

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
MAY 1, 2009

A regularly advertised hearing on the application of **ARROW OF OREGON/HAWAII, LLC (SPP 09-76)** was called to order at 11:17 a.m. in the Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i with Chairman Rell Woodward presiding.

PRESENT: Rell Woodward
Takashi Domingo
Wallace Ishibashi
Andrew Iwashita
Shelly Ogata

Brandon Gonzalez, Deputy Corporation Counsel
BJ Leithead Todd, Planning Director
Norman Hayashi, Staff Planner
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner

And two people from the public in attendance

APPLICANT: ARROW OF OREGON/HAWAII, LLC (SPP 09-76)

Special Permit to allow a cinder and rock quarry operation on 5.003 acres of land situated within the State Land Use Agricultural District. The properties are located at the corner of Mahimahi Drive and Liliana Lane, Hawaiian Ocean View Estates Subdivision, Kahuku, Ka'u, Hawaii, TMK: 9-2-148:1 to 5.

WOODWARD: We can probably get through this last item. I know there is a question about one more document that needs to be filed before the background and recommendation. But since we have I believe the applicant here -. Jeff, did you have anything to present or not on Item No. 6?

DARROW: Not at this time.

WOODWARD: Okay.

DARROW: Mr. Chair, just to give some background on this to the Commissioners, through our background and recommendation preparation for this application, we had received a comment letter from the Department of Public Works. They were asking that the applicant be required to have the quarry site evaluated by and follow recommendations of an engineer qualified in the field of soil and mechanics for minimum setbacks from the subdivision road and

adjacent properties and to establish and maintain safe operational and resultant stability of the entire quarry site. What we at the Planning Department did, the Planning Director had sent a letter to the applicant requesting that they hire a soils engineer to be able to submit a report with this information to us so that we could prepare appropriate conditions for this. We had asked for that report to be submitted prior to this date. Because we haven't received it, we are asking for a continuance of this matter. But we understand that the applicant and representatives are here today.

WOODWARD: Very good. So the applicant, I guess, is asking for a continuance and based on the fact that their submission is -.

LEITHEAD TODD: I don't think the applicants are asking for the continuance. It was the Department. Applicant has come and he has brought a soils engineer with him.

WOODWARD: Okay, very good.

LEITHEAD TODD: But they haven't submitted a report.

WOODWARD: Okay. Well, we'll certainly be willing to take testimony, although it's unlikely we'll be able to make a decision. But if we could have the applicant and whoever would like to speak come up to the table. And just so I don't get ahead of myself, we have nobody from the public signed up to testify.

Okay, gentlemen, if you'll raise your right hand. Do you swear or affirm to tell the truth today before the Windward Planning Commission?

CHAMBERLAIN: I do.

THOMAS: I do.

WOODWARD: Very good. All right. And then one at a time we'll take it. Whoever wants to go first, if you would just give us your name and address, and then you're free to begin your testimony. If you'll speak into the microphone, sir.

CHAMBERLAIN: Yeah, Joe Chamberlain, 15666 Northeast Eilers Road, Aurora, Oregon, 97002. I -.

WOODWARD: If you would speak into the microphone, sir, since we're recording.

CHAMBERLAIN: When I last met with the board then they did tell me to get a soils engineer now. And I immediately started searching for one. Soils engineers are not plentiful supply around. And right now we got Mr. Thomas to finally sign onto this, but he has been very, very busy. We just got to the property and inspected it yesterday. And that is our reason, that his schedule has been such and he wasn't able to get the written report out. I would say you could talk to him now, and he could give you a fairly good outline of where this thing is going.

WOODWARD: All right. Any questions for this testifier? Seeing none, all right. Sir, if you'd just give us your name and address and then begin your testimony.

THOMAS: My name is Robert Thomas. I'm with Construction Engineering Labs, and we're located at 1173 Waihona Street, Pearl City. And at the request of Mr. Chamberlain, we went out and did a preliminary observation of the property to scope out our investigative measures and to address any concerns that the Commission and Planning Department may have in the development of the property as a mining site. As we approached the site, I noticed that there were a number of uncontrolled 1-acre mines under operation and had significant concern. And I can commend and understand your concerns for proper slope stability and setbacks from the property lines. And Mr. Chamberlain is to be commended for not mining his property until those proper measures have been taken.

Taking a look at the materials that we have along those slopes, I had a lot of concerns with the prior mining operations and the vertical cuts that were made right up to the property lines themselves. And I learned today that there was an accident previously that resulted in the death, and Mining Safety and Health Administration has become involved.

In taking a look at the property and taking a look at perspective yields from this property we're going in the direction of recommending a minimum of five- to ten-acre plot for mining operations to adequately address the safety concerns as well as the economics. Breaking up the lots into smaller zones with slopes and setbacks will definitely cut into the potential yield of this area. We are looking at stabilizing the slopes with a system most likely comprised of the shotcrete, soil anchors and wire mesh to stabilize that slope. And I understand that Mr. Chamberlain is proposing to excavate down to at least a 100-foot depth below the existing grades, maybe even deeper depending upon stability concerns and resources.

