# STATE OF HAWAII

## LAND USE COMMISSION

# VOTE RECORD

		ITEM SP	(T)63-6	(Tsubota	
	PLACE LUC Hearing Room				
		TIME 2/30 pm!			
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NAMES	YES	NO	ABSTAIN	ABSENT	
WUNG, L					
INABA, G.	Charles States and American				
OTA, C.	B			C. C	
WENKAM, R.					
BURNS, C.E.S.					
NISHIMURA, S.					
MARK, S.					
FERRY, J.					
THOMPSON, M.					
COMMENTS: Nishimura - Molion te approve petition					
Second - my Wung -					

Stoff - a more precise desaription og structure.

disopproved .

Ref. No. LUC 167 March 9, 1964 Mr. Edger Hamasu Planning Director Planaing & Traffic Commission County of Bausit Milo, Manuait Dear Mr. Messasut The Land Use Commission, in action taken on February 28, 1964, denied the request of Mr. Sadesu Taubota for a special permit. A motion was made by Commissioner Mishimura to approve the petition but was defeated by a lack of majority vote. The Commission's denial of the petition was based on the staff report, copies of which are enclosed for your information and your transmittal to the petitioner. A copy of this latter is also enclosed for the same purpose. Should there be any questions, please feel free to contact this office. Very truly yours, PAYMOND S. TAHASHITA Executive Officer TEXAL / axes Smel. ec: Mr. Myron Thompson Mr. Roy Takeyana Mr. Sademu Tsubota

# STATE OF HAWAII LAND USE COMMISSION

Minutes of Meeting

LUC Hearing Room

Honolulu, Hawaii

1:00 P. M. - February 28, 1964

Commissioners

Present:

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

Absent:

Shelley Mark C.E.S. Burns Goro Inaba

Staff Present: Raymond Yamashita, Executive Officer

Roy Takeyama, Legal Counsel

Richard Mar, Field Officer Amy Namihira, Stenographer

The meeting was called to order by Chairman Thompson who said a short opening prayer.

## ADOPTION OF MINUTES

The minutes of 1/17/64, 1/18/64, 1/24/64 and 1/25/64 meetings and public hearings were accepted as circulated with the understanding that changes would be made in sentence structures and phrases, particularly relating to the minutes concerning Oceanic Properties, Inc.

#### ELECTION OF A TEMPORARY CHAIRMAN

In view that both Chairman and Vice Chairman would be absent at tonight's meeting at 7:00 p.m., election of a temporary chairman was in order.

Commissioner Nishimura moved to elect Commissioner Ota as temporary chairman, to which Commissioner Wenkam seconded the motion. The motion was carried unanimously.

#### PETITIONS PENDING ACTION

PETITION OF EUGENE & EVA KENNEDY(A(T)62-27) FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN LANIKAI, OAHU: Described as TMK 4-3-2: Por. 1

Mr. William Yim, Counsel for petitioners, presented a letter to the Commission (which was read by the Chairman) requesting a withdrawal of their petition.

In light of this request Commissioner Wung moved to accept the request by Eugene and Eva Kennedy to withdraw their petition; which was seconded by Commissioner Nishimura. The motion was carried unanimously.

PETITION OF SADAMU TSUBOTA (SP(T)63-6) FOR A SPECIAL PERMIT TO CONSTRUCT A MULTI-UNIT RESIDENCE ON SUBJECT PARCEL LOCATED IN PUNA, HAWAII: Described as TMK 1-5-03: 28 containing 3.00 acres

The Field Officer, Richard Mar, gave a background on the petition, and pointed out the location of the area on a map.

The Executive Officer continued with the staff's analysis and recommendation. The recommendation was for disapproval of the petition on the basis that adequate areas, for which a development plan has already been prepared and for which detailed zoning maps will soon be adopted, have already been placed in the urban district. Approval of an urban use, outside of the areas now designated urban would adversely affect orderly development by setting a precedent which can only lead to further scatteration of developments in the area.

The Commissioners felt that the request was reasonable because the area is now serviced with facilities, the area would be most appropriate for a rural classification, and that the needs of this petition were of an unusual nature.

The Chairman asked whether this petition would be more appropriate for a boundary change rather than a special permit. The Executive Officer replied that the request was for a multi-residence use which was an unusual use. Therefore, the special permit procedure would be more appropriate than a boundary change. He stated that if it were a boundary change, approval would constitute spot zoning.

Commissioner Nishimura felt that these people should be given an opportunity to develop their lands, which are available, to their best and highest use. Commissioner Nishimura, recognizing the opportunity this petition would provide in fulfilling the need for more low cost housing in the area, moved to accept this petition by Sadamu Tsubota. The motion was seconded by Commissioner Wung. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioners Wung, Wenkam and Nishimura.

