

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 14, 2006

Committee
Report No.

_____ 06-91

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

Chair and Members:

Your Land Use Committee, having met on June 29, 2005 and February 15, 2006, makes reference to County Communication No. 02-115, from the former Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING CHERIE ATTIX A CONDITIONAL PERMIT TO OPERATE THE HALE HOOKIPA INN, A TRANSIENT VACATION RENTAL, WITHIN THE COUNTY R-3 RESIDENTIAL DISTRICT, FOR PROPERTY SITUATED AT 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII".

The purpose of the proposed bill is to grant Cherie Attix a one-year Conditional Permit to operate the Hale Hookipa Inn, a transient vacation rental, on approximately 21,079 square feet at 32 Pakani Place, Makawao (TMK: (2) 2-4-18:063).

Your Committee notes that the Maui Planning Commission held a public hearing on the application for a Conditional Permit on February 26, 2002.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION FEBRUARY 26, 2002 MEETING" (Department's Report), and the conclusions and recommendation presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION FEBRUARY 26, 2002 MEETING", voted to recommend approval of the proposed Conditional Permit.

Your Committee further notes that the Council referred County Communication No. 02-115 to the Land Use Committee (2001-2003 Council term) on May 30, 2002.

At its meeting of January 10, 2003, the Council referred County Communication No. 02-115 to the prior Council's Planning and Land Use Committee (County Communication No. 03-10).

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By correspondence dated January 28, 2003, the Chair of the Committee requested that the Planning Director transmit the minutes of the relevant portion of the Maui Planning Commission's February 26, 2002 meeting.

By correspondence dated February 4, 2003, the Planning Director transmitted the requested minutes.

At its meeting of January 21, 2005, the Council referred County Communication No. 02-115 to your Land Use Committee (County Communication No. 05-13).

By correspondence dated June 22, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel incorporate technical and nonsubstantive revisions to the proposed bill.

By correspondence dated June 23, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING CHERIE ATTIX A CONDITIONAL PERMIT TO OPERATE THE HALE HOOKIPA INN, A TRANSIENT VACATION RENTAL, WITHIN THE COUNTY R-3 RESIDENTIAL DISTRICT, FOR PROPERTY SITUATED AT 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII", incorporating the requested revisions.

At its meeting of June 29, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Finance; the Administrator, Real Property Tax Division, Department of Finance; the Deputy Director of Public Works and Environmental Management; a Deputy Corporation Counsel; Cherie Attix, the applicant; and Michele McLean, the applicant's land use consultant.

There was no public testimony.

Ms. McLean provided your Committee with a copy of: (1) four pieces of written testimony in support of the project; (2) an article from the September 21, 2003 issue of *The Maui News* entitled "New lease on life for Makawao's House on the hill"; (3) colored photographs of the site and the structures on the site; (4) a site plan; (5) a chart entitled "Hale Ho'okipa Inn Makawao Application for Conditional Permit June 2005", comparing various features of the transient vacation rental by date (May 2001 vs. June 2005); (6) a 2004-2005 Historic Preservation Honor Award; and (7) documents reflecting the filing of State Transient Accommodations Tax (TAT) returns and General Excise/Use Tax (GET) returns for the calendar year 2005.

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Ms. McLean gave an overview of the property and the guest house, which contains four guest units. She also described the documents she had distributed, noting the following changed circumstances since the application was submitted in 2001: the driveway and parking spaces are now concrete; the cook house has been repaired; and the applicant no longer resides on the property, but lives on an adjacent lot she also owns, placing her 55 feet away from the transient vacation rental, as opposed to 50 feet away. Ms. McLean acknowledged that the applicant's move off of the subject property "presents a wrinkle in the general and well-founded approach that the Council and the Planning Department have taken with B&B's [*sic*], which is that the owner/proprietor must live on site." She noted that the intent of that approach is to have a regular full-time presence to ensure that there are no disruptions to the neighborhood and that the guests are well tended. Ms. McLean proposed that an appropriate condition would be to require the applicant to reside either on-site or within 75 feet of the transient vacation rental.

