

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

APPROVED  
DEC 11 1970

Kaunakakai Elementary School Cafetorium  
Kaunakakai, Molokai

September 26, 1970 - 9 a.m.

Commissioners Present: Goro Inaba, Chairman Pro Tempore  
Eddie Tangen  
Leslie Wung  
Alexander Napier  
Tanji Yamamura  
Stanley Sakahashi

Commissioners Absent: Sunao Kido  
Shelley Mark

Staff Present: Ramon Duran, Executive Officer  
Ah Sung Leong, Planner  
Walton Hong, Deputy Attorney General  
Dora Horikawa, Stenographer

Acting-Chairman Goro Inaba called the meeting to order and swore in all persons wishing to testify. He then called the following hearings.

HEARINGS

PETITION BY LAND USE COMMISSION (A70-256) TO REZONE 202.70 ACRES FROM CONSERVATION AND RURAL TO URBAN AT KALUAAHA-PUKOO, MOLOKAI)

The Executive Officer, Mr. Ramon Duran, informed the Commission that since the hearing on this matter was continued from the Maui meeting, notice of today's hearing was again sent to all interested parties. He then called on the staff planner, Mr. Leong, to describe the area proposed for reclassification from posted maps. Mr. Duran then presented the staff report (on file) and noted that 25 letters were received opposing the rezoning and 8 letters in favor of the rezoning.

Mr. E. Loy Cluney, Molokai member of the Maui Council, thanked the Commission for holding the hearing on Molokai. He stated that although the Commission's proposal to urbanize the 202 acres at Pukoo would be in conformance with Molokai's General Plan, it would be premature to do so at this time. He felt that development proposals should be considered individually, thus enabling the Commission to exercise greater control and prevent speculation.

Maui Planning Director H. Nakamura reiterated the Maui Planning Commission's recommendation for approval of only the portion of the subject area, situated between Kupeke and Pukoo Fishponds, which was estimated to contain less than 40 acres. He stated that since there does not appear to be any great demand for urbanization along that area, development requests should be considered individually.

Mr. Duran questioned Mr. Nakamura as to whether better control can be exercised through the issuance of special permits rather than spot zoning development proposals.

Mr. Nakamura replied that if the proposal conforms with the General Plan, it would be wiser to redistrict. He felt that urbanizing each development through issuance of special permits would provide greater control but would be contrary to the Land Use Law.

Mr. Gene Duvauchelle, lessee of Niaupala Fishpond, asked whether Maui County is encouraging spot zoning in the area.

Mr. Nakamura answered that he did not think it is spot zoning when individual requests are in conformance with an adopted General Plan. He stated that spot zoning occurs when individual requests are approved in the absence of a General Plan.

Mrs. Alice Kalima, Community Affairs Chairman of the Kilohana Action Program, stated that the organization opposed the rezoning because of inadequate roads, water system and the lack of other urban amenities in the area.

Mr. Robert Cushing, representing the Hawaiian Sugar Planters Association, stated that they did not oppose the rezoning but desired to continue the present agricultural uses on the property.

Mrs. Zellie Sherwood questioned why the mauka side of the highway was not included in the rezoning proposal.

The Executive Officer replied that since there have been no major proposals for urban development on the mauka side, the Commission proposed urbanization of only the shoreline side of the road.

Mrs. Sabas asked the reason for the proposed rezoning and the difference between an Urban and a Rural designation.

The Executive Officer explained the difference between the 2 designations and stated that he believed the action was initiated because of the great interest in urban development in the area and since it conformed with the County's General Plan.

Mrs. Sabas stated that she is opposed to the rezoning and felt that the people in the area are also opposed.

Mrs. Evelyn Bicoy felt that the added taxes which would result from urbanization would be too heavy a burden for the small landowners in the area.

Mr. Allan Stewart added his concern over the increased taxes.

Mr. William Kalipi asked whether the initiation of the petition by the Land Use Commission was exceeding or against the Commission's normal procedure.

Commissioner Tangen answered that in order to resolve the criticism of the spot zoning at Pukoo, the Commission initiated this rezoning to eliminate any question of spot zoning and schedule a hearing to get the people's response. He assured Mr. Kalipi that the testimony received here will be considered and that the Commission will act accordingly. He requested an informal poll of the people in attendance by a show of hands which indicated that the great majority of those attending opposed the rezoning. No one favored the rezoning. Acting-Chairman Inaba thanked the audience and advised that additional testimony will be accepted in the next 15 days. The hearing was closed and a short recess was called.

## SHORELINE SETBACK

Mr. Duran, the Executive Officer, presented the reasons for passage of Act 136 or the Shoreline Setback Law and explained the provisions contained therein.

Maui Planning Director H. Nakamura assured the people of Molokai that an opportunity to be heard will be extended them when the County formulates its rules and regulations to administer the shoreline setback line.

Molokai Council member <sup>E. Loy</sup> Cluney testified that he opposed the setback and preferred that the status quo be maintained until the County's rules and regulations can be established.

Commissioner Tangen explained that this was not possible under the legislative mandate to establish a 20-40 foot setback.

Mr. Albert Inaba urged the establishment of a 20 foot setback for Urban areas.

Mr. Arthur Chu, landowner at Wailua, requested a 20 foot setback.

