

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
APRIL 23, 2004

A regularly advertised hearing on the application of SHAWN NAKAKURA AND SAM LEE (USE 04-002) was called to order at 9:05 a.m. in the Ohana Keauhou Beach Resort, Kahaluu Ballroom, 78-6740 Alii Drive, North Kona, Hawai'i, with Chairman Fred Galdones presiding.

PRESENT: Fred Galdones
C. Kimo Alameda
Earl Fujikawa
Bill Graham
Jeffrey McCall
Hannah Springer
Francis Smith
Bill P. Thibadeau

Patricia O'Toole, Deputy Corporation Counsel
Chris Yuen, Planning Director
Norman Hayashi, Planning Program Manager
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner

And approximately 15 people from the public in attendance

APPLICANTS: SHAWN NAKAKURA AND SAM LEE (USE 04-002)

Use Permit to allow the operation of a cremation business within portion of a warehouse building situated within the Limited Industrial 1-acre (ML-1a) district. The property is located along the north side of Hulikoa Drive within the Kohanaiki Business Park Subdivision which is situated along the east side of Queen Kaahumanu Highway (Highway 19), Kohanaiki, North Kona, Hawaii, TMK: 7-3-58:28.

GALDONES: Commissioners, proceeding on the agenda under New Business, the Agenda Item No.1, the applicants are Shawn Nakakura and Sam Lee (USE 04-002). This is a permit to allow the operation of a cremation business within portion of a warehouse building situated within the Limited Industrial 1-acre (ML-1a) district. Jeff?

DARROW: Thank you, Mr. Chair. First of all, I'd like to welcome our new Commissioner, Commissioner Alameda.

If I may direct your attention to our location map, this area of the request that we're looking at is within the North Kona district. For bearing, this line traveling north/south on the map is the Queen Kaahumanu Highway. The area that we're looking at is in this

area, the Kohanaiki Business Park Phase II area. If you recall recently, we've been looking at applications in this area. Clifto's identified here, and also the Rutter application located in this area directly across the street from the Kohanaiki Business Park. This area identified with the red dot is the area that the request is located. This is in the Phase II area of the Kohanaiki Business Park. This gray identifies the zoning, the County zoning, which is Limited Industrial 1 acre. Located around this area, the green is all Open zoning. The light green is Agricultural 5 acres. Other gray areas located near this area, the Kaloko Light Industrial area is located here where Costco and Home Depot are located.

Looking at the site map, this is what the actual request will look like at the, when it is completed.

The applicants, Shawn Nakakura and Sam Lee, are requesting the use permit for the operation of a cremation business within one bay within a six-bay warehouse. This is located, again, about half way up in the Kohanaiki Business Park. The bay that they will be located in will be running next to the Hulikoa Drive, which is the road that runs directly through the Kohanaiki Business Park. It will not be located on the side of the warehouse where there are other properties located.

The request is to allow cremation of human and animal remains in EPA approved ovens that are built specifically for this purpose. There will be no funeral services performed at the business site. The reason for the request is to, at this time, there are two cremation businesses located on the bbig Island. They are both located in East Hawaii, one at Dodo Mortuary and the other at Homelani. There is one pet cremation facility, and this is located in Keaau. All these facilities are located within East Hawaii; and it makes it difficult for residents in West Hawaii. The reason for the request would be to allow a shorter time for loveF ones to be returned for residents within the West Hawaii area, as well as saving them transportation costs.

We have sent out previously the recommendation, but we're withholding that recommendation at this time because we have received a petition for standing in a contested case from Mr. Edmund Wong. Last night we received a fax from Mr. Wong; and if I could just read it to you. He is requesting a continuance. He states in his request that he regrets, regrets to inform the Planning Commission that he will not be able to present, be present at the meeting. And he is asking for a continuance, "Due to the multi property owners who are of Hawaiian ancestry we are exercising our rights to ask for a continuance in order to have more time in notifying the families and to respond to the petition."

