

STATE OF HAWAII
LAND USE COMMISSION

1:00 P.M. Meeting

March 14, 1969

Honolulu, Hawaii

STATE OF HAWAII
LAND USE COMMISSION

March 14, 1969

CHAIRMAN CHOY:

The meeting of the Land Use Commission will come to order. All those who would like to testify but are not attorneys, could you rise and be sworn in?

Do you swear the testimony you are about to give to your Land Use Commission is the truth, the whole truth, and nothing but the truth, so help you God?

RESPONSE:

I do.

CHAIRMAN CHOY:

Thank you.

We'll have a hearing on A69-210, Bishop Estate, 6.2 acres.

MR. DURAN:

Mr. Chairman, Bill Dorse (?) will make the staff presentation on this.

CHAIRMAN CHOY:

Mr. Dorse:

MR. DORSE:

Just to give you a bit of orientation, you may recall the Horita hearing of sometime ago where a parcel over here just at the end of the middle lock of Pearl Harbor. Well, our petition today, A69-210, is another little dot right up here, very much in the same area. As you can see on this map . . . this map here in this area, the relationship of the two.

MR. DORSE (Cont'd.)

Now this area is about 6.2 acres. They want to . . . The petitioners are asking to rezone this from ag to urban. The land is described in Tax Map 9-6-03, parcels 39 and 40. They are contiguous parcels. You'll notice that it is located just makai of the new interstate highway which is now under construction, and the Leeward Community College is right here. The properties adjoin. And our urban boundary runs right along here. You can see it again over here in more detail. So that it does have an urban boundary on 2 sides.

Many of the existing land uses in the area indicate the transitory nature, I think, of this whole little area. You have the highway, you have the community college, and of course some vacant lands and some (inaudible) in here, so the whole area is quite transitory. This area is all built up along the road. The adjoining portion of the Leeward Community College is also (inaudible). I think their buildings must run somewhere to about here so that this section over here. . . (inaudible) . . .

The subject parcels were formerly in cane on soils designated as A2i by the Land Study Bureau, but I'm not sure what to classify them at the moment because they've come in and taken a lot of the top soil off, so that a portion of it is disturbed. And the property is very gently sloping. You can see better on this map. The petitioners have submitted this map of the property. Very gently sloping gently down this way, but there is a bank that runs along here, about 35 feet. There are scrubs and weeds on the property now but no crops, which does indicate that there is still soil there.

All utilities are available on the site except for sewers, and the sewer problem would be solved prior to development, and the City-County

MR. DORSE (Cont'd.)

recommendations we don't have yet. While talking to their staff, they did make a comment on this, so I'd like to read you their letter very quickly. Bear in mind again that the City-County Commission has not taken action on this particular petition, but the staff has done an analysis and says: "We have completed our staff analysis of the subject request and will recommend approval through the Planning Commission. The recommendation for approval was based on the existing planned urban development and the proximity of the site to the Community College. It was noted, however, that the vicinity of the site is not serviced by sewage. The Division of Sewers informs us that service of 2 sewer lines to Leeward Community College is being planned at the present time and proposed Bishop Estate development can eventually connect to it. The Department of Health has informed us that the use of cesspools or other disposition of sewers into the ground would not be permitted in the subject area. Cesspools can raise a danger to the (inaudible) waters and springs. It may (inaudible) . . . watercress farms . . . (inaudible) . . . Bishop Estate parcel." That area they're referring to is down here, where the watercress is growing. That's their letter.

Now for the analysis. (The "Analysis" portion of the March 14, 1969 Staff Report to the Land Use Commission on A69-210 - Bernice P. Bishop Estate (Waiawa), was read verbatim.) (The Staff Recommendation portion was also read verbatim.)

CHAIRMAN CHOY:

Any questions?

COMMISSIONER:

Have you seen any evidence of any plan here on the part of the University or the City and County for the long range uses of all of these

COMMISSIONER (Cont'd.)

various mixtures and all these mixed uses that appear now? Is there any direction that . . . ?

MR. DORSE:

You mean the general area?

COMMISSIONER:

Yes, the general area.

MR. DORSE:

No. I haven't seen a thing. This area . . . The highway is going to take a little bit from them. Their parking is all in here, and this is where the buildings are now. They do have a small sewage treatment plant down here, and I understand that this has not been built to a very big capacity in expectation that a trunk line will . . . (inaudible) . .

COMMISSIONER:

Do you know if that area is adequate for the Community College site itself?

MR. DORSE:

I really don't know. They certainly haven't used it all yet, but what they have in mind . . . (inaudible) . . . (Mr. Dorse has a habit of speaking quieter as his phrases near the end of a sentence and his voice trails off.)

COMMISSIONER MARK:

(Question was totally inaudible due to soft tone of voice.)

MR. DORSE:

It may be, Dr. Mark, that the State is not interested in any more properties because we asked them that question with regard to Mr. Horita's property, and I think at that time they indicated that they had ample land

MR. DORSE (Cont'd.)

for the Community College in what they presently owned.

COMMISSIONER:

A two year community college?

MR. DORSE:

Yes. That's what was presently planned. A two year community college.

COMMISSIONER:

As I recall Mr. Horita's case, I think this land was offered to the college prior to your purchasing it. I think I read this somewhere.

COMMISSIONER:

Yes, where is that new campus? The four year. I thought they were somehow tack it onto this one.

COMMISSIONER:

It's some kind of competition.

CHAIRMAN CHOY:

Judge, do you know anything about . . . ?

JUDGE (?):

Yes, I'm interested in this piece here. Maybe to add to Dr. Mark that there was investigation made before we made this application. The Community College will have about 60 acres plus a (inaudible) for their 2 years.

CHAIRMAN CHOY:

Yes.

JUDGE:

And then they thought of their 4 year college. It's certainly not going to be in this neighborhood. They wouldn't have . . (inaudible) . .

JUDGE (Cont'd.)

junction where they're building that big interchange. Further answering this question, I think the staff report is well taken. Right below where that watercress farm . . . that's all what you call in watercress and there's some taro, but other than that, I don't think anything else around there would be (inaudible) because there is a boundary. Your highway is actually limited any way you can move. So this is a piece, and I think it should be used. And I think it's going to be put to good use for the university. The sewer line . . . I can tell you there is a bid on the sewer line right along the high ground of the watercress area, but because of the price the bids were, they're taking a good look at it and I think they'll call for another bid. But it's all been planned and that treatment plan will tie into the sewer in there. So I accept the report as it has been presented by the staff.

COMMISSIONER:

George, what are the long range plans for preserving that watercress?

JUDGE:

Well, I'll tell you right now, Bishop Estate wants to preserve it. In fact, they want to make 40 and 50 year leases. They have a subdivision of 2 and 3 acre parcels, but the watercress people could remain in their lease of 40, 45 years. Mr. (inaudible) can vouch for that. They don't want to disturb the watercress.

CHAIRMAN CHOY:

Any other questions? Any comments from the staff or the petitioners?

If not, . . . (inaudible) . . .

COMMISSIONER:

We accept the report and ask them to . . . (inaudible) . . .

CHAIRMAN CHOY:

Judge, you understand we'll have to act on your petition within 45 days. Thank you.

JUDGE:

Thank you very much.

CHAIRMAN CHOY:

That ends the hearings. We'll get into action. Case 68-203.

By the way, do we have a quorum?

COMMISSIONER:

We have a quorum. (Additional comment inaudible.)

CHAIRMAN CHOY:

I thought we'd give the petitioner a choice.

MR. DURAN:

I don't think anyone's here representing Mahikoa.

CHAIRMAN CHOY:

Judge, can we extend this time on this particular petition. I mean, we were overdue when we were in Kauai.

COMMISSIONER:

And that time we only had 5 members.

MR. DURAN:

Right. And we were going to consider that in Honolulu the following day and we didn't have time and we didn't have a quorum again.

COMMISSIONER:

I'm trying to recollect now . . . March 20th. When do we next meet?

MR. DURAN:

The 28th.

COMMISSIONER:

Gee, I don't know. On this one here, you clearly don't have a request

COMMISSIONER (Cont'd.)

from the petitioner to defer. You do have a quorum . . . I mean, enough to take action, and . . .

COMMISSIONER:

I think we should.

COMMISSIONER:

Mr. Chairman, if I may interject a point. I don't know the legality of this, but in view of the fact that we've already done this, the precedent has been established.

COMMISSIONER:

Oh, yes, but always at the request of the petitioner.

COMMISSIONER:

Unfortunately, the guy is not here because of the distance.

COMMISSIONER:

Well, the statute says take action between 45 and 90 days. Now the only reason I think we've construed that 90 day limitation to open up was because there was at least an intent read into the statute that a 90 day outside limitation was for the benefit of the petitioners and only he could waive it. You see? Well, now here we have a situation where he hasn't waived it . . . and whether this further step just opens the door and makes meaningless that 90 day limitation. What is the purpose of it?

CHAIRMAN CHOY:

I'll tell you what we'll do. Why don't we deliberate on this particular one?

We have on here A68-205. We have Mr. Horita here. Why don't we take this case up first?

May I have your attention please? We'll come back to Case A68-203

CHAIRMAN CHOY (Cont'd.)

since nobody's representing them, and go on to Case A-68-205, the case of Herbert Horita. Staff, would you like to . . (inaudible) . . Is there any change in the original recommendation?

MR. DURAN:

No change.

CHAIRMAN CHOY:

Commissioners, shall we dispense with the staff report since there is no changes? Staff has recommended for approval.

MR. DURAN:

The staff memo was circulated prior to the meeting, Mr. Chairman.

COMMISSIONER:

Is there any additional evidence one way or the other?

CHAIRMAN CHOY:

Would the Commission like to question the staff? If not, we'll go on to the petitioner if he would like to present his case.

PETITIONER:

Yes. Mr. Chairman, inasmuch as you have only 6 Commissioners at this meeting, the petitioner requests that we defer action on this matter until such time as you have a . . .

CHAIRMAN CHOY:

We might have a unanimous vote. You never can tell.

(General discussion between several of the Commissioners at one time.)

COMMISSIONER:

I move we accept the staff report.

COMMISSIONER:

I second it.

CHAIRMAN CHOY:

O.K. It has been moved and seconded that we accept the staff report.

CHAIRMAN CHOY (Cont'd.)

