

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room 435
4th Floor, State Capitol
Honolulu, Hawaii

Approved
11/13/81

July 9, 1981 - 9:00 a.m.

COMMISSIONERS PRESENT: Charles Duke, Chairman
Richard Choy
Everett Cuskaden
Shinsei Miyasato
Phil Tacbian
Robert Tamaye
Carol Whitesell
Edward Yanai (10:00 a.m.)
William Yuen

STAFF PRESENT: Gordan Y. Furutani, Executive Officer
Joseph Chu, Planner
Allan Kawada, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

Chairman Duke welcomed the three newly appointed Commissioners--Robert Tamaye from Hawaii, Everett Cuskaden from Oahu and Teofilo P. Tacbian from Kauai, who were attending their first Commission meeting today.

ELECTION OF OFFICERS

Chairman Duke explained that although it has been the Commission's policy to hold an election of officers in June of each year, since no Commission meeting had been scheduled for June, the election will take place today.

Whereupon, he turned the meeting over to the Executive Officer to conduct the election.

Mr. Furutani opened the floor for nominations for Chairman of the Land Use Commission.

Charles Duke and William Yuen were nominated for the office of Chairman by Commissioners Miyasato and Choy respectively.

Commissioner Cuskaden moved that the nominations be closed, which was seconded by Commissioner Tamaye and unanimously carried.

The Commission voted by secret ballot and the Executive Officer announced that William Yuen had been elected as Chairman by a count of 6 to 2.

The meeting was turned over to newly elected Chairman Yuen who called for nominations for Vice Chairman from the floor.

Commissioner Duke nominated Carol Whitesell for the position of Vice Chairman. Commissioner Tamaye moved that the nomination be closed, which was seconded by Commissioner Duke and unanimously carried. Carol Whitesell was elected as the new Vice Chairman of the Commission.

ACTION

A80-497 - HULU MANU ASSOCIATES

In the matter of the boundary amendment petition by Hulu Manu Associates, Docket A80-497, a hearing was conducted by Hearing Officer Benjamin Matsubara on February 6, 1981.

At the conclusion of his summary report, it was reported by Mr. Matsubara that, based on a review of the petition, the evidence adduced at the hearing and the provisions of Chapter 205, Hawaii Revised Statutes, the Department of Planning and Economic Development had recommended approval of the petition. It was also his recommendation that the reclassification was reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

Mr. Matsubara also responded to questions regarding disposal of the sewage and construction of cesspools on the property.

Commissioner Tacbian moved to adopt the Hearing Officer's report and recommendation that the reclassification be approved, which was seconded by Commissioner Duke.

Commissioner Cuskaden moved to amend the motion to read as follows: "That there be no structures at all on portions of the property having a slope in excess of 20 percent, and that no cesspools be allowed at all on the subject property." It was seconded by Vice Chairman Whitesell.

Since the petitioner was present, Chairman Yuen felt it would be in order to ask if he had any objections to the amendment to the motion.

Mr. Walton Hong, representing the petitioner, submitted that he would have no objections to the amendment. Moreover, petitioner

had no intention of violating the public's welfare.

The amendment to the motion was approved as follows:

Ayes: Commissioners Whitesell, Duke, Tamaye, Miyasato,
Tachian, Cuskaden, Chairman Yuen

Nay: Commissioner Choy

The motion to approve the petition, as amended, was unanimously carried.

Chairman Yuen directed the Hearing Officer to prepare the Commission's Findings of Fact, Conclusions of Law and Order for the petition by Hulu Manu Associates, Docket A80-497, in accordance with the Commission's decision.

A81-502 - MARVIN J. ROEDER, JR., ET AL

In the matter of the boundary amendment petition by Marvin J. Roeder, Jr., et al, Docket A81-502, a hearing was conducted by the Hearing Officer on April 3, 1981.

Following a comprehensive review of his findings and conclusions of law, Mr. Matsubara recommended that the reclassification of the subject property be granted.

