

PLANNING COMMISSION
COUNTY OF HAWAII

HEARING TRANSCRIPT
DECEMBER 12, 2007

A regularly advertised hearing on the applications of Initiator PLANNING DIRECTOR and Applicant KOHALA LLC (REZ 866/SMA 379) was called to order at 9:20 a.m. at the Waikoloa Beach Marriott Hotel, Alii I, 69-275 Waikoloa Beach Drive, Waikoloa, Hawaii, with Chairman William Graham presiding.

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

ABSENT & EXCUSED: Andrew Iwashita

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

Christopher Yuen, Planning Director

And approximately 11 people from the public in attendance.

INITIATOR: PLANNING DIRECTOR

- a. Continued hearing on the Planning Director's initiation of a Change of Zone (REZ 07-000067) for 37.88 acres of land from a Single-Family Residential 15,000-square foot (RS-15) to a Residential and Agricultural 5-acre (RA-5a) district.
- b. Continued hearing on the repeal of Ordinance No. 97-102 which rezoned 37.88 acres of land from an Agricultural 5-acre (A-5a) to a Single-Family Residential 15,000-square foot (RS-15) district.
- c. Continued hearing on the revocation of Special Management Area (SMA) Use Permit No. 379, which allowed the development of a 50-lot single-family residential subdivision.

The property involved, owned by Kohala LLC, is located along the southwest (makai) side of Akoni Pule Highway and the Kohala Ranch Subdivision, Kahua 1st, North Kohala, Hawaii, TMK: 5-9-1:8.

APPLICANT: KOHALA LLC (REZ 866/SMA 379)

- a. Continued hearing on an amendment to Condition C (time to secure final subdivision approval) of Change of Zone Ordinance No. 97-102, which rezoned 37.88 acres of land from an Agricultural 5-acre (A-5a) to a Single-Family Residential 15,000-square foot (RS-15) district.

- b. Continued hearing on an amendment to Condition 4 (time to secure final subdivision approval) Special Management Area Use Permit No. 379, which allowed the development of a 50-lot single-family residential subdivision.

The property involved is located along the southwest (makai) side of Akoni Pule Highway and the Kohala Ranch Subdivision, Kahua 1st, North Kohala, Hawaii, TMK: 5-9-1:8.

GRAHAM: The first item on our agenda today is a three-part item, initiated by the Planning Director, and it has a relation to Item 2 where the application is Kohala LLC. The first item initiated by the Planning Director – these are continued hearings in both Items 1 and 2 – the Planning Director’s initiation is for a change of zone on 37 acres of land from Single-Family RS-15 to Residential and Agricultural 5-acre, which is RA-5. The second part of that is repeal of Zoning Ordinance 97-102 which rezoned the same parcel of land from Ag-5 to Single-Family Residential RS-15. And the third part of the Planning Director’s initiated agenda item is also a continued hearing on revoking the SMA, Special Management Area Use Permit No. 379, which allowed a development of a 50-lot single-family subdivision on this same piece of land. The piece of land is owned by Kohala LLC. It’s located along the makai side of Akoni Pule Highway and the Kohala Ranch Subdivision; that’s in Ahupuaa of Kahua 1, North Kohala, Hawaii.

The second item of business, which I’m going to put forth right now because I think we’re going to for the most part handle the two of them concurrently, is an application by Kohala LLC. It also has been continued from prior meetings. It’s asking for an amendment to Condition C, which is a timing condition to secure final plan (sic) approval; that amendment is to Change of Zone Ordinance No. 97-102, which rezoned the same parcel of land we were speaking of, 37.88 acres, from Ag-5a to Single-Family Residential 15,000-square foot, which we call RS-15. And the second part of Kohala LLC’s application is a continued hearing also on an amendment to Condition 4, another time related amendment, time to secure subdivision approval, and that’s related to Special Management Area Use Permit No. 379, which allowed the development of the 50-lot single-family residential subdivision. And again we’re speaking of the same piece of property I spoke to before in North Kohala on the makai side of the Akoni Pule Highway across from the Kohala Ranch Subdivision.

We have communications on these items, both from the Planning Director and the attorney for the applicant. We have one person signed up to speak from the public today. And before we do any of that, Jeff will give us a little background on both of these items. Jeff?

DARROW: Thank you, Mr. Chairman. Good morning, Members of the Planning Commission. Usually we do give a brief background on this particular application, but I’ve been asked to defer this to the Planning Director. I just wanted to bring to your attention that we have received also a correspondence this morning from, which is dated December 11th as well as August 30, 2007, these are two letters and they are from different parties, six different parties that are listed on the letters. These appear to be support letters for the Planning Director’s action. If I could defer this to the Planning Director at this time.

GRAHAM: All right. Mr. Yuen?

YUEN: Good morning, everybody. The short story is that the applicant has asked for deferral of any action today, and I have written a letter which was put out yesterday and

should be on your tables, I hope that you've gotten, where I suggested that action be deferred until the January 11, 2008, meeting which is the next West Hawaii meeting. I can then give a little longer background on where we are and what is in front of the Planning Commission here. So just briefly -. There was a question? Yes?

WATANABE: Yeah, I -.

GRAHAM: Commissioner Watanabe, you had a question?

WATANABE: I'm wondering if, I understand what is going on, but I'm wondering if it's going to help to expand upon the discussions or lack of discussions that have gone on between the applicant and the Planning Department.

GRAHAM: I think we should, personally I think we should just go ahead with Mr. Yuen's commentary now, and then once we have everything spoken, we can, you know, discuss more on where I think you might be coming from, if that's okay.

WATANABE: Okay.

GRAHAM: Go ahead, Mr. Yuen.

YUEN: Okay. What this, to start with the beginning, in 1997 there was an application, this is, concerns the 38-acre property on the North Kohala shoreline, roughly across from the entrance to the Kohala Estates Subdivision. It was, in 1997 at the landowner's request, it was rezoned from Agricultural 5-acres to Residential 15,000-square foot lots. At the same time the Planning Commission approved an SMA permit which would allow a maximum of 50 lots to be developed there. The rezoning ordinance and SMA permit both had time conditions requiring that final subdivision approval be obtained within 5 years; that would have been July of 2002. There was a provision for one administrative time extension in that, which would have been July of 2007. No request for the administrative time extension was actually made, and no plans for either for preliminary subdivision approval have been submitted. So naturally, final subdivision approval was not obtained. In late May 2007, I initiated a revocation of the SMA permit and an ordinance which would change the zoning essentially to what had been before, which would be RA-5a, which is 5-acre minimum lot size. Shortly thereafter the applicant initiated a request to extend the time on the SMA permit and on the rezoning. So what the Planning Commission has in front of it is two of these related actions. And the extension of time on the zoning would have to go, or the change of zoning, both of those eventually would have to be decided by the County Council; the Planning Commission provides a recommendation to the Council on those. The SMA permit, the Planning Commission would make the final decision on either extending time or revoking it. However, if the Planning Commission extended time on the SMA permit and the Council changed the zoning, then the SMA permit would become void because of inconsistency with the zoning.

GRAHAM: Yes, Commissioner Siracusa?

SIRACUSA: And if it was the other way around?

GRAHAM: The Council only takes action on the zoning.

SIRACUSA: If that condition, situation was reversed?

YUEN: Yes, if the Planning Commission revoked the SMA permit and the Council continued the current zoning, the applicant would have to come in for a new SMA permit.

GRAHAM: Okay. Any further questions of Mr. Yuen? All right. Jeff, did you have anything further to give on your presentation?

DARROW: That's it. Thank you.

GRAHAM: Okay. I think we have probably a few comments from Commissioners, we also have a public testifier, and of course we'll have the applicant, Mr. Lim, come forward before we go anywhere with this. So my question is just how do we sequence that.

TORIGOE: Public testimony.

GRAHAM: Pardon?

TORIGOE: Public testimony.

GRAHAM: Okay. Maybe good to take the public testimony at this point since we've kind of heard from Mr. Yuen exactly where we stand and what's at stake here. I have a Gail Byrne signed up to testify. If you could come forward, Gail.

BYRNE: Good morning.

GRAHAM: Thank you. Could you -?

BYRNE: Do I need to hold this, or am I -?

DARROW: Yes.

BYRNE: Okay.

GRAHAM: Could you raise your right hand, so I swear you in first?

BYRNE: Sure.

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

BYRNE: Yes.

GRAHAM: Thank you.

BYRNE: Thank you.

