

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

July 7, 2008

Council Chamber

RECONVENE: 10:03 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Danny A. Mateo, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember G. Riki Hokama, Member
Councilmember Jo Anne Johnson, Member

STAFF: Tammy M. Frias, Committee Secretary
Carla M. Nakata, Legislative Attorney
Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Jeffrey Hunt, Director, Department of Planning
Robyn Loudermilk, Planner, Department of Planning (Item No. 3)
Jeffrey Dack, Planner, Department of Planning (Item No. 26)
Michael Miyamoto, Deputy Director, Department of Public Works
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: **Item No. 3:** Dwayne Betsill, Managing Member, RDD, LLC
Vince Bagoyo, Jr.
Item No. 26: Dr. Roger Kehler, Kihei Veterinary Clinic
Mich Hirano, Project Manager, Munekiyo & Hiraga, Inc.
Additional attendees (2)

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

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of July 2nd, 2008 is now in session. It is just after 10:00 a.m. on Monday, July 7th. For the record we have in attendance for this recessed meeting, we have Members Mateo, Medeiros, Pontanilla, Victorino, and Molina. Excused are Members Anderson, Baisa, Hokama, and Johnson.

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Members, welcome back and thank you for making yourself available for this meeting. Just for the record the reason why we are in, we recessed this meeting was due to some unanticipated technical difficulties with our audio system, and being that the Committee was not given any assurances that the equipment would be repaired either on Wednesday or Thursday, along with the fact that Friday was a holiday, that is why the decision was made to hold a recessed meeting for Monday, July 7th.

ITEM NO. 3: CHANGE IN ZONING FOR WAIHEE MAUKA PROJECT (C.C. No. 06-314)

CHAIR MOLINA: So we are on Committee Item, Land Use Item 3, which is a Change in Zoning for the Waihee Mauka Project, and we were in the process of getting a question responded to from Member Pontanilla from Deputy Director of Public Works, Mike Miyamoto, when the audio system went haywire. So we are--knock on wood--we are somewhat back to normal again with our system, we hope. And if, Member Pontanilla, if you can bring up your question again, if you remember it, from Wednesday, and we'll try to get Deputy Director Miyamoto to answer the question.

And while you're looking for that particular question, Mr. Pontanilla, from the Committee Staff we have Legislative Analyst Carla Nakata, we have Committee Secretary Tammy Frias in attendance, and from the Corporation Counsel's Office we have James Giroux and Planning Director Jeff Hunt as well. . .and Planner Robyn Loudermilk.

Mr. Pontanilla, would you care to restate your question again to--

VICE-CHAIR PONTANILLA: Sure.

CHAIR MOLINA: --Mr. Miyamoto?

VICE-CHAIR PONTANILLA: Thank you, Chairman. I think when we left off we were talking about traffic, and the question that I had posed to the Public Works Department, Deputy. . .Mike Miyamoto is in regards to Waiehu Beach Road. I understand that Waiehu Beach Road along with the growth that front the particular project are both State highway. My question to Mr. Miyamoto is that the right-of-way on Waiehu Beach Road. . .you know, it's pretty wide, I, I don't know how wide it is, and if, you know, with the width of the road right, right-of-way, if, if a third lane could be installed? I know it's far-fetched from the, the project itself, but I've been trying to advocate the, the State of Hawaii to look into this matter because of the traffic condition coming out of Waihee as well as Waiehu, and one of the questions that I brought forth with the State of Hawaii Transportation is that, you know, what it would take to create a four-lane highway, two going into, coming out from that particular intersection up through Lower Main Road? If a four lane cannot be. . .gotten, you know, the possibility of a three-lane highway going in, into and coming out of Waihee town and maybe, you know, like Haleakala Highway for the last, I don't know, 15, 20 years, you know, what they did is, is do the contraflow and, you know, maybe contraflow in the morning as well as in the afternoon on that one particular section. And

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it, it would relieve traffic from coming into Wailuku town if the State of Hawaii, you know, did that. I, I don't know if there has been conversation between the County of Maui and the State of Hawaii in regards to such, you know, planning of maybe a three-lane highway, contraflow in the morning as well as in the afternoon to relieve traffic.

CHAIR MOLINA: Okay. Deputy Director Miyamoto, are you aware of any discussions on those lines in response to Councilmember Pontanilla's--

MR. MIYAMOTO: Mr. Chair, no, not at this time. We have not been in conversation with the State as to trying to do a multi-lane, reversible lane on Waiehu Beach Road. I think the one major limiting factor right now is the bridge that crosses Iao Stream. I think that it's very tight with two lanes of traffic, and I think there's a pedestrian path also. So I think any, any additional lanes would have, require a major reconstruction of that inters..., that bridge over the Iao Stream. But yes, there is a lot of right-of-way, but as you get closer to Lower Waiehu Beach Road there's a lot of. . .one side has the sand dunes and the other side drops off towards the shoreline. So it could be a little bit challenging. There are some turn lanes at Lower Waiehu Beach Road and also at the. . .for the Waiehu Terrace there's also a left-turn lane. So that would be adding sort of a fourth lane in that area also to get the reversible through lane.

