

PLANNING COMMISSION
COUNTY OF HAWAII

HEARING TRANSCRIPT
AUGUST 31, 2007

A regularly advertised hearing on the COUNTY COUNCIL INITIATED AMENDMENT TO CHAPTER 23 AND CHAPTER 25 RELATING TO SUBDIVISIONS was called to order at 2:01 p.m. at the King Kamehameha's Kona Beach Hotel, 75-5660 Palani Road, Kailua-Kona, Hawaii, with Chairman William Graham presiding.

PRESENT: C. Kimo Alameda
William Graham
Andrew Iwashita
Alvin Rho
Rodney Watanabe
Rell Woodward

ABSENT & EXCUSED: Takashi Domingo
Shelly Ogata
Rene' Siracusa

Ivan Torigoe, Deputy Corporation Counsel
Christopher Yuen, Planning Director
Norman Hayashi, Planning Program Manager
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner

And approximately 23 people from the public in attendance.

INITIATOR COUNTY COUNCIL

Continuation of a Public Hearing on an amendment to Chapter 23, Hawaii County Code 1983 (2005 Edition), as amended, relating to Subdivisions, and Chapter 25 (Zoning Code), Hawaii County Code 1983 (2005 Edition), as amended. The proposed amendment would require subdivisions of seven or more lots to be processed in the same manner as a change of zone in accordance with Hawaii County Code Chapter 25 (Zoning Code), Sections 25-2-42 and 25-2-43.

GRAHAM: I think we can move onto our next Agenda Item today, and that's continuation of a public hearing on an amendment to Chapter 23 relating to Subdivisions, as well as Chapter 25, of the Hawaii County Code. The amendment would require subdivisions of seven or more lots be processed in the same manner as a change of zone in accordance with the Hawaii County Code Chapter 25. And Mr. Yuen, our Planning Director, will give us a little presentation on this one also.

YUEN: These are also two Council initiated bills which, because they would change the Subdivision Code in one case and the Zoning Code in the other case, are being sent first to the Planning Director and then to the Planning Commission for their recommendation, and will be considered and acted upon later by the Council after receiving this. They deal with a different stage in the land use process than the Planning Commission has normally dealt with. The case of subdivisions, after a property has been zoned, particularly for residential areas, the next stage is usually that it comes for a subdivision. For example, the Planning Commission has seen many rezoning applications where a piece of property that may

have Agricultural 5-Acre zoning has been requested for rezoning to Residential 15,000-square foot lots, and say, that's gone up to the Council and has been approved. Before that subdivision can actually take place, the owner of the property must get an approved subdivision. That's done currently as an administrative process by the Planning Department. There isn't any formal public hearing process. In the last three years there has been a requirement of a notice being posted by sign on the property. With the amendment to the Subdivision Code last year there is a requirement of publication in the newspaper when the application comes in. But the process is primarily a review by people in the administration in the administrative side of government. We included a sample subdivision file for the Commission just to give the Commission an idea of the kinds of things that do happen in subdivision. The issues in a subdivision are primarily conformance with the conditions of the zoning – there may be special conditions of the zoning that have to be met – then water supply, road and drainage infrastructure constructed in connection with the subdivision. So those are reviewed by the Planning Department and the Department of Public Works; when there is a connection with State highways, by the State DOT. And ultimately there is a first stage that is issuance of a tentative approval of a subdivision, which is basically an approval of a layout and a listing of the types of infrastructure improvements that have to be made, and second final subdivision approval, which happens after the improvements have been made or after they have been secured by a bond so that they assure that they can be done. Final subdivision approval allows the subdivider to actually sell individual lots.

The Council has proposed that for subdivisions of seven lots or more that this be handled in the same way as a change of zone, except that the final decision would still be made by the Planning Department. The Council originally proposed that the final decision would go to the Council. There is a Corporation Counsel opinion that because of language in the Charter that says essentially the Planning Director makes final decision on subdivision applications, this would not conform with the Charter. So the bill that's before you says that whenever there is a subdivision of seven lots or more, the application would come to the Planning Commission, and would be heard here like a rezoning-type application; then it would go up to the Council and it would be heard by the Council like a change of zone; and the Council could recommend conditions, but then it would go back to the Planning Director to actually implement the conditions. The Planning Department has a negative recommendation on this. We don't have an alternative bill. We tried to outline some of the practical and administrative problems along with the overall question of what is supposed to happen and what kinds of decisions are supposed to be made at the subdivision rather than at the zoning level. And so we tried to explain that in the letter. We have a negative recommendation on the Council bill with no alternative bill actually being proposed.

