

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

September 23, 2008

**Committee
Report No.**

08-110

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on September 3, 2008, makes reference to County Communication No. 08-42, from the Planning Director, transmitting a proposed resolution entitled "APPROVING THE ACTION OF THE MAUI PLANNING COMMISSION GRANTING A TYPE 3 BED AND BREAKFAST HOME PERMIT FOR THE GUESTHOUSE BED AND BREAKFAST ON PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII".

The purpose of the proposed resolution is to grant a request from Tanna Swanson for a Type 3 Bed and Breakfast Home Permit (Type 3 B&B Permit) in order to operate five guest rooms, known as The Guesthouse B&B, on approximately 10,585 square feet in the R-3 Residential District, located at 1620 Ainakea Road, Lahaina, Maui (TMK: (2) 4-5-27:022).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on December 14, 2004.

Your Committee further notes that at its meeting of December 14, 2004, the Maui Planning Commission, after reviewing the findings and recommendations presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION TO THE MAUI PLANNING COMMISSION DECEMBER 14, 2004 MEETING" (Department's Report), voted to recommend that the Type 3 B&B Permit be granted with 17 conditions.

Your Committee also notes that, according to the Department's Report, at page 2, Ms. Swanson has held a Type 2 Bed and Breakfast Home Permit (Type 2 B&B Permit) since 1999 for a four-bedroom bed and breakfast (B&B). Under Chapter 19.64, Maui County Code, a Type 2 B&B Permit applies only for short-term rentals of three or four bedrooms, while a Type 3 B&B Permit applies for short-term rentals of five or six bedrooms. Ms. Swanson's request to add a fifth bedroom to her operation thus requires a Type 3 B&B Permit, which in turn requires final approval by Council resolution.

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By correspondence dated July 30, 2008, the Chair of your Committee requested that the Planning Director provide the following: (1) a recommendation relating to an appropriate timeframe for the permit, since the proposed timeframe had already expired (proposed Condition No. 1); (2) the status of proposed Condition No. 16, relating to water meter size and backflow preventers, since the proposed deadline for compliance had already passed; (3) complaints made on the operation, if any; (4) the status of the applicant's Type 2 B&B Permit; and (5) an update on the applicant's inquiry concerning the State Department of Health's (DOH) requirement that individual wastewater systems be upgraded to septic tanks for B&Bs with cesspools.

By correspondence dated August 21, 2008, the Planning Director responded to the Chair's request. The Planning Director recommended that the proposed Type 3 B&B Permit be valid until December 31, 2009, or one year from the date the resolution is adopted, whichever is later. He advised that the requirements of the Department of Water Supply had not been met, but that the applicant had indicated that full compliance could be achieved by June 14, 2009, if the Type 3 B&B Permit is granted. He also recommended that the upgrade to a one-inch meter size be rendered by December 31, 2009, or one year from the date the resolution is adopted, whichever is later.

In his correspondence, the Planning Director advised that no complaints had been made on the operation since December 14, 2004 (the date of the Maui Planning Commission's meeting), but that one letter of concern had been received. He also advised that the Type 2 B&B Permit was renewed on July 29, 2008, and is valid until July 29, 2009, and transmitted a copy of the renewal letter. Finally, the Planning Director provided additional information concerning the septic system issue, and recommended that a new condition be added to require the existing cesspool to be upgraded to a septic system by December 31, 2009, or one year from the date the resolution is adopted, whichever is later.

By correspondence dated September 1, 2008, Tanna Swanson transmitted nine pieces of written testimony from her neighbors in support of her B&B operation.

At its meeting, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works; a Deputy Corporation Counsel; and Tanna Swanson, the applicant.

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Your Committee received oral testimony from one individual, a neighbor of Ms. Swanson's, in support of the application.

Ms. Swanson provided your Committee with a computer-generated presentation and a printout of the presentation. The printout also attached a copy of a preliminary wastewater system analysis for the subject property, prepared by Linda Taylor Engineering, Inc., dated August 25, 2008, as well as a copy of correspondence between Ms. Swanson and the Department of Water Supply concerning the Department's requirements, dated June 3, 2008 and June 20, 2008, respectively.

