

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Public Hearing and Meeting

Land Use Commission Hearing Room  
Honolulu, Hawaii

December 17, 1965  
1:30 P.M.

Commissioners

Present:

Myron B. Thompson, Chairman  
C. E. S. Burns  
Goro Inaba  
Leslie Wung  
Charles Ota  
Shiro Nishimura  
Robert Wenkam  
Jim P. Ferry  
Shelley Mark

Staff

Present:

George S. Moriguchi, Executive Officer  
Roy Miyamoto, Legal Counsel  
Ah Sung Leong, Draftsman  
Dora Horikawa, Stenographer

JAMES J. TAMURA (SP65-19), SPECIAL PERMIT TO SUBDIVIDE 1.96 ACRES OF LAND INTO FOUR RESIDENTIAL LOTS, LOCATED IN THE PANAWEA HOUSELOT SUBDIVISION, WAIAKEA, SOUTH HILO, HAWAII, IDENTIFIED BY TAX MAP KEY 2-2-52: 8.

Mr. George Moriguchi, Executive Officer, State Land Use Commission, presented the staff report in which it was recommended that the petitioner's request for a special permit be denied on the basis of the evaluation conducted using the guidelines set up by the Rules and Regulations of the Land Use Commission, and because the proposed use was not unusual or reasonable (see report on file).

The following testimony was presented by Mr. Kazuhisa Abe, attorney for the petitioner:

"My name is Kazuhisa Abe, the attorney for James J. Tamura. I'm sure that all of you here know what the intent of the Legislature was when it enacted Act 187, Session Laws 1961, especially Section V. Section V reads as follows: 'These temporary districts shall be determined so far as practicable and reasonable to maintain existing uses.' Prior to the enactment of 1965, the Territory of Hawaii had determined these lots in the Panaewa Subdivision to be residential urban lots. Under that law, it is our contention that these lots in the Panaewa Subdivision should have been classified urban. But the Land Use Commission did not see fit to do so. They went ahead and, though the patent, the condition of sales agreement, and everywhere it is indicated that these lots in the Panaewa Subdivision are sold for residential purposes only, it went ahead and classified these lots in the Agricultural District, which is contrary to Section V of the Act 187. I'm sure that in the County of Hawaii, agricultural lots had to be 3-acre lots. None

of these lots are 3 acres. It has been reported by the staff members that these lots are useful. What can these lots support? Except probably anthurium culture and, gentlemen, you know that anthurium is not grown because of the soil or the soil condition. It is because of what is put on the land that exists. How can you gentlemen say that these are prime agricultural land? Your staff members talk about scatteration. This is part of the City of Hilo. It's within the city boundaries and it is unreasonable to say that even at the present time, if a person wants to raise anthuriums, coffee, macadamia nuts on these lots, an application has to be made to the Board of Land and Natural Resources for a permit to use these particular lots for agricultural purposes. In the light of these circumstances, can you say that these lots were intended for residential purposes as indicated in the conditions of sales agreement and the land patent? I for one cannot see permitting residences to be built on these lots, permitting subdivision of these two lots into residential lots, in any way, is contrary to the Land Use Law, State of Hawaii. It is unfortunate that cases like this brings about the clamor for repeal of the Land Use Law. I say gentlemen, the Land Use Commission did not follow the intent of the Legislature when they classified these lands into agricultural lots--zone, because I say from the very first instance these lots were to be considered as residential lots. Now, I believe if the Land Use Commission, contrary to the decision of the Judge of the Third Circuit Court, denies this request, the State of Hawaii as successor to the Territory of Hawaii would be subject to probably a suit for breach of covenant if a suit could be brought against the government. Unfortunately, no such suit may be brought against the State of Hawaii without permission. Because if you will go over some of the records, you will note in the first instance, before these lots were offered to the public, the notice before the notice, the condition of sales agreement, distinctly said that subdivision of these lots would be permitted. That is stated in black and white. Now, gentlemen, if you are a prospective bidder, would you tend to bid higher where you had a right to subdivide these lots, where the lots had been advertised for residential purposes only? I'm sure a person would bid more than he would bid otherwise because of the right to subdivide. You, an arm of the government, the same government where the Land Department has stated that these are residential lots, the land patent distinctly said these lots are for residences only, and you come along at a later date, after the patents are issued, the sales agreement executed, and say that these lots even sold for residential purposes only are no longer residential lots but agricultural lots, which, as I have indicated, is contrary to Section V of the Land Use Act, Act 187 of the Session Laws of 1961. In all decency, in fair play, can you say that these lots should have been classified as agricultural lots? These are not prime agricultural lots. Coffee was planted on 5-10 acre lots-- it was a failure. These lots are not agricultural lots. These are what we call aa lots. Only thing that can be grown so far to date is macadamia nuts, probably papaia, but papaia because of the climatic condition, the high elevation, would not be successful because Mr. Matsumoto, within a distance of one mile, planted papaia. He has given up papaia. Some of you from Hawaii know that. How can you say that these lots are prime agricultural lots? Is it for you to say that because of the construction of one of the streets that serve this lot is of cinder construction that subdividing of this lot into four lots would bring about faster deterioration of the cinder road? May I remind you, if this lot is subdivided, only one of the lots would be served by this so-called cinder road. I respectfully request, in fairness and to uphold the Territory of Hawaii when it sold these lots as residential purposes only, it had already zoned this area for residential purposes, and to quote Section V again of Act 187, Session Laws of 1961, I feel that the Land Use Commission was duty bound to classify this particular

