

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

October 5, 2007

**Committee**  
**Report No.**

07-106

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

Chair and Members:

Your Land Use Committee, having met on February 28, 2007 and August 15, 2007, makes reference to County Communication No. 04-249, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1537 (1986) (CONDITIONAL ZONING) TO DELETE CONDITIONS 1, 2, 3, 6, 7, 8 AND 9 AND REVISE PERMITTED USES OF THE B-2 BUSINESS ZONED PARCEL FOR PROPERTY SITUATED AT 252 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII". The purpose of the proposed bill is to grant a request by Lahaina Gateway, LLC to delete certain conditions placed on the prior zoning change and to expand the uses permitted at the subject property, consisting of approximately 7,347 square feet (TMK: (2) 4-6-10:010, or Parcel 10).

Your Committee notes that the proposed bill also purports to amend an earlier unilateral agreement; however, the unilateral agreement is not attached to the copy of Ordinance No. 1537 transmitted with the County Communication.

Your Committee notes that the Maui Planning Commission held a public hearing on the application on June 8, 2004.

Your Committee further notes that at its meeting of June 8, 2004, the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JUNE 8, 2004 MEETING" and the conclusions presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION JUNE 8, 2004 MEETING", voted to recommend approval of the Conditional Zoning.

Your Committee further notes that the Council (2003-2005 Council term) referred County Communication No. 04-249 to its Planning and Land Use Committee at the Council meeting of October 5, 2004.

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At its meeting of January 21, 2005, the Council (2005-2007 Council term) referred County Communication No. 04-249 to its Land Use Committee (County Communication No. 05-13).

At its meeting of February 23, 2005, the Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Captain, Department of Police; a Deputy Corporation Counsel; Ferdinand Cajigal, District Engineer, Maui District, Highways Division, State Department of Transportation (State DOT); David Shimokawa, Planner, Statewide Transportation Planning Office, State DOT; and Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.

Ms. Ohashi Hiraga distributed a map reflecting the location of the subject parcel; a chart comparing existing conditions, status of compliance with those conditions, and proposed revised conditions; and a list of proposed permitted uses for the parcel. She also distributed photographs of the subject property and the structure on the lot, and displayed a poster board of the site.

The Planner provided a brief overview of the application and the proceedings before the Maui Planning Commission. She noted that the application seeks to expand allowable commercial uses on the parcel. She also explained that the property is within the Special Management Area (SMA) and the National Historic Landmark District. Therefore, if a new building is proposed, the owner would be subject to Chapter 343, Hawaii Revised Statutes (HRS), and the SMA permit process.

Based on title documents subsequently provided by Ms. Ohashi Hiraga, your Committee notes that the parcel was conveyed by Lahaina Gateway, LLC to Peter Longhi by Deed dated January 8, 2004 and recorded with the Bureau of Conveyances on January 15, 2004.

The Committee received public testimony from two individuals. Zach Winters, the business manager for the company that would operate on Parcel 10, stated that he is in full support of the proposed zoning changes, views the property as a gateway to Lahaina, and believes the proposed business will complement its surroundings.

The second testifier, Michelle Welch, is the owner of adjacent residential property burdened by an easement in favor of Parcel 10. Ms. Welch testified that she would like to

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ensure that the wall recommended by the Maui Planning Commission is constructed between her parcel and Parcel 10.

The Committee recommended that the proposed bill be revised to increase the maximum building height in proposed Condition No. 2 from 30 feet to 35 feet, thereby making it consistent with the West Maui Community Plan. The Committee further recommended that technical and nonsubstantive revisions be incorporated into the proposed bill.

The Committee voted to recommend passage of the revised proposed bill, recordation of the unilateral agreement, and filing of the communication.

By correspondence dated March 1, 2005, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmitted portions of a Lease/Option Agreement for Parcel 10.

By correspondence dated March 4, 2005, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmitted a copy of a Deed dated January 8, 2004, reflecting the conveyance of Parcel 10 from Lahaina Gateway, LLC to Peter Longhi; and a copy of a Preliminary Title Report for Parcel 10, dated February 25, 2005.

