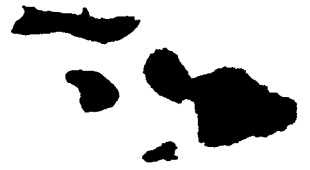
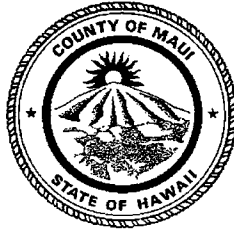


MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

RICHELLE M. THOMSON
First Deputy

LYDIA A. TODA
Risk Management Officer



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OFFICE OF THE
CORPORATION COUNSEL

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MEMORANDUM

June 23, 2021

MEMO TO: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

FROM: Michael J. Hopper, Deputy Corporation Counsel *mjh*
Department of the Corporation Counsel

SUBJECT: **WAILUKU REDEVELOPMENT AREA AND VARIANCES** (PSLU-24)

In response to your June 21, 2021 inquiry on PSLU-24, I have attached a copy of the Complaint as requested.

Regarding the status of the lawsuit, the Plaintiffs have filed a Motion for Summary Judgment and the County Defendants have filed a Motion to Dismiss. The parties have so far agreed to continue hearing dates based on the ordinance included with PSLU-24, however a hearing date on the motions is approaching and would require the parties to file responsive pleadings in July.

Once PSLU-24 is scheduled by the Committee, the parties would have the option to continue the lawsuit pending consideration of the ordinance by the Council. Our office believes adoption of the ordinance would resolve the issues in the lawsuit, as such considering and adopting the ordinance could avoid needless litigation.

If you have additional questions or would like to discuss further, please do not hesitate to contact me.

Attachment

cc: Moana Lutey, Corporation Counsel
Richelle Kawasaki, Deputy Corporation Counsel

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**Electronically Filed
SECOND CIRCUIT
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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

WAILUKU GOOD GOVERNMENT)	Civil No. _____
COALITION, an unincorporated association,)	(Other Civil Action)
and MAUI TOMORROW FOUNDATION, a)	
non-profit organization,)	COMPLAINT; SUMMONS
)	
Plaintiffs)	
vs.)	
)	
MAUI REDEVELOPMENT AGENCY;)	
COUNTY OF MAUI; and DOES 1-27,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs WAILUKU GOOD GOVERNMENT COALITION, an unincorporated association, and MAUI TOMORROW FOUNDATION, a non-profit organization (collectively, “Plaintiffs”), respectfully submit this complaint against Defendants MAUI REDEVELOPMENT AGENCY; COUNTY OF MAUI, and DOES 1-27, (collectively, “Defendants”). This Complaint is submitted to secure timely and immediate declaratory and injunctive relief to prevent violations of the Maui County Charter and the Ordinances of the County of Maui.

I. Jurisdiction and Venue.

1. This lawsuit is based on violations of the Maui County Charter and article VIII, §2 of

the Hawai'i Constitution. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 91-7, 603-21.5, 603-21.9, and 632-1; HRS § 91-7; articles I § 5 and VIII §2 of the Hawai'i State Constitution.

2. Venue properly lies in the Circuit Court of the Second Circuit pursuant to HRS §§ 603-36(5) and 632-1 because claims for relief arose in this circuit and Defendant's actions take place in this circuit and invoke the jurisdiction of the second circuit court.

II. Parties.

3. Plaintiff WAILUKU GOOD GOVERNMENT COALITION, is an unincorporated association composed of Wailuku residents and business-owners who are residents, voters, and taxpayers of Maui.

4. Plaintiff MAUI TOMORROW FOUNDATION is a domestic nonprofit corporation domiciled in Wailuku and has worked in partnership with community groups on issues vital to Maui's quality of life for nearly three decades.

5. Plaintiffs' supporters, members, and communities include those who live, work, recreate, and volunteer in Wailuku -- areas that are affected by actions of the Maui Redevelopment Agency.

