

PURSUANT TO CHAPTER 92, HAWAII REVISED STATUTES AS AMENDED, NOTICE IS HEREBY GIVEN OF A REGULAR MEETING OF THE MAUI PLANNING COMMISSION

## AGENDA

DATE: January 25, 2005 (Tuesday)  
TIME: 9:00 A .M.  
PLACE: Planning Department Conference Room, First Floor, Kalana Pakui Building,  
250 South High Street, Wailuku, Maui, Hawaii 96793

Members: Randy Piltz (Chair), Susan Moikeha (Vice-Chair), Bernice Lu, Susan Moikeha, Suzanne Freitas, Patricia Eason, Johanna Amorin, Diane Shepherd, Nick Casumpang Jr., William Iaconetti

**Public testimony will not be allowed on the Doug White Appeal item as the Maui Planning Commission will be exercising its adjudicatory function pursuant to Section 92-6(a) (2) Hawaii Revised Statutes as amended in decision making on the contested case appeal proceeding.**

A. CALL TO ORDER

B. Decision making on the contested case hearing conducted by Hearings Officer E. John McConnell, Retired Judge on the following Special Management Area appeal and subsequently reopened at the July 27, 2004 meeting (J. Alueta)

Appeal by Mr. James Geiger of Mancini, Welch & Geiger on behalf of Douglas Richard White from the determination of the Director, Department of Planning by letter dated January 24, 2003 to rescind the Special Management Area (SMA) Exemption determination by letter dated August 8, 2002 regarding the construction of a single family dwelling at 1377 Front Street, TMK: 4-5-012: 018, Lahaina, Island of Maui. (SM5 2002/0289) (APPL 2003/0004)

James Richard McCarty, attorney for Momi Keahi, Kai Keahi, and Kalani Kapu intervening on the abovementioned appeal.

PURSUANT TO SECTION 92-6(a)(2), HAWAII REVISED STATUTES AS AMENDED, PUBLIC TESTIMONY WILL NOT BE RECEIVED ON THESE ITEMS AS THE MAUI PLANNING COMMISSION WILL BE EXERCISING ITS ADJUDICATORY FUNCTION.

Memoranda Filed in the Reopened Contested Case Hearing:

- 1) James W. Geiger of Mancini, Welch & Geiger submitting Appellant Douglas Richard White's Supplemental Proposed Findings of Fact dated December 23, 2004

- 2) Brian T. Moto and Madelyn S. D'Enbeau of the Department of the Corporation Counsel submitting Appellee Michael W. Foley, Director, Department of Planning, County of Maui's Proposed Findings of Fact and Conclusions of Law Re; Additional Evidence dated December 22, 2004
- 3) James Richard McCarty, attorney for Intervenors Momi Keahi, Kai Keahi, and Kalani Kapu submitting Intervenors' Supplemental Proposed Findings of Facts, Conclusions of Law, and Decision and Order dated December 22, 2004
- 4) James W. Geiger of Mancini, Welch, & Geiger, attorney for Appellant Douglas Richard White submitting Appellant Douglas Richard White's Objections to the Appellee Michael W. Foley, Planning, County of Maui's Proposed Findings of Fact and Conclusions of Law Regarding Additional Evidence dated January 7, 2005.
- 5) James W. Geiger of Mancini, Welch & Geiger, attorney for Appellant Douglas Richard White's Objections to Intervenor's Supplemental Proposed Findings of Fact, Conclusions of Law, Decision and Order dated January 7, 2005.
- 6) Brian T. Moto and Madelyn S. D'Enbeau, attorneys for Appellee Michael W. Foley, Director, Department of Planning submitting Appellee's Exceptions to Appellant Douglas Richard White's Supplemental Proposed Finding of Fact dated January 7, 2005.
- 7) James W. Geiger of Mancini, Welch & Geiger, attorney for Appellant Douglas Richard White submitting Appellant Douglas Richard White's Post-Hearing Memorandum Regarding Authority of Maui Planning Commission to Rescind or Revoke Former Planning Director John E. Min's 8/8/02 SMA Exemption Determination dated January 7, 2005.
- 8) Brian T. Moto and Madelyn S. D'Enbeau, attorney for Appellee Michael W. Foley, Director, Department of Planning submitting Appellee's Memorandum regarding Jurisdiction of the Maui Planning Commission to Rescind a Director's SMA Exemption Determination dated January 7, 2005

Memoranda previously circulated for the Maui Planning Commission's July 27, 2004 meeting (**Commissioners: Please bring these documents with you.**)

- 1) Hearing Officer E. John McConnell (Ret.)'s Report dated May 21, 2004.

