

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

Kailua United Methodist Church  
Kailua, Hawaii

March 24, 1977 - 10:00 a.m.

*Approved*  
AUG 16 1977

COMMISSIONERS PRESENT: Eddie Tangen, Chairman  
Stanley Sakahashi, Vice Chairman  
James Carras  
Charles Duke  
Colette Machado  
Shinsei Miyasato  
Mitsuo Oura  
Carol Whitesell  
Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer  
Michael Marsh, Deputy Attorney General  
Dora Horikawa, Clerk Reporter  
  
Ray Russell, Court Reporter

HEARING

A76-420 - DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT  
(Kawainui Marsh)

Pursuant to a notice published in the Honolulu Star Bulletin on February 10, 1977, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by the Department of Planning and Economic Development to amend the land use district boundaries for approximately 250 acres presently in the Urban District into the Conservation District at Kawainui Marsh, Kailua, Oahu, Docket A76-420.

Appearances

Gilbert Lee, Deputy Attorney General, representing the  
Department of Planning & Economic Development

Jane Howell, Deputy Corporation Counsel, representing  
the City Department of General Planning

Warren Higa, Attorney, representing Harold K. L. Castle  
Estate, et al

Kenneth Kupchak, Attorney, representing Ad Hoc Committee  
for Kawainui Marsh

Request to Order Intervenor Castle to Desist Processing any Applications Before the City

It was requested by Mr. Lee and Mr. Kupchak that the Commission direct intervenor Castle et al to cease and desist any processing of applications for subdivision approval, shoreline management permit, etc.

Mr. Higa argued that he failed to see how the petition by DPED would be prejudiced by any pending applications before the City unless actual physical entry or turn of the soil occurs on the property. Moreover, the landowners would suffer loss of time needed to process the necessary requests before the City, in the event the subject petition is denied.

Following a brief recess, Mr. Lee, speaking on behalf of all the parties, stipulated that intervenor Castle, through its counsel Mr. Higa, had indicated that the engineering and planning consultants for the landowners are not now designing nor preparing plans for the proposed development, nor will they initiate design plans for the proposed development until the Land Use Commission has rendered a decision. All of the parties concurred with the foregoing stipulation.

Swearing In

All those planning to testify during today's proceedings were sworn in by the Chairman.

Mr. Kupchak requested that Mr. Robert Whittam from the Canadian Government be allowed to testify without being sworn in since he was not allowed to swear fealty to any other government. Mr. Higa strenuously objected to the presentation of testimony by a witness not under oath. Mr. Kupchak responded that the witness will be available for cross-examination and the authority from which he emanates should be sufficient to establish the credibility of his testimony.

Chairman Tangen suggested that at the time Mr. Whittam is called as a witness, Mr. Kupchak ask him to affirm that his answers to the questions will be truthful.

EXHIBITS

DPED, Petitioner

Petitioner's Exhibits 1 through 46 were introduced by Mr. Lee and admitted into evidence, with the following qualifications:

1. In response to Mr. Higa's objection concerning Exhibit 3A on the basis of the discrepancy in the acreages with the City's computation, Mr. Lee withdrew Exhibit 3A and submitted that DPED will file an amended 3A which will be fully concurred with by the City and DPED.

2. Mr. Higa reserved his right to review and object to DPED's Exhibits 38 through 46 until he has had an opportunity to examine them.

City Department of General Planning

The County's Exhibits A through J were identified and admitted into evidence.

It was stipulated by Mr. Lee that County's Exhibit K was a more accurate description of the heiau and proposed landfill. However, admittance of the County's Exhibit K was deferred subject to the availability of a representative from the Department of Public Works for examination, upon Mr. Kupchak's request.

Ad Hoc Committee for Kawainui

Pursuant to the motion by Castle et al requiring all parties to submit complete texts of documents to the Commission and other parties, Mr. Higa agreed that if all of the documents were made available for examination, he would have no objections to their admissibility.