VICE-CHAIR PONTANILLA: Is it a possibility in, in doing, you know, that type of improvements to the bridge to accommodate three lanes? I, I know there's been talk when the Piihana, Piihana affordable housing project that came up, the possibility of a developer, you know, constructing a bridge by the old. . .or by the post office--Eha Street, I think it is--and, you know, the cost to do that is, is pretty, pretty extensive. And, I don't know, maybe the County can take a look at, you know, what would be the cost to expand that bridge. I've seen expansions to some of the bridges here on Maui by different contractors of late. You know, something like that could help alleviate the traffic coming out of Waihee and going to Waihee town.

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: If you recall the intersection at Waie..., Waiehu Beach Road and Eha Street, right now there is a. . .in the town-bound, in the Kahului-bound direction there is a right-turn lane, a left-turn lane and a through lane, and in the opposite direction they have a through lane, a left-turn lane, and that's about it. On the makai side of the roadway there's a residential housing, that there's a wall there that limits your ability to widen to the makai side. On the mauka side you would have to sacrifice that, that right-turn lane because beyond that right-turn lane you would be into the McDonald's at that intersection. So there would have, it would be rather. . .you'd be sacrificing some of the local traffic turning ability in that area.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: Alright. Thank you, Mr. Pontanilla. Mr. Medeiros?

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COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Miyamoto, the Kahekili Highway is a State highway? Is that correct?

MR. MIYAMOTO: From the portion where it intersects with Waiehu Beach Road.

COUNCILMEMBER MEDEIROS: Okay. But Kahekili Highway goes through or to Happy Valley? Is that right?

MR. MIYAMOTO: Yes, but from the intersection with Lower, Waiehu Beach Road going towards Happy Valley, that's the County's responsibility.

COUNCILMEMBER MEDEIROS: Oh, I see. So the State jurisdiction stops at the intersection where it intersects with Waiehu Beach Road?

MR. MIYAMOTO: Yes.

COUNCILMEMBER MEDEIROS: I see. So the County somewhat has an ability to make some traffic flow changes from Waiehu Beach Road intersection through Market Street?

MR. MIYAMOTO: Through Happy Valley, I guess, would be the, the most challenging right-of-way impacts.

COUNCILMEMBER MEDEIROS: Right.

MR. MIYAMOTO: There's a lot of angle parking in that area in front of the, the grocery store, in front of the hardware store.

COUNCILMEMBER MEDEIROS: Right.

MR. MIYAMOTO: That's why the...for...I think in the, the previous Administration when the Hale Mua project came up, they were looking at that third crossing of Iao Stream at the extension of Imi Kala by Eha Street.

COUNCILMEMBER MEDEIROS: Uh-huh. I see. Okay. And, and you gave a response to Member Pontanilla about having to sacrifice the right-turning lane where it intersects with Eha next to McDonald's in order to do any widening. Does the County have jurisdiction over the shoulder part of the stream that comes down parallel to Eha where I see we have some equipment there working currently?

MR. MIYAMOTO: Yes, that's an access road for Iao Stream maintenance that we have, we are currently using as a part of our project to maintain that stream.

COUNCILMEMBER MEDEIROS: I see. Do you think, in your professional analysis, that that could be a right turn, taking a one-way street up there and connecting back to Eha above?

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MR. MIYAMOTO: That would really be impinging on the ability to maintain Iao Stream, the levies at Iao Stream, and that levy wasn't designed to carry regular traffic at, at this point. I mean it carries our heavy equipment, but the surface, the slopes of the sides off of the roadway area are not ideal for vehicular traffic, the general public.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that response. In, in my attendance to a community meeting in Waihee the concern, which has been raised already, about traffic is a major concern for that community, and if there's anything we can do to mitigate that with this application, I certainly think the people of that community would appreciate that. But thank you for your consideration. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you very much, Mr. Medeiros. Committee Members, any other questions before the Chair makes a recommendation as it relates to Land Use Item 3, the Waihee Mauka Project. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. For the Director, Deputy Director again. Is the Imi Kala Road extension still a project for the County of Maui?

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Mr. Chair? The. . .actually, the Imi Kala extension with the increase of that bridge actually was part of the Piihana District, but then again when Hale Mua was passed through the 201G process, that was also part of their development. So there's two projects that somewhat are connected to that, that extension.

VICE-CHAIR PONTANILLA: One, one more question, Chairman, in regards to that particular bridge and, in general, Imi Kala extension. What is the requirements for developer Stanford Carr in regards to his development improving the roadway from, I guess, his development area into the Piihana development, so-called Piihana development area?

CHAIR MOLINA: Okay.

MR. MIYAMOTO: Mr. Chair?

CHAIR MOLINA: Mr. Director, before you answer, again if your response can be catered to the. . .Committee item as it--you know, we have to make sure that it can relate because I want to make sure we stay, you know, on the subject matter as well. So, I know there's traffic questions, but main thing we keep it tied in to Land Use Item 3. Proceed, Mr. Director.

MR. MIYAMOTO: Yes, the. . .to provide the traffic relief to the, the Waihee side for the crossing of Iao Stream--since there's currently only two crossings, one at Waiehu Beach Road and one through the Happy Valley area. The Happy Valley area is really right-of-way constrained and there's. . .we're trying to work on providing some turn lanes and parking in that area. The

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Imi Kala extension for Stanford was part of their original development, the Piihaha District, was part of their project. The Hale Mua has that same road, connecting road to help relieve the traffic from that portion of the island.

