

LAND USE COMMISSION

Minutes of Meeting

Hearing Room

Honolulu, Hawaii

December 7, 1962 - 9:00 A.M.

Commissioners

Present:

Edward C. Bryan
Stanley C. Friel
Wayne D. Gregg
Yuichi Ige
Edward Kanemoto
Franklin Y. K. Sunn
Roger T. Williams

Ex-Officio Members

Present:

Philip T. Chun

Absent:

E. H. Cook

Staff

Present:

R. J. Darnell, Executive Officer (XO)
W. M. Mullahey, Field Officer (FO)
John Canright, Legal Counsel

The meeting was called to order by Chairman Bryan.

Chairman Bryan asked if the minutes of the last meeting had been circulated, to which the XO replied that they have not been completed yet.

ITEMS PENDING ACTION

APPLICATION OF WILLIAM SARMENTO (SP(T) 62-23), FOR SPECIAL PERMIT TO SUBDIVIDE A 1.847 ACRE PARCEL INTO TWO PARCELS, ONE OF WHICH WILL MEASURE 6012 SQUARE FEET, AND WILL CONTAIN AN EXISTING SINGLE-FAMILY RESIDENCE IN THE KOLOA DISTRICT, COUNTY OF KAUAI: Described as TMK 2-5-04: 13.

Chairman Bryan asked if there were someone present to represent William Sarmento. There was no reply, and the XO was requested to outline this particular application.

The XO described the property and repeated the staff recommendation which was for conditional approval. He added that it has been verified that Harland Bartholomew and Associates intends to recommend rezoning to Urban, not only this area but also the area between it & the cannery,, although it is in pineapple now.

Chairman Bryan asked **whether** this fact was known when the Commissioners were on Kauai. The XO stated that he did not believe so since it was dated November 20th.

The XO read a staff report from Mr. Wong to the Kauai Planning and Traffic Commission and the approval of the recommendation by the County of Kauai Board of Supervisors. Also another communication from the Kauai Planning and Traffic Commission dated November 30 recommending approval of this special permit.

The XO stated that the staff's recommendation for approval of the application was not made on the same basis as that of the County of Kauai. The LUC staff gave the reason that it is needed for the expansion of Lawai.

The Chairman asked if anyone had any questions.

Commissioner Sunn asked if the Highway Department had answered, to which the Chairman replied in the negative.

Commissioner Sunn made a motion to approve the permit as requested; seconded by Commissioner Ige.

The XO asked if Commissioner Sunn's motion included any condition, to which Commissioner Sunn answered in the negative.

Chairman Bryan asked if the matter of land ownership title were clear and was answered affirmatively. He asked if there were any other questions or discussions. The Chairman asked Mr. Mullahey to poll the Commissioners.

Approved: Commissioners Kanemoto, Williams,
Friel, Sunn, Ige, Gregg, and
Chairman Bryan.

Abstained: Commissioner Chun

APPLICATION OF BALDWIN PACKERS, LTD., FOR SPECIAL PERMIT TO OPERATE A RESTAURANT-BAR FACILITY WITH LIVING QUARTERS FOR A LESSEE-MANAGER AND ACCESSORY USES THERETO (ACCESSORY USES DESCRIBED AS PERSONAL SERVICE SHOPS, FLOWER, GIFT, NEWSSTAND, ETC.) ON PROPERTY LOCATED IN THE HONOKAHUA SECTION, LAHAINA DISTRICT, MAUI: Described as Second Division, TMK 4-2-01: Por. 1.

Chairman Bryan asked the staff to outline the above.

The XO reviewed the application and staff recommendation, which was for conditional approval. The special permit was requested for a restaurant and associated facilities. The staff has asked for a clarification of what the associated facilities would be.

Chairman Bryan asked what had been received by way of clarification.

The FO explained that the clarification given at the hearing was that these would be uses contained within the main building and necessary to the operation.

Chairman Bryan asked if there were any further questions.

Commissioner Sunn made a motion to approve the application according to the staff recommendation; seconded by Commissioner Williams.

The XO stated that he did not know if the wording included that the associated facilities would be included in the main building and that the recommendation would be that the wording be followed.

Commissioner Sunn stated that the wording was supposed to have been changed to say it included a restaurant and bar facility with living quarters and add the words "for lessee and manager."

Commissioner Gregg questioned if there were an obligation on the part of the County to furnish or build roads or furnish water.

Commissioner Sunn stated that it was all covered. The XO added that the note was on the staff report.

