

(10-786 OLOWALU

January 27, 2012

Aloha Orlando "Dan" Davidson, Executive Director , Land Use Commission,

ORIGINAL

This response letter to Frampton is a chronology of the facts explaining what has happened in our subdivision, which is grounds for our request to deny the developers application.



Randy Ragon

Olowalu Mauka Lot 6 Homeowner

713 A Front Street

Lahaina, HI 96761

808-298-1461

RR077@hotmail.com

LAND USE COMMISSION
STATE OF HAWAII
2012 JAN 30 A 8:56

Jan 24, 2012

Olowalu Town LLC.
2035 Main St. Suite 1
Wailuku Hi. 96793

Attention: Bill Frampton

SUBJECT: Response to December 28, 2011 letter
Re: Comments on the Environmental Impact Statement Preparation Notice
(EISPN) for the Olowalu Town Master Plan at Olowalu, Maui, Hawaii

Dear Mr. Frampton:

Your letter dated December 28, 2011 states that the numerous Subdivision Land Entitlement Violations filed on behalf of Olowalu Mauka with the Maui Planning Department have since been resolved by that agency.

You also state that the Olowalu Town Master Plan is proposed by Olowalu Town, LLC and Olowalu Ekolu, LLC. and you claim they are separate entities from Olowalu Elua Associates, LLC.

As the former president of the Olowalu Mauka HOA and the father of a family, I have endured the daily disruption of my life for over five years in order to force you and your developer clients into subdivision compliance. You clearly had no intention of honoring your development obligations. Your letter once again misrepresents the reality that our homeowners and my family continue to face in our non compliant Subdivision.

As a developer and land planner on Maui, your firm is well aware that the County of Maui Department of Planning has no final inspections for SMA permits. The administration for the Coastal Zone Management Environmental Program relies solely on developer's and their consultant's integrity and on citizen's complaints for the monitoring of developer compliance with issued permits. In the case with Olowalu Mauka, the SMA Major Permit and conditions were unfulfilled by the developer and the permit expired in 2005. Despite the fact the developer violated their land entitlement conditions without public notice, the developer continued to market and sell properties to the general public which raises multiple issues that only further civil remedies will resolve.

In accordance with the State of Hawaii Uniform Land Sales Act the developer was required to register their subdivision with the State of Hawaii. This public registration is intended to protect buyers as it insures that the developer provides full disclosure of all relevant conditions, restrictions, and obligations related to the subdivision. The State of Hawaii has confirmed in writing that the Olowalu Mauka developers did not register the subdivision and are in violation of the Uniform Land Sales Act.

Had the developer followed the State Laws and registered the subdivision with full disclosures of the specific conditions, restrictions, and obligations outlined in the consultant studies and mandated by government agencies there would have been notice to the general public prior to recordation of any sales contracts. In accordance with state law, the remedy for this violation could include rescission of sales contracts. Personally, I would have never entered into a purchase contract had I known the truth related to this non compliant subdivision.

There is also a strong legal argument that in accordance with Title 18 of the Maui County Code that the underlying subdivision map expired when the conditions of approval were left unfulfilled prior to the specific dates set forth in the original subdivision approvals. This also raises the question of vesting and clear land title.

As we now know, when the subdivision map was recorded there was a written condition by the State Department of Transportation that the subdivision was to remain unoccupied until there was full compliance with the issued permits. Knowingly and intentionally the developers and their agents solicited innocent buyers and recorded the sale of properties in the Olowalu Mauka Subdivision placing them in harms way with incomplete fire roads and unsafe ingress and egress from a major highway along with many other unfulfilled obligations.

As you are well aware there have been multiple fires in our subdivision that resulted in life threatening evacuations of our families from their homes that should never have been permitted and occupied. These original conditions of approval remain incomplete as well as many other conditions and unfulfilled obligations.

During this entire exhausting process when this information was exposed you and your consulting firm partner Dave Ward and the Olowalu Mauka developer chose to continue to manipulate and deceive our homeowners and government agencies rather than simply fulfill your developer obligations in our subdivision. At the very same time that my family and our HOA was seeking compliance for these unfulfilled obligations you and the developer were seeking community support for your next development venture Olowalu Town.

In response to your unwillingness to bring our subdivision into compliance a complaint was filed with the County of Maui Planning Department. Ultimately, as a harmed homeowner, I was advised to file a lawsuit to force you back in the direction of compliance of your ethical and developer obligations. As a result of this lawsuit, the County issued a letter on December 16, 2010 which you refer to as **Exhibit A** agreeing with my position that the developer had knowingly and intentionally violated their land entitlement conditions.

Consequently, you were required to go back to the Maui County Planning Commission to start over and seek new SMA permits. Rather than simply completing the original underlying subdivision conditions and engineering roadway and drainage designs in accordance with your approvals which we based our purchases on, you shifted the

multiple violations into an opportunity to amend and eliminate your prior obligations and agreements. You fooled the Maui County Planning Commission into believing there was a verbal agreement between Olowalu Elua Associates and the Maui County Department of Transportation for an occupancy phasing plan for our subdivision.

There is nothing in the Maui County Code or for that matter any other government approval process that allows for undisclosed retroactive verbal agreements between developers and government agencies at the expense and safety of unknowing purchasers.

This decision completely contradicted the prior written opinion of the State of Hawaii Director of Transportation Brennen Morioka who stated "that the subdivision was not to be occupied until the permit conditions were met unless there was a phasing plan of which there was none on record." He also stated that the County of Maui was responsible for the enforcement of the subdivision permit conditions.

Because of the disjointed communications between the Department of Public Works which issues building permits and the Department of Planning, building permits were issued to unaware purchasers in Olowalu Mauka in direct violation of the written agency conditions of approval for the underlying subdivision.

All of these further manipulations of government agencies orchestrated by your planning firm, the developer, their, and their agents took place after the sale of the entire subdivision, the formation of our homeowner's association, and after occupancies within the Olowalu Mauka development. By circumventing the vested homeowner's rights you took it upon yourselves to amend the engineering subdivision design to our development without the approval or authority of our board.

Additionally, the 2372 Lot Line Consolidation and Resubdivision Ordinance that the subdivision was developed under was intended to preserve agriculture. The developer's attorney Tom Welch testified years ago at a County Council meeting that the proposed 2372 Ordinance would not result in any quote "development activities".

Subsequently, and without full disclosure, attorney Tom Welch self amended our homeowner's bylaws to allow for further division of the resulting parcels via state land use laws pertaining to condominiumization. Unknown to us at the time is the fact this action violated the County of Maui Ordinance 2372 which the Olowalu Mauka subdivision was approved under with specific language and limitations for further land division in our subdivision.

While you may publicly claim Olowalu Town, LLC. and Olowalu Ekolu LLC are separate entities from Olowalu Elua Associates, the principals involved in the companies are the same and in fact share the same office location and employ the same lawyers, agents and consultants. The only separation is the name on your letterhead.

You are a partner in Olowalu Town LLC., along with the principals who were involved in developing Olowalu Mauka. Despite your partner Dave Ward's statement in a public

hearing that he had nothing to do with Olowalu Mauka or the highway improvements for our subdivision it has since been documented and verified by the Department of Transportation that he was very involved in the promises made to that agency as a planner for the Olowalu Mauka developer.

Before you move on with your next development venture, you must immediately address the deficient deceptive approvals you have recently received and the documented financial impacts on my family for being forced to be your personal watchdog.

You have knowingly and intentionally manipulated the State Department of Transportation, State Real Property and Disclosure Act, and the State Real Property Division Laws as well as many County agencies at the personal expense, safety and well being of my family and other homeowners. If you continue down this manipulative and deceptive path you will once again leave me and others no choice but to seek civil remedies to reconcile the consequences of your actions.

In closing, it is imperative that the State Land Use Commission understands how all of your developer manipulations of Olowalu Mauka tie together. The underlying land areas that created the Olowalu Mauka subdivision are once again being altered and incorporated into the application for Olowalu Town that is currently under review.

It is my hope that the Land Use Commission will use the information provided in this correspondence to initiate an investigation that will address the multiple violations and manipulation of State and County agencies that have harmed my family and have created a nightmare of real property disclosures and title issues.

Through this correspondence I am hereby requesting the State Land Use Commission deny your application for Olowalu Town.

Sincerely,



Randy D. Ragon
Olowalu Mauka Lot 6 Homeowner

'cc. Orlando "Dan" Davidson, Executive Director, Land Use Commission
Michael Munekiyo, Munekiyo & Hiraga, Inc.
William Spence, Maui Planning Director
Maui County Council Members