

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

APPROVED
DEC 11 1970

Lecture Hall No. 10, Science Building
Maui Community College, Wailuku, Maui

October 29, 1970 - 7 p.m.

Commissioners Present: Alexander Napier, Chairman Pro Tempore
Eddie Tangen
Sunao Kido
Shelley Mark
Leslie Wung
Tanji Yamamura
Stanley Sakahashi

Commissioner Absent: Goro Inaba

Staff Present: Ramon Duran, Executive Officer
Ah Sung Leong, Planner
Walton Hong, Deputy Attorney General
Jean Soma, Stenographer

Acting Chairman Alex Napier called the meeting to order. The Executive Officer, Mr. Ramon Duran, swore in persons wishing to testify before the Commission, and explained the procedure usually followed by the Commission in the conduct of its meeting.

HEARING

SHORELINE SETBACK

Mr. Duran presented the background of the shoreline setback law and explained in detail the provisions contained therein.

Mr. Jack Meddings of Kihei asked whether property owners at Kihei would be allowed to build the same type of retaining walls now being constructed by the County at Kalama Park in Kihei.

The Executive Officer replied that the question of what

constitutes a structure will have to be clarified by the County.

Mr. Barney Erdman, representing Ulupalakua Ranch, felt that in view of the decision on the Ashford case, defining the shoreline at the high water mark would be easier. It would be a line which the surveyor could recognize.

Commissioner Tangen reminded Mr. Erdman that a law has already been passed which has determined where the setback area begins. The same law mandates that the Land Use Commission establish a 20 to 40 foot shoreline setback line after testimony gathered at these public hearings are considered. It does not empower the Commission to change the definition of the shoreline or any other part of the law.

Mr. Kenneth Woods questioned at what time of year the shoreline readings will be taken, since there is a great seasonal variation.

The Executive Officer explained that the matter will have to be determined by the County based on the highest point annually that the waves wash inland.

Mr. Donald Tokunaga asked whether the setback will be uniform throughout the entire State.

Commissioner Tangen replied in the negative.

Mrs. Bobbie Dixon of Kihei asked how the State plans to compensate shoreline property owners for the land "taken away" by the setback.

The Acting Chairman replied that this is not within the jurisdiction of the Commission; that the property will not be taken over by the State; and that the problem of taxation is not within ^{the} Commission's authority.

The Commission's legal counsel suggested that complaints on the merits of the bill should be taken up with members of the legislature.

Mr. Eddie Ching requested that the Land Use Commission support the shoreline property owners before the legislature, since the shoreline property owners are the ones who pay the highest taxes.

Mr. George Apoa from Honokowai stated his preference for the 20 foot setback.

Lee Abrams McDonald also supported the 20 foot setback and cited Lahaina as an example of a beautiful town because of its encroachment on the sea.

Mr. Wayne Ikeoka felt that the 40 foot setback would help to preserve the State's shoreline assets for young people such as himself who did not own any property.

Mr. Glenn Shepard of Kihei, a geologist, stated that he had a certain amount of expertise in marine matters. He said that the shoreline is difficult to define and that the setback should be established after consideration of the nature, configuration and composition of the shoreline itself. He felt that non-conforming structures which have caused erosion should not be allowed to be rebuilt if they are somehow destroyed. Structures which are permitted on a hardship basis should be reviewed for its effects over an entire area.

Mr. Sherman Thompson, Lahaina resident, testified that the setback is a form of eminent domain and that lands covered by the setback should be tax exempt.

Mr. Barney Erdman, representing Ulupalakua Ranch, favored a 20 foot setback in most areas, but a 40 foot or greater setback for sandy beaches.

Mr. Thomas Flynn, representing Mr. and Mrs. Robinson of Lahaina and Kaanapali, favored a 20 foot setback.

Alexander & Baldwin

Mr. Richard Cox of / suggested that a 20 foot setback be adopted for rocky shorelines. However, sandy beaches should be reviewed in detail and appropriate setbacks be established after study.

Mr. Joseph Medeiros, speaking as an individual, viewed the shoreline setback requirement as similar to the front, side and rear yard setbacks imposed by the County. He stated that the quest for money has overshadowed the need to provide for our youth and for those who do not own shoreline property. Yet, when high waves threaten these properties, the owners will invariably seek help from the government.

Mr. Tomio Tsuji of Kihei spoke in favor of a 20 foot

shoreline setback.

