

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

July 13, 2016

Council Chamber, 8th Floor

CONVENE: 1:32 p.m.

PRESENT: VOTING MEMBERS:
Councilmember Robert Carroll, Chair
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Stacy Crivello

EXCUSED: VOTING MEMBERS:
Councilmember Don Couch
Councilmember Don Guzman

STAFF: Scott Jensen, Legislative Attorney
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
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Colleen Suyama, Munekiyo Hiraga
Plus (3) Others

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

CHAIR CARROLL: . . .(gavel). . . This Land Use Committee meeting of July 13, 2014 [sic] will come to order. I'm Councilmember Robert Carroll, Chair of the Council's Land Use Committee. May I request first that anybody has any cell phones or anything that makes noise, please turn it off . . .(coughs). . . excuse me. Voting Members, this morning, we have our Vice-Chair, Mr. Victorino.

VICE-CHAIR VICTORINO: Good afternoon, Mr. Chair.

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CHAIR CARROLL: Good afternoon. And we have Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR CARROLL: Afternoon. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, good afternoon, Chair.

CHAIR CARROLL: Afternoon. And Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR CARROLL: Thank you. Excused today are Don Couch and Don Guzman. For Executive Branch, we have Will Spence our Planning Director.

MR. SPENCE: Good afternoon, Chair.

CHAIR CARROLL: Jennifer Oana our Deputy Corporation Counsel.

MS. OANA: Good afternoon, Chair.

CHAIR CARROLL: Afternoon. And we have...coming, I think we're going to have Charles Nunes, Jr. and Colleen Suyama our consultant for Charles and Angela Nunes. Committee Staff, we have Raynette Yap our Committee Secretary and Scott Jensen our Legislative Analyst. Today, we have a single item on our agenda a proposed Community Plan Amendment and Change in Zoning for 0.049 acres in Lahaina, Maui. Assisting us this morning with the Hana District Office is Dawn Lono.

MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office.

CHAIR CARROLL: Thank you. Do you have anybody waiting to give testimony?

MS. LONO: There is no one waiting to testify.

CHAIR CARROLL: Thank you. Molokai, are you there?

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?

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

CHAIR CARROLL: Thank you. For individuals who will be testifying in the Chamber, please sign up at the desk located at the eight-floor lobby just outside the Chamber door. If you will be testifying from the remote sites, please sign up at the Council staff at that

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location. Testimony will be limited to the items on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes. When testifying, please state your name and the name of any organization you are representing. Mr. Jensen?

MR. JENSEN: Mr. Chair, there are no testifiers currently present.

CHAIR CARROLL: Members, we have no testifiers in the Chamber. Is there anybody who wishes to come forward? Seeing none, and we have none at the remote sites. No objections, we shall close public testimony.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Public testimony is now closed.

ITEM NO. 20: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR 0.049 ACRE; CHARLES JAMES NUNES, JR. AND ANGELA MARIE NUNES (LAHAINA)
(CC 16-97)

CHAIR CARROLL: Councilmember Baisa, as the Member who introduced this resolution, do you have any opening remarks?

COUNCILMEMBER BAISA: Chair, I just want to say that, you know, was my pleasure to introduce this legislation on behalf of the Nuneses. I do not know Mr. Nunes very well, but I am an old and dear friend of his mother and her family, and so they felt comfortable in coming to ask me. And I looked into it and spoke with the consultants and I felt comfortable in moving it forward. So let's hope that this is something we can do. I think it would be very beneficial. Thank you.

CHAIR CARROLL: Thank you. Members -

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR CARROLL: --the applicant is going to give a brief presentation.

VICE-CHAIR VICTORINO: Before you do that, I would like to disclose --

CHAIR CARROLL: Oh.

VICE-CHAIR VICTORINO: --a possible conflict of interest. Chuck Nunes and I are second cousins. And, you know, because of the close proximity of the family, I would like to make sure that there is no chance of any conflict of interest issue being brought up at a later date. So I want to disclose that to leave it to you and the Members to decide if I should recuse myself or not. Whichever way you decide, Mr. Chair, I have no problem whatsoever. But I just wanted that on the record.

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CHAIR CARROLL: Thank you very much, Mr. Victorino. I find that there is no conflict over here, and that you can participate and vote on the item on the agenda today; but thank you. Members, we're going to put down the screen and have a very brief presentation. We will stand in recess for two minutes. . . .(gavel). . .

RECESS: 1:38 p.m.

RECONVENE: 1:40 p.m.

CHAIR CARROLL: . . .(gavel). . . I call this Land Use Committee back to order. Are you ready?

