

STATE OF HAWAII  
LAND USE COMMISSION

*Approved - June 17, 1966*

Minutes of Meeting

DP&ED Hearing Room

Honolulu, Hawaii

1:30 P. M. - November 20, 1964

Commissioners

Present:

Myron B. Thompson, Chairman  
C.E.S. Burns, Jr., Vice Chairman  
Charles S. Ota  
Goro Inaba  
Shiro Nishimura  
Jim P. Ferry  
Robert G. Wenkam  
Leslie E. L. Wung

Absent:

Shelley M. Mark

Staff

Present:

Raymond S. Yamashita, Executive Officer  
Roy Y. Takeyama, Legal Counsel  
Richard E. Mar, Assistant Planner  
Amy Y. Namihira, Stenographer

Chairman Thompson called the meeting to order followed by a short prayer. The members of the staff who would be giving testimonies were sworn in at this time.

PETITION FOR SPECIAL PERMIT, SP64-3, BY DEPARTMENT OF LAND AND NATURAL RESOURCES

Mr. Richard Mar presented a summary of the background of the staff report and outlined the area on a map. The Zoning Board of Appeals of the City and County of Honolulu transmitted its approval of the special permit application by Department of Land and Natural Resources "based on the fact that the use sought is a reasonable use within an Agricultural District, and would promote the effectiveness and objectives of Chapter 98H, RLH, 1955, as amended."

Chairman Thompson asked, "What does the Health Department say?" Mr. Mar stated that the Health Department is in favor of this and that this operation is quite desirable.

Commissioner Burns asked whether there were any conflict between the home and the University of Hawaii operations. Mr. Mar replied in the negative.

Chairman Thompson stated this kind of operation relieves the State Hospital from hospitalizing people too long. The State Hospital is becoming acutely crowded and is trying to find additional facilities to place people in. They want the people to get back into the community as fast as possible.

Mr. Mar continued with the discussion and recommendation of the staff report as follows: staff recommended approval of the special permit application for Oahu TMK 5-8-01: 51 containing an area of 12.13 acres. Staff felt that the Department of Land and Natural Resources' application for a special permit substantially met the guidelines of Section 2.24 of the State Land Use District Regulations.

Commissioner Burns moved to accept the application for special permit based on the staff report. Commissioner Inaba seconded the motion.

The Executive Officer polled the Commissioners as follows:

Approved: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura,  
and Chairman Thompson.

Disapproved: None.

The motion to approve the special permit application was carried.

PETITION FOR SPECIAL PERMIT, SP64-5, BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES

Mr. Mar presented the background of the staff report and outlined the area on a map. The Maui Planning and Traffic Commission transmitted its unanimous approval of a special permit to the Department of Land and Natural Resources for the purpose of constructing a YMCA recreational camp in Keanae,

Maui, TMK 1-1-02: 9 containing 7.742 acres. He then continued with the discussion and recommendations of the staff report. The staff recommended approval of the special permit application submitted by the Department of Land and Natural Resources on the basis that the YMCA campsite substantially conforms to the guidelines of Section 2.24 of the Land Use Regulations.

The Legal Counsel was called upon in regards to the legality of the conditions imposed by the Maui Planning and Traffic Commission. He stated that there were three legal questions.

1. Maui Planning and Traffic Commission limited the use to the length of the term of the lease.
2. Maui Planning and Traffic Commission limited renewal of this lease automatically to the same party. He stated that this phase was up to the Department of Land and Natural Resources.
3. Whether the Maui Planning and Traffic Commission can condition permits based upon the nontransferability of the permit.

He further stated that the permit of this nature is for a use -- not as to who's going to use it.

Commissioner Ferry felt that this was merely a sympathetic way of giving a wholehearted support to the YMCA by the Maui Planning and Traffic Commission.

Legal Counsel stated that action can be taken on the petition subject to review by county legal staff as to whether such conditions can be imposed on the permit.

Commissioner Burns stated that the Land Use Commission only acts on whether to approve the special permit or not, and not on the fringes around it.

Legal Counsel stated that under the Law, the County imposes a condition, so when the County processes the petition and acts on it with a condition and

then sends it to the Land Use Commission, the Land Use Commission is in effect acting on the condition. He also stated that the Land Use Commission cannot impose its own conditions on the special permit.

Commissioner Ferry asked what was the difference if Maui County imposed those conditions; what will the effect be. Legal Counsel stated that it was unenforceable. Commissioner Ferry said the Land Use Commission will either vote for or against the special permit as it now stands.

Legal Counsel stated that for the records, this illegality appears as far as the Land Use Commission is concerned.

Chairman Thompson asked, supposing they run out of their lease and a commercial venture wants to come in, does the special permit still apply? He was answered in the affirmative.

