

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

January 11, 2008

Committee
Report No.

_____ 08-6

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

Chair and Members:

Your Land Use Committee, having met on December 19, 2007, makes reference to County Communication No. 07-217, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3299 (2005), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO VALERIE LEWIS OKAMURA TO ALLOW FOR THE OPERATION OF MAUI BY THE SEA, A TRANSIENT VACATION RENTAL SITUATED AT 532 HANA HIGHWAY, KUAU, PAIA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Valerie Lewis Okamura for a five-year time extension for her existing Conditional Permit to continue to operate a transient vacation rental business in a one-bedroom second dwelling on approximately 14,321 square feet of land in the R-1 Residential District, situated at 523 Hana Highway, Kuau, Paia, Maui, Hawaii (TMK: (2) 2-6-09:008).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on January 23, 2007.

Your Committee further notes that at its meeting of January 23, 2007, the Maui Planning Commission, after reviewing the findings and conclusions presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION TO THE MAUI PLANNING COMMISSION JANUARY 23, 2007 MEETING" (Department's Report), voted to recommend approval of the Conditional Permit time extension, subject to 17 conditions, as opposed to the 8 conditions contained in Ordinance No. 3299 (2005).

Your Committee further notes that Ms. Okamura timely requested an extension of her one-year Conditional Permit, which expired on July 5, 2006. According to the Department's Report, at a December 18, 2006 site visit of the property, Department staff confirmed compliance with the conditions of the Conditional Permit. In addition, no complaints relating to the operation have been filed with the Department.

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By correspondence dated October 30, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bill to correct the street address and to incorporate technical and nonsubstantive revisions.

By correspondence dated November 5, 2007, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3299 (2005), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO VALERIE LEWIS OKAMURA TO ALLOW FOR THE OPERATION OF MAUI BY THE SEA, A TRANSIENT VACATION RENTAL SITUATED AT 523 HANA HIGHWAY, KUAU, PAIA, MAUI, HAWAII", incorporating the requested revisions.

At its meeting, your Committee met with the Deputy Planning Director; a Planner, Department of Planning; a Deputy Corporation Counsel; and Valerie Lewis Okamura, the applicant.

There was no public testimony.

The Planner provided an overview of the application. She noted that she had conducted a site visit to the property approximately one year ago, and that Ms. Okamura is in compliance with the terms of the Conditional Permit. She also reiterated that no complaints regarding the transient vacation rental have been filed with the Department.

Ms. Okamura informed your Committee that her property has a house and a cottage on it. She rents her one-bedroom cottage for \$195 per night plus taxes, on average, three weeks per month. She also confirmed that she is current on her general excise taxes and transient accommodations taxes.

Ms. Okamura advised that she has not had any problems fitting in with her neighborhood; that there are transient vacation rentals all along the coast; that her operation is very quiet; and that she lives on the property and can control her guests.

Your Committee discussed the status of the proposed transient vacation rental bill being shepherded by the Department of Planning. The Deputy Planning Director advised your Committee that, under the Department's original proposal, Ms. Okamura's transient vacation rental would not qualify as a permitted operation. She noted that the proposed bill had made its way through all three planning commissions and that the Department

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hopes to transmit it to the Council in January 2008. She further noted that some changes had been recommended to the proposed bill.

The Planner confirmed that Ms. Okamura had been advised of the Department's proposed transient vacation rental bill and its potential impact on an operation such as hers.

The Deputy Corporation Counsel advised your Committee that Ms. Okamura's Conditional Permit bill, if granted, would fix a specific duration. Further, absent a clear statement that the transient vacation rental bill applies retroactively, Ms. Okamura's operation would be able to complete its term. However, should a transient vacation rental bill be enacted that disqualifies her operation, once the Conditional Permit expires, Ms. Okamura would be unable to renew it.

The Deputy Planning Director advised that, in many instances, the Department supports five-year extensions of such Conditional Permits and views five years as a reasonable time period. She noted that there are instances where longer terms have also been supported, in particular where the use does not cause adverse impacts and there have been no complaints against the applicant.

Your Committee discussed the duration of the proposed extension. The Deputy Planning Director clarified that a time extension is treated a bit differently from an initial issuance of a Conditional Permit, noting that a shorter initial period allows the Department an opportunity to check that the operation is in compliance with the terms of the Conditional Permit. Your Committee noted the lack of complaints and Ms. Okamura's compliance with the terms of the initial Conditional Permit in supporting the extension.

Your Committee recommended that the proposed Conditional Permit bill be revised to fix the expiration of the permit on December 19, 2011 instead of July 5, 2011; to delete the phrase "for a period" in line 2 of the first condition; and to delete the proposed phrase "five-year" from line 5 of that condition. The first condition would provide for the following: "That the Conditional Permit shall be valid until December 19, 2011; provided, that an extension of this Conditional Permit beyond this period may be granted pursuant to Section 19.40.090, Maui County Code."

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

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Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions and changing the year of the bill from "(2007)" to "(2008)".

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3299 (2005), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO VALERIE LEWIS OKAMURA TO ALLOW FOR THE OPERATION OF MAUI BY THE SEA, A TRANSIENT VACATION RENTAL SITUATED AT 523 HANA HIGHWAY, KUAU, PAIA, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 07-217 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**