VICE-CHAIR PONTANILLA: Chairman, thank you for letting me stray on that.

CHAIR MOLINA: Okay.

VICE-CHAIR PONTANILLA: And maybe, you know, that should be taken up on another day in regards to traffic congestion coming in and out, out of Waihee town. Thank you.

CHAIR MOLINA: Okay. Good, good point, Member Pontanilla, because I guess the other projects tie in to this High..., Kahekili Highway as well, so I think it's worthy of a more detailed discussion at another time, but nevertheless a good subject. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. And I appreciate my colleagues' concerns and suggestions in the area. Thank you very much. All of these are being and have been explored for a long time, it's nothing new. Unfortunately, some of this was tied into development. . .that some of it, as we all know right now, may not occur, so that may put a lot of these plans on hold or the County has to with Federal fundings pickup the tab, which may become also difficult, as Chair Hokama has mentioned of the difficulty in the transportation funding. Also, I know that the main concern for the Waihee Village area was really the portion that starts from beyond the school in. . .across where the Hawaiian homes have been built, and that's where the big tie ups have been occurring, especially the school, and that's where the emphasis has to be; and the State is looking into it, the Department of Transportation. In fact, I had a meeting with Brennon Morioka yesterday on Kauai 'cause we were up there for the services of the late Mayor Baptiste, and we kind of covered a few items, and that was one of them we covered and they are looking at. But, unfortunately, the matrix and all that, we're down on the list and so it's not something that's going to happen overnight, yeah. But I assure the people of Waihee that we are looking for some positive solution. What I'd like to know from the developer, and this ties directly into that, is there resolve to work on the bypass road or the back road? Because I know Mr. Betsill has a point where they have come to some kind of reasonable working relationship with the other developers who are talk, talking about building anything. So, I want to know from him, and I think he mentioned it briefly, but just to make sure the public's aware that they are working. . .and, and that bypass from the village behind, coming across to connecting just below the. . .or just beyond the Hawaiian homes, that area will be another positive way of moving traffic away from the village two lanes and moving it behind. Part of it would be their development and part of it would be other developments that are talking about the area. That, to me, is where I'd like to see them put their effort and money and resources towards so that the people of Waihee Village are not being impacted. I mean I should say not Waihee--yeah, Waihee Village. Yeah.

CHAIR MOLINA: Okay. Members, any objections to having Mr. Betsill respond to Mr. Victorino's questions?

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COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Mr. Betsill, if you will. . .and if you could state your name for the record before you respond.

MR. BETSILL: Dwayne Betsill. Good morning. The. . .as I spoke last week, we're working with Dave Goode who has that project above the village, and we've had two meetings about that. Once again, there's the old cane road that just. . .it borders our property, it's not on our property. But what we've shared is that we actually have a, a. . .our project will be where there's a little circle in and out of our project and we're connecting it upward to the adjacent land. So my suggestion to Mr. Goode was to go ahead and contact those people, because that cane road's been there forever, you know, and, and a lot of people still walk on that cane road. And so basically, that is what they were trying to, that's what he was working on the last time I talked with him. That was about two months ago. So, I haven't had any talk or conversation for about two months on that, but we did meet twice on that possibility and we're willing to give them frontage through our prop. . ., property to make that work.

COUNCILMEMBER VICTORINO: Thank you, Mr. Betsill. I guess the question then would come up for Mr. Goode and KSD and, and what they're planning to do. But so long as I have assurances that you're going to be part of the process, I think that's important. You know, I don't want to add another condition. I, I think, you know, you stated public and I'm going to hold your feet to the fire. You know me, yeah?

MR. BETSILL: Yeah.

COUNCILMEMBER VICTORINO: . . .*(chuckle)*. . . And but, more importantly, the people of Waihee Village are not happy with the continuous growth without some kind of relief, and that back, that old cane field road or that area back there would be ideal for a reliever, if you want to call it another bypass, you know. But I think it would be really working 'cause it'd pass the school and take away a lot of that heavy traffic in that area. So, so long as I know you're considering it and you're working on it, and hopefully Mr. Goode can somewhere along the line we can get him up, ask the Chair to write a letter, if that would be alright with the Chair, asking their consideration and, and some answers to that question. If that's alright with you, Mr. Chair--

CHAIR MOLINA: Sure.

COUNCILMEMBER VICTORINO: --I'd be satisfied with that. So thank you very much. Thank you, Chair. Thank you, Mr. Betsill.

CHAIR MOLINA: Okay.

MR. BETSILL: You're welcome.

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CHAIR MOLINA: Thank you, Mr. Victorino. Members, any other, other questions for Mr. Betsill? Oh, excuse me, Mr. Betsill, you have a question from Member Medeiros. Member Medeiros, proceed.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Good morning, Mr. Betsill.

MR. BETSILL: Good morning.

