

JEFFREY T. KUWADA
County Clerk



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Deputy County Clerk

2013 FEB 15 PM 1:47

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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**OFFICE OF THE
COUNTY COUNCIL**

February 15, 2013

Honorable Donald G. Couch, Jr., Chair
Planning Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Couch:

Respectfully transmitted are copies of the following communications that were referred to your Committee by the Council of the County of Maui at its meeting of February 15, 2013:

COUNTY COMMUNICATIONS:

- No. 13-76 - Gladys C. Baisa, Council Chair
- No. 13-78 - Donald G. Couch, Jr., Chair, Planning Committee

Respectfully,

A handwritten signature in black ink, appearing to read "Jeffrey T. Kuwada".

JEFFREY T. KUWADA
County Clerk

/jym

Enclosure

cc: Director of Council Services

Council Chair
Gladys C. Baisa

Director of Council Services
David M. Raatz, Jr., Esq.



Vice-Chair
Robert Carroll

Council Members
Elle Cochran
Donald G. Couch, Jr.
Stacy Crivello
Don S. Guzman
G. Riki Hokama
Michael P. Victorino
Mike White

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 8, 2013

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2013 FEB - 8 AM 9: 47
OFFICE OF THE
COUNTY CLERK

The Honorable Gladys C. Baisa
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

Dear Chair Baisa and Members:

**SUBJECT: PROPOSED BILL AMENDING TITLE 19 RELATING TO
RESIDENTIAL DISTRICTS (13-026)**

At its meeting of December 21, 2012, the Council adopted the recommendation contained in Planning Committee Report 12-150 to file County Communication 10-210. The communication transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AND AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS."

I have discussed this matter with the Department of Planning and have determined that this communication merits further consideration.

Therefore, may I request that the attached letter dated September 1, 2010, from the Planning Director, relating to residential districts, and related correspondence be referred to the appropriate committee for discussion and action.

Thank you for your consideration. Should you have any questions or require clarification, please contact me.

Sincerely

DONALD G. COUCH, JR., Chair
Planning Committee

paf:kcw:13-026a

attachment

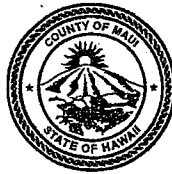
cc: Michele McClean, Deputy Director of Planning

COUNTY COMMUNICATION NO. 13-78

CHARMAINE TAVARES
Mayor

KATHLEEN ROSS AOKI
Director

ANN T. CUA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

September 1, 2010

RECEIVED

2010 SEP -1 PM 3:52

OFFICE OF THE MAYOR

OFFICE OF THE
COUNTY CLERK

2010 SEP -2 AM 9:25

RECEIVED

Honorable Charmaine Tavares
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Danny A. Mateo, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Charmaine Tavares 9/1/10
Mayor Date

Dear Chair Mateo and Members:

SUBJECT: A BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AND AMENDING TITLE 19, MAUI COUNTY CODE RELATING TO RESIDENTIAL DISTRICTS

Transmitted for your review is a proposed bill entitled, "A BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AND AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS."

The proposed bill is part of the Department of Planning's (Department) on-going effort to update, streamline, and standardize Title 19 of the Maui County Code. The overall goal is to resolve conflicts and to standardize code format, eliminate out-dated terms and uses, as well as incorporate user-friendly tables and graphics. Aside from updating the title format, using graphics and consolidating Chapters 19.09 and 19.08, the following is a summary list of new provisions and standards:

- Added garage sale as an accessory use;
- Established a lot coverage standard of 40%;
- Established a maximum height for accessory structures in the setback area;
- Added Energy Systems, small scale as an accessory use;
- Established an Access yard setback line from all roadways;
- Increased the height limit of structures attached to roofs, such as vent pipes, solar panels, and antenna;
- Established a Home Based Business definition;
- Established standards for free standing antenna and wind turbines.

COUNTY COMMUNICATION NO. 10-210

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793

MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

Honorable Charmaine Tavares, Mayor
 For Transmittal to:
 Honorable Danny A. Mateo, Chair
 September 1, 2010
 Page 2

During the reviews by the County Council and Planning Commissions of the Home Occupation Resolution 08-05, it was suggested that the Department look at establishing standards or a streamlined permit process for entrepreneurs who did not meet the Home Occupation definition. The Department's proposal is to establish a definition for "Home Based Business". The Department added this definition to the proposed bill amending 19.08 and 19.09 after the initial draft was sent to agencies and the bills were scheduled for review by the three commissions. The revised bill was sent to agencies for review and comments. Based on comments received, the Department amended the bills to allow Home Based Business in the Residential District as a Special Use.

The proposed bill was transmitted to the Maui, Molokai, and Lanai Planning Commissions. Below is a summary of their comments.

Commission	Public Hearing Date(s)	Comments and Recommendations
Maui	June 23, 2009 August 11, 2009	Voted to recommend approval of the proposed bill along with amendments presented in the July 21, 2009 memorandum. The Commission also voiced support for the Department's amendment to include a provision to allow any structure that was legally constructed and becomes an existing non-conforming structure as a result of these amendments, may be reconstructed per approved plans.
Molokai	July 8, 2009	Voted to recommend approval of the proposed bill to the County Council with the following amendments for Molokai only: Requires Special Use Permit for Pools and Spas; require the determinations of other Accessory uses to be the Planning Commission; amend Item J to read "Energy systems, small-scale, provided that it does not produce noise, dust, smoke, glare, or odor that negatively impacts the neighbors." Require a Special Use permit for any free standing antenna or wind turbine tower.
Lanai	July 15, 2009	Recommend the Bill back to County Council with no comments.

Honorable Charmaine Tavares, Mayor
For Transmittal to:
Honorable Danny A. Mateo, Chair
September 1, 2010
Page 3

Attached, for your review, are the following documents:

1. Memorandum from Jeffrey Hunt, Planning Director, to the Maui, Molokai, and Lanai Planning Commissions, dated June 11, 2009;
2. Memorandum to the Maui Planning Commission dated July 21, 2009;
3. Minutes of the June 23, 2009 and August 11, 2009 Maui Planning Commission meeting;
4. Minutes of the July 8, 2009 Molokai Planning Commission meeting;
5. Minutes of the July 15, 2009 Lanai Planning Commission meeting;
6. Agency comments received after the Planning Commissions review.

The Department respectfully requests that the proposed bill be referred to the appropriate Council committee for consideration.

Thank you for your attention to this matter. Should further clarification be necessary, please contact Joseph Alueta at Ext. 7743.

Sincerely,



KATHLEEN ROSS AOKI
Planning Director

Attachments

xc: Clayton I. Yoshida, Planning Program Administrator
Joseph W. Alueta, Administrative Planning Officer
Maui Planning Commission
Molokai Planning Commission
Lanai Planning Commission

KRA:JWA:atw
Molokai File
Project File
General File

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ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AND AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 19.09, Maui County Code, is repealed.

SECTION 2. Section 19.04.040, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Garage sale, rummage sale, or yard sale" means the sale or offering for sale to the general public of items of personal household property on any portion of a lot, whether within or outside any building.

"Home-based business" means an enterprise or activity, conducted by the occupant of the dwelling unit wherein the enterprise or activity takes place, involving the growing, processing, or manufacturing of a product or the provision of services for consideration and profit; provided:

1. That only one person other than a member of the family residing on the premises of the dwelling unit shall be employed by the home-based business;

2. That no more than twenty-five percent of the floor area of the dwelling unit shall be used by the home-based business;

3. That no group instruction classes or group sales meeting shall be permitted on the premises of the dwelling unit;

4. That retail sales shall be limited to products produced by the home-based business;

5. That no sign or display shall advertise the home-based business and there shall be no change in the exterior appearance of the dwelling unit to accommodate the home-based business;

6. That deliveries to or from the dwelling unit used for a home-based business shall be limited to two-axle vehicles between the hours of 9:00 a.m. and 5:00 p.m.;

7. That any goods, samples, materials, or objects used in the home-based business shall be stored within the dwelling unit or screened from public view;

8. That customers of the home-based business shall be limited to two at any time and a total of eight per day;

9. That customers shall be present at the home-based business only between the hours of 9:00 a.m. and 5:00 p.m.;

10. That the home-based business shall not impact the residential character of the property or neighborhood; and

11. That the following activities shall be prohibited:

a. Harboring, caring, training, or raising dogs, cats, birds, horses, or other animals;

b. Repair of automobiles and other vehicles with internal combustion engines;

c. Contractor headquarters or dispatch centers to other locations; or

d. The repair, manufacture, processing, or alteration of goods, materials or objects that results in a detrimental or nuisance effect upon neighbors."

SECTION 3. Section 19.04.040, Maui County Code is amended by amending the definition of "Yard, access" to read as follows:

"Yard, access. "Access yard" means [the yard on which a driveway is located.] a yard, the longest side of which borders a public or private street, excluding driveways for flag lots."

SECTION 4. Chapter 19.08, Maui County Code, is amended to read as follows:

"CHAPTER 19.08

RESIDENTIAL DISTRICTS

Sections:

19.08.010 [Generally.] Purpose and intent.

19.08.020 Permitted uses.

19.08.025 Accessory uses and structures.

19.08.030 Special uses.

19.08.040 [Area regulations.] Development standards.

19.08.050 [Height regulations.] Rule making authority.

[19.08.060 Yards.]

19.08.010 [Generally.] Purpose and intent.

Areas for single-family dwellings are established to provide for harmonious residential neighborhood without the detracting of commercial and industrial activities.

19.08.020 Permitted uses. Within residential districts, the following uses and structures shall be permitted:

A. Single-family dwellings;

B. Greenhouses, flower and truck gardens, and nurseries; provided, that there shall be no retailing or transacting of business on the premises;

C. Parks and playgrounds, noncommercial; [certain] commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground;

D. Schools, elementary, intermediate, high, and colleges, publicly or privately owned, which may include on-campus dormitories; and

E. Buildings or premises used by the federal, State, or county governments for public purposes[;].

[F. Accessory buildings located on the same lot, the use of which is customary, incidental, usual, and

necessary to that of the main building or to the use of the land;

G. An accessory dwelling may be permitted where the area of the lot on which the main house is located is seven thousand five hundred square feet or more. Chapter 19.35 of this article, pertaining to accessory dwellings, shall be applicable to any accessory dwelling;

H. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet, serving eight or fewer children at any one time on lot sizes of seven thousand five hundred or more square feet but less than ten thousand square feet, or serving twelve or fewer children at any one time on lot sizes of ten thousand or more square feet;

I. Subject to the restrictions and standards of chapter 19.64 of this title, Type 1 bed and breakfast homes shall be permitted on any lot; Type 2 bed and breakfast homes shall be permitted on lots of seven thousand five hundred square feet or greater, and Type 3 bed and breakfast homes shall be permitted on lots of ten thousand square feet or greater; and

J. Home occupations.]

19.08.025 Accessory uses and structures. The following uses and structures, located on the same lot, are deemed accessory, customary, incidental, usual, and necessary to the above permitted uses in the residential district:

A. Accessory dwellings subject to chapter 19.35 of this code;

B. Pools and hot tubs;

C. Fences, walls, patios, decks, and other landscape features;

D. Garages, car ports, porte-cochere, mail boxes, and trash enclosures;

E. Other subordinate uses and structures that are determined by the planning director to be clearly

accessory, customary, incidental, usual, and necessary to the permitted uses listed herein;

F. Home occupations;

G. Garage sales limited to four times in a calendar year, not to exceed a total of eight days;

H. Day care nurseries, kindergartens, nursery schools, child care homes, adult day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care, adult or multi-generational day care services, subject to the following limitations:

<u>Lot Size</u>	<u>Maximum Clients</u>
<u>7,499 sq. ft or less</u>	<u>6</u>
<u>7,500 sq. ft to 9,999 sq. ft</u>	<u>8</u>
<u>10,000 sq. ft or greater</u>	<u>12</u>

I. Bed and breakfast homes subject to chapter 19.64 of this code; and

J. Energy systems, small-scale, provided that the energy systems do not result in a detrimental or nuisance effect upon neighbors or surrounding properties.

19.08.030 Special uses. The following are declared special uses, and approval of the appropriate planning commission shall be obtained:

A. Churches together with accessory buildings;

B. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services serving more than the number of children defined in section [19.08.020.H;] 19.08.025.I;

C. Hospitals; provided, that written consent of seventy-five percent of the property owners within five hundred feet from the property to be used for such purpose has been obtained;

D. Nursing or convalescent homes and domiciliary facilities operated and maintained to provide nursing or supporting care;

E. Housing for the aged, operated by governmental or nonprofit organizations; provided,

that the normal population density is not increased more than ten percent;

F. Housing for low and moderate income families, operated by governmental or nonprofit organizations; provided, that the normal dwelling unit density is not increased more than ten percent;

G. Public utilities substations, which are not and will not be hazardous or a nuisance to the surrounding areas;

H. [Certain domestic] Domestic type businesses in the home[,] that do not meet the definition of home occupation, provided there will be no detrimental or nuisance effect upon the neighbors. [Such businesses shall be normal functions of the home, such as baking, sewing and piano playing];

I. [Residential planned developments only.] Specialized education;

J. Home-based business; and

K. Group instruction of traditional Hawaiian practices such as lei making, ukulele classes, hula classes, and lomi lomi, if such instruction cannot qualify as a home-based business or home occupation. Group instruction shall be limited to no more than six students who do not reside on the property, and shall be conducted between 9:00 a.m. and 6:00 p.m.

[19.08.040 Area regulations. A. The minimum lot area shall be six thousand square feet in R-1 residential districts, seven thousand five hundred square feet in R-2 residential districts, and ten thousand square feet in R-3 residential districts. The minimum lot width shall be sixty feet for R-1, sixty-five feet for R-2, and seventy feet for R-3. There may be more than one single-family dwelling on any lot when the minimum lot area of six thousand square feet in R-1, seven thousand five hundred square feet in R-2, and ten thousand square feet in R-3 is provided for each dwelling unit.]

19.08.040 Development standards. A. Within residential districts, the following development standards shall apply:

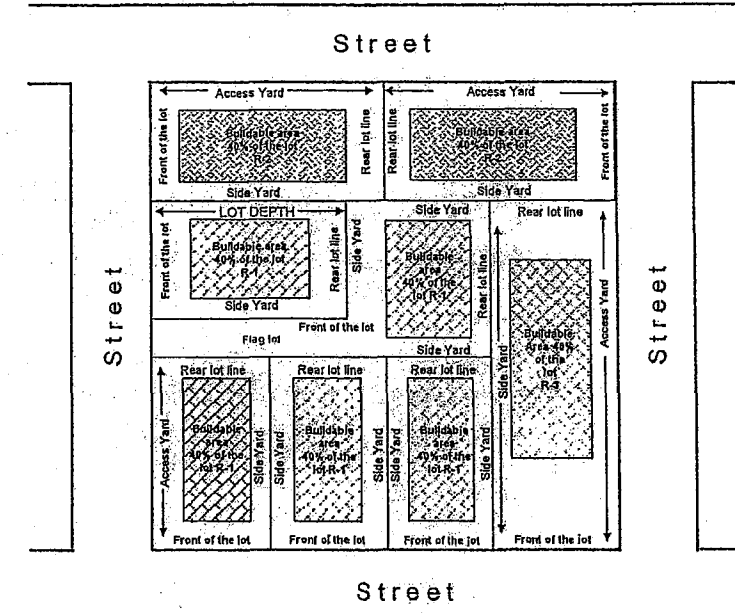
	<u>R-0</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>Notes</u>
<u>Minimum Lot Area (Square feet)</u>	<u>3,000</u>	<u>6,000</u>	<u>7,500</u>	<u>10,000</u>	
<u>Minimum Lot Width (in feet)</u>	<u>35</u>	<u>60</u>	<u>65</u>	<u>75</u>	<u>Except that the stem of a flag lot shall be exempted</u>
<u>Maximum Building Height (in feet)</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy systems on roofs shall not exceed forty feet.</u>
<u>Maximum Yard Setback (in feet)</u>					
<u>Front</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	
<u>Side and Rear</u>	<u>0 for one yard per lot, otherwise 6</u>	<u>6</u>	<u>6</u>	<u>6</u>	
<u>Side and Rear for the portion of the building above one-story or 15 feet</u>	<u>0 or 10</u>	<u>10</u>	<u>10</u>	<u>10</u>	
<u>Access yard setback line</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	
<u>Lot Coverage</u>	<u>40%</u>	<u>40%</u>	<u>40%</u>	<u>40%</u>	
<u>Free standing antenna or wind turbine structures height and setback</u>	<u>Maximum height of 50 feet and shall be set back at least 1 foot from all property lines for every foot in height.</u>				

<u>Accessory structures within Setback Area</u>	<u>Mail boxes, trash enclosures, boundary walls or walls. Accessory structures within the setback area shall not exceed 8 feet in height, except that retaining walls exceeding 8 feet in height may be approved by the appropriate planning commission after holding a public hearing pursuant to section 19.510.020, Maui County Code, to consider impacts to views, air and light, aesthetics, and health, safety and welfare. The commission may, when approving a retaining wall exceeding 8 feet in height, impose conditions to mitigate impacts.</u>	
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B. Subject to approval of the commission, a mixture of lot sizes within the R-1, R-2, and R-3 residential districts may be permitted [within any residential district]; provided, however, that the minimum lot size shall not be less than six thousand square feet, and that the overall project density shall not exceed that permitted within the district. Where the subdivision or project is designed to meet the needs of low or moderate income families, and adequate provisions are provided to insure owner-occupancy and the control or limitation of speculation, the commission may permit an increase in density not to exceed ten percent.

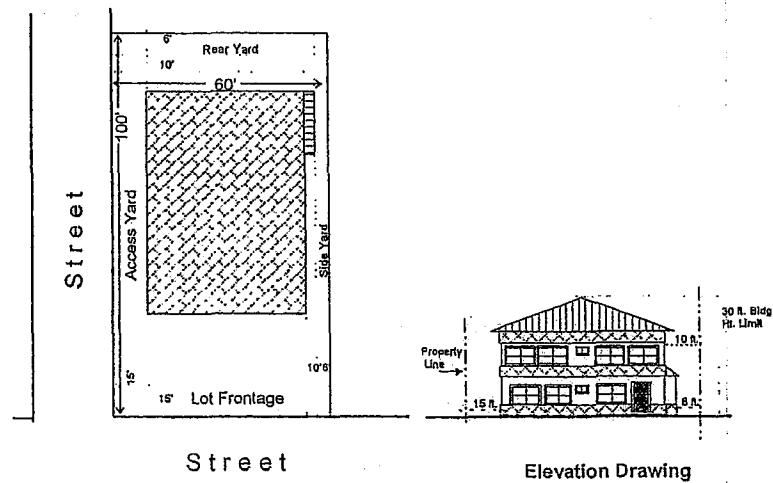
C. Dwelling units in an R-0 district may be located on alternating lot lines if a zero lot line of a lot is not adjoined by a zero lot line of an adjacent lot; provided, that if a zero lot line of a lot is not adjoined by a zero lot line on an adjacent lot, a maintenance easement not less than five feet in width as measured from the lot line of the adjacent lot shall be reserved for the benefit of the lot with the adjoining zero lot line.

Examples of Setbacks and Lot Coverages



R-1 to R-3 Yard and Lot Coverage Diagram

Figure 1
R-1, R-2, and R-3 Yard and Lot Coverage Diagram



Lot area: 6,000 sq.ft.
Structure: 2,400 sq.ft.
Lot coverage: 40%
Residential District (R-1)

R-1 to R-3 Detail layout is the same just change
Lot area & floor area to based on 40%

Figure 2
Setback for building over 15 feet in R-1, R-2, and R-3

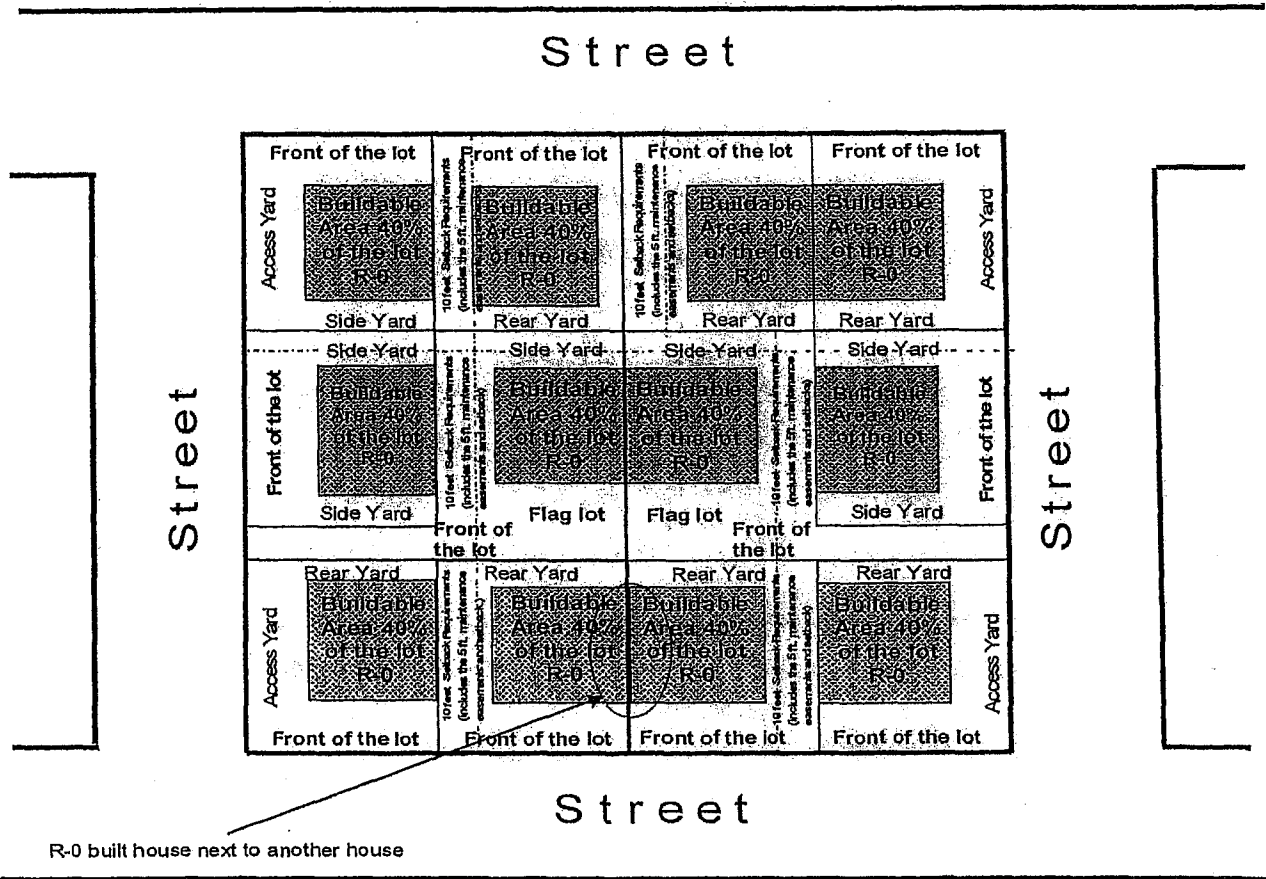
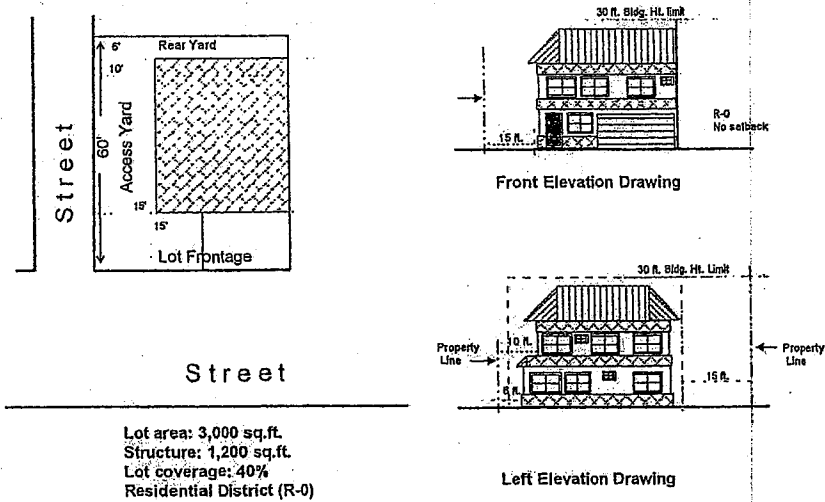


Figure 3
R-0 Yard and Lot Coverage Diagram



Detail layout

Figure 4
 Setback to Building Over 15 Feet in R-1, R-2, and R-3

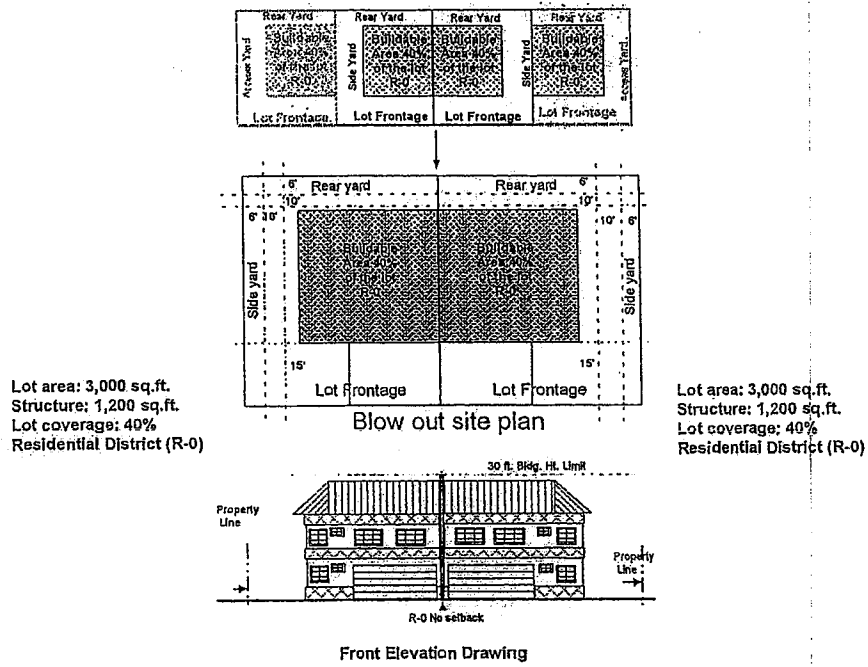


Figure 5
 R-0 Yard and Lot Coverage Diagram with Elevation

[19.08.050 Height regulations. No building shall exceed two stories nor thirty feet in height.]

19.08.050 Rule making authority. The planning director may adopt rules to clarify and implement this chapter.

[19.08.060 Yards. A. There shall be a front yard of fifteen feet, side yard of six feet, and rear yard of six feet for all residential districts. Side and rear yards for two-story buildings shall be ten feet in all residential districts.

B. Greenhouses may be constructed along the rear or side lot lines, provided, the entire roof is constructed of laths or screen to permit passage of light and air; the clear distance to the front lot line is not less than thirty feet; and that no portion of the greenhouse shall overhang into the next property. If the greenhouse is not constructed on the lot lines, then it must conform to the side and rear yard spacing of six feet.]"

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This ordinance shall take effect upon its approval. All structures for which a lawful building permit was issued prior to the effective date of this ordinance may reconstruct as allowed by the original building permit, and may perform renovations to restore the condition of the property as allowed by the original building permit.

APPROVED AS TO FORM
AND LEGALITY:



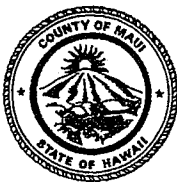
MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 11, 2009

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: JEFFREY S. HUNT, AICP 
PLANNING DIRECTOR

SUBJECT: PROPOSED BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AMENDING TITLE 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS, AND AMENDING TITLE 19.04 GENERAL PROVISIONS AND DEFINITIONS

The proposed bills are part of the Department's on-going effort to update, streamline, and standardize Title 19 of the Maui County Code. The overall goal is to resolve conflicts and to standardize code format, eliminate out dated terms and uses, as well as incorporate user friendly tables and graphics.

The Department is also using this opportunity to add several provisions within the Residential District including:

- Renewable energy systems;
- Home based businesses; and
- Lot coverage requirements.

The proposed bill (Exhibit 1) will fold the R-0 zero lot line Residential district (MCC 19.09) into the Residential zoning district (MCC 19.08). A summary of the proposed changes and rational are as follows:

Page and Line #s	Summary of change	Rationale
P1, L25 - 30	Changes outline of title sections	Establish standard outline throughout Title 19 – Zoning
P2, L8 – 10	Establishes Accessory Uses in its own section	Improves usability consistent with standard outline
P2, L12 – 18	Lists existing and new Accessory Uses	Codifies accepted accessory uses
P2, L19	Adds Home occupations	Codifies recently adopted home occupation ordinance
P2, L20	Add Home based businesses	Provides for more home businesses
P2, L21	Adds "garage sales"	Codifies accepted accessory use
P2, L22-27	Reformat existing use	Uses table format to improve usability
P2, L28	Makes changes to B&B permit types	Reflects recently adopted bed and breakfast ordinance
P2, L29	Adds Energy systems, small-scale	Existing code defines Energy systems; small scale means energy production facilities which are incidental and subordinate to a principal use which is established on the property. These systems include but are not limited to solar, wind, hydrologic, and biomass systems.
P3, L26 – 29	Updates domestic type businesses	Update based on provisions for home occupations and home based businesses, and allows other uses under a Special Use Permit
P3, L38	Adds Education, Specialized	Existing code defines "Specialized education" means a facility that offers a specialized educational curriculum, such as, but not limited to, trade and vocational, language, music, dance, and art schools
P4	Development standards table	Consolidated development standards from 19.08 and 19.08 into a table format. Department believes this to be an easier to understand than existing

		format
P4	Maximum building height for vents, pipes, antennae and small scale energy systems	Increases height allowed for these structures attached to roofs to have a maximum height of 40 feet
P4	Access yard setback line	Establishes a requirement that buildings be setback from all roadways
P4	Lot coverage	Establishes a maximum lot coverage standard. The county currently defines "lot coverage" as the area of a lot occupied by all roofed structures, whether open box-type, lath roofs, or fully roofed, including buildings, accessory buildings, carports, garages, lanais, patios, porches, and recreational facilities. Covered walkways, trellis-covered parking and trellis-covered accessory equipment, underground parking when the roof is not more than an average height of thirty-six inches above the adjacent grade, and unroofed structures such as swimming pools, tennis courts, fences, and walls used as fences shall not be included in calculating lot coverage area.
P4	Free standing antenna or wind turbine structures	Establishes standards for free standing antenna and wind turbine structures
P4	Accessory structures in setback area	Clarifies what accessory structures are allowed in the setback area and establishes a maximum height
P5	Figure 1 and Figure 2. Provides illustrations showing development standards for the R-1, R-2, and R-3 Districts.	The Department believes that visual illustrations assist the public in using the zoning ordinance
P6	Figure 3 and Figure 4. Provides illustrations showing development	The Department believes that visual illustrations assist the public in using the zoning ordinance

	standards for the R-0 District.	
P7	Figure 5. Provided illustration showing development standards for the R-0 District	The Department believes that visual illustrations assist the public in using the zoning ordinance
P7, L5 – 8	Non-conformity provision	Establishes regulations for dealing with any non-conforming property as a result of the proposed bill
P8, L14 – 15	Rule making authority	Standard provision that allows the director of planning to establish rules as needed to provide clarity in the administration of this chapter
P8, L20 – P9, L17	Creates definition of a “home based business”	Provides for home businesses beyond home occupations
P8, L19 – 21	Adds new definition of “garage sale”	Codifies existing policies and provides clarity to the general public
P8, L23 - 25	Amends the definition of “access yard”	Amendment needed to provide consistency with new setback requirement

The proposed ordinance was reviewed by the general planning staff. Staff was supportive of the over all structure and continued uses of tables, graphics as well as the consolidation of the two residential districts into one title. There was support for the new provision of a home based business and for requirements for a “lot coverage” standard as well as a floor area ratio (FAR). In reviewing the amendments with Zoning Administration and Enforcement Division, staff recommended that a “garage sales” be defined and a standard created. They further recommended a limit on boundary walls be established.

The proposed ordinance was transmitted to various agencies for review and comments, except that the provision for a home based business was added after agency review. The following is a summary of their comments:

Agency	Date	Summary Comments	Exhibit
Police Department	12/24/08	No recommendations or comments	2
Department of Fire and Public Safety	1/2/09	Question on whether the repair of automobiles for personal use is	3

		exempted or is it included in body fender description ?	
Department of Housing	1/5/09	No comments	4
Department of Public Works, DSA	1/15/09	No comments	5
Department of Health, Maui	12/31/08	No comments	6
State Department of Transportation	1/6/09	Does not appear to affect DOT's land review process. DOT request a copy of the approved, amended codes when adopted.	7
Department of Land and Natural Resources, Land Division Honolulu	1/6/09 and 1/7/09	No comments. Division comments attached	7A-H
Office of Hawaiian Affairs	1/8/09	No comments	8
Office of Planning	1/12/09	No comments	9

It should be noted that no responses were received by:
Department of Health, Honolulu
Department of Water Supply
Civil Defense

Attached as Exhibit 10 is a copy of the proposed bill with the sections to be deleted removed. The department has also attached as Exhibit 11, a comparison on the maximum build out for various lot sizes under the existing code and under the proposed changes.

Proposed additions in the bill are noted by underlining, while proposed deletions in the bill are noted by strikethrough.

Recommendation and Options

The Department is recommending approval of the proposed bill.

The commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the

Maui Planning Commission
Molokai Planning Commission
Lanai Planning Commission
April 22, 2008
Page 6

- Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
 4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments
JSH:JWA

S:\ALL\Jeff\Council\memoreport19.08.doc

Draft 4
June 11, 2009

ORDINANCE NO. _____

BILL NO. _____ (2009)

A BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AMENDING TITLE 19.04 and 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 19.09, Maui County Code, is repealed.

SECTION 2. Title 19.08, Maui County Code, is amended by adding a
appropriately designated and to read as follows:

"Chapter 19.08

RESIDENTIAL DISTRICTS

Sections:

19.08.010 ~~Generally.~~ Purpose and Intent
19.08.020 ~~Permitted Uses.~~
19.08.030 ~~Permitted property uses.~~ Accessory uses and buildings
19.08.040 ~~Area regulations.~~ Special Uses
19.08.050 ~~Height regulations.~~ Development Standards
19.08.060 ~~Yards.~~ Rule making authority.

19.08.010 Purpose and Intent.

Areas for single-family dwellings are established to provide for harmonious residential neighborhood without the detraction of commercial and industrial activities. (Prior code § 8-1.4(a))

19.08.020 Permitted uses.

Within residential districts, the following uses and structures shall be permitted:

- A. Single-family dwellings;
- B. Greenhouses, flower and truck gardens and nurseries;
- provided, that there shall be no retailing or transacting of business on the premises;
- C. Parks and playgrounds, noncommercial; ~~certain~~ commercial amusement and

EXHIBIT 1

1 refreshment sale activities may be permitted when under supervision of the government
 2 agency in charge of the park or playground;
 3 D. Schools, elementary, intermediate, high and colleges, publicly or privately owned,
 4 which may include on-campus dormitories;
 5 E. Buildings or premises used by the federal, State, or county governments for public
 6 purposes;

7
 8 19.08.030 Accessory uses and buildings. The following uses
 9 and structures, located on the same lot, are deemed accessory, customary, incidental,
 10 usual, and necessary to the above permitted uses in the residential district:

- 11
- 12 A. Accessory dwellings subject to 19.35;
- 13 B. Pools and hot-tubs;
- 14 C. Fences, walls, patios, decks, and other landscape features;
- 15 D. Garages, car ports, porte-cochere, mail boxes and trash enclosures;
- 16 E. Other subordinate uses and structures which are
 17 determined by the director of planning to be clearly incidental and customary to the
 18 permitted uses listed herein.
- 19 F. Home occupations.
- 20 G. Home based businesses.
- 21 H. Garage sales limited to 4 times in a calendar year, not to exceed a total of 8 days.
- 22 I. Day care nurseries, kindergartens, nursery schools, child care homes, adult day care
 23 homes, day care centers, nurseries, preschool kindergartens, babysitting services, and
 24 other like facilities located in private homes used for child care, adult or multi
 25 generational day care services. Subject to the following limitations:
- 26

<u>Lot Size</u>	<u>Maximum clients</u>
<u>7499 sq.ft or less</u>	<u>6</u>
<u>7500 sq.ft to 9,999 sq.ft</u>	<u>8</u>
<u>10,000 sq.ft or greater</u>	<u>12</u>

- 27
- 28 J. Bed and breakfast homes subject to Chapter 19.64 of this title.
- 29 K. Energy systems, small-scale
- 30

31 ~~F. Accessory buildings located on the same lot, the use of which is customary and~~
 32 ~~incidental, usual and necessary to that of the main building or to the use of the land;~~
 33 ~~G. An accessory dwelling may be permitted where the area of the lot on which the main~~
 34 ~~house is located is seven thousand five hundred square feet or more. Chapter 19.35 of~~
 35 ~~this article, pertaining to accessory dwellings, shall be applicable to any accessory~~
 36 ~~dwelling;~~

37 ~~H. Day care nurseries, kindergartens, nursery schools, child care homes, day care~~
 38 ~~homes, day care centers, nurseries, preschool kindergartens, babysitting services, and~~
 39 ~~other like facilities located in private homes used for child care services. These facilities~~
 40 ~~shall serve six or fewer children at any one time on lot sizes of less than seven thousand~~
 41 ~~five hundred square feet, serving eight or fewer children at any one time on lot sizes of~~
 42 ~~seven thousand five hundred or more square feet but less than ten thousand square~~
 43 ~~feet, or serving twelve or fewer children at any one time on lot sizes of ten thousand or~~
 44 ~~more _____ square _____ feet;~~

45 ~~I. Subject to the restrictions and standards of chapter 19.64 of this title, Type 1 bed and~~

1 ~~breakfast homes shall be permitted on any lot; Type 2 bed and breakfast homes shall be~~
2 ~~permitted on lots of seven thousand five hundred square feet or greater, and Type 3 bed~~
3 ~~and breakfast homes shall be permitted on lots of ten thousand square feet or greater.~~
4 (Ord. 2628 § 1, 1997; Ord. 2609 § 3, 1997; Ord. 2585 § 1, 1997; Ord. 2030 § 3, 1991;
5 Ord. 1956 § 1, 1990; Ord. 1269 § 6, 1982; prior code § 8-1.4(b))

6 19.08.030.040 Special uses.

7 The following are declared special uses, and approval of the appropriate planning
8 commission shall be obtained:

9 A. Churches together with accessory buildings;

10 B. Day care nurseries, kindergartens, nursery schools, child care homes, day care
11 homes, day care centers, nurseries, preschool kindergartens, babysitting services, and
12 other like facilities located in private homes used for child care services serving more
13 than the number of children defined in section 19.08.030H;

14 C. Hospitals; provided, that written consent of seventy-five percent of the property
15 owners within five hundred feet from the property to be used for such purpose has been
16 obtained;

17 D. Nursing or convalescent homes and domiciliary facilities operated and maintained to
18 provide nursing or supporting care;

19 E. Housing for the aged, operated by governmental or nonprofit organizations; provided,
20 that the normal population density is not increased more than ten percent;

21 F. Housing for low and moderate income families, operated by governmental or nonprofit
22 organizations; provided, that the normal dwelling unit density is not increased more than
23 ten percent;

24 G. Public utilities substations, which are not and will not be hazardous or a nuisance to
25 the surrounding areas;

26 H. ~~Traditional-Certain~~ domestic type businesses in the home that do not meet the
27 definition of a home occupation or home based business, provided there will be no
28 detrimental or nuisance effect upon the neighbors. ~~Such business shall be normal~~
29 ~~functions of the home, such as baking, sewing and piano playing;~~

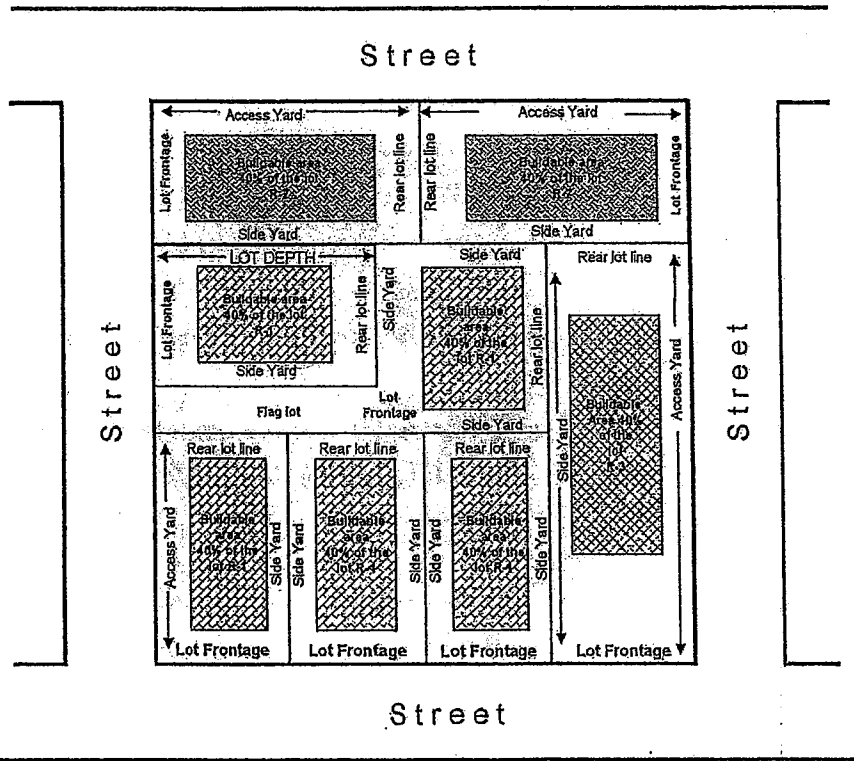
30 I. Mixed lots size. A mixture of lot sizes may be allowed within the R-1, R-2, and R-3
31 residential districts; provided, however, that the minimum lot size shall not be less than
32 six thousand square feet, and that the overall project density shall not exceed that
33 permitted within the district. Where the subdivision or project is designed to meet the
34 needs of low or moderate income families, and adequate provisions are provided to
35 insure owner-occupancy and the control or limitation of speculation, the commission may
36 permit an increase in density not to exceed ten percent. ~~Residential-planned~~
37 ~~developments only.~~

38 J. Education, Specialized.

39
40 (Ord. 2628 § 2, 1997; Ord. 2585 § 2, 1997; Ord. 1956 § 2, 1990: prior code § 8-1.4(c))

41 19.08.050. Development Standards

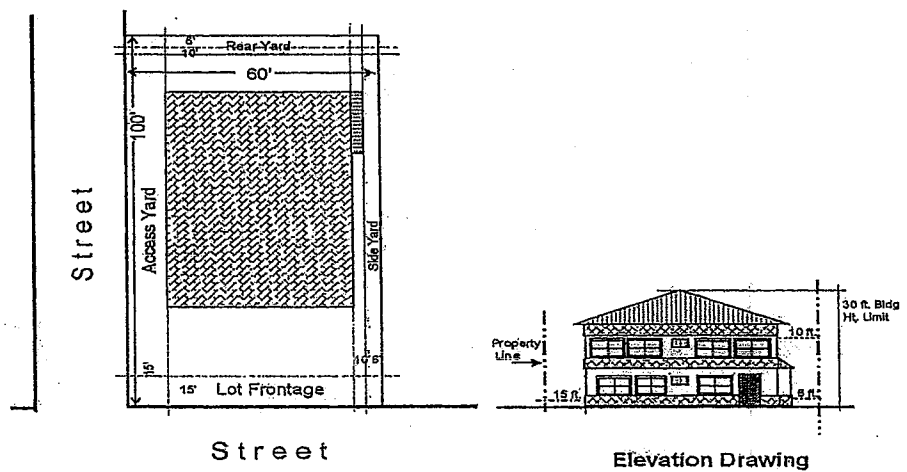
DEVELOPMENT STANDARDS					
	R-0	R-1	R-2	R-3	Notes
<u>Minimum Lot Area (Square feet)</u>	<u>3,000</u>	<u>6,000</u>	<u>7,500</u>	<u>10,000</u>	
<u>Minimum Lot Width (in feet)</u>	<u>35</u>	<u>60</u>	<u>65</u>	<u>75</u>	<u>Except that the stem of a flag lot shall be exempted.</u>
<u>Maximum Building Height(in feet)</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy systems on roofs shall not exceed forty feet.</u>
<u>Minimum Yard Setback (in feet)</u>					<u>For R-0 lots, only one lot line shall be a zero-lot line.</u>
<u>Front</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>See Figures 1 thru 5</u>
<u>Side and Rear</u>	<u>0 or 6</u>	<u>6</u>	<u>6</u>	<u>6</u>	
<u>Side and Rear above one-story or 15 feet</u>	<u>0 or 10</u>	<u>10</u>	<u>10</u>	<u>10</u>	
<u>Access yard setback line</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	
<u>Lot Coverage</u>	<u>40%</u>	<u>40%</u>	<u>40%</u>	<u>40%</u>	
<u>Free standing antenna or wind turbine structures height and setback</u>	<u>Maximum height of 50 feet and shall be set back 1 foot for every foot in height from all property lines.</u>				
<u>Accessory structures within Setback Area</u>	<u>Mail boxes, trash enclosures, boundary walls or walls. With an exception for retaining walls, accessory structures within setback shall not exceed 8 feet in height.</u>				



R-1 to R-3 Yard and Lot Coverage Diagram

- 1
- 2
- 3
- 4

Figure 1

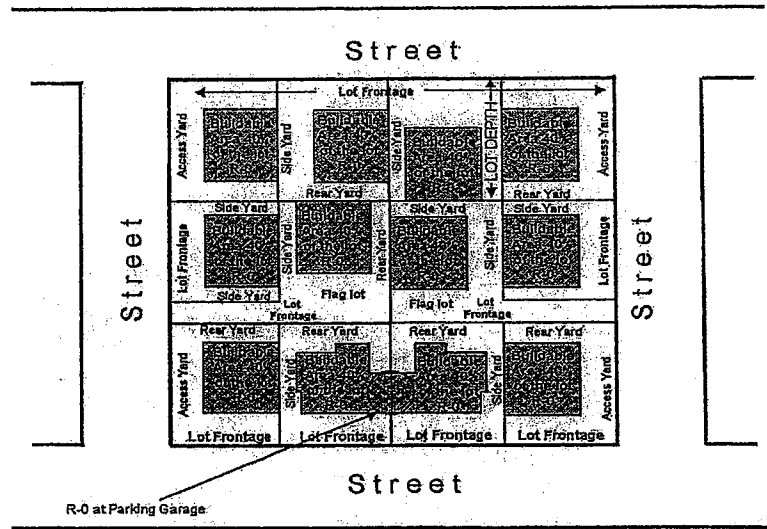


Lot area: 6,000 sq.ft.
 Structure: 2,400 sq.ft.
 Lot coverage: 40%
 Residential District (R-1)

R-1 to R-3 Detail layout is the same just change
 Lot area & floor area to based on 40%

- 5
- 6

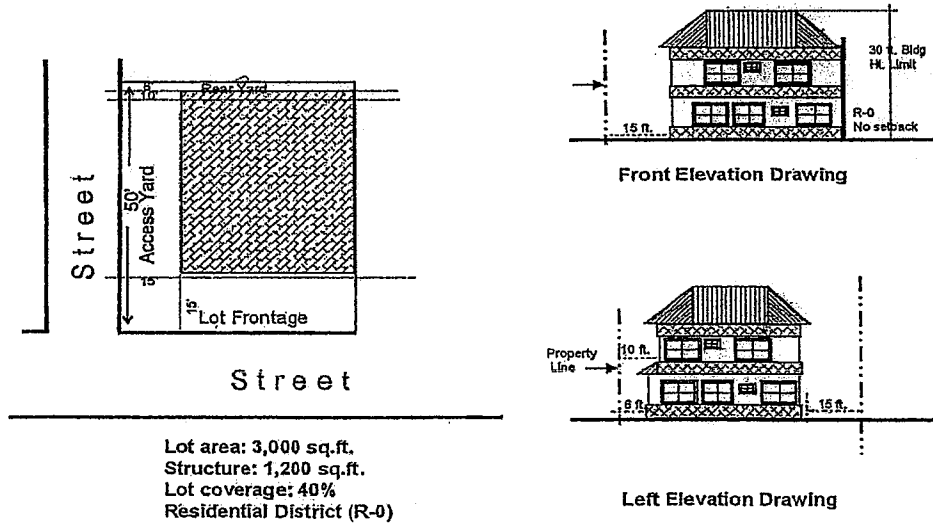
Figure 2



R-0 Yard & Lot Coverage Diagram

1
2
3
4

Figure 3



Detail layout

Figure 4

5
6
7

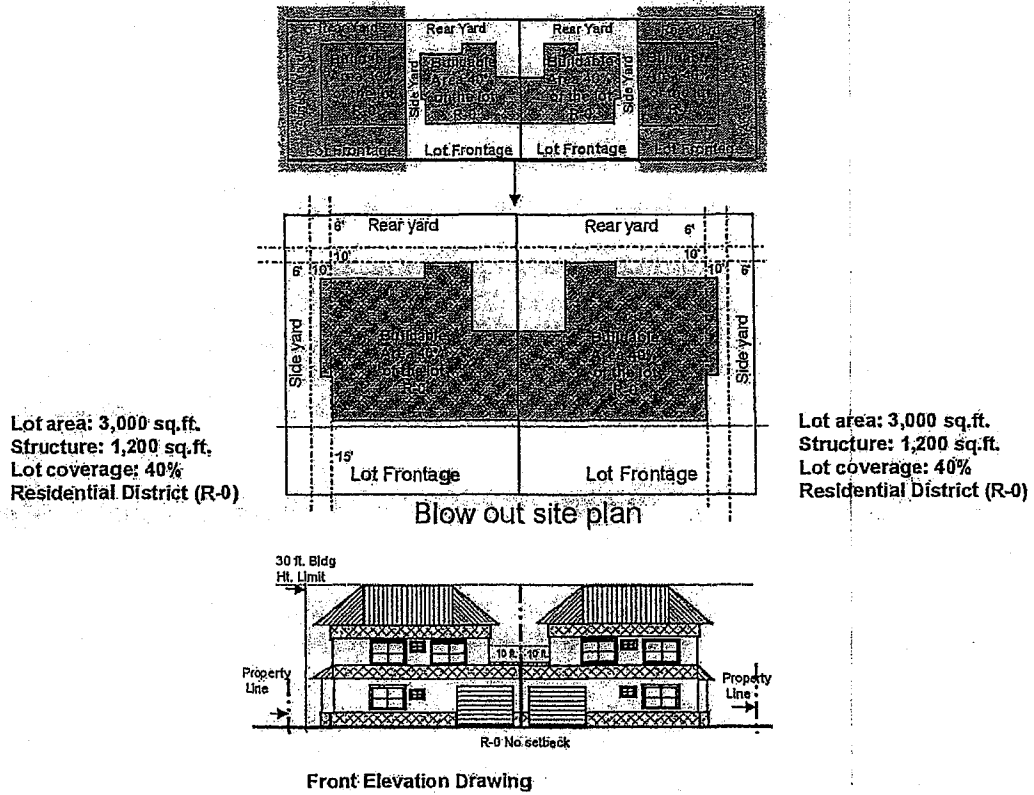


Figure 5

19.08.080 Non-conforming regulations.

Nonconforming lots, structures, and uses in place or in operation as of the date of this ordinance shall be subject to section 19.500.110 of this code."