Mr. Raymond Silva, a beach property owner, favored a 40 foot setback. He also felt that the higher the building is, the greater the setback should be.

Mrs. Judge, owner of 4½ acres at Kihei, stated that there should be some way that the State could help in easing the tax burden on shoreline properties.

Mr. Vernon Smith of Kihei and Makena favored the 20 foot minimum setback.

Mr. Ernest Ching recounted his experiences on the mainland and in Mexico where structures have blighted the shoreline and resulted in the alienation of our youth. He therefore urged a setback beyond the 20 foot minimum.

Mr. Andrea A. Pavich, Director of the Restoration Program at Kihei, urged that the minimum setback be established along the shoreline of TMK 3-9-07: 3, owned by the St. of Hi, and leased to the Board of Trustees, David Malo Memorial Church, Inc. Mrs. Lucy Fardon of Lahaina agreed with Mr. Pavich that the setback should be the minimum possible.

Mr. Fumio Tsuji suggested that a design requirement be included to prevent the construction of buildings which are incompatible or unaesthetic.

Acting Chairman Napier advised that additional testimony will be accepted by the Commission with the next 15 days. The public hearing on this matter was closed thereafter.

ADOPTION OF MINUTES

Minutes of the August 28th meeting on Maui were circulated. Commissioner Sakahashi made the motion to approve the minutes; Commissioner Wung seconded and it was carried unanimously.

ACTION

PETITION BY DEPARTMENT OF ACCOUNTING & GENERAL SERVICES (A70-253) TO RECLASSIFY 15.483 ACRES FROM AGRICULTURAL TO URBAN

AT KIKIAOLA, WAIMEA, KAUAI

Mr. Leong, the staff planner, presented a detailed description of the area under consideration.

Acting Chairman Napier questioned whether there were any changes in the staff's recommendation since the public hearing on this matter. The staff planner replied that the Commission did not receive the recommendation of the staff at that time and that additional information received since the public hearing is contained in the action memorandum. The Acting Chairman then called for a summary of the new developments rather than going through the entire report.

Mr. Leong indicated that the deed to the parcel in question has been acquired by the State and that subdivision approval has been obtained from the County. He summarized that the outcome of a meeting between State and County officials which resulted in the decision that Huakai Street would be used as the main access to the proposed school. In conclusion, he stated that the staff felt it had no alternative but to recommend approval of the petition because of all the commitments made for the establishment of this facility.

Commissioner Sakahashi requested that the portion of the staff memorandum dealing with the Land Use Commission's concern over prime agricultural lands be read into the record.

The staff planner complied with this request and read into the record pages 4, 5 and 6 of the staff memorandum (see memorandum on file) dealing with the Commission's concern over the location of public institutions in prime agricultural areas and the attraction of other urban uses to these areas thereby removing these lands from agricultural production.

The Executive Officer recalled that the question of sewage disposal was discussed at the hearing and wondered what provisions have been made by the petitioner.

Mr. Lloyd Takahashi, representing the Department of Accounting & General Services, reported that the County will construct a sewage treatment plant by 1972.

Commissioner Sakahashi voiced his concern over possible future development of school sites on prime agricultural land and advised the petitioner that an undesirable situation such

as the present one can be avoided by working together with other agencies directly concerned with the Department of Education's proposals.

Commissioner Wung moved to accept the staff's recommendation for approval of the petition. The motion was seconded by Commissioner Sakahashi and unanimously carried.

Commissioner Tangen then moved that the Executive Officer write to the Department of Education notifying them that the Land Use Commission requests that in the future they consult with this Commission and with any other governmental agency, commission or boards that might be affected by this decision of the Department of Education, and that copies of the letters particularly between Dr. Mark and the Department of Education also be transmitted to the Acting Superintendent of Education.

PETITION BY DEPARTMENT OF ACCOUNTING & GENERAL SERVICES (A70-254) TO RECLASSIFY 37.5 ACRES FROM AGRICULTURAL TO URBAN AT WAKUI, HANA MAUI

Mr. Duran briefly described the area under consideration and presented the staff's action memorandum recommending approval of the petition, since this is another school that was substantially committed (see memorandum on file).

Mr. Howard Nakamura, Maui Planning Director, pointed out that the Department of Education worked closely with the County and the Hana Community in the matter of site selection of the new Hana School.