6. Defendant MAUI REDEVELOPMENT AGENCY is a county board composed of five persons purporting to have authority to zone and grant variances from zoning laws in Wailuku.

7. Defendant COUNTY OF MAUI (County), is a political subdivision of the State of Hawai'i and governed by the Charter of the County of Maui.

8. Additional Defendants Does 1-27 ("Doe Defendants") are persons or entities who may be liable to Plaintiffs or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiffs. Plaintiffs have reviewed the permits, records, state and federal statutes, and other documents, but are unable to ascertain whether or not all parties liable to Plaintiffs are named therein. Plaintiffs will identify such Doe 1-27 Defendants when their names and capacities are ascertained, Plaintiffs are informed and believe and thereon allege that some of these Doe Defendants and at all times relevant herein, were, in some manner presently unknown to Plaintiffs engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for the damages to Plaintiffs and the public, as alleged herein.

III. Background

9. Defendants are, or approved a Maui Redevelopment Agency, which purports to hold authority to zone land and grant variances from county zoning laws.

10. In 1949, the legislature of the Territory of Hawai'i enacted Act 379, establishing a mechanism by which county boards of supervisors could create a county agency to develop affordable housing and eliminate blight.

11. The 1950 Hawai'i Constitution maintained the legal relationship of the counties to the State as the Admission Act had established the counties within the Territory.

12. In 1955, the Revised Laws of Hawai'i (RLH) permitted the county boards to create a "local redevelopment agency" via resolution. RLH §143-3.

13. In 1964, the Maui county board of supervisors passed Resolution No. 64-054, establishing the Maui Redevelopment Agency (also "MRA").

14. In 1966, the Maui county council (county council) passed the Permanent Ordinances of the County of Maui, which included §4-1.16, titled "Maui County Urban Redevelopment Agency" and providing: "There shall be a Maui county urban redevelopment agency whose powers, duties and functions shall be as provided by law. (R.L. 1955, c. 143)."

15. In 1967, Ordinance No. 0156 codified the Permanent Ordinances of Maui County.

16. In 1968, the 1950 Hawai'i Constitution was amended to provide, in relevant part, "Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions." Hawai'i Const. art. VIII, §2.

17. In 1969, the County of Maui adopted the Maui County Charter (Charter), establishing its executive, legislative and administrative structure and organization.

18. 1969 Charter §4-1, titled "Actions of the Council" provides in relevant part: "Every legislative act of the council shall be by ordinance[.]"

19. Transitory provisions of the 1969 Charter, § 15-3, titled "Existing Laws and Conflicting Laws" provides in relevant part:

All laws, ordinances, resolutions, rules and regulations in force at the time this charter takes full effect, and not in conflict or inconsistent with this charter, are hereby continued in force until repealed, amended or superseded by proper authority.

All laws which are inconsistent with this charter, including specifically, but not limited to, the provisions of chapters 144, 145, 145A, and 148 of the Revised Laws of Hawaii 1955, as amended, shall be superseded by the provisions of this charter at its effective date. All laws

relating to or affecting this county or its departments, officials or employees, and all county ordinances, resolutions, orders and regulations which are in force when this charter takes full effect, are repealed to the extent that they are inconsistent with or interfere with the effective operation of this charter or of ordinances or resolutions adopted by the county council under the provisions of this charter.

20. The Maui County Charter requires that the planning director “[p]repare, administer, and enforce zoning ordinances, zoning maps and regulations and any amendments or modifications thereto.” Charter §8-8.3(6).

21. “Any revisions of the general plan, zoning ordinance or other land use ordinance may be proposed by the council and shall be reviewed by the appropriate planning commission as if prepared by the planning director.” Charter §8-8.6(2).

22. The Maui County Board of Variances and Appeals is required to: “[h]ear and determine applications for variances from the strict application of any zoning, subdivision or building ordinances.” Charter §8-8.7(1).

