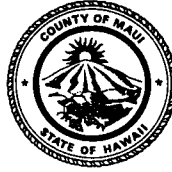


CHARMAINE TAVARES
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX 270-7152

October 3, 2008

MEMO TO: Michael J. Molina, Chair
Land Use Committee

F R O M: James A. Giroux, Deputy Corporation Counsel

SUBJECT: **CHANGE IN ZONING FOR EDITH MARCIEL (HANA) (LU-21)**

I. Introduction.

This memorandum is in response to your memorandum dated September 9, 2008. The letter requests advice as to "whether the Council has the authorizations necessary to proceed with the proposed Change in Zoning."

We also received your memorandum dated September 23, 2008, attaching correspondence dated August 28, 2008 from Paul Horikawa, Esq. The correspondence included four signed and notarized documents entitled "Notarized Owner's Acknowledgment/Authorization to Subdivide", dated September 18, 2008, for TMK:(2) 1-4-006:020.

II. Background.

This issue arises from a change in zoning application filed on April 21, 2006 by Mr. Wayne Arakaki on behalf of Ms. Edith Marciel. The Department of Public Works and Environmental Management certified the application to be complete and ready for processing on April 27, 2006. The application requests that property situated at Hana, Maui, and identified as Tax Map Key No. (2) 1-4-006:020 ("Property") be zoned from County Interim Zoning District to RU-0.5 Rural District. The Property consists of approximately 2.863 acres in the State Rural District. The Property is designated Single Family on the Hana Community Plan Land Use Map. The applicant intends to subdivide the Property into two lots.

On November 30, 2006, the Hana Advisory Committee (HAC) held a public hearing regarding this application. The HAC voted to recommend approval of the change in zoning from Interim to RU-0.5 Rural District. The Maui Planning Commission held a meeting regarding this application and voted to recommend approval of the change in zoning.

In a letter dated July 23, 2008, from the Law Office of Paul L. Horikawa to Michael Molina, Chair of the Land Use Committee, the Committee was informed that a title report was prepared by Title Guaranty of Hawaii, Incorporated, for the Property.

The title report dated as of July 11, 2008, states that title to the Property is vested in:

FRANCIS V. M. OLIVEIRA,
husband of Carol Oliveira,
as to an undivided 17.46% interest;
JAMES STUART OLIVEIRA,
single,
as to an undivided 17.46% interest;
WAYNE K. MARCIEL,
married,
EDITH E. MARCIEL,
widow,
JODY L. BAILEY,
unmarried, and
GAIL L. BAIRD,
married, as Joint Tenants,
as to an undivided 47.62% interest;
JAMES STUART OLIVEIRA,
single,
JAMES STUART OLIVEIRA
as custodian for James K. K. Oliveira
under the Hawaii Uniform Transfers
to Minors Act, and
JAMES STUART OLIVEIRA,
as custodian for Kinikalakua K. Oliveira
under the Hawaii Uniform Transfers
to Minors Act,
as Joint Tenants,
as to an undivided 8.73% interest; and
FRANCIS V. M. OLIVEIRA,
married,
KRAZMER K. OLIVEIRA¹,
single, and
FRANCIS V. M. OLIVEIRA,
as custodian for Chaylvin L. A. K.
Oliveira-Kalama under the Hawaii Uniform
Transfers to Minors Act,
as Joint Tenants,
as to an undivided 8.73% interest;
as Fee Owner

¹ Owner's name is correctly noted as Kazmer K. Oliveira in Exhibit "F" attached.

Michael J. Molina, Chair
October 3, 2008
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Of the owners listed, four (Gail L. Baird, Wayne K. Marciel, Jody L. Bailey, and Edith E. Marciel) submitted signed authorizations as part of the change in zoning application. (See attached Exhibits "A" through "D".)²

In his letter, Mr. Horikawa also stated that the applicant's consultant was in the process of obtaining authorizations from the remaining owners of the Property. The letter informed the Committee that the Property was the subject of a partition proceeding and that some of the owners may refuse to sign the authorizations for the zoning application.³

III. Discussion and Conclusion.

By attachments to your memorandum dated September 23, 2008, we received copies of authorizations from Francis V. M. Oliveira, Chaylvin L. A. K. Oliveira-Kalama, Kazmer K. Oliveira, James Stuart Oliveira, James K. K. Oliveira, and Kinikalakua K. Oliveira. (See attached Exhibits "E" through "H".)

Section 19.510.010(D)(1), Maui County Code, provides, in pertinent part, that all applications shall provide the following information:

Documents which identify the owner of the subject parcel of land and the signature or written authorization for the application by the owner; provided, however, that this requirement shall not apply to revisions or amendments proposed by the planning director or the County council.

Based on a review of the title report, the authorizations received, and the information provided by the applicant, Mr. Horikawa, and your Committee, all parties who appear to have an interest in the Property have signed authorizations. Therefore, the issue posed in your September 9, 2008 memorandum is now moot. Council may deliberate and act upon the subject zoning application.

² Owner Gail L. Baird incorrectly signed her authorization as "Gail Marciel Baird." (E-mail from Paul Horikawa, Esq.)

³ The Stipulation Regarding Partition filed with the Circuit Court of the Second Circuit on October 23, 1998, states: "All parties shall cooperate to complete the Marciel Subdivision and shall execute all documents necessary to complete said subdivision. The same requirement is in the Final Judgment filed in Second Circuit Court on October 29, 1998: "All parties shall execute all documents necessary to complete the Marciel Subdivision."