GRAHAM: Then we'll hear your testimony. And when you start, just give your name and address, so it's on the record for us.

BYRNE: Sure.

GRAHAM: Thanks.

BYRNE: And I'll keep it brief 'cause it looks like it's going to be deferred to January. So we'll come back in January; and there will be other representatives here from the organizations I'm, that also signed this testimony. My name is Gail Byrne, and I'm representing Malama Kohala Kahakai as well as five other non-profit organizations in Kohala. And we testified and submitted testimony at the August Planning Commission and supported the Planning Director's actions to repeal Ordinance 97-102 and to revoke the Special Management Area Permit 379. We also asked at that time, and we continue to ask, for a change of zone to at least Ag 20a; and there is really strong basis for that. In brief, there is over 30 years of State and County resolutions, Community Development Plans, and community petitions have called for this coast to be zoned Open and Conservation. Coastal zoning of Ag-5a has never been aligned with what the community has wanted for this shoreline and it's very well documented history. I think I provided that in August, over 30 years of work regarding that. RA-20 is more aligned with the long-standing ,documented work of the community.

You know, most significantly, as I understand it, this applicant doesn't meet the conditions for a time extension. The conditions and contexts under which this application was initially approved have changed. This project is not consistent with the present and past General Plans, it is not consistent with input received from the community during the recent readiness process for the North Kohala Community Development Planning process that's undergoing, and it is not consistent with draft recommendations that are coming out of the focus groups up there, which are calling for a rezoning of the State coastal lands to Conservation, finally getting to what the community has asked for over 30 years. So they list some other reasons why RA-20 is valid here; I won't go into this again. We'll be back in January. I just want to thank you for your time this morning.

GRAHAM: Thanks, Ms. Byrne. Do we have any questions for the testifier from the Commissioners?

SIRACUSA: Yes.

GRAHAM: Commissioner Siracusa?

SIRACUSA: You mentioned that you were representing, I believe, five different groups. Could you tell us what those groups are?

BYRNE: Sure. They are listed on the back of the, I don't know if you've got a copy; I brought in copies this morning for everyone. The organizations, I'm with Malama Kohala Kahakai; there's Maikai'i Kamakani 'O Kohala, Kamakani 'O Kohala Ohana, the Kohala Historic and Cultural Preservation Group, Malama Na Wahi Pana O Kohala and Hui Lihikai.

SIRACUSA: Thank you.

BYRNE: Yeah, and together these organizations represent nearly 400 families in North Kohala. Thank you.

GRAHAM: Thank you. Yes, Commissioner Alameda?

ALAMEDA: Thank you. Thank you for your testimony. You also mentioned that there is a group of Kohala residents that are in process of planning for what they would like to see in Kohala. What group is that?

BYRNE: Yeah, we are, there's a, the County has initiated Community Development Planning process in North Kohala, like the one that's going on in Kona and Puna. So we're in the midst of that right now.

ALAMEDA: Okay, thanks.

BYRNE: Thank you.

GRAHAM: Anything further?

DOMINGO: Mr. Chairman?

GRAHAM: Commissioner Domingo?

DOMINGO: I'd like to ask our staff a question. Is this particular area, what it's General Plan for?

DARROW: The General Plan for this particular area at this time is Low Density Urban, Extensive Agricultural and Open; all of these three designations affect the property. More specifically the Open designation is along the coastline, the Low Density Urban affects the southern portion of the property, and a portion of the northern piece of the property is Extensive Agriculture.

DOMINGO: When was that General Plan adopted? The provisions of this, the part that is directly applicable to this parcel?

DARROW: I'm not sure when the first date was, but I do not think it was amended on the last General Plan. So it was in effect at least from 1989 is my understanding, and even, could be even further.

DOMINGO: So then if the zoning is consistent with the General Plan, then the statement that this project is not consistent with the present General Plan is erroneous, huh?

DARROW: I believe that it was -. Is that the Community Development Plan or the General Plan?

DOMINGO: It refers to the General Plan.

DARROW: I think it's referring to the element, the natural beauty element. Is that correct? So it's referring to the actual element of natural beauty, not so much the LUPAG designation.

GRAHAM: Commissioner Domingo, would you like the testifier to explain a little bit why she said that?

DOMINGO: Yeah, that'll help.

BYRNE: Sure. The Community Development Plans are a component of the General Plans to help implement the General Plans, and the recommendations of the 1983 Community Development Plan were to zone the entire coast Conservation/Open. There have also been joint resolutions out of the State Legislature asking for the same. And the Planning Commission in the past has actually supported similar initiatives. So I guess it's a matter of interpretation, but certainly Development Plans in the past were recommended now.

DOMINGO: Yeah, it seems like you mentioned that in 1983 all the ongoing discussions indicated that you folks wanted to have it Open and into 20-acre Ag, yeah? But somehow that suggestion on that part of your Community Development Plan was not followed and not implemented because the Planning Department has not up to this moment even changed the General Plan. So I'd just like to make that clear.

BYRNE: Uh huh.

DOMINGO: Okay?

GRAHAM: Thank you. Any other questions for the testifier? Yes, Commissioner Alameda?

ALAMEDA: Sorry. I'm interested in this Community Development Planning process 'cause that in a nutshell will kind of give us one idea of maybe where the community is headed in their thinking, yeah? Are you an active participant of that Community Development Planning process?

BYRNE: In one of the focus groups, yeah. And I attended most of other meetings.

ALAMEDA: Okay. Does it feel like it's collaborative and there is, you know -?

BYRNE: The community up there is very special; in North Kohala they are immensely involved in what's going on. Chris can probably speak to that a little bit, and certainly the planners from the County that are involved in that. There're focus groups in Kona and South Kohala and Puna; their groups focus on certain issues and they make recommendations to the general steering committee, and often they meet with their consultants. But folks in North Kohala are so, care so deeply about where they live and really want to make a difference, and they have really stepped up to the plate, and they have really in the last 30 years. But they meet regularly, almost weekly, not just with, when the consultants are there. You'll

find in other processes they tend to meet just when the paid consultants are there. So they are doing a ton of work on their own.

ALAMEDA: Okay, good. Very good. Thank you.

DOMINGO: Mr. Chairman?

GRAHAM: Yes, Commissioner Domingo?

DOMINGO: I commend the efforts of you and those in the community in keeping a sharp vigil on what's really happening in a way of development in the North Kohala, and I think it would be nice if all the communities throughout the island would do such a thing; and then we would know that the growth and development is happening according to what the community actually all want. But I think in this particular case, as you indicated, that the Development Plan should be reflective of the General Plan. And unfortunately at this time in your deliberations, the General Plan and what's in the General Plan and what you say now, I feel personally, contradicts, somewhat contradicts each other -.

BYRNE: Yeah, we've been very frustrated by that. Not just me but people for decades. I mean last time I brought in a stack of petitions dating from 2002, 2000 and 1988, asking for different zoning, but they, you know, whatever reasons there have been different decisions made regarding that.

DOMINGO: Uh huh. Thank you very much.

BYRNE: Thank you.

GRAHAM: All right. Planning Director Yuen?

YUEN: Yeah, just for the sake of the Commission, we are having a presentation tomorrow morning by staff working on the various Community Develop Plans. So we can talk about the update of that. It's mostly a procedural thing, just to let you know how it's going.

GRAHAM: Thank you. Is there anyone else from the public who would like to speak on this matter today?

DOMINGO: Mr. Chairman?

GRAHAM: Yes, Commissioner Domingo?

DOMINGO: Just one simple question here, probably to the Planning Department staff. Have there been any attempts to change, amend the General Plan to reflect what the community actually wants to accomplish with regard to the entire North Kohala coast? Have there been any applications or any requests for that consideration be made with regard to changing that portion of the General Plan?

GRAHAM: Mr. Yuen, maybe you could best address that?

YUEN: In the General Plan update that was started in the late 1990s and finally passed in 2005, I don't believe that there were any specific changes to the General Plan maps involving the coastal areas. I would like to say, though, that although the General Plan may have an area as an Urban area, some kind of Urban designation, that the Planning Commission, the County Council and the Planning Department still have to make a site specific judgment as to whether that property should in fact be zoned for some kind of Urban use. The General Plan maps are taken on a broad scale; they show the general locations of uses and do not -, generally when you adopt the General Plan map, you aren't looking at all the factors that may affect the actual usability or desirability of the property for a particular use by drainage, historic sites, viewplanes and the like. So there is still that analysis that has to be made on the zoning level and on the SMA level by the Planning Commission and the Council.