subdivision, the Panaewa Lot Subdivision into residential or urban district, for the reason that the government, the Territory of Hawaii, prior to the enactment of the Land Use Act had already classified these lots in the said subdivision as residential lots. If there are any questions, I would be very happy to answer them."

Thompson: Senator, what was the actual use of the land in 1958?

Abe: 1958? This particular lot? There was no use because the original purchaser from the then Territory of Hawaii had not built a home. But one of the conditions or covenant of the agreement was that a residence could be built on the premises within 5 years. And subsequent thereto, when Mr. Tamura purchased this lot, after entering into an agreement with the three other parties, he went ahead and fulfilled this covenant and the patent was issued to Mr. Tamura. Immediately after the issuing of the patent, he applied for the right to subdivide this lot into four parcels. And as reported by the staff, prior to the purchasing of this lot by Mr. Tamura, Mr. Tamura did not wish to buy lot containing 1.96, he wanted to buy approximately half-an-acre. But because of the reasonableness of 1.96 acres, he went ahead, got three of his friends to agree to purchase one-half acre apiece. Of course, the land patent had to be taken under one name, Mr. Tamura, as testified in court. There are four persons. They were going to draw lots to see which person got which lot, but inasmuch as Mr. Tamura was going ahead to build a house, he was given the first choice and he selected the corner where his home is. And the three other parties drew lots to determine who would get what lot. There's no intent on the part of these parties to speculate. They wanted these lots for house lots. These parties were in the lower than average income group. They were finding means of buying lots as cheap as possible.

Contrary to the report given as to number of residences built prior to 1963, I would like to point out to this Commission that after 1963 tremendous amount of residences had been built. For your information, I would ask you to check that the building permits which have been issued in 63, 64, and 65. 63 and 64 were record years. Building permits ran over 10 million dollars--first time in the history of the County of Hawaii. I, for one, wonder where people get all the money to build the residences that are coming up. For example, I just completed a home in the Kaumana Terrace Subdivision, which subdivision was opened in 1959. Up to 1962-1963 there were very few homes. But at the present time, out of the 141 lots sold, there are 80 lot residences and many of these residences are built on two lots, and I would say that more than 80% of the lots have been used for residences already. You could go to Kaumana Gardens, some of the subdivisions in Waiakea where you see many residences coming up. Therefore, I feel that the recommendation of the staff, that just because there are 3,000 lots, only 1,000 something have been used up to 1963, has any merit in this case because after 1963 there was considerable construction.

Thompson: Senator, how large was this subdivision when it was sold?

Abe: Panaewa? I'm not sure. It's a territorial subdivision. Some of the lots went from 1.96. The largest lot I think was 2.73 or something of that nature.

Burns: About how many of the lots are now occupied? (Mr. Moriguchi pointed out the area on the map.)

Nishimura: How many miles from the urban?

Moriguchi: About 4½ miles from the airport.

Nishimura: No, from the urban.....

Moriguchi: That's a distance of about ½ mile.

Nishimura: One question I would like to ask the Senator here. You have stated that the intent of the Land and Natural Resources was that they may be able to subdivide into 10,000 square foot lots, subject to the approval of the Hawaii Planning Commission. But under the recommendation of the Hawaii Planning Commission, they have denied this petition.

Abe: Yes, because their feeling is that because of the fact that this area has been zoned or classified in the Agricultural District. My contention is that in the first place this area should not have been zoned in agriculture because the government had already zoned this for residential purposes. The land patent, the condition of sales agreement, all said that these lots in this subdivision would be sold strictly for residential purposes. And as I indicated, even at this present time, if a person wants to use a lot in this subdivision for agricultural purposes, he has to go to the Board of Land and Natural Resources for permit to use it for agricultural purposes. I'm sure that Mr. Ferry can verify that. That's a fact.

Nishimura: That has been a past law. It doesn't apply today.

Abe: It does apply--oh yes. Because the condition of the patent is there. They have not denied but you have to apply.

Ferry: Just a matter of enforcement.

