

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing
and Meeting

State Highways Division
Hilo, Hawaii

9:30 a.m. - October 29, 1966

Commissioners Present: Myron B. Thompson, Chairman
C. E. S. Burns
Robert Wenkam
Jim P. Ferry
Leslie Wung
Goro Inaba
Shiro Nishimura

Commissioner Absent: Shelley Mark

Staff Present: George Moriguchi, Executive Officer
Roy Takeyama, Legal Counsel
Ah Sung Leong, Draftsman
Dora Horikawa, Stenographer

A short prayer was offered by the Chairman, followed by an introduction of the Commissioners and staff and a brief outline of the hearing process. Individuals testifying during the hearing were sworn in.

Chairman Thompson advised that a rearrangement of the agenda had been necessitated and that the items requiring Commission action would be considered first.

ADOPTION OF MINUTES

Minutes of the August 5, 1966 hearing and meeting were approved as circulated.

ACTION

PETITION OF IIDA SUBDIVISION (A65-102) TO RECLASSIFY APPROXIMATELY 5.3 ACRES AT MIKIOLA, KANEOHE, FROM CONSERVATION TO URBAN, identifiable by Tax Map Key 4-4-13: portions 55 and 56

Staff memorandum, presented by Mr. Moriguchi, recommended denial of the petition based on the extensive grading that would be required and the possible resultant slide and storm water hazards to the abutting landowners.

Commissioner Wenkam brought out the point that on this and previous occasions, the recommendation from the City and County Planning Commission did not seem to reflect any consideration from the resultant slide and water hazards

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VERBATIM TRANSCRIPT OF PROCEEDINGS

REQUEST OF BISHOP ESTATE FOR A DETERMINATION OF THE HEEIA FISH POND LAND USE DISTRICT BOUNDARIES AT HEEIA, KOOLAUPOKO, OAHU, Identifiable by Tax Map Key 4-6-05: portion 1

George Moriguchi

We have a map that indicates the area in question. We have a letter from the Bishop Estate, Mr. Chairman (see copy of letter on file dated October 20, 1966 presented by the Executive Officer). As far as the staff's report is concerned, we refer to Part III of our Regulations which reads as follows:

"Unless otherwise indicated, all areas of the State having an elevation below high-water mark are classified "C", although the district boundary lines which reach the sea are extended, for convenience of reading, a short distance offshore. All off-shore and outlying islands of the State of Hawaii are classified "C" unless otherwise indicated."

And it would appear to the staff that it is clear that the fish pond in Heeia is within the Conservation District according to our maps. There has been a similar situation that came up --Kahaluu Pond--which also on that map you have. City and County at one time issued a permit to permit the owner to fill that fish pond. They started this and the City was contacted by the Department of Land and Natural Resources inquiring why and on what basis this permit was granted since the pond is in Conservation. Upon receipt of that letter, the City backed off and said they made a mistake, this is in Conservation, so they stopped filling of the Kahaluu Pond, which to me is an identical situation as far as designation is concerned.

Chairman Thompson Are there any questions from the Commissioners?

Shiro Nishimura What kind of development is this? Is that going to be filled up?

Moriguchi Mr. McCormack showed me his development plans. He has development rights for the pond area extending mauka across the highway and into the valley. They have varied uses. The mauka portion would be more residential and he has indicated by letter from the Bishop Estate, down near the pond area, they plan for residential and town house developments.

Thompson Will you be making the plans available?

Michael McCormack I don't know very much about the situation.

Thompson: This is not really necessary, because the question before us is: is this Conservation or is it Urban? And we're going to make a determination at this time. That's the basic question. Are there any further questions for clarification? If not, I'll ask the petitioner to make a presentation.

Roy Nakamoto Attorney I do not think I have anything further to add at this time, except that I think the facts have been stated very well by the staff member. Just a matter of interpretation. And the Bishop Estate letter sets forth their position as to why they feel it should be Urban District rather than Conservation District.

