

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

Council Chamber

March 16, 2011

CONVENE: 1:34 p.m.

PRESENT: Councilmember Robert Carroll, Chair
Councilmember Mike White, Vice-Chair
Councilmember Elle Cochran, Member
Councilmember Donald G. Couch, Jr., Member
Councilmember G. Riki Hokama, Member
Councilmember Danny A. Mateo, Member (arr. at 1:35 p.m.)
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Gladys C. Baisa, Member

STAFF: Kirstin Hamman, Legislative Attorney
Pauline Martins, Committee Secretary

ADMIN.: James Giroux, Deputy Corporation Counsel, Department of the Corporation
Counsel
Scott English, Lieutenant, Fire Prevention Bureau, Department of Fire and
Public Safety
William Spence, Director, Department of Planning
Simone Bosco, Planner, Department of Planning
Livit Callentine, Planner, Department of Planning
Jeffrey Dack, Environmental Section Supervisor, Department of Planning
David Goode, Director, Department of Public Works

OTHERS: Jane Lovell
Geraldine Carroll
Plus (4) other people

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR CARROLL: ... (*gavel*) ... This Land Use Committee meeting of March 16, 2011 will come to order. Members, we have Members present - Elle Cochran, Donald Couch, Riki Hokama, Michael Victorino, Mike White, and myself. Members, because of time constraints and we need some time for staff to prepare and we need some other things that we have to do, I'm going to recess this meeting until 2 p.m. This meeting now stands in recess until 2 p.m. ... (*gavel*) ...

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RECESS: 1:35 p.m.

RECONVENE: 2:01 p.m.

CHAIR CARROLL: . . . (*gavel*) . . . The Land Use Committee meeting of March 16, 2011, is now back in session. We have with us Members Mateo, Cochran, Couch, Victorino, and Pontanilla. Joining us later will be Mr. White, Mr. Hokama, and Ms. Baisa. Our Corporation Counsel we have James Giroux, Deputy Corporation Counsel. Executive Branch representatives we have Will Spence, Planning Director; Simone Bosco, from Planning Department, a Planner; Livit Callentine, Planner, Department of Planning; Jeffrey Dack, Planner, Department of Planning; David Goode, Director of Public Works; Lieutenant Scott English, Fire Department and Safety [*sic*]. We also have with us today for LU-6; we have Jeanne McJannet, permit holder. And for LU-47, we have Mark Roy from Munekiyo & Hiraga, the consultants; Committee Staff - Pauline Martins, Committee Secretary; and Kirstin Hamman, Legislative Attorney. Public testimony on all items is going to be accepted starting in a few moments. Those wishing to testify should sign up at the table in the lobby. Testimony will be limited to three minutes with one minute to conclude, if necessary. Testifiers are requested to state their name for the record and to indicate who they're representing, if appropriate. We have three items on the agenda. LU-39, Conditional Permit to Wilfred Tavares, Jr. for continued operation of Hana Tropical Water Works; LU-6, Conditional Permit Amendment for Maalaea Bay Realty & Rentals LLC to continue operation of a transient vacation office within the County A-2 Apartment District, for property situated at 280 Hauoli Street, Maalaea; and LU-47, Community Plan Amendment for the Hale Hui Kai Association of Apartment Owners in Kihei. I will now open public testimony. Public testimony is now open. Ms. Hamman?

MS. HAMMAN: Thank you, Mr. Chair. We have one person signed up to testify. The only testifier will be Jane Lovell.

. . . *BEGIN PUBLIC TESTIMONY* . . .

MS. LOVELL: Good afternoon, Chair and Members. Although many of you know me in my capacity as a Deputy Corporation Counsel, I am here today as a private citizen to testify on matter number LU-47. And I assure you that I have taken vacation time to do so, and I am not doing so on County time. I'm testifying on this item because I used to live at Hale Hui Kai, and the other owners there who have brought this petition to the Committee are my friends and former neighbors. What happened was that in 1980. . . the 1985 Kihei-Makena Community Plan, there was a change in the community plan designation. And the change read as follows: "Re-designate a narrow strip of multi-family designated parcels north of Kilohana Drive and parallel to South Kihei Road to Single-Family." It didn't give any TMKs and it didn't give any property descriptions. And it is our firm belief that this was an error to re-designate the parcel on which this 40-unit condominium sits from its previous designation to Single-Family. The property is zoned Hotel. It was built in the mid-60s. It has always been a multi-unit building; vacation rentals have always been legal there. When I discovered this error, I think I was the only one in

