

Action A69-215

Puaala--800 acres on Molokai

August 14, 1969

7:00 p.m

Legislative Auditorium

Honolulu

(held same time as Adoption of Oahu Boundaries meeting)

Ron

Mr. Chairman, members of the Commission, the petitioners are asking that approximately 800 acres/now zoned agricultural-conservation be zoned in the urban district. The subject lands formerly in the property is substantially all of of Puaahala on the south shore of the island of Molokai approximately 8 miles ~~of~~ east of Kaunakakai between and Kawaeloa Harbor. Approximately 90 acres at the mauka end of the subject lands are in the forest reserve and zoned in the conservation district. from the property is the Paialoa Fishpond containing approximately 35 acres and also in conservation. The remainder of the property is in the agricultural district. Kam Highway, Kam V Highway, separates from approximately 68 acres on the makai side ~~of~~ the area in question of the highway on the mauka side. The makai side/is low with marshy sections whereas the mauka side is densely covered with brush and kiawe trees. The area is not in any agricultural use at the present time and may have been used for cattle grazing in the past. The Land Study Bureau has rated most of the land either D or E, poor or very poor for agricultural use. There are gulches on either side of the Mauka property in question. The petitioner, Mr. Paul Noel, proposes a resort-residential community development on the property. Mr. Noel proposes to have the reef dredged for

a yacht basin using the dredged material to fill the fishponds on the lower lands on the makai side of the highway. Agricultural lands on the mauka side of the highway have a slope of approximately 25%, which increases to possibly 40% in the forest reserve area. Adequate electricity and water will be made available for the development. The petitioners plan to build sewers also. C.R. Williams Company of Honolulu, managers of the Pacific Basin Travel System, a company constructing a chain of hotels in this state, has a contract to purchase 80 acres of the area in question--40 acres on the makai side, 40 acres on the mauka side of the road to construct a 250 unit hotel in the next years. The Maui County Planning Commission recommends that an urban designation be approved below the 250 elevation; the fishpond remain in conservation, and the dredging of the sea and the filling of the pond be processed in the Department of Land and Natural Resources; the area up to the 1000 ft. elevation remain unchanged to be developed later under the incremental zoning concept, all in accordance with the Molokai General Plans; and the area above the 1000 ft. elevation remain unchanged. The Land Use Commission staff recommended that the developer's general land use plan be approved in concept pursuant to the zoning and increment section of the new regulations and that the makai portion of the project in question below the 250 ft. elevation similar to the County recommendation involving approximately 165 acres be rezoned urban and permit the developers the opportunity

to complete the 250 unit hotel and marina on the makai side of the road and employee housing and a subdivision on the mauka side of the road. The developers' five year incremental schedule submitted in support of the petition includes the construction of 975 ^{hotel} units, marina, bar, yacht club, restaurant, launching ramp, marine fuel dock and 30 apartment units below some housing ^{this}

The staff recommended that/evidence be accepted as a condition to be substantially completed within 5 years

future purchaser or developer before rezoning any additional lands. It was also recommended that the signatures of the owners of approximately eight kuleanas be obtained before the rezoning is enacted or before the property is acquired by the petitioners. At the public hearing the petitioners both using their construction schedules submitted in support of their petition as a condition for future zoning. However rather than agreeing to construct 975 ~~1114/75~~ hotel rooms in the first five year development time table, they did agree to construct only 250 rooms. There was no suggestion as to the number of ^{employee} ~~employee~~ housing that would be constructed, or cost. Mr. Noel did agree to have the marina excavated, 25-30 apartment units, and an increment of residential lots constructed. No additional evidence has been received in the office since the public hearing other than a letter from Tony Worthington supporting the request because of the need for a marina in this area and serving that with the property in question providing boundary descriptions. Therefore the staff

maintains its original recommendation approximately 165 acres
makai of the 250 ft. be zoned urban district conditional
upon a five year construction schedule time performance
section of the new Land Use Commission regulations. It is
further recommended that setback from the water be established
for all buildings, particularly the sewage disposal plant
because of possible pollution of the sea, and to maintain and
enhance the of the shoreline. Are there any questions,
Mr. Chairman?

