

PUBLIC HEARING

March 18, 1975

DPED Conference Room
10:00 a.m.

MR. TANGEN: Call this meeting of the Land Use Commission to order. The first order of business will be action on Special Permit 75-198. Ser Cam Kennels, Inc., special permit request to establish a commercial dog kennel within the State's Agricultural District. Approximately 4.65 acres of land described as Tax Map Key 8-6-09: 15, situated at Waianae, Oahu, Hawaii.

MR. LEONG: Mr. Chairman, members of the State Land Use Commission. In accordance with the provisions of Section 205-6, Hawaii Revised Statutes, as amended the Planning Commission of the City and County of Honolulu has transmitted the records and proceedings of a Special Permit request by John L. Aki, of Ser Cam Kennels, Inc. for the establishment of a commercial dog kennel within the Agricultural District at Lualualei Homesteads, Waianae, Oahu.

Mr. Aki holds an option to purchase the property.

Going to our District map, the red colored areas are the existing Urban Districts. The orange colored area is the Agriculture District. Green represents the Conservation District, Pacific Ocean here, Waianae Urban District is here, Makaha Valley Urban District here, Maile Urban District, and Nanakuli.

The subject parcel is located in Lualualei Valley, approximately 2 miles from Farrington Highway, which is along here, the subject parcel being here. This is the Urban District which is about a mile away from the subject property. On a large scale of the Tax Map of the area, access is provided by

Puhawai Street which is aligned in this direction which is the Conservation District. The subject parcel fronts the east side of the Puhawai Street. On the mauka side of the street, and is located here.

Some uses include a chicken farm, a dairy, a plant nursery and single family dwellings along Puhawai Street and diversified agriculture in these areas here.

Coming over to a still larger scale map we have the subject parcel outlined in yellow. Puhawai Road is here intersects with Paheehee Road which is a coral filled road leading to the dairy just mauka of the subject parcel.

The kennel proposed to be constructed are in a L-shape. This end will contain the office, reception area, and the second floor of this portion will be the quarters for the caretaker.

Manager's home is proposed here. And a training area 100 feet by 100 feet will be here.

This is the parking facility for approximately 28 cars off Puhawai Road.

The property in question comprises 4.65 acres described as Tax Map Key 8-6-09:15, and fronts the southeast corner of the Paheehee- Puhawai Road intersection. It lies approximately 2 miles mauka of Farrington Highway and about a mile mauka of the Waianae Urban District.

The subject parcel is presently vacant and unimproved. The Soil Conservation Service for West Oahu Soil and Water Conservation District indicates that the soil is Lualualei clay,

suitable for cultivation, but is very plastic when wet and difficult to cultivate. It was noted that the soil has very high shrink-swell potential and slow permeability, and that these characteristics should be considered in the design of the kennels.

Slopes are primarily 5 to 7 percent and rainfall varies from 10 to 40 inches annually. The nearest Urban District is Waianae, situated over a mile to the west.

Surrounding land uses in the immediate area include a dairy operation to the east, a vegetable and chicken farm to the south, a plant nursery and single-family dwellings to the west, and vacant lands owned by the Hawaiian Homes Commission to the north.

The Paheehee Ridge Conservation District lies approximately 400 feet away from the subject site.

Generally, the surrounding area is rural in character and the larger parcels are devoted to agricultural uses including horticulture, poultry, dairy and hog raising.

Lot sizes in the immediately abutting area generally range from 1 acre to 9 acres, while the parcel owned by the Hawaiian Homes Commission comprises approximately 100 acres.

The City's General Plan designates the area for agricultural use and the present zoning by the City is Ag- 1 Restricted Agricultural District.

The petitioner proposes to construct a commercial dog kennel facility adequate for 100 dogs. The kennel portion will be set back 100 feet from the front and south boundary lines and approximately 250 feet from the rear or east property line. Plans for the kennel facility indicate two rectangular buildings 35' x 125' and 35' x 175', shaped in an "L". The front 25 feet of one building will house the office and reception area, storage, and grooming activities. The second floor above the office area will be used for a resident caretaker's quarters. A separate manager's residence is proposed at the northeast corner of the parcel.

