

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

Conference Room 322 (B & C)  
New State Building  
Honolulu, Hawaii

*Approved*  
*2/14/78*

October 25, 1977 - 9:00 a.m.

COMMISSIONERS PRESENT: Stanley Sakahashi, Chairman  
Charles Duke, Vice Chairman  
James Carras  
Colette Machado  
Shinsei Miyasato  
Shinichi Nakagawa  
Mitsuo Oura  
Carol Whitesell

COMMISSIONER ABSENT: Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer  
Daniel Yasui, Planner  
Allan Kawada, Deputy Attorney General  
Dora Horikawa, Clerk Reporter  
Ray Russell, Court Reporter

ACTION

A74-421 - WEST BEACH DEVELOPMENT CORPORATION

Motion for Reconsideration and for Hearing by the Ewa Beach Aliis Athletic Club

Miss Karen Radius, representing the Ewa Beach Aliis Athletic Club, submitted that the motion for reconsideration and hearing had been filed in view of the newly discovered evidence regarding the water situation. It was her feeling that, based on this additional information, the Commission would be better equipped to make a "fully-informed" decision. She requested that a full hearing be held, at which time the Board of Water Supply could be subpoenaed. Miss Radius cited the pertinent sections of the Commission's Rules dealing with authority to waive its rules for "good cause shown" and requested that Rule 4-5 be waived and a new hearing set up to consider the important water question.

Mr. Harry Kim, representing the West Beach Development Corporation, called the Commission's attention to the fact that there was an appeal before the Circuit Court which had been

filed by the Ewa Beach Aliis, providing them with an adequate remedy of law under the Administrative Procedures Act. It was further explained that once a notice of appeal is filed with the Circuit Court, the jurisdiction moves from the Land Use Commission over to the Circuit Court; and the Commission is without power to entertain any matter with respect to the subject petition. Mr. Kim therefore requested that the petition for reconsideration and hearing be denied.

Miss Radius argued that the water question was a very real concern and the kind of concerns upon which courts have granted motions for new trials.

It was Commissioner Whitesell's feeling that the question of water wasn't really new information and perhaps the Commission should have persevered further during the hearing, either by subpoena of experts from the Board of Water Supply, or calling other qualified witnesses to answer questions relating to the water situation. However, she expressed reservations about the kind of information that may have resulted therefrom.

Miss Howell, Deputy Corporation Counsel representing the City, submitted that she had no comments.

Mr. Maurice Kato, Deputy Attorney General representing the Department of Planning & Economic Development, noted that if the Commission's rule 4-5 which provides for reconsideration is limited only to Commissioners, what kind of motion other than a reconsideration request is envisioned here.

Vice Chairman Duke moved that the Commission go into executive session to discuss the merits of the arguments of both counsels with the Deputy Attorney General. The motion was seconded by Commissioner Carras and unanimously carried.

The Commission was in executive session from 9:40 a.m. to 10:10 a.m.

10:10 a.m.

Mr. Kawada, Deputy Attorney General, stated for the record that the executive session was called to counsel the Commission on some of the points that were brought out by Miss Radius and Mr. Kim in oral argument relative to the motion pending before the Commission.

Vice Chairman Duke moved to deny the request for reconsideration and hearing by the Ewa Beach Aliis, for the reason that an appeal is on file in the Circuit Court. The motion was seconded by Commissioner Miyasato and carried with the following votes:

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

SP77-276 - KONA FARMERS COOPERATIVE

Special Permit Application to allow the establishment of a coffee processing plant at Kahauloa, South Kona, Hawaii

Commissioner Oura asked to be excused from the deliberation on this request due to a conflict of interest.

Mr. Daniel Yasui, staff planner, presented the County's recommendations and conditions and located the subject parcel on the maps.

In response to a request for clarification from the Executive Officer, Mr. Norman Hayashi of the Hawaii Planning Department verified that the County was recommending approval of the Special Permit based only on the use of the property without any indication of future expansion. Mr. Hayashi pointed out that under Chapter 205, the establishment of a Special Permit is for the use of a particular property without reference to specific improvements.

It was Mr. Furutani's concern that without some indication of the scale of a use, such as the number of people who will be using the facility, it would be very difficult to determine the impact of that use on the surrounding properties, as required in the tests to be applied, as well as the requirements for determining the burden on the public facilities and services. However, the indication of the physical facility proposed on the property could become a strong measure of the scale of the use. Mr. Furutani expressed his concern about the precedent that would be set <sup>on</sup> by the Commission in approving a Special Permit based only ~~on~~ the use without specific information relative to the intensity of the use. Mr. Kawada agreed that the Commission should avoid granting a wholesale type of permit without addressing the scale of the use.

Commissioner Carras felt that undue concern was being expressed about setting a precedent. He stated each case should be determined on its own merits.