MS. SUYAMA (*PowerPoint Presentation*): Yes. Before starting, the reason why the resolution was requested is that the developers and the Nunes families are trying to finalize the subdivision action that would allow them to do the final transfer of lands between the Nunes family and the Honua Kai Resort, and that's the only reason that this resolution was being requested. During the subdivision action, there was...originally it was thought that there was going to be a request for a five-foot-wide easement for utility purposes. But, as it went through the subdivision process, the easement increased, that it was about between 10 to 12 feet in places; and, because of that, it reduced the area that was useable by the Nunes family. The problem is that when you have the utility easement, they're not allowed to put any kind of structures on that easement and it becomes almost, in their eyes, not useable land; and they wanted to make sure that, in the land exchange, they had equal amount of land in order to effect the transfer of properties so that the North Beach Park, which was developed by the Honua Kai Resort, can be transferred to maintain it as a public park. The request for the resolution is for two bills. One is to change the Community Plan from Park to Business, and the other one is to change the zoning from PK General Park District to B-2 Community Business District. It involves about 0.049 acres of land. This is a shot of the aerial view of the property. For information purposes, Honoapiilani Highway is to the top of the aerial. This is Lower Honoapiilani Highway. And the North Beach Park is located here with the Honua Kai Resort located here. And what it is, is the Nunes property original was where portions of the North Beach Park was developed. And the reason why that was done, in around 2005-2008, between that time, is that when Honua Kai came in for the Special Management Area Permit, one of the conditions was to construct the North Beach Park. And, at that time, the Maui Planning Commission requested that the applicant go into land negotiations to try to exchange the Nunes property which was located here to their property which was located next to the Lower Honoapiilani Road because they wanted one contiguous North Beach Park. This shows...depicts the application before they did a 2008 Community Plan/Change in Zoning application. The pink color is where the Nunes property was originally. Where the green is where Honua Kai originally owned the property. Through the land exchange, after 2008, after the Community Plan Amendment and Change in Zoning was effected, the Nunes property, portion of the property that was to be exchanged was community planned and zoned Business while the remaining portion was for the contiguous North Beach Park was community

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planned and zoned PK Park. This is how the subdivision was eventually going to be effectuated. And what happened is that—this is the easement—in 2008, it was, at that time, assumed that it was going to be a five-foot-wide easement. But, as they went through the whole subdivision process, the utilities needed to have more space; so the easement was changed between 10 to 12 feet in portions. And in order to do something about it, what it is is that they needed to create another six-foot-wide portion of the property for...in order to give...do the land...complete the land exchange with the Nunes family. And all of this is required as part of the land exchange. And eventually, the owners of the Honua Kai Resort intend to transfer the property, the North Beach Park, to the Kaanapali North Beach Association; and, that way, it will always be a public park and it would also be maintained privately and not by the County of Maui. If there are any questions, I'm available to answer anything.

CHAIR CARROLL: Thank you. We will now stand in recess for two minutes while we put up the screen. Stand in recess. . . .(gavel). . .

RECESS: 1:45 p.m.

RECONVENE: 1:47 p.m.

CHAIR CARROLL: . . .(gavel). . . Land Use Committee meeting will come back to order. Planning, do you have any comments?

MR. SPENCE: Thank you, Mr. Chairman. We have no comments at this time.

CHAIR CARROLL: Deputy Corporation Counsel, do you have any comments?

MS. OANA: I do, Chair. I have some comments with regard to the second whereas in the resolution. Did you want to address that now? Okay. So, Members, in front of you is the resolution. And the second whereas is a recital with regards to some history and it states the trust names for Charles and Angela Nunes. When we drafted this resolution, we thought we had the correct name of the trust and then we drafted it. Subsequent to that, we did ask the applicant for trust documents to verify the trust name, and I did get three documents; however, I'm not satisfied with what I received. I'm not comfortable stating that that is the correct trust name. So what I proposed that we do is just amend that second whereas to take out where it says on the third line, trust under that certain unrecorded revocable trust of Charles James Nunes, Jr., dated March 12, 1989. And then also take out from line 5, trustee under that certain unrecorded revocable trust of Angela Marie Nunes, dated March 12, 1989. And instead, after that, replace that with, trustees of their respective trusts. So basically I would like to revise the reso to take out the trust names and just to refer to the Nuneses' trust generally. I don't believe that this change will affect the substance of the resolution.

CHAIR CARROLL: Thank you. Members...

VICE-CHAIR VICTORINO: Do we need...

