

PLANNING COMMISSION
COUNTY OF HAWAII

HEARING TRANSCRIPT
FEBRUARY 19, 2009

A regularly advertised hearing on the application of **WILLIAM AND DIXIE MINSON (REZ 08-000089)** was called to order at 10:00 a.m. in the Waikoloa Beach Marriott Hotel, Alii III Room, 69-275 Waikoloa Drive, Waikoloa, Hawaii, with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe
C. Kimo Alameda
Lani Bowman
Takashi Domingo
Frederic Housel
Andrew Iwashita
Shelly Ogata
Rell Woodward
Warren Lee, Public Works Director – Ex Officio Member

Gerald Takase, Deputy Corporation Counsel
BJ Leithead-Todd, Acting Deputy Planning Director
Norman Hayashi, Planning Program Manager
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner
Kiran Emler, Engineering Division, Department of Public Works

And three people from the public in attendance

APPLICANT: WILLIAM AND DIXIE MINSON (REZ 08-000089)

Change of Zone from Limited Industrial - 1 acre (ML-1a) to Industrial-Commercial Mixed 1-acre (MCX-1a) for approximately 1.3698 acres of land. The property is located between Hina Lani Street and Olowalu Street, bounded on the east by Kamanu Street, Kaloko Light Industrial Subdivision, North Kona, Hawaii, TMK: 7-3-51: 65.

WATANABE: We will address Agenda Item No. 1, which is William and Dixie Minson. This is REZ 08-000089. This is a change of zone from Limited Industrial 1-acre to Industrial-Commercial Mixed 1-acre. And it looks like it's Maija.

COTTLE: Thank you, Mr. Chairman. Good morning, everyone.

COMMISSIONERS: Good morning.

COTTLE: The next application, as Mr. Chairman mentioned, is a change of zone request. The applicants are William and Dixie Minson. And they are requesting a change of zone from Limited Industrial 1-acre to Industrial-Commercial Mixed 1-acre.

And if I can direct your attention to the screen, we have a map showing the location of the property. The property is outlined in red, and it's located in the Kaloko Business, or Industrial Park in the North Kona district. Queen Kaahumanu Highway runs in a north-south direction on the left side of the slide, and Hina Lani Street runs east-and-west on the top of the slide. The subject property is bordered on the north by Hina Lani Street, on the east by Kamanu Street and on the south by Olowalu Street. And next door to it is a Credit Union.

On the slide the areas shown in gray are currently zoned Limited Industrial, and the areas in light purple are zoned Industrial-Commercial Mixed. So you can see that the three adjacent properties to the west are currently zoned MCX, and the large property across Kamanu Street is also zoned MCX.

This slide is a little bit hard to read, but I'll kind of walk you through it. The proposed development is a two-level structure. And the way the topography of the lot is oriented, there is going to be parking on the lower level and also on the upper level. So there are currently two existing driveways from Olowalu Street; one is shown here, and then there is another one shown right here, which leads into the lower-level parking lot, and then the driveway closest to Kamanu Street leads to an upper-level parking lot. And then the proposed building, which will be constructed in three phases, is oriented along the eastern property boundary. The applicant has actually already constructed the first phase of the development, and it's currently being occupied with industrial uses. And if his proposed change of zone request is approved, then he would continue on with the next two phases of the development, and open it up to industrial and commercial mixed uses.

This is a photograph showing the existing building, and you can see that it is under construction. This view is from the Credit Union parking lot to the west, so it's actually looking kind of south-east. And as I mentioned, this is the existing building, and then construction of the rest of the building would occur over on the left side of the slide.

We actually have, the Planning Department has a revised condition that you should have gotten in your folder; it's on a yellow handout. And basically this condition is at the recommendation of Department of Public Works, and we are recommending that left turns to and from the mauka Olowalu driveway be restricted either by closing off the driveway completely or having the applicant install a median barrier in that street. And we actually just have another revision to the revision; we just want to add at the end of the first sentence, after "Kamanu Street," it should read "Kamanu Street right-of-way tangents." This is word-for-word, the condition from Department of Public Works, and we left that off.

So, a little background on this revised condition. The applicant constructed the driveway quite a while ago, when he first started his development; he constructed this existing driveway, which is the one closest to Kamanu Street. And at the time that he constructed that driveway, it met our DPW road standards. Since that time the standards have changed, and the driveway is now considered too close to the Kamanu Street/Olowalu Street intersection. And it has introduced, you know, the potential for some traffic safety issues for people turning west onto Olowalu

Street from Kamanu Street; it does not provide enough distance for them to slow down or react, if a vehicle is turning in or out of this driveway left.

This is a view of the property with Kamanu Street over on the right side of the slide. This is the upper driveway. And again, you can kind of see the short distance between that intersection and the existing driveway.

The Planning Department is recommending that the Planning Commission send a favorable recommendation to the County Council for the change of zone request with the two revisions – the revised Condition G and then the revision to that.

WATANABE: Okay, thank you, Maija. Fellow Commissioners, do we have any questions of staff? Pretty clear then, yeah? Okay. For the record, we have no one signed up to testify from the public on this matter. So let me go ahead and call up Mr. and Mrs. Minson. Would both of you come up, please? Yeah, if I may swear you in. Do you swear or affirm to tell the truth now before the Planning Commission?

W. MINSON: I do.

D. MINSON: I do.

WATANABE: Okay. Could you all state your – you may be seated – could you all state your name and address for the record, and, yes, speak into the mike, please?

D. MINSON: I'm Dixie Minson, and the address is off of Tomi Tomi Street on Old Palani Road.

W. MINSON: I'm William Minson. All correspondence goes to 73-5613 Olowalu Street. That's why the residence -. We just direct all of our traffic into the business site in question here.

WATANABE: Okay, thank you. Have you had a chance to review the recommendations from the staff, and inclusive of the new condition?

W. MINSON: Yes. The new condition was there initially, then it was introduced as an exemption, but then it was reintroduced. So we are in tune with what's in question.

WATANABE: Okay, okay. So I take it then you have no objections to the revised Condition G or any of the other conditions?

W. MINSON: Actually, we do have objection to especially G and H in the conditions.

WATANABE: G and H. Okay. So with H we are looking at a ten-foot wide future road widening setback.

W. MINSON: Correct.

WATANABE: Is that what you are referring to?

W. MINSON: Yes.

WATANABE: What are you proposing, that no setback be allowed?

W. MINSON: We're asking -. If we could stay with G for now, the driveway, since the picture is up there. As it was explained earlier – thank you – the upper driveway has been permitted and in use for a few years now. It's already been approved by County. So it's an existing, usable driveway that -. You know, we are on site everyday; we've never experienced a traffic problem on that corner. The sight distance issue could probably be addressed by taking some fencing out.

The previous picture here, that's pretty tight, I agree. But that, look where the car, the car is not legally driving on the road, right? He is on the wrong side of the white line. So let's move to this picture. This is the exit for our upper driveway. So if the car is coming down the road properly, there is quite a bit of distance here to gain the sight distance before the vehicle exits out this way. And you notice this median that we put in here; that is purposely put there. So this is in-lane; this is exit-lane. That was intentionally done, so vehicles exiting -. Between the right white roadway County line here and our property line there is an additional, like, twelve feet there. So not only do you have this radius, but then you have the separation, so nobody can block this driveway for traffic moving inward; you've got this traffic sitting here with plenty of clearance to exit. So these are usually designed with safety in mind. We weren't eliminating that factor. But we did meet the Code at that time. And that's why the property shows that and designed that way.

To go back to this picture on the second floor, that's the in-lane right there. The car in the photo was right there. And this is our exit-lane. Now this not only feeds the upper parking lot, but as you come back down this auto ramp here, it feeds this parking structure area here as well. So to accommodate rezoning to MCX and have adequate parking count, we had to add this to gain enough parking stalls including an ADA compliant here, here and here. So every individual cube of parking would have ADA compliance. So to cut that entrance/exit out would eliminate -. To gain access for all the businesses up here and down on this level, that's a major thoroughfare for us; so that's why it's important for us to keep that active. And the whole property was designed with that in mind.

This also shows -. This is Phase I, existing and in use. Phase II, upper level, and Phase III, upper level and lower level; they've already been permitted. So we are waiting to see the outcome of the rezoning issues, the conditions before we can advance on the project. So we are actually permitted and ready to continue building, and we are anxious to get going. But what we initially did was design this whole property, so we can prepare -. This project was prepared for MCX zoning, because ML you only need 1,000-square foot for stall – we've got 84 stalls there for 30,000-square foot of floor space – we only needed 30 stalls; we could have accomplished that so easy. So the whole project was actually designed for -. We prepared for the rezoning. We did all the meeting with all the committees, the Planning Department, several people, Fire,

Building, Jai and Chris down there, so we can accommodate all the Codes, the setbacks necessary, fire access, etc. and then we applied for MCX zoning; that way we are compliant.