Why did you recommend getting the signatures of the owners of
the 8 kuleanas before proceeding? or acquiring it

Ron The reason for that is because if you will look at this map
you'll note that there are a number of shaded parcels within
the total area being considered for rezoning. Now we can't
zone these parcels without the signature of the applicants
and so if you were to rezone the area you would then end up
with a number of pukas within the urban district. This is
undesirable ~~from~~ from the standpoint of logical districting;
it would be better avoided. And so my condition was at ~~that~~ ^{that}
time if the applicants could purchase these kuleanas then of
course that would resolve the problem. I understand they
either have purchased some of that or are in the process of
purchasing ~~but~~ but I'm sure Mr. Izumi can expound on that.

Choi Any other questions?

___ Yes. Ron, did the petition proper consider the inclusion of the Paialoa Fishpond?

Ron It was their intention that that also be zoned urban.

___ Are there any marine values in there to be conserved?

Ron From the testimonies presented at the hearing at that time, there would appear to be no significant historical or marine or agricultural characteristics of this pond.

___ The reason why I asked is in your staff report that Mr. Noel proposes to have the reef dredged for a yacht basin using the dredged material to fill the fishpond and the low land to the makai side of the highway. I presume he is to fill the fishpond. Now if he is going to fill the fishpond I presume its going to take an urban like character in there that might necessitate urban zoning rather than having it in conservation and allowing the Department to implement this by way of reg. four.

Ron Yes. The proposal of the County was that it not be rezoned to conservation although the staff did recommend that it be rezoned to urban.

Choi Ron in that case the boundary that follows _____ on the makai side of the fishpond will be the urban boundary.

Ron That is correct. I believe that our consultants did not agree with that recommendation, however. I believed they endorsed a concept similar to that which was enacted by the Commission on Keia Fishpond, that is, a portion of the pond be retained as water recreational area.

____ Ron, may I ask one more question with respect to the fishpond; actually
 Isn't it ~~rather~~ a mudflat rather than a fishpond?

Ron At the time I visited the site it was high tide and it was
 under
 substantially ~~in/the~~ water.

Choi Any other questions?

Izumi My name is Izumi. I'm here on behalf of the petition
 on Puahala Property. I'd like to congratulate Mr. Duran
 on the excellent report except for a few points which need
 to be clarified . First of all I'd like to
 clarify the of the property, which is the subject
 for this petition. It does include all of the of
 Puahala and describes
 This comprises a net area after ^{lu}excursions being the
 shaded areas of some 783 acres. Since then, however, we have
 acquired three kuleanas and these are not shaded. I had
 submitted a letter to Mr. Duran in view of the possible mis-
 understanding we had at the last public hearing that
 these kuleanas are in fact owned by the Puahala Company. My
 document has already been filed on record in both the Land
 and Bureau of . Again, I'd like to
 identify these kuleanas that were acquired. In this portion
 here which is 56051, this unshaded kuleana, which is 56072, this
 unshaded kuleana which is 56074. With that in mind I'd like
 to briefly the petition

all the way through a public hearing by the Maui Planning Commission and we have the also a public hearing on June 28. And we have in particular the fact that the full time general plan which we're in the course of the Commission's consideration of the petition has since been adopted by the Maui Council on July 18, 1969 and includes the regions in which the subject property is located as the hotel and tourist designation area. I realize its been a long and torturous road for the of the Commission and the petitions and it seems in the course of the evidence and testimonies that were submitted and various public hearings and the hearings of special interest groups particularly on MolokaiNow coming back to the recommendation of the staff proposed in its report submitted at the June 28 meeting and finally in the report dated today for this meeting it is significant that the recommendation is consistent in that the staff ~~and~~ requested that areas makai of the 250 ft. elevation be zoned urban. In its first report it also remarked that this would include the filling of the fishpond for construction of the first phase development of a 250 unit resort hotel. So this is to lend emphasis to the fact that while he was on property, which is the subject of this petition along the fishpond the fishpond wall or the outer edge wall of the seaward boundary of ~~the~~ our property.