Commissioner Ige questioned who would supervise this condition once the Commissioners gave its conditions.

The XO answered that the County of Maui was required to make a formal approval for all uses before the man could establish the restaurant.

Chairman Bryan called for further discussion; and then asked Mr. Mullahey to poll the Commissioners.

Approved: Commissioners Kanemoto, Williams,
Friel, Sunn, Ige, Gregg, and
Chairman Bryan.

Abstained: Commissioner Chun.

APPLICATION OF GEORGE K. SING FOR SPECIAL PERMIT TO CREATE FOUR RESIDENTIAL LOTS AND ONE RESIDUAL LOT ON LAND LOCATED IN LUALUALEI HOMESTEADS, THIRD SERIES, WAIANAE, OAHU: Described as First Division TMK 8-6-03: 6.

The XO reviewed the application and the staff's recommendation for conditional approval. He stated that in this case the argument for the applicant was made by Mr. Fasi at the hearing. He added that it would also be the recommendation of the staff that, in any other such case, where there is similar evidence that a subdivision was obviously contemplated, and legally so, and the evidence exists that it was the intent of the man to place the houses on the lot so that the lot could be subdivided in a certain manner and the houses are on the main road, the staff would recommend that the houses be allowed to be sold off in proper lots.

The FO read from a communication from the City Council saying that it has passed through Public Works and been referred to the Committee and had taken no action.

Chairman Bryan asked if action should not be deferred until the County sent in their opinions.

Commissioner Ige questioned the XO as to whether the houses had been placed on the property prior to the Land Use Regulations. The XO replied in the affirmative, adding that they had been legally placed on the property, and this request is to allow them sold off separately. It is a 5-acre lot, rectangular; and in the front, on each side of an entrance road are the two proposed lots, each containing a house.

APPLICATION OF JOSEPH R. SOUZA FOR SPECIAL PERMIT TO CONSTRUCT TWO NEW SINGLE-FAMILY DWELLINGS ON LAND LOCATED IN LUALUALEI HOMESTEADS, SECOND SERIES, WAIANAE, OAHU: Described as First Division. TMK 8-6-11: 3.

APPLICATION OF ALBERT SHIBUYA (AS AGENT FOR THE OWNER FRANK MONIZ), FOR SPECIAL PERMIT TO CONSTRUCT THREE ADDITIONAL SINGLE-FAMILY DWELLINGS ON LAND LOCATED IN LUALUALEI HOMESTEADS, SECOND SERIES, WAIANAE, OAHU: Described as TMK 8-6-03: 39.

As far as time limits were concerned, the Commission could take action upon the three above-mentioned applicants, but Chairman Bryan pointed out that action is postponed until hearing from City authorities.

The Commissioners agreed with the Chairman's views.

PETITION OF GEORGE VIERRA AND LYDIA TOLEDO, FOR CHANGE OF TEMPORARY DISTRICT BOUNDARY TO RECLASSIFY CERTAIN PROPERTY IN PUUKAPU HOMESTEADS, WAIMEA, NORTH KOHALA, HAWAII, FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT CLASSIFICATION: Described as Third Division, TMK 6-4-03: 7.

The XO read a communication from Senator Bernard Kinney of Hawaii concerning the petition of Vierra and Toledo, requesting withdrawal and giving the reasons for the request. The staff's answer to Senator Kinney was also read.

The Commissioners discussed the acceptance of the withdrawal or a denial of the petition.

The FO stated that the letter was in the form of a motion (according to the regulation). The letter was submitted and the regulations read that the Commission on its own motion or on the motion of any party may withdraw.

The XO inserted that it is possible to strike an application if any document initiated or filed in a proceeding is not in substantial conformity with either plans or rules or regulations which the Commission has or the contents thereof or is otherwise insufficient. This applies to incomplete application and does not apply to this case.

Mr. Canwright suggested that the Commission deny the motion and then deny the application.

The FO continued to explain saying that the 45-day time limit for action would be up only on January 5 and therefore no action could be taken, even for a denial.

Mr. Canwright stated that Senator Kinney's motion could be denied.

Commissioner Chun asked Mr. Canwright if in the allowance of withdrawal it would be required to know what action in event of a new petition.

Mr. Canwright answered affirmatively adding that in any even it would require the normal hearing. If they want to withdraw it now it would simply save the denying of it. If they file a new petition after denial it would raise the question whether or not the Commission was ready to rehear it. Where they have withdrawn it with no action taken, then they can file a new petition which would have to be heard. It would accomplish the same purpose to grant his motion of withdrawal.

