

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

County Board Room - Lihue, Kauai

October 1, 1965 - 2:20 P.M.

Commissioners
Present:

Myron B. Thompson, Chairman
C.E.S. Burns
Jim Ferry
Charles Ota
Goro Inaba
Leslie Wung
Shiro Nishimura

Absent:

Shelley Mark
Robert G. Wenkam

Staff Present:

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

Chairman Thompson called the meeting to order, followed by a short prayer.

SPECIAL PERMIT APPLICATION BY COMMUNICATIONS SATELLITE (SP65-18) TO CONSTRUCT
AND OPERATE A COMMUNICATION SATELLITE EARTH STATION AND RELATED FACILITIES WITHIN
AN AGRICULTURAL DISTRICT, TMK 5-9-06: 5

Mr. George Moriguchi presented the staff report and the Findings of Fact transmitted by the City and County Zoning Board of Appeals, in which it was recommended that a special permit be issued to the Communications Satellite Corporation to operate and construct a communication satellite earth station, because the request was for an unusual and reasonable use within the area, it would promote the effectiveness and objectives of the State Land Use Law, and the proposed use will not alter the essential character of the surrounding area.

Commissioner Ota expressed concern over the possible construction of additional facilities and accessories in the future, and the danger of developing a small community within a so-called prime agricultural area.

Mr. Moriguchi stated that according to the data submitted by the petitioner, the request was specifically for construction of antenna and related facilities and did not include houses and accessories.

Mr. Thomas P. Goodbody, attorney for the petitioner, reassured the Commissioners that the Communications Satellite Corporation was directed by an Act of Congress to proceed forth with this project specifically, and that there was no request for apartments or housing construction. For this reason, the land use will be restricted for this purpose only.

Commissioner Wung moved to approve the petition as recommended by staff, which was seconded by Commissioner Nishimura. The motion was carried with Commissioner Ota casting the only dissenting vote.

PETITION OF AMITY DEVELOPERS (A65-88) TO AMEND THE URBAN DISTRICT BOUNDARY AT KALANI-IKI, OAHU, SO AS TO INCORPORATE ABOUT 20.221 ACRES IDENTIFIABLE BY TAX MAP KEY 3-5-24: 9

Mr. George Moriguchi presented the memorandum prepared by staff on the above petition, in which it was recommended that the Land Use Commission rule that the project be permitted to proceed as a non-conforming use, based upon the following facts:

1. On December 19, 1963, the project was granted tentative approval by the City Planning Director. Temporary district boundaries were in effect at that time and lands of the subject parcel were within the Urban District.
2. On September 28, 1964, the Building Department issued a building permit for the construction of 6 units at the subject project.
3. On November 12, 1964, the City Planning Department granted tentative approval on a revised plan.
4. On February 8, 1965, a grading permit was issued.
5. On July 13, 1965, the Department of Land and Natural Resources approved construction of 21 of the 95 units of the project.
6. On July 19, 1965, the developers were issued a building permit for the construction of 14 units on the project.

Mr. Moriguchi read a letter submitted by Mr. H. William Burgess, attorney for the petitioner, in which he requested that the Land Use Commission make a determination that the subject petition qualifies under the "non-conforming" clause as defined in Part II, State Land Use District Regulations, Sub-part A, Section 2.19. (See copy of letter on file). Each Commissioner was handed a copy of the letter.

The steep lands recommended for non-use in the staff report were pointed out on the map by Mr. Moriguchi. He verified the fact that these lands were requested for development in the plans submitted to the Planning Department of the City and County.

It was also established that the interim urban boundaries which were in effect at that time included the subject lands; however, when the final boundaries were established, the urban line was changed to its present location. The City and County Planning Department recommended approval of the petition except for two steep portions.

Chairman Thompson stated that the petitioners were requesting a ruling on the total area based upon the preliminary approval.

Commissioner Ota commented that if the Commission ruled that the petition qualified under the "grandfather clause", we would be running away from the issue of non-use of the steep lands as recommended by the City Planning Department, unless we modified the boundary.

Commissioner Ferry felt that due to the sequence of events, the staff's recommendation to rule on the "grandfather clause" was entirely proper, and that the Commission did not have the jurisdiction to consider a boundary change at this time.

Upon Chairman Thompson's invitation, Mr. William Burgess, attorney for the petitioner, requested that Mr. Lee, who was the Planning Director of the City Planning Department at the time the project was first submitted to the Planning Department, be allowed to testify on behalf of the petitioners.

In reply to Mr. Takeyama's question as to whether approval was granted for the subdivision or for the use, Mr. Lee replied as follows: "In this case, on April 23, 1965, the State Land Use Commission had adopted an interim boundary within which this subdivision fits. We felt that in granting a tentative approval of the subdivision, we were complying with the State Land Use Commission's tentative boundary. That takes care of the State Land Use Commission. Specifically, for my part as Planning Director on the City and County level, we were granting a subdivision as such and the subdivision was a division of lands of one larger parcel, 3 smaller parcels--one parcel to remain with the Bishop Estate, one parcel to go to Amity and, within that one parcel, another parcel which was supposed to be for roads. Later, the sequence of events was such that they decided the road parcel should be eliminated and that they wished to retain ownership to increase the privacy of the area. At that time, they came back to me and asked that the road be deleted. The only method of deleting that was to resubmit new maps which would indicate subdivision of the two lots rather than subdivision of three lots."

Mr. Lee continued that in December of 1961, the City Planning Commission, by Resolution #406, zoned this area class A-1 residential area. Upon that the State Land Use Commission had super-imposed another requirement.

Commissioner Ferry wondered whether Mr. Lee had also given approval to the physical development of the subdivided 20-acre parcel. Mr. Lee replied that approval was given to the subdivision of three separate parcels for which a plan was submitted, provided they complied with certain requirements of the city agencies. Insofar as the condominium subdivision was concerned, Mr. Lee stated that there was no clear-cut ruling. The developers were required to check with the fire and police departments for adequate protection, and with the City Engineer for garbage service.

Commissioner Ferry commented that the Planning Commission now had some reservations about the development of the higher slopy areas, and wondered about the developers' plans in this connection. Mr. Lee advised that approval had been given by his department for the subdivision, but that this matter had never gone before the Planning Commission because it was out of their jurisdiction. The only way this could take place was to petition the Land Use Commission for boundary change, who in turn would seek the Planning Commission's recommendation.

Commissioner Ferry raised the question of whether Mr. Lee's approval, at the time he was the City Planning Director, would super-impose the decision of the present director. Mr. Lee advised that when he gave tentative approval to the developers' plans, he was acting as an agent of the City and County of Honolulu, and that his decision would have legal status and would hold.

In response to Commissioner Ferry's query as to whether the developers would carry out the recommendations of the Planning Commission, Mr. Tharp of Amity Developers stated that they had originally requested approval for 126 units but following their topographical survey, they had cut this request down to 95, and that additional units will be removed from the area. Mr. Tharp said that they were interested in developing a plan that would be a credit to the community.

Chairman Thompson asked for additional testimony and clarification from Mr. Roy Takeyama, legal counsel. Mr. Takeyama made the following statement: "Staff's recommendation is based upon the fact that approval was granted by the Planning Director. I am in agreement with the staff-however, I am not in agreement as to the basis upon which petitioner has submitted it. In other words, petitioner is arguing that it falls within Rule 2.19B. I cannot read 2.19B as a provision upon which the petitioner can fall within a non-conforming use. This is a parcel which involves subdivision plans. However, I think Rule 2.18A regarding lawful use of land--lawful use being based mainly upon the fact that the petitioner has gotten the approval of the planning director, satisfying their mandates, and the substantial amounts of time and money spent, give him the vested right to continue. On those bases and facts presented, I am of the opinion that staff recommendation is in order."

