

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room 322 A & B
New State Building
1151 Punchbowl Street
Honolulu, Hawaii

Approved
JAN 8 1980

June 26, 1979 - 9:30 a.m.

COMMISSIONERS PRESENT: Charles Duke, Chairman
Shinichi Nakagawa, Vice Chairman
James Carras
Shinsei Miyasato
Mitsuo Oura
George Pascua
Carol Whitesell
Edward Yanai
William Yuen

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Allan Kawada, Dep. Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

ACTION

A78-443 - TONY HASHIMOTO, ET AL

Commissioner Yuen was excused from participating in the action on this petition inasmuch as he had not been present during the hearing.

Chairman Duke stated for the record that it was the consensus of the Commission to utilize the procedure of rendering a decision on the application first, and then adopting the true findings of fact and conclusions of law.

Commissioner Yanai moved that the Commission adopt this procedure for taking action on petitions for boundary amendment. It was seconded by Commissioner Miyasato and unani- mously passed.

The Executive Officer pointed out the location of the subject property on the posted maps and oriented its location with various surrounding landmarks.

Following a discussion, it was determined that the right-of-way had already been acquired by the State and they were presently negotiating the purchase price of this acquisition with the petitioner.

Commissioner Miyasato moved to approve Docket A78-443 to reclassify approximately 30 acres from the Agricultural District into the Urban District, which was seconded by Commissioner Pascua.

Commissioner Whitesell moved to amend the motion to include the 4 conditions recommended by the Maui Planning Department.

It was the general feeling of the Commission that, with the exception of condition No. 3 in the County's recommendation, the conditions were matters that would normally be covered under the County's zoning jurisdiction.

Commissioner Whitesell withdrew County's conditions 1, 2 and 4 from her motion. However, she recommended that an additional condition be made a part of the motion to approve the petition and to read as follows: "That urban reclassification of the right-of-way parcel should not affect its valuation for acquisition by the State."

Commissioner Yanai seconded the motion to amend the motion to approve the petition.

The Commission voted as follows:

Aye: Commissioner Whitesell

Nays: Commissioners Nakagawa, Oura, Miyasato, Pascua
Yanai, Chairman Duke

Commissioner Carras refrained from voting on this motion on the basis of a conflict due to his position with the Department of Transportation.

The motion failed to carry.

Commissioner Whitesell moved to amend the motion to approve the petition by adding the condition "that the project be initiated within one year of the approval of the boundary amendment (initiated meaning a subdivision application)". Vice Chairman Nakagawa seconded the motion. The motion was carried with the following votes:

Ayes: Commissioners Yanai, Carras, Whitesell, Nakagawa,
Miyasato, Chairman Duke

Nays: Commissioners Pascua and Oura

The Commission was polled on the original motion to approve the petition, as amended, and it was unanimously carried.

At Mama Loa's request (member of the audience), the Chair permitted her to express her general views regarding land use changes.

Thereafter, the Commission reviewed the petitioner's proposed findings of fact; adding, deleting and amending it to reflect the Commission's true findings. The Chairman directed Deputy Attorney General Kawada to prepare the Commission's Decision and Order, including the true findings of fact and conclusions of law as discussed by the Commission today.

Since it had been announced earlier by the Chairman that action on Docket A76-420, DPED, Kawainui Marsh, will not be held until the afternoon, Deputy Corporation Counsel Moseley submitted that Mr. Kupchak will represent the City's position. Counselor Moseley explained that he had a previous commitment for the afternoon.

A78-448 - DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT ON
BEHALF OF THE DEPARTMENT OF LAND AND NATURAL
RESOURCES AND THE DEPARTMENT OF TRANSPORTATION

In the matter of the boundary amendment petition by the Department of Planning and Economic Development, et al, Docket A78-448, on which a hearing was held on March 9, 1979 by the Hearing Officer, a resume of his prepared report to the Commission was presented by Hearing Officer Benjamin Matsubara. Based on the petition as filed and testimony of the witnesses as presented, Mr. Matsubara recommended that reclassification of the subject property from Conservation to Urban was reasonable, non-violative of Section 205-2 of the Hawaii Revised Statutes, and consistent with the Interim State-wide Land Use Guidance Policy.

