

AH Committee

From: Sara Tsukamoto Strona <sstrona@STARNLAW.COM>
Sent: Tuesday, June 18, 2019 8:52 AM
To: AH Committee
Cc: Strombeck Properties; Norman Cheng
Subject: Steve Strombeck Written Testimony for 6/19/19 AHC Meeting
Attachments: Steve Strombeck Written Testimony for 6-19-19 Meeting of the Maui County Council Affordable Housing Committee.pdf

Importance: High

Chair Kama,

Please see the attached written testimony for the 6/19/19 AHC meeting, submitted on behalf of Steve Strombeck.

Thanks,

Sara S. Tsukamoto Strona
Attorney at Law

Starn O'Toole Marcus & Fisher
A Law Corporation
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 1900
Honolulu, HI 96813
Email: sstrona@starnlaw.com
Telephone: (808) 537-6100
Facsimile: (808) 537-5434
Website: www.starnlaw.com

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TO: Councilmember Tasha Kama, Committee Chair, Affordable Housing Committee of the Council of the County of Maui

FROM: Steve Strombeck

RE: Written Testimony in Opposition to County Communications 19-249 (14.390 ac. District Boundary Amendment for the Makila Rural-East Workforce Housing Project) and 19-250 (14.453 ac. District Boundary Amendment for the Polanui Gardens Project); agenda items AH-1(1), AH-27, AH-1(2), and AH-28

DATE: June 18, 2019

Aloha Chair Kama:

I live at 24 South Lahoe Place, near the proposed Makila Rural-East Workforce Housing and Polanui Gardens projects. I am writing to oppose these 201H projects and the accompanying petitions for district boundary amendments (“**DBAs**”) for the following reasons:

- The DBAs should be before the State Land Use Commission as the developers are clearly using loopholes to make “spot zoning” changes to the State land use classifications in the area. These changes are significant and must be analyzed by the State in totality.
- There is not enough water to serve our existing agricultural communities and adding a new development project will only make the situation more dire. It is fire season and existing residents are prohibited from watering their lawns because of the water shortage. How can the developer honestly say that there is adequate water when this sort of condition is ongoing?
- The comments submitted with the 201H applications is outdated (some are from 2017) and the various agencies (including the Department of Water Supply of Maui) need to update their comments to take into account current conditions.
- Both projects are inconsistent with the County’s Maui Island Plan, which designates both project areas within the Rural Growth Boundary, rather than the Urban Growth Boundary

Laws and rules are clearly being ignored in the name of addressing the affordable housing crisis affecting Hawaii. However, in seeking to address one crisis, the City Council will be creating a whole new set of crises for existing residents (*e.g.*, water, traffic, fire safety, etc.). These plans must take into account the overall impact on the region and the proposed fast-tracking, use of outdated information and blatant violation of State land use laws should not be permitted.

It is impossible to consider these projects in a vacuum by artificially disconnecting the projects from adjacent proposed projects such as the Makila Kai project. The developers have clearly segmented a larger project area into multiple areas that are conveniently smaller than 15 acres in a thinly veiled attempt to circumvent review by the State of Hawaii Land Use Commission (“*LUC*”).

The subject area is a part of a larger 271.175-acre “Makila Rural Community” area for which a predecessor landowner applied to the LUC for a DBA in 2015 (Docket No. A15-799). After the applicant withdrew that application in 2016, the larger area was divided into three proposed projects: Makila Kai, Polanui Gardens, and Makila Rural-East.

I previously submitted written testimony in opposition to Bill 67 (2017), which would have reclassified a less-than-15-acre portion of the 79.5-acre Makila Kai project area from the agricultural district to urban district. As you know, the Council filed Bill 67, citing concerns about segmentation and spot zoning, increased intensity of water usage, traffic, the project’s effects on kuleana families, the developer’s lack of meaningful dialogue with the community, and the project’s lack of conformance with the Maui Island Plan.

Now, the developers are back for another bite at the apple, this time asking the Council to consider two DBAs for the two projects that remain from the original 271.175-acre project. According to the HRS Chapter 201H applications submitted for these projects, Polanui Gardens (with 66 homes) will be approximately 48.87 acres, and Makila Rural-East Workforce Housing (with 95 homes) will be approximately 97.5 acres. Again, the developers have parceled out DBA areas that are just under 15 acres in order to avoid public scrutiny and LUC review.

Multiple State agencies recognized and condemned this segmentation tactic, as shown in their letters responding to the 201H applications. For example, regarding the Polanui Gardens project, the State Office of Planning (“*OP*”) stated:

OP believes a DBA cannot be acted upon by the County Council without any proceedings which normally characterize the filing and processing of a DBA.

...

The smaller proposed market one-acre lots are not conducive to promoting agricultural activity. OP does not support such use of the § 201H-38 process to enable lots smaller than the current County two-acre minimum lot size, as it further exacerbates the problem of gentlemen estate lots . . . Based on the overall project, it seems more appropriate for the Petitioner to seek reclassification of both the workforce housing and market one-acre lots to the State Urban District under a State DBA, which together would exceed 15 acres and require Land Use Commission approval. . . .

OP provided similar concerns as to the Makila Rural-East project. I also wanted to draw attention to the date of the OP (and other letters attached to the 201H applications) as they are outdated (dating back to 2017). The agencies that are required to review these applications need to be given an opportunity to update their comments from almost 2 years ago. A lot has changed since 2017 and the County Council cannot responsibly act on a 201H application that is

referencing reviews by State and County agencies from 2017. Most significantly, the water shortage on Maui has worsened since the Department of Water supply issued its comments on the projects and more analysis is needed to ensure that existing projects are adequately served before approving new developments. As it stands now, our current agricultural operations are not getting enough water and bringing new developments to the area will only make things worse.

The Hawaii Housing Finance and Development Corporation also provided the following commentary about Polanui Gardens:

The parcels and the project are over 15 acres so we do not believe that Section 205-3.1, HRS applies and we do not believe that 201H exemptions apply to LUC requirements of Section 205-3.1, HRS. We believe that the entire project should go through the LUC reclassification process.

The Department of Agriculture also raised concerns about segmentation as to the Makila Rural-East project:

While the Department recognizes that the project area is within the [Maui Island Plan's] Makila Planned Rural Growth Area, the Department has concerns that the proposed Urban classification of 14.6 acres within the project area may constitute an urban "spot zone". The MIP recognizes that urbanization is a contributing factor to the general loss of agricultural land within the County: "Noncontiguous and fragmented agricultural parcels offer less economy of scale for production and marketing and make it more difficult to justify the cost of agricultural investment . . . Once fragmentation begins, it leads the way to further development of agricultural land." (MIP, page 7-4).

...

[t]he Department has concerns that the exemptions being sought under Section 201H-38, HRS, will create 45 market-value "fake farms" on the 49 acres within the State Agricultural District.

The LUC itself acknowledged that the Makila Rural-East project developer was proposing parcelization:

Based on our review of the project description, we believe that the Applicant is deliberately engaging in parcelization so as to circumvent the comprehensive review of the project by the [LUC]. . . .

As they represent approximately 50 percent of the project, consideration should also be given to include the proposed 45 agricultural lots as part of the district boundary amendment. This would allow regulatory agencies to comprehensively review the project as an integrated whole rather than on a segmented basis. . . .

[w]e reiterate our concern that the individual components of the project should be treated as a single development for the purposes of the district boundary amendment.

OP also correctly noted that both projects are inconsistent with the County's Maui Island Plan, which designates both project areas within the Rural Growth Boundary, rather than the Urban Growth Boundary.

Other State agencies also raised additional concerns about traffic congestion and water scarcity in the Launiupoko area. Recently implemented Interim Instream Flow Standards for several West Maui streams have also further constrained the limited water resources that are available for existing agricultural activity in the area, including my sod farm.

I ask that the Committee and the full Council heed the recommendations of these State agencies and refer the DBA requests to the LUC for a more comprehensive and thorough review.

I also hereby request that the Council hold a **CONTESTED CASE HEARING** before the appropriate County agency on the following issues:

- (1) whether these two requests for DBAs for less than 15 acres each, when the developers' intent is clearly to ultimately develop larger areas, is appropriate;
- (2) whether the Developers' requests are properly before the Council or should be deferred to the LUC; and
- (3) if and only if the Developers' requests cover the appropriate land area and is properly before the Council, whether the requests should be granted.

It is important for the County to hold a public hearing and allow public input on these issues. Hawaii Administrative Rules §§ 15-15-52 and 15-15-97 provide procedures for interested third parties to intervene in DBA proceedings before the LUC. In considering these DBAs, the County is exercising authority delegated to it by the LUC. As such, the public should be afforded the same rights they would have if the hearing was before the LUC.

As a neighboring property owner, I have an interest in these proceedings that is clearly distinguishable from the interest of the general public, and I believe it is my right to be able to attend and testify at a public hearing on these DBAs before the LUC.

Please feel free to call me at (707) 527-2204 if you have any questions about my request. Thank you for your time.

- Steve Strombeck