We just got blind-sighted by the Conditions G and H. G, hopefully, we will work something out. But H, I need further explanation from the Council (sic) on the dedicating of the ten-foot Kamanu strip, which would start here and then here; there is redundancy there. If we dedicate ten feet and it's actually used, then take away that whole area, ten feet into our property, we lose either ten-foot landscaping or all the parking stalls; now we are no longer MCX compliant. So it's redundant. If we have to meet that condition and surrender ten feet of our property, we can no longer be MCX compliant. So I don't, we are not really clear on where this is going on the rezoning issue, because if we rezone and do that, we are not compliant anymore. So if you can clarify that, I'd appreciate just to get that point, so we can continue.

WATANABE: Okay, thank you. I'm going to have to refer to staff on the ten feet. I don't believe the ten feet would encroach into your parking area. But maybe Maija, you can confirm that?

COTTLE: The ten-foot requirement likely would encroach into the parking area, so they may have difficulty meeting the minimum parking standards for that zoning.

WATANABE: I'm a little lost there. So, we are saying we have an existing parking area, right?

COTTLE: A portion of the parking area has been constructed -.

WATANABE: Yeah, a portion, yeah, the first portion, right, yeah, because the other part is just graded, right? But the ten-foot encroaches into that? The existing and planned, proposed?

COTTLE: The recommended ten-foot setback would probably partially encroach into some landscaping and then probably halfway into these parking spaces.

WATANABE: So that eliminates, essentially eliminates the all the stalls on the mauka side.

COTTLE: Correct.

WATANABE: How many stalls are those?

COTTLE: Probably about 20, a little over 20.

W. MINSON: Almost 30.

COTTLE: Thirty?

W. MINSON: Almost thirty, yeah. I think (inaudible) -.

HAYASHI: Could you use the mike, please.

W. MINSON: Yeah, there're basically twelve stalls in Phase I that's existing on the upper right hand corner up on the second level there. On the left side the encroachment would take out another probably 15 stalls and the loading zone, so we would no longer have the loading zone for the upper levels as well. So the landscape strip between Kamanu Street and the parking stalls there is that strip that's ten-foot wide right there, so that would have to disappear, if we keep our parking, or if Planning continued with the requirement of a ten-foot landscape strip, we would have to take out the parking. So one of the two has to go -.

WATANABE: Okay, so, so, now, wait. Okay, okay. Now you are clarifying it a little better. So in other words, what's you are saying is, to accommodate the landscaping requirement as well as the ten-foot future road widening easement, that would eliminate the parking, the mauka parking, approximately someplace between 20 and 30.

W. MINSON: Yeah, well, we need the, they need to gain ten feet, and that's if -. Now the way I understand it, this dedication of the ten-foot setback is a just-in-case-what-if-we-maybe-need-it; it's not an issue right now that is required to widen the road. The one thing that we missed and we haven't found out yet: If you are familiar with that intersection, TSA developed the - can we go back to the big project with TSA, one of the first ones, yeah, that - our subject property, if you notice across the street from our subject property going east where the pointer is, that big, huge retaining wall they just put in, that is set back now 20 feet. A talk with Ki, my understanding is they needed 80-foot road widening to run the length of Kamanu to accommodate I believe it's your condition F in the Kailua Community Development Plan (sic), which would send Kamanu down to the harbor intersection and give that a southerly exit. So that widening in front of our property on the east side, mauka facing, does exist now with the TSA's dedication of that 20-foot, is 80 feet now. So we are confused with, they road-wise 80 feet, as we told that, and explained to us that was needed, and then they are still looking for ten more feet of our property. So we are not sure where this is going, and it's a little awkward for us.

WATANABE: Okay, but let's clarify one thing first, and then I don't want to dominate the conversation, so we will open it up for other questions from other people. But you know, again, Maija, the encroachment into the existing parking or planned parking would only occur, if we also require the ten-foot planting screen or landscaping? Is that correct? Or would that take it without any landscaping right through about midway of those existing parking stalls?

COTTLE: With the ten-foot easement for road widening purposes, it would encroach into the existing parking lot.

WATANABE: Without landscaping, without accounting for any landscaping?

COTTLE: Without accounting for landscaping.

WATANABE: Okay, okay, okay. Mr. Woodward.

WOODWARD: You know, this is one of these conditions that I really sympathize with these people. And in dealing with government and any government agency, you can't win the game, if they keep changing the rules; and that's what they've done. You know, there was not any prohibition to their driveway when it was put in originally; it was approved. And now they are trying to add another ten-foot easement that they don't know if they are even going to ever use. So I'd say, you know, when you are dealing with a government agency and you are trying to win the game, you can't win the game, if the rules keep changing.

WATANABE: Okay, thank you.

W. MINSON: Thank you.

WATANABE: Ms. Bowman.

BOWMAN: Just a question. I thought I heard you say that you have more than ample parking for the zoning.

W. MINSON: We have, the project was designed to rezone, given enough parking, because we got plan approvals based on the figures, we've talked with, like, Deanne, at Planning, that's 400 square feet per parking stall; we have 84 stalls, three ADA, three loading, etc. that's been in the plan approval already. What I'm saying is if we originally designed this for ML occupancy, 30,000 square feet would mean we would only have to have 30 parking stalls, so we could actually have more building. The whole building was designed to be here today. And then we did not find out about Conditions G and H until after we've applied for a zone change request. We were never approached at any time in the history of this project that we were going to get surprised. We were kind of blind-sighted by this. That's why I'm saying we tried our best to accommodate Kona rules, the government rules and the County rules, and prepared for this, and everything was fine. That's why -.

WATANABE: Okay. You have any follow-up?

W. MINSON: Does that answer your question?

BOWMAN: Well, a little bit. With the new MCX zoning, the new one that you are applying for, what I asked is if those 30 stalls, those mauka stalls are taken out, will you still have enough to meet the requirements for the new zoning?

W. MINSON: Well, that, for us that's kind of choking the chicken to try to get more businesses. And if I was a businessman to come in and rent this facility, and the 30 parking stalls would disappear -. Because parking is such a major issue in Kona, and we all know – probably Hilo has a same problem – parking is a premium, and just to forfeit that prime-time real estate on the exposure side of the building, that would convince all the upper shops into another parking nightmare like we experienced on Starbucks on Henry Street. It was just so frustrating getting in and out of that parking lot, that it was disappointing. So maybe Jamba Juice left for that reason; that's what I heard, I'm not sure. But for us to lose prime real estate in exposure like that, that's devastating to the project.

WATANABE: Okay, okay. If I might -.

BOWMAN: Thank you.

WATANABE: We do have Ki here. And I'm thinking that maybe it would be appropriate to have you come up and explain to us, cause there's some question as to whether you already have the 80-foot easement that you need or whether you need an additional ten feet; and I think it would be appropriate at this time for you to explain your position on this.

COTTLE: Mr. Chairman?

WATANABE: Yes?

COTTLE: Before Ki speaks, I just want to make a correction.

WATANABE: Oh, yes.

COTTLE: I have a copy of the site plan that the applicant submitted, and you should have gotten a copy in your background reports, but we just realized that you didn't.

WATANABE: Okay.

COTTLE: It does show that there is currently a ten-foot wide landscaping area. So if we did require the ten-foot road widening easement, it would not impact the parking spaces unless the five-foot landscaping easement -.

WATANABE: Was also required. And I would assume then that you would naturally waive the landscaping requirement, if you didn't need to take advantage of the ten-foot road widening easement.

COTTLE: I would defer to DPW to answer that because that was their recommendation.

WATANABE: Okay, okay. That makes it a little more palatable, I think, yeah? Okay. But, Ki, maybe you can explain and confirm or, you know, about the 80 feet.

EMLER: Kamanu Street is right now predominantly an existing 60-foot wide right-of-way; in fact, it is a 60-foot wide right-of-way. We are in the process of obtaining additional right-of-way between Hina Lani Street and Olowalu Street for widening on the mauka side in order to accommodate traffic circulation improvements that are being made for Kaloko Phase III and Phase IV Subdivision, which is under development on the mauka side of this area. And those improvements required a 20-foot wide widening, and so we -. The reason for that is the traffic study indicated there would be a need for a double left-turn lane to Hina Lani Street that would be a northbound double left-turn lane right there at that intersection and then also a right-turn lane.

WATANABE: Okay, so -.

EMLER: So the additional ten feet beyond the 40 feet -. Actually, Kamanu Street, what we are looking for ultimately is an 80-foot wide right-of-way in accordance with the Kailua to Keahole Development Plan recommendation. And so we've been following through with that recommendation consistently with previous rezoning applications. So we thought it would be good to at least be consistent on this and also have that option available in the future, if we needed to do some widening at this intersection.

