

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Kauai Public Library
Lihue, Kauai

November 9, 1976 - 8:30 a.m.

Approved
DEC 21 1976

COMMISSIONERS PRESENT: Eddie Tangen, Chairman
Stanley Sakahashi, Vice Chairman
James Carras
Charles Duke
Colette Machado
Shinsei Miyasato
Carol Whitesell

COMMISSIONERS ABSENT: Mitsuo Oura
Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer
Michael Marsh, Deputy Attorney General
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

All persons planning to testify during today's proceedings were duly sworn in by the Chairman.

ACTION

APPLICATION BY JOSEPH GONSALVES (SP76-242) TO ALLOW CONSTRUCTION OF A SECOND DWELLING IN THE RURAL DISTRICT AT OMAO HOMESTEADS, KAUAI

Chairman Tangen noted that action on the subject Special Permit had been deferred from the meeting of July 30, 1976. He called on Mr. Greg Kamm of the Kauai Planning Department to report on developments in the matter since the deferral.

Mr. Kamm, representing Mr. Gonsalves, submitted as follows:

1. Mr. Gonsalves had approached the Department of Land and Natural Resources to request permission to purchase a remnant piece of State land abutting his property which, when consolidated with his parcel, will bring it up to the required one-acre minimum to construct two dwellings within the Rural District.
2. If the Commission will not grant the Special Permit as requested, would it be willing to approve the Special Permit on the condition that the Special Permit will become effective only upon receipt of a firm commitment

from the Board of Land and Natural Resources that it will convey the necessary acreage to Mr. Gonsalves. This will enable Mr. Gonsalves to proceed with construction during the period that the actual acquisition is being processed.

Commissioner Duke strongly recommended that legislative amendment be sought to allow the Commission, at its discretion, some flexibility in permitting a use under a Special Permit where the failure to meet the minimum requirements, in terms of the total acreage, is only minimal.

Commissioner Duke moved to approve the Special Permit, subject to petitioner's acquisition of sufficient property to meet the minimum requirements. The motion was seconded by Commissioner Carras.

Chairman Tangen clarified that there would have to be a firm commitment from the Board of Land and Natural Resources that it will allow Mr. Gonsalves to acquire the necessary acreage.

Mr. Marsh, Deputy Attorney General, further elaborated that the form of the firm commitment would be an action by the Board of Land and Natural Resources to sell the necessary number of square feet to Mr. Gonsalves, at which time Mr. Gonsalves could proceed to obtain a building permit. Mr. Marsh observed that the actual title exchange may take as long as six months through the normal bureaucratic process.

Vice Chairman Sakahashi questioned the propriety of issuing the Special Permit for the proposed use when in fact it did not meet the minimum requirements for construction of two dwellings within the Rural District.

It was Mr. Marsh's opinion that it was appropriate for the Commission to approve a Special Permit, conditioned upon a firm commitment of sale approved by the Board of Land and Natural Resources, in order to resolve a problem such as that presented by Mr. Gonsalves.

In response to further questioning by Vice Chairman Sakahashi, Mr. Marsh advised that without a Special Permit approval by the Land Use Commission, the County would not have the authority to issue a building permit until the title was actually conveyed to Mr. Gonsalves.

Chairman Tangen called for the motion on the floor to approve SP76-242 subject to notification of action by the Board of Land and Natural Resources that it will convey sufficient land to Mr. Gonsalves to create a one-acre or more parcel, and subject also to the conditions imposed by the Kauai Planning Commission.

The Commissioners were polled as follows:

Ayes: Commissioners Duke, Whitesell, Machado, Miyasato,
Carras, Chairman Tangen

Nay: Vice Chairman Sakahashi

The motion was carried.

HEARING

A76-417 - CAN CORPORATION

Pursuant to a notice published in The Garden Island and the Honolulu Advertiser on October 4, 1976, and notices sent to all parties, a hearing was called by the Land Use Commission in the matter of the petition by the Can Corporation, to amend the land use district boundaries for approximately 10.7 acres presently in the Agricultural District into the Urban District at Kilauea, Kauai for residential use, Docket No. A76-417.

It was noted by the Chairman that a pre-hearing conference on the subject petition had been held on November 4, 1976 for the purpose of exchanging exhibits and determining the number of witnesses in order to expedite the hearing procedure.

The hearing procedure to be followed was explained by Chairman Tangen.

APPEARANCES

Walton Hong of the law firm of Masuoka and Hong, representing the petitioner

Gilbert Lee, Deputy Attorney General, representing the Department of Planning and Economic Development

William Hoag, Deputy County Attorney, representing the Maui Planning Department

All of the above were admitted as parties to the proceedings.

