

M I N U T E S

11 PLANNING AND LAND USE COMMITTEE
12 Council of the County of Maui
13 Council Chamber
14 April 12, 2004

CHAIR NISHIKI: Discussion? Jo Anne, go ahead.

10 COUNCILMEMBER JOHNSON: Once again, we went through
this
11 before; and part of the reason why we're looking
at
12 some of the elements that are contained within
the
13 developer's wording is that the developer has
said
14 that they shall develop.
15 In this one, if they're going to only
develop
16 a beach access plan -- but there's no mention of
17 what they're going to implement. There's no
mention
18 of the area where it's going to be. So, I know
it's
19 getting late again; but this is one of those
areas
20 that we went back and forth about this. And I
21 actually think that if we amend the first
paragraph
22 of the developer's proposed conditions, I think
that
23 we might be able to work with it.
24 And my -- my wording would take out in
the
25 developer's originally -- I guess -- I know
we're

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1 not on that subject now; but because we're
2 discussing this, I think that we should
designate
3 that they're going to help develop the expansion
of
4 the beach park at the south end of Maluaka
Beach.
5 I think it should state clearly what the
6 amount of the acreage is and just state that
it's
7 for public use and for beach access. I think
that
8 we did agree or the developer agreed that on the
9 time thing, that they would require the
expansion
10 within six months of the approval of the change
in
11 zoning and that if we just simply say that the
land
12 area of the 1.5 acres would be applied as credit
13 toward satisfying a portion of the applicable
park
14 dedication requirements, to me, I think that
would
15 be better than going back to what we've already
16 discussed which really is just a plan. I think

way. 17 we're actually going backwards if we go that
discussion. 18 So, that's my thought. That's my
Earl 19 CHAIR NISHIKI: You know what? I'm going to pull the
recess 20 Stoner conditions. So, I'm going to have a
21 until 11:10. Thank you. (Gavel.) Meeting in
22 recess.
23 RECESS: 11:04 p.m.
24 RECONVENE: 11:22 p.m.
Committee 25 CHAIR NISHIKI: Meeting please reconvene. The

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-- 1 will be in recess until 4:30 Wednesday. That is
2 MR. RAATZ: In the Council chambers?
3 CHAIR NISHIKI: -- March --
4 COUNCILMEMBER KANE: April 14th.
5 CHAIR NISHIKI: -- April 14th, April 14th, Council
6 Chambers.
7 MS. BANTILAN: What time?
8 CHAIR NISHIKI: 4:30, yeah, p.m. Okay. Meeting in
9 recess. (Gavel.)
10

11 RECESS: 11:23 p.m.

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11 PLANNING AND LAND USE COMMITTEE

12 Council of the County of Maui

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COUNCILMEMBER KANE: Thank you, Mr. Chair. Because

17 Mr. Hokama is not here as the maker of the
motion

18 that's currently on the floor, can I move to
amend

19 the main motion by substituting the main motion
with

20 the contents of your April -- the attachment to
your

21 April 14th memo from you to the members of the
Land

22 Use Committee and that the memo would be
reflected

23 as the attachment itself, Mr. Chair? That's the

24 amendment.

25 COUNCILMEMBER TAVARES: Second.

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1 CHAIR NISHIKI: Moved and second that we amend the

2 Condition 38 to include the language on the
3 April 14th memo to this Committee.
4 COUNCILMEMBER KANE: Mr. Chair.
5 CHAIR NISHIKI: Mr. Kane.
6 COUNCILMEMBER KANE: Mr. Chair, on your behalf, if I
may
7 read your April 14th memo?
8 CHAIR NISHIKI: Go ahead.
9 COUNCILMEMBER KANE: Thank you. On your behalf,
Chair,
10 your -- in your memo you state that "At the
11 Committee's reconvened meeting of April 12, the
12 applicant submitted a document entitled Proposed
13 Park Conditions" and that you "would be pleased
to
14 accept a motion to amend the applicant's
proposal as
15 reflected in the attached document, 'PROPOSED
PARKS
16 CONDITION-REVISED.' proposed deletions from the
17 applicant's proposed" -- "proposal are
bracketed;
18 proposed additions are underscored."
19 The "two major substantive differences
20 between the applicant's proposal and the
attachment
21 document, No. 1, the developer's costs would not
be
22 counted toward park dedication requirements"
and,
23 "No. 2, the developer would be required to
provide
24 perpetual traversable lateral shoreline access,
just

his 25 as applicant Earl Stoner was required to do for

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1 Makena property in 2002, as referenced by the
2 Corporation Counsel during the Committee's
3 reconvened meeting of April 12th, 2004. Thank
you 4 for your consideration."