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CHAIR CARROLL: Now I'm going to --

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR CARROLL: --open the floor for discussion.

VICE-CHAIR VICTORINO: Do we need a motion for that or was that...can be done as a friendly amendment?

CHAIR CARROLL: We can make a motion now. The Chair would accept a motion.

VICE-CHAIR VICTORINO: I'd like to make a motion to amend as stated by Corporation Counsel, so make it cleaner.

CHAIR CARROLL: Thank you.

VICE-CHAIR VICTORINO: You know, and that way when we discussing, we just discussing a clean resolution.

CHAIR CARROLL: Been moved by Mr. Victorino --

COUNCILMEMBER BAISA: Second.

CHAIR CARROLL: --seconded by Ms. Baisa. Mr. Victorino?

VICE-CHAIR VICTORINO: Well she has stated her concerns. And I would only hope that...and I'm not sure if the project manager or Ms. Suyama, I should say, would be able to address whether that would be bothering them or not. I wish they were here to confirm with them. I mean I understand what you've said and it's on the record; however, if their attorney or someone else on their side said, no, no, no, it shouldn't be done that way, then I have that concern. But I don't want to hold it up either. And there's time between now and first reading should that become a challenge or that become an issue that needs to be corrected, Mr. Chair. I hope, at that point, we could correct it. So I'll go along with Corp. Counsel right now because the Nuneses are not here to speak for themselves. I don't know if Ms. Suyama could address that. But just not to hold this back. And I think this has been long overdue. I will make that motion and stand with it unless, by first reading, something else makes a...make another amendment to change it back or whatever it might be. Thank you, Mr. Chair.

CHAIR CARROLL: If you would like, I can call the applicant's representative to the podium.

VICE-CHAIR VICTORINO: If the applicant's representative could speak to that. I'm not sure if she can. But you go ahead, Mr. Chair.

CHAIR CARROLL: I'm sure she can. Please identify yourself at the microphone.

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MS. SUYAMA: Good afternoon. Colleen Suyama with Munekiyo Hiraga. Mr. Nunes was planning to come today. Unfortunately, he had car trouble, and he wasn't able to attend. We have been in discussion with Mr. Nunes as to what the trust name has been and the documents that we have submitted so far to the Corporation Counsel is the documents according to Mr. Nunes that he has. But Corp. Counsel has suggested that, you know, maybe Mr. Nunes can contact his attorney who did the trust documents and get a more definitive answer as to what is the actual trust name. And we are willing to work with Mr. Nunes to get that information to the Corp. Counsel and the Council itself.

VICE-CHAIR VICTORINO: I'm satisfied, Mr. Chair. Thank you. And I think between now and first reading, hopefully that could be resolved and that way it's clean when it's brought forward. 'Cause I think, again, this has been long overdue. It's waited for this period of time to get it completed. So I'd be happy to support it. But I just want to make sure it's done right so that we don't have to come back at a later date. Thank you, Mr. Chair.

CHAIR CARROLL: The floor is still open for discussion. Any...

COUNCILMEMBER COCHRAN: Yeah, Chair?

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: And Ms. Suyama...for Ms. Suyama.

CHAIR CARROLL: Could you please stay by the microphone?

COUNCILMEMBER COCHRAN: Thank you. Sorry, I know you're limping. Ms. Suyama, thank you and thank you for your presentation. So the changes I guess in the I guess square footage of the easement initially was supposed to be five feet but now it extended out to ten.

MS. SUYAMA: Right.

COUNCILMEMBER COCHRAN: And so the difference is the family obviously wants to get their fair share of equal swapping of the land, so to speak, so that additional five foot, was that in that center -

MS. SUYAMA: Right.

COUNCILMEMBER COCHRAN: --that center line at...

MS. SUYAMA: The little small line?

COUNCILMEMBER COCHRAN: Right.

MS. SUYAMA: Yeah, the little center line.

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COUNCILMEMBER COCHRAN: Okay. I think it was yellow or something in that section –

MS. SUYAMA: Right.

COUNCILMEMBER COCHRAN: --so that adds the five to the front five –

MS. SUYAMA: Right.

COUNCILMEMBER COCHRAN: --off the road, and that...

MS. SUYAMA: Right. And we're advised that it had to be done this way because the original ordinance in 2008, which adopted both the Community Plan Amendment and the Change in Zoning was done by metes and bounds survey. So in order to make that change of, you know, a six-foot change, they needed to do another metes and bounds description as well as do the Change in Zoning and the Community Plan Amendment in order for the subdivision to become completed.