SPRINGER: Mr. Chair?

GALDONES: Any questions? Commissioner Springer.

SPRINGER: Jeff, can you point out for us on the map where the Wong property is situated?

DARROW: Sure. I'm going to pass out a copy of the real property tax record that identifies all the listed owners for the particular property that Mr. Wong is a part of. This is located, this piece of property here running on the northern boundary of the entire park.

GALDONES: Commissioner Springer?

SPRINGER: On the maps circulated with the background information, I'm just trying to get myself oriented now, are those the lands of Ooma that are indicated as being government land? I'm looking at Exhibit 1 of the background report.

DARROW: Okay. This would be the first map that has the business park kind of circled. Okay, if you'll, where the area that you see kind of the markings there, there's the lot right there next to it. So it's in between that.

SPRINGER: Thank you.

GALDONES: Commissioners, any further questions?

FUJIKAWA: Mr. Chairman?

GALDONES: Commissioner Fujikawa.

FUJIKAWA: Jeff, has the County researched with the State Health Department on this application?

DARROW: We did send out a request for comments to the Department of Health and, unfortunately, they did not respond.

FUJIKAWA: Another thing is that I know at one time in the past I was told that you cannot cremate an animal, remains, with the same incinerator with a human. Has there, can this question be answered?

DARROW: If it's okay with you, if I could defer that question for the applicants, because I'm not very thorough on this matter. But I'm sure that they are lot more aware of these types of requirements.

GALDONES: Commissioners, any further questions? Commissioner Graham.

GRAHAM: Jeff, could you just, there are enough parties involved in this that it's a little confusing. We have the petitioner. Then we have the gentleman applying for a contested case hearing. Then we have somebody, is it the same gentleman asking for a continuance? And then we have a bunch of property owners who have not been notified, which I would think would be the applicant's obligation to notify. But it's not the

applicant, it's not the applicant asking for the continuance, I believe. Is there any way you can make it look clearer who's doing what here?

DARROW: The list that we're sending around that identifies the listed owners of the property, there's one person that receives the tax information by mail. And so when the applicants look for an address, usually that will be the address where the taxes are sent to. So Mr. Wong was that party that's identified on that list that received the notification. So he's requesting more time to be able to notify the other owners that are part of this property as well.

GRAHAM: Fine.

DARROW: If I could also continue on, there are just two parties that are involved here. There's the applicants, Shawn Nakakura and Sam Lee, and there's the petitioner who's also the person that has requested the continuance, Edmund Wong. And then, again, Mr. Wong is asking for more time so the names on that list that were passed around can be notified. There's quite a number of those names that don't have addresses so he must have a way of being able to contact them.

GALDONES: Further questions? Hearing none, is the representative or the applicant here this morning?

NAKAKURA: Yes.

GALDONES: Could you please step forward. Good morning. Could you please raise your right hand. Do you swear or affirm to tell the truth on this matter now before the Hawaii County Planning Commission?

LEE: I do.

NAKAKURA: Yes, we do.

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

LEE: Sam Lee, 73-4448 Holoholo Street.

GALDONES: Thank you, Mr. Lee.

NAKAKURA: Shawn Nakakura, 77-110B Kalaniuka Street, Holualoa.

GALDONES: Thank you, gentlemen. Did you receive a copy of the background report and the recommendation also, as stated earlier by Jeff that we will not be acting upon it because of Mr. Wong's request? Did you receive a copy of those, and do you have any response to those?

NAKAKURA: We did receive copies; and it was very well prepared; and appreciate all the hard work from Mr. Darrow.

GALDONES: Do you folks find anything that is or any conditions that you have any problems with?

NAKAKURA: None whatsoever. Our goal and our intent for this business is to be very good neighbors to the surrounding neighborhood, as well as a valuable service for the Kona community.

GALDONES: Thank you. Commissioner Fujikawa, you had a question earlier?

FUJIKAWA: Yeah, my question was with the State Health Department. Have you contacted the State Health Department on this matter?

