

PLANNING COMMISSION
COUNTY OF HAWAII

HEARING TRANSCRIPT
DECEMBER 2, 2004

A regularly advertised hearing on the application of **SCD KAHAKAI, LLC (SMA NO. 304)** was called to order at 9:30 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
C. Kimo Alameda
Jeffrey McCall
Francis Smith
Hannah Springer

ABSENT AND EXCUSED: Fred Galdones
René Siracusa
William Graham

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 10 people from the public in attendance.

APPLICANT: SCD KAHAKAI, LLC (SMA NO. 304)

Continued hearing on the request to amend Special Management Area Use Permit No. 304 by increasing the number of allowable residential lots from 98 to 101. The area involved includes the Kahakai Estates Subdivision situated along the southwest (makai) side of Kuakini Highway and north-northeast of Kahakai Elementary School, Puapuaa, North Kona, Hawai'i, TMK: 7-5-20:78 (formerly portion of 7-5-20:portion of 1).

FUJIKAWA: This is a continued hearing on SCD Kahakai, LLC (SMA No. 304). Continued hearing on the request to amend Special Management Area Use Permit No. 304 by increasing the number of allowable residential lots from 98 to 101. The area involved includes the Kahakai Estates Subdivision situated along the southwest (makai) side of Kuakini Highway and north-northeast of Kahakai Elementary School. Staff?

DARROW: Thank you, Mr. Chairman. Good morning, Members of the Planning Commission. At this time, I'd like to bring to your attention that on November 1st, the Planning Department received a letter from Sandra Song, representing the Petitioners, Kevin Cawley and Richard Bosselmann, stating that they are withdrawing their request for a

EXHIBIT A

contested case hearing. They have come to a settlement agreement, and at this time, if the Commission could move to accept the withdrawal, and then we can move forward.

FUJIKAWA: Commissioners, you do have the letter, a copy of the letter. Would you accept the withdrawal?

SPRINGER: Mr. Chair?

FUJIKAWA: Yes.

SPRINGER: I move that the Hawai'i County Planning Commission accept the withdrawal of petition for standing in the contested case hearing.

FUJIKAWA: A motion has been made to accept the withdrawal by Commissioner Springer. Do I hear a second?

ALAMEDA: Second.

FUJIKAWA: Second by Commissioner Alameda. Is -, do you need a roll call or just a voice -?

DARROW: Norm, would this be a roll call or a voice? Voice would be okay?

HAYASHI: Take a roll call.

DARROW: Okay.

FUJIKAWA: Okay, let's do a roll call. Staff?

DARROW: Thank you, Mr. Chairman. I'm sorry. It was moved by Commissioner Springer and seconded by -.

FUJIKAWA: Commissioner Alameda.

DARROW: Commissioner Alameda, okay. Commissioner Springer?

SPRINGER: Yes.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Smith?

SMITH: Aye.

DARROW: And Mr. Chairman?

FUJIKAWA: Aye.

DARROW: The motion passes five to zero.

FUJIKAWA: Thank you.

DARROW: If I could direct your attention to the location map, just to refresh your memory regarding the location of this application. Again, this is a continued hearing for SCD Kahakai. They are requesting an amendment to Special Management Use Permit No. 304 to increase the lots from 98 to 101. The location of this application, this white line here represents Queen Kaahumanu Highway running in a north-south direction. Below that is the Kuakini Highway. The red line that is located on that is the SMA line. The location of the application is within this area identified in yellow, which represents the zoning of RS-15 Single Family Residential and, more specifically, this lot identified in red, which is the area in consideration for the amendment. The area is, again, identified as Kahakai Estates Subdivision.

The -, just to bring you up to speed on what had occurred, the Petitioners met with the Applicant, and they had come to a settlement agreement. One condition that I'd like to bring to your attention is Condition 2 in the joint statement that states that SCD Kahakai will protect the view planes of the Intervenors' residences by not constructing any building or structure on each of the three lots that will be subdivided out of Tax Map Key 7-5-20:78, the height of which, except for any chimney, exceeds a point described as a horizontal plane extending in a westward (makai) direction over Tax Map Key 7-5-20:78, measured from the center of Nakukui Drive, as depicted on the diagram attached therein. So the agreement is that the houses that will be developed on the lot will not rise above Nakukui Drive. In turn, the Petitioners have withdrawn their request.

The Planning Director is recommending approval of the request, but there have been several conditions that have been added that I want to bring to your attention, and one that was just brought to our attention this morning, as well. In the Recommendation, you will notice that there are four amended, three amended conditions. Condition No. 4, where we have added within five years from the effective date of this amendment. Condition No. 14, all new lots created by this amendment shall connect to the County sewer system. And No. 15, which states that the Applicant shall comply with the agreement of the joint statement between SCD Kahakai, LLC and Richard Bosselmann and Kevin Cawley.

