

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JANUARY 22, 2014**

*** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes' file and are available for public viewing at the Maui County Department of Planning, 2200 Main St., Suite 315, Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ***

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairperson, John Sprinzel, at 12:00 p.m., Wednesday, January 22, 2014, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

A quorum of the Commission was present. (See Record of Attendance.)

Chair John Sprinzel: Okay, Ladies and Gentlemen. We have a quorum. It's noon. I call the meeting to order.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered

C. APPROVAL OF MINUTES OF THE OCTOBER 9, 2013 MEETING

Chair Sprinzel: First thing is public testimony if there's any public testimony. There being none, public testimony is now closed.

The next thing is approval of the minutes for whenever it was, October the 9th.

Mr. Michael Jennings: I will make a motion for that, John.

Chair Sprinzel: Seconder?

It has been moved by Commissioner Jennings, seconded by Commissioner Tancayo, then unanimously

VOTED: to approve the minutes of the October 9, 2013 meeting.

Chair Sprinzel: Okay, unanimous. Thank you. The minutes are approved.

Chair Sprinzel read the following agenda item into the record:

D. CONCURRENCE WITH SPECIAL MANAGEMENT AREA EXEMPTION

MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that Special Management Area (SMA) exemptions can be issued for the following:

MR. CURTIS MIYAMURA, consultant on behalf of LIBERTY DIALYSIS HAWAII, submitting a Special Management Area (SMA) assessment for a proposed tenant improvement to an existing retail building located in the B-CT Country Town Business District at 28 Kamo'i Street Suite 400, TMK: 5-3-002: 112 & 121, Kaunakakai, Island of Molokai. (SMX 2013/0231) (Valuation: \$300,000) (B. Sticka)

The tenant improvement will be relocating an existing window and door. The existing tenant space is approximately 2,097 square feet and is expanding into an adjacent space. The remodeled tenant space is proposed to be approximately 3,717 square feet in an existing 10,065 sq. ft. building.

The Commission may take action on this request to concur or not concur with the SMA exemption determination.

Chair Sprinzel: Ben's sick today so Clayton is doing the honors.

Mr. Clayton Yoshida: Good afternoon, Mr. Chair and Members of the Molokai Planning Commission, and Happy New Year. I guess this is our first meeting of the 2014 year. I'm subbing for Ben Sticka, who became ill yesterday afternoon and was unable to make the boat ride over, so I'm going what I did 20 years ago, I'll present a staff report to the Planning Commission.

Anyways, such a request is from Liberty Dialysis Hawaii for a proposed tenant improvement to an existing retail building, Molokai Drug Store building. The improvement calls for relocating an existing window and door, and expanding the existing space, which is currently 2,097 square feet, into an adjacent area, so the total space, tenant space, would be 3717 square feet in the existing 10,065 square-foot Molokai Drug Store building.

The parking situation was resolved with the Planning Department last month. And the valuation of the proposed action is \$300,000.

We find that the proposed action is not a development as it qualifies as repair and maintenance or interior alterations to existing structures. There will not be any adverse environmental or ecological effects on the special management area. It is consistent with community plan zoning and, therefore, we are recommending your concurrence with the finding for an SMA exemption. We have Marie Naganuma here today representing Liberty Dialysis Hawaii, as well as the Mikami family, who are the landowners so if there are any questions.

Chair Sprinzel: No. Thank you, Clayton. There seem to be no questions.

Ms. Zhantell Dudoit: I'd like to move to approve the SMA exemption for this item.

Chair Sprinzel: Zhantell and second is Doug. Any discussion?

Mr. Yoshida: I guess we did call for public testimony at the beginning, but I don't know if there's anybody who --

Chair Sprinzel: Oh, yes.

Mr. Yoshida: I forgot to mention that we did receive a letter of support for the project from Councilmember Stacy Crivello. You should all have a copy of the letter from Councilmember Crivello.

Chair Sprinzel: Is there any public testimony on this matter? Thank you.

