

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
DECEMBER 7, 2007

A regularly advertised hearing on the application of **VERNE WOOD (SPP 870)** was called to order at 1:08 p.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawaii, with Chairman William Graham presiding.

PRESENT: William Graham
C. Kimo Alameda
Takashi Domingo
Alvin Rho
Rene' Siracusa
Rodney Watanabe
Rell Woodward

ABSENT & EXCUSED: Andrew Iwashita
Shelly Ogata

Ivan Torigoe, Deputy Corporation Counsel
Norman Hayashi, Planning Program Manager
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner

And approximately 12 people from the public in attendance

APPLICANT: VERNE WOOD (SPP 870)

Amendment to Condition No. 5 (construction timetable) of Special Permit No. 870, which allowed the development of the Orchidland Trade Center on 2.3 acres of land situated within the State Land Use Agricultural District. The property is located along the north side of Orchidland Drive, approximately 1,600 feet west of the Keaau-Pahoa Highway (Highway 130) and Orchidland Drive intersection, Orchidland Estates Subdivision, Keaau, Puna, Hawaii, TMK: 1-6-10:83.

GRAHAM: Our next item of business is an application, Vern Wood is the applicant. This relates to Special Permit 870, and that permit allowed the development of the Orchidland Trade Center on 2.3 acres of land in the State Land Use Agricultural District. The property is located along the north side of Orchidland Drive, approximately 1,600 feet west of the Keaau-Pahoa Highway and Orchidland Drive intersection, in Orchidland Estates in Keaau, Puna, Hawaii.

We have a couple of things in regard to that. We have an application, a petition for a contested case standing, a petition for standing, excuse me, in a contested case hearing. And we also have a letter from the applicant indicating their willingness to continue the hearing until our next scheduled meeting, I presume. So we won't need to figure out how we want to deal with that. And we have two testifiers, Roger Hawney and Kirstie Goin.

WATANABE: Well -.

GRAHAM: Commissioner Watanabe?

WATANABE: I think generally we're supposed to take the testifiers first, so we might proceed that way. I'm not sure if they're the individuals who are seeking standing in a contested case hearing. But probably if we start there -.

GRAHAM: Yeah, I think that's actually what we have, the testifiers here are the parties involved in the contested case hearing standing petition. So it would seem like that would be our first item of business; and we will take that up. And then once we've made our decision on standing then we'd make our decision on where we'd go with the application. So, Jeff, do you have a little background on this as far as the petition for standing or any other matters that we should know about right now?

DARROW: Well, basically you pretty much summarized what's happening. We have received an amendment request from Vern and Melody Wood to allow a time extension for Special Permit No. 870, more specifically Condition No. 5 which states "Construction of the proposed regional trade center and related improvements shall be completed and a certificate of occupancy issued within four years from the effective date of the amendment." The amendment, at this time this particular condition is coming to pass without construction occurring or a certificate of occupancy. What happened was the applicant did not notify surrounding property owners in the proper manner; and then additionally there are issues regarding this application that they wanted to try to be able to resolve before coming to the Planning Commission. So if we do have a continuance at that time they can be able to take care of proper notification, as well as submit additional information as to how they're going to deal with these issues; and I'm sure the applicant's representative can go into more detail about these issues.

We have received a contested case from the Orchardland Community. It is timely and we did receive a filing fee.

GRAHAM: Okay, thank you.

ALAMEDA: Mr. Chairman?

GRAHAM: Yes, Commissioner Alameda.

GRAHAM: Thank you, Mr. Chair. Is the applicant present or the applicant's representative?

DARROW: Yes.

GRAHAM: Yes.

ALAMEDA: Okay. Okay, I just lost my train of thought. Too much lunch. Sorry.

WATANABE: I have a follow-up.

GRAHAM: Commissioner Watanabe.

WATANABE: Jeff, you mentioned that not everyone was noticed properly. And so does that imply that there could be others who might be interested in filing a contested case?

DARROW: The applicant's representative can probably go into more detail as to what happened with the notification. We were just notified that they hadn't conducted it in the manner it should have been. So it looks like there will be an opportunity to be able, that there may be a possibility for another contested case request to come in.

WATANABE: Thank you.

GRAHAM: Mr. Torigoe, how would you suggest we proceed at this moment to do things in the right order?

