

STATE OF HAWAII  
LAND USE COMMISSION

*approved*  
*6-16-67*

Minutes of Public Hearing  
and Meeting

First Circuit Court Room  
Honolulu, Hawaii

December 17, 1966 - 9:40 a. m.

Commissioners Present: Myron B. Thompson, Chairman  
Shelley Mark  
Robert Wenkam  
Goro Inaba  
Leslie Wung  
Shiro Nishimura

Commissioners Absent: Jim P. Ferry

Staff Present: George Moriguchi, Executive Officer  
Ah Sung Leong, Draftsman  
Dora Horikawa, Stenographer

Following the customary opening prayer, an outline of the procedures to be followed during the meeting, and swearing in of participating members in the audience, Chairman Thompson called for the first item on the agenda.

HEARINGS

PETITION OF SEICHI HIRAI (A66-128) TO AMEND THE URBAN DISTRICT BOUNDARIES AT MOANALUA, OAHU, TO INCORPORATE APPROXIMATELY 811 ACRES PRESENTLY IN A CONSERVATION DISTRICT, Identifiable by Tax Map Key 1-1-12: 2 and 15

Mr. Moriguchi reported that a letter had been received from Mr. Hirai, petitioner, dated December 5, 1966, requesting withdrawal of his petition (see copy of letter on file).

Commissioner Inaba moved to accept Mr. Hirai's request for withdrawal, seconded by Commissioner Mark, and the motion was carried unanimously.

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PETITION OF JERRY J. NEVILLE (A66-137) TO AMEND THE LAND USE DISTRICT BOUNDARIES FROM CONSERVATION TO URBAN AND FROM URBAN TO CONSERVATION INVOLVING AN 8.1 ACRE PARCEL LOCATED AT PACIFIC HEIGHTS, HONOLULU

Staff's recommendation for denial of the reclassification from Conservation to Urban, and approval for the portion involving reclassification from Urban to Conservation was based on the severe topography of subject lands (see copy of report on file).

Mr. Moriguchi pointed to the steepness of the slopes on the cross-section map of 70% which generally prevailed through Mr. Neville's property. The petitioner is contemplating a horizontal condominium type development.

Mr. Lloyd Stebbings, realtor, representing Mr. Neville, submitted the following data in support of the proposed development on subject land:

1. Where the road curves, there is a natural location where a road could be constructed.
2. There were two alternatives for the development:
  - a. Chop off the steep portion of the ridge and level it off.
  - b. Build alpine-type cantilevered homes.
3. Proposal is for a very exclusive condominium cluster type home development blended into the hillside.
4. A water tank would serve all the homes, except three, by gravity flow. A booster pump to serve the three homes would be installed by the developers, at approximately \$150 each.
5. Gravity flow would also meet the sewer needs.
6. Radio tower presently located in the gully would be moved up on the hill.
7. More land will be reclassified conservation than is presently zoned for conservation.
8. After subject parcel is developed, it will be no steeper than some of the areas in Tantalus.

Mr. Moriguchi requested clarification of the claim made by Mr. Stebbings that more lands will be reclassified conservation when petitioner was requesting 3 acres of urban lands. Mr. Stebbings contended that the map submitted by Mr. Neville with his petition on which staff had made its recommendation did not accurately reflect the development plan, which actually put back more lands into conservation. He added, however, that if their plans were disapproved, they would not want the Commission to effectuate only that part of their proposal to put a portion of the urban lands into conservation, since they could find a means of utilizing these lands.

Chairman Thompson wondered whether petitioner might consider entertaining an amended petition and Mr. Stebbings felt that this was possible.

Commissioner Wenkam agreed that from the engineering point of view, it was feasible to bulldoze the subject area, put a road in the center and build on each side of the hill. However, the Land Use Commission was charged with the responsibility of protecting the scenic amenities of the hillside from the very type of construction suggested by the petitioner. Due to the possible dangers involved also, Commissioner Wenkam felt it more prudent to retain the subject lands in Conservation and to pursue any construction

thereof under the surveillance of the Department of Land and Natural Resources.

Mr. Moriguchi pointed out that contrary to Mr. Stebbings' estimate of the existing cut of 100' where he proposes to build several homes, the cut was actually 50' deep and could only accommodate one or two homes. Mr. Stebbings explained that they were suggesting it would be better to move the wall of dirt approximately 5 to 10' and create a nice flat area. As it is now, he could only foresee an eroding bank 25 to 30' high.

