

PLANNING AND SUSTAINABLE LAND USE COMMITTEE
Council of the County of Maui

MINUTES

May 21, 2019

Site Inspection

CONVENE: 3:06 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Keani N.W. Rawlins-Fernandez
Councilmember Yuki Lei K. Sugimura

EXCUSED: VOTING MEMBERS:

Councilmember Kelly T. King
Councilmember Alice L. Lee
Councilmember Michael J. Molina

STAFF: David Raatz, Supervising Legislative Attorney
Leslee Matthews, Legislative Attorney
Julie Reed, Legislative Analyst
Clarita Balala, Committee Secretary

Angela Lucero, Executive Assistant to Councilmember Tamara Paltin
Don Atay, Executive Assistant to Councilmember Shane M. Sinenci

ADMIN.: David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
Stephen Welling, Deputy Director, Department of Public Works

OTHERS: Raymond Cabebe, Chris Hart & Partners
Carol Koepke Tu`ua, General Manager, Kahana Sunset
Lysa Tracy, Quam Properties
Rory Frampton

**PLANNING AND SUSTAINABLE LAND USE COMMITTEE INSPECTION MINUTES
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**PSLU-13 COMMUNITY PLAN AMENDMENT AND CHANGE IN
ZONING FOR THE KAHANA SUNSET CONDOMINIUM AT
4909 LOWER HONOAPIILANI ROAD (LAHAINA)**

The Committee assembled at the Kahana Sunset Condominium, 4909 Lower Honoapiilani Road, Lahaina, Maui, Hawaii, at the Keonenui Room patio area located at the south end of the condominium's Building A.

Chair Paltin convened the site inspection and explained that the purpose of the inspection was to view the Kahana Sunset Condominium property. The property is being considered for a Change in Zoning from R-3 Residential District to H-M Hotel District and a Community Plan Amendment from Single-Family to Hotel.

No individuals testified.

Chair Paltin explained the proposed Change in Zoning and Community Plan Amendment would bring the property's land use designation into conformity with the property's existing use.

Chair Paltin asked Raymond Cabebe, the consultant for the project, to provide an overview of the applicant's request.

Mr. Cabebe explained that the company he works for, Chris Hart and Partners, was retained by the applicant ten years ago to assist with obtaining entitlements necessary to construct sea walls. During that time, the applicant had to conduct an environmental assessment. Because an environmental assessment is also a requirement of a Community Plan Amendment, the applicant also initiated a Change in Zoning and Community Plan Amendment.

Mr. Cabebe said the sea wall work has been completed.

Mr. Cabebe explained that the Change in Zoning and Community Plan Amendment were recommended to be approved by the Council's Land Use Committee in 2016. However, the applicant was unable to prepare the necessary Unilateral Agreement at that time. The Council changed in 2017 and again in 2019, so the applicant must receive another recommendation from a committee for approval.

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Mr. Cabebe indicated the Maui Planning Commission recommended a condition to limit the height of the buildings on the property to the height of the buildings currently on the property.

Mr. Cabebe said the condominium was built in 1971 under a variance granted by the County.

Mr. Cabebe explained the State and County requested the applicant provide beach access. Subsequently, the applicant created an access along the south boundary of the property, which was completed in 2016. The Special Management Area permit granted for the property required the access to be open from 9:00 a.m. to 7:00 p.m. Mr. Cabebe said a Councilmember in 2016 requested the access to open at 7:00 a.m., so a condition to effectuate the longer period was proposed.

The Chair called for questions germane to the site from Committee members.

Committee member Rawlins-Fernandez asked if there was any dedicated parking for beach access.

Mr. Cabebe said there is no dedicated parking on the property. He said there is a no-parking sign on the street, but people park on the street anyway.

Committee member Rawlins-Fernandez asked when the sea wall was constructed. Mr. Cabebe said the current wall is from 2015. A previous wall had been put in place, but it had started to fall apart.

Mr. Cabebe explained a drain line runs through the property from upland properties. It had leaked, so the property owners fixed it.

Chair Paltin asked if the sand on the property erodes and whether a layer of clay underneath the sand mixes in the ocean to make it look like runoff.

Vice-Chair Sinenci asked who owns the property.

Mr. Cabebe explained that because it is a condominium property, it has 79 owners.

Vice-Chair Sinenci asked if there are future plans for the property.

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Mr. Cabebe said there are currently no plans. If anything does occur, a Special Management Area major permit would be required.

Chair Paltin asked what would happen if the current owners decided to sell their property and the new owners wanted to redevelop it.

Mr. Cabebe said the new owners would need to acquire a Special Management Area permit. Furthermore, the owners would be limited to what is allowed in the zoning of the property.

