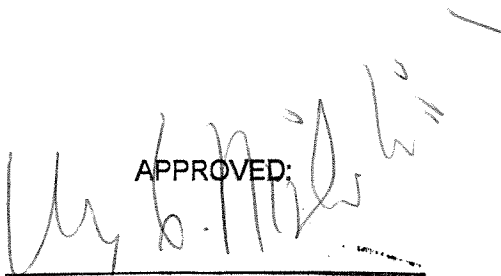


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M I N U T E S
PLANNING AND LAND USE COMMITTEE
Council of the County of Maui
Council Chamber
June 15, 2004

APPROVED:


Committee Chair

1 CONVENE: 1:33 p.m.

2 PRESENT: Councilmember Wayne K. Nishiki, Chair
 Councilmember G. Riki Hokama, Vice Chair
 3 Councilmember Robert Carroll, Member
 Councilmember Jo Anne Johnson, Member
 4 Councilmember Dain P. Kane, Member
 (ar 1:55)
 5 Councilmember Danny A. Mateo, Member
 Councilmember Michael J. Molina, Member
 6 (ar 1:34)
 Councilmember Joseph Pontanilla, Member
 7 Councilmember Charmaine Tavares, Member
 (ar 1:40)

8
 9 STAFF: David Raatz, Legislative Attorney
 Shelly Espeleta, Legislative Analyst
 Yvette Bantilan, Committee Secretary

10 ADMIN.: Glenn Correa, Director of Parks and
 11 Recreation
 John Buck, Deputy Director of Parks and
 12 Recreation
 Michael Foley, Planning Director
 13 Captain Charles Hirata, Department of Police
 Gilbert Coloma-Agaran, Director of Public
 14 Works and Environmental Management
 Brian Moto, Corporation Counsel
 15 Dudley Akama, Deputy Corporation Counsel

16 OTHERS: Dennis Winnie
 Additional attendees (15)

17 PRESS: Ilima Loomis, The Maui News
 18

19 CHAIR NISHIKI: (Gavel). Planning and Land Use please
 20 come to order. Let's turn to Item No. 12, Community
 21 Plan Amendment for Five-Lot Residential Subdivision,
 22 a Bill to Amend an Ordinance to the West Maui
 23 Community Plan from Park to Multi-Family.
 24 We have one person here to testify. Let the
 25 record show Councilmembers Carroll, Hokama, Johnson,

1 Mateo, Pontanilla, and Molina. Excused are Members
2 Kane and Tavares.

3 Dennis Winnie is the only testifier here.

4 Good afternoon, Mr. Winnie.

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

6 MR. WINNIE: Good afternoon, Councilman. You'll have to
7 excuse me. I'm a little nervous. The last time the
8 meeting -- this Council heard -- we were discussing
9 these lot changes, gentleman stood up and said that
10 he didn't think it would be much of an impact on the
11 roadway. I stood out there for five hours yesterday
12 and one hour this morning counting the cars and
13 buses and trucks that went by, and I came up with,
14 in the five hours, 42 buses, a total of 1,042
15 trucks, vans, SUVs, and cars, and 48 -- 148 carts.

16 Now, the best of my knowledge, this property
17 was owned by another identity when the Council
18 turned down the application to build five homes
19 between number two tee and number six at Kaanapali
20 Golf Course on Kaala Drive a few years ago. Later
21 it was purchased by a company called Sunstone, who
22 bought it at a discount from the previous owners
23 since they were unable to build and get the zoning
24 rechanged. Should we reward this greed by approving
25 this application, I pray not, and destroy the

1 atmosphere of this green open space -- sorry. Lost
2 my notes. Sorry.

3 Sunshine [sic] has shown no redeeming
4 qualities by building on these -- these five homes.
5 It will do nothing but cause more congestion and
6 blithe in this park-like area. Imagine, if you
7 will, looking upon this beautiful park-like area for
8 almost 30 years, as I have, and then look at it once
9 the five homes are built in this area. Pardon my
10 being so emotional about this issue, but I speak for
11 the hundreds of owners who would be affected by this
12 proposal change in this land use who are not able to
13 attend this meeting. Thank you so much.

