

STATE OF HAWAII  
LAND USE COMMISSION

*Approved*  
*9-8-67*

Minutes of Meeting

Land Use Commission Hearing Room  
Honolulu, Hawaii

June 16, 1967 - 1:15 P. M.

Commissioners Present: C. E. S. Burns, Chairman  
Leslie Wung  
Shiro Nishimura  
Keigo Murakami  
Goro Inaba

Commissioners Absent: Shelley M. Mark  
Jim Ferry

Staff Present: Ramon Duran, Executive Officer  
Roy Takeyama, Legal Counsel  
Ah Sung Leong, Planner II  
Dora Horikawa, Stenographer

ADOPTION OF MINUTES

It was moved by Commissioner Nishimura and seconded by Commissioner Inaba that the minutes of the meetings of December 16, 17, 1966 and February 17, 18, 1967 be approved as circulated. The motion was unanimously passed.

NEXT MEETING DATE:

After a short discussion, the next meeting date was set for July 28, 1967 in Kona, Hawaii.

BOUNDARY INTERPRETATION ON KAMILONUI RIDGE

Mr. Duran presented a letter received from Mr. Mineo Okamoto of Wilson Okamoto and Associates dated June 8, 1967, requesting a conservation boundary interpretation on Kamilonui Ridge, Tax Map Key 3-9-19 (see copy of letter on file). The Kamilonui Farmers Cooperative was proposing an agricultural subdivision in this area and a small sliver of land within the subdivision had been placed in the Conservation District by the Land Use Commission. This had been determined by measuring the USGS 1"=2000' scale district map and transferring the information on the subdivision map. It was the Cooperative's contention that the existing coral road with ground slopes of 12% was a more logical urban-conservation boundary. They are proposing an agricultural subdivision in an Urban District on Bishop Estate lease lands. The average size of the lots ranged from 2 to 4 acres.

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If the 20% criteria were applied in separating the steep ridges from the fairly developable area, the Executive Officer did not believe that interpreting the urban-conservation boundary as requested by the cooperative would result in any violation of the intent of the law.

Mr. Takeyama, legal counsel, advised that an interpretation of boundary could be accomplished by passage of a motion, and did not require a public hearing.

Commissioner Nishimura moved that the Commission interpret the urban-conservation boundary to follow the line of the coral road as shown on the petitioner's map. The motion was seconded by Commissioner Wung and passed.

The meeting was recessed to enable Commission members to attend Commissioner Inaba's swearing-in ceremonies in the Governor's office.

The meeting was resumed at 2:50 p.m. Commissioner Ferry attended the meeting at this time.

Mr. Ramon Duran and Mr. Ah Sung Leong were sworn in by Chairman Burns.

#### ACTION

PETITION BY FRANK AND BESSIE MONIZ (A66-143) TO RECLASSIFY APPROXIMATELY 6.9 ACRES OF AGRICULTURAL LANDS INTO RURAL LANDS AT KAONOULU, KULA, MAUI

Staff memo presented by Mr. Leong recommended denial of the petition since it was felt that the additional evidence submitted since the denial of the original petition by the Commission was not sufficiently significant to warrant a reversal of that decision.

Commissioner Ferry remarked that the argument that sufficient urban or rural lands had been zoned to accommodate anticipated population was passe in today's moving society and that it had been pointed out previously that much of the lands so zoned were not available for the open market. He felt that emphasis should not be placed on this reasoning in the future.

Mr. Duran defended staff's rationale and referred to Act 187, the Land Use Law, which mandates "proof of need" before a boundary change can be made. He continued that staff's analysis of the entire area substantiated the availability of a tremendous amount of lands zoned for urban and rural purposes which were presently not being used for these purposes. Therefore, neither the need nor the boundary change could be justified in this instance. It was also pointed out that in establishing the criteria for agricultural lands, the law provided for the inclusion of lands that were not necessarily suited for agricultural uses.

Commissioner Nishimura reflected that although he had voted for denial in the original petition, he now felt that agricultural pursuits would be very uneconomical for the subject property and that a rural classification would be the highest and best use.

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Commissioner Murakami moved to approve the petition on the basis that the information submitted by the petitioner falls within the criteria established for rural zoning and is of sufficient nature to warrant a change. Commissioner Ferry seconded the motion which was passed with Commissioner Mark casting the only negative vote.

