

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

October 9, 1975 - 1:00 p.m.

Adopted
DEC 5 1975

State Office Building
Lihue, Kauai

COMMISSIONERS PRESENT: Eddie Tangen, Chairman
Stanley Sakahashi, Vice Chairman
James Carras
Charles Duke
Colette Machado
Carol Whitesell

COMMISSIONERS ABSENT: Mituso Oura
Tanji Yamamura
Edward K. Yanai

STAFF PRESENT: Ah Sung Leong, Acting Executive Officer
Gordan Furutani, Planner
Harry Kim, Consultant
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

Chairman Tangen announced it had been planned that the hearing today would be conducted in two parts--first on the proposed amendments to the Land Use Commission's Rules of Practice and Procedure, and secondly, on the State Land Use Districts. However, inasmuch there were only three persons in attendance, testimony will be accepted for either of the two parts at the same time.

Mr. Furutani, staff planner, read the public hearing notice which had appeared in all the major newspapers of the State.

It was announced by the Chairman that following the adoption of the Rules and Regulations, a summary pamphlet will be prepared in layman's language to enable the average person to understand the legal language which are necessarily a part of the Rules and Regulations.

He also advised that the Commission will accept written testimony within 10 days following the public hearing.

Mr. Greg Kamm of the Kauai County Planning Department read portions of a prepared testimony which had been submitted to the Commission. It was pointed out that there was an obvious need to streamline and clarify the Rules and Regulations to reflect the purposes of Act 193 for the benefit of the layman. A suggestion was also made to require a periodic grouping of all urban proposals for a particular county one or more times a year to actually encourage petitioners to compete among themselves. In closing, Mr. Kamm commended the Commission for developing such an extensive draft on the amendments to the Rules and Regulations.

Ms. Jo Ann Yukimura, interested citizen, spoke primarily on the Rules of Practice and Procedure. The thrust of her testimony focused on the imbalance of power between the developers and the private citizen or citizen groups in favor of the former. She felt that the proceedings should be designed to equalize this imbalance. She contended that the proposals being considered today will have the opposite effect--to curtail and frustrate citizen input. Ms. Yukimura suggested that the rules be modified to insure that the public's rights and interests are protected.

More specifically, Ms. Yukimura discussed sections dealing with Appearance and Practice Before the Commission, definition of parties, Intervention, copy requirement for filing all pleadings and amendments, defective filing, limiting the number of witnesses, refusal to issue declaratory order, etc.

Commenting on the District Regulations, it was suggested that the existing guidelines for the granting of Special Permits be reinstated. A recommendation was made to include a requirement that the shoreline protection act policies be applied wherever applicable.

Responding to some of the previous comments by Ms. Yukimura, Chairman Tangen advised that the section on defective filing was there to protect the petitioner from being penalized due to the time constraints under which the Commission is required to proceed.

Ms. Yukimura suggested that someone on the Commission staff familiar with the technical requirements should notify the applicant of any defect in the filing. Mr. Kim, Commission's consultant, called Ms. Yukimura's attention to the prepared summary of amendments which in essence gave examples of the type of information required in a boundary amendment petition.

Mr. Kim clarified that under the present law, any person may represent himself without engaging the services of an attorney at a

public hearing. However, if a person is representing another and going through the legal procedures of filing petitions and arguing legal arguments--if what he is doing constitutes the practice of law--then he is now practicing law and therefore required to be an attorney in good standing before the Supreme Court of the State of Hawaii. Mr. Kim added that this was brought about by the Supreme Court ruling which ruled that the Commission proceed under the contested case procedure. He emphasized that details were the most important aspect of any case to insure that the proper details are before the Commission.

Ms. Yukimura suggested, for the sake of clarity, that the sentence in the rules be reconstructed to reflect the Commission's intent, i.e. "if an attorney represents a party, then he must be an attorney in good standing before the Supreme Court of the State of Hawaii."

Mr. Kim advised that by the very nature of adjudicating a person's rights, it was necessary for the Rules and Regulations to be technical and detailed to assure that everybody was on the same frequency as far as the law was concerned and also so that the courts will have all the necessary details to make a proper and just ruling in an appeals case.

Ms. Courtney Kahr, attorney, submitted that a quasi-judicial proceeding is not a court proceeding and therefore did not require an officer of the court. An attorney was required only for proceedings in the appeals court. She also asked the Commission to look into the definition of "public interest".

Mr. Ned Broadbent, manager of Amfac Communities, raised several questions concerning computation of time, representation before the Commission, serving of notices, Rules of Evidence, Intervention, preliminary data in a petition, etc.

Mr. Walton Hong, attorney, suggested that the Rules and Regulations specifically set forth the standards as to which type of property interest would give a person standing, to either intervene or participate in an action.

The conclusion of the hearing today marked the last in a series of public hearings that the Commission had conducted throughout the State on the proposed amendments to the Rules and Regulations. Chairman Tangen observed that in the past 3 days of public hearings, 6 people had testified in Honolulu, one person in Maui, one in Hilo, and those who appeared today. He expressed his appreciation for the many suggestions, recommendations and comments that were offered by the people who had come before the Commission to testify. He acknowledged that it was difficult for the lay person to understand some of the legal and technical language in the document but maintained that this was necessary due to the nature of the Commission's role. He expressed the hope that the Commission will receive support at the

next session of the Legislature when it seeks to cure some of the problems that exist under the present law, such as time constraints.

The Chair declared that the hearing was closed and advised that additional written testimony will be accepted until October 19, 1975 by the Commission, and that the Commission will meet to adopt the amended Rules and Regulations on October 28, 1975.