

MANCINI, WELCH & GEIGER LLP

JAMES W. GEIGER 4684-0
305 East Wakea Avenue, Suite 200
Kahului, Hawaii 96732
Telephone: (808) 871-8351
Facsimile: (808) 871-0732
Email: jgeiger@mrwlaw.com

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Attorney for Petitioner
ANDREW GRIER

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

ANDREW GRIER,)	CASE ID: 2CSP-20-0000039
)	
Petitioner,)	DECLARATORY ORDER
)	
vs.)	
)	
COUNTY OF MAUI; MICHELE)	
CHOUTEAU MCLEAN, Director,)	
Department of Planning, and DOE)	DATE: September 17, 2021
GOVERNMENTAL UNITS 1 - 5,)	TIME: 9:00 a.m.
)	JUDGE: Peter T. Cahill
Respondents.)	
)	
)	

DECLARATORY ORDER

On September 10, 2020, Petitioner Andrew Grier filed a Verified Petition for Declaratory Ruling on Number of Dwellings Allowed on Rural Zoned and Classified Properties in the above-referenced matter pursuant to HRS §632-1 and HRS §91-7 (the "Petition"). Petitioner requested a declaratory order as to whether HRS §46-4(c) and Ordinance 4936(2018) authorized the construction of ohana dwellings in addition to single-family

dwellings on properties in the rural district that are over one acre in area.

On September 17, 2021, Petitioner and James W. Geiger, attorney for Petitioner, and Kristin K. Tarnstrom, attorney for Respondents, appeared and presented argument to this Court. The Court, having examined the pleadings filed in this matter by Petitioner and Respondents, having heard from counsel for Petitioner and Respondents, and having made such inquiries the Court deemed necessary to render a declaratory order, makes the followings findings of fact and conclusions of law.

FINDINGS OF FACT

Procedural Review.

1. On September 10, 2020, Petitioner filed the Petition.
2. On July 26, 2021, this Court entered an order denying Respondents' Motion to Dismiss the Petition.
3. On July 30, 2021, Petitioner filed an Opening Brief.
4. On August 13, 2021, Respondents filed an Answering Brief.
5. On August 20, 2021, Petitioner filed a Reply Brief.
6. On September 14, 2021, Respondents filed an Errata to their Answering Brief.

Issue Presented for Review.

7. Whether property within the State Land Use Rural District that is zoned rural can have one single-family dwelling for each one-half acre, plus one accessory dwelling if the lot is under 7,500 square feet or two accessory dwellings if the lot is over 7,500 square feet. (Verified Petition at ¶ 26).

Statutory Review.

8. In 1981, the Hawaii Legislature adopted HRS §46-4(c) that required Counties to adopt ordinances to allow Ohana Zoning, stating: "Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted; provided: (1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements; and, (2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection." (Act 229, 1981 Session Laws at pp. 441-442).

9. In 1988, the Hawaii Legislature amended HRS §46-4(c) to remove language stating that the section superseded any other law. (Act 252, 1988 Session Laws at p. 447).

10. In 1989, the Hawaii Legislature, noting that the 1988 amendment to HRS §46-4(c) arguably prohibited adoption of

Ohana Zoning in the State Land Use Rural District, amended HRS §205-2(c) to provide for a density of one dwelling unit per one-half acre in lands classified as rural by the Land Use Commission, subject to the provisions of HRS §46-4(c). (Act 5, 1989 Session Laws at p. 6).

11. The stated purpose for the 1989 amendment to HRS §205-2(c) was to correct the prohibition of ohana zoning in rural district lands, which prohibition was manifestly contrary to legislative intent. (Act 5, 1989 Session Laws at p. 5).

12. In 1989, the Hawaii Legislature also amended HRS §46-4(c) to state that each county "may" adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted. (Act 313, 1989 Session Laws at p. 687).

13. The stated legislative intent was to "broaden the authority of the counties to regulate ohana zoning." (Conference Committee Report 33 on SB 1128, 1989 House Journal at p. 770).

14. In 2018, the Maui County Council adopted Ordinance 4936 to allow as many as two accessory dwellings on any lot on the island of Maui that is greater than 7,500 square feet, stating "[n]o more than two accessory dwellings shall be permitted on any lot that is seven thousand five hundred square feet or greater." (Ordinance 4936 (2018)).

