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January 20, 2020

County Council, Planning Department, Affordable Housing Committee and CPAC

COUNTY OF MAUI

WAILUKU, MAUI, HAWAII 96793

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RE: CPAC Meetings January 21 & 23
Makila Plantation Phase I, Lot 5, 16.055 acres
TMK (2) 4-7-001:005

SUBJECT: Getting the aforementioned lot into the Urban Growth Boundary of The Maui Island Plan

My wife and I have written you previously expressing our humble desire to have our real property above included in the Maui Island Plan/Urban Growth Boundary or exempted from the "sliding-scale" restrictions placed upon it so as to enable us to also assist in helping ease Maui's critical housing crisis. In approving the subdivision of Makila Farms located virtually at our doorstep, we believe that we too should be afforded the same opportunity as the major developers in our area. As stated repeatedly in prior emails, my wife and I seek to subdivide our property but, unfortunately, we find ourselves prevented from doing just that by both the County with the "sliding-scale" requirements and the developer's putting into our CC&Rs that we must change zoning from Ag to Rural before being able to subdivide. We are being put into the position of having to seek a change in zoning from Ag to Rural for a parcel that we would like to keep as agricultural. Moreover, it perplexes us as to how these same developers managed to get their lands in the Urban Growth Boundary/Maui Island Plan and avoiding the "sliding-scale" while we find ourselves excluded. Hopefully, this isn't just for the privileged.

Unfortunately, the fact is Maui's housing needs on the West Side are not even be close to being met. Interestingly, the proposed new subdivision in Launiupoko is exactly where my lot is located. Advertisements tout; "In Launiupoko between Hokiokio Street and Kai Hele Ku Street and between the Lahaina bypass and Haniu Street." In other words, they're NIMBY but actually IMBY. The word "NIMBY" (Not In My Back Yard) is often used by Peter Martin in attacking those in opposition to his developments. If anyone is to be affected by these subdivisions, it's me. No matter the names of those applying for these subdivisions, they are distinctively Peter Martin. That being said, I know that Maui desperately needs housing. As a resident of Launiupoko myself, I wholeheartedly agree with the County and Peter Martin in the need for affordable housing which is why it perplexes me as to why I'm being kept out of the process. He knows full well that I've been trying to get his company's, and the County of Maui's, help in subdividing for over a decade to ease the housing crisis without success. As I have stated repeatedly, I am for subdividing my property. As a chiropractor I see the need for housing in the eyes of folks I see every day; from those who can't afford homes to employers who can't find enough workers due to the lack of affordable housing. So many of us living here on Maui struggle everyday just to make ends meet, and it's about time to change that. Let's face it, if it really is all about helping ease Maui's housing crisis, is it possible to get CPAC and the County Planning Department to both remove the "sliding-scale" restrictions placed on my lot and that of my neighbors and reassign Makila Plantation to have it included in the Urban Growth Boundary of the Maui Island Plan? Both Peter Martin and the County left us out of those plans in 1998 (sliding-scale) and 2012 (Urban Growth Boundary/Maui Island Plan) which allows him to develop his property while keeping us out of the MIP/UGB and now's the change to change that. We all know that the "sliding-scale" was put in place to curb growth and it's done exactly that to the point of, along with a bunch of other factors, to help create one of the worst housing crisis' Maui has ever seen. We badly need housing and repealing or amending the "sliding-scale" would greatly help improve that situation. Ideally, as part of their approval process, have the developers of upcoming subdivisions remove the impediments that they put into our CC&Rs that keep us from subdividing ourselves. Maui desperately needs more housing in the future and Makila Plantation has the land to do it. Getting us into the mix by including us in the Urban Growth Boundary/Maui Island Plan will help ease Maui's housing crisis. Let's face it; if it is truly about affordable housing as you say then shouldn't you be helping everyone in creating more housing, including me? Help us in removing these roadblocks and pave the way for helping us to ease Maui's housing crisis. Let's all work together to make Maui a better place for all of us. Our keiki and our future depend upon it. If you don't believe me, you might want to ask the dozens of people who responded to my recently published article, "Remove roadblocks to affordable housing," published in the Lahaina News, July 11th through July 17th, all of whom overwhelmingly supported my ideas. Regarding the "sliding-scale" consider the following:

"The timing was fortuitous for Martin. In 1998, the county passed a sliding-scale agriculture bill, which put a limit on agricultural subdivisions but 'grandfathered me because I was almost through,' Martin said. Before the bill, Ag land could

be subdivided into as many 2-acre lots as landowners wanted. (For example, 100 acres could be subdivided into 50, 2-acre lots.) But the new law set a cap of 14, 2-acre lots, no matter the overall lot size. 'What it did was create a huge shortage of 2-acre lots, and we had 'em still,' Martin said.'

Latest Peter Martin projects generate familiar opposition, Colleen Uechi, Assistant Editor, The Maui News, July 18, 2019

My wife and I wish to be part of the solution to help ease Maui's housing crisis. Unfortunately, as previously stated, our hands are tied by both the County, who in 1998 introduced a "Sliding-Scale" measure designed to limit development on Ag lots and by the developer, Peter Martin of West Maui Land, Co. (WML) who both didn't include our subdivision in the Urban Growth Boundary of the Maui Island Plan and put into our CCRs restrictive covenants meant to prevent us from doing exactly what he's trying to do. Both measures severely restrict or ability to subdivide thereby making our ability to help ease Maui's housing crisis all that much more difficult. The County's "Sliding-Scale" was meant to contain growth and look where it has gotten us; to a point of a critical housing crisis with people leaving the islands because of not finding a place to live. Peter Martin's efforts to curb our ability to subdivide have worked in containing any competition to his plans of developing the area. If you don't believe me, consider this statement by Patrick Ihu whom we consulted: *"It seems all of the other lots mauka of the Proposed Lahaina Bypass are zoned rural and within the proposed general growth boundaries except for Dr. Owens Lot and his neighbor's lot which seemed to have been purposely left out of the rural area and remains Ag."*

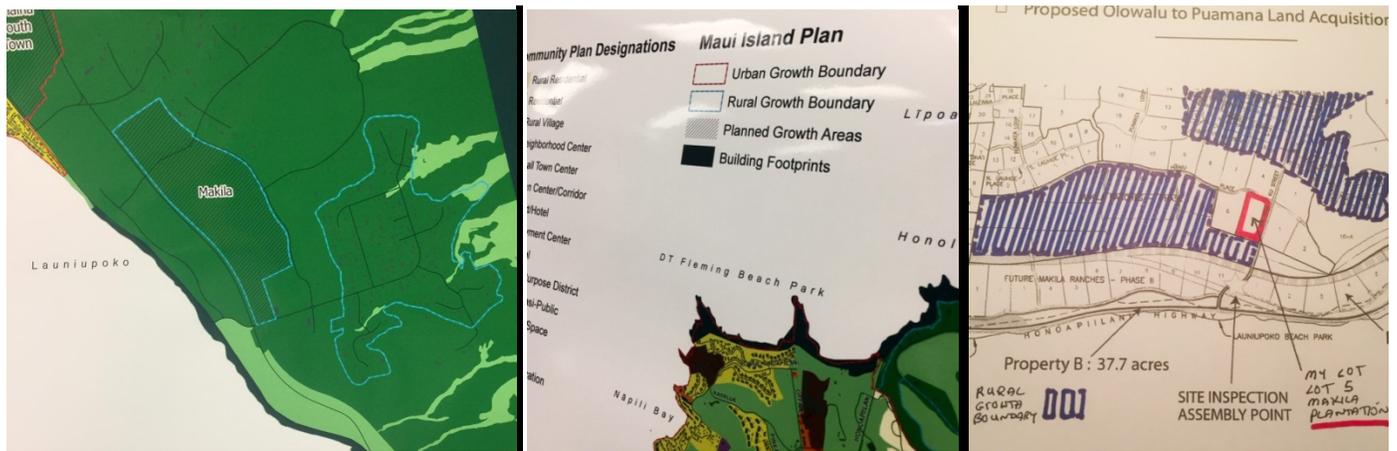
According to the Full-page ads in the Maui News by West Maui Land, Co., local governmental agencies state: "14,000 housing unit demand in Maui by 2025- with No sizable West Maui home developments are currently proposed to be built soon-The housing crisis is worsening every year" with another article published in the Lahaina News estimating that over "250 affordable housing units need to be built annually" just on the West Side and just to keep up with current demand." No wonder Jeri Dean, West Maui Community Plan Advisory Committee had this to say, "We are in a crisis situation that goes beyond desperation...we need housing for our people." That said I wish to have my 16-acre parcel approved for such. After all, as my wife bluntly put it in her email to you dated June 17, 2019, "dirt is dirt." In her letter, it was detailed that our property, located at 25 Haniu Street, is virtually identical to those that are seeking subdivision approval. As she put it, "if you look at the accompanying photos taken just yesterday, you'll notice two pictures of dirt that look exactly the same. One is taken from my property and the other is taken from the property being considered for fast-track approval seeking rezoning from Ag to Urban. If you look very closely, perhaps under a microscope, you'll notice small, almost undetectable differences between the dirt on their property and mine." Please see below:



Dirt from my property

Dirt from developers

The same goes for looking at our respective lots. Both areas had been under cane cultivation for almost 150 years. They both are bordered by Hokiokio St. to the North, Kai Hele Ku St. to the South, Haniu St. to the East and the Lahaina Bypass to the West. Their lots are approximately 14 1/2 –acres whereas ours is 16. They're touting their lots as "vacant" where ours is 99.9987% vacant. Heck, our property is connected to theirs with only a thin barbed-wire fence separating the two. The only difference between our dirt and theirs is that the developers of Makila Rural East, Polanui Gardens, and now Makila Farms, West Maui Land Co. (WML) and Brown Development (BD) developments, managed getting their dirt included in the Maui Island Plan/Urban Growth Boundary while keeping our dirt out of it. Even worse, is the fact that WML deliberately chose to keep our dirt out of the Maui Island Plan/Urban Growth Boundary and has written into our CC&Rs restrictive covenants preventing us from doing the same? Or better yet, look at the following pictures. You'll notice immediately that my lot, outlined in red, has been deliberately left out of the mix despite being in the exact same area and even connected to the areas being considered for rezoning and fast-track. It's all so obvious. Perhaps that's why former County Council Member Elle Cochran said the following: *'Anyone can tell that they (the developers) drew all this sh*t up!'*



As my wife put it in her letter, “I believe that if you and your members truly look over these pictures, I’m sure that you’ll come to exactly the same conclusions that both Elle and Patrick came to.” Our property should be placed within the Urban Growth Boundary of the Maui Island Plan. It is only fair. As such, we humbly ask that your committee consider placing our property within the Urban Growth Boundary of the Maui Island Plan or that we be exempted from the “sliding-scale” restrictions. We seek to be removed from the “Sliding-Scale” restrictions placed on our property either through amendment or changing the Maui Island Plan so as to be able to subdivide as Ag. If that’s not possible, we ask to be considered for amending the State Land Use District Classification from Agricultural District to Urban District (Conditional Boundary Amendment) as was sought by the large developers in our area. Minimally, as a minimal requirement in approving their future subdivisions, they should be required to remove the restrictive covenants placed into our CCRs preventing us from further subdividing and have their help, with the County’s approval, to include us into the Maui Island Plan/Urban Growth Boundary so as to enable us to also help with the current housing crisis through being able to further subdivide our Ag property. To do so otherwise would invite public scrutiny/opinion to believe that only the privileged are granted the ability to do so. Of course, as my wife put it in her letter, “My dad, born and raised in the Philippines, always used to talk how the rich and powerful got their way back home and it is hoped that Maui isn’t following in their example.”