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PETITION BY COUNTY OF MAUI (A66-144) TO RECLASSIFY APPROXIMATELY 15,300 SQUARE FEET OF CONSERVATION LAND INTO RURAL LAND AT KEPANIWAI PARK, MAUI

Mr. Duran recommended in the staff report that the request again be denied since no additional significant information was submitted that would substantially alter the facts upon which the Land Use Commission based its original decision.

Commissioner Wung commented that during the earlier testimony, the petitioners had expressed that Mr. Duarte had no intention of any specific use for the land which the county would exchange.

Commissioner Nishimura felt that locating the caretaker's home on Mr. Duarte's property in exchange for the county property would not adversely affect the land use pattern in the area.

Commissioner Ferry expressed his stand that the County was responsible for its own destiny and for providing recreational facilities for its own people, and if it deemed it advisable to locate the caretaker's cottage in the park, it should be allowed to do so.

It was pointed out by Commissioner Inaba that had the conservation parcel abutting Mr. Duarte's rural lands belonged to Mr. Duarte at the time the boundary was established, it would have in all probability been districted rural; that the line was drawn where it was due to the land ownership pattern.

Commissioner Ferry moved that petition be granted on the grounds that the information submitted is valid. It was seconded by Commissioner Murakami and passed unanimously.

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PETITION OF HAWAII MILL CO., LTD. (A67-147) TO RECLASSIFY APPROXIMATELY 19.6 ACRES FROM THE AGRICULTURAL DISTRICT TO THE URBAN DISTRICT AT HILO, HAWAII

Mr. Leong presented the staff memo recommending approval of the petition based on analysis and investigation as outlined in the memo (see copy of memo on file).

Commissioner Wung wondered whether Mr. Detor's property might be subjected to an increase in taxes once the rezoning to urban is effected for the parcel under discussion. Commissioner Ferry felt Mr. Detor's taxes would not be affected since assessments were based on present and actual use of the land.

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Mr. Duran advised that at the time the Land Use Commission initiates action to include the lands in between into the Urban District, the owners will be duly notified.

Commissioner Inaba moved that the petition be approved as recommended by staff, seconded by Commissioner Nishimura. The motion was carried unanimously.

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PETITION BY CASTLE & COOKE, INC. (A67-148) TO RECLASSIFY APPROXIMATELY 19.2 ACRES OF AGRICULTURAL LANDS TO URBAN LANDS; AND APPROXIMATELY 4.8 ACRES OF URBAN LANDS TO AGRICULTURAL LANDS IN LANAI

Following presentation of staff report recommending approval of the petition based on staff analysis by Mr. Duran (see copy of report on file) Commissioner Wung moved to approve the petition, which was seconded by Commissioner Mark, and passed unanimously.

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APPLICATION FOR SPECIAL PERMIT BY GILLIARD AND RICHARD SMART (SP67-43) TO CONSTRUCT 40 SINGLE-FAMILY DWELLINGS, ETC. IN AN AGRICULTURAL DISTRICT AT KOHALA, HAWAII

Mr. Duran read the staff report recommending denial of the request on the basis of staff's analysis, discussion and field investigation (see copy of report on file).

A detailed report of existing uses such as the race track, airport, highways, etc., surrounding the subject area, plus a site plan of the proposed use, was also presented by the Executive Officer.

At the request of Commissioner Ferry who felt that there was an attempt here to duplicate the facilities at Mokuleia on Oahu, the staff determined that the Mokuleia development was in an Urban District on the makai side of the highway and agricultural throughout the surrounding area.

Mr. Duran advised that the Lalamilo farm lots across from the proposed development were zoned for minimum 5-acre lots under the proposed county zoning presently under consideration, and that the subject parcel fell within the 40-acre minimum Agricultural District. He added that both the General Plan and the proposed zoning designated this area as Agricultural A-40.

Commissioner Nishimura expressed concern that the special permit was proposing a high-density residential development in an Agricultural District which would result in spot zoning. This would also lead other landowners in the surrounding area to speculate and request reclassification.

Mr. Duran advised that there were two avenues open to the petitioner--a boundary change request or a special permit because the request was not a permitted use in the Agricultural District.

Mr. Takeyama, legal counsel, agreed with Commissioner Nishimura and added that perhaps this request was more appropriately for a boundary change rather

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than a special permit based on the facts as presented in the staff's analysis.

Mr. Gilliard Smart, petitioner, was sworn in by the Chairman.

