

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004

Committee

Report No. 04-107

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning and Land Use Committee, having met on February 3, 2004, February 23, 2004 (site inspection and meeting), March 2, 2004; June 1, 2004, and June 15, 2004, makes reference to County Communication No. 01-165, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK (GC) TO MULTI-FAMILY FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII".

The purpose of the proposed bill is to change the Community Plan designation from Park to Multi-Family for approximately 1.602 acres situated at Kaanapali, Lahaina, Maui (identified for real property tax purposes as Tax Map Key No. 4-4-008:016), as requested by Curtis Deweese on behalf of Sunstone Realty Partners, LLC. Approval of the proposed Community Plan Amendment would facilitate development of a five-lot single-family subdivision and related improvements on the subject property.

Your Committee notes that County Communication No. 01-165 was referred to the prior Council's Land Use Committee at the Council meeting of June 1, 2001.

Your Committee further notes that the Land Use Committee met on October 15, 2001 and February 25, 2002 (site inspection and meeting).

By correspondence dated August 8, 2001, the Chair of the Land Use Committee requested that the Planning Director provide additional background information on the proposed Community Plan Amendment.

By correspondence dated September 13, 2001, the Planning Director transmitted pages 10-13 of the West Maui Community Plan, relating to the major problems and opportunities in the West Maui area, and advised that additional

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 2

Committee  
Report No. 04-107

background information on the proposed Community Plan Amendment could be obtained from other agencies.

By correspondence dated October 1, 2001, the Council Chair transmitted correspondence dated September 26, 2001, from the Planning Director, transmitting excerpts of minutes of the Maui Planning Commission meeting of March 13, 2001, relating to the proposed Community Plan Amendment.

By correspondence dated October 12, 2001, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., on the applicant's behalf, transmitted paper copies of a computer-generated slideshow on the proposed Community Plan Amendment.

At its meeting of October 15, 2001, the Land Use Committee met with the Deputy Planning Director, a Staff Planner from the Department of Planning, and a Deputy Corporation Counsel.

There was no public testimony.

On the applicant's behalf, Ms. Ohashi Hiraga presented a computer-generated slideshow on the proposed Community Plan Amendment. She noted that the subject property is located within the Coastal Zone and that, therefore, the applicant will need to obtain a Special Management Area (SMA) permit from the Maui Planning Commission to proceed with the proposed development. She further noted that an SMA permit could not be obtained if the subject property has inconsistent zoning and community plan designations. Therefore, the applicant is requesting a Multi-Family community plan designation, which would be consistent with the subject property's A-2 Apartment District zoning. Ms. Ohashi Hiraga also noted that the subject property is undeveloped and located adjacent to a golf course in the Kaanapali Resort area.

In response to the Committee's questions, the Staff Planner and Mr. Deweese provided additional information regarding the subject property's location, including its geographical relationship to the golf course and the El Dorado and Kaanapali Royal condominiums.

The Committee deferred consideration of the matter pending the scheduling of a site inspection.

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 3

Committee  
Report No. 04-107

By correspondence dated October 17, 2001, the Chair of the Land Use Committee requested that the Planning Director provide a copy of the Final Environment Assessment.

By correspondence dated October 29, 2001, the Council Chair transmitted correspondence dated October 23, 2001, from the Planning Director, transmitting the Final Environmental Assessment for the proposed Community Plan Amendment.

By correspondence dated December 28, 2001, the Chair of the Land Use Committee requested that the Corporation Counsel provide a legal opinion indicating whether the County would likely be subject to "takings" liability if the Council did not approve the proposed Community Plan Amendment.

By correspondence dated February 25, 2002, the Department of the Corporation Counsel advised that "the County may be subject to takings liability if the Council decides to retain the current Park Community Plan designation" for the subject property. The opinion was premised on the assumption that "the applicant cannot develop any other project unless it is golf-related because of the SMA requirement that a project must be consistent with the Community Plan".

At its site inspection of February 25, 2002, the Land Use Committee met with a Staff Planner from the Department of Planning and a Deputy Corporation Counsel. The Committee viewed the subject property at 2495 Kekaa Drive in Kaanapali, Lahaina, Maui, adjacent to a golf course in the Kaanapali Resort Area. Mr. Deweese and Ms. Ohashi Hiraga provided the Committee with information about the applicant's plans for a five-lot single-family development. Ten members of the public testified in opposition to the application, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks. The Deputy Corporation Counsel responded to the Committee's questions about the alternative legal implications of approving and denying the application. The Committee deferred consideration of the matter pending a meeting in the Council Chamber later in the day.

