

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

September 2, 2005

**Committee**  
**Report No.**

05-130

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on February 2, 2005 and August 3, 2005, makes reference to the following:

1. County Communication No. 01-165, from the former Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK (GC) TO MULTI-FAMILY FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII".

The purpose of the proposed bill is to change the Community Plan designation from Park to Multi-Family for approximately 1.602 acres situated at Kaanapali, Lahaina, Maui (identified as TMK: (2) 4-4-08:016), as requested by Curtis DeWeese, on behalf of SunStone Realty Partners, LLC (the applicant). Approval of the proposed Community Plan Amendment would facilitate the development of a five-lot single-family subdivision and related improvements on the subject property.

2. County Communication No. 05-32, from the Planning Director, transmitting the Maui Planning Commission's recommendations relating to the draft bill identified as Exhibit "1" to Resolution No. 04-101, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII".

The purpose of the draft bill is to conditionally change the zoning for the subject property from A-2 Apartment District to R-3 Residential District.

Your Committee notes that the prior Council's Planning and Land Use Committee reported on this matter through Committee Report No. 04-107, which recommended that

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(1) a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN AND LAND USE MAP FROM PARK (GC) TO SINGLE-FAMILY FOR PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII" be passed on first reading and ordered to print; and (2) a proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A BILL TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII" be adopted. At its meeting of July 9, 2004, the Council adopted Committee Report No. 04-107 (Bill No. 45 (2004) and Resolution No. 04-101). The purpose of Bill No. 45 is to approve a Community Plan Amendment from Park (GC) to Single-Family, to facilitate the development. The purpose of the draft bill referred to the Maui Planning Commission by Resolution No. 04-101 is to change the zoning from A-2 Apartment District to R-3 Residential District. The zoning change would establish a land-use designation consistent with the Community Plan, as amended, and the proposed single-family subdivision.

By correspondence dated July 9, 2004, the Chair of the Committee transmitted correspondence dated July 6, 2004, from Isaac Hall, submitting comments on behalf of the Board of Directors of the Association of Apartment Owners of the Kaanapali Royal.

Your Committee further notes that SunStone Realty Partners VIII LLC is the current owner of the subject property. Your Committee is in receipt of a title policy reflecting that SunStone Realty Partners VIII LLC acquired the property by limited warranty deed dated October 27, 2003, from H.F.J. Co., Ltd. Your Committee is informed that the applicant, SunStone Realty Partners, LLC, is the managing member of SunStone Realty Partners VIII LLC.

Your Committee further notes that the Maui Planning Commission held a public hearing and meeting on the proposed Change in Zoning on September 28, 2004.

Your Committee further notes that the Maui Planning Commission, after reviewing the Department of Planning's Memorandum dated September 15, 2004, voted to recommend approval of the draft Change in Zoning bill.

At its meeting of January 21, 2005, the Council referred County Communication No. 01-165 to your Land Use Committee (County Communication No. 05-13).

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By correspondence dated January 25, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel transmit a proposed bill incorporating a minor technical revision.

By correspondence dated January 27, 2005, the Department of the Corporation Counsel transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII".

At its meeting of February 2, 2005, your Committee met with the Planning Director; the Planning Program Administrator, Current Planning Division, Department of Planning; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; the Chief of Litigation, Department of the Corporation Counsel; a Deputy Corporation Counsel; and Michael Lam, Esq., the applicant's attorney.

Your Committee received public testimony from Mr. Lam, who noted his presence to address any questions from Committee members.

The Planner provided a brief overview of the application.

The Chief of Litigation provided the historical background for the Change in Zoning request, noting that this step is the final piece of a legislative package to ensure the property is developed as single-family residential units subject to conditions. She reviewed the proposed conditions.

Your Committee discussed the status of the lawsuit, which remains pending until official action is taken on the Change in Zoning application.

Your Committee considered refining the condition relating to a 28-foot height limitation for buildings, noting concerns that the use of fill might impact view planes. Your Committee voted to recommend that Condition No. 2 be revised to read, "That the height of all buildings shall not exceed two stories nor twenty-eight feet above the existing or finished grade, whichever is lower."

Your Committee also discussed incorporating a condition that would restate the existing law and emphasize that transient or short-term rentals are not a permitted use in

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the R-3 Residential District. Your Committee voted to recommend that such a condition be added.

Your Committee considered adding a condition that would state that the County would interpret the subdivision, consisting of five lots and two driveways, to be a development and subject to a Special Management Area (SMA) major permit. Your Committee further discussed the SMA assessment process, expressing concerns that the public be permitted a further opportunity to comment in connection with the SMA review. Your Committee voted to recommend that a new condition be incorporated which provides, "If there are more than two single-family residences, it is the County's interpretation that this would be a development and not exempt from SMA review."

Your Committee voted to recommend passage of the revised proposed bill, recordation of a unilateral agreement reflecting the applicable zoning conditions, and filing of the communications.

By correspondence dated February 4, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bill to incorporate the revisions requested by your Committee at its February 2, 2005 meeting, to contain the following five conditions:

- “1. That no more than five single-family residences shall be constructed.
2. That the height of all buildings shall not exceed two stories nor twenty-eight feet above the existing or finished grade, whichever is lower.
3. That the subdivision shall be accessed by no more than two driveways.
4. If there are more than two single-family residences, it is the County's interpretation that this would be a development and not exempt from SMA review.
5. Transient vacation rentals are not a permitted use in the R-3 Residential District.”

