

zoned for Multiple Residential as well as those properties to the south. The properties within the Seaview Circle Subdivision towards the west are designated Single Family Residential. There are a number of apartment buildings within this particular subdivision, indicated in areas designated brown, pink and brown on this side toward the south.

The Applicant intends to construct 14 units of condominium, 14 condominium units within three buildings. One would be a proposed 3-story structure located in this, at this particular location. The other 3-story structure would be located on the lower or makai end of the property. There would also be a 2-story structure situated at the corner of Kuakini Highway and Seaview Circle.

The Applicant's proposal is to construct the access point at this particular location, which is on the Ka'u side or south side of Seaview Circle. Seaview Circle goes in this configuration. So this also is referred to as Seaview Circle.

If you had looked at the Public Works' comment, they had requested that we consider access from the west side of the property rather than the south side of the property. Based on this proposal, there is also an access located at this particular corner which is on the west side of the property. This basically shows the elevation of the subject, of the buildings proposed on the property.

For those of you who are familiar with this particular location, this property is also the property that's also, that was previously, there was Special Management Area Use Permit for a prior, previous condominium project applied for the Topliss, Larry Topliss. And, I think, basically, many of you are familiar with that particular case that went to the Third Circuit Court.

We received a Petition for Standing to a Contested Case Hearing from the Kona Sunset Villas, AOA. At this time, the Planning Director, the Planning Department is requesting that the Commission deal with the Petition for Standing filed by the Association of Kona Sunset Villas. Are there any questions at this time?

FUJIKAWA: Any questions, Commissioners, with the staff? Commissioner Graham?

GRAHAM: Norman, from, I did read that Topliss material and the court reporter stuff; and, I mean, the position of the court was that it was remanded back to the Planning Commission because of the difficulties in the way the decision was made, you know, what was wrong about it; but I don't know anything that transpired thereafter. Did they go back to the Planning Commission? Did the Applicant, Topliss, choose to go anywhere with the project? What happened since then?

HAYASHI: If memory serves me correctly, I believe Mr. Topliss, after it was remanded back to the Planning Commission, withdrew the application. So the Commission did not deal with the application, further deal with that application.

GRAHAM: Thank you.

FUJIKAWA: Any other questions? Springer?

SPRINGER: Is there a map that you can show me of the Kona Sunset Villas AOA -?

HAYASHI: Yes. I failed to mention that that Association, the condominium project is situated adjacent to and on the north of the subject property. My apologies.

SPRINGER: So they share a boundary.

FUJIKAWA: Any other questions, Commissioners, to the staff? If not, would the Applicant or its representative, please step forward.

HAYASHI: Before, while the Applicant is coming up, I did receive a Petition which was handed to the staff. This is only one copy. There were, if I counted correctly, there were 73 signatures; and basically this Petition, I'll read this Petition and also make copies for you for the subsequent time. And this is addressed to the Planning Commission from the undersigned residents of Seaview Circle; and it reads: "A Special Management Area Use Permit application (SMA 03-019) filed with the Planning Department of the County of Hawaii on December 5, 2003, requesting Permitting for a 14-Unit Condominium Project and Related Improvements. This proposed Project is located on the 22,000 square foot property on the North corner of Kuakini Highway and Seaview Circle. This proposed project will consist of 4 buildings and will have 18 parking stalls to accommodate the residents and visitors of the 14-2BR condominium units. This proposed Project plans Ingress and Egress of cars to Seaview Circle, approximately 60 feet from the traffic lights. This will present a serious and continuous Traffic Safety issue. Every vehicle making the turn off of Kuakini Highway (35 MPH zone) will be subject to immediately encountering a vehicle entering or leaving this condo complex. The proposed 14-2BR units is capable of having 28 vehicles, which means that as many of 10 vehicles will seek on-street parking. They will be forced to park a block or more away...on Seaview Circle. **WE ARE OPPOSED TO THIS PROJECT AND TO ANY MULTI-FAMILY UNIT RESIDENTIAL PROJECT THAT MAY BE PROPOSED IN THE FUTURE FOR THIS PROPERTY AT THE NORTH CORNER OF KUAKINI HIGHWAY AND SEAVIEW CIRCLE.**" And it's signed with addresses and the dates.

We also received another correspondence from Maureen Kelly, who also signed the Petition basically opposing the project; and we'll make copies of this correspondence at a later date.

FUJIKAWA: Thank you. Any questions, Commissioners, to the staff? Okay, if not, the Applicant -. You are the Applicant?

DAVIS: Representative.

