

**MINUTES**

**PLANNING AND LAND USE COMMITTEE**

**October 12, 2004**

**Council Chamber**

CONVENE: 1:34 p.m.

PRESENT: Councilmember Wayne K. Nishiki, Chair  
Councilmember G. Riki Hokama, Vice Chair (ar 1:36)  
Councilmember Robert Carroll, Member  
Councilmember Jo Anne Johnson, Member  
Councilmember Dain P. Kane, Member (lv 2:00)  
Councilmember Danny A. Mateo, Member  
Councilmember Michael P. Molina, Member  
Councilmember Joseph Pontanilla, Member  
Councilmember Charmaine Tavares, Member

STAFF: David Raatz, Legislative Attorney  
Yvette Bantilan, Committee Secretary

ADMIN.: Wayne Boteilho, Deputy Planning Director  
Colleen Suyama, Planner, Department of Planning  
Gilbert Coloma-Agaran, Director of Public Works  
and Environmental Management  
Jane Lovell, Chief of Litigation, Department of Corporation Counsel  
Brian Moto, Corporation Counsel

OTHERS: Doyle Betsill, President, Betsill Brothers Construction,  
Inc. (applicant)  
Ruth Dudson  
Gary Zakian (applicant's attorney)  
Chris Hart, Chris Hart and Partners  
Additional attendees (5)

PRESS: Valerie Monson, The Maui News

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**ITEM 54      COMMUNITY PLAN AMENDMENT FOR THE PROPOSED  
WAIPUILANI ESTATES SINGLE-FAMILY RESIDENTIAL  
PROJECT (KIHEI) (C.C. No. 04-13)**

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CHAIR NISHIKI: Planning and Land Use Committee meeting please come to order. . . .*(inaudible)*. . . Item No. 54, community plan amendment for the proposed Waipuilani Estates single-family residential project -- "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI/MAKENA COMMUNITY PLAN LAND USE MAP FROM MULTI-FAMILY TO SINGLE-FAMILY FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII." The Chair wants to make a couple of opening statements prior to accepting public testimony. You know contrary to statements in the Maui News dated October 8, 2004, this applicant's lawsuit against the County is not based on any improper action or inaction by this Committee. Rather, the lawsuit simply raises a legal question on the Administration's interpretation of the requirement for consistency between zoning and community plan designation. There is no justification for this body to be intimidated or pressured into taking action just because a lawsuit has been filed. In fact, it may be appropriate to defer action until the applicant's claim for judicial relief is resolved.

You know in talking with certain Council members today, I think many of you are a bit miffed by the fact that individuals seem to want to create intimidation through taking County government to court. You know, I remember 20 years back when this term never really having to experience individuals that come to Maui County and so often intimidate us through lawsuits. I just want to express my frustration with the fact of how people coming to Maui take this type of attitude. I think people in Maui County that have lived here through the years are not used to seeing lawsuits filed. All of a sudden, this is the style that individuals choose to take and again the Chair is not happy with what is occurring.

I will now open for public testimony. The first person to testify is Doyle Betsill representing Betsill Brothers Construction followed by Ruth Dodson.

**. . . BEGIN PUBLIC TESTIMONY . . .**

MR. BETSILL: Doyle Betsill. First of all, I would like to concur with Mr. Nishiki's opening comments that the lawsuit that we have filed is strictly over a procedure and policy formulated by Maui County that we think is unfair. But I would, I would like to say that our intent with the lawsuit was not to intimidate Maui County but was to receive justice. We've, we've over a period of several months, actually, four years we've been trying to bring

this project forward. All we've asked is for a fair shake and a fair hearing, and we haven't received it. In fact, our request for a community plan amendment was, was, was lodged in January – 9 or 10 months ago. And during that period of time, even though we're working on an affordable project, we weren't able to get this affordable project heard before Maui County Council and I think that was unfair. So the purpose of the lawsuit is regarding justice and unfairness. It's not about intimidation.

