

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

December 11, 2018

Committee
Report No. 18-229

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

Chair and Members:

Your Planning Committee, having met on November 15, 2018, and reconvened on November 21, 2018, makes reference to County Communication 09-246, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR PROPERTY SITUATED AT KIHAI, MAUI, HAWAII" ("Community Plan Amendment bill").

The purpose of the proposed bill is to amend the Kihei-Makena Community Plan ("Plan") and Land Use Map from Single-Family to Hotel, to reflect the existing hotel use on approximately 1.119 acres of State-owned property situated at 2980 South Kihei Road, Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:029.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO WESTERN APARTMENT SUPPLY & MAINTENANCE CO. FOR THE CONSTRUCTION AND USE OF AN OFFSITE PARKING LOT WITHIN THE COUNTY PARK DISTRICT FOR PROPERTY SITUATED AT KIHAI, MAUI, HAWAII" ("Conditional Permit bill").

The purpose of the proposed bill is to grant a two-year Conditional Permit to allow for the construction and use of an offsite parking lot on approximately 35,932 square feet of State-owned property on South Kihei Road, Kihei, Maui,

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Hawaii, within the County Park District, identified for real property tax purposes as tax map key (2) 3-9-004:149.

Your Committee notes the Kihei-Makena Community Plan designates parcel 29 as Single-Family Residential. This designation is inconsistent with the parcel's Hotel zoning. To correct the inconsistency, the applicant is requesting a Community Plan Amendment from Single-Family Residential to Hotel. The applicant is also requesting a Conditional Permit for property within the County Park District to allow for the construction and use of an off-site parking lot to fulfill parking requirements for the hotel.

Your Committee further notes County Communication 09-246 was referred to the Council's Land Use Committee in each Council term since 2009. The Land Use Committee in the 2009-2011 Council term met on August 4, 2010. The Land Use Committee in this Council term met on February 15, 2017.

By correspondence dated February 14, 2017, the Department of the Corporation Counsel transmitted a revised proposed Community Plan Amendment bill and a revised proposed Conditional Permit bill, entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO RUBY & SONS HOSPITALITY, LLC, FOR THE CONSTRUCTION AND USE OF AN OFF-SITE PARKING LOT WITHIN THE COUNTY PARK DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII," to the Land Use Committee. The Community Plan Amendment bill was revised to update the year of the bill. The Conditional Permit bill was revised to update the year of the bill, and to add a requirement that proof of insurance and all subsequent certifications of insurance coverage be submitted directly by the insurance carrier to the Department of Planning. Also, such insurance certificates shall include the applicable tax map key and permit numbers. The Committee also revised the name of the applicant from Western Apartment Supply & Maintenance Co. to the new owners, Ruby & Sons Hospitality, LLC.

By County Communication 18-361, the Land Use Committee was discharged from consideration of County Communication 09-246. At its

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meeting of October 19, 2018, the Council referred County Communication 09-246 to your Planning Committee.

Your Committee expressed concerns that the existing hotel would be appropriated more parking than what was necessary, according to the requirements set by the Maui County Code ("MCC"). The Planning Director said, at the time this application was originally submitted, the Applicant was short 3 parking stalls under the MCC. Currently, under the existing MCC, the Applicant is short 18 parking stalls. The Planning Director said the Department would apply the parking requirements that were in effect when the application was originally submitted because improvements subsequently made to the property did not increase the square footage of the hotel and restaurant.

Jordan Hart, representative of the applicant, explained the parking lot was previously used as a commercial parking lot. He said by obtaining a Conditional Permit for the development of an off-site parking lot, the applicant is complying with a settlement agreement resulting from a Board of Variances and Appeals' intervention, which allocates 51 percent of the parking stalls for public use and 49 percent of the parking stalls for hotel and restaurant use. The settlement agreement also places the duty to develop and maintain the parking lot on the applicant.

Your Committee discussed the timing of the next Kihei-Makena Community Plan update and whether the proposed amendment should be postponed until the community plan update is considered. The Planning Director said the next update will not happen for a while.

Your Committee recommended that the Conditional Permit bill be revised to add additional conditions 6 through 9. Condition 6 incorporates the parking stipulations proposed in the amendment to the settlement agreement, which states that not less than 51 parking stalls shall be designated for public beach access and no more than 34 parking stalls shall be designated for hotel and restaurant parking. Condition 7 holds the Applicant responsible for preventing those other than the public from using those dedicated parking stalls for public beach access. Condition 8 states the Applicant shall be responsible for the maintenance and upkeep

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of the parking lot on the parcel identified for real property tax purposes as tax map key (2) 3-9-004:149. Condition 9 places responsibility on the applicant for signage. The Community Plan Amendment bill was revised to prohibit the hotel from increasing its current capacity, density, height, and footprint.

Your Committee expressed support for passing the further revised proposed bills to bring the Kihei-Makena Community Plan in line with the hotel zoning of parcel 29 and provide public parking. Your Committee noted the application has been pending for nearly ten years.

