

PLANNING COMMISSION  
COUNTY OF HAWAI'I

HEARING TRANSCRIPT  
APRIL 23, 2004

A regularly advertised hearing on the application of **FLORA BEAMER SOLOMON (SMA NO. 288)** was called to order at 10:17 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 12 people from the public in attendance

APPLICANT: FLORA BEAMER SOLOMON (SMA NO. 288)  
Request to amend Special Management Area Use Permit No. 288 by allowing the construction of 3 single family dwellings (two 2-bedroom dwellings and a 1-bedroom dwelling) to be used for a bed and breakfast operation. The initial approval allowed the construction of a 3-unit apartment building. The property is located along the south side of Keokea Park Road, approximately 1,500 feet from the Keokea Park Road – Akoni Pule Highway intersection, Niulii, North Kohala, Hawaii, TMK: 5-2-12:14.

GALDONES: Commissioners, we are on Agenda Item No. 4. The applicant is Flora Beamer Solomon (SMA No. 288). This is a request to amend Special Management Area Use Permit No. 288 by allowing the construction of 3 single family dwellings (two 2-bedroom dwellings and a 1-bedroom dwelling) to be used for a bed and breakfast operation. Jeff?

DARROW: Thank you, Mr. Chairman. If I may direct your attention again to the location map. This request is in the North Kohala District. We're looking in the area of Niulii. If you were travelling towards Pololu Valley, it would be, you would be traveling in an East/West direction. You would come to the Keokeo Beach area and you would be

traveling down the Keokeo Beach Road or the Government Road. And this map here is a little bit enlarged, showing the particular site that we're looking at this morning. In yellow is the property owned by Flora Beamer Solomon. This property is zoned Commercial Village 10,000 square feet. All other properties surrounding it, these smaller properties are zoned Single Family Residential 15,000 square feet; and then the larger portions are zoned Ag-20. The request is to amend Special Management Area Use Permit No. 288 which was originally approved in August of 1989 for the construction of a 3-unit apartment building. They're requesting an amendment to allow the construction of three single family dwellings, two of which will be used for a bed and breakfast operation, and one for dwelling purposes. You will have, the proposal at this time is for two 2-bedroom dwellings that will be used for the bed and breakfast operation, and one bedroom dwelling to be used for dwelling purposes.

On the proposed site map, you'll see these numbers here, this is for the parking area. In relation to this map, this would be the Government Road that's coming from the entrance to Niulii and then travelling on to Keokea Beach. There are some access roads that surround this property, one located here and one coming around on the, I believe, that's the east side.

We have received several comment letters from the Department of Water Supply. They've been submitted to you this morning. Within there, there are concerns regarding water to this proposed request. There are possible options in the future to try to resolve these concerns. One is that there is only one water unit available to the property, they're requesting three units, they're saying there's only one unit available. The more recent request we've got stated that because this is commercial zoning that there are fire flow requirements; and based on that they're requesting a 12-inch line come in. And at this time they're saying that that, there's a six-inch line and there is no possibility of a 12-inch line in the area. But then, again, there are some possible options in the future to be able to see if we can resolve the fire flow requirements.

We have received two petitions for standing in a contested case hearing. One is from Shirley Batad-Labisores and Randal Labisores. They are the owners of this property located here. And, also, Mr. and Mrs. Antone Cazimero, and they're the owners of this property here. Both are within the 300-square foot area and do border the subject property. Are there any questions?

GALDONES: Commissioner Springer.

SPRINGER: Jeff, can you refresh my memory about the difference between a bed and breakfast and a vacation rental?

DARROW: At this time, the Planning Department does not have a definition for a vacation rental. But, basically, it's a dwelling that is operated as a single family dwelling and they meet the requirements of a single family dwelling. There's one kitchen, there is one family or up to five unrelated people. In regards to long-term/short-term rentals, it's just seen as a single family dwelling that's being rented out on a short-term basis.

A bed and breakfast operation, they are allowed to have up to 10 guests at one time. There are up to five bedrooms that are allowed for the bed and breakfast operation. And they're allowed, part of that operation is that they serve breakfasts to their guests.

SPRINGER: Question. So a bed and breakfast does not need to be occupied by the purveyor of the service?

DARROW: I believe at this time they have, the occupier, the owner of the property or the operator has to live on site. We've had situations where they're now a guest house or two dwellings, similar to this here. So this would be allowed because they're going to be living on site, even though they wouldn't be living in the particular structure.

GALDONES: Commissioners, any further questions? Commissioner Graham.

GRAHAM: Jeff, just, I think one simple question about the zoning, this is village commercial 10,000 square feet which I think we have a 17,000 square foot parcel which I think means that the building site has to be 10,000 square feet. But here you have three different buildings. Is it all just viewed as just one building site? Is that how it sort of conforms to that requirement or -?

DARROW: Well, it meets the 10,000 square foot requirement for a bed and breakfast operation. As far as the dwellings themselves, the commercial village zoning allows for the amount of dwellings.

GRAHAM: Allows for multiple dwellings within the one building site?

