

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

Conference Room 322 A & B  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii

October 15, 1980 - 9:00 a.m.

*Approved* FEB 17 1981

COMMISSIONERS PRESENT: Charles Duke, Chairman  
Shinichi Nakagawa, Vice Chairman  
Richard Choy  
Mitsuo Oura  
Shinsei Miyasato  
George Pascua  
Carol Whitesell  
William Yuen (10:25 a.m.)

COMMISSIONER ABSENT: Edward Yanai

STAFF PRESENT: Gordan Y. Furutani, Executive Officer  
Joseph Chu, Planner  
Allan Kawada, Deputy Attorney General  
Dora Horikawa, Chief Clerk  
  
Ray Russell, Court Reporter

A80-484 - KUAKINI INVESTMENT, INC.

The Executive Officer read a correspondence which had been received from Mr. Robert Carlsmith, attorney representing Kuakini Investment, Inc., requesting postponement of the hearing scheduled for October 21, 1980 to October 28, 1980 due to a conflict in Mr. Carlsmith's schedule.

Following a detailed account by Mr. Furutani of the costs and staff time involved in postponing a scheduled hearing, it was Commissioner Whitesell's recommendation that at the time the Commission reviews amendments to the Rules and Regulations, it consider provisions for imposing penalties on similar requests.

Vice Chairman Nakagawa moved that the hearing on Docket A80-484 be continued, which was seconded by Commissioner Oura, and unanimously carried.

Commissioner Pascua moved that the hearing on A80-484 be continued to October 29 and 30, 1980, which was seconded by Vice Chairman Nakagawa.

Due to an expression from Commissioner Oura of his inability to attend the hearing on October 29, Vice Chairman Nakagawa withdrew his second to the motion. Subsequently, Commissioner Oura seconded the motion and the Commissioners were polled as follows:

Ayes: Commissioner Pascua

Nays: Commissioners Whitesell, Oura, Miyasato, Nakagawa, Choy, Chairman Duke

The motion did not carry.

Vice Chairman Nakagawa moved that the hearing on Docket A80-484 be continued to November 12 and 13, 1980. The motion was seconded by Commissioner Oura and unanimously carried.

#### ACTION

#### A80-475 - KAUAI BIBLE CHURCH

Chairman Duke called on the Executive Officer to give a chronological account of the events that had transpired since action on the matter was deferred from the July 15, 1980 action meeting.

Mr. Furutani advised that petitioner had filed for a Conservation District Use permit with the Board of Land and Natural Resources on August 14, 1980; however, it was not known when action on the request would take place. In response to questions about the possibility of deferring the Commission's action until after the Land Board's decision, Mr. Furutani advised that the 180th day for action, as required by statute, on this petition will fall on October 19, 1980. He therefore deferred the question to the Deputy Attorney General.

Mr. Kawada responded that there were legal overtones to the question posed by the Commission and that he would like to discuss this in executive session.

Commissioner Pascua moved that the Commission go into executive session, which was seconded by Vice Chairman Nakagawa and unanimously carried.

The Commission was in executive session from 9:57 a.m. to 10:32 a.m.

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The Commission noted for the record that the Commission had been joined by Commissioner Yuen at 10:38 a.m.

Commissioner Pascua moved to reclassify approximately 3.75 acres of land presently in the Conservation District into the Agricultural District at Omao, Koloa, Kauai for church-related use. The motion was seconded by Commissioner Yuen. The Commissioners were polled as follows:

Ayes: Commissioners Pascua, Yuen, Oura

Nays: Commissioners Whitesell, Nakagawa, Choy, Miyasato, Chairman Duke

The motion failed to carry.

Commissioner Whitesell moved to accept the Hearing Officer's report and adopt the recommended findings and decision of the Hearing Officer as the Commission's findings of fact and decision and order for subject petition. The motion was seconded by Commissioner Miyasato and unanimously approved.

A80-473 - DONALD E. KRAEMER, INC.

Under the proposed decision procedure, Miss Diane Kishimoto, petitioner's attorney, and Miss Annette Chock, Deputy Attorney General, representing DPED, were given equal time to present their closing arguments. Miss Kishimoto was also afforded time for rebuttal. The County of Hawaii was not represented at today's meeting.

