

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
SEPTEMBER 3, 2004

A regularly advertised hearing on the application of **ALYSSA ACKERMAN (REZ 04-017)** was called to order at 10:23 a.m. in the King Kamehameha's Kona Beach Hotel, Kamakahonu Ballroom, 75-5660 Palani Road, Kailua-Kona, Hawai'i, with Chairman Fred Galdones presiding.

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

ABSENT & EXCUSED: Bill P. Thibadeau
Rene' Siracusa

Ivan Torigoe, Deputy Corporation Counsel
Chris Yuen, Planning Director
Norman Hayashi, Planning Program Manager
Jeff Darrow, Staff Planner
Kiran Emler

And approximately 16 people from the public in attendance

APPLICANT: ALYSSA ACKERMAN (REZ 04-017)
Change of Zone from an Agricultural 20-acre (A-20a) to a Family Agricultural 1-acre (FA-1a) district for approximately 3.936 acres of land. The property is located on the northeast side of Kokoiki Road, approximately 1,200 feet northwest of the Kokoiki Road – Akoni Pule Highway (Highway 270) intersection, Kokoiki, North Kohala, Hawaii, TMK: 5-5-4:33.

GALDONES: Commissioners, we are on Agenda Item No. 5. Applicant is Alyssa Ackerman (REZ 04-017). This is a Change of Zone from an Agricultural 20-acre (A-20a) to a Family Agricultural 1-acre (FA –1a) district for approximately 3.936 acres of land. Jeff?

DARROW: Thank you, Mr. Chairman. If I may direct your attention to the location map. The area of this application is North Kohala. This road, moving in a easterly-westerly direction is the Akoni Pule Highway, Highway 270. The area of this location of the application is where the red dot is located here on the map, right off of Kokoiki Road in North Kohala. Just for reference, this area of blue is the Puakea Subdivision; and if you were to travel in a easterly direction you would be heading towards Hawi and in a westerly direction you would be heading towards Kawaihae.

The Applicant in this case, Alyssa Ackerman, is requesting a Change of Zone from Agricultural 20-acre to Family Agricultural 1-acre. And this is for a 3.936-acre parcel of land, and they would be subsequently subdivided into two parcels which are identified here on the site map. This area here is the Kokoiki Road. This is towards the end of the road in this area, and the Applicant is going to be purchasing a property if this application is approved from the owners, James and Trish Bryan. These two structures located on the site plan are two dwellings. The owner of the property did receive an ohana permit prior to the change of the State law. The Applicant is proposing to purchase the property identified as Lot 1, which, at this time, is vacant of structures and uses.

We have several changes that we want to bring to your attention. No. 1, we've submitted a new Condition E, and that should be in the back of your handed-out information, and that would be added to the conditions, and this is in regards to the prohibition to the second dwelling, as well as we have been requested -. We are going to make a change to Condition H, and that is that we will be removing the last portion of the condition that says, "prior to the issuance of Certificate of Occupancy." That would be the new Condition I. The added Condition E, all conditions after that will subsequently be alphabetized accordingly.

The Planning Director is recommending a favorable recommendation be forwarded to the County Council. Are there any questions?

GALDONES: Jeff, can you restate what you did to Condition H?

DARROW: Okay. Condition H, which is now going to be Condition I, I know that's a little confusing but Condition H as it stands now, the last portion of the condition where it states "prior to the issuance of a Certificate of Occupancy," we were going to, we've been requested to delete that from the condition.

GALDONES: This new condition that you have brought forth, does that replace the new -, so that'll be in addition to E and it would be numbered as F?

DARROW: That's going to be the new Condition E and everything after that will be re-alphabetized.

GALDONES: Commissioners, any questions of Jeff? If not, would the Applicant or its representative please come forward? Would 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?

ACKERMAN: Yes, I do.

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

ACKERMAN: My name is Alyssa Ackerman and my P.O. Box is P.O. Box 1680, Kapaau, Hawaii.

GALDONES: Thank you. Sir?

BRYAN: My name is Jim Bryan, and I'm the property owner, and the address is 55-150 Kokoiki Road.

GALDONES: Thank you. Ms. Ackerman, have you received a copy of the Background Report and the Recommendation, and also the amendment to Condition E -?

ACKERMAN: Yes, I've received everything, I believe.

GALDONES: Do you have any comments on those documents?

ACKERMAN: No comments on the documents.

GALDONES: Do you find the conditions and the amendments acceptable?

ACKERMAN: Yes.

GALDONES: Commissioners, any questions of Ms. Ackerman? Mr. Bryan, you are going to testify in support of the Applicant?

BRYAN: I basically don't have anything to add to my written testimony, but if there are any questions, I'd be glad to answer them.

ACKERMAN: There is a letter that I just handed to each of you from all of the four surrounding neighbors, and Jim has written a letter on that. Those are all four surrounding neighbors with the exception of one who is in California in letters of support.