DARROW: Correct.

GRAHAM: Thank you.

GALDONES: Further questions?

SPRINGER: No, thank you.

GALDONES: Hearing none, is the applicant or representative present?

SOLOMON: Yes, I am.

GALDONES: 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?

SOLOMON: Yes, I do.

GALDONES: Ms. Solomon, could you please speak into the mike.

SOLOMON: Yes, I do, Mr. Chairman.

GALDONES: State your name and your residence address.

SOLOMON: Thank you. My name is Malama Solomon; and my present address is 16-1986 Kohala Mountain Road.

GALDONES: Ms. Solomon, have you received a copy of the background report and do you have any comments to that?

SOLOMON: Yes, I have received the report, Mr. Chairman. And, as you know, I am representing my mother today, Flora Beamer Solomon. She apologizes for not being here today, but my momma is now 79 years old. I know you have on file her authorization that gives me permission to represent her at this time.

My parents purchased this aina 20 years ago; and at then it was the home of the old Karisma Store. Of course, as you know, this is the only piece of aina that is now zoned commercial village in the area. We have downsized and modified the project considerably. As a matter of fact, when we did first go in, you know, we were allowed at that time to do a 16 unit. And because of the community concern, you know, we had downsized to a three-apartment unit.

And at this time, we feel that a bed and breakfast operation would, you know, be more appropriate because it is a residential community. And, as you know, if this property was zoned residential, it would be allowed, you know, if we had, if it was in that zoning. The approximate square footage of the whole project, the buildings itself, is 2,295 square feet. So it's not a very large project.

As shared by Jeff, you know, we do have some water considerations that we have to work out with the Water Department. I have been in contact, in specific, with Larry Beck who is working, you know, with me on this. And they're able, they're possibly able to provide us water for one unit, but not for two. So we are considering a redesign of the project to accommodate that. They don't foresee a 12-inch line going down to Niulii in the near future. So I've been working with Alan Yagi and the Fire Chief, you know, to come up with some kind of recommendation as to how we can comply with the Fire Code requirements to be able to provide adequate water for the project. So that's where the project is as it now stands. Of course, the family's goal is to keep the project low density so, again, it can be in keeping with the surrounding properties; and also with the, a land design that would complement, you know, the area and to be able to provide the kind of privacy that the, our neighbors are enjoying now.

So, basically, you know, that's what I have to share with the Commission. Thank you.

GALDONES: Thank you, Ms. Solomon. Commissioners, any questions of Ms. Solomon?

SPRINGER: Mr. Chair?

GALDONES: Commissioner Springer.

SPRINGER: Aloha.

SOLOMON: Aloha.

SPRINGER: With regard to those concerns regarding the 12-inch line and the water units available, are you prepared to move forward with this application today or would you like some time to work those issues out and get some specific numbers for us?

SOLOMON: I think it's up to the Commission as to how I should proceed with this, you know. The bottom line is that if this were just one unit, it would qualify. The problem is that because the units are three separate dwellings. But if it was one unit with the five bedrooms, you know, it would be no problem, even with the Fire Code. It's just because it's three separate dwellings. And this is why the Fire Code is, you know, we can't comply. But if it were one unit with the same square footage with the five bedrooms, we would be able to comply with the Fire Code. So, you know, I do have a, I've submitted the plan already to Mr. Darrow when we were alerted of the situation, you know, to redesign the project, in essence, keeping in the same kind of architectural concept but making it a one unit as opposed to three separate units.

And I think, I don't know if, Jeff, were they given copies of that? Do they have that in the -?

DARROW: Yes, that was given to them this morning, the recent submittal.

SOLOMON: So if we do it as a single unit, you know, with the five bedrooms, then we can comply. So, that -. So it's up to the Commission. If the Commission feels that, you know, they want to defer, that's fine, you know, with me.

SPRINGER: Thank you.

SOLOMON: Thank you.

GALDONES: Any further questions, Commissioners? Commissioner Fujikawa.

FUJIKAWA: Yeah, I have a question with the applicant. Are these buildings all tied in in any way?

SOLOMON: I'm sorry?

FUJIKAWA: Are they all tied in somehow? In other words, they're separate buildings, but are they tied into together by roof structure or what?

SOLOMON: Yeah, by roofing structure and breezeways.

FUJIKAWA: Director, how do you classify this then, if they're tied in with the same roofing?

YUEN: Well, as far as we would be concern, it would be one unit, as long as it has only one kitchen.

FUJIKAWA: Oh, I see.

SOLOMON: Right. And then the kitchen would be situated in the center, which would be serving for the residential person that would be on the property.

FUJIKAWA: So this narrows down to one unit again, right, in other words, one building?

YUEN: Well, how this comes up, typically, say in a single family neighborhood, you can build all kinds of, there's no limit on the number of bedrooms. If you're building your own house -.

FUJIKAWA: Right.

YUEN: You can have as many bedrooms as you want. You can only have one kitchen. That's what makes it one unit.

FUJIKAWA: Right.

YUEN: This is a little different because she's in a commercial zone and she could have a multi-unit building theoretically. By the zoning she could have a multi-unit building.

FUJIKAWA: Sure.

YUEN: But because of the water, the lack of water in North Kohala, the Department of Water Supply will only give one meter.

FUJIKAWA: Right.

YUEN: Now you can put a 12-bedroom house on that one meter, but you can't put two 2-bedroom houses on that one meter. Okay, you can't put two houses with two kitchens on one meter. You can put one house with one kitchen and as many bedrooms as you want on one meter. That's the way it is. All right -.

FUJIKAWA: So that's how you describe your house right now, one kitchen with all the bedrooms?

SOLOMON: Yes. 'Cause we've, excuse me. Originally, we went with three separate units but -. Oh, am I answering that or are you Jeff? I'm sorry.

DARROW: Well, if I could -.

SOLOMON: Okay.

DARROW: We have been given an updated presentation map. If you want I can go ahead and place it on the, or should we wait on that?

YUEN: You mean the map of how the three units would be?

DARROW: The one unit.

YUEN: Oh, the one unit. Yeah, we can put that up. But I think in response to the fact that the Department of Water Supply would not issue water for three separate units, the applicant has, is changing their design to put them all under one roof, and still you'd have to have one kitchen to be one unit.

SPRINGER: Mr. Chair?

GALDONES: Commissioner Springer.

SPRINGER: Thank you. So that addresses the water units. But the fire flow requirements would remain, is that correct?

YUEN: They still need to work that part out. And, again, this is a little bit of a dilemma for the applicant because if they were in a residential, if they had residential zoning like their neighbors they would not need a fire flow requirement. They would not need to meet a fire flow, even doing a very similar project.

GALDONES: Jeff, you want to explain the map?

DARROW: This was recently submitted to be able to show the difference between the three units and the one unit. Now it's very similar in regards to the layout. The difference would be that unfortunately he had put the similar wording here. But this, if you're able to refer to your house, your floor plan layout, you would have one section of the house with two bedrooms and a living room, a breezeway. You would have a main dwelling that would have the kitchen in it; and this would have one bedroom, another breeze way; and this would have two bedrooms and a living room. So, basically, this would be connected as one dwelling unit, one kitchen with five bedrooms, which would qualify as a single family dwelling and would have the correct number of bedrooms for a five-bedroom bed and breakfast operation.

GALDONES: Any other questions, Commissioners?

GRAHAM: I have a question.

GALDONES: Commissioner Graham.

SOLOMON: Hi.

GRAHAM: Hi, Malama. This original SMA Permit you had for the three-unit apartment building was back in 1989, which is almost 15 year ago, and it does have time considerations you were supposed to have met. Can you give me a little chronology of what has gone on since then, or what you've done with the Planning Department, or why you haven't moved forward with that, just so I can understand over time how that went.

SOLOMON: Okay. Well, basically, I had submitted a request, Jeff, for the extension, and the rationale for that is -. Could I read just what I wrote, I submitted to the -? Would that be appropriate, if I could just read this?

GALDONES: Yes.

SOLOMON: Okay, thank you. My request to extend the conditions, and this was written from my mother, yeah, of the SMA, SMA, "Due to unforeseen circumstances, health problems incurred by my husband and self in the early 90's, the death of our son from illness inflicted by the Viet Nam War, he was an integral part of our" family "business. The ranch incurred financial losses from two major droughts, made refinance impossible," at the time. "Funds permitting, we continued to improve the property, the original Karisma Store was removed, the lot bulldozed, grubbed, the concrete foundation for one unit was completed. Present improved economic conditions of the North Kohala area and in particular, Nuili (sic) now noted as a tourist destination, coupled with reasonable mortgage rates we felt that this project" at this time, "can move forward." And that was the rationale.

GALDONES: Thank you, Ms. Solomon. Any further questions, Commissioners? Hearing none, Ms. Solomon, there's two petitions for a contested case hearing. So if you would relinquish your chair, I will ask the two individuals to come forward, please. Thank you. Antone and, Mr. and Mrs. Antone Cazimero, and Randal Labisores, are you in the audience? Could you please come forward. Okay, you will need to use the microphone so you could be recorded. I would like to swear you in first. Could you please raise your right hands. Do you swear or affirm to tell the truth on this matter now before the Hawaii County Planning Commission?

LABISORES: I Shirley Batad-Labisores do.

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

LABISORES: My name is Shirley Ann Batad-Labisores. My residence is 2530 Pauoa Road, Honolulu, Hawaii 96813.

GALDONES: Ms. Labisores, we have received your petition for standing in a contested case hearing and you have indicated in your petition in “(A) Is your interest in this matter clearly distinguishable from that of the general public?” in which you have indicated “Yes.” Would you care to explain further?

LABISORES: My application clearly states everything that I think needs to be said from my husband and myself. But I’d just like to extend that our goal and intent is to protect the quality of life and maintain the preferred rural and small town village lifestyle that our families enjoy there, as well as that environment.

We have a rather genuine and simple Hawaiian lifestyle that my husband and I, my children, and our fellow Niulii neighbors, that we’re very passionate about; and we desire to preserve that.

