

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

March 16, 2016

Council Chamber, 8th Floor

CONVENE: 1:31 p.m.

PRESENT: VOTING MEMBERS:
Councilmember Robert Carroll, Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran (in 1:33 p.m.)
Councilmember Don Couch
Councilmember Stacy Crivello

EXCUSED: VOTING MEMBERS:
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Don S. Guzman

STAFF: Scott Jensen, Legislative Analyst
Raynette Yap, Committee Secretary

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

ADMIN.: William Spence, Director, Department of Planning
Sybil Lopez, Staff Planner, Department of Planning
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

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

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee Meeting on March 16, 2016 will come to order. I'm Councilmember Robert Carroll, Chair of the Land Use Committee. First of all, may I request if anybody has anything makes noise, please turn it off or put it on the silent mode. With us this morning we have Committee Members, Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR CARROLL: Don Couch.

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COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR CARROLL: And, Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR CARROLL: We have from Department of Planning, Mr. Will Spence; Jennifer Oana, Deputy Corporation Council; Raynette Yap, Committee Secretary; and, Scott Jensen, our Legislative Analyst. We have a single item on our agenda today. It involves a request for a Change of Zoning from Interim District to R-3 Residential District for 14.59 acres in Kawela, Molokai, Hawaii, consistent with Molokai Planning Commission recommendations. For individuals who will be testifying in the Chamber, please sign up at the desk located in the 8th floor lobby, just outside the Chamber door. Testimony will be limited to items on the agenda today. Pursuant to Rules of the Council, each testifier will be allowed up to three minutes. When testifying, please state your name and the organization you are representing if any. Mr. Jensen, do we have anybody signed up for testimony?

MR. JENSEN: Not currently.

CHAIR CARROLL: Hana, do you have anyone signed up for testimony this afternoon?

MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR CARROLL: Thank you. Molokai, do you have anybody signed up for giving testimony this afternoon?

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR CARROLL: Thank you. Lanai, do you have anybody waiting to give testimony this afternoon?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR CARROLL: Thank you. Seeing no one to give testimony today, if there's no objection, we will close public testimony.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: And with us we have, Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good afternoon, Chair.

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**ITEM NO. 16: CHANGE IN ZONING FOR WEYMOUTH KAMAKANA, SR.
(KAWELA) (CC 15-215)**

CHAIR CARROLL: The Committee is in receipt of County Communication 15-215, from Councilmember Stacy Crivello, transmitting a proposed resolution to refer to the Molokai Planning Commission a proposed bill to grant a Change in Zoning from Interim District to Agricultural District, 14.59 acres at Kawela, Molokai, Hawaii, identified for real property tax purposes as tax key [sic] map key (2) 5-4-001; [sic] 029. I'd like to call the Members' attention to correspondence dated January 15, 2016, from the Planning Director, transmitting the Molokai Planning Commission's findings and recommendations on the proposed Change in Zoning bill referred by Resolution 15-111. Finally, please note the answer to my request, correspondence dated March 4, 2016, from the Department of Corporation Counsel, transmitting a proposed bill entitled A Bill for an Ordinance to Change Zoning from Interim District to R-3 Residential District (Conditional Zoning) for 14.59 acres at Kawela, Molokai, Hawaii. The purpose of the proposed bill is to grant a request for a Change of Zoning from Interim District to R-3 Residential District for the property, consistent with the Molokai Planning Commission recommendation. Planning, do you have an opening statement?

MR. SPENCE: Okay. Thank you, Mr. Chairman. This proposed rezoning comes via reso from the County Council. This is a...the property is Interim zone which you understand we cannot subdivide Interim-zoned land. The family needs to settle some estate matters and is requesting this rezoning. Since the original resolution requested rezoning to the Ag District so they could do two-acre lots, the, upon closer look at the property and the community plan, the community plan actually says Single-Family Residential. So in keeping with the Council's original resolution and...but also keeping with the community plan, we thought let's propose R-3 Residential that follows the community plan but making minimum lot size two acres that follows the Council's resolution. And, you know, when we went to public hearing on Molokai, there were no objections. There was no concerns issued about this. As you know, that community, if they have a concern about things, they will let you know so I feel very good about recommending approval for this as did the Molokai Planning Commission.

