

# LAND USE COMMITTEE

Council of the County of Maui

## MINUTES

December 3, 2008

Council Chamber

**CONVENE:** 1:40 p.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Michelle Anderson, Member  
Councilmember Gladys C. Baisa, Member  
Councilmember Danny A. Mateo, Member  
Councilmember Bill Kauakea Medeiros, Member  
Councilmember Michael P. Victorino, Member

**EXCUSED:** Councilmember Joseph Pontanilla, Vice-Chair  
Councilmember Jo Anne Johnson, Member  
Councilmember G. Riki Hokama, Member

**STAFF:** Clarita Balala, Substitute Committee Secretary  
Carla M. Nakata, Legislative Attorney

*Seated in the gallery:*

Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

**ADMIN.:** Jeffrey Hunt, Director, Department of Planning  
Paul Fasi, Planner, Department of Planning (Item No. 47)  
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Mich Hirano, Principal, Munekiyo & Hiraga, Inc.

**PRESS:** *Akaku--Maui County Community Television, Inc.*

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**CHAIR MOLINA:** . . .(*gavel*). . . Land Use Committee meeting for Wednesday, December 3, 2008, is now in session. For the record, we have in attendance Members Mateo, Anderson, Baisa, Medeiros, and Victorino. Excused are Members Johnson, Hokama, and Pontanilla. From the Committee Staff we have Committee Analyst Carla Nakata, and filling in for Committee Secretary Tammy Frias, we have Clarita Balala. Welcome, Ms. Balala. And from the Planning Department, we have Director Jeff Hunt, and Staff Planner, Paul Fasi, and from the Corporation Counsel's office we have Mr. James Giroux. Welcome all.

Members, we have a very ambitious agenda today. One item and a bunch of items to consider for referral to the next Council so, you know, we won't keep you very long here today, Members.

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**ITEM NO. 47: TRANSIENT VACATION RENTAL CONDITIONAL PERMIT AND/OR BED AND BREAKFAST HOME PERMIT INVOLVING PROPERTY LOCATED AT 367 HANA HIGHWAY (KUAU) (C.C. No. 08-192)**

CHAIR MOLINA: Our one item we're going to consider today is LU-47, transient vacation rental conditional permit and/or bed and breakfast home permit involving property located at 367 Hana Highway over in Kuau. The Committee is in receipt of County Communication No. 08-192 from the Planning Director transmitting documents relating to a request from Linda Gallagher on behalf of CB Laana, Charles Brent, and S. Lumjuan, for a Conditional Permit to operate a transient vacation rental and/or Bed and Breakfast Permit for The Spyglass House, on approximately 16,335 square feet within the P-1 Public/Quasi-Public District, located at 367 Hana Highway, Kuau, Maui, Hawaii. And a correspondence dated November 17, 2008 was received from the Planning Director notifying the Committee of the withdrawal of the request for a Conditional Permit and/or Bed and Breakfast Home Permit for the property.

At this time, the Chair would like to turn matters over to the Planning Department for additional comment on Land Use Item 47.

MR. HUNT: Thank you, Chair. You're correct. The Department has received a...I believe an e-mail requesting that the application be removed. That was subsequent to the public hearing at the Planning Commission. The Planning Commission did recommend denial of the application. I think it's important for the public to realize that some of these applications don't meet criteria. In this particular case the Planning Commission felt it didn't meet the Community Plan and the Paia Community Plan speaks to having an onsite owner and also not having B&Bs along the shoreline. So there's some discussion in the community that, well, we shouldn't be enforcing against these B&Bs or TVRs, give them three strikes, and only complaint-driven. Well, that then avoids the whole issue of compliance with the Community Plan and it's important that the public and the Council realize that there is compliance with the Community Plan as a criteria. In this case the application did not meet that criteria.

CHAIR MOLINA: Okay. Thank you, Mr. Director. Committee Members, questions for the Planning Department on Land Use Item 47? Member Anderson.

COUNCILMEMBER ANDERSON: Well, I'd just like to say that I appreciate the Planning Department pointing out the noncompliance with the Community Plan and making an issue of it because there's no point in having community plans and policies adopted in the plan if the Department isn't going to back up the policies that the Council has adopted for each community. So I appreciate that very much. Thank you.

