

HOUSING AND HUMAN SERVICES COMMITTEE

MINUTES

January 27, 2003

Council Chamber

CONVENE: 1:30 p.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember Michael J. Molina, Vice-Chair
Councilmember Danny A. Mateo, Member

Councilmember G. Riki Hokama, Non-member (arrived at 1:49 p.m.)

EXCUSED: Councilmember Robert Carroll, Member
Councilmember Jo Anne Johnson, Member

STAFF: Shannon Alueta, Legislative Analyst
Carla Nakata, Legislative Attorney
David Raatz, Legislative Attorney
Clarita Balala, Committee Secretary
Pauline Martins, Committee Secretary
Kelly McGinnis, Executive Assistant to Councilmember Pontanilla
Morris Haole, Executive Assistant to Councilmember Carroll

ADMIN.: Edward S. Kushi, Jr., Deputy Corporation Counsel, Department of the
Corporation Counsel
Wayne Boteilho, Deputy Director of Planning
Milton Arakawa, Deputy Director of Public Works and Environmental
Management

OTHERS: Zeke Kalua, Executive Director, West Maui Taxpayers Association
Michelle Anderson
Zandra Amaral
Thomas Blackburn

PRESS: Mark Adams, Maui News

CHAIR PONTANILLA: . . . (*gavel*) . . . The Housing and Human Services Committee will come to order. At this time, I would like to introduce the committee members that are present here with us this afternoon. I'd like to introduce Councilperson Mike Molina, Councilperson Danny Mateo. Not here today is Councilman Bob Carroll, and also Councilperson Jo Anne Johnson. Both of them are excused. At this time, I would like to introduce the Administration personnel that is here with us this afternoon also. I

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would like to introduce Wayne Boteilho, Deputy Director, Planning Department, and also introduce Corporation Counsel Ed Kushi, Jr. I'd like to introduce to you the Council staff, Ms. Shannon Alueta, Ms. Clarita Balala, Ms. Pauline Martins and Mr. David Raatz.

Public testimony will be accepted for each item on the agenda. We have one item. Those wishing to testify should sign up at the secretary's desk. Testimony shall be limited to three minutes. An additional minute to conclude testimony may be granted subject to discretion of the Committee Chair. If testimony is incomplete, an additional three minutes will be given after all others have been heard. Testifiers are requested to state their name for the record and to indicate who they're representing. Welcome, Milton. Milton Arakawa is Deputy Director for Public Works.

Members, today we have one item on our agenda. The item is HHS-1 Establishment of Deadlines for Change in Zoning Applications with Affordable Housing Conditions to Require the Applicant to Develop Affordable Housing Within a Specific Time Period.

HHS-1: ESTABLISHMENT OF DEADLINES FOR CHANGE IN ZONING (CONDITIONAL ZONING) APPLICATIONS WITH AFFORDABLE HOUSING CONDITIONS TO REQUIRE THE APPLICANT TO DEVELOP AFFORDABLE HOUSING WITHIN A SPECIFIC TIME PERIOD

CHAIR PONTANILLA: Members, for your background, this matter came up during the discussion by the Budget and Finance Committee 2001. As your Chair, I'm interested in getting your input on the direction the Committee should take in this matter. I'm also anxious to hear from the members of the Administration to discuss their viewpoints, as well. But, before we begin our discussion, I would like to accept any public testimony. Anyone here wish to make a testimony? This time I would like to call on Zeke Kalua.

BEGIN PUBLIC TESTIMONY

MR. KALUA: Aloha everyone. My name is Ezekiel Kalua, Executive Director for the West Maui Taxpayers Association. Chair, before I begin I'd just like to welcome you to the Council. I know it's been a rough, long road for you that's actually just beginning. So bear in mind that it's worth it.

CHAIR PONTANILLA: Thank you.