19.08.040. Area regulations.

A. The minimum lot area shall be six thousand square feet in R-1 residential districts, seven thousand five hundred square feet in R-2 residential districts, and ten thousand square feet in R-3 residential districts. The minimum lot width shall be sixty feet for R-1, sixty-five feet for R-2, and seventy feet for R-3. There may be more than one single-family dwelling on any lot when the minimum lot area of six thousand square feet in R-1, seven thousand five hundred square feet in R-2, and ten thousand square feet in R-3 is provided for each dwelling unit.

B. Subject to approval of the commission, mixture of lot sizes may be permitted within any residential district; provided, however, that the minimum lot size shall not be less than six thousand square feet, and that the overall project density shall not exceed that permitted within the district. Where the subdivision or project is designed to meet the needs of low or moderate income families, and adequate provisions are provided to insure owner occupancy and the control or limitation of speculation, the commission may permit an increase in density not to exceed ten percent. (Ord. 784 § 1, 1974: prior code § 8-1.4(d))

1 ~~19.08.050 Height regulations.~~

2 ~~No building shall exceed two stories nor thirty feet in height. (Prior code § 8-1.4(e))~~

3 ~~19.08.060 Yards.~~

4 ~~A. There shall be a front yard of fifteen feet, side yard of six feet, and rear yard of six feet~~
5 ~~for all residential districts. Side and rear yards for two-story buildings shall be ten feet in~~
6 ~~all residential districts.~~

7 ~~B. Greenhouses may be constructed along the rear or side lot lines, provided, the entire~~
8 ~~roof is constructed of laths or screen to permit passage of light and air; the clear~~
9 ~~distance to the front lot line is not less than thirty feet; and that no portion of the~~
10 ~~greenhouse shall overhang into the next property. If the greenhouse is not constructed~~
11 ~~on the lot lines, then it must conform to the side and rear yard spacing of six feet. (Prior~~
12 ~~code § 8-1.4(f))~~

13
14 **19.08.100 Rule making authority.** The planning director may adopt rules to clarify and
15 implement this chapter.

16
17 SECTION 3. Title 19.04, Maui County Code, is amended by adding the following
18 definitions.

19
20 "Home based business" means an enterprise or activity conducted by the occupant of
21 the dwelling unit wherein the enterprise or activity takes place and which involves either
22 the growing, processing, or manufacturing of product or the provision of services for
23 consideration and profit; provided:

24
25 1. That only one person other than a member of the family residing on the premises of
26 the dwelling unit shall be employed by the home based business;

27
28 2. That no more than twenty-five per cent of the floor area of the dwelling unit shall be
29 used by the home occupation;

30
31 3. That no group instruction classes or group sales meeting shall be permitted on the
32 premises of the dwelling unit;

33
34 4. That retail sales shall be limited to products produced by the home based business;

35
36 5. That no sign or display shall advertise the home based business and there shall be no
37 change in the exterior appearance of the dwelling unit to accommodate the home based
38 business;

39
40 6. That deliveries either to or from the premises of the dwelling unit used for a home
41 based business shall be limited to two-axle vehicles between the hours of 9:00AM and
42 5:00 PM;

43
44 7. That any storage of goods, samples, materials, or objects used in connection with the
45 home based business shall be stored within the dwelling unit or screened from public
46 view;

47

1 8. That customers of the home based business shall be limited to: two at any time and a
2 total of eight per day and between the hours of 9:00 AM and 5:00 PM;

3
4 9. That the home based business shall not impact the residential character of the
5 property or neighborhood; and

6
7 10. That the following shall not be construed to be a home based business and therefore
8 shall not be permitted:

9
10 a. Harboring, caring, training, or raising dogs, cats, birds, horses, or other animals;

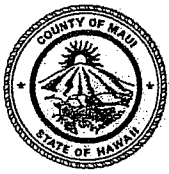
11
12 b. Repair of automobile and other vehicles with internal combustion engines;

13
14 c. Contractor headquarters or dispatch centers to other locations; or

15
16 d. The repair, manufacture, processing, or alteration of goods, materials or objects that
17 produce noise, dust, smoke, glare or odors that negatively impact the neighbors.

18
19 "Garage sale" "rummage sale" "yard sale" means the sale or offering for sale to the
20 general public items of personal household property on any portion of a lot, whether
21 within or outside any building.

22
23 Yard, access. "Access yard" means the yard on which a driveway is located, boundary
24 line of a lot bordering a public or private street used for vehicular traffic, excluding
25 driveways for flag lots.



POLICE DEPARTMENT COUNTY OF MAUI



CHARMAINE TAVARES
MAYOR

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

THOMAS M. PHILLIPS
CHIEF OF POLICE

GARY A. YABUTA
DEPUTY CHIEF OF POLICE

OUR REFERENCE
↓
YOUR REFERENCE

December 23, 2008

DEPT OF PLANNING
COUNTY OF MAUI
RESERVATION
08 DEC 24 PM 2:34

MEMORANDUM

TO : JOSEPH W. ALUETA, STAFF PLANNER

FROM : THOMAS M. PHILLIPS, CHIEF OF POLICE

SUBJECT : I.D. : Changes 19.08 and 19.09 Residential Districts
Project
Name : TITLE 19 UPDATED TO 19.08 AND 19.09
Applicant : Jeffrey S. Hunt, AICP, Planning Director

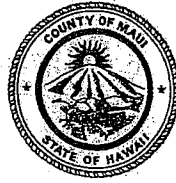
- No recommendation or comment to offer.
- Refer to enclosed comments and/or recommendations.

Thank you for giving us the opportunity to comment on this project.

Assistant Chief Wayne T. Ribao
For: THOMAS M. PHILLIPS
Chief of Police

EXHIBIT -2

CHARMAINE TAVARES
MAYOR



JEFFREY A. MURRAY
CHIEF

ROBERT M. SHIMADA
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY
FIRE PREVENTION BUREAU

780 ALUA STREET
WAILUKU, HAWAII 96793
(808) 244-9161
FAX (808) 244-1363

December 24, 2008

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED
09 JAN -2 P2:49

Mr. Joseph W. Alueta
Administrative Planning Officer
Department of Planning, County of Maui
250 South High Street
Wailuku, HI 96793

Subject: Title 19 Updates to Chapters 19.08 & 19.09

Dear Mr. Alueta,

I have had the opportunity to review the subject proposal. It appears that the inclusion of a fire station can still be constructed in a residential districts under 19.08.020 section E.

Is the repairing of automobiles for personal use exempt? Spray painting is a constant concern. Would this be included in the body fender description in 19.08.030 #9 section C?

Sincerely,

A handwritten signature in black ink, appearing to read "Val F. Martin".

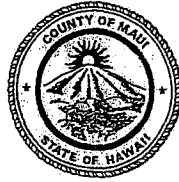
Valeriano F. Martin
Captain
Fire Prevention Bureau

EXHIBIT - 3

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

TRANSMITTAL

DECEMBER 16, 2008

STATE AGENCIES	
X	Dept of Health, Maui (2)
X	Dept of Health, Honolulu
X	DOT, Statewide Planning Office (4)
X	DLNR-Planning (5)
X	Land Use Commission (Hard Copy)
X	Office of Planning
X	DBEDT
X	Office of Hawaiian Affairs
OTHER	

COUNTY AGENCIES	
X	Civil Defense (CIZ/CPA)
X	Dept of Water Supply
X	Dept of Housing
X	Dept of Human Concerns
X	Dept of Public Works (3 Hard Copies)
X	Fire & Public Safety
X	Police Department
X	Zoning Admin. & Enforcement Div.
FEDERAL AGENCIES	

PROJECT NAME: TITLE 19 UPDATED TO CHAPTERS 19.08 AND 19.09
APPLICANT: Jeffrey S. Hunt, AICP, Planning Director
SUBJECT I.D.: Changes 19.08 and 19.09 Residential Districts

TRANSMITTED TO YOU ARE THE FOLLOWING:

<input checked="" type="checkbox"/>	Draft Ordinance
-------------------------------------	-----------------

THESE ARE TRANSMITTED AS CHECKED BELOW:

<input checked="" type="checkbox"/>	For your Comment and Recommendation
-------------------------------------	-------------------------------------

Please provide any previous comments, letters, etc. pertinent to this application and identify which of your comments and recommendations you would like the Department of Planning to recommend as conditions of project approval. Submit your comments directly to me by January 6, 2009. If no comment, please sign the bottom and return. For additional clarification, please contact me via email at joseph.alueta@mauicounty.gov or by phone at (808) 270-7743.

Sincerely,

JOSEPH W. ALUETA, Administrative Planning Officer
For: JEFFREY S. HUNT, AICP, Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator
Joseph W. Alueta, Administrative Planning Officer
Project File
General File

JSH:JWA:vb
S:\ALLAPO\19.08\transmittal to agencies.doc

RECEIVED
COUNTY OF MAUI
JAN 18 AM 9 10
09 JAN -5 AM 9:30

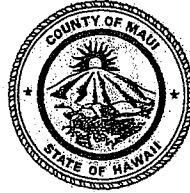
We have no comment:	Signed: <i>Jo Ann T. Ridas</i>	Dated: 01-02-09
Print Name: <i>Jo Ann T. Ridas</i>	Title: <i>Deputy Director, DHP</i>	

EXHIBIT - 4

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND ENVIRONMENTAL MANAGEMENT
DEVELOPMENT SERVICES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

RALPH M. NAGAMINE, L.S., P.E.
Development Services Administration



DAVID TAYLOR, P.E.
Wastewater Reclamation Division

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

TRACY TAKAMINE, P.E.
Solid Waste Division

January 13, 2009

MEMO TO: JEFFREY S. HUNT, A.I.C.P., PLANNING DIRECTOR
FROM:  MILTON M ARAKAWA, A.I.C.P, DIRECTOR OF PUBLIC WORKS 
SUBJECT: TITLE 19 UPDATED TO CHAPTERS 19.08 AND 19.09

We reviewed the subject application and have no comments at this time.

If you have any questions regarding this memorandum, please call Michael Miyamoto at 270-7845.

MMA:MM:ls

S:\LUCA\ZM\Title_19_updated_to_chapt_19.08_19.09_ls.wpd

c Highways Division
Engineering Division

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

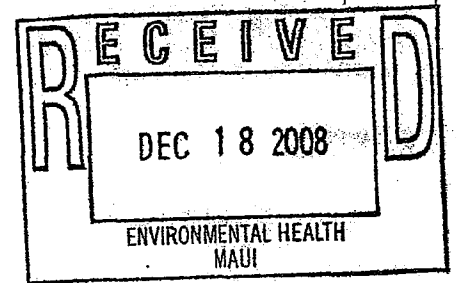
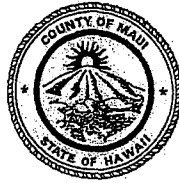
09 JAN 15 AM 02:25

EXHIBIT-5

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

TRANSMITTAL

DECEMBER 16, 2008

STATE AGENCIES	
<input checked="" type="checkbox"/>	Dept of Health, Maui (2)
<input checked="" type="checkbox"/>	Dept of Health, Honolulu
<input checked="" type="checkbox"/>	DOT, Statewide Planning Office (4)
<input checked="" type="checkbox"/>	DLNR-Planning (5)
<input checked="" type="checkbox"/>	Land Use Commission (Hard Copy)
<input checked="" type="checkbox"/>	Office of Planning
<input checked="" type="checkbox"/>	DBEDT
<input checked="" type="checkbox"/>	Office of Hawaiian Affairs
OTHER	

COUNTY AGENCIES	
<input checked="" type="checkbox"/>	Civil Defense (CIZ/CPA)
<input checked="" type="checkbox"/>	Dept of Water Supply
<input checked="" type="checkbox"/>	Dept of Housing
<input checked="" type="checkbox"/>	Dept of Human Concerns
<input checked="" type="checkbox"/>	Dept of Public Works (3 Hard Copies)
<input checked="" type="checkbox"/>	Fire & Public Safety
<input checked="" type="checkbox"/>	Police Department
<input checked="" type="checkbox"/>	Zoning Admin. & Enforcement Div.
FEDERAL AGENCIES	

PROJECT NAME: TITLE 19 UPDATED TO CHAPTERS 19.08 AND 19.09
 APPLICANT: Jeffrey S. Hunt, AICP, Planning Director
 SUBJECT I.D.: Changes 19.08 and 19.09 Residential Districts

TRANSMITTED TO YOU ARE THE FOLLOWING:

<input checked="" type="checkbox"/>	Draft Ordinance
-------------------------------------	-----------------

THESE ARE TRANSMITTED AS CHECKED BELOW:

<input checked="" type="checkbox"/>	For your Comment and Recommendation
-------------------------------------	-------------------------------------

DEPT. OF PLANNING
 COUNTY OF MAUI
 RECEIVED
 08 DEC 31 49:54

Please provide any previous comments, letters, etc. pertinent to this application and identify which of your comments and recommendations you would like the Department of Planning to recommend as conditions of project approval. Submit your comments directly to me by January 6, 2009. If no comment, please sign the bottom and return. For additional clarification, please contact me via email at joseph.alueta@mauicounty.gov or by phone at (808) 270-7743.

Sincerely,

JOSEPH W. ALUETA, Administrative Planning Officer
For: JEFFREY S. HUNT, AICP, Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator
 Joseph W. Alueta, Administrative Planning Officer
 Project File
 General File

JSH:JWA:vb
 S:\ALLAPO\19.08\transmittal to agencies.doc

We have no comment:	Signed:	Dated: 30 Dec 08
Print Name: H. Makubayashi	Title: DRHPC	

0A159781

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

STP 8.3085

January 2, 2009

Mr. Jeffrey S. Hunt, AICP
Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

09 JAN -6 P 1:39

Dear Mr. Hunt:

Subject: Title 19 Updated to 19.20 Central Business District
Title 19 Updated to 19.15 Country Town Business District
Title 19 Updated to 19.18 Community Business District
Title 19 Updated to 19.08 and 19.09 Residential Districts
Title 19 Updated to 19.16 Neighborhood Business District

Thank you for requesting The State Department of Transportation's (DOT) review of the subject draft ordinances amending various Districts of Title 19, Maui County Code.

The proposed changes do not appear to affect DOT's land use review process (i.e., review of land development projects for transportation impacts, submittal of comments and recommendations for mitigating measures and improvements). DOT wishes to continue to be consulted on all land development projects with any potential airport, harbor or highway facilities impacts.

DOT requests that a copy be provided of the approved, amended codes when the subject amendments are adopted.

DOT appreciates the opportunity to provide comments. If there are any questions, please contact Mr. David Shimokawa of the Statewide Transportation Planning Office at (808) 587-2356.

Very truly yours,

BRENNON T. MORIOKA, PH.D., P.E.
Director of Transportation

EXHIBIT - 7



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 5, 2009

County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

DEPT. OF PLANNING
COUNTY OF MAUI
RECEIVED
JAN 6 1 39

Attention: Mr. Joseph W. Alueta

Ladies and Gentlemen:

Subject: Updates to Title 19 – Country Town Business District, Residential District, Community Business District, Neighborhood Business District & Central Business District

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR), Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comment.

Other than the comments from Division of State Parks, Land Division-Maui District, Engineering Division, Division of Boating & Ocean Recreation, the Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0433. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Morris M. Atta".

Morris M. Atta
Administrator

EXHIBIT - 7A

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
MAUI DISTRICT
LAND DIVISION
LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

2008 DEC 23 PM 1:46



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 22, 2008

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2009 JAN -2 A 9 47

RECEIVED
LAND DIVISION

MEMORANDUM

TO: **DLNR Agencies:**
 x Div. of Aquatic Resources
 x Div. of Boating & Ocean Recreation
 x Engineering Division
 x Div. of Forestry & Wildlife
 x Div. of State Parks
 x Commission on Water Resource Management
 x Office of Conservation & Coastal Lands
 x Land Division – Maui District/Keith/Gavin

FROM: *for* Morris M. Atta *Thielen*
SUBJECT: Updates to Title 19 – Country Town Business District, Residential District, Community Business District, Neighborhood Business District & Central Business District
LOCATION: Island of Maui
APPLICANT: Jeffrey S. Hunt, AICP, Planning Director

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 3, 2009.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- () We have no objections.
- () We have no comments.
- () Comments are attached.

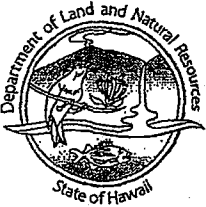
Signed: *[Signature]*
Date: 12/23/08

EXHIBIT -7B

LINDA LINGLE
GOVERNOR OF HAWAII



0201.1
LAURA I. THIELEN
SECRETARY
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 22, 2008

MEMORANDUM

TO: **DLNR Agencies:**
 x Div. of Aquatic Resources
 x Div. of Boating & Ocean Recreation
 x Engineering Division
 x Div. of Forestry & Wildlife
 x Div. of State Parks
 x Commission on Water Resource Management
 x Office of Conservation & Coastal Lands
 x Land Division – Maui District/Keith/Gavin

RECEIVED
LAND DIVISION
2008 DEC 31
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
RECEIVED
STATE PARKS
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
DEC 23 AM 12:28

FROM: *for* Morris M. Atta *Dr. Thiele*
SUBJECT: Updates to Title 19 – Country Town Business District, Residential District, Community Business District, Neighborhood Business District & Central Business District
LOCATION: Island of Maui
APPLICANT: Jeffrey S. Hunt, AICP, Planning Director

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 3, 2009.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

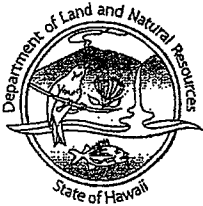
Signed: *[Signature]*
Date: 12/30/08

EXHIBIT -7C



RECEIVED
LAND DIVISION

2008 DEC 31 A 7:39



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

December 22, 2008

MEMORANDUM

- TO: **DLNR Agencies:**
- Div. of Aquatic Resources
 - Div. of Boating & Ocean Recreation
 - Engineering Division
 - Div. of Forestry & Wildlife
 - Div. of State Parks
 - Commission on Water Resource Management
 - Office of Conservation & Coastal Lands
 - Land Division - Maui District/Keith/Gavin

18 DEC 22 PM 03:05 ENGINEERING

FROM: *for* Morris M. Atta *Thielen*

SUBJECT: Updates to Title 19 - Country Town Business District, Residential District, Community Business District, Neighborhood Business District & Central Business District

LOCATION: Island of Maui

APPLICANT: Jeffrey S. Hunt, AICP, Planning Director

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 3, 2009.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *[Signature]*

Date: 12/22/08

EXHIBIT -70

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

LD/MorrisAtta
Ref.: Updates Title 19
Maui, 438

COMMENTS

- () We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone ____.
- () Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone ____.
- () Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is ____.
- () Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- () Mr. Robert Sumitomo at (808) 768- 8097 or Mr. Mario Siu Li at (808) 768-8098 of the City and County of Honolulu, Department of Planning and Permitting.
 - () Mr. Kelly Gomes at (808) 961-8327 (Hilo) or Mr. Kiran Emler at (808) 327-3530 (Kona) of the County of Hawaii, Department of Public Works.
 - () Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
 - () Mr. Mario Antonio at (808) 241-6620 of the County of Kauai, Department of Public Works.
- () The applicant should include project water demands and infrastructure required to meet water demands. Please note that the implementation of any State-sponsored projects requiring water service from the Honolulu Board of Water Supply system must first obtain water allocation credits from the Engineering Division before it can receive a building permit and/or water meter.
 - () The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.
 - () Additional Comments: We do not have any objections to the request to set aside portion of Government lands in Waimanalo identified as Tax map Key: (1) 4-1-10:2 and 92 to the Department of Agriculture for Waimanalo Reservoir purposes.
 - (X) Other: We do not have any objections to the Updates to Title 19. Title 19.16 - Neighborhood Business District, Title 19.08 - Residential Districts and Title 19.15 - Country Town Business Districts.

Should you have any questions, please call Ms. Suzie Agraan of the Planning Branch at 587-0258.

Signed: 
ERIC T. HIRANO, CHIEF ENGINEER

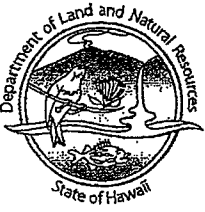
Date: 12/29/08

EXHIBIT 7E



RECEIVED
LAND DIVISION

2008 DEC 24 P 3:13



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

December 22, 2008

MEMORANDUM

- TO: **DLNR Agencies:**
- ~~x~~ Div. of Aquatic Resources
 - x Div. of Boating & Ocean Recreation
 - x Engineering Division
 - x Div. of Forestry & Wildlife
 - x Div. of State Parks
 - x Commission on Water Resource Management
 - x Office of Conservation & Coastal Lands
 - x Land Division – Maui District/Keith/Gavin

FROM: *for* Morris M. Atta *Thielen*

SUBJECT: Updates to Title 19 – Country Town Business District, Residential District, Community Business District, Neighborhood Business District & Central Business District

LOCATION: Island of Maui

APPLICANT: Jeffrey S. Hunt, AICP, Planning Director

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 3, 2009.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *Edward H. Wilson*

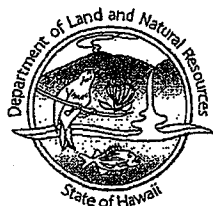
Date: 12/23/08

EXHIBIT 7F

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 7, 2009

JAN -9 P1:43

DEPT. OF PLANNING
COUNTY OF MAUI
RECEIVED

County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

Attention: Mr. Joseph W. Alueta

Ladies and Gentlemen:

Subject: Updates to Title 19 – Country Town Business District, Residential District, Community Business District, Neighborhood Business District & Central Business District

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR), Land Division distributed or made available a copy of your report pertaining to the subject matter to Division of Aquatic Resources for their review and comment.

The Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0433. Thank you.

Sincerely,

Handwritten signature of Morris M. Atta in cursive script.
Morris M. Atta
Administrator

EXHIBIT - 76

DIVISION OF AQUATIC RESOURCES - MAUI
DEPARTMENT OF LAND & NATURAL RESOURCES
130 Mahalani Street
Wailuku, Hawai'i 96793
January 6, 2009

To: Alton Miyasaka, Aquatic Biologist

From: Skippy Hau, Aquatic Biologist

Subject: Updates to Title 19 - Country Town Business District,
Residential District, Community Business District, Neighborhood
Business District & Central Business District (DAR1996)
(Comments due on Jan. 3 to Morris Atta)

I've read the drafts and summarized my comments below.
Yesterday, I commented on County Resolution 08-95 to establish
solar energy facilities as permitted uses in the agricultural
zoning district. I request that "small scale" be clearly
defined in the proposed ordinance package.

Chapter 19.16 Neighborhood Business District - No Comments

Chapter 19.18 Community Business District

19.18.030 A Energy systems; small scale

Chapter 19.08 Residential District - No Comments

Chapter 19.15 Country Town Business District - No Comments

Chapter 19.20 Central Business District

19.20.030 A. Energy systems, small-scale

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2009 JAN -7 A 10:48

RECEIVED
LAND DIVISION

EXHIBIT

- 7H



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD08/4110

January 8, 2009

Joseph W. Alueta, Administrative Planning Officer
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawai'i 96793

RE: Title 19 Updated to 19.08 and 19.09, Residential Districts, County of Maui.

Aloha e Joseph W. Alueta,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated December 16, 2008. The County of Maui is transmitting the draft ordinances regarding changes to Title 19.08 and 19.09, Residential Districts for comment and recommendation. OHA has reviewed the draft ordinances and offers the following comments.

Title 19.08 and 19.09 guides the development of the residential districts and provides harmonious residential neighborhoods without the detracting of commercial and industrial activities. Our office has no specific comment regarding the proposed changes to Title 19.08 and 19.09.

Thank you for the opportunity to comment. If you have further questions, please contact Jason Jeremiah by phone at (808) 594-1816 or e-mail him at jasonj@oha.org.

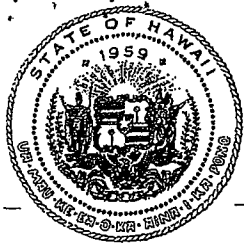
'O wau iho nō me ka 'oia'i'o,

A handwritten signature in black ink, appearing to read "Clyde W. Nāmu'o".

Clyde W. Nāmu'o
Administrator

C: OHA Maui CRC Office

EXHIBIT - 8



DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR
ABBEY SETH MAYER
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Ref. No. P-12390

January 9, 2009

Mr. Jeffrey S. Hunt, AICP
Planning Director
County of Maui
Department of Planning
250 South High Street
Wailuku, Maui, Hawaii 96793

09 JAN 12 P2:26
DEPT. OF PLANNING
COUNTY OF MAUI
RECEIVED

Dear Mr. Hunt:

Subject: Title 19 Updated to 19.08 and 19.09
Changes 19.08 and 19.09 Residential Districts

Thank you for the opportunity to review and comment upon the repeal of Ordinance 19.09 and proposed amendments to 19.08 relating to Residential Districts. The Office of Planning has no comments at this time. In so stating, the Office offers no judgment of either the adequacy of the document itself or the merits of the proposed amendments.

If you have any questions, please contact Ruby Edwards of our Land Use Division at 587-2805.

Sincerely,

Abbey Seth Mayer for

Abbey Seth Mayer
Director

EXHIBIT - 9

Clean Draft
June 11, 2009

ORDINANCE NO. _____

BILL NO. _____ (2009)

A BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AMENDING TITLE 19.04 and 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 19.09, Maui County Code, is repealed.

SECTION 2. Title 19.08, Maui County Code, is amended by adding a
appropriately designated and to read as follows:

"Chapter 19.08

RESIDENTIAL DISTRICTS

Sections:

19.08.010	Purpose and Intent
19.08.020	Permitted Uses.
19.08.030	Accessory uses and buildings
19.08.040	Special Uses
19.08.050	Development Standards
19.08.060	Rule making authority.

19.08.010 Purpose and Intent.

Areas for single-family dwellings are established to provide for harmonious residential neighborhood without the detracting of commercial and industrial activities. (Prior code § 8-1.4(a))

19.08.020 Permitted uses.

Within residential districts, the following uses and structures shall be permitted:

A. Single-family dwellings;

B. Greenhouses, flower and truck gardens and nurseries;

provided, that there shall be no retailing or transacting of business on the premises;

C. Parks and playgrounds, noncommercial; commercial amusement and refreshment

EXHIBIT 10

1 sale activities may be permitted when under supervision of the government agency in
 2 charge of the park or playground;
 3 D. Schools, elementary, intermediate, high and colleges, publicly or privately owned,
 4 which may include on-campus dormitories;
 5 E. Buildings or premises used by the federal, State, or county governments for public
 6 purposes;

7
 8 19.08.030 Accessory uses and buildings. The following uses
 9 and structures, located on the same lot, are deemed accessory, customary, incidental,
 10 usual, and necessary to the above permitted uses in the residential district:

- 11 A. Accessory dwellings subject to 19.35;
- 12 B. Pools and hot-tubs;
- 13 C. Fences, walls, patios, decks, and other landscape features;
- 14 D. Garages, car ports, porte-cochere, mail boxes and trash enclosures;
- 15 E. Other subordinate uses and structures which are
- 16 determined by the director of planning to be clearly incidental and customary to the
- 17 permitted uses listed herein.
- 18 F. Home occupations.
- 19 G. Home based businesses.
- 20 H. Garage sales limited to 4 times in a calendar year, not to exceed a total of 8 days.
- 21 I. Day care nurseries, kindergartens, nursery schools, child care homes, adult day care
- 22 homes, day care centers, nurseries, preschool kindergartens, babysitting services, and
- 23 other like facilities located in private homes used for child care, adult or multi
- 24 generational day care services. Subject to the following limitations:
- 25
- 26

Lot Size	Maximum clients
7499 sq.ft or less	6
7500 sq.ft to 9,999 sq.ft	8
10,000 sq.ft or greater	12

- 27
- 28 J. Bed and breakfast homes subject to Chapter 19.64 of this title.
- 29 K. Energy systems, small-scale
- 30

31 (Ord. 2628 § 1, 1997; Ord. 2609 § 3, 1997; Ord. 2585 § 1, 1997; Ord. 2030 § 3, 1991;
 32 Ord. 1956 § 1, 1990; Ord. 1269 § 6, 1982; prior code § 8-1.4(b))

33 19.08.040 Special uses.

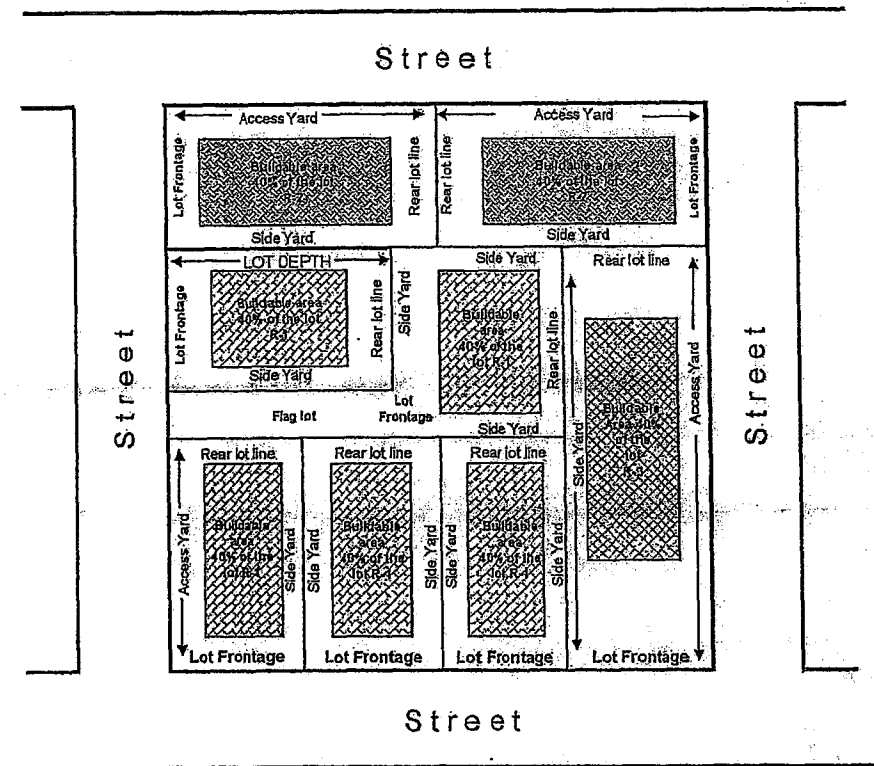
34 The following are declared special uses, and approval of the appropriate planning
 35 commission shall be obtained:

- 36 A. Churches together with accessory buildings;
- 37 B. Day care nurseries, kindergartens, nursery schools, child care homes, day care
- 38 homes, day care centers, nurseries, preschool kindergartens, babysitting services, and
- 39 other like facilities located in private homes used for child care services serving more
- 40 than the number of children defined in section 19.08.030H;
- 41 C. Hospitals; provided, that written consent of seventy-five percent of the property
- 42 owners within five hundred feet from the property to be used for such purpose has been
- 43 obtained;

- 1 D. Nursing or convalescent homes and domiciliary facilities operated and maintained to
- 2 provide nursing or supporting care;
- 3 E. Housing for the aged, operated by governmental or nonprofit organizations; provided,
- 4 that the normal population density is not increased more than ten percent;
- 5 F. Housing for low and moderate income families, operated by governmental or nonprofit
- 6 organizations; provided, that the normal dwelling unit density is not increased more than
- 7 ten percent;
- 8 G. Public utilities substations, which are not and will not be hazardous or a nuisance to
- 9 the surrounding areas;
- 10 H. Traditional domestic type businesses in the home that do not meet the definition of a
- 11 home occupation or home based business, provided there will be no detrimental or
- 12 nuisance effect upon the neighbors;
- 13 I. Mixed lots size. A mixture of lot sizes may be allowed within the R-1, R-2, and R-3
- 14 residential districts; provided, however, that the minimum lot size shall not be less than
- 15 six thousand square feet, and that the overall project density shall not exceed that
- 16 permitted within the district. Where the subdivision or project is designed to meet the
- 17 needs of low or moderate income families, and adequate provisions are provided to
- 18 insure owner-occupancy and the control or limitation of speculation, the commission may
- 19 permit an increase in density not to exceed ten percent
- 20 J. Education, Specialized.
- 21
- 22 (Ord. 2628 § 2, 1997; Ord. 2585 § 2, 1997; Ord. 1956 § 2, 1990: prior code § 8-1.4(c))

23 19.08.050. Development Standards

DEVELOPMENT STANDARDS					
	R-0	R-1	R-2	R-3	Notes
<u>Minimum Lot Area (Square feet)</u>	<u>3,000</u>	<u>6,000</u>	<u>7,500</u>	<u>10,000</u>	
<u>Minimum Lot Width (in feet)</u>	<u>35</u>	<u>60</u>	<u>65</u>	<u>75</u>	<u>Except that the stem of a flag lot shall be exempted</u>
<u>Maximum Building Height(in feet)</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>Except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy systems on roofs shall not exceed forty feet.</u>
<u>Minimum Yard Setback (in feet)</u>					<u>For R-0 lots, only one lot line shall be a zero-lot line.</u>
<u>Front</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>See Figures 1 thru 5</u>
<u>Side and Rear</u>	<u>0 or 6</u>	<u>6</u>	<u>6</u>	<u>6</u>	
<u>Side and Rear above one-story or 15 feet</u>	<u>0 or 10</u>	<u>10</u>	<u>10</u>	<u>10</u>	
<u>Access yard setback line</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	
<u>Lot Coverage</u>	<u>40%</u>	<u>40%</u>	<u>40%</u>	<u>40%</u>	
<u>Free standing antenna or wind turbine structures height and setback</u>	<u>Maximum height of 50 feet and shall be set back 1 foot for every foot in height from all property lines.</u>				
<u>Accessory structures within Setback Area</u>	<u>Mail boxes, trash enclosures, boundary walls or walls. With an exception for retaining walls, accessory structures within setback shall not exceed 8 feet in height.</u>				



R-1 to R-3 Yard and Lot Coverage Diagram

1
2
3
4

Figure 1

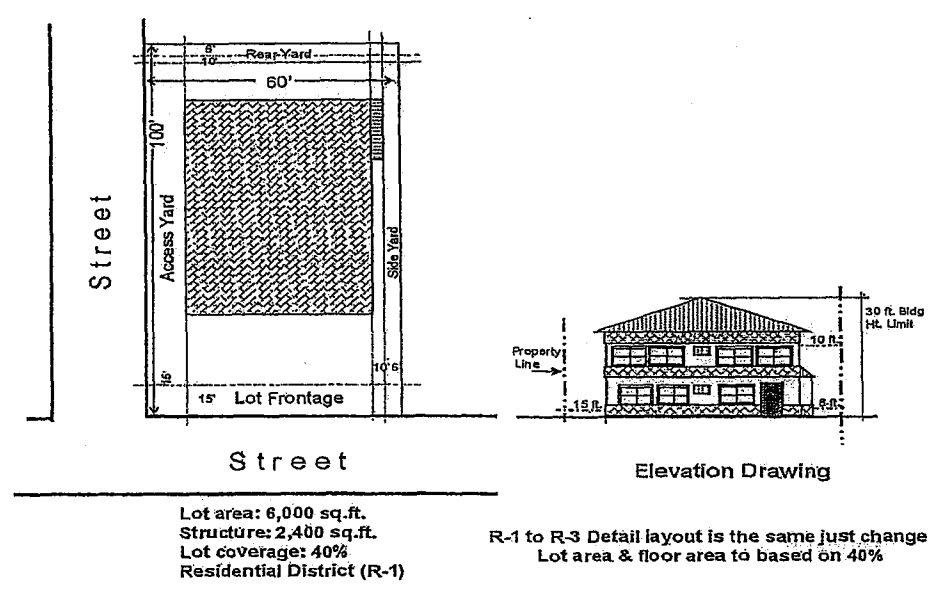
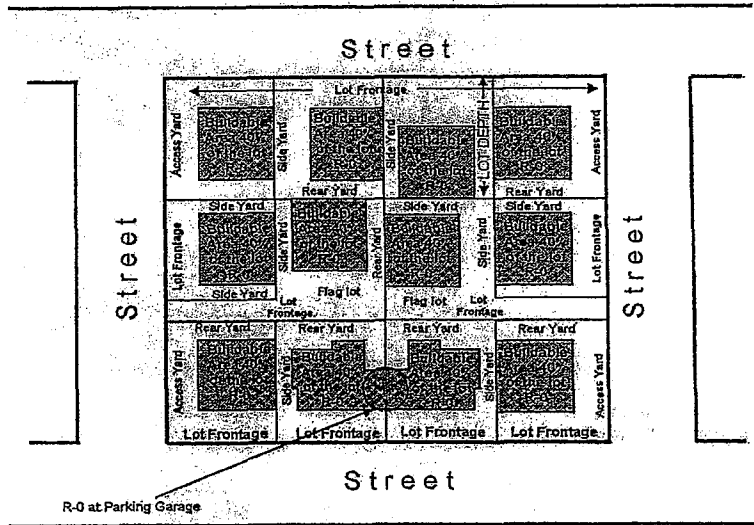


Figure 2

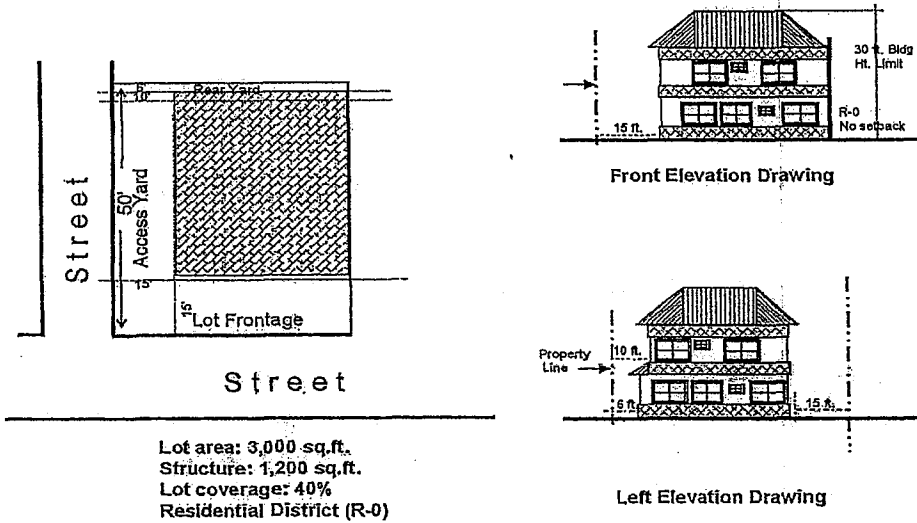
5
6



R-0 Yard & Lot Coverage Diagram

1
2
3
4

Figure 3



Detail layout

Figure 4

5
6
7

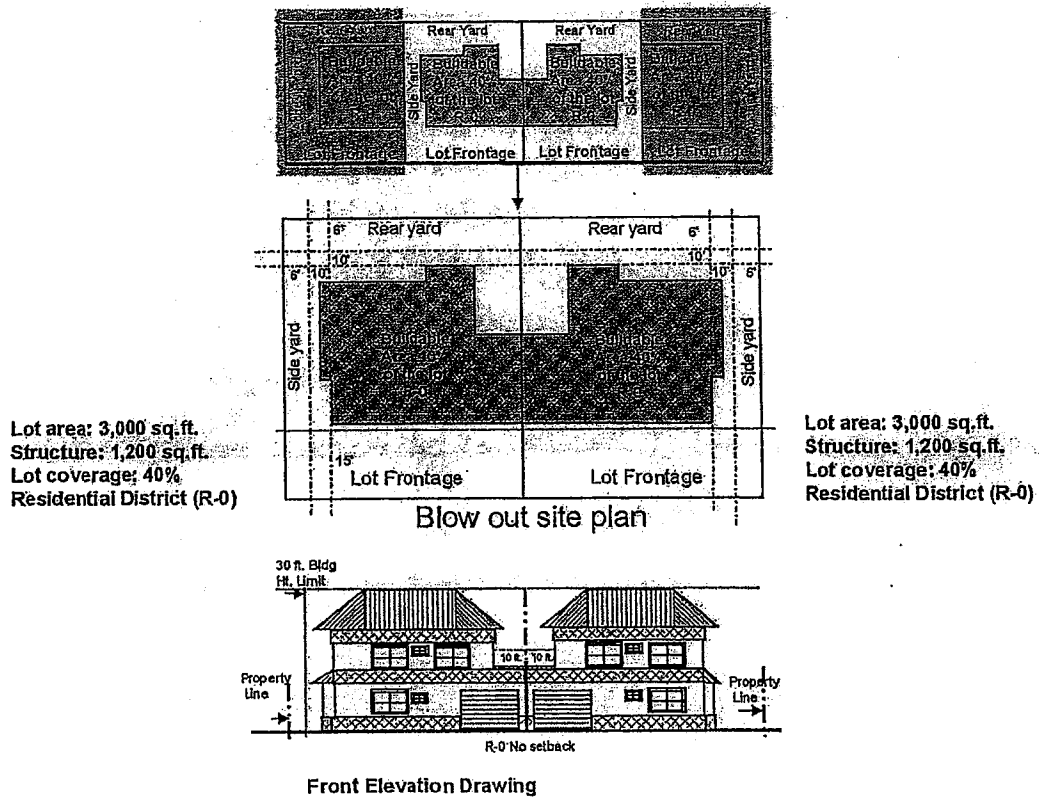


Figure 5

19.08.080 Non-conforming regulations.

Nonconforming lots, structures, and uses in place or in operation as of the date of this ordinance shall be subject to section 19.500.110 of this code."

