

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Kahului Library
Kahului, Maui

August 5, 1976 - 9:30 a.m.

Approved
September 24, 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
Benjamin Matsubara, Consultant
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

Chairman Tangen called the meeting to order and announced that the agenda will be rearranged to take action on the three Special Permits before the hearing on Docket A75-405.

ACTION

SP76-243 - MAUI ELECTRIC COMPANY, LTD.
APPLICATION FOR A SPECIAL PERMIT TO ALLOW CONSTRUCTION AND OPERATION OF AN ELECTRIC GENERATION PLANT TOGETHER WITH ACCESSORY FACILITIES IN THE AGRICULTURAL DISTRICT AT MAALAEA, MAUI

The staff memo was presented by Mr. Ah Sung Leong (see copy on file) and the location of the property was described on the various maps and drawings.

To clarify a point which had been raised by Chairman Tangen regarding the exact location of the 2½-acre area, delineated in orange on the map, in which the proposed facility is to be accommodated, Mr. Colin Murdoch, President of Maui Electric, advised that the location had not been clearly defined by the Maui Planning Commission. However, he added that he would prefer the area not be exactly delineated to allow for more flexibility in locating the facility in an area not to exceed 2½ acres.

Mr. Toshi Ishikawa, Maui Planning Director, explained that the boundary had been delineated as shown by the orange colored area, based on the application which showed that the facility would be constructed in such a manner.

The following information was provided by Mr. Murdoch in response to various questions that were posed by the Commissioners:

1. The discrepancy in the acreage of 25.7 as indicated by the colored cross-hatched area on the map and the 39.5 acres referred to in the staff memo was reflected by the section which had been added to accommodate future needs beyond 1980.
2. The future capacity was based primarily on the company's own premise of growth and on known projects which will occur in the future.
3. The company will continue to look at additional sites, keeping in mind those areas with existing transmission lines, substations, personnel, etc.
4. The new building to accommodate the diesel units will be built to accommodate future growth.
5. The project will be protected from flood and tsunami inundation by raising the level of the land 15' above the tsunami zone.

In response to a question raised by Commissioner Whitesell, Mr. Ishikawa advised that in the normal process of obtaining a building permit, the builder would be required to take appropriate measures to minimize and alleviate flooding through grading and soil programs, and meet all federal, state and county requirements.

Concerning any studies of damage to wildlife, etc. since the original permit was granted in 1971, Mr. Dick Bell, Environmental Manager for Maui Electric, submitted that no damage to wildlife or plant had been identified in the Maalaea plant area.

Commissioner Duke again raised the question of the exact configuration of the 2½-acre site. Chairman Tangen felt that this was a matter that should be worked out between the county and the petitioner at the appropriate time and could be added as a condition for approval.

In view of the evidence presented today, Commissioner Duke moved to approve the Special Permit, subject to the conditions imposed by the Maui County Planning Commission and the two additional conditions imposed by the Maui Planning Department; further that the precise 2½-acre area be determined by the county and the petitioner at the time of construction. The motion was seconded by Commissioner Miyasato.

Deputy Attorney General Marsh advised Vice Chairman Sakahashi that the Commission was empowered to impose a condition with respect to clarification of the 2½-acre area within the 25 acres.

The motion was carried with the following votes:

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

Absent: Commissioner Machado

SP76-244 - EDWIN T. OKUBO FOR COUNTY OF MAUI
APPLICATION FOR A SPECIAL PERMIT TO ALLOW CONSTRUCTION OF
APPROXIMATELY 80 RENTAL UNITS FOR THE ELDERLY, TOGETHER WITH
ACCESSORY FACILITIES IN THE AGRICULTURAL DISTRICT AT KAUNAKAKAI,
MOLOKAI

Mr. Leong read the staff report and pointed to the location of the subject property on the various maps and drawings.

Responding to Commissioner Duke's query, it was explained by Mr. Okubo, petitioner, that the Special Permit route had been employed rather than a boundary amendment petition primarily for the sake of expediency, due to the critical need for elderly housing on Molokai.