23. The Maui County Department of Housing and Human Concerns shall “[d]evelop a comprehensive approach to the administration and coordination of programs and plans of action designed to meet human needs in the county.” Charter §8-10.3(1).

24. The Mayor of Maui County has the sole ministerial duty to “[s]ign instruments requiring execution by the county, including deed and other conveyances, except those which the director of finance or other officer is authorized by this charter, ordinance or resolution, to sign.” Charter §7-5(11).

25. The MRA is a county board consisting of five members, appointed by the mayor and approved by the council.

26. The MRA purports to hold the power to undertake and carry out urban renewal projects and related activities; to make and execute contracts and other instruments necessary or convenient to exercise its power; to sue and be sued; to have a seal; to make, amend, and repeal rules and regulations; to appoint a manager and a deputy manager, both of which are exempt from the state civil service law; to make preliminary surveys, studies, and plans to identify redevelopment areas; to make redevelopment plans for the areas in conformity with the master plan for the development of the locality; to enter into contracts for professional services to prepare redevelopment plans; to contract for professional services with the other local agencies in carrying out its duties; to establish and operate a central relocation office for persons and entities displaced; to authorize the central relocation office to make relocation payments for actual moving costs; to

prepare plans for and assist in the relocation of persons; to make relocation payments to or with respect to the persons from funds provided by the federal government; and to prepare a general neighborhood renewal plan for urban renewal areas.

27. The MRA purported to adopt rules of practice and procedure.

28. The MRA reviews applications for new development and renovation projects in the Wailuku Redevelopment Area.

29. Plaintiffs are groups with members and supporters who are residents, voters, and taxpayers of the County of Maui and work and/or reside in Wailuku.

30. Plaintiffs and their members are injured by MRA's usurpation of authority and power to zone and grant variances from comprehensive zoning laws.

IV. Claims for Relief.

COUNT ONE – QUO WARRANTO (USURPING ZONING POWER)

31. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

32. In 1964, the MRA was established by resolution of the county board of supervisors under RLH §143-3.

33. In 1969, Maui county adopted a Charter, which provided under §15-3 that all laws inconsistent with the Charter and were either superseded or repealed to the extent of that inconsistency.

34. “Charter provisions with respect to a political subdivision’s executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.” Hawai’i Constitution art. VIII §2.

35. Charter provisions with respect to Maui county’s executive, legislative, and administrative structure and organization are superior to HRS chapter 53 provisions relating to the same.

36. Establishment of administrative agencies, including the MRA, is a legislative act.

37. “Zoning” means dividing cities or towns by legislative regulation into districts as well as the prescription and regulation of the structural designs and dimensions of the buildings, uses of the lands and buildings, height, and setbacks.

38. Zoning and rezoning land, as well as granting variances to zoning are legislative acts.

39. The Maui county council “shall be the legislative body of the County.” Charter §3-6.

40. “Every legislative act of the council shall be by ordinance, unless otherwise provided for herein. Other acts of the council may be by resolution.” Charter §4-1.

41. Every proposed ordinance must go through two readings on separate days and a digest of every said proposed ordinance must be published in the newspaper at least three days before final reading.

42. Every proposed ordinance which has passed two readings must be submitted to the mayor for approval.

43. All proposed ordinances related to land use on the island of Maui are required to be reviewed by the Maui Planning Commission before being decided upon by the council.

44. Revisions to zoning and land use ordinances proposed by the planning director shall be reviewed and acted upon by the council. Charter §8-8.6(4).

45. The Charter does not authorize the county council to delegate approvals of zoning, rezoning, or other land use decision to an administrative body, including the MRA.

46. The MRA lacks authority to zone or rezone land on the island of Maui because zoning power is vested in the council after review by the Maui Planning Commission.

