STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing
and Meeting

Board Room, County Building
Lihue, Kauai

3:30 P.M. - May 7, 1965

Commissioners Present:	Myron B. Thompson Jim P. Ferry Shelley M. Mark Charles S. Ota Goro Inaba Shiro Nishimura Robert G. Wenkam Leslie E. L. Wung
Absent:	C.E.S. Burns
Staff Present:	Raymond S. Yamashita, Executive Officer Roy Takeyama, Legal Counsel Gordon Soh, Associate Planner Alberta Kai, Steno

The public hearing was called to order by Chairman Thompson who opened the meeting with a prayer. The Commissioners and staff were introduced. The procedures of the public hearing were outlined. All persons presenting testimonies during this day's hearing were sworn in by the Chairman.

PETITION OF LIHUE PLANTATION (A64-79) TO AMEND THE URBAN DISTRICT BOUNDARY AT LIHUE SO AS TO PLACE APPROXIMATELY 16.6 ACRES CURRENTLY IN AN AGRICULTURAL DISTRICT INTO AN URBAN DISTRICT, AND APPROXIMATELY 11.1 ACRES CURRENTLY IN AN URBAN DISTRICT INTO AN AGRICULTURAL DISTRICT IN ORDER TO ACCOMMODATE A SPECIFIC PLAN FOR RESIDENTIAL AND INDUSTRIAL DEVELOPMENT: Area described by Fourth Division, TMK 3-6 and 3-7 (portion).

The background and analysis on the above petition were presented by Gordon Soh (copy of report on file). The staff's recommendation for approval was on the basis:

1. That the petition is essentially a request for a more practical location of the boundary lines, requiring relatively minor adjustments and based on refinements of the subdivision layout;

2. that there is no apparent evidence that the requested amendments would be adverse to any intent or purpose in the land use law.

The Kauai Planning and Traffic Commission recommended approval of this petition.

Commissioner Nishimura asked whether granting a request of this nature would set a precedent for similar requests in the future. Chairman Thompson stated that it would depend upon the facts presented in each case and upon the nature of the request.

Commissioner Wenkam asked the staff why it recommended approval of a withdrawal from an Urban District when it is obviously the intention of the owner to use the land for urban purposes in the near future.

Mr. Soh replied that existing district sizes are based on ten year projections and the net change suggested by this petition is marginal. The question the staff asked itself was, "What was it the petitioner was asking, and was this request consistent with the objectives of the land use law?" Staff inquiry did not go beyond this point.

Commissioner Wenkam stated that according to the law, the Commission is charged with orderly development of the community and of urban lands in relation to the agricultural lands. In this case the boundaries are retreating and expanding; the lines moved around not in terms of an orderly, logically arranged, over-all master plan but rather in terms of the particular whims of the developer.

Mr. Yamashita stated that there is a master plan for the entire area of Lihue, a large portion of which is not now in Urban because there is at the present time not a sufficient demand to place the entire area into an Urban district. The readjustments of the boundary lines requested are based on refinements of the original master plan on which the existing boundary line was drawn. At that time the preliminary layout was shown. On that basis boundary lines matching road lot lines were laid out. Subsequently, a plan was made so that now the boundary lines do not match logically the lot lines. This is principally the basis for the findings of the staff. This plan has been discussed earlier at considerable length during the deliberation period upon drawing the boundaries.

Commissioner Nishimura pointed out that another petition for an Urban District by the same petitioner had come in the early part of 1964.

Commissioner Wenkam stated that under the Land Use Law the Commission is to foster orderly development and an equitable basis for tax assessments with respect to urban lands. In this particular case the Commission may be allowing the owner to withdraw and to add to his land in a manner which could employ tax assessments to his personal benefit rather than to promote development of the community. In keeping with all the other actions the Commission has taken, it seems that all the areas the petitioner has master planned for urban use should be placed in an Urban District. It is obvious that the owner has no intention of growing cane here for any definite period. He intends to put it in urban use as rapidly as he can obtain a market for it.

Commissioner Ota stated that perhaps this problem could be resolved if we know how much land has been allocated as a reserve for the urban area in Lihue. Mr. Yamashita explained that the staff has the figures but did not have it with them at this time. It was stated that this information would be made to the Commission during the 15 day period after this hearing.

Mr. Hansen, representing Lihue Plantation, stated that before they asked that this area be Urban, they inquired as to the number of people who might be interested in acquiring property in Lihue. Seventy-two lots have been completed; 400 more lots remain that have not been touched. The drawings of the boundary which were submitted to the Commission earlier were preliminary boundaries done by a firm. Because petitioner hardly had time to get them in before the deadline, they were not refined. Since that time the area has been engineered. Petitioner has found that this is an isolated area and that he is faced with the problems of drainage, access, etc.

Mr. Sam Keala was introduced by Mr. Hansen. Mr. Keala confirmed Mr. Hansen's statements that they did have a plan earlier. However, the necessity to coordinate with planning on the part of the local planning commission, petitioner's survey of housing needs for petitioner's employees, and housing from the outside, have prompted petitioner to come up with the plan now before the Commission. It is a little more refined. In this area there are problems of drainage and access. This is the reason adjustment of these boundaries is requested.

Pointing to a map submitted by petitioner, Mr. Keala explained that the blue line shown was the boundary initiated under the old master plan. In some of the earlier plans, these plans were based on a scale of 1"=2000'. This scale could not show refinements of a master plan, would not bring up all the details, and would be very hard to use.

Commissioner Ferry asked if it is still intended that the blue shaded area on the map will be developed for urban use. Mr. Keala replied in the negative.

Commissioner Inaba asked Mr. Hansen whether the present allotment met demands for houselots. Mr. Hansen replied in the affirmative.

Commissioner Nishimura asked Mr. Hansen why he claims that 15 acres will take over 5 years to develop when 75 homes have already been developed within 2 years.

Mr. Hansen replied that they intend to ask for another piece of land later on, but that this request would be for lands up near the subidvision. He felt he had to be fair to the stockholders as well. (correction. see 7/23/65 minutes)

Mr. Keala stated that Mr. Hansen is talking about areas toward Hanamaulu. Petitioner's program of development was started with a small area there which later came down to the Lihue area. In the meantime there was another low cost area available up near Hanamaulu and petitioner is thinking about possibly going back up into this area to continue. This area is presently classified Urban according to this Commission's maps.

Mr. Hansen replied that his company was not requesting additional acreage. Actually, the difference is about 2½ acres. Petitioner desires no more than what he now has, what he originally asked for, and what he asks for now. The acreage difference has to do with the little triangular piece of isolated land along Ahukini Road.

There were no further questions or testimonies from the public or Commission. The Chairman announced that the Commission will receive additional written testimonies and protests within the next 15 days, and will take action on this petition 45 to 90 days from this hearing.

The public hearing was closed.

ADOPTION OF MINUTES

The minutes of March 12, 1965 meeting were adopted as circulated.

ACTION TO BE TAKEN

PETITION BY JOHN S. RODRIGUES (SP65-1) FOR A SPECIAL PERMIT TO CONSTRUCT A SINGLE RESIDENTIAL LOT SUBIDVISION ON 21,000 SQUARE FEET OF PROPERTY IN THE KAPAA HOMESTEAD AREA: Area described as Fourth Division, TMK4-6-08: 15.