Commissioner Wenkam asked whether any engineering or architectural plans were available for the proposed development. Mr. Stebbings replied that he understood Mr. Neville had employed the services of a large engineering firm. He expressed his wish to present more detailed maps and plans at a later date after he has contacted Mr. Neville.

The hearing was closed thereafter.

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PETITION OF WILIWILINUI RIDGE (A66-140) TO RECLASSIFY APPROXIMATELY 10 ACRES OF LAND FROM CONSERVATION TO URBAN AT WILIWILINUI RIDGE, WAILUPE, OAHU, TMK 3-6-04: Portion of 18

Mr. Moriguchi read a letter from the petitioner's counsel, Mr. David McClung, dated December 7, 1966, requesting postponement of the hearing on the petition in order to avoid any conflict of interest since Mr. McClung was recently elected to the State Senate, and until such time as they were able to arrange for other confident counsel.

Chairman Thompson advised that there were two possible alternatives:

1. To defer hearing on this matter to another date.
2. To conduct a hearing as advertised and extend it over a period of time.

The gathering of a large group of residents from the Aina Haina area apparently eager to make statements concerning the petition was recognized by Chairman Thompson.

Commissioner Wung moved to hold the hearing today and continue it at a later date, seconded by Commissioner Nishimura. The motion was carried by a unanimous vote.

Mr. Moriguchi suggested that a date for the continuation of this hearing be established today. Commissioner Wenkam requested that this be set for a Saturday, possibly on the 18th of February.

Commissioner Wung moved to hold the continuation of the hearing on this petition on February 18, 1967, seconded by Commissioner Inaba, and the motion was passed unanimously.

Mr. Moriguchi advised that the owners of the land, Harold M. Aoki and Duke Kawasaki, through their attorney Mr. McClung, have petitioned for reclassification of approximately 10 acres of land located at Wiliwilinui

Ridge from Conservation to Urban. He pointed out the subject lands and other prominent landmarks in the vicinity on the map.

It was also brought out that the proposed use was permitted under the non-conforming clause, but that the developers would have to obtain the approval of the Department of Land and Natural Resources for the structural design, engineering aspects, etc. of the project.

Chairman Thompson wondered whether petitioner's counsel would care to offer any testimony at this time. Mr. McClung reiterated his letter request asking for an opportunity to make a presentation at a later date. He also informed the Commission at this time that Harold Aoki and Duke Kawasaki held title to the subject property as a matter of convenience only, and that the property actually belonged to a hui. However, Mr. Kawasaki's name was now being withdrawn from the petition for the same reasons Mr. McClung offered for his withdrawal as counsel for the petitioners.

Chairman Thompson opened the discussion to the floor and invited testimonies from the Aina Haina residents, who testified as follows:

Dr. Thomas Murphy

Dr. Murphy expressed his concern over the possible danger to his family if the developers were allowed to build homes on the side of the ridge which overlooks Aina Haina.

He also spoke of the tremendous amount of rain runoff that would occur which would overtax the present drainage ditch situated behind Dr. Murphy's property. In the past he has had to moat his home to protect it from the water that the drainage ditch could not handle. The proposed project would surely exert greater pressure upon the ditch and may even destroy it by falling rocks. Dr. Murphy wanted some assurance that all of these potential dangers would not occur.

Mr. C. J. Lillie, Jr.

Mr. Lillie submitted snapshots he had taken showing the exposed rocks on the hillside. He added that there were many other rocks which were hidden by the bushes, leaning against trees or buried, and any jarring action would loosen these rocks.

Mr. Wayne Hulten

Mr. Hulten based his opposition to the proposed development as follows:

1. Possibility of loosened rocks which will roll down the hill.
2. The drainage ditch is slowly being filled up and any additional silt will worsen the situation.

Mr. Hulten offered as evidence a letter he had received from the City and County of Honolulu, informing him of the property owner's responsibility to keep the drainage cleared. Chairman Thompson commented that the letter will be returned to Mr. Hulten as soon as it has been duplicated for the Commission's file.

Mr. Hulten requested the names of the persons involved in the hui but was informed by Mr. Moriguchi that the Commission's files did not contain this information.

