

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing
and Meeting

Lihue Police Station
Lihue, Kauai

August 26, 1966

Commissioners

Present:

Myron B. Thompson, Chairman
Jim P. Ferry
Robert G. Wenkam
Shelley Mark
Goro Inaba
Leslie Wung
Shiro Nishimura

Absent:

C. E. S. Burns

Staff Present:

George S. Moriguchi, Executive Officer
Roy Takeyama, Legal Counsel
Ah Sung Leong, Draftsman

Chairman Thompson opened the public hearing and meeting with a short prayer, followed by an introduction of the Commissioners and staff members, outline of the procedures to be followed, and swearing in of persons testifying during the hearings.

APPLICATION OF MCBRYDE SUGAR COMPANY, LTD. (SP66-30) FOR A SPECIAL PERMIT TO BUILD A SMALL AIRCRAFT RUNWAY AT KOLOA, KAUAI

Staff report (see copy on file) was read by the Executive Officer in which it was recommended that the application be approved since the proposed use may be classified as an unusual and reasonable use.

Mr. Moriguchi advised that the five-year lease referred to in the staff report was a stipulation imposed by the petitioner. The intent here was to enable McBryde Sugar Company to replant the area at some future date, should they choose to do so.

Mr. Moriguchi further elaborated that the construction of the aircraft runway would have to meet all federal and state requirements, and that the request was only for a 100' x 2600' strip and did not include any building or other facilities.

Commissioner Wenkam moved to approve the special permit as recommended by the staff, seconded by Commissioner Nishimura. The motion was carried unanimously.

PUBLIC HEARING

PETITION OF LIHUE PLANTATION COMPANY, LTD. (A66-124) TO AMEND THE URBAN DISTRICT BOUNDARY AT LIHUE, KAUAI FOR APPROXIMATELY 4.5 ACRES. PRESENTLY IN AN AGRICULTURAL DISTRICT

Mr. Moriguchi presented the staff report (see copy on file) recommending approval of the petition as modified.

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Commissioner Wenkam brought out the fact that at the time of the last request by Lihue Plantation to reclassify agricultural lands to urban, due to the frequent recurrence of these requests, the Commission had requested staff to report on lands master-planned for urban uses by Lihue Plantation with the idea of entertaining a motion to bring this to a public hearing. He added that the Commission had acted previously to reclassify all lands master-planned for urban uses for other large landowners, under a single motion.

Mr. Moriguchi agreed to check back into the records and report on the Commission's request.

A detailed and comprehensive discussion of the surrounding uses, slopes in and around the area, elevations, depths of the lots, etc. was held by the Executive Officer and the Commissioners.

Commissioner Wenkam expressed his concern over setting a precedent by allowing the petitioner to build houses on the steep slopes, although he felt that in this instance it was a reasonable use due to the flatness of the major portions of the lands.

Chairman Thompson felt that this would not constitute a precedent since the Commission had taken similar action previously, that instead it could be considered as an adjustment.

Commissioner Nishimura commented that he could see no justification for urbanization of the yellow area jutting out as shown on the map. Mr. Moriguchi explained that the yellow area was actually the road.

Mr. Clinton Childs, representing the petitioner, presented his testimony. He commented that in order to upgrade the uses in the commercial area which heretofore had been interspersed with residences, they had moved the employee housing to the residential area. He added that these were not newly constructed homes.

In reply to Commissioner Wenkam's earlier reference to a master plan by Lihue Plantation, Mr. Childs advised that they were presently in the process of contacting John Carl Warnecke & Associates to conduct an analysis and re-evaluation of Lihue's holdings. They felt this was in order since their last master plan was six years old. Mr. Childs did not think the new master plan would be completed for several months.

Commissioner Nishimura expressed concern over Lihue Plantation's reluctance to urbanize its lands despite the great demand by the people for such lands. Mr. Childs disagreed and replied that Lihue Plantation was just as interested in making more lands available for urban purposes.

Replying to Commissioner Inaba's comments about the adequacy of urban lands for the next ten years in Lihue as specified by Mr. Hansen during a previous hearing, Mr. Childs agreed that the statement was true - that this included a particular type of homes requiring certain architectural standards and in a higher price level, differing from the normal type of subdivision. He interpreted "normal" subdivision to mean tract-type homes varying in price from \$11,000 to \$30,000.

Commissioner Wenkam wondered if it would be feasible to continue the public hearing on the petition by Lihue Plantation until such time as the Commissioners

were able to examine the new master plan. Mr. Moriguchi advised that the deadline for the hearing on this petition was September 8, 1966. Commissioner Wenkam continued that he wanted to be fully satisfied that the extension of the urban boundary was in keeping with the proposed master plan. Mr. Childs thought that it was probably just outside of the master-planned urban area.

Mr. Takeyama advised that since the law specifies that the public hearing shall be advertised within 60 to 120 days, it would have to be held within a reasonable period of the specified number of days. It would be difficult to observe this stipulation if the hearing were postponed, in this instance, since there was no assurance of the completion date of the master plan.

Commissioner Nishimura referred to the master plan prepared by Mr. George Houghtailing and Mr. Childs replied that the Commission was in possession of a master plan in its files. He added that Lihue Plantation was not contemplating a new master plan - they were requesting a re-evaluation and analysis of the existing one.

Chairman Thompson felt that a deferral of the hearing was not justified at this time.

Mr. Walter Bryant, an interested party, urged that the Commission not delay action on the petition and give it its favorable consideration.

Since there was no further testimony, the hearing was closed.

ACTION

PETITION OF JOHN M., MARIE V., AND JULIET MEDEIROS (A66-114) TO RECLASSIFY APPROXIMATELY 18 ACRES OF LAND PRESENTLY IN AN AGRICULTURAL DISTRICT TO A RURAL DISTRICT AT OMAO, KOLOA, KAUAI

Staff memorandum (see copy on file) presented by Mr. Moriguchi recommended approval of the petition since there was no adverse testimony presented at the public hearing or the period following thereafter.

Motion to accept staff recommendation for approval was made by Commissioner Nishimura, seconded by Commissioner Ferry, and carried unanimously.

PETITION OF JOHN COSTA AYRES (A66-116) TO RECLASSIFY 1.2 ACRES OF LAND FROM AGRICULTURE TO URBAN, AT LAWAI, KAUAI

Recommendation for approval of the petition was made in the staff memorandum (see copy on file) based on the fact that topographically the subject parcel was a part of the upper plateau of the existing Urban District.

Commissioner Wung's request for background information was supplied by the Executive Officer.

Commissioner Ferry moved to accept staff recommendation for approval of the petition, seconded by Commissioner Nishimura, which was passed unanimously.

PETITION OF WILLIAM FERNANDES & MARGARET ARCIA (A66-120) TO RECLASSIFY APPROXIMATELY 55 ACRES OF AGRICULTURAL LANDS TO A RURAL CLASSIFICATION AND APPROXIMATELY 5 ACRES OF URBAN LANDS TO A RURAL CLASSIFICATION

Staff recommended approval only for change of the fifty-five acre portion from Agricultural to Rural. The five acre portion involving change from Urban to Rural was not recommended. It was also recommended that the Commission initiate a petition to reclassify the three parcels fronting on the south side of Opaekaa Road from Agricultural to Rural, in the event that the Fernandes-Arcia petition was approved.

Commissioner Ferry moved to accept staff recommendation, seconded by Commissioner Inaba and the motion was passed unanimously. Commissioner Nishimura was not polled for this motion.

PETITION BY LAND USE COMMISSION TO RECLASSIFY THE THREE PARCELS FRONTING ON THE SOUTH SIDE OF OPAEKAA ROAD FROM AGRICULTURAL TO RURAL

It was moved and seconded that the Land Use Commission initiate petition to reclassify three parcels fronting on the south side of Opaekaa Road from the Agricultural District to the Rural District. The motion was carried unanimously.

REQUEST OF MAUI COUNTY PLANNING COMMISSION FOR RECONSIDERATION OF PETITIONS

At the request of the Chairman, Mr. Moriguchi gave a resume of the events leading up to the present request by the Maui County Planning and Traffic Commission to reconsider the Commission's decisions on three petitions involving lands in Maui, namely:

1. 58 acres from Agricultural to Rural
2. 6 1/2 acres from Agricultural to Rural
3. Approximately 15,000 square feet at Iao Valley, Kepaniwai Park, from Conservation to Rural

In addition, Mr. Moriguchi continued, the Commission was also in receipt of a resolution from the Maui County Board of Supervisors (see copy on file) also requesting reconsideration.

Chairman Thompson reminded the Commissioners that the Commission's policy in the past had always been for reconsideration of a decision only up to twenty-four hours following the decision, and thereafter all decisions became final.

Chairman Thompson observed that, at this point, the most logical course for the petitioners was to submit another petition with additional evidence which would be heard at another public hearing. The floor was opened for discussion.

Commissioner Ferry expressed surprise to learn of the Commission's decision on all three petitions, upon his return from the Mainland, since he was familiar with the areas involved and did not feel that any of them were controversial matters. He also pointed to the fact that there were only four Commissioners present at the time of the public hearings of the subject petitions.

Commissioner Wenkam stated that considerable discussion had taken place during the deliberation of the three petitions and that if there was additional

information now that had not been available at the time of the hearing, it would be wise for the petitioners to present it.

Mr. Takeyama, legal counsel, advised that in the light of the policy adopted by the Commission, it would not be possible to entertain a re-hearing of petitions. However, there was nothing in the Land Use Law nor in the Rules and Regulations that stipulated a time limit for reconsideration of petitions. On the other hand, he did feel that reconsideration should be entertained within a reasonable time following decision - say two days at the most.

Commissioner Wenkam raised the question of the propriety of changing the policy to accommodate one petitioner. Mr. Takeyama replied that since the policy was adopted by the Commission, the Commission was also empowered to change the policy. However, whether this would constitute a precedent was for the Commission to decide.

Commissioner Wenkam commented that if the petitioner could present additional new information never presented before, the Commission could re-open the petition or reconsider it.

Chairman Thompson summarized that the thinking of the Commission was to communicate with the Planning and Traffic Commission of Maui, recommending that new petitions be submitted with additional evidence.

For the records, Chairman Thompson advised that according to the law, the Executive Officer was empowered to conduct a public hearing by himself in the absence of any other Commissioner.

COMMUNICATIONS FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES

Mr. Moriguchi referred to two communications which were received by the Land Use Commission from the Department of Land and Natural Resources (copies transmitted to each Commissioner):

1. Decision of the Board of Land and Natural Resources to permit Hawaii Loa College to utilize approximately 149 acres of State lands for construction and operation of a four-year liberal arts college.
2. Notice of public hearing held on the application of Valley of the Temples Corporation for the proposed cemetery use of approximately 216 acres in the Conservation District in Ahuimanu Valley.

Commissioner Ferry agreed with Chairman Thompson that these communications were transmitted merely to keep the Land Use Commission apprised of applications either pending or acted upon by the Land Board within the Conservation District. The Land Board was not actively seeking any reaction or recommendation from the Land Use Commission.

Commissioner Ferry added that cemetery use was not covered within the permitted uses under Regulation IV of the Land Board; thus, necessitating a public hearing.

Commissioner Wenkam contended that at the time of the public hearing involving subject lands, the owners had indicated that they would not require any additional lands for development in the future if the Commission would place the conservation boundary as requested by the owners. Chairman Thompson concurred with

Commissioner Wenkam that this information would be relevant to the records of the Land Board.

Since cemetery use was not permitted in either the Conservation or Agricultural District, Chairman Thompson wondered if it more properly belonged in the Urban District. Commissioner Wenkam felt that a memorial park constituted one of the best uses within a Conservation District. Commissioner Ferry added that leading conservationists were exponents of the theory that cemetery uses were the highest uses within the Conservation District.

PETITIONS INVOLVING SUBSTANTIAL ACREAGE OF LAND

Chairman Thompson reviewed the thinking expressed during previous meetings with respect to special permit applications pending before the Land Board involving substantial acreage of lands:

1. Request for change of land use involving substantial acres should be referred to the Land Use Commission for boundary change.
2. Staff was directed to meet with the Land Board staff to arrive at some criteria for "substantial" acreage.

Commissioner Ferry argued that "substantial" on Oahu and "substantial" on Hawaii could have wide variance due to the differences in land ownership, population, etc.

Commissioner Ferry suggested that the Land Use Commission could, upon its own motion, initiate a petition for boundary change whenever it felt that the projected uses within the Conservation District were objectionable. He felt that the time factor in holding such a public hearing could be worked out between the two agencies.

Chairman Thompson commented that this was an approach which had not been considered during the previous meetings and that this was the kind of thinking the administration was seeking.

SALT LAKE APPLICATION

Commissioner Wenkam requested some affirmation or consensus from the Commission with respect to the reasons Salt Lake was placed in a Conservation District. He was convinced that the decision was based on very definite reasons in light of the fact that the surrounding areas were placed in urban.

Commissioner Ferry offered that his reason for voting it into the Conservation District was based on the fact that it was a body of water.

Chairman Thompson felt that Commissioner Wenkam's request for a consensus from the Commission on the reasons behind the decision to place Salt Lake in the Conservation District was unreasonable, coming at this time. However, the transcribed tape of the proceedings involving Salt Lake might provide the answer and the discussion could be re-opened at that time.

It was pointed out that the tape for this particular hearing had not been transcribed due to staff shortage. Requests for additional staff had never been

resolved. Commissioner Wenkam requested and Chairman Thompson directed that the minutes for the Salt Lake hearing be transcribed.

NEXT MEETING SCHEDULE

It was decided that the next Land Use Commission meeting will be held on September 16, 1966 at 9:00 a.m.

HOUSE RESOLUTION ON THE MATTER OF RURAL AND AGRICULTURAL LANDS

Chairman Thompson reminded the Commission of the pending House Resolution concerning conveyance of rural and agricultural lands to family members.

In the opinion of Mr. Takeyama, he did not believe this was a legal matter. Rather, during discussions the Commission had raised the question of good planning and had felt that allowing non-conforming subdivisions in a Rural or Agricultural District to accommodate a few families would be contradictory to the Land Use Law. However, a recommendation to the Legislature was in order. Chairman Thompson agreed that a study should be conducted and a recommendation readied for the next Legislature.