Thompson Now the thing I have a question about this is this letter from the Bishop Estate. Item 2 states that "the fish pond is not indicated as conservation on the Land Use District Map". Is this correct?

Moriguchi On that map right before you, Mr. Chairman, we do not indicate the Land Use districting. The onshore lands, as you can see by the shaded pink on your map, are all shown as Urban. To cover anything offshore under water, you have promulgated Part III of the Land Use District Regulations that blankets all offshore lands as Conservation.

Thompson One more question: Item 4 by the Bishop Estate. The "Detailed Land Use Plan of the City and County of Honolulu for Heeia indicates residential use of the fish pond area".

Moriguchi This is their General Plan.

Thompson So then the question before us today is: Is it Conservation or is it Urban? That's what we're going to be taking a ruling on.

Robert Wenkam I don't see how we can take a vote on it, according to our Regulations as it is.

C.E.S. Burns The Regulations spell out fairly clearly that this would naturally fall into the Conservation area.

Nishimura Maybe we haven't explored the area of the fishing industry. I see no reason why we should go into areas where it's natural for raising fishes. We're trying to revive fishing for one thing and our supply of fish is getting less and less. Here we're trying to destroy the natural habitat of fish. I personally frown on things like this that they're trying to develop.

Thompson At this point, the Regulations make it clear that this is a Conservation District.

Nishimura And to circumvent this law to make things available for his own personal gain-- I think that's really going a little too far.

Thompson This is another side of the coin too. There's another side too. How economical will pond fishing be? We don't know.

Burns Do we need action in terms of a vote?

Thompson I think Bob is right. We don't need a declaratory ruling on this because it is within our Regulations here.

Burns How did it come to us? Where did it come from? In terms of a letter from the Bishop Estate? Wouldn't we solve this problem by answering their letter and sending a copy to Jim Ferry?

Wenkam I think with appropriate quotation from our Regulations.

Thompson This gentleman wants to make a statement. Would you raise your right hand please. Do you solemnly swear that the testimony you will give before this your Land Use Commission is the truth, the whole truth, and nothing but the truth, so help you God?

McCormack I do. My name is Michael McCormack and we are the developers of the land. This gentlemen did not know that we were going to be here and I thought that it might be important to clarify how this came about.

The Bishop Estate and ourselves, as the developers of the land holding a development agreement, never even considered the fact that this was under Conservation. And in an informal discussion with Mr. Moriguchi from the State Land Use office, a question came up about filling of a pond, and he made a remark that he thought it was in Conservation. This prompted the action on this that it might be in Conservation. I read the Regulations, informed the Bishop Estate and my father about the circumstances and, of course, they didn't even believe that this was in Conservation. There was never any question. So we spoke to George and someone from the Bishop Estate called George and he suggested that we deal with Mr. Ferry from the State Land Board because this was under his purveyance. We talked to Mr. Ferry and he pulled out his maps and he said "I'm sorry, as far as I'm concerned, it's not in Conservation. At least it's not that clear to me. I don't feel you're under my jurisdiction". We talked to George again and other Bishop Estate trustees. We're not waiting to go right out in there and raise high rises or anything like that. We have some outstanding plans for the area. But we didn't want to sit and let this thing drag on and on with this doubt in our mind. So Mr. Moriguchi recommended that we write the Land Use Commission giving the points and the reasons we felt it was in Urban, on which there had been no question about. That's how this

came about. So as I understand it, this body is to make a determination to interpret whether this was Conservation or Urban. As Mr. Moriguchi said, it does not indicate Conservation on the Conservation maps, nor does it indicate Urban. However, our maps are planned and as you know when the State law was passed, the green belt law, many of the landowners were asked to come in to present their plans on which lands they wanted in Conservation, sort of a mutual plan. Without a doubt, I can say emphatically that the Trustees or their representatives presented a comprehensive plan that has been adopted by the City and County of Honolulu, which shows this in a residential and urban use when the law was passed. And as I understand it, the maps are the law that define boundaries. In other words, what was the intent when the law was passed? Was it that this pond was to be in Conservation, or was it that this pond was to be included in the Master Plan of the Bishop Estate lands which ran from the mountain to the sea. So that was one point that I thought I would like to bring back out. It's sort of a reiteration of the points made in the Trustees' letter. Another one was that offshore islands are not marked Conservation, is that what you stated, George?

