

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
SEPTEMBER 3, 2004

A regularly advertised hearing on the application of **PHIL KNIERIM (REZ 04-011)** was called to order at 9:18 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 representing Department of Public Works
And approximately 18 people from the public in attendance

APPLICANT: PHIL KNIERIM (REZ 04-011)

Change of Zone from an Agricultural 20-acre (A-20a) to a Family Agricultural 3-acre (FA-3a) district for approximately 20.477 acres of land. The property is located along the north side of Kaloko Drive at the northern corner of Kaloko Drive and Mahi Street, Kaloko Mauka Subdivision, Kaloko, North Kona, Hawaii, TMK: 7-3-25: 7.

GALDONES: Commissioners, we are on Agenda Item No. 2. The Applicant is Phil Knierim (REZ 04-011). This is a Change of Zone from an Agricultural 20-acre (A-20a) to a Family Agricultural 3-acre (A-3a) district for approximately 20.477 acres of land. Norman?

HAYASHI: Thank you, Mr. Chair. Just a matter of correction. A typographical error on the agenda, as well as the first page of Background Report. It does state that the request is from a Family Agricultural 3-acre. However, in parenthesis it says (A-3a). It should say (FA-3a).

The property, again, is located within the Kaloko Mauka Subdivision. It is situated along the north side of Kaloko Drive, indicated by this red dot, and it's in a low elevation of the subdivision. This particular property is at the elevation of approximately 2,200 feet, so it would be outside of that area as discussed in the resolution.

EXHIBIT B

The Applicant intends to subdivide the property into three lots, excuse me, six lots. It is situated along, again, along Kaloko Drive, and this is at the intersection of Mahi Street and Kaloko Drive.

There currently are two single-family dwellings on the property, one is an ohana dwelling, and that is proposed to be on, retained on proposed Lot 1-A. The access for these lots are, some of these lots would be off of Kaloko Drive. There is one lot that would be, Lot 2, excuse me, 1-B would be situated, would gain access from Kaloko Drive, and some of the other lots would be through a common driveway approach.

As noted by the Department of Public Works, they would like to see that a condition be imposed that access be restricted to only one driveway approach from Kaloko Drive. So the Applicant, should this request be approved with the proposed condition, proposed Condition I, would have to redesign the subdivision layout.

Since there are also two existing dwellings on this particular property, on the proposed Lot 1-A, we have amended proposed Condition F and the proposed conditions were circulated to you this morning. And, basically, what it says in a nutshell is that with the exception of proposed Lot 1-A, all of the other lots would have to have only one single-family dwelling and that should be stated in the Restrictive Covenants of those particular lots.

While the two dwellings may be retained on proposed Lot 1-A, proposed Lot 1-A cannot be further, or cannot be CPR'd. Are there any questions at this time?

GALDONES: Commissioners, any questions of Norman? Commissioner Springer?

SPRINGER: Looking at the photographs that have been circulated, are the properties presently being used for pasturage and tree crops, looks like avocados?

HAYASHI: It was used for pasturage at one point in time.

SPRINGER: And are there also crop trees?

HAYASHI: I believe there are some crop trees on the property also.

SPRINGER: Thank you.

GALDONES: No further questions? Will the Applicant or his representative, please come forward? Mr. Mooers, you have already been sworn in. Have you received a copy of the Background Report and the Recommendation, and also with the amendment to Condition F?

MOOERS: Yes, I have.

GALDONES: Do you have any comments on them?

MOOERS: Yes. First, I'd like to point out on our site plan, proposed Lot 1-B is not intended to have direct access off Kaloko Drive. It is actually a flag lot off of Mahi Street. So if you look at the rezoning exhibit in the Background Report, you'll see that Lot 1-B is designed to be a flag lot.

I'd like to respond to the comments that Commissioner Springer made regarding the condition, present use or condition of the property which I think is important. This side has been cleared, a substantial portion had been cleared previously. Under the conditions of this Change of Zone, there will have to be a reforestation plan that's approved by the Department. And so I think what we'll see in this action is we'll actually improve the forest, because it'll have to be replanted in a number of areas. There are avocado trees that had been developed and used as an orchard as part of Lot 1. And I think what the Applicant will need to do is to determine if they want to try to maintain part of that and develop a reforestation plan and forest management plan consistent with these conditions. They could be approved by the Department. If not, then those trees would need to be removed and other native species would have to be planted. So that, I think, is really the benefit of this rezoning, is that a lot that has been at a lower elevation substantially grubbed and cleared and used for pasture and the avocado orchard in the past will be reforested with native forest.

SPRINGER: Thank you.

GALDONES: Any further questions of Mr. Mooers?

HAYASHI: Mr. Chair, and I do stand corrected. There is an access as Mr. Mooers had indicated off of, flag lot off of Mahi Street for Proposed Lot 1-B. It just so happens it's shaded over so it's not distinguishable on this map.

GALDONES: Commissioner McCall?

MCCALL: So to clarify then, this is in compliance with the -?

HAYASHI: As laid out, yes.

GALDONES: Any further questions, Commissioners?

SPRINGER: Mr. Chair?

GALDONES: Commissioner Springer?

SPRINGER: This question being to the Director regarding Ag lands that are in watershed areas. Then native forest or any forest cover, in effect, growing a crop of, water, falls under the agricultural conditions?