This morning, Ki Emler of the Department of Public Works had asked us to also add a condition, an addition to Condition No. 8 of SMA Use Permit No. 304, and this has to do with the right-of-way of the Alii Highway. And if I could get to that. Condition No. 8 of SMA 304 states that upon the determination of the required right-of-way of the Alii Highway by the Department of Public Works and the completion of the right-of-way subdivision by the County, the Applicant shall dedicate such right-of-way and any resulting remnants of the subject property to the west of the right-of-way in fee simple to the County upon its request. The Applicant shall make fair, its fair share contribution for the proposed Alii Highway project.

We will be adding to this Condition No. 8 the following. Upon the proposed subdivision of Lot 100, which is identified in red on the location map, and also identified in blue on the site plan, an additional road lot shall be subdivided according to the most current Kahului to Keauhou Alii Highway right-of-way map available to -, from the Department of Public Works for the Kahului to Keauhou Parkway project and dedicated to the County in fee simple upon request. Okay, I think -.

FUJIKAWA: You're done?

DARROW: Yeah, thank you.

FUJIKAWA: Is there any questions, Commissioners, to the Staff?

SPRINGER: Question.

FUJIKAWA: Commissioner Springer.

SPRINGER: Jeff, just for clarification with regard to that statement regarding the most current map will be used as a base map. Am I hearing you correctly, that the most current base map of the Kahului to Keauhou Parkway?

DARROW: Correct.

SPRINGER: So that implies some sort of timeframe?

DARROW: It might be better -.

SPRINGER: Because the maps may be changing?

DARROW: If I could defer this question to Ki Emler.

SPRINGER: Okay.

EMLER: Commissioner Springer's question is regarding the highway maps and whether we have current mapping or when we may obtain a map of the additional right-of-way that's needed, and I've already supplied the Applicant's representative with a copy of that current map so they understand exactly what we are asking for.

SPRINGER: May I?

FUJIKAWA: Go ahead.

SPRINGER: Might that map change? I'm just concerned that if an agreement is made regarding what is now the current map, might that map change in the near future and subject the Applicant to undue hardship?

EMLER: Well, I think because we've asked for it to take place in the process of doing the subdivision, we couldn't ask for more than what we've already presented to the Applicant this morning, so for the record, I'm willing to make that statement.

SPRINGER: Thank you.

FUJIKAWA: Were you there, Ki? Is there any question, Commissioner, with Department of Public Works? Ki, I have a question. Whereabout would that be? Can you -, the picture in the back of you, can you point out the location of where we're talking about as far as -?

EMLER: Okay. The additional right-of-way lot that we would want broken out is approximately a 26-foot wide strip paralleling the northerly property line, and then approximately a 10-foot wide strip along the makai side, or that would be the western side of the property. And then coming up the south, returning up the south, southern property line approximately a 9 or 10-foot wide strip approximately I believe about 25 feet long. So just a slimmer property in this area, excuse me, from here down to here.

FUJIKAWA: Just an easement of sorts?

EMLER: It's a -, it would be a road lot, so they would -, instead of subdividing into three lots, they would be subdividing into four lots, in which one would be a roadway lot.

FUJIKAWA: Any questions, Commissioners? Okay, Staff, are you done? Okay. Will the Applicant or the representative please come up forward. Kindly raise your right hand. Do you swear to tell the truth and nothing but the truth to the Hawai'i Planning Commission?

FUKE: I do.

FUJIKAWA: Please state your name and address.

FUKE: Sure. Good morning, Mr. Chairman, Members of the Commission, my name is Sidney Fuke. I'm a land use planning consultant. My address is 100 Pauahi Street, Suite 212, in Hilo, Hawai'i.

FUJIKAWA: You may proceed.

FUKE: Sure. Mr. Chairman, the Staff's report is comprehensive, and we are happy to report that the need for a contested case hearing before this Commission was obviated by a settlement agreement, and that settlement agreement was negotiated by essentially two parties representing the developers, both of whom are here today, Mr. Stanford Carr, he's the developer and the Applicant, and also Mr. Michael Matsukawa, the attorney who represented SCD Kahakai. So we're pleased with the outcome.

As for the additional conditions that the Staff is proposing relative to Conditions 4, 14, 15 and the last one, the proposed amendment to -, based upon Mr. Ki Emler's comments on the Department -, from the Department of Public Works, the Applicant has no objections to them.