The parcel will be enclosed by a 7-foot chainlink fence inside an open landscaped area. A training area, 100' x 100' in the southeast corner will also be fenced. Except for the open runs, the main facility will be air conditioned and soundproofed. The remaining 150 feet consists of two rows of kennels, 25 on each side of a walkway and a food preparation area. Two or more rows of kennels, 25 on each side of a walkway extend toward Paheehee Road.

Each kennel will have an enclosed 4' x 5' sleeping quarters and an open air run 4' x 10'. The runs and sleeping quarters will be enclosed by a 3-foot highhollow tile wall and 3-foot chainlink fence above. Access to the site will be off Puhawai Road which is a 40 foot right-of-way with 15 feet of coral pavement. A 25 foot driveway will lead to an asphalt concrete paved parking facility for 28 cars on the south boundary of the parcel.

Business hours are proposed to be from 8 a.m. to 5 p.m., Monday through Saturday. Emergencies will be accommodated 24 hours, 7 days a

week. The petitioner proposes a total of five employees; two living in the unit above the kennels and two in a separate manager's residence. A maintenance man lives within three blocks of the project.

Boarding charges will range from \$4.00 to \$5.00 per day depending on the weight of the dog.

COUNTY RECOMMENDATION

At its meeting on January 29, 1975, the Planning Commission of the City and County of Honolulu voted to recommend approval of the special permit subject to final approval by the State Land Use Commission and subject to further obtaining a Conditional Use Permit from the City and County of Honolulu.

It is noted that the Planning Commission of the City and County of Honolulu reviewed both the Special Permit and the Conditional Use Permit concurrently at its meeting of December 15, 1974. At its January 29, 1975 meeting, it decided to approve the Special Permit. However, at its prior meeting on January 15, 1975, the City Planning Commission voted to recommend to the City Council that the Conditional Use Permit be denied on the basis that "the proposed use is not in conformance with the purpose and intent of the General Plan for this area." It further recommended to the City Council to review the conditional use sections of the Comprehensive Zoning Code to delete any and all uses not directly related to the agricultural industry.

According to the minutes of the January 29, 1975 meeting of the Planning Commission, the original motion to approve the Special Permit did not carry. However, after a recess, the motion to approve the Special Permit was unanimously carried. Discussion preceding the decision

indicated that the request met the guidelines contained in the State Land Use District Regulations and that disapproval of the Special Permit would deprive the petitioner the opportunity of review of the Conditional Use Permit by the City Council. Action by the City Council on the Conditional Use Permit is scheduled for April 2, 1975.

Approval of the Special Permit was made subject to the following conditions which were recommended by the City's Director of Land Utilization:

1. The plans dated November 19, 1974, and marked Exhibit A which are on file with the Department of Land Utilization shall be followed except as may be altered by the conditions stated herein.
2. Except for the open runs, the kennel structures shall be air conditioned and soundproofed.
3. All dogs shall be kept in the enclosed sleeping quarters by 7:00 p.m. and shall not be allowed in the open run area until 6:00 a.m.
4. There shall be no more than 100 dogs boarded on the premises at anytime.
5. This conditional use shall encompass the entire site.
6. Landscaping plans show a screening hedge on the south boundary for 250 feet and the front yard shall be submitted to the Director for his approval prior to obtaining a building permit.
7. An appropriate sign may be erected indicating the name of the facility. Any such sign shall conform to the requirements for signs in Ag-1 district provisions in Section 21-404 of the Comprehensive Zoning Code.
8. A waste disposal system shall be installed in accordance with the State Department of Health regulations and applicable Comprehensive Zoning Code requirements. Said system shall be certified as to its adequacy by the Department of Health and a copy of same shall be submitted to the Director of Land Utilization prior to obtaining a building permit.
9. The applicant shall operate in accordance with all applicable public health regulations.

