

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

August 21, 2007

Committee
Report No.

_____ 07-85

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

Chair and Members:

Your Policy Committee, having met on July 24, 2007, makes reference to County Communication No. 07-98, from the Chair, relating to the matter of appeals of the Residential Workforce Housing Policy.

By correspondence dated March 29, 2007, the Council Chair transmitted correspondence dated February 28, 2007, from the County Clerk, transmitting correspondence dated February 23, 2007, from Christopher L. Hart, ASLA, President, Chris Hart & Partners, Inc. (“the appeal”), requesting a waiver from the requirements of the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code (“MCC”), for the proposed Kamaole Heights and Kamaole Plantation multi-family residential projects within the Kamaole Superblock in Kihei, Maui, on behalf of the developer, No Ka Oi Development LP (also known as Nokaioi Development, LLC).

By correspondence dated June 1, 2007, the Council Chair transmitted correspondence dated May 31, 2007, from the County Clerk, transmitting correspondence dated May 25, 2007, from Christopher J. Cole, Esq., of McCorrison Miller Mukai MacKinnon LLP, on behalf of the developer, providing additional technical data in support of the appeal.

Your Committee notes that Section 2.96.030, MCC, provides for appeals of the Residential Workforce Housing Policy. Subsection 2.96.030(C)(3) states, in part: “The council shall approve or disapprove the appeal by resolution within ninety days from the date the developer has concluded its presentation of evidence supporting the appeal.”

By correspondence dated June 5, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel clarify when the 90-day period for the Council to approve or disapprove an appeal would commence, and advise whether a contested-case hearing is required.

By correspondence dated June 29, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel review a draft resolution entitled

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“APPROVING THE APPEAL TO THE RESIDENTIAL WORKFORCE HOUSING POLICY FOR THE PROPOSED KAMAOLE HEIGHTS AND KAMAOLE PLANTATION MULTI-FAMILY RESIDENTIAL PROJECTS”; and a draft resolution entitled “DISAPPROVING THE APPEAL TO THE RESIDENTIAL WORKFORCE HOUSING POLICY FOR THE PROPOSED KAMAOLE HEIGHTS AND KAMAOLE PLANTATION MULTI-FAMILY RESIDENTIAL PROJECTS”. The respective purposes of the draft resolutions are to approve or, alternatively, disapprove the appeal.

By correspondence dated July 13, 2007, the Department of the Corporation Counsel transmitted the following, approved as to form and legality:

1. A proposed resolution entitled “APPROVING THE APPEAL TO THE RESIDENTIAL WORKFORCE HOUSING POLICY FOR THE PROPOSED KAMAOLE HEIGHTS AND KAMAOLE PLANTATION MULTI-FAMILY RESIDENTIAL PROJECTS”.

The purpose of the proposed resolution is to approve the appeal of the Residential Workforce Housing Policy for the proposed Kamaole Heights and Kamaole Plantation multi-family residential projects.

2. A proposed resolution entitled “DISAPPROVING THE APPEAL TO THE RESIDENTIAL WORKFORCE HOUSING POLICY FOR THE PROPOSED KAMAOLE HEIGHTS AND KAMAOLE PLANTATION MULTI-FAMILY RESIDENTIAL PROJECTS”.

The purpose of the proposed resolution is to disapprove the appeal of the Residential Workforce Housing Policy for the proposed Kamaole Heights and Kamaole Plantation multi-family residential projects.

By correspondence dated July 18, 2007, the Chair of your Committee requested that Christopher L. Hart, ASLA, President, Chris Hart & Partners, Inc., the developer’s consultant, and Christopher J. Cole, Esq., of McCorriston Miller Mukai MacKinnon LLP, the developer’s attorney, attend the Committee’s meeting of July 24, 2007.

By correspondence dated July 23, 2007, James Smith provided comments supporting the proposed resolution disapproving the appeal.

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At its meeting, your Committee met with the Director of Housing and Human Concerns; a Deputy Corporation Counsel; Christopher J. Cole, Esq. and Robert G. Klein, Esq., of McCorrison Miller Mukai MacKinnon LLP; and Daryl Fletcher, representing the developer.

Your Committee received oral and written testimony from Stan Franco, Chair, Housing for the Local Person, supporting the proposed resolution disapproving the appeal.

Your Committee noted that Section 2.96.030(C), MCC, sets forth the conditions for a reduction, waiver, or adjustment of the requirements of the Residential Workforce Housing Policy. Your Committee further noted that the developer contended that the presentation of evidence concluded with the May 25, 2007 correspondence from Christopher J. Cole, Esq., of McCorrison Miller Mukai MacKinnon LLP.

In response to your Committee's inquiry by correspondence dated June 5, 2007, the Deputy Corporation Counsel stated that the 90-day clock for the Council to approve or deny an appeal would start when the Council or Committee hears the evidence presented in a meeting.

