

PLANNING COMMISSION
COUNTY OF HAWAI`I

HEARING TRANSCRIPT
DECEMBER 2, 2004

A regularly advertised hearing on the application of **STEVE HOLMES (SMA 04-008)** was called to order at 9:55 a.m. in the Hapuna Beach Prince Hotel, Hau/Lehua Room, 62-100 Kaunaoa Drive, Kohala Coast, Hawai'i, with First Vice-Chair Earl Fujikawa presiding.

PRESENT: Earl Fujikawa ABSENT AND EXCUSED: Fred Galdones
C. Kimo Alameda René Siracusa
Jeffrey McCall William Graham
Francis Smith
Hannah Springer

Ivan Torigoe, Deputy Corporation Counsel
Christopher J. Yuen, Planning Director
Norman Hayashi, Planning Program Manager
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner
Kiran Emler representing Department of Public Works

And approximately 6 people from the public in attendance.

APPLICANT: STEVE HOLMES (SMA 04-008)

Continued hearing on the application for a Special Management Area (SMA) Use Permit to allow the conversion of a single family dwelling into a 3-unit multiple family residential structure and related improvements. The 5,419-square foot property is located 230 feet east (mauka) of Alii Drive and Kahaluu Beach Park, Kahaluu Beach Lots, North Kona, Hawai'i, TMK: 7-8-14:41.

FUJIKAWA: We're on Agenda Item No. 2, correction, Item No. 2. It'll be Steve Homes on a Special Management Use Permit No. 04-008, again to -, this is a continued hearing. And the Applicant is asking for a Special Management Area Use Permit to allow the conversion of a single family dwelling into a 3-unit multiple family residential structure and related improvements. Staff?

DARROW: Thank you, Mr. Chairman. If I may direct your attention to the location map, this is again a continued hearing for Steve Holmes. He is requesting an SMA permit to convert his single family dwelling into a three-unit multi family residential unit.

EXHIBIT B

At the previous hearing, Commissioner Graham had asked that the Applicant look into the possibility of connecting to the private sewer system. The Applicant has made an effort. There's been a letter that's been submitted by the Applicant and also in regards to the response from the Keauhou Community Services regarding the lack of probability of hooking up to the private sewer system.

The area of this actual application is within the North Kona District. This white line running along the ocean in a north-south direction is Alii Drive. This is where it comes down from Keauhou. And we have the red dot which identifies the area of the application just across from Kahaluu Beach Park. The site plan identifies the access over the perpetual easement access coming from Alii Drive, and this is the footprint of the proposed three-story multi-family dwelling which has been constructed as a single family dwelling.

The Planning Director has recommended approval of this request, and we do have a simple modification to Condition No. 4 that might have -, that's been passed out to the Commission, and what we've done is just changed the words at the end, or upon connection with, we delete the words "the County sewer system," and we include "an approved sewer system." So that way -, because in this area we were looking at a private sewer system.

FUJIKAWA: Okay. Any questions, Commissioners, to the Staff?

DARROW: I have one more thing I need to -.

FUJIKAWA: You have one more? Go ahead.

DARROW: Yes, sorry about that. We also received a letter from the Mokuaikaia Church stating their objections to the application, and we have received a response from the Applicant regarding that letter. And just this morning, we have received a letter from a lady named Ellen Kjos, and that's been handed out to the Commission regarding her objections to the application.

FUJIKAWA: Commissioners, any questions? If not, will the Applicant or his representative please step forward. Kindly raise your right hand, please. Do you swear to tell the truth on this matter now before the Hawai'i Planning Commission?

MOOERS: I do.

FUJIKAWA: Please state your name and your address.

MOOERS: My name is Greg Mooers. My address is Box 1101, Kamuela, Hawai'i.

FUJIKAWA: You may proceed.

MOOERS: I have not had an opportunity to review the letter that just came this morning, Mr. Hayashi just gave it to me, but I can recount the situation regarding the sewer. Commissioner Graham had requested that we explore the opportunity of connecting to the private sewer system in Keauhou, so I contacted the company and they indicated that they were not able to provide service in that area. I received a letter from Joe Spencer, which I passed along to the Planning Department. I also contacted Commissioner Graham and asked him if there was anything else he wanted me to do as far as pursuing another option. He said no and just requested that I send a copy of that response to Mrs. Kjos, which I did.

FUJIKAWA: So are you clear with everything right now, Mr. Mooers?

MOOERS: Yes.