CHAIR CARROLL: Thank you. Ms. Crivello, since you initiated this action, do you, would you like to make comment at this time?

COUNCILMEMBER CRIVELLO: Yes. Thank you, Chair, and thank you, Director. I appreciate your assistance through this process. I know we have enough to put this through and I hope my colleagues will support passage of this, to recommend passage on first reading. And I'd like to give a little bit background. These are lands that have gone many, many generations, generations before. And our kupuna, Weymouth Kamakana. As a matter of fact today, just a couple of weeks ago, he was medevaced to Queen's Hospital. But when he came out to seek my assistance, it was...what a process we have to go through so that I can settle matters before I'm hala or I leave

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this Earth, you know. And it has been quite a process but thanks to the assistance of Director's, Will, we've been able to come to this conclusion. And the other concern matter I have for our island we're Interim. So Interim makes it hard for old timers or the kupuna like our uncle here who wants to take care of the matter and make sure that the younger generation have their full share and he can take care of what he needs to take care from his side. So the eventual is the hopes to subdivide but cannot do that until you have your proper zoning.

MR. SPENCE: Right.

COUNCILMEMBER CRIVELLO: And so, you know, he shares how he hired lawyers to help him to get this resolved and paid out thousand and thousands of dollars just to tell him, oh we cannot do anything because you're Interim zoning. And so then, he comes to me as a Councilmember to see how we can help. So, as it states here, we're trying to have it in accordance so that we don't have to go through an amendment to the community plan and push forward so that he can finish up what he wants to complete. And, you know, this is somewhat like a kuleana land, but, you know, it's very generational. These are original Molokai family so I just hope we can put things in perspective for Kamakana and Grambusch family can move forward with...and hope we can improve on the process so it doesn't take over a year for us to get this resolved. And I also wanna thank your Staff, for helping us through and, Chair, I really appreciate your understanding of this matter and you hearing this. Thank you very much.

CHAIR CARROLL: Thank you. Any further discussion? The floor is open. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. So, I was just so...as I read through the minutes of the Molokai Planning Commission and trying to follow the chronological order here, 'cause, sorry I missed the original meeting that came to the, the reso came out of this Council and I was out, perhaps with my ankle or something, I'm not sure. But so I wasn't there for those proceedings so I was trying to read back on how it got to where it is today. So initially, zoning Interim and it was passed out through reso through Council to Ag then it went to Molokai Planning Commission. And in the minutes, somehow it was talking what I just explained, what was presented and then it was a recommendation by your Department to change it to R-3.

MR. SPENCE: Correct.

COUNCILMEMBER COCHRAN: With the condition of the two-acre lots, minimum lot size.

MR. SPENCE: That's correct.

COUNCILMEMBER COCHRAN: And so my...but you can still do the minimum two in Ag. So I'm just trying to figure out why it's almost...and then R-3 allows you further sizing down but you're putting a condition that you can't do that. So I'm just trying --

MR. SPENCE: Correct

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COUNCILMEMBER COCHRAN: --to still figure out why are we moving into R-3 when the Ag zoning already provides...from what the condition is that you're putting on the R-3.

MR. SPENCE: Because we're following the community plan, which says Single-Family Residential. We don't feel we have the option of zoning it Agriculture because the community plan says Single Family.

COUNCILMEMBER COCHRAN: Okay. So just trying to be consistent what's on the existing community plan?

MR. SPENCE: Well, that's unless you change the community plan, that's what we must follow.

COUNCILMEMBER COCHRAN: Okay. And when it was discussed at the Council level previously though, that was not brought, that light wasn't shed on that fact?

MR. SPENCE: Yeah.

COUNCILMEMBER CRIVELLO: Yeah. If you...if I may, Chair? Director, if you recall, that was the first recommendation, to go Ag.

MR. SPENCE: Right.