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the association who knew what consequences would flow from that error. Namely, that if there were ever a problem if we needed a new roof, if there were a fire, if there was some calamity such as a tsunami or an earthquake and we needed any kind of major repairs, we wouldn't be able to get an SMA Permit because the community plan designation wouldn't match the Hotel zoning. So we came and discussed it with the Planning Department. We had several staff planners looking through all of the history trying to find out if there was a real intention to re-designate this particular property to Single-Family for some particular reason. And none could be found. I went back and talked with my friends and neighbors who also owned units in the apartment building and there was a range of feelings. Some felt that the best way to resolve the problem was to sue the County. And as you can imagine, I was a little bit appalled at that idea. So I said why don't we instead of trying to lay blame on anyone for this error, just try to fix it. So we hired Munekiyo. In 2008, they put together an application for a Community Plan Amendment. It went through the Planning Commission and was approved and now it is in your Committee. And on behalf of my friends and former neighbors at Hale Hui Kai, I respectfully ask you to make this change. There are no plans for any increase in the size, any change in the footprint, anything of that nature. We merely want to get a Community Plan Amendment that gets us back to where we were before this error was made in the 1985 Community Plan. Thank you very much for your consideration.

CHAIR CARROLL: Thank you. Any questions for the testifier? Hearing none, thank you.

MS. LOVELL: Thank you.

CHAIR CARROLL: Is there anyone else that wishes to give testimony at this time, please come forward? Seeing none. If there is no objection, we will close public testimony.

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER COCHRAN: No objections.

CHAIR CARROLL: Thank you. And let the record show that all Council members are now present, except Gladys Baisa, who will be joining us shortly.

LU-39 CONDITIONAL PERMIT TO WILFRED TAVARES, JR. FOR THE CONTINUED OPERATION OF HANA TROPICAL WATER WORKS (HANA) (C.C. No. 10-94)

CHAIR CARROLL: Members, the first item the Committee will be considering is LU-39, relating to a request from Wilfred Tavares for a Conditional Permit Amendment to continue a commercial bottling wholesale distribution, and storage of bottled water operation known as Hana Tropical Water Works, on approximately 5.986 acres within the County Agricultural District for property situated at 195 Maia Road, Hana, Maui, Hawaii. The Committee is in receipt of correspondence dated February 11, 2011, from Gwen Ohashi Hiraga, Principal, Munekiyo & Hiraga, Incorporated, notifying the Committee that Mr. Wilfred Tavares withdraws his request for a

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Conditional Permit Amendment. We are here today; I will accept a motion to file this communication, LU-39.

COUNCILMEMBER HOKAMA: So move.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR CARROLL: Moved by Mr. Hokama, seconded by Mr. Victorino. Discussion, Mr. Hokama? Any further discussion on the floor? Hearing none, all in favor of the motion please signify by saying "aye"?

COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried. Thank you.

VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Cochran, Couch, Hokama, Mateo, Pontanilla, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Baisa.

MOTION CARRIED.

ACTION: FILE COUNTY COMMUNICATION.

LU-6 CONDITIONAL PERMIT AMENDMENT FOR MAALAEA BAY REALTY & RENTALS LLC TO CONTINUE OPERATION OF A TRANSIENT VACATION RENTAL OFFICE WITHIN THE COUNTY A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 280 HAUOLI STREET (MAALAEA) (C.C. No. 11-26)

CHAIR CARROLL: Members, the next item on our agenda is LU-6. Before the Committee is a proposed bill to grant a request from Jeanne McJannet on behalf of Maalaea Bay Realty & Rentals, LLC, for a ten-year extension of a Conditional Permit to operate a transient vacation rental office within County A-2 Apartment District, for property situated at 280 Hauoli Street, Maalaea, Maui, Hawaii. We have a revised proposed bill from the Department of the Corporation Counsel incorporating changes to clarify the time period of the Conditional Permit

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and nonsubstantive revisions. I'd like to call on the Planner, Livit Callentine to provide a brief overview.

