

MINUTES

PLANNING AND LAND USE COMMITTEE

March 30, 2004

Council Chamber

RCONVENE:11:10 a.m.

PRESENT: Councilmember Wayne K. Nishiki, Chair
Councilmember G. Riki Hokama, Vice Chair
Councilmember Robert Carroll, Member
Councilmember Jo Anne Johnson, Member (ar 12:22)
Councilmember Dain P. Kane, Member
Councilmember Danny A. Mateo, Member
Councilmember Michael P. Molina, Member
Councilmember Joseph Pontanilla, Member
Councilmember Charmaine Tavares, Member

EXCUSED: None

ABSENT: None

STAFF: David Raatz, Legislative Attorney
Yvette Bantilan, Committee Secretary

ADMIN.: John Buck, Deputy Director of Parks and Recreation
Ann Cua, Staff Planner, Dept. of Planning
Michael Foley, Planning Director
Cindy Young, Deputy Corporation Counsel

OTHERS: Roy Figueiroa, Makena Resort Corporation (applicant's
representative
Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc. (applicant's
consultant

PRESS: Ilima Loomis, The Maui News
Tim Hurley, Honolulu Advertiser

CHAIR NISHIKI: Meeting on Planning and Land Use please reconvene. Member there are--one, two--three new communications that are in front of you. I don't know if you have 'em in front of you. One from Giovanni Rosati, coordinator for the Maui Nui Affordable Housing Task Force, dated March 22nd. They should all be in your binders.

COUNCILMEMBER KANE: Binder C.

CHAIR NISHIKI: C that you need to look at. The other is a communication from the Maui Contractors Association also in regards to the Maui Nui Affordable Housing Task Force Draft Policy and contractors also have a concern in regards to the affordable housing concern. They probably cc you members individually also I see that you need to look at. The other is the March 27th letter from committee member Johnson in regards to her concern that we should have a discussion on today when she arrives. I don't know when she'll be here because she's on a ferry. So those three letters you should read and if any of you have any comments or questions . . . for Jo Anne's letter I'd rather have her be present. Then finally I promised you that I'd have some recommendations and so also within your binder dated March 30th, 2004, there are also recommendations that I have offered also. Any questions or comments in regards to those letters? If not you probably need some time to read and digest and, uh, I guess if you need any clarification from Contractors or Maui Nui you can address those letters to the committee and possibly we can get responses. However, if any of you would like to call any of the organizations let the Chair know. Any questions or comments in regards to those letters? I was--

COUNCILMEMBER KANE: Mr. Chair.

CHAIR NISHIKI: Yeah, go ahead, Dain.

COUNCILMEMBER KANE: Just one, one real brief question on your March 30th--

CHAIR NISHIKI: Yes.

COUNCILMEMBER KANE: --memo and the list and I'm sorry, um, if I missed maybe what your intent is. The list that you attached to the memo, uh, that starts off with density and height restrictions and I know that's the list we've been going through--

CHAIR NISHIKI: Uh-huh.

COUNCILMEMBER KANE: --is this list all conditions combined or does this list incorporate what we've discussed as well as specific conditions that you

as an individual member or also incorporating into this list and just for clarity.

CHAIR NISHIKI: Yeah. I think when you look . . . when I was looking through it today, there were also recommendations from other members in here, and some of them are mine personally, but they are referenced not in the numbered pages. They are referenced in the first two pages . . .

COUNCILMEMBER KANE: Thank you.

CHAIR NISHIKI: . . . on there.

COUNCILMEMBER KANE: Thank you.

CHAIR NISHIKI: Yeah. Any questions in regards to those areas? The other concern I have today is as you can see, uh, when Jo Anne comes we'll have all nine members. Mr. Moto I guess is really ill and I hope that he would be able to serve us when it comes down to final decision making when we discuss the entirety of the conditions that we have here. The Chair has one question from Mr. Figueiroa in lieu of a conversation that I had with him earlier this morning via the, the phone and it has to do with the timeshare, the 25 acres. Does anyone have any problems in asking Mr. Figueiroa for some clarity?