NAKAKURA: Yes. We have contacted them and they told us we need to get our use permit first and then we need to purchase our machines. And when we purchase our machines, we will be dealing with the Department of Health to get a Clear Air Permit. It takes about four to six months to get it. It's not an easy thing to do. It's a lot of paperwork.

FUJIKAWA: Yeah, the concern about a smoke house, is there smoke coming out?

NAKAKURA: There is a smoke stack but when operated properly it is smokeless and odorless.

FUJIKAWA: Okay. And how about the concern about between a human remain and the animal? Can you use the same incinerator?

NAKAKURA: No, you cannot. So we'll abide to have one for humans and one for animals.

FUJIKAWA: Two different units?

NAKAKURA: Yes, two machines.

FUJIKAWA: Okay, thank you.

GALDONES: Commissioners, any further questions of the applicants? Hearing none, is there anybody from the public here to testify on this subject matter? Seeing none, Jeff, procedural matter, there are two things that the Commissioners have before us. One is for continuance and the other is the standing for contested case hearing. Does one supercede the other?

DARROW: We do have a request for a continuance. It appears that if you folks feel that the petitioner has, at this time, enough standing I would see the opportunity to vote on that at this time. But if you feel that there are questions that need to be asked maybe at this, maybe we should look at a continuance.

FUJIKAWA: Mr. Chair -?

GALDONES: Commissioner Fujikawa.

FUJIKAWA: Yeah, if that's the case, I would like to make a motion to continue this hearing and give it a chance so we could listen to the intervenor.

GALDONES: There is a motion by Commissioner Fujikawa to grant Mr. Wong a continuance. Is there a second to his motion?

SPRINGER: Second. Discussion?

FUJIKAWA: Discussion?

GALDONES: Seconded by Commissioner Springer. Discussion, Commission Springer?

SPRINGER: The motion as worded indicates that Mr. Wong is an intervenor and we haven't decided upon that yet. So I would suggest that motion be amended to reflect Mr. Wong by name rather than as the intervenor.

GALDONES: Commissioner Fujikawa?

FUJIKAWA: Okay.

GALDONES: It has been accepted by Commissioner Fujikawa that the motion shall be amended to recognize Mr. Wong not as an intervenor. Commissioner Springer?

SPRINGER: If we grant the continuance and Mr. Wong has the opportunity then to come forward and any of his colleagues and they can come to us and they can hear the discussion before us, are we required then to accept them as intervenors or will we be taking that up immediately when they are able to sit with us?

GALDONES: Ms. O'Toole?

O'TOOLE: No, you do not. You have to vote on their petition to intervene, whether it's continued or not, you know.

SPRINGER: And then will we do that at the next meeting then on this matter?

O'TOOLE: Whenever it is put on again.

SPRINGER: All right, thank you.

O'TOOLE: Although I would agreed with Mr. Darrow, if you feel there's enough information in the application to act on it -.

GALDONES: Further discussions, Commissioners? Commissioner Graham.

GRAHAM: My understanding of where we're at is this other party, Mr. Wong, wants to intervene, which would move it to a contested case hearing. At the same time, he's asking for a continuance.

It seems like, in one sense, if we don't deal with the motion to intervene until the next meeting, the continuance is just drawing out the process seemingly for no good reason, if we were to grant the intervening -. On the other hand, sometimes a continuance gives you a chance to work out issues so that there doesn't need to be a contested case hearing. So I just thought I might ask the applicants here if you folks have any sense of whether you're in favor of continuance at this point or just going forward and acting on the contested case motion for intervenor status?

GALDONES: Mr. Lee or Mr. Nakakura.

NAKAKURA: I'm not sure I really understand. I would like to proceed as quickly as possible on this matter, if that is an answer to your question. We have, I contacted Mr. Wong, I left a message on his answering machine, and he hasn't called back. In our letters out to the public, we have explained what we tried to do and have left contact numbers to be personally contacted; and we were never contacted.

