

MINUTES

PUBLIC WORKS COMMITTEE

August 28, 2006

Council Chamber, 8th floor

CONVENE: 9:03 a.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember Robert Carroll, Member
Councilmember G. Riki Hokama, Member
Councilmember Danny A. Mateo, Member

EXCUSED: Councilmember Michael J. Molina, Vice Chair

STAFF: Scott Jensen, Legislative Analysts
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

OTHERS: Alan Alamida

PRESS: Akaku: Maui Community Television, Inc.
Alan Alamida

CHAIR PONTANILLA: . . . *(gavel)* . . . Good morning, Members. The Public Works Committee meeting is now in session. It's 9 o'clock. With us this morning, we do have Member Carroll, Member Mateo, our Council Chair Member Hokama. Excused this morning is our Vice-Chair Member Molina. Also with us this morning is Scott Jensen as well as Yvette Bantilan from our Staff. Representing the Administration is Cindy Young from Corporation Counsel, along with Milton Arakawa from the Department of Public Works and Environmental Management.

***PW-64 DEDICATION OF ROADWAY LOTS FOR THE
HONUALAHELE SUBDIVISION PHASES I AND II; AND
DEDICATION OF A DRAINAGE EASEMENT FOR THE
HONUALAHELE SUBDIVISION PHASE II (KIHEI)
(C.C. No. 06-180)***

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CHAIR PONTANILLA: Members, we do have one item on the agenda – PW-64, which is a dedication of roadway lots for the Honualahele Subdivision Phases I and II; and dedication of a drainage easement for the Honualahele Subdivision Phase II in Kihei.

Members, at this time, the Chair would like to call for public testimony. Seeing no one and no one has signed up for public testimony. If there are no objections, the Chair would like to close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR PONTANILLA: Thank you very much. Okay, Members, as I had indicated, we do have one item on the agenda this morning, which is PW-64, dedication of roadway lots for the Honualahele Subdivision Phases I and II; and the dedication of a drainage easement for the Honualahele Subdivision Phase II. This is a result of County Communication 06-180, transmitting the following:

A proposed resolution entitled “ACCEPTING DEDICATION OF ROADWAY LOTS FOR THE HONUALAHELE SUBDIVISION I, AT WAIAKOA MAKAI HOMESTEADS, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE”. The purpose of the proposed resolution to accept roadway Lots 34 (Honuhalemua Street) and 35 (Honuea Street and Honuea Place) in Kihei, Maui;

A proposed resolution entitled “ACCEPTING DEDICATION OF ROADWAY LOTS FOR THE HONUALAHELE SUBDIVISION II, AT WAIAKOA MAKAI HOMESTEADS, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE”. The purpose of the proposed resolution to accept roadway Lots 34 (Honuhula Street and Honuhula Place) and 35 (Honuhalemua Street) in Kihei, Maui; and

A proposed resolution entitled “ACCEPTING DEDICATION OF A DRAINAGE EASEMENT FOR THE HONUALAHELE SUBDIVISION II, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE”. The purpose of the proposed resolution is to accept Drainage Easement C along Honuhula Place in Kihei, Maui.

At this time, the Chair would like to call upon Mr. Arakawa, the Department of Public Works Director for some comments. Mr. Arakawa.

MR. ARAKAWA: Thank you, Mr. Chair. As you noted, this item pertains to the proposed dedication of roadway lots for the Honualahele Subdivision I and II, and

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a proposed dedication of a drainage easement for the Honualahele Subdivision II. Honualahele Subdivision I and II consist of two abutting rectangular parcels which extend between Kenolio Road and Kaiola Place in North Kihei. For Honualahele Subdivision I, the proposed resolution which we have before you pertains to the acceptance of Honuhalemua Street, which is Lot 34, consisting of 5,520 sq. ft. and Honuea Street and Honuea Place, which is Lot 35, consisting of 50,344 sq. ft. Final subdivision approval was granted on July 8, 2003. The improvements are complete and have been approved by the Department of Public Works and Environmental Management on October 18, 2004, and the Department of Water Supply on September 8, 2004.

For Honualahele Subdivision II, the proposed resolution pertains to the acceptance of Honuhula Street and Honuhula Place, which is Lot 34 in that subdivision consisting of 57,302 sq. ft., and Honuhalemua Street, which is Lot 35 consisting of 4,847 sq. ft.