Mr. Smart stated that the special permit route was recommended to them by the Planning Commission. He submitted that the project site was chosen due to its proximity to the race tracks. As far as the agricultural use was concerned, this would only take 40 acres of grazing lands out of a vast 49,000 acre parcel and the horses could graze anywhere else. The subject parcel was hilly and windy with an approximate elevation of 50' and not conducive to growing of crops, Mr. Smart added. Water for irrigation purposes was not available but water was served to the Lalamilo Lots from the reservoir.

Commissioner Ferry offered that the Lalamilo farmers were doing well and generally successful.

Chairman Burns asked the petitioner if there had been any indication of interest in the proposed subdivision. Mr. Smart advised that everyone he had talked to had expressed interest and that there were at least 8 letters of intent to purchase.

Mr. Charles Sutton of John Carl Warnecke and Associates, architects and planners for Mr. Smart on the project, testified in behalf of the petitioner, after being duly sworn in by the Chairman.

Mr. Sutton commented that subject parcel was chosen specifically in relation to the rise of the land and the nearby race track. Also, that this was oriented to those people who would like to be in the ranch environment with the possibility of keeping horses within the development and utilizing the race tracks.

The density as compared to the typical urban community will be quite low and the houses will be oriented to provide the feeling of open space, Mr. Sutton added. He did not think that the low-lying Lalamilo Farm Lots across the street was comparable to the proposed site since this was located 50' above the water line, requiring very special pumping equipment.

Commissioner Ferry wondered how a peaceful and restful ranch atmosphere could be anticipated on subject lands in view of the projected activities that will be taking place at Kamuela Airport. Mr. Sutton replied that the wind pattern was parallel to the air strip and that there was really no bad effect from the landing and taking-off of the planes. Commissioner <sup>Ferry</sup> argued that with continued island development and urbanization, this could become a distinct possibility.

Mr. Sutton continued that the proximity of the airport offered an attraction similar to Kaanapali, where passengers could get directly to the ranch site. Commissioner Ferry brought out the fact that removal of the air strip at Kaanapali was being proposed due to the hazards. He expressed his opinion that the ranch type environment was really secondary, that the main purpose was the capitalization of an existing facility--namely the race track.

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Referring to the possibility of locating the proposed development and the race track to another site, Mr. Sutton maintained that he did not believe the project could support the construction of a new race track.

Chairman Burns solicited opinion from legal counsel as to which of the two categories--special permit or boundary change--was the more appropriate avenue for the petitioner to follow in view of the request.

Mr. Takeyama advised that the law clearly states that a special permit cannot be applied where the facts indicate a boundary change. If the Commission, upon examination of the facts, determines that this is a type of use which is urban and residential, then it would seem as though it was more appropriately a boundary amendment.

Chairman Burns summarized that the problem facing the Commission was twofold:

1. Is this a suitable request for a special permit?
2. If so, should the special permit be approved?

Commissioner Ferry commented that since an application had been filed for a special permit, the Commission should merely vote on the merits of the application.

Commissioner Ferry moved that the special permit application be denied as recommended by staff, which was seconded by Commissioner Nishimura. The motion was carried with Commissioner Wung casting the only negative vote.

#### PRESENTATION BY BISHOP ESTATE TRUSTEES ON HILLSIDE DEVELOPMENT

At the request of the Bernice P. Bishop Estate Trustees, Mr. Fred Lee, professional planner and engineer associated with DMJM-Hawaii, presented a comprehensive report of a study of methods to develop hillside lands to establish an economic, aesthetic and practical development (see text of report on file). Visual aids such as slides, maps and renderings of Bishop Estate lands were employed by Mr. Lee to emphasize the various points in the report.

The meeting was recessed until 7:30 p.m.

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The meeting was reconvened and Chairman Burns swore in all those planning to testify before the Land Use Commission.

HEARING

PETITION BY THE LAND USE COMMISSION (A67-152) TO AMEND THE LAND USE DISTRICT BOUNDARIES SURROUNDING DIAMOND HEAD, OAHU

Mr. Duran reported in the staff report that the proposed amendments in the Diamond Head area are recommended by the Land Use Commission staff. (See copy of report on file.)

A letter from Mr. Frank Skrivanek, Planning Director of the City Planning Department, dated June 14, 1967, supporting the boundary adjustment, was presented (see copy of letter on file).

