

*Adopted
February 17, 1967*

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing
and Meeting

State Highways Division
Hilo, Hawaii

9:30 a.m. - October 29, 1966

Commissioners Present: Myron B. Thompson, Chairman
C. E. S. Burns
Robert Wenkam
Jim P. Ferry
Leslie Wung
Goro Inaba
Shiro Nishimura

Commissioner Absent: Shelley Mark

Staff Present: George Moriguchi, Executive Officer
Roy Takeyama, Legal Counsel
Ah Sung Leong, Draftsman
Dora Horikawa, Stenographer

A short prayer was offered by the Chairman, followed by an introduction of the Commissioners and staff and a brief outline of the hearing process. Individuals testifying during the hearing were sworn in.

Chairman Thompson advised that a rearrangement of the agenda had been necessitated and that the items requiring Commission action would be considered first.

ADOPTION OF MINUTES

Minutes of the August 5, 1966 hearing and meeting were approved as circulated.

ACTION

PETITION OF ILDA SUBDIVISION (A65-102) TO RECLASSIFY APPROXIMATELY 5.3 ACRES AT MIKIOLA, KANEHOHE, FROM CONSERVATION TO URBAN, identifiable by Tax Map Key 4-4-13: portions 55 and 56

Staff memorandum, presented by Mr. Moriguchi, recommended denial of the petition based on the extensive grading that would be required and the possible resultant slide and storm water hazards to the abutting landowners.

Commissioner Wenkam brought out the point that on this and previous occasions, the recommendation from the City and County Planning Commission did not seem to reflect any consideration from the resultant slide and water hazards

to adjoining properties. Chairman Thompson countered that we could not determine this.

A detailed explanation of the petitioner's development proposal, City's recommendation for approval, slope of the land, was presented by Mr. Moriguchi on the cross-section map. He continued that the plans would have to be modified if the developers followed the City's recommendation and that, even then, there was no assurance that the slides would not occur from the fill material.

Chairman Thompson wondered if there were any way possible, from the engineering point of view, to construct the subdivision on subject lands without the danger of slides. Mr. Moriguchi replied that a series of dykes would be the only assurance against landslides but that this would be economically prohibitive.

Mr. Genro Kashiwa, representing the petitioner, submitted that at one time the Conservation District boundary had been established at approximately the same line recommended by the City Planning Commission with respect to subject lands. This was confirmed by Mr. Moriguchi.

Mr. Kashiwa further submitted that a precedent had been set by the Commission in the case of Wiliwilinui Ridge, represented by Mr. McClung, in December of 1965, when it ruled that the grandfather clause applied. He argued that under the law, subdivision rights on subject lands should also fall within the grandfather clause since similar circumstances prevailed in both instances.

In reply to Commissioner Wung's question about the precise nature of petitioner's request, Chairman Thompson replied that two factors were involved:

1. To determine whether grandfather clause should be a consideration in the Commission's decision.
2. To consider the contour and lay of the land in making a decision.

Commissioner Inaba requested the Executive Officer to give a chronological summary of the petition, which was outlined as follows:

1. 1958 - Mr. Iida had started on some plans for subject subdivision but had been turned down by the City Planning Department because of sewer problems.
2. 1964 - Tentative approval was received in January from the City, which lapsed in January, 1965, due to failure to complete plans in preparation for final approval. However, in spite of this, they continued working with various agencies in the City government. Construction plans had been signed by the Engineering Department of the City and the lapse in approval was discovered by the Planning Department. The sewer problem was given as the prime reason for the delay in completing plans.
3. Subject lands were partially in Urban and partially in Conservation under the temporary boundary, but were placed entirely within the Conservation District under the permanent boundary in August, 1964.

4. November 18, 1965 - Application for boundary change was filed with the Land Use Commission. Initial public hearing was held in February, 1966.

Both Commissioners Nishimura and Wenkam expressed their beliefs that the petitioner had acted in good faith and to deny any development on subject lands would impose a hardship. Commissioner Wenkam also felt that had the Commission been aware of the temporary approval, it would have placed the lands in the Urban District. Under the circumstances, Commissioner Ferry commented that it would be inconsistent to deny development of the proposed subdivision.

Commissioner Ferry moved to approve 2.8 acres of the subdivision as recommended by the City and County of Honolulu Planning Commission on the basis that this received approval prior to the drafting of the final boundaries. It was seconded by Commissioner Nishimura and unanimously passed.

PETITION OF ERIK AND LEILA VANNATTA TO RECLASSIFY APPROXIMATELY 2.75 ACRES FROM CONSERVATION TO URBAN AT MIKIOLA, KANEOHE, identifiable by Tax Map Key 4-4-38: 02

The staff maintained its original recommendation for approval of only a triangular shaped area of approximately 8,400 square feet with the remaining area to be kept within the Conservation District. Mr. Moriguchi confirmed that the City and County's recommendation was for denial of the total petition.

Mr. Moriguchi explained that staff had merely recommended enough area to allow Mr. Vannatta construction of another home which could be accommodated with water and sewer services.

Commissioner Ferry moved to accept staff's recommendation for amendment of the urban boundaries as indicated, seconded by Commissioner Wenkam, which was passed unanimously.

PETITION OF CARL AND LENNA FAE SCHULER (A66-116) TO RECLASSIFY TWO PARCELS OF LAND TOTALING APPROXIMATELY 2.4 ACRES FROM CONSERVATION TO URBAN AT LANIKAI, OAHU identifiable by Tax Map Key 4-3-6: 16 and 65

It was the staff's recommendation that the entire petition be denied based on the data submitted by the various organizations and the City and County Planning Commission, including the Chief Engineer.

