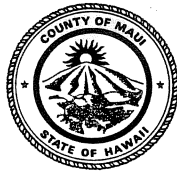


ALAN M. ARAKAWA
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January 17, 2006

MEMO TO: G. Riki Hokama
Council Chair

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

SUBJECT: **PAPAANUI, LLC Applications for Land Use Commission
District Boundary Amendment, Community Plan Amendment,
and Change in Zoning (No file number specified)**

Introduction.

This memorandum is in response to your request for legal services dated November 29, 2005.

As summarized in your request, on November 25, 2005, the Office of the County Clerk received from the Planning Director, via the Mayor, a letter dated November 18, 2005 (with enclosures) for posting on the agenda of the December 2, 2005 Council Meeting. The caption of the letter referenced a Land Use Commission District Boundary Amendment, Community Plan Amendment, and a Change in Zoning for approximately 3.93 acres of land located at Tax Map Key Numbers (2)2-1-007:009, (2)2-1-007:060 (portion), (2)2-1-007:094 (portion), and (2)2-1-008:100 (portion) ("Papaanui Subdivision").

Before posting the letter on the Council Meeting agenda, Council staff noted that the identification of the subject property in the Planning Director's letter differed from the information in the applications filed by the developer, Papaanui, LLC. The applications reviewed by Council staff identify the property as Tax Map Key Number (2)2-1-007:009 and describe the lot size as 3.51 acres. Further, the letter authorizing Chris Hart & Partners to file the applications makes reference to Tax Map Key Number (2)2-1-007:009 only.

You have asked us to review the transmittal to Council and advise you as to whether the applications are ready for Council consideration.

Short answer and recommendation.

Upon review and investigation of the application files, and having consulted with the Department of Planning and others, we conclude the following:

- The November 18, 2005 letter to the Council should not have referenced Tax Map Key Number (2)2-1-007:094 (portion) inasmuch as that parcel, although a part of the Special Management Area Permit application filed in conjunction with the Papaanui Subdivision, is not a part of the subject Land Use Commission District Boundary Amendment, Community Plan Amendment, and Change in Zoning.
- References to Tax Map Key Numbers (2)2-1-007:060¹ and (2)2-1-008:100 (portion) were inadvertently omitted from the agenda posted for the July 12, 2005 meeting of the Maui Planning Commission. The Commission's July 12, 2005 agenda referenced only Tax Map Key Number (2)2-1-007:009 under the item relating to the Papaanui Subdivision.
- We recommend that the subject land use entitlement applications (or at least those parts pertaining to Tax Map Key Numbers (2)2-1-007:060 and (2)2-1-008:100 (portion)) be returned to the Planning Director so as to allow the Maui Planning Commission, pursuant to a correct agenda, to rehear the applications as they relate to Tax Map Key Numbers (2)2-1-007:060 and (2)2-1-008:100 (portion).

Discussion.

Based on information provided to us, the original land use applications for the Papaanui Subdivision were filed with the Department of Planning on July 30, 2004 and identified one Tax Map Key Number, (2)2-1-007:009. By submissions dated November 1, 2004, the applications were revised to include Tax Map Key Numbers (2)2-1-007:060 and (2)2-1-008:100 (portion) and to revise the property size to 3.93 acres. (Copies of these revised applications were apparently not included among the enclosures submitted to the

¹Upon review of the application files, and having consulted with the Department of Planning, we believe that all of Tax Map Key Number (2)2-1-007:060 is part of the pending applications, and not just a portion of parcel 60. Therefore, references in the Planning Director's November 18, 2005 letter and in the Department's Report to the Maui Planning Commission to "(por.)" in conjunction with Tax Map Key Number (2)2-1-007:060 are in error.

Council with the Planning Director's letter dated November 18, 2005.) Tax Map Key Numbers (2)2-1-007:060 and (2)2-1-008:100 (portion) are portions of Makena-Keoneoio Road and Old Ulupalakua Road, respectively, serving the Papaanui Subdivision.

On June 10, 2005, the Department of Planning published a Notice of Public Hearing on Applications. The published Notice referenced only Tax Map Key Number (2)2-1-007:009. However, on June 21, 2005, June 28, 2005, and July 5, 2005 the applicant published notices of public hearing and location maps relating to the requested State Land Use District Boundary Amendment, Community Plan Amendment, and Change in Zoning. These notices referenced all three Tax Map Key Numbers involved in the project and were accurate as to the description of the property.

Papaanui Subdivision was included on the July 12, 2005 agenda of the Maui Planning Commission; however, the only Tax Map Key Number referenced on the agenda in connection with the Papaanui Subdivision was (2)2-1-007:009. The Commission recommended approval of the subject land use applications, subject to a recommended condition of zoning.

By letter addressed to Michael Foley, Planning Director, dated December 15, 2005, Papaanui, LLC, authorized Christ Hart & Partners, Inc., to represent the landowner with regard to the pending applications for all three Tax Map Key Number parcels.

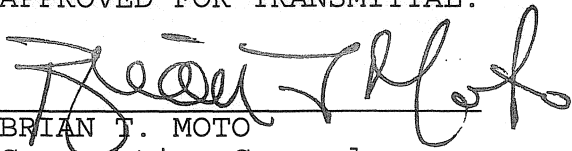
Conclusion.

In light of the fact that Tax Map Key Numbers (2)2-1-007:060 and (2)2-1-008:100 (portion) were omitted from the Maui Planning Commission's July 12, 2005 meeting agenda, the actions taken in connection with these two Tax Map Key Number parcels is questionable at this time. In informal conversations with the Office of Information Practices, we have been informed that the most advisable course of action is to have Tax Map Key Numbers (2)2-1-007:060 and (2)2-1-008:100 (portion) referred back to the Maui Planning Commission for hearing so as to erase all doubt as to the actions taken regarding those parcels. This is also advisable considering that the letter authorizing Chris Hart & Partners to seek a State Land Use District Boundary Amendment, Community Plan Amendment, and Change in Zoning for these two Tax Map Key Number parcels is dated after the Commission action in question.

G. Riki Hokama, Council Chair
January 17, 2006
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cc: Michael Foley, Planning Director
Robyn L. Loudermilk, Planner

APPROVED FOR TRANSMITTAL:

A handwritten signature in black ink, appearing to read "Brian T. Moto", written over a horizontal line.

BRIAN T. MOTO
Corporation Counsel

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