There's also a drainage easement dedication which is noted as Easement C on your map which consists of 1,893 sq. ft. Final subdivision approval for Honualahele Subdivision II was granted on August 9, 2005. All the improvements are complete and have been approved by the Department of Public Works and Environmental Management on August 31, 2004, and the Department of Water Supply on September 8, 2004.

The Committee's review and consideration of the three proposed resolutions to accept dedication of the roadway widening lots and the drainage easement is respectfully requested.

CHAIR PONTANILLA: Thank you, Mr. Arakawa. Members, any questions for the Director? No questions? Well, thank you very much. At this time, the Chair would like to make his recommendation in regards to Public Works item PW-64 and the . . .

MR. ARAKAWA: Mr. Chair, may I make one minor correction?

CHAIR PONTANILLA: Mr. Arakawa.

MR. ARAKAWA: The area of the drainage easement I misspoke. Easement C is 1,813 sq. ft. Just a correction.

CHAIR PONTANILLA: Thank you. Members, any questions for the Director in regards to that?

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COUNCILMEMBER HOKAMA: I have a question.

CHAIR PONTANILLA: Mr. Hokama.

COUNCILMEMBER HOKAMA: Drainage easements, Mr. Director, is it . . . do we treat it differently from like County right-of-ways whereby what's in front of our homes although it's the County's right-of-way, we as property owners, maintain it? What about the drainage easements? Does the property owner have any responsibilities to keep the portion in front of their property in some type of reasonable manner?

CHAIR PONTANILLA: Mr. Arakawa.

COUNCILMEMBER HOKAMA: Do we need a recess, Chairman?

CHAIR PONTANILLA: Mr. Arakawa, do you need a recess to do research?

MR. ARAKAWA: Um . . . just give me a brief moment here.

CHAIR PONTANILLA: Okay. Short recess at the call of the Chair.

RECESS: 9:12 a.m.

RECONVENE: 9:16 a.m.

CHAIR PONTANILLA: Okay, Members. . . . (*gavel*) . . . The Public Works and Environmental Management Committee meeting [*sic*] is now back into session. Mr. Arakawa.

MR. ARAKAWA: Thank you, Mr. Chair for that brief recess. In reviewing the easement document, generally whatever the County puts into the easement, we're responsible for the maintenance and upkeep. As far as the owner of the easement, they would be prohibited from putting any kind of buildings or walls in the easement area. But they are also responsible for the maintenance. Like if they choose to grass it or put in any other landscaping within it, no trees however, but any other landscaping within it, that would be their responsibility. Right now, the easement area just has gravel. It's just gravel, basically.

COUNCILMEMBER HOKAMA: I just asked that, Chairman, because on Lanai Castle & Cooke while Mr. Arakawa was not the Director of the Department at the time,

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they've blocked a, as I knew it in my neighborhood, a 60-year drainage easement and allowed a home to construct and block what was a major drainage easement. So, who would be at fault on that one, the County since we allowed it?

CHAIR PONTANILLA: Mr. Arakawa.

COUNCILMEMBER HOKAMA: And if we have damage on the homes that existed prior to the blocking of that easement, and I hope you allow me to proceed on the parameters of the subject, Chairman. Thank you. Then what, would I recommend those property owners to take the County to court?

MR. ARAKAWA: I suppose, Councilmember Hokama, we should probably take a look at the easement document itself first. I, myself, am not really familiar with that particular easement document but if you can give me the particulars on the location I can try to see if I can dig that up.

COUNCILMEMBER HOKAMA: Okay. But we view the drainage easements separately from right-of-ways? Would that be a good accurate statement, Corporation Counsel?

CHAIR PONTANILLA: Corporation Counsel.

MS. YOUNG: If the right-of-way is, for example, a road widening lot or roadway lot, we would view them differently because we are dedicated those types of lots by . . . in fee simple. So we would be in full ownership of those lots versus easements are non-exclusive typically the ones that we are, the ones that are granted to the County and the maintenance of that easement area is usually addressed in the easement document itself. So, for example, here where you're talking about an actual structure or building being erected in the easement area, here the agreement that we're talking about, the one that's before you, provides that the grantor, which is a developer, shall not at any time during the term of this indenture erect any building foundation in the easement area. And then it goes on with more provisions. But there shall not be any erection of a building or structure in that easement area by the grantor. And then it would be up to the County on what types of structures we would deem appropriate in this drainage easement. And any structure that we erect would obviously have to be consistent with the drainage easement before you.

