

BOARD OF APPEALS  
COUNTY OF HAWAII

HEARING TRANSCRIPT  
OCTOBER 12, 2007

A regularly advertised hearing on the petition filed by **CARNOR J. SUMIDA (BOA 07-000039)** at 11:39 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Valta A. Cook presiding.

PRESENT: Valta A. Cook  
David Drury  
Peter Hendricks  
Joel Gimpel  
Diane Gentry  
Kim Tavares

ABSENT & EXCUSED: Kelly Ann Soo

Brooks Bancroft, Counsel to the Board  
Alice Kawaha, Staff to the Board

Sandra Song representing Appellant  
Bill Brilhante representing Planning Director  
James Paulsen, Intervenor  
Ginger Van Vleet, Intervenor

And approximately 16 people from the public in attendance

**PETITIONER: CARNOR J. SUMIDA (BOA 07-000039)** - Consideration of Petition for Intervention filed by James Paulsen, and hearing on the Appeal of Decision by the Planning Director dated December 7, 2006 Notice of Violation and Order (ZCV06-100E), relating to operation of a semi-truck and trailer baseyard within an Agricultural District. The property is one acre in size and located approximately 135 feet east from the intersection of Paradise Drive and 28<sup>th</sup> Avenue, Hawaiian Paradise Park Subdivision, Puna, Hawai'i, TMK: (3) 1-5-20:80.

COOK: I think the next item is Petitioner Sumida, Board of Appeals 07-000039, and I think we have a petition for intervention. Don't we have a petition for intervention in this? I would ask the person asking for intervention to please come up also.

SONG: Mr. Chairman, I'm Sandra Song representing the Appellant. I believe there was a second petition for intervention today; I received it today.

COOK: Did we have a second one for intervention today?

KAWAHA: Yes. That came in on -, the Planning Department received it on September 28<sup>th</sup>, and the petitioner is Ginger Van Vleet.

COOK: I'm sorry, who's that again?

KAWAHA: Ginger Van Vleet.

COOK: Are you here today, Ms. Van Vleet?

KAWAHA: Right there.

COOK: Well, come up. Please come up forward.

BRILHANTE: Your Honor, also present is -.

COOK: Just a minute. I'll first ask the two parties that have come up here who are intervenors, if they would identify themselves on the record. And then, I think Mr. Brilhante has something he wants to say. Yes.

PAULSEN: My name is Jim Paulsen. I live at 15-1753 28<sup>th</sup> or known as Poha Street in Keaau, right next door to the Petitioner, Carnor Sumida.

COOK: And you are asking to intervene in the case, right?

PAULSEN: Yes.

COOK: Okay. And would you give us yours?

VAN VLEET: It's on? My name is Ginger Van Vleet, and I have three properties across the street from Carnor Sumida's -.

COOK: And you are asking to intervene also?

VAN VLEET: Yes.

COOK: Okay. Mr. Brilhante, you had some comment?

BRILHANTE: Just for the record, I want to introduce myself as Bill Brilhante; I'm attorney for the Planning Director, Chris Yuen.

COOK: And Ms. Song, would you introduce yourself?

SONG: I'm Sandra Song representing the Appellant, Carnor Sumida.

COOK: All right. The first things I'm going to take up are these -, actually we'll take them in order that they were presented. Mr. Paulsen's motion to intervene. Do I have any objection by either the Appellant or the -, I'll first ask the Appellant, do you have any objections to the intervention?

SONG: I have no objection.

COOK: Mr. Planning Director?

BRILHANTE: Mr. Chair, the Planning Director has no objection, either.

COOK: I'll ask a motion from the Board.

GIMPEL: I'll move to permit interventions by both Mr. Paulsen and -.

COOK: No, I'm sorry, we're doing this one at a time because of the time difference and their -.

GIMPEL: Okay. By Mr. Paulsen.

GENTRY: Second.