COUNCILMEMBER TAVARES: No.

COUNCILMEMBER KANE: No.

CHAIR NISHIKI: Roy.

?: No objections.

CHAIR NISHIKI: Yeah and, and, and this is in regards to . . . in our density and height restrictions we have here for Lot 19 on Page 1 committee members if you look at number four on the density and height, for Lot 19 H-M Hotel district the building height shall be limited to 45 feet and be consistent with the Urban Design Standards for Building Form in the Kihei-Makena Community Plan; no more than 89 units shall be developed; and no lock out unit shall be allowed when we had that discussion. However, in speaking with Mr. Figueiroa this morning when I had mentioned to him about what and where these 89 units were to be located because in the existing hotel zoned property there is approximately ten acres that is makai of the Alanui Road and yet behind the existing hotel and parking lot that's not developed yet. The other is the ten acres that is makai of the hotel, uh, southern side of Maluaka that they now currently have zoning for and so the question was is the 89 timeshare units part of the entire

zoned and unzoned area? And, and the reason why I have this concern is normally when a hotel zoning comes in we are given basically a concept plan and what the developer plans to put in those areas that they're asking for. I'm sure Seibu has a master plan and I'd like to hear clearly what that plan is in regards to this request for additional 25 acres of land and the tie in between the already zoned hotel that hasn't been developed lots. Mr. Figueiroa.

MR. FIGUEIROA: In going through this process . . . by the way my name is Roy Figueiroa representing Makena Resort. In going through this process at the time that I did mention the 89 units it was on an on-site inspection and we said if we would get it in the near future we'd be able to develop with that. We've always looked at both lots being developed as one project. I would like to consider, uh, or have you consider at this time that your conditions are since then have continued to grow and they have . . . in fact some of them have even morphed and disappeared and come back. As an example Mr. Nishiki on your March 30th memorandum it includes on the second bullet point condition regarding Mokulele and Piilani that on March the 12th there was a consensus that that would be deleted so that has now resurfaced at this particular point in time. There have been other conditions that have, uh, that are still being considered. And so we'd like to hear all of the conditions connected with this project in order to assess since we will have to make a unilateral agreement to consider all of the conditions that you come up with at one time. In looking at them independently it seems that some of them could be worked out, but now you're looking at the accumulative effect of all of these conditions at one time, and as I said some of them have been changed from our understanding even of the meeting on March the 12th. As we've mentioned before that many of these conditions really in the, uh, perhaps the Chair's attempt to set policy by adding these conditions in effect have attached these conditions to this particular project we're not sure that will be policy in the future. As we've said with many of these conditions they should be considered during the SMA process. So we'd like to be able to evaluate then all of the conditions that the committee does come up with as a list, of a final list. It's difficult as I said to come to each meeting and try to determine if that condition is now workable in light of the other conditions that you add. It was our intent at the beginning and, uh, hopefully we can still stick to that intent of having those 89 units as, uh, single project in that area, but we had hoped that we'd be able to evaluate this based on what your final list will be as far as conditions, and we'd like to be able to finally arrive at that so we can make that determination. Right now it's just so difficult. Every time we come to a meeting it seems that, you know, there's something different and something that we thought was already decided upon previously is now different again, and so we would appreciate knowing what all of these conditions will be in respect to this change in zoning.

CHAIR NISHIKI: Questions for Mr. Figueiroa? I'll, I'll make it real plain and simple, Roy, in regards to when we were looking at this entire project, and you know that some of the discussions that we had from Planning and also from our Corporation Counsel was, you know, perhaps that this project is tremendous in size and, and, and even some recommendations was to separate that hotel and refer that back to Planning Commission because never before have we heard where you've got all the different areas and each one is not represented with any kind of developmental plan, Roy, and I'm sure that Seibu has a master plan for the entire area so this has been tough.