Any questions? Will you poll the Commissioners?

MR. DURAN:

Commissioner Napier.

COMM. NAPIER:

Aye.

MR. DURAN:

Wung.

COMM. WUNG:

Aye.

MR. DURAN:

Inaba.

COMM. INABA:

Aye.

MR. DURAN:

Kido.

COMM. KIDO:

Aye.

MR. DURAN:

Mark.

COMM. MARK:

Aye.

MR. DURAN:

Chairman Choy.

CHAIRMAN CHOY:

Aye.

MR. DURAN:

Six votes in favor. Motion is carried. Thank you very much.

CHAIRMAN CHOY:

Now is anybody here from the Bulldozing Services?

PETITIONER:

Yes. I am.

CHAIRMAN CHOY:

Staff, would you read your report on . . . (inaudible) . . .

STAFF:

. . (inaudible due to Commissioners speaking) . . Kaneohe town. The Pali road leads to the subject parcel via Ahuimanu Road. This is the area in question. On the scale, we have the subject parcel indicated in yellow, the conservation boundary is indicated in green, this is an urban portion . . . a conservation portion. This is the rear boundary of the parcel. The homes that are existing are shown here in blue. On another scale, we have the subject parcel indicated here; this is the portion requested for urban usage. (The March 14, 1969 memorandum from Staff to Land Use Commission re: A68-204 - Bulldozing Services, Limited, was read verbatim.)

Also attached to your staff memo is a copy of a letter that Mr. Higa, president of Bulldozing Services, has submitted after the writing of this report. The staff has selected a few of the items in this letter which we would not discuss at a public hearing on January 18th. Item No. 4 on page 2 of this letter states: (No. 4 was read verbatim). (Please see letter in file with staff report.) Comments by the staff: "The letter dated March 8th does not mention the second violation issued by the (inaudible) Board on February 3rd. In fact, the continued violation prompted the plan to initiate action to the Attorney General's office to force compliance with these regulations.

Going back to page 2 of the letter, items 6, 7 and 8 seems to have . . . seems to explain the petitioner's reason for continuing the construction

STAFF (Cont'd.)

work. Item 6: (No. 6 was read verbatim. See letter with staff report.)
(Items 7 and 8 were then read verbatim.) This last statement has been
checked with the tax office and has been (inaudible) confirmed.

COMMISSIONER:

Confirmed?

STAFF:

Confirmed, yes. It is the staff's opinion that this letter appar-
ently attempts to justify the petitioner's action in ignoring the land
board's citations. It has very little to do with the . . (inaudible) . .
of the land use law with regard to boundaries' amendments, justifying the
need for changing the (inaudible). Therefore, the recommendation for dis-
approval of the petition is retained.

COMMISSIONER:

I have a question, Mr. Chairman. I note here that this letter was
received on March 8, 1969.

STAFF:

It was received on March 10th.

COMMISSIONER:

March 10th. Then do you feel that you have had enough time to ascer-
tain whether all the facts stated in this letter are true or untrue?

STAFF:

We have considered all of the items that were not taken up previously
at the January 18th meeting, and these points were brought up at the last
(inaudible).

COMMISSIONER:

I can't recollect what was taken up and what wasn't.

STAFF:

For instance, on page 1 of the applicant's . . . of the petitioner's letter, he mentions the 18-lot subdivision mentioned on page 3 of the staff report, and page 3 of the staff report did mention that this was a project by (inaudible) Yee Realty instead of the applicant, and this was something that was covered in the public hearing.

COMMISSIONER:

Well, how about paragraph 2?

STAFF:

Oh, this was also covered on page 3 of the staff report of January 18th which gave a kind of summary at a glance . . .

COMMISSIONER:

Are you saying that all of the facts that he has in his letter of March 8, 1969 . . .

MR. LEONG:

. . . was considered.

COMMISSIONER:

They have been considered?

MR. LEONG:

Yes. In other words, we're not passing over the bulk of the letter. We're just taking those items that were not picked up at the public hearing.

COMMISSIONER:

And you have made findings one way or another on all of these items?

MR. LEONG:

Yes, as much as . . .

COMMISSIONER:

Either previously or at this time?

COMMISSIONER:

The blue are the existing homes?

MR. LEONG:

The blue are the existing houses that are occupied. These are the ones that are still under construction.

CHAIRMAN CHOY:

And there is one more below that area.

MR. LEONG:

Oh, this is the one you're referring to possibly.

(Some conversation followed but it was inaudible due to the soft tone used by the speakers.)

The petitioner has submitted photographs of the area.

COMMISSIONER:

That dirt road that . . . it passes these 2 houses also.

MR. LEONG:

Yes. This is actually a 40 foot right of way on which 2 houses were constructed. It has the bare minimum clearance on this side . . . 5 foot.

CHAIRMAN CHOY:

Are all these people permitted to put 2 houses on their lots now?

MR. LEONG:

These are 10,000 square foot lots and these are all single family . . . single lots with one . . . But this is an unsubdivided lot which the petitioner owns and he has 10 homes on there. I think part of the reason is that he has a subdivision in mind or he might want to take that area for (inaudible) development.

CHAIRMAN CHOY:

Any other questions? Thank you, Ah Sung. Would the petitioner like

CHAIRMAN CHOY (Cont'd.)

to make a statement?

MR. ROBINSON:

Yes. I'm John Robinson. I'm attorney for Bulldozing Services. I have some further information here supplementing that which you have already, and I'd like to try to get you to reject the idea that here's a man who's arbitrarily going ahead and trying to do something against your wishes . . . that he's bulldozing the thing through if he can.

Since we last met on January 18th, there's been a couple of newspaper articles printed which I think are very unfavorable and very unfair to the situation here. You may have seen them and because you may have seen them, I think the applicant ought to have a chance to comment on the newspaper articles. I don't believe that any member of this body would have made a statement to the press saying, for instance, that the outlook for approval is grim, as is quoted in the newspaper, because you people haven't reached your decision yet, I assume. That this matter is still under consideration. So I'd like to make some comments, using the newspaper article as an outline so I can clear some things up.

At one place in the article, it is said that Mr. Higa has ignored 2 certified letters asking him to halt the work. I don't believe this could have come from Mr. Kido's office because Mr. Kido knows that Mr. Higa and I both appeared in his office following that letter and asked if we could see him. At that time, Mr. Kido was the head of the Department of State and a very busy man, and I realize you can't just walk in and say, "Here I am; let's talk this thing over." Mr. Kido suggested through the secretary that we come back at some other time and have an appointment. I personally called the secretary at least on 2 other occasions immediately following in

MR. ROBINSON (Cont'd.)

subsequent days, and we were unable to effect a time when Mr. Kido could get away from the pressures of his office so that we could talk about this. If you'll recall, the Legislature was just opening at that time and obviously, his office was quite busy. But what Mr. Higa wanted to talk to him about was the fact that on the one hand, the City and County was saying that if you don't keep this work up, we're going to cancel the building permits which have already been issued; on the other hand, the Board of Land and Natural Resources says you've got to stop or you're in violation of our regulations. The result was that the City and County did give Mr. Higa a notice of violation because he did stop the work, and they said that your permits have expired for that reason. So now he has a violation from them because he did stop. But there's another reason . . . the heavy rains during that period. It's common knowledge that it was raining during that period. There are people living in there. You've just noted the numbers of houses there in that area. They ought to be protected from the erosion which would naturally have occurred in a half-finished project. So it was deemed essential to finish that roadway. At the time you gentlemen looked at it, there was a half a road there, and I think that is shown in one of the photographs that I submitted at the last meeting. The other half of the roadway was put in so it would cause a trail to carry that surface water off so it wouldn't go into that lower tier of houses. And I'm submitting then today a couple more pictures which update that same project which will show how that was done. You'll notice lying beside the side of the road are cesspool covers which were poured out of the excess concrete from the road. And in answer to your question, Mr. Chairman, there was . . . you'll be able to see the numbers of houses which were affected there as compared

MR. ROBINSON (Cont'd.)

with the previous photographs. We don't feel then that Mr. Kido's letters went ignored. We did try to do something, and we feel that this work that was done was necessary. So the . . . skipping over some of the things here which are not so important at this time. For instance, the fact that the application was filed in October of 1968. This is not something that has just come up recently.

I'll go into that part of the newspaper article which refers to the scarring of the hillside. Here's a photograph of the most prominent scarring of the hillside, and that scar is outside this parcel. It's on the . . . that little narrow neck going mauka of that yellow parcel. And again, it was caused before this project was ever started. That can be seen for miles as your first staff report says. The grading of this area was approved by the Division of Engineering, Department of Public Works, on September 15, 1964. Here's the grading plan for it with the approval, clearly marked here by the Director, Division of Engineering, Department of Public Works, September 15, 1964. You might want to be sure of that. The building permits which were issued in connection with this thing clearly show on the bottom where it says zone, parantheses use district AA, residential. These zoning permits were issued in the latter part of 1965. The Board of Water Supply approved a plan and profile for the road and waterline of this particular development on February 2, 1966. Now these, the Board of Water Supply, the Division of Engineering, Department of Public Works, and the City and County Building Department . . . they apparently didn't know this area was in conservation district. Each of them have approved these applications for their particular problems within the area. Naturally, the land owner in moving ahead with this project, felt that he could rely

MR. ROBINSON (Cont'd.)

on these things. So meanwhile, the Tax Office has been, as the staff pointed out, classifying this as Class 1, single family and 2 family residential, and here's their most recent notice which says they still classify it thusly.

So I want to reiterate one thing. It wasn't said at the last . . . well, I said it the last time but didn't expand upon, and that is that this particular project is a low income family project. These houses are designed to market and they should be marketed at from \$16,000 to \$17,500 on fee simple land. So it's not a great money-making project, although I'll be honest . . . the owner hopes to make some money on it. The need for urban housing in this area has been stressed by the staff. Frankly, I would think that it would be almost apparent that the housing need is upon us. One of the elements I would point to is this: the Hawaii Housing Authority has already gone into a leasing arrangement with Bulldozing Services for the use of these houses for low income families. Now Hawaii Housing Authority . . . apparently they don't know it's conservation or don't care because they have a lease already on at least one of the houses and has indicated that as soon as some of the others become empty, they want those, too. And then as the staff pointed out, the Planning Department of City and County has set out in its letter to this Commission of January 29, 1969 for what reasons by the application ought to be approved. The one which strikes me . . . and still I can't see why it isn't so apparent . . . is that it's continuous. It's already in an area that's being used for urban purposes. The line drawn on the map there appears to be quite an arbitrary line. It doesn't follow the ridge line that's up above those houses but cuts down through a project which is already in existence.

