

LAND USE COMMISSION
STATE OF HAWAII

Minutes of Meeting

Hearing Room

Honolulu, Hawaii

10:00 A. M. - November 22, 1963

Commissioners

Present:

C.E.S. Burns
Shelley Mark
Shiro Nishimura
Charles S. Ota
Myron B. Thompson
Robert G. Wenkam
Leslie E. L. Wung

Absent:

James P. Ferry
Goro Inaba

Staff

Present:

Alfred Preis, Planning Coordinator
Planning and Economic Development
Raymond Yamashita, Executive Officer
Roy Takeyama, Legal Counsel
Gordon Soh, Planning & Economic Development
Richard Mar, Assistant Planner
Alberta L. Kai, Stenographer

The Chairman called the meeting to order, followed by a prayer and a tribute to the past President of the United States.

ELECTION OF OFFICERS

Commissioner Wung moved to defer the election of officers to the next meeting when all the commissioners would be present; seconded by Commissioner Burns. Motion carried.

SPECIAL PERMITS

Mr. Soh informed the Commission that the staff reports were prepared and circulated to the Commission in advance for their review with respect to the five special permits pending before the Commission for action. He stated that the same procedure may not be followed in the case for petitions for boundary changes, since the staff reports will be presented at the time of the public hearing.

A lengthy discussion on the procedure for circulating the staff report was held and it was pointed out by the Legal Counsel that there is a statutory provision in the administrative procedures act which prevents a quasi-judicial body of this nature to have any preconceive idea before a hearing of the staff's recommendation.

The legal counsel felt, however, that it was all right for the Commission to obtain or receive any background information pertaining to the locale, area, request, or other facts or information which were not of issue as long as it did not give the position that the staff would be taking.

Commissioner Burns suggested that the staff provide the Commission in advance of any hearing factual information that were of issue which would make the Commission a little more alert to the problems involved and better educated at the time of the hearing; but not to the point where it would indicate the staff's recommendation.

Commissioner Wenkam also requested that at the same time the staff provide the Commission with a very minimum type of sketch map concerning the area.

APPLICATION OF W.H. SHIPMAN, LTD. FOR SPECIAL PERMIT TO SUBDIVIDE AND DEVELOP AN INDUSTRIAL PARK ON APPROXIMATELY 19 ACRES OF LAND SITUATED IN PUNA JUST SOUTH OF THE SOUTH HILO JUDICIAL DISTRICT AND APPROXIMATELY 200 YARDS MAUKA OF VOLCANO ROAD: Described as TMK 1-6-03.

A formal request to the Land Use Commission by L.N. Nevels, Jr. on behalf of his client, W. H. Shipman, Ltd., to defer action on their request until 1/18/63, whereby he could be present and be heard, was presented.

Commissioner Burns felt that the Commission should follow the required provision by law as much as possible in order not to leave the door wide open for everyone.

Commissioner Wung stated that action taken at this time on this request may have an effect on the economy of the island of Hawaii, and therefore requested that Mr. Nevels request for deferral be accepted until he could be heard.

Commissioner Wung moved to defer action on the W.H. Shipman, Ltd. request until 1/18/63; seconded by Commissioner Nishimura. Motion carried unanimously.

APPLICATION OF LIHUE PLANTATION COMPANY (SP(T)63-2), FOR SPECIAL PERMIT TO SUBDIVIDE A LOT OF APPROXIMATELY 20,000 SQUARE FEET FROM A PARCEL OF 321 ACRES IN SIZE AND TO CONSOLIDATE THIS LOT WITH A THIRD LOT CONTAINING 30,000 SQUARE FEET ADJACENT TO IT, FRONTING RICE STREET, LIHUE, KAUAI: Described as TMK 3-6-02: 1

A detailed and descriptive background on the request and area involved was outlined by Mr. Soh, followed by the staff's recommendation for approval of the request.

