

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

September 1, 2006

**Committee**  
**Report No.**

06-102

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

Chair and Members:

Your Land Use Committee, having met on August 16, 2006, makes reference to County Communication No. 02-209, from the former Planning Director, transmitting an application submitted by BFS, Inc. for a Change in Zoning from R-3 Residential District to B-2 Community Business District to construct a new Kihei Ace Hardware and Retail Shop on approximately 43,390 square feet of land located at 1488 South Kihei Road, Kihei, Maui (TMK: (2) 3-9-10:077) (the property).

Your Committee notes that the Maui Planning Commission met on the application by BFS, Inc. (applicant or BFS) for a Change in Zoning on July 9, 2002, and deferred the matter to allow the applicant to meet with the neighboring residents. Your Committee further notes that the Maui Planning Commission again met on the application on August 13, 2002, at which time the applicant presented a progress report and public testimony was received relating to area residents' concerns over drainage, traffic, noise, outdoor lighting, appropriateness of the location for the proposed use, impacts on property values, whether the Change in Zoning would lead to other properties being similarly rezoned, and adverse effects on quality of life.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the documents entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JULY 9, 2002 MEETING" (Department's Report) and "MAUI PLANNING DEPARTMENT'S RECOMMENDATIONS REPORT TO THE MAUI PLANNING COMMISSION JULY 9, 2002 MEETING" (Recommendations Report), voted to recommend denial of the proposed Change in Zoning on August 13, 2002.

Your Committee notes that at its meeting of October 18, 2002, the Council referred County Communication No. 02-209 to the Land Use Committee (2001-2003 Council term).

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At its meeting of January 10, 2003, the Council referred County Communication No. 02-209 to the prior Council's Planning and Land Use Committee (County Communication No. 03-10).

By correspondence dated January 28, 2003, the Chair of the Committee requested that the Planning Director provide a copy of the minutes of the July 9, 2002 and August 13, 2002 meetings of the Maui Planning Commission.

By correspondence dated February 6, 2003, the Planning Director transmitted a copy of the minutes of the August 13, 2002 meeting of the Maui Planning Commission.

By correspondence dated March 31, 2003, the Planning Director transmitted a copy of the minutes of the July 9, 2002 meeting of the Maui Planning Commission.

By correspondence dated October 8, 2003, the Chair of the Committee noted that the Maui Planning Commission had recommended denial of the application, and requested that the Department of the Corporation Counsel advise the Committee of the appropriate means of effectuating a denial of the application, should the Committee wish to follow the Maui Planning Commission's recommendation.

At its meeting of January 21, 2005, the Council referred County Communication No. 02-209 to your Land Use Committee (County Communication No. 05-13).

By correspondence dated January 24, 2005, April 7, 2005, and July 7, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel respond to the October 8, 2003 inquiry.

By correspondence dated April 21, 2006, the Chair of your Committee requested that Michael Munekiyo, Munekiyo & Hiraga, Inc., advise your Committee as to whether BFS remained interested in pursuing the application, due to the passage of time.

By correspondence dated May 8, 2006, Michael Munekiyo, Munekiyo & Hiraga, Inc., responded that BFS remained interested in pursuing its application, "although in a slightly modified form".

By correspondence dated June 23, 2006, the Chair of your Committee requested that Michael Munekiyo, Munekiyo & Hiraga, Inc., advise your Committee, in writing, of the modification being proposed by BFS.

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By correspondence dated June 27, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel transmit proposed legislation that would allow the Committee to make a recommendation to approve or deny the application when it is considered.

By correspondence dated July 6, 2006, Michael Munekiyo, Munekiyo & Hiraga, Inc., indicated that BFS had decided not to use the property for hardware store purposes, but that it is still requesting the Change in Zoning to B-2 Community Business District, with specific permitted uses. He noted that a key objective of the Change in Zoning is to establish consistency between the Kihei-Makena Community Plan (which designates the property Business/Commercial) and the County zoning for the property. He further noted that no specific development proposal is currently being pursued.

