

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

AGENDA

DATE: June 23, 2004 (Wednesday)
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

A. CALL TO ORDER

B. Decision making on the consolidated contested case hearing conducted by Hearings Officer Boyd Mossman, Retired Judge on the following Special Management Area appeals: (C. Yoshida)

1. Thomas D. Welch, Jr. and James W. Geiger of Mancini, Welch & Geiger, attorneys for Montana Beach, LLC appealing the determination made by the Planning Director on August 8, 2001 to suspend without prejudice the SMA exemption determination for the Montana Beach Condominium Project, TMK: 2-5-005: 014, Paia, Maui, Hawaii. (Docket No. 01-0002)
2. Thomas D. Welch, Jr. and James W. Geiger of Mancini, Welch & Geiger, attorneys for Montana Beach, LLC appealing the determination made by the Planning Director on August 1, 2001 to suspend without prejudice the SMA exemption determination for the Montana Beach Condominium Project, TMK: 2-5-005: 014, Paia, Maui, Hawaii. (Docket No. 01-0003)
3. James Fosbinder and Rhonda Fosbinder (formerly Clay Sutherland), attorneys for Dennis P. Holland and Diane Holland appealing the determination made by the Planning Director on August 1, 2001 to suspend without prejudice the SMA exemption determination for the Montana Beach Condominium Project, Paia, Maui, Hawaii. (Docket No. 01-0004)
4. Carl Osaki (formerly Bernard Bays of Bays Deaver Lung Rose Baba), attorney for Michael L. Weidner, appealing the determination made by the Planning Director on August 1, 2001 to suspend without prejudice the SMA exemption determination for the Montana Beach Condominium Project, TMK: 2-5-005: 014, Paia, Maui, Hawaii. (Docket No. 01-0005)

5. Deborah Wright of Wright and Kirschbraun, attorney on behalf of Ashgar R. Sadri appealing the determination made by the Planning Director on August 8, 2001 to suspend without prejudice the SMA exemption determination for the Montana Beach Condominium Project, TMK: 2-5-005: 014, Paia, Maui, Hawaii. (Docket No. 01-0006)

Isaac Hall, attorney for Christine Hemming and Hui Alanui O Makena intervening on the five above mentioned appeals.

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.

- 1) Hearings Officer Boyd P. Mossman (Ret.)'s Report dated February 24, 2004.
- 2) James W. Geiger of Mancini, Welch, and Geiger submitting Appellant Montana Beach LLC's Exceptions to Hearing Officer's Report and Proposed Findings of Fact, Conclusions of Law, Decision and Order, Memorandum in Support of Exceptions dated March 9, 2004.
- 3) Carl H. Osaki, submitting Appellant Michael Weidner's March 9, 2004 Exceptions to Hearing Officer's Report and Proposed Findings of Fact, Conclusions of Law, Decision and Order.
- 4) Deborah K. Wright of Wright & Kirschbraun submitting Appellant Asghar R. Sadri's March 9, 2004 Exceptions to Hearing Officer's Proposed Findings of Fact and Conclusions of Law and Order.
- 5) James H. Fosbinder and Rhonda M. Fosbinder of Fosbinder & Fosbinder submitting Appellants Dennis P. and Dianne Holland's March 10, 2004 Exceptions/ Memorandum regarding Hearing Officer's Proposed Findings of Fact and Conclusions of Law and Order.
- 6) Brian T. Moto and Madelyn S. D'Enbeau of the Department of the Corporation Counsel submitting Appellee Michael W. Foley, Department of Planning, County of Maui's March 8, 2004 Exceptions to Hearing Officer's Proposed Findings of Fact and Conclusions of Law and Order.
- 7) Isaac Hall submitting Intervenors-Appellees Christine Hemming and Hui Alanui O Makena's March 9, 2004 Memorandum in Support of Hearing Officer's Report and Exceptions to Hearing Officer's Report.

- 8) James H. Fosbinder and Rhonda M. Fosbinder submitting Appellants Dennis P. and Dianne Holland's March 23, 2004 Memorandum in Support of Certain of the Hearing Officer's Proposed Findings of Fact and Conclusions of Law and Order; Statement of Joinder.
- 9) James W. Geiger of Mancini Welch & Geiger submitting Appellant Montana Beach LLC's March 23, 2004 Memorandum in Support of Certain of the Hearing Officer's Proposed Findings of Fact.
- 10) Deborah K. Wright of Wright and Kirschbraun submitting Appellant Asghar R. Sadri's March 23, 2004 Joinder in Appellant Montana Beach LLC's Memorandum in Support of Certain of the Hearing Officer's Proposed Findings of Fact , filed March 23, 2004.
- 11) 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 March 22, 2004 Memorandum in Support of Hearing Officer's Proposed Findings of Fact and Conclusions of Law and Order.
- 12) Isaac Hall submitting Intervenors - Appellees Christine Hemming and Hui Alanui O Makena's March 23, 2004 Further Memorandum in Support of Hearing Officer's Report and Reply to Exceptions to Hearing Officer's Report Taken by Appellants.
- 13) Isaac Hall submitting Intervenors- Appellees Christine Hemming and Hui Alanui O Makena's March 29, 2004 Supplemental Memorandum in Support of Hearing Officer's Report .

ALL OF THESE DOCUMENTS WERE PREVIOUSLY CIRCULATED TO THE PLANNING COMMISSION. COMMISSIONERS, PLEASE BRING YOUR DOCUMENTS WITH YOU..

C. UNFINISHED BUSINESS

1. Status of contested case regarding ISAAC HALL, attorney for CHRISTINE HEMMING and HUI ALANUI O MAKENA submitting a Notice of Appeal to to the Maui Planning Commission on the SMA Exemption Determinations made by the Planning Director for the Montana Beach Condominium project at TMK: 2-5-005: 014, Paia, Island of Maui. (Docket No. 01-0001) (C. Yoshida)
 - a. THOMAS D. WELCH of MANCINI WELCH & GEIGER, attorneys for

MONTANA BEACH LLC submitting Objections to and Request for Dismissal of Notice of Appeal to the Maui Planning Commission from Determinations by Planning Director.

- b. ISAAC HALL, attorney for Appellants CHRISTINE HEMMING and HUI ALANUI O MAKENA submitting a Further Memorandum in Support of Appeal by Appellants.
- c. Declaration of Christina Hemming.

D. DIRECTOR'S REPORT

E. NEXT REGULAR MEETING DATE: July 13, 2004

F. ADJOURNMENT

AGENDA ITEMS ARE SUBJECT TO CANCELLATION.

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.

*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:\a11\carolyn\062304.age)