The background and analysis of the above petition was presented by Gordon Soh (copy of report on file). The recommendation of the staff was for denial on the basis that the proposed use is not unusual and reasonable. Further the staff concluded that the petitioner may not change the use of the parcel dedicated to agricultural use until such time as the dedication was cancelled. Mr. Soh informed the Commission that all the lands shown in blue on the map were dedicated lands, and that this particular property in question was dedicated.

Mr. Yamashita added that the 1964 dedications have not been plotted because staff was unable to have them officially declared as such. He stated that there were a considerable number of these dedications in this area.

Mr. Morris Shinsato, attorney representing the petitioner, introduced himself. He stated that the statutes in section 98H-2 does not prohibit dwellings in an Agricultural District especially if the dwellings were for accessory uses. He stated that if no subdivision was requested, this dwelling as proposed by Mr. Rodrigues for accessory purposes could very well be built under existing regulations and that, supposing a subdivision of a 3 acre lot were proposed, Mr. Rodrigues could also go ahead and put up this dwelling since the County's lot size standard for agricultural subidvisions is 3 acres. However, a man of Mr. Rodrigues' situation is in no position to spend $15,000 to put up his home. The purpose of this subdivision is to erect a home for his son and his family. He could give his son 3 acres, but if he were to do this, his son would have all those usable flat areas

Commissioner Ferry asked Mr. Hansen if he would clarify his statement that they would be back to this Commission to ask for additional urban lands. Mr. Hansen replied that he was incorrect because the particular area they would request was already zoned for urban use.

Commissioner Ferry stated that this raises an interesting point--whether or not on a 10 year projection the 16 acres under petition are sufficient to meet needs; and that on the basis of statements made, it is quite possible that it is not. Mr. Hansen was in agreement with Commissioner Ferry.

Commissioner Wenkam asked Mr. Hansen where he intended to subdivide to provide the additional 400 lots. Mr. Hansen replied that their plans go beyond this area which is zoned Urban Commissioner Wenkam replied that that area under petition did not have sufficient space for 400 lots. Mr. Hansen replied that they probably would have to pursue their plans further but not in the same area, and probably would have to request additional areas for the 400 lots.

Commissioner Wenkam stated that this agricultural land originally was in Agriculture to be used for cane production. One of the reasons the Commission had established the district was to keep the agricultural land in production. He stated that it is clear that the petitioner intends to take it out of agricultural use--in fact, to take it out of Agriculture as rapidly as the market for homes is obtained.

Under these circumstances if the Commission is to be fair to the State and provide for proper tax assessments, it would seem that the entire area master planned for urban use and proposed for urban development should be placed in an Urban District. He asked why petitioner has not requested this.

Mr. Hansen replied that it is far down the future and that he did not think it is necessary at this time to ask for it; but that they may in 5 years or more.

Commissioner Wenkam asked if it is fair under these circumstances that lands in the meantime be taxed as agricultural and not urban lands.

Mr. Hansen replied that he did not think it was unfair. He added however that his company recognized an obligation to the public.

Commissioner Wenkam stated that he was aware of the many other areas in the State zoned for urban use far in advance of requirements, and that the land owners were paying taxes accordingly.

Mr. Hansen replied that they were paying urban taxes for some of these Agricultural areas in Urban Districts.

Commissioner Wenkam asked that since petitioner has used 15 acres in two years and now requests only an additional 16 acres in this particular area, he would be prudent to ask for a little more.

immediately surrounding his home. Any mortgage claim would have to cover the entire area which was subdivided. To enable his son to secure a mortgage, he must give title to his son. The approximate lot size of the proposed subdivision conforms very nearly to the Rural lot size standard of ½ acre and he could increase the area under petition by several thousand square feet.

Recent economic research done for Kauai County by the University of Hawaii shows that small farms are uneconomical. As a matter of fact, the only reason small farms survive in the County of Kauai is because they are family farms, that is, family members work on the farm. Mr. Rodrigues and his son are employed outside on a full time job and farming is just an avocation. Mr. Shinsato argued that while full time farming may be desirable, it has proven uneconomical. Indications are that people are deserting farming, and that the number of farms are decreasing. The particular areas now open and available for farming can't be utilized. The Kalaheo area, for example, has gone out of pineapple production and lies idle. Nobody knows what to do with those lands. Under such circumstances, Mr. Shinsato asks, what is this aim of preserving farm land?

Mr. Shinsato observed that the staff has made a negative recommendation and that some of its presentation was not based on facts. The staff report mentions the difficulty of assessment for the tax people. In the past weeks he has heard nothing but tax appeal hearings and finds there is no problem confronting the tax people in devising their assessments. The report mentions the problem of urban sprawl and that this area is 2 miles from the school. If all the homes were two miles away from available schools, Kauai would be in a very happy situation. As to the community development, a special permit for an additional home would not create any urban sprawl at all. The report stated that there are adequate mains, power lines and road which run right by this lot.

This issue involves basically an American deed of giving a man's children a part of his heritage. The reason Mr. Rodrigues wants his son to live close by is so that there will be efficient use of the land as a whole. This is not defeating agricultural use but preserving agricultural use. Mr. Rodrigues has this area in citrus crops which is an unusual crop for a farm, but he feels that this crop has a future. Evidently, the legislators feel this is so too, in that they have encouraged farming and industry by providing tax exemptions.

The report mentions something about dedications. The law states that you forfeit dedication privileges if you change the use of the land. Mr. Shinsato asked if it is changing the use of land when you place a dwelling on it so that you can farm the land more efficiently? He suggests that if the records were checked more closely, it would be found that Mr. Rodrigues did not dedicate the entire area to farming. He has excepted an area of 3 acres where the subdivision is proposed. Consideration should be given to petitioner for a chance to develop his land to the maximum and not to confront him with a negative attitude.

Commissioner Ferry asked that if a subdivision were applied for on a 3 acre parcel, how would the use within the 3 acre be restricted? The uses on the remaining parcels of land which Mr. Rodrigues owned, the same type of agricultural endeavor, could it not prevail on this 3 acre parcel? Why would Mr. Rodrigues, Sr. not be able to utilize a portion of this 3 acre plot of ground to pursue the same activity as on the remaining parcels? Wouldn't it be a fact that if it were subdivided into a 3 acre parcel that a consistent use could be maintained with the 3 acres as on the remaining 5 acre parcel? If Mr. Rodrigues complies with the present County subdivision standards and be granted a 3 acre plot rather than a 21,000 sqaure feet plot, all objectives would be met. Why would there be an objection to the granting of a 3 acre plot to uphold this American heritage that is mentioned? Why take an 8 acre parcel, utilize only the flat portions for what you describe as highest and best use and create a scattered development?

Mr. Shinsato denied that he ever made statements to this effect.

Commissioner Ota informed Mr. Shinsato that if these parcels were lots of record he could construct a dwelling on each one of these parcels.

Mr. Shinsato replied that these were not parcels of record.

Mr. David Wong, Planning Director of Kauai Planning & Traffic Commission confirmed this. He stated that the County has a subdivision ordinance which states that these parcels must have the approval of the Board of Supervisors before it is recorded as an approved subdivision. They, therefore, do not accept the Tax Office definitions of these parcels. Unless these parcels have been approved by the Board, or unless these lots appeared prior to the establishment of the subdivision ordinance, they are not lots of record. As far as Mr. Wong was concerned, this was not a lot of record.

Mr. Medeiros, tax assessor for Kauai County, stated that in a subdivision with 4 or 5 lots with one home, the Tax Office just gives it one parcel number. However the description of the lots are altogether different.

