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Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 19, 2013

Mr. Brett Davis, Planner
Chris Hart & Partners, Inc.
115 N. Market Street
Wailuku, Hawaii 96793

Dear Mr. Davis:

SUBJECT: CHANGE IN ZONING FOR GRAYMARK WAIALE ROAD ASSOCIATES, LLC (WAILUKU) (LU-37)

I am writing to request that you advise the Maui County Council's Land Use Committee of Graymark Waiale Road Associates, LLC's intentions concerning its Change in Zoning application.

The application has been pending before a Council committee since February 2010. My understanding is that in June 2010, and again in about June 2012, the Department of Planning requested information concerning whether the equipment dealer on the property is a legal nonconforming use. I have enclosed a copy of two pieces of correspondence from the Department of Planning concerning this issue.

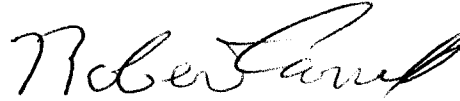
The Committee has not scheduled this matter pending resolution of the issue.

I would appreciate receiving your response by **Friday, March 1, 2013**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Mr. Brett Davis
February 19, 2013
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Should you have any questions, please contact me or the Committee staff (Carla Nakata at 270-7659, or Clarita Balala at 270-7668).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Carroll". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

ROBERT CARROLL, Chair
Land Use Committee

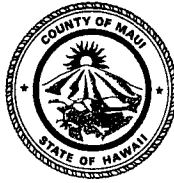
lu:ltr:037a01:cmn

Enclosures

cc: Brian Heckman, Graymark Waiale Road Associates, LLC
William Spence, Planning Director
Jeffrey Dack, Planner, Department of Planning

LU-37 CN

CHARMAINE TAVARES
Mayor
KATHLEEN ROSS AOKI
Director
ANN T. CUA
Deputy Director



RECEIVED

2010 JUN 25 AM 11:46

COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 25, 2010

RECEIVED
OFFICE OF THE MAYOR
COUNTY COUNCIL
10 JUN 28 AM 8:46

Honorable Charmaine Tavares
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Charmaine Tavares 6/26/10
Mayor Date

For Transmittal to:

Honorable Gladys C. Baisa, Chair
and Members of the Land Use Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Baisa and Members:

SUBJECT: CHANGE IN ZONING FOR GRAYMARK WAIALE ROAD ASSOCIATES, LLC (WAILUKU) (CIZ 2006/0014) (LU-37)

The Department of Planning (Department) has reviewed your letter dated May 4, 2010. In it you ask the Department to clarify the intent of Condition No. 2 and if there are presently any uses on the property which would be subject to its requirements to obtain a County Special Use Permit.

I apologize for the delay in responding to your request. In summary, the intent of Condition No. 2 is to provide a means by which the County can provide protections for the residentially zoned land adjoining the site from impacts which industrial uses can have on residences. This is addressed more fully on page 14 of the Department's Report to the Planning Commission. That discussion is part of an analysis of how the project can, with mitigations such as this condition, be considered consistent with various applicable provisions of the Wailuku-Kahului Community Plan. Specifically, Condition No. 2 is intended to address a way the project can achieve consistency with the Community Plan's Environment objective and policy no. 8. That objective and policy and the related discussion is excerpted from the Staff Report as found in Attachment A to this letter.

You specifically requested an explanation of the intent, and that the Department suggest clarifying wording for, the phrase "until such time that there is no longer any residentially zoned land within 150 feet of the property which is not committed to use as a drainage facility." Page 14 of the Department's Report refers to providing protections through a "possible approach [that] would be to require interim discretionary review of uses of the site". The intent of the cited phrase in the condition is to define the parameters of adjoining zoning which would limit the applicability of the recommended requirement for a Special Use Permit, including a

Honorable Charmaine Tavares, Mayor
For Transmittal to:
Honorable Gladys C. Baisa, Chair
June 25, 2010
Page 2

sunset to the requirement. The subject property and the adjoining lands on the west side of Waiale Road are zoned residential. However, immediately to the south is the Spreckels Ditch and next to that is a relatively large area dedicated to drainage for part of the Kehalani Project District. The condition's intent is to provide the protections of a Special Use Permit to nearby residentially zoned land available for use as residences. If and when the zoning of such nearby lands might change to non-residential, such as to the M-1 District, the protections of a Special Use Permit would no longer apply.

The following alternative wording of the condition is offered as a means to clarify the application of parameters of adjoining zoning which would limit the applicability of the requirement for a Special Use Permit.

That, in order to meet provisions of the Wailuku-Kahului Community Plan, and to the satisfaction of the Department, uses which are permitted within the M-1 Light Industrial District but which are not permitted within the R-3 Residential District and which are not conducted wholly within a completely enclosed building shall be established only upon the approval of a County Special Use Permit. Such County Special Use Permit shall only be required for so long as there remains, within 150 feet of the property, any residentially zoned land on the west side of Wailale Road which is not committed to use as drainage facilities or the Spreckels Ditch.

You also specifically asked "are there any uses on the property that have already been established which 'are permitted within the M-1 Light Industrial District but which are not permitted within the R-3 Residential District and which are not conducted wholly within a completely enclosed building'?" You also requested that the Department explain whether the condition would apply to uses already established. Two (2) businesses on the site, a water distribution business and a bail bonds business, are conducted within a building and would not be subject to these terms of the condition. However, the equipment dealer has considerable outside storage, likely with related outside operations, and would be subject to these terms of the condition. The equipment dealer is not a permitted use within the R-3 Residential District. So unless the Applicant were able to submit adequate information for the Department to verify that it is a legal nonconforming use it would be subject to the County Special Use Permit requirements of the recommended condition. The Department has requested information from the Applicant regarding its use status.