COUNCILMEMBER MEDEIROS: Thank you for being here. In your consideration of that bypass road. . .would that road, the entrance to that particular road go up the road by the Catholic church? Is that where it would it would go up from--

MR. BETSILL: Well, what they'd, when, in the. . .you were in the meeting that we met there with the County, with the community, and the road that goes up by the church into it. . .what the consideration was right now there is a cul-de-sac, there is a road that goes through Mr. Goode's property and there's a cul-de-sac. So what he was talking about is extending the cul-de-sac through a piece of property. . .right straight through which would connect to the cane road, that was the last thing. But, but that would be the relief is what you're saying they would, they-- 'cause the traffic is there by the school, everybody knows that.

COUNCILMEMBER MEDEIROS: Right.

MR. BETSILL: So what it would probably mean is people would need to turn up right and go up and back down.

COUNCILMEMBER MEDEIROS: So the, the connector road from Kahekili Highway to that bypass would be on that road by the Catholic church?

MR. BETSILL: Yes.

COUNCILMEMBER MEDEIROS: Okay. And also in that meeting there was suggestions by the community to extend that road through your property and Mr. Goode's or along that line and connect to the road that goes up to Waiehu Mauka. Was that a consideration?

MR. BETSILL: Well, what we discussed was just coming through back down through our property, because, once again, the cane road is right on our border, on our fence line. So it's not actually on our property, but it's right next to it. So we just talked, we didn't talk about extending it all the way up to Malaihi Road. Is that the one you're talking about?

COUNCILMEMBER MEDEIROS: That's correct. That's the road name. . . .*(chuckle)*. . .

MR. BETSILL: That would be quite expensive, but once again. . .the plan at that point was just to give some relief in and out and back out, but I'm not sure. I think more than that, the community just

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didn't want people from Mr. Goode's subdivision to come down through the main part of town. That was part of the. . .their, their concerns there.

COUNCILMEMBER MEDEIROS: Yeah, you're correct on that. Does the old cane haul road extend all the way to Malaihi Road?

MR. BETSILL: It does.

COUNCILMEMBER MEDEIROS: It does?

MR. BETSILL: Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Betsill. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Mr. Betsill, thank you for being here. Fast question. When you subdivided your 15 ag lots--

MR. BETSILL: Which ones?

VICE-CHAIR PONTANILLA: Your existing 15--

MR. BETSILL: Ten.

VICE-CHAIR PONTANILLA: --ag lots. Was there like a road widening requirement of you?

MR. BETSILL: The, the previous one was 72 acres, it was 10 lots. . .and, and that's that configuration, and there was no requirement. There was wide. . .we required wide. . .*(chuckle)*. . .road widening--sorry--on Malaihi Road. We had to widen Malaihi Road, but not Kahekili Highway.

VICE-CHAIR PONTANILLA: Thank you. For the Department, with this Change of Zoning, is there a requirement for a road widening lot on Kahekili Highway? Planning or--

MR. MIYAMOTO: Again, Kahekili Highway is a State highway at this point. It's up to the State to make a determination at this point what, what their requirements are going to be on that roadway. But that's why, when in his other subdivision in the County roadway, they did provide the road widening.

VICE-CHAIR PONTANILLA: Planning Department, would you know if a . . .request by the State of Hawaii, Department or Transportation in regards to a road widening lot on Kahekili Highway fronting the project, the existing project?

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CHAIR MOLINA: Before you respond, Committee Members, any of...do you, the rest of you have any questions for Mr. Betsill at this time? Otherwise, I'll excuse Mr. Betsill.

VICE-CHAIR PONTANILLA: No.

CHAIR MOLINA: Okay. Thank you, Mr. Betsill.

MS. LOUDERMILK: Councilmember Pontanilla, there was no specific request for a road widening lot as part of this Change in Zoning.

VICE-CHAIR PONTANILLA: So you, you wouldn't know of the requirements for them, yeah, whenever a development comes about fronting State highways?

MS. LOUDERMILK: ...Sometimes the DOT would provide us with that if there are specific plans already drawn up to be implemented. We would get comments indicating either specific improvements or that they are required to work with the Maui District Office to provide improvements to the satisfaction of the Maui District Office, and then the Department would confirm with the Maui District Office that any proposed improvements are done to the satisfaction of the State DOT.

VICE-CHAIR PONTANILLA: In this case, yeah, you wouldn't know?

MS. LOUDERMILK: In this case we did not receive anything specific.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Committee Members, any other questions before the Chair makes a recommendation? Okay. Seeing none, the Chair will make a recommendation. The Chair will entertain a motion to pass on first reading "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT FOR PROPERTY SITUATED AT WAIHEE, MAUI, HAWAII", and to file the...County Communication No. 06-314.

COUNCILMEMBER VICTORINO: So moved.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. Moved by Member Victorino, seconded by Member Pontanilla. And before I recognized Mr. Victorino, the Chair would like to ask for the Committee's consideration to allow Staff to make technical and nonsubstantive revisions to the bill, one of which is to change the year of the bill. Currently, the bill reads "(2007)" and should it pass, it will be changed to "(2008)", if there are no objections to that revision or that request.

COUNCIL MEMBERS: No objections.

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COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MA, GB, RH, JJ).

CHAIR MOLINA: Okay. Thank you. Mr. Victorino, you have the floor as the maker of the motion.