GRAHAM: Thank you, Mr. Yuen.

DOMINGO: Mr. Chairman, Mr. Chairman?

GRAHAM: Yeah, Mr. Domingo. Remember we do have a ways to go on this. We're going to hear from the applicant, then we're going to discuss, so -.

DOMINGO: Yeah, I understand, but you know, I'd just like to lay foundation for me -.

GRAHAM: Okay.

DOMINGO: And make it clear as to where I'm coming from. And I think with regard to having a workshop tomorrow, I think it's good and I hope that people from the community would come and listen to try to understand what the process is like; because there being no request for any kind of General Plan amendment in this North Kohala coast indicates that somewhat there might be misunderstanding of what can be done and what would be done in the best interest of what the people actually want. And you know, it's not like the Community Development Plan would actually drive the whole force, but as we've been often told the General Plan is a document, is a general document, and the Development Plan as we consider, decide on more finer and detailed development of a particular area is done through the Community Development Plan. And you know, I think where we need to make the initial changes would be at the General Plan review. And this particular case, it was mentioned that the Planning Commission and the Council and the Planning Department would decide where the finer boundaries of the development would be allowed, when you consider Urban and Ag and all of that. But you know, that not being done, when any particular application comes before the Council or the Planning Commission, in essence by default the decisions that they make is a statement of policy which would designate the proper use for that particular area based on what the General Plan speaks. And you know, if the General Plan is broad and the LUPAG map indicates a certain use for that particular land is such that it would be Rural, Ag or whatever, then the question is how far do we draw the line. And that line, the specific line, is not being drawn at any time by the Commission, the Planning Department nor the Council. So when anyone comes with an application for any kind of development before the Planning Commission or the Planning Department, the Planning Department looks at that, and looks at the LUPAG map, and they at that time initially would indicate, you know, this falls within the general context of what the General Plan is saying. So what actually happens is that the Planning Department then processes that application, and the Planning Commission in turn would recommend approval or

denial of that; and with any application that is done in the advisory capacity, and it's sent up to the Council with the Council making the final determination. And with any zoning or General Plan amendment or whatever land use issues and decisions you have to make, the final decision makers would be the County Council. So what we discuss from time to time and we reference to is something that is acted upon officially and is made law through ordinances, and that, which we must follow. So you know, that's my understanding of the whole process in brief, and I just wanted to make myself clear as to what, how I'm looking at it. It all depends, it all starts with the community coming together and deciding what they want for that particular community, and that has to be effectuated through the amendment of the General Plan, and then you follow up with the Community Development Plan or some specific issues if you want concerning a particular parcel. Thank you, Mr. Chairman.

GRAHAM: Okay. Could the applicant's representative come forward, please? Good morning, Mr. Lim. Yes, please. Do you swear or affirm to tell the truth on this matter today before the Hawaii County Planning Commission?

LIM: I do.

GRAHAM: Thank you. And could you start with your name and address, and give us whatever presentation you would like?

LIM: Sure. I'm Steven Lim representing Kohala, LLC, with the Carlsmith firm at P. O. Box 121 in Hilo. Basically what we are here for is, you know, we had an exchange of letters – I think the letters will speak for themselves – we obviously have a disagreement over, you know, how to interpret what happened. But I think, let's move past that, I would like to respond to the proposed date that the Planning Director is giving of January 11th. I think what we are trying to accomplish – and you understand, I think, that this is a very serious matter for the landowner. We believe that it's an unprecedented action – I'm sure the Planning Director disagrees – but you know, we're looking at it, we are the ones in the gun sights right now. So what we are trying to do is to see if we can establish a procedure by which the applicant and the Planning Director will have time to prepare their legal memoranda, submit their proposed Findings of Fact, Conclusions of Law, Decision and Order, and then have the Commission have enough time to review those; and then we come back for a public hearing in which you would hear our arguments under Chapter 91, which with your review of the transcripts would then qualify all the Planning Commissioners to vote on the matter. That's our intended goal. I, you know, the Planning Director's proposed continuance to the date of January 11th doesn't let us do that. So what I was proposing, I would like to propose, is that the Commission adopt the following schedule: We would have the Kohala LLC legal memoranda and their proposed Findings of Fact, Conclusions of Law, Decision and Order submitted to the Commission and the Director no later than February 8th of this next year 2008; by Thursday (sic), February 29th, which gives them almost a month, the Planning Director would submit any legal memoranda or any proposed Findings of Fact, Conclusions of Law, and Decision and Order that he wishes to propose – we still agree that the Planning Director's background and recommendation can serve as that, if he wants to; by Friday, March 7, 2008, Kohala LLC would submit any rebuttal memoranda or comments on the proposed Findings that the Planning Director submits; and then we come back for the, what I believe to be the Planning Commission's March 20, 2008, hearing in Kona; at that point we would argue the proposed Decision and Order, and the Planning Commission could then start to take final action on the matter. I think that gives everybody

enough time to prepare their legal memoranda and their proposed Findings, and that gives the Planning Commission something in the neighborhood of two weeks till, before the hearing to happen everything in front of you rather than have it two or three days, you know, like as often times happens. So that's our request.

GRAHAM: Thank you, Mr. Lim. I missed the last meeting that we had where this was brought up, but I do remember back in, I think it was the August meeting that I chaired, at that time I thought the way we left it was that you needed to get some additional documents from the Planning Department, so that you could prepare your Findings of Fact, Decision and Order at that time. Have you gotten those documents that you need or -?

LIM: Yes, we believe we have gotten the documents. Planning Department staff has asked us for a list of the documents that we did get, so we're going to prepare that for them.

GRAHAM: Okay. I think I also asked Director Yuen at that time if he could provide some written reports on the nature of the flooding that went on apparently at some point after the earthquake and left a lot of sedimentation along the coast in that area. Have you been able to chase them down at all, Mr. Yuen?

YUEN: Yes, we have that and we can have that before the Commission when they take this up on the merits.

GRAHAM: All right.

YUEN: We can have that well in advance. There isn't, well, they are somewhat informal; some of that are by lengthy emails that were done by people with the Division of Aquatic Resources. But we can have that, and naturally of course we would copy to Kohala LLC.

GRAHAM: Do we have any other questions from the Commissioners of the applicant's representative? Commissioner Alameda?

ALAMEDA: I have one for the Director, if it's okay now.

GRAHAM: Sure.

ALAMEDA: I've heard the pros of why we should maybe abide by Mr. Lim's request. But what will be the cons?

YUEN: Well, in thinking about this, it's an extremely long time to deal with the matter. However, let me make a suggestion. There's actually two different items here: One is the rezoning and the other is the SMA permit. The Planning Commission is advisory on the rezoning that ultimately goes to the Council for final decision; there is no reason to keep that here. There is no requirement of Findings of Fact, Conclusions of Law, etc. in a rezoning because it's not an administrative permit that has these formal requirements. I would suggest that the Planning Commission take up the matter of the rezoning on January 11th, try to come to a recommendation that it takes to the Council on both Kohala LLC's request and the Planning

Department's alternative. And if the Planning Commission is not able to come to a decision on that by a 5-member vote, there is, the procedure under the ordinance is that the Commission has 60 days to make a recommendation to the Council on a Director initiated rezoning. And my suggestion is that – and depending on whether you count that there was a period of a voluntary deferral by the parties, which I would not count against the 60 days, however, this rezoning is supposed to move up from the Planning Commission to the County Council within the timeframe – so my suggestion is that we, the Commission act on that on the January 11th meeting, and if it is not able to act on it, then that would move up to the County Council. I have certainly no objection as well to the rezoning request from Kohala LLC also moving up to the Council at the same time. And then following the suggestion on the schedule for the SMA permit, which in any event is only valid if the Council enacts Kohala -, Kohala LLC's request for an extension of their SMA permit is only valid anyway, if the Council does rezone the property.

GRAHAM: Mr. Lim, do you have a response -?

LIM: Yeah, obviously we have an objection 'cause it accomplishes the same thing; it forces us into hurrying up. I mean that was the whole point of my last letter is I'm trying to give the applicant an opportunity and a fair opportunity to the Planning Commission to review all the legal arguments and make a reasoned decision on both matters. I think everybody recognizes that this change of zone and the SMA permit are intertwined, and to send one up without the other is nonsensical to me. We would object to that.

GRAHAM: All right. Commissioner Watanabe?

