

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

House Conference Room 310
Third Floor, State Capitol
Honolulu, Hawaii

Approved
11/22/83

October 4, 1983 - 9:00 a.m.

COMMISSIONERS PRESENT: William Yuen, Chairman (10:10 a.m.)
Richard Choy, Vice Chairman
Lawrence Chun
Everett Cuskaden (10:10 a.m.)
Shinsei Miyasato
Winona Rubin
Teofilo Tacbian
Robert Tamaye
Frederick Whittemore

STAFF PRESENT: Gordan Furutani, Executive Officer
Carolee Aoki, Deputy Attorney General
Raymond Young, Planner
Dora Horikawa, Chief Clerk

Katherine Stanley, Court Reporter

The meeting was called to order by Chairman Choy who presided over the action proceedings on the petition by Kalua Koi Corporation.

ACTION

A82-542 - KALUA KOI CORPORATION

In the matter of the petition by Kalua Koi Corporation, Docket A82-542, hearings were conducted by the Land Use Commission on March 15, 1983, March 21, 1983, March 22, 1983, April 7, 1983, April 8, 1983 and May 18, 1983. It was determined by Chairman Choy that all of the Commissioners present today were eligible to participate in the action on the subject petition.

The Executive Officer pointed out the property under petition and oriented it with various surrounding landmarks.

Appearances

James Funaki, Attorney representing the petitioner

Steve Garcia, Deputy Corporation Counsel, representing the
Maui Planning Department

Appearances (cont.)

Annette Chock, Deputy Attorney General, representing the
Dept. of Planning & Economic Development

William Tagupa, representing the Office of Hawaiian Affairs

Closing Arguments

By Mr. Funaki----- 7 to 12

By Miss Chock-----12 to 19

By Mr. Tagupa-----19 to 22

By Mr. Garcia-----22 to 24

Rebuttal

By Mr. Funaki-----24 to 25

Commissioner Chun moved that the Commission consider taking action on the four areas by separate motions. It was seconded by Commissioner Rubin and carried.

Commissioner Rubin moved for the approval of the reclassification of 924.7 acres from the Urban District into the Rural District at Kaluakoi, Molokai. It was seconded by Commissioner Whittemore and the motion was carried with the following votes:

Ayes: Commissioners Miyasato, Tacbian, Whittemore, Chun
Rubin, Chairman Choy

Commissioner Tacbian's motion to deny the request to reclassify approximately 54.6 acres from the Agricultural District into the Rural District died for lack of a second.

Commissioner Chun moved, seconded by Commissioner Rubin, to approve the reclassification of 54.6 acres from the Agricultural District into the Rural District at Kaluakoi, Molokai. Commissioner Chun elaborated that denying the reclassification of the 54.6 acre parcel would not assure the preservation of the archaeological sites. Moreover, it was his feeling that ample agriculturally-zoned lands were available on Molokai to advance the "super-market" concept. Commissioner Rubin echoed much of the same sentiments and added that she would hope the developer and individuals in the community will be able to work together to achieve the appropriate development of the area.

The Commissioners were polled as follows:

Ayes: Commissioners Tamaye, Rubin, Chun, Whittemore,
Miyasato, Chairman Choy

Nay: Commissioner Tacbian

The motion was carried.

Commissioner Rubin moved to approve the reclassification of 11.5 acres from the Agricultural District into the Urban District. It was seconded by Commissioner Whittemore and the motion was unanimously approved.

In the matter of the 23.8 acres, it was moved by Commissioner Rubin, seconded by Commissioner Tamaye, that the Commission reopen the hearing for the purpose of receiving additional information regarding the use of the property. The motion was unanimously carried.

Chairman Yuen arrived to conduct the balance of the proceedings for the day.

A69-222 - C. BREWER AND COMPANY

Chairman Yuen recalled that on August 10, 1983, the Commission had held a hearing, pursuant to an inquiry by the Waihee Neighborhood Board as to the progress or lack of progress on subject lands by the petitioner, C. Brewer and Company. Today, the Commission will determine whether there was cause to take further action on the petition and, if cause did exist, whether the Commission will institute a petition to reclassify the property.

It was moved by Commissioner Whittemore, seconded by Commissioner Miyasato, that the Commission find substantial progress had been made by the petitioner and that no action was required. The motion was unanimously carried.

A69-242 - PUKOO PROPERTIES, INC.

Chairman Yuen stated that the Commission had held a hearing in late 1982 on the order to show cause why developer had not proceeded to develop certain lands at Pukoo, Molokai, upon a complaint filed by Mr. George Peabody. At that time, the Commission had determined that it would defer action on the matter until approximately 9 months later.

Today, the Commission will hear from both Mr. Peabody and the Maud Van Cortlandt Schroll Trust, after which the Commission will take action.

The Executive Officer oriented the Commission to the property under discussion and pointed out various surrounding land uses and landmarks.

Appearances

Ben Kudo, attorney representing the Maud Van Cortlandt Schroll Trust

George Peabody, Molokai resident

Arguments

By Mr. Peabody-----39 to 43

Examination of Mr. Peabody by
Commissioner Tacbian-----44

By Mr. Kudo-----45 to 48

Examination of Mr. Kudo by Commissioner
Chun-----48

Examination of Mr. Kudo by Commissioner
Cuskaden-----49 to 54

The Commission went into executive session upon motion by Commissioner Rubin, seconded by Commissioner Tacbian to consult with the Deputy Attorney General.