FUJIKAWA: You're the representative. Okay, could you kindly raise your right hand? Do you swear to tell the truth on this matter now before the Hawaii County Planning Commission?

DAVIS: Yes.

FUJIKAWA: State your name and your address.

DAVIS: Phil Davis, 75-338 Hoene Street, Kailua-Kona.

FUJIKAWA: Okay. You may proceed with your -.

DAVIS: I have one comment regarding access to the property; and that is that we have already decided to pull the access from the short section right off of Kuakini Highway. We already decided to pull that out and have one access to the property from the lower end of the property. I can field questions from here.

O'TOOLE: I think you should take up the intervention request.

FUJIKAWA: Okay.

O'TOOLE: Ask the Intervenor to come forward if they're here.

FUJIKAWA: The Kona Sunset Villas representative, can you come forward? Ralph Mesick? Raise your right hand? Do you swear to tell the truth on this matter now before the Hawaii County Planning Commission? Okay, you may sit and, state your name and your address?

MESICK: Ralph Mesick, 77-6585 Seaview Circle, No. 201 in the condominium complex known as Kona Sunset Villas.

FUJIKAWA: Okay. You're the Intervenor, you may proceed.

MESICK: I submitted an application for Standing in a Contested Case Hearing. Incidentally, that form is really an inadequate form. It doesn't give you enough space to really state your purpose. In fact, it doesn't even have room on the application for a date, what you're contesting, nothing like that.

Anyway, our objection to this proposed project, as I stated in that application is that, No. 1, personally, we had a, we experienced in 1992 or '93 a condominium, 15-unit condominium complex to our immediate north boundary. And at that time in the site preparation, the amount of rock that had to be removed from this, I don't know what you call the type of equipment that does it -. But I recall one particular day I was standing in the parking lot when this was being done in our parking lot; and it was worse than an

earthquake, you know, the ground just shook unbelievably. And unbeknownst at the time, we found out later that we did have some serious damage. We had to replace tanks in our sewage treatment facility and we also had our pool, our swimming pool, completely resurfaced shortly after that particular thing. Unfortunately, at the time the construction took place, we were not really aware that damage was being done. And when we found the damage the feeling was that it would be very difficult for us to prove the source of the damage, so, you know, we were not able to seek any relief for the damage that was done. And this proposed complex on our south boundary would be an exact replica of what happened on the other side. So we are fearful that, you know, it will damage our building, our structures, our parking lot, our swimming pool, our sewage treatment plant, our foundations.

Secondly, our objection is to the traffic problem that is created. No. 1 was their proposed ingress-egress which now I'm being told that they're planning to change. But if it's that proposed plan, ingress and egress spot, it would really create a traffic hazard. You know, people coming around the corner from Kuakini Highway coming down to Seaview Circle, immediately they could be a cause of an accident. And if an accident should occur there at a peak period, traffic period time, emergency vehicles would have a very difficult time getting to the location because there is no other entrance or outlet to Seaview Circle.

Also, the effect on on-street parking. Right at this moment in time, our complex, we have 21 units and we provide 21 parking stalls plus 7 guest parking stalls, and we allow our residents to use these guest parking stalls. But, currently, I think we have about 5 cars that seek on-street parking, and that just about fills up whatever is available in that area. So an additional, this additional project, if another 5 cars had to seek on-street parking, you know, they would be seeking on-street parking a block or more away from where they live. So that would be another problem that this project would create.

And just the sheer addition of another 20 cars every day having to go in and out of Seaview Circle would complicate the already heavy traffic situation.

FUJIKAWA: Any questions, Commissioners? Yeah, Ralph, your facility, is it on the left side of the drawing on -?

MESICK: Left side of the drawing.

FUJIKAWA: Or is it located right directly, right next door?

MESICK: Correct.

FUJIKAWA: Graham?

GRAHAM: Ralph, I just wanted to point out a little background, as I understand it, just to sort of make sure we're on the same page; and if the Planning

Director feels like I'm wrong in anything I say, I would certainly welcome being corrected. The point I want to bring up is the particular permit that we are being asked to grant is a Special Management Area Permit. And apparently in the past when this Topliss application went on, the permit was not granted; but the Planning Commission essentially didn't grant it because of traffic impact rules or traffic impact problems; but then the court said the traffic impact per se is really not an issue for a Special Management Area Permit. Obviously, there's a lot of nuances involved when you get down to all the legalities and all, but I just wanted to sort of make it clear that we have a whole set of requirements that must be met for a Special Management Area Permit. The traffic per se is not one of them or, you know, traffic safety issues. So all I'm doing is putting that forth as information to you that we're not in the same situation we would be in if like in the prior application that we had here just today, where we were talking about recommending for a rezoning where traffic is, traffic and access are real sort of direct obvious issues for a rezoning. So I'm not sort of saying this to you in any other way -, just to sort of let you sort of share the same feeling I have as I'm going to, at some point, have to deal with this issue.