MR. KALUA: I'm here today to speak on HHS-1 and I'm here to just give kind of a brief outline of what direction, I think, needs to be take. . .taken at this point. In West Maui right now there's over 3,000 affordable units that are still owed. There's a lot of people right now that are searching for housing that, quite frankly, isn't being made available at affordable cost. As many of you may recall, the headliner for the Maui News several days ago had to do with what they call the bush people, but only identified twelve people of the many that are homeless right now in West Maui. Some of you that were

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returning members from the Council of last year may have remembered the Kahana Sun debate that had come in front of you. And, it was in regards to Kahana Ridge development where the proprietor at that time had gone bankrupt. And, their affordable housing qualifications were not met after the final construction and final lot were completely sold. Betsill Brothers had opened LLC called Kahana Sun and proposed 12 out of 100 units that were going to be sold at \$167,000.00, where you have to make at least \$86,000.00 to qualify to purchase within the first 60 days. I don't know about anyone in this room, but I'm considered professional and I don't make \$86,000.00 a year. And, I'd be very willing to talk to anyone who is a professional that does make that and find out where they're working because that's got to be the job to have. At this point, it's never going to be an easy quest to provide affordable housing, but I feel whatever can be done in order to expedite the construction of and implementation of affordable housing needs to be addressed. Whatever formula that seems fair for the consumer, which in my case might be someone like me, may not necessarily agree with a developer even HUD considers fair. Nonetheless, we've got to take care of the people, otherwise, there won't be a Hawaii to have anymore.

Chair, could I ask for an additional three minutes since I am the only testifier?

CHAIR PONTANILLA: Sure.

MR. KALUA: Folks, I'd like to tell you a quick story. And it happens to do with someone that I know that's a professional that lived in West Maui for almost three years who entailed a girlfriend with a son and had to move out of their studio because it was no longer legally comfortable for them to be there. And, they happened to move to the area we know as Kahului where they paid half of the rent that they were paying for just a studio. It's because of the lack of affordable housing on that side of the island, which is why we can attribute to so many commuters that go over to West Maui to work. Because of the high economics that are produced in West Maui and South Maui, it's no mystery why people don't live there. The cost of living itself just in those areas is so ecstatic there's no way to survive, especially if you have one or two kids, and whether or not you're married has really not much to do on it, you know. And, standing before you is the man I speak of. Because I now am one of those statistics. I live in this area of Kahului and I gave up the area of Kahana to live here because I was not afforded affordable housing. And, I don't have a very expensive lifestyle so I'm sure the majority of you could relate to where I'm coming from. There's people that are in worse conditions than I am that are working two or three jobs that have really, really big problems and we need to work on that. This goes beyond pride. It goes beyond the common equalities that any man or woman should have. . .be they employed as a professional or not. Thank you.

CHAIR PONTANILLA: Thank you, Mr. Kalua. Any questions for Mr. Kalua, members?

COUNCILMEMBER MATEO: Mr. Chair? Thank you. Zeke, good afternoon. The 3,000 units that you referred to that you said were units lost. Okay. Do you know why they were lost?

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MR. KALUA: I couldn't point out exactly a hundred percent why they were, but I think there was a small example just in what I had relayed about Kahana Ridge. I believe of those 3,000 units, there was a small percentage that had come out of that equation. And, 3,000, mind you, isn't the exact number. I had the statistics. I just didn't have a chance to review them prior to the meeting.

COUNCILMEMBER MATEO: Okay. Thank you.

CHAIR PONTANILLA: Any other questions for Mr. Kalua? If not, thank you, Mr. Kalua.

MR. KALUA: Thank you.

CHAIR PONTANILLA: At this time I'd like to close the portion of. . .Michelle, you're going to testify?

MS. ANDERSON: Yes, please.

CHAIR PONTANILLA: Okay, fine.

MS. ANDERSON: Thank you, Mr. Chairman, Members. My name is Michelle Anderson. I'm Executive Assistant to Wayne Nishiki. I'm testifying on my own behalf, as a private citizen, who does have some experience in the affordable housing problem as our office has researched the issue quite extensively. I would suggest that, in the future, any time an affordable housing component is added to a project, that it be tied to the market-priced housing. In other words, it be built concurrently with whatever phasing they're doing the market-priced housing so that a developer who. . .say he's got three phases for market-priced housing. Each phase of that market-priced housing must conclude with a certain portion of affordable housing also being built. And, that in order to get the Certificate of Occupancy for his market-priced housing, he must have the affordable housing completed. That would be an incentive to do the affordable and the market-priced housing concurrently. And, anybody that has worked in affordable housing on the mainland, since that's about the only place we have really good examples to draw from, will tell you that what makes affordable housing affordable (if that's the right term) for a developer to participate in is that the infrastructure for the affordable housing is put in at the same time the market-priced housing is done. So, it really makes sense to do both at the same time. What we found in the past here, is that when an affordable housing component has been attached to a market-priced project, there were not specific time-lines attached to when they needed to do it. Now, I would argue that this could have been accomplished administratively by the Public Works Department by telling the developer until you get some market. . .some affordable housing done we're not going to approve the final on your market-priced housing. But, that apparently was never done. So, that's why we have so many outstanding affordable units that are owed to the County, because there was not that time-frame tied in to the. . .to the requirement. I think that a way you could take care of those backlogs is just to tell those