I would like to note, however, for the record, that the Condition 15 refers to the Applicant having to comply with the joint statement between SCD Kahakai, LLC and Richard Bosselmann and Kevin Cawley. The - what was passed out, I guess, to the Commission, reflects like the settlement agreement, and attached to that is the -, is an Exhibit 1, a joint statement, and it's our understanding that the reference to Condition 15 refers to the joint statement in Exhibit 1. I state that largely because there is like a numerical error in the settlement agreement but not in the joint statement. In the settlement agreement, there is a reference that the -, as part of the background, noting that the Applicant's proposal was to increase the number of lots from 98 lots to 100 lots, and really it should have been 98 to 101. And also under Paragraph 4, there's a description resulting in a net increase of two lots, and actually it should have been three lots. The joint statement does acknowledge that the subject area was going to be subdivided to create no more than three lots, so it's just the clarification I wanted to indicate to the Commission for the record.

FUJIKAWA: So you want it corrected.

FUKE: Correct.

FUJIKAWA: Commissioners, for the correction, is it acceptable? It has been accepted by the Commissioners.

TORIGOE: Yeah. Thank you, Mr. Chairman. Just maybe since we have Mr. Matsukawa here, would he be able to just, I guess, confirm that it is the numbers in the Exhibit 1 joint statement that will govern rather than what's in the agreement?

MATSUKAWA: Yes, there's a typo on the -.

FUJIKAWA: Before you proceed, Mr. Matsukawa, can you kindly raise your right hand. Do you swear to tell the truth on this matter with the Hawai'i Planning Commission?

MATSUKAWA: I do.

FUJIKAWA: Please state your name and address.

MATSUKAWA: My name is Michael Matsukawa. My address is 75-5751 Kuakini Highway.

FUJIKAWA: You may proceed.

MATSUKAWA: In answer to Mr. Torigoe's question, the answer is yes.

FUJIKAWA: Okay. Great.

TORIGOE: And I also suggest that we specifically identify this Exhibit 1. As it says, the Applicant shall comply with the agreement of the joint statement between SCD Kahakai LLC and Richard Bosselmann and Kevin Cawley, and I suggest that we just say that which is attached as Exhibit 1 to the settlement agreement SCD Kahakai, etc. dated September 21st, 2004. I think the Staff can do that.

FUJIKAWA: Is that okay? Agreed? Mr. Matsukawa?

MATSUKAWA: That will be fine because it'll clarify what Mr. Fuke said.

FUJIKAWA: Okay. Staff, it has been agreed.

FUKE: Okay.

FUJIKAWA: Commissioners, any questions with the Applicant or Mr. Matsukawa? If none, is there anyone in the public who wants to testify on this application? If not, none, I guess we are ready to make a motion.

MCCALL: Make a what?

FUJIKAWA: You have a question?

MCCALL: Yes.

FUJIKAWA: McCall.

MCCALL: Yeah, thanks. I'm not sure to the Applicant or maybe just to clarify for my -. In the new conditions it talks about connecting up to the County sewer system. Is the rest of the subdivision connected to the sewer system?

FUKE: There is a sewer system.

MCCALL: It is?

FUKE: With the Kahakai Estates Subdivision.

MCCALL: Okay.

FUKE: And all of the lots will access, will be basically part of the Kahakai Estates Subdivision, so the direct answer to your question is yes.

MCCALL: Okay. And so I just wondered why we -, it seems like it's fairly obvious. I thought there was a sewer system.

FUKE: Yeah.

MCCALL: For that -.

FUKE: And it's connected, too.

MCCALL: Thank you.

FUJIKAWA: Commissioner Springer, do you have a question?

SPRINGER: Thank you.

FUJIKAWA: Do I hear a motion?

SPRINGER: Mr. Chair?

FUJIKAWA: Commissioner Springer.

SPRINGER: I move that the Hawai'i County Planning Commission approve the application of SCD Kahakai, LLC for amendments to Special Management Area Use Permit No. 304, including the amendments to Conditions 14, 8, sorry, 4, 8, 14, 15, as stated by the Planning Department Staff, and that all subsequent numbers be renumbered.

FUJIKAWA: Do we have a second?

SMITH: Second.

FUJIKAWA: It has been moved by Commissioner Springer and seconded by Commissioner Smith that Use Permit No. 304 be passed. Staff?

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

SPRINGER: Yes.

DARROW: Commissioner Smith?

SMITH: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: And Mr. Chairman?

FUJIKAWA: Aye.

DARROW: The motion passes five to zero.

FUJIKAWA: You will be informed by the County.

FUKE: Thank you very much.

The discussion ended at 9:55 a.m.

Respectfully submitted,

Janet L. Kama, Transcriber