



at the submitted plot plans from the applicant, the actual property is identified in the blue outline. You'll notice two different colored lines on the lower portion of the map. The dark blue line is the new certified shoreline; the red line is the new 20-foot shoreline setback line. We have the bottom floor identified on the map. We have Alii Drive which the property borders on the east side of the property and will receive access from, and we have the ocean on the west side of the property. The applicant is proposing to construct this 5-story structure with eleven 2-bedroom/2-bath units. The actual layout for each floor has been submitted to the Planning Commission within the application. The applicant this morning has also submitted several colored maps. One is showing the landscaping as well as the lower floor layout which identifies mainly the parking, also the shoreline setback, as well as the elevation what the actual condominium will look like after construction.

To give some background on this particular project, on January 14, 1982, a Special Management Area Use Permit, SMA 173, was approved by the Planning Commission to allow an 8-unit condominium project on this property. Later in 1991, that project was, that Permit was revoked at the time when a new Special Management Area Use Permit, SMA 318, was approved by the Planning Commission. That SMA Permit allowed for a 12-unit condominium project on this parcel.

Since the background and recommendation has been submitted to the Planning Commission, we've received one letter from the applicant's representative, dated November 9<sup>th</sup>; and it basically addresses certain issues with this application as well as comments received from different governmental agencies. It also deals with a procedural issue that we have with this case; there were some properties that were within 300 feet of this particular parcel that were not notified in the first and second notification. And so that's going to be an issue that we need to address for this particular application.

Additionally, we've received a request from the Department of Public Works to add in a new condition, and this condition is basically from their comment letter dated September 11<sup>th</sup>, which is Planning Department Exhibit 5. This project does not propose to have any gates for their access, but the Department of Public Works is just requesting that this condition be added in, in case in the future there might be a possibility of someone placing a gate on this property. This new condition would state that no vehicular security gates shall be installed or swing within 25 feet of the Alii Drive right-of-way. I have spoken with the applicant and his representative, and they don't have a problem with the addition of the condition. And at this time they still state that there is no intention to add a gate for this project.

The Planning Director is recommending that this application be approved by the Planning Commission. Are there any questions?

WATANABE: Mr. Domingo?

DOMINGO: Jeff, with regard to the Shoreline Setback Variance No. 616, has that been also revoked?

DARROW: I believe it has. This particular Shoreline Setback Variance was approved for in relation to SMA 173. At this time this application doesn't have any improvements within the shoreline setback area.

DOMINGO: Doesn't the red dotted line indicate that the very tip of that goes within the buildable area of that project?

DARROW: It appears this is actually an open area. This is, these are columns; so these columns are not located within the shoreline setback area, but the actual boundary of the building is located in there. And this would be something that maybe the applicant or the representative can address in more detail, but this is the lower floor which is actually open for parking.

DOMINGO: For parking.

DARROW: Yeah. But as far as the upper floors, I'm not sure if it's placed back outside of the shoreline setback area. I'm sure that the applicant is aware of that particular issue.

DOMINGO: You know, I would appreciate if I can have some clarification on that.

DARROW: Sure.

WATANABE: Are there any other questions of staff? Mr. Rho?

RHO: I might be asking the same question, but I'll ask it anyway. In 1982 with 8 units, was the setback in that red mark on the map the same?

DARROW: No, it was actually different. The shoreline was closer to the actual makai portion of the boundary. So since this last shoreline certification the actual shoreline has moved inland.

RHO: But from, no matter where the shoreline is actually located, was it in 1982 also 20 feet?

DARROW: Correct. The determination of the 20-foot shoreline setback, normally the shoreline setback should be 40 feet, but if the buildable area on the parcel is reduced to 50 percent, less than 50 percent, when you compute the setbacks, then there is the possibility to increase the, or decrease the shoreline setback from 40 to 20 feet along the makai side to be able to give them more buildable area.

RHO: And even though there are lots of buildings along that shoreline in that area -?

DARROW: Correct. They -.

RHO: Banyan Tree Condominium is one of them.

DARROW: Yeah, they may, I'm not sure if Banyan Tree had also had the 20-foot shoreline setback applied to their property as well.

RHO: How about those other properties along the shoreline in that area?

DARROW: As a case-by-case basis, when these applications come in, if we have, what we do is we apply the setbacks to the buildable area. See, at this time because this property, the shoreline certification moved inland, this applicant had lost property. And so what they do is they apply the 40-foot shoreline to the makai portion of the boundary, and then the setbacks for the sides and the front; and if you take that buildable area and if that buildable area is reduced to less than 50 percent, through Planning Commission Rule 11.5, then it allows the Planning Director to determine that the shoreline setback is moved from 40 to 20 feet.

