

PLANNING COMMISSION  
COUNTY OF HAWAII

HEARING TRANSCRIPT  
JANUARY 22, 2009

A regularly advertised hearing on the application of **SAMSON LLC (REZ 709/REZ 524)** was called to order at 9:53 a.m. in the Hapuna Beach Prince Hotel, Hau Room, 62-100 Kaunaoa Drive, Kohala Coast, Hawaii, with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe  
Lani Bowman  
Takashi Domingo  
Frederic Housel  
Andrew Iwashita  
Shelly Ogata  
Rell Woodward

ABSENT & EXCUSED: C. Kimo Alameda

Ivan Torigoe, Deputy Corporation Counsel  
Daryn Arai, Acting Planning Director  
Norman Hayashi, Planning Program Manager  
Phyllis Fujimoto, Staff Planner  
Jeff Darrow, Staff Planner

And four people from the public in attendance

**APPLICANT: SAMSON LLC (REZ 709/REZ 524)**

- a. Time extension to Condition C (Final Plan Approval and Completion of Construction) of Ordinance No. 06 137, which rezoned 3.224 acres of land from Unplanned (U) to Multiple-Family Residential – 2,500 square feet (RM-2.5) and 2.29 acres of land from Double-Family Residential – 3,750 square feet (RD – 3.75) to Village Commercial – 7,500 square feet (CV-7.5).
- b. Time extension to Condition C (Final Plan Approval and Completion of Construction) of Ordinance No. 06 138, which rezoned 45,411 square feet of land from Multiple-Family Residential – 2,000 square feet (RM-2) to Village Commercial – 7,500 square feet (CV-7.5).

The area involved is located along the north side of Hualalai Road and adjacent to the Aloha Kona Subdivision, Hienaloli 4<sup>th</sup> and 5<sup>th</sup>, North Kona, Hawaii., TMK: 7-5-10: portion of 13.

WATANABE: The first item on the agenda is Samson LLC. This is REZ 709 and REZ 524. I believe these are both time extensions to conditions. With that, I'll turn it over to Mr. Darrow.

DARROW: Thank you, Mr. Chairman. Good morning, Members of the Planning Commission. If I can direct your attention to the PowerPoint presentation on the wall. The first applicant is Samson LLC. They are requesting a time extension request for Condition C of Change of Zone Ordinances Nos. 06 137 and 06 138. The location of this application is within

the North Kona district. More specifically, we are looking at Hualalai Road that runs through the middle of the map. We have Kuakini Highway that's running north-south on the left side of the map. The actual property itself is identified by a blue outline. This is just located very near the middle of the Kailua town.

The applicant in this case – oh, I'm sorry, I wanted to show you an aerial – currently you can see that the property is vacant of structures and uses. There are single family dwellings located to the south as well as, I believe this is a retirement facility that is located just to the north of the property. There is a, you can see the subdivisions that are surrounding the property.

The applicant is requesting a two-year time extension to Condition C to Change of Zone Ordinances Nos. 06 137 and 06 138 to be able to secure final plan approval. The reason that the applicant is actually here today is that the Ordinances require the applicant to secure final plan approval within two years from the amendment date of these Ordinances; and that did not occur; so the applicant had to come in for the time extension. They are also requesting a five-year time extension for the same condition, which is the portion that requires them to complete construction within five years.

This is a tentative site plan that was submitted prior by the applicant. It kind of shows you the layout of the particular project. The project is going to consist of 146 multiple-family residential units. This is what the elevation of the two-story building is going to look like, as well as the three-story building.

The Planning Director is recommending that the Planning Commission send a favorable recommendation for these time extension requests. Our Condition C, as you'll notice, does not have the time for the final plan approval; so we are just allowing the five-year time extension. We are requesting that the Planning Commission send a favorable recommendation for Condition C for just the five-year time extension to complete construction, so that the applicant won't be tied by this two-year time limit to have to secure final plan approval.

Additionally, this morning we received proposed conditions of approval from the applicant, which has been submitted to the Planning Commission. Are there any questions?

WATANABE: Fellow Commissioners, do we have any questions of staff? Yes, Ms. Bowman.

BOWMAN: Just looking over what was given us, are there changes? I mean I can't see the delineation of the changes that the applicant has -.

WATANABE: I believe that would be on the last -.