COUNCILMEMBER VICTORINO: Well, thank you. And I . . . it is my hope that the, the concerns that were raised by my fellow colleagues and myself in the area of traffic and the, also the areas of flooding and all of these, that the applicant as well as those in the area that thinking about some development really look hard, heartily upon these issues because it is being continuously said by these communities that sometimes they're not inclusive, and Mr. Betsill knows that at the meeting they were upset more of not being included in these issues. And so that's why I want them to know that from now on they have to get out there and meet with the communities, the communities will meet with us, and we'll try to find some resolve in this area. I think they're working very diligently on that. But other developers have to understand, Mr. Chair, that we are not going to just take things carte blanche. So, I thank Mr. Betsill and, and, and the people that have been working with him to make sure that transportation is a big consideration, flooding, and all these other issues so that we can have a, a development that won't in . . . , intrude upon the people that are presently there. I think that's so important to respect your neighbor that's there before you and to have a cohesive development, not something that's obtrusive and makes people feel adversarial in, in not only the development but those who move in on that development. We're a, we're a County of people and the people have to understand, we need to live together. So it's starts from the beginning, it does, doesn't come at the end. It starts from the beginning. I hope this is a beginning of a new wave of development that understands what contributions they have to make to make sure those who are there and those who come in coexist in some kind of harmonious way. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Members, any other comments before the Chair calls for the vote? The Chair would just like to thank the applicant for going through the process, as well as the Administration and the Department, and also to you, Mr. Victorino, as the area representative, for attending the meeting and, Mr. Medeiros. Obviously more Council Members would've like to have participated; however, due to Sunshine Law restrictions there can only be two Council Members that can participate in a community meeting. So with that being said, the Chair call for the vote. All those in favor, signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay, thank you. The Chair will mark it five-zero, with four excusals: Members Johnson, Anderson, Hokama, and Baisa. The matter passes out of Committee by a vote, again, of five-zero and will go on to the full Council.

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VOTE: **AYES:** **Councilmembers Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

NOES: **None.**

EXC.: **Councilmembers Anderson, Baisa, Hokama, and Johnson.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FIRST READING of revised proposed bill, and FILING of communication.**

ITEM NO. 26: CONDITIONAL PERMIT TIME EXTENSION FOR KIHEI VETERINARY CLINIC (C.C. No. 08-22)

CHAIR MOLINA: Very good. Members, we're on our last Committee item for today, which is Land Use Item 26. And, Committee Secretary, just for the record, just to refresh everyone's memory, we did close public testimony on all items at the Wednesday, July 2nd meeting? Am I correct?

MS. FRIAS: Yes, Mr. Chair.

CHAIR MOLINA: Okay. Thank you very much. This last item for today, Members, relates to a Conditional Permit time extension for the Kihei Veterinary Clinic. The Committee is in receipt of County Communication No. 08-22, from the Planning Director, transmitting a proposed bill to grant a request from Munekiyo & Hiraga, Inc., on behalf of Dr. Roger Kehler, for a time extension of his existing Conditional Permit to continue to operate the Kihei Veter..., Veterinary Clinic on approximately 0.996 acres in the R-3 Residential District in Kihei, Maui, Hawaii. The Maui Planning Commission recommended that a five-year extension be granted, and the Chair would like to direct the Members' attention to a revised proposed bill received from the Corporation Counsel's Office by correspondence dated June 27, 2008, a bill which is "FOR AN ORDINANCE AMENDING ORDINANCE NO. 2185 (1992), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO DR. ROGER KEHLER TO ALLOW FOR THE CONTINUED OPERATION OF KIHEI VETERINARY CLINIC, SITUATED AT 1476 SOUTH KIHEI ROAD" over in Kihei, Maui, Hawaii. And as was noted in the Committee's agenda, the property's mailing address is actually at 1476 South Kihei Road, which is located at the corner of Waiohuli Street and South Kihei Road, and the proposed bill has been revised to reflect that address and to incorporate any nonsubstantive revisions. So that is the version of the bill the Chair would like you to reference, Members.

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And we have from the, joining us from the Planning Department we have Planner Jeffrey Dack as well, and we have Mr. Hirano from the Munekiyo & Hiraga firm, and I believe we have Mr., Dr. Kehler as well in the gallery, Members, for your perusal should you have any questions for him. We'll start first with a . . .well, I guess we'll, maybe we'll get some comments from the Planning Department first and then I'll turn matters over to Mr. Hirano to give us a brief presentation. Mr. Dack or Mr. Hunt, do you have any opening comments?

MR. DACK: Yeah. Good morning, Mr. Chair and Members of the Land Use Committee. I'm Jeffrey Dack with the Planning Department. The property which is addressed at 1476 South Kihei Road is in the State's Urban District, it's in, it's Commercial in the Community Plan, but it's zoned R-3 Residential. Munekiyo & Hiraga, as applicants for the land and business owner Dr. Roger Kehler, are requesting a five-year time extension of a County Conditional Permit allowing for the site. . .for. . .allowing use of the site for a veterinary office. Effective November 23rd of 1992, the County Council approved an ordinance granting a Conditional Permit to the Kihei Veterinary Clinic. After a series of discussions, the Planning Department ultimately agreed in 2001 that the five-year time limit to this original Conditional Permit did not start until a permanent certificate of occupancy was issued on September 6th of 2001. An application for a five-year time extension was filed in a timely manner on March 17, 2006. The Maui Planning Commission considered the request on January 31, 2007 and recommended the Council's approval with conditions. No letters of support or opposition were received and no members of the public spoke on the request at the Planning Commission meeting. The Commission recommended approval of a time extension for the Conditional Permit, subject to nine conditions, to allow the permit to be valid for five years beyond the original five-year period, so it would expire on September 6, 2001. This concludes the Department's report.

