

approved 7/26/68

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Board of Supervisors Chambers
Wailuku, Maui

May 17, 1968 - 7:00 p.m.

Commissioners Present: C. E. S. Burns, Chairman
Wilbert Choi
Shelley Mark
Sunao Kido
Alexander Napier
Goro Inaba
Leslie Wung
Shiro Nishimura
Keigo Murakami

Staff Present: Ramon Duran, Executive Officer
George Pai, Legal Counsel
Ah Sung Leong, Planner III

The swearing in of persons planning to testify before the Commission tonight by Chairman Burns was followed by the adoption of the minutes of January 12, 1968, as circulated.

HEARING

PETITION OF MAUI PINEAPPLE COMPANY, LTD., ET AL (A68-174) TO RECLASSIFY APPROXIMATELY 3 ACRES PRESENTLY IN AN AGRICULTURAL DISTRICT INTO AN URBAN DISTRICT AT HALIIMAILE VILLAGE, MAKAWAO, MAUI

A recommendation for approval of the request was presented by Mr. Leong based on the need for additional urban lands in the area, the suitability of subject property for the proposed use, the availability of public facilities and utilities, etc. (see copy of report on file).

Mr. Robert Ohata, Maui Planning Director, apologized for having inadvertently approved a subdivision at Haliimaile Village within the State's Agricultural District. Upon learning of the error, Mr. Ohata immediately notified applicant that all activities, including transfer of land, be held in abeyance until the discrepancy could be corrected.

Mr. Ohata requested that the Commission consider the application only on the basis of its merit as it may relate to the proper classification of the area.

The hearing was closed since there was no further testimony.

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APPLICATION OF LOUIS F. & ANNA PHILLIPS (A68-176) TO RECLASSIFY 14 ACRES FROM THE AGRICULTURAL DISTRICT INTO THE URBAN DISTRICT AT PUKALANI, MAUI

Mr. Duran presented the staff report recommending denial of the petition since additional urban lands are not needed at Pukalani at the present time (see copy of report on file).

A detailed explanation of the land ownership of the surrounding undeveloped urban lands was given by Mr. Duran. He further elaborated that the need to expand the Urban District to include subject area could not be justified in view of the fact that there was so much vacant urban land, and particularly since the entire area was being used for pineapple.

Mr. Duran commented that property owners had requested that large areas, presently in pasture use, be included in the Urban District at the time the boundary was established.

Identifying the limited activity in the Urban District, Mr. Duran commented that perhaps during the re-evaluation of the district boundaries, some of these pasture lands could be redistricted Agricultural and the Urban District shifted.

Mr. Walter Shimoda, attorney representing Mr. Phillips and estate, stated that with the Commission's permission, he would like to exercise his right to cross-examine the witness as provided under the Administrative Procedures Act.

During the cross-examination of Mr. Duran by Mr. Shimoda, the following facts were elicited:

1. In attempting to establish Mr. Duran's length of residency in Maui, Mr. Shimoda claimed that it was important for the witness to have had ample time to acquaint himself with local conditions if he were going to testify on matters of real estate on Maui.
2. Mr. Shimoda questioned whether staff had conducted a study of the market for domestic growers of pineapples. Mr. Duran replied that although a study of the market for pineapple per se had not been done, the staff had made a thorough study on the availability of agricultural land as mandated by the Land Use Law.

At this point the Chairman elected to disallow continuation of the cross-examination upon advice of legal counsel of his prerogative to rule on matters of this nature.

Mr. Shimoda argued that since the need for the property other than for agricultural purposes was being challenged by staff, he did not believe this was a mere rule-making function but rather a semi-judicial question.

In rebuttal Mr. Pai of the Attorney General's Office offered his opinion that the original boundary maps were on file in the Lt. Governor's Office and were adopted pursuant to a state-wide proceeding--that when the proceeding affected the citizens on a state-wide basis, it was certainly a rule-making procedure.

In defense of his argument, Mr. Shimoda quoted from the statute: "No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified." The property owner was given the right to have these boundaries amended under the Land Use Law, provided that he meets with certain conditions. This therefore was a semi, quasi-judicial proceeding.

The County's feeling that this area was a logical extension of the urban area was given as the reason for the County's recommendation for approval by Mr. Robert Ohata, County Planning Director. He agreed that the population increase in the Makawao District would be minimal. However, the population shift within this district will be tremendous. The entire Paia community which will be phased out in the next few years will relocate itself somewhere within this district and that a dynamic change will be taking place in the Makawao District.