Mr. Matsubara responded to questions posed by the Commission members regarding the effect of the proposed land use change on the quality of the double A waters off Keahole Point, and whether the proposed project will upset the pristine water conditions.

The meeting was in recess for lunch from 12:05 p.m. to 1:35 p.m.

1:35 p.m.

Commissioner Oura moved to approve Docket A78-448 to reclassify approximately 7.745 acres of land from the Conservation District into the Urban District at North Kona, Hawaii. It was seconded by Commissioner Pascua and unanimously carried.

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

It was announced by Chairman Duke that the subject matter before the Commission was to hear oral arguments and to act on an order from the First Circuit Court remanding this matter to the Land Use Commission for "a clarification between Findings of Fact Numbers 2 and 6 as to the marsh acreage of the subject property" and "a determination of the location of said marsh acreage".

The Executive Officer elaborated on the various colors and markings on the posted map.

Upon advice from Counselor Kawada, Chairman Duke stated that the arguments from the parties should be limited to the exceptions rather than to supporting their own proposed findings.

Miss Annette Chock, representing DPED, requested that the Docket Number "A75-398" in the lower right hand corner of the two maps attached to their findings be corrected to read "A75-420".

Miss Chock; Mr. Kenneth Kupchak, representing the Ad Hoc Committee for Kawainui; Mr. Warren Higa, representing the landowners; presented their oral arguments. Rebuttals to the oral arguments were also delivered by each representative.

Upon motion by Commissioner Pascua, seconded by Commissioner Yuen, it was unanimously agreed to go into executive session to receive counsel, prior to acting on this order.

4:12 p.m.

For the record, Counselor Kawada noted Counselor Chock's absence and the fact that Mr. Kupchak will represent her position.

Commissioner Whitesell moved that the Commission use the acreage figure of 79 acres (to be reclassified into the Conservation District) as proposed by the Department of Planning and Economic Development. It was seconded by Commissioner Yuen.

Commissioner Whitesell spoke in favor of the motion since essentially the 79 acres were based on the vegetation mapping and that this was as good as any information available on the record at this time.

Vice Chairman Nakagawa spoke against the motion since it was his feeling that 69 acres more closely reflected the mandate of the court.

Chairman Duke felt that in view of the evidence and facts adduced at the original hearing, the Commission would be acting against the remand order were it to find that there were 79 acres in marsh land.

The Commissioners were polled as follows on the motion to place 79 acres in the marsh area:

Aye: Commissioner Whitesell

Nays: Commissioners Yuen, Yanai, Oura, Miyasato,
Nakagawa, Pascua, Carras, Chairman Duke

The motion did not carry.

Commissioner Yanai moved that approximately 69 acres be determined as the acreage to be put into Conservation. The motion was seconded by Vice Chairman Nakagawa. The motion was carried with the following votes:

Ayes: Commissioners Nakagawa, Miyasato, Pascua, Yuen
Yanai, Oura, Carras, Chairman Duke

Nay: Commissioner Whitesell

Chairman Duke called for action on the second part of the court order, i.e. to delineate the location of the approximately 69 acres of marsh lands.

Commissioner Yanai proceeded to point out the location of the 69 acres on the map. He then moved that the areas, as delineated and pointed out on the maps, be used as a guide in preparing a map to show the areas to be placed into the Conservation District. The motion was seconded by Commissioner Miyasato and the Commission was polled as follows:

Ayes: Commissioners Nakagawa, Oura, Pascua, Miyasato,
Carras, Yanai, Chairman Duke

Nays: Commissioners Yuen and Whitesell

The motion was carried.

The Chairman directed staff to prepare the map for the delineation of the marsh area as adopted by the motion.

Chairman Duke agreed with Counselor Kupchak's position that his objections to the procedures employed by the Commission in arriving at the decision were preserved.

The meeting recessed at 4:54 p.m.