14 . . .END OF PUBLIC TESTIMONY. . .

15 12 COMMUNITY PLAN AMENDMENT FOR FIVE-LOT RESIDENTIAL
16 SUBDIVISION (KAANAPALI) (C.C. No. 01-165)

17 CHAIR NISHIKI: Thank you. Any questions for Mr. Winnie?
18 Seeing none. Let the record show also there's been
19 a couple of faxes, one from Michelle Anderson,
20 another from David Krell, and Tom Vishanoff. Also,
21 Members, you've got in your last -- second to the
22 last item dated June 8th, two resolutions from
23 Dudley Akama, Deputy Corporation Counsel. And I'd
24 like Corporation Counsel to speak to the two
25 resolutions, if there are no objections.

1 COUNCIL MEMBERS: No objections.

2 MR. MOTO: Good afternoon, Mr. Chairman and Members of the
3 Committee. Brian Moto, Corporation Counsel.
4 Mr. Chairman, your agenda for today's -- for today
5 is a fairly complete and detailed description of
6 various matters that are on today's agenda. As the
7 agenda indicates, as the consequence of your last
8 meeting, our office prepared and forwarded to this
9 Committee a number of documents which are now on
10 today's agenda. One of them is a resolution
11 authorizing settlement of Sunstone Realty Partners
12 VII, LLC versus Maui County, and secondly there's
13 also a resolution that -- referring to the Maui
14 Planning Commission a bill to change zoning from A-2
15 Apartment District to R-3 Residential District
16 (conditional zoning) for the subject property.
17 Attached to that resolution is a copy of a
18 conditional zoning bill.

19 Mr. Chairman, also I should report that since
20 your last meeting and in accordance with the request
21 of the Committee, I did have conversations with the
22 attorney representing Sunstone Realty, Michael Lam
23 of Case, Bigelow & Lombardi. Because those
24 discussions were in the nature of preliminary
25 settlement negotiations and talks, and because we

1 discussed -- and because that discussion and the
2 matters that are covered relate to the liability and
3 obligations and legal standing of the County of
4 Maui, I would recommend that if you would like
5 further information about my discussions with
6 Mr. Lam, that that be done in executive session.

7 CHAIR NISHIKI: Any questions from Mr. Moto in regards to
8 the two resos or any other concern from Committee
9 members? Okay. Anyone here other than Mr. Winnie
10 wishing to testify? Seeing none. If there are no
11 objections, Chair is closing public testimony. Let
12 the record also show that Councilmember Tavares is
13 present.

14 Being that there's no questions, under
15 Section 92-5(a)(4), Hawaii Revised Statutes, the
16 Chair would recommend that we go into executive
17 session to consult with our legal counsel.

18 COUNCILMEMBER MOLINA: So moved.

19 COUNCILMEMBER MATEO: Second.

20 CHAIR NISHIKI: Moved by Mr. Molina, seconded by
21 Mr. Mateo. Any discussion? Seeing none. All those
22 in favor, say "aye."

23 COUNCIL MEMBERS VOICED AYE.

24 CHAIR NISHIKI: All those opposed?

25

1 VOTE: AYES: Councilmember Carroll, Hokama,
2 Johnson, Mateo, Molina,
Pontanilla, Tavares, and Chair
Nishiki.
3 NOES: None.
4 ABSTAIN: None.
5 ABSENT: None.
EXC.: Councilmember Kane.
6 ACTION: EXECUTIVE SESSION.

7 CHAIR NISHIKI: Motion carried. Short recess. (Gavel).

8 RECESS: 1:41 p.m.

9 (THE PLANNING AND LAND US COMMITTEE ENTERED INTO EXECUTIVE
SESSION AT 1:45 P.M. AND ENDED AT 2:05 P.M.)

