

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

June 20, 2008

**Committee
Report No.**

08-66

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

Chair and Members:

Your Land Use Committee, having met on June 4, 2008, makes reference to County Communication No. 05-151, from Councilmember Jo Anne Johnson, transmitting the following:

1. A draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4 GOLF COURSE PARK DISTRICT FOR PROPERTY AT KAA NAPALI, MAUI, HAWAII".

The purpose of the draft bill is to change the zoning from A-2 Apartment District to PK-4 Golf Course Park District for TMK: (2) 4-4-13:003 (Parcel 3), comprising approximately 34.386 acres; TMK: (2) 4-4-08:009 (Parcel 9), comprising approximately 39.647 acres; TMK: (2) 4-4-08:010 (Parcel 10), comprising approximately 1,391.547 square feet; and TMK: (2) 4-4-08:014 (Parcel 14), comprising approximately 1.009 acres, in Kaanapali, Maui.

2. A draft resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A BILL TO CHANGE THE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4 GOLF COURSE PARK DISTRICT FOR PROPERTY AT KAA NAPALI, MAUI, HAWAII".

The purpose of the draft resolution is to refer the draft bill to the Maui Planning Commission.

Your Committee notes that the County Communication states that the purpose of the request is "to grant appropriate golf course zoning for approximately 75 acres of the Kaanapali Golf Courses and the surrounding area that currently have apartment zoning", and that the proposed legislation had been introduced at the request of constituents in the Kaanapali area "who wish to ensure that golf course property and adjacent open space are not inappropriately converted to residential use because of improper zoning".

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Your Committee further notes that the PK-4 Golf Course Park District (PK-4 District) was established by Ordinance No. 2031 (1991).

Your Committee further notes that the Council (2005-2007 Council term) referred County Communication No. 05-151 to its Land Use Committee at the Council meeting of April 15, 2005.

By correspondence dated October 5, 2005, the Chair of the Land Use Committee requested that the Planning Director provide a preliminary analysis of the request which would address the following issues: confirmation of ownership of the subject parcels, and the current and historical community plan and land use designations for each parcel; sufficiency of the property descriptions provided; the need for a metes and bounds description, and the appropriate timing for such a description, if needed; Departmental comments concerning the request; and any provision for rezoning property already being used for golf course purposes when the PK-4 District was established. The Chair also requested a proposed Land Zoning map reflecting the requested changes and a map placing the parcels in the context of the surrounding area.

By correspondence dated October 5, 2005, and November 4, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel opine whether any provision had been made, when the PK-4 District was established, for the rezoning of property already being used for golf course purposes.

By correspondence dated November 8, 2005, the Planning Director responded in detail, including the following: that ownership information is being researched; that Department zoning maps reflect that the current zoning for Parcels 9, 10, and 14 is A-2 Apartment District, while Parcel 3 is R-3 Residential District; that it appears that Parcel 3 is actually zoned PK-4 District due to Ordinance No. 2031 (1991); that the Community Plan designation for all four parcels is PK (GC) Park Golf Course, except for small portions of Parcel 3, which are designated Business/Commercial; that the Corporation Counsel is researching the need for metes and bound descriptions, and that if they are necessary, a land surveyor should be hired; and that there is a slight mapping discrepancy that the Department will further research. The Department also provided maps, as well as its analysis of the zoning situation and recommendations, noting that it interprets Ordinance No. 2031 (1991) as automatically changing to the PK-4 District any golf course on lands then designated State Agricultural, County Agricultural, Interim, Residential, or Hotel, but not Apartment zoned lands.

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At its meeting of November 21, 2005, the Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; and a Deputy Corporation Counsel. The Committee noted the presence of Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP, attorney for the Employees' Retirement System of the State of Hawaii (ERS) and Royal Kaanapali Holdings, LLC; Paul Rezens, Senior Vice President and Portfolio Manager, Heitman Capital Management LLC, Real Estate Advisor for the ERS; and Ed Kageyama, PGA General Manager, Kaanapali Golf Courses.

The Committee received public testimony from two individuals. Bob Pure, who is the President, Board of Directors, Kaanapali Royal, and the constituent referenced in the County Communication, supported the request. Mr. Kobayashi opposed the request. He informed the Committee that the ERS is the sole member of Royal Kaanapali Holdings, LLC, which is the title holder for the golf course properties, and that Heitman Capital Management LLC is the manager of Royal Kaanapali Holdings, LLC. Mr. Kobayashi noted that the ERS owes a fiduciary duty to its program beneficiaries regarding the management of its investment assets, and that ERS must, therefore, protect the value of the properties, including their potential for development. He further noted that there are no present plans to develop the properties makai of Honoapiilani Highway (which would include the subject parcels), but that ERS's intent is to preserve flexibility for future development.

