

KAUA‘I PLANNING COMMISSION
SUBDIVISION COMMITTEE MEETING
November 12, 2019

The regular meeting of the Planning Commission Subdivision Committee of the County of Kaua‘i was called to order at 8:31 a.m., at the Līhu‘e Civic Center, Mo‘ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Roy Ho
Ms. Donna Apisa
Mr. Kimo Keawe

Absent:

The following staff members were present: Planning Department –Chance Bukoski, Dale Cua, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Nicholas Courson; Office of Boards and Commissions – Administrative Specialist Anela Segreti, Commission Support Clerk Arleen Kuwamura.

CALL TO ORDER

Subdivision Committee Chair Ho: Called the meeting to order at 8:31 a.m.

ROLL CALL

Chair Ho: Good morning all. Welcome to to our Subdivision Committee meeting this morning. Mr. Bukoski could you start us out with our roll call.

Staff Planner Chance Bukoski: Good morning Commissioners. Chair Ho.

Chair Ho: Here.

Mr. Bukoski: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Bukoski: Commissioner Keawe.

Mr. Keawe: Here.

Mr. Bukoski: We have three present.

APPROVAL OF AGENDA

Mr. Bukoski: Moving on to Item C, Approval of the Agenda.

Ms. Apisa: I motion to approve the agenda as presented.

Mr. Keawe: Seconded

Chair Ho: Motion before us is to approve the Agenda. All in favor? Aye (Unanimous voice vote) approved. Motion carries 3:0.

MINUTES of the meeting(s) of the Subdivision Committee

Mr. Bukoski: Thank you Chair. Moving on to Item D, Minutes of the Meeting of the Subdivision Committee. Seeing none

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Bukoski: Moving on to Item E, Receipt of Items for the Record. Seeing none.

HEARINGS AND PUBLIC COMMENT

Mr. Bukoski: Moving on to Item F, Hearings and Public Comment. Is there individuals in the audience wishing to testify on any items on the Agenda? Seeing none.

GENERAL BUSINESS MATTERS

Mr. Bukoski: Moving on. Item No. G, General Business Matters. None.

UNFINISHED BUSINESS (For Action)

Request for Modification of Condition.

Subdivision Application No. S-76-60 *ANTONE M. SOUZA*

Proposed 7-lots Subdivision; TMK: (4) 2-5-03:044, Lawai, Kaua'i.

Mr. Bukoski: Item H, Unfinished Business for Action. Request for Modification of Condition. Subdivision Application No. S-76-60 Antone M. Souza, Proposed 7-lots Subdivision; TMK: (4) 2-5-03:044, Lawai, Kaua'i.

The Subdivision Report pertaining to this matter. We do have a supplemental No. 2, to the Directors Report.

Mr. Bukoski read the Subdivision Report for the record (on file with the Planning Department).

Mr. Bukoski: Based on the information mentioned above the Planning Department stands by its initial recommendation for denial of the request of the Modification of Condition. And also, before you as well Commissioners, the applicant did send out a calculated cost by their hired Engineer for more of a firm cost of the improvements which is before you.

Chair Ho: Is Mr. Breckenridge here please? Please come up and could you give us your name please.

Mr. Lucas Breckenridge: My name is Lucas Breckenridge.

Chair Ho: You represent the Antone...Antone Souza Trust?

Mr. Breckenridge: I represent David Estrella.

Chair Ho: Okay. Have you heard the report by Mr. Bukoski?

Mr. Breckenridge: Yes.

Chair Ho: And his recommendation?

Mr. Breckenridge: Yes.

Chair Ho: Would you like to comment on that?

Mr. Breckenridge: Yes I would. So 1977, the County went into an agreement with Antone Souza to do the Subdivision. Since then, there have been other Subdivisions that were approved with like road conditions on the same street. There is one right here. I have the comments on it were... this is for lot 54 b.1, b.2, and b.3, and they are makai of lot 53. And it was a subdivision that took a three acre lot and brought it down to three 1 acre pieces. The comments here says, 'the Subdivision abuts Akemama Road, existing with 30 ft, required width 56, which is not paved but has been surfaced with penetration treatment.' So they didn't require these guys to do any road improvements in 1986, and there is more that have been post this Subdivision that weren't required to do any road improvements. The only thing they were ever required to do was road widening you know, reservations, which Antone Souza's has that in there as well.

