

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

November 2, 2018

Council Chamber, 8th Floor

RECONVENE: 2:08 p.m.

PRESENT: Councilmember Robert Carroll, Chair
Councilmember Elle Cochran
Councilmember Stacy Crivello (out 2:23 p.m.)
Councilmember Don S. Guzman (in 2:24 p.m.)
Councilmember Kelly T. King (out 2:21 p.m., in 2:24 p.m., out 3:10 p.m.)
Councilmember Yuki Lei K. Sugimura
Councilmember Mike White

EXCUSED: Councilmember Riki Hokama, Vice-Chair
Councilmember Alika Atay

STAFF: Carla Nakata, Legislative Attorney
Saumalu Mataafa, Legislative Analyst (LU-2(5))
James Krueger, Legislative Analyst (LU-67)
Leslee Matthews, Legislative Analyst Trainee
Rayna Yap, Committee Secretary

ADMIN.: William Spence, Director, Department of Housing and Human Concerns (LU-2(5))
Michele McLean, Planning Director, Department of Planning
Tara Furukawa, Planner, Department of Planning
Walt Pacheco, Radio Shop Communications Coordinator, Maui Police Department (LU-67)
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel (LU-67)
Jeffrey T. Ueoka, Deputy Corporation Counsel, Department of the Corporation Counsel (LU-2(5))

OTHERS: Craig Hirai, Executive Director, Hawaii Housing Finance and Development Corporation (LU-2(5))
Ken Takahashi, Housing Development Specialist, Hawaii Housing Finance and Development Corporation (LU-2(5))
Linda Schatz, Principal, Schatz Collaborative (LU-2(5))
Darren Unemori, Warren S. Unemori Engineering (LU-2(5))
Vince Bagoyo, Vince Bagoyo Development Consulting Group (LU-2(5))
Michael Munekiyo, Munekiyo Hiraga (LU-2(5))
Erin Mukai, Munekiyo Hiraga (LU-2(5))
Tyler Fujiwara, Traffic Engineer, Austin, Tsutsumi and Associates (LU-2(5))

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

Tom Welch, Attorney, Mancini, Welch and Geiger LLP (LU-2(5))
Rich Conte, Wireless Resources, Inc. (LU-67)
Pete Yeagar, Wireless Resources, Inc. (LU-67)
(5) additional attendees

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

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting is called to order. I'm Councilmember Robert Carroll, Chair of the Land Use Committee. First, I may I please request that anything to make noise outside there, that you disable it. We have with us this afternoon...the Vice-Chair of the Committee Mr. Hokama is excused. We have Member King, Member Cochran, Member Sugimura --

COUNCILMEMBER SUGIMURA: Good morning...oh, good afternoon, Chair.

CHAIR CARROLL: --Member Crivello, and Member White.

COUNCILMEMBER CRIVELLO: Good afternoon.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR CARROLL: Hopefully we will have a few others show up. Department of Corporation Counsel, we have Jeff Ueoka.

MR. UEOKA: Good afternoon, Chair.

CHAIR CARROLL: Good afternoon. And in the afternoon we will have David Galazin for LU-67. We have Will Spence, Director, Housing and Human Concerns --

MR. SPENCE: Good afternoon, Chair.

CHAIR CARROLL: --Michele McLean, Planning Director; Tara Furukawa, Planning...Department of Planning; Rowena Dagdag-Andaya, I believe she cannot be here, somebody else will be coming down.

MS. NAKATA: Mr. Chair, Ms. Dagdag-Andaya is available on-call.

CHAIR CARROLL: Oh, thank you. For LU-2(5) we have Ken Takahashi, Manager, HHFDC. For LU-67 we have Rich Conte on behalf of Sprint Wireless; Peter [sic] Jeagar [sic], Program Manager of _____. Staff, we have Committee Secretary Rayna Yap; Legislative Analyst Samuel [sic] Maafa [sic]; Legislative Analyst Leslee Matthews; and Legislative Attorney, Carla Nakata. This is reconvening of our meeting of October 31st. The Committee received, closed on public testimony on the 31st. Members, we recessed this meeting and we're reconvening today to continue discussion of the proposed 201H project known as Wailuku Apartment Rental...Project, pursuant to 201H, Revised

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

Statutes. As Members are aware, we're under 45-day statute deadline on this item designated as LU-2(5). The Council must therefore act on this application by November 18, 2018. On Wednesday, the Committee made recommendations on related proposal, a district boundary amendment bill designated as UL-64 [sic]. We also have our meeting agenda, LU-67, application for a conditional permit for Sprint Wireless Communications [sic] facility at 3...3740 Lower Honoapiilani Highway...Road, Lahaina. Sprint agreed to a 60-days extension of the shot clock order to this application. Accordingly, the Council must act on this application by December 7, 2018.

ITEM LU-2(5): AFFORDABLE HOUSING PROJECTS (CHAPTER 201H, HAWAII REVISED STATUTES) (WAILUKU APARTMENT RENTAL HOUSING PROJECT)

CHAIR CARROLL: Affordable Housing Projects are LU-2(5). As a reminder, we are here to consider the proposed application for the development of Wailuku Apartment Rental Housing Project, pursuant 201H-38, Hawaii Revised Statutes, on property identified as real property tax purposes as tax map key (2) 3-5-001:064. The application, prepared for Legacy Wailuku LLC, is for the development of 195 affordable units and 129 market-rate units on approximately 14.4 acres bordered by Waiale Road, East Kuikahi Drive, and Honoapiilani Highway, Wailuku, Maui, Hawaii. During the meeting on Wednesday, the Committee discussed and agreed on revisions to the exemptions and modifications attached to the revised proposed resolution approving the project with modifications. The Staff has distributed a handout containing the revised modifications identified as Exhibit "A" and the exemptions identified as Exhibit "B" for your reference and track changes. These exhibits to the proposed resolution approving the project with modifications without Exhibits "1," "2A," "2B," and "3" attached as those exhibits remain unchanged. Members, Linda Schatz of Schatz Collaborative as well as the applicant's team of consultants were designated as resource persons, pursuant to Rule 18A of the Rules of the Council on Wednesday. If there's no objections, the Chair would like to continue these designations through this meeting.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Thank you. Ms. Schatz, could you come to the podium? Could you comment on Modifications 1 and 2 as proposed by the Chair? Modifications.

MS. SCHATZ: No objections.

CHAIR CARROLL: Thank you. Members, any comment on Modifications 1 and 2? And you have that distributed. Alright.

COUNCILMEMBER KING: Chair? Chair?

CHAIR CARROLL: Yes, Ms. King?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER KING: What are the specific items that they are in conflicts in the community plan that they're seeking to avoid by not making a community plan amendment? Maybe the department knows.

MR. SPENCE: I...

CHAIR CARROLL: Applicant, did you have...

MS. SCHATZ: May I call up our resource expert to answer that question? Mike Munekiyo.

CHAIR CARROLL: Yes, proceed.

MR. MUNEKIYO: Good afternoon, Committee Members. My name is Mike Munekiyo. Councilmember, your question is about the exemption from the community plan provisions are being requested under this request. The community plan land use designation for the property is future urban growth or future growth reserve, and so rather than seek a community plan amendment for apartment use, the request for exemptions is to allow the project without going through the community plan amendment process.

COUNCILMEMBER KING: Okay. So, the apartment building is not in...it would not comply with the designated future growth?

MR. MUNEKIYO: Not under the current community plan designation.

COUNCILMEMBER KING: Okay. So, what...so the current designation requires what, housing or --

MR. MUNEKIYO: It's actually...

COUNCILMEMBER KING: --actual...

MR. MUNEKIYO: I believe the...and perhaps the Planning Director may be better able to answer but I understand this particular land use designation in the community plan is to provide for future urban-related uses without specifying specifically what those uses may be.