The second bill, which is related, concerns Planned Unit Developments. A Planned Unit Development is a variety of subdivision; typically it's a way of doing a project that's a little bit different than the strict standards of the Code. The kinds of things that can happen in a Planned Unit Development, for example, would be a mix of lot sizes. Say, an example of a project that had zoning of Residential 15,000-square foot lots; with a Planned Unit Development you can do lots that are smaller than 15,000 square feet, as long as the average size is 15,000. In other words, you can have a mix of smaller lots and open space. You can change the roadway standards in a Planned Unit Development. So it offers flexibility to developers, and often times results have been a better project. The proposal by the Council is that Planned Unit Developments would also go to the Council. In this case there isn't anything in the Charter,

which prohibits the Council from substituting itself for the administration in terms of having the final say on Planned Unit Developments. Under the current practice, as it laid out in the Zoning Code, these applications go to the Planning Director, there is a time frame, there is notice to neighbors, there is publication in the newspaper, but the Planning Director makes final decision. The Council bill as proposed would say that the Council would make final decision for Planned Unit Development. Again we have a negative recommendation on that. We think that this would actually discourage people from using this route, by creating a much longer and more political process to get something that does not change the ultimate use of the property or the ultimate density of the property. And taken as a whole, the existing requirements do safeguard the opportunity for public to comment on Planned Unit Development. So again we have a negative recommendation on this with no alternative bill.

GRAHAM: Thank you, Mr. Yuen. So you spoke to both Item 7 and Item 8 on our agenda here. I might ask the public – I have no one signed up to speak on neither these Items – if you want to speak, please sign up at the end of the table. Since I only announced Item 7, I think that’s all we should really deal with here first. Commissioners, do you have any questions of Mr. Yuen? Yes, Commissioner Woodward?

WOODWARD: Well, not so much a question, as a comment from looking over this information that I have. I have a couple of concerns with it. One is the question of taking a function of the administration and turning it over to the legislative branch. The second is you’re going to be taking it to people who have no expertise in that area. You have expertise. I’d much rather have you review it and give a recommendation than to have a bunch of politicians go over it and hash it out for political reasons. So I think for a number of reasons both of these are bad bills. And I think that the crossover between taking something that was an administrative function and the legislature co-opting it is a really bad precedent. And again, I get back to the question, too, of giving the item to somebody who has expertise, and it’s not the County Council.

GRAHAM: Thank you, Commissioner Woodward. Commissioner Alameda?

ALAMEDA: Thank you, Mr. Chair. I agree totally with Commissioner Woodward. I think it’s a bad idea. I agree with the Director. And I’m just waiting for a motion.

GRAHAM: Any other comments from the Commissioners? Commissioner Iwashita?

IWASHITA: You are not waiting for me to talk? I think, you know, my limited experience on the Commission thus far, last couple of years, has taught me one thing; and that is that there is a lot of concern in the community about how development is going, and concurrency, and those kinds of issues. And I think that part of that is based upon just looking to the other side of the Alenuihaha Channel and seeing what happened over there in the last 30, 40 years. And then going past Molokai and seeing what happened on Oahu. And you know, that’s just a general concern that, and so these kinds of, and we’ve seen these kinds of Band-Aid legislative remedies being proposed to try and slow down that or get more control over it or change the way things happened. But the concern is they are not, I don’t think that, you know, the concern’s going to go away. My view is that the box that we work in, Land Use Law, and I don’t call it planning, because everything on Oahu was planned and everything on Maui was planned. You know, using these laws, if you want to use that term, I for one don’t like the result