On behalf of my husband, Randal and, again, I said myself and my Niulii neighbors, I humbly request that you approve of a petition in standing on a contested case hearing on this SMA No. 288.

GALDONES: Commissioners, any questions of Ms. Labisores? Commissioner Springer.

SPRINGER: Aloha.

LABISORES: Aloha.

SPRINGER: Have you been apprised of the requirements of the contested case hearing at the time that you filed your application?

LABISORES: I’m sorry, could you repeat that, please.

SPRINGER: Have you been apprised of the requirements of a contested case hearing when you discussed this matter with the Planning Commission staff in terms of time, in terms of what is expected of you, and what your rights are?

LABISORES: Yes.

SPRINGER: Thank you.

GALDONES: Commissioners, any further questions? Jeff, has the fee been submitted over to the Department?

DARROW: Yes, it has.

GALDONES: Has Ms. Labisores, Mr and Mrs. Labisores met all the requirements to prepare for a petition for a contested case hearing, Jeff?

DARROW: Yes, they do, Mr. Chairman. Again, the Labisores' property is located right in this area here; and this is where the subject property is.

GALDONES: Thank you, Jeff. Commissioners, having heard the discussion and having seen that Mr. and Mrs. Labisores have met the requirements to file a petition for standing in a contested case hearing, the wishes of the Commissioners whether to approve or not? Commissioner Graham?

GRAHAM: I make a motion that we approve Ms. Labisores and her husband as petitioners in this SMA Permit process, please.

SPRINGER: Second.

GRAHAM: It has been moved and seconded to grant Mr. and Mrs. Labisores the petition for standing in a contested case hearing. I would like to call on Ms. Solomon if she has any remarks in reference to the motion before us?

SOLOMON: Not at this time, Mr. Chairman. Thank you.

GALDONES: Thank you, Ms. Solomon. Any further discussion on the motion to grant standing? Hearing none, Jeff.

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

GRAHAM: Aye.

DARROW: Commissioner Springer?

SPRINGER: Yes.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Fujikawa?

FUJIKAWA: Aye.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Smith?

SMITH: Aye.

DARROW: Commissioner Thibadeau?

THIBADEAU: Aye.

DARROW: And Mr. Chairman?

GALDONES: Aye.

DARROW: The motion passes to allow standing for a contested case.

GALDONES: Thank you, Jeff. Ms. Labisores, you will be informed in writing of today's action and the further actions that's to be taken in the contested case hearing.

LABISORES: Thank you, Mr. Chairman.

GALDONES: Thank you. Is, Ms. Cazimero?

CAZIMERO: Yes.

GALDONES: Ms. Cazimero, we have received your petition for standing in a contested case hearing. And in the question raised, "Is your interest in this matter clearly distinguishable from that of the general public?" you had mentioned "Yes." Do you wish to expand further on your response?

CAZIMERO: Is this on?

GALDONES: Yes, it's on.

CAZIMERO: Well, the new thing that just came up today is pretty new. We're, our concern was three buildings. I border her in two areas there. And pictures like this, black and white drawings, does not in any way show the community, the ambiance, the serenity. In just looking at how the lots are done, it, like it just overlaps each other. It's not even square lots. It's rounded, angled, triangle. This is the kind of community this is. It just overlaps each other. And you lawn mower your yard, you go into your neighbor's. You know, nobody even has fences, or hedges, or anything to divide, to divide us. And just having three buildings set right smack in the middle of our little village is not, not pono.

Prior, the first building that was there that allowed the commercial zoning, I, I've lived there for 30 years, was there when I moved there. And it was a home, and it was two stories, and it had a big basement. And this basement was converted to half of a grocery store, and the other half a pool room and a gas pump. It was an asset to the community. It never took away, and it just fit in. You wouldn't know until you pulled in front of it that it was a store, or it was a pool hall, or if they, they give you gas. And then after plantation days, of course, they moved away and it had to be broken down. I think the

zoning was given to them because of this. The Takakis thought that was the best thing for Niulii, being it was so far, winding roads to Niulii that you can run down for a can of tomato sauce or a dozen eggs, you don't have to go out all that way. But now, what is proposed now, and in no way -. Am I, are you hearing me?

GALDONES: Yes.

CAZIMERO: I'm doing this (waiving hand), in no way benefits anybody in the community. B&B, at first I believed the zone, she was given, the proposal was approved because it was going to add economical housing to the area. And B&B by no means going to benefit us, the community, or anybody. It's going to just benefit the owner. And it went from, it just, to me it's keeping, it's escalating. Who is to say the next time anybody comes before the Planning Commission is because they want to extend? I believe you can even do on this type of zoning, 13 units, I believe. It can go up, it can go bigger. And who's to say it won't happen. That's my concern because I, like I said, my bedroom is 20 feet from her boundary. I mean, you know, to have this three -. It looks like it's nice, it's fine, the foliage, everything looks nice on the paper there. But if you live in this community and you drive down into this community, it's a village. It is not pono. That's, and I feel I'm against it, not because I don't, I'm against her doing anything with it. One building, a home, like how, I don't know how, I can't really tell how that is. But you put a home and you add extra bedrooms to do a B&B, maybe that's fine, it'll fit there, you don't have 8-parking stalls and -. I don't know. That's all. That's all I need to say.