10 RECONVENE: 2:08 p.m.

11 CHAIR NISHIKI: (Gavel). Meeting please reconvene. Any
12 other discussion or questions? I see we have the
13 Planning Director here. Any statements from the
14 Planning Director? If there are none, Chair would
15 recommend the adoption of the resolution referring
16 to the Maui Planning Commission a bill to change
17 zoning from A-2 Apartment District to R-3
18 Residential District (conditional zoning) for
19 property along the westerly line of Kekaa Drive,
20 Kaanapali, Lahaina, Maui, Hawaii, and also sending
21 the attached bill, conditional zoning to the
22 Planning Commission. Any discussion? Chair
23 would --

24 MR. FOLEY: Mr. Chairman, could I ask a question?

25 CHAIR NISHIKI: Sure.

1 MR. FOLEY: At the previous meeting there was some
2 discussion about alternative of designating the
3 property as project district on both the community
4 plan and zoning, the reason being that then it would
5 be possible to specify that it would be five houses,
6 two stories high with two driveways. Whereas with
7 the R-3 designation, if the homeowners association
8 chooses to eliminate the deed restrictions, we
9 wouldn't know about it and it would be possible to
10 build under those circumstances anything allowed in
11 the R-3 district, which would include apartments.

12 So I was surprised to see that the direction
13 was to go towards R-3. I remember Mr. Hokama
14 raising the question of, you know, wouldn't it be
15 more -- more appropriate to use the project district
16 designation in order to be more -- to be more clear
17 that it -- you're expecting five houses.

18 CHAIR NISHIKI: *Mike, I know you didn't have time to look*
19 *at the attached bill, but we do have three*
20 *conditions on it also, if you look at Exhibit B.*
21 *I'll give you time. It's --*

22 MR. FOLEY: I have it. I have it.

23 COUNCILMEMBER CARROLL: Chair. Chair. Could we have a --
24 could we have a short recess?

25 CHAIR NISHIKI: Sure. Short recess. (Gavel).

1 RECESS: 2:10 p.m.

2 RECONVENE: 2:20 p.m.

3 CHAIR NISHIKI: Meeting please reconvene. Mr. Carroll.

4 COUNCILMEMBER CARROLL: No, thank you for the recess,
5 Chair.

6 COUNCILMEMBER KANE: That's it. He just wanted a recess.

7 CHAIR NISHIKI: Oh, really? Any other questions or
8 comments?

9 VICE CHAIR HOKAMA: Mr. Chairman.

10 CHAIR NISHIKI: Mr. Hokama.

11 VICE CHAIR HOKAMA: Is it your intention to take community
12 plan consideration separately from the motion on the
13 floor, which is just for a change of zoning?

14 CHAIR NISHIKI: My recommendation, if you're asking me, is
15 to adopt the resolution to initiate change in zoning
16 to R-3 with conditions, also to pass the community
17 plan bill as amended to designate the property as
18 single family, and then send this to the Planning
19 Commission. Don't forget that this whole process
20 still has to come back to this Council for the final
21 passage.

22 VICE CHAIR HOKAMA: And thank you for your clarification,
23 Chairman.

24 CHAIR NISHIKI: Yes.

25 VICE CHAIR HOKAMA: I'm reluctant, but I'm in support of

1 you, Mr. Chairman, in your recommendation. Thank
2 you.

3 CHAIR NISHIKI: Any other questions before the
4 recommendation? Chair would recommend that we adopt
5 the resolution to initiate change in zoning to R-3
6 with conditions, pass community plan bill as amended
7 to designate the property as single family, and of
8 course the entire communication stays within this
9 Council because it's still got to come back from the
10 Planning Commission to the Council for final
11 passage. Someone to accept the motion?

12 VICE CHAIR HOKAMA: So moved, Mr. Chairman. So moved,
13 Mr. Chairman.

14 CHAIR NISHIKI: Moved by Hokama.

15 COUNCILMEMBER TAVARES: Second.

16 CHAIR NISHIKI: Second by Charmaine. Any discussion? Jo
17 Anne.

18 COUNCILMEMBER JOHNSON: Because in a previous meeting --
19 in fact when this issue had first come up, I was
20 asked for at least -- it was alleged that because I
21 live in such close proximity to this particular
22 property I was asked by I believe at least one
23 person who wrote a letter to the editor that stated
24 I should recuse myself because I had a conflict of
25 interest. I live I believe it's like a mile and a

1 half to two miles -- you know, I know it's over a
2 mile. I did measure it at one point in time. The
3 property that's in question does not abut our
4 property. Our property is completely developed. We
5 have all the infrastructure. We will not benefit
6 nor to my knowledge would we be harmed financially,
7 but I leave it up to the body to state whether I
8 have a conflict or not.

9 CHAIR NISHIKI: Thank you. Any objections? Charmaine, go
10 ahead.

11 COUNCILMEMBER TAVARES: Yeah, I propose that there's no
12 conflict.

13 CHAIR NISHIKI: Okay. Anyone else can see Jo Anne as
14 having a conflict?

15 COUNCILMEMBER KANE: No objections to her voting.

16 CHAIR NISHIKI: Seeing none. Thank you.

17 COUNCILMEMBER TAVARES: No objections.

18 COUNCILMEMBER CARROLL: No conflict.

19 CHAIR NISHIKI: Okay.

20 COUNCILMEMBER JOHNSON: Thank you.

21 CHAIR NISHIKI: Any other discussion? Dain.

22 COUNCILMEMBER KANE: And just for clarification,
23 Mr. Chair, on the community plan amendment,
24 Mr. Chairman, so we're changing that from
25 Multi-Family to Single Family, is that -- I'm just

1 getting clarification on the motion on the floor.

2 CHAIR NISHIKI: Yes.

3 COUNCILMEMBER KANE: So we're amending what we have on the
4 agenda, which is to change from Park to
5 Multi-Family, so actually it's going to change from
6 Park to Single Family is what we're amending it to
7 do?

8 CHAIR NISHIKI: Community plan Park to Single Family.

9 COUNCILMEMBER KANE: Yes, that's what's on the floor right
10 now?

11 CHAIR NISHIKI: Right.

12 COUNCILMEMBER KANE: And then the other is the referring
13 it to Planning Commission to initiate the zoning
14 requests on the resolution?

15 CHAIR NISHIKI: Yes.

16 COUNCILMEMBER KANE: Okay. Thank you, Chair.

17 CHAIR NISHIKI: Any other discussion? All those in favor,
18 say "aye."

19 COUNCILMEMBER PONTANILLA: Aye.

20 COUNCILMEMBER JOHNSON: Wayne, wait.

21 CHAIR NISHIKI: Excuse me. Mr. Carroll.

22 COUNCILMEMBER CARROLL: Thank you, Chair. I'll make it as
23 short as I can. This has been a very contentious
24 agenda item that we've had. Any time that you
25 change anything on any part of Maui, it doesn't just

1 affect that area. It affects all of Maui. In this
2 case I think everybody agrees that they wish that
3 that wasn't over there and that it would remain as
4 it is right now. When you build something over
5 there, it's going to take away the open feeling that
6 you have when you go through that area. It is to an
7 extent going to degrade the area and the surrounding
8 area. You cannot take any portion of Maui and make
9 a change and degrade it without affecting the rest
10 of Maui County, the rest of this island. I know
11 there's a lot we need to do with land use laws in
12 our ordinances, and I hope that in the next -- this
13 year and the coming years that we can address these
14 so we can take the appropriate actions that are
15 necessary to preserve what we have. Thank you.

16 CHAIR NISHIKI: Jo Anne.

17 COUNCILMEMBER JOHNSON: I think most of us have received
18 all the letters from the *community members*, and
19 because I'm from that area I perhaps take it more
20 seriously, because these people are the individuals
21 that I pass every day on the highway, I shop at the
22 same grocery stores with, and one of the things that
23 I think is extremely difficult for me in this
24 situation is given the information that we have been
25 provided with, which we did not have previously, I

1 think it makes it even more difficult.

2 For me, I agree with Councilmember Carroll.
3 I think that it is extremely difficult, because
4 we're faced with a lose-lose situation, I think that
5 the community clearly has not been informed about
6 what land use could take place, what kind of
7 development could take place in this area, and there
8 is some dispute, which I've at least been made aware
9 of by the Citizens Advisory Committee who state that
10 clearly this was always intended to be golf course.