Mr. Paul Jones, President of the Lanikai Association, advised that during the July 8, 1966 hearing on subject petition, he had represented the Board of Directors of the Association in requesting that the petition be denied. He was appearing today in behalf of the entire membership of the Association, supporting the Board's stand.

The Executive Officer maintained that he had revised his original recommendation for reclassification of a portion of subject lands and was now recommending denial of the entire petition based on the City Chief Engineer's report. It was also pointed out that with proper construction of adequate drainage and retaining walls, the graded area could support one house, but the chief concern here was whether this work would be performed as submitted by the petitioner

during the hearing.

Chairman Thompson commented that the avenue of a special permit application with the Department of Land & Natural Resources was open to the petitioner which would impose stricter controls to insure against landslides and hazard to adjoining property owners.

It was the consensus of the Commission that a motion was in order to deny the petition without recommending petitioner's application to the Department of Land & Natural Resources because the position of the Commission could be misconstrued.

It was moved by Commissioner Wenkam that the petition be denied based upon the disapproval by the County Planning Commission, the fears of the Chief Engineer, the excessive slopes and the danger to the property below. The motion was seconded by Commissioner Burns and carried, with one dissenting vote cast by Commissioner Nishimura.

PETITION BY LILIUOKALANI TRUST (A66-122) TO RECLASSIFY APPROXIMATELY 14.5 ACRES FROM URBAN TO AGRICULTURE AT KAILUA KONA, identifiable by Tax Map Key 7-4-08: portion 2

Chairman Thompson declared himself ineligible to participate in the deliberation of this petition due to his employment status and asked Vice-Chairman Burns to conduct the discussion.

It was the staff's recommendation that the petition be approved since the primary intent was to refine the original preliminary layout of the industrial subdivision in accordance with more detailed plans.

Mr. Moriguchi elaborated on the significance of the various colored areas of the map.

Commissioner Ferry moved to accept staff's recommendation to amend the boundaries as set forth, seconded by Commissioner Inaba. The motion was passed unanimously.

PETITION OF W. H. SHIPMAN, LTD. & KEAAU LAND CO., LTD. (A66-126) TO AMEND APPROXIMATELY 112 ACRES FROM AGRICULTURAL TO URBAN AT KEAAU, HAWAII, identifiable by Tax Map Key 1-6-03: portion 3

It was recommended by the staff that the reclassification from Agriculture to Urban be allowed for the 47.5 acre portion only.

Commissioner Ferry wondered how rezoning of this area would affect the cane cultivation or mill operation. It was indicated that the petitioners did not feel this would be affected at all.

Mr. Moriguchi informed that, according to a study made by Belt and Collins, approximately 200 residences would have to be relocated in the phasing-out program. He further explained that most of these homes were in varying degrees

of dilapidation, and that there were several other areas districted urban presently in camps which could be phased out if the owners so desired.

Commissioner Wung Commented that he was familiar with the area and that the last two subdivisions were completely sold out even before the subdivisions were started, attesting to the great demand for urban lands in the area.

Mr. Philip Yoshimura of the Hawaii Planning Commission advised that contrary to the statement in the staff memorandum to the effect that "the total acreage requested by the petitioners was over and beyond the limits established by the County General Plan", the County General Plan did indeed embrace the entire area for residential purposes.

Commissioner Ferry moved to accept staff recommendation for amendment of 47.5 acres into an Urban District, seconded by Commissioner Nishimura. The motion was carried unanimously.

PETITION BY LAND USE COMMISSION (A66-133) TO AMEND 60.5 ACRES FROM URBAN TO AGRICULTURAL AND 43.5 ACRES FROM AGRICULTURAL TO URBAN AT KEEAU, PUNA, HAWAII

The original recommendation to reclassify 60.5 acres from urban to agricultural and 43.5 acres from agricultural to urban was maintained by the staff.

Referring to the camp which had been excluded in the subdivision plans, Commissioner Ferry expressed his feeling that to retain this on a leasehold basis for another 10 years was certainly to discourage the camp phasing-out program. However, it was pointed out by the Executive Officer that the residents were free to relocate themselves in the new subdivision if they chose to do so.

Commissioner Wung also added that perhaps one of the reasons for the exclusion of this camp could be traced to the fact that many of the present occupants were older retired people, who could not afford to buy into a subdivision, and wished to maintain the status quo.

It was established by the Executive Officer that the only point of disagreement between staff and the Hawaii Planning Commission was the area marked 9 on the map which had been recommended for reclassification to Agricultural by the staff.

Mr. Yoshimura advised that the lease problem in the camp would be resolved by the formation of a community association which would lease the entire camp area from the sugar company and assess each occupant on an equitable basis.

Commissioner Wenkam moved that reclassification of the specified parcels of land at Keaau, as recommended by the staff, be approved. Commissioner Nishimura seconded the motion and it was passed unanimously.

PETITION OF BISHOP ESTATE (A66-119) TO RECLASSIFY 35 ACRES OF LAND LOCATED AT PUNALUU, OAHU FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT, Identifiable by Tax Map Key 5-3-01

It was the staff's recommendation that approximately 18 acres, following

the toe of the 20% and steeper slopes, be reclassified for urban expansion and that the remaining 17 acres out of the original 35 acres be retained within the agricultural classification.

Mr. Moriguchi had checked out the matter of the City's recommendation for approval of the total petition in spite of its detailed land use map and general plan for the area, and was advised that the plan would only be used in the event there was a request for zoning change in the area.