During the proceeding on subject petition, it was noted by Chairman Yuen that Commissioner Yanai had joined the Commission but will not participate in the matter due to his late arrival.

Mr. Matsubara responded to questions which were raised regarding ownership of the parcel, the acreage being requested for reclassification, the rationale behind petitioner's choice of the specific parcel for the proposed use. Mr. Matsubara also read portions of the County's comments withdrawing its original recommendation and submitting that now the "County has no objection to the Hearing Officer's report in its entirety". Additional discussion revolved around DPED's concerns regarding the County's projected plans for the area and the existence of several subdivisions of varying sizes adjacent to the subject property.

Commissioner Tamaye moved that Docket A81-502 be approved, which was seconded by Commissioner Choy.

Commissioner Tachian moved to amend the motion by adding "and provided that it does not become effective until water is

made available to the subject property". It was seconded by Vice Chairman Whitesell.

Chairman Yuen called on Mr. Matsubara to comment on the legality of the foregoing amendment to the motion. Mr. Matsubara responded he was not aware that the Commission had ever granted a totally conditional amendment; i.e. a conditional land use amendment that could occur only after certain specific concerns had been resolved.

Mr. Allan Kawada, Deputy Attorney General, concurred with Mr. Matsubara's views that the rules do not provide for a conditional reclassification.

Commissioner Tacbian withdrew his motion and the seconder of the motion raised no objections.

Commissioner Cuskaden voiced his objection to the reclassification on the basis that he felt it was premature at this time and urged that the petition be denied.

The motion to approve the petition was defeated by the following votes:

Ayes: Commissioners Choy, Tamaye, Duke, Tacbian, Miyasato

Nays: Commissioners Whitesell, Cuskaden, Chairman Yuen

Following a short recess, Commissioner Duke moved for a reconsideration of the decision on the Roeder petition based on his contention that the Chair's ruling in denying Commissioner Yanai's participation in the subject petition was out of order. In support of his motion, it was pointed out by Commissioner Duke that the Hearing Officer's report had been distributed to all Commission members 30 days in advance of today's meeting. The motion was seconded by Commissioner Miyasato.

Chairman Yuen requested counsel from the Deputy Attorney General regarding the legality of reconsidering the Commission's decision on the basis of the reasons set forth by Commissioner Duke.

Mr. Kawada noted that, as mentioned by Commissioner Duke, a copy of the Hearing Officer's report had been made available to Commissioner Yanai. Moreover, there had been no oral arguments on the matter and therefore, he advised that Commissioner Yanai was eligible to participate in the action on this matter.

Thereafter, due to additional issues which surfaced subsequent to his advice, Mr. Kawada submitted that he needed more time to assess the motion presently on the floor. Chairman Yuen deferred the matter until a later time and called for the next item on the agenda.

A81-504 - JOHN H. MAGOON, SR., TRUST

In the matter of the boundary amendment petition by John H. Magoon, Sr., Trust, Docket A81-504, a hearing was conducted by Hearing Officer Benjamin Matsubara on April 13, 1981. It was submitted by Mr. Matsubara that DPED had recommended approval of the reclassification based on a review of the petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes.

Questions were asked whether petitioner had entered into a discussion with either the City Department of Housing or the Hawaii Housing Authority regarding the proposed housing development, and what kind of assurance had been exacted from the petitioner that moderate cost housing would be developed. Other questions which were raised involved information on water availability, the responsibility for the cost of the sewage treatment plant and the target date for hookup with the city sewer. Much concern was expressed over the method of disposal for the sewer effluent and possible contamination of the stream and bay.

Mr. Maehara, representing the petitioner, went on record as objecting to the procedure for oral arguments as outlined by Chairman Yuen. It was explained by the Chairman that he was affording the City and County rebuttal rights since they were the aggrieved party by virtue of their adverse position to the Hearing Officer's report.