Mr. C. L. Childs introduced himself as representative of the Lihue Plantation Company. Mr. Childs stated that it was their understanding that the proposed Land Use Commission final district boundaries had included the area in question in urban, and they therefore had entered in negotiations with the Salvation Army in order to effect a land exchange. He stated that the plantation interest is for

the exchange of lands in the area about a mile and a half above the town which was the old Esenberg residence. He stated that Mrs. Esenberg at the time of her death willed this to the Salvation Army at the time her daughter gave up residence in the area. He stated that her daughter was willed 10 acres in the same area. He stated that Mrs. Esenberg's daughter has now purchased a lot in one of their subdivisions, and they have exchanged lands with her to obtain the 10 acres she had in the area. He stated that when she moves then under the will the remaining 14 acres will revert to the Salvation Army. The Salvation Army plans to carry out the intent of Mrs. Esenberg's will to build a place to house people of low income standing, or pensioners and retirees. This cannot be done until approval is given by this Commission, Mr. Childs pointed out. He also stated that the plantation operations are also dependent on this valley for storing of waste from the sugar canes, and will be affected if the exchange of the land does not go through.

The Chairman asked, "Why did the petition come in for a special permit rather than a boundary change?" Mr. Childs replied, "Because it is our understanding that you do not have permanent boundaries yet; therefore we might be operating under an interim boundary until such time permanent boundaries are adopted; 'How do we go about these interim boundaries?' The only way we could see to do it was first go to the County, and the County advised us to put in a special permit application."

A lengthy discussion on the possibility that the proposed Land Use Commission final boundaries will indicate the area in question as urban was held and it was pointed out by the Executive Officer that to make a decision based on conjectures what the Commission's decisions will be cannot be done. He stated that the Commission should not place itself or be obliged to back up decisions of any person who enters into a kind of agreement based on anticipated moves by this Commission. He stated that the point to recognize is the overriding principles, the precedence the Commission sets.

The Legal Counsel who was in accord with the Executive Officer's concept stated that in this incident some kind of consideration should be given this petitioner, because it is really a mistake on the part of the local planning department to have advised that the petitioner apply for a special permit rather than a boundary change.

Commissioner Wenkam moved for approval of the special permit; seconded by Commissioner Wung. The Chairman polled the Commissioners. Approval: Commissioners Wung, Wenkam, Burns, Nishimura, and Chairman Thompson. Disapproval: Commissioner Ota.

It was requested that the staff notify all the county planning agencies concerning the special permit versus boundary change procedures that should be applied and followed; and request that the county planning agencies at the initiation of a special permit forward a carbon copy of the application to the Land Use Commission for review and advisement.

APPLICATION OF LIHUE PLANTATION COMPANY (SP(T)63-3), FOR SPECIAL PERMIT TO SUBDIVIDE A LOT APPROXIMATELY 13,000 SQUARE FEET IN SIZE OUT OF 1,090 ACRE PARCEL, IN ANINI, HANAIEI, KAUAI: Described as TMK 5-3-06: 6

Mr. Soh presented a description of the area and request involved and the staff's recommendation for denial which was on the basis that the present level of public services at Anini could not support an intensification of urban uses at Anini without creating serious problems.

In reply to questions posed by Commissioner Wung concerning the possibility of using rainfall to curtail the water problem, Mr. Soh replied that he was not prepared to answer this as he did not make any research in this area.

Mr. Childs informed the Commission that the request is being made because an individual who came down from the mainland wanted their home in this area. He stated that inasmuch as this particular area would be cornered by a bluff on one side and a house lot on the other, the only proper use would be for some kind of a beach home; and felt that this was consistent with a special permit request. He stated that he did not think that the Land Use Commission would concern themselves with the utility problems as he felt it was in the domain of the county. He stated that the county had very strong subdivision ordinances. He stated if this application were to be approved by this Commission, they would then go back to the county and submit an application for a subdivision at which time the matter regarding the utility problems would be considered. He stated that they have talked to the Director of Kauai County Water Department and he has indicated that if the improvement were to be taken care of, he would have no objection. He stated that there are some grazing along the flats, and indications are that the area will eventually go to single family residential.