- 2) Hearing Officer E. John McConnell (Ret.)'s Proposed Findings of Fact and Proposed Conclusions of Law dated May 21, 2004.
- 3) James W. Geiger of Mancini, Welch, and Geiger submitting Appellant Douglas Richard White' s Exceptions to the Hearing Officer's Report and Proposed Findings of Fact and Conclusions of Law dated June 4, 2004.
- 4) Brian T. Moto and Madelyn S. D'Enbeau of the Department of the Corporation Counsel submitting Appellee Michael W. Foley, Director, Department of Planning, County of Maui's June 4, 2004 Exceptions to the Hearing Officer's Report.
- 5) Brian T. Moto and Madelyn S. D'Enbeau of the Department of the Corporation Counsel submitting Appellee Michael W. Foley, Director, Department of Planning, County of Maui's June 4, 2004 Exceptions to Hearing Officer's Findings of Fact and Proposed Conclusions of Law.
- 6) James Richard McCarty submitting Intervenors Momi Keahi, Kai Keahi, and Kalani Kapu's June 8, 2004 Joinder in Appellee Michael W. Foley, Director, County of Maui's Exceptions to the Hearing Officer's Report; Joinder in Appellee Michael W. Foley, Director, County of Maui's Exceptions to the Hearing Officer's Findings of Fact and Proposed Conclusions of Law.
- 7) James W. Geiger of Mancini, Welch, and Geiger submitting Appellant Douglas Richard White's June 18, 2004 Memorandum in Support of Hearing's Officer's Report.
- 8) James W. Geiger of Mancini, Welch , and Geiger submitting Appellant Douglas Richard White's June 18, 2004 Memorandum in Support of Hearing Officer's Proposed Findings of Fact and Conclusions of Law.

**\*An Executive Session may be called in order for the Commission to consult with their attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.**

#### E. DIRECTOR'S REPORT

1. Conduct of persons testifying before the Maui Planning Commission (requested by Maui Planning Commission)
2. EA/EIS Status Report distributed with the January 11, 2005 agenda **(Commissioners please bring this with you)**
3. EA/EIS Status Report

4. SMA Minor Permit Report distributed with the January 11, 2005 agenda  
**(Commissioners please bring this with you)**
5. SMA Minor Permit Report
6. SMA Exemptions Report distributed with the January 11, 2005 agenda  
**(Commissioners please bring this with you.)**
7. SMA Exemptions Report

F. NEXT REGULAR MEETING DATE: February 8, 2005

G. ADJOURNMENT

AGENDA ITEMS ARE SUBJECT TO CANCELLATION.

ANY PETITION TO INTERVENE AS A FORMAL PARTY IN THE PROCEEDINGS BEFORE THE MAUI PLANNING COMMISSION MUST BE FILED WITH THE COMMISSION AND SERVED UPON THE APPLICANT NO LESS THAN TEN (10) DAYS BEFORE THE FIRST PUBLIC HEARING DATE. (Note: The calculation of time for deadlines ten days or less excludes weekends and State recognized holidays.) THE ADDRESS OF THE COMMISSION IS C/O THE MAUI PLANNING DEPARTMENT, 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793.

ORAL OR WRITTEN TESTIMONY WILL BE RECEIVED ON EACH ANY AGENDA ITEM SUBJECT TO THE PROVISIONS OF CHAPTER 92, HAWAII REVISED STATUTES AND THE MAUI PLANNING COMMISSION RULES OF PRACTICE AND PROCEDURE. WRITTEN TESTIMONY SHOULD BE RECEIVED AT LEAST TWO BUSINESS DAYS BEFORE THE MEETING TO INSURE DISTRIBUTION TO THE BOARD. FIFTEEN (15) COPIES OF WRITTEN TESTIMONY ARE NEEDED IF TESTIMONY IS PRESENTED IMMEDIATELY PRIOR TO OR AT THE MEETING.

DOCUMENTS ARE ON FILE WITH THE PLANNING DEPARTMENT.

THE ADDRESS OF THE COMMISSION IS C/O THE MAUI PLANNING DEPARTMENT, 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793.

THOSE PERSONS REQUESTING SPECIAL ACCOMMODATIONS DUE TO DISABILITIES, PLEASE CALL THE MAUI PLANNING DEPARTMENT AT 270-7735 (Maui) OR 1-800-272-0117 (Molokai) OR 1-800-272-0125 (Lanai) OR NOTIFY THE MAUI PLANNING DEPARTMENT IN WRITING AT 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793 OR FAX NUMBER 270-7634; AT LEAST TWO (2) BUSINESS DAYS BEFORE THE SCHEDULED MEETING.

ANY FAXES SHOULD BE RECEIVED BY THE DEPARTMENT OF PLANNING BY 5:00 P.M. ON THE SECOND WORKING DAY BEFORE THE MEETING TO INSURE THAT IT IS CIRCULATED TO THE BOARD.

\*An Executive Session may be called in order for the Commission to consult with their attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.

**PLEASE NOTE:** If any member of the Commission is unable to attend the scheduled meeting, please contact the Planning Department at least one day prior to the meeting date. Thank you for your cooperation. (S:\all\carolyn\012505 .age)