Michael J. Molina, Chair
October 3, 2008
Page 4

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

S:\ALL\Advisory\JAG\Edith Marciel CIZ.wpd
cc: Michele White, Legal Assistant
Jeff Hunt, Planning Director
Robyn Loudermilk, Planner

LAND USE & CODES ADMINISTRATION
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Gentlemen:

Re: Tax Map Key: (2) 1-4-6:20

I hereby authorize WAYNE I. ARAKAKI, ENGINEER to apply for and obtain the necessary permits for the above referenced property.

Sincerely,

OWNER: Gail mauiel Band

OWNER: _____

OWNER: _____

EXHIBIT " A "

LAND USE & CODES ADMINISTRATION
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Gentlemen:

Re: Tax Map Key: (2) 1-4-6:20

I hereby authorize WAYNE I. ARAKAKI, ENGINEER to apply for and obtain the necessary permits for the above referenced property.

Sincerely,

OWNER: Wayne I. Arakaki

OWNER: _____

OWNER: _____

EXHIBIT "B"

LAND USE & CODES ADMINISTRATION
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Gentlemen:

Re: Tax Map Key: (2) 1-4-6: 20

I hereby authorize WAYNE I. ARAKAKI, ENGINEER to apply for and obtain the necessary permits for the above referenced property.

Sincerely,

OWNER: Jody Lushin Dwyer

OWNER: _____

OWNER: _____

EXHIBIT "C"

LAND USE & CODES ADMINISTRATION
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Gentlemen:

Re: Tax Map Key: (a) 1-4-6: 20

I hereby authorize WAYNE I. ARAKAKI, ENGINEER to apply for and obtain the necessary permits for the above referenced property.

Sincerely,

OWNER: Edith E. Marciel / 18 Dec 98

OWNER: _____

OWNER: _____

EXHIBIT "D"

**NOTARIZED OWNER'S ACKNOWLEDGMENT/
AUTHORIZATION TO SUBDIVIDE**

TMK: (2) 1-4-006: 020 Lot No. _____

1. I am aware of and consent to the filing of this application.
2. I confirm that the information provided in this application is true and correct to the best of my knowledge and I assume all responsibility for the truth and validity of this application and all associated exhibits and documents submitted.
3. I agree to allow representatives of the County of Maui to go on or about the subject property for inspection purposes in connection with this application.
4. I confirm that I have uncontested legal ownership of the subject property, without any outstanding rights, reservations or encumbrances which could nullify the intended development and use of this subdivision.
5. If the owner is a corporation, partnership, limited liability company (LLC), governmental agency or other entity, I confirm that I am authorized to act on behalf of the corporation, partnership, LLC, governmental agency or other entity in processing this application.
6. I acknowledge that any potential or existing separate lots, land titles, partitions, previously subdivided lots or other such land units will be consolidated with this subdivision action and upon final subdivision approval only the newly created lot(s) will be recognized.

Check, if applicable:

I (We), the owner(s) of the subject property, do authorize Wayne I. Arakaki as my (our) agent(s) to represent me (us) in processing this application and to do any and all acts required to obtain final subdivision approval.

<i>Francis V.M. Oliveira</i>	Francis V.M. Oliveira	9/18/08
Signature of Owner	Print Name	Date

Company/Partnership/LLC/Agency/Entity Name	Title	
<i>Chaylvin L.A.K. Oliveira-Kalama</i>	Chaylvin A.K. Oliveira-Kalama	
Signature of Owner	Print Name	Date
	Francis V.M. Oliveira Cust. under HUTMA	9/18/08

Company/Partnership/LLC/Agency/Entity Name	Title	

Attach additional sheets if more than two owners

**NOTARIZED OWNER'S ACKNOWLEDGMENT/
AUTHORIZATION TO SUBDIVIDE**

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_____ as my (our)
agent(s) to represent me (us) in processing this application and to do any and all acts
required to obtain final subdivision approval.

Kyazmer K. Oliveira Kyazmer K. Oliveira 9-18-08
Signature of Owner ~~WY~~ Print Name Date

Company/Partnership/LLC/Agency/Entity Name Title

Signature of Owner Print Name Date

Company/Partnership/LLC/Agency/Entity Name Title

Attach additional sheets if more than two owners

**NOTARIZED OWNER'S ACKNOWLEDGMENT/
AUTHORIZATION TO SUBDIVIDE**

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Check, if applicable:

- I (We), the owner(s) of the subject property, do authorize Wayne I Arakaki
_____ as my (our)
agent(s) to represent me (us) in processing this application and to do any and all acts
required to obtain final subdivision approval.

James Stuart Oliveira James Stuart Oliveira 9-18-08
Signature of Owner Print Name Date

Company/Partnership/LLC/Agency/Entity Name Title

Signature of Owner Print Name Date

Company/Partnership/LLC/Agency/Entity Name Title

Attach additional sheets if more than two owners

S:\DSA\STANDARD FORMS\Subdivision\Subdivision Application\shd 4 - Subd App Owner.wpd (03/08)

**NOTARIZED OWNER'S ACKNOWLEDGMENT/
AUTHORIZATION TO SUBDIVIDE**

TMK: (2) 1-4-006: 020 Lot No. _____

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I (We), the owner(s) of the subject property, do authorize Wayne I Arakaki
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agent(s) to represent me (us) in processing this application and to do any and all acts
required to obtain final subdivision approval.

<u>James K.K. Oliveira</u>	James K.K. Oliveira (minor)	Date
Signature of Owner	Print Name	Date

Company/Partnership/LLC/Agency/Entity Name Title

<u>Kini Kalakua K. Oliveira</u>	Kinikalakua K. Oliveira (minor)	Date
Signature of Owner	Print Name	Date

Company/Partnership/LLC/Agency/Entity Name Title

Attach additional sheets if more than two owners