

Ref. No. LUC 58

January 22, 1964

Planning and Traffic Commission
County of Hawaii
Hilo, Hawaii

Attention: Mr. Edgar A. Haasu, Planning Director

Gentlemen:

The Land Use Commission in action taken on January 13, 1964, voted to deny the petition for special permit, SP(T)63-3, submitted by W. H. Shipman, Limited on the basis that the matter was not a proper subject for special permit. The Land Use Commission staff report is attached for your information.

It should be noted that the Land Use Commission received the full arguments by the petitioner and agreed to consider them prior to adoption of final district boundaries. As soon as the minutes can be prepared, we shall submit it to you for your information.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

Attachment

cc: Mr. L. N. Nevels, Jr.
Mr. Myron Thompson
Mr. Roy Takeyama

LAND USE COMMISSION
STATE OF HAWAII

Minutes of Meeting

LUC Hearing Room

Honolulu, Hawaii

9:00 A. M. - January 18, 1964

Commissioners

Present:

C.E.S. Burns
James P. Ferry
Goro Inaba
Shiro Nishimura
Charles S. Ota
Myron B. Thompson
Robert G. Wenkam
Leslie E. L. Wung

Absent:

Shelley Mark

Staff

Present:

Raymond Yamashita, Executive Officer
Roy Takeyama, Legal Counsel
Gordon Soh, Planning & Economic Development
Richard Mar, Field Officer

The Chairman called the meeting to order, followed by an opening prayer. Introduction of the Commissioners and staff members was made by Chairman Thompson, who then outlined the procedures to be followed throughout the meeting.

APPLICATION OF W. H. SHIPMAN, LTD. (SP(T)63-1), FOR SPECIAL PERMIT TO SUBDIVIDE AND DEVELOP AN INDUSTRIAL PARK ON APPROXIMATELY 19 ACRES OF LAND SITUATED IN PUNA, HAWAII: Described as First Division, TMK 1-6-03.

The Chairman requested that all persons who would be participating and giving testimonies on this matter to stand and be sworn in. All complied.

Mr. Gordon Soh outlined and described the area and request involved, locating the area in question on a map.

Mr. Nevels stated that basically this is a combined application. It is an application to create an industrial park for heavy industry as well as light industry, although primarily they were interested in heavy industry; and an application for a proposed botanical garden which has already been created by way of a foundation by certain members of the Shipman family. The botanical garden is part of the development for two purposes: (1) as a botanical garden;

and (2) as an assistance in the preservation of the natural beauty and parklike surroundings of the proposed industrial site. Mr. Nevels stated that as far as the industrial park itself is concerned, this is a most desirable location for it. He stated that it was not far from all primary communications and transportation in the Hilo area, which is basically the metropolis of the Island, and would in no way, shape or manner, interfere with the Hilo area or create any nuisances which would cause concern to any surrounding situation. He stated that the only areas which are in use within several miles of this area are: (1) the Panaewa farm lots which are largely developed and a new Panaewa farm lot subdivision that is being developed for residential purposes a mile off Hilo; (2) a police academy about a mile and a half towards Hilo; and (3) a macadamia nut orchard, cane land, and forest land approximately one and a half miles from the residential area of Keaau Village. Mr. Nevels stated that this land has never been used for any agricultural pursuit. The land has been opened to bid to the Puna Sugar Company interest, but they do not want it. It has been available continuously to Puna Sugar Company, but they just said no, that it wasn't feasible to use it. The soil in the area is aa with excellent drainage. The forest which covers the area is thick and heavy and not useable from a forest point of view. Mr. Nevels stated that the negotiated lease which Shipman has with Olsen looks very doubtful at this point. This doubtfulness stems from minor factors and one large factor is that it has been roughly a year since the lease was negotiated. He stated, however, from a legal estimation this is still a firm, executed lease with considerations already paved. Mr. Nevels stated that he did not want to indicate that this is a situation which looks as though it is going immediately, as he did not think that it would. He stated, however, that there have been other people from time to time very much interested in this development who have made inquiries. There was one inquiry which he felt would definitely lead to a substantial plant for heavy industry. This plant is presently located in Hilo and is being evicted by reason of the Honolulu Redevelopment Agency. In addition to this there are presently negotiations going forward with the United States government who are interested in some closely adjacent lands. Mr. Nevels felt that these are some probabilities which indicate that this park may be put to immediate or almost immediate use. Mr. Nevels stated that without having something to offer or the ability to give a lease once it is negotiated, they are doing very well. He stated that there has been no advertising except by word "of mouth". He stated that there was an announcement in the late winter of 1962 but that was the only word that has ever been mentioned of this project. Because of its excellent location in every respect, Mr. Nevels felt that this was a justification for the land being used for industrial purposes.