Mr. William Akutagawa: My name is William Akutagawa. I am a patient at the Molokai dialysis facility, and I wish to support the exemption for several reasons. One of them is that we've been waiting a long time for this expansion, and in the course of waiting for that, we have 28 patients, of which I am one of them, and I think you should consider that there are many more people out there from Molokai that eventually may face end stage renal disease. So with that in mind, I wish to ask for the exemption and request that the Planning Commission approve this. Thank you.

Chair Sprinzel: Thank you, sir. Anymore public testimony? There being none, public testimony is now closed. We'll have a vote, please.

There being no discussion, the motion was put to a vote.

It has been moved by Commissioner Dudoit, seconded by Commissioner Rogers, then unanimously

VOTED: to approve the SMA exemption for this item.

Chair Sprinzel: Carried unanimously. Thank you very much. That was easy, wasn't it?

Chair Sprinzel read the following agenda item into the record:

E. SPECIAL MANAGEMENT AREA MINOR PERMIT

MR. ARTHUR PARR, consultant on behalf of GERALD and NANCY SWARTZ, requesting a Special Management Area (SMA) minor permit for the construction of a proposed 1,492 sq. ft. single family residence , 280 sq. ft. lanai, 310 sq. ft. balcony, 252 sq. ft. ground level garage, septic system, leach field, utilities, driveway, and related improvements at 2238 Kamehameha V Highway, TMK: 5-4-017: 030, Kawela, Island of Molokai. (SMX 2013/0224) (Valuation: \$220,000)

The Commission may take action on this request.

Mr. Yoshida: Thank you, Mr. Chairman and Members of the Planning Commission. This assessment application was filed on June 25, 2013 by Arthur Parr, on behalf of Gerald and Nancy Swartz, for a property in the interim district at Kawela. The project consist of a single-family residence and other -- also installation of a septic system, leach field, utilities, and a driveway.

A letter from the State Historic Preservation Division states, "With the exception of a single shard of 19th century glass, no historic properties were found during the survey or within the fill from the excavations, which were all approximately 50-by-50 centimeters in area. All shovel test units were excavated down to the water table between 60 to 80 centimeters below surface. Archaeological monitoring is not recommended for upcoming construction. And based on the lack of findings, we concur with the recommendation."

The department has determined that the proposed single-family residence can be permitted under your shoreline area rules. In terms of the analysis, the valuation of the project is less than \$500,000. It does lie adjacent to the shoreline area, therefore, subject to your shoreline rules. It is located in the flood hazard zone AE, which is a area subject to inundation by the 1% annual chance of flood event generally determined using approximate methodologies. A special flood hazard area development permit is required. It is not anticipated that the project will affect an environmentally sensitive area. With the application of best management practices for shoreline protection, the project will have no significant adverse environmentally, ecological effect taking into account potential cumulative effects. The project is consistent with the objective, policies, and SMA guidelines set forth in Chapter 205A, HRS, and with the county general plan and zoning.

The department is recommending approval of an SMA minor permit subject to six conditions, which we can present at the appropriate time. If there are any questions, we have Mr. Parr here, the architect. He can answer any technical questions you may have about the project.

Ms. Diane Swenson: You know, it says that they have to start by January 31, 2015. How can they get a building permit that soon?

Mr. Yoshida: We -- well, I guess we're giving them two years to initiate construction, and one year to complete construction after initiation because they, you know, they still have to go complete the building permit process, which I'm not sure how long that will take, but initially we're giving them two years. If they need more than two years, then, you know, they could come in -- back for a time extension from the Commission.

Ms. Dudoit: So, Clayton, just to clarify, 'cause we've seen this before, so when we look at the condition no. 5, this is simply saying that from January 31, one year, they have all that time, one year from January 31, to actually initiate the project, so it's not the date of one year to completion, it's one year from January 31 that they can initiate or start the project?