19.08.100 Rule making authority. The planning director may adopt rules to clarify and implement this chapter.

SECTION 3. Title 19.04, Maui County Code, is amended by adding the following definitions.

"Home based business" means an enterprise or activity conducted by the occupant of the dwelling unit wherein the enterprise or activity takes place and which involves either the growing, processing, or manufacturing of product or the provision of services for consideration and profit; provided:

1. That only one person other than a member of the family residing on the premises of the dwelling unit shall be employed by the home based business;
2. That no more than twenty-five per cent of the floor area of the dwelling unit shall be used by the home occupation;

- 1 3. That no group instruction classes or group sales meeting shall be permitted on the
2 premises of the dwelling unit;
3
- 4 4. That retail sales shall be limited to products produced by the home based business;
5
- 6 5. That no sign or display shall advertise the home based business and there shall be no
7 change in the exterior appearance of the dwelling unit to accommodate the home based
8 business;
9
- 10 6. That deliveries either to or from the premises of the dwelling unit used for a home
11 based business shall be limited to two-axle vehicles between the hours of 9:00AM and
12 5:00 PM;
13
- 14 7. That any storage of goods, samples, materials, or objects used in connection with the
15 home based business shall be stored within the dwelling unit or screened from public
16 view;
17
- 18 8. That customers of the home based business shall be limited to: two at any time and a
19 total of eight per day and between the hours of 9:00 AM and 5:00 PM;
20
- 21 9. That the home based business shall not impact the residential character of the
22 property or neighborhood; and
23
- 24 10. That the following shall not be construed to be a home based business and therefore
25 shall not be permitted:
26
- 27 a. Harboring, caring, training, or raising dogs, cats, birds, horses, or other animals;
 - 28 b. Repair of automobile and other vehicles with internal combustion engines;
 - 29 c. Contractor headquarters or dispatch centers to other locations; or
 - 30
 - 31
 - 32
 - 33 d. The repair, manufacture, processing, or alteration of goods, materials or objects that
34 produce noise, dust, smoke, glare or odors that negatively impact the neighbors.
35
- 36 "Garage sale" "rummage sale" "yard sale" means the sale or offering for sale to the
37 general public items of personal household property on any portion of a lot, whether
38 within or outside any building.
39
- 40 Yard, access. "Access yard" means the boundary line of a lot bordering a public or
41 private street used for vehicular traffic, excluding driveways for flag lots.
42
43
44

COMPARISON CHART

Existing MCC 19.08 ordinance

Residential District: R-1
Lot area: 6,000 sq.ft.

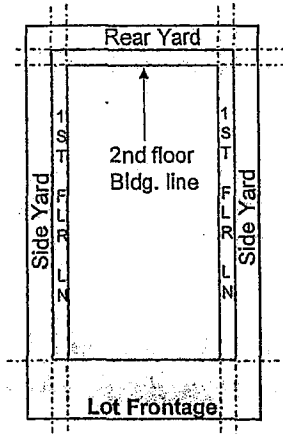
First floor:
100-15-6 = 79
60-6-6 = 48

48 x 79 = 3,792 sq.ft.

Second floor:
100-15-10 = 75
60-10-10 = 40

30 x 75 = 3,000 sq.ft.

Total floor area:
3,792+3,000 = 6,792 sq.ft.



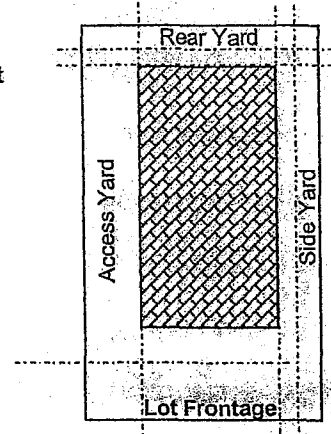
Propose amendment to MCC 19.08 ordinance

Residential District: R-1
Buildable area: 40% of the lot
Lot area: 6,000 sq.ft.

First floor:
2,400 sq.ft. (35x68.57)

Second Floor:
2,400 sq.ft. (35x68.57)

Total floor area:
4,800 sq.ft.



Residential District: R-2
Lot area: 7,500 sq.ft.

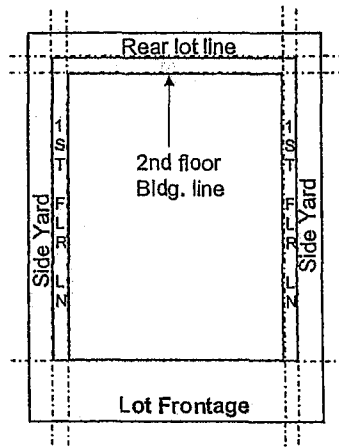
First floor:
100-15-6 = 79
75-6-6 = 63

63 x 79 = 4,977 sq.ft.

Second floor:
100-15-10 = 75
75-10-10 = 55

55 x 75 = 4,125 sq.ft.

Total floor area:
4,977+4,125 = 9,102 sq.ft.

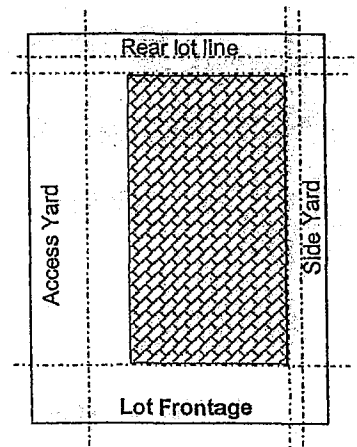


Residential District: R-2
Buildable area: 40% of the lot
Lot area: 7,500 sq.ft.

First floor:
3,000 sq.ft. (40x75)

Second Floor:
3,000 sq.ft. (40x75)

Total floor area:
6,000 sq.ft.



Residential District: R-3
Lot area: 10,000 sq.ft.

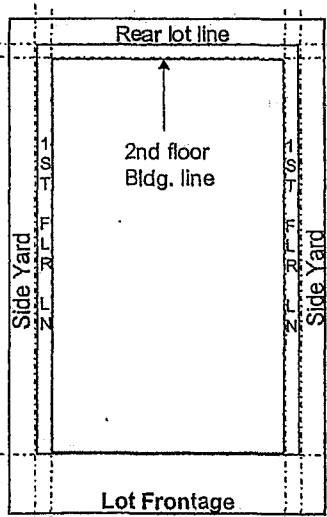
First floor:
125-15-6 = 105
80-6-6 = 68

105 x 68 = 7,140 sq.ft.

Second floor:
125-15-10 = 100
80-10-10 = 60

60 x 100 = 6,000 sq.ft.

Total floor area:
6,000+7,140 = 13,140 sq.ft.

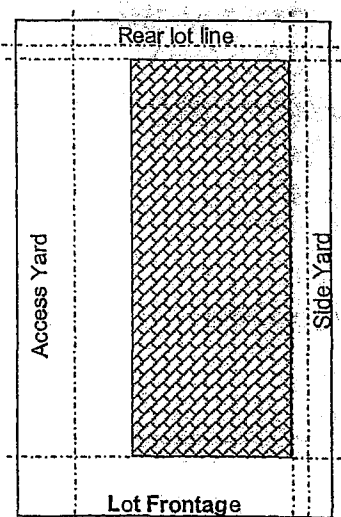


Residential District: R-3
Buildable area: 40% of the lot
Lot area: 10,000 sq.ft.

First floor:
4,000 sq.ft. (40x100)

Second Floor:
4,000 sq.ft. (40x100)

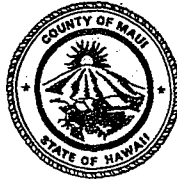
Total floor area:
8,000 sq.ft.



CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

July 21, 2009

MEMORANDUM

TO: MAUI PLANNING COMMISSION

FROM: JEFFREY S. HUNT, AICP *KRA for*
PLANNING DIRECTOR

SUBJECT: PROPOSED BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AMENDING TITLE 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS, AND AMENDING TITLE 19.04 GENERAL PROVISIONS AND DEFINITIONS

At the June 23, 2009 meeting, the Commission requested draft language that would allow for hula halaus within the Residential District. The following is submitted for your discussion:

Under 19.08.030 Special Uses

"Instruction of Traditional Hawaiian practices such as lei making, ukulele classes, hula classes, and lomi lomi. Group instructions shall be limited to no more than 6 off-site students conducted between 9:00 AM and 6:00 PM."

The Commission also raised questions on what the existing maximum lot coverage ratio is based on the existing set backs for each residential zoning district. Attached is a revised Exhibit 11 indicating the lot coverage ratio.

Finally, based on comments and concerns raised, the department would recommend that 19.08.030 K. be amended to read as follows:

"Energy systems, small-scale, provided that no noise, dust, smoke, glare or odors that negatively impacts the neighbors is produced."

Thank you for your consideration of these revisions.

Attachment
JSH:JWA
S:\ALL\APO\19.08\adendummemo.doc

COMPARISON CHART

Existing MCC 19.08 ordinance

Residential District: R-1
Lot area: 6,000 sq.ft.

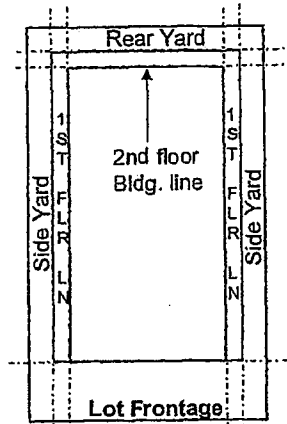
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Second floor:
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60-10-10 = 40

30 x 75 = 3,000 sq.ft.

Total floor area:
3,792+3,000 = 6,792 sq.ft.



*Lot coverage
63%*

Residential District: R-2
Lot area: 7,500 sq.ft.

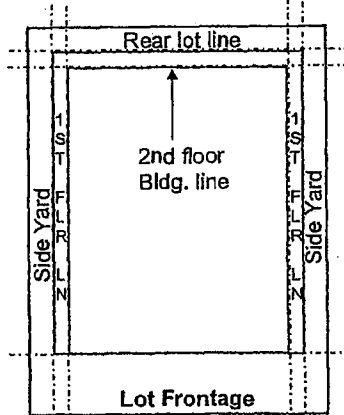
First floor:
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75-6-6 = 63

63 x 79 = 4,977 sq.ft.

Second floor:
100-15-10 = 75
75-10-10 = 55

55 x 75 = 4,125 sq.ft.

Total floor area:
4,977+4,125 = 9,102 sq.ft.



*Lot coverage
66%*

Residential District: R-3
Lot area: 10,000 sq.ft.

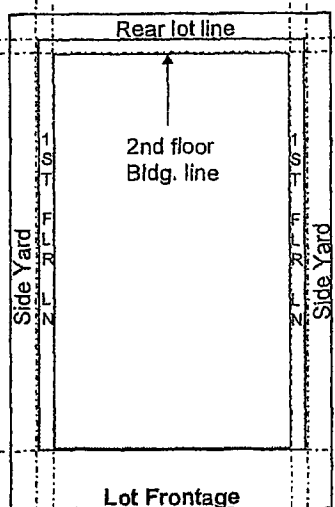
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105 x 68 = 7,140 sq.ft.

Second floor:
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80-10-10 = 60

60 x 100 = 6,000 sq.ft.

Total floor area:
6,000+7,140 = 13,140 sq.ft.



*Lot coverage
71%*

Propose amendment to MCC 19.08 ordinance

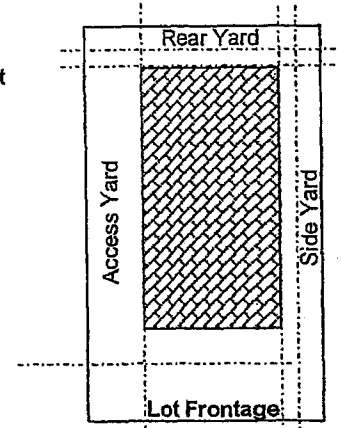
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Lot area: 6,000 sq.ft.

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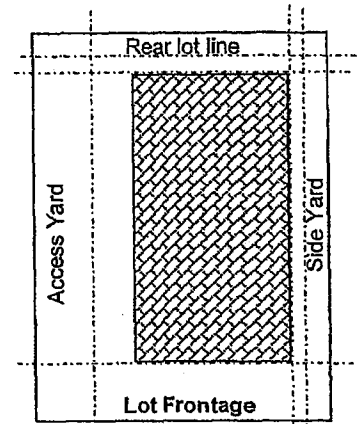
Residential District: R-2

Buildable area: 40% of the lot
Lot area: 7,500 sq.ft.

First floor:
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Second Floor:
3,000 sq.ft. (40x75)

Total floor area:
6,000 sq.ft.



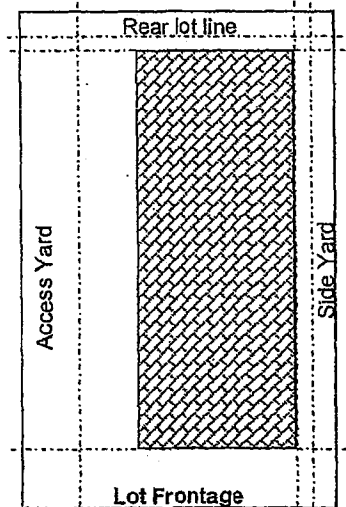
Residential District: R-3

Buildable area: 40% of the lot
Lot area: 10,000 sq.ft.

First floor:
4,000 sq.ft. (40x100)

Second Floor:
4,000 sq.ft. (40x100)

Total floor area:
8,000 sq.ft.



Mr. Hedani: Carried. Thank you. Thank you very much. Director. For the commission's information Commissioner U'u will be leaving at 12:00 and Commissioner Shibuya will be leaving at 3:00 p.m. So for the balance of items that we have under our discussion, we need to keep that in mind. Let's take a 10-minute recess.

A recess was called at 10:31 a.m., and the meeting was reconvened at 10:45 a.m.

Mr. Hedani: Planning Commission meeting of June 23rd is reconvened. Director Hunt.

Mr. Hunt: Your next item involves the Planning Director transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to residential districts and amending Title 19.04, General Provisions and Definitions. Joe Alueta is the planner assigned to this. He's on vacation. So on his behalf, I will go through the department's staff report briefly.

3. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions. (J. Alueta)**

The following testimony was received at the beginning of the meeting:

Mr. Dave Deleon: Aloha and good morning. I'm Dave Deleon, Government Affairs Director for the Realtors Association of Maui speaking on behalf of Maui's 1,400 licensed realtors. I'm speaking in support of the proposed ordinance redrafting of the residential district, Item B-3 on your agenda. Overall, RAM supports the amendments for the residential district proposed in this bill. The bill does a particularly good job in creating manageable, reasonable and enforceable rule for home-based businesses. This bill is a positive step towards recognizing the asymmetric world we now live in in making Maui a more business friendly community especially for the small business community, the most vibrant part of our economy.

RAM also supports the creativity in using graphic images to show the setback and height bounds that adds a lot more to the clarity of the bill in being able to understand what's being proposed.

The following comments are on elements of the bill. The bill allows truck farms in residential district but does not allow the farmer to sell the produce on site. Why? Allowing on-site sales will promote fresh food production and help these small businesses viable. Farm products are not subject to zoning and do not require a permit to sell on a roadside. So why not out of the backyard? And why set that type of restrictions if you have no means or willingness to enforce it?

Second point is, I understand that this carries over from the early ordinance, but I have to ask why does low, mod housing require a permit, a special permit if it falls under this zoning. Are we implying a denser use in this case? It's not clear to me what is implied by why low, mod requires a special permit.

Sections 3-10A, disallowing the harboring, caring, training or raising of dogs, cats, birds, horses or other animals. This section should include a statement for profit or beyond ordinary domestic purposes or some such because otherwise you're telling people they can't raise dogs and chickens or not chickens, but dogs and cats. The problem here will be chickens. How many chickens is reasonable to harbor in a crowded residential setting especially roosters? Honolulu does set a number allowed and they have the same kind of ethic mix we do. So it's doable if you want to.

And it's as if this issue is not complicated enough, I'm going to suggest another complication. This section makes no reference to long term rentals and what constitutes long term. Point of fact, more than half of the rental contracts written in Maui County for residential use are now month to month and therefore, –

Ms. Ramoran-Quemado: Three minutes.

Mr. Deleon: I'm almost pau. And therefore are in violation of the county's concept of long term use. If you want this code to match reality you need, we need to reset that long term definition to 30 days.

These comments notwithstanding, RAM supports the proposed ordinance. Thank you.

Mr. Hedani: Thank you very much Dave. Questions from the Commission? Commissioner Starr.

Mr. Starr: Mr. Deleon, I'm curious if you have a recommendation regarding the chickens, how many or what would be a good?

Mr. Deleon: I believe Honolulu said four roosters – four hens.

Mr. Starr: And roosters?

Mr. Deleon: What I recommend for roosters is it be like horses. If you want to keep a horse in a residential district you're not allowed. So you have to keep it out in somebody else's barn in a rural district. If you're going to keep fighting cocks, then keep it somebody's rural district place. They don't belong in a crowded residential district because it does interfere with the peace and quiet of the community.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: He asked my question.

Mr. Hedani: Any other questions? Thank you very much Dave.

Mr. Deleon: Thank you.

Mr. Hedani: Also here to testify on Item B-3 is Mr. Eric Taniguchi.

Mr. Eric Taniguchi: Good morning Commission Members. My name is Eric Taniguchi. I am an

architect. I'm from Pukalani and I am the President of the American Institute of Architects, Maui Chapter. I represent about 52 members of which 36 are licensed professional architects practicing here on Maui and Molokai.

First I want to thank each of you for your dedication and hard work by serving on this commission. I also want to thank you for allowing me and the general public to testify on the proposed bill to repeal Chapter 19.08 R0 Zero Lot Line Residential District, amending Title 19.08, Residential District and amending the Provisions and Definitions entitled 19.04 in the Maui County Code.

We recommend that the commission vote to defer action on the proposed bill in order to gather specific additional information. After reviewing the proposed bill we noticed certain inconsistencies and conflicts in the design of single family homes using the proposed rules. This bill seems to penalize one-story homes by opposing lot coverage rules that seems to be aimed at two-story homes. Please review the diagrams they have attached to the bill. They're all two-story structures. So this effectively kills a one-story single family home with an interior atrium, all the setback lines. That's pau.

This bill if passed will effectively cause problems to the existing homeowners that have residences which do not comply with this new bill. They would become existing nonconforming and there's a whole bunch of stuff that comes with that.

The other issue that needs further definition is the use of access yard. What is an access yard? What can or cannot be built on that access yard? There is some definition in there but it's really vague. So there's going to be an interpretation that the Planning Department will be imposed on us architects as we design here. So access, almost in definition means allowing someone other than the owner access to your property.

There are other issues we see in this bill that needs to be addressed. We of the Maui AIA has a Planning Committee which needs additional time to review this bill and do our analysis and design ...(inaudible)... implications. After we are complete, we will transmit our recommendations to each of you. Again, we ask the commission to defer action on this proposed bill and in closing, the American Institute of Architects, Maui Chapter, thank you for your hard work and commitment to our island's quality of life and future. Thank you.

Mr. Hedani: Thank you very much Mr. Taniguchi. Question from Commissioner Mardfin.

Mr. Mardfin: I'm sorry. I think I might have missed your point. Could you explain the part about the atriums and why that wouldn't work?

Mr. Taniguchi: Well, okay, if you look at the definitions in there basically you can take a one-story building and you can go to the six-foot setback line, right? But with a 40% lot coverage, you effectively cut that, you know, that house in half. You know, what I mean? So basically you won't get a 3,000 – lets say the 40% lot coverage has, lets say 3,000 square feet and you can put two stories, right, that would be 6,000 would be your total square footage for the house. But if only did a one-story house, you could only do the 3,000 lot coverage, you know what I mean. Instead of lets say, your lot is like 10,000 square feet, you couldn't go past the you know, the 4,000 you know on

a one-story. And if you look at the diagrams it's pretty self-explanatory. They have all two-story. There's no one-story.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I saw those diagrams and I just thought that was illustrative that they were using two-story.

Mr. Taniguchi: That's the first thing we picked up when we saw it you know.

Mr. Mardfin: I don't see why that would affect a one-story building. It's just you'd have the same foot print as a two-story building, and if you did have a true atrium, I'd have to read it more carefully but that might be treated like a swimming pool. If it's not covered with a roof, I'd have to check it more carefully. But there's a thing about whether it's covered by a roof and if an atrium is not covered by a roof than that might not count as area.

Mr. Taniguchi: Okay, that's going to be open to interpretation by the Planning Department when we come in with designs like that. But effectively what this is a 40% lot coverage means that you can only build 40% on your lot with a house. So the current rule is, if I have one-story house, I can go to the setback lines, six-foot, you know, on the rear, the sides and your front is like a 15-yard. So anyway, I could build up to the six-foot line on a one-story building and have just a one-story and it could be, you know, a 5,000-square foot home, one-story. You know, this is hypothetically, you know, what I mean? But effected with the 40% lot coverage you cannot build it you know what I mean? You gotta go to a smaller foot print like a two-story. You know what I'm saying?

Mr. Mardfin: I do. Thank you very much.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Thank you Mr. Taniguchi. I just wondering, you mentioned that you wanted a delay. How long a delay?

Mr. Taniguchi: I just got this thing like about a week and a half ago and then the members who are on the Planning Committee in the AIA, they're coming out with a lot of different opinions. So some members are on vacation right now and we're trying to collate all this information and data because we actually are trying to do some studies based upon this new proposed ordinance. And so, we'd like to have at least a month if that's possible.

Mr. Shibuya: Thank you.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Yeah, thank you Mr. Taniguchi. Question. You mentioned the word existing nonconforming. What would be the rough estimate of how much people will be I guess a existing, nonconforming? Top of your head, take a guess, wild swing because you're saying that now you would have limited lot coverage on a single story because of the 40% lot coverage. And basically

the people right now, ...(inaudible)... they get less money. A lot of people extending, right for your ohana units, for extended family. Will those people be affected by this?

Mr. Taniguchi: Of course. When I look at this bill I don't want to get too into this but this is like a social issue right here with this proposed 40%. Basically what it does, it's going to affect, the mcmansions we see in Kahului. You know, the mini mcmansions we see where they go up to the property line, they go up two stories, but you know what, majority of those homes are multi-generational. They get the grandparents, the mom and the dad, get the sons, the daughters who's got family. They cannot buy a house. You know, that's the whole reason why this is happening that they're building like that. And so, we can see where we have members, we have AIA members who like this bill, who want to control that, who don't want to see that kind house. But then you get, all of us members know the reason why they build those kind homes, you know what I mean? We all realize what that is. It's a cost issue, you know what I mean. It's about cultural, social issues, you know what I mean that come into play as far as my family I have my grandparents living with me, my sons, my two sons with their family living with me also, you know, I mean, is that so bad? Some people don't want it. Don't want to see the 10 cars that's parked in front. You know what I mean, but then some of us it's a reality you know about living here on Maui. And then also on top of that you get this new – I'm going off little bit, Commission U'u, but basically you got this new plan, General Plan coming in with this urban growth boundaries, yeah. So you're going to get density, you know what I mean? So right now, this is like two opposing things coming out of the Planning Department. You got urban growth boundaries but you're not allowing for the density for these families to build you know what I mean? You're restricting even more. So what going happen? All these comments are coming from all my members, so we just need to collate it and get it to you in a logical thing that you know, just kind of looks at these issues that we see.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Back to the original question my brother, what would be roughly rough guess, take a swing at the existing nonconforming if this would be approved? Guess, just guess um, go high if you need, kidding, kidding.

Mr. Taniguchi: You know, to me, in my opinion, in Kahului I see at least 200, 200 of those homes just driving by because I get friends in that neighborhood.

Mr. U'u: Just in Kahului?

Mr. Taniguchi: Yeah, just Kahului. I just see, there's got to be at least 200 of those homes out there. I mean, they're on every single block. There's like two or three of them on single block coming up.

Mr. Hedani: Thank you. Any other questions? Seeing none, thank you very much Mr. Taniguchi.

This concludes the testimony received at the beginning of the meeting.

Mr. Hunt: Again, this is part of an overall attempt to streamline and standardize Title 19. Title 19 is your zoning ordinance. The overall intent really is to standardize the code format including tables

and graphics which makes it more user friendly. At the same time, as we're going through this updating of the ordinance or formatting and streamlining we're looking at it as an opportunity to add provisions that have arisen. The dilemma for the department is if we add too many or it's too controversial, etc., then the whole bill could get bogged down and not get passed or not get passed for a long time. But having said that, we felt comfortable at least proposing three major or three significant changes.

One is renewal energy systems would be allowed and this would allow for small scale renewal energy systems such as a small windmill or solar panels, etc. We're also suggesting that we allow home-based business and this is a liberal expansion beyond the existing home occupation and we can go through those details a little bit more and then we're also suggesting that we add a lot coverage requirement and lot coverage requirement it would merely require that buildings not be built out to their absolute setbacks and that the lot coverage would regulate the size of those buildings.

So briefly on page 2 of the staff report, we're adding home occupations. We're adding a home-based business. We're adding a definition of — or garage sales, we're adding energy systems, small scale. We're adding a development standards table. Adding a lot coverage and we're providing illustrations showing development standards. We're also providing illustrations regarding the R-0 District. There's a nonconformity provision that's proposed. A rule making authority provision and then the last part of the bill creates an actual definition of the home-based business and creates a new definition of a garage sale and amends the definition of access yard.

So going through the bill itself, you should have as Exhibit 1 a draft, July 11th, or pardon me, June 11th, and you can see that the bill has permitted uses on page 1 and then goes over on page 2 that's where your accessory uses are and that's kind of formatting change. A lot of those uses are already in you bill. You can see that they're struck through further on down on the bill except for a home-based business and the garage sales.

Then over on the next page, page 3, you have your special uses. There's provisions in there for home-based businesses that don't meet the definitions of a home occupation or home-based business. There's also other criteria. A lot of it is existing, all that language for the most part is existing. And then there's some clean up on Item H, traditional, domestic type businesses, mixed lots also has some slight revisions.

And the going over on page 4, that's where the lot coverage comes in at 40%. The graphics on page 5, showing the yard and lot coverage. And there's also the yard and lot coverage on page 6 of the bill. Essentially, the bill would allow for at 40% lot coverage and 6,000 square foot lot, you'd have a structure 2,400 square foot and at two stories, it would be 4,800 square feet.

And going over on page 7, there's a nonconforming regulations. So it says essentially no lot structures that they would be subject to 19.500.110, that would make them nonconforming. Now we could change that language if there's a concern with that. There was some testimony this morning regarding that exact issue. So we could potentially change that language to say that these existing buildings are not subject to 19.500.110. Above that, I skipped over above it, there's some examples there of lot area. A lot area of 3,000 square feet, at 40% would have a 1,200 square foot

base.

And then finally going over to page 8 of the bill, there's rule making authority. That's standard language we're adding to all our ordinances and then Section 3 is the home-based business provision. The first item would be only one person other than the family member could be involved in the business. Right now your home occupation doesn't allow anyone except a family member. The home-based business would allow sales. Right now your home occupation does not allow sales on site, but the sales has to be limited to products by the home-based business. The home-based business would allow deliveries. Right now the home occupation does not. We're suggesting it be limited to two axle vehicles and between the hours of 9:00 a.m. and 5:00 p.m. Storage of goods has to be screened from public view. Customers are allowed. Right now your home occupation ordinance does not allow customers to visit the home occupation. We're suggesting a home-based business, you have two at any time, total of eight per day and between the hours of 9:00 to 5:00. And then there's prohibitions that are not allowed, animal caring, training, repair of automobiles, contractors headquarters and any home-based business that produces noise, dust, smoke, glare or odors. Further on down there's a definition of a garage sale and also the access yard.

On the home-based business what we did is we did a lot of research on other ordinances, and as part of the smart growth concept there's a push to liberalize home occupations a little bit. So we looked at Honolulu, we looked at County of Hawaii and we looked at City of Portland and the existing home occupation ordinance for the county is very strict. So what we're proposing is to come up with a second tier, a home-based business and as we go through our other zoning ordinances we can perhaps allow a home occupation in one of them or a home-based business in one, maybe both and maybe one not the other, etc.

So that's the overview at this point. We're open for questions.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: This is just a technical problem. But I think you have a misprint on page 3.

Mr. Hunt: Page 3 of the bill?

Mr. Mardfin: Of the bill, line 13.

Mr. Hunt: Yes, that should be I.

Mr. Mardfin: The H should be an I, and it's also on page 2, line 40 is the cleaned up version at the end.

Mr. Hun: Yeah because people didn't catch that. On line 13, page 3, should be 19.08.0309(i).

Mr. Mardfin: And it's also on Exhibit 10, page 2, line 40, same issue.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I have two questions for the director. First, is I'd like him to talk about density. I know that density in the planning movement is generally considered good, but I think that – I'm wondering whether that's just pertaining urban areas or whether we want residential areas to be more dense or not from a planning perspective. The second is that in light of the AIA's request to have time to look at it whether the department feels that that is the right thing to do to give them some time?

Mr. Hunt: I agree with the comment that we want more density in, particularly in our urban areas and in the residential district. And I think the issue is how much density and what kind of density. The problem that we're trying address is in a lot of communities there's a neighborhood style of development that is there and somebody will come in and build a new home and build it right up to the max, out to the setbacks and it towers and dwarfs over the other homes in the community. Now, as a community if we feel that's okay, then so be it. I mean, we don't have our heart set on this. We're just suggesting that other communities in our, trying to grapple with that issue. And this is one way they do it is with lot coverage. If you look at the lot coverage, at 40% it's still fairly large. I mean, a 6,000 square foot lot which is small, that's 60'x100', that's a very small lot, you'd still be allowed a 4,800 square foot home. A 4,800 square foot home is pretty big by my standards. I mean, I don't know about the rest what you guys live in, but – and so I don't think we want misconstrue this as clamping on a residential dwelling or anything. It's preventing the excesses and we can massage the numbers. If you guys feel the number's too small or too big or whatever, and again, if you don't like it at all, so be it. You know, that's what we're here for is to listen to you folks.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I like a lot of parts of this but there are few things I'd like to ask about. The main one is maybe the easiest way to see it is on the draft Exhibit 1, page 4, where you have the table. And I want to know the relationship between these – if this is adopted how this will – will this overrule community plans or will this allow community plans to overrule this? The reason I ask I was looking at the Hana Community Plan and comparing it to this and you have maximum building height in feet of 30 feet, R-0, R-1, R-2, R-3. The Hana Community Plan says, two-stories or 35-feet. So Hana would allow it to be five feet higher than this depending on which is controlling. Going the other direction, the bottom of that table says accessory structures within setback area with an exception for retaining walls, accessory structures within the setback area shall not exceed eight feet in height. The Hana Community Plan says non retaining wall structures along public roadways shall not exceed four feet in height. So there Hana has a more restrictive, Hana Community Plan, the existing one, has a more restrictive thing. I want to know where – which is going to take control when it comes to it, the Hana Community Plan or the – which is more liberal on the height of the building or the other?

Mr. Hunt: Generally speaking we would say whichever one's more restrictive. Now, implementing the community plan is somewhat of an art, not so much a science because depending on the language that's in there, if it's mandatory, if it's suggestive, if it talks to a further adoption of an ordinance, etc., and it's not uniform across the board. I mean, the issue with the store, Hasegawa Store is, you know, the Public Works Department and they can speak to that, they take a different view, that the ordinance overrules the community plan. So I can't give you a definitive answer on that.

Mr. Mardfin: Okay.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I had a similar type question in terms of precedence. We have the conditions, covenants and restrictions in certain subdivisions and so which would take precedence and generally as you mentioned, the more restrictive would prevail. However, in some of the subdivisions especially the one I'm living in, the CC&Rs are very restrictive. You have to abide by the setbacks and the setbacks are according to the county ordinances. So can we go ahead and make provisions or say that if we agree with this we would be deferring also to the or respecting the CC&Rs as well as the community plan type of guidelines?

Mr. Hunt: I don't think you need to say that. It's pretty much understood. We don't enforce or interfere with CC&Rs and I think you had that conversation on the last application a little bit. You might allow somebody time to work out their internal CC&Rs but we wouldn't get involved with enforcing them. We would simply administer our rules and if the CC&Rs are more restrictive somebody would have to go through some civil action or some board action, homeowners board action in order to seek compliance with the CC&Rs.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Another one, in terms of non conforming regulations on page 7, just above there there's a picture an image there of two lots and two houses seem to be joined. In this diagram, would that not, if they were joined, would that not be a condominium or a townhouse type of arrangement.

Mr. Hunt: Those are separate lots so they wouldn't be condominiumized. That diagram is trying to show the R-0 provision. So in an R-0 zone you can build right up to, on one property line you can build right up to the property line. And as proposed, I believe the language says that only for a garage. Let me check that, but that diagram is intended to show that provision. Right now, we have a separate R-0 zone and then a residential zone and the intent is to just incorporate it all into one residential zone.

Mr. Shibuya: Understand and then if they wanted to share the driveway then all of a sudden it becomes a condominium then or a townhouse.

Mr. Hunt: I suppose if they wanted to share one driveway, yeah, they could have two parallel driveways.

Mr. Shibuya: Yeah, that's what I'm kind of worried about in terms of the appearance of two driveways right next to each other and you have a shared garage.

Mr. Hedani: Additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Could you explain what the access yard is?

Mr. Hunt: As I understand it, it's supposed to be used for vehicle traffic. I probably can't explain it very well.

Mr. Hedani: Is that for like deliveries to the house or something?

Mr. Hiranaga: Mr. Chair?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: If you look at the diagrams where they show access yards it's parallel to the street so I'm kind of confused as to what an access yard is.

Mr. Hunt: Well, the proposed definition seems to state it would be bordering, a lot bordering a public and private street used for vehicle traffic excluding driveway.

Mr. Shibuya: Maybe I can try and help here. In the old plantation --

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: In the old plantation days we had houses right next to each other and between the rows of houses it wasn't a space enough for a vehicle but there was space enough for people to walk through and that's how us kids walked to school and it was shady. Rather than walk on the side of the road which did not have any trees, we walked between the homes and that was access. Is this something to that effect?

Mr. Hunt: To be honest, I don't understand it very well and it's one of those issues where somebody mentioned, you know, do we want to bring this bill back for a little bit. We could do some more research on that. I can talk to Joe who's the author of the bill. I think it may have something to do with the R-0 where you have your two garages or building side by side and then you'd still be able to have some kind of access to the back of your yard though it's not your driveway, but again, I'm starting to speculate and I don't like to do that.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Can we have comment from Public Works?

Mr. Hedani: Mr. Miyamoto.

Mr. Miyamoto: Mr. Chair, if you look at a lot of the sketches that show access yards. Generally they are corner lots, lots that have frontages to two streets, two adjacent streets. So basically one is determined to be the frontage where typically that's where you have your driveway and then so they're defining the area that's adjacent to the other street which is a right of way for vehicular traffic and everything as the access yard. Because typically you know, we have a lot of people who if they have a unit in the back try to get an additional driveway to the backyard. So that access yard becomes a defacto additional frontage yard. In looking at the table, they seem to have the same setbacks in all categories.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: If you look at Figure 1 on page 5, I think that's exactly what it shows. If you look at Figure 1 and look at the lower right-hand building, it shows lot frontage and then access yard going along the other street. I think – and I think our Public Works person is correct in that there are setbacks from the front that are greater than the side and this is a way to define the front in favor of the builder. If they had to take the other street, they'd have to go in a whole lot and they'd have a really, really skinny building. And so it's, I think it's an attempt as Mike says, it's an attempt to define where the street to which you're going to apply frontage setback as distinguished from the street from which you're not going to define frontage setback but you're going to define as access.

Mr. Hunt: And I recall conversation with Joe that part of it is to assure visual access, sight access, sight distance. So you have two streets here. You don't want to have only one setback of a front street setback and then they could build just a side setback right up to the other street. So it's increasing both your setbacks in order to see through the corner.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, seeing that the author and our really expert planner on this matter is Joe Alueta is not available today and also that the American Institute of Architects who are the folks who deal with this on a daily basis has asked for a deferral, I feel we're wasting time dealing with it today. I move to defer till maybe July 14th, assuming that Mr. Alueta will be back by then.

Mr. Hedani: Motion to defer to July 14th, is there a second?

Mr. Shibuya: I'll second it but –

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion?

Mr. Shibuya: I would like to amend that to another week or so because the testifier said he needed at least a month.

Mr. Starr: Okay, first meeting in August.

Mr. Shibuya: That will be fine. If that's okay with the maker of the motion.

Mr. Hedani: So the motion is amended to read defer to the first meeting in August, first regular meeting in August with the consent of the second.

Mr. Shibuya: Second.

Mr. Hedani: Discussion? Commissioner Mardfin.

Mr. Mardfin: Again, I like this motion, but I don't like it right now. I'm happy to vote for it later but I think we ought to discuss like the previous one discuss all the issues we have so that they can fully respond on that deferred date.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I have to agree with Commissioner Mardfin.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, the only problem is the planner is not here so is there anyone who's taking notes on what we have to say Mr. Director?

Mr. Hunt: Yeah, I'm trying to take notes and you know, I got to admit I kind of dropped the ball on the access yard. In my preparation, it didn't jump out at me as one of the bigger issues. I mean, really the big ticket items in this one and I hoping we get some feedback is the home occupations, the alternative energy and the lot coverage. So I have no problem with the deferral, but I really agree with the comments that lets try and get some at least direction, we can come back with information.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Someone is taking minutes of this meeting correct?

Mr. Hunt: Correct.

Mr. Hiranaga: There is a record. I have another question.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I guess on page 3, H, you talk about additional domestic type businesses which I would assume would be something like hula lessons, classes and then on 8, number 3, line 31, you say no group instruction classes.

Mr. Mardfin: Point of Parliamentary Procedure.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: We have a motion on the floor to defer, unless that's withdrawn, we shouldn't be talking about the details of the plan.

Mr. Hiranaga: True.

Mr. Starr: I'm willing to withdraw.

Mr. Shibuya: We withdraw.

Mr. Hedani: Okay, why don't we table that until later.

Mr. Starr: Okay.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, so on page 3, line 26, they talk about traditional domestic type businesses. But then on page 8, line 31, they talk about no group instruction classes. So I assume they're talking about hula lessons or taiko drum lessons or kendo lessons. I don't know what traditional. I think it needs to be more specific.

Mr. Hunt: In drafting the language for the home-based business we as staff discussed the idea of should we allow for hula halaus. Frankly there was a couple of people who were involved with them and said no, it's just too noisy, there's too much traffic. So then we said, well, what's the options? Well, that's where you fall back on this item H, on page 3, line 26. These are your special uses. So Item H is being suggested to be reworded. It is an existing provision in your law. We're suggesting it be refined and revised so that it's better understood but this is where if you don't meet the definition of a home occupation or home-based business you could still apply for a special use. Special use would come before this commission. We'd notify neighbors and agencies.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess I have a concern about having to vote yea or nay on a hula halau. Maybe we could defer that to the director's discretion.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I have a problem with windmills. I'm speaking as someone who has lived and actually manufactured windmills for a long time and maybe that's why you know, I have a little more insight, but large windmills tend to run at a slow speed with reduction gears and are on tall towers and are quite. The ones that folks tend to put up on a small tower or on the eaves of their house tend to run at very high speeds and are quite noisy. There's on particular brand that people nicknamed "The Screamer," and a lot of my friends and neighbors in Kipahulu mourn the day that their neighbors put these things up and you know, a lot of them are reduced to rubble by shotgun or having guy wires cut in the middle of the night because they're very, very loud. You'd have to have a thousand chickens screaming to equal the noise of one of them. So I don't quite know what the mechanism is of doing this, but one person can really turn the lives of their neighbors, you know, into hell, by making a hundred watts of power. I don't know if you want to put a decibel limit or something on it. But it really will create problems if we don't create a structure for it. And I ask the department to look at this.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I concur and I think Jonathan came up with a solution just now. Maybe there should be decibel levels connected to the – as part of the entire program to keep noise – to recognize noise could be a potential issue. And the hula halau problem might be done by having it, and for other things, allowing them at certain hours but not at other hours. You know, a hula halau at 4:00 in the afternoon is probably much less intrusive than a hula halau at 8:00 p.m.

Mr. Hunt: We can investigate the small individual windmills. I think we all agree with the intent to

try and get energy independence but we certainly don't want to aggravate our neighbors. There's got to be some way that other jurisdictions are dealing with it. Perhaps the decibels or maybe they didn't by "The Screamer" model or something. But in terms of halaus we can come back with some draft language and if this group wants to allow halaus with restrictions we can try and help you with that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, my concern regarding the 50-foot height limitation on windmills is that you're going to be impacting people's view corridors. My parents who live in Wailuku can right now see all the way to Pauwela light house. There's homes in front of them 30 feet high that do not obstruct their view of this northshore coastline, but if someone puts a 50-foot high windmill in front of them, they're going to be looking at windmill spinning instead of the northshore of Maui. And I think to me personally, that should be handled through the Board and Variance and Appeals. If someone wants to go above 30 feet make them provide notice to the community and go through the Board of Variance and Appeals.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I agree with what Commissioner Hiranaga just mentioned in terms of the height. But I wanted to comment that noise should be another – a separate restriction overarching that it would include businesses as well as other activities. Noise has always been a residential problem and so it encompasses chickens as well as other individual type projects such as I'm selling Amway or I'm selling cosmetics or I have a whole bunch of people in there and it's a festive activity and yet is very noisy. And so the noise level is another factor. I think we can treat that separately.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I agree with that. And my intent was not just to limit to halaus, but the notice level in general. You can have churches next to you practicing hymns day and night as used to occur. I think noise is a – I agree with Commissioner Shibuya that noise an overarching thing that ought to be specified in here.

With respect to item E on page 3, under special uses it says, this would be a special use, "housing for the aged operated by governmental or nonprofit organizations provided that the normal population density is not increased by more than 10%." And I was wondering whether a nonprofit organization would include a community land trust. I'm not asking for an answer now, but think about, I think we want to encourage community land trust as we've talked about in the Maui Island Plan. I wouldn't like a particular wording adopted here to restrict that any more than it would be necessary.

Mr. Hunt: That item is existing language. It's proposed for any revisions at all but this is an opportunity where we could. As it's worded it's a special use and I would assume which is always dangerous, but I would assume it's because you can increase the density up to 10%. Now if we want to facilitate low and moderate income housing, perhaps there should be a discussion of whether we just drop that into a permitted use. You still have your limit of 10%. It's just that it

doesn't require a public hearing and etc. We can come back and at least throw that on the table next time.

Mr. Hedani: Commissioner Starr.

Mr. Hunt: And there was some testimony regarding that also.

Mr. Starr: Yeah, I think I'd like to see it as a right use and I'd like to see to the ability to make it more dense as a special use. I actually think that in that in special purpose housing particularly in terms of you know, housing that provided limited care facility that more density is good.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yes, regarding the 40% lot coverage, I'd like the staff to calculate the percentage that's excluded by the setback areas just to find out what the proposed or allowed building – buildable area would be within the proposed setback areas.

Mr. Mardfin: Footprint?

Mr. Hiranaga: Allowable building area. You have the setbacks. So you need to find out what those square footages are with the four setbacks that provides you the allowable buildable area.

Mr. Hunt: I think we can do that if we haven't already. Check out the last page, exhibit 11, and it may be in there. Existing ordinance is on the left. So, and the first example you have a 6,000 square foot lot. The total floor area that could be built would be 6,792 square feet. Under the proposal it would be reduced to 4,800 square feet.

Mr. Hiranaga: Okay, if you could just provide the percentage so I don't have to calculate what that is.

Mr. Hunt: Okay.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to congratulate you for or Joe for putting in exhibit 11. I did think that was very helpful, but this does imply two floors, and the architect guy suggested that you know, what if they want to build one floor and I think that's worth thinking about again.

The other thing I wanted to raise was on page 9, under definitions, Item 10A, on line 10, harboring, caring, training or raising dogs, cats, birds, horses or other animals I think the testimony was pretty, I like what the gentleman said about not having roosters right next to you. And so you might think about changing that definitions to take care of that issue. It's partially a noise issue. I lived in Kahili for seven years and our next door neighbor had a lot of roosters that he was raising for various activities.

Mr. Hunt: The way the home-based business works is you have an introductory paragraph and I

believe that was verbatim for the home occupation so it states it needs an enterprise or activity conducted and it goes into for consideration and profit. So somebody under this existing definition could raise roosters as long as they're not doing it for profit. That's really what this home-based business is geared towards. It falls under that umbrella statement I just read. If you want to not allow roosters at all in the residential zone, you probably need to address that in a manner outside of the home-based business.

Mr. Mardfin: Okay.

Mr. Hunt: And I would caution you folks about venturing down that road, but if you guys want to.

Mr. Mardfin: It is an issue.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: That's why I wanted an overarching sound level decibel and put a distance too. That it be no more than 10 decibels within 10 feet or five feet. Be sure to have that decibel level and the distance because that makes a critical difference especially when you go in zero lot areas, you're right next to the person.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'd like to ask Corp. Counsel about this. I know it's tricky. I know on Oahu right now there's a couple that's been in the news that are members of a certain religious sect and they proselytize day and night with microphones and when they go to sleep they play tapes and the neighbors have been trying to shut it down. It's become a RLUIPA case that lawyers flew in from Virginia to help fight. You know, I know animals, my property backs onto property where there are dog kennels there. I don't know if it's a commercial use or not, but they're very, very loud. If there's a decibel level placed how enforceable is that?