Commissioner Nishimura asked whether there was enough water at present. Mr. Childs replied that there is enough water for the type of use involved in this area. He stated that the full time residential use is not there. He stated, however, that the pipe would have to be changed to a larger pipe.

Commissioner Ota felt that the request did not fall within the premise of a special permit. He pointed out that if the Commission allowed this request in this area, it would leave every other parcel within the agricultural area open for someone to come in for one beach lot or one house lot, etc. He pointed out that this request, however, would merit some consideration if a comprehensive plan were presented.

Mr. Childs stated that the little pocket of land of concern is contiguous to an already built up beach home and the only use that could be made. He stated that frankly they were at a loss because they did not know how to proceed with the use of their own lands, inasmuch as there were no permanent boundaries established as yet. He stated that they have a master plan for this area which conforms with the county and state general plans, and that both of these plans indicate that the area will eventually be urban. He therefore felt that this was within the context of the proposed framework of the general plan.

Commissioner Burns asked the staff whether the only objection they had as indicated in their report was the lack of water.

The Executive Officer replied that the staff report points out the fact that the principle question to consider is, if we allow one lot to develop in this area, we will open the door to all similar type of developments on lands in this area. The question that the Commission should ask itself concerning the matter of utilities is, "Can the Commission accept the responsibility of starting a greater urbanizing development in this area; and how much land in this suitable area will it allow for this type of development at this time."

After a lengthy discussion on the subject Mr. Childs brought out two main points of impression which he felt was of concern to the Commission.

1. The impression that the plantation was creating a new urban area; and
2. The impression that the County would be faced with the water development problem in the area.

Mr. Childs pointed out that it is not the intent of the plantation to create a new urban area. He stated that their proposal and ideas were based solely that this was a logical system for extension and for use of a segment of land which is isolated by houses on one side and a bluff on the other. He added that the Kauai ordinances require that the subdivider always provide the necessary water to adequately take care not only of his own lots, but to the demand of the area that particular lot is contiguous to. He stated that the county would not provide it, the developer or purchaser would provide it.

Commissioner Nishimura moved to accept this special permit; seconded by Commissioner Wenkam. The Chairman polled the Commissioners. Approval: Commissioners Wung, Wenkam, Burns, Nishimura, and Chairman Thompson. Disapproval: Commissioner Ota.

APPLICATION OF JOHN WADE COMPANY (SP(T)63-1), FOR SPECIAL PERMIT TO CONVERT A SINGLE-FAMILY DWELLING UNIT ON A 0.91 ACRE LOT INTO A DUPLEX AT ANINI BEACH ON KAUAI: Described as TMK 5-3-07: 12

A detailed background on the area and request involved was outlined by Mr. Soh. Mr. Soh gave the staff's recommendation which was for denial of the application for special permit on the basis that the public facilities at Anini Beach were inadequate to support an intensification of urban uses.

No one was present to represent the John Wade Company.

Mr. Preis recommended that the Commission support the staff's recommendation but for different reasons. He stated that the creation of duplexes in a beach area of this nature is undesirable. He stated for sociological and moral reasons, it is undesirable to handle this on a special permit basis, exactly because it requests duplex.

Commissioner Nishimura was not in accord with the comments presented by Mr. Preis. He stated that the Commission should judge the land use merit of this property and not commit itself to whether duplexes should be allowed or not allowed in the area because it is undesirable; he felt that this rest within the jurisdiction of the County and not this Commission.

Mr. Preis pointed out that because this is a special use application, all considerations must be made and weighed to influence this Commission's decision. Considerations such as whether this is desirable; what influence it will have to the neighborhood or the proposed use; what will go on or what is the use for; and will it be rented out and for how long, etc.

