

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 21, 2007

Committee
Report No.

07-153

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

Chair and Members:

Your Land Use Committee, having met on November 14, 2007, makes reference to County Communication No. 02-145, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING KATHLEEN GILDRED AND TERI MISTER A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL BUSINESS WITHIN THE COUNTY RURAL DISTRICT, FOR PROPERTY SITUATED AT 3378 KEHA DRIVE, KIHEI, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Kathleen Gildred and Teri Mister for a one-year Conditional Permit to operate a transient vacation rental business, known as the Hale Alana Vacation Rental, in a three-bedroom/three-bath main house on approximately 27,225 square feet at 3378 Kaha Drive, Kihei, Maui, Hawaii (TMK: (2) 2-1-17:040).

Your Committee notes that the transient vacation rental is restricted, under the State Special Use Permit (SUP), to the main house. The SUP also requires the on-site manager to occupy the cottage when the main house is rented to guests.

Your Committee notes that the Maui Planning Commission held a public hearing on the application on September 12, 2000.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION SEPTEMBER 12, 2000 MEETING" (Department's Report), and the conclusions and recommendations presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATIONS REPORT TO THE MAUI PLANNING COMMISSION SEPTEMBER 12, 2000 MEETING", voted to recommend approval of the Conditional Permit application, with five conditions, on September 12, 2000.

Your Committee further notes that the Council (2001-2003 Council term) referred County Communication No. 02-145 to its Land Use Committee at the Council meeting of July 19, 2002.

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At its meeting of January 10, 2003, the Council (2003-2005 Council term) referred County Communication No. 02-145 to its Planning and Land Use Committee (County Communication No. 03-10).

At its meeting of January 21, 2005, the Council (2005-2007 Council term) referred County Communication No. 02-145 to its Land Use Committee (County Communication No. 05-13).

By correspondence dated June 22, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel revise the proposed bill to conform the wording of conditions in Section 2 to the Department's current form.

By correspondence dated June 23, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING KATHLEEN GILDRED AND TERI MISTER A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL BUSINESS WITHIN THE COUNTY RURAL DISTRICT, FOR PROPERTY SITUATED AT 3378 KEHA DRIVE, KIHEI, MAUI, HAWAII", incorporating the requested revisions.

By correspondence dated June 29, 2005, the Chair of the Committee requested that Kathleen Gildred respond to questions arising from an attempt to contact her for purposes of scheduling the application for a meeting. Those questions related to representations by Karen and Ken Stover that they are co-owners of the property; and that the on-site manager and co-applicant, Teri Mister, is no longer involved with the property. The Chair also asked that the Committee be advised of any other material changes to the application.

By correspondence dated August 24, 2005, Kathleen Gildred responded that Karen and Ken Stover are not co-owners of the property, but that they reside nearby and frequently assist with the needs of the transient vacation rental; that Teri Mister is no longer the on-site manager; and that interviews for a new on-site manager were in progress. Ms. Gildred requested that a meeting on her application be deferred until a new on-site manager could be confirmed.

By correspondence dated June 16, 2006, Kathleen Gildred advised the Committee that she had found a new on-site manager for the property, Sean Brunwin, and was therefore ready to continue with the process of obtaining the Conditional Permit.

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At its meeting of January 5, 2007, the Council referred County Communication No. 02-145 to your Land Use Committee (County Communication No. 07-5).

By correspondence received on November 5, 2007, Kathleen Gildred transmitted a copy of a Warranty Deed dated March 30, 1994, and recorded at the Bureau of Conveyances on April 11, 1994, for TMK: (2) 2-1-17:040, reflecting her status as fee simple owner of the property.

By correspondence dated November 5, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bill to replace all references to "Teri Mister" with "Sean Brunwin", the new on-site manager.

By correspondence dated November 6, 2007, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING KATHLEEN GILDRED AND SEAN BRUNWIN A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL BUSINESS WITHIN THE COUNTY RURAL DISTRICT, FOR PROPERTY SITUATED AT 3378 KEHA DRIVE, KIHEI, MAUI, HAWAII", incorporating the requested revisions.

Your Committee received anonymous written testimony on November 9, 2007, from a neighbor disturbed by noise created by the transient vacation rental. The neighbor requested that restrictions relating to quiet times at the transient vacation rental be considered.

By correspondence dated November 13, 2007, the Chair of your Committee transmitted documents received from Ken Stover in support of the application. The documents include reasons for granting the Conditional Permit; photographs of the property; 11 letters of support; a copy of correspondence dated August 3, 2007, from Rebecca Tuden, Large Capacity Cesspool Coordinator, United States Environmental Protection Agency, to Ken Stover, relating to the closure of the cesspool located at the subject property; a waiver, release and guidelines form for guests of the Hale Alana Vacation Rental; and a copy of a declaration page for a \$500,000 insurance policy for the property, indicating an effective renewal date of April 11, 2007.

By correspondence dated November 13, 2007, Bill Ruidas, Web Insurance Agency, transmitted a copy of a \$1,000,000 certificate of liability insurance for the transient vacation rental, effective November 13, 2007.

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Your Committee received, on November 13, 2007, an addendum from Jae Webster to earlier anonymous testimony, in which she requested consideration of four conditions, as follows: (1) a written commitment that the Hale Alana Vacation Rental will set acceptable quiet times (for instance, from 10:00 p.m. to 8:00 a.m.) and post signs regarding these times; (b) in the event guests forget to comply, the on-site manager or the Stovers will remind the guests of the quiet times; (c) after 10:00 p.m., all outdoor music and speakers will be turned off, entertaining moved inside, and sounds lowered and doors closed to mute sounds; and (4) phone numbers for the on-site manager and the Stovers will be provided in the event there is a problem.

