

MINUTES OF THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES

DATE: January 9, 1987
TIME: 9:00 A.M.
PLACE: Kalanimoku Building
Room 132, Board Room
1151 Punchbowl Street
Honolulu, Hawaii

ROLL
CALL

Chairperson William W. Paty called the meeting of the Board of Land and Natural Resources to order at 9:00 A.M. The following were in attendance:

MEMBERS: Mr. J. Douglas Ing
Mr. Moses W. Kealoha
Mr. Leonard Zalopany
Mr. John Arisumi
Mr. Herbert Arata
Mr. William W. Paty

STAFF: Mr. Manabu Tagomori
Mr. Ralston Nagata
Mr. Mike Shimabukuro
Mr. Roger Evans
Mr. Melvin Young
Mrs. LaVerne Tirrell

OTHERS: Mr. Johnson Wong, Deputy Attorney General
Peter Garcia, D.O.T.
Ms. Millie Keola (Item E-1)
Ms. Sylvia Dobry (Item H-4)
Mr. Winston Watanabe (Item H-2)

ADDED
ITEMS

Upon motion by Mr. Ing and a second by Mr. Kealoha, the following items were added to the Agenda:

Item H-4 -- Commercial Film Permit for a High Wire Walk Above Waimea Canyon, Kauai.

Item J-5 -- Use of Harbors Division Facilities (York/Umphreys Productions).

ITEM H-3

REQUEST FOR TIME EXTENSION ON CDUA HA-1314 FOR DATA COLLECTION AND OBSERVATION USE AT MAUNA KEA, HAWAII (UNIVERSITY OF HAWAII).

ACTION

Mr. Arata moved to approve subject to the following:

1. That all tests must be completed by the end of 1992; and,
2. That the applicant must comply with all conditions of approval of CDUA HA-1314.

Seconded by Mr. Kealoha, motion carried unanimously.

ITEM E-1

REQUEST TO TRAVERSE MALAEKAHANA STATE RECREATION AREA, OAHU, TO RELOCATE A PRIVATE DWELLING STRUCTURE.

Mr. Nagata said that he was notified after this submittal was prepared that, in moving the house this time, there is a section of the house that is wider than the entry gate and the applicant has asked that they not go through the entry gate and just basically go directly through the Hale Koa that is on the front side of the park. Another suggestion is to remove one of the entry gates.

Mr. Nagata said that he suggested instead that they break the house down into smaller units or raise that section of the house over the entry gates.

Mrs. Millie Keola, Project Coordinator for Transportation Dynamics, Inc. said that they have cut the house down into three sections and cannot cut it down anymore. She said that they have gone over the gates before but they would have to look at it again. They can go over but it would take longer.

Mr. Nagata said that the applicant's were advised that they did not want traffic to the park to be held up any longer than necessary.

ACTION

Mr. Ing moved to authorize the issuance of a permit to Transportation Dynamics, Inc. to cross a section of the Malaekahana State Recreation Area to deliver a house to a property adjacent to the park, subject to the conditions listed in the submittal. Seconded by Mr. Kealoha, motion carried unanimously.

ADDED
ITEM H-4

COMMERCIAL FILM PERMIT FOR A HIGH WIRE WALK ABOVE WAIMEA CANYON, KAUAI.

Mr. Evans said that normally a copy of of the submittal is sent to the applicant. However, in this case, because of the time element a copy of this submittal was not sent to the applicant but a copy was given to DPED.

Mr. Paty asked, "are we approving the film permit before we approve the act itself?"

Mr. Evans said, no. Several years ago the Department of Planning and Economic Development came and went through a conservation district use application process. The purpose of that application was to allow commercial filming on state-owned and conservation zoned lands. That application was brought to the board which was approved subject to a number of basic conditions one of which was the designation of the DPED film branch as the lead agency to interact with the clients. Additionally, as a follow up of that application our department entered into a Memorandum of Understanding with the DPED to allow filming to occur in more concrete terms. What the process has been is that when someone wants to film they would go to the DPED film office, our entire department review it and then a decision is made as to whether or not the application should be allowed. In this particular case, because of the sensitivity of the activity proposed and the comments received from DLNR, it was staff's sense that this was a matter that should be brought to the board for its judgement in terms of allowing or not allowing the activity to occur.