And incidentally, the Kona Community Development Plan does indicate that Kamanu Street will extend further north. We are not necessarily in support of that extension further north at that location because of the steepness of Hina Lani. And so this all might not need to happen, and so that's why there is a question mark as to whether we'll need the full ten feet or not. The Kona Community Development Plan also calls for sidewalk along Kamanu Street, so we may need some additional property just to install a sidewalk, if nothing else, and for that purpose we wouldn't need the full ten feet; it would be quite a bit less.

WOODWARD: Mr. Chairman?

WATANABE: Yes, Mr. Woodward.

WOODWARD: So you don't exactly know what you are going to be doing?

EMLER: There is no program planned for a widening on that side of the street at this time in Public Works -.

WOODWARD: All right, well, then I would say we ought to omit that easement requirement. And if you have to do something, you always have the power of condemnation in eminent domain. Right?

EMLER: That's correct.

WOODWARD: Okay. End of sentence.

WATANABE: That potentially is one way to approach the issue, although condemnation does present another issue with the cost to the County. My question to you is, for clarification purposes, the main reason you are looking at potentially additional easements is because that is an intersection and so you may need, if traffic requires it, a double left-turn lane, so you would actually exceed the original 80-foot easement that you are looking at, right-of-way, for the road on Kamanu Street. Is that correct?

EMLER: We have the widening already on the mauka side for the double left-turn lane and the right-turn lane; that was imposed on the TSA development Phase III. The reasons, again, that we may need widening on the makai side along the applicant's frontage would be for installation of sidewalk or adding another through lane.

WATANABE: For adding another through lane. Okay, then -.

BOWMAN: I have a question.

WATANABE: Yes, Ms. Bowman.

BOWMAN: So to clarify, all the other property owners along Kamanu Street have that same requirement?

EMLER: What I mentioned before was that there were previous applicants that came up along, at least one other one that came up along Kamanu Street where we did request the widening, and it was passed through the Council. So there in the background report it tells you that what Ordinance that was -.

BOWMAN: Okay. That's all the way down Kamanu to the end? All those, because I look at Gaspro and all those -. So they all have that requirement.

EMLER: No. This -.

WATANABE: Gaspro is on the opposite side of the road.

EMLER: Again -.

BOWMAN: Okay, so you are just talking about the mauka; this is on makai side.

EMLER: This opportunity for Public Works to request this additional widening would only come up in a case of a rezone application like the case we have before us now.

BOWMAN: Okay, so the other ones don't have that requirement.

EMLER: Only the one other case that I recall that we did also require an additional ten feet from the further south property on the mauka side as part of the Phase III improvements for Kaloko. So that ten feet is also being set aside on the end lot further south on the mauka side.

BOWMAN: But if you don't have – I'm just a little confused – if you don't have all the widening you need all the way down the strip, what good is it to require just of a couple owners? I'm sorry if I'm ignorant, but -.

EMLER: Yeah, again, when these applications come up, Public Works researches what plans have been developed for future widening, and then we make recommendations. It's not something we can impose unless the Planning Commission, the Planning Director and the County Council go along with that.

WATANABE: Maybe I can clarify -.

BOWMAN: Thank you.

WATANABE: Maybe I can clarify that, Ms. Bowman. This is what we customarily do in a rezoning type of situation, because then they are asking for additional rights, and at that time we have an opportunity, if there is a perceived future need to gain that easement without condemning. Otherwise, you would have to condemn when the need is absolutely clear at that time, and pay for everything all the way down the length of Kamanu Street. This provides you with an opportunity, assuming that it's not too great a burden for the property owner, yeah, to acquire the right-of-way without paying for it -.

BOWMAN: So we would then condemn, to say, we, or the County, and I'm just, to get clear, if this were to come to happen, you would condemn the other properties, but you would already have these easements that you required from the new rezoning.

WATANABE: Yeah, and potentially you could have more, if other people applied for rezoning along that strip.

BOWMAN: Right.

WATANABE: But you know -.

BOWMAN: But presently you only have two; one, the property owner at the end, and then if we require this, you would have two. And then you would have to condemn, phew, everybody else.

EMLER: We actually would have four at that time, because we already have the lot on the corner of Hina Lani on the mauka side -.

BOWMAN: Okay, if you can show the, yes, thank you.

EMLER: We already have this one. We already have this one. And we already have, I believe it's this one.

BOWMAN: And that's the mauka side.

EMLER: Because you can see that's got a different color right there?

BOWMAN: Right.

EMLER: That was recently rezoned as an independent application of Phase III; this is all Phase III. See the line in between here?

BOWMAN: Right, right.

EMLER: That's because this was a separate application that came in, and the ten-foot was imposed on that by the County Council.

BOWMAN: But now you are talking on the mauka side; and now we are on the makai side.

EMLER: Correct. But what we are doing is asking for an equivalent ten feet on both sides -.

BOWMAN: Okay, so -.

EMLER: To make the right-of-way total of 80 feet.

BOWMAN: Okay, so if the condemnation took place – I don't mean to belabor this – then you would have to condemn ten feet all the way down the road on the makai side also.

EMLER: Unless the other application, the other properties also came in for the same rezoning application at which time we would ask for the same thing, make the same recommendation.

BOWMAN: Okay, thank you.

W. MINSON: Okay, I do have a question. Do you need 90 feet? Ki, do you need 90 feet at the end of Kamanu at the Hina Lani intersection, or just 80? Because right now with TSA's 20-foot setback donation, that's 80 feet. So you need our ten in addition to that, making it 90?

EMLER: Again, when we do road widening, we try to do it symmetrically about the centerline. So in the case of location at the Hina Lani/Kamanu intersection on the mauka side, we needed additional widening for both the right-turn lane and the double left. So that's why we imposed an additional widening strip there.

WATANABE: Yeah, I -.

IWASHITA: Mr. Chair?

WATANABE: I think I'm pretty clear about that. I've got you. I know I have a couple of people that want to chime in on this. But before we proceed, I believe landscaping is typically a Planning Department rule; I think it was Rule 17. But because Mr. Minson had brought up that if the Public Works would waive the planting screen, I want to clarify with you rather if you would require a planting screen, should you make use of the ten-foot road widening easement, or would you waive that?

EMLER: It wouldn't be up to Public Works to waive a Planning Department requirement; however, when Public Works needs to obtain additional property, then we would do a subdivision application and submit it to the Planning Department, and at that time they could tell us what their requirements are.

WATANABE: Okay, I guess what I'm getting -. Maija, you have something to contribute in that area?

COTTLE: Yeah, let me try to clarify that a little bit. The landscaping requirement would be a Planning Department requirement -.

WATANABE: Rule 17, then.

COTTLE: During plan approval. Correct.

WATANABE: Okay, so, so I assume then that if something like this were to go through, we would of course waive that, so that he would not lose his parking?

COTTLE: Not necessarily. The five-foot wide easement that I was mentioning earlier, though, was for sight distance, not landscaping.

WATANABE: Oh, excuse me, okay.

COTTLE: And that was a DPW requirement.

WATANABE: Okay, okay, I got that confused then.

COTTLE: That's in Condition H.

WATANABE: Then I have two people. Mr. Iwashita, you want to go first and -?

IWASHITA: Thank you, Mr. Chair. Ki, I just want to clarify a statement you made or you have restated. You referenced the Keauhou-Keahole Plan?

EMLER: Yes.

IWASHITA: And what does that Plan envision for Kamanu Street from the point of this project back towards town?

EMLER: It's indicated to be a collector road. And then in the text of the K to K Plan it states that it would, the collector roads would be a two to four-lane facility, and then it also states in there, there's some wording about it being possibly a five-lane facility.

IWASHITA: By collector road, how far then would it come out, or extend back into Kailua Town?

EMLER: Right now, because there was the plan that the County had to develop a golf course on the south side of Kealakehe Parkway, it was going to just end at the T-intersection there. There may be some future plan to extend that as a frontage road. That's something that has been discussed, because I believe the golf course is no longer on the table. So it's my

understanding that that plan is somewhat in flux, so I can't be sure how, whether that's going to happen or not.

IWASHITA: So presently it extends up through a previously proposed golf course at Kealakehe.

EMLER: Correct.

IWASHITA: But that golf course is no longer in the works.

EMLER: As far as I know, that's correct.

IWASHITA: Okay. So in the future it may extend further back towards Kailua Town -.

EMLER: That's a possibility.

IWASHITA: As a -. Okay. Thank you. I guess the reason I bring that up, Mr. Chair, I want clarification on that is I view my job on this Commission as to look at the big picture in terms of what we are doing. And, yes, this obviously has impact on the applicant in terms of proceeding with their project; but if greater plans in the community look for the expansion of this road, then I see, you know, that the request for this ten-foot easement would be basically in line with what we always do. And right now I don't see any, you know, need to make an exception. Thank you, Ki. Thank you, Mr. Chair.

WATANABE: Okay. Mr. Woodward.