of that planning process. It's not our laws. The General Plan, the general statement about what we do, you know, how we want things to develop, it's not really an enforceable document. The zoning laws and the subdivision laws, it's not a plan. Those are administrative, basically some guidelines in administrative functions as far as the Subdivision Law. And so I'm going to vote against, or I'll do a negative recommendation. But I really think that, you know, our Charter says that this Commission is supposed to give some counsel advice to the County Council about how to do things, right? And you know, Commissioner Woodward is right; we're not experts on this, right? We are not, none of us have planning degrees and all of that. But that's not to say, you know, it's a community issue. What happens to our land and our water and our air, that's a community issue. And we don't need experts to tell us, you know; we can see for ourselves that it's – excuse my French – getting screwed up, has been screwed up. So I think the message should go back to the Council that we need to do something different. And as most of the Commissioners know, my answer to that is to fully implement the Community Development Plans in an effective community engaging way. And then so we can draw the lines on the ground, so the developers know where they can develop, you know, and make it easier for them to get their development money loosened up. But at the same time those lands (lines) will protect our agriculture and conservation, you know, those green areas that we want to keep, so that my grandchild hopefully one day can have some of the benefit that I've had, being born and raised here. So that's my spiel that Commissioner Alameda was trying to avoid me having to say. But these are the kind of opportunities, you know, this kind of – I would call it – piece-meal legislation that really is not going to be effective in any way; just says our present Zoning and Subdivision and General Plan are ineffective planning documents. They are Land Use Laws, but they really have no effect in terms of giving a clear vision for how this island is going to look in 30, 40, 50 years. The documents don't. You go to Maui and Oahu, you can see what's going to happen, until we do something out of the box. And the Council has to do that; it has the power to do that. You know, we are all swimming down a stream – we are not even swimming – we are being pushed down a stream, and we are going to end up in the same mess Maui and Oahu are in.

GRAHAM: Thank you. Any other comments from Commissioners?

WATANABE: Mr. Chair.

GRAHAM: Yes, Commissioner Watanabe?

WATANABE: Mr. Chair, I whole-heartedly agree with Mr. Woodward's statement, especially in light of the previous two bills that we sent a negative recommendation on and the discussions they are having with the additional flood control. And with that, I'm ready, prepared to make a motion, if that's in order.

GRAHAM: Yeah, I had one comment I'd like to make too as long as everybody is making comments.

WATANABE: Sure.

GRAHAM: I agree with the general thrust of Commissioner Woodward; that you want the decisions to be made where the expertise is. And I think the only difference in what maybe is valuable about what the Council is putting forth here is that it does become a

public process as opposed to a private process. And sometimes the subdivisions can be very large-scale, like when we had the Continental Pacific one over there in Pepekeo, and North Kohala where I live, Chalon has sold and re-subdivided a lot of property, and all that goes by with the public not being aware what's going on until that sort of happens already, and I think maybe that's some of the public thrust behind us. And those cases in particular I think our Planning Director has done a very fine job, so I have no gripe about it, but I just think that the way it is, when you have a really large-scale subdivision, the public can be greatly affected and not have any sort of open forum to hear what's going on. Thank you. Go ahead, Commissioner Watanabe.

WATANABE: Okay. Can we take this vote to -, well, maybe we shouldn't. I move to send a negative recommendation to the County Council for the proposed amendment to Chapter 25 for Agenda Item 7, based on the discussion we've had regarding their technical expertise.

GRAHAM: Thank you. Second? Do we have a second?

WOODWARD: Second.

GRAHAM: Seconded by Commissioner Woodward. Excuse me a second. So Commissioner Watanabe, this is related to Chapter 23 and Chapter 25, is that correct, of the Zoning Code?

WATANABE: I think, I was, I'm perfectly willing to take 7 and 8 together, but I'm wondering if you want to -. It seems to me like -.

GRAHAM: Let's just do 7, all right, first.

WATANABE: Yeah, 7 is only 25, I believe, right?

GRAHAM: No, if we read on, my agenda has -.

WATANABE: Oh, excuse me. Twenty-three and 25. I stand corrected.

GRAHAM: Okay. Is that okay, Commissioner Woodward?

WOODWARD: That's acceptable, yes.

GRAHAM: Okay. Any further comments by the Commissioners? Jeff?

DARROW: Thank you, Mr. Chairman. The motion before us is to send an unfavorable recommendation to the County Council initiated amendment to Chapters 23 and 25. With that, I'll take the roll. Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, six to zero.

GRAHAM: Thank you, Jeff.

The discussion ended at 2:19 p.m.

Respectfully submitted,

Noriko Sauer
West Hawaii Secretary