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developers who still owe us affordable housing that we're not going to give you anymore market-priced zoning entitlements until you take care of your. . .your affordable housing requirements that are due the County. There are quite a few developers on this list that are still active here in Maui County building market-priced housing. So, I think that's a doable thing.

CHAIR PONTANILLA: Michelle, three minutes.

MS. ANDERSON: Thank you.

CHAIR PONTANILLA: Thank you, Michelle. Any questions for. . .

COUNCILMEMBER MATEO: Mr. Chair?

CHAIR PONTANILLA: Councilperson Mateo.

COUNCILMEMBER MATEO: Thank you, Mr. Chair. Michelle, in the studies that your office has done, did your office also take a look at the possibility of pursuing the development of affordable housing as the first priority before the rest of the project actually is initiated as the incentive to get the affordable component done?

MS. ANDERSON: We didn't look at that specifically, Councilmember Mateo, because it's like the market-priced housing is the incentive to get them to do the affordable housing. And, the argument has always been until we make some money off the market-priced housing we can't do the affordable. But, as I said there are developers that are engaging in market-priced development right now that still owe us affordable housing. So, I think it'd be very easy to say to them until you do what is owed us from past projects, you can't do anymore projects.

COUNCILMEMBER MATEO: Thank you.

CHAIR PONTANILLA: Okay. Councilperson Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Michelle, you have off hand about how many developers owe affordable housing here on Maui? Just a rough number?

MS. ANDERSON: I'd say about 15.

COUNCILMEMBER MOLINA: 15.

MS. ANDERSON: But, I have to qualify that. Some of them may be out of business or may have sold off their project and are no longer a principal in the project. But, you know whenever you have affordable housing as a requirement of a project, it is. . .it's deeded onto the land. It runs with the title. So, whoever bought the property still. . .still has to do the affordable housing. It's just somebody needs to make them do it.

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COUNCILMEMBER MOLINA: Okay, thank you.

CHAIR PONTANILLA: Thank you. Any more questions for Michelle? There is no one else here to testify. I would like to close the portion as far as the testimony goes.

END OF PUBLIC TESTIMONY

CHAIR PONTANILLA: At this time I'd like to hear from the different Administrative representatives on their position on this matter.

MR. BOTEILHO: Thank you, Chair and Members. First of all, it's nice to be back, albeit on the other side of the room. My Director and I have met with the Mayor twice on this matter prior to this meeting and we are in full support of placing deadlines on conditional zoning affordable housing conditions. However, what path that will take, we do not know at this time. We just got into our office. The Mayor has asked us. . .asked the Planning Department to look at this matter. He has given us two months. And, we'll be doing that. We'll also be working closely with Director Lee of Housing and Human Concerns and we'll be. . .we'll be back to you on this. Thank you.

CHAIR PONTANILLA: Thank you, Mr. Boteilho. Mr. Arakawa.

MR. ARAKAWA: Thank you, Mr. Chair. Actually, I have nothing further to add to what Wayne Boteilho has mentioned. We certainly are willing to work with the Committee in coming up with affordable housing processing guidelines or rules or an ordinance, should the committee choose that route. And, we are certainly willing to make ourselves available to that end.

CHAIR PONTANILLA: Thank you, Mr. Arakawa. Members, any questions for both Mr. Arakawa and Mr. Boteilho? Member Molina.

COUNCILMEMBER MOLINA: Chairman, more of a question for Corporation Counsel. Maybe I'm looking more for clarification. It's my understanding that the developer of several hotels are required to have affordable housing guidelines. What is the law for a developer that, you know, creates a subdivision? What are. . .there is a law as to my understanding on the books. A developer who creates an affordable, not affordable, just a subdivision, they are also mandated to provide x number of affordable housing units much like that of a developer of a hotel?