Mr. Hedani: Jim.

Mr. Giroux: I think traditionally there's two ways that the government's tried to deal with this issue. One, is the nuisance issue and the other is a use issue. I think for the Planning Department, the use issue is a lot easier to enforce because you don't have to do any measurement, you don't have to do any, you know, it's just are you doing this and is it in the proper area. And that's usually what zoning is for. But zoning, you know, it's part of the police power also which means that it's based on health, safety and welfare. So regulating decibels is fine, but then it also has to be based on some type of rational basis. You know for some things you might have to establish a base noise level like an ambient base level where you would actually go out and see what is the ambient noise level. And if whatever you're doing is over and above your ambient base level then you might have a you know, some type of a enforcement action. But that's a lot of work for the Planning Department to go out. Usually, you know, I mean, the cops are called because you're having a graduation party and it's at one in the morning they're still rocking out and you can hear it from the end of the neighborhood, the police drive up and they say, okay you guys need to turn off your stereo, you can still party but turn off the stereo. And then you know, four-o'clock in the morning

they get another call and they're like okay, guys you know, we got two more calls you guys gotta at least disburse a little bit, maybe go inside the house. They work it that way. There is the boom box law where the cars, you know, the police if they're over a certain amount of feet away from you and they can actually hear your stereo whether it's a boom box or not, they're going to assume that's over a certain amount of decibels and that they have to establish that after they give you the ticket and you protest it, the police officer will tell the judge well, I was this much feet away and could hear, still hear the stereo. The judge will have to decide, okay, yeah, that violated the boom box law. If you want to go decibels or you want to go can you hear it above a base level or can you hear it from a certain far away that all depends on what's your enforcement action that you want to be taking and who do you want to be enforcing it? Because a planner at two in the morning, you're not going to get it.

Mr. Starr: Do police carry meters, decibel meters?

Mr. Giroux: I'm not sure. You'd have to ask MPD. That's why they like the so many feet away because they do have a measuring tape and they just roll up on the car or they use their measuring tape and they say well, this is how far away I was and I heard, the door was open and I could hear the stereo so we gave them a ticket for that.

Mr. Starr: Could we ask police for comment on noise?

Mr. Hunt: We'll do some research on that issue including police.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: In addition, you might contact in Honolulu there was an organization called Citizens Against Noise and they've, I'm sure, worked with this. Part of the problem is intermittent noises like a rooster is a intermittent noise. When it's crowing it's real loud and when it's not, it's not. This relates to the – you know, my rule of thumb – in terms of graduation parties, that's once a year. I don't have a problem with my neighbors – my rule of thumb is if it's once every two months or less frequently that's everybody has a chance to blow things off. If it's every week or every night then it's a real inconvenience. So part of it's the frequency per year. I think you know, if you have a graduation party in June and it goes to 2:00 a.m. you shrug your shoulders, you roll over and say, honey go to sleep, but if it's every Friday night that's a whole different issue.

Mr. Hedani: Additional discussion?

Mr. Mardfin: We need some reasonableness in this.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I think I know what this is but just for clarity, truck gardens, is that where you store as many trucks as possible in your yard because you can't afford to establish a baseyard in an industrial area. Is that what a truck garden is?

Mr. Hunt: Truck garden refers to shipping your produce off site.

Mr. Hiranaga: Oh, trucking your garden produce. Oh, okay. I'm glad I asked.

Mr. Hedani: Additional comments? Commissioner Mardfin.

Mr. Mardfin: I kind of like the idea about adding the home-based business in addition to the home occupation. I think in general that makes a lot of sense. And again, if the idea is we're opening up opportunities for small business people, I think that's a good thing as long as it doesn't bug the neighbors too much. I wanted to give positive feedback as well as well suggestions ...(inaudible)...

Mr. Hunt: And I appreciate that because that's one of the more controversial issues and if there's not support at this level let us know, but again, we echo what Commissioner Mardfin said, is that, you know, this is an opportunity to provide more small businesses and stimulate the economy but there has to be some kind of threshold on it. At some point, home occupations are intended to go beyond incubator businesses then they should move or relocate to a commercial district.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I think that where it's possible without impacting neighbor's quality of life to allow people to work and go to the hula halau or child care in the vicinity of the house it's a good thing as far as building community and a planning issue. You know, to me, the cutoff is once it starts affecting the neighbors through noise parking or you know, any other type of thing like that.

Mr. Hedani: Additional comments? Commissioner Shibuya.

Mr. Shibuya: I think it's a matter of being considerate of others and the neighbors. You can have a piano practicing, a student at his own home doing that as well as a student practicing his drums. So you have two different types of things. And then you have one that uses a trumpet. I've been through all three of these situations. So now it becomes a little problematic in a sense that when you're trying to come out and somehow control the considerateness there's no considerateness rule and I think if we can adopt some kind value here that you at least discuss your proposal such as, I'm going to be a teacher in piano lessons and from 2:00 all the way to about 6:00 that's my intention, please go talk to your neighbors or something to that effect.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, you know, I have a music studio and I record and play loud music and you know, I've gone through great extremes to place it in an interior space and sound insulate it so that I don't broadcast anything. You can't hear any of it outside the building. So I don't think and a lot of times it's the use, but as you say, it's the considerateness, but you know, considerateness being policed by a gun and sound meter is probably stronger than considerateness based on human nature. I think I would like to see us work toward a decibel level if we feel that it's enforceable and it's written in a way that is consistent. I know I have a \$40 Radio Shack decibel meter which is kind of a standard the Radio Shack one, and you know, it tells you what it is. I assume the police would have access to that too.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: On page 7 you talk about 19.08.080, non conforming regulations, and this referred to a different part of the code and I could have looked it up in my book but I didn't. But I do think we need to think about how we deal with non conforming uses. I'm not sure a standard approach that we would use for other things would apply in this case and we please have you and Joe look at that and think about what you really want to have there. If it should be different than would a non conforming use in a different zoning.

Mr. Hedani: Additional comments?

Mr. Hunt: 19.500.110 is your traditional non conforming use language which is very strict, which is conformance with most non conforming language. It's intended to phase them out, not allow expansion, if they burn down they're not rebuilt or they're rebuilt in conformance. So there has been some testimony and even commissioner concerns I think about existing homes that if this lot coverage is adopted they would be non conforming so we could change this to allow those homes to be rebuilt. That's an issue we can work on that.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: But it might be something in between. You might allow instead of full impact of the way it would be currently you might allow some sort of a 50% compromise or – ..(inaudible)... rules are rules and they tend to be inflexible and I'd like to – maybe it could be – there could be an option for the Planning Director to make exceptions to it or some sort of –

Mr. Hunt: Along with the hula halaus. People are going to be lined outside my door for a mile.

Mr. Mardfin: We all love you.

Mr. Hedani: Additional comments, Commissioner Starr.

Mr. Starr: Right now, my understanding is that we kind of have three levels of as, you know, as of right use, where one thing is allowed, one thing is a special use permit where there has to be a public hearing before this commission. The other is a conditional use permit for things which are basically not allowed which goes through, there's public hearing, this commission is advisory, it goes to the County Council. I hate to create more complexity but it is possible to have a lower – items with a lower level of scrutiny where the scrutiny is on the part of the Planning Director and staff so that, you know, if there's something that may fit or may not fit but does require some discretion then it doesn't have to take the expense and the time of a public hearing before this commission. But that the department can look at it and if they feel it's innocuous allow it, if not kick it up another notch.

Mr. Hunt: And Jonathan, I agree, I didn't mean to dismiss comment, I was just having some fun. And we actually are doing that. The new B&B bill gave the department to approve B&Bs rather than bring most of them to you or to this commission. And so we support that and we've been advocating the streamlining and delegating down. And so we can do some research on that. Specifically you're talking about types of home-based businesses that are like a hula halau or something that goes a little bit beyond this proposal?

Mr. Starr: But doesn't have to be a full special use, but should be discretionary at some lower level.

Mr. Hunt: And I think there's actually a provision in one of the code languages for notice to neighbors or with acceptance of 75% of the neighbors, I read something in there. So we can craft some language and come back with that.

Mr. Hedani: Additional comments? Okay, I think we've pretty much covered that for an item that's scheduled for deferral. So far we're batting a thousand gang. We've deferred everything that's come before us this morning.

Mr. Mardfin: We haven't deferred this yet.

Mr. Hedani: Right. So we'll open for consideration at this point? Commissioner Starr.

Mr. Starr: Move to defer till the first meeting in August.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion? All those in favor signify by saying aye. Opposed nay.

It was moved by Mr. Starr, seconded by Mr. Shibuya, then

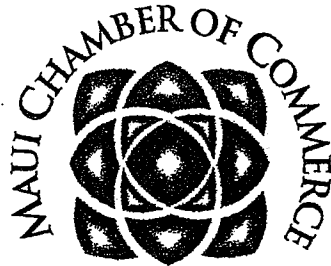
VOTED: To Defer the Mater to the August 11, 2009 meeting.
(Assenting - J. Starr, W. Mardfin, B. U'u, J. Guard, D. Domingo,
W. Shibuya, L. Sablas)
(Excused - J. Guard)

Mr. Hedani: Carried. Thank you. Twenty-five minutes more before Commissioner U'u disappears.

Mr. Hunt: Your next item involves the Planning Director transmitting a Bill for an Ordinance to Amend Chapter 19.62 of the Maui County to adopt Special Flood Hazard Area regulations in accordance with the National Flood Insurance Program. The planner assigned to this is Francis Cerizo.

- 4. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance to Amend Chapter 19.62 of the Maui County Code to adopt Special Flood Hazard Area regulations in accordance with the National Flood Insurance Program. (F. Cerizo)**

Mr. Francis Cerizo: Good morning, Commissioners. My name is Francis Cerizo. I work with the Zoning Enforcement Division. And I've been working with the Flood Hazard Ordinance since it came out in 1981. This is an update to that ordinance. We had a change in – about the early '90s. And they usually come around when the maps change. And we're up – we're due for a major



OUR BUSINESS IS MAUI BUSINESS

June 23, 2009

Mr. Wayne Hedani, Chair &
Members of the Planning Commission
Maui Planning Commission
250 South High Street
Wailuku, Hawaii 96793

A Bill for an Ordinance Repealing Chapter 19.09, Maui County Code,
R-0 Zero LotLine Residential District and Amending Title 19.08,
Maui County Code, Relating to Residential Districts and
Amending Title 19.04 General Provisions and Definitions

Dear Chair Hedani & Members of the
Maui Planning Commission:

I am writing today on behalf of the Maui Chamber of Commerce regarding the bill referenced above.

We commend the Planning Department for working to clean-up and update this area of the ordinance, providing graphical representations for improved understanding, including renewable energy systems, detailing garage sales, and adding greater flexibility for home based businesses, a vital segment of our community and economy.

We offer the following comments/questions for further consideration with respect to the home based business uses included.

- Pg. 1, Could we consider allowing retail sales for flower, truck gardens and nurseries (under 'B') as long such sales would be of no more impact to the neighborhood than other allowable uses?
- Pg. 3, Under 'H', the word "Traditional" when describing business types may need more clarification. It might be easier to take this word out and begin with "Domestic type"...
- Pg. 8, #1, We recommend that the employment allowance for a home based business be expanded and not limited to just one person beyond family members. Bev Gannon of Haliimaile General Store's story on how she got started is a great testament to the employment that can be created if we are more flexible in this area, while still addressing parking and other neighborhood concerns.

Testimony to the Maui Planning Commission

June 23, 2009

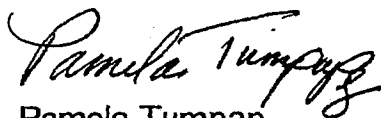
Page 2.

- Pg. 8, #2, We still don't understand the square footage limitation. If it does not impact the neighborhood, then why have it? A family whose children have moved out, for example, might have and be able to utilize more than 25% of their floor area of the dwelling for the business, without it ever impacting the neighborhood.
- Pg. 8, #3, This limits Tupperware, multi-level marketing businesses and more that many people make a living doing. We ask that rather than prohibiting this type of activity, that it be addressed from the standpoint of how to mitigate neighborhood concerns, possibly considering the number of times it could occur at a given residence, as has been done with garage sales, for example.
- Pg. 8, #4, Why limit retail sales to products actually produced in the home? What does this have to do with protecting neighborhoods?
- Pg. 8, #6, While I'm not currently clear on what vehicle's do or do not fall within a "two-axle" category, we would want to ensure that deliveries from regular delivery services, that currently deliver in residential areas, such as DHX, FedEx, Postal Service, UPS, etc. are acceptable.
- Pg. 8, #7, We agree that storage of items should be screened from public view, except in the case of nurseries, gardens, etc., but wonder why the limitation on the dwelling unit. Could an enclosed garage also be acceptable?
- Pg. 9, #8, We appreciate the improved language here, however, we question how "customers" is being defined. If a family of four pulls up in a single car, are they considered one customer?

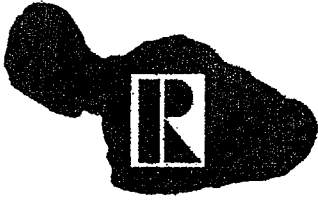
Again, we want to commend the Planning Department for looking at how to include home based business uses and offer the above for additional discussion so that we can arrive at the best possible outcome for our community.

Thank you for taking the time to consider our position on this matter. We appreciate your service and the opportunity to testify.

Sincerely,



Pamela Tumpap
President



REALTORS®
*Association of
Maui, Inc.*

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June 23, 2009

TESTIMONY

I am David DeLeon, Government Affairs Director for the Realtors® Association of Maui, speaking on behalf of Maui's 1,400 licensed Realtors. I am speaking in support of the proposed ordinance re-drafting of the Residential District.

Over all, RAM supports the amendments to the Residential District proposed in the bill. The bill does a particularly good job in creating manageable, reasonable, and enforceable rules for home-based business. This bill is a positive step towards recognizing the asymmetric world we now live in and in making Maui County more friendly to the small business community, the most vibrant part of our economy.

RAM also supports the creativity in using graphic imagines to show the setback and heights bounds. That adds so much more clarity.

The following are other comments on elements of the bill:

- The bill allows "truck farms" in residential districts, but does not allow them to sell their produce on site. Why? Allowing on-site sales will promote fresh food production and help make those small businesses viable. Farm products were not subject to zoning and did not require a permit to sell on the roadside, so why not out of the backyard. Why set that type of restriction if you have no means or willingness to enforce it?
- I understand that this carries over from the earlier ordinance, but why does low/mod housing require a permit if it falls under the zoning? Are we implying that it is a denser use?
- Section 3, 10.a : disallowing the "harboring, caring, training, or raising dogs, cats, birds, horses, or other animals." This section should include a statement "for profit" or "beyond ordinary domestic purposes," or some such. The problem here will be chickens. How many chickens is it reasonable to harbor in a crowded residential setting? Especially roosters. Honolulu set a number of chickens allowed.
- As if this effort is not complicated enough, I am going to suggest another complication: This section makes no reference to long-term rentals, and what constitutes long-term. Point of fact: more than half of the rental contracts written in Maui County are for month-to-month and therefore are in violation of the county's concept of long-term use. If you want this code to match the reality, we need to re-set that long-term definition to 30 days.

Those comments notwithstanding, RAM supports the proposed ordinance.

**MAUI PLANNING COMMISSION
MINUTES of PUBLIC HEARING
ITEM C-1
AUGUST 11, 2009**

Approved: 10/27/09

Mr. Hunt: The next item on your agenda involves the director transmitting a bill for an ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code relating to Residential Districts and amending Title 19.04, General Provisions and Definitions. Joe Alueta is the planner assigned to this.

C. UNFINISHED BUSINESS

1. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions. (J. Alueta) (Public hearing conducted on June 23, 2009.)**

Mr. Hunt: You did hold a public hearing on June 23rd. This is a follow up to that and at that June 23rd meeting, the commission requested some potential draft language and we included a memo dated July 21st in your packet, hopefully giving you some tools or some potential language you could incorporate into the bill if you'd like.

Mr. U'u: Take it away Joe.

Mr. Joe Alueta: Good afternoon commissioners and we're just again, continuation from your thing. I did pass out a July 21, 2009 memo from our director with regards to some of your questions that you had at the last meeting that I was not able to attend. I'll just address two from some of the testifiers that you had with regards to R-0. R-0 is not being deleted per se, I mean, the chapter is, the number, but if you look at the ordinance, we're actually merging it together with the regular residential district. The residential ordinance that establish R-1, R-2, R-3 zoning standards came first and then when they came up with this way of theoretically providing more affordable housing by doing smaller lots and eliminating setbacks in some areas, they just created this separate ordinance called the R-0 District as well as a process called the R-0 Overlay District process. But we feel that it should just be added. So that's what we're doing. If you look at the development tables to the proposed ordinance, you'll see that we've added R-0 in there for this thing. So we're eliminating the hard work that ..(inaudible)... Mr. Laub, his comments. He had some great descriptive comments and my only response is he described exactly what you have in the Business District. So he should look at the Business District if we wants to have all of those non restrictions. We're dealing with a Residential District and a primary purpose of a residential district is theoretically for single family homes and long term residential homes and we are making our best effort to try to accommodate small scale home occupations as well as the director proposed today for home-based businesses which is again, a new proposal that you're going to discuss today.

So going – I guess because I wasn't here at the last time, you had requested a few things as well as some questions. Hopefully the memo addresses them. I'll just over one. You wanted some language. You didn't have a preference as to whether you wanted to include it or not. So I guess you'll have that discussion here today. But from the department's standpoint this is our first stab at assisting you with some language for your consideration if you wanted to incorporate it in your

recommendations with regards to amendments to 19.08 and that is for, under "Special Uses" you would have instruction of traditional Hawaiian practices such as lei making, ukulele classes, hula classes and lomi lomi. Group instruction shall be limited to no more than six off site students conducted between 9:00 a.m. and 6:00 p.m.

Again, commission also raised questions with regards to maximum lot coverage ratio and that was based on existing setbacks for the Residential Districts and again, I had that attached as you Exhibit 11 under the original memo. And then on this memo I just provided you what those lot coverages would be relative to – so if you had a 6,000 square foot lot and you applied just your setbacks to it, the lot coverage would be 63%. In the R-2 District on a 7,500 square foot, it would be 66%. And on a larger, 10,000 square foot it would 71%, and that's if you maxed out. So again, on the existing Exhibit 11, we show you what the sizes are of the houses that you could potentially do as a far as the square footage.

And then again, on energy systems, this came up during your discussions but also, Molokai also brought in, had concerns over the incorporation of what we call small scale energy systems within the residential district so we would recommend that the amendment similar to what came out in Molokai is that energy systems, small scale, be allowed but provided that no noise, dust, smoke, glare or odor that negatively impacts the neighborhoods be produced.

That's – hopefully I addressed the majority of some of your discussion points. Do you have any?

Mr. U'u: Director Hunt.

Mr. Hunt: Just to add a little bit, to clarify, the newspaper article indicated that the home occupation...(inaudible - changing of tape)... zoning districts then you'll have the choice whether to add one or both to them depending on that district.

There has been some concern expressed that the home-based business while it's liberalizing the standards isn't going far enough but again, we want to remind you that we're trying to balance the economic development and still retain our neighborhoods for peace and quiet and a place to go home and recharge your batteries after a hard day at work. So there's that balance there. We don't want to turn our residential districts into commercial districts. We want to allow some home occupation, some home-based business. And what we did is we based the home-based business on a review of our existing home occupation ordinance against other home occupation ordinances in other jurisdictions and our existing ordinance is very stringent. By adding a home-based business our new ordinance with the home-based business would be very lenient. It would be one of the most lenient that we studied. So I don't think you should look at this as any kind of baby step. It's actually a fairly substantial change and I think the community should be aware of that that we would be allowing a substantial increase in business in our residential districts. We support that, we're proposing it, but we don't want to make light of that fact.

Mr. U'u: Thank you. Commissioner Starr.

Mr. Starr: Yeah, you know, in planning principles more and more you're seeing especially for affordable housing, they're looking for more density. You know I think that trend is changing and

so, you know, especially in transit corridors and infill, we're looking for – to kind of maximize density and I'm wondering what kind of density, I guess, you know, the standard is units per acre, you know, these zero lot line will allow. I'm not sure if it even, you know, if it even kind of even goes far enough, if it will actually allow enough density.

Mr. Alueta: The R-0 ordinance is an existing ordinance that has been in existence, I don't know the exact incorporation date but it's been around since I've been with the department so at least 15 years. You know, it allows for those who seek the R-0 zoning category a minimum lot size of 3,000 square feet. So that's about 10, 11 units per acre, probably 10 when you consider roadways and stuff like that as opposed to you know, an R-3 is four units per acre. So it more than doubles your densities relative to the existing residential categories. The concept behind the original R-0 as well as the R-0 Overlay was to again, share common wall, reduce the – have smaller lots and theoretically because of the smaller lots and the higher density per acre the cost of infrastructure such as roadways, sidewalks as well as underground utilities would be less. I mean, it makes sense, you know, higher density, you know, the cost structure per unit theoretically comes down and theoretically that cost savings that the developer receives from having a higher density would hopefully be passed on to the end user. And so that's the thought behind it.

With regards to our, you know, we're not necessarily lowering the density. I mean, I'm not – with the lot coverage because if you look at the table that I provided, the size of the house is still a significant size even for a 6,000 square foot lot. If you look at the table you would have a potentially, you could build on a R-1 you could build a 4,800 square foot house on a 6,000 square foot lot. So that's – I mean, I'm not sure the argument that you know, you're going to be limiting certain people and their sizes.

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: I haven't had a chance to digest it yet but when we came in this morning there was a three-page comment from the Department of Public Works about this. Have you had a chance to review that and want to react to different portions of it, dated July 27?

Mr. Alueta: Yeah, from the original review by variety of agencies with regards to the amendments to Title 19.08 and 19.09, after it was sent out and discussions with staff and the director the home-based business was added. Again, as director pointed out we didn't want to make light of it and therefore we felt that certain agencies should be commenting and that's primarily what you have your comments are coming back from specifically toward that amendment.

Mr. Mardfin: But some, at least in my quick reading of this, it looks like there are some serious conflicts with existing laws and ordinances and other context. You know, I'd hate to recommend something that would have caused more problems rather than fewer problems.

Mr. U'u: Questions, comments? Commissioner Hiranaga.

Mr. Hiranaga: One of the concerns I had regarding the energy systems was I believe the proposed height limit was higher than residential building heights. I was concerned about impacting views, view corridors. I think residential building heights are 30 feet and you are proposing a 35-foot

limitation on these energy systems.

Mr. Alueta: You would get a bonus for just the energy. So if you had a solar panel and you had to tilt up your solar panel or your PV panel on your roof and that exceed the height of the 30 feet then you would get that -- you could go up to 35 feet and then same thing with, you know, if somebody had a rooftop heat vent, you know, they're common now, those little mushroom things people put on to vent their ridge line. Sometimes they put that on, that exceeds the 30-foot threshold for houses as well as you have roof mounted, very limited roof mounted windmill systems.

Mr. Hiranaga: Well, my concern is you know, my parents built their home next year, 50 years ago and they had an unobstructed view of Kahului Harbor all the way to Pauwela lighthouse. Now people are building in front of them so they have an obstructed view, and now if people are allowed to put windmills up they're going to have their views obstructed even more. I have an issue with that when you're erecting -- I mean, they complied with the building heights and then all of sudden someone puts a 35-foot windmill in the middle of their remaining ocean view. I have an issue with that.

Mr. Alueta: Well, again, our proposal is to try to, given a balance between trying to provide for sustainable energy. Again, the windmill or small scale energy system is considered an accessory use to the single family residence. So you wouldn't necessarily be able to plop one of those large two megawatt windmills in your yard because, I mean, I'm not sure what you would be using two megawatts at your single family house. So the scale of these windmills or energy system would be related or had to be an accessory to your home. So you couldn't necessarily become an energy producer, large scale supplier. That's why it's called small scale. It has to be accessory to the -- has to be accessory to your single family house.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: But you could place one on the top your roof that's five feet high?

Mr. Alueta: Correct.

Mr. Hiranaga: And that would impact the people behind them.

Mr. Alueta: That is correct.

Mr. Hiranaga: I have a concern about.

Mr. Alueta: Okay.

Mr. Hiranaga: I think the private individual rights need to be protected and there's a balance between you know, trying to be green and still being able to see the ocean like you have for the past 50 years.

Mr. Alueta: Right.

Mr. Hiranaga: So how do we convey that concern?

Mr. Alueta: If you feel that – if the commission as a body feels that it should be reduced back to 30 feet then fine that can be the recommendation from the body. I just feel that in a lot of other districts that we have come in before you including the interim district and some of these other districts we've always given a slight bonus to, so this is not an unusual thing. It's not the first time in the code in amendments that we propose to you where we've given that five-foot bonus to small scale energy systems. We also have it in the small town code for Wailuku in the MRA where you go another five feet for energy systems or natural light and ventilation. So it's not uncommon and in past practice for the amendments that this board has reviewed to give a five-foot bonus.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Not to belabor the point, but when I was three years old I could see this much of the ocean and now we can see that much of the ocean. I don't want that little sliver to be knocked away with a windmill and so I could say well, we could see the ocean before.

Mr. Alueta: I don't know. Like I say, I just – I have a piece of property and all I know is I have view corridor to my property lines and that's pretty much all I have – that's all I was ever entitled to and that was to my property lines. So –

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, a lot of houses are built out to that 30-foot and if you want to add solar hot water or you want to add PV onto it, you need to go a little above that and You know, and to kind of penalize it I feel would be wrong where this allows it. To put a windmill with the top of it at 35 feet is probably not going to really make any real usable power. But certainly solar hot water and PV need a little bit of extra and I think it's a good thing that we're doing.

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: Mr. Alueta, I see this as doing fundamentally two things, one changing the parameters of buildable space and the other, the usage of the property for home-based businesses and you addressed earlier the testimony by Mr. Laub I think it was and he was primarily addressing the home-based businesses aspect of it, but we had earlier testimony this morning, we don't have a written copy of it where a gentleman was talking about the architects are against this, I'm paraphrasing, the architects are against this because it would change what they're able to do in terms of parking and covered and lanais and that sort of thing and I don't remember the full impact of it but would you address the issues that gentleman was raising this morning?

Mr. Alueta: Yeah, I talked to him briefly but it's – under the ordinance any covered surface is considered under floor area. So can have a – your garage obviously is considered is lot coverage. If you built a covered patio that would be going to lot coverage. So if you paved it and had it open that's not lot coverage. So it's not going to prevent people from paving to their property lines but as far as coverage structures. But I found it humorous, I don't know, I've been in several homes and I have a three-car garage and I only have one car in it and I've driven around many neighborhoods

and I've looked in many garages and I don't know of anybody who parks their car in their garage. I mean, that's a rarity now. Most people have used it as storage or liveable space or game room or whatever, but it would be nice. It doesn't preclude it, it will be counted. He thinks people are going to park, increase or park on the property and that's actually one of the reasons if you have a lot coverage you're going to create a little more open space so that people, even though they meet the "parking requirement" of two stalls for a single family home, there'll be additional yard space on the property where they could have overflow parking. But his concern was that people are going to where the garage – because the garage is counted toward it, that that would eliminate some of the space that they're gonna just build more usable space.

Mr. Mardfin: On your comparison chart, where you gave us the lot coverage for the existing, and we probably had it last time and I'm not – is the proposed amendment going to increase lot coverage or decrease lot coverage?

Mr. Alueta: It would establish a lot coverage. Currently there is no lot coverage requirement. Currently if you came into a house, all it is, is based off is you have a front yard and side yard setback. Okay, and that setback goes up if you are above two stories or 15 feet, you have an additional setback for that floor. It doesn't mean you can't build to that six feet on the first level. So we are proposing again, the number 40% came out as a result of analyzing a variety of different communities and different ordinance that we could do through research and 40% is the one that we came up with as a starting point for discussion. And given, you know, how much, in some communities it's smaller. I mean, their lot coverages is 25%. And some areas is bigger. Lot coverage and also another term called floor area ratio is normally used in the commercial district. Originally we had put in a FAR but we felt that would be too cumbersome. And again, so we stuck with just a lot coverage.

Mr. Mardfin: So just to follow up on that if I may? Looking at R-1, you say buildable area 40% of the lot under the proposed. And under the existing it would be 63%. So basically you're shrinking the amount of covered?

Mr. Alueta: Correct. Because right now – and again, because it's based upon your setbacks, so that's why it increases, it goes up.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, in the suggested wording regarding energy systems you have small scale provided no noise, dust, smoke, glare, odors that negatively impact the neighbors is produced, and I'm curious about what the criteria is on that. Particularly windmills, a lot of the small windmills that people put on houses are really noisy and you know, really can be a problem. You know, I'm not sure if that's something you want in a dense residential area. So if that crops up, what are the criteria and what's the enforcement on that?

Mr. Alueta: Well, again, if it impacts the neighborhood we would obviously send an inspector out and find that the project, that the windmill does not meet – is producing an adverse impact to the neighborhood. So we would try to figure out that and work with – find out based on neighborhood complaints if that's really the case and then try to you know, cite them because it does not meet the

code as far as meeting that definition of when and where you can have a small scale energy system. On Molokai and I guess in some areas, because remember, it can be biomass gasification if you've ever had a barbeque, that's pretty much biomass gasification, so campfire. So there was concern that you know, smoke and smell of that would be more of an issue especially – at least that's how it came about on Molokai. And so in a small dense – a smaller neighborhood that could be an issue. So we wanted to add that caveat and we thought it was a good caveat. Again, with anything, enforcement is troublesome but you know, I think that if you have a small windmill and it's whistling pretty loud and everyone can hear it in the neighborhood then we would pretty much say hey, you gotta do something, but if it's bothering your neighbors, chances are it's going to be bothering that person living in the house too. So I would think that person closest by is going to be just as affected.

Mr. U'u: Director Hunt.

Mr. Hunt: Just to follow up. There's two approaches, the way we're proposing it is it would be a permitted use outright. If does start producing noise or we get complaints then we would have to follow up and as Joe said you work with the neighbor or you work with the owner. The alternative is to do some kind of permitting and you have some standards that would give you better chances of not having an enforcement issue but then you'd have to go through the whole regulatory process and neither – you know, there's no perfect solution. We're suggesting as Joe said, if it's that noisy, it's disturbing the neighbors perhaps the owner wouldn't want it either. The industry also is aware of this and I think they can come forward and help the owners and say, look this is a quieter model than this other one. There's no perfect solution.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Just going back to the home occupation, home business, you said you know, we want to keep residential areas residential so people have a place to go back and recharge their batteries. So in my opinion, someone that's wanting to build an energy system would need a permit because if you're going to start impacting your neighbors and place the burden on them to file a complaint, you're taking away their peace and quiet. So to me, the person who's proposing something should have to get a permit, do a 500-foot notification radius and not put it up and then wait for people to complain about it and put the burden on the neighbors to initiate action.

My other question is, could you just explain again, what is the access yard in your chart?

Mr. Alueta: Access yard is that, if the property fronts a right of way, a vehicle right of way, that you have that additional setback.

Mr. Hiranaga: So it's like a second front yard setback basically?

Mr. Alueta: Correct. So it applies to corner lots.

Mr. Hiranaga: The other comment, I think there's a differentiation between buildable area and lot coverage. Because the buildable area could be larger than the lot coverage, allowable lot coverage. Because the buildable area is between the setbacks. So you can move your lot

coverage.

Mr. Alueta: Okay, you're correct. Yeah.

Mr. Hiranaga: So you should make a differentiation between them.

Mr. Alueta: Okay, I think –

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I'm sorry, would you explain that to me I don't quite get it.

Mr. Hiranaga: I'll let Joe explain that to you.

Mr. Alueta: The lot coverage is 40%, okay. And so that basically creates a triangle, a smaller triangle on a piece of paper, so that this represented your buildable area and this represented your lot, you could then move this square around or theoretically you could split this in two right, and place it anywhere on this piece of yellow provided you met the setbacks.

Mr. Mardfin: So how does that differ from – then lot coverage is the same as buildable area.

Mr. Alueta: Well because the buildable area is really defined by your setbacks, and then so you could take like say – you have a 40% lot coverage, that's just assuming that you did one big house or thing, but if you wanted to do a cottage and a house, right, you would separate the cottage from the main dwelling, right. As long as they fell within the setbacks. For simplistic – say doing the calculation of how many square footage, we just showed you where it met on the overall lot itself.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: To put it in simpler terms if you look at this comparison chart, the handwritten word lot coverage 63%, that should be buildable area. The lot coverage is 40% and buildable area is 63%.

Mr. Mardfin: So the term is the same. In the right-hand column, it's buildable area 40% and the left-hand it's buildable area at 63%.

Mr. Hiranaga: No, no.

Mr. Alueta: Actually it's buildable area and lot coverage.

Mr. Hiranaga: The lot coverage is 63% as long as you're in the setbacks. So you can move that 40% within that 63%, you can move it from back and the front, left, right. So the buildable area is 63% of your lot, but the lot coverage is limited to 40%.

Mr. Alueta: Correct.

Mr. Hiranaga: So you've got if my math is correct, 23% of play.

Mr. Mardfin: Still not getting it, but that's okay.

Mr. U'u: Questions? Commissioner Shibuya.

Mr. Shibuya: Joe, I just don't want to complicate this even more, but in some residential areas and subdivisions, people have been talking about walking paths especially for children going to school that you avoid having parents taking them around the block and to school rather than having these access routes right between the houses, you just walk through them and going to school or church or however you want to do. This does not seem like it accommodates that or where would I see that kind of accommodation?

Mr. Alueta: You see that accommodation during your subdivision review and so, you know, during the subdivision review and also the new legislation which called complete streets that was adopted, when they come in for subdivision we would look at how the subdivision is laid out whether they provide for alternative paths and meet the criteria for complete streets. So that's where we would implement that portion during the subdivision, but this just deals with once you got the thing subdivided, here's the lot, what can I build on the lot.

Mr. Shibuya: Okay, thank you. Because during the General Plan deliberations much was said about that and having walking paths that even golf carts could use going to shopping and ..(inaudible)...

Mr. Alueta: Like I said, during the subdivision review process we would implement. Even if it's not in the SMA, we do look at that during the subdivision review process.

Mr. Shibuya: Okay, thank you.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: I'm not sure if this is related but somehow I got a copy of this resolution 09-60. This is not part of the agenda item on C-1 or is it? About allowing accessory dwellings on 6,000 square foot lots. Is that something in the future?

Mr. Alueta: That's a future.

Mr. Hunt: That shouldn't have been involved with this packet.

Mr. Hiranaga: Okay. But I just note that they're proposing a 25% lot coverage maximum.

Mr. Alueta: Yeah.

Mr. Hiranaga: I know I should not have read ahead, but --

Mr. Alueta: I'll just say that we were in discussions with the Council, with Councilmember Molina

and we were discussing what should be the appropriate lot coverage and we threw out a variety of numbers to him with regards to how much it should be. And again, he's just making his recommendation, he sent that down and you'll be commenting on that. And so, and that 25% again, is more restrictive. Again, I'm seeing a variety of ordinances that have lot coverages ranging from 17% to you know, higher numbers. So it's – we kind of just started with the 40%, we thought it was a reasonable number.

Mr. U'u: Director Hunt.

Mr. Hunt: When we discussed sending that bill down to the planning commissions we noted that the 25% would likely be reviewed and perhaps refined. So that's just a starting number at this point.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I think my colleague next to me helped me understand the lot coverage a little bit better. It's basically a restriction from what currently exists. And if that's the case, the gentleman this morning raised a point what would happen to existing buildings that had a lot coverage of greater than 40%, would they be grandfathered in or it permanently not apply to them? If their house burns down will they be limited in what they can rebuild? What's the plan?

Mr. Alueta: Again, they would fall under 19.510 existing non conforming uses. As far as reroofing, no they can reroof. I don't administer the thing, but they couldn't add on to create more of a nonconformity than already there. However, they could if the house burnt down, I'm not exactly sure whether or not, if they had a legal building permit, how the nonconformity issue whether they could rebuild it to that building permit that was originally issued. In some cases they can. I don't know the code big enough. In most cases, if it burns down you would have rebuild and meet the new code.

Mr. U'u: Commissioner Guard.

Mr. Guard: Could they do it to say new subdivisions in the future. I don't like I mean Hawaiian Homes out at Leialii is all 6,000 foot lots and I don't know how big some of those guys are but a lot of them are I mean, multi generational. A lot of North Kihei which might even be in flood zone areas right now, I mean, some of these lots are going to be prone to possible damages that they'd need to tear down, I don't know about soon, but at some point. House is built in the '50's, the '70's are a lot of those smaller size lots. So I mean, the useful life of those homes is coming up. So I don't know if that would maybe just a not for Council to look at establishing it for new subdivisions.

Mr. Alueta: And that's a good point. That's why, I mean, we're trying to get your comments on, you know, we kind of created a starting point. The main purpose of doing this amendment was to simplify the code. That was the main thrust of it. At the same time we had a few issues or things we wanted potentially add on it. You know, if those are the hanging points that you guys have or you have concerns on we want to get those comments. Another thing that probably you may want to consider is that point of smaller lots. There are a lot of lots out there especially in Wailuku and there may be a need you know, for adjustment there with regards to the lot coverage because of

their – you know, either applying it only to lots of certain size with the lot coverage or you know, so that smaller non conforming lots can continue to build to the setbacks because you know if you got like a 2,400 square foot lot, I mean, you're limited to – that means you could build a footprint I mean, of 800 something square feet but you could build two stories. But in some cases, you may not want to – because the scale of that house relative to its lot is probably more appropriate. You know, an 800 square foot house or a 1,600 square foot, two-story house on a 2,400 square foot lot is probably appropriate. But it's just food for thought. I mean, again, we're looking at the scale of things.

And as a side note, I talked to my aunt who lives in Manhattan Beach in California and they are doing the same thing. I mean they already have it. They're going one step further because they're having – these have these 6,000 or 7,000 square foot lots but the movie industry has moved into the neighborhood to build a sound studio and you're getting these very rich people coming in and they're buying two, three lots, tearing them down and building one big mansion up. I mean, it's just maxed out to the max. And so they just passed an ordinance where they are prohibiting the consolidation of lots because people are building these houses. You know, you got a guy with a 6,000 nice little bungalow and all of a sudden you got a 5,000 to 8,000 square foot mansion next door and it just – for them they're having a hard time. And so they recently passed that. It was kind of interesting how every community is facing similar situations.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Just couple things you may want to look into. If you create this non conforming issue for existing homes there may be some refinancing and insurance issues. You know, if someone wants to refinance their loan and it's now non conforming there may be issues as well as insurance.

Mr. U'u: Questions? Seeing none, open it up for public testimony. Anybody want to give public testimony. State your name for the record.

Mr. Wil Spence: Good afternoon Commissioners, my name is Wil Spence. I just briefly looked over this ordinance and I agree with a lot of the provisions in it. I have just a couple of comments. One, under the special uses it talks about having to come in for a special use permit if it's a traditional home occupation and if it doesn't meet the code. I don't really know what a traditional, you know, use within a residential district is. You know, I think in everybody's mind, you know what traditional is but for every person here that is different. So you know, I would just say, if it needs a special use permit, it's not traditional. You know, I would just leave the regular language, it's just certain uses you know that could be done.

My other concern was about the non conforming and we went through this with the stacking bill where there could be problems with getting insurance. We really don't know how many homes out there would be rendered non conforming all of a sudden. I mean, there could literally be thousands. You do have older neighborhoods, and then I even think about some of the luxury areas with some of those homes maybe they're more, already more than 40% of the lot coverage.

In other ordinances that are passed, for instance the ag bill, there's a section in there that says if a certain structure was built lawfully prior to the enactment of this ordinance they can be rebuilt.

And in this instance, you're saying no they couldn't be. You would have to then come back and then conform. And so, I would prefer to see that kind of provision in this that people could rebuild if they already have all their building permits. Otherwise, we really don't know what the impact of how many homes, you know, what the expense would be, the insurance implications, etc. So I'd be in favor of just, you know, letting people that already have their building permits go ahead and rebuild if they need to.

Mr. U'u: Questions? Seeing none, thank you.

Mr. Spence: Thank you.

Mr. U'u: Any more public testimony? State your name for the record.

Mr. Dave DeLeon: Good afternoon, Dave DeLeon from the Realtors Association of Maui. I'll be brief. Basically following with what Will was saying. Our association reviewed the bill and our Government Affairs Committee thought that they supported the 40% lot coverage concept. However, they are very concerned about the existing properties and particularly about the ability to refinance, the ability to get insurance and believe that once you got a building permit that's the deal, you should be able to redo it if that's - if that's what you did originally, you should be able to continue that use and I'll leave it at that. Thank you very much.

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: But you're content with going down to the 40% area?

Mr. DeLeon: Yes sir.

Mr. Mardfin: Why are you -- do you have a reason?

Mr. DeLeon: Well, that's the association. I mean, the Government Affairs Committee debated it and came to the conclusion that the impact of the larger properties or the larger homes is such that in future uses, in future permits that it's just too big. It's too dominate. If you look in Kahului and look at how, you know, the bigger mansions fill up the whole property and then dwarf the properties next door, the existing property, the same conversation we were just having about California.

Mr. Mardfin: Thank you.

Mr. U'u: Questions for the testifier? Director Hunt.

Mr. Hunt: Did your committee debate the home-based business provisions?

Mr. DeLeon: I didn't repeat that because we've already supported that in testimony. We believe that that's a very good provision and well written. Thank you.

Mr. U'u: Any questions? Seeing none, thank you.

The following testimony was received at the beginning of the meeting:

Mr. Eric Taniguchi: Good morning Commission Members. My name is Eric Taniguchi. I am an architect. I'm from Pukalani and I am the President of the American Institute of Architects, Maui Chapter. I represent about 52 members of which 36 are licensed professional architects practicing here in the County of Maui.

First, I want to thank the commission for deferring a decision on the proposed bill to repeal Chapter 19.09 R0 Zero Lot Line Residential District, Amending Title 19.08 Residential District and Amending the provisions and the definitions in Title 19.04 in the Maui County Code.

We, the AIA Maui had an opportunity to review several parts of the proposed bill by the Planning Department. We recommend that the commission don't support any changes to the current Chapter 19.09 R0 Zero Lot Line Residential District and don't support specific changes to Title 19.08 and don't support specific changes to the provisions and definitions in Title 19.04 in the Maui County Code. Again, I repeat we don't support changes to Chapter 19.09 R0 Zero Lot Line Residential District and we don't support specific changes to Title 19.08 and Title 19.04.

We as architects refer to the Maui County Codes Chapter 19.09, Title 19.09 and Title 19.04 almost on a daily basis. It is one of our most important references we design projects within Maui County. After reviewing the proposed bill we noticed certain inconsistencies and conflicts in the rules the Planning Department are proposing.

First we don't understand or we don't support repealing Chapter 19.09, Maui County Code, R0 Zero Lot Line Residential District. This change makes no sense to us architects. Actually we coauthored this ordinance with the County back in the early 1990's as a way to produce affordable housing here on Maui. One of our members, Hans Riecke worked tirelessly with the County to help produce this housing district. As we move forward with our new General Plan, community plans and urban growth boundaries, zero lot line districts are still a viable housing scenario. Please don't touch it.

The specific changes to Title 19.08 and 19.04 we don't support are provisions which add a 40% lot coverage and the addition of an access yard on a residential zoned lots. Again, as previously stated on my initial testimony given on June 23, 2009, these changes to the residential zoned lots seem to target a certain cultural group which tend to live in a multi-generational family setting. These families live together for three reasons. They want to live together, number one. Number two, they have to live together. And number three, a combination of both. They want to and they have to live together and we all know why this situation occurs here on Maui. Also with the urban growth boundaries that we introduced in our community plans we should be promoting more density in our residential zoned areas.

Mr. U'u: Three minutes. Questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: I have a question. You spent most of your time saying that you just opposed it and only at the very end did I hear any reason why to oppose it and it's about – you think it's targeting particular ethnic groups I think.

Mr. Taniguchi: Thank you Commissioner Ward so I can finish this, because I get into the specifics and I will leave my testimony for you guys to review. But yeah, we also reviewed the planning models that the Planning Department had done using the 40% lot coverage and the access yards. And by looking at it, we saw that it almost kills outdoor covered lanais. That's gone when you look at the 40% lot coverage. Because anything under a roof is considered lot coverage. So the outdoor lanai, covered outdoor lanai, pau, gone.

And the other one is the two-car garage or the coverage garage or the covered car port, pau, gone. Because if you have people who still want to live together, they're going to find ways to do that. You know what I mean? Even though you look at what the Planning Department did and produced this models if they got to live together and they gotta make so many rooms, they're going to forego making the two-car garage because that's part of the lot coverage, right? So instead of parking the car under a carport, you park um next to side of the house. You know, what I mean? Park um to the side of the house. Especially with the access yard they make, you know, that it's setting that up. So you're going to have all these cars sitting outside around the yard because there's no provisions in the code to prevent that from happening. And you know, that's going to happen. You know. That's an obvious one. So when we look at these changes that's how we see it you know. I mean, when clients come to us and ask us to design their home and they no can do this and no can do that, then they going think other ways we can come up. And those are some of the solutions that we came up with.

The other implication that we saw is that, if this code goes in place, what happens to the existing houses that are already built like that? They become existing non conforming so they no can repair the roof or you know, change their roof or repair their house without having to reconfirm back to that so that means demoing some of that house right there.

Mr. U'u: Thank you. Anymore questions? Seeing none, thank You.

Mr. Taniguchi: Okay, thank you.

Mr. U'u: Any more public testimony? Seeing none, public testimony is now closed. Staff recommendation.

Mr. Alueta: Again, the department is recommending that you recommend to the County Council approval of the proposed amendments subject to the amendments that we talked about with regards to energy systems small scale, adding that language in. As well as, --

Mr. Starr: Hawaiian cultural.

