

PUBLIC WORKS AND TRAFFIC COMMITTEE

Council of the County of Maui

MINUTES

March 5, 2004

Council Chamber

RECONVENE: 3:01 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Charmaine Tavares, Vice-Chair
Councilmember Robert Carroll, Member
Councilmember Dain P. Kane, Member
Councilmember Joseph Pontanilla, Member

ABSENT: NONE

EXCUSED: Councilmember G. Riki Hokama, Member

STAFF: Gary Saldana, Legislative Analyst
Jo-Ann C. Sato, Committee Secretary

ADMIN.: Cindy Y. Young, Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: Item 22: Roy Katsuda, Executive Director, Hale Mahaolu

PRESS: NONE

CHAIR MOLINA: . . .(*gavel*). . . Public Works and Traffic Committee meeting, excuse me, recessed meeting of March 4th is now back in session. At this time, Members, we are awaiting the Corporation Counsel's office to be here as well as the Director of Public Works and Environmental Management. So the Chair will call for a brief recess until they get here. And in the meantime, the Chair would ask that you please review your memo that you received today. Meeting in recess subject to the call of the Chair.

RECESS: 3:02 p.m.

RECONVENE: 3:06 p.m.

PUBLIC WORKS AND TRAFFIC COMMITTEE MINUTES
Council of the County of Maui

March 5, 2004

CHAIR MOLINA: Recessed meeting of March 4, 2004 is now back in session. Thank you for that recess, Members. We will proceed at this time without the presence of the Public Works Director; however, Members, if you do have questions for the Director as it relates to this item, the Chair will forward your concerns to him and get you an answer.

We are here, of course, to discuss Item No. 22, which is authorizing the grant of a license to use County real property to Hale Mahaolu Eono Subdivision in Lahaina.

ITEM NO. 22: RE: AUTHORIZING GRANT OF A LICENSE TO USE COUNTY REAL PROPERTY TO HALE MAHAOLU EONO SUBDIVISION (LAHAINA) (C.C. 04-69)

CHAIR MOLINA: And as you may recall yesterday, Members, Mr. Katsuda, the Executive Director, asked for this body to consider the approval of a proposed resolution that would grant the use of County property along Lahainaluna Road. Mr. Katsuda noted that HUD or the Housing and Urban Development segment of our Federal government will not grant final approval of the Hale Mahaolu project without a resolution of the encroachment matter. Furthermore, he noted that without HUD approval, Hale Mahaolu would be unable to proceed with improvements to their community facility, which will be utilized by seniors in West Maui. And Mr. Katsuda also noted that the current facility, which seniors are utilizing does not adequately meet their needs.

During our discussion, Members, the Committee noted a desire to adopt the proposed resolution conditioned on the sale of the licensed premises to Hale Mahaolu. So, as a result, the Committee requested that language be drafted to revise the proposed resolution and license agreement. And in your possession, Members, you have a memorandum to you with the recommended language.

At this time, are there any questions for the Corporation Counsel, Ms. Young, as it relates to this resolution, as revised? Member Kane.

COUNCILMEMBER KANE: Yeah, one question, Mr. Chair, and just for clarification – in the reconvening of this meeting, did we already the motion to approve the resolution on the floor? Should we move forward with that proposal so that we continue the discussion and then move for the amendment and then have the discussion on the amendment?

CHAIR MOLINA: If that is appropriate . . . Staff, can we go ahead and proceed in that fashion?

MR. SALDANA: Yeah, that's fine. We did not . . . I listened to the tape just to check and made sure that there were no motion made.

PUBLIC WORKS AND TRAFFIC COMMITTEE MINUTES
Council of the County of Maui

March 5, 2004

COUNCILMEMBER KANE: Yeah, I don't recall there was a motion, Mr. Chair.

CHAIR MOLINA: Okay.

MR. SALDANA: But if you would like to entertain a motion for the adoption and then subsequently have a motion for an amendment.

CHAIR MOLINA: A motion to adopt the resolution as revised, or just adopt the resolution?

MR. SALDANA: Uh, no. Basically, you haven't offered any revisions as of yet so I think it would be appropriate, I mean, you've offered it in your memorandum but I think it would be appropriate to . . . you could either move to revise the resolution or as the Chair, Councilman Kane has suggested do the . . . motion to approve the resolution –

CHAIR MOLINA: Okay.

MR. SALDANA: -- and then discuss potential revisions.

CHAIR MOLINA: Amendments. Okay, thank you, Mr. Saldana. So at this time, we'll proceed in that fashion. The Chair will entertain a motion to adopt the resolution.

COUNCILMEMBER KANE: So move.

COUNCILMEMBERS PONTANILLA AND TAVARES: Second.

CHAIR MOLINA: Okay, it's been moved by Kane, seconded by . . . Member . . . we'll give it to Member Pontanilla. It was in a close call. Member Kane, as the maker of the motion, you have the floor.

