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STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

County Board Room  
Lihue, Kauai

October 2, 1965 - 9:20 A.M.

Commissioners

Present:

Myron B. Thompson, Chairman  
C.E.S. Burns  
Charles Ota  
Goro Inaba  
Leslie Wung  
Shiro Nishimura

Absent:

Jim Ferry  
Shelley Mark  
Robert Wenkam

Staff

Present:

George Moriguchi, Executive Officer  
Roy Takeyama, Legal Counsel  
Raymond Yamashita  
Ah Sung Leong, Draftsman  
Dora Horikawa, Stenographer

County Planning

Directors Present:

Raymond Suefuji, Hawaii  
Robert Ohata, Maui  
Thomas Yamasaki (Representing Kauai Director)  
Philip Yoshimura (Assistant to Mr. Suefuji)

GENERAL SESSION

Chairman Thompson called the meeting to order with the comment that he was very happy to have representation from the neighbor islands and to have them act as consultants to the Commissioners. He mentioned that invitations had been sent out to all the Planning Directors of each county for this meeting and that a standing invitation was extended to all future Commission hearings and meetings. The Commissioners had found participation by the Planning Directors on petitions very helpful--in fact, comments need not necessarily be confined to matters pertaining to their respective islands. Chairman Thompson asked that the Planning Directors share their thoughts on the matter of participation with the Commission.

Commissioner Ota brought up the fact that very often decisions are rendered on petitions on islands other than that from which they originate, making it difficult for the petitioners to make their appeal, and that the Commission might be open to criticism. Mr. Moriguchi explained that these meetings were held according to the public hearing schedule and not on the action items; that the Commission was mandated by law to hold the public hearings in the County where the petition originates.

Chairman Thompson suggested that perhaps the County Planning Directors could speak up in behalf of petitions concerning their counties. Mr. Suefuji, Hawaii Acting Director, did not think they were in a position to speak in behalf of the petitioners since they were representatives of the counties reviewing and delving into the merits of the case, providing unbiased opinions to the Commission.

Mr. Robert Ohata, Maui Planning Director, expressed his opinion that once a hearing has been closed, it should not be reopened to the public at the time of the action meeting. He said that if this procedure were followed, it would be immaterial where the meetings were held. He also felt that it was unfair for him to appear in behalf of a petitioner, in that he would be representing only the one faction involved in the petition. Whenever possible, he thought that the Land Use Commission staff should attend the special permit hearings held on the neighbor islands. He said notification of such hearings were given the staff in advance.

Mr. Moriguchi wondered about the fact that petitioners were permitted to submit additional supporting data up to 15 days following the public hearing. Mr. Takeyama advised that the intent of the Rules and Regulations in permitting this was to allow the petitioner to submit any new evidence which might have a bearing on the case. He admitted there was a tendency to rehash the same facts over and over again, but felt that this could be controlled. This would also allow petitioner an opportunity to rebut recommendations and interpretations presented in staff report, since in many cases he would not have received the staff report before the hearing date.

Mr. Moriguchi observed that actually the 15 days cut-off period was meaningless because the petitioners were permitted to rebut during the action meeting. Commissioner Burns stated that there had to be a cut-off date because otherwise petitioners could come in at the last minute with reams of additional evidence and the staff would have difficulty making an intelligent analysis.

Chairman Thompson commented that this brought up the question of whether the Commission should change the 15-day time limit for additional testimony.

Chairman Thompson wondered if Mr. Ohata was experiencing any feed-back problems. Mr. Ohata replied that he found relationships with the Land Use Commission had improved tremendously and that the rapport was very good.

Mr. Ohata felt that it was very important for the County Planning Directors to be present at the public hearings whenever possible. He continued, although the Land Use Commission was a state agency, it should conform to the County General Plan rather than the State Plan.

Commissioner Ota felt that the suggestion made by Mr. Ohata to have a staff member present at the special permit hearings was an important one. He mentioned that a staff member had to go to the neighbor islands to make spot inspections anyway. Mr. Ohata assured that staff would be given equal opportunity to question the petitioner.