COUNCILMEMBER KING: Can we have Department answer?

CHAIR CARROLL: One moment. Department of --

COUNCILMEMBER KING: Okay.

CHAIR CARROLL: --Planning?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

MS. McLEAN: Thank you, Chair. Thank you for the question. Yes, I would agree with Mr. Munekiyo's comment, it's...because the language is so broad and vague, it's not clear whether this use or any use would be in compliance. So, to make it clear in the matter before you to request that exemption to establish what uses would be allowed.

COUNCILMEMBER KING: Okay. So, it's your opinion that the designation which Mr. Munekiyo says is future growth, was meant to require future specific designation before they went ahead, before anybody goes ahead and does anything on this property?

MS. McLEAN: Yes. Rather than establishing a particular kind of use that a use would be established when there was actually a proposal for the use of the property and then it would be looked at comprehensively.

COUNCILMEMBER KING: Okay. So, we haven't done that, we haven't established...

MS. McLEAN: Well, that's what you're doing now.

COUNCILMEMBER KING: Well, as...with the community we haven't done that. We haven't...we're being asked to just waive that...creating a designation. We're just waiving that basically 'cause it's asking for an exemption from a community plan amendment so we're not doing that basically.

MS. McLEAN: With the 201H process, you are in effect giving fast track entitlement approvals and so these don't go through the Planning Commissions, they don't go through a more extensive process that the usual entitlement process goes through.

COUNCILMEMBER KING: Okay. I'm just trying to --

MS. McLEAN: But it...

COUNCILMEMBER KING: --establish the intention of the community plan which is to bring this back to the community, I'm assuming, and then figure out...

MS. McLEAN: I wouldn't go so far to say that. I wouldn't --

COUNCILMEMBER KING: Okay.

MS. McLEAN: --make that kind of representation for the designation. It's the community plan didn't want to establish a specific use, and it was to allow that to be determined at the time that there was a proposal for the property.

COUNCILMEMBER KING: Okay. But it still would require an amendment? Because if they're asking for an exemption that means it still normally would require an amendment, that, whatever that designation was? I'm just trying to clarify what was the intent.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

MS. McLEAN: It requires Council approval of an entitlement --

COUNCILMEMBER KING: Okay.

MS. McLEAN: --and whether that comes through a 201H process, whether that comes through a community plan amendment, whether that comes through the community plan update process, there are a number of ways for Council to establish the use and this is one way.

COUNCILMEMBER KING: Okay. So, we're just...so basically it's just kind of wiping out that, the community plan...we're just setting the designation?

MS. McLEAN: If that's how you wish depict it, you can. That isn't how I would depict it but --

COUNCILMEMBER KING: Okay.

MS. McLEAN: --you're the ones making the decision today.

COUNCILMEMBER KING: Okay. Thank you, Chair.

CHAIR CARROLL: Any further discussion? Ms. Crivello?

COUNCILMEMBER CRIVELLO: Chair, I was, I have to apologize, I have a...I wasn't prepared for us to reconvene this afternoon. I have a flight to go back home. But I...if you'll allow me, I just want to just make some brief comments in regards to this overall. You know the 201H process as you're well aware for this project is supposed to find a solution, I would think, for us to expand the rental supply. We don't have the supply. We have the demand but we do not have the supply. And I don't know how supportive we are on what we say. We do have some challenges we know as far as with the traffic and perhaps with some of the comments that was made about the drainage, and I hope our departments can help us to find some solution. So, for me we have an opportunity to either deliver or do not deliver affordable rentals. And as we keep making changes, everything is shaped by the cost. And I think we're just going to have to find how we're going to meet our needs, and the builder will constantly be working on a financial jigsaw puzzle. And every increase falls on the homebuyer or for this the tenants who may be able to rent. Myself, my district is Molokai, I live on Molokai but the work here demands more than me flying back and forth. I tried to find rental and it's just me. It's difficult and the rent is costly, so I can feel for what the Maui families are going through. And I see this as a solution for us to bring up the supply for our Maui residents. So, I apologize that I cannot be part of the decision, make final decision today, and I just wanted to put in a few of my thoughts that there is a need and we have to try and work together to make it happen. That's my opinion at this point. Thank you, Chair.

CHAIR CARROLL: Thank you, Ms. Crivello.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER CRIVELLO: Have a good weekend.

CHAIR CARROLL: We appreciate your coming.

MS. NAKATA: Excuse me, Mr. Chair, I think Committee will need to take a short recess.

COUNCILMEMBER COCHRAN: We don't have quorum.

CHAIR CARROLL: Oh, yes. We stand in recess. . . .*(gavel)*. . .

RECESS: 2:23 p.m.

RECONVENE: 2:24 p.m.

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting is called back to order. Alright, Members, we have gone through everything over here, and the only thing left is discussion on any concerns, and then the Chair can give his recommendation. So, I'll go right down the line just to make sure we don't miss anybody over here. Mr. White?

COUNCILMEMBER WHITE: No questions, no concerns.

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: I'm fine, I'm ready for your recommendation.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Chair, God, I don't know how I lost my modification paper. Number one, it was saying that if it doesn't start or complete the project within five years...thanks. What is the repercussion if they don't? It doesn't say anything to...right? It states when it needs to start construction and then it states when it needs to finish, complete by, but what if it doesn't? Where is it in here that states what happens if it doesn't get completed?

CHAIR CARROLL: We've had that discussion before and it's really difficult. The start time is really important. As for the, what we could do if they didn't finish on the completion time has always been a matter of discussion. I'm going to ask Mr. Ueoka to comment on that.

MR. UEOKA: Thank you, Chair. Yeah, we examine it at the time. If...hopefully it doesn't happen, if it did happen we'd have to look at it. But these completion dates are difficult 'cause again if the project's like 99 percent complete, equity might not be looking so great at removing all their entitlements and exemptions and stuff when the project's 99 percent done. Whereas, if two years comes and goes without them starting at all and the commencement which is start of, visible start of grading, it's a little more understandable if the entitlements were to be removed at that point.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

But...‘cause they haven’t done anything at all. But once they’ve gone to a certain point it’s difficult to just remove entitlements after five years because a hard and fast deadline has come. But we’ll have to look at the specifics at the time. But currently as worded there’s nothing clear as to what happens. Thank you, Chair.

COUNCILMEMBER COCHRAN: Chair, and, you know, that’s been the issue. How many 201Hs have we approved and we fast track it and it’s not fast at all? And it’s because I believe we don’t set that hard and fast rule to put that hammer down and teeth into this modifications and conditions to make it happen. You know we just talked about this other fast tracking process on the County level. So, are these guys going to come in for that one too should that pass through? But there has to be something. I mean I think we sit here all, every day talking about all these projects we’ve already approved and nothing has come through. So, here we are again letting it just go by.

CHAIR CARROLL: What we have done is gone for the start date which is the most important, and we’ve never been really able through much effort to be able to work out something satisfactory for the last part. But we have the applicant, I’d like to ask them to comment.

MS. SCHATZ: Yes, I’d like to mention that say we did start the project and it’s in construction, that means that we’ve secured a construction loan for the entire project, and our investors and our lenders will require the developer to provide a completion guarantee to complete the project; otherwise, they won’t lend us the money. So, financially we...the developer is obligated to provide a completion guarantee at the time that the loan is closed and executed so the project does get finished.

COUNCILMEMBER COCHRAN: Thank you for that...

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you for that insight. Is that just you as a developer or is that a hard and fast rule for all developers and when they’re seeking funding, do you know?

MS. SCHATZ: Yeah, most developers who are seeking loans are required to provide a completion guarantee. I think in some instances on smaller projects it may be different, but for developers of this size and this scope of project, they’re required to normally, under normal circumstances.