Mr. Gordan Furutani, Executive Officer, pointed out the subject parcel on various maps and oriented the parcel with existing landmarks.

PETITIONER

Exhibits

The following documents were marked for identification and introduced into evidence as Petitioner's Exhibits:

Exhibit A - Map locating subject parcel

Exhibit B - Letter of Authorization

Exhibit C - Financial Statement of Can Corporation

Exhibit D - Amended Proposed Subdivision Map

Exhibit E - Projected costs for proposed subdivision

Exhibit F - Topographic map of subject parcel

Exhibit G - Soils map of subject parcel

Lawrence L. T. Ching - Witness

Mr. Lawrence Ching, President of Can Corporation, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Hong -----	29 to 41
Cross examination by Mr. Hoag -----	41
Cross examination by Mr. Lee -----	41 to 48
Redirect examination by Mr. Hong -----	48
Recross examination by Mr. Lee -----	49

Calvin Ching - Witness

Mr. Calvin Ching, Engineer, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Hong -----	49 to 57
Cross examination by Mr. Lee -----	57 to 59
Redirect examination by Mr. Hong -----	59 to 60

Michael Dyer - Witness

Mr. Michael Dyer, real estate broker, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Hong -----	60 to 65
Cross examination by Mr. Lee -----	65 to 69
Redirect examination by Mr. Hong -----	69 to 70

KAUAI PLANNING DEPARTMENT

Greg Kamm - Witness

Mr. Greg Kamm, planner with the Kauai Planning Department, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on ----- Pages

Cross examination by Mr. Hong -----	70 to 76
-------------------------------------	----------

Direct examination by Mr. Hoag -----	76
Cross examination by Mr. Lee -----	76 to 80
Redirect examination by Mr. Hoag -----	80 to 82
Questioned by Mr. Marsh -----	82 to 86
Questioned by Chairman Tangen -----	84
Questioned by Commissioner Whitesell -----	86
Recross examination by Mr. Hong -----	87 to 88

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Mr. Lee requested that the reading of the testimony prepared by the Department of Planning and Economic Development be waived.

Tatsuo Fujimoto - Witness

Mr. Tatsuo Fujimoto, Head of the Land Use Division, DPED, having been duly sworn in, was called as a witness, examined and testified as set forth in the transcript on ----- Pages

Direct examination by Mr. Lee -----	89 to 90
Cross examination by Mr. Hong -----	90 to 105
Cross examination by Mr. Hoag -----	105 to 106
Redirect examination by Mr. Lee -----	106 to 107
Questioned by Chairman Tangen -----	107 to 108
Recross examination by Mr. Hong -----	108

Chairman Tangen advised the petitioner of the deadline for the filing of the proposed findings of fact and conclusions of law, service to all parties, etc., and announced that the hearing on A76-417 was closed.

ACTION

SP76-250 - OUR LADY OF MT. CARMEL CHURCH
APPLICATION FOR A SPECIAL PERMIT TO CONSTRUCT A NEW PAVILION FOR CHURCH USE AND RELATED FUNCTIONS ON 3.97 ACRES IN THE AGRICULTURAL DISTRICT AT WAIKANE, OAHU

Mr. Furutani presented a summary of the staff report which had been prepared for the subject request.

Commissioner Duke observed that the County's condition No. 1 needed clarification. Chairman Tangen suggested that the Executive

Officer communicate with the City Planning Commission for a clarification of condition No. 1.

Commissioner Duke moved to approve the Special Permit, subject to the conditions imposed by the City Planning Commission and upon verification of condition No. 1 by the City Planning Commission. The motion was seconded by Commissioner Carras and unanimously carried.

SP71-117 - BOISE CASCADE RECREATION COMMUNITIES GROUP
REQUEST FOR EXTENSION OF EXPIRATION DATE FOR A PERIOD OF FIVE YEARS
TO DECEMBER 17, 1981

The location of the subject parcel was pointed out by the Executive Officer. In response to a question raised by Commissioner Whitesell, Mr. Furutani explained that the conditions imposed in the granting of the original petition related to noise and dust problems.

Commissioner Carras moved that the extension request be approved, subject to the conditions imposed by the Hawaii Planning Commission. The motion was seconded by Commissioner Duke and unanimously passed.

ADOPTION OF MINUTES

Upon motion by Commissioner Duke, seconded by Commissioner Carras, the minutes of September 24, 1976 were adopted as circulated.

MEETING SCHEDULE

Mr. Furutani advised that the next Commission meeting was scheduled for November 22, 1976.

There were no objections from the Commission to Mr. Furutani's request that Mr. Benjamin Matsubara be appointed as the hearing officer to conduct the Commission hearings on the proposed amendments to the Rules and Regulations.

Other future meeting dates were also discussed.

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