

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Room 322 (B & C)
New State Building
Honolulu, Hawaii

Approved
2/1/78

October 13, 1977 - 9:00 a.m.

COMMISSIONERS PRESENT: Stanley Sakahashi, Chairman
Charles Duke, Vice Chairman
James Carras
Colette Machado
Shinsei Miyasato
Shinichi Nakagawa
Mitsuo Oura
Carol Whitesell

COMMISSIONER ABSENT: Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
William Milks, Deputy Attorney General
Benjamin Matsubara, Special Dep. Att. Gen.
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

ACTION

SP77-275 - ISLANDER U-DRIVE, INC.

Special Permit to establish a car rental operation at Hoolehua, Molokai

Mr. Daniel Yasui, Planner, located the subject property on the posted maps and read the recommendations and conditions imposed by the Maui County Planning Commission.

During the discussion, it was noted that there were several u-drive operations scattered in and around the Molokai air terminal area without benefit of a master plan. Commissioner Machado felt that the County should initiate steps to centralize the u-drive operations on Molokai.

Commissioner Machado proposed that the County's condition No. 4 be amended as follows: "That the applicant shall seek a

suitable site at the Molokai Airport terminal area as the permanent location for the subject business, and the applicant shall be assisted by the Maui County Planning Department and the State Department of Transportation in finding a site suitable for both the subject business and a centralized car rental lot". Commissioner Machado also proposed that another condition, No. 5, be added as follows: "That within 2 years of final approval of the Special Permit, a progress report on the establishment of a suitable location for a centralized car rental operation be submitted by the Maui Planning Director to the Land Use Commission." This, in essence, would renumber the present County condition No. 5 to 6, 6 to 7, and 7 to 8.

Commissioner Machado moved to approve SP77-275, subject to conditions 1 through 8 imposed by the Maui County Planning Commission, and condition No. 4 as amended, and to the added condition No. 5 as stated above. The motion was seconded by Commissioner Whitesell and unanimously carried.

SP77-273 - OAHU CORPORATION

Special Permit to establish a recreational theme park at Kahe Point, Ewa, Oahu

Mr. Furutani reported that he was in receipt of a petition for hearing and for intervention on the subject Special Permit submitted by Ronald Albu and Willam M. Tam of the Legal Aid Society in behalf of Waianae Neighborhood Board No. 24, etal. It was explained that the petition included exhibits containing news articles which appeared subsequent to the close of the hearing at the County level. Mr. Furutani therefore requested advice from legal counsel regarding the admissibility of the new information and the disposition of the hearing and intervention requests.

Mr. William Milks, Deputy Attorney General, agreed with Vice Chairman Duke's views that the Commission was powerless to consider any evidence which had not been a matter before the County Planning Commission, and that its decision must be based on information gathered at the County hearing.

Mr. Tam argued that according to a Supreme Court decision, before any contested case can be finally decided upon, there must be a quasi-judicial hearing, with opportunity to examine and cross examine, which had been denied in the instant Special Permit. He continued that the appeal to the courts must follow the Land Use Commission's proceedings and therefore the final remedy lay before this body.

Mr. Milks questioned Mr. Tam's authority for determining that this was a contested case proceedings in view of Section 205-6 of the Hawaii Revised Statutes. Mr. Tam replied that a contested case was defined as any proceeding where the legal

rights of the parties are to be determined and, in this instance, he claimed that his clients' rights will be affected by the Commission's decision.

Mr. Benjamin Matsubara, legal consultant, observed that the contested case proceedings should have occurred at the County level and that the Land Use Commission was merely a review body on Special Permits, to rule on the County's decision based on the record submitted by the County.

Moreover, Mr. Milks advised that the Commission would be unable to have an evidentiary hearing providing due process, right to cross examination of all parties, and still comply with the stringent time constraints imposed by the Statutes in a Special Permit procedure.

It was Mr. Tam's contention that the Special Permit procedure in this instance was improper and that the matter should have been considered under a boundary amendment procedure due to the substantial nature of the proposed development.

Vice Chairman Duke moved to deny the petition for hearing and for intervention by Neighborhood Board No. 24, etal, which was seconded by Commissioner Carras. The motion was carried with the following votes:

Ayes: Commissioners Whitesell, Miyasato, Carras, Nakagawa
Oura, Duke, Chairman Sakahashi

Abstain: Commissioner Machado

Upon motion by Vice Chairman Duke, seconded by Commissioner Nakagawa, it was unanimously agreed to go into executive session to receive legal counsel concerning Special Permit procedures.

The Commission was in executive session from 10:19 a.m. to 11:45 a.m.

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Chairman Sakahashi called on the Executive Officer for a summary of the subject request, including the County's conditions and recommendations. Mr. Furutani also responded to questions posed by the Commissioners regarding the site of the proposed city landfill, topography of the property under consideration, access to the site from Farrington Highway, etc.

The Commission entered into a discussion with Mr. Henry Eng of the City Department of Land Utilization concerning removal and replacement of soil on the property, the 3 test sites for water at Honouliuli, slopes of the developable part of the valley.

A lunch recess was called at 12:09 p.m., and the meeting reconvened at 1:30 p.m.

1:30 p.m.

The Commission continued its discussion with Mr. Eng, at which time Mr. Eng deferred all questions concerning the development of the water system to the Board of Water Supply.

Commissioner Nakagawa requested legal counsel as to the applicability of condition #2 imposed by the County, directing the applicant to provide evidence of its financial condition, together with the balance sheet, to the Land Use Commission.

Mr. Milks advised that it was the City Planning Commission's responsibility to review all documents prior to rendering its decision, and that the Land Use Commission only reviewed the record transmitted by the County. Therefore, the Commission should not review any newly submitted document. However, Mr. Milks observed that, in submitting the financial statement, the applicant was complying with the County's condition No. 2.

Vice Chairman Duke agreed that this was consistent with the Commission's position of denying the presentation of new evidence during a Special Permit procedure before the Land Use Commission, and suggested that staff recall all of the financial statements which had been distributed to the Commission members at the beginning of the meeting. Whereupon, staff removed all of the aforementioned document.

Vice Chairman Duke recommended further that the County Planning Commissions be notified that it would be improper for the Land Use Commission to receive new information which had not been considered at the County's hearing on Special Permit requests.

A clarification was requested by the Vice Chairman concerning the kinds of uses which would be considered appropriate to come under a Special Permit procedure.

Mr. Furutani explained that there were two approaches to the Special Permit procedure--1) the rationale for the establishment of the Special Permit procedure under the planning approach; and 2) the intent of the drafters of the Land Use Law with respect to the Special Permit variance measure. To afford some flexibility to the rigid regulation of land uses according to the broad zoning approach, the Special Permit procedure was introduced as a variance mechanism. This mechanism allows reasonable and unusual uses to occur within the Agricultural and Rural Districts, uses which otherwise would not be permitted under the law. However, in terms of the kind of uses which would be appropriate for consideration under the Special Permit procedure, Mr. Furutani felt that there was a need for further discussion and study.

It was further explained that in cognizance of the absence of performance on several Special Permits dating back as far as the '60's on which no time limitations had been imposed, the Commission amended its Rules to require that a time condition be imposed

on all Special Permits. Mr. Furutani elaborated that there were two aspects to the time condition--one prescribing a specific time frame in which to start the project, and the other establishing a termination date for the use. In the former instance, so long as the petitioner meets the starting time requirement, the use could conceivably continue indefinitely.

Commissioner Nakagawa moved to approve SP77-273, subject to the conditions set forth by the City Planning Commission, excluding condition No. 2. Commissioner Carras seconded the motion.

Commissioner Nakagawa moved to amend his motion to include condition No. 2, with the qualification that he will not take into account the financial statement presented by the petitioner. Commissioner Carras stated that he had no objections to the amendment.

Commissioner Machado requested clarification of the term "professional" under condition No. 4, expressing concern that this might exclude many who may have the expertise but who may lack the necessary formal educational background. Mr. Fred Rodrigues, representing the petitioner, assured Commissioner Machado that the proper combination of people, both professional and non-professional, would be called upon for input and to provide guidance in planning the development.

Commissioner Whitesell spoke against the motion, questioning the appropriateness of considering such an intense use under a Special Permit procedure. She felt that the proposed use was basically an urban use due to the large concentration of people, cars, buses, etc. which will occur on the site, and it was not the intent of the Land Use Law to establish urban uses within the Agricultural District. She also disagreed with the Attorney General's opinion. Moreover, adverse effects on surrounding properties and the whole issue of water, salt intrusion into the water source, etc., had not been adequately addressed.

Commissioner Carras supported the motion on the basis that there was a need for some new industry on the island; the theme park will enhance the area and provide some very needed job opportunities for the community; and an investment as substantial as that proposed by the petitioner should be encouraged.

Commissioner Machado went on record opposing the motion since she felt that this request should have been pursued under a boundary amendment petition rather than a Special Permit application.

Commissioner Oura felt that the proposed development on 103 acres of land presently lying idle would foster economic progress for Hawaii and create job opportunities for the tradesmen and others.

Commissioner Nakagawa observed that as far as he knew, subject lands had never been used for agriculture for many years

and was not even suitable for grazing due to the dryness.

The Chair called on the Executive Officer to poll the Commissioners. The motion was carried with the following votes:

Ayes: Commissioners Oura, Miyasato, Nakagawa, Carras,
Chairman Sakahashi

Nays: Commissioners Machado, Whitesell, Duke

The meeting adjourned at 3:18 p.m.