COUNCILMEMBER COCHRAN: Okay. It’s funny ‘cause I have a development in Lahaina just has stopped.

CHAIR CARROLL: Well...

COUNCILMEMBER COCHRAN: Two oh one H fast track process too, so.

CHAIR CARROLL: At least for this project...

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER COCHRAN: I don't see any guarantee for us --

CHAIR CARROLL: For this project --

COUNCILMEMBER COCHRAN: --again.

CHAIR CARROLL: --at least to have that insurance.

COUNCILMEMBER COCHRAN: So...

CHAIR CARROLL: Mr. Guzman? Oh I'm sorry, Mr. Guzman has been here for a while and I did not recognize him.

COUNCILMEMBER GUZMAN: Oh.

CHAIR CARROLL: Thank you, Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. I have no questions. Thank you, Chair.

CHAIR CARROLL: Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Yeah, I do have some concerns, one of them was the, is just the constant community plan exemption...amendment exemptions that we're giving. But I also just wanted to say that we, you know, we...I think it was brought up earlier about needing a plan for this general area, because we have a lot of development going into this area and so residents are very concerned and we don't have, you know, we're kind of piecemeal'ing it one at a time. But I also have concerns that there was a large project that was proposed by, the Waikapu Country Town Estates that the developers been working on for eight months [sic] is, includes affordable housing and affordable rentals but has not asked for any exemptions or any entitlements, and he was planning on building --

COUNCILMEMBER COCHRAN: Eight years.

COUNCILMEMBER KING: --a wastewater treatment facility himself. And yet we haven't even seen this on the agenda so I understand why we're pushing this one through because...and I just actually talked to the developer earlier this week about why they didn't go for the 201H 'cause maybe, you know, that's what gets you on the agenda. But there's a lot of frustration that that has not been put on the agenda, that has been dragging for the last few years before I even got on the Council. It seems like it's due to a Waiale Road extension project that keeps being put on the Budget and keeps being taken off. But that's a concern because that project...is this project going to make that project not go through, or is it, has it already superseded the other project? I don't know, it feels a little political. But the third issue, Chair, and I don't know if I'll get support for it, but I do want to make that motion that was brought up by a testifier earlier who has concerns about the 30 year. And so I do want to make an amendment

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

to the conditions that we add a condition that there shall be a deed restriction recorded on the property doing...requiring that the 195 residential workforce housing units be rented to income-qualified tenants in accordance with the provisions of Chapter 2.96, Maui County Code, for a period of 50 years which would put it a little bit closer to the Front Street Apartments' project that was supposed to be affordable and we're working on. But I think there's a lot of entitlements we're giving. There's 129 market units, and I'd like to see a little bit longer period of affordability so that we're...when we make these projects, we're working towards a goal of a certain number, and then that goal doesn't constantly keep going away because these projects are expiring, the affordability is expiring.

COUNCILMEMBER COCHRAN: Second.

COUNCILMEMBER KING: Anyway, I make that motion.

CHAIR CARROLL: Could you repeat the motion please?

COUNCILMEMBER KING: The motion is to add a condition that there shall be a deed restriction recorded on the property requiring that the 195 residential workforce housing units be rented to income-qualified tenants in accordance with the provisions of 2.96, Maui County Code, for a period of 50 years.

CHAIR CARROLL: Is there a...

COUNCILMEMBER COCHRAN: Second.

CHAIR CARROLL: Been moved and seconded. Applicant, could you please comment?

MS. SCHATZ: Yeah, currently 2.96 requires a 30-year deed restriction for workforce rentals so we were trying to comply with that. The other reason that I'd like to make sure that the Council consider is that for 30 years it doesn't...we will be able to figure out how to find a loan, but what happens is during that time of the 30 years or say the deed restriction is 50, the lifecycle of the building deteriorates over time. So, typically 30 years is a good marker where the restriction comes off, and the person who owns the project is able to refinance, cover debt service, and also potentially rehabilitate the structures themselves such as the roof, plumbing, anything that breaks down within that period. If say there is an extended deed restriction period that's over 30, it makes it much more difficult once the building is 30 or more years older, to obtain financing at that point to rehabilitate it. So, you're left with a structure, you know, a bunch of buildings that need assistance, and it will be difficult to obtain that refinancing to take care of maintenance, deferred maintenance.

COUNCILMEMBER KING: Okay. Chair, can I talk, speak to my motion? You kind of superseded me and went to the...

COUNCILMEMBER COCHRAN: Yeah, made the motion, why is she chiming in?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER KING: But...

CHAIR CARROLL: Yes, Ms. King.

COUNCILMEMBER KING: Okay. Well, you know, one of my reasons for making this motion is because there's kind of a picking and choosing of what parts of 2.96 the project is using. They're not following the 2.96 requirements for affordability which says that one-third of the rental units shall be for very low income, one-third of the rental units shall be for below moderate income, and one-third of the rental units shall be for moderate income. So, instead they're using HHFDC rules which allows them to go to that 129 market units so to have that mix. And so I'm not...I mean either follow 2.96 and then, you know, do the 30 years with the amount of affordability it requires, or if you're not going to then you can't just like pick and choose pieces of 2.96 you want to use and pieces that you don't. So, that's what I'm kind of concerned about is that we're not getting what the requirement is from 2.96 as far as affordability but we're sticking to the 30 years. So, you know, I'm proposing this with respect to testifiers who are saying that they would like to see...they would support this but they would like to see the affordability for a longer period. So, I just wanted to make that motion and see if we can get support for that.

CHAIR CARROLL: Okay, your motion still stands. Is there any comment to the motion on the floor?

COUNCILMEMBER COCHRAN: Go ahead. Go ahead, Mr. Guzman.

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you, Chair. I wanted to at least go over or review what Ms. King is saying is she's saying that the, that this...that the developer is not going to be covering the entire gamut of the low to low-income...very low to low income. And I need clarification as to that, is the one-third, one-third, one-third, whether or not that is being upheld.

CHAIR CARROLL: Mr. Ueoka?

COUNCILMEMBER GUZMAN: Or the 2.9...

MR. UEOKA: Thank you, Chair. If I may, Mr. Guzman?

COUNCILMEMBER GUZMAN: Yes, yes.

MR. UEOKA: My understanding is the applicant, 201H requires 50 percent plus 1 units of the project be under the income-qualified individuals. So, the 50 percent plus 1 units, they are split up, one-third in the very low --

COUNCILMEMBER GUZMAN: Yes.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

MR. UEOKA: --one-third, and one-third. I believe what...

COUNCILMEMBER KING: There are four categories that they're using.

MR. UEOKA: But the 50 percent plus 1 are spilt up under the one-third, one-third set forth in 2.96. They're doing 60 percent residential workforce housing units so the remaining units are still within affordable guide...or the income-qualified guidelines per HUD requirements. They're just at the higher end for those last handful of units above --

COUNCILMEMBER GUZMAN: . . .*(inaudible)*. . . --

MR. UEOKA: --the 50 percent plus 1.

COUNCILMEMBER GUZMAN: --penciling in, right.

MR. UEOKA: They met the requirement of 2.96 with the 50...201H with the 50 percent plus 1 and they're following 2.96 splitting for the 50 percent plus 1 units.

COUNCILMEMBER GUZMAN: Okay, okay.

MR. UEOKA: Thank you, Chair.

COUNCILMEMBER GUZMAN: So, they're in accordance with the ordinance? Thank you.

COUNCILMEMBER KING: So, that doesn't take into account the total amount of affordability.

CHAIR CARROLL: Excuse me, you don't have the floor. I'm sorry.

COUNCILMEMBER KING: Okay.

CHAIR CARROLL: Mr. Guzman still has the floor.

COUNCILMEMBER GUZMAN: Oh, my question was answered.