CHAIR MOLINA: Thank you, Member Anderson. Before the Chair turns matters back over to the body, the Chair neglected to ask if there's any public testimony here today. Chair's a little excited. Committee Secretary, have we had any sign-ups for Land Use Item 47 for testimony?

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MS. BALALA: No.

CHAIR MOLINA: Okay. Seeing no one approaching the front to sign up, if there are no objections, Members, the Chair will close public testimony for Land Use Item 47.

COUNCILMEMBER BAISA: No objections.

COUNCILMEMBER VICTORINO: No objections.

CHAIR MOLINA: Alright. Thank you very much, Members. Additional questions for the Planning Department regarding Land Use Item 47? Member Baisa.

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. For the Planning Department – would this application, if it is denied as a TVR, be allowed as a bed and breakfast if they were to come back and have somebody live on the property, or would it still have concerns with the Community Plan?

MR. HUNT: There's two Community Plan policies that the Planning Commission felt it did not meet and one was no onsite owner. So the scenario that you just laid out, that would alleviate that problem. However, the Paia Community Plan also says that B&Bs should not be located along the shoreline. Apparently, there was concern about the shoreline getting developed and no longer having access to the public or impacts to the shoreline, et cetera. This, this one is on the shoreline. I can't speculate whether the Planning Commission would recommend denial based on that one but it certainly is a good possibility.

COUNCILMEMBER BAISA: Thank you very much for that. I just think it's very important that the viewing audience will understand why the Planning Commission and the Planning, Planning Department take this position. You know, public watches all of these decisions on these vacation rentals. It's very important that they understand why you would deny or, or want to support.

CHAIR MOLINA: Okay.

MR. HUNT: And we just wanted to point out that it, it doesn't remove all options for the owner. In this case they are doing long-term rentals now on that property so. . .

COUNCILMEMBER BAISA: I can understand that that is always an option. However, it's not a desirable one by folks who want to make more money on a short-term rental. But I think it's very clear and I'm okay with it.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Committee Members, additional questions for the Department on Land Use Item 47 prior to the Chair making a recommendation?

COUNCILMEMBER BAISA: Recommendation?

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COUNCILMEMBER VICTORINO: Recommendation?

CHAIR MOLINA: Okay. Thank you very much. Members, the Chair would entertain a motion to file County Communication No. 08-192 and Land Use Item 47.

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay. Thank you. It's been moved by Member Victorino, seconded by Member Medeiros. Additional comments on the motion that is on the floor to file? Seeing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it 6-0 with three excusals, Members Johnson, Hokama, and Pontanilla.

**VOTE:       AYES:       Councilmembers Anderson, Baisa, Mateo, Medeiros, and Victorino, and Chair Molina.**

**NOES:       None.**

**EXC.:       Vice-Chair Pontanilla, and Councilmembers Hokama and Johnson.**

**ABSENT:   None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:     Recommending FILING of communication.**

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**COMMUNICATIONS FOR REFERRAL TO THE COUNCIL CHAIR  
FOR THE 2009-2011 COUNCIL TERM**

- ITEM NO. 2      COMMUNITY PLAN DESIGNATION FOR 5.171-ACRE PARCEL AT SITE OF PREVIOUSLY PROPOSED KA ONO ULU COMMERCIAL DEVELOPMENT AND NEARBY 7-ACRE PARCEL (KIHEI) (MISC./G.C. No. 02-1)**
- ITEM NO. 11     APPROPRIATE ZONING FOR KAA NAPALI GOLF COURSES (C.C. No. 05-151)**
- ITEM NO. 33     PA`ANI MAI PARK (HANA) (C.C. No. 08-60)**

CHAIR MOLINA: Alright, Members, our last matter of business on our agenda we will be...the Chair will be recommending that the following communications be referred to the Council's Chair for the term beginning January 2, 2009 pursuant to Section 19 of the Rules of the Council and those items are: Land Use Item 2, which is a Community Plan Designation for 5.171-acre parcel at the site of the previously proposed Ka Ono Ulu Commercial Development and nearby 7-acre parcel in Kihei; Land Use Item 11, appropriate zoning for KaaNapali Golf Courses; and Land Use Item 33, Pa`ani Mai Park in Hana. These are considered discretionary referrals and would have to come to the Committee for consideration to be referred to the next Council. So, Members, any consideration? The Chair will call for a motion to refer these items to the next Council if there are no objections.