GALDONES: Thank you, Ms. Cazimero. Commissioners, any questions of Ms. Cazimero? Commissioner Graham.

GRAHAM: I'd like to ask the Planning Director to, in respect to what's being proposed, it seems like part of the SMA request is for an extension of a permit from many years ago for a three-unit apartment building; and then we're having a, what's on the agenda today is three separate single-family dwellings; and then we brought up an alternative since then to deal with the water issues. So, and, clearly, the different people who are speaking have different, or have concerns regarding one of these possibilities versus another might be greater. So I'm just concerned about a moving target here. If we're having a contested case hearing, are we having a contested case hearing based on what's on the agenda today and proposed or -? I'd like it to be clear before we go forward.

YUEN: I think the applicant, the applicant's idea is that if they got the B&B permit they would give up the old SMA Permit for the three-unit apartments. It's not their intent to have both.

SOLOMON: Right.

YUEN: Am I correct?

SOLOMON: Yeah, that's correct.

YUEN: But we, but by the same token they don't want to give up the existing SMA Permit for the apartment not knowing whether the bed and breakfast is going to be approved. So if it came to the point of a vote, chances are, the proper, if that's what the Commission wanted to do, the proper vote would be to terminate the, to approve the old bed and breakfast, approve the bed and breakfast upon a condition that the old apartment be voided. That's how that will be handled at that time.

GRAHAM: Okay.

YUEN: Is that where you're going with this or what?

GRAHAM: Well, -.

YUEN: Like the possibility of there being two permits on the property, two separate -?

GRAHAM: No, I'm not so much going for the result. I'm going for like what's at stake in a contested case hearing. If, when we had these two -. You're only dealing with two out of three now, too, when we have the old one that's being asked for continued, and we have the new one that's on the agenda. So if one wants to contest, does one contest the continuance of the old one, or does one contest the one that's on the agenda, or both at the same time? And since they're both not going to be built, that's a little bit bizarre. And then beyond that we now have a new proposal for a somewhat different situation which it feels like if that's going to be on the agenda it needs to be re-agendized and put forward again, and not part of what's going on today. But it also would be silly for these folks to have a contested case hearing about what's going on today if something new is going to be proposed right away anyway. So I'm just concerned about the whole process with all these different things.

YUEN: Well, I think the applicant, as far as the bed and breakfast, the applicant can modify it to change the, to reduce the number of units. They won't have to, nobody, we won't have to do a new notice and possibly bring in more intervenors for that. And if I understand the petitions that we've received correctly, they are petitions in opposition to the proposed new permit for the bed and breakfast. They're not opposing the continuance of the old apartment permit. Is that correct? Norman is striding to the microphone.

HAYASHI: I think you need to understand that what's before us is an amendment to the existing permit. So if this request goes through, which is to allow the bed and breakfast operation, then that would replace the wording of the permit to say bed and breakfast operation instead of the three-unit apartment. So this is not a new petition.

YUEN: Much better explanation.

GRAHAM: Okay, good. I understand, Norman. And then on the final part about a proposal to maybe change it according to what Jeff put up, so procedurally where we're at is these contested case petitioners are considering the three-units that we have on the agenda today, and somewhere along the way as that plays forward the applicant may choose to reduce without requiring new, you know, new hearings and things. Is that all correct?

YUEN: Right, right.

GRAHAM: Okay.

GALDONES: Commissioner Fujikawa.

FUJIKAWA: So to clear it up, Norman and Director, we are looking at, to, first of all, continuing the existing permit, yes or no, right? And then once we grandfather their existing permit then they could put to amend to the existing permit?

YUEN: No. I made a mistake when I answered the question earlier. As Norman said, what we're looking at is an amendment to the existing permit to change it from an apartment building to a -.

FUJIKAWA: I see.

YUEN: Bed and breakfast.

FUJIKAWA: Great.

GALDONES: Any further questions? Any further discussion?

GRAHAM: I -.

GALDONES: Commissioner Graham.

GRAHAM: Mrs. Labisores had a question. Could I call her back so she could do that?

GALDONES: As soon as we dispose of Mrs. Cazimero's petition.

THIBADEAU: Mr. Chairman?

GALDONES: Commissioner Thibadeau.

THIBADEAU: Yeah, my question will wait, but -.

GALDONES: Go ahead.

THIBADEAU: We had a proposal before us and we now have a change in that proposal. My question is, is it proper in the middle of a hearing to change the proposal when you have a history of having had it cleared with everybody else and now we have a different proposal which has not been cleared by anyone? I don't quite understand how we can act on something that has been changed right now. Or is there a different rule I'm not aware of? I can understand why the applicant wants to change it. But isn't the proper thing to do is submit another modification, or a change, or whatever, whatever it is, and then at the hearing in May we take action on that, so we can handle it properly as a different proposal? To me it's not the same thing.

