

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room, Boy Scouts of America
200 Liholiho Street
Wailuku, Maui

June 28, 1977 - 9:30 a.m.

Approved
October 25, 1977

COMMISSIONERS PRESENT: Stanley Sakahashi, Chairman
James Carras
Charles Duke
Colette Machado
Shinsei Miyasato
Shinichi Nakagawa
Mitsuo Oura
Carol Whitesell
Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Michael Marsh, Deputy Attorney General
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

Vice Chairman Sakahashi called the meeting to order. Mr. Shinichi Nakagawa, newly appointed Commission member, was introduced.

ADDITION TO THE AGENDA

Upon motion by Commissioner Duke, seconded by Commissioner Whitesell, it was unanimously agreed to add to the agenda the election of officers for the Land Use Commission.

Commissioner Duke moved that Mr. Gordan Furutani, Executive Officer, chair the election until the Chairman is selected, which was seconded by Commissioner Machado and carried.

ELECTION OF CHAIRMAN

Commissioner Duke moved to nominate Mr. Stanley Sakahashi as Chairman of the Land Use Commission, which was seconded by Commissioner Whitesell.

Commissioner Carras moved that the nomination for Chairman be closed, which was seconded by Commissioner Miyasato and unanimously carried.

Mr. Furutani announced that Mr. Sakahashi was the newly elected Chairman of the Land Use Commission and turned the meeting over to him.

ELECTION OF VICE CHAIRMAN

Chairman Sakahashi opened the floor for the election of a Vice Chairman. Commissioner Nakagawa requested deferral of the nomination for at least 2 weeks on the basis that he has not really had adequate opportunity to observe all of the Commission members, as he had Chairman Sakahashi.

Commissioner Oura moved to defer the election of a Vice Chairman, which was seconded by Commissioner Carras.

Commissioner Whitesell spoke against the motion, noting that Mr. Nakagawa had been observing the Commissioners during the proceedings for approximately 6 weeks. Moreover, there was an urgent need to fill the position of Vice Chairman. Commissioner Machado concurred with Commissioner Whitesell's views.

Commissioner Duke felt that Commissioner Nakagawa should be afforded the courtesy of his request for a deferral.

Commissioner Oura amended his motion by adding "for at least 2 weeks" and Commissioner Carras agreed to the amendment.

The motion to defer the election of a Vice Chairman was carried by the following votes:

Ayes: Commissioners Oura, Duke, Nakagawa, Miyasato, Carras

Nays: Commissioners Whitesell, Machado, Yanai, Chairman Sakahashi

ACTION

SP76-242 - JOSEPH M. GONSALVES
TO AMEND A CONDITION OF THE SPECIAL PERMIT WHICH WOULD ALLOW THE CONSTRUCTION OF A SECOND DWELLING WITHIN THE STATE RURAL DISTRICT AT OMAO, KOLOA, KAUAI

Mr. Furutani gave a background of the subject request.

In connection with this request for amendment of the condition to allow Mr. Gonsalves the construction of a second dwelling within the Rural District, the Commission discussed the recently enacted Act 140. Counsellor Marsh explained that the provisions of Act 140 allow one lot of less than one-half acre but not less than 18,500 square feet within a Rural subdivision for lots on record existing prior to January 1, 1977, and permit the construction of one dwelling on said lot, provided that all other dwellings in the subdivision have a minimum lot size of one-half acre.

Commissioner Duke moved to delete the condition that the applicant be required to obtain sufficient land to make a full acre before constructing the second home, and that the second home be permitted on this less than one-acre parcel under the provision of HB 770, subject to the conditions imposed by the Kauai County Planning Commission; and the additional condition that construction of the residential unit commence within one year from the effective date of the Special Permit. Commissioner Miyasato seconded the motion and it was unanimously carried.

It was recommended by Mr. Marsh that the Special Permit clearly identify not only Mr. Gonsalves' property but the other properties which were created from the same subdivision, relay this to the County Planning Commission and request that they take note of this.

A77-429 - MAKAWAO, INC.

Both Commissioners Oura and Nakagawa were excused from the deliberations on the subject petition since they had not participated in the hearing proceedings. However, they remained in the audience.

In the matter of the boundary amendment petition by Makawao, Inc., Docket A77-429, on which a hearing was held on May 12, 1977, the Commission discussed the following documents which had been previously distributed to the Commission members, prior to taking action on the petition:

1. Findings of Fact, Conclusions of Law and Order, by Makawao, Inc.
2. Objections of the County of Maui to the Proposed Findings of Fact, Conclusions of Law and Order by Makawao, Inc.
3. DPED's Comments regarding Petitioner's Proposed Findings of Fact, Conclusions of Law and Order

During the deliberations, the Commission considered the above documents and discussed the following subject matters:

1. Present use of the property
2. Compliance with the Safe Drinking Water Act by the Maui Department of Water Supply
3. Restrictive covenants to be included in the deed to satisfy concern about the agricultural/residential conflict; the creation of a buffer zone between the proposed subdivision and the Agricultural District

Commissioner Duke moved to approve the petition, subject to the condition that the petitioner impose restrictive covenants upon the property, which was seconded by Commissioner Carras. The Commissioners were polled as follows:

Ayes: Commissioners Duke, Miyasato, Carras, Yanai
Chairman Sakahashi

Nays: Commissioners Whitesell, Machado

The motion did not carry.

Counsellor Marsh advised that if the vote of the Commission is not determinative and the additional votes of the abstaining members could make a difference, another vote is taken, including the abstaining members, and the subsequent decision will become a Proposed Decision and Order. Thereafter, all parties will be given an opportunity to file written exceptions, whereupon the Commission will set the petition for another hearing for oral arguments; go through the decision-making process again and then issue the final decision.

motion for

The other alternative would be a/reconsideration of the first vote by a member of the majority, and if this passes, another motion is made by a Commissioner to approve or disapprove the petition. However, since it was established that this would not alter the original vote, Commissioner Yanai moved to go into a Proposed Decision which was seconded by Commissioner Duke, and the Commissioners were polled as follows:

Ayes: Commissioners Machado, Whitesell, Duke, Miyasato,
Carras, Yanai, Chairman Sakahashi

At this point, Commissioners Oura and Nakagawa joined the rest of the Commission members at the table. Mr. Marsh explained that under the Proposed Decision route, the opportunity to file written exceptions to the Commission's decision assured safeguards to all the parties.

Commissioner Duke moved to approve the petition, subject to the restrictions within the proposed restrictive covenant of the applicant which will include not only the poultry farmers but all the people in agriculture surrounding the area. The motion was seconded by Commissioner Miyasato and the Commissioners were polled as follows:

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

Nays: Commissioners Oura, Machado, Whitesell

The motion was carried.

ADOPTION OF MINUTES

Upon motion by Commissioner Machado, seconded by Commissioner Duke, the minutes of March 1, 1977 and March 9, 1977 were adopted as circulated.

EX PARTE MOTION BY FOSTER PETROLEUM

The Commission was advised of the ex parte motion for an extension of time to file proposed findings of facts and conclusions of law by Foster Petroleum.

Commissioner Duke moved to approve the extension request, seconded by Commissioner Whitesell, and the motion was unanimously carried by voice vote.

TENTATIVE SCHEDULE

The Executive Officer apprised the Commission of the future meetings which were tentatively scheduled.

The meeting adjourned at 1:02 p.m.