Commissioner Wenkam wondered why a reserve area for the highway had not been included in the staff's recommendation for urban classification. Mr. Moriguchi replied that this would have permitted the petitioner to use this particular strip for urban purposes other than a highway. He also advised that if the urban line were moved up to the orange line as indicated on the map, the highway would have to be cut out from the hillside.

It was confirmed by the Executive Officer that the area marked in blue on the map was merely conjecture on the part of staff as to the probable location of the highway. The petitioner was proposing the future road above the railroad right of way which had an approximate slope of 20%.

Commissioner Ferry commented that as far as the road alignment was concerned, staff was working with whatever information was available, and that even the Department of Transportation did not have any projections for the road in this area.

Commissioner Wenkam felt that the Commission was in a position to indicate the road alignment by reserving an area for the construction of the road. In this respect, if the subdivision were held to the makai side of a possible road alignment, within a period of 10 years, the growth of the development would not be restricted since there was ample room for residential use in this particular area.

Chairman Thompson voiced his reluctance to take a stand on the road alignment at this time inasmuch as there was no projected plan by the Department of Transportation. Commissioner Wenkam argued that if the Commission did not act in a far-reaching manner and allow for reserved areas for use by other departments, it would in a sense be abdicating its responsibilities. In this instance, since there was no projected plan for the road alignment, he felt that the petitioner should come before the Commission with more precise information.

Commissioner Burns suggested that the Commission consider the 20% slope indicated by the orange line and not concern itself with the highway alignment.

Commissioner Nishimura expressed his concern that consideration of the highway was a real problem due to the prolonged condemnation process involved with the resultant delay in providing for adequate highways.

Chairman Thompson summarized that there were three alternatives before the Commission:

1. Approve the petition as requested by the petitioner above the railroad line.

2. Approve the areas bounded by the 20% slope as shown by the orange line.
3. Approve the petition as recommended by staff indicated on the map below the blue line.

Mr. Takeyama, legal counsel, advised that the issue at hand was not the location of the highway but the justification for additional urban lands in the area. Commissioner Ferry added that the Commission was also discussing a condominium type of development and since economics were involved, the plan should be considered in the whole and not in pieces.

Commissioner Wenkam moved that the petition be approved as submitted by the petitioner, recognizing that there was a reasonable need for residential use of the area and on the basis that the land is not being used for intensive agricultural purposes. Commissioner Wung seconded the motion and the Commissioners were polled as follows:

Ayes: Commissioners Wenkam, Wung, Burns, Ferry, Chairman Thompson

Nays: Commissioners Inaba, Nishimura

The motion was not carried.

Commissioner Inaba moved to approve the area below the blue line as recommended by the staff, seconded by Commissioner Nishimura. The motion was defeated with the following votes:

Ayes: Commissioners Wung, Inaba, Wenkam, Burns, Nishimura

Nays: Commissioner Ferry, Chairman Thompson

Commissioner Wung moved to approve the petition as indicated by the orange line on the basis that it was on the toe of the 20% slope and also to include the private club, seconded by Commissioner Ferry.

Staff advised that approximately 5 additional acres would be involved here over and above the staff's recommendation, replying to Commissioner Nishimura's question. Commissioner Wenkam suggested that if the general 20% slope were supported by the Commission, the Executive Officer should implement the boundary line in terms of a reasonable planning area for the subdivision.

Mr. Moriguchi pointed out that the orange line was determined by the contour of the land and that anything above the 20% slope would be above the orange line, and anything less than 20% would be below it.

Chairman Thompson suggested that if the Commission agreed on the orange line, it might be appropriate to defer action on the motion until a more definite boundary could be determined, rather than placing this responsibility on the staff.

On the matter of the private club, Chairman Thompson felt that if the Commissioners were of the opinion that it was reasonable from the planning point

of view, it could be included for development even though it exceeded the 20% slope.

The Commissioners were polled as follows on the motion made by Commissioner Wung to approve the orange line:

Ayes: Commissioners Wung, Ferry, Chairman Thompson

Nays: Commissioners Inaba, Wenkam, Burns, Nishimura

The motion was defeated.

Commissioner Burns commented that it was unfair to the petitioner to come up with a negative decision when, in principle, the Commission was agreed in favor of the petition.

Mr. Moriguchi made a request for reconsideration of the staff's recommendation which had also been defeated during the previous voting.

Commissioner Ferry moved to reconsider his negative vote on the motion to accept staff's recommendation for the inclusion of 18 acres out of the 35 acres into the Urban District, seconded by Chairman Thompson. Commissioner Ferry added that this did not restrict the petitioner from coming in at a later date with revised plans for additional lands. The motion was passed unanimously.

Commissioner Burns moved to accept staff's recommendation, seconded by Commissioner Nishimura, and the motion was carried with Chairman Thompson casting the only dissenting vote.

PETITION BY OCEANIC PROPERTIES (A66-123) TO RECLASSIFY 48 ACRES FROM URBAN TO AGRICULTURE AND 48 ACRES FROM AGRICULTURE TO URBAN AT WAIPIO, EWA, OAHU, identifiable by Tax Map Key 9-5-01

As outlined in the staff memorandum, recommendation was for reclassification of 20.5 acres from urban to agriculture, and 48 acres from agriculture to urban.

Representative for the petitioner stated that there would be no objection to the staff recommendation.

Commissioner Wenkam moved that the petition be approved as recommended by staff, seconded by Commissioner Burns. It was unanimously carried.

SPECIAL PERMITS

APPLICATION OF BEN J. HESS (SP66-32) TO DEVELOP A MOTEL AND RESTAURANT COMPLEX ON AN INCREMENTAL BASIS IN THE HAWAIIAN OCEAN VIEW ESTATES SUBDIVISION AT KAHUKU, KAU, HAWAII

Staff recommended approval of the special permit as conditioned by the Hawaii County Planning Commission and also on the fact that it could be considered unusual and reasonable.