Mr. Yoshida: Yeah. They have two -- oh, sorry. They have one year to start construction, and one year to complete construction after project initiation. So if they initiate the project in, oh, July of this year, they have one year from July of this year to complete the project -- I'm sorry, one year to initiate construction.

Ms. Dudoit: Okay, I have several questions, maybe Mr. Parr can answer for us. First of all, I'll ask all the question and then when we get the answers, I'll explain why. The diagram, in accordance our Chapter 202 and general provisions in special management area permit procedures and assessments, it states here that there are certain criteria that we have to follow, some of which are that when the applicant gives a diagram or a drawing, those should be complete with elevations, square footage. The drawing that we are given, maybe because it's too small, so if somebody has a bigger drawing that we can see, that might help, but I don't see -- well, I see elevation marks, but it also says that it needs to, at some point, state the materials that you're using, and the use of the building, so that you can find in 202-9, none of that information is here. What kinds of material are you using to build this structure?

Mr. Art Parr: The foundations will be -- first of all --

Chair Sprinzel: Could you, please, just state your name. Thank you.

Mr. Parr: Sorry. Sorry, Chairman.

Chair Sprinzel: No, it has to be because, otherwise, it isn't recorded.

Mr. Parr: Yeah, my name is Art Parr, the architect for Mr. and Mrs Swartz. I live here in Kaunakakai. The first living level of the house or the only living level is about eight feet above existing grade, so it's elevated substantially. And the foundations are concrete footings and concrete block piers that are about seven feet high. They're seven feet clear from grade to the underside of existing floor -- underside of the floor. And the rest of the structure is wood frame, wood frame walls, wood trusses for the roof, and we're thinking in terms of metal siding, and composition roofing.

Ms. Dudoit: Thank you. And the contractor for this project?

Mr. Parr: We're dealing with Glen Brake Construction.

Ms. Dudoit: With who?

Mr. Parr: Glen Brigg Construction.

Ms. Dudoit: Okay, and then I don't know if you can answer this, but I'll ask the question in general and then either you or Clayton can. The biggest issue that I have with the information that has been presented to us is, first of all, the way that the description of the project is written, it specifies four different measurements of square footage, 1492 for the square footage of the living space, 280 for the lanai, 310 for the balcony, and 5 -- 252 for the ground-level storage. So if you add-up all those together, that comes out to 2,334 square feet of total construction. That's not including the septic system, leach field, utilities, and driveway. If we take the \$220,000 valuation of the project, and divide that by the amount of total square footage, that would mean you would have to complete the project at a rate of \$94.25 per square foot labor and material. So I'm trying to understand from the department, okay, so further, this is not just only you, but I'm trying to understand from the department, when I go back to our policies and procedure, it directs Mr. Parr and the contractor to come up with a valuation, and I know that they've done this to the best of their ability, but it also goes further to say that the department then takes this proposed valuation and they verify this and the estimate of the total cost or fair market value to be verified by the Director of Public Works and Environmental Management using the building valuation data provided by the International Conference of Building Officials. So I went to that website. As of August 2013, the valuation of a single-family dwelling, in the lowest amount, would be \$110.29 per square footage. That's just for construction labor, that doesn't include materials. So my question and my challenge with this application is to the department maybe, the valuation determined whether or not this project becomes eligible for an SMA minor or major permit. How you can build a house at 2,334 square feet for \$220,000 is remarkable, and I would like to know how the department came about with that figure to solidify that this could be passed as an SMA minor permit.

Mr. Yoshida: I guess we're taking the valuation of the licensed architect. If it is close, the threshold between the minor and major, again is the 500,000, so if it is close, then we probably would ask Public Works to check on the valuation close to that \$500,000 threshold.