GALDONES: So those letters are from Ken and Karen Crowson, Christi Morgan, Tom and Michelle Mitchell, and also James Bryan?

ACKERMAN: Yes.

GALDONES: Commissioners, you should have those letters before you. Any further questions or discussions? Commissioner McCall?

MCCALL: I guess to Mr. Bryan. So you have the ohana on the property right now?

BRYAN: Yes.

MCCALL: And that's being rented out to someone?

BRYAN: No, my mother lives in one house and I live in the other house.

GALDONES: Any further questions or comments? Seeing none, there is one person from the public who has signed up to testify, Tom Mitchell. Could you please come forward? Mr. Mitchell, 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?

MITCHELL: I do.

GALDONES: Mr. Mitchell, could you please state your name and your residence address?

MITCHELL: Thomas Mitchell, the lot directly adjacent to this 55-164 Kokoiki Road.

GALDONES: Mr. Mitchell, you may begin your testimony, or did you have any comments to make on this matter?

MITCHELL: I'm here in support of this application. My wife and I own the lot directly adjacent to this and probably stand the greatest visual impact of any of the properties that border this land from where we are currently building a house right now. And I'd just like to say that from our opinion, knowing both of these applicants for sometime, that if there has been a worthy applicant, it would be Alyssa Ackerman. She's a great contributor to the community. Jim and Trish Bryan are also great contributors to the community as a school teacher and as a nurse at the local hospital. Alyssa has volunteered extensively. And from our prospective, you know, with the land prices rising the way they have just in the past year in North Kohala, it's becoming increasingly difficult for younger people to obtain a piece of property. And her uses of the property will be very consistent with the agricultural zoning that currently exists. It would be a pleasure to have her as a neighbor and to see the intention of this area continue in the form of what Ms. Ackerman's intentions are. So as the neighbor who stands one of the most, the greatly impact, we are here just to support this application.

GALDONES: Thank you, Mr. Mitchell. Commissioners, any questions, comments? Commissioner Graham?

GRAHAM: Kind of like I did the last time around, I just feel I'd like to, while you folks are there, express my concern with whatever so that the Commissioners and you will be able to understand -. I'll kind of go down the same list of concerns where I did on the list one.

First, precedence, I'm very concerned about precedence where there's a lot of demand for people that want to live in North Kohala and on the other hand there's a lot of community sentiment to try to keep Kohala rural. I'm certainly very worried about the precedence, in particular, 3- to 5-acre Ag parcel and subdivide it, or rezone it and subsequently

subdivide it into two parcels. And I think there's going to be a lot of parcels around North Kohala where people are going to do the same thing and there will more the explanations as to why this particular instance is a good instance. But, again, as I feel like before, as land planners we have to consider this whole thing of whether the project is really worth or not. So that's sort of the precedence issue.

As far as the particularly infrastructure, like before us, we talked about the Mamalahoa Highway to Holualoa. Here, the project area, the road fronting the parcel is, again, a very substandard road. I don't feel that represents any particular safety problem, particularly a road that's a deadend road. You're not going to be putting on a lot of traffic. The only real safety issue is that where you pull out onto the road from a stop sign on the highway. It's still a steep hill. I'm sure people who use that road who live there have grown accustomed to dealing with that. So precedence wise subdividing the land where you don't have the proper road, this is where I feel like in this particular situation, it's not, real safety concern that bothers me.

If we look at, you know, if we look at where do we open up more lands for intensive use for people in North Kohala, and this is the Kokoiki area, in one sense I could sense as an individual living about a planning strip, I could positively say it might be a good area in that people who live in that area that work down the coastline, many people don't have to run through the middle of Hawi and Kapaau to get home. So the traffic situation for the central areas is not going to be worsened by this application in the way it might for some other areas.

However, more important to me is sort of community planning. I feel like it's really important for us as a body and for the Planning Department to as much as possible to honor the community development plans, to honor what the community has done. We went through a process when Norman came to Kohala like four or five years ago when Mayor Yamashiro was still in office and we went through a lot of discussions about the General Plan and how it would be revised. And even though I can make a case for the Kokoiki area being a reasonable area, I didn't hear anyone make a case at that time. And on the latest plan which Councilman Elarionoff is working on the County Council right now for North Kohala District and the recommendations, the one substantial recommendation for increased, it says it has to meet the goals of the land classification, is E-2, urban expansion area or low density urban, location north side of Hawi. Ranch lands now between Hawi and Kohala High and Elementary School are more suited for low density urban uses. In other words, his recommendation is that additional housing would be brought to the North Kohala area, as being in that area. And I think that's what we've only heard from the community. So, whereas I don't have any particular feeling that it's wrong to increase density at Kokoiki, I don't feel the community has spoken in favor of that in any way other than on this particular application. And I don't like to see land use trail an applicant, particular application, which is affecting stuff for many years with this county and in this state. So that's a long-winded response, but I'd just like you all to get a feel for the community and my own thoughts. Thank you.