COOK: Okay. All in favor -, is there any discussion? Okay, all in favor of the motion to allow Mr. Paulsen to intervene, please say aye.

MEMBERS: Aye.

COOK: Any opposed? Okay, Mr. Paulsen, you are now a party to the action. I'll now - we are not ready for you to talk yet - I'll now ask the second petition for intervention.

GENTRY: I move that we accept the intervenor, Van Vleet.

COOK: Do I have a second?

GIMPEL: Second.

COOK: Okay, any discussion? Do either of the parties have any objection to this intervention?

SONG: I have no objection.

BRILHANTE: No objection.

COOK: Okay, all in favor of allowing the intervention, say aye.

MEMBERS: Aye.

COOK: Any opposed? Okay, the intervention is allowed. Now I understand there is a request for continuance on this matter. Ms. Song, would you make your -?

SONG: That's correct, Mr. Chairman. I've requested continuance because we are trying to settle this matter; again because of delays on schedule we were not able to reach a final resolution, but we are very close, which would mean withdrawal of this appeal. And I'm -, although I requested this, with the intervenors, I don't -, present, I don't think this hearing can go on anyway today, because if you've just admitted a party, there has to be time for submission of exhibits and witnesses; and with new parties, we are not prepared to go on today anyway. And

in checking with your staff, I wasn't sure whether there would be an evidentiary hearing; but since they weren't sure, I wrote this letter asking for continuance. But I suspect, if this is continued, there will not be an appeal; this will be withdrawn prior to the next hearing date.

COOK: Mr. Brillhante, what is your position on this?

BRILHANTE: Mr. Chairman, it's my understanding that significant steps have been made and are continuing to be made in order to remedy this current situation; and it's my understanding from Mr. Yuen that the parties are very close to reaching some type of amicable agreement that would resolve this matter, and hopefully would result in withdrawal of the petition for appeal.

COOK: Mr. Paulsen, I know I have received letters I think on this particular matter, objecting to continuances; and we have given continuances before in this matter. And Mr. Paulsen, you had some comment you wanted to make? You are one of the intervenors. Now one of the statements that has been made by the Appellant here is that because you and the other intervenor have come in, that, you know, we really shouldn't take the evidentiary hearing today. Because there is necessity maybe that you need to prepare or that there are other witnesses, I'd like to have the both of your positions on this. First, I'll have yours, Mr. Paulsen.

PAULSEN: Mr. Chairman, this is very discouraging news because I think we are looking only at one side of the issue; and as I've explained in my letters to the Board of Appeals, my reasons, my health reasons and so forth. Since writing to you previously in the last few months, I came down with a second cancer which they cannot by operation remove, so I'm under treatment for that. And I think the delays that had already been given have been far too long; it's 10 months later, 6 months past the first Board of Appeal's meeting that was to be assigned; and I prepared everything far in advance, and gave everything I was supposed to give to the Board of Appeals, and I am prepared to go ahead with this. I see this is just another stall to make me and my neighbors suffer more from this noisy, polluting, unhealthy business that's going on next door to me.

COOK: I'm sorry, would you repeat your name? You know, you hit me late here, and I've had a lot of things on my mind today.

VAN VLEET: My name is Ginger Van Vleet.

COOK: Okay. What is your position on this?

VAN VLEET: My -, well, I didn't quite understand everything you said and why that you want to request a continuance. You are talking about perhaps us -.

COOK: Oh, no, I'm not requesting it; Ms. Song is requesting it. And I was -.

VAN VLEET: Or Ms. Song is. For, so that she can call more witnesses? I just need that explained again to me.

COOK: Yeah, I wasn't sure about that, either, but I think what she was saying was – and she can correct me – is that maybe the intervenors are not prepared to go forward, and that they need time to get their witnesses and so forth together. Was that what you were saying, Ms. Song?

SONG: Mr. Chairman.

COOK: Yes.

