

STATE OF HAWAII
LAND USE COMMISSION

Approved
DEC 11 1970

Minutes of Meeting

Legislative Auditorium, State Capitol
Honolulu, Hawaii
October 9, 1970 - 7 p.m.

Commissioners Present: Leslie Wung, Chairman Pro Tempore
Sunao Kido
Alexander Napier
Eddie Tangen
Tanji Yamamura
Stanley Sakahashi
Shelley Mark

Commissioner Absent: Goro Inaba

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

ADOPTION OF MINUTES

Minutes of the July 10, 1970, and August 1, 1970,
meetings were approved as circulated.

HEARING

PETITION BY HELEN, FRANCIS & BERTHA CHUNG (A70-259) TO
RECLASSIFY 1.019 ACRES FROM AGRICULTURAL TO URBAN AT PAUMALU,
KOOLAULOA, OAHU

The staff planner, Mr. Leong, gave a detailed description
of the land use pattern around the area under petition and
presented the staff report (on file).

Acting-Chairman Wung asked if there were any questions
from the Commission members on additional testimony from the
petitioners, government officials, or any interested party.
Since there was none, he informed that the Commission will
receive additional evidence on this matter up to 15 days after
this date and thereupon closed the public hearing.

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ACTION

PETITION BY NICHOLAS F. GREENER (A70-251) TO RECLASSIFY
4 ACRES FROM CONSERVATION TO URBAN AT KAHALUU, KOOLAUPOKO, OAHU

Mr. Duran, the Executive Officer, presented the staff memorandum recommending approval of a 2.7-acre portion of Mr. Greener's request. The remaining portion of the request was recommended for retention in the Conservation District since it was too steep for development and meets the standards for Conservation Districts. Mr. Duran pointed out a remnant pocket of Conservation land would result on the abutting parcel if Mr. Greener's property is rezoned as recommended. He recommended that this minor adjustment be made during the next boundary review (see staff report on file).

The Acting-Chairman asked for additional testimony. Since there was none, Commissioner Napier moved that the staff's recommendation be accepted. Commissioner Tangen seconded the motion, and it was unanimously carried.

SPECIAL PERMIT APPLICATION BY DUERKSEN LANDSCAPING COMPANY
(SP70-80) TO PERMIT A SAND MINING OPERATION ON APPROXIMATELY
18 ACRES AT LAIE, OAHU

The staff planner presented the staff report recommending approval of the special permit subject to the conditions stipulated and summarized a letter from Marvin Stone of the Zion Securities Corporation, the landowner, stating that they wish to develop a subdivision on the property within five years, after the sand mining operation is completed.

Attorney Philip Chun, newly representing the petitioner, stated that he had no serious objections to the recommendations of the staff.

The Commission's legal counsel interrupted the proceedings to ask Mr. Chun whether he was still on the County Planning Commission and if so whether he was aware of a possible conflict of interest. Mr. Chun replied affirmatively and stated that he is representing Mr. Duerksen only at the State level. He would not participate in this matter at the County level.

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Mrs. Janet Cordon, Sierra Club, questioned whether it would be wise to allow a subdivision on the property just because the land will be filled. If this happens, the conservation aspect would be destroyed.

Mr. Leong replied that the issuance of this special permit in no way commits the Land Use Commission to approving a residential subdivision on the property. The landowners would have to petition the Land Use Commission for an Urban designation and receive its approval before a subdivision can be established.

Commissioner Tangen added that the matter being considered presently is a special permit to mine sand only and that no structures will be allowed without proper authorization.

Mrs. Lee Butler, a resident in the area, voiced her concern over the hauling operations since the main highway is narrow and already congested with tour buses.

Mr. Alan Sanborn, Planning Director of the Windward Citizens Planning Conference, questioned whether existing statutes governing pollution are adequate to handle the problems raised at the previous meeting.

The petitioner was asked what he intended to do about the problem. Mr. Chun felt that they are within the statutory requirements of the water pollution act, that Department of Health authorization would be required, and that the conditions imposed on the entire operation will actually result in an improvement of the conditions found at the present time.

Commissioner Tangen agreed with Mr. Chun and suggested that the petitioner work with the Windward Citizens Planning Conference in resolving these problems.

Commissioner Napier's motion to approve the special permit as recommended by the staff was seconded by Commissioner Tangen and unanimously carried.

HEARING

SHORELINE SETBACK

Acting-Chairman Wung announced that in the interest of time and to give everyone an equal opportunity to testify, testimony would be limited to 5 minutes per person and that additional time would be allotted after everyone had an opportunity to speak.

The Executive Officer, Mr. Duran, presented background information from the General Committee Report which outline the reasons for the passage of Senate Bill 1139-70, and which became Act 136 upon the Governor's signature. He defined and reviewed the provisions of the shoreline setback law.

Mr. Ching of Ewa Beach stated that the city constructed a drainage canal near his property which has eroded his shoreline property. He questioned whether the setback would be measured from the original property line or the existing shoreline. He stated that the setback requirement denies the landowner the legal use of his property.

Commissioner Tangen replied that the setback will be from the existing shoreline and that the shoreline setback law is legal unless it is considered by a court and proven not legal.

Mr. Steven Bolles, whose parents own property at Sunset Beach, disagreed with the definition of shoreline as contained in Act 136 since there is a difference of about 70 yards in the location of the shoreline in the Sunset Beach area between summer and winter months. He recommended that the law be remanded to the legislature to have the shoreline redefined by qualified personnel.

Commissioner Tangen stated that the Land Use Commission is mandated by the legislature merely to establish a shoreline setback from 20-40 feet and that it has no control over the definition of the shoreline. He called for a show of hands from those in the audience who owned shoreline property favoring a setback of more than 20 feet and those favoring the 20 foot minimum setback. Two persons favored over 20 feet and the majority of shoreline property owners favored the minimum 20 feet. About 12 non-property owners favored a setback greater than 20 feet.

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Mr. George Lipp, whose wife owns beach property at Kailua, said that depending on the topography of an area, a 40 foot setback would be proper. However, if a uniform setback is established throughout the island, he favors a narrower setback.

Mr. E. M. Michael, representing the Bishop Estate, summarized a letter (on file) previously submitted stating that the trustees believe that a universal 40 foot setback is unwise and unwarranted and apparently not the intent of Act 136. He stated that the developers of Hawaii Kai have a letter indicating that the Kuapa Pond area is outside of the jurisdiction of the setback.

Mr. Walton Hong, legal counsel, stated for the record that the matter of the law's application to fishpond areas is still under consideration by the Attorney General's office and that an opinion will be forthcoming within the next few weeks.

Commissioner Mark inquired whether the Bishop Estate testified before the legislature on the shoreline setback bill. Mr. Michael replied no and added that he understood that there was no public hearing on the matter. Commissioner Mark replied that there were several held by the Senate.

Mr. Peter Cole, President of the Sunset Beach Community Association and shoreline property owner, testified that the shoreline setback requirement would jeopardize the view amenities of the property for which the owners paid \$4 per square foot. He stated that there is a big difference between the shoreline and the property line in the Sunset Beach area and added that the shoreline there is inconsistent and impossible to define.

Attorney Asa Akinaka, representing John T. Waterhouse, urged that the 20 foot minimum be established for his client's properties at Makaha and Kauai.

Mr. John Kelly, of Save Our Surf, stated that a setback of 100 to 200 feet was recommended when that organization helped in the formulation of the law. He stated that access to all of the desirable shoreline areas are rapidly diminishing and should be provided and that the young people of the islands, who comprise the bulk of the population and enjoy the shoreline activities, are not properly represented. He urged the establishment of a 40 foot shoreline setback.

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Commissioner Tangen requested that those in attendance who are under age 25 be given the opportunity to testify on the shoreline setback.

A recess was called by the Acting-Chairman shortly thereafter.

SHORELINE SETBACK CONTINUATION

Acting-Chairman Wung again called the meeting to order and continued with the shoreline setback hearing.

Mr. Lowery Roobian, representing the Windward Chamber of Commerce, read a statement (on file) that the shoreline setback law would prevent development of unimproved property and makes no provisions for reimbursement to affected property owners. The variance procedure is time consuming and expensive. He stated that Ordinance Bill #2837 of the City of Honolulu was adopted in August 1966 providing for a 10 foot shoreline setback and other provisions. Unfortunately, however, Act 136 will nullify this ordinance. He, therefore, recommended that a 20 foot setback be established until the next legislature can reconsider and possibly change this Act.

Mr. D. T. Connell, Windward member on the Board of the State Chamber of Commerce, stated that amendments were added to Senate Bill 1139-70 in the last days of the legislative session and that the revised bill received no hearing at all. Under the circumstances, he recommended adoption of a 20 foot setback on a statewide basis.

Mokuleia property owner Ronald Hirahara stated that his property is situated in a Conservation District and yet the property is taxed as unimproved residential. He asked consideration of a 20 foot setback.

Mr. James Hulten, property owner at Sunset Beach, took issue with Mr. John Kelly who testified earlier. He stated that this hearing is concerned with shoreline setback on private property and would not affect public access to beach areas. He questioned the Commission's rationale for proposing a 40 foot setback. He stated that damage of houses from high waves could not be prevented by the setback provisions and that a change in the building code requiring raising of houses would make more sense.

Commissioner Tangen explained that the proposal for a 40 foot setback was advertised in order to avoid the need for

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additional notice and hearings if the Commission felt that a greater setback than 20 feet was called for.

Mr. Henry Ahuna, property owner in Kona's Alii Drive area, urged consideration of the minimum 20 foot setback.

Mr. George Moriguchi, Deputy Planning Director of the City Planning Department, was called upon to comment from the County's viewpoint. He stated in summary that those areas on Oahu which have proven over the years to be safe and stable be considered for a shoreline setback of 20 feet. This would minimize the number of non-conformities and the number of variances that would result from a 40 foot shoreline setback. The greater setback technically would also preclude construction of structures in a situation where the shoreline process would not be disturbed. He also noted several technical problems which needed to be clarified, such as jurisdiction over the area beyond the shoreline. However, he suggested that these problems may be resolved at the staff level.

Mrs. Janet Gordon, Chairman of the Hawaii Chapter of the Sierra Club, urged the establishment of the maximum 40 foot setback. She noted that the blanket application of the shoreline setback would never be acceptable for everyone concerned. She stated that aesthetic and recreational values should be considered as well as safety factors.

Mr. Peter Cole recommended that the Commission conduct a study to find out how much land there is in the islands that is not accessible to the public.

Mr. Fred Forbes of Mokuleia stated that anyone who builds a house closer to the water than 20 feet is asking for trouble in most cases.

Yvonne Yarborough said that she was below 25 years of age and not a property owner. She felt that the wall surrounding her rented shoreline property in Waianae detracts from the full enjoyment of the beach.

Mr. John Kelly again spoke of the encroachment of large hotel developments along the shoreline. He stated that people are gradually losing their basic right to enjoy the shoreline because of the lack of adequate concepts in the past.

The Acting-Chairman asked for additional testimony. Since there was none, he advised that additional testimony will be

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received by the Commission in the 15 days following this hearing. The public hearing on this matter was closed thereafter.