

**MINUTES**  
**PUBLIC WORKS COMMITTEE**

**Council of the County of Maui**

**Council Chamber**

**July 31, 2006**

**CONVENE: 9:03 a.m.**

**PRESENT:** Councilmember Joseph Pontanilla, Chair  
Councilmember Michael J. Molina, Vice-Chair  
Councilmember Robert Carroll, Member (arr. at 9:04 a.m.)  
Councilmember G. Riki Hokama, Member (arr. at 9:04 a.m.)  
Councilmember Danny A. Mateo, Member

**STAFF:** Scott Jensen, Legislative Analyst  
Yvette Bantilan, Committee Secretary

**ADMIN.:** Milton Arakawa, Director, Department of Public Works and Environmental  
Management  
Cindy Young, Deputy Corporation Counsel, Department of the Corporation  
Counsel

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**PW-60 DEDICATION OF ROAD WIDENING LOT FOR THE PULEHUIKI-KAMEHAMEIKI  
HOMESTEADS (KULA) (C.C. No. 06-83)**

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CHAIR PONTANILLA: . . . (*gavel*) . . . Good morning, Committee Members and members of my staff as well as members of the Administration. I would like to call the Public Works Committee meeting to order. Today is July 31, 2006 and it's 9:03 a.m. in the morning. I would like to welcome Committee Members Robert Carroll, Mr. Mateo, and the Vice-Chair of the Committee Michael Molina, and now joining us is our Council Chair Riki Hokama. From staff, we do have Yvette Bantilan as well as Scott Jensen; and from the Administration, we do have Cindy Young and Milton Arakawa. At this time, I'd like to call for public testimony. Although there is no one in the gallery, I'll keep public testimony open for a little while. Okay, Members. We do have one item on our agenda this morning. It's Public Works No. 60, Dedication of Road Widening Lot for the Pulehuiki-Kamehameiki Homesteads in Kula. This is a result of County Communication No. 06-83, transmitting correspondence from the Director of Public Works and Environmental Management. It was followed by correspondence dated July 11, 2006, transmitting a revised proposed resolution entitled "ACCEPTING DEDICATION OF A ROAD WIDENING LOT FOR THE PULEHUIKI-KAMEHAMEIKI HOMESTEADS, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE". The purpose of the revised proposed resolution is to accept road widening Lot 8-B-3 in Kula, Maui, along Lower Kula Road, Tax Map Key: 2-3-02:009. Okay. At this time, I would like to call on the Public Works Director Milton Arakawa for some comments.

**PUBLIC WORKS COMMITTEE**  
**Council of the County of Maui**

July 31, 2006

---

MR. ARAKAWA: Thank you, Mr. Chair. As you mentioned, this item pertains to a proposed dedication of a road widening lot relating to the Pulehuiki-Kamehameiki Homesteads Subdivision along Lower Kula Road. The subdivision was granted final approval on February 23, 2006 and the road widening lot, which is before you for action, is 471 square feet in area and of an irregular shape. As allowed under Section 18.20.040 of the Maui County Code, the subdivider has deferred roadway improvements by completing the requirements of a three-lots-or-less subdivision agreement. The Committee's review and consideration of the proposed resolution is respectfully requested. Thank you, Mr. Arakawa. Members, any questions for the Public Works Director?

COUNCILMEMBER HOKAMA: One question.

CHAIR PONTANILLA: Mr. Hokama?

COUNCILMEMBER HOKAMA: What would have been the improvements, Director, if . . . we didn't do this option? What would have the subdivider be required to provide in improvements?

MR. ARAKAWA: Councilmember Hokama, it's basically to provide the additional right-of-way along a section of the frontage to bring it up to the required 40 feet. I believe the pavement along the frontage does not meet the minimum 20 feet, so I would also mention that the road widening lot is an irregular shape and it's along a portion of the frontage. So if the . . . um . . . for instance, if the subdivision were four lots or more, we would require the pavement to be brought up to 20 feet. I believe it's around 16 or 17 feet at this point.

