

LAND USE COMMISSION

STATE OF HAWAII

Minutes of Meeting

Hearing Room

Honolulu, Hawaii

9:45 P.M. - October 24, 1962

Commissioners

Present:

Edward C. Bryan
Stanley C. Friel
Wayne D. Gregg
Yuichi Ige
Edward Kanemoto
Franklin Y. K. Sunn
Roger T. Williams

Ex-Officio Members

Absent:

E. H. Cook
Frank Lombardi

Staff

Present:

R. J. Darnell, Executive Officer (XO)
W. M. Mullahey, Field Officer (FO)
John Canwright, Legal Counsel
Philip Chun, Department of Planning and Research

The meeting was called to order by Chairman Bryan.

The continuation of the agenda for the afternoon meeting was opened by the Chairman.

Chairman Bryan asked if Commissioners wished to open the matter on the petition by William Y. Hayashi for change of temporary district boundary from Agriculture to Urban. There was no response and the matter was closed.

Both the Chairman and the XO informed the Hayashis that the Commission will be holding public hearings on all the islands to consider the final boundary lines and that at this time if they wished to be heard, they may have the opportunity to do so then.

Though the matter on the petition by William Y. Hayashi was closed, Mr. Hayashi was heard by the Commission. He described his property and other surrounding properties, pointing out the disadvantages and advantages, but more so the disadvantages. He stated, for example, that his land was not suitable for agriculture and was not producible enough for a livelihood. The Chairman thanked Mr. Hayashi for his comments.

The XO outlined the November meeting of the Land Use Commission, to be combined with the rule change hearings to be heard on all islands. The XO circulated the digest of the October 12 meeting of the County Planning Directors and County Attorneys.

Commissioner Sunn questioned the Chairman on the Commission's attendance at the October 12 meeting, stating that it was his impression that the Commission was to attend the meeting, but since only two commissioners were present, Mr. Sunn surmised that he must have been mistaken. Commissioner Sunn also commented on the lack of objections raised by the County people during the meeting, aside from the basic disagreement between the County Attorneys and the Attorney General over the interpretation of SECTION 2, Sections 3 and 8, of Act 187/61. The Chairman asked Commissioner Sunn if he thought the meeting was worthwhile, and Commissioner Sunn replied in the affirmative.

The Chairman asked if there were any changes in our own procedure that we should make, or whether the County people think that our attitude in these things is correct. Commissioner Friel answered that he did not think the county staff people who attended the meeting agreed on our attitude, again citing the differing interpretations of SECTION 2, Sections 3 and 8.

The XO stated that he thought that these matters would come up on the Commission's rule change hearings in November, and that is why the digest of the October 12 meeting will be helpful in predicting the questions that will be asked and the attitudes of the various county staff people.

The FO brought up the question of private schools in the 'A' district and the fact that the Interim Regulations do not allow this use. It was the Deputy Attorney General's suggestion at the October 12 meeting that the regulations be amended to include private schools as a permitted use in the 'A' district. The XO concurred with the statement but added that he did not think that this change in the proposed amendment would clear the county planning commissions in time to be advertised for the November set of meetings.

Legal Counsel stated that it was his opinion that the proposed amendment could be further amended at the time of the hearing, without going through the counties beforehand. As long as the basic proposal was sent to the Counties for their recommendations, further amendments could take place at the time of the hearings.

The XO stated that now would be a good time to bring out the fact that notice for the proposed November hearings had been published incorrectly by the newspapers and that the hearing schedule would have to be moved back a few days.

In reply to a question by Commissioner Sunn the FO said that it was his suggestion that the meetings be held on the 14th, 15th and 16th of November.

The commissioners discussed dates for the November hearings, and agreed to set the hearings for the 19th and 20th of November, at which time the "round-robin" on the rule change and other items pending would be heard.

