

STATE OF HAWAII  
LAND USE COMMISSION

*approved 11/29/68*

Minutes of Meeting

Board Room of the Board of Supervisors  
Lihue, Kauai

October 18, 1968 - 2:00 p.m.

Commissioners Present: C. E. S. Burns, Jr., Chairman  
Wilbert Choi  
Leslie Wung  
Alexander Napier  
Shiro Nishimura  
Goro Inaba  
Keigo Murakami

Commissioners Absent: Shelley Mark  
Sunao Kido

Staff Present: Ramon Duran, Executive Officer  
Ah Sung Leong, Planner  
Jack Morse, Attorney General's Office  
Jean Soma, Stenographer

Chairman Burns called the meeting to order and swore in persons wishing to testify at the hearing.

HEARINGS

PETITION BY HERBERT AND DOROTHY MIYAHARA (A68-196) TO RECLASSIFY 13 ACRES FROM AGRICULTURAL TO URBAN AT OMAO HOMESTEADS, KOLOA, KAUAI

Staff's recommendation to approve this request was presented by Mr. Leong on the basis that the extent of existing rural-type developments beyond the present Omao Rural District and the restriction on development imposed by Omao and Poeleele Streams to the east and west lead to the conclusion that the Omao Rural District should extend southward to include the existing rural developments adjacent to the subject property. (See copy of report on file.) In addition, it was recommended by the staff that parcels 14 and 61 (TMK 2-7-06: 14 and 61 - 2.846 acres) and the small parcels across the road from the subject property be considered for inclusion in the Omao Rural District when the district boundaries are reviewed in the near future.

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In reply to Chairman Burns' question regarding the ownership of TMK 2-7-06: 14, Mr. Leong replied that parcel 14 is owned by Mr. and Mrs. Charles H. McAlister and that parcel 61 is owned by the Yamamoto family. Mr. Leong also stated that neither the owners of parcel 14 or 61 have indicated any interest in the rezoning of their land.

Pursuant to Commissioner Murakami's inquiry as to the approximate slopes of the property in question, Mr. Leong stated that roughly 50% of the subject property contains slopes of approximately 21 to 35%.

Since there was no further testimony, the hearing was closed.

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PETITION BY JOSEPH S. BRUN (A68-199) TO RECLASSIFY 6 ACRES FROM AGRICULTURAL TO URBAN AT KALAHEO, KAUAI

Executive Officer, Mr. Duran, gave a detailed account of the property in question and also of the surrounding areas.

On the basis that the property in question abuts the Kalaheo Urban District; is poorly suited for agricultural use; and since it was proposed for inclusion within the Urban District when the "final" district boundaries were being considered in 1964, the staff recommended that this petition be approved.

The petitioner, Mr. Brun, reported that at the present time he has no plans to discontinue the operation of the slaughterhouse.

Mr. Brian Nishimoto, Director of the Kauai County Planning & Traffic Commission, informed the Land Use Commission that in the event that Mr. Brun subdivides his property in whole or if the County considers the slaughterhouse to be a nuisance factor, Mr. Brun will be required to raze his slaughterhouse.

Commissioner Murakami related his understanding of the matter that should the petitioner sell all of the lots on his property, he would not have to rid himself of the slaughterhouse. Mr. Nishimoto replied that the slaughterhouse is to be removed if the petitioner decides to subdivide his property.

Mr. Duran announced that the staff was in receipt of a letter from Mr. Brun in regard to the specific use of his land. The letter from Mr. Brun dated October 14, 1968, and read by Mr. Duran stated in part:

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"In reply to your letter of September 26, 1968, permit me to supply the following answers:

1. If reclassified I would like to use the portion fronting the highway for business and the rear portion for residences.
2. See 1 above.
3. I will terminate the operation of the slaughterhouse as soon as construction is begun near it so as not to make its operation objectionable. I would like to continue its operation for the time being."

(See letter on file.)

Mr. Duran revealed that the feeling of the petitioner, Mr. Brun, as expressed in his correspondence, is that he will continue to operate the slaughterhouse until such time as the urban reclassification is granted by the Land Use Commission and residential and business construction is begun on his property near the slaughterhouse. Also, the County has the authority or the responsibility to determine whether or not Mr. Brun may subdivide his property.

Frances Welk, manager of Mr. Brun's business, testified in behalf of the petitioner stating that the Land Use Commission considered the area under discussion for inclusion in the Urban District in 1964. At that time the petitioner requested his property be retained in the Agricultural District due to the fact that he desired to continue his agricultural activities. However, Mr. Brun has discontinued his hog-raising operation and requests that his property now be designated urban.