MR. ROBINSON (Cont'd.)

Therefore, gentlemen, I hope you won't feel that Mr. Higa has been arbitrarily bucking the Commission. I feel that here's a citizen who's caught right square between several Government agencies, and I think he's done the best he can trying to get out of it. And I think the reason for filing an application would be to try to get the situation clarified.

COMMISSIONER:

What do they say . . . damned if you do and damned if you don't?

MR. ROBINSON:

Yes. That is the situation. Now if he's turned down, I suppose we'd have to go in there and tear those houses out. It just seems like a great waste of housing and a great waste of effort. I propose instead, let him finish it out. Let him get the ground cover in there and let him get the cesspool covers on so nobody falls in those holes.

CHAIRMAN CHOY:

What is the reason for keeping the cesspool covers off?

MR. ROBINSON:

He's been instructed to stop work. As soon as he was instructed to stop work, he hauled out 2 truckloads of lumber to put in his warehouse. He stopped the work on the cesspools except for finishing that roadway which was felt to be absolutely necessary. He poured the cesspool covers out of the excess cement so that they were there ready to go back on, but he's afraid to start work now. He's been told he's in violation.

CHAIRMAN CHOY:

Have you been out to see the site?

MR. ROBINSON:

I was there about a week ago at which time I took the pictures which

MR. ROBINSON (Cont'd.)

I submitted today.

CHAIRMAN CHOY:

Were you up there when you last came and presented the case to us?

MR. ROBINSON:

I had been there previously, yes.

CHAIRMAN CHOY:

Because, unfortunately for Mr. Higa, the Commission acted very promptly and it went out the same day. We told him to not stop work. They were . . . (inaudible) . . . excepting Saturday and Sunday.

MR. ROBINSON:

Were they building on a house?

CHAIRMAN CHOY:

They were building a house. So your statement that they had stopped work is not true.

MR. ROBINSON:

If they were building a house on that date, I stand corrected, but

. . .

CHAIRMAN CHOY:

The tenants living right next door said sure, they build every day except Saturday and Sunday. Would we accept that?

MR. ROBINSON:

I think the pictures would show the difference in the two . . . in the hearing of January 18th. Apparently, some completion was going on yet. I will stand corrected. But I don't believe that . . . See, for protection there, I think there was certain completion that had to be done.

CHAIRMAN CHOY:

Would you say these buildings were put on a very suitable piece of ground . . . land that you would advise a client to buy a home on?

MR. ROBINSON:

My field is not land use, sir. I'd rather not make a personal opinion on that, because it wouldn't be a valid one.

CHAIRMAN CHOY:

I wouldn't expect your opinion. But how much time would be allowed for a person to build a cottage. When you say stop work and they cancelled the permit, isn't there at least a year to quit to build a cottage?

MR. ROBINSON:

I have the impression it's 90 days.

MR. DURAN:

A permit is issued for 90 days within which work must be accomplished . . . every 90 days. It cannot stand idle for a period of 90 days or the permit could go on indefinitely. If you work one day every 89th day . . . but it's good for 90 days and if you don't do any work, then it's automatically revokable.

CHAIRMAN CHOY:

I see. So if Bulldozing Services can prove that they have been up there and milled one piece of lumber, that permit can still be valid.

MR. ROBINSON:

We're in this dilemma, sir.

CHAIRMAN CHOY:

Any questions?

COMMISSIONER:

May I ask Mr. Robinson a question? Do you know if Mr. Higa's firm

COMMISSONER (Cont'd.)

did the grading for this portion of the subdivision?

MR. ROBINSON:

I believe he did, yes, sir.

COMMISSIONER:

And he had no knowledge of the conservation designation?

MR. ROBINSON:

I can't speak for another man's actual knowledge, but I am told that he didn't know all this time it was a conservation area.

COMMISSIONER NAPIER:

How'd that area withstand the recent flooding conditions on the windward side?

MR. ROBINSON:

Not too bad. There was a . . . By personal observation, I can say something about that. The map would show a drainage easement which is down in this area and follows up to a (inaudible) which comes off of the high ground this way and should then follow right down this natural drainage area. It was necessary during the rains to go in with drainage equipment and open this ditch along this boundary line here. It was necessary to go in there to prevent the water from pouring in on these upper houses and hence down to the lower area. The profile for drainage will also show that there's (inaudible) up this slope . . . not quite half way up, right along here. This would cause run-offs from the upper portion of the lot to collect in this basin here and later go out through a drainage area, underground, connecting with this existing drainage easement. So the . . . even though it wasn't too bad, I think it was . . . this house here, one of the foundation blocks or the post was lowered about that much.

CHAIRMAN CHOY:

Any other questions? If not, this is . . . we're supposed to take action on this but, as you know, we only have 6 Commissioners present and it takes 6 for a unanimous vote to make a boundary change. Would you rather wait until we have a full Commission?

MR. ROBINSON:

Well, as some of our Las Vegas friends would say, I'll wait til the odds are better.

CHAIRMAN CHOY:

Then would you request an extension on this basis?

MR. ROBINSON:

Yes, sir. I do request it.

CHAIRMAN CHOY:

Can I have a motion? Or do we have to have one?

MR. DURAN:

No.

CHAIRMAN CHOY:

O.K.

MR. ROBINSON:

Thank you.

CHAIRMAN CHOY:

We'll go along with the Petitioner's request to wait until we have a full Commission.

MR. ROBINSON:

And may I have my exhibits returned since they are working papers?

MR. DURAN:

Mr. Chairman, on that full Commission, this might be a . . .

CHAIRMAN CHOY:

I meant by full Commission when we have more Commissioners present.

COMMISSIONER:

Why don't we put an outside limit on it?

CHAIRMAN CHOY:

I think we ought to just say more Commissioners, then the petitioner will have the choice as to whether he wants to go ahead or not.

COMMISSIONER:

How are we going to tell when we'll . . .

MR. DURAN:

It could be a Maui meeting, it could be a Kona meeting, and . . . I wonder if Mr. Robinson realizes that.

CHAIRMAN CHOY:

You could keep in touch with the executive officer.

MR. ROBINSON:

I will.

COMMISSIONER:

It could mean taking a trip to Maui and then we may not have but 6 members present again. You do understand that?

MR. ROBINSON:

We'll take our chances. Thank you, Mr. Duran. I'll keep in touch with you.

CHAIRMAN CHOY:

On this action A68-203, wasn't this a staff approval?

MR. DURAN:

It was a partial approval. We had recommended that that lower area

MR. DURAN (Cont'd.)

subject to periodic flooding not be included in the urban district.

COMMISSIONER:

Mr. Chairman, I believe that our concern earlier that the next meeting would be beyond the 90th day was not well founded. Tomorrow . . . I believe we have a meeting tomorrow.

CHAIRMAN CHOY:

Not necessarily. If we get through today, we're going to take off.

COMMISSIONER:

I see. Then . . .

CHAIRMAN CHOY:

I don't think tomorrow's meeting would get us any more Commissioners.

COMMISSIONER:

I wonder then if we could call a short recess. I'd like to see . . .
(inaudible) . . .

CHAIRMAN CHOY:

Let's have a short recess.

Would the staff read the staff recommendations the way how we . . .
(inaudible) . . .

MR. DURAN:

In view of the adverse reports from the U. S. Corps of Army Engineers and the U. S. Soil Conservation Service, it is the recommendation of the staff that only parcel 17 be rezoned for urban purposes at this time. This is the 3 acre parcel owned by Floro and Trinidad Villabrille which directly abutts the north boundary of the Kapaa urban district. This is the upper land.

CHAIRMAN CHOY:

It's parcel 17.

MR. DURAN:

But it's the lands outside of the floodland area.

CHAIRMAN CHOY:

Do I hear a motion?

COMMISSIONER:

I move we accept the staff's recommendation.

COMMISSIONER:

I second it.

CHAIRMAN CHOY:

It's been moved and seconded that we accept the staff's recommendation. Any questions? Will you poll the Commissioners?

MR. DURAN:

Commissioner Wung.

COMM. WUNG:

Aye.

MR. DURAN:

Inaba.

COMM. INABA:

Aye.

MR. DURAN:

Kido.

COMM. KIDO:

Aye.

MR. DURAN:

Mark.

COMM. MARK:

Aye.

MR. DURAN:

Napier.

COMM. NAPIER:

Aye.

MR. DURAN:

Chairman Choy:

CHAIRMAN CHOY:

Aye.

MR. DURAN:

Motion is carried, Mr. Chairman.

CHAIRMAN CHOY:

O.K. Let's see . . . shall we start on the review of the Hawaii boundaries?

COMMISSIONER:

Can we take a 5 minute break?

MR. DURAN:

Ed, just let me make a comment here before the Commissioners. We received a letter from Henry Heidtbrink, representing the recent purchasers of Princeville Ranch on Kauai. They have advised in this letter that they have Belt Collins working as planning consultants and (inaudible) Forrester as economic consultants on this Princeville Ranch land of theirs. They've been in contact with the 701 Project people working on Kauai.

CHAIRMAN CHOY:

Where is Princeville Ranch on that Kauai map.

(Mr. Duran's response was inaudible due to his distance from the tape recorder. Appeared to be at map.)

CHAIRMAN CHOY:

Right. And where is Hanalei Valley?

(Response inaudible for reasons stated above.)

CHAIRMAN CHOY:

Oh, it abutts Hanalei, huh?

COMMISSIONER:

They even own some of that . . .

MR. DURAN:

Well, down to the crux of the request. As I understand it, these consultants will hold public hearings on April 11th and 12th. My question is, can our planners and I meet briefly with the Land Use Commission at some meeting they may be holding the latter part of this month or the fore-part of next month. As you know, we are trying to meet the deadline prior to final acceptance approval by the Land Use Commission of the consultant's report. They want to meet with us before we decide on these boundaries and go to a public hearing, so I wanted you to make the decision on that. We will meet the 28th of this month on Maui and the early part of April on the Kona . . . if you want to meet with them.

CHAIRMAN CHOY:

And when is the decision due on Kauai?