Right today, all we're dealing with, I believe, in your case is whether you have proper standing to go ahead with a Contested Case on this. And, so, what I'm saying is not really directly related to that at all, but it's just there as sort of background to you to consider in this matter, that's all. And if there's any corrections anyone would like to make to what I said, please do so.

FUJIKAWA: Any questions, Commissioners, with the Director or the testifier?

SPRINGER: I don't have a question. But I believe, given the proximity of the Petitioner for Standing in a Contested Case to the project, I would be inclined to grant them that at the appropriate time.

FUJIKAWA: Fine. Any other questions, Commissioners, with anyone, the Director, staff? If not, now we're on the issue of accepting the Contested Case Hearing. What is your move?

SPRINGER: Mr. Chair?

FUJIKAWA: Commissioner Springer?

SPRINGER: Given Commissioner Graham's discussion regarding the Topliss decision which, in effect, diffuses the emphasis placed on traffic considerations, the Applicant for Petition, I'm sorry, the Petitioner for Standing in a Contested Case Hearing mentions other factors, including potential damage by construction. Does the Planning Department take things of that nature into consideration in their evaluation of an application? The Petitioner for Standing in the Contested Case mentions another construction project where damage was apparently made to their property. Does the Planning Department take that up when evaluating an application?

FUJIKAWA: Director?

YUEN: I can't say that it's part of a checklist of things that are looked at, but it is controlled by certain rules in the development process, like the necessity of getting grading permits, or there are Department of Health rules for dust screens that you see in construction sites. It's something that we've discussed in connection with projects where there may be historic sites nearby that may be affected by ground shaking or ground movement; and it's something that can be certainly considered in either, in any land use action. But the normal, as I say, it's not in a normal checklist because the normal kinds of things that happen in construction are covered by other regulations.

SPRINGER: Thank you.

FUJIKAWA: Commissioners, any questions with the Director? I believe that the Intervenor here had stated also parking on the street. Staff, is that a County road or is it private?

HAYASHI: I believe it is County road, yes.

FUJIKAWA: And how wide is it?

HAYASHI: The right-of-way width is 60 feet and this particular section has a 35-foot wide pavement. This section here is 20 feet wide.

FUJIKAWA: One of the issues was off-street parking. This is added into the contested application. Any questions? Do we have a motion on the standing? Go ahead.

SPRINGER: Mr. Chair, I move that the Hawai'i County Planning Commission accept favorably the Petition for Standing in a Contested Case on this matter, SMA 03-019, made by Kona Sunset Villas, AOA.

FUJIKAWA: Do I hear a second?

MCCALL: Second.

FUJIKAWA: It has been moved by Commissioner Springer and seconded by Commissioner McCall that the Petition for Standing is granted. Any questions? No? Staff?

HAYASHI: Commissioner Springer?

SPRINGER: Yes.

HAYASHI: Commissioner McCall?

MCCALL: Aye.

HAYASHI: Commissioner Smith?

SMITH: Aye.

HAYASHI: Commissioner Graham?

GRAHAM: Aye.

HAYASHI: Chair Fujikawa?

FUJIKAWA: Aye.

HAYASHI: Mr. Chair, motion carries.

FUJIKAWA: Okay. Commissioners, do you want to hear it, this case, or do you want to select, have a hearings officer involved into this matter?

SPRINGER: Mr. Chair?

FUJIKAWA: Springer?

SPRINGER: I would like to inquire of the Planning Director if we have sufficient funds to out-source?

FUJIKAWA: Director?

YUEN: Yes, we do.

FUJIKAWA: We do have the funds available for a hearings officer.

SPRINGER: Thank you.

FUJIKAWA: Do I hear a motion that we hire a hearings officer on this application? McCall?

MCCALL: I move that we ask the Planning Director to hire a hearings officer to hear this.

FUJIKAWA: Is there a second?

SMITH: Second.

FUJIKAWA: It has been moved by McCall and seconded by Commissioner Smith that the Director hire a hearings officer to handle this hearing. Any questions? All in favor, aye?

COMMISSIONERS: Aye.

