STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

County Board of Supervisors Chambers

Hilo, Hawaii

10:30 A.M. - June 17, 1966

Commissioners Present:	Myron B. Thompson, Chairman Shelley Mark Jim Ferry Leslie Wung Shiro Nishimura Charles Ota
Commissioners Absent:	C. E. S. Burns, Jr. Robert G. Wenkam Goro Inaba
Staff Present:	George S. Moriguchi, Executive Officer Roy Takeyama, Legal Counsel Ah Sung Leong, Draftsman Dora Horikawa, Stenographer

The meeting was called to order and a short prayer followed. Chairman Thompson apologized for the delay in the meeting. Procedures to be followed during the hearing were outlined and persons testifying were duly sworn in.

It was announced that there would be a change in sequence on the agenda.

ADOPTION OF MINUTES

The minutes of the following dates were approved as circulated:

October 29, 1965, November 5, 1965, November 20, 1965
March 25, 1966, April 14, 1966

ACTION

Upon the request of the petitioners, action on the following petitions were deferred to a later date:

A65-103 - Bishop Estate
A65-105 - Mauna Loa Development Corporation

see page 7

PETITION OF TAKESHI & CHIZUKO KUDO (A65-104) TO AMEND THE DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT AT KEALAKEKUA, HAWAII, identifiable by TMK 8-1-06: 13.

Mr. Moriguchi presented the staff memorandum recommending approval of the petition since all services required on urban lands were available, adjoining areas would not be adversely affected by the boundary change, and lands available for urban expansion in the area appeared to be limited.

Since there was no one present representing the petitioners, and no further discussion on the matter, Commissioner Ferry moved to accept staff's recommendation for approval of the petition, which was seconded by Commissioner Wung. The motion was carried unanimously.

PETITION OF A. C. AND EMILY F. GOUVEIA (A65-108) TO AMEND THE DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT AT LAALOA, NORTH KONA, HAWAII, identifiable by TMK 7-7-07: 18

Staff memorandum presented by the Executive Officer was for denial of the petition due to the lack of any justification for the need of additional urban lands and because the proposed use would contribute toward scattered urban developments.

The area in question was pointed out on the map by Mr. Moriguchi. It was also explained that Mr. Gouveia's property was partially planted in coffee and the surrounding area was of a rural residential nature.

In reply to Commissioner Ferry's question, Mr. Moriguchi advised that the areas colored in green indicated the most thriving agricultural lands in the area. Commissioner Ferry then commented that Mr. Gouveia was requesting an urban classification for a small parcel within a large Agricultural District.

Chairman Thompson observed that during the last meeting a member of the Hawaii Planning Commission had made the statement that the property abutting subject parcel was being considered for boundary change by the County of Hawaii.

Mr. Suefuji was of the opinion that reference was being made here to the study conducted by the Hawaii Planning Commission on future zoning of the area. The Statutes provide that 3-acre parcels may be included in the urban area. Upon survey, the Planning Commission found that both sides of the highway bounding subject parcel were lined with residences and felt that zoning this parcel for single-family dwelling would not constitute scattered zoning.

Mr. Suefuji thought that the Hawaii County Planning Commission would petition for a boundary change in the area within the next five or six months, although he was not certain about the exact acreage since the matter was still under review.

In view of Mr. Suefuji's foregoing testimony and the fact that the petitioner's request was for only a 3-acre parcel, Commissioner Ferry felt it more prudent to deny Mr. Gouveia's petition now and to review the more encompassing petition which will be forthcoming from the County at a later date. Therefore, Commissioner Ferry moved to accept the staff recommendation for denial of the petition, seconded by Commissioner Wung. The motion was carried unanimously.

PETITION OF ALEXANDER & BALDWIN, INC. (A65-106) TO AMEND THE DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT AT KAHULUI, MAUI, identifiable by TMK 3-8-07: 02.

