

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

Conference Room 3 - State Capitol  
Honolulu, Hawaii

September 1, 1976 - 9:30 a.m.

*Approved*  
OCT 15 1976

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

STAFF PRESENT: Ah Sung Leong, Acting Executive Officer  
Michael Marsh, Deputy Attorney General  
Dora Horikawa, Clerk Reporter  
  
Ray Russell, Court Reporter

ADDITION TO THE AGENDA

It was moved by Commissioner Duke to add to the agenda the Motion in Opposition to Request of Withdrawal of A75-407, The Hawaii Corporation, and Bill of Costs by John F. Schweigert. The motion was seconded by Commissioner Whitesell and the Commissioners were polled as follows:

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

(Commissioners Oura and Miyasato were not present during this portion of the meeting)

The motion was carried.

MISCELLANEOUS

REQUEST FOR DECLARATORY ORDER ON COPY REQUIREMENT BY LIFE OF THE LAND

Mr. Michael Marsh, Deputy Attorney General, summarized the nature of the request for the declaratory order from Life of the Land (see copy on file), and advised that procedurally, there were several avenues open to the Commission:

1. Deny the petition and refuse to issue a declaratory order.
2. Issue a declaratory order.
3. Set the request for a hearing, receiving petitioner's arguments and public comments, and issue a declaratory order within 30 days after the hearing.

However, Mr. Marsh felt that a request of this type should be resolved through an amendment of the rules rather than by issuance of a declaratory order.

Commissioner Whitesell noted that there were two parts to the request; i.e. abolishment of the 15-copy requirement and reimbursement of the costs for the copies. Mr. Marsh counselled that there was no statutory authority to pay public monies to any private organization, agency or person. He did agree with Commissioner Whitesell that under the Commission's Rules and Regulations it was empowered to waive certain requirements for good reason.

Commissioner Duke moved to deny the declaratory order request by Life of the Land and suggested that if petitioner desires, the matter be pursued through a rule change. The motion was seconded by Commissioner Whitesell and unanimously carried.

Chairman Tangen announced that as requested during the pre-hearing conference, the matter of the hearing on the petition by Oceanic Properties will be held first.

#### HEARING

#### A76-414 - OCEANIC PROPERTIES, INC.

Pursuant to a notice published in the Honolulu Star Bulletin/Honolulu Advertiser on August 1, 1976, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by Oceanic Properties, Inc., to amend the land use district boundaries for approximately 47.6 acres presently in the Agricultural District into the Urban District at Haleiwa, Oahu, for residential use, Docket No. A76-414.

#### APPEARANCES

James Funaki, Counsel for the Petitioner, Oceanic Properties, Inc.

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

Ronald Mun, Deputy Corporation Counsel, representing the Department of General Planning, City and County of Honolulu

All of the above parties were admitted as parties to the proceedings. The Chairman swore in all those planning to testify today.

PETITIONER

Exhibits

The following documents were marked for identification and introduced into evidence as Petitioner's Exhibits:

- Exhibit 1 - Regional Map
- Exhibit 2 - Copy of Deed dated May 27, 1976 made by Castle & Cooke, Inc., as Grantor and Oceanic Properties, Inc., as Grantee
- Exhibit 3 - Tax Map for Tax Map Key 6-6-18: 01
- Exhibit 4 - Tax Map for Tax Map Key 6-6-19: 09 and 6-6-19: 02
- Exhibit 5 - Consolidated Balance Sheets of Oceanic Properties, Inc. and Consolidated Subsidiaries Jan. 3, 1976 and Dec. 28, 1974
- Exhibit 6 - Consolidated Statements of Earnings of Oceanic Properties, Inc. and Consolidated Subsidiaries years ended Jan. 3, 1976 and Dec. 28, 1974
- Exhibit 7 - Consolidated Statements of Changes in Financial Position of Oceanic Properties, Inc. and Consolidated Subsidiaries years ended Jan. 3, 1976 and Dec. 28, 1974
- Exhibit 8 - Letter dated March 17, 1976 from Toraki Matsumoto to W. Brooks
- Exhibit 9 - Letter dated May 18, 1976 from Koichi H. Tokushige to James Bell
- Exhibit 10 - Preliminary data on Urban development proposed
- Exhibit 11 - Letter dated August 17, 1976 from Toraki Matsumoto to James Caldwell
- Exhibit 12 - Existing Honolulu General Plan and D.L.U.M. for Waialua-Haleiwa
- Exhibit 13 - Paalaakai State Land Use and Land Ownership
- Exhibit 14 - Paalaakai Units 1 and 2 Preliminary Development Plan
- Exhibit 15 - Paalaakai Units 1 and 2 Preliminary Development and Utilities Plan
- Exhibit 16 - Environmental Assessment for Paalaakai Units 1 and 2 prepared by Belt, Collins, Associates, Ltd.