15. The stated purpose of the Maui County Council in adopting Ordinance 4936 was to provide for additional housing. (Ordinance 4936, § 1, p. 1 (2018)).

Parties Positions.

16. Petitioner's position is that HRS §46-4(c) and Ordinance 4936 allows an owner of property in the rural district to construct on each lot in the rural district one main dwelling per one-half acre on the lot, plus two accessory dwellings for any lot that is greater than 7,500 square feet.

17. Respondents' position is that the HRS §46-4(c) exception adopted in HRS Chapter 205 is more restrictive and limits the application of HRS §46-4(c) to circumstances in which only one house is allowed per lot. As applied to State Land Use Rural District properties, for lots that are less than one acre, HRS §46-4(c) applies, but for lots that are one acre or greater, no accessory dwellings can be allowed by the County under HRS Chapter 205 because more than one house would already be allowed on the lot. Therefore, Respondents' conclude that HRS §46-4(c) limits the number of accessory dwellings allowed in the State Land Use Rural District, regardless of what may otherwise be allowed by Ordinance 4936.

18. Any conclusion of law improperly designed as a finding of fact shall be deemed or construed a conclusion of law and any finding of fact improperly designated as conclusion of

law shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Petitioner is an interested person and has standing to bring this Petition pursuant to HRS §632-1.

2. This Court has jurisdiction to issue this declaratory ruling as an actual controversy exists between contending parties concerning the application of statutes and as the Court is satisfied that a declaratory ruling will serve to terminate the uncertainty or controversy giving rise to the proceeding.

3. The Hawaii Legislature, in amending HRS §205-2(c) and HRS §46-4(c) intended to allow the counties to increase the density of dwellings on rural classified lots with the intent to expand housing opportunities.

4. Section 46-4(c), HRS, authorized the counties to adopt reasonable standards to allow construction of accessory dwelling units on lots where residential dwelling units are permitted; where the counties chose to so act, neither HRS §§ 205-5(c) and 205-2(c) limit the number of accessory dwellings permitted by the counties.

5. The Maui County Council enacted Ordinance 4936 with the intent to allow owners of properties that were zoned rural to increase the density of dwellings on such lots and to

increase housing availability on the island of Maui.

6. Based upon the language of HRS §205-2(c), HRS §46-4(c) and Ordinance 4936, as well as the stated legislative intents of the Hawaii Legislature and the Maui County Council, the State of Hawaii authorized the County of Maui to adopt an ordinance allowing for the construction of accessory dwellings within the rural district in addition to the dwellings authorized under HRS Chapter 205 and the County of Maui adopted such as an ordinance.

7. Under the applicable Maui County ordinances and Hawaii State Statutes currently in effect, for those lots within the State Land Use Rural District which also are zoned as rural by the County of Maui, the density of structures on such lots shall be one dwelling per one-half acre, and such lots may be allowed one accessory dwelling for any lot that is less than 7,500 square feet and two accessory dwellings for any lot that is greater than 7,500 square feet.

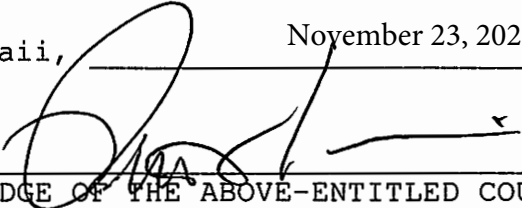
8. Nothing in this Declaratory Order shall relieve the owners of lots affected by this Declaratory Order from compliance with any other obligations imposed by law.

DECLARATORY ORDER

Having duly considered Petitioner's Petition, the pleadings in this matter, the oral and written arguments presented by Petitioner and Respondents, the Court hereby rules

that lots within the State Land Use Rural District on the island of Maui which also are zoned Rural by the County of Maui, shall be entitled to have one dwelling per one-half acre, and under Ordinance 4936 may be allowed one accessory dwelling for any lot that is less than 7,500 square feet and two accessory dwellings for any lot that is greater than 7,500 square feet.

DATED: Wailuku, Hawaii, November 23, 2021.



JUDGE OF THE ABOVE-ENTITLED COURT



APPROVED AS TO FORM:

/s/ Kristin K. Tarnstrom
KRISTIN K. TARNSTROM
Attorney for Respondents