WOODWARD: Yeah, well, I look upon this as being arbitrary and capricious at best. The County has no plans. We are talking about pie in the sky, and you don't even have an idea what's going to happen with that road. And instead of putting it on the County to condemn the property in the future, if plans are developed, you want to put it on the landowner - the cost. And I think that is inherently unfair. And I would totally delete Condition G, because they actually had permission to build that driveway. The rules changed on them. You can't win the game, if they keep changing the rules. And Condition H, as I say, is absolutely arbitrary and capricious. There are no plans. You know, as I say, it's pie in the sky; you're thinking of things that might be done in the future. Well, if things might be done in the future, it's up to the County to take care of that, and it ought to be the County's responsibility; the landowners should not carry that burden.

WATANABE: Okay. Obviously we have two sides to this issue. But I'd like to step back a moment to reconfirm that -. So, Maija, having reviewed that site plan a little further, would you reconfirm for us right now that the ten-foot future road widening easement would not affect his parking unless there were an additional requirement for landscaping. Is that correct?

COTTLE: That is correct. Based on the site plan, that's correct.

WATANABE: Yeah, okay, now let me get back to you, Mr. Minson. You know, with that clarified, and also with Ki's explanation that when they tend to align roads, they try to keep them from meandering – so you know, if you want 80-foot and you've got 60-foot, you take ten on each side, either that or you have a winding road, right – and with that explanation, is that something that's a little more palatable to you? Maybe not the ideal situation, but I'm asking you if that's something that's a little more palatable to you, because you won't lose the parking, your planned parking.

W. MINSON: I don't know how many people have seen our project, but the project was designed, maybe over-designed. We call it the Beautiful Building; it's designed nice, it's got wonderful features, beautiful landscaping, it's always kept up real nice. To eliminate the landscape strip, unfortunately, takes away for the visual appeal of the building itself, because across the street you have a – what is that – an 80-foot tall rock wall that drops into zero landscaping pavement all the way to our property, which would be widened by ten feet pavement, then it will hit our concrete parking lot with curbs all the way to the building. I thought the whole idea of planting was visual appeal to -.

WATANABE: I, I -.

W. MINSON: Put trees to break up the visual effects. And I am confused about application compared to what we would have to sacrifice to meet this demand -.

WATANABE: I guess what I'm saying is, I understand that, but if the future road widening did come into play, then what you are also looking at is sight distance, and if you are looking at sight distance, then you don't want trees there because you are going to have a problem.

D. MINSON: But if we took out the landscape strip, that's going to put the parking right up against the road going through or the sidewalk. And I'm wondering if that's going to cut off the sight distance, too.

WATANABE: I'm not sure; we didn't have the site plan. How much room do we have?

HAYASHI: You are talking about the -.

WATANABE: From the edge of his lot to the beginning of his existing parking.

HAYASHI: According to the plans that were submitted, it will be ten feet. So there will be the ten feet strip along Kamanu Street. This is based on their plans. However, the parking is laid out such that we don't know whether the parking overhangs into, your car would overhang into the ten-foot strip; because normally when you design your parking, you just show your parking as perhaps 18 feet long, but you can have your car overhang into the strip in the front of that. Just like if you go to this parking lot here, you'll see that the parking spaces are aligned, but your car would protrude into an area, which is not marked.

WATANABE: No, but he has a wall, right? Don't you have a wall along Kamanu?

HAYASHI: I'm not too sure as to whether they have along there or not.

W. MINSON: When Phase I -.

WATANABE: I guess that's my real question, you know. Where is the wall in relation to your property line? How far back is the wall set back from your existing property line? And does that affect -?

W. MINSON: Okay, now when you say a wall, are you saying the one across the street or one on our property?

WATANABE: No, no, no, the one on your property. I'm concerned about your parking, right?

W. MINSON: We have a ten-foot landscape strip that includes all landscaping -.

WATANABE: Yeah, but that's not parking.

W. MINSON: Of Phase I, which we did not allow for three feet overhang into the landscape strip. We only utilized 18, 24 and 18, which is the access parking for this type of -. So when you come to the upper parking lot, as soon as you hit two adjacent parking stalls, there is a 24-foot access which is exactly a County, or a Planning code. We did not allow three feet overhang into the landscape strip. Although the wall that you were referring to is in a, is not in an area that would affect the dual parking -.

WATANABE: What is the setback, what is the setback from the wall to the end of your property? Is it 20 feet?

W. MINSON: No, the setback with the wall to the County property is ten feet.

WATANABE: Exactly ten feet, the wall?

W. MINSON: Our Phase I, we, ten feet three inches exactly.

WATANABE: Yeah, we have our incident. So then the road would come right up to your wall then, and you have three inches exactly leftover.

W. MINSON: Well, we have a fence right on the property line to the County line. There is a fence so that -. Okay, we'll remove it, if that's what means to increase the visual impact from Olowalu to Kamanu; that is a visual impact. But the wall itself that you are referring to is ten feet into the property, nine-foot four inches, whatever it is. We do not, the wall you are referring to, the rock wall with a fence is right on the property line against the County road. We have an additional curving retaining wall that's ten feet from the property line toward the parking; that would not be affected. I think the -. You see this picture? See that concrete column that's in front of the white truck? That is sitting three inches from the property line to

the County property, and that goes all the way down to Olowalu Street. Does that answer your question?

WATANABE: So that wall is right on your property line?

W. MINSON: It's on the, it's three inches inside the County property line, from the County property line onto our property.

WATANABE: And the end of your concrete parking slab there is exactly ten feet three inches, as you testified earlier -.

W. MINSON: Correct.

WATANABE: From your property line?

W. MINSON: Correct. The edge of the parking is ten feet three inches from the County property.

EMLER: May I ask a question?

WATANABE: Please.

EMLER: Okay. Do the wheels, excuse me, the area of the vehicles overhang into the landscaping strip? I think that's a question that -.

W. MINSON: Yes. We are using that also -.

EMLER: They are trying to find out.

W. MINSON: To increase the access.

EMLER: So there is some encroachment your official parking space into the landscape strip?

W. MINSON: It's not an official encroachment; we didn't utilize that into 20-foot for the access.

EMLER: So you have the full parking space exclusive of the ten-foot landscape strip.

W. MINSON: If the vehicle -.

EMLER: Is that correct?

W. MINSON: If the vehicle would be parked all on the parking lot without overhanging onto the landscape strip, it would be compliant just barely. So I did not use that three feet, no.

EMLER: Okay. Thank you.

WATANABE: Mr. Emler, you know, based on what he just testified to, that means if you have a ten-foot future road widening easement, the end of your pavement is three inches from the end of his concrete slab.

EMLER: If we took the entire ten feet there, whatever improvement that would identify the boundary, which could be a sidewalk, it could be a back slope of a swale, could be at that location, yes, if we took the entire ten feet.

WOODWARD: Mr. Chairman?

WATANABE: Yes, Mr. Woodward.

WOODWARD: I'm really getting tired of this. We are talking about would-be, could-be, should-be. And to bring up Commissioner Bowman's point, they don't have a ten-foot easement all down that road. They are just trying to apply that just so that the County doesn't have to go out of their way, if they decide to do something. As I said, they are putting it on the landowners. This is ridiculous.

ALAMEDA: Mr. Chair?

WATANABE: Yes, Mr. Alameda.

ALAMEDA: In light of what Commissioner Woodward is suggesting and stating, I'd like just to bring it back a little bit further on the safety issue. You know, that picture almost looks staged; you know, you get the bicycle and you get the car. I mean, that looks dangerous to me. So you know, I mean I hear what Commissioner Woodward is saying, but I'm just worried about safety. I mean, we are famous on this island for, you know, putting a stop sign after the fatality. You know, we are trying to prevent a big-time safety issue. So if you are to -. Like that looks dangerous to me, so if we can figure out how to make that safer -. You know, I'm not even at that point where you guys are talking about setbacks for the road; that doesn't concern me as much as that as a Commissioner, because the primary responsibility of the County and all of us is safety first. And that looks unsafe to me.

W. MINSON: That was a compromise we would be willing to entertain. That yellow sign that's pointing into that, looks like about a 6-foot concrete column, that's the fencing that runs along Kamanu going north; that's a visual impact, I agree. But I put that in there in the past Code, like putting my median divider in. We've never had a problem. I've never been approached by one single accident because of that other than just people the way they normally drive. To take out that fencing would increase the visual impact that would go halfway down Kamanu; we would do that. We would be happy to do that, if we would settle that issue.

HOUSEL: Mr. Chair?

WATANABE: Mr. House.

HOUSEL: A question to the Planning Department. You are asking for a ten-foot easement for sight distance. Now, the Kona Community Development Plan, if Kamanu is widened and carried through, would like to see sidewalks there. Would the sidewalks, if they went in, be part of the sight distance requirement?

COTTLE: I think that would be a question better answered by DPW.

HOUSEL: Okay.

EMLER: Yeah, we wouldn't have to, if it was just a sidewalk installation, we wouldn't have to change anything with regard to the sight distance easement that would be imposed as a condition here that's being proposed on this application. We wouldn't have to change that easement.