MR. DURAN:

We should have the boundaries and the regulations finalized for the public hearing April 2nd.

COMMISSIONER:

And when is the public hearing?

MR. DURAN:

April 11th and the 12th, if necessary.

COMMISSIONER:

On Kauai?

MR. DURAN:

On Kauai. Ed, just for a thought on this matter . . . these people have been in contact with you. I presume that if they have more information, they can, like the rest of the land owners, report to you. I don't know why it would be necessary for them to have a meeting with this Commission because this is the purpose of the public hearing. This is just my idea.

COMMISSIONER:

I think in the interest of everybody's time and not treating anybody specially, I think they could come to the public hearing and . . .

CHAIRMAN CHOY:

At the public hearing we wouldn't be making any decisions.

MR. DURAN:

But then every other land owner should be entitled to make a presentation to the Commission prior to the public hearing, too, then. I mean, it's up to the Commission whether you want to sit in with them or if you want to let the consultants handle it and let the rest of it . . .

CHAIRMAN CHOY:

I think we ought to make them aware of the fact that they could meet with the consultants, and then if they insist because of some special reason to meet with us, then we'll meet. But just make them aware of the fact that they need not meet with us actually. It will only be a hearing and not action.

COMMISSIONER:

Emphasize the fact that they should meet with the consultants. They will be in post-communication with at least the staff of the Commission. I think they also ought to engage a conservation consultant, too.

COMMISSIONER:

The way I look at it . . . a private hearing like that, the public is not aware of what they're presenting and it may be something against the public.

CHAIRMAN CHOY:

But let them know . . . O.K., Rom?

MR. DURAN:

O.K.

UNIDENTIFIED: (MR. WILLIAMS?)

I want to give this to you, Rom. These are the steps of the second draft of the revised regulations and I'm sure that there will be a 3rd and a 4th draft, but we want you to have copies of them as they progress. These contain now all of the recommendations . . . results of our previous discussions over the first draft plus some ideas that our attorneys have had that were basically technical matters. They don't change any of the concepts. But these are for your use and reference, and I imagine that within another couple of weeks we'll probably have a 3rd draft because already we've gotten together some of our own ideas about changes. Most of them are technical though. Then this is a list of what we've submitted so far, just so everybody could have it as a reference and if they are missing something, we could get it to them.

MR. DURAN:

Are you planning to discuss these today?

MR. WILLIAMS (?)

No. These are just for distribution. We'll discuss them if you like but we hadn't planned on it because we don't have anything new to present. What I did want to do was report on the meeting we had yesterday with all the planning directors of the Counties . . . or day before yesterday . . . and the people from the tax office and Dr. Mark's office and, unfortunately, we didn't have anybody from D.L.M.R. But what we were trying to do was get all of the technicians, so to speak, involved in planning, and that includes the assessors, together to discuss how planning was working throughout the state, from the state to the local level, to see if there were points of conflict that could be ironed out in the process of working on this land use review, and to see also how this total process related to the job that the assessor is doing and if there were ways in which the planning process . . . the people that are planning in the Islands could assist and ways he could assist them, or if there were conflicts that should be ironed out. Actually, we did rediscover I should say, a number of conflicts. I don't think we came up with anything that anybody agreed on that is going to be a way of resolving these right now, but it was a very helpful meeting. I talked to a couple of the County planning people afterwards and they thought it had been a particularly good and helpful meeting. And it seemed to me from the back and forth response between Dr. Carvard and the tax people that there might be something very good come out of this section of the meeting.

Well, I want to take up one point and then I want to introduce Dr. Carvard (?) to you and he'll tell you a little bit about what he's doing and will have some suggestions and maybe some questions of you.

MR. WILLIAMS (Cont'd.)

The one thing that I want to do is to go back to Kauai just a minute to review one point that we made. It's just in the Hanalei Valley that we discussed before and that we feel some concern about. We want to just bring it out and see if you have some feelings about this.

As you know, this is one of the beauty spots of Hawaii. There's just no question about it. It's just a beautiful place. Originally, this was in agriculture, right? And our first proposal was that under the way we read the law and the regulations that because this is a flood area and an area that should be preserved because it's an area of great scenic beauty and scenic quality, we felt it logical it into a conservation zone. We have felt, however, that when we move areas from agriculture into conservation that we want the owners of those lands to go along with the concept behind this, so we've been wondering a number of things. What's their reaction going to be? We've found that there's a certain emotionalism connected with the word that has no basis in reality. We had one developer say, I don't want my land put into conservation because I'll never get it out. That's not totally the idea behind the conservation zone and I don't think that our experience has been that it's any more difficult to get a rezoning from conservation to any other use than from ag to another use. So anyway, we posed the question to the tax assessor because we felt one of the things that people would be concerned with is what was going to happen to their taxes in these areas if there is a shift from ag to conservation. Well, he said that for the most part . . . like in here there wouldn't be because there was no different use possible, but we asked him specifically about Hanalei Valley and he said there he thought there would be because it was buildable and developable and very attractive and

MR. WILLIAMS (Cont'd.)

accessible and that because (inaudible) does provide the many uses in a . . . in a general use conservation zone that he thought there it would be easier for the owners to install the uses. Well, you can see the dilemma that this could . . . Our feeling here is that it should be conserved from urbanization and from this kind of use. Alright, now the County people said they felt and some of the other people felt that if it was left in an agricultural zone, they would still have the Land Use Commission involved and would have to go through public hearing and the normal processes if somebody had an idea for development. They would have to go through the County and they would have to go through the Land Use Commission. And this was more of a protection for that area than if it were zoned conservation. Well, can you see our dilemma?

CHAIRMAN CHOY:

The tax people . . . do they feel that they could tax the conservation area higher than ag?

MR. WILLIAMS:

In this case, yes. In this case they felt they could. In many cases no, because there's the matter of access and, you know, buildable quality of it and so forth. But in this particular case, Mr. (inaudible) was quite positive about it.

COMMISSIONER:

I'd like to contradict one thing now. You say that you take land and put it in conservation to get a certain tax break, and you say you put this land in conservation and use it for agriculture . . . so they can turn around and tax your (inaudible) also?

MR. WILLIAMS:

I mean, there is that much flexibility.

COMMISSIONER:

We're using one argument . . . they say, alright, you put it into conservation and you get a tax break.

COMMISSIONER:

No. We say put it in conservation but use it for agriculture and we're going to tax you for it on agriculture, huh?

COMMISSIONER:

What he said was that in the agricultural district, there are less potential uses.

MR. WILLIAMS:

You're talking about Hanalei Valley and (inaudible). You know, we originally thought that it should go into conservation. We had this meeting in your office there. The tax people said that in this particular case, because of accessibility, desirability and so forth, that they would tax that area higher if it was in conservation than in agriculture. And it kind of shook us up, so . . .

COMMISSIONER:

Desirability for what?

COMMISSIONER:

Urbanization.

MR. WILLIAMS:

Resorts and . . .

COMMISSIONER:

You should make it clear when the tax people told you the taxes would be higher, it meant that the land would have more value.

COMMISSIONER:

But wouldn't it be based upon the actual use, regardless of whether it's in conservation or ag? Are you saying that the tax is based upon the zone itself or the specific use?

COMMISSIONER:

Not only the use; the potential use.

MR. DURAN:

The value of the potential use.

COMMISSIONER:

You say there is some flexibility in the administration of the tax law?

MR. DURAN:

Oh, yes.

MR. WILLIAMS:

There is very much.

COMMISSIONER:

Then what has been the precedent which leads to this particular interpretation? Is there something that they have done recently that they have to follow?

MR. WILLIAMS:

I can't answer that.

COMMISSIONER:

Do you think they can be guided by expressions from other bodies? I wonder whether we have made expressions.

COMMISSIONER:

You can't use the term "potential" in so many different ways, because if you even say that the lands will be in ag zone . . . have a potential

COMMISSIONER (Cont'd.)

for resort development . . . so that when you talk about potential . . .

MR. WILLIAMS:

We're speaking about potential under that zone, under that district. What we're saying is that under an agriculture district, you're limited as to . . . but under conservation district, you're less limited. In this case . . .

COMMISSIONER:

What I'm trying to establish here is that you can interpret the word potential . . . not necessarily because there are potentially greater uses within the conservation district as opposed to ag, but the real potential . . .

COMMISSIONER:

I wonder if Dr. Carverd who is in taxes could give us some guidance on this problem?

CHAIRMAN CHOY:

I think he's listening so far and he gets an idea of what the problem is.

MR. WILLIAMS:

He was at this meeting too and we discussed a lot of things I'm sure you would like to hear. I'd like to introduce him.

MR. DURAN:

I wonder, Ed, if we could interrupt for about 15 minutes. I think that this could go on for quite a while as it's quite involved. And we do have just one little item we'd like to take up. Would this be a good time to interrupt?

MR. WILLIAMS:

Can I offer an alternate? That you let us continue and then at 3:15 we should leave.

MR. DURAN:

O.K. You go ahead then.

CHAIRMAN CHOY:

This is on the Ethics Commission.

MR. WILLIAMS:

I took the liberty of inviting Mrs. Van Winkle, the Executive Officer of the Ethics Commission, to come down here and forewarn you people of your responsibilities under the new law in view of the fact that you are going to be making major decisions all over the Islands with the boundary review. And she has consented to come up here and talk to us today for a few minutes.

MRS. VAN WINKLE:

Thank you. Many of you may have already received these because I did send them to you in the mail under separate cover. But if you do and don't want another one, please just pass them on. I will note here that the last page which is detachable -- the back yellow cover -- is a declaration form defining the declaration under such (inaudible) of the Ethics Act which is required of all State employees which is required of you, even though you serve without compensation, of any interest which they may believe may be affected by their agency. So that's where it is so afterwards don't ask me, where is the declaration card. O.K.?

I'll be very brief. I'm sorry to interrupt, but this is an important thing for all State employees, so I'll try and get it done in 5 or 10 minutes.

MRS. VAN WINKLE (Cont'd.)

As you were told, the Act was just recently passed, January 1, 1968, and has been effective since then. It covers all of you. It covers everyone but judges, justices and magistrates in the state.

COMMISSIONER:

Why not?