BOWMAN: Except for "additional" under C. Would they be underlined? I'm just trying to compare.

DARROW: They are red. You'll see the changes in red.

HOUSEL: Page 3.

BOWMAN: Oh, okay, thank you.

WATANABE: Okay? For the record we do not have anyone signed up from the public to testify for this agenda item. So I'll call up the applicant, I believe, Mr. Lim? Yeah, I'll swear you in. Do you swear or affirm to tell the truth now before the Planning Commission?

LIM: I do.

WATANABE: Thank you. And -?

LEUTENEKER I do.

WATANABE: Thank you. So, name and address before you begin, please, Mr. Lim.

LIM: Thank you, Mr. Chairman. I'm Steven Lim from Carlsmith Ball in Hilo at 121 Waianuenue Avenue. Seated to my right is Mr. Erik Leuteneker who is the chief financial officer of the applicant. And his -. I'll have him give his address.

LEUTENEKER: 635 Kenolio Road, and I'm located in Kihei, Maui.

WATANABE: Thank you. So Mr. Lim, have you had an opportunity to review the Planning Director's recommendations? And do you have anything that you care to add?

LIM: Thank you. Yes, we have received the Planning Director's recommendations, and we are supportive of those recommendations. We've submitted today a proposed amendment that Ms. Bowman was just talking about. When you look at that proposed amendment, the underlining and the bracketing on the first two pages are the changes that were made by the Planning Director's recommendation; our change comes at Page 3 and that's in the red. And what that's designed to do is just to recognize the fact that the applicant should be getting fair share contribution credits for anything that he does off-site that's also contained in Condition No. F. Condition No. F provides at the second (sic) sentence that "(t)he applicant shall provide a left turn storage lane on Hualalai Road to the subject property ...." So we'd like to get the fair share credit for that. I think it's standard practice with the Planning Department and we just didn't pick it up until we were preparing for the hearing.

WATANABE: Okay, thank you. Mr. Arai, you care to comment on this?

ARAI: Thank you, Mr. Chairman. I reviewed the proposed amendment to Condition - what was it -.

WATANABE: F?

ARAI: F, no, Condition - why am I losing it - N regarding fair share. I, with all due respect, disagree with the proposed amendment, and I recommend that the Planning Commission keep the conditions of approval as represented by the Planning Department. And the reason for my position is because Condition F or at least the more substantive improvement

is that “(t)he applicant shall provide a left turn storage lane on Hualalai Road to the subject property ....” If it wasn’t for the proposed project, there would be no need for the left turn lane improvement. So the improvement that they are providing on Hualalai Road is simply to service this individual project, and there is no regional benefit to the surrounding community. So with that being said, it is a requirement specific to this project and should not be subject to credit against the fair share obligations.

WATANABE: Mr. Lim, you care to comment on that?

LIM: We understand the Planning Director’s position and we let the Commission decide on the amendment.

WATANABE: Okay. So it’s my understanding then that aside from that all the additional conditions or revisions to conditions are satisfactory?

LIM: That is correct. We believe that -. This is a project that has been in the process of development for many years. There has been a series of owners on this. And for one reason or another they’d not been able to cross the finish line. This particular project was proceeding and we filed our application for final plan approval in August of last year, which is the final design approval by the Planning Department before you apply for building permits, and you know what happened between now and August of last year. So essentially what happened is the financial markets fell, the lenders withdrew their financing. And as part of the final plan approval one of the requirements is that you pay your fair share contributions; and for this project, it was, you know, in the neighborhood of slightly less than a million dollars, and obviously they couldn’t do that out of pocket. And we are glad to see that the Planning Director has suggested removing that two-year time frame from the current Condition No. C because it is, as a practical matter it’s a difficult -. If they are going to require that you pay the fair share contributions at the time of final plan approval, that’s significantly prior to the time that the developers can get financing. So we are glad to see that change.

WATANABE: Okay, thank you. Well, fellow Commissioners, do we have any questions of the applicant or the applicant’s representative? Seeing none, both of you may be seated. And we begin deliberations on this. Anyone care to begin the deliberations or does anyone care to make a motion? Yes, Mr. Iwashita.

IWASHITA: I can make the motion.

WATANABE: Thank you.