On the matter of staff going to county hearings, Mr. Moriguchi wondered whether this was permissible and if any provision permitted staff's making independent reviews. Mr. Takeyama advised that independent reviews were permissible.

Commissioner Ota suggested that <sup>to</sup>improve working relationships between the Commission and county planning offices, a copy of the agenda be sent to each county commission. Mr. Moriguchi reported that he had already been so instructed by the Chairman.

Mr. Ohata felt that the best line of communication was between staffs since they had more permanency and were paid employees.

Commissioner Ota commented that at the time of the annual Planning Commissioners and Directors Conference, much could be accomplished if the two groups could act jointly on legislative matters.

Mr. Takeyama expressed his views on the matter of opening the floor to the public after the hearing. The intent of this was to afford Commissioners an opportunity to obtain additional information and data that were not brought out at the time of public hearing, to enable them to make an intelligent decision.

Chairman Thompson brought out the question of whether the Commission should change the 15-day time limit.

Mr. Ohata pointed out that the 15-day time limit was set forth in the Rules and Regulations of the Land Use Commission. However, he felt that the Commission could rule on whether any evidence was admissible or not after due consideration.

Mr. Takeyama also advised that the Commission had the authority to enforce the 15-day time limit.

Mr. Yamashita felt that the Commissioners were subjected to unfair psychological pressures at the time of decision since only one side of the picture is presented, usually in behalf of the petitioner, at the very last minute.

Commissioner Burns felt that if any major evidence were presented after the 15-day period, decision on the petition should be delayed. The possibility of opening up a second public hearing was also suggested. This would also allow the opposition equal opportunity to be heard.

Mr. Suefuji thought that the petitioner would agree to a deferment of decision under such circumstances.

Mr. Moriguchi requested that the Commission be given discretionary power to adhere to the 15-day time limit, as set forth in the Rules and Regulations, and to allow additional testimony thereafter only upon proof that petitioner or opposition was not aware of the existence of such evidence.

Chairman Thompson asked legal counsel to comment on Mr. Moriguchi's request. Mr. Takeyama advised that in a court of law additional evidence can only be

presented which would have a substantial bearing on the case, and only if the parties were not aware of the evidence at the time of hearing. He also advised against conducting a second public hearing.

Chairman Thompson directed that the Commission would follow the foregoing procedure.

#### PLANNING DIRECTORS' ATTENDANCE

Chairman Thompson wondered if the county budget provided for the traveling expenses of the planning directors when they attended the Land Use Commission hearings. Mr. Ohata, Maui Planning Director reported that the County of Maui did not have any financial problem in this respect, but voiced his preference for hearings on days other than Saturday. Attendance would depend on the agenda which the staff would mail in advance.

Mr. Suefuji, Acting Director of Hawaii County, commented that County Chairman encourages his staff to attend the meetings whenever they concerned a county matter.

Mr. Yamasaki, administrative assistant to the Director of the Kauai County Planning Commission, reported that any inter-island travel to attend meetings had to have the approval of the Board of Supervisors, and that an agenda of the meeting would help in making this request to the Board.

Commissioner Nishimura observed that the Planning Director's attendance at meetings only when it touched upon his own county's problems defeated the intent of an overall participation at the state level. He was of the opinion that the directors should make every effort to attend each meeting.

Mr. Suefuji stated that the Legislature had this in mind during the last session when it attempted to include the Planning Directors as members of the Land Use Commission. However, this idea was rejected and the Directors were not clear as to what extent they were accepted by the Land Use Commission as participants in discussions, etc. Therefore, they have confirmed their participation to county matters. Mr. Suefuji did not think the voting privilege was important but expressions of opinion concerning planning matters were.

Chairman Thompson offered the Governor's thoughts on the matter of the legislation. The Governor felt that it was not necessary to pass such a legislation, that the matter could be handled administratively by the Land Use Commission. Mr. Takeyama advised, however, that the Commission could not vote to include County Directors as ex-officio members of the Land Use Commission without amendment to the Statutes.