Mr. Steven Lim, Deputy Corporation Counsel, representing the City Department of General Planning; Mr. Eric Maehara, representing the petitioner; and Miss Annette Chock, Deputy Attorney General, representing the Department of Planning and Economic Development; presented their oral arguments. Mr. Lim was given additional time for rebuttal.

Commissioner Yanai moved to approve Docket A81-504, John H. Magoon, Sr., Trust, which was seconded by Commissioner Duke.

Commissioner Cuskaden proposed an amendment to the motion as follows: "That the petitioner shall offer for sale, or cooperate with either or both the Hawaii Housing Authority or the City and County of Honolulu, to offer for sale, on a preferential basis, all of the residences to be developed within the subject property to the residents of the State of Hawaii who shall have low and moderate family incomes, as determined by the Hawaii Housing Authority or the City and County of Honolulu from time to time. The residences shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain state assisted financing (i.e. Act 105 or Hula Mae funds) or federally assisted financing (i.e. FHA 245 Program). This condition may be fully or partially released by the Commission as to all or any portion

of the subject property upon timely motion, and provision of adequate assurance of satisfaction of this condition by the petitioner. In the event a private sewage treatment plant is established and installed, that the developer of the project be fully responsible for its continued maintenance, operation and upkeep until such time as the entire development is connected to a City and County sewage facility."

The amendment was seconded by Commissioner Tacbian.

Mr. Maehara responded that there would be no objection to the provision for low and moderate income housing since due to the physical attributes of the property, that would be the most logical use for the parcel. However, he voiced a strong objection to the proviso that the developer of the project be fully responsible for the continued maintenance of the sewage treatment plant indefinitely.

Both Commissioners Cuskaden and Whitesell expressed similar views in support of the foregoing amendment. Commissioners Choy and Duke disagreed and felt that it was unfair to place the burden for the sewage treatment plant on the petitioner for such an indefinite period.

Chairman Yuen suggested that Commissioner Cuskaden consider changing that portion of his amendment stating "all of the residences to be developed" to "offer for sale, on a preferential basis, 50 percent of the residences to be developed". He elaborated that this would allow the petitioner some flexibility in setting alternative price ranges in the event it becomes impossible for all the buyers to qualify for Hula Mae, or should other complications develop. Commissioner Cuskaden agreed to the suggested change.

The motion to amend the original motion was carried with Commissioner Choy casting the only dissenting vote.

The motion to approve the petition, with the amendment, was unanimously carried.

A81-502 - MARVIN J. ROEDER, JR., ET AL (cont.)

Chairman Yuen called on Deputy Attorney General Kawada to render his opinion regarding the motion pending before the Commission on the subject petition which had been deferred earlier today.

It was Mr. Kawada's advice that Commissioner Yanai was eligible to vote on the petition since he had been in possession of the Hearing Officer's report for a reasonable time and any subsequent discussion which took place today was merely clarification of what was already on record.

Commissioner Duke changed his original motion for reconsideration to a motion stating that the Chair was out of order in denying Commissioner Yanai an opportunity to vote. The seconder of the motion had no objections to the change.

A vote in favor of revoting on the petition was recorded by voice vote.

Commissioner Tamaye moved to approve the petition by Marvin J. Roeder, Jr., which was seconded by Commissioner Miyasato and the Commission was polled as follows:

Ayes: Commissioners Tacbian, Yanai, Miyasato, Duke, Tamaye, Choy

Nays: Commissioners Whitesell, Cuskaden, Chairman Yuen

The motion to approve the petition was carried.

The Chairman directed Mr. Matsubara to prepare the findings of fact, conclusions of law and order in accordance with the Commission's decision.

MISCELLANEOUS

Adoption of Minutes

The following minutes were adopted as circulated:

September 16, 1980
December 11, 1980
December 19, 1980
January 28, 1981
February 3, 1981
February 4, 1981
February 6, 1981
February 10, 1981
February 11, 1981
February 17, 1981

The meeting was adjourned at 1:20 p.m.