

STATE OF HAWAII  
LAND USE COMMISSION

*Approved - June 17, 1966*

Minutes of Meeting

Library of Hawaii Auditorium

Honolulu, Hawaii

1:40 P.M. - October 29, 1965

Commissioners  
Present:

Myron B. Thompson, Chairman  
Robert G. Wenkam  
Jim P. Ferry  
Leslie Wung  
Goro Inaba  
Charles Ota  
Shiro Nishimura

Commissioners  
Absent:

Shelley Mark  
C.E.S. Burns

Staff  
Present:

George S. Moriguchi, Executive Officer  
Roy Takeyama, Legal Counsel  
Ah Sung Leong, Draftsman  
Dora Horikawa, Stenographer

Chairman Thompson called the meeting to order and offered a short prayer. He then proceeded with his explanation of the procedure to be followed during this hearing in detail.

Following this, members in the audience who would be testifying during the hearing were duly sworn in by Chairman Thompson.

Minutes of Public Hearing - October 29, 1965 - Library of Hawaii, Honolulu

PETITION OF AMITY DEVELOPERS (A65-88) TO AMEND THE URBAN DISTRICT BOUNDARY AT KALANI- IKI, OAHU, SO AS TO INCORPORATE ABOUT 20.221 ACRES IDENTIFIABLE BY TAX MAP KEY 3-5-24: 9

Mr. George Moriguchi presented the staff report on the above petition (see staff report on file). Staff recommended approval of the petition on the basis of the following facts:

1. Usability and adaptability of the subject lands.
2. City-like concentration of people, structures, streets and other related uses would be effectuated on the subject lands.
3. All community services and utilities are available in the immediate and nearby areas.

Mr. Moriguchi also read a letter addressed to the Land Use Commission by the Bernice P. Bishop Estate, expressing their approval of the revised plans and grading plans by the Amity Developers and earnestly requesting approval of the petition.

Chairman Thompson opened the floor for questions from the Commissioners.

Commissioner Wenkam asked Mr. Moriguchi for a brief explanation of the reasons for requesting that the petitioner be permitted to continue with construction. Mr. Moriguchi explained that at the October 1, 1965 meeting of the Land Use Commission, the petitioners had requested a ruling to determine that their development came under the non-conformance clause under Section 2.18 of the State Land Use District Regulations, which allowed continuance of any existing use prior to the establishment of the Land Use District Boundaries. The Commission had ruled that the subject petition did fall under Section 2.18. In addition, the Planning Director of the City and County had approved a permit by the developers which was never withdrawn.

Commissioner Wenkam wondered about the status of the request made by the developers to the Department of Land and Natural Resources with respect to construction of the first 12 units. Chairman Thompson stated that this matter had been clarified with the Attorney General's office and was in order.

Mr. H. William Burgess, attorney for the developers, said that he had nothing further to add except to assure the Commission that the project will be a benefit to the community.

Since there were no further comments, the hearing was closed.

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PETITION OF NUUANU VENTURES (A65-90) TO AMEND THE URBAN DISTRICT BOUNDARY AT NUUANU VALLEY, OAHU, SO AS TO INCORPORATE APPROXIMATELY 3.6 ACRES PRESENTLY IN THE CONSERVATION DISTRICT, IDENTIFIABLE BY TAX MAP KEY 2-2-42: 1

Chairman Thompson announced that the Land Use Commission had been served with a Motion to Intervene in the matter of the Nuuanu Ventures petition by Attorney William M. Swope, representing the Nuuanu Valley Community Association, Inc., and presented it to the Commissioners.

Mr. Roy Takeyama, legal counsel, requested Mr. Swope to enumerate the sections of the Hawaii Administrative Procedure Act, and the Land Use Commission Rules of Practice and Procedure upon which this was based.