Now, in regards to why I put in front of this committee some of the considerations because I had a chance to view and review some of the minutes in our discussion, and I think that in the committee prior discussion there was talk about either made by Dain or Charmaine about allowing certain amount of units upon completion of Mokulele and Piilani, and when I again reviewed the community plan language in regards to the statements made on the transportation in the objectives and policies and then the implementation actions, I really thought that the language there, and I'll read it Roy. On the transportation objectives and policies under B it says undertake transportation system improvements concurrently with plan growth of the Kihei-Makena region, require adequate interregional highway capacity including the widening of Piilani and Mokulele Highways to four lanes prior to the construction of major projects south of Kilohana Road or mauka of Piilani Highway and this project fits exactly what this language states in the community plan. Then under the implementing actions it states under C widen Piilani Highway between Mokulele Highway and Wailea Ike Drive to four lanes. In terms of roadway improvements within the community plan region this shall be the third priority. So for me and I think committee members have reviewed this. That's the reason why I think Dain and Charmaine had asked that we phase in some of your development despite of what this language read and I think it was to perhaps accommodate your development, but at the same time making sure that some of these road developments would at least be completed rather than allowing again a development to be built only to find that some of these roads that the community plan considered should be built prior to any development and that was the reason. So I, when I, after examining that language I had strong concerns and therefore was going to bring up to the committee some of the ways in which perhaps this project could be mitigated knowing that, uh, unless this basic infrastructure of roads are built as stated in the community plan, um . . . it just be hard to swallow especially of what is being dictated here that's all.

MR. FIGUEIROA: If I could comment on that?

CHAIR NISHIKI: Yeah, I'll give you an opportunity to comment but I, you know, this was . . . go ahead.

MR. FIGUEIROA: Well, we know that, uh, I believe in that March 12th meeting I think it was, uh, Ms. Tavares that did say that that she, this condition didn't have to remain. I don't know what the exact words were, but I remember checking that off on the list. Now, with any condition as even Mr. Moto said there has to be a rational nexus to what is being requested. In our change in zoning and our Traffic Impact Assessment Report it does not indicate this particular, uh, roadway has to be widened in respect to what is being planned for the urban development of Makena resort. We know of perhaps in, in future years if anything beyond this urban area is developed then perhaps this widening as it says here would have to occur but right now we're talking about the change in zoning application and the TIAR does not reflect that that would be required at this particular point in time before any construction would occur that this widening has to occur.

CHAIR NISHIKI: Yeah.

MR. FIGUEIROA: And I think that's true with any of the conditions. There has to be a rational nexus to whatever conditions that come out.

CHAIR NISHIKI: Roy, you know, I, I, I will allow you to say what you just said, but in all reality and, and I would hope that . . . I can accept what you just said, but in all reality when we look at what is going to occur there and right, you know, we are to look at in a narrow perspective only what is being zoned, okay, but realizing what also is zoned and some of the, you know, the, the way you're going to connect certain perhaps parcels with what is being zoned, the reality is, Roy, approximately, if this is built out, 3,000 units possibility because there are no density concerns with the old zoning, okay. So when we look, when I, when we, when I looked at what the Planning Department provided with us in regards to what you already have zoned, the reality is that there's gonna be tremendous impact and I think that was the reason why, and I can't speak for other members that proposed the phasing in, we cannot joke ourselves and saying that there's not gonna be an impact on the roadway, you know, and that's the reason why I brought up this concern. I cannot be tunnel vision. I've got to look at what the community plan states, okay, and what the realities of what you have there, Mr. Figueiroa, and all I'm saying is that let's be real about it, you know, that, that got a tremendous or will have a tremendous impact on our roadway system, and I really have no guarantees on when these roadways will be built and I think that's why the committee was cautious and, and why some of the phasing in was being made, okay.