COUNCILMEMBER CRIVELLO: Yes. And then, after going through the process, you brought it to my attention as well that we're gonna have to deal with the community plan so Agriculture zone was not in line with the Molokai Community Plan.

MR. SPENCE: Yeah.

COUNCILMEMBER COCHRAN: Okay. And then that's when during the Molokai deliberations, that was brought up?

MR. SPENCE: Right.

COUNCILMEMBER COCHRAN: It was more proper to put it into a Residential versus Ag I guess?

MR. SPENCE: Correct.

COUNCILMEMBER COCHRAN: Okay.

MR. SPENCE: And the ideas, I mean it's still...I mean you're following the community plan which we're required by law to do that in the case of rezoning. The...and you can still farm in Residential. You can still do all kinds of stuff that you can do in the Ag District, you can do those things within R-3 Residential so in...the effort here was to follow what the community plan said and it all seemed pretty consistent with the

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Council's reso. And I did discuss it with Councilmember Crivello and we did discuss it with the family members, and they were all good with it.

COUNCILMEMBER COCHRAN: Okay. And so I guess because Molokai is going under their community plan amendments currently, was there any talk in that realm to do the changing somehow? 'Cause the, right, the plan's being looked at as we speak so...

MR. SPENCE: Right.

COUNCILMEMBER COCHRAN: And they wanted it Ag. Could they have gone that route too?

COUNCILMEMBER CRIVELLO: Chair, may I say something on behalf of my community? Councilmember Cochran, the existing community plan is what we're basing this on. We have not accepted the community plan and the land designations all remain the same throughout the discussion. The hope was to get this resolved sooner. And when I say the kupuna would like to have this resolved is recognizing his age and the need for him to put his estate in place for his family. So if we were to wait for the community plan --

MR. SPENCE: Right.

COUNCILMEMBER CRIVELLO: --we're looking over a year. So we're basing this in consultation with the Planning Department and the Planning Commission and why we're dealing with the existing community plan. And, so, it's...we're following the law to say that you can change the zone according to what the community plan has the assignment for that area which is the R-3. It doesn't say Ag.

MR. SPENCE: Right. So for that reason, we came up with Ag at first but until, as we were going through the process and it was discovered it's not Ag, it's R-3. So this is why we're, we've come back with this other resolution for the R-3 and what was brought forward to the Planning Commission, the Molokai Planning Commission.

CHAIR CARROLL: All right, Ms. Cochran?

COUNCILMEMBER COCHRAN: Right now it's community plan Single-Family Residential, currently yeah?

MR. SPENCE: That's correct.

COUNCILMEMBER COCHRAN: Okay. So I guess if I, downzoning, if you wanted to downzone something out of current plan, that's same, I mean, is that allowed? Or I mean is there a difference in up zoning something versus downzoning? Is there some...one more frowned on or, you know, more acceptable than others?

MR. SPENCE: Certainly it's within the authority of the Council to down-designate something and downzone property and all that. In this particular case, this...understanding the expediency of the needs of the family, I don't see the advantage of taking the time to go

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through the longer process or wait for the community plan and see what happens with that. The...if the concern is some kind of proliferation of Residential...I mean, you're not resolving potential impacts. You're not promoting growth by doing this. This is...I mean you're basically allowing, if we went through the big long process, you're basically allowing what this proposed rezoning has right now. So you're not, you wouldn't...neither the community nor the Council nor the island would gain anything by going through a longer process.

COUNCILMEMBER COCHRAN: You mean downzoning would be a longer process?

MR. SPENCE: Well, we'd have to go all the way back around.

COUNCILMEMBER COCHRAN: Well, no. We're, but we're changing this to something else also from what it...

COUNCILMEMBER CRIVELLO: Interim.

COUNCILMEMBER COCHRAN: So...

COUNCILMEMBER CRIVELLO: Interim.

MR. SPENCE: We're not changing anything. We are...

COUNCILMEMBER COCHRAN: Coming in compliance with.

MR. SPENCE: We're coming in the compliance with the community plan.

