

STATE OF HAWAII
LAND USE COMMISSION

Approved
MAR 11 1980

Minutes of Meeting

Kauai Regional Library
Lihue, Kauai

October 16, 1979 - 9:00 a.m.

COMMISSIONERS PRESENT: Charles Duke, Chairman
Shinichi Nakagawa, Vice Chairman
Shinsei Miyasato
Mitsuo Oura (9:30 a.m.)
George Pascua
Carol Whitesell
Edward Yanai
William Yuen

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Allan Kawada, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

CONTINUED HEARING

A79-456 - THE LIHUE PLANTATION CO., LTD.

It was announced by Chairman Duke that the first item on the agenda was a continued hearing of the above petition to permit petitioner to submit a financial statement as required by the Rules and Regulations of the Commission.

The Chairman also noted that a letter, via registered mail, from Ms. Elizabeth Stone had been received by the Commission this morning on Kauai regarding subject petition and that it was necessary for the Commission to act on it. Following an oral presentation of the letter by staff planner, it was moved by Commissioner Pascua, seconded by Commissioner Yuen, to deny admission of Ms. Stone's letter into evidence. The motion was unanimously carried.

Following a discussion of the financial statement submitted by the petitioner, marked as Petitioner's Exhibit C and which had been duly served upon all of the parties, it was moved by Commissioner Pascua that Petitioner's Exhibit C fulfilled the requirements of the Rules and Regulations of the Land Use Commission. The motion was seconded by Vice Chairman Nakagawa and unanimously carried. (Commissioner Oura abstained from voting since he had not heard all of the discussion.)

Chairman Duke declared that the hearing on Docket A79-456 was officially closed.

CONTINUED ACTION

A76-418 - MOANA CORPORATION

Motion to amend conditions originally imposed in the Decision and Order of the Land Use Commission

Chairman Duke noted that action on the subject motion will be conducted through the proposed decision route inasmuch as only 6 Commissioners had been present during the entire discussion. Commissioner Yuen who had not heard all of the arguments had qualified himself to participate in this matter by virtue of having read all of the transcripts relative to discussions on the motion. Commissioner Pascua abstained due to a conflict, as indicated earlier.

Communication

A communication from Vladimir Knudsen, dated September 29, 1979, regarding 28 acres owned by the Knudsen Trust was denied admittance into the record since the aforementioned lands were not under discussion at this time.

Appearances

Walton Hong, representing the petitioner

Michael Belles, County Attorney's Office, representing the Maui Planning Department

Annette Chock, Deputy Attorney General, representing the Dept. of Planning & Economic Development

Teresa Tico, Attorney, representing the intervenors

The oral arguments and rebuttals by all of the parties concerning the subject motion are recorded in the transcript on the pages noted.

ORAL ARGUMENTS

Oral arguments by Mr. Hong-----18 to 20

Oral Arguments by Mr. Belles-----20 to 24

Oral Arguments by Miss Tico-----25 to 27

REBUTTAL

Rebuttal by Mr. Hong-----27

Rebuttal (cont.)

Rebuttal by Miss Tico-----28

Vice Chairman Nakagawa moved that the motion to amend the conditions originally imposed in the Decision and Order of the Land Use Commission on Docket A76-418, Moana Corporation (i.e. deletion of the condition requiring petitioner to provide 140 houselots for medium and low-income housing and in lieu thereof to accept the agreement made between the petitioner and the County of Kauai) be approved, subject to the conditions as set forth by the Land Use Commission. It was seconded by Commissioner Miyasato.

The meeting was in recess from 10:32 a.m. to 10:46 a.m. to resolve a minor legal problem.

10:46 a.m.

The Chairman called on the Executive Officer to poll the Commissioners on the motion on the floor, and the votes were recorded as follows:

Ayes: Commissioners Nakagawa, Miyasato, Yanai, Yuen, Oura, Chairman Duke

Nay: Commissioner Whitesell

The motion was carried.

The Chairman directed Mr. Hong to prepare a proposed Decision and Order regarding the motion.

ACTION

SP77-273 - OAHU CORPORATION
TO ALLOW A SIX-MONTH TIME EXTENSION TO COMMENCE CONSTRUCTION OF
A RECREATIONAL THEME PARK AT KAHE POINT, EWA, OAHU

Mr. Yasui, staff planner, pointed out the location of the property on the maps and also summarized the events which had occurred prior to the present extension request.

Chairman Duke called on Mr. William Tam, attorney representing the five organizations who are opposed to the project, to identify himself. However, he was not permitted to submit additional testimony.

Mr. Arnold Green, President of Oahu Corporation. was also recognized by the Chairman.

Vice Chairman Nakagawa moved that Oahu Corporation, SP77-273, be allowed a 6-month time extension to commence construction of a recreational theme park, subject to all conditions imposed by the City Planning Commission, and further that this will be the last time extension. The motion was seconded by Commissioner Pascua and carried with the following votes:

Ayes: Commissioners Oura, Yanai, Miyasato, Yuen, Nakagawa, Pascua, Chairman Duke

Nay: Commissioner Whitesell

A79-451 - MAHINAHINA VENTURE AND RICHARD K. G. STURSBURG

Chairman Duke stated for the record that all 8 Commissioners present today were qualified to participate in the action on the subject petition.

Commissioner Miyasato moved to approve Docket A79-451, Mahinahina Venture and Richard K. G. Stursberg, to reclassify approximately 26.905 acres presently in the Agricultural District into the Urban District at Honokowai, Kaanapali, Lahaina, Maui. The motion was seconded by Commissioner Pascua and unanimously carried.

Thereafter, under Counselor Kawada's guidance, the Commission reviewed and discussed the proposed Decision and Order submitted by the petitioner, amending, deleting and adding facts as appropriate, to reflect the true findings of the Commission relative to this petition.

Chairman Duke directed Counselor Kawada to prepare the final findings of fact, conclusions of law and decision and order on this petition, and submit it to the Commission for their signatures.

The meeting was in recess from 11:45 a.m. to 1:15 p.m.

1:15 p.m.

ACTION (cont.)

A79-458 - DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT

Vice Chairman Nakagawa was excused from participating in the action on this petition since he had not attended the hearing.

Commissioner Oura moved to approve Docket A79-458, DPED, to reclassify approximately 224 acres of land presently in the

Conservation District into the Agricultural District at Ke-ahole, North Kona, Hawaii, which was seconded by Commissioner Pascua and carried with the following votes:

Ayes: Commissioners Miyasato, Pascua, Yuen, Yanai, Oura, Whitesell, Chairman Duke

It was recommended by Counselor Kawada that the petitioner's proposed findings be adopted in its entirety as the Commission's findings. Chairman Duke directed counselor to prepare the true findings, conclusions of law and decision and order on Docket A79-458 and submit it to the Commission.

COMMISSIONER YUEN'S DISSENT ON KAWAINUI

Commissioner Yuen requested that his dissent on Kawainui be filed as a part of the Decision and Order of the Commission and served upon all the parties to the proceeding.

Counselor Kawada advised that the Decision and Order on Kawainui had been prepared in final form and duly served upon all the parties. It was also his advice to the Commission that the dissenting opinion not be made a part of the Decision and Order for the following reasons:

1. Commissioner Yuen's dissenting opinion could be made known to the public by mailing it under separate cover to all parties and appropriate persons.
2. The concerns brought up in Commissioner Yuen's dissent were not specifically addressed in the Commission's Order, nor were they a matter of discussion in open hearing.
3. At some point in time, a decision has to be made final, reflecting a majority decision.
4. There is nothing in the rule requiring or indicating that a minority opinion on a decision should be made a part of the decision.

Commissioner Whitesell argued that she could see no reason why a minority opinion could not be attached to the decision since it was merely a vehicle for getting the dissenting opinion on record, and did not necessarily open up avenues for further arguments.

Commissioner Yuen maintained that he did not see any procedural defects resulting from the dissent since no appeal could be taken from the dissent; that his primary concern was to see

that it went out to all the parties and made a physical part of the record as an expression of one point of view after the decision was rendered.

Chairman Duke observed that there two alternatives open to the Commission--either send the dissent out as a separate document, or send it out with instructions to all parties that it is to be made a part of the Decision and Order previously served.

Commissioner Yuen moved to make the dissenting opinion a part of the Decision and Order, which was seconded by Commissioner Whitesell. The Commissioners were polled as follows:

Ayes: Commissioners Whitesell, Miyasato, Pascua, Yuen

Nays: Commissioners Nakagawa, Yanai, Oura, Chairman Duke

Chairman Duke stated that the other alternative open to the Commission was to circulate the dissent to all the parties so that they will be apprised of Commissioner Yuen's position.

A79-457 - JOHN H. MIDKIFF, JR.

Chairman Duke called on Mr. Benjamin Matsubara, Hearing Officer, to present a report of the hearing which he had conducted on the subject petition.

Following a comprehensive report by Mr. Matsubara, Mr. Midkiff--petitioner, Mr. Orlando Davidson--Deputy Corporation Counsel representing the City Department of General Planning, Miss Annette Chock--Deputy Attorney General representing DPED, were all afforded equal time to present their positions.

Mr. Matsubara responded to questions raised by Commissioner Yuen regarding resolution of the policy argument which had been raised by the County, the fate of the 4 existing residences on the property, etc.

Commissioner Yanai moved to approve Docket A79-457, John H. Midkiff, Jr., to reclassify 1.128 acres of land from the Agricultural District into the Urban District. It was seconded by Vice Chairman Nakagawa and carried. Commissioner Whitesell was not present during the voting.

ADOPTION OF MINUTES

Upon motion by Commissioner Yuen, seconded by Vice Chairman Nakagawa, the minutes of May 16 and 17, 1979 were approved as circulated.

The meeting was adjourned at 3:15 p.m.