

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Rooms A & B
State Office Building
Lihue, Kauai

November 22, 1976 - 9:30 a.m.

*Approved
January 20, 1977*

COMMISSIONERS PRESENT: Stanley Sakahashi, Chairman Pro tem
Charles Duke
Colette Machado
Shinsei Miyasato
Carol Whitesell
Edward Yanai

COMMISSIONERS ABSENT: Eddie Tangen, Chairman
James Carras
Mitsuo Oura

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

Ray Russell, Court Reporter

ACTION

SP76-251 - MANFRED B. CIESLIK
APPLICATION FOR A SPECIAL PERMIT TO ALLOW THE ESTABLISHMENT OF A
BOWLING CENTER FACILITY WITHIN THE AGRICULTURAL DISTRICT AT
KEAHUOLU, NORTH KONA, HAWAII

Mr. Gordan Furutani, Executive Officer, gave a resume of the staff report on the subject request and offered other pertinent information with respect to details of the proposed use, location, access from the highway, surrounding uses, etc.

Commissioner Whitesell posed a question regarding the diametrical differences of opinion in the statement of the petitioner and the County's staff report with respect to the presence of "unusual conditions, trends and needs" to warrant the granting of the subject request. Mr. Jeffrey Watanabe, attorney representing the petitioner, explained that the county was referring to the availability of other commercially-zoned areas. However, he argued that since the proposed facility was non-visitor oriented, to make it economically reasible, it would have to be located outside of the high-priced commercially-zoned areas.

Mr. Clifford Lum, Corporation Counsel for Hawaii, clarified that the Planning Department was not averse to the proposed use; however, it was their feeling that it more appropriately belonged in the village area where commercial properties were available.

In response to Commissioner Whitesell's request, Mr. Lum further explained that the Kona Community Development Plan lists the subject area as an alternate industrial site.

Commissioner Duke moved to approve the Special Permit, subject to the condition that the County police the representation made by the applicant. The motion was seconded by Commissioner Miyasato.

Commissioner Whitesell argued that, as pointed out by the County Planning Department staff, the proposed use was basically an urban use and expressed her concern about placing an urban facility in an area which may not be ready for urban expansion. She felt that the matter should be held in abeyance pending the County's decision regarding development of the subject area.

Commissioner Duke defended his motion on the basis that the petitioner had come up with a solution to the problem of providing a recreational facility for the area that could not otherwise be provided. However, the motion was defeated as follows:

Ayes: Commissioners Duke, Machado, Miyasato, Sakahashi

Nays: Commissioners Yanai, Whitesell

Commissioner Duke moved that the hearing on the subject Special Permit be continued until a full Commission can be present. The Chairman requested counsel from the Deputy Attorney General regarding the motion. Following a short recess, Mr. Marsh advised that there was a provision within the Commission's Rules and Regulations that, unless otherwise provided by law, a majority of all the members of the Commission shall constitute a quorum to transact business which, in this case, would mean 5 members. Therefore, if the Commission fails to either approve or deny the request by a vote of 5 by the December 10th deadline (45 days following submittal by the County Planning Commission), the petition will have failed for lack of Commission approval. It was suggested that the Commission could continue to act on the Special Permit beyond the December 10th deadline if the petitioner will waive the time condition.

Commissioner Duke moved to deny the Special Permit which was seconded by Commissioner Whitesell. The votes were recorded as follows:

Ayes: Commissioners Whitesell, Yanai

Nays: Commissioners Machado, Duke, Miyasato, Sakahashi

The motion did not carry .

Commissioner Duke moved that the matter be continued until the next regular meeting of the Commission with the petitioner's approval. The motion died for lack of a second.

Another motion by Commissioner Duke to call a special meeting of the Commission to consider the petition before December 10, 1976 also died for lack of a second.

Commissioner Whitesell felt that since all of the motions did not carry, there was nothing to resolve. Commissioner Duke countered that since the motion to approve and the motion to deny did not carry, the matter was still in "limbo".

Chairman Sakahashi declared that the discussion on the Special Permit was closed and called for the next item on the agenda.

HEARING

A73-367 - JOSEPH FLORES (ORDER TO SHOW CAUSE)

Mr. Furutani pointed out the parcel on the map and oriented it with various surrounding landmarks.

APPEARANCES

Joann Yukimura, Attorney representing Mr. Flores

Joseph Flores, Petitioner

Tatsuo Fujimoto, Head, Land Use Division, representing the
Department of Planning & Economic Development

William A. Hoag, Deputy County Attorney, representing
the Kauai Planning Department

Commissioner Whitesell moved to admit Mr. Kawakami, one of the general partners of Lawai Ventures, owners of the property in fee, as a party to the proceeding. Commissioner Duke seconded the motion and it was unanimously carried.

Both the State and the County represented that they did not have any recommendation to make but will be available for questioning.

At Commissioner Whitesell's request, Mr. Marsh advised the options available to the Commission, and the procedure to be followed on the Order to Show Cause hearing, as follows:

1. Follow the same procedures as in a boundary amendment hearing.

2. Specify with particularity the "written and verbal representations made" mentioned in the condition.
3. Commission could modify or delete those conditions in whatever respect it feels appropriate.
4. Commission could act to reclassify the property from Urban to Agricultural if there is sufficient basis.

On the latter option, Mr. Marsh advised that it was not necessary for the Commission to initiate action to reclassify the property, as in a boundary amendment petition, since this would be premised on the petitioner's failure to meet the conditions imposed at the time of approval of the boundary amendment.