IWASHITA: With regard to Agenda Item 1, Applicant: Samson LLC, REZ 709/REZ 524, I move that the – should I do it in two parts, or -?

WATANABE: Well, the recommendation is done in one, and it’s both just time extension, so I guess you can do it in one.

IWASHITA: As to both Items a and b, I move that the Planning Commission forward a favorable recommendation to the County Council in accordance with the recommendations and conditions set forth in the Planning Department's submission to the Planning Commission.

WATANABE: Okay, we have a motion. Do we have a second to that?

BOWMAN: Second.

WATANABE: Thank you, Ms. Bowman. Any further discussion on the matter?

WOODWARD: Mr. Chairman?

WATANABE: Yes, Mr. Woodward.

WOODWARD: Okay, just to clarify. So the applicant submitted this proposed change of conditions, and I'm kind of unclear on Condition C. It says, "... completed within five (5) years ...." and you go down to about the fifth line, and it says, "... [within two (2) years of the effective date of this amendment ....]" I guess that was struck.

WATANABE: Yeah, that was, and the motion was to approve the -.

WOODWARD: Director's recommendation.

WATANABE: Yeah, the Director's and not the applicant's. I believe the applicant was suggesting that we also include Condition F as part of the fair share requirement credits, but as you recall, the Director suggested that that not be included because it's a condition specific to the project.

WOODWARD: Okay, yeah, I just wanted to get clarification on that one point. That's fine.

WATANABE: Yeah. And I believe the Department's recommendation is that the two-year limit on plan approval be removed and the entire time extension be referenced only to five years. Is that correct, Mr. Hayashi?

HAYASHI: That is correct. And that is a standard condition that we use currently. These Ordinances were adopted several years back, and at that time we included the requirement that they construct within five years; but then they had to receive plan approval within two years. Now what the condition states is they complete construction within this five-year period and not mentioning when they have to get final plan approval.

WATANABE: Yeah, so it will be consistent with what we've been doing -.

HAYASHI: Current wording, yes.

WATANABE: Currently. Okay. Are we all clear on that?

IWASHITA: Yeah, so -.

WATANABE: Mr. Iwashita.

IWASHITA: Just to be clear, my motion would include the conditions in the recommendations beginning on Page 2 and ending on Page 6.

WATANABE: Right. Well, the one submitted to the Planning Commission by the Department without any revisions, right?

IWASHITA: Yes, that's correct.

WATANABE: Okay. Okay, so I think we are all clear on this. Any further discussion on the matter?

BOWMAN: I just have -.

WATANABE: Ms. Bowman.

BOWMAN: One comment. I think, in all fairness to the applicant, again -. You see, if we did approve their request, it would be precedent setting, because I don't think historically that the fair share has been, that this has been done, right, unless there is a public, like the Acting Director said, that there is overall public benefit. I just want to clarify that.

WATANABE: Oh, with regard to the applicant's suggested change -.

BOWMAN: Right, right, their suggested, yes.

WATANABE: Yeah, yeah, yeah. And it would appear that we are being, I think, consistent, if we follow the -.

BOWMAN: Planning Director's -.

WATANABE: Planning Director's recommendation as it exists.

BOWMAN: Okay, because historically this has not been the case, to approve this. I just wanted, for the record. Thank you.

WATANABE: Okay. Any further discussion on the matter? Mr. Darrow?

DARROW: Thank you, Mr. Chairman. The motion before us is to send a favorable recommendation to the time extension request to Condition C for Change of Zone Ordinance 06 137 as well as Condition C of Change of Zone Ordinance 06 138. With that, I'll take the roll. Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Bowman?  
BOWMAN: Aye.  
DARROW: Commissioner Domingo?  
DOMINGO: Aye.  
DARROW: Commissioner House?  
HOUSEL: Aye.  
DARROW: Commissioner Ogata?  
OGATA: Aye.  
DARROW: Commissioner Woodward?  
WOODWARD: Aye.  
DARROW: And Mr. Chairman?  
WATANABE: Aye.  
DARROW: The motion passes, seven to zero.  
WATANABE: Okay, thank you. You'll be notified in writing, Mr. Lim.  
LIM: Thank you very much.  
WATANABE: Good luck with the Council.

The discussion ended at 10:10 a.m.

Respectfully submitted,

Noriko Sauer, West Hawaii Secretary