

Approved

STATE OF HAWAII
LAND USE COMMISSION

JAN 19 1983

Minutes of Meeting

Department of Education Board Room
4th Floor, Liliuokalani Bldg.
1390 Miller Street
Honolulu, Hawaii

December 2, 1982 - 9:00 a.m.

COMMISSIONERS PRESENT: William Yuen, Chairman
Richard Choy, Vice Chairman
Lawrence Chun
Everett Cuskaden
Shinsei Miyasato
Winona Rubin
Teofilo Tacbian
Robert Tamaye
Frederick Whittemore

STAFF PRESENT: Gordan Furutani, Executive Officer
Carolee Aoki, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

ACTION

A81-516 - GEORGE LEWIS SAGEN

Mr. Gordan Furutani, Executive Officer, reported that petitioner's counsel, Michael Salling, had called the Commission office requesting a continuance of the action on subject petition due to his inability to attend today's meeting. At that time, Mr. Salling was requested to submit a written waiver of the 180-day action period but to date there has been no communication from him to this effect.

It was moved by Commissioner Cuskaden and seconded by Commissioner Tacbian to continue action on subject petition, subject to the receipt of a waiver of the 180-day action period from petitioner.

Commissioner Tacbian amended the motion to state that if the written request for waiver of the 180 days is not received by December 5, 1982, the petition be denied. It was seconded by Commissioner Whittemore. Maker of the original motion had no objections to the amendment.

Commissioner Tacbian moved to withdraw his motion to amend the original motion and Commissioner Whittemore withdrew his second.

The motion to continue action on the subject petition was unanimously carried.

A81-525 - Y-O LIMITED PARTNERSHIP

In the matter of the petition by Y-O Limited Partnership to reclassify approximately 410 acres of land from the Agricultural District into the Urban District at North Kona, Hawaii for residential and commercial development, hearings were conducted by the Land Use Commission on March 9, 1982, June 1, 1982, June 2, 1982 and September 10, 1982. For the record, the Commissioners who had not participated totally or partially in the hearings procedures indicated that they had read the transcripts of those hearings and were therefore eligible to act on the petition today.

Appearances

Terence Yoshioka, Attorney representing petitioner

Duane Kanuha, Deputy Planning Director, representing the Hawaii Planning Department

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

Closing Arguments

By Mr. Yoshioka-----10 to 12

Examination by Commissioner Cuskaden-----12 to 14

Examination by Commissioner Rubin-----14 to 15

By Mr. Kanuha-----15 to 16

By Mr. Fujimoto-----16 to 20

Rebuttal

By Mr. Yoshioka-----20 to 21

Upon motion by Vice Chairman Choy, seconded by Commissioner Whittemore, the Commission went into executive session from 9:50 a.m. to 10:30 a.m.

10:30 a.m.

Chairman Yuen advised that the Commission received legal counsel as to the legality of the conditions being recommended by the County of Hawaii, as well as the conditions which the Commission may wish to impose.

Commissioner Tamaye moved to approve Docket A81-525, Y-0 Limited Partnership, to amend the Land Use Agricultural District boundary and reclassify approximately 410.9 acres in North Kona, Island and County of Hawaii, into the Urban Land Use District, with the following conditions:

- a. Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring its interest in the subject property or offering for sale on a preferential basis on its own, or in cooperation with either or both the Hawaii Housing Authority or the County of Hawaii, ten percent of the lots or houses and lots to be developed in the subject property to residents of the State of Hawaii of low and moderate family income as determined by the Hawaii Housing Authority or the County of Hawaii from time to time. The preferential lots or houses and lots shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain State assisted financing or federally insured or assisted financing intended to encourage home ownership by low and moderate income families;
- b. Petitioner shall provide access from the subject property to Queen Kaahumanu Highway and to Mamalahoa Highway by constructing or causing to be constructed a roadway, the location and standard of design and construction of such roadway to be approved and accepted by the County of Hawaii;
- c. Petitioner shall execute and perform its obligation as the developer under Agreement 1 as it relates to the water condition by the County of Hawaii for water source development, and shall not submit any application to the County of Hawaii for General Planning or Zoning changes or for subdivision approval or sell the subject property until petitioner has submitted to the Commission an agreement for water source development executed by the petitioner and the County of Hawaii;

- d. Petitioner shall dedicate to appropriate State and County agencies sufficient land for the provision of necessary public facilities;
- e. Petitioner shall submit an annual progress report to the Land Use Commission, to DPED and County Planning Department as to its progress to satisfy these conditions.