10. Drainage facilities shall be installed in accordance with the recommendation of the Department of Public Works;
11. Within one year of the approval of the Conditional Use Permit, the applicant shall file an application for a building permit with the Building Department and commence construction. If necessary, this time limit may be extended by the Director of Land Utilization subject to Land Use Commission approval provided that the applicant makes his request in writing and submits reasons which justify the time extension;
12. Prior to obtaining a building permit:
 - a. The recorded owner of the land encompassed by this Conditional Use Permit shall file with the Bureau of Conveyances or Assistant Registrar of the Land Court of the State of Hawaii, a declaration of the above mentioned restrictive conditions; and
 - b. A certified copy of the documents as issued by the Bureau of Conveyances or Assistant Registrar shall be presented to the Department of Land Utilization as evidence of recordation prior to the issuance of the building permit;
13. Within three months following the occupancy of the kennels and thereafter as may be determined necessary by the Director of Land Utilization, the applicant shall have a consultant conduct a noise study in a form and under conditions acceptable to the Director. Said study shall be submitted to the Director for his review and approval. Where a noise violation is found, the applicant shall take such corrective action as may be determined necessary by the Director to abate the noise source including but not limited to surrounding the entire facility with a sand-filled cinder block wall 8 feet high.
14. In the event the approved use of this permit is terminated by the applicant, the applicant shall submit notification of the same to the Director of Land Utilization. Upon submission of such notification, the subject permit shall be declared null and void.
15. In the event that any of the conditions set forth herein are not complied with, the City Council may authorize the Director of Land Utilization to take action to terminate the use or halt its operation until such time full compliance is obtained.
16. Any major modifications to the conditions stated herein shall be subject to approval of the City Council. The Director of Land Utilization may approve any request for modifying the submitted plans which he considers to be a minor revision; and

17. The City Council may at any time impose additional conditions when it becomes apparent that a modification is necessary and appropriate in accordance with Section 21-242 of the Comprehensive Zoning Code (Ordinance Number 3234).

Also transmitted by the City agency are the following:

1. A letter dated December 23, 1974 from the Waianae Farm Bureau Center opposing the petition on the basis that the use will not be compatible with the existing uses in the area because of problems with noise, loose dogs, traffic and increasing urban encroachment.
2. A petition with approximately 70 signatures of residents in the general area opposing the proposed facility since a commercial kennel presently exists in the area, and the operation will generate odor, noise, and cause health nuisances.
3. Ballots apparently passed out at the December 18 public hearing showing that 9 persons were in support of the project.
4. A letter dated December 12, 1974 from Howard Furumoto, DVM, Ph.D., supporting the proposal, and a letter dated January 25, 1975, from Cora Molter indicating a need for such a facility.

In his report to the City Planning Commission, the City's Director of Land Utilization indicated the following:

1. The Board of Water Supply has no objection to the facility and water facilities are adequate.
2. The Department of Health recommended use of an aerobic sewage disposal unit; sloped concrete kennel floors; adequate roof covering for kennels, and proper maintenance to prevent public nuisance.
3. Department of Public Works recommends a pipe system connected to the sewage disposal system to take care of excess water generated by washing down of kennel floors.
4. Department of Transportation Services indicates that Puhawai Road can accommodate traffic generated by the facility.
5. Animal Quarantine Station indicates that their facility is specifically for quarantine purposes and that the agency does not operate a commercial boarding kennel.

6. The Humane Society agrees there is a need for a facility such as proposed. The applicant has revised his site plans to reflect improvements suggested by this agency.
7. The Department of Agriculture indicated that the site was formerly a dairy; that the Lualeilei area was recently recommended to the Land Use Commission as an agricultural park site; that they do not consider a boarding kennel to be an agricultural venture; and since they desire to promote agricultural expansion in the area, does not recommend approval of this facility.
8. The Department of Health Noise and Radiation Branch indicated that unless a kennel is built and operated with controls, numerous complaints will be generated. It indicated that the more sophisticated type of control is to have the kennels shielded and air conditioned so that noise will not affect the neighborhood.
9. The Citizens Against Noise committee suggests air conditioning and soundproofing, and if this proves inadequate, an 8 foot sand filled cinder block wall around the entire facility.
10. Presently, kennel facilities on Oahu can board approximately 200 dogs. According to the Animal Quarantine Station, about 185 to 350 more kennels are required to fulfill an islandwide need.