The Planner summarized the proceedings before the Maui Planning Commission and the 12 conditions which had been recommended. The Planner informed your Committee of her visit to the site, noting that the applicant now resides in a single-family residence on an adjacent lot, and that the cook house that was once used solely for storage is now also being used as an office. The Planner noted that the Department proposes adding a condition as follows: "That the owner/operator or the vacation rental manager shall reside on the subject property, which is Tax Map Key No. 2-4-18:063". She also suggested that the Conditional Permit be amended to add a condition relating to the applicant's use of the cook house as an office.

Your Committee discussed the applicant's operation of the transient vacation rental prior to obtaining the requisite Conditional Permit. Your Committee also discussed policy issues relating to requiring the property owner or a transient vacation rental manager to reside on the subject property or on adjacent property.

Ms. McLean informed your Committee that she believed fire flow calculations had been provided to the Department of Water Supply following the hearing before the Maui Planning Commission; however, no response had been received from the Department. She also noted that a fire evacuation plan had been posted and fire extinguishers installed. Your Committee requested verification of the adequacy of the cesspool on the property, and a copy of the applicant's TAT and GET reconciliation statements.

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Ms. McLean confirmed that the cook house is being used for storage and some office use, and that the office use is related to the operation of the guest house.

Your Committee questioned whether a grease trap would be required for the transient vacation rental. Ms. McLean advised that the applicant does not prepare foods for the transient vacation rental operation. The Deputy Director of Public Works and Environmental Management confirmed that a grease trap is required when meals are prepared for the operation.

Your Committee inquired whether the applicant could be required to build an affordable housing unit, referencing the Director of Housing and Human Concerns' inquiry dated June 29, 2001, attached as Exhibit 5 to the Department's Report. The Deputy Corporation Counsel advised that he would need time to research the issue.

Your Committee discussed the real property tax rate being applied to the subject property. The Director of Finance advised that the property is being taxed at the residential rate, and that the Department applies the tax rate that applies to the zoning that has been approved. He further advised that if the Conditional Permit is granted, the property will then be taxed at the hotel rate. The Administrator, Real Property Tax Division, advised that this rate, which would be discounted slightly because the Conditional Permit is only temporary, could be applied retroactively, to collect the differential for the prior four tax years.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated July 7, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel provide a written opinion as to whether the affordable housing provisions of Chapter 2.94, Maui County Code (MCC), apply to the subject transient vacation rental.

By correspondence dated July 22, 2005, Michele McLean, Chouteau Consulting, responded to issues raised at your Committee's June 29, 2005 meeting, relating to viability of the existing cesspool; payment of GET and TAT for the prior four years; fire flow calculations that had been completed by a licensed engineer in 2002; the applicable rate for real property taxes; the absence of any justification for a grease interceptor; the historic status of the structures on the property; and benefits to Maui provided by the Hale Hookipa Inn. She also provided the applicant's position on (1) the inapplicability of

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the affordable housing requirements under Chapter 2.94, MCC; and (2) suggested conditions to address the fact that the applicant no longer resides on the subject property.

By correspondence dated September 14, 2005, the Vice-Chair of your Committee requested that the Department of the Corporation Counsel respond to the request for a written opinion concerning the applicability of Chapter 2.94, MCC.

By correspondence dated November 7, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel provide its written opinion.

By correspondence dated February 6, 2006, the Department of the Corporation Counsel opined that the Hale Hookipa Inn is not subject to the affordable housing requirements of Chapter 2.94, MCC.

By correspondence dated February 10, 2006, the Chair of your Committee transmitted to Michele McLean, applicant's land use consultant, a copy of the opinion dated February 6, 2006 from the Department of the Corporation Counsel.

By correspondence dated February 14, 2006, the Chair of your Committee transmitted various documents received from Michele McLean, applicant's land use consultant, on February 14, 2006, including a petition in support of the application signed by 22 Makawao merchants; three letters in support of the application; an article entitled "A Present to the Past" by Cherie Attix and Abigail Maynard, published in the *Historic Hawai'i Newsletter* dated October 2003; and fire flow calculations for the Hale Hookipa Inn prepared by Wayne I. Arakaki Engineer, LLC, dated August 2, 2002 (not signed or stamped).

At its meeting of February 15, 2006, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Finance; the Administrator, Real Property Tax Division, Department of Finance; the Deputy Director of Public Works and Environmental Management; the Engineering Program Manager, Engineering Division, Department of Water Supply; a Captain, Department of Fire and Public Safety; the Corporation Counsel; Cherie Attix, the applicant; and Michele McLean, the applicant's land use consultant.

There was no public testimony.

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Ms. McLean provided a brief presentation on the application, summarizing various aspects of the property and the transient vacation rental operation. She highlighted the information contained in the documents she had submitted by correspondence dated July 22, 2005, and noted that the applicant is no longer using the cook house as an office for the transient vacation rental operation, and that dozens of businesses in the area support the application. Ms. McLean also requested that your Committee consider extending the duration of the Conditional Permit from one year to five years.

The Planner noted that, at the last meeting concerning this application, she had given your Committee an extensive overview of the project, summarized the conditions recommended by the Maui Planning Commission, and noted certain changed circumstances relating to the application. She advised that the Department had recommended an additional condition be incorporated based on the applicant's move onto the adjacent property, and noted also the applicant's alternative language that had been proposed.

Your Committee questioned whether the applicant had considered consolidating the two parcels, and was informed that the applicant does not intend to seek consolidation. Your Committee also discussed cesspool issues and requirements for review by the Maui County Cultural Resources Commission.

On behalf of the Engineering Program Manager, the Planning Director asked whether the applicant had installed a backflow preventer on the subject property and requested a copy of the building plans for the guest house. Ms. McLean advised that a backflow preventer had not been installed but that if one was necessary, one would be installed.

The Engineering Program Manager informed your Committee that the Department had reviewed the fire flow calculations and did not have a problem with them, but wanted to confirm the fixture counts for the guest house to ensure that the water line that serves the building is adequate. He requested that the building plans be provided and advised your Committee that the Department would provide a written response upon receipt and review of the plans.

Your Committee recommended that the proposed bill be revised to reflect a five-year duration and to change the year from "(2005)" to "(2006)".

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

Your Committee is in receipt of the further revised proposed Conditional Permit bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions.

The Chair of your Committee noted that issues of concern to your Committee remained outstanding, and pursued resolution of those issues and confirmation that they had been resolved, rather than requesting further Committee consideration.

Following your Committee's meeting, your Committee received correspondence dated March 1, 2006, from Michele McLean, Chouteau Consulting, transmitting a copy of her correspondence dated March 1, 2006 to the Engineering Program Manager, Engineering Division, Department of Water Supply, transmitting a February 2006 fixture count for the property, a site plan and floor plan for the guest house, and standard details for the installation of a backflow preventer.

Your Committee also received correspondence dated March 2, 2006, from the Director of Water Supply, noting that the Department continued to await receipt of signed and stamped fire flow calculations from the applicant and a drawing showing the installation of a backflow preventer.

Your Committee further received a copy of correspondence dated March 6, 2006, from Michele McLean, Chouteau Consulting, transmitting signed and stamped fire flow calculations to the Engineering Program Manager, Engineering Division, Department of Water Supply, and noting that the applicant would work with the Department to ensure that a backflow preventer is properly installed.

By correspondence dated March 17, 2006, the Director of Water Supply informed your Committee that the fire flow calculations had been reviewed and accepted by the Department, and that the backflow preventer had not yet been installed.

By correspondence dated March 22, 2006, the Chair of your Committee requested that Michele McLean provide written confirmation of the installation of the backflow preventer.

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By correspondence dated July 13, 2006, Michele McLean, Chouteau Consulting, advised your Committee of the following: that the backflow preventer had been installed on April 7, 2006 by a licensed plumber; that the Department of Water Supply inspected it soon after its installation; and that the applicant had been informed that a confirmation letter from the Department was forthcoming.

By correspondence dated July 17, 2006, the Director of Water Supply confirmed that the applicant had installed a backflow preventer on her property.

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2006), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING CHERIE ATTIX A CONDITIONAL PERMIT TO OPERATE THE HALE HOOKIPA INN, A TRANSIENT VACATION RENTAL, WITHIN THE COUNTY R-3 RESIDENTIAL DISTRICT, FOR PROPERTY SITUATED AT 32 PAKANI PLACE, MAKAWAO, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 02-115 be FILED.

Adoption of this report is respectfully requested.