Mr. Swope supported his motion on the basis that, under the provisions of the Hawaii Administrative Procedure Act, every party was given a right to conduct a close examination which may be required for full disclosure of facts; but that this was permitted under the Land Use Commission Rules of Practice and Procedure only with the permission of the Chairman of the Commission. He said that the intervenors represented a community association of property owners in the area affected by the subdivision and also the property owners immediately adjacent to the proposed subdivision, Wallace A. and Doris M. Dyer, who would be adversely affected in terms of diminishing property values if the petition were granted. Mr. Swope referred to Section 6C-14, Judicial review and justification of the Revised Laws of Hawaii, which sets forth an appeal procedure. He continued that under the Rules of Practice and Procedure of the Land Use Commission, no provision had been set forth for intervention. He also quoted Section 1.6 - "The Commission may on its own motion conduct such proceedings", and Section 1.15 - "Party. The term 'party', wherever used in these rules, shall mean each person or agency named or admitted as a party," of the Rules of Practice and Procedure. Mr. Swope felt that the Commission should have a procedure by which a party could be admitted.

Mr. Takeyama agreed that under Section 6C-14, any person aggrieved by a final decision had a right to appeal, but wondered whether the matter of right to intervene in the proceedings might not be an entirely different matter.

Mr. Swope replied that he was taking the position of a representative of property owners in the Community Association with a right to be heard.

Chairman Thompson informed Mr. Swope that he would be given the right to be heard, but that under the proceedings he would not be permitted to cross-examine any of the witnesses.

Mr. Swope again pointed to the fact that under the Hawaii Administrative Procedure Act, the Commission was bound to give his client the right to cross-examine and to be heard. He stated that he wanted to go on record as having filed a Motion to Intervene.

Following Mr. Takeyama's reminder to Mr. Swope that the petitioner in the case had not been served with the motion, Mr. Kinji Kanazawa, attorney for the petitioner, was served with a copy.

Chairman Thompson called for a recess at 2:05 p.m. to allow the three attorneys to confer on the above matter.

The meeting reconvened at 2:15 p.m.

Chairman Thompson advised that, after due consideration of facts involved, the Motion to Intervene was denied, but that the persons originating this motion would be given the opportunity to be heard.

Commissioner Wenkam stated that he wished to present a prepared statement, questioning the propriety of the Land Use Commission to consider, at this time, a petition for change of boundary from a land owner who had clearly violated the State Land Use Law (see copy of statement on file).

Chairman Thompson asked for comments from Mr. Takeyama regarding the question of whether or not the petitioner had a right to come before the Commission. Mr. Takeyama advised that under Section 4 of the Land Use Act, petitioner was entitled to petition the Land Use Commission for a determination.

Commissioner Ota requested that Commissioner Wenkam's statement be stricken from the records since it expressed an opinion. Chairman Thompson explained that he had accepted the statement in the hopes that it would substantiate the need for denying the hearing, although none of the facts bore this out. However, he stated that the statement was accepted for the records.

Mr. George Moriguchi, Executive Officer, read the report prepared by the staff on the above petition (see copy on file). Staff's recommendation was for modification of the Urban District boundary to include lots 42 through 47 and portions of lots 49 through 58, since the developer had proceeded with subdivision grading construction with the sanction of a governmental body, and restoration of the graded areas would be economically infeasible. Moreover, restoration would probably present a serious potential landslide hazard to life and property in the area below the subject lands.

Mr. Moriguchi also read a letter from the International Longshoremen's and Warehousemen's Union addressed to the State Land Use Commission, expressing serious concern over the possibility of revising the Conservation District boundary in Nuuanu Valley (see letter on file).

Commissioner Wenkam disagreed completely with the staff's recommendation and asked the Executive Officer to explain the reasons therefor. Mr. Moriguchi replied that, based on his experience with land development, it would be economically infeasible to restore this area. Commissioner Wenkam argued that notwithstanding the economic hardship to the developer, serious damage had occurred in a Conservation District and restoration should be made. As outlined in the staff report, Mr. Moriguchi explained that the developers had sought to subdivide these lands surreptitiously, openly and publicly, and to require them to restore these lands would be unreasonable.