COUNCILMEMBER HOKAMA: Is there any formula or whatnot that the . . . um . . . the deferral and improvement would be approximately equal in value?

MR. ARAKAWA: That's . . . um . . . what we've normally done with the deferral agreement--and this is a point of some contention--was that when we would go in with some sort of a County CIP, then we would try to collect on the agreement at some future point in time. And at that time, it would be basically what would have been the cost of doing the frontage improvements along that particular subdivision property.

COUNCILMEMBER HOKAMA: In your position as our Director of this Department, is this deferment working? Is it a workable option for us? I would hate for us to always be in the short end and putting up a lot more money because of this deferral when it should have been the subdivider's cost, not the general fund.

MR. ARAKAWA: There's some sentiment . . . um . . . which says we should reevaluate that provision in the Code. But the . . . um . . . if you look at some of the other provisions of the Code, for instance, if you consolidate lots, you're basically ending up with less lots. Of course, no frontage improvements would be required. If you have three lots and you reconsolidate and re-subdivide so that there's no additional lots, there's no frontage improvements. In this particular case, there is one lot and they're basically subdividing it into two lots, so it's a very small subdivision. So the question is: at what point, do we require full frontage improvements? And . . . um . . . that's the question, I guess, that would need to be

**PUBLIC WORKS COMMITTEE**  
Council of the County of Maui

July 31, 2006

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answered with any kind of possible Code revision; and with that, we have to also take into account issues like rational nexus. For instance, you know . . . um . . . can we require full frontage improvements with certain minor types of improvements? Generally, the types of improvements that we require . . . um . . . should be proportional to the impacts that the development causes. So that's, you know, part of the . . . uh . . . the factors that need to be taken into consideration with any possible revision of the Code.

COUNCILMEMBER HOKAMA: Let me ask you this then, Mr. Director. Lower Kula Road, is that under our jurisdiction and liability?

MR. ARAKAWA: Yes, it is.

COUNCILMEMBER HOKAMA: If we repave, do we need to make improvements on this specific area?

MR. ARAKAWA: If we repave it, we would probably bring it up to at least 20 feet of pavement.

COUNCILMEMBER HOKAMA: The minimum standards?

MR. ARAKAWA: Yes.

COUNCILMEMBER HOKAMA: And how much would that cost in today's dollars (round number)? \$10,000? \$100,000?

MR. ARAKAWA: I couldn't really tell you offhand with the prices of asphalt; but we would look at the existing pavement. As I mentioned, it's about 16 or 17 feet wide now and we'd probably have to add another, you know, 3 or 4 feet of pavement to bring it up to 20 along this particular stretch of the road.

COUNCILMEMBER HOKAMA: Do you need strengthening? You need grading? You need leveling? You need fill?

MR. ARAKAWA: Very possibly. I haven't looked at the conditions there. But generally, when we would look at like country road resurfacing, if the road is . . . um . . . you know, it's been fine, but we just haven't resurfaced it for a number of years, we would just . . . either just cold plane it and resurface or just, you know, add another layer of asphalt on top, depending on the specific conditions.

COUNCILMEMBER HOKAMA: If we turn this down, the subdivider needs to make the road improvement? Or is the Code written that this is just Administrative, we don't really turn it down? Corp. Counsel, can you respond?

MR. ARAKAWA: Oh, maybe you should respond.

**PUBLIC WORKS COMMITTEE**  
Council of the County of Maui

July 31, 2006

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MS. YOUNG: We would just note for the Members that final approval was granted according to the fact sheet that's included in the documentation in the binder on February 23, 2006. So the Department (Public Works)--I mean I'm reading that as "Public Works" views this application for subdivision as being complete. This subdivision being . . . um . . . this Pulehuiki-Kamehameiki Homesteads Subdivision as having complied with all of the requirements of Title 18.

COUNCILMEMBER HOKAMA: I'm asking: if we turn this down, what happens?

MS. YOUNG: If I could just have a moment to look at the Code.

COUNCILMEMBER HOKAMA: Chairman, how about a short recess?