MCCALL: Mr. Chairman?

GRAHAM: Thank you.

MCCALL: Yeah, my comments are approximately the same. I was mostly wondering whether Mr. Wong had contacted you on whether the idea of getting a continuance, I mean, whether getting a continuance would allow him to contact you and perhaps get, you know, perhaps we could avoid going through a contested case. I don't, but because we haven't talked to him we don't know that. My hope would be, I would be in favor of doing a continuance. The risk is that it will make this take longer for you, but potentially not if you can get a hold of Mr. Wong and allay his, whatever concerns he has. If that works out, it could work out for the best. But if this goes to contested case it's, you know, I mean, we're talking several months anyway. So, I guess, that's the primary comment. I really don't have a question per se.

SPRINGER: Mr. Chair?

GALDONES: Commissioner Springer.

SPRINGER: I agree with Commissioner McCall, and that was my reason for seconding the motion, that by granting the continuance if there's an opportunity for the applicant and Mr. Wong and his party to discuss matters that may reduce the amount of time that would be spent on this application. If it goes to contested case immediately, it would be many months just in process. Thank you.

GALDONES: Mr. Nakakura or Mr. Lee, did Mr. Wong indicate to you what the ground that he was concern with in your application or was there no contact made at all from him?

NAKAKURA: No, no contact from Mr. Wong. Just the faxes to the Planning Department regarding -. I'm not sure what he has a problem with.

Between our business, West Hawaii or Cremation Services of West Hawaii, and his property is going to be Kona Lua, a portable toilet business; and I have heard that there are smells emanating from his business that are going to be way more noxious than what we have. Ours is smokeless, ours is odorless. We have a roll-up door where we will drive our vehicles into; and there will be no visible bodies to, dead bodies to the public. Like I said earlier, we're very concerned about being a good neighbor; and we will take every effort to make that happen.

GALDONES: Jeff, did Mr. Wong indicate any reason why he wanted to, first of all, enter into contested, file a petition for a contested case hearing and now for the continuance, beside what you had to mention was to inform all the other parties within his tax map?

DARROW: Mr. Wong, did not contact me personally as well. We just received the fax; and on the fax, unfortunately, he doesn't go into detail. The only thing he mentions is that he is a neighboring property owner. And then on Subsection D it asks, "Are you a person or persons descended from native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practiced those rights which were customarily and traditionally exercised for subsistence, cultural, or religious purposes?" He puts, "Please note to be determined."

GALDONES: Mr. Yuen?

YUEN: If I could make a suggestion here. It may be that if the Planning Commission does give a continuance, these gentlemen can talk to Mr. Wong and perhaps address his fears about this business. If they're not able to do so, my suggestion would be that we put the matter on the agenda for the May meeting; and then we get to this question of how long would it take to conduct a contested case hearing. Commissioner Springer asks the standard question about budgeting, and we are starting to get a little bit of a budgeting pinch on hearing officers. This particular application seems to be one where the issues might be, we might be able to handle as a Commission, hear what the applicant has to say, hear what the objections are, and make a decision as a Commission

within a reasonable, without taking a huge amount of time. And my suggestion would be to try then, if they can't work it out, to tell the applicant and the intervenor, the prospective intervenor, to be prepared to, the applicant to present their case and the intervenor to say what they have to present in opposition at the next hearing. In that case we would take up first the petition for intervention. There's only one person who has filed on time so if the Commission votes to allow the intervention then we, my suggestion would be to try to go directly into the contested case. A contested case hearing simply has to be that the applicant presents what they have to present, the intervenor can question them, they have the right of cross-examination. The intervenor presents what they have, any witnesses, any documentary evidence, the applicant can cross-examine them, the Commission and the Department can ask questions, and then the Commission -.

(Lights went out at this time.)

GALDONES: The budget cut -.

NOMURA: The microphone is still on.

DARROW: It's still on.

GALDONES: The mike is still on.