I'm often asked or I hear the statement, why isn't there more affordable housing on Maui? I think this neighborhood that we brought forward voluntarily from day one as an affordable project is a good example of why we don't have more affordable housing. In the last four years while we've been trying to bring this project forward, material costs have gone up, labor costs have gone up, subcontractor costs have gone up. Everything has gone up as far as pricing. So by the time we get to market with these homes, they will cost more than we originally planned and anticipated for them to do so. And all we've asked the County Council is to give us a fair hearing. We feel like this is fairly straightforward. We have zoning that's for single-family. We have a community plan designation, which is multi-family, which allows single-family homes to be built. I feel like it's a travesty, and I feel like it's intimidation by Maui County to bring us to the point where we have to file a lawsuit just to get a simple, simple reply from the County as to, as to our position. This was never meant as any disrespect towards the County or was never meant to intimidate this body. I hope you guys realize we're smart enough to know that kind of, that kind of procedure and that kind of policy wouldn't work.

So here we are four years later, nine months after we asked to be heard about the community plan amendment, and we're still waiting for an answer. So the affordable project in the meantime is placed on hold. I don't think that we're being hurt as a company because we have other projects occurring. We're not being hurt as a company by this delay, but the people of Maui County are being hurt. And we feel like if we're trying to bring an affordable project forward and that project is being delayed and delayed and delayed, and during this time also a lot of impact fees have been imposed that weren't in effect four years ago. So the cost of the project continue to go up. We have committed to try to bring the housing in at a certain price. We just want due process. We just want fairness. What I would encourage the County Council to do is to bring this subject to a fair hearing, to a quick hearing. Give us a quick response so we can go forward and bring affordable homes to the people of Maui, which was the purpose of this project from its very inception. Thank you.

CHAIR NISHIKI: Any questions? Jo Anne.

COUNCILMEMBER JOHNSON: Hi, Doyle. Thank you for coming and, you know, bringing us the materials. Can you give us some idea of the cost of what, let's say if you got an approval earlier, what your projected cost might have been? I realize you can't give it exactly. And then what it would be now just looking at the pricing of the housing.

MR. BETSILL: Material costs have gone up over 30 percent since we started this project. Our subcontractors, of course, are very busy on Maui right now. As a result, their pricing has gone up. If we can find a subcontractor to work for us at this point, a minimum of 30 percent on that. Labor costs have gone up probably 20, 25 percent. So, and there's several impact fees, which we didn't figure into the original calcs, which now are in effect. The park fee is different. The traffic impact fee could take effect before we're completed. I would say overall, there's been a minimum increase in cost for the project of 30 to 35 percent since we conceived it.

COUNCILMEMBER JOHNSON: And do you have any idea what the price range, what your original price range was projected and what you now project it to be?

MR. BETSILL: The original price range was starting at 188, I believe, was for the lowest, for the lowest category and went up accordingly. At this point, I can't even, I don't even try to put a tag on what the homes are going to cost now because we don't know how long the process is going to take. I mean we still got to go, we got to get an answer from you guys. We got to go back to the Planning Commission, and then we got to get our plans approved. So, I mean we're, at this point when I say four years into the project, and four years kind of falls glibly off the tongue, but we think that's totally unacceptable for the review of an affordable housing project. And the County Council has only been involved for the last nine months but we've written several letters and we've made several pleas to have this project heard over the period of the last nine months. I still don't understand why it hasn't been heard to date.

COUNCILMEMBER JOHNSON: Are you proposing it as a 201-G through the County's process or are you just, you know, proposing it as a standard housing proposal?

MR. BETSILL: This is a fairly unique project in that we had the zoning. We had the community plan on the first two-thirds of the project and that last one-third is what we're talking about now. This was, there was no requirement. There's no 201-G involved. This land was fully entitled. We voluntarily brought this forth as an affordable project from day one.

COUNCILMEMBER JOHNSON: Okay. Because the only reason I was thinking with the cost escalation that it may be prudent to have you actually look at

it on that basis and work with Human Concerns so that some of the impact fees that you're looking at that you believe may add to the substantial cost for the housing. That maybe you might look at that and revisit some of that.

MR. BETSILL: We've talked with Alice for, you know, have had several meetings with Alice on this project through the course of, of the, of the project and she has been very helpful and, but she's fairly limited in what she can help us with.

COUNCILMEMBER JOHNSON: Yeah, and, and, and I realize that. And I'm not saying to avoid the impact fees but, you know, to really get to a point where maybe some of the administrative delays that cost you money because of the time factor, that may be able that . . . At least some of that may help alleviate some of the concerns you're bringing out.

MR. BETSILL: I appreciate your sentiment but in all practical, for all practical intents there just are more cost associated with the project and there's nothing that can be done about it. Because of the delays to date and God knows how many future delays we face before we bring it to market.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR NISHIKI: Any other questions? Seeing none. Thank you.

MR. BETSILL: Thank you.

CHAIR NISHIKI: Ruth Dodson.

MS. DODSON: I'm intimidated. And so, before I begin, I would like to take a moment and thank our Chair today for all the hard work he's done for the many, many years not only for Kihei but for all of Maui County. Thank you.

Now, I have lived at Koa Resort for 18 years. When we moved into our unit, there was no road called Kulanihakoi. It was a semi-paved road that served only Koa Resort. It also served the church on Sundays. Our traffic was at a minimum. Through the years and right now we have 18 driveways coming off Kulanihakoi. I've got to put my glasses on. Alright. That serves a total of 593 households, not cars. Now, the only access to Piilani Highway or the South Kihei Road is on that particular street. There are another 200 units - Paradise Garden, which used to be called Keawe Terrace, that also can go out on South Kihei Road. But we have a total of 793, roughly 800 households dependent on Kulanihakoi. Because of this development, and this is background information, because of Waipuilani, what I call, what I have dubbed Waipuilani mistakes, not estates they want

to take over Road "C" and have another hundred households dumping off onto that property.

Now Mr. Betsill said he's been on this project, which he will end up making money out of, for four years. I've been in this project as a neighbor for two years. May 10, 2002, I received notice of this project. There were a total of 478 notices sent out to adjoining residences. I protested this at the Planning Commission and said ten of our 54 owners at Koa Resort had not been notified. And they had sold their property and their new owners had owned for two years at least. I was told after waiting all day long, I was told, oh no, the developer took the right number off of their tax rolls. Well. . .(inaudible). . .entered into and proved that the developer had made a mistake. So on August 15<sup>th</sup> they were required to send out more notices and renotify the people. The developer then sent out 674 notices taken from the proper tax rolls.

I was on the KCA back in 1990 when their consultant Chris Hart was also Director on the Planning Commission. Chris Hart was perfectly aware of the fact that apartment selling was \_\_\_\_\_. I think he knew the ropes better than most of us at the KCA. That hadn't changed when Betsill Brothers bought the property. They should have known.

Other mistakes that have been made are in the general plan. Taking over Road "C" does not qualify as a viable plan. We have an entrance in at the lower part of South Kihei Road. Entrance in, right turn in, right turn out only. The developer has been asked why not make a hold and I do have the property. That has been refused. The length of Road "C" goes through the property and there are other options. We have a North and South collector road that needs to be constructed to take the impact off of Piilani Highway and Kihei, South Kihei Road. Also, there is a gulch on the property and it just needs a bridge to go over to a street, I think it's \_\_\_\_\_ Hoonui Street. I'm not sure or . . . yeah, I think it is, which could also relieve the traffic.

The front section, oh, I wanted to read this, Kulanihako'i occasionally is used now that it goes clear through to Piilani Highway. It is used in the event that there is a traffic accident and it does, we cannot get out of our unit. It is totally jammed. It needs to be an access road. The only other time we ever had problems was shortly after another project that Betsill Brothers - Kenolio Estates was built. We had our road jammed because of the flooding, flooding problem because they had a gulch also on Kenolio. The project itself has a gulch, which is going to be according to the developer a community garden. It has a play area right central. It supposed to be a park. It has one basketball hoop and maybe a slab of concrete. It has a couple picnic tables. It's nearshore, uh, parking because they don't have any parking either there or on their property.

Let's see, what else, oh and they do not want to put a bathroom there, so if you have to go to the bathroom I guess you use the gulch.

The South Kihei Road, the lower portion has been a known flood zone. You put a road going from west to east up their slope, pave it over with concrete and you're going to have a bad flood. Now, at one point when Paradise Gardens was built, it was built as Keawe Terrace by TSA, the developer of the Grand . . . Renaissance. Well, you know, the two hotels and Kea Lani. They discovered that their front portion of the property flooded. In fact, when they dug, they lost a truck because of it. And it actually slid and we watched it slide right down because of the water table. *And this is only right next door to the gulch property. So, TSA agreed to put in an adequate drainage system to take care of the runoff. It has worked beautifully. Basically, you don't need it for everybody and Betsill Brothers seem to think that the drainage will go across to this drainage system. I doubt it. He seemed to think he had the proper people notified. He didn't. He seemed to think he had the drainage solved. He doesn't. I understand it's hard to do impact fees. Oh, and traffic lights, he thinks maybe in the future that we might need stop lights, traffic lights on both Piilani, and Kulanihakoi, and South Kihei. He also was very reluctant until . . . really vouched to pay adequate school funds. Now, this is the background. . .(inaudible). . . Give me a break.*

I do want to praise all of you for this. Habitat for Humanity. If you haven't seen today's paper. This is a cooperative group of people who not only listen to their neighbors but joined in. Realtors, hotels, everybody to help make a family home.

The other headline is I must thank you all for it for tossing what is desperately needed. I am not against development. I'm against sound development. This project basically is not sound. We do need apartments and I think that the, the developer is neglecting to build apartments. This is my own thinking because he didn't sell those apartments to someone else to take over. I do not know the reasons. I do know the impact on our community when asked at a session if he would be willing to not finish all of the homes and let people do some of the painting, the landscaping to keep the cost for our young families. He said, oh, it wasn't feasible. Give me a break. It's feasible. Thank you.

CHAIR NISHIKI: You done, Ruth? Are you done, Ruth?

MS. DODSON: I think so.

CHAIR NISHIKI: Any questions for Ruth? Jo Anne.

COUNCILMEMBER JOHNSON: Thank you very much for coming, Ruth. I haven't seen you in a while.

MS. DODSON: I know.

COUNCILMEMBER JOHNSON: I wanted to find out because when you're looking, the problems that you described in the early part of your testimony about all the impacts of traffic, about, you know, the crowding in the area, and all those driveways coming out on the roadway. I don't know because you live in the area. You see what goes on. I'm trusting your judgment. Do you think that by putting multi-family houses in there with so many cars for each one of those apartments that that would create a greater impact, or do you think that single-family homes would create a greater impact? Which do you think I guess would create less of an impact? Because I don't know you're living in the area, so you tell me.

MS. DODSON: In my experience, the homes that are being planned in this have got attached closed garages. And some of the homes have got two, two-car driveway. The smaller homes have a one-car driveway. There will be no parking on the street at all. The Planning Commissioners insisted that all parking be on, on the site. For some reason, the developer has taken over Road "C" and put 18 parking spaces. I would say that only he can use probably. There would no other excuse for it. I don't know. I don't think a decently planned apartment, plus apartment housing will be on, all homes will be on Phase II. Phase II will have the smaller homes and they're not affordable from what I have seen unless plans have changed. That's only my own judgment. I feel that the project is, well, hinging on whether it's apartment or homes. Has very little to do with the developers inability to meet with the neighbors and to \_\_\_\_ an inclusion rather than an intrusion into our neighborhood.

COUNCILMEMBER JOHNSON: So, so, if I understand what you're saying, you think that basically because of the configuration of the homes and maybe the fact that they do have this additional garage space that that might bring more traffic really into the area, and also with the use of the roadway that that might also affect the movement of traffic through the area? Is that correct?

MS. DODSON: Right. Well, what I'm saying is you put up an apartment building, and it's a one- and two-bedroom apartment. So usually you're not going to have ohanas in them. And so maybe it would even lessen the traffic.

COUNCILMEMBER JOHNSON: Okay. Thank you very much.

CHAIR NISHIKI: Any other questions? Seeing none. Thank you. Anyone else wishing to testify? Chris, if you're going to testify or are you going to wait 'til the project is being discussed?

MR. HART: I'd rather wait until the project is being discussed.

CHAIR NISHIKI: Okay. Any other, any other wishing to testify? If not, if there are no objections, public testimony is closed.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.**

**. . . END OF PUBLIC TESTIMONY . . .**

CHAIR NISHIKI: Two things I want to bring up before the Committee. The Corporation Counsel has asked that we go into executive session to discuss some of the concerns that have been raised in regards to litigation. The other concern that the Chairperson has also, and it comes with track record of people that come to Maui to develop. If you've read recently, this developer also has had some problems with the people of Waihee when they went and graded a scenario without first discussing anything about the development with the residents there. This I feel was a poor decision.

Secondly, if I may, this is the same developer that created a housing project in Kihei a couple of years back. He blamed government for why he had to raise his home prices 20 to \$30,000 from what he originally quoted and knocked out many of the local residents that wanted to buy into this project. Finally, as you've heard through a question asked by Jo Anne, this is not an affordable housing project. Okay. I want to make that crystal clear. You've heard some of the prices that the developer, when asked by Jo Anne was going to charge. But I'm sure that we will have some clarification as we go through this project. *The Chair at this point, if you look at today's posting would like to go into executive session to consult with our Corporation Counsel pursuant to Section 92-5(a)(4) Hawaii Revised Statutes.*

COUNCILMEMBER JOHNSON: So moved.

CHAIR NISHIKI: Moved by Jo Anne. Any second?

COUNCILMEMBER TAVARES: Second.

CHAIR NISHIKI: Second by Charmaine to go into executive session to consult with legal counsel. Any discussion? All those in favor say aye.

CHAIR NISHIKI: All those opposed.

**VOTE:**        **AYES:**        *Councilmember Carroll, Hokama, Johnson, Kane, Mateo, Molina, Pontanilla, Tavares, and Chair Nishiki.*

**NOES:**        *None.*

**ABSTAIN:**    *None.*

**ABSENT:**    *None.*

**EXC.:**        *None.*

**ACTION:**    **EXECUTIVE SESSION**

CHAIR NISHIKI: Motion carried. Thank you.

**RECESS:**    **2:00 p.m.**

***(THE PLANNING AND LAND USE COMMITTEE ENTERED INTO EXECUTIVE SESSION AT 2:18 P.M. AND ENDED AT 2:56 P.M.)***

**RECONVENE:**    **2:58 p.m.**

CHAIR NISHIKI: Planning and Land Use Committee please reconvene. The Chair wants to state for the record in lieu of concerns about the scheduling of a site inspection, possible meeting in Kihei, concerns raised by the Public Works Department, an opportunity to consult with the Housing Director on affordability issues, also to consider other legislative options that we defer this item until another time. So that is the Chair's recommendation. The Chair will accept a motion to defer this item.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.**

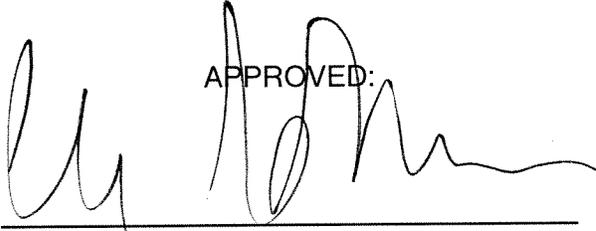
CHAIR NISHIKI: No objections. Seeing none, this is item is deferred. Any statements?

COUNCILMEMBER TAVARES: Mr. Chairman, my understanding is that you are going to schedule a site inspection. I would encourage all the Members to, just before the site inspection, to read over what the conditions are that had been proposed for the development by the Maui Planning Commission. And it's the last section of our item in the binder. So that when we go to the, the meeting if it follows the site inspection that we will already have reviewed this part of it and look at additional conditions that we may want to consider at that time. Thank you.

CHAIR NISHIKI: Any other discussion? Seeing none. If there are no objections, this item is deferred. Meeting adjourned.

**ACTION:**    **DEFER.**

ADJOURNED: 3:00 p.m.

APPROVED: 

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WAYNE K. NISHIKI, Chair  
Planning and Land Use Committee

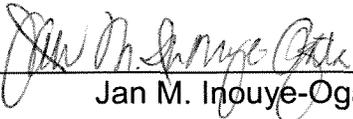
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Transcribed by: Cathy L. Simmons

CERTIFICATE

I, Jan M. Inouye-Ogata, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 10th day of November, 2004, in Kahului, Hawaii.

  
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Jan M. Inouye-Ogata