MR. KUSHI: Mr. Chair, Member Molina. You're correct in that there is a chapter on our books entitled. . .regarding hotel-related developments. I think Section 2.94, which was created back in the early 90s and it applies only to hotel/motel type share projects. It does have a ratio. . .required ratio of one to four for every four units they had to put one affordable housing. As far as I know, in terms of a project that just comes in that has zoning, that is not in the SMA, and just wants to subdivide and provide housing,

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residential low-end, high-end, whatever you want, there is no specific requirements in our Maui County Code. And, let me qualify that. If it is a project where it needs a change of zoning, it comes to this body. It goes to Planning Commission first and then it comes to this body. This is the time where you can condition the type of housing as you've done before. If the project. . .and that's one way. . .if the project is an SMA and has zoning, the Planning Commission is the authority to set conditions. Again, when you say set conditions, again realize that it must be related to the public health, safety and welfare and affordable housing has been recognized as one of those elements. But, aside from that your questions specifically don't come to these bodies. In essence, there's nothing we can regulate.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR PONTANILLA: Anymore questions, members? Member Mateo.

COUNCILMEMBER MATEO: Thank you. Just to continue. . .continue on that. So if in fact, if conditions are set. Say a hundred. . .the developer is requesting to build a hundred units and out of the hundred units, ten of those units are identified as affordable units, those units. . . those affordable units are not built, there is nothing we can do to . . .towards the developer to make him either penalize him for not complying with that condition or hold future permits or whatever from them. What recourse do we have when they do not comply with conditions?

MR. KUSHI: Mr. Chair, Member Mateo. Again, there is something the County can do. Depend on the situation. If it's a re-zoning condition, a conditional zoning, I believe your ordinance provides that it will be enforceable by the County. Depending what the agreements says, too, now. Depending what the conditions are set forth in the ordinance. The worst case scenario for the developer, I would imagine, is that the zoning reverts back to what it was before. Then it would be a land use violation, technically. In the case of a SMA condition, if they don't fulfill a condition that requires affordable housing, they will be in violation of the SMA permit. There are enforcement mechanisms. And also, I should also add that a lot of times, in many cases, the developer of the land may have gone to the Land Use Commission, which again has some sanctions about breaching of conditions, which again, the County enforces. So it's not like we're without remedies. The question is enforcement. The question is how clear you make that agreement and the conditions stated. And, it may end back in that they don't fulfill it, the. . .the developer would have to go back to the process again.

CHAIR PONTANILLA: Anymore questions? Mr. Molina.

COUNCILMEMBER MOLINA: Chairman, did. . .was someone from the Human Concerns asked to comment also today.

CHAIR PONTANILLA: Yeah, we sent the agenda to the Human Concerns Department. I understand that Ms. Lee is not able to attend.

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COUNCILMEMBER MOLINA: And the Deputy wasn't asked to comment, also?

CHAIR PONTANILLA: Not to my knowledge.

MR. BOTEILHO: Mr. Chairman, if I may?

CHAIR PONTANILLA: Mr. Boteilho.

MR. BOTEILHO: Yeah, I spoke to Director Lee today and she basically said that she would wish to yield to Planning Department at this point because she has a firm position on this and we don't. So she didn't want to come in here and be . . .saying all kind of things that we would like to do differently later. Thank you.

COUNCILMEMBER MOLINA: Thank you.

CHAIR PONTANILLA: Thank you. I have a question for Mr. Kushi. Serving on the Planning Department. . .Planning Commission a year and a half, there was a provision that we looked at as far as affordable units being provided to the County and the ratio was one to ten. Is this still in effect?

MR. KUSHI: Mr. Chair. One to ten. Was that recommended by the Department of Human Concerns?

CHAIR PONTANILLA: I believe so.

MR. KUSHI: Yeah, Mr. Chair. My understanding dealing with the Department and with the past Council is that I believe the former Administration and Ms. Lee should be here to correct me, I believe the former Administration had attempted to pass a affordable housing ordinance of some sort and in that there was a 10 percent requirement straight across no matter what. That never occurred. Then the Administration meet became . . .used that 10 percent figure as its policy in requesting. . .in answering bodies like the Planning Commission for recommendations. And, I believe they went to the Planning Commission and they are requested for comments, I believe, on all projects. I think that's the response that they made. But again, it's their recommendation to the Planning Commission which makes the ultimate decision.