WATANABE: Clarification. Actually you mean more than 50 percent, right? Not less, huh?

DARROW: If the property falls less than 50 percent of buildable area -.

WATANABE: Oh, yeah, that the buildable is less than -.

DARROW: Right.

WATANABE: Okay, okay.

DOMINGO: Mr. Chairman? You know, as you indicated that the shoreline area was moved back and in fact the whole shoreline changed, then there have been some occurrences which probably high waves or high seas which may have damaged the shoreline and moved it further in, and that may have caused that red line to be moved further back. You know, and now we are looking at only 20-foot setback whereas it should be 40-foot setback.

DARROW: Even – if I could interject – even the previous application in 1982, the same principle was applied and the setback was determined to be 20 feet even back then.

DOMINGO: Yeah, I can understand, but my concern is that, and not only specifically to this property, because as we look at the whole Alii Drive, buildings have been put up; and I don't know if there are any other further developments contemplated along the shoreline. So what we're seeing is that, you know, the threat of eventually those shoreline would be moved farther in, and then would cause some kind of damage to the existing properties that exist there. That's my only concern.

HAYASHI: Yeah, I just wanted to clarify one thing that Jeff said, that the shoreline setback rules originally adopted had a flat 20-foot shoreline setback requirement. It was changed back in the early 1990s, I believe, to say that 40-foot shoreline setback unless it meets certain criteria; and one of the criteria was that buildable area be less than 50 percent. And that's in this particular case. But before many of the buildings were built with 20-foot shoreline setback because the law allowed 20 feet, even if the lots were larger at that time.

DOMINGO: Okay, thank you.

WATANABE: Any -.

YUEN: I'd like to make one another comment. The question of coastal hazards is certainly a very valid and important one in any SMA Permit. I would not draw the conclusion, though, that the change in where the shoreline is certified from one year to the next or from one certification to the next necessarily means that there has been a physical change. There's a bit of an art to the shoreline certification. It's not scientific in a sense that two surveyors will go out and, even on the same day, and certify the shoreline at exactly the same place. So it may be that there's been a change, there's actually been a physical change in the shoreline; it also may not be.

DOMINGO: So my theory, so my theory -.

WATANABE: Art meets science.

DOMINGO: So my theory that there is nothing right or wrong in planning, it depends on how you look at it at a certain day at a certain time, right?

YUEN: Well, you strive for consistency as much as possible. And I wish you would say, you know, I wish we could say that there was an absolute way of certifying the shoreline. But the fact is that there are often negotiations and discussion between the State Surveyor; sometimes there is public input on a shoreline certification; and depending on, sometimes the landowner will not care about particularly where the shoreline is certified, and there will be a certification that's more inland at one time. But that is just the fact of the matter that you can have the shoreline certified differently by two surveyors. I think normally surveying would be considered more exact than planning, but in the case of shoreline certifications, probably not.

DOMINGO: One more issue which we haven't gone into yet, but you know, they are proposing to replicate the conditions of the previously granted SMA Use Permit; and I think the last one was in 1991. So, you know, we are looking at about 15 years ago. Does the Department have any rule or any policy with regard to how far back the submittal of information would be applicable to a permit at the present day? I mean, because what we are looking at here are statements made over 10 years ago; and if we consider this very parcel, we are looking at over 20 years ago in 19, was it 19 -?

DARROW: If I could interject on this matter, Special Management Area Use Permit 318 was also revoked in July 1999, and the reason for this was because the applicant had filed bankruptcy and was unable to pursue the project. So this particular application is a new Special Management Area Use Permit, separate from the one in 1991.

DOMINGO: Yeah, but my question was they're using the very same information they used then to be, as an exhibit to their submittal for the application. And if you look at it, at this parcel, you know, you are going back as far as 1982; and I don't know if the information is still pertinent now as it was then.

YUEN: Well, we do expect applications to be updated. And so – I thought, I thought that they submitted a, let's see – the archeological report has been updated as of 2003; it's not from the previous application. So they have submitted new information.

DOMINGO: Well, you know, perhaps when we have the applicant or representative come up here, they can make a statement with regard to certain issues that have been updated as an attachment, as an exhibit to their application, because my only concern was that it goes far back and sometimes too far back. And we don't know if, you know, it does not say in their, perhaps looking at the exhibit it shows that, you know, 2003 certain studies were done. But the statement here is they propose to replicate the conditions of the previously granted SMA Permit which is found in 318 as exhibits.