With the developers citing the urgent need for additional housing on Maui in support of their subdivisions, why have they limited others, like me, from developing their properties as they are now doing? Think about it for a moment, why have they put into our CC&Rs restrictive covenants meant to limit our ability to subdivide? Why have they deliberately (see Patrick Ihu’s comments above) left our properties out of the Maui Island Plan/Urban Growth Boundary? If their argument is about creating more housing opportunities on Maui, shouldn’t they be for allowing us to do the same? When my wife and I met with then Mayor Alan Arakawa a number of years ago to discuss the effects the Lahaina Bypass was having on our property, we discussed a myriad of things regarding development in our area including: Fire, Flood and the effects of the moving of the Lahaina Bypass. At that time, Mayor Arakawa informed us that the developer (WML) had “agreed to and was required to provide for an Agricultural buffer/greenbelt between the Bypass and the developments above.” It is interesting to note that, at that time, the mayor advised us to sue WML for “failure to disclose” these matters relating that, “disclosure is everything.” West Maui Land’s response, “The Mayor must have been confused.”

As my wife put it, “with these developers placing emphasis on developing the ‘vacant properties makai of Haniu St. (as is our property),’ having already been granted inclusion in the Maui Island Plan/Urban Growth Boundary and now seeking rezoning from Ag to Urban, we hope to be included in the recommendations approved by Planning at this time. It seems only fair and natural that we be included in the process. With our lot being over 99.99% ‘vacant’ and in the area described, we believe that we should be included in any effort to rezone along with the other lots ‘makai of Haniu St.’ After all, dirt is dirt. Should a variance be needed to account for the .0013% that is developed, it is hoped that County Planning grant a variance to include us into the proposed amendment. Of course, I hope the use of the term ‘vacant’ isn’t a blatant or deliberate attempt by the large developers in the area to pursue approval of the proposed developments to the exclusion of others like myself, who, being smaller landowners could also benefit from a change in zoning from Agricultural to Rural and are willing to help ease Maui’s current housing crisis. We too wish to be afforded the same opportunity as the developers of Makila Rural East and Polanui.” We all agree that the Maui General Plan needs to be updated to allow for growth to ease Maui’s housing crisis, hence, our seeking subdivision. We do not have the resources to hire expensive attorneys, architects, or personnel to attend meetings on our behalf or to pay for full-page ads in The Maui News, yet we too seek the same consideration currently being granted the large developers in our area who cry for more housing while preventing others from subdividing themselves. As such, we seek to have our lot either removed from the “Sliding Scale” restrictions so that we may be allowed to subdivide as Ag or to be granted rezoning from Ag to Rural as is being sought by Peter Martin and his partners. Additionally, with the help of County, we wish to have the developers remove their restrictive covenants from our CC&Rs with the County granting us subdivision approval for Ag, or identified as “Rural” and included in the “Rural Growth Boundary” designation of the Maui Island Plan and Urban Growth Boundary as are the proposed subdivisions. We would also like to be included in the CPAC discussions and hope to gain the support of the General Plan Advisory Committee in making this happen.

"The Maui County Code established a "sliding scale" in the Agricultural District that allows for a certain limited number of 2, 15, 25 and 40-acre lots. Your lot is one of the 15-acre lots located under the scale. In order to subdivide your property, it must be rezoned because under the Agricultural zoning and sliding scale, it cannot be further subdivided because the scale is maxed out...you need to change everything else (Maui Island Plan, West Maui Community Plan and zoning)."

Alice L. Lee/ Councilmember

In other words, my wife and I humbly ask Planning to consider placing our real property located at 25 Haniu Street, Lahaina, HI 96761, Lot 5, Makila Plantation in Launiupoko, TMK (2) 4-7-001:005, in "the Planned Growth Areas/Rural Growth Boundaries" of the Maui Island Plan and within the Urban Growth Boundary. Why the large developers in the area are granted inclusion in the MIP/UGB, and are able to rezone from "Agricultural" to "Rural" while small landowners such as my wife and I are not afforded the very same opportunity? If that were the case, it seems far from being Pono, is unfair and definitely un-American. Our longtime friend and Planning Commission member, Lawrence Carnicelli, told us at a recent West Maui Open House that working with Planning and getting into CPAC is the way to go in developing our property. We hope that he is right and that you are able to help us. My wife and I respectfully request that this matter be referred to the appropriate Council committee for review and discussion. We appreciate your attention to this matter and sincerely thank you for any and all help that you may provide. Please do not hesitate in contacting us should you have any questions regarding the aforementioned.