COUNCILMEMBER HOKAMA: Uh-huh. But the County maintains the easement, whereas, property owners let's say fronting their property maintain the right-of-way.

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MS. YOUNG: Here we would maintain the County's improvements in the easement area. And that's taken care of throughout the document. It does provide further on in the easement that any drain lines or other equipment constructed, reconstructed, et cetera, within the easement area and maintained, et cetera, by the Grantee shall remain . . . shall be and remain the property of the Grantee, which is the County.

COUNCILMEMBER HOKAMA: Okay. Is that by the agreement or is that by Code?

MS. YOUNG: That's by the agreement provisions.

COUNCILMEMBER HOKAMA: Is that standard? Do we need to codify it so that people can find it in the Code?

MS. YOUNG: Each drainage easement is drafted typically by the Grantor, which is the developer. And each one may have slightly different provisions. We don't have requirements. If you wanted them to actually be requirements prior to the County's acceptance, it could be by ordinance. But usually the Department of Public Works in this case would review the drainage easement and make sure that it complies with all of their requirements before recommending approval of that drainage easement or any other type of easement for dedication.

COUNCILMEMBER HOKAMA: So why wouldn't we codify it? If it needs to just make Department standards, we would state that in the Code?

MS. YOUNG: You could. My comment is more just that the Department typically does look for those things to be addressed already in the easement document before the Department recommends acceptance of the easement. So it does look for those same types of things that you're talking about here today.

COUNCILMEMBER HOKAMA: So, in actuality, if this Subdivision had more than one easement, each one could be treated differently under the circumstances? Because it's not being treated . . . you just told us there's no general uniformity that's why we don't have it in the Code.

MS. YOUNG: Well, the Department looks for uniformity. So generally when we see it, they are pretty standard. There are certain things that it depends on negotiation like, for terms such as indemnification. Those kinds of things sometimes differ from easement document to easement document. But by and large, the substantive provisions are typically always in the easement document. We do also I think provide or DSA provides some samples of easement documents that

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have been approved in the past. So developers do have that as well provided by DSA.

COUNCILMEMBER HOKAMA: I'm not concerned about the developers. They know they need to comply with Department requirements and drainage easements through the engineering and whatnot is one of the things. But as a property owner that may be adjacent to the development and adjacent to the drainage easement, unless they go and dig out an executed agreement, they cannot look in the Code and say, that this is what is the minimum requirement the County requires regarding drainage easements. And so, unless they know to call Mr. Arakawa's department or your office, how would they know what are the minimum standards for easements whether it be amount of flow or obstructions within the easements or penalties should something occur. I'm just wondering, Chairman, whether or not it comes to a point where maybe we need to be very upfront so that anybody has concerns 'cause I can tell you that when something goes wrong, we get the call, okay. And we cannot refer to the Code. We have to go ask somebody, can you dig up an executed agreement somewhere and let us know what are the specific conditions or points of the acceptance document. So I just bring this up. Maybe the Director . . . maybe in your experience, Mr. Director, do you have any comment on why it's not in the Code currently?

CHAIR PONTANILLA: Mr. Arakawa.

MR. ARAKAWA: Councilmember Hokama, generally, the easement document you have before you is fairly typical. You know, we've pretty much . . .

COUNCILMEMBER HOKAMA: It's pretty standard?

MR. ARAKAWA: It is pretty standard. Where we may have some variation, you know, if you will, is the decision as to whether or not we should instead of taking an easement, for instance, should it be just dedicated in fee or whether or not it should be just left in private hands, and that's kind of a judgment call on the part of our Department. In this particular case, the reason why it's an easement is that there's that connecting interior subdivision road which we are proposing that the County accept. It would contain a drain line which the County would also accept responsibility for and there's a short segment that would connect up at the end of the cul-de-sac to Kenolio Road. So that's why in this particular case we said, well, it probably makes sense to just take an easement so we have a continuous County drain line for maintenance. But it may vary, I mean, depending on the drainage circumstances whether or not we would take an easement or whether we take it in fee or whether we just wanted it maintained by the private developer.