Chair Paltin asked if preventing future redevelopment of the property would constitute a taking.

Deputy Corporation Counsel Galazin said that generally speaking, it would not be a taking. He said anything on the property other than repair or replacement would require a Special Management Area major permit, which is a discretionary permit.

Committee member Rawlins-Fernandez asked if there has been a significant impact on the environment since the construction of the original sea wall. Mr. Cabebe said the beach has eroded significantly but could not say whether that was a result of the sea wall, natural erosion, or sea level rise.

Committee member Rawlins-Fernandez asked what the responsibility of the owners is to monitor and take care of artificial elements created along the shoreline, such as sandbags that may fall into the ocean. Ms. Tu`ua said the sea bags are permitted. Ms. Tu`ua said it is not easy to remove the sea bags, but there is a plan in place to remove them.

Committee member Sugimura said beach erosion is a concern for many condominiums.

Vice-Chair Sinenci asked if the proposed land use entitlements would change the applicant's taxes. Mr. Cabebe said the property owners are already being taxed at hotel rates.

Chair Paltin clarified the proposed Community Plan Amendment and Change in Zoning would match the property's current hotel-type use.

Ms. Tu`ua explained the property is divided into six buildings that are three levels each. The rooms on the first level are one-bedroom units.

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Two-bedroom units on the second and third levels have two bathrooms and a kitchen. Some units on the ground level have half-baths. The office building has a property manager's office, a residential apartment, an activities desk, and an office for one of the rental management companies operating on the property.

The Committee moved to the gated entrance of the fenced public beach access pathway on the south side of the property that runs from Lower Honoapiilani Highway directly to the ocean.

Committee member Rawlins-Fernandez noted the sign at the beach access path states "weather permitting." She asked who makes that determination. Ms. Tu`ua said the sign should be changed.

Ms. Tu`ua indicated a building is within six feet of the path, which is a concern if the beach access hours were expanded.

Chair Paltin asked if a member of the public could make an appointment to go to the beach for a specific purpose at night. Ms. Tu`ua said they could use the front access to the beach on the property.

Chair Paltin asked if anyone would stop people from using the beach access at night. Ms. Tu`ua could not guarantee that, but said they are accommodating to visitors.

Ms. Tu`ua said they would have to look at accommodating appointments for beach use at night since there are no staff on the property after 10:00 p.m. to lock up the property. Chair Paltin suggested checking out a key to people.

Ms. Tu`ua said people would need a good reason for accommodations to be made to provide access to the beach at night. Chair Paltin questioned if going to holoholo was not a good reason. Ms. Tu`ua expressed concern if several hundred people wanted to use the beach at the same time.

Committee member Sugimura asked Deputy Corporation Counsel Galazin about beach access law. Deputy Corporation Counsel Galazin said while beach access should be maintained, the property owner does have security interests and other interests. As such, having limited access times for the public beach access is permissible. However, if someone wants to come out at night to do an activity at the beach, there needs to be a legal means of access for that person if the public beach access is closed.

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Committee member Sugimura noted the property owners have made extensions to the beach access and the current times should be maintained.

Committee member Rawlins-Fernandez said some traditional and customary practices are outside of the beach access times.

Chair Paltin asked if access during the allowed hours has had a negative impact on the property. Ms. Tu`ua said visitors sometimes let their dogs run loose, which is a concern for some on the property. Chair Paltin asked about the laws on leashed dogs. Deputy Corporation Counsel Galazin said the County laws on that matter apply anywhere in the County. He is not sure if the State has specific provisions on leashed dogs on beaches, but he thinks if the County does not permit unleashed dogs, neither would the State.

Ms. Tu`ua expressed a desire to be consistent with County and State laws.

Chair Paltin asked if State laws supersede County laws. Deputy Corporation Counsel Galazin said yes. He clarified that if the State has legislated clearly in a certain area, it preempts County law. In this instance, though, the State has the status of a property owner in the County.

Committee member Rawlins-Fernandez noticed overgrowth from another property crossing the property's fence line. She asked who is responsible for that overgrowth. Lysa Tracy said the other property owner is responsible.

Ms. Tu`ua said the other property owners have not offered to assist with the overgrowth issue. Deputy Corporation Counsel Galazin said if the owner of the actual plant does not want to act, then the owner of the property the plant is crossing into can proceed with trimming the plant.

There being no further questions or discussion, Chair Paltin adjourned the inspection at 3:44 p.m.

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APPROVED:

Tamara A. M. Paltin

TAMARA PALTIN, Chair
Planning and Sustainable Land Use Committee

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