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 4

Committee  
Report No. 04-107

At its meeting of February 25, 2002 (in the Council Chamber), the Land Use Committee met with the Deputy Planning Director, a Staff Planner from the Department of Planning, and a Deputy Corporation Counsel.

Attorney Michael L. Lam, representing the applicant, testified in support of the proposed Community Plan Amendment. Three members of the public testified in opposition to the proposed Community Plan Amendment, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks.

Lahaina resident Larry Kerr provided the Committee with documents entitled "Letters of Opposition to Sunstone Development" and "Petition Against Sunstone's Proposed Amendment to Community Plan," respectively, transmitting expressions of opposition to the proposed Community Amendment from members of the public.

The applicant provided the Committee with a document entitled "REAL PROPERTY ASSESSMENT INFORMATION".

In response to the Committee's question, Ms. Hiraga advised that property taxes had been assessed for the subject property based on the existing A-2 Apartment District Zoning.

The Deputy Corporation Counsel responded to the Committee's questions about the alternative legal implications of approving and denying the application.

In response to the Committee's questions, the Deputy Planning Director provided historical information on the subject property's land-use designations.

After due consideration of information provided by the Administration, the Department of the Corporation Counsel, the applicant, and the public, the Committee voted to recommend filing of the communication.

By correspondence dated September 6, 2002, the Chair of the Land Use Committee transmitted correspondence dated August 26, 2002, from attorney Michael L. Lam, requesting a status on the Council's consideration of the proposed Community Plan Amendment.

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 5

Committee  
Report No. 04-107

Your Committee notes that the recommendation of the Land Use Committee was not reported to the Council before the expiration of the 2001-2003 Council term at 12 noon on January 2, 2003.

At its meeting of January 10, 2003, the Council referred County Communication No. 01-165 to your Planning and Land Use Committee (County Communication No. 03-10).

By correspondence dated January 23, 2003, attorney Michael L. Lam requested a status report on the Council's consideration of the proposed Community Plan Amendment and transmitted a copy of correspondence dated August 26, 2002, in which he requested that the then-Chair of the Land Use Committee provide a status report on the Council's consideration of the proposed Community Plan Amendment.

By correspondence dated March 6, 2003, attorney Michael L. Lam reiterated his request for a status report on the Council's consideration of the proposed Community Plan Amendment and transmitted a copy of correspondence dated January 23, 2003, in which he previously made the same request.

By correspondence dated March 19, 2003, the Chair of your Committee informed Mr. Lam that the proposed Community Plan Amendment was still pending.

By correspondence dated April 15, 2003, the Council Chair advised that he had directed Council staff to work with the Department of the Corporation Counsel to draft proposed resolutions to indemnify the individual defendants in the lawsuit entitled SunStone Realty Partners VIII, LLC v. Maui County, et al., Civil No. 03-1-0136(2) and transmitted a copy of the lawsuit. Among other elements, the lawsuit alleges the Council's failure to approve the proposed Community Plan Amendment violated the United States Constitution in several respects. Current and former Council members are named as defendants in their individual capacities.

Your Committee notes that, by Resolution Nos. 03-56 through 03-63, the Council indemnified the following current and former Council members who are named as defendants in their individual capacities in the subject

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 6

Committee  
Report No. 04-107

lawsuit: Alan Arakawa, Robert Carroll, G. Riki Hokama, Jo Anne Johnson, Dain P. Kane, Michael J. Molina, Wayne K. Nishiki, and Charmaine Tavares.

By correspondence dated November 24, 2003, the Chair of your Committee informed the Corporation Counsel that the proposed Community Plan Amendment would be considered on February 3, 2004.

By correspondence dated February 3, 2004, the Chair of your Committee transmitted an article dated January 23, 2004, from *West Hawaii Today*, entitled "Court says Hokulia case now closed", reporting that a judge awarded \$1.76 million in attorneys' fees to plaintiffs in a lawsuit challenging a County of Hawaii development approval.

By correspondence dated February 3, 2004, Lahaina resident Madeline Long expressed opposition to the proposed Community Amendment, citing the need for land conservation.

At its meeting of February 3, 2004, your Committee met with the Planning Director; the Deputy Planning Director; the Director of Transportation; a Captain from the Department of Police; the Corporation Counsel; the Chief of Litigation, Department of the Corporation Counsel; and another Deputy Corporation Counsel.

Attorney Michael L. Lam, representing the applicant, testified in support of the proposed Community Plan Amendment. Three members of the public testified in opposition to the proposed Community Plan Amendment, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks.

