

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

June 23, 2006

Committee
Report No.

_____ 06-71

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 7, 2006, makes reference to County Communication No. 06-53, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING RICHARD M. SWORD, PH.D., INC. A CONDITIONAL PERMIT TO OPERATE A PSYCHOLOGIST OFFICE ON PROPERTY WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Richard M. Sword, Ph.D., Inc. for a two-year Conditional Permit to operate a psychologist office on approximately 2.09 acres at 30 Ahuwale Place, Makawao, Maui (TMK: (2) 2-4-32:011).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on December 13, 2005.

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 DECEMBER 13, 2005 MEETING" (Department's Report), and the conclusions and recommendation presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION DECEMBER 13, 2005 MEETING", voted to recommend approval of the Conditional Permit application on December 13, 2005.

By correspondence dated April 3, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel consider possible rewording of the title of the proposed bill and clarify a reference in Paragraph No. 6 of the proposed bill.

By correspondence dated April 3, 2006, the Chair of your Committee requested that the Planning Director transmit a copy of the December 13, 2005 computer-generated presentation, and advise whether the Department of Fire and Public Safety had commented on the application.

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By correspondence dated April 4, 2006, the Chair of your Committee requested that the Director of Water Supply review the attached fire flow calculations, and provide a written response concerning their adequacy and any water improvements required in connection with the application.

By correspondence dated April 5, 2006, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING RICHARD M. SWORD, PH.D., INC. A CONDITIONAL PERMIT TO OPERATE A PSYCHOLOGIST OFFICE WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII", incorporating the requested revisions.

By correspondence dated May 9, 2006, the Planning Director transmitted a copy of the computer-generated presentation given to the Maui Planning Commission. The Planning Director also responded that the Department had contacted the Department of Fire and Public Safety for comments, but no comments had been received.

By correspondence dated May 15, 2006, the Chair of your Committee requested that the Fire Chief provide the Department's comments on the application.

By correspondence dated May 15, 2006, the Director of Water Supply responded that fire flow protection of 1,250 gallons per minute (gpm) is needed, and that the applicant had selected the alternative of installing a fire hydrant off a 12-inch water line at the intersection of Ahuwale Place and Makani Road. The Director further advised that the Department is awaiting fire hydrant plans from the applicant and that the applicant is required to install a reduced pressure backflow prevention device if one does not already exist.

By correspondence dated May 22, 2006, the Chair of your Committee requested that Richard M. Sword, Ph.D. (Dr. Sword) advise your Committee of the status of his efforts to comply with the Department of Water Supply's requirements.

By correspondence dated May 24, 2006, Douglas Gomes, President, Engineering Dynamics Corp., advised that he had been retained by Dr. Sword to prepare plans for the fire hydrant and installation of a backflow prevention device if one did not already exist.

By correspondence dated June 5, 2006, the Chair of your Committee transmitted correspondence dated June 2, 2006, from a Captain, Fire Prevention Bureau, Department

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of Fire and Public Safety, to a Planner, Department of Planning, relating to fire protection requirements for the project.

At its meeting, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Water Supply; a Planner, Water Resources and Planning Division, Department of Water Supply; the Deputy Director of Public Works and Environmental Management; a Captain, Fire Prevention Bureau, Department of Fire and Public Safety; and a Deputy Corporation Counsel. Your Committee also met with Dr. Sword, on behalf of Richard M. Sword, Ph.D., Inc., the applicant; and Douglas Gomes, President, Engineering Dynamics Corp., the applicant's engineering consultant.

Dr. Sword, a clinical psychologist whose office is in Kahului, provided a brief background on his practice and the pending Conditional Permit application. He informed your Committee that he would like to incorporate horse and dog therapy into his practice, noting that animal therapies are being implemented in all the State hospitals across the State. Dr. Sword further noted that many of his clients are veterans on Maui who prefer a rural home setting to a downtown clinical setting, and that a number of those veterans had accompanied him as a show of support for his application. Dr. Sword reported that he had discussed his application with the two neighbors who had opposed it before the Maui Planning Commission, and that he had been able to satisfy their concerns. He further reported that he had retained Douglas Gomes to work on fire protection requirements, including fire hydrant plans, and had arranged for a contractor to install the hydrant.