MS. CALLENTINE: Thank you, Mr. Chair and Members. This project has been in existence operating as a vacation rental office in the A-2 Apartment zone for approximately 27 years. The building was built in 1972, and the applicants hold a lease from the Association that expires in October 2012 and it has been renewed throughout this past 27 year period. You have in your exhibits copies of the Planning Department Report to the Maui Planning Commission on September 28, 2010, which goes into detail and provides you with background information. There are several conditions that the Department recommended to the Commission, and the Commission subsequently recommended to you be amended as well as there is an additional condition today which I believe the Chair will discuss but which we would like to add as a recommended deletion because we find documents which are before you from Architect A.E. Palmer dated March 13, 2003 in which he states that the conformance with the Americans with Disabilities Act has been satisfied and gives the specifics as to that. I'd be happy to answer any questions if you have any?

CHAIR CARROLL: Any questions for the Planner, Members? Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Just a fast question for the Department. You know, last year we passed an ordinance in regards to AOA, I guess for a particular condominium or apartment to provide information to the Real Property Tax Division in regards to the number of units that are being used as residents. And I just want to know if this condominium had complied in providing that information to the Real Property Tax Division?

MS. CALLENTINE: Thank you, Mr. Pontanilla. I do not have that information. Real Property Tax wouldn't have forwarded any such information along to the Department of Planning; however, it's possible that the applicant may have that information and be able to provide that to you.

COUNCILMEMBER PONTANILLA: Okay. So in regards to that particular ordinance then the Department really didn't ask the Real Property Tax Division if there any issues regarding the extension of this Conditional Permit.

MS. CALLENTINE: Actually, we transmitted the request for extension to the Department of Finance, Real Property Tax Division, and if you'll just give me a moment to pull up that. It is in our report to the Planning Commission. I will let you know what they reported to us. Okay, Exhibit No. 7 of your report shows a copy of the transmittal page, and the second page of that transmittal has a section in it for no comment and that was signed - No Comment, on July 7, 2010. And in addition, I might add that I did do a fact check with the Real Property Tax yesterday to determine . . . there had been an issue previously about whether this condominium unit was subject to commercial tax rates, and there was a request in the original ordinance that they provide a supplemental public report which subsequently it was determined by the Real Estate Commission and by the Council in the second, in the amended Ordinance 3203 that that

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supplemental report was no longer going to be required. However, I can confirm that they are being taxed at Commercial rates and have been appears back until at least 2004.

COUNCILMEMBER PONTANILLA: Thank you. The only reason why I asked you that question is that hearing from the Real Property Tax Division and the issues that they have with maybe not this particular property here but other properties that had promised to provide the information voluntarily to the Real Property Tax Division. So, you know, we still have that issue in regards to that particular information not being passed on to the Real Property Tax Division. Thank you. Thank you, Chairman.

CHAIR CARROLL: Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. To the Planning Department, I noticed that in Exhibit 8 of the submittal we have received from then Director Arakawa of the Public Works Department a comment that there are four open building permits. So I would like to ask - 1) are there still four open permits and what would the permits be regarding this application, and has final inspections been conducted on those that have been completed?

MS. CALLENTINE: Thank you, Chair, I mean, sorry, excuse me, thank you, Member Hokama. I did check with the Department of Public Works and although I don't . . . and I checked in our KIVA Land Use database, and all four of those permits have been completed. They are no longer open. I did not inspect as that they are building permits and not something that the Planning Department enforces.

COUNCILMEMBER HOKAMA: Okay.

MS. CALLENTINE: So, I didn't check those on my site visit.

COUNCILMEMBER HOKAMA: Was there anything on the KIVA that said that the permits are completed and inspection was done by the appropriate . . . I guess Mr. Nagamine's division? Was there any other additional comment that you can share with us regarding this specific Exhibit 8, please? If the answer is no, that's fine. I just wanted to know if there was something else you could share with us? And I just bring that up because I believe one of the existing conditions that it will be developed in compliance as presented and so my follow up was, of course, was this done to fulfill that condition that require them to develop the property as presented to the Commission and Council?

MS. CALLENTINE: When the Department of Public Works made their comment on July 27th, 2010, this letter was transmitted to the applicant for action. So their action was in response to this comment letter.

COUNCILMEMBER HOKAMA: Okay.

MS. CALLENTINE: It does partially also satisfy the condition you just referenced as well.