Mr. Harold Jambor

Mr. Jambor contended that since the developers were permitted to proceed with their plans under the non-conforming clause, under the jurisdiction of the Department of Land and Natural Resources, today's discussion was purely an academic one. Chairman Thompson disagreed since the decision by this Commission would determine whether the jurisdiction for the project fell with the City and County or the Department of Land and Natural Resources.

Under questioning by Mr. Jambor, the staff offered the following data:

1. The grandfather clause declaratory ruling by the Land Use Commission was not a public hearing and therefore was not publicized.
2. Should the jurisdiction fall with the Department of Land and Natural Resources, Mr. Jambor or any citizen will have the prerogative to submit pertinent information to the Board, although there will be no formal hearing.
3. Petitioner's present plans did not indicate any building on the slopes, nor construction of any access road to this area.

Commissioner Wenkam wanted it fully understood that the Commission's declaratory ruling action was merely the acceptance of the petitioner's right to legally pursue the development since approval for this had been obtained before the permanent land use boundaries were established.

Mr. Jambor listed the basis for his objection to the subdivision as follows:

1. The danger to residents living below from falling rocks.
2. The harmful effects to the aesthetic qualities of the hillside.
3. The progressive encroachment with respect to use of lands within the Conservation District.

Mr. Leon Johnson

Mr. Johnson testified as follows:

1. There was a gigantic pile of rocks within a few feet of his property which could be easily shifted by any movement on the ridge and result in great danger to his home as well as others below.
2. Easement for the drainage ditch goes through Mr. Johnson's property. The runoff from the mountainside is being taken care of by an 18" pipe and Mr. Johnson has had water up to his patio during a heavy storm. Any change on the hillside would be disastrous.

Mrs. Dorothy Jambor

Fourteen years ago when the Jambors purchased their fee simple property, they were assured by the Hind Estate that the land above was conservation and would never be developed. Mrs. Jambor was now appealing to the Commission to protect this privilege and also possibly their lives.

Mr. Andrew Pavlic

Mr. Pavlic remarked that a certain amount of grading at the top would be necessary in order to build which would disturb the rocks. These rocks will go right through Mrs. Jennings' living room (who lives right above Mr. Pavlic) and through Mr. Pavlic's roof. Mr. Pavlic also mentioned the inadequacy of the existing water, sewer, utility facilities to handle any additional load.

Mrs. Willis C. Jennings

Mrs. Jennings testified that 2 large rocks had rolled down into their terrace in the last 7 years besides numerous smaller ones they had removed.

Mr. Gus Gilbert

Mr. Gilbert asked about the extent of the smallest interval that would be left in conservation if this petition were approved. Mr. Moriguchi replied that this would vary--however, it would seem that the narrowest portion remaining in the Conservation District would fall approximately in the locale of Mr. Gilbert's property and measure about 100'.

Since there was no further testimony, the hearing was closed, to be continued on February 18, 1967.

Chairman Thompson called for a short recess at this time to review material which had been submitted by Mr. Alvin Badenhop, whose petition was being considered next on the agenda.

ACTION

PETITION OF ALVIN BADENHOP (A66-129) TO RECLASSIFY APPROXIMATELY 39,000 SQUARE FEET FROM CONSERVATION TO URBAN AT LANIKAI, OAHU

Chairman Thompson advised the petitioner that in addition to the many difficulties he had encountered, there were only 6 Commission members present today to vote on his petition, and since 6 votes were needed to gain approval of the boundary request, the Chairman was offering Mr. Badenhop the opportunity to request a deferment.

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Since there was/matter of refinancing involved and time was of the essence, Mr. Badenhop wondered what the time lapse would be for the Department of Land and Natural Resources to render a decision on a special use permit in the Conservation District, should he choose to seek this avenue and withdraw his petition for a boundary change as was suggested by Commissioner Wenkam. Mr. Moriguchi advised that the maximum time could run to 6 months, but that they could also act within 30 days.

Mr. Badenhop was also advised that if the petition were acted upon today and denied, any reconsideration of the decision would have to be effectuated within 24 hours of the decision.

Mr. Badenhop decided that he would ask for a vote on his petition today.