At its meeting of November 14, 2007, your Committee met with the Deputy Planning Director; the Administrative Planning Officer, Department of Planning; a Civil Engineer, Engineering Division, Department of Public Works; three Deputy Corporation Counsel; Kathleen Gildred, the property owner and applicant; and Karen and Ken Stover, Ms. Gildred's representatives who have stated they also help to manage the property.

There was no public testimony.

The Administrative Planning Officer noted that, apart from the hiring of a new on-site manager, the Department was not aware of any substantial changes to the application. He also advised that the SUP for the transient vacation rental had expired, that Ms. Gildred had been unaware of its expiration, and that she intended to seek an extension to the SUP if the Conditional Permit is granted.

Ms. Gildred informed your Committee that she is the property owner, and that she works on the mainland but plans to retire on Maui. She discussed work she has done on Maui to contribute to its sustainability. She noted that she feels her transient vacation rental is a positive contribution for the local economy; and that she, Sean Brunwin, and the Stovers are good neighbors and good citizens.

Ms. Stover advised that she and her husband were the first managers of the property, succeeded by Teri Mister, then by Sean Brunwin. She stated that transient vacation rental guests sign an agreement when they arrive that they will maintain a quiet atmosphere. She noted the receipt of letters of support from surrounding neighbors, and apprised your Committee of other commercial uses in the neighborhood.

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Mr. Stover noted that there are two other transient vacation rentals in Maui Meadows. He also noted the transient accommodations taxes and general excise taxes paid, and highlighted other ways in which the operators demonstrate good citizenship.

Your Committee discussed the request for quiet times made by a neighbor. Your Committee was advised that six transient vacation rental guests are the maximum number allowed, and that Sean Brunwin resides in the cottage. The Administrative Planning Officer informed your Committee that no complaints relating to this transient vacation rental have been filed.

The Deputy Planning Director advised your Committee that Ann and Bob Babson's transient vacation rental in Maui Meadows is no longer in operation.

Your Committee discussed the proposed duration of the Conditional Permit. The Deputy Planning Director noted that the Department typically recommends that a Conditional Permit have an initial duration of one year to ensure compliance with conditions, followed by a three-year renewal.

Your Committee questioned whether the Department of Public Works and Waste Management's comments, attached as Exhibit "9" to the Department's Report, had been addressed. The Administrative Planning Officer referenced the responses attached to the Department's Report as Exhibit "9A", and confirmed that the Department of Public Works would check for compliance with conditions in reviewing any request for a permit extension. He explained the interdependency of the two permits and their respective roles, and noted that your Committee could proceed on the Conditional Permit request despite the expiration of the SUP.

The Administrative Planning Officer noted that the Department does not investigate an applicant's compliance with Hawaii's employment laws, which is a separate function from the land use entitlement process.

Your Committee recommended that a new condition be incorporated into the proposed bill to require quiet times at the transient vacation rental, as well as the enforcement of those quiet times, as follows: "That Kathleen Gildred and Sean Brunwin shall post signs for and enforce quiet times at the transient vacation rental between 10 pm and 8 am."

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In order to further mitigate the concerns expressed by a neighbor, and based on the Administrative Planning Officer's comment that similar language is being considered by the Department in proposed transient vacation rental legislation, your Committee recommended that a new condition be incorporated that would require a sign to be posted with a contact number for emergencies, as follows: "That Kathleen Gildred and Sean Brunwin shall post and maintain on the premises a sign measuring one foot by one foot, noting the permit number for the transient vacation rental and a phone number for emergency purposes."

Your Committee discussed the Administrative Planning Officer's statement that the SUP had expired, as well as the projected timing involved in obtaining a new SUP. Your Committee considered alternatives that would allow for a reasonable initial period during which Ms. Gildred might be able to have both the SUP and the Conditional Permit, if granted, in effect. The Administrative Planning Officer advised that it would be in Ms. Gildred's best interest to apply for a new SUP as soon as possible. He further advised that your Committee could consider language similar to that employed by the planning commission in setting the duration of the SUP, to allow for expiration by a certain date or until the date the corollary permit expires, whichever is later.

Your Committee recommended that Section 2, Paragraph No. 2, of the proposed bill be revised as follows: "That Kathleen Gildred and Sean Brunwin shall immediately apply for a new State Special Use Permit. The Conditional Permit shall be valid for a period of two years from the effective date of this ordinance or until the termination date established by the State Special Use Permit, whichever is later; provided, that an extension of this Conditional Permit beyond this period may be granted pursuant to Section 19.40.090, Maui County Code."

To further reduce impacts on the community, your Committee also recommended that a new condition be incorporated that would prohibit on-street parking, as follows: "That no on-street parking shall be permitted."

Ms. Gildred advised your Committee that she is agreeable to the conditions as revised.

Your Committee voted to recommend passage of a revised proposed bill containing the new and revised conditions, and filing of the communication.

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Your Committee is in receipt of a further revised proposed bill, 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 Bill No. _____ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING KATHLEEN GILDRED AND SEAN BRUNWIN A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL BUSINESS WITHIN THE COUNTY RURAL DISTRICT, FOR PROPERTY SITUATED AT 3378 KEHA DRIVE, KIHEI, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 02-145 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**