

MINUTES

**PLANNING COMMITTEE
September 17, 2008**

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember JoAnn A. Yukimura, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, September 17, 2008, at 10:08 a.m., after which the following members answered the call of the roll:

Honorable Daryl W. Kaneshiro
Honorable Shaylene Iseri-Carvalho
Honorable Ronald Kouchi
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Tim Bynum, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

There being no objections, the meeting was recessed at 10:08 a.m. The meeting was reconvened at 4:55 p.m., and proceeded on its agenda item as follows:

PL 2008-5 Communication (8/26/2008) from Committee Chair JoAnn A. Yukimura, requesting agenda time to receive a briefing from the Planning Director on the "Burmeister Enforcement and Settlement Agreement."
[This item was deferred.]

JOANN A. YUKIMURA, PLANNING COMMITTEE CHAIR: I spoke with Gary Heu today while he was here. As you recall, Councilmember Rapozo was going to try and meet off-line with the Planning Department to distill the issues and I know that Councilmember Rapozo tried to get a meeting and wasn't, didn't really get a response back. So, Mr. Heu has promised that he will facilitate that meeting and so my intention is to defer this matter to our next Committee meeting, but I would like to now and first open it...suspend the rules and open it for public testimony. And I see Ms. Diamond in the room, so we'll start with you and I believe you had some testimony and photos that you sent beforehand. If you would introduce yourself first.

There being no objections, the rules were suspended.

CAREN DIAMOND: Aloha, Caren Diamond. First, I want to say I'm really sorry that the Planning Director didn't show up for this agenda item. Although I live in Wainiha, I did show up and I showed up early today and I've spent the whole day waiting. And so I am...I feel like this is just about what has happened for this entire project where the citizens have asked for some answers. First, you know, a landowner puts a wall up that blocks traditional access that has always been there. The fishermen of our community can't get to the beach anymore. This spot was so heavily used by all the local people of our community for gathering and fishing rights. And then you have a new owner that just comes and puts up a 6-foot wall. I want to say that this SMA minor permit that was issued was...the way that they filled out the questionnaire was really junk and the reason I say that is because, you know, there's questions like does this block your coastal views and the answer is no. Well, I don't know how a 6-foot wall doesn't block your coastal views. Maybe it's because I'm short, but most of us aren't over 6 feet tall. I

went to Maui on a Planning Conference this last week and they took us on a shoreline tour of South Maui shorelines and the Planning Director, not the Planning Director, but Thorn Abbott, actually, showed us different projects that they're working on. And one of the main things the Maui Planning Department does right now is relocation. It's called they take these old structures that have no life left in them because they're old and because they're too close to the ocean now, and they have the applicant move them back and they don't do it as part of an enforcement action. They do it, a part of common sense where they explain to these people, you know, all the issues and people decide to set their houses back. In this case, we have the exact opposite. We have a Planning Department who chose to waive the shoreline certification so that there is no safe setback for this parcel. I want to say that part of this SMA assessment says the petitioner shall be responsible for filing the following with the Department before an application is considered complete. Number 2 says, if property abuts the shoreline, a certified shoreline survey conducted by a registered land surveyor within 6 months of an application shall be submitted, except as may be waived by the Planning Director. So, I'm wondering if this SMA permit is even valid because if there was no shoreline application, no survey submitted with this, maybe there is an easier way out of this than any of us had thought because maybe this permit is not valid and he needs to go back to square one. Now, when this property was for sale in 1989, they wrote to the Planning Department and asked how many houses. They were told there was three houses approved for this and that if there was any more construction, they needed to get a certified shoreline and that they couldn't use the State property. But that's not what happened now. The State property is used, it's blocked with a wall. I see my 3 minutes and I just want to say that I did take some time between last time and this time...

Ms. Yukimura: So, excuse me...

Mr. Furfaro: You're speaking to the Chairwoman of the Committee, not to me.

Ms. Diamond: Oh, sorry.

Ms. Yukimura: So, I think that's the 3-minute signal and I'm going to use my discretion and allow you another 3 minutes and then we'll let anybody else come up and speak.

Ms. Diamond: Thank you, I'll be brief. I just want to say I did take some time to write down the issues in a clear way and I think that you probably have that before you. I'm not going to read that, but I hope that you will read it and I hope that you will use it to ask the Planning Director and the Planning Department some questions and find out some answers because as a citizen we don't have the...any recourse to find out how projects like this go through. And if the landowners can just go ahead and do whatever they want on the coast and get an after-the-fact permit, then I think we've lost the rule of law here and we've lost the beach in Wainiha as a result of this. This is one of the first beach loss places that we have. And my children were born and raised on that street and I find it really sad that we can't go to the beach here any more and I think that this house should have been relocated and there should have been a certified shoreline done and there should be a safe setback for this. There should be a septic system or we

don't even know. Was it sent for a septic? Is there still a cesspool operating here? How far from the ocean is it? What about the flood? One of the questions that they checked no to is "Is this in the flood hazard zone?" and they checked no. Well, this certainly is in the flood hazard zone. So when you get answers that are meaningless on applications, then these things become meaningless and citizens like me are stuck here complaining in front of you. And Councilman Furfaro, I know your family comes from here. I know you care about the spot. I know a lot of us care about this spot. How do we get it back?

