

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Kahului Library
Kahului, Maui

August 8, 1978 - 9:30 a.m.

Approved
9/27/78

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

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Allan Kawada, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

ACTION

SP78-309 - PARADISE HUI HANALIKE
SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF A COMMUNITY CENTER
AND RELATED IMPROVEMENTS AT KEAAU, PUNA, HAWAII

Mr. Daniel Yasui, staff planner, presented the staff report and pointed out the location of the property on the maps and oriented its location with various surrounding landmarks.

Commissioner Carras moved that the Special Permit be approved, subject to the conditions imposed by the Hawaii Planning Commission. The motion was seconded by Commissioner Oura and unanimously carried.

SP77-269 - INTER-ISLAND ENGINEERING, INC./HAWAIIAN HOST, INC.
REQUEST TO AMEND CONDITIONS 1 AND 2 of SP77-269

Commissioner Oura was excused from participating in this matter since he declared a conflict of interest on the basis that he was a member of the Kona Farmers Co-op. Commissioner Oura withdrew from the meeting room.

Mr. Yasui noted the conditions which had been imposed by the Commission in the original Special Permit. The reasons for the amendment request and the highlights of the proceedings at the County level relative to the request were reported by Mr. Yasui.

Staff responded to questions which were raised by the Commissioners concerning the impact on the environment resulting from the expanded operation, chronology of events beginning with the original permit up to ^{the} present, time elements involved, etc.

It was Commissioner Carras' position that free enterprise should be encouraged and therefore he moved that petitioner's request for amendments to conditions 1 and 2 of SP77-269 be granted, subject to the conditions set forth by the Hawaii Planning Commission. The motion was seconded by Commissioner Pascua.

Vice Chairman Nakagawa spoke in opposition to the motion since it was not clear in his mind what impact this proposed use may have on existing businesses.

Commissioner Whitesell commented that the County or the Department of Health should have responded in some way to the allegations that were made regarding the impact on the environment.

The Commissioners were polled as follows:

Ayes: Commissioners Pascua, Machado, Miyasato, Carras, Yanai, Chairman Duke

Nays: Commissioners Whitesell, Nakagawa

The motion was carried.

A78-437 - ROLPH B. FUHRMAN AND ULUPALAKUA RANCH, INC.

a. Petition for Intervention by Life of the Land

It was reported by the Executive Officer that a timely application had been filed by Life of the Land requesting intervention in the subject petition.

Mr. Paul McCarthy, attorney representing Life of the Land, submitted that he was seeking to intervene under 6-7 (1) (d) of the Commission's Rules since his position will be different from that of any of the other parties, and the admission of Life of the Land as a party would not make the proceedings unmanageable. Responding to a question raised, Mr. McCarthy said he felt he had standing to represent the Maui members of Life of the Land in these proceedings in view of their interest in protecting the environment. It was also determined that

Mr. McCarthy will be the only one representing this group.

Mr. Roy Takeyama, representing the petitioner, Mr. Roy Yempuku, Deputy Corporation Counsel for Maui, Mr. Maurice Kato, Deputy Attorney General representing DPED, all submitted that they had no objections to the intervention request by Life of the Land.

Commissioner Whitesell moved, seconded by Commissioner Machado, that Life of the Land be admitted as a party to the proceeding. The motion was unanimously passed.

b. Life of the Land's Motion for Determination of Defective Filing

Chairman Duke announced that upon completion of arguments by Life of the Land, the County, and DPED, the Commission will go into executive session to receive legal advice on this matter.

The arguments by counsels for the parties regarding Life of the Land's motion for determination of defective filing are set forth in the transcript on the pages noted.

	<u>Pages</u>
Presentation by Mr. McCarthy-----	46 to 63
Argument by Mr. Takeyama-----	63 to 75

The meeting was in recess from 12:15 to 2:30 p.m.

2:30 p.m.

Presentation by Mr. Kato-----	76 to 99
Rebuttal by Mr. Takeyama-----	99 to 100
Rebuttal by Mr. Kato-----	100 to 103

Chairman Duke reiterated that the Commission will go into executive session to confer with counsel regarding certain legal points.