Commissioner Wenkam wondered if the Executive Officer was aware that the survey stakes of the developer were driven into the ground immediately next to the forest reserve boundary marker. Mr. Moriguchi replied that he had seen the developer's basic survey map of the area but that he did not observe any forest reserve boundary marker. Chairman Thompson asked if Commissioner Wenkam would like Mr. Moriguchi to check further into this matter. Commissioner Wenkam felt it would be very appropriate for every Commissioner to see the basic survey map of the developers.

Commissioner Ferry reaffirmed the plea made earlier by the Chairman to confine the hearing to accumulation of facts as related to this particular petition.

Mr. Herbert K. Horita, a partner of Nuuanu Ventures, made the following presentation. He observed that the developers could go along with the recommendations made by the staff. A brief account of events leading up to the present petition was reviewed. The developers had applied, in all good faith, to the City governmental agencies and, upon their approval, had gone ahead and developed the land according to the Subdivision Rules and Regulations, and were not aware of any encroachment into the Conservation District until they were so notified. At that time 60% of the lots in the area had been sold on a package deal. Approximately 50% of the lots in the Conservation District were sold in the initial stages. By that time about 50% of the overall development of the subdivision had been completed, including the grading of the hillside. No work has been done in the area since.

As a developer, Mr. Horita stated that they were interested in complementing the area with their development and that they were fully aware of the beauty of the Nuuanu area. Prices have definitely gone up in other areas where they have completed developments. A sketch of the proposed development was presented. Mr. Horita cited the Moanalua Subdivision as an example of what proper landscaping and planting could do to beautify a community. Following a similar pattern, he stated that the developers were planning to plant the sidewalks with trees which would be contributed by the Foster Gardens. Site plans were also produced at this time. When the proposed development is completed, it would definitely enhance the Nuuanu-Dowsett area with an appreciation in property values, Mr. Horita concluded.

Chairman Thompson wondered if the developers had in any way indicated to the City their intent to landscape the cut areas. Mr. Moriguchi informed that a similar testimony had been presented to the City Planning Commission, according to the minutes of their meeting of August 26, 1965. It was also brought out that the City Planning Commission's approval of this subdivision was not contingent upon the developers' commitment to landscape the cut areas.

Commissioner Wenkam stated that according to the maps on file with the Division of Forestry and Board of Water Supply, the 17 lots in question were within the Honolulu watershed area. Mr. Horita reiterated the fact that they were not aware of this until they were so informed.

Commissioner Wenkam continued that according to the records on file in the Division of Forestry, there was no indication that the property owners had stopped claiming any tax benefits because this land was in the forest reserve area. Mr. Horita replied that he did not know about any tax benefits and had assumed that they had been paying for the property as urban lands. Upon Commissioner Wenkam's request, Chairman Thompson directed the Executive Officer to check into this matter.

Commissioner Wenkam stated that he understood land placed in the forest reserve received certain tax benefits. He wondered whether the appraisal obtained for the petitioners would indicate this. It had a bearing on the petition as to whether or not the petitioners did or did not know that the subject lands were in the Conservation District.

Mr. Moriguchi advised that as far as the Tax Department was concerned, they had assessed the makai side of the lands at \$7,000 per acre and \$140 per acre for the mauka area. It was also pointed out that although there was this differential

in assessed value, the notice to the landowners merely indicated the total tax responsibility for the whole area and did not indicate the two different values.

Chairman Thompson interrupted the hearing to recognize a group of Vietnamese officials in the midst, who were introduced by Mr. Katekaru of the East-West Center as provincial deputy chiefs, equivalent to our Lieutenant Governor. These officials were visiting our State to observe local government in operation at the invitation of the Governor.

Chairman Thompson resumed the hearing by opening the floor for comments in connection with the petition.

Attorney Swope moved to dismiss the petition on the grounds that it violated Section 98H-4 which reads, in part, as follows: "The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified." Mr. Swope stated that he failed to have heard one word that this area is needed for a use other than what is normally considered Conservation District.

Chairman Thompson denied the motion to dismiss the petition on the basis that the Commission would make a ruling within 45 to 90 days.

Attorney Swope asked if he could have the material, as submitted, identified including any proof that the area was needed for other than that for which it was classified. Chairman Thompson reminded Mr. Swope that this was not a court of law. Mr. Swope said that scarcity of houselots in the Honolulu area, usability and adaptability of land for urban uses, were not proofs that the area was needed for a use other than that for which it is classified.

During a question and answer session between Mr. Swope and Mr. Mark Mitchell, President of the Nuuanu Valley Community Association, the following testimony was recorded. Mr. Mitchell pointed to the fact that Mr. Kinji Kanazawa, one of the partners in Nuuanu Ventures, was a member of the City Planning Commission. Mr. Mitchell also mentioned that Mr. Kanazawa's name appeared in the acknowledgment of a report prepared by Larry A. Nelson dealing with detailed land classification. This document summarized the different classifications of land by use and under consideration were lands in the Nuuanu Valley area. The maps clearly showed the area involved, existing forest reserve water shed boundary lines, and the existing conservation line.

Mr. Mitchell continued that he had gone into the area under discussion, and wished to submit evidence of a pin that was noted at the intersection and also the surveyor's stake as shown in the photograph. He stated that this line had been surveyed and been in existence for a long time, and that he had very good evidence that it was used by the developers to determine the survey. Mr. Swope commented that, in other words, Mr. Mitchell was saying that the Nuuanu Ventures themselves found the designation by a pipe of the Water and Forestry reserve boundary.

The Nuuanu Valley Community Association felt very strongly that the high cuts and banks were dangerous. During the last rain, the water was coming out in gushes from the forest reserve that had been cut, and the only way to preserve the safety of the residents was to stabilize the banks by replacing the trees which had held the earth.

Mr. Mitchell then presented their map showing the 17 lots in question, the 400 ft. contour line which he claimed was the final boundary adopted by the Commission, and the interim boundary line.

Mr. Mitchell stated that the land was purchased by the present developers in January of 1963.

Commissioner Ferry questioned whether Mr. Mitchell had confirmed the stakes he had found by actual survey. Mr. Mitchell replied that he had not. Commissioner Ferry wondered whether Mr. Mitchell was disputing the Land Use Commission's declaration that 17 lots were affected by the Conservation District. Mr. Mitchell stated that he was not disputing this but that he was referring to the red line as the boundary, based upon information he had found on the tax map in the Land Use Commission office.

Referring to the point made by Commissioner Ferry about the fact that the stakes had not been confirmed by actual survey, Mr. Mitchell explained that he did not see the necessity of this as the wooden pegs were marked with the numbers 58 and 60 and were found on the corner of lots 58 and 60.

Mr. Mitchell replied in the affirmative in answer to Commissioner Ferry's query as to whether it was an assumption on his part that the pipe was the Forest Reserve boundary line.

Mr. Larry Matsuo, engineer for the developers, informed the Commission that the Department of Agriculture and Forestry had asked his engineering firm to show them where the line would be, after the dispute over the Conservation District had been brought to Mr. Matsuo's attention. Prior to that time, they were not aware of any restrictions. He also pointed out that the peg was a lot corner point and not necessarily the Board of Forestry and Reserve line.

Mr. Swope proceeded to rebut the four reasons submitted by the petitioner in support of the petition, outlined in the staff report, as follows:

1. He did not think that the Commission should be concerned with the fact that subdivision plans of the affected area were approved by the various agencies of the City and County of Honolulu, because Act 187 adopted in 1961 and subsequent acts set forth with preciseness the boundaries of the Conservation Districts.
2. The crux of the whole matter lay in the developers' claim that they had inadvertently erred in not asking the State Land Use Commission for a determination of the boundary. When one member of the developers was a member of the Planning Commission and also an adviser in the establishment of the detailed land use boundary in the City and County of Honolulu, Mr. Swope could not see how the Commission could give any due consideration to the second point.
3. The developers were now suggesting that "with proper landscaping and maintenance by each individual lot owner, this area can be greatly improved " They were imposing upon the lot owners what they had originally proposed to do themselves.
4. If economic hardship to the developers were to be the criteria for planning, Mr. Swope could not see how the Land Use Commission could carry out its responsibility.



Chairman Thompson opened the floor for comments from the audience.

Miss Gertrude Humphries wondered if the developers could legally sue the City and County. Chairman Thompson advised that Mr. Takeyama, legal counsel, would be happy to discuss this with Miss Humphries after the meeting.

Miss Humphries expressed her feeling that the responsibility for checking on the boundary was not entirely up to the City and County, and that she had no sympathy for the petitioner because of the steepness of the slopes.

Mrs. Eldon Dykes, representing the League of Women Voters, read a letter urging the Commission to preserve the Conservation District in Nuuanu and to deny the petition (see letter on file).

A question was posed to Mr. Horita by a Nuuanu resident as to just how home owners were expected to replace soil and landscape their property. Chairman Thompson asked Mr. Horita to elaborate on his plans in this respect. Mr. Horita pointed to the developers' site plans and explained that they were planting trees between the sidewalk and the curbing, and planting shrubberies and bushes on the slopes wherever possible. He assured the Commission that the developers would carry out their commitment to landscape the slopes if this petition were granted.

Mr. Matsuo explained that it would be almost impossible to plant trees on a one to one cut (10' horizontal and 10' high, creating a 45° angle) because the soil content would be a mixture of rock and dirt and would not be able to support trees.

Chairman Thompson advised that the Land Use Commission could not impose any conditions upon the petitioner, in reply to Commissioner Ota's concern over the developers' obligation to landscape the slope.

Mr. Matsuo informed the Commission that the developers were residents of the State of Hawaii, in business to stay, and fully realized their obligation to the State to do whatever they had committed themselves to do.

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

A short recess was called by the Chairman at 3:45 p.m. and the hearing was resumed at 3:50 p.m.

ACTION

PETITION OF HAWAIIAN HOME LANDS, (A65-87) TO AMEND THE URBAN DISTRICT BOUNDARY AT KAWAIHAE, COUNTY OF HAWAII, SO AS TO INCORPORATE ABOUT 119 ACRES IDENTIFIABLE BY FIRST DIVISION TMK 6-1-01: 3

Mr. Moriguchi presented memorandum prepared by staff on the above petition (see memo on file), in which it was recommended that:

1. Urban District boundary be moved mauka and paralleling the Mahukona Highway to provide for a depth of 860 feet.
2. Approximately 44 additional acres would be added to the 70 acres within the Urban District.

At Chairman Thompson's request, Mr. Moriguchi pointed out the staff's recommended boundary change on the map.

Commissioner Wenkam wondered whether a petition would be required if deletion of the urban area makai of the highway were contemplated. Chairman Thompson replied in the affirmative.

A letter received from Belt, Collins & Associates, expressing their views and position with regard to the planning for industrial areas in the vicinity of Kawaihae Harbor was read by the Executive Officer. (See letter on file.)

Commissioner Ferry moved that staff recommendation be accepted, which was seconded by Commissioner Wenkam. The motion was carried by 6 affirmative votes. Commissioner Ota abstained from voting.

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APPLICATION BY WALTER YAMAGUCHI (SP65-17) FOR A SPECIAL PERMIT TO CONSTRUCT A FRAME STORE BUILDING FOR RETAIL AND GENERAL MERCHANDISING PURPOSES AT KALAPANA, PUNA, HAWAII, IDENTIFIABLE BY TAX MAP KEY 1-2-03: 35

Staff report on the above request for special permit recommended approval on the basis that the use was "unusual and reasonable", with the additional condition that the petitioner conform generally to the site plan as submitted, and that the petitioner landscape the property at least to the extent shown on his plan.