Mr. Alueta: We're not recommending that. We put that out if you wanted to incorporate that, but it wasn't a recommendation - I do not believe it was a recommendation by our director. I'll leave it to him if that was an official recommendation for that language.

Mr. Hunt: I think we're responding to a request for draft language. We can support the draft language if that's the will of the body.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, I move for recommendation of approval per the staff report with the addition of the Hawaiian cultural practices as suggested by staff.

Mr. U'u: Do we have a second a second?

Mr. Shibuya: Second.

Mr. U'u: Motion made by Jonathan Starr. Seconded by Warren Shibuya. Discussion?
Commissioner Starr.

Mr. Starr: Yeah, I happen to think this is an excellent job of drafting, you know, I think we can all pick at it but then we can all see the other side of it. And as far as home occupations, I think it's done as - probably as well as can be done in terms of giving leeway but taking away those areas that are likely to cause noxious effects on the neighbors. So I just want to commend staff. I think it's a - a good job has been done and hope it moves forward.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: A point of information. In your motion Commissioner Starr, you moved to adopt the special use 19.08.031, instruction of traditional Hawaiian practices. Did you also mean to include the amended portion 19.08.030K about energy systems?

Mr. Starr: Yes, because that was part of the staff recommendation.

Mr. Mardfin: Okay, thank you.

Mr. U'u: Comments? Questions? Commissioner Guard.

Mr. Guard: Propose a friendly amendment to add the language for the existing homes with the building permits. I don't know if you discussed that or if we can send that up for comment or actual amendment.

Mr. Alueta: I thought the comments that they made with regards to - that if you receive the building permit that you can make a recommendation that the department look into adding that type of language that should you house need to be rebuilt, that if you were granted - any structure that was granted a legal building permit at the time of the adoption of the ordinance -

Mr. Guard: So we don't need that as an amendment?

Mr. Alueta: I would make it as an amendment if that's the wish of the body. To help you along, we would look at it as from what I gather from the testimony and from their comments here was that that if any structure was burnt down or needs to be rebuilt, they may be rebuilt provided they were granted a legal building permit at the time of the adoption of this ordinance.

Mr. Guard: Suggest that as a friendly amendment.

Mr. Starr: Would the department be supportive of that?

Mr. Alueta: Yeah, I think -

Mr. U'u: Okay. Commissioner Mardfin.

Mr. Mardfin: We're not going to do an amendment?

Mr. Guard: Friendly amendment.

Mr. Starr: I mean whether it's part of the original motion or we make an amendment, I'd be for it either way.

Mr. U'u: Is it okay with the maker of the motion?

Mr. Starr: Yeah.

Mr. U'u: Second?

Mr. Shibuya: ..(inaudible)...

Mr. U'u: I'd like to suggest as you draft the language for that down the road that there be comments about to the - if it was legal to have it to the same scale as existed. I mean, you could take a certain square footage and really go outlandish on it. It should be same scope and scale of the existing structure as of the time of adoption.

Mr. Alueta: You would only be able to build whatever you got your building permit for.

Mr. Mardfin: Right. But you could do it in terms of area or the same building plan.

Mr. Alueta: You would have to get approved your same building plans.

Mr. Mardfin: The same building plan?

Mr. Alueta: Yes.

Mr. Mardfin: That's the way I would like it.

Mr. Alueta: Yeah.

Mr. Mardfin: If it's that way, then I'm fine.

Mr. Alueta: Yeah, it has to be the exact same plan.

Mr. U'u: Discussion? Commissioner Guard.

Mr. Guard: So barbeques and imus are still allowed under the small energy biomass burning?

Mr. Alueta: That's under traditional Native Hawaiian practices if you want to - that's according to the Fire Department.

Mr. Starr: As long as they're not noxious.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I raised an issue a little bit earlier about this memo from the Director of Public Works and I think our director has had a chance to look it over, do you - does that suggest to you that we ought to make some alterations or?

Mr. Hunt: I haven't had a chance to look over it real thoroughly. I think there's some issues that he raises that would have to be addressed through permitting process and what we're proposing under this law is a home based business would be permitted outright. And once you go into the permitting process and notify neighbors and agencies it's a much longer process and there's pros and cons. You get a lot better review. The neighbors have a chance to object, etc., but it's a prolonged process, it's extra work for everyone involved. I think at a minimum we can try and address these issues as we take it further to the Council and try and work with Public Works.

Mr. Mardfin: On the understanding that that's what you'll be doing, I don't think we need to make any modifications here. It's too complex to make modifications here and you'll have time to do it down the road.

Mr. U'u: Call for the question? All those in favor? All those opposed.

It was moved by Mr. Starr, seconded by Mr. Shibuya, then

VOTED: To Recommend Approval of the Proposed Bill with the Recommended Amendments.
(Assenting - J. Starr, W. Shibuya, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, L. Sablas)
(Excused - W. Hedani)

Mr. U'u: None opposed. Motion passes. We're going to take a five-minute break and we'll be backing five, 1:15, 2:15.

Mr. Mardfin: Mr. Chairman, was that unanimous.

Mr. U'u: Unanimous, passed unanimously.

(APPROVED: 09/28/09)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JULY 8, 2009**

*** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ***

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Vice-Chairman Steve Chaikin at approximately, 12:05 p.m., Wednesday, July 8, 2009, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

A quorum of the Board was present. (See Record of Attendance.)

Mr. Steve Chaikin: I didn't realize that I would be Chairing today's meeting, but I just found that out, so I'm not quite as prepared as perhaps I could've been, but nevertheless I think we'll get through this just fine. I'd like to start by welcoming our Maui County Planning Department Staff that's here today. We have Mr. Clayton Yoshida over there. We got Francis Cerizo with us today. Joe Alueta is back there. We have Nancy McPherson. And also sitting over there is Suzie Esmeralda. Sitting to my left is Michael Hopper, our Corporation Counsel. The Commissioners that are present here today we have Commissioner Buchanan, followed by Sprinzel, Waros, and sitting to my right we have Commissioner Bacon. I'd like to thank the public for -- the few public that's here today for taking the time to, you know, to be here today and be part of this process.

As we look at today's agenda, it is pretty full. I mean, there's quite a bit of stuff on here. So I think we have to be mindful of our time as we move through this process because we have people here from the State, as well as our County people that have flown in today. They have flights they need to catch. And so as we move through the process, we should just keep that in mind. Commissioner Buchanan, do you have something you want to say?

Ms. Lori Buchanan: No, Chair. Going off of what you said, it looks pretty zealous, the agenda for today. So I wanted to propose amending the agenda. On Items E and F, to move Item F before Item E because I see that people from DLNR are here, and I think we're already gonna run long if we do the flood map and the two SMA exemptions.

Mr. Chaikin: Well, I have no objections to that. So you just wanted to move that one item up before -- but leave all the rest of the stuff before it? Or did you wanna move them all the way up? One thing is that we have the people from DLNR here. I mean, I'm not sure if they wanna sit through all of this stuff. So that's one thing is we could move them up, but -- you know, further than that, but I don't know. What do you think?

Mr. Chaikin: Any other questions from the Commissioners? I heard earlier that an EA is gonna be required. Do you know, at this point, who's going to be the accepting authority for that EA?

Ms. Suzuki: No. It's either DOT or DLNR. I'm asking maybe John check with OEQC.

Mr. Sakaguchi: ...(inaudible)...

Mr. Chaikin: I'm sorry?

Mr. Sakaguchi: The rules indicate that the agency who's proposing the action needs to be the lead agency so I think, at this point, I think the money's gone from DOT to DLNR but the majority of the facilities are on DOT property, so I think that's still being discussed.

Mr. Chaikin: Okay, thank you very much for that. Is there any other final questions from the Commissioners? If none, then I'd like to thank you all for coming and providing this opportunity for us to provide input. And I think you have gotten a lot of input. I think you've gotten a lot of take-home messages. Probably the most important one is for you to go down there, on a busy day, and experience firsthand what goes on there at the wharf so you can do a better job of planning. Alright, thank you.

And with that, we're gonna move on to the next agenda item. And we have Joe here that's been waiting patiently all day. So I'm gonna turn the mike over to him.

E. PUBLIC HEARING

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions. (J. Alueta)**

Mr. Joseph Alueta: Good afternoon, Commissioners. It's always nice to be on Molokai so it's not a problem waiting around. I love coming here. I didn't see any family members, so I only saw friends today. No family. What do you call? As you know, I'm the Administrative Planning Officer for the Planning Department. I handle all your rule changes as well as your new ordinances for the County Code. As you -- as many of you are aware, there's two ways in which you can get an ordinance or a bill through the County Council, and that's either through a resolution or through a Department -- or administrative-initiated change to the ordinance. The Department has been -- the Planning Department has been going through Title 19, which is the main Zoning Code for the Maui -- County of Maui, and

systematically trying to update it, clean up some codes and some outdated things, as well as improve the usability for the common person either incorporating tables and graphics. And so this is kind of a first for the County of Maui, the concept of using pictures to describe what you're trying to do. You saw some of that earlier with the interim bill, as well as some of the definition sections that we brought before this Commission earlier. And so this is just a continuation of trying to update and streamline and improve the usability of the existing code.

While we're doing that, one of the things that have come up during the thing was, as you know, home occupations or home based businesses. My Director felt it was important to try to incorporate some type of home based business within the new ordinance. So he has made a last minute proposal to incorporate that in the staff report.

All -- during the agency comments period, that home based business was not incorporated or was not in the original draft that I sent out to agency comments. The Director did send out his draft language to some agencies primarily -- I'm gonna pass out this one right now from the Department of Business and Economic Development for you, just so you have that copy. That was -- so the, again, the reason we wanted to -- because he added the home based business, I -- we felt it was a significant change that we needed to get some agencies to review it if it has any potential impact.

Again, the staff report, you should all -- it was a memo report dated June 11, 2009. I have a summary of the changes basically going by page number as well as line numbers that incorporate -- the Ramseyer version of the draft bill is on -- is your Exhibit 1. So again, I'm gonna be work -- I'm gonna to try to work from Exhibit 1 here as I go through the bill.

Again, trying to standardize that first section of it. Well, I'll start off by saying is that there's a residential district that has -- that currently contains your R-1, R-2, and R-3 development standards. There's a second chapter called 19.09, which is a R-0 overlay. It is a R-0 residential district. That was -- came in later on back in the late '90s. Rather -- for some reason, rather than amending 19.08 and incorporating the standards of the R-0 in it, they just wrote a new chapter. What I'm doing is I'm deleting the R-0 chapter, and consolidating it in with the regular residential district standards cause that's where it should be. So just to consolidate two chapters into one, again, trying to make it simple.

As far as the section, the Ramseyer version, I'm just trying to standardize the format in which in the County Code is presented. For each zoning category, I believe that you need to have a purpose and intent; what's your permitted uses; what are your accessory uses that are allowed within the district to a permitted use; anything that's a special -- a special use in that district should be -- have its own section, as well as development standards, and then again, rule-making authority. Pretty -- pretty straightforward.

With regards to accessory use and buildings, that was always just kinda clumped in or added on to the end of the permitted uses. What I've done is as you can see from the -- from the -- from Page 2, is all I did was strike it from the bottom, and created its own section called, Accessory Uses and Buildings. Again, we're adding that home based business, and then again, using table formats for -- and again, all of that is existing language. It's just put into alphabetically listing out all of the accessory uses, trying to be more clear on what uses are allowed. So obviously, garages, carports, trying to be standardized throughout so there's no questions as to what -- what's considered an accessory use, or building, or structure to the above listed permitted uses.

I added -- as you know, gasoline prices are high. Oil prices are so high even though they are coming down. They are historically high at -- right now, oil at \$63 a barrel. As you know, Molokai has some of the highest gas prices. So energy has always been an issue. People here on Molokai has some of the largest PV panels systems -- systems installed here on Molokai because of the high fuel costs. We had already an existing definition for energy systems, small-scale. That -- we're just adding it to be clear that it's an accessory use so you can do a PV system. You could do a wind turbine on your property if -- to help supplement a single power on a single family home or any use within the residential district that's permitted.

Special -- again, special uses, we listed what -- as you can see from the Ramseyer version, I haven't changed much. Letter H, I'm just trying to clarify what that is. I didn't know what "certain" was. I just put "traditional" type because that was -- again, and on J, under Special uses, we have a new -- we have a definition called, "Education, Specialized." This is your Aikido classes, your guitar -- I mean, your commercial type, educational facilities. So it didn't -- it's not necessarily a school. It's like a private institution or private classes. And that's defined. So we added -- that's also -- that would be a special use permit. That's basically, you know, a non-DOE certified educational facilities is education, specialized.

On development standards, again, this is where the adding on Page 4 basically taking a, as I like to call it, a word math problem. You know, train A leaves Chicago headed east into 40 mile an hour headwinds going 60 mile an hour. What time -- another train leaves going west from Boston going 40 miles an hour. Where do they meet? I don't like those. And I think a lot of developers and common people don't like to try to figure out exactly what is the code trying to tell me. I prefer to have a straightforward table. This is how big my lot needs to be. This is how far away from the setbacks I need to be. This is how big and how tall I can build. That's something I felt needed to be done. And as you can see on Page 7, that's all that was stricken. The key difference now is we added a new thing called "lot coverage." We have a tendency -- I'm not sure about Molokai. Maui has a tendency to build to your -- to your setbacks. And it can create issues where Manilla mansions, you know, Filipino condominiums, whatever you wanna call them, that's what we call them on Maui, where you got, you know, extended family or extended renters, whatever you want,

I mean, and you can't provide all the parking onsite. At least this will create a lot coverage where you have a footprint of your building. There's gonna be some open space or some yard left rather than a building to building all the way. And we hope one will accommodate two air and light issues, you know, with separation between -- create more open space on a lot, but also create that potential parking if you do decide to have a high density house with renters, you'll be able to accommodate them onsite. Yes, Commissioner?

Mr. Bacon: Quick question. Does that include all buildings including the garages and that sort of thing is included in that ...(inaudible)...

Mr. Alueta: Yes, we already have a definition for lot coverage, and it's any covered area. So you can still pave your front lawn, but you just couldn't have a covered building on it. So that's new. Also, you know again, a picture's worth a thousand words. Page 5, 6, and the top of 7, basically, those are graphics that will be -- that are gonna be codified, that are gonna be part of the Maui County Code so people can see what do we mean by buildable area. What does that leave you? What do I mean by lot frontage? All of these are defined. Lot frontage. They're all written in the code. We feel that, again, a picture is easier to explain to someone. It makes it easier to understand you don't need to hire a consultant or a lawyer to help you translate it. And so we gave you samples there. Again, with the R-0, the yards and lot coverage.

Nonconforming regulation, that's pretty standardized. We already have a section, 19.500. So all nonconformities will be dealt with in that manner.

We're adding rule-making authority. This has pretty been a standard tag line at the end of all our new codes. We were just -- have the ability for the -- Planning Department and the Director already has rules to help administer -- one, we had B&B, farm plans. This would just be another ability to expand those existing Planning Department rules to provide clarity, if need be, in the administration of this code.

On Section 3 of the -- on Page 8, what's called, Section 3, you have that new definition that was added by the Director called, "home based businesses, " as well as on Page 9, we added definitions for garage sale, rummage sale, yard sale. That's currently not defined. In the code we are -- we are allowing for garage sales. I don't know. Some of you may not be aware that that's -- that was kind of like a gray area here in the County of Maui that -- it's a commercial activity, but everybody does a garage sale, and so where does it -- and so no one really came up with a solution. And because it was a gray area, I felt it I needed to clarify it, as well as we've had people who are establishing garage sales, and they have signs up says "Garage sales, Monday, Wednesday, Friday." I'm not sure. That's not a garage sale to me. That's a business. Okay? And so we needed to clarify what exactly is allowed. And that helps our inspectors.

Yard access, again, we're just creating a new definition for access yard. Basically, if there's a -- if there's a roadway on one side of your property, or on two sides, those are considered accessways or roadways. And we set -- we established a setback of 15 feet. So how is that different from the existing code? It means that traditionally like if you had a corner lot in a residential subdivision, your standard setbacks are 15-foot front; 6-foot sides; I believe 6-foot rear for a single story building. Normally, you would only have 15-foot setback from that front road. In this new definition, it would require that if you're on a corner, the two -- the two sides that front the street would have to have a setback of 15 feet. So that's one -- I just wanted to point that out. And that, we feel, is going to help with sight distance. Sometimes people build right up to it. It creates a sight issue, sometimes. But -- and that's also being taken from another section of our code.

That pretty much summarizes changes to the code for the residential district. Any questions at this time?

Ms. Waros: Joe, I have a question. Now, I don't know where I saw it. But I saw something about the wind turbines and that the setback needs to equal one foot to one foot of height. And they're generally 30 to 50 -- well, the height restriction's 50 feet, correct?

Mr. Alueta: Correct, maximum.

Ms. Waros: So I don't know the average lot size, but is that realistic?

Mr. Alueta: It's realistic in some areas. Not everybody is gonna have the ability to do a massive wind turbine. And I think that's -- I think that's good. I think that's important that, you know, if you have like a 3,000 square foot lot, and you only have six -- you know, your lot width is 30 feet, you know, or some 25 feet, you know, it's not really - scale-wise, and safety issue-wise - it's not really appropriate to put a 50-foot tower in your front lawn. And so I think that, you know, it doesn't prohibit you from doing a small wind turbine or one that's attached to your house, you know, like built into your roof. There's some rooftop ones. But if somebody -- we don't wanna have people plunking down a large tower in the middle of the high density residential area. In a lower density area, we have, you know, bigger lots, 10,000 square foot, 18,000 square foot lots that are R-3 in Kahului. And you have some other larger lots here in -- on Molokai that could potentially do it. It's just another option. It was never available before to anyone. We just feel that it's something that's talked about time and time again. I think Commissioner Feeter was the biggest advocate of a windmill when he was on the -- so that's kind of where we're going with it.

Mr. Chaikin: Commissioner Sprinzel, go ahead.

Mr. Sprinzel: I seem to remember when I was on the Urban Design Review Board that there was some width between buildings so that the fire trucks have access. You don't

seem to have that on this. If I'm looking at Figure 3 on Page 6, if there was a fire in one of those center houses, how on earth would you get a fire truck through there?

Mr. Alueta: That's on your flag lots, and that would be regulated by the Subdivision Code. I only -- this only regulates the lot size. The access roadways would be regulated by subdivision. So the illustration that you have showed the flag lots. And those widths or potential turnarounds would be regulated during the subdivision process.

Mr. Sprinzel: I hope so.

Mr. Alueta: Yeah.

Mr. Chaikin: Any other Commissioners?

Ms. Buchanan: I tired already, and I get way too many questions for Joe. What time your guys' flight, Clayton? What time is your flight you guys gotta leave?

Mr. Chaikin: 4:15 he had said that he had to wrap the meeting up. So we have approximately one hour left.

Ms. Buchanan: Okay, so R-0 is gone and incorporated into this now under the development standards, yeah?

Mr. Alueta: Correct.

Ms. Buchanan: Okay. Maybe I should've just went stick to the front on the changes. So the definitions of R-0 is gonna be the same but you just putting them under one code?

Mr. Alueta: Correct, the only difference that we're adding to the R-0, right, is an access yard setback which all of the -- all of the districts will be subject to, the lot coverage which all of them would be subject to, as well as allowing for the antennas. But again, within an R-0 it's gonna be very difficult for you to try to do a windmill/antenna so it's not impossible. It just will be very difficult.

Ms. Buchanan: Yeah, that 50 feet height antenna and windmill, or whatever, is -- I'm trying to figure that out because we -- say that your house gotta be 30 feet maximum height, but we going let you have 50 feet. And I don't know under our SMA rules, Joe, don't we need -- don't you need a variance for -- for if I was -- if tomorrow I wanted to put up one 50-foot antenna, or windmill, or pole, or whatever, satellite dish, wouldn't I need a variance?

Mr. Alueta: Yes, that's why we're trying to add into the code.

Ms. Buchanan: Okay, see, I have a problem with that. I don't want my neighbor down from me to go ahead, and they'll be allowed under these standards, to go ahead and put up one windmill without a variance so I cannot say -- I like looking at Diamond Head from my house. And I no like look at your windmill now. You know? Because that's what's gonna happen or there's a potential for that to happen. I kinda like that you gonna have to come and get permission to put in a 50-foot antenna, MOBI PC.

Mr. Alueta: Well, you wouldn't be MOBI PC because MOBI PC is not allowed. I mean, a commercial antenna is not allowed. Okay? Because that's -- the reason antenna was put in there is because we recently was -- I don't know what the word is - "threatened" -with a lawsuit? But basically, the Federal government, if you do a ham radio operation, there was a recent court case in which we were basically forced to grant the variance or grant this person a large antenna because the FCC has control over it. And so we were not able to establish zoning or any type of rules that would prohibit those types of -- that would limit his ability to do his ham operation or whatever -- this antenna. So the Federal government came in and basically told us. So we came in and we put that in because there was a recent case in which we had to deal with on Maui. And again, windmill, we have added it. We did add it to interim district, which you have. We also have added it to other districts that we've amended or previously. So 50 feet is kinda the standard I think that we've done. In fact, it came out of Molokai for the 50 feet. But at the same time, you know, we're kind of doing this balancing act. We all are trying to support alternative energy sources. At the same time, we're trying to balance the aesthetics of it because a lot of times this would be better off in the rural and ag district. And that's why we came up with the one foot -- the setback issue of one foot from the property line. So if you do a 50-foot antenna, you're gonna have to be at least 50 feet away from your property line. So you're -- and that means your lot width is gonna have to be at least about a 101, 102 feet given a diameter of a -- depending on your antenna structure. So it's not gonna be right there in your face. It's gonna be set back away from the property lines.

Ms. Buchanan: So how long -- how many square feet would my lot be then in order to -- for me to have to put up this 50-foot?

Mr. Alueta: If you put it right in the middle, you'd have to be 100 by a 100, somewhere around there to be -- that way you would be 50 feet from -- if it was 50 feet, that way you'd have to be 50 feet from -- so you'd have to be at least a minimum of 100 by a 100, if I do my calculations correctly.

Ms. Buchanan: So that's a 10,000 square foot lot?

Mr. Alueta: Is that right?

Ms. Buchanan: Okay, my sister has a 10,000 square foot lot, and I cannot see one 50-foot antenna in her yard.

Mr. Alueta: In the middle.

Ms. Buchanan: In the middle of her yard.

Mr. Alueta: Not yard, in the middle of the property.

Ms. Buchanan: In the middle of her property.

Mr. Alueta: That means her house would have to be set back on one side.

Ms. Buchanan: Yeah. She has a 10,000 square foot lot right down the road from me. And if today she wanted to put up a 50-foot antenna, should this ordinance pass, she could do that. And then I cannot see Diamond Head any more. And I no like that.

Mr. Alueta: Okay.

Ms. Buchanan: So I don't know if Corp. Counsel going tell if we going do one "except on Molokai" on this kind stuff, you know. So I don't know. I don't know. For me, it would be one "except on Molokai." You cannot do this. You still gotta go do'em the old fashion way. You gotta do'em by variance. That way you have a public hearing and then your neighbor has the right to voice his opinion one way or the other whether they like it or not. I kinda like the old fashion way.

The retaining wall eight feet high, that can be one solid structure eight feet high? You're talking one solid eight-foot wall that's right underneath the -- my 50-foot antenna?

Mr. Alueta: With the exception of retaining walls, eight feet is the height, maximum.

Ms. Buchanan: I mean it's the solid, not see through wall, though, I can build?

Mr. Alueta: Correct, boundary wall. So it could be wall or fence.

Ms. Buchanan: Boundary wall, can be wood fence, whatever, eight feet?

Mr. Alueta: Right now.

Ms. Buchanan: Okay.

Mr. Alueta: If you wanted to.

Ms. Buchanan: Okay. And that would be --

Mr. Alueta: If you wanted to, you could build a 30-foot fence on your property line.

Ms. Buchanan: Of a solid structure? Yeah.

Mr. Alueta: Of a solid fence or wall.

Ms. Buchanan: And this has nothing to pertain with the SMA plain view walls?

Mr. Alueta: This is just trying to close the loophole that we discovered. As I do these, I try to find -- I try to think of all the different loopholes, and as all the years, and that's pretty much it. And right now again, we don't regulate fences. I mean we regulate them, but building permits will give you a fence or a 30-foot fence or a 30-foot wall on your property line. And so if you wanna lose your view of Diamond Head, a 30-foot wall will do it faster than a pole, than a 50-foot pole. And so I'm trying to cut this fence down so that, you know, reasonably, it can be an eight-foot boundary wall, because people do want their privacy. I understand that. But we're not trying to be draconian about it, but at the same time, we're trying to make sure that the view corridors --

Ms. Buchanan: Okay, so this is gonna limit it to eight feet, period? Okay.

Mr. Alueta: That is correct, period, max. Not everybody does it. Some people don't have walls. Some people don't have fences. Some people --

Ms. Buchanan: Yeah, this Molokai. We no more walls. Only for the animals but -- okay, so where are the definitions for the Item K on Page 2 for energy systems, small-scale? And I see your garage sales are limited to four times in a calendar year not to exceed a total of eight days. You know, all this kind of stuff like that and -- what happens to the enforceability and severability part of this new ordinances? How we going enforce this stuff?

Mr. Alueta: Well, currently there is no enforcement. That's why we wanna -- our enforcement officers asked us specifically to add a definition because right now it's very gray. A person does it once a month or twice a month. We don't know how you -- how do you cite the person, and it's -- especially when the neighbors complain? Hey, this guy's doing a garage sale every weekend. And so we had to come up with what do we think is reasonable. How often do you do a garage sale? And, you know --

Ms. Buchanan: So I going have to call one RFP up and say my neighbor having one garage sale again. They going come out and do that. And then I need to do that four more

times in order for them to take action? And then what would be the consequence of the action of any of these ordinances, the new ones?

Mr. Alueta: We would cite -- we would say that it's not a normal or accessory use to your -- to your single family dwelling. We'd say you're operating a commercial enterprise. And if you're not running a home based business or certified as a home based business or whatever under the new definition, we'd be able to control it that way.

Ms. Buchanan: Okay, most of this stuff is really good, Joe, it's just I cannot see how it's gonna be enforceable. On Page 8, for instance, you say like retail sales shall be limited to products produced by the home based business. You don't know. Nobody going know. I mean it says here, but you know. And then on Page 9 on No. 2, No. 1 and 2, the customers of the home based business shall be limited to, at any time a total of eight per day between the hours of 9:00 and 5:00. So now you back to counting people of customers of your neighbors that coming in for your home based business. I wasn't a big proponent of home based businesses cause it was very difficult to enforce and it kinda pits your neighbors against each other. And I should know. I live in one subdivision with a lot of issues. But -- and then you go on, on 10, and you say the following shall not be construed. And then I wanted you clarify Item C on that Page 9 under No. 10, which was contractor headquarters or dispatch centers to other locations. Clarify that.

Mr. Alueta: Again, this was the Director's proposal, personally -- I mean, so I didn't have much input in the discussion with this. This came about, I think, as an offshoot from Council's discussion and direction during the home occupation discussion, as well as discussion with other Planning Commissioner -- other Planning Commissions who have -- who had concerns as well as wanted to expand the home occupation. So I mean just put it from there.

But as far as contractor headquarters or dispatch centers to other locations, what we don't wanna have is someone running a warehouse where they're having delivery service. So you have -- you're having, you know, eight or ten delivery trucks show up at a person's house and loading up their material and then being dispersed. We have that -- we've had complaints where people are running taxicab dispatch services where all of a sudden you get like, you know, taxicabs parked along the road, and all those people come, get out of their car, get into a taxicab, and then get disbursed for the day. We've had contractors using their home as, you know, again, their property as a warehousing and contractor location. It's okay on a small-scale, you know, single -- you know, small guys, but when you have a large -- larger contractors, and you have several employees, and that's what the -- that's where the concern came about. We've also had, you know, bus tours. You know, small little tour companies that park all their tour buses and tour vans on the property. Have all the people come to their house, all the drivers, they all get out of their

cars, jump on the tour van, and goes off. And that's not what this is intended to be. If you wanna do that, you should get a -- rent a space in a baseyard.

Ms. Buchanan: Okay, that needs to be clarified then because when I read this, that's -- that's not assumed. You know, I had to ask you for a clarification. So I don't know if that's defined some place where you can just say no warehouse, no taxicabs, dispatches, bus tours, blah, blah, blah.

Mr. Alueta: If you're dispatching anybody -- I mean, if you wanna clarify, you know, but let's see -- I'm welcome to -- I welcome your suggestions as to what -- I mean if you're supportive of doing this, the whole concept of the home based businesses --

Ms. Buchanan: Yeah, I not supportive, no.

Mr. Alueta: Yeah, so then, and you feel that there's some stuff you wanna improve on it, then -- then by all means, I welcome your comments.

Ms. Buchanan: It's just the line is so thin and easy to cross because I see we cross it all the time. I mean, unless it's like -- like you spelled it out earlier, you know, you can't be having a garage. You can't be repairing cars. You can't be doing body work. You can't be filling gas, all that kinda stuff. It's all spelled out. But I mean if that's what you gotta come down to, you know -- when the County allowed home based businesses, it opened a can of worms because people thought, oh, how nice. You go to aunty's house and cut your hair. That's okay. But if you start repairing aunty, uncle's cars and everybody else, that's not okay. So for me, it's the issue of enforceability. And what it does it now makes your neighbors having to police your neighbors, and that's not good. But I like the -- you including R-0 and trying to combine everything. That was really good. And I know you worked on it for a long time.

Mr. Chaikin: Any other Commissioners? Questions? Comments? Alright, well, I have a few. I'd like to go back to a couple of things that Commissioner Buchanan touched on, and one was the boundary walls. Can you -- I thought there was a limit of fences or walls, the height of them like six feet or something? What is this 30 feet?

Mr. Alueta: Without a building permit, you can do a six-foot fence, okay? And you can do a -- which is defined in the code, and then you can do also a four-foot retaining -- I believe up to a four-foot retaining wall without a building permit or any type of permit. If you wanted to get a -- taller than that, you technically need a building permit. And Public Works has indicated that there is no -- for a wall or a fence, there is no setbacks. So if you wanted to do a boundary wall, if you structurally engineered it, you could build a 30-foot high fence or a wall on your boundary.

Mr. Chaikin: And that's -- let's say it's not in the SMA. That's administrative in nature? So it's not up to anybody's discretion? It's just whether it's engineered correctly or not?

Mr. Alueta: That is correct.

Mr. Chaikin: Okay, so you're trying to bring that down to eight feet?

Mr. Alueta: Yes.

Mr. Chaikin: Okay, thank you. The other question I have is on the maximum height. Is 30-foot the maximum height for the building, and then you can go an extra ten feet for pipes and vents? Is that the deal?

Mr. Alueta: Correct.

Mr. Chaikin: Okay, and then in addition to that, you can go up another five feet if the flood -- if you're in a flood district in the -- and you have to raise your house up?

Mr. Alueta: Correct.

Mr. Chaikin: So the maximum building height is 45 feet, I mean, theoretically, somebody might have a 45-foot vent sticking up there if they're in a flood area and they had to raise their house up?

Mr. Alueta: Yeah, 35 feet, I believe that's what Francis and I talked with that the -- if you had -- if it was -- the maximum you could get credit for, I guess, is five feet. So technically, I mean if you had to raise your feet, ten feet, say if you're in a higher flood area, we'd only count -- we'd only give you a bonus for the first five feet so --

Mr. Chaikin: Okay. Small-scale energy systems, is that something that's -- is that a part of this, or is that something that's already been decided? The only reason I bring that up is cause I see that biomass is one thing that's actually approved. And some of these lots are very small. They can be a 3,000 square foot lot, an extremely small lot, and then biomass is approved on that lot. Is that correct?

Mr. Alueta: That is correct.

Mr. Chaikin: And is that something that had been decided at an earlier stage and that --

Mr. Alueta: Small-scale energy facilities was a definition that was added sometime in late '90s.

Ms. Buchanan: Where I can find the definition for that?

Mr. Alueta: Because it's an existing definition, it's not -- it's not in your thing. It's on the Maui County Code. I believe --

Mr. Chaikin: It's on Page 2 --

Mr. Alueta: Yeah, and I believe --

Mr. Chaikin: The second page in the middle.

Mr. Alueta: I'm hoping Mr. Hopper over there is currently trying to scroll to find it on the -- so you can read it, but, yes, biomass. If you -- have you ever made a barbecue?

Mr. Chaikin: Yeah.

Mr. Alueta: With wood chips or with wood? That's biomass.

Mr. Chaikin: Right, yeah, but it's different than what could be biomass in the future when people are trying to cut down the kiawe and produce electricity from it or something and then it's an ongoing thing rather than a --

Mr. Alueta: Right. I mean you would -- it's -- it's not something that's -- well, I shouldn't say that. In the old days, in the late 1900s, they would have small biomass energy facilities, you know, either through the burning of it, or through, you know, wood chip, you know, compression. And like when you compost, the heat that's generated, that's part of a biomass gasification process.

Mr. Chaikin: Okay, the only other question I have right now is this is really pertaining to the residential districts. And I guess in that residential district, you're gonna have I guess single family dwellings, and maybe accessory dwellings, or something along those. Has that ever been defined how big a single family dwelling can be?

Mr. Alueta: Right now, single family dwellings, you're only limited by your setbacks, okay? So you can build as big as your lot is to your setbacks. This proposal would limit it to a lot coverage. An early draft of this that we did had floor area ratios, okay? But that was a -- the Director decided that would be too complex and did not wanna do that. So we were just going with lot coverage and that accomplishes pretty much the same means. If you look at Exhibit -- if you look at Exhibit 11 on the back page, if you just turn the memo report over, I did a quick comparison chart just to help people out so they would understand what -- so you could understand where -- and again, what I did was I compared how big -- if you did your setbacks under the existing code, and if you did it with the thing -- because I didn't

wanna have people clamoring saying you're making my -- I'm gonna have -- my house is too small. And so if you look on -- even on a 6,000 square foot lot with a 40% lot coverage, you could theoretically build a 4,400 square foot lot house, which I think is pretty -- I mean it's still a big house, okay? Under the existing code, on a 6,000 square foot lot, if you maxed out your setbacks, you could do a 6,700, almost a 6,800 square foot lot -- house. So again --

Mr. Chaikin: So we're talking about relatively small lots. Within the residential district, are there any large lots like acres, like ten acres, or 20 acres, or big lots?

Mr. Alueta: In a residential district, yeah. I mean you have lots that are 18,000 square feet, and you have some residential lots that are like an acre or two acres that have not been subdivided.

Mr. Chaikin: So theoretically, the people could develop an enormous structure on that, and that would just be administrative in nature. Is that correct, if it was not in the SMA?

Mr. Alueta: Within the agricultural district, you can build your farm dwelling as big as you want up until the lot coverage. So if you had a -- if you had two acres, and as long as you kept 50% open area, if I'm remembering my -- what the standards are, it would -- you know, you could have a 48 -- 42,000 square foot house. I mean --

Mr. Chaikin: Well, and that's why I'm bringing it up because right now, we're taking a look at the ordinance, and seeing if there should -- if there's things in the ordinance that are not in the ordinance that should be in there. I mean, what's your take? Do you think people should be able to build as big a house that they wanna build without restrictions as long as they meet the lot coverage?

Mr. Alueta: The Department is not proposing that at this time. It's not unheard of. It has -- in North Carolina, they do have a lot -- a house -- maximum size for houses. I believe it's like 3,500 or something like that but -- and that was the result of like second homes and the amount of energy consumption. It was -- they sold it under as an energy bill. But this is again, in another state. The Department is not willing to -- or has not proposed that. And it would open a big can of worms, I can tell you that right now. So I wanted to get some really good amendments that I felt were needed under Title 19, under the residential district. And I didn't want to take on too many controversial items that would derail the overall process. How's that sound?

Mr. Sprinzel: Could Molokai specify an exemption, and say three and a half thousand square feet or something as a maximum house size?

Mr. Alueta: You can make that recommendation for Molokai, and we can add that on to the end of the table that, you know, maximum size.

Mr. Sprinzel: What a good idea.

Mr. Chaikin: Well, you know, personally I think that I don't have a problem if somebody's gonna build a big house. I have a problem if they do it administratively, which means that they just can put it in their application and then out pops out their building permit. If they actually, you know, had to go through some kind of a -- if their house was over 5,000 square foot, and they had to get some kind of a variance, or special use, or some kind of a thing to be able to do that, at least some of the negative impacts could potentially be addressed. The way they are right now, it's just, you know, it's -- people can do whatever they want.

Mr. Alueta: It's up to you. I'm not -- I'll take those comments. I'm not -- I mean -- for Molokai only, if you wanna have a maximum house size, that's up --

Mr. Chaikin: I tell you what, let's take care of the -- let me say, if there's anybody in the public that wants to provide testimony, this is the time to do it.

a. Public Hearing

Mr. Chaikin: I don't really see anybody out there so we'll close this part of the -- close the public hearing. And now it's back to us as Commissioners. Again, we have a little bit of a time constraint. There are some things on the Director's Report that we probably should get to. So, you know, at some point, we gotta decide, you know, how we want to go from here, if we wanna make decision-making or more questions. Commissioner Buchanan?

Ms. Buchanan: I gotta -- I gotta review the definitions for stuff. You know, like we talked energy systems, the small-scale. I was born a severe asthmatic all my life. And so if somebody was burning something which is now not permitted in Maui County, open burning, I really was glad when they outlawed that because it does impact me, and he has the definition. Do you wanna give me a definition of small-scale, energy system? If you're burning stuff, I don't want it.

Mr. Hopper: I tried to blow it up. It says -- it's not big enough, I guess. It says, "Energy systems, small-scale means energy production facilities which are incidental and subordinate to a principle use which is established on the property. These systems include, but are not limited to, solar, wind, hydrologic, and hydroelectric and biomass systems" -- hydrologic.

Mr. Alueta: Means you do a hydro system or you use water in some fashion to generate electricity.

Ms. Buchanan: Bed and breakfast is included in this right above that on Item J. That was not currently included under accessory uses. Is it that -- what, you're putting this as 19.08.030, and you got accessory uses, then you have the table of lot size, and then J is just bed and breakfast home subject to Chapter 19? So it wasn't there before and it's there now? You're including it because it's underlined? It's a new permitted use? That's on Page 2.

Mr. Hopper: Joe, isn't that in the existing code?

Mr. Alueta: Yeah, I thought so too. I'm sorry. I might've gotten ...(inaudible)...

Ms. Buchanan: So not supposed to be underlined, and that not supposed to be in there cause it's already -- what?

Mr. Alueta: Correct. But it is -- I mean, as well we all know, it is an allowed use -- it is an allowed use in the residential district.

Ms. Buchanan: Okay, I going scratch this then. And then the specialized education definition?

Mr. Chaikin: She's looking for a definition of specialized education.

Mr. Alueta: It's under E, education, specialized, I believe.

Ms. Buchana: Okay.

Mr. Hopper: A facility that offers a specialized educational curriculum such as, but not limited to, trade and vocational, language, music, dance, and art schools.

Mr. Alueta: Carpenters union training facilities, something like that, trade school.

Ms. Buchanan: As long as no more eight people? Because later on in your stuff, you say, right, you cannot have more than eight people coming in and out of your house on 19.08.100, rule-making -- I mean, Section 3.

Mr. Alueta: No, because it would be a special use permit, so the number --

Ms. Buchanan: Oh, okay.

Mr. Alueta: Would be limited during the special use permit process which requires a public hearing before this Commission.

Ms. Buchanan: And then under that special use, the conditions would be -- you would set the conditions of how much people could attend your specialized education home based business?

Mr. Alueta: Yeah, theoretically, but it wouldn't be a home based business because you could do a specialized education. It doesn't necessarily need to be a single family dwelling. So in a residential district, if you got a State -- if you a County special use permit, you could build a church. So a church is a not a single family home. It's a church. But you need to -- because it's not related to a single family district, or related to a single family home, it requires a special use permit from this Commission. Same thing with day care nurseries that are larger than normal hospitals, nursing or convalescent homes, housing for the aged, housing for the low or moderate income, operated by a government or nonprofit organization. Public utility substations need a special use permit as well, and again, education specialized. So all those items are -- require a public hearing by the Commission.

Mr. Chaikin: Joe, I noticed that with the -- I guess this is the home occupations or the home based businesses we have all of these restrictions. One of them there's this kind of catchall phrase that says the repair, manufacturer, processing, or alteration of goods, materials, or objects that produce noise, dust, smoke, glare, or odors that negatively impact the neighbors. So I guess if you're doing something that negatively impacts the neighbors, then that can be construed as an activity that's not allowed, is that correct?

Mr. Alueta: That is correct. And if you wanted to do it, you would have to either get a -- you would either have to not do that, or get a special use permit through the Commission.

Mr. Chaikin: Okay, then moving that kind of a concept over to the small energy systems, is there any similar catch phrase for people that are producing their own energy and they're producing nuisances for their neighbors?

Mr. Alueta: Not based on the definition that Mike Hopper read. And again, that was -- it was discussed at the Commissions. That when that definition came through, it was discussed at all three Commissions as well as discussed at the Council, and it was not raised at that time. I think the thinking is that because it's an accessory use to a single family home, the size would be limited meaning, you're not gonna build, I mean, if you have a single family home, you can't generate above and beyond what you would consider for your domestic consumption because once you do that, then you're not a -- you're not a -- it's not accessory to the home. It's not -- you're actually a producer. So that in itself limits the amount of energy that you would produce. Again, and wind -- wind turbine or a solar

arrays are not -- for a single family home are not that giant. It's when you start getting into the commercial size and you become a -- do a private purchase agreement and selling back to the power company that your size of your energy system gets enormous. But again, that's a good point of concern that you may wanna mention that, you know, have a catchall phrase added to the existing definition of small energy systems. I think that's a great -- great point.

Mr. Chaikin: Cause I could potentially see how, you know, all these wind turbines become popular, and I can see all these bearings going out, and the things squealing, and just creating nuisance, and there would be nothing for the Director to hang his hat on saying that, you know, that it's causing a nuisance cause it's not in there or something.

Mr. Alueta: I think that, one, I think, the setback issues come into the play, but again, good point. You never know what's gonna happen. So I'd recommend that you make that kinda comment that even though it's not an amendment, per se, but we're adding it as a permitted use that you would wanna have some type of tag line like that added to the existing small-scale energy facility definition, or at least add -- you can just add it to the end of the existing as a permitted use meaning small-scale energy facilities provided --

Mr. Chaikin: That it doesn't create an unreasonable nuisance for the neighbors.

Mr. Alueta: Okay, that's good. I think that's good. So we just add it to the list of -- under accessory use. That's fine.

Mr. Chaikin: Alright, Commissioners, the clock is ticking. We're running shorter and shorter on time. So we need to move into the action stage where we actually make some decisions on what we are or are not going to do. So does anybody have any comments about that?

b. Action

Ms. Buchanan: I'm inclined to defer. Yeah. Enforcement is the issue for me. You know, hundred complaints and RFPs went out on Island Kine Auto Rentals and they still there irritating their neighbors to death and nobody's done nothing about it. They're dispatching. They're parking cars. They're whatever for the past ten years. And all their neighbors complained, and Maui County hasn't moved to do a darn thing about it, and that's what I'm afraid of. So I just -- I would move to defer.

Mr. Chaikin: Anybody else have any comments on that? Joe, are you -- what does our timeframe look like on this? What's the maximum time that we can submit comments? Or what is our last meeting date that we can discuss this?

Mr. Alueta: We really don't want to give you the answer. No, just-- this is not a resolution. This is a Department-initiated bill. But again, I'd like to get -- get it through each of the Commissions so I can get it up to Council as soon as I can while it's still fresh in a lot of people's minds, as well as the Department has numerous other bills coming before you such as all of the commercial districts and other -- and again, this is just another one of the revisional chapters that we're revising, and we have several chapters to get through. So I wanna be able to get through all of them before I retire. So I wanna -- so the sooner the better, but, you know, I don't wanna rush you into a decision. If you're not comfortable, fine, but I wanna make sure you have a discussion on it.

Mr. Chaikin: Commissioner Sprinzel?

Mr. Sprinzel: While I certainly agree with Lori's worries, I don't see how deferring it is going to stop a ten-year-old infraction by one person. I mean isn't there a better way of stopping them rather than deferring something which is obviously important?

Ms. Buchanan: Well, like Vice-Chair Chaikin had said, you have to look at certain ones. If you wanna put a phrase that puts some enforcement behind it instead of just blanketing it and saying all these uses are permitted but by the way, you know, if it becomes a nuisance, you can't do it, then who determines it a nuisance if your only one neighbor is complaining? There's several things in here that I would like to probably email Corp. Counsel on, on where to find definitions for certain things to fully understand what we allowing, you know, instead of taking up more time.

Mr. Alueta: Commissioner Buchanan, maybe I can make one simple suggestion is that -- if your concern that you wanna have review over these home based -- over the home based businesses, you could do that by -- if you wanted to have that, you could potentially just move it from being a -- from being an accessory use and move it under the special use permit process. So the definition would stay the same, correct? And that you would just move it to being under special use permits, and that would require Commission approval. And so therefore, you could be more restrictive if you wanted to be. So if you look under accessory uses, it's considered to be an outright permitted use provided you have a single -- a single thing, you could do it as a home based business, and put it under as a special use permit, if that's your comments, but -- if that addresses your concerns.

Ms. Buchanan: Yeah, because Item E is troublesome for me under accessory uses. It says "Other subordinate uses and structures which are determined by the Director of Planning to be clearly incidental and customary to the permitted uses." That's like whoa. I'd like to just strike that. So yeah. I don't know what you mean by that. That's kind of like whatever he thinks is incidental.