In response to Commissioner Ota's question whether this ½ acre parcel (pointing to map) is a lot of record and whether it is permissible to build on, legal counsel replied: "The rules state that any parcels of any lot of record may be occupied and permitted according to these regulations. In Honolulu there is a different situation. In Kauai I don't know what the law is. I have to take this under advisement; I can't give an opinion right now."

In response to Commissioner Wenkam's question whether there may be legal grounds for this Commission not even to consider this petition because of the dedicated provision, and because there may be a change in the use of the parcel if this commission were to grant this special use permit for a subdivision, legal counsel replied: "The law in essence provides for a major land use classification change by the Land Use Commission. Now this is a situation involving a special use permit. Whether the intent of Section 128-A permits this Commission to entertain such a permit in spite of the

fact it is dedicated, I don't know. However section D of this provision states that in the event of failure by the petitioner to comply with the dedication, the penalty imposed is to pay back taxes."

Commissioner Wenkam asked, "Are we, however, granting an illegal right--according to staff in its interpretation of dedications that the petitioner may not change the use of parcel until such time as the dedication is cancelled. If we were to grant this petition, we would be granting residential use of a parcel that should be handled through other procedures as in selling it or taking it out of this use. Are we changing that use in violation of the dedication provision if we were to grant it?"

Mr. Shinsato replied that Mr. Rodrigues did not dedicate the entire area. He excepted a 3 acre piece for the general use of agriculture.

Mr. Takeyama stated that the land is then not dedicated.

Chairman Thompson informed the Commission that this Commission must act on the petition as stated. If this 3 acre parcel is a lot of record, the applicants could go ahead and build without having to come before this Commission. However, this Commission must act in terms of this petition.

Mr. Shinsato explained that the applicants are not saying that there is a 3 acre parcel, but only that they did not dedicate the entire area from which was excepted the 3 acre lot they propose to build on. It is not the same as saying that is a separate lot itself.

Chairman Thompson stated that the question before this Commission is, "Is it a lot of record?" According to the tax map it has a tax key to it. According to the County of Kauai it does not necessarily mean that it is a lot of record. Which prevails? This matter has to be taken under advisement; however, this petition could be acted upon at this time.

Mr. Yamashita stated that the permit is to subdivide out a 21,000 sq. ft. lot for a residential unit. When this Commission made the land use districting for this particular area, it sought the advice of the Kauai Planning & Traffic Commission as to the appropriate districting. The Commission made field surveys and looked this area over before coming to a decision. This particular area was in essence in agricultural use and therefore was so districted. Whether the agricultural activity of small farm activities are declining or not, the dedication of lands as plotted (and there are between 10 to 30 more that are not plotted which were dedicated in 1964) does indicate that the overwhelming choice of the people in that area is to continue the agricultural uses in that district. The granting of what may in effect be spot zoning for a residential use in an Agricultural District, while it may be a benefit to one person or relieve a personal financial hardship, in itself is not a legitimate basis for changing the present zone. It would adversely affect the entire agricultural district in the surrounding area of this particular 21,000 sq. ft. lot. It would accomplish that in two ways:

1. It would set a precedent by fractionalizing land holdings in the area;

2. with this permission comes the rightful expectation of other owners who also would want to subdivide for the same reason; and

3. therefore when a tax assessor goes out into the area, he must also consider the fact that although it is zoned for agriculture, residential uses may also be permitted and this would rightfully be reflected in the tax assessment on the property in the Agriculture district.

On the basis of this principle alone, the staff recommends that this particular special permit be denied. Whether or not it is dedicated land, or whether a portion of it is dedicated, should be a secondary basis for the recommendation.

Mr. Shinsato stated that the principal reason for dedication is to cut down taxes.

Commissioner Ota moved to defer action on this petition within the time allocation and with agreement of the petitioner.

The legal counsel asked whether the deferment was on the basis of whether it is a lot of record or not. The legal counsel pointed out that Rule 2.19 allows single family residential dwellings on lots of record provided that they have received approval by the County. He stated in this particular case it has not been approved by the County. So the question whether this is a lot of record is not an issue here. This is provided in the Commission's Rules and Regulations Section 2.19.

On this basis Commissioner Ota withdrew his motion.

Commissioner Ferry moved that the request of the petitioner be denied.

Commissioner Inaba seconded the motion. The Executive Officer polled the Commissioners as follows:

Approval: Commissioners Wung, Inaba, Mark, Ferry and Chairman Thompson.

Disapproval: Commissioners Ota, Wenkam and Nishimura

The motion for denial was carried.

PETITION OF JOSEPH R. PAO FOR HAWAIIAN PACIFIC INDUSTRY (A(T)64-71) FOR AMENDMENT OF THE LAND USE DISTRICT BOUNDARIES IN PIA VALLEY FOR A RESIDENTIAL SUBDIVISION: Area described as Second Division, TMK 3-7-03: 12, 13, 15, 19, 20, 21, 23, 24, 28, 39 and Por. 1

Chairman Thompson: A(T)64-71 - Action on a Petition by Joseph R. Pao for Hawaiian Pacific Industry to Amend the Land Use District Boundary, County of Honolulu. The hearing on this matter was held on February 19, 1965. Our job today is to take action on it. Is there a representative from Mr. Pao's organization? Do you have any further testimony you would like to present at this time?

John Hulten, Jr.: Yesterday, the City Planning Commission voted to accept our recommendation for a change in zoning by a 5 to 0 vote. You have a letter presented to the Land Use Commission which we have not had a chance to see. Your Executive Officer has this letter on this matter. We have agreed to withdraw 4½ acres of lot size out of the request and leave it in Conservation, and the City thought that this would take care of any intentions we had of furthering this subdivision.

Raymond Yamashita: (Executive Officer) (Letter referred to read into the record. See letter on file.)

Gordon Soh: (Staff member) Begins presentation of staff memorandum. (See memo on file.)

The petitioner has submitted a rough drainage plan containing a number of cross sections. The plan shows deep cuts and fills will be necessary. This is the petitioner's plan referred to. These are different quads. This particular cross section falls on Ainaola Street. The area shown in red is the difference between the present grade and the existing grade. The red areas essentially show cuts. There are other examples of this. Once again we are on Ainaola Street and at this particular point, the land is benched above this line here. At this point, a cross section along Hua Street, the cut has an elevation of about 51 feet.

Chairman Thompson: All of this you are referring to--what is the slope presently?

Soh: We have calculated the slopes from different portions of the existing grades. This is 33% between here and here, 26% here, and here about 20%.

Commissioner Nishimura: How do you tell what per cent is here...

Soh: The distance between here and here is 51 feet.

Nishimura: No, the cut here. The cut from this point to this point.

Soh: Along this line here the cut is about 13-15 feet. Here, there are some examples of rough land. There are certain portions not noticeable except the fill areas deep in the subdivision.

Commissioner Wenkam: What's on the last one? The last proposed plan, what is it, a roadway or a walk?

Soh: This is the general area of the roadway, and the lot is on the side of the roadway.

Wenkam: Is that the area in the upper section that he proposes to build below the road? What is the slope in that cut area above the road?

Soh: This is 80 to 84%.

Wenkam: What is the new cut slope?

Yamashita: Where there is a flat shown--and not all areas in the subdivision have flat shelves built for houses shown on the basic plan, but where they are shown--the slope of the land where the houses shall be built is about 16 or 17%. Where they have to cut to create the shelf, the cut is 100% or 45° slope.

