

KAUA'I PLANNING COMMISSION
REGULAR MEETING
February 13, 2018

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Apisa at 9:52 a.m., at the Lihu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Donna Apisa
Ms. Kanoe Ahuna
Mr. Roy Ho
Mr. Sean Mahoney
Ms. Glenda Nogami Streufert

Absent and Excused:
Mr. Kimo Keawe
Mr. Wade Lord

The following staff members were present: Planning Department – Director Michael Dahilig, Dale Cua, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Apisa called the meeting to order at 9:52 a.m.

ROLL CALL

Chair Apisa: Take a roll call.

Planning Director Michael Dahilig: Commissioner Keawe. Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Lord. Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Here.

Mr. Dahilig: Madame Chair, you have five (5) members present this morning.

Chair Apisa: We have quorum.

APPROVAL OF AGENDA

Mr. Dahilig: Madam Chair, for the approval of the agenda this morning, the Department would recommend taking Item K, the Subdivision Committee Report, as well as Item M, New Business, before Item I, in that order this morning, Madame Chair.

Chair Apisa: Do we have a motion to adjust the agenda?

Ms. Nogami Streufert: I move to adjust the agenda as proposed by the Planning Director.

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

MINUTES of the meeting(s) of the Planning Commission

Regular Meeting of January 9, 2018 **Contested Case Calendar of January 9, 2018**

Mr. Dahilig: We are on Item D. These are the minutes of the Planning Commission for the regular meeting of January 9, 2018, as well as the Contested Case Calendar of January 9, 2018, for your approval.

Ms. Nogami Streufert: I move to accept the minutes of the regular meeting of January 9th and the Contested Case Calendar of January 9th.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: We do not have any additional items for the record.

Deputy County Attorney Jodi Higuchi Sayegusa: I'm sorry–

Chair Apisa: Jodi does.

Ms. Higuchi Sayegusa: I do have one (1) note.

Mr. Dahilig: Okay.

Ms. Higuchi Sayegusa: Just wanted to note for the record that the Clerk of the Commission received and forwarded to the Commission the withdrawal and substitution of counsel in the Contested Case No. CC-2015-15; that's Parnell Kaiser and Michele Kaiser v. Planning Department, County of Kaua'i. This was received from Attorney Jonathan Chun withdrawing from this matter. Thank you.

Chair Apisa: Thank you very much. It is received for the record.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

Mr. Dahilig: Madame Chair, we are now on Item F. This is Hearings and Public Comment. Under Item F.1., Continued Agency Hearing, we do not have any continued agency hearings this morning.

New Agency Hearing

Special Management Area Use Permit SMA(U)-2018-5 to construct a single-family residence on a parcel situated along the western side of Nalo Road in Po'ipū, approx. 450 ft. north of its intersection with Hoone Road, further identified as 2281 Nalo Road, Tax Map Key: 2-8-019:056, and containing a total land area of 15,646 sq. ft. = *Lon and Tina French.*

Mr. Dahilig: Under Item F.2., we have an Item F.2.a. Special Management Area Use Permit SMA(U)-2018-5 to construct a single-family residence on a parcel situated along the western side of Nalo Road in Po'ipū, approximately 450 feet north of its intersection with Hoone Road, further identified as 2281 Nalo Road, Tax Map Key: 2-8-019 Parcel 056, and containing a total area of 15,646 square feet. The applicants are Lon and Tina French. There is a Director's Report pertaining to this matter.

Madame Chair, the Department would recommend opening the agency hearing at this time.

Chair Apisa: We will open the agency hearing at this time.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify on this particular—

Chair Apisa: Oh wait, someone is raising their hand.

Mr. Dahilig: —agenda item. I would recommend making a final call for any testimony for this agency hearing.

Chair Apisa: Final call – anyone to testify? Yes, please step forward. State your name for the record, please.