Mr. Alueta: It means that as you know times change and things -- people get added, but it's just like hot tub, pools and hot tubs, that's not listed, but we all know that a pool, or a hot tub, or a mail box is a normal accessory use or a structure. It's not currently listed in the code. And so right, now when somebody comes in with building plans, the Director and the staff just say, well, that's a normal function of a single family. They're doing a single family home. They're doing, you know, a storage shed. Okay, the guy's doing, you know, a trellis or whatever. He wants to have, you know -- outside. That's considered just to be part of a single family structure. It's not listed. If the guy wanted to do it without a home, then we'd have a concern. This just gives the flexibility that -- for the Director that there are gonna be things that we never thought of that, you know, someone wants to do an exterior birdcage. It's not listed. We didn't list it. He wants to have a dog kennel. Well, we didn't list dog kennels, you know, for his dog, so -- but it's something that -- if the guy wanted to build a huge dog kennel because he's got 50 dogs, then we'd go, whoa, that's a commercial activity. But if the guy wants to do a dog run for his dog -- I didn't wanna list everything that could possible -- because you know what? Just as you come up with some great ideas of adding some things, I can't think of them all. And so that's why we go through this whole process. And that's also why we give some flexibility here to the Director because thing change and get added.

Mr. Chaikin: Alright. Thank you, Joe. And I think that is important because this is a really important bill. There's a lot of -- it covers a whole lot of area and some of those could potentially be problematic down the world -- I mean down the road, like home based businesses, and energy systems, and probably some other things. So I think it is important that we spend time and try to provide constructive criticism to you guys. My concern about deferring is that it really costs the County a bunch of money to send you back here. It wastes your whole day having to come back here as opposed to being productive. So let me just ask, are you planning to come back -- not next -- when -- are you coming back for that Title 18 Public Works thing that's scheduled for August 12th? It's the proposed amendments to the --

Mr. Yoshida: I think the Public Works Director, Milton Arakawa, will be here to discuss those amendments.

Mr. Chaikin: Okay. Yeah, I was just seeing if there was a way we could get two birds with one stone, and not having him to make a special trip back here to finish this up with us. But, okay, I'll just throw it back to the Commissioners of whatever you would like to do it at this point. I think Commissioner Buchanan has stated what she'd like to do is. Any of the other Commissioners wanna express their views?

Ms. Buchanan: Chair Chaikin, after your impassioned plea to not defer, I'm ready to rock 'n roll.

Mr. Chaikin: Alright, well, let's make some constructive comments that we can provide to Joe.

Ms. Buchanan: Let me just get one clarification. Joe, on Page 4, on your Development Standards, on your freestanding antenna, wind turbine, blah, blah, blah, maximum height, can I say "except on Molokai where a special use permit will be required?" And also, on 19.08.030, on Molokai will come under special uses or special use permits.

Mr. Alueta: For which one?

Ms. Buchanan: On Page 2.

Mr. Alueta: No, but which item?

Ms. Buchanan: All of them.

Mr. Alueta: What do you mean all of them?

Ms. Buchanan: On Accessory uses and Buildings and the following uses, they won't be accessory uses, they'll be special uses.

Mr. Alueta: Okay.

Ms. Buchanan: And on Item E, on No. 2, where Other subordinate uses, strike "Director of Planning" and insert "Molokai Planning Commission." You wanted to rock 'n roll. Let's go. Come on.

Mr. Chaikin: Okay, I needed a little more clarification. So how many different things were -- did you brought up? Three or?

Ms. Buchanan: On Page 4, I want that to be a special use permit on Molokai, you know, the free standing antenna.

Mr. Chaikin: Okay.

Ms. Buchanan: Maximum height of 50, blah, blah, blah.

Mr. Chaikin: Right. That's one item.

Ms. Buchanan: Yeah. You're gonna have a special use permit for that.

Mr. Chaikin: Okay.

Ms. Buchanan: And then on Page 2, the 19.08.030, Accessory uses and buildings will all require special use permits. They won't be accessory uses.

Mr. Chaikin: But that includes normal and ordinary things like garages, and wall, and -- we don't people having to come in for a special use permit for that.

Ms. Buchanan: Okay, well, then if you wanted to say accessory uses, I want you to strike Item B, strike Item E.

Mr. Chaikin: Okay, let me just say that -- so what you're saying is for a pool and a hot tub, you want them to get a special use.

Ms. Buchanan: Yes, you know why? Because we're a water management area, and I don't want you using water.

Mr. Chaikin: Right, right. So that's a reason that we should say specifically on Molokai this is what we want because we don't necessarily need to mandate that Maui --

Ms. Buchanan: I don't care what we do, okay?

Mr. Chaikin: You know what I'm saying? So if we make this specific to Molokai because what we're doing is we're putting in suggestions for all of Maui County. And unless we wanna -- is that your intention to make that for all of Maui County or just Molokai?

Ms. Buchanan: On Molokai. That's fine.

Mr. Chaikin: Okay. So that was two things.

Ms. Buchanan: Okay, so if we're gonna do that, on Page 2, you're gonna have your accessory uses, but you're gonna strike -- well, for B, Item B, pools and hot tubs, except on Molokai will require a special use permit.

Mr. Alueta: What I'll do, I'll just -- that item that you want under a special use permit, I can just -- I can -- except -- I can put "except on Molokai" and then just move that whole "pools and spa" under special use permits for Molokai only.

Ms. Buchanan: Okay. And then for Item E, can I strike the "Director of Planning" for Molokai and insert the "Molokai Planning Commission," as the person that determines what is incidental and customary?

Mr. Alueta: If that's the wish of the Commission.

Ms. Buchanan: It's always my wish. I don't wanna leave it up to him.

Mr. Alueta: No, no, if that's the wish of the Commission, not the Commissioner, you.

Ms. Buchanan: Oh, okay, but that's what I'm suggesting, because for years and years, we grumble about them doing stuff without us knowing, and then it would now be charge -- charging the Commission to determine what is an incidental and customary permitted use of something that is not listed here.

Mr. Chaikin: Okay, so that is your third item. You got three items, right?

Ms. Buchanan: Okay, whatever.

Mr. Chaikin: Is there any more items?

Ms. Buchanan: Yeah. We striking J because you said was not supposed to be there anyway.

Mr. Chaikin: Okay, that was the fourth -- fourth item.

Ms. Buchanan: And Item K, energy systems, small-scale, that's also gonna be a special use permit.

Mr. Alueta: So solar water heaters and solar photo voltaic was gonna be a special use permit?

Ms. Buchanan: Do we wanna just say biomass? Anything that burns?

Mr. Chaikin: Well, my idea was to put that nuisance clause in there. Like if you're gonna do any small-scale energy and it creates a nuisance for your neighbors, then that's something that the Director can determine is not allowed.

Mr. Alueta: Right, and the language that I'm proposing would be just energy systems, small-scale, provided that it does produce noise, dust, smoke, glare, odor --

Ms. Buchanan: Odor, I like that.

Mr. Alueta: Odor -- odor that negatively impacts the neighbors.

Ms. Buchanan: I'll go with that.

Mr. Alueta: So you could still have a noisy fan, but if it's like on a 50-acre parcel, you know, no problem, as long as it produce -- it has an impact on -- negative impact on your neighbors, then it would not be considered to be an accessory use.

Mr. Chaikin: Okay, and just to clarify the previous point, you had talked about that J, bed and breakfast home subject to Chapter 19.64. Can you repeat that? Did you want him just to take away the underline or strike the whole thing out of there?

Mr. Alueta: Yeah, it's already there. It's already part of --

Ms. Buchanan: Okay.

Mr. Alueta: Yeah.

Ms. Buchanan: So it's not supposed to be underlined?

Mr. Alueta: That's all.

Ms. Buchanan: That's the only error?

Mr. Alueta: It's not supposed to be Ramseyered, correct.

Mr. Buchanan: Okay.

Mr. Chaikin: Okay, so leave it, just not underlined?

Ms. Buchanan: Yeah. Okay, so that's good as long as that wording is in there about odor and burning and -- and can you work on Page 9, Item C, to add examples, or the same wording as long as it's not a nuisance or -- so I know it's warehousing, taxicabs, bus tours, rental cars, and then we should be good.

Mr. Chaikin: Any other Commissioners? Okay, we have -- Lori made a lot of good points there. Is there any other Commissioners that wanna add anything to that list?

Mr. Sprinzel: Did we add that we have to decide if it's a 50-foot thing? Didn't you want that in?

Mr. Chaikin: Yes, she put that in that it would have to come to us if they wanted to put up a 50-foot pole.

Mr. Sprinzel: Good. Good.

Mr. Alueta: Was it -- I'm sorry, but it was -- was it any tower structure that you wanted to move antennas to be a special use permit? So it doesn't have to be a 50-foot? Like I mean if they came in with a 30-foot pole, they'd still need a special use permit, is that correct?

Mr. Chaikin: Yeah, yeah.

Mr. Alueta: Okay, I just wanted to make that -- sure.

Mr. Chaikin: Any other Commissioners wanna add anything to that list? Alright, seeing none, I'll go ahead and accept a motion to concur with the Planning Department taking in considerations the recommendations that are set forth in this discussion.

Mr. Sprinzel: I would so propose.

Mr. Chaikin: I'm sorry, go ahead?

Mr. Sprinzel: I would so propose.

Mr. Chaikin: Okay, so that sounds like we have a motion on the floor. Is there any second? Second by Commissioner Bacon. Is there any discussion?

Ms. Buchanan: Discussion: are we gonna see a draft of this? The draft, Joe, of the proposed amendments from this Commission?

Mr. Chaikin: Well, that's something that we can either request him to do prior to him sending to the Council or --

Ms. Buchanan: I would be requesting that, then.

Mr. Chaikin: Okay, we -- I think Corp. Counsel wants to weigh in on that.

Mr. Hopper: Not weigh in, just what do you wanna see? Do you wanna be cc'd on the letter that Joe sends in to Council with the Commission's recommendations?

Mr. Alueta: Or do you wanna have me send what I -- I'll redraft this and send it over to the Chair?

Mr. Hopper: Because I'll let you now what happens. Joe compiles the -- all three Commissions' comments, sometimes puts in some, sometimes does not puts in some, because that's understood to be the Department's recommendation. What they have to send up is an accurate reflection of what all three Commissions said. So even if Joe's

draft, as it goes to Council, doesn't have those in it, it still has to have those comments separate. So did you wanna see that comment letter that goes to the Commission as it's cc'd to you, or is it something else you're talking about? I think that's what Joe wants clarified.

Ms. Buchanan: I just wanna make sure that all what we discussed is in the recommendation to Council.

Mr. Chaikin: Right, I think what happens is we sit here and make recommendations. Joe takes our recommendations, and puts it into the fewest amount of words that he can to articulate our points, and then he sends it out to the Council. And what we're saying is wait before you send it out to the Council, let us have a look at it to make sure that we concur with your interpretation of what we have said.

Mr. Alueta: Can I quickly verbalize what I think you said up here so far?

Mr. Chaikin: Go ahead.

Mr. Hopper: Here's the thing: the Council gets all of the minutes of all the meetings. So the Department not only puts the recommendation in or puts -- summarizes the comments, but gives the minutes. And by giving the minutes, you, by definition, comply with giving them the comments of the Commission, because anyone in the Council can read those minutes. So that's what happens.

Mr. Chaikin: But I think we take into consideration that most of the time they don't read the minutes, so it's important that Joe accurately articulates our position. So it is good that if there's something controversial like this kind of a thing that we do get a copy prior to it going to the Council. So are you agreeable to that?

Mr. Alueta: Yeah, I have no problem with even going ahead of time before I do my transmittal just to transmit to you what I think occurred because I have to do a summary. So I'm just summarizing. And hopefully, I'm accurate. So if I'm inaccurate, then you can -- you can correct me ahead of time. And I often, before I do that transmittal, I go through the minutes to make sure I caught all of the proposed recommendations and -- because I have had people say -- tell me, oh, no, we said this. And I go, no, you didn't. Here's the minutes. So it's important to have the minutes. And I go through them before I draft my letter. So -- but I will quickly, if I can, just tell you what I think you said or what the proposal from Lori so far was.

So on Page 2, you are -- for B, accessory use, pools and hot tubs, you don't want them on Molokai, no for Molokai. You want them to be a special use permit. So I will move that. Strike -- it would be recommended that those be a special use permit.

For E, other subordinate uses and structures which are determined -- which are determined by the Planning Commission to be clearly incidental -- so I'll replace MPC for Planning Commission.

Under energy systems, small-scale, we agree that provided that it meets and don't produce the dust, noise to the neighbors. That's -- that one probably -- you know, make it past my Director.

For standards under Development Standards, freestanding antennas and/or wind turbine structures setback, maximum feet of 50 feet, and then I'll just put in "except on Molokai it shall be a special use permit." And then I'll put under -- under special use permits category, I'll add "for Molokai, hot tubs and pools." And then also, "For Molokai, wind turbines." Okay?

And then you wanted samples on Page 9 for -- you know, under the list of prohibited uses, you wanna have under 10(c), Contractor headquarters, dispatch centers, or other - or dispatch centers to other locations such as taxi dispatch, contractor warehousing and dispatching, bus storage and dispatching, those kinds of such as. So I'll just do a such as to give an example, or an e.g., or is it i.e.? I'll check my English. Okay. But -- e.g., I think it is e.g. Thank you. So I'll do that so that it clarifies what we discussed here today.

Mr. Chaikin: Okay, is -- I'm sorry, go ahead.

Mr. Alueta: That's all I got.

Mr. Chaikin: Is there any further discussion from the Commissioners?

Ms. Buchanan: No, Joe, you're correct under the special uses, you know, for the hot tubs and pools, wind turbines, it's actually the -- you know, whatever you said over there, the antennas or anything. It's all inclusive, freestanding antenna, wind turbine structure, blah, blah, blah. Okay?

Mr. Alueta: Yeah, that's what you want under special uses.

Ms. Buchanan: Yes.

Mr. Alueta: Yes.

Mr. Chaikin: Commissioner Bacon?

Mr. Bacon: Yeah, on -- on the accessory uses, the pools and hot tubs, I mean hot tubs are also like Jacuzzis that people put in their houses and stuff like that. So maybe hot tubs, we don't need to do for that, but pools, definitely.

Mr. Chaikin: I concur with that. Lori, I -- do you concur?

Ms. Buchanan: That's good as long as your hot tub isn't 29,000 gallons.

Mr. Bacon: Most are not.

Ms. Buchanan: Okay. See now, now that raises a question. Well, how big is a hot tub? I mean, you know.

Mr. Bacon: Yeah, but I -- if people -- we're people trying to make this whole process easy for people and having somebody come before us at the meeting that may get postponed or deferred for a hot tub in their home or on their patio is kinda silly, you know, but the pool is a good point.

The other one is, on E, with the Director of Planning, clearly incidental and customary to the permitted uses, if someone wants to put a shed up or something like that that isn't defined in here as we were just, you know, speaking about earlier, to have them go through the process of coming before us, which means they have to fill out applications and all that kind of stuff for that seems kinda silly because he'll do that. I mean the Commissioner can -- I mean not the Commissioner, but the Director can certainly do that.

Ms. Buchanan: I don't wanna leave it to my Director of Planning who changes every time we get a new Mayor. I don't want him to be the one to have to make that decision of what is incidental and customary.

Mr. Alueta: Or she.

Ms. Buchanan: Or she. Sorry.

Mr. Bacon: Okay, I guess -- I guess then, the question is --

Ms. Buchanan: It's too vague. Right now, the wording is too vague. I would assume that it would be easier for us to just to make the determination and it shouldn't be difficult.

Mr. Bacon: But what I'm saying is that if somebody wants to put up something -- I don't know what the limitations of this is, you know, the definition of it because if somebody wants to put up a shed, it seems silly for them to have to fill up all the forms and come through here if it's a -- you know, we were talking about mailboxes or sheds or different

things before. So maybe that could be more clearly defined rather than have somebody come before us and -- you know, we don't need that extra work.

Mr. Sprinzel: Aren't sheds a permitted thing anyway? I mean garden sheds and things are in the --

Mr. Alueta: Well, again, like I say, shed, green houses, we didn't add -- I didn't --

Mr. Sprinzel: Those things are allowed anyway. You don't need to have the Director come and tell you, do you?

Mr. Alueta: Correct. And that's why we used that catchall phrase, because you never know what people are gonna -- I mean, a birdbath is -- I mean it's under landscaped feature. That's what I would put it under. But you can add -- if you wanna put greenhouses, greenhouses, sheds, I mean it's just when do you end the list? And that's why we put in the catchall, something that -- you know, if somebody comes in -- because I don't know -- people are gonna have different ideas. And the Director is -- should have pretty -- have some flexibility to interpret and that's --

Mr. Chaikin: Okay, we're pretty much at the end of our rope here in terms of time. So we need to -- we have a motion on the floor. The motion's been seconded. We've been discussing it. And now I think it's time to vote just from a time element situation. So okay, Corp. Counsel has brought up the point that there was some discussion and that there is the potential to amend the motion. One of the things that Nat brought up was the part about the Jacuzzi being a little over burdensome for somebody to have to come in for a special use permit for that. So that's something. Do we as a group agree to amend the motion? Or I should ask the motion-maker if she's willing to amend the motion.

Ms. Buchanan: I am not willing to amend the motion because I've been in planning way too long, and I've seen to many things happen at the discretion of our Planning Director. So I'm not willing to amend my motion.

Mr. Chaikin: Okay, well, we can -- I can allow Nat the opportunity to make a motion to amend your motion.

Ms. Buchanan: Do we have to take a -- call for a roll on the motion?

Mr. Chaikin: Okay, point of order, Corp. Counsel, what's the best way to proceed on this?

Mr. Hopper: Anybody can make a motion to amend. It doesn't have to be a friendly amendment. You need to take a vote on it, and you have to have five votes to amend the motion, but it doesn't have to be with the consent of the motion-maker. Anybody can make

a motion to amend the motion once it's placed before the body. That's -- that's just a rule. If no one wants to make the amendment, or if there's no second, or if there's not five votes, then nothing passes.

Mr. Sprinzel: Can we just try voting on the proposal?

Mr. Chaikin: We can try, but if anybody wants to make a motion to amend, they can do that too. If there's no motion to amend, we'll -- I'll call for the vote.

Mr. Bacon: I make a motion to amend that we don't include hot tubs in that special use thing. And I guess that should be a separate one. And then the Director would be a separate one, right?

Mr. Chaikin: Well, you can both in one, or you can maybe make two separate ones. I don't know.

Mr. Bacon: I'll make -- I'll make two separate ones because then that way we can get going here faster. Okay? And then the separate one would be --

Mr. Chaikin: Okay, well, you made one. You made a motion to eliminate hot tubs from the original motion. Is there a second on that?

Ms. Waros: I second it.

Mr. Chaikin: Is there any discussion? Seeing none

It has been moved by Mr. Bacon, seconded by Ms. Waros, then

VOTED: *to eliminate hot tubs from the original motion.*

(Assenting: N. Bacon, T. Waros, J. Sprinzel, S. Chaikin.)

(Dissenting: L. Buchanan, N. Leong.)

(Excused: J. Kalipi; M. Pescaia; D. Williams)

MOTION FAILS.

Mr. Chaikin: Okay, we've got one, two, three, four. So the motion fails. Oh, yeah, who is against the motion? Okay, two against. Motion fails. Did you wanna make another motion before we vote on the --

Mr. Bacon: I make a motion to keep the Director of Planning in rather than having us be burdened with deciding on incidental and customary permitted uses.

Mr. Chaikin: Okay, any second on that amendment motion? I'm looking. I see no second. So that dies. Alright. We're at the point where we need to make a vote on the original motion. So I'm gonna call for the vote at this time. All those in favor of the original motion, raise their right hand. So we got one, two, three, four, and to move this process along -- first, I have to ask who's against the motion. Anybody against the motion? We have four for it, one against. I'm gonna say I'm for it, and that's gonna pass the motion.

It has been moved by Mr. Sprinzel, seconded by Mr. Bacon, then

VOTED: to concur with the planning department taking in considerations the recommendations that are set forth in this discussion.

(Assenting: J. Sprinzel, N. Bacon, N. Leong, L. Buchanan, S. Chaikin.)

(Dissenting: T. Waros.)

(Excused: J. Kallipi; M. Pescaia; D. Willams)

Mr. Chaikin: So we've made it through that. So now Joe can move on with his life and start preparing the draft for us. Do we have time for you, Clayton? I can forego the Chairperson's Report and just go directly into anything that you need to cover right now.

H. DIRECTOR'S REPORT

- 4. Cancellation of the September 23 Molokai Planning Commission meeting due to the 2009 Hawaii Congress of Planning Officials (September 23-25, 2009) in Honolulu hosted by the State planning agencies/ boards. (The Commission may act to cancel the September 23, 2009 meeting.)**

Mr. Yoshida: Yeah, I guess we just have a couple of minutes. I'd move to Item 4 which is the Hawaii Congress of Planning Officials Conference, September 23rd to 25th. You've received a memo from our Deputy Director dated June 29, 2009 regarding the conference and our inability to send all the Members as we have in the past because of the current financial situation that we're facing. However, the conference is gonna be September 23rd to 25th, so September 23rd is a regular Molokai Planning Commission meeting date. And we approached the Commission back in last year when the Mayor announced, you know, she wanted all the Departments to cut their budget by 16%, we had floated the idea of meeting once a month, and that didn't fly with the Commission, but they said, well, we can eliminate some meetings along the way or whatever so --

Mr. Chaikin: Commissioners?

Ms. Buchanan: As an earlier -- DeGray testified, he suggested not cancelling the meeting, but moving the meeting. I'm in favor of moving -- moving the meeting instead of cancelling the meeting because for the past five meetings, we have never gotten to the open -- the open sheet. We're always falling short and running short of time. I don't wanna cancel the meeting. I'd like to move the meeting.

Mr. Chaikin: Any other Commissioners have any other comments? My personal preference is to wait until we get a little bit closer to that meeting date, and determine how backed up we are as a Commission, and make the call, you know, a few meetings out rather than -- rather than way out as we are right now. So, but, I don't know. That's just me. Any Commissioners have any other comments?

Ms. Buchanan: Just one, in the event that the Chair or the Vice-Chair cannot attend, if the -- if staff would consider, I would like to go, if the Chair or Vice-Chair cannot attend, and if that would be allowed. It's just a consideration.

Mr. Yoshida: Okay, we'll pass that along to the Deputy.

5. Agenda Items for the July 22 Meeting:

- a. **Public Hearing on the Molokai Federal Credit Union SMA Permit application. (N. McPherson)**
- b. **Completion of Orientation Workshop No. 2**

Mr. Yoshida: Moving on, the next meeting, July 22nd, we have the public hearing on the Molokai Federal Credit Union SMA permit, and hopefully, the completion of orientation workshop no. 2, which we -- was originally scheduled for the April 22nd meeting, but we haven't been able to get to because of the agendas.

6. Agenda Items for the August 12 meeting:

- a. **Public Hearing on the Department of Public Works bill regarding proposed amendments to the consistency in Title 18 of the Maui County Code concerning subdivisions.**
- b. **Molokai Veterans Center Change in Zoning Public Hearing**

Mr. Yoshida: For the August 12th meeting, we have the Public Works bill which has been circulated to you regarding amendments to Title 18 concerning subdivisions, as well as the Veterans Center change in zoning. I did talk to Art Parr before I scheduled this because I have certain deadlines to work with the staff to have the public hearing notice published. And I guess Art felt that they should move forward with the zoning change at that time.

We have circulated the copies of Council Resolution No. 09-53 regarding amendments to the rural district ordinance. And we feel that probably -- probably will be coming before the Commission sometime in October because they want us to go to the Hana Advisory Committee. There is another Council resolution I believe of the Planning Committee regarding amending the accessory dwelling section of the code to allow for accessory dwellings on lots of 16,000 square feet or greater to provide more affordable housing. This was introduced by Councilmember Molina based on a bill that was developed by some affordable housing advocacy groups. So we believe that will come before you in October. With that given the time constraints, that's all we have to report.

Mr. Chaikin: Just inside of our packet, we did get a letter from the Planning Department in relation to the Zappacosta house. And I believe in reading that, they were asking whether or not the Commission wanted to dismiss the appeal? Is that correct or can you correct that?

Mr. Hopper: Any consideration of dismissing the appeal comes at a contested case hearing later on. That's a letter between the Planning Department and the -- and the appellant. So the appellant can decide to withdraw their appeal or continue with their appeal. But as far as the Commission, the Commission can't take any action or discuss the matter until it actually comes before you as a contested case, until it's actually scheduled on your agenda as a contested case. It would request the Commission dismiss that should the matter proceed, and it would do that in the form of a motion or a pleading that it would file with the Commission.

Mr. Chaikin: Okay, thank you for that clarification. Anything else, Clayton?

Mr. Yoshida: No, that's all we have, Mr. Chair.

Mr. Chaikin: Okay, with that, Commissioners, do you have anything else before we adjourn this meeting? Seeing none, thank you, everybody for your patience. And thank the Commissioners for their continued commitment. This meeting is now adjourned.

J. ADJOURNMENT

There being no further business to come before the Commission, the meeting was adjourned at 4:28 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Steve Chaikin, Vice-Chairperson
Mikiala Pescaia (12:05 p.m. - 2:10 p.m.)
Lori Buchanan
John Sprinzel
Nathaniel Bacon
Napua Leong
Teri Waros

Excused

Joseph Kalipi, Chairperson
Don Williams

Others

Clayton Yoshida, Planning Program Administrator
Nancy McPherson, Staff Planner, Molokai
Francis Cerizo, Staff Planner, Maui
Joseph Alueta, Administrative Planning Officer
Michael Hopper, Deputy Corporation Counsel

**LANA'I PLANNING COMMISSION
REGULAR MEETING
JULY 15, 2009**

APPROVED 08-19-09

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission was called to order by Chair Sally Kaye at approximately 6:00 p.m., Wednesday, July 15, 2009, in the Old Lana'i Senior Center, Lana'i City, Hawaii.

Ms. Sally Kaye: Okay, I'm going to call the July 15th, 2009 Lana'i Planning Commission meeting to order. Let the record show that we have quorum with Commissioners Rabaino, Kaye, Mano, Endrina, Zigmond and de Jetley. And I believe Commissioners Castillo and Ruidas will be joining us shortly. First on the agenda is the approval of the May 20th meeting minutes. Bev and I both sent around corrections. I trust you all read them. So I'd entertain a motion at this time.

B. APPROVAL OF THE MAY 20, 2009 AND JUNE 17, 2009 MEETING MINUTES.

Ms. Beverly Zigmond: I move that we approve the minutes of May 20th with corrections as amended.

Mr. Gerald Rabaino: I second on the motion on minutes of the meeting.

Ms. Kaye: Any discussion, any further additions or corrections? Okay, all in favor?

Commission Members: "Aye."

**It was moved by Commissioners Beverly Zigmond, seconded by
Commissioners Gerald Rabaino, then unanimously**

**VOTED: to approve the May 20, 2009 Lana'i Planning Commission
meeting minutes with the corrections as submitted.**

Ms. Kaye: Now we're going to move to the approval of the June 17th meeting minutes. Also corrections were sent around to that. Do I have a motion?

Ms. Zigmond: Two for two, I move that we approve the June minutes.

Ms. Kaye: Okay.

Ms. Darlene Endrina: I second the motion.

Ms. Kaye: Thank you. Any additional corrections? Any discussions? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay, motion passes. The minutes are approved.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioners Darlene Endrina, then unanimously

VOTED: to approve the June 17, 2009 Lana`i Planning Commission meeting minutes with the corrections as submitted.

C. PUBLIC HEARING (Action to be taken after public hearing)

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions. (J. Alueta)**
 - a. Public Hearing**
 - b. Action**

Ms. Kaye: Next on the agenda we have Joe Alueta representing the Planning Department, transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero lot line residential district and amending Title 19.08, Maui County Code, relating to residential districts and amending Title 19.04, General Provisions and Definitions. Joe.

Mr. Joseph Alueta: Good evening Commissioners. If you don't mind, Madame Chair, I'd like to make the presentation from here rather than have my back facing people. Again, this is amendments to Title 19, dealing primarily with the residential district, both the R-0 overlay – I'm sorry – R-0 lot line district, as well as, the normal residential, which is the R-1, R-2, and R-3 district standards. This is part of our continuing on-going update of the Title 19. We're attempting to, (1), simplify the code where needed, incorporating graphs and tables, as well as pictures because we feel pictures help explain what we're trying to do. You've all heard me say before I don't like word math problems where train A headed east, from Chicago at 45 miles an hour into a 10 mile head wind. And then another train leaving Boston headed west, so I don't like to figure that out. And I don't think most of the public would like to have to try to figure those out. And so we try to make it as simple as possible for people to understand what we mean by a lot of things. Also, because the code has been around since – around 1958 is when the interim zoning provision was adopted by the

– for Maui. There's been minor revisions throughout the way, as well as, chapters being inserted, permits has been added, as well as, nomenclatures or the format in which the code is set up. As part of this revision to all of the chapters, we're trying to standardize it so that they all have the same type of structure from our perspective. What we're attempted to do is we believe that we should have a purpose and intent of what that zoning provision is for. You should list out what is considered to be the principal and primary uses that are allowed within that district. You should have list your uses that are accessory to what are those principal uses. And then you should list what you consider – is considered to be a special use that requires additional review either through the Commission, and then you should clearly define how your standards are in the table format. So you've seen it before in other chapters that I've brought before you and this is just a continuation.

The R-0 overlay – excuse me – R-0 zoning district is a residential district and it allows for smaller lot sizes. It was added after the standard – your regular residential district. And for some reason it wasn't incorporated into Title 19.08, so they just made a new chapter. So what I'm attempting with this thing is we're basically eliminating R-0 and just folding in the standards into the Chapter 19.08, which is the residential district. So that's part of our primary – one of the things that we're doing. Some of the key changes that are different – and if you look through exhibit 1 of the memo report, that's basically the latest, greatest draft of this. And some of the things that we've added again, on page (1), line 25 through 30, we're just standardizing the sections so that they're all the same throughout the code, or throughout zoning chapters. We're trying to add just to provide clarity in some of the accessory uses, accessory dwellings – pools and hot tubs – you know, things that are normally considered functions within the residential district. Fences, walls, patio decks, other landscape features. One of the new things that was added by our director recently, and we'll go into more depth, is something called home occupation and he's created a definition. That's probably one of the things you probably have some discussion on.

The table format with regards to, you know, day care nurseries. Those are existing. All I did was put it into a table format. Those are existing uses that are allowed. Garage sales, we have – I don't know about you but we have garage sales going on and that's kind of a gray area. Is it a commercial use? Is it a normal function of home? And throughout the County, we just consider it a normal function of the home that's allowed however there tends to have – because it's not clearly defined or regulated at all. If you give an inch, some people will take a mile. So we have people who have garage sales either every weekend or we have some – they have their sign out, it says garage sales Mondays, Wednesdays, Friday, so that's not normal. To me, garage sales are something on an odd occasion, and what you're selling is your own personal items, trying to get rid of them. And from an enforcement stand point, it makes it difficult. So our zoning inspectors as well as the general public have asked us to come up with some standards, so we came up with a definition of what we considered to be a garage sale. That will help us with our enforcement as well as neighborhood complaints.

Again, on the bottom of page two, you see a lot of strike outs. That's all being consolidated, so where it talks about accessory uses, as well as the day care nurseries, that whole (h) section is basically that table format that you see up there. Energy system, small scale – that's an existing definition within the code. We're just adding it. This will make it clear that you can do a photo voltaic panel system or solar water heater or something that's consider an accessory to your single-family home. We wouldn't consider a nuclear power plant that's generated for the entire State to be an accessory use to a single-family home. It would have to be something that's clearly subordinate to your own single-family home.

Special uses have not changed. These are the existing ones that are there, that are in Title 19.08, on the residential district. We added on line #26, of page #3. We just changed some of the language for domestic type businesses, as well as education specialized. That primarily is like, say, karate classes, or sewing classes, or something that requires group instructions. And so that's where you have education, and that's already defined in Title 19.

Ms. Kaye: Could I ask a question at this point since we're on this page? On line 13, you have, you've quoted 19.08.030(h). Did you mean (i)?

Mr. Alueta: Yes. Thank you. Good catch.

Ms. Kaye: And on line 22 to 23, increase not more than 10%. How did you folks arrive at that?

Mr. Alueta: That's in the existing language.

Ms. Kaye: Okay, but how was it derived? What's the 10% based on?

Mr. Alueta: In the Planned Unit Developments, PUD's, that are allowed, they're allowed a 10% increase, and so I'm not sure if that carried over.

Ms. Kaye: Just carried over?

Ms. Alueta: Again, it's existing language. If I don't have basis or a reason to change it, I pretty much kept it the same because I figured somebody must have had a good reason to add it in that way.

Ms. Kaye: Okay, and then at line 26, traditional, as defined by whom and what point in time?

Mr. Alueta: I think that's going to – when I talk about some of the amendments that was drafted prior to the Director's proposal to have home based businesses. So I think that

would probably supercede that traditional. At the time when I first drafted this Bill, that language called certain domestic typed businesses and homes provided there's no detrimental nuisance effecting neighbors. Such business shall be normal functions of homes, such as baking, sewing and piano playing. That's already in the existing code, and that's through a County Special Use Permit. Because the previous code, or the existing code, lists baking, sewing and piano playing as certain, a lot of people felt that was a traditional, domestic type use, and so I just changed the word from certain to traditional. That was the recommended language. I don't know. It came out of –. When I reviewed it with the staff, they felt certain was kind of weird, and so they felt traditional was a better term. So that was a recommendation from our planners.

Ms. Kaye: You don't see that problematic? My definition of traditional might not be yours, or the next generations. I mean, going forward, how are you going to define tradition?

Mr. Alueta: Well I think that's part of the –. I think you want certain flexibility and that's why it's under Special Use Permit where a Special Use Permit is required. So that means they would have to go before the Commission and that argument would be made at the Commission level. It wouldn't be made at – unless there was a rule by the Director. But I think that regardless, I think, if you change it from traditional or certain, I think you still run into that same problem because it says such as, or such business shall be a normal function of the home. I mean, I'm here to get your comments. If you feel there needs to be some clarity, I'm open to suggestions at this point.

Ms. Kaye: Gerry?

Mr. Rabaino: Like Sally said traditional, yeah? Traditional in, if you look culturally, and the history and moving forward, we know that home occupancy is clear. Home base – if you look at Lana'i and I'm only referring to the island of Lana'i – in my cul-de-sac, when they first moved in, my neighbor wanted to start this camera business. In past meetings that we had this year, parking was taken into consideration for home business. So, if someone who lives in a cul-de-sac that wants to start a home business, and you with tradition, that is not a tradition. You need more clarity on what tradition is.

Mr. Alueta: Again, two points is that it says traditional domestic type businesses. Okay? And then secondly, again, because that area is existing language, and all I did was change that certain line. We also have the addition by our Director which is his proposal is to make home base businesses to be an accessory use. And if you look at the definition of what a home business is that he has added, that would basically, to me, that supercedes the need for this section (h) all together, if you adopt home base businesses as it is. Because how would you not meet that?

Ms. Kaye: But Gerry raises a good point that I hadn't really thought of, and that's traditional

in terms of who's culture. I just think it's going to be a problem going forward. I mean, you want to comment on it?

Mr. Alueta: No. If it's –. Do you want me to strike? Is your recommendation to strike it all together? Because at this point –. Like I said – or leave the language as it currently stand or are you forwarding it?

Mr. Rabaino: Can I make a suggestion? Okay, I know this probably encompasses the County of Maui. But because our lot size in the current Lana`i City, we have lot size ranging from 3,000 to 4,000. Okay that is the plantation housing. And reading this pass out about the BTC, and you trying to make this, there's no way that you're going to have a home business on a 4,000 square foot, and there's no parking lot, especially if everybody agrees with me on Palawai Lane, behind Lana`i City Service, there's no parking. Even the fire truck and emergency vehicles can't go through. Now if you're talking about future, existing subdivision, and when I'm looking at this town house complex that we got through the mail, the pictures that you have here, yeah, any artist can draw, but my question is where is the allowance when you have all these things so close? It kind of reminds of me of Kapolei, Hawaii Kai – and then when I ride around Wailuku side, especially by Safeway and you look at all those housings over there, and home business – I don't think so. I mean, Commissioners, you know if you agree with me, fine. If you don't, well, let's see your side, but this is mine, what I'm looking at. I'm looking at the island of Lana`i. We're looking at the concept of the BTC for Lana`i. We're also looking at the lot sizes of the plantation housing. If this is just for the island of Maui, fine, but I think we should have a clarity for the island of Lana`i City. And anything moving forward maybe applied. But just for the island of Lana`i City, as far as, home base is concerned – don't get me wrong – I'm not against home base business, but we have to look at the lot size and the way the County has structured and designed the roadways. Because you look at Lalakoa I, II and III, the roadways, is like, this is Japan. Land is becoming a precious commodity. If you look at the Olopuia Woods, when they hold baptismal party, graduation party, in the cul-de-sacs, the cops are there to make sure that you do not park. And if you're going to have a tradition of a home business in a cul-de-sac, it ain't going anywhere.

Ms. Kaye: Actually Gerry, I think at this point, Joe, you're asking us to comment on the changes in the language. You're not really dealing with lot sizes, correct, with this particular? Or are we going to get through parking?

Mr. Alueta: Again, the proposal by the – the traditional domestic type businesses in the home that did not meet the definition of home occupation – again that was added prior to – I mean, that's existing language. A lot of that is existing language. As to whether that's moot relative to home based businesses, and if you look at the definition of what the Director is proposing. And again, you need to decide whether or not your comments are that addition of home base businesses is appropriate as an accessory use – meaning

there's no permit or no public review – is appropriate for Lana'i, or if you want it at all. And then that's separate from the lot size issue. I'll go over the diagrams.

Ms. Kaye: Well, just to clarify, though, because Gerry's concern is a good one. This is special uses, and it would require the Planning Commission, if I'm reading that right, Gerry, approval; and the rest of the sentence after traditional, provided there would be no detrimental or nuisance effect. So what would be a nuisance in a small lot neighborhood as opposed to a 6,000 might be different. So if this would require Planning Commission approval, it would be handled on a local level. Is that correct?

Mr. Alueta: For that particular statement. But for home based businesses, that would be, it would not be handled on a local level. It would be handled as an accessory use as an allowed use. So if it did not meet the definition of a home base business, meaning it had higher impacts or higher amount of people visiting or square footage or whatever, then it would be considered under (h), potentially under (h).

And the again, let me just go through the rest of it and then we can jump back to the code itself just to give an overview. Again, education specialize, that's an existing definition. It made sense since you've already have one for school, and for these others – daycare, nurseries and –. Development standards, again, we basically took wording and tried to put it into a table format. The difference between the existing verbiage code, and what's in the table is – one of the things that we've added is lot coverage. And on exhibit 11, I give you an example of what how that relates. It should be your last exhibit on your memo report. And that gives you how that differentiates from if you just applied the standard set backs – what would be your lot coverage.

Ms. Zigmond: Joe, I have a question please. I'm not understanding what is a flag lot – the stem of the flag lot. What's a flag lot?

Mr. Alueta: What about the stem of a flag lot?

Ms. Zigmond: I don't know what it is. It's under notes.

Mr. Alueta: That is not counted or something. Except the stem of a flag lot shall be exempted meaning that if you have a flag lot, you don't count the width.

Ms. Zigmond: I don't know what a flag lot is.

Mr. Alueta: If you look on exhibit – or figure 1 – if you look on figure 1 on the exhibit of page 5 – on the next page – a page over from that table. If you look, and you'll see a lot where there's a flag, and it's labeled flag lot, okay, that's basically your driveway, so you may have 12 foot flagged lot where you have your easements to get to the main property,

and we would eliminate that. When we measure your lot width, we would only measure basically the rectangle part. Does that help? Okay. That's why my pictures help doesn't it? So, I don't know, it's subdivision. I just try to carry over. Again, everything is there. As far as setbacks, one of the interesting thing – so we have a lot coverage – one interesting, on the side and rear on the setbacks, once they're above 15 feet, we're moving away from stories and going to like you're above – any portion of the building that's above 15 feet, we have a setback. We're allowing for free standing antenna or windmill, turbine structures. They have to be set back one foot for every foot of height in the tower.

Mr. Stanley Ruidas: Joe, I was wondering about that. If your lot is 15 feet wide.

Mr. Alueta: You can only get like maybe a 22 foot tower.

Mr. Ruidas: If it's in the middle?

Mr. Alueta: If it's in the middle. That's right. So it doesn't necessary mean that, you know, somebody, with at 3,000 square foot lot and he's got 40 foot up frontage, is going to put up a tower. It's more for somebody who's got like a larger lot. And it's standard that we're adding throughout the code to help, (1), for alternative energies, but (2), for –. We recently had a case here which the Federal government told us that he couldn't limit antenna height for these hand radios. We couldn't have restrictive language because the FCC had the control over it.

Mr. Ruidas: Was it part of the one we discussed back in January, about the height limits?

Mr. Alueta: We did talk about that for another Bill, and so it's something that we're adding in throughout the code. Again, with the small energy systems, because alternative energy seems to be big right now and I think it will continue to be important for a lot of areas, and so people want to have the alternative to do – and we're seeing a lot of small scale wind turbines being put up. Some of them are actually being connected to the structure and so we have a provision in which you could do that and you would not exceed 40 feet. So if you had one attached to your building, it would have to be 40 feet because that would be your maximum height. That would take into account, like, you know fans, vent pipes, chimneys, antenna, equipment used for small scale energy systems on roofs – not to exceed – so you could do PV panels tilted. Some people have some tilt up either photo voltaic panels or solar water heaters. But we wanted to have a free standing, and again, 50 feet is a maximum. But again, one foot for the boundary. So you're going to have a property lot that has a minimum lot width of at least 100 feet in width. So it would have to be like a minimum – if it was in the middle of the property – it would have to be a 10,000 square foot lot, or 100 by 100 lot. And it would have to be right in the middle.

So accessory structures within the set back. Again, it's kind of a gray area. We've always,

you know, what's considered – it can be a mail box, trash enclosures, boundary walls – with the exception that retaining walls, accessory structure and set back shall not exceed eight feet in height. Currently someone could come in and put up a fence or a boundary wall, 30 feet in height. If you go to the building permits, and you wanted a wall that tall, they'd let you do it. So you could theoretically enclose the entire – build a fortress around your property, and that's kind of a loop hole that we're trying to close right now. So the maximum height that anybody could build a boundary wall would be eight feet.

Again, in covering on page five, figures one and two, basically it's just showing an example of trying to explain the definitions. What would be a buildable area, what's your rear lot line? I'm just trying to show a sample of what we mean by the standards and diagrams. And that goes on to page six, and then on top of page seven. And then non-conforming, we're just providing the –. The County Code has a standard non-conforming provisional section 19.500. And then all of the bottom of seven and the top of eight, that's basically just striking all of those verbiage that's reflected in the standards. On page eight, on line 14, is your standard rule making authority. And then you have the new definition that's being proposed by the Director and that is the home base businesses. And then we also have our new definitions for garage sale, as well as, access yard or yard – meaning because we have a new set back for that. So if you're a corner lot, you're going to have 15 feet on the sides that you have a roadway.

Ms. Kaye: Gerry?

Mr. Rabaino: Joe, page eight – as I was saying earlier on for item 26, and as Sally indicated on page three, line item 34 – okay, I know of several homes that have retail sales that shall be limited to produce products by home based business – like making guava jelly or bake sales and what not – to help out. But what I was referring to earlier is that when somebody wants to make a home business in their little subdivision, and particularly if it's on the cul-de-sac – and a good one Beverly pointed out, the flag lot – you know what I mean? Where are all these customers going to park? They're going to be obstructing because of the street size length or width. So the language that I'm – the intent for you to clarify for the island of Lana`i City – if there's a language that we could interject in here, where it says Lana`i will have – what's the proper word – to be exempted with certain things because of the way it's designed? Because I understand this is probably for future and any subdivision coming into play because you're updating. Or you're not even update?

Mr. Alueta: This would apply to existing subdivisions. And again, if you have a concern over the language proposed by the Director, we're more than willing to listen to alternatives. Again, Molokai had the same situation with this idea of commercializing or having that type liberties with home based businesses. And I believe they recommended to have it listed as a special use permit. That way it comes to the Commissions to determine on a case by case basis, rather than having it as an outrightly accessory use. Meaning there's no

permit, the Director would not make any call. It would just be, you meet these qualifications, you meet these definitions, you can run a business. And so, they felt enforcement would be a key issue without having a permit, having it reviewed and coming before a public hearing.

Ms. Zigmond: So what I wanted to ask about enforcement, on page nine, starting on line one it says, the customer of the home base business shall be limited to two at any time and a total of eight per day, so like, who's keeping track?

Mr. Alueta: Well, they'll be subject to complaint by the neighbors and/or inspection by the County. But most likely if there's an excess amount of people coming to the property, then they would probably have complaints by the neighbors, especially if they're not able to accommodate. That's why I think the Director felt it was important to limit the number because if you had two, you could accommodate those people on your property because normally there's enough parking onsite.

Ms. Kaye: I have a question similar to that, and then I want go back to Gerry's question which is still out there. On page eight, line 28, same question – no more than 25% of the floor area of the dwelling shall be used by the home occupation. How are you going to enforce that?

Mr. Alueta: Again, those are concerns raised by the Moloka`i Planning Commission also. I didn't write it – that's all I can say – and there was some discussion, but I understand your concerns. But I guess from an enforcement stand point, if there's a complaint with regards to how much square footage is being used on the property, then we would have to send out inspectors. How we know about how much square footage is actually being used, it would have to either come through a complaint.

Ms. Kaye: Okay then, let's go back to Gerry's. If I understood your response to him, Lana`i would have the option that Moloka`i suggested of having this be considered a special use which would then require a permit and it would come to the Commission for a permitting.

Mr. Alueta: Correct. If you want to make it for Lana`i only or you want to make comments as far as generally for the County is up to you. However you vote on it, you can make those comments known.

Ms. Kaye: Do you want to hold that and then we'll go through the rest of it, and when we make our recommendations, we'll consider it? Okay. Thank you.