COUNCILMEMBER COCHRAN: Okay. And I mean the park is existing already –

MS. SUYAMA: Yes.

COUNCILMEMBER COCHRAN: --and being utilized.

MS. SUYAMA: Right.

COUNCILMEMBER COCHRAN: So part of the existing park will now be cordoned off or some...fenced off or something to make it the private property of the Nunes family. Is that...

MS. SUYAMA: They don't have any, at this point, the Nunes family does not have any plans to develop the lot. They're just interested in getting the land exchange completed. The park has been in existence from around 2008, and this is already 2016 and they've been going through the subdivision process all this time. And, as the process...because it takes so long to get the subdivision finally approved, the utilities from five feet, it increased during that process. And originally when the 2008 Community Plan/Change in Zoning was done, it was assumed at that time in their discussions with the utility companies that it was only going to be five feet wide.

COUNCILMEMBER COCHRAN: Okay. Alright. Well thank you very much for your presentation. And...

CHAIR CARROLL: Actually, I thought you were going to refer something to the motion that's on the floor right now.

COUNCILMEMBER COCHRAN: Oh, sorry. I forgot there was a motion.

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CHAIR CARROLL: 'Cause we still have the motion on floor; that's why I thought...so if you have --

COUNCILMEMBER COCHRAN: Yeah.

CHAIR CARROLL: --anything to the motion on the floor, fine. If not, we'd like to do that and then --

COUNCILMEMBER COCHRAN: Okay. And then we'll finish that.

CHAIR CARROLL: --then we can get right back to you.

COUNCILMEMBER COCHRAN: Okay.

CHAIR CARROLL: Okay?

COUNCILMEMBER COCHRAN: Yeah.

CHAIR CARROLL: Any further discussion to the motion to amend on the floor? Seeing none, all in favor, please signify by saying, "aye."

COUNCILMEMBERS: Aye.

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

**VOTE: AYES: Chair Carroll, Vice-Chair Victorino,
Councilmembers Baisa, Cochran, and
Crivello.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Couch and Guzman.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Okay. Thank you. Sorry I went off on that tangent. But thank you for your comments. And then this is just a reso to be sent to the Commissions, the Planning Commissions?

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CHAIR CARROLL: I'm sorry?

COUNCILMEMBER COCHRAN: This is just a...what we're trying to move out of here is a reso, is that correct right now?

CHAIR CARROLL: Yeah.

COUNCILMEMBER COCHRAN: It's just a reso trying to refer out to the Planning Commissions?

CHAIR CARROLL: To the Planning Commission, yes.

COUNCILMEMBER COCHRAN: Okay. That's all, thank you.

CHAIR CARROLL: Any further . . .*(clears throat)*. . . excuse me. Any further discussion before I give my recommendation?

COUNCILMEMBERS: Recommendation?

CHAIR CARROLL: The Chair will entertain a motion to recommend adoption of the revised proposed resolution entitled, Referring to the Maui Planning Commission a Proposed Bill to Amend the West Maui Community Plan Designation from Park to Business; and a proposed bill to Change the Zoning from PK to General Park District to B-2 Community Business District for Portions of Properties Situated at Tax Map Keys (2) 4-4-001:010 and (2) 4-4-014:006, Lahaina, Maui, Hawaii, incorporating any revisions made at today's meeting and any nonsubstantive revisions.

VICE-CHAIR VICTORINO: Mr. Chair, I move...I make the motion.

COUNCILMEMBER BAISA: Second.

CHAIR CARROLL: Moved by Mr. Victorino, seconded by Ms. Baisa. Discussion? And we are not filing this in case anybody... 'cause it's going to come back to us; so we're going to keep it.

VICE-CHAIR VICTORINO: Okay.

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: Yes. I'd like to thank you and the Members, if we can move this forward. You know, we were here in 2008 when the Community Plan Amendment went through, and we were so overjoyed that, you know, we were moving it not realizing that we'd be here eight years later trying to complete the work. So I really appreciate this and I hope that we can move it forward. Thank you.

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CHAIR CARROLL: Thank you. Any further discussion to the motion as amended on the floor? Seeing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

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

**VOTE: AYES: Chair Carroll, Vice-Chair Victorino,
Councilmembers Baisa, Cochran, and
Crivello.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Couch and Guzman.

MOTION CARRIED.

ACTION: ADOPTION of resolution.

CHAIR CARROLL: I would like to thank the Members for coming, and all those that attended today. And this Land Use Committee meeting stands adjourned. . . .(gavel). . .

ADJOURN: 1:57 p.m.

APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

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Transcribed by: Raynette Yap