Ms. Tessie Kinnaman: Good morning, Commission Chair. Tessie Kinnaman for the record. Commissioners, good morning. I am here on this permit, strictly for the parking requirements. I don't know if you are familiar with Nalo Road; the condominium to the east of that, Nihi Kai, was built over, I think, thirty (30) years ago, and the parking on that street is getting very narrow. There is parking on both sides of that street, and so if this residence is being built, I don't know what the...if it is zoned R-4 or -10, if that is going to be affecting the off-street parking because the Nihi Kai Condos, one of their parking lots has been closed. Their visitors are parking on the street on the east side of Nalo Road and then other people are parking on the west side of Nalo Road, so it makes it very narrow whereas the firetruck...there is only one (1) lane actually – a very narrow one (1) lane – because even I myself when I go up that street, both sides of the street are packed. And then you need to make a sharp right-hand turn to go up the hill where one woman, a member of the community for years...she is an elderly woman and if she needs any help, I mean, if that road is going to be packed on both sides of the street, it is going to be hard for emergency vehicles to make that turn. So that is my concern. If they could enforce a condition on Nihi Kai where there is no parking on the east side of Nalo Road, (then) that would really help. Thank you.

Chair Apisa: Thank you. Is there anyone else before we close the public testimony? (Would anyone else like to testify?)

Mr. Dahilig: Madame Chair, seeing no other additional testifiers on this agency hearing, the Department would recommend closing the agency hearing on this matter.

Chair Apisa: (Do) we have a vote [*sic*] to close the agency hearing?

Mr. Mahoney: Chair, move to close the agency hearing.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Continued Public Hearing

Mr. Dahilig: We are on Item (F.)3., Continued Public Hearing. We have none for this morning.

New Public Hearing

Mr. Dahilig: As well as no New Public Hearing.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: We also do not have anybody signed up to testify on any other agenda item this morning. The Department would recommend making a final call for any Chapter 92 compliant testimony.

Chair Apisa: Final call for any public testimony. Hearing none.

Mr. Dahilig: Thank you, Madame Chair.

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing

Mr. Dahilig: We are on Item G. This is the Consent Calendar. No status reports or no Director's Reports scheduled for agency hearing.

EXECUTIVE SESSION

There was no Executive Session.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: We move to Item K, which is the Committee Report. I believe that has been circulated for the Commission's review.

Chair Apisa: Yes. This would be the Subdivision Committee that had its meeting just prior to this. Do we have the minutes [*sic*] for that? I need a motion to approve. You don't have the minutes?

Mr. Ho: Subdivision Committee – we had just one, really; Greg and Robin Yost, tentative map approval. It was approved–

Chair Apisa: Can't hear you very well.

Mr. Ho: I'm sorry. We had one (1) item; Greg and Robin Yost, tentative subdivision map approval, and it was approved 2:0. Our other item was a...

Mr. Mahoney: Status.

Mr. Ho: Yes, was a status report.

Ms. Nogami Streufert: I move to accept the Subdivision Report No. 9.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

NEW BUSINESS

Special Management Area Use Permit SMA(U)-2018-5 to construct a single-family residence on a parcel situated along the western side of Nalo Road in Po'ipū, approx. 450 ft. north of its intersection with Hoone Road, further identified as 2281 Nalo Road, Tax Map Key: 2-8-019:056, and containing a total land area of 15,646 sq. ft. = *Lon and Tina French.*

Mr. Dahilig: We are now on Item M. This is New Business. We are back to Special Management Area Use Permit SMA(U)-2018-5 at TMK: 2-8-019 Parcel 056. Dale will be presenting the report on behalf of the Department for this matter, Madame Chair.

Chair Apisa: Thank you, Dale.

Staff Planner Dale Cua: Good morning, Madame Chair and members of the Commission. At this time, I will just go through the Director's Report and summarize highlights of the report.

Mr. Cua read the Summary, Project Data, Project Description and Use, Additional Findings, and Agency Comments sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: That concludes the Director's findings at this time.

Chair Apisa: Thank you. Any...question here.

Ms. Nogami Streufert: Since one of the comments that came up was that with on-street parking, that road is very narrow for any fire vehicles should that be necessary. Have we gotten anything from the Fire Department yet?

Mr. Cua: We have and they were saying that the fire protection is adequate. They didn't really offer any comments. But in addressing the off-street parking requirements, the applicant has noted that they will be provisioned for parking on the subject property.

Ms. Nogami Streufert: There is a one-car garage and there is a pad, I think, a concrete pad.

Mr. Cua: Yes.

Ms. Ahuna: How many cars?

Ms. Nogami Streufert: For one (1) car; the pad was for one (1) car.