Mr. Louis Phillips, petitioner, testified that he has met with hardship in trying to raise pineapple on his property due to irrigation problems. Contrary to the staff's claim that these were prime pineapple lands, there was not much profit in growing pineapple here. He spoke of the uneven rainfall--50 inches in a month with 11 months of drought, the high cost of water, etc. These were some of the reasons Libby and Haserot Pineapple Co. refused to issue a contract to plant pineapple on the property. He stated that he has not planted any pineapple since the early part of 1956.

Mr. Wilfred Phillips, petitioner's cousin, testified that due to the uneven distribution of rainfall, he was the last remaining independent pineapple grower in Pukalani. And that the only reason he had survived up to the present time was due to the irrigation system he had installed and the free labor supplied by his large family.

Mr. Fiddes, former field superintendent for Libby, reiterated that subject land was not considered good pineapple land due to the erratic rainfall, the strong winds, the subsoil, etc.

Mr. Fiddes added that the pineapple yield above the Haleakala Highway was substantially higher than below the road due to the difference in the soil component.

Mr. Shimoda quoted from a letter received from Mr. Doi of the University Extension Service as follows: "In the case of Mr. Louis Phillips of Pukalani, we can only advise him to forget pineapple." Letter was filed with the Commission for the records.

Mr. Al Covic, branch manager of the Hicks Homes, offered the following testimony in support of the petition:

1. The reasons for the lack of development in the Pukalani urban area were due to the fact that much of it was in estates or in large acreages, and some of it was unsuitable for development due to the uneven terrain and gulches.

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2. In the last 7 years, there have been only 3 major subdivisions in the Pukalani area:
 - a. Pukalani Terrace with over 300 lots in $\frac{1}{2}$ -acre size. There are 92 homes built.
 - b. Pukalani Place with 35 lots in 10,000 square foot size. There are 25 homes, and all lots are sold.
 - c. Pukalani Subdivision with 61 $\frac{1}{2}$ -acre lots has 44 homes already built. There are an additional 39 lots which were subdivided into 10-12,000 square foot lots and for which there are already 25 applicants.
 - d. The above subdivisions have a total of 161 homes. This figure was arrived at by actual on the site count of existing homes.
3. The 2,500 people living in the 15 camps could not afford lands around Kahului. Instead they desire to move into the rural Pukalani area which they could finance through the Rural Housing Loan at 5% for 33 years, with an average monthly payment of \$60 to \$80. These people are eligible to buy into the Kahului Development. However, since they are unable to afford FHA monthly payments, they are buying the land at 58¢, the cost to plantation employees, and reselling it for 82¢ which is the going market price, and in turn buying into the Pukalani area, primarily because of the easy financing.
4. The 4th increment of Pukalani Terrace will open shortly. These again will be $\frac{1}{2}$ -acre lots. At an estimated 30¢ a square foot, it would cost close to \$6,500, which would be beyond the buying ability of most of the plantation employees, pointing to the need for smaller sized lots at a lower cost. This would also enable them to qualify for a Rural Housing Loan.

In closing, Mr. Shimoda submitted that the foregoing data submitted by Mr. Covic clearly disproved staff's statement that only 152 dwellings will be needed over a period of 20 years. Insofar as farming was concerned, Mr. Shimoda stated that an on-site examination of the property will reveal to the Commissioners that it was not even suitable for pasturing. Mr. Covic added that the University of Hawaii Extension Service rated that land as "C" for truck farming.

The hearing was closed since there was no further testimony.

ACTION

PETITION BY PAUL & MARTHA GILLETTE (A67-171) TO AMEND THE LAND USE DISTRICT BOUNDARIES AT KULA, MAUI, FROM RURAL TO URBAN

In the absence of any significant evidence received since the public hearing, the staff maintained its original recommendation for denial of the petition (see copy of report on file).

Mr. Langa, attorney representing the petitioners, contended that a good portion of the undeveloped urban zoned land, colored in pink on the map, was

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in fact not available for urban use because of litigation, that the amount of urban lands available were much less than appeared on the map. He added that the fact that the Commission felt some of the surrounding urban areas were improperly zoned had no bearing on the subject land which was next to the Silversword Inn and only a short distance from the Kula Lodge.

Mr. Gillette advised that his original plan to develop his land with the Silversword in 1962 did not materialize due to litigation and various other reasons. Mr. Langa qualified this with the statement that Mr. Gillette's failure to develop his land was due to differences with the management of the Silversword Inn and not with the character of the land.

A question of law was raised by Mr. Gillette. Since the statutes mandate that all land in urban use in 1963 be included in the Urban District, Mr. Gillette felt that an error had been committed in districting his land rural.

In response to the Chairman's query, Mr. Duran, Executive Officer, advised that the subject property was within the LUC's Urban District under the temporary districting when Mr. Gillette purchased the property.