Ms. Dudoit: It concerns me because I build affordable houses. In Maui County, affordable housing rates range between \$170- and \$300,000, and that's with a maximum of 1100 square feet for a four-bedroom house. So I'm having a really difficult time trying to equalate the value of this property to the immense size and all the things that are entailed - a lanai, a balcony, a driveway, and inclusive of the septic system and all of that, so I'm not actually questioning the integrity of the contractor, but I am questioning how the department calculate these things to be fair to all of our residents because we've seen single-family dwellings in Ranch Camp cost more than this. So when an amount like \$220,000 comes up and I see that amount of square footage and it's not inclusive of the other stuff in here, it sort of -- it's just not factual to me unless there's a whole bunch of material that is going to be donated and the contractor is doing it basically for free, and it's a beachfront property, so I mean I wish that somebody from the department could help me understand. Because it's okay for you -- if this said \$450,000 valuation, I'd probably wouldn't have took the immense amount of time it took for me to research all this stuff, but it said 220. So then I started to go back and I'm questioning whether or not the department does its due diligence in seriously looking at the valuation of the proposed projects and being fair to everybody and not just passing it because it seems like it meets all the other criteria on an SMA minor permit.

Mr. Yoshida: Well, I guess the department will also review the building permit application and there's a valuation on that, and if, you know, there was a major discrepancy, if it's over 500,000, then I guess we'd have to bring it back.

Ms. Dudoit: Okay. So if we were to approve this today, and then because all that building permit stuff happens after we already approve the SMA minor, but if we did that, then these people would have to come back before us if it exceeded the --

Mr. Yoshida: Yeah, if it's a development -- development over \$500,000, then it's a major permit.

Ms. Dudoit: Isn't that kind of unfair though? I mean the -- I guess what I'm getting to, and I'm not trying to delay our meeting, but if your policy states that the Director of the Planning Department and all the public -- I'm sorry, the Public Works is supposed to scrutinize the valuation and use the existing data that is privy to all of us online, and I can see that it doesn't match-up first of all, and why isn't that being done so that it prevents this applicant from having to come back again after the fact? And why are we being made, as Commissioners --

Mr. Yoshida: Well, we're saying that the -- well, I guess the Corporation Counsel has --

Mr. Michael Hopper: I just wanted to clarify, the Public Works valuation is optional. It says, "The applicant's estimates of the total cost or fair market value may be verified by the Director of Public Works and Waste Management." That's not done in every case. You've got rule amendments coming up and you could require that to be done in every case, and I would definitely as the Public Works Director, but that is an option for the department in determining the valuation. It doesn't have to send it in every case. That's why the word "may" appears rather than "shall." So it's up to the department, in an individual case, if they believe this is a valuation they want the Public Works Director to give an evaluation of. Now, if the Commission is not satisfied with the valuation figures or believes the project may have an adverse environmental or ecological effect, it can determine, at this meeting, that they want to require an SMA major permit. That's the Commission's option. That would involve the project going through a public hearing process, notice in the newspaper, as well as notification to various agencies, but you can still condition that the project, just like you can now. Maui has a bigger difference. Maui has minor permits approved by the director. The commission never sees them. Whereas, your Commission sees all of the minor permits. So the difference is actually not substantial -- as substantial as Maui, but your key differences are public notice in the newspaper, notice of neighbors within 500 feet, and also there is agency comments, I think, that weren't necessarily obtained in this case. But this is something that the Commission does have the authority to do. I would urge the Commission come up with a basis, either the valuation has certain problems and that could be a basis, or that the project may have an adverse environmental or ecological effect. But that's certainly an option if you disagree with the department's valuation. But your rules don't require the department, in every case, to go to the Public Works Director and have a separate verification. They allow the department to do that in certain cases and it would be up to the department to explain to you why, in any given case, they decided to not do that or to do that. So just to clarify that in the rules. I think that's important.

Ms. Dudoit: Is there a written documentation or criteria for how the department deciphers which project will be evaluated and which will not?

Mr. Hopper: Not that I know of. I'm not sure if Clayton has one.

Ms. Dudoit: Unbelievable.

Mr. Hopper: Well, it says, "may." I mean it's at the department's discretion, that's what your rules say, so if in your rules you want to clarify that, you certainly could.

Ms. Dudoit: Okay.