The question was raised whether it was within the counsel of this Commission to consider the ramifications of the land uses. Legal Counsel stated that the law was very contradictory and ambiguous. He stated that Section 5 of the Act and Section 138-42 state that the county zoning powers under the law as granted to them shall apply. He stated that, on the other hand, the Land Use Commission is quite concerned with the type of uses that the particular applicant is going to pursue. He stated that this is a question as to whether the Commission should follow the text as defined in the Act under special permit - whether this is a reasonable or unusual use other than for which it was districted.

Legal Counsel stated that the concern of the staff about what impact this would have upon future development in this area should not be limited to only this because it is already intensified as a residential area.

After a lengthy discussion the question was raised whether intensification came into play within this Commission's concern.

Legal Counsel stated that if it is an issue on whether this Commission should approve the request on grounds that it is merely going to be a duplex or not, he didn't think it was legally within the powers of this Commission. He stated that as far as uses within the designated district is concerned, it is strictly within the County.

The Executive Officer stated that this Commission must recognize that this is a special permit for a special use. He stated that this is the proper procedure which the applicant has followed in submitting his request to this Commission. He stated that the special use is for a duplex unit. He stated that in this particular case the Commission is correct in examining the ramifications of this particular use. He added that in the previous request by Lihue Plantation Company, it was stated that the County had zoned the area for single residential uses, however, here we have a request for a duplex in the same area. He stated that the County has gone contrary to their stated plan. He also pointed out that the Commission should also consider the problem of spot zoning which will occur in this area once a number of grants are issued.

After a lengthy discussion the questions were raised whether it was proper to vote on the matter or take it into consideration because of insufficient evidence; and whether the problem concerning the request was the responsibility under the county jurisdiction or not.

Commissioner Wung moved to deny the special permit application submitted by John Wade Company for duplex on the basis that the information and facts submitted by Kauai County Planning and Traffic Commission do not substantiate approval that it is a reasonable and unusual use. Motion seconded by Commissioner Wenkam. The Chairman polled the Commissioners. Approval: Commissioners Wung, Ota, Wenkam, Burns and Chairman Thompson. Disapproval: Commissioner Nishimura.

Mr. Soh requested the Commission's thoughts on partitioning of lands and partitioning of dwelling units or duplexes. The Chairman requested that this be deferred and brought up again at the Commission's next meeting.

APPLICATION OF HAWAII AERIAL TRAMWAY CORPORATION TO CONSTRUCT A GONDOLA AERIAL TRAMWAY FROM BENCH MARK #15 TO LAUNIUPOKO PEAK, AN ELEVATION OF A LITTLE OVER 800 FEET, LAHAINA DISTRICT, MAUI: Described as TMK 4-7-01: 2.

Mr. Soh outlined the area and request involved and presented the staff's recommendation which was for approval and recommending that the Commission attach conditions on the special permit grant.

Commissioner Wenkam asked whether the Land Use Commission could legally attach conditions.

Commissioner Thompson asked whether it was possible to approve the special permit based on conditions outlined by the petitioner and if he deviates from it, then the permit becomes void.

Legal Counsel requested that he be allowed to look into the matter and have some time to review this further. Offhand, he stated that, "This Commission grants a special permit on the grounds that it is a reasonable and unusual use. As far as what the petitioner does with the land for the type of use, it is not within this Commission's jurisdiction."

Commissioner Thompson replied that it would be in this Commission's preveue in terms of the type of use, but specifically what goes into it, as far as conditions, it is out of our hands. The Chairman requested that the Legal Counsel review this further.

Mr. Frederick Lee, Director of City Planning Department, informed the Commission that at the county level conditions can be imposed upon the applicant, which in turn is forwarded to this Commission together with the map showing his development plans, application and other documents, for approval or disapproval. He stated that on this basis your problem is easily solved and this Commission would no longer worry about the minute detail operation.

Commissioner Thompson stated that in this case the Commission can accept the request according to the restrictions set by the County.