Mr. Toshi Ishikawa, Maui Planning Director, confirmed that there were future plans for a general plan study for Molokai; however, he could not say whether this specific area would be recommended for urban designation.

The following information was elicited from Mr. Okubo in response to questions posed by the Commission:

1. Basically studios and 1-bedroom units are being considered. Applicants with children requesting 2/3-bedroom units will be accommodated in the subdivision where these are available.
2. Under the FHA program a maximum rent is permitted for each type of dwelling, and the tenant will pay approximately 25% of his income towards the rent, any difference being subsidized through the federal program.
3. A boundary amendment request would have required a general plan amendment involving a much longer process.

Mr. Ishikawa agreed that the general plan study was time consuming and would delay the housing project for which there was an urgent need.

It was brought out by Commissioner Whitesell that the subject request did not meet one of the Special Permit tests, i.e.

"such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law . . ." She argued that a housing development in an Agricultural District was contrary to the objectives sought to be accomplished by the Land Use Law. Although it had been submitted that equivalent improved lands will be converted to agriculture, Commissioner Whitesell maintained that the concern here was not so much the replacement of lands to agriculture as meeting the Special Permit standards.

Mr. Okubo added that the petitioner had recently received a commitment from Molokai Ranch stating that a site will be made available for the elderly housing on a long-term lease at a dollar a year.

Mr. Howard Nakamura, Planning Consultant to the county on this project, provided further information to clarify some of the points which were raised. A survey had indicated that Kaunakakai was the people's choice for elderly housing. However, it was found that the only public lands in Kaunakakai were owned by the Hawaiian Homes Commission which agency did not consider the project an appropriate use for its lands. Since there were no other suitable urban land in Kaunakakai which would lend itself to economical development of elderly housing, petitioner necessarily had to look at other than urban lands.

Mr. Marsh counseled that the Commission should consider, in its deliberation, the five Special Permit guidelines in determining "unusual and reasonable use". He noted that the facts developed into the records so far did not seem to indicate support for the findings of the tests to be applied in approving a Special Permit.

Mr. Nakamura argued that petitioner had addressed all of the "unusual and reasonable" criteria and had met all of them.

Chairman Tangen suggested that the Commission could justify approval of the Special Permit on the basis that continued agricultural use of subject lands would have a deleterious effect on the adjacent school and community center, and that the request was reasonable inasmuch as additional agricultural lands are being made available. Moreover, the subject site was an ideal location for elderly housing in terms of land area, topography, proximity to shopping center, library, and community center.

Although it was the consensus of the Commission that the need for elderly housing on Molokai had been adequately substantiated, it was maintained that the proposed use more appropriately belonged in the Urban District and should have been resolved through a boundary amendment petition.

Mr. Nakamura emphasized that approximately a half a million dollars in federal grant could be jeopardized if petitioner could not demonstrate to HUD that they were proceeding expeditiously toward the implementation of this project. He reiterated that Molokai will be imminently faced with the housing problem due to

the phasing out of pineapple operations by Dole.

Chairman Tangen suggested that the Commission could approve the Special Permit with the added condition that the county come in for a boundary amendment. Mr. Ishikawa agreed, provided that this could take place subsequent to the completion of the Molokai General Plan.

Commissioner Duke moved to approve the Special Permit, subject to the conditions imposed by the Maui County Planning Commission, and the added condition that the county petition the Land Use Commission for a boundary amendment for this particular parcel upon completion of the Molokai General Plan. The motion was seconded by Vice Chairman Sakahashi.

Commissioner Whitesell maintained that although she agreed the project was a worthy one, the proper procedure should have been a boundary amendment petition. Moreover, it was her feeling that it was incumbent on government to set a good example for the private sector in seeking relief through proper channels.

