

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 23, 2011

Committee
Report No. _____

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

Chair and Members:

Your Land Use Committee, having met on August 3, 2011, makes reference to County Communication No. 08-170, from the Planning Director, transmitting documents relating to a request from Troy and Susan McCasland for a Conditional Permit to continue to operate a transient vacation rental ("TVR") on approximately 11,060 square feet within the R-2 Residential District at 451 Ilikahi Street, Lahaina, Maui, Hawaii (TMK: (2) 4-6-06:039).

Your Committee notes that the Maui Planning Commission recommended denial of the request, and no proposed legislation was included in the communication.

In response to your Committee's request that the Department of the Corporation Counsel transmit proposed legislation that would permit the Council to take such action as it deems appropriate, the Department transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO TROY AND SUSAN McCASLAND TO OPERATE A SINGLE-FAMILY RESIDENCE AS A TRANSIENT VACATION RENTAL WITHIN THE R-2 RESIDENTIAL DISTRICT FOR PROPERTY SITUATED AT 451 ILIKAHI STREET, LAHAINA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a one-year Conditional Permit to Troy and Susan McCasland to operate a TVR on the property, subject to 11 conditions.

The Department of Planning noted that the proposed use is inconsistent with the policies of the General Plan and a number of zoning ordinances that discourage the use of single-family homes in residential areas for TVRs.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 23, 2011
Page 2

Committee
Report No. _____

Your Committee notes that by Resolution No. 11-24, adopted on March 18, 2011, the Council referred to the appropriate planning commissions a draft bill to permit and regulate short-term rental homes in certain areas. Your Committee decided to consider the Conditional Permit request with a condition that would prohibit the Department of Planning from extending the Conditional Permit if legislation regulating short-term rentals is enacted.

Your Committee agreed to approve the Conditional Permit for a two-year, rather than a one-year period, to avoid expensive and time consuming application costs for another extension. Furthermore, the two-year term is still short enough to ensure oversight of the TVR use.

Your Committee recommended additional conditions related to the Department's enforcement authority, house policies, availability of the onsite manager, and the requirement that signage indicating the onsite manager's name, contact number, and the Conditional Permit number be posted on the premises.

Your Committee questioned how the Department of Finance will determine the real property taxes for the property, which is zoned R-2 Residential District, if the Conditional Permit is granted. Your Committee noted that, according to the County's Real Property Tax Assessment website, the property is currently taxed as Residential. Your Committee expressed a desire to have the property taxed at a higher real property tax rate to reflect the TVR use.

Your Committee voted 6-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Carroll and members Baisa, Cochran, Couch, Hokama, and Pontanilla voted "aye". Committee Vice-Chair White and members Mateo and Victorino were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 23, 2011
Page 3

Committee
Report No. _____

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2011), attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO TROY AND SUSAN McCASLAND TO OPERATE A SINGLE-FAMILY RESIDENCE AS A TRANSIENT VACATION RENTAL WITHIN THE R-2 RESIDENTIAL DISTRICT FOR PROPERTY SITUATED AT 451 ILIKAHI STREET, LAHAINA, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 08-170 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

ORDINANCE NO. _____

BILL NO. _____ (2011)

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO TROY AND SUSAN McCASLAND TO OPERATE A SINGLE-FAMILY RESIDENCE AS A TRANSIENT VACATION RENTAL WITHIN THE R-2 RESIDENTIAL DISTRICT FOR PROPERTY SITUATED AT 451 ILIKAHI STREET, LAHAINA, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Troy and Susan McCasland for the operation of a single-family residence as a transient vacation rental within the County R-2 Residential District. The site is identified for real property tax purposes by Tax Map Key Number: (2) 4-6-006:039, comprising approximately 11,060 square feet of land situated at 451 Ilikahi Street, Lahaina, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of two (2) years from the effective date of this ordinance; provided that an extension of this Conditional Permit beyond this two-year period may be

granted pursuant to Section 19.40.090, Maui County Code; however, if legislation regulating short-term rentals is enacted, this Conditional Permit shall not be extended by the Department of Planning.

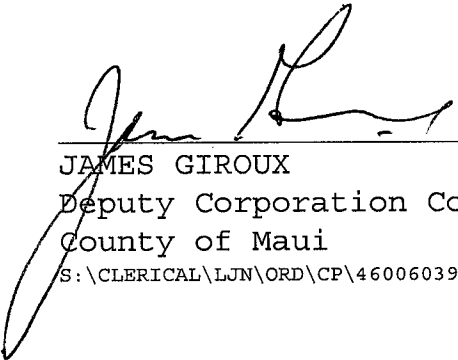
3. That the Conditional Permit shall be nontransferable, unless the Council approves the transfer by ordinance.
4. That Troy and Susan McCasland, their successors and permitted assigns, and any property manager, shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at their own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Troy and Susan McCasland, any property manager, and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this Conditional Permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Troy and Susan McCasland and any property manager of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.
5. That Troy and Susan McCasland shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit and comply with all conditions of the Conditional Permit. Failure to do so, may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.

6. That a property manager shall reside full-time on the property.
7. That Troy and Susan McCasland shall maintain the rental unit at all times in compliance with Department of Fire and Public Safety regulations, including fire extinguishers, smoke detectors, and evacuation routes to the satisfaction of the Department of Fire and Public Safety.
8. That Troy and Susan McCasland shall include the Conditional Permit number in all advertising for the transient vacation rental.
9. That Troy and Susan McCasland shall inform the Department of Finance, Real Property Tax Division, that they are operating a transient vacation rental on the subject property.
10. That Troy and Susan McCasland shall provide the Department of Planning a copy of the transient accommodations tax (TAT) license and general excise tax (GET) license for the transient vacation rental, and confirmation that the GET and TAT have been paid each year.
11. That five (5) copies of a Compliance Report shall be submitted to the Department of Planning for review and approval with any request for a time-extension amendment.
12. That Troy and Susan McCasland shall post house policies within each guest room. The house policies shall be included in the rental agreement, which must be signed by each guest and shall be enforced by Troy and Susan McCasland or the onsite property manager. The house policies at a minimum shall include the following provisions:
 - a. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m., during which noise in the transient vacation rental shall not disturb anyone on a neighboring property.
 - b. Amplified sound that is audible beyond the property boundaries of the transient vacation rental is prohibited.

- c. Vehicles shall be parked in the designated onsite parking area and shall not be parked on the street overnight.
 - d. No parties or group gatherings shall occur without a special events use permit granted by the Department of Planning pursuant to administrative rules.
13. That Troy and Susan McCasland shall post and maintain at the front of the property along the main access a one-square foot sign identifying the transient vacation rental permit number and a phone number for onsite property manager. The onsite property manager shall be available at all times.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JAMES GIROUX
Deputy Corporation Counsel
County of Maui

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