

STATE OF JAWAII  
LAND USE COMMISSION

Minutes of Meeting

Lotus Room - Maui Beach Hotel  
Kahului, Maui

October 14, 1976 - 1:00 p.m.

*approved*  
NOV 22 1976

COMMISSIONERS PRESENT: Eddie Tangen, Chairman  
Stanley Sakahashi, Vice Chairman  
Charles Duke  
Colette Machado  
Shinsei Miyasato  
Mitsuo Oura  
Carol Whitesell  
Edward Yanai

COMMISSIONER ABSENT: James Carras

STAFF PRESENT: Ah Sung Leong, Acting Executive Officer  
Michael Marsh, Deputy Attorney General  
Benjamin Matsubara, Consultant  
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

All persons planning to testify during today's proceedings were duly sworn in by the Chairman.

ADDITION TO THE AGENDA

It was moved by Commissioner Duke, seconded by Commissioner Whitesell, to add to the agenda an executive session of the Commission to discuss the matter of starting date, salary, and job description of the new Executive Officer. The motion was unanimously carried by voice vote.

HEARING

A76-415 - PIONEER PROPERTIES, INC.

Pursuant to a notice published in the Maui News and the Honolulu Advertiser on September 1, 1976, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by Pioneer Properties, Inc., to amend the land use district boundaries for approximately one acre presently in the Rural District into the Urban District at Kihei, Maui to allow four residential lots, Docket No. A76-415.

It was noted by the Chair that according to the Hearing Officer's report of the pre-hearing conference held on the subject petition on

October 7, 1976, the petitioner had been unprepared to proceed with the exchange of exhibits. He emphasized the importance of the pre-hearing conference for purposes of expediting the hearing process, and requested an explanation for the lack of preparation and certain deficiencies in the petition.

Mr. Gerald Kremkow, President of Pioneer Properties, Inc., submitted that he was not aware of any deficiency in the petition, nor had he been advised of the necessity for transmitting additional information. He apologized for his unpreparedness at the pre-hearing conference.

The discussion that ensued regarding the deficiency in the petition, the existing Agreement of Sale between the petitioner and Gregory Muth, the Land Use Commission's Rural designation which prevails over the County's R-2 Residential zoning for the parcel, etc. are set forth in the transcript on pages 4 through 36.

Mr. Melvyn Yoshii, Deputy County Attorney for Maui, made a motion to dismiss the petition with prejudice for the following reasons:

1. The copy of the petition which was served on the County of Maui was unsigned and therefore not verified as required by the Commission's Rules.
2. An essential party to the petition had not joined as a party.
3. A copy of the Agreement of Sale between the Petitioner and Gregory Muth had not been submitted to all of the parties as requested during the pre-hearing conference.

On these points, Deputy Attorney General Marsh advised as follows:

1. According to the findings in the Commission's Rules, it was not necessary for Mr. Muth to become a party to the proceedings.
2. The other two bases for dismissal were readily curable and too minor in nature to warrant dismissal.

The Chair called for a short recess.

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Commissioner Duke moved to deny the motion of the County of Maui to dismiss the petition, which was seconded by Vice Chairman Sakahashi and unanimously carried.

The hearing procedure to be followed was explained by Chairman Tangen.

Mr. Leong identified the subject property with the aid of the maps on the board, pointing out the realignment of the highway at the request of Commissioner Duke.

APPEARANCES

Gerald Kremkow, President of Pioneer Properties, Inc.

Melvyn Yoshii, Deputy County Attorney, representing  
the Maui Planning Department

Tatsuo Fujimoto, Head, Land Use Division, representing  
the Department of Planning and Economic  
Development

All of the above were admitted as parties to the proceedings.

PETITIONER

Exhibits

The following documents were marked for identification and introduced into evidence as Petitioner's Exhibits:

Exhibit 1 - Agreement of Sale between Pioneer Properties, Inc. and Gregory and Patricia Ann Muth

Exhibit 2 - Letter dated October 14, 1976 to the Land Use Commission from Gregory and Patricia Muth indicating agreement with Pioneer's petition

Exhibit 3 - Letter dated October 23, 1973 from Toshio Ishikawa to Mr. R. C. Holloway, Jr., Haleakala Land Co.

