

2001 DEC 20 P 1:41

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. SP94-387
)	
FONG CONSTRUCTION)	DECISION AND ORDER
)	APPROVING REQUEST TO
To Establish A Baseyard And Accessory)	TRANSFER SPECIAL USE
Uses On Approximately 31.164 Acres Of)	PERMIT
Land Within The State Land Use)	
Agricultural District At Waikapu, Maui,)	
Hawai'i, TMK No: 3-8-07:89 and)	
por. 102)	
_____)	

DECISION AND ORDER APPROVING REQUEST
TO TRANSFER SPECIAL USE PERMIT

On November 16, 2000, Fong Construction Company, Limited ("Applicant"), filed a request to transfer the Special Use Permit issued in this docket from the Applicant to Consolidated Baseyards, LLC ("Request"). The Request was filed with the County of Maui Planning Department ("Planning Department"), pursuant to Condition No. 3 of the Findings of Fact, Conclusions of Law, and Decision and Order dated September 19, 1995. Condition No. 3 states as follows:

- 3) That the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission. However, in the event that a contested case hearing preceded issuance of said Land Use Commission Special Use Permit, a public hearing shall be held upon due published notice, including actual written

notice to the last known addresses of parties to said contested case and their counsel.

On February 13, 2001, the County of Maui Planning Commission ("Planning Commission") conducted a hearing on the Applicant's Request. There was no written or oral public testimony provided at the hearing. After due deliberation, the Planning Commission recommended approval of the Applicant's Request to the Land Use Commission ("Commission").

On July 9, 2001, the Commission received a copy of the decision and a portion of the record of the Planning Commission's proceedings on the Applicant's Request.

On October 9, 2001, the Commission received the remaining portion of the record.

On October 18, 2001, the Commission met in Honolulu, Hawai'i, to consider the Applicant's Request. Roderick Fong appeared on behalf of the Applicant.¹ Brian T. Moto, Esq., and Joseph Alueta appeared on behalf of the Planning Department. Following discussion by the Commissioners, a motion was made and seconded to approve the Applicant's Request. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 8 ayes and 0 nays, the motion carried.

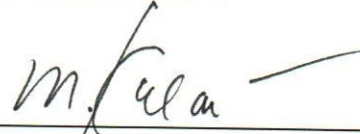
¹ Roderick Fong is the sole member/manager of Consolidated Baseyards, LLC.

ORDER

Having duly considered the complete record of the Applicant's Request and the oral arguments presented by the parties in the proceeding, and a motion having been made at a hearing conducted on October 18, 2001, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, Hawai'i Administrative Rules, and there being good cause for the motion, the Commission hereby APPROVES the Applicant's Request granted by the Planning Commission to transfer the Special Use Permit issued in this docket from the Applicant to Consolidated Baseyards, LLC.

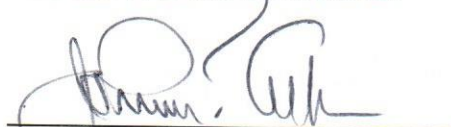
Dated: Honolulu, Hawai'i, DEC 20 2001

LAND USE COMMISSION
STATE OF HAWAII




By MERLE A. K. KELAI
Chairperson and Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
DEC 20 2001, 2001

Certified by:

Executive Officer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision And Order Approving Request to Transfer Special Use Permit was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

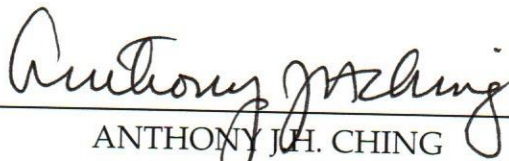
CERT. RODERICK FONG
Fong Construction Company, Ltd.
495 Hukilike Street, Bay 4
Kahului, Hawaii 96732-2960

CERT. JOHN E. MIN, Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT.

JAMES B. TAKAYESU, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 20th day of December 2001.



ANTHONY J.H. CHING
Executive Officer