He also responded that the Council is exempt from the contested-case hearing procedures specified in Chapter 91, Hawaii Revised Statutes, because the Council is a legislative body. This is consistent with the Supreme Court of Hawaii's opinion in Sandy Beach Defense Fund v. City Council of the City and County of Honolulu, 70 Haw. 361, 773 P.2d 250 (1989).

The Deputy Corporation Counsel further stated that his verbal opinion would be followed by a written opinion from the Department of the Corporation Counsel.

The Director of Housing and Human Concerns said that a developer's representative met with her and representatives from her Department in early February to request a waiver of the residential workforce housing requirements and was referred to the Council. She said that the developer did not request a determination as to what the housing requirements would be, and her Department has not made that determination.

Your Committee noted that the correspondence submitted by the developer's representatives did not identify the legal basis upon which the appeal was being made.

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Your Committee further noted that there was not sufficient information presented on the cost of the units being sold or what the affordable requirements would be.

Mr. Klein respectfully declined your Committee's invitation to provide information in the meeting.

Your Committee voted to recommend adoption of the proposed resolution to disapprove the appeal.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "DISAPPROVING THE APPEAL TO THE RESIDENTIAL WORKFORCE HOUSING POLICY FOR THE PROPOSED KAMAOLE HEIGHTS AND KAMAOLE PLANTATION MULTI-FAMILY RESIDENTIAL PROJECTS", be ADOPTED.

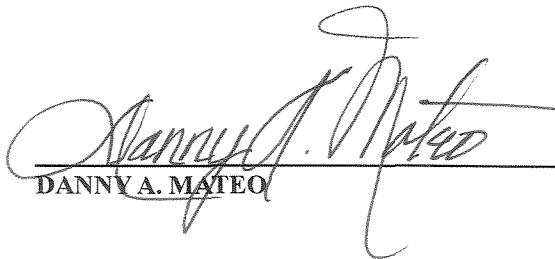
Adoption of this report is respectfully requested.

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DANNY A. MATEO Chair

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MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

Resolution

No. _____

DISAPPROVING THE APPEAL TO THE
RESIDENTIAL WORKFORCE HOUSING POLICY FOR
THE PROPOSED KAMAOLE HEIGHTS AND
KAMAOLE PLANTATION MULTI-FAMILY
RESIDENTIAL PROJECTS

WHEREAS, the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code, is intended to “encourage the provision and maintenance of residential workforce housing units” in the County of Maui; and

WHEREAS, the purpose of the Residential Workforce Housing Policy is effectuated through residential workforce housing requirements placed on developers, as specified in Section 2.96.040, Maui County Code; and

WHEREAS, Section 2.96.030(C)(1), Maui County Code, provides a process for a developer to appeal to the Council “for a reduction, adjustment, or waiver of the residential workforce housing requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and the number of residential workforce housing units or in-lieu fees/land required”; and

WHEREAS, Section 2.96.030(C)(2), Maui County Code, states that “The appeal shall set forth in detail the factual and legal basis for the claim of reduction, adjustment, or waiver, and the developer shall bear the burden of presenting substantial evidence to support the appeal, including comparable and relevant technical information”; and

WHEREAS, No Ka Oi Development, LP, is the developer (the “developer”) of the proposed Kamaole Heights and Kamaole Plantation multi-family residential projects in Kihei, Maui (the “development”); and

WHEREAS, on February 23, 2007, a representative of the developer submitted an appeal seeking a waiver of the residential workforce housing requirements for the development, pursuant to Section 2.96.030(C), Maui County Code; and

WHEREAS, on May 25, 2007, the Council received additional technical data from another representative of the developer; and

Resolution No. _____

WHEREAS, the developer concluded its presentation of evidence in support of its appeal at a Policy Committee meeting on July 24, 2007; and

WHEREAS, pursuant to Section 2.96.030(C), Maui County Code, the Council shall approve or disapprove the appeal by resolution within ninety (90) days from the date the developer has concluded its presentation of evidence supporting the appeal; and

WHEREAS, after due consideration of the evidence and other relevant facts and circumstances, the Council finds that there is a reasonable relationship or nexus between the impact of the development and the residential workforce housing requirements for the development; now, therefore,

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

1. That it hereby disapproves the appeal to the residential workforce housing requirements for the proposed Kamaole Heights and Kamaole Plantation multi-family residential projects, as submitted to the Council on February 23, 2007, pursuant to Section 2.96.030(C), Maui County Code; and
2. That certified copies of this resolution be transmitted to the Director of Public Works, the Planning Director, the Director of Housing and Human Concerns, and No Ka Oi Development, LP.

APPROVED AS TO FORM AND
LEGALITY



EDWARD S. KUSHI, JR.
Department of the Corporation Counsel
County of Maui