MRS. VAN WINKLE:

Because they have their own higher codes of ethics. Anyway, that may be changed later but as it is now . . . This Act provides guidelines and provides for State employees and provides a matter of obtaining justification if a State employee is wrongfully accused of action. Important definition in the Act, 46 - Define the Financial Interest, and that includes your wife or minor child's interest. It is felt by the Legislature that you are so close to your wife and minor child that if they own land or they own something that that's really the same as you owning it. I don't think that's unfair. O.K., the things that are considered financial interest are set up there and you can read them all. The last one is ownership or interest in real or personal property which most of you may have something of. The part two sets out the standards and these are the thou shalls and thou shalt nots of the Act. It's nothing really new or revolutionary. It sort of fortifies the law as you would have expected. You cannot accept gifts if it can be reasonably assumed that it was given to you for influence purposes. You can't use confidential information that you receive here for your own or somebody else's advancement. You can't use your position to get unfair treatment for other people. But section 8 is the important one and that's the conflict of interest section. That's on page 2. And it says, no employee, and again, you are employees,

MRS. VAN WINKLE (Cont'd.)

may participate in a State agency in official action -- and that would be action on this body -- if you have substantial financial interest which may be affected by the action. That's the limitation, and that's our narrow little conflict of interest section under this Act. If you have property or something that you believe is going to be affected by this agency, you must disclose it, and if something is coming up, under our interpretation of this Act, you would say I have this property under this zone and it's going to be affected by this action; I wish to disqualify myself for this purpose. And that would be under our interpretation of this section, the proper action to avoid participation in violation under this section. I think that it's pretty simple and it may be under your own rules and regulations of which I am not familiar, but that's the State law.

CHAIRMAN CHOY:

You don't file every piece of property you own, do you?

MRS. VAN WINKLE:

If you have pieces of property that won't be in any way influenced by the action of this Commission, you don't have to file it. But if you believe it might be or you're sure, then you should file.

CHAIRMAN CHOY:

Only when the case comes up that affects it?

MRS. VAN WINKLE:

When the time came that you might be having . . . that your agency might be affecting it, right.

CHAIRMAN CHOY:

So this is primarily an interest in boundary change. So if your home

CHAIRMAN CHOY (Cont'd.)

is already in an urban area, there is no conflict.

MRS. VAN WINKLE:

No, there wouldn't be unless the boundary were going to be changed on one side or the other to affect it, I would assume.

COMMISSIONER:

It would have to be disclosed prior to the case coming up?

MRS. VAN WINKLE:

Right. I would say yes.

COMMISSIONER:

So what you're saying is that everybody would have to disclose their property since we all own property?

MRS. VAN WINKLE:

Right, if it's in a district that's coming up. Now if you . . . if it's in a district where there isn't a case coming up and nobody's asked any questions about it . . .

COMMISSIONER:

Then we don't have to . . .

MRS. VAN WINKLE:

No.

COMMISSIONER:

May I ask one question? We have a big boundary change coming up, and I believe that every Commissioner . . .

MRS. VAN WINKLE:

Well, to be safe, I would say file. These are confidential. Nobody can come subpoena them or anything.

COMMISSIONER:

The whole State force is going to be sending in declarations, you know, and . . .

MRS. VAN WINKLE:

The declaration is only if your agency might be affecting it, so somebody that's in tax department who isn't . . . even though he's affected by your agency is not affected by tax department, he doesn't have to file.

COMMISSIONER:

No, but I mean, we have boundary changes coming up and we all own land, even a house lot, you know . . . so if you're on the boundary . . .

MRS. VAN WINKLE:

Yes, well, again I would say file. Failure to file is a condition of remaining in the position in which you are, and the filing is confidential. It can't hurt to file, and if you're in doubt, I would certainly say file.

COMMISSIONER:

Just one question, Mrs. Van Winkle. I see here gifts. No legislator shall solicit, receive or accept directly or indirectly any gift . . . Does this involve (inaudible)?

MRS. VAN WINKLE:

Our Commission hasn't spoken on this though, as you know, the City and County have, but the criteria . . . that would be a gift, but the only gifts that are prohibited are those that can reasonably be inferred or to influence you. We haven't spoken on that, and I think that's a reasonable . . .

MRS. VAN WINKLE (Cont'd.)

Oh, by the way, any time any of you have any questions or think of anything, please just call me up. My number is on the front here. Or write. And we're accessible. We're a full time commission, so we'd like anyone that . . .

COMMISSIONER:

Do I just put down here "none?" I don't have any financial interests or controlling interests in any land or anything like that.

MRS. VAN WINKLE:

The requirement on the back says that you should only file if you have; therefore, the implication is that if you don't have, you don't have to file, but we don't mind if you put in "none." We file it anyway. But it's not a condition of remaining in employment, filing none if you have none.

COMMISSIONER:

So you're better off not filing then?

MRS. VAN WINKLE:

Yes, I would say so, unless there's a question in your mind. If there's a question, I would file.

COMMISSIONER:

O.K. Now this is Land Use . . . I work for a land company and they're involved. How do I stand on that?

MRS. VAN WINKLE:

Then I would say file, because an interest is employment and there is a possibility of some kind of . . . in some cases of pressure being put through. I would file and say I am employed by so and so who has X, Y and

MRS. VAN WINKLE (Cont'd.)

Z land coming before the Commission. But I wouldn't think there was any question, because we've given opinions in cases that were similar where somebody had interest. Say, a land assessor had interest in A and B on Maui and was assessing A and B's land. That kind of question.

COMMISSIONER:

And in this particular case, I could not vote on anything that came up on my firm.

MRS. VAN WINKLE:

I would say no. But I am only the Executive Director and I would urge you to ask for an opinion of the Commissioners. We have 5 Commissioners and they're very realistic. Some of them are businessmen. We have Bud Morgan and Don Kimatsu, and there's not a bunch of people sitting up in the clouds making a bunch of rules it's impossible to live under.

CHAIRMAN CHOY:

Is the Commission from state-wide or . . . ?

MRS. VAN WINKLE:

No. There's no mandate that they be taken from all Counties. They happen to be all from here, and it's fortunate because we meet 2 or 3 times a month usually and it would be a transportation expense as well as the expense . . . When people under this Act ask an opinion which everybody can do when they have a question, either about themselves or some other State employee, we have to give an answer within 30 days. So if they were in Hilo or some other place, we'd have a hard time getting them all together.

Before I leave, I'd like to make one more point. I just want to emphasize that things that are filed under section 12, which you should read,

MRS. VAN WINKLE (Cont'd.)

your interest that may be affected by your agency does not mean you have a conflict. A lot of people think that they only have to file if they have a conflict, but that's not true at all. You have to file if you think it may be affected by your agency. And that means that it's on the public record and the public is, therefore, supposedly protected by this. But it doesn't mean you have a conflict and it doesn't mean that you have to give up your job or give up your private interests or any other type of thing. And that's one misconception I'm trying very hard to clear up.

O.K. That's briefly it. You're all intelligent and can read this and find the small things. These should be filed as soon as possible.

CHAIRMAN CHOY:

I'll do it right now.

MRS. VAN WINKLE:

O.K. A description of the interest is sufficient. If you can describe, I own a house lot in Puna subdivision No. so and so, I mean that's . . . you know.

Does anybody have any questions? If you are in doubt, you can ask the Commission for an opinion. Thank you, and if any of you do have any questions later on, please feel free to call. My number is on that little pamphlet.

MR. WILLIAMS:

Thank you, Mrs. Van Winkle.

Mr. Chairman, may we proceed?

CHAIRMAN CHOY:

Yes, sir.

MR. WILLIAMS:

I'd like to introduce Les Carvard.

MR. CARVARD:

I got so interested in that last display of public conscience that I almost forgot what I was going to talk about. I think I can honestly say that I own no property in the State of Hawaii, as an independent contractor or otherwise. Although I must say that the hotel bills I've been paying make me think that I own a couple of those, but that's something else.

To be serious, I think that you gentlemen, from my brief exposure to the kinds of problems that are facing you, are really sitting on one of the most exciting kinds of problems and opportunities that exists in the United States today. And I hope you make the right decisions. I'm very impressed by having read your laws at the amount of power that has been granted . . . the amount of power and discretion that has been granted to administrative agencies, and I view this as an unfortunate thing because I happen to feel that the statutes ought to express legislator's intent much more clearly than they have in my reading of the statutes of the State of Hawaii. And that includes the Land Use Law as well as the Tax Law. You have to understand, of course, that my principal concern is with the Tax Law and I think extreme discretionary powers for planning the land uses in a very meaningful sense have been given to the tax administrators -- perhaps inadvertently, but I'm not here to judge legislative intent but merely to interpret it.

I think the job, if I might say so, of the prime contractor with whom I'm associated is a two-fold job and Ed may or may not agree with me on this subject, but I think this job is first, a narrow one to interpret

MR. CARVARD (Cont'd.)

the validity of present land use boundaries and the suggested revisions in those boundaries; the second which to me, as a private observer, is much more significant than the former, is to review the status of the existing statutes and regulations to see whether or not they really perform the acts that they are supposed to perform. Now I say that that's much more important than the former and I really mean that, and I think you gentlemen have to interpret your responsibilities under the Land Use Law in these dimensions, too.

I see some rather strange contradictions built into the present statutes. First, as they define the powers of the Land Use Commission with respect to other agencies at the State level; secondly, as they define State powers as opposed to County powers; and thirdly, as they are silent on so many issues that are of crucial significance to really intelligent decision-making processes. I don't know how much time we have to get specific on these subjects today. I know Ed and I and I guess Dr. Mark have another obligation shortly, but this I think . . . what I want to tell you is that this is the thrust of my analysis so far. And I can't really say in all honesty that the actual effects have been disastrous. All I can say is that disastrous opportunities exist within the existing body of statutes. These may, as a matter of fact, have been avoided up to now because of the intelligence and the good will with which administrators have pursued their responsibilities, but I don't see any guarantees in the laws that this will continue to be the case. So essentially, I think what I'm arguing is that Hawaii is at a very important crossroads, having had some experience with a body which are -- let's face it -- unique in American experience but which have not been fully tested and which nevertheless demonstrate to me at least some rather remarkable

MR. CARVARD (Cont'd.)

deficiencies. And whether or not one proves that these deficiencies have had terrifying results is for my purposes beside the point. They have terrifying opportunities, and I think that's what we really have to look at. It's in this sense, you see, that I say that the prime contractor, Eckbo, Dean, Austin and Williams, has 2 responsibilities, the first of which is a short run kind of thing -- to say how adequate our land use boundaries are, recognizing the kind of economic pressures that are being placed upon the Islands now for land use decision-making purposes; but the second and much more important and longer range sort of vision is . . . the really fundamental question is the state itself and it's through its governmental machinery prepared to adapt that machinery to express the real public planning purpose. I think that it's fairly easily demonstrated that at the moment several different authorities have responsibility for this planning purpose, and I would suggest that it's very important to look at the internal consistency of these laws and regulations to see whether they meet what might be called the common purpose or to see whether there are internal conflicts. And I think that's a much more important job, although the other has to be performed, too. I think that's a much more important job in the long run to test the posture of State institutions to see whether they're really concerned about patterns of land use in Hawaii and if they are concerned, to see how far they want to develop the program and with what intensity. I see great confusion now.

