

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

LUC Hearing Room

Honolulu, Hawaii

APPROVED  
2-19-65

10:30 A.M. - December 18, 1964

Commissioners

Present:

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

Staff

Present:

Raymond S. Yamashita, Executive Officer  
Roy Takeyama, Legal Counsel  
Richard Mar, Assistant Planner  
Amy Namihira, Stenographer

Chairman Thompson called the meeting to order and gave an opening prayer. The Chairman announced that other business would be discussed before taking action on petitions for boundary changes and special permits.

PROPOSED LAND USE COMMISSION BUDGET

Item A. Personnel (Page 1)

The Executive Officer stated that this section of the budget included an added staff position of Senior Planner. There were several bases. First, the Land Use Law was unique in the nation. Therefore, there are little precedences and criteria to follow. Considerable research and analysis are required to develop such criteria for comprehensive state zoning. While the assistant planner position does contribute to present staff productivity, the qualifications of that position are inadequate to serve the higher specific need. In addition, the public's interest can better be protected in cases where the petitioner can afford considerable professional assistance, and in cases where the petitioner can afford the filing fee only. In both cases, the public's interest would be better protected by additional competent staff capacity. Further, more proper attention can be given to the Land Use Commission's concern for a more active public relations program and, incidentally, provide the Land Use Commission with a more flexible staff from an administrative viewpoint.

Commissioner Ota asked if another assistant planner might not meet the need. Commissioner Nishimura felt that the Land Use Commission needed more clerical assistance, instead.

Chairman Thompson felt that the comments were probably related to the question of whether or not the request for the proposed position would be able to get through the legislature. Commissioner Burns stated that the senior planner should have knowledge of land and public relations. Chairman Thompson stated that the duties should be set up for this position. The alternative would be to select a planner who had experience or aptitude in that direction. Another expression was that the assistant planner position is easier to obtain, and therefore that position should be requested. The assistant planner could then be trained to take the responsibilities of a senior planner.

The staff indicated that the request was based on a need for a specific level and type of performance, that there were established job series in Civil Service and that it would take years for an assistant planner to reach the required level of competence.

Commissioner Ota moved to accept Item A (Page 1) of the budget as circulated, and Commissioner Burns seconded the motion.

During discussion on the motion, Commissioner Wenkam felt that since the budget is low, the Land Use Commission should use the money on public relations and education rather than a senior planner.

Upon a call for the question, the Chairman instructed the Executive Officer to poll the Commission. The motion was carried on the following vote:

Approved: Commissioners Wung, Inaba, Ota, Burns, and Chairman Thompson.  
Disapproved: Commissioners Wenkam and Nishimura.  
Absent: Commissioners Mark and Ferry.

#### Item B. Supplies (Page 2)

The item of the \$5,000 for consultant fees was discussed by the Commission. The staff stated that this item was related to the expressed concern of the Land Use Commission that certain alleged "agricultural" subdivisions were subverting the Law by shifting prime agricultural lands into non-revenue producing residential uses, and promoting scattered developments. In order for the Land Use Commission to take further action, research and study of the problem is necessary before reasonable action can be taken. One of the principal issues related to this concern is the determination of a reasonable minimum lot for a bona fide agricultural subdivision. To resolve this concern, the services of a competent agriculturist would be most helpful.

The commission queried staff as to the feasibility of requesting assistance from, say, one of the agencies related to the University of Hawaii. Staff indicated that this was the intent. However, no inquiry has yet been made. Since reimbursement to any agency for such time may be required, or the hiring of a part time consultant would be required if any agency does not have adequate time or manpower, the estimated sum of \$5,000 is being requested.

The remaining items were briefly examined and generally found to be more standard in nature.

Commissioner Burns then moved to accept Item B (Page 2) of the budget. Commissioner Nishimura seconded the motion. There being no discussion, the Chairman directed the Executive Officer to poll the Commission. The motion was approved on the following vote:

Approved: Commissioners Wung, Inaba, Ota, Burns, Nishimura  
and Chairman Thompson.

Disapproved: Commissioner Wenkam.

Absent: Commissioners Ferry and Mark.

#### PUBLIC RELATION PROGRAM

Chairman Thompson stated that this program discussion will be taken up at a later date since Mr. Goodfader is leaving for Washington and no one has yet been assigned to the Commission.

Commissioner Wenkam suggested that the Notice of Public Hearing be revised so that the public will be able to understand it more clearly. This is to be followed up by the Executive Officer and Legal Counsel.