SONG: Under due process rights, I have a right to know who their witnesses are ahead of time, I have a right to review exhibits ahead of time. Mr. Paulsen has asked to intervene in this proceeding. And since his request for intervention, he has submitted substantive evidence that has gone to the Board, which is totally improper. I have three letters that were submitted after his request for intervention. And I found out from the staff that the Board of Appeals received all of those letters. That's testimony; and the Board has gotten testimony, ex parte testimony from Mr. Paulsen. We did not receive copies of that from Mr. Paulsen. And as a party; he has to follow rules like everybody else. And so it's not for us to get it from the Board of Appeals, it's for Mr. Paulsen to provide it to us. He cannot submit written testimony without the approval of the Board prior to that. And the last letter, I would say, is partially written testimony. And that's totally improper. We have a right to prepare for it. We just got some of this today.

COOK: Well, we get letters all the time on these cases. And the letters are filed; the letters are not testimony. Anything that Mr. Paulsen has filed here prior to today is not testimony; those are public statements. So, you know, I disagree that we have taken any testimony from Mr. Paulsen up to this point.

SONG: Mr. Cook, I beg to differ. If somebody submits a request to intervene as a party, their status changes; it's not public testimony anymore. They want to be a party to the proceeding.

COOK: But they, but -.

SONG: And once they're going to be a party to the proceeding, they need to follow the rules like everybody else.

COOK: But they aren't a party to the proceedings until we have accepted them as a party to the proceedings.

SONG: That's -.

COOK: So technically they have -, that is not testimony. That is not under oath; we have not accepted that as testimony -.

SONG: But they cannot -.

COOK: So I do not agree with your, with your statements. But your other opposition or your other reason why you think it should be continued because of the intervention, we have two new parties here, maybe you can articulate that a little bit more for me, please.

SONG: When parties intervene, you have a right -, there is generally a pre-hearing conference and, where the Chairman can reduce the, to clarify the issues and reduce any issues, to set deadline for submission of exchange of exhibits and things like that. And that's been done with the Board before. Ms.-, there is a new party that just submitted, that I received the petition for intervention this morning from the staff. And because of that, I had no idea; there's surprise there. We have a right to, due process right to have, find out what the other party is going to submit in this case.

COOK: Okay. I'm going to go into executive session, and we're going to discuss this with our legal counsel, and we'll reconvene very shortly because I want -, once I've made a decision on this particular issue, we're going to break for lunch.

EXECUTIVE  
SESSION

The Board went into executive session at 11:50 a.m. and came out of executive session at 12:00 noon.

COOK: Okay, the Planning Board of Appeals is back in session. Before we take up that matter of the continuance, I would ask if Mr. Brillhante on behalf of the County and Ms. Song can tell us where you are in relation to settling this matter. Are we talking about something you are about there? Could you give us some idea where we are? I mean we've got some real concerns, you know, about the length of time that this is continued since the original citation. So we want to know where you are, and I, you know, then we will take up the issue of the continuance. Okay, Mr. Brillhante, you want to speak to that first, and then Ms. Song?

BRILHANTE: You know, Mr. Chair, I'll let Ms. Song address the Board initially because it's -, I'm just coming in filling in for Ms. Self who is the primary attorney on this. And I believe there has been significant discussion between Ms. Song and Mr. Yuen that transpired prior to me coming on the case. So I'll let Ms. Song go, and then I'll give my comments second.

COOK: Okay, Ms. Song.

SONG: Mr. Chairman, we're very, talking to, again Mr. Yuen hasn't been available; I've been trying to meet with him for about a month and a half. And so he came to talk to me today about this. We are just about there with settlement. My client has leased other property, the trucks are going. He's leased property in Shipman Industrial; the trucks will be gone.

COOK: I'm sorry. Hit me again with that.

