

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Lanai Community School Library
Lanai City, Lanai

December 20, 1976 - 9:30 a.m.

Approved
March 9, 1977

COMMISSIONERS PRESENT: Eddie Tangen, Chairman
Stanley Sakahashi, Vice Chairman
James Carras
Charles Duke
Colette Machado
Shinsei Miyasato
Mitsuo Oura
Carol Whitesell
Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer
Michael Marsh, Deputy Attorney General
Benjamin Matsubara, Consultant
Dora Horikawa, Clerk Reporter

Ray Russell, Court Reporter

Chairman Tangen called the meeting to order and swore in all those planning to testify during today's proceedings.

REMANDED EVIDENTIARY HEARING - ALLAN DALE STARR

Mr. Benjamin Matsubara, Special Deputy Attorney General representing the Commission in the litigation arising out of the 1974 boundary review entitled Allan Dale versus the Land Use Commission, identified as Civil No. 2648, reported on the background relative to this matter presently pending before the Second Circuit Court in Maui, as follows:

1. On January 16, 1975, Mr. Starr filed Notice of Appeal in the Second Circuit Court of the Commission's denial of his boundary amendment request from Conservation to Urban for his Lanai property during the 1974 boundary review.
2. Judge Fukuoka of the Second Circuit Court remanded the matter back to the Land Use Commission for the purpose of permitting Mr. Starr to present further and additional evidence in support of his request to change the boundary designation from Conservation to Urban. It was for this purpose that the hearing was called today.

3. Judge Fukuoka had determined that since Mr. Starr's property is contiguous to lands owned by Lanai Company, the documentary evidence presented in the hearings on Lanai Company's petitions was also applicable to Mr. Starr's petition.

The parcel in question was identified on the map by Mr. Gordan Furutani, Executive Officer.

For the records, Mr. Michael Marsh, Deputy Attorney General, advised, and Mr. Matsubara concurred, that the court order granting Mr. Starr the motion to present additional evidence was limited to the evidence already contained in the Lanai Company's dockets in 1973 and 1974.

Chairman Tangen stated that the Commission will only accept evidence today and render a decision within the mandatory time as required by the statutes.

APPEARANCES

Mr. Tatsuo Fujimoto, Head, Land Use Division, representing the Department of Planning & Economic Development

Mr. Leland Spencer, attorney representing Mr. Starr

The Executive Officer read a letter from Mr. Toshio Ishikawa, Maui Planning Director, reaffirming the position taken by the County of Maui during the 1974 review, recommending denial of subject request based on the absence of adequate public facilities near the property, and the undue burden which would be placed on government to provide police and fire protection.

Exhibits

The following documents were marked for identification and introduced into evidence as Petitioner's Exhibits:

Exhibit 1 - Petition filed by Lanai Co. on Docket A74-349

Exhibits 2 through 29 - Various documents filed under Docket A74-349 (see list of exhibits in Allan Starr file)

Exhibits 30 through 37 - Various documents filed under Docket L74-3, Lanai Company (see list in Allan Starr File)

Exhibit 38 - Maps (Exhibits 1 through 14)

The following exhibits, upon which arguments will be referenced, were introduced by Mr. Matsubara and admitted:

All statements, letters, transcripts of Mr. Starr's participation before the Commission on all prior proceedings.

Mr. Spencer, attorney representing Mr. Starr, testified and was examined as set forth in the transcript on -----Pages

Testimony by Mr. Spencer -----11 to 16
19 to 25
34 to 35

Questioned by Vice Chairman Sakahashi-----36 to 39

Since there was no further discussion, the evidentiary hearing on the case of Allan Dale Starr was closed.

ACTION

SP76-253 - RICHARD SMART DBA PARKER RANCH
APPLICATION TO CONSTRUCT A SMALL ANIMAL SHELTER ON APPROXIMATELY
4,445 SQUARE FEET AT WAIKOLOA, SOUTH KOHALA, HAWAII

Mr. Furutani summarized the staff report relative to the subject Special Permit and pointed the area out on the map.

It was reported by the Executive Officer that the records did not indicate any response to the Department of Transportation's concern over the adverse impact upon the animals from the airport noise. Mr. Furutani observed that there were only 2 flights a day into Waimea.

Commissioner Oura moved to approve the Special Permit, subject to the conditions imposed by the Hawaii County Planning Commission. The motion was seconded by Commissioner Duke and unanimously approved.

A75-405 - KULA ALII, LTD.

In the matter of the boundary amendment petition by Kula Alii, Ltd., Docket A75-405, on which hearings were held on January 15, 1976, March 22, 1976, August 5, 1976 (petition as amended), September 24, 1976, the Commission discussed the following documents which had been previously distributed to the Commission members, prior to taking action on the petition:

1. Petitioner's Proposed Findings of Fact and Conclusions of Law
2. Michael Town's Proposed Findings of Fact and Conclusions of Law
3. DPED's Concurrence to Mr. Town's Proposed Findings of Fact and Conclusions of Law

4. DPED's Opposition to Petitioner's Findings of Fact and Conclusions of Law; Proposed Additional Finding of Fact by DPED; Proposed Conclusions of Law by DPED

For the record, Counsellor Marsh noted that both Commissioners Duke and Machado were excused from participating in the decision since they had either wholly and in part been absent during the proceedings. It was also confirmed that all of the Commissioners presently sitting at the table attended all of the hearings and were present throughout the presentation of evidence and arguments.

In reviewing the petitioner's proposed findings, the discussion focused primarily on whether or not there will be any significant adverse effects upon the agricultural uses of the area; the impact of further residential development on land values and the demand for urban amenities; the adequacy of water to accommodate agricultural and urban uses; the need for more low density housing in the Kula area; and whether the amendment was reasonably necessary to accommodate growth and development.

The Chair directed that the record indicate that the majority of the Commission members found that the subject petition meets the requirement of being reasonably necessary to accommodate growth and development as directed by the Interim Statewide Land Use Guidance Policy. The only dissenting position was registered by Commissioner Whitesell.

Mr. Town's proposed findings were discussed as set forth in the transcript on pages 67 through 79.

DPED's objections to petitioner's proposed findings, DPED's proposed additional findings of fact, etc. were also considered as set forth in the transcript on pages 80 to 87.

It was moved by Commissioner Yanai and seconded by Commissioner Miyasato to approve the petition. The Commissioners were polled as follows:

Ayes: Commissioners Carras, Sakahashi, Yanai, Oura, Miyasato, Chairman Tangen

Nay: Commissioner Whitesell

The motion to approve A75-405 was carried.

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