5 And, Mr. Chair, would you like the
revised 6 one read into the record?

7 CHAIR NISHIKI: Go ahead. Continue.

8 COUNCILMEMBER KANE: Okay. And, Mr. Chair, the --
9 verbatim the amendment would read: "Developer
shall

10 develop an expansion of the beach park at the
south

11 end of Maluaka Beach, such that the beach park
shall

12 comprise of at least 1.5 acres of land area for
13 public use and beach access. The developer
shall

14 submit the necessary applications required for
the

15 expansion within six months of the approval of
the

16 change in zoning. The land area shall be
applied as

17 credit toward satisfying a portion of applicable
18 park dedication requirements. To the extent
19 practicable, the developer" -- and I'm sorry,
20 Mr. Chair. There's a period after
"requirements."

21 CHAIR NISHIKI: Go ahead.

22 COUNCILMEMBER KANE: Okay. And I didn't see that
after

23 the bracket. So, it reads, "the park dedication
24 requirements." It continues, "To the extent
25 practicable, the developer shall provide, in

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in 1 perpetuity, traversable lateral shoreline access
2 the area between the shoreward boundary and the
3 mauka boundary of the Makena Resort Area."

4 And then it goes on to say, "Within one
year

5 of the approval of the change in zoning,
developer

6 shall initiate and fund a plan for the
development

7 of the State Park at Makena for the State
Department

8 of Land and Natural Resources or the County of
Maui,

9 Department of Parks and Recreation. The plan
shall

and 10 incorporate recreational, landscaping, parking
development 11 facility concepts as a guide for future
12 of the park."
13 Under discussion as well, Mr. Chair?
14 CHAIR NISHIKI: Mr. Kane.
understanding 15 COUNCILMEMBER KANE: Mr. Chair, is it your
16 that that second -- or that last paragraph
actually 17 is what the intent of No. 37 in the April 6th
18 document is trying to portray?
19 And in No. 37, that's the one where you
put 20 forth to the body the developer should produce a
21 beach master plan. Because it seems like that
last 22 paragraph is really what the intent of -- of the
23 body was is to actually create a plan for the
24 development of the State Park at Makena.
25 And that's just a question, Chair.

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1 CHAIR NISHIKI: Right. The answer is yes.
2 COUNCILMEMBER KANE: Thank you.
3 CHAIR NISHIKI: Thank you.

4 COUNCILMEMBER KANE: Thank you for the discussion.

5 CHAIR NISHIKI: Any other discussion? Charmaine, go
6 ahead.

7 COUNCILMEMBER TAVARES: Yes, Mr. Chairman, I heard
some
8 talk the -- when did we meet -- the other night
that
9 the park acreage -- that the 1.5 represented the
10 portion that's already developed and an
undeveloped
11 portion. So, can we get some clarification
about
12 what the acreage is? And I think we asked if
there
13 was a map available that showed this park but I
14 had -- I guess I forget now where I heard it,
but I
15 had heard that the 1.5 included the existing
park
16 area.

17 CHAIR NISHIKI: Yeah, I think I would rather not make
that
18 statement. I think when -- the last time the
19 developer was here -- I don't have the numbers
that
20 I wrote of what the existing park was, plus
maybe
21 Roy could clarify what is now existing and the
22 addition, if there are no objections.

23 COUNCIL MEMBERS VOICED NO OBJECTIONS.

24 MR. FIGUEIROA: Roy Figueiroa from Makena Resort. It
was
25 the intent -- I believe the existing park is
about a

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1 .8 acres --

2 CHAIR NISHIKI: Okay.

3 MR. FIGUEIROA: -- plus or minus. And so, the intent

4 was -- and we -- to make it at least 1.5 in
total.

5 COUNCILMEMBER TAVARES: Total.

6 MR. FIGUEIROA: So, perhaps that could be something
you

7 could consider the language of, at least 1.5
acres

8 of land area in total. Maybe that might clarify
it.

9 CHAIR NISHIKI: Thank you, Roy. Any questions?

10 COUNCILMEMBER TAVARES: No.

11 CHAIR NISHIKI: Any other discussion?

12 COUNCILMEMBER TAVARES: Well, Mr. Chair.

13 CHAIR NISHIKI: Charmaine?

14 COUNCILMEMBER TAVARES: If what he -- I understand,
you

15 know, the .8 is already -- or approximately .8
acres

16 is already developed and what they're proposing
to

17 develop would be then, I guess, .7 --

18 CHAIR NISHIKI: Right.

is 19 COUNCILMEMBER TAVARES: -- if my addition or division
20 correct.

those 21 And that is -- was represented to us in

to 22 series of pictures that Mr. Figueiroa presented

23 the body. And if we want to say that it shall

24 comprise of at least the 1.5 acres of land area,

25 that's fine; but I believe that only .7 or

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1 approximately .7 acres should be allowed to be
2 credited toward their park assessment, not 1.5.