Chairman Tangen declared that whenever a witness is not available for examination, the Commission will give the appropriate weight to those exhibits. Mr. Higa's right to submit similar documents was reserved throughout.

Ad Hoc's Exhibit 1 was withdrawn. The admissibility of the form, marked Exhibit 2, which was used to obtain 10,500 signatures was deferred pending examination of the witness who will be able to verify this fact. Mr. Kupchak agreed to submit a complete set of the slides, identified as Exhibit 3, together with accompanying script, for the Commission's records. Exhibit 3 was therefore admitted.

The following Ad Hoc's Exhibits were admitted:

Exhibits 4, 5 6A, 6C, 7 A, B, C, 8, 9, 10, 11, 12, 13, 21A

Admittance of the following Exhibits were reserved, pending presentation of the testimony by the witnesses and for other reasons. Mr. Higa's rights to object to these Exhibits were also reserved:

Exhibits 6B, 14, 15, 16, 17A and B, 18, 19 (withdrawn),  
20 (withdrawn), 21B, 22, 23, 24, 25A & B, 26, 27  
28 A, B, C, D, 29, 30, 31, 32, 33, 34, 35, 36,  
37, 38, 39, 40, 41

The hearing recessed at 11:55 a.m. and reconvened at 2:00 p.m.

AD HOC COMMITTEE FOR KAWAINUI

At Mr. Kupchak's request, Mr. Robert Whittam was called as a witness at this time since he was scheduled to leave the islands in a few days.

Robert Whittam - Witness

Mr. Whittam of the Canadian Wildlife Service, Department of Fisheries and the Environment, testified as set forth in the transcript on----- Pages

Read from prepared testimony-----	61 to 69
Direct examination by Mr. Kupchak-----	69 to 79
Slide presentation, marked Exhibit 21A, with explanation-----	79 to 87
Cross examination by Mr. Lee-----	87 to 96
Cross examination by Mr. Higa-----	97 to 111
Redirect examination by Mr. Kupchak-----	111 to 114
Recross examination by Mr. Lee-----	114 to 115
Recross examination by Mr. Higa-----	116
Redirect examination by Mr. Kupchak-----	116 to 117
Examination by Commissioner Duke-----	117 to 123
Examination by Commissioner Machado-----	123 to 125
Examination by Commissioner Yanai-----	125 to 128

Professor P. Bion Griffin - Witness

Professor Griffin, anthropologist, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on----- Pages

Read from prepared testimony-----	129 to 131
Direct examination by Mr. Kupchak-----	131 to 133
Cross examination by Mr. Higa-----	134 to 143
Redirect examination by Mr. Kupchak-----	144 to 146

<u>P. Bion Griffin - cont.</u>	<u>Pages</u>
Recross examination by Mr. Higa-----	146 to 147
Redirect examination by Mr. Kupchak-----	147 to 149
Cross examination by Mr. Lee-----	149 to 151
Examination by Commissioner Whitesell-----	151 to 152

John Agard - Witness

Mr. Agard, International President of the Congress of the Hawaiian People, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on-- Pages

Direct examination by Mr. Kupchak-----	153
Read from prepared testimony-----	154 to 156
Examination by Commissioner Machado-----	156 to 157
Examination by Vice Chairman Sakahashi-----	157 to 158

Stan Mofjeld - Witness

Mr. Mofjeld, Hawaiian Trail and Mountain Club, having been duly sworn in, was called as a witness, examined, and testified as set forth in the trnascript on----- Pages

Read from prepared testimony-----	158 to 159
Cross examination by Mr. Higa-----	159 to 162

Chairman Tangen advised that all of the Exhibits by Castle et al, including any additional documents they may wish to submit, will be offered into evidence at the next meeting.

The hearing on Docket A76-420 was continued to a future date to be determined to the mutual agreement of all the parties.

The meeting recessed at 5:38 p.m.