

STATE OF HAWAII
LAND USE COMMISSION

approved 11/29/68

Minutes of Meeting

Molokai Community Center
Kaunakakai, Moloaki

September 13, 1968 - 2:30 p.m.

Commissioners Present: C. E. S. Burns, Jr., Chairman
Wilbert Choi
Shelley Mark
Alexander Napier
Goro Inaba
Leslie Wung
Shiro Nishimura
Keigo Murakami

Commissioners Absent: Sunao Kido

Staff Present: Ramon Duran, Executive Officer
Ah Sung Leong, Planner
George Pai, Legal Counsel
Dora Horikawa, Stenographer

Chairman Burns swore in persons planning to testify before the Commission.

HEARING

PETITION BY MOLOKAI RANCH, LTD. (A68-192) TO RECLASSIFY 6,800 ACRES FROM AGRICULTURAL TO URBAN AT THE WEST END OF MOLOKAI

Prior to the presentation of the staff report, Mr. Duran pointed out on the map the property under discussion and the other land uses on the Island of Molokai.

It was recommended by staff that an area sufficient to accommodate a 10-year growth, 1,460 acres, be rezoned to the Urban District. However, it was further recommended that the consultants be requested to review and comment on this application before final action is taken by the Commission. (See copy of report on file.)

Chairman Burns noted that the Maui Planning Commission had recommended approval of the petition and wondered what the County's responsibilities were in terms of supplying water, etc., to the project.

September 13, 1968

Mr. Duran replied that initially, the developers envision that they will develop the source and their own transmission system to the west end. However, they were also working with the State on a plan to develop water for this area, as well as other parts of Molokai, which might prove beneficial to both the State and the developers. There were several studies underway presently to determine the feasibility of government participation in the project. It was Mr. Duran's understanding that the Kaluakoi Corporation was prepared to develop its own water sources and system at its own cost.

Commissioner Napier commented that since substantial sums of money would be involved for the development, petitioners would require some assurance that the entire area could be developed. He wondered whether the 6,800 acres requested by the petitioners could be granted with the provision that they keep up with the schedule.

Mr. Duran advised that such a schedule was not presently available and further that the Commission could not stipulate any conditions in granting a district boundary change. However, the Commission was empowered to initiate a petition to withdraw lands from any district.

Mr. Harold Geiger representing the Molokai International Developers Corporation testified that the Honolulu International Airport for the State of Hawaii is inadequate. Following a survey of possible sites on all of the islands, Ilio Point on Molokai was deemed to be the ideal location for the new international airport, since it was virgin land possessing open-air space for approaches and departures of aircraft and sufficient acreage and capacity to accommodate all of the amenities that will be needed for future air transportation.

Mr. E. J. Watson, presently Vice-President and Chief Engineer of Belt, Collins and Associates who will become an employee of Louisiana Land and Exploration Company as General Manager of the Kaluakoi Corporation early next year, testified that the major point of issue at the moment was the petitioners' necessity to have the entire 6,800 acres reclassified. The basic reasons for this were set forth as follows:

1. Proposed project was a very expensive undertaking with the possible basic expenditure for the development of the water supply alone running from 3 to 4 million dollars. Additional expenditures in terms of roads and utilities would be substantial. Therefore, Louisiana Land did not wish to engage

in such a project without some assurance that they will be able to follow through on the total development program.

2. The larger area was necessary to develop a comprehensive planning program since the area next to the Kakaako Gulch, as recommended by staff, was considered a prime resort development area for hotels, vacation condominiums; and confinement to this area would not allow for flexibility.
3. Facilities, such as the sewage system plant would have to be designed to fit the total development of 6,800 acres.

The request specifically for 6,800 acres resulted after a review of the boundaries delineating the irrigable productive pineapple lands. In addition, other tracts were committed to Libby, McNeil and Libby for pineapple production.

Although there was no finalized physical plan now, Mr. Watson stated that following the reclassification of the property and mutual acceptance of the terms between the Board of Directors of the Louisiana Land and Exploration Company and the Molokai Ranch, they will proceed with the design. He called attention to a critical stipulation in the agreement between the two companies which prescribed that both parties must agree on the expansion of this project to the extent of 12,000 acres at the end of the first 10-year period with an additional investment of approximately \$10 million.

Another major point at issue was the fact that if the entire 6,800 acres could be reclassified now, it would eliminate the time element involved in the hearing procedures before the Land Use Commission in the future and allow petitioners to expedite the project.

Mr. Watson submitted that the request fulfills the purposes of Act 187 in that it encourages development of lands for uses to which they are best suited. It was certainly not a short-term gain development. Petitioners envision only negative cash flow during the first 5 years and returns from the investment will not be realized for 20 years. Marginal lands were not being forced into improper use and prime agricultural lands will not be shifted into a non-revenue producing category.

September 13, 1968

Extreme care has been exercised in permitting cultivation of maximum potential pineapple lands to Libby, McNeil and Libby.

The development will create an isolated urban community and therefore could not be considered a scattered one. Very stringent controls will be exercised to assure sound planning and engineering and proper guidelines will be followed. Furthermore, the interior zoning of the project will be controlled by the County. Subject project will not violate any forest or water conservation zones, and the protection of Papohaku Beach will be a prime consideration.

Mr. Watson concluded that the project was unanimously supported by the Maui Planning Commission and the people of Molokai and encouraged favorable consideration of the rezoning of the 6,800 acres.

Chairman Burns reiterated his earlier concern over the government's financial involvement for improvements in the proposed development. Mr. Watson reflected that these would normally involve police and fire protection and also schools. Although developers were prepared to proceed with the construction of the roads without government contribution, it was hopefully anticipated that there would be some County and State participation. The same would apply to the sewage-disposal system.

Mr. Watson stated that the development of phase 1 and 2 for 500 resort hotel rooms and an 18-hole golf course could prove profitable. However, this was strictly in the preliminary stages; and developers were actually thinking in terms of a 4-hotel complex initially.

The question of the preservation of one of the magnificent beaches for public swimming and enjoyment as recommended by staff was raised by Commissioner Mark. Mr. Watson replied that Papohaku Beach would essentially remain in open space, and adequate facilities will be provided for the general public's use.

Commissioner Nishimura commented on the extensive mining operation being conducted on the sandy beach and observed that this could destroy the beach and cause erosion elsewhere. Mr. Watson replied that since a contractual agreement existed between the landowner and HC&D, there was not much anyone could do to stop this operation. Mr. Harrison Cooke of Molokai Ranch supported the operation on the basis that since 1968, although 1½ million yards of sand had been removed from this beach by HC&D,

September 13, 1968

the beach was larger now than before. He attributed this to the theory that sand was being manufactured in the ocean and being brought in. He also disagreed that the mining operation would cause an erosion elsewhere.

The location of the well site was pointed out on the map by Mr. Watson and described as being immediately below the State water transmission line on the west bank of the north fork of Kaunakakai Gulch. The source of water will be developed in incremental stages. However, the possibility of tapping the existing reserve capacity in the State system for the first increment, which would be mutually beneficial to the State and to the developers, was discussed with Bob Chuck, Manager and Chief Engineer of the Water and Land Development Division of the Department of Land & Natural Resources.

Mr. Watson estimated that a population of approximately 6,000 people could be sustained on 670,000 gallons of water per day. It was planned to reclaim a substantial portion of the water for reuse on the project since approximately only 10 to 15% of the water will be consumed.

Mr. Watson commented that \$220 million of the Louisiana Land money will be used for installing the basic utilities and that a substantial portion of the investment was really outside the project area. However, if the total acreage were less than 6,800 acres, the investment will be reduced.

Mr. Watson indicated that the State had put up considerable sums of money for highways, increased water facilities, etc., in Rockefeller's area; and the question essentially was "how much does the private sector intend to contribute?". He added that the petitioners' second increment did not include prime agricultural lands, and the ranch has made arrangements with Libby, McNeil & Libby for additional pineapple lands outside the present pineapple boundaries.

Mr. Watson stated that Louisiana Land was aware of the tax consequences in requesting urbanization for the 6,800 acres, including the golf course which could be pursued in an Agricultural District. It was presently planned that Louisiana Land will undertake the development of the golf course although they were open to any feasible proposition by other interested parties.

It was projected that the 6,800 acres will be developed within a 10-year period although not necessarily at maximum density. Mr. Watson supported this by explaining that the total area will be fairly well developed but all of the vacation

condominiums, for instance, may not be completed at the end of this period. The development of the upper area for employee housing will be one of the major considerations during the first phase.

The only incremental plan available at present was the preliminary plan developed by Belt, Collins and Associates. Extensive financial studies have also been conducted in terms of the input for facilities, such as roads, water, and the possible cash return from advance sales. It was the developer's feeling that they did not wish to make a decision on a meaningful long-range physical plan involving large sums of money without the assurance that they could proceed with the 6,800 acres.

If the 6,800 acres were reclassified, it was the intent of the Louisiana Land Company to contract out the proposed development to other qualified developers under controlled criteria to insure the quality of the project. Commissioner Nishimura viewed with disfavor the subsequent inflation of land prices following reclassification into an Urban District. He also expressed concern over the possible inability of these other developers to fulfill their obligations. Mr. Watson submitted that if this should occur, Louisiana Land and Molokai Ranch would have no alternative but to assume the responsibility.

Mr. Watson did not anticipate any problems with internal zoning since the Maui Planning Commission unanimously supported the rezoning of the 6,800 acres and Chairman Elmer Cravalho had reacted favorably.

Mr. Duran observed that the same logic should apply then to the request for boundary change--that the petitioners could come in for the reclassification as needed, just as they would be required to do for a zoning request before the Maui Planning Commission and that even the County could not guarantee zoning for the entire 6,800 acres should there be a change in administration or commissioners.

Mr. Watson argued that by the same token the Land Use Commission was empowered to withdraw any of the lands should the developers fail to fulfill their commitments.

Commissioner Mark wondered if it might be possible for the petitioners to present some kind of incremental timetable of the development for the benefit of the Commissioners. Mr. Watson agreed that this would be possible.

September 13, 1968

Mr. Duran cautioned the Commission that a precedent might be set if the criteria for rezoning is based on the petition being supported by a financially sound institution. Thus, any petition for 5,000 or 10,000 acres may be reclassified when the justification is primarily financial backing. He further submitted that 6,800 acres represented a fantastic area to be developed in 10, 15 or even 20 years and that a realistic survey should be made and a timetable prepared for the Commission's review.

Chairman Burns concurred that the Executive Officer's point of view represented the Commission's thinking.

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

ACTION

PETITION BY AMFAC, INC. (A68-189) TO RECLASSIFY 25.7 ACRES FROM AGRICULTURAL TO URBAN AT LAHAINA, MAUI

A recommendation for approval of the petition by staff was based on the need for additional urban lands for low-cost employee housing in Lahaina and the fact that the existing subdivision is 100% developed and sold. (See copy of report on file.) As additional information, Mr. Leong read a letter from Colonel Walter Winegar, Deputy Division Engineer of the Corps of Engineers, expressing doubt that the "development would have any appreciable effect on flood flows since the area of the development would be less than 1 percent of the total drainage area".

Commissioner Murakami moved for approval of the petition as recommended by staff, seconded by Commissioner Napier, and the motion was carried by the following votes:

Ayes: Commissioners Nishimura, Napier, Choi, Mark, Murakami, and Inaba

Nays: Commissioner Wung

Abstain: Chairman Burns

PETITION BY AMFAC, INC. (A68-190) TO RECLASSIFY 48.2 ACRES FROM AGRICULTURAL TO URBAN AT KANAPALI, MAUI

Mr. Duran advised that the recommendation for approval had been made by staff since the area is part of the Kananapali resort destination area, characterized by city-like concentrations of .

people, close to urban amenities, free from floods, and abuts an Urban District. (See copy of report on file.)

It was brought out that petitioners' plan involved approximately 35 lots for residential homes with a density of 2 acres per dwelling unit. Furthermore, since a golf course was also being created in the area surrounding the subdivision, which is a permitted use in the Agricultural District, the area in question automatically will be taken out of agricultural use. In this respect, Mr. Duran raised the question of the reasonableness of permitting golf courses in an Agricultural District by the Land Use Commission regulations.

Commissioner Murakami moved to approve the petition as recommended by staff, which was seconded by Commissioner Choi. The Commissioners were polled as follows:

Ayes: Commissioners Choi, Napier, Mark, Inaba, Nishimura, and Murakami

Nays: Commissioner Wung

Abstain: Chairman Burns

The motion was carried.

APPLICATION BY HISAO AND MATSUI FUJII (SP68-57) FOR A SPECIAL PERMIT TO OPERATE A RESTAURANT AND BAR AT OLOWALU, LAHAINA, MAUI

Mr. Leong presented staff report recommending approval of the special permit as conditioned by the Maui County Planning Commission and also that the alterations be completed within one year. (See copy of report on file.)

Commissioner Wung moved to approve the special permit request, as recommended by staff, seconded by Commissioner Choi and the motion was carried by 7 ayes. Commissioner Napier voted Kanalua.

DECISION IN THE THIRD CIRCUIT COURT - ALLISON, ET AL VS. LAND USE COMMISSION

Mr. Duran advised that Mr. George Pai, legal counsel, received a court decision by the Third Circuit Court, Ralph Allison, et al versus the Land Use Commission, dated September 3, 1968, reversing the decision of the Commission.

September 15, 1968

Mr. George Moriguchi, Executive Officer of the Land Use Commission at the time of the decision, briefly reviewed the background of the case.

A special permit request by James Tamura (SP65-19) in May of 1964 to subdivide his one-acre lot in an Agricultural District at Panaewa Houselots into 4 parcels had been denied by the Land Use Commission. Petitioner took the case to court, and the judge directed that the Hawaii Planning Commission request a favorable ruling from the Land Use Commission. The subsequent denial by the Land Use Commission was upheld by the Third Circuit Court.

A new petition by Ralph E. Allison, et al was filed with the Land Use Commission, requesting a rural or urban districting for the Panaewa Houselots. The Commission ruled that this was not proper and denied the request. Thereafter, the petitioners took the case to court which resulted in the present decision by Judge Ogata, reversing the decision of the Land Use Commission.

Mr. Pai expressed his opinion that the conditions of the sale under which these people purchased the land from the then Territory of Hawaii weighed heavily in the Judge's decision. Mr. Moriguchi stated that Judge Monden ruled this was not valid and sustained the Land Use Commission's action.

In the present decision, Judge Ogata was placing the case solely on the physical characteristic of the land without any consideration for the need for this type of development. Mr. Moriguchi quoted a passage in the decision which read "while this court must not sit as a zoning commission and it should not substitute and replace its judgment for that of the Commission, such salient physical features and land qualities would overwhelmingly indicate that the area is deserving of at least a rural district boundary". It was Mr. Moriguchi's impression that although Judge Ogata mentioned that the Territory of Hawaii sold the land for houselots, he did not use it as a basis for his decision.

Mr. Pai reiterated his impression that the conditions of sale by the territorial government in 1958 restricting the use to residential purposes weighed heavily in Judge Ogata's decision. He added that although a prior action by a State agency does not bind the Land Use Commission in its zoning powers, this was a technical point and the courts did not rule on technicalities but on the justice and merits of the case.

Chairman Burns raised the question of the alternative left to the Commission. Mr. Pai advised that there were 30 days in

September 13, 1968

which an appeal could be filed with the Supreme Court and the decision was up to the Commission. He added that he disagreed with the Judge's decision insofar as the ruling was based on the rationale that the land was usable for rural and not agricultural purposes.

Chairman Burns observed that if the Supreme Court rules in favor of the appellants, this could result in other similar court decisions.

Mr. Pai felt that the result of this court decision would not create a binding precedent.

Mr. Duran wondered whether the court could ignore the fact that the Commission had based its decision on need according to the mandates of the Land Use Law and for the court to determine that the Land Use Commission had acted in a capricious and arbitrary manner, could set a precedent, and reverse the Commission's decision in other similar situations.

Mr. Duran advised that legal counsel could, within 30 days, indicate to the court of the Commission's intent to appeal and work up a brief in the meantime. Mr. Moriguchi suggested that Mr. Duran, Mr. Pai and he could review the matter in detail and report back to the Commission.

Chairman Burns agreed that the matter will be held in abeyance until a recommendation could be prepared on a course of action.

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