

Ref. No. LUC 42

January 21, 1964

Mr. Edgar Hamasu  
Planning Director  
Planning & Traffic Commission  
County of Hawaii  
Hilo, Hawaii

Dear Mr. Hamasu:

The Land Use Commission, in action taken on January 17, 1964, denied the petition for a special permit by Mr. & Mrs. Correia. The Commission's denial of the petition was based on the following:

1. The use petitioned for is common rather than unusual and does not meet the requirements of law in this respect.
2. The granting of this petition would constitute spot zoning and would be, in effect, the granting of a special privilege to an individual unless it is to be also made to all similar future petitions. Since the use and the circumstance is not unusual and hardship is not intimated (as has been true in other cases which have been denied), granting of this petition would set a precedence which would provide opportunity for scattered developments to occur.
3. Denial of the application is based in the interest of preserving the agricultural use and character of the Waialea-Uka area and of keeping lot sizes there to a standard which will serve to foster agricultural pursuits.

If there are any further questions regarding this petition, please feel free to contact us.

Sincerely,

RAYMOND S. YAMASHITA  
Executive Officer

cc: Mr. & Mrs. Joseph Correia  
Mr. Myron Thompson  
Mr. Roy Takayama

LAND USE COMMISSION  
STATE OF HAWAII

Minutes of Meeting

LUC Hearing Room

Honolulu, Hawaii

1:00 P. M. - January 17, 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  
Alfred Preis, Planning Coordinator  
Richard Mar, Field Officer  
Amy Namihira, Stenographer

Meeting was called to order by Chairman Thompson. Mr. Yamashita introduced Miss Amy Namihira, the new Stenographer for the Land Use Commission, to the Commissioners.

ADOPTION OF MINUTES FOR 11/30/63 MEETINGS AND HEARINGS ON KAUAI AND OAHU

1. Minutes of 11/30/63 Meetings and Hearings in Lihue, Kauai

Commissioner Wung moved to accept the minutes as circulated; seconded by Commissioner Nishimura. Motion carried.

2. Minutes of 11/30/63 Hearings in Honolulu and Kailua, Oahu

Commissioner Burns moved to accept the minutes as circulated; seconded by Commissioner Inaba. Motion carried.

LUC ACTIONS ON INTERIM BOUNDARY CHANGES AND SPECIAL PERMITS

Chairman Thompson raised the following question and opened it to the floor:

When the Commission makes a decision today, tomorrow, or within the next few months, is this decision binding in terms of the final district

boundaries, or is this decision alterable when the final district boundaries are determined?

Legal counsel stated that under the Law, there is no question this Commission may do so. He stated, however, that this would become a policy matter because once this Commission makes a grant, he could not see how this Commission could go against it in the final adoption of the district boundaries.

Commissioner Burns stated that this Commission should be building the permanent boundaries as it moves along. This Commission would not want to take action that it knows later is going to be reversed. The only reason that this Commission would change its decision would be either on the same evidence, new evidence or something that is unusual.

The general opinion of the Commission was that this Commission should be consistent in its decision and that whatever decision it makes from hereon in concerning the interim boundaries and special permits, it will be included in the establishment of the proposed final district boundaries.

#### SPECIAL PERMITS PENDING ACTION

The staff members who would be participating in the matters before the Commission were sworn in by the Chairman.

APPLICATION OF JOSEPH CORREIA, JR. (SP(T)63-4), FOR SPECIAL PERMIT TO SUBDIVIDE APPROXIMATELY 39.28 ACRES INTO TWO LOTS IN WAIAKEA HOMESTEADS, WAIAKEA, S. HILO, HAWAII: Described as TMK 2-4-05: 39.

Mr. Gordon Soh gave a background on the area and request involved, and pointed out the location of the area on the map. The staff recommendation was for denial of the request in the interest of preserving the agricultural uses in the Waiakea Uka area and to keep the lot sizes to a standard; and on the following bases:

1. that it was common and not unusual;
2. that it would constitute spot zoning; and
3. that it shows that it is not a hardship situation which would establish a precedence.