CHAIR CARROLL: Alright. And Ms. Cochran is next and then we'll get back to you, Ms. King.

COUNCILMEMBER COCHRAN: Go ahead. No, go ahead, Ms. King.

COUNCILMEMBER KING: Well, no, I'm just looking...I was just looking at the requirement for the one-third, one-third, one-third of the...it says income group distribution of the affordability. But, you know, we're, if we're making other considerations then, you know, that's one of the conditions that...one of the entitlements I guess.

CHAIR CARROLL: Any further discussion to the motion on the floor? Mr. White?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER WHITE: Thank you, Chair. You know when an applicant comes in here following the ordinances that we've passed, I think they deserve to be able to give it a shot...be given a shot to depend on what we have in ordinance. And, you know, I don't disagree that it would be nice to have 50 years or 40 years or a longer period, but what happens here on this floor is that we continually have folks coming in here with projects and this is a shooting gallery and we throw things up on the wall to see what sticks. And the degree to which we do that and continue to do that diminishes the credibility of this body, and it also makes it very, very difficult for the, for applicants to go through the process they've gone through which is a very, very long and very expensive process to get to this point. And they should be able to depend on what we've put into ordinances. So, on that basis I just, I can't support the motion on the floor. Thank you, Chair.

CHAIR CARROLL: . . .*(inaudible)*. . .

COUNCILMEMBER COCHRAN: Chair?

COUNCILMEMBER SUGIMURA: Your mic.

CHAIR CARROLL: Oh, I'm sorry. Any further discussion to the motion on the floor?
Ms. Cochran?

COUNCILMEMBER COCHRAN: Well, first off I know Mr. Ueoka knows how hard my office has been trying to work with his office in reference to the 2.96 and to change what exists. There's a lot of things in that I don't...that I think needs to be better, that needs to be more beneficial to the community and the people. And, you know, developers yeah, they're abiding by what's in there, but I don't agree with what's in there. So, unfortunately I haven't had a chance to change some things out which is the length of affordability. So, that's, I mean right out of the gate I'm having issues.

CHAIR CARROLL: It is...

COUNCILMEMBER COCHRAN: But, you know, the affordability part is not, is it's not truly affordable when you pencil out all the numbers. And the HUD guidelines are what they are, but technically we should be looking at the 60...50, 60, 70 percent. And 80 to 140, that's way out of reach of a lot of people already. So, I'm for keeping things, yeah, as long as we can in as affordable as it can be at this point, because again we're losing that inventory of affordability in a short amount of time. Thirty years is a blink of an eye for a family, really. And I hear the developer's point but you know what, I hear more so the pleas of this community and we need to keep it in affordability for several generations. And, you know, maybe take out a swimming pool from this project to be able to put more into whatever, quality, you know. I know you gotta cut things to make things affordable, but let's rely on the stability of the dwelling and the units itself to make it last. Where I live in a house that's 90-years-old, it's pretty solid. So, I'm for 50 minimum. I'd shoot for 100 but I'll go with the...is it 50? Fifty. Thank you.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

CHAIR CARROLL: And to make it clear, it is this Committee that determines if any changes are made, and sometimes it might be difficult for a developer or somebody else; however, it is this Committee that needs to make the decisions to come out with the best product that we approve. Alright, any further discussion to the motion on the floor? All in favor signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed?

COUNCILMEMBER WHITE: No.

COUNCILMEMBER SUGIMURA: No.

CHAIR CARROLL: Two "noes," four "ayes," the motions fails. Chair votes "aye."

COUNCILMEMBER COCHRAN: Is that right?

CHAIR CARROLL: Alright, the motion has failed, we're back to...two "noes" right?

COUNCILMEMBER COCHRAN: Is that the right count?

CHAIR CARROLL: And one...two...

MR. MATAAFA: Chair?

CHAIR CARROLL: Yes.

MR. MATAAFA: Chair? Can we do a roll call please? Roll call vote.

CHAIR CARROLL: Roll call.

MR. MATAAFA: Councilmember White?

COUNCILMEMBER WHITE: No.

MR. MATAAFA: Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: No.

MR. MATAAFA: Councilmember Cochran?

COUNCILMEMBER COCHRAN: Aye.

MR. MATAAFA: Councilmember Guzman?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER GUZMAN: No.

MR. MATAAFA: Councilmember King?

COUNCILMEMBER KING: Yes.

MR. MATAAFA: Chair Bob Carroll?

CHAIR CARROLL: Aye.

MR. MATAAFA: The motion is three-three, the motion fails.

VOTE: AYES: Chair Carroll, and Councilmembers Cochran and King.

NOES: Councilmembers Guzman, Sugimura, and White.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Hokama, and Councilmembers Atay and Crivello.

MOTION FAILED.

CHAIR CARROLL: Alright, Members, we are back to the main motion as amended. Any further discussion? Or the Chair's going to give his recommendation. Members, Chair will entertain a motion recommending adoption of the revised proposed resolution approving the project with modifications; incorporating any amendments made at the meeting on Wednesday and recess today; and any non-substantive revisions; and to file the other two proposed resolutions.

COUNCILMEMBER SUGIMURA: That's your motion, recommendation?

CHAIR CARROLL: That is the motion, yes.

COUNCILMEMBER SUGIMURA: So move.

COUNCILMEMBER WHITE: Second.

CHAIR CARROLL: Moved and seconded. Alright, discussion, Members?

COUNCILMEMBER KING: Chair? You know I'm not ready --

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

CHAIR CARROLL: Ms. King?

COUNCILMEMBER KING: --to support this just because of the amount of projects in this area. And what I've been hearing from people who live in this area is they're being burdened by...you know well, we heard, in fact I heard Councilmembers saying no, we hear you and we want to serve you at the forum that was held at Waikapu, and the folks in Central Maui are feeling like all the development is going into Central Maui. My concern is that we have other ones on the books and I think I said eight months but I meant eight years for the --

COUNCILMEMBER COCHRAN: Yeah, it is eight years.

COUNCILMEMBER KING: --previous one. That we have...we have to have a plan for this area, we just can't keep adding things up...on. And then if we add this one on and that precludes the one that someone's been working on for eight years, is that fair? The Waikapu Community Association has been working and supporting the Waikapu Country Town Project for a few years now, and it just never seems to make it on to the agenda, and yet this one which has been less than a year or maybe a year is being pushed on to the agenda despite the amount of testimony we got in writing. So, I'm not at this point...I mean I'd like to have more discussion about this entire area. And I think it was Mr. Hokama that brought up we need a plan for this area and what we're doing is piecemeal'ing all these projects together. So, I really feel for the folks in that Central Maui area who are frustrated, because they feel like all the development is going into that area and that they don't have a say in it. So, I, you know, I don't...I'm just torn right now. I do support affordable housing, I'm not sure that I...I mean I kind of agree that these rates are really not...except for the bottom end are not that affordable. But I'm not at the point where I'm prepared to support this project as it is.

CHAIR CARROLL: Alright, just to make it clear to the Members and to the public, any project that was ready that came before me, 201H or otherwise was put on the agenda. I have never held a project ever. As long as it was ready and it was submitted, I heard it and I've done that for the last six years or eight years. Good grief. But no, anything that is ready has been heard. Nothing has ever been held or not made it on the agenda. If it was ready, it was posted. Okay, further discussion? Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. You know I support this project because we need housing inventory, we need rentals, we need apartments, we need single-family homes, and we're not getting them built. And we're not getting them built because developers come in here with all the best intentions, and they get loaded down with conditions, and then in many cases those conditions make the projects infeasible because they just, the numbers just don't pencil out. It's something that I think we should be respecting. If we have people coming in here willing to risk their funds in order to build housing, we need to respect the fact that there has to be some reward when people are significantly risking their own finances and risking borrowing from others in order to try to help us build more housing. The problem that we have is that the very people who espouse that they support affordable housing then come and try to pick apart the various developments that come through here. It's my

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

understanding that if we...if...once this comes to Council, we have 45 days to approve or disapprove. And to approve takes five votes, to disapprove takes five votes. Is that correct? So, if we...

