

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

November 17, 2006

Committee
Report No.

06-149

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

Chair and Members:

Your Planning Committee, having met on July 10, 2006, July 31, 2006, August 28, 2006, September 11, 2006, October 2, 2006, and October 30, 2006, makes reference to County Communication No. 04-12, from Councilmember Charmaine Tavares, transmitting the following:

1. A draft bill entitled "A BILL FOR AN ORDINANCE TO EXPAND THE PERMITTED USES IN COUNTRY BUSINESS TOWN DISTRICTS".

The purpose of the draft bill is to amend the Country Town Business District zoning ordinance to include multi-family residential, educational, recreational, and related uses as permitted uses.

2. A draft resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A BILL TO AMEND THE COUNTRY TOWN ZONING ORDINANCE TO INCLUDE MULTI-FAMILY-RESIDENTIAL, EDUCATIONAL, RECREATIONAL, AND RELATED USES AS PERMITTED USES IN COUNTRY TOWN BUSINESS DISTRICTS".

The purpose of the draft resolution is to refer the draft bill to the Lanai, Maui, and Molokai Planning Commissions, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended.

Your Committee notes that it previously reported on this matter through Committee Report No. 05-87, which recommended that County Communication No. 04-12, transmitting a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A BILL TO AMEND THE COUNTRY TOWN ZONING ORDINANCE TO INCLUDE MULTI-FAMILY-RESIDENTIAL, EDUCATIONAL, RECREATIONAL, AND RELATED USES AS PERMITTED USES IN COUNTRY TOWN BUSINESS

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DISTRICTS” be adopted. At its meeting of July 1, 2005, the Council adopted Committee Report No. 05-87 (Resolution No. 05-103).

By correspondence dated June 24, 2005, the Chair of your Committee requested that the Planning Director provide information regarding maximum height and story limits, and the practice of including permitted uses in other zoning categories, within Country Town Business Districts.

By correspondence dated June 24 2005, the Chair of your Committee requested that the Director of Finance provide information relating to real property tax valuations and multiple uses within one building.

By correspondence dated July 18, 2005, the Director of Finance responded that a parcel zoned Country Town Business will be assessed as commercial, provided the property is not a condominium. If the owner of the property occupies one of the units as his residence, the property will be assessed as commercial, but the taxes for the entire property will be based on the homeowner rate. In situations where there are multiple owners of units within a single building that is being used for multiple uses, the Director stated that the property would be considered a condominium. The valuation of each individually-owned unit would be based on the sales of comparable units; however, for classification purposes, the use is determined by the PITT Code (corresponding real property tax classification).

By correspondence dated July 27, 2005, the Planning Director provided your Committee with the “Zoning Fact Sheet” used by the Department of Planning when considering maximum building heights for the various zoning categories. In addition, the Planning Director stated that when determining a building’s height, neither a maximum “three story” requirement, or a maximum “35 feet” requirement may be exceeded. He further stated that the practice of including permitted uses in other zoning categories is not allowed in Country Town Business Districts.

By correspondence dated January 24, 2006, the Chair of your Committee requested that the Planning Director provide a status report on the planning commissions’ findings.

By correspondence dated February 1, 2006, the Planning Director transmitted recommendations from various administrative departments regarding the proposed amendments to the Country Town Business District zoning ordinance. The comments from the various departments noted the following concerns: (1) the Captain of the Fire

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Prevention Bureau responded that water main requirements for residential occupancy and business occupancy differed; (2) the Director of the Department of Water Supply responded that permitted uses should be subject to verification of adequate water infrastructure; and (3) the Administrator of the Office of Hawaiian Affairs responded that cultural view planes should be considered when processing permits.

By correspondence dated June 20, 2006, the Council Chair transmitted correspondence dated June 9, 2006, from the Planning Director, transmitting the Maui, Molokai, and Lanai Planning Commissions' meeting minutes, comments, and recommendations to the proposed amendments to the Country Town Business District zoning ordinance.

At its meeting of July 10, 2006, your Committee deferred the matter without discussion.

At its meeting of July 31, 2006, your Committee met with the Planning Director; the Planning Program Administrator, Long Range Division, Department of Planning; the Administrative Planning Officer, Department of Planning; and a Deputy Corporation Counsel.

There was no public testimony.

After discussion with the Administrative Planning Officer regarding comments from the planning commissions, your Committee requested the following revisions to the proposed bill: (1) retain maximum building height limits to two stories; (2) change some permitted uses to comply with definitions codified in Section 19.04, Maui County Code; (3) exempt Molokai from the amended permitted uses; (4) add storage facilities as a special use; and (5) make nonsubstantive changes.

Your Committee requested that the Department of Finance transmit information on how the Department determines the real property tax rates for the various uses designated within a Country Town Business District.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated August 14, 2006, the Director of Finance responded that the Real Property Tax Division assigns rates for all properties based on the classification of the land with consideration of its highest and best use and its zoning.