In response to Commissioner Whitesell's question, Mr. Hayashi replied that there were means of controlling the intensity of a use on a property at the county level at the time of reviewing the building permit application in terms of assessing the availability of water, the adequacy of the sewage outfall requirement by the Department of Health, etc.

Mr. Furutani wondered whether approval of a Special Permit automatically allows the applicant to expand or intensify the use in that particular area, and would that expansion be within the jurisdiction of the county? He felt that this was the crux of the issue.

Mr. Kawada advised that in approving a Special Permit, at least some controlling conditions or indication of the intensification of the scale of the contemplated use of that property

should be established. It was also suggested that in order to avoid piece-meal type of consideration for every improvement or expansion on the subject property, the Commission could approve the Special Permit with a proviso that future expansion, if needed, must have some tentative approval at least by the county and the county, at that point, could decide whether another Special Permit was necessary for the expansion.

Mr. Hayashi reiterated that the scale of the operation on the property could be controlled at the county level at the time of issuance of building permits, special management permits, etc.

The Executive Officer pointed out the inappropriate nature of some of the requests that come under the Special Permit procedure, e.g. addition of bathrooms to an existing structure, etc.

From Mr. Kawada's assessment of the foregoing discussion, he concluded that the replacement or repair of an existing facility permitted under a Special Permit would not require another Special Permit. However, it was not clear whether an expansion of an existing facility would fall under the same category.

Vice Chairman Duke recommended that the petitioner be allowed to repair, replace his facilities without the necessity of appearing before the Land Use Commission, so long as he was not changing the nature of his operation. He therefore moved that the Special Permit be approved, subject to the conditions imposed by the Hawaii County Planning Commission, which was seconded by Commissioner Carras.

Vice Chairman Duke reworded his motion as follows: "That the Special Permit be approved, subject to the conditions imposed by the Hawaii County Planning Commission and subject further to the following additional conditions:

- "5. That construction of the new coffee storage building commence within one year from the effective date of approval of the Special Permit.
- "6. That petitioner be permitted to replace, repair, or modernize the existing buildings and, within reason, to expand without coming before the Land Use Commission if the expansion does not exceed twice the size of the existing operation."

The Commissioners were polled as follows:

Ayes: Commissioners Nakagawa, Miyasato, Carras, Whitesell,  
Machado, Duke, Chairman Sakahashi

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

1:15 p.m.

A76-424 - FOSTER PETROLEUM CORPORATION

In the matter of the boundary amendment petition by Foster Petroleum Corporation, Docket A76-424, on which a hearing was held on May 17, 1977, the Commission discussed the following documents which had been previously distributed to the Commission members, prior to taking action on the petition:

1. Petitioner's Findings of Fact and Conclusions of Law
2. City DPG's Response to Petitioner's Proposed Findings of Fact and Conclusions of Law
3. DPED's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order

Commissioner Nakagawa was excused from the deliberation on this petition inasmuch as he had not participated in the hearing.

At the Chairman's request, Mr. Furutani oriented the Commission to the location of the parcel under petition.

During the deliberations to adopt the Findings of Fact, Conclusions of Law and Decision, the Commission discussed the following significant factors relevant to the subject petition:

1. The price range per unit of the proposed residential project; the uncertainty of the actual selling price due to inflation factors.
2. Definition of medium income housing; ability of people in the Waianae area to afford the homes at the prices proposed.
3. The cost of the required off-site improvement; insufficient evidence to support the economic feasibility of the proposal.
4. The position of the Board of Water Supply and the necessity of developing a domestic water source by the petitioner.
5. Intensification of the existing inundation problem and the consequent adverse effect on surrounding properties; the drainage flow.
7. Loss of agricultural production and negative impact in the immediate vicinity resulting from the development.

Following a short recess, Chairman Sakahashi announced that due to the departure of one of the Commissioners, decision on the subject petition will necessarily have to be postponed to a future date. The Executive Officer advised that the matter could be continued to the November 3rd meeting and still meet the statutory time requirement.

Chairman Sakahashi stated for the record that action on A76-424 will be continued until November 3, 1977.

#### ADOPTION OF MINUTES

Upon motion by Vice Chairman Duke, seconded by Commissioner Whitesell, the minutes of June 28, 1977 were adopted as circulated.

#### MEETING SCHEDULE

The Executive Officer suggested that hearings on the following petitions involving small acreages be conducted by a Hearing Officer:

1. A77-432 - Kauai County
2. A77-433 - Enchanted Lake Partners
3. A77-434 - Tom Yagi

Vice Chairman Duke recommended that the hearings on A77-432, Kauai County, and A77-434, Tom Yagi, be conducted by a Hearing Officer. Decision on the method of hearing for the petition by Enchanted Lake Partners, A77-434, was held in abeyance until the next meeting.