

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Rooms A, B & C
State Building
3060 Eiwa Street
Lihue, Kauai

Approved
10/4/83

July 20, 1983 - 9:00 a.m.

COMMISSIONERS PRESENT: William Yuen, Chairman
Richard Choy, Vice Chairman
Everett Cuskaden
Shinsei Miyasato
Winona Rubin
Teofilo Tacbian
Robert Tamaye
Frederick Whittemore

COMMISSIONER ABSENT: Lawrence Chun

STAFF PRESENT: Gordan Furutani, Executive Officer
Carolee Aoki, Deputy Attorney General
Dora Horikawa, Chief Clerk

Phyllis Kushiner, Court Reporter

Vice Chairman Choy moved to amend the meeting agenda to add the adoption of the Decision and Orders for A82-545, Stanley G. Friel, A82-543, The Episcopal Church in Hawaii, and a Declaratory Order regarding use in an Agricultural District. It was seconded by Commissioner Tacbian and carried by voice vote.

ACTION

SP83-357 - HAWAIIAN MEMORIAL PARK CEMETERY ASSOCIATION

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

The Commission went into executive session to receive counsel from the Deputy Attorney General, upon motion by Commissioner Cuskaden and seconded by Commissioner Tacbian.

The Commission was in executive session from 9:30 a.m. to 9:37 a.m.

Chairman Yuen explained that the Commission had received legal advice from its Deputy Attorney General regarding the legality of the subject request for a cemetery use and legal interpretations with respect to the Land Use Regulations for special permits in an Agricultural District.

Commissioner Whittemore moved to approve an existing cemetery as a special permit use on approximately 18 acres of land situated within the State Land Use Agricultural District at Pauwela, Makawao, Maui, SP83-357, seconded by Commissioner Miyasato.

Commissioner Tacbian moved to amend the motion to add a condition that the petitioner be required to petition the Land Use Commission for a boundary amendment from the Agricultural District into the Urban District within 5 years. The motion was seconded by Commissioner Cuskaden and the Commissioners were polled as follows:

Ayes: Commissioners Tamaye, Rubin, Tacbian, Cuskaden

Nays: Commissioners Whittemore, Choy, Miyasato, Chairman Yuen

The motion did not carry.

The motion to approve the special permit was unanimously passed.

SP80-347 - GEOTHERMAL EXPLORATION & DEVELOPMENT CORPORATION

The Executive Officer offered a description of the property and presented background information on the subject request.

Vice Chairman Choy moved to approve SP80-347, Geothermal Exploration and Development Corporation, to amend conditions 4 and 5 for time extensions to this special permit which allows geothermal exploration on approximately 180 acres of land situated within the Agricultural District at Laepaoo, Puna, Hawaii; subject to the additional condition that the petitioner shall indemnify and hold harmless the Land Use Commission from any and all claims and demands for damages arising from the approval of this special permit and any amendments thereto, including but not limited to any litigation regarding geothermal and environmental regulations or violations thereof and any damages, expenses and liabilities, attorney's fees and costs incurred by the Land Use Commission resulting from such claims or demands or for which the Land Use Commission may be determined liable. Should any of the foregoing conditions not be met, the special permit may be deemed null and void. The motion was seconded by Commissioner Whittemore.

The Vice Chairman affirmed that, by his motion, it was his intent to approve the special permit request as recommended by the Hawaii County Planning Commission. The motion was unanimously carried.

HEARING

A83-546 - GRAHAM BEACH PARTNERS

Pursuant to a notice published in the Garden Island and the Honolulu Advertiser on June 13, 1983 and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by Graham Beach Partners to reclassify approximately 1 acre of land currently in the Conservation District into the Urban District at Hanamaulu, Lihue, Kauai, for a resort development, Docket A83-546.

Appearances

Walton Hong, Attorney, representing petitioner

Warren Perry, County Attorney's Office, representing the
Kauai Planning Department

Annette Chock, Deputy Attorney General, representing the
Department of Planning & Economic Development

Linda Levy, representing the Committee to Save Nukolii

Mr. Gordan Furutani, Executive Officer, described the property and oriented its location with various surrounding landmarks.

Petition of Committee to Save Nukolii to Associate Counsel

Chairman Yuen stated that the petition to associate counsel will be deferred until such time as Mr. Wolinsky can appear before the Commission.

All of the statements and testimony presented before the Commission are recorded in the transcript as noted.

Petition of Committee to Save Nukolii to Intervene in Proceedings for District Boundary Amendment

Statement by Ms. Levy-----18 to 19

Arguments by Mr. Hong-----20 to 22

Statement by Miss Chock-----22 to 23

Vice Chairman Choy moved to approve the intervention request by the Committee to Save Nukolii and it was seconded by Commissioner Rubin.

Chairman Yuen expanded on his reasons for speaking against the motion.

Commissioner Cuskaden moved to go into executive session to receive counsel from the Deputy Attorney General. It was seconded by Commissioner Tacbian and the Commission was in executive session from 10:25 a.m. to 10:30 a.m.

10:30 a.m.

Chairman Yuen explained that the Commission had received counsel from its Deputy Attorney General regarding the standards on admission of intervenors and how the pending litigation in the Fifth Circuit Court may affect the boundary amendment petition.

Ms. Levy responded to questions from the Commissioners regarding what the Committee hoped to accomplish in its role as intervenor that could not be accomplished by participating as a public witness.

The Commissioners were polled as follows on the motion to admit the Committee as an intervenor in the proceedings:

Ayes: Commissioner Choy

Nays: Commissioners Cuskaden, Rubin, Whittemore, Tamaye, Miyasato, Tacbian, Chairman Yuen

The motion was defeated.

Commissioner Tacbian moved to admit the Committee to Save Nukolii as a public witness. It was seconded by Commissioner Cuskaden and carried by voice vote.

Motion to Continue Hearing (by petitioner)

Statement by Mr. Hong-----33 to 35

Statement by Miss Chock-----36

Examination of Mr. Hong by Commissioner Cuskaden-----37 to 38

Commissioner Cuskaden moved that the motion to continue the hearing be granted, subject to the condition that the petitioner reimburse the Commission for any additional publication costs, and additional postage and mailing costs which will be incurred resulting from service to the 150 condominium owners. Commissioner Rubin seconded the motion and it was carried by voice vote.

Site Inspection

Both the County and the State stated that they had no objections to the Commission's conducting a site inspection of the subject property.

The Executive Officer pointed out the Urban/Conservation boundary lines of the property, using the map submitted by the State Surveyor.

The Chairman advised that the Declaration of Horizontal Property Regime submitted by the petitioner will not be considered an exhibit, but only as a matter of record. He requested, however, that petitioner make available the required number of copies of the title insurance policy required for the construction loan and all endorsements. The Chairman also asked that Mr. Hong furnish various other documents relative to the petition.

It was announced that testimony from public witnesses will be received at the time the hearing is continued.

The meeting was adjourned at 11:20 a.m.