Mr. Ohata pointed out that he did not believe, as a County Director, that his responsibility lay in implementing statewide programs; that his responsibility rested with matters concerning Maui County. However, in the event he wanted to contribute his thoughts on statewide matters, he would prefer to work through the Executive Officer of the Land Use Commission.

Commissioner Nishimura felt that this was unsatisfactory inasmuch as an intermediary would be introduced.

Mr. Yamashita was of the opinion that it was desirable to have the County Planning Directors present at the time of public hearing on the petitions; however, he felt their presence at the time of decision would prejudice either the petitioner or the public interest, depending upon the stand they take, since in some instances neither the petitioner nor the public representative would be present.

Commissioner Ota differed in his point of view. He felt that it was important to be able to question Planning Directors for clarification of various issues and to have them express the County's point of view.

Chairman Thompson summarized the foregoing discussion as follows:

1. In effect, the door is open to all the Planning Directors to attend all of the Land Use Commission hearings and meetings--that their presence will be expected.
2. We will try out this procedure and see how it works.

#### VIOLATION OF LAND USE LAW

Mr. Ohata brought up the matter of enforcement of the Land Use Law. He submitted that enforcement of the Land Use Law rested with the counties, but in the event of county violation of the Land Use Law, who would be the enforcement body. Could the Land Use Commission step in?

Mr. Takeyama, legal counsel, advised that the legal procedure would be to go through the Attorney General's office.

Mr. Ohata wondered about non-conforming uses as, for example, a residential subdivision in an Agricultural District. Mr. Ohata cited a few examples of such violations within the City and County of Honolulu. He felt that if these violations were allowed to exist, it would be setting undesirable precedents, and that the Land Use Commission should aggressively work towards a solution.

Mr. Takeyama felt that this was an enforcement problem at the county level since the violation took place after the area had been designated as an Agricultural District by the Land Use Commission.

#### SPECIAL PERMITS

Chairman Thompson commented that many times, in the past, special permit requests for an additional house to accommodate a family member in a Rural District have come before the Commission. However, since this is not permitted in the Rural District, under our Rules and Regulations, requests were denied. He wondered whether the Regulations could be amended to allow the Commission to act favorably in cases where this was warranted, until such time as a density problem was created as a result of such actions.

Mr. Suefuji added that in cases where the son desires to build a home on his father's property of say 40 acres, it was impractical for him to mortgage the 40 acres. He felt that many of the homestead lands on the Big Island were not being used for agricultural purposes, and to enforce agricultural lot sizes without agricultural pursuit, was defeating the Land Use Law of preventing scattered developments.

Chairman Thompson continued that the problems on the neighbor islands were unique and that they should not be considered in the light of Oahu's operations.

Commissioner Ota pointed out that in communities of less than 2,500 people, anyone who owned a piece of land outright could go to the federal agency and borrow money at a low rate of interest on a long-term loan. That was one of the reasons for the many special permit applications from the outside islands, to build on rural or agricultural lands on which there was an existing building.

Mr. Ohata felt that zoning should not be predicated on human hardship as there was no assurance that this condition would prevail in the future. It would set undesirable precedents, contrary to good planning concepts.

Mr. Ohata stated that on Maui, the zoning laws permitted an additional servant or guest house, not to exceed 500 square feet, and this took care of the need for the additional house while confining it to one person or a couple at the most.

Mr. Suefuji wondered if the courts could petition for subdividing rural or agricultural lands into smaller parcels. Mr. Takeyama was of the opinion that the courts could not order a petition.

Mr. Ohata suggested uniform enforcement of the Land Use Law in case of violations. He stated that he would like the Land Use Commission to show a greater concern for such violations. During the original drafting of Act 187, the intent was for the counties to police the law and inform the Commission of any violation, and the Commission would enforce the law. Mr. Takeyama disagreed with Mr. Ohata on this point.

Chairman Thompson thought that an amendment might be in order to clarify this matter. In summary, he suggested that the counties handle violations on the local level, and to refer the matter to the Land Use Commission only when this was not possible. The possibility of vesting the counties with the authority to police, as well as enforce the Land Use Law, was also presented.

There seemed to be some concern about equal application of the law throughout the State. It was felt that an investigation by the Attorney General's office, in this respect, might be in order.