CHAIR PONTANILLA: Okay. We'll have a short recess to have Corporation Counsel research this particular issue. Recess. . . . (*gavel*) . . .

**RECESS:            9:15 a.m.**

**RECONVENE:      9:23 a.m.**

CHAIR PONTANILLA: . . . (*gavel*) . . . The Public Works Committee meeting of July 31<sup>st</sup> will reconvene. Corporation Counsel?

MS. YOUNG: Thank you, Mr. Chair. The question before the Committee posed was: what happens to the subdivision in the event that the road widening lot is not accepted by Council? We would note some sections of the Subdivision Code, particularly, Section 18.20.040, which deals with existing streets and it provides that no improvement shall be required upon existing streets for a consolidation of lots. For a designation of access easement for a subdivision creating only a road widening, creating only road widening lots, and for a consolidation of three developable lots or less, which is subdivided without creating additional developable lots. Improvements to existing streets may be deferred for a subdivision containing three lots or less, which is the subdivision before . . . before this committee. Or if the subdivided parcels are used for churches, provided that the subdivider or owner et cetera, et cetera . . . um . . . provide, pay his or her prorata share of the cost of road improvements upon the existing street pursuant to the terms of the ordinance authorizing the improvements by the County, or to a formula determined by the County taking into account, reasonable factors such as actual cost of road improvements and the number of feet of roadway abutting the subdivided property; and it lists the improvements that we were talking about, which are . . . uh . . . including, pavement widening, construction of curb, gutter, and sidewalk, and relocation of utilities underground. Once a subdivision takes advantage of this provision of the Code, it cannot, the land underneath it or any lot thereof cannot come in later on and get the same type of deferral. So this is basically a one-shot thing. We would also note that 18.16.060 of the Code requires that, in Subsection B. "When existing streets within, adjacent to, or providing access to a subdivision do not meet county width requirements,"--and that's set forth in 18.16.050--"the subdivider shall provide additional rights-of-way"--according to County standards--"for those portions of substandard streets within the subdivision". So in this case, that's what's before you today.

**PUBLIC WORKS COMMITTEE**  
Council of the County of Maui

July 31, 2006

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CHAIR PONTANILLA: Thank you.

MS. YOUNG: And so . . . oh, I'm sorry.

CHAIR PONTANILLA: Oh, more?

MS. YOUNG: And so going to the question of "what happens if the Committee, or the Council doesn't accept the road widening lot, then it puts into question, and I . . . maybe this is a question of what we've done in past practice. On the one hand, does Public Works deem this provision to be completed? We do have a subdivision that has been approved. So as we sit here today, there is--I am understanding--a recorded subdivision plat map that has these . . . that's divided the one lot into two lots. So I think, it seems like Public Works has interpreted this section and I think somewhat reasonably to allow for the dedication to be when they submit the . . . um . . . the deed versus when the County accepts the road widening lots. The dissection of the Code is deemed to be complied with once they submit the deed for processing. And once that deed, I think it's once the deed is deemed to be complete and basically correct--you know, there's been times where these have had to be corrected and such--but once it's deemed completed, correct, and whatnot, then I believe the Departments process the subdivision and approve the plat map if there's no other issues with the subdivision.

If we could . . . um . . . just one final note--and this doesn't go directly to your question--but going back to 18.20.040, it does give the Director discretion in allowing this basically three-lots-or-less deferral, if you will. So it's not something that has to happen but it's my understanding that has typically occurred in the past. In other words, there's never been a differentiation between certain types of subdivision that may qualify for this. If there were, it's within the Director's discretion but because it's been past practice for this to occur without any scrut., without any differentiation, if you will, we would advise that if the Department wanted to pursue that they could. Rules would be in good order, but it's something that the County (by Code) doesn't have to allow for this, for the three-lots-or-less deferral. It's allowed but it's not mandated by Code.

COUNCILMEMBER HOKAMA: So legally, the County is already liable for that portion of that roadway lot under your comment to this committee this morning?

MS. YOUNG: No.

COUNCILMEMBER HOKAMA: Are they on the hook?