Approval of the above petition was recommended by staff on the basis of the high rate of sales experienced by the Ninth Increment Development and because need for additional urban lands had been established.

There was no discussion on the matter.

Commissioner Ota moved to accept staff's recommendation for approval of the petition which was seconded by Commissioner Nishimura and passed unanimously.

PUBLIC HEARINGS

PETITION OF PARKER RANCH (A66-111) TO AMEND THE DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT AT WAIKOLOA, SOUTH KOHALA, HAWAII, identifiable by TMK 6-7-01: portion of parcel 3.

Staff report was presented by Mr. Ah Sung Leong which recommended disapproval of the petition since the petitioner had not substantiated the need for additional urban lands for U-drive and car rental businesses.

Mr. Leong advised that the terminal area was in the Agricultural District, and that the nearest urban area was approximately one mile away.

Commissioner Ota felt that since Kamuela was tied in with the resort complex, it should be preserved in the rural atmosphere as much as possible. He also cautioned against the possibility of commercial encroachment in the area once the 4-acre parcel was approved for urban uses. Kamuela is one of the last remaining airports with a semblance of open space and beauty, Commissioner Ota observed.

Mr. Suefuji was of the opinion that with proper landscaping, set-backs and planting of trees, the proposed use could be concealed from the highways. He also felt that this type of use would be in support of the tourist industry and should be considered in that light.

Chairman Thompson asked Mr. Norman Brand, attorney for the petitioner, whether Parker Ranch had considered coming in on a special permit rather than a boundary change, as suggested by Commissioner Nishimura.

Mr. Brand replied that since in either case the ultimate decision will be the same, Parker Ranch would be happy to withdraw the petition for boundary change and come in on a special permit if this approach would be more in keeping with the Commission's wishes. Chairman Thompson advised that the end result would not be the same.

Chairman Thompson continued that it was his personal feeling that the special permit would be more appropriate at this time, since boundary change could constitute spot zoning for this area.

Pursuing the matter along the same lines, Commissioner Ferry commented that it was conceivable that a special permit request would be approved in an Agricultural District for parking purposes. However, a boundary change would place the jurisdiction within the Hawaii County Commission and it was not wholly inconceivable that the parking use would eventually change to a commercial use.

Mr. Brand submitted that the staff report was invalid because he felt the decisions were based on faulty assumptions. He argued that no mention was made of parking stalls in the petition--however, Parker Ranch had been approached by businessmen over the possibility of establishing a base of operation. Kamuela was an actively growing community and although Parker Ranch had no interest in the matter, because of its position as controlling landowner in the district, it would be open to criticism on the grounds of ultra-conservatism or even obstruction should they choose to refuse these requests. Parker Ranch had a moral obligation to see that developments in the area are conducted in a manner harmonious and inoffensive to the community.

On the basis of opinions expressed during this hearing, Mr. Brand asked to withdraw the petition of Parker Ranch for boundary change with the idea of submitting a special permit request at a later date.

Chairman Thompson called for a 5-minute recess at 11:05 a.m.

The hearing was resumed at 11:10 a.m.

Chairman Thompson advised that the following had transpired during a conference with Mr. Brand:

1. Request for withdrawal of petition still stands, with the hope of submitting a special permit request at a later date.

2. Petitioner fully understands that this morning's discussion in no way indicated that a special permit would be considered favorably by this Commission--that all of the facts would have to be considered at the time of the meeting.

Chairman Thompson informed the Commissioners that they had a choice of one of two motions:

1. To deny petitioner's request for withdrawal of petition and proceed with the hearing.

2. Accept the request for withdrawal of petition, subject to a letter in writing making this request, to be submitted at a later date.

In reply to Commissioner Wung's query, Mr. Moriguchi advised that the $50.00 fee for the special permit was strictly a matter between Mr. Brand and the County of Hawaii since special permits are routed to the Land Use Commission through the County Planning Commissions.