Your Committee voted to convene a closed executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the Corporation Counsel and a Deputy Corporation Counsel.

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 7

Committee  
Report No. 04-107

Following the executive meeting, your Committee reconvened in regular session. Your Committee deferred consideration of the matter pending the scheduling of a site inspection.

At its site inspection of February 23, 2004, your Committee met with the Planning Director; the Director of Parks and Recreation; a Lieutenant from the Department of Police; the Chief of Litigation, Department of the Corporation Counsel; and a Deputy Corporation Counsel.

Your Committee viewed the subject property at 2495 Kekaa Drive in Kaanapali, Lahaina, Maui, adjacent to a golf course in the Kaanapali Resort area. Sixteen members of the public testified in opposition to the application, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks. Mr. Lam testified on the applicant's behalf and requested prompt action on the proposed Community Plan Amendment. The Chief of Litigation responded to your Committee's questions about the alternative legal implications of approving and denying the application. Your Committee deferred consideration of the matter pending a meeting in the Lahaina Civic Center Social Hall later in the day.

At its meeting of February 23, 2004 (in the Lahaina Civic Center Social Hall), your Committee met with the Planning Director; the Chief of Litigation, Department of the Corporation Counsel; and a Deputy Corporation Counsel.

Five members of the public testified in opposition to the application, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks.

Your Committee received a map entitled "Five-Lot Subdivision", prepared by Austin, Tsutsumi & Associates, Inc. (and previously submitted by Ms. Ohashi Hiraga), from Lahaina resident Larry Kerr.

The Chief of Litigation provided background information on the proposed Community Plan Amendment.

Your Committee deferred consideration of the matter.

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 8

Committee  
Report No. 04-107

At its meeting of March 2, 2004, your Committee met with the Planning Director; a Staff Planner, Department of Planning; the Director of Parks and Recreation; the Deputy Director of Parks and Recreation; the Chief of the Planning and Development Division, Department of Parks and Recreation; the Deputy Director of Public Works and Environmental Management; a Police Captain, Department of Police; the Chief of Litigation, Department of the Corporation Counsel; and a Deputy Corporation Counsel.

Four members of the public testified in opposition to the application, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks.

Your Committee received a document entitled "Kaanapali Parcel; 28 (LOT 43); PARCEL PURCHASER'S HANDBOOK; DESIGN GUIDELINES; STANDARDS AND CRITERIA", from the Chief of Litigation, Department of the Corporation Counsel.

Your Committee voted to convene a closed executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the Planning Director, the Corporation Counsel, and a Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated March 3, 2004, the Chair of your Committee requested that the Planning Director work with Committee staff and the Department of the Corporation Counsel regarding a possible legislative alternative to the proposed Community Plan Amendment.

By correspondence dated April 20, 2004, Peter Butler expressed opposition to the proposed Community Plan Amendment.

By correspondence dated April 21, 2004, the Chair of your Committee transmitted correspondence in opposition to the proposed Community Plan



COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 9

Committee  
Report No. 04-107

Amendment from the following: (1) Charles Panzer and Renee Miklethun, dated April 17, 2004; (2) Robert and Wendy Patrucco, dated April 18, 2004; (3) Mr. and Mrs. Jack R. Belur, dated April 20, 2004; (4) William Flint, dated April 20, 2004; and (5) James A. and Margaret M. O'Brien, dated April 20, 2004.

At its meeting of June 1, 2004, your Committee met with the Planning Director, the Director of Parks and Recreation, the Deputy Director of Public Works and Environmental Management, a Lieutenant from the Department of Police, the Corporation Counsel, and a Deputy Corporation Counsel.

Two members of the public testified in opposition to the proposed Community Plan Amendment, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks.

Your Committee voted to convene a closed executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the Planning Director, the Corporation Counsel, and a Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated June 4, 2004, the Chair of your Committee requested that the Corporation Counsel prepare the following:

1. A proposed resolution to approve a settlement of the litigation relating to this matter pursuant to the terms discussed in the executive meeting.
2. A proposed resolution to initiate a Change in Zoning from A-2 Apartment District to R-3 Residential District for the subject property.

By correspondence dated June 8, 2004, the Corporation Counsel submitted the following:

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 10

Committee  
Report No. 04-107

1. A proposed resolution entitled "AUTHORIZING SETTLEMENT OF SUNSTONE REALTY PARTNERS VII, LLC V. MAUI COUNTY, ET AL., CIVIL NO. 03-1-0136(2)".