Exhibit 17 - Soil Investigation and Percolating Testing for Paalaakai Subdivision (Unit 2) dated March 17, 1976 by Geolabs Hawaii

Exhibit 18 - Letter dated August 28, 1976 from President of Waialua Community Association

Wendell Brooks - Witness

Mr. Wendell Brooks, Executive Vice President of Oceanic Properties, Inc., 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. Funaki ----- 11 to 19  
Cross examination by Mr. Lee ----- 19 to 23  
Questioned by Vice Chairman Sakahashi ----- 23 to 24

James Caldwell - Witness

Mr. James Caldwell, project manager for Oceanic Properties, Inc., 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. Funaki ----- 24 to 35  
Cross examination by Mr. Mun ----- 36 to 41  
Cross examination by Mr. Lee ----- 41 to 46  
Questioned by Commissioners Whitesell, Sakahashi,  
Duke ----- 46 to 51

James Bell - Witness

Mr. James Bell, President of Belt Collins & Associates, 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. Funaki ----- 51 to 57  
Cross examination by Mr. Mun ----- 57 to 58  
Cross examination by Mr. Lee ----- 58 to 60

Bob Y. K. Wong - Witness

Mr. Bob Y. K. Wong, President of Geolabs, Hawaii (soil and foundation consulting firm), 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. Funaki ----- 60 to 66

Cross examination by Mr. Mun -----	66 to 67
Cross examination by Mr. Lee -----	67
Questioned by Commissioner Whitesell -----	68

CITY & COUNTY OF HONOLULU

Mr. Robert Way's testimony was moved into evidence.

Robert Way - Witness

Mr. Robert Way, Chief Planning Officer, Department of General Planning, City & County of Honolulu, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on ----- Pages

Cross examination by Mr. Funaki -----	69 to 74
Cross examination by Mr. Lee -----	74 to 75
Questioned by Commissioner Whitesell -----	75 to 83

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT

Since there were no objections, DPED's written testimony and appended exhibits were admitted into evidence.

Esther Ueda - Witness

Mrs. Esther Ueda, Planner with DPED, 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. Lee -----	84 to 85
Questioned by Commissioner Whitesell -----	85 to 86

The hearing on A76-414 was closed, and the Chairman advised the petitioner with respect to the deadline for the filing of the proposed findings of fact and conclusions of law, service, etc.

A lunch recess was called at 12:22 a.m., and the meeting was reconvened at 2:27 p.m.

A76-413 - MITZI BRIGGS

Chairman Tangen announced that Mr. Tsao, representing the petitioner had made an informal request for continuance of the hearing on the subject petition since he had been made aware of the position of the other parties only today. However, the Chair advised that the hearing will proceed as scheduled, although he did not rule out the possibility of a continuance should the facts support the need for additional information.

## Intervention

On the matter of the several applications for intervention before the Commission on A76-413, Mr. Marsh advised the Commission of the procedural requirements under Section 6-7 of the Rules and Regulations. It was explained that for the purposes of these applications, the Commission was concerned primarily with determining whether they fell under 6-7 (c) or (d). Under category (c), they would clearly qualify for intervention. Under category (d), the Commission would have some discretion as to whether or not it will allow the applicant to intervene. Therefore, it was necessary to determine from each applicant the basis for his standing to intervene.

All of the following applicants for intervention declared that they qualified for intervention under category (c):

Jack Schweigert, representing James D. & Ovitta Sue Gardner,  
owners of adjacent property

Elizabeth Ann Stone Miyamoto

Paul McCarthy, representing Life of the Land

Mr. Marsh advised that to qualify under category (c) as an intervenor, the Commission would have to determine whether each one of these 3 applicants will be so directly and immediately affected that their interests were different and distinguishable from that of the general public.

### Jack Schweigert

Mr. Schweigert contended that the Gardner's property, which is adjacent to subject property, would be negatively affected by sedimentation, erosion and other aesthetic considerations by the proposed development. Mr. Schweigert stated that his position would be in opposition to the Briggs' request.

Commissioner Whitesell moved to admit the Gardners as parties in this case, which was seconded by Vice Chairman Sakahashi and unanimously carried.

### Elizabeth Ann Stone Miyamoto

Although Mrs. Miyamoto's property was not directly adjacent to the subject parcel, she submitted that her interest in the proceeding was different from that of the general public since it would affect the aesthetic value of the environment which she has been enjoying; it would also create traffic hazards to her children.

Commissioner Whitesell also felt that Mrs. Miyamoto's interest was different from that of the general public.

Chairman Tangen called for a 5-minute recess to allow Mr. Schweigert to counsel Mrs. Miyamoto.

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Mr. Schweigert reported that Mrs. Miyamoto would like to qualify for intervention under Section 6-7 (c) of the Commission's rules.

Mr. Marsh advised that the standards were relatively high to qualify under this section. The legislative intent behind the statement "directly and immediately affected by the proposed change" seemed to indicate persons who would be able to demonstrate that they would be directly affected, for example, by inadequate sewage disposal, drainage problems or physical effects stemming from the proposed development.

Chairman Tangen stated that he would like to comment on some of the points brought out in Mrs. Miyamoto's letter to the Commission. First of all, he reminded Mrs. Miyamoto that hearings for the amendments to the Rules and Regulations had been held in various geographical locations throughout the State to explain the proposed changes. Additionally, he wanted it clearly understood that Mrs. Miyamoto did not pay the salaries of the Commission members since they were all unpaid volunteers. He expressed concern that the \$15.47 expended by Mrs. Miyamoto to file for intervention had denied her family food for a week, as alleged by Mrs. Miyamoto.

Mrs. Miyamoto responded that she was merely trying to make the point that it was very difficult for an ordinary person to be heard.

Mr. Marsh advised that under category (d), in order for the Commission to deny the application, it would have to first determine that the intervention of the party would render the proceedings inefficient and unmanageable, and that the interests of those persons involved are substantially represented by the other parties already admitted in the proceedings.

Commissioner Duke requested an explanation of the advantages of being admitted as a party as compared to a witness.

Primarily, the advantages would be the ability to cross-examine all of the witnesses and the right to appeal the Commission's decision to the circuit court, it was explained by Mr. Marsh. A witness would only have the opportunity to present his testimony and to rebut whatever had transpired during the cross examination by the parties.

Both Commissioner Oura and Vice Chairman Sakahashi noted that Mrs. Miyamoto's position was substantially the same as that taken by the City and DPED, and admitting her as a party would be reverting to the legislative type of hearing.

Commissioner Whitesell commented that whether it was appropriate or not, it was Mrs. Miyamoto's wish to be considered as a party and therefore she moved to admit Mrs. Miyamoto as a party in the proceedings. The motion was seconded by Commissioner Machado.

Commissioner Duke spoke strongly against the motion since he felt that Mrs. Miyamoto qualified as a witness rather than as a party.

The Commissioners were polled as follows:

Ayes: Commissioners Yanai, Whitesell, Machado

Nays: Commissioners Carras, Duke, Sakahashi, Oura, Miyasato, Chairman Tangen

The motion to admit Mrs. Miyamoto as a party was denied.

Commissioner Duke moved to admit Mrs. Miyamoto as a witness which was seconded by Vice Chairman Sakahashi. The motion was carried with the following votes:

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

Paul McCarthy, Representing Life of the Land

Mr. McCarthy submitted that his primary reasons for requesting to be a party were for cross-examination rights and opportunity to appeal to the circuit court in the event the decision is adverse to their views. He added that Life of the Land represented members living in Kahaluu and the Kaneohe Bay area. If admitted as a party, it was Mr. McCarthy's intention to request a continuance of the hearing so that he could call on Dr. Albert Banner, marine biologist, to testify on the effects of the siltation in Kaneohe Bay.

Chairman Tangen suggested that even if Mr. McCarthy were admitted as a witness, he could call on Dr. Banner to make a statement. Mr. McCarthy argued that even though it was not Life of the Land's intent to bring action against the Commission, he felt it had standing to be admitted as a party.

Mr. Marsh explained that the Commission was attempting to determine the admissibility of Life of the Land as a party under the new provisions of Act 193.

Commissioner Duke observed that Mr. McCarthy's position was basically the same as that of the City and County and the State and therefore moved to deny Mr. McCarthy's petition to intervene. The motion was seconded by Vice Chairman Sakahashi.

Mr. McCarthy argued that he wanted the prerogative to cross-examine certain witnesses. Commissioner Whitesell spoke against the motion on the basis that it would not render the proceedings inefficient to allow Mr. McCarthy to cross-examine or to call on a witness.

Commissioner Machado went on record to support Commissioner Whitesell's views, and expressed grave concern over the bureaucratic

procedure that would deny community representatives the right to be heard or to cross-examine when they would be so directly affected by the proposed development.

To set the record straight, Chairman Tangen stated that there was no argument against Commissioner Machado's position where Life of the Land was concerned, but that the witness section in the Rules was incorporated to take care of specific situations.

Vice Chairman Sakahashi stated that if Life of the Land is admitted as a party, he would like a reconsideration of Mrs. Miyamoto's application and to admit her as a party also.

Chairman Tangen recommended that since Mr. McCarthy contended that he would be offering additional information not covered by the other parties, that he be admitted as a party.

A short recess was called at 3:50 p.m., and the meeting reconvened at 4:00 p.m.

Chairman Tangen asked Mr. Leong to poll the Commissioners on the motion on the floor to deny the petition of Life of the Land to intervene as a party. The votes were recorded as follows:

Ayes: Commissioners Duke, Miyasato, Sakahashi, Yanai

Nays: Commissioners Whitesell, Machado, Oura, Carras,  
Chairman Tangen

The motion did not carry.

Commissioner Whitesell moved to admit Life of the Land as a party, seconded by Commissioner Machado. The motion carried with the following votes:

Ayes: Commissioners Whitesell, Machado, Oura, Carras,  
Chairman Tangen

Nays: Commissioners Duke, Miyasato, Sakahashi, Yanai

At this time, Mr. Tsao, on behalf of the petitioner Mitzi Briggs, requested that the petition be withdrawn.

The oral withdrawal was accepted and Mr. Tsao was requested to transmit a formal notice of withdrawal in writing. It was announced by the Chair that pending receipt of the formal written withdrawal, the hearing will be continued. It was also noted that Dr. Frederick Reppun's application to become a witness was a matter still before the Commission, to be resolved at a later date should the hearing be continued.

A short recess was called.

## MISCELLANEOUS

### MOTION IN OPPOSITION TO REQUEST OF WITHDRAWAL OF A75-407, THE HAWAII CORPORATION, AND BILL OF COSTS BY JOHN SCHWEIGERT

The Chair briefly described the motion filed by Mr. John Schweigert requesting that the Commission either deny the request for withdrawal by The Hawaii Corporation, or to grant the withdrawal with prejudice. This motion was supported by the affidavit of Alan Tyler, who swears that he spent considerable time and energy in his attempt to oppose the redistricting, and he will be unduly prejudiced if The Hawaii Corporation is allowed to resubmit its petition within less than the 1-year period.

The Chair also noted that there was a bill of costs against The Hawaii Corporation in the amount of \$1,650.75 for expenses incurred by Mr. Tyler.

Mr. Marsh advised that neither the statutes nor the Rules provided for withdrawal with prejudice as requested by Mr. Schweigert.

Mr. Schweigert stated that the petitioner should not have the right to petition for land use change, withdraw it when resistance is registered, and then re-apply at his whim.

Chairman Tangen agreed that Mr. Schweigert had raised a valid point and suggested that he submit a proposal for legislative amendment.