CHAIR CARROLL: That is correct.

COUNCILMEMBER WHITE: You know I can understand Ms. King's hesitancy to vote on it because of the issues she has, but if we don't have five votes to disapprove, the project's going to go ahead without any of these modifications. If we have five votes to approve, it goes with the modifications. So, I can understand her hesitancy but the reality is that if we take no action then the project moves ahead. Is that correct?

CHAIR CARROLL: As far as I know but, Ms. Nakata?

MS. NAKATA: Mr. Chair, Councilmember White is correct, the default is approval as submitted if the Council fails to take action within the 45-day period.

CHAIR CARROLL: So, one action needs to be taken, approval or disapproval as you --

COUNCILMEMBER WHITE: Right.

CHAIR CARROLL: --have said. Yes.

COUNCILMEMBER WHITE: So, if...it appears that we don't have enough to approve and we don't have enough to disapprove, so here we sit with a, these people have spent I would venture probably in the neighborhood of between 500 and a million dollars to get to this point and we're messing with well, we don't have a plan. We have a Maui Island Plan, the Planning Department has gone along with it, the Housing Department has gone along with it. They've added the things that they feel are critical to have and they've presented them, and I think we've accepted a significant number of the modifications that were requested by departments such as Public Works. So, I'm ready to push this through with the modifications but if that's not the will of the Council then I'm comfortable letting it go on as is with no modifications. Thank you, Chair.

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. I just wanted to...I believe Member Hokama at the last meeting said we need a plan, an overall plan regarding, you know, transportation, the movement of roads or whatever. It wasn't about this project only. And I think that's where that discussion was had about, you know, like we need to take control, the Council, the County needs to take control of what this, the transportation movement is, and that's my recollection. The other thing is that I can, I also respect developers when they come before us, and I know that through the short period that I've been here, I've met with this project a few times and they've made adjustments over time by meeting with other community people. So, they're not like solidly stuck in what they want and that's it, I mean they've been, you know,

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

accommodating. So, I want to appreciate them for that and for bringing this forward. We do have a huge housing crisis. This is like gold sitting in front of us and for us to take and be grateful for providing homes for our working families. I mean, heavens, you know, we've been hearing it and we all talk about it, especially since all of us who are running for office we all talk about how we need more affordable housing and we support it so let's vote for this and let's make it happen. This is rentals, we need to bring rentals into the housing formula. And I will tell you as I've said before that when I'm at the Upcountry Farmers Market, there are people who are thanking the County for building that Kulamalu project, because they were surf, they were sofa surfing or whatever that's called and staying at friends' houses 'cause they didn't know where they were going to stay. And then they got on that wait list and they were accepted and there were tears in their eyes, they're so grateful. And there're people out there, I mean I love veterans. I hope veterans get to stay here. We have a huge need for our veterans who, you know, fought for us and I hope this project goes through. The other thing that I want to just say is one of the testifiers early on said that oh, they're ashamed to say this but this project is being funded by, I don't know, mainland people and, you know, it won't...it...people won't stay and they'll just abandon this. I forget how the wording was but, you know, we all know Linda Schatz and I don't think she's going to go anywhere. She's going to be in Hawaii for, you know, as long as...for life, right? I mean she's going to care about this project. We're not...she's not going to do this and walk away and say okay, you're on your own. You know I think that there's a lot of integrity in the people who are behind this. There's Munekiyo Hiraga. I mean people that we know and grew up with are making this project happen in unison with the needs of our community. So, I stand by this project. I want us to support it, and appreciate the developers for what they've done so far in helping us get through this terrible problem that we have and we cannot be part of the problem, we have to be part of the solution. So, Chair, thank you.

CHAIR CARROLL: Any further discussion to the motion on the floor? The Chair will make --

COUNCILMEMBER KING: Chair?

CHAIR CARROLL: --his final comment before he calls for the question then. We know we have the 201H process, because it's the only way we have been successful in bringing developers forward to get affordable housing or affordable rentals which is before us today. There's been motions and movement to work with the Planning Department and others to make the system better, hopefully we will in the future. And heaven knows how long that will be to where we can actually process things in a way that more developers can come forward with affordable projects and affordable units. However, the need is so great outside there for affordable rentals right now. I've had people in my office over there, just people from Kahului just beside themselves because they're living with two or three families over there. If you go down some of the streets, it looks like a used car place. It's...I'll support this. In the end I will vote for it because the bottom line is our people really need it and I have to put them first. Alright...

COUNCILMEMBER KING: Chair?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

CHAIR CARROLL: Ms. King?

COUNCILMEMBER KING: King, yes. I actually had my hand up before you gave your final thoughts but I did want to clarify a couple of things. And I did speak with the developer of the other project, the other affordable that is not a 201H. So, I mean part of my issue is I think it is possible to do affordable unit, affordable building without the 201H, and I don't like this restriction of 45 days that puts us between a rock and a hard place when we're also trying to deal with a community that feels like it's getting over built. But the fact is they haven't been able to get on the agenda for the Planning Commission so it wasn't attacking you or any...or saying that you weren't being...but the...but they've been trying for over a year to get on that agenda. So, you know, this is part of what's going on is, you know, how do we decide which ones goes forward. Are we going to just start approving everything in this area which is going to make an even bigger problem for us, because we're going to have more people coming through...coming by...coming into us saying there's a traffic problem. We haven't done good planning for this area, we're just putting stuff in there, you know, blindly without listening to the residents that are already there. So, that's been a great issue for me. I mean I don't want to go back to...I feel like we're between a rock and a hard place 'cause I don't want to go back to the no conditions. You know I think the conditions that we put in there about traffic abatement and these traffic studies are really important, and those will come out if we can't come to a conclusion. But I do want to just, you know, let my colleagues know that this is going to come up again with the next project and if they use this project to deny the next one, that's going to be really shibai because the other one has been on the books for, you know, they've been working on that for eight years. And that's one of my biggest issues that we saw this come up with Launiupoko with the idea of, you know, these three lots and we denied it because we didn't know what was coming up until we saw all three of those lots. We were looking at a potential of just, you know, one at a time and there was a lot of environmental issues. So, anyway, that's...I just wanted to give those final thoughts because the other one hopefully will come up at some point. I mean I don't know what the issue...why it's being withheld, but I think it's a very...the other one is a very valuable project as well. And I think the developer is this far away from just walking on it, because he's so frustrated that he can't even get a hearing at the Planning Commission.

CHAIR CARROLL: Just to make it clear to the public, this Committee and the Council has no control over --

COUNCILMEMBER KING: Right.

CHAIR CARROLL: --the Planning Committee [sic].

COUNCILMEMBER KING: Right.

CHAIR CARROLL: Just so people don't get confused.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER KING: Yeah, no, that's why I'm saying, I wasn't talking about --

CHAIR CARROLL: No, no, just to clarify.

COUNCILMEMBER KING: --you, I was talking about --

CHAIR CARROLL: Just to make sure that everybody understands.

COUNCILMEMBER KING: --you know, the whole process is not going through.

CHAIR CARROLL: But thank you. We appreciate your comments. Oh, I'm sorry.

COUNCILMEMBER GUZMAN: Yeah.