CHAIRMAN CHOY:

Do you know of any other state that taxes lands on its potential use rather than actual usage?

MR. CARVARD:

Oh, yes indeed. In fact, this is the common standard. The common standard in property taxation, whether it's restricted to real property or to all property, in an American experience is its highest and best use, otherwise known as a market value principle, and this is written into Hawaii law. In response to the earlier conversation, and I've forgotten the exact reference, the assessor has really no other alternative if he pursues the law than to assess according to highest and best use and to market value principles. Now I say this in spite of the Land Use Law because all the Land Use Law does is say that the State has decided that this land is to be used for a restricted set of purposes. All that means is that the assessor then has to appraise the effectiveness of public policy -- to ask himself how effective is public policy in determining what the marketplace response will be. And there's only one way to . . . there's several ways to construct this kind of evidence, but the best way is to look at what the marketplace reaction is.

CHAIRMAN CHOY:

But if you have one government agency saying that this land must be zoned conservation or agriculture, the tax man can say, gee, that's a beautiful site for a hotel, so it should be taxed as a resort. There's a conflict now.

MR. CARVARD:

Indeed.

CHAIRMAN CHOY:

Now who is the final judge on a thing like this?

MR. CARVARD:

The final judge, as the laws are written, in a problem of this sort

MR. CARVARD (Cont'd.)

has to be the marketplace because that's what the law tells the assessor he's supposed to be imitating. He's trying to imitate what the market response is. Now if he has enough evidence to suggest that private entrepreneurs as they buy and sell land, which I gather happens only occasionally in Hawaii . . . but as they involve themselves in economic transactions with respect to the land which can include leasehold arrangements . . . as they engage in this activity, how do they value that public decision which says this land is agricultural? Now if a buyer buys land at significantly higher prices than would be justified by agricultural use, that proves 2 things. It proves that that potential buyer as part of the private sector of the Hawaiian economy, doesn't really care all that much about the public decision that says it's going to be agriculture. He thinks he can change it. Whether it's true or not is beside the point. He thinks he can, and that's reflected in the price that he's willing to pay for this property or the specific leasehold arrangement he's willing to negotiate. Alright, the second thing it proves is that if the assessor doesn't take that fact into account, he's not observing the rules of the statutes. It's not in that sense, you see, that I argue that the assessor . . . I should really say the tax administrator, to be more general about it . . . has been given far too much discretion in Hawaiian laws. It's in a different sense entirely, partly in the thing you referred to, Mr. Choy, the classification scheme. But in terms of the actual appraisal -- the assessment process -- he can do nothing else but reflect what the market establishes. He may do it well, he may do it badly, and he's available for criticism on that score, but he's perfectly right in insisting upon his need to interpret market value, in spite of public regulations.

CHAIRMAN CHOY:

Well, in this case, like Ed here is conservation minded, and Hanalei he claims is one of our more scenic spots . . . a developer-oriented person sees it as the perfect place to put up a complex of hotel development. The tax assessor, if he is developer oriented, he would up the taxes on that land and we couldn't withhold it, even if we wanted to, as a conservation area because of the high taxes. How can you solve this type of problem?

MR. CARVARD:

I think that's probably the question that Ed Williams addressed himself to earlier. The term itself notwithstanding means perhaps a lot of things. What does it mean to, let's say, me as a potential developer of land in a conservation district? The assessor is just trying to put himself in my shoes to reflect what's going on in the marketplace. Now would I, as a potential buyer of land in the area we're talking about, consider the designation . . . the boundary designation of conservation as restrictive or would I consider it an opportunity to develop? All the assessor can do, if he's honest about the performance of his job, is to ask himself about how my mind would work as a potential buyer. I could tell you how my mind would work. I would consider any developer land as a potential, and I'd pay development prices for land in a conservation district if it were developable. And therefore, the assessor has to do that.

CHAIRMAN CHOY:

And if the taxes are too heavy that this person who owns the property comes to us and says, these are my taxes and how can you hold me from developing my land?

COMMISSIONER:

That seems illegal, especially the land that is bought and paid for. As an urban zone, it's fine, but the surrounding area is taxed accordingly, too. Everything goes up around that area, even if the other people want to keep it.

MR. CARVARD:

I don't know whether it does or not.

CHAIRMAN CHOY:

They use that as a guideline.

COMMISSIONER:

Yes, they use that as a guide and they up everything else around it.

MR. CARVARD:

That may be. You know, I agree that the way you've stated that problem is the way I stated that problem when I first came to it and, you know, I desperately searched for evidence that would prove that to be the case or not to be the case and I'm sorry to tell you gentlemen that I haven't found that evidence one way or the other. One way or the other. What I'm saying is that the evidence doesn't really exist. But it is possible to identify the pressures which are clear and which do exist, and the thing that becomes important is not whether the assessor makes this decision or that decision but rather whether, for example, you mean what you say when you make a boundary designation and then subsequently listen to requests for changes in that boundary designation. Now you have to think of that as part of the influence that affects the assessor because your determination as a public body to be easy, to be gentle, or to be harsh about an original boundary designation and subsequent changes in them must determine the assessor's processes and he's observing the law

MR. CARVARD (Cont'd.)

because that's what the law tells him to do. It tells him, in effect, to assess how concerned you are about your decisions and how determined you are to maintain a sturdy attitude. So in a very real sense the assessor is not only assessing the land; he's assessing your policies. And there's no way out of that unless you change the law completely and rather drastically. Now I insist that this exists even in such a thing as the Dedication Law where the evidence would appear to be even clearer that the assessor is supposed to assess according to use, but the law doesn't tell him how to assess according to use. It doesn't give him any instructions about this. It doesn't need to give him any instructions when he's told to assess according to market values. The marketplace provides those instructions. Again, he may read those instructions well or badly, but at least it gives him the instructions. But the law gives him no instructions whatsoever about how to assess for agricultural use, and you know, I wouldn't know how to do it.

CHAIRMAN CHOY:

Is it true that our state is the only state that has land use boundaries for all lands in the state or . . .

MR. CARVARD:

I think that's true, yes.

CHAIRMAN CHOY:

If that is so, if we could get the tax people to go on the basis of as the lands are zoned, to tax accordingly rather than to potential, wouldn't that help us as a group from this problem of zone boundary changes?

MR. CARVARD:

Well, I don't know.

CHAIRMAN CHOY:

On this basis, the actual boundary would be the guide for tax assessment.

MR. CARVARD:

Well, of course, only if you changed your law, because your law does not say this now.

CHAIRMAN CHOY:

Since we haven't such a law for land use, shouldn't you as a tax man probably recommend such a law?

MR. CARVARD:

No, I wouldn't. I wouldn't. It's a very serious and useful question. It really gets to the heart of the matter.

CHAIRMAN CHOY:

If a fellow came in and had a piece of agricultural land and had no reason for developing it but he wanted it rezoned, the tax man would come right in and say, well, now that it's urban zone land, we're going to tax you 10 times what you paid before. He'll think twice about coming in and asking for a 5,000 acre zoning change.

MR. CARVARD:

Yes. Well, let me tell you why I'm a little reluctant about an automatic yes. I think that this Commission, for example, the State, in general, ought to be in the business of exercising the police power that's the meaning of the boundary designations and, therefore, it ought to be fully controlling and if it is, then you don't need to use the tax gimmick necessarily to persuade people to do what public policy has already told them they have to do anyway. You see? In a sense, the tax law is offering an incentive to people to behave agriculturally in an agricultural zone

MR. CARVARD (Cont'd.)

when, if your Commission really means what it says in establishing that zone, it won't let them do anything else anyway.

COMMISSIONER:

But they're not doing it that way.

COMMISSIONER:

I think what Wilbur's pointing out is that it works the other way around -- that the tax assessor is sometimes forcing the Land Use Commission to behave urbanly in an agricultural case.

MR. CARVARD:

But then, you see, you're really asking the gut question because . . . does the assessor properly reflect the attitudes of the marketplace? You're really asking him to do that . . .

COMMISSIONER:

This is tradition. There must be something more to it, but to me, this is tradition for the assessor to go that route. And this tradition is based on the experience throughout the country. Now here we have this rather unique situation. Is it possible to buck tradition? Is it possible to set precedence in view of the more common good of the greater number by taking another direction? And how can we do this? This is our problem.

MR. CARVARD:

But I'm not going to let this Commission off the hook that easily.

CHAIRMAN CHOY:

We want guidance actually. That's what we want.

MR. CARVARD:

But I think this . . . I think what we're getting down to is a

MR. CARVARD (Cont'd.)

clarification of responsibilities. That's really what we're talking about. And let's say the assessor does do the invalid thing of increasing the assessment to urban values in an agricultural zone. O.K.? And he does so improperly because you're not about to change your decision . . . I mean this Commission. Why does that fact force this Commission to change its decision? It doesn't. It places additional pressure on this Commission to exercise its police powers. But there's no reason except this kind of economic pressure for this Commission to change its designation just because a high value has been placed on that property. Yes, I agree, the person who owns that property is going to pay higher property taxes as a consequence.

CHAIRMAN CHOY:

And not be able to . . .

MR. CARVARD:

But the first 10 of these that you refuse is going to be the measure that the assessor needs not to do what you're accusing him of doing.

COMMISSIONER:

What if a sale occurs?

MR. CARVARD:

If a sale occurs, that proves that the marketplace which the statutes insist is the god here that determines right and wrong . . . if a sale occurs, then that proves that there are other people that don't think that you're . . . that the Commission's policies are sturdy.