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COUNCILMEMBER HOKAMA: Okay. Thank you. And then as part of their other condition of approval, I believe it's Condition 9 or I guess in the new proposal it'll be Condition 8, beginning with a list of the transient vacation rentals . . . so this has been verified by the Department that all units are legal units to be operated under the phrase or term "transient vacation rentals"?

MS. CALLENTINE: Yes, yes, sir. I received a copy of their current list which was provided in the Planning Department's Report to the Planning Commission on September 28, 2010.

COUNCILMEMBER HOKAMA: Uh-huh.

MS. CALLENTINE: That is shown in the Report as Exhibit No. . . .

COUNCILMEMBER HOKAMA: Is that 12?

MS. CALLENTINE: No. 12. Thank you. And I also asked the applicant yesterday verbally to update that list so I did a tally because one of the questions that the Planning Commissioners had raised was what percentage of these units are actually being . . . the units that are managed by this rental office are units that are onsite at the Hono Kai Resort versus offsite.

COUNCILMEMBER HOKAMA: Uh-huh.

MS. CALLENTINE: So I can speak to that and let you know the numbers if that would help to answer your question.

COUNCILMEMBER HOKAMA: Well, I think the applicant was very detailed in breaking it down by properties because I believe the condition was to list all that they managed under the condition so I think the applicant was very responsive in detailing exactly where all the units are, and while it may be on a different property I believe it fulfilled the requirement of the conditions. So my only concern was that it's been verified that these are all legal TVRs. And I see Mr. Spence nodding in the affirmative so I'm taking that as a yes.

MR. SPENCE: Mr. Chairman?

CHAIR CARROLL: Mr. Spence?

MR. SPENCE: If I understand Councilmember Hokama's question, are these legal TVRs? I mean, I can't say. We've gone back into everybody's records, and seeing that there's an unbroken chain of rentals since 1972 when the units were built that that's really my opinion beyond the scope of this application. This is just for the rental office not for all the different rentals within the building.

COUNCILMEMBER HOKAMA: Okay. And again, Mr. Director, I appreciate that. I'm just going by what was part of the previously approved conditions. And as I understand it, one of the

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conditions was to list a list of transient vacation rental units by project and TMK offered for rental by Maalaea Bay Rentals, and that's why the applicant I thought was very upfront, listed it by property address and the number of units that was listed. So I don't want someone later on to say that by approving this permit we kind of gave assent or acknowledgement of a unit listed here that may not have been legal but then we kind of legalized it because we approved the permit.

MR. SPENCE: Yeah.

COUNCILMEMBER HOKAMA: You understand what I'm trying to drive at?

MR. SPENCE: Yeah. I understand. No, we would not be saying that a particular unit is a legal rental or not. We're just saying that the office handling vacation rentals would be an approved use.

COUNCILMEMBER HOKAMA: I understand what you're saying, Director, and don't get me wrong because the record shows that I have supported this permit twice already. So I understand what this operator does, and from past history they've shown to be very responsible applicants or representatives of this request. So I'm just trying to make sure that if someone asked me what was listed as transient vacation rentals that I can say, yes, I did my due diligence. I asked the question and I was reassured that what was listed was in compliance because that's one of our general conditions that you have to be in full compliance of all County and State laws and other requirements. So, I'm just bringing that up and asking that question so that I can say that I did my responsibility and that I asked the due diligence questions prior to making my decision.

MR. SPENCE: Perhaps just for the record and maybe this will help satisfy that, for the record the Planning Department believes this rental office is in full compliance. That says nothing whether the rentals that they manage are or not. I mean, all we're looking at here is the rental office.

COUNCILMEMBER HOKAMA: Okay. And I appreciate that. I'm just going by what I see as Condition No. 8, Chairman. Okay, thank you very much, Director, Department. Chairman, thank you very much.

CHAIR CARROLL: Thank you, Mr. Hokama. Mr. White?

VICE-CHAIR WHITE: Thank you, Mr. Chair. Director Spence, the question that comes to my mind is we have condominiums all over the island that have been rented for many, many years. Have 'em next door to me at The Whaler. And I guess you can refer to them as transient vacation rentals and be accurate but I wouldn't want the guys that have been doing this for years on the basis that I believe has been approved all these years to be looked at as the transient vacation rentals that we will be dealing with in our Planning Committee coming up and going to the Planning Commission and coming back to us at some point as those that are outside of the condominium type developments that have been doing it for all these years. Can you clarify whether we're using the right terminology?