Exhibit 4 - Staff report from planning staff to Board of Adjustments and Appeals re TMK 3-9-1: 32, Kihei, Maui

Gerald Kremkow - Witness

Mr. Gerald Kremkow, President of Pioneer Properties, Inc., having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on ----- Pages

Cross examination by Mr. Yoshii ----- 45 to 58

Cross examination by Mr. Fujimoto ----- 58 to 63

Questioned by Vice Chairman Sakahashi ----- 63 to 64

COUNTY OF MAUI

Mr. Yoshii submitted the written testimony of Mr. Ishikawa, Maui Planning Director, for the record.

Exhibits

The following documents were marked for identification and introduced into evidence as the County's exhibits:

- Exhibit 1 - Portion of TMK 3-9-1
- Exhibit 2 - Land Approval Card: 3-9-01: 32
- Exhibit 3 - Land Appraisal Card: 3-9-01: 139
- Exhibit 4 - Preliminary Plat of TMK 3-9-01: 32
- Exhibit 5 - Zoning Summary - County of Maui

Toshio Ishikawa - Witness

Mr. Toshio Ishikawa, Planning Director, Maui Planning Department, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on -- Pages

Cross examination by Mr. Kremkow ----- 67 to 68

Questioned by Commissioner Whitesell ----- 68 to 69

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

A short recess was called by the Chair to review DPED's written testimony.

Esther Ueda - Witness

Mrs. Esther Ueda, Planner with the Land Use Division, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Fujimoto ----- 70 to 71

Cross examination by Mr. Kremkow ----- 71 to 73

Harry Suyama - Witness

Mr. Harry Suyama, District Engineer, Highways Division, Department of Transportation, Maui, having been duly sworn in, was called as a witness, examined, and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Fujimoto ----- 74 to 75

Cross examination by Mr. Kremkow ----- 75 to 77

Questioned by Mr. Marsh ----- 77 to 78

In his closing statement, Mr. Yoshii submitted that the petitioner had not shown any real need or urgency for the requested land

classification except to indicate that a substantial investment was at stake. It was his feeling that it was not the function of the Land Use Commission to insure a profit to every investor, but rather to be guided by the criteria as outlined in the Commission's Rules and Regulations.

The hearing on A76-415 was closed and the Chairman advised the petitioner of the deadline for the filing of the proposed findings of fact and conclusions of law, service to all parties, etc.

#### ACTION

#### A76-411 - MCBRYDE SUGAR CO.

In the matter of the boundary amendment petition by McBryde Sugar Co., Docket A76-411, on which a hearing was called on May 12, 1976, the Commission discussed and reviewed the following documents which had been previously distributed to the Commission members, prior to taking action on the petition:

1. Petitioner's Proposed Decision and Order
2. Supplementary Testimony of Mr. Levine
3. Amendment to the Supplementary Testimony of Mr. Levine
4. DPED's Comments on Supplementary Testimony by Mr. Levine

At Mr. Izumi's request, the transcript of May 12, 1976 was corrected as per motion filed on June 8, 1976 by Mr. Izumi.

The lengthy discussion in the areas of anti-speculation provisions, the owner-occupancy 4-year restriction period and the establishment of the starting date for this period, definition of "qualified buyers" and the various categories of priorities, etc., are set forth in the transcript on pages 81 to 93.

Chairman Tangen recommended that the petition be approved, subject to the condition that any change on all of the items covering the anti-speculation provisions would require agreement between A&B and the County; and that for a period of 6 years from date of sale it will be owner-occupied (which will allow 2 years in which to construct the house and 4 years for owner-occupancy); and subject also to all representations made both in writing and orally to the Commission.

It was Mr. Marsh's recommendation that if it were the Commission's intention to include in the conditions all representations made by the petitioner, that these representations be specifically identified; otherwise the Commission may be faced with a very difficult situation in the event of litigation.

Due to the time constraints, Chairman Tangen suggested that Mr. Marsh refer to the record to enumerate the representations which had been made by the petitioner which he felt were important and should be included in the Decision and Order.

It was moved by Commissioner Whitesell and seconded by Vice Chairman Sakahashi that the petition be approved, subject to all pertinent representations made orally and in writing by the petitioner. The motion was carried with the following votes:

Ayes: Commissioners Oura, Yanai, Miyasato, Machado,  
Whitesell, Sakahashi, Duke, Chairman Tangen

The meeting was adjourned at 4:33 p.m.