47. Since its establishment, the MRA has approved redevelopment plans that include zoning and rezoning actions.

48. The MRA purports to carry out urban renewal projects, make redevelopment plans, and carry out other zoning actions.

49. Plaintiffs demand the MRA show by what authority it exercises zoning or rezoning powers on the island of Maui.

50. Plaintiffs seek a judgment of ouster indicating the zoning powers the MRA purports to exercise constitute a usurpation of power and are void.

COUNT TWO – DECLARATORY JUDGMENT (ZONING POWER)

51. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

52. The MRA lacks authority to exercise zoning or rezoning powers on the island of Maui.

53. The MRA has exercised zoning or rezoning powers on the island of Maui.

54. Since its establishment, the MRA has approved redevelopment plans that include zoning and rezoning actions.

55. The MRA purports to carry out urban renewal projects, make redevelopment plans, and carry out other zoning actions.

56. Plaintiffs are harmed by the Maui Redevelopment Agency's unlawful exercise of zoning power in Maui because they reside, recreate, work, transit, and return to land areas that are affected by zoning or rezoning.

57. Plaintiffs seek a declaration that MRA lacks the power to zone or rezone land.

COUNT THREE - QUO WARRANTO (USURPING VARIANCE POWER)

58. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

59. Charter provisions with respect to Maui county's administrative and legislative structure and administration are superior to statutory provisions under HRS chapter 53.

60. Pursuant to the Charter, all applications for variances from the strict application of any zoning, subdivision or building ordinance are required to be heard or determined by the Board of Variances and Appeals after a public hearing.

61. The MRA lacks authority to grant variances from the strict application of any zoning, subdivision or building ordinance because such authority is exclusively vested in the Board of Variances and Appeals.

62. The county Board of Variances and Appeals hears and determines applications for variances from the strict application of any zoning, subdivision, or building ordinances. Charter §8-8.7(1).

63. The Charter does not authorize the Board of Variances and Appeals to delegate hearing and determination of applications for variances.

64. The MRA lacks authority to grant variances to the zoning, subdivision, and building code in the county of Maui.

65. Since its establishment, the MRA has granted variances to projects that do not conform to the County zoning code in redevelopment districts.

66. The MRA has purported to determine and approve applications for variances to the zoning code.

67. Plaintiffs demand the MRA show by what authority it exercises powers to determine, grant, or deny variances on the island of Maui.

68. Plaintiffs seek a judgment of ouster indicating the powers of variance the MRA purports to exercise constitute a usurpation of power and are void.

COUNT FOUR - DECLARATORY JUDGMENT (VARIANCE POWER)

69. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

70. The MRA lacks authority to grant, deny, or otherwise determine variances from the zoning code.

71. The MRA has purported to exercise authority to grant, deny, or otherwise determine variances from the zoning code.

72. Plaintiffs are harmed by the MRA's unlawful exercise of authority over variances in Maui because they reside, recreate, work, transit, and return to land areas that are affected by the grant or denial of variances.

73. Plaintiffs seek a declaration that the MRA lacks the power to grant variances from the strict application of the law.

COUNT FIVE – UNLAWFUL RULEMAKING

74. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

75. Rules are to be declared invalid if they are found to violate constitutional or statutory provisions, or exceed the statutory authority of the agency, or were adopted without compliance with statutory rulemaking procedures.

76. Defendants purported to adopt rules for the MRA, Title MC-12, subtitle 07, chapter 701 (Chapter 12-701).

77. Chapter 12-701 purports to govern the MRA's practice and procedure and constitute rules within the meaning of HRS chapter 91.

78. Subchapter 10 of chapter 12-701 is titled, "Rules Applicable to Land Use and Development."

79. The MRA lacks authority to promulgate rules that enable it to make decisions on zoning, rezoning, and variances from zoning because it lacks that authority under the Charter.

80. Chapter 12-701 constitutes an invalid rule because the MRA lacks authority purported to exercised through those rules.

81. Plaintiffs are interested persons harmed by the MRA's operation and enforcement of invalid rules under Chapter 12-701 because those rules affect land areas that they reside, live, work, recreate, transit, and return to.