FUJIKAWA: The Director, you may hire a hearings officer to hear this case. Okay. Thank you very much.

Okay, now we may proceed on to, I guess that's our last application, so -. Before we excuse all of you, is there any other person who wanted to testify on this case? If you would like to come on up and -. I didn't see your name in the sign-in sheet.

IMMING: My name is Rod Imming.

FUJIKAWA: Excuse me. Could you raise your right hand. Do you swear to tell the truth on this matter now before the Hawai'i Planning Commission?

IMMING: Yes, yes.

FUJIKAWA: Will you state your name and address.

IMMING: My name is Rod Imming. I'm the applicant. My address is 75-346 Hualalai Road, Unit B, like in boy, 105, Kailua-Kona, Hawai'i 96740.

FUJIKAWA: You may proceed.

IMMING: One thing I'd, question I have is what would be the timeframe of the hearings officer's hearing. How long is it going to take to get, select a hearings officer and to hear this case?

FUJIKAWA: Staff or the Director, you have an answer to that?

HAYASHI: Well, as an example, we had a request for a contested case hearing or petition approved by the Commission back in the December. We still haven't gone into hearing. We're in the selection process; and we recently selected hearing officers for those cases, those applications, back in December. So I would think that it will probably take about three to four months before we go into hearing.

IMMING: I didn't get a chance to speak to this because I, my architect was doing the representation. So I would like to make a comment about the testimony that was given here today.

As far as the traffic problem, we have agreed to take away the access onto Seaview Circle between Kuakini and Seaview Circle below. So their question about all of the traffic problems that could happen about that are moot. Okay?

Number 2, regarding the parking problem or on-street parking, as he indicated in his testimony from the Kona View Condominium next door, they have 21 or 22 units and

they have 22 parking spaces. So if you use the same rationale that they're applying to us that there would be at least two cars for every unit, that would mean that they now have ten people parking on the street. Yes, they say they have seven other parking spaces for guests, that's their requirement okay. Our parking requirement, and we meet the County's requirement for parking on our development for the number of units. The number of units meets the zoning for the parcel also. So if there's any problem down there on on-street parking right now, it's created by this adjoining condominium. And I have taken pictures of parking along there and I agree that they have a problem down there. That condominium has a problem. All the other condominiums have a problem with on-street parking because the County has not seen fit to require, in the past, adequate parking on-site for these condominium projects. But now there's a concern for this last piece of property to be developed in this area that has the zoning, that the number of units meet that zoning, that the parking requirements meet the requirements. And so now there's a traffic problem for us providing the number of parking spaces we have. Had this other condominium development provided the same number that we're providing proportionately, they would have had more.

In addition, they had a problem with their sewer plant and they had constructed a out, a overflow drain into the street out there and placed a large concrete barrier into the street that prohibits parking of at least one space. So they have restricted the parking on the public street.

I have pictures of people in the neighborhood parking on this piece of property that we have proposed to be developed, back in off of the public right-of-way onto the private property. So this question about the on-street, the off-street parking problem is there already. I think we have as much right to that off-street parking with this development as any other condominium development in that area. And I take it, you know, that you would approve, contested, contestment on this on that basis, I can't see how you could do that after the testimony that was given about how many parking spaces. There was nobody who questioned about, "Well, you've got 22 units and you've only got 22 parking spaces, aren't you parking on the street?" They say we're going to add 10 more. Well, if we're adding 10 more, they're adding 22 on the street. We have more frontage on the street than they have, if you include Seaview from Kuakini down to Seaview and the Seaview frontage. We could provide more off-street parking than they can on our own frontage. They have room for 5 cars, they have an excess of 22.

I think you've made a mistake, okay, in allowing this.

FUJIKAWA: Mr. Imming, your testimony, this is what you'll testify with the hearings officer, and being that we have granted -

IMMING: Yes, yes, we will. But what I take amiss is that, you know, that this has been granted that requires, that it's going to postpone this project for three, four, five, six months, who knows, just on a whim. Thank you.

YUEN: Mr. Imming -

FUJIKAWA: Mr. Yuen?

YUEN: Let me try to make an answer on behalf of the Planning Commission. The laws that are involved in an SMA Permit allow people who may be affected by the project in a way that's different than the general public to request a more formal kind of hearing procedure, than just the Commission taking a vote on it today, up or down on the merits of your project. So the adjoining apartment did request that; and because they are an adjoining property owner they may be affected in a way that is different than the general public by your project. So the Commission voted to put this into as a more formal type of procedure to make a decision. They did not vote that they, their vote doesn't mean that you think that you should have more parking or that the other condominium should have more parking, or that they agree with the objections that are being made by the adjoining property, just that it has to be put into this contested case hearing process.