Ms. Yukimura: Okay, thank you. Any questions of Ms. Diamond?

Mr. Furfaro: I just want to say whether it's land in this particular location at Kepuhi, whether it's my family, other members of the family, the Baptistes, the Nuuhiwas, the Kaonus, you know, your point is well taken. I would appreciate it, you know, if we just look at the standards of law rather than whose it is or what family is connected there. It's equally important for everybody. I will plan to write a letter, Councilwoman, for the purpose of you chairing this Committee, I write a letter over to the Planning Commissioners, not to the Department, not to the Director, but to the Commission who has the oversight on this and ask them if we can't have the presence of the Planning Director to give us an update on this agenda item. I will do as such...

Ms. Yukimura: Thank you.

Mr. Furfaro: ...and see what outcome we have on a briefing.

Ms. Yukimura: I think that's appropriate and I appreciate it.

Council Chair Furfaro: But I will write to the Commissioners.

Ms. Yukimura: Okay, any other questions? I have one question. Is this a flood plane or is it a coastal hazard location?

Ms. Diamond: It's in the coastal, it's in the flood zone for...

Ms. Yukimura: It is in a flood zone for tsunami.

Ms. Diamond: Yeah, for tsunami, yes.

Ms. Yukimura: Oh, okay, right. All right. Thank you. So, before the next Committee meeting, hopefully, Councilmember Rapozo will get to meet with the Planning Department and then, hopefully, with no excuses they will be present so that we can hear the responses. Okay, thank you. Thank you very much, Ms. Diamond.

Ms. Diamond: Thank you.

Mr. Rapozo:
the photographs.

Thanks, Caren. Thanks for your information and

Ms. Yukimura:
would like to speak.

Yes, they're pretty graphic. I think Ms. Elmore

BARBARA ELMORE: Barbara Elmore. This case is typical of the ones that led me to suggest to the last Charter Review Commission before the 2004 Election that the County consider hiring Planning Commissioners to do the job right. You people are paid as council people, maybe you don't think it's enough, but you're paid. They are not paid and they don't take it as seriously. They do not look at the big picture. They do what they were directed from the Mayor that appointed them which was look at each application separately, don't look at the big picture, don't look at how it affects the whole island. So, I'm hoping some day we'll get professional planning people running the most important commission on the island. Thank you.

Ms. Yukimura: Thank you. Any other person wants to speak? If not, the Committee will come back to order.

There being no one else wishing to speak, the Committee was called back to order, and proceeded as follows:

Ms. Yukimura: The Chair will entertain a motion to defer unless there's some commentary.

Mr. Rapozo: I have some commentary. Again, I want to thank Caren for coming all the way, leaving her kids at home and coming all the way down, thinking it was going to go on and with the Planning Director. I share your frustrations. We tried to make contact, we did. They did not return our emails for a meeting as I promised Councilmember Yukimura that I would try to meet with them. I mean we're all busy and, you know, I've made the time and they chose not to. And they just did not even appear today, which is frustrating. And, you know, I've read this file, I've gone out there, Caren, thanks to you. You've taken us; you've showed us the properties. It's quite clear that in prior violations our Planning Director, same guy, so there's no excuse, stated on the record that until a certified shoreline was done that they would not be able to alter the properties at all. And, you know, now we find out just recently earlier this year, we've settled and agreed with the landowner to go ahead and do some after-the-fact work, permit work. So, I'm not sure what's going on. I am very frustrated again that the Planning Department is not here. You know, Gary Heu can try to facilitate a meeting. This case, I think is right for a 3.17 investigation. That's what I think. I think this case with the evidence and the facts that we have in front of us is right for that. To find out where did...we talked about disconnect earlier with Personnel. Where was the disconnect here? What happened between 2004, when the landowner was told, sorry, if you don't come up with a certified shoreline survey, you will not be able to rebuild your house, you will not be able to change your house, your buildings, and

2008, where all of a sudden you do what you want, no problem, expand the size of your homes, build seaward, extend your landscaping so that you can own more beach. I mean look at his square footage of his lot went from 24,321 to 39,000. It grew. That doesn't normally happen in an erosion zone. What does that tell you? It's artificially growing. It's artificially. So, Madame Chair, I guess for me I would say that, you know, and I would ask that maybe we ask staff to start the process for 3.17 and at least start that process and if the Planning Director insists on not showing up, then we can move forward with that. That's the only option we have. We got audits and we got investigation. That's all we have. If they're not going to come here, then we need to go there and the way we go there is with 3.17.

Ms. Yukimura: And I believe it would start with a resolution at the Council level?