Sincerely, Greg Owens, D.C.

P.S. We all know of the serious lack of water in our area. On March 20, 2018, the Commission of Water Resource Management (CWRM) severely reduced the stream flows to the subdivisions of Launiupoko and Puunoa. After the PCRMR ruling, virtually all non-potable water is gone leaving only potable water available and then only sporadically for farming and housing needs. With this new reality, the Launiupoko Water Co. described the current non-potable supply of water as, "severely short with near zero available water supply." In fact, last year the Mahanalua Nui Homeowners Association stated, "Agricultural (non-potable) water may be cut-off...The association was informed by Launiupoko Irrigation Co. (LIC) that the reservoir that provides our ag-irrigation was empty!" This has, of course, had the direct effect of severely reducing non-potable water to zero to the area. Additionally, the availability of potable water in the areas is insufficient at the time to make up the difference. Concurrently, since non-potable water currently costs \$0.76/ 1,000 gallons and potable water costs \$2.57/ 1,000 gallons, in addition to having less water available to irrigate, this represents a financial hardship to those farming in the area, including us. Recently, we were advised by LIC that additional wells are being brought online but at additional costs, making the water prohibitively more expensive. According to County and State charters pertaining to the availability of agricultural water: "A reliable and inexpensive source of water is particularly important to keep agricultural lands in production. Without it, farmers cannot predictably plant and harvest, and the land may be good for other uses (Chapter 19.30A Agricultural Zoning District). To further illustrate the point of how severe our water situation is in our area, West Maui is currently experiencing a severe water shortage and has been requested to cut water consumption. Here in Launiupoko, we've been advised by the Launiupoko Irrigation Company, Inc. for months that we are at a "Level 4" water restriction which requires a "40% Reduction" in water usage. We have tried in vain to develop multiple crops on our property over the years only to be thwarted by repeated limited water issues. Recently we spoke to former mayor Alan Arakawa who suggested that we contact governmental agencies to seek a list of prospective farmers, nurseries, fisheries, etc. who might be interested in leasing our land for farming. Upon receiving such a list and contacting prospective farmers, we were totally discouraged by having each and every one on the list who got back to us state that the "lack of water" and the "expense" of pumped water would make it all but impossible to farm in our area. It is interesting to note that one of our neighbors, advertising in Craigslist with the following caption: "I have 1 to 3 acres of land that I am willing to let someone use for farming and or to house animals or build a pond to reproduce fish for FREE," hasn't had any bites due to the lack of water in the area despite offering her land for "FREE." Of those responding to our inquiry, a hemp farmer who wanted to produce Maui Grown CBD Oils rescinded his application to lease our land due to the limited water situation that exists in the area. Each farming entity that got back to us cited the same thing, "There's no water but even when water is more abundant, the increased costs associated in farming using 'pumped and treated' water as an issue." Another was more blunt, "They (The County) want you to go Ag but there aint no water so how can go Ag? With no water, no Ag." He suggested we look up "19.30" which we did only to discover that Maui County and State charters (19.30) stipulate that a low-cost and reliable source of water is required for farming. Since we have neither, farming in our area has proved elusive. Now, water is being further restricted by the Launiupoko Irrigation Company to three days per week. Which brings us to this, with (19.30) stipulating that a low-cost and reliable source of water is required for farming. We've found out that when said low-cost and reliable water are not available, that farming entities have withdrawn their proposals to lease our land for farming as a consequence of the lack of water, then, again according to (19.30), said land shouldn't the land be designated for its most appropriate use which, in this case, isn't farming? In other words, although we'd rather keep our land Ag, we find ourselves being put into the position of having that not be possible. In reviewing "PURCHASE OF DEVELOPMENT RIGHTS" and "Chapter 7: Land Use" on mauicounty.gov, I believe the "Diminished Production Capacity" and "Water" are arguments that substantiate County changing our zoning away from Ag should we not be granted our request. With County charter stating, "Where water is available it is often expensive, as it is treated to potable standards." In other words, the County Charter for Land Use supports that position.