By correspondence dated July 19, 2006, the Department of the Corporation Counsel transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII", incorporating the seven conditions of zoning recommended by the Department of Planning in its Recommendations Report.

By correspondence dated August 15, 2006, Michael Munekiyo, Munekiyo & Hiraga, Inc., advised your Committee that a hardware store use on the property is no longer required, as BFS had obtained a long-term lease at the current Ace Hardware Store location in the Azeka Makai Shopping Center; that BFS understood that the lack of a specific development proposal makes it difficult for your Committee to analyze impacts associated with the request; that BFS proposes that the permitted uses be revised to include apartments, and to exclude hardware stores and a number of other uses ordinarily permitted in the B-2 Community Business District; that schematic site development plans, an updated traffic assessment, and a drainage review would be completed to facilitate your Committee's review; and that the revised alternatives would be presented to the Kihei Community Association and neighboring residents for review and comment.

At its meeting of August 16, 2006, your Committee met with the Planning Director; the Administrative Planning Officer, Department of Planning; the Director of Water Supply; the Deputy Director of Public Works and Environmental Management; and a Deputy Corporation Counsel. Your Committee also met with Guy Kamitaki,

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Treasurer, BFS, Inc.; Paul Mizoguchi, Vice President/Secretary, BFS, Inc.; and Michael Munekiyo, Munekiyo & Hiraga, Inc.

There was no public testimony.

Mr. Munekiyo provided your Committee with a map reflecting the property and surrounding land uses; photographs taken in the vicinity of the property; and a copy of the portion of the Kihei-Makena Community Plan Land Use Map that includes the property.

Mr. Kamitaki provided a brief overview of his family's business and intentions for the property. He stated that his family owns and operates the Ben Franklin Store in the Kaahumanu Shopping Center, and the Ace Hardware Stores in Kihei, Lahaina, and Pukalani. His family also operates Ace Hardware Stores on Oahu, the Big Island, and Kauai. His family has owned the Kihei property since 1989. Although family members had plans to one day build and operate their Ace Hardware Store on the property, they understand the need to be respectful of their neighbors, and instead renegotiated a long-term lease for their Ace Hardware Store at its current location at the Azeka Makai Shopping Center. He noted that it is still important, however, to obtain a Change in Zoning to make the property functional.

Mr. Munekiyo reiterated that BFS had withdrawn its hardware store proposal and was requesting the Change in Zoning to accommodate less intrusive business types of uses, as indicated in his August 15, 2006 correspondence. He noted that BFS intends to prepare schematic plans representing probable development alternatives under the revised proposal, and that once those plans had been presented to the Kihei Community Association and neighboring residents, BFS would return to your Committee for further consideration. He estimated that this process might take 60 to 90 days, and noted that BFS is seeking a deferral to allow those steps to be accomplished and the revised proposal to move forward.

The Administrative Planning Officer provided an overview of the application and the property. He noted that a good portion of the project site is an enhanced wetland. He advised that the Maui Planning Commission had considered heavily the fact that the property is surrounded by properties zoned R-3 Residential and abuts, on two sides, properties designated in the Kihei-Makena Community Plan as Single-Family. He further noted that, at the time the Maui Planning Commission evaluated the application,

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BFS was proposing a hardware store use, which was not a permitted use in the B-1 Neighborhood Business District.

The Planning Director informed your Committee that the Department is generally supportive of the concept of changing the request for potential land uses of the property from retail to a combination of business office and residential uses. He noted that the primary question before your Committee is one of procedure – namely, whether it would be appropriate to hold the application in abeyance while BFS conducts its traffic study and returns to the Kihei Community Association and neighboring residents for input, or to start over and also return to the Maui Planning Commission for review.

Your Committee discussed the posture of the application and the options available to it. Your Committee considered the significance of the changes that had been made since the application was originally submitted and considered by the Maui Planning Commission.

Your Committee notes that the application dated July 20, 2001 described the proposed development as “a hardware/retail store of approximately 11,664 square feet”. Your Committee further notes that the Department’s Report specifically contemplated an outlet for BFS’s Kihei Ace Hardware Store, to be relocated from the Azeka complex.

Your Committee discussed the desirability of receiving input from the Maui Planning Commission on the revised proposal, and of having a public hearing on the revised proposal, with notice provided to residents within a 500-foot radius of the property.

The Administrative Planning Officer advised your Committee that it would need to consider whether the information presented provided a broad enough framework of the impacts that could result from the Change in Zoning.

Your Committee questioned the timeframe for consideration of a revised proposal by the Maui Planning Commission. The Planning Director advised that once the project was submitted to the Department, it could ordinarily be scheduled before the Maui Planning Commission within four to six weeks. He noted that a new application would require new application fees to be paid, based on the valuation of the property. He further advised that, if the project is deemed by your Committee to be significantly different from the original application, it would be prudent to obtain a recommendation from the Maui Planning Commission.

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Your Committee noted that if it was decided that the revised proposal was significantly different from the original, that it would be in the applicant's best interest to start over. Your Committee expressed dismay at the prospect of the applicant being required to pay additional fees for a new application.

The Deputy Corporation Counsel advised your Committee that directing the Planning Director to waive the fees for a new application would likely present a separation of powers issue.

Your Committee questioned whether another zoning district, such as Country Town Business District, might be more appropriate and palatable for the neighbors. The Administrative Planning Officer explained that BFS's original intent to locate a hardware store on the property precluded the Department from recommending another zoning district, such as B-1 Neighborhood Business District zoning.

Your Committee noted traffic challenges on South Kihei Road, concerns over ingress and egress to and from the property, and the need for an updated traffic assessment.

The Deputy Corporation Counsel clarified a concern raised by your Committee as to the vote that would be required in light of the Maui Planning Commission's recommended denial of the application. He advised that Section 8-8.6(2), Revised Charter of the County of Maui (1983), as amended (Charter), and Section 3(B)(4), Rules of the Council, require an affirmative vote of at least two thirds of the Council's membership, under certain circumstances, but that the requirement applies to Council-initiated applications. He advised that the requirement, therefore, does not apply to this request.

Mr. Munekiyo noted that the discussion had been helpful, and that BFS did not disagree with what had been discussed. He further noted that, although the hardware store use had been abandoned, the need for the Change in Zoning had not diminished.

The Deputy Corporation Counsel advised your Committee that it needed to evaluate whether there had been a substantial change to the proposed bill or to the proposed use. He noted that your Committee should consider whether proceeding without including the Maui Planning Commission's input on the revised proposal would

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circumvent the Charter under this set of facts. He further noted that other actions might slow the process more than requiring the applicant to start over with a new application.

The Deputy Corporation Counsel further advised that the applicant needs to evaluate the risks to which it might be exposed, by way of a potential procedural challenge from members of the public, should the revised proposal be pursued under its current posture.

Mr. Munekiyo informed your Committee that BFS understands the difficult circumstances with which your Committee is faced. Having considered your Committee's discussion, he advised that BFS is willing to withdraw its application and start the process over.

Your Committee expressed appreciation for BFS's willingness to withdraw its application under the circumstances, and encouraged the Department of Planning to consider expediting its processing of the new application once the application had been deemed complete.

In light of the applicant's withdrawal of its request, your Committee voted to recommend filing of the communication.

Your Land Use Committee **RECOMMENDS** that County Communication No. 02-209 be FILED.

Adoption of this report is respectfully requested.

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**ROBERT CARROLL** **Chair**

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**DAIN P. KANE** **Member**

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**JOSEPH PONTANILLA** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**MICHELLE ANDERSON** **Member**

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**MICHAEL J. MOLINA** **Member**

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**G. RIKI HOKAMA** **Member**

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**CHARMAINE TAVARES** **Member**

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**JO ANNE JOHNSON** **Member**