Commissioner Ferry wondered whether petitioner would have the option of converting the boundary change petition to a special permit upon submission of necessary data. Mr. Moriguchi advised that this alternative would not be open to the petitioner inasmuch as special permit hearings were conducted by the County Planning Commissions.

Mr. Suefuji commented that the applicant should be made aware of the fact that there was a waiting period of 30 days before the County Planning Commission could conduct a public hearing on the special permit request and another 15 days before the County Planning Commission could render a decision.

Commissioner Wung moved to accept the request to withdraw the petition by Parker Ranch, subject to receipt of a letter from petitioner to this effect. Commissioner Mark seconded the motion and the motion was passed unanimously.

PETITION OF HAWAII COUNTY PLANNING COMMISSION (A66-115) TO AMEND THE DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT INTO AN URBAN DISTRICT AT LALAMILO, SOUTH KOHALA, HAWAII, identifiable by TMK 2 through 14

Mr. Ah Sung Leong presented the staff report in which it was recommended that the petition be approved since the Department of Taxation had included this area in its recommendations for Urban Districts, facilities and services were readily available and the area was contiguous to an Urban District.

Mr. Raymond Suefuji stated that based upon staff investigation of the area under petition, it was felt that this should have been included in the Urban District. This is an area already built up with single family homes. The matter was brought to the attention of the Planning Commission by Mr. Lloyd Kaneshiro who owns a parcel in the affected area.

Mr. Takeyama, legal counsel, brought up a procedural legal point since the subject lands were not owned by the County but by several landowners. He advised that advertisement of a public hearing in a legal notice in a newspaper of general circulation was not sufficient--that each property owner affected by the boundary change should be informed individually of the public hearing to be held. He pointed to the possibility that there may be some objections to the change in boundary.

Chairman Thompson commented that the subject area was already being assessed as an Urban District. Commissioner Ferry felt that a drafting error might have occurred at the time the final boundaries were drawn.

Mr. Takeyama advised that two approaches were available to the Commission to resolve this problem:

1. Defer the public hearing and have the staff send out letters or notices of public hearing to be held at a later date to each landowner affected by the petition.

2. Request the County to obtain signatures from each landowner affected by the petition, assenting to the request for boundary change, and submit them as part of the petition.

Replying to Mr. Suefuji's argument that property owners other than those whose properties were directly involved in the petition in the immediate area were also going to be affected by the boundary change, Mr. Takeyama commented that his concern was for procedural safeguard against any criticisms or complaints that might result from inadequate notification to persons whose properties were being proposed for a boundary change.

Inasmuch as the Commission had 45 days in which to offer a decision on the petition, Commissioner Ferry suggested that the Hawaii County Planning Commission be requested to obtain signatures from those property owners whose properties were directly involved in the petition, assenting to the proposed boundary change. He added that the State was amply represented on this Commission.

Mr. Moriguchi raised the point as to whether this procedure would have to be followed in the future in the event the County or State initiated a boundary change even though it might involve 300 separate property owners.

Mr. Takeyama advised that a letter by mail to each property owner advising him of the public hearing would be adequate.

Chairman Thompson wondered about the legal implications of past decisions rendered by the Land Use Commission, involving petitions initiated by the State or County, on which individual notices had not been served to individual property owners.

Mr. Takeyama replied that as far as he knew all of the government-initiated petitions had been for boundary changes on lands owned by either the State or County.

Mr. Takeyama further advised that there was a technical difference between the drawing of the district boundaries and making a boundary change. In the former instance, the Commission had pursued the matter on the basis of its rule-making powers. In the latter instance, the Commission is exercising a quasi-judicial right on contested cases, and the procedure for contested cases requires personal notices to the parties involved and public advertisement is not adequate.

Referring to Mr. Suefuji's earlier argument, Mr. Takeyama felt that the notice requirements to property owners of adjacent lands may not be the same as the notice requirements to property owners whose lands were subject to change.