CHAIRMAN CHOY:

But you take like today. We had a fellow put up 8 houses in a conservation zone without knowing that it's a conservation zone. He probably

CHAIRMAN CHOY (Cont'd.)

paid a fancy price for it. And he's got this thing all bulldozed, got the roads in, the storm . . . If we could somehow . . .

MR. CARVARD:

Perhaps you should refer this problem to the Attorney General's office. I'm serious. It is a matter of the exercise of the police power and I'm sure the Attorney General's office is concerned about that exercise of his authority.

CHAIRMAN CHOY:

But I really think we ought to pursue this problem.

COMMISSIONER:

Yes, I do, too.

MR. DURAN:

But I think, Les, that you're saying that 11th sale is going to set a different market.

MR. CARVARD:

The real key to this, Mr. Choy, is in this Dedication Law. And that is really why I answered your question negatively -- why I wouldn't suggest an across the board assessment according to use. And that is because in the first place, necessarily I suppose, too much discretion for the assessor. What is a piece of agricultural property worth in terms of what it is now being used for and how do you determine that value? You can't go out and ask what is somebody willing to pay for it. Well, you may be able to but the law doesn't really say that. Presumably, you go through the technical economic process of capitalizing expected future income. The law doesn't say how you do this. It doesn't say whether you assume that present income is the same as expected future income, and in

MR. CARVARD (Cont'd.)

the case of changes in agricultural use even within the dedication, there can be a big difference there to higher agricultural uses. Doesn't tell him what capitalization rate to use, and I think you'll agree that many people have earned quite a few million dollars on a tenth of one per cent on a capitalization rate. So there are these kinds of problems. The assessor really can't be asked to judge unless the law tells him how to judge and, of course, it doesn't.

CHAIRMAN CHOY:

(Question was inaudible due to soft tone of speaking.)

MR. CARVARD:

I am saying that the tax administrators have become planners in Hawaii law but for reasons that we really haven't discussed today, in a sense. It does not include the question of how they determine market value. It's what the law tells them to do. If you want them to do something else, then change the law. But there are other ways including how they classify lands, not for assessment purposes but for the application of the tax rate, which has nothing to do with how you assess the property but just how it's taxed. . . the rate classification it falls into. I see no reason why the assessor should have this planning decision.

COMMISSIONER:

Don't they have this power throughout the country?

MR. CARVARD:

They do frequently, although it's . . .

COMMISSIONER:

And moreso, jurisdiction without planning laws? State-wide or County-wide.

MR. CARVARD:

No, I don't think so, Charlie. I think they assume planning powers, to be sure, but they do it administratively. It's not sanctified by law. In Hawaii, it's sanctified by law.

CHAIRMAN CHOY:

I think we have to forget what's happened in the other 49 states and concentrate on what we can do here. That's going to be your job.

MR. CARVARD:

I guess I accept that responsibility.

MR. WILLIAMS:

Are there any more questions of Mr. Carvard? If not, they'll proceed to the Big Island and . . .

CHAIRMAN CHOY:

I guess we've heard all the testimony then.

(An unidentified person gave some comments on the soil conditions and various zoning restrictions on the Big Island, but almost all of his comments were inaudible due to the distance from the tape recorder.)

MR. ALTMAN:

Well, to sum it up, and then we'll come back here, these red areas that are shown here are those areas where developers are asking for urban zoning to begin development or develop between 1969 and 1973 and in summing up all of these areas, they are almost equal to the existing urban zoning on the whole island. And I brought in some of the reports and the quality of the reports and petitions that are being sent to us so that you could see that in some instances there is a good deal being spent on very adequate analyses of potential in some instances and in others they are only asking us without going through any kind of feasibility report.

MR. DURAN:

These are all C. Brewer ones that just arrived, I think, yesterday. In addition, there's a little area down here of about 160 acres, as I recall.

COMMISSIONER:

Who?

MR. DURAN:

C. Brewer. They include some proposals on Bishop Estate land that they're leasing which Bishop Estate trustees have gone along with.

CHAIRMAN CHOY:

Which of that is existing urban?

MR. ALTMAN:

Right here. Totalling almost 3,000 acres here.

MR. DURAN:

This is Dilrock. This is Signal and this shows its relationship to Boise Cascade here and here -- in the white areas. These 4 or 5 are Hui Hui Ranch proposals. This is William Lum trust. This is Greenwell. This is a mixed ownership area here. That gives you an idea of the scale of these proposals.

MR. ALTMAN:

Our problem is summing up, just for example, all the proposed resort areas and comparing the projections to the anticipated resort growth on the island. The thing is, each developer thinks . . . I shouldn't say each, but the feeling is that they can capture a greater share of the resort potential than any other developer, so for the first time you can see the impact of all of the proposals.

Another point is that the County and State CIP hasn't been geared to accepting all of these either. I'd say that in the Department of Planning

MR. ALTMAN (Cont'd.)

and Economic Development's population projections for 1973 are almost absorbed as of 1968, and the CIP programs for additional services are based on these figures. So the thing I'm saying is that all of the figures that I have on a sheet here which are proposed increases on this filing do not anticipate or haven't anticipated variance of this sort which will only add to the expansion of the island.

The Signal Oil at 8,000 acres isn't a petition, but I was showing it because it is a potential development area and they're very serious about it. But it isn't clear if they are going to ask us to consider it or if they're going to come in after our job is through, and I've not been able to find out. Is there anything on that?

COMMISSIONER:

Rom, they've made an application to the County for the purpose of amending the general plan.

CHAIRMAN CHOY:

The general plan, that's right.

COMMISSIONER:

How can we handle this?

CHAIRMAN CHOY:

If the petitioner, working through the consultants now . . . the moment he appears before the consultants . . . (inaudible) . . . actually an off-the-cuff request for a study, not a petition. But if a person comes directly to you and submits a petition, then you have to act. Has C. Brewer presented their . . . ?

(Response was not audible due to several Commissioners speaking at one time.)

COMMISSIONER:

This was nothing but a rehash of the original plan with some changes. The original plan that was presented to the Board of Directors of C. Brewer was not adopted, so they engaged another consultant to re-do the study.

MR. ALTMAN:

Well, the proposals in here ask for a certain amount of urban zoning for 1973. It's broken into 2 phases, and they have sheets in there of areas that they are asking us to examine for urban zoning. One problem that we should point out that I'm sure has shown up to the Board is that developments of this scale, say, require . . . just for example, in Mililani Town there is a lag time from the beginning of planning to the sale of homes out there of about 3½ years time and that is a result of design, financing, County refuse, services, all of this. So if you're talking about urban expansion for a 5 year period, you also have to accept that on developments of this scale, those buildings aren't up for 1970, say, or 1971. On anything of this scale it will absorb a good deal of time. One problem is to provide low cost housing there now. One developer is proposing 200 acres for low cost housing that they assure us will go in as soon as it's shifted to urban, but our problem is that it's a fragmented piece and if it's shifted to urban, some of the other areas that are adjacent to it could also ask for urban zoning. On this coast, there are all of the existing non-conforming subdivisions, and it is our feeling, too, that they should stay in the ag district -- that they shouldn't be shifted to urban zoning. But if, for example, the Commission acts on a request for low cost development here, they could be obligated to also offer urban zoning on some other areas in that location. A very important factor on the coast is that all of the State owned lands . . . these

MR. ALTMAN (Cont'd.)

proposals are all on fee simple ownerships or in some instances on leased area. And our concern also is if you shift any areas into urban, what does that impose on the State owned property? Is that also potential for future development as a result of the shift to urban? It's a very difficult area, and I'm just totalling up the figures. We do have some proposals that will show up at a different scale of the Kona area itself but over and above that, to sum up the impact of all these proposals and get the County's feeling on that since they have to provide the services. I do have some specific areas in the Hilo area that we can show. You are knowledgeable on the petitions that have been denied. It is the County's feeling that there is vacant area within the existing urban zone, but a good deal of it is not privately owned. This is the adopted zoning plan from the City and it shows the existing urban areas here, but under it, it shows the ag lot sizing. Well, in talking to Mr. Hikuji, it came out that the districting for one acre ag sites generally are in the areas that he foresaw that urban expansion was called for. In going back there, we wanted to find out what areas the County foresaw as required urban expansion through 1973, and these areas are patched in. Our fear was that they would ask for all of the 1A zoning for urban expansion, but in examining it and comparing it to their capital improvements, these areas are falling in logical locations for urban expansion on the city, and it also recognizes the existing development, too. For example, here.

CHAIRMAN CHOY:

Can I ask you a question? On this island of Hawaii in your thinking . . . your figures are for the whole island.

MR. ALTMAN:

That's correct.

CHAIRMAN CHOY:

And yet you grasp the situation as such that you could almost isolate Hilo as one, Kohala-Kawaihae as one area, and Kona as one area.

MR. ALTMAN:

Yes.

CHAIRMAN CHOY:

Have you ever thought of it in the manner that Hilo may be a dieing town and we should delete the amount of urban area? No, what I'm saying is . . . all kidding aside . . . would it be proper for you to think in terms of not only just the island as one but to isolate the pockets of development? Have you thought of it in that way?

MR. ALTMAN:

Not exactly. The logical break-down in . . . by judicial district and it's the character of many areas that the majority of urban activity occurs mainly in localized areas. Just for example, in the north Kona judicial district, which is this area in here, it's fairly easy to sum up that area. See?

CHAIRMAN CHOY:

What is the rate of growth in that area?

MR. ALTMAN:

Well, from 1965 to 1968, it's gone up 33% and from 1968 to 1978, according to the existing figures, it is going up 28% except that these figures aren't collective of all of the developments that are being proposed. So that these are in the existing urban areas, I think very conservative.

CHAIRMAN CHOY:

And the Hilo area? Four per cent?

MR. ALTMAN:

It was up 4 from 1965 to 1968, and it's projected up 16% from 1968 to 1978.

CHAIRMAN CHOY:

So actually, the figures that you could really believe would be the 1965 to 1968; that would be the actual figure.

MR. ALTMAN:

Except that both are provisional figures. That is, they aren't verified by a census. They're projected on a basis of things that have occurred before. The only accurate count is back to 1960.

CHAIRMAN CHOY:

Oh, that 1965 to 1968 is not an actual figure?