Disapproval: Commissioner Ota and Chairman Thompson.



The motion was not carried because of lack of votes. The petition was denied.

PETITION OF GILBERT ASHIKAWA (SP(T)63-7) FOR A SPECIAL PERMIT TO SUBDIVIDE PROPERTY INTO TWO LOTS CONTAINING 19,700 SQ. FT. SITUATED IN NORTH KONA, HAWAII: Described as TMK 7-6-10: 18 consisting of 49,300 sq. ft.

A background of the petition was given by the Field Officer, Richard Mar.

The Executive Officer presented a letter from Mr. Ashikawa which was read into the record (letter on file).

The staff recommended denial of the petition on the bases that:

- 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 are 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.

The consensus of the Commission was that this area was typical of a rural designation and requested that the staff inform Mr. Ashikawa that the Commission would be considering this area (which includes Mr. Ashikawa's property) in a rural district during its deliberation on the final district boundaries.

Commissioner Ota moved to deny the petition on the basis of the staff recommendation. Commissioner Wung seconded the motion. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioners Wung, Ota, Wenkam, Nishimura and Chairman Thompson.

Disapproval: None.

The motion was carried.

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PETITION OF PUNA SUGAR COMPANY (SP(T)63-8) FOR/SPECIAL PERMIT TO SUBDIVIDE A LOT OF 1.424 ACRES FROM A PARCEL OF 253.751 ACRES IN SIZE AND TO DEED THIS LOT WITH AN EXISTING DWELLING TO AN EMPLOYEE OF THE COMPANY, LOCATED IN PUNA, HAWAII: Described as TMK 1-8-05: 141

The Field Officer, Richard Mar reviewed the background on the petition and pointed out the location of the area on a map.

The Executive Officer reviewed the staff's analysis and recommendation (which is on file). The recommendation was for disapproval.

Commissioner Ferry moved to deny the petition by Puna Sugar Company on the basis of the staff's recommendation. Commissioner Wenkam seconded the motion. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioner Ota, Wenkam, Ferry and Chairman Thompson.

Disapproval: Commissioners Wung and Nishimura.

The motion was not carried because of insufficent votes.

A second motion to grant approval of the petition was made by Commissioner Nishimura and was seconded by Commissioner Wung. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioners Wung and Nishimura.

Disapproval: Commissioners Ota, Wenkam, Ferry and Chairman Thompson.

Motion was not carried because of insufficient votes. The petition was thus denied.

PETITION OF LIHUE PLANTATION COMPANY, LTD. (SP(T)63-6) FOR A SPECIAL PERMIT TO USE A PORTION OF ITS LANDS FOR THE CONSTRUCTION OF A SOUND MOVIE STUDIO COMPLETE WITH HOTEL, RESIDENTIAL AND RESTAURANT FACILITIES CONSISTING OF 30 ACRES LOCATED IN THE SOUTHWEST CORNER OF HANAMAULU BAY, KAUAI: Described as TMK 3-7-02

The Field Officer, Richard Mar, reviewed the background information on the petition and outlined the location of the area on a map.

The Executive Officer reviewed the analysis and recommendation of the staff report (which is on file). The recommendation was for approval in concurrence with the Kauai Planning and Traffic Commission's reasons as follows:

- The development is directly necessary to the economic development of the County;
- it is utilizing vacant lands of poor soil conditions to more productive use; and
- the proposed use of the land is unusual and reasonable within an agricultual district.

However, the recommendation for approval was limited to the south bank of Hanamaula River where it meets the shore.

The question as to the ownership of about one-half of the Hanamaulu sand beach frontage was raised. Tax maps indicated that the sand beach frontage, which was included in the petitioner's petition, was not included as a portion of lands owned by the petitioner.

Commissioner Ferry moved to approve the petition but limiting the area to lands owned by Lihue Plantation as indicated by the tax maps. The motion was seconded by Commissioner Wung. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioners Wung, Ota, Wenkam, Nishimura, Ferry and Chairman

Thompson.

Disapproval: None.

The motion was carried.

PETITION OF DONN CARLSMITH (SP(T)63-9) FOR A SPECIAL PERMIT TO SUBDIVIDE APPROXIMATELY 10.84 ACRES INTO TWO LOTS (38,160 sq. ft. lot and 9.96 acre lot) AND TO DEED THE PROPOSED 38,160 SQ. FT. LOT TOGETHER WITH A DWELLING AND A ROADWAY EASEMENT TO A PROSPECTIVE PURCHASER SITUATED AT ONOMEA, SOUTH HILO, HAWAII: Described as TMK 2-7-10: 5

A summary of the background of the petition was made by the Field Officer, who located the area on a map.