YUEN: Yeah, we would certainly expect, you know, and I -. Say somebody had, an SMA Permit that was granted in, like in this one, 1991 and then revoked, somebody comes in 2007; we would certainly expect them to update the information in the previous application, not just xerox what was submitted in 1991, and say all this is still valid. That's not what we would expect, no.

WATANABE: Any further -. Mr. Rho?

RHO: On Exhibit 10, it refers to a letter dated August 10<sup>th</sup>, I think, and in the back of that letter, they have comments. And I'm actually really interested in the last comment on the bottom – there is an X before it, additional comments – basically because I don't understand it. So can you comment on that? That's No. 1.

No. 2, can you verify that the applicant actually made the changes? 'Cause I can't find any documents in reference to the additional comments. I mean I can find it in the report, like Item 3-F (6), I can actually find that, but I couldn't find any corrections. And it's asking for, "please correct information on the following items." And I don't know how important that is, but I couldn't find the corrections.

DARROW: If you could give me one second. When I looked at this particular comment, they themselves, the applicants represent that the flood zone is VE; yet under Item 3-F (6) in the application, it confirms that it was in Zone VE. There could be a discrepancy on their base flood elevation of 12 feet, but that would be something that we would need to discuss with the applicant if there was a discrepancy on the base flood elevation.

WATANABE: Follow-up, Mr. Rho?

RHO: I could be totally wrong, but I think what this Eric Hirano is trying to get them to do is to reference the National Flood Insurance Program instead of – I can't remember what, who they referenced – but they referenced somebody else. And like I said, I could be totally wrong on this. I just was curious as to this person making these comments and whether or not the applicant made written corrections, if that really was necessary. And I didn't see that in writing, so I wanted to know whether or not that was actually done.

WATANABE: Should we maybe bring up the applicants and ask them directly?

RHO: We can proceed. I just, I didn't want to bring it up when the applicants are up here, if in fact they submitted something and I just didn't receive it, so -.

DARROW: We did receive the letter from the applicant's representative, dated November 9<sup>th</sup>, and I'm not sure if they addressed that issue within the comment letter.

RHO: No, they don't.

DARROW: Yeah, it doesn't look like they did. If we could defer that question to the applicant's representative. Thank you.

WATANABE: Thank you. Are there any other questions for staff? Then, may I call the applicants up? Or the applicants and their representative? I'd like to swear you in first, if I may. Would you please raise your right hands? Do you swear or affirm to tell the truth now before the Planning Commission?

YEH: I do.

KILGORE: I do.

WATANABE: Okay. You may proceed with your testimony, but prior to providing any testimony, would you kindly state your name and address for the record.

YEH: Sure thing. My name is Thomas Yeh. I'm attorney representing the applicant. And then with us here today -. And then my address is, business address is 85 West Lanikaula Street, Hilo, Hawaii. And then Mr. Kilgore is the applicant, so -.

WATANABE: Thank you.

KILGORE: My name is Matthew Kilgore with Koa Architects up in Waimea. My business is 65-1285 C Kawaihae Road, Kamuela, 96743.

WATANABE: Thank you. You may proceed.

YEH: Thank you. Well, what we wanted to do was – we were able to hear some of your questions and concerns – and what Mr. Kilgore wanted to do was to provide you with kind of a brief overview; it might answer some of the questions, give you some history of the project and how it's come to be designed the way it is now. I think maybe the term “replication” wasn't quite an accurate one; I don't use that term myself too often. But anyway, he can tell you what this project is about, and then we can leave it up for questions. Thank you.

KILGORE: Actually, I guess we can start up by saying due to the new shoreline certification from this year, earlier this year, that that severely reduced the buildable area of the site, so we did pull the building back quite a bit further than it was before. And in addition to that minimization of the site, the side yard setbacks were increased from the previous SMA Permit another 2 feet because we squeezed another floor into the building to try to get closer to our allowable unit count of 11 units. So our current envelope is actually quite a bit smaller than it was, say, in SMA Permit 318. As you can see from the rendering, we are proposing to maintain quite a bit of view corridor on the north side and also the south side of the project, and as well as right through the middle of the parking garage level of the project. So we are confident that the building will have a minimum impact on, say, a passerby from Alii Drive.

In response to your question, Commissioner Domingo, about the red line shoreline setback, how it impacts the upper floors, it is completely maintained all the way up with 6 inches in addition to that red line. All the lanais are held back 6 inches from that line all the way up.

As far as the question about the Flood Insurance Rate Map, that's based on a survey that we got from Wes Thomas surveyors; and the BFE that showed, the base flood elevation that showed on their survey that cuts right through the middle of the site was 12 feet. So we, our structure does, the base occupied floor of our structure is I think 2 feet above that elevation.

