

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

Conference Room 322  
New State Building  
Honolulu, Hawaii

*Approved*  
*Nov. 14, 1977*

July 6, 1977 - 9:30 a.m.

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

A76-423 - WINDWARD PARTNERS

It was reported by the Executive Officer that upon advising all of the parties to Docket A76-423, Windward Partners, of the tentatively scheduled dates of July 14 and 15 for Commission action on the subject petition, Mr. Michael Hare, representing Adolpho, et al, had indicated that he would be unable to attend the meeting on those dates due to a prior commitment. It was the consensus of the Commission that the meeting date should be changed to accommodate Mr. Hare. Whereupon, the action date for Windward Partners petition was set for July 27, 1977.

SP73-157 - HAWAII LAND CORPORATION  
Extension of Time Request

Mr. Furutani gave the following resume of the subject request: In essence, the issue before the Commission was to consider the opinion prepared by the Deputy Attorney General which stated that if a time extension request is denied at the County level, that denial was final and not subject to the Land Use Commission's review.

Commissioner Whitesell moved that the Commission accept the counselor's opinion on the time extension request by the Hawaii

Land Corporation. The motion was seconded by Commissioner Duke and unanimously passed by voice vote.

Mr. Furutani advised that he will write to all of the other County Planning Departments regarding this procedure with respect to Special Permit time extension requests.

In response to a question posed by Mr. Norman Hayashi of the Hawaii Planning Department regarding extension requests on conditions which had been imposed by the Land Use Commission, Mr. Marsh advised that he had included at the end of his opinion the recommendation that, for the purpose of uniform procedures and in consideration of the cooperative county/state scheme, the Commission amend its regulations to require that all requests for modification or deletion of conditions attached to Special Permits, regardless of their origin, be submitted first to the County Planning and that its action to deny would be final. However, approval of a modification or deletion of a condition would be subject to approval by the Land Use Commission also. In the interim, until such time as the rules are amended, it was Mr. Marsh's advice that modification of a condition imposed by the Land Use Commission, whether it's approved or denied by the County, should become a matter for consideration before the Land Use Commission.

#### ACTION

##### SP77-266 - ROBERT JOSE

SPECIAL PERMIT APPLICATION TO ESTABLISH A SMOKED MEAT PROCESSING PLANT AND COMMERCIAL SALES OF THE PRODUCT AT PAAUILO HOMESTEADS, HAMAKUA, HAWAII

Mr. Daniel Yasui, staff planner, described the land in question and gave a resume of the staff report, including the conditions imposed by the Hawaii County Planning Commission.

It was moved by Commissioner Carras and seconded by Commissioner Oura to approve the Special Permit, subject to the conditions imposed by the Hawaii County Planning Commission. The motion was carried with the following votes:

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

##### A76-419 - PARADISE HUI HANALIKE ASSOCIATION

Mr. Michael Marsh counselled that since 6 votes were necessary to reach a decision on a boundary amendment petition and only 5 of the Commissioners present today had sat in on the hearing for the subject petition, it will be necessary to issue a proposed decision. He explained that the procedure for the

proposed decision was the same as in any decisionmaking process; i.e. establish all the findings of fact and conclusions of law by discussion and then issue the proposed decision. Thereafter, all parties will have the opportunity to file written exceptions and to present oral arguments in the event the decision is adverse to them. However, since all of the parties in this instance were in favor of the petition and if the Commission's decision today is to approve the petition, a final decision may be issued even though some of the Commissioners participating today may not have been present at the hearing. Mr. Marsh went on to explain further that the law requires if any member of the Commission participates in a decision which is adverse to a party and that Commissioner did not hear all of the evidence, then the Commission must issue its decision as a proposed decision.

For the benefit of the Commissioners who were not present at the hearing, the Executive Officer offered a background of the petition and the reasons for the boundary amendment application.

Commissioner Whitesell brought out the fact that although she favored approval of the petition, she was not certain the findings reflected the right reasons for approval. It was her feeling that the issue was mainly one of equity to enable each landowner to build a home on his property presently zoned in the Conservation District. Commissioner Whitesell recommended that a letter be addressed to the Department of Land & Natural Resources requesting that they consult with the Land Use Commission regarding any change in policy concerning uses within the Conservation District which may become a matter for consideration before the Commission.

Even if a change in land designation from Conservation to Agricultural were granted, a question remained regarding the permissibility of putting up homes on these lots if the homes were not ancillary to agricultural pursuits. Mr. Marsh called the Commission's attention to the Attorney General's opinion of 1975 regarding permissible uses within the Agricultural District.

In its deliberation to adopt Findings of Fact, Conclusions of Law and Order, the Commission discussed the following documents which had been distributed earlier to the Commission members:

1. Petitioner's Findings of Fact and Conclusions of Law
2. DPED's Concurrence with Petitioner's Proposed Findings of Fact and Conclusions of Law
3. Hawaii Planning Department's Concurrence with Petitioner's Proposed Findings of Fact and Conclusions of Law

The possibility of reclassifying subject lands into the Rural District at some future date was discussed. Mr. Marsh also pointed to the fact that permitting non-conforming lot sizes in the Agricultural District did not mean that a non-conforming use was allowable. However, since there was a question of equity in this instance, it was suggested that justification for the reclassification could be supported with a statement to the effect that inasmuch as there now exists a Coastal Zone Management Act for the protection of the shoreline, the Conservation designation was no longer necessary for the subject lands. Moreover, it would be unjust to impose limitations on the use of their property to the people living along the shoreline, when such limitations are not subjected to the other landowners within the same subdivision.

Commissioner Duke moved to approve the petition, subject to the changes made in the proposed findings of fact and conclusions of law as discussed. The motion was seconded by Commissioner Oura and carried with the following votes:

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

Mr. Marsh counselled that the foregoing decision was a final decision by the Land Use Commission.

At Commissioner Whitesell's suggestion, the Chairman directed the Executive Officer to write to the Department of Land & Natural Resources expressing the Commission's desire for more active participation by that Department involving petitions of a similar nature so that the Commission may have the benefit of their views.

#### SELECTION OF A VICE CHAIRMAN

Commissioner Carras moved to defer the matter of the election of a Vice Chairman which was contemplated for tomorrow until a later date since he would be unable to attend the meeting. It was seconded by Commissioner Oura and unanimously carried by voice vote.

The meeting was adjourned at 11:35 a.m.