MS. YOUNG: No, we don't own the road because it hasn't been accepted as a road widening lot. So we don't own the parcel that we're talking about (the 471 square foot parcel Lot 8-B-3).

COUNCILMEMBER HOKAMA: So when you say the Department has already accepted, through the deed review, the deed review?

**PUBLIC WORKS COMMITTEE**  
**Council of the County of Maui**

July 31, 2006

---

MS. YOUNG: Oh, I'm sorry. Let me clarify. I'm not saying that the County accepted the lot in any way, shape, or form. I'm saying that the Department is deeming that provision to have been completed or complied with by them submitting a complete and correct deed; but not that we would own it or anything like that. That would still require Council approval. I'm talking merely about complying with Title 18.

COUNCILMEMBER HOKAMA: That's . . . uh . . . Title 18, is that Subdivision or Zoning, the 18?

MS. YOUNG: Eighteen is Subdivision.

COUNCILMEMBER HOKAMA: Subdivision, okay.

MS. YOUNG: Yes.

COUNCILMEMBER HOKAMA: So we could actually go along without accepting this parcel then, and it wouldn't stop the subdivision from moving forward. We just wouldn't own this lot. Right?

MS. YOUNG: It's your discretion of whether or not to . . . um . . . to accept the road widening lot. That's correct.

COUNCILMEMBER HOKAMA: What is the County's advantage of accepting the lot?

MS. YOUNG: The County's advantage would be if we need it later on for comprehensive improvements or what have you, we would own the lot. We wouldn't have to acquire it. The other advantage would be that . . .

COUNCILMEMBER HOKAMA: Because we chose not to have the current subdivider pay for that improvement? Is that the reason?

MS. YOUNG: Um . . . uh . . . I guess. Yeah. I mean if it, basically, if there's a larger project that we have. The other thing would be, the other advantage would be that if one or more of those lots that were created subdivides again, then they would have to do these improvements. It's not a waiver. It's a deferral. So at the point where they further subdivide it, they would need to do these improvements. So, yeah.

COUNCILMEMBER HOKAMA: I understand that, Corp. Counsel. My thing is: have we collected on those deferrals? And that is an issue the Director has, knows about because it's been brought up in other districts, West Maui in particular, about these deferrals and whether or not we actually--when we do the project (the major project) do we go back and collect for this deferral? That's the issue. Okay, Chairman. Thank you.

CHAIR PONTANILLA: Thank you, Mr. Hokama. Members, any more questions? Mr. Mateo.

**PUBLIC WORKS COMMITTEE**  
**Council of the County of Maui**

July 31, 2006

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COUNCILMEMBER MATEO: Chairman, thank you very much. And just to continue along, then maybe, Mr. Director, hearing the discussion and concerns relative to the deferred improvements, is the Department willing to take a look at the Code to see exactly whether or not change is forthcoming in terms of dealing with the Code specifically in making it clear regarding the whole concept of deferred improvements because if they don't pay for it, taxpayers pay for it. So can you kinda comment on the Department's position at this point?

MR. ARAKAWA: Councilmember Mateo. *(NOTE: Cleared his throat)* Excuse me. We have a number of proposed amendments that we have been contemplating for Title 18 (the Subdivision Code) and we've been massaging that with our staff as well as with Corp. Counsel. And this is one of them, one of the provisions that we're looking at. So you can expect this to be debated and discussed with the Council fully within the near future.

COUNCILMEMBER MATEO: Thank you. And then . . . um . . . also, Mr. Director--and that would continue with just being able to obtain the same type of information--when the Department does the fact sheet and in terms of . . . uh . . . you know, meeting requirements of Title 18, referencing the deferred improvements, could a projected cost of what those deferred improvements would, you know, would be . . . be added to this fact sheet so that we're able to look at exactly what the subdivider would or could be responsible for?

MR. ARAKAWA: We can include that information if that's what the Council wants to see.

COUNCILMEMBER MATEO: Thank you.