MR. FIGUEIROA: In respect to that as far as our TIAR, the Traffic Impact Assessment Report, it did include all of the urban areas under

consideration including the already existing. If that became, if we went beyond what that included then it would have to be revised the Traffic Impact Assessment Report, and then that would indicate additional improvements that would have to be made. So we did assess it according to the proposed roughly 1,200 units for this area including the existing zoning. If it goes beyond that, even if the development phase goes a long time into the future then that would have to be re-evaluated anyway and you may, uh, you know, confirm this with the Planning Director, but I believe each SMA project would have to come in with a new TIAR anyway that's what I believe anyway. We have for the master plan we have a TIAR, but I think each development would have to, uh, come in with a TIAR for that development to either confirm or, uh, what that traffic master plan was for this particular project that's what I, that's what I understand.

CHAIR NISHIKI: Committee members, questions for Mr. Figueiroa in regards to this area? Anyway, I just brought it up as a concern, Roy, and therefore the reasoning behind it after listening to minutes and looking at the statements made in the community plan. I guess my question to you still is what is the overall . . . I mean you said well, these conditions are there, but what is the overall master plan for hotel development there in the ten acres and that other . . . what is it? . . . ten acres that you have fronting the proposed expansion of hotel zoning?

MR. FIGUEIROA: As I said we would hope to be able to continue to look at 89 units in that area. We had intended single units on the makai side. However, as I said it'd be good to have a complete list so that we can look at that and see if we can continue to have that fulfill our desire to build it like that 'cause that would be our first inclination, that would be our first preference.

CHAIR NISHIKI: Is that the representation you made for that additional hotel site that you were given zoning for? I don't understand what you mean by single units. What does single units represent?

MR. FIGUEIROA: Uh . . . a building would have only one unit on the makai side. As far as term of ownership . . . to me the timeshare is a term of ownership. So on the makai, mauka side of the old Makena Road would be the multiple units per building, on the makai side would be single units that's what we contemplate at this time as one project, and we would like to develop it as one project.

CHAIR NISHIKI: That on the existing zoning ten acres you would have . . .

MR. FIGUEIROA: I think it was--

CHAIR NISHIKI: Timeshare units or homes or what, what . . .

MR. FIGUEIROA: It would be single units. I'm not sure about the ownership at this time. It would be single individual units.

CHAIR NISHIKI: Questions from committee members in regards to the question of the type of units to be put in that area?

COUNCILMEMBER KANE: Mr. Chair.

CHAIR NISHIKI: Yeah, go ahead.

COUNCILMEMBER KANE: A question for Mr. Foley with respects to the comments were made.

CHAIR NISHIKI: Okay.

COUNCILMEMBER KANE: Thank you. Mr. Foley, good afternoon or good morning still.

MR. FOLEY: Good morning.

COUNCILMEMBER KANE: Um . . . the options that the applicant has if what he says if the intent is to come forward with a SMA application to move forward on developing the pink part where the hotel zone and the intention is to incorporate both into one SMA application, at that point in time you folks would have the full review process and they would have to conform to whatever the set up within again SMA is that correct?

MR. FOLEY: Mr. Chairman, yes, that is correct. The, a, uh, the SMA application could include both of those parcels and we would review all of the issues including traffic report specifically associated with, with those two parcels.

COUNCILMEMBER KANE: And if they came in separately then they would be reviewed separately but again with the, whatever the accumulative impacts would be to the surrounding areas is that correct?

MR. FOLEY: Yes. If they came in, uh, separately there'd be separate traffic reports.

COUNCILMEMBER KANE: If they did come in together, would the condition set forth, whatever conditions we have on the pink portion for the sake of discussion, if it came in together then the existing zoning that they already have would have to conform to be consistent with the SMA application and I don't know if I asked that correctly.

MR. FOLEY: Mr. Chairman, the, uh, yeah, the conditions that are attached to this rezoning application would apply to the pink area and, uh, so there would probably be additional conditions on the pink area beyond the conditions that we would have on the yellow area since that's already zoned, but we would look at all those conditions and analyze the impacts of the two sites either independently if they came in separately or together if they came in together, but in either case the analysis would include site specific traffic reports and site specific archaeological reports.