The Special Permit was approved with the following votes:

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

Nay: Commissioner Whitesell

Absent: Commissioner Machado

SP76-245 - HAWAIIAN CABLE VISION CORPORATION
APPLICATION FOR A SPECIAL PERMIT TO CONSTRUCT A T.V. RECEPTION
STATION IN THE AGRICULTURAL DISTRICT AT KANAPALI, LAHAINA, MAUI

The staff memo was presented by Mr. Leong and the location of the property duly noted on the maps.

Vice Chairman Sakahashi moved to approve the petition, subject to the conditions imposed by the Maui County Planning Commission, seconded by Commissioner Yanai. The motion was unanimously carried.

A recess was called at 11:30 a.m.

The meeting resumed at 1:08 p.m.

CONTINUATION OF HEARING

A75-405 - KULA ALII, LTD. (as amended)
PETITION TO RECLASSIFY APPROXIMATELY 26.7 ACRES FROM AGRICULTURAL
TO RURAL AT KULA, MAUI

Pursuant to a notice published in the Maui News and in the

Honolulu Star Bulletin on July 5, 1976, and notices sent to all parties, the continuation of a hearing was called by the Land Use Commission in the matter of the petition by Kula Alii, Ltd., to amend the land use district boundaries for approximately 26.7 acres from the Agricultural District into the Rural District at Kula, Maui for low density residential use, Docket No. A75-405.

Chairman Tangen recalled that at the original hearing on this docket on July 30, 1976, Michael A. Town and Bonnie Carol Town, having made timely application for intervention, had been admitted as parties.

The Chairman administered the swearing-in-oath to all those planning to testify today, other than attorneys, and briefed everyone on the procedural details.

APPEARANCES

William F. Crockett, Attorney representing petitioner

Gilbert Lee, Deputy Attorney General, representing the
Department of Planning and Economic Development

Steven R. Scott, Deputy County Attorney, representing the
Maui Planning Department

Michael A. Town, representing himself and wife

Mr. Michael Marsh, Deputy Attorney General, suggested that objections to any of the exhibits be withheld until such time as they are offered into evidence. Mr. Crockett stated that he was putting the state on notice that he will object to certain exhibits. Additionally, since it was his understanding that Mr. Farias of the Department of Agriculture will not be present today for cross-examination concerning information contained in his letters, he will expect to cross-examine Mr. Fujimoto, the state's witness, in this respect.

EXHIBITS

The following documents which were marked for identification during the pre-hearing conference were admitted into evidence as Petitioner's Exhibits:

- Exhibit 1 - Development Plan
- 1-A - Amended Development Plan (identified on August 5, 1976)
- Exhibit 2 - Land Use District Map
- Exhibit 3 - Slope Analysis
- Exhibit 4 - Kula Water System
- Exhibit 5 - Photographs of subject property

- Exhibit 6 - Letter from Robert Delzell, USDA, Soil Analysis
- Exhibit 7 - Letter from Dan Shigeta, UH Extension Service, Agricultural Analysis, 10/2/74
- Exhibit 8 - Letter from Dan Shigeta, UH Extension Service, Agricultural Analysis, 3/12/76
- Exhibit 9 - Letter from David Kong, real estate broker, market analysis (affidavit concerning his qualification will be submitted later)
- Exhibit 10 - Letter from James Greenan, real estate broker, market analysis (Mr. Greenan is present today for cross-examination)
- Exhibit 11 - Letter from Warren Unemori, Engineer, Project analysis, 3/12/76
- Exhibit 12 - Market Analysis, C. Earl Stoner, real estate broker
- Exhibit 13 - Statement of Negative Declaration
- Exhibit 14 - Letter from Warren Unemori, Engineer, 4/8/76
- Exhibit 15 - Comparison of Agricultural and Residential Water Use Requirements
- Exhibit 16 - Supplemental Information Sheet

The following documents were marked for identification and introduced into evidence as the Department of Planning and Economic Development's Exhibits:

