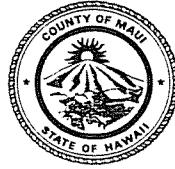


CHARMAINE TAVARES  
Mayor



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June 28, 2007

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

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

SUBJECT: **APPROPRIATE ZONING FOR KAAPALI GOLF COURSES** (LU-11)

I. INTRODUCTION.

This memorandum is in response to several memoranda from the Land Use Committee regarding Communication No. 05-151, from Councilmember Jo Anne Johnson, transmitting (1) a draft resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A BILL TO CHANGE THE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4 GOLF COURSE PARK DISTRICT FOR PROPERTY AT KAAPALI, MAUI, HAWAII", and (2) a draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4 GOLF COURSE PARK DISTRICT FOR PROPERTY AT KAAPALI, MAUI, HAWAII."

The purpose of the draft legislation is "to grant appropriate golf course zoning for approximately 75 acres of the Kaanapali Golf Courses and the surrounding area that currently have apartment zoning."<sup>1</sup> The legislation involves four parcels, identified as Tax Map Key Nos. (2) 4-4-013:003, (2) 4-4-008:009, (2) 4-4-008:010, and (2) 4-4-008:014.

The memorandum, dated October 5, 2005, from Robert Carroll, Chair, Land Use Committee, observes that "the PK-4 Golf Course Park District was established in 1991" and asks:

1. Was any provision made for "automatically" rezoning property already being used for golf course purposes when that zoning district was established? Please explain.

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<sup>1</sup> Memorandum to Brian T. Moto, Corporation Counsel, from Robert Carroll, Chair, Land Use Committee (Oct. 5, 2005), at 1.

2. Has your Department issued a written opinion concerning "automatic" rezoning of property upon the establishment of a new zoning district? If so, please provide a copy of the opinion.

The memorandum, dated December 1, 2005, from Robert Carroll, Chair, Land Use Committee, asks the following:

1. May I, therefore, request your further response to the questions posed in my October 5, 2005 correspondence to the Planning Director, as revised to take into account the comments made at the meeting:
  - a. No metes and bounds descriptions for the subject parcels have been attached to the draft bill. Please advise whether the property descriptions attached as Exhibit "1" to the draft bill are sufficient, or whether revised property descriptions should be provided.
  - b. If the latter, should such revised property descriptions be provided prior to any consideration by the Maui Planning Commission (if the Council passes an appropriate resolution referring the draft bill to the Maui Planning Commission)?

II. ORDINANCE NO. 2031 (1991) INCORPORATED AN "AUTOMATIC" ZONING PROVISION THAT REZONED CERTAIN LANDS PK-4 GOLF COURSE PARK DISTRICT.

Section 8 of Ordinance No. 2031 (1991) reads as follows:

All land for golf course use in a State agricultural district, and County-zoned agricultural, interim, residential or hotel district as defined by chapters 19.30, 19.02, 19.08 and 19.14 of the Maui County Code, respectively, for which (a) grading permits were lawfully issued, fully comply with all requirements of law, and where substantial changes in the land have already occurred evidenced by final grading, seeding and maturation of the landscaping, as of the effective date of this ordinance, (b) building permits, special management area use permits, or planned development approvals were lawfully issued and which fully comply with all requirements of law as of the effective date of this ordinance, or (c) building permits, special management area use permits and planned development

applications were properly filed, though not yet issued, and which fully comply with all requirements of law as of the date of first reading of this ordinance, **shall be rezoned on the County zoning maps to the PK-4 district**, shall be exempt from the provisions of section 19.615.050 and shall be redesignated on the appropriate community plan to park. (Emphasis added.)

Under Section 8-8.3 of the Revised Charter of the County of Maui (1983), as amended, the Planning Director administers and enforces zoning ordinances and zoning maps.<sup>2</sup> The Planning Director has determined that one of the subject lots, Lot 3, identified as Tax Map Key No. (2) 4-4-013:003, was zoned PK-4 Golf Course Park District pursuant to Section 8 of Ordinance No. 2031 (1991). In particular, the Planning Director has made the following comments regarding the zoning of Lot 3:

According to Department zoning maps, the current zoning for lots 9, 10 and 14 is A-2 Apartment District, which has been the zoning since the 1960's. According to the same maps lot 3 is zoned R-3 Residential District. However, it appears that lot 3 is actually zoned PK-4 due to the automatic re-zoning clause of the 1991 ordinance that created the PK-4 District.

...

As mentioned above, the Department believes that the correct zoning for lot 3 is PK-4 due to provisions within the 1991 ordinance that created the PK-4 District. These provisions changed the zoning to PK-4 for existing golf courses that were on certain zoned lands, including R-3. Department research indicates that lot 3 was zoned R-3 at the time the ordinance was adopted. It appears that the Department's zoning maps have never been updated to reflect the 1991 automatic re-zoning. The Counsel [sic] could remove lot 3 from any proposal for rezoning, assuming it has already been accomplished.

...

As noted, the ordinance establishing the County's Park Districts, including PK-4 Golf Course Park District, was adopted in 1991. The ordinance contains a provision that changed the zoning to PK-4 for any golf course on

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<sup>2</sup> § 8-8.3, Charter, states, in part:

The planning director shall:

...

