

From: Jason Economou <jason@ramauai.com>
To: <planning@mauicounty.gov>
CC: Lawrence Carnicelli <lawrencecarnicelli@gmail.com>
Date: 8/21/2020 2:07 PM
Subject: RAM Testimony for Planning Commission Meeting on August 25, 2020
Attachments: GAD Testimony to Planning Commission RE West Maui Community Plan.pdf

Aloha,

I am submitting the attached testimony on behalf of the REALTORS Association of Maui for the upcoming Maui Planning Commission meeting scheduled for 5:30 p.m. on August 25th, 2020. For ease of reference, I have also included the body of our testimony below.

RE: Planning Department Recommendations for the Draft West Maui Community Plan, on the Agenda for August 25, 2020, Planning Commission Meeting

Aloha Chair Carnicelli, Vice-Chair Tackett, and Members of the Commission:

I am submitting the following testimony on behalf of the REALTORS Association of Maui (RAM) and the 1,700+ REALTORS and affiliates that we represent. This testimony is in regards to the West Maui Community Plan and the Planning Department's recommendations for amendments to Section 3 of the Growth Framework. Specifically, RAM would like to provide additional recommendations concerning the Planning Department's recommended amendment to Section 3.5 as described in the Memorandum dated August 25, 2020 <https://protect2.fireeye.com/v1/url?k=7f2c6f9c-219ce040-7f285a9a-86ab8bdaf1e2-9e9ec0cef801f2de&q=1&e=3bce63b8-254d-4717-a63a-ca4f196d8a32&u=https%3A%2F%2Fwww.mauicounty.gov%2FDocumentCenter%2FView%2F123093%2F082520_Agenda-Item-B1_Department-Recommended-Amendments>

In the aforementioned memorandum, Planning Director McLean referenced a list of non-hotel-zoned properties that can lawfully operate as short-term rentals (STRs), and recommended "that the properties that have a high percentage of STR use be designated Hotel." RAM is strongly in support of this concept, but we believe the Director's recommendation does not go far enough. Rather than reclassifying these properties based on the percentage of STR use, they should be reclassified based on whether or not STR use is a vested property right.

The right for certain Apartment zoned properties to operate as short-term rentals became widely recognized in 2001, when Deputy Corporation Counsel Richard Minatoya was tasked with answering the following question: "which apartment units are excluded from the prohibition on transient vacation rentals in the Apartment District?" The answer he came up with based on the Maui County Code was two fold: "(1) projects with building permits, special management area use permits, or planned development approval lawfully issued and valid on April 20, 1989; or (2) apartment units that were operating as transient vacation rentals on or before March 4, 1991." That answer is still legally valid today, and has since been codified in the language of the Maui County Code in Section 19.12.020(G) regarding permitted uses in the A-1 and A-2 districts. Therefore, these properties have a vested property right to operate as short-term rentals regardless of the percentage of that use.

Nevertheless, these Apartment zoned properties that can lawfully conduct short term rentals pursuant to their zoning and the Minatoya opinion are a frequent source of controversy and debate. Moreover, the frequent attempts by members of the County Council or from within the Planning Department to "undo" the Minatoya opinion are almost certainly expending County resources that could better be used elsewhere, and will ultimately lead to costly litigation. Notwithstanding, much of the controversy, debate, cost, and threats of litigation could disappear if these short-term rentable condominiums were to be reclassified as Hotel. Such a reclassification would also lead to a significant increase in property tax revenue, as the Hotel tax rate is significantly higher than the Apartment rate.

It is my sincere hope that this Commission will consider my proposal and reclassify all non-hotel-zoned properties that can lawfully operate as short-term rentals into the Hotel designation. Such a change would

eliminate the need for future battles over the “Minatoya properties,”
protect property rights, bring conformity among uses in the Apartment
zoning districts, increase County revenue, and it just makes sense.

Mahalo,

Jason A. Economou

Government Affairs Director

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August 21, 2020

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VIA EMAIL: planning@mauicounty.gov

**RE: Planning Department Recommendations for the Draft West Maui
Community Plan, on the Agenda for August 25, 2020, Planning Commission
Meeting**

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Jason A. Economou
Government Affairs Director