I also wanted to address the Commission to make sure that our investigation and our report meet all of your concerns and questions, and cover any areas including MPDS concerns for this particular property.

WOODWARD: I'll direct that to the Planning Director.

LEITHEAD TODD: Our biggest concerns in this area, some of the items that you mentioned is that in some of the prior lots because they are one-acre, only 83-feet wide, and guys have done vertical cuts, it has led to areas where we've been concerned about stability of the nearby roads and also the impact to neighboring properties. Because, you know, there's one lot which is going to come in, and it's kind of in a strange situation. It's a one-acre lot. But what happened is everybody excavated around him. So even though it's a one-acre lot, what he has is property that is sitting 78 to 56 feet above what has been mined around him. So he wants to be able to come in and basically bring his lot down to try and meet what has already occurred, because otherwise he has got these vertical slopes and not much width. And we were looking at perspective trying to go in the direction that Arrow of Oregon is talking about in terms of having minimum operational sizes of at least five acres because we wanted some slope stability.

So the basic thing that we would be looking at is what type of slope arrangements and what types of conditions would be required in order to ensure that the operation could be done safely for the people working there, and also to provide for safety of the neighboring property or any stability for any roads in the nearby area. And that's basically what we're looking at.

WOODWARD: Let me ask one question of the Planning Director. First I'll ask the testifier, have these five lots been consolidated?

CHAMBERLAIN: Yes.

WOODWARD: So you have consolidated them into one lot?

CHAMBERLAIN: Yes.

WOODWARD: Okay, very good. That answers my question.

IWASHITA: Mr. Chair?

LEITHEAD TODD: Mr. Chair, I'm not sure if they've been consolidated per se, but he has acquired title to all five acres. And you're coming in with the application as to cover all five acres, correct?

CHAMBERLAIN: Well, I'm not sure what the status, excuse me.

LEITHEAD TODD: I'm just double checking with staff. Has it actually been consolidated into one lot?

DARROW: To my understanding, it's still five separate 1-acre lots.

LEITHEAD TODD: Yeah. But the application covers all five lots and he would be doing the operation on the five, five acres?

DARROW: Yes.

WOODWARD: All right.

CHAMBERLAIN: We have submitted everything that was requested of us for the five lots.

WOODWARD: Very good.

DARROW: Just for your understanding, Mr. Chamberlain, what he's asking is if you've taken the five separate lots and made it one big lot?

CHAMBERLAIN: Yes.

DARROW: At this time, you still have separate TMK's, correct, five separate parcels?

CHAMBERLAIN: I don't think so. It was supposed to have been consolidated. We put that in months ago.

DARROW: Okay.

WOODWARD: Well, the question I have is because each of these lots have setbacks from the sides, and from the back and from the front, and I don't know the legal standpoint whether you need to consolidate them to overcome that problem with the setbacks between the lots.

CHAMBERLAIN: They said we had to consolidate them; and we've submitted all the paper work. It's to my knowledge, that it was.

LEITHEAD TODD: The setbacks usually apply to construction of buildings, because the setbacks are to provide adequate space between one property and the next so you don't have fire leaping from one house to another. So in this kind of situation where he's looking at an operation, the setback requirements would not be an issue.

WOODWARD: Thank you.

DARROW: We can follow up on, to see if that -.

LEITHEAD TODD: We can look up the consolidation.

WOODWARD: Yeah, that would be worthwhile to find out about it. Commissioner Iwashita.

IWASHITA: It's a timing question. How long will it take for you to prepare a report as requested by the Department?

THOMAS: We're looking at three to four weeks to complete it.

IWASHITA: Thank you.

WOODWARD: And Madam Director, how much time do you need? It looks like the next meeting might be a little premature if it's going to be four weeks.

LEITHEAD TODD: Well, we'll wait for the report, and then we would set this for a meeting, on the next available Planning Commission meeting.

WOODWARD: Very good. Commissioner Iwashita?

IWASHITA: I'm prepared to move for continuance.

WOODWARD: All right.

IWASHITA: Thank you, Mr. Chair. I move that Item No. 6, applicant Arrow of Oregon/Hawaii, LLC., SPP 09-76, be continued until it's reset at the discretion of the Department.

WOODWARD: And Corporation Counsel has suggested that we add applicant submit a written soil report as initially requested on April 2, 2009 to be submitted prior to, it was to be submitted, prior to the meeting of May 2009. Well, that would be tough. So I would suggest that maybe if this is all right with you, Commissioner Iwashita, that applicant needs to submit a written soil report and that it will be agendized at the next available East side meeting. Is that acceptable to you?