The Executive Officer reviewed the staff's analysis and recommendation. The staff recommendation was for disapproval on the bases stated in the staff report (on file).

Commissioner Wenkam, in response to a question raised by Commissioner Ota, felt that there was insufficient information available to set any standards that would categorize petitions of this nature.

Commissioner Wenkam, therefore, moved to defer action on this petition. The motion was seconded by Commissioner Wung.

The motion was carried unanimously.

PETITION OF EDWARD & GLADYS HORNER (SP(T)63-5) FOR A SPECIAL PERMIT TO CONSTRUCT A NEW HOME ON LAND SITUATED IN KOLOA, KAUAI: Described as TMK 2-5-06: 18

The Field Officer reviewed the background of the petition and pointed out the location of the area on a map.

The Executive Officer continued with a review of the analysis and recommendation. The recommendation of the staff was for denial on the bases that: (1) the use is not unusual; (2) approval would constitute spot zoning; and (3) justification for similar future petitions and effective control over scattered developments would be lost.

Commissioner Nishimura stated that the petitioners have been prevented from building on their property over a year and has caused them a great hardship.

The Executive Officer was sympathetic with the petitioners' views but stated that the petitioners' land is now in Agriculture and is proposed for an Urban classification. He stated that the special permit process should not be used to circumvent the procedures of a boundary change.

Commissioner Wenkam stated that the area, in reality, is an urban area and that most of the areas which were classified as agriculture under the interim boundaries were arbitrarily established. The previous zoning of the area in agriculture was in error. The argument that a special permit would be contrary to land uses in an agricultural district is purely a technicality. A factual look on the situation shows that the area should be urban and this Commission would be implementing what should have been done if it were to act on this special permit.

Chairman Thompson inquired as to what the possibility for relief to the petitioner would be should this Commission deny this special permit on a technicality. The Executive Officer replied that a petition for a boundary change would involve a waiting period as long as July 1st or longer. He stated that the denial is not only based on a technicality but also a principle. This Commission is mandated to follow the Law and accordingly should base its decisions and actions as mandated by Law.

Commissioner Nishimura moved to accept the petition for a special permit by Edward and Gladys Horner. The motion was seconded by Commissioner Ota. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioners Wung, Ota, Wenkam and Nishimura.

Disapproval: Chairman Thompson.

The motion was not carried because of lack of sufficient votes and the petition was thus denied.

#### OLD BUSINESS

PETITION OF OCEANIC PROPERTIES, INC. (A(T)63-38), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN WAIPIO, OAHU: Described as Portions of TMK 9-4 and 9-5. (Discussion only - not to take action)

The possible need for additional information on the above petition was stressed in discussions by Commissioner Wenkam. A suggestion to subpoena individuals was

turned down by the Commissioners, and a request to have the Executive Officer initiate letters to certain individuals was met with great reluctance.

The Executive Officer explained that it appeared there were indications that the area under consideration is in demand and in need for agricultural use. He requested permission to write to those individuals who would be qualified in answering questions which needed clarification. This request was granted by the Commission.

The meeting adjourned at 5:30 p.m.

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### STATE OF HAWAII LAND USE COMMISSION

LUC Hearing Room Honolulu, Hawaii

1:00 P. M. February 28, 1964

### STAFF REPORT

Subject: SADAMU TSUBOTA, Petition SP(T)63-6 for Special Permit to use TMK 1-5-03-28 containing 3.00 acres for a multi-unit residence. The subject parcel is located in Puna, Hawaii.

## Background

On January 25, 1964, the Land Use Commission received a report on a special permit application from the Planning and Traffic Commission of the County of Hawaii. The report indicated that Mr. Sadamu Tsubota is owner in fee of land situated in the Pahoa-Kapoho area as described in TMK 1-5-03-28.

Mr. Tsubota proposes to construct a four unit workmen's quarters on his three acre property for bachelor farm laborers who are being displaced by the removal of plantation camps numbers 3 and 4.

The subject property is currently vacant. It is a portion of the Kaniahiku Houselots which comprises 13 lots and is accessible by a paved road originating at the junction of Highway 132 (Puna Road). Out of the 13 lots of the Kaniahiku subdivision, only two lots are occupied by single family residences. The houselots to the north and south of the subject parcel are vacant open land. The land to the east is owned by the State of Hawaii and is presently in forest reserve.