Chairman Thompson asked what was meant by the word "common" as stated in the staff's recommendation? The Executive Officer stated that it must first consider, What a Special Permit Is? As we examine this it is commonly known as a variance. A variance procedure is set up to take care of those situations that generally cannot be foreseen or thought of at the moment. A residential use is something that is considered in any kind of districting, because it is one of the most common of all urban land uses. It does not constitute a reason or use that could

not have been considered or could not have been aware of previously, so that it is not unusual.

The point which was raised that a hardship case would be created on the family if this request were denied was answered by the legal counsel. He stated that if the Commission approved this special permit on the basis that it would work a hardship because the applicant wants to give so many square footage to his daughter is not logical; and legally it would not meet the definition of an unusual and reasonable use under the Law.

Commissioner Wung moved to accept the staff's recommendation; seconded by Commissioner Ferry. The Executive Officer polled the Commissioners. Approval: Commissioners Wung, Inaba, Ota, Burns, Nishimura, Ferry, and Chairman Thompson. Disapproval: None.

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APPLICATION OF SIDNEY WEINRICH (SP(T)63-5), FOR SPECIAL PERMIT TO SUBDIVIDE 93,000 SQ. FT. LOT INTO TWO LOTS FOR LAND IN NORTH KONA, HAWAII: Described as TMK 7-6-10: 21.

Mr. Soh gave a background on the area and request involved, pointing out the location of the area on the map. The staff's recommendation was for denial on the bases that: (1) it was common rather than unusual; and (2) it would constitute spot zoning which would set a precedence for scattered development.

Commissioner Ferry moved to deny the special permit based on the staff's recommendation; Commissioner Ota seconded the motion.

Discussion: Commissioner Inaba felt that the request before this Commission was a little different from the last request. He pointed out one definite factor which differed and that was the area was located near to an already existing urban area.

Mr. Preis contended that the area would not constitute scatteration. He stated that he felt it desirable to have a Rural area between an Urban area and an open land area.

Chairman Thompson felt that this was a serious problem and recognized that there were many similar problems of this nature throughout the various counties. He felt that this problem should be taken up for discussion later and with the proper authorities.

The Executive Officer polled the Commissioners. Approval: Commissioners Ota, Burns, Ferry, and Chairman Thompson. Disapproval: Commissioners Wung, Inaba, Nishimura. Motion not carried.

Commissioner Inaba moved to approve the Special Permit application; seconded by Commissioner Wung. Approval: Commissioners Wung, Inaba, Nishimura.

Disapproval: Commissioners Ota, Burns, Ferry, and Chairman Thompson. Motion not carried because of lack of majority votes.

The following were requested of the staff:

1. Write letter to Hawaii County Planning & Traffic Commission concerning present activity in area under question.
2. Write letter to Hawaii County Planning & Traffic Commission requesting for a vote count on each special permit grant submitted to the Land Use Commission.

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APPLICATION OF CLARA KIM (SP(T)63-4), FOR SPECIAL PERMIT TO SUBDIVIDE LAND CONTAINING 22,466 SQ. FT. IN AREA IN KAPAA HOMESTEADS, KAPAA, KAUAI: Described as TMK 4-4-09: 8.

The staff was requested to write to Kauai Planning & Traffic Commission advising them that the matter for special permit by Clara Kim should not have been referred to the Land Use Commission and that the petitioner also be so informed.

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APPLICATION OF WILLIAM AND MARION BRANDT (SP(T)63-2), FOR SPECIAL PERMIT TO CONSTRUCT A BEACH HOME TOGETHER WITH THE NECESSARY SUBDIVISION ON A 23,900 SQ. FT. LOT IN MAKENA, MAUI: Described as TMK 2-1-07: 61.

Mr. Richard Mar gave a background on the area and request involved, and pointed out the location of the area on the map. The recommendation of the staff was for denial to subdivide the present lot into separate parcels, and approval of one beach home.

