

Work force housing law challenged

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HONOLULU – A federal lawsuit challenging Maui County’s Residential Workforce Housing Policy as unconstitutional and a violation of state law was filed last week on Oahu.

Lawyers for a Canadian condominium developer, who is seeking to build two multiunit projects in the Kamaole area, are seeking a court order to block the county from implementing the law that the developer says is defective.

The lawsuit alleges the housing policy adopted by the council last year failed to include a “close nexus” between new developments and the need for affordable housing, is “an arbitrary, unreasonable impairment” of property rights and violates due process rights.

It also charges that the county policy does not meet the standards for imposing impact fees allowed by a state law.

The suit filed by Honolulu attorney Robert Klein on behalf of Kamaole Pointe Development and Alaku Pointe names the county, County Council members, Mayor Charmaine Tavares and Housing Director Vanessa Medeiros as defendants.

It was filed in U.S. District Court on Oahu after the council last week denied an appeal by the developer on the requirements of the Residential Workforce Housing Policy for the two projects planned by Kamaole Pointe Development LP and Alaku Pointe LP, the plaintiffs in the suit.

The county Workforce Residential Housing Policy requires 40 percent to 50 percent of all housing units in a new development to be priced at affordable ranges. It was approved by the council last year over a veto by former Mayor Alan Arakawa.

Klein said on Tuesday that the policy “is constitutionally deeply suspect and not well thought out. We don’t have another recourse but to go to court.

“We’re just waiting for the response from the county,” he said.

Deputy Corporation Counsel Madelyn D’Enbeau said the county was served with the suit on Monday, and the county has 20 days to respond to the complaint. Options include filing a motion to dismiss the complaint or give an answer to the plaintiffs.

Council members did not return calls for comment on Tuesday. Council staff said the members were served with the lawsuit late Tuesday afternoon.

An appeal from the development group represented by Klein was reviewed July 24 by the council Policy Committee, which recommended a resolution to deny the appeal. According to minutes from the July 24 meeting, council members said the developer had not provided them with details on which to consider an appeal of the housing policy.

The projects involve two parcels in Kihei. One would be a 124-unit residential condominium on 1 acre mauka of the Rainbow Mall and next to the Kihei Regency Apartments.

The second project is a 127-unit development proposed on 5 acres off Alaku Place, just makai of the residential subdivision along Alaku and Keonekai Road.

Both properties are owned by investment groups based in Calgary, Alberta, Canada.

During the July 24 meeting, Policy Committee Chairman Danny Mateo said correspondence submitted by the developer's representatives did not identify the legal basis for the appeal or provide sufficient information on the cost of the units being sold or what the affordable requirements would be.

When asked to comment at the meeting, Klein declined. But the presentation to the committee appeared to focus on the issues raised in the lawsuit – the legality of the housing policy rather than any details of the development project.

“I read through their appeal, and frankly they don't talk about the number of units,” Council Member Jo Anne Johnson said. “They don't even lay out a proper case for pre- and post-development. Because even if you read through their rationale, if it's to be called a rationale, it makes no sense because in . . . they're accusing us of not having a rational nexus. I don't even understand what their point is.”

Council Chairman Riki Hokama similarly said he did not see a rationale for a waiver in the documents filed with the council.

“You would think in an appeal that part of the evidence provided to this committee would have stated some type of legal documentation whether it be a case, an opinion, a ruling, which I found interesting was not attached to the communication,” he said.

“We who have lived through this situation are providing affordable housing throughout the islands of this county. I believe, Mr. chairman, you know, we've come to the determination that it is not in the best interest of this county to be same ol' same ol'.”

The Residential Workforce Housing Policy is imposed on any development of five or more residential units or hotel or time-share projects that generate three or more units.

For residential projects, the policy requires that 40 percent of the units in a development be priced according to county affordable housing standards if at least half of the project is priced at less than \$600,000. For projects in which half of the units will be priced at more than \$600,000, the policy requires the other 50 percent be priced under affordable housing guidelines.

Hotel and time-share developments – including resort renovations that increase the number of lodging units or convert a hotel to a time-share property – must also provide affordable housing equal to 40 percent of the new hotel or time-share units being developed.

Developers could satisfy the requirements by building affordable homes for sale or rent, providing land or partnering with a nonprofit organization to build the homes. The county has yet to adopt administrative rules to implement the policy.

During the Policy Committee meeting, Medeiros said her department had not calculated what number of affordable units would be required of the two Kamaole projects.

“They basically wanted exemption, and we didn't do any further analysis,” she said.

In claiming that the county housing policy is unconstitutional, the lawsuit also charges that:

- The county does not have authority to address issues of statewide interest and concern such as housing, saying it is the Legislature that regulates those matters.

- The policy does not allow the developer to recoup the costs for building affordable housing.

Klein said the development group is “trying to provide a development, and it’s deeply threatened as probably most developments are by this work force ordinance.

“It apparently doesn’t work economically for developers,” he said.

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