

approved 12-15-67

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Lihue District Court Room
Lihue, Kauai

September 8, 1967 - 3:05 p.m.

Commissioners Present: Shiro Nishimura, Chairman Pro tem
Jim Ferry
Wilbert Choi
Goro Inaba
Leslie Wung
Keigo Murakami

Commissioners Absent: C. E. S. Burns
Shelley Mark

Staff Present: Ramon Duran, Executive Officer
Roy Takeyama, Legal Counsel
Ah Sung Leong, Planner III
Dora Horikawa, Stenographer

ADOPTION OF MINUTES

It was moved by Commissioner Wung and seconded by Commissioner Choi that the minutes of the meeting of June 16, 1967 be approved as circulated. The motion was passed unanimously.

Acting Chairman Nishimura swore in persons planning to testify before the Commission.

HEARINGS

PETITION BY TAKATO SOKEI (A67-155) TO RECLASSIFY 2 PARCELS TOTALLING APPROXIMATELY 2.5 ACRES FROM AGRICULTURE TO URBAN AT KAPAA, KAUAI

Mr. Duran presented a staff report recommending approval of the reclassification of the 2.1 acre parcel for Urban and denial of the smaller parcel containing approximately 16,900 square feet, based on staff's analysis (see copy of report on file).

In response to Commissioner Inaba's question, Mr. Duran advised that the reason for recommending denial of the smaller parcel was based on the existing boundary which created a desirable physical feature since it followed the road. Also, that the area was presently in pasture use, part of a large dairy pasture, and was dedicated by the petitioner for agricultural use for the next 10 years. He stated that a dairy operation presently existed on the property and this was not compatible in an Urban District. He added that there was nothing to preclude the petitioner from building a residence on the parcel since the parcel had been subdivided in 1935.

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Mr. Tatsuo Asari, attorney representing the petitioner, submitted that the decision to petition for the triangular piece was based on the fact that it was indicated as a separate parcel and, furthermore, the penalty for withdrawing all of the dedicated lands would be prohibitive. It was brought out that Mr. Sokei hoped eventually to build residential rental units on the parcel since he anticipated a demand for such units in the future.

Mr. Asari submitted that the small dairy operators would eventually be forced to phase out since they would not have the capacity nor the willingness to compete with the major operators.

Mr. Brian Nishimoto, Kauai Planning Director, advised Commissioner Inaba that under the county's interim zoning ordinance in the Urban District, Mr. Sokei would be allowed to build only 2 houses on his 16,900 square foot lot.

Since there was no further testimony, the hearing was closed.

PETITION BY MATSUKO TAGUMA (A67-156) TO RECLASSIFY 4.3 ACRES FROM AGRICULTURAL TO URBAN AT KALAHEO, KAUAI

The Executive Officer recommended in the staff report that the petition be approved since the request is reasonable and a logical extension of the abutting existing Urban District (see copy of report on file).

Since there was neither testimony nor discussion on the petition, the hearing was closed.

REQUEST BY EDWIN T. IGE TO RECONSIDER PETITION TO RECLASSIFY 58 ACRES FROM AN AGRICULTURAL DISTRICT TO A RURAL DISTRICT AT WAIAKOA, KULA, MAUI

Mr. Ah Sung Leong read a letter received by the Land Use Commission from Mr. Edwin T. Ige to "request for reconsideration of the action taken by your commission at its meeting on August 5, 1966" for approximately 58 acres at Waiakoa, Kula, Maui from an Agricultural District to the Urban District. (See copy of letter on file.)

The staff rebutted the data submitted by the petitioner as the bases for requesting reconsideration of the petition as follows:

1. The additional data with reference to the soil classification is essentially the same as that submitted during the hearing of the original petition, except for the source of the information.
2. There is still no evidence to support the statement that there is a great demand for house lots in the Waiakoa District.
3. There was no evidence to support the statement that there is a population increase in the Kula District. This is contrary to the LUC staff report, dated June 17, 1966, which cited a 20% decline in population in the Waiakoa area from 1950-60. A population decline of 6½% was projected for the Makawao District 10 years hence.

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4. Only 27% of the lands under petition is contiguous to a Rural District, and not 44% as reported by petitioner.
5. Access to existing county road had been submitted in the earlier petitioner.

Mr. Leong did not feel that an increase in the percentage of petitioner's land abutting the Rural District would alter staff's analysis, since the denial was based on the availability of excessive rural lands in the area to satisfy the projected population.

Commissioner Murakami argued that instead of a population decline in Kula, an increase of 10,000 people had been noted in the last 6 to 7 years.

In response to Commissioner Ferry's contention that inasmuch as the petitioner had filed the \$50 fee there was no justification to deny his right to a public hearing, Mr. Duran reviewed the Commission's policy relative to reconsideration of a petition. A petition on which a decision had been previously rendered was considered only if the new petition carried sufficient new evidence which had not been presented at the original hearing to warrant a second hearing. Mr. Ige's new petition contained essentially the same data he submitted with his first application.

Commissioner Murakami moved that the petition be reconsidered based on the additional facts presented, which was seconded by Commissioner Choi.

Mr. Duran stated that all of the points submitted by the petitioner as new evidence had been taken into consideration at the time of the public hearing, including the population projection which was based on staff research and analysis. Therefore, the petitioner's data could not be considered as new evidence.

Commissioner Ferry argued that perhaps the decision to reconsider subject petition should not be based on sufficient additional data but rather on the basis of its acceptability as a legitimate petition for public hearing.

On this point, Mr. Roy Takeyama counseled as follows:

1. Reconsideration of a petition on which a decision had been previously reached by the Commission should not be considered in the same light as a new petition merely because a \$50 fee has been filed, since an opportunity had been provided the petitioner to present his request at a public hearing.
2. If this practice were followed, the Commission would be deluged with similar requests.
3. As a matter of practice and procedure, the Commission has adopted the policy that a petition be considered for the second time only if there is sufficient new evidence submitted which was not presented at the time the Commission rendered its decision.

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Mr. Duran commented that the purported additional data by the petitioner such as population growth in the Kula area, existing boundaries, existing utilities, the unsuitability of the land for agricultural uses, were all matters that were discussed at the time of the original public hearing. He further stated that staff had been in the Kula area recently to conduct survey of pending Tax Department applications for dedication of urban lands for agricultural purposes for the next 10 years. The Urban and Rural areas were mostly vacant or being used for grazing. From the standpoint of need alone, it would be very difficult to justify urbanization of Mr. Ige's property located farther upland. If a need for home sites existed, why were not the urban-zoned lands being developed rather than being dedicated for agricultural purposes?

In support of the motion pending before the Commission to reconsider the Ige petition, Commissioner Ferry expressed the view that he would like another public hearing conducted, preceded by a field trip by the Commissioners to the subject area. He also pointed to the fact that there were only 4 Commissioners present at the time of the public hearing.

Mr. Duran suggested that if the motion were for approval of a reconsideration, a more appropriate basis might be on the field inspection rather than on new evidence submitted.

The Commissioners were polled as follows:

Ayes: Commissioners Ferry, Inaba, Nishimura, Murakami, Choi

Nay: Commissioner Wung

The motion was carried.

ACTION

PETITION BY LAND USE COMMISSION (A67-152) TO RECLASSIFY APPROXIMATELY 29 ACRES FROM URBAN TO CONSERVATION, AND APPROXIMATELY 1/3 ACRE FROM CONSERVATION TO URBAN AT DIAMOND HEAD, HONOLULU

Staff memo was presented by Mr. Leong recommending approval of the petition (see copy of report on file).

Commissioner Choi moved to approve the petition which was seconded by Commissioner Inaba and passed unanimously.

PROPOSED ADDITION TO KALANI-IKI ESTATES CONDOMINIUM PROJECT BY BISHOP ESTATE

Mr. Duran read a letter from the Trustees of the Bishop Estate requesting the Land Use Commission's reaction to the Trustees' proposed increase in the number of dwelling units from 89 to 107 for the Kalani-iki Estates Condominium Project. (See copy of letter on file.)

Mr. Duran reviewed the circumstances involved at the time of the approval of the petition by the Commission and the present request by the Trustees of

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the Bishop Estate as follows:

1. A gentleman's agreement had been reached whereby the petitioners consented to delete 6 units on steep slopes within the project from 95 to 89 units.
2. Lining of the channel through the area, removal of the road from the lower area, the creation of a 20% slope by cutting into the banks about 10 to 13 feet, have resulted in more developable lands.
3. The petitioners were now proposing that the "topography and layout readily afforded a total buildable area that would permit an increase in the number of dwelling units from 89 to 107".
4. The addition of the 18 units would not affect the boundaries.
5. The developer's new plan including the proposed additional units was presented.
6. The developer has indicated a willingness to work with LUC staff to make any changes that may be considered proper.
7. Although approval for the development of these urban lands was not within the Commission's jurisdiction, the Bishop Estate felt a moral obligation to apprise the Commission of the revised plans and to await its reaction before proceeding with the change.

Commissioner Ferry commended the good faith exhibited by the petitioner in seeking the Commission's favorable reaction. He moved that a communication be sent to the Bishop Estate Trustees thanking them for keeping the Commission apprised of construction plans for the urban-zoned area, reminding them that the Commission has no jurisdiction over this area; that the Commission regrets the necessity for the change but that if it has to take place, it trusts that the change will be in the best taste and in keeping with the character of the valley. Commissioner Wung seconded the motion and it was passed unanimously.

Acting Chairman Nishimura directed the Executive Officer to prepare a letter to the Bishop Estate Trustees expressing the Commission's thinking on this matter.

NEXT MEETING SCHEDULE

October 13, 1967, Friday, in Hilo, Hawaii was agreed upon as the next Commission meeting date, followed by a field trip in the Kona and Kamuela areas on October 14, 1967, Saturday.

LETTER FROM RICHARD SMART+

For the Commission's information, Mr. Duran advised that he received a letter from Richard Smart requesting a reevaluation of the staff's recommendation to the Commission to deny the special permit application by Gilliard and Richard Smart (SP67-43) to construct a condominium development in Kamuela, Hawaii. (See copy of letter on file.)

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