Wenkam: What is the slope of the cut above the road there. The cut slope, not the natural slope.

Yamashita: 40% to 45%.

Soh: (Continues presentation made in a memorandum form.) The petitioner has submitted information on soil samples taking in Unit I. Unit I is located in this general area of the proposed subdivision.

The petitioner has submitted a revised plan of the mauka portions of Unit II. This is the general area we are speaking of (pointing to the map originally submitted with the petition). This (pointing to revised plan) covers just the mauka portions of Unit II. Basically this plat shows three rows of lots in the upper portions--one, two and three--instead of four, indicating a total subdivision--Units 1 and 2--of about 236 lots instead of the original 247 lots.

Soh: An expansion of the existing Urban District boundary at Pia Valley is recommended as shown by the red line on the presentation map marked, Exhibit A. This expansion is recommended to permit petitioner additional lots near the mauka end of the boundary and along the Koko Head portions of the boundary.

Yamashita: This is the map which the City referred to in the letter that was read into the record. The existing Urban line is now here. There is a difference in the way the Urban boundary is shown by petitioner and as plotted out by the staff. There are certain ways of looking at it. This is the present urban area, where they have started the first increment. The total area which they request goes up to this limit and all the way down. This generally describes the 17 acres that we are concerned with in this petition. This particular area is generally in the Conservation District. Of the total area requested in the petition, the City now recommends that this portion of it be retained in the Conservation District and this remaining area be granted to the petitioner.

I would like to go into a brief description of the material that was submitted by the petitioner on Monday or Tuesday of last week. These are cross sections taken along the proposed road leading up to the subdivision. If you take a knife and cut the land across the road and expose it, this is the way the sections would look. The black lines indicate the finished grade after they would build it. The red line indicates what the existing land actually is like. The red shaded areas show areas to be excavated. The areas in white, between the red and black lines are areas to be filled in. The black portions that you see in all the sections are in the roadways.

One of the big concerns here is the esthetics of the area. There are several ways you can measure this or speak about it. What we have done here is taken the elevation of the roadway and have followed the cut and taken the distance in the vertical heights between these two as an indication of the extent of the cut that will appear on the ground. What you see depends on where you're standing. If you're standing directly opposite on a level line, the picture we have here is what you will see, before a house has been constructed. We have such figures as 39 feet, 58 feet, 54 feet, 57 feet, 33 feet. To give you a general impression of how high this is, a normal telephone pole or electric pole that you see on the street is about 35-40 feet in height. The red lines plotted here are where the existing Urban

boundary line now is. These distance as shown here are the areas being asked for in this petition. In this particular case this is the area--between the existing Urban boundary line here and the lot lines here--being asked for in this petition. This gives you an idea of what the visual impact is upon the valley in the construction of these roadways and the final grading.

Before coming to our recommendation, we have examined all the limits. We have indicated roughly what the slopes are of the existing grades. Although the finished grading of lots will be 15 or 17%, the existing ground cross section slopes---. For example in this area to the left, outside the existing urban boundaries the slopes are 34%, 23% below; here 48% above 26% below; here 42% beyond 37% and less inside. So it goes 54, 26; 78, 30; 50, 26. All these are cases of slopes existing outside of the present Urban boundaries; 20% in this case, 29 here, and 33. These particular cross sections in the road run right through this area of the petition. We have done a similar analysis of the cross sections in these other areas. You might say, in terms of depth of ground, from this ground to existing ground, that the most severe cuts run between 15 to 23 feet maximum. The fill generally runs a maximum of 12 to 18 feet.

After studying these cross sections and the slopes, in trying to relate this to what we have applied in our general land use districting for urban areas; that is, slopes generally less than 20% be included in the Urban and those generally steeper excluded. On those bases, staff has come up with this recommendation. Although some of these areas that we recommend for inclusion run as high as 40 to 50%, we have concluded that otherwise a significant portion of the usable area cannot be practically used. It may already be that the limits staff has recommended and that you do approve may be impractical. But not having the facts and figures on the cost, the construction cost, the field data, etc., we are not in the position to determine whether or not the recommended limits is financially sound or not. Because of this we have not examined this decision from that point of view but purely from the statistical point of view, giving thoughts and consideration to practicalities of making the physical layout, but most of all concerned with the principles which we have previously applied to provide Urban Districts. Although a lot has been mentioned about storm drainage facilities and subsequent damage, staff has concluded that the issue of drainage was one that can normally be taken care of at the County level and need

not therefore influence the decision of this Commission. For example in the letter read earlier and an oral conveyance of what had happened in the Planning meeting yesterday, the Planning Director of the City & County did state that the City will not approve further subdivision plans until the drainage issues are reasonably resolved. Therefore whether we put it in urban or not, the City has stated that they will not approve further subdivisions until such time as drainage problems are resolved. Further, staff feels that the additional contributions to drainage in this area is not one of serious consequence--serious enough that you would say whether it be a factor for you to make a determination of yes or no. It is not that serious.

Mr. Hulten: We are very happy to see that the staff has recommended at least something to this petition and their reasons for doing so. We do feel, however, that the economics of the subdivision, which were pointed out by the staff, demand, from the subdivider's viewpoint, more lots in the area. Part of this land is Urban already, which is the part we propose to start working on and which this Commission has seen fit to zone it as Urban. But in order to put the lots in economically it becomes necessary to put in certain number of lots. The basic problem here is the problem of water. Getting water in to the proper lots. The cost figures which we have figured out show that it would be very uneconomical to go ahead on the basis of the staff's recommendation to put in all the improvements, and a water reservoir without these extra lots. The main point of the staff's recommendation appears to be the esthetics value in the area--in fact what the cuts would do to the area. It is my understanding that this area, the area in question, above this red line here, is not visible even from the portion of the valley which is now constructed. You would have to drive further up in the valley in this area to see these lots. Anyway, this type of development and cuts are not uncommon in the Islands. Taking this into consideration with the staff's recommendation on the drainage problem and the economic factors involved here, we would like to see the Commission follow the City Planning Commission's recommendation. In effect, otherwise, this becomes an inconsistent type of line because although the lower portion is urban, it makes it economically impractical to develop it. It penalizes the owner of the property because of the water condition.

Wenkam: I'm curious why the Conservation line as shown in black does not follow the 20% slope line? On the map you have shown the yellow areas are above the 20% slope. I am curious as to why the Conservation District lines do not follow the 20% slope line in relation to this particular petition.

Yamashita: On this map the existing Urban line is like so. The white areas are areas less than 20%; the yellow areas are areas between 20 and 30%; the black areas are over 30%. This total outline is the subject of this petition. The best map we had available to use at that time was the USGS 1"=2,000' scale map showing 40 foot contours. We used both maps as well as boundary line maps to determine where a practical line could follow. At the present time the Conservation-Urban lines run like so.

Wenkam: I do understand that this is so. At the time it was drawn on the map, it was on a large scale. However, in terms of interpreting this boundary by larger scale map, especially when asked so by the petitioner, I am wondering why the intent of the Commission was not in this respect concerned with the 20% slope.

Chairman: Mr. Wenkam, we have discussed this on three occasions, then we came to a decision at our last meeting. I think your questions are out of order.

Wenkam: We came to a decision with respect to a particular location. Where is the 20% slope line?

Chairman: He pointed it out to you.

