

PLANNING COMMISSION
COUNTY OF HAWAI`I

MINUTES/HEARING TRANSCRIPT
OCTOBER 22, 2004

The Planning Commission met in special session on DOUTOR COFFEE HAWAI`I CO., INC. (SPP NO. 1215) at 4:31 p.m. in the County Building, Councilroom-Room 201, 25 Aupuni Street, Hilo, Hawai`i, with Chairman Fred Galdones presiding.

PRESENT: Fred Galdones
C. Kimo Alameda
Earl Fujikawa
William Graham
Jeffrey McCall
René Siracusa
Hannah Springer
Francis Smith

ABSENT & EXCUSED: Bill Thibadeau

Ivan Torigoe, Deputy Corporation Counsel
Christopher J. Yuen, Planning Director
Norman Hayashi, Planning Program Manager
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner

And 3 people from the public in attendance

APPLICANT: DOUTOR COFFEE HAWAI`I CO., INC. (SPP NO. 1215)

For discussion/executive session on the effect of and whether to appeal the Third Circuit Court's September 23, 2004 decision entitled: "Appellants Dean Yokoyama and Kulana Huli Honua's Joint Findings of Fact, Conclusions of Law, and Order Granting Appellants Dean Yokoyama and Kulana Huli Honua's' Appeal from the County of Hawai`i Planning Commission's Findings of Fact; Conclusions of Law; and Decision and Order dated August 19, 2003, in SPP 02-010." Special Permit No. 1215 allowed public tours of the existing coffee farm, proposed retail sales of non-agricultural products, and related parking area on approximately 12 acres of a 28.47-lot situated within the State Land Use Agricultural District. The property is located on the west (makai) side of Mamalahoa Highway, approximately 300 feet south of the Keopu Cemetery, Hienaloli 2nd, North Kona, Hawai`i, TMK: 7-5-11: portion of 24. The purpose of the executive session is to consult with Corporation Counsel on matters involving the Commission's powers, duties, privileges, immunities and liabilities pursuant to Sections 92-4 and 92-5, HRS.

GALDONES: Okay. Commissioners, there was a Notice of a Special Meeting and Hearing that was submitted to us. The agenda item, the Applicant is the Doutor Coffee Hawai`i Co., Inc. (SPP No. 1215). This was for discussion and executive session on the effects of and whether to appeal the Third Circuit Court's September 23, 2004 decision entitled: "Appellants Dean Yokoyama and Kulana Huli Honua's Joint Findings of Fact, Conclusions of Law and

Order Granting Appellants Dean Yokoyama and Kulana Huli Honua's Appeal from the County of Hawai'i Planning Commission's Findings of Fact, Conclusions of Law and Decision and Order dated August 19, 2003 in SPP 02-010." Special Permit No. 1215 allowed public tours of the existing coffee farm, proposed retail sales of non-agricultural products and related parking area on approximately 12 acres of a 28.47-lot situated within the State Land Use Agricultural District. Norman, is there a synopsis to this?

HAYASHI: We'll just defer to Corp. Counsel.

GALDONES: Counsel? Mr. Torigoe?

TORIGOE: Okay, thank you, Mr. Chairman. I just want to start up by orienting you procedurally. This is not a continuation of the Contested Case that was concluded a while ago, and this matter went to the Circuit Court. You've received a copy of the Circuit Court's decision dated September 23, 2004 (SEE EXHIBIT A) and, so, all we're talking about today is whether, you know, if you want to discuss any of the effects of this decision and whether an appeal needs to be filed on behalf of the Commission. I understand that Doutor Coffee intends to file an appeal, I see Mr. Tsukazaki is here today. But, again, this is not a continuation of the Contested Case. So, Mr. Tsukazaki, if he's going to speak would be just to speak to us as a matter of public testimony, as well as, I assume the other parties as well.

So, you have the decision and if you're open to any questions regarding the effect of it, if you want to go into executive session to discuss any of that, we can do that as well, which is probably advisable if we're going to be talking about whether to appeal the matter.

GALDONES: Mr. Torigoe, in reference to Mr. Tsukazaki's letter that was submitted to the Commissioners, how are we to handle this communication?

TORIGOE: I guess that would just be written testimony on this agenda item, so receive it as public written testimony on this agenda item.

GALDONES: Do we -? Being that Mr. Tsukazaki is here, I'll allow him to explain the letter that he has circulated to us?

TORIGOE: You can do that. And, again, it's a matter of public testimony.

GALDONES: Okay. Commissioners, any question of Mr. Torigoe? Hearing none, in reference to a letter from Mr. Tsukazaki, Mr. Tsukazaki, do you wish to make a statement on the letter?

TSUKAZAKI: Yes. I'll try and be brief. Again, Ben Tsukazaki, representing Doutor Coffee Hawai'i.

GALDONES: Oh, Mr. Tsukazaki, could I swear you in first?

TSUKAZAKI: Sure.

GALDONES: Do you swear or affirm to tell the truth on this matter now before the Hawai'i County Planning Commission?

TSUKAZAKI: Yes.

GALDONES: Name and address, please?

TSUKAZAKI: Ben Tsukazaki, my address is 142 Kapaa Street, Hilo, Hawai'i.

GALDONES: You may proceed.