YUEN: Because it's a reduction in the number of units, and has not changed the location of the site -. We're not going to act on this today, at any rate. But I would not say that you have to start over again and reapply.

THIBADEAU: Which one are they going to contest then? This one that's on the board or the new modification today?

DARROW: Could I interject? The original request is for this request here -.

THIBADEAU: That's right.

DARROW: The three units.

THIBADEAU: Right.

DARROW: In the course of receiving comment letters from the different agencies, we pretty much were informed that there's only one water unit available for this request. So, basically, Water Supply limits it to one unit. So, at this point, when that happened, then the applicant had submitted a possible solution to that to allow a one unit. Now, again, the contested cases would be based on the original proposal. Now if there was a way to resolve this through having one unit then, at this time, we might be able to resolve both the contested cases and the application. But, if not, then we need to proceed with the original proposal of three units and work towards the contested case hearings. But that is a possible solution that if, if the petitioners for standing -. You know, as Mrs. Cazimero said that she was unaware that this new proposal for a one unit is coming before us, then maybe that, if that's a possible solution we can resolve this. If they're in agreement, then maybe we can proceed without the contested case hearings. But, if not, then we need to proceed with the original proposed request.

GALDONES: Jeff, on those bases, if the amendment, amended form is being introduced now, does that change the background report that is before us?

DARROW: At this point, this is just a, I wouldn't say replacing this, it's just a possible option. If it's something that could be agreed upon, then we might be able to proceed. Oh -.

HAYASHI: I don't think we'd be able to proceed on that basis. I think if they're going to amend the application to say they want a single family dwelling, then they need to do that, because what has been advertised is for three dwelling units. And I think that's in response to, you know, Mr. Thibadeau's question.

THIBADEAU: That's basically what my questions was, yes.

HAYASHI: But you can -.

THIBADEAU: It's a different animal.

HAYASHI: Yeah. But you can proceed with the contested case hearing; and then at that time you could, as your decision you can say that although the applicant had requested three dwelling units, your approval could be just one dwelling unit, based on the water situation.

THIBADEAU: Sure.

GALDONES: However, also, Commissioners, we need to be aware that we only have the background report, and we do not have the recommendation to deal with, with all the conditions. So for the Commissioners to be able to come up with a decision whether to grant or not to grant, or to approve this application, we are missing some information to proceed forward. So it looks like in some fashion it's going to be continued -.

THIBADEAU: Right.

GALDONES: Whether it's through a contested case hearing or otherwise. Commissioner Springer?

SPRINGER: And we did already grant one intervenor's request for standing in a contested case hearing.

GALDONES: That's correct. Okay, so are we clear on what we are proceeding with, Commissioners? Commissioner Graham.

GRAHAM: I don't know whether, I don't want to get in the way of the normal process of events here. But it seems like the applicant, Ms. Solomon, if she wanted, could say I would like to hold off a month and present this as my application on what's on the board right now over in the corner, or we could go forward with the understanding that we started with what's on the agenda. So I would jump in the middle of our speaking with Ms. Cazimero, if she doesn't mind, and just ask Ms. Solomon to clarify how she would like to see it go. Is that all right?

GALDONES: Yes.

SOLOMON: I thank you.

GALDONES: Maybe I shall do that. Ms. Solomon.

SOLOMON: Yeah, thank you, thank you. I think the reason why we're in this situation is because when I came forward with this project and being that we were first given a three-unit apartment -. So the design of the project we felt we were just really modifying the use of what the project would be. That was No. 1. So, No. 2, when I had submitted everything we had gotten the approval of the Water Department for the project; and this is why things were presented as such. And then we were notified after we received the approval letter, and I have the copy with me and I'll be very happy to present it to the Commission, we were then notified that the Water Department didn't realize that this was a commercial piece of property. They thought that this was a residential property. So the Water Department had advised me that if this were a residential property we'd have no problem with the five bedrooms and what we wanted to do. But because it was a commercial zone property we had to comply to higher standards, which included a greater water flow requirement for the fire to meet the Fire Code. So this is why we're in this situation. Because the family was operating under the premise that it was okay to proceed with this idea, because this was the kind of idea that we were going to do with the three-unit apartment.

So at last minute I think, when was that, I think like last week, we were notified that we were unable to proceed with three separate units, that we have to go forward now with a single unit, residential unit, and then that way we would be able to comply. Because, unless the family was willing to get the property downzoned to residential, then they would allow this project to proceed, which would be the five bedrooms for the B&B. So this is why this is adding to a lot of confusion, you know, on the property itself. But the bottom line, if the family is willing to downzone that property to residential, they would allow, this five bedroom B&B would be a permitted use.

Now when I made that proposal to my mother and my father, you know, their manao was, well, if we wanted to buy a residential property in Niulii that's what we would have bought; but we bought 20 years ago a piece of property that was zoned commercial.