When queried by Commissioner Napier as to his slaughterhouse passing federal inspection, Mr. Brun replied that a federal inspector had inspected his slaughterhouse and found it to be in conformance with federal standards. Commissioner Napier contested Mr. Brun's statement by reporting to the Commission that, to his knowledge, no slaughterhouse in the State of Hawaii has passed federal inspection.

Frances Welk then retorted that the petitioner was in receipt of a letter from the federal government that the slaughterhouse has been inspected and approved. In addition, another slaughterhouse on the island of Kauai owned by a Mr. Andrade has passed federal inspection.

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Mr. Nishimoto commented on the stipulation made by the Kauai County Planning & Traffic Commission pertaining to the slaughterhouse. Mr. Brun had been contacted and notified that in the event he develops his property in totality, he must remove his slaughterhouse. Should the petitioner's request for urban classification be approved with the stipulation previously mentioned, the existing use of the slaughterhouse will be considered a non-conforming use.

Chairman Burns stated that the prime objective of the Land Use Commission is to district lands in the appropriate classification and that it is up to each individual County to enforce the Land Use Commission regulations or the appropriate County regulations.

In response to Vice-Chairman Choi's question as to the County having the authority of not permitting the petitioner's subdivision plans to go into effect in the event the slaughterhouse is still existing, Mr. Nishimoto explained that this matter would come under the Subdivision Ordinance. At the present time this ordinance cannot require Mr. Brun to discontinue his operation of the slaughterhouse.

Vice-Chairman Choi then posed another question to Mr. Nishimoto in regard to the County of Kauai having the authority of not granting Mr. Brun his subdivision request because of the slaughterhouse. In reply to this question, Mr. Nishimoto answered that he was not too clear on this on the basis that the slaughterhouse is an existing use on the property and that this matter would have to be checked out with the aid of an attorney.

Commissioner Nishimura commented it was his feeling that the question in the minds of the Commissioners was that it is a nuisance factor when you have an existing slaughterhouse where a housing development is proposed. If the property is zoned for urban use, then it is up to the County to permit the petitioner to develop his land for residential, business, etc., uses. Because of the fact that the slaughterhouse is a non-conforming use, the petitioner may leave it on his property or he could remove it under the present County Zoning Ordinance.

Mr. Nishimoto informed Commissioner Nishimura that he was correct in his understanding and that under the interim zoning, the petitioner is allowed to leave the slaughterhouse on his property. The petitioner then disclosed that he desired to continue his slaughterhouse operation, which was constructed in 1948, until such time as it becomes a nuisance factor.

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In addition, Commissioner Wung asked Mr. Brun to submit a copy of the letter from the federal government stating that the slaughterhouse has passed federal inspection. Commissioner Wung stated his disbelief of any slaughterhouse in the State of Hawaii having passed federal inspection. In this regard, Frances Welk said that they would not submit a copy of the letter and that the Land Use Commission should seek its own copy. Furthermore, Mr. Brun added that the approval of his slaughterhouse will not be effective until November or December, 1969, and reiterated his statement that a federal inspector has already inspected the slaughterhouse and found it to be in conformance with federal standards.

The hearing was closed thereafter.

ACTION

PETITION BY IRVING JENKINS AND JOSEPH TEXEIRA (A68-191) TO RECLASSIFY 18 ACRES FROM AGRICULTURAL TO URBAN AT KAPAA, KAUAI

In the staff memorandum presented by Mr. Leong, the staff maintained its original recommendation for approval of Urban Districting for parcels 7 and 61, owned by Mr. Teixeira comprising approximately 9.8 acres, and disapproval of Urban or Rural Districting for parcel 24, owned by Mr. Jenkins comprising approximately 9 acres. Furthermore, it was again recommended that parcel 63 be included in the Urban District in the forthcoming boundary review.

Chairman Burns questioned Mr. Leong as to the ownership of parcel 63. In response, Mr. Leong stated that the parcel is owned by the Henriques family and also that they have not indicated any interest in this matter.

In regard to Commissioner Napier's inquiry as to the result of the Henriques family not desiring parcel 63 to be included in the Urban District, Mr. Duran answered that this matter will be considered during a public hearing conducted during the boundary review program. At that time the Henriques family should be contacted to appear at the public hearing to present their views on this matter.

In reply to Commissioner Nishimura's question, Mr. Leong advised that the staff is recommending denial for parcel 24 owned by Mr. Jenkins on the basis that it is unsuited for residential development because of the steepness of the terrain and that despite Mr. Jenkins' request for Rural Districting, it is still

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an obvious case of spot zoning since this parcel is not contiguous to either an Urban or Rural District.