COUNCILMEMBER KANE: Among other things.

MR. FOLEY: Among other things.

COUNCILMEMBER KANE: Thank you, Chair, that's my question. Thank you.

CHAIR NISHIKI: Joe, go ahead.

COUNCILMEMBER PONTANILLA: Thank you. As far as . . . well, this is not in regards to the two parcels that we're talking about. As far as the rest of the pink areas and also . . . well, just the pink areas, that would still have to go through SMA process and with all of the studies that are required that the developer provide?

MR. FOLEY: Mr. Chairman, yes, that's correct. All of the pink areas, uh, would be required to go through the SMA review process at the Maui Planning Commission because the, uh, all of the . . . portions of all of those, portions or all of those pink areas are within the SMA boundary so there's no part of the pink area that could be developed without SMA review.

COUNCILMEMBER PONTANILLA: And then during the SMA review as far as the transportation that would also take into account the traffic impact on Piilani Highway?

MR. FOLEY: Yes and the local roads as well, uh . . . and all the areas in yellow would also be included because those areas in yellow would probably in some cases be combined with the areas in pink but, yeah, we would, the traffic reports would analyze not only the impact on regional roads like Piilani Highway and South Kihei Road but also the internal circulation.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chair.

CHAIR NISHIKI: Questions? Mike, the TIAR that Mr. Figueiroa alluded to those studies only address internal roads. They don't address major highways do they?

MR. FOLEY: Just, uh, they are required to analyze cumulative impacts for the, the whole area and they, they would include analysis of impacts on regional access to the site such as Piilani Highway and South Kihei Road. What we often have in a situation like this is that we have an overall traffic study for the whole region and then we have site specific traffic reports that are more detailed for each site, uh, having to do with the impact on the immediate vicinity, but we do definitely require the traffic impact reports to include cumulative analysis. So they'd have to look at other projects in South Maui and their potential impact on the, on the regional roads like Piilani and South Kihei Road as well as this entire project.

CHAIR NISHIKI: Any other questions in regards to the proposed hotel development? And I guess traffic is one thing that many of you have looked at. So what do you think, Roy, the, the total build out will be in regards to total units? I mean, you mentioned I think 89 as being what is represented if we give you the 25 acre. What, how many units would be put on the 10 acre parcel?

MR. FIGUEIROA: I believe it's 11 or 12, but that's at this time, that's what we contemplate. If we are able to go through with this in a reasonable amount of time that's what we're looking at, and our Traffic Impact Assessment Report looks at it that way.

CHAIR NISHIKI: Okay. Any other, uh, concerns in regards to the hotel area that is to be put in there? Seeing none, thank you, Roy.

Any questions in regards to some of the Chair's recommendations? One thing I had a concern and I don't know about other members, just as we're putting a unit count on the timeshare, Planning Department I guess my question is can there be a break down because right now we have in the text densities for the height and density . . . oh, heights and, and also the amount of dwellings per unit via single family and multi-family. Can there be a condition set on the amount of units to be put in this area?

MR. FOLEY: Mr. Chairman, it is possible for the Council to, to do that to have a maximum number or we can continue to use the density that's set in the conditions as drafted. When there's a maximum number set it's usually very difficult to achieve once the design takes into consideration set backs and parking and landscaping and, and building heights and all those other things, but it, uh, yeah, it's up to the Council whether they wanna stick with the density or, or add a maximum unit count as well. Condition number 4 says no more than 89 units.

CHAIR NISHIKI: Yeah, and the reason why I ask this, Michael, is you know when we were discussing the other night the consolidation pink going into yellow--

MR. FOLEY: Yeah.

CHAIR NISHIKI: --how would the Planning Department look at what densities apply? Because their existing zoning gives them . . . I don't know what the existing zoning gives them as far as densities. What does the existing zoning give them in A-2?

MS. CUA: Mr. Chair, I think when we initially responded to you on the yellow areas and the potential or the maximum unit count I think we indicated that on an average we're looking at approximately a 15 units per acre and, and I think what would happen if they came in with an application that dealt with the pink that also had some yellow in it, um, and there was a condition on density that apply to the pink and we were looking at the overall that condition would probably . . . as they develop the project it's probably gonna run with the, that portion of the yellow that's crossing over to the pink because I think in terms of their planning and in terms of our view that that's the only thing that would make sense. So in all actuality, um, that condition, if they're proposing one project that deals with both areas that condition would really apply to the both areas. And I just wanna add one more comment on density. It's much easier for the department to apply densities to a project than overall unit counts. Because when you set a density no matter what size parcel they're coming in with you just apply the densities and that project can be done. When you assess a unit count then we always have to keep, you know, a running total of, okay, where are we, where are we now with the unit count. So if you're looking at management, you know, from now and going onto the future, you know, we may not all be here when this project is finally completed. And if you're looking at assuring densities in the future because this project is not gonna be developed in the next five years then I think densities as you have established is the way to go because then it's real simple, you know, you're coming in with a five acre piece, it's zoned A-2 apartment, you apply the density of eight units per acre, real simple math. I think the other way in terms of enforcement and just management of the paperwork it just, it gets a little more complicated.

CHAIR NISHIKI: Yeah, so members just as we I think in discussing the kicking(?) on the SMA with the combination of the yellow and the pink, we had this discussion on the beach parking, I think maybe we need to add language in there that says should there be any kind of consolidation that the dense, that the . . . I don't know what the language should be but the, but the lower density of what we've addressed in this zoning should be carried through that new project. Dain, go ahead.

COUNCILMEMBER KANE: Question to Ms. Cua and the Director.

CHAIR NISHIKI: Okay.

COUNCILMEMBER KANE: Your response didn't show any absolutism, uh . . . being absolutely sure on the consolidation question. So in my mind the bottom line is if an SMA application comes in and it consolidates an existing zoning component as well as the pink, uh, what we're talking about now and it's consolidated, the Chair is asking if you need language there to point it out that yes, the pink conditions are the ones that's gonna tie. Is there language already existing, SMA, County Code, somewhere where you folks can find that yes, it's gonna be something that's gonna be done where the yellow is gonna be subject to the pink's conditions?

MS. CUA: There's nothing on the book that, that says that if that situation, if we're presented with that situation we are required by law to apply, um, we can just tell you as a practice we would apply it. It doesn't make sense not to.

COUNCILMEMBER KANE: Okay. Mr. Director any further comment? Mr. Foley, you don't have any additional comment to that?

MR. FOLEY: No.

COUNCILMEMBER KANE: Okay, thank you, Mr. Chair.

CHAIR NISHIKI: And, and, and hopefully Corporation Counsel and staff take into consideration perhaps spelling out that clarity. I don't know if all Council members are following what we're discussing. In the yellow right now I don't know if there are any density conditions, but in the pink we already have. So just as the developer preface this zoning application that that's what they were trying to do, consolidate different parcels, and then develop or sell those zoning rights, uh . . .

COUNCILMEMBER PONTANILLA: Chairman.

CHAIR NISHIKI: . . . we need to spell out perhaps the density that would be the overriding zoning.

COUNCILMEMBER PONTANILLA: Chairman, I have a question for--

CHAIR NISHIKI: Mr. Pontanilla go ahead.

COUNCILMEMBER PONTANILLA: --Planning Department. Looking at the pink area you said that the density would have been 15 units per acre.

CHAIR NISHIKI: What is that?

COUNCILMEMBER PONTANILLA: No.

MS. CUA: What we said we apply 15 units per acre is when we were asked to calculate the maximum unit build out for the existing zone area so this is the yellow area--

COUNCILMEMBER PONTANILLA: The yellow area.