Mr. Aaron Levine, Executive Vice President of the Oahu Development Conference, urged that staff's proposal be approved. He also urged that all possible public action be taken to stabilize and enhance Diamond Head in its natural state. He added that steps were just getting under way to have Diamond Head declared as a national land mark by the federal government.

Chairman Burns read a letter signed by Mrs. Robert T. Sasaki, President of the Outdoor Circle, urging favorable consideration of the recommended adjustment in the Conservation District at Diamond Head (see copy of letter on file).

Mr. Robert Wenkam, Hawaii Vice-President of the Federation of Western Outdoor Clubs, made a statement also urging approval of the petition as recommended by staff.

Mr. James Fidel from the legal office of the Coast Guard, asked what effect the Conservation zoning would have on their reservation in the event it becomes necessary to add a structure or increase the height of the lighthouse. Commissioner Ferry advised that Regulation 4 adopted by the Department of Land and Natural Resources charged with the administering of uses within the Conservation District would govern in such an instance.

Since there was no further testimony, the hearing was closed on this petition.

ACTION

PETITION BY JERRY NEVILLE (A66-137) TO AMEND THE LAND USE DISTRICT BOUNDARIES AT PACIFIC HEIGHTS, HONOLULU

It was recommended in the staff memo, presented by Mr. Leong, that that part of the petition requested for urban be disapproved, but that that part of the area requested for conservation be approved, based on the staff's original analysis and investigation.

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Mr. Robert Wenkam opened his statement with the remark that there was great fear that the State Land Use Commission was in danger of becoming nothing more than a license bureau for landowners who want to take their lands out of temporary storage in the Conservation District and develop them for private gain at the expense of the community. Jerry Neville's request was a case in this matter.

Mr. Wenkam continued that the world-famed beauty of our islands was being threatened by these requests. If we are to enjoy this beauty tomorrow, it must be the decision of the Commission to save it today. As a former member of the Land Use Commission, Mr. Wenkam reflected that it had been his task to oppose every encroachment into agricultural and conservation lands which he considered detrimental to the long-term interest of Hawaii. He had opposed every subdivision that would destroy any portions of Hawaii's irreplaceable natural scenic beauty. It was his goal to make conservation lands equally as important as urban lands, and to a great degree this Commission supported this view in a majority of its decisions. Hawaii is richer today because of the Land Use Commission.

Mr. Wenkam spoke of the continuing need for the Commission to make its decisions based on ethical planning concepts and community needs. He felt that the Commission had already zoned sufficient lands to satisfy Honolulu's residential needs for 25 to 30 years at our present rate of growth. The citizens of Hawaii desperately needed the amenities of open spaces and natural beauty. Mr. Wenkam strongly urged the denial of petitions involving lands in the Conservation District.

Commissioner Ferry asked Mr. Wenkam whether he had ever voted favoring a hillside subdivision while he was serving on the Commission. Mr. Wenkam replied that he may have in cases where he felt that there was a moral obligation because of some previous approval obtained by the developer.

Commissioner Ferry wondered whether Mr. Wenkam did not feel that the rest of the members of the Commission were possessed with this same integrity. Mr. Wenkam defended that he had made it clear that Hawaii was a richer place due to the actions of the Commission, but that the danger lay in the growing number of petitions requesting development of conservation lands.

Commissioner Ferry said that the petitioners were exercising their rights in making these requests.

Commissioner Ferry moved to accept staff recommendation and deny the areas requested for zoning from Conservation to Urban, and approve the areas requested from Urban to Conservation. Commissioner Wung seconded the motion and it was carried unanimously.

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PETITION OF WILIWILINUI RIDGE (A66-144) TO AMEND THE LAND USE DISTRICT BOUNDARIES AT WILIWILINUI RIDGE ABOVE THE AINA HAINA AREA, OAHU

Mr. Duran presented the staff memo recommending denial of the petition due to the lack of need for additional urban lands in this area and the potential



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danger from development to the residents living below and the Aina Haina School. (See copy of report on file.)

In response to Commissioner Ferry's query, Mr. Duran pointed out on the map the vacant and undeveloped areas in the Urban District.

Mr. Duran also advised that the City Planning Commission had recommended approval of this petition due to its non-conforming status.