TORIGOE: Well, let's see, as you know, your rule generally says the first thing that you need to do is to deal with any applications for a contested cases, and so you do have one. It sounds like a properly filed application. So you could just take that up. I'm not sure if, you know, maybe you should just call up the applicant and the contested case applicants up and see if there's any disagreement as to whether the Association should be awarded standing. If not, that's a pretty easy call. And then I think there's also a request for a deferral, so you can then entertain that, and see if the parties also might want to defer to talk story about it. And there being an apparent deficiency in the notices then, as Jeff was saying, there is the possibility that someone else will also file for a contested case. So in some sense you almost have to defer it to allow for that to happen.

GRAHAM: Good. Thank you, Mr. Torigoe. So maybe the proper thing now is for the three of you to come up to the table and -. So could I swear the three of you in please first. Do you swear or affirm to tell the truth on this matter before the Hawaii County Planning Commission today?

TESTIFIERS: I do.

GRAHAM: Thank you. On the contested case application, the petition for standing, I have the Orchidland Community Association being the entity and President Roger Hawney, I presume that's you, sir.

HAWNEY: Yes, sir.

GRAHAM: You've heard what Mr. Torigoe had to say about where we're at today, that normally what we're going to try to do is sort of grant or not grant standing. And there's a possibility there could be others since notice was not given properly. There's also a possibility that you could work things out with the petition holder, I mean, the Special Permit holder. Would you address those issues for us and make sure we get on the right track? And start with your name and address, please.

HAWNEY: Okay. My name is Roger Hawney. I'm president of Orchidland Community Association. My address is HCR 1, Box 4053, Keaau, Hawaii 96749. My understanding here now as far as the deferral of this, I guess we'd like to go on record with the concerns that you already have a letter addressing our concerns here.

GOIN: You should confirm that they got that.

HAWNEY: And, yeah, can I get confirmation that you received our request?

GRAHAM: Yeah. The basic issue for us now is not substance about the application before us.

HAWNEY: Right.

GRAHAM: But it's about whether you want to proceed with this intervention into a contested case proceeding. In the contested case proceeding that's where the substance of the application will come up.

HAWNEY: Okay.

GRAHAM: And then so normally what we would do is we would consider your application to intervene here today; and we'd ask the landowner, the permit holder, if they object to you intervening or not, and we deal with that first.

HAWNEY: Okay, so, yes, we are requesting to have standing in this. If there is a way that we can get issues resolved with Mr. Wood and his representation that would be fine. But at this point that's where we stand. We haven't had contact with Mr. Wood really about this, or not in any detail. And so we're here today basically to make sure that we do get standing in this. We don't want to have to come back multiple times to be assured that we have standing. And so I guess what I get from you is that you're not really wanting to hear the issues here today, you just want to know whether we really want standing in this or not; and I say we do.

GRAHAM: Right. It also occurs to me that since Mr. Wood's representative would like a postponement till the next meeting if we were to vote today, which we plan to do, on granting you standing or not, if we grant you standing, our normal process would be to decide how we move forward. Like we'll assign the case to a hearing officer perhaps and then have him schedule it and whatever. But if Mr. Wood's representative is asking for a continuation and if you think there is a possibility of working out issues, in

the meantime what we could do, instead of moving forward with a contested case, we could vote on giving you standing today and then just postpone the matter to the next hearing; and then at the next hearing we could decide on going ahead with the contested case, whether you guys have worked anything out, those kinds of issues. So it's up to you, up to the other Commissioners, up to Mr. Wood's representative. We just want to make sure we land on the thing that works best for everybody.

HAWNEY: If there was a way to get Mr. Woods to accept what we have added in, basically we're just kind of revising -. We initially, I think, had a contested case on that, we had conditions that were accepted in the original permit; but that was some time ago.

GOIN: In '94.

HAWNEY: And so now we're, conditions have changed in that time, of course. We have a new design plan approved by the community and basically all we're asking is that our new design plan is followed as part of the conditions of his permit. And that's pretty straight forward. And if he was to agree to that right here and now we would be good with that. But I'm not so sure we're going to get that right now.

GRAHAM: Okay, let me go forward with that understanding. Thank you. Commissioner Alameda.

ALAMEDA: Thank you, Mr. Chairman. I just think maybe some more information about the hearing -. You know, if we were to grant you standing then the next question would be whether or not we're going to put it out to the hearing officer, or we could hear it. But it becomes time consuming and all for us so we usually put it out to a hearing officer; and then there could be a possible cost involved too as well. So it's kind of like a long, it can be a long and drawn out. But that's always an option. But the other option is to reach some compromise, especially if you didn't have a chance to even talk to the applicant or applicant's representative yet. So I would encourage you to go that route first, at least. It's just a thought. Thank you, Mr. Chair.