Wenkam: According to our Conservation District regulations the 20% slope line --- I mean according to our regulations the Conservation District lines are at the 20% slope.

Chairman: Generally so.

Wenkam: Generally so. If it be generally so why is it that consistently it is moved up away into the Conservation District? Why is it in a sense moved in a manner which subtracts from the Conservation District contrary to public interest instead of generally so moving into the lower area?

Chairman: Mr. Wenkam, this question is superfluous at this point because it is not moved into the Conservation District. We have set the Conservation District at a certain line.

Wenkam: After a great deal of discussion we set it at a 20% slope.

Chairman: No. Mr. Wenkam, your discussion at this point is out of order. Move on.

S. Nishimura: Mr. Chairman, hasn't there been a case where we have gone beyond the 20% slope?

Chairman: Yes, in many cases, but generally we have held to the 20% slope.

Mr. Wenkam, are you then recommending that we pull the line down? Is this your point?

Wenkam: My feeling is that wouldn't it be more proper when we go for a more exact interpretation of the 20% slope of the Conservation District lines which is requested that it be actually drawn at the 20% slope? We argued this a great deal at the time of our drawing up the final boundary.

Commissioner Ferry: Mr. Chairman, I would appreciate not having a rehash for the fourth go-round on this very same topic.

Commissioner Ota: Mr. Chairman, I would want to know the approximate acreage in the difference of the staff's recommendation of the Urban boundary limits and what the City had proposed or recommended; I think they had acted on this yesterday. A more or less estimate.

Mr. Chairman, I would like a point of order here. Maybe I'm lost in this memorandum that staff has gone through. In the last paragraph of staff's recommendation for additional land that would be added to the Urban area from the Conservation District, then the area that staff is recommending compared with what the City has recommended, how much difference is there, or is there any difference?

Soh: The difference between the City and staff's recommendation is this area here--since last night's decision by the City.

Nishimura: What is the staff's recommendation?

Soh: Staff's recommendation is here.

Nishimura: What are the slopes here?

Soh: It widely varies. It's pretty acute in some portions, especially up here.

Nishimura: 100% or what?

Soh: At what point? This point? They all vary in different cross sections.

Chairman: Mr. Nishimura, do you want the range?

Nishimura: Yes, the range from the 100% slope.

Soh: This is a cross section of station 18, located here. The pad will be built around 18%. The present grade above this portion is about 33%, and up here it's 64%. At station 19 the grade at this point is about 24%. Up here about 48%. At station 20, however, something happens; here it drops down. At this point it's 23% and up here it's 27%. In general it is very rough topography.

Nishimura: What are the slopes like in here? Are they flat here?

Soh: This area here (pointing to one chart) is right here (pointing to another). This line here.

Nishimura: In other words that top area here is this area here, rather flat.

Soh: Not altogether. There are areas in here that are over 30%, and there are areas in here that are less than 20%. There is a streambed that goes through here. Part of the difficulty here is that the proposed development calls for a drainage ditch and the necessary treatment to service the lot. It is a matter of fitting all this scheme within this area here. That is where the difficulty is.

Ferry: Mr. Chairman, may I ask for only the lots that are involved between the recommendation of staff and the action taken by the City Planning Commission yesterday. Are they plotted out there?

Soh: No sir. Excuse me, I can count them off... 54 lots.

Ferry: More or less a total of 54 lots difference between our recommendation and that of the City Planning Commission.

Ota: Earlier it was mentioned on the Honolulu side there would be only one row of lots. Isn't that what the petitioner proposed or somebody proposed? The Koko Head side of the two rows, one on each side of the area.

Soh: Earlier, during discussions at the City level, we were advised of this by petitioner. Petitioner was apparently thinking about having 3 rows of lots here. The City's dark line shown here would indicate two rows of lot.

Ota: Now is that the City's recommendation?

Soh: No. This was the City & County staff's conversation with petitioner. But subsequent to that conversation, the City Planning Commission voted to recommend three rows of lots as requested by petitioner.

Ota: And that was the accepted recommendation of the boundary?

Soh: By the City Planning Commission, yes.

Ferry: I would like to ask counsel for the petitioner, would it be economically feasible to proceed with the development even if a difference of opinion of 54 lots were involved?

Hulten: I would say with that number of lots involved, it would be very difficult to make it economically feasible to proceed with the development.

Commissioner Mark: Is economics a consideration of the Land Use Commission to make a decision?

Chairman: If they are pleading hardship, and apparently they are. It can be entered into their testimony.

Yamashita: I think the Commission ought to recognize that there was an initial recommendation to us from the City Planning Commission. Their initial recommendation was for only those areas below the 20% slope, and I am at a loss right now to understand how come the City is making a second recommendation which is contrary and adverse to their first recommendation. Their first recommendation, as you may recall, was similar to staff's and that was in general to let them build or extend the urban area into all these back portions up in this area also. After the hearing I sat in a meeting with Mr. Arakaki and Joe Pao and we discussed the possibilities of an alternative plan which would consider the recommendation being made as a possible alternative. At that time showing this generalized topo (slope of land) map, we measured the distance across. There was a maximum room for only two tiers of lots which would require full major storm drainage improvements in addition to a feeder roadway to the area. On this basis Mr. Pao stated that he cannot have only this sliver of land, it's either a bigger area or none at all. On that basis staff is making a recommendation for additions here; although there is a flatter portion along the foot of ridges in the upper area of the valley which is not included in the recommendation.

Yamashita: Because while this is flat (pointing to flat portion at foot of ridge) this particular area (pointing to adjoining portion) is excessively steep at this side of the valley. For that reason there may be about only 10 to 15 lots that can be made, which perhaps we would have recommended except for the statement that was made by Mr. Pao to us. Looking at it from a practical point of view, I can see why he made that statement. So we left this area out of the recommendation today that we are making to you.

Arakaki: Would you kindly have Gordon put up all the cross sections. As pointed out by Mr. Yamashita, this land is fairly steep, similar to this land here. I beg to differ with him; it is this area here and so on down the line. You will note there is a cut there, just about 7 feet, 5 feet, etc.; as drawn there, this is 17%, 25, 31, etc. down to 25. Now on this end, the reason for it being steep is we are running a reservoir access road; we have to put it in a reservoir no matter what happens. In order to get at the top I have to go up this ridge, get as much slope as possible, to an elevation of 355. In order to do that we put this road in. To recover cost we put in that row along the stream channel and we put in a tier of lots here. That is about our basic concept of this development. Unfortunately, this land here I consider very steep for development, but not as steep as this land.

Yamashita: Mr. Arakaki is correct that the land on that side (Koko Head) is not as steep as this side (Ewa). I was only referring to that slope of land shown on the left in yellow and black. All of the slopes on both sides of the valley included in the petition are over 30% slope.

Arakaki: Which is true. In this development we have an agreement with Mr. Horita to develop just 4,000 sq. ft. of usable areas, so we probably won't touch the back. These are actually just rough grading and in the final grading, of course, you'll put a house here, a driveway, retaining walls, this is the final grading.

Ota: You mentioned on the Honolulu side there will be a road going up to the reservoir. You're going to have one row or two rows?

Arakaki: One row.

Ota: One recommendation states that there will be two rows of houses on each side. The count came up to 54 because I questioned the intent of two rows on the Honolulu portion of the streambed. Am I to assume and is it correct you are going to put only one row?

Arakaki: That is what we propose to do and that is the proposal we submitted to the City Planning Commission.