Mr. Lee stated that the Land Use legislative act grants the county the power under the special permit procedure; the power is given to them, and therefore, under the legislative act they can do this. He pointed out two things which the City & County of Honolulu bases the special permit on:

1. That it is an extraordinary use up and above the regular considerations.
2. That it is a variance classification which the Act spells out that the special permit is granted by the County and approved by this Commission.

Therefore this gives the County the power to impose any conditions it sees fit upon the developer or applicant which in turn is transmitted to this Commission. He stated that as a planner who has done this type of work, he saw no procedural difference.

Commissioner Thompson questioned whether there was a point of law that needed to be reviewed.

Commissioner Burns stated that it was his understanding that this Commission approves the use to be used for this purpose, and that the policing of that use is not our responsibility but the County's. Therefore the Commission would approve the use for this land for a tramway and let the county carry on from there.

Mr. Preis stated that the Commission may want to follow the staff's recommendation to put into the Commission's approval, conditions; or approve the special permit subject to what Mr. Lee recommends. Therefore, making the approval only valid after the county presents development plans or submits development plans together with all other documents for the Commission's protection.

Mr. Lee stated that the procedure for a special permit on all county levels is as follows:

1. The county holds the hearing; and
2. A package containing the county's restrictions imposed upon the use of the applicable parcel is transmitted to this Commission for approval or disapproval.

A summary of what is done at the City & County of Honolulu level concerning the special permit procedure was given by Mr. Lee, who in turn suggested that the staff get together with the Maui County Planning staff to put these restrictions into form that would be acceptable by this Commission.

Commissioner Ota moved to defer action on this request for further study and follow-up by the staff and for representation on December 6, 1963 meeting on Maui; seconded by Commissioner Burns. Motion carried unanimously.

The staff was instructed to carry the Commission's sentiments that the Commission is not denying the petition but would like assurance that should this request be approved it would be carried out in accordance with the statement of the developer. (The staff was requested to gather information from the County as to how the mechanics on this operation will take place.)

FOLLOW-UP MATTERS

1. Chartering of Flights

Legal Counsel reported that as far as legal provisions are concerned there are none prohibiting the chartering of flights. He stated, however, that there is a written established policy on the part of the Accounting and General Services that only on extenuating circumstances should charter flights be made. He clarified extenuating circumstances to mean that as much as possible meetings should be scheduled so that the established airline flights could be met, but in the event that it could not be helped then possibly this could be termed as an extenuating circumstance. He reported that on record there is no board or commission in the State that has chartered flights. He also pointed out that the maximum passenger carriage by charter flights is 10 people. A breakdown in comparison of cost was given for the trip to Kauai by the whole commission - Charter flights: \$350.31; scheduled commercial flights: \$393.30; a savings of \$42.99 by charter flights.

Commissioner Burns also pointed out that some charter flights do not carry insurance such as fire, loss, etc.

It was the concensus of the Commission that travel be made by regular scheduled airlines and whenever necessary then travel by charter flights.

2. Communication to all Counties Asking for their Cooperation

An oral report was given by the Executive Officer stating that he communicated with each county through personal contact. He outlined the progress that Kauai had made; the difficulties he was encountering on Hawaii; and the work he has started for the county of Maui.

The Chairman recommended that whenever the Executive Officer felt that the Commission should be apprised of any problems he encountered on the county level which should be brought to the Commission's attention, to include it on the agenda.

3. Governor's Recommendation on the Land Use Commission's Stenographer.

This was deferred to the Commission's next meeting.

4. Report on the Protest Communications on File Dating Back to 1962 which the Commission should be Apprised; and Recommendation from the Staff as to What Can Be Done About It.

This was deferred to the Commission's next meeting.

5. Procedure for Initiating Communication between the Executive Officer and the Commission.

The Chairman questioned whether this needed to be clarified. He referred to a letter from Commissioner Wenkam to the Engineer of the Department of Transportation. He stated that the impression he got was that it expressed

the view point of this Commission, although it was a view point of one commissioner.

This was deferred to the Commission's next meeting.

With no other business the meeting adjourned at 2:45 p.m.