Vice Chairman Nakagawa moved that the Commission go into executive session for reasons as stated by the Chairman. The motion was seconded by Commissioner Pascua and unanimously carried.

The Commission was in executive session from 3:30 p.m. to 3:55 p.m.

3:55 p.m.

Chairman Duke announced that he will entertain a motion regarding the motion for defective filing by Life of the Land.

Vice Chairman Nakagawa moved that the petition by Life of the Land for determination of defective filing be denied. The motion was seconded by Commissioner Pascua.

Commissioner Whitesell expressed concern about the lack of information regarding environmental assessment, the impact of the proposed development on the shoreline area, and the manner in which some of the information had dribbled in, and spoke against the motion.

Commissioner Yanai spoke in favor of denying Life of the Land's motion since it was his belief that the petitioner in this case had made a sincere effort to submit the necessary information. It was also recommended by Commissioner Yanai that guidelines be developed to assist petitioners to file petitions that will contain the basic necessary information as required by the Commission's Rules.

It was Commissioner Machado's feeling that detailed information could be provided by the petitioner's expert witnesses during the hearing and she was in favor of continuing with the hearing today.

The Commissioners were polled as follows:

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

Nay: Commissioner Whitesell

For the benefit of everyone present, Chairman Duke advised that he had directed the Deputy Attorney General to draw up a policy statement regarding the type of information that will be necessary to fulfill the requirements of the Commission's Rules of Practice and Procedure in filing a boundary amendment application.

HEARING

A78-437 - ROLPH B. FUHRMAN AND ULUPALAKUA RANCH, INC.

Pursuant to a notice published in the Maui News and the Honolulu Advertiser on June 30, 1978, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by Rolph B. Fuhrman and Ulupalakua Ranch, Inc. to amend the land use district boundaries for approximately 14.699 acres of land presently in the Rural District into the Urban District and approximately 5.5 acres presently in the Agricultural District into the Urban District, at Makena, Maui, Docket A78-437.

Exhibits

It was announced by Chairman Duke that all parties had stipulated to the admissibility of the exhibits of all the parties which had been exchanged at the pre-hearing conference, and they were therefore all entered into evidence.

Petitioner's additional Exhibit M-1 distributed today was also admitted into evidence.

Appearances

Roy Takeyama, Attorney representing the petitioner

Ken Enright, Co-Counsel with Mr. Takeyama

Roy Yempuku, Deputy Corporation Counsel, representing
the Maui Planning Department

Maurice Kato, Deputy Attorney General, representing DPED

Paul McCarthy, representing Life of the Land

Public Witnesses

The following public witnesses were admitted by motion as indicated:

- | | |
|---|---|
| 1. William E. Maschal, President
Kihei Community Association,
represented by Jim Wagner | <u>Motion</u>
Commissioner Whitesell
<u>Second</u>
Commissioner Carras |
| 2. Cathryn Dearden | <u>Motion</u>
Commisisoner Pascua
<u>Second</u>
Vice Chairman Nakagawa |
| 3. Edward Y. & Harriet L. Chang | <u>Motion</u>
Commissioner Pascua
<u>Second</u>
Commissioner Whitesell |
| 4. Lafayette Young, represented
by John Bose | Admitted by Chairman Duke |

All of the witnesses appearing on behalf of all the parties and public witnesses were duly sworn in, testified and were examined as set forth in the transcript on the pages noted.

PETITIONER

Mr. Takeyama requested that technical corrections be made in the record; i.e., on the amended petition which was filed on June 8, 1978, correct 11.234 acres to 10.734 acres on line 6 of page 1; and correct 130 units to 184 units on line 16 of page 16 in the original petition.

Pages

Ralph Hayashi - Civil Engineer

Direct examination by Mr. Takeyama-----120 to 131
Cross examination by Mr. Yempuku-----131 to 135
Cross examination by Mr. Kato-----136 to 145
Cross examination by Mr. McCarthy-----145 to 154
Examination by Commissioner Whitesell-----155 to 164
Examination by Vice Chairman Nakagawa-----164

PUBLIC WITNESS

Cathryn Dearden

Oral testimony-----165 to 168

The meeting was recessed at 6:15 p.m., to reconvene tomorrow at 9:00 a.m.