Mr. Marsh advised that the matter under discussion could be resolved through an amendment to the Rules and Regulations and outlined the procedures to be followed. Insofar as the bill of costs was concerned, Mr. Marsh advised that there was no provision in Chapter 205 or the Commission's Rules to award costs against any party.

It was moved by Commissioner Duke and seconded by Commissioner Whitesell to deny the motion in opposition to request of withdrawal of A75-407. The motion was unanimously carried.

It was moved by Commissioner Whitesell and seconded by Commissioner Duke to deny the bill of costs request. The motion was passed unanimously.

## ACTION

APPLICATION BY CITY & COUNTY OF HONOLULU, BUILDING DEPARTMENT, (SP76-248) TO ALLOW CONSTRUCTION AND OPERATION OF A POLICE AND FIRE TRAINING FACILITY AT WAIPIO PENINSULA, OAHU

Mr. Leong summarized the staff report and indicated the location of the land and oriented it with various surrounding landmarks.

At Commissioner Duke's request, Mr. Leong read the conditions imposed by the City & County of Honolulu on the subject Special Permit.

There was a general discussion of the various existing uses and the land ownership of the surrounding area.

Chairman Tangen noted that the Waipahu residents were concerned about the City's failure to live up to its promise for a regional park in the area. Therefore, it was suggested that if the Commission approves the Special Permit, it be clearly stated that the permit applies only to those facilities represented in the petition and that any other facility proposed in the future will be subject to another Special Permit. Further, that the appropriate City and Waipahu Community Association authorities meet to discuss the use of the swimming pool and gymnasium.

Commissioner Duke disclosed that on another matter concerning the Waipahu area, the City had failed to live up to its commitments as promised during the public hearing. Commissioner Duke submitted that he supported the subject Special Permit since a great community service will be fulfilled by providing facilities for fire and police protection. However, he suggested that the approval be subject to stringent conditions to insure that the area in and around the facility will be maintained, and require that a maintenance schedule be submitted.

Chairman Tangen recommended modifying the City's conditions No. 4 and No. 5 as follows:

- #4. Add "and landscaping shall be implemented within at least 12 months after commencement of construction";
- #5. Add the words "and landscaped" after "Waipahu Depot Road . . . . . project site".

Mr. Walter Tagawa, one of the architects for the project, felt that a condition requiring that landscaping be implemented within 12 months after commencement of construction would be reasonable.

Chairman Tangen proposed the addition of conditions No. 9 and No. 10 as follows:

- No. 9. That the appropriate City & County authorities meet with the Waipahu Community Association to discuss community use of at least the gymnasium and swimming pool.
- No. 10. That it is understood that Special Permit A76-248 covers only the facilities submitted to the Land Use Commission in this petition, and any proposed facilities in the future shall be subject to another Special Permit petition.

It was recalled by Mr. Marsh that at the last meeting, he had been requested to advise the Commission as to what constituted "unusual and reasonable use" in approving a Special Permit. He was concerned that the "unusual and reasonable use" requirement for

approving Special Permits was not being adequately analyzed.

Upon reviewing all of the bills submitted by the legislature on the subject, committee reports, etc., he had not been able to uncover any indication of the legislative intent with respect to Special Permits. He stated that he would need to delve into this matter further. He noted that there were other existing Special Permits in the area, and although the land is classified as Agricultural, there was no agricultural use nor any indication of amendment to the district classification.

Chairman Tangen stated that in the absence of a definitive position at this time by the Deputy Attorney General on the matter, he will rule that the uses sought under the subject Special Permit were unusual and reasonable. He also suggested that perhaps there should be some change in the rules to preclude the improper use of the Special Permit procedure.

Commissioner Duke moved that the Special Permit be approved, subject to the conditions imposed by the City and County, and as modified by the Land Use Commission on conditions #4 and #5, and subject further to the additional conditions #9 and #10 imposed by the Land Use Commission. The motion was seconded by Vice Chairman Sakahashi and unanimously approved.

#### TENTATIVE SCHEDULE

The future meeting dates were approved as follows:

September 24, 1976 - Maui

October 14 and 15, 1976 - Maui

There being no further business, the meeting was adjourned at 5:10 p.m.