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"THE ATTORNEY GENERAL OF HAWAII"
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State of Hawaii
LAND USE COMMISSION

April 3, 1975

Mr. Eddie Tangen
Chairman, State Land
Use Commission
250 South King Street
Honolulu, HI 96813

Dear Sir:

We have reviewed the Petition for a Declaratory Ruling by Robert Way, Chief Planning Officer, City and County of Honolulu, and recommend that said Petition be dismissed for the following reasons and authorities:*

1. Clarification of Conditions

The Petition, filed August 21, 1974 by Mr. Way, requested a "clarification of the intent and degree of the type of conditions referred to in Section 2.351(a), (b) and (d), Part II, of the State Land Use Regulations, hereinafter 'LUC Regulations.'"

Sections 2.351(a), (b) and (d) read in parts as follows:

*Section 1.20(c) of the Commission's Rules provides that the "Commission may, without notice or hearing, dismiss a petition for declaratory ruling . . . for other good and sufficient cause." It should be noted that Section 1.20(d) permits a petitioner to request a hearing for the disposition of the petition. Petitioner, the record reveals, did not request a hearing.

We note from the Commission's records relating to the amendment of Part II of the LUC Regulations that Mr. Way testified at the public hearing on the proposed amendments.

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- (a) In approving a petition for boundary change, the Commission may impose conditions necessary to uphold the general intent and spirit of the Land Use Law and Regulations and to assure substantial compliance with representations made by the petitioner in seeking the boundary amendment.
- (b) Such conditions may require the petitioner or subsequent developers or landowners of the property rezoned to adhere to representations made by the petitioner. The Commission may further require periodic status of development reports; notice to the Commission of the landowner's intent to sell, lease or assign the property other parties.
- (d) Conditions, if any, imposed by the Commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer.

Mr. Way further stated that "Because of the very general language of Section 2.351(a) and because there are no guidelines or tests, except those set forth in Sections 2.30(b), (c) and 2.31(a) and (b), an uncertainty arises as to what type of conditions are . . . necessary to uphold the general intent and spirit of the Land Use Law and regulations."

This Commission, subsequent to the Petition filed by Mr. Way, instituted rule-making proceedings to amend Part II of the LUC Regulations, including that section which is the subject of Mr. Way's inquiry. The amended LUC Regulations, which became effective on January 5, 1975, amplified in Section 2.12, Subpart G, the Commission's intent and purpose regarding conditions to be imposed on the Petitioner.

We therefore conclude that the Petition for a Declaratory Order is moot since the Petition is seeking a declaratory ruling of regulations that have been repealed. Anderson v. Cain, 27 Haw. 415 (1923); Territory v. Damon, 44 Haw. 557 (1960); In Re Kuwaye Bros., 50 Haw. 172 (1967).

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2. Clarification as to whether conditions constitute a contract or conditional zoning.

In answer to the question as to whether the conditions imposed on any petitioner constitute a conditional zoning or contract, we attach an opinion by the Attorney General's Office (72-8), indicating why the Land Use Commission can legally impose conditions.

Very truly yours,



HARRY S. Y. KIM
Deputy Attorney General

Att. 2/2.