

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**MINUTES**

**Council Chamber**

**June 15, 2011**

**CONVENE:** 1:35 p.m.

**PRESENT:** Councilmember Robert Carroll, Chair  
Councilmember Mike White, Vice-Chair  
Councilmember Gladys C. Baisa, Member  
Councilmember Elle Cochran, Member  
Councilmember G. Riki Hokama, Member

**EXCUSED:** Councilmember Donald G. Couch, Jr., Member  
Councilmember Danny A. Mateo, Member  
Councilmember Joseph Pontanilla, Member  
Councilmember Michael P. Victorino, Member

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

Morris Haole, Executive Assistant to Councilmember Carroll  
Kelly McGinnis, Executive Assistant to Councilmember Pontanilla  
Troy Hashimoto, Executive Assistant to Councilmember White

**ADMIN.:** James Giroux, Deputy Corporation Counsel, Department of the Corporation  
Counsel  
Michele McLean, Deputy Director, Department of Planning (Item No. 38)  
Jeffrey Dack, Planner, Department of Planning (Item No. 38)

**OTHERS:** Cherlyn Kong, Nona Lani Cottages LLC  
Winona Kong, Nona Lani Cottages LLC  
Christopher Hart, Chris Hart & Partners, Inc.  
Raymond Cabebe, Chris Hart & Partners, Inc.  
Plus (9) other people

**PRESS:** *Akaku Maui Community Television, Inc.*  
*Ilima Loomis, The Maui News*

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CHAIR CARROLL: ... (*gavel*) ... This Land Use Committee meeting of June 15, 2011, is now in session. Members, we have with us this morning, our Committee Members, Mike White, Vice-Chair, Gladys Baisa, Elle Cochran, and Riki Hokama. Excused are Michael Victorino, Donald Couch, Danny Mateo, and Joseph Pontanilla. From Corporation Counsel, we have

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James Giroux, the Executive Branch Representatives, we have Michele McLean, Deputy Director, Department of Planning; and Jeffrey Dack, Planner, Department of Planning. For our applicant representatives for LU-38, we have Raymond Cabebe, Chris Hart & Partners, Incorporated; Christ Hart & Partners, Winona Kong, the owner of the, the applicant. Committee Staff, we have Pauline Martins, our Committee Secretary, Kirstin Hamman, our Legislative Attorney. Public testimony on all items will be accepted in a few moments. Those wishing to testify should sign up at the table, set up in the lobby. Testimony shall be limited to three minutes, with an additional minute to conclude, if necessary. Testifiers are requested to state their name for the record and indicate who they are representing, if applicable. And if anybody has cell phones or pagers or anything else that can make noise, at this time, please turn it off or put it on the silent mode. We have two items on our agenda today LU-36, Lanai Project District 2 (Koele) Phase I Amendment, use of water from high level aquifer to irrigate the golf course; and LU-38, Community Plan Amendment and Change in Zoning for Nona Lani Cottages (Kihei). The Committee will now accept public testimony on all items.

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

MS. HAMMAN: Cherlyn Kong?

MS. C. KONG: Good afternoon, my name is Cherlyn Kong, and I represent the David and Winona Kong family, owners of the Nona Lani Cottages. I just wanted to say thank you on behalf of my family, my father's very ill and he couldn't be here, but this is very important for us. We are trying to get the Change in Zoning so that we can continue operating as a vacation rental, although, we fit in the grandfather clause right now. We're trying to mitigate any future situations that might keep us from continuing that process. So I just wanted to say thank you for your time, and if you have any questions I'm happy to answer them.

CHAIR CARROLL: Members, any questions for the testifier? Hearing none, thank you.

MS. C. KONG: Thank you.

MS. HAMMAN: Mr. Chair, we don't have anybody else signed up to testify.

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

CHAIR CARROLL: Is there anyone else wishes to give testimony at this time, please come forward?  
Seeing none, Members, if there's no objection we will close testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed.

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## **LU-36 LANAI PROJECT DISTRICT 2 (KOELE) PHASE I AMENDMENT (USE OF WATER FROM HIGH LEVEL AQUIFER TO IRRIGATE GOLF COURSE, AFFORDABLE HOUSING PROJECTS) (C.C. No. 03-76)**

CHAIR CARROLL: LU-36. . . *(clears throat)*. . . Excuse me. The first item the Committee will be considering LU-36, relating to a request for a Lanai Project District 2 (Koele) Phase I Amendment, in order to use 150,000 gallons per day of groundwater from the high level aquifer, for the irrigation of the Koele Golf Course. Committee is in receipt of correspondence dated May 5, 2011, from Kristofer Baptist, Senior Project Coordinator, Castle & Cooke Resorts, LLC, informing the Committee that Castle & Cooke Resorts, LLC is withdrawing its application for the amendment because the requested use of groundwater is no longer necessary. Members, any discussion? Hearing none, based on Castle Cooke's [*sic*] Resorts a withdrawal of the application, the Chair will entertain a motion to file County Communication No. 03-76.

VICE-CHAIR WHITE: So moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR CARROLL: Been moved by Mr. White, seconded by Mr. Hokama. Discussion? Mr. White?

VICE-CHAIR WHITE: No discussion, Chair.

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

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried, five-zero.



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## *... BEGIN PRESENTATION ...*

MR. HART: Thank you, Mr. Chairman, Members of the Land Use Commission...Committee. My name is Chris Hart, of Chris Hart & Partners. I'm here with Raymond Cabebe, who has been a planner on this project, and we're gonna just share the PowerPoint, it's a brief PowerPoint and I just wanted to give some background information. This is an application on behalf of Nona Lani Cottages and the David Kong family, David and Nona Kong family, and the application is for a Community Plan Amendment and a Change in Zoning. Just a little bit of background. From the point of view of compliance with Chapter...HRS, Chapter 343, Environmental Review was triggered for this project by the proposed Community Plan Amendment. The Kong family has owned the property--this is a 2.27 acre site--since 1938. The first cottages were built in 1972 and they were operated as transient vacation rentals for 39 years. I just...as a little bit of history, back in 1972 there wasn't a lot of visitor development in Kihei. There was the Maui Lu Resort, there was the beginnings of Wailea, Wailea actually didn't really get underway until about 1974. In the R-3...R-2 Residential District, David and Nona actually built 12 cottages based on the zoning which was R-2 Residential District, one unit per 7,500 square feet. Also, there was no definition in the ordinance, that actually our Maui County Comprehensive Zoning Ordinance, that actually established a definition for long-term residential or short-term residential, so there was no, there was no real differentiation. A person, who had a unit that chose to rent it, could actually rent it for less than six months if they chose, there was no concern about that, at that time. The use of the cottages as vacation rentals was determined to be existing and non-conforming, and that was during the Tavares Administration, during the period when we were making the application, and there was a concern about the fact that it was a transient vacation rental project. And we were able to establish, based on history that it was, the project is existing and non-conforming. There's no development of the property proposed at this time, the, the basic intention is to be, be able to establish consistency and concurrency with the community plan and the zoning. The intent of the owners is to establish conformity and consistency between the County's Kihei-Makena Community Plan and County zoning, County land use...zoning land use designation and the existing non-conforming transient vacation rental use. The location is on South Kihei Road, and the property that's immediately to the north, is a new condominium, residential condominium project called Kai Makani, and right next door is the Kihei, Kihei Holiday Hotel condominium project. This is the site, again it's a 2.27 acre site, and the existing Land Use Residential use has been established since 1952, and the transient vacation rental use has been consistent since 1972. The State Land Use classification is Urban, the Kihei-Makena Community Plan is Multi-Family, the County zoning is R-2 Residential, and the flood zone designation is AE 100 year floodplain. Special designations, the site is located within the Special Management Area. I'd like to say two things at this point; first of all; in the context of the land use designations, in 1985 the community plan identified the site from Single-Family to Multi-family, to essentially accommodate the transient vacation rental use; however, in 1989 this Council chose to amend the Apartment District Zoning Ordinance to delete motel use from the ordinance. So no longer were transient vacation rentals technically allowed in the Apartment District, therefore; the application for Hotel designation in the community plan, an H-1 two story hotel for the zoning designation. Also, in terms of any proposed future development, if there is any, if there's any chosen to be initiated by the family, any proposed future development would

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have to, to basically comply with the requirements of the Special Management Area, and requirements for a Special Management Area Permit. This essentially is a land use map it shows the parcel, you can identify it as Multi-Family, and it, it's important to note that it's right immediately adjacent to Hotel, which is the next parcel to the north, or to the south, which is Kihei Holiday. So this is not a spot zone, this is basically just an infill of existing multi-family and two-story hotel development along South Kihei Road. This is a historic zoning map from 1969, that shows the parcel as R-2 Residential District. I'm gonna turn this over to Raymond, at this time.

MR. CABEBE: Good afternoon, Members of the Land Use Committee, my name is Raymond Cabebe with Chris Hart & Partners. Basically we're requesting a Community Plan Amendment from Multi-Family to Hotel, and from County zoning from R-2 Residential to H-1 Hotel. Just to give you a historical perspective, this is an aerial photo from 1975, showing the property and the surrounding area. The area surrounding there...it's largely undeveloped. The Maui Lu is to the right, Wailana Place right next to it is being developed here, just keawe forest pretty much around the whole area. And this is the 2007 aerial, showing the development that grew around the parcel, in particular the Kai Makani property and Southpointe to the East. The property will have or does have 12 existing rental units, 8 of them are cottages, they're in front of the property, 4 of them are within the main building, and any proposed development, as Chris said would require an SMA Major Permit. These are some photos of the area, the approach from South Kihei Road. This is the main driveway to, to Nona Lani, and this is looking back towards the ocean on the drive...same driveway. This is the entrance to the main house, which is also the, the check-in area. This is the front of the main house and garden area. Looking from South Kihei Road, these, these are the cottages, two of them, or there's four of them right here on the front and the other four in the back. This is the secondary driveway to...on the north side of the property, and looking back towards the ocean, on the same driveway. This is a comparison of what's on the property right now to H-1 Hotel zoning, as you can see it meets the minimum area, and it conforms with the height limitations as far as lot coverage and floor area ratio, it's way below what is allowed there. As Chris mentioned, it went through the HRS Chapter 343 process with the Draft Environmental Assessment in 2007, was reviewed by the Planning Commission, it went through the final Environmental Assessment review by the Planning Commission in 2009. And during this process, all of these agencies reviewed the applications, and all of their concerns were met. The Planning Commission reviewed the, the applications in, in 2009. And there was a unanimous recommendation of approval, with the three proposed conditions, which are contained in the proposed bill. This is the summary; these are the requested actions, the Community Plan Amendment and also the Change in Zoning. As we said before there's no additional development planned, and the existing transient vacation rental use is not...legally non-conforming. Requested actions are consistent with all government regulations, and today we're just asking for your consideration on these actions. Thank you.

*... END OF PRESENTATION ...*

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CHAIR CARROLL: Thank you. Members, we're gonna call a short recess, after which when we reconvene, you will have the opportunity to ask any questions of the, the applicant or the planners. This Committee stands in recess, subject to the call of the Chair. . . . (*gavel*) . . .

**RECESS: 1:55 p.m.**

**RECONVENE: 1:59 p.m.**

CHAIR CARROLL: . . . (*gavel*) . . . This Land Use Committee meeting of June 15, 2011, is now back in session. Members, before I open the floor to questions from [*sic*] the applicant I would ask Jeffery Dack and the Department of Planning, to make some opening remarks. Jeffrey?

MR. DACK: Yes, good afternoon, Mr. Chair and Members of the Land Use Committee. I'm Jeffery Dack, the Staff Planner for the project with the Planning Department. The property which is the subject to the Community Plan Amendment in Change in Zoning request is as has been mentioned, a 2.27 acre parcel, located in Kihei on the mauka side of South Kihei Road. It's at 455, between Ohukai and Kaonoulu Streets on Tax Map Key No. 3-9-041:001. Across the is a narrow strip of beach park and then Maalaea Bay. The site's community plan designation is Multi-Family, it lies within the State Urban District and Zoned R-2 Residential, as it has been mentioned. The Community Plan Amendment in re-zoning to Hotel, is proposed to achieve consistency between the land use designations, and long-term use of the site for transient vacation rentals, and that we would concur with the, the applicant. The final Environmental Assessment states that Nona Lani Cottages LLC, with 12 transient vacation rental units has been operated by the family since 1972. It has a non-conforming status in the Zoning Ordinance, with this latest additions being in 1991. The public hearing on the request was conducted by the Planning Commission on October 13, 2009. Correspondence received by the Planning Department, before the hearing, was from one party in opposition and one party in support. These were transmitted to the Council, and the Department has received no letters about the proposal following the hearing. One individual testified at the public hearing in support of the request, and no one spoke in opposition. This concludes the Department's report. Thank you.

CHAIR CARROLL: Thank you. Members, the floor is now open to either ask questions of the applicant or the Department.

COUNCILMEMBER HOKAMA: Chairman?

CHAIR CARROLL: Mr. Hokama?

COUNCILMEMBER HOKAMA: Can we call Mr. Hart as the representative, please?

CHAIR CARROLL: Mr. Hokama, your microphone.

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COUNCILMEMBER HOKAMA: Chairman, if Mr. Hart would come forward that would be appreciated.

CHAIR CARROLL: Mr. Hart?

MR. HART: Mr. Chair, my name is Chris Hart, Chris Hart & Partners; we're the consultants in this Community Plan Amendment and Change in Zoning process.

COUNCILMEMBER HOKAMA: I appreciate the presentation you provided for the applicant, Mr. Hart, your client. Let me ask couple things, since you mentioned that it's been running as a TVR since 1972?

MR. HART: That's correct.

COUNCILMEMBER HOKAMA: What category does the County assess and charge property tax on?

MR. HART: Yeah, I don't know that, an answer to that. I would assume that it's a, it's a --

COUNCILMEMBER HOKAMA: Is it TVR?

MR. HART: --R-2, it's R-2 Residential?

COUNCILMEMBER HOKAMA: We're, we're...they're paying tax as...on Residential but using it as a vacation rental?

MR. HART: I think I would, I would have to ask Cherlyn Kong to come up and discuss that with you. I, I, I'm not sure of some of those business related issues.

MS. C. KONG: Good afternoon. Cherlyn Kong. I believe that it's being taxed in the R-2 category.

COUNCILMEMBER HOKAMA: Chairman, if you can have Finance verify this. How does the use over of almost 40 years, be assessed a Residential rate when they doing a short-term business, and under our tax code it's a TVR? It would be the highest tax rate.

CHAIR CARROLL: That's a good question, Mr. Hokama. I don't have anybody over here right now that can answer that. Perhaps Ms...

COUNCILMEMBER HOKAMA: So, so maybe I can ask the Deputy Planning Director.

CHAIR CARROLL: Planning Department, can you comment on that?

COUNCILMEMBER HOKAMA: Was, was that ever brought up in any of the Commission or staff review with the various departments, Ms. Chouteau [*sic*]?