CHAIR MOLINA: Okay. Thank you, Mr. Dack. Committee Members, before we, the Chair opens up the floor for questions to the Department, if there are no objections, I'd like to have the applicant's representative, Mr. Hirano, give us a brief overview--

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: --of the application. Okay. Seeing no objections, thank you. Mr. Hirano, just for the record, if you could state your name and the firm you represent as well.

MR. HIRANO: Yes. Good morning, Chair Molina and Members of the Council Committee, Land Use Committee. My name is Mich Hirano with Munekiyo & Hiraga. Our firm is assisting Dr. Kehler with the Kihei Veterinary Clinic and the request for a time extension to continue operating the subject property as a veterinary clinic. The original Conditional Permit was granted for a five-year period commencing when the certificate of occupancy. . . --(*CHANGE OF TAPE, start 1B*)-- . . .veterinary clinic. It was issued in 2001 and, therefore, it expired in 2006, and the applicant had made an application to the Department for a time extension for the Conditional Permit. The clinic provides a vital service for medical care and needs for domestic pets, feral animals, and agricultural animals to the residents of South Maui and beyond. Dr. Kehler continues to and will continue to comply with the conditions of the Conditional

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Permit. Dr. Kehler has one request and that is since the time extension is for a five-year period and it is now 2008, that Dr. Kehler would like consideration for a full five years of the permit, if that would be possible, and that would be until. . .from 2001 for a full five years, which would bring it to approximately 2012. That's, that's all that I have to report on the permit. The, the property has been in, developed in compliance with a Special Management Area Use Permit that was issued for the project and as well continues to operate and maintain the conditions of the Conditional Permit. Dr. Kehler and I are available to answer any questions the Chair or Committee Members may have on the time extension request. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Hirano. Before I turn matters over to the Committee for questions, you mentioned a five year. So you want the, the period to start from--when does the current permit expire?

MR. HIRANO: If the five-year period is granted, it would expire in 2011.

CHAIR MOLINA: I see.

MR. HIRANO: Ten years from 2001. So the first five years was from 2001 to 2006. Then the second five years would be from 2006 to 2011.

CHAIR MOLINA: Okay. I see. So here we are in 2008, finally.

MR. HIRANO: 2008. So just to give the Kihei Veterinary clinic a full five years from today I think would be the request.

CHAIR MOLINA: Okay. Alright. Thank you very much. Okay, Members, the floor is now open for questions. We. . .well, I guess we, since we have Mr. Hirano up at the podium, Members, any questions for him right now? . . .Or else we can turn matters over back to the Department for questions. Mr. Mateo?

COUNCILMEMBER MATEO: Mr. Chairman, thank you. Mr. Hirano, thank you very much for sharing the information with us. I guess because this is the, the second request for extension. . .

MR. HIRANO: Yes.

COUNCILMEMBER MATEO: . . .is there any plans. . .I mean, you know, the vet, that, that Veterinarian, Veterinary Clinic. . .

MR. HIRANO: Yes.

COUNCILMEMBER MATEO: . . .it's going to stay there?

MR. HIRANO: Yes, it will, Councilmember Mateo--

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COUNCILMEMBER MATEO: That's--

MR. HIRANO: --yes, it will.

COUNCILMEMBER MATEO: --so that is going to be a permanent home for the clinic?

MR. HIRANO: Yes. That is what, I think, Dr. Kehler would like to do.

COUNCILMEMBER MATEO: So is there any expected time to actually come in and actually get the appropriate zoning instead of the constant returning for extension of conditional zoning?

MR. HIRANO: Yes. When our firm was contracted, we were contracted to do a time extension request as well as to, we had a proposal to Dr. Kehler for a Change in Zoning, and we are moving in that direction over this, the next five-year period to do the Change in Zoning application. But because he was, he needed to get the time extension request in first, we concentrated on that. Yes.

COUNCILMEMBER MATEO: So by the time the second extension, 2011--

MR. HIRANO: Yes.

COUNCILMEMBER MATEO: --by the time this extension reaches its expiration date, then are we going to be looking at you coming in for an actual Change in Zoning?

MR. HIRANO: Yes. Yes.

COUNCILMEMBER MATEO: Okay. Thank you very much, Mr. Hirano. Thank you, Chairman.

CHAIR MOLINA: Thank you, Member Mateo. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And, Mr. Hirano, thank you for being here. You know, because I, I never went on a site visit or know what this looks like or where it is, the first thing is on the permit, the first five years you mentioned was 2001 to 2006. So on, on what permit does it operate right now?

MR. HIRANO: Well, it's operating on the original Conditional Use Permit, which is expired, but the time extension request was made in a timely fashion, which was 90 days before expiration. So it is operating on the goodwill of the Department because they have submitted the time extension request in a timely manner and are in compliance with the permit.