Chairman Bryan stated that the Commission could not take action upon this matter until the 45 days were up.

APPLICATION OF MICHAEL CHUN FOR SPECIAL PERMIT TO MOVE TWO HOMES TO HIS LAND LOCATED IN THE KOOLAUPOKO AREA, WAIMANALO, OAHU: Described as TMK 4-1-25: 51.

Chairman Bryan asked Mr. Mullahey to explain this case.

Mr. Mullahey stated that an agent for the application had come to him on the previous day and asked to file a Special Permit. He had purchased two houses at an auction conducted by the Hilton Hawaiian Village approximately one and a half weeks ago and planned to move them on his lot in Waimanalo which is in an Agricultural district, whose regulations forbid it without special permit. At the time he bought the houses he bound himself to a contract by which he agreed to move them from the Hilton premises within 45 days or stand delinquent at \$50.00 a day after the 45-day period. The normal processing of a Special Permit would leave him about 10 to 15 days over the time limit. There are several other circumstances that enter into it as far as the applicant's health is concerned and perhaps his agent will make this clear. He is asking the Commission to declare an emergency in this instance to allow him to present his case for Special Permit, and get a decision from the Commissioners before the lapse of the 45-day period.

The Chairman requested the person speaking for Mr. Chun to come forward and give his explanation.

Mr. Pang came forth and stated that he would speak for Mr. Chun. He reiterated Mr. Mullahey's explanation correcting the penalty of \$50.00 per day to \$25.00 per day. He stated that the homes, once moved to Waimanalo onto a 1-acre lot, would house a family (from the Kukui Street Redevelopment area) which has to relocate within five weeks. The other house would be the home of Mr. Chun and his brothers who will live with him and care for him. Also, the two houses are presently situated at the entrance of a section with other houses which also have to be moved within the time limit. His houses are blocking the way of removal. In addition, he is unemployed and would not be able to pay the daily penalty according to the agreement of sale.

Chairman Bryan asked if any member of the Commission had any questions.

Commissioner Ige asked Mr. Pang if they had checked with the house mover prior to putting in the bid for the buildings. Mr. Pang answered negatively, stating that Mr. Chun thought that he could move the houses with no trouble since there is a new subdivision near his lot.

Chairman Bryan asked if he knew that even with the emergency petition the Commissioners may deny it. Mr. Pang stated that he understood.

Commissioner Sunn asked Mr. Pang if he realized that he was trying to prove hardship in the case of Mr. Chun and that the government took a very hard-hearted view of what is hardship--not personal hardship, but hardship connected with the land, and the Commission was concerned with land use. Also, as far as moving of the houses are concerned the requirement to remove them by January 11 does not preclude Mr. Chun from moving the houses off to any other piece of land that he can rent, lease, or otherwise obtain.

Mr. Pang stated that Mr. Chun does not own any other land nor does he have funds to rent or lease some. He again brought up the fact of the relocation of the other family.

Chairman Bryan asked if there were any other questions.

Commissioner Williams asked if the Hawaiian Village had been asked for an extension of time. Mr. Pang replied negatively.

Commissioner Ige asked if the property was in an Agricultural zone. The reply was affirmative and he continued, stating that the moving of the building would necessitate the Commission's granting him a Special Permit.

Commissioner Chun wondered if the emergency rule-making provision could be invoked in this case.

Chairman Bryan asked Mr. Canwright for an opinion to which Mr. Canwright read: "If the Commission finds that an imminent peril to the public health, safety, or morals requires the adoption of the emergency ruling." He did not think that it could apply.

Chairman Bryan asked if any member of the Commission thought that an emergency ruling in this case was in order. Since no one spoke, the Chairman stated that the petition of Mr. Chun would have to be considered on a normal basis and asked that Mr. Chun be so notified so that he could get an extension from Hilton, find a place to put the houses temporarily, or get permission from the County to put them temporarily on the land.

There was no further discussion on this case.

PETITION OF ROBERT Y. AND SHIMAYO Y. HAMAMURA FOR SPECIAL PERMIT TO CONSTRUCT TEN OR LESS SINGLE FAMILY DWELLINGS ON LAND NOW DESIGNATED AS AGRICULTURAL LOCATED ON THE ISLAND OF KAUAI: Described as Fourth Division, 4-8-11: 50; 4-9-04: 27.

Chairman Bryan asked for reports on the requested emergency rule-making in the case of Kauai.

