

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

December 7, 1973 - 1:30 p.m.

Liliuokalani Building
Honolulu, Hawaii

COMMISSIONERS PRESENT: Eddie Tangen, Chairman
Stanley Sakahashi, Vice Chairman
James Carras
Sunao Kido
Shelley M. Mark
Mitsuo Oura
Tanji Yamamura

Approved
FEB 14 1974

COMMISSIONER ABSENT: Alexander J. Napier

STAFF PRESENT: Tatsuo Fujimoto, Executive Officer
Ah Sung Leong, Planner
Gordan Furutani, Planner
Dora Horikawa, Clerk Reporter

Chairman Tangen called for the first item on the agenda.

ACTION

PETITION BY JOSEPH FLORES (A73-367) TO RECLASSIFY APPROXIMATELY 24 ACRES FROM AGRICULTURAL TO URBAN AT LAWAI HOMESTEADS, KOLOA, KAUAI

It was announced that the discussion on this petition had taken place on Kauai yesterday but due to the lack of a quorum, action had been deferred until today.

Vice Chairman Sakahashi moved that the 16.7 acre portion of the petitioned 24 acres be reclassified from the Agricultural District to the Urban District with the following conditions:

1. That the petitioned area be developed in accordance with all representations made in writing and orally before this Commission and in compliance with all County requirements;
2. That the Land Use Commission be informed as to the progress of development within the next 6 months.

The motion was seconded by Commissioner Yamamura and the Commissioners were polled as follows:

Ayes: Commissioners Carras, Yamamura, Kido, Mark, Oura,
Vice Chairman Sakahashi, Chairman Tangen

Absent: Commissioner Napier

The motion to reclassify 16.7 acres from the Agricultural to the Urban District was carried.

A 5-minute recess was called by the Chairman.

HEARING

AMENDMENT TO THE RULES AND REGULATIONS (AR&R-73-2)- IMPOSITION OF CONDITIONS

Chairman Tangen advised that hearings on the amendment to the Land Use Rules and Regulations had already been held in the other 3 neighbor counties, but that testimony from a member of the Hawaii Planning Department will be heard today since he had been unable to attend the hearing on Hawaii.

Following the swearing in of persons testifying today, Chairman Tangen called on Mr. Robert Way, Chief Planning Officer of the Department of General Planning of the City and County of Honolulu, for his testimony.

In essence, Mr. Way's objections to the proposed amendments were based on the fact that the specifics of the problem that the amendments address were not explicitly defined; the conditions to be imposed had no discernible relationship to the objective of upholding the general intent and purpose of the Land Use Law and regulations. Further, if the problem were one where non-compliance with representations made by the applicants invalidated the basis for the Commission's decision, then the improvement of the basis or development of better criteria for amending boundaries was recommended. Mr. Way submitted that the problem of compliance with representations made by applicant is a county responsibility and the proposed amendments would duplicate the zoning powers of the counties, and introduce conflict and chaos with county zoning in the Urban District. More rigorous proof that additional urban lands are needed would be more appropriate than imposing conditions of the nature described in the proposed amendments. He concluded that the proposal constitutes a serious erosion of county powers

and local planning functions, and recommended that the proposed amendments to the Land Use Regulations be rejected (see copy of testimony on file).

In response to questions raised by Vice Chairman Sakahashi, Mr. Way reiterated that compliance with requirements for development is a county responsibility in the Urban District, and he was raising the question of whether it was in the interest of the Land Use Commission to interject itself into this area, taking into account statutory provisions and the Rules and Regulations.

Vice Chairman Sakahashi reviewed the present procedure whereby the Land Use Commission solicits comments and recommendations on pending petitions from the counties, and where the counties' views are considered prior to action by the Commission. Under these procedures, he wondered whether Mr. Way felt that there was a duplication.

Mr. Way acknowledged that under the present procedure this problem did not exist. However, under the proposed amendments to the Rules and Regulations, many of the same issues which are also addressed under the provisions of the county's zoning ordinance, such as incremental development, could constitute duplication of responsibility.

Vice Chairman Sakahashi felt that the proposed amendments were justified on the basis that the Commission was protecting the county's interest by imposing conditions consonant with the county's policies, and also to assure that the petitioners lived up to their representations.

Mr. Way brought up another matter which he felt should be kept in mind, i.e. the relationship of his role as Chief Planning Officer, the City Planning Commission and the City Council. He advised that the Planning Commission is a purely advisory body and the City Council was the policy-making body. The City Council acts in the very same arena that the proposed amendment addresses through its involvement in zoning issues, etc. He stated that his concern centered around the distinction between the two different roles in the process of urbanization and development.

Chairman Tangen pointed out that, as a State body, the Land Use Commission's responsibility encompassed a broader spectrum than the counties' in serving the best interest of all the people of the State of Hawaii. He also brought out that from time to time, the Commission was faced with the problem of determining the county's real position. If there were a single entity expressing the county's position, it would simplify matters. He observed

that the positions taken by the Planning Department, the Planning Commission and ultimately the City Council were not always the same. He felt the proposed amendments in the Rules and Regulations, in part, addressed some of these problems.

Referring to the statement by the Chairman regarding the several agencies involved in the planning process at the county level, Mr. Way submitted it was his opinion that referral to the Planning Commission was misdirected. Under the new City Charter which became effective the first of this year, the Planning Commission's role has become even more advisory than it was previously. The Department of General Planning, formerly the City Planning Department, is the administrative executive agency which is concerned with these issues first and foremost. The only response that the Land Use Commission will receive from Mr. Way will consistently reflect the adopted General Plan which is their policy document. He stated he was not in a position to respond otherwise until the General Plan is changed. In the last few years, the Planning Commission has also maintained similar views, that in evaluating petitions for boundary change, the General Plan of the city be upheld until changed. He added that this can only happen by action of the City Council and the Mayor.

Chairman Tangen advised that the Land Use Commission did not have the authority to change the referral procedure. However, from the foregoing testimony by Mr. Way, Chairman Tangen concluded that Mr. Way was in effect saying that referrals of pending petitions should not be directed to the Planning Commission of the City.

Mr. Way agreed that this was his position. He elaborated further that nothing is referred to the Planning Commission in a formal or official way. Matters are referred to them as a means of providing a forum for public hearing, such as General Plan amendments, zoning changes, planned development, etc. Federal projects, for example, which must be reviewed by the executive branch of the county are referred to the Planning Officer of the Department of General Planning and not to the Planning Commission. Proposed State projects were also referred to the Department of General Planning. Formerly, the Planning Commission was indeed the policy body with a policy directive role in the administration of the planning agency, but this was no longer the case.

Chairman Tangen then questioned where, in Mr. Way's opinion, pending petitions should be referred.

Mr. Way replied that, in his judgment, referrals should be made to the Department of General Planning, the administrative executive agency which administers the policies of the city. He

agreed with Chairman Tangen's understanding that, according to his recommendation, the determination from the Department of General Planning would be the official county position to come before the Land Use Commission and would not involve the Planning Commission or the City Council.

In this respect, insofar as the other counties were concerned, Mr. Way advised Commissioner Mark that it would depend upon the provisions of the Charter under which they may be operating. He agreed, also in response to a question by Commissioner Mark, that if it were determined that there were no Charter restrictions, he would support statutory change. He suggested, for example, appointing the Chief Executive (Mayor) of the respective counties to designate the appropriate responding agency within his county.

Commissioner Mark wondered whether Mr. Way would be agreeable to some provision in the proposed Rules and Regulations where the Land Use Commission or staff might defer to the counties in some specific areas where it was determined the counties do have statutory base for operation, or a defined acknowledged policy, but still retain the general provision indicated in the proposed Rules and Regulations. Mr. Way replied that in terms of the spirit of the regulations to overcome a problem in the public interest, this would be acceptable. Commissioner Mark continued whether, under the county's ordinance concerning park land dedication, some of the conditions that were involved in the proposed amendments might already be spelled out. Mr. Way felt that this could very well be the case. However, this ordinance was presently pending before the City's legislative body.

Mr. Way further elaborated that in adopting a planned development, which is an ordinance procedure, the county has stipulated that a certain number of homes within a certain price range must be set aside to accommodate low and moderate income families. This became statute, attached to zoning change. The conditional zoning also allows broader application than has been possible under the planned development or conditional use permit procedure.

Chairman Tangen concluded that the foregoing discussion had been worthwhile. However, the matter of referral was not really within the province of the Land Use Commission. Mr. Way agreed that the State statutes were clear in that all planning matters were to be referred to the Planning Commission. He expressed his willingness to work with the Land Use Commission toward amending the statutes. The Chairman stated that the county should first make its determination as to which agency within the county referrals should be made and, at that time, the Commission could seriously consider the State's statutes.

Chairman Tangen called on Mr. Sidney Fuke, Deputy Planning Director of the Hawaii Planning Department to make his presentation.

Mr. Fuke submitted that the county concurred with the intent and spirit of Act 187, SLH 1972, to curb speculation and non-development of urban zoned lands, and to assure that lands are developed according to representations made before the Commission. However, it was requested that the Commission consider the several concerns which the county had. These were enumerated as follows:

1. Chapter 205, HRS, confers full zoning powers to the counties within the Urban District, and if the Land Use Commission were to impose or levy conditions contained in the proposed amendment, it would in fact assume the responsibility of zoning for Urban Districts.
2. The Land Use Commission may approve an urban classification with conditions that may be in conflict with the County's General Plan, i.e. low-cost multiple family residential project within an area general planned for open space by the County. If the County were to proceed accordingly, it would be in violation of the General Plan which it is legally obliged to implement.

In view of the foregoing, it was the County's recommendation that the proposed regulations be amended to allow the Commission-imposed conditions to become valid only after the County grants the appropriate zoning to allow such a development. The County, at the time of rezoning consideration, should be given the authority to impose other conditions necessary to better fulfill the objectives of its General Plan, consistent with the objectives sought by the Land Use Commission's broad conditions. Moreover, since the counties will now be reviewing not only the propriety of the district classification but a particular use, more detailed information relative to design, density, location, need, etc. will be needed. It was also suggested that the Commission consider the need for environmental impact statements for major developments. (See copy of testimony on file)

Chairman Tangen assured Mr. Fuke that the Hawaii County's concerns will be given serious consideration.

The League of Women Voters' views, expressed in a written statement presented by Mrs. Carol Whitesell, supported the basic intent of the proposed amendment. However, it asserted that in imposing conditions on urban boundary changes, the Land Use Commission was moving into an area of detailed land use regulations which has hitherto been the responsibility of the counties. In

order to avoid conflicts and disruption of county planning, a high degree of cooperation must exist between the Land Use Commission and the counties in working out conditions which were acceptable to both. Therefore, it was the League's position that ample opportunity be given to the counties for input on conditions to be imposed. Comments were also offered on specific sections of the proposed regulations, i.e. Sections 2.351 (b) (e), 2.355 and 2.356 (see copy of prepared testimony on file).

Referring to a statement by Mrs. Whitesell, Chairman Tangen maintained that there had not been any instance where the county had expressed the lack of cooperation from the Land Use Commission and he intended that the good rapport should continue.

Mrs. Whitesell added that the League was in sympathy with the county's views that detailed matters were the responsibility of the counties. However, she observed that, in enacting the law, it must have been the Legislature's intent to empower the Land Use Commission to impose conditions.

Mrs. Michele Wilde, representing the Kaneohe Outdoor Circle and the Koolauloa Research and Action Committee, requested the Commission to consider the following 3 points:

1. Act 187-72 was improperly drawn and therefore had no force and effect as law. It was urged that the Commission obtain a ruling from the Attorney General before implementing this act.
2. Piecemeal approach to strengthening the law was not proper and could not effectuate the needed changes. It objected to the "autocratic control which is embodied in the language of the subject rules and regulations, in the hands of anyone who is not directly responsible to the will of the electorate."
3. No government agency should be permitted to hold a closed hearing (Section 2.354 (c) (2)).
(See copy of testimony on file).

Mrs. Wilde also questioned the reason for implementing Act 187, almost two years after it was enacted, when HB 808 amending the Land Use Law was presently pending before the Legislature.

Chairman Tangen replied that HB 808 had failed passage during the last legislative session and since there was no assurance that it will be enacted during the coming Legislature, the Commission felt that at least the provisions under Act 187 should be implemented at this time.

Chairman Tangen expressed his appreciation to those who had participated in today's proceedings and advised that additional testimony will be accepted by the Land Use Commission within the next 15 days, and that the Commission will act upon the amendments to the Rules and Regulations within 45 to 90 days.

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