

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

November 18, 2005

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

05-157

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

Chair and Members:

Your Land Use Committee, having met on October 19, 2005 and November 2, 2005, makes reference to County Communication No. 05-234, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Austin Swartz, on behalf of the Kihei Seventh Day Adventist Church, for a District Boundary Amendment from Agricultural District to Urban District to construct and operate a church and preschool on 5.773 acres in Kihei, Maui (TMK: (2) 3-9-01:149).

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT AND A-1 APARTMENT DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Austin Swartz, on behalf of the Kihei Seventh Day Adventist Church, for a Change in Zoning from Agricultural District to OS-2 Open Space District (1.433 acres) and A-1 Apartment District (4.340 acres) to construct and operate a church and preschool in Kihei, Maui (TMK: (2) 3-9-01:149).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on June 28, 2005. The minutes of the hearing reflect that the Maui Planning Commission questioned the appropriateness of an application for A-1 Apartment District zoning for the proposed church use. The Planner, Department of Planning, advised that the Community Plan designation is Multi-Family, and that a

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

November 18, 2005  
Page 2

**Committee**  
**Report No.**     05-157

Change in Zoning to P-1 Public/Quasi-Public District would have required a Community Plan Amendment to Public/Quasi-Public, triggering the need for an environmental assessment. She further noted that because churches are identified as a special use in Residential Districts, the applicant chose this route as the easier one.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JUNE 28, 2005 MEETING" (Department's Report), and the conclusions and recommendation presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION JUNE 28, 2005 MEETING", voted to recommend approval of the application, without conditions, on June 28, 2005.

By correspondence dated August 29, 2005, the Planning Director transmitted the relevant portion of the minutes of the Maui Planning Commission's June 28, 2005 meeting.

By correspondence dated October 5, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed Change in Zoning bill to correct a typographical error and to supplement the property description.

By correspondence dated October 7, 2005, the Chair of your Committee requested that Rodney Haraga, Director, State Department of Transportation (State DOT), provide comments on the revised Traffic Impact Analysis Report for the project.

By correspondence dated October 7, 2005, the Chair of your Committee requested that August Percha, the project architect, provide the following: (1) any response to concerns expressed by the Office of Hawaiian Affairs (OHA) by correspondence dated January 10, 2005; and (2) clarification on the plot plan he prepared.

By correspondence dated October 7, 2005, the Chair of your Committee transmitted a copy of correspondence dated January 28, 2004 from August Percha to Rodney Haraga, Director, State DOT, which was referenced in Exhibit "16" to the Department's Report, regarding various traffic, noise, drainage, and construction matters.

By correspondence dated October 10, 2005, the Department of the Corporation Counsel provided a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO

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

November 18, 2005  
Page 3

**Committee**  
**Report No.**     05-157

CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT AND A-1 APARTMENT DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII”, incorporating the requested revisions.

By correspondence dated October 12, 2005, August Percha responded that a response to OHA’s comments had not been pursued due to the State Historic Preservation Division’s determination that no historic properties would be affected. He also confirmed that the area for which the OS-2 Open Space District zoning is sought is 1.433 acres.

By correspondence dated October 12, 2005, Ferdinand Cajigal, District Engineer, Highways Division, Maui District Office, State DOT, provided comments on the Supplemental Traffic Impact Analysis Report, which included an analysis of the Piilani Highway and Kulanihakoi Street intersection.

By correspondence dated October 17, 2005, the Chair of your Committee transmitted a copy of a bound application booklet from August Percha for the Special Management Area Use Permit, Change in Zoning, Land Use Commission Boundary Change, and Maui County Special Use Permit.

By correspondence dated October 18, 2005, August Percha provided your Committee with photographs of the site, a use matrix for the proposed church and preschool, and a map of the area.

At its meeting of October 19, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; two Deputy Corporation Counsel; Charlene Shibuya, Assistant District Engineer/Construction Engineer, Maui District, Highways Division, State DOT; Austin Swartz, Building Committee Chair, Kihei Seventh Day Adventist Church (the applicant); Tim Nelson, Pastor, Kihei Seventh Day Adventist Church; and August Percha, the project architect.

Your Committee received public testimony from one individual, who noted concerns that the proposed uses made it more appropriate for the property to be designated Public/Quasi-Public. The testifier also asked whether there should be some means to require that appropriate land use designations again be considered if the property is sold or used in a different fashion than proposed. The testifier further noted

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

November 18, 2005  
Page 4

**Committee**  
**Report No.**     05-157

that he had not seen any referenced improvements to existing roadways or easements, and questioned whether that prompted concerns.

Due to a shortage of meeting time, your Committee deferred the matter pending further discussion.

At its meeting of November 2, 2005, your Committee met with the Planning Program Administrator, Current Planning Division, Department of Planning; the Deputy Director of Public Works and Environmental Management; the Corporation Counsel; Charlene Shibuya, Assistant District Engineer/Construction Engineer, Maui District, Highways Division, State DOT; Austin Swartz, Building Committee Chair, Kihei Seventh Day Adventist Church; Tim Nelson, Pastor, Kihei Seventh Day Adventist Church; and August Percha, the project architect.

Mr. Swartz informed your Committee that the Kihei Seventh Day Adventist Church has been having its services in various public locations for 15 years now. The members would like to have their own Church building, which would allow for a preschool, community outreach, cooking and health-related classes, and Bible study.

Mr. Percha gave an overview of the project site layout, and displayed a poster board of the site plan and a poster board of architectural renderings.

The Planning Program Administrator provided a brief background on the application, noting that the Maui Planning Commission had deferred action on the Special Management Area application and the Special Use Permit application until the Council takes action on the subject request.

Your Committee received public testimony from six individuals, all of whom are affiliated with the Church (four members, the Pastor, and the applicant) and all of whom support the application. The testifiers noted their desire for a place to worship that they can call their own. The applicant also noted that a church and related preschool are considered accepted special uses in Residential Districts.

Your Committee discussed issues relating to drainage and the proposed retention ponds. Mr. Percha noted that an east and a west surface retention ponds are planned. He explained that the project involves 18,000 cubic feet of post-development runoff, while the combined total of the retention ponds is 33,000 cubic feet, allowing a good safety

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

November 18, 2005  
Page 5

**Committee**  
**Report No.**      05-157

margin for water retention. He further noted that flooding as a result of this project is not a problem for adjacent property owners, as the properties slope away from one another.

The Deputy Director noted that Liloa Drive ends at or near the subject property, without crossing Kulanihako'i Gulch. He also informed your Committee that the existing roadway is built on the mauka side of the North-South Collector corridor, which makes space available for the bike path/greenway on the makai side.

Your Committee discussed whether a preschool qualifies as a special use in Residential Districts, or whether it might constitute a permitted use under Section 19.08.020(D) of the Maui County Code (MCC), relating to Residential Districts. Your Committee noted that the preschool would not be located in a private home and, therefore, questioned whether it appropriately falls within the special use category noted in Section 19.08.030(B), MCC. The Planning Program Administrator informed your Committee that a preschool is not included as a permitted use under Section 19.08.020(D). Furthermore, the proposed preschool would have more than eight children and, therefore, would also not qualify as a permitted use under Section 19.08.020(I). However, "churches together with accessory buildings" are specified as special uses.

The Corporation Counsel advised your Committee that it appears that the Department of Planning characterized the overall project as a church use in its analysis. He noted that the site plan, for example, shows that while a preschool is going to be part of the proposed use, it will only be part of one wing of a larger building, which will also include a hall, administrative facilities, a lobby, and a worship sanctuary. Even though the project may have multiple uses, the Department of Planning will evaluate the best overall characterization of the project. In this case, the project involves a fairly modest-sized facility, with the uses all planned to occur within the same connected structure. He further noted that Title 19, MCC, does not have a definition of "church". Under Chapter 19.08, MCC, "churches together with accessory buildings" are declared special uses in the Residential Districts. The Corporation Counsel opined that the Department of Planning appears to have concluded that the project fits within the special use category for churches.

Ms. Shibuya provided your Committee with a historical perspective on left-turn restrictions at Kulanihako'i Street. She noted that a refuge lane provides some relief, although a strict analysis will show that the level of service is poor for left-turn movements. At this time, the State views the intersection as functioning. While the State

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

November 18, 2005  
Page 6

**Committee**  
**Report No.**     05-157

remains concerned about cumulative impacts, this project's actual contribution to the level of service for left-turn movements is so small that it would be difficult to find a rational nexus for a signalization requirement or other such improvements.

Mr. Swartz informed your Committee that the preschool would be open to the public and is designed to accommodate 36 children. He estimated that about 6 children would be from the Church's own congregation, with the rest from the community generally. Your Committee acknowledged the need for preschools in the area.

Mr. Percha noted that the project area is 5.773 acres, approximately 2.3 of which would be impacted with grading. Your Committee discussed the depth of grading. Mr. Percha indicated that the embankment depicted in the site photographs would be retained, as well as a 15-foot buffer between the proposed parking area and the back yard, thereby retaining the existing yard fence and landscaping. If blue rock is encountered, plans would be altered so that blasting is not necessary.

Your Committee voted to recommend passage of the proposed District Boundary Amendment bill and the revised proposed Change in Zoning bill, and filing of the communication.

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

1. That Bill No. \_\_\_\_\_ (2005), attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That Bill No. \_\_\_\_\_ (2005), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT AND A-1 APARTMENT DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
3. That County Communication No. 05-234 be FILED.

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

November 18, 2005  
Page 7

**Committee**  
**Report No.** 05-157

Adoption of this report is respectfully requested.

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

November 18, 2005  
Page 8

**Committee**  
**Report No.** 05-157

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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**