By correspondence dated February 7, 2005, your Committee received a revised proposed bill from the Department of the Corporation Counsel, incorporating your Committee's requested revisions.

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By correspondence dated February 18, 2005, the Chair of your Committee transmitted the following correspondence: (1) correspondence dated February 11, 2005, from Michael Lam, Esq., Case Bigelow & Lombardi, to Deputy Corporation Counsel Jane Lovell, requesting revisions to the proposed conditions recommended for approval by your Committee at its February 2, 2005 meeting; and (2) correspondence dated February 14, 2005, from Deputy Corporation Counsel Jane Lovell to Michael Lam, Esq., Case Bigelow & Lombardi, responding that she is not authorized to negotiate changes to your Committee's proposed conditions.

By correspondence dated July 14, 2005, Michael Lam, Esq., Case Bigelow & Lombardi, provided your Committee with the applicant's objections to the conditions and the reasons for its objections.

By correspondence dated July 22, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel be prepared to advise your Committee of the merits of the applicant's objections.

At its meeting of August 3, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Public Works and Environmental Management; the Chief of Litigation, Department of the Corporation Counsel; a Deputy Corporation Counsel; Curtis DeWeese, SunStone Realty Partners, LLC; Michael Lam, Esq., Case Bigelow & Lombardi, applicant's attorney; Scott Radovich, Esq., Schneider Tanaka Radovich Andrew & Tanaka, applicant's attorney; and Gwen Hiraga, Munekiyo & Hiraga, Inc., applicant's consultant.

There was no public testimony.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the Planning Director; a Planner, Department of Planning; the Chief of Litigation, Department of the Corporation Counsel; and a Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session.

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Mr. Lam provided a brief presentation outlining the reasons for the applicant's request that your Committee's prior recommendation be reconsidered, referring to his written testimony dated July 14, 2005. Mr. Lam noted that the two main conditions of concern are Condition Nos. 2 and 4 and explained the bases for concern.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to reconsider its recommendation to pass on first reading the proposed Change in Zoning bill, as amended, to record the unilateral agreement, and to file the communications.

Your Committee further considered the revised proposed Change in Zoning bill transmitted by the Department of the Corporation Counsel on February 7, 2005.

Your Committee recommended that the following condition be deleted:

- "4. If there are more than two single-family residences, it is the County's interpretation that this would be a development and not exempt from SMA review."

The Planning Director commented on Condition No. 2, recommending consistency with the language in the Maui County Code (MCC). He noted a preference for specifically referencing how the height would be measured, citing Section 19.04.040, MCC. However, he also noted that the condition is redundant of the Code provision, apart from the 28-foot limitation.

The Chief of Litigation noted that the 28-foot height limitation originated with the design guidelines imposed on the development. The condition was earlier drafted to ensure that the height limitation was not later altered. She also noted that the applicant had proposed, as an alternative, including the definition of "height" found in MCC Section 19.04.040 in the condition, which might resolve the conflict.

The Deputy Corporation Counsel noted that "natural or finish grade" rather than "existing or finished grade" would be more consistent with the Maui County Code.

Your Committee recommended that proposed Condition No. 2, relating to the height limitation for buildings, be revised as follows:

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- “2. That the height of all buildings shall not exceed two stories nor twenty-eight feet. “Height” means the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is lower.”

Your Committee further recommended that proposed Condition No. 3 be revised to specify that the limitation on number of driveways applies to Kekaa Drive, as follows:

- “3. That the subdivision shall be accessed by no more than two driveways off of Kekaa Drive.”

Your Committee recommended that the revised proposed Change in Zoning bill be further revised to incorporate the various changes to the conditions of zoning.

Your Committee voted to recommend passage of the further revised proposed Change in Zoning bill, recordation of a unilateral agreement reflecting the applicable zoning conditions, and filing of the communications.

Your Committee is in receipt of a further revised proposed Change in Zoning bill from the Department of the Corporation Counsel, incorporating your Committee’s revisions.

Your Committee is in receipt of an agreement entitled “Unilateral Agreement and Declaration for Conditional Zoning” executed by SunStone Realty Partners VIII LLC.

Your Land Use Committee **RECOMMENDS** the following:

1. That Bill No. \_\_\_\_\_ (2005), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM A-2 APARTMENT DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED ALONG THE WESTERLY SIDE OF KEKAA DRIVE, KAA NAPALI, LAHAINA, MAUI, HAWAII”, be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**;
2. That the County Clerk **RECORD** the “Unilateral Agreement and Declaration for Conditional Zoning”;

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3.     That County Communication No. 01-165 be FILED; and
4.     That County Communication No. 05-32 be FILED.

Adoption of this report is respectfully requested.

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**ROBERT CARROLL** **Chair**

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**DAIN P. KANE** **Member**

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**JOSEPH PONTANILLA** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**MICHELLE ANDERSON** **Member**

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**MICHAEL J. MOLINA** **Member**

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**G. RIKI HOKAMA** **Member**

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**CHARMAINE TAVARES** **Member**

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**JO ANNE JOHNSON** **Member**