In her presentation, Ms. Swanson noted that the B&B operation was established in 1985, and that she had purchased the property in 1988 as a five-bedroom guesthouse. She explained that, due to parking constraints, she had applied for a four-bedroom rather than a five-bedroom operation, and received a Type 2 B&B Permit in 1999. She noted that she had since made several improvements on her property, including renovations to increase parking, various water reduction measures to lower average daily consumption from 1630 gallons to 745 gallons, and installation of a reduced pressure backflow preventer. She also noted that she had hired consultants to investigate and address septic system issues, and that she had been in communication with the Department of Water Supply concerning its requirements for the operation.

The Planner provided a brief summary of Ms. Swanson's request. She advised your Committee that no on-street parking is being used for the B&B, and confirmed that the backflow preventer had already been installed. She explained that the Department had delayed transmitting the application to the Council to allow time to explore whether Ms. Swanson would be able to meet wastewater, parking, and other departmental and agency requirements.

Your Committee discussed whether the existing cesspool would meet State DOH requirements, or whether a septic tank or other improvements would be needed to handle wastewater for the proposed five-bedroom B&B. Your Committee noted the Department of Planning's recommendation that a new condition be added to require that the cesspool be upgraded to a septic tank. The Planner advised that, since the Department had transmitted its August 21, 2008 correspondence, she had been in contact with State DOH, and that alternatives other than a septic tank may be available to achieve compliance with State DOH requirements. She noted that Ms. Swanson is already working with a wastewater engineer to evaluate her options. To allow flexibility, the Planner

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recommended that a broader condition be incorporated that instead requires compliance with State DOH requirements within a one-year period.

The Planner informed your Committee that the single structure on the property contains a bedroom in which Ms. Swanson resides, five other bedrooms to be used for the B&B, and seven bathrooms. She advised that Ms. Swanson had indicated there had been no problems with the existing cesspool. Your Committee also noted that the report from Linda Taylor Engineering, Inc. states that the cesspool had never been pumped. Your Committee requested that the State DOH be asked to clarify the need for a septic tank on the property.

Your Committee commended Ms. Swanson for complying with tax laws from the very start, as well as her successful efforts to conserve water.

Your Committee recommended that Condition No. 1 of the proposed resolution be revised so that the Type 3 B&B Permit would be valid until December 31, 2009, or one year from the effective date of the resolution, whichever is later. Your Committee also recommended that Condition No. 16 be revised to remove the requirement that reduced pressure backflow preventers be installed, since Ms. Swanson had already complied with this requirement. Your Committee further recommended that Condition No. 16 be revised to require the upgrade to water meter size by December 31, 2009, or one year from the effective date of the resolution, whichever is later.

In light of concerns that had been expressed regarding wastewater requirements, your Committee recommended that a new Condition No. 18 be incorporated, to read: "That full compliance with the requirements of the Environmental Protection Agency and the State Department of Health shall be rendered by December 31, 2009, or one year from the effective date of this resolution, whichever is later."

Your Committee also recommended revisions to the fourth WHEREAS clause and the second BE IT RESOLVED paragraph of the proposed resolution to accommodate the fact that your Committee had revised the proposed conditions recommended by the Maui Planning Commission.

Your Committee voted to recommend adoption of a revised proposed resolution incorporating your Committee's requested revisions, and filing of the communication.

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Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions.

Your Land Use Committee RECOMMENDS the following:

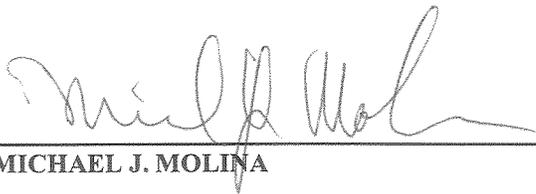
1. That Resolution No. _____, as revised herein and attached hereto, entitled "APPROVING THE ACTION OF THE MAUI PLANNING COMMISSION GRANTING A TYPE 3 BED AND BREAKFAST HOME PERMIT FOR THE GUESTHOUSE BED AND BREAKFAST ON PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII", be ADOPTED; and
2. That County Communication No. 08-42 be FILED.

Adoption of this report is respectfully requested.