And, if I may add at this time, the old Karisma Store that was standing there had a larger square footage than what the family is proposing to do today. The two-story structure, I think, was close to almost 3,000 square feet, you know. And it had, that's true, it had a service station, it had a pool hall, it had a little store, you know, or whatever. Because we had rented that home out to the Holeso family, cause they were related to the Pules. You know, they were family friends of us at that time. But the square footage of the original structure was close to 3,000 square feet, you know. And if you were to add all the square footage of what we're proposing to do, it's substantially less.

So, you know, I don't want the community to think, you know, that I'm the one that's kind of pushing this agenda in terms of trying to confuse the community, because we're not doing that. You know, we had gone with the procedure; and it was the Water

Department because they, I don't know what had happened, but they thought that this was a residential property, had given us the approval. And then when they realized, hey, no, this is a village commercial, that's when they had imposed the stricter Fire Code, you know, onto the family, onto this aina. So I just want to clarify that's why there's all this confusion. In other words, I didn't come with this plan last minute, you know, to try to influence or, you know, to try to confuse the public, no. This plan was brought forth with the single family. Because it was the Fire Department, I mean, excuse me, it was the Water Department that didn't do their homework and it caused all of this confusion, knowing that we were up, you know, for a hearing this Friday. So this is the situation I'm at. And because of this, you know, I really want to just leave it up to the Commission how they decide to proceed.

But I just would like to remind the community that this property is zoned village commercial. The bottom line is that if this property was zoned residential, we could have gone forward with this project. So I don't know why, you know, why there's all this confusion on what we propose to do, you know, with the aina.

Now a three-unit apartment, you know, and I can understand what Ms. Cazimero was saying. And at the time when we had proposed that project there was, you know, there was, really rental units were not readily available, you know, in the North Kohala area. But the bottom line is things have changed quite dramatically in terms of the community as to where the community is at now. So this is why the family felt that in keeping, you know, with the area, to do a very low density kind of a breakfast, bed and breakfast kind of operation would enhance the opportunities there in that community.

And then also I had received inquiries from the persons that are operating the flume rides there in Kohala and also the ATV rides. You know, they had approached me to ask for consideration for this because they felt that, you know, it would provide the visitor an opportunity to maybe layover and then they could take advantage of the eco-tourism that we're trying to develop, you know, in the North Kohala area. So this is really the rationale behind the project. You know, it's nothing underhanded or -. You know, we're trying to, I'm trying to propose this new concept. So, you know, it really, I mean, with the family, well, we really had to scramble to try to be prepared, 'cause I wanted to be prepared, you know, for this hearing at this moment, and to try to make the amends after we had gotten, after we had received the information from the Water Department. Thank you.

GALDONES: Thank you, Ms. Solomon. Commissioner Graham?

GRAHAM: Yeah, I just wanted to be sure -. Ms. Solomon, I'm not trying to, you know, question how we came to this point in time. But just that going forward from here, do we go forward with the three separate dwellings or, which I think was all we really can't do today if we're going grant intervenor status and move forward to a contested case hearing. It would have to take place regarding what's on our agenda, which is the three separate buildings, and we can do that. And I just wanted to put it forward to you, is that in line with what seems reasonable to you, or would you rather we

hold off and, because of the Water Department requirements you choose to change what you're proposing and then we go forward at a later date with that? I'm just -.

CAZIMERO: Can I say something to this?

GALDONES: Hold on, Ms. Cazimero. Ms. Solomon, you wish to comment on Mr. Graham's -?

SOLOMON: Yeah, that's fine. We, the family has no problem deferring, you know, until we can work this out. I don't know if those are the appropriate words. But that's fine, you know, because we want everybody to feel comfortable with the project. So we have no problem with that, if that's how you so desire to proceed. Thank you.

GALDONES: Thank you, Ms. Solomon.

CAZIMERO: This is just to add on to what she's saying.

GALDONES: Hold on, Ms. Cazimero. Commissioner Graham -?

GRAHAM: That's all I have.

GALDONES: Anything further with Ms. Solomon?

GRAHAM: No.

GALDONES: Ms. Cazimero, before you proceed forward, I have been reminded, I failed to swear you in. So -.

CAZIMERO: I know.

SOLOMON: That's okay, we know who she is.

CAZIMERO: I know you never swear me in, so no bother me.

GALDONES: So, so for the record -.

CAZIMERO: You cannot hold me against to my word now, you know, so (jokingly) -.

GALDONES: So for the record I need to go through the procedure. Do you swear that what you've told us was the truth and you will tell us the truth on this matter now before the Hawaii County Planning Commission?

CAZIMERO: Sure.

GALDONES: Ms. Cazimero, for the record, can you just give us your name and your address, please.

CAZIMERO: Maxine Medeiros Cazimero, 52229 Government Road, Niulii, North Kohala.

GALDONES: Thank you, Ms. Cazimero. Do you wish to add anything further to your testimony?

CAZIMERO: Yeah. Like how I said earlier, that is new to us. A lot of our oppose, what we oppose is not her doing, she has a right to do, you know, build on her property. It's what she's going, the how she's, three buildings, you know, this is where we, we're against the thought of like three buildings. If we had a chance to look at that, we may approach this differently, I would. I cannot speak for everybody, but I would approach this differently probably. You know, a one with her, for whatever her plans on her yard work would fall into one building, I wouldn't oppose it as much as three ugly buildings -.