GRAHAM: Commissioner Watanabe?

WATANABE: Yeah. Might I suggest that we follow-through on deciding on standing. And because notice was deficient I think we're obliged to continue this matter anyway because there would be potentially other people who might want to intervene. And during that process I would assume that the applicant would proceed with perfecting the notice. And at some subsequent meeting we would be able to decide whether we want to take this on by ourselves or maybe this matter will be resolved on its own.

ALAMEDA: Mr. Chair, I've got a question.

GRAHAM: That sounds reasonable to me, Commissioner Watanabe. Yes, Commissioner Alameda.

ALAMEDA: Question maybe for Mr. Torigoe. If the application process was kind of like flawed in the beginning, in other notice wasn't properly given, then wouldn't that make everything after flawed as well, if you will? So how can we grant standing on the application that was given? I mean, the application is not fully complete. So how can we move to the next step?

GRAHAM: Mr. Torigoe?

TORIGOE: Thank you. I'm assuming that the application is complete, except that notice to some of the surrounding property owners was not properly given or fully given. So in that sense, you know, you give the notice so that people can come forward and apply for standing if that's what they want to do; and apparently the Association did get enough notice so that they could do that. So I think you could go forward with just that part. But if you want to put that off too, that's all right also.

GRAHAM: Other than that, Mr. Melrose, now you've heard a bit back and forth, and we'd like your take on the matter on how you'd like us to proceed. Start with your name and address, please.

MELROSE: I'm Jeffrey Melrose, 1405 Waianuenue, representing the applicant, 130 Holding LLC I think is the technical name of the applicant. But we don't have a problem with the Community Association's intervention. Certainly as a representative of the surrounding neighbors he certainly, to me, does have standing in this conversation. I've only recently been asked to help with this process. And one of the first tests in that process was was notice given, and it was not adequately given; and that's something we need to get done appropriately. So that's part of the next set of steps. So that's what we will do. And also we'll have communications with the Association in the meantime.

Whether or not notice generates more activity, we don't know. I mean posting a sign on that street is going to get more people involved in it as well, which was not done. So I think those issues -. You're right not to set the hearing meeting now because it may shift over that period of time. And should for some reason we're able to come to an understanding with the Association, then we could avoid it all together. But we will be spending time, you know, in the next month to do that. And I guess you guys don't meet again till February or something like that, is that true, on this side?

GRAHAM: Jeff is nodding so I believe February would be our next meeting on this side.

MELROSE: Yeah, so -. But I think there are some, you know, the project has more than just a time issue at issue here from the applicant's point of view. There's some real significant cost issues and the ability to, you know, waterlines, and a series of things that are a part of their requirement to complete. And so those things have been, it has been a moving target for Mr. Woods for quite some time, and there have been a variety of changes in the neighborhood with different users taking different portions of the business

that he thought he was going to get. So that's why the long-term, since the nineties, I guess, that this process has been around. So at this point we don't have a problem with the intervention. We will be in communication with the Association and we will be back when all of the ducks are in line to get this thing nailed down.

GRAHAM: Thank you, Mr. Melrose. So I think our take is that we will go ahead and take action on the intervention here today to grant standing or not. And once we're through with that, rather than do any scheduling, we'll just continue until a more appropriate date to bring up this matter again. Does that sound correct to the Commissioners?

COMMISSIONERS: Yes.

GRAHAM: Okay. So could I have a motion for granting or not granting standing to -.

SIRACUSA: Right here. I would like to move that we grant standing to Orchidland Community Association in this matter, and part of my reason for this is that we do have precedent. Orchidland Community Association has successfully intervened in other matters that had to do with developments within their community; and they have a unique position and perspective that is not held by any other entities; and, therefore, they fill the criteria.

WATANABE: Second.

GRAHAM: All right, thank you. So I have a motion made by Commissioner Siracusa, seconded by Commissioner Watanabe, to grant standing on this matter to Orchidland Community Association. Do we have any questions of the intervenor. The intervenor is being not opposed by the applicant on this special permit. Any questions from the Commissioners to any of the parties here before me? All right, Jeff, I guess we can take a vote on the motion.

DARROW: Thank you, Mr. Chairman. The motion before us is to grant standing for a contested case to the Orchidland Community Association. Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes seven to zero.