Commissioner Ferry posed a question to the Legal Counsel - "When we grant a special permit, do we also grant a specified tenure?" Legal Counsel replied in the negative.

It was agreed by the Land Use Commission that the word YMCA will be left out from the staff report.

Commissioner Inaba moved to approve the special permit based on the staff report. Commissioner Wenkam seconded the motion.

The Executive Officer polled the Commissioners as follows:

Approved: Commissioners Wung, Inaba, Wenkam, Burns, Nishimura,  
Ferry, and Chairman Thompson.

Disapproved: None.

The motion was carried unanimously.

PETITION FOR SPECIAL PERMIT, SP64-1, BY MR. & MRS. KIYOSHI MIZUTANI

The Executive Officer presented the background of the staff report and outlined the area on a map. The Kauai Planning and Traffic Commission

unanimously approved a special permit to Mr. & Mrs. Kiyoshi Mizutani to use TMK 3-2-03: 9 and 28, with a gross area of approximately 2.06 acres, for the construction of a 12 unit, 2 story motel building.

Commissioner Wenkam asked why is this an application for a special permit rather than a boundary change. The Executive Officer stated that legally, the Land Use Commission cannot force the petitioner to come in for either a boundary change or a special permit. If the land is in the Agricultural District, the petitioner may come in for a special permit.

Commissioner Nishimura asked why the Kauai Planning and Traffic Commission haven't asked for a boundary change. Mr. Mar stated that in the minutes, the Kauai Planning Director requested that the Land Use Commission designate this area as Urban in their (Land Use Commission) deliberations of the final district boundaries, but that the Land Use Commission did not designate it as such. It is, therefore, assumed that the Kauai Planning and Traffic Commission applied for a special permit instead of a boundary change.

The Executive Officer read part of the Kauai Planning and Traffic Commission Director's report and then continued with the discussion and recommendation of the staff report. Staff recommended denial of this petition on the bases that (1) there is a lack of evidence that the legislative prerequisites for approval have been met, and (2) further investigation and analysis indicate that the proposed use, in this particular case, does not meet the legislative prerequisites.

Commissioner Nishimura stated that only this area was in fee simple and felt that it would be good for the proposed development. He also felt that this should have been a boundary change.

Commissioner Ferry felt that there is a need for this type of operation. The State plans to sell some property shortly for this type of commercial hotel operations.

Commissioner Burns asked if there were any effort made to tie this motel arrangement into the marina. The Executive Officer replied in the affirmative. Commissioner Ferry stated that the Department of Taxation is doubtful of this and that there is some question as to the expense of developing the marina.

Commissioner Ota questioned the recommendations of the staff report. The Executive Officer felt that because the County did not transmit sufficient materials, on that basis, it did not meet the prerequisites of the Law. Commissioner Ota felt that the staff should have gone a step further and acquired the necessary information. The Executive Officer stated that the staff made that effort but did not succeed in getting the information. Commissioner Ota's concern was whether or not the Land Use Commission could take a stand on this matter should the petitioner contest this case in court.

Commissioner Ferry stated that it may be premature at this time to grant a special permit because of the lack of amenities in the area. Commissioner Wenkam concurred with Commissioner Ferry and also stated that the flood control problem should also be considered.

Commissioner Nishimura asked if flood control problems were part of the Land Use Commission jurisdiction to zone a certain area. If this be the case, can the Land Use Commission deny the petitioner the zoning even if it's contiguous to an Urban area. Commissioner Ferry stated that the Department of Land and Natural Resources is preparing studies on the flood plain areas with the aid of the counties.

The Executive Officer stated that flooding is a problem but not to use it as a basis for denying the special permit.

Chairman Thompson asked the Commission whether they were prepared to act on this special permit at this time, or should the Land Use Commission ask the County for additional information?

The Executive Officer stated that the way the special permit procedure is set up in the Law, the basic responsibility for providing all the facts, conclusions of the Law, etc. is with the County. He further stated that the staff has gone into this matter and tried to get the unanswered information.

Commissioner Burns stated that if the Land Use Commission had the information, they would have more strength should they decide to turn down the application.

Commissioner Ferry stated that the site is going to be close to a proposed boat harbor. If the boat harbor were a reality, maybe there is good justification for such a venture, but, as it now stands, it would be difficult to grant it at this time.

The Executive Officer stated that this proposed boat harbor is number 13 on the third division of the Department of Transportation.

Commissioner Wung stated that the State and County Plan propose the area for industrial. Why is it a flood plain for a motel but not a flood plain for an industrial area? Commissioner Ferry stated that a flood plain doesn't stay a flood plain all the time.

Commissioner Burns moved to defer action and refer this matter for additional information to be furnished by the County. Commissioner Inaba seconded the motion.