The discrepancy between the Hawaii Planning Commission's report and Commissioner Kimura's motion regarding the development of Phase 1 and 2 was attributed to the secretary's oversight by Philip Yoshimura.

Mr. Hiroshi Kasamoto, representing the petitioner, testified that the utility poles for telephone and electrical services had been installed and should be completed by the end of the year. With reference to the State highway, Mr. Kasamoto informed that this was in the proposal stage and had been recommended by the State Highways Division.

This point had been checked out with the Chief State Highways Division Engineer by Mr. Moriguchi and the indication was that this access was limited to the internal streets that are fronting the area now.

On the matter of water availability, Mr. Kasamoto stated water catchment would have to be provided for the operation of the restaurant, etc. After being duly sworn in, Mr. Hess also testified that there was a water tank on the property and he had the subdivider's permission to haul water when needed. He also confirmed that he would not expect the State or County to provide the water.

Commissioner Burns moved, seconded by Commissioner Inaba, to grant the special permit on the basis of the staff's recommendation, which was passed unanimously.

APPLICATION OF DAVID E. ERWINE (SP66-33) REQUESTING PERMISSION TO PROVIDE LIGHT INDUSTRIAL USES WITHIN THE HAWAIIAN OCEAN VIEW ESTATES SUBDIVISION AT KAHUKU, KAU, HAWAII, TMK 9-2-03: 30

Staff recommended approval of the special permit application based on its unusual and reasonable nature and also on the fact that the conditions imposed by the County Planning Commission would provide for discriminate development.

It was reported that there were approximately two dozen homes scattered in and around the immediate neighborhood.

Commissioner Wenkam felt that it was the County's responsibility to notify the adjoining residents of the proposed use requested by this special permit. Mr. Yoshimura of the Hawaii Planning Commission pointed out that, under the provisions of the special permit regulations, they were not mandated to do so except via a public hearing notice.

Commissioner Ferry offered that under the circumstances, namely the existing non-conforming use of scattered residences in a vast Agricultural District, this application for light industrial uses definitely fell within the realm of being unusual and consequently a reasonable request.

Mr. Erwine, petitioner, submitted that he was in receipt of a letter from one of the adjoining property owners indicating full accord with his proposed plans. He added that his prime reasons for acquiring the property was based on the subdivider's designation of the subject area for business purposes.

Miss Lavenia Waldstein, property owner in the area, confirmed that the encircled area was designated as a shopping center and that there was a need for such a development. In fact, the absence of such a facility was a contributing factor in the slow development of the area.

In light of Miss Waldstein's testimony, Commissioner Wenkam expressed concern over the possible increased urban uses.

Commissioner Ferry moved to approve the special permit application as recommended by staff, seconded by Commissioner Burns. The motion was carried with Commissioner Wenkam casting the only negative vote.

APPLICATION OF JACK SUMITANI, ET AL (SP66-35) REQUESTING PERMISSION TO SUBDIVIDE A FIVE ACRE PARCEL INTO THREE LOTS AT WALAKEA HOMESTEADS, SOUTH HILO, HAWAII, TMK 2-4-07:47

Based on its findings (see copy of report on file) it was the staff's recommendation that the application be approved.

Chairman Thompson asked for a clarification of the section in the staff report under Analysis which stated "the fact that all three homes situated on the parcels 'proposed' for residential use existed long before the enactment of the Land Use Law and the stipulation that no further development would take place are factors to be considered in applying the test for a special permit."

Mr. Ah Sung Leong explained that the County's approval had been based in part on the stipulation that no further development would take place. He also commented that the homes had existed 15 years prior to the enactment of the Land Use Law.

Commissioner Burns raised a question with respect to the tenure of the stipulation that no further development would take place. Mr. Moriguchi said that the stipulation would always remain with the lands even if there were to be a change in ownership at some future date.

Commissioner Wung moved to accept the staff's recommendation for approval, seconded by Commissioner Nishimura, and it was carried unanimously.

APPLICATION OF HENRY BLANCHARD (SP66-37) TO CONSTRUCT A SINGLE FAMILY DWELLING UNIT WITHIN THE AGRICULTURAL DISTRICT IN KAHUKU, OAHU, TMK 5-6-03: 28

It was the consensus of the staff that the petition meets the tests established by the Land Use Commission in evaluating special permits and therefore recommended approval of the special permit (see copy of report on file).

In brief, Mr. Leong summarized that the petitioners were merely seeking to build another house on an already existing 5-parcel subdivision which had never been recorded. Four homes had already been built and the request was for permission to build a fifth house.

Commissioner Wenkam moved that the petition be approved as recommended by staff. It was seconded by Commissioner Burns and passed unanimously.

APPLICATION OF RICHARD SMART DBA PARKER RANCH (SP66-34) TO ALLOW A BUSINESS EXPANSION AT PUUKAPU HOMESTEADS, WAIMEA, HAWAII, TMK 6-4-01: 42

It was recommended by staff that the permit be approved on the grounds that the County General Plan indicated this area as commercial and the request is unusual (see copy of report).

Commissioner Ferry moved to accept staff recommendation for approval, which was seconded by Commissioner Wung and passed unanimously.

APPLICATION OF COUNTY OF MAUI (LANAI DUMP SITE SP66-36) TO USE APPROXIMATELY 10 ACRES OF LAND FOR A GARBAGE DUMP SITE ON THE ISLAND OF LANAI, TMK 4-9-02: portion 1

Favorable action of the application was recommended by staff based on the guidelines established by the Land Use District Regulations. Commissioner Nishimura moved to approve the special permit application, seconded by Commissioner Wung, and the motion was passed.