The recommendation of the staff was discussed at length and it was resolved that the State had no jurisdiction in the matter concerning the building of the beach home in the area classified by the Land Use Commission as Agriculture.

The Executive Officer stated that the Commission may override the staff's recommendation on this request instead of the staff deleting portions of its recommendation.

Commissioner Ferry moved that the petitioners' request be denied in its entirety; seconded by Commissioner Ota. The Executive Officer polled the Commissioners. Approval: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura, Ferry and Chairman Thompson. Disapproval: None.

ADMINISTRATIVE MATTERS

The following reports were given or asked of staff to do:

1. Request that the staff circulate all minutes to each County, two copies each - one for the Planning and Traffic Commission office and the other for the Board of Supervisors.
2. Request that the staff schedule Commission's meetings and hearings to meet the conference on Planning Commissions and Planning Directors in August on Kauai. (No definite date has been set as yet.)
3. Request that the staff write or communicate with the Counties concerning the Land Use district boundaries proposed for July 1964 at its earliest convenience.

The Chairman suggested the following as a possible communication:

"If you are ready to make decisions regarding your own planning and would like to consult with ours, we will be willing to do it, would you?"

4. Earlier follow-ups requested of staff:
  - a. Have the staff notified all planning directors of each county concerning the criteria for selection on whether it would be a special permit or a boundary change?

Reply: No.

- b. Have the staff had an opportunity to write and mail letters to protestees as suggested on Kauai?

Reply: The staff has answered all letters being received at present, but has not written to those 500 or so that were already on file.

5. The Chairman reported that the Governor has okayed a writer for the Land Use Commission who has already been engaged and who is on the payroll of the Governor's Office. This writer is charged with the responsibility of reviewing all materials of this Commission and to consider all materials that would be useful for public information.
6. Commissioner Wenkam reported that the televised public hearing on the generalized proposed land use district boundaries is firmed up for March 7, 1964, from 8:00 a.m. to 10:00 a.m., at the KGMB TV studio. The program will be taped and rebroadcast. He stated that this is the first of its kind to occur in the United States and that the purpose of this T. V. program is to educate, explain and expose to the public what the Land Use Law is, how it functions and how it applies to a particular area.

(The Executive Officer informed the Commission that the present schedule as circulated will have to be revised to meet the new television public hearing schedule.)

Commissioner Wenkam suggested that the Chairman announce at the beginning of the program that this is only a generalized preview presentation of the major islands of the State, and that detailed hearings will be held on each island at a later time, which time and place will be announced later. He also suggested that the Chairman inform the people that this will be only a two hour show; that it will be continued after the T. V. program, and those who are not able to be heard can be heard then.

Commissioner Wenkam reported that there will be a meeting with the program director and producer of KGMB TV which is scheduled in two weeks, and at which time the Executive Officer, the Chairman and himself will be present.

The following program was outlined by Commissioner Wenkam:

- a. All islands will be included (major islands) and certain amount of time allocated. Maps will be displayed on wall. Motion picture showing particular areas on each island will be shown.
- b. All Commissioners and staff will be there and arranged sitting around a table.
- c. Commissioners are to make presentation of his own island, very briefly stated, and involving only those areas that the public would be familiar.
- d. Invite audience participation. Commissioners were encouraged to invite individuals from his own island to participate in this program and Chairman was instructed that he must be alert and able to recognize these people as participants. (Studio will hold approximately 100 persons.)
- e. Rehearsal will be held on the night of March 6, 1964, before the T. V. public hearing program.

Commissioner Wenkam was requested to write up an agenda and program for this T. V. hearing and have it circulated to everyone.

7. Commissioner Wenkam gave a brief report on what sort of things will be happening before the T. V. program.
  - a. Stories in the newspapers
  - b. T. V. programs
  - c. Radio, etc.

Commissioner Wenkam also informed the Commissioners that the public relations program on the outside islands were very poor, with the exception of Kauai. He encouraged Commission members to participate more in this area in his own county.

Meeting adjourned at 4:55 p.m.