Mr. Rapozo: Correct.

Ms. Yukimura: Probably.

Ms. Iseri-Carvalho: Yeah, that's the process.

Ms. Yukimura: So, if you want to initiate that and then it might come to Planning, I don't know.

Mr. Rapozo: I'm assuming that's where it'll go. I'll work with staff to, at least with staff to start that process because I'm not going to wait another two weeks to get it deferred because he's not here.

Ms. Yukimura: And I want to say we deferred this matter because we were at 10 a.m., right, 10 p.m., I'm sorry, in the evening, and so it should have been automatic for the Planning Department to know to come back here. It is very unprofessional not to have them show up today. So, the Chair at this point would entertain a motion to defer.

Ms. Iseri-Carvalho: I'll just make a few comments.

Ms. Yukimura: Sure.

Ms. Iseri-Carvalho: You know, this Council has adopted the resolution for zero tolerance on shoreline structures and the reason is because we've seen devastating consequences because of structures being built too close to the ocean. I was fortunate enough to attend the Planning Conference as well and Caren was there. We went to, as indicated earlier, the shoreline protection and clearly, well our Planning Director wasn't in that session, but at least our County Engineer was. So, you know, he did and that actually, I believe, precipitated the meeting that we're having tomorrow on the Pono Kai seawall. After receiving that information from the experts, it appears that they are taking these issues a lot more serious and are probably a couple years back lag than what yourself, Councilmember Yukimura,

as well as this Council in trying to aggressively protect the shoreline from any structures. So, at least they generated some awareness and we're setting up meetings and it was, you know, something positive despite the fact as I said Pono Kai was on for two years. Any change in a positive direction is more than welcome and I hope that the Planning Director would raise that kind of awareness on the shoreline issues because clearly at the Planning Conference there were a lot of experts that we could have engaged in and I took the time to engage in and networking in order to obtain more information, especially in dealing with the Hawai'i coastal erosion issues. So thank you and I would support, you know, any efforts to assure that there is enforcement of any violations of land use.

Ms. Yukimura: Thank you. Council Chair.

Mr. Furfaro: Yes, I will follow up on the suggestion I made in your Committee. I do want to point out although we're talking to Mr. Heu or getting kōkua from the Mayor, the Planning Director does report to the Planning Commission and so forth by structure in our organization. So, I will write that letter. I would hope by encouraging them to have the Planning Director give us an update that we can find ourselves waiting to hear from the Planning Director. I mean that is extremely important for me. I know there is the beacon easement that goes out on the point there. That is a State easement. It is probably also a traditional access. I know I took young Makana Ho'okano there and that's when I discovered there was a fence there. So it is also equally important to point out that that easement was given to the State for the beacon and I had earlier conversations with the State seeing if they wouldn't convey that easement to us. But again, it was an easement that was given for a specific reason. Therefore, I'm wondering to keep that beacon documented, if someone can tell us, is that what makes up the additional land easement even though it's under water? Could they...because it is an official marker and we heard some of that today in the tax bill that was brought up regarding Nāwiliwili where they were referencing some metes and bounds that were under water in Section 7. So, you know, it's very important that we have an understanding of, you know, that, but we're not going to get that understanding unless we have the Planning Commissioner here to explain it to us.

Ms. Iseri-Carvalho: Director.

Mr. Furfaro: And so I will plan to write that letter to the commissioners and I would hope within two weeks we would get some explanation and have him present.

Ms. Yukimura: Thank you. I think all these efforts are excellent. I want to clarify that the Planning Commission is the one that is the body which appoints the Planning Director.

Mr. Furfaro: And does his review.

Ms. Yukimura: And does a review. And the Mayor is an ex-officio member of the Planning Commission...

Council Chair Furfaro: Non-voting.

Ms. Yukimura: ...and on a day-to-day basis does oversee the Planning Director. So, it's a dual kind of oversight. But it is the Planning Commission that does the review. You're correct. And the appointment.

Council Chair Furfaro: I will assure you that my letter will also be copied to the Mayor.

Ms. Yukimura: Yes, thank you.

Council Chair Furfaro: But it will be directed to the Planning Commission.

Ms. Yukimura: Yes, thank you. Any other discussion? If not, the Chair entertains a motion to defer.

Upon duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Rapozo, and unanimously carried, PL 2008-5 was deferred.

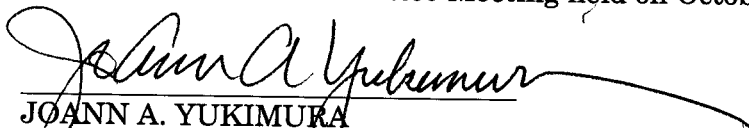
There being no further business, the meeting was adjourned at 5:14 p.m.

Respectfully submitted,



Wilma Akiona
Secretary

APPROVED at the Committee Meeting held on October 15, 2008:



JOANN A. YUKIMURA
Chair, Planning Committee

