

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room 3 - State Capitol
Honolulu, Hawaii

July 30, 1976 - 10:00 a.m.

APPROVED

AUG 19 1976

COMMISSIONERS PRESENT: Eddie Tangen, Chairman
Stanley Sakahashi, Vice Chairman
James Carras
Charles Duke
Shinsei Miyasato
Mitsuo Oura
Carol Whitesell
Edward Yanai

COMMISSIONER ABSENT: Colette Machado

STAFF PRESENT: Ah Sung Leong, Acting Executive Officer
Michael Marsh, Deputy Attorney General

Ray Russell, Court Reporter

Chairman Tangen announced that the Commission will consider the matter of the Motion to Intervene in Docket A75-405, Kula Alii, Ltd., submitted by Michael A. Town as the first item on the agenda.

The Chairman noted that Mr. Town had indicated that he would not be able to attend the meeting today.

Mr. William F. Crockett, attorney representing the petitioner Kula Alii, Ltd., voiced his opposition to Mr. Town's motion to intervene on the basis of the provision in Section 6-7 (c) of the Commission's Rules of Practice and Procedure. He contended that Mr. Town had not shown that he had grounds to intervene.

Mr. Gilbert Lee, Deputy Attorney General representing the Department of Planning and Economic Development, submitted that the State did not oppose Mr. Town's motion to intervene.

Commissioner Whitesell commented that Mr. Town did have a direct interest in the petition inasmuch as he is an abutting property owner.

Commissioner Duke moved to permit Mr. Town to intervene in Docket A75-405, Kula Alii, Ltd., which was seconded by Commissioner Whitesell. The motion was carried with the following votes:

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

Absent: Commissioners Machado and Oura

It was requested by Mr. Michael Marsh, Deputy Attorney General, that staff direct Mr. Town to submit a pre-hearing statement including exhibits, list of witnesses, etc. in advance of the hearing.

It was announced by Chairman Tangen that he had appointed Mr. Benjamin Matsubara, consultant, to conduct the pre-hearing conference on Docket A75-405, Kula Alii, Ltd.

ACTION

SP76-241 - SOUTHWESTERN IMPROVEMENT & INVESTMENT CO.
APPLICATION FOR A SPECIAL PERMIT TO ALLOW A NEWSPAPER PUBLISHING FACILITY IN THE AGRICULTURAL DISTRICT AT LANIHAU 1ST, NORTH KONA, HAWAII

Mr. Ah Sung Leong, Acting Executive Officer, presented the staff memo (see copy on file), and oriented the Commission to the area under discussion on the maps and drawings.

(At this point, Commissioner Oura joined in the proceedings.)

Both Chairman Tangen and Commissioner Duke questioned some of the inconsistencies, as reported in the staff memo, between the Hawaii Planning Department and the Hawaii Planning Commission concerning future uses for the area. It was also noted that a clarification was in order regarding the concept of the Kailua Village Urban Design Plan and the Proposed Kona Development Plan.

Mr. Sidney Fuke, Deputy Planning Director of the Planning Department, explained that the County's planning process for the area involved basically 3 stages: the General Plan, which is a broad plan; the Kona Community Development Plan, which is a refinement of the General Plan encompassing all of North and South Kona; and the Kailua Village Design Plan, which is primarily a redevelopment plan for the village of Kailua which does not encompass the subject area.

Chairman Tangen observed that the present General Plan indicated that the agricultural area between the Kailua and Kealahou Urban Districts will serve as an alternate urban expansion area and ultimately merge the 2 Urban Districts into one continuous Urban area. Commissioner Whitesell's understanding, based on Mr. Fuke's statement, was that the consultants felt these two areas should remain as separate Urban areas.

Commissioner Whitesell also recalled that according to the County Planning Department's statement, land was available for commercial use within the existing Urban District. Moreover, to justify the subject Special Permit on the basis that it would serve as a buffer area for some possible future urbanization, as submitted by the petitioner, did not appear to be a valid reason for allowing the proposed use.

