

LEEWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
OCTOBER 16, 2009

A regularly advertised hearing on the application of **PUAKO BAY INVESTORS, LLC (SMA 07-16)** was called to order at 9:43 a.m. in the Waikoloa Beach Marriott Hotel, Ali'i III Room, 69-275 Waikoloa Drive, Waikoloa, Hawai'i, with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe
Brandi Beaudet
Geraldine Giffin
Frederic Housel
Wayne Iokepa

Bill Brillhante, Deputy Corporation Counsel
BJ Leithead Todd, Planning Director
Norman Hayashi, Planning Program Manager
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner

ABSENT & EXCUSED: Lani Bowman

And three people from the public in attendance

APPLICANT: PUAKO BAY INVESTORS, LLC (SMA 07-16)

Amendment to condition no. 2 (secure water commitment) and related conditions of Special Management Area Use Permit No. 07-16 which allowed the development of an 8-lot residential subdivision and related improvements. The property is located on the makai side of Puakō Beach Drive, adjacent to and east of the Puakō boat ramp, Lalamilo, South Kohala, Hawai'i, TMK: 6-9-2:1 and 2.

WATANABE: We will proceed to Agenda Item No. 1. The applicant is Puakō Bay Investors, LLC, and it's SMA Permit 07-16. Jeff?

DARROW: Thank you, Mr. Chairman. Good morning, Members of the Planning Commission. I'd like to welcome you this morning. If I can direct your attention to the presentation. This morning our first applicant is Puakō Bay Investors, LLC. They are requesting an amendment to Condition No. 2 for Special Management Area Use Permit No. 07-16. The location of this application is within the South Kohala District. More specifically, we are looking in the entrance to the Puakō area. We have, on our location map, we have the entrance from Queen Ka'ahumanu Highway, which is on the right side of the map, and this will go onto Puakō Beach Drive heading makai. And the area of the subject properties are identified with two black outlines; this is just south of the boat harbor that's located down in this area. As you will

notice the different colors of zoning, the light green is Agricultural 5 acres, we have, the darker green is Open zoning and then we have Resort zoning for the purple. We also have some Single-Family Residential identified in yellow and darker yellow. Here is an aerial photo of the actual properties. These are in this general location; again, we have the boat harbor, or the boat launch, just to the north of this property.

The applicant is requesting a one-year time extension to comply with Condition No. 2, which is the requirement to secure the water commitments for the development. The original request was to allow the development of an eight-lot single-family residential subdivision and related improvements. The Planning Director is recommending approval of their request. Are there any questions?

WATANABE: Fellow Commissioners, do we have any questions of staff? Seeing none, for the record, before I forget, no one has signed up to testify for this Agenda Item No. 1. So Mr. Fuke, I believe you are the representative for Puakō Bay Investors?

FUKE: Yes, sir.

WATANABE: Yeah, just for, you know, swear you in. Do you swear or affirm to tell the truth now before the Planning Commission?

FUKE: Yes, I do.

WATANABE: Thank you. And then, of course, name and address.

FUKE: Good morning, Mr. Chairman, Members of the Commission. My name is Sidney Fuke. I'm a planning consultant. I'm working on this application with the owner. Unfortunately, the owner is in his second home, which is Las Vegas, so he is not able to attend. I'll give him a report after the outcome of today's meeting – hopefully, it's favorable.

Just to add a little bit to the staff report, I'd like to kind of note a couple of things. One is that in terms of the water system, what the applicant has done to date is that we had a number of meetings with the existing resort developers who have previously participated with the Department of Water Supply. And so they do have excess water commitments that conceivably could be assigned to this property, and these are particularly Mauna Lani Resort and Mauna Kea Resort Properties. Nothing has been, you know, consummated with either of these resorts. We've also had discussions with the former developers of the Bridge 'Āina Le'a property, which is Bridge Capital. But since the new owners, DW 'Āina Le'a Development Corporation, bought the Urban designated area, and is now obligated to fulfill a lot of the water related requirements, there have been active discussions with DW 'Āina Le'a. So we hope that over the next year, or within the extended time period, if the Commission so grants it, you know, we'd be able to consummate something and the project can proceed.

The other thing I want to kind of note is that since the original SMA Permit was issued, the only substantive regulatory change that has occurred was the adoption of the South Kohala Community Development Plan. And since the adoption back in November of 2008 -. And if

you look at that Plan compared to what's being proposed, it's totally consistent with the Puakō conceptual land use plan for that area. So aside from that, if there are any questions the Commissioners have, I'll be happy to answer.

WATANABE: Fellow Commissioners, any questions of Mr. Fuke? I have one. I noted that, okay, we gave you apparently in the original SMA one year, and I believe Bobby Jean, or the Director, gave you an administrative extension. Is – I don't want to muddy the water but – is one year sufficient?

FUKE: Like any development we would like to have like infinity in terms of planning; but I think it's realistic and I think that the standard practice on the part of the Commission in matters like this has always been like one year, so -.

WATANABE: Typically, traditionally it's been one year, so you are okay?

FUKE: Correct, yes.

WATANABE: Okay, then I won't, yeah, I won't pursue that. Yes, Mr. Hayashi.

HAYASHI: That is what I wanted to clarify, because the applicant actually requested a two-year extension to that particular condition.

FUKE: We said like up to two years, so if the Commission is willing to extend up to two years, then you know, that would, as I said, it's better than, I mean it's short of infinity but way better than one year. But I'll leave that to the Commission. I really don't know what the Commission or the Department's policy has been in terms of time extension, but two years would have been equivalent to like the original request, which was one year plus a one-year administrative time extension, so -.

WATANABE: Mr. Hayashi?

HAYASHI: Yes, as far as the time extension, in the initial administrative time extension the Director is allowed to do that; but the maximum would be whatever is was -.

WATANABE: Originally, and originally it was one year, right?

HAYASHI: Yeah, so if it was one year, then it would have to be for one year. There is no policy set as to if the Commission were to grant a time extension request.

WATANABE: Yeah, okay, then I guess my next question would be directed to the Director, and I'd rather have your input than just the Commission voting.

LEITHEAD TODD: I think the two-year is a reasonable request, especially considering both the applicants and my experience in the Department in terms of how long it takes to work out these agreements, especially when you are dealing with multiple parties.

WATANABE: Okay. Yeah, there was about that and others because the economic situation we find ourselves in. So you know, maybe it's just an exercise, yeah, if one year. But along those same lines, though, I have, oh, Condition No. 3 within the conditions, we say, "Final Subdivision approval shall be secured within five (5) years from the effective date of this permit." I guess my question is, does the effective date now change to this date?

FUKE: Mr. Chairman, if I can respond to that -.

WATANABE: Yes.

FUKE: It really wouldn't affect the developer's overall schedule because, you know, as your staff indicated previously, the Planning Director is entitled to grant an additional administrative extension; so if we cannot complete within the five years, then conceivably an additional five years could be secured.

WATANABE: Right, exactly, exactly. But the clock does not actually restart on this.

LEITHEAD TODD: No.

WATANABE: No. Okay. I just, for the record. Then I guess my question would be directed to the fellow Commissioners. Do we, in light of the new information, do we want to revise this to two years as opposed to a one-year extension?

HAYASHI: Mr. Chair, since the Director had no objections to extending the request to two years, Condition 2 would be amended by the Department to state that the time extension would be for two years from the effective date of the amended permit.

WATANABE: Thank you. Is everybody okay with that? Then if that's the case, may I have a mo-?

GIFFIN: Mr. Chairman?

WATANABE: Ms. Giffin.

GIFFIN: Okay, so then we are changing the wording of the condition, correct?

WATANABE: Just on Condition 2 we are replacing "one" with "two."

GIFFIN: Correct. I have a question of Mr. Fuke.

WATANABE: Yes.

GIFFIN: On the first page of the background report under Proposed Action No. 2, the Reasons for the Request, the second to the last sentence, "Currently, the best option appears to be securing excess water commitments from landowners and developers in the area." And I know you addressed and you mentioned Mauna Lani and Mauna Kea. How far along are those

discussions and how realistic is it that their water commitments could be used up, or used towards this project?

FUKE: Conceivably, you know, at this point in time there is excess water commitments that's already been earned by Mauna Lani and Mauna Kea. Mauna Lani has, in our discussions with Mauna Lani, they do have a few, well, basically they don't have any developable lands because whatever lands that they had originally satisfied for development have already been parceled out or sold to different investors; however, in our discussion – and so based on the amount of water availability required for their projects, if you take that aside, Mauna Lani would still be in the position to assign the additional water commitments, their water commitments to this project – however, what they have told us is that because in the past the different units have used sometimes in excess of the normally allocated 600 gallons per day, some for example have used, you know, like the single-family dwellings anyway, have used like 4,000 to 5,000 gallons per day, and then so this has created some issues for Mauna Lani, and thus Mauna Lani and Mauna Kea have had to construct new well systems, you know, to secure additional water commitments. And based on that Mauna Lani is saying that they would not want to put themselves in jeopardy at this point in time; so they are saying maybe four or five years from now after the project has developed, we can consider it. As it relates to Mauna Kea, Mauna Kea is saying that, yeah, they do have more than enough water; however, what they told the applicant is that, however, if you can give us some assurance that we will eventually have this water come back to us, you know, then maybe we can work something out. And so this is why we are trying to work with DW 'Āina Le'a because DW 'Āina Le'a already has a water agreement with the Water Department to construct two wells at the 'Ōuli system, and that will then provide considerable amount of water not only for their project but being in the position where 'Āina Le'a could then restore the water that was assigned from Mauna Kea to Puakō Bay Investors. So it becomes a little bit convoluted, but – and that's why I appreciate what the Planning Director is saying that if you have to do a tri-party agreement, it might take longer than a year to have it established.

GIFFIN: Thank you.

WATANABE: Okay. Do we have any further -? Mr. Brillhante.

BRILHANTE: Yes. Sorry to interject here, but just a little housekeeping matter. As a , you know, in the, I guess, proposed change in the condition, just directing us back to Item No. 3 where it says the “final subdivision approval shall be secured within five (5) years from the effective date of this permit,” I know there was some discussion about the automatic five-year extension; what I don't want to have happen is there be any confusion as to when that automatic extension takes effect. I notice the date of the original permit, I believe, is a “07” number, so there might be at least a two-year difference between when the original permit was granted and today's approval. So what I propose is language to the effect of the “final subdivision approval shall be secured within five (5) years from the effective date of the original permit,” if that's something that you guys would want to have discussion on this, my proposal.

WATANABE: Mr. Fuke, I believe that was what we previously discussed, and it seems like it summarizes what we discussed.

FUKE: That's the understanding, and so for clarity what your counsel is advising is perfectly fine.

WATANABE: Okay, thank you. And while we are on the subject – I know we are not making any amendments to any of the others but – everything else is fine, right, as far as conditions?

FUKE: Well, we can't request any amendments because we didn't make the request, so -. Yeah, thank you.

WATANABE: Okay, okay, thank you. So then we are, the original permit -.

GIFFIN: So Mr. Chairman?

WATANABE: Yes.

GIFFIN: The clock has started to tick already then, right, is what was -?

WATANABE: Yeah, in essence approximately two years have elapsed for the first five years. And they would still be, you know, dependent upon the Director, of course, approval allowed a five-year administrative extension.

GIFFIN: Okay.

WATANABE: So, is everybody clear on this? We have two minor revisions. I would, since we have no one signed up to testify and it doesn't appear like we have any questions, I entertain a motion.

GIFFIN: Mr. Chairman, I'd like to move that the request for an amendment to Condition No. 2 of the SMA Use Permit 07-16 be approved with the changes from one-year to two-year and Condition No. 3 as amended by our counsel. Is that the correct wording?

WATANABE: Yes, that's correct. And the amendment would be inserting -.

GIFFIN: "Original -."

WATANABE: Replacing, yeah, inserting "the original," or replacing "this" with "the original." Okay, is everybody clear on that? Do we have a second?

HOUSEL: I'll second that.

WATANABE: Thank you, Mr. Housel. If there is no further discussion, Mr. Darrow?

DARROW: Thank you, Mr. Chairman. The motion is to approve with the amendments to Condition No. 2 and Condition No. 3. With that, I'll take the roll. Commissioner Giffin?

GIFFIN: Aye.

DARROW: Commissioner Housel?

HOUSEL: Aye.

DARROW: Commissioner Beaudet?

BEAUDET: Aye.

DARROW: Commissioner Iokepa?

IOKEPA: Aye.

DARROW: And Mr. Chairman?

WATANABE: Aye.

DARROW: The motion passes, five to zero.

WATANABE: Okay. So you'll be notified in writing, Mr. Fuke.

FUKE: Thank you very much, Director and Commission, for the additional year especially.

The discussion ended at 10:00 a.m.

Respectfully submitted,

Noriko Sauer, Secretary
Leeward Planning Commission