So the way I see it basically, putting the entire burden of improving this road on Antone Souza's Subdivision, that's it. I just don't see how that is fair treatment. You know, there is only two real possible ways to go around this. Either for some indefensible reason the County is going to require lots 53 b, e, f, and g, to solely bear the burden of improving the roads, Akemama and Ili Roads, or the County's going to do it. I just don't see how it's feasibly possible for us to do, to bear the burden. The cost estimate from our Engineer came in yesterday and it's 10 times to 15 times what these properties are worth. And I mean that's just...in order, we won't be able to do anything with them we can't even get water until the road access has been...this agreement has been dealt with because the Water Department won't let us apply for permits at this time.

Chair Ho: Commissioners, any questions?

Ms. Apisa: I'm just curious what that number was the Engineers—?

Mr. Breckenridge: It's in there in that package from the Engineer.

Ms. Apisa: Okay I have it.

Mr. Breckenridge: It's on the last two pages.

Ms. Apisa: Yes, I have it...the last two pages.

Mr. Keawe: So is it 4.4 million or 5 million somewhere around there was it?

Mr. Breckenridge: Its 5.3 million is what the estimate came in.

Mr. Keawe: 5.3. The initial estimate was 4.4 and then it came in at 5.3.

Mr. Breckenridge: Yes, what they added was the right- of -way, the requirement of the right- of -way because that's not been acquired as far as (inaudible).

Mr. Keawe: Right, right. I guess unfortunately, back when Mr. Souza applied for this subdivision back in 1977, it was fairly clear back then that you know, that consideration of subdivision approval that no dwelling shall be constructed until the improvement when in for Akemama and Ili Road. And that's a difficult thing, you know, I empathize with your position. The difficult part is that is that, that was the agreement and we have to live by that agreement. I know that its 43 years ago, and a lot of things have happened but those particular improvements needed to be done before a house could be built on it. Irrespective of some of the other things in that particular area. And then again, I empathize with your position it's very difficult from a family standpoint. It was 40 something years ago, but it is still the requirement that's currently on the books.

Chair Ho: Donna do you have anything right now?

Ms. Apisa: I should but I can't think of anything right now. Yes, it's a tough predicament. So you're just not able to build? You can't—

Mr. Breckenridge: We can't do anything with it—

Mr. Keawe: They can't do anything with it.

Mr. Breckenridge: We can't do nothing. I mean we are trying to run goats on it right now and grow a garden on it but there is no water, we can't get water and the only water we have is water catchment from whatever source we can get and that barely waters the goats.

Ms. Apisa: So how these other did lots... just...was it a little more lax back in '86?

Mr. Breckenridge: No. It's the same road way requirements in '86 as it was in '77.

Ms. Apisa: No but what I'm saying is it was just a little more lax in enforcing that?

Mr. Breckenridge: Yes.

Chair Ho: I guess we are at a point that a decision has to be made. Subdivision depends on the road widening and the improvements needed by the Board of Water Supply but before us is the application for permits, that's what we have to consider today.

Ms. Apisa: Right.

(Inaudible talking from the audience).

Chair Ho: Just a, just a...you are?

Ms. Apisa: Applicant.

Chair Ho: David Estrella? I will give you three minutes. Mr. Estrella please come up.

Mr. David Estrella: David Estrella. Present owner of the properties. It's seems to me that when Antone was given permission for the subdivision he was told that if you sign this you know, you won't build or apply for building permits until, until the County improve the roads. But then the 42 years went by and the County didn't improve the roads. But yet, what is really unfair and the reason why we are here today is that they've allowed other property owners to not have to meet those requirements. And they've been free to apply for building permits and build their homes and residents and they haven't been held to this real costly requirement.

