

Nukolii & the court

It will be some time before the full impact of the state Supreme Court's ruling halting construction at the Nukolii resort on Kauai is felt.

The situation is unique — at least in Hawaii — and all involved parties are carefully assessing the high court's action.

STILL A NUMBER of points can be made:

Chief Justice Richardson's ruling which overturns a lower court decision clearly establishes the primacy of the referendum process as it was exercised on Kauai.

In 1980, Garden Isle voters by a nearly 2-to-1 margin supported a referendum measure to revert the Nukolii property to agricultural use. But, as the court noted, the referendum process began much earlier. Indeed, after more than 4,000 petition signatures were certified by Kauai officials in January of that year, the developer, Graham Beach Partners, proceeded with the permit and construction process at its own risk.

It also meant that the developer and the administration of outgoing Mayor Eduardo Malapit were wrong in insisting that rights had been vested before the actual vote was held.

SOME CONCERN has been expressed that the court's ruling might have a detrimental effect on other development projects on Kauai and elsewhere in the state.

The question cannot be answered with certainty, of course, but that does not appear to be the case.

The important point is that Graham Beach Partners knew well in advance that (in the court's words) "... the referendum to repeal the zoning ordinance authorizing the Nukolii resort was certified before any necessary development permits had been issued."

Simply put, the developer gambled and lost.

In that regard, a positive impact of the Richardson ruling should be a reluctance on the part of other developers to try similar moves. That also goes for local authorities who might, as was the case on Kauai, continue to advocate projects which are at odds legally with the public's will.

IN THE short-term, of course, there's the question of what will happen to the 150 condominium units already constructed and purchased by investors, the part of the hotel under construction and the improved grounds area.

At one extreme, the lower court (which now is empowered to settle the fate of the project) might decide to raze the structures. There are those on Kauai who would support such a move, and if one narrowly interprets the 1980 referendum, that's what is called for.

Yet the Supreme Court — while "unprepared to provide specific instruction" — strongly suggests "alternative remedies" including "damages" or "other ... relief which would mitigate the harm caused by the offending structure" should be considered.

That would seem to leave open a number of possibilities, ranging from a fine and continued construction to perhaps making the resort an affordable housing project, turning it into a community center, or some similar public-minded use.

BEGARDLESS, the majority of Garden Islanders who voted against a Nukolii resort can take considerable satisfaction in Chief Justice Richardson's ruling.

It has taken two years, but the court has upheld their right to play a significant role in determining how development proceeds on their island. That's a principle that is larger than the immediate questions involved in the Nukolii dispute.



*Honolulu Advertiser
October 16, 1982*