MS. CUA: --specifically the A-2.

COUNCILMEMBER PONTANILLA: Not all of it.

MS. CUA: Yeah, we were also asked to calculate the maximum unit densities for the pink and for the pink we were asked to apply your conditions. So for the A-2 we did apply your condition which requires eight units per acre.

COUNCILMEMBER PONTANILLA: That's the pink.

MS. CUA: That's correct for the apartment.

COUNCILMEMBER PONTANILLA: So when we add the two, see, we're talking about 89 units. So the density if we were--

MS. CUA: No, no, wait, wait. Okay, I need to stop you because, yeah, the 89 is the hotel that's totally separate area.

COUNCILMEMBER PONTANILLA: Okay. Eight-nine for the hotel.

MS. CUA: Is what the applicant is represented that he's doing. That is not what we said is the maximum built out for the hotel there's a difference 'cause you, your question to us was very specific. You asked the maximum unit count for all the zoning districts, both existing and proposed, and that's what we gave you. The 89 units didn't enter our calculations because that's not the maximum. That's what they're saying they could do. I think we indicated it would be much higher than that based on hotel zoned property.

COUNCILMEMBER PONTANILLA: It could be for them.

MS. CUA: It would be. Oh, yeah, it could be--

COUNCILMEMBER PONTANILLA: Okay.

MS. CUA: --or it would be.

COUNCILMEMBER PONTANILLA: Thank you, that's what I wanted to know.

CHAIR NISHIKI: Any other comments or questions in regards to this density concern that somehow . . . if we don't do that, members, then what could occur is when they consolidate they could use the higher density.

COUNCILMEMBER KANE: Mr. Chair.

CHAIR NISHIKI: Yeah, Mr. Kane.

COUNCILMEMBER KANE: Not based on what Planning Department said. They said as a practice they apply consolidation with the lower density so it's not accurate what you just said and so I'm just making a point--

CHAIR NISHIKI: Yeah.

COUNCILMEMBER KANE: --you know what you're telling us is not what we just heard from the Planning Department. Planning Department said as a matter of practice that they apply the lower densities, and so the question in front of us now is as a body are we going to apply some language in a condition that state (*change of tape*) as a matter of practice but as a matter of we setting it forth via conditions that's . . . and I just wanted to make that clear, Mr. Chair.

CHAIR NISHIKI: Okay. I wanna make--

COUNCILMEMBER KANE: It just seems like you--

CHAIR NISHIKI: --yeah, I wanna make something clear that you asked and it's not a debate, okay. When you asked her whether in law there is anything to enforce it, the answer was given no. And so I don't think we want this to be a policy question and that is the reason why the Chair is asking that this committee look at inserting language on this zoning that would stipulate that when there is consolidation the density used in this ordinance of eight units per acre be what should be mandated.

COUNCILMEMBER KANE: Yeah. And I have no objections with what you just said now.

CHAIR NISHIKI: Okay, yeah.

COUNCILMEMBER KANE: But you didn't say that earlier. What you said earlier was that they can just come in and get the higher density, that's what you said, and that's not true, and that's why I'm saying I have no objections to us having that discussion specific to whether or not as a body we're gonna agree to make that condition--

CHAIR NISHIKI: Got it.

COUNCILMEMBER KANE: --specific to what you just stated.

CHAIR NISHIKI: Got it.

COUNCILMEMBER KANE: So I think we all need to be clear. You as the Chair made a statement and I just wanted to clarify that your statement was inaccurate.

CHAIR NISHIKI: Okay. So that's why I wanna clarify and--

COUNCILMEMBER KANE: Thank you.

CHAIR NISHIKI: --not to debate the fact that there is no law or existing right now that perhaps is the reason why we need to condition this zoning. So is there any objections to adding language in there to make it crystal clear that should any commission or administration come in that that is what they follow when consolidation occurs.

?: No objection.