The XO read Commissioner Gregg's report stating that he had discussed the matter with John Humme, manager of Hawaiian Canneries Company (in Kapaa), which owned the houses. Mr. Humme had asked the people to move at their earliest convenience and that there are eight or ten houses involved. Three of these were moving at the end of November and three others want to buy houses in the area of Moloaa. The intention of the company is to offer these houses on a sealed-bid basis, the deadline being set for February 28, 1963. Some people had never approached the company to buy the houses. The head of the housing survey team from the State said that the people would not be counted, meaning they were not considered. Half of the houses are occupied by single people and half by families. The welfare cases are all out already and there appears to be no hardship or emergency. Mr. Humme will be glad to comment further if he is requested to do so.

Chairman Bryan asked if this case were now in the normal procedure. The FO stated that an application had been received, and the first day that it can be legally published would be December 11 and heard on December 31, which would supposedly require a field officer hearing.

Chairman Bryan stated that action could be taken on January 15 and this would be some 45 days ahead of the deadline, giving the petitioner sufficient time. He asked if any Commissioner differed with this view: the Commission will not consider this on an emergency basis but will do it as quickly as possible within the required time.

The XO asked for field officer hearing clearance on Chun and Hamamura in order to save time.

It was moved by Commissioner Ige and seconded to authorize such a hearing and carried unanimously.

BUDGET ITEM

The XO stated that he had a communication from former Commissioner Aldrich in which he claims that he had not been paid \$40.00 for two days per diem. Two letters from Mr. Aldrich were read.

Mr. Bryan questioned that this was between him and the Bureau of Accounting and did he not make out a voucher stating what his problem was and submitted it at that time.

Mr. Chun and Mr. Darnell said it would have been submitted to this office for approval.

Chairman Bryan wanted to know if he had made out a voucher which Mr. Aldrich could sign. Mr. Darnell answered that there are no records. The Chairman continued that the forms should be sent to him for him to sign.

Mr. Darnell said that the secretary went through all the old vouchers and found the attached letters and bills and this is something that was never completed. He could not definitely say what is justified because there is nothing definite. Mr. Darnell asked that the Commissioners grant approval.

Mr. Bryan stated that if he made out the vouchers and signed them and they go through the normal procedure, that is all that should be necessary. If they should refuse him then the Commissioners will look into it.

STAFF OVERTIME

Mr. Darnell stated that he had a breakdown memo, addressed to Mr. Chun, the subject of which is cash payment of overtime. It has been suggested by Mr. Skrivanek of the Department of Planning and Research that a third be paid and an attempt be made for the staff to take part of their time off during the ensuing months. He continued to say that he could predict that Mr. Mullahey would not be able to take very much time off, although some time might be found for Miss Kai. A memo was sent to notify Mr. Chun.

Chairman Bryan asked what was Mr. Chun's reply to the letter.

Mr. Chun stated that he referred this back to the Commission because he felt that the matter should be brought to their attention. It is not only a question of budgetary finances but a question of reason for overtime. It appears that Mr. Mullahey's time was used for transcribing minutes of which he felt that a member of the higher staff should not use his time for such transcription. He suggested that an administrative check be made

on overtime. If it is because of clerical reasons that overtime is necessary, it would be better to hire additional personnel.

Chairman Bryan stated that Mr. Mullahey was transcribing because he was present at the hearings on the Neighbor Islands and because of his familiarity with what happened.

The XO explained to the Commission the necessity for using the FO to transcribe tapes of Commission meetings to justify the overtime charged by the FO. He stated that, at times when the staff workload was heavy the FO was used to help out on the tapes because his familiarity with the subject matter discussed during hearings allowed him to transcribe only the pertinent sections of the discussion, in this way cutting the transcription time virtually in half.

In answer to a question posed by the Chairman, Commissioner Chun replied that compensatory time was allowed for overtime in lieu of cash payment; and that this compensatory time had to be taken within 30 days following the date for which the overtime was claimed. Mr. Chun also stated that he thought that a third alternative was open: namely, to add the accrued overtime to vacation which could be taken at any time when the staff workload was low.

In answer to a question from the Chairman, the XO replied that he could see no way that the FO could take any compensatory time off before the end of the year; and virtually the same situation existed in the case of Miss Kai, although an attempt would be made.

Commissioner Williams moved that the overtime be paid in accordance with the suggestion made by the Chairman, that is: cash for all time prior to October 23, 1962, and that the rest of the overtime claimed be dealt with in the next quarter.

Commissioner Gregg seconded the motion, which was passed unanimously.

The meeting was adjourned at 10:00 a.m.