At Commissioner Duke's request, Mr. Fuke pointed out the 12-15 acre areas in Kailua which are commercially zoned but undeveloped. He also felt that the major employment generators in North Kona would be industrial and resort functions and functions related to

the airport.

Commissioner Duke felt it was difficult to make a good decision based on the information available from the Planning Commission. He felt that the matter should be referred back to the Planning Commission.

Chairman Tangen agreed and pointed to the conflicting positions taken by the Planning Department and the Planning Commission. He felt that the findings of the Planning Commission are not sufficient to in effect overrule the Planning Department and the County General Plan.

On the basis of the findings available to the Commission, Commissioner Duke moved to deny the application, which was seconded by Commissioner Whitesell.

Mr. Marsh requested that the Commission develop for the record, an indication of the reasons for the denial of this Special Permit, i.e., particularly in terms of the tests to be applied in the Commission's Rules and Regulations in granting Special Permits.

The Commission found that the proposed use would be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations since it would contribute to the scatter of urban type developments; that no unusual conditions have arisen to justify the location of the proposed facility at this location; and that within the Urban District, there are existing vacant areas which can accommodate the proposed use.

The Commissioners were polled as follows:

Ayes: Commissioners Whitesell, Duke, Sakahashi, Carras, Yanai, Chairman Tangen

Nays: Commissioners Oura, Miyasato

Absent: Commissioner Machado

The motion to deny SP76-241 was carried.

SP76-242 - JOSEPH M. GONSALVES
APPLICATION FOR A SPECIAL PERMIT TO ALLOW CONSTRUCTION OF A SECOND DWELLING IN THE RURAL DISTRICT AT OMAO HOMESTEADS, KAUAI

The staff memo was read by Mr. Leong (see copy on file) who also pointed out the location of the property and other various land uses on the maps.

In response to Commissioner Whitesell's question, Mr. Leong advised that there had been other such similar requests in the past which had been denied by the Commission.

Chairman Tangen declared that the Commission would need to resolve this recurring issue in the near future. He also recalled that the problems accompanying Special Permit requests of this type had always concerned the Commission. In cases involving subdivision of the property, there was the possibility that the subdivided

property may subsequently be sold for a profit, contrary to the representation made before the Commission regarding the use of the property. Although subdivision was not involved in the subject request, to preclude any questionable activity on the land, Chairman Tangen suggested that the Special Permit could be conditioned to restrict it to only those uses represented before the Commission and that this could be recorded at the Bureau of Conveyances.

It was determined from Mr. Gonsalves, petitioner, that he would be willing to accept the condition that the use of the two residences on the property would be restricted to the Gonsalves' immediate family forever.

Chairman Tangen requested an opinion from Mr. Marsh regarding the legality of imposing such a condition. Mr. Marsh advised that it was within the Commission's power to impose conditions when approving a Special Permit.

Mr. Marsh added that in this instance, we were talking about a denser use than that allowed under Chapter 205 of the Hawaii Revised Statutes, and not about subdividing the land which could result in separate ownership. In the former instance, the Commission would be better able to control the use and he felt this was an important factor. Therefore, although it was only a preliminary opinion, Mr. Marsh felt that it may be technically possible for the Commission to approve a denser use than the minimum set out in Chapter 205. However, the question of unusual and reasonable use would still need to be answered.

Commissioner Carras felt that it was within the Commission's prerogative to exert a little common sense involving such a small fraction of an acre and permit this family to build the second home.

Vice Chairman Sakahashi commented that although it was unfortunate, the statutory provisions for Rural classification were established to control density, and to allow an exception could create future problems.

Since no one objected, Chairman Tangen announced that action on Special Permit SP76-242 will be deferred to a later date, pending an opinion from the Attorney General's office regarding the technical aspects of permitted uses under a Special Permit.

ADOPTION OF MINUTES

The minutes of May 12, 1976 were adopted as circulated and as corrected by Commissioner Whitesell to change the word "substitute" on page 9, line 1, to read "change".

The minutes of June 2, 1976 were approved as circulated.

MEETING SCHEDULES

It was announced that the meetings for August 5, 19 and September 1 have been advertised.

Since there was no further business, the meeting was adjourned.