Immediately across the road from the subject property is a large grove of orange trees while at the end of the read is another grove of orange trees. Other than the two orange groves and the two existing dwellings, all of the houselots are vacant open land.

Not far from the petitioner's property is a 2.9 acre parcel owned by Mr. Alfred H. Green. Mr. Green has one single family dwelling on his property facing the Puna Road. Approximately .30 mile from the Tsubota property along the Puna Road on the mauka side is the State subdivision called Kaniahiku Village. There are approximately 12 to 15 single family dwellings in the village. Across the Puna Road on the makai side is the extensive Naniwale Subdivision.

The area in which the subject parcel is situated is characterized by vacant lands with natural vegetation and scattered small farms and residences.

General rainfall in the area is about 140 inches per year. The slope of land is below 6%. The lands have been classified as fair to marginal suitability for intensive agriculture. According to Belt Collins and Associates, the subject parcel is located along the 1840 lava flow and is near the east lift zone of Mauna Loa.

The Hawaii County Board of Water Supply mentioned that there is an existing 8<sup>th</sup> water line which services the residents in the general area. Electric power lines are also available to the residents.

The Planning and Traffic Commission of the County of Hawaii, subsequent to a public hearing on October 21, 1963, decided on December 20, 1963 to grant the request for special permit. The bases for this decision were the following:

\*1. Due to the expansion of papaya production in and around the Pahoa-Kapoho area, the cutting back of labor force in sugar plantation at Keaau and

<sup>1/</sup> Belt Collins and Associates, A Plan for the Metropolitan Area of Hilo, pg. 101.

<sup>2/ &</sup>lt;u>Ibid</u>, pgs. 101 & 103.

<sup>3/</sup> Ibid, pg. 117.

the resultant removal of plantation camps #3 and #4 between October and December 1964, the need for modicum rental homes is becoming critical.

- 2. Despite the fact that this structure cannot be deemed accessory to the agricultural use since no farming is being done in the premises, the structure shall be used primarily to accommodate farm workers who work in proximity to the location of said structure.
- 3. This use may be considered exceptional as it would approximate an accessory use to agricultural production and as such it is a reasonable and compatible use to its proposed location."

The development plan for Puna by Belt Collins and Associates, which is the basis of the County's proposed zoning maps, designated the area in which the subject area is situated as "residential agriculture." According to the State General Plan, the area is designated as "open land and forest reserve."

#### Analysis

One of the bases for the County's approval was that the need for rental homes is becoming critical "due to the expansion of papaya production in and around the Pahoa-Kapoho area, the cutting back of labor force in the sugar plantation at Keeau and the resulted removal of plantation camps #3 and #4...." Keeau is located some 12 miles north and the expansion in the papaya production area is taking place in Kapoho some 6 miles east of the subject parcel. Employment

<sup>1/</sup> County of Hawaii - Planning and Traffic Commission, December 28, 1963.

<sup>2/</sup> Belt Collins and Associates, A Plan for the Metropolitan Area of Hilo, p. 47.

<sup>3/</sup> State Planning Office, General Plan of the State of Hawaii, p. 79.

is apparently declining in Keeau and increasing in the Kapoho area. Although Pahoa is about 5 or 6 miles away from Kapoho where agricultural activity and employment is increasing, Kapoho is apparently more susceptible to lava flows. Pahoa, therefore, provides a more convenient and logical residential area to accommodate the shift in employment opportunities from Keeau to Kapoho.

This basis for County approval would be logical except for the fact that the Land Use Commission, in general agreement with the County, have already designated an urban district for such requested urban uses. The proposed final urban districts incorporate the general town of Pahoa, which is less than a mile from the subject property for which a town plan has been prepared, and for which detailed zoning maps are about to be adopted. The intent of such districting and planning activities is to promote orderly development and the prevention of further scatteration of developments as now exist in the subject area. The approval of this petition would defeat such intent. Approval of this petition would in fact mean that multi-unit residences may be constructed in Agricultural districts on parcels which are not included within the limits of an agricultural operation.

The County further states, in support of their approval, that "Despite the fact that this structure cannot be deemed accessory to the agricultural use since no farming is being done in the premises, the structure shall be used primarily to accommodate farm workers who work in proximity to the location of said structure." There is agreement that the use is not directly accessory to agriculture. However, the Pahoa-Kapoho area referred to by petitioner, and where occupants might work, is a rectangular agricultural area some 6 miles wide by about 15 miles long.

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If this petition is approved on the basis that "the structure will be used primarily to accommodate farm workers who work in proximity to the location...," and proximity means the Pahoa-Kapoho area (to quote the petitioner), then it would be a reasonable assumption by anyone that any residential structure which would serve the same purpose, can be constructed anywhere in the "Pahoa-Kapoho area." Thus, the approval of this petition would result in the loss of control in preventing further scatteration of developments in the area.