#### SCHEDULE OF HEARINGS

Commissioner Ota suggested that the Land Use Commission should hold one meeting per month. After noting the effect of the time limitations related to the processing of petitions, the Commission agreed to meet about once a month as may be dictated by the timing required for the expeditious processing of pending petitions. The Commission decided to meet next on January 22, 1965 in Hilo.

#### ADOPTION OF MINUTES

The minutes of November 5, 1964 meeting held in Lihue, Kauai were adopted as corrected (see corrections on file).

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PETITION BY MARYANN KAMAHELE (A(T)64-66), FOR AMENDMENT TO THE LAND USE DISTRICT BOUNDARIES FROM AGRICULTURAL TO RURAL TO SUBDIVIDE 5.52 ACRES INTO FOUR 1.220 ACRE LOTS TO BE GIVEN TO HER FOUR DAUGHTERS: Described as TMK 1-5-10: 15, Makuu, Puna, Hawaii

The Executive Officer presented a brief review and summary of the petition, and outlined the area on a map. The County had recommended approval of this petition on the following findings:

- "1. The applicant is desirous to subdivide a 4.881-acre parcel into four 1.220-acre lots. The minimum density in the County of Hawaii of agricultural zoned areas is one house per 3 acres.

"2. Despite its appearance of "spot zoning," the land use character of rural and agricultural districts is not radically different; hence, the placement of this area into rural zone district will not be materially detrimental to adjacent land which is currently unused, undeveloped land.

"3. Access is available through an unimproved County road; water system nor electricity is available."

Staff recommended disapproval of this petition on the following summarized bases:

1. The petitioner has not submitted adequate "proof" as required by law.
2. The approval of this petition would be contrary to the intent and purpose of the Land Use Law and as interpreted by the Standards for Determining District Boundaries. The parcel is now appropriately in the Agricultural District.

The Executive Officer stated that approval of this petition would, in addition, be similar to spot zoning.

Commissioner Ota moved to deny the petition on the basis of staff recommendations. Commissioner Wenkam seconded the motion.

The Chairman then directed the Executive Officer to poll the Commission. The motion to deny the petition was carried on the following vote:

Approved: Commissioners Inaba, Ota, Wenkam, Burns, Nishimura and Chairman Thompson.

Disapproved: Commissioner Wung.

Absent: Commissioners Ferry and Mark.

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PETITION BY JOHN G. PEDRA (A(T)64-67), FOR AMENDMENT TO THE LAND USE DISTRICT BOUNDARIES FROM AGRICULTURAL TO RURAL FOR THE PURPOSE OF SUBDIVIDING A PORTION OF PARCEL 11 INTO TWO ONE-HALF ( $\frac{1}{2}$ ) ACRE LOTS: Described as TMK 9-5-12: Portion of 11 containing 1.00 acre, Naalehu, Kau, Hawaii

The Executive Officer presented a review and summary of the petition and outlined the area on a map. This petition is to amend the District Boundaries so that the land use classification of one (1) acre of TMK 9-5-12: 11, Third Division, is changed from Agricultural to Rural. The Hawaii Planning and Traffic Commission voted to recommend approval of the petitioner's request on the following bases:

- "1. The parcels to be created are to be given to the immediate blood relation of the parcel owner.
- "2. Said parcels are located in an area being used for the front yard of the existing structure; as such they never were used for agricultural purposes.

- "3. The land use character between rural and agricultural districts is very similar; consequently despite what may be termed "spot zoning", the rezoning will not incur detrimental effect on adjacent land, in this case used for grazing.
- "4. An existing County road provides access to the lot in question; electricity and water system are available."

Staff recommended denial of this petition on the following summarized bases:

1. There is inadequate proof that the land is "needed for a use other than that for which the district in which it is situated is classified" and that conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable.
2. Spot zoning of a one acre site would be contrary to the intent and purpose of State zoning.
3. According to the Standards for Determining District Boundaries, an Agricultural classification of the site is most appropriate.

Commissioner Wenkam felt that he would deny this petition but suggested that the Commission hold a public hearing and reclassify the whole area Rural.

Commissioner Wung moved to approve the petition. Commissioner Burns seconded the motion.

The Chairman then directed the Executive Officer to poll the Commission. The petition was denied on basis of the following vote:

Approved: Commissioners Wung, Inaba, Ota and Nishimura.  
Disapproved: Commissioners Wenkam, Burns and Chairman Thompson.  
Absent: Commissioners Ferry and Mark.