FUJIKAWA: Okay. Any more time to discuss with your client?

MOOERS: No. No, my client unfortunately is ill and on the mainland. I was hoping that Mr. Holmes would have been here for the first hearing but unfortunately he was diagnosed with cancer and is undergoing radiation treatment in Oregon right now.

FUJIKAWA: Do you have any questions with that?

MOOERS: No, I have no questions.

FUJIKAWA: You have no questions? Are you done? Okay. Commissioners, do you have any questions with the Applicant's representative? Springer?

SPRINGER: Perhaps not only for the Applicant's representative but also for the Planning Director. In both the correspondence that we received this morning and the correspondence from Mokuaiakaua Church, the matter of traffic and parking have been discussed, and I'm wondering if approved, if the traffic would be greater than if the building were fully occupied by family members.

YUEN: Well, that's hard to predict, because it really depends on what the people are doing. There's no real proof or real reason why it would be that much different between three, I think what they're proposing is three units with a total of five bedrooms versus the one unit with five bedrooms that they get without an SMA permit. A lot -, when you get down to actually how much traffic happens, a lot depends upon people's own lifestyle and habits. You would say as a matter of attendancy, there perhaps would be a bit more for three different families, particularly if they, if they're both working couples versus a family that had young children who weren't driving, but that on an individual level it's very hard to tell. In any event, we -, I really could not look at the difference between one unit and three units as being a significant difference in the level of traffic in the area.

As far as parking, we would require, there is a standard of three -, of 1.25 parking units per -, parking stalls per unit for a multi-family, which would equate four for this building. Whether you would wind up with more cars and more need for parking is a little bit hard to say. On the other hand, with the three, we would enforce having four parking stalls, whereas on a single family, we don't enforce any parking, any particular parking area at all.

FUJIKAWA: Is there any other question? Commissioner Springer?

SPRINGER: Yes, just the Kona Traffic Safety Committee recommended the provision of additional parking on the property. Is that possible?

FUJIKAWA: Director Yuen?

YUEN: It's -, I think actually it's going to be -, it's tough to do on this site. The site is really quite small. I'm -, and as far as our recommendation, a couple of things. Number one, we are dealing with an SMA permit. Our conditions have to be tied to the environmental and ecological effects of the project. It would be -, I think it's difficult to say in this case that the level of traffic involved in going from one unit to three units creates a significant environmental or ecological effect in the Special Management Area or that the possible lack of parking would create such an effect. That's one point.

And the second point is that if we, we think that 1.25 is inadequate, these are the kinds of things that I prefer to do on an overall level rather than on a particular applicant, particularly on an SMA permit and say, well, you need more. We actually see now some multi-family developers coming in with more off street parking than required simply because they know that their clientele does tend to be two-car families, so it's something that we can look at. As I say, I would rather not do it on Mr. Holmes' SMA permit.

FUJIKAWA: Go ahead, Springer.

SPRINGER: So if I understand the Planning Director, this matter of sufficiency of parking may be taken up at a policy level rather than in this particular application?

YUEN: I can't promise that we will, but if we were, that's how I would rather do it. I'd rather say, rather than the relatively few that happen to come in for SMA permits or even when you have a multi-family zoning situation, rezone come in, if we're going to say that 1.25 is not enough, then we ought to change the Code.

SPRINGER: Thank you. And Mr. Chair, I wonder if the Deputy Corporation Counsel can remind us of -, with regard to the SMA application permit process, the -, remind us of the Topliss, I believe it is, decision and how that -, we should take that into consideration.

FUJIKAWA: Okay. Mr. Torigoe.

TORIGOE: Thank you, Mr. Chairman. Again, you have been advised of the Topliss vs. Planning Commission Intermediate Court of Appeals of the State of Hawai'i decision previously, which basically says that the issue of traffic in and of itself really should not be a factor in an SMA decision unless it rises to the level of having some kind of adverse ecological effect or effect on some factor that is relevant to an SMA decision, and I think the Planning Director has already alluded to that.

FUJIKAWA: Okay. Thank you. Thank you. Is there any other question, Commissioners, with the Applicant's representative? Mr. McCall.

MCCALL: Just because it's not really quite clear on the tax map key, the perpetual easement that they use for access, does that, like on the site map here, does it end where they show it? I mean it doesn't continue on past their property to any other, to access any other properties?

MOOERS: No, it does not. No.

MCCALL: Thank you.

FUJIKAWA: Any other questions? Commissioner Alameda?