Evaluation of this request under the guidelines contained in Section 2.91 of the Land Use District Regulations for determining an "unusual and reasonable" use in the Agricultural District shows the following:

1. Other than its commercial aspect, the proposed facility does not appear to contravene the objectives sought to be accomplished by the Land Use law relating to the proliferation of urban uses and preservation of agriculture since the boarding of domestic animals is in keeping with other permitted uses in the Agricultural District such as the raising of cattle, swine and poultry; and since the soil of the property is difficult to cultivate and does not have a high potential for intensive cultivation. It is noted that the subject site is located on the fringe of the Agricultural Park proposed by the Department of Agriculture and takes up only a very small portion of the area.
2. To allow the proposed use to be established without controls to alleviate potential noise and health nuisance problems would definitely cause adverse effects on surrounding property. However, the conditions imposed by the City should adequately resolve those concerns expressed by the residents in the area.

3. The proposed use will not unreasonably burden public agencies to provide need services as cesspool and drainage improvements will be borne by the petitioner and be constructed in accordance with required standards of pertinent governmental agencies.

4. Since the present Agricultural designation was established in 1964, the need for a commercial kennel facility has become more evident with the increase in the dog population on Oahu. The need for such a facility has been indicated by the State Quarantine Station and the Humane Society.

5. The land on which the use is sought is suitable for cultivation but is difficult to cultivate. The Land Study Bureau classification for the soil of the subject property is "E", or very poor for overall agricultural use.

6. The proposed use will change the character of the land since the subject property is unused at present.

7. It appears that the proposed use of a property which is presently vacant and unutilized would offer the highest and best use of the subject site since it will help to accommodate an islandwide need for such a facility.

Based on the above discussion, it is recommended that the special permit be approved subject to the 17 conditions imposed by the City and County of Honolulu Planning Commission.

Since the petitioner has in a letter dated January 29, 1975 to the City Planning Commission indicated a willingness to construct an 8 foot wall around the property to reduce the noise and prevent stray dogs and strangers from coming into the kennel area, it is further recommended that the following condition be added as Condition #18:

18. A sand filled cinder block wall 8 feet high shall be constructed around the kennel building and that plans for such a structure be reviewed and if necessary modified by the Director of Land Utilization.

Approval by Land Use Commission subject to approval of a Conditional Use Permit by the City and County of Honolulu City Council.

MR. TANGEN: Before we call on the applicant, if he or she is here. I want to call a few things to the attention of the commissioners.

I reviewed this file and there is much more to this case that is indicated even in the staff report, which doesn't really belong in the staff report.

This particular issue has been before the City and County since August, 1974, and that communications indicate that it even came in before that. First communications relates to August 1, 1974.

This is the file, I won't bore the commissioners with going over the whole thing. But this thing has been at meetings before the Planning Commission and has been referred and deferred and motions to approve and motions to deny and during this whole period of time, a long history of this. I want to point out some things to you.

On December 3, 1974, the Director of Land Utilization,

Mr. Moriguchi prepared a report to the Planning Commission in which he said, that the existing zonings Agr-1, restricted, agr-district, of the Comprehensive Zoning Code permits commercial kennels within the Agr-1 district only as a conditional use.

He pointed out in his report that a similar boarding facility for 55 dogs which was to be located about a half mile down the road was granted a Special Use Permit/Conditional Use Permit on April 20, 1971, has not been constructed yet.

And then later on that permit was revoked, actually withdrawn by the person who was going to do it, but who didn't, so there is no permit out there now. And that was issued a Special Use Permit as well as a Conditional Use Permit by the Commission.

Then at one of the meetings, that they had, there were several meetings on this subject, we've asked Representative Town, to be here today to perhaps explain some of these things.

And at that meeting of December 18, 1974, the recommendation for approval of both the Special Use Permit and the Conditional Use Permit by the Director of Land Utilization involves all aspects of reviewing the State Land Use guidelines, and also the criteria that is within the Comprehensive Zoning Code.

Then the Chief Planning Officer, on January 3, 1975 said in a report to the Planning Commission, it would seem that the applicant has met all of the requirements as set forth in the Comprehensive Zoning Code for a Conditional Use Permit.

All of the requirements have been met for a Conditional Use Permit. In the report from Mr. Moriguchi, it points out that the restrictions of the Land Use Law have also been met.

Here on January 3, 1975, the Chief Planning Officer, said it would seem that the applicant has met all the requirements for a Conditional Use permit, then he goes on further to say that the Commission's alternative would be or would appear to be one of the following:

- (1) To accept the recommendation and conditions of the Director of Land Utilization and thus affirm the regulations as found in the Comprehensive Zoning Code.
- (2) To add additional conditions.
- (3) To deny the request.
- (4) To recommend denial on the basis that the proposed use is not in conformance with the purpose and intent of the General Plan for this area.

Now this is in the same communication to the Planning Commission, the Chief Planning Officer is saying that the applicant has met all the requirements of the Comprehensive Zoning Code.

Now there was some discussion which will throw some light before we make a decision on this matter. At a meeting on January 15, 1975, the Commission still had before it, recommendation by the Director of Land Utilization, for approval of both the Special Use Permit and the Conditional Use Permit.

Some discussion went on that I think will show some light on this. One of the Commissioners, Mr. Duke, pointed out: "My point in asking is that the motion states that he wants to recommend denial on the basis that the proposed use is not in conformance with the purpose and intent of the general plan.

We're setting, I believe, a precedent, because that's the object of a special use permit is may be to deviate somewhat from the plans.

You wait until a gentleman comes along here and wants to put a radar tower on top of a mountain whether it be preservation or agricultural, we undoubtedly will give him a special use permit.

Therefore, I think, we should have some clarification on this not in conformance with general plan as a reason to deny.

And Mr. Clegg, points out, that's the Deputy Chief Planning Officer, that it would appear that it meets Land Use requirements. Mr. Clegg also says, Deputy Chief Planning Officer, "It would appear that the applicant has also conformed to the regulations in the Comprehensive Zoning Code with regard to Conditional Use Permits in an agricultural district. It would also appear from our review the problem is that the CZC does not conform to the general plan.

And one thing, And one possible action is at this point in order to bring this thing through to approve the Special Use Permit because after all, the Special Permit is dealing with the

State Land Use Law. It seem to be in conformance. And at the same time deny the Conditional Use Permit on the basis that it's not in conformance with the general plan.

Mr. Duke said "Aren't we still setting a precedent at this point in time because we've had many special permits come before us before that were not in conformance with the general plan."

And Mr. Clegg said " That's true. I think what we're doing is recognizing that fact at this point and saying yes, those were not in conformance with the general plan and it's about time we recognized it."

Mr. Duke said, "Well, do you think we should make a guinea pig out of this particular applicant, or do you think we should ask Council for guidance on telling us that Special Use Permits because of thus and so will not be permitted on agricultural land that are generally planned for agricultural land?"

Mr. Duke also says "But sir, we don't ask for a general plan change when we want to put up a radio tower or radar or certain other things that doesn't have the stigma of a dog kennel."

And Mr. Clegg says, "What we're suggesting is we should have raised the same issue when the antennas and towers came up.

Mr. Duke says, "But, we didn't."

Mr. Clegg says, "Yes."

And Mr. Duke said, "Well, I don't believe an applicant should be denied a request merely because we should have done

something in the past. I think we should do something now that would forbid applications of this nature, if they are not according to the general plan, and rule that way.

Now on these four alternatives presented by the Chief Planning Officer in his January 3rd memo to the Planning Commission, let me say here very clearly that as it stands right now, the Conditional Use Permit could be granted, but what we want to do is to not issue a Conditional Use Permit even though the applicant would appear to be entitled to it, until we can get the law changed which can deny him the opportunity to get it.

I think what Mr. Duke said at their meeting to the Commissioners, pretty well points out that as affirmed by Mr. Clegg, Deputy Chief Planning Officer.

So when we take into consideration this matter, I think we ought to bear those things in mind, and call upon. Are you a representative from the City and County?

We have a representative of the City here.

Anyone else wishing to testify on this matter. Please rise and be sworn in, please. Anyone who thinks they might testify, please stand, raise your right hand.

You solemnly swear the testimony you are to give the State Land Use Commission to be the truth, whole truth, and nothing but the truth, so help you God.

UNIDENTIFIED PERSON; I do.

MR. TANGEN; Thank you, Yes sir. Would you identify yourself, Sir.

UNIDENTIFIED PERSON: My name is Henry Eng. I represent the Department of Land Utilization.

MR. TANGEN: Well, let me ask this, Mr. Eng. As far as I can find in this file, the Director of the Department of Land Utilization recommended to the Planning Commission that the permit be granted with several conditions.

MR. ENG: That's correct.

MR. TANGEN: Now, as far as you're concerned that's still the position of the Department of Land Utilization.

MR. ENG: Yes sir, yes it is.

MR. TANGEN: And this whole matter of denying the Conditional Use Permit so that the general plan can be changed is just then from the office of the Chief Planning Officer.

MR. ENG: That's correct.

MR. TANGEN: And not from Land Utilization.

MR. ENG: Yes.

MR. TANGEN: As far as you're concerned, the Special Use Permit and the Conditional Use Permit, you're recommending.

MR. ENG: Yes.

MR. TANGEN: Is there any other light you want to throw on this.

MR. ENG: Well, we've reviewed the situation, the Comprehensive Zoning Code was adopted by City Council after the adoption of the general plan, we would presume then that the CZC does further the purpose and intent of the general plan.

Quite frankly we see no content between the two.

This conflict is something that the Department of General Planning is pursuing and perhaps the Planning Commission in their recommendations.

I do have a point of clarification regarding the condition that was added by the staff of the State Land Use Commission.

Our intention was to require the applicant to build an 8 foot wall around the facility rather than around the property.

The purpose of this 8 foot wall is to reduce the sound transmission, I think you'll realize that an 8 foot wall at the property boundary would not be very effective at reducing the noise.

The intent is that the facility itself be somewhat walled in by the 8 foot wall.

MR. TANGEN: Thank you. Have any objections of the part of the staff. The 8 foot wall would surround the building rather than the

MR. ENG: That's correct.

MR. TANGEN: There is a motion to approve this permit, if there is one Any questions for Mr. Eng.

UNIDENTIFIED PERSON: State and County Planning Commission and Advisory Committee.

MR. TANGEN: Well, I guess we would say its advisory to the Council. It makes decisions, it approves or denys.

UNIDENTIFIED PERSON: Land Use Law says we refer this to the body who person who makes

the final decision is supposed to send it back to us, so we can act..... I notice in the staff report here, there is a difference between the Town Council and the Planning Commission.

UNIDENTIFIED PERSON: May I ask a question on that point. Mr. Eng, with respect to the Department of Land Utilization. Are you? Is your immediate superior, Mr. Moriguchi, is the Department Head.

MR. ENG: Yes.

UNIDENTIFIED PERSON: Does he ... Is Mr. Way his superior officer.

MR. ENG: No, perhaps a point of clarification would shed some light on the situation.

In 1973, the former City and County Department of Planning separated in accordance with the charter. Mr. Moriguchi is the Director of Land Utilization, Mr. Way, is the Chief Planning Officer and Director of the Department of General Planning,

So these exist as separate agencies, currently.

UNIDENTIFIED PERSON: Your decision, then you made is not subject to approval by Mr. Way, of the Planning Department.

MR. ENG: Not directly, with regard to applications that we process, the Department of Land Utilization normally makes it recommendations, the Planning Commission also makes recommendations.

The Conditional Use Permit is decided upon by the City Council, the State Special Use Permit is a slightly different

situation, we review and make a recommendation, in this particular case the Planning Commission if it denys the Special Use Permit, the matter is finished, if it recommends approval, it is sent to this body for final action.

UNIDENTIFIED PERSON:

MR. ENG: Yes.

UNIDENTIFIED PERSON:Plan-
ning Commission

MR. ENG: Yes.

UNIDENTIFIED PERSON: But with respect to your Conditional Use Permit it is ultimately the authority of City Council.

MR. ENG: That's correct

UNIDENTIFIED PERSON: Now do you foresee one of these matters coming before the City Council that the Department will be taking a stand separate than that of the Planning Commission with respect to this Conditional Use Permit.

MR. ENG: I believe, which department, Land Utilization

UNIDENTIFIED PERSON: Yes.

MR. ENG: I, believe, we have, your chairman, did ask whether we had changed our position.