The Planning Director advised the Committee of the status of the Department's research, noting that the parcels could not be developed in any event because of the inconsistency between the Community Plan designation and the existing zoning.

The Committee requested that the Board of Ethics be consulted as to whether a conflict of interest exists if the Council considers and votes on an issue, which has the potential to impact the value of assets owned by the ERS.

The Deputy Corporation Counsel advised that a conclusion had not yet been reached as to whether metes and bounds descriptions would be needed. The Planning Director noted that the Department is also researching the zoning of golf course properties mauka of Honoapiilani Highway.

By correspondence dated November 28, 2005, the Chair of the Committee requested that Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP, provide a

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copy of the appropriate conveyance documents reflecting the current ownership status of the subject parcels.

By correspondence dated December 1, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel advise whether metes and bounds descriptions should be provided prior to consideration of any proposed legislation by the Maui Planning Commission; respond to the request dated October 5, 2005; and provide an opinion on the applicability of Ordinance No. 2031 (1991), Section 8, to the zoning of the subject parcels.

By correspondence dated December 1, 2005, the Chair of the Committee requested that the Board of Ethics provide an advisory opinion on whether the Council and/or the Committee have a conflict of interest that would preclude recommendations and action upon a Change in Zoning request involving property owned by an entity whose sole member is the ERS.

Your Committee notes that the Board of Ethics considered the request at its December 14, 2005 meeting.

Your Committee is in receipt of an Interim Ruling dated December 29, 2005, from the Board of Ethics, advising that the Board finds no conflict of interest that would preclude members of the Council or the Committee from recommending and/or taking action on a Change in Zoning request involving property owned by the ERS.

By correspondence dated December 30, 2005, Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP, provided the first page of a Commissioner's Deed dated September 9, 2003, conveying to Royal Kaanapali Holdings, LLC, Parcels 3, 9 and 10. Mr. Kobayashi stated that it appeared that title to Parcel 14 is currently held by Amfac Property Investment.

By correspondence dated January 3, 2006, the Chair of the Committee transmitted to Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP, a copy of the Board of Ethics' Interim Ruling.

By correspondence dated January 18, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel respond to the outstanding requests.

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By correspondence dated January 23, 2006, the Chair of the Board of Ethics transmitted Advisory Opinion No. 05A-10, adopted January 11, 2006, opining that Council members who participate or vote on the rezoning of the subject property would not have a conflict of interest.

By correspondence dated February 2, 2006, the Chair of the Committee transmitted a copy of Advisory Opinion No. 05A-10 to Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP.

By correspondence dated April 4, 2006, the Chair of the Committee again requested that the Department of the Corporation Counsel respond to the prior requests for a written opinion.

At its meeting of November 29, 2006, the Committee recommended that County Communication No. 05-151 be referred to the Council Chair for the term beginning January 2, 2007, for a recommendation as to referral or other disposition.

By correspondence dated December 5, 2006, the Chair of the Committee requested a complete copy of the Commissioner's Deed from Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP.

By correspondence dated December 7, 2006, Councilmember Johnson transmitted undated correspondence from Peter Grieve, expressing strong support for the proposed land use change.

By correspondence dated December 29, 2006, Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP, transmitted a copy of the Commissioner's Deed.

At its meeting of January 5, 2007, the Council referred County Communication No. 05-151 to your Land Use Committee (County Communication No. 07-6).

By correspondence dated January 25, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel respond to the prior requests for a written opinion.

By correspondence dated April 17, 2007, Lisa Cuvelier, Assistant to Norman Nouskajian, transmitted correspondence of the same date from Mr. Nouskajian in support of the request.

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By correspondence dated April 25, 2007, Keith Hamilton submitted testimony in support of the request.

By correspondence dated April 27, 2007, Hugh O'Reilly submitted testimony in support of the request.

By correspondence dated May 23, 2007, Roger Winkelman submitted testimony in support of the request.

By correspondence dated June 28, 2007, the Department of the Corporation Counsel opined that Ordinance No. 2031 (1991) incorporated an "automatic" zoning provision that rezoned certain lands PK-4 Golf Course Park District. Noting that the Planning Director had determined that one of the subject parcels, Parcel 3, was zoned PK-4 Golf Course Park District pursuant to Section 8 of Ordinance No. 2031 (1991), the Department concluded that Parcel 3 may be omitted from the draft bill.

The Department also opined that properties recorded in Land Court do not need a metes and bounds description to be sufficiently described for zoning purposes, and recommended that copies of the Land Court maps relating to the subject properties be obtained and provided to the Maui Planning Commission for its information.