ALAMEDA: No, but perhaps a clarification for the Director. So at what point then do we consider traffic impacting the environment? What are some queues?

YUEN: On an SMA permit, if it was to the point of interfering with public access because the congestion got so bad, if there was a -, if it created -, if it was at the level that it created problems with tsunami evacuations because mitigating coastal hazards is part of the SMA process, those would be some of the possible issues. I would not say -, I'd say that at some point and in some locations the traffic congestion and traffic issues and roadway adequacy might be a significant environmental or ecological effect that we could take into account and use in denying or approving an SMA permit or putting special conditions on it. This one is definitely well below that line, involving only, as it does, only an additional two units.

ALAMEDA: Thank you.

FUJIKAWA: Is there any other question, Commissioners, for the Applicant or the Staff? If not, we do have a person to sign in to testify. You may stay right there, Mr. Mooers. Ellen Kjos, please step forward. You may sit. You may be seated. Please raise your right hand.

KJOS: I'm sorry, I can't hear you.

FUJIKAWA: Please raise your right hand. Do you swear to tell the truth on this matter now before the Hawai'i Planning Commission?

KJOS: Yes, sir, I do.

FUJIKAWA: Thank you. Please state your name and your address.

KJOS: My name is Ellen Kjos. Oh, I'm sorry. My name is Ellen Kjos, spelled K-j-o-s. I live at 78-6703B Alii Drive.

FUJIKAWA: Thank you. You may start with your testimony.

KJOS: I would like to read the statement into record that I gave you earlier, if I can see it and read it.

"I gave testimony at the October 1st, 2004 meeting in protest of Steve Holmes' application for a special permit to turn a single family dwelling into a triplex. It was my first meeting and I was not well prepared. By the end of the meeting I knew that none of you had ever actually been to inspect the site nor had you been given enough information as well to be prepared. Please look at the pictures I have supplied to you and you will have the background information that you may need to rule on this application in an educated manner.

1. This is a picture of Mr. Holmes' dwelling. It's still under construction after all these years.
2. The garage and parking area also showing the erosion of the land caused by rain and disrepair. That's number two.
3. Erosion and disrepair of Mr. Holmes' portion of the driveway as viewed looking makai to mauka.
4. A relatively flat area behind the home (which is not owned by Mr. Holmes, however is used by him). The white rock pointed out by the arrow shows where the erosion begins.
5. Mr. Holmes' driveway as viewed mauka to makai.

"My objection to this special permit is not that the home in question has and been intended to house more than one family, or that the end run around the process may gain approval, but that the added traffic this usage will generate (if the SMP is granted) will complicate and aggravate an already overworked and fragile environment that directly endangers our most prized possession, that's the ocean and more specifically Kahaluu Beach Park.

“All the homes in our little area have cesspools with the exception of the Mr. Holmes. He has a septic system (which is not large enough to handle two 2 bedroom/2 bath units and a one bedroom/one bath).

“Ideally, I would like to see a joint effort among all the owners to trench in a sewage pipe big enough to handle all 5 homes and hook up to the Keauhou treatment plant which is located just opposite the driveway entrance on the makai side of the road. (Marked by an arrow at the top of Page A, Picture A.) Paving the easement with precautions taken to prevent run off pollution would ideally be the next step in these preventative measures. Due to the absentee ownership of all the properties in question, that cooperation is probably never going to happen unless it is forced upon us by the county.

“During the October 1st meeting, all of us heard Mr. Holmes’ representative, Gregory Moores, testify that ‘it was the consensus of the neighborhood,’ and that’s a direct quote, that my husband and I should be the ones to put all the money and labor to try to keep the driveway repaired and in a non polluting and drivable condition because our property is used as a vacation rental. I assume he meant that we derive income from that property, which is very true. I would not have the time nor the money to devote to trying to keep the erosion and pollution at bay if I were not getting this income. His client, Mr. Holmes, has also had various different families occupying his home over the past few years. The last 2 families just moved out in October. The property to the south of us is owned by Ilene Tredway, a lawyer from Hilo. This is also a vacation rental unit affording her additional income as a result of those rentals. The property directly across the easement to the north of our home is owned by a California couple, James and June Beck, and has three units in it. The home is owned -. Let’s see. Two of which are rented on a month to month basis. The 5th property located at the front of the drive, is owned by the Lang Trust and managed by Clark Realty and is also income property rented on a month-to-month basis. None of these renters has any interest in helping in any way to keep anything done in the neighborhood outside of their own little living space. Therefore the drive way continues to deteriorate and pollute with each ensuing rain, as it did on October 4th. Those are the pictures that are labeled A, B, C.

