

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

DLNR Board Room  
New State Building  
1151 Punchbowl Street  
Honolulu, Hawaii

June 14, 1978 - 9:30 a.m.

*Approved*  
SEP 27 1978

COMMISSIONERS PRESENT: Charles Duke, Chairman  
Shinichi Nakagawa, Vice Chairman  
James Carras  
Colette Machado  
Mitsuo Oura  
George Pascua  
Carol Whitesell  
Edward Yanai

COMMISSIONER ABSENT: Shinsei Miyasato

STAFF PRESENT: Gordan Furutani, Executive Officer  
Daniel Yasui, Planner  
Allan Kawada, Deputy Attorne General  
Dora Horikawa, Chief Clerk  
  
Ray Russell, Court Reporter

ACTION

SP78-299 - BENJAMIN BUTAC  
SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF A SECOND DWELLING  
UNIT AT OMAO, KAUAI

Mr. Daniel Yasui, staff planner, pointed out the location of the property on the maps and presented a summary of the staff report.

Upon motion by Commissioner Pascua, seconded by Vice Chairman Nakagawa, it was unanimously agreed to approve the Special Permit, subject to the conditions imposed by the Kauai Planning Commission.

A78-435 - HAWAIIAN PARADISE PARK CORPORATION  
PETITION FOR INTERVENTION BY LIFE OF THE LAND AND SHORELINE  
PROTECTION ALLIANCE

It was reported by the Executive Officer that a timely application for intervention had been filed by Life of the Land

and the Shoreline Protection Alliance; and that a letter opposing the intervention request had also been filed by Hawaiian Paradise Park Corp.

Questions were posed concerning the topography, depth of the shoreline, etc.

Mr. Zulkoski, representing Life of the Land, elaborated that they were requesting intervention under the Commission's Rule 6-7, subparagraph (1) (c) in the Regulations. It was further submitted that Life of the Land was the only party, with the exception of the Shoreline Protection Alliance, who represented a non-governmental interest in the proceeding whose views will differ from that of the government. Mr. Zulkoski confirmed that he will be representing both Life of the Land and the Shoreline Protection Alliance. Mr. Douglas Meller of the Shoreline Protection Alliance also offered his reasons for requesting intervention in the proceedings.

Mr. Cuyler Shaw, attorney appearing on behalf of Hawaiian Paradise Park Corp., elaborated that petitioner was objecting to the intervention request by Life of the Land/Shoreline Protection Alliance on the bases that the proposed project will not cause any pollution, it will create employment, water is available, and government should encourage development and employment. Mr. Shaw questioned how the interest represented by the Shoreline Protection Alliance differed from that represented by Life of the Land. A determination regarding the timeliness of the application by Life of the Land was also requested by Mr. Shaw.

Mr. Furutani, Executive Officer, presented proof of timely application by Life of the Land to Mr. Shaw's satisfaction.

Both the Department of Planning and Economic Development and the County of Hawaii declared that they had no objections to the intervention application by Life of the Land/Shoreline Protection Alliance.

Upon motion by Commissioner Whitesell, seconded by Commissioner Machado, it was unanimously agreed to admit Life of the Land/Shoreline Protection Alliance as parties, pursuant to Section 6-7 (1) (d) of the Commission's Rules.

#### DPED's Motion for Determination of Defective Filing

All those appearing before the Commission were duly sworn in by the Chairman.

#### Appearances

Maurice Kato, Deputy Attorney General, representing DPED

Appearances (cont.)

Cuyler Shaw, representing Hawaiian Paradise Park Corp.

Reginald Minn, representing the County of Hawaii

Walter Zulkoski, representing Life of the Land and the  
Shoreline Protection Alliance

Mr. Kato submitted that the Motion for Determination of Defective Filing was filed by DPED based on the following reasons:

1. Insufficient data regarding projected number of lots, lot size, number of units, densities, selling price, intended market, development timetables and projected costs, as required under Rule 6-2 (2) (b)
2. Petitioner had not addressed the significant effects upon the environment, agricultural, recreational, historic, scenic or other resources of the area as required under Rule 6-2 (2) (d)
3. Lack of information regarding the availability of water as required under Rule 6-2 (2) (f)

Mr. Kato stated, notwithstanding some differences of opinion on some of the points, the County Planning Department and the intervenors have joined in DPED's motion for determination of defective filing, and he respectfully requested that the Commission grant their motion and determine that the petition filed by Hawaiian Paradise Park Corp., Docket A78-435, is in fact defective.

Chairman Duke observed that the motion had been filed approximately 90 days after the petition had been submitted. Mr. Kato explained the time-consuming nature of gathering certain basic information from various governmental agencies to determine whether some of the insufficient data in the petition could be satisfied through this avenue.

Mr. Shaw, representing the petitioner, argued that Rule 6-2 (2) which sets the requirements for a petition for urban reclassification was subject to varying interpretations as to the degree of details required in an application, and it was his feeling that Hawaiian Paradise Park Corp. had submitted sufficient information to enable the Land Use Commission to make an informed decision on the petition. However, the petitioner would be willing to cooperate and supply the additional information if the Commission deemed that this was necessary.

Mr. Minn stated that there may not be as great a difference between the County's and DPED's positions as might appear from the briefs filed and that basically they were in agreement regarding the inadequacy of the data in the petition. The County was particularly concerned with the lack of information concerning the incremental districting timetable.

Mr. Zulkoski submitted that intervenors joined in DPED's motion.

Executive Session

Upon motion by Commissioner Pascua, seconded by Commissioner Oura, the Commission went into executive session as 11:10 a.m.

11:41 a.m.

Chairman Duke explained that the Commission went into executive session for the purpose of determining the legal requirements in a boundary amendment application. Mr. Kawada explained that the Commission discussed and expressed concern over the lack of information in the petition as required under the Commission's Rule 6-2 (2) (b) (d) (f) (i) and (l). At this point, the Commission did not feel adequately informed regarding the applicant's proposal.

Commissioner Whitesell moved that the Commission determine the petition is indeed a defective filing as described by DPED. The motion was seconded by Commissioner Carras.

It was Commissioner Whitesell's feeling that it was important for the petition to include information regarding the different uses that are being proposed.

Commissioner Yanai added that, considering the complexity of the proposed project, very little information had been provided by the petitioner for the Commission's evaluation and study on which to base their decision.

Commissioner Pascua also felt that petitioner should have supplied the Commission with a more detailed plan in view of the magnitude of the request.

Chairman Duke made it clear that it was not the government's intent to bar citizens from coming forth and making requests; however, unfortunately in this instance the petition was not defensible because it was indeed defective. He was critical of DPED for waiting 90 days to find defects in the petition when in fact the application had been in their hands since February.

The motion to declare the petition defective was unanimously carried.

The Chairman directed Mr. Kato to prepare a proposed decision and order granting DPED's motion for determination of defective filing. It was also announced that a notice will be published canceling the scheduled hearing.

ADOPTION OF MINUTES

Vice Chairman Nakagawa moved to adopt the minutes of February 1, February 14, February 27 and March 7, 1978, which was seconded by Commissioner Whitesell and unanimously passed.

The meeting was adjourned at 12:09 p.m.