Wenkam: But it is a minimum requirement, not a maximum requirement, and where there seems to be a county or state law or regulation prevailing, that other requirements enter into it that override this. I'm curious as to why you speak of the County's ruling only in terms of technicalities when the County General Plan itself calls for development of the area as a residential-agricultural use involving small operations such as poultry farm or truck gardening with minimum size lots of one acre. Is it true that the County General Plan calls for one-acre size lots in this area?

Abe: Yes, I believe so, but that was brought about because of your placing that area in agriculture.

Wenkam: Well, I think the County General Plan was developed independent of our boundary.

Abe: Right, but I for one cannot see why it is not in the urban area. As you can see, it's a continuation of the urban area and within the city limits of Hilo.

Wenkam: This raises up the other point though. The fact that it is not being utilized for prime agricultural purposes does not seem to me automatically therefor that it must be urban. In this particular circumstance, I am curious as to the desires of the other property owners in the area. This is a very low density residential use here.

Abe: All right, There's a petition being circulated. Everyone of the lot owners except five has signed it.

Burns: Petitioning for urbanization?

Abe: Yes.

Wenkam: This raises a very important point, then. My interpretation of Act 187, Section V, is that the uses that were intended are the non-conforming uses existing at the time on the particular land. No reference is made to prior commitments. It's the non-conforming use that exist at the time, at the time we zoned the land.

Abe: No, if this area is zoned for residential purposes only, what does residential purpose mean? Urban area.

Wenkam: It's a particular type of use that is existing at the time.

Abe: Isn't the urban area for residential purposes only? It's not agricultural.

Wenkam: Admitted, there are other uses....

Abe: What uses? Because the then Territory said you must use these premises only for residential purposes.

Wenkam: Bur there are low-density residential purposes, maybe such as in our rural district, such as occur in our agricultural district. Does this mean then that--the implications of this would imply that people who bought the Hawaiian Paradise Park are deserving of urban use too.

Abe: At that time, prior to that time, such as these temporary districts shall be determined so far as practicable and reasonable to maintain existing uses.

Thompson: This is why I raised the question, Senator, what the existing use was at that time.

Abe: Not this property at that time, but its use was restricted to residential purposes.

Ferry: I don't have the legal background. However, the intent of the Territory in drafting the conditions of sale in 1958 and, again I'm only working on the assumption as you are, it simply means that the residence requirements imposed on the sale of these lots was to preclude any commercial activity taking place, and not necessarily exclude agricultural endeavor. If you review the issuance of patents and previous sales made by the Territory, as well as the State, you will note that much reference is given to conversion of property to commercial use when it is sold for residential purposes. This is why you would have, under your interpretation, a restrictive use for residents.

Abe: This is what the word says: "Shall be used for residential purposes only from date of sale for a period of 10 years next following the issuance of the land patent or deed."

Ferry: Not to the exclusion of agricultural uses. But to the exclusion of commercial uses.

Abe: It doesn't say agricultural. It doesn't even provide in there saying that agricultural uses may be permitted.

Wung: In other words all those people are semi.....

Abe: Semi-----That's right, they might be violating the law--not the law but the covenant. They might be subject to-----

Ferry: It's a matter of interpretation as well as enforcement.

Abe: We want urbanization. Even a rural district. That's all right. We have no objection. What I'm trying to say is it is not a prime agricultural property. The intent of the Legislature was to reserve prime agricultural land for agricultural uses. We didn't want, for example, some part of good sugar land to be urbanized. That was the original intent.

Wenkam: Mr. Abe, there is another aspect too; that is to prevent scatterization of urban use area.

Abe: That was never.....

Wenkam: It's in the preamble to 187, to hold the urban use areas into certain areas to provide orderly and proper growth of urban facilities. And this is, in a sense, scatterization.

Abe: Let me argue on that point. The fact that you permit one lot to be divided into half-acre lots would not bring about scatterization, because all the utilities are in. Like it or not, whether the roads serve one house, ten houses, the streets are going to be paved. This is wrong? We have been appropriating monies to resurface these roads session after session because, I don't blame Mr. Ferry. These lots should have been served with paved streets before it was offered to the public for sale. We are in a way penalizing the taxpayers. The lot purchasers at that time should have paid for the improvement to the street. The fact that some of our department heads failed to see this

point, went ahead and subdivided lots, sold the lots without getting back the improvement cost, does not take away an obligation, responsibility on the part of your government to go ahead and serve these people in this subdivision with paved streets. Lama Street which is not paved, I believe, would be paved in the next five years. There's no danger of scatteration here. All the utilities and schools are there.

Thompson: Senator Abe, you mentioned that you might be interested, or the people in the area might be interested in a rural designation. Would you consider this a Rural District?

Abe: I for one feel it should be urban. It's within the city limits of Hilo. But I'm sure the people there would be satisfied with a rural classification.