HOUSEL: Okay, so -.

EMLER: Because actually the traveled way, the edge of the traveled way wouldn't change under that condition, if it was just a sidewalk we were adding.

HOUSEL: Okay. For the ten-foot easement that you are asking for is being included in this application, is that expansion of the roadway eventually or for sidewalks?

EMLER: The ten feet would allow for an additional lane, but a sidewalk would not require that much.

HOUSEL: Okay. Now, Commissioner Bowman made the point that along Kamanu there are no other, I mean, well, at the very end as you said are easements, but the other properties, especially Home Depot and the car fender body shop, do not currently have easements granted for the widening, and I think it's probably, just in my opinion, unlikely that Home Depot is going to apply for a change of zone. So ultimately that would have to, if you need that easement, you would probably have to go through condemnation eventually, right?

EMLER: Most likely, yes.

HOUSEL: Okay, thank you.

WATANABE: Okay. Can I clarify my point a little bit? I did indicate that it's been our practice to require future road widening easements at no cost to the County, but I also did say if it's not, you know, an overwhelming burden to the landowner; and when we have testimony indicating that the ten feet would come within 3 inches of the existing concrete slab, then it's going to be very difficult to have the road ending there. So with that, you know, I don't see how we could request the ten-foot. But because we typically do do this, you know, in other words, if you had 20 feet between your property line and the edge of the concrete, I think I would be consistent in what we've been doing in the past, and saying, no, you will provide the ten feet; on

the other hand it doesn't appear that that's the case. So from my standpoint anyway I'm perfectly willing to let that go, because I think it would be an extraordinary burden to you. On the other hand, getting back to what Mr. Alameda brought up, which is Condition G, and I realize that you had prior approvals and that the rules did change to some degree on you; however, the entry from Kamanu to Phase II or III of your project is not paved, or, yeah, I don't believe it's paved, but it's only recently cut, right? Am I correct?

W. MINSON: Are you referring to the Kamanu entrance?

WATANABE: Yes.

W. MINSON: Yeah, it's part of Phase II and it hasn't -. A gate is there, but no parking lot -.

WATANABE: Yeah, but it's not, and nobody really turns in -.

W. MINSON: That's it. There you go.

WATANABE: And that is a new entry. And you know, that one really concerns me, because you have left-turns coming down, you have people making right turns off of Olowalu onto Kamanu, it's not clear whether the right-turn has the right of way even though you have two lanes there, and then, right then, you have your gate. You understand what I'm saying?

W. MINSON: I understand your point of view, correct.

WATANABE: It's apparently like less than 75 feet or something. Is that right, Ki?

W. MINSON: I think we measured it 180 feet.

WATANABE: Oh, was it?

W. MINSON: From the intersection.

EMLER: I think there is some confusion about which driveway we are talking about here. Are you talking about the Olowalu Street driveway? The mauka driveway on Olowalu Street or Kamanu Street?

WATANABE: No, the one that, the exit that isn't being used and has that yellow gate on it right now.

EMLER: Okay.

WATANABE: That one is pretty close even still to the intersection of Olowalu, isn't it?

EMLER: No, that one is in a reasonable location to allow what is already restricted as right-in and right-out because of the median within Kamanu Street.

WATANABE: Okay, you already have the median there then?

EMLER: Yes, that's correct. That one is already restricted with a median.

WATANABE: But then it's redundant; in here you are saying on Olowalu you want the median, too, yeah?

EMLER: On Olowalu we want the median as well.

WATANABE: Oh, excuse me, Olowalu is the next street over, yeah.

EMLER: That's correct. Yeah, that's the other driveway.

BOWMAN: That's, that's – can you show – so that's Olowalu. Can you show on the site map where that, Kamana, or whatever that -?

WATANABE: Kamanu.

BOWMAN: Yeah, Kamanu?

COTTLE: The Kamanu driveway with the gate across it is right here; that's restricted to right turns in and out only. The Olowalu driveway that's close to Kamanu Street is located here, and this is the one that we are requesting also be restricted to no left turns in or out.

BOWMAN: So the parking on the lower side is actually underneath, right?

COTTLE: I'm sorry, could you repeat that?

BOWMAN: The parking on the lower side is the lower parking -.

W. MINSON: That's accessed by the upper, through the upper second floor to come down and around down Hina Lani, parallel to Hina Lani, to access that parking structure. It's going to be under the second floor.

BOWMAN: And your Olowalu traffic is, you said, mostly container, or you need it for container. In your letter of February 4th, "the Olowalu Street mauka driveway is needed to conveniently gain access to the upper level businesses. In addition, it is needed as an exit for container traffic."

W. MINSON: Correct. Containers come in on the Kamanu gate, pull in, forward in; you'll park in the loading zone, which is in the property just to the left of the gate, that's the upper loading zone that's already been pre-approved; then when he hooks up, he pulls out of the lower Olowalu gate, forward first. So there is no backing up off the County property.

BOWMAN: Okay. Can we see the Olowalu -? Thank you. So you have big -. Now, are those big containers? Because that looks like a real narrow one.

W. MINSON: We've tested it; we've had containers go through before. They go out the inside just because it's a straight shot, because of the size of the container. They take a right, so they -. That divider wall, it's set back onto the property sufficiently enough, so when they make the turn, it doesn't hit, and a 40-foot container conveniently goes out of the driveway.

BOWMAN: And they only go right.

W. MINSON: Correct. We ask them only go right, because that -.

D. MINSON: They can't make a left.

W. MINSON: Yeah.

BOWMAN: They can't make a left.

W. MINSON: It's not reasonable for a truck to turn that way.

BOWMAN: Okay. Because that concerned me; it looks - I think I've been down there - it looks pretty thin, narrow.

W. MINSON: There is 14 feet, then that's plenty wide, yeah.

BOWMAN: Okay, thank you.

WATANABE: Do we have any further questions? Mr. Iwashita.

IWASHITA: I know you got Condition G just most recently, but do you have idea of the cost? You know, if it's passed, and I guess my looking at this, what I would like to know is your thoughts on the cost of putting that median strip in, which would be the requirement on Olowalu.

W. MINSON: Well, I'm saying that \$100,000 plus, just because if you look at the median across the street coming down Olowalu in the new development, there is a right-turn lane and the center median curb that the right traffic turns in front of. Once we start the median and we have -.

IWASHITA: Okay, so you are saying 100K.

W. MINSON: Oh, that's just a guess to start.

IWASHITA: Okay. Ki, do you have any idea if that's in the ballpark or not?

EMLER: I think \$100,000 is way too high for what we are proposing.

IWASHITA: And all this is a median strip, so you know, in my mind -. I don't really know what that is; I'm not a -.

EMLER: I'm kind of hesitant to guess – at the most \$10,000.

IWASHITA: A thousand dollars?

EMLER: Ten thousand.

IWASHITA: Ten thousand. So you are talking about like a 6-inch by 6-inch concrete -.

EMLER: We are talking about a 2-foot wide concrete median 6-inch high curb -.

IWASHITA: Curb from -.

EMLER: Imbedded 6 inches into the sub-grade, and then some striping to provide for properly situating it with respect to the traveled ways.

IWASHITA: Okay. And that would extend from the Kamanu Street intersection mauka and then down how far makai?

EMLER: Just past the driveway, just so it will prevent left turns.

IWASHITA: To physically prevent left turns in -.

EMLER: That's correct, yes.

IWASHITA: And left turns out.

EMLER: Correct.

IWASHITA: So is that – back to the applicant – does that sound more reasonable?

W. MINSON: Why I would allocate \$3,000 to \$5,000 just to draw up the plans and to get them County approved because of all the movement engineering that may be needed. Then they get road crew out there, you'll have traffic control, you'll have the road closed. Ten thousand, that's probably per day to get that done. I can't see that happen in -. Maybe the actual work on that day of pouring the concrete and stripping the forms and getting out there -.

IWASHITA: Is \$10,000 -.

W. MINSON: Then to come in and repave -.

IWASHITA: So let's double that and say it's \$20,000.

W. MINSON: I'll pay you first \$10,000, you pay the rest. How's that? I'll be happy to.

IWASHITA: Well, I -.

W. MINSON: Because that's an open gun, that's an open, it's going to run with this on that one. It's, \$10,000 right now is a financial burden; but it's not, it's going to take way more than that. I can't get anything done on my project for less than \$5,000 or \$10,000 every time I turn around, just simple stuff.

IWASHITA: Okay, well, I just wanted to get -. Thank you for the range of numbers that you've gotten us.

WATANABE: We've had comments all around and a quite bit of additional testimony, and I thought maybe we should hear from the Deputy Planning Director, or Acting Deputy Planning Director, on her views on these contentious conditions.