Mr. Cua: Right. Each residence is required to...should provide at least two (2) off-street parking stalls and there is enough land area to provide parking on-site.

Ms. Nogami Streufert: If you put the house, a garage, the parking area, and the outdoor shower, which I presume is also a pad, that comes up to about forty-seven percent (47%) of the land for that particular unit, which is 5,630 feet. I don't know whether the concrete pad for a parking and the outdoor shower counts with that.

Mr. Cua: Okay, yes, the overall land area, I think, noted in the application is 15,646 square feet.

Ms. Nogami Streufert: But for Unit 2 because aren't they...not subdividing but CPR'ing it?

Mr. Cua: They are looking to partition the property into two (2) units. I think from a land coverage calculation, what we do is collectively look at the land coverage for the entire parcel to assure that it is under the fifty percent (50%).

Ms. Nogami Streufert: Okay.

Chair Apisa: Question. You mentioned that three (3) houses are allowed, but they are only planning to do the two (2)?

Mr. Cua: Correct.

Chair Apisa: And that would be it for the lot.

Mr. Cua: Unless they can fit the third unit somewhere and still meet the land coverage requirements.

Chair Apisa: Thank you. Any other questions from the Commission?

Ms. Ahuna: So there is room, Dale, for...it looks like in Exhibit K you can see there is the one (1) garage and then there is the two, and then two on the other side, so would that be considered as a possible...enough room? It looks like they could fit five (5) cars total, correct?

Mr. Cua: As noted on the illustration on the plot plan, they show parking on the paved portion of the driveway. I think—

Ms. Ahuna: Off of Nalo Road.

Mr. Cua: Off of Nalo Road, correct. They could possibly park more vehicles on the unpaved portion of the property.

Ms. Ahuna: So technically five (5) cars, right, it looks like?

Mr. Cua: There should be adequate space for more cars, especially at the rear portion of the property.

Ms. Ahuna: Oh I see, yes. Okay.

Chair Apisa: Thank you. Would the applicant come forward, please? State your name for the record.

Mr. Jonathan Chun: Good morning. Jonathan Chun on behalf of the applicant. With me is Tina French.

Ms. Tina French: Good morning.

Chair Apisa: Good morning.

Mr. Chun: We have received the Director's Report and we agree with the conditions on that. In particular, we agree with the provision that requires us to have a color palette that is consistent with the neighborhood, so we will be working with the Planning Department to submit an acceptable color palette for the house with them. Also, we do agree that there should be adequate landscaping between the parking areas as we discussed on Nalo Road, so we will be working with them on giving more detail (to) the Planning Department on the landscaping. I think, particularly, they wanted to have more native species, so we will be doing that for that.

In regards to the parking, the plans provide for already two (2) parking in there as you note; that is the requirement and we have met the requirement. We don't believe we are going to have any problems with any of the residents on that parking on the road, and we will not allow that on that anyway. There is room...as you saw in Exhibit K, there is room for an additional parking space, a tandem parking space, in front of the garage, so that can be done if the tenants really require that. I don't think that is a problem. And if, really, it becomes an issue, there is parking in the back of the house for even more, but we don't believe that is going to be an issue. We do meet the requirements and we think it is adequate parking. I think all the...basically, all the requirements have been met. I think the parking that Ms. Kinnaman alludes to...I think in the

beginning it comes from – my understanding because I have been there before – it comes a lot from the visitors that are visiting on the Nihi Kai side because they have a parking lot there and when that parking lot is full – and sometimes it is full – we do note that visitors go and park on the side of Nalo Road. I know that before they also had that restaurant there that was converted. I do know that restaurant because I used to go to that restaurant myself. Patrons from that restaurant, if there is no parking in the Nihi Kai parking lot which they were allowed to use and in the smaller parking from the restaurant, they would also park on Nalo Road. But as you know, that restaurant has since closed and has been opened as a real estate office, so that took care of some of the problems on Nalo Road. I don't believe any of our tenants on this when the house is built will be parking on Nalo Road. I am open to any questions if any Commissioner has any questions.

Oh, regarding the shower, the shower was moved during the process of consulting with the Planning Department on the application. The shower was moved from Nalo Road to the side of the house opposite of Nalo Road.

Ms. French: Off of the lanai.

Mr. Chun: Yes, next to the lanai, so there is no shower there now. But it doesn't show (inaudible) because after the application was filed, we did have further discussions with the Planning Department and we did revise the plan. But I will make the representation that the shower has been moved, or will be moved.

Chair Apisa: Thank you. Questions from the Commission?

Mr. Ho: Yes.

Chair Apisa: Go ahead.

Mr. Ho: Mr. Chun, is this property in the VDA area?

Mr. Chun: Yes, it is in the VDA and zoned R-10.

Mr. Ho: And at present, your plan is for a family dwelling?

Mr. Chun: Yes, a single-family dwelling. They do plan on renting it out occasionally when the owners are not on the island.

Mr. Ho: Thank you.

Chair Apisa: Any other questions from the Commission?

Ms. Nogami Streufert: Yes. Could I ask...are we anticipating anymore agencies to comment or is it sufficient that...the ones that we got are sufficient and we don't have to wait for anymore?

Mr. Cua: Yes, the ones we have received are sufficient to move with the application.

Chair Apisa: Any further questions? I would like to take a short recess. We need to reconfigure the tables.

Ms. Higuchi Sayegusa: We still have yet to...

Chair Apisa: Oh, sorry.

Ms. Higuchi Sayegusa: Yes, sorry, we still have yet to (inaudible) on this permit issue.

Chair Apisa: A little ahead on my time here. Sorry. Recommendation from you, Dale.

Mr. Cua: Sure.

Chair Apisa: From the Department.

Mr. Cua read the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: That concludes the Department's recommendations.

Chair Apisa: Thank you.

Mr. Mahoney: Chair, I move to approve SMA Permit (U)-2018-5.

Ms. Nogami Streufert: Second.

Chair Apisa: We have a motion to approve. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. Congratulations.

Mr. Chun: Thank you, Madame Chair and members.

Chair Apisa: Now we will take a short recess.

The Commission recessed this portion of the meeting at 10:18 a.m.
The Commission reconvened this portion of the meeting at 10:28 a.m.

Chair Apisa: We will reopen the meeting.

GENERAL BUSINESS MATTERS

Contested Case CC-2017-12, Special Management Area Use Permit SMA(U)-2018-3 for the construction of a public shared use path extending from Papaloa Road to the Uhelekawawa Canal, and associated improvements involving an existing parking lot and a new comfort station, and Shoreline Setback Variance Permit SSV-2018-1 to deviate from the shoreline setback requirement, involving several properties along the makai side

of Kūhiō Highway in Waipouli identified as Tax Map Keys: 4-3-002:001, 012-016, 019, 020; 4-3-007:009, 011, 027, 028; 4-3-008:016, and containing a total area of approx. 2-14 acres = County of Kaua‘i, Department of Public Works. [Director’s Report (DR), Sup 1 DR, and S2 DR received 9/12/17; hearing continued 9/12/17 at request of the Office of the County Attorneys for further review of Petition to Intervene by Wailua-Kapa‘a Neighborhood Association 9/12/17; Petition to Intervene by Wailua-Kapa‘a Neighborhood Association approved 9/26/17; hearing closed 9/26/17; Contested Case Hearing held 11/14/17, deferred to 2/13/18 for decision making.]

Ms. Higuchi Sayegusa: Madame Chair, we are on Item I, General Business Matters, Contested Case CC-2017-12, Special Management Area Use Permit SMA(U)-2018-3 for the construction of a public shared use path extending from Papaloa Road to the Uhelekawawa Canal, and associated improvements involving an existing parking lot and a new comfort station, and Shoreline Setback Variance Permit SSV-2018-1 to deviate from the shoreline setback requirement, involving several properties along the makai side of Kūhiō Highway in Waipouli identified as Tax Map Keys: 4-3-002:001, Parcels 012 through 016, 019, and 020; 4-3-007 Parcels 009, 011, 027, 028; 4-3-008 Parcel 016, and containing a total area of approximately 2-14 acres, County of Kaua‘i, Department of Public Works.

Chair Apisa: Thank you. The Contested Case was closed and final arguments were completed on January 9, 2018. The proceeding is, therefore, before the Commission for decision. No further evidence will be taken at this time. Does everyone understand that? Thank you.