So it seems like really unfair that a targeting...we feel like we are getting targeted when others are allowed. So that doesn't seem right to me. I don't think...shucks we live in the United States of America and we just was celebrating the Veterans and the sacrifices they gave for freedoms in our country and yet, why are we getting targeted? Others, Zach, there is a list of others that have been able to build without being put to this stringent requirement. So that seems really, really unfair and then Zach has found and pointed out to me that in the County Ordinance, there is...it does allow for modification when the requirements are to strict and unreasonable and that the Planning Commission can waive and allow property owners to enjoy the freedoms and the rights to their property ownership like being able to at least have their homestead for their family. So that is where we are really pleading on that case...its unjust to pick on one guy. I don't understand what is? I really plead for your consideration on this and I thank you.

Chair Ho: Thank you.

Ms. Apisa: I guess a question would be more for legal guidance on this, on his statement or what solution are there to—?

Mr. David Estrella: May I comment one more? Also, Zach was mentioning the water, there isn't a water facility. But that is one thing we are perfectly willing to do even though it should be the County, as why we pay taxes and everything. But we are willing to improve the water line and extension to our property from where it was left off. Now that kind of cost and project we could do to help with the consideration.

Chair Ho: I'm going to bring this meeting back to us Commissioners. Your question Donna?

Ms. Apisa: I don't know if it is appropriate to ask legal Counsel for guidance on that comment about, about making exceptions.

Deputy County Attorney Nicholas Courson: So it's hard to give this advice because I sympathize with the owners as well, it's not fair when people are treated differently. But in general, you don't look at lack of enforcement in one area as the reason to not do enforcement again, the chain never ends then. And we all see inconsistent enforcement when someone goes speeding by you for instance it's kind of a common sense thing. Like, I don't know why this wasn't done but I know that the Planning Commission and Public Works looked into it quite a bit and certainly it is this body's...you have the power to make decisions but they should be reasoned exceptions and they looked into it and the standards are there for a reason. And so yes, it's unfortunate but usually we don't encourage one deviation to justify another. So and I'm very sorry to say that.

Mr. Keawe: Yes, just one thought I think Mr. Estrella I think you mentioned that the County was supposed to improve Akemama and Ili Roads. I don't think that was ever the concern because the agreement said, 'Antone Souza would make the improvements to Akemama and Ili Road.' It wasn't the County's responsibility that was part of the deal I think in 1977, that's what it said, yes.

Mr. David Estrella: Okay. I thought that they were saying that the County—

Mr. Keawe: No. The County never said that...so they never did say that, 'we are responsible' they basically said, 'you want to improve your lots? You got to fix the road.' That's what it said, okay.

Mr. David Estrella: But then if...to be fair it seems to me that everyone else up on that road should have maybe equally bear the burden and then the governing agencies should have saw to it that everybody bore that burden and equally contribute to it. Not hold one guy responsible. It's like...was there some kind of prejudice?

Mr. Keawe: No.

Chair Ho: We are getting...we are drifting here. Commissioners, you have consideration and I need a motion to continue.

Mr. Keawe: I move to deny the Subdivision Application No. S-76-60, Antone Souza, Proposed 7-lot Subdivision, TMK: (4) 2-5-03:044, Lawai, Kauai.

Ms. Apisa: Well with deprecation I have to second that motion and follow our legal counsel.

Mr. Keawe: Yes.

Chair Ho: I hope I frame this right, the Motion before us is to deny the request for Modification of Condition 2.e. Subdivision Application S-76-60 that is the motion before us. All in favor? Aye (Unanimous voice vote) approved. Motion carries 3:0.

NEW BUSINESS (For Action)

Final Subdivision Map Approval.

Subdivision Application No. S-20190-11; TOWER KAUAI LAGOONS; Proposed 2-lot Subdivision; TMK: (4) 3-5-001: 027 & 3-5-004:700-710, Lihue, Kaua'i.

Mr. Bukoski: Moving on to Item I, New Business for action. Final Subdivision Map Approval, Subdivision Application No. S-20190-11; Tower Kauai Lagoons; Proposed 2-lot Subdivision; TMK: (4) 3-5-001: 027 & 3-5-004:700-710, Lihue, Kaua'i.

Mr. Bukoski read the Subdivision Report for the record (on file with the Planning Department).

Mr. Bukoski: Commissioners, we have received all various government agencies comments and the Department is recommending Final Approval.

Chair Ho: Is there someone representing Tower Kauai Lagoons, please in the audience?

Mr. Gary Siracusa: Good morning Commissioners. I'm Gary Siracusa representing the applicant. I'm the Director for construction for Timbers Resorts at Hokuala.

Chair Ho: Good morning. Commissioners, any questions? As we know it this is going to be a combination of 12-lots and then Subdivided into 2 large lots. Is that correct?

Mr. Siracusa: That's correct.

Mr. Keawe: So there are individual parcels that you are going to re-subdivided into 2 separate lots, is that correct?

Mr. Siracusa: That's correct.

Mr. Keawe: Okay. The location of these lots is that mauka of the bay? I'm just trying to get some orientation as to where the lots physically are.

Mr. Siracusa: It is mauka of the bay if you're familiar with the Golf Course it's above the 15th fairway.

Mr. Keawe: Yes. Above the 15th fairway.

Mr. Siracusa: And would be parallel to it.

Mr. Keawe: Okay.

Mr. Siracusa: Yes.

Mr. Keawe: Okay. So it's parallel? Okay.

Mr. Siracusa: Yes.

Chair Ho: Mr. Bukoski, all the Zoning rule, when it's combined and re-subdivided all the Zoning stated here shared by the 2-lots?

Mr. Bukoski: Absolutely. The Zoning does not change designation it's just the way the configuration of the Subdivision does. Basically, the applicant Mr. Siracusa is consolidating those 12-lots and just creating 2-lots instead. So it's basically, kind of more like a simple boundary in a sense.

Chair Ho: Does the applicant give up Density?

Mr. Bukoski: No. The Density still stays with whatever it is currently zoned.

Chair Ho: Do you understand?

Mr. Siracusa: Yes. We agree. No exceptions.

Chair Ho: Okay. Commissions you have any other questions?

Mr. Keawe: What about the curb and gutter issue?

Mr. Bukoski: I believe that was resolved during the Tentative Approval phase, that—

Mr. Keawe: It's the same one that we were talking about the last time it came up?

Mr. Bukoski: Yes.

Mr. Keawe: Alright. So these weren't swales in lieu of curbs and gutters. I got it.

Chair Ho: Did you take out everything? Or is just curbs and gutters?

Mr. Bukoski: We took out sidewalks. The waiver was for sidewalks because it was unnecessary due to they do have some type of trail plan to access for beach access.

Mr. Keawe: So it was the swales in lieu of the sidewalks.

Chair Ho: That's right.

Mr. Keawe: I think I do remember that.

Chair Ho: Okay, Commissioners we I guess we can move to question? Amendment please.

Mr. Keawe: I move to approve final Subdivision Map approval, Subdivision Application No. S-2019-11, Tower Kauai Lagoons, Proposed 2-lot Subdivision, TMK: (4) 3-5-001: Parcel 027 and 3-5-004: Parcel 700-710.

Ms. Apisa: Second.

Chair Ho: The Motion before us is Final Subdivision Map Approval, Application NO. S-2019-11, Tower Kauai Lagoons. All in favor? Aye (Unanimous voice vote) approved. Motion carries 3:0.

Mr. Siracusa: Thank you Commission and Commission team.

ADJOURNMENT

Mr. Bukoski: Thank you Chair. Moving on to Item J, Adjournment.

Ms. Apisa: Motion to adjourn.

Mr. Keawe: Second.

Chair Ho: Motion to adjourn. All in favor? Aye. (Unanimous voice vote) Motion carries 3:0. Meeting is adjourned.

Subdivision Committee Chair Ho: adjourned the meeting at 8:56 a.m.

Respectfully submitted by:



Arleen Kuwamura
Commission Support Clerk

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

() Approved as amended. See minutes of _____ meeting