Mr. Alueta: That's pretty much it. That does cover –. I mean that pretty much covers the amendments. Again, I'm just trying to highlight what was, I guess, issues or major changes to the Code. Also, some of the comments from Moloka`i – Molokai, as far as on accessory

uses for energy system small scale, they wanted to add language which the Department doesn't have too much of a problem with that. Their comments were provided that it does not produce noise, dust, smoke, glare or odor that negatively impacts the neighbors. So they were okay with small scale energies – you know, energy system small scales. The definition includes bio-mass, so that's – if you have a barbeque that's considered bio-mass classification also. But, even a small scale bio-mass may produce or –. So they just wanted to have that provision to say, yeah, it's okay to do small scale, but, you know, if you impact the neighbors in a negative fashion, you know, create excessive smoke or noise. And I think the issue came up with, say, someone does a noisy wind turbine or like I said – I think they were thinking more on the bio-mass classification that someone does one and it creates a lot of smoke or smell that could impact the neighbors. Again, some of the other changes –

Ms. Kaye: Wait, hold on. You're talking about (g) under special uses?

Mr. Alueta: No (k). On page two, line 29, energy systems small scale. That was the comments from Moloka'i. As far as the standards, access yard, setback, that's something new. That means like if you're on a corner lot, you're going to have –. It's not just 15 front yard – that's normally where your access is. But if you're on a corner lot, rather than have a six foot set back, you'd have a 15 foot setback on that roadway side. Lot coverage – I wasn't at the Maui Planning Commission – but there was a lot of discussion at the Maui Planning Commission from some discussion on it and they wanted a ratio, so that's why you have that exhibit 11. And that shows you like –. Again on a 6,000 square foot lot, under the existing setbacks, you'd be able to build a 2,400 square foot one-story house, or potentially a 4,800 square foot house, with the lot coverage. I'm sorry. With the lot coverage of 40% on a 6,000 square foot lot, you'd have a potential of a 2,400 square foot house, and a potential for 4,800 square foot total floor area house on a 6,000 square foot lot. Under the existing law, it would just apply in the six-foot setback and everything, you would have a potential of 3,792 square foot single-story house; and a two-story house, you could do a total of 6,792 square feet. So what we're trying to illustrate is that even with requiring a lot coverage of 40%, we feel that 2,400 square foot house is pretty big for a 6,000 square foot lot; and a 4,800 square foot house is pretty big for a 6,000 square foot lot. And then again moving up to say – again the examples are shown there – for a 7,500 for the R-2 district as well as the R-3 district on a 10,000 square foot lot. So you could get a pretty good size house even with your lot coverage of 40%. Now how that works out with, again, you can do additional math if you were concerned with the smaller lots here on Lana'i. And that is something you should probably consider given some of the comments I heard tonight.

Again, the loop hole of fences, potential of having 30 foot fences or boundary walls. We felt we needed to close that loop hole, to limit that to eight feet. We didn't think that would be unreasonable. And again, we're just trying to clarify on some of the gray areas, which

are allowed uses such as pools, fences, you know, hot tubs – obviously storage sheds would be allowed. They're not listed but they are –. Other subordinate uses and structures which are determined by the Director of Planning is clearly incidental and customary. And that's all.

Ms. Kaye: Okay Commissioners, any questions for right now, and then we'll take some public testimony and then go back to our concerns to make recommendations? Leilani, do we have a sign up sheet tonight, or do we just want to have a show of hands? Testimony tonight for all items will be limited to three minutes per testifier. Okay, we have four names, but no indication of which agenda item. Ron, you're first on the list. Did you want to speak to this agenda item? Mr. McOmber is saying no. Archie Nahigian? No. Pat Reilly?

Mr. Fairfax "Pat" Reilly: Hello. Pat Reilly. I respect the County and I respect what you guys have to do. I can imagine that the Planning Department spent hundreds of hours going through these and figuring out a standardization for all of Maui County. You, as the Planning Commission, have 15 or 20 minutes to review all of that, and somehow apply it to Lana`i and have it make sense. It's a very difficult job. If I were going to offer a comment, and I agree with Commissioner Rabaino, that much of this does not conform to my understanding of how Lana`i works as a community in terms of its household, and even as businesses. And that would be a fundamental question because once you try to standardize everything – and you can hear it from Moloka`i – it's very difficult to take a standard and apply it specifically to our community. And frankly, I don't know if you'd want all of these permits coming in and have to hear every little permit that was coming up, you'd be in meetings forever hearing permits. So I respect what the Planning Department is trying to do in terms of standardizing things, make it easier for enforcement and clarity. On the other hand, some of the definitions and procedures, I was particularly struck by the rule making procedure that the Planning Director – I think it was 080 – was unilaterally going to be able to make the rules and redefine the functional definitions of all those things. Ultimately it changes the community plan and when I look at the community plan I think how Lana`i functions, some of these – again, I agree with Commissioner Rabaino – don't conform and I don't know how you address that. You guys have 20 minutes to do 100's of hours of work, and I don't know how that works.

The two questions I had – what happens to 201G lots? Does this apply to those? And what happens if this is designed as a historic district? Thank you.

Ms. Kaye: Commissioners, any questions for Pat before he runs away? Okay, John Ornellas. I'm sorry John. I'm sorry. Wait one second. Gerry had a question for Pat.

Mr. Rabaino: Pat, the G-lot, what were your concerns for the G-lot again?

Mr. Reilly: My understanding is that there are 217 201G lots designated in Lana`i City.

Those 201G's are affordable housing that was passed through the State Legislation. So my question is how does this code impact 201G lots? Thank you.

Mr. Rabaino: We'll just ask Joe later, then, regarding the G-lots.

Ms. Kaye: John?

Mr. John Omellas: . . . (Inaudible) . . .

Ms. Kaye: I'm sorry, John, only this agenda item at the moment. If you wanted to testify on another item, then we'll take that a little later. Thank you. Is there anyone else that would like to speak to this agenda item? Okay Joe, do you –? Now closing public hearing. Do you want to address Pat and Gerry's question about the –?

Mr. Alueta: If it's not zoned R-1, R-2, R-3, or R-0, then it's not subject to this provision. So if the 201G is in the State Urban and County Ag, or State Ag and County Ag, that's not subject.

Mr. Michael Hopper: 201G lots could be zoned. There's classifications. But if it is, then it would still have the minimum lot size allowed by the 201G approval the Council would have. A lot of times they make the lot size smaller. So the 201G size voted on by Council would apply even if you amended this ordinance and the zoning. The zoning technically stays but it's essentially given – most 201G projects are given an exemption from that zoning for the purposes of constructing the development. So those minimum lot sizes of the 201G ordinance would apply rather than the zoning in that situation.

Ms. Kaye: Okay, so let's clarify this. The Code the way it's written right now, without these changes, would permit a home occupation for traditional, certain domestic activities, as permitted use. And the changes you're suggesting are not going to alter that. So the concern that is expressed about Lana'i's density in some areas as a result of some of the zoning permitting makes the problem much more difficult in terms of parking. And I think Commissioner Reilly is right, this Commission might not want to be hearing permits. But what do we do? Have you any thoughts on how to suggest how to . . . (inaudible).
..(changed cassette tapes)

Mr. Alueta: First of all, the home occupation, or the home based business, is a new definition. That is not in the existing code. Certain types, domestic business such as baking, sewing and stuff is considered to be a County Special Use Permit, under the existing Code.

Ms. Kaye: So the occupation that Gerry is referring to in his neighborhood, are they not permitted? Right now they're not permitted and they could be subject to fine?

Mr. Alueta: What was the occupation? I'm sorry, I'm missed that.

Ms. Kaye: Making jelly and selling it out of your house.

Mr. Alueta: Yeah, that would be considered that you would need to get a County Special Use Permit or under the – if you don't sell it out of your home, it could be considered a normal function and it could be considered an allowed home occupation provided you don't have any customers coming to your property. So if you were to, you know, provided you had a DOH certified kitchen, of course, you making your jelly or whatever, and then you took the jelly, and then you took the jelly to the local supermarket, that's an allowed use. That's fine. If you have a sign out that say eight to five, homemade crafts or whatever, then that's not – that would be considered a – you'd require a Special Use Permit – if not a County Conditional Permit because you're basically doing a retail store in the residential district.

In the case of your 201G, if the underlining zoning of that 201G project is one of the residential categories, and depending on what your exemptions were granted at the time of approval –. Because a lot of times, these 201G are exempted from the provisions of –. They may be broad based, meaning you're exempted from all the provisions of a residential district. That means you're exempted from everything, or you're exempted from the development standards of that residential district, meaning you can do a smaller lot size. However, the uses and permitted uses and restrictions of that residential district still apply unless it's specifically waived. So there is a concern that if you have 201G project in which you have 3,000 square foot lots or 2,500 square foot lots and they exempted you only from the lot size and set backs, but your uses are restricted by the residential district, then, yeah, you could potentially have a concern. And again that's where you may want to say either recommend amendments to the home occupation. Either have it moved to a Special Use Permit requirement or say home occupation is allowed on lots greater than x to avoid some of your concerns such as, you know, saying that the definition for home occupation shall apply only to lots greater than 10,000 square feet or greater than 8,000 or whatever you want. I'm just trying to give you some – to address some of your issues with smaller lots.

Mr. Rabaino: I want this for the record though, okay. In the three years –. See, I live in Lalakoa III. There's this cul-de-sac. We have a t-formation. For those Commissioners know where I'm located. In the three years, the first year we had baby sitting. Come drop off in the morning, traffic. Okay, and school never start yet. Then you get the school movement. They're still dropping off child care. That lasted a year and a half. The following, we have a barber shop in the cul-de-sac. So I'm pointing out things that I see in my little area. In that three years, there were four different businesses in that cul-de-sac. My concern because we get kids running around in there, there were homes in that cul-de-sac that sold at least three times from the time it opened in 1988. Folks move out. Move in families. Business starts. We've got barber shop. The camera shop couldn't go through

because there was no way they could deposit the chemicals, so he lost out. The hair barber shop one was accepted but I don't know what kind of permits they went through, but she started her business. Now there's another talk of another business that suppose to be in another cul-de-sac, but I'm just concerned about the traffic. Now with that little space that I'm witnessing as a resident in that area of Lalakoa III. Now, if you step out of the box and you take a company corner lot which is a plantation home – if you know where the fleet maintenance is located – you go across the street from Lana'i City Service there's two several corner lots that's less than 4,000. If he's mentioning home based business and somebody decides to start a home base business in this little square footage, there's no parking, number one.

Ms. Kaye: Okay, I think Gerry's concern is a really valid one and it shows the clash between smart growth principals where you're trying to keep people near their home, and there are very, very few commercial opportunities for people to set up businesses which almost drives them to operate out of their homes. I would question the one example that Gerry gave that someone had a permit or couldn't get a permit. Right now, if I wanted to run an occupation out of my home, the code would permit me to do it, and would I have to get a permit, and from whom?

Mr. Alueta: The Commission or the County Council.

Ms. Kaye: Well, obviously, these particular people have not come to get a permit, so you're saying they're all illegal?

Mr. Alueta: Well the only one that I heard was legal was the day care. Childcare facility is probably the only legal one that I heard so far unless they were doing –. And if they've got customers coming, then they're not a legal business. I mean, they're not legal.

Ms. Kaye: Okay, but this change to the code you're suggesting would make them legal.

Mr. Alueta: Would potentially make them legal. Yes.

Ms. Kaye: Okay. So I think that's the consideration that this Commission has to think about.

Mr. Alueta: I understand in the sense that, you know, I lived on a very narrow street, and I had the top selling "batu" dealer behind me. And down the road was Aunty with her Saturday morning, 50 ukulele class kids or whatever. So I had the gamut around me of commercial activity. And so I understand the concern when you're on a small narrow street. And so I'll say the "batu" dealer was less intrusive probably than the ukulele classes, but it only happened on Saturday. But, you know, it all depends on that you –. So again, if there's an issue with the small size lots – if that's the only concern. Again,

you've got to look at the definition that's being proposed by the Director as far as what he's defining as to be a home base business. He's established standards. If you feel those standards are too lenient or you need something to tweak it, fine. That's why we want your comments.

Mr. Rabaino: Joe, I'm not going against you, but who is the Director? Has he been to Lana'i?

Mr. Alueta: Jeff. He was just here.

Mr. Rabaino: Yeah, but has he really --? I mean, putting something on paper and looking at the physical character of it --

Mr. Alueta: It's like spaghetti. You know, sometimes, some of these things, we have a lot of concerns by people who, given the economic times, and there's a panic during economic times, and people want to try to stimulate the economy and you have local people who want to loosen up, loosen up, we want to be able to -- this needs some help. And so you kind of draft something. And it's like spaghetti. You throw it against the wall and see if it sticks. And that's kind of what this proposal is. It's like you're the community representatives and also a body that's going to be approving these, you know, so we want to know what do you think. This has gone through our department, through our staff, and so now it's your turn. That's why we drafted it.

Ms. Zigmond: Joe I have a question on the day care. I didn't see the word licensed, so could this be like any nana or tata that wanted to watch a few kids as long as it was the ratio of children per total square footage? It would be okay?

Mr. Alueta: Correct.

Ms. Kaye: Just as a housekeeping matter. I'm going to assume the letter that came in from the Fire Department that repairing your own car in your yard is exempted from car repair? Repair of automobile and other vehicles?

Mr. Alueta: I believe, yeah, that's the concern. If you're working on your own car, it would be exempted. They also had --. Did you get the July 13th letter? I believe that was --. That was when they were specifically commenting on the concept on home based businesses. So again, what happened was just so you know, the staff report was -- the draft that you saw or the main draft went out to agency comments. It did not include the home base business provision. That was added after it went out for agency comments. And so I asked the Director to transmit. To me, it was a significant change, it needed to go back out to certain agencies to comment on. And so now you're seeing some of those comments. That's why you're getting that particular comment late.

Ms. Kaye: So we don't have comments from agencies. Is there any to wait and see what these agency comments are?

Mr. Alueta: You should have gotten –

Ms. Kaye: I thought you said the home occupation part.

Mr. Alueta: Yes, the home occupation part did not – was transmitted out to agencies on June 17th. And so some of them are coming back a little late, and that's why we had to hand them to you tonight. So that's why you have like the DLNR's comments and you've got the Fire Department's one.

Ms. Alberta de Jetley: May I make a comment please? Joe I really like the definitions that you have in this because basically what you're saying is you can have a home base business if you do not interfere with the quiet enjoyment of your neighborhood, your neighbor's property right to peace and quiet within the neighborhood. So if you're going to have ukulele classes with 20 kids there, on Saturday morning or any other day of the week, then you're infringing on my rights to peace and quiet. If you're going to be repairing four or five automobiles in your yard, commercially, then that's not in keeping with the residential character of the neighborhood. If you're a massage therapist and you have one person coming to your house, twice a day, or two people, twice a day, you're not really infringing. It's a quiet activity. You're not infringing on your neighborhood. Parking is an issue on Lana`i. So if you have people coming and going out of your property, out of yard, parking in your neighbors driveways, yes, you are infringing on your neighbor's rights to have peace and quiet. So I think it's pretty basic. What you're saying is you can have a home business as long as you respect the right of your neighbor to enjoy their property with peace and quiet.

Mr. McOmber: . . . (inaudible) . . .

Ms. Kaye: Yes, public hearing is closed.

Mr. McOmber: . . . (inaudible) . . .

Ms. Kaye: Yes I did. Yeah. Yes Commissioner Rabaino?

Mr. Rabaino: I just want to add for the record and for the Commissioners, on Third Street – you guys know where that is – as Alberta said earlier, we have on Fraser, the back on Gay Street, there's some activity going on there. And if you cruise around Lana`i City, there are other activities that's regard to home base. As Zigmond states enforcement, it seems like the enforcement when they come to Lana`i – as on my street for the Fire Department – they give so much warning and nothing has been applied by enforcement.

It's noticed, noticed, noticed. You've got rats coming across. You've got cars, as you indicated in here. If we're going to approve something like this and the enforcement not even being applied, it's useless. And you know, there's only 3,000 people on this island, and this is a plantation island. The enforcement – fixing cars, there's about four if you cruise around Lana'i City. You have several homes that is so dilapidated that it's encompassed by hoarding and supplying things in their yard where you see the Fire Department go there, walk around, it's still the same.

Ms. Kaye: Gerry, I don't think that's the issue tonight. Okay, the point is that some of those uses you're referring to right now are already not permitted. It's just that no one is turning them in. And if they are turning them in and they're not being enforced, then that's an issue to take up with the Planning Department. But you can't just make a blanket statement because they're already not permitted. This won't make them permitted. Your concern, I think Joe tried to address with, do we want to consider limiting home occupations to a certain lot size? Because regardless of whether you put all these requirements on it, if somebody doesn't listen and obey the requirements, it's going to cause a situation where someone has to turn them in and it would be enforced. I think what Joe was suggesting is there's less likelihood of the kind of congestion. You're talking about if the occupation is limited to a certain lot size where there is more space between the houses and more parking space out front. That's, I think, what you were suggesting. I'm not necessarily agreeing.

Mr. Alueta: I'm just trying to get an understanding of what your main concern with. On Moloka'i it was a different concern. Moloka'i felt that enforcement would be difficult and arbitrary. It would require that the enforcement be primarily through the neighbors complaining. Then therefore, then we would have to go out and there would be an argument because it's an allowed use. As oppose to, if everybody had —. From an enforcement standpoint, it's difficult. Is it a violation or not a violation? If you make it a permit through the Special Use Permit process, they would have to come before the Commission, and get approval, establish their conditions, and the Commission can, at that point, establish limitations and conditions. And they feel it's easier to have a permit that has conditions and revocation, as well as, the public coming in and having their two cents said on whether or not this a good idea for their particular neighborhood in their particular location. Now that was their issue with regards. On the flip side, you sometimes what to make – if you make easy and make it an allowed use – I'm sorry, if you make it a permit, everybody has to get to get a permit, then it discourages certain people. And you sometimes have people who have really benign uses such as maybe a massage place, or chiropractor, or whatever or someone who has got an architect, who have a very limited clientele coming. They have to go through the same permitting process, and I think that's the balance. And from the Moloka'i standpoint, they didn't care. If you have no problem, then you shouldn't have a problem getting a permit, and there shouldn't be any problem enforcing that permit. And so that's what they felt. That way it would make it —. If a permit

is required, then if you don't have a permit, it's easy. You don't have a permit, therefore you're breaking the rule. Again, I think, the Department, or our Director, was taking the other direction which was we don't want to punish everybody. We want to assume everybody is innocent and is going to comply with the law, and we'd rather chase, I guess, the ones that are really obnoxious. But from your aspect, from what I'm hearing, is you don't have a problem with the home occupation being allowed. It's just that because of the small lots, you have a concern with parking and addressing that issue, so that's the reason I felt that you know --.

Ms. Kaye: Okay Commissioners, we're at the point where I think we want to either make some concrete recommendations. Quite frankly the only one that I had were the questions I asked in changing (h) to (i) in the subsection. And Commissioners, any other suggestions?

Ms. de Jetley: Madame Chair? Since Gerry has such a concern about parking, maybe we could add that on Lana'i, home base businesses with customers coming to their premises, must provide off-street parking on their own property. That will take care of it. Then they can't park in the street in front of your house. They must park inside their property. That would take care of it.

Ms. Kaye: What about somebody who's on a small lot and has a fence, and the car can't get through?

Ms. de Jetley: Well, you're limited to two people at a time, and many of the smaller lots -- if you had a small lot in town -- many of your customers may potentially be walking to your place of business. Like if you were a seamstress and you were on a small lot, your customers could park else where, on the next street over, or on the main street, rather than blocking a neighbor's property.

Ms. Zigmond: Madame Chair? That wouldn't work on Palawai Street. I mean, and I'm sure there are other streets like that. There's just nothing. We couldn't provide it.

Ms. de Jetley: Then it would mean that they would not be able to operate a home business on Palawai or any other substandard street.

Ms. Kaye: But that's discriminating against someone who doesn't have the financial ability to own a bigger property, but still needs to run a home occupation.

Ms. de Jetley: They could still have a home base business. They could meet their customers elsewhere. They don't need to meet them at their home. They could meet elsewhere.

Ms. Kaye: Gerry, did you want to add something?

Mr. Rabaino: I agree with Alberta. I was just reviewing what he was reading here, yeah, Joe. It's fine, but I think we should insert that parking limitation.

Ms. Kaye: And how would you word it?

Mr. Rabaino: Alberta, you want to state what you said about the parking? That restriction one?

Ms. de Jetley: Well I'm looking at this. It says your home base business, you can only have only one other person besides the member of the family can be employed at your business. So if that one person is coming to work at your property, at your business on a daily basis, that person will have to have off-street parking. So you need a minimum of two parking spaces available.

Mr. Alueta: If I may, you may want to just add, make a recommendation that 19.36, parking ordinance, create a parking standard for home based businesses of either providing one or two additional parking stalls onsite. You're currently are required to provide two parking spaces on your property for the single-family home. One for accessory structure. So if you're going to have a home base business, right now, there's no parking standards potentially, so I would suggest just adding it.

Ms. Kaye: The only thing I'd point out is that existing businesses around the square aren't now required, and have been successful in getting variances to provide onsite parking because there is so much around the square parking, and there isn't any other commercial space available. I'm just playing devil's advocate. The notion that home occupation should be permitted is a good one. How to control it, I'm not sure it's going to be done strictly through parking.

Mr. Alueta: Well, I've only heard your concern over parking, and that's the only reason I could suggest at this point. I'm trying to address some of the issues.

Ms. Kaye: Gerry – I thought Gerry's earlier concern was density of action too, and noise level, which as Alberta points out is covered by these.

Ms. de Jetley: Madame Chair, I almost think that we should send this back to send it back with no comments.

Ms. Kaye: Commissioners? Anyone disagree with that? Okay, thank you Joe. Can I ask – there was an indication from the public that maybe they would've wanted to testify to this. Can they still respond in writing to the County? Okay.

Ms. Zigmond: Do we need a motion?

Mr. Alueta: Yeah, I was waiting for the motion.

Ms. Kaye: He's waiting for someone to make one. I'll entertain a motion that we send this back to the Planning Department.

Mr. Alueta: No, recommend this to the Council.

Ms. Kaye: With no comments and no changes. I'm sorry, to the Council.

Mr. Alueta: With the changes with just the typo of (i).

Ms. Kaye: Yeah.

Ms. de Jetley: I so move.

Ms. Kaye: Making a motion that it goes back to County Council without comment.

Ms. de Jetley: I move that we send this back to the County Council with no correction other than for the typo.

Ms. Kaye: Do I have a second?

Ms. Leticia Castillo: I second it.

Ms. Kaye: All in favor? Any oppose? Okay, motion carries.

It was moved by Commissioner Alberta de Jetley, seconded by Commissioner Leticia Castillo, then unanimously

VOTED: recommend the Bill back to County Council with no comments.

Ms. Kaye: I've been asked for a five minute break for everyone and we'll be back.

(The Lana'i Planning Commission recessed at approximately 7:15 p.m., and reconvened at approximate 7:20 p.m.)

D. UNFINISHED BUSINESS

1. **CASTLE & COOKE RESORTS, LLC requesting a State Land Use District Boundary Amendment from State Agricultural District to State Urban District and a Change in Zoning from County Agricultural District to M-2 Heavy Industrial District for the Miki Basin Heavy Industrial area encompassing about 6 acres off of Miki Road, adjacent to the Maui Electric power site at TMK: 4-9-002: portion of 001, Miki Basin, Island of Lanai. (DBA 2008/0002) (CIZ 2008/0003) (J. Prutch) (Public hearing was conducted on January 21, 2009. Matter was last reviewed at the March 18, 2009 meeting.)**

The Commission may take action on these requests.

There may be a possible continuance if the information requested at the March 18, 2009 meeting has not been obtained. (Refer to the April 6, 2009 letter to Mr. Mich Hirano from the Planning Department listing the information requested by the Lana'i Planning Commission.)

Ms. Kaye: We're back in order. The next item on the agenda is State Land Use District Boundary Amendment from State Ag District to State Urban, and a Change in Zoning from County Ag to M-2, Heavy Industrial District for the Miki Basin heavy industrial area encompassing about six-acres off Miki Road.

We're going to make a record at this point. This matter first appeared on our agenda in January of '09, and it was deferred until March due to under representation by the applicant and a multitude of questions left unanswered as a result. It was deferred again in March after lengthy discussion and after several informational items, some to be supplied by the applicant, and some by the Planning Department, were requested by the Commissioners. It was made clear at that time, and in subsequent meetings and communications with the Planning Department's personnel, that this agenda item should not have been set again until the Department had gathered all information requested.

Now, for tonight, I had intended without going into the substance of the response as to the items requested to ask the Planning Department to simply address whether all data requested had been secured with the view to continuing this agenda item. As you note, on the amended agenda, this was subject to continuance. Now I understand there's a new wrinkle. Having made inquiry to Corporation Counsel on why for the very first time, there was a notation on the Planning Department's communication to us dated July 6th regarding time limitations for review of Changes in Zoning and District Boundary Amendments. I note that neither the Planning Department, Corporation Counsel, nor the applicant or its consultants have raised any objections to past deferrals requested due to a lack of

information, nor brought this limitation to our attention. By my calculations the clock would have run on a CIZ, Change in Zoning, on February 19th, and for a District Boundary Amendment on March 11th, or seven days before the March Planning Commission meeting where this item was taken up, yet we heard nothing until now. For the record, the Maui County Charter tasks us with reviewing land use ordinances and amendments prepared by the Director and we are to transmit findings and recommendations to County Council no later than 120 days after the final public hearing. If that provision applied, and the final hearing was in March, then today would be the 119th day. But after consultation with Corporation Counsel, I've been advised that to be safe, we should act tonight.

So I am proposing to the Commission the following steps. After briefly hearing from the Planning Department regarding whether anything new is to be offered, we then will make a record specifically of what we asked for and what has not been received. We would then take public testimony which is required because since this is an agenda item. I would then entertain a motion that we would forward this application to County Council with a message that we cannot take action on the application at this time because we have not received all the information we requested from the Planning Department and the applicant, and suggest that County Council may decide not to act until they receive the information for which we have been asking. That way County Council may decide to seek the missing information without laboring under the time constraints imposed on us. Following that, we may as a Commission offer conditions for County Council's consideration as we have done on past applications with the understanding that all or none of our suggestions may be considered by Council when and if they set conditions to protect the community's interest. This way we would have fulfilled our duty and responsibility under the County Charter to "advise the Mayor, Council and Planning Director in matters concerning planning programs," and we can make sure our voices and the work we have done are heard and offered to the County Council for consideration. So at this time, if we could hear briefly from the Planning Department whether there is anything new to add after which we will make a record of what we've asked for that hasn't been received.

Mr. Joseph Prutch: Let's see, there's nothing new to add other than what's in your staff report, of course, and that letter from Castle & Cooke dated July 10th that you also received in an e-mail from Leilani. Those are the only items that I know that are part of this that we have to give to you today. Nothing new since that July 10th letter.

Ms. Kaye: Okay. So, then, what I would like to do is just as you've all read our minutes, we've all taken part in the discussion in January and then in March, and I'd like to just get on the record for County Council's consideration what we've asked for and I'm going to go down the list in the order presented in the Planning Department's letter of April 6th beginning with the response to our question regarding how the applicant plans to offer fee simple lots for sale. The response was "it's too early to tell." With respect to the request that the applicant contact the Lana'i Water Advisory Committee (LWAC) and the

Department of Water Supply (DWS) to come to an agreement on whether the current infrastructure will accommodate the additional usage. This was in fact agreed to by the applicant's consultant at the January meeting at page 13. The applicant now says, "we don't have to." To perfect the record for County Council, I would like to point out that LWAC, the Lana'i Water Advisory Committee, was established by the Board of Water Supply resolution #5 in 1999 in part because, "(1), water use issues on the island of Lana'i have arisen because the island has limited resources, and (2), the Board is committed to public involvement and planning and decision making as it relates to the Lana'i Water Use and Development Plan. The purpose and intent of LWAC is to provide public input and involvement during the development of the Lana'i Water Use and Development Plan and to monitor the Lana'i Water Use and Development Plan implementation."

Now, in order to comply with condition #2 on the previously zoned 13.9 acres as well as condition #1 proposed by the Planning Department for the six acres subject to the current application, the "water use for this project shall be consistent with the Water Use and Development Plan." The current Water Use and Development Plan has no allocation for heavy industrial water usage as we've referenced before. Therefore the proposed water usage is inconsistent with the current Water Use and Development Plan.

A further concern is the condition included in the Planning Department's recommendation to us that "the 10-inch water line serving the Palawai Basin water system shall be replaced to the satisfaction of the Department of Water Supply." The applicant has responded with an assertion that they intend to do pressure relief valves for now and see about the lines later. Despite the record from both meetings held on this application which references that this line is poor repair. I will concur with so much of Castle & Cooke's letter of July 10th that the intent of this request was never to achieve written agreement on potential users of the site, so I'm not sure where that came from. So, it seems clear that County Council might decide to take this application up once the Water Use and Development Plan is revised and approved, but that's for them to decide.

Moving down the line, a request for a written assessment from the Fire Department "as it pertains to fire flows and fire safety at the project site" was met, to me, an indecipherable e-mail exchange that was included in our packet that had very little to do with the current status of the system to handle fire safety.

Next, a request that the Planning Department make a formal inquiry to the Land Use Commission and DLNR on the status of a 10-acres commercial and 15-acres light industrial parcels subject to a 1994 agreement to convey, which was submitted to the Planning Commission in January by former Commissioner Pat Reilly, was met with, and I quote from what was in our packet, "the notes concern a separate issue we have been trying to resolve with Castle & Cooke." This is in respect to the 15 acre light industrial. This in no way speaks to the status of the parcel which was what we requested, and not a single mention

has or is being made of the status of the 10-acre commercial parcel.

A request to the Planning Department for a formal report on the status of the 13.9 acres subject to conditional zoning pursuant to ordinance number 2894 and 2895, in 2000, caused by the potential that this acreage was subject to reversion pursuant to 19.510.050(c) and (f) for failure to comply with conditions imposed in 2000 has received no response. What we do know is that at condition #1, 50% of the 13.9 acres that was to have been offered in fee has not happened. We know that Chapter 19.510, application and procedures, section 050(c) states, "the conditions to be imposed must have been performed prior to Council action on the re-zoning amendment or be enforceable by the County so is to ensure performance after Council action. The condition shall be fulfilled within the time limitation set by the Council or if no time limitation is set, within a maximum of five years from the date the ordinance is in effect." We also know that pursuant to section (f), "failure to fulfill any condition on a zone change within the specified time limitation may be grounds for the enactment of ordinances to restore the zoning to the previous zoning." What we do know is, also, is that on July 21st '08, the Office of Hawaiian Affairs questioned the necessity for this proposed project in the absence of the current need for the formerly zoned 14 acre project. And on July 7th, the Land Use Commission told us that the record in the County of Maui docket, #DBA 9903, "the 13.9 acres re-zoned in 2000 indicated that there were no potential users of the lot except for 2.4 acre portion. Moreover, the application appears to indicate that the demand originally anticipated for industrial lands has not materialized to warrant subdivision of the 13.918 acre lot since it's urbanization. Given this apparent lack of demand, we request the applicant to specifically address the need to urbanize this six acre parcel at this time." The applicant's response was that it was needed for its own operations and the most recent project assessment report dated 06-09 continues to acknowledge, "there are no potential users for the required six acres."

Now the current Lana'i Community Plan, under government, acknowledges and supports the role and responsibility of the Lana'i Planning Commission in monitoring and enforcing the Lana'i Community Plan. The current community plan adopted in 1998 by ordinance 2738 calls for 50% of the 20 acre heavy industrial area at Miki Basin to be sold in fee. The 13.9 acres re-zoned to accomplish this nine years ago has neither been developed nor sold. Therefore, I think, County Council might consider this application after the new Lana'i Community Plan is approved. That is up to them. Given the time constraints that a potentially applied to this zoning request and in the absence of the full information we've requested, it is impossible for the Planning Commission to determine if this is the appropriate time to grant a request for additional zoning. So, I would like to do some public testimony at this point, see if the Commissioners would like to add anything else to the list of what we have asked for and not received, and then we'll move on to forming a motion. Commissioners?

Ms. Zigmond: I think you've covered it.

Ms. Kaye: Okay, for public testimony, I'm going to assume the four people that are on here plus others, you each have three minutes. We'll start with Ron.

Mr. Ron McOmber: Good evening. Ron McOmber. Lana'i resident and a member of LWAC. After reading this letter this evening which I just received.

Ms. Kaye: Could you identify the letter Ron, please?

Mr. McOmber: Huh?

Ms. Kaye: Could you identify which letter your referring to?

Mr. McOmber: The letter that I've got is the letter from Castle & Cooke dated July 10th in reference to what LWAC's position is or is not, and what the water working group can do or can not do. My understanding, when we started LWAC, it was water use and development for the whole island. Part of the project was and still is looking at water use coming up. And we've asked Castle & Cooke, and they've been at the table. This is not an ad hoc committee folks. Castle & Cooke sits at the table with us. So it isn't like we're out with an ad hoc committee somewhere, hiding in the bushes. They're at the table. But we have a hard time getting these people to come to the table. Point of interest that we have to have a point, they don't show up. They make excuses that they missed the date, they don't have time, they're off island. This is ridiculous, but to read it, this is a slap in the face. This letter that you have in front of you, it says we don't have the authority. We didn't say we had an authority, but we have the right, on this Island, to look at water use and development plan. We're not here making the rules. We just want to be informed. If we were not informed, they can run this under, right through all of us, and we would never know what was going on. We're an avenue. And this is true. We're waiting for the Water Use and Development Plan to get done, and then we will have a force even tighter than what we already have, so it's going to happen. We're working on it. I think we have a meeting at the end of the month, and we're going to start finalizing this thing because it's getting really hot right now. But my concern, like your Chair said, we've been chasing this for a long time. This particular item at Miki Basin should have already been subdivided. Some of them should have been sold in fee because they're using 13 acres of it. They only should be using 10 acres of it, and the others should be in fee. You saw it today down there, they ain't close to that yet. And the part that they want the other six acres, it looks like it's going to be hell for somebody to develop it. And they're not going to tell us what kind of water, and how the water is supplied until that is permitted and moves forward. That's insane. We need to know this in the Water Use and Development Plan. That's why it's called Water Use and Development Plan. So, I'm insulted by this. I really am. This is just a slap in the face to the people that have been working on this, what, 15 -18 years on

some of this stuff. And every time we have new water directors and we have new people coming in. This is insane. There's only one person in this room that knows everything other than what we know and that's Ralph (Masuda.) All the rest of them are new people here. And poor Ralph is going to have to answer for all this. But anyway, I hope I didn't get Ralph into trouble. He's a friend of Ron's. But we've known each other for a long time. We've been on a lot of bumpy roads. But this is insane folks – sorry – but thank you for your indulgence and that your Chair for doing a very sharp work. Listen to what she's saying. Thank you.

Ms. Kaye: Ron, hold it a second. Commissioners, any questions for Ron? Okay, next on the list is Archie Nahigian.

Mr. Archie Nahigian: Thank you Madame Chair. Basically you all have an impossible task. You're being asked to make a decision without being given the information upon which that decision should be based. The Chair actually has shortened my presentation substantially because I would concur with all the requests that you've made. There are two others that I would – Well before getting to that, let me just say that I think the result – and I'm not for or against – I'm for the process. I think if you have integrity in your process, you will get the proper result. I haven't been at either of the prior meetings. I have reviewed minutes of the January and March meetings, and I was able to participate on the site visit today, and I would have two additions to the Chair's comments. One, I think, in the January meeting, there was a mention about urgency to approve the application. I think that's a false urgency. Since 2000, Castle & Cooke, or the applicant, has had 13.9 acres to proceed on in terms of developing and selling. That has not happened. And my feelings should be those plans should be clarified before an additional six acres are provided.

At the site visit today, it was clear to me that it appears as though more room is needed, which suggests also that more than half of the 13.9 acres are being used now. Also, from the site visit, the 6.1 acres that are in the community plan are not the best 6.1 acres. It's not level. It's going to require a substantial expenditure to grade or that land is going to be given as part of the 10 acres that's going to be used for the public. Also, it was said that if they didn't use that land, it would be about an acre to acre-and-a-half, if I understood correctly – if that is true – then the applicant would not have the 10 acres that they say they need to develop the project. It's hard for me to understand. Zoning gives a benefit. It confers an economic benefit to an applicant beyond which they expected when they purchased the land. To give an economic benefit normally the County or the zoning entity gets something back in return. In 2000, the applicant was given this benefit, has had the benefit, and has not given back in return what they expected and agreed to do. So my suggestion would be that before any additional zoning are provided, that the 13.9 that's already been promised, the commitments are done on that, the conditional zoning of 2000 is honored and that the community plan be put in place in 2010. Thank you. (*Changed cassette tapes*)

Ms. Kaye: Thank you. Commissioners any questions for Mr. Nahigian?

Mr. Reilly: Thank you Commissioners, Madame Chair. Pat Reilly. 468 Ahakea Street. I would concur with the general sentiments, specific sentiments, of the Chair. The Planning Commission actually is required to do due diligence to ensure that the Community Plan is enforced and implemented. And if you don't get the information you need to feel like due diligence has been satisfactorily met, you don't approve it. Now who's to say who gets what, and when they can give you things and when they can't give you things. But I would say unless the Planning Commission feels that its received the information, where it can make a solid decision, then it cannot approve the permit. If you think you've gotten it, through letters or some other way, then you have to make a judgement. But I would concur with the Chair. I'm not sure the exact language when the public hearing is – I guess perhaps you have to say public hearing is recessed and you continue that because as far it's on – my understand was as long as something is on an agenda, the public hearing continues, so I'm not too sure.

My greatest concern had to do with water. And although it's not related, I always see the community plan as a functional plan. In other words, you move something here, it changes something up here. You just don't pick out single elements and say well if we do something here and it doesn't affect everything else. Obviously this will affect as a result of this change in land classification. Things moved to that area, that opens up other areas in the City which will functionally affect the community plan. So the community plan is a living thing. You do one thing, it affects other things. One example that they have placed is, well, okay, they're going to move the laundry shop down to that area. That opens up an area there. My greatest concern and I see your part, there's a letter about the Senior Center. Now what would that have to do with an approval of land classification there? Because it's functional. If you approve that, something moves down there, that opens up an area where the Senior Center is going to be moved or whether that building can be demolished and rebuilt. Because as we know that \$1.5 from the County will lapse December 31st. So I support the Chair's statement, and if you think you've got what you've got, fine. If you don't, and you have to move it on, then I would concur with the Chair. Thank you very much.

Ms. Kaye: Commissioners, questions for Pat? Okay, John Ornellas is next.

Mr. Ornellas: Thank you. Madame Chair, you're right on. John Ornellas. 405 Lama Street. Yeah, you hit it right on the button there. You know, personally, I don't care if they get their six acres. But I would definitely hold that over their head when it comes to our new Senior Center. You want your six acres, give us our new Senior Center. It may be talking apples and oranges, but, you know, when it comes down to planning, give us our Senior Center. They know we need it. They know we want it. And the only people we're actually hurting

is our kupunas, so that would be the only thing. The only question I would have about giving them the six acres is definitely the water issue. They have to do that first before they get the six. Thank you.

Ms. Kaye: John, hold on just a second. Commissioners, questions for John? I have a question for you. Are you suggesting that we add, as a condition – typically when something is forwarded to the County Council for consideration, we attach conditions, the Planning Department suggested some, and I'm sure Commissioners, and I know I have some – are you suggesting we add a condition that the Senior Center –?

Mr. Ornellas: Definitely. Yeah. We've got to get something. I mean, I just read some minutes that Castle & Cooke had a meeting and one of the items on that was trust. You want us to trust you, then start helping out this community more. Thank you.

Ms. Kaye: Thank you John. If I could just clarify, and Mr. Hopper, Corporation Counsel, will check me on this. My understanding the difference between public hearing is you open it, you close it. Public hearing was closed. We had two public hearings on this – January and March – and tonight is testimony because it's an agenda item.

Mr. Michael Hopper: Provided that public hearings in those cases were both closed, then you're fine. I mean, you wouldn't have to say it's closed. It is public testimony only because it's on your agenda. You know, every agenda item you have to give testimony. Public hearing just means it's in the newspaper. It's really the only difference. And there are things you have to do to continue a public hearing versus a regular public testimony. But if you closed the public hearings in this case, then you have no other obligation other than to take this testimony today.

Ms. Kaye: Okay, well, thank you for clarifying that. I guess in this case it really doesn't make any difference because we have to do something tonight anyways or we run the risk of not being able to send over our comments. So, is there any other public testimony? I see Butch's hand up.

Mr. Reynold "Butch" Gima: Good evening. My name is Butch Gima. I'm a member of the Lana`i Water Advisory Committee. I have two points. One in response to the comments made in the letter about LWAC. Just some history and you can have both Clay and Ralph verify this. On our agenda, we have a standing agenda item, one of them is any pending applications or projects by the company that involves water. Typically the company would come to the committee and inform us so we can start talking about it in preparation for a Planning Commission meeting. In terms of whether we have the expertise and experience, I don't know who authored the letter, but my feeling is they are both – there's no foundation for that position and the author of the letter seems very uninformed about the Lana`i Water Advisory Committee and what we've been doing for the last ump-teen years. I would agree

that there is no statutory mandate for the Lana`i Water Advisory Committee to review any application or projects that will be coming before the Planning Commission. However, since we've been meeting for years, on a monthly basis, there is this working relationship amongst the committee members, and we've all agreed that it's in the best interest for the community to have the discussions ahead of time. So not only can we be informed about it, but we may bring up some issues that the company may have overlooked. And that has happened on a number of occasions. Now this process has worked. I'll give you an example. When the company wanted to put in the second swimming pool down in Manele, they did bring it to the Water Advisory Committee. We talked it over, and we worked things out, and it went sailing through, I believe, before the Planning Commission. So the process works. I mean, the idea is not to add another layer of bureaucracy, but because we have a cross representation on the committee, I think it's beneficial to discuss this. So that was my first point.

My second point is there's no ambiguity in terms of what was decided back in March. They agreed to something and they didn't follow through. I mean, it's real clear. You, as Commissioners, have a responsibility to the community that if they don't follow through, too bad. For you to agree when they change the rules mid stream is unfair to you, and it's unfair to the community. You in your own personal dealings, when someone agrees to something, somewhat like a contract, you expect them to follow through. There's that expectation. They're on the record saying that they're going to do it, and now they're not. It seems pretty clear what your decision has to be. Thank you.

Ms. Kaye: Thank you Butch. Commissioners, any questions for Butch? Okay, that's all on our list. Is there anyone else that would like to speak to this agenda item?

Mr. Gary Yokoyama: Gary Yokoyama. Vice-President, Castle & Cooke Resorts. I've been attending all of the meetings relative to this application and I think that the testimony and the nice speech that you heard from your Chair is – I have to question whether those voices are really looking at the merits of our application or is simply here to stop Castle & Cooke from development. I tend to think it's the latter. I tend to think that a lot of the questions that are raised are simply raised to confuse, muddle what these actual issues are. If our application was not complete, then you would have heard that from the County agencies, the County authorities, the Director. You would've heard that from them. But they've indicated that our application is complete. We have followed the process. This particular zoning application is merely to implement what's already in the Lana`i Community Plan. It's not something new. We're not trying to change the rules in the middle of the game. It's simply implementing what this community has already decided it wants to have. – a 20-acres heavy industrial area outside of the City. Do you think the community – does this community want to have heavy industrial, a fleet maintenance yard in the heart of Lana`i City next to residences forever? If that's what you want, then, well, so be it. I mean, maybe that should be what you decide.

But I think that we've followed the rules, the 120-day limitation is in the Lana`i Planning Commissions rules, themselves, and not only in the ordinance. So for all of a sudden, for the Commission to say, hey, we didn't know, you guys didn't tell us. It's in your rules. You should know. We're not trying to pull a fast one on you. So, I speak to you as Commissioners – I mean you've been appointed to be fair and impartial, look at things and assess things based on their merits, not necessarily on rhetoric or hearsay or accusations or back stabbing or character assassination. I mean, we've done everything in our power to make sure that you have all the information you need to make this decision. It's not a big decision. It's not going to impact – it's not going to change the way of life. It's going to allow the company – maybe not tomorrow, maybe not next year – to provide and move the heavy industrial area outside of Lana`i City, but it will provide that opportunity to do so in the future as the need and as the economy justifies. So I would urge the Commission to kind of vote your conscience. I mean, you want the community to move forward, or do you want to have – we've heard there's commercial activities going on in residential areas. Why? Because there's no commercially zoned properties. And you'll continue to have that problem because people have to make a living. And this small zoning issue, I think, helps in that regard. It provides more heavy industrial area. I think, it's for the advancement of the community. I really do.

Ms. Kaye: Gary, I'm sorry, there might be a question or two for you so don't run away. Commissioners, questions?

Ms. Zigmond: I do. Muddling the issue and rhetoric and hearsay – sounding like we don't want this project to go through. I think it's been said over and over again that we all agree with the concept. Not only is it in the community plan, but we all know that we need this. However, it has been said over and over again that none of these businesses that are in town have been approached or have expressed an interest. And so I don't see how that's hearsay because it has been said over and over by the applicant and the consultant. And also –

Mr. Yokoyama: Is that a question?

Ms. Zigmond: Yeah. How can you say that then?

Mr. Yokoyama: How can I say that's hearsay and there's rhetoric and that's there's muddling the issues?

Ms. Zigmond: Specifically to that.

Ms. Kaye: Let's tone this down. If you have a specific question for Mr. Yokoyama, then – but we're not going to get into beefing about definitions of hearsay. You've made your point, so go ahead.

Ms. Zigmond: Okay. I just wanted to know how we were muddling the issue when we were asking for information specifically regarding water, and specifically regarding the fact that nobody has – there has been no interest and that the original 2000 agreement, nothing has been done with that. That's my question.

Mr. Yokoyama: What 2000 agreement?

Ms. Zigmond: It was the first condition on the changes – the conditional zoning in 2000 – it was 50% of that was suppose to be offered in fee simple.

Mr. Yokoyama: Okay. Let me address your question about muddling the issues. An example, the issue of the 15 acres industrial parcel that Castle & Cooke was to have dedicated to the State has come up. It came up at this meeting tonight. That has nothing to do. May I answer the question?

