

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
OCTOBER 2, 2009

A regularly advertised hearing on the **PLANNING DIRECTOR INITIATED AMENDMENT TO CHAPTER 25 ALLOWING SOLAR ENERGY FACILITIES WITHIN THE COUNTY'S AGRICULTURAL ZONED DISTRICT** was called to order at 11:27 a.m. in the County of Hawai'i, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Rell Woodward presiding.

PRESENT: Rell Woodward
Takashi Domingo
Andrew Iwashita
Zendo Kern
Shelly Ogata
Wallace Ishibashi

Brandon Gonzalez, Deputy Corporation Counsel
BJ Leithead Todd, Planning Director
Norman Hayashi, Planning Program Manager
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner

And 4 people from the public in attendance.

INITIATOR: PLANNING DIRECTOR

Amendment to Chapter 25 (Zoning Code), Hawai'i County Code 1983 (2005 Edition, as amended) allowing solar energy facilities within the County's Agricultural zoned district provided that the property is within the Land Study Bureau's class D or E soils category.

WOODWARD: The next one is Item No. 8, initiator is the Planning Director who wants to put sunshine on bad dirt, sort of. That's my gestalt. Who's going to talk about this? Jeff?

COTTLE: Okay.

WOODWARD: Maija.

COTTLE: Thank you, Mr. Chairman. I didn't do a slide presentation of this, but I just handed out two maps. The first map that looks like this shows the Land Study Bureau classification of soils for the island. The dark brown areas are soils classified E. These are considered very poor. The kind of light -.

WOODWARD: You mean all I have is bad dirt?

COTTLE: That's the bad dirt, yeah.

WOODWARD: All right. Okay.

COTTLE: The light browns are classified as D which is poor. And the yellow, kind of the bright yellow, those are C soils which are considered fair. And there's a little narrow strip of B soils, which are considered good up near Hamakua, mauka and just southeast of the town of Waimea. There are no A classified soils on the island. And just to give you a little background of how the soils are classified, the rating is based on texture, depth and drainage qualities of the soil, as well as topography, climate and rain within the area. And, so the second map that I handed out shows the State Land Use designations for the island. And the item that we're discussing, the amendment that the Planning Director initiated, is related to State Land Use agricultural soils which are shown in green on the map. So the Director is initiating the amendment to the Zoning Code to allow solar energy facilities on State Land Use agricultural lands. And this amendment is coming about because the State Legislature just recently changed the State Land Use Law to allow solar energy facilities on Ag lands. So we're requesting to change the Zoning Code to be consistent with that. And the Director is recommending approval.

WOODWARD: Seems like a fine idea to me.

KERN: I have a quick question.

WOODWARD: Yes, Commissioner Kern.

KERN: The Class B soils, I missed the color code of that, that's that kind of the lightish-greenish?

COTTLE: Yes.

KERN: Okay.

COTTLE: It's kind of a yellow green.

KERN: It's the one in Hamakua there between the really bright yellows there?

COTTLE: Right.

KERN: Thank you very much.

WOODWARD: Okay. We have a Randy Vitousek, Vitousek, signed up to testify. Okay, if you could have a seat, sir, and we'll swear you in, and then you can testify. If you'll raise your right hand. Do you swear or affirm to tell the truth today before the Windward Planning Commission?

VITOUSEK: Yes.

WOODWARD: All right. If you'll give us your name and address; and then you may begin.

VITOUSEK: Randy Vitousek, 75-170 Hualalai Road, Kailua-Kona. That's my business address. I am a resident of Waimea. I'm a resident/partner with the law firm of Cades Schutte on the Big Island. I'm a member of our firm's alternative energy practice group; and I'm just here to testify today on behalf of this proposed amendment.

When the State Legislature amended Chapter 205 to say that solar energy facilities are a permitted use on State classified Ag lands in the lower soil productivity areas, the intended result was to make it easier to permit the development of solar energy facilities. Unfortunately an unintended result was that once solar energy facilities become a permitted use under the State Land Use Law and because they are not a permitted use under the County Ag Zoning Law, that it made it more difficult, in fact impossible, to permit solar energy facilities on lands that are in the County Agricultural Zoning District. In other words even if you could have permitted it by special permit, under the County Zoning Code, that's 25-5-72(c)(16) dealing with special use permits, the use has to be one that is not permitted under the State Zoning District in order to be permitted by special permit. So it created a Catch 22 where because it's now permitted by the State it can't be permitted by Special Permit in the County. And the only way to develop a solar energy facility on a County zoned land is either to amend the Zoning Code to make it a permitted use like the State Legislature did or to rezone it to Industrial, which is not a good result, you know, because it's too time-consuming and we don't need more Industrial lands in otherwise Ag Districts.

So this is a good bill. I mean all this does is mirror what the State Legislature did to Chapter 205; and we have a real opportunity to develop solar energy facilities in Hawai'i. The Kekaha lands of West Hawai'i that's basically from the airport to Kawaihae are the sunniest lands in the State of Hawai'i. If you look at the Atlas of Hawai'i you'll see that. And so there's a real opportunity. There are solar energy producers who are looking at this market, want to come into this market; and this will be, this will not only be a good amendment to our ordinance but it will be an amendment which will provide the impetus for these people to come in and to develop the kind of facilities we need to reduce our dependence on imported oil. So, if you have any questions, thanks. Otherwise, aloha.

WOODWARD: Thank you. It's my impression you're preaching to the choir but -.

VITOUSEK: I understand -.

WOODWARD: Okay, any questions for Mr. Vitousek?

IWASHITA: How come somebody didn't figure that out before?

VITOUSEK: Pardon?

IWASHITA: Why wasn't that figured out before?

VITOUSEK: That's, but I must say, as soon as it was identified, the dichotomy, Norman Hayashi and Ms. Leithead Todd jumped right on it and immediately, I mean within three days, initiated this application.

WOODWARD: So that's why Norm is getting leid over there. Okay.

IWASHITA: That it be spelled correctly on the record, l-e-i-d.

WOODWARD: Yes, l-e-i-d. Okay. Any further questions for Mr. Vitousek? Anybody would like to make a motion? Commissioner Iwashita.

IWASHITA: Thank you, Mr. Chair. With regard to Item No. 8, Initiator Planning Director, Amendment to Chapter 25 (Zoning Code), Hawai'i County Code 1983 (2005 Edition, as amended) allowing solar energy facilities within the County's Agricultural zoned district provided that the property is within the Land Study Bureau's class D or E soils category, I move that the proposed amendment be approved, a favorable recommendation for approval be forwarded to the County Council.

KERN: Second.

WOODWARD: All right, any discussion? Okay, seeing none, Maija.

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

IWASHITA: Yes.

COTTLE: Commissioner Kern?

KERN: Aye.

COTTLE: Commissioner Domingo?

DOMINGO: Aye.

COTTLE: Commissioner Ishibashi?

ISHIBASHI: Aye.

COTTLE: Commissioner Ogata?

OGATA: Aye.

COTTLE: And Mr. Chairman?

WOODWARD: Aye.

COTTLE: Okay, the motion passes 6-0.

WOODWARD: All right, very good.

The discussion ended at 11:36 a.m.

Respectfully submitted,

Sharon M. Nomura
East Hawai'i Secretary