In connection with this project and I'm sure the the Commission noticed already from ~~g~~previous testimony the petitioner is in the process of finalizing engineering plans and construction design for the marina in the adjoining offshore waters and submerged lands which would be contiguous with the property in question. An application for work term permit has already been submitted to the United States Corps of Engineers and also to ~~t~~ the Harbors Division of the Department of Transportation. Now that's the substance of my remark and I'd like to conclude....

— Yes in the five year development plan at the time we submitted our report to Mr. Duran's office there was contained in the report explaining the adoption of the rules which you re~~a~~call on the public hearing on Maui we did confer with the principal of the five year incremental zoning plan and incidentally this is one point I'd like to clarify in view of Mr. Duran's report today

as a matter of fact this is not true.

If you remember in ~~Thur~~ ~~Thursday's~~ discussion under the old rules and the le~~g~~al enforceability of that green line here. abo~~v~~e the Kam V Highway.... proposed marina area that adjoins the property~~e~~. In addition to acquiring through appropriate governmental ~~agencies~~/ authorities including the Corps of Eng~~i~~neers and the Harbor Division for any use to be made of the offshore and the submerged land and the application for the marina which has to be submitted and has been submitte~~d~~ to the Dept. of Land and Natural Resources we can

jurisdiction in this area.

Ron Mr. Chairman, the report which I referred to which I thought was their five year projection was not agreed to. I raised that issue that originally they said that hotel in the first five years and we were talking in the end about our new regulations where the performance time section conditions in terms of the five year program might be opposed by the Commission...whatever be submitted as appropriate and that's why I question the 975 rooms, 365 lots and the 220 apartment units that you have said will be built in five years. But you didn't agree ~~to that~~ as a condition and it was toned down to agree to build 250 units, hotel units, and 20-30 apartment units and some lots. This is why I would like the record to be clear so that you may tell the Commission what you plan to build ~~in~~ in the next five ~~years~~ years.

Izumi construction was ~~the~~ the fact that condition contained in the report of June 28 meeting was to require an agreement to this and this obviously was before the effective day of the new regulations August 4. I had only your report at that time to consider. This was the reason

Ron Now that we understand this is not a argument what is it you propose

Izumi Substantially, because its the intent of the petitioner to request assuming a favorable position tonight to request from

the Maui Planning Commission by the filing of a petition

Monday that hotel medium within a county hotel fishing resort area makai of Kam V Highway for B1 business district for the area mauka and southeast of Kam Highway as well as A2 multiple family apartments and finally R3 residential.

Choi Mr. do you go along with this staff recommendation?

Yes I do to the extent that he recommends an urban designation for all lands makai of....

Yes I'd like to discuss that. I think that also needs to be clarified in that we had originally asked for the redesignation or redistricting of the entire Oahu which states that above the 1000 ft. elevation which goes into the forest reserve zone. This obviously was unrealistic but we did ask for the redesignation in that fashion. The we have since reoriented our aims that we have requested up to the 1000 ft. elevation and to a minimum of the 500 ft. elevation for contour. In light of the so-called five year development plan and by this I don't mean that additional or increase implies that it would be incapable of performing within the five year development plan up to the 500 contour that we decided to go along with the staff report to the 250 ft. elevation. Now this brought up the question of what would be the best evidence of an urban or land use district boundary. Rather than the kind of lines that are drawn on our land use district maps, the official maps on file as well as on the five year boundary review maps, we acceded to

the suggestion by Mr. Duran that we get a metes and bounds map. Now in all fairness to Mr. Duran what is designated ~~as~~ on the map before you as the proposed urban boundary line was purely a decision on our part to be as consistent as possible with the recommendations of the staff in both reports in that we felt the green line here which marks the upper 40 of Pacific Basin Land Corporation the title holding entity that the square lot area this strip of land would permit orderly planning and would allow the our ~~Y~~ engineers the latitude that they required for constructing designs of roads and for establishing a good road and lot pattern. And this is the only reason for establishing what we designate the proposed urban boundary on the upper reaches of this property.

Inaba On these shaded kuleanas, do you have a lease ability in the

?

Izumi No we do not.

Inaba Then in other words when we zone these properties we will zone something you don't actually own. You are not petitioner....