Honorable Charmaine Tavares, Mayor
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June 25, 2010
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Thank you for your request and your consideration of the Department's response. Should further clarification be necessary, please contact Current Planning Supervisor Jeffrey Dack at Ext. 6275.

Sincerely,



KATHLEEN ROSS AOKI
Planning Director

Attachment

xc: Ann T. Cua, Deputy Planning Director
Clayton I. Yoshida, Planning Program Administrator
Jeffrey P. Dack, Current Planning Supervisor

KRA:JPD:sg

Project File
General File

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ATTACHMENT A

Excerpt from page 14 of the Department of Planning Report to the Maui Planning Commission July 14, 2009 Meeting regarding application of Graymark Waiale Road Associates, LLC for a Change in Zoning

ENVIRONMENT

Goal:

A clean and attractive physical and natural environment in which man-made developments or alterations to the natural environment relate to sound environmental and ecological practices, and important scenic and open space resources are maintained for public use and enjoyment.

Objectives and Policies

8. *Minimize noise, water and air pollution from industrial uses, electric power generating facilities and wastewater treatment plants.*

Discussion: Although the property and a number of the parcels nearby to the north are designated as Light Industrial in the Wailuku-Kahului Community Plan, they appear to have been zoned as Residential since the inception of County Zoning. The parcels to the immediate north are in residential use and appear to have been so for many years, most likely also since before the inception of County zoning. The subject property appears to be the primary non-residentially used parcel in this relatively small area designated as Light Industrial in the Community Plan.

The M-1 Light Industrial District allows a broad range of uses as permitted uses with no discretionary review by the Planning Commission (**Exhibit "40"**). Given the limited size of the site, major light industrial uses are clearly not likely to be developed, but some uses permitted in the Light Industrial District which could possibly be established at smaller scales could lead to some levels of "noise, water and air pollution", most likely noise.

Given that much land adjoining and nearby the property is still residentially zoned and residentially used, some of the permitted uses in the M-1 Light Industrial District could impact these residents. It is worthy to consider if and how these residential uses should be "protected" from the potential impacts of possible light industrial uses. A restriction in the range of allowed light industrial uses for an interim during which residential uses still adjoin or are nearby the property is one possible approach. Another possible approach would be to require interim discretionary review of uses of the site, or maybe some uses such as those not conducted wholly within a completely enclosed building. These considerations are the genesis of recommended condition no. 2. However, the applicant's consultant does not feel that such possible limitations are appropriate."

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



LU-37

KH

RECEIVED

2012 JUN -1 AM 10:10

COUNTY OF MAUI

OFFICE OF THE MAYOR

DEPARTMENT OF PLANNING

June 1, 2012

OFFICE OF THE
COUNTY COUNCIL

12 JUN -6 A9:40

RECEIVED

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Alan Arakawa 6/5/12
Mayor **Date**

For Transmittal to:

Honorable Robert Carroll, Chair
and Members of the Land Use Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Carroll and Members:

**SUBJECT: CHANGE IN ZONING FOR GRAYMARK WAIALE ROAD
ASSOCIATES, LLC (WAILUKU) (CIZ 2006/0014) (LU-37)**

The Department of Planning (Department) has reviewed your letter dated February 9, 2012. In it you ask the Department to "please provide the Land Use Committee with an update on the status of the subject property's use, and the requirement, if any, for a County Special Use Permit pursuant to Condition 2 of the proposed bill."

I apologize for the delay in responding to your request. The uses on the site are the same as they were when the Department sent a letter to the Land Use Committee on June 25, 2010 in response to questions at that time. The uses include a water distribution business and a bail bonds business conducted within a building, and an equipment dealer which has considerable outside storage, likely with related outside operations.

Condition No. 2 of the proposed bill states:

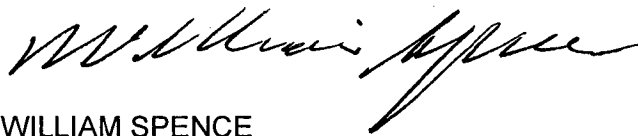
That, in order to meet provisions of the Wailuku-Kahului Community Plan, and to the satisfaction of the Department, uses which are permitted within the M-1 Light Industrial District but which are not permitted within the R-3 Residential District and which are not conducted wholly within a completely enclosed building shall be established only upon the approval of a County Special Use Permit until such time that there is no longer any residentially zoned land within 150 feet of the property which is not committed to use as drainage facilities.

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For Transmittal to:
Honorable Robert Carroll, Chair
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Page 2

As mentioned in the June, 2011 letter, the equipment dealer is not a permitted use within the R-3 Residential District. Therefore, unless the Applicant were able to submit adequate information for the Department to verify that it is a legal nonconforming use it would be subject to the County Special Use Permit requirements of the recommended condition. Planning consultants for the Applicant were invited in July 2010 to provide the Department with evidence which would demonstrate that the equipment dealer is a legal nonconforming use on the site. We have inquired similarly of the consultant again. However, as of the writing of this letter the Department has not received such evidence. We will be happy to update the Committee should the Department receive such evidence and determine that the equipment dealer is a legal nonconforming use.

Thank you for your request and your consideration and patience while awaiting the Department's response. Should further clarification be necessary, please contact Current Planning Supervisor Jeffrey Dack at Ext. 6275.

Sincerely,



WILLIAM SPENCE
Planning Director

xc: Michele Chouteau McLean, Deputy Planning Director (PDF)
Clayton I. Yoshida, Planning Program Administrator (PDF)
Aaron H. Shinmoto, Planning Program Administrator (PDF)
Jeffrey P. Dack, Current Planning Supervisor (PDF)

WRS:JPD:rm

Project File
General File

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