Chairman: Mr. Arakaki, is this the correct proposal?

Arakaki: Yes. We propose to eliminate all of these areas which is about 4½ acres.

Ferry: Is the green shaded area that portion of the petition which did not receive approval from the City Planning Commission?

Arakaki: Yes, that is the compromise area. We will delete this portion.

Chairman: The correct boundary is these yellow areas.

Arakaki: Yes, more or less. Approximately that.

Chairman: If this land is developable on the right side, why isn't it in your interest to have taken the staff's recommendation earlier if you take the bottom land into consideration.

Arakaki: Because the stream runs about here and we can have only one tier of lots.

Chairman: But you made a statement earlier that the slopes mauka of that are much more developable than the left side.

Arakaki: Correct, this side. This is where the stream lies. We have two rows in here now. The so-called level sections are up here. Most of our lands in Honolulu are well over the 20%, a good portion of developable areas.

Ota: In the final analysis of staff, staff concurs that on the right side of the stream, in many instances, land is relatively around 20%. On the left side from their cross section I can see where it will involve a deeper cut. Now assuming that the recommendation of the petitioner is carried out, the newspapers mention that the original 17 acres is down to 13 acres. Assuming that there are two rows in there according to County standards, we probably will end up with a net usable land for houses of roughly 10 acres, assuming 20% is taken off for the road. I don't know what the lot size would be but generally you would end up with 7500 minimum. But because you are confined by the contour of the land, etc., you might end up with 40 lots assuming 4 lots per acre. The additional land that staff is recommending--how many lots would you estimate they can build on your additional land you recommend?

Yamashita: About 6 to 8 lots, however, it is hard to answer because there is a steep sliver between the proposed boundaries and the now existing boundaries.

Ota: Can we say 10, 15; well, let us say 20. What I'm trying to do is this. Assuming our estimates of 20 is correct. In essence the petitioner is asking for only 20 more lots in the confines of their request. I stand corrected, but one said 40 and staff says 20, so the difference is 20.

Yamashita: It depends on how you made your deductions. Because there's a way you have to arrange your lots for the most economical construction. But the way the existing pattern of the Urban District is you could not make a logical or practical economical layout of lots, at least for that portion already in.

Ota: Then my assumption would be that because of the contour, the lots might be less than 20, less in numbers because of contours.

Wenkam: I feel that the original conservation district lines set up generally the 20% slope established in this particular area for several reasons. One of the most important ones discussed at the time we drew up our permanent boundaries was the question of esthetics and the desirability of keeping any further subdivision expansions off the ridge sides and tops. I feel that for this reason alone we should hold the urban lines where we have it drawn and not allow nibbling away at the Conservation Districts. The hardship plea I find very difficult to understand because we have not accepted this plea in cases where people have wanted to put an extra house on their farm lot and other cases I remember. I feel that the general zoning procedures should be done in terms of how it affects the general community and the general welfare of this community rather than the individual. The staff, has, however, brought out that Pao had an opportunity to object to the zoning at the time of the preparation of our original boundaries and did not. The City & County is proposing that further subdivision be stopped in Honolulu until flood control actions of a substantial nature are taken care of. I think we should support the City & County in this area and not put any more urban areas into use in valleys where it has flooded until flood control situations are taken care of. I don't think the need of these additional lots in terms of this subdivision has been amply demonstrated. The Commission has zoned lands sufficient for urban use in Honolulu to last for the next 25 to 30 years. There are a great

Wenkam: many lots both in fee simple and leasehold within a very short distance of this area that is already zoned Urban but not yet even subdivided. In this respect it is not necessary to construct additional lots within the Urban line. I also like to bring out that the local residents who live in the valley, a substantial number of them, legislators in the area, a substantial portion of citizen groups in Honolulu, a wide range of people have objected to an expansion of this subdivision in Pia Valley as such. On basis of statements and testimonies by the petitioner that the economics being the case, that if he were not allowed to have these additional lots in the Conservation area that he would probably not be able to proceed with this subdivision, which would be a very good reason for denying the petition. Just by the act of denying the Conservation area we could bring a halt to the entire subdivision, which according to testimonies by many witnesses before this Commission would be undesirable, poor planning for the community, would contribute to deterioration of the appearance of Honolulu and would be a subdivision that would be very undesirable. In this respect I would like to argue that we deny this petition.

Ferry: How much of the area has already been scarred?

Arakaki: Along this entire area.

Ferry Consequently then the conservation values have been diminished?

Arakaki: We have the first unit under construction right now, 106 lots. Now 70 of those lots could be served from the existing lots. Now the balance has to be divided on the reservoir and that reservoir has been estimated to cost about $250,000. To deny this tier of lots here and to put in this reservoir road where it exists, one tier of lots on the right hand side would kill it.

Mark: On what basis has staff recommended the extension of the Urban lines?

Yamashita: The Rules and Regulations of the Land Use Commission--in reference to determining where the final district boundary lines actually are, where they run into areas that are not yet platted or subdivided--indicate that when they subsequently do become subdivided the final subdivision lines shall become the Urban District lines.

Yamashita: For that reason, in consideration of that particular regulation, the particular Urban lines to the right have been moved up to the lot line. It may be questioned that this area is steep and therefore should not have been put in. But considering all the factors we did put it in primarily because of that reason.

Now there are a few lots at the uppermost end of the existing Urban area which are topographically about the same as that just within. They are slightly over 20%; they range between 20 to 25%. We felt that this would be a reasonable refinement of the line. For that reason we recommended that particular area.

I sit here and am concerned about the fact that so much emphasis has been based on the issue of hardship and economics and finances in the construction of this subdivision. However, I do not particularly feel that it is a significant issue in that we made public the land use district boundaries in January; we stated publicly that we had set it. We also appeared on T.V. and at the public hearings to show it to the public. We had no reaction in this particular area.

The other thing is we have applied principles in districting throughout the State. One basis in this one particular case that applies to this issue is generally to include lands 20% and less in the Urban area. And were we to do it now I think it would be contrary to one of our basic principles.

Wenkam: I'd like to move that the petition be denied.

Chairman: That the petition be denied or staff's recommendation be accepted?

Wenkam: I think that the petition be denied is the proper thing first.

Chairman: Let me ask you this question? Do you go along with the staff's recommendation?

Wenkam: No, I do not.

Chairman: Then your motion is to deny the petition. You heard the motion, do I hear a second? The motion is to deny the petition. The line goes back to its original line. (No second, motion dies.)

Ferry: Mr. Chairman, I move that the petition be granted upon the advice of the City & County of Honolulu Planning Commission and its findings.

Chairman: You heard the motion. Is there a second to that motion?

Ota: I second that motion, Mr. Chairman.

Chairman: It has been moved and seconded that this petition be granted based upon the findings of the City & County Planning Commission.

Wenkam: Only in respect to the City & County Planning Commission's decision. They did not discuss any of the matters that were entertained here today. Their motion was purely an act without consideration of the questions which I think that the Land Use Commission is required by Law to consider. The Commission should realize this.

Chairman: If there is no further discussion the Chair will call for the question.

Yamashita: Commissioner Wung?

Wung: No.

Yamashita: Commissioner Inaba?

Inaba: Aye.

Yamashita: Commissioner Ota?

Ota: Aye.

Yamashita: Commissioner Wenkam?

Wenkam: No.

Yamashita: Commissioner Nishimura?

Nishimura: Aye.

Yamashita: Commissioner Mark?

Mark: No.

Yamashita: Commissioner Ferry?

Ferry: Aye.

Yamashita: Chairman Thompson?

Chairman: No.

Yamashita: The motion is not carried. The vote is 4 to 4.

Chairman: Now, would someone like to make a motion to accept the staff's report? The line could be moved up to the other area.

Mark: I so move.

Chairman: Do I hear a second?

Wung: Second.

Chairman: It has been moved and seconded that the staff report be accepted.

Ota: I would want to put to this Commission that staff in its recommendation here has concurred that the area on the right bank of this subdivision is relatively developable, except on the curve. I made a field inspection of this area. What I sized up and what Mr. Yamashita has said is that when you make the bend there, there is developable land beyond the point. The cross section bears that out. Staff recommendation has confined the upper limits of this subdivision purely at the squaring off at the bend. On the discussion of lot size data it has been mentioned that size might come into the picture as far as the specific number of lots there. Logically, I would concur with staff. However, I would want this Commission to recognize the fact that there are additional lands along the right boundary that could be developed within the confines of our 20% slope. About the strong statement that Mr. Wenkam has made about esthetics, I want staff and those who haven't gone into the area to recognize this fact that once you make this bend you can't see this area beyond there.

Chairman: In terms of the motion what would you like to see happen?

Ota: I want staff to consider the possibility of expanding that area along the right bank in this particular motion.

Chairman: Your discussion here is based on the assumption that staff said this. I'm going to ask if staff did say this.

Yamashita: There is a sliver inside here that you can put in. Just about one row of lots.

Ota: In many respects, time and time again, petitioner has said the economics of land in this area would sell at $2.00 a sq. ft. I think we should consider maximum use of urban land. In other words economic use of land that is available. Once this subdivision is set, the land is lost forever---developable land. Knowing this area fairly well, I think it is desirable and fine residential land. Therefore, I feel that we are not doing justice to the petitioner if we just square off this boundary. There is some land beyond that I think he should get--the maximum land available fo development in that area.

Chairman: Mr. Ota, I don't know if you recall, but Mr. Yamashita has had conversations with Mr. Pao regarding this particular area you're talking about. Mr. Pao did not want it, he wanted the whole works. Am I correct?

Mr. Hulten: On behalf of Mr. Pao, I'm certain the suggestion is most welcome if we can get any more lots. As he says, some of it is usable and it would be much in our favor to get as much as we could use in accordance with staff recommendation.

Ota: In that case I am willing to have staff and the petitioner negotiate this. If the rest of the commissioners so agree, we should give the petitioner the maximum benefit for development.

Chairman: We have a motion before the floor which is based on the staff's recommendation in this report which holds the line to this spot. This motion would have to be voted down or withdrawn, at this time, in order to approve your suggestion that it go a little further below the 20% slope. Is that your suggestion?

Ota: Mr. Chairman, my suggestion is that there are some more developable lands in there, and I feel that there shouldn't be an arbitrary line across the mouth of the valley. Rather than a line across the map in this particular case, this should be negotiated between staff and petitioner. If staff feels it shouldn't carve any more, I would perfectly back staff 100% on this. But if there is additional land available beyond this line or limit, I think it only fair at this stage that we should try to work out some further compromise.

Yamashita: The only area that I can see is to draw a line here based on the studies that I have made. I don't know whether it will be acceptable.

Nishimura: I can see Charley is trying to get a compromise and I feel the same way. I haven't seen the area, and that is why I have been asking a lot of questions about the 20% slope, 10% slopes, etc. I can see the hardship and I think hardship is part of our criteria.

Ota: One final thing. Mr. Yamashita is confident he can draw a line across. At this stage I don't think that is the proper way. The petitioner has stated that the area is rubbed out. I think an on-the-site compromise is in order in this particular case.

Chairman: Are there any further discussions on the motion, which is to hold to the line as recommended by staff, at this time? The course we could take is if the people who made the motion and second would like to withdraw, they could. (Pause) If not we will vote on it.

Yamashita: Commissioner Wung?

Wung: Aye.

Yamashita: Commissioner Inaba?

Inaba: No.

Yamashita: Commissioner Ota?

Ota: No.

Yamashita: Commissioner Wenkam?

Wenkam: No.

Yamashita: Commissioner Nishimura?

Nishimura: No.

Yamashita: Commissioner Mark?

Mark: Aye.

Yamashita: Commissioner Ferry?

Ferry: No.

Yamashita? Chairman Thompson?

Chairman: Aye.

Yamashita: The motion is not carried.

Ota: I move that the staff and petitioner's engineer or whoever his representative is, look into the possibility of furthering the staff's recommendation to the upper limits of this subdivision. A compromise with on-site inspection.

Ferry: I believe Commissioner Ota is giving staff the authority to further expand the recommended Urban boundary.

Chairman: Keeping generally within the 20% slope?

Ota: I wouldn't want to put that in, Mr. Chairman.

Ferry: I believe Raymond has expressed possibilities of additional lots being served within the subdivision, and this is the aim I would like to see served.

Chairman: Is there a second to Commissioner Ota's motion?

Ferry: I'll second his motion.

Chairman: It has been moved and seconded.

Wenkam: A point of order? I think this is something of a new petition. What is being asked would be subject for another petition.

Chairman: If it is within the bounds of the petition being submitted, we can delineate it.

Ota: As far as my motion is concerned it might end up that will be the boundary. I am just pleading for additional consideration, because dollars and cents are involved and the economic use of urban land, that staff and the petitioner work out a compromise if possible.

Wenkam: I am merely stating that we have already taken action on this petition and that when this meeting is adjourned this petition is closed.

Chairman: No, we can still continue to take action in terms of our petition within the confines of their request.

Wenkam: Our own petition without public hearings?

Chairman: No, this is their petition. Within the confines of their request, we can delineate the lines which in essence we are doing.

Wenkam: At any future date can it be reopened?

Chairman: No, only at this time. The Executive Officer may be able to clarify this point at this time.

Yamashita: The extent to which I feel that additional land can be included in this area in accordance with all the reasons why we did this, is to take this like this and come down like this (drawing motions across map). This is the only additional lands that I can justify recommending to the petitioner, then there is no sense in putting it in.

Ota: Mr. Chairman, again I want to qualify my motion. The final say will rest with the staff as far as I'm concerned in this motion. Otherwise, I can't see how we're going to compromise.

Mark: The final say rests with this Commission.

Chairman: That's right.

Nishimura: Mr. Chairman, I noticed the Executive Officer has recommended a straight line. I concur with Charley about this straight line. Now there is a possibility in this area. We have given Hawaii Kai areas similar to that.

Chairman: Charlie, the recommendation made by staff is agreeable with petitioner.

Ota: Okay. I just can't see how you can just go like that and come out to an agreement.

Yamashita: There is only one row of lots now.

Ferry: Point of information, Mr. Legal Counsel. If we are unable to decide on this position, can the Commission put it off voluntarily?

Takeyama: The Law states you shall act within 45 to 90 days.

Ferry: Yes, but in view of additional information forthcoming from staff, can we put it off?

Takeyama: It does not make any qualifications regarding additions. All it says is "within the period of not more than 90 days and not less than 45 after such hearing, the Commission shall act upon the petition for change." Now I interpret that to mean that it is mandatory that you act within 90 days.

Mark: Mr. Chairman, in terms of days, what day is this?

Chairman: We have to act now.

Nishimura: Mr. Chairman, may I make a correction. In the Waipio City case, we have extended.

Chairman: This is because of circumstances existing at that time. Remember, we just got into business; we just went into business. What we can do at this point is to defer action on this motion to allow the petitioner and staff to get together and come back with a recommendation after five minutes.

Ferry: May I ask another question from our legal representative. That if we so move to defer action pending receipt of additional information from staff, would we be in a defensible position?

Takeyama: Yes, you would.

Ferry: Then, Mr. Chairman, I will withdraw my second to the motion so that the Chair will entertain a motion to this effect.

Ota: I withdraw my motion.

Ferry: Then I move that we defer action on this petition pending additional information from staff relative to the proposed boundaries.

Ota: I second the motion.

Wenkam: Point of order. Won't this motion have an effect on our regulation?

Takeyama: I said this. I answered specifically what Mr. Ferry had asked. The law states in part that you must act within 45 and 90 days. Commissioner Ferry asked if we disregard this, is it defensible? I answered that yes, it is defensible. By that I mean that in the law there is ample authority to that effect. Even though the law itself states that the particular act must be done within a specified period of time, the Court has interpreted that to mean that--in a situation where it cannot comply within a certain period of time and if an administrative body should fail to act within a specific period of time but does it subsequent to what is expressed in the law--- the Courts have gone along with the administrative body and have upheld the action even though it in effect has not complied to the strict letter of the law, regulations or statute as such.

Mark: Then is a deferral an action? Is deferral interpreted as an action? To move to deny; to move to approve; to move to defer. Apparently we are taking a third choice. Is deferral an action?

Takeyama: I would think that it is an action. Yes.

Chairman: I don't know why a deferral is necessary. Mr. Pao, his engineer and Mr. Yamashita have gone over these plans in detail, and they have discussed this particular area. The attorney states now that he would be willing to go along with the lines suggested by Mr. Yamashita, I don't see why we are deferring.

Hulten: I was agreeing to go along with the motion.

Chairman: Not to what he suggested as to the line?

Hulten: That is only one tier of lots.

Yamashita: One row.

Hulten: In your discussions with Mr. Pao, what was the extent of that discussion?

Yamashita: Just that area below the 20% that runs up into the valley. You have room for only about one or possibly two rows of lots.

Hulten: Maybe it would be possible that an on-site examination could show this. If so, we would like this opportunity.

Yamashita: It can only be reduced to paper where you can measure it.

Mark: Mr. Chairman, I would call for a recess while they confer.

Wenkam: We have already taken action on the petition. Therefore, you cannot introduce a motion asking for deferring action on the petition.

Mark: Does staff have any comments based on the discussion?

Chairman: Just a moment, we have to clarify this motion.

Ferry: All right if it is out of order.

Chairman: Now you can reword your motion.

Ferry: The motion then would be for additional time for staff to present information which may expand the recommendation offered today for the Urban boundary zone.

Ota: I second.

Chairman: Do you have any comments regarding the conference?

Yamashita: Regarding the conference, the only additional area the staff could recommend to you, which would be appropriate, the petitioner can't accept because of practicalities of major improvements and building improvements for just a few lots.

Hulten: It is my understanding that you would recommend just one strip right in the middle which would allow just one row of houses. Well, one strip we feel would be impractical. We were hoping that there would be enough border line in back for perhaps two strips or some other arrangements could be made.

Ferry: Under discussion, Mr. Chairman, would it be possible in the eyes of staff that an on-site inspection may influence their thinking. Or has sufficient time and effort been spent so as to come to an appraisal as to how much more area could be allowed in an Urban zone on such short notice.

Yamashita: I have studied this in detail and have gone to this site.

Ferry: You don't feel that another on-site inspection would materially add to this discussion?

Yamashita: No.

Chairman: As far as you are concerned your recommendation would be the only one you will accept?

Yamashita: The only one I would make.

Chairman: That's one you will make. Later on even if you made an on-site review, you would still come back with the same recommendation?

Yamashita: Yes.

Ferry: Well, in lieu of that would Mr. Pao's representative be willing to accept the recommendation made by Mr. Yamashita? I know you have stuck for the fact of going out on the site and looking at it before determining the line. Mr. Yamashita claims that this would not materially change his thinking.

Hulten: Our engineer tells us that it would not be economically feasible to have just one row.

→ Commissioner Wenkam moved to adjourn, seconded by Commissioner Marsh. (correction see minutes of 11/23/65 meeting)

Ferry: I would like to see a vote taken on the motion and then a suggestion made that we have a commission review on the site.

Nishimura: I think that is a good suggestion, Mr. Chairman.

Wenkam: Doesn't a motion to adjourn take precedence over a motion on the floor.

Chairman: I don't know.

Ferry: It does not.

Chairman: Why don't we take it to a vote. The motion before us is to allow staff and petitioner to get together and come up with a suggested division of the boundary within the present boundary as passed by the City & County.

Yamashita: Commissioner Wung?

Wung: I didn't quite hear that motion.

Chairman: The motion is to have an on-site inspection by petitioner and our staff and for our staff to come back with a recommendation to this Commission regarding extending the Urban boundary line up that middle part, and if possible the Commission should be included.

Yamashita: Commissioner Wung?

Wung: Aye.

Yamashita: Commissioner Inaba?

Inaba: Aye.

Yamashita: Commissioner Ota?

Ota: Aye.

Yamashita: Commissioner Wenkam?

Wenkam: No.

Yamashita: Commissioner Nishimura?

Nishimura? Aye.

Yamashita: Commissioner Mark?

Mark: No.

Yamashita: Commissioner Ferry?

Ferry: Aye.

Yamashita: Chairman Thompson?

Chairman: No.

Yamashita: The motion is carried 5 to 3.

Chairman: The decision as it stands now is that the petition is denied. The boundary lines is where it was, which is the old boundary line. On this particular petition. The action taken on this particular petition is that this petition was denied, however, it is subject to further review by the staff.

Ferry: It is subject for further review by the staff and action taken at that time. This does not require the procedure of a new public hearing and so forth.

Chairman: I'm not too sure whether it does or not.

Takeyama: Yes it does. This is the situation you're in now. If you defer action on this subject to the staff coming back with a recommendation, in effect what it does it kills the petition.

Ferry: Well then, as a person who voted "no" on a previous motion to accept staff's recommendation for boundaries, I wish to change my vote and have the motion reread-- and that motion was made by Leslie Wung which said to accept staff's recommendation for Urban zoning.

Chairman: Anyone else wish to reconsider?

Ferry: I want to reconsider my vote. I voted no at that time.

Chairman: Anybody wants to make a motion to that effect?

Ferry: Yes, I so move.

Ota: I second.

Wenkam: What is the motion?

Ferry: That we give Urban zoning upon staff's recommendation.

Yamashita: Commissioner Wung?

Wung: Aye.

Yamashita: Commissioner Inaba?

Inaba: Aye.

Yamashita: Commissioner Ota?

Ota: Aye.

Yamashita: Commissioner Wenkam?

Wenkam: No.

Yamashita: Commissioner Nishimura?

Nishimura: Aye.

Yamashita: Commissioner Mark?

Mark: Aye.

Yamashita: Commissioner Ferry?

Ferry: Aye.

Yamashita: Chairman Thompson?

Chairman: Aye.

Yamashita: The motion is carried.

The meeting adjourned at 5:00 p.m.