Your Committee voted 4-1 to recommend passage of the revised proposed bills on first reading and filing of the communication. Committee Chair King, Vice-Chair Sugimura, and members Hokama, and White voted "aye". Committee member Cochran voted "no". Committee members Crivello and Guzman were excused.

Your Committee is in receipt of a further revised proposed Community Plan Amendment bill, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR 1.119 ACRES SITUATED AT KIHAI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY (2) 3-9-004:029," approved as for form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Committee is also in receipt of further revised proposed Conditional Permit bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Planning Committee RECOMMENDS the following:

1. That Bill 148 (2018), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR 1.119 ACRES

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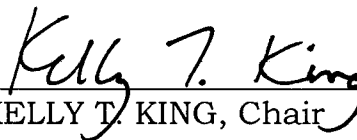
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SITUATED AT KIHEI, MAUI, HAWAII, IDENTIFIED AS TAX
MAP KEY (2) 3-9-004:029," be PASSED ON FIRST READING
and be ORDERED TO PRINT;

2. That Bill 147 (2018), as revised herein and attached
hereto, entitled "A BILL FOR AN ORDINANCE GRANTING A
CONDITIONAL PERMIT TO RUBY & SONS
HOSPITALITY, LLC, FOR THE CONSTRUCTION AND USE OF
AN OFF-SITE PARKING LOT WITHIN THE COUNTY PARK
DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI,
HAWAII," be PASSED ON FIRST READING and be ORDERED
TO PRINT; and
3. That County Communication 09-246 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of
the Council.



KELLY T. KING, Chair

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY
PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR 1.119
ACRES SITUATED AT KIHAI, MAUI, HAWAII,
IDENTIFIED AS TAX MAP KEY (2) 3-9-004:029

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:


SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Kihei-Makena Community Plan and Land Use Map is hereby amended from Single-Family to Hotel for property situated at Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:029, comprising 1.119 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Community Plan Map No. CP-531, attached hereto as Exhibit "B" and made a part hereof.

SECTION 2. Part III.C.1. of the Kihei-Makena Community Plan, adopted by Ordinance 2641 (1998), relating to Planning Standards, Land Use Standards, is amended by adding a new paragraph g, to read as follows:

"g. The hotel and restaurant located on the property situated at Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:029, shall not increase their current capacity, density, height, or footprint from what is in existence as of the date of this ordinance."

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui

pc:misc:022acpabill02:ldm

EXHIBIT "A"

GOVERNMENT LOT

Situate on the west side of Piilani Highway,
adjoining Grant 13225 to Yasuko N. Watanabe
and Grant 1959 to Mahi

