

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
SEPTEMBER 7, 2007

A regularly advertised hearing on the applications of **WILLIAM C. FOULK (SLU 07-000016/REZ 07-000069)** and **WILLIAM C. FOULK (SLU 07-000017/REZ 07-000070)** was called to order at 11:25 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawaii with Chairman William R. Graham presiding.

PRESENT: William R. Graham
Takashi Domingo
Andrew Iwashita
Shelly Ogata
Rene' Siracusa
Rodney Watanabe
Rell Woodward

ABSENT & EXCUSED: C. Kimo Alameda
Alvin Rho

Ivan Torigoe, Deputy Corporation Counsel
Christopher Yuen, Planning Director
Jeff Darrow, Staff Planner

All those testifying were duly sworn in.

APPLICANT: WILLIAM C. FOULK (SLU 07-000016/REZ 07-000069)

- a. State Land Use Boundary amendment for approximately one acre of land from an Agricultural to an Urban district.
- b. Change of Zone for approximately one acre of land from an Agricultural one-acre (A-1a) to a Village Commercial 40,000 square foot (CV-40) zoned district.
The property is located in the Hawaiian Ocean View Estates Subdivision on the northeasterly side of the Hawaii Belt Road, southwest of Lehua Lane at Kahuku, Kau, Hawaii, TMK: 9-2-93: 39.

APPLICANT: WILLIAM C. FOULK (SLU 07-000017/REZ 07-000070)

- c. State Land Use Boundary amendment for approximately 3 acres of land from an Agricultural to an Urban district.
- d. Change of Zone for approximately 3 acres of land from an Agricultural one-acre (A-1a) to a Village Commercial 40,000 square foot (CV-40) zoned district.
The properties are located in the Hawaiian Ocean View Estates Subdivision on the northeasterly side of the Hawaii Belt Road, southwest of Lehua Lane at Kahuku, Kau, Hawaii, TMK: 9-2-93: 40, 41 and 42

GRAHAM: Our next item on the agenda is a State Land Use Boundary Amendment for one acre of land and a Change of Zone for approximately one acre of

land; and here the applicant is William Foulk. And the location of the property in question is in the Hawaiian Ocean View Estates Subdivision, on the northeasterly side of the Hawaii Belt Road in Kahuku, Hawaii.

And our staff Planner Jeff is also suggesting in the interest of making the proceedings move more easily today that we take up No. 4 at the same time as far as his presentation. No. 4 on our agenda is the same applicant but it's a different State Land Use Boundary Amendment. This one is for three acres of land from Ag to Urban and Change of Zone for three acres of land from Ag-1a to Village Commercial 40,000 square foot; and it's located in approximately the same area in the Hawaiian Ocean View Estates in Kau, Hawaii. So, Jeff, if you'd give us a presentation on these applications, please.

DARROW: Sure, Mr. Chairman. Before I begin, I'd just like to let the Commission know that the Planning Department has recently sent a letter to the applicant requesting that a revised Traffic Impact Analysis Report or a TIAR be submitted. This is based primarily on comments received back from the Department of Transportation that the report was unacceptable. Within that letter we did state to the applicant that the Planning Department would be asking for a continuance on these two applications until we've received the revised Traffic Impact Analysis Report, and that it has been reviewed from the Department of Transportation. So I just wanted to let you know about that from the start.

With that, I'll begin the presentation. This application is within the Kau District. More specifically we're looking at the Hawaiian Ocean View Estates that are identified in green; and the Hawaiian Ranchos Subdivision identified in blue. Running in an east-west direction, through the middle of the map is Mamalahoa Highway. The area of the applications are identified with a red dot and a blue dot. The red dot identifies the area. These are three one-acre parcels. That would be this first site plan which will be consisting of a three-acre commercial project; and then the blue dot next to it which is adjacent to the first project is a one-acre commercial project. And, again, this is identified in the map to the right.

The applicant in this case, William C. Foulk, is requesting State Land Use Boundary amendments from Agricultural to Urban for both the 3-acre portion and the 1-acre portion. Additionally, the applicant is requesting for a Change of Zone from Agricultural 1 acre to Village Commercial for 40,000 square feet or CV-40 for, again, both projects for a total of approximately 4 acres, one being 3 acres in size and one being 1 acre in size.