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER BAISA: Second.

CHAIR MOLINA: Okay. Moved by Member Victorino, seconded by Member Baisa. Any additional comments on the motion on the floor? Seeing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it 6-0 with three excusals, Members Johnson, Hokama, and Pontanilla.

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**VOTE:       AYES:       Councilmembers Anderson, Baisa, Mateo, Medeiros, and Victorino, and Chair Molina.**

**NOES:       None.**

**EXC.:       Vice-Chair Pontanilla, and Councilmembers Hokama and Johnson.**

**ABSENT:     None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:     Recommending REFERRAL of communications to the Council Chair for the term beginning January 2, 2009.**

CHAIR MOLINA: And Members, for the record all of the other items in the Land Use Committee for this term have been automatically referred to the next Council so I just wanted to make you aware of that. So, Members, I believe that --

MS. NAKATA: Mr. Chair?

CHAIR MOLINA: --concludes our order of business today. Staff.

MS. NAKATA: Just for clarification, there were two items that will be automatically filed.

COUNCILMEMBER VICTORINO: There's two, yeah.

MS. NAKATA: LU-17, relating to the land zoning map for Maui Meadows, as well as LU-28, relating to an inquiry on a Conditional Permit for Hale Alana Vacation Rental in Kihei.

CHAIR MOLINA: Okay.

MS. NAKATA: There is no pending legislation in connection with that item.

CHAIR MOLINA: And thank you for reminding the Chair of that. We had two automatic filings, Land Use Item 17, which is a land zoning map for Maui Meadows, and Land Use Item 28, which is a Conditional Permit for the Hale Alana Vacation Rental in Kihei. So just to make you aware those two have been automatically filed. The rest of the items are automatically referred for future consideration. So anyway, any other considerations for the Chair to relay to the Committee? Okay, seeing none.

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Then I believe that is it, Members. We took all of nine minutes to do our business today. I believe this is the shortest Land Use Committee meeting for the term. As the Chair of the Committee it was an honor to serve you and I want to thank all of you for your hard work this whole term. We had a lot of items that we dealt with...got through, and all of you worked so hard. I want to extend my thank you's to all of you, to the Staff, Committee Analyst Carla Nakata, as well as Committee Secretary, although she's not here today, Tammy Frias, and also to you, Ms. Balala. I know you worked very hard in the other committees as well. To the Planning Director, Mr. Hunt, thank you for enduring a lot of long meetings and some very, very tough and complex issues, and of course, our illustrious Corporation Counsel, Mr. Giroux. Thank you for providing the legal counsel that we need at various times during these very, very important meetings.


So with that being said, any other announcements? Member Baisa.

COUNCILMEMBER BAISA: Yes, illustrious Chair. Thank you very much for your leadership throughout a very difficult time and some very tough land use decisions and I want to compliment you on your being able to stay with it, keep your cool, and keep us on track. So I'd like to thank you very, very much for being a good leader in this Committee. You certainly did a yeoman's job. Thank you.

CHAIR MOLINA: Thank you very much, Member Baisa. Well, the, the work is not possible without everyone working together so, you know, I think we all need to share in, you know, doing a successful job this term. So, again, if there's any...no other announcements, the Chair would like to thank you very much. My goodness, ten minutes, I think we've had longer breaks than this particular meeting. So have a great and wonderful rest of the afternoon and we'll look forward to seeing you folks at our next Committee meeting. I believe we have another...we have a...I believe a Council meeting this Friday, Members, so December 5<sup>th</sup> at 9:00 a.m. So with that being said it is ten minutes to the hour of two o'clock. This Land Use Committee meeting for Wednesday, December 3<sup>rd</sup> is now adjourned. . . .(gavel). . .

**ADJOURN:** 1:50 p.m.

APPROVED:

  
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MICHAEL J. MOLINA, Chair  
Land Use Committee

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Transcribed by: Clarita Balala