

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Kamehameha Ballrooms
Kona Surf Resort and Country Club
78-128 Ehukai Street
Kailua-Kona, Hawaii

May 25, 1995

*Approved
6/23/95*

COMMISSIONERS PRESENT:

Allen K. Hoe
JoAnn Mattson
Trudy K. Senda
Elton Wada
Lloyd Kawakami
Renton L.K. Nip (Portion of
Proceeding)

COMMISSIONERS ABSENT:

Eusebio Lapenia
M. Casey Jarman

STAFF PRESENT:

Esther Ueda, Executive Officer
Jon Itomura, Esq.,
Deputy Attorney General
Kathy Yonamine, Staff Planner
Leo Asuncion, Jr., Staff Planner
Darlene Kinoshita, Chief Clerk

Jean McManus, Court Reporter

Chairperson Hoe called the meeting to order.

ACTION

A89-649 - LANAI RESORT PARTNERS (Manele)

Chairperson Hoe announced that the Commission would take action to consider an Order to Show Cause as to whether certain land located at Manele, Lanai, and identified as TMK: 4-9-02: Por. 49 should revert to its former agricultural and/or rural land use classification or be changed to a more appropriate classification due to Petitioner's failure to comply with Conditions 2, 5, 5(a), 5(e), 5(f), 5(g), 8, 8(b), and 18 of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order filed on April 16, 1991.

Appearances

James T. Funaki, Esq., Attorney for Petitioner

Gary Zakian, Esq., Deputy Corporation Counsel, County
of Maui

Clayton Yoshida, Planning Department, County of Maui

Abe Mitsuda, Land Use Division, Office of State Planning

Alan Murakami, Esq., Attorney for Intervenor

Arguments were heard from Mr. Funaki, Mr. Zakian,
Mr. Murakami, and Mr. Mitsuda.

It was determined by Chairperson Hoe that all of the
Commissioners present were eligible to participate in the
action on the petition.

Commissioner Nip moved to adopt the Findings of Fact as
distributed to the parties. Commissioner Nip also moved that
the Commission found that the Property has been developed in
substantial non-compliance with Condition No. 8(b) of the
Decision and Order of the Commission dated April 16, 1991 and
that the conditions shall be amended as follows:

8(a). The Petitioner shall fully mitigate any
condition caused by its development activities which results in
deterioration of the standards referred to in paragraph 8.

8(b). The Petitioner shall retain an environmental
monitor, as mutually agreed between it and Intervenor for the
purpose of monitoring the water quality standards referred to
in paragraph 8. The monitor shall promptly make its results
available to the State Department of Health. The monitoring
program shall include baseline studies of such coastal waters
and ongoing water quality monitoring on not less than a
quarterly basis. The monitoring program will be conducted with
a frequency and in a manner so as to be at least as effective,
in the opinion of the monitor, as any other coastal water
quality monitoring program for similar waters implemented in
the State of Hawaii.

The motion was seconded by Commissioner Mattson and
polled as follows:

Ayes: Commissioners Nip, Mattson, Senda, Wada, Kawakami, and Hoe.

Commissioner Nip was absent from the proceeding at this time.

STATUS REPORT

A90-660 - HOUSING FINANCE AND DEVELOPMENT CORPORATION (Hawaii)

Appearances

Mike McElroy, for Petitioner

Richard Wurdeman, Esq., Corporation Counsel, County of Hawaii

Royden Yamasato, Planning Department, County of Hawaii

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of State Planning

Abe Mitsuda, Land Use Division, Office of State Planning

Status of development report was presented by Mr. McElroy. After hearing the status report, questions were asked by the Commissioners and parties.

ACTION

A94-705 - COUNTY OF HAWAII, PLANNING DEPARTMENT

Chairperson Hoe announced that the Commission would take action to consider Amended Motion for Permission to Amend Petition by Further Reducing the Total Acreage of the Petition Area to reclassify approximately 3,785 acres of land currently in the Agricultural District into the Urban District from Kau through Keauhou, North Kona, Hawaii to allow uses for the area consistent with adopted State and County policies.

Appearances

Frederick Giannini, Esq., Deputy Corporation Counsel, County of Hawaii

Virginia Goldstein, Director, Planning Department, County of Hawaii

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of State Planning

Abe Mitsuda, Land Use Division, Office of State Planning

Arguments on the County of Hawaii's amended motion to amend petition were heard from Mr. Giannini, Ms. Goldstein, and Ms. Ogata-Deal.

Commissioner Mattson moved to go into executive session to consult with our Deputy Attorney General on legal matters. The motion was seconded by Commissioner Senda and unanimously carried by voice votes.

Commissioner Mattson moved to grant the County of Hawaii's amended motion to amend petition by further reducing the total acreage. The motion was seconded by Commissioner Senda and unanimously carried by voice votes.

At this time, the Planning Department, County of Hawaii, withdrew its motion to waive landowners authorization on TMK No.: 7-3-10:31.

Chairperson Hoe deferred the action on the Office of State Planning's motion to declare petition defective. The Commission will notify potential intervenors of the County's amendment. The potential intervenors need to respond to the Commission if they so desire to intervene.

Frederick Giannini, Esq., Deputy Corporation Counsel, County of Hawaii, requested a clarification on whether or not the landowners in the northern section, lands that have been deleted, would be barred from applying for their own property boundary amendments within a year should they choose to. Chairperson Hoe responded that the LUC rules would allow them to apply.

CONTINUED HEARING

A93-701 - KAUPULEHU DEVELOPMENTS (Hawaii)

Chairperson Hoe announced that the matter before the Commission is a continuation of the hearing which was previously heard on March 23 and 24, 1995.

Appearances

R. Ben Tsukazaki, Esq., Attorney for Petitioner

Richard Wurdeman, Esq., Corporation Counsel, County of
Hawaii

Royden Yamasato, Planning Department, County of Hawaii

Ann Ogata-Deal, Esq., Deputy Attorney General, Office
of State Planning

Robyn Loudermilk, Land Use Division, Office of State
Planning

Abe Mitsuda, Land Use Division, Office of State Planning

Robert Kim, Esq., Attorney for Intervenor, Plan to
Protect

Alfred Lerma, Esq., Attorney for Intervenors, Ka Lahui,
Kona Hawaiian Civic Club, and Protect Kohanaiki

Maile David, for Ka Lahui

Charles Young, for Ka Lahui

Leimana Damate, Kona Hawaiian Civic Club

Karen Eoff, Protect Kohanaiki

At this time, it was mentioned by Mr. Tsukazaki that the parties were notified by him about whether they would be willing to stipulate to an in-camera review with safeguard for Bishop Estate's ability to challenge determination of what provisions of these documents would come in, and to challenge that at a time prior to the full disclosure of those documents to this body and to the parties. A stipulation could not be reached by all the parties at this time. Chairperson Hoe suggested that the parties work out the viewing of the materials in camera. The Commission to defer the action on the motion to quash filed by Petitioner until tomorrow morning to give the parties the opportunity to iron out whatever issues need to be ironed out as to whether or not you can reach an agreement on how to do it if not.

EXHIBITS

1. Petitioner's Exhibit Nos. 5 through 13 were admitted into evidence by the Land Use Commission.

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PETITIONER'S WITNESSES

1. James Bell

The meeting was adjourned at 2:10 p.m.