WATANABE: Yeah, I have a question for Ivan. Now the Rules as far as if we cannot arrive at a majority decision for a change of zone, then it implies that we send up a negative recommendation. Is that correct?

TORIGOE: Right. If you look at your Rule 11-3(c), which is consistent with the Zoning Code, there is actually a couple of things going on: If you have the Planning Director initiated one and if you look at Rule 11-3(c)(B), it says that within 60 days after receipt of the amendment, then the Commission shall transmit the proposed amendment with its recommendation to the Council, and in the event the Commission fails to act on the amendment within the 60-day period, such inaction shall be considered as unfavorable recommendation by the Commission. You also have the request by the applicant for an extension of time, the amendment to Condition C of the change of zone ordinance, that would also be handled as an amendment and there is a, as you know, most of the time amendments are initiated by property owners; and your Rule 11-3(b)(2) says within 90 days – it's a longer period – after receipt of the application from the Director, unless a longer period is agreed to by the applicant, the Commission shall transmit the proposed change of zone ordinance together with its recommendations; and similarly in the event that the Commission fails to act on the application within the 90-day period, the application shall be considered an unfavorable recommendation. So in either the property owner initiated or the Director initiated, if you fail to act within the prescribed period, then it goes up with a default negative recommendation.

I want to note this one thing – and this is probably something that the applicant and the Director may want to respond to or give some recommendation on – there is a difference. As I noted, for the property owner initiated ones, it says that's 90 days unless a longer period is agreed to by the

applicant; for the Director's one, it just says within 60 days after receipt, and does not contain the same language that talks about, you know, a longer period being agreed to by the applicant. Exactly what that means, I don't think we ever dealt with that, but it's an issue that I invite the parties to address when we get to argument on the merits.

WATANABE: Follow-up.

GRAHAM: Yes, Commissioner Watanabe?

WATANABE: Okay. I don't know if I'm reading this correctly or not, but we have two opposing proposals here: one from the applicant to extend the time and another from the Planning Director to rescind. And if we are unable to come to a majority decision on either one, then it implies that we will not have a majority decision on the other. But the Rules state in both instances that a negative recommendation is then forwarded to the County Council, and the negative recommendation in each situation will nullify the other. It's -, you see what I'm driving at? It doesn't make sense. You know, so unless we decide here, it's a nonsensical circular argument.

GRAHAM: All right. Is it all right if I have Mr. Yuen respond?

WATANABE: Please.

GRAHAM: Go ahead.

YUEN: There isn't any way around that. If you have contradictory applications and there isn't a majority vote by the Planning Commission, they will both go up with a negative recommendation. We have had, as you know, quite a few matters go to the Council with a negative recommendation due to the failure to obtain five votes by the Planning Commission either for or against the application. So we do, we transmit it to the Council with a transcript of what happened, we tell the Council what the vote was, and it does formally go up as a negative recommendation. We try to explain, we send the Planning Director's recommendation on it, so the Council has something to work with. So there really is no way around that, if the Commission does not have -, and in this case where there are two contradictory proposals for the same piece of property.

GRAHAM: Yes, Commissioner Domingo?

DOMINGO: Mr. Chairman, where are we on the time clock with regard to the submittal for the down zoning to the Planning Commission?

GRAHAM: Mr. Torigoe, could you explain that sort of as concisely as possible?

TORIGOE: Well, I think it's kind of a matter of calendar; it depends on when the transmittal was to the Planning Commission from the Director.

DOMINGO: So Mr. Torigoe, that means that being that it's a Planning Director's initiated measure, and if we pass the 90-day mark, then it would automatically go up to the Council with a negative recommendation; that's what I understand -.

WATANABE: Sixty.

DOMINGO: Sixty, 60 days. So that would be forwarded to the Council with a negative recommendation by the Planning Commission.

TORIGOE: Right. That's essentially what the rule says.

DOMINGO: Okay. So you know, I think the critical question of the matter is where are we on the time clock.

HAYASHI: Okay. The -.

GRAHAM: Mr. Hayashi?

HAYASHI: The Director's recommendation was forwarded to the Planning Commission on July 11th. So that's the date that you have received it. That being the case, if you take 60 days, then action should have been taken by September 11th.

GRAHAM: Thank you, Mr. Hayashi -.

YUEN: Let me, let me lay out what the issue is here -.

GRAHAM: All right. Mr. Yuen.

YUEN: And I do think that in this case I would turn to the Planning Commission's counsel to tell us the proper legality of the procedure. The issue that counsel is raising is whether the, clearly under the – and the ordinance, by the way, the ordinance is the same as the Rules; the Zoning Code has the same procedure as the Planning Commission Rules – clearly under both the ordinance or the Planning Commission Rules, when an applicant landowner initiates a change to the Zoning Code, the applicant landowner can consent to the Planning Commission keeping the matter there beyond 90 days and not sending it up to the Council. The rule does not, both the rule and the ordinance don't expressly say that of a Planning Director initiated amendment. For the record, my view is that the Planning Director can consent to keep a matter at the Planning Commission beyond the 60 days. And again for the record, I would consent that this matter be kept at the Planning Commission for action at the January 11th meeting. I would not consent to a time period beyond that. There is also sort of a subsidiary question of whether you count periods of a voluntary deferral against the 60 days or 90 days. My view is that you -, it's not really that critical because, as I said, either the Planning Director can consent to extend the time beyond the 60 days or not; if the Planning Director can, then I would, as I just said, consent to extend it to January 11th for the Planning Commission to consider this and, to consider the rezoning aspect of it and make a decision on the merits before sending it up to the County Council, but not beyond that.

GRAHAM: Thank you, Mr. Yuen. I would also like to just say to the public who's here today, this is all kind of meticulous legal kind of back-and-forth we are doing, which doesn't probably make very good listening on your part, but it's important, it's important that we do it in a public arena. So maybe you want to take a break, maybe you want to keep listening,

but we'll probably be at it for another few minutes for sure. Thank you for your forbearance. Mr. Lim, do you have comment, please?

LIM: Yes. Mr. Chairman and Members of the Commission, you know, we first started out this hearing some months ago, and I think one of the, my main thrust in that hearing was that we were asking the Commission for basic fairness. And you know, I think that I outlined in my proposed schedule enough, way enough time for both myself and Mr. Yuen to prepare the adequate legal arguments and proposed Findings, a very, you know, clear path to get everybody's facts on the record and you can review, you'll have something in the neighborhood of two weeks at least to review from the last submittal. You know, this is something that, like I said, is very important to the applicant. We feel that basic fairness dictates that we should be able to have this time. For the Planning Director to recommend that the zoning go up before the SMA action means that he wants you to vote on the matter before we even get a chance to get ready to give you our best argument. I think that's not in good faith. I think that we should have fairness. The applicant is stalled in his development because of the proposed down zoning; we've stopped all work on the project. We can't proceed with the project. So to me, you know, there is no harm to the Planning Director, to the County, for us to take this extra time to give us the chance to give you, the Planning Commission, the chance to review all of the arguments and all of the facts. I think that, you know, the rush to judgment, the rush to push the change of zone ahead of the SMA action is not warranted. I think that you should consider both in your decision. Thank you.

GRAHAM: Mr. Lim, one question I had, when you spoke to the Findings of Fact submittal and all, I think you had February 8th for the applicant and February 29th for the Planning Director. Why does the Planning Director need extra time to essentially do the same thing? I think you are doing it by February 8th.

LIM: Yes. We figured that we would give the Planning Director adequate time. His attorneys are quite busy also, and so we didn't want them to have to respond in a week, so we thought we would give them that extra time, that's what, 21 days.

GRAHAM: So when you say February 29th, you are talking about him responding to yours, not him submitting his.

LIM: Yes, he could submit his own. But, yes, we would submit our legal memorandum and a proposed Findings on the 8th of February, then he would come back with his on the 29th of February. We would then have about maybe a week or so for rebuttal to March 7th, and then you would have all of documents at least two weeks before the hearing to review. And then we would come back on March 20th to argue the proposed Decision and Orders, and you could take final action at that point, if you wish to.

GRAHAM: I see. Also we might keep in mind that since we have a difficult decision maybe to make here today, the Planning Director is at least in general agreement with you as far as the SMA permit. So, you know, as far as us deciding what we're going to do taking votes, we might sort of split them and get one out of the way and deal with the rezoning one or -. I'm just throwing that out as a way to help us move forward, if we need to do that. Commissioner Watanabe?