MR. ALTMAN:

Well, it is the existing current estimated figure.

COMMISSIONER:

Have you checked these figures out with the Counties or any departments of the government?

MR. ALTMAN:

Yes, and there is an amazing concurrence. The County in certain areas challenges the figures that D.P.E.D. has.

COMMISSIONER:

They say they're lower than that.

MR. ALTMAN:

Yes.

CHAIRMAN CHOY:

That's interesting. You have the Kohala area which had an increase of 48% and yet they anticipate an increase of only 13%.

MR. ALTMAN:

Well, in this instance there are some odd things. There is an increase from 1965 to 1968 and then after 1968, it goes down. Just for example, in the Kau district they figure from 1968 to 1978, it will go down 9%, but according to the proposal, that isn't true.

CHAIRMAN CHOY:

If this goes in though. If it goes in.

MR. ALTMAN:

Yes. So if you district urban, say, for urban expansion based on these figures, you're too far under to be able to accept any of the proposals here. I would . . .

CHAIRMAN CHOY:

I'd be inclined to accept the 1965-1968, wouldn't you?

MR. ALTMAN:

Well, the only thing is, it's in such a short span of time that, for example, as soon as the hotel went in, say, and the amount of urban acres added . . . just for example, from 1965, the boundaries had only about 1,800 acres urban, but in 1968 as a result of Boise Cascade, it's 6,080 acres of urban; and that's a 230% increase. But the . . . number of people have gone up only 48% and this is the thing that I was referring to is this lag time. As soon as these areas are shifted into urban, I think it's going to take a good deal of time to get the services in there, to get the financing and even perhaps even see homes there. So for the island in total from 1965 to 1968, it's gone up 11% and from 1968 to 1978, with these figures, a 12% increase only, and yet the people are, in effect, asking for double the urban areas for these same time periods.

COMMISSIONER:

Then the moral of it is that perhaps the population projection should be reviewed again.

MR. ALTMAN:

Well, they're going over it, and our problem is to come up with a figure that adequately shows how many acres should be in urban to accept this expansion. But if the figures are that far off on all of this, it will be a difficult chore. First of all, to sum up the total acres into urban and also that may occur in those areas that the County can provide adequate services.

CHAIRMAN CHOY:

Well, Boise Cascade was put in there and there isn't a single person living on the place yet. But naturally, once they get moving, there are bound to be a few hundred or a few thousand people living in there.

COMMISSIONER:

I don't know about that.

CHAIRMAN CHOY:

Well, at least a few hundred. You couldn't possibly have nobody. You've got the 6,000 acres in there. You've got to put somebody . . .

MR. ALTMAN:

Let me add a very important figure that Wes Carvard was, I think, referring to . . . that since 1965 the Commission's review of the boundary changes has increased the urban zone almost 30% on this island, and the problem is to insure that those actions are going to absorb any expansion first, without adding any other areas. But with this 3 time problem, there isn't any assurance that you've gone through . . . that this area is going to develop fast enough to absorb any expansion.

COMMISSIONER:

That 6,000 acres . . . increase of 280% . . . what . . .

MR. ALTMAN:

That's 230%.

COMMISSIONER:

I just can't see where the 6,000 acres is.

COMMISSIONER:

You sure that doesn't include Signal Oil?

MR. ALTMAN:

No.

MR. DURAN:

Actually, Boise had about 3,000 acres rezoned.

CHAIRMAN CHOY:

And Dilrock had about 300 acres.

COMMISSIONER:

And Frances Brown?

COMMISSIONER:

One hundred seventy-five. Where's the other?

COMMISSIONER:

Parker Ranch.

COMMISSIONER:

But Parker Ranch is small.

MR. DURAN:

The Industrial Park.

CHAIRMAN CHOY:

That's small. Fifty acres? You still have only 3,700 acres.

COMMISSIONER:

No, but it's the difference between the two.

CHAIRMAN CHOY:

Oh, the difference. I thought it was in addition. Then it comes out.

MR. ALTMAN:

Another area that I should point out is the Davies ownership and the C. Brewer on the northeastern coast. There are about 5 or 6 proposals to phase out the existing plantation towns and consolidate into the existing larger towns. And they require a shift to urban before they can phase out any of the older areas, in order to provide this land for their employees.

CHAIRMAN CHOY:

Would that be under an exchange of (inaudible).

MR. ALTMAN:

It varies.

CHAIRMAN CHOY:

No, but what I mean is we need 20 acres of new camp added to the old camp.

MR. ALTMAN:

The problem is that the old camps are at a density that isn't desirable if you're beginning over and planning housing.

CHAIRMAN CHOY:

No, we're just saying that the old camps could be put back into sugar.

MR. ALTMAN:

That is correct. But it isn't the same as phasing out an old 50-acre camp and adding 50 acres into urban. What I'm saying is, to provide adequate housing at an acceptable density, it could be 80 acres.

CHAIRMAN CHOY:

But still, 50 acres could go back into it.

MR. ALTMAN:

Yes, that's correct.

MR. DURAN:

And you're proposing then to take that urban designation away from the existing camps?

MR. ALTMAN:

That's what they're asking for. In some instances, the land that the camps are on are more valuable in cane than any of the existing cane areas, so it's a shift and generally, it's my feeling that that should be accepted if it is within a proper total overall that can be absorbed by 1973.

MR. DURAN:

O.K. Howard, what are your reactions to the . . . (inaudible) . . . ?

MR. ALTMAN:

Well, in talking to the owners, Brewer felt that they would have preferred to have seen those areas that aren't in cane and their tiny areas put into urban so that they could keep the existing cane here, but they also thought that with the facilities and the fact that it is urban on 3 sides that it was inevitable that it be urbanized. But they asked us not to include urban areas or expansion areas through here that are in cane. Their feeling is that it's logical to phase out part of it, but the cane that exists out in this area should be kept.

COMMISSIONER:

What's their reason for that?

MR. ALTMAN:

Well, in this instance, they saw the County's point about existing

MR. ALTMAN (Cont'd.)

services and the demand on it was such that it would have to phase out. Their plantation manager was . . . said that he wouldn't like to see any area go out of cane, but if the land development department over there conceded that point . . . that if it did put in the County zoning plan and the general plan that this is the logical area first off for urban expansion. Your point I've not covered, which is are these total areas called for for a 5 year period of time. It can only be summed up in totalling up the figures and going back over them to see if all of them are called for excepting that certain areas are subdivided and services . . .

COMMISSIONER:

This doesn't represent your . . . ?

MR. ALTMAN:

No. I brought in some of these proposals so that you could see them. Again, the variance in quality and intent . . . but since you will be acting on these boundaries in terms of the final boundaries, I really think that the Commission should be exposed to some of the data and thinking that is showing up. We're going over it and interpreting it obviously but for back-up, I think it would add a good deal to find out about some of the other proposals that you've not seen yet.

MR. DURAN:

You know, it's interesting that Grady should be proposing more urban around this little urban pocket there because there have been a number of requests for ag dedication in that area and from the people that have made the applications . . . and we denied them . . . but they claim that they relocated there because they were pushed out of some other area that

MR. DURAN (Cont'd.)

was urbanizing and that basically the people in that pocket except for the camp at the very corner, are farmers. They have small acreages -- chicken farms, some grazing -- but they're living on their land and they do have (inaudible) but they wanted it in agriculture.

CHAIRMAN CHOY:

Isn't that the reason for the dedication?

MR. ALTMAN:

Well, I think that also it explains why the petitions have been turned down, too. That area was needed for urban expansion, so it is conceivable by adding additional urban area that those farmers could dedicate without absorbing the expansion.

MR. DURAN:

But the lands that would be added in urban are similar to those that are supposed to be dedicated, so that if we were to dedicate those requesting at this time, then we would have no basis for denying any others in the new areas added from dedicating their land, and we then end up with all of the urban land dedicated and forcing urban growth.

MR. ALTMAN:

I was just going to say that the general plan shows the entire area in residential. Radiance point was . . . well, if the entire area shows that way, where is the logical phasing of it? And it was the County's feeling that this pattern . . . and I don't think that we concur that it should occur in these areas first.

COMMISSIONER:

Besides Hilo, going up around the volcano area, how are you fixed?

COMMISSIONER:

Gee, you got me behind the eight ball now.

MR. ALTMAN:

The only thing in the volcano area is the total for the entire judicial district but the detail isn't here on the volcano area.

CHAIRMAN CHOY:

We have at the present time all those lands that are urban. Are the non-conforming or are they . . .

COMMISSIONER:

I think there's only one piece that's urban.

CHAIRMAN CHOY:

How are you fixed, Howard, on your time schedule? Are you folks on schedule?

MR. ALTMAN:

No.

CHAIRMAN CHOY:

Are you falling back?

MR. ALTMAN:

Yes. We should have been in more detail on the Big Island.

CHAIRMAN CHOY:

Maybe we're spending too much time on . . . (inaudible) . . . some of these areas like in Hilo.

MR. DURAN:

You're going to need maps to go to the public hearing to discuss those problems.

CHAIRMAN CHOY:

Shouldn't they go in with a definite thing in mind that they feel should be . . . whatever they feel is not right, leave it out and then let it be hashed out in the public hearing.

MR. ALTMAN:

Yes, but the ideas in back of those lines are going to be asked for, and without the figures, without the details, it is only a consultant's opinion and it is something I think is undesirable. So you've got to, just for example, back up these areas with existing access permits, existing vacant area for adding.

MR. DURAN:

And when you go up to the public hearing, you go in with your proposed boundaries and not the consultant's proposed boundaries so that . . . (inaudible) . . . unless someone could prove that they should be otherwise.

CHAIRMAN CHOY:

What can they do to speed it up and get it on schedule?

COMMISSIONER:

No, I can see the Counties' situation. They can see the development proceeding into that area and they are already (inaudible) so even if you leave them out . . . (inaudible) . . .

CHAIRMAN CHOY:

Have you started on Oahu yet?

MR. ALTMAN:

We've been compiling all of the proposals and the figures but not going out to the specific areas.

CHAIRMAN CHOY:

You are now complete as far as Hawaii?

MR. ALTMAN:

Yes.

CHAIRMAN CHOY:

So you could be holding some hearings on schedule on Kauai?

COMMISSIONER:

Is the meeting on the 7th still booked?

MR. DURAN:

Yes.

* * *