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. I just wanted to lay on the record I will support this project just because of the fact that we, you know, we don't have developers standing in line right now to build rental units. And one of the issues that we're facing on the whole housing crisis is the rental market. We have less on the rental market than we do fee simple. And if it's in Kahului, that's where the infrastructure's at. So, it's going to cost the renters or the developers less so the...when you build closer to the infrastructure everyone wins. You know we've seen developers in the past come in here, try to get some projects on the books or pass on the entitlements, but yet that district, Kihei, South Maui, wherever, Upcountry, they come in the gallery and they say no, not in my backyard. Well, Kahului, Central Maui is already developed, we already have a significant amount of housing here meaning development and infrastructure so it is a good fit. You know Mr. Hokama was commenting on a regional traffic infrastructure plan, and what we had heard from the Public Works Department is they're working on it. And it is in fruition, it is being developed. And this development is going to be part of the solution in accordance to the modifications that were agreed upon between the developer and Public Works. So, if we deny this at this point, this just opens the floodgates later on to say look, we are so anti-development, anti-rental, anti-building of anything, no other developer is going to come this way again. And so I'm just saying this is an opportunity where we can get rentals, rentals. So, I'm going to support this project. Thank you.

CHAIR CARROLL: Any further discussion from the floor? Ms. Cochran?

COUNCILMEMBER COCHRAN: Chair? And I share the same concerns as Ms. King in reference to the community in the vicinity and the developer at the end of the line, the other end of Waiale. So, I'm looking at rentals is rentals, yeah, but if you look at...let me use my own staff as an example here and she testified. She falls into the 80 percent area median income so HUD says she can afford a studio for 1,140, a 1-bedroom for 1,221 or a 2-bedroom for 1,465. She gets 2 paychecks a month at \$1,300. Half her paycheck is going to go one of these rentals, half. A living normal rate is a third of your income, these, it's going to be half of her income just to get a

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

place to rent over here. So, you know, unless this project is 60 to 100, it's not truly affordable. So, yeah, let's look at numbers. I'm for rentals but I'm for affordable, true affordable that our working class people can afford. And people in our offices aren't just your regular hotel working-class class, I mean they make pretty good money here. You know and so that's one of the things where yeah, let's call it what it is. I don't think it's truly, really affordable for a lot of people but we'll see who all gets to get a place here. Thank you.

CHAIR CARROLL: Mr. White, followed by Mr. Guzman.

COUNCILMEMBER WHITE: Thank you, Chair. You know we all know that for housing to be affordable it requires significant subsidy either by a market purchaser or by a market renter or by the State or by the County. This happens to be one that is being, the affordability is being generated by the folks paying market rents. The best way to drive down rents is to increase inventory. The reason rents are so high is because the demand is high because the supply is so low. Why is the supply low? Because nothing ever gets through this place. And once it does, it just get added to a remaining low level of inventory with a high demand. So, one of the reasons that this pencils out is that we have such a low inventory because of years of inactivity that the rents are very high. It pencils out this time. It may not pencil out next time. And so, you know, I, you know, when Ms. Sugimura mentioned that people had tears in their eyes because of the new availability at Kulamalu, I can really relate to that. You know I started off my independent life in a one, very small one-bedroom apartment on Nihoa Street which is about ten feet up and six feet back from all the traffic, you have four lanes going by there every morning, every evening, all the time. It wasn't great but boy, I was happy as hell to have it because that was my place. And so, you know, I get a little bit irritated when we have people who say we want affordable housing. Well, they don't take the time to understand how hard it is to make it pencil out without significant subsidy. And the less we build, the less affordability we have. And, you know, I...when we out to Hana for the hearing on the affordable, the 25-lot affordable subdivision, I recall that somebody, some of the testifiers got up and said they want it so badly because it's the first available lots that have been put up for offer in Hana since 1971. Well, two Members of this Council went out the night before and held a public meeting to try to get the Hana residents to go and testify against that project. I won't name them but they know who they are, and yet not a single Hana resident would do so because the need was so high. The same thing applies here. This is just a fool's game that we're playing. We try to load things up because the developers are the bad guys. Well, I'm sorry, but without developers we don't have anything. The County cannot tax the people to death in order to build all the housing. It has to be...we have to have the assistance of developers, whether they're nonprofit or for-profit. One way or the other these various developments are subsidized very heavily. So, let the votes fall where they may. If this doesn't go beyond today's meeting then all these modifications go away and they save some money and they move ahead with the project. I'm okay with that. So, thank you, Chair.

CHAIR CARROLL: Mr. Guzman I believe was next.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER GUZMAN: No, that was a good conclusion. I will yield my comments.

CHAIR CARROLL: And --

COUNCILMEMBER KING: Just...

CHAIR CARROLL: --Ms. King?

COUNCILMEMBER KING: Yeah, thank you. I have a question about these rents. Are these numbers readjusted on an annual basis depending on where we're at with median family income or is this a 30 year...is this number good for 30 years? Are these numbers, do we know, Department?

CHAIR CARROLL: I would...

MS. SCHATZ: Yes, we follow HHFDC's adjusted rates annually.

COUNCILMEMBER KING: Annually, okay.

MS. SCHATZ: So, they issue readjusted rates annually --

COUNCILMEMBER KING: Okay. So, if --

MS. SCHATZ: --and we must follow them.

COUNCILMEMBER KING: --we do get more inventory, hopefully these rates drop. I do want to mention, Chair, and, you know, I resent the, being said...being...the implication that we don't understand what it takes. I've seen developers that are also doing things, you know, there's one is standing in line right now to do affordable housing without taking all these exemptions. So, I think it is possible. I mean I don't think everybody can do it. But I watched what happened with Kamalani in Kihei, you know, and that went through, I don't know, four or six hundred units, and they couldn't sell those units because they were not affordable and people bought them who then were supposed to rent them out at affordable rates, but they're renting them out at market rates because they were given the option after so many days if you can't sell it for a certain rate, you can sell it for market. And then these people buy them and they start renting out at these extraordinary rates. So, I don't think it necessarily falls that all units are going to be, you know, they're still trying to rent those or sell those units over at Kamalani, because they aren't rates that people in Kihei can afford. So, just, you know, let's be realistic about this and stop being so black and white. There are some good projects and there are some projects that give us pause and we're learning from what we're doing. Now, we have a project in North Kihei that's 30 to 60 percent AMI or median family income and that's wonderful. It's going to really allow a lot of people to live there who are working in restaurant and hotel jobs. But I just don't like this implication that we don't understand because we have cautions. And I've said before that I'm going to support this because I think that we need those conditions and I don't want to see it go through without them but I do have concerns. And I have

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

concerns for reasons beyond apparently what other Councilmembers can understand. You know we're living with it in North Kihei with that project. I'm glad we're not doing that anymore where we're allowing, you know, this short period and if you can't sell it within this period you can sell it for market, because that's what really screws up the market in Kihei, but that has happened.

CHAIR CARROLL: Thank you, Ms. King. Yes, Housing...I mean not Housing, Planning Department, I'm sorry.

MS. McLEAN: Thank you, Chair. Just for the Committee's information, if there are any questions about the Wailuku [sic] Country Town Project and the status of that, that has gone out of the Planning Commissions. Because it has a form-based code that is a very extensive and detailed zoning document that needs to be adopted by ordinance, that transmittal package has not been forwarded to Council yet because we're waiting for Corporation Counsel to review and sign off on that ordinance. When a project goes through Planning Commission, after Planning Commission action, we put a package together with the relevant ordinances signed by Corporation Counsel before we transmit the package to the County Council. So, that's somewhere in between in case there were any questions over the status of that. Thank you, Chair.

CHAIR CARROLL: Thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: Sorry, Chair. Wait, that's like not part of the motion but is that, did you say Wailuku Country Estates? I thought you said Wailuku Country Estates which is the...

MS. McLEAN: Wailuku Country Town.

COUNCILMEMBER COCHRAN: Wailuku Country Town?

MS. McLEAN: Or excuse...Waikapu Country Town.

COUNCILMEMBER COCHRAN: But she's talking about Waikapu. Yeah, okay. So, is...alright. Anyway, so H...how's...HHFDC, you're part of this...HHFDC is part of this? 'Cause I...and how are we going to avoid the situation I'm going through in West Maui with the Front Street Apartments with this? Is there some protective measure going on here 'cause --

CHAIR CARROLL: Mr. Ueoka?

COUNCILMEMBER COCHRAN: --can't have that happen again.

MR. UEOKA: Thank you, Chair. For the...that unfortunate situation in Lahaina, that was more based on some Internal Revenue Code matters, not really under our control or purview. For this development, we will require the developer to record a deed restriction maintaining the affordability for 30 years, and they have conveyed to us they are more than willing to comply. We'll also be...it'll be recognized in the

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

residential workforce housing agreement which will state that and that will also be recorded on the property. So, those are the assurances that for 30 years barring something terrible happen like foreclosure or something that the deed restrictions will remain. Thank you, Chair.

COUNCILMEMBER COCHRAN: Okay, thank you.

CHAIR CARROLL: Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, I mean after all is said and done and the issues with the pricing and all that, you know, it's better to have modifications/conditions put upon or the not, so obviously with this put into a rock and hard place situation there has to be support. Thank you, Chair.

CHAIR CARROLL: Any further discussion before the Chair calls for the vote? All in favor of the motion on the floor signify by saying "aye."

COUNCILMEMBERS VOICED AYE

CHAIR CARROLL: Opposed? Motion carried, one, two, three, four, five...six "ayes," no "noes."

VOTE: AYES: Chair Carroll, and Councilmembers Cochran, King, Guzman, Sugimura, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Hokama, and Councilmembers Atay and Crivello.

MOTION CARRIED.

ACTION: Recommending ADOPTION of revised resolution approving the project with modifications; FILING of revised resolution approving and revised resolution disapproving the project.

CHAIR CARROLL: Members, thank you very much. I know this was very hard. Obviously it was difficult but I think we have made the right decisions and I commend the Committee Members. We have one more item over here, LU-67. Does anybody need a five-minute break for restroom --

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER SUGIMURA: Yes.

CHAIR CARROLL: --or anything? Okay, we're going to take a five-minute recess. Please five minutes because...yeah. Five-minute recess. We have one more item. Yeah. This item also...this other item is also time sensitive, it has to be taken care of. . . .(gavel). . .

RECESS: 3:10 p.m.

RECONVENE: 3:23 p.m.

CHAIR CARROLL: . . .(gavel). . . The Land Use Committee is called back to order.

ITEM LU-67: CONDITIONAL PERMIT FOR SPRINT WIRELESS TELECOMMUNICATION FACILITY AT 3740 LOWER HONOAPIILANI ROAD (LAHAINA) (CC 18-314)

CHAIR CARROLL: The last item on our agenda, LU-67, Conditional Permit for a Sprint Wireless Telecommunication Facility at 3740 Lower Honoapiilani Road. Members, the Committee last heard this item in its meeting on October 2, 2018. As a reminder, Sprint Wireless is requesting a ten-year conditional permit to construct a wireless telecommunication facility in an existing parking lot on property currently owned by the Association of Apartment Owners of Maui Lani Terraces. The last time we met on this, Rich Conte of Wireless Resources, Incorporated, gave a presentation to the Committee on the project on behalf of Sprint Wireless. The presentation in Granicus if you would like to review it. Mr. Conte is available today to help us with any questions we may have on the project. The Chair will ask that he first be designated as a resource person pursuant to Rule 18A of the Rules of the Council. Any objections?

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Thank you. So...Members, the Staff is passing out a revised proposed bill for our consideration today. I'm suggesting a few revisions for consistency and clarity. These revisions are reflected in track changes on the document being distributed. First, the Chair reviewed a previous condition [sic] permit granted to a group of six wireless communication carriers on property in Paia. This Ordinance 3713, the Staff is also passing out for your information. The Conditional Permit had a five-year term. I'm proposing the same length for Sprint Wireless as initial duration for consistency. I am also proposing a change throughout the bill to change "Applicant" to "Sprint Wireless." And changes to Condition 7 to clarify that the property must be developed in accordance with representations made to the Council. Sprint Wireless will also be limited to placing six antenna on the tower as opposed to the 12 shown in their plans, since they have indicated at the Committee that they intend only to install six. As previously mentioned, the Chair sent correspondence to the Chief of Police and also to Sprint Wireless relating to Ordinance 3713 granted in 2009, specifically the permit granted through that ordinance contains conditions that are not present in the

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

proposed bill before us today. These are Conditions 6 through 10 in Ordinance 3713. The only condition from Ordinance 3713 that appears to be in the proposed bill before us is Condition 11 relating to a notification requirement. Because technology changes so rapidly, your Chair would like to get clarification as to whether any of these conditions remain relevant today and would be helpful in protecting the County public safety radio system or the Police Department's operations generally. We have with us today Walter Pacheco, Communications Coordinator for the Department. Mr. Pacheco, could you please comment on the Chair's concerns?

MR. PACHECO: Good afternoon, Chair. Thank you. The proposal as written, we really just need to make a couple of word order changes. The previous long list of conditions are generally met today. Just out of practice with the carriers in that time working together we've moved forward. That list of conditions are in the Planning Commission's discussions. So, in this all we would really need to do is just change word order. In item nine where it says that the Sprint Wireless shall notify MPD Communications Coordinator with the Department of Police of installation of equipment operating in the 700/800 megahertz band, system expansion, or a shared location. So, it's just a matter of changing order to indicate the process of developing the site and maintaining that operation.

CHAIR CARROLL: Anything further?

MR. PACHECO: No, Chair.

CHAIR CARROLL: Thank you. The Chair also sent correspondence to Mr. Conte relating to Ordinance 3713. Mr. Conte, do you have any comments as it refers to Conditions 6 through 10, Ordinance 3713?

MR. CONTE: I'm sorry, I didn't hear that.

MS. CALLENTINE: We can't hear you, sir.

CHAIR CARROLL: Yeah, I know. Well, I'm glad somebody else besides me has hard hearing . . . *(inaudible)*. . . The Chair also sends correspondence to Mr. Conte relating to Ordinance 3713. Mr. Conte, do you have any comments as it relates to Conditions 6 through 10 in Ordinance 3713?

MR. CONTE: I'd like to defer my comments to the, Pete Yeagar who's the RF technician.

MR. YEAGER: Thank you, Chair. Thank you, Councilmembers. As far as the Conditions that were sent to us, 6 through 10, these are very familiar to us. We've used these kind of conditions in the past here on Maui and in other installations on other islands. So, we agree to all these conditions and we agree to Walt's change in Number 9.

CHAIR CARROLL: Thank you. . . *(inaudible)*. . . do you have any comments on the revised proposed language for Condition 7 relating to the development of telecommunications facility and the limitation to six antennas?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

MR. YEAGER: We have no objection to the changing from 12 to 6 antennas. It's six antennas with a microwave dish, is that correct?

CHAIR CARROLL: Yes.

MR. YEAGER: Yes.

CHAIR CARROLL: The Committee received several documents from you since the last meeting, do you have any comments you wish to make to the Committee at this time relating to the new information provided? The Chair would ask you to please be...your comments because of time constraints.

MR. YEAGER: One of the things that was brought up in the last meeting was talked about the proximity of the airport to this particular cellular installation, and we did have an FAA notice or opinion on that and it's, it passes. We do not have to give notice. And unless the tower were to be built at 189 feet, so this is a 40-foot structure so it falls well within their guidelines.

CHAIR CARROLL: Thank you. Planning Department, does Planning have any comments they would like to offer at this time as it relates to Conditions 6 through 10 of Ordinance 3713 specifically?

MS. McLEAN: We have no comments, Chair. We feel that we can enforce those conditions as proposed. Thank you.

CHAIR CARROLL: Thank you. Deputy Corporation Counsel Galazin, do you have any comments at this time as it relates to Conditions 6 through 10 of Ordinance 3713 specifically?

MR. GALAZIN: Thank you, Chair. One of the requirements that we act under, you know, as I explained it during the last meeting that we're subject to the Federal Communications Commission's...both the regulations that they have promulgated as well as the Federal statutes. One of the prohibitions is that, you know, as a body we cannot treat different carriers differently if they provide similar services. So, as the applicant has indicated, if they are familiar with these types of conditions and they have agreed to them on the island already and then it seems appropriate to include them. Thank you.

CHAIR CARROLL: Any other comments you would like to make at this time, Corporation Counsel?

MR. GALAZIN: Not at this time, Chair.

CHAIR CARROLL: Thank you. Members, the floor is open for discussion. Mr. Guzman?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

MR. GUZMAN: Thank you, Chair. I know that we have a deadline to either pass this or not. If we don't pass it then I believe the Federal statute allows the carrier to take us to court for an injunction. Is, has that been extended and when is the actual deadline now?

CHAIR CARROLL: Corporation Counsel?

MR. GALAZIN: Thank you for the question, Member Guzman. You are correct in that the, once the deadline has passed, after 30 days after that then the applicant does have the ability to seek injunctive relief in Circuit Court. The current shot-clock extension that we've mutually agreed to with the applicant to have it run until December 7, 2018, we have not executed a, another written amendment to that. If the applicant is here today and understands that this, you know, is an ordinance and must go through, you know, two readings before Council, if they, you know, can aver here in front of this body that they are fine with the timeframe that that will take, even if it does go past December 8th, you know, I don't think we would go 30 days past December 8th. And they would certainly be bound to the representations that they make here to you today.

COUNCILMEMBER GUZMAN: So, we basically have to pass this out today in order to meet the deadline of December 7th?

MS. NAKATA: Mr. Chair, under the current calendar in order to meet the December 7th deadline, if the Committee made a recommendation today then the Committee would try to report out for the Council meeting on November 15th for first reading and second reading on December 7th if it's a positive recommendation.

COUNCILMEMBER GUZMAN: Okay.

CHAIR CARROLL: Anything further, Mr. Guzman?

COUNCILMEMBER GUZMAN: No, I, you know, Chair, at the last meeting I do not like this strong arm legislation from the Federal government basically saying look, either you guys pass this out or we get sued and they're...and it's enabling Federal law that allows them to say hey, they have grounds to sue us if we don't pass it out. And the only justification that we can deny this is aesthetic, and if we put forth a denial based off of health/safety, health or safety it's not defensible in the court system, because the Federal law says it's not a reason for us to deny it. So, to me that's ridiculous that aesthetic purposes has a higher priority than health and safety. So, I will, you know, if this needs to be passed out, yeah, I'll vote yes to get it to the full Council but at full Council I'm going to say on record I disagree with this Federal law and I will vote no. But to pass it out of Committee so that we can meet that December 7th deadline, I'm willing to do so to get it out of Committee. But I'll stay my position and, you know, set forth that I disagree with this strong arm Federal legislation.

CHAIR CARROLL: Chair agrees. Any further discussion before the Chair gives his recommendation?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Ms. Cochran?

MS. COCHRAN: The land is zoned A-2 and that's our land? Whose property is this?

CHAIR CARROLL: Planning Department?

MS. McLEAN: It's private property.

COUNCILMEMBER COCHRAN: Oh, and who, do you know who the owner is?

MS. McLEAN: The Maui Lani Association of Apartment Owners.

COUNCILMEMBER COCHRAN: Oh, it's part of their property.

MS. McLEAN: It's at the end of the parking lot of that --

COUNCILMEMBER COCHRAN: In the back.

MS. McLEAN: --complex. Yeah.

COUNCILMEMBER COCHRAN: Okay. But I agree with Mr. Guzman's comments too. So, thank you.

CHAIR CARROLL: Any further discussion before the Chair gives his recommendation? Members, the Chair will entertain a motion to recommend passage on first reading of the revised proposed bill distributed at today's meeting entitled A Bill for an Ordinance Granting Sprint Wireless a Conditional Permit to Allow for the Installation of a Wireless Telecommunication Facility Consisting of a Thirty-Five (35) Foot Metropalm [sic] Tower with Additional Five (5) Feet of Palm Fronds at the top, and a 200 Square-Foot Lease Area to Contain Equipment on the Ground; Located in the A-2 Apartment District, for Property Situated at 3740 Lower Honoapiilani Highway...Road and Identified as Tax Key Map [sic] Number (2) 4-3-006:004, Lahaina, Maui, Hawaii; incorporating any amendments made at today's meeting; and nonsubstantive revisions; and the filing of County Communication 18-314.

COUNCILMEMBER SUGIMURA: So move.

CHAIR CARROLL: Been moved by Ms. Sugimura, seconded by Mr. White. Any further discussion? Hearing none, all in favor signify by saying "aye."

COUNCILMEMBERS: Aye.

MS. NAKATA: Mr. Chair?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

CHAIR CARROLL: Opposed?

VOTE: AYES: Chair Carroll, and Councilmembers Cochran, Guzman, Sugimura, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Hokama, and Councilmembers Atay, Crivello, and King.

MOTION CARRIED.

ACTION: FIRST READING of revised bill and FILING of communication.

MS. NAKATA: Mr. Chair? Mr. Chair? Before the vote, could Staff just clarify whether the bill is being amended to incorporate those Conditions that were numbered 6, 7, 8, 9, and 10 from Ordinance --

CHAIR CARROLL: Oh, I'm sorry.

MS. NAKATA: --3713, as well as I believe the Police representative's revisions to Condition 9 of the proposed bill which as Staff understands it would be to add the phrase "system expansion" after "700/800 megahertz band."

CHAIR CARROLL: Alright, I thought we went over that but was there any objection to those, the one we passed out?

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Alright, thank you. And again the vote has already been passed.

COUNCILMEMBER WHITE: So, if...and also to allow the Staff to make nonsubstantive...

CHAIR CARROLL: Yeah, I had that in the --

COUNCILMEMBER WHITE: Okay.

CHAIR CARROLL: --motion.

COUNCILMEMBER WHITE: So, that she can make sure that we've got the amendment offered by the Police.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

COUNCILMEMBER WHITE: So, that she can make sure that we've got the amendment offered by the Police.

CHAIR CARROLL: Alright, that brings us to the end of our meeting today. And I realize this last item was extremely frustrating, and just for the Members and the public to know that we have people trying, going before in Washington to try to change this to get the counties more latitude and more authority on when we have future tower requests coming to us. However --

MS. NAKATA: Excuse me, Mr. Chair?

CHAIR CARROLL: --that's probably going to be --

COUNCILMEMBER WHITE: Chair?

CHAIR CARROLL: --a long time.

COUNCILMEMBER WHITE: I don't believe you announced the result of the vote. I think you may have heard it --

CHAIR CARROLL: Oh.

COUNCILMEMBER WHITE: --but...maybe --

CHAIR CARROLL: The results of the vote --

COUNCILMEMBER WHITE: --just to be clear let's...

CHAIR CARROLL: --were five "ayes," no "noes." Thank you...

MS. NAKATA: Thank you, Chair.

CHAIR CARROLL: Alright, thank you again. And you still have time to go down to the MACC and the Made in Maui Festival is going on until six o'clock. This meeting stands adjourned. . . .(gavel). . .

ADJOURN: 3:38 p.m.

APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 2, 2018

CERTIFICATE

I, Daniel Schoenbeck, 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 16th day of November, 2018, in Kula, Hawaii



Daniel Schoenbeck