WATANABE: Yeah, I have a question for the Director. You, in spite of the additional discussions that have occurred, you stand firm with January 11th? Because it appears that, the way that the Rules are written, that only you can consent to an extension.

GRAHAM: Mr. Yuen?

YUEN: At most, yes. There is some question about whether the Planning, as Mr. Torigoe said, there is some question as to whether the Planning Director can extend the time. I would consent to extend the time to January 11th but not beyond.

WATANABE: Okay, so then that, as a follow-up, that means that for the Planning Director recommended initiatives, we have until January 11th, which is our next meeting. Right?

GRAHAM: For those pertaining to the rezoning, not to the SMA.

WATANABE: Yeah, to the rezoning. Okay. Here, let me, could I continue for a second, Mr. Woodward? Here is where I'm having a problem. I don't believe that much communication has gone on in spite of the amount of time that has passed. And I agree that RS-15 is probably much too dense for the area in question. On the other hand, going from an entitlement of 50 – and it's questionable whether that entitlement even is in place at this point; I'll concede that – but going from 50 to 5 or 6 is a huge taking, and I'm not comfortable with either one. But as these arguments are outlined at present, I have a choice of either saying, yes, I vote for RS-15 or downsize from 50 to 6; and I'm not sure I'm comfortable with either one. And to that extent, I was hoping that we could enter into some discussions as to what the other Commissioners might be comfortable with. Now I could be in a minority and maybe everybody wants to downsize or maybe everybody wants to go to RS-15. But you know, in a final analysis we would hope that this body could make a recommendation rather than punt to the County Council. And that's my concern.

GRAHAM: Thank you, Commissioner Watanabe. My sense of interpreting what he was saying is that, let's say, we come back for the January meeting, and Mr. Yuen's change of zone initiatives, we're going to make a decision one way or the other; and I think what Commissioner Watanabe is saying is he doesn't know at this time – I certainly don't know at this time – how the Commission will vote on it. So he was thinking rather than take such discrete steps along the way that he may be uncomfortable with, it might be good to initiate a discussion early like perhaps today even amongst the Planning Commission, so that the applicant and the Director, if they want to take some direction from what they hear about coming to some kind of middle ground, that's something they can be working on in a meantime rather than have the whole discussion take place in January. Is that correct?

WATANABE: That's correct, and I'm just, you know, that way we can push this thing forward hopefully with a recommendation either way.

GRAHAM: Thank you. Commissioner Woodward?

WOODWARD: Well, I have a procedural question first. Evidently there is a question about a Director initiated motion whether it has a 60-day limit. But cannot that be refiled if we

were to agree with Mr. Lim's request to defer this to the March meeting? And if there was a legal question about the Director initiative having elapsed, could that not be refiled?

GRAHAM: Mr. Yuen?

YUEN: Well, I would like to see the matter move forward, and the only consequence of the 60 days having run out already is that it should already have gone to the Council with a negative recommendation.

GRAHAM: All right. Commissioner Siracusa?

SIRACUSA: Commissioner Watanabe expressed his discomfort with the two extremes, and hoping to find some kind of a middle ground that would be satisfactory that could be worked out between the Department and the applicant. But we haven't heard from Mr. Lim on that, if he feels that his, that the applicant would want to hold a hard line to 50 lots or would be willing to negotiate the number of lots and a decreased density. So unless we know if there is a willingness to negotiate on that, your point would become moot. So Mr. Lim, would you please respond to that?

LIM: Yes. I'd have to of course reserve all my legal rights to the RS-15 zoning. But on the question of whether or not the applicant would be willing to negotiate on something less dense, the answer is yes; and the answer is we've tried and we were rejected.

GRAHAM: Thank you, Mr. Lim. Commissioner Domingo?

DOMINGO: Thank you, Mr. Chairman. I would like to ask for confirmation from our legal counsel with regard to the statements made by Mr. Yuen regarding the time schedules and what would be in his power to make decisions that he is making, and with regard to, you know, the elapsing of the time, the time and the ability to send up a negative recommendation to the full Council.

GRAHAM: Mr. Torigoe?

TORIGOE: Thank you, Mr. Chairman. I am not entirely sure, exactly what you would like to hear from me is -.

DOMINGO: Well, you know, I was hoping to have caught the Chairman's attention at the very instant when Mr. Yuen had completed his statement and to ask at that time whether in fact that what Mr. Yuen is saying is how you interpret the law or the policies and the Rules of the Commission.

GRAHAM: You mean the very last statement that Mr. Yuen just made a couple of minutes ago?

DOMINGO: No, not the last statement. He was explaining the applicant initiated measure and the Planning Director initiated measure. And I remember in my discussion, I pointed out that, okay, if the applicant, and we have that 60-day limit when if no action is taken, then it's sent up to the Council as a negative recommendation. But I think it's not that clear if in

fact that is what actually is happening here. And I think Mr. Yuen explained why it isn't. That's why, you know, I want some confirmation from Mr. Torigoe as to if he in fact agrees with that as our attorney for the Planning Commission.

GRAHAM: Yeah, Mr. Torigoe, did what you hear from Planning Director Yuen all sound legally accurate to you?

TORIGOE: You're referring to whether the Planning Director has authority to agree to an extension of the time beyond the 60 days. Is that the question?

GRAHAM: Is that the question, Mr. Domingo?

DOMINGO: Yeah, that's one of them. And, okay, when an applicant submits an application, the applicant would in fact agree to whether an extension of the 60 days would be appropriate in his favor, and he would do it. Now in this case, as the Planning Director, is there the leeway wherein he would be able to hold it on the Planning Commission level for another extension of time?

TORIGOE: Yeah, you know, you can, the Planning Director has expressed a position, and I think it's an arguable position. I was hoping to get some input from both the Planning Director and the applicant regarding that before I had to give you an opinion on it. I could give you an opinion, you know, right now, but then I'm not sure if you would want to do that in an open session or whether you want to get that as a matter of attorney-client privilege because you may disagree with my opinion and go the other way, you know, in which case the record would have me contradicting you.

DOMINGO: You know -. Mr. Chairman? Thank you, Mr. Torigoe, for your comments. It's been frank and I can understand what you are saying. You know, at the last meeting we received a letter from the representative of the applicant, Mr. Lim, with regard to the application and the sequence of time that has taken place and his efforts to see if this whole issue could be resolved. And you know, in frustration, because nothing had actually happened, you know, he was forced to in his interest write that letter for the applicant. Now recently I read a reply to that by Mr. Yuen regarding what the attorney's applicant said in his letter. You know, I see in both letters and I can understand it; there is a lot of information that we need that is not in our hands. And you know, one is saying one thing and the other is reflecting on another thing. And it seems like, if you look at it, the blame is upon either one and it depends on where you are coming from, you know, whether or not you support the application, the move on or not. And that's why I think, you know, more time is needed. Both parties, as Mr. Lim indicated, would do their part and then a final analysis would be submitted to the Planning Commission for our review and study, so that we can make a decision. And whatever that decision may be, then that will be final because at that point we would have all the information before us, the arguments, the arguments for the action or inaction of both parties. And that's what I'm looking at.

GRAHAM: Okay, thank you, Commissioner Domingo. I might say I think we've gotten pretty clear presentations by both the applicant and the Planning Director, and I would like to encourage us to kind of move forward rather than just chewing on the same information too long. Commissioner Watanabe?

WATANABE: I would like to hear from the other Commissioners really, as far as what your concerns are or whether you agree with what's been proposed, and not with regard to the procedures but with regard to the final decision, you know, as far as the zoning is concerned. And I think if we have some input there, then it will be much clear as to whether we can arrive at some type of decision come January 11th. Barring further discussion amongst us, I doubt that there's going to be any fruitful discussion between the Planning Department and the applicant. And so we'll be at the same impasse come January 11th, and that's why I suggest what I suggested earlier.

GRAHAM: Okay. Commissioner Watanabe, the only thing that occurs to me is, like Commissioner Domingo just said he feels like he needs a lot more information, a lot more time; I think one thing we want to keep clear here is that at this point we are not making a decision about the body of it. So if the Commissioners want to speak, it's probably best they speak to concerns that they want to have brought up in additional material rather than their positions on the Planning Director's or the applicant's.