Upon motion by Commissioner Duke, seconded by Commissioner Whitesell, Mr. Peter Taylor, engineer representing the Hawaii Rural Development Corporation was admitted as a witness to the proceeding.

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

Miss Joann Yukimura testified as set forth in the transcript on ----- Pages

Testimony by Miss Yukimura----- 44 to 51

Questioned by Mr. Hoag----- 51

EXHIBITS

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

1. Exhibit 1 - Notarized agreement between Mr. Daniel Matsukage and Mr. Flores re Agreement of Sale and financing of the proposed subdivision
2. Exhibit 2 - Letter from Mr. Matsukage explaining his background and ability to fulfill the agreement with Mr. Flores

Mr. Furutani reported on the details of the initial proposal and representations made by the petitioner at the hearing. He also responded to questions which were raised regarding HHA's involvement in the project.

Questions were raised regarding the engineering fees, tentative subdivision approval, etc., to which Mr. Taylor responded.

Miss Yukimura was further questioned by the Chairman and Mr. Marsh as set forth in the transcript on pages 60 to 62.

Mr. Kawakami submitted that although he still felt there was a basic need for low-cost housing, several questions would have to be resolved before an agreement could be reached; i.e., Mr. Flores' capability to continue with the project, a qualification of the conditions which had been imposed by the Commission at the time of the approval. It was also brought out by Mr. Kawakami that Hawaii Rural Housing was no longer a party to the project; J & M Building and Supply, supplier of the material, was no longer in business; and the cost estimate of 3 years ago was unrealistic today. However, it was Mr. Kawakami's opinion that the project was still feasible if Mr. Flores could meet certain criteria.

Mr. Taylor stated that the \$650,000 to \$1,000,000 estimate for development costs was reasonable and accurate.

The following matters were discussed as set forth in the transcript on pages 66 to 73:

1. The possibility of Mr. Flores assigning his Agreement of Sale to a third party.
2. The status of the subdivision approval by the County and the number of lots proposed.
3. Mr. Matsukage's commitment to the development proposal submitted by Mr. Flores.
4. Mr. Flores' personal investment to date, and his options which he will use to subsidize the low-cost housing through the "Robin Hood" approach.

Mr. Marsh advised that it was rather premature for the Commission to do anything today since the whole matter rested upon the acceptance of the assignment of the Agreement of Sale to Mr. Matsukage by Lawai Ventures.

Commissioner Whitesell questioned the need for the Show Cause procedure and felt it might have been more appropriate to have entered into a discussion to change the conditions.

Mr. Tom Shigemoto of the Kauai Planning Department informed that when Mr. Flores requested an extension of the time period, it was indicated by Mr. Matsukage that he was no longer selling the lots to the low and moderate income group but to the general public. It was at this point the County advised Mr. Flores that his extension request will be granted only after he had obtained approval from the Land Use Commission.

The question of Mr. Flores' ability to raise sufficient funds to purchase the required lots and securing the option remained as the major issues.

Commissioner Whitesell summarized that the Commission's main concern was setting conditions that would reasonably insure that some low-cost housing will be put in regardless of who might ultimately develop the lands.

It was suggested by Chairman Sakahashi that Mr. Flores, Mr. Kawakami and Mr. Matsukage draw up a proposal for the development of these lands for the Commission's review and perhaps at that time the conditions could be modified.

Mr. Kawakami requested a criteria upon which they could base their moderate and low-cost housing in formulating their new proposal. Mr. Marsh cited the Farmer's Home Administration loan program standards of \$37,500, as an example. Mr. Kawakami offered that in the County of Kauai the price ranged between \$36,000 for leasehold and \$46,500 for fee.

Commissioner Duke moved that the hearing on the Order to Show Cause be continued for a period of 3 months or until a motion for modification of the conditions is filed. The motion was seconded by Commissioner Whitesell and unanimously carried.

ACTION

SP76-252 - NA PUA O KAUAI SCHOOL
APPLICATION FOR A SPECIAL PERMIT TO ESTABLISH A DAY SCHOOL IN THE FORMER KEALIA STORE BUILDING AT KEALIA, KAUAI

Mr. Furutani oriented the Commission to the subject area with the aid of the maps.

During the discussion that ensued, the following factors were established:

1. The proposed private school will accommodate grades kindergarten to the 12th grade.
2. Some modification would be necessary as required by the Department of Education; and health and fire department regulations will also have to be met in order to operate the school.

Miss Lindsay Warren, Secretary-Treasurer of the school, offered the following information in response to questions which were raised by the Commissioners:

1. Petitioner was proposing a small private school with college preparatory courses, on a daytime basis, for a total enrollment of approximately 50 students.
2. The student-teacher ratio will be 10 students to one teacher.

3. The concept of the proposed school is to offer an alternative to the public type of school--a small school with small classes in an intimate environment.

The Executive Officer added that a petition was on file containing 46 signatures supporting the establishment of the proposed facility.

Commissioner Whitesell moved to approve SP76-252, subject to the conditions imposed by the Kauai Planning Commission. The motion was seconded by Commissioner Duke and unanimously carried.

ADOPTION OF MINUTES

The minutes of October 14, 1976 were approved as circulated.

MEETING SCHEDULE

Mr. Furutani announced that the next meetings of the Commission will be held on December 20 and 21, 1976. Future meeting dates were also discussed.

ADJOURNMENT

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