

LAND USE COMMISSION

STATE OF HAWAII

Minutes of Meeting

Hearing Room

Honolulu, Hawaii

September 19, 1962 - 9:30 P.M.

Commissioners

Present:

Edward C. Bryan
Stanley C. Friel
Wayne D. Gregg
Yuichi Ige
Franklin Y. K. Sunn
Roger T. Williams

Absent:

Edward Kanemoto

Ex-Officio Members

Present:

E. H. Cook
Frank Lombardi

Staff

Present:

R. J. Darnell, Executive Officer (XO)
W. M. Mullahey, Field Officer
John Canwright, Legal Counsel

The meeting was called to order by Chairman Bryan.

ITEMS PENDING ACTION

PETITION OF EAST MAUI IRRIGATION COMPANY FOR AMENDMENT OF TEMPORARY DISTRICT BOUNDARY TO RECLASSIFY, FROM CONSERVATION TO AGRICULTURAL CLASSIFICATION, PROPERTY LOCATED IN THE HALEHAKU AREA, MAUI: Described as TMK 2-8-08: Por. 7 (1030 acres).

Chairman Bryan suggested taking the above matter first, since it was reviewed on Maui. The pending action on this item was discussed with consultants, Harland Bartholomew and Associates, in the afternoon.

Chairman Bryan asked, "What is the pleasure of this Commission?" Commissioner Sunn stated that the Commission intended to query Commissioner Cook for further detail of his Department's recommendations. Chairman Bryan asked Commissioner Cook if he had anything in addition to this matter to be brought before the Commission. Commissioner Cook replied, "The Department of Land and Natural Resources

asked for deferral of this item to the end of this year. Although my administrative problems are not relevant, I would like to point out that the administration of Act 234 was, before the summer of 1961, a function of the State Division of Forestry, which the 1961 Legislature moved from the Department of Agriculture to the Department of Land and Natural Resources. With it went Act 234. The function of subzoning within Conservation Districts has now been transferred from the Forestry Division, to the Land Department's planning office. The reason for this was the expansion of Conservation districts. The Land Department is not interested in forestry areas alone. The Department thought it could get a better look at this and handle it better, and solve all problems, if it took a part in forestry. The Department is trying to shift from a concept of protection to a concept of multiple use. In this transfer of function, the Department has taken this in a large scope and has been completely swamped and simply has not been able to give this East Maui Irrigation petition the consideration it deserves. The Department believes that, with an additional 3 months, it can give the matter the consideration it deserves, with a zoning ordinance that would satisfy the East Maui Irrigation Company or even recommend that this be changed to Agriculture. This is the position that the Department of Land and Natural Resources has taken, and I have taken."

Chairman Bryan asked if there were any comments from the members of the Commission.

Commissioner Ige stated if the Commission defers action until December or the end of this year, will the Commission be able to get a definite reply on this situation? Commissioner Cook replied in the affirmative.

Commissioner Friel suggested that Commissioner Cook be briefed on what took place today with Harland Bartholomew and Associates and what they have considered in regard to the permanent boundary lines of this area.

Chairman Bryan stated that as far as he understood it, HB&A felt that the character of the land, the use of it at present, the use of the adjacent land, the water usage and preservation situation, all pointed to an improved situation if the land were put into an agricultural use at this time.

Chairman Bryan asked if anyone had anything else to add to this. The XO stated that HB&A stated that this would be their preliminary recommendation, if they were asked for a recommendation on the situation today. Chairman Bryan stated that if HB&A were to put this on a permanent map today, they would put this area in an Agricultural zone.

Commissioner Cook stated that it may well be that the Department of Land and Natural Resources would recommend to that effect.

Commissioner Williams stated that, from the story of the applicant, there is a necessity, almost, to have this matter acted on a little more quickly than 3 months. To have the lessee pending for that property who has an investment in capital, etc., it seems that 3 months is a little long a time to keep them waiting. Perhaps there may be a way of getting this thing into motion before, rather than coming to a final conclusion later on.

Commissioner Cook asked if HB&A would have their final recommendation on this area by the 15th of next month. The XO replied that it would not be until some time in late November or early December. Commissioner Sunn stated that HB&A's recommendation on this area was pretty firm. Commissioner Gregg stated that the impression he got at the meeting with HB&A this afternoon was that this area was misplaced years ago due to bitterness. It isn't an area for forestry, and so forth. Its natural use would be for pasture, judging from soil types and adjacent areas. Another matter of practicability is that the longer you wait, the rainier the season you get into. The prospective applicant might want to go in there and find it will be so wet he can't do anything, weatherwise speaking.

Chairman Bryan asked the Commissioners' pleasure. Commissioner Friel stated that, since there are no other comments, with due respect to Commissioner Cook and the Department of Land and Natural Resources, he would move approval of East Maui Irrigation's petition. Commissioner Gregg seconded the motion.

Chairman Bryan polled the Commissioners.

Approved: Commissioners Williams, Friel, Sunn, Ige, Gregg, Lombardi, and Chairman Bryan.

Disapproved: Commissioner Cook.

Chairman Bryan stated to Commissioner Cook that the Commission appreciates his Department's problems, taking on this huge job, but that perhaps this might lighten the load because the Department won't have to administer this land. Commissioner Cook replied in agreement with the Chairman, stating "I will admit that the Department's position may be indefensible."

Chairman Bryan thanked Commissioner Cook for his understanding. The XO stated that he will notify the applicant, the Tax Office and other Departments.

PETITION OF WAIANAE ASSOCIATES (A(T) 62-3), FOR AMENDMENT OF TEMPORARY DISTRICT BOUNDARY TO RECLASSIFY, FROM AGRICULTURAL TO URBAN CLASSIFICATION, PROPERTY LOCATED IN THE WAIANAE DISTRICT: Described as TMK 8-6-01: 4, 168.32 acres.

Chairman Bryan asked the XO to outline the above item very briefly.

The XO pointed out the area concerned on the map. He stated that the staff's recommendation was for reclassification to Urban that portion of the area shown as recommended for intensive urban uses on the General Plan of the City & County of Honolulu; and that the boundary should be drawn along a line separating the area generally less than 20% in slope, from steeper land. Both the City Planning Commission and the City Council recommended approval of the rezoning.

The Chairman stated that according to minutes of the meeting on August 21, 1962 in Hearing Room, there were no objections by Commissioners for granting of this petition. He asked if there were any discussion. Commissioner Lombardi asked the difference between acreage of the petitioner's petition and the staff's recommendation. The XO stated that it would be considerable, since the petition covered an area on both sides of the valley and the slopes going up to the tops of both of the mountains on either side of the valley. The staff's recommendation was for the flat area in between to be rezoned, and not the area on the sides of the mountains.

Chairman Bryan stated as he recalled the petitioner stated that there would be no hardship.

Commissioner Gregg stated that he would like to have this 20% slope business clarified. He asked whether this would be a standard policy with this Commission. Chairman Bryan replied in the negative, stating that it is a borderline that any developer would be willing to live with. Commissioner Gregg asked "Wouldn't this properly come under the City & County's planning." Chairman Bryan stated that the reason for the expression being used is that it is hard to draw a line on the map without going out to survey it.

Commissioner Sunn stated that it was his understanding in our discussion that this 20% line would not be a fine rigid line, that it would be an approximate line. The XO stated that most of the lines on the interim boundary maps can be adjusted a hundred feet or so either way, depending on what your reference is.

Commissioner Sunn's advice was called upon by Chairman Bryan after discussion on this subject was carried at great length. Commissioner Sunn stated that as a practical matter in regard to this particular area you probably would not develop this area for residential urban uses beyond 25 to 30% slope and that is why the XO has specified something like 20 and 25%. But Commissioner Gregg's point is well taken, Commissioner Sunn stated; and he didn't think this Commission should specify the suitability of land for development. He felt this should come under the county planning commissions.

Chairman Bryan stated that what the staff is doing is using the slopes in order to define the boundaries and not actually what is developable and what is not. The Chairman stated that the staff probably could have said 40% in any of these cases because it goes from 20 to 70%.

The XO stated, "What we have to do is draw a line. We can't just leave the area blank on the map, and say, 'There is a line in here somewhere.'"

Commissioner Gregg suggested using the property line, and the development of the land be up to the people who own it and the City Planning Commission. He stated, "If there is some feasible way of developing this land, and there is someone who wants to, and if the county determines that -- well, that is fine."

The XO stated, "That is not the recommendation of the staff. The recommendation of the staff is that there is some kind of a line that divides the developable

land, for ordinary purposes; and nondevelopable land, in this particular case." Commissioner Lombardi stated "Isn't the XO trying to say we shouldn't be zoning for urban where you can't make it urban because it's too steep?" Chairman Bryan stated "That is the same thing that the City & County Planning Commission had stated." Commissioner Gregg stated that he is speaking of a standard policy as he felt this will come up time after time.

Commissioner Lombardi asked whether the applicant agreed that the staff recommendation met with his approval and found no hardship? The Chairman stated in the affirmative and called on the applicant to verify this.

Mr. Hirotooshi Yamamoto stated that their position is what the City Planning Commission recommended but at the same time did not want the upper portion to be zoned in such a way that they would need to return. When the actual subdivision was done it could have overlapped, and if the area were zoned for urban he didn't think they would be able to use it. He added that if it were zoned in agriculture they wouldn't be able to do any agricultural work unless the State would be willing to trade other lands for it.

Chairman Bryan stated that at the moment anything that is not conservation or urban is agricultural. Some day this might change to anything that is not agricultural or urban is conservation, in which case this steep slope would become conservation. The Chairman stated that the question Commissioner Gregg raises is that this Commission has to put this area into one of these classifications and it might probably be Urban. The applicant didn't feel that putting houses on this land would be feasible. The Chairman stated that the only problem he could see would be the land owner might be requested to pay urban taxes on urban land even though it is not land usable for urban purposes. The applicant did not foresee any problem in taxation by the Tax Department.

Commissioner Sunn stated his concern regarding the 20% line and the possibility of overlapping of these lots after subdivision was finally laid out. The Chairman suggested stating 50%, with which Commissioner Sunn was in favor. Chairman Bryan called on the XO for an opinion on this.

The XO asked if the Chairman wished to know the highest figure, as far as slope is concerned, that the staff would recommend in an ordinary case for rezoning for urban development? Chairman Bryan replied in the negative, stating "In this particular instance, as I understand it, the intent of the staff and the intent of the City Planning Commission is to put this area into an Urban classification, the reasonable slope being up to the base of the cliff, to exclude the cliff itself, and the tri-station on the top, as the boundary line. In other words, the lower slope below the cliff can be developed." The XO stated, "That is not correct. If a 100% cliff (which would be a 45° angle) broke to a 40% slope, that 40% is too steep for ordinary types of urban development; and if there were some special way to develop such an area, then special consideration should be given to such a possibility." Chairman Bryan asked "Does that happen in this particular case?" The XO stated that in this particular case this does not happen. He stated that he does admit that he

is trying to recommend some type of standard for urban development. He stated that this was discussed with Mr. Kim of the City Planning Department; Mr. Kim suggested 15% to which he (the XO) did not agree, believing that 20% land was still suitable for subdivision.

Chairman Bryan stated, "Suppose this Commission decides that their function is not to set these standards, that the county would set them; but that it would be this Commission's function to draw a line at some reasonable location and also how to describe this line. He stated that his suggestion for describing the boundary in this particular case would be "where the slope breaks," and using 30%, in order to give the applicant any leeway of spaces where it might break in the middle of the lot, and at the same time exclude what appears to be impossible -- the vertical slope. The Chairman asked the XO if he would agree to this. The XO replied, "I believe so. In this particular case I think the two are almost identical. If it cannot be resolved, I could recommend very easily, in this case, that the line as it is shown on both sides of the valley on the City's general plan be followed."

Commissioner Lombardi asked whether that is the triangular line to the toe of the slope. The XO stated he did not know; that it has been his attempt to define a line without drawing it so that the line could be referred to in the text of the approval.

The Chairman stated that he believed the petitioner has a problem. Mr. Yamamoto stated that their main concern is the problem in the case of interim drawings and other matters which would force them to come back to this Commission again.

Chairman Bryan stated if the Commission stated 40% would that be satisfactory. Mr. Yamamoto stated that he couldn't answer at this time. Commissioner Williams asked whether the description "going to the bottom of the cliff line" would be well defined. The XO replied in the affirmative, to which the Chairman stated it would be well defined on the north side.

Commissioner Friel moved to approve the petition of Waianae Associates up to the toe of the Pali, excluding everything over 40% in slope. Commissioner Williams seconded the motion. There was no discussion, and the Chairman polled the Commissioners.

Approved: Commissioners Williams, Friel, Ige, Gregg, Lombardi, Cook,
and the Chairman.

Disapproved: None

Abstained: Commissioner Sunn (Commissioner Sunn abstained from voting
because he had prepared the plans for this subdivision)

The XO requested that the engineer for the applicant supply the staff with the 40% line, documented with contours, so that the staff may revise the map.

PETITION OF YAMAGUCHI ET AL (A(T) 62-4), FOR AMENDMENT OF TEMPORARY DISTRICT BOUNDARY TO RECLASSIFY, FROM AGRICULTURAL TO URBAN CLASSIFICATION, PROPERTY LOCATED IN THE NANAKULI AREA, OAHU: Described as TMK 8-7-09: 1 398.438 acres.

The XO was asked to brief Commissioners on the above petition.

The XO stated that this area is just past Nanakuli on the Waianae Coast of the island. He pointed out the Navy access road which passes the Kaiser Permanente Cement Plant and runs on to the naval installations further up the valley. He stated that the staff's recommendation was the same as the plan of the City and County and recommended that this plan be followed. The XO stated that it was recommended that the slope break at 20% be the dividing line. The XO stated that the State Health Department had been contacted and that they did not make a definite recommendation for or against the rezoning of this property, but mentioned the dust problem that was created by the cement plant across the road. The XO stated that the staff has been notified by the City Council that it has deferred action on any recommendation on this petition for further study. The City Planning Commission's recommendation was for designating a portion of 397.4 acres of existing open space use to residential, 153.5 acres; and golf course use, 19.2 acres as per development plan submitted. City Planning Commission also recommended that the Land Use Commission adjust the open space boundary accordingly, and amend the temporary district boundary by designating a portion of the agricultural zone to an urban zone.

Chairman Bryan stated that in effect we have approval of the application by the City Planning Director but not by the City Council. The XO replied in the affirmative and stated that Commissioner Sunn has a copy of a letter from the City Council. Commissioner Sunn stated that Councilman Kageyama had just handed him the report of the Committee of the Whole of the City Council, dated September 4, 1962. This report notes that the communication to the Planning Commission was transmitted to the Council and they simply received and filed the communication regarding this subdivision because it was noted that the Land Use Commission had to act further. Commissioner Sunn stated, "Since Councilman Kageyama is here, maybe he can clarify this particular point."

Councilman Kageyama stated that the interpretation of laws should come from the Attorney General's Office. The general application of the Greenbelt law should be brought to the Attorney for interpretation of Act 187. The proper procedure in processing a petition would be first to the City Planning Commission, then to the Land Use Commission, and then to the City Council for further consultation.

Chairman Bryan stated that this is probably something the Commission should get together with the City Council about, and have an understanding of procedure. The Chairman stated that the Commission's procedure has been in each county that, whatever matter comes before this Commission, this Commission

would want to know how the County feels about it; otherwise we may pass something which the county may have problems on, which this Commission does not know about, and may be doing injustice to both the applicant and the county, and may put the county officials in a bad position. The Chairman stated, "In other words, the applicant can say, 'We have the State authorities' authorization; how come you folks right here in our own home town have anything to do about it?'"

Councilman Kageyama stated that the city officials would choose to act and take an action and then, if the Land Use Commission should act contrary to the action, it should be sufficient in the eyes of the applicant.

The Chairman stated that he felt this is one of the things on which a procedure should be set so that it always goes one way. At the moment we both are waiting for the other to act and the result is unfair to the applicant. Councilman Kageyama felt that his procedure was best: that the application go to the City Planning first; then a carbon copy should come to the Land Use Commission with the City's recommendation; then a public hearing is held; then, on the basis of the public hearing, the Commission approves or disapproves; and then the action is reported back to the Council; and finally the Council would act on the decision of the Land Use Commission.

Chairman Bryan asked Mr. Houghtailing if he wished to be heard. Mr. Houghtailing stated, "In view of this Commission's own laws, this Commission has a decision to make one way or the other. When the Supervisors or Councilmen got the letter from the Planning Commission they should have said 'yes or no'. However, they chose to file it and this is no different than your previous case. This is in the same area, the 45-day waiting period for all matters to come up has passed, the applicant is asking that you take this area out of the temporary Agricultural zone and put it in Urban." He added that he believed the matter rested with this Commission to make a decision now. Mr. Houghtailing stated, "The applicant is being put in a very funny position right now. They have people who want to move into this area, people coming from the mainland. The Board did not act one way or the other, they just stated that they filed it and that it remains in open space. Now, an open space means that eventually these people will have to go out and buy it for some park purposes. This Commission has put it on the plan for agricultural use and the applicant is saying to take it off the agricultural use. If this is taken off, it becomes an open space area and the applicant is in a better position to follow through." Mr. Houghtailing stated that this matter is before this Commission; this Commission has shown all the courtesies; the 45 days have gone; and a decision should be reached. He felt that this area was not any different from the previous area discussed.

Chairman Bryan stated that this Commission isn't asking for any arguments on this case; this is a problem between the county and this Commission. The Chairman stated that this Commission is going to do all that they can to see that the applicant gets the best service he can get from this Commission. The Chairman stated that he felt that this Commission tried to lean over backwards in that direction and didn't think this was the argument. Mr. Houghtailing stated that he was just clarifying this 45-day waiting period, which has passed.

The XO stated that during recess he consulted Legal Counsel's advice if it might be possible that action could be taken on part of the property inasmuch as both the City Planning Commission and City Council felt at least a part of the area belongs in an urban district, according to the adopted plan. The rest could be held in abeyance until it is found out what the actual Council's action had been; in other words, what the City Master Plan now reads.

Commissioner Lombardi asked if a recommendation was received from City Planning. The XO replied in the affirmative, stating that the recommendation was for rezoning to Urban. Commissioner Lombardi asked, "How does that follow the master plan that shows an open space on there." The XO stated that the Planning Commission had recommended a change in the Master Plan to the City Council and that the City Council did not take an action to change the Master Plan. The XO stated that it is his understanding that the Master Plan is not changed; it reads as it is on the wall.

Chairman Bryan stated that there is a possibility that the City Council will not give this Commission any comment unless they are also prepared to change their Master Plan.

Commissioner Ige stated, "Inasmuch as that land is not good agricultural land why not give them the zoning and let it come to the City Council?"

Commissioner Sunn stated that he had a copy of the minutes of the City Planning Commission's meeting of June 21, 1962. He stated that the minutes are not too clear, but it notes that at the Planning Commission's public hearing no written protest had been filed; then, after considerable discussion as to what to do with this open space the Planning Director made a recommendation that this open space be changed to residential use and to recommend to the Land Use Commission that the temporary district boundary be amended by designating a portion of agricultural zone to urban zone. This was made by Mr. Lee and seconded by Norwood and carried. Only one dissenting vote of the Planning Commission.

Mr. Houghtailing interpreted this to mean that the open space was included, that the Planning Commission took 173 acres for residential use and the 19 acres for the park. He stated that 200-odd acres are left out as far as putting it into agricultural or conservation district. Commissioner Sunn stated that the developer pointed out that to develop that small triangular portion and that sliver just mauka of that road would almost be impossible. You would have to include all of it or none at all.

Mr. Houghtailing presented the following letter from Mr. Frederick Lee to Mr. Yamaguchi:

"The Planning Commission, at a meeting on Thursday, June 21, 1962, held a duly authorized public hearing to consider your proposal to amend that portion of Waianae General Plan by designating a portion of the open space use for recreational and residential use, reassessing the open use boundary, in consideration of petition to

amend the Temporary District Boundary by designating a portion of the Agricultural zone as Urban zone for a parcel of land comprised of 398 acres situated off Lualualei Road, approximately 2,000 feet mauka of Farrington Highway in Nanakuli, Waianae.

"The Commission, after considering the Director's report and recommendation, voted to recommend approval of the General Plan amendment as follows:

- "1. Designating the portion of 397.4 acres of existing open space use to residential, 153.5 acres, and golf course use, 19.2 acres.
- "2. Adjust the open space boundary accordingly and further amend the temporary district boundary by designating a portion of the agricultural zone to an urban zone.
- "3. The staff will prepare the necessary ordinance for submission to the City Council for its enactment."

Chairman Bryan asked the pleasure of this Commission. Commissioner Sunn stated that the other point the XO wanted make was that the original petition was for the entire area and that the 20% or even 30% would encroach into that yellow area, according to those contours. The XO added that according to the contours that part of the land is quite steep, in the area of 40%. The XO was requested to give the staff's recommendation again. The XO stated that the staff's recommendation was for approval of reclassification of the less steep portion of the area to Urban designation, which would include the lower triangle and a sliver of the remaining eastern portion leaving the land generally over 20% in slope in Agricultural classification. This addition would allow for expansion of the urban center of Nanakuli into an area of little, if any, agricultural potential. Although there might be a reason for concern for health, due to the aerial effluent from the cement plant across the road, as to whether the area was to be developed into residential use, the specific types of intensive urban uses to be allowed were more properly the business of the local planning agency.

The Chairman asked the XO if he saw any problems in this if the Commission were to approve this request to the area designated by the City Planning Commission in their action, and whether this is an adequate description. The XO replied in the negative: "If this Commission uses this as the line, the staff can certainly put it on the map." Commissioner Sunn stated that the City Planning Commission does not say that's the line. The XO stated that as he understood the question of the Chairman, he is asking whether the XO sees any difficulty of transferring this onto a map. The Chairman restated his question, asking whether, if the City Planning Commission approved their change in the General Plan for this area to include this subdivision and golf course, and if this Commission were to approve inclusion in the Urban area of that same number of acres in the same place to Urban classification, however you want to describe it, do you see any problems in doing it that way?

The XO stated that the problem that he saw in doing it that way is that part of the area which he thought was a little too steep for this type of development. The Chairman stated that this is the City Planning's business, which they have stated what they wanted to do. The XO stated that is the Chairman's answer to the XO's information, to which the Chairman stated, "This is what we have been trying to say all night."

Commissioner Williams asked whether this map had been submitted to the City Planning Commission, and whether this is the map the City based their recommendation on. Mr. Houghtailing replied in the affirmative, stating this map was submitted for discussion.

Commissioner Ige moved for approval of the petition in accordance with the City and County's changes in their General Plan. Commissioner Friel seconded the motion. Commissioner Gregg questioned whether the original petition would have to be changed. The Chairman stated that this Commission is not granting the whole request. Commissioner Gregg asked whether this Commission could grant without any amendment. Legal Counsel also questioned the changing by this Commission when it is not known whether the applicant is in favor of it. Chairman Bryan stated in this particular case the applicant has gone to the City Planning Department with a request for this new boundary which has been approved. Legal Counsel stated, "In other words it is being accepted by both applicant and the City Planning Department. Technically and legally, this Commission can approve, but would suggest that Commission have something to act upon which this Commission knows would be acceptable to the applicant." The Chairman stated that this Commission will ask the applicant for a map.

Chairman Bryan polled the Commissioners.

Approval: Commissioners Williams, Friel, Sunn, Ige, Gregg, Lombardi, Cook, and Chairman Bryan.

Disapproval: None.

Councilman Kageyama questioned whether this Commission was amending that property in the description of the ordinance which has passed on the applicant's map and the boundary as it is written in the ordinance. He felt to pass that concept of the ordinance, the Land Use Commission might increase the property line or the boundaries and that it would not be in accordance with the description pending before the City Council on such ordinance. He suggested that this procedure be followed: the action of the City Planning Commission goes to the authorities of the State Land Use Commission and the application comes to this Commission for discussion and upon approval, without any amending, the parcel in the City Planning description be approved or disapproved in such a way that the City Council will be able to make the final action to go by in the description as approved by the City Planning Department and by the Land Use Commission. Councilman Kageyama stated that this is his off-hand suggestion in the discussion of the proper procedure in the follow-up of any application for change of zoning by the applicant. Chairman Bryan stated that the legal counsel is taking this into consideration, and in the Commission's discussion with the City Planning Commission and your legal people at City Hall, this Commission will try to come to some procedure to put an end to the question that was raised here this evening.

PETITION OF M. KIDO, ET AL. (A(T) 62-5), FOR AMENDMENT OF TEMPORARY DISTRICT BOUNDARY TO RECLASSIFY, FROM AGRICULTURAL TO URBAN CLASSIFICATION, PROPERTY LOCATED IN THE HAUULA AREA, OAHU: Described as TMK 5-4-04: 4, 5 & 7, 214.591 acres.

The XO described the subject property. The XO stated that this petition is for an area outlined in red below the forest reserve. The City's master plan shows only the lower portion of the petition for more intensive urban uses; and the recommendation of the staff was for reclassification, to Urban, of that portion below the line as shown on the city plan which the XO believed coincided very closely with the line indicated on the petitioner's development plan in yellow. The recommendation is to zone the area to urban that is below the line set by the city for intensive development.

The Chairman asked whether the XO recalled the comments of the applicant. The XO stated that the staff recommendation was agreeable to the applicant.

Commissioner Lombardi moved that the Commission change the Urban district boundary to include the lower part, as outlined by the XO. Commissioner Friel seconded the motion.

Approval: Commissioners Williams, Friel, Sunn, Ige, Gregg, Lombardi, Cook and Chairman Bryan.

Disapproval: None.

APPLICATION OF CONSOLIDATED AMUSEMENT COMPANY, LTD. (SP(T) 62-18), FOR SPECIAL PERMIT TO ESTABLISH AND OPERATE A DRIVE-IN THEATER ON PROPERTY ADJACENT TO KALANIANA'OLE HIGHWAY NEAR KAILUA, OAHU: Described as TMK 4-2-14: Por. 2.

The XO stated that all Commissioners have inspected the property in question personally, and that the property is located on the Windward Side, halfway between Kaneohe Junction and Waimanalo Junction. The recommendation of the staff was for approval of application for Special Permit on the basis of correctness of the recommendation received from the City & County and the Department of Transportation, subject to certain conditions outlined in the staff report in the interests of proper development of the area, community appearance, and convenience and safety. Three conditions were recommended, referring to further approval by the City and County of Honolulu; and approval of the State Department of Transportation, which should be secured for any vehicular access to or egress from the property, as well as onsite parking reservoir, accommodations for vehicles waiting entrance to or egress from performances of theater. The XO stated that he believed that this is an understanding between the proposed operators of the theater, the property owners, and the Department of Transportation.

Commissioner Sunn moved for approval of the staff's recommendation. Commissioner Williams seconded the motion.

Approval: Commissioners Friel, Lombardi, Ige, Williams, Cook, Gregg, Sunn, and Chairman Bryan.

Disapproval: None.

APPLICATION OF PATRICK AND CLELLA COCKETT (SP(T) 62-12), FOR SPECIAL PERMIT TO CONSTRUCT A MOTEL, OFFICE BUILDING AND WATER-SKI CLUB HOUSE ON THE SOUTH BANK OF THE MOUTH OF THE WAILUA RIVER, ON THE MAUKA SIDE OF KUHIO HIGHWAY: Described as TMK 3-9-04: 6.

The XO stated that the proposed use is on the southwest corner of Kuhio highway, where it crosses the Wailua River. The area is proposed for a state park and there is no acquisition underway in this particular portion of the area that the staff would consider a key piece of property. The XO stated that it was mentioned in the staff report and brought out in the conversation that the applicant wished to put an excessive number of things on a 15,000 sq. ft. lot. Since the area across the road is in an Urban district, the staff would recommend an extension of the existing urban boundary because of the surrounding development. Also by process of logic, since the county has recommended approval of all the uses that are proposed on the property, the staff would recommend approval of the application subject to the conditions approved in similar cases.

The Chairman asked the XO to do away with logical thinking and use common sense instead.

The XO replied that he thought the area was unsuitable for what the applicant wishes to put into. The XO stated that the Commission would have to ask itself whether this area should come under the control of the county as an urban district. He stated that since the Commission has control of the precise land use, the Commission can recommend certain conditions be put on the property on approval.

The Chairman stated that his point was whether the staff feels that this request for change of boundary should be granted. On the other hand if the specific use in this case indicate there is some undesirable aspect to the application, would a recommendation for denial of special permit and a recommendation that applicant be advised to apply for an urban classification be more desirable. The XO stated that this could be construed as holding up the applicant in an unreasonable fashion. The XO stated, "This is my opinion: If the man had applied for Urban zoning, I would ask myself if I would have recommended for the approval of the urban zoning, and the answer in this particular case is yes. The staff would recommend that the county take over complete control of the use of that property."

Commissioner Sunn stated that if the XO would ask himself this question, "Should

this area be in a Conservation zone?"; the XO might also have to say yes. "If you asked yourself **this** question, **should** this be in Urban, or Conservation, or Agricultural zoning for the permanent boundary, how would you have established this? I'm **not sure** you would place it in an urban zone."

Commissioner Lombardi suggested that the Commission leave the thing alone as it is. He stated that this Commission has no control over what is going to happen. He expressed concern for the area, "If a special permit is granted for all these uses."

The Chairman stated that the question which comes before this Commission is what agency is to purchase the land for a state park. Commissioner Cook stated that no action has been taken to acquire this piece, as there was no appropriation for it. \$180,000 was appropriated for the Wailua-Lydgate Park but was earmarked for construction only and none for acquisition.

Commissioner Lombardi stated that the question the Commission should ask itself is, "Should these uses be allowed on this particular piece of property?"

Commissioner Friel stated that he thought the applicant's main reason for wanting the place is to put up a drugstore and a doctor's office as a start. Commissioner Lombardi felt that the applicant didn't really have a set idea as to what he wanted; and he felt that the Commission would be blamed for allowing these uses if permission is granted which might create an eyesore on this important river junction.

The Chairman asked whether the staff had received any additional information on this matter. The XO stated that a letter from the Department of Land and Natural Resources was received, and copies were distributed to each Commissioner.

Commissioner Sunn stated that this Commission had hoped to get further information from the Lihue Plantation Company with regard to whether this was a desirable type of use. He asked the Chairman whether this was a compatible use of land adjacent to a sugarcane field subject to burning.

Chairman Bryan stated that this would be no problem; this happens every day. The problem is the kids who throw matches in the canefield, which sets fire to it; but this could happen anywhere. There are subdivisions next to canefields where we have trouble; but that is one of the facts of life. It's like having a highway next to a canefield.

Commissioner Sunn stated that **it is not** a desirable or compatible use. Chairman Bryan replied that he didn't think this Commission can deny this applicant his requests on that basis, because Lihue Plantation Company operates the canefield and builds houses next to the canefield themselves.

Commissioner Friel stated if a motion is in order, he would move to disapprove Mr. Cockett's petition for a Special Permit. Commissioner Lombardi seconded the motion.

Two points (and the problem of wording) were taken into consideration during the discussion of this motion.

1. Findings for denial of portion of applicant's requests; and
2. Recommending approval for one of applicant's requests: permitting applicant to go ahead with his doctor's office on premises in his residence or dwelling.

Legal Counsel suggested that, in making the finding for denial, the Commission simply state that they do not feel that these other uses are reasonable uses. He stated that the Section covering special permits provides for granting special permission for unusual and reasonable uses. He stated that all the uses applied for could be considered unusual, but they wouldn't necessarily be considered reasonable uses.

Commissioner Lombardi suggested withdrawing the motion (he withdrew his second and Commissioner Friel withdrew his motion), and made a new motion to approve that portion of the application dealing with a doctor's office in the present residence or any reasonable extension of the residence to accommodate a doctor's office as an accessory to the doctor's residence or dwelling. Commissioner Sunn seconded the motion.

Approval: Commissioners Friel, Lombardi, Ige, Williams, Sunn, Gregg, Cook, and Chairman Bryan.

Disapproval: None.

APPLICATION OF JULIAN FLORES (SP(T) 62-19), FOR SPECIAL PERMIT TO IMPROVE AND EXPAND, THE EXISTING BUSINESS USE OF PROPERTY IN LUALUALEI, WAIANAЕ, OAHU: Described as TMK 8-7-18: Portion of Parcel 48.

The XO gave a brief description of the item and located the area on the map. He stated that the City Planning Department recommended that any special permit being issued at this time be limited to a reasonable size to serve the immediate needs of neighborhood. The City Council recommended that the master plan be followed. The Mayor recommended that the applicant be permitted a reasonable expansion of his facility, subject to conformance of all existing regulation applicable in the matter. The Department of Transportation had no comments to offer at this time because their program for a proposed highway through the area has not reached the stage where the final route has been selected. The staff's recommendation was for approval of the enlargement of the existing grocery store subject to certain conditions in the interest of property and proper community development in the area, community appearance and safety. The XO stated that at the hearing the application was amended to include only the front 26,000 sq. ft., which is actually 200 feet deep from the road.

Chairman Bryan asked what the original application included. The XO stated that when the Chairman questioned the applicant, the applicant mentioned adding a gasoline pump or service station. The XO stated that in the application itself, the applicant asked for permission to operate a grocery store under variance permit 251, and that the applicant is forced to improve and expand his facility but cannot do so under the variance permit. The XO stated that he did not recall that the application was actually amended to include a service station.

Commissioner Sunn stated that the letters received subsequent to the hearing concerned themselves only with fear of the displacement of the farm operation; and this is no real fear, actually; and therefore, Commissioner Sunn moved to approve the staff's recommendation. The motion was seconded by Commissioner Friel.

Approval: Commissioners Friel, Lombardi, Ige, Williams, Cook, Gregg, Sunn, and Chairman Bryan.

Disapproval: None.

COMMUNICATIONS

The following communications were presented:

1. Copy of a letter from Colonel Roesch of Kauai requesting reclassification of his property. The staff was requested to reply to Colonel Roesch informing him to make a formal application for rezoning, if he wished immediate action by the Commission.
2. A number of letters from County Attorneys and Planning Directors regarding attendance at the conference on 10/12/62.

(The XO stated that the staff will be asking that the Counties submit in advance of this meeting a list of their problems, in order to set up an agenda and group these problems into categories. The XO stated that the time element will be the next step in setting up this conference. The XO stated that the purpose of this conference is to have a round table discussion regarding the interim provisions and to coordinate the interpretations of the State and County.)

3. Letter from Robert Wenkam of the Federation of Western Outdoor Clubs expressing his concern over land from Makapuu to Waimanalo Beach Park to be developed into an Oceanarium which was rezoned from the Commission's designated "Conservation district."

(Chairman Bryan stated that he replied to Mr. Wenkam and read reply to Commissioners.)

4. Letter from Mr. Dunlap, of the Department of Land and Natural Resources, Division of State Parks, regarding remarks on the Federal Bureau of Outdoor Recreation by Mr. Louis E. Reid, Jr. in which he discusses in some detail the new Bureau's responsibilities, functions, and plans.

The XO stated that if Commissioners wished, he would obtain copies for their use.

5. Letter from C.E.S. Burns, Jr. of Oahu Sugar Company requesting meeting with Commission in October, at 9:00 a.m., at Oahu Sugar Company in Waipahu.

Chairman Bryan stated that he had replied to letter, saying that if Commissioners had time on Oahu they would consider meeting with Oahu Sugar Company.

Commissioner Sunn stated that he felt Commission may have to meet with them because of the appeal relating to the Oceanic matter.

6. Letter from Robert S. Gordon of the Honolulu Chamber of Commerce giving their suggestions for Commission's consideration.
7. Letter from Charles W. Atkinson of Atkinson Associates, Ltd. giving a summarized abstract of circumstances which has stymied any attempt on their part to effectuate a sale of property.

Legal Counsel's assistance was called upon to reply to this letter. Legal Counsel's suggestion was that the XO would refer matter to him asking for his advice, and the XO then can make his reply. The Chairman stated that he wished to have definite answers and a reply as soon as possible.

8. Letter from Wendell F. Crockett asking for Commission's advice whether conveyance of portion of his client's lot to daughter for the purpose of building a home on lot, which will be used by daughter's husband in connection with his agricultural pursuits, is within the Land Use Commission's jurisdiction and requires approval and action by Commission.

Legal Counsel's assistance was called upon to reply to this letter.

9. A letter to Dr. Rosenberg of the University of Hawaii from the Governor, regarding setting up meetings and informing the public of Act 187.

The XO stated that Dr. Rosenberg will be setting up these meetings but that these meetings will be conducted by people who understand the rules and regulations. The XO stated that information regarding these programs will be forthcoming and will be sent to each Commissioner.

DECLARATORY RULING

Chairman Bryan briefed the Commissioners on the subject stating that RCA wants to use the pasture area above Kahuku beyond Waimea Bay for a Radio Receiving Station, comparable to that station at Koko Head, Oahu, which must be removed by the end of 1962. The new station will consist of a receiving station, to be confined within a 1.0 to 1.5 acre parcel, with pole and guy lines, receiving antennas and the like. The Chairman stated that RCA feels that this comes under our Section 2.1(b)(6) of the Interim Regulation, and RCA wants this Commission to say that this comes within Section 2.1(b)(6) in our opinion. The Chairman stated that there is a provision for a declaratory ruling under our Rules of Practice and Procedure which states: "....Notwithstanding the other provisions of this sub-part, the Commission may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty." The Chairman stated that RCA wants this Commission to remove that uncertainty.

Legal Counsel's opinion was requested. Legal Counsel stated that it was his belief that the facilities RCA is speaking about are the installation of the office, shop and garage necessary in the operation of the radio tower. Legal Counsel felt that this fell within the private utility lines and facilities, and this did not constitute the excepted offices and yards, etc.; these are the things that are necessary in the operation of this facility.

The XO stated that he had communicated with Mr. Ernest Kai, attorney for RCA, and the XO briefly outlined to the Commissioners what took place.

There were some uncertainties among Commissioners who felt some points were not too clear but this was removed by the legal counsel who summed up the uncertainties by stating that the regulation is quite clear that what RCA is talking about is excluding simply the general use of an agricultural area for utility purposes.

The XO asked the legal counsel if it were possible in a declaratory ruling for the Land Use Commission to state that according to the material they have on file, in this particular case, this is in conformance with the regulation. The legal counsel replied in the affirmative. Chairman Bryan asked the legal counsel for a ruling to make in this case.

Following ruling was given by the legal counsel:

"The Land Use Commission of the State of Hawaii finds that the planned use of the parcels designated First Division, TMK 5-9-06: Por. 5, submitted by RCA Communications, Inc., in connection with its request, set forth in the letter of Heen, Kai, & Dodge, dated August 9, 1962, and supplemented in the letter of the same firm, dated September 5, 1962, said plans being those numbered 1,353,656, dated August 16, 1962; 1,353,614, dated June 5, 1962; and 1,353,554, dated April 15, 1962; comprise utility facilities authorized as provided in Section 2.1b, 6, of the Interim Regulations adopted by the Land Use Commission, effective April 21, 1962."

Commissioner Sunn moved that the Commission reply according to Mr. Canwright's stated ruling which was seconded by Commissioner Williams.

Approval: Commissioners Sunn, Friel, Lombardi, Williams, Cook, Gregg, Ige, and Chairman Bryan.

Disapproval: None.

LEGAL COUNSEL'S REPORT

The following matters were reported by the legal counsel.

1. Waiting Period for Special Permit Actions

Legal counsel stated that as far as the Special Permit is concerned, and as far as the law is concerned, this Commission can so arrange things whereby the Commission can decide matters at the time they are heard.

Legal counsel stated that this Commission has a regulation that requires an allowance of 15 days after the hearing, during which people may submit written statements; and he recommended that the Commission change it for the reason it is difficult to remember the cases and all the facts that were recited or given a month later. The legal counsel stated also that it is impractical to meet two weeks later when the communications are in.

Commissioner Sunn questioned whether the 15 days are in the administrative act. Legal Counsel stated that it is not in the law and that the Commission just inserted it in its regulation.

Commissioner Ige stated that it wouldn't give those people the opportunity who didn't show up at the hearing to speak. Legal counsel stated that they will have the opportunity in the 20 day period during the time of the notice for public hearing and the time the hearing is conducted: it might be just as well to require them to present their information at the time of the hearing or before then to present their information 15 days after the hearing.

2. Waiting Period for Temporary District Boundary Change Actions

This problem could not be resolved at this time. Following questions and statements were given:

- a. Various language usage found in different sections relating to above subject. ("Within not less than.....")

Legal counsel felt that something could be done about this.

- b. Chairman Bryan asked, "At public hearings, when the attorney appears

in behalf of a client and the client may not be present, what should be done?"

Legal counsel stated that if he is appearing solely as a counsel, the Commission does not swear him in; but then if the Commission has no evidence to act on, the Commission may wish to swear him in to actually testify. Legal counsel stated that if the Commission is depending on the statement of facts that the attorney makes, for evidence on the basis of which the Commission is going to act, then the attorney should be sworn in.

The legal counsel also confirmed this to be true of field officers, staff members, etc.

- c. Commissioner Cook asked, "What assurance do we have, in granting a petition, that the petitioner is going to carry out his presentation. In other words, are we, in granting the petition, meeting the needs or hanging a higher price tag on a piece of property?"

Chairman Bryan stated that in granting a change of boundary, or special permit for a specific thing, what the man is specifically going to do with his property is only an illustration why it should be placed in this or another category, and is one of the things we should take into consideration; except that when the County changes their master plan for a specific use, this will tie the person down.

There was no further business. The meeting adjourned at 1:00 a.m.

Respectfully submitted,

YUICHI IGE
SECRETARY