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COUNCILMEMBER HOKAMA: So, since you just shared your comments, and I thank you very much, Mr. Director, why wouldn't since one of the options you shared with us, why wouldn't we ask the property owner to maintain the easement?

MR. ARAKAWA: In this particular case, we would be responsible for the drain line within the subdivision roads and we're also responsible for the drain line within Kenolio Road. And there's just a short stretch that . . . the question is whether that short stretch should remain private or should be public. And our thought was it makes more sense to just be responsible for the entire length of drain line. Other than that, we would just be cleaning out or being responsible for most of it and asking the homeowners to take care of that short stretch. So rather than doing that, we just said, we'll do the easement. And, you know, it should provide for more continuous and reliable, I think, maintenance of the drain line.

COUNCILMEMBER HOKAMA: And I'm glad you shared the options of how we deal with easements because we couldn't find it in the Code because it currently does not exist in the Code. You're aware of it. Corporation Counsel is aware of it. Most people and, at times, even the Councilors may not be aware of it. So it's something to think about it, Mr. Chairman.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER MATEO: Chairman.

CHAIR PONTANILLA: Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you. Mr. Arakawa, you indicated that all of the improvements were completed – August 31, 2004. Is there a reason why this took two years before coming to this body? Because it was transmitted from your Department in June of this year. Were there additional problems in meeting the completion requirements that pushed it back awhile?

CHAIR PONTANILLA: Mr. Arakawa.

MR. ARAKAWA: Councilman Mateo, I'm not aware of the . . . any undue delays per se that have caused this two year hiatus, but generally once the improvements are complete the onus would be on the developer to provide all of the necessary documents whether it's the deeds or conveyance documents or what have you to us and once that is all done, you know, we'll bring it up to the Council. Some times and I'm not saying it happened in this case, but sometimes there are delays because we just don't receive the necessary documents to bring it up to the Council. Sometimes as you know, we'll review the improvements and we'll ask

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for remedial measures to be made prior to bringing it up to the Council, so you know, there may be a variety of factors. But generally once the improvements are certified as completed and final subdivision is granted, basically the onus is on the applicant to get it up to us.

COUNCILMEMBER MATEO: So, in addition to the easement, the drainage easement and the road widening lots, were there other required improvements that they needed to do?

MR. ARAKAWA: Well, this is the interior subdivision road so it's the entire subdivision roads that we're proposing that the Council accept. So it's the roadway, the shoulder improvements, the landscaping within the public right-of-way and everything.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you, Mr. Mateo. Members, any more questions for the Director? If not, the Chair would like to recommend the adoption of the revised resolution accepting dedication of roadway Lots for the Honualahele Subdivision I at Waiakoa Makai Homesteads, pursuant to Section 3.44.015, Maui County Code. Also, accepting the dedication of roadway lots for the Honualahele Subdivision II and the Waiakoa Makai Homesteads, pursuant to Section 3.44.015, Maui County Code; and accepting dedication of a drainage easement for the Honualahele Subdivision II, pursuant to Section 3.44.015, Maui County Code; and the filing of the communication.

COUNCILMEMBER CARROLL: So moved.

COUNCILMEMBER MATEO: Second.

CHAIR PONTANILLA: It's been moved by Member Carroll, seconded by Member Mateo. Any more discussion? If not, all in favor say "aye"?

COUNCIL MEMBERS: Aye.

CHAIR PONTANILLA: Opposed? Let the record show that it's unanimous.

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VOTE: **AYES:** *Councilmember Carroll, Hokama, Mateo, and
Chair Pontanilla.*
NOES: *None.*
ABSTAIN: *None.*
ABSENT: *None.*
EXC.: *Vice-Chair Molina.*

MOTION CARRIED.

ACTION: **ADOPTION of revised proposed resolutions; and FILING of
communication.**

CHAIR PONTANILLA: Thank you, Members. This meeting is adjourned.

ADJOURNED: 9:34 a.m.

APPROVED:



JOSEPH PONTANILLA, Chair
Public Works Committee

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Transcribed by: Jo-Ann Sato