TSUKAZAKI: Thank you. Thanks, I wanted to just make a short statement before you enter into executive session, if that's, in fact, what you'll do; and I understand the scope of this agenda item is just, you know, whether you decide to appeal the court decision or not. In a letter that I've submitted today, I have requested that this body file an appeal. We believe that the court's decision infringes upon this body's jurisdiction and this body's province, and I -. I'll stop there because you've -. I hear from counsel that you all have a copy of the court's decision so I don't want to go through it, unless you need an explanation from me as to why I feel the court's decision is wrong.

GALDONES: Thank you, Mr. Tsukazaki. Commissioners, any questions of Mr. Tsukazaki? If none, Elizabeth Strance?

STRANCE: Good afternoon and thank you for taking a time to -.

GALDONES: Before you begin your testimony, may I swear you in, please?

STRANCE: Certainly.

GALDONES: Raise your right hand. Do you swear or affirm to tell the truth on this matter now before the Hawai'i County Planning Commission?

STRANCE: I do.

GALDONES: Could you please state your name and your address?

STRANCE: Thank you. My name is Elizabeth Strance. My law firm's address is 75-165 Hualalai Road, Suite 201, Kailua-Kona, Hawai'i 96740. Our office represents Kulana Huli Honua in this matter. And I'd like to note for the Planning Commission the presence of Mr. Roy, who is here this afternoon, who is the president of that organization; and I'm speaking on behalf of that organization this afternoon.

We understand that you're going to go into executive session to address this matter but we did want to place on the record our hope that you would not do so. We believe that Judge Ibarra's Decision and Order in this matter was very clear, that there were some deficiencies in the manner

in which this case was handled; and that given some of the repercussions, that were addressed by other parties but on behalf of my client, that there were some very significant cultural, Hawai'ian cultural issues relating to this property that were not addressed and that they are deficient, and that the court properly noted that. I think that the court's decision is sufficiently narrow that we believe that an appeal, a successful appeal is very unlikely and will simply postpone final resolution and conclusion of this matter. And as a public policy matter, this body also kind of wears two hats in some of these cases where you're a participant in the process but you're also representatives and have a community obligation; and, that, my client is a participant in the community organization and respectfully request and hopes that you will not appeal the decision and that you'll allow the matter to proceed. And that's really all I have today and thank you again.

GALDONES: Thank you, Ms. Strance. Commissioners, any questions of Ms. Strance? If not, thank you for your testimony. And at this time I would like to have the Planning Commission go into executive session. Counsel, do we need to have a motion to -?

TORIGOE: Yes, you need to have a motion and a roll call vote of two-thirds of your entire membership.

GALDONES: A motion is in order. Commissioner Fujikawa?

FUJIKAWA: I make a motion to get into executive session.

GALDONES: To, for the purposes of discussing -?

FUJIKAWA: Discussing this appeal by the applicant.

SMITH: Second.

GALDONES: Moved by Commissioner Fujikawa and seconded by Commissioner Smith that the County Council, not the County Council, excuse me, the Planning Commission, it has been a long day, yeah, that the Planning Commission go into executive session to discuss the effects and whether to appeal the Third Circuit Court's decision. Further discussion? Hearing none, Norman?

HAYASHI: Commissioner Fujikawa?

FUJIKAWA: Aye.

HAYASHI: Commissioner Smith?

SMITH: Aye.

HAYASHI: Commissioner Springer?

SPRINGER: Yes.

HAYASHI: Commissioner Alameda?

ALAMEDA: Aye.

HAYASHI: Commissioner Graham?

GRAHAM: Aye.

HAYASHI: Commissioner McCall?

MCCALL: Aye.

HAYASHI: Commissioner Siracusa?

SIRACUSA: Aye.

HAYASHI: Chair Galdones?

GALDONES: Aye.

HAYASHI: Motion carries.

GALDONES: Okay, thank you. We'll be in executive session so I need to excuse the public from the discussions. Thank you.

EXECUTIVE
SESSION

The Commission went into executive session at this time, 4:40 p.m. The Commission came out of executive session at 5:02 p.m. by a motion made by Commissioner Springer, seconded by Commissioner Smith, and unanimously carried by a voice vote of all Commissioners in attendance.

GALDONES: The Hawai'i County Planning Commission will be back in order in the matter of the Applicant, Doutor Coffee Hawai'i Co., Inc. (SPP No. 1215) regarding the effects of and whether to appeal the Third Circuit Court's September 23, 2004 decision. Commissioner Springer?

SPRINGER: Mr. Chair, I move that the Hawai'i County Planning Commission direct Mr. Torigoe to exercise his discretion to join in as an Appellee or a nominal party in this matter to take positions protecting the Hawai'i County Planning Commission's decision and authority.

MCCALL: Second.

GALDONES: It has been moved by Commissioner Springer and seconded by Commission McCall. Discussion? Hearing none, Norman?

HAYASHI: Commissioner Springer?

SPRINGER: Yes.

HAYASHI: Commissioner McCall?

MCCALL: Aye.

HAYASHI: Commissioner Siracusa?

SIRACUSA: Aye.

HAYASHI: Commissioner Smith?

SMITH: Aye.

HAYASHI: Commissioner Alameda?

ALAMEDA: Aye.

HAYASHI: Commissioner Fujikawa?

FUJIKAWA: Aye.

HAYASHI: Commissioner Graham?

GRAHAM: Aye.

HAYASHI: Chair Galdones?

GALDONES: Aye.

HAYASHI: Mr. Chair, motion carries.

GALDONES: Thank you, Norman.

The discussion ended at 5:05 p.m.

A T T E S T:

Respectfully submitted,

Fred Galdones, Chairman
Planning Commission

Sharon M. Nomura, Secretary

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