“These pictures were taken during that rain. I went down to Alii Drive as soon as it became light enough to take pictures, but the traffic (that begins at 4:00 AM) had already disturbed and carried the evidence all over the road. As you can see by the photographs (B and C) that even though it is relatively light rain, as it was on October 4th, the debris had washed all the way across the centerline of the road. This is the typical outcome after each and every rain. My husband I spend half a day each time it rains with shovels and brooms scraping the debris back to the road side where we scoop it up and carry it via wheel barrels back up the hill. I spend at least a couple of hours a week working on the sides of the drive trying to fortify and beautify the area.

“We spend on average of \$1,500 to \$1,000 per year on equipment and rock with never the offer of either financial or manual help being given. In fact, there has never even been a simple thank you uttered by any of the homeowners or renters.

“As I have stated before, my objections to this home being used in a manner different than what it was first permitted to be used, only pertain to the fact that none of these ecological issues will ever be dealt with unless the granting of the SMP is denied at this time.

“You are the only ones who have the power to compel solutions to protect our environment and subsequently protect our ocean waters and parks. I urge you to deny this permit.
Sincerely, Ellen Kjos”

FUJIKAWA: Thank you. Commissioners, any questions with the Applicant, the testifier, I’m sorry?

SPRINGER: Mr. Chair?

FUJIKAWA: Springer?

SPRINGER: I don’t have a question for the testifier, but I do have a question piqued by the testimony. I don’t believe that it’s the County Planning Commission’s task to force cooperation in the neighborhood, but I am concerned with the discussion of erosion. And to the Planning Director, if erosion becomes a nuisance or a safety issue, at what point might the Planning Department or another agency intervene?

FUJIKAWA: Planning Director?

YUEN: Let me pump this one to Ki Emler because I think that the DPW, it’s more the DPW’s role when there’s gravel wash-off from private driveways onto County roads, and does DPW do anything about that in particular?

FUJIKAWA: Mr. Emler?

EMLER: The question is does the Department of Public Works take action regarding erosion problems that impact our County roadways? In my four years of experience with the Engineering Division, we’ve never taken direct action to -, upon any individual landowner regarding an erosion problem from their residential or other driveway that I can recall. Our Highway Maintenance Division has regular programs of cleaning up, that sort of thing, and unfortunately, I see the homeowner has testified that she does it on her own, perhaps, you know, we appreciate her effort. I have given this some thought and tried to look in our code to see if there’s anything that we could do about it, and I haven’t found anything in our code. I could do a little more research again and see if I could find something that I could enforce that issue under but so far I haven’t found it.

FUJIKAWA: Thank you. Mr. Director, I have a question. Can this be applied toward the condition that the Applicant have to maintain it in such a way that there won’t be any runoff into the public road?

EMLER: Can I add something?

FUJIKAWA: Go ahead, Mr. Emler.

EMLER: An individual property owner has a responsibility to maintain their driveway approach on the County right-of-way. I'm not sure if we can go ahead and try and enforce an erosion problem on that basis, but I can check on that.

KJOS: Sir?

FUJIKAWA: Go ahead.

KJOS: At the present time, that perpetual easement is still in the, still titled in the name of Keauhou Investment Properties or whatever they call themselves now. It has never been turned over to the individual owners.

EMLER: That would be an issue. The ownership is always an issue. Who would we ask to do the maintenance on this? Who owns the easement? It would be the owner that we would have to enforce it on. And so I'm not sure that Mr. Mooers' client actually owns the easement.

FUJIKAWA: Right now, Mr. Emler, there is a section with the County that if you are a property owner, you can't have your debris run off into your neighboring property, right, your water? In other words, you can't have your water run into your neighbor's property.

EMLER: If the water is from a natural runoff condition, you know, there's always going to be some runoff, and if it's from a natural condition, we generally would not -, say a pre-existing drainage condition, we would not take action on something like that. If it's generated by the development, if there's a complaint, we will ask the property owner to address it, but as far as how, whether a code is available to do that, again, the code seems to be rather vague and weak on that issue. In other words, the grading, the grading ordinance -.

YUEN: Just to amplify on that, just in general, one private property owner is allowed to pass the natural flow of water across their property into the next property. You're not allowed to divert the flow from your property into another person's property. You -, in the course of subdivision and other land use approvals, the County has conditions that you're not supposed to worsen the flow, in the natural flow of water across the other property.