Mr. William Dunbar asked where the setback will be established in fishpond areas. The Executive Officer explained that this question may need to be legally clarified. Deputy Attorney General Walton Hong recommended that a legal opinion be requested by the staff from his office.

Mr. James Richmond, lessee of Keawanui Fishpond, felt that a 20 foot setback is adequate. He also thought that the shoreline should be determined at the outer walls of fishponds and not from the inner shores of the pond.

Mr. Gene Duvauchelle and Mr. H. B. Hustace felt that a 20 foot setback is sufficient.

Mr. Tom Flynn, attorney for the Foster family in East Molokai, urged the establishment of a 20 foot setback.

Mr. Mendosa, Mrs. Bicoy and Mrs. Pearl Friel favored the minimum 20 foot setback.

Attorney Jerry Chong, representing the Kaluakoi Corporation, stated that the establishment of an arbitrary 40 foot setback would upset the overall planning of the resort development in West Molokai. He felt that the County should have the prerogative of setting a greater setback than the minimum 20 foot setback.

Mrs. Alice Kalima and Mr. Alan Stewart favored the 20 foot setback.

Mr. Henry Yamashita asked for an estimate of the acreage affected by a 40 foot setback and was told by the Acting-Chairman that the staff would later provide him this information. Mr. Yamashita urged the establishment of the minimum setback in view of the undeveloped nature of Molokai.

In reply to a question by William Kalipi, the Executive Officer noted that if a fishpond was filled with the proper authorization, the setback would be determined from the new shoreline at the outer walls of the pond. Mr. Kalipi asked if separate setbacks may be established for construction and for sand removal. Mr. Duran replied that the law does not provide for this; it requires the Land Use Commission to establish a shoreline setback of 20 to 40 feet only. Mr. Kalipi then expressed his support for the 20 foot setback.

Mrs. Patricia Kiili of Kawela favored the 20 foot setback for small property owners but felt that the 40 foot setback would be appropriate for hotel and commercial developments.

Mrs. Wilma Grambusch questioned where the setback would be for her property since she owned a fishpond and the property situated outside of the pond.

Deputy Attorney General Hong replied that it depends on whether the Commission establishes the setback from the outer walls of the pond or whether it would be determined from the inner shores of the fishpond.

In reply to a question by Mr. Mendosa, the Acting-Chairman explained that the Land Use Commission is comprised of people from different islands. However, membership of the County planning agencies is composed of people from within the respective Counties and, therefore, would be more familiar with their own problems. Because of this familiarity, the Counties were given the authority to administer the provisions of the law,

which includes variances for hardship.

Mr. Harold S. Wright, speaking on behalf of Canadian Hawaiian Developers of Pukoo Fishpond, stated that the 40 foot setback would seriously impair their project. He urged adoption of a 20 foot setback for Molokai.

The Acting-Chairman asked for more testimony. Since there was none, he informed that further written testimony will be received by the Commission up to 15 days after. He then closed the hearing on this matter.

#### MISCELLANEOUS

##### 1. Tentative Schedule

The Commission discussed the tentative schedule and decided to hold their next meeting on October 9 in Honolulu. Another meeting was scheduled for October 10 at Lihue.

##### 2. Response to Land Use Inquiry on Vacant Urban Zoned Lands

Requests for extension of time to respond to the Commission's inquiries received from Pflueger, Dillingham and Atherton Richards were discussed.

The Acting-Chairman suggested that the Executive Officer work out a declaration form so that any Commission member who felt that his participation in a particular matter would constitute a conflict of interest may fill out one. The form will then be filed with the records of the Land Use Commission. He felt that this would be more effective than a verbal declaration, which is often difficult to pick up on the recording tape.

Commissioner Napier declared a conflict of interest in the matter concerning Atherton Richards and Commissioner Yamamura excused himself from participation in the Dillingham matter.

Commissioner Tangen's motion to grant an additional 45 days to Pflueger and Atherton Richards to respond to the Commission's request was seconded by Commissioner Yamamura and carried.

Commissioner Napier's motion to approve an extension of 4 months to the Dillingham Corporation was seconded by Commissioner Sakahashi and was also carried.

3. Rescinding of SP69-60 - Helen Divine

The Commission felt that since Mrs. Divine has not complied with the conditions stipulated under the special permit that construction be initiated within one year of approval by the Land Use Commission, that the special permit has automatically expired and, therefore, required no further action by the Commission. It was suggested that the Executive Officer so inform the Hawaii County Planning Commission.

4. Boundary Interpretation Request by Maui County for Frank A. Haleakala

The staff planner described the parcels for which the Maui County Planning Commission desired a classification of the land use district boundaries. It was pointed out by Mr. Leong that the 3 parcels involved are clearly situated in the Agricultural District and had so informed the Maui Planning Department. It was noted that Mr. Frank Haleakala wished to construct a second dwelling on one of the 3 parcels.

In the letter to the Maui Planning Department, the staff advised that a boundary change petition appeared reasonable in view of the extent of development of the abutting Puuhala Urban District and since the parcels involved are already in urban use.

Acting-Chairman Inaba suggested that the best solution would be for the County to submit a petition involving all 3 parcels. Since there was no further business, the meeting was adjourned.