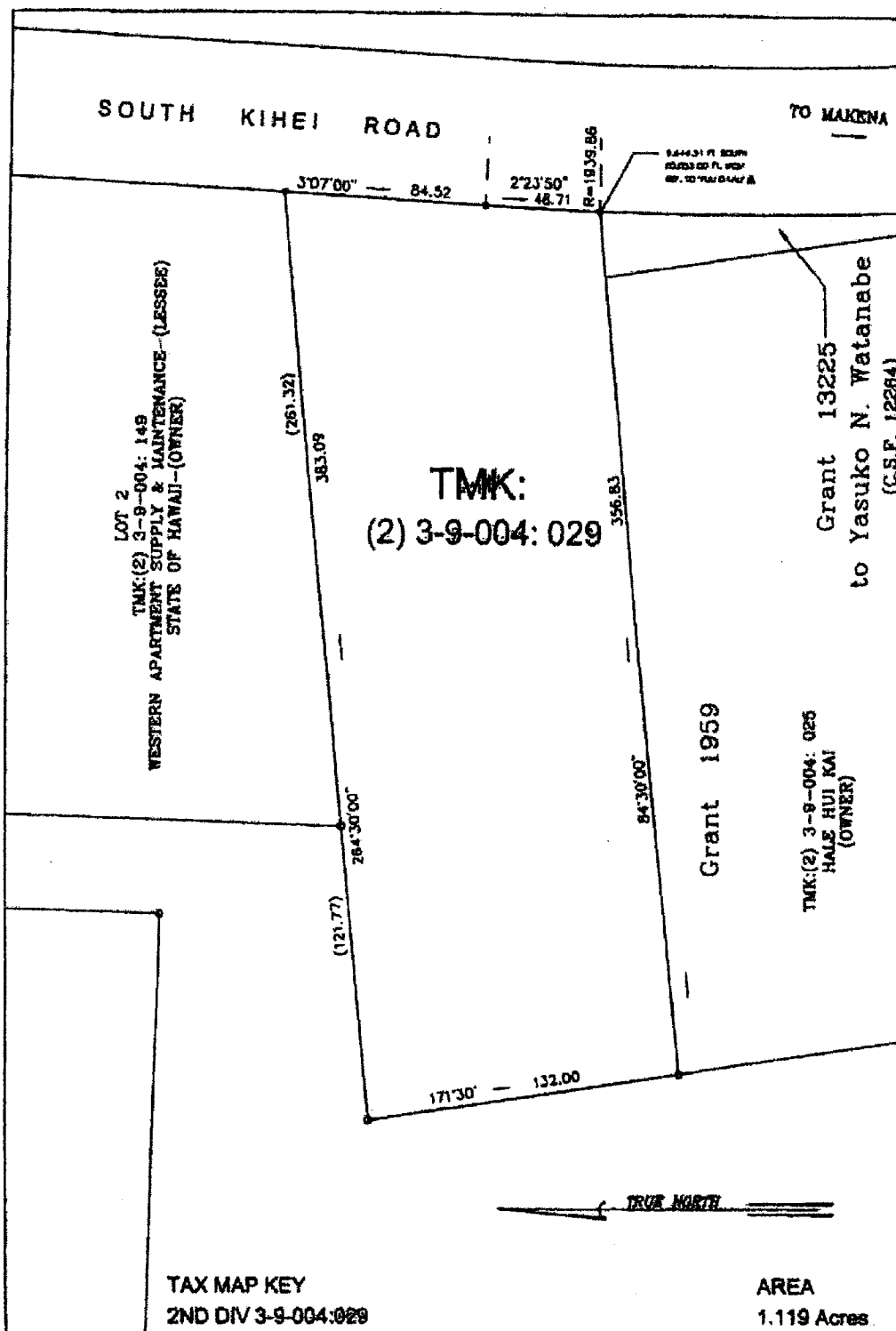
Kamalo, Wailuku (Kula), Maui, Hawaii

Being portion of the Government Land of Kamalo

Beginning at the southeast corner of this parcel of
land, at the northeast corner of Grant 13225 to Yasuko N.

Watanabe and on the west side of Piilani Highway, the coordi-
nates of said point of beginning referred to Government Survey
Triangulation Station "POU O KALI" being 9644.91 feet South
and 20,033.00 feet West, as shown on Government Survey Regis-
tered Map 3005 and running by azimuths measured clockwise from
True South:-

1. 84° 30' 356.83 feet along Grant 13225 to Yasuko N.
Watanabe and Grant 1959 to
Mahi;
2. 171° 30' 132.00 feet along Government Beach Reserve;
3. 264° 30' 383.09 feet along Government Beach Reserve;
4. 3° 07' 84.52 feet along the west side of Piilani
Highway;
5. Thence along the west side of Piilani Highway, on a curve
to the left having a radius of
1939.86 feet, the chord azimuth
and distance being: 2° 23' 50"
48.71 feet to the point of
beginning and containing an
AREA OF 1.119 ACRES.



COMMUNITY PLAN MAP NO. 531

COMMUNITY PLAN AMENDMENT - KIHAI, MAUI, HAWAII
FROM SINGLE FAMILY (SF) RESIDENTIAL TO HOTEL (H)

APPROVED

COUNTY CLERK

DATE

APPROVED

Kathleen Rose 7-2-89

PLANNING DIRECTOR

DATE

PUBLIC HEARING: NOVEMBER 15, 1988

ADOPTED - COUNCIL

ADOPTED - MAYORAL

ORDINANCE

DATE:

SCALE: 1" = 50'

OFFICE OF THE COUNTY CLERK

200 South High Street, Wailuku, Maui, Hawaii 96791

CP-531

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO RUBY & SONS HOSPITALITY, LLC, FOR THE CONSTRUCTION AND USE OF AN OFF-SITE PARKING LOT WITHIN THE COUNTY PARK DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Ruby & Sons Hospitality, LLC for the construction and use of an off-site parking lot within the County Park District. The site is identified for real property tax purposes as tax map key (2) 3-9-004:149, comprised of approximately 35,932 square feet of land situated at Kihei, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of two (2) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this two-year period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the subject Conditional Permit shall not be transferred unless the Maui County Council approves a transfer by ordinance.
4. That Ruby & Sons Hospitality, LLC, its successors and permitted assigns, shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during

the entire period of the Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Ruby & Sons Hospitality, LLC, and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of the Conditional Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Ruby & Sons Hospitality, LLC of said rights; and (2) all actions, suits, damages and claims by whomever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department of Planning and shall include the applicable tax map key and permit numbers.

5. That Ruby & Sons Hospitality, LLC shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
6. That Ruby & Sons Hospitality, LLC shall provide at least fifty-one (51) parking stalls designated for public beach access parking and no more than thirty-four (34) parking stalls designated for hotel and restaurant parking on tax map key (2) 3-9-004:149.
7. That Ruby & Sons Hospitality, LLC and Sarento's on the Beach, LLC shall be responsible to prevent the guests, employees, invitees, and agents of the hotel and restaurant from using, at a minimum, 51 parking stalls dedicated for use by the public for public beach access.
8. That Ruby & Sons Hospitality, LLC shall be responsible for the maintenance and upkeep of the parking lot on tax map key (2) 3-9-004:149.
9. That Ruby & Sons Hospitality, LLC shall be responsible for clearly marking with signage, at a minimum, 34 contiguous parking stalls on tax map key (2) 3-9-004:149 designated for use by the hotel and

the restaurant and, at a minimum, 51 parking stalls designated for public beach access.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui

pc:misc:022acpbill04:ldm