By correspondence dated June 29, 2007, the Chair of your Committee transmitted a copy of the Department of the Corporation Counsel's June 28, 2007 response to Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP.

By correspondence dated July 3, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel review and approve a revised draft resolution (attaching a revised draft bill), based on the Department's conclusion that Parcel 3 may be omitted from the draft bill.

By correspondence dated July 20, 2007, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A DRAFT BILL TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4 GOLF COURSE PARK DISTRICT FOR PROPERTY SITUATED AT KAA NAPALI, MAUI, HAWAII". The revised proposed resolution deletes Parcel 3 from the attached revised draft bill, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4

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GOLF COURSE PARK DISTRICT FOR PROPERTY SITUATED AT KAANAPALI, MAUI, HAWAII”.

By correspondence dated July 23, 2007, the Chair of your Committee requested that the Planning Director review the tax map key numbers and descriptions in the revised draft bill for accuracy; provide a copy of the Land Court maps for the subject properties; explain the steps being taken by the Department of Planning to correct the R-3 Residential District designation for Parcel 3 on the Department’s zoning maps; explain how the “slight discrepancy between Map #960 and current zoning maps” has been resolved; and revise the proposed Land Zoning maps in light of the conclusion that only three of the four parcels will be subject to the Change in Zoning request.

By correspondence dated August 1, 2007, the Chair of your Committee transmitted to Derek Kobayashi, Esq., Goodsill Anderson Quinn & Stifel LLP, a copy of the July 23, 2007 request to the Planning Director, which contains as an attachment the July 20, 2007 response received from the Department of the Corporation Counsel.

By correspondence dated September 20, 2007, November 20, 2007, and April 1, 2008, the Chair of your Committee requested that the Planning Director respond to the July 23, 2007 request.

By correspondence dated June 2, 2008, Peter Grieve and Don and Diane Weston submitted separate pieces of testimony in support of the request.

By correspondence dated June 3, 2008, Aaron and Cathi Read, and Dwight and Vicki Hanger submitted separate pieces of testimony in support of the request.

By correspondence dated June 4, 2008, Teresa Bathey, Monica Balog, John and Dawn Balog, and Bob Bathey submitted separate pieces of testimony in support of the request.

By correspondence dated June 4, 2008, the Planning Director: (1) confirmed that the tax map key numbers contained in the revised draft bill are correct and that the descriptions contained therein are appropriate; (2) transmitted a copy of the relevant Land Court maps; (3) noted that, as an interim measure, the Department had revised the existing zoning map to reflect that Parcel 3 was rezoned PK-4 Golf Course Park District pursuant to Section 8 of Ordinance No. 2031 (1991), and that the corrected zoning would then be incorporated into the digital mapping project currently being undertaken by the

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Department; (4) advised that the “slight discrepancy” between Land Zoning Map No. 960 and the current zoning maps would be resolved as part of the digital mapping project; and (5) transmitted revised zoning maps.

At its meeting of June 4, 2008, your Committee met with the Planning Director; a Planner, a Geographic Information Systems (GIS) Analyst, and a GIS Technician from the Department of Planning; the Deputy Director of Public Works; and a Deputy Corporation Counsel.

Your Committee received testimony from two members of the public in support of the proposed resolution.

The Planner provided an historical overview of the land use designations for the subject parcels and surrounding properties. She advised that the Department of Planning supports changing the zoning for the subject parcels from A-2 Apartment District to PK-4 Golf Course Park District to provide consistency with the existing use and to ensure that the existing use continues, unless and until the Council makes a policy decision to approve a change in the use and enacts a corresponding Change in Zoning ordinance.

The GIS Analyst and GIS Technician provided a visual display of the subject property, surrounding properties, and their respective land use designations.

Noting previous concerns raised by the ERS, your Committee inquired whether an ERS representative was present and able to provide comments. No ERS representative appeared.

Your Committee noted a technical error in the description of one of the parcels in the revised proposed resolution and in the attached revised draft bill. Your Committee voted to correct the error.

Your Committee voted to recommend adoption of the revised proposed resolution.

Your Committee is in receipt of a revised proposed resolution incorporating the requested revisions.

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Your Land Use Committee RECOMMENDS that Resolution No. _____, as revised herein and attached hereto, entitled "REFERRING TO THE MAUI PLANNING COMMISSION A DRAFT BILL TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4 GOLF COURSE PARK DISTRICT FOR PROPERTY SITUATED AT KAA NAPALI, MAUI, HAWAII", be ADOPTED.

Adoption of this report is respectfully requested.

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