And in response to your earlier question about erosion control, in general, the Planning Commission, we -, yes, we can put conditions that are intended to prevent erosion into the ocean, certainly, from -, that are on -. You can put conditions like that on an SMA permit. I'm not sure, from what we're hearing, whether we're talking about that or we're talking about

a matter more of convenience for the road itself but, in general, yes, you can put erosion control conditions on an SMA permit.

FUJIKAWA: Thank you.

MOOERS: Mr. Chairman?

FUJIKAWA: Is there any question, Commissioners, of Mr. Emler?

MOOERS: Mr. Chairman, could I respond?

FUJIKAWA: Go ahead, Mr. Mooers.

MOOERS: First, I point out that Mrs. Kjos did testify that the flooding began behind Mr. Holmes' property, not on his property, so this I think, as Mr. Yuen pointed out, the issue is are you, you know, you cannot channelize, increase the flow or the velocity of the waters that crosses the property.

The second thing, it seems very clear to me we're talking about a driveway that is shared by a number of properties who are all using it for other than single family dwellings. They are using it for rentals or apartments or vacation rentals, etcetera. And it seems highly unfair to deny Mr. Holmes that same use of the property because the driveway's in disrepair. In a perfect world, the neighbors would get together and pave the driveway and share the expense and share the maintenance of that. But any condition that you put on Mr. Holmes is not going to arrive at that conclusion because there is no obligation by any of the property owners other than Mr. Holmes to comply with the conditions of this SMA permit. I do not believe that this is an environmental issue. I do not think it's an SMA issue, having a bad driveway. I think it's an issue of neighbors who don't particularly get along very well, and it's unfortunate that Mrs. Kjos has taken on the responsibility of maintaining the driveway, and that doesn't appear to be fair. At the same time, I don't know how you can condition an SMA permit to address that problem.

FUJIKAWA: Any questions, Commissioners, with the Staff or the Applicant or with Department of Public Works? If none, is there anyone else in the audience who would like to testify on this application? There's none.

SPRINGER: Mr. Chair?

FUJIKAWA: Springer?

SPRINGER: I move that the Hawai'i County Planning Commission approve the application of Steve Holmes for a Special Management Area Use Permit No. 04-008 for the reasons and the conditions as recommended by the Planning Director, including the revised Condition No. 4.

MCCALL: Second.

FUJIKAWA: It's been moved by Commissioner Springer and seconded by Commissioner McCall that this application, Use Permit No. 04-008 be accepted. Is there any questions? None? So, Commissioner Springer, we do not put on the added condition of the erosion, right? Nothing? Okay, none.

SPRINGER: Thank you.

FUJIKAWA: So it has been moved and seconded. Staff, you may do a roll call.

DARROW: This is just for clarification, Mr. Chairman. This includes the revised Condition No. 4? Okay. And Commissioner McCall was the -, seconded that motion, is that correct? Okay. Thank you. Commissioner Springer?

SPRINGER: Yes.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Nay.

DARROW: I'm sorry?

ALAMEDA: Nay.

DARROW: Commissioner Smith?

SMITH: No.

DARROW: And Mr. Chairman?

FUJIKAWA: Aye.

DARROW: The motion does not pass, three to two.

FUJIKAWA: Motion has been rejected.

YUEN: This is the first time we voted on this, correct?

FUJIKAWA: Yeah, correct.

YUEN: Okay. Fine. So what we will -, because it's neither been approved nor denied, we'll schedule it for re-hearing at the next Kona meeting.

FUJIKAWA: Okay. So the Director has just stated the fact that it will be re-heard for the next Kona meeting. It hasn't been rejected or denied, accepted or denied.

DARROW: Norman, would we be able to place this on the next Kona agenda?

FUJIKAWA: Mr. Torigoe, you have a question?

TORIGOE: Yes. Mr. Chair, I just wanted, for the record, to make sure that the applicant is in agreement with continuing for another vote at the next Kona meeting.

MOOERS: Yes, we are.

FUJIKAWA: Okay. Thank you. Go ahead, Mr. Hayashi, you have a -?

HAYASHI: Yes, the Director already indicated that we'll have it on the next agenda.

FUJIKAWA: Are we okay?

HAYASHI: Yes.

FUJIKAWA: We're okay for the next Kona hearing? Thank you.

The discussion ended at 10:29 a.m.

Respectfully submitted,

Janet L. Kama, Transcriber