

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Meeting Room, First Hawaiian Bank
Kailua, Kona, Hawaii

September 27, 1978 - 10:00 a.m.

Approved
December 13, 1978

COMMISSIONERS PRESENT: Charles Duke, Chairman
Shinichi Nakagawa, Vice Chairman
James Carras
Colette Machado
Shinsei Miyasato
Shinichi Nakagawa
Mitsuo Oura
George Pascua
Carol Whitesell

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Allan Kawada, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

ACTION

SP78-313 - CHARLES T. ONAKA
SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF A SMOKED BEEF
BUSINESS AT HONAUNAU MAUKA, SOUTH KONA, HAWAII

Mr. Daniel Yasui, Planner, pointed out the location of the property on the maps and oriented it with various surrounding landmarks. A resume of the staff memorandum relative to the subject request was also presented.

Commissioner Whitesell observed that the petitioner was in fact already operating a meat smoking business on the property and wondered why the County had permitted this to occur. Chairman Duke agreed that this subject Special Permit request appeared to be after the fact even though it was a request for a very small operation. However, he also felt that it would behoove the Commission to discuss this type of untimely requests with the Planning Commissions.

It was moved by Commissioner Oura to approve the Special Permit, subject to the conditions imposed by the Hawaii County Planning Commission. The motion was seconded by Commissioner Carras and unanimously carried.

At Commissioner Whitesell's suggestion, Chairman Duke instructed staff to set up a meeting of the Commission for the purpose of discussing problems relating to Special Permit applications, such as untimely requests and others which have confronted the Commission from time to time.

SP78-318 - HAWAII COUNTY POLICE DEPARTMENT
SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF AN OUTDOOR PISTOL RANGE AT KAI'AAKEA, NORTH HILO, HAWAII

A resume of the staff memorandum was presented by the Planner. The location of the subject property was also pointed out on the maps.

In response to questions which were raised by the Commissioners, Miss Piianaia, Planner with the Hawaii Planning Department, provided the information that the Special Permit had been approved by the County for the use of the entire 15-acre parcel although the proposed use would be sited on an approximately 1.5-acre portion of the parcel.

Commissioner Carras moved to approve the Special Permit, subject to the conditions imposed by the Hawaii County Planning Commission, subject further to clarification regarding the 1.5 acres required for the pistol range and the 15+ acres described in condition No. 1. The motion was seconded by Commissioner Oura and unanimously passed.

SP78-273 - OAHU CORPORATION
SPECIAL PERMIT TO ALLOW A ONE-YEAR TIME EXTENSION TO COMMENCE CONSTRUCTION OF A RECREATIONAL THEME PARK AT KAHE POINT, EWA, OAHU

Mr. Furutani, Executive Officer, pointed out the location of the subject property on the maps and oriented its location with various surrounding landmarks. A resume of the staff memorandum was presented. It was also reported that a letter had been received from the attorney for the Neighborhood Board No. 24, et al, requesting the "hearing on the building permit extension be held on Oahu and that the presently scheduled action be continued until the Land Use Commission's next meeting on Oahu", since a contested hearing procedure was indicated.

Mr. Allan Kawada, Deputy Attorney General, counselled that he did not believe a contested case hearing for a consideration of a time extension request on a Special Permit application was warranted or meritorious, inasmuch as today's request was merely a modification of a condition already imposed by the County at the original hearing. Therefore, it was his contention that the action taken by the County was not in violation of due process, as stated by the attorney for the

Neighborhood Board. He advised that if the Commission were to proceed with the extension request, it would not be violative of either Chapter 205 or the Commission's Rules and Regulations. Moreover, the Commission is an appellate body for purposes of considering Special Permits and would be in violation of its own rules if it should take additional testimony when considering a Special Permit extension request.

Vice Chairman Nakagawa moved to approve the time extension request by the petitioner, as approved by the City Planning Commission. The motion was seconded by Commissioner Carras and unanimously carried.

SP78-317 - DEPARTMENT OF PUBLIC WORKS, CITY & COUNTY OF HONOLULU
SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF A SEWAGE TREATMENT
PLANT AT KAHUKU, OAHU

The location of the property under discussion was pointed out by staff Planner. A summary of the staff memorandum on the subject Special Permit was offered.

Mr. Kawada felt that it would be in order to have a discussion of the subject request in light of the restrictions under Section 4.5 of Chapter 205 which would preclude subdivision of subject lands for the purposes proposed, and also exclude treatment plants from Class A and B lands. Therefore, Mr. Kawada suggested that clarification be sought from the County as to the soil classification of the lands and whether it will be necessary to subdivide the land in order to carry out the purposes of the permit. It was recommended that the permit be remanded to the County for clarification.

Mr. Furutani observed that there were two parts to the discussion; one involving the question of whether the requested use was appropriate within the Agricultural District, and the other concerning the possible subdivision of the property. It was pointed out that the subdivision question properly belonged at the County level and could be resolved when the petitioner applies for subdivision approval from the appropriate county agency. It was Mr. Furutani's feeling that the Commission should concern itself only with the appropriateness of the proposed use in the Agricultural District.

At Mr. Kawada's request, it was moved by Vice Chairman Nakagawa, and seconded by Commissioner Whitesell, to go into executive session to discuss the legal aspects of the sewage treatment plant request. The Commission was in executive session from 11:05 a.m. to 11:40 a.m.

11:40 a.m.

Mr. Kawada elaborated that he had recommended to the Commission to request a clarification from the City and County

concerning the soil classification of the subject property, and whether a subdivision of the subject parcel will be required in order to establish the proposed use. It was Mr. Kawada's opinion that this clarification was relevant to the consideration of compliance with Section 4.5 of Act 205.

Commissioner Whitesell moved to remand SP78-317 back to the City Planning Commission with a request for information on the productivity ratings of the land, method of land conveyance, and whether the petitioner can comply with Section 205, 4.5 of the Hawaii Revised Statutes. The motion was seconded by Vice Chairman Nakagawa.

It was emphasized by Mr. Kawada that this request for clarification from the City dealt strictly with the procedural and legal aspects of the request and in no way reflected on the merits of establishing a sewage treatment plant on the parcel.

The motion was unanimously carried.

Chairman Duke directed the Deputy Attorney General to prepare a letter informing the City of the Commission's foregoing action.

HEARING

A74-440 - KOBAYASHI DEVELOPMENT & CONSTRUCTION, INC.

Pursuant to a notice published in the Honolulu Advertiser and the Hilo Tribune-Herald on August 16, 1978, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by Kobayashi Development and Construction, Inc. to amend the land use district boundaries for approximately 214 acres presently in the Conservation District into the Urban District at North Kona, Hawaii, Docket A78-440.

Chairman Duke administered the oath to persons planning to testify today.

Mr. Kazuo Omiya, Vice President and General Manager of Kobayashi Development and Construction, Inc. read a motion requesting that the hearing today be continued for six weeks for the following reasons:

1. Petitioner first learned of the County's and DPED's adverse positions during the pre-hearing conference.
2. The objections, reasons and issues raised therein are extensive and complex. Petitioner was unable to adequately address these objections and arrange for witnesses on such short notice.

3. Petitioner contacted Shirley Gilb of the Kona Outdoor Circle, public witness, and Sidney Fuke, Hawaii Planning Department, both of whom had no objections to the continuance of the hearing. (However, Maurice Kato, Deputy Attorney General representing DPED noted his objections to the continuance of the hearing.
4. Part III, Section 3-1 (3) of the Commission's Rules and Regulations states that the presiding officer may, in his discretion, postpone or continue any hearing.

Mr. Lionel Meyer, Deputy Corporation Counsel representing the County of Hawaii, submitted that the County was prepared to proceed with the hearing. He found the petitioner's request untimely and unusual in view of Mr. Omiya's position during the pre-hearing conference with respect to any delays in the proceeding. However, should the continuance be granted, the County would like to request another pre-hearing conference.

Mr. Maurice Kato, Deputy Attorney General representing DPED, also objected to the continuance at this late date. It was his contention that a continuance at this late date would inconvenience, not only the Commission, but the other parties and members of the public who are interested in the subject petition. Mr. Kato conceded that there would be extenuating circumstances under which the Commission could opt to continue with the hearing. However, in this instance, there did not appear to be any extraordinary circumstance to justify granting a continuance. Moreover, Mr. Kato felt that the positions of all the parties revealed at the pre-hearing conference should not be used as a basis for requesting a continuance.

Mr. Omiya was granted permission to read into the record a letter dated September 12, 1978 from Mr. William Thompson, Chairman of the Board of Land & Natural Resources, addressed to Mr. Fuke, and marked County's Exhibit "W", which he had received a couple of days ago. Mr. Omiya maintained that the views contained in the letter opened up a new point of argument which will require more research and preparation.

Both Mr. Meyer and Mr. Kato voiced their views regarding Mr. Omiya's argument over County's Exhibit W.

On the basis that it was obvious petitioner will need additional time to overcome objections of both the County and State, Chairman Duke granted the petitioner's motion for continuance.

Chairman Duke directed the petitioner's attorney to draw up a Decision and Order pursuant to the foregoing motion by the petitioner, and to send copies to all of the parties.

MISCELLANEOUS

ADOPTION OF MINUTES

The minutes of July 18, 1978, August 8, 1978 and August 9, 1978 were adopted as circulated, upon motion by Commissioner Whitesell, seconded by Commissioner Machado.

The meeting adjourned at 1:15 p.m.