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MICHAEL J. MOLINA Chair

JO ANNE JOHNSON Member

JOSEPH PONTANILLA Vice-Chair

DANNY A. MATEO Member

MICHELLE ANDERSON Member

BILL KAUAKEA MEDEIROS Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

G. RIKI HOKAMA Member

Resolution

No. _____

APPROVING THE ACTION OF THE MAUI PLANNING COMMISSION
GRANTING A TYPE 3 BED AND BREAKFAST HOME PERMIT
FOR THE GUESTHOUSE BED AND BREAKFAST ON
PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII

WHEREAS, Ms. Tanna Swanson operates the Guesthouse Bed and Breakfast Home located at 1620 Ainakea Road, Lahaina, Maui, Hawaii, identified for real property tax purposes as TMK: (2) 4-5-027:022; and

WHEREAS, the Guesthouse Bed and Breakfast Home has five rooms available for short-term rental purposes; and

WHEREAS, Ms. Swanson applied for a Type 3 Bed and Breakfast Home Permit pursuant to Chapter 19.64, Maui County Code, on August 21, 2002; and

WHEREAS, on December 14, 2004, the Maui Planning Commission unanimously voted to recommend approval of the Type 3 Bed and Breakfast Home Permit, subject to certain conditions; and

WHEREAS, pursuant to Section 19.64.050.C.1, Maui County Code, an application for a Type 3 Bed and Breakfast Home Permit requires the approval of the Maui County Council by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That a Type 3 Bed and Breakfast Home Permit is hereby granted to Ms. Tanna Swanson for the Guesthouse Bed and Breakfast; and
2. That the Permit be subject to the conditions set forth in Exhibit "A", attached hereto and by this reference made a part hereof; and

Resolution No. _____

3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, and Ms. Tanna Swanson.

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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EXHIBIT "A"

CONDITIONS

1. That the Type 3 Bed and Breakfast Home Permit shall be valid until December 31, 2009, or one year from the effective date of this resolution, whichever is later, subject to further extensions by the County Council pursuant to the provisions of Section 19.64.060, Maui County Code. A time extension request shall be filed at least ninety (90) days prior to the expiration date of the permit for timely processing.
2. That the subject Bed and Breakfast Home Permit is limited to five (5) guest rooms.
3. That Ms. Tanna Swanson shall provide the Department of Planning with evidence that a TAT license is current and that the TAT has been paid for the current period. The permit holder shall provide written verification of GET and TAT tax payments when filing a time extension request.
4. That the Type 3 Bed and Breakfast Home Permit shall be nontransferrable.
5. That the bed and breakfast operation shall be subject to periodic inspections by County enforcement personnel at reasonable times upon presentation of appropriate credentials.
6. That the bed and breakfast operation shall be available for bi-annual fire inspections.
7. That Ms. Tanna Swanson shall submit a copy of all subsequent inspection reports upon each permit renewal (time extension request) if an inspection occurs during that year for the subject bed and breakfast operation.
8. That Ms. Tanna Swanson, her successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Bed and Breakfast Type 3 Home Permit and shall procure at her own cost and expense, and shall maintain during the entire period of this Bed and Breakfast Type 3 Home Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of

Maui as a named additional insured, insuring and defending Ms. Tanna Swanson and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Ms. Tanna Swanson of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. Copies of the policy naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this resolution.

9. That the operation shall meet the definition of a bed and breakfast home as specified in Section 19.04.040, Maui County Code.
10. That the permit is subject to revocation by the Planning Director, pursuant to the provisions of Section 19.64.060.C, Maui County Code.
11. That the project shall be conducted in substantial compliance with representations made by Ms. Tanna Swanson.
12. That one (1) copy of a compliance report shall be submitted to the Department of Planning for review and approval with any request for a time extension or amendment.
13. That Ms. Tanna Swanson must include the number of the permit in all advertising.
14. That parking shall be provided on-site for each bed and breakfast room in addition to those required for the dwelling, and that no visitor to the property shall park within any public right-of-way.
15. That occupancy shall be limited to two (2) persons per room.

16. That the requirement of the Department of Water Supply to upgrade the meter size on the property to a one-inch meter size shall be rendered by December 31, 2009, or one year from the effective date of this resolution, whichever is later.
17. That full compliance with all applicable governmental requirements shall be rendered.
18. That full compliance with the requirements of the Environmental Protection Agency and the State Department of Health shall be rendered by December 31, 2009, or one year from the effective date of this resolution, whichever is later.