MISCELLANEOUS

FRANK & BESSIE MONIZ PETITION

The Executive Officer advised the Commissioners that during a previous discussion on Kauai, it was the consensus of those present that they would accept a new petition for the same subject lands only if the new petition contained additional pertinent information that had not been presented or available during the initial hearing. The petitioners had been apprised of this fact by letter.

Chairman Thompson commented that, therefore, the decision before the Commission was whether the additional information submitted by the petitioner warranted or justified acceptance of resubmittal of the petition. In the event the Commission voted to accept the petition, it would be processed through the normal channels of a public hearing.

Mr. Moriguchi added that if the Commission decided to accept the new application, staff would be mandated to review the additional data and make a recommendation. It was brought out that the additional information was comprised primarily of a petition signed by approximately 20 potential purchasers of the Moniz's property should the reclassification take place. There was also a letter from the Soil Conservation Service and the County Extension Agent.

Commissioner Ferry moved that this body declare that the additional information warrants another hearing on the petition. It was seconded by Commissioner Wenkam and passed.

PUBLIC HEARINGS

PETITION OF FRANK E. FERREIRA (A66-130) TO RECLASSIFY 3 ACRES OF LAND FROM AN AGRICULTURAL DISTRICT TO A RURAL DISTRICT AT PAAUHAU, HAMAKUA, HAWAII, TMK 4-4-06: 18

Staff report presented by Mr. Ah Sung Leong recommended retention of the

Agricultural District classification for subject lands since it was fitting and proper and a change of district would constitute spot zoning.

Mr. Ferreira, petitioner, testified that he had acquired the 3-acre parcel of land during a land exchange with the Paauhau Sugar Company with the intention of building two additional homes for his son and daughter, since the parcel was on the highway and facilities were available. He submitted the land exchange resulted in additional choice cane lands for the sugar company. He added that there was presently one home on the parcel and the rest of the land, in the front portions, had been graded and levelled off for home sites. The back portion would remain in cane.

Mr. Ferreira verified the fact that he was aware of the agricultural classification of the 3-acre parcel prior to the exchange. The matter of the amendment to the district boundary would have been taken care of by the Paauhau Sugar Co. prior to the exchange, had it not been for the long process involved.

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

PETITION OF SUNRISE REALTY MORTGAGE CORPORATION (A66-131) TO RECLASSIFY 19.3 ACRES OF LAND NEAR THE ANUHEA VOLCANO HOUSE LOTS FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT.

Mr. Moriguchi presented the staff report in which it was recommended that the Commission accept the Hawaii County Planning Commission's suggestion for denial of the petition as supported by the data (see copy of report).

Mr. Carlsmith, representing the petitioner, submitted that the map at the Hawaii County Planning Commission office showed the boundary of the 200' strip adjacent the subject parcel included in the Urban District. He spoke of the demand for lands in the area and the fact that they had received requests from at least 20 people in Honolulu who wished to purchase a lot here.

Taking exception to the staff's statement about the great percentage of vacant or unused urban lands, Mr. Carlsmith argued that this was due to the undesirability of these lands for residential purposes. However, in the area of petitioner's lands, there was a substantial demand for homes, and it was merely an extension of an already well-known residential district. He also added that the lands were economically unsuited for agricultural purposes.

Commissioner Wenkam requested an explanation of the apparent discrepancy in the boundary line. Mr. Moriguchi advised that when the petition was originally submitted to the Land Use Commission, it had been returned to the petitioner with a letter indicating that the Urban District boundary did not go through his property as was shown on the map sent in by the petitioner. The misinterpretation had been made in the County Planning Commission's office and subsequently the matter had been resolved.

Mr. Carlsmith stated that the lots were selling for much more in the area than they were a few years ago and that there were some houses being built.

Referring to an earlier statement made by Mr. Carlsmith, Chairman Thompson wondered if he would be willing to submit evidence of the interests of the 20

people from Honolulu who wished to purchase lots on subject lands. Mr. Carlsmith agreed to do this.

Mr. John Arujo, principal of Sunrise Realty, stated that the area between the yellow and red lines as shown on the map was densely wooded in ohia and fern.

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

PETITION OF FRANCES & WILLIAM M. DOUGLAS (A66-132) TO RECLASSIFY A 40.41 ACRE PARCEL FROM AGRICULTURE TO URBAN AT WAIAKEA HOMESTEADS, SOUTH HILO, HAWAII, TMK 2-4-03: 23

Mr. Leong presented the staff report recommending denial of the petition since adequate provisions have been made for Urban lands in Hilo and the agricultural use conforms to both the State General Plan and the County General Plan (see copy of report).

Mr. William Douglas, petitioner, offered that there appeared to be contradictory statements in the staff report wherein on one hand it was admitted that the area was poorly suited for agricultural uses, while on the other it denied urban use of the lands.

Mr. Douglas submitted that an important factor had been overlooked in the report, that of the Kumahana Street extension, presently underway, which would bring subject lands very close to Hilo. He also brought out that water, electricity were available at the two tracts in the vicinity of petitioner's lands and that these tracts were surrounded by houses. The area was not suited for agriculture and should be put to the best and only use possible-- urban development.

Mr. Royal Brian, developer, testified that with the Kumahana Extension the subject area would be only 10 minutes away from Hilo and very much in demand. He predicted that they would be sold readily once they were subdivided.