82. Plaintiffs seek a declaration from this Court that Chapter 12-701 constitutes an invalid rule.

COUNT SIX– INJUNCTIVE RELIEF

83. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

84. Defendants are engaging in unlawful conduct.

85. Plaintiffs are harmed by the MRA’s unlawful exercise of authority over zoning and variances in Maui.

86. There is no adequate remedy at law for Defendants’ violations of the Charter and the administrative structure of the County.

87. Public policy strongly supports the rule of law and orderly administration of the County’s zoning powers and authority to grant variances.

88. The MRA threatens imminent harm to Plaintiffs’ interests and rights in the orderly and lawful administration of the county’s zoning and variance powers.

89. Plaintiffs seek a temporary restraining order, a preliminary injunction, and a permanent injunction, enjoining Defendants and their agents and employees, and all persons acting under, in concert with, or for them from any conduct in furtherance of the MRA’s exercise of zoning powers and granting of variances until Defendants fully comply with the Charter and all applicable laws and until such time as this Court has been able to fully adjudicate the merits of Plaintiffs’ complaint.

WHEREFORE, plaintiffs respectfully request that the Court:

1. Enter a declaratory judgment that:
 - a. Defendants unlawfully exercise zoning power through the Maui Redevelopment Agency;
 - b. Defendants unlawfully grant variances from the zoning code through the Maui Redevelopment Agency;
 - c. Defendants violated HRS chapter 91 by unlawfully promulgating rules for the Maui Redevelopment Agency that purport to allow it to exercise powers of zoning and variances.
2. For a writ of quo warranto requiring Defendants to show by what authority the Maui Redevelopment Agency exercises zoning power and the authority to grant variances to zoning codes in Maui.

3. That upon an evidentiary hearing or trial, a judgment be entered directly, that Defendant usurps the County of Maui's powers of zoning and/or variance and that it is ousted from exercising said powers.

4. For preliminary and permanent injunctive relief enjoining Defendants, and their employees, agents, servants, and representatives, and any other persons acting in concert with them, under their authority, or with their approval, from any conduct in furtherance of the Maui Redevelopment Agency's exercise of zoning powers and granting of variances until Defendants fully comply with the Charter and all applicable laws.

5. For the Court to retain continuing jurisdiction to review defendants' compliance with all judgments and orders entered herein.

6. For such additional judicial determinations and orders as may be necessary to effectuate the foregoing.

7. For the costs of suit herein, including reasonable attorneys' fees; and



8. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between plaintiffs and defendant.

DATED: Wailuku, Maui, Hawai'i

February 10, 2020



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for Plaintiffs

STATE OF HAWAI'I CIRCUIT COURT OF THE SECOND CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT		
CASE NUMBER	PLAINTIFF'S NAME & ADDRESS, TEL. NO. LAW OFFICE OF LANCE D COLLINS Post Office Box 179336 Honolulu, Hawai'i 96817 808.243.9292		
PLAINTIFF WAILUKU GOOD GOVERNMENT COALITION, an unincorporated association, and MAUI TOMORROW FOUNDATION, a non-profit organization,	LAW OFFICE OF BIANCA ISAKI 1720 Huna Street, 401B Honolulu, Hawai'i 96817 808.927.5606		
DEFENDANT(S) MAUI REDEVELOPMENT AGENCY, COUNTY OF MAUI, and DOES 1-27,			
TO THE ABOVE-NAMED DEFENDANT(S)			
<p>You are hereby summoned and required to filed with the court and serve upon MAUI REDEVELOPMENT AGENCY; COUNTY OF MAUI; and DOES 1-27,</p>			
<p>_____, plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p>			
<p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p>			
<p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>			
DATE ISSUED February 10, 2020 _____	Effective Date of 28-Oct-2019 Signed by: /s/ D. Pellazar Clerk, 2nd Circuit, State of Hawai'i		
 <p>If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation: Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.</p>			