We have received a proposed Findings of Fact, Conclusions of Law, and Decision and Order from the Petitioner, Department of Public Works, and the Intervenor, Wailua-Kapa‘a Neighborhood Association. We also received Exceptions to Intervenor’s proposed Findings of Facts, Conclusions of Law, Decision and Order from the Petitioner, Department of Public Works, and Exceptions and alternative proposed Findings of Fact, Conclusions of Law, and Decision and Order from the Planning Department.

At this point, the Commission has two (2) options. We can adopt the Decision and Order as submitted by any of the parties with or without revisions, or, two, we could take action on the matter and require the Department or party to submit another Decision and Order that conforms to the evidence. In other words, make a decision and direct one of the parties to submit an amended Findings of Fact, Conclusions of Law, and Decision and Order that conforms to our decision today. What is the pleasure of the Commission? To adopt as submitted with or without revisions, or to take action and require a further submission?

Deputy County Attorney Adam Roversi: Madame Chair – Adam Roversi for the Planning Department – with your permission, I would like to correct one (1) error in the Planning Department’s submission.

Chair Apisa: Please.

Mr. Roversi: If appropriate; just a small item. Beginning on page 2, Paragraph No. 4 in the Findings of Fact states that an approved burial treatment plan was submitted. It should say a

draft burial treatment plan was submitted; just to be accurate. But notwithstanding that error, the proposed Decision and Order in the Planning Department's document requires compliance with an approved burial treatment plan.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Sorry. Just to note for the record, maybe the parties could state their appearances.

Mr. Roversi: Since I already jumped in, Adam Roversi for the Planning Department.

Deputy County Attorney Teresa Tumbaga: Good morning. Teresa Tumbaga, Deputy County Attorney, on behalf of the Department of Public Works.

Ms. Rayne Regush: Good morning. Rayne Regush, Chair, Wailua-Kapa'a Neighborhood Association as Intervenor.

Chair Apisa: Thank you. Any direction or motion from the Commission?

Ms. Nogami Streufert: I move to accept the Decision and Order from the Department of Planning with possible amendments.

Chair Apisa: Do we have a second?

Ms. Ahuna: Second.

Chair Apisa: Okay, we have a motion on the floor. Any discussion on this?

Ms. Higuchi Sayegusa: Perhaps the motion...you iterated that may be a possible amendment, so maybe you could make a proposal on how you would like to amend that.

Ms. Nogami Streufert: Let me explain a little bit about this. I think there is some...let's put it this way. The path is close to the shoreline in certain areas. It does go over historic and culturally sensitive areas. There are areas that are still being negotiated for right-of-way or for permanent easement, and some of that land is on vacant land. To the extent that it might be possible to negotiate it further inland, for only the vacant land area, not for anything else, it might be worth looking at. That is not just something that the Intervenor has brought up, but on one of the agency reports, it does indicate that might be one thing that we might want to look at; how far inland you can put it. I am not suggesting this for any other area where it has already been decided and negotiated, but for that undeveloped, vacant land, while negotiations are still going on, if that can be moved a little further inland to meet the 60-foot or 50-foot limit, that would be useful, if it is not either cost or time prohibitive. This has been waiting for too long. Everyone wants to see it done. The question is how to best do that. So that would be a potential amendment to the Decision and Order that I would like to have discussed.

Mr. Mahoney: Well, I think it would cost both delay and more money to go through it, to tell the truth, if that is a concern to you. Everything has been worked out and I think you are going to open it up (and) it is going to cause a much further delay, the way I look at it.

Chair Apisa: And it would be subject to negotiation with those landowners?

Ms. Nogami Streufert: Only with that particular vacant land. There is only one (1) property, I think, that is vacant. My understanding, according to the documents that we have, is it is still under negotiations. If it has already been negotiated, then I withdraw that.

Chair Apisa: Does anyone have the answer to that? If it is still under negotiations?

Ms. Ahuna: My only other concern on that as well is just...I don't think they are in the burial report or the archaeological report; if that area was actually stated in the report, like that there were no burials, findings. So if that could just be addressed; maybe Adam might have that answer.

Chair Apisa: Anyone have the answer to that regarding the archaeological study?

Ms. Ahuna: I think it was, but I am not quite exactly sure in reference to what Glenda is stating (if) it was already addressed.

Mr. Roversi: Could we have a brief recess to confer with my client, and come back and answer your question?