3 COUNCILMEMBER CARROLL: Right.

4 CHAIR NISHIKI: Right. And, also, I think we could

5 request that a map also be attached to the

6 to show the additional acreage. If there are no

7 objections, we could request that also.

8 COUNCILMEMBER TAVARES: So, I'm not sure how we could

put

9 the wording in there to make it clear that it's

the

10 .7 that will qualify for credit towards the park

11 assessment.

12 COUNCILMEMBER JOHNSON: Mr. Chair.

No map found

condition

13 CHAIR NISHIKI: Jo Anne.
14 COUNCILMEMBER JOHNSON: My suggestion would be to
include
15 at least .7 acres, or whatever it is, of the
land
16 area and then add it in there so that what
you're
17 doing is you're specifying what's going to count
18 towards the portion of their satisfaction. So,
that
19 would be where I would add in whatever they're
going
20 to be credited with for their park dedication.
21 CHAIR NISHIKI: Yeah, go ahead.
22 MR. FIGUEIROA: Could I make a suggestion on this,
23 Mr. Chair? On that, since, I said, it's plus or
24 minus .8 acres; and instead of waiting to find
the
25 exact amount of what that expansion is, could we

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1 say -- you see where you deleted "and
development
2 costs of the expansion"? Could you just delete
"and
3 development costs" so that the sentence would
read,
4 "The land area of the expansion shall be applied
as

I -- 5 credit"? Would that work for you? That's what
6 that's how I would read it if I -- if I got it.
7 COUNCILMEMBER TAVARES: Mr. Chair, I was just fooling
8 around with that section of the -- of the
sentence
9 and putting in the land area of the additional -
-
10 and that's (inaudible) -- the additional
expansion
11 to the existing park shall be applied or
expansion
12 of the existing park.
13 CHAIR NISHIKI: Dain, go ahead.
14 COUNCILMEMBER KANE: No objections to that being a
15 friendly amendment, Chair.
16 CHAIR NISHIKI: Okay.
17 COUNCILMEMBER TAVARES: Oh, does Dain -- Dain is so
much
18 faster than I am. So, it would be that the --
the
19 section -- the sentence that starts with "The
land
20 area," "The land area of the additional
expansion of
21 the existing park shall be applied as a credit
22 toward," et cetera.
23 I'm sorry. I have a little hard time
reading
24 that from here. I didn't bring my binoculars
25 tonight. I'm sorry. Is that what it has?

1 COUNCILMEMBER KANE: Dave, is it blurry or is it us?

2 ?: It's blurry.

3 CHAIR NISHIKI: Okay. Let me read --

4 COUNCILMEMBER TAVARES: Oh, additional.

5 CHAIR NISHIKI: -- exactly what the --

6 COUNCILMEMBER TAVARES: I think the word additional is

7 missing from there.

8 ?: Yeah.

9 ?: You don't need that.

10 COUNCILMEMBER KANE: No need, eh?

11 COUNCILMEMBER TAVARES: No need?

12 COUNCILMEMBER KANE: No need.

13 COUNCILMEMBER TAVARES: Oh, okay.

14 COUNCILMEMBER KANE: No need.

15 CHAIR NISHIKI: That's not necessary, David.

16 COUNCILMEMBER TAVARES: Okay. "The land area of the"

--

17 COUNCILMEMBER KANE: Chair, go read, Chair.

18 COUNCILMEMBER TAVARES: Read it out for us, please.

19 CHAIR NISHIKI: Okay. I'll read the entire condition.

20 COUNCILMEMBER KANE: Thank you.

of

21 CHAIR NISHIKI: "Developer shall develop an expansion

Beach,

22 the beach park at the south end of Maluaka

23 such that the beach park shall compromise of at

24 least" --

25 COUNCILMEMBER JOHNSON: Comprise.

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1 COUNCILMEMBER KANE: Comprise.

land

2 CHAIR NISHIKI: -- "comprise of at least 1.5 acres of

the

3 area and shall be acceptable" -- "accepted by

4 County of Maui."

5 COUNCILMEMBER KANE: No, no, that's bracketed, Chair.

--

6 CHAIR NISHIKI: Oh, excuse me. We're eliminating that

applications

7 "land area for public use and beach access. The

8 developer shall submit the necessary

the

9 required for the expansion within six months of

of

10 approval of the change in zoning. The land area

applied

11 the expansion of the existing park shall be

12 as credit toward satisfying a portion of the

13 applicable park dedication requirements."

to

14 And then -- that's it. Then it goes on

15 say --

16 COUNCILMEMBER KANE: No. So, that's it.

17 CHAIR NISHIKI: -- "To the extent practicable" --
18 COUNCILMEMBER KANE: We went through all that, Chair,
19 already.
20 CHAIR NISHIKI: Okay -- "the developer shall provide,
21 perpetuity, traversable lateral shoreline access
22 the area between the shoreward boundary and the
23 mauka boundary of the Makena Resort Area."
24 Any discussion?
25 COUNCILMEMBER TAVARES: Mr. Chair?