Mr. Nevels stated that since the closing of Flintkote Plant, there are now almost 420, mostly full-time and some part-time, workers who are now seeking employment elsewhere. He stated that they are now involved in a severe employment situation in Hilo. He stated that there are indications that this particular area would be most suitable for papaya canning operations as it is within the Puna growing area; also interest has been shown for a citrus operation. Mr. Nevels stated that the Shipman family are well aware that considerable amount of money must be contributed to make this worthwhile, but are still interested in seeing this go forward. He stated that any improvement costs that would necessarily concern the government would be nil. The roadways to the area are ample to take care of any conceivable traffic of the industrial site; preliminary research

on the water problem indicates that drilling wells on the property will furnish ample water for all potential requirements. (This is an opinion based upon present but understandably not complete research.) Mr. Nevels stated, however, if county water were required, he could not think of any better way to invest tax payers money than for the creation of new employment and new wealth for the benefit of taxpayers. He stated that he did not feel that there would be any need for county improvements at this time.

Mr. Soh proceeded with the staff's analysis and recommendation. The recommendation of the staff was for denial of the special permit. It further stated that the Shipman's request should have probably been submitted for a boundary change in accord with the Attorney General's Opinion 63-37 which provides an excellent guideline in cases of this nature. The staff, however, recommended that should the petition have been processed as a boundary change the staff's recommendation would still be for denial.

Question and Answer Session

Chairman Thompson stated that the impression he has is that the petitioner is making a distinction between light and heavy industrial use. Mr. Nevels replied in the affirmative, stating that there is definitely a distinction and they were primarily and basically interested in heavy industrial uses. He stated that he did not want to exclude the light industrial uses because in many ways they support the heavy industries. He stated that this would be an ideal spot for noxious industries, but basically this would be up to the County Planning and Traffic Commission (though they did not want to exclude this).

Commissioner Wenkam stated that he felt that this request before this Commission was not within the premise of a Special Permit and felt that it would fall more within the scope of a Boundary Change. He stated that every consideration of this particular request indicates a petition for boundary change would be more proper.

Legal Counsel stated that there are two avenues that a petitioner may approach: (1) a special permit; and (2) a boundary change. The way the statute is written, it does not prohibit the petitioner from filing for a special permit, but holds within the jurisdiction and powers of this Commission to deny the special permit on grounds that this is a proper subject for boundary change. The legal counsel stated that the petitioner is entitled to a procedural hearing based on a procedure for special permit; however, in legal counsel's opinion basically it indicates that this application (in question) should be a proper subject for boundary change. However on the last page of legal counsel's opinion, it states that the petitioner cannot be prohibited from filing a special permit application with the (County) nor can he be denied the right to a public hearing to be heard on behalf of his petition.

Chairman Thompson asked legal counsel, "Should the Commission deny the petitioner's request, would the petitioner need to go through another hearing in terms of a boundary change?" Legal counsel replied in the affirmative.

Mr. Nevels stated that at the time this special permit was made, it was upon the advice of the then Executive Officer (William Mullahey), at which time there

was no commission. It was because of this reason that petitioners have used this procedure.

Mr. Nevels stated that the amount of acreage involved in this request is less than 600 at this point. He stated, however, if this Commission were to grant a boundary change or a special permit for this area, they would certainly want to be under the impression that additional area, mauka of this (as the need arose), would be permitted within this 600 acres of land. He stated that they are not at this time requesting for the entire 600 acres for both the botanical garden and the industrial park, but would want some indications on whether the district would be allowed. Mr. Nevels stated that if it were necessary for them to reapply, they would reapply. He confirmed that the request at this time is for 19 acres only.

Commissioner Wenkam suggested that the special permit request should be denied because it is not submitted in the proper form and that the petitioner be allowed to resubmit his petition for a change in temporary district boundary.

Commissioner Burns stated that as he understands legal counsel's recommendation it states in essence that this petition be a boundary change rather than a special permit on the basis of its potential magnitude.

Legal counsel stated that the procedural devise as set forth under the Law provides for it but when it comes to substitute action on the part of the Commission it seems as though this is a proper subject for boundary change. The statute provides two avenues of approach for procedural hearing, but when this Commission acts on this, this would seem a proper subject for boundary change, rather than a special permit.

Commissioner Wenkam stated that in other words the petitioner has a right to appear and request action on a special permit, but it is up to this Commission to decide whether it is proper to grant his request for a special permit. Legal Counsel replied in the affirmative.

Commissioner Burns asked whether there was any way which this Commission could expedite the petitioner's request on a boundary change? He felt that because the petitioner was advised to go this route, this Commission should find a way to expedite this request.