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By correspondence dated August 17, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bill and approve the bill as to form and legality.

Your Committee is in receipt of correspondence dated August 25, 2006, from the Department of the Corporation Counsel transmitting a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.15, MAUI COUNTY CODE, PERTAINING TO B-CT COUNTRY TOWN BUSINESS DISTRICTS", incorporating your Committee's requested revisions.

At its meeting of August 28, 2006, your Committee met with the Planning Director; the Planning Program Administrator, Long Range Division, Department of Planning; the Administrative Planning Officer, Department of Planning; the Director of Finance; the Acting Real Property Tax Administrator, Department of Finance; and a Deputy Corporation Counsel.

Your Committee received testimony from one individual speaking on behalf of the Kihei Community Association, stating that the Council should consider certain areas of Kihei for a Country Town Business District zoning designation.

The Director of Finance referred to his correspondence dated July 18, 2005, and explained how properties zoned Country Town Business would be taxed.

The Administrative Planning Officer confirmed that the planning commissions have adopted design guidelines for all of the districts that are zoned Country Town Business, although some of them are combined, such as for Paia and Haiku. He further stated that new design guidelines will be established for each new district that is zoned Country Town Business.

Your Committee discussed concerns regarding permits and applications for properties within Country Town Business Districts that have been denied by the Board of Variances because they do not meet subdivision requirements of Title 18 of the Maui County Code (MCC), but are in conformance with the design guidelines. Your Committee determined that it would be necessary to insert language into the ordinance to require that design guidelines be adopted by resolution in order to ensure that they will take precedence over other laws in the Code.

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Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 11, 2006, the Chair of your Committee transmitted a list of further revisions to the revised proposed bill to be discussed at an upcoming meeting of your Committee.

At its meeting of September 11, 2006, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; and a Deputy Corporation Counsel.

Your Committee received testimony from one individual speaking on behalf of the Wailuku Main Street Association, Inc., Tri-Isle Main Street Resource Center, who noted that the center is pleased with the amendments to the ordinance, but cautioned your Committee to carefully any new Country Town Business District applications.

Your Committee requested that the revised proposed bill be further revised to: (1) clarify minimum and maximum setbacks, lot coverage, and floor area/lot area ratios; (2) rename "design guidelines" to "design guidelines and standards"; (3) require that design guidelines and standards be adopted by resolution; (4) require that new projects preserve scenic and historic view corridors; and (5) make nonsubstantive changes.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 13, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bill and approve the bill as to form and legality.

By correspondence dated September 25, 2006, the Department of the Corporation Counsel transmitted a revised proposed bill incorporating your Committee's requested revisions.

At its meeting of October 2, 2006, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; the Deputy Director of the Department of Public Works and Environmental Management; and a Deputy Corporation Counsel.

Your Committee discussed whether to amend the revised proposed bill to allow medical facilities as permitted uses in Molokai. The Molokai Planning Commission had

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previously recommended allowing only the existing medical facilities in Country Town Business Districts. The Administrative Planning Officer noted that the medical facilities already established in Kaunakakai prior to the adoption of this ordinance would be considered as “existing nonconforming uses”.

Your Committee discussed concerns regarding the authority of the design guidelines and standards. Your Committee noted that the Hawaii Administrative Procedures Act, Chapter 91, Hawaii Revised Statutes, ensures that the design guidelines and standards have the force and effect of law. However, after further discussion regarding administrative concerns, your Committee requested that the revised proposed bill be further revised to state that, except as necessary to protect public health, safety and welfare, where a conflict exists between the design guidelines and standards, and the Maui County Code, the design guidelines shall prevail.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated October 18, 2006, Chair of your Committee requested that the Planning Director verify all of the Country Town Business District design guidelines that have been filed with the Office of the County Clerk.

By correspondence dated October 18, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel further revise the proposed bill and approve the bill as to form and legality.

By correspondence dated October 23, 2006, the Department of the Corporation Counsel transmitted a revised proposed bill incorporating your Committee’s requested revisions.

At its meeting of October 30, 2006, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; the Deputy Director of Public Works and Environmental Management; and a Deputy Corporation Counsel.

There was no public testimony.

The Administrative Planning Officer stated that all of the design guidelines adopted by the appropriate planning commissions, except for the “Makawao-Pukalani-Kula Design Guidelines”, have been filed with the Office of the County Clerk. He noted

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that the Department of Planning is working with the Department of the Corporation Counsel to have the "Makawao-Pukalani-Kula Design Guidelines" filed with the Office of the County Clerk as well.

Your Committee briefly discussed the revisions to the revised proposed bill.

Your Committee voted to recommend passage of the revised proposed bill and filing of the communication.

Your Planning Committee RECOMMENDS the following:

1. That Bill No. _____ (2006), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.15, MAUI COUNTY CODE, PERTAINING TO B-CT COUNTRY TOWN BUSINESS DISTRICTS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 04-12 be FILED.

Adoption of this report is respectfully requested.