Our position is the same as it was at the public hearing.

So if the Commission does pursue this, there may well be a discussion at the City Council.

UNIDENTIFIED PERSON: Planning

Commission disapproval of your recommendations.

MR. ENG: No, the City Council has scheduled the matter for public hearing on April 2.

UNIDENTIFIED PERSON: This is my question, Who has, at the City - County level, who has the final say, as to whether this is approved.

MR. ENG: City Council

UNIDENTIFIED PERSON: The City Council

MR. ENG: Yes.

UNIDENTIFIED PERSON: City Council is on April 2 going to hold a public hearing on this subject matter.

MR. ENG: Yes.

UNIDENTIFIED PERSON: How is it then, that this is before the Land Use Commission?

MR. ENG: Because, the applicant, the project involved is through applications. It involves applications through the City and County for a Conditional Use Permit to the State, through the Planning Commission for a State Special Use Permit.

We have found it advantageous to simultaneously process these two (2).

MR. TANGEN: The Planning Commission makes its recommendation to us on Special Use Permits. Its recommendations on a Conditional Use Permit at the City - County level are decided by City Council, comes to us.

One of the things that happen here, is that if we were to deny this petition, if we approve it, then this petitioner

has the opportunity to convince the City Council that they should approve the Conditional Use Permit.

It would now be out of the hands of the Planning Commission, the Planning Commission will be

I'm not sure when you go through all these minutes here, I'm not sure exactly where it stands, as far as the Planning Commission.

UNIDENTIFIED PERSON: statutes also states that if we were to deny this petition for approval of the Special Use Permit, the petitioner now has only one route and he can appeal directly to the Circuit Court of our denial to the Circuit Court denial was made based on our records Planning Commission.

UNIDENTIFIED PERSON: If you look back to the Land Use Law, it says that we refer to the body that is responsible for the final decision, whether it was Conditional or whatever..... they have to come to us with the final opinion, say this is it all around and then, we are going to approve it or disapprove it.

MR. TANGEN: That's Special Use, don't get them mixed up..... City-County has Conditional Use.

UNIDENTIFIED PERSON: Yes, that Conditional Use is something else..... but the final thing has to come to us. as approved by the body whose responsible for

UNIDENTIFIED PERSON: if it approves you have to have the now what you're asking is it also is

supposed to clear with, or have the approval of the Conditional Use Permit, City Council before they circulate it to the Land Use Commission.

I think the City has taken a position right now, that is a separate internal matter as far as the Conditional Use Permit. I would agree with you that we should have both actions taken at the City level before the Commission takes a look at it.

But we only handle Special Use Permits.

And the City Council is entitled to make a final determination on the Conditional Use Permit.

UNIDENTIFIED PERSON: inaudible.....
..... Ten bodies they still have to agree on one thing and bring in up to us.

UNIDENTIFIED PERSON: I agree inaudible

MR. TANGEN: This is for Mr. Eng, Is the position of the Department of Land Utilization of the Comprehensive Zoning Code supercedes in a case like this.

MR. ENG: The Comprehensive Zoning Code and the zoning code is not ligated by the General Plan, Comprehensive Zoning Code exists as a law, the general plan exists as a guideline.

MR. TANGEN: You find, you found in your investigation of this petition that it did meet the requirements of the Comprehensive Zoning Code.

MR. ENG: Yes.

MR. TANGEN: So then it appears to me that simply what

we have here, is a case of the Department of Planning saying, that, Well, yes, it does meet the Comprehensive Zoning Code, but it does not meet our general plan, So therefore, we need some time in order to change the general plan to make it illegal for this applicant to be able to do what he's petitioned to do and what is legal for him to do today.

That's pretty much decided.

UNIDENTIFIED PERSON: I think is whether the law, whether in fact the Planning Commission has made a decision, filed a decision on this matter.

(Several persons talking at this point.)

UNIDENTIFIED PERSON: The Planning Commission will act on the petition not only 15 days after a public hearing. A decision in favor of the applicant shall require a majority vote of the total membership of the Commission, which shall be subject to the of the Land Use Commission.

If approved by this Commission that they have approved the petition, but they have also noted in their minutes that they are planning to recommend this approval, which is also an action of this Commission. I take it they must have voted on it.....