Izumi No sir, Mr. Inaba because if you will look at our petition as well as this map up here. On the map before you the shaded areas denote the areas excluded from the petition because we have no right either under the statute or the regulations since we're neither owners nor leasees nor interested parties of petitions for rezoning of those shaded areas.... My client is in the process of acquiring because these are undivided interests

and possibly in some cases there would have to be a petition filed in court for the determination of heirs and its a lengthy process so they are necessarily excluded.

Ron Mr. Izumi I understand the zoning of this area will be B1, business?

Izumi Yes

Ron Do you know how many acres will be involved?

Izumi No we're finalizing in view of the Countour Maps above the 50 ft. elevation we're finalizing these maps with Corporation which would give us a better idea of what the configuration of County use zone districts would be in that area.

Ron So at this time you don't even know if you're going to get this zoning from the county.

Izumi Obviously we don't know because we can't proceed

Ron Your general plan has nothing for a commercial area in there? You mean the County General...adopted by the Maui County Council? No.

Ron What about the parking area...?

Izumi No.

Ron What about hotels?

Izumi Yes.

Ron And what is the density of hotel zone...what would be the district be and the density permitted?

Izumi By recent amendment to the hotel district by ordinance number 590 these are the area height regulation and lot coverage regulation.

I'll cover them all if you wish, including density. Area regulations: minimum lot area shall be 10,000 square feet in H1 hotel district, 15 square feet in Hm and 20,000 square feet in H2 district. Minimum lot frontage shall be 70 feet for H1, 85 for Hm, and 100 feet for H2. On heights no building shall exceed two stories for H1, six stories in Hm, and 12 stories in H2 district. Lot coverage: the total ground area occupied by all buildings shall not exceed 25% of the lot area in H1, 30% of the area in Hm, and 35% in H2 district. It is our intent to request Hm.... By a curious circumstance the County of Maui has never had until recently a general plan for Molokai and has never adopted or implemented the general plan within the framework of the comprehensive zoning ordinance so what has been done on the island of Molokai you might characterize as a technical subterfuge. It should implement uses through the instrument of these variance.... four stories our present plan by.... I really can't say but according to the schematic that was supplied by at the public hearing for the subject property they will be going or rather for the Molokai rather Maui hotel development they are going four stories....

Ron Mr. Anderson testified at our public hearing that no building should be built higher than two stories on Molokai.

Izumi I don't recall that he did.

Ron How many hotel units do you propose ...

Izumi Initial phase development 250 units. In the first five year development plan it is our intention to adhere as much as possible to the schedule we submitted in our report to you to the extent that we're permitted to... oh we urban district up to the 250 ft. contour... No we don't. According to this report this has got to be updated 90 units.

___ Low income housing hasn't gone into that at all...

Izumi Well I don't know by what standard you would consider a unit to be a low income unit but there will be a concerted effort and this is a commitment on the part of the hotel developers in view of what they project to be a staff of hotel employees numbering 250 to provide appropriate housing for them for those who will require housing in that area.

___ So your objective is to house people who will work in the hotel area.

Izumi That's correct.

Nishimura Yes Mr. Chairman I think the policing power should be left up to the Maui Planning Commission.

Choi Any other questions? If not, thank you, Mr. Izumi....

Izumi Did you say beyond the fishpond wall? Our seaward boundary? ...Show the reef...and this is clear water, incidentally...if by high water mark you're talking about the legal implications that flow from that term, it doesn't apply in this case because we're talking about land property, which is registered.

So we're not concerned with the question of seaward boundary as described by words like "along the shore," or "along high-water mark!"

Choi In other words you have bounds... Your sea wall would be your

Izumi Right. That fixes for the purpose of ownership claim. It fixes permanently the extent of our property because its registered.

Choi Any other questions? (question raised)

Izumi In the makai forty we talked about it as being in the process of being acquired by PBLC would include a portion of the fishpond which incidentally measures some 26 or 27 acres or thereabouts.