SONG: He's leased property in the Shipman Industrial area, and his tractor trailers will be removed very shortly. I was just talking to these two people because I know there have been some bad neighbor feelings on top of it. And I explained to them that the trucks will be gone very shortly, within a week. However, since there are still bad neighbor feelings, I thought that it might be useful to set up a mediation, a kuikahi mediation. Because sometimes when there're neighbor disputes, there are other issues that could get smoothed over with a neutral

sitting there between the parties. But I think with the trucks gone, a lot of problems will be gone. And then the other minor issues, if we set up a mediation, that should resolve anything that isn't really related to the Board right now in this appeal.

COOK: When you are talking about a mediation, that would be between the property owner and the -?

SONG: Right.

COOK: Neighbors out there? That would be something outside of our purview -.

SONG: That would be something outside.

COOK: But that would be the intent that you -?

SONG: Right.

COOK: All right. With those explanations, we've discussed in the executive session basically whether or not we have to continue because we have intervenors here; and that's a little iffy question, so I'm going to at this point accept a motion either to continue or not to continue, and then we can discuss it. Could I have a -?

GENTRY: I move to continue this hearing.

COOK: Do I have a second?

GIMPEL: I'll second.

COOK: All right. Let's have some discussion on that. Do we have any discussion on the right here?

DRURY: Just to convey again the sense of much of the Board that there be no more continuances; we'd like to resolve this quickly.

COOK: Okay. Mr. Gimpel, do you want to say a couple of things?

GIMPEL: Well, I'll agree that, I believe that is the sense of the Board. I'm quite disturbed that this is going on this long. I understand the reasons for it, but I also understand that the neighbors have voiced a lot of complaints about the timeframe for making this decision. But especially in light of the representation that the parties are very close to settlement of this agreement, I think it'll be appropriate to continue it for, until our next meeting. And hopefully that it will be resolved well before then and the whole thing settled.

COOK: Okay, I will just say that, you know, the Chair was concerned because I get the letters and the concerns of the public, and you know, it's always a concern of ours that all issues be heard by the Board and we don't pre-judge; and I think I indicated in the letter to Mr. Paulsen that we are concerned, too, about the long length here, but that we do have rules that we have to apply, and that we do not pre-judge cases. But with the representations made by

Ms. Song, particularly about the removing of the trucks very shortly, I would be inclined to go along with this motion to continue. Okay, could we -?

GENTRY: Oh, wait. Further discussion -.

COOK: I'm sorry, yes.

GENTRY: I had, I have a comment.

COOK: I'm sorry -.

GENTRY: I think the suggestion for mediation is actually a good one given the length of time and other unresolved issues that might exist. This might not be the format for the other issues.

SONG: And I just would like to add, if I were in better health, I would have addressed these issues earlier. And the delays are really my fault rather than anything else, so I apologize for that. But since I am feeling a little better, at least part-time better, I'm determined to get this thing resolved.

COOK: Yeah, well, Ms. Song, you know, I didn't want to make this personal with you, and you know, we certainly sympathize, and, you know, the Board has gone along and -. But you know, it comes to a point that we have to move. Okay, could I -, well, let me first ask, all in favor of this motion, please say aye.

MEMBERS: Aye.

COOK: Any opposed? Okay, unanimously carries. So this matter is continued until the next Hilo date for appearance by the Board -.

SONG: Mr. Chairman, I believe -.

COOK: Yes, I'm sorry?

VAN VLEET: Can I ask a -?

COOK: Yes, Ms. Intervenor?

VAN VLEET: Can I ask a question? May I ask a question?

COOK: Why I'm sure.

VAN VLEET: What guaranty or what response will there be if the trucks are not removed within, you said, a week?

COOK: Well, unfortunately, that is not something that we can handle. I would suggest that maybe you want to bring that up with the Planning Director over there; since representations were made here, maybe they would have something.

The discussion ended at 12:07 p.m.

Respectfully submitted,

Noriko Sauer  
West Hawai'i Secretary