Mr. Ivan Fujinaka, registered professional engineer for the petitioners, testified that he would like to have the Commission consider the following additional points with respect to approval of the petition for boundary change:

1. On May 26, 1967, the Planning Department of the City and County of Honolulu gave final approval to the proposed subdivision after all of the city departments concerned with construction plans had reviewed the proposal. During conferences with Chief Engineer, petitioners had assured him that prior to starting construction, all potentially dangerous boulders will be removed along the project boundary by the contractor at a cost of \$40,000.
2. The petitioners had entered into a contract with the Hawaiian Dredging Company to do the offsite improvements. They will also build a wire fence along the project boundary to insure that no boulders which may become dislodged during construction will roll down into the adjacent property. He assured that the contractors were very reliable and knowledgeable in these matters.
3. The problem of suitability of construction lies within the jurisdiction of the City and County of Honolulu and is not the concern of the Land Use Commission. If project site is deemed unsuitable for construction, then Alewa Heights, Pacific Heights, St. Louis Heights or Kahala Heights should never have been developed. Mr. Fujinaka submitted that these were all fine residential areas. He presented photos taken at different angles of St. Louis Heights and Wiliwilinui Ridge to emphasize their similarity.
4. Denial of the petition will in effect render the project economically unfeasible and result in a tremendous loss to a number of small island investors. Mr. Fujinaka strongly urged approval of the petition.

In reply to Commissioner Nishimura's question, Mr. Fujinaka stated that only those rocks within the project boundary will be removed which will be about 200' from the ridge line. Mr. Fujinaka contended that the rocks were already there and could also roll down through natural causes. To demand that the petitioners remove every rock was economically impossible.

Mr. Fujinaka agreed that a second row of fence for added protection could be considered as suggested by Commissioner Nishimura. He also added that the fence would be of a temporary nature, strictly to protect the lower residents during construction of the project. However, he felt that it could be left there permanently.

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Mr. Fujinaka further submitted that the contractor and the developer both carried \$1,000,000 worth of insurance separately, and that the insurance company would certainly insist on safe practices. A professional engineer will be maintained on the site at all times during construction.

Commissioner Ferry remarked that the Commission should confine its discussion to whether or not the land was suitably developable as urban lands, since the jurisdiction over the construction of the subdivision rested with the City and County.

Mr. Harold Jambor, resident of Aina Haina, expressed concern that he did not believe any fence would contain the enormous boulders, and that they could not consider this a safeguard. He also raised the question of redirecting the tremendous amount of water collected on the roofs of the homes that will be hanging on the slopes. The million-dollar liability insurance could never replace a life, he added.

Mr. Jambor appreciated the fact that the developers had the right to develop these lands in any case, but that he would have more confidence if the project were under the supervision of the State. He said that development of the steep hillside would set an undesirable precedence and it will only be a matter of time before other property owners of lands of similar slopes would be coming in for permission to build.

Mr. Jambor spoke of the rocks that had rolled down on different occasions during the 10 years of his residence in Aina Haina. If blasting occurred, more rocks would be loosened and increase the danger.

Dr. Murphy, also resident of Aina Haina, testified that according to their consultant geologist, blasting was absolutely essential on this project and this was also verified by Mr. Fujinaka. The geologist, Dr. Abbott, also advised that the increase in danger, as a result of blasting, would exceed 100%.

Mr. Fujinaka advised that petitioner will provide a professional engineer, not a safety engineer, on the project site at all times during the construction.

In the matter of the danger from blasting, Mr. Fujinaka cited a court case resulting from damages due to blasting in which it was proven that the closing of a door measured a greater shock wave on the seismograph than the blasting.

A 5-minute recess was granted by Chairman Burns at the request of Commissioner Ferry.

The meeting reconvened and Commissioner Ferry moved that in view of the testimony offered this Commission at the public hearing and testimony offered by the developer, the petition be approved on the grounds that this area is suitable for urban development. The motion was seconded by Commissioner Murakami and the Commissioners were polled as follows:

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Ayes: Commissioners Wung, Murakami, Nishimura, Inaba, Ferry, Chairman Burns

Nay: Commissioner Mark

The motion was passed.

Mrs. Estelle Murphy, resident of Aina Haina, expressed disappointment over the approval of the petition. As a mother living at the base of subject slopes, she was terribly disappointed that only one Commissioner was concerned.

APPOINTMENT OF AH SUNG LEONG TO PLANNER III

Commissioner Mark announced that Mr. Ah Sung Leong has received a very justly deserved promotion to Planner II from Planning Draftsman.

Since there was no further business, the meeting was adjourned.