Mr. Takeyama pointed to the difficulty of proving violations in cases where the property owners indicate their intention toward agricultural pursuit but do not confine their activities to such purposes.

Mr. Moriguchi commented that this problem was primarily one of enforcement. The City and County of Honolulu was presently revising its ordinances to increase agricultural lot sizes which might minimize this problem.

Mr. Suefuji advised that the opinions he had expressed at this meeting reflected the Hawaii County Planning Commission's views. The Planning Commission was advisory to him but where the ordinances specifically grant the Director administrative authority, he was advisory to the Commission.

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1:15 P.M.

Present: Myron B. Thompson, Chairman  
Goro Inaba.  
Charles Ota  
Leslie Wung  
Shiro Nishimura

George Moriguchi  
Roy Takeyama  
Raymond Yamashita  
Ah Sung Leong  
Dora Horikawa

Raymond Suefuji  
Philip Yoshimura

#### PUNA-KEAAU, HAWAII

Mr. Moriguchi presented a map prepared by staff for possible reconsideration of boundary lines in the Puna-Keaau area. He explained the varied colored lines on the map as follows:

1. The red line represented the present Urban District.
2. The green line indicated staff's recommendation for reclassification of present Urban District to an Agricultural District.
3. The red shaded area was being recommended by staff to be put into an Urban District from its present agricultural classification.

Mr. Moriguchi explained that these recommendations were being made based on the actual use of the areas and also on the proximity to other similarly developed areas. It was also pointed out that the next evaluation of district boundaries will occur on August 23, 1969 as mandated by law.

Commissioner Wung moved that the Land Use Commission initiate boundary amendment in the Puna-Keaau area as recommended by staff. Commissioner Inaba seconded the motion and it was carried unanimously.

HANAPEPE, KAUAI

Mr. Moriguchi presented the staff report regarding evaluation of the Rural District in the Hanapepe area (see report on file). On the basis of the findings, it was recommended that the present Rural District in the Hanapepe area be maintained.

Commissioner Nishimura pointed out that the Richard Tongg plan and the Kauai County plan placed this area in an urban classification. He further contended that the area in question was overgrown with kiawe, opiuma, etc., and to keep it in a rural classification would tend to discourage development and constitute a blight in the Hanapepe area. With the urbanization of the area, the County could enjoy greater tax returns and an orderly development would result.

Commissioner Ota raised the question of traffic and potential flood problems.

Chairman Thompson wondered how much of the urban lands were presently unoccupied. Mr. Moriguchi pointed these out on the map and added that there were sufficient urban lands in the general area.

Commissioner Nishimura further maintained that it was economically unwise to take good cane land, which is producing income for the State, out of agriculture especially when these idle lands in Hanapepe were available.

Commissioner Wung moved to accept staff recommendation to maintain the present Rural District in the Hanapepe area, which was seconded by Commissioner Inaba. The Commissioners were polled as follows:

Aye: Commissioners Wung, Inaba, Ota, Chairman Thompson

No: Commissioner Nishimura

Motion was defeated.

Commissioner Ota suggested that since the Department of Land and Natural Resources owned so much of the lands in question, perhaps the matter should be deferred until such time as Commissioner Ferry could be present.

Following a discussion, Commissioner Wung moved that the Land Use Commission initiate a boundary change in the Hanapepe area through a public hearing, which was seconded by Commissioner Inaba. The Commissioners were polled as follows:

Aye: Commissioners Wung, Inaba and Nishimura

No: Chairman Thompson, Commissioner Ota

The motion was not carried.



HIGHWAY, URBAN LIMITS

Mr. Moriguchi advised the Commissioners that the State Highway Division had requested certification from the Land Use Commission for their interstate defense highway rights of way at Barber's Point, Oahu. It was further explained that the Commission regulations, as it is presently set up, does not make it clear whether the Commission is empowered to include highways within Agricultural Districts.

Mr. Takeyama observed that it was not clear whether highways were a permissible use within an Agricultural District, unless they were meant to provide access to agricultural areas. The Department of Transportation, in conjunction with the federal government, did not request a ruling from the Land Use Commission. To preclude the recurrence of a similar situation, Mr. Takeyama suggested amendment of the regulations to include highways as a permissible use in an Agricultural District.