Referring to Commissioner Wenkam's statement, Chairman Thompson stated that the Commission has the prerogative to rezone the area as a Rural District. Commissioner Wenkam moved that the staff initiate studies to determine the feasibility of rezoning the vicinity of Pedra's lot into a Rural District. Commissioner Wung seconded the motion.

Upon instruction from the Chairman, the Executive Officer polled the Commission. The motion was carried on the basis of the following vote:

Approved: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura and Chairman Thompson.  
Disapproved: None.  
Absent: Commissioners Ferry and Mark.

The staff was further instructed by the Commission to inform the petitioner that the Commission is considering the possibilities of redistricting the area into a Rural classification.

PETITION BY DONALD G. KENDALL (A(T)64-68), FOR AMENDMENT TO THE LAND USE DISTRICT BOUNDARIES FROM AGRICULTURAL TO URBAN OF 352 ACRES: Described as TMK 1-4-03: 19 and 20, Puna, Hawaii.

The Executive Officer presented a review of the issues and outlined the area on a map. This petition is to amend the district boundaries, from an Agricultural to an Urban District, for Hawaii TMK 1-4-03: 19 and 20 which include 352 acres. The Hawaii Planning & Traffic Commission recommended the disapproval of this petition on the basis of the following findings:

- "1. Under Act 205, the establishment of urban district is guided by those lands now in urban use and sufficient reserve for foreseeable growth; hence, the above application is for an area not now in urban use despite the thousands of lots now in existence and furthermore, the applicant did not submit sufficient evidence of the urgent need for additional lots to be used for urban purposes.
- "2. The adjacent subdivision - Hawaii Beaches and Hawaiian Parks - has no water system nor other urban utilities and there is no evidence of urban development within said subdivision.
- "3. An urban-sized lot subdivision of 352 acres without sufficient evidence of demand and without assurance of minimum urban-type improvements such as water system, electricity and County standard roadways, will incur added burden on the County Government for public services such as fire and police protection, and school bus transportation among other demands."

The testimony of Mr. Donald G. Kendall, presented at the public hearing, was recalled and reviewed.

Staff recommended disapproval of this petition on the following summarized bases:

1. The petitioner has not submitted adequate "proof" as required by law.
2. The approval of this petition would be contrary to the intent and purpose of the Land Use Law as interpreted by the Standards for Determining District Boundaries.

Commissioner Burns moved to deny the petition based on the recommendations of the staff and Commissioner Wenkam seconded the motion.

The Chairman then directed the Executive Officer to poll the Commission. The motion to deny the petition was carried on the basis of the following vote:

Approved: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura, and Chairman Thompson.

Disapproved: None.

Absent: Commissioners Ferry and Mark.

APPLICATION OF KIYOSHI AND FRANCES MIZUTANI (SP64-1), FOR SPECIAL PERMIT FOR CONSTRUCTION OF A 12-UNIT TWO STORY MOTEL BUILDING IN NAWILIWILI, KAUAI: Described as TMK 3-2-03: 9 and 28, Fourth Division

Action on this petition had been deferred to this meeting. The reason for the deferral was to provide the County with an opportunity to submit any additional information. The County did not submit any additional information.

The Executive Officer presented a review of the petition and outlined the area on a map. The Kauai Planning and Traffic Commission has transmitted its unanimous approval of a special permit to Mr. & Mrs. Kiyoshi Mizutani to use TMK 3-2-03: 9 and 28, Fourth Division, with a gross area of approximately 2.06 acres, for the construction of a 12 unit two story motel building. Staff recommended denial of this petition.

Commissioner Ferry stated that Mr. Wong, Kauai Planning and Traffic Commission Director, advised him that strong measures on the part of the County would be made to preserve whatever investment any owner would make there. He also stated that he was encouraged after talking with Mr. Wong because at least Kauai County seems interested enough to give some weight to flood plain zone problems. He further stated that there are a few residences in the area and felt the Land Use Commission might have "miszoned" the area. He felt that this area might have been included in the Urban District.

Commissioner Wenkam stated that to grant the petition would not be satisfying the situation. To grant the special permit under these circumstances would be contrary to good planning and administrative procedures. He stated that planning should be of benefit to the community and not for specific reasons. He felt that if this petition was granted, it would be spot zoning. This area, under the present circumstances, as it exists today, is hardly suited for the purposes that is requested. Further, the petitioner's property is subject to flood damage. To build on this area without proper planning would be detrimental to the community itself. He stated that the water, sewage and roadway are inadequate. He felt that the Land Use Commission should deny the petition, but initiate hearings to provide for urban zoning of the area mauka of the road for a suitable distance in order to give the County room and permit them to initiate the necessary improvements for flood protection, roads and other activities.