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MR. SPENCE: Chair, I guess . . . can you repeat that just a little bit?

VICE-CHAIR WHITE: Sure. The . . . let's just use The Whaler condominium. They've got owner-residents, they've got timeshare, and they've got condominium rentals for people that come from the mainland. I've always called them condo rentals. So I see those rentals as being separate and apart of transient vacation rentals that we are going to be discussing later this year that are outside of the normal resort areas. At least that's my understanding as to where those will be located. So should we be using a different terminology in a case where these are in a condominium that has had rentals for 20 or 30 years?

MR. SPENCE: Okay. Now I understand. I think I understand.

VICE-CHAIR WHITE: I'm not sure I said it correctly but . . .

MR. SPENCE: We would consider these different. I mean, I'm just, you know, you'd have to go unit by unit and do an investigation whether they're grandfathered in or not. But what . . . the Council is going to be considering as vacation rentals is like single-family residences predominantly. These are going to fall pretty much outside. I mean, I'm not saying a hundred percent sure that everything would fall outside of it but by and large condominiums, if they were rented short-term before a certain date, those can continue to do so. I just, I assume by looking at some of the names of the projects here or at The Whaler, you know, those things are grandfathered in. So mostly what we're going to be taking up in Committee, in Planning Committee for short-term rentals is going to be single-family residences.

VICE-CHAIR WHITE: Yeah. I just want to state that we may want to look at calling these something different or calling them something different so we know we're talking about two total separate issues.

MR. SPENCE: Sure. We can certainly discuss that too.

VICE-CHAIR WHITE: Thank you, Mr. Chair.

CHAIR CARROLL: Thank you, Mr. White. Further discussion? Mr. Couch?

COUNCILMEMBER COUCH: Thank you. I've noticed that the applicant is required to have a million dollars liability naming the County. Have we bumped that up recently with all the costs of everything to two million dollars requirements before or would it be wise to do that if we haven't?

MS. CALLENTINE: Thank you, Mr. Couch. Not that I am aware. I think that it's been a million dollars since at least 2004. I can speak back to then. Will can speak to much further back than that. In fact, many Members here probably can but that's my experience. It hasn't been elevated since at least 2004.

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COUNCILMEMBER COUCH: The second part of my question is, I guess, should we consider doing that because if this is going to go for another five years, a million dollars may or may not be enough to indemnify the County.

MR. SPENCE: Mr. Couch, I can't speak directly to the dollar amount that should or should not be there. But it's been a million dollars for a very long time since I was a staff planner, and I would like to think that it could come up as a Planning Committee item when we're . . . you know, we're going to be reviewing notification and those kinds of things. I'd rather see this kind of thing codified rather than just going, hey, we should increase it and we don't know what the amount should be. The Planning Department would like to study that a little bit and get some advice from Corp. Counsel, et cetera.

COUNCILMEMBER COUCH: Okay. Mr. Chair, the only reason that I bring that up is because as you know, or as the Members know we're involved in all kinds of different settlements and whatnot, and sometimes insurance has a cap and it's far below what the damages are and then they go after the County after that. So, I'm a little concerned about that.

CHAIR CARROLL: It's a valid concern, Mr. Couch, but that should really be taken up in Committee along with the Planning Department and the legal department and discussed, and the decision should be made at that time if we're going to raise that. Thank you.

COUNCILMEMBER PONTANILLA: Chairman?

CHAIR CARROLL: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: This is a question that is kind of related to Conditional Permits and if I can ask that question? On Monday, we provided or we gave an authority to the Planning Director to extend Conditional Permits by his signature. The only time the Council will see any Conditional Permit is when they first come to the County of Maui. After that, we're not going to be seeing Conditional Permit extensions. It will all be taken care by the Planning Director. This afternoon we're asking all kind of questions in regards to things that I don't know if the Planning Director in his mind would look at that in regards to extending Conditional Permits. I thought I'd pass that on to you because on Monday we had provided Planning Director and it went out of Committee to provide him authority to sign off on extension of Conditional Permits. So I may have an issue with that. Thank you.

CHAIR CARROLL: Thank you, Mr. Pontanilla. And the Chair will note working with the Department and the others that you will notice that the questions were all answered, and you might consider that too. Any further discussion?

COUNCILMEMBER HOKAMA: Recommendation?

COUNCILMEMBER MATEO: Recommendation?

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COUNCILMEMBER VICTORINO: Recommendation, Chair?

CHAIR CARROLL: Members, I will entertain a motion to recommend passage on first reading of the revised bill entitled "A BILL FOR AN ORDINANCE TO EXTEND CONDITIONAL PERMIT TO ALLOW THE OPERATION OF A TRANSIENT VACATION RENTAL OFFICE WITHIN THE COUNTY A-2 APARTMENT DISTRICT, FOR PROPERTY SITUATED AT 280 HAUOLI STREET, MAALAEA, MAUI, HAWAII".

VICE-CHAIR WHITE: So move, Mr. Chair.

COUNCILMEMBER VICTORINO: I second, Mr. Chair.

CHAIR CARROLL: Moved by Mr. White, seconded by Mr. Victorino. Members, the Chair would . . .

COUNCILMEMBER HOKAMA: Chairman? Chairman?

CHAIR CARROLL: Mr. Hokama?

COUNCILMEMBER HOKAMA: I was going to ask if you would also in your recommendation take into consideration the request from Planning Department regarding I believe the condition on...as it regards to the ADA compliance component? Thank you, sir.

CHAIR CARROLL: Thank you, Mr. Hokama. Members, I would entertain a motion to delete the Condition No. 8, relating to compliance with the American Disabilities Act, and renumber the subsequent conditions accordingly.

VICE-CHAIR WHITE: So move, Mr. Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR CARROLL: Move by Mr. White, seconded by Mr. Victorino. Discussion, Mr. White?

VICE-CHAIR WHITE: I would support that amendment, Mr. Chair. I think it makes sense.

MS. HAMMAN: Mr. Chair? Just to clarify. I think we need a main motion to pass the bill on first reading and then a motion to amend to delete Condition No. 8.

CHAIR CARROLL: Yes, this is a motion to amend.

VICE-CHAIR WHITE: Right.

CHAIR CARROLL: We already had a motion.

MS. HAMMAN: I don't believe there was a vote on the main motion.

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VICE-CHAIR WHITE: No.

COUNCILMEMBER HOKAMA: Yeah, yeah.

CHAIR CARROLL: That's right.

COUNCILMEMBER VICTORINO: We didn't vote on the main one. This is an amendment.

CHAIR CARROLL: The Chair apologizes. We're trying to go too fast over here. Back to the main motion that's on the floor. Shouldn't we withdraw the motion that would be appropriate anyway?

COUNCILMEMBER HOKAMA: Chairman, recess.

COUNCILMEMBER COUCH: Yeah, recess.

CHAIR CARROLL: Short recess. . . . (*gavel*) . . .

RECESS: 2:33 p.m.

RECONVENE: 2:35 p.m.

CHAIR CARROLL: . . . (*gavel*) . . . Land Use Committee meeting of March 16, 2011 is now in session. Members, we have a motion to amend the main motion on the floor made by Mr. White and seconded by Mr. Victorino. Discussion? Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, if there's no objection by you and the Committee, I would just ask that we would allow you also to allow staff and Corp. Counsel to make the appropriate changes to the document regarding numerical order and anything else as it regards to the presentation of the proposed ordinance.

CHAIR CARROLL: If there's no objection . . . (*inaudible*) . . . will go with that and nonsubstantive changes allow the staff to do that included in the motion. Mr. White? Thank you. Any further discussion on the motion to amend the main motion? Hearing none, all in favor signify by saying "aye"?

COUNCILMEMBER COCHRAN: Aye.

COUNCILMEMBER COUCH: Aye.

CHAIR CARROLL: Opposed? Motion carried.

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VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Cochran, Couch, Hokama, Mateo, Pontanilla, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Baisa.

AMENDMENT CARRIED.

ACTION: AMEND REVISED BILL.

CHAIR CARROLL: We're back to the main motion, as amended. Any further discussion? Hearing none? Mr. Couch?

COUNCILMEMBER COUCH: Mr. Chair, the Condition 2 and Condition 3 have those been taken care of in the recommendation from the Planning Department? We have some proposed amendments from the Planning Department on Page 6, uh, Slide 6 of our handout from the Planning Department. One, relating to Condition 2 - time extension from expiration of Ordinance No. 3095 to September . . .

CHAIR CARROLL: Oh, those have been handled and they are incorporated.

COUNCILMEMBER COUCH: They are incorporated already in the conditions.

CHAIR CARROLL: They are incorporated in the bill.

COUNCILMEMBER HOKAMA: They're already in the bill, Chairman.

CHAIR CARROLL: Yeah.

COUNCILMEMBER COUCH: All right. Thank you.

CHAIR CARROLL: Any further discussion?

COUNCILMEMBER VICTORINO: No.

CHAIR CARROLL: Hearing none, all in favor of the amended motion, signify by saying "aye"?

COUNCIL MEMBERS: Aye.

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CHAIR CARROLL: Opposed? Motion carried. Thank you, Members.

VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Cochran, Couch, Hokama, Mateo, Pontanilla, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Baisa.

MOTION CARRIED.

ACTION: FIRST READING OF REVISED BILL.

CHAIR CARROLL: Thank you, Members.

COUNCILMEMBER HOKAMA: Chairman?

CHAIR CARROLL: Member Hokama?

COUNCILMEMBER HOKAMA: Mr. Chair, I just would ask, is there anything you feel that we should make a motion to file regarding Item LU-6? Would you like a motion to file any appropriate correspondence?

CHAIR CARROLL: We did a motion to file LU-6.

COUNCILMEMBER HOKAMA: No.

MS. HAMMAN: Mr. Chair, we need a motion to file the County Communication.

CHAIR CARROLL: We did that. Yes, that was done.

COUNCILMEMBER HOKAMA: No, no, Staff said we need to do that yet, Mr. Chairman. So, I guess Mr. White would be happy to make you the motion to file.

CHAIR CARROLL: Mr. White?

VICE-CHAIR WHITE: What's the number of the communication?

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COUNCILMEMBER HOKAMA: LU-6.

VICE-CHAIR WHITE: Mr. Chair, I move that we file the communication for Item LU-6.

COUNCILMEMBER VICTORINO: Second the motion, Mr. Chair.

CHAIR CARROLL: Moved by Mr. White, seconded by Mr. Victorino. Mr. White, discussion?

VICE-CHAIR WHITE: No discussion.

COUNCILMEMBER COUCH: Mr. Chair, just for the record, its Communication No. 11-26.

CHAIR CARROLL: Any further discussion? Hearing none, all those in favor of the motion, signify by saying "aye"?

COUNCIL MEMBERS: AYE.

CHAIR CARROLL: Opposed? Motion carried.

VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Cochran, Couch, Hokama, Mateo, Pontanilla, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Baisa.

MOTION CARRIED.

ACTION: FILE COUNTY COMMUNICATION NO. 11-26.

LU-47 COMMUNITY PLAN AMENDMENT FOR THE HALE HUI KAI ASSOCIATION OF APARTMENT OWNERS (KIHED) (C.C. No. 10-232)

CHAIR CARROLL: Members, the last item on our agenda is LU-47. And we're going to take a very brief recess. Recess at the call of the Chair. . . . (*gavel*) . . .

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RECESS: 2:40 p.m.

RECONVENE: 2:41 p.m.

CHAIR CARROLL: ... (*gavel*) ... Land Use Committee meeting of Wednesday, March 16, 2011 is now back in session. And Mr. Dack from Department of Planning is here for this agenda item LU-47. For the Committee is a proposed bill to grant a request from the Hale Hui Kai Association of Apartment Owners for a Community Plan Amendment from Single-Family to Hotel for approximately 45,690 square feet at 2994 South Kihei Road, Kihei, Maui, Hawaii, to establish consistency with the H-M Hotel Zoning District. I have asked the consultant to be here and we have the Planner, Mr. Jeffrey Dack, who will now make the opening statement.

MR. DACK: Yeah, thank you, Chairman. There's an existing, actually there are existing three- and four-story buildings at this site that according to the final Environmental Assessment for the request to Community Plan Amendment were built in 1971, according to the property's Hotel designation in the 1970 Kihei Civic Development Plan as well as the Hotel County zoning at the time. With the establishment of the first Kihei-Makena Community Plan in 1985 and then its updates and revisions in 1998, the property was re-designated to single-family use. Staff has not been able to discover and discern the precise reasons for the change from the designation . . . original designation from Hotel to Single-Family. This created a project inconsistency which then the applicant is attending to rectify because with the designation being for Single-Family and the project being in a Special Management Area this impedes the ability to make improvements and get SMA permits due to the inconsistencies between the community plan designation and the zoning and the proposed use thereby the reason for the request of an amendment. This went to the Planning Commission on April 13th of last year. There were . . . there was one speaker in support of the item at the hearing. There were no speakers in opposition. Staff had one letter in opposition to the proposal and one in support of the proposal, both of which were included in the Staff Report to the Commission which has been passed along to the Council. There's been no further correspondence or communication received from the public by the Department subsequent to the hearings. The Planning Commission recommended the Council's adoption of the requested amendment with no conditions. That concludes the Staff's presentation.

CHAIR CARROLL: Members? Mr. Couch?

COUNCILMEMBER COUCH: Mr. Chair, if there's no objection, I'd like to hear your recommendations.

CHAIR CARROLL: Any objections from the floor?

COUNCIL MEMBERS: No objections.

CHAIR CARROLL: No. The Chair will give his recommendation.

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COUNCILMEMBER VICTORINO: Go ahead. Recommendation, Chair?

CHAIR CARROLL: The Chair recommends passage on first reading of the proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR TAX KEY NUMBER (2) 3-9-004:025, KIHEI, MAUI, HAWAII".

VICE-CHAIR WHITE: So move, Mr. Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR CARROLL: So moved by Mr. White, seconded by Mr. Victorino. Discussion, Mr. White?

VICE-CHAIR WHITE: Thank you, Mr. Chair. I would like to think that we could come up with a less expensive way to correct clear mistakes done in the planning process. This is one of those examples where the mistake, I mean, it can't be a clearer mistake on mapping. There is no ordinance that backs up the change from Hotel to Single-Family. I don't believe there's anyone in their right mind who would have legitimately to change zoning from a hotel, which has been standing there for many years, to Single-Family. So I would think that in cases like this that the Council could be approached with a matter such as this without the owners having to go through an Environmental Assessment and go through a Community Plan Amendment when it's a simple . . . what looks to me like a simple mapping error. If there's no indication in the ordinance that this was part of the intended change, then I think we should be able to make these kinds of changes in a much more graceful and less costly way for the owners. So, I fully support us moving quickly and approving this. Thank you very much, Chair.

CHAIR CARROLL: Thank you. Further discussion? Mr. Hokama?

COUNCILMEMBER HOKAMA: Chair, if there's no objection by the Committee members, I would also ask that you consider including in your motion the filing of all pertinent communications and attachments as it relates to LU-47.

UNIDENTIFIED SPEAKER: No objection.

CHAIR CARROLL: And that we be allowed to make any nonsubstantive changes, if necessary.

COUNCILMEMBER HOKAMA: That we also include it in my request to you, Chairman, with no objections from the Committee.

COUNCIL MEMBERS: No objections.

CHAIR CARROLL: No objections. Thank you. Any further discussion? Hearing none, all in favor of the motion on the floor signify by saying "aye"?

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COUNCIL MEMBERS: Aye.

CHAIR CARROLL: Those opposed? Motion carried.

VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Cochran, Couch, Hokama, Mateo, Pontanilla, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Baisa.

MOTION CARRIED.

ACTION: FIRST READING OF REVISED BILL and FILING OF COMMUNICATION

CHAIR CARROLL: Members, that brings us to the end of our agenda, 15 minutes ahead of time.

COUNCILMEMBER VICTORINO: Yeah, thank you, Chair.

CHAIR CARROLL: I thank you all and I realize the Chair had to talk a little fast, and ordinarily we would have had presentations but in this case they were not really necessary. And the Staff of the Planning Department, I commend them for bringing forth a very clean presentation for you to consider. In ten minutes, Mr. Hokama's meeting will proceed, will reconvene. And this Land Use meeting of March 16, 2011 stands adjourn. . . . (*gavel*) . . .

ADJOURN: 2:48 p.m.

APPROVED BY:



ROBERT CARROLL, Chair
Land Use Committee