By correspondence dated March 11, 2005, the Chair of the Committee transmitted the following: (1) a copy of Ordinance No. 1537, entitled "A BILL FOR AN ORDINANCE CHANGING ZONING FROM R-2 RESIDENTIAL DISTRICT TO CONDITIONAL ZONING (B-2 COMMUNITY BUSINESS DISTRICT) FOR PROPERTY LOCATED IN LAHAINA, MAUI, HAWAII", which includes as an attachment a "Unilateral Agreement and Declaration for Conditional Use" dated November 15, 1985 (the 1985 Unilateral Agreement); and (2) correspondence dated March 7, 2005, from Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmitting a complete copy of a Lease/Option Agreement dated November 8, 2004, for Parcel 10, between Peter Longhi, Optionor, and Sherry Ann Boonstra-Barbier (Ms. Boonstra-Barbier), Optionee.

By correspondence dated March 16, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel revise the proposed bill to incorporate the Committee's requested revisions in addition to technical revisions.

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By correspondence dated March 17, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1537 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 252 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", incorporating the requested revisions.

By correspondence dated March 21, 2006, the Chair of the Committee wrote to Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., reiterating his understanding that Ms. Boonstra-Barbier, the optionee under the November 8, 2004 Lease/Option Agreement, had purchased the subject property from Peter Longhi. In light of that understanding, the Chair requested that the following information be provided: (1) a copy of the relevant document demonstrating the transfer of ownership; and (2) a letter of authorization reflecting that the new owner is authorizing the subject application for revised conditions of zoning to be pursued.

By correspondence dated March 21, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel revise the proposed bill to reference the applicable Land Zoning Map and to clarify that the 1985 Unilateral Agreement would be superseded.

By correspondence dated March 29, 2006, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1537 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 252 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", incorporating the requested revisions.

By correspondence dated December 14, 2006, the Chair of the Committee transmitted correspondence dated December 13, 2006, from Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmitting a Unilateral Agreement and Declaration for Conditional Zoning dated November 29, 2006, from Sherry Ann Boonstra-Barbier; a letter of authorization dated April 28, 2006 (notarized November 29, 2006), from Sherry Ann Boonstra-Barbier, to proceed with the requested Change in Zoning; and a copy of a Warranty Deed dated March 3, 2006, reflecting the conveyance of the subject property from Peter Longhi to Sherry Ann Boonstra-Barbier.

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By correspondence dated December 19, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel review and approve the Unilateral Agreement and Declaration for Conditional Zoning as to form and legality, and transmitted a copy of the letter of authorization and Warranty Deed. The Chair noted that the property description attached to the Warranty Deed appeared to have been updated and was not the same as the property description attached to the revised proposed bill, and requested that the bill be further revised accordingly.

By correspondence dated December 26, 2006, the Chair of the Committee requested that Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., transmit a revised unilateral agreement reflecting the correct recordation date of the 1985 Unilateral Agreement and incorporating various revisions recommended by the Department of the Corporation Counsel.

At its meeting of January 5, 2007, the Council referred County Communication No. 04-249 to your Land Use Committee (County Communication No. 07-5).

By correspondence dated January 19, 2007, the Department of the Corporation Counsel confirmed that the Unilateral Agreement and Declaration for Conditional Zoning would not be signed pending revision.

By correspondence dated February 16, 2007, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1537 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT 252 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII", incorporating the requested revisions.

At its meeting of February 28, 2007, your Committee met with the Deputy Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Captain, Department of Police; the Corporation Counsel; a Deputy Corporation Counsel; and Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.

There was no public testimony.

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Ms. Ohashi Hiraga provided a computer-generated presentation, noting background information concerning the property, the procedural history of the application, and the recommended conditions.

Ms. Ohashi Hiraga distributed a copy of Chapters 19.18 and 19.16, Maui County Code (MCC), annotated to reflect the B-2 Community Business District and B-1 Neighborhood Business District uses that the Maui Planning Commission had recommended be prohibited. She also provided a printout of her computer-generated presentation.

The Planner summarized the proceedings before the Maui Planning Commission.

Your Committee discussed the proposed expansion of uses. Your Committee questioned Ms. Boonstra-Barbier's current and intended uses for the property. Ms. Ohashi Hiraga informed your Committee that Ms. Boonstra-Barbier currently uses the structure as an office from which she does activities bookings and condominium rentals for off-site properties.

The Planner noted that the property is in the National Historic Landmark District, but not within the County Historic District. She advised that the Department of Planning had done an environmental assessment determination, and that repairs to the property were considered exempt. Your Committee questioned whether an environmental assessment was required under Chapter 343, HRS, and asked that the State Office of Environmental Quality Control (OEQC) be consulted.

Your Committee expressed concerns over the breadth of uses being permitted, and requested that further restrictions be considered. Your Committee also discussed driveway access issues.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated March 1, 2007, the Chair of your Committee requested that Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., provide a written response concerning the current and future anticipated uses of the property by Ms. Boonstra-Barbier.

By correspondence dated March 5, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel prepare a written request to the OEQC,

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seeking an opinion as to whether an environmental assessment would be required for the proposed zoning amendments under Section 343-5(a)(4), HRS.

By correspondence dated March 29, 2007, the Department of the Corporation Counsel requested that Genevieve Salmonson, Director, OEQC, respond whether an environmental assessment is required under Section 343-5(a)(4), HRS, in connection with the amendment of zoning ordinances for certain properties located within the Lahaina National Historic Landmark District.

By correspondence dated April 5, 2007, the Chair of your Committee requested that Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., respond to the March 1, 2007 request.

By correspondence dated April 20, 2007, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., responded that the property is currently used for business offices, involving activities booking and condominium rentals of off-site properties, noting the hours of operation and number of employees involved. She further advised that Ms. Boonstra-Barbier was willing to prohibit additional uses such as auctioneer establishments, banks, museums, and gasoline retailing.

By correspondence dated April 25, 2007, the Department of the Corporation Counsel transmitted a copy of correspondence dated April 20, 2007, from Genevieve Salmonson, Director, OEQC. The Department noted that it appears that an environmental assessment is not necessary at this time for this project.

By correspondence dated June 28, 2007, Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc., reiterated that Ms. Boonstra-Barbier was willing to prohibit the four additional uses noted in the April 20, 2007 correspondence (auctioneer establishments, banks, museums, and gasoline retailing), and advised that Ms. Boonstra-Barbier is also willing to prohibit uses such as automobile parts stores, dancing and hula studios, dry goods and/or department stores, music conservatories or music studios, and restaurants.

At its meeting of August 15, 2007, your Committee met with a Planner, Department of Planning; the Deputy Director of Public Works; a Deputy Corporation Counsel; Gwen Ohashi Hiraga, Project Manager, Munekiyo & Hiraga, Inc.; and Sherry Ann Boonstra-Barbier.

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There was no public testimony.

Ms. Ohashi Hiraga distributed a copy of Chapters 19.18 and 19.16, MCC, annotated to reflect the B-2 Community Business District and B-1 Neighborhood Business District uses that the Maui Planning Commission had recommended be prohibited, as supplemented to reflect the additional uses that Ms. Boonstra-Barbier had agreed not to pursue.

Your Committee expressed further concerns over the following permitted uses: nurseries (Section 19.18.020(41), MCC); financial buildings (Section 19.18.020(51), MCC); grocery stores and meat markets (Section 19.16.020(J), MCC), and nurseries associated with day care centers (remaining portion of Section 19.16.020(F), MCC). Ms. Boonstra-Barbier agreed that these four additional uses could also be prohibited.

Your Committee recommended that the nine uses listed in the June 28, 2007 correspondence be prohibited, along with the four additional uses of concern. Your Committee also recommended that a new condition be incorporated to read, "Any other uses not permitted by this ordinance shall require a further change in zoning."

Your Committee voted to recommend passage of the further revised proposed bill, recordation of the unilateral agreement, and filing of the communication.

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 and other nonsubstantive revisions.

Your Committee is in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" for 252 Lahainaluna Road, executed by Sherry Ann Boonstra-Barbier and approved as to form and legality by the Department of the Corporation Counsel.

Your Land Use Committee **RECOMMENDS** the following:

1. That Bill No. \_\_\_\_\_ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 1537 (CONDITIONAL ZONING) FOR B-2 COMMUNITY BUSINESS DISTRICT PROPERTY SITUATED AT



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252 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII”, be  
PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That the County Clerk RECORD the “Unilateral Agreement and Declaration for Conditional Zoning”; and
3. That County Communication No. 04-249 be FILED.

Adoption of this report is respectfully requested.

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**MICHAEL J. MOLINA** **Chair**

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**JO ANNE JOHNSON** **Member**

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**JOSEPH PONTANILLA** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**MICHELLE ANDERSON** **Member**

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**BILL KAUAKEA MEDEIROS** **Member**

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**GLADYS C. BAISA** **Member**

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**MICHAEL P. VICTORINO** **Member**

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**G. RIKI HOKAMA** **Member**