YUEN: What agricultural conditions do you mean?

SPRINGER: Of Ag zoning, this forest?

YUEN: It would qualify, it wouldn't be in violation to have forest cover.

SPRINGER: It wouldn't?

YUEN: Yeah.

SPRINGER: Thank you.

YUEN: And in this case where they have, I'm sure as part of the reforestation, we didn't require, you know, grubbing out and replacement of an existing avocado orchard. But we would want the reforestation of the pasture area as part of the plan.

SPRINGER: Thank you.

GALDONES: If there are no questions, Sharon, do we have anyone signing up for this to testify from the public?

NOMURA: No one signed up.

GALDONES: Commissioners, there is an amendment to the Background Report, as stated by Norman on page 2. Should read as, this is under paragraph No. 10. It should read, instead of A-3a, it should be FA-3a. And, also, this morning you received an amendment to Condition F, which you have before you. This comes with a recommendation from the staff, that it be favorably forwarded to the County Council. Commissioner Fujikawa?

FUJIKAWA: May I make a motion?

GALDONES: Motion is in order.

FUJIKAWA: I make a motion to approve the Change of Zone application (REZ 04-011) and forward all this to the County Council.

SPRINGER: Second.

GALDONES: Mr. Mooers, before I butcher the Applicant, could you pronounce the last name for me?

MOOERS: Knierim.

GALDONES: Knierim.

MOOERS: Knierim. Thank you very much. There's been a motion by Commissioner Fujikawa, seconded by Commissioner Springer, that Phil Knierim's Change of Zone application (REZ 04-011) be given a favorable recommendation and be forwarded to the County Council. Discussion? Commissioner McCall?

MCCALL: I'm uncomfortable with the amendment to Condition F, basically giving them a right to have two parcels on one of the, on one of their subdivisions. My general feeling on this situation that we're, in allowing these subdivisions, the subdivision of this property, we have been putting the restriction on saying you're only allowed one parcel on the, one dwelling, pardon me, one dwelling on each lot, and, you know, no CPRs, no Ag, no second, no Ag dwelling. My general feeling is that we should stick with that. The fact that this person has put two dwellings on this property, I'm pretty sure he could if he chooses, his choices should be either he can remove that one dwelling, move it to another lot, or reconstitute his subdivision to, if possible, to allow this.

But I'm not comfortable with the situation as it is now. Cause what we're doing, to me, we're setting a precedent saying, okay, if you put, you know, it's okay. And the fact is when this is split up into three-acre parcel, the guy next door to me who has two lots will say why can't I put two dwellings, why can't I, and -. I think we're just, you know, next thing you know we're going to be Ag-1 acre, Family Ag 1-acre there. And, generally, I think we need to kind of draw the line somewhere. And I think that we're giving this guy enough by allowing him to split it up into three-acre parcels. If he has to tear down the dwelling or, you know, convert it back to a garage so be it.

GALDONES: Mr. Mooers?

MOOERS: Yeah, I'd like to respond. I appreciate the Commissioner's concerns. This, however, could not happen again. And the reason is, is that you cannot get an ohana permit in an agricultural district. Secondly, since the Council and the Department, the County's position has been to, that this area is an important forest area, I think it would be very difficult to come in and ask for a second dwelling, the second farm dwelling on the lot, saying that we need an extra dwelling to grow forests. So I think this is a unique situation. All right? So I don't think that if it's approved as is, that it would perpetuate further situations like this.

We did look at the situation of the location of these to see if we could configure the lot so that they could each be on a separate lot; and given the lot setbacks and the layouts, that couldn't be done. So, really, what they'd end up having to do is just, right, is they would have to basically tear down this house; and my personal belief is that that would be an unreasonable thing to do. I share your concerns about precedent; and I hope I addressed the fact that this doesn't set a precedent. But I'd be happy to work with the Department to see if there is some way we could lay out the lots differently, but I don't think, given the setback rules and the lot configuration and the Public Works desire not to have

additional driveways off Kaloko, that it can be done.

GALDONES: Any further questions, any further discussions? Commissioner Graham?

GRAHAM: I just want to ask Greg, how did that second house come about?

MOOERS: It was built as an ohana unit. It was permitted many years ago.

GRAHAM: And as far as the current occupancy?

MOOERS: Just two different families are living in the houses. They're rented right now. Since the owner has acquired it, he has it rented back to the people that lived there.

GRAHAM: Thank you.

GALDONES: There being no further questions, no further discussions. Norman, please call the vote.

HAYASHI: The motion was to approve the request, as amended.
Commissioner Fujikawa?

FUJIKAWA: Aye.

HAYASHI: Commissioner Springer?

SPRINGER: Yes.

HAYASHI: Commissioner Alameda?

ALAMEDA: Aye.

HAYASHI: Commissioner Graham?

GRAHAM: Aye.

HAYASHI: Commissioner McCall?

MCCALL: No.

HAYASHI: Commissioner Smith?

SMITH: Aye.

HAYASHI: Chair Galdones?

GALDONES: Aye.

HAYASHI: Mr. Chair, motion carries.

GALDONES: Thank you, Norman. Mr. Mooers, you'll be informed in writing of today's actions.

MOOERS: Thank you.

GALDONES: You're welcome.

The discussion ended at 9:31 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary