

LEEWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
JULY 24, 2009

A regularly advertised hearing on the application of **DR. VIRGIL PLACE (REZ 09-95)** was called to order at 9:50 a.m. in the King Kamehameha's Kona Beach Hotel, Ballroom IV, 75-5660 Palani Road, Kailua-Kona, Hawai'i with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe
Brandi Beaudet
Lani Bowman
Geraldine Giffin
Frederic Housel
Wayne Iokepa
Warren Lee, Public Works Director – Ex Officio Member

Brandon Gonzalez, Deputy Corporation Counsel
BJ Leithead Todd, Planning Director
Margaret Masunaga, Deputy Planning Director
Norman Hayashi, Planning Program Manager
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner
Kiran Emler, Engineering Division, Department of Public Works

And approximately 30 people from the public in attendance

APPLICANT: DR. VIRGIL PLACE (REZ 09-95)

Change of Zone from an Agricultural 20-acre (A-20a) to a Family Agricultural 3-acre (FA-3a) district for 45 acres of land. The property is located along the south side of Ala Kahua Drive, approximately 2,600 feet east of the Ala Kahua Drive – Akoni Pule Highway intersection, Kahua 1st, Kahua and Waika, North Kohala, Hawai'i, TMK: 5-9-5: 4 and 5.

WATANABE: Agenda Item No. 2. This, the applicant here is Dr. Virgil Place. This is a change of zone from an Ag-20 to a Family Agricultural 3-acre, REZ 09-95. Maija, is this yours also?

COTTLE: Yes.

WATANABE: Working you hard today.

COTTLE: Thank you. I get to take a break after this. Okay, the next application is a change of zone. The applicant, Virgil Place, is requesting to change approximately 45 acres of land from Agricultural 20 acres to Family Agricultural 3 acres. The property is located just mauka of the Kohala By The Sea Subdivision which is shown here in light green. The property is outlined in red. I'm sorry, it's actually two properties that total 45 acres. The properties are

located in the Kohala Estates Subdivision off of Ala Kahua Drive. Most of the properties surrounding are also Agricultural, with the exception of this subdivision to the south which is zoned Single Family Residential.

This is a very dark aerial view of the properties, but you can make out the existing botanical garden that takes up a good portion of both of the properties. The owner also has a single family dwelling in one corner, as well as some accessory structures throughout. The applicant would like to create a 14-lot subdivision, if the change of zone request is approved, in order to support the continued operation of the botanical garden and also to accommodate estate planning for the applicant's family. This is a preliminary site plan that was submitted by the applicant for the proposed subdivision. Again, the existing botanical garden is in this area here. And you'll also see the existing roadways and structures.

The Planning Department is recommending that the Commission send a favorable recommendation for the change of zone request to the County Council.

WATANABE: Okay, thank you, Maija. Fellow Commissioners, do we have any questions of staff? Mr. Housel?

HOUSEL: Yeah, I had one question. Maija, could you go back to the plan again? Does the road that's shown there in the middle currently exist?

COTTLE: This wide road right here?

HOUSEL: Yes.

COTTLE: No, it does not.

HOUSEL: Okay, so that would be a new feature?

COTTLE: That would be a new feature of the subdivision.

HOUSEL: Okay, okay.

WATANABE: Yes?

BOWMAN: Could you go back to the other picture of the garden. So it looks like basically that road would go right through the middle of the garden, sort of.

COTTLE: Yeah, I think it would come off somewhere right about here.

BOWMAN: Okay. And then most of the lots would encompass, it seems like, a major part of the existing gardens. We can ask the applicant then. Thank you.

WATANABE: Any further questions? Okay, well, thank you, Maija. So may I call up the applicant? Oh, okay, Mr. Mooers, you're the applicant's representative.

PUBLIC: The applicant is here.

WATANABE: Ah, the applicant is here also. Okay, may I swear you in then? Would you raise your right hand? Raise your right hand, please. Yes. Do you swear or affirm to tell the truth now before the Planning Commission?

MOOERS: I do.

APPLICANT: I do.

WATANABE: Thank you. And then, you know the drill, Mr. Mooers, name and address -.

MOOERS: Yes.

WATANABE: And then you may begin.

MOOERS My name is Greg Mooers. I'm the applicant's representative. My address is P. O. Box 1101, Kamuela 96743. Name and address?

V. PLACE: Huh?

MOOERS: Name and address.

V. PLACE: Virgil Place at Pua Mau Place and at Kawaihae.

I. PLACE: I'm Irina Place and I reside also at 10 Ala Kahua, P. O. Box 44555, Kamuela 96743.

WATANABE: Thank you. Mr. Mooers, have you received the recommendations from the Planning Department and do you have any comments on the conditions?

MOOERS: We received the background report and recommendations and have no problem with the recommendations as currently stated.

WATANABE: Okay, okay. So everything seems in order then.

MOOERS: Yes.

WATANABE: Is there anything you care to add to this now?

MOOERS: Sure. I think the drawing of the 14-lot subdivision is obviously very simplified. That has not been engineered. What we're trying to do is create a mechanism in which the garden can be retained. Now there are a couple of possibilities. One of the possibilities would be to subdivide and create one lot, which is the garden, and have a nonprofit that currently exists control that garden, and then create lots around that. The other possibility would be to create lots in which the garden would actually be an easement over portions of each

of the lots. So if you purchased the lot you might have an area where you could construct your home, but a portion of your lot would be dedicated to the maintenance of the existing botanical garden. And as you've noticed in the plan is that the place is, residence is in one corner, and that would be able to be subdivided out and kept separate from the garden. So this is really an estate planning issue. But we have not engineered the road so the location of the road, where it's exactly going to go, how it crosses gulches, that all has to be, has to be engineered. And at the time the subdivision is laid out it will be. The likelihood is that there will not be 14 lots; it will be a number less than that. Fourteen is the maximum lots that could be created. But that's the process.

And according to the conditions being proposed we would have five years to develop the subdivision and develop the mechanism by which the garden can be retained. But that is one of the two goals, is to separate out the personal estate for their purposes, for the family's purposes, and then to have the garden maintained. Because up to this point Dr. Place has been, you know, footing the bill.

WATANABE: Okay. Do we have any questions of the applicant or -? Ms. Bowman, were all your questions answered?

BOWMAN: Just, it's an existing nonprofit then, the garden is?

MOOERS: Yes, it is.

BOWMAN: Thank you.

WATANABE: Any further questions of the applicant? Geri?

GIFFIN: So this garden is currently open to the public?

MOOERS: Yes, it is.

GIFFIN: Okay. And then in the big picture down the road, do you envision this garden to remain as a public visitation site?

MOOERS: That, that is the goal, yes.

GIFFIN: Okay. Thank you.

WATANABE: No further questions? If not, then you may be seated. I do have one person from the audience that signed up to testify, and that would be Jeff Sacher. So if I could call upon Jeff Sacher to come up, please.

SACHER: Good morning -.

WATANABE: Yes, Mr. Sacher, may I swear you in. Do you swear or affirm to tell the truth now before the Planning Commission?

SACHER: I do.

WATANABE: Thank you.

SACHER: Jeff Sacher, P. O. Box 44910, Kamuela 96743. Unfortunately Dr. Place gets caught in this because this is probably something that should have been done before. I live next door in Kohala By The Sea so I'm aware of that area. My main concerns are with regard to police, fire and water, the infrastructure there. There is one road, Ala Kahua, that goes into and out of the subdivision, and that goes onto Akoni Pule Highway. So in the case of a fire, there's only one means of egress, which is even worse than what people have run into in Waikoloa. So what I would ask is that the Planning Commission would look more closely at this, and if any kind of zoning change is going to be given, that prior to that another means of egress, whether it's mauka or makai at the north side of the subdivision, be put in. There is one gate that's closed off that's between the Kohala Estates and Kohala By The Sea Subdivision, that Kohala By The Sea, there's a lock on that I believe that has, because it's their gate, that has a combination on it. So for all intents and purposes there is only one road that goes out of Kohala Estates. And I think it's something the Planning Commission has to consider because that is a very dry, fire-prone area, and if something were to happen, there's only that one way to get out. I don't think it's fair to the other folks in that area. Again, I'm not as concerned about the, by what has happened here that it's not necessarily 14 homes and it may be less, I think that's even better with regard to the area. But my biggest concern is the means of egress due to fire. Thank you.

WATANABE: Thank you. Fellow Commissioners, do we have any questions of Mr. Sacher? Thank you for your -.

GIFFIN: I'm sorry, Rodney, I do.

WATANABE: Ms. Giffin.

GIFFIN: You know, I can't visualize exactly where you live and what your concern is for that area. Could you go over that again, please?

SACHER: Yes, fire and how people -.

GIFFIN: No, no, I understand that. But where are you -?

SACHER: I'm in Kohala -.

GIFFIN: In relationship to this subject property -?

SACHER: Do you want to show that map? It was in that little, the little green area - I believe it was green - that's next door. Down there. That's Kohala Estates. That's Kohala By The Sea, and then Kohala Estates is right next door.

GIFFIN: Wait, just one minute.

WATANABE: These people that are located above you?

SACHER: The brown area where the pla-, is that what you're talking about?

WATANABE: No, they're located above you?

SACHER: No. Kohala Estates, they're located next -.

MOOERS: I think they want to know where you are.

SACHER: Where I am?

WATANABE: Yeah.

GIFFIN: Yeah, where are you?

SACHER: I'm down on the road at Kohala, in the green.

WATANABE: Right.

SACHER: Right.

WATANABE: So this proposed subdivision is above your location, right?

SACHER: That subdivision, yes.

WATANABE: Yeah, yeah.

SACHER: Well, I'm just -. I'm, I'm -. Maybe this is out of place but I'm here because I don't, I'm not only concerned about my subdivision – that whole area is. I have neighbors and friends that live in that area. So I want to make certain, because everything sounds all well and good but when you're not looking at infrastructure and roads for people to get out in the case of an emergency, I think it's something that needs to be considered.

WATANABE: Yeah, I'm not making light of your concerns.

SACHER: Okay.

WATANABE: Yeah.

SACHER: Thank you.

WATANABE: Ms. Giffin?

GIFFIN: Yes?

WATANABE: Are you satisfied with the -?

GIFFIN: I still want to locate that map that was included in here that showed the sequence.

HAYASHI: Could you speak in your mike.

GIFFIN: Which one is it?

WATANABE: No, the mike.

HAYASHI: The microphone.

GIFFIN: I'm sorry.

WATANABE: Yeah, cause -.

GIFFIN: I wanted to locate the map that was given to us that showed the sequence of the -. No, not that one. Yeah, that's the one, the submitted map. Where is that? In the pull out? Okay, sorry for the delay. Yeah, okay. And you said that you reside where, once more, please?

SACHER: Kohala By The Sea.

GIFFIN: Okay. And the subject property is in Kohala Estates?

SACHER: Correct.

GIFFIN: Okay, I see where you are. Kohala By The Sea, you said something about the road there where you live. It's only an -.

SACHER: There's -.

GIFFIN: It's one road?

SACHER: There's, right. And that's why I'm saying the subdivisions in that area, that's been a problem. For whatever reason people were allowed to build those subdivisions. And that while for us fortunately there's a gate that's between on Kohala Estates and Kohala By The Sea, but it is a locked gate. And my understanding is because it's on the Kohala By The Sea Subdivision we have -.

GIFFIN: Which is your subdivision, right?

SACHER: Our subdivision, we have the control to that lock. So that if something does happen, folks can't get out. For us if something were to happen we could use that fire road. But my understanding is if something were to happen for the folks in Kohala Estates, unless somebody in our subdivision is called and is home, they're not going to be able to use that exit.

BOWMAN: Could you show with the pointer where that locked gate is, please, approximately?

SACHER: It should, oh, yes, it should be right in here. This is, that's Laninui Drive, right here; and that gate is right down in there.

BOWMAN: Okay. And it leads to the Akoni Pule Highway?

SACHER: No, no, no.

GIFFIN: Goes mauka, I think.

SACHER: The gate goes, goes across.

BOWMAN: Okay, across.

SACHER: From one subdivision to the, sorry, from one subdivision to the other.

BOWMAN: Oh, I see. So it's on Laninui, right there, connecting into Kohala Estates?

SACHER: Exactly, right there.

BOWMAN: Thank you. And I do understand your concern. That whole area is a fire hazard. Thank you.

WATANABE: Ms. Giffin, are you satisfied?

GIFFIN: Yes, thank you.

WATANABE: Okay. Do we have any further questions of -?

HOUSEL: One question -.

WATANABE: Yes, Mr. Housel?

HOUSEL: Of Mr. Sacher. You know the area, of course, much better than we do. If there were a fire road that could be put in to give a secondary access or exit, where would be an appropriate place to put that?

SACHER: You know, quite honestly, I really think that the folks in Kohala Estate should be asked that question. I initially, I mean, I don't know, I mean you may even know if there's something that goes mauka. I'm not sure if there is or not. The first thing I thought of is that there was something at the northern end of Kohala Estates which I think butts up against Kohala Ranch, if something can come down there at least to get out to the highway. Cause I don't know about access going up to the upper highway, if that's possible. That could be a huge expense. But there may be something that I think on the northern side of Kohala Estates out to Akoni Pule Highway would probably be good.

HOUSEL: Okay, thank you.

SACHEL: Thanks for your concern. I appreciate it.

WATANABE: Thank you. You may be seated. Okay, Mr. Mooers, would you care to address that? I understand that this is at the most a 14-lot subdivision. So, you know, -.

MOOERS: I appreciate the concerns. I think one of the things that may have been lost in the application unless you read my application carefully, is that at the top of Ala Kahua Drive, which is the road that provides access to this subdivision, there is a volunteer fire department at the top of that, right above them. There's also a locked gate that goes into Kohala Ranch. And Kohala Ranch has always been good neighbors in the past in times of accidents on Kawaihae Road and other areas of allowing people, the public, to transfer through their property. And I think that's a reasonable expectation here. So that really there is a mauka exit available and the gate -.

WATANABE: Albeit locked.

MOOERS: Is right next to the volunteer fire department.

WATANABE: Oh, okay, okay. So your response basically is an alternate exit exists?

MOOERS: That's correct. And I cannot speak for Kohala Ranch, other than to say that as a, I live on Kawaihae Road, and when there are accidents that close the road, the police work with Kohala Ranch and we go through Kohala Ranch up through the mauka side to get to Waimea to, you know, bypass any accidents that occur on Kawaihae Road. That's happened both in times of car accidents and also in times of fire. I can't tell you what the official arrangement is with Kohala Ranch other than to say that to this point they've always been good neighbors and provided that access.

I personally live in a gated community - oh, I shouldn't say that - it's a private road system and it's gated to adjoining properties on Kawaihae Road. It's open to the main road. But in times of fire the police always come and open those gates so that people are not trapped within these subdivisions.

WATANABE: Or even with accidents, major accidents?

MOOERS: That's correct.

WATANABE: Yeah, so it would sound as though the general public has a, at least some awareness of the alternate route.

MOOERS: That's true.

WATANABE: Ms. Giffin, you look like you had a question?

GIFFIN: Yes. Correct me if I'm wrong, but in our short history of the Kohala Estates, wasn't there a fire also, and to the best of my knowledge one or two, where the traffic was successfully rerouted out of there? And to the best of my memory, traffic was not an issue.

MOOERS: That's my recollection. But I don't live there, I'd rather not go on the record saying that I know that for a fact. Irina, do you have any knowledge?

I. PLACE: Yes, there was a fire in 1993, December 5th, and the fire was addressed very prudently, and the traffic was blocked. Also, sometimes we are subject to high winds and in December 14, 2007 some lines were down and the police was there redirecting traffic. So, and because the houses are actually sparsely located, it is not a problem. It's not like Puako where the population is very dense. So, yes, we have history of addressing some sort of, you know, accidents; and so far they have been resolved successfully.

GIFFIN: Thank you very much.

WATANABE: Thank you. Ms. Bowman?

BOWMAN: I just, I think I have a comment because fire, you know, is such an important problem. And there's an organization, I think it's Hawaii Wildfire Organization, that is really actively working with the County and the Federal governments to do control burns. And also Dr. Place is a horticulturist and there are many, many plants, you know, that are fire, a little bit more fire resistant, and there's, you know, venues to take. So I, you know, would hope that we and also as a Planning Commission and as a County can look towards that, especially areas like Waikoloa and these areas, rather than just, you know, we're going to respond when it happens, to some kind of preventative landscaping, which your garden provides -.

MOOERS: Can I make a couple of comments?

BOWMAN: Yes.

MOOERS: I think you'd be hard-pressed to find a better situation. You have a botanical garden in which the natural grasses have been removed and irrigated, you know, plants have been placed in. You've got two irrigation wells on the site and a 50,000 gallon reservoir on the site. So this area is quite prepared to address any fire in the immediate area. So I think we'd be very lucky to have other subdivisions that had such, you know, access to water and storage facilities as this particular subdivision does.

WATANABE: Thank you. Fellow Commissioners, any further questions? I think you responded quite well to that, Mr. Mooers, thank you. Do we need to discuss this further or is someone prepared to make a motion? Ms. Giffin?

GIFFIN: Mr. Chairman, I move that we approve the change of zone application 09-95 and send a favorable recommendation for this change to the County Council.

WATANABE: Okay, thank you. Any second? Mr. Housel?

HOUSEL: I'll second that.

WATANABE: Any further discussion on the matter? Maija.

COTTLE: Thank you, Mr. Chairman. Commissioner Giffin?

GIFFIN: Aye.

COTTLE: Commissioner House1?

HOUSEL: Aye.

COTTLE: Commissioner Beaudet?

BEAUDET: Aye.

COTTLE: Commissioner Bowman?

BOWMAN: Aye.

COTTLE: Commissioner Iokepa?

IOKEPA: Aye.

COTTLE: And Mr. Chairman?

WATANABE: Aye.

COTTLE: Motion to forward a favorable recommendation to County Council passes, six to zero.

WATANABE: Thank you. So, congratulations. You'll be notified in writing. Well, you still have another hurdle, yeah?

MOOERS: Thank you very much.

The discussion ended at 10:15 a.m.

Respectfully submitted,

Noriko Sauer, Secretary
Leeward Planning Commission