Commissioner Wenkam wondered how Mr. Brian could equate the need with the availability of urban lands when only a few lots were occupied with homes. Mr. Brian defined that the need was the need and desire of people to own their own lands. Carrying the discussion further, Commissioner Wenkam suggested that Mr. Brian was equating need with the availability of land for speculation. Mr. Brian agreed that this was possible. However, he added that this was a choice residential area with a beautiful view.

Upon Chairman Thompson's request for substantiating data with respect to the great demand for these lands, Mr. Brian replied that he would be glad to comply.

Mr. Douglas argued that he had observed many homes all along the vicinity of petitioner's lands and some subdivision activities as well.

The hearing was closed thereafter.

VERBATIM TRANSCRIPT OF PROCEEDINGS

REQUEST OF BISHOP ESTATE FOR A DETERMINATION OF THE HEEIA FISH POND LAND USE DISTRICT BOUNDARIES AT HEEIA, KOOLAUPOKO, OAHU, Identifiable by Tax Map Key 4-6-05: portion 1

George
Moriguchi

We have a map that indicates the area in question. We have a letter from the Bishop Estate, Mr. Chairman (see copy of letter on file dated October 20, 1966 presented by the Executive Officer). As far as the staff's report is concerned, we refer to Part III of our Regulations which reads as follows:

"Unless otherwise indicated, all areas of the State having an elevation below high-water mark are classified "C", although the district boundary lines which reach the sea are extended, for convenience of reading, a short distance offshore. All off-shore and outlying islands of the State of Hawaii are classified "C" unless otherwise indicated."

And it would appear to the staff that it is clear that the fish pond in Heeia is within the Conservation District according to our maps. There has been a similar situation that came up --Kahaluu Pond--which also on that map you have. City and County at one time issued a permit to permit the owner to fill that fish pond. They started this and the City was contacted by the Department of Land and Natural Resources inquiring why and on what basis this permit was granted since the pond is in Conservation. Upon receipt of that letter, the City backed off and said they made a mistake, this is in Conservation, so they stopped filling of the Kahaluu Pond, which to me is an identical situation as far as designation is concerned.

Chairman Thompson: Are there any questions from the Commissioners?

Shiro Nishimura: What kind of development is this? Is that going to be filled up?

Moriguchi: Mr. McCormack showed me his development plans. He has development rights for the pond area extending mauka across the highway and into the valley. They have varied uses. The mauka portion would be more residential and he has indicated by letter from the Bishop Estate, down near the pond area, they plan for residential and town house developments.

Thompson: Will you be making the plans available?

Michael McCormack: I don't know very much about the situation.

Thompson: This is not really necessary, because the question before us is: is this Conservation or is it Urban? And we're going to make a determination at this time. That's the basic question. Are there any further questions for clarification? If not, I'll ask the petitioner to make a presentation.

Roy Nakamoto Attorney: I do not think I have anything further to add at this time, except that I think the facts have been stated very well by the staff member. Just a matter of interpretation. And the Bishop Estate letter sets forth their position as to why they feel it should be Urban District rather than Conservation District.

Thompson: Now the thing I have a question about this is this letter from the Bishop Estate. Item 2 states that "the fish pond is not indicated as conservation on the Land Use District Map". Is this correct?

Moriguchi: On that map right before you, Mr. Chairman, we do not indicate the Land Use districting. The onshore lands, as you can see by the shaded pink on your map, are all shown as Urban. To cover anything offshore under water, you have promulgated Part III of the Land Use District Regulations that blankets all offshore lands as Conservation.

Thompson: One more question: Item 4 by the Bishop Estate. The "Detailed Land Use Plan of the City and County of Honolulu for Heeia indicates residential use of the fish pond area".

Moriguchi: This is their General Plan.

Thompson: So then the question before us today is: Is it Conservation or is it Urban? That's what we're going to be taking a ruling on.

Robert Wenkam: I don't see how we can take a vote on it, according to our Regulations as it is.

C.E.S. Burns: The Regulations spell out fairly clearly that this would naturally fall into the Conservation area.

Nishimura Maybe we haven't explored the area of the fishing industry. I see no reason why we should go into areas where it's natural for raising fishes. We're trying to revive fishing for one thing and our supply of fish is getting less and less. Here we're trying to destroy the natural habitat of fish. I personally frown on things like this that they're trying to develop.

Thompson At this point, the Regulations make it clear that this is a Conservation District.

Nishimura And to circumvent this law to make things available for his own personal gain-- I think that's really going a little too far.

Thompson This is another side of the coin too. There's another side too. How economical will pond fishing be? We don't know.

Burns Do we need action in terms of a vote?

Thompson I think Bob is right. We don't need a declaratory ruling on this because it is within our Regulations here.

Burns How did it come to us? Where did it come from? In terms of a letter from the Bishop Estate? Wouldn't we solve this problem by answering their letter and sending a copy to Jim Ferry?

Wenkam I think with appropriate quotation from our Regulations.

Thompson This gentleman wants to make a statement. Would you raise your right hand please. Do you solemnly swear that the testimony you will give before this your Land Use Commission is the truth, the whole truth, and nothing but the truth, so help you God?

McCormack I do. My name is Michael McCormack and we are the developers of the land. This gentlemen did not know that we were going to be here and I thought that it might be important to clarify how this came about.

