

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

July 20, 2001

Committee
Report No. 01-120

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

Chair and Members:

Your Land Use Committee, having met on July 2, 2001, makes reference to County Communication No. 99-56, from the Council Chair, requesting consideration of the matter of the ratification of invalid zoning.

Your Committee notes that County Communication No. 99-56 was referred to the prior Council's Committee of the Whole at the Council meeting of January 22, 1999.

By memorandum dated July 19, 2000, the Chair of the Committee transmitted a copy of Hawai'i County Corporation Counsel Opinion No. 99-1, relating to the ratification of a voidable ordinance.

At its meeting of November 14, 2000, the Committee recommended that County Communication No. 99-56 be referred to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

At its meeting of January 12, 2001, the Council referred County Communication No. 99-56 to your Land Use Committee (County Communication No. 01-15).

By memorandum dated March 12, 2001, the Chair of your Committee requested that the Corporation Counsel provide a legal opinion on the appropriate course of action to rectify invalid zoning.

By memorandum dated April 24, 2001, Deputy Corporation Counsel Richard K. Minatoya advised your Committee that "the Planning Department should identify properties with 'invalid zoning' (e.g., when zoning for a property is invalidated by a new legal interpretation or court ruling) and apply, as the applicant, for a change in zoning."

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

Your Committee received testimony from a member of the public, who urged the County to act with caution when considering possible action with respect to invalid zoning.

The Deputy Corporation Counsel reviewed the advice provided by the Department of the Corporation Counsel and explained that the Department of Planning should initiate applications to bring zoning designations into conformity with State law and other legal requirements, as necessary. According to the Department of the Corporation Counsel, relieving a property owner of the burden of initiating the application for any necessary change in zoning would be equitable, considering that invalid zoning is not usually the property owner's fault. The Deputy Corporation Counsel further noted that the concern about invalid zoning was brought to the Council's attention in 1998, when it reviewed land-use designations for certain properties in the Makena area of South Maui, as indicated in Land Use Committee Report No. 98-224.

The Planning Director informed your Committee that several parcels within the County were known to have invalid zoning (i.e., the zoning designation is inconsistent with State land-use classifications), including some properties in Makena. He noted that the Department of Planning would consider systematically reviewing land-use designations within each community-plan area to further identify properties with invalid zoning.

Your Committee discussed the possibility of providing other equitable relief to owners of property with invalid zoning, possibly including tax credits, in recognition of the possibility that in some cases the owners have been liable for higher property-tax costs than would have been the case under valid zoning. The Deputy Corporation Counsel, however, informed your Committee that existing law does not provide for tax credits or other relief to affected property owners. Therefore, simply correcting the zoning designations is the most appropriate action, according to the Deputy Corporation Counsel.

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Your Committee also noted that it may not be helpful to use the term "ratify" with respect to the County's efforts to ensure valid zoning. "Ratify" is susceptible to varying definitions. Regardless of the terminology, the County's objective should be to eradicate invalid zoning. Your Committee urged the Department of Planning to expeditiously act to achieve that objective.

Noting the lack of pending legislative action, your Committee voted to file County Communication No. 99-56.

Your Land Use Committee **RECOMMENDS** that County Communication No. 99-56 be FILED.

Adoption of this report is respectfully requested.

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