CHAIR PONTANILLA: Thank you, Mr. Kushi. Anymore questions? Members, how should we pursue this matter? Mr. Mateo.

COUNCILMEMBER MATEO: Mr. Chair, what was the Chair's intent?

CHAIR PONTANILLA: The Chair's intent was to, if there was no objections, I'd like to defer this to future meetings and continue to process as far as trying to get the Planning

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Department on board. According to Mr. Boteilho, it's going to take them two months to have something for us.

COUNCILMEMBER MATEO: Thank you, Mr. Chair. I can support that. In addition, Mr. Chair, I think Mr. Boteilho had indicated his discussion with Ms. Lee earlier and she indicated that she did have some strong positions on the matter itself. In our communications, Mr. Chair, we have letters from October 2001 asking Ms. Lee to provide those recommendations and concerns to us and we still are not in receipt of those recommendations. And because we have a new Administration, because we have new players, I think it will be more appropriate to give them the opportunity to provide their recommendations and their comments on the item so we may be able to take a look at it and develop our own firm decisions on possible recommendations.

CHAIR PONTANILLA: Thank you, Member Mateo. Member Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Maybe a question for Corporation Counsel. Are there situations when we're required to use federally established median income or state established median income for basing price of affordable housing? What would be some situations?

MR. KUSHI: Mr. Chair, Member Molina. Was the question when do we use those standards?

COUNCILMEMBER MOLINA: Yeah, what are. . .

MR. KUSHI: You're talking about the HUD standards?

COUNCILMEMBER MOLINA: Yeah, HUD versus the County guidelines. I mean how was . . . maybe I think that question might have been more suited for the Director of Human Concerns. I'm just asking off the wall if you have some idea. I'm trying to figure out when is it appropriate. How do they make that judgment to use HUD guidelines versus County guidelines?

MR. KUSHI: Member Molina, I'm not sure. I think Ms. Lee would be best to answer that.

COUNCILMEMBER MOLINA: Okay.

MR. KUSHI: I know the HUD guidelines are set for State projects. There's still a State overseeing body, I guess.

CHAIR PONTANILLA: Excuse me, gentlemen. I just was informed that today's agenda is basically trying to get a specific time period. So, if we can stick to that agenda?

COUNCILMEMBER MOLINA: Okay, appreciate it. I'll ask that question at a more appropriate time.

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CHAIR PONTANILLA: Thank you, Member Molina. Any more questions for the gentlemen up in the front here?

COUNCILMEMBER MOLINA: Question, Chairman.

CHAIR PONTANILLA: Member Molina.

COUNCILMEMBER MOLINA: It's my understanding with the prior Planning Director and Administration, I guess, certain colleagues on. . .some of my colleagues on the prior term had requested answers from the Planning Department. Maybe, Mr. Boteilho, if you could. . .some of the questions that were being asked from some of my colleagues in the last term; they claimed there was no response given from the Planning Department. Can I get assurances from you that you folks will do your best to respond to any concerns with regard to affordable housing?

MR. BOTEILHO: Yes, because my boss gave me too much to do so. (laughter)

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR PONTANILLA: For your information, Member Molina, I think Grant Chun made a response in regards to the letters that were sent by the former. . .not the former, yeah, former Councilperson from Kahului indicating that they would. . .they agreed to the contents of the HHS-1.

COUNCILMEMBER MOLINA: Okay. Are these in the binder currently right now?

CHAIR PONTANILLA: Yes.

COUNCILMEMBER MOLINA: Okay. Thank you. That's the January 29, 2002 correspondence. Okay. Thank you, Mr. Chairman.

CHAIR PONTANILLA: Any more questions? If not, this is the only item that we have on the agenda. If there's no objections, I'd like to defer this matter to future meetings.

COUNCILMEMBER MOLINA: No, no objections.

CHAIR PONTANILLA: Thank you. Let's see. At this time, I would like to call the meeting adjourned. . . . (gavel) . . .

ACTION: DEFER PENDING FURTHER DISCUSSION

ADJOURN: 2:00 p.m.

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APPROVED:


JOSEPH PONTANILLA, Chair
Housing and Human Services
Committee

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Transcribed by: Clarita Balala