6. Prepare, administer, and enforce zoning ordinances, zoning maps and regulations and any amendments or modifications thereto.

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lands designated as State Agricultural, County Agricultural, Interim, Residential or Hotel...Apartment zoned lands, such as three of the subject properties, were not included in this automatic re-zoning.<sup>3</sup>

Based on the facts referenced by the Planning Director, the accuracy of which we have assumed for purposes of this memorandum, Lot 3 (which was previously zoned R-3 Residential District and which constitutes part of the Kaanapali Golf Course) was rezoned PK-4 Golf Course Park District pursuant to Section 8 of Ordinance No. 2031 (1991). Therefore, Lot 3 may be omitted from the draft bill.<sup>4</sup>

III. PROPERTIES RECORDED IN LAND COURT DO NOT NEED A METES AND BOUNDS DESCRIPTION TO BE SUFFICIENTLY DESCRIBED FOR ZONING PURPOSES

Exhibit "1" of the draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM A-2 APARTMENT DISTRICT TO PK-4 GOLF COURSE PARK DISTRICT FOR PROPERTY AT KAA NAPALI, MAUI, HAWAII

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<sup>3</sup> Letter, dated November 8, 2005, from Michael W. Foley, Planning Director, to Robert Carroll, Chair, Land Use Committee, at 2-4.

<sup>4</sup> Like the Planning Director, we do not interpret the first "and" in the first sentence of Section 8 of Ordinance No. 2031 (1991) as limiting the "automatic" zoning provision to those golf course lands that are in the State agricultural district *and* zoned agricultural, interim, residential, or hotel district. Such a reading would be inconsistent with the legislative intent of the ordinance and lead to an absurd result. Rather, we agree with the Planning Director in interpreting Section 8 to rezone golf course lands *either* in a State agricultural district *or* in a County-zoned agricultural, interim, residential, or hotel district. See, e.g., Kimball v. Sadaoka, 56 Haw. 675, 678 (1976) ("The use of the word "and" is not decisive.")

Further, in his November 8, 2005 letter, Planning Director Foley stated that "[t]he designation in the 1981 Lahaina Community Plan was PK Park for all the properties, although lot 3 had some small portions designated B Business/Commercial." Because Section 8 of Ordinance No. 2031 (1991) not only rezoned golf course lands PK-4 Golf Course Park District, but also "redesignated [such lands] on the appropriate community plan to park", any portions of Lot 3 that were designated B Business/Commercial on the 1981 Lahaina Community Plan map were redesignated Park pursuant to Ordinance No. 2031 (1991).

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reads as follows:

All of those certain pieces of lots of land, situated at Kaanapali, District of Lahaina, Island and County of Maui, State of Hawaii, described as follows:

LOT 22, area 1.009 acres, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1744 of Pioneer Mill Company, Limited;

LOT 41, area 39.647 acres, as shown on Map 9, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1744 of Pioneer Mill Company, Limited;

LOT 69, area 1,391.547 square feet, as shown on Map 31, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1744 of Pioneer Mill Company, Limited; and

LOT 73-B, area 34.386 Acres, as shown on Map 77, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with the Land Court Application No. 1744 of Pioneer Mill Company, Limited.

For zoning purposes, property should be described with reasonable certainty and have definite boundaries so that the ordinance may be practically applied.<sup>5</sup> Zoning boundaries should appear upon the zoning map with definiteness so that landowners may rely upon the map and ascertain permissible or prohibited uses.<sup>6</sup>

Land Court property is registered pursuant to Chapter 501, Hawaii Revised Statutes, and is not described by metes and bounds; rather, such property is described by reference to a lot on a map in a Land Court Application.<sup>7</sup> A Land Court property description includes a lot number, map number, application number, and a transfer certificate of title (TCT) number.<sup>8</sup>

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<sup>5</sup> McQuillin Mun. Corp. §25.89 (3<sup>rd</sup> ed. 2000).

<sup>6</sup> *Id.*

<sup>7</sup> Hawaii Conveyance Manual (4th ed. 2001), at 2-19, 5-3, 5-4.

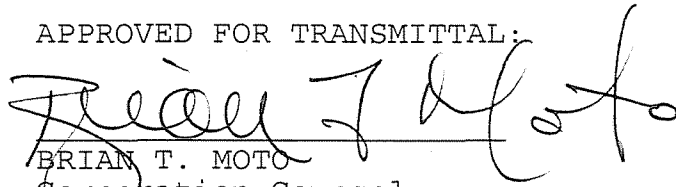
<sup>8</sup> *Id.*

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Therefore, it is not necessary to have a metes and bounds description of the subject Land Court properties prior to submission of the draft bill to the Maui Planning Commission. We recommend that copies of the Land Court maps relating to the subject properties be obtained and provided to the Maui Planning Commission for its information.

cc: Jeffrey Hunt, Director of Planning  
Colleen Suyama, Deputy Director of Planning  
Michael J. Hopper, Deputy Corporation Counsel  
Michele White, Legal Assistant

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO  
Corporation Counsel

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