Moriguchi They are Conservation unless indicated otherwise.

McCormack Right. And for example, look at the map of Coconut Island and all the islands around this piece of land that we're speaking of. All are marked with a C or Conservation though this particular piece is not.

The other thing in regard to fish ponds. I'm not an expert and I wouldn't want to get into a long discussion over this--as far as the raising of the fish is concerned--the pond has been abandoned over three years ago. The continual problem they have with the upper basins of water here--completely washed out the walls in about 5 areas and restoration of the pond is estimated to be in the neighborhood of \$50,000. So from the standpoint of raising fish, it doesn't seem economical or possible. I wanted to make that remark in passing.

And the last point was there was never any question over, for example, a similar body of water on the other side of the island--Mr. Kaiser's pond, Kuapa Pond. You might be familiar with that. They're filling that today and that I don't believe was classified Urban as such but it was a fish pond. Perhaps George can clarify that.

Moriguchi Mr. Kaiser submitted extensive plans to the Commission and those areas were districted Urban specifically.

McCormack I'm just wondering why because our plans were also submitted at the time the law was adopted. In other words, on the map that Jim Ferry has in his office, it would show a "U" on it. Is that correct on the Kuapa Pond?

Moriguchi The portions they're filling, yes.

McCormack I realize that you have been doing a lot of work with the Trustees. I just happen to be one individual developer of the Trustees of the Bishop Estate and I realize that their lands come under a lot of controversies as they own a lot of property in here. We only happen to hold the development rights in this property and I might say, as stated earlier here, that there has never been any question in our minds at all. We feel the intent at the time the law was passed that this was to be developed as Urban, so did everyone till we discovered

that there was this question.

And the other point that was made is that the fish pond wall itself, which is the outer perimeter, is out of the water almost all of the time. In fact, all of the time. It's not submerged at all which is the outer boundary of these land court plans. Anyone have any questions?

Nishimura There is a movement, in fact the State has made movements to try to buy kuleanas--so-called fish ponds. On the Island of Kauai, they bought out the Kalihiwai Kuleana. Under the kuleana system it was kapu--you cannot go in--out of the jurisdiction of the public. So the State has no say and they felt that they would like to open it up for fishing. We really should make a good study of this so-called off shore lands.

We're also making a shoreline study now. I don't know whether it's completed but we're having a study going on. I think these are some of the things that the public is not aware of and I for one have been in the fishing industry for many years. I know some of the problems of the fishermen, the lack of facility for tuna fishing--these are some of the problems that I think we should really bring up and see if we can work up something in the interest of the public.

Thompson I think this is important, Shiro, what you brought up. It should be gone into from the economic development point of view. But the problem facing us today -----

Nishimura I sympathize with the developers. They're in a position where they don't know whether they're in Urban District or whether they have a right to go and develop this.

Thompson Roy, as I understand it, unless it's otherwise indicated, a declaratory ruling is not necessary because of the statement.

Takeyama Well, it's a question of interpretation and I think George has stated very clearly that all offshore lands below the highwater mark are Conservation. So it's very clear now, in order to satisfy the Bishop Estate maybe we should take action and say so.

Thompson And this can be handled administratively--we don't need to take a vote on it?

Roy No, I don't think so.

Thompson We will reaffirm the intent in terms of the fish pond area. We'll reaffirm our original intent in terms of zoning of fish pond areas as specified in our Regulations. A letter will be sent to Bishop Estate.

Nakamoto May I ask on that. Did you say that the regulations refer to Part III of the Regulations? Is this similar to Section 2.9?

Takeyama No, I don't think you have that. It's the maps filed with the Lieutenant Governor's office along with that.

Nakamoto Because paragraph 2.9 (e) says "coastal areas having an elevation below high-water mark may be included in this district". So that it would require

determination on the part of the Commission if this particular section is followed rather than the other one.

Takeyama This is Part III of the Land Use district boundaries where it is clearly stated " unless otherwise indicated, all areas of the State having an elevation below high-water mark are classified "C" ". The other one is just a standard in determining boundary changes. There is more than one standard. These are the standards used in determining whether amendment to boundaries are to be granted or in establishing boundaries.

Wenkam Instead of drawing boundaries on the map for all coastal Conservation areas, it merely, in a paragraph, states what the coastal Conservation areas are.

Takeyama I think it should be made clear that the area you are concerned with--under the temporary district boundaries, was also included in the Conservation District. So the question of not knowing whether that land was in Conservation or not is not totally accurate. Because under the temporary district boundary, which was adopted in 1962--it says the same thing: "All areas in the State having an elevation below high-water mark are classified "C"." What was adopted in August 23, 1964 is exactly the same as this. So Bishop Estate, at the time they submitted the General Plan, was aware of this temporary district boundary and at no time, as I can remember, brought this point out, that this pond should have been in Urban.

McCormack How would you determine high-water line? ,

Nishimura The water line they refer to is the high tide and low tide and they make a compromise between there. Even the courts don't understand that but there is an understanding among most people.

Moriguchi It doesn't make too much difference to you Mike, because the pond goes straight down when it fluctuates. The area is still about the same. Most of it is under the water.

McCormack What would you interpret the relationship of the high-water mark to the wall?

Moriguchi I think you have a right in saying it is unclassified.

McCormack In the wall itself?

Moriguchi Yes.

Thompson Any other questions:

McCormack There is no voting action taken by this Commission, is that correct?

Thompson No voting action is necessary.

McCormack What would be the procedure for an appeal? Or the next step? We could ask for a petition, is that right? To the State Land Use Commission for a boundary change since in general discussion you felt that it is in Conservation. The other alternative is to apply to the Land Board.

Thompson Yes.

Takeyama May I ask, George, are they asking for a declaratory ruling?

Moriguchi This is my understanding of my discussion with the representative of the Bishop Estate.

Takeyama Are they asking for a ruling on this? Then I would suggest that if they're asking for a ruling, they're entitled to a vote and action by this Commission. Because they may want to appeal our ruling to the Circuit Courts and they can't appeal the ruling unless they get an order stating that we interpret this boundary to be in the Conservation District.

Burns Why do we have to re-vote? We have said that this is in Conservation. Otherwise, we would be subject to re-voting everytime somebody asks.

Takeyama It's on the question of interpretation of boundary. If you're saying that this is clearly that, no interpretation is necessary.

Thompson It isn't a matter of shifting that line around. The fish pond, according to our regulation, is in Conservation.

Nishimura And if they want to appeal that it's up to them.

Thompson This question gets back. Then they could come in for a boundary change or go to Jim Ferry's office. Either one, And then if we deny at that point, they can appeal it.

McCormack I think we would like a specific response of some kind because this is what prompted the request in the first place. The Trustees didn't even want to write a letter. They said "what are we writing for? Doesn't make sense. As far as we're concerned, it's Urban. Go right ahead". In effect they said just what you said: "We don't think we have to discuss this--as far as we're concerned, it's Conservation". That's what you're saying. As far as we're concerned, it's in Urban. And then Jim Ferry says "not under my jurisdiction". So we're in limbo.

Thompson No, you're not any more.

Takeyama I stand corrected because it says "Commission may issue a declaratory ruling". It doesn't say it must.

Moriguchi A letter to the Bishop Estate.

Takeyama Which is about the same thing.