COUNCILMEMBER MEDEIROS: Okay. And, and this may be either a question for the Planning Department or for the Doctor. But you mentioned in your opening statements that it even houses or provides services for farm animals?

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MR. HIRANO: Yes.

COUNCILMEMBER MEDEIROS: And this is on--

MR. HIRANO: South Kihei Road.

COUNCILMEMBER MEDEIROS: --an acreage of not even 1 acre, right? Close to an acre?

MR. HIRANO: Yes.

COUNCILMEMBER MEDEIROS: So for farm animals, so is there like farm style animal enclosures outside of the building for these animals?

MR. HIRANO: No, I'll, I'll ask Dr. Kehler to come in, but--

COUNCILMEMBER MEDEIROS: Mr. Chairman, if you would allow the Doctor to come down.

CHAIR MOLINA: Okay. Members, any objections?

MR. HIRANO: But he does as well go out, go out on-call to the, to the farms--

CHAIR MOLINA: Right.

MR. HIRANO: --to look, to inspect.

COUNCILMEMBER MEDEIROS: So they don't bring the animals--

MR. HIRANO: They don't bring the animals there.

COUNCILMEMBER MEDEIROS: Oh, okay. That clears it up for me then.

MR. HIRANO: Yes.

COUNCILMEMBER MEDEIROS: Thank you for that response. And I think that's all I have for Mr. Hirano. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Committee Members, any other questions for Mr. Hirano? If not, thank you, Mr. Hirano.

MR. HIRANO: Thank you very much, Chair Molina.

CHAIR MOLINA: Okay. Members, questions for the Department, Planning Department or Public Works, on this particular matter? And for the record, I believe the clinic is located across...is that near Kalama Park or prior to getting to Kalama Park? . . .Prior to there, okay. I was just in

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Kihei over the weekend, so I thought I caught a glimpse of it off, off the roadside. So, it's very visible, you can see it. Any other questions for the Department before the Chair makes the--well, the Chair has one question to the Department, Planning Department. The applicant has requested that the permit expire in 2012 instead of the 2011. Any concerns or comments on that? I guess, Mr. Dack?

MR. DACK: The Department would not object and, actually, I think Mr. Hirano corrected that upon questioning. He was asking for a five-year, a five-year extension from today's date, so that would be through July 2013, if that's, if that's the way the Council would like to go.

CHAIR MOLINA: Alright. Okay, Members, you've heard the comments from the Department. Mr. Pontanilla, followed by Mr. Medeiros.

VICE-CHAIR PONTANILLA: Thank you. Just, just a question to the Department, knowing that this is the first time they're coming for an extension. . .

MR. DACK: Right.

VICE-CHAIR PONTANILLA: . . .and we utilize September 6, 2001. If another permit that came to this body here for a second extension, would the original date be shown or, or, you know, like say if five years from now they come back for another five years, so it's going to be a 15-year extension, so the 2001 date will always remain and noting 15-year extension?

MR. DACK: Not necessarily. For example, as, as requested here today. . .they're, they're requesting now, the applicant has changed to five years from today, so that would be, that would be the reference date at this point if there were to be a request for another extension. I, I think the actual date and condition can be designed various ways, but the original, the original date was, was. . .(*inaudible*). . .the original permit was to extend until a certificate of occupancy, which turned out to be in 2001, so that's why that date was used as a reference. But it, it. . .we would do that on permit by permit basis, depending upon how it's clearest to, to define it.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Is it Mr. Dack?

MR. DACK: Yes, thank you.

COUNCILMEMBER MEDEIROS: Thank, thank you. So you, you're the Planner reviewing this application?

MR. DACK: Correct.

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COUNCILMEMBER MEDEIROS: Okay. And I'm assuming you did a site visit?

MR. DACK: Yes.

COUNCILMEMBER MEDEIROS: Okay. And...because I'm trying to get a visualization of, you know, this down there in a residential area. Other than you mentioned there was no opposition during the public hearing...?

MR. DACK: Correct.

COUNCILMEMBER MEDEIROS: Okay. Did the Department or any of our other County agencies receive any complaints from area residents on the operations of it?

MR. DACK: No. When we were reviewing the request for the time extension, the Department did look into that and that there had been no complaints received by other departments.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Dack.

MR. DACK: You're welcome.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Committee Members, any other questions for the Department before the Chair offers a recommendation? Members, just for the record, there are nine conditions attached to the proposed bill. There has been a request from the applicant to change the, I guess the permit time, if you will, to 2012. Then the Department mentioned that, I guess, July 13, 2013 would make it more, I guess, more consistent. So it would be Condition No. 1 that would have to be under consideration for an amendment when we get to that point. So, I would just like for you to keep that in mind if that is the will of any of the Members that would like to change and amend. So with that being said, Members, the Chair will offer a recommendation at this point if there are no other questions for this particular matter, and that is to entertain a motion to...for passage for "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2185 (1992), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO DR. ROGER KEHLER TO ALLOW FOR THE CONTINUED OPERATION OF KIHEI VETERINARY CLINIC, SITUATED AT 1476 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII", along with the filing of County Communication No. 08-22.

VICE-CHAIR PONTANILLA: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: It's been moved by Member Pontanilla, seconded by Member Medeiros. Member Pontanilla, you have the floor and the Chair is also open to any considerations for amendments as well. Mr. Pontanilla?