LEITHEAD-TODD: As to Condition H, I would prefer to see Condition H remain in the conditions. If we never need the property, then it will remain as landscaping; if we need the property for a road widening, that is going to be a major intersection. When we do these rezonings, it makes sense for us to put these conditions in, because we are trying to plan for the future. And the Kona Community Development Plan sees Kamanu as one of our major roads. Currently it will punch through towards Kealakehe Parkway, but they would like it to go also where you can see the, across Hina Lani. Public Works is concerned that the topography is a little too steep at that intersection, so the plan is is that further mauka would be where Kamanu Street would extend; so you would come out of Kamanu, you would turn right going mauka on Hina Lani, and then further up there will be a left-turn on where they plan to put Kamanu through. But it would still mean that Kamanu is a major intersection because of its connection to Kealakehe.

As to Condition G, you can see from our reports that our initial response to the condition was, because at the time they built their driveway it did meet with the requirements of DPW, that our original recommendation was that they not be required to do anything further to the Olowalu entrance. The reason the amended Condition G came in is that Public Works is very concerned about safety and the traffic in that area. And I think in some ways this is being caught between a rock and a hard place; you have the concerns of Public Works, which is on sight distance and safety and whether this area can accommodate the left-turn lanes, and the fact that you have an existing driveway, which was legally permissible and met with the conditions of DPW at the time that it was constructed. And so when we initially looked at it, we were concerned about cost to the property owner. And my feeling is is that if you are going to give on anything, I want the ten-foot future road widening, because I think in terms of long-range planning that's far more important to the County.

In terms of the Olowalu entrance, you know, if there had been no driveway, if this were just coming in as a clean piece of property, I think I would be much more insistent about where the location of that is; but you have this problem that they did their planning, they came in, they got approval. And I feel badly about that because the conditions and our requirements did change.

On the other hand, you know, there is a concern perhaps on the exit they should just make it right-turn out. And if you get left-turn in, you can only have a right-turn out; you can't have a left-turn out, so people have to go down Olowalu. And that would, you know, if you have a signage there that says right turns only -.

W. MINSON: If we can exit right turn only, we'd be totally happy with that, without sacrificing our finances for median. Our concern is when people come from, like, Costco and want to get into the property, there is no way for them to turn left without -. And we've already seen this on the Hina Lani/Kamanu intersection; they do U there, and head back to the bank or Home Depot because they missed the turn. And that confusion of people just doing U-s out in the middle of Hina Lani, that's kind of, I agree, that's a safety concern as well. So we need to get people out in the park onto our upper level by a left turn. Right-only sign, totally acceptable.

IWASHITA: Mr. Chair?

WATANABE: Right-only exit you were talking about?

LEITHEAD-TODD: Yes. I was thinking that if you had a right, right exit, no left-turn exits coming out of that driveway because -.

WATANABE: But you would be able to make a left turn from Olowalu into your property -.

LEITHEAD-TODD: Coming from makai going mauka, you could left-turn into Olowalu. And the only reason is because they have an existing driveway that they had approved, you know, and my concern over the fact that they came in, we approved it, we signed off on it. And it seems like it makes it very difficult to make this plan work, if you have to close that off, because you don't have any access on that side because that other parking lot is lower elevation. Right?

W. MINSON: Yeah, 16 feet below the upper parking. We've considered trying to get a driveway from the lower level up on property; there is just no room.

LEITHEAD-TODD: I'm a little concerned from the photos that I saw there, though, that that pole you've got there, the concrete column -.

W. MINSON: That's our fencing, correct.

LEITHEAD-TODD: That seems, I wondered whether that obstructs the viewplane.

W. MINSON: It does. I admit it. And I'm more than willing to take that fencing out -.

LEITHEAD-TODD: Yeah, I would think that that needs to come out on that corner, so that there is a viewplane, so that somebody coming up Olowalu and wanting to make a left turn can see the cars coming, and likewise, cars coming around the corner don't have their view blocked.

W. MINSON: I totally agree with you.

WATANABE: Okay, okay. I think we pretty much have an agreement in place. Unless you, Mr. Iwashita, do you have further -?

IWASHITA: Yeah, there is one thing I got confused on, and that is, that scooter or whatever, that scooter is making a left turn from Kamanu onto Olowalu, right?

W. MINSON: I don't, the scooter on the left side of, the driver side of the car?

COTTLE: That's correct.

WATANABE: That's right.

W. MINSON: Oh, I see it.

IWASHITA: Yeah, there is a blue car turning right from Kamanu onto Olowalu, right?

W. MINSON: Okay.

IWASHITA: And just to the right of that is a scooter, somebody riding a scooter -.

W. MINSON: That's a good shot. I -.

IWASHITA: Making left from Kamanu onto Olowalu, right?

W. MINSON: It appears to be that, yes, though hard to tell exactly.

IWASHITA: I just want to clarify, because from what you said -. It's my understanding if I came out of Costco, I went up to Kamanu, and I came down and I wanted to go to your property, I could make a left turn from Kamanu, down Olowalu, turn right and get into your parking lot. Right?

W. MINSON: Yeah, so -.

IWASHITA: The only place that I couldn't get in is if I miss Olowalu and I went down, and there is a median so I couldn't turn left into that. Right?

W. MINSON: Yeah -.

IWASHITA: Okay, so-.

W. MINSON: You'd end up U-ing on Hina Lani.

IWASHITA: So, right, so I guess my, to me it's, I appreciate, my only concern about what the Deputy Director suggested is that it's really unenforceable, you know. There are places like that in Hilo, and you see people - and I won't admit to it but - that ignore those kinds of -

light turned on me – signs all the time. So I don't know how enforceable it is, but I guess it's a -. I don't know, if there is some suggested language to look at, perhaps we can look at that. But I just had to clarify that people coming from Costco can get to your property by turning left onto Olowalu. Right?

W. MINSON: Yeah -.

IWASHITA: Okay, thank you.

W. MINSON: Just one little detail. When you turn left like the scooter is, and you turn right into our property, the power pole that's there, the tall wood pole, the power-line pole, when the car turns right onto our property off of, it would be Olowalu Street, the distance between the white line and our property, look how wide that is, I think that's at least 15 feet, I'm not sure the exact dimension, but to get to that median divider that separates the in and out lane, that's another six or eight feet back, so anybody that turns, a car would be in coasting motion off of the street and off the white line onto our property before anybody turning right would be in jeopardy of hitting them. And so it is designed with safety in mind, and it has been working all these years.

WATANABE: Okay, okay. Are there any other questions? If not, then -.

LEE: Mr. Chairman?

WATANABE: Yes.

LEE: From the standpoint of Department of Public Works, I think that prohibiting the no-left-turns is critical as far as public health and safety. I mean, this is not something that was made up; there was a purpose for revising the Ordinance, and it is to protect public health and safety from traffic standpoint. I think it's common from physics that, you know, two objects cannot occupy the same space at the same time. So I think there is a potential liability here on the part of the County.

WATANABE: Okay. I appreciate that. And along those lines, I believe I heard the applicant agree that, you know, restricting left turns onto Olowalu Street was agreeable. And I also heard the applicant say that sight distance is something of concern. So we already have language in here, "A sight distance easement meeting with the approval of the Department of Public Works shall be provided," etc., in Condition G. I think what the, the applicant is stating that what he's finding particularly objectionable is having to provide the median in Condition G. So possibly revising the wording to "left turns onto Olowalu Street shall be prohibited" and removing the second sentence that requires the construction of a median on Olowalu Street would satisfy the applicant, then he would comply with the rest. Am I correct in my interpretation?

W. MINSON: Yeah, and as a footnote, if a median was on Olowalu, containers couldn't pull out without jumping over the median; they just couldn't make that turn.

WATANABE: Yeah, yeah, okay. I'm trying to wrap this up. We did go pretty long, yeah? So if that is -. Yes, Mr. Woodward.

WOODWARD: If nobody has any further comments, I'd like to make a motion.

WATANABE: Okay. I'd like to ask them to sit down first.

WOODWARD: Okay, all right.

WATANABE: Just, if what we've discussed is -. I pretty much summarized your points pretty clearly, yeah?

W. MINSON: Yeah, so we have the right turn off of Olowalu onto the property, no left turn off of the Olowalu upper gate onto, left turn off of our property onto Olowalu by signage, and then eliminating Condition H -.

WATANABE: Eliminate the median is what we were discussing. But you know, I'm not a dictator here; it takes everybody, okay? So, please, if that's okay with you, would you be seated?

HOUSEL: I have one question also, Mr. Chair.

WATANABE: Yes.

HOUSEL: Did you also state that you would remove the column to improve the sight distance?

W. MINSON: If that's a compromise that is acceptable, I will remove, not that column, but it goes down the street, so we'll clear that whole section out all the way to the Kamanu gate. Just gone.

HOUSEL: Okay, and you -.

W. MINSON: And then we'll have a sight distance that Ki recommended. I've got to understand his measurements exactly that will give us that clear view within the whole intersection.

HOUSEL: Right. And you will agree to do that?