Mr. Hopper: But the department has to look at a variety of things before it determines valuation. We just had a case on Maui where there was a challenge of a valuation and the planning commission on Maui upheld the valuation, it was accepted. The requirement, initially, is that the valuation has to be provided by a licensed architect, engineer, or contractor. So the department, I think, in many cases, and Clayton can clarify, has to rely on that because that person is putting their reputation on the line by signing that document and saying based on my license -- based on me being a licensed architect, here's the valuation. So that's something that your rules require. Again, if you want to require further specifications on the valuation and things like that, the department that certainly -- or the Commission can certainly do that. And, like I said, recently we had an appeal on Maui of a director decision on a valuation and that's still being resolved right now. So I can't say we haven't had issues on those before, and there's case law on issues like that before, so that is an area because the state law defines valuation as the replacement value of the structure, that's something that can be, frankly, can be, particularly in commercial projects, residential less though, can be estimated in a variety of ways. You could have multiple bids for a project that vary greatly that are all honest bids. And so that's the challenge that I think the department might have. But Clayton can maybe explain to you, in this case, what went on. I don't know the background of this case but can just explain, in other cases, valuation has been placed at issue, so that's certainly true.

Ms. Dudoit: No, Clayton, that's fine. I don't think -- I don't think my issue was with this applicant, you know, personally, just with this project. I think the issue just was the valuation and now, for the record, it seems to me that our Commission should look into rewording "may." I think it should be a streamline process where either everybody gets evaluated or nobody gets evaluated, and we just take the word of the licensed architect or contractor, but to say that it's such an open-ended statement that the department has all this power to decide who should and who shouldn't be evaluated, to me, is a bit unfair to the general public. And then I just also wanted to say that I don't think for me, as a Commissioner, questioning the integrity of our professionals or you is in my best interest or something that I started out to do. I think what it is is, as a Commission, we are hoping that the department does its due diligence in being fair, straight across the board, so that when issues like this come up before us, we are able to make the best, most fair, and informative decision based on the best policies that can be provided to our community. So that's it.

Chair Sprinzel: At this moment, is there any public testimony on this matter? There being none, public testimony is now closed. Commissioners, anymore views?

Ms. Swenson: I sold them the lot so I'm going to recuse myself from voting.

Chair Sprinzel: The lot looks exactly like mine looked 25 years ago. I love all that kiawe - not.

Ms. Dudoit: I'd like to move to approve.

Chair Sprinzel: Yes, I think basically we have no objections to this project whatsoever, but I do feel that 220,000 wouldn't buy you that. If you went out in public and asked for bids on this, nobody would do it, and if they did, they'd be bust in a week, I tell ya. Okay, folks.

Mr. Jennings: I'll second.

Chair Sprinzel: You'll second it, yes? Any --

Mr. Hopper: Just to clarify that it was approve as recommended by the department with the recommended conditions? Okay.

Chair Sprinzel: Yes.

Ms. Dudoit: Just discussion, yeah, 'cause I just wanted to state something for record?

Chair Sprinzel: Well, yes. We now have discussion. Yes.

Ms. Dudoit: So for the record, I would just like to say that I will vote to approve this matter based on the integrity of our architect and our contractor and the valuation that was set forth and put on the application. And I will also, for the record, like to state that it is my understanding that the department, if at such time the valuation exceeds the 500,000, this Commission will be able to reexamine the applicaton and that it will come before us again.

Chair Sprinzel: You've got him thinking.

Ms. Hopper: You would need to state that as a specific condition. I mean the rules require a valuation be determined at the time of approval; the challenge being that, I mean there's no other time where they would need to, as I understand it and Clayton can verify this, I don't know any other time where they need to provide the department with a valuation. I don't think they provide you with a final cost for he project at any point. Will the department get that at some point in the future? I mean if they give you -- they would give you a valuation for building permit purposes, but once construction -- I mean you're talking about construction being complete, or the department, at some point, learning about the figures because I don't think anyone gives like as-built plans to the department or any county department for verification. I mean they would have a real property tax assessment eventually, but that's not something that the Commission generally looks at. So I'm not sure when the department would be getting that information. I mean it may be better advice to you to scrutinize the project now and determine if this is an acceptable valuation or not, and if you've got issues, to require a major permit now, at this point, because I'm

not sure, and Clayton can maybe verify, I'm not sure if there's any other point where they would have to provide any county agency a valuation other than this.