COUNCILMEMBER COCHRAN: And I guess for the breakdown of what's allowed on R-3, which is, you know, the lots on R-3? So that, how many lots can they get then on this two-acre parcels? I mean how many --

MR. SPENCE: How many --

COUNCILMEMBER COCHRAN: --dwellings or...

MR. SPENCE: --acres total?

COUNCILMEMBER COCHRAN: Because it's now gonna be an R-3 so that's gonna come out to...

MR. SPENCE: It's 14 acres so you would get about 7, maybe 6 after roadways and everything.

COUNCILMEMBER COCHRAN: And if it was Ag?

MR. SPENCE: You would get about the same amount. You would get six, possibly seven if you could finagle the roadway somehow. So it's a wash.

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COUNCILMEMBER COCHRAN: So equal in dwelling --

MR. SPENCE: Equal, correct.

COUNCILMEMBER COCHRAN: --count, or unit count basically.

MR. SPENCE: Correct.

COUNCILMEMBER COCHRAN: Okay. Okay. But I guess it's just the idea of, you know, everyone wants to preserve Ag, keep Ag, Ag, the land designation Ag and it's just --

MR. SPENCE: Well the...

COUNCILMEMBER COCHRAN: --would be nice if it could, I know it's up to the owner and how they would like it but it was odd for me to follow the chronological order of it. Being asked to be Ag and then it...so it seems like more of a downzone from a Residential zoning to Ag anyways but yet it, in the end, it gives the owner or applicant what they want --

MR. SPENCE: Okay.

COUNCILMEMBER COCHRAN: --in the end.

MR. SPENCE: Again, I'm not sure what would be gained. This is also in the Urban District.

COUNCILMEMBER COCHRAN: State Urban.

MR. SPENCE: We're not preserving Agriculture. This is an Urban, State Urban. The community plan is Single Family, that's an Urban designation. And Interim zoning is really, it's an, more of an Urban use but it's supposed to be temporary. And it's been supposed to be temporary since the late '50s. Actually, you could actually look at this as a downzoning 'cause under Interim right now, they could do one house per 6,000 square feet on 14 acres.

CHAIR CARROLL: Ms. Cochran?

MR. SPENCE: So now we're saying, okay two-acre lots.

COUNCILMEMBER COCHRAN: Right. Okay. Well, just, I mean for future, if this came up in another scenario, I guess, it's okay to do, I mean is it okay to downzone? I guess, I don't know if that's a Corporation Counsel question or a Planning Department question. Is it...

MR. SPENCE: I mean, the Council has the authority to propose downzoning, I mean that's certainly within your purview. You have to go to the process but...and...

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COUNCILMEMBER COCHRAN: Right, if it's a downzoning from the existing community plan then you go community plan amendment and --

MR. SPENCE: Yup.

COUNCILMEMBER COCHRAN: --all of those --

MR. SPENCE: You have to do all that.

COUNCILMEMBER COCHRAN: --hurdles and whatever. Okay.

MR. SPENCE: And the...

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Okay. No I just thought Mr. Spence had further. And then I guess on a...Interim is taxed how? If you just know that real quickly. I know it's, might be off something.

MR. SPENCE: It was passed when I think...

COUNCILMEMBER COCHRAN: No, taxed.

MR. SPENCE: Oh taxed.

COUNCILMEMBER COCHRAN: How do you tax Interim land?

MR. SPENCE: I don't know, you'd have to ask the tax people.

COUNCILMEMBER COCHRAN: Okay.

MR. SPENCE: Probably Unimproved Residential. I'm guessing.

COUNCILMEMBER COCHRAN: Okay.

CHAIR CARROLL: All right.

COUNCILMEMBER COCHRAN: Okay. Thank you.

CHAIR CARROLL: Ms. Baisa, followed by Mr. Couch. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, I have read the materials that are in our binder as well as the Molokai Planning Commission minutes, and I've had the opportunity to discuss this a little bit with Ms. Crivello, and I really think that this is something that I would like to see us get out of Committee today. I'd like to support it. I don't see that this is going to cause any major changes or give anybody

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an wonderful advantage but I know the advantage that is really important, that is to take care of a kupuna who would like to settle their estate affairs while he's still alive. And I understand how important that is to the family, and I think that the folks on Molokai, I know the Molokai Planning Commission well and spend many, many hours watching them on TV. Sometimes I'm really grateful that I can watch them on TV. It must be very difficult to sit there for hours and hours. But they're very, very dedicated and they spend a lot of time looking at detail in trying to make sure that things are protected on Molokai. So with their recommendation, Chair, and that of our colleague from Molokai, I feel very comfortable in supporting this. Thank you.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Yeah, I too can support this. Just gotta remind the Members that Interim as Mr. Spence said, it kinda follows what the community plan says. It's Interim to what the community plan says but in the meantime, until you get out of Interim, you can have 1 home for every 6,000 square feet so for the 14,000...1,400 [sic] acres, it would be a huge subdivision. So this is certainly not gonna add density 'cause it's gonna be the same as it...Ag. And I believe the issue was the Department or so whoever made the original reso thought that the land was community plan Ag when it wasn't. It was a community plan Single Family. So we're just following the community plan in this case. Thank you.

CHAIR CARROLL: Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. I was trying to understand where Councilmember Cochran with her inquiries and I'd like to say that it was going through all the steps. We've started this since last year I think or the year before, September. And we were hoping to get it resolved by the end of 2015. And now there seems to be a stronger push for expediency. And again Interim, thinking it was just fitting in with Ag but it's not, it's Single, it's a Single Family and come back to that so that we don't have the long, drawn-out process with dealing with the amendments to the community plan or to wait for the new community plan. And if this was not something that the residents would want, they certainly would have stepped forward at the Planning Commission or the phones would ring off, might ring off the hooks as they say in my office. So, you know, if I can hear your recommendation, I certainly hope you would encourage passage of this. Thank you, Chair.

CHAIR CARROLL: Further discussion? Any further discussion?

COUNCILMEMBER COUCH: Recommendation?

CHAIR CARROLL: Thank you. The Chair will entertain a motion to recommend passage on the first reading of the proposed bill entitled A Bill for an Ordinance to Change Zoning from Interim District to R-3 to [sic] Residential District (Conditional Zoning) for 14.56 [sic] Acres at Kawela, Molokai, Hawaii; incorporating any nonsubstantive revisions and filing of County Communication 15-215.

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COUNCILMEMBER CRIVELLO: Chair, so move.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: Been moved by Ms. Crivello, seconded by Mr. Couch. Discussion? All those in favor of the motion, signify by saying "aye."

COUNCILMEMBERS: Aye.

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

VOTE: AYES: Chair Carroll, Councilmembers Baisa, Cochran, Couch, and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino and Councilmember Guzman.

MOTION CARRIED.

ACTION: FIRST READING of bill, **RECORDATION** of unilateral agreement, and **FILING** of communication.

CHAIR CARROLL: Members, thank you. I will say that I appreciate your participation and especially Member Cochran's concern. Interim zoning is a headache that has been put on our people because of actions of previous Councils way back. It should never have happened in the first place and now we're having to take care of it. So I'm very happy when we can go over there and we can address and make things right for our people and I appreciate it. Thank you very much. Having no further business --

MR. SPENCE: Mr. Chair?

CHAIR CARROLL: --and with no objections...

COUNCILMEMBER COUCH: Whoa, whoa, whoa, Mr. Chair.

CHAIR CARROLL: Oh, excuse me.

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MR. SPENCE: Just one comment. I would like to recognize Staff Planner Sybil Lopez who took this reso when it came down and ran with it and processed it the whole way through. I think she did an excellent job.

COUNCILMEMBER BAISA: Thank you.

CHAIR CARROLL: Now, having no further business, this meeting stands adjourned.
...*(gavel)*...

ADJOURN: 1:58 p.m.

APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

lu:min:160316:acqp

Transcribed by: Ann Carmel Q. Pugh

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CERTIFICATE

I, Ann Carmel Q. Pugh, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 28th day of March, 2016, in Kula, Hawaii



Ann Carmel Q. Pugh