Commissioner Pascua moved to deny A80-473 to reclassify approximately 16.070 acres of land presently in the Agricultural District into the Urban District at Holualoa 1st and 2nd, North Kona, Hawaii, for residential use. The motion was seconded by Commissioner Whitesell and the Commissioners were polled as follows:

Ayes: Commissioners Choy, Nakagawa, Yuen, Whitesell, Pascua

Nays: Commissioners Oura, Miyasato, Chairman Duke

The motion did not carry.

Commissioner Oura moved to approve Docket A80-473 to reclassify approximately 16.070 acres of land presently in the Agricultural District into the Urban District at Holualoa 1st and 2nd, North Kona, Hawaii, for residential use. The motion was seconded by Commissioner Miyasato and the Commissioners were polled as follows:

Ayes: Commissioners Miyasato, Oura, Chairman Duke

Nays: Commissioners Whitesell, Choy, Nakagawa, Pascua, Yuen

The motion to approve the petition did not carry and, therefore, the petition was denied.

Pursuant to a request by Hearing Officer Benjamin Matsubara, it was moved by Commissioner Pascua and seconded by Commissioner Whitesell to rearrange the agenda to take action on Docket A80-481, Thomas and Tere Fearon, at this time.

A80-481 - THOMAS & TERE FEARON

Mr. Benjamin Matsubara, Hearing Officer who conducted the hearing on this petition presented a summary of his report and recommended that the petition be approved, based upon the evidence presented by the petitioner, County and State.

Mr. Matsubara responded to questions which were raised by Commission members regarding water availability, easement for access to the second lot, archaeological survey, etc.

Commissioner Oura moved to approve A80-481 to reclassify approximately 1.0 acre of land presently in the Agricultural District into the Urban District at Holualoa, North Kona, Hawaii, for residential use. It was seconded by Commissioner Pascua and unanimously carried.

Commissioner Yuen moved, seconded by Commissioner Pascua, to adopt the proposed findings by the Hearing Officer as the true findings in this matter. The motion was carried by voice vote.

1:30 p.m.

A80-473 - DONALD E. KRAEMER, INC. (cont.)

Chairman Duke announced that the Commission was now ready to adopt the true findings for the subject petition on which the Commission had taken action earlier today. However, since the State had not prepared proposed findings in support of its objection to this petition, it was moved by Commissioner Yuen and seconded by Vice Chairman Nakagawa to continue action on this petition until DPED files proposed findings of fact and conclusions of law in accordance with the action taken by the Commission today. The motion was unanimously passed.

A80-478 - DONALD E. KRAEMER, INC. AND JOHN P. ELLBOGEN

The Chairman called on staff planner to point out the location of the petition under consideration.

Miss Diane Kishimoto, attorney representing petitioner, presented her closing arguments in support of the petition. Mr. Fujimoto, representing DPED, submitted that he had nothing further to add, other than what was represented at the hearing and as stated by Counselor Chock. Insofar as the County was concerned, Mr. Furutani, Executive Officer, advised that he was in receipt of a communication from the County stating its staff's inability to attend the meeting today and waiving its rights to oral argument.

Commissioner Oura moved to approve Docket A80-478 to re-classify approximately 15.4 acres of land presently in the Agricultural District into the Urban District at Puaa 1st, North Kona, Hawaii for residential use. It was seconded by Commissioner Miyasato and unanimously carried.

The Chairman turned the meeting over to Mr. Allan Kawada, Deputy Attorney General. During the ensuing discussion, the Commission adopted the true findings relative to this petition, utilizing petitioner's proposed findings and also taking into account comments from DPED and the County Planning Department.

The Chairman instructed Mr. Kawada to prepare the conclusions of law and order consistent with the findings just adopted by the Commission.

ADOPTION OF MINUTES

The minutes of July 1, 1980, July 8, 1980, July 9, 1980 and July 10, 1980 were adopted as circulated.

The meeting was adjourned at 2:35 p.m.