Acting Chairman Napier commented that the consultation should be extended to include the Land Use Commission in the future.

Commissioner Yamamura moved for approval of the petition as recommended by the staff. The motion was seconded by Commissioner Tangen. The motion was carried by the following votes:

Ayes: Commissioners Tangen, Mark, Kido, Sakahashi, Yamamura and Napier

Noes: Commissioner Wung.

PETITION BY HALE MAHAOLU AND THE COUNTY OF MAUI (A70-258)
TO RECLASSIFY 15 ACRES FROM AGRICULTURAL TO URBAN AT PAIA,
MAUI

The staff planner presented the staff memorandum and briefly outlined the land uses around the area under petition.

Mr. Bob Ohata, consultant for the petitioners, indicated that the petitioners' goal is to provide qualified applicants with a house and lot package for approximately \$23,000 to \$25,000. Bids for construction of the homes were opened about 2 weeks ago. The bids will be firm for a period of 5 months during which negotiations and processing of the petition can proceed. He added that the bid on the house is \$14,000, complete with driveways, sidewalks and grading. Lot improvements will cost about \$1 per square foot or \$6,000 per lot, and other costs such as interest, consultant fees, etc. will add \$2,000 to \$3,000.

Commissioner Tangen questioned Mr. Ohata about the negotiations with A&B, the owner of the land.

Mr. Ohata replied that they are awaiting the appraisal report which will determine the price of the land.

Commissioner Tangen questioned whether / approval of this petition would automatically increase the price of the land. The Executive Officer recalled similar instances in the past in which the landowner went on record to say that rezoning of the land would not increase the purchase price of the land to governmental agencies. He felt that since prime agricultural lands are being removed from production in order to meet the need for this low-cost housing project, the value of the land should not be inflated by a rezoning action.

Commissioner Mark asked whether the goal of \$23,000 to \$25,000 is based on an appraisal of urban or agricultural prices.

Mr. Ohata replied that the raw land value is not the most expensive item and that the high estimate of \$25,000 allowed for an urban valuation.

The Commission's legal counsel advised that a commitment from the landowners to sell the land at agricultural prices

would not be legally binding but that the Commission may defer action in order that the petitioner can get a commitment from A&B. However, if such a commitment cannot be secured, the Commission will still act on the petition.

Commissioner Tangen's motion for deferral of action on this petition was seconded by Commissioner Wung and carried by the following votes:

Ayes: Commissioners Tangen, Yamamura, Kido, Mark and Wung

Noes: Commissioners Sakahashi and Napier.

DECLARATORY RULING REQUEST

Mr. Duran presented the staff memorandum (on file) on a request by Mrs. Alfreda Worst asking whether a single-family residence and a manager's cottage may be constructed on a 2.13 acre parcel situated in the Rural District. The lot presently contains a 4-unit motel operation.

Attorney Lawrence Ing, representing Mrs. Worst, agreed with the staff that the manager's unit would in fact be expanding a non-conforming use and, therefore, withdrew that portion of the request. He stated that the tax valuation in 1964 jumped from \$898 to \$6,495; that other non-conforming uses exists nearby; and that the situation is complicated by the fact that the existing facility contains 4 studio units and 2 kitchens housed in one structure. The special permit procedure was considered, but in an effort to save time and costs, a declaratory ruling was requested.

Maui Planning Director H. Nakamura felt that the motel operation should be isolated as a non-conforming use and not thought of as single-family dwellings. Since a dwelling does not presently exist, he felt that Mrs. Worst should be permitted to build her own residence on the lot.

In reply to questioning by Commissioner Mark, Mr. Duran stated that he had no doubt that the manager's house is an expansion of a non-conforming use. However, in regard to the owner's residence, there is nothing to prevent its conversion to a manager's unit should the owners decide to move. The basic question is whether another house can be built on the property and still be within the intent of the Land Use Law.

Mr. Duran noted that it will definitely meet the test for "unusualness" under a special permit procedure and that if it meets the test for "reasonableness", particularly with regard to no adverse effects on adjoining properties, it would have a good chance of being approved.

Commissioner Wung moved that the request be denied and was seconded by Commissioner Mark. The Executive Officer polled the Commissioners as follows:

Ayes: Commissioners Wung, Kido, Mark, Tangen and Napier

Noes: Commissioners Sakahashi and Yamamura.

The motion was carried.

Since there was no further business, the meeting was adjourned.