Some of the facts brought up during the unsuing discussion in connection with the proposed construction are as follows:

1. 2 homes were planned for the area--one to serve as a working studio for petitioner's architectural, ceramic, printing pursuits, and the other to serve as his residence.
2. Mr. Yoshio Kunimoto, Chief Engineer of the City and County, and Mr. Walter Lum, engineer, have agreed that the land is buildable, in separate letters to Mr. Badenhop.
3. Any danger from loose rocks could be averted by either removing or breaking them up. In fact they could even be used in the proposed construction.
4. The proposed buildings can be constructed without the necessity of any bulldozing activity.

Commissioner Wenkam strongly argued to keep subject lands in Conservation, not necessarily because he was ignoring the property rights of the individual but in an attempt to protect the individual rights of all the people, particularly the amenities of the people who live on Oahu. He felt this would be better served by keeping the jurisdiction over these lands within the Department of Land and Natural Resources. He added that these lands were placed in the Conservation District for good and proper reasons and should be maintained. Commissioner Wenkam was of the opinion that the plans submitted by Mr. Badenhop were reasonable and proper and could be adapted to the hillside, and achieved under the surveillance of the Department of Land and Natural Resources with its restrictions and conditions.

Since Mr. Badenhop owned interest in the property as early as 1960, Commissioner Nishimura wondered why he had not been aware of the subsequent proceedings by the Land Use Commission that placed the subject property in the Conservation District. Mr. Badenhop argued that he had a list of many people who had found themselves in the same predicament. Chairman Thompson explained that the hearing to establish the permanent boundaries in the Lanikai area was duly publicized and held in Kailua and there were approximately 200 to 300 people present at that hearing.

Mr. Moriguchi recommended that the Commission properly deny this petition and encourage and assist Mr. Badenhop in formally pleading his case before the Department of Land and Natural Resources in view of the circumstances and on the basis that the proposed plans were feasible.

Chairman Thompson advised Mr. Badenhop that the Commission was sympathetic with his plight and that the staff would be happy to assist him in making the application to the Department of Land and Natural Resources if

he so desired. Mr. Badenhop agreed that he would be willing to seek a special use permit if he could be assured of its approval. It was pointed out by Chairman Thompson that the Commission could not give this assurance-- it could only support Mr. Badenhop's application and general concept and that he would have to abide by the restrictions and conditions imposed by the Department of Land and Natural Resources.

Commissioner Nishimura moved to deny the petition for an urban classification as recommended by staff. The motion was seconded by Commissioner Wung and carried unanimously.

Commissioner Wung then moved to submit a letter to the Board of Land and Natural Resources supporting the general concept of Mr. Badenhop's presentation within the confines of the Department of Land and Natural Resources' regulations, stressing the urgency of an early decision on the matter. It was seconded by Commissioner Wenkam and passed unanimously.

#### HEEIA FISH POND

Mr. Moriguchi advised that the Notice of Appeal (see copy on file) served the State Land Use Commission on December 5, 1966 by the Bishop Estate Trustees on the above subject was a designation to file certain materials in the Circuit Court of the First Circuit, which matter had already been fulfilled. The Complaint and Summons served individually on the Commissioners today by the Bishop Estate Trustees (see copy on file) required the submittal of a reply within 20 days. Mr. Moriguchi commented that he will check this matter with the Attorney General's office.

#### HAWAII CONGRESS OF COMMISSIONERS AND DIRECTORS

It was announced that the conference was scheduled for February 23, 24, 25, 1967 in Hilo, Hawaii. All Commissioners present expressed plans to attend the conference.

#### SPECIAL USE APPLICATION WITHIN THE CONSERVATION DISTRICT

For the Commission's information, staff advised that it was in receipt of a copy of an application for use within the Conservation District filed with the Department of Land and Natural Resources affecting the Waipio Valley in Hawaii. Chairman Thompson commended the interchange of information between the DLNR and the LUC.

#### NEXT MEETING SCHEDULE

January 13, 1967 in Hawaii was suggested as a possible date for the next meeting of the Commission. Decision on this matter was left to the discretion of the Executive Officer.

#### KONA GARDEN ESTATES

Commissioner Wenkam observed that the Kona Garden Estates were offering agricultural lands in Hawaii for residential condominium uses and as being suitable for subdivisions. He felt that this matter should be brought to the



attention of the County Planning Commission since this was not a proper interpretation of the Land Use Law. Chairman Thompson agreed that we should request an expression from the County Planning Commission on this matter.

ADJOURNMENT

There being no further business, the meeting was adjourned.