Thompson: You feel that the use of the land is more nearly rural than urban?

Wung: Mr. Chairman, maybe I can answer that. I am very well aware of this area. In fact when we drew the maps, Mr. Ferry talked me from putting it in the rural but I think if anything is rural, this is it.

Ferry: I'll reiterate my position why. We're talking about this immediate vicinity. I presume we're going to confine our discussion to this. You must agree as to what is best for the County because whatever is good for the County reflects on the State as a whole. If these lots were submitted for subdivision, you would have an endless stream of deadend streets, going nowhere, because that's the only conceivable way it could be developed under its present state of ownership. And that's why I objected to the rural zoning.

Abe: The Planning Commission of the County of Hawaii has always indicated where we went ahead and subdivided 50 acres, 40 acres or the like, to bring out streets to the next property. When a person comes to subdivide this, the Planning Commission can insist, for example, that the street be put here. It's up to the Planning and Traffic Commission or the Planning Commission of the County of Hawaii to get an orderly subdivision in this area. I have represented subdividers, I have been engaged in subdivision, and the Planning Commission of Hawaii has always insisted that if we are subdividing this area, if we put our streets here--of course we don't want to go through the whole lot--but they have insisted that we put the street right to this boundary so in case the owners of the next lot want to subdivide they just connect and there will be a straight subdivision. And therefore if that is the thing that the County wants, they can do it by insisting that when they come for subdivision plans, subject to their approval, owner of say lot 34 comes in, subdivides his lot into half-acre lots, 2.75 acre lot into five lots, they can provide to have streets. And that will do away with these flag lots, the situation you have in Waikiki.

Ferry: Now, if your argument were to hold water there, then the County should make a strong pitch as to this land of rural nature. But they say it is agricultural, just as we believe it is.

Abe: They're saying it's agricultural because you have classified it as agricultural. They say they can't do anything contrary to your wishes.

Thompson: Senator Abe, you're quite correct. You're here in terms of this permit and although we've digressed a bit.....

Nishimura: Mr. Chairman, if a request of this nature is granted, then it would be a precedent, right?

Thompson: Right.

Wenkam: I feel these arguments are very valid with respect to a rural or urban zoning in the area, but I disagree completely how they apply to a special permit for one lot. Contrary to the intent of the law itself, to grant one lot in the middle of an agricultural area a high density urban use--the proper procedure would seem to me that the consideration be given to the zoning in that area.

Thompson: For our consideration today, let us confine it to the request of this special permit.

Wenkam: That's what I'm arguing.

Abe: The reason I'm here to represent Mr. Tamura they're in a pickle. If the three other persons can't build a house, I don't know how he's going to pay the three others for the money they paid.

Thompson: Are there any other questions?

Wenkam: You mentioned that the majority of the owners have signed the petition for change of boundary.

Abe: I think you'll be receiving one soon.

Moriguchi: I have discussed this with Mr. Allison, who represents the group there. We have 56 signatures and will be in with the money, if it is not already in, for the petition for boundary change for the entire area.

Nishimura: How many lots are these?

Moriguchi: 56 lots--just about the entire area. They came in and asked initially for urban or even rural.

Wenkam: Would it be possible to defer action on this special permit, pending our consideration of the petition?

Abe: I feel that in fairness to these persons, they've been hanging on a rope since 1963. Something should be done because as I said they had never intended to speculate and, as Mr. Tamura said, because of this agreement he had he could not borrow money from financial institution. He had to borrow from his family and friends and still now



he cannot get a loan from the financial institution. The four parcels of land to be subdivided don't belong to him.

Thompson: So you're pleading for a decision today?

Abe: Yes.

Thompson: Is there any other discussion? If not, the Chair will entertain a motion.

Ota: I have a question to ask before we take action on this. Under the Hawaii County Subdivision Ordinance, is there a minimum frontage per lot?

Moriguchi: Yes, I believe the minimum lot width is 60 feet, depending on what the area is zoned for.

Inaba: What is the frontage on this lot?

Moriguchi: 260 feet on Lama Street and 219 feet on Kalo Street.

Ferry: Mr. Chairman, I so move that we accept staff's recommendation and deny this permit.

Nishimura: I second the motion.

Moriguchi: Commissioner Wung.	Commissioner Wung: No.
Commissioner Inaba.	Commissioner Inaba: No.
Commissioner Ota.	Commissioner Ota: No.
Commissioner Wenkam.	Commissioner Wenkam: Aye.
Commissioner Burns.	Commissioner Burns: Aye
Commissioner Nishimura.	Commissioner Nishimura: Aye
Commissioner Mark.	Commissioner Mark: Aye
Commissioner Ferry.	Commissioner Ferry: Aye
Chairman Thompson	Chairman Thompson: Aye

Six ayes and three noes. Motion is carried.

Abe: There will be another court order.