Chairman Thompson raised the question of whether the Commission had the authority to set conditions on special permits.

Mr. Moriguchi replied that the Hawaii County Planning Commission was vested with the power to enforce building codes, etc., and it was his recommendation that the Planning Commission impose compliance with the site plans and landscape plans as submitted by the petitioner.

Mr. Suefuji advised that the Planning Commission could spell out the terms to petitioner and impose restrictions and conditions. He also added that the County General Plan for this particular parcel designated it for village commercial use.

Commissioner Inaba moved to grant the special permit as recommended by staff, seconded by Commissioner Ferry. The Commissioners were polled as follows:

Aye: Commissioners Inaba, Nishimura, Ferry

No: Chairman Thompson, Commissioners Wung, Wenkam

Abstained: Commissioner Ota

The motion was not carried.

Commissioner Wung moved for a reconsideration of the vote, seconded by Commissioner Ferry, which was passed unanimously.

Commissioner Wung then moved to defer action on the permit, seconded by Commissioner Ferry. Motion was carried.

#### DIAMOND HEAD BOUNDARY

Mr. Moriguchi presented staff's review and study on the subject lands and the recommended adjustments in the Conservation District, (see staff report on file). In response to the Commissioners' request, Mr. Moriguchi pointed out the areas affected, the Department of Land & Natural Resources lands, etc.

Chairman Thompson pointed out that if the Commission agreed with staff's recommendation to adjust the Conservation District boundary, a public hearing would be necessary.

At this point, Commissioner Ferry requested deferment of action on this matter since the Department of Land had been committed by the last Legislature, through concurrent resolution, to make a report on the status of the Diamond Head Monument. Therefore, if the Commissioners did not feel that a decision was urgent, he felt that a deferment might be in order, pending completion of the report. Commissioner Ferry went on to explain that the purpose of maintaining the Diamond Head Monument was primarily to keep the area in a clean condition and also for preservation.

Chairman Thompson wondered whether declaration of the area as a national monument might affect the adjacent urban lands, and Commissioner Ferry replied that they would remain unchanged.

Commissioner Wenkam made a plea that the Commissioners do everything possible to protect the Diamond Head area from urban encroachment.

Since there was no objection, it was unanimously agreed to defer this matter until completion of the report by the Department of Land & Natural Resources.

FINAL BOUNDARIES AT PUNA

Chairman Thompson brought up the problem faced by Mr. Suefuji, Hawaii County Acting Director, with respect to which was the more accurate map, of the two maps prepared by staff for the Puna District, in determining boundaries. Mr. Suefuji explained that both maps were dated about the time the final boundaries were adopted--one map with a scale of 1"=4,000' and the other with a scale of 1"=62,500'. A public hearing was held on an application for use of a parcel of land which was determined to be in the Agricultural District from the 1"=4,000 scale map. However, upon reviewing all of the documents, the staff came up with the second map, which showed this parcel to be in the Conservation District. Therefore, Mr. Suefuji was requesting determination from the Commission as to which map to use.

Chairman Thompson asked the Executive Officer if the Commission were prepared to make this determination at this time. Mr. Moriguchi replied that he did not think so, but that it was his understanding, from discussions with other members of the staff, that the intent of the Commission, at one time, was to include the Queen's Bath within the Conservation District.

Since there was still sufficient time for the Hawaii County Planning Commission following the next Commission meeting in Hawaii on November 5, 1965 to render a decision, the matter was deferred until the next Land Use Commission hearing.

DEPARTMENT OF TAXATION RECOMMENDATIONS

Chairman Thompson recommended deferral of this matter until there was representation from the Department of Taxation so that the Commissioners could receive the benefit of their thinking and knowledge. Since these data were submitted from the field agents of the Department of Taxation, Chairman Thompson directed the Executive Officer to invite the field agents in their respective counties to the next Commission meeting.

ADOPTION OF MINUTES

The minutes of the August 20, 1965 meeting were approved and adopted as circulated.