The Bishop Estate and ourselves, as the developers of the land holding a development agreement, never even considered the fact that this was under Conservation. And in an informal discussion with Mr. Moriguchi from the State Land Use office, a question came up about filling of a pond, and he made a remark that he thought it was in Conservation. This prompted the action on this that it might be in Conservation. I read the Regulations, informed the Bishop Estate and my father about the circumstances and, of course, they didn't even believe that this was in Conservation. There was never any question. So we spoke to George and someone from the Bishop Estate called George and he suggested that we deal with Mr. Ferry from the State Land Board because this was under his purveyance. We talked to Mr. Ferry and he pulled out his maps and he said "I'm sorry, as far as I'm concerned, it's not in Conservation. At least it's not that clear to me. I don't feel you're under my jurisdiction". We talked to George again and other Bishop Estate trustees. We're not waiting to go right out in there and raise high rises or anything like that. We have some outstanding plans for the area. But we didn't want to sit and let this thing drag on and on with this doubt in our mind. So Mr. Moriguchi recommended that we write the Land Use Commission giving the points and the reasons we felt it was in Urban, on which there had been no question about. That's how this

came about. So as I understand it, this body is to make a determination to interpret whether this was Conservation or Urban. As Mr. Moriguchi said, it does not indicate Conservation on the Conservation maps, nor does it indicate Urban. However, our maps are planned and as you know when the State law was passed, the green belt law, many of the landowners were asked to come in to present their plans on which lands they wanted in Conservation, sort of a mutual plan. Without a doubt, I can say emphatically that the Trustees or their representatives presented a comprehensive plan that has been adopted by the City and County of Honolulu, which shows this in a residential and urban use when the law was passed. And as I understand it, the maps are the law that define boundaries. In other words, what was the intent when the law was passed? Was it that this pond was to be in Conservation, or was it that this pond was to be included in the Master Plan of the Bishop Estate lands which ran from the mountain to the sea. So that was one point that I thought I would like to bring back out. It's sort of a reiteration of the points made in the Trustees' letter. Another one was that offshore islands are not marked Conservation, is that what you stated, George?

Moriguchi They are Conservation unless indicated otherwise.

McCormack Right. And for example, look at the map of Coconut Island and all the islands around this piece of land that we're speaking of. All are marked with a C or Conservation though this particular piece is not.

The other thing in regard to fish ponds. I'm not an expert and I wouldn't want to get into a long discussion over this--as far as the raising of the fish is concerned--the pond has been abandoned over three years ago. The continual problem they have with the upper basins of water here--completely washed out the walls in about 5 areas and restoration of the pond is estimated to be in the neighborhood of \$50,000. So from the standpoint of raising fish, it doesn't seem economical or possible. I wanted to make that remark in passing.

And the last point was there was never any question over, for example, a similar body of water on the other side of the island--Mr. Kaiser's pond, Kuapa Pond. You might be familiar with that. They're filling that today and that I don't believe was classified Urban as such but it was a fish pond. Perhaps George can clarify that.

Moriguchi Mr. Kaiser submitted extensive plans to the Commission and those areas were districted Urban specifically.

McCormack I'm just wondering why because our plans were also submitted at the time the law was adopted. In other words, on the map that Jim Ferry has in his office, it would show a "U" on it. Is that correct on the Kuapa Pond?

Moriguchi The portions they're filling, yes.

McCormack I realize that you have been doing a lot of work with the Trustees. I just happen to be one individual developer of the Trustees of the Bishop Estate and I realize that their lands come under a lot of controversies as they own a lot of property in here. We only happen to hold the development rights in this property and I might say, as stated earlier here, that there has never been any question in our minds at all. We feel the intent at the time the law was passed that this was to be developed as Urban, so did everyone till we discovered

that there was this question.

And the other point that was made is that the fish pond wall itself, which is the outer perimeter, is out of the water almost all of the time. In fact, all of the time. It's not submerged at all which is the outer boundary of these land court plans. Anyone have any questions?

Nishimura There is a movement, in fact the State has made movements to try to buy kuleanas--so-called fish ponds. On the Island of Kauai, they bought out the Kalihiwai Kuleana. Under the kuleana system it was kapu--you cannot go in--out of the jurisdiction of the public. So the State has no say and they felt that they would like to open it up for fishing. We really should make a good study of this so-called off shore lands.

We're also making a shoreline study now. I don't know whether it's completed but we're having a study going on. I think these are some of the things that the public is not aware of and I for one have been in the fishing industry for many years. I know some of the problems of the fishermen, the lack of facility for tuna fishing--these are some of the problems that I think we should really bring up and see if we can work up something in the interest of the public.

Thompson I think this is important, Shiro, what you brought up. It should be gone into from the economic development point of view. But the problem facing us today -----

Nishimura I sympathize with the developers. They're in a position where they don't know whether they're in Urban District or whether they have a right to go and develop this.

Thompson Roy, as I understand it, unless it's otherwise indicated, a declaratory ruling is not necessary because of the statement.

Takeyama Well, it's a question of interpretation and I think George has stated very clearly that all offshore lands below the highwater mark are Conservation. So it's very clear now, in order to satisfy the Bishop Estate maybe we should take action and say so.

Thompson And this can be handled administratively--we don't need to take a vote on it?

Roy No, I don't think so.

Thompson We will reaffirm the intent in terms of the fish pond area. We'll reaffirm our original intent in terms of zoning of fish pond areas as specified in our Regulations. A letter will be sent to Bishop Estate.

Nakamoto May I ask on that. Did you say that the regulations refer to Part III of the Regulations? Is this similar to Section 2.9?

Takeyama No, I don't think you have that. It's the maps filed with the Lieutenant Governor's office along with that.

Nakamoto Because paragraph 2.9 (e) says "coastal areas having an elevation below high-water mark may be included in this district". So that it would require

determination on the part of the Commission if this particular section is followed rather than the other one.

Takeyama This is Part III of the Land Use district boundaries where it is clearly stated " unless otherwise indicated, all areas of the State having an elevation below high-water mark are classified "C" ". The other one is just a standard in determining boundary changes. There is more than one standard. These are the standards used in determining whether amendment to boundaries are to be granted or in establishing boundaries.

