

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

October 7, 1975 - 7:00 p.m.

Room 310, State Capitol
Honolulu, Hawaii

adopted
DEC 5 1975

COMMISSIONERS PRESENT: Eddie Tangen, Chairman
Stanley Sakahashi, Vice Chairman
Charles Duke
Colette Machado
Mitsuo Oura
Carol Whitesell
Tanji Yamamura
Edward K. Yanai

COMMISSIONER ABSENT: James Carras

STAFF PRESENT: Ah Sung Leong, Acting Executive Officer
Gordan Furutani, Planner
Harry Kim, Consultant
Tany Hong, Deputy Attorney General
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

HEARING

AR&R75-5 - PROPOSED AMENDMENTS TO PART I RULES OF PRACTICE AND PROCEDURE, PART II STATE LAND USE DISTRICT REGULATIONS, AND PART III LAND USE DISTRICT BOUNDARIES OF THE STATE LAND USE COMMISSION

The meeting was called to order by Chairman Tangen. For the benefit of those who were not in attendance at the last Commission meeting, the Chairman introduced the three newly appointed Commission members--Colette Machado, Carol Whitesell and Charles Duke.

Mr. Gordan Furutani, staff planner, read the public hearing notice which was duly published in the Honolulu Star Bulletin on September 16, 1975, the Maui News on September 16, 1975, the Hilo Tribune Herald on September 17, 1975, and the Garden Island on September 17, 1975.

Chairman Tangen announced that the public hearing today will be conducted in two parts--first, on the proposed amendments to Part I, the Rules of Practice and Procedure before the Land Use Commission; and second, on the proposed amendments to the State Land Use District Regulations. To expedite the hearing process and to afford everyone a fair opportunity to present his views, it was requested that testimony, either for or against the proposed amendments, be confined to specific sections of the Rules and Regulations. Additional testimony

will also be accepted by the Commission within 10 days following the close of the hearing. Persons wishing to testify were asked to give their names, addresses, organization represented, on the sign-in sheet.

Testimonies received are summarized below:

Mr. Alan Tyler, representing Friends of the Earth, recommended amendments to the Rules and Regulations aimed at broadening and encouraging public participation to provide the Commission with balanced input from the two sectors--developers and citizens' groups. Other suggestions for consideration concerned sections dealing with disclosure of new evidence in the deliberation of Special Permits, paper and copy requirements for filing petitions, limiting of witnesses, right to intervene, petition filing fees, reapplication of petitions expanding on term "property interest", etc.

Mr. Dave Raney, representing the Hawaii Chapter of the Sierra Club as its Chairman, expressed concern over the "phrasing and tone" of the rules which seemed directed at attorneys rather than ordinary citizens. It was suggested that the terminology in the rules be simplified to encourage maximum citizen participation so that the Commission's actions will be based on knowledge of all relevant facts and possible ramifications of each proposed action, and in the best interest of the public. The balance of Mr. Raney's testimony was directed at specific examples of questionable or unclear language in the proposed Rules and Regulations; i.e. "parties to procedures", limitation to the number of witnesses, use of latin terms, right to intervene, etc. Mr. Raney was also critical of the vague criteria in the Special Permit procedures. It was also suggested that the requirement for the number of copies be kept to 3 or some reasonable number.

Chairman Tangen assured Mr. Raney that subsequent to the adoption of the Rules and Regulations, a summary pamphlet will be prepared, explaining the document in layman's language.

Mr. Jack Schweigert, representing Life of the Land, recommended that the Commission keep in effect the existing tests to be applied in granting Special Permits during the interim period before the new standards are adopted. He also supported Mr. Tyler's testimony in its entirety. In addition, he took issue with the section on Declaratory Exceptions, submitting that a citizen should be allowed to petition the Land Use Commission for a Declaratory Order. Mr. Schweigert suggested that specifications be drafted into the Rules and Regulations regarding the Hearing Officer, strengthening the section on the disqualification of a Commissioner, and criticized the limiting ability of a person to be an intervenor.

Mr. Steve Goodenow, representing the Shoreline Protection Alliance, stated that a letter expressing the organization's position regarding the Rules and Regulations had been delivered to the Commission office and requested that it be considered by the Commission in its deliberation. He also expressed his concern that the procedures were becoming a little too complicated and could result in discouraging the private citizen from testifying before the Commission.

It was announced by the Chairman that this concluded the hearing on the Proposed Amendments to Part I, the Rules of Practice and Procedure Before the Land Use Commission, and that the Commission will proceed with the hearing on the Land Use District Regulations.

Mr. James Kirchhofer, Acting Planner for the State Department of Agriculture departed from the order of his written testimony and submitted that he shared the concerns which had been previously expressed regarding the Special Permits and the proposed deletion of the guidelines.

Mr. Kirchhofer proposed for the Commission's consideration an amendment to the definition of "farm dwelling" to include the wording "a single family dwelling located on a farm that would normally provide an income of at least \$1,000 per year."

Representative Russell Blair of the State Legislature stated that he will be submitting his written testimony within the 10-day period. He added that it was the intent of the Legislature in adopting the land use measure that intervention be granted freely, and that any abrogation of this intent would inevitably lead to the introduction of numerous bills on the subject.

Mr. Riley Herberg of C. Brewer and Company saw the Commission's role as one of resolving conflicts and presented his comments to provide a different perspective on some of the issues that were raised today. The first concerned the section on defective filings and it was his suggestion that the earlier concerns might be resolved by setting some criteria for the filing requirements; e.g. requiring substantial completion or a significant filing. Mr. Herber touched upon sections in the Rules and Regulations dealing with limited the number of witnesses, filing of counter affidavit with the Commission, petition to intervene, use of the Hearing Officer, increase in the filing fee, etc.

Commissioner Whitesell wondered who would be responsible for advising the petitioner of a defective filing if such is the case.

Mr. Harry Kim, consultant, counselled that it was not within the clerk's jurisdiction to spot the defect and then make a ruling since this was a matter for the 9-member Commission to decide, based on arguments.

Commissioner Whitesell argued that this seemed like an unwieldy procedure and perhaps the requirement for filing a petition could be explicit so that a responsible person like the Executive Officer can make a simple determination as to whether all the necessary information is included.

It was the Chairman's understanding that the clock does not start to run until all defects in the petition are cured.

Mr. Kim reminded the Commission that it would have to take action on petitions within the time limit prescribed by law; otherwise, the decision will be null and void.

State Senator Jean King focused on the language in the proposed amendments and urged that it be rewritten as simply as possible to

encourage the ordinary citizen's participation in the Commission's meetings. She pointed out that the wording in the Act itself was broader and clearer regarding the right to appear. It was also suggested that it would be wiser to limit the time allowed for testimony rather than limiting the number of witnesses. Senator King took exception to the provision where questions by persons or agencies will be permitted only at the discretion of the Chairman which she felt would be contrary to the legislative intent. Other areas which were discussed by the Senator included Commission's refusal to issue declaratory orders, request for hearing, use of the Hearing Officer, admission and rejection of evidence at the discretion of the Commission, intervention, filing of brief, modification or deletion of condition.

Mr. Schweigert suggested that when the counties set their rules and regulations to implement land use districting, they incorporate the purpose of the land use districts. It was also his recommendation that the tests to be applied for Special Permit applications be re-instated.

Mr. Alan Tyler also requested that the Commission retain in the Regulations the tests to be applied in the Special Permit procedure. He suggested that a sentence be included under "Establishment of State Land Use Districts" that "the pending Coastal Zone Management Plan and the pending State General Plan be given prime consideration".

Chairman Tangen doubted whether the statement concerning Coastal Zone Management Plan could be incorporated into the Commission's Rules since the Legislature had addressed itself to this question before enactment of the law.

At the conclusion of the hearing, Chairman Tangen thanked all of those who had testified today and announced that the adoption of the Rules and Regulations will occur on October 28, 1975, time and place to be announced later. Subsequent to the adoption, the Rules and Regulations will be translated in a separate publication in easily understandable language.

Since there was no further business, the meeting was adjourned.