GRAHAM: Thank you, Jeff. I would think the next step for us would be to get a motion on continuing the hearing. Does anybody else have anything they wanted to offer in the meantime before we do that?

ALAMEDA: Question.

GRAHAM: Yes, Commissioner Alameda.

ALAMEDA: I noticed you have two names on your testimony sheet. If we continue the hearing, would they have an opportunity to provide testimony today?

WATANABE: Kirstie Goin is here.

GRAHAM: Kirstie, yeah, it seems like you folks are little bit in a double mode here. You're signed up -. This is usually just public becomes the testifier, not an intervenor or something. So, you know, we've called you forward as intervenor and I think you're assisting the intervenor as I understand.

GOIN: My position is slightly different from Roger's. I'm not on the Board of Directors. I am Recording Secretary for Orchidland; but I'm here in my position as Planning Committee Chair for the Community Planning Committee. And I oversaw, I chaired the meetings where our design plan was developed over a period of a year and approved. And I represent those residents who came forward and stated their concerns for development within the community and set very specific guidelines that they asked to be followed. And I'm here representing those residents who developed the design plan; and Roger is representing the Association. So it's related but it's virtually separate.

GRAHAM: Okay. Could you also give your name and address for the record.

GOIN: My name is Kirstie Goin and my address is Post Office Box 1667, Pahoa 96778.

GRAHAM: Okay, thank you.

SIRACUSA: Question, please.

GRAHAM: Commissioner Siracusa.

SIRACUSA: Yes. Are the people who are the Membership Committee also members of the Orchidland Community Association?

GOIN: They're all residents of, yes.

SIRACUSA: All right, so there's an overlap.

GOIN: There is an overlap.

SIRACUSA: Okay, thank you.

GRAHAM: Okay. So for sure when we come time to consider the substance of the matter, you know, what is being proposed, whether permits should be granted, all that. You're going to have another opportunity to deal with specific concerns and all. So I don't think it's appropriate for you to try to do that today. I'm not sure if there's any further role required of you here today. It doesn't seem like that. Any other comments, questions from Commissioners?

ALAMEDA: Mr. Chair?

GRAHAM: Commissioner Alameda.

ALAMEDA: I just want to make sure -. I'm reading a nonverbal so I just want to make sure you understand or if you have any other questions -. Cause we're going to take a vote on your standing pretty soon, so -.

GRAHAM: No, we just took the vote on -.

ALAMEDA: Oh, we just did. Well, we're going to move to the next step, right, which is -.

GRAHAM: Which is to continue the hearing to our next meeting.

ALAMEDA: Yeah, so is it all okay with Roger?

HAWNEY: Yeah.

GRAHAM: Speak in the microphone please

HAWNEY: I don't really see another way. I just want to be assured that if we can get together and come to an agreement on the side between now and the hearing time that we can go with that, that we can make our agreement and run with it.

GRAHAM: Yes, there's no obstacle to you doing that and you can withdraw your petition, all that, in the future.

HAWNEY: All right.

GOIN: My question is how do we, do we get something in writing from Mr. Wood and then that is binding? How does that work?

GRAHAM: As far as then your negotiations with him?

GOIN: Exactly.

GRAHAM: I think if you, when you communicate with Mr. Melrose and Mr. Wood it will all work out. And you can certainly contact the Planning Department and Jeff and say this is where you're at; and if he sees any problem, he'll surely let you know. I think you'll work all that out fine. I don't think, there's no specific form that we have or, you know, affidavit for anybody to sign or anything like that.

GOIN: I just know that once we had a verbal agreement with the developer and he later sold the development, and all of those agreements fell by the wayside; and I would hate to see it happen again.

GRAHAM: I think when you come to an agreement when we have our hearing to actually deal with the permit then we can make those important parts of the agreement part of the conditions at the time of the hearing. So as long as you stay vigilant and make sure that we're doing what you want to through the process and that he's living up to his side of it, I don't think you'll have any problem.

GOIN: Thank you.

GRAHAM: You're welcome. Yes, Mr. Torigoe?

TORIGOE: Thank you. I just want to make sure that the Association has been granted standing and so they're going to be a part in the contested case. Ms. Goin seems to have stated that she's not really of exactly the same interest as the Association. She represents some other interests within the same community. I just want to make sure that there's, you know, she may be coming in for not so much as a representative or part of the Association but as a member of the public to give testimony. So if she has some kind

of testimony that she feels like she wants to give as a member of the public that is different from the interest of the Association then you'd probably ought to allow her to do that.

GRAHAM: Yeah, I think Mr. Torigoe is speaking to my comments a few minutes ago when I said we're going to deal with the substance at a later time. But since you are signed up as a member of the public and you are not officially representing the Community Association if you would choose to make any comments right now about the substance or any other aspect, you're certainly welcome to do so. So he wants to be sure that you have that opportunity. So is there anything further you would like to say at this time?

HAWNEY: Yeah, as much as our, technically we're a little bit different in our approaches to this, Kirstie and I are working together. She is working with the Association. She is not a Director on the Board of Directors; but she is very much working with the Directors on this whole thing. And she's, I'm going to need her assistance in anything I do because of the work that she has put into this.

GRAHAM: Okay. Thank you, Mr. Hawney. Kristie, do you have any -?

GOIN: Yes. I guess I'm here actually because I'm more familiar with the design plan and Roger wasn't, and also I feel personally responsible to support it on behalf of the people who passed it. So that's my position. But Roger felt like he wasn't familiar enough with it; and he might have questions of me.

GRAHAM: Okay, we understand. So -.

HAWNEY: We're going to need each other.

DOMINGO: Mr. Chairman?

GRAHAM: Kirstie, in response to what Mr. Torigoe said, do you feel like there's anything further you'd like to say as a member of the public here today?

GOIN: I guess my only position is that there is a community of people who are extremely concerned about what's happening in the neighborhood of Orchidland Drive and the safety on the roads. And we made the conditions in our design plan to provide for a solution; and I understand it puts a financial obligation, or at least it puts obligation on either the State, the County or the developers to deal with it. And I understand that that's a weight that no one seems to want to bear; but it's certainly not fair to put that responsibility onto the residents of our community. And we're basically risking our lives every time we go through there. It's only going to be amplified by another commercial development. And I just want to be certain that you're understanding the position of the people who have to drive through that intersection on a daily basis, is that their lives are being risked. It's a very dangerous situation and we'd like to see a remedy.

GRAHAM: All right, thank you for that. Commissioner Domingo.

DOMINGO: Mr. Chairman, in view of the fact that she said that she was a Planning Committee Chairman of the Association, or are you a Planning Committee Chairman of just a group of people -?

WATANABE: I believe it was a community development plan, she was involved in that.

DOMINGO: Okay, so -.

GOIN: I was appointed by the Board as the Planning Chair; but the Committee was not appointed by the Board. The Committee came forward in response to a blanket invitation to attend the meetings. So that Committee that passed this design plan is a committee of the community and not of the Board.

GRAHAM: I don't think we really have to run too far with this at this moment. I think we're kind of about finished today of what we really need to do, is to have a motion to continue the hearing; and then we can deal with it the next time.

DOMINGO: I was just wondering, you know, instead of just considering probably two parties whether or not we can just integrate both of them together as one, and that being the community association.

GRAHAM: I think that's kind of where we are. All we have is the intervenor is the Community Association and she's going to help him, that's my understanding.

DOMINGO: Okay.

SIRACUSA: Are you ready for a motion, Mr. Chair?

GRAHAM: I am ready for a motion.

SIRACUSA: I will move that in the matter of applicant Vern Wood, Special Permit No.870, that we continue this matter for the next Hilo meeting.

WATANABE: I second.

GRAHAM: Thank you, Commissioner Siracusa. Seconded by Commissioner Watanabe. Motion is to continue to the next hearing until Mr. Melrose and Mr. Wood indicates they're ready to proceed with the application. Any comments from Commissioners? Jeff, vote, please.

DARROW: Thank you, Mr. Chairman. Just for clarification, the motion before us is to continue to the next Hilo meeting or at the time that the applicants inform the Planning Commission that they're ready to proceed.

GRAHAM: Is that correct, Commissioner Siracusa?

SIRACUSA: Well, I didn't add that second part, Jeff. You did.

DARROW: That's what I heard from the Chairman.

WATANABE: Yeah. Are you okay with that?

SIRACUSA: I'm okay with that.

WATANABE: I'm okay with that also.

DARROW: Okay.

GRAHAM: Thank you.

DARROW: All right, with that I'll take the motion. Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes seven to zero.

GRAHAM: All right. Thank you. Thank you all for coming forward.

The discussion ended at 1:47 p.m.

Respectfully submitted,

Sharon M. Nomura, Secretary