Mr. Paty was still not sure about the procedure. The board has not approved the high wire act itself so how can they approve a permit to film

Mr. Ing thought that the two occurred at the same time. The filming -- whether it's commercial or not -- the filming and the act are looked at as one at the same time.

Mrs. Sylvia Dobry, Main Street Manager for the West Kauai District, said that she is on the committee for the Captain Cook festival. They were told by ABC that they would be in the area and they would film the Captain Cook Festival at the same time as Philippe Petit's high wire walk in Waimea Canyon on February 21, 1987. She explained that Mr. Petit is not a carnival performer. He is a very precise, exact class act. He said that if the weather is not right he will postpone the walk. She explained that they are not interested in a high wire act per se but in keeping the economy of West Kauai going.

There was much discussion re this application. Mr. Paty, however, felt that the basic question the board needs to address is whether the activity is appropriate for the setting.

ACTION

Mr. Zalopany moved to deny this request to conduct a highwire walk above Waimea Canyon, Kauai for the following reasons:

1. That the proposed site is inadequate to support the ancillary activities of the event i.e. parking, sanitation, traffic, and crowd control.
2. That the proposed activity is an incompatible use of Waimea Canyon; and
3. That the carnival-type event on State-owned Conservation Zoned lands is an inappropriate means of publicizing Hawaii's natural resources.

Seconded by Mr. Arisumi, motion carried unanimously.

ITEM D-1

APPLICATION FOR A STREAM CHANNEL ALTERATION PERMIT, WAIMANALO STREAM, WAIMANALO, KOOLAUPOKO, OAHU.

Mr. Tagomori asked that Condition 4. as listed be deleted and that the following amended condition be inserted:

4. That the applicant submit construction plans through the Division of Land Management as required under General Lease No. S-4095 and authorize the Chairman to review the plans for approval prior to construction.

ACTION

Unanimously approved as amended. (Ing/Kealoha)

ITEM D-2

SOIL AND WATER CONSERVATION DISTRICT DIRECTOR, HAWAII.

ACTION

Mr. Arata moved to certify the appointment of Mr. William Cowell for the term ending June 30, 1987 to serve as a Director for the Kona Soil and Water Conservation District. Seconded by Mr. Arisumi, motion carried unanimously.

ITEM H-2

CDUA FOR A SINGLE-FAMILY DWELLING AT HONOKOHAU VALLEY, MAUI (WINSTON WATANABE).

Mr. Evans recommended denial of this request to allow the Department to resolve the alleged outstanding violation.

Mr. Arisumi said that the submittal requires the applicant to remove all structures on the property. He said that he had an opportunity to visit this area and also discussed this with the Maui Land Agent and the applicant, who was not given title to the land until a year ago and all the things which have happened on the land occurred before he received ownership to the land. With that in mind, he would like the board to allow the applicant to work something out with the department.

Mr. Evans said that what staff has done is divided this problem up to get it resolved. Staff's only concern is whether the board is affecting a policy such as resolving the problem with the former owner.

Mr. Watanabe thanked the board for allowing him to testify. He said that staff's recommendation for denial was based on the conditions spelled out under nonconforming use and then continued to address some of the questions raised by the board.

Mr. Watanabe said also that he was never asked on matters other than that of meeting the conditions spelled out under nonconforming use until he received a letter on January 5, 1986.

Mr. Ing told Mr. Watanabe, "even if everything you say is true you still have not addressed the issue as to whether or not this is entitled to nonconforming use."

Mr. Watanabe felt that he had addressed this.

Mr. Ing said that there are two problems. One is that a structure was put on without approval from the department and secondly the building is being rented out, which becomes a commercial use in the conservation district which is also a separate violation.

Mr. Watanabe said that he did not rent the building out. He is just honoring the commitment from the previous owner to allow the tenants to stay until April.

Mr. Ing asked Mr. Evans, "what is your feeling if we went to the last alternative to wrap everything up?"

Mr. Evans said, we have a question of violation. The Board would have to determine 1) whether or not there is a violation and 2) find a way to correct the violations. The Board would then consider removal or nonremoval. The Board would consider fines and the next step would be the board may accept the representations by the applicant that he does indeed have nonconforming use and approve it.

Mr. Ing asked, "what if we denied subject to verification of nonconforming?"

Mr. Evans said, that's o.k. and suggested that we first take of the violation and then move on to acting on the CDUA.

Mr. Watanabe asked Mr. Evans, "which violations are you concerned about?"

Mr. Evans replied, "everything on the property which was placed there without permission from the Board."

Mr. Arisumi told Mr. Watanabe said that there is fine for any illegal construction whether built by the present or the former owner.

ACTION 1.

Mr. Arisumi moved to fine the applicant a total of \$500.00.

Mr. Kealoha asked Mr. Evans, "how many violations?"

Mr. Evans said, about four.

Mr. Watanabe felt that this was all connected as one.

Mr. Arata seconded Mr. Arisumi's motion.

Mr. Ing asked Mr. Arisumi if, by this motion, it was intended to take care of the rental, the occupancy, or are you looking at it as one?

Mr. Arisumi said, one. He saw the whole operation and Mr. Watanabe is really paying the fine for somebody else's doing and this is why he feels that he should pay only the minimum fine.

Mr. Kealoha couldn't see Mr. Watanabe paying only a \$500.00 fine. He sees three violations whether it's his cause or the previous owners'. The violations are there so there should be a fine of \$500.00 for three violations or a total of \$1500.00.

Mr. Arata asked the applicant if a \$1500 fine would cause a hardship.

Mr. Watanabe felt this fine would be unfair and would cause a hardship.

Mr. Paty called for the vote.

Motion carried with Messrs. Kealoha and Ing voting no.

ACTION 2.

Mr. Arisumi moved that Mr. Watanabe be granted a nonconforming use providing he qualifies under the criteria for nonconforming use.

Mr. Ing said that before we move on we have to clear up the existing violation.

Mr. Evans said that if the violation is not cleared within ninety days then it would be sent to the AG's.

Mr. Ing felt that a part of the motion should require Mr. Watanabe to pay and, in this case, that the structures be removed. He moved to amend Mr. Arisumi's motion to include payment of the \$500.00 fine plus removal of the structures within ninety days, and if this is not done, that the matter be referred to the Attorney General's Office for appropriate disposition. Mr. Kealoha seconded, motion carried unanimously.

Mr. Evans said now we have a vacant piece of land. The board's sense is that if this meets nonconforming criteria then they would want to approve it. He said this would be Section B and would be subject to the effect that the board approve this application as nonconforming use providing it meets the nonconforming use provision.

Mr. Ing said that this is the way we have done this in the past because of the 180 day deadline. If we don't deny this it is granted under the statute so what we have done is denied it subject to confirmation of nonconforming and if there is nonconforming then the denial is void and the permit is granted. This would also be subject to the standard conditions under the nonconforming use.

For clarification, Mr. Ing repeated the motion as follows:

"Deny the request for single family dwelling use subject to the condition that, if upon review it turns out that Mr. Watanabe is entitled to nonconforming status that he be allowed to go ahead with the construction of the dwelling and that the standard nonconforming essential conditions would apply."

Mr. Arisumi seconded. Motion carried unanimously.

ITEM E-2

REQUEST TO USE IOLANI PALACE GROUNDS FOR CHOIR PERFORMANCE.

Mr. Nagata asked that Condition No. 9 be amended so it would read as follows:

- 9. Provide a certificate of liability insurance naming the State of Hawaii as additional insured for minimum coverages of \$300,000 bodily injury and \$50,000 property damage; the certificate must be delivered to the State Parks Office prior to the event. In the event they are not able to come up with the necessary insurance that the Chairman is authorized to waive Condition No. 9.

ACTION

Unanimously approved as amended. (Ing/Kealoha)

ITEM E-3

REQUEST TO USE THE IOLANI PALACE GROUNDS FOR A SOVEREIGNTY FOR HAWAII CEREMONY.