Due to his advancing age, it was Mr. Gillette's intention to sell the property upon approval of the reclassification. He spoke again of the impracticability of restricting development on the land to $\frac{1}{2}$ acre per house under the Rural zoning. He said he was not sure as this was an engineering problem because of the gulch, but he would estimate that 5 additional lots would be gained under the Urban District as compared to about 2 under the Rural District.

Commissioner Nishimura moved that the boundary change from rural to urban be approved in view of the fact that this land was previously under the urban zoning, seconded by Commissioner Choi. The motion was defeated by the following votes:

Ayes: Commissioners Choi, Nishimura, Murakami, Chairman Burns
Nays: Commissioners Mark, Kido, Inaba, Wung

PETITION BY HANA RANCH CO., LTD. (A68-173) TO RECLASSIFY 20 ACRES FROM AGRICULTURAL TO URBAN AT KAWAIPAPA, HANA, MAUI

Since there was no representative from the Hana Ranch Co., the Chairman dispensed with the presentation of the staff memo.

Commissioner Choi moved to approve the request as recommended by the staff report which was seconded by Commissioner Napier.

Commissioner Murakami expressed concern that this action was not merely a redistricting matter but involved moving families about. He felt it was important for the Commission members to inspect the property and also to hold a hearing in Hana to allow the families to express their views about the reclassification before taking action on the petition.

Chairman Burns reminded Commissioner Murakami that a hearing on the petition had been duly held and that the Commission was obliged by law to act on it within a prescribed period of time.

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Mr. Duran explained in detail the proposed school site, the proposed changes in the land use pattern reflected by the proposed General Plan for resort-residential, resort-commercial and residential areas. The request before the Commission was the 1st increment toward implementing this plan. The County Planning Commission is in accord with the basic plan with the exception of a few minor adjustments.

The Chairman called for the question and the Commissioners were polled as follows:

Ayes: Commissioners Napier, Choi, Kido, Mark, Inaba, Chairman Burns
Nays: Commissioners Nishimura, Murakami, Wung

The motion was carried and the petition approved.

TENTATIVE SCHEDULE

June 7, 1968, on Oahu and June 8, 1968, on Kauai were decided on as the next meeting dates. July 5, 1968, in Kona and July 26, 1968, in Lahaina, Maui, were tentatively agreed to as possible future meeting dates.

LUC BOUNDARY REVIEW CONTRACT

Mr. Duran announced that the federal government had made available a grant of \$10,000, to be matched with \$50,000 by the State on a 2/3-1/3 basis. A scope of work to conduct the boundary review had been submitted, and it had been premised that this project would be conducted by a consultant. Mr. Duran said he was seeking Commission's advice and thinking on how this should be accomplished. He has been in contact with Donald Wolbrink and Associates, formerly associated with Harland, Bartholomew & Associates, the firm instrumental in assisting the State in enacting the Land Use Law and prepared the first report and recommendation for the Land Use regulations and district boundaries, which firm Mr. Wolbrink had indicated he was interested and able to conduct the project. Mr. Duran wondered whether the Commissioners had any reservations about contracting Mr. Wolbrink's firm for the review.

A suggestion was made that perhaps the Executive Officer could build up sufficient staff to do the boundary review under his supervision. Mr. Duran expressed doubt that adequate qualified personnel could be added to the present staff for the short period of time prescribed to conduct the review.

The formation of a committee of 3 by the Chairman, including the Executive Officer, was suggested as an alternative to do the hiring of the consultant.

Mr. Duran advised that the decision on the final boundaries will ultimately lie with the Commission. However, it would be the consultant's task to analyze past decisions by the Commission on the district boundaries and special permits since the final boundaries were established to thoroughly familiarize himself with the problems of the Commission and provide direction; to review and map the district boundaries as they relate to the physical features on the ground and future County and State plans, to review the rules and regulations, and the purposes and objectives of the Land Use Law; to analyze development plans and schedules for private property that will be affected by the Land Use Commission

boundaries; to interview interested and affected parties; and to prepare a report upon same.

Since the final boundaries had to be filed in the Lt. Governor's office by August 13, 1969, ten days before the effective date, Mr. Duran envisioned that the latest date for final action on the boundaries should be around June 1, 1969. He felt that public hearings should begin in March or April, 1969.

Referring to the suggestion that perhaps a consultant on each of the 5 major islands could be retained to conduct separate reviews, Chairman Burns felt that the end result might be 5 diverse opinions resulting from 5 different standards.

The boundary review project would have a ceiling of \$150,000, less approximately \$4,000 for administrative work performed by staff and less \$7,500 for a 15-minute sound-in color public relation type movie on the Land Use Law or a total of about \$140,000.

It was finally agreed that a special meeting of the Commission will be called within the next 10 days to discuss the matter of hiring a consultant for the boundary review.