Wenkam Instead of drawing boundaries on the map for all coastal Conservation areas, it merely, in a paragraph, states what the coastal Conservation areas are.

Takeyama I think it should be made clear that the area you are concerned with--under the temporary district boundaries, was also included in the Conservation District. So the question of not knowing whether that land was in Conservation or not is not totally accurate. Because under the temporary district boundary, which was adopted in 1962--it says the same thing: "All areas in the State having an elevation below high-water mark are classified "C"." What was adopted in August 23, 1964 is exactly the same as this. So Bishop Estate, at the time they submitted the General Plan, was aware of this temporary district boundary and at no time, as I can remember, brought this point out, that this pond should have been in Urban.

McCormack How would you determine high-water line? .

Nishimura The water line they refer to is the high tide and low tide and they make a compromise between there. Even the courts don't understand that but there is an understanding among most people.

Moriguchi It doesn't make too much difference to you Mike, because the pond goes straight down when it fluctuates. The area is still about the same. Most of it is under the water.

McCormack What would you interpret the relationship of the high-water mark to the wall?

Moriguchi I think you have a right in saying it is unclassified.

McCormack In the wall itself?

Moriguchi Yes.

Thompson Any other questions:

McCormack There is no voting action taken by this Commission, is that correct?

Thompson No voting action is necessary.

McCormack What would be the procedure for an appeal? Or the next step? We could ask for a petition, is that right? To the State Land Use Commission for a boundary change since in general discussion you felt that it is in Conservation. The other alternative is to apply to the Land Board.

Thompson Yes.

Takeyama May I ask, George, are they asking for a declaratory ruling?

Moriguchi This is my understanding of my discussion with the representative of the Bishop Estate.

Takeyama Are they asking for a ruling on this? Then I would suggest that if they're asking for a ruling, they're entitled to a vote and action by this Commission. Because they may want to appeal our ruling to the Circuit Courts and they can't appeal the ruling unless they get an order stating that we interpret this boundary to be in the Conservation District.

Burns Why do we have to re-vote? We have said that this is in Conservation. Otherwise, we would be subject to re-voting everytime somebody asks.

Takeyama It's on the question of interpretation of boundary. If you're saying that this is clearly that, no interpretation is necessary.

Thompson It isn't a matter of shifting that line around. The fish pond, according to our regulation, is in Conservation.

Nishimura And if they want to appeal that it's up to them.

Thompson This question gets back. Then they could come in for a boundary change or go to Jim Ferry's office. Either one. And then if we deny at that point, they can appeal it.

McCormack I think we would like a specific response of some kind because this is what prompted the request in the first place. The Trustees didn't even want to write a letter. They said "what are we writing for? Doesn't make sense. As far as we're concerned, it's Urban. Go right ahead". In effect they said just what you said: "We don't think we have to discuss this--as far as we're concerned, it's Conservation". That's what you're saying. As far as we're concerned, it's in Urban. And then Jim Ferry says "not under my jurisdiction". So we're in limbo.

Thompson No, you're not any more.

Takeyama I stand corrected because it says "Commission may issue a declaratory ruling". It doesn't say it must.

Moriguchi A letter to the Bishop Estate.

Takeyama Which is about the same thing.

COUNTY OF MAUI PETITION

Chairman Thompson announced that the Commission was in receipt of resubmittal of a petition, which had been previously denied, by the County of Maui involving the Kepaniwai Park. He advised that the Commission's position was to determine whether there was sufficient additional evidence, which had not been presented during the previous hearing, to warrant admission of a new petition.

Commissioner Burns expressed his views that a hearing held before only four Commissioners, as in the case of the previous petition, did not present a good image.

Chairman Thompson felt that the four Commissioners present had engaged in a thorough questioning of the facts and data available prior to arriving at a decision. However, if it were the general consensus that there was substantial additional information, the matter should be brought to a vote.

The additional data were comprised primarily of the fact that the matter was thoroughly investigated by all the technical staff of the County of Maui and by the Board of Supervisors; and the County's plan to develop an international garden and the amounts that had been appropriated for the project.

Commissioner Wenkam pointed to the fact that the absence of the Maui Planning Director at the previous hearing had left some questions unanswered and suggested that a letter be transmitted requesting representation from the Maui Planning Commission to our hearings.

Commissioner Nishimura moved to accept new petition for a re-hearing as submitted by the County of Maui based on the additional information provided this Commission. Commissioner Wung seconded the motion and the Commissioners were polled as follows:

Ayes: Commissioners Wung, Inaba, Nishimura, Chairman Thompson

Nays: Commissioners Wenkam, Burns

The motion was not carried.

Commissioner Burns moved for reconsideration of his vote, seconded by Commissioner Wung. The motion was carried with only one negative vote cast by Commissioner Wenkam.

Commissioner Burns then moved to accept the new application by the County of Maui, seconded by Commissioner Nishimura, and the motion was carried. The only dissenting vote was called by Commissioner Wenkam.

NEXT MEETING SCHEDULE

It was decided that the next meeting of the Land Use Commission would be held on November 23, 1966.

EXECUTIVE OFFICER'S POSITION

Mr. Moriguchi announced that Dr. Mark, Director of the Department of Planning and Economic Development, had not opened the Executive Officer's vacancy to public announcement. There was a possibility that the Department would work out a transfer of a planner presently within the governmental agency, in lieu of seeking a qualified person on the outside. Dr. Mark was actively pursuing this avenue of approach.

ADJOURNMENT

There being no further business, the meeting was adjourned.