MR. ARAKAWA: That's not a problem.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you, Mr. Mateo. Members, any more questions? I do have some questions, or maybe just one. The . . . um . . . rock wall on that old Lower Kula Road, it indicates that it's historical loose rock wall. Does that rock wall belong to the County? Or whose rock wall is that? And if you did make road improvements, how would we handle that historical rock wall?

MR. ARAKAWA: Mr. Chairman. I see portions of the rock wall appear to be within the County right-of-way as well. I don't believe that the County had . . . um . . . constructed that like that but if we were going to be making improvements, we'd have to deal with that in some fashion, whether--and I assume we'd have to enter into some discussion with the State Historic Preservation Division as to the significance of the wall and whether or not it should remain or, you know, can be . . . uh . . . taken out (relocated, removed, or whatever). We'd have to discuss appropriate mitigation with the State Historic Preservation Division before doing the . . . uh . . . any improvements to the, within the right-of-way.

**PUBLIC WORKS COMMITTEE**  
Council of the County of Maui

July 31, 2006

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CHAIR PONTANILLA: Thank you. Another question . . . um . . . in regards to, I guess, walls. When we placed in guardrails or any type of barrier, you know, maybe 15-20 years ago, and we find out that--by survey--that now this so-called walls are within private properties. What happens when the subdivider or property owner wants to sell their property? Do we relocate the wall? Do we leave the wall there? What happens?

MR. ARAKAWA: If it's a wall or like a guardrail or some improvement that the County had put in some years ago, there are cases that come up where . . . um . . . upon sale of a property, these encroachments are found and normally, the owner will notify us about the encroachments, and then we'd have to go and basically remedy the encroachment, whether remove it or to try to get some sort of approval to leave it there or, you know, some . . . um . . . solution to that encroachment, whether it's to remove it or leave it. But we'd have to address it at that time and there are . . . um . . . yeah, a number of these cases that come up; but we'd have to just deal with it on a case-by-case basis.

CHAIR PONTANILLA: I understand at one time we had a provision in regards to . . . um . . . walls being, you know, installed. Because of the surveying issue, a provision where . . . um . . . it was almost like a grandfather (plus or minus) on the installation. Do we have that type of provisions?

MR. ARAKAWA: Yes. I believe, by State law, there are some deminimous provisions where . . . um . . . they allow for . . . um . . . basically minimal encroachment of walls--and I can't recall the exact amounts--but . . . um . . . it's basically minimal encroachments are basically okay in accordance with the State law. Once you exceed that, then we'd have to remedy it.

CHAIR PONTANILLA: Thank you. Members, any more questions? Member Molina.

VICE-CHAIR MOLINA: Yeah, thank you, Chairman. Mr. Chairman, I don't know if you plan on moving this out today; but whether you move it out or not, can we get some type of cost analysis from the Department as well as . . . uh . . . getting comment from SHPD with regards to the wall?

CHAIR PONTANILLA: We can have that information. Mr. Director, if you any questions on that . . . comments?

VICE-CHAIR MOLINA: And the reason I bring it up, Mr. Chair, is I want to know how much this thing is gonna cost us if we do accept the dedication, yeah. So I guess the more we look into this, just . . . uh . . . for my own comfort level.

CHAIR PONTANILLA: Okay. For this particular issue?

VICE-CHAIR MOLINA: Yes.

CHAIR PONTANILLA: Okay, fine. Members, any more questions? Seeing none, the Chair would like to defer this issue (Public Works Item No. 60) in regards to information being requested by the Members this morning, on historical walls from SHPD. Members, any more questions . . . concerns? If not, thank you very much. This item (Public Works No. 60) is deferred.

**PUBLIC WORKS COMMITTEE**  
Council of the County of Maui

July 31, 2006

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**COUNCIL MEMBERS VOICED NO OBJECTIONS. (PRESENT: PONTANILLA, MOLINA, CARROLL, HOKAMA, AND MATEO)**

**ACTION: DEFER.**

CHAIR PONTANILLA: This meeting is now adjourned.

**ADJOURN: 9:40 a.m.**

APPROVED BY:

  
JOSEPH PONTANILLA, Chair  
Public Works Committee

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Transcribed by: Pauline Martins