MR. ENG: As I recall the recommendation for approval of the Special Use Permit and the denial of the City and County Conditional Use Permit were in the same way.

UNIDENTIFIED PERSON: By the same

MR. ENG: Yes sir.

MR. TANGEN: Now, you try and figure that one out.

MR. ENG: Let me stand corrected, my staff indicates they were separate.

UNIDENTIFIED PERSON: Separate motions.

MR. ENG: Yes, but they did consistently clearly take two actions which do not appear to be in our
.....

MR. TANGEN: for the purpose of passing it on to the State Land Use Commission (special use permit)

MR. ENG: That's correct.

MR. TANGEN: And the other one was to deny the Conditional Use Permit, recommend to Council, City Council that the Conditional Use Permit be denied.

MR. ENG: That's correct.

MR. TANGEN: Now that's the record we have, all these volumes and anybody can really

UNIDENTIFIED PERSON:
..... (inaudible)

MR. TANGEN: Suppose that if we took that position and didn't make a decision, then I suppose we

Based on this record, of what's going on, it appears then, what would happen is that nothing would happen, as far as this applicant is concerned, until such time as the Planning Department, not Land Utilization, until such time as the Planning Department is able to get effective changes either in the Comprehensive Zoning Code or in the general plan, that would then

make it impossible for this applicant to go ahead.

They all say now, that it's legal, that he's met the requirements, both at the State level and the County level as far as the Comprehensive Zoning Code is concerned.

What they're saying is, I've read to you what Mr. Clegg said, what we're saying here, what we did before is wrong, So now we ought to stop it.

Mr. Duke objected to making a guinea pig out of somebody, just go ahead and change it if that's what people want to do. But not when a man comes before you, has met all the requirements and then you see as a guinea pig and you say, Well no, everything we did before was wrong, so therefore we're going to shoot you down the tubes until we get time to get this thing changed, that appears to be what the picture is.

UNIDENTIFIED PERSON: May I ask a question again. Is there a limit to the CZC so that a can be consistent with the General Plan.

UNIDENTIFIED PERSON: No, there's no such amendment.

UNIDENTIFIED PERSON: You're saying that the Comprehensive Zoning Code being adopted after the General Plan was adopted, that this all was consistent with the General Plan.

MR. ENG: It's the same body plan.

UNIDENTIFIED PERSON: There's no [REDACTED] hearing to be held in respect to what Mr. Way has indicated that no more Conditional Use Permits will be issued.

MR. ENG: No, there are no more public hearings scheduled for that purpose.

UNIDENTIFIED PERSON: testimony inaudible

MR. TANGEN: I'm opposed to that, I know what's going to happen, I know exactly what's going to happen.

UNIDENTIFIED PERSON: You're opposed to it.

MR. TANGEN: I'm opposed to deferring action..... they still have to go back to CouncilIf we kill it or defer it they will just go ahead by what they said..... just go ahead and make it.

UNIDENTIFIED PERSON: It would appear that it would make this decision. If we recommended approval if we make it subject to the approval of the City Council's approval, we've added a condition.

And if the City Council should say deny this Conditional Use Permit, it is actually our decision and our, we're responsible for the decision, not we're in favor of the Special Use Permit.

I think if we attach any strings or any more conditions, the next action will be against the Commission in terms of any legal rights or appeals from the decision

UNIDENTIFIED PERSON: But
..... The Planning Commission made the decision.

UNIDENTIFIED PERSON:

MR. TANGEN: Write the City Council and explain this type of situation.

I suggest we get this clarified down there and find out who is the body who is going to make the recommendation.

UNIDENTIFIED PERSON:

MR. TANGEN: on Special Use Permits.

UNIDENTIFIED PERSON: Conditional Use Permits.....
they could have that matter decided before the Planning Commission recommendation to the Land Use Commission.

If the City Council in this case, for example, disallows the Conditional Use Permit, then it appears to me the Planning Commission would recommend disapproval of the Special Use Permit.

They wouldn't be recommending approval if the City Council had acted earlier.

MR. ENG: The situation, the way our department understands it is that all approvals need to be secured.