The XO reviewed the County Agents' Workshop meeting, which was held at the University of Hawaii on October 22, 1962, for the purpose of explaining all of the facets of Act 187 to the County land agents. The XO listed the speakers in the order of their appearance: Frank Skrivanek, Planning and Research; John Canwright, Attorney General's Office; R. J. Darnell, Land Use Commission; Paul Tajima, Department of Land and Natural Resources; Frederick Nunns, Land Study Bureau of the University of Hawaii; and Stanley Ooka, Department of Taxation. The XO stated that a short digest of the meeting would be available in a few days.

Commissioner Sunn asked for an oral digest of what Stanley Ooka had said at the meeting.

The XO stated that the discussion centered around the following point: "How Would Dedication Help?". Mr. Ooka stated that in some cases dedication was not going to help at all. Dedication is principally for people who are close to the Urban areas to let them dedicate their lands for agriculture, any form; for people a great distance from the Urban district who have valuable agricultural land but are not able to grow a high value crop on it economically. The XO stated that he had questioned Mr. Ooka as to how the Department of Taxation would view a piece of valuable agricultural land fairly close to the Urban district but not dedicated. Mr. Ooka replied to the effect that if this property were dedicated the urban increment would be removed, as the law is quite clear on this point; but that if not dedicated, there would be an urban increment added to the land close to the Urban district as it presently is done, regardless of the soil rating, because of the property's proximity to the Urban district.

The Chairman remarked that this type of assessment would seem to make dedication worthwhile, and he said that he could see nothing wrong with that.

The Chairman stated that, as he understood it, the provision was in the law to keep the land in agriculture and encourage people to dedicate their land.

Commissioner Sunn stated that, in his mind, the bigger point was how agricultural uses in the Urban district were to be taxed.

The XO replied that the Department of Taxation policy would be to add an urban increment to the land in the Agricultural district which would be greater than the increment added to undedicated land in the same district.

The question was raised as to what the assessments in the Agricultural district would be based upon.

The XO replied that the Department of Taxation would go to the market price that land had brought in the area in the past. So, in discussing this point with Mr. Ooka, the XO said that he had used the example of land in Waimanalo where deed restrictions placed on the land prohibited any primary use of land for anything besides agriculture for a period of 20 to 25 years. The Tax Office looks at what the man sold the property for, say \$15,000 an acre (based on potential subdivision), and then fixes their assessment on that price, even though the state deed restrictions and the Land Use Commission may say that the land cannot be used for urban purposes. It seems that the state is supporting land speculation in this case, through their method of taxing real property, where the property may have been conveyed for a higher price on the theory that the buyer can go to the State and get the restrictions lifted subsequent to the purchase.

Commissioner Sunn said that this does not support speculation but rather hurts the property owner.

The XO replied that the State is taxing the land as though he could get the restrictions lifted.

Commissioner Sunn replied, "Yes, and this makes the property owner a little more cautious when buying property; it makes the speculator think twice."

The Chairman then raised the question, "On the other hand how could the Tax Office ignore the actual sale price of the property, that is the valuation; what other way is there to set it?"

The XO replied, "What I am saying is to base it upon the best use of the land. Act 187/61 states that the Department of Taxation shall look at not only what the land is being used for, in this case agriculture, as well as what the property can be used for, which is not for subdivision (deed restrictions). So how can the Tax Department decide which areas will be Urban 10 years from now which is what they are assessing at? They don't know."

Legal Counsel then spoke of the subject as follows: "The method of assessment has always been to view the uses of the land for the past 10 to 12 years and an anticipation of what the land will be used for over a similar period in the future. They were not assessing for today, but for a substantial period of time, and that has simply been carried over to the present time. You will notice that all Act 187 says is that, "they shall give consideration to"; it does not say that they shall assess in accordance with the zoning but shall just give consideration to it."

The XO replied, "I'm not convinced but that the law was aimed at trying to break a vicious circle where the State is involved in supporting speculative practices on land, in effect, by recognizing that the land has that (\$15,000) type of value."