GALDONES:

Ms. Ackerman?

ACKERMAN: Thank you for your comments. I agree with you. I'd like to see Kohala stay beautiful and serene. On this particular piece of land, I'd like to just make two comments to note and that is that my father owns a piece of land directly across from Kokoiki Road, and so making it stay in the family is one reason why I'd like to live in Kokoiki. Kokoiki is the place that my heart is and why I'd like to take a piece of land and nurture it.

The other thing I'd like to point out is that I'm going to increase the agricultural use on this land, unlike I'm not asking for residential, I'm asking for family agricultural one because I intend to take it from a pasture land right now to a more farm type of environment which the details are listed in my report.

GALDONES: Mr. Bryan?

BRYAN: I'd also like to point out that I think, you may have a better map. I made my own sketch here, but I think there's 14 properties on this road. It's about a quarter-mile along this road and to my knowledge all of them are two acres or less, except three of them, some are half an acre and one acre. So it's not out-of-line with the current usage.

GALDONES: Mr. Mitchell?

MITCHELL: Just, again, to reiterate my comment. It seems to me, and we're relatively newcomers to the North Kohala area, but it seems it's becoming the parcel of the rich and famous or not so famous but rich. I mean, the people who are able to come up now and buy five acres at \$500,000 or ten acres at a million dollars, it just seems that it's going to be coming increasingly more difficult for people who want to be able to establish some kind of agricultural opportunity there to do so. And, again, I just, from my limited experience, I've not met one individual that'd be more worthy of your consideration than Ms. Ackerman.

GALDONES: Thank you. Mr. Yuen?

YUEN: Well, I think Bill has pointed out some of the real dilemmas of this kind of decision and this kind of zoning; and the biggest, of course, is the question of precedent and what happens in the future. We're all sitting here, and where I'm going with this is I am still justifying our recommendation of approving this, we're all sitting here feeling I'm sure that this individual and I'm not judging this on the level of a personality but we feel, okay, that this is not a terrible thing to happen for this individual to rezone the property. We are all concerned with what happens if you do this 5,000 times on the island or 500 times in North Kohala. Sometimes I wonder, you know, you sit, they say, I've never tried this, of course, they say if you put a frog in a pot and slowly turn up the heat, the frog will never jump out until it boils.

You also have to look at the question of whether you will deny the application in front of you because you're concerned about what people might do in the future; and, I guess, I'm more for drawing the line at the point where we see it as a problem.

As far as North Kohala, specifically, what was happening in North Kohala is that it is almost impossible to subdivide even with the existing zoning now because of the water restrictions. I was surprised that this lot was able to get a second meter. It was apparently on the grounds of there being two meters to the property originally. And when I saw this application and I thought there's just no way this is going to happen because there's no water. Be as it may, they do have a meter for the additional rezoning so we were able to support the rezoning for that. That condition is likely to continue, a lack of availability water for sometime. We are on the administration side because we have an affordable housing problem, we have talked with the Water Department about freeing up water for really affordable projects. I'm not talking about the, you know, 100-foot, you know, the \$300,000 housing affordable project, but self-, this continuation of a self-help housing project that went in a few years ago. And the Water Department has indicated that they're willing, on a scale it's not going to break their system that they will, and for a truly, a project that really fits community needs that they will loosen up water because nobody likes the trend that the people here at the table are talking about where only people with an extreme amount of money can move into North Kohala, or many of the other communities on the island.

As far as where we're going, you know, we tend to see things in the Planning Department, even the Planning Commission, you come every two weeks and you see an application, you see these applications to break up agricultural land into smaller parcels. If we step back, I think in the last few years we're basically doing okay. We don't want to see the island agricultural land fragmented, we don't want to see the open spaces turn into residential subdivisions or large, or these agricultural subdivisions everywhere. If you were to step back and look at what we've actually done in the last few years, there really have not been that many. We haven't had a massive rezoning of agricultural land. Most of the rezoning that have taken place have been special situations like Kaloko Mauka, you've seen quite a few, the Kalaoa area, which is a, frankly, it's not actually an agricultural area. It is definitely on the way to becoming a residential area. So if you look at, then we've had Mr. Komo's today, little pockets. So if that's any comfort, that is, that has been the trend for the past few years at least.

GALDONES: Commissioner Graham.

GRAHAM: I would just like to ask you, Mr. Yuen, like a future applicant comes in with six lots and it's for a similar purpose and it has support of the landowner and neighbor and there is no plan for agricultural activity which is credible, or if there are three hundred of them, or if there are two of them, or whatever, is there any basis by which you will say that's different from this or is that what it now takes to get an agricultural, higher intensity zoned used in North Kohala?

YUEN: This application has a number of, you know, every application has to be judged on its own merits. This application does have a number of features that are unique to it. You're not, it's zoned, and although it's zoned Agricultural 20 acres and the whole, actually this Kokoiki area is zoned Agricultural 20 acres, it is actually an area of relatively small lots. Most of the lots on the road are one- to two-acre lots. And this lot is a four-acre lot, then we're talking an application that creates one lot.

In a similar situation, we act similarly, yes. But you have to not filter out all, you have to look at the whole picture that this application presented before jumping to the conclusion that another application is the same.

GALDONES: Commissioners? Mr. Mitchell?

MITCHELL: Thank you for your comment, Commissioner. I'd just like to point out that someone in the local area posted the notice that this rezoning was taking place, at the local post office which is our gathering point. I mean, anybody who knows Hawi and Kapaau knows that pretty much everybody goes there on a daily basis; and it was posted and highlighted. And I don't see one person here in opposition of this rezoning application. So, you know, and I really appreciate and we do want to keep Kohala beautiful but it does not seem that there's any opposition from the community.

GRAHAM: Yeah. I think that's a valid and important one. And, in fact, I did post it on the -.

MITCHELL: Oh.

GRAHAM: At the post office in North Kohala.

GALDONES: Any further comments, questions, further discussions?
Commissioner McCall?

MCCALL: Maybe just a point. If this rezoning goes through to Family Ag 20-acre, Mr. Bryan's parcel, which is 2.7 acres, could be then, he could come in for another resubdivision to split up his, his mother's lot and his lot?

YUEN: We have a clause that only one additional lot can be created. And if I'm not mistaken, the tricky part here, if I'm not mistaken, is that the Zoning Code says that you're supposed to, the FA is supposed to be in increments of one acre. Is that right? Does it say that? You couldn't, you know, they don't have enough for, if you went to FA-2a, which would make sense, they don't have enough for two 2-acres. But with, because the application came in as we want to make one lot, we held that condition here; and it does say that -. So both properties, the entire property is covered by the zoning of the one acre, but the rezoning ordinance limits it to the one additional lot.

MCCALL: I mean, that's fine for now. But, say, 10 years from now, I really doubt somebody going to come back and look at what conditions are there when

this thing was rezoned. I mean, I don't think anybody looked at what condition, when this was subdivided, who knows 30 or 40 years ago, you know, whenever this was subdivided.

YUEN: The subdivision staff is supposed to look at the rezoning ordinances when they have a subdivision application. That's absolutely, they know they're supposed to do that; and I've seen, we see evidence that they do, in that the conditions are carried. You know, we don't self-audit in a sense of being able to go back and look at every subdivision and make sure that people carry it through, but that is part of the expected standard operating procedure of the people that handle subdivisions, that they're supposed to look at the conditions of the rezoning ordinance. Because very, it's not just this one but very, very often you'll see in your rezoning applications, you'll see conditions that are supposed to be, that are, that had to be carried forward in a subdivision process and -. They're not self-implementing. They require the applicant to come forward and do it, and they require it to be checked at the time of the subdivision.

GALDONES: Further questions or comments? Hearing none, is there anyone else from the public who wish to testify on this subject matter before I close the debate or discussion? Seeing none, Commissioners, this comes with a favorable recommendation to be forwarded to the County Council? Commissioner Fujikawa?

FUJIKAWA: I'm ready to make a motion?

GALDONES: Motion is in order.

FUJIKAWA: I make a motion that the Commission forward a favorable recommendation to the County Council on the change of zone application (REZ 04-017) with the amendments to the conditions, with corrections that have been stated on Conditions E and H, and realphabetize -. Staff, it's with the amendments on the Conditions E and H?

DARROW: Correct.

GALDONES: Is there a second?

SPRINGER: Second.

GALDONES: It has been moved by Commissioner Fujikawa and seconded by Commissioner Springer that Alyssa Ackerman's Change of Zone application (REZ 04-017) be given a favorable recommendation and forwarded to the County Council with the amendments to Condition E and Condition H. Further discussion, Commissioners? Seeing none, Jeff?

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

FUJIKAWA: Aye.

DARROW: Commissioner Springer?
SPRINGER: Yes.
DARROW: Commissioner Alameda?
ALAMEDA: Aye.
DARROW: Commissioner Graham?
GRAHAM: No.
DARROW: Commissioner McCall:
MCCALL: No.
DARROW: Commissioner Smith?
SMITH: Aye.
DARROW: Mr. Chairman?
GALDONES: Aye.
DARROW: The motion passes five to two.
GALDONES: Thank you, Jeff. Ms. Alyssa, you will be informed in writing
of today's action.
ACKEKRMAN: Thank you.

The discussion ended at 10:53 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary

