

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

State Conference Room  
Lihue, Kauai

May 8, 1970  
1:00 p.m.

*Approved 9-11-70*

Commissioners Present: Wilbert Choi, Chairman  
Goro Inaba  
Alexander Napier  
Eddie Tangen  
Shelley Mark  
Sunao Kido  
Leslie Wung  
Tanji Yamamura  
Stanley Sakahashi

Staff Present: Ramon Duran, Executive Officer  
Ah Sung Leong, Planner  
Walton Hong, Deputy Attorney General  
Dora Horikawa, Stenographer

Persons planning to testify before the Commission were sworn in by Chairman Choi.

HEARING

PETITION BY LAND USE COMMISSION (A70-243) TO RECLASSIFY 12 ACRES FROM AGRICULTURAL TO URBAN AT NAWILIWILI, KAUAI

The Executive Officer read the staff report recommending retaining Area "A" in the agricultural designation in view of the deteriorated condition of the existing dwellings and since the land is unsubdivided and unimproved and part of a large parcel under one ownership; however, recommending that properties fronting on Hulemalu Road and all of the smaller parcels generally bordered by Puali Stream be included within the Urban District.

There was no county representation, no testimony from anyone and the hearing was closed.

PETITION BY MANUEL AND BERTHA SANCHEZ (A70-246) TO RECLASSIFY 30 ACRES FROM AGRICULTURAL TO URBAN AT WAILUA HOMESTEADS, WAILUA, KAUAI

The Executive Officer read the staff report recommending denial of the petition on the bases of the reasons outlined in staff report (see copy on file).

He added that the applicant just submitted a memo statement (copies were circulated to each Commissioner).

In reply to Commissioner Sakahashi's question, Mr. Duran stated that the property was dedicated in 1964 for 10 years. If the property owner wanted to remove the dedication at the end of the 10 year period, he is required to notify the Tax Office 5 years (1969) before the 10-year dedication period elapsed. Since the Tax Office was not notified last year of the intent to withdraw the land from dedication at the end of 10 years, the dedication is automatically extended from 1969 to 1979. In other words, the land is committed to a dedication for another 9 years and the petitioner may in 1974 advise the Tax Office that he wishes the dedication to be withdrawn in 1979.

Mr. Hiroshi Sakai, attorney for the petitioner, referred to his memo circulated to the Commissioners citing Section 246-12C, Hawaii Revised Statutes, and stated that if the land classification is changed by a State agency, the dedication may be cancelled within 60 days of the change. The Executive Officer disagreed because no land classification can be changed without the action of the Land Use Commission which is a State agency, and if Mr. Sakai was right there would be no reason to have the 5% penalty clause on land removed from dedication.

Deputy Attorney General Hong said he could not comment on property owner initiated petitions and Commission initiated petitions at the present time.

Mr. Sakai also stated that he understood the water situation is adequate to develop the area in question, but may not be adequate if additional land in the area were to be developed. Mr. Sakai disagreed with the staff report that there was no development activity in the area by citing statistics on the number of lots that have been sold and resold in the area, but that development was not occurring on these lots because of the tight money market.

Mr. Clinton Childs of Prosser-Childs, Inc. submitted a statement regarding the sale and resale of lots in existing vacant subdivisions in the surrounding Urban District. Chairman Choi and Commissioners Mark and Tanager raised several questions regarding the resale and speculative aspect of the development, as opposed to assuring the actual construction of houses on the lots. Chairman Choi specifically noted that a 200' strip or approximately 8 acres of the property in question was already zoned urban but not subdivided or developed. Mr. Childs commented that there is no way for him to forecast the market, but that the market is sensitive to additional competition and that the best guarantee would be more activity in the sale and resale of lots.

Mr. Sakai, in answer to Commissioner Sakahashi's question, stated the subdivision would be developed to the minimum requirements of the County.

Chairman Choi advised the petitioner he had 15 days to submit additional testimony and also suggested that the developer redesign the subdivision to provide lots on both sides of the proposed road and to propose the development on an incremental basis, utilizing that portion of the property already in an Urban District.

Mr. Sakai said that if the Commission would assure the incremental development of the remaining portion of the property, that the petitioner would consider the suggestion, and the hearing was closed.

PETITION BY LAND USE COMMISSION (A70-249) TO RECLASSIFY 45 ACRES FROM CONSERVATION TO AGRICULTURAL AT WAIMEA VALLEY, WAIMEA, KAUAI

Mr. Ah Sung Leong presented the staff report recommending that the area be rezoned into the Agricultural District since the lands have a high capacity for agricultural production, much of the area is used for agricultural purposes, it is not characterized by city-like concentrations of people and public facilities, the area is similar to the land on Makaweli River banks in the Agricultural District and the property abuts an existing Agricultural District (see copy of report on file).

Since there was no testimony from anyone else, the hearing was closed.

ACTION

SPECIAL PERMIT REQUEST BY AMFAC PROPERTIES (SP70-77) TO CONSTRUCT A 9-HOLE GOLF COURSE TO EXPAND THE PRESENT KAUAI SURF GOLF COURSE AT KALAPAKI, LIHUE, KAUAI

Mr. Duran read the staff report recommending approval of the special permit with the condition that the 80 acres of land be replaced with an area of waste land capable of producing at least the equivalent production of sugar that will be displaced by the 80 acres.

In reply to Commissioner Napier, Mr. Duran stated that the area could be used for a golf course only under the special permit, or for any permitted agricultural use. The approval did not include a club house and that the restrictions would be conveyed to anyone else that purchased or leased the property. For any other construction beyond just the addition to the golf course, the development would have to be reviewed and approved by the Land Use Commission.

Mr. Earl Stoner, representing Amfac and Lihue Plantation, stated that some time in the future a club house would be constructed and that another special permit by Amfac or Inter Island Resorts would be filed at that time. He stated that to maintain an equal balance of agricultural land they are reclaiming 500 acres of forest lands in the Kilohana area in Lihue Plantation ownership. They have arranged to reclaim approximately 300 acres under lease from Grove Farm in that same area. He also indicated that the yields stated in the staff report were much lower than records indicate and that the figure should read about 10 to 11 tons per year on a long term basis, although the last two crops were between 7 to 8 tons per acre per year.

Mr. Lawrence, Kauai Airport Manager, restated the position of the Department of Transportation that urban development be discouraged in this area until the new airport site is selected, but they did not have any objections to just the golf course.

Commissioner Wung moved that the Commission accept the staff's recommendation and grant the special permit, seconded by Commissioner Sakahashi, and unanimously passed.

PETITION BY LAND USE COMMISSION (A69-241) TO RECLASSIFY 63 ACRES FROM RURAL TO URBAN, AGRICULTURAL OR CONSERVATION AT HANAPEPE VALLEY, KAUAI

Mr. Leong presented the staff memorandum recommending approval of Alternative 2 including 6.5 acres as outlined in the memo (see copy of memo on file).

Commissioner Kido questioned the County's reason for not including the levee in their recommendation for urban rezoning and Mr. Leong replied that the County had no intention of building anything on the dike, that it was a raised, narrow, flat area about 10 feet wide presently zoned in the Rural District, and that the Land Use Commission staff recommended the property lines be followed and include the levee.

Commissioner Sakahashi moved that the staff recommendation of Alternative 2 be approved, seconded by Commissioner Tangen, and passed unanimously.

PETITION BY JOHN MEDEIROS, JR., ET AL (A69-239) TO RECLASSIFY .76 ACRE FROM RURAL TO URBAN AT OMAO HOMESTEADS, KOLOA, KAUAI

Mr. Duran presented the staff memorandum recommending denial of the petition since it would create a spot zone and since the petitioners had not submitted any evidence to support the need, and that the land is usable and adaptable for the proposed use, or that trends of development have so changed since the adoption of the existing Rural District that the proposed classification is reasonable (see copy of report on file).

There was no discussion or testimony from anyone.

Commissioner Wung moved that the staff's recommendation for denial be accepted, seconded by Commissioner Tangen, and the motion was unanimously carried.

SPECIAL PERMIT REQUEST BY AILEEN MCCORRISTON AH PING (SP70-75) TO CONSTRUCT AND OPERATE A LOW-RISE HOTEL AT PUKOO, MOLOKAI

Mr. Leong read the staff report recommending approval of the petition subject to the County's conditions and with the added condition that all roofed structures have a minimum setback of 40 feet from the maximum inland line of the zone of wave action; and a minimum of 20 feet for uncovered structures (see copy of report on file).

Commissioner Sakahashi questioned the County's condition that the approval is for the applicant only and shall not be transferable. Mr. Duran explained that the land must be developed in accordance with Mrs. Ah Ping's and the Bishop Corporation's representation, and that if the property were sold to anyone else, the special permit privileges would be cancelled.

There was considerable discussion as to whether Mrs. Ah Ping or Bishop Corporation would have the right to construct the project under the conditions imposed by the Maui County Planning Commission. Mr. Clint Ashford, attorney representing Bishop Corporation, explained that the property owner is Mrs. Ah Ping but that she has a lease to option the land for 70 years to Bishop Corporation to do the development. He explained it was the County's understanding that she cannot sell the property and have the approval go with it, but she may retain ownership and allow the Bishop Corporation to develop the property. He assumed the reason the County imposed this condition is the concern that once the property is reclassified, the petitioner could sell the property to anyone at an increased purchase price and the Maui Planning Commission wants to assure that only what was represented will be developed. The conditions were discussed by the Commission, including the recommendation by the staff that a 40-foot shoreline setback be placed on covered structures and a 20-foot setback be maintained for uncovered structures.

Mr. Ashford, as a lawyer, said he did not think the Land Use Commission had the power to impose any conditions and that the Commission is limited to those established by the County and the power of the Commission is only to approve or disapprove the County's action.

Commissioner Tangen moved that the special permit be approved with the following conditions:

1. That substantial construction shall begin within 3 years from date of final action by the Land Use Commission.
2. Approval be for the applicant and Bishop Corporation as the developer only and shall be non-transferable.
3. That the development conform to the requirements of the County's H-1 Hotel District.
4. Final plans shall be subject to review by the Molokai Advisory Committee to the Maui Planning Commission.
5. All roofed structures have a minimum 40-foot setback from the maximum inland line of the zone of wave action, and for uncovered structures, a minimum 20-foot setback.

The motion was seconded by Commissioner Yamamura and the Commissioners were polled as follows:

Ayes: Commissioners, Yamamura, Napier, Tangen, Kido, Mark, Sakahashi, Inaba, Chairman Choi

Nay: Commissioner Wung

The motion was passed.

MISCELLANEOUS

REQUEST FROM HAWAIIAN TELEPHONE COMPANY

A letter from Hawaiian Telephone Co. dated May 4, 1970 and a report by the staff were circulated to the Commission (see file). The staff recommended against the Telephone Co.'s request.

Mr. Fred Brezee from the Hawaiian Telephone Co. explained that their interpretation of permitted uses within the Agricultural District, Section 2.14 (g), wherein the Regulations read "public, private and quasi-public utility lines, transformer stations, etc." included their proposed construction of telephone central offices or switching centers within the agricultural area. He explained they have a major switching center proposed in Kailua-Kona at the intersection of Palani and Kawaihae Road junction which is scheduled to be completed by February, 1971. They also propose to construct another switching center to serve Keauhou Bishop Estate development.

The purpose of this equipment is to facilitate the direct distance dialing program to the United States and the rest of the world.

Mr. Brezee objected to processing of a special permit as recommended by the staff which would put them 120 days behind schedule. Mr. Chang from the Hawaiian Telephone Co. also stated they were two months behind schedule already. They felt that their facility was permitted and did not agree with the staff's interpretation that only small buildings for utility purposes were permitted in the Agricultural District as stated in the staff report.

Mr. Brezee pointed out that the Telephone Co. has already filed a request for a special permit for the Kailua-Kona site. The Commissioners expressed sympathy and interpreted the regulations to include only small buildings housing utilities as a permitted use in the Agricultural District, and recommended that the Telephone Co. process their large facility requests, such as the 10,000 square foot building proposed at Kailua-Kona and the 2,000 square foot building at Keauhou under the special permit procedure.

Regarding Chairman Choi's question on an exception to the rule, Mr. Walton Hong, Deputy Attorney General, replied that the Commission cannot make exceptions to the rule. If the Commission desires to retain control over the use of agricultural land, the Commission cannot justify approving a 10,000 square foot building for Hawaiian Telephone Co. and denying another public utility, whatever the use may be, from putting up another 10,000 square foot building. He suggested that for consistency, the Commission take a firm line one way or the other.

Mr. Tangen moved that the Commission advise the Hawaiian Telephone Co. that they pursue the special permit course for relief, seconded by Commissioner Mark. The motion was passed unanimously.

REQUEST FROM EAGLE COUNTY DEVELOPMENT CORPORATION

Mr. Duran acknowledged representatives from Eagle County Development Corporation at the meeting and pointed out that they submitted a letter requesting an interpretation of the Conservation District line along the shoreline of their project at Hanalei.

Mr. William McCarthy, project manager for Eagle County Development Corporation submitted maps and charts showing how they proposed to construct buildings along the top of the bluff and several other buildings on the slopes below the bluff, utilizing slopes in the 20 to 45% category. They requested that the Commission interpret the Conservation District to follow makai of these proposed developments. Chairman Choi explained that the consultants recommended the conservation line be established at the top of the bluff which was adopted by the Commission, with the exception of the sandy beaches where Eagle County stated they desired to build a tramway or airlift for people to use the beach but where no permanent buildings will be constructed. Chairman Choi suggested that since Eagle County Development Corp. has now finalized in greater detail their proposed development plans, that these plans be submitted to the Commission along with a boundary change application where they deemed necessary in order that the Commission may evaluate the request in relation to the proposed development and the intent of the Land Use Commission. This was agreeable to Mr. McCarthy and the rest of the Commissioners.