Ms. Dudoit: Okay. Well, I just included that because I thought that's what you said when we were having our discussion that if it went to the building permitting process and there was a, you know, grotesque elevated amount beyond the 500,000 that we would be able to hear the project again. But if that's not something, then that's fine and I'll, you know, take that off the record, but that was just something I thought I heard you say.

Mr. Yoshida: Yeah, the department will be reviewing the building permit application, there is a valuation on the building permit application. If there is a wide discrepancy, we're basing it -- I mean we're recommending approval based on representations made.

Chair Sprinzel: Okay, folks, time for a vote.

There being no further discussion, the motion was put to a vote.

It has been moved by Commissioner Dudoit, seconded by Commissioner Jennings, then

VOTED: to approve the recommendation of the department with the recommended conditions.

(Assenting: B. Buchanan; R. Davis; Z. Dudoit; M. Jennings; D. Rogers; S. Tancyo)

(Recused: D. Swenson)

(Excused: J. Kalanihuia)

Chair Sprinzel: Carried unanimous -- well, not quite unanimous. Oh, you're recusing yourself. Thank you. Enjoy your home.

Unidentified Speaker: ...(inaudible)...

Chair Sprinzel: You'll have to speak in front of a microphone, I'm afraid, you want to speak. Okay, it's time for the -- well, I see they've omitted the chairman's report this time, so we won't have a chairman's report, we'll have a director's report.

F. DIRECTOR'S REPORT

- 1. Agenda Items for the February 12 , 2014 meeting.**
- 2. Pending Molokai Applications Report generated by the Planning Department (see Appendix A)**

3. Closed Molokai Applications Report generated by the Planning Department (see Appendix B)

Mr. Yoshida: Thank you, Mr. Chair. Our next meeting is scheduled for February 12, which is three weeks from today. We have at least your review of the draft environmental assessment for the high school science building, a Department of Education project. And we may have a few other items, which I'm not aware of at this time but --

Chair Sprinzel: The meeting will, of course, be at the DAGS --

Mr. Yoshida: Yeah, I think --

Chair Sprinzel: DAGS conference room in the state building where we'll have proper chairs to sit in.

Mr. Yoshida: For the March 12, we have scheduled the public hearing on your proposed rule amendments. Remember three, four years ago, there was a rules committee when, I believe, Steve Chaikin was Chair of the Planning Commission, and they, together with Deputy Corporation Counsel, they reviewed all of your rules and made suggestions, and we went through this, a number of iterations, now we're ready to bring it forward for public hearing. And the next meeting will be at the DAGS conference room. We were able to use the facility today because Parks delayed their start of their project by a month, so they're supposed to start construction next month here. We've distributed the list of pending and closed Molokai applications if you have any questions on either report. If not, that concludes our report.

G. NEXT MEETING DATE: February 12, 2014

H. ADJOURNMENT

Chair Sprinzel: Thank you, Commissioners. Thank you all for coming today. I hope you'll all be there next time because it's quite important, you know, the Molokai High School is the center of our island's everything, really, so it's important we discuss it. Thank you. I call the meeting adjourned.

There being no further business brought before the Commission, the meeting was adjourned at 12:34 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

John Sprinzel, Chairperson
Michael Jennings, Vice-Chairperson
Billy Buchanan
Ron Davis (Arrived at 12:09 p.m.)
Zhantell Dudoit
Doug Rogers
Diane Swenson
Sherry Tancayo

Excused

Janice Kalanihuia

Others

Clayton Yoshida, Planning Program Administrator
Michael Hopper, Deputy Corporation Counsel