Chair Apisa: Right, so we have two (2) questions that we are looking for answers (for). Thank you. We will take a short recess.

The Commission recessed this portion of the meeting at 10:37 a.m.

The Commission reconvened this portion of the meeting at 10:51 a.m.

Chair Apisa: Call the meeting back to order. We had a couple of questions on the floor regarding archaeological findings. Does anyone have an answer on that?

Mr. Roversi: I can give you my understanding of the methods of the Archaeological Inventory Survey that do pit diggings in various locations in the survey area. In those pits, no remains were found along the oceanfront area. They also did a ground penetrating radar, which didn't find any burials in the oceanfront area. There were two (2) burials that were reflected in the record that were found further away from the beach and those were addressed in the burial treatment plan. That said, there is always a possibility of an inadvertent discovery of burials during any project. If that occurs, the applicant is required to comply with SHPD's requirements and the existing burial treatment plan and proceed as the law requires. So there is no present knowledge through the Archaeological Inventory Survey of burials in that area. If any would be inadvertently discovered in the future, they have to be addressed appropriately as the law requires.

Chair Apisa: Thank you.

Mr. Roversi: The second question had to do with preexisting agreements relating – correct me if I’m wrong – preexisting agreements that constrain the location of the path in the Coconut Plantation property which is in the portion of Phase C section. The agreement that the Director provided me had to do with previously issued Special Management Area Permits for the Coconut Plantation area parcel, and the condition in that permit states that the location of the north and south beach multi-access path, lateral shoreline multi-use access walkway shall match the existing paths on the abutting properties. So at least where the path crosses that Coconut Plantation parcel property, the previous agreement is that the two (2) connecting points would meet the existing pathways that would be there. It is my understanding there has been a process of negotiation that the County has done an appraisal for the path as indicated; not the County, the Department of Public Works has done an appraisal, prepared easement documents for the path as indicated on the application. To now alter that would require the Department to do additional appraisals, redraw the maps, and redraw the easement documents. Representing Planning, I can’t speak to the Department’s willingness or the reasonableness of going through that process; perhaps their attorney could answer that part of the question.

Chair Apisa: It seems logical that you would connect two (2) dots, but there are different ways to connect the dots. Any further comment on that? Commissioner Streufert, do you–

Ms. Regush: Do I–

Chair Apisa: Oops, I’m sorry.

Ms. Regush: If I get to respond. Thank you.

Chair Apisa: Yes, please.

Ms. Regush: Yes, we can certainly match the existing path on the adjacent property, but nonetheless, there is still enough area to setback at least 10 or 20 feet, and by doing so, you would avoid the taxpayer expense of moving 12-foot segments of concrete slabs in the future due to sea-level rise and the current evidence from king tides.

Chair Apisa: Comments from the Commissioners?

Mr. Mahoney: Yes. I was just reading a method of...the path will be designed with unreinforced concrete slabs saw-cut at 5-foot intervals, which will allow for easy removal or replacement of any damaged portions, so they would be saw-cut at 5-foot portions. And if there was damage, 5-foot portions of concrete sidewalk would be easy to move and replace, according to what I just read here in the testimony that was...

Chair Apisa: Commissioner Streufert... So there is a motion on the floor; it was seconded. Any further comments?

Mr. Mahoney: If I may, in the motion there seemed to be a pending part – if it did not cause such and such, you know, an ‘x’ amount of time.

Chair Apisa: Right–

Ms. Nogami Streufert: Cost prohibitive.

Mr. Mahoney: Cost prohibitive or time. So that part I am not sure about.

Chair Apisa: We could take a vote and if it doesn't pass, we could have a new motion; would probably be easier than amending. Or what would the Commissioners like to do?

Ms. Higuchi Sayegusa: Perhaps, Commissioner Streufert, if you had language that you wanted to put up, exact language, and where that may be inserted or amending the–

Ms. Nogami Streufert: Can I ask one (1) more question?

Ms. Higuchi Sayegusa: Sure.

Ms. Nogami Streufert: The appraisal of a land, regardless of where it...the appraisal of the land – it is the same amount of square footage that we are looking at, it is just a potentially different path. Does that change the appraisal that much if it goes, like, 10 feet inland?

Chair Apisa: Come forward, please. State your name for the record.

Mr. Douglas Haigh: Douglas Haigh, Department of Public Works. Hopefully not. Really, it is based on the square footage and you are doing the property, so the appraisal...hopefully we will be able to keep the same appraisal. There would be some mapping redone, but that is not a huge cost, so it is doable.

Ms. Nogami Streufert: What about time?

Mr. Haigh: Time – we would have to see how the discussion goes, but it could be doable in time and without excessive costs to make minor adjustments to the alignment.

Chair Apisa: Would this need to be renegotiated with that landowner?

Mr. Haigh: It would definitely be reopening discussions with the landowner.

Ms. Nogami Streufert: How far along are those discussions right now?

Mr. Haigh: We are pretty much...agreement on the alignment, so, really, we are waiting for some final action on the Federal side to finalize...they come back and then finalize the land transfer.

Ms. Nogami Streufert: If that...that is not Federal land.

Mr. Haigh: Well, it is Federal funds that we are using.

Ms. Nogami Streufert: So if there were any changes to the path, would that have to be again resubmitted to the Federal government and then start over again? I am looking at time again.

Mr. Haigh: Yes, it's...we could definitely make a good faith effort with the qualifications you put in the language there. If we all of a sudden found that we were hitting a stumbling block that was going to be a significant impact on time, I assume we would then discuss it with the Planning Director and let him know that hey, that condition on time is making it so this isn't doable.

Ms. Nogami Streufert: Time and cost.

Mr. Haigh: But I would certainly, at the Planning Commission's request, try to do our best faith effort to do get some movement. It is part of...two, is for the developer, you know, they are still kind of finalizing their plans, and we are not sure where they are at today on that process, so... But we certainly would be willing to make a good faith effort.

Chair Apisa: Do you know what is planned on there? Would it affect...

Mr. Haigh: Landscaping, some of their improvements; I am not sure where their development is at and where the latest plan is. I do know that the alignment we came up with was based on our discussions with them, and putting it where we could get it as far mauka and not impact their resort plans. So that was the direction to my consultant, and the direction and the negotiations with the landowner were we want to be as far mauka as we can without negatively impacting your development. The ability to move farther mauka – I don't know how that would affect their development plans, so I can't answer that question.

Chair Apisa: So that was taken into consideration? You know, discussion–

Mr. Haigh: Absolutely. All our discussions with all the landowners were we want to be as far mauka as we can, regardless of the setback or whatever; that was our commitment in our environmental documents, subject to the negotiation and the balancing of the resort operations and our need to move farther mauka.

Ms. Regush: Thank you. If I might just clarify that SMA Permit for Coconut Plantation, they are not allowed to have their resort buildings within the 100-foot open zone.

Chair Apisa: Thank you. Commissioner Streufert, any further comment?

Ms. Nogami Streufert: Thank you.

Chair Apisa: Are we ready to take the vote? I would like to take a roll call. Oh, more–

Ms. Ahuna: Can you clarify the vote [*sic*]?

Ms. Higuchi Sayegusa: Right.

Mr. Mahoney: The motion.

Mr. Ho: The motion, again, please.

Chair Apisa: The motion...

Ms. Higuchi Sayegusa: I believe the motion on the floor is to adopt the Planning Department's Findings of Fact, Conclusions of Law, and Decision and Order with an amendment; if Commissioner Streufert could read a possible amendment. I think, as we discussed, it would be to Condition No. 1, adding a second sentence.

Ms. Nogami Streufert: That could be something to the...in consultation with our legal attorney here, "To the extent the Petitioner is still in the process of acquiring the required right-of-way for the land not owned by the County, the Petitioner shall attempt to move the path alignment on the undeveloped Coconut Plantation property further from the shoreline, assuming that it is not either cost or time prohibitive to fit into the time limitations that are already in the Decision and Order. Because the Decision and Order from the Planning Department is for two (2) years; to commence within two (2) years and completion within five (5) years. And if it does, then-

Chair Apisa: So we want to stay within that timeframe.

Ms. Nogami Streufert: That would be my druthers. And it should not cost more than it already is costing.

Chair Apisa: So at a no additional cost or time.

Ms. Nogami Streufert: Right.

Chair Apisa: Is that clear?

Ms. Ahuna: Yes. I mean, if it is not going to make...I think what you are saying is that just as long as there is no cost or-

Ms. Nogami Streufert: Time.

Chair Apisa: Time delay.

Ms. Ahuna: --additional time delay, then why not move it.

Ms. Nogami Streufert: Just for that portion.

Ms. Ahuna: Just for that portion. That is what you are stating, correct?

Chair Apisa: And if there is a time or cost delay, then proceed as planned.

Ms. Nogami Streufert: Correct.

Chair Apisa: Okay. And we have...that was your second. This is the motion on the floor. Everyone's clear?

Ms. Ahuna: Makes sense.

Chair Apisa: Comment?

Mr. Roversi: It might be appropriate to put "significant cost or time delay" because doing anything is going to create a time delay, so just to have some qualifying language.

Ms. Higuchi Sayegusa: Okay, I'm sorry, just so we can clarify once more, the possible amendment would be to be added to Condition No. 1 – the second sentence in Condition No. 1 – of the Planning Department's Decision and Order, and the language would be, "To the extent the Petitioner is still in the process of acquiring the required right-of-way for the land not owned by the County, the Petitioner shall attempt to move the path alignment on the undeveloped Coconut Plantation property land further away from the shoreline, assuming it is not going to cost significant additional costs or time–

Ms. Nogami Streufert: Financial or time.

Ms. Higuchi Sayegusa: I'm sorry, so strike the...from "assuming", "it is not going to..."

Ms. Nogami Streufert: "[R]equire any significant costs or time."

Ms. Higuchi Sayegusa: "[A]ssuming it is not going to require significant costs or time."

Ms. Nogami Streufert: "[A]dditional funds or time."

Ms. Higuchi Sayegusa: Okay.

Chair Apisa: Everyone good with that? And the second stands.

Ms. Ahuna: Adam already addressed the burials and with his No. 4 change, it is fine with me.

Ms. Higuchi Sayegusa: Okay. I think we still need to take a vote.

Chair Apisa: I think we are ready. I would like a roll call.

Mr. Mahoney: Did she second it? Did she verbally second the motion?

Chair Apisa: Yes.

Ms. Ahuna: I second.

Chair Apisa: Commissioner Ahuna seconded it, so we have a first [*sic*] and a second.

Ms. Higuchi Sayegusa: Okay, roll call vote. Commissioner Ahuna.

Ms. Ahuna: Yes.

Ms. Higuchi Sayegusa: Commissioner Ho.

Mr. Ho: Yes.

Ms. Higuchi Sayegusa: Commissioner Streufert.

Ms. Nogami Streufert: Yes.

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Chair Apisa.

Chair Apisa: Yes. Motion carried 5:0.

Mr. Roversi: Thank you.

Chair Apisa: Thank you. So we will move it as far mauka as reasonably possible on that particular lot.

Ms. Nogami Streufert: Without significant costs or time.

Chair Apisa: Right, without significant costs or time.

Mr. Roversi: To clarify, would the Commission like the Planning Department to resubmit an amended document with the addition or will the Staff do that?

Ms. Higuchi Sayegusa: Perhaps could you forward a Word document to me and I will be able to conform it.

Mr. Roversi: Yes.

Ms. Higuchi Sayegusa: Hopefully by today. Thanks.

Mr. Dahilig: Thank you, Commissioners.

COMMUNICATION (For Action)

Mr. Dahilig: We are on Item J, Communication. There is none.

UNFINISHED BUSINESS (For Action)

Mr. Dahilig: Item L, no Unfinished Business.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu‘e Civic Center, Mo‘ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i 96766 on Tuesday, March 27, 2018.

Mr. Dahilig: And we are now on Announcements. The on deck sheets have been circulated. As you can see, we are running a bit lean on the intake so that is why, based on scheduling, we are able to consolidate load for the Commission to have a meeting, I guess, approximately forty-five (45) days from now. March 27, 2018, is the next date that we will be needing the Commission to come forward. So the second meeting in February, as well as the first meeting in March, we have no business, Madame Chair. At that point, that is all we have.

Chair Apisa: Okay. The next meeting will be Tuesday, March 27, 2018.

ADJOURNMENT

Chair Apisa: A motion to adjourn?

Mr. Mahoney: Move to adjourn, Chair.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Motion carried 5:0. Meeting is adjourned.

Chair Apisa adjourned the meeting at 11:08 a.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.