Chairman Thompson directed that Mr. Takeyama's testimony be included in the records.

Commissioner Wung moved to accept the staff recommendation, which was seconded by Commissioner Burns. The motion was passed unanimously.

APPLICATION BY AMADOR DEL CASTILLO FOR A SPECIAL PERMIT (SP65-7) TO CONSTRUCT AN "ADULT CARE HOME" ON 1.53 ACRES OF LAND DESCRIBED BY SECOND DIVISION TMK
2-7-25: 4

Staff memorandum was read by Mr. Moriguchi (see copy on file) in which denial of special permit was recommended, based on the guidelines as set up and mandated for evaluation of special permits. Action on this request had been deferred at the August 20, 1965 meeting, pending receipt of recommendations from the Department of Health and Department of Social Services. Subsequently, these letters had been received and Mr. Moriguchi presented them to the Commissioners. Their recommendations were for approval of the special permit due to the need for such a facility in the community.

Replying to Commissioner Ferry's remark that the staff sought recommendation from the Department of Social Services and the Department of Health, yet maintained its original recommendation for denial, Mr. Moriguchi advised that these recommendations were sought at the request of the Commissioners and not by the staff.

Commissioner Ferry observed, with dismay, that many of the mainland cities have located their convalescent and nursing homes in noisy urban areas which did nothing to contribute to the patient's comfort or well-being. Fortunately, here

in Hawaii, the Land Use Commission could allow for this type of facility to be located away from an intensely developed urban area.

Mr. Moriguchi advised that there were minimum care requirement standards set up by the Department of Social Services for nursing homes.

Chairman Thompson brought out the fact that the Department of Health had jurisdiction over granting of licenses for these homes and therefore will be supervising all such facilities. It was also pointed out that no objections had been raised by property owners in the vicinity.

Commissioner Ota added that there was a definite need on Maui for a facility such as the one Mr. del Castillo was proposing. The present trend was to get away from pensioner's home and camp facilities, especially since many of the plantations were closing down. Mr. del Castillo's nursing home would serve retired plantation workers of Filipino extraction, primarily.

Chairman Thompson commented on the great need for special homes for mentally ill and retarded persons. He was of the opinion that these homes would be better served near urban facilities. In 1965 a housing act was passed and one of the provisions was that landowners charge reasonable fees, and that the federal government would supplement the difference.

Due to changing times and the severing of old ties, there will be a greater need for special care homes for the aged.

Commissioner Inaba moved, seconded by Commissioner Ota, to grant the special permit because the request was reasonable and unusual. The motion was carried unanimously.

PETITIONS OF ARTHUR AND DORIS ACHOR (A65-85) AND STANLEY & SACHIKO TABA (A65-86)
TO RECLASSIFY 5.6 ACRES AND 12.8 ACRES IN AN AGRICULTURAL AREA INTO A RURAL
DISTRICT

Chairman Thompson wondered if the two petitions could be discussed together since they were adjoining properties. Mr. Takeyama, legal counsel, advised that this was permissible but that action on the petitions would have to be voted upon separately.

Staff reports were presented by Mr. Moriguchi in which denial of both petitions was recommended on the following bases:

Achor - A65-85 - Mr. Achor and his former wife are merely asking to have the land subdivided for convenience in selling the lots. The area is agricultural in nature as evidenced by dedication of approximately 1,300 acres for agricultural purposes.

Taba - A65-86 - Petitioner contemplated use of portions of the land for commercial purposes. The area is agricultural in nature as evidenced by dedication of approximately 1,300 acres for agricultural purposes.

Mr. Moriguchi also read affidavits filed by Mrs. Bonnie Dunford and John D. Texeira supporting approval of the above two petitions on the basis of the need and great demand for rural lands.

Mr. Moriguchi explained that Mr. Taba's plans for the 12.7 acres included subdividing the land into half-acre lots, plus a garden-type tourist attraction for which a fee would be charged. Commissioner Ota felt that this was a permitted use in an agricultural area--that it was no difference, for example, from a golf course. Commissioner Ferry wondered whether a special permit would be required by the petitioner for a fee garden-type operation, even if the Commission zoned the area as a Rural District. Chairman Thompson directed Mr. Takeyama to look into this matter and advise the Commission.

Commissioner Nishimura expressed his feeling that since the petitions involved small parcels of land contiguous to urban areas, the Commission should grant the petitioners' requests.

Commissioner Burns wondered if any objections to the petitioners' requests had been voiced by landowners in the vicinity, to which Commissioner Nishimura replied in the negative.

Mr. Takeyama reported on the matter of the special permit in connection with Mr. Taba's petition. According to the petitioner's plans, a fee garden was contemplated only after subdivision of the property, and Mr. Takeyama's opinion was that this was no different from the growing of crops for sale, which was a permitted use.

Commissioner Nishimura added that the Kauai Chamber of Commerce had on file 250 letter requests regarding availability of lands for retirement or second homes.

Commissioner Ota commented that if the petitioners were granted the rural classification, this might serve as a logical buffer from urban to rural to agriculture since lands along the main road across the subject parcels were in urban and the mauka area was in rural.

Commissioner Ota moved that A65-85, Arthur and Doris Achor, be reclassified from an Agricultural to a Rural District, since the subject parcel was not an economic unit for agricultural pursuit and abutted a Rural District. Commissioner Inaba seconded the motion. The Commissioners were polled as follows:

Aye: Commissioners Inaba, ota, Burns, Ferry, Chairman Thompson.

No: Commissioner Wung

The motion was carried.

Commissioner Nishimura moved to approve A65-86, Stanley and Sachiko Taba, for change of boundary to a Rural District since it abutted the urban area and was rural in nature, seconded by Commissioner Ferry. The motion was carried unanimously.

REQUEST BY JOSEPH PARK

Mr. George Moriguchi read a letter written by Mr. Joseph Park, requesting reevaluation of District Boundary from urban to agricultural. Staff memorandum (see copy on file) recommended that Mr. Park's request be considered favorably since staff felt that classification of the subject parcel from agricultural to urban was the result of an oversight and should have properly been classified as agricultural.

Mr. Park agreed with the staff's recommendation and presented several documents and letters supporting his claim that his parcel was inadvertently zoned urban (see letters on file).

In response to Mr. Moriguchi's question, Mr. Park stated that the classified lease use for his property was strictly agricultural. Mr. Park only became aware of the discrepancy when he went to dedicate his land at the tax office, at which time he was informed that only his parcel in the area had been designated urban.

Commissioner Wung moved to accept the staff recommendation, seconded by Commissioner Nishimura. The motion was passed unanimously.

ADOPTION OF MINUTES

The following minutes of the previous meetings were approved as circulated:

July 23, 1965
July 27, 1965
August 2, 1965

A short recess was called by Chairman Thompson. Meeting was resumed at 4:30 p.m.

DETERMINATION OF LANAI CITY BOUNDARY LINE

Mr. Moriguchi advised the Commission that a request had been received from Mr. Robert Ohata, Planning Director of Maui Planning & Traffic Commission, for a delineation or interpretation of the Urban Boundary around Lanai City since they were ready to begin on a general plan for Lanai. Mr. Moriguchi indicated that the red boundary line was somewhat non-conforming and recommended that the green boundary line be established as the urban area.

Commissioner Ferry wondered if the green line could be construed as the finer delineation and the accurate urban boundary line. Mr. Takeyama advised that if the ambiguity was the result of a drafting error, the Commission could make a ruling on it. After some discussion, it was the consensus of the Commissioners present that an obvious error had been made by the staff.

Commissioner Ferry moved that the green line, as recommended by staff, be adopted as the urban boundary for Lanai City, seconded by Commissioner Inaba. Motion was carried unanimously. Commissioner Ota commented that any future similar discrepancies should be brought to the attention of the Commission.

Meeting was adjourned at 4:45 p.m.