10:50 a.m.

Chairman Yuen stated that the Commission had received legal advice from its Deputy Attorney General regarding the standards to be applied in determining "substantial progress".

Regarding the question posed by the Commission as to whether the petitioner was willing to accommodate the dedication of a boat ramp to the public, Mr. Kudo submitted that this would be an "onerous and somewhat unreasonable" request upon the Schroll Trust. In support of this view, Mr. Kudo called upon the following witnesses to present testimony:

Kila DeMello - Resident on the property and Canoe Club member

Oral testimony-----57 to 59

Examination by Commissioner Chun-----59 to 60

Kila DeMello (cont.)

Examination by Commissioner Tacbian-----60 to 61

Examination by Commissioner Cuskaden-----61 to 62

Lawrence Dorsey - Property Owner

Oral testimony-----63 to 64

Examination by Commissioner Cuskaden-----64

Examination by Commissioner Whittemore-----64 to 65

In the matter of Docket A69-222, Pukoo Properties, Inc., Commissioner Rubin moved that the Commission find substantial progress was made in the development of the property and no further action was required. It was seconded by Commissioner Miyasato and the motion was unanimously carried.

DR83-9 - DOUGLAS MELLER

Chairman Yuen advised that there were several alternatives available to the Commission regarding the request for a declaratory ruling by Mr. Douglas Meller regarding the shoreline and zone of wave action; i.e., make a ruling today on the request, deny or refuse to make a ruling on the request, or the Commission could set a hearing and receive testimony from Mr. Meller and any other interested parties.

Upon motion by Commissioner Cuskaden, seconded by Commissioner Tacbian, the Commission voted to set this matter for a hearing, and that Mr. Meller be directed by staff to prepare a memorandum of law to address the legal questions.

A83-547 - RICHARD T. TAJIRI & HELEN H. KAWAHARA

In the matter of the petition by Richard T. Tajiri and Helen H. Kawahara, a hearing was conducted by Hearing Officer Benjamin Matsubara on June 9, 1983. Mr. Matsubara presented a summary of the change being requested by petitioners.

Mr. Matsubara also responded to questions posed by the Commission regarding the adequacy of the financial statement provided by the petitioner, and the true intent of the use of the property.

Commissioner Miyasato moved to approve the reclassification of the 1.75 acres from the Agricultural District into the

Urban District at Haiku, Maui for a residential subdivision. It was seconded by Commissioner Tacbian and carried.

A83-548 - DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT

Hearing Officer Matsubara, who conducted the hearing on this request to reclassify approximately 1.19 acres of land from the Conservation District into the Urban District for a medium security prison facility, reported on his findings and recommendation.

Commissioner Whittemore moved to approve the amendment of the Conservation District into the Urban District for approximately 1.19 acres of land at Halawa, Ewa District, Oahu, Docket A83-548. It was seconded by Commissioner Cuskaden and unanimously carried.

Adoption of Minutes

The minutes of July 20, 1983 and August 10, 1983 were approved as circulated.

The Commission was in recess from 12:05 p.m. to 2:05 p.m.

2:05 p.m.

The Commission went into executive session upon motion by Commissioner Chun, seconded by Commissioner Rubin, to consult with the Deputy Attorney General.

2:20 p.m.

ACTION

A82-542 - KALUA KOI CORPORATION

Chairman Choy explained that during the executive session, the Commission had received counsel from its Deputy Attorney General regarding the proper procedure for reconsidering the action taken this morning on the petition by the Kalua Koi Corporation.

It was moved by Commissioner Chun and seconded by Commissioner Rubin to reconsider the Commission's action on the 23.8 acre parcel on Docket A82-542. It was carried by voice vote.

CONTINUED HEARING

A83-551 - OCEANIC PROPERTIES, INC.

Following a discussion of the admissibility of a film which Mr. Lee, Intervenor's representative, was proposing to show, Mr. Lee agreed to withdraw the film showing, and in lieu thereof requested that the transcript, exhibit 6-A, be admitted into evidence. Chairman Yuen agreed and Intervenor's exhibit 6-A was admitted into evidence. Admission of the slides was held in reserve pending their receipt by the Commission.

PETITIONER (cont.)

Jerry Vriesenga - Manager of Dole's Fresh Fruit Operations in Hawaii

- Direct examination by Mr. Funaki-----83 to 101
- Cross examination by Mr. Lim-----101 to 104
- Cross examination by Miss Chock-----104 to 105
- Cross examination by Mr. Lee-----106 to 111

James Kumagai - Environmental Engineer and Vice President of M & E Pacific, Inc.

- Direct examination by Mr. Funaki-----112 to 114
- Cross examination by Mr. Lim-----115 to 117
- Cross examination by Mr. Lee-----117 to 121
- Examination by Commissioner Rubin-----121 to 125

Robert J. Hommon - Archaeologist, Science Management, Inc.

- Direct examination by Mr. Funaki-----125 to 129

T. F. Lowe - President, EDP Hawaii

- Direct examination by Mr. Funaki-----129 to 135
- Cross examination by Mr. Lim-----135 to 138
- Cross examination by Miss Chock-----138
- Cross examination by Mr. Lee-----139 to 140

The Commission adjourned the hearing at 4:30 p.m. with the announcement that it will reconvene tomorrow at 9:00 a.m.