Commissioner Ferry moved, seconded by Commissioner Nishimura, to request the Hawaii County Planning Commission to obtain signatures from the affected property owners, consenting to the proposed boundary change from Agricultural to Urban within 15 days of this hearing. The motion was carried unanimously. The hearing was closed thereafter.

PETITION OF HAWAII COUNTY PLANNING COMMISSION (A66-117) TO AMEND THE DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT INTO AN URBAN DISTRICT AT PUNAHOA, HILO, HAWAII, identifiable by TMK 2-3-39: 3, 5, 6, 7 and 8

Staff recommendation, as presented by Mr. Moriguchi, was for approval of the petition since the adjacent areas were presently in intense urban use, all community and utility services were presently available and the lands were adaptable for urban purposes. It was also recommended that parcel four be included for change upon concurrence by the petitioner.

Mr. Suefuji commented that the background on this petition was similar to that of the foregoing petition just heard. He added that the area was presently developed and the Hawaii Planning Commission felt it should be included in the Urban District based on its actual use.

Commissioner Wung moved that the Hawaii County Planning Commission be requested to obtain signatures from the affected property owners consenting to the proposed boundary change from Agricultural to Urban within 15 days of this hearing. Commissioner Nishimura seconded the motion and it was passed unanimously. The hearing was closed thereafter.

DECLARATORY RULING - CONCRETE INDUSTRIES INC.

Staff evaluation of the request by Concrete Industries, Inc. resulted in its recommendation to rule that only the crushing and screening plants were direct accessories to the permitted use within an Agricultural District. (See copy on file.) A letter, dated June 6, 1966, from Concrete Industries, Inc. was also presented by Mr. Moriguchi. (See copy on file.)

Chairman Thompson summarized that the request was to include ready mix plant, asphalt, block, cast concrete and pipe plants as accessories to excavation or extraction of natural building materials.

Mr. Moriguchi commented that the Commission should consider whether these facilities as listed in the staff report were permitted uses, being direct accessories to permitted uses within an Agricultural District.

Mr. John Russell of Concrete Industries, Inc. referred to Section 2.14 (m) of the State Land Use District Regulations "Permissible Uses Within the Agricultural District" and commented that mills, storage and processing facilities were considered direct accessories to the permitted uses. In futher-

ance of this argument, he submitted the following definitions:

Mills - Crushing activities, crushing of rocks

Processing facilities - The ready-mix plant, asphalt plant and other plants needed for processing

Mr. Russell reiterated that it was their feeling that the facilities located at the quarry where the rock was excavated should be considered as processing facilities, which are permitted uses under Section 2.14 (m).

Chairman Thompson observed that there was a difference in definition of permissible uses under Section 2.14 (m), as submitted by Mr. Moriguchi and Mr. Russell.

Mr. Moriguchi commented that the mere fact that the Regulations contained the words "mills" or "storage facilities" did not mean that these were allowed. They had to be part of a permitted use and tied to a basic use.

Mr. Takeyama raised the question of whether requests for declaratory rulings, such as the one under discussion, should not go through the special permit route, wherein notices would be duly publicized to afford interested persons an opportunity to express their views on the matter.

Mr. Moriguchi clarified this by stating that the Concrete Industries had already been advised to this effect, that in fact a special permit had been filed with the Maui County Planning Commission. However, to keep things rolling, a declaratory ruling had also been sought.

Chairman Thompson expressed the concern that if a declaratory ruling were made on the Concrete Industries' request today, it would drastically affect the Land Use Regulations and all state concrete plants.

Commissioner Ferry remarked that he would be hesitant to establish precedents by concurring with the applicant that the proposed activity would fall within the District Regulations, and that he would prefer to evaluate the matter on a special permit application.

Commissioner Ferry moved to accept staff's recommendation in declaring a ruling that the only item falling within the Land Use Regulations as a permissible use be the crushing and screening plant. The motion was seconded by Commissioner Ota and carried unanimously.

The meeting was adjourned at 12:30 p.m.