GALDONES: Thank you, Ms. Cazimero.

CAZIMERO: In front of my bedroom.

MCCALL: Mr. Chairman?

GALDONES: Commissioner McCall?

MCCALL: Maybe if I would make a comment. I don't know whether it would be appropriate, we have already given standing to Ms. Labisores, but if it's appropriate and -. To Malama, would it be, what I'm proposing is that maybe you go back talk to the community, talk to these people, see if you can work out something, rather than push this straight into a contested case. Let's take a month, see if you guys can work this out, you know. And if we can't, then we can come back here a month from now and we'll do the contested case; and we'll go that way. But maybe it's time to just, you know, talk to the community, see if we can get everybody on the same plate. And then we can, you know, and just, I mean, it's one idea; and I think what we need is we need to get, I don't know, we need to get the approval of Ms. Labisores 'cause we have -. But, well, I guess, what I'm saying is if we just defer any action on this, we could come back next month and perhaps not go the contested case route.

GALDONES: Just -.

YUEN: Could I make a suggestion though? I would suggest that the Commission take a vote on the standing question. It's clear that the applicant needs to do some work with Water and Fire Departments to have a project that can go forward. So action is not eminent on, we couldn't -. Had this not had any opposition today, we couldn't have acted on it today anyway. But since the matter is before you with a request

for standing from Ms. Cazimero, go ahead and vote on it; and then we can wait on further action after that.

GALDONES: Mr. Yuen, as a follow up to your suggestion then if, through the process that Ms. Solomon introduces an amendment to her initial proposal that we are considering, then the parties would be able to work this out and perhaps come to some understanding, and the contested case hearing may be withdrawn by the petitioners?

YUEN: Yes, that's a possibility.

GALDONES: Okay. Commissioner Fujikawa?

FUJIKAWA: So, in other words, I could go ahead and make a motion to grant standing to Mrs. Cazimero, right?

GALDONES: You're introducing a motion?

FUJIKAWA: Yeah.

GALDONES: Is there a -?

SPRINGER: Second.

GALDONES: It has been moved by Commissioner Fujikawa and seconded by Commissioner Springer that the petition for standing in a contested case hearing by Mr. and Mrs. Cazimero be granted. Further discussion? Jeff, has Ms. Cazimero met all of the requirements to be a legible, to be a petitioner?

DARROW: Yes, she has, Mr. Chairman. Again, they are located within the 300 feet distance, they have submitted payment, and they have submitted a timely application.

GALDONES: Great. Thank you, Jeff. Any further discussion? Hearing none, Jeff?

DARROW: Commissioner Fujikawa?

FUJIKAWA: Aye.

DARROW: Commissioner Springer?

SPRINGER: Yes.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Graham?

GRAHAM: Aye.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Smith?

SMITH: Aye.

DARROW: Commissioner Thibadeau?

THIBADEAU: Aye.

DARROW: And Mr. Chairman?

GALDONES: Aye.

DARROW: The motion to grant standing passes eight to zero.

GALDONES: Thank you, Jeff. Ms. Cazimero, you will be informed in writing of today's action and the further proceedings of the contested case hearing.

CAZIMERO: Okay, thank you.

GALDONES: You're welcome. Commissioner Fujikawa?

FUJIKAWA: Now that they're granted standing, both, I think that, this is my last year as a Commissioner where in the past we have handled the cases where we were the hearing officers. And I would recommend that we finally get into the hearing officer position right now. So I would like to make a motion that we be the hearing officers on this case.

GALDONES: There is a motion that the Commissioners become the hearing officers in this application. Is there any second to the motion?

SPRINGER: Second.

GALDONES: It has been moved, it has been seconded by Commissioner Springer. Further discussions, Commissioners? Commissioner McCall.

MCCALL: Just a point of clarification. Is it necessary to set up the hearing process or -? Because there is a potential for discussion and withdrawal of the petition for standing, can we defer going into the hearing officers and, etc., or not? I don't know.

YUEN: You can defer. But if you go ahead and decide to hear this on your own, what, the Department would then keep in contact with the applicant and the intervenors and see if there is any progress being made. And then we would do the scheduling after that -.

FUJIKAWA: Right.

YUEN: As far as bringing it back to the Commission if it looked like things were not going to work out.

GALDONES: The Chair would recommend that we act upon the motion. Further discussion? Hearing none, Jeff, does this go through a roll call vote?

DARROW: It's not necessary, Mr. Chairman, I guess, if the ayes have it.

GALDONES: Okay. Hearing no further discussion, all those in favor of the motion say aye?

COMMISSIONERS: Aye.

GALDONES: All those oppose say nay?

SMITH: Nay.

GALDONES: Motion is carried.

O'TOOLE: There was a nay.

GALDONES: One nay.

FUJIKAWA: One nay.

The discussion ended at 11:18 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary