PSLU Committee

From: Rory Frampton <rory@roryframpton.com>
Sent: Tuesday, January 29, 2019 10:03 AM
To: PSLU Committee
Cc: Kathy L. Kaohu
Subject: PSLU-20
Attachments: R Frampton response to Arakawa testimony.pdf

Please see attached response to concerns raised by Jay Arakawa. Thank you,
Rory Frampton

Rory Frampton Consulting Inc.

Land Use and Environmental Planning ▪ Consulting ▪ Project Management

340 Napoko Place
Kula, Hawaii 96790

cell 808 298 4956
rory@roryframpton.com

January 29, 2019

Committee Chair and Members
Planning and Sustainable Land Use Committee
Maui County Council
200 S. High Street
Wailuku, Hawaii 96793

Dear Chair Tamara Paltin and Committee Members

Re: **Response to Testimony by Jay Arakawa, dated January 27, 2019**
Conditional Permit for the Kukahiko Estate (Makena) PSLU – 20
County Communication No. 18-377; Conditional Permit 2017/004

The following are responses to Mr. Arakawa's concerns in the order they are presented.

1. <u>49 Person limit includes event staff.</u> Mr. Arakawa is correct in that events holding over 49 individuals would trigger additional requirements (exit signs, bar handle doors, two exits). Apparently, Mr. Arakawa did not read proposed condition no. 7 closely. Proposed condition no. 7 specifies that the 49 person limit includes event staff.

2. <u>Continued Operations and NOV.</u> The applicant turned in the application for a conditional permit to continue weddings on the property voluntarily. They were not forced to turn in the request. There were a number of weddings and ceremonies that had been booked in advance and the applicant did not wish to cancel these events. A verbal statement by the staff planner indicated that it could be a problem at the Planning Commission or Council level if they continued to host events. They were not provided with an explicit written notice to stop holding events prior to receiving the Notice of Violation (NOV) dated May 18, 2018.

The NOV was dated and postmarked Friday May 18, 2018. The Planning Commission Public Hearing was held on Tuesday May 22, 2018. The Applicant did not receive the notice until May 23, 2018. Mr. Arakawa is concerned that the Planning Staff did not include the NOV in the staff report. Staff reports are finalized and mailed out at least a week prior to the public hearing. There was no way staff could have included the NOV in the report since it was filed on the Friday before the hearing. Apparently, the Zoning and Enforcement Division did not communicate with the Current Planning Division to let them know a NOV had been issued.

3. <u>Intent of the Corporation.</u> Mr. Arakawa questions the intent of the Kukahiko Corporation insinuating that the requested number of events will generate considerable profits. Mr. Arakawa is apparently not aware that there are many other costs to maintain the property,

including on-going building maintenance, landscape maintenance, commercial insurance, taxes, etc. These costs are roughly estimated to be around $30,000 per year. The taxes have been as high as $74,355 per year. Since 2001, the Corporation has paid over $745,000 in property taxes. There were several years where they were not able to make the payments and they were required to pay an additional $63,062 in penalties and interest.

More importantly, Mr. Arakawa apparently is not aware of the history of the Corporation. The primary purpose of the formation of the John and Kamaka Kukahiko of Makena Corporation in 1973 was for the remaining heirs of the descendants of John and Kamaka Kukahiko to retain interest in their family lands, which were originally acquired in the 1880s. In the late 1960s, other heirs had sold off their interests to an individual who eventually forced a partition of the property for the purpose of future subdivision and development. The 59 heirs who wanted to maintain ownership in their ancestral lands did not have enough shares to create their own lots so they formed the Corporation in order to hold a collective interest in the resultant partition lots. This was a creative way to hold onto family lands. Sadly, most families in the Makena area, and throughout Hawaii, have been forced to sell family lands due to complications arising from high land taxes and multiple ownership interests that increase over generations.

The intent of the Corporation is to hold enough events per year to pay taxes and for up-keep of the property and to allow for as much family use as possible.

4. Potential Conflict of Interest. Mr. Arakawa raises a concern over a potential conflict of interest with one of the Planning Commissioners. Apparently, Mr. Arakawa was not at the Planning Commission public hearing or he did not take the time to read the Planning Commission minutes. The Commissioner that had previously participated in events at the property made note of that during the Commission meeting on multiple occasions. Prior to the Commission taking action on the matter, said Commissioner again disclosed her previous activities on the property and noted that she felt she had no conflict, and she asked other Commissioners if they were comfortable with her voting on the matter. They voiced no concerns. See page 16 of the Planning Commission minutes for the May 22, 2018 public hearing included in County Communication No. 18-377.

In conclusion, Mr. Arakawa cautions about the precedence of approving permits based on the need for families to develop revenue streams in order to keep land in family hands. This indeed would be a concern if there were not unique circumstances in place. In this case, the lands are a portion of lands that were originally deeded to the family ancestors in the 1880s. Unfortunately, there are not many families remaining that could use this unique case as precedence.

Lastly, the Planning Department's Report to the Planning Commission made a detailed analysis of impacts to surrounding neighbors, infrastructure and other concerns to ensure that potential impacts to the community are mitigated. See County Communication No. 18-377.

Please let me know if there are any question regarding the above responses.

Rory Frampton
Land Use Planner
on behalf of the John and Kamaka of Makena Corporation