

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

LOTUS Room - Maui Beach Hotel
Kahului, Maui

October 15, 1976 - 8:30 a.m.

Approved
DEC 21 1976

COMMISSIONERS PRESENT: Stanley Sakahashi, Chairman Pro tem
Charles Duke
Colette Machado
Shinsei Miyasato
Mitsuo Oura
Carol Whitesell
Edward Yanai

COMMISSIONERS ABSENT: Eddie Tangen, Chairman
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

HEARING

A76-416 - EDWIN TU-KUEI KAM

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 Edwin Tu-Kuei Kam to amend the land use district boundaries for approximately 60 acres from the Conservation District and an additional 28 acres presently in the Rural District into the Urban District at Puu Olai, Makena, Maui to allow residential, resort and limited commercial development, Docket No. A76-416.

Intervention

One timely application for intervention had been received by the Commission, dated September 16, 1976, from Douglas Meller, Secretary of the Shoreline Protection Alliance.

Three timely applications to be witnesses had been received from the following:

1. John Bose, II, Conservation Committee, Sierra Club

2. Charles R. Morris, property owner and resident of Kihei
3. William E. Maschal, President, Kihei Community Association

One untimely application to be a witness had been received from David Melrose, teacher at Seabury Hall, Makawao, requesting permission for himself and several of his students who wished to express their views to be heard at the hearing.

Commissioner Whitesell moved to admit Douglas Meller as an intervenor in this Docket, which was seconded by Commissioner Machado.

Upon Deputy Attorney General Marsh's advice, Commissioner Whitesell clarified for the record that she was moving to admit Mr. Meller as an intervenor pursuant to the provisions of Section 6-7 (1) (d) of the Commission's Rules.

The motion to admit Mr. Meller as an intervenor was unanimously passed.

It was moved by Commissioner Whitesell and seconded by Commissioner Machado to admit Mr. Bose as a witness representing the Sierra Club. The motion was unanimously carried.

Upon motion by Commissioner Whitesell, seconded by Commissioner Duke, it was moved to allow Mr. Morris to appear as a witness. The motion was unanimously passed.

Mr. Maschal was admitted as a witness to the proceedings upon motion by Commissioner Whitesell which was seconded by Commissioner Miyasato.

On the matter of his untimely application, Mr. Melrose explained that this may have been due to the delay in the mail service. Commissioner Whitesell observed that this was understandable. Moreover, she felt it was very important for young people to know that they can participate in government matters, and therefore moved to admit Mr. Melrose and his students as witnesses. The motion was seconded by Commissioner Duke and carried.

A briefing of the procedure to be followed for the hearing was given by the Chairman.

All those testifying during today's proceedings were sworn in by the Chairman.

APPEARANCES

Hiram Kamaka, Attorney representing the petitioner

Steven Scott, Deputy County Attorney, representing the
Maui Planning Department

Gilbert J. Lee, Deputy Attorney General, representing the
Department of Planning & Economic Development

Mr. Leong pointed out the subject parcel on various maps and oriented it with various surrounding landmarks.

WITNESSES

The following admitted witnesses testified opposing the subject petition and strongly urging the denial of the request for urbanization:

1. John Bose - Representing Sierra Club, Maui Branch
2. Charles Morris - Resident of Kihei
3. William Maschal - Representing Kihei Community Association
4. Students at Seabury Hall
 - a. Stanford Carr
 - b. Missy Wilson
 - c. Christen Vaught
 - d. Sarah Bott
 - e. Jeffrey Baldwin
 - f. Heidi Lee
5. David Melrose - Teacher at Seabury Hall

Chairman Sakahashi called for a short recess.

PETITIONER

Exhibits

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

- Exhibits 1 through 30 appended to the original petition
- Exhibit 31 - Environmental Impact Statement for Puu Olai, Maui
- Exhibits 1-a through 7-a: Photos of subject lands and surrounding areas; proposed floor plans of hotel and condominiums
- Exhibit 8-a: Chart showing height of proposed hotel in relation to Puu Olai

Exhibit 9-a: Notice of Property Assessment, 1975-1976

Exhibit 10-a: Notice of Property Assessment, 1976-1977

Mr. Hiram K. Kamaka, Counsel for Dr. Edwin T. Kam, petitioner, read into the record the written testimony (see copy on file).

Mr. Kamaka was examined and testified as set forth in the transcript on ----- Pages

Cross examination by Mr. Scott ----- 156 to 170

Cross examination by Mr. Lee ----- 172 to 174

Jerry Daly - Witness

Mr. Jerry Daly, consultant conducting the State Housing Study for the State of Hawaii, 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. Lee ----- 174 to 177

Questioned by Commissioner Whitesell ----- 178 to 180

Examination of Mr. Kamaka continued as set forth on ----- Pages

Cross examination by Mr. Meller ----- 177 to 178

MAUI PLANNING DEPARTMENT

Mr. Scott submitted Senator Yamasaki's written testimony for the record. For the benefit of the public in attendance, Mr. Scott read Senator Yamasaki's statement (see copy on file).

The following exhibits were identified and introduced into evidence as the County's Exhibits:

Exhibit 1 - Kihei General Plan

Exhibit 2 - Letter from Department of Water Supply

Exhibit 3 - Comments from Land Use and Codes

Exhibit 3A- Attached comments from Central Maui SWCD

Exhibit 4 - Letter from Department of Land and Natural Resources

Toshio Ishikawa - Witness

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

Direct examination by Mr. Scott ----- 185 to 189
 Cross examination by Mr. Meller ----- 190 to 192
 Questioned by Commissioner Whitesell ----- 193 to 194
 Questioned by Commissioner Yanai ----- 194 to 197

Shigeto Murayama - Witness

Mr. Shigeto Murayama, Director of the Maui Department of Water Supply, having been duly sworn in, was called as a witness and examined and testified as set forth in the transcript on

Questioned by Commissioner Whitesell -----	<u>Pages</u> 198 to 200
Cross examination by Mr. Kamaka -----	200 to 201
Cross examination by Mr. Lee -----	201

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Mr. Lee requested the introduction of the written testimony prepared by the Land Use Division into the record and to waive the reading of the statement.

Exhibits

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

- Exhibit 1 - Makena-La Perouse State Park
- Exhibit 2 - State Park Plan
- Exhibit 3 - Suggested Areal Use Plan
- Exhibit 4 - Circulation and Use Map
- Exhibit 5 - Soils Map
- Exhibit 6 - Potential Hazards Map

Tatsuo Fujimoto - Witness

Mr. Tatsuo Fujimoto, Head of the Land Use Division, having been duly sworn in, was called as a witness and examined and testified as set forth in the transcript on----- Pages

Direct examination by Mr. Lee ----- 202 to 205

A lunch break was called by the Chairman at 11:45 a.m.

The meeting was reconvened at 1:15 p.m.

Mr. Lee continued with his presentation of witnesses.

William Gorst - Witness

Mr. William Gorst, Parks Planner with the State Parks Division, having been duly sworn in, was called as a witness and examined and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Lee ----- 207 to 214

Cross examination by Mr. Kamaka ----- 215 to 217

Cross examination by Mr. Scott ----- 217 to 219

Questioned by Commissioners ----- 219 to 223

Hitoshi Mogi - Witness

Mr. Hitoshi Mogi, consultant to the State Parks Division, having been duly sworn in, was called as a witness and examined and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Lee ----- 223 to 229

Cross examination by Mr. Kamaka ----- 229 to 232

Cross examination by Mr. Scott ----- 232 to 233

Recross examination by Mr. Kamaka ----- 233 to 234

DOUGLAS MELLER, SHORELINE PROTECTION ALLIANCE

Mr. Meller, Secretary of the Shoreline Protection Alliance, requested a ruling on the following two questions which the organization had posed in a letter to the Commission, dated October 12, 1976:

1. Does Act 176 take precedence over Hawaii's Land Use Law?
2. Does HRS, Chapter 343, take precedence over Hawaii's Land Use Law?

For the record, Mr. Meller stated that he had been advised by the Alliance's attorney to submit that there was good reason to believe that Act 176 and Chapter 343 do take precedence over the Land Use Law.

Mr. Michael Marsh, Deputy Attorney General, responded that although there had not been sufficient time to prepare a final opinion, he did not believe that the requirements under Act 176 or Chapter 343, HRS, were applicable to the LUC's boundary amendment proceedings. However, the Commission's own Rules and Regulations

and the Interim Shoreline Policy Guidelines do require consideration of environmental effects, which requirement was supported by Mr. Kam's EIS prepared for the Interim Shoreline Special Management Permit.

It was Mr. Meller's suggestion that the Commission seek legislative amendment to clarify the EIS requirements by the Land Use Commission in boundary amendment applications.

Exhibits

The following documents were marked for identification and introduced into evidence as the Shoreline Protection Alliance's Exhibits:

- Exhibit I - Testimony recommending that Edwin T. K. Kam be required to dedicate designated lands as a condition for granting of his petition
- Exhibit II - Tax Map showing areas which SPA recommends for dedication by Edwin T. K. Kam
- Exhibit III - Photo of Puu Olai

Mr. Meller presented a summary of the written testimony, and recommended that, should the Commission elect to approve the petition, Dr. Kam be required to dedicate a portion of his land to the State for a public park, as a condition to granting approval.

There was no cross examination of Mr. Meller by any of the parties.

In his closing statement, Mr. Kamaka appealed to the Commission to take into consideration the fact that Dr. Kam was born and raised in Hawaii, loved the land and had the same concerns as those presenting the public's views.

Mr. Scott countered that the Commission had no alternative but to deny the petition on the bases that the proposed development would be in violation of the County's General Plan, it would require a planned development of the water system at great public expense, and it would deny the citizen's enjoyment of a purely natural environment.

Mr. Lee concluded that the weight of the evidence seemed to indicate that the use proposed by the petitioner for the property did not conform with the views of the public.

Chairman Sakahashi advised the petitioner of the deadline for the filing of the proposed findings of fact and conclusions of law, service to all parties, etc., and announced that the hearing on A76-416 was closed.

ADOPTION OF MINUTES

Upon motion by Commissioner Duke, seconded by Commissioner Whitesell, the minutes of September 1, 1976 were adopted as circulated.

MEETING SCHEDULE

Mr. Leong apprised the Commission of the next scheduled meeting of the Commission and of other tentative dates in the future.

It was recommended by Mr. Marsh that since the hearings on the proposed amendments to the Commission's Rules and Regulations were legislative in nature, they be conducted by a hearing officer.

EXECUTIVE OFFICER

As determined during an executive session of the Commission the previous evening, Commissioner Duke moved to set the maximum salary of the Executive Officer at \$31,500.00 effective July 1, 1976, including any increment or increase which had accrued to an SR-30 classification subsequent to July 1, 1976. Furthermore, that Gordan Furutani be employed as the Executive Officer effective November 1, 1976 with a starting salary of \$24,000.00, and that the starting salary be reviewed by the Commission at least once annually. The motion was seconded by Commissioner Whitesell and unanimously carried with the following votes:

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

The meeting was adjourned at 3:18 p.m.