WATANABE: Well, I understand what you're saying and I understand that Mr. Domingo feels like he needs more information and he needs more time. But I also understand that the Director is very firm on the January 11th date. So in my opinion based on the firmness of the Director's January 11th date, we don't have additional time, which means the zoning change goes up regardless of what we say or decide come January 11th, or can't decide. What I'm trying to point out is that generally we do not want to punt; generally we want to come up with a decision and a recommendation. So if that is a fact, then it would be helpful I think if people would express where they stand on this to some degree, not so much to decide, but it may send a message to both parties that maybe there is compromise or maybe it's going to fly one way or the other, you know, as it stands. I'm not sure.

GRAHAM: Okay. Commissioner Woodward?

WOODWARD: Yeah, I would agree with Commissioner Domingo. And one of the things that we brought up at the last time that this was addressed was that we'd like to have dialogue between the Planning Department and the applicant. And evidently that has not happened, which is unfortunate. And in that regard I think we do need more information. This is not an emergency, they are not doing anything with the property right now, and they can't until we make a decision one way or the other. So in that regard I would support Mr. Lim's recommendation that the parties be given time to prepare more information for us, and hopefully dialogue will occur between the Planning Department and the applicant, so that maybe this can be worked out in some other fashion, other than just an up or down vote. But I think the thing that disturbs me is there has been no dialogue, right, and that does bother me. And for that reason I would support Mr. Lim's recommendation that this be deferred.

GRAHAM: Commissioner Alameda?

ALAMEDA: Thank you, Mr. Chair. In addition to what Commissioner Woodward has suggested, I'm kind of more interested in dialogue between the developer and the Kohala community and seeing the result of that. That's kind of where I'm leaning. Commissioner Watanabe's, I want to -. And like in March - I was looking at the Community Development Plan timeline as one our documents - I think we should have like a rough draft over the Kohala

Community Development Plan, I think, around that time. So to me, I'm more interested in the dialogue between the developer and the community and seeing that result, if you will.

GRAHAM: Thank you, Commissioner Alameda. Commissioner Siracusa?

SIRACUSA: Yes. Relevant to that, I believe the County Council passed some resolutions about rezonings in the three districts where the Community Development Plans are being worked out. And so I'm wondering if a rezoning comes under that purview of those resolutions.

GRAHAM: Mr. Yuen?

YUEN: We attached copies of the resolutions to the materials that were submitted to the Commission, and the proposed rezoning that I initiated does not contradict the resolutions which ask for a moratorium. I believe that a time extension doesn't, if this were a new zoning, it would contradict the resolutions. As far as, you know, what the applicant wants, I'd have to go back and look at it to be sure, but I don't believe that the resolutions apply to time extensions. And in any event, the Planning Department and the Planning Commission have to, if an applicant chooses to submit a rezoning request that contradicts one of these resolutions, the Planning Department and the Commission are still obligated to process those through under the timeframes that are contained in it, in the ordinance. The Council can defer action, if they want, indefinitely; the Council can vote down the rezoning application.

SIRACUSA: I'll follow up.

GRAHAM: Go ahead, Commissioner Siracusa.

SIRACUSA: Since everyone was giving their opinion and I hadn't stated mine, I was just asking questions. I would be willing to go along with the Director on January 11th. I think there has been lots of time already for information gathering. That still gives a month; it doesn't take that long to talk to people. And if on January 11th everyone seems to agree that more time is needed, I understand that it can always be agreed to grant some more time. But I don't want to see this dragging on forever, and so I would vote to continue the matter to the January 11th meeting.

GRAHAM: Thank you. I'd like to move our process forward. I'm not saying I want to move the application forward; I'd like to move our process forward. I think we have agreement on the SMA matters with Mr. Lim and Mr. Yuen about the schedule that Mr. Lim proposed. Could we not take a motion, and move forward and say this is how we want to handle the SMA matters as far as our continuance and what we expect from the parties? And then once we've done that, then we can look at continuing the rezoning requests both for the applicant and for the Planning Director, just so we can move through this logjam we are in in our procedures today. Commissioner Siracusa?

SIRACUSA: Okay, I'll make that motion.

DOMINGO: Mr. Chairman?

GRAHAM: All right. Commissioner Domingo has something he wants to say also. Go ahead.

DOMINGO: Yes. I had my hand up for a while. But during that opportunity to the other half of the table, to people who haven't spoken yet, I thought I'd just wait and see that through, and then I'd like to speak. You know, trying to put things in proper perspective, and you know, first, I totally respect the efforts of people in the community who'd like to participate in the decision-making process that we have in our government, and it's real important that they do that. But in this particular case, what we are looking at is entitlements that have been given to an individual in a community to do and to carry out his plan. And this whole acquisition of these entitlements has gone through a lengthy process of hearings, a number of hearings, and participation by those who are interested in the matter. Now they have been given those entitlements, and what we are doing now is trying to take back those entitlements. And you know, for one, for me I'd like to know what has drastically happened between – was that 19? – 1997 till now that warrants the government to come up and take away those entitlements, you know. We are talking about fairness. You can apply to this principle to anyone on this island, anyone in the community where you live; and if you by some desire decide to have your parcel rezoned, you know, at a time, and because you haven't been able to develop it or because the parcel you bought has gone to some other person's hands and they have not complied with some requirements of the zoning hearing at that time, now we are asking this other individual who bought the property, you cannot develop that because there is some ties to it. Apply it – we are looking at a developer, you know, we are looking at a developer – but put that same situation in your life as an individual, as a couple, as a father and a mother who'd like to give your children a parcel for them to build, you know. Now the principle is the same. There is a question of fairness right here. The applicant is asking give us more time so that we can assemble all the facts together, and let the Planning Department do the same, and we'll present it to the Commission; and you guys decide with the fullest possible complete information that we can give you. And you know, at that point my whole attitude is that, you know, let it fall where they may and if we say no, it's no. But at least we give them the fair, we treat them fairly and give that time as they requested. I think that's what they are asking. So you know, I certainly would like to see that they be given, they be given enough time to comply with our request.

GRAHAM: Again, you know, I'm stuck on wanting to move today forward. And I'm sure if we take up Mr. Yuen's stuff on January 11th and we take up Mr. Lim's stuff in March, we're going to be talking all about entitlements on January 11th and we're going to talk about them all in March, so I would prefer we don't talk about that stuff right now; and we just try to move with the schedule and get the schedule we want, so that we can go on with our other business today.

SIRACUSA: Point of order, Mr. Chairman?

GRAHAM: Yes, Commissioner Siracusa?

SIRACUSA: We have not closed the hearing and asked Mr. Lim to step back.

GRAHAM: Thank you.

SIRACUSA: And I'm prepared to make a motion. And it has nothing to do with the merits of the case but with our scheduling.

GRAHAM: Thank you. Do we have any further questions of Mr. Lim at this point, questions of the applicant? All right. Thank you, Mr. Lim, for your participation today. All right. Mr. Watanabe, can we go ahead with Commission Siracusa's motion now? Do you need something that needs to be said first?

WATANABE: I was about to echo what you had said. And really for clarification it's, the Commission does not have the power to extend; so we are talking about extending, the only person that potentially has the power to extend is Mr. Yuen, and Mr. Yuen has adamantly stated that it's going to be January 11th. So all this talk about extension, as far as the rezoning is going, is moot because the Commission does not have the power. Now if Ms. Siracusa would like to make a motion to extend on the SMA issue, on the SMA not the rezoning, then you know, then we can proceed as the Chair has requested.

GRAHAM: All right, let's hear Commissioner Siracusa's motion. Can we do that?

SIRACUSA: Can we discuss after the motion? I mean -.

GRAHAM: Well, we're going to discuss the motion.

SIRACUSA: That's when discussions happen; it's after you make a motion.

GRAHAM: That's fine. So should I officially say -.

SIRACUSA: Instead of assuming what I'm going to -.

GRAHAM: That the hearing is closed at this time? Is that appropriate, Mr. Torigoe?

SIRACUSA: I was going to move in the matter of SMA Use Permit No. 379 that we continue the hearing until January 11th.

GRAHAM: Do I have a -?

SIRACUSA: And then I was going to make a follow-up motion for the rezoning.

WATANABE: I'll second.

GRAHAM: Do I have a second? Okay. Now just as a point of information, I thought Mr. Lim's suggestion was that Findings of Fact, etc. would be put forward in February and that he didn't really presume that we would be hearing this again probably until March, given his schedule on the SMA. Did you understand it differently, Commissioner Siracusa?

SIRACUSA: I did, but I really, I think we have so much information in front of us right now, it seems to me that what Mr. Lim is doing is a delaying tactic, and I don't feel like playing into that.

WATANABE: Oh, wait. I withdraw my second then because I guess I misunderstood the motion.

GRAHAM: Okay, Commissioner Watanabe misunderstood, so we need another motion, I mean we need another second, if we have one for Commissioner Siracusa's motion, which ask that we continue the SMA hearing until our January meeting. Do we have a second for that? I guess the motion fails for lack of a second. Do we, I'll be asking to entertain a motion for when we might like to continue to hear the SMA matters resolved. Commissioner Watanabe?

WATANABE: I would move to hear or proceed with the schedule proposed by Mr. Lim for the SMA and hear that at the – I believe it was – March 20th meeting.

DOMINGO: Second.

GRAHAM: All right. And the second is by whom?

DOMINGO: I second.

GRAHAM: Oh, Commissioner Domingo, you seconded that motion?

DOMINGO: Yes, I seconded.

GRAHAM: All right, thank you, just -. Commissioner Alameda?

ALAMEDA: Is this discussion? Are we in discussion?

GRAHAM: Yes, go ahead.

ALAMEDA: Okay, thank you, Mr. Chair. I wanted to comment on Commissioner Watanabe's comment about the Director's interpretation of that timeline, that only the Director has the final say on that. I think that it's interpretable, given Mr. Torigoe's earlier comment that he didn't want to go into. So just to make that clear, in my mind, that's an interpretation right now, and it's not very clear.

WATANABE: Okay. May I -?

GRAHAM: Commissioner Alameda, that's regard to the rezoning, I believe, not to the SMA permit. So it's really not on point with this particular motion.

ALAMEDA: I'll hold that thought then.

GRAHAM: Good, thanks.

DARROW: Mr. Chairman?

GRAHAM: Yes, Mr. Darrow.

DARROW: Thank you. If I can just get some clarifications, these matters before us involve five different actions, and if I can make sure that I'm on the same page with the Commissioners. With Commissioner Siracusa's motion, is that exclusive of only 2.b? I'm sorry, for the first motion I need to get clarification.

GRAHAM: Mr. Darrow, the first motion failed for lack of a second -.

DARROW: Correct, but I -.

GRAHAM: So we are with Commissioner Watanabe's motion now.

DARROW: All right. On the second motion, is that specific to 2.b. on the agenda?

WATANABE: Excuse me.

DARROW: This would be the applicant, Kohala LLC, continued hearing for an amendment to Condition 4 of SMA Use Permit 379. Or is this inclusive of the Planning Director's -?

WATANABE: Here, you know, we may need some clarification here because we also have 1.c. which references to the SMA portion. As I understood it, the Planning Director consented to the SMA extending beyond the 60 days, so I'm assuming that we were referring to No. 1.c. and No. 2.b. both of which reference the SMA permit and none of which references the zoning.

DARROW: Thank you.

GRAHAM: Thank you. Is that your understanding also, Commissioner Domingo, when you seconded?

DOMINGO: I, you know, I can say yes or no, but I think what we all in general would want is more time to consider all the facts and evidence that certainly I see forthcoming.

GRAHAM: Do I need to get another second on Commissioner Watanabe's revised motion, or does your second hold okay with his explanation?

DOMINGO: Okay, I'll go with it.

GRAHAM: Okay, thank you. So we'll go forward with that motion. I'm also in need of a break pretty soon here for the restrooms. I don't know at what point I'm going to say, we're not going to be through here anytime soon. Why don't we take a break right now? Can we do that?

WATANABE: Why don't we take a vote?

SIRACUSA: We have a motion on the table.

GRAHAM: Are we ready for a vote on this one?

WATANABE: Or do we need further discussion?

GRAHAM: That's the issue. Is there further discussion? Is there further discussion on Commissioner Watanabe's motion to bring up Item 1.c. and Item 2.b. in our March meeting, to defer until that time? Is there any further discussion? Good. Thank you. And Mr. Darrow?

DARROW: Thank you, Mr. Chairman. I'm sorry I have to again ask for just a brief clarification. My understanding is that this motion is to continue this, both these Special Management Area Use Permit actions till January 11, 2008, with -.

WATANABE: No, no. March 20th.

DARROW: Oh, I'm sorry, March 20th.

WATANABE: The January 11th motion failed -.

DARROW: Correct. Okay.

WATANABE: Because no second.

DARROW: To the March 20, 2008, with the schedule given by the applicant. My understanding is that the schedule is that Kohala LLC will submit proposed Findings of Fact, Conclusions of Law, Decision and Order by February 8th -.

WATANABE: That's correct.

DARROW: And that there will be -.

WATANABE: Twenty-one day additional period.

DARROW: The 21 days will allow the Planning Department to submittal a rebuttal to the proposed Findings of Fact submitted by the applicant. Is that correct?

GRAHAM: I believe that's correct.

WATANABE: Yeah, that's correct.

DARROW: Okay. And then on March 7th it will allow comments and rebuttals for both the Planning Department and the applicant, and then the hearing will be for March 20, 2008.

WATANABE: That's correct.

GRAHAM: Mr. Yuen?

YUEN: I need to see, was there a date for the Planning Department to submit proposed Findings, if it so desires? I believe there was a stipulation that it was not necessary, but

we should have a date for the, deadline for the Planning Department to submit proposed Findings. And I'd let Mr. Lim suggest one.

GRAHAM: Well, all right, Mr. Lim, maybe you can clarify for us where we stand.

LIM: Yes. We had intended that the February 29th date be for the Planning Director's legal memoranda and any proposed Findings that he wishes to submit.

YUEN: The same date as the applicant?

LIM: No, no. We would be submitting ours on February 8th, you would submit yours on February 29th.

YUEN: That's fine, that's fine, yes.

GRAHAM: All right, fine. I think our -. Go ahead, Mr. Darrow.

DARROW: So we are okay with that. Okay, I won't reword that; I'll just go ahead into the motion. The motion before us is to continue this matter. If I could, with that I'll take the vote. Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes to continue both the Kohala LLC amendment and the Planning Director's initiated revocation of SMA Use Permit 379 to March 20, 2008. Thank you.

GRAHAM: All right, thank you. So our next item would be the rezoning ordinance, and what we're going to do with them as far as continuations or whatever. So let's take a five-minute recess now, then we'll go right to that.

RECESSED The Chair called a recess at 10:43 a.m.

RECONVENED The meeting reconvened at 10:56 a.m.

GRAHAM: Will the Planning Commission come back to order, please. Also, I want to indicate that we are scheduled to do our 12 noon lunch today, so we'll time ourselves for that. So the item before us now, the items are those on these two applications: one initiated by the Planning Director, one initiated by Kohala LLC, as they relate to change of zone ordinance. And we've already heard from the applicant that he would like his change of zone ordinance to mirror the same timetable as the SMA ordinance, as the SMA permit that we will be hearing in March as we've just decided. And the Planning Director has indicated that as far as his rezoning, initiated ordinance, he would be willing to extend the date from today until our January meeting, but he would really not be wanting to extend beyond that. And my presumption would be that if in fact we were not willing, we didn't want to hear his motion today and we didn't want to hear his application on January 11th, we wanted to extend beyond that, essentially that the time clock would run out on that, so it would go up to the Council with this sort of default negative recommendation. So that's my kind of read of the lay of the land.

WATANABE: Yeah, Mr. Chair?

GRAHAM: Commissioner Watanabe?

WATANABE: I would like to make a motion that the Planning Director initiated change of zone No. 1.a. and 1.b. as well as the applicant initiated amendment to Condition C of Change of Zone Ordinance 97-102 that will be Agenda Item 2.a. be continued to the January 11th meeting because it appears this body does not have the authority to extend beyond that.

SIRACUSA: Second.

GRAHAM: All right, seconded by Commissioner Siracusa. So Commissioner Watanabe has made a motion, and seconded by Commissioner Siracusa, to have the rezonings of both the applicant and the Planning Director come before us in January. I see Mr. Lim is at the table and would like to make a comment on that. We have closed the hearing, so I'd sort of ask whether the Commissioners would appreciate hearing from Mr. Lim now or not. Mr. Woodward?

WOODWARD: Well, I would like to make a comment first.

GRAHAM: Okay.

WOODWARD: And maybe my mike is a little too high, but -. These issues are so intertwined; voting on one essentially means we are voting on all five issues. And if we have agreed to defer at Mr. Lim's request to March 28th (sic) for the two issues, voting on these other three essentially means we are voting on all five at one time. And I think, out of the issue of fairness, if we send a negative recommendation to the Council on all these issues, they essentially cancel each other out; it means we don't have a recommendation. I would recommend that we defer this also until March 28th (sic) and then we discuss the whole issue because these are all five intertwined initiatives.

WATANABE: I -, Mr. Chair?

GRAHAM: Okay, yes, Commissioner Watanabe, go ahead, if you want to respond to that -.

WATANABE: Please.

GRAHAM: Then I'd also want to deal with whether we'd like to hear from Mr. Lim or not -.

ALAMEDA: I have a comment, too, before that.

WATANABE: Yes.

GRAHAM: Go ahead, Commissioner Watanabe.

WATANABE: I fully agree, however, I did state towards the end of my motion that the body apparently does not have the authority, and that is the only reason I'm making the motion. And I have further comments when we get into discussion on this because as I stated earlier I'm not comfortable with either choice that we have.

ALAMEDA: Mr. Chair?

GRAHAM: Okay, Commissioner Alameda?

ALAMEDA: We are in discussion from what I understand. Correct, Mr. Chair?

GRAHAM: Yeah, but I think we are in discussion at this point of time on his specific motion which is to what date do we continue the hearing on the rezonings.

ALAMEDA: Again I just wanted to, I don't know when it is appropriate, but I think I need to get at least just a yes, that's correct, from our counsel, that that is indeed true that the Director does have the final say on that, and if so, then at least I can put that to rest. 'Cause I understand Mr. Torigoe may have a different interpretation on that.

GRAHAM: Mr. Torigoe?

TORIGOE: Well, with respect to, you know, you are asking at this point about the choices whether you can go beyond November 11th, and basically even if you assume that the Director has the authority to agree to an extension, if the Director does not agree to the extension, then he's basically choosing to end it at that point. And so it would at that point go, you know, if you don't make either decision by that date, then it would go up with the default negative recommendation.

GRAHAM: Is that answer what you needed?

ALAMEDA: No.

GRAHAM: Okay, go ahead and be more specific.

ALAMEDA: So Mr. Torigoe, then as our counsel, you agree that the Director cannot or has the authority to consent or to not consent to the January 11th deadline, and that basically that's already rest with the Director and not with the Commission?

TORIGOE: Well, basically the Director has, you know, the Director has a veto power in any case at that point, you know. If we are saying that your going forward depends on the Director's agreement to go forward beyond that date and he is saying, no, I'm not agreeing to go forward beyond that date, then you can't go and do anything with the Director initiated matters beyond the date that the Director agrees to, which is January -.

WATANABE: Mr. Chair?

ALAMEDA: Okay, got you.

GRAHAM: That's clear?

ALAMEDA: Thank you, Mr. Chair.

GRAHAM: All right, now, hold -.

WATANABE: Mr. Chair?

GRAHAM: A lot of people speaking here. Let's, first off I did ask a minute ago if the Commission would like to hear from Mr. Lim. Would the Commission like to hear from Mr. Lim at this time or not? So the hearing is closing?

LIM: I just wanted to lodge an objection, and then I'll sit down, for the record.

GRAHAM: All right, go ahead, Mr. Lim.

LIM: For the record, we object to the setting of the January 11th change of zone hearing separately from the SMA, and the applicant reserves all rights on the Planning Commission Rule 11-3(c) to argue that the 60-day period for action has or will elapse by January 11, 2008. Thank you.

GRAHAM: All right, thank you. Commissioner Woodward?

WOODWARD: Yeah, I think the question of whether or not we pass or decide on this recommendation with regard to rezoning is moot because in all, from all intents and purposes the 60 days elapsed a long time ago. And again I think out of the interest of fairness, since these are all intertwined issues, you can't decide one without deciding the other. It makes no sense to hear the rezoning request, particularly if there is a question of whether the time has already elapsed, on January 11th, and then to hear the SMA permit request on March 20th. It makes much more sense to put everything back together. It may require a little bit of work from the Planning Department to reformat this and to get together with their counsel, but I think that's an interest of fairness.

GRAHAM: Thank you. Do we have any further discussion? Commissioner Domingo has been waiting. Go ahead, Commissioner Domingo.

DOMINGO: Thank you, Mr. Chairman. You know, if the statement of Mr. Woodward is correct with regard to the 60-day limit already has passed, then regardless of how we feel or even how the Planning Director feels, by law, having passed that date, it should be sent up to the Council with a negative recommendation. There're no two ways about it. It's a law; we've got to abide by the law.

GRAHAM: Thank you, Commissioner Domingo. Anything further from the Commissioners? All right. So we have a motion on the table for January 11th date to hear – is it all three rezoning matters? Is that the case, Commissioner Watanabe?

WATANABE: As I stated the motion, yes, it was for all three. I think for clarification purposes, maybe Mr. Torigoe could make it clear that, whether the Commission has any authority to extend. 'Cause we are keeping going back whether the Director has any authority; it's not clear within the Rules, as I read it, whether the Director has. But I think the second part of Mr. Alameda's question was whether the Commission had any authority.

GRAHAM: Yes, Mr. Torigoe?

TORIGOE: Reading your Rule 11-3, you know, basically I think what seems to be intent of this in general is that if anybody has the authority to extend the timeframe, it would be the applicant or possibly the Director. And if the Director, you know, basically refuses to agree to an extension, then that certainly I think would end the time; and I don't think the Commission would have the authority to go beyond that. For instance, if you did another motion that would ask for the rezoning initiated by the Director to be heard on March 20th, but the Director says, no, I don't want it to go that long, I think you are basically stuck with what the Director wants at that point. I mean you can make the motion, you can pass it, but I think basically that it ends up with the Rule saying that, you know, it goes up with the default negative.

GRAHAM: Thank you. Also it occurs to me, looking ahead time-wise, that if we approve this motion today, the one before us right now for January 11th date, when we come to January 11th, we are sort of asking the parties to be ready to argue and with those particular three rezoning matters. But when January 11th comes, we certainly can wind up entertaining more

motions to put things off until March or something, right? I mean that's certainly part of what could happen come January 11th. Any further -?

WATANABE: I, I wish we could handle this -.

GRAHAM: Commissioner Watanabe, go ahead.

WATANABE: I'm sorry. I wish we could handle this all at once, but we don't have that choice or at least that's my understanding of the Rules. To be -.

LIM: To the extent that -.

GRAHAM: Mr. Lim, please, would you -?

LIM: I'm sorry.

WATANABE: To be perfectly honest with you, I stated my position that I'm not in favor of either extreme to be, I would, however, be inclined to vote for an extension of the time and go with the RS-15 when this vote comes up on January 11th, even though I think it's much higher density than the area should have, because to me that's a preferable choice than to take away – what is that, it can get come down to 6, that would be – 44 units. And that's why I don't particularly like the choices that I have. I was hoping that we could arrive at, you know, the parties could arrive at some kind of compromise, but it doesn't seem like it's going to go that way. And so -.

GRAHAM: Okay, thank you. Any other comments by the Commissioners on the motion? All right, Jeff, we have a motion before us for January 11th, continuance to January 11th, on the rezoning matters, which would be, I believe, 1.a. and 1.b. and 2.a. on our agenda.

DARROW: Thank you, Mr. Chairman. If it's okay with you, I'll take one vote for all three matters.

GRAHAM: Is that all right, Mr. Watanabe?

WATANABE: I'm fine with that; I did state the motion that way.

SIRACUSA: That's the way the motion was made.

GRAHAM: Thank you.

DARROW: Thank you. With that, I'll take the vote. Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Nay.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: No.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, six to two.

GRAHAM: All right, thank you. So I believe we are finished with Items 1 and 2 today; that on the SMA aspects we are going to have our March meeting, and we are going to follow the schedule suggested by Mr. Lim as far as the legal documents and their schedule, they will be prepared because we will be taking final actions on the SMA. As far as the rezonings, we are only doing recommendations to the Council and they will both come before us at our January meeting. So Mr. Torigoe, have we exhausted all issues on these two agenda items, as far as you understand?

TORIGOE: I think so. Basically you've continued everything. Unless the parties have some other issues that they think should be raised.

GRAHAM: Correct. Mr. Lim, is there any further that we should raise today that comes to your mind?

LIM: We'll be submitting legal memoranda on the change of zone prior to the January 11th hearing. Thank you.

GRAHAM: Thank you. Mr. Yuen, anything further?

YUEN: No.

GRAHAM: Thank you.

The discussion ended at 11:11 a.m.

Respectfully submitted,

Noriko Sauer
West Hawaii Secretary