W. MINSON: Correct.

HOUSEL: Okay, thank you.

WATANABE: Okay. By seated, I meant back there. And no more comments. Thank you for your comments -.

W. MINSON: But Condition H, Condition H, is that going to be voted on, or is there -?

WOODWARD: We're going to make a motion here in just a second.

WATANABE: We are going to talk about that, but all of you may be seated. Thank you.

HAYASHI: Mr. Chair?

WATANABE: Yes.

HAYASHI: May I caution the Commission that what you are looking at is the design of the facility, but talking about taking off the column and all those things; I think you should leave those things up to the professional. If you want to put in a condition that they have a ten-foot strip, and so be it. If you want the sight distance, so be it. As far as the other aspect, leave it up to -.

LEITHEAD-TODD: I think there is an existing language that says they have to have sight distance -.

HAYASHI: Yes.

LEITHEAD-TODD: And improvements both on Kamanu and on Olowalu.

WATANABE: Yeah, what I was suggesting is the exact wording that is actually here. So it will be approved by Public Works, yeah? My only suggestion would be that maybe we remove the second sentence, which requires the installation of the median on Olowalu Street, and change the language that "left turns onto Olowalu Street shall be prohibited," which means you remove, or delete, "and from." Yeah? But that's just my suggestion. You are prepared, Mr. Woodward, to make a motion?

EMLER: Can I -?

WOODWARD: Yeah, I would like to make a motion.

WATANABE: Thank you.

WOODWARD: That we -.

EMLER: Can I bring something up, Rodney?

WATANABE: Yes.

EMLER: Before we go on?

WATANABE: Yes.

EMLER: I would just like to explain why we recommended the median and having both directions of left turns restricted, granted the left turns out from the site are probably the most hazardous. But the left turns coming off of Olowalu into the driveway are also a concern because of the closeness to the intersection and all of the conflicting movements that occur that close to the intersection. And the other reason is because there is no other physical way that we can think of to restrict that movement, to restrict the left turn out movement. So putting a sign up is really just depended on the goodwill of the people that are coming out.

WATANABE: Right. I agree. And Mr. Iwashita pointed it out also that it's difficult to enforce. And so I'm hoping that by leaving in the last sentence, which leaves it up to Public Works as to approving the sight distance requirements, that will certainly help with the safety.

EMLER: Yeah, we need to make sure that the sight distance doesn't refer to just stopping sight distance then, that it requires all sight distance as required by the Department of Public Works -.

WATANABE: The exact wording is, "A sight distance easement meeting with the approval of the Department of Public Works shall be provided and recorded along the property frontage with Olowalu Street and any sight distance obstructions shall be removed, within the subject property, to establish and maintain adequate stopping sight distance..." Oh -.

EMLER: I think "stopping sight distance" is a problem.

WATANABE: Okay, so if we remove "stopping" – "adequate sight distance" – then you will be happy?

EMLER: And, yeah, what we would impose would be the guidelines as recommended by AASHTO, American Association of State Highway and Transportation Officials, A-A-S-H-T-O.

WATANABE: So you would finish that last sentence with what? "Maintain adequate sight -."

EMLER: You could just say "as approved by the Department of Public Works." Stopping sight distance is only going to be used, if we were only allowing the right turn movement, because it's a shorter, it's a more constraint situation; it allows a shorter sight distance. But if you are going to allow the left turn out -.

WATANABE: Well, it already says "the approval of the Department of Public Works."

EMLER: And left turn in, then we need to make sure all of those comply with the recommended sight distances. The problem I have with this is what if we find out he cannot comply with those sight distances, and that's why we put in that median as an option. So we want to make sure that whatever we allow here doesn't allow him to continue to use the driveway.

IWASHITA: Mr. Chair?

WATANABE: Yes.

IWASHITA: Thank you, Mr. Chair. The point that Ki is raising now, you know, and I think emphasizes the point Commissioner (sic) Lee made earlier, and that is that, you know, this is really a safety issue, and Commissioner Alameda raised that as his concern. And our trying to tweak with this, as staff pointed out, there are standards, you know, established by experts about these things. And this is, I guess in my mind it's a timing kind of issue, because a part of this project, or the building was allowed under the previous safety standard; the safety standard has changed. And now, you know, the applicant is coming before us asking for this zoning change to allow the additional uses allowed by the MCX zoning. And I guess my view right now is that the point that Ki is raising, I think if we change the language according to his suggestion, they are not going to be able to use this driveway. You know, it may -.

EMLER: That's a possibility. I don't know that it's likely. I just, we didn't examine it in that much detail.

IWASHITA: Well, it may be that, you know, because of the safety standards currently being applied by the Department, that the sight distance requirements for left-turn movements cannot be met, right, in this physical configuration. So you know, to follow the standards, I mean, we may actually by following his language be saying, and the applicant needs to understand, you know, if the Department of Public Works requirements apply the current standards, that's what you are going to have to meet. That's what we are saying. And that will be fine with me, but I think that should be clear.

EMLER: So in other words, you would be allowing, you would keep the option of putting a median in as a way for them to still be able to use the driveway, if they couldn't meet the sight distance requirements. Is that -?

IWASHITA: Well, I think the language that you are suggesting, the changes to the sight distance easement requirement would, if the applicant -. Because to me, you know, I'm not the expert; you guys are going to have to apply the current standards. But if applying the current sight distance standards to this physical configuration ends up that it can't be met, you know, there can be no sight distance requirements established to make this a safe left-turn entry, right, then that's what it's going to be and you can't have a left turn. So, you know, then you might be left with right turn only and preventing the left turn, and if that's the way it's going to have to be, that's the way it's going to have to be. That's, you know -.

EMLER: So in other words, Public Works could require the median in order to restrict the -.

IWASHITA: Yeah, well, the way, the language that you are suggesting -.

WATANABE: Okay, okay, I think I follow. What's the suggested language, though? "A sight distance easement meeting with the approval of the Department of Public Works shall be

provided and recorded along the property frontage with Olowalu Street and any sight distance obstructions shall be removed, within the subject property, to establish” “Meeting with,” or where do we go from there? What’s the wording from there?

IWASHITA: “To establish and maintain adequate sight distance for”

WATANABE: “For” what?

IWASHITA: “In accordance with the current standards applied by the Department of Public Works.”

WATANABE: “Establish and maintain adequate sight distance -.”

IWASHITA: “in accordance with the standards currently applied by the Department of Public Works.”

EMLER: We would be satisfied with that wording.

WATANABE: “Current,” yeah, “standards of Public Works?”

IWASHITA: Yes.

WATANABE: Okay. Have we covered everything? Mr. Woodward?

WOODWARD: I would like to move in the matter of change of zone application, REZ 08-000089, that we send a favorable recommendation to County Council with the suggested revisions made to Condition G, and Condition H be eliminated.

WATANABE: Do we have a second?

DOMINGO: Second.

WATANABE: Who was that? Mr. Domingo?

DOMINGO: Yes.

WATANABE: Thank you. Any further discussion on this?

IWASHITA: Mr. Chair?

WATANABE: Yes, Mr. Iwashita.

IWASHITA: For the record I voice my opposition to the motion based on the elimination of H. Thank you.

WATANABE: Okay. Any further comments?

BOWMAN: I have a comment.

WATANABE: Ms. Bowman.

BOWMAN: Could we go back to that overall map with the rezoning? You know, okay, the end lot that was rezoned, okay, nothing was built on -. Has something been built on that yet?

COTTLE: On this lot here? Yes, there is an existing commercial building.

BOWMAN: And the commercial building was there before it was rezoned MCX-1a?

COTTLE: Correct.

BOWMAN: Okay. So their requirement now, if the road widening happens for them, what are the implications? I'm just, I'm just wondering. It would encroach into their building?

COTTLE: It would encroach, there is actually a large rock wall that runs along their property frontage, and some landscaping and a few air-conditioning unit concrete pads, so it would encroach into all of that.

BOWMAN: So those would have to be taken out.

COTTLE: Correct.

BOWMAN: I'm against taking it out, because I think, you know, it would set a precedent for other rezonings. And I understand, you know, I feel for the applicant; however, if the ten feet were required, as we discussed, it would not encroach on their parking, it would encroach on their landscape. Correct?

COTTLE: It would be, according to the applicant, three inches away from their parking, and some of the vehicles may hang over into the easement.

BOWMAN: Okay, but the easement, I mean, you are not going to have a road right there; the easement also requires, you know, distance. And like Commissioner Housel said, you know, he doubts that Home Depot is going to rezone. But I look at – and I'm not quite sure what are on those other lots – but I think with keeping its consistency we need to keep this in, and hopefully it won't happen. But we set precedents already; I mean, we've required it of the other rezoning. And I just don't think it would be fair to not require it. Thank you.

HOUSEL: Mr. Chair, I'd like to make a comment.

WATANABE: Mr. Housel.