CHAIR NISHIKI: Okay. Dain, go ahead.

COUNCILMEMBER KANE: Mr. Chair, my concern is that we're creating legislative policy as we're going along here and this is the question that should be applied to everybody. And so if that's the intent of this body then perhaps the proper approach in my opinion is that we as a body do our legislative duty and enact ordinance amending the current or incorporating something new that says in the event that there's consolidation at the SMA level or wherever we have to do it, wherever the proper is that it applies to everybody, but right now it seems like a lot of these conditions including the one we're talking about now we're attempting to do legislation as we're going along with these specific conditions, and I don't know if that's the way to go so I do have a concern. I think it's the more appropriate way to do it is that we as a body do our jobs as legislators and create legislation that's going to put forward what you're talking about which I by the way would agree to. I think that whenever, whatever the practice is and it seems like they have been incorporating it, all we're doing is codifying it and that's the way it should be done not putting it on this condition because then we may look at something and for the sake of discussion we may be at another application for rezoning and we may not think about it that day because for whatever reason and then the next person doesn't get that condition incorporated into their project and that's what's not fair. It has to be applied fairly, Mr. Chair. So that's my concern for putting it here because

then we're just kind of passing it off and saying you know what? As we go along let's just create legislation and . . . I don't know. I'm having a little bit of a problem with it. I agree with it in concept. Putting it this way is not the way to do it in my opinion.

CHAIR NISHIKI: Yeah. Well, that's all right because you asked the question of Administration what their policy was and so this is in keeping to the Administration's policy so it's been consistent is all I'm doing, okay, and we can, we can look at passing legislation Mr. Kane. Any other comments, Mr. Kane? None. Any other comments from Committee members? Okay.

Where is Riki? It's the 12 o'clock hour. We got a 1:30 meeting of the budget and I need to take a short recess to figure out when we can reconvene or recess this meeting some time tomorrow. So we'll take a five minute recess (gavel) until 12:05.

RECESS: 12:01 p.m.
RECONVENE: 12:22 p.m.

CHAIR NISHIKI: Meeting on Planning and Land Use please reconvene. Jo Anne is here. I told her that we'd be able to address her memo tomorrow morning at around 9:15 to allow members to take a break before the budget meeting. Jo Anne.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair, and I think one of the main things that I'm concerned about is this is interfering now according to my memo, it's interfering with our budget. That to me is the thing that has the most time sensitivity. I think you all got copies of my memorandum. I don't think that this is the way to do good legislation. I know that some other members may disagree with me, but I fully expect to at least discuss my memorandum and at least find out where we're gonna go with this because I will not be put behind the gun and force to make a decision when there are other things that are, in my view, much more pressing than on our plate--

CHAIR NISHIKI: Okay.

COUNCILMEMBER JOHNSON: --there's no time sensitive. So I, I wanna hold everyone to that that we're gonna discuss where we're really going as a Council with this whole issue. So thank you, Mr. Chair.

CHAIR NISHIKI: If no objections the Budget Chairman has given us tomorrow morning, uh, to run for about 5 or 6 hours. So this meeting will stay in recess until 9:15 tomorrow morning. Any objections?

COUNCILMEMBER JOHNSON: Mr. Chair.

CHAIR NISHIKI: Jo Anne.

COUNCILMEMBER JOHNSON: I thought we were just going to be discussing tomorrow morning the whole issue of my memo and some other memos that I understand that have come in the interim. I am driving to Hana tomorrow. So if you wanna continue a conversation without me here that's fine, but I am not gonna let that interfere with my attendance at the Hana meeting. I am driving. Other members are flying. I am not gonna drive all the way to Hana and all the way back to Lahaina. So I will not be meeting for five or six hours tomorrow.

CHAIR NISHIKI: Meeting in recess until 9:15. (gavel)

RECESS: 12:24 p.m.

APPROVED:


WAYNE K. NISHIKI, Chair
Planning and Land Use Committee