The Executive Officer polled the Commissioners as follows:

Approved: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura,  
Ferry, and Chairman Thompson.

Disapproved: None.

The motion to defer this matter was carried unanimously.

ADOPTION OF MINUTES

The minutes of October 22, 1964 in Wailuku, Maui at 12:30, 1:30 and 1:45 p.m. were adopted as circulated. The minutes of September 10, 1964 in Wailua, Kauai were adopted as circulated. The minutes of May 23, 1964 were adopted as corrected (Page 4 - La Perouse Bay - Requested adjustments of the Conservation lines). The minutes of November 5, 1964 in Lihue, Kauai with Mr. Moragne of Grove Farm were adopted as circulated. The minutes of November 5, 1964 in Lihue, Kauai with Kauai Planning and Traffic Commission at 4:00 p.m. were deferred. Corrections and comments to be submitted by Legal Counsel and Commissioner Wenkam.

PROPOSED LEGISLATIVE AMENDMENTS

The following were discussed by the Commission as possible amendments to the Law:

1. Agricultural Subdivision
2. Time limit for boundary change
3. Resort Use
4. Conditions imposed by the County on resort and hotel uses

After discussion on these items, the Commission agreed that further study was needed before workable solutions can be developed.

PUBLIC INFORMATION PROGRAM

Chairman Thompson stated that he met with Mr. Goodfader and Mr. Greaney of the Department of Planning and Economic Development regarding this matter. He stated that Mr. Goodfader posed a basic question to him -- What has the Land Use Commission done; what are the results of the work so far?

Mr. Goodfader stated that no public relations is ever a success unless it's based on something that's true. If it's true, then this Law has been of



public benefit. The Commission should decide if the Land Use Law and the administration of the Law by the Commission have been of benefit to the public and in what ways?

Chairman Thompson stated that the Commission should analyze the past activities of this Commission to see how the Commission thinks of its past actions and then present the past activities of the Land Use Commission for public evaluation.

Mr. Goodfader suggested that the Commission ask themselves if they accomplished what they had set out to do.

It was agreed by the Commission that they will hold a "brainwash" meeting and evaluate the job they have done so far.

#### STATE DEPARTMENT OF TRANSPORTATION

Chairman Thompson read a letter from Albert C. Zane of the Highways Division regarding the Urban boundary from Kunia to Waiawa.

Chairman Thompson asked, does the Land Use Commission's decision, at that point, cover in terms that the Land Use Commission will adjust it wherever the Department of Transportation Highway Division places the line.

Legal Counsel stated that the question was whether the Land Use Commission can draw a boundary based upon the determination of another agency (by saying that the Land Use Commission will draw it up to the point as to where the Department of Transportation is saying the boundaries is going to be). He further stated that the Land Use Commission adopted the Urban boundary as of the date that the Land Use Commission saw the H-1 map. Legally, the Land Use Commission doesn't have a boundary.

The Executive Officer stated that legally, no one has asked the Land Use Commission where the boundary was. The intent of the Land Use Commission was to use the boundary of the proposed highway as the Urban boundary.

Commissioner Burns stated that technically the boundary was drawn.

Legal Counsel asked, what boundary did the Land Use Commission adopt. At the time the Land Use Commission adopted it, did they adopt it accordingly to the proposed H-1 highway at that particular date? If that is the case, it doesn't change the boundary.

Commissioner Burns stated that the Land Use Commission based its decision on the proposed highway, but when it came to the actual drawing of the line, the Land Use Commission had to draw a line indicating the proposed highway at that time.

Chairman Thompson stated that legally, this is where the boundary remains until the Land Use Commission makes a further determination upon a formal request.

Staff was requested to obtain the existing H-1 highway at the time the Commission acted on the boundaries.

NEXT LUC MEETING

It was agreed by the Commission that the next meeting will be on December 17, 1964 at 10:00 a.m. in Honolulu.

PETITION BY KAUAI PLANNING & TRAFFIC COMMISSION (A64-74)

The Executive Officer explained the situation to the Commission. After the discussion, Commissioner Nishimura moved to accept the boundary lines as recommended by staff. Commissioner Nishimura moved as follows: inasmuch as uncertainty exists as to the exact district boundaries with respect to TMK 2-8-20: 8 and 31, Fourth Division, I move that the Land Use Commission hereby interprets the location of the Urban-Agricultural boundary line to be located on the property line between the two parcels, thus including all of TMK 2-8-20: 8 in the Agricultural District and all of TMK 2-8-20: 31 in the Urban District. Commissioner Wung seconded the motion.

The Executive Officer polled the Commissioners as follows:

Approved: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura,  
and Chairman Thompson.

Disapproved: None.

The motion was carried.

The meeting was adjourned at 5:00 p.m.