11 So being consistent with past behavior on my
12 part and at least from past actions that I've taken
13 whenever I have doubt about whether something is
14 being done appropriately or being done with the full
15 support of the community, and certainly it's being
16 done in the spirit in which the community plans are
17 developed, I support in theory what's being done,
18 but I am not going to be supportive of any community
19 plan amendment which would deviate from what the
20 community clearly wants in that area. Thank you.

21 CHAIR NISHIKI: Dain.

22 COUNCILMEMBER KANE: Thank you, Mr. Chairman. Not in this
23 past executive session but the previous executive
24 session, by way of background, I guess we were given
25 information which is found as a matter of public

1 record, but it helped us to develop some of the
2 things that we discussed in the executive session,
3 and appropriately so. But what I found interesting
4 is -- is contrary to a lot of those letters that we
5 did get, that this place was always intended to be
6 the open space, and what we did find, as a matter of
7 public record, that when these -- when the golf
8 course was developed, that this lot, along with two
9 other lots in particular where we now have
10 Multi-Family use, this lot was also intended
11 originally when the golf course was cut up and made,
12 this particular lot in question was also intended
13 for the same type of use, originally.

14 Over time things change, but it needs to be
15 clearly stated that it was -- it was intended
16 originally that this place would be developed
17 adjacent to the golf course for Multi-Family use.
18 So I just want to make that clear for the record,
19 that that is a matter of public record, and that
20 yes, this is a difficult issue, but I think our
21 decision is going to be based on the public's
22 interests. And in this case I think a vote to
23 support what's on the floor will hold I think the
24 developer accountable to what they're representing
25 to us as far as their intentions of this property

1 and it will not allow them to deviate from that at
2 some future point.

3 So with reservations, I will support,
4 Mr. Chair, the recommendation and the motion on the
5 floor. And as we get further along with this item
6 and bring it to closure, I think it's important that
7 more of that information that was -- that is a
8 matter of public record be made public and make the
9 people aware who are impacted by this and who have
10 some other perception of the intent of this
11 property. They need to understand, if they weren't
12 notified, it was unfortunate, but they need to
13 understand what this property was originally
14 intended to be and what we're doing is consistent
15 with that. Thank you, Chair.

16 CHAIR NISHIKI: Any other discussion? Seeing none. All
17 those in favor, say "aye."

18 COUNCIL MEMBERS VOICED AYE.

19 CHAIR NISHIKI: Those opposed? Motion --

20 COUNCILMEMBER JOHNSON: No.

21 COUNCILMEMBER CARROLL: No.

22 COUNCILMEMBER JOHNSON: Two noes.

23 CHAIR NISHIKI: All ayes, Carroll and Johnson votes no.

24

25

1 VOTE: AYES: Councilmember Hokama, Kane,
2 Mateo, Molina, Pontanilla,
3 NOES: Councilmember Carroll and
4 Johnson.
5 ABSTAIN: None.
6 ABSENT: None.
7 EXC.: None.
8 ACTION: FIRST READING OF REVISED PROPOSED BILL TO
9 AMEND THE WEST MAUI COMMUNITY PLAN AND LAND
10 USE MAP FROM PARK (GC) TO SINGLE-FAMILY FOR
11 PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII;
12 AND ADOPTION OF PROPOSED RESOLUTION REFERRING
13 TO THE MAUI PLANNING COMMISSION A BILL TO
14 CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO
15 R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING)
16 FOR PROPERTY ALONG THE WESTERLY SIDE OF KEKAA
17 DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII

11 CHAIR NISHIKI: Motion carried. Meeting adjourned.

12 (Gavel).

13 ADJOURN: 2:31 p.m.

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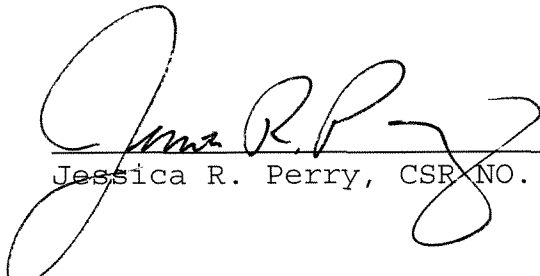
C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF MAUI)

I, Jessica R. Perry, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 1st day of July, 2004, in Honolulu, Hawaii.



Jessica R. Perry, CSR NO. 404