Mr. Ing asked that Condition No. 5 be amended so it would read as follows:

- 5. Not permit commercial activity including advertising on sale of commercial products to be conducted in conjunction with the permitted activity;

ACTION

Unanimously approved as amended. (Ing/Kealoha)

ITEM F-1 DOCUMENTS FOR CONSIDERATION.

Item F-1-a REQUEST TO CONSENT TO ASSIGNMENT OF G. L. NO. 3155 FROM KENNETH LEW HUGHES AND ALICE HANSON HUGHES TO RICHARD ALDERSON, COVERING LOT 22, OCEAN VIEW LOTS, TMK 2-1-07:21, WAIAKEA, SO. HILO, HAWAII.

Item F-1-b REQUEST TO CONSENT TO SALE OF LEASEHOLD BY AGREEMENT OF SALE, G. L. NO. S-4200, KAPAA INDUSTRIAL PARK FOOD PROCESSING PLANT SITE, TMK 4-5-15:40, KAPAA, KAUAI.

ACTION Mr. Arata moved to approve Items F-1-a and F-1-b as submitted. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM F-2 DIRECT SALE OF ROAD REMNANT TO ROGER CRANDLEMIRE, PUUKAPU HOMESTEADS, PUUKAPU, SO. KOHALA, HAWAII.

ACTION Unanimously approved as submitted. (Arata/Arisumi)

ITEM F-3 APPROVAL OF ADDENDUM TO DSSH R. P. NO. 78-1 TO HILO ASSOCIATION TO HELP RETARDED CITIZENS DBA HILO VOCATIONAL REHABILITATION CENTER, TMK 2-2-32: POR. 8, PIIHONUA, SO. HILO, HAWAII.

ACTION Unanimously approved as submitted. (Arata/Arisumi)

ITEM F-4 DIRECT SALE OF ROAD EASEMENT AT LOWER HONOKOWAI, LAHAINA, MAUI, TMK: 4-4-01: POR. 22.

ACTION Unanimously approved as submitted. (Arisumi/Kealoha)

ITEM F-5 CONVEYANCE OF PORTION OF ABANDONED ROAD RIGHT-OF-WAY (FORMER OLINDA PRISON ROAD), TO MRS. ANNIE L. AKO, TMK 2-4-11:24, MAKAWAO, MAUI.

Mr. Shimabukuro requested addition of the following condition:

6. That the document fee be waived.

ACTION Unanimously approved as amended. (Arata/Kealoha)

ITEM F-6 DIRECT SALE OF ROAD AND WATERLINE EASEMENT AT WAIMANALO, KOOLAUPOKO, OAHU, TMK 4-1-35:13

ITEM F-7 DIRECT SALE OF ELECTRICAL TRANSMISSION, POLE AND ANCHOR EASEMENT, AT WAIMANALO, KOOLAUPOKO, OAHU, TMK 4-1-35:03.

ACTION Mr. Ing moved to approve Items F-6 and F-7 as submitted. Seconded by Mr. Kealoha, motion carried unanimously.

ITEM F-8 SELECTION OF APPRAISER FOR PROPOSED HAWAII OCEAN AWARENESS CENTER AT SEA LIFE PARK SITUATE AT WAIMANALO, OAHU.

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM F-9 AMENDMENT TO PREVIOUS BOARD ACTION REGARDING ASSIGNMENT OF G. L. NOS. S-3831, S-3840, AND S-4647, KAUAI RESORT HOTEL, INC., ASSIGNOR, WAILUA, KAUAI.

Mr. Shimabukuro asked that the second paragraph of Amendment 2. listed on page 1 be amended as follows:

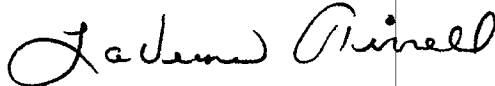
"The statute, amended by Act 55, SLH 1982, does not apply retroactively to the above-cited leases."

ACTION Unanimously approved as amended. (Zalopany/Arata)

- ITEM F-10 CITIZENS UTILITIES CO., REQUEST FOR ELECTRIC TRANSMISSION LINE EASEMENT, WAILUA, KAUAI.
- ACTION Unanimously approved as submitted. (Zalopany/Kealoha)
- ITEM F-11 LEASE OF OFFICE SPACE FOR DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, ISLAND OF MAUI.
- ACTION Unanimously approved subject to review and approval of the lease agreement by the Office of the Attorney General. (Arisumi/Arata)
- ITEM F-12 DAVID KOUCHALAKLO'S REQUEST FOR NON-EXCLUSIVE EASEMENT FOR ACCESS PURPOSES, WAIOLI, HANALEI, KAUAI.
- ACTION Unanimously approved as submitted. (Zalopany/Kealoha)
- ITEM H-1 FILLING OF POSITION NO. 2735, PERSONNEL TECHNICIAN VI, OAHU.
- ACTION Mr. Ing moved to approve the appointment of Ms. Jonalyn Leong to Position No. 2735 effective January 16, 1987. Seconded by Mr. Kealoha, motion carried unanimously.
- ITEM H-2 CDUA FOR A SINGLE-FAMILY DWELLING AT HONOKOHAU VALLEY, MAUI (WINSTON WATANABE).
- (See Pages 4 & 5 for Action.)
- ITEM H-3 REQUEST FOR TIME EXTENSION ON CDUA HA-1314 FOR DATA COLLECTION AND OBSERVATION USE AT MAUNA KEA, HAWAII (UNIVERSITY OF HAWAII).
- (See Page 1 for Action.)
- ADDED
ITEM H-4 COMMERCIAL FILM PERMIT FOR A HIGH WIRE WALK ABOVE WAIMEA CANYON, KAUAI.
- (See Pages 2 & 3 for Action.)
- REPORT ON THE WALTER RITTE CASE
- Mr. Evans reported that this matter had been transferred to the Office of the Attorney General and the Attorney General's Office had decided not to pursue this matter at this time. It was their feeling that if they go and take Mr. Ritte to court then they have to go through the process of trying the case all over again and Mr. Ritte is not in a position to pay anyway. Going this route, Mr. Ritte will be a debtor to the State and, when he comes back in for a permit, he would not be given permit unless he pays what he owes the State or he can sue the State. If he decides to sue, then the burden will be on himself.
- REPORT ON THE MOORING AT KAAPALI
- Mr. Evans said that the board had denied Wagoneer' CDUA unless he could get authorization from the Hyatt Hotel, DOT and Board of Health. He was not able to get approval from the Hyatt so he has to take the mooring out at his own expense. Staff, on November 26, 1986 sent a letter which, in essence, said that he had ninety days to remove the mooring or the case would be referred to the Office of the Attorney General.


- ITEM J-1 AMENDMENT NO. 22 TO LEASE NO. A-62-19, HONOLULU INTERNATIONAL AIRPORT, OAHU (UNITED AIR LINES, INC.).
- ACTION Mr. Kealoha moved to approve as submitted. Motion carried with a second by Mr. Zalopany.
- Mr. Ing was excused from acting on this item.
- ITEM J-2 AMENDMENT NO. 22 TO LEASE NO. A-62-32, HONOLULU INTERNATIONAL AIRPORT, OAHU (HAWAIIAN AIRLINES, INC.).
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-3 APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 4242, ETC. (AIRPORTS DIVISION).
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ITEM J-4 CONTINUANCE OF REVOCABLE PERMITS H-84-1136, ETC., (HARBORS DIVISION).
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- ADDED
ITEM J-5 USE OF HARBORS DIVISION FACILITIES (YORK/UMPHREYS PRODUCTIONS).
- ACTION Unanimously approved as submitted. (Ing/Kealoha)
- RESOLUTION A resolution was adopted by the board commending Mrs. Joanne Sau Ling Song, Abstractor IX in the Bureau of Conveyances, for her more than twenty-nine years of service to the Territory and the State of Hawaii.
- ADJOURNMENT: There being no further business, the meeting was adjourned at 11:15 A.M.

Respectfully submitted,



Mrs. LaVerne Tirrell
Secretary

APPROVED:



WILLIAM W. PATY
Chairperson

It