Looking at the submitted site plans, this is a proposed layout for the first project. This is identified as Lehua Court. And it is, I believe, in fact, this is actually No. 4 on the agenda, but they just happen to be in line this way. So I'll deal with No. 4 first. Lehua Court is proposed to have two 3-story structures outlined in red. These, again, are proposed to be commercial buildings. The applicant is proposing to utilize these buildings for medical management and professional offices, food and beverage, and retail shops. Additionally, the applicant is proposing for their water source to have on-site five 30,000 gallon water tanks for a total of 150,000 gallons of water storage. At this time

water will be hauled in from another area to this project. The parking is identified on site. Access at this time is from Lehua Lane. It was unclear at the time of the application. We were thinking that it would be from this project, the project to the north. But what it has been identified is that it will actually come from the project to the west, I'm sorry, not the project to the west but to the east. There's going to be an access from Lehua Lane, one access for both properties; and then there will be an access easement to the second property to the west that will provide access to the larger project.

The second project, which is identified at Landowner Ohia Commercial Properties, again, is a commercial project. There will be two 2-story buildings. These buildings will be actually 8,400 square feet in size. The first buildings will be 27,150 square feet in size, each building. This 2-story building, again, is proposed for commercial uses. These uses are proposed to be glass and screen shop, flooring, electrical supply, cabinet making, building supplies, farm and garden supply and upholstery. As in the first application, the applicant is proposing to have one water storage tank. This one will be a 50,000 gallon water storage tank. And, again, water will be brought in from another area, or hauled in from another area.

These are unique applications because previously the permits that have come before the Planning Commission in this area have been mainly special permits. You may recall we've had a special permit on this particular property for Bert Kamigaki; and this is for a similar type of project. He's proposing to have an 18,900-square foot market, a 2-story 5,760-square foot building for commercial, office and retail space, and a proposed gas station. That would be located on this particular property. These particular properties in this area is the Pohue Plaza. This is located on the makai side of the road. This is a very active area in Ocean View, as you have the shopping center in this particular area on the makai side of the road and then on the mauka side of the road you have the Ocean View Town Center. And, again, these three operations were approved through special permits. The Pohue Plaza is consisting, they had come in for an amendment request which resulted in including, it allowed for a variety of commercial and industrial uses, including an open storage facility, a farmers market and all uses permitted within the Industrial-Commercial mixed use zoned district. The Ocean View Town Center was approved to allow a new hardware store, a postal facility, and a commercial building on approximately 2 acres of land. So, again, these are all in this general location, just for the Commission's review.

Recently, the Hawaii County has passed an ordinance, Ordinance 07-99. This ordinance changed the Zoning Code by adding a new section related to concurrency conditions. The Council found that because of road congestion in Hawaii County it is necessary to assess the traffic impacts of major developments if they will add traffic to roads that are now congested or will foreseeably be congested in the future, that rezonings should not take effect unless improvements to traffic situations occur before the occupancy of the project. And this is the reason that we now have this requirement that in certain projects that are of certain sizes the Planning Department will require the applicant to submit a TIAR to be reviewed by DOT or Department of Public Works to find out what those possible conditions or requirements might be for road conditions.

Additionally, the Council had found that it is desirable to have standard expectations for water supply for these new rezonings. The Council understood that in some rural areas such as Ocean View and Hawaiian Ranchos that there is no reasonable prospect of a public water system, but the County may wish to allow some commercial and possibly light industrial rezonings to serve the growing rural population. The water supply necessary for sanitation and fire fighting in these circumstances can be handled by requiring adequate storage facilities.

So again these applications are unique in the sense that these are our first two change of zones, State Land Use Boundary Amendment and Change of Zone applications in these particular areas based on this new ordinance that has been passed by the Hawaii County Council.

Again, at this time, the Planning Department is requesting that these two applications be continued until a time in the future when we do receive that information that we've requested. Are there any questions?

GRAHAM: Thank you, Jeff. Let me just ask you one about the continuance. Just thinking back to the one we had in here less than a year ago which was out by the KTA, maybe it was Ginger Patch or something; and that was a rezone. And it was kind of clear, as I recall it was clear that the DOT was going to ask for a traffic impact analysis. But it was presented to us that we were going to take action on it anyway but that the final conditions would include that they have to conform to what came out of the TIAR. But we're not following that route now. Is that basically, rather you're asking for a continuance in this rather than that we take action. Is that because of the difference in the rezoning process now due to the concurrency issue or -? Do you understand the gist of my question?

DARROW: Would you like me to answer that or you want to answer that question?

YUEN: I think the basic reason is yes. We had this discussion before about when; and there wasn't really a firm guideline as to when a TIAR should be required in a rezoning, now there is. So that's the reason for dealing with this differently. And then, you know, to tell the truth there, and the Department had deferred action on other rezonings pending Department of Transportation review of projects, wanting to see their comments. So we did apply this more on a case-by-case basis. And now the ordinance gives a threshold of expected number of trips. And clearly this project would exceed the number of trips, and so-. They did submit report but the DOT had some criticism of the methodology; and so we're asking for a more comprehensive report and to give DOT little time to look at it. And my expectation is that, you know, DOT will have some discussion of improvements on the State highway that they would want to see, is my guess on this. And then, so that's what their input is likely to be. It's not likely to be on the overall, the basic question of whether this rezoning should be granted, but what would be the conditions of approval.

GRAHAM: Thank you, Mr. Yuen. Any questions from Commissioners?
Commissioner Siracusa.

SIRACUSA: Yes. I'm looking at the Lehua Court application for change of zone. And the very first question is if your request is approved do you intend to subdivide, and you wrote yes. And I got the impression from reading everything else that actually what we're looking at is a consolidation and not a subdivision. And if that is the case, I would like to make that really clear on the record that the Lehua Court lot is not being subdivided into three separate parcels but being consolidated from three into one. Am I correct with that, Jeff?

GRAHAM: Jeff?

DARROW: Sure, if I could respond to that. Let's take a look at the conditions for Lehua Court. Condition B states that Tax Map Keys 9-2-93:40, 41 & 42 shall be consolidated within one year from the effective date of the ordinance. So this is a proposed condition for the rezone.

SIRACUSA: Right. So then that was, I guess, a handwritten typo when it was written down that he intends to subdivide. I just wanted it to go on the record so that anyone reading it later on down the line should be absolutely clear what we're talking about here.

DARROW: Sure.

GRAHAM: Mr. Yuen, did you have a comment on that?

YUEN: Not specifically on that. But I just wanted to follow-up a little bit on the presentation, and Jeff did a very good job of discussing this application and the presentation. I wanted to spend about five minutes just to talk about zoning and special permits and the process, and why this was coming in as a zoning now rather than a special permit.

The basic idea in land use is that you have an overall master plan which in our County is the General Plan; and then that identifies your preferred locations, possibly in a more or less general form and not down to the exact site; and then within those areas you have zoning. So, for example, in the towns that we have around the island, the older towns like Hawi or Honokaa, they're zoned Commercial, Village Commercial, CV; and under the State Land Use Law the idea is a town like that or village center like that is in, supposed to be in the Urban district. It may be surrounded by an agricultural area, but that's the basic idea of the State Land Use Law.

Now we also have special permits. And the special permit is a procedure to recognizing that you can't plan everything out in advance and that there may be reasons to have unusual uses within the State Land Use Agricultural district. And although, you know,

the Department has been negative on some Special Permit applications, by the same token we've always advocated that this process be available. There have been actually serious attempts in the State Legislature to do away with special permits. We've testified against doing away with special permits because, frankly, only about 3 percent of the island is Urban and virtually the rest, all the rest is either in Conservation district or Agricultural district. So to have some flexibility on the local level of deciding what happens in the Agricultural district, it's very useful to have special permits, especially for things like churches, charter schools, other kinds of community facilities that people want to do.

What has happened now in the Ocean View area is that this very large subdivision was approved many years ago, there was never a designated town area for that in the County's overall planning. Businesses saw a commercial opportunity, the public saw the need for it and the special permit route was used as a way of allowing those businesses. But it's not really the right process for establishing a town center. It really should go through the process that we're doing here of a boundary amendment to Urban and a zoning to something like, in this case it would be a Village Commercial. And then you have the range of uses and the flexibility within that, even though they may have an idea of a particular, that they're going to have certain kinds of uses now. They would have a flexibility under Village Commercial, as you would in a town like Honokaa or Hawi, to change that over time to accommodate market conditions. So that's the basic reason behind this.

And as the Department has already come out with a favorable recommendation, you know, not that we're against hearing other opinions and comments on that, but just to explain why this is coming in by this different route rather than the special permits.

GRAHAM: Since the Planning Department is recommending we continue this hearing that will be one of the first items we're going to deal with on this today. But, in any event, we're going to take public testimony whether we continue it or not. So any of you folks that are here that would like to give public testimony, please sign up now, and we can have you on the agenda for that.

Any further questions for Jeff before we ask the applicant? Go ahead, Commissioner Siracusa.

SIRACUSA: Thank you. Jeff, I can't tell if that space between the two lots is a roadway or it's just that, you know, you put them up like that on the board. Is there mutual interconnectivity between the two areas, the two developments?

DARROW: Yes. They're adjacent to each other. I just, I guess I should have put the map a little closer. But there's no roadway lot in between the two lots.

SIRACUSA: So they butt right up against each other?

DARROW: Correct.

SIRACUSA: And can one drive then from one lot to the other without going out onto the street?

DARROW: That's what the proposal is. This is Lehua Lane. On your location map this would be Lehua Lane, this would be Keaka Parkway. This is the Highway. The proposal is to come from the Highway and turn into the first lot, the lot to the east, and then be able to access all lots from that one access location; and that's identified in this area on the site plan. If you'll notice on this particular site plan there is something here, a causeway, but I'm not sure exactly what that is. But this appears to be the proposed access for all these particular properties.

SIRACUSA: Okay. I thought at first there was and then I went up and I looked and I saw the way the plantings were indicated. It doesn't look like there's, you'd have to drive right over a tree or a hedge or something.

GRAHAM: My preference is we don't get too deep into the details of the application until we decide if we're going to continue it; and if we're continuing it, let's get into it the next time when we kind of take action. But first I think I'd like to hear -. Are there any questions for Jeff at this point? First, maybe I'd like to hear from the applicant, and right away want to know whether you're okay with us doing a continuance or whether there's a problem with that. First let me swear you in.

FOULK: Sure.

GRAHAM: Okay, do you swear or affirm to tell the truth on this matter before the Planning Commission today?

FOULK: I do.

GRAHAM: Okay, and could you give your name and address, please.

FOULK: My name is William C. Foulk, 75-5656 Kuakini Highway, Suite 301, Kailua-Kona, Hawaii 96740.

GRAHAM: Thank you. And go ahead and address the continuance issue or anything else you feel appropriate at this time.

FOULK: Yeah, you know, we're happy with the continuance. We generated a traffic impact analysis report. Unfortunately, the figures we got from DOT were from October and so they were about 8 months old when we generated the report. They say that the law states that it has to be six months or less, so we're using newer numbers now. And we're also opening the dialogue with DOT to figure out the nature of the improvements they want at the intersections so we can include those in the report and in this application.

The whole idea of coming in here as a rezone, we're all long-term Kona residents. I've been here 30 years; and rezoning is really the way to deal with this kind of stuff, I believe. The mishmash that you get with all the special permits and everything is, it's not a simpler time today. It's a much more complex time and I'm preaching at the choir with you guys. So, yeah, we decided to just come in straight ahead and do a rezone. They need a new commercial center there; and I believe it will help the traffic on that side of the island by locating a commercial center there. We all subscribe to the idea that traffic can be resolved with zoning better than roads; and this is the first step in that direction, for Ocean View anyway. So, yeah, I think it's a good project.

There's going to be a waterline go down Lehua Lane at some point in the future right in front of this parcel. That's what made it attractive in the first place to explore as the first rezone down in that area. Even though the timeframe for that waterline has been pushed back significantly, we've addressed the water issues and stuff, I think, well, enough with the design.

So, yes, if we could get a continuance to clean up the traffic analysis stuff and work with DOT, then we'd like to come back in here and see what you guys think of it.

GRAHAM: Thank you, Mr. Foulk. Any questions from Commissioners? All right.

SIRACUSA: Well, I have some but I can wait till we come back again.

GRAHAM: All right. Sharon, I don't see any public testifiers. We have none?

NOMURA: None.

GRAHAM: Thank you. Mr. Torigoe, would it be appropriate for us right now to go ahead for a motion on continuance?

TORIGOE: Yes.

GRAHAM: Okay. Commissioner, Iwashita, did you have something different or -?

IWASHITA: No.

GRAHAM: Would you have a motion?

IWASHITA: I move that Items 3 and 4, SLU 07-000016, REZ 07-000069, and SLU 07-000017, and REZ 07-000070 be continued until the completion of the TIAR and until further reauthorized by the Department.

GRAHAM: Thank you. Do we have a second?

SIRACUSA: Second.

GRAHAM: So moved by Commissioner Iwashita, seconded by Commissioner Siracusa, that we continue this hearing to the appropriate time. Any questions? Jeff?

DARROW: Thank you, Mr. Chairman. The motion is to continue these applications until a revised TIAR is submitted and until it's reengdized. With that I'll take the vote. Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes seven to zero.

GRAHAM: All right. Well, thank you for coming in today anyway.

FOULK: Thank you guys and we'll see you next time.

GRAHAM: Okay.

The discussion ended at 11:47 p.m.

Respectfully submitted,

Sharon M. Nomura, East Hawaii Secretary