Mr. Moriguchi wondered if highways might not properly qualify under "and quasi public utility lines" as provided in the regulations, under "Permissible Uses within the Agricultural District".

Commissioner Ota commented that preservation of scenic sights, as well as agricultural lands, was stipulated in the Land Use Regulations, and the granting of large parcels of land in prime agricultural areas or scenic areas for highways might constitute a violation.

Chairman Thompson expressed his feeling that if this situation were carried a little further, other departments in the State government might be required to come before the Land Use Commission whenever the situation was affected by our regulations.

Chairman Thompson asked legal counsel whether the Land Use Regulations could be interpreted to permit the State Highway Department to proceed without coming before the Land Use Commission. Mr. Takeyama advised that since federal funds were involved in the project, and the law specified that federal funds shall not be jeopardized for any reason, the State Highway Department would have much the same sanction or authority from the Legislature as does the Land Use Commission. For this reason, the Commission could not stipulate the location of the highway.

Mr. Moriguchi then summarized the discussion by concluding that it was the consensus of the Land Use Commission that the request by the State Highway Division be considered in the affirmative, to which Chairman Thompson agreed.

BOUNDARY INTERPRETATIONS

Mr. Moriguchi pointed out that our regulations provide that in interpreting location of boundaries, the scale of our district boundary maps shall be applied. These lines can be shifted 50 to 100', depending upon interpretation of the staff, since our maps are 2000 scale maps, and not nearly as accurate as the surveyor's map which property owners bring into our office. Mr. Moriguchi felt that it was the intent of the Land Use Commission to include and exclude certain

areas for urban purposes, depending on topography, desirability, etc. Therefore, he was requesting authority to interpret the boundaries according to staff's discretion. Mr. Takeyama wondered if the problem here was one of conflict between Land Use boundary maps and that submitted by the property owners, to which Mr. Moriguchi replied that it was a conflict in the intent of the Land Use Law as to where the boundary should be. The staff was mandated to use the scale line and sometimes this conflicted with staff's concept of the proper location of the boundary line.

Chairman Thompson wondered if the Commission had the authority to shift the boundary lines. Mr. Takeyama suggested the possibility of referring to some provision, other than Section 2.11, of the Regulations.

Mr. Moriguchi recommended that the original intent of setting the lines be used in interpreting the boundaries.

Mr. Yamashita expressed his feeling that it would be unwise to rely on intent in the long run since staff personnel changes could affect interpretations. The only solution he could see was in expending much time and effort toward resolving this problem, with an ultimate change or amendment in the Regulations by the Commission.

Chairman Thompson concluded that the problem warranted further study, and that administratively staff set aside sufficient time to conduct such a study. It was also suggested that more money be requested for additional staff.

Mr. Moriguchi wondered if it was improper to encourage a developer to consider staff's recommendation of subdivision boundaries, especially where steep lands were concerned, and Mr. Takeyama replied that he did not think so.

If the developer agrees to abide by the staff's recommendation, Mr. Moriguchi wondered whether that line could be legally considered the new boundary line. Mr. Takeyama emphasized that the developer could not be legally bound to the staff-recommended line and that the line would remain where it was originally.

Chairman Thompson summarized the discussion with the following comments:

1. Proceed along present lines.
2. If the line is moved by the developer, it will be up to the Commission to initiate a boundary change.

#### MAPPING ON TAX MAPS

Mr. Moriguchi advised the Commissioners that work had begun in marking up the tax maps with the final boundaries as established. Much work was involved and staff was faced with shortage of personnel, and although request for additional staff had been made, there was no assurance that this would be granted. There was also the question of legalizing these maps and obtaining sanction from the Commission. There was no objection to Chairman Thompson's statement that the Commission was in full accord with staff on this matter.

DIAMOND HEAD

Discussion on this matter was deferred until a later date.

DEPARTMENT OF TAXATION RECOMMENDATIONS

This matter was also deferred until a later date.