HOUSEL: Thank you. You know, in light of the current economy and current state of the Hawaii county trying to save money and balance the budget, I'm all for, you know, trying to help the County; however, I can't support this No. H, because I believe that it's taking property from the landowner who paid for the property, and he is not receiving any compensation for that, and I don't feel that's appropriate in this case. And the other question is whether this is ever going to be needed or not. So the County does have a process, condemnation, where they could acquire this land, if they do decide that they need it. So I think that's appropriate, and the landowner should be compensated because he certainly had to pay for that land. Thank you.

WATANABE: Mr. Domingo.

DOMINGO: Thank you, Mr. Chairman. I look at this application, and what I see is a beginning of a nightmare, as you look into the future, because as indicated – was it the Kona Community Development Plan – calls for the extension of that street, and that according to Public Works that there will be a need in the future to expand it into a four-lane highway, and that also I think the Development Plan states that sidewalks would be installed. So you know, right now in the present configuration we can hardly find room for ten feet dedication of the individual properties, let alone putting in sidewalks in the future. That would certainly be impossible to implement. I refer to the Community Development Plan, and one of the most glaring issues of the Plan is that it is a law, by law now that it has to be implemented. So Public Works, Planning Department and all other agencies are bound by law to fulfill the requirement in the Plan. And that's why I say more difficulty is coming in the future.

WATANABE: Thank you.

ALAMEDA: Mr. Chair?

WATANABE: Yes, Mr. Alameda.

ALAMEDA: I just want to respond to Commissioner Housel's comment. I kind of hear what you are saying. So my question would be, so Condition H would not be fair to the applicant; but not putting it in would not be fair to the other guys that already -. So what's the comment on that?

HOUSEL: I feel that the, you know, if the other people who did agree to that easement, you know, did so voluntarily, then that was their decision. And so, in fact the landowner doesn't agree to it voluntarily, I think he has a right to, you know, defend himself against taking his property.

WOODWARD: Mr. Chairman?

WATANABE: Yes, Mr. Woodward.

WOODWARD: I might address that question. I'm sure there're only, from what the gentleman from Public Works stated, four of these properties along that road that have granted

easements, and I am sure that they didn't have things built within ten feet of the road at the time that the easements were granted. These people have something that is ten feet three inches from that easement; that's a big difference. And you know, I think the whole question is, if you don't get an easement all the way down along the road, you're going to have to condemn some properties. You're going to have to condemn that easement, and it's not fair to have this property owner give up his property and put his parking lot at risk for future use that is not even planned. I mean, you know, it's, like I said, this is pie-in-the-sky stuff. Public Works can't tell us what they're going to do with it; they have no idea. You know, it's in a long-range plan, but how and when that happens, who knows.

IWASHITA: Mr. Chair?

WATANABE: Mr. Iwashita.

IWASHITA: Thank you, Mr. Chair. First of all, it's my understanding of the record that the previous approval on the mauka side of the road, that was a change of zone when the property was fully developed with the retaining wall and all of that, so that actually is more egregious. If you look at what improvements need to be changed or destroyed, if the expansion is done, that's a really more egregious, fatuous situation.

But the concern I'd like to address is, you know, this discussion about takings and the use of eminent domain in the future as the alternative to what's being suggested here. It's clear in my mind that the easement that's being proposed in H is one that is a rather common easement that's a condition to change of zone applications. It's not anything extraordinary. It's not anything special in this case. It's something that's done for -. In this case the Kona Community Development Plan has sidewalk and other expansion issues for this area. And so the record really shows that there are plans; they are not real specific plans, but there are plans for this area. And the community has made its input, and it's been adopted by the Council as law. So I'm really concerned that taking and those kinds of issues are raised, because in my mind it doesn't even come close as a matter of a law, as a matter of a practice, as a matter of precedent, you know, that this County has acted on for many years, and it's common throughout the State and across the country; this is how it's done. So you know, I would like just to make it clear on the record my view of this, and that we should – you know, I'm proceeding on that basis that clearly this is a practice that that is common historically, and it's legal, and it doesn't come anywhere near to a taking kind of an issue – and so we should address it on its merit, and the merit is essentially to me the Kona Community Development Plan. And so, on that basis we should keep H in.

WATANABE: Okay. Ms. Bowman.

BOWMAN: Yes, I have a comment that may be -. In looking at the background, the applicant appears to have this development in three phases, correct? Phase I with the shell and then Phases II and III. When was this submitted?

COTTLE: The application?

BOWMAN: Here is what I'm trying to understand. If the applicant had these three phases in mind, right – maybe I can get clarification – then at the onset there should have been an application for a change of zone, if in fact it's their long-term plan to have multiple uses here.

COTTLE: I'm not certain why the applicant designed the project with MCX in mind, but did not come in for the change of zone at that time. You would need to ask the applicant that question.

WATANABE: I'm not sure that's critical -.

BOWMAN: I think it's very critical, because it's the use, it's the density, the use, their intention, so I think it is very critical; because if the phases were already in there – and I'm not trying to be critical to the applicant – then there are different requirements for MCX, right? That's my point.

WATANABE: Okay. Okay, I think everybody has chimed in. Let me say it again. Typically I would agree with Condition H. Unfortunately, from my perspective the future road widening easement would come, according to testimony provided, within three inches of an existing concrete slab, so I would tend to agree that it's a bit onerous on the landowner. And that's just so that it doesn't seem like I'm being inconsistent in the future, because ordinarily I would agree with this, with Condition H. Unless anybody else has anything to add in, then, Maija, would you call for the vote?

IWASHITA: Mr. Chair?

WATANABE: Yes.

IWASHITA: Just one final point, please. Thank you. It's my, I've been thinking about this mauka previous approval with basically a similar Condition H in there, and it's my recollection that that was, you know, that the existing building, the owner came in, developer came in and asked for in order to add medical kind of services and those kind of uses that were not fit the industrial zoning, and accepted the ten-foot easement. And I guess in addressing the Chair's concern about, you know, this ten-foot easement coming within inches of the existing concrete slab, that's true, but in the mauka case, which in the previous case on the mauka property, you know, what we are talking about is wiping out the wall, you know, I mean, substantially more improvements than the planted area. So I really, the point I'm trying to make is that we have established a precedent by including such a condition in this area for a situation that has really more egregious facts than this particular case. So I find it hard for those of us who were here and voted to approve that prior zoning change with that condition to take a different position.

WATANABE: Thank you. Maija.

COTTLE: Thank you, Mr. Chair. I'd like to just read revised Condition G to make sure that I understand it's the same intent that Commissioner Iwashita had with DPW, and

Commissioner Woodward, it's the same condition you made your motion on. Okay, so, "Left turns from Olowalu Street shall be prohibited within -."

WATANABE: No, no. Let me read it for you then, Maija. "Left turns onto Olowalu Street shall be prohibited within 75 feet of the intersection of Olowalu Street and Kamanu Street." Eliminate the second sentence, and then the last sentence would be, "A sight distance easement meeting with the approval of the Department of Public Works shall be provided and recorded along the property frontage with Olowalu Street and any sight distance obstructions shall be removed, within the subject property, to establish and maintain adequate sight distance in accordance with the current standards of the Department of Public Works."

IWASHITA: Mr. Chair, are you going to leave in the right-of-way tangents language? That was original change at the end of the first sentence: "Olowalu Street and Kamanu Street right-of-way tangents."

WATANABE: I don't think it really changes the meaning, but if you want it in, that's fine with me.

IWASHITA: I think geometrically it does.

WATANABE: Yeah.

WOODWARD: Well, I think the other thing that the applicant agreed to was that the appropriate signage be placed.

WATANABE: We are going to leave that to Public Works.

WOODWARD: Okay, okay, that's fine.

WATANABE: Personally, I don't care what they do.

WOODWARD: Yeah, well, then I have no problem with exactly the way you have it. You can give that copy to Maija; she can transcribe it.

COTTLE: Okay? Okay.

WATANABE: Is that Okay? So we are clear on this and what we are voting on, right? The motion is to forward a favorable recommendation to County Council with the revised Condition G as read and eliminating Condition H. Right?

WOODWARD: Correct.

COTTLE: Correct.

WATANABE: Okay.

COTTLE: Commissioner Woodward?

WOODWARD: Aye.

COTTLE: Commissioner Domingo?

DOMINGO: Aye.

COTTLE: Commissioner Alameda?

ALAMEDA: No.

COTTLE: Commissioner Bowman?

BOWMAN: No.

COTTLE: Commissioner Housel?

HOUSEL: Aye.

COTTLE: Commissioner Iwashita?

IWASHITA: No.

COTTLE: Commissioner Ogata?

OGATA: Aye.

COTTLE: And Mr. Chair?

WATANABE: Aye.

COTTLE: Motion passes, five-three.

WATANABE: Okay.

The discussion ended at 11:44 a.m.

Respectfully submitted,

Noriko Sauer, West Hawaii Secretary