IWASHITA: Well, I would word it that the resetting will not take place until the applicant submits the soil report previously requested by the Department.

WOODWARD: All right, very good. Do I have a second?

DOMINGO: Second.

WOODWARD: Okay. Any discussion?

IWASHITA: Just ask the, I would ask the applicant if there was any objection to it.

WOODWARD: Are you all right with that approach?

CHAMBERLAIN: I would like to know just exactly what you voted on.

WOODWARD: Well, we haven't voted yet. But what the vote will be will be that once we receive the written soil report we will schedule the hearing for the next available meeting, cause we don't know exactly when it's going to be. If the Department doesn't get it for four weeks the next meeting is going to be a couple days and they need to prepare a background -.

CHAMBERLAIN: We can speed that up a little bit.

LEITHEAD TODD: Basically the problem is that without the report the Department cannot prepare the appropriate conditions on the permit. So we need the report so we can specify conditions under what circumstances a mining operation could take place.

CHAMBERLAIN: Okay, now what is the very best (asking Mr. Thomas) -?

LEITHEAD TODD: No, you don't have to tell us that.

CHAMBERLAIN: Oh, okay.

WOODWARD: Yeah, we will arrange to have it scheduled a-s-a-p once we get that report.

CHAMBERLAIN: Right, I will be on it.

WOODWARD: Okay. All right. And Corporation Counsel said that I should mention that the delay is due to the fact that this written soil report was not submitted, that was requested by the Department on April 2nd.

CHAMBERLAIN: April 2nd is the first day that I even found a soils engineer that I could get a return call from.

WOODWARD: Okay, very good.

LEITHEAD TODD: I understand.

WOODWARD: Okay, is there any further discussion? Okay, we have a motion and a second. Jeff.

CHAMBERLAIN: Now there were some other issues on -. There were some other questions there that had come up about us going in there doing some grading; and I'd like to get a clarification from you people -. I have at the last meeting said that I would go in there and do the remedial work as far as cutting Mahimahi Street down and getting these old holes filled so that we got rid of the safety problems. And in return for that I asked that, you know, this thing be facilitated and that these two people where the holes are dug there now would be relieved of any fines if I remedied the situation and done the earthwork, which is about \$25,000 worth of work. Can we get any relief from you on the deviation of those fines from the individuals?

LEITHEAD TODD: The Department is going to hold off on any fines in order to try and work that out with you because what you are proposing does make the area safer and will address some of the issues on the stability of Mahimahi Street.

Just for the Commission's information, the applicant here who has mining experience on the mainland is proposing to do some additional work outside of his property that would address some of the actions of previous people who have mined in the area and destabilized one of the roads and also left big pukas on some properties that they mined property that didn't even belong

to them. And he's actually trying to propose kind of a global solution to the area, not only to do his mining operation but to help Hawaiian Ocean View Estates Road Maintenance by making the existing road that has been destabilized safer. We'll work with you.

CHAMBERLAIN: Okay.

WOODWARD: Yeah, I would suggest that you be in touch with the Planning Department in that regard. Okay, Jeff.

DARROW: Thank you, Mr. Chairman. The motion before us is to continue this matter until the applicant submits a report, and then it will be agendaized on the next East side meeting. With that I'll take the roll. Commissioner Iwashita.

IWASHITA: Just a clarification on the motion. It may not be the very next meeting if there's insufficient time for -.

LEITHEAD TODD: The next meeting after we get the report.

DARROW: After the report is submitted.

IWASHITA: No, I understand that. But if the report is, you know, if the meeting is set for June 3rd and the report is given on June 2nd I don't think that's enough time for the -.

LEITHEAD TODD: We're not going to set until we get the report.

IWASHITA: Right. But the way, I'm sorry, the way I understood the motion being restated was that if we get the report that the matter would be set on the next Windward Planning Commission agenda, and I think there should be some fudge area there if, you know, to give the Department time to prepare the necessary conditions in writing and evaluate it. So the motion should be that it will be, that the report is required; and that once the report is received then the matter would be set by the Department, but not necessarily at the next scheduled meeting.

HAYASHI: Correct. It will have to meet the notice requirement, necessary time requirement.

IWASHITA: Right, okay.

HAYASHI: Legal requirement.

IWASHITA: Sorry for being picky about the language but -. Okay, with that understanding, that's great.

DARROW: Okay, with that I'll take the motion. Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Ishibashi?

ISHIBASHI: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: And Mr. Chairman?

WOODWARD: Aye.

DARROW: The motion passes five to zero.

WOODWARD: All right, thank you, Gentlemen; and stay in touch with the Planning Department about the issues; and once we get that soil report and they've had a chance to issue recommendations, then we will get it back on the schedule.

CHAMBERLAIN: Thank you so much.

WOODWARD: Sure.

The discussion ended at 11:38 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary
Windward Planning Commission