The Chairman inserted that as a practical matter he is right until someone takes him to court.

Commissioner Gregg added, "And that is why a lot of this is none of our business."

Commissioner Sunn asked, "What happens to the fellow who dedicates and is then surrounded by the urban area?" The XO replied, "The dedication continues its term, unless the Director of Taxation and the land owner mutually agree to remove the dedication; and in that case the dedication may be lifted in 60 days." Commissioner Sunn stated, "You mean that it is not an automatic lift because of the fact that urban now surrounds him?" The XO replied, "No. It is not automatic." Mr. Chun stated, "This makes the owner of the dedicated land a rich man because he can go to the Tax Office and lift his dedication when and if he is ready to develop." The XO stated, "But the Tax Office may say 'no' at that time." Mr. Chun replied, "I would dare the Tax Office to say 'no', after this Commission has rezoned the land to urban." The XO stated, "This is a matter for consideration by the Land Use Commission before they rezone dedicated property. The dedication is meant to be a shelter for the man if he does mean to continue farming. If he reneges, he then has to pay all the back taxes. If the urban line bypasses a dedicated property and the property owner wants to stay in farming, the dedication provision will protect him as long as he wants to stay in farming, for the duration of the dedication. This is a definite intent of the law."

PROGRAM INFORMATION REPORT

The XO stated that he felt that he needed the Commission's approval on the proposed program statement mailed to the Commissioners before he gave the Budget Department the go ahead on this.

The Chairman asked if the members of the Commission would like to have this read, or have the opportunity to read this right now. The Chairman suggested, "Perhaps the members would like to take this with them tonight and act on it tomorrow morning?" The members were in agreement with this suggestion and postponed any action to be taken on this matter to the following morning.

COMMUNICATION

The XO read a letter from the Hawaii County Planning and Traffic Commission, signed by Hiroshi Kasamoto, Director, asking that their petition for change of Temporary District Boundary for the Waiakea Camp Six area be dropped.

The Chairman stated that he thought the Commission might do one of two things: take action on Hawaii County's request now and withdraw it, or wait until the 45 days had lapsed and deny the petition.

The XO then directed a question to the legal counsel, "May not an applicant withdraw at any time?" Commissioner Sunn in turn stated that he did not think this course of withdrawal was proper as in effect the Hawaii County had placed the matter before the public.

The Chairman asked the FO to review the protests received to date regarding the petition. The FO stated that, in response to more than a hundred requests for comments that had been sent out by the Land Use Commission staff, 33 responses had been received in return: 15 for the proposed rezoning and 18 against the rezoning.

The Chairman stated that the staff should ask Mr. Kasamoto to stir up people who did not reply to the Land Use Commission and ask them to do so. Also the County should inform the staff of any replies that they may have received which were not forwarded to the Land Use Commission staff.

Commissioner Sunn stated that, since the Commission could not act upon the petition at this time, the Commission should defer the matter until the next meeting.

NEW ITEMS

1. Letter from the Outdoor Circle regarding Philo Owen, signed by Mrs. Virginia Davis, President of the Outdoor Circle.

The Chairman asked if the Commission should acknowledge the letter. The XO stated that in matters such as this, not requiring Commission's action, no reply is made.

Commissioner Sunn suggested that the staff thermofax the original, stamp it received, initial it and mail the thermofax as the reply.

2. Request from the Director of Planning and Research to revise the Land Use Commission letterhead to include the Department of Planning and Research on the letterhead.

After a discussion between the Commission and Mr. Chun, the Chairman deferred the matter until the next Land Use Commission meeting.

3. The Field Officer hearing on Kauai was noted as being rescheduled for 1:00 p.m. on the 30th of October. There were no comments.
4. The XO asked for Commission's comments on the Revised Office Procedure sheet that had been circulated. There were no comments.

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

YUICHI ICE
SECRETARY