The conditions may be fully or partially released by the Commission as to all or any portion of the subject property upon timely motion and provision of adequate assurance of satisfaction of these conditions by the petitioner.

The motion was seconded by Commissioner Tachian. Chairman Yuen affirmed and Commissioner Tamaye concurred that the motion to approve included approval on an incremental basis and also excluded the 2½ acres involved in a quiet title action suit.

At the Executive Officer's request, the Chairman directed the petitioner to submit an appropriate map showing the precise acreage of the areas recommended for approval.

The Commissioners were polled as follows:

Ayes: Commissioners Tamaye, Tachian, Rubin, Choy, Cuskaden, Whittemore, Miyasato, Chun, Chairman Yuen

The motion was unanimously approved.

A82-531 - THEODAVIES HAMAKUA SUGAR COMPANY

In the matter of the petition by TheoDavies Hamakua Sugar Company to reclassify various lands in North Hilo, Hawaii, hearings were held by the Land Use Commission on September 9 and 10, 1982. The Chairman determined that all of the Commissioners present today were eligible to participate in the action on subject petition.

Appearances

Gene Aguiar, representing the petitioner

Duane Kanuha, Deputy Planning Director, representing the Hawaii Planning Department

Tatsuo Fujimoto, Head, Land Use Division, representing DPED

Closing Arguments

By Mr. Aguiar-----30 to 34

Closing Arguments (cont.)

By Mr. Kanuha-----34

By Mr. Fujimoto-----34 to 36

Examination by Mr. Aguiar-----36 to 39

Examination of Messrs. Aguiar, Kanuha and Fujimoto
by Chairman Yuen-----39 to 43

Examination of Mr. Aguiar by Commissioner Cuskaden 44

Rebuttal by Mr. Aguiar-----44 to 45

Upon motion by Vice Chairman Choy, seconded by Commissioner Cuskaden, the Commission went into executive session from 11:23 a.m. to 11:38 a.m.

11:38 a.m.

Chairman Yuen advised that the Commission received counsel from its Deputy Attorney General regarding the legality of certain conditions being proposed by DPED.

It was moved by Commissioner Tacbian, seconded by Commissioner Cuskaden, and approved, to act on each area separately.

Commissioner Tamaye moved to approve Area 1 of Docket A82-531 which was seconded by Commissioner Tacbian.

Commissioner Tacbian moved to delete from the motion to approve Area 1 approximately 8 acres within the Conservation District, or to reclassify only those lands that are makai of the proposed highway. The seconder of the motion, Commissioner Cuskaden, agreed to the deletion, and the motion was carried.

The motion to approve Area 1, as amended, was unanimously passed.

Commissioner Tamaye moved to approve Area 2, which was seconded by Commissioner Cuskaden.

Commissioner Chun moved to amend the motion by deleting the Conservation areas. The seconder of the motion had no objections to the amendment and the motion was approved.

The motion to approve Area 2, as amended, was unanimously approved.

Commissioner Tamaye moved to approve Area 3, excluding the areas designated as Conservation, which was seconded by Commissioner Tacbian and unanimously carried.

Commissioner Cuskaden moved to approve Area 4, seconded by Commissioner Tamaye. The motion was defeated as follows:

Nays: Commissioners Tacbian, Rubin, Miyasato, Chun, Whittemore, Cuskaden, Tamaye, Choy, Chairman Yuen

Commissioner Cuskaden moved to approve Area 5, which was seconded by Commissioner Rubin and carried with the following votes:

Ayes: Commissioners Rubin, Choy, Cuskaden, Whittemore, Tacbian, Tamaye, Miyasato, Chairman Yuen

Nay: Commissioner Chun

Commissioner Tacbian moved to reconsider the Commission's action on Area 5, which was seconded by Commissioner Cuskaden, and the motion was carried with the following votes:

Ayes: Commissioners Cuskaden, Tacbian, Chun, Tamaye, Rubin, Chairman Yuen

Nays: Commissioners Whittemore, Miyasato, Choy

A revote was taken on the motion to approve Area 5, and the Commissioners were polled as follows:

Ayes: Commissioners Choy, Rubin

Nays: Commissioners Chun, Whittemore, Tamaye, Miyasato, Tacbian, Cuskaden, Chairman Yuen

The motion did not carry.

Commissioner Chun moved to approve Area 6, seconded by Commissioner Whittemore. The motion was carried as follows:

Ayes: Commissioners Miyasato, Chun, Rubin, Choy, Tamaye, Whittemore, Chairman Yuen

Nays: Commissioners Cuskaden, Tacbian

Chairman requested that petitioner submit to the Commission a revised map of Areas 1, 2 and 3, showing the areas delineated in yellow together with a computation of the acreages, which will be incorporated in the Commission's Decision and Order.

The Chairman also asked the makers of the foregoing motions whether it was their desire to impose conditions on the sale of the property to employees as a condition for approval.

Commissioner Tacbian moved to insert the following conditions to the approval of Areas 1, 2, 3 and 6: "That the dwelling units shall be offered to the employees of Davies Hamakua Sugar on a priority basis. Secondly, the petitioner shall make provisions for temporary housing for the employees purchasing homes in the proposed housing development, and also provide assistance in relocating employees who do not qualify for financing or are otherwise unable to purchase homes in the proposed development." The motion was seconded by Commissioner Chun.

Commissioner Tacbian amended his motion to include the phrase "A time limit be set for one year where priority will be given to employees of Davies Hamakua Sugar Company." Commissioner Chun, seconder of the motion, agreed with the amendment.

The Commissioners were polled on the motion, as amended, as follows:

Ayes: Commissioners Choy, Chun, Whittemore, Tacbian, Miyasato, Chairman Yuen

Nays: Commissioners Tamaye, Rubin, Cuskaden

The motion was carried.

The Commission was in recess from 12:15 p.m. to 2:00 p.m.

2:00 p.m.

Adoption of Decision and Orders

The following Decision and Orders were approved for adoption:

A81-522 - Jeffrey Choi, et al
A82-528 - Alexander & Baldwin, Inc.
SP82-356 - Department of Parks and Recreation, County of Hawaii

A82-531 - THEODAVIES HAMAKUA SUGAR COMPANY

Reconsideration of Motion on Area 5

Commissioner Cuskaden moved to reconsider the Commission's action on Area 5, Docket A82-531, seconded by Commissioner Chun, and it was unanimously carried.

Commissioner Cuskaden moved to approve the reclassification of Phase I, approximately 40 acres, and to deny the reclassification of Phase II, approximately 40 acres, within Area 5 (Phases I and II being defined in the petition). Commissioner Tacbian seconded the motion and it was unanimously carried.

The Chairman requested that petitioner include a revised map of Area 5 also.

SP73-145 - HAWAIIAN ANTHURIUMS, LIMITED

To allow a time extension for the construction of reservoirs and operation of a quarry at Keaau, Puna, Hawaii

The Executive Officer summarized the background information and pertinent data relating to the extension request by petitioner.

Mr. Tanouye, petitioner, responded to questions which were raised by Commission members regarding the necessity for the special permit and the absence of any quarrying activities on the property in the last 10 years. He also affirmed that he would be able to meet the 9 conditions which had been imposed by the Hawaii Planning Commission.

Commissioner Cuskaden moved to deny the special permit which was seconded by Commissioner Tamaye. The Commissioners were polled as follows:

Ayes: Commissioners Choy, Tamaye, Rubin, Chun, Whittemore
Tacbian, Cuskaden, Chairman Choy

Nay: Commissioner Miyasato

The motion to deny the extension request was carried. Chairman Yuen advised petitioner that he was free to reapply for the special permit, submitting a more detailed description of the intended use for the property, the acreage involved in the operation, and a proposed timetable for the development.

A69-242 - PUKOO PROPERTIES, INC.

To show cause why developer has not proceeded to develop lands at Pukoo, Molokai

Chairman Yuen announced that the hearing on subject petition was being called on an order filed by the Commission to show cause why the property owners have not proceeded to develop the property at Pukoo, Molokai in accordance with the representations made to the Commission in 1969 and 1970.

Appearances

George Peabody - Resident of Pukoo, Molokai

David Irons)
Meyer Ueoka) - Attorneys representing present landowners
of property under petition

Edwina Kuha - Representing landowners of a portion of
the land involved in petition

Guy Archer - Deputy Corporation Counsel, representing
the Maui Planning Department

Tatsuo Fujimoto - Head, Land Use Division, representing DPED

Mr. Furutani, Executive Officer, presented background information of the lands under discussion and oriented the Commission to the location of the property. He also responded to questions which were raised by the Commission members regarding the prior land use designation of the property, the areas which had been proposed for development by the former owners, development schedule, etc.

All of the persons who appeared today, having been duly sworn in, testified and were examined as set forth in the transcript.

George Peabody

Examination by Chairman Yuen-----90 to 104

Examination by Commissioner Tacbian-----104 to 105

Examination by Commissioner Cuskaden-----105 to 109

Examination by Mr. Ueoka-----109 to 117

Examination by Ms. Kuha-----119 to 120

Examination by Commissioner Cuskaden-----120 to 121

Owners

David Irons - Attorney

Oral testimony-----122 to 127

Christopher Schroll - Property Owner

Oral testimony-----127

Examination by Chairman Yuen-----127 to 128

Laurence Dorcy - Property Owner

Oral testimony-----130

Examination by Commissioner Cuskaden-----130

Examination by Commissioner Whittemore-----131

Examination by Chairman Yuen-----131 to 134

Examination by Commissioner Tacbian-----134 to 136

David Irons (cont.)

Examination by Chairman Yuen-----137 to 138

Examinations by Commissioners Cuskaden,
Whittemore, Chun-----138 to 142

Edwina Kuha - Property Owner

Examination by Chairman Yuen-----142 to 143

Examination by Commissioner Tacbian-----144

Examination by Commissioner Cuskaden-----144 to 145

COUNTY OF MAUI

John Min -Planner, Maui Planning Department

Direct examination by Mr. Archer-----145 to 146

Examination by Chairman Yuen-----146 to 147

Examination by Commissioner Cuskaden-----147 to 149

Examination by Commissioner Chun-----149

Exhibits

Various letters and documents which were submitted by Mr. Peabody were marked as Land Use Commission's exhibits 1 through 6 and admitted into evidence.

Owner's exhibits A and B were identified and admitted into the record. Mr. Irons was also permitted to submit as an exhibit a petition with approximately 177 signatures of Molokai residents stating that they had no objections to the plan being proposed by the present landowners.

Owner Kuha's exhibit A was identified and moved into evidence.

Ms. Colette Machado, resident of Molokai, expressed her views regarding the impact of the Urban designation in a predominantly agricultural community.

The Commission went into executive session to receive counsel from the Deputy Attorney General, upon motion by Commissioner Cuskaden, seconded by Commissioner Choy. The Commission was in executive session from 5:16 p.m. to 5:43 p.m.

5:43 p.m.

Chairman Yuen announced that the Commission received counsel regarding the legality of the course of action the Commission may take relative to the order to show cause.

Commissioner Tacbian moved that the hearing be continued until September 1, 1983 to allow the owners of the property time to come up with a more definitive plan and a progress report; however, excluding from the motion those lands represented by Ms. Kuha since the property owner had acted in good faith in trying to pursue its goals. It was seconded by Commissioner Cuskaden and unanimously carried.

The hearing was concluded at 5:52 p.m.