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VICE-CHAIR PONTANILLA: Thank you, Chairman. I'd like to amend--

CHAIR MOLINA: Proceed.

VICE-CHAIR PONTANILLA: --the Conditional Permit. . .looking at the five years from this date, that would be July, ending July 13, 2013.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been a motion by Member Pontanilla and seconded by Member Victorino to amend. Staff, can you inter..., interject? You want clarity?

MS. NAKATA: Just for clarification, would that be from today's date of July 7th?

VICE-CHAIR PONTANILLA: Yeah, July 7th.

CHAIR MOLINA: Okay. Mr. Pontanilla, would you like a brief recess to. . .maybe we can add, add more clarity to the amendment?

VICE-CHAIR PONTANILLA: Okay.

CHAIR MOLINA: We'll call for a short recess and we can work with Staff just so we can make sure we know everybody's all on the same page as to what kind of an amendment is being considered. Okay. Recess, subject to the call of the Chair. . . .(*gavel*). . .

RECESS: 10:45 a.m.

RECONVENE: 10:50 a.m.

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of Wednesday, July 2nd, 2008 is now back in session. It is ten minutes to the hour of 11:00 a.m., Monday, July 7th. When we last left off, we had a proposed amendment to Condition No. 1 for Land Use Item 26 from Councilmember Pontanilla, and during the break we were working on the language with Councilmember Pontanilla to provide more clarity to the Committee. At this point the Chair will recognize Member Pontanilla to restate the amendment.

VICE-CHAIR PONTANILLA: Thank you, Chairman. Thank you for allowing me the time to converse with our Legal Analyst as well as the Administration, along with Corp. Counsel regarding Condition No. 1. At this time, I would like to amend Condition No. 1 by. . .on the second sentence by replacing the word "ten" and the number parenthesis, "(10) years" with "twelve (12)".

CHAIR MOLINA: Okay.

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VICE-CHAIR PONTANILLA: And on the third to the bottom where it says “ten-year period”, to replace “ten-year” with “twelve-years”, “twelve-year”.

CHAIR MOLINA: Okay. Alrighty. We, we currently have a motion on the floor. So, Members. . .well, let me check with Corp. Counsel or Staff, can we still keep the motion and being that Member Pontanilla is basically rewording his amendment, do we need to re..., withdraw the initial motion or can we leave the motion on the floor and have. . .address the amendment as proposed?

MR. GIROUX: I think with the permission of the second, you could just do that by consensus.

CHAIR MOLINA: Okay. Alright.

COUNCILMEMBER VICTORINO: I have no problem to that.

CHAIR MOLINA: Okay. I believe who--

COUNCILMEMBER VICTORINO: I have no problem with it.

CHAIR MOLINA: --the seconder of the motion was Mr. Medeiros [*sic*], I believe. Okay. If there are no objections, we'll leave the original motion on the floor and as Member Pontanilla just read out, he provided more clarity to the amendment. Okay. So the amendment has been restated by Mr. Pontanilla. Mr. Pontanilla, do you have additional comments before I recognize the other Members to make comments on this proposed amendment?

VICE-CHAIR PONTANILLA: No, Chairman.

CHAIR MOLINA: Okay. Members, any other comments. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah. Thank you, Mr. Chair. And I think this only makes things more clear as far as specific time dates, you know, starting from here. I think many times in the past we've done changes and retro the date and now we're, we're working. . .instead of five years only three years, and that's really unfair to the applicant. If it's us or if it's we who are taking the time to get things clarified, then we shouldn't penalize the applicant because then instead of five years like you're looking at right now, really more like two and a half or three years and really making it difficult for them to get their, their. . .*hopefully*, their final approval. So, I'm all for that and I thank the, the. . .Member Pontanilla for clarification and your guidance in this area. So, I will support your recommendation and Councilmember Pontanilla's motion, amendment I should say.

CHAIR MOLINA: Okay. Thank you very much, Mr. Victorino. Any other comments on the amendment as proposed by Member Pontanilla? Seeing none, all those in favor of the proposed amendment, signify by saying aye.

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COUNCIL MEMBERS: . . .*(chuckle)*. . .

CHAIR MOLINA: Great job, you guys. Are there any announcements? I guess I'd like to recognize Mr. Mateo, if you'd like to make an announcement for tomorrow?

COUNCILMEMBER MATEO: Thank you.

CHAIR MOLINA: Some, some important meeting that will occur tomorrow morning.

COUNCILMEMBER MATEO: . . .*(chuckle)*. . . Chairman, thank you very much. Yes. Tomorrow at 9:00 the Council meeting is scheduled and, and yes, it is not a Friday, it is a Tuesday, but Members will be heading off to a national conference.

CHAIR MOLINA: Thank you very much, Mr. Mateo. And Vice-Chair Mateo will be chairing the meeting tomorrow as well. Any other announcements, Members? If not, we shall call for the adjournment of the, this meeting, the recessed Land Use Committee meeting of July 2nd, 2008. It is 10:58 on Monday, July 7th, 2008. This meeting is now adjourned. . . .*(gavel)*. . .

ADJOURN: 10:58 a.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

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Transcribed by: Tammy M. Frias