The hotel would be sitting assuming the site preparation was completed the filling of the fishpond what would have been the fishpond before.... In a way I'm glad you raised the question and in a way I'm unhappy that you did because we're getting into a hairy situation and its my contention I'm expressing only my opinion based upon.... Well, since you asked its a legitimate question that needs to be answered based upon the Attorney General's of June 25, 1962 number 62-33 in which the and the results of purported Commission action to establish minimum size lots in the agricultural district the question was raised whether or not the Commission did have that authority under the statute and regulations applicable to both the Commission and the several counties within a zoning jurisdiction. And the conclusion there was

because by express reference in the Land Use Statutes it was conferred upon several counties within agricultural, rural and urban with specific zoning authority and because by further more specific implementation of this expression with other statutes authorizing the several counties with specific land within their boundaries. It is my opinion that the conclusion arrived at in that case by the Attorney General would be equally applicable in this case because the county in its zoning ordinance specifically provides for Yyard space including setback.

Mr. Chairman I don't know how we got over into the agricultural zone. I just want to ask whether you think its a desirable thing to have a shoreline setback for this property, thats all. I think that's what Commissioner Wung wanted to know.

Izumi There should be a setback from shoreline except that the ... county does not describe it this way because the setback requirements are measured from property lines. They don't distinguish shoreline as such, but from property line.

Ron Mr. Izumi what are the requirements in these three districts for setbacks from the property line?

Izumi I didn't bring that knowledge with me tonight...Yes. I was quoting from Ordinance 590 which is an amendment....

Choi setback required distinctive zoning
but you're trying to that hotel development
will have a setback from the shore

Izumi Absolutely yes in line with the minimum ~~zoning~~ requirements of the county zoning authority

Ron Mr. Chairman is it a fair question to ask if the Molokai Hotel has observed this setback requirement as prescribed by county ordinance?

Choi I don't think that's a fair question because we're not discussing Molokai

___ Mr. Chairman one question. What did the consultants have to do with the setback....

Ron Mr. Chairman is it a fair question to ask Mr. Izumi what he thinks the setback should be?

Choi I believe so, if Mr. Izumi would like to answer this question.

Ron Mr. Chairman with all this consulting could I read a letter to the Commission which has been received from the State Health Department and says "Gentlemen in as much as the proposed development above... the area in question is adjacent to Class AA ___ water area we would like to strongly emphasize that serious consideration be given to the providing of ample space for the treatment of sewage resulting from the proposed resort. Now is it a fair treatment to ask how far the sewage treatment plant will be set back.

___ Mr. Chairman I would like to get a clarification. Are we really talking about setbacks? Setbacks are problems of the County not of the State Land Use Commission. We're talking about establishing a conservation buffer zone around the shoreline. That's another

thing. But I think we're intermeshing conservation buffer zone with setbacks. Setbacks are the county's responsibility and the petitioner has the responsibility when making application for building permit to conform to the county building setback. I don't think its proper for the State Land Use Commission to impose ~~its~~ a building setback as such. If you want to impose a conservation buffer zone that's another question.

Izumi Mr. Chairman may I interject. I think I realize Mr. Wung's real concern with development along the shore. I didn't mean to because I didn't feel it was really pertinent to the discussion tonight to display the marina preliminary plans which were submitted to the . This will indicate the aesthetics along the ocean front for most essentially all of the seaward boundary of this property.

Choi Can you display that? Is the map large enough to be displayed?

Izumi Yes its a rather large map. This incidentally was drawn up to meet the requirements of the Corps of Engineers and the Harbors Division. First of all let me delineate the outer perimeter of the marina for which application has been made. It will be along this line. To orient you this is the south wall and this area is the existing fishpond.... We've designated a public along all of the shore frontage owned by along here and up to the of the marina. Now its our purpose to enhance the beauty of the shoreline because this is a beautiful area in that you have pure crystal water. Create a public beach

we would have absolutely no ownership interests in this area.

our own

We would be willing at ~~any~~ possible expense to create that beach to dedicate a right of way...providing access of boats to the marina. The developers and to the public beach. It may be somewhat premature insofar as and residential resources are concerned because in no way in our application to the Land Department did we allude in any way to a beach being created for the public. I'm sorry it had to come out this way....

Choi

It has been moved and seconded that the line as drawn on the map all land makai of that be zoned urban. Are you ready for the question?

Vote:

Nishimura--Aye
 Napier--No
 Kido--Aye
 Mark--Aye
 Yamamura--Aye
 Wung--No
 Inaba--Aye
 Choi--Aye