#### Recommendation

Staff recommends disapproval of the petition on the following basis:

Adequate areas, for which a development plan has already been prepared and for which detailed zoning maps will soon be adopted, have already been placed in the urban district. Therefore, approval of an urban use, outside of the areæ now designated urban, would negate or adversely affect orderly development by setting a precedent which can only lead to further scatteration of developments in the area.

Ref. No. LUC 103 February 11, 1964 Mr. Sadamu Tsubota c/o Planning & Traffic Commission County of Hawaii Hilo, Hawaii Dear Mr. Tsubota: The Land Use Commission of the State of Hawaii will hold a meeting on the Island of Oahu on February 28, 1964 in the Land Use Commission hearing room, 426 Queen Street, Honolulu, Hawaii, at 1:00 p.m. As prescribed by SECTION 98H-6 of Act 205/63, your application for Special Permit has been placed on the agenda for consideration by the Commission at this meeting. Final action may be taken at that time. Very truly yours, RAYMOND S. YAMASHITA Executive Officer

Pahoe, Hawell 28 Cot. 1963 Er. Hobert Yamada, Chairman Planning and Traffic Commission County of Hawaii Jear Mr. Yamada: Please accept this as an application for variance to eract a multiple unit residence in fahou as per enclosed drawing and land map. 1. Due to the rapid expansion of the papaya, cattle, flower, etc. industries and other developments in the Pahoe-tapoho area. and. 2. The present plantation camps #3 and #4 centain housing for over sixty (60) edults and oblidren, not to mention the familles who have houses, but no means to ramove them or to build due to financial inability. 3. As early as october, 1964, and not later than December, 1964, Camps #3 and #4 have to be removed. There remains only a matter of months before this is to take place. b. Many are single farm laborers. A few families who have no means to build new homes must seek low cost bousing. 5. I have been asked by many of these people to help them by providing reasonable rent housing for them. 6. The natural increase in population in Taboa and the removal of the comp housing leaves a critical housing shortage. I would like to build more units, but due to uncertain conditions, volcanic and other, this is all that I have planned for the present. with these main reasons, I pray you give every consideration and approve my application for variance at your earliest convenlence. Thank you. Yours truly, Sadamu Tsubota Box 237 Pahoa, Hawaii

COUNTY OF HAWAII PLANNING AND TRAFFIC COMMISSION

JAN 25 1964

Applican Date of Public Hearing November 18, 1963 Date of Decision December 20, 1963 Meeting Place Bd. of Supervisors Room Date Decision and Findings Forwarded to LUC January 23, 1964

Sadamu Tsubota

State of Hawaii LAND USE COMMISSIE

# SPECIAL PERMIT

The Planning and Traffic Commission of the County of Hawaii pursuant to consideration required by the provisions of Act 204, SLH 1963, hereby transmits the decision and findings of the above special permit request to use the following described property:

Approximately 3.00 acres in area, being Lot 42 a portion of Kaniahiku House Lots, 2nd Series, Puna, Hawaii, Tax Map Key: 1-5-03-28.

# for the following purpose(s);

Development and use of a four (4) unit workmen's quarters.

The Commission decided to: Approve the Special Permit.

# on the basis of the following findings:

- 1. Due to the expansion of papaya production in and around the Pahoa-Kapoho area, the cutting back of labor force in sugar plantation at Keaau and the resultant removal of plantation camps #3 and #4 between October and December 1964, the need for modicum rental homes is becoming critical.
- 2. Despite the fact that this structure cannot be deemed accessory to the agricultural use since no farming is being done in the premises, the structure shall be used primarily to accommodate farm workers who work in proximity to the location of said structure.
- This use may be considered exceptional as it would approximate an accessory use to agricultural production and as such it is a reasonable and compatible use to its proposed location.

## subject to the following conditions:

- 1. Said structure shall be constructed with a front yard in excess of 30 feet and side yards of 20 feet.
- Adequate landscaping shall be provided with hedges and planting around the structure in order to enhance the aesthetic quality of the structure and the site involved.
- This special permit shall be reviewed at such time when comprehensive County zoning is introduced in the area and at which time, reclassification shall be made of this structure and the site involved if need be.
- Parking shall be provided on the basis of one parking stall to one rentable unit up to 15 units and one parking to two units from 16 units and above. A parking stall shall have a minimum dimension of 9' x 20'.
- Said parking area as well as the driveway shall be paved.

(Signed) Planning and Traffic Commission