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1 CHAIR NISHIKI: Charmaine.
2 COUNCILMEMBER TAVARES: Yeah, I think that clarifies
3 everyone what shall be creditable toward park
4 assessment. And I just want to read from -- you
5 know, we took out the part -- or we're proposing
6 take out the part about development costs of the
7 expansion would be also creditable; and we have
8 taken that out.
9 And, Mr. Chair, in the Maui County Code
10 the park assessment -- park dedication
requirements

11 out of Chapter 18.16 -- 16.320, parks and
12 playgrounds, it's Section D, E -- E-5 states
that,
13 "The subdivider shall improve the site with lot
14 grading, grass planting, automatic irrigation,
15 parking areas, adequate drainage and comfort
16 stations, provided that the Council may waive
any of
17 these requirements if such improvements are
nearby."
18 And so, with park ded -- park land
dedication
19 comes already the expected development of that
to a
20 certain standard. The standard is stated here
in
21 the Code. So, I don't believe that that should
be
22 like a double -- double-dipping, so to speak.
23 So, I think that there is a reason why we
24 should be deleting this -- that portion; and I
hope
25 that the members can all be satisfied and -- you

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worded 1 know, basically satisfied with the way it's
2 now.

the 3 I thank you, Chair, too, for proposing
4 amendment.
5 CHAIR NISHIKI: Thank you. Any other discussion?
6 Jo Anne?
the 7 COUNCILMEMBER JOHNSON: Yes. My question was because
8 main motion actually had some of these
statements, I 9 believe, in it or on -- in -- basically was it
38 10 that was the original main motion? Is that
11 correct --
12 COUNCILMEMBER KANE: Yes.
13 COUNCILMEMBER JOHNSON: -- Mr. Chair?
14 CHAIR NISHIKI: Yes.
main 15 COUNCILMEMBER JOHNSON: Okay. Because we now have a
16 motion that actually contains some of the
language 17 that we currently have in the amendment, how are
we 18 going to address that or is this going to be an
19 amendment which actually would be substituting
the 20 language in 38?
21 COUNCILMEMBER KANE: It -- it replaces. It replaces.
22 That was my motion.
23 CHAIR NISHIKI: Replaces.
24 COUNCILMEMBER JOHNSON: Okay. All right. And does
that 25 also -- then it would incorporate 37 -- how
about 39

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1 and 40? These -- are these to be dealt with
2 separately, Mr. Chair?

3 CHAIR NISHIKI: Yes.

4 COUNCILMEMBER JOHNSON: Okay. Thank you.

5 COUNCILMEMBER KANE: Mr. Chairman?

6 CHAIR NISHIKI: Continue.

7 COUNCILMEMBER KANE: Thank you, Mr. Chairman. If this
8 amendment is successful and the main motion is
9 successful, then it would seem from your

response

10 earlier to my question that we would vote to

delete

11 No. 37 on the April 6th because it's already

been

12 incorporated into this one condition, Mr. Chair?

13 CHAIR NISHIKI: Yes.

14 COUNCILMEMBER KANE: Okay. And then 39 and 40, as

you've

15 responded, is separate?

16 CHAIR NISHIKI: Yes.

17 COUNCILMEMBER KANE: Thank you, Chair.

18 CHAIR NISHIKI: Any other discussion? Seeing none,

all

19 those in favor say aye.

20 COUNCIL MEMBERS: Aye.

21 CHAIR NISHIKI: All those opposed? Motion carried.

22

23

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Kane,

1 VOTE: AYES: Councilmembers Carroll, Johnson,
Mateo, Molina, Pontanilla, Tavares,
2 and Chair Nishiki.
NOES: None.
3 ABSTAIN: None.
ABSENT: None.
4 EXC.: Councilmember Hokama.

5 ACTION: APPROVE AMENDMENT TO PROPOSED CONDITION
NO. 38

6

7 COUNCILMEMBER KANE: We're back to the main motion.

8 CHAIR NISHIKI: Let the record show -- oh, excuse me.

9 This was an amendment.

10 COUNCILMEMBER KANE: Yes.

11 CHAIR NISHIKI: -- to the main motion as amended. Any
12 discussion? All those in favor say aye.

13 COUNCIL MEMBERS: Aye.

Let

14 CHAIR NISHIKI: All those opposed? Motion carried.

Hokama

15 the record show both votes eight to zero, Mr.

16 excused.