Commissioner Nishimura stated that compared to other areas, such as Waimea, Hanalei, and Wailua River, this particular area was not flooded as bad as the other areas.

The Executive Officer stated that no evidence in justifying the change in zoning has been received. If approved, it would frustrate the intent in the development of orderly planning. He stated that the proposed use would be in conflict with the County and State General Plans. It is also in conflict with proposed County zoning. He pointed out the flood problems in the Puali and Nawiliwili Stream areas. He stated that the

mouth of streams was an important control point for flood flows and this was the area where most of the major stream improvements are made.

Commissioner Nishimura moved to approve the special permit on the basis that the area is contiguous to an urban area and because of the time element involved for constructing it. Commissioner Inaba seconded the motion.

The Chairman then instructed the Executive Officer to poll the Commission. The motion to approve was carried on the basis of the following vote:

Approved: Commissioners Wung, Inaba, Ota, Nishimura and Ferry.  
Disapproved: Commissioners Wenkam, Mark and Chairman Thompson.  
Absent: Commissioner Burns.

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APPLICATION OF DEPARTMENT OF LAND AND NATURAL RESOURCES (SP64-12), FOR SPECIAL PERMIT FOR ALLOWING THE CONTINUATION OF THE EXISTING HALE MANU CRAFT SHOP AND TO PROVIDE IMPROVEMENT AND/OR ADDITION TO IT LOCATED IN WAIAKEA, SOUTH HILO: Described as TMK 2-4-04: portion of 41 containing approximately three acres.

The Executive Officer presented the staff report and outlined the area on a map. The Planning and Traffic Commission of the County of Hawaii transmitted its approval of a special permit to the Department of Land and Natural Resources for the purpose of allowing the continuation and to provide for the improvement and/or addition of the existing Hale Manu Craft Shop in Waiakea, South Hilo, TMK 2-4-04: portion of 41 containing approximately three acres. He pointed out the guidelines of the Regulations and the comments of the staff. Staff recommended disapproval of this petition for special permit on the basis that the use, in the specific location, would not promote the effectiveness and objectives of the Land Use Law. Basically, the existing use is a non-conforming use. The intent is to eliminate such uses as expeditiously as possible. There is nothing unique at the site which is necessary for the operations - that is, the use should then be eventually located in an appropriately zoned area. (For detail, see filed copy of staff report on this petition.)

Commissioner Nishimura stated that lauhala industry is agricultural. He asked, "Are we going to discourage people from abandoning operations such as this? It is an agricultural product. Are we going to discourage people from improving or expanding their operation?"

Commissioner Wenkam felt that this is a manufacturing and retailing operation and not an agricultural operation because the materials that they use do not come from the area that they are located and, therefore, they would be more appropriately located in a more appropriately zoned district. He also felt that this substandard operation should not be encouraged. It is a purely commercial venture.



Dr. Mark asked if the State had any industrial land near the area. He was answered in the affirmative. Dr. Mark then felt that this operation should be in that area where such land was available.

The Executive Officer stated that the lease is coming to an end. In the Lease Agreement, a minimum \$10,000 improvement must be made. However, the terms of any proposed agreement are not a basis for decision.

Mr. Mar stated that if this building was demolished, Mrs. Park would not be able to afford another operation such as this. He also stated that the 15 people who are now employed by Mrs. Park would have to apply for welfare should this operation be abandoned. The question was whether it was an unusual and reasonable use. Mr. Mar further stated that Mrs. Park plans to plant the mature lauhala trees from the nearby forests on the premises.

Commissioner Ota moved to approve the petition submitted by the Department of Land and Natural Resources on the basis that it is an agricultural use and there is reasonable regulatory restrictions provided by the Department of Land and Natural Resources. Commissioner Nishimura seconded the motion.

During the discussion, the Executive Officer questioned the legality of the basis for approving the petition. He stated that when the Land Use Commission grant a petition, the basis should be one in the Law or the Regulations.

After further discussion, Commissioner Ota withdrew his motion and Commissioner Nishimura withdrew his second to the motion.

Commissioner Wenkam then moved to deny the petition on the basis of the staff report. Commissioner Inaba seconded the motion.

The Chairman instructed the Executive Officer to poll the Commission. The motion to deny the petition was carried on the basis of the following vote:

Approved: Commissioners Inaba, Ota, Wenkam, Mark and Chairman  
Thompson.

Disapproved: Commissioners Wung and Nishimura.

Absent: Commissioners Burns and Ferry.

The meeting then adjourned at 5:30 p.m.