YUEN: Oh, there's still power. Then the Commission take a vote, can take a vote on that. So that would be, and this might not, I don't think the agenda for the next Kona meeting is that heavy. This might be a good chance for the Commission to see if we can efficiently deal with a contested case as a Commission; and that's just a suggestion. But that would be my suggestion, if the Commission goes ahead and says let's continue this for this meeting today and put it back on the agenda next month.

My note to the applicant would be that you should be prepared to have at the hearing something more formal that explains the operation. I'm sure that there's literature about the product that you're planning to purchase, what the emissions are. You might have, and I would recommend that you bring something from the Department of Health that shows what their rules are, and the EPA what their rules are, that you would have to meet to operate this business and to demonstrate that the other rules guarantee that there aren't air quality issues or other kinds of problems from the business that you have; and so that would be your part of the case. And then the applicant, I mean, the intervenor, if the intervention is granted, would present their part of the case.

GALDONES: Okay, thank you, Mr. Yuen. Commissioner Springer?

SPRINGER: Regarding the intervention and the status of the petitioner should their application be granted, is one of the things that they receive when they are accepted the right to appeal a decision if they're not granted the petitioner status? May they or may they not appeal the decision of this body?

YUEN: If someone is denied standing in a petition to intervene in a contested case, they can appeal to the Circuit Court; and the Circuit Court then reviews the Commission's decision, was it right or was it wrong. In the meantime the application would be continuing through the process. And so what can happen, if the application has not been acted on and the Court says they should be allowed intervention, then we would start back again with the contested case hearing. If the Court, Circuit Court, finds that they should have been allowed to intervene, then, and the application has been granted in the meantime, then the application, the permit gets thrown out and you start again from the beginning with the intervention; and that has happened. So it's always a concern that can happen if you have somebody wanting to intervene and it's wrongfully denied.

GALDONES: Commissioner Springer?

SPRINGER: Just in terms of perspective was not the Public Access Shoreline Hawaii case a case where basically it was appeal of a denial of standing?

YUEN: That's right.

GALDONES: Commissioners, any further discussion? Otherwise, there's a motion on the floor to grant Mr. Wong's request for a continuance.

SPRINGER: Mr. Chair?

GALDONES: Commissioner Springer.

SPRINGER: Following the Planning Director's discussion, may we add to that motion that it's continued until the May meeting in Kona? That sets the timeframe for us.

GALDONES: Jeff, is that any problem to have that on the agenda for the next Kona meeting?

DARROW: No problem. We'll be able to put it on. That will be the May 28th.

MCCALL: Maybe we should also make sure -.

GALDONES: Commissioner McCall.

MCCALL: I'm sorry. Maybe we should also make sure we stipulate that intervenor, or potential intervenor, will be notified and that he will be ready for a contested case, that we would probably be taking it up.

GALDONES: So noted.

YUEN: Let's have a letter to him that would say that, that he should be prepared to present his opposition, his full opposition at that meeting.

GALDONES: Okay. Any further discussion?

MCCALL: No.

GALDONES: Hearing none, Jeff?

DARROW: Thank you, Mr. Chairman. Commissioner Fujikawa?

FUJIKAWA: I made the motion, yeah.

DARROW: Commissioner Springer?

SPRINGER: Yes.

DARROW: Commissioner Alameda?

ALAMEDA: Yes.

DARROW: Commissioner Graham?

GRAHAM: Aye.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Smith?

SMITH: Aye.

DARROW: Commissioner Thibadeau?

THIBADEAU: Aye.

DARROW: And Mr. Chair?

GALDONES: Aye.

DARROW: The motion for continuance passes.

GALDONES: Thank you, Jeff. Mr. Nakakura and Mr. Lee, you will be informed in writing of today's action. And you have heard the discussion that there will be a continuance and put on the agenda in the May meeting?

NAKAKURA: Yes.

GALDONES: Thank you, gentlemen.

NAKAKURA: Thank you very much, Planning Commission.

GALDONES: You're welcome.

The discussion ended at 9:33 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary