

STATE OF HAWAII  
LAND USE COMMISSION

7:00 P.M. Meeting  
September 26, 1969

Lihue, Kauai

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CHAIRMAN CHOY:

Will the meeting please come to order. All those who wish to testify before the State Land Use Commission, will you please stand. I would like to swear you in all at one time. Is there anybody here to testify for the Moody case? As an attorney, you're exempt. Do you swear that the testimony you're about to give to the Land Use Commission is the truth, the whole truth and nothing but the truth, so help you God?

RESPONSE:

I do.

CHAIRMAN CHOY:

We will proceed with the hearing A69-217.

MR. DURAN:

This is a petition by Robert Enomoto representing Harriet R. Moody. (The September 26, 1969 staff report re: A69-217 - Harriet R. Moody by Robert M. Enomoto, Representative, was read verbatim.) Let me go to the map and orient everyone. This is the district map recently adopted by the Commission. This is the ocean at the top. This is Hanalei Bay; the pink represents the Hanalei urban district and this large pink area is the recently rezoned Princeville Ranch properties. This little pink area is the Hanalei plantation property. This white area is the Hanalei stream. This is the Hanalei valley. This white area is in agriculture, as is this area and this area over here. The green shaded area represents the existing conservation district, so we do have conservation along the shoreline by Kahiliwai Bay and along the bluffs at Princeville. In

MR. DURAN (Cont'd.)

this area . . . this shaded area represents existing conservation district, too, and this green area here along the shoreline as you leave Hanalei Bay. Now on this larger scale map of the same area again, this is Hanalei Bay. This is Hanalei existing urban area, Hanalei River, the agricultural district here. This is Princeville Ranch which we zoned urban, and this shaded area represents the property in question. Again, this pink area is the location of the Hanalei Plantation Hotel. The existing conservation district is shown in this green line along here along the shoreline as it affects this property, so that this depth is about 300 feet here and at this point it's a little less . . . between 80 and 100 feet at this point.

When we speak of the triangular area or the makai area, we speak of this area as being low and this area as being rather high and steep.

CHAIRMAN CHOY:

Rom, that conservation area . . . is that sandy beach area?

MR. DURAN:

Oh well, it's rocky and sandy and kind of a mixture. It's not really a . . . it's not as sandy as your beaches here.

MR. TAKAYAMA:

My name is Roy Takayama. I represent the petitioner, Harriet Moody through Robert Enomoto. I wish to thank initially the Commissioners for . . . (inaudible due to banging in background) . . . my clients really appreciate your consideration.

We concur with the recommendations of the staff but we'd like to take exceptions to the report relative to the (inaudible) out of the conservation district along the shoreline. I would like to point out some inconsistency in the staff report. On page 1, you have here . . .

MR. TAKAYAMA (Cont'd.)

it says that this area is designated a tsunami zone. In 1946, a tsunami reached a height of 10 to 15 feet on each side of Hanalei Bay. I have here a report on tsunamis in the Hawaiian Islands published by Hawaii . . . United States Department of Commerce and . . . (inaudible) . . . survey dated May, 1969, and it lists all the tsunamis that occurred here in the State of Hawaii. And the 1946, April 1st tsunami that hit Hanalei area, the report indicates it was a type of 3.7 feet . . . less than 4 feet, so there is some discrepancy in the report as far as the height of the tsunami along the Hanalei area. So if anybody would like to look at this . . . (inaudible) . . .

I think the staff report was mainly based upon the Civil Defense report that the area which is carved out as conservation is merely because of the tsunami threat. I also have here a report by Doak Cox who is the foremost authority on tsunamis written in February, 1961, and what he says, in essence, is that the first tsunami on Kauai based upon past practice was in 2 areas . . . one, the Wainiha area and, two, Nawiliwili area. However, I think as far as the (inaudible) is considered very cautious and they had included in the report the entire Hanalei area as a tsunami inundation area. But I'd just like to point out that the potential tsunami area as submitted by Doak Cox based upon actual tsunamis that appear does not list this area as a tsunami inundation threat area.

I also wish to point out one point in the staff report. On page 4 of the staff report, the staff makes an assumption that this would not be an isolated conservation zone if the shoreline of Hanalei . . . (inaudible) . . . in its 1969 highway boundaries review. Now, my understanding is that the Hanalei bluffs have not been placed in a conservation district but

MR. TAKAYAMA (Cont'd.)

(inaudible) condition, so in effect what it means. . . it implies the fact that since you have not put in the shoreline portion . . . (inaudible) . . . in a conservation district except the shoreline area along the subject property, then in essence I'd like the Commission to consider whether that's consistent with what they have done in the Hanalei area. You'll notice that in the Hanalei area along the river banks, Hanalei area is placed in conservation except for public property. Now, I'm talking about . . . well, right over here . . . which is a low lying area along the mauka of the Hanalei River right along that Hanalei Bay area. It's all in urban up to the shoreline along there.

And just one more point. In closing, I'd like to point this out, that I think consideration of . . . (inaudible) . . . My understanding was that you're placing a lot of these areas . . . if they was under form of protest, you would reconsider and leave it as it is before you place it in the conservation district. Now that was my understanding. And in this case clearly there was a petition already filed before you adopted the conservation district boundaries so, in effect, there was a protest submitted to the Commission when the Commission adopted its final review boundaries sometime in August.

Thank you very much.

COMMISSIONER NAPIER:

(Question totally inaudible due to banging in background.)

MR. TAKAYAMA:

Well, initially what happened was that the petition was filed way back in February or so, and at that time, you did not have a conservation district mapped out. So what we were asking for at that time was amendment

MR. TAKAYAMA (Cont'd.)

to agriculture according to urban.

COMMISSIONER NAPIER:

What do you mean a protest against the . . (inaudible) . . ?

MR. TAKAYAMA:

That's right. That's right. Asking them to amend the property from agriculture to urban.

COMMISSIONER:

What do you propose to do in terms of development in the area that's been proposed as conservation?

MR. TAKAYAMA:

We propose to develop a resort and residential units.

COMMISSIONER:

Right down in that particular area?

MR. TAKAYAMA:

Basically, what we have in mind is . . . this is, of course, a long range plan, but we feel some . . . I think (inaudible) if I'm wrong, maybe you can speak up . . . you propose to build condominium units . . . hotel units along the bluff area here and some in the middle area, right?

UNIDENTIFIED:

Yes. In the back. There will probably be a lagoon . . (inaudible) . . lot back there, but we plan to dredge and . . (inaudible) . .

MR. DURAN:

Roy, I think the question was, what are you going to do within the conservation area.

MR. TAKAYAMA:

Yes, I think in the conservation at this time we're not sure as to

MR. TAKAYAMA (Cont'd.)

what we might be building . . (inaudible) . . because I think the conservation area . . (inaudible due to speaker talking too fast) . . of 300 feet which actually takes up a substantial amount of flat land in the area, because the map doesn't indicate the true configuration as far as the buildable area in there.

MR. DURAN:

That's slightly above the high water mark now, isn't it, or quite a ways back in? This is all (inaudible) in here, right? All low lands.

MR. TAKAYAMA:

Yes.

MR. DURAN:

And this is very, very low compared to mean high water mark. But right now you really don't have any plans for building in the conservation area?

MR. TAKAYAMA:

No.

COMMISSIONER:

If this proposed conservation area is designated, what would that do in terms of your plans with what you want to build? As I understand it, there aren't any firm plans as of now as to what you really intend to do with the whole area. What would be detrimental then to the property if that portion that's marked there were placed in conservation? What detriment would there be to the property owner?

MR. TAKAYAMA:

Well, for one thing, you're taking away the substantial set-back from the shoreline which prevents the developer from building if he wants to . . .

MR. TAKAYAMA (Cont'd.)

if he has a scheme to build along the . . . closer to the shoreline . . .  
if he can devise a means of building and constructing. Another thing is  
. . . it's a matter of known fact that carving out a conservation district  
along the shoreline of a property would, in effect, economically make it  
that much more difficult to market.

COMMISSIONER:

Why?

MR. TAKAYAMA:

Well, it's understandable in the real estate deal that whenever you  
have another agency involved which zones it conservation that it means  
that you have to go to another agency to get the permit, if at all possible.  
Because . . . I think my point here is this . . . that if the Commission  
is concerned about the tsunami trend, then the copies also have a tsunami  
control program. If you put this area in urban, then the County require-  
ments comes into play rather than going through another State agency,  
because in a County level, they have to go back to zoning change anyway  
in the County and they have the controls as far as tsunamis are concerned.  
They're following the same, I think, civil defense tsunami map. So rather  
than going to another agency, then the County can police that area as far  
as tsunamis are concerned.

COMMISSIONER:

Roy, I don't think this line would (inaudible) tsunami area. This is  
just a fact of the shoreline areas throughout the State that we have been  
zoning conservation. I don't think the tsunami really has . . .

MR. TAKAYAMA:

Oh, if that's the case . . . well, then, if that's the case, then  
actually the beach area should be . . . I mean, you don't need 300 feet  
then.



COMMISSIONER:

Well, . . . shoreline. It doesn't have to be up to 300 feet . . .

CHAIRMAN CHOY:

. . . (inaudible) . . . if there were no natural boundaries.

COMMISSIONER:

Yes. All we're trying to do is . . . (inaudible) . . . I think that's what . . . (inaudible) . . .

COMMISSIONER:

Rom, I don't think that's the high water mark . . . (inaudible) . . .

MR. DURAN:

Oh, no, no. The high water mark . . . This is probably the high water mark right here.

MR. TAKAYAMA:

How do you get that line?

COMMISSIONER:

There's no natural barrier over there at all.

MR. DURAN:

No, I don't think so either. This was mapped by our consultants and I'm not sure why this is wider at this end and narrow here.

COMMISSIONER:

Really, the whole are is low.

CHAIRMAN CHOY:

When a petitioner comes forward to rezone a particular parcel of land and . . . (inaudible) . . . conservation, is it a hard and fast rule that this land has to be rezoned in 2 separate portions. Can he request that both agricultural and conservation zoned lands that belongs to . . . that action on one parcel be zoned urban? In essence, Roy is asking that this property

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become urban. Isn't that what you're requesting, Roy?

MR. TAKAYAMA:

Yes.

CHAIRMAN CHOY:

Is there any . . . ?

COMMISSIONER:

I don't think there's any legal (inaudible) as far as the Commission is concerned. I think that they can consider this request and act on it, you know, within its discretion.

MR. DURAN:

Mr. Chairman, might I comment on that? At the time this petition was filed, all of this land was in the agricultural district, and we since adopted our new district boundaries and placed this area in the conservation district, so it is presently in a conservation district. Now when we advertised your application, we realized that conditions had changed in here, so we took the liberty of advertising both rezoning from conservation and agriculture to urban. So legally you're protected there and the Commission can take action on both or . . .

MR. TAKAYAMA:

That makes it even clearer.

CHAIRMAN CHOY:

In other words, you're asking that both zoning be resumed?

MR. TAKAYAMA:

That's right.

CHAIRMAN CHOY:

You might substantiate that request with a letter just to clarify the

CHAIRMAN CHOY (Cont'd.)

request.

MR. TAKAYAMA:

I will do that, Mr. Chairman.

CHAIRMAN CHOY:

Should . . (inaudible) . . , Rom?

MR. DURAN:

Well, I don't think that's too pertinent. If there's any question about it, we should.

MR. TAKAYAMA:

If it's the course of the Commission to set it back 100 feet . . (inaudible) . . you know, we would be willing to do whatever the Commission wanted to do. We would be willing to go along with a 100 foot set back. But I think 300 feet is a substantial set back requirement which I don't think you have in any part of Kauai where you have such a nice . . (inaudible) . . The shoreline is quite a nice beach over here. I was out there yesterday.

COMMISSIONER:

It's a sandy beach, but not as good as Hanalei.

MR. TAKAYAMA:

So you're taking away quite a number of . . .

COMMISSIONER:

What is it that's on the narrow side of . . (inaudible) . . What is there? Is there a big slope there or what?

MR. DURAN:

No. This is (inaudible) going down; this is bluff coming down. And this is all very flat in here and marshy.

MR. DURAN (Cont'd.)

The reason, of course, that this wasn't placed in conservation is, again, when we made our 5 year boundary review, we only changed agricultural lands that were along the shoreline into land zoned agriculture that were not used for agriculture into the conservation district, which is why this wasn't put in. Of course, this is a bluff. And why this wasn't put in, because it was existing urban. But this was added because it is the bluff along the Hanalei River, and all of this land was added along the bluffs and this area. Of course, Lumahai was already in.

MR. DURAN:

Mr. Chairman, on that tsunami . . . I wonder if I could ask Shiro a question on that area. Wasn't there substantial damage to the homes in here along the waterfront that wiped out the Cox's residence, damaged it . . . ?

COMMISSIONER NISHIMURA:

Not that heavy. The tsunami area is . . . (inaudible) . . . You know, where (inaudible) have his apartment now. All that area.

MR. DURAN:

I know there's another report out. I haven't seen this one, but there is another report out with maps that show the inundation along the shoreline.

COMMISSIONER NISHIMURA:

I . . . (inaudible) . . . but the water is not the force like Hilo, Kalihiwai, Kaena. These are 3 of the most dangerous areas. Kalihiwai, Kaena and Hilo.

MR. DURAN:

Mr. Chairman . . . Roy, are you guys preparing a development plan for

MR. DURAN (Cont'd.)

this area?

MR. TAKAYAMA:

Yes.

MR. DURAN:

Do you have any time table on it?

MR. TAKAYAMA:

No time table is set forth as yet.

MR. DURAN:

In other words, what I'm thinking of is that if we go back to our new regulations where we have this new provision for performance time subject to the proposal by the developer and we're talking about substantial development within 5 years, and what was intended, of course, is that we would have some kind of a physical plan and the development schedule as part of the evidence in support of the original request. Is it possible that something like that could be submitted before our action?

MR. TAKAYAMA:

I really can't answer that, Rom, because I don't know how far the planners have gone into the development phase of it to submit it to the Commission.

CHAIRMAN CHOY:

You have 45 to 90 days.

UNIDENTIFIED:

I was going to suggest in the letter the submission of additional or supporting evidence. I feel that there should be some plan as to what's going to happen and when and also to what detriment would be if the present conservation zone remains as it is . . . what detriment it would be to the property owner other than the fact that the property owner would just as soon . . . (inaudible) . . .

CHAIRMAN CHOY:

Any other questions? Thank you, Roy. You will submit further evidence?

MR. TAKAYAMA:

Yes. Thank you.

CHAIRMAN CHOY:

. . (inaudible) . . heard Harriet Moody and that was the only one on our agenda, so at this time I'll have to ask the Executive Officer if he has any correspondence or . . .

MR. DURAN:

Under miscellaneous, Mr. Chairman, we do have a letter from Hui Ko'olau which is a letter from Mr. Harper informing us that they have formed a community organization in Kahaluu and that they look forward to working with the Commission and the staff in the future.

Also, you'll note number two, there's a request here from Morio Omori. Actually, that request never came in. We had a discussion in the office and, just for your information, you'll recall the Bishop Estate/Austin Estate rezoning on Oahu.

CHAIRMAN CHOY:

Yes.

MR. DURAN:

And he came in with a map of that area which was in greater detail photographically which illustrated main pockets of land under a 20% slope all the way up to the forest reserve line, and he asked me if it was my understanding that the Commission zone everything under 20% in the urban district, and I replied in the negative. I said that we zoned everything they indicated on their development plan within a line that we drew that

MR. DURAN (Cont'd.)

was in the urban district, but those 20% pockets up above were not intended to be in the urban district. And I told him what he would have to do is submit a letter to the Commission for clarification if he didn't accept my interpretation of it. I did talk to Sunao and ask him what his understanding was. We got the minutes out and I read them one way, Morio reads them the other way, and then . . . it's not really that clear except that I know the discussions that we had and the boundary maps that you asked us to draw, and it's what I understood to be the opinion of the Commission. So this isn't really anything for action now, but just merely a . . . if you want to kick it around. If somebody has some definite views on it, fine. But I am of the opinion that we zoned only up to that urban line with the understanding that with . . . if he came in with a topographic map and showed that that line could bow a little bit here and bend a little bit there to include 20% lands . . . lands under 20% slope . . . that this was agreeable and this is what the Commission understood, but not all of these little pockets all the way up to the forest reserve line.

CHAIRMAN CHOY:

Do we have that work map?

MR. DURAN:

Oh, I don't think we brought that folder along.

CHAIRMAN CHOY:

But we have one?

MR. DURAN:

Yes, it's in the files. Right.

CHAIRMAN CHOY:

I think if the question comes up, we should look at the maps again.

COMMISSIONER:

I thought we had the forest reserve line already.

MR. DURAN:

Right.

CHAIRMAN CHOY:

We didn't go up to the forest reserve. I wouldn't swear to that right now. I would like to see the map.

MR. DURAN:

But I think the best way to resolve this would be to let the Commission make the determination on this, and I have to stick fast by that line that we have on our district boundary maps.

And then this other letter, Mr. Chairman, from Brewer is just information for you. They submitted some additional evidence pursuant to that Ka'u hearing that we had in Kona, and so we'll later summarize it in our memorandum to you when we take action, but I did submit it to you for your advance information.

And then, of course, there is one other insignificant item that was submitted by Shiro Nishimura. No address. I don't know where he's from.

CHAIRMAN CHOY:

May I see the letter?

MR. DURAN:

This again is . . . (inaudible due to consistent banging in background)

. . . It has nothing to do with the Commissioners.

That's all that I have, Mr. Chairman.

We do have a meeting next Friday on Molokai. You will, if you haven't already, receive your airplane tickets.



CHAIRMAN CHOY:

Before we adjourn, is there anybody in the audience that would like to speak for or against any particular question on boundaries on Kauai?

If not, the meeting is adjourned.

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