IMMING: Okay, a question on that then is, in a contested hearing, how many individuals are hearing it, one?

YUEN: What's going to happen is that the Planning Department will appoint a hearings officer to hear what you have to say and to hear what the objectors have to say; and that hearings officer will make a, that's one person. And that hearings officer who is selected from a list of potential hearings officers that we have, most of them are attorneys, that hearings officer will then make a report and recommendation back to the Planning Commission, which will then take a final vote on the permit to grant or deny the permit.

IMMING: Okay, so that was, the background is that that person is an attorney that's used to mitigating litigation or something like that? Is that correct?

YUEN: Most of the people on the hearings officers list are attorneys. I think we do have a few people who are civil engineers, planning consultants and the like.

IMMING: Yeah, cause that was my other question, was what is their background in land development planning, engineering, traffic engineering, you know, all of those type things? Do they have the proper background to be able to make a determination on this? In your opinion, I guess, this group that you've selected do have that in that they have done other public hearings, or other hearings of this nature and have that background. Is that correct?

YUEN: The attorneys, certainly the attorneys have qualifications. The attorneys have been involved in land use planning and permitting of this type.

IMMING: Well, it won't do any good. But I'll make a recommendation that you get someone that has some traffic engineering background since the contestant here is alleging traffic problems. Okay? That's all I have, thank you.

FUJIKAWA: Okay, thank you very much. We have one more person down there who raised their hand. Are you here to testify?

MEADOWS: Yes, I am.

FUJIKAWA: Will you kindly raise your right hand. Do you swear to tell the truth on this matter now before the Hawai'i Planning Commission?

MEADOWS: Yes, I do.

FUJIKAWA: Will you state your name and your address.

MEADOWS: Leo Meadows, 77-6529 Seaview Circle.

NOMURA: Microphone, please.

FUJIKAWA: You may proceed.

MEADOWS: I'm sorry I was a little late on coming in. I had to find parking, as anybody does here in town. One of the considerations that I don't know whether it has been properly addressed is the drainage of this property into the road easement, or lack of it there. Currently, any time it rains heavily, like in the last couple of weeks, there's a stream that forms on the Kailua town side of Seaview Circle that runs down hill. I'm at the bottom of the hill. That stream, depending on how many cars are parked there, if there's trash in it, if there's somebody trailer parked there, somebody has loaded in a load of sand to do work on their yard, if the County hasn't come out and trimmed the weeds back, whatever, the stream will be diverted onto one of the other streets and into somebody's yard or house. Being at the bottom of the circle I get it more frequently than anybody else. There is no drainage out of that stream, except down to the end of Seaview Circle, out into the vacant lot which may or may not be continued out, depending on other projects.

The easement on the entrance of Seaview Circle now when it rains, this is on the right-hand side as you're going down into the Circle, you have a stream there that constantly erodes out and dumps gravel into the street, along with the subdivision on the other side. Supposedly on the other side they were supposed to put in drainage where that couldn't happen. As it is now, after every heavy rain, 2, 3, 4, 5 days later the County has to come out with their road sweeper and backhoe, depending on how much gravel, and haul out a half yard of gravel. It's now at the bottom of the intersection there. That is also a problem for the person in front of the Seaview Circle. He has a large rock in front of his house that stops the cars from running into, which it occasionally does. But the buses, school buses, in order to make the grade on Seaview Circle, when they're full coming out in the morning, they wait at the bottom for the light to change, and then they make a run at the light, you know. So any traffic problem that this will create, by parking on the side parking there at the corner, is definitely going to have a massive effect on it.

But speaking on the other hand, the owner here has recently taken a bit of aggression on the lot, they've cleaned up the lot. It's not as much of an eyesore as it was before and, except for some parking of other people who don't want to park in front of their own house, you know, they'll do it. He's making an attempt to clean up the place.

I think that the apartments there would be better than having a vacant lot full of cars and trailers, if it's handled right, the parking is taken care of and the drainage is taken care of. And I don't see why that you guys can't work all this out between the architects, developer and the County. That's it.

FUJIKAWA: Thank you. Any questions? Thank you very much. Can you give me the spelling of your last name?

MEADOWS: M-e-a-d-o-w-s.

FUJIKAWA: Thank you. Okay, now we have concluded that application on that contested hearing.

The discussion ended at 10:02 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary