

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

**MINUTES**

**Council Chamber**

**August 1, 2012**

**CONVENE:** 1:31 p.m.

**PRESENT:** Councilmember Robert Carroll, Chair  
Councilmember Mike White, Vice-Chair (arr. at 1:32 p.m.)  
Councilmember Gladys C. Baisa, Member  
Councilmember Elle Cochran, Member  
Councilmember Donald G. Couch, Jr., Member  
Councilmember Danny A. Mateo, Member  
Councilmember Joseph Pontanilla, Member  
Councilmember Michael P. Victorino, Member (arr. at 1:32 p.m.)

**EXCUSED:** Councilmember G. Riki Hokama, Member

**STAFF:** Carla Nakata, Legislative Attorney  
Pauline Martins, Committee Secretary

Morris Haole, Executive Assistant to Councilmember Carroll

**ADMIN.:** James Giroux, Deputy Corporation Counsel, Department of the Corporation  
Counsel  
Michele McLean, Deputy Director, Department of Planning  
Paul Fasi, Planner, Department of Planning

**OTHERS:** Mark Collins  
Haunani Collins  
Scott Teruya, Administrator, Real Property Tax Division, Department of  
Finance

**PRESS:** *Akaku Maui Community Television, Inc.*

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**CHAIR CARROLL:** . . . *(gavel)* . . . This Land Use Committee meeting of August 1<sup>st</sup> will come to order. Good afternoon, I'm Chairman Robert Carroll with the Land Use Committee. First of all, my request that anybody out there that has anything that makes noise—cell phones or otherwise--please turn it off. We have with us this morning Members, Council Chair Mr. Mateo.

**COUNCILMEMBER MATEO:** Good afternoon, Chair.

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CHAIR CARROLL: Ms. Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR CARROLL: Ms. Cochran.

COUNCILMEMBER COCHRAN: Aloha.

CHAIR CARROLL: Mr. Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR CARROLL: And Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Good afternoon.

CHAIR CARROLL: Excused at this time are Member White, Victorino, and Hokama. Department of Corporation Counsel, we have James Giroux--

MR. GIROUX: Aloha.

CHAIR CARROLL: --Deputy Corporation Counsel. For Planning, we have Paul Fasi.

MR. FASI: Good afternoon, Chair.

CHAIR CARROLL: And for the applicant, we have Mark and Haunani Collins with us today. Pauline Martins, our Committee secretary, and Carla Nakata, our Legislative Attorney. Members, we have one item on our agenda today. Members, we have one item on our agenda today, LU-29, change in zoning for Hana Bay Hale. I will now open public testimony. Do we have anybody signed up for testimony? No one? Is there anyone that wishes to give testimony at this time? Seeing none, with no objections, we will close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed.

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**LU-29 DISTRICT CHANGE IN ZONING FOR HANA BAY HALE (C.C. No. 12-73)**

CHAIR CARROLL: The Committee is in receipt of a proposed bill entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM URBAN RESERVE DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT HANA, MAUI, HAWAII”. The purpose of the proposed bill is to grant a request from Mark and Haunani Collins for a Change in Zoning from Urban Reserve District to Service Business Residential District to allow for a neighborhood-scale commercial fish processing operation, and three transient vacation rental bedrooms known as the Hana Bay Hale on an approximately 0.989-acre parcel situated at 4950 Uakea Road, Hana, Maui. I will now ask the Planner, Paul Fasi, if he has any comments at this time.

MR. FASI: Just that the item was before the Planning Commission on June 7, 2011, and it was unanimously approved for a recommendation for approval to the Council.

CHAIR CARROLL: Thank you. And we have Deputy Planning Director, Michele McLean, joining us. Thank you.

MS. McLEAN: Good afternoon, Chair.

CHAIR CARROLL: Mr. Giroux, do you have anything you would like to say at this time?

MR. GIROUX: No, not at this time. Thank you, Chair.

CHAIR CARROLL: Thank you. We have a few issues for consideration. The Service Business Residential or SBR zoning allows for up to five TVR bedrooms on a lot with a Special Use Permit (SUP). Therefore, the Applicants also applied for an SUP for their 3-bedroom TVR. Because the applicants first need the SBR zoning approval from the Council, the Maui Planning Commission deferred action on the SUP. On May 23, 2012, the Short-Term Rental Bill became effective, so the applicants may now be eligible to get a Short-Term Rental Permit. Corporation Counsel, the effects of this new Short-Term Rental Bill on this application, Mr. Giroux?

MR. GIROUX: Thank you, Chair. Looking at the SBR Ordinance, it looks like there is a mechanism for what they were trying to achieve. Along with that, in talking to the Department, my understanding is that on top of that, there’s going to be—depending on what that product looks like, the Department will probably have to process a parallel application for the use; and Planning can probably address that better.

CHAIR CARROLL: Thank you. Mr. Fasi, do you have anything to add?

MR. FASI: The new Short-Term Rental Ordinance amended the Service Business Residential Ordinance, and short-term rentals are a permitted use in the Service Business Residential District with the approved permit. So they will still have to apply for a short-term rental permit.

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CHAIR CARROLL: Thank you. Any questions so far with what we've gone through before I continue with some of the other concerns? Member Cochran followed by Mr. Victorino.

COUNCILMEMBER COCHRAN: Thank you, Chair Carroll. Department, hi; it's nice to see you folks. I was going through and I know, Mr. Fasi, back in June 7th, you mentioned commercial large-scale fishing processing operations shall be prohibited. And then, it was later saying that because of their neighborhood-scale type use, they will not be prohibited for that type of use. So I kinda wanted—those are two, for me, two sort of different sounding definitions, and what you had meant between what large-scale versus neighborhood-scale is.

CHAIR CARROLL: Mr. Fasi.

MR. FASI: On June 7th, at the Hana Advisory Committee public hearing, the issue came up as to what large-scale fishing processing operation was. Is it 1,000 feet? Is it 10,000 feet? The community and the neighbors were just a little bit concerned about the size. The SBR kind of addressed that and in the SBR Bill itself, it limits it to 2,000 square feet. So the matter got resolved by the SBR Bill, which at that time, on June 7, 2011, we did not have the SBR Bill.

COUNCILMEMBER COCHRAN: Okay. So currently, the SBR has taken care of the size concern?

MR. FASI: Yes, ma'am.

COUNCILMEMBER COCHRAN: Okay, thank you. And also, because this is sort of planning concerns, the applicant is actually wanting to subdivide this lot, this .989 acres?

MR. FASI: I believe that's a separate matter that's not part of this particular subject directly. I'm not aware that the applicants made any applications towards subdivision at this time.

COUNCILMEMBER COCHRAN: Because I think it was part of some comments by DLNR? So this is not in relation to this? There was no . . . *(inaudible)* . . .

MR. FASI: I don't believe the applicant has any intention to subdivide at this time. They simply want to get through the Change in Zoning process. Of primary importance to the applicant is the short-term rental right now, and the fish processing facility is probably secondary to that.

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair Carroll. If I find out where I'm--

CHAIR CARROLL: Thank you, Ms. Cochran.

COUNCILMEMBER COCHRAN: --this exhibit that it's stating it's . . . *(inaudible)* . . .

CHAIR CARROLL: Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair.

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COUNCILMEMBER COCHRAN: Or revisit.

COUNCILMEMBER VICTORINO: I just . . .

COUNCILMEMBER COCHRAN: Oh, here it is.

COUNCILMEMBER VICTORINO: I just wanted to, for clarification with both Mr. Giroux and Planning. As far as the short-term rental's concerned, because we have the new ordinances in place, that becomes precedent right now, and they have to apply for, under the new ordinances that we have existing. Right?

MR. FASI: Yes, sir.

COUNCILMEMBER VICTORINO: Okay. And that's correct, Mr. Giroux?

MR. GIROUX: Yeah, we concur.

COUNCILMEMBER VICTORINO: Yeah, okay. So I just wanted to make sure that that was perfectly clear. The other parts, I really don't have a lot of questions. I like what they're trying to do and I think property zoning, Mr. Chair, is something that we've lacked a long time in this County. If we can get something corrected, I'm all in favor of that. So, thank you. Thank you, Chair.

CHAIR CARROLL: Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. For Planning, is this the first ever in regards to a Change in Zoning from Urban Reserve to Service Business Residential? I know there's certain parts of Maui that allow this.

CHAIR CARROLL: Ms. McLean?

MS. McLEAN: This might be the first time that we've had an applicant request SBR zoning. In the past, the Department has undertaken sort of a comprehensive zoning initiative with Interim zoned parcels. So it's possible that in Hana, the Department proactively established some SBR zoning if the parcels were zoned interim; but because this parcel is zoned Urban Reserve, it wouldn't have fallen under that. This could be the first one, where an applicant has come forward to go through the Change in Zoning process to SBR.

COUNCILMEMBER PONTANILLA: Okay. Good. The other areas with SBR zoning, I understand it's like Waiehu Beach Road area in Wailuku?

MS. McLEAN: I'm sorry? Say that again.

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COUNCILMEMBER PONTANILLA: Other areas that have SBR zoning? Are part of Wailuku--I think it's Waiehu Beach Road area? And is Paia also included?

MS. McLEAN: I don't believe there's . . . the first designation you would see it would be on the community plan. I don't believe there's SBR zoning in Paia town. There might be in some areas of Wailuku. I'm not sure.

COUNCILMEMBER PONTANILLA: Okay, thank you. Thank you, Chairman.

CHAIR CARROLL: Thank you. The floor is now open. Ms. Cochran, did you?

COUNCILMEMBER COCHRAN: Yeah, Chair. Yeah, I see. I guess there's one question, a little bit of clarification needed on my behalf from Planning in regards to Exhibit 10. It is an actual--I guess a letter in opposition type testimony--and it mentions that the vacation rental is actually three separate units as opposed to one four bedroom home? So I think that's where the subdividing kind of question--if . . . if that's going to occur, or is needed to occur?

MR. FASI: If I may?

CHAIR CARROLL: Mr. Fasi.

MR. FASI: If I may? The applicant is here, maybe he can address that directly.

MR. COLLINS: *(NOTE: Speaking from the gallery.)* Yeah. Yes, this is a . . . *(inaudible)* . . .

COUNCILMEMBER COUCH: Oh!

COUNCILMEMBER COCHRAN: Oh!

COUNCILMEMBER COUCH: He's . . . *(inaudible)* . . .

MR. FASI: Sorry.

MS. MARTINS: He needs to come down to the podium.

CHAIR CARROLL: Excuse me.

MR. FASI: I'm sorry.

CHAIR CARROLL: No, no. You're going to have to come down if da kine; but it is a one, one home.

COUNCILMEMBER COCHRAN: It's one home?

CHAIR CARROLL: There is only one home over there.

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COUNCILMEMBER COCHRAN: Okay, thank you.

CHAIR CARROLL: All right, the floor is open. I think we have everything before us. Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I just want to be clear. I understand the two things that they're requesting. On the case of the TVRs or the short-term rentals, is there an expiration date on that? Or is it for a specific amount of time? I'm not clear. I haven't had a chance to dig that out.

CHAIR CARROLL: I don't think so, but I'll defer to Mr. Fasi.

MR. FASI: The applicant has yet to apply for the proper permits for short-term rentals, so we don't know. We haven't put a time limit on it yet.

COUNCILMEMBER BAISA: Okay.

CHAIR CARROLL: Anything further? If not, the Chair's going to give his recommendation.

COUNCILMEMBER BAISA: Recommendation.

COUNCILMEMBER COCHRAN: Chair!

COUNCILMEMBER VICTORINO: It's too late.

COUNCILMEMBER COUCH: No.

COUNCILMEMBER COCHRAN: Chair!

CHAIR CARROLL: Oh, I'm sorry. Ms. Cochran?

COUNCILMEMBER COCHRAN: Are we going to have applicant come down to share?

CHAIR CARROLL: Yes. If there's no objection, I'll bring the applicant forward.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Would the applicant—either one—come down, or both? *(NOTE: Ms. Collins walks down, instead of assisting Mr. Collins with his wheelchair.)* You have to come to the, down over here.

*(NOTE: Staff is retrieving the ADA accessible microphone for Mr. Collins; but instead, Ms. Collins walks down.)*

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CHAIR CARROLL: That's all right. *(NOTE: Ms. Collins approaches the podium.)* She can go to the podium. Yeah, right over there. Please identify yourself at the podium.

MS. COLLINS: Haunani Collins.

CHAIR CARROLL: Ms. Cochran?

MS. COLLINS: Good afternoon.

COUNCILMEMBER COCHRAN: Hi, Good afternoon. Thank you for coming all this way. I know it's a trek to come here. I guess there's quite a few, I guess, conditions or things from Department of Health that was requested of you folks; and I was just curious if any of these Department of Health concerns were addressed since the origination of this application?

MS. COLLINS: Um.

COUNCILMEMBER COCHRAN: Do you recall?

MS. COLLINS: Um.

COUNCILMEMBER COCHRAN: What . . .

MS. COLLINS: My husband's been speaking. I should probably bring him down.

COUNCILMEMBER COCHRAN: Oh!

MS. COLLINS: Is that okay?

COUNCILMEMBER COCHRAN: Sorry.

MS. COLLINS: Because he's been speaking directly with them, through the Department of Health, regarding this. Is that all right? If I bring him down?

CHAIR CARROLL: Yeah.

COUNCILMEMBER COCHRAN: Yeah.

*(NOTE: Staff is retrieving the ADA accessible microphone while Ms. Collins assists Mr. Collins in his wheelchair.)*

MR. COLLINS: Hello, my name is Mark Collins.

CHAIR CARROLL: Ms. Cochran.



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COUNCILMEMBER COCHRAN: Aloha, Mr. Collins. Thank you also for coming all this way. Is his microphone on?

MS. COLLINS: Yeah.

COUNCILMEMBER COCHRAN: So, yeah. I was noticing there were a few concerns on the Department of Health's behalf and they requested that wastewater disposal method site plan was provided, so I was just curious if that has been done thus far.

MR. COLLINS: No, it hasn't been done because we didn't have the proper permit for the zoning to go ahead, you know, at this time. So I have been in the fishing business for 30 years. We've been out in Hana that long. So we've, you know, been waiting to get the proper zoning. But I am well aware of what needs to be done, and that we can accomplish that once the zoning's in place.

COUNCILMEMBER COCHRAN: Then also, I guess to install a separate septic system was part of it also.

MR. COLLINS: Yeah. Correct.

COUNCILMEMBER COCHRAN: Okay. Not yet, but you will be open to fulfilling these--

MR. COLLINS: Absolutely.

COUNCILMEMBER COCHRAN: --these concerns of DOH. And also, Chair, if I may?

CHAIR CARROLL: Proceed.

COUNCILMEMBER COCHRAN: I'm just referring back, you know, because I always want to address perspectives from different people in the community; and of course, there's the--I believe, Gibson and Trask Trust had sent in some testimony back in the day, I guess, in protest to your rezoning that you're seeking and things. And I just want to know if their concerns have been addressed and sort of worked out since then. I guess they mention, you know, the traffic, noise, odor, changing the whole ambiance and feel of the neighborhood and things of that nature, that this, the operation would bring.

MR. COLLINS: Well, as I said, we've been out in Hana for 30 years and part of the existing community, you know, many families are involved in, and what we have in mind won't change the community in that way at all. There's many—it's a small fishery in Hana due to the size of the ramp and really lack facilities. It's commercial fishery and subsistence fishery and very important, I think, for many small communities like Hana to provide fresh fish and jobs. So we, I think the Trask felt that we were going to develop some large-scale fishing operation and that was never the intent, and there's, it's not enough room, and it's again it was addressed. The 2,000 square feet is not, you know, that's not enough space to do any, anything but a very small operation actually.

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COUNCILMEMBER COCHRAN: Okay, thank you. And one last inquiry, and it's, if Water Department was here, I'd address Water Department more so; but since you're here as the applicant, I'm sure you're aware that Water Department. I just wanted their, you stated back--I think Mr. Fasi was there too at the time though--that "there would be no change in water usage".

MR. COLLINS: No.

COUNCILMEMBER COCHRAN: And today, you still are saying that?

MR. COLLINS: Yes.

COUNCILMEMBER COCHRAN: Okay. Because I think that Water Department would have had, and for fire, fire-flow specs too, I think that was a question—if it was going to change any type of extra usage that way.

MR. COLLINS: No more than any of the small food, the legal, you know, small food concessions that now exist.

COUNCILMEMBER COCHRAN: Okay. All right. Well thank you again for coming all this way.

MR. COLLINS: Certainly.

COUNCILMEMBER COCHRAN: Thank you, Chair, for the opportunities.

CHAIR CARROLL: Thank you. Any questions for the applicant before I let them go back up? If not, Thank you, Mr. Collins.

MR. COLLINS: Thank you.

CHAIR CARROLL: If . . . *(NOTE: Speaking to his Executive Assistant)* Mr. Haole, could you help Mr. Collins up?

*(NOTE: Mr. Haole assists Mr. Collins in his wheelchair.)*

CHAIR CARROLL: All right. Members, I have one amendment that needs to be made. The Chair will entertain a motion to amend the title of the proposed bill by inserting "4950 Uakea Road," after the phrase "for property situated at".

VICE-CHAIR WHITE: So moved.

COUNCILMEMBER PONTANILLA: Second.

CHAIR CARROLL: It's been moved by Mr. White, seconded by Mr. Pontanilla.

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COUNCILMEMBER PONTANILLA: Can we have a short recess? Short recess?

CHAIR CARROLL: Short recess.

COUNCILMEMBER PONTANILLA: Same . . .

CHAIR CARROLL: One minute.

COUNCILMEMBER PONTANILLA: Yeah.

CHAIR CARROLL: Stand in recess. . . . (*gavel*) . . .

**RECESS: 1:50 p.m.**

**RECONVENE: 1:51 p.m.**

CHAIR CARROLL: . . . (*gavel*) . . . Land Use Committee meeting is now back in session. We have a motion on the floor. This is almost a housekeeping thing, but I need to do it by motion because it's on the title. Any further discussion? Hearing none, all in favor of the motion, signify by saying "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried. Seven "ayes", two excused, and no "noes".

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Hokama and Victorino.**

**MOTION CARRIED.**

**ACTION: AMEND THE TITLE.**

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CHAIR CARROLL: Members, the Chair will entertain a motion to recommend passage on first reading of a proposed bill, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM URBAN RESERVE DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 4950 UAKEA ROAD, HANA, MAUI, HAWAII", incorporating any amendments made today and the filing of County Communication 12-73.

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

COUNCILMEMBER PONTANILLA: Second.

CHAIR CARROLL: It's been moved by Mr. White, seconded by Mr. Pontanilla. Discussion? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And you're referring to the actual bill on page, from the March 20, 2012?

CHAIR CARROLL: Yeah.

COUNCILMEMBER COUCH: It has as Exhibit B, the condition that a large-scale commercial fish processing operation shall be prohibited. Is that the one we're referring to?

CHAIR CARROLL: The . . . what we're . . . let's see. Which one? I'm sorry. What page are you on?

COUNCILMEMBER COUCH: The bill, bill number of the ordinance on the March 20<sup>th</sup> letter from the Department of Planning.

CHAIR CARROLL: Yeah. Okay. Right; right. That's the one.

COUNCILMEMBER COUCH: Then the Ordinance there and then that Appendix--

CHAIR CARROLL: Yes, that is the one.

COUNCILMEMBER COUCH: --or Exhibit B says condition of zoning that large-scale commercial fish processing operation shall be prohibited.

CHAIR CARROLL: Yes, that is the one.

COUNCILMEMBER COUCH: Okay. I just want to make sure that that--

CHAIR CARROLL: No, that is it.

COUNCILMEMBER COUCH: --exhibit is there.

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CHAIR CARROLL: That is the one. I'm sorry for . . .

COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: I wanted to double check myself.

COUNCILMEMBER COUCH: Okay.

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

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried. Seven "ayes" . . . eight "ayes", one excused (Mr. Hokama) and no "noes".

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

**NOES:     None.**

**ABSTAIN:  None.**

**ABSENT:   None.**

**EXC.:     Councilmember Hokama.**

**MOTION CARRIED.**

**ACTION:    FIRST READING OF REVISED BILL AND FILING OF  
              COMMUNICATION.**

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CHAIR CARROLL: Members, that brings us to the end of our meeting today. I thank you for attending, and all of those, our Staff and the applicant, for coming out from Hana. This Land Use Committee meeting of August 1, 2012 stands adjourned. . . . (*gavel*) . . .

**ADJOURN: 1:53 p.m.**

APPROVED BY:



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ROBERT CARROLL, Chair  
Land Use Committee

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Transcribed by: Pauline Martins