The Chairman directed Commissioner Burns question to the Legal Counsel and the Executive Officer.

Legal counsel stated that the petitioner is limited by Law. The Executive Officer stated that by Law it would take 5½ months before a decision would be forthcoming under a boundary change, if processed at this time. He pointed out for the petitioner's consideration the fact that the final district boundaries would be adopted by the time any action can be taken on a petition for a boundary change, if it were initiated at this time.

Mr. Nevels stated that with this consideration in mind that the final district boundaries will be adopted prior to the assumed time period for action of 5½ months, he would suggest that this matter be pursued (as today) and made part

of the record; so that when the establishment of the final district boundaries come up the Commission will have heard this matter (as it will be on record), and hope that the final boundaries will take care of this situation. He stated that they will appear at the public hearings on the proposed final district boundaries, but stated that since they were here at present and were advised to initiate this special permit, he would appreciate it if they could be given the opportunity to present their testimonies and rebuttals for the record at this time.

The Executive Officer was in accord with this request.

The Chairman stated that this Commission will then proceed with this matter on this basis, which in essence means that this Commission is denying this special permit.

Mr. Nevels acknowledged the Chairman's remarks, stating that they understand that their special permit request will be heard fully at this time, and will be considered by this Commission when the establishment of the final district boundaries takes place.

A lengthy discussion followed on this request which was summarized in closing statements by Mr. Nevels.

Mr. Nevels stated that the petitioner will not sell any of the lands for development but will lease out lands on a long term basis. Mr. Nevels commented on the lands mentioned as being now available or projected to be available for industrial areas. He stated that:

1. the Hawaiian Home Lands

Are occupied by vast number of people living in the area and was certain that noxious industries of whatever type would not be permitted. He stated that the county dump in the area would not be an attractive location for an industrial development. He stated however, that the area had some advantages that it was near to the jet runway and docks.

2. the Lands to be Available by the Department of Land & Natural Resources

Are not zoned for this and will need to be rezoned. He stated that he doubts there will be heavy industry in there as this has been made clear by the County Planning Office because of the residences already established in the area. He stated that competition would be evident between the State and private industry, but Mr. Nevels felt that this would be a healthy and new concept.

He also commented on the declining population and stated that this was true until two years ago, but apparently the population is now increasing. He added that employment is also increasing along with this. He remarked that at the present moment sufficient industrial land is not available and that there is no question it will be made available. He suggested that there are places for different types of industries and submitted that commercial and industrial

are different from heavy industries. He stated that this area is most fitting and most suitable for heavy industry.

Mr. Nevels commented on the master plan of the County of Hawaii. He stated that the master plan of Hawaii County (which indicate the area in question as agriculture) was adopted last week (1/8/64) merely to get something on the floor so it could be discussed by the Board of Supervisors. Mr. Nevels stated that in every likelihood the master plan as submitted will not be severely amended, and would remain generally in its present form.

The legal counsel expressing concern on this matter stated that he would recommend that the staff follow-up on this and obtain a formal statement from the Hawaii County Planning and Traffic Commission concerning their recommendation for approval on this special permit and adopting a master plan for Hawaii County contrary to this recommendation.

Commissioner Ferry clarified a point made by Mr. Nevels. He stated that the intention of the State is definitely not to compete with private enterprises. The State has an obligation to victims of the tsunami disaster Hilo area. The needs that are on record total 40 to 50 acres for those people who are supposed to be relocated but have not as yet, and the State is seeking areas to fulfill this need.

Mr. Nevels replied that he meant to indicate that if there were a need for lands other than what the State is proposing, they would like to be permitted to develop. Mr. Devine added that one frustration they have is not being able to get actively involve with people who have indicated interest in these lands.

Commissioner Burns asked if this Commission should deny this request, could it technically accept information that has been given at this time and make it part of the record for consideration at the time the final district boundaries are to be acted upon?

Legal counsel replied that the information presented today is a matter of public record which becomes public information. Therefore any information this Commission will use as basis for the determination of the final district boundaries would be from public information and would assume the information being submitted today would be considered as public information. The Executive Officer also added that the information presented today would be included in the minutes.

The general consensus of this Commission was that when the Commission holds a public hearing in the County that this area is situated, the information that has been offered at this meeting will be considered at that time.

Commissioner Ferry moved to deny the petition for special permit on the basis that it is not a proper subject for a special permit. Commissioner Nishimura seconded the motion.

The Executive Officer polled the Commissioners: Approval: Commissioners Wung, Inaba, Wenkam, Burns, Nishimura, Ferry and Chairman Thompson. Disapproval: Commissioner Ota.

Meeting adjourned at 10:00 A. M.