The Planner, Department of Planning, provided a summary of the application and the existing land use designations for the property. She noted that the applicant proposes to operate a psychologist office at his home. The home office would augment the applicant's Central Maui clinical practice. She further noted that Dr. Sword had recently constructed a family room and study at his home and would operate his office there if the application is approved. He would also use his yard for horse and dog therapy. She informed your Committee of the proposed hours of operation and staffing for the home office, and that eight parking stalls would be provided on-site. The Planner summarized the proceedings before the Maui Planning Commission, and noted that the Maui Planning Commission had recommended approval of the application subject to six conditions.

Your Committee received public testimony from four individuals, all of whom spoke on behalf of veterans and in strong support of the application. The first testifier was accompanied by 14 veterans, and stated that veterans feel safe talking with

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Dr. Sword. He informed your Committee that public areas can create difficulties for the veterans, making the home office setting desirable. The second testifier spoke in support of Dr. Sword's animal therapy, noting that the technique had been recognized by Dr. Sword's peers and Federal and State agencies as being on the cutting edge of animal therapy. The third testifier, who appeared on behalf of the veterans of the 442nd Regimental Combat Team, brought photographs of veterans and others in support of Dr. Sword, and testified about his father's gratitude to Dr. Sword. The fourth testifier, who appeared on behalf of the Vietnam Veterans of Maui County board of directors, spoke of being treated by Dr. Sword for nine years and of the days when he was not able to drive downtown for his visits. He noted that it would have been helpful to have an Upcountry facility as an alternative.

The Captain informed your Committee that, since the subject property is serviced by the County water system, the Department of Fire and Public Safety defers to the Department of Water Supply on fire protection requirements.

The Planner, Department of Water Supply, summarized the results of a meeting between Dr. Sword and the Director of Water Supply, noting that 1,250 gpm is needed for fire protection. He advised that Dr. Sword had chosen the alternative of installing a fire hydrant to meet the Department's requirements, and that the Department is awaiting receipt of fire hydrant plans. The Planner noted that a fire hydrant connected to a 12-inch water line would also be capable of serving other properties.

Your Committee questioned whether the granting of a Conditional Permit would be premature at this stage, since plans for the fire hydrant still needed to be submitted. The Planner, Department of Planning, advised that the Department does not view the Conditional Permit as premature; that the Special Use Permit incorporates as Condition No. 8 a requirement that the applicant "construct water improvements to meet the fire protection requirements of the Department of Water Supply"; that the recommended two-year duration of the Conditional Permit would allow the Department an opportunity to confirm compliance with conditions; and that the fire hydrant should be installed and accepted by the Department of Water Supply before the applicant begins operating the home office. She further advised that the Department of Planning would not have concerns if your Committee decided to recommend a three-year duration instead.

Your Committee noted that the 1,250 gpm contradicts Exhibit 5 to the Department's Report, in which the Director of Water Supply stated that fire flow protection for "a project of this sort" is 2,000 gpm. The Planner, Department of Water

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Supply, advised that the 2,000 gpm calculation is used as a general comment for most commercial projects, and that final calculations determine what the actual fire flow requirement should be.

Your Committee questioned how long it might take for the fire hydrant to be installed and operational. Your Committee expressed an interest in allowing the Conditional Permit to extend until three years after the hydrant is operational, in light of the Department of Planning's position that the home office could not properly operate until the hydrant had been installed and accepted.

Your Committee recommended that the revised proposed Conditional Permit bill be further revised to change the duration of the Conditional Permit from two years to three years. Your Committee also recommended that the three-year period run from the effective date of the ordinance or the date of acceptance of the fire hydrant by the Department of Water Supply, whichever is later.

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.

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 RICHARD M. SWORD, PH.D., INC. A CONDITIONAL PERMIT TO OPERATE A PSYCHOLOGIST OFFICE WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**; and
2. That County Communication No. 06-53 be **FILED**.

Adoption of this report is respectfully requested.