- Exhibit 2 - Map showing location of Diversified Agriculture Areas, Kula, Maui - Excerpt from Wolbrink Report
- Exhibit 3 - Map showing location of Agricultural Dedication Parcels, TMK: 2-2-16: 4 & 5
- Exhibit 4 - Table 26 Potential Lots in Rural District Excerpt from Wolbrink Report
- Exhibit 5 - Table 17 Makawao, Pukalani, Kula Subdivisions, 1970 to June 1974 - Excerpt from Wolbrink Report
- Exhibit 6 - Table 19 Vacant Subdivision Parcels, June 1974 - Excerpt from Wolbrink Report
- Exhibit 7 - Map showing location of subdivision since

1970, Kula, Maui - Excerpt from
Wolbrink Report

(As previously indicated, Mr. Crockett objected to the admittance of the State's Exhibits 1 and 8 into evidence)

The following document which was marked for identification during the pre-hearing conference was admitted into evidence as the Maui Planning Department's Exhibit:

Exhibit 1 - Makawao Pukalani Kula General Plan,
County of Maui

Earl Stoner - Witness

Mr. Earl Stoner, developer and real estate consultant, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Crockett ----- 57 to 67

Discussion re petitioner's objections to
State's Exhibits 1 and 8 ----- 67 to 70

Redirect examination by Mr. Crockett ----- 70 to 85

Cross examination by Mr. Scott ----- 85 to 87

Cross examination by Mr. Lee ----- 87 to 99

A 5-minute recess was called by the Chairman.

TENTATIVE SUSPENSION OF HEARING

It was announced by Chairman Tangen that the proceedings on A75-405 will be tentatively suspended to consider a motion which Commissioner Duke wished to make.

Commissioner Duke moved to reconsider the action taken by the Commission earlier today on Special Permit SP76-243, Maui Electric Co., Ltd. The motion was seconded by Vice Chairman Sakahashi and it was unanimously passed.

Commissioner Duke moved to approve the application of Maui Electric Co., Ltd., subject to the 15 conditions imposed by the Maui County Planning Commission; and to exclude the two conditions recommended by the Maui Planning Department; in addition to the inclusion of the 15 conditions and the exclusion of the two conditions, that another condition be included that the petitioner and the county shall agree upon the site configuration of the 2½ acres. The motion was seconded by Commissioner Whitesell

and unanimously carried.

CONTINUATION OF HEARING

The Chair announced that the Commission will proceed with the continuation of the hearing on A75-405.

Earl Stoner - Witness

Mr. Stoner was recalled for further examination as set forth in the transcript on ----- Pages

Recross examination by Mr. Lee ----- 107 to 108

Cross examination by Mr. Town ----- 108 to 121

Redirect examination by Mr. Crockett ----- 121

Daniel Shigeta - Witness

Mr. Daniel Shigeta, Extension County Chairman, University of Hawaii Extension Service, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Crockett ----- 122 to 125

Cross examination by Mr. Scott ----- 125 to 127

Cross examination by Mr. Lee ----- 127 to 136

Questioned by Chairman Tangen ----- 136

Cross examination by Mr. Town ----- 137 to 138

Redirect examination by Mr. Crockett ----- 138 to 139

Recross examination by Mr. Lee ----- 140 to 141

A 5-minute break was called by the Chairman.

Commissioners Carras and Oura were excused from the meeting.

Another 10-minute break was called by the Chairman.

It was announced by the Chairman that if there were no objections from the Commissioners or the parties, the hearing on A75-405 will be continued to a later date and that notice of date, time and place will be duly served to all parties.

Mr. Scott, Deputy County Attorney, submitted that Mr. Greenan had been available for questioning today; however, for the continuance of the hearing, the county will submit his credentials in the form of an affidavit rather than summon him as a witness. The Chair allowed that this will be acceptable and requested that it be served on all the parties.

The hearing on A75-405, Kula Alii, Ltd., was continued until a later date.

The meeting was adjourned at 4:15 p.m.