One of the petitioners, Mr. Jenkins, submitted that he had originally requested an urban reclassification on his property because he felt it was suitable for his property to be subdivided into smaller houselots. He realized that the Commission was justified in denying his urban classification request in view of the fact that there is no Urban District anywhere in the area of his property. The changing of his plea for a Rural Districting rather than Urban was due to his belief that this would allow small landowners to operate a small farm with chickens, etc., which have no place in an urban area. In addition, he had asked the Souza family (people owning property that is mauka of Mr. Jenkins' property) to petition the Land Use Commission together with him in asking for a reclassification of the two properties. In the meantime, Mrs. Souza had passed away; and the remaining members of the family have not decided what they intend to do with their property.

Mr. Duran informed Commissioner Murakami that Mr. Jenkins has changed his request from an urban designation to rural and that the Commission could move to accept a motion in this regard.

In answer to a question raised by the Executive Officer as to what the petitioner, Mr. Jenkins, meant by a "subsistent farm", Mr. Jenkins submitted that he referred to a home garden. For example, a resident with a 20,000-foot lot would have enough room in the back of his house for a 25 x 30 foot area for a vegetable garden or one could raise "fighting chickens".

Vice-Chairman Choi raised a question as to the legality of the Commission in not conducting an additional public hearing to change Mr. Jenkins' request from an urban to rural zoning before action is taken. Mr. Duran commented that it is permissible to do so as "Urban" was advertised and "Rural" is a more restrictive district.

In informing Commissioner Wung regarding the slopes of the area under discussion, the Executive Officer referred to correspondence the petitioner received from Mr. John W. Smithhisler, Work Unit Conservationist, United States Department of Agriculture, Soil Conservation Service, in which Mr. Smithhisler states that the front portion of the area has slopes of 25-40% and the rear area contains slopes of 40-70%.

Commissioner Nishimura stated the predicament of the landowner is that his land is steep and he wants to subdivide it

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for residential purposes. Considering the urban amenities, a one-acre parcel in this area would be most feasible. Furthermore, Rural Districting for the property in question should be approved.

In reply to Mr. Duran's question, Mr. Jenkins stated that he has owned this property for one year.

Mr. Nishimoto replied to Mr. Duran that under the County Subdivision Ordinance, Mr. Jenkins would be required to improve the dirt road leading to his property.

In answer to Commissioner Inaba's inquiry, Mr. Nishimoto commented that the Kauai County's General Plan for the area under discussion is in the residential category. Water facilities for the area include pipelines 2 inch in size. The smallest lot size in an Agricultural District is three acres.

Commissioner Nishimura moved that the Commission grant Mr. Texeira's request for Urban Districting parcels 7 and 61 and also Mr. Jenkins' request for Urban Districting parcel 24. The motion was seconded by Commissioner Napier and was defeated by the following votes:

Ayes: Commissioners Inaba, Napier, Nishimura, and  
Chairman Burns

Nays: Commissioners Murakami, Wung, and Choi

The chair then entertained a motion from Vice-Chairman Choi who moved to accept staff's recommendation to approve Urban Districting for Mr. Texeira's parcels and disapproval of Urban or Rural Districting for Mr. Jenkins' parcel. The motion was seconded by Commissioner Wung and was carried with Commissioner Nishimura casting the only dissenting vote.

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APPLICATION BY KAUAI HELICOPTERS (SP68-53) FOR HELIPORT USE AT  
LIHUE, KAUAI

Executive Officer, Mr. Duran, delivered the staff memorandum in which the staff again maintained its original decision that this Special Permit request be denied. Denial of this request is on the basis that an operation of this nature (heliport operation) should be conducted at the Lihue Airport approximately 1 mile away; the proposed landing pad does not meet minimum requirements recommended by the Federal Aviation Agency in their "Heliport Design Guide"; landings and takeoffs of helicopters next to the road obviously attract the attention of the motorists

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causing a traffic hazard; and noise generated by the helicopters is not compatible with the desired living environment of the proposed residential subdivision less than 370 feet away.

Mr. Duran reminded the Commissioners that the Commission first met on this matter on August 16, 1968, at Lihue, Kauai, at which time action was deferred due to further investigation on this matter. At that time Mr. Jerry Robinson, General Manager of Kauai Helicopters, opposed the information submitted by the Kauai Fire Chief, Mr. Raymond B. Toguchi, in reference to the cost of the installation of the fuel pumps and tanks that were installed by the applicants. Fire Chief Toguchi stated that the equipment and installation costs amounted to \$23,508. Mr. Robinson corrected this figure by saying that the amount was in the neighborhood of \$7,000 and that the equipment had been installed prior to the Land Use Commission taking a stand on the subject matter and meeting on August 16, 1968.

Chairman Burns queried Mr. Duran as to the Federal Aviation Administration giving their approval of the heliport operation at its present site. In reply, Mr. Duran reported that the FAA fully endorses its retention as a heliport.

In reply to Commissioner Nishimura's question, Mr. Duran disclosed that the Kauai County Planning Commission approved Kauai Helicopters' operation of the heliport at its present location with the stipulation that this approval terminate on June 30, 1969, or at such time as the operation may be objectionable, whichever occurs first.

In response to Commissioner Nishimura's question about the properness of a motion being made upon the condition that the lease run until December 31, 1969, Chairman Burns answered that the applicants be asked if they have any new evidence to submit to the Commission.

In support of the approval of this request, Mr. Robinson submitted that the status of Kauai Helicopters' lease is uncertain at the present time because of the status of the variance. KTOH Radio Station is in progress of renegotiating their own lease with Amfac. Kauai Helicopters' lease has been extended until December 31, 1969, and KTOH has indicated that there should be no problems in doing so. Mr. Robinson requested the Commission grant approval of the permit contingent on a time limit of five years.

Commissioner Murakami asked Mr. Robinson if Kauai Helicopters would like to stay at their present site permanently and will



not attempt to relocate themselves for another five years. Mr. Robinson commented that if adequate facilities are available at the Lihue Airport, it may be as long as five years or possibly longer until anything suitable, facility wise, will be accepted by the applicants. Furthermore, Mr. Robinson added that it is very unlikely that the State will provide Kauai Helicopters with necessary and adequate facilities for their heliport operation.

Vice-Chairman Choi questioned Mr. Duran in regard to the Land Use Commission having the power or authority to deny KTOH Radio Station its continued use of their present location as a radio station site. Mr. Duran explained that it is the responsibility of the County to take such action, because the radio station according to the Land Use Law has a non-conforming status. It existed before the Land Use Law came into being and may continue but not change the use nor expand the use. Vice-Chairman Choi further added that KTOH is not using their land for which it was previously intended. Mr. Duran then assured him that the radio station is still using the tower. However, the tower is still a non-conforming use; and the use of it has not changed. The entire parcel is involved in the non-conforming status.

Following a ten-minute recess, Chairman Burns called the meeting to order at which time the Executive Officer announced that if a party is interested in new facilities at the airport, they would have to make an application for them through the Airports Division. Then, it is processed on that basis; but, it is not logical for the airport to construct new facilities in the hope that someone will move in.

Although they have not made a formal written application to Lihue Airport for the possible relocation of their heliport operation, Mr. Robinson agreed to do so at the request of Commissioner Murakami.

Commissioner Nishimura then moved that the Commission grant the applicants ample time to relocate themselves and that the lease be permitted to run until December 31, 1969. In the meantime, however, the applicants should attempt to relocate their operation. Motion was seconded by Commissioner Napier.

Commissioner Murakami reminded Mr. Robinson that the heliport operation on the KTOH Radio Station site was in complete violation of the State Land Use Law and that they should attempt to relocate themselves as soon as possible.

The motion was unanimously carried.

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KALAUAO, OAHU - COMMUNITY PLANNING, INC. - APPLICATION FOR INTERPRETATION OF DISTRICT BOUNDARY

Discussion on the subject matter was withheld until the November 1, 1968, meeting in Honolulu, Oahu.

TENTATIVE SCHEDULE

November 1, 1968, on Oahu was decided on as the next meeting date.

CLARIFICATION ON KAUAI HELICOPTERS' SPECIAL PERMIT APPLICATION

Meeting was adjourned at 3:25 p.m. but was resumed at 3:30 p.m. pursuant to Kauai Helicopters' Special Permit application.

Mr. Duran questioned the Commission's action on Kauai Helicopters and reported that the Kauai County placed a condition on this Special Permit that it be approved until June 30, 1969, as per applicants' request. The Land Use Commission today took action on this matter and approved it until December 31, 1969. He commented that the Commission may be more stringent than the County but not less restrictive. Mr. Jack Morse tended to agree with the Executive Officer. He further commented that the proper procedure to follow would be to have a reconsideration vote. Commissioner Nishimura declined to agree with Mr. Duran and suggested that the Attorney General's office make an investigation and written decision on this matter and that the applicants should be notified.

It was agreed that the Attorney General's office be notified of the Commission's action and that if the Commission was found to be correct in its action, then the motion and second would be left as is with the December 31, 1969, stipulation. However, if the Attorney General's office determined that the Land Use Commission was incorrect in its proceedings, then the Land Use Commission should correct its action by complying with the instructions from the Attorney General's office.

ADJOURNMENT

Meeting was adjourned at 3:40 p.m.