] COUNCILMEMBER KANE: Mr. Chair, I'll move to amend the motion by incorporating the language that you have posed to us in your March 5th memo to the body with respect to incorporating revisions to the license agreement as well as the resolution.

CHAIR MOLINA: Okay. Thank you.

COUNCILMEMBER TAVARES: Second.

CHAIR MOLINA: A motion to amend has been made by Member Kane and seconded by Member Tavares. Member Kane, you have the floor.

PUBLIC WORKS AND TRAFFIC COMMITTEE MINUTES
Council of the County of Maui

March 5, 2004

COUNCILMEMBER KANE: Thank you, Mr. Chairman. I wanted to inquire with Corporation Counsel and with the concurrence of the body as to – although in the revised language as being proposed, it focuses in on specifically the sale of the said encroachment. And I was wondering if the body would feel it necessary or would consider that, that language be revised to consider the disposition of the property and in that way in negotiations the Administration would have more flexibility and not only looking at the sale but could be looking at perpetual easements, could be looking at other mechanisms that are available to us, and I just thought if the body felt comfortable with something like that or if it's even necessary or the body feels comfortable with just moving forward. With this, it's basically saying, you know what, go sell the property and go work the price out. And so I just pose that question – first, if putting disposition would provide broader flexibility in the negotiations, and second, if the body feels comfortable in considering something like that. And I'm open. I just wanted to put it on the table.

CHAIR MOLINA: Okay, thank you, Member Kane. Corporation Counsel.

MS. YOUNG: Yes, thank you, Mr. Chair. We could incorporate language to that effect taking language, for example . . . in essence, it would be disposition of real property in fee simple or by other . . . basically by easement or some other type of property interest.

COUNCILMEMBER KANE: So the language, as an example in the license agreement where in the Chair's March 5th memo, uh, the first one under the license agreement on the first page, the 3rd WHEREAS, it would read something like, and again, this is just for discussion. It would read: "WHEREAS, Licensor and Licensee anticipate negotiating for the . . ." and instead of having "sale of Licensed Premises", it would say for the disposition of the Licensed Premises by Licensor to Licensee, pursuant to Section . . . and we would have to make sure that the pursuant to section is the correct section that it would be referencing?

MS. YOUNG: It could be by pursuant to a couple of sections. It would be pursuant . . . negotiation would be pursuant to Section 3.44.050, and it would also be pursuant to Section . . . it could also be . . . it would . . . well, we wouldn't have to reference the section but basically it would be disposal of real property in fee simple or easements as provided – that would be provided for in Section 3.44.020 and that's disposition by Council.

COUNCILMEMBER KANE: Okay. Mr. Chair, I'll yield and again, the first answer was I think, yes, we can make that adjustment to provide more flexibility and be, you know, if Member Pontanilla and Member Tavares have any –

CHAIR MOLINA: Comments.

PUBLIC WORKS AND TRAFFIC COMMITTEE MINUTES
Council of the County of Maui

March 5, 2004

COUNCILMEMBER KANE: --you know anything burning in them to be supportive of that or just say, you know what I think we're okay the way it is and I'm fine with that too.

CHAIR MOLINA: Okay. Thank you, Member Kane. Member Tavares, do you have any burning comments onto the . . .

VICE-CHAIR TAVARES: No, not really.

CHAIR MOLINA: Okay.

VICE-CHAIR TAVARES: Maybe smoldering.

CHAIR MOLINA: Okay.

COUNCILMEMBER KANE: Wow.

CHAIR MOLINA: It's Friday folks, we're getting ready for the weekend. Would this additional language, would this require an amendment to the amendment or can we just incorporate this without a formal amendment?

COUNCILMEMBER KANE: Mr. Chair.

CHAIR MOLINA: Member Kane.

COUNCILMEMBER KANE: We have the amendment on the floor. I would ask, I mean, if there's no objections to it, and again, I'm not trying to push this. All I'm doing is putting it on the table and providing this as more flexibility, and if the body is okay with it obviously including yourself, Mr. Chair, that you could just do it as a friendly amendment and incorporating the language of, you know, taking out any sale language and putting in disposition, and that again, provides I think broader flexibility in the negotiation process.

CHAIR MOLINA: Okay. Any objections to this request being put in as a friendly amendment, Committee Members?

MEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay, the Chair has no objections either. The Chair has one question for Corporation Counsel on the second page of the memo that I sent out, the March 5th memo, under No. 1, Grant of License, I guess the last two sentences where it states, License shall terminate no later than one year from the date of execution of this License Agreement. And then moving on down to the Be It Resolved clause, on the bottom, number one, I guess the last . . . we'll take it from the last three sentences where it starts with the word sale ". . . sale of the

PUBLIC WORKS AND TRAFFIC COMMITTEE MINUTES
Council of the County of Maui

March 5, 2004

ADJOURN: 3:17 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Public Works and Traffic Committee

pwt:min:040305

Transcribed by: Jo-Ann C. Sato