Just to keep everything up to date, we did meet with some neighbors two weeks ago to the south, and they had mentioned to us that they were concerned about the pedestrian access that we'd shown, which we would prefer to call walkway at this point in time. But it was originally along the southern edge of the site where there was a little bit more of a landscaped area, and they had requested that we move it to the north side of the site to possibly alleviate any kind of public access coming through adjacent to their properties and their driveway existing on the southern edge of the site. So we were able to do that, and that's replicated, that's represented in the color site plan that you see there. There is an existing fence from the Banyan Tree Condominiums along the northern edge, and that seems to have a minimum impact as far as the neighbors are concerned in terms of allowing a walkway from Alii Drive to the shore. I think that's most of what we have that's fresh information.

WATANABE: Fellow Commissioners, do you have any questions for the applicant?

DOMINGO: So your neighbors are satisfied with this change in the location of the pedestrian path?

KILGORE: Yes, they mentioned to us at the meeting with them that if we show the walkway on the northern side, that they would approve the project or not object to the project.

DOMINGO: Mr. Chair?

WATANABE: Mr. Domingo?

DOMINGO: Are applicants along Alii Drive required to provide for pedestrian walkways to the shoreline? Every lot that is developed?

KILGORE: It was strongly suggested that we provide a walkway -.

WATANABE: I believe that's part of PASH, right? Public Access Shoreline Hawaii?

YEH: Well, maybe I can respond to that. I'm not sure if you, well, the background report, essentially if you were to go to the south of the property, there are some residential structures; and then thereafter if you were to drive along Alii Drive, you'll see a sign "Public Access" which leads to Holualoa Bay. So there is essentially a public access less than 100 yards to the south of the property. And then if you were to run north, you would go to the Banyan Drive, Banyan surf spot location, you'll see cars parked; that's a very popular surfing spot that there is a public access to. And in answer to the question about whether or not there is

access on every property, the answer is, you know, not a rote yes to that; it's based on whether or not there are sufficient accesses in the vicinity kind of impacts where they're going to be created.

An archaeological study that was done, and then there is also some work that we are doing right now with traditional – well, I shouldn't say traditional – but cultural representatives from that area. We've already met with several native Hawaiian people who have been interested about making sure that we don't inhibit traditional access by native Hawaiians who want to access the shoreline. So the policy is not purely public access that would be a condition of this particular Permit, but from a policy standpoint on the applicant's side to allow people who want to exercise traditional access to the shoreline, they will allow that to occur. And there're still some discussions about how that's going to be effectuated, but that's also largely the reason why the applicant has said we are not going to put up a security gate across the driveway to inhibit native Hawaiians from accessing the shoreline through the property. But from the come-all kind of standpoint as a regular public access issue would be, the answer is, yeah, that's not what's on the table right now. I'm not sure if that explains everything, but -.

DOMINGO: So you don't have to put up a sign indicating that that's a public access going between your property and the neighbor?

YEH: Correct, correct. But it'll be under-.

DOMINGO: But it's a pedestrian walkway that people can use?

YEH: It'll be understood that people want to exercise traditional native Hawaiian cultural access, that that's going to be something that the owner will allow. Yes.

DOMINGO: Thank you.

WATANABE: Any other questions for the applicant? Mr. Iwashita?

IWASHITA: I have a, looking at this site elevation – it's labeled A2.2, part of the application, that is the best I can identify it – anyway, it's this site elevation that shows the compliance with the height limitation. And my question is it, there's a reference to mean sea level as the reference point from which the measurements begin, and -.

KILGORE: Well, as a surveyor measures the site, it builds up from MSL, mean sea level, to a slight berm 6 or 7 feet above sea level, and then the vast majority of where we're proposing to locate the building is in the 6- to 7-foot range.

IWASHITA: Okay, well, I'm not real concerned about the height limitation, but my concern is that – I'm not sure where the high wash of the waves would be, but I assume that's some place above the mean sea level; and where the measurements are, you know, progressing upward, it basically shows 6 feet, it looks like from mean sea level to the existing grade which is the makai side of the building – and my concern is a general one, and I'm not sure, trying to figure out where it fits here, but you know, in the long run and you talk about the changing sea level and all of that that's happening, and if we calculate or try to project in a 1-meter increase in all of these ocean levels including the high wash of the waves, I'm just wondering whether or not

you considered that in how this project was designed, and I guess the potential that impact it would have on – I don't know – possibly wiping out your parking lot.

KILGORE: Yeah, that would be unpleasant definitely. We would certainly have our civil engineering plan for worst case scenario; if necessary, possibly a pump system to back up dry sumps to keep the lower level dry in a 100-year flood condition. What transpired this last winter was quite a large series of winter storms that the State Surveyor from the DLNR came out and noted a lip of wave action that you can see in the blue line protruded into the site quite far. I've never been down there to see that. I mean I've seen where he thinks that that was where the high water mark, but in the times I've been down at the site which are numerable, I've never seen the water anywhere near there.

IWASHITA: So I guess that you are addressing the essentially historical storm, storm surge and all that, and that's how this existing line gets established. What I'm concerned about and what I'm asking is whether or not any consideration has been given to in developing these plans on what's pretty much the world's scientists now believe is going to be a 1-meter, a minimum 1-meter increase in sea level, and how that's going to impact your project.

KILGORE: Well, there is a little bit of leeway in our site section to push the lowest level up, maybe a foot and a half, which we could address. We are trying to minimize the height of the project as much as possible; but certainly it's in the owner's best interest that the property does not flood. And as architects and engineers, we will take care of that consideration, that whatever foreseeable high waterlines will be taken care of.

WATANABE: Well, Mr. Yuen, maybe you can elaborate on whether we do take into consideration projected but not yet developed tides. I mean, I understand about global warming, but you know, you could have a mini freeze, too, so -.

YUEN: No, I think that a possibility of sea level rise has to be taken seriously; and there are places like Kapoho which is also subsiding where you really, really have to be careful about this. But for planning purposes, I go by the IP-, there is an International, I think, International, Intergovernmental Panel on Climate Change or IPCC, which is the major scientific body that does projections and predictions on climate changes. There's a lot of different scenarios about sea level rise with respect to global warming; some of them are plausible. But the IPCC has a consensus report on what they would expect by the end of the century, which I think as far as a planning horizon for building like this is the timeframe; and their consensus report on the high side is 2 feet, it's a half a foot to 2 feet. So from a standpoint of a piece of property, I would be concerned that if it was actually going to be submerged. We are talking about the elevation for the tsunami event or a hurricane event, and I don't know that a sea level rise of a foot or two is really significant for those events in this. But this is something that you have to keep, you know, in the back of your mind, and think about, particularly, in really low lying areas. And it may be that we need to revise, you know, if we have a justification, we can revise the minimum heights. For example, we looked at an SMA Permit in Keaukaha recently for a piece of quite low laying property on Kalaniana'ole, and we knew that the County had done, there had been some studies done of tsunamis and that there was a revision of the expected height; and so we did put a condition on that, that the building had to be built a little bit higher than the official FIRM Map line because of the scientific work that had been done. In this case

we really don't have anything like that, so we would continue with our basic recommendation of the, following the requirements of the Flood Insurance Program.

WATANABE: Thank you. Any follow-up to that? Mr. Iwashita?

IWASHITA: Thank you, Mr. Chair. I guess the other concern I would have with regard to, you know, whatever the increase in the sea level is going to be is that I guess in considering approving projects like this within an area that would be affected, directly affected, by the sea level rise is how that, part of what we are supposed to consider in 205A is essentially our decision is irreversible. We are talking about the end of the century, that kind of a timeframe, that this project can exist here because of the public infrastructure that is committed to this area, and allows a project like this to go forward. So I'm not real clear, you know, as far as Alii Drive is concerned and all the infrastructure that goes on with it and can possibly go along with it, you know, sewer and all those kind of things, that what we are really looking at is by committing, allowing these entitlements to go forward, that the County is committing to maintaining that. And so if there is an increase in sea level rise, if there is hurricane damage or those kind of things, you know, like the earthquake we had last year, all of the damage that has caused to our existing infrastructure, we are supposed to fix it because people have to rely on it for access and those kind of things, and that's what needs to be done. If, the more projects we approve on Alii Drive basically, you know, the more and more we have to commit; we're basically committing to improving, and beyond just maintaining, but improving and expanding all of the infrastructure. So I'm not sure, you know. This is obviously not, that concern doesn't directly affect the applicant, but that's -. How do we factor, I'm trying to figure out how to factor that in, that concern, in terms of more development on Alii Drive, you know, and what the impact is going to be on what would be deemed -. You know, if we fully develop Alii Drive, I don't think everybody is going to say, well, we leave it the way it is. It's not going to be, you know, it's not going to be sufficient public improvement -.

WATANABE: I think I understand your concern; on the other hand, I don't think any of us would suggest that we stop development along Alii Drive now, and rising sea levels or further erosion would cause damage to Alii Drive, that we would abandon Alii Drive even if we didn't put any more buildings on it. So I'm not sure if that's germane at this point.

IWASHITA: I'm not saying that, I guess, you know, there are issues now with Alii Drive in terms of emergency exit capability, right? That's there; that's a present problem. What I'm trying to suggest is that, you know, there needs to be some serious thought given to how increase in sea level rise is going to impact Alii Drive, right, and whether or not that that consideration should be, well, I think we need to have some information on that. Because to say that, well, maybe it will, maybe it won't, that's not to me the best way for us to fulfill our duty to, you know, properly plan.

WATANABE: Okay, thank you. Are there any other questions from other Commissioners for the applicant? Mr. Rho?

RHO: I have a couple of questions. But first I wanted to ask Jeff if he could refer back to the – whatever this is called – the background report, on page 3, Section 14, the last line which is bracketed; it says 8-foot sideyard setbacks. Can you tell me what the height restriction would be, if it was just 8 feet, or how many stories?

DARROW: There are no restrictions for the 8-foot setback. It would be 45 feet.

RHO: No, there is a restriction.

DARROW: I mean it would -.

HAYASHI: I guess your question was what is the height requirement for this area. Is that correct?

RHO: If I was a property owner and I set it back 8 feet on either side, how high could I build? How many floors?

HAYASHI: If it's a one-story structure, I mean, 8 feet would be only one-story structure. You can go up to 45 feet because that's the allowable height within that zone district.

RHO: So could I actually build 2 stories?

HAYASHI: If you go 2 stories, then you've got to, then it has to be set back 10 feet on the sides.

RHO: Ten feet.

HAYASHI: Yes. So this is why it's 16 feet; the applicant intends to do a 5-story structure. But the height limit would still be 45 feet.

RHO: This is not a question, but I guess I bring that up because instead of 8 feet or 10 feet, we are doing 16 feet on each side. But the basis for allowing the 20 feet setback is based on 8 feet, right, so the developer then adds his own requirement which further limits the buildable area. Isn't that right? That self-imposed buildable area is further reduced.

DARROW: Correct. But the -.

RHO: Okay. And all I'm saying in my thinking, and I know this is not a question, we are already blocking the viewplane, whatever viewplane there is. The builder is setting 16 feet on either side, why not come back further from the shoreline and build wider. That's not a question, that's just a comment. I guess I'm concerned about that. So I'll move onto a question -.

YUEN: Could I jump in here? Because I, you know, if your question was the thought that the builder has created the 20-foot shoreline setback by going higher, by creating a wider setback, that's not the case. The -.

RHO: No, I didn't say that.

YUEN: Yeah. Okay.

RHO: We are doing that. We are imposing or we are saying it's 20 feet based on the 8-foot setback on either side and then making the calculation based on that -.

YUEN: Right.

RHO: All I'm saying is then the developer comes along and makes it, makes the buildable area even smaller, yes? Well, you guys agree to that?

YUEN: Right. The side setback -.

RHO: And all I'm saying is why not make the buildable area larger and take more from the, take less from the shoreline, I guess, or cut back on the shoreline side and make it wider. That's just a comment. I don't have a question about that. I just wanted to clarify in my mind that that's exactly what's happening or that's what's happening. So if you allow me to make more comments, I will, which means that you don't have any viewplane already, basically on that whole strip, so why not build wider. And that's not a question. I just, I'm thinking aloud. So I want to move onto what I really have a question about, which is back to my first comments about Exhibit 10. And on the attachment to Exhibit 10 there is this message or comments by Eric Hirano; at the very bottom there's an X. And I still, I'm not clear as to what all of the additional comments refer to, so if the applicant can comment about that.

DARROW: If I could comment on that. What Mr. Hirano is asking is to replace the references within the background, the application from, instead of Flood Insurance Rate Maps, the proper term should be Federal Emergency Management Agency. So there are three references within the applicant's report where he references, instead of FEMA, he references the FIRM map. So on the record, if the applicant is okay with that, we can have them replace that with the proper term, which should be Federal Emergency Management Agency. If you want, I can identify the three areas in the background report.

RHO: And that doesn't change any rules or regulations, etc.?

DARROW: No, it's just the proper reference that they are trying to bring up.

RHO: Okay. That's fine. On Exhibit 12, it's actually a letter from the Kona Traffic Safety Committee, and it references parking; and I think the project is going to do 17 covered stalls and 2 visitor parking. And I was curious as to what the applicant's response to that letter was in light of the applicant's background report. There is no page but it begins, I guess when it addresses the Special Management Area Major Use Permit Application, Section 3-N, and it talks about "the current assessment of traffic conditions along Alii Drive can be described as congested and traffic slowing is exacerbated by the prevalence of shoulder parking along the Drive."

KILGORE: Just for the record, we are fine with changing the FIRM note to FEMA. And with respect to the parking, the actual latest updated drawings, per Planning Department's recommendations, where we have 15 covered stalls and – I'm sorry – 13 covered stalls and 2 that are not underneath the structure. That is reflected on both the colored and uncolored plans there. And it is for aesthetic purposes and practicality. It's really the max meal that we can get on that site. For the current ordinances, the parking ordinances, we're required to have 13.25; we have

run up to 14 stalls. So we were more than happy to try to get the extra 3 in there for 17, but the Kona Traffic Safety Committee was really shooting for, I think, 2 per unit, so 22. Theoretically that's possible if we utilize tandem parking along the southern edge of the site at 14, 15, 16 and 17 listed as stalls there, but from a practical standpoint it's extremely difficult and not very pretty to look at. There is a revision to the parking ordinance that's pending that would further complicate the issue. But at this point in time we'd like to run with the 17 stalls that we've provided.

RHO: I'm not clear on that. You said 13 covered?

KILGORE: Yes. There is a dash line on the site plan that indicates the extent of the upper floor, and our current -. We have 2 stalls on the north side and 2 stalls on the south side that are actually half-covered.

RHO: And that comes out to 17.

KILGORE: Total 17.

RHO: How many are visitor?

KILGORE: Well, one could assume 3, if the ordinance requirement is 14. The 2 out front on north and south sides that was 4 total.

RHO: So for residents you have 14.

KILGORE: Yes. I mean we could, that would be subject to the, I guess, CC&Rs of the condominium, but we think that, well, without getting too obligated, delete but we could probably provide 2 visitor parking or three, yeah.

YEH: Yeah, I think part of the – if I can add a little bit to the discussion – but part of the demographics for the ownership of the units, there is a good chunk of owners who will be like second home owners who probably won't have 2 cars per unit. And from a practical standpoint, I think, you know, if experience really shows that parking is an issue, you know, as you get all these units sold and occupied or used, there always is going to be a natural push. Let's say the association of owners, they hear that, hey, we don't have enough parking for our guests or visitors, from a real practical standpoint or for the owners, they will probably do what they can to try to squeeze more parking on there. But for right now even where the way the footprint is, I think from an aesthetic and design standpoint, it is believed that that number of stalls is sufficient. And we have some disagreement with the current parking ordinance even in terms of how we get to the numbers that they do. I don't know if there's really any study that's been based, or predicated for these new numbers that are coming out now. So I think given the current code requirement of 1.25 per unit and then the additional I think 3 stalls that's going to get put in, I think it's believed to be sufficient at this time. So I think that's just the basic answer that we can provide at this time.

KILGORE: And in the historical reference the previous estimate had 12 units and 16 parking stalls, and we have 11 units and 17 stalls.

DARROW: If I can bring a matter to the Planning Commission's attention, in the background report it references 17 covered parking stalls and 2 visitor parking stalls; the reason for that is in the application on 3-B where it talks about detailed written description, it identifies 17 covered parking stalls one of which will be handicap accessible and ADA van compliant in addition to visitor parking stalls. So that's why I think the Kona Traffic Safety Committee had come up with the 19 stalls, as well as ourselves.

KILGORE: That's correct. We actually had a different parking layout originally that accessed the parking internally from the outside and north and southern edges, and that was deemed to be impractical. And so we have a central drive-out, 24-foot wide, with standard parking stalls on either edge of it now, which did reduce the total stall count by 2.

WATANABE: Are there any other questions for the applicant? Okay, now as I understand it, we have a procedural issue also, I mean in spite of all this discussion. And I believe that is related to notification. So would you care to comment on that?

YEH: Yeah, well, let me see, from a purely legal technical standpoint the Rules do seem to allow the Commission to render a decision without the notice, rendering that decision invalid. From a practical standpoint there may be some issue as to whether or not a fuller opportunity should be provided to the public to provide input. I think that's kind of up to the Commission's discretion. Obviously, from our standpoint we would like to see the Commission say yes today; but we also understand that there may be some concerns about the ability to give more notice to all of the owners that should've been given notice before. As I understand, there is a possibility we can be put on the December, I think December 12<sup>th</sup>, agenda that's coming up, that I think would be acceptable to the applicant, if the Commission desires to continue the hearing to that date. And then we can try to, you know, supplement the notifications that have gone out by providing to the other owners, but we are fine either way.

WATANABE: Okay, thank you. But it's my understanding that when you provide notice, there has to be a 20-day period following the notice. Is that correct? So I don't know if that's going to meet the December 12<sup>th</sup> meeting date. Is that, am I correct in that, Mr. Torigoe?

TORIGOE: Yeah, basically under the SMA Permit rules, the notice should be given not less than 20 calendar days prior to the date of the hearing.

YEH: If we gave notice on Monday, the 19<sup>th</sup> or Tuesday, the 20<sup>th</sup>, that would still give us 22 days, and that including mailing, you know, assuming there is a two-day period to receive, we're still within that 20-day period.

HAYASHI: I guess this is a question for legal counsel, your counsel, if we were to continue this matter to December 12<sup>th</sup>, do we need to publish the paper, the new public hearing notice 20 days prior to the meeting date? Or since it's a continued hearing, can we use a lesser -?

TORIGOE: Yeah, I think basically as I've said in the past, as long as you've done the initial one, you know, with a long notice period, that subsequent ones are, it's not necessary as far as publishing goes. But just to clarify, do we have actual neighbors within the geographical radius that should have gotten notice that have not gotten notice?

YEH: The answer to that, I believe, is yes.

YUEN: Mail notice, yes.

TORIGOE: Mail notice, yeah.

YEH: Yes.

TORIGOE: So, you know, we would obviously recommend that those people do get timely mail notice to prevent the possibility of their coming in and claiming that they were denied the right to come in and intervene.

HAYASHI: If the applicant needs to submit those notification 20 days prior to the meeting date, that would fall under the 22<sup>nd</sup>. So there would be time for them to notify. It's just a matter of us doing an amendment to the agenda, so that they can notify the surrounding property owners as to the time of the meeting.

WATANABE: Is it then agreed that it's, potentially we could continue this matter to December 12<sup>th</sup>, the next Kona meeting?

KILGORE: Sure.

WATANABE: Let me ask counsel then that, seeing that the applicant has acknowledged that's possible, do we, I guess we do need a motion from the Commission to that effect, yeah?

TORIGOE: Well, you know -.

WATANABE: So that the applicant would have the opportunity to provide a public notice.

TORIGOE: Although, you know, again this is under Rule 4, Contested Case matter, the presiding officer has the authority to continue a matter. If you want to take a motion, you can, but you know, I think under Rule 4 you are able to just continue it.

WATANABE: Well, what's your pleasure? Anybody wants to make a motion, or -?

IWASHITA: We'll rely on you, Mr. Chair.

WATANABE: Okay, then in light of the discussion, then I would suggest that we continue this to the December 12<sup>th</sup> meeting, and I hope that you would then be able to show that you did provide disclosure.

YEH: We'll make every possible effort to do the right thing, yes.

WATANABE: Thank you. Are there any objections that this will be continued to the next -?

DOMINGO: No objections.

RHO: I don't -.

WATANABE: For the record?

RHO: I don't have any objections, but I did want to, I thought we were going to proceed a little bit further, so I reserved my comments. And if it's okay with the Chairman, I'd like to share my comments, so that – I'm assuming that we're going to vote for this motion – that at the next meeting the applicant is prepared.

WATANABE: Oh, by all means then, yes.

RHO: I just wanted to share a few things. One is that I have serious concerns about the 20-foot setback, that's No. 1. No. 2, I have serious concerns about the parking, especially in light of our last – I think it was our last Kona meeting, it might not have been the last – it was the D-Bar case. Part of the reason for it being held up as long as it did, I think, was the parking; and they came up with a solution. And I think, if I may say this, that part of the reason why it was successful was because of the parking changes that they made. I don't think this case or this applicant is any different from D-Bar, even though D-Bar was considerably larger. But this project is in a place where parking is at a premium just as D-Bar was or is, White Sands, Magic Sands. This is at the Banyan Tree surfing spot. So I'll just leave it at that. They are -.

WATANABE: Then I take it your recommendation -.

RHO: Concerns that I have.

WATANABE: Yeah, then I take it your recommendation is that they attempt to revise the plan to put in it as many parking stalls as possible, or at least be prepared to explain why it's not -?

RHO: Yes.

WATANABE: Thank you. We got that. Okay, so then it has been decided it's going to be continued. You may be seated. I guess we'll see you at the December 12<sup>th</sup> meeting.

YEH: Thank you, Mr. Chairman and Members of the Commission.

KILGORE: Thank you.

The discussion ended at 11:23 a.m.

Respectfully submitted,

Noriko Sauer  
West Hawaii Secretary