The purpose of the proposed resolution is to authorize settlement of the lawsuit filed on April 10, 2003, by the applicant against the County and other defendants in the Second Circuit Court (State), alleging inverse condemnation, denial of due process, and denial of equal protection, under terms recommended by the Corporation Counsel in the executive meeting.

2. A proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A BILL TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII".

The purpose of the proposed resolution is to refer to the Maui Planning Commission a draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII". The purpose of the draft bill is to conditionally change the zoning for the subject property to facilitate development of a five-lot single-family subdivision and related improvements.

By correspondence dated June 15, 2004, the Chair of your Committee transmitted correspondence in opposition to the proposed Community Plan Amendment from the following: (1) Richard Krell, dated June 14, 2004; (2) Thomas Vishanoff, dated June 14, 2004; and (3) a Lahaina resident, dated June 15, 2004.

At its meeting of June 15, 2004, your Committee met with the Planning Director, the Director of Parks and Recreation, the Director of Public Works and

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 11

Committee  
Report No. 04-107

Environmental Management, a Captain from the Department of Police, the Corporation Counsel, and a Deputy Corporation Counsel.

One member of the public testified in opposition to the proposed Community Plan Amendment, citing negative impacts arising from the proposed development, including traffic congestion, aesthetic concerns, and safety risks.

Your Committee voted to convene a closed executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the Corporation Counsel and a Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Your Committee noted that principles of sound land-use planning and public policy dictate that land-use designations should be consistent with actual and proposed uses of property. Therefore, your Committee noted that the zoning and community plan designations for the subject property should reflect the applicant's proposal for a single-family development.

Your Committee voted to revise the proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK (GC) TO MULTI-FAMILY FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII" to change the community plan designation from Park to Single-Family, consistent with the applicant's proposed development of a five-lot single-family subdivision. Your Committee voted to recommend passage of the revised proposed bill.

Your Committee reviewed the proposed resolution to refer to the Maui Planning Commission a draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAAHAPALI, LAHAINA, MAUI, HAWAII". The purpose of the draft bill is to conditionally change the zoning for the subject property to facilitate development of a five-lot single-family subdivision and related improvements.

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 9, 2004  
Page 12

Committee  
Report No. 04-107

Your Committee noted that enactment of both bills--the revised proposed bill to approve a Community Plan Amendment and the draft bill to approve a Change in Zoning--would achieve the important public purpose of establishing land-use designations consistent with the proposed development on the subject property. Accordingly, your Committee voted to recommend passage of the revised proposed bill on first reading and adoption of the proposed resolution.

Your Committee also reviewed the proposed resolution to authorize settlement of the lawsuit filed on April 10, 2003, by the applicant against the County and other defendants in the Second Circuit Court (State), alleging inverse condemnation, denial of due process, and denial of equal protection, under terms recommended by the Corporation Counsel in the executive meeting. Your Committee recommended passage of the revised proposed bill to approve a Community Plan Amendment and adoption of the draft resolution to approve a Change in Zoning. Your Committee deferred consideration of the proposed resolution to settle the lawsuit.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK (GC) TO SINGLE-FAMILY FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII". The purpose of the revised proposed bill is to approve a Community Plan Amendment from Park (GC) to Single-Family, to facilitate development of a five-lot single-family subdivision and related improvements on approximately 1.602 acres along the westerly side of Kekaa Drive in Kaanapali, Lahaina (identified for real property tax purposes as Tax Map Key No. 4-4-008:016), as recommended by your Committee.

Your Planning and Land Use Committee RECOMMENDS the following:

1. That Bill No. \_\_\_\_\_ (2004), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK (GC) TO SINGLE-FAMILY FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII" be PASSED ON FIRST READING and be ORDERED TO PRINT; and

COUNCIL OF THE COUNTY OF MAUI  
**PLANNING AND LAND USE COMMITTEE**

July 9, 2004  
Page 13

Committee  
Report No. 04-107

2. That Resolution No. \_\_\_\_\_, attached hereto, entitled "REFERRING TO THE MAUI PLANNING COMMISSION A BILL TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII" be ADOPTED.

Adoption of this report is respectfully requested.

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**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND LAND USE COMMITTEE**

July 9, 2004  
Page 14

Committee  
Report No. 04-107

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**WAYNE K. NISHIKI** **Chair**

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**DANNY A. MATEO** **Member**

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**G. RIKI HOKAMA** **Vice-Chair**

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**MICHAEL J. MOLINA** **Member**

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**ROBERT CARROLL** **Member**

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**JOSEPH PONTANILLA** **Member**

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**JO ANNE JOHNSON** **Member**

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**CHARMAINE TAVARES** **Member**

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**DAIN P. KANE** **Member**