Ms. Kaye: No. I'm sorry. You may not because –. You may not because this is about information we have not received and that information was requested of the Planning Department. It is not your responsibility to answer that question. We're drawing the line because the information – my big beef quite honestly is with the Planning Department and the information that we didn't get. So, no, we're not going to entertain. You can take that up with County Council.

Mr. Yokoyama: So you're preventing me from answering a question that was asked?

Ms. Kaye: Did you asked a specific question about the –

Mr. Yokoyama: She wants an example where the issues are being muddled.

Ms. Kaye: Then you've answered the question.

Mr. Yokoyama: You didn't allow me to answer the question Madame Chair.

Ms. Zigmond: My question was specifically regarding how was asking for – we asked for the water information – how was that muddling the issue?

Mr. Yokoyama: Because LWAC, contrary to what Mr. McOmber has testified, is an ad hoc agency. I mean, it is an ad hoc committee. It's not even an agency or the board. It has no legal authority to render a recommendation to this board. It can. It can do so. Nothing prevents Mr. McOmber or Butch from coming forward and reporting to you what their thoughts are as LWAC committee. But it is not LWAC's jurisdiction. LWAC does not have jurisdiction to be rendering opinions and recommendations to this Commission. It does not. And I'll challenge anybody to show me the ordinance or the law that disputes that because

I don't think it exists.

Ms. Zigmond: I think the community plan talks about that, but I would just say that I think we would be errant if we did not, as a Planning Commission, if we did not consider water issues in every application.

Mr. Yokoyama: Sure. And I'm not saying not to.

Ms. Kaye: Okay. Any further questions for Mr. Yokoyama?

Mr. Rabaino: So Gary on the water issue, has anything been brought to the Planning Commission from the Castle & Cooke's stand point?

Mr. Yokoyama: I think and we've got a lot of water people here, John Stubbart and Clay, who are more familiar with the application. But I think that the estimated water consumption for this re-zoning has been provided to the County, the County Planning Department and to this Commission, and the information before you.

Mr. Rabaino: Then I guess my question would be being that the County Planning Commission board is here, with all these paper trail and whatever is typed on it, has it been communicated to us in our packet? Are you aware or has it been summarized in this fashion where this could be where it's fair and reasonable to say that whatever is printed here is what we're going to read and make our own determination based on what we received sort of speak?

Mr. Prutch: I think what you're asking is the information you got, Planning Commission's staff reports – today, last time – whatever we've got that's concerning water has been forward on to you. So you have what we were getting in writing.

Mr. Rabaino: Okay. So now because of the Lana`i Water Advisory Committee, the LWAC, is trying to get information, so that way we, the Commissioners here, the nine members can make a determination on the water usage. Just reading this paragraph four from the 1997 draft, you're telling me that the – because I'm not to familiar with the Water Board because I only attended one time – that the 6,000 g.p.d./acre water allocation of heavy industrial use is 120,000 g.p.d. for the 20 acre site sufficient? Is that what you're saying that you received from Castle & Cooke?

Mr. Yokoyama: That information was provided.

Mr. Rabaino: So what else information are we searching for?

Mr. Yokoyama: Does that estimated consumption jeopardize the water supply on Lana`i?

Answer, no.

Ms. Kaye: Did you have your question answered Gerry? I think if we read into the record the other things that were missing. Do you have any other questions for Mr. Yokoyama?

Mr. Rabaino: No.

Ms. de Jetley: I have a question. Gary, we've been hearing a lot about water usage and about improving the Miki Basin system, but as one of the few users in that area, do you have a ball park figure of how much it will cost you to develop the water system there because I show the airport, MECo, my farm, Manny down at Lana'i Waste, the landfill, the harbor and the ranch as the primary users of water in that area. And everybody is jumping up and down and saying you have to improve the water system. We all know that the water system needs to be improved, but there's no way that you're going to be able to split the cost of that water between this limited amount of people who are actually using it. So could you just give a ball park of what is estimated? What is the estimated cost to improve the Miki Basin system is going to be?

Mr. Yokoyama: I can't, but John Stubbart, who is here, can.

Ms. de Jetley: Madame Chair, may I ask John to reply to that question?

Ms. Kaye: John can testify. He has three minutes if he'd like to.

Ms. de Jetley: John?

Ms. Kaye: And the specific question is the cost.

Mr. John Stubbart: John Stubbart. Director of Utilities, Castle & Cooke. . . .(inaudible) . . . got to get close. The cost for improvements for this project, depending on what the engineering review will reveal at the time of zoning, I mean, subdivision, where they have to then do all the engineering and determine what the requirements would be. There are options for that. One is to replace the line from the bottom of the Hi'i tank where the line comes down the hill. From that point out across the Palawai Basin to the Miki Basin area would cost anywhere between \$800 (thousand) to a \$1 million. An option, and it just depends on the line sizing requirements, an option would be to build a fire flow tank similar to what's at the airport to handle the fire flow requirements because the current line can handle the other domestic uses in the area. To go beyond that to the cost to improve the rest of the lines to the Palawai Basin area including the farms and the ranchers, in those areas, I don't have a number for that, but it would be several million dollars.

Ms. Kaye: Does that answer your question Alberta?

Ms. de Jetley: I have another question. So is it even reasonable to expect you to do this with no expectation of being able to get your projects through? As a user there I'm looking at it and saying if we don't push for the Miki Basin project, I can kiss the water systems good bye because there's no way that this company will be able to afford to do improvements to this water line to the limited amount of users that are presently on it.

Mr. Stubbart: I can't answer that question. For me, I can't tell you what tell you that answer. Sorry.

Ms. Kaye: Thank you John. Gerry?

Mr. Rabaino: I have a question for Clay.

Ms. Kaye: I'm sorry Gerry. Okay, we made a record based on what we did not receive in order to make a decision. We made that record. The option is we're out of time. The option before us is to send it to County Council. I want to assure everyone in the room that I intend to put this entire process, what was asked for and when, in writing to the Mayor, County Council, the Planning Department because I think the information that has been given to us has come in untimely. I think we were informed ill-informed of the deadlines we were facing. I think the parties sat of their rights until all of the sudden it's come up that, oh, you're out of time. And I think that we need to figure out a way to improve information so we don't have this situation again. We made it very clear this item should not have been on the agenda unless we got everything we asked for. We did not get everything we asked for. I fault the Planning Department for even having it on the agenda this evening. Having been told we're out of time, then I think our best option is to send the record to County Council and let them sort it out. We can still, after we make a motion or discuss a motion, or we can wait, but we still have the option of implying conditions to this that would answer some of the concerns that came up tonight.

Ms. de Jetley: Madame Chair, may I have the floor? I really feel that the Lana`i Planning Commission has presented itself as anti-business commission. This project is badly needed by this community. All you need to do is drive around town and see the amount of illegal materials being stored within our community because there is no heavy industrial section. We've already been told that this project –. If we sent it on tonight, it's still going to be five years before it can become a reality. What we're doing is we're looking at our community and saying where are we going to be in five years? Are we going to be economically viable or are we going to be deader than dead? Where is our industry going? Where are we going to go? What kind of jobs will we able to provide? Just throw this out and just leave it the way it is and we will continue to have illegal businesses being operated within our community. We need to move forward on this project. We need to get ourselves going, send it to the Council. We are all volunteers. We're not elected officials. Send it on to the Council and let them deal with it. It will come back to the community anyway for

public hearings. But we're not elected officials and I think we should move on.

Ms. Leticia Castillo: Madame Chair?

Ms. Kaye: Yes, Letty? Excuse me. Mr. Hopper would like to have a word.

Mr. Hopper: I was just unclear Madame Chair, is the public testimony portion of the meeting closed for this item or are there others?

Ms. Kaye: Everybody on the list is exhausted. If there's anyone else that would like to speak? Otherwise, we will close it at this point.

Mr. Hopper: I would like to make a brief statement before deliberations begin just to clarify the standards that you're looking under. Just to read from the County Code, 19.510.040, for change in zoning. It says that upon closing the public hearing and upon reviewing the report and recommendations of the Planning Director and all of the applicable information on the application, the Commission shall prepare a report which includes, but which is not limited to, the Commission's findings of fact, conclusions of law, recommendations and any recommended condition which the Commission determines to be necessary pursuant to the conditional zoning provisions of this chapter. To give you an idea of what the Council will be looking at – again, you are making recommendations to the Council – the Council has a set of criteria in the same section that it needs to look at for a zoning change. It states the County Council may grant a change in zoning if all of the following criteria are met. And they are listed.

Now in this situation, zoning throughout Hawaii has been considered by the Courts to be a legislative act, which means that the Council has a very broad discretion in granting or denying a change in zoning, or for placing conditions on a change in zoning. An applicant – and we've advised Council before – does have the burden of proving that they meet this criteria, which for example states, the proposed request meets the intent of the General Plan, and the objectives and policies of the Community Plans of the County. The proposed request is consistent with the applicable community plan, land use map of the County and several other things. It's the applicant's responsibility, through the application, to provide that information to you, and then you would forward your recommendation onto Council. The Council and you, as the Commission, can ask for more information if you so desire. And if you've provided enough information to make a decision, you can make a decision to either approve, deny or to approve with conditions. If you do not believe you've been given enough information to make a decision, and that is within your discretion after your review of the criteria here, you have the ability to deny based on lack of information, or to, if you do believe in this situation, you haven't had enough information, you could explain that to the Council in your report to them. But, that is something that you, as a body, have to vote on. So it's not something the chairperson can unilaterally have done. You have to

vote on it as a body and support that as your report and recommendations to the Council, which again, has broad discretion in enacting a zoning change. Basically there is a comprehensive zoning ordinance that sets forth zoning. In order to change that, the Council can decide whether they want to or not to change that zoning depending on the application. It has no obligation to make that change. That's within the discretion of the Council. And it's like legislation, it's like passing a law basically and they have that discretion.

So to make that clear to you, that's the section that we are operating under and it is within your purview to advise the Council on how to proceed with this application. And it's, I believe, important to create a clear record. Once you have your motion, and a second, of what that motion is going to state. You'll be giving guidance to Joe as your staff to transmit that to the full Council. He will be responsible for making that report to the full Council who will then decide when to act on the – what to do, finally, based on your recommendations. And just so you know, the Council can decide to basically go along with your recommendation or throw out your recommendation. They don't have to listen to you. You're only an advisory in this case. The Council does have the final decision.

Ms. Endrina: I just want to say for the record that, in what Alberta said, I am not anti-business, and I just want to make sure that's perfectly clear. My only concern has been water numbers that we've been going over and over and backwards and in and out. That is the only thing that I'm concerned with, but I am not anti-business, and I do not believe this Planning Commission is anti-business.

Ms. Castillo: Madame Chair, you know we have been going through this for several months and it seems that we have been battling over this request with information that we, as Planning Commissioners, requesting from the company. You know, we just have to ask the Planning Commission Director if he has received anything or even the Council, and if those information that we needed as a body to act on this, we would like to have that. And, you know, maybe what we can do is wait maybe for next month. Thank you.

Ms. Kaye: No Letty, unfortunately, because the issue of time limitation has been raised, we can no longer – we have been advised not to defer or continue this item, which was originally what we requested. If we didn't get the various things that I've listed – the two reports from the Planning Department – and now, in fact, the applicant has refused to honor the condition to just talk to LWAC and DWS, and make sure there was an accommodation for heavy industrial use. We didn't want this on the agenda, so we wouldn't inconvenience everybody to come. It's on. Now, we're out of time, so we can't put it off anymore. And Alberta even suggested this in March that we send it to County Council. That's all I'm suggesting tonight, that we send it to County Council. Bev? Gerry?

Mr. Rabaino: Well, let's send it to County Council because I'm not anti-business. I want to

see this thing go forward. But let's send it to County Council and let them deal with the necessary things that they need to. But we also can give some recommendation and I think we should add those recommendations in in order to move things forward. And those were said by Sally and we attach that and we let them, the County Council, to take it from there. I think that's a better deal. Okay, we move it to the County Council, attached what has been read earlier.

Ms. Zigmond: Madame Chair? Sorry? I was just going to say that I think our track record shows that we have supported business. But having said that, I see our options as one of two. That is to recommend denial to the County Council because of lack of information that we felt we needed and then the County Council can try to get that information. Or we could recommend to County Council to approve with certain conditions.

Ms. Castillo: I believe that is what Gerry is saying, so I don't know if we need to entertain, as a motion, what Gerry has said. What Gerry had said – are you making that as a motion Gerry?

Ms. Kaye: Okay. I'm confused. Gerry, your suggestion was we send it to County Council with the original recommendation that we can't approve at this point because we don't have enough information. Is that what you were suggesting? Would you like to try a motion to that effect and see where –?

Mr. Rabaino: I'm not making a motion. I'm just saying, as a suggestion, let's move on and have the Council do with these conditions that we can attach to.

Ms. Zigmond: But we need a motion to do that, and we can either do it one of two ways – is to recommend to deny or to recommend to approve with conditions.

Mr. Rabaino: Recommend to approve with conditions attached to it.

Ms. Kaye: Okay. Can I just clarify? Recommending to approve with conditions ignores the fact that we haven't gotten the information that we requested. It goes against the last two meetings and all the information we've asked the Planning Department for. So that's just – I just wanted to bring that to your attention. We went there. Mr. Hopper?

Mr. Hopper: Just quickly. I think you have several options. The first was what your Chairperson said if you believe you do not have enough information, you could forward that on to the Council and say you don't have enough information to make a recommendation and you could recommend conditions along with that if they do get that information and see fit to approve. You could recommend approval with conditions. If you believe that these standards have been met, you can certainly recommend approval with conditions – if you believe these standards have been met. And you can recommend denial either because

based on the information you provided you see that these standards are not met or that you have not been provided enough information in order to determine that these standards have been met which requires that the applicant show, for example, there will not be an adverse impact on a variety of issues. That's the burden that the applicant would have. So those are the options that you would have, and almost anything else, to tell you the truth, you do have a broad discretion in making a recommendation to Council in this situation. As far as conditions, you can recommend approval with conditions, no conditions and you can recommend specific conditions. Whatever you do in motion, I'd recommend that you be very clear on your reasons for doing so, as well as, if there are any conditions, to be very clear on which conditions you're talking about. You just can't say with conditions. You need to specify are they the Planning Department's conditions proposed? Are they separate conditions that you have? I mean, you need to make that clear.

Ms. Kaye: Okay, any further comments on the Commissioner's part?

Ms. de Jetley: I'd like to make a motion. I move that we forward this application to the Maui County Council with no conditions attached.

Ms. Kaye: Okay. To clarify, you're forwarding it with no action on our part, no recommendation on our part and no conditions?

Ms. de Jetley: Yes because the way I feel personally about this is we need to get it out from us, back to the Council where the Planning Department staff can work directly with the Council on getting the answers that they need. They have all of the notes. They have all of the records of all our meetings to go through. For us to pull out one recommendation from everything that we have will be next to impossible. It will take us the rest of this evening. So I'm putting it back to the Planning Department that they will work with the Council to sort through all of the meetings that have transpired, and all of the recommendations and letters that have been flowing back and forth between Castle & Cooke and our Commission.

Ms. Kaye: Okay, a motion is on the floor to —. Michael, do you want to add?

Mr. Hopper: I would just recommend that if there's a reason you can't make a decision, that should be stated on the record as to why. The Council is going to want to know why. They typically get a recommendation for approval or denial. It's happened before, that there been no recommendation. But, it probably be stated on the record so Council knows why they did not get a recommendation to either approve, deny or approve with conditions.

Ms. Kaye: Alberta, would you like to amend your motion?

Ms. de Jetley: I move to forward — so restate it? — I move to forward this application with

no conditions because of the sheer volume of paper work that we have had to go through. There's so many –. Would that be adequate? Because of the sheer volume of information that has passed between us? So retract – revamp.

Ms. Kaye: Are you withdrawing your motion?

Mr. Hopper: Just to state to the Council why you think you can't make a recommendation. I would say volume of paper alone is probably is not a sufficient basis. If there are unanswered questions, if you cannot, for whatever reason evaluate the criteria for a change in zoning, explain to Council what additional information they might need or why. The fact that there is a lot of paper to go through, I mean, that's what Commissioners are there for. You have to go through the paper and make a conclusion based on that. So I would not advise that would be a sufficient comment to Council. They might remand it back to you and ask you for more specific reasons. I would advise to – if you do say you can't make a recommendation to explain in a bit more detail why you could not.

Ms. de Jetley: So, I just amend it to say I cannot make a recommendation because there was no way at this point in time that we could get an answer from the applicant as to what the fee structure is going to be. You cannot project five years out.

Mr. Rabaino: Okay, I'm going to throw this also. Help me along.

Ms. de Jetley: Okay, I'll withdraw my motion completely until we hear from the others.

Mr. Rabaino: Okay, I'm going to give it my best shot, so I'm not that good at this.

Mr. Hopper: And I'm only giving legal advice on what I feel.

Mr. Rabaino: Well for me, my manao, my feeling is send it back to the Council and the Planning with the attached recommendations. That's the bottom line. Send it back over there, and spell out the – am I saying this right – spell out what we need more of for a recommendation.

Ms. Kaye: Okay. If I could try to clear this up. We asked for information from a variety of sources. We haven't gotten it. So we've done that. That's now in the minutes. That's a record. So County Council is going to know what we're missing. It will then be up to them, at their time pace, to find it. So I think what Michael is recommending to us is that we make a motion to send it to Council with either – with a reason why we're sending it back. And I had started the mission of not trying to make it unilateral decision here. I don't even vote. That for months we've been asking for stuff. We didn't get it. The one way to deal with this now is to send it back to County Council simply telling them we can't make a decision because we didn't get the information, and we're not comfortable moving forward at this

time (*Changed cassette tapes*) and we can't keep continuing.

Mr. Hopper: And what I'm saying is that your Chair spoke about a lot of things and about a record, but unless you adopt that as a body, that's not your group's recommendation. So if you want to reference back to that in your motion, that's an option. If you want to state your own reasons why you believe, on the record, that's an option. Either one has to be adopted by a majority of your body. Meaning if that the Chairperson says something, that doesn't get adopted by you, unless in your motion you say for the reasons stated by the Chairperson, or for the reason stated where ever in the record, or you can basically say because we did not get the following information, (a), (b), (c), (d), if that's your reason. Those can be options, but just be clear to the Council what you as a body are recommending. And if it's the same thing your chairperson said, that's your option. If it's something different, that's your option as well.

Ms. Zigmond: Madame Chair? Gerry can we – did you make a formal motion? Because I'd like to if you don't have one on the floor. Okay, I move that we send this to the County Council without any recommendations due to the lack information that we had requested as described by our Chair earlier, and let the Council get the information and do with what they want.

Ms. Kaye: Is that an adequate motion? Would anyone like a second?

Mr. Rabaino: Is that a motion?

Mr. Kaye: Yeah. Michael, you're raising –

Mr. Hopper: I have no ability to veto, or anything, your motions. And I'm sorry, I didn't want to intend that, but that would be – the effect of that motion would be to recommend that Council do nothing because – or you were not able to advise them because you did not get sufficient information because of the reason stated. It does not state any recommended conditions. It does not state any recommended action. It simply states you didn't have the information that you had requested. And if you believe your chairperson adequately stated the information you were missing, it is the body's option to vote on that motion.

Ms. Zigmond: That was my intent. Thank you.

Ms. Kaye: So Bev's motion is on the floor, is there a second? Let's restate the motion.

Ms. Zigmond: Okay. I move that we make no recommendations to the County Council because we don't have all the information that we had requested from both the Planning Department and the applicant, period. Sorry, and with the omitted information as summarized by the chair at the beginning of this part of the hearing. Our other option is

to reiterate all the –

Ms. Kaye: Let's try and restate it again. Okay, am I understanding that the intent of your motion is to – okay, that's not what I understood Michael to say to us. We have the option to continue more discussion and impose conditions – not impose – suggest conditions that would be considered by County Council. Our job right now is to state for the record for County Council's understanding why we're sending it back to them. So it's not that we're sending it back with no recommendations, we're saying we are unable. This is where we started this an hour and a half ago, and I asked you guys if there was anything else you wanted to add to the list of what was omitted and I got nothing back from you. So really, it's the reason why we're sending it back is I think what Michael is asking us to supply.

Ms. Zigmond: Okay, and as iterated/enumerated by you at the beginning. No. Okay, we have to say them specifically then? Okay.

Mr. Hopper: And if you do want conditions, then you would need to specify them in your motion as well as part of your recommendation to Council, so that they're clear on that. Or no conditions is fine as well.

Ms. Kaye: Well, could you – the Planning Department suggested conditions and I actually thought we had the option to discuss additional conditions per the conversation I had with you Michael. So, if you're saying we shouldn't make a motion until we discuss whether there would be any conditions, then that's another situation. That's another conversation that has to happen.

Mr. Hopper: I recommend that if you want conditions, and I'm not sure what exactly we talked about before, but if you want condition, I think your recommendation should be made in one motion. I mean, you can discuss the possible conditions before making the motion, or after making the motion, but I think they should be all together. If you want to have conditions, typically that's with a motion to approve. If there's some other reason why you believe you couldn't make your recommendation, but you still want them to consider conditions, I suppose in the event they decide to approve, you could have that as part of your recommendation as well. I would have that all in one motion. I'd probably advise you to do that. And be clear to Joe because he's going to be writing them down and getting a sense of what they would they would be.

Ms. de Jetley: Madame Chair, we still have a motion on the floor? Do we still have one on the floor? We do?

Ms. Kaye: I believe we do.

Ms. de Jetley: Because I've got – if that motion is withdrawn, I have another that might

possibly get us through this evening, but it has to be withdrawn first.

Ms. Kaye: Well, Bev, do you want to restate your motion in a way? We haven't gotten a second or failed to get a second on the original motion, so it's still pending.

Mr. Prutch: Okay the motion I heard, simply put, simply stated, was forward this application to the County Council with no recommendation due to the lack of information as described by the Chair in her record at the beginning of the public hearing. And that includes, of course, no conditions of approval.

Mr. Rabaino: Try read that one more time, slower.

Mr. Prutch: Forward to County Council with no recommendations from the Lana`i Planning Commission due to the fact that there is a lack of information from both staff and the applicant as described in the Chair's reading into the record at the beginning of the public hearing.

Mr. Rabaino: Sounds good.

Ms. Kaye: It's your motion Bev because yours is the one on the floor now, and he's trying –

Mr. Hopper: If you want conditions, you could add them to that. You can add to that initial motion if you'd like.

Ms. Zigmond: Well I think there are some conditions that – yeah – in addition to the ones that are in the Planning Department's.

Ms. Kaye: If you're happy with your motion, we can see if we get a second and then we can discuss where to go from there.

Ms. Zigmond: Okay, let's do that.

Ms. Kaye: There's a motion on the floor. Joe has summed it up for us. Do I have a second?

Mr. Rabaino: If we make the motion, then we can discuss it right?

Ms. Kaye: We need a second because we can discuss it.

Mr. Rabaino: Okay, I'll second it and we'll discuss it.

Ms. Kaye: Okay. Now we're into discussion. So I think, if I can just try to summarize the

options. There's a motion on the floor stating that we send this over to County Council without a recommendation to approve or deny because we have not received the information that we asked for. There's a second. Now the discussion would be I think what Michael was suggesting is if there's a concern that conditions should be addressed as well, then we need to decide whether we're going to go through conditions now or not – send it over without any conditions for County Council to consider.

Mr. Hopper: You can amend your motion to add conditions as part of it. That's one thing you could do at this point should you want conditions.

Mr. Ruidas: Sally, can you go over what you stated after recess and reiterate what – when we got back from recess?

Ms. Kaye: You want me to restate what was missing?

Mr. Ruidas: Yes.

Ms. Kaye: Okay, this is following the list that was in the Planning Department's letter of April 6th that sort of divvied up who was going to supply what information to us. And all of these go back to many places in the record. Some from January, some from March. This Commission asked for how the applicant plan to offer fee-simple lots for sale, and the response was it was too early to tell. The applicant was requested to contact –. A request was made that the applicant contact LWAC and DWS to come to an agreement on whether the current infrastructure will accommodate the additional usage. This was agreed to by the applicant's consultant at the January meeting, but the applicant is now saying that they don't feel they have to do that. Do you want me to read through all the support for that, or just what's missing?

Mr. Ruidas: Just highlight on what was missing.

Ms. Kaye: Okay. Then there was a request for a written assessment from the Fire Department as it pertains to fire flows and fire safety at the project's site. This was a concern of yours, Stan, that you voiced several times. And what was in our packet, what we've received thus far is an e-mail exchange that really didn't address the status of the system that handles fire safety at this particular point in time. A request was made to Planning Department to make a formal inquiry to the Land Use Commission and the DLNR on the status of the 10 acre commercial and 15 acre light industrial parcels subject to a 1994 agreement to convey. The response to that, in our packet, from the Planning Department was a note from a gentleman at DLNR that says these notes concern a separate issue we had been trying to resolve with CCR. We recall in our early packet there was a hand written note we still need to acquire lands. So we asked the Planning Department because we wanted an objective opinion, a formal opinion, on the status of

these parcels. We also asked for the Planning Department to confirm the status of the 10 acre commercial parcel that was subject to a 1994 agreement to convey. We've had no mention. Nothing has come back at all except for what I've just read and nothing on the commercial. A request was made to the Planning Department for a formal report on the status of the 13.9 acres that was subject to conditional zoning back in 2000 and we have heard nothing on that. So we really – really I was thinking we're in a position of being asked to approve six acres when the original 13 might be subject to reversion for failure to comply with conditions. We wanted a formal report on that status and it has not been received so we can't know any more about that. And that's it.

Mr. Rabaino: Anybody else? Discussion? We're going to attach that to what was – to the motion – forward it with this attached as a condition. Correct? Yes? No? Hello?

Ms. Zigmond: It's not a condition per se, right? It's telling them what –.

Mr. Rabaino: I'm just asking are we going to attach that to the motion that is already presented?

Ms. Kaye: Well what we should do is attach the minutes because they did it detail. What I've done now is just reviewed it for Stan's sake. I'm not sure why Stan wanted that review, but the whole minutes would –.

Mr. Rabaino: Well I would accept the motion – to attach.

Mr. Prutch: The minutes always get forwarded to the Council as part of our Council packet. That guarantee goes.

Mr. Hopper: The important part though is the minutes are not necessarily the justification for everything. One person could say something and the rest can agree. So that's why in your motion, you specifically stated that what the Chairperson's had stated previously. And she has gone over it now, so you're clear on what that basis is going to be in the staff report. The entire minutes might create a record, but it's not necessarily specifically what everybody agrees to. So that's why that was put in your motion as far as what the basis was. What you have to forward to the Council are what your recommendations are in a form of a report. They need to be able to decipher that so they know why you're not making a recommendation which has happened before, but it's pretty rare, so that's why you're stating a basis for doing that. You want to add conditions to that motion in the event that Council does get that information and decides to pass, or decides to pass it anyway and they disagree with you on how much information they need, then you can do that as well as part of your motion. It's not there yet. You can amend it, or you could vote for or vote against the motion are your options.

Mr. Rabaino: Amend it. We're going to amend to the motion. We're going to amend it to the motion.

Mr. Hopper: The basis are already stated, I believe, in the original motion. If you want conditions, though, conditions are not part of the motions. So if you want to discuss conditions now, and add that to your motion, you would need to amend that motion because conditions are not there yet.

Mr. Rabaino: So I'm going to amend the thing with conditions to it. Discussion.

Ms. Kaye: Wait. Wait. Gerry, are you suggesting that you want to amend the motion to add conditions? Well, then we have to discuss them. You can't just say conditions. We have to go down them one by one by one. And I'm sorry, is that--? Wait, it's Bev's motion. There's been a second. You're offering an amendment, but the amendment, I think, is probably not going to fly unless you mean to actually discuss conditions. Yeah? Okay. But then we have to discuss those conditions and the motion stays open until we get there. Michael, track me on that.

Mr. Hopper: Well, you would need to know what the conditions are. So in your motion, you would need to state with conditions as follows, that – whatever – whatever conditions you would want. And the conditions, by the way, on conditional zoning, it states conditions shall be imposed if the Council finds them necessary to prevent circumstances which may be adverse to the public health, safety, convenience and welfare. The condition shall be reasonably conceived to mitigate the impacts emanating from the proposed land use and shall meet the following criteria, and there's a criteria in your law here. It states, the public shall be protected from the potentially deleterious effects of the proposed use and that the need for public service is created by the proposed use shall be fulfilled. And I can advise you more on that as you go through your conditions.

Ms. de Jetley: We're in discussion now. You know what I see is this motion with all of the amendment is going to get terribly bogged down, and we should try to keep it short and simple. So what I would like to see is a very simply worded motion, and I will have to ask you this. What if we put forth and this is just discussion – forward the application to County Council with no recommendation due to missing information from the Planning Department and applicant – end. Well then it will be on them to find, go through all of our notes, because we're going to be here the rest of the night looking for all of these conditions. We're never going to be able to settle it. And the other question I have is, what happens, since this is the last night available, what happens if we do nothing?

Ms. Zigmond: Alberta, I just want to point out that what Sally had read into the record, the missing information, was not conditions. It was to make the job easier for the County Council. We didn't even get to conditions yet. So I think it would be more prudent to list

them as we already have instead of not listing them. It would help everybody out.

Ms. Kaye: Okay, we've been here before. We've had long nights where we've gone through condition, one by one, to agree with them. I think what the Commission has to decide now is if it wants to go there. Can we take a five minute break and then come back with this motion?

Mr. Hopper: Yes you can take a break. No discussion on this issue in the break. You can go down and look on your own. For example, the Planning Department's conditions, review them prior to coming back, on your own, not discussing and be prepared to discuss them. Usually conditions start with the Planning Department's recommendations. Then you can delete or add as you see fit.

Ms. Kaye: And with the understanding that these conditions are not binding. Anything we suggest would be arbitrarily considered – well, they have their guidelines – but the Council is not required to accept them.

Mr. Hopper: They are not. But I'd still advise you to try to have conditions that fit the ones that Council can adopt though. They're not final, though, you're correct.

Ms. Kaye: So, we're not there yet. We don't know if we want to do conditions, but we're going to take a break and wake up a little bit.

(The Lana'i Planning Commission recessed at approximately 8:50 p.m. and reconvened at approximately 8:58 p.m.)

Ms. Kaye: Okay, so we have a motion on the floor, and we have a second, and we're in discussion. Would we like the motion restated?

Mr. Rabaino: Definitely.

Ms. Kaye: Go for it Joe.

Mr. Prutch: Okay, the motion on the floor, and seconded, is simply to forward this project to the County Council with no recommendations and therefore no conditions of approval due to the lack of information as described by the Chair at the beginning of the meeting.

Mr. Rabaino: So move.

Ms. Kaye: Gerry, it's been moved and seconded. Now we're discussing whether –. Think of it as a two part question. Okay, there's a motion on the floor to send over without a recommendation, and I'm sorry Joe, did you say – Michael suggested the reason – what

did you say?

Mr. Prutch: The reason was the lack of information as described by the Chair.

Ms. Kaye: Thank you. And then the second part of that is do you want to consider conditions, and in which case, we would just simply go down the list, start with Planning Department's, make corrections or additions to them, accept them as they are, add our own if we want to and then in the end we would have a set of conditions we've agreed to and then we would vote on them as a total package.

Mr. Hopper: And I recommend you tell the Council also why you're recommending condition even though you had no recommendations. It would be something to the effect that if this information is received and they decide to approve, these could be conditions. Or if they go for approval and disagree with your findings that you did not have enough information which they could do and say they did have enough information, that those would be conditions to mitigate the impacts of the development. It would be two possible options. Or you can certainly have no conditions to them.

Ms. de Jetley: Madame Chair, I really would like to do away with this right now. I think that if we can possibly call for a vote and see where we're at rather than trying to attach conditions to it, then we would be able to move forward.

Ms. Kaye: Okay, let's see where everyone is on that. Do any of the other Commissioners have opinions about conditions they would like to consider that the Planning Department has recommended? And I think the way Michael put it is actually the best way to think about it. We can't act right now, essentially, according to our motion because we don't have the information we asked for. We're giving County Council the option to get that information. Once they do, we either can then have conditions once that information is provided that we think would help to mitigate, as Joe said, the impact of the development or we lose the chance to do it.

Ms. Zigmond: Having said it that way, putting it into perspective that way, there are some changes to some of the conditions that was offered by the Planning Department that I could think of.

Mr. Rabaino: And what are those changes?

Ms. Zigmond: I am thinking that, on number one, 50% of the land zoned M-2 Heavy Industrial shall be offered in fee. I'm saying that it should be sold instead offered because in my mind there's a big difference there.

Mr. Rabaino: Is that one of the one that's you're going to add? Is that acceptable?

Ms. Kaye: It's up to us. She's suggesting, I think – Bev – I don't let me put words in your mouth – that you would change number one to read how?

Ms. Zigmond: That the applicant shall sell 50% of the acreage zoned M-2 Heavy Industrial which is 20 acres total in fee simple.

Ms. Kaye: You're writing that down?

Mr. Prutch: I was just referring to the Community Plan just to make sure, and the Community Plan does say that those 20 acres shall be sold in fee simple upon development.

Ms. Zigmond: Yes, I know, but the Planning Department's condition said offered, so I'm asking it to be sold.

Mr. Prutch: I just wanted to make sure the condition, as you were stating it matched what was in the Community Plan.

Ms. Zigmond: Okay. Is that okay?

Ms. Kaye: Okay. So I guess the procedure would be to vote on each of the suggested conditions?

Mr. Rabaino: Yeah.

Ms. Kaye: So, there's a condition on the table. Would anyone would like to move to accept that and if we get a second, we'll have discussion.

Mr. Rabaino: I move to accept.

Ms. Kaye: Okay. Do we have a second?

Ms. Endrina: I second.

Ms. Kaye: Okay, discussion.

Mr. Rabaino: As we stated earlier in this meeting that we do have people that need various access to preform their business.

Ms. Kaye: Okay.

Mr. Hopper: Madame Chair, just to clarify. Would we be treating the motion to accept as

a motion to amend the motion on the floor to add this as a condition? I just wanted to be absolutely clear.

Ms. Kaye: Actually at this point, I'm following your guideline where you said we make a motion and then we should consider conditions that we want to append and then treat it as a whole package. We're going to vote to send over with no recommendation because we don't have enough information. But if sufficient information is gained by County Council, then these are the conditions we would suggest. That's what I understood you to say.

Mr. Hopper: Yeah, as long as you eventually vote to amend your original motion to add these conditions as a whole. You can deliberate on these conditions now and come to consensus on them as long as you make a motion to amend your original motion, vote on that, have that added and then vote on the whole proposal then that's okay. I just want to make sure we're following Robert's Rules because this is under close scrutiny obviously.

Mr. Rabaino: We're going to amend. We're going to amend the –

Ms. Kaye: Well, I think what he's suggesting is we get all the conditions that we want to consider in first and then amend to accept those conditions. No, we have to have a vote. We had a first, we had a second, now we're in discussion. If there's no discussion, we can call for a vote. Alberta?

Ms. de Jetley: No, I have a question. On the wording, Bev, you're changing it instead of offered in fee, you're saying sold in fee? To me, it means the same thing. Okay, explain what is the difference. Because when I say I'm offering this in fee simple, okay, that means that I'm putting it on the market, it's an offering for you or anybody else to buy it. What's the difference between shall be sold in fee?

Ms. Zigmond: Number one, it makes it consistent with our Community Plan. Our Community Plan says shall be sold. But, also, I'm saying that offering is offering it, putting it on the market, but it's not necessarily sold.

Ms. de Jetley: Well any property owner doesn't have to accept any offer that comes in. It may be offered in fee simple, but the terms have to be agreeable to both the buyer and the seller. So you can say, yeah, it has to be sold, but there's nothing in here that says you cannot force a landowner to sell a piece of property for below what they think is its true market value.

Ms. Kaye: I don't think that condition recommends selling it below value. I don't know where you're getting that.

Ms. de Jetley: No, if she saying shall be sold in fee – so her description of it is different from

what I'm reading here.

Ms. Zigmond: But it's in the Community Plan as sold. I'm trying to make it consistent.

Mr. Rabaino: Can you clarify that?

Ms. de Jetley: Well that's what I'm asking.

Mr. Hopper: The condition would not state a price of which they would have to be sold.

Ms. de Jetley: It shall be sold in fee. So what's the difference between offered in fee and sold in fee? I say there's no difference.

Mr. Alueta: It's a condition that we've had before. Offered means you just offer for sale. It doesn't mean that you actually sell it. Sold in fee means you're actually going to sell it. It means sold – sold in past tense – you sold it in fee to someone of a Lana`i resident. Offering it means you're just offering it. We have conditions with affordable housing which you offer for sale first to residents. It just means you're offering it. It doesn't mean you sell it to them. And then after a certain time period, you can then sell it to some else and we've had that with elderly housing in Kula where they offered. It's a condition that they offer it for sale. So they offer it to sell only to people of certain age. After that time period, then they can offer it and primarily sell it to other people at market rate. They're not offering any special. They're just restricting this to be sold to Lana`i residents. So that means, it's restricted to Lana`i residents.

Ms. de Jetley: Where does it say that it's restricted to Lana`i resident? It doesn't.

Mr. Alueta: I'm sorry. It's being sold. I'm sorry. It's an example.

Ms. de Jetley: Sold is sold. Whoever comes up with their money can buy it.

Mr. Alueta: Correct.

Mr. Rabaino: So the phrase we're looking for is to be sold, not offered. So which one we're going to take – sold or offered?

Ms. Zigmond: If nothing else, sold will make it consistent with the Community Plan.

Ms. Castillo: Offering has a different meaning. Offering is just you just offer somebody, and selling is you sell it with a fee. Because you're just offering – you know, when you offer something, it's not necessarily that the recipient would like to accept that. And if you sell it, the recipient will be giving his money in return.

Ms. de Jetley: I'm taking the word fee in this to mean in fee simple rather than in leasehold. Is that correct?

Mr. Rabaino: So fee simple it is. Are we going to vote on the fee simple?

Ms. Kaye: No. I think the discussion is the use of the word sale as oppose to sold. Shall be sold or shall be offered in fee. They're both fee simple. Both ideas. Okay, so –

Mr. Rabaino: I'll take sold.

Ms. Kaye: So hold it. That was Bev's condition and Alberta you objected to that, so does anybody have anything else to add or shall we vote on it?

Mr. Rabaino: If it's sold, I'll vote on it.

Ms. Kaye: Bev's condition is that 50 – Bev, you want to state it again – 50% –?

Ms. Zigmond: That 50% of the land zoned M-2 heavy industrial area shall be sold in fee simple.

Ms. Kaye: Okay. That's on the floor.

Mr. Rabaino: Yes – individually.

Ms. Kaye: Now, could we vote on this please? All in favor of that condition as worded say aye.

Commission Member: "Aye."

Ms. Kaye: All opposed? Okay. Commissioner de Jetley votes against.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Darlene Endrina, then

VOTED: to amend condition #1, as discussed.

(Assenting: Commissioners S. Ruidas, B. Zigmond, D. Endrina, L. Castillo, M. Mano and G. Rabaino

Dissenting: Commissioner A. de Jetley

Excused: Commissioner D. Gamulo)

Ms. Kaye: Okay. Now, Commissioners, well, let's go down the Planning Department's. The applicant shall ensure that water use for this project will not adversely affect water resources. Water use for this project shall be consistent with the Water Use and Development Plan for Lana`i, as approved by law. I actually had a change to that, but I'll wait to see what some of the other Commissioners think about that condition.

Mr. Rabaino: By law, that sounds good.

Ms. Zigmond: Is the Water Plan actually a draft? Do we need to mention that? That the Water Use and Development Plan is a draft.

Ms. Kaye: No. Well, actually that's not correct. There is an active Water Use and Development Plan that's in effect, and what's being drafted now has not been approved. So what's enforced is the current Water Use and Development Plan.

Mr. Rabaino: I vote yes.

Ms. Kaye: Okay wait. That's what's existing. I'm going to propose a change to it because this is one that I'd thought about. The applicant shall ensure that water use for this project will not adversely affect water resources by, (a), consulting with the Department of Water Supply and the Lana`i Water Advisory Committee on projected demand and allocation, and securing agreement from both that such projections are consistent with the Water Use and Development Plan for Lana`i prior to location or relocation of any user or subdivision processing. And by (b), detailing aggregate water usage by meter readings for the 20 acres of heavy industrial land on the monthly periodic water report. Now if I can just explain my thinking on this. Again, County Council can consider this or not. But for all of the reasons I've stated on the record and from the testimony you've heard from the people who have worked on this advisory committee for years and years, and the fact that right now the water usage projected is not consistent with the existing plan, this seem to me, a sensible way to go forward so that all parties are at the table. And as Butch pointed out when the LWAC was consulted before, it made coming to the Planning Commission much easier, and so that's my recommendation. And I think the second part of that is simply detailing the aggregate water usage at Miki Basin once and if this project is approved. It means that information is there in the periodic monthly water report and then you don't have to chase the numbers going forward.

Ms. Zigmond: I move that we approve that condition.

Ms. Endrina: I second that.

Ms. Kaye: Okay, any discussion? Okay, it's been moved and seconded. There being no further discussion, could we have a vote? All those in favor of adding that as a condition

say aye.

Commission Members: "Aye."

Ms. Kaye: Oppose? Okay so that motion carries unanimously.

Ms. de Jetley: Can I abstain?

Ms. Kaye: That's a yes vote. So you're going to leave your vote as a yes vote?

Ms. de Jetley: . . . (Inaudible) . . .

**It was moved by Commissioner Bev Zigmond, seconded by
Commissioner Darlene Endrina, then unanimously**

VOTED: to amend condition #2, as discussed.

Ms. Kathleen Aoki: Excuse me Chair. Can I say something? I just talked to our pilot, and this meeting needs to be adjourned by 9:30 p.m., in order for him to make his flight hours because we need to be off the ground no later than 10 p.m., so I just wanted to give you a heads up.

Ms. Kaye: Well okay. Please tell me that you're not going to curtail this discussion based on your travel. I mean, we've got to accommodate – I think probably everybody is tired enough that they'd like to postpone this discussion, but I think it's unconscionable to tell us that we've got to stop now. I know that Erin's got a presentation to make.

Ms. Aoki: Well, just to address that. It's not me. It's FAA regulations. I have absolutely no control over FAA regulations.

Ms. Kaye: Okay. So we're not even close to being finished I wouldn't think. Is there a way to put just this part of it on the agenda for next month?

Mr. Hopper: All right, one thing you can do is approve this as a group of conditions. You don't have to take each one, but that's up to you. Secondly, you're still past the deadline if you do that. So the Planning Department can send up recommendations. They can send up something without your recommendations. That's the situation. You don't have to. And Council, if it wants to, can consider stuff that you send to them later, if you want to make a later recommendation. But right now, you are past the ordinance deadline, and the Commission can send that up to the Council saying they were not comments made within the time.

Ms. Kaye: Okay, then let's do this. We have a motion on the floor. We have a second. We have two conditions we've agreed to. We are under protest. I'm going to call a vote on this, and think about scheduling it to a later agenda item if we want to if we want to communicate further to County Council on potential conditions. Is that okay?

Mr. Hopper: I've never had that happen. I can't advise you on that right now.

Ms. Kaye: Okay, let's have a vote and get this one done at least. We have two conditions and a motion on the floor. I suppose, to make it very easy, we could also accept the remaining Planning Department conditions as part of our recommendation. How about that? In totality. Yeah? Okay. Yeah, could somebody amend it.

Ms. Endrina: I would like to make a motion that we amend this to include all of the Department of Planning's recommendations.

Ms. Kaye: Plus the two we just voted on.

Ms. Endrina: Plus the two that we just voted for. Yes.

Mr. Rabaino: So move. I second.

Ms. Kaye: Okay, all in favor?

Mr. Hopper: Just to recommend also that you explain to the Council why you are recommending conditions along with a recommendation – that you can't make a recommendation as we've discussed before.

Ms. Kaye: Okay, I thought we did that. We are – catch me guys –

Mr. Hopper: I think I mentioned a couple of reasons that you could, but I do not believe you ever took a vote on that. I could be wrong on that. I mentioned a couple of thoughts.

Ms. Kaye: The motion on the floor, as I remember it, is that we're sending this back to County Council with no recommendation because the information we received – the information we requested was not received. Should County Council get that information and consider this, then these were the conditions that we were going to ask them to consider. The two that we just voted for and the Planning Department's conditions.

Mr. Hopper: Provided that's clear, then yes, that's fine.

Ms. Kaye: What is unclear?

Mr. Hopper: I didn't suggest it was. I'm providing that is your basis for voting, and everyone understands that on the Commission.

Ms. Kaye: Yes. And you know we're cutting this short, and I would like that to be in the report that we did not finish discussing conditions. Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Opposed? Okay, motion carries. (*Changed cassette tapes*)

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Gerald Rabaino to forward the application to County Council with the comments as discussed.

It was moved by Commissioner Darlene Endrina, seconded by Commissioner Gerald Rabaino, then

VOTED: to amend the motion as discussed.

E. COMMUNICATIONS

- 1. Deputy Corporation Counsel submitting a draft of proposed amendments to Chapter 402, Special Management Area Rules for the Lanai Planning Commission based on prior discussions at the Lanai Planning Commission meetings. The intent of the proposed amendments is to solidify enforcement procedures and add an order to show cause procedure. (Previously distributed with the June 17, 2009 agenda and discussed briefly at the June 17, 2009 meeting.)**

Commission may authorize the Department of Planning to accept the rules to publish notice of the public hearing for the adoption of the rules in accordance to HRS 91-3.

Mr. Hopper: Quickly Madame Chair, the rules on the next item – this is only to forward this on for public hearing – you could take action. Copies of our rule revisions from – we basically incorporated your rule revisions that you suggested when we brought those rules before you last month. Copies are available at the front here for anyone who wants them. Your action could be to basically vote to set these rules for public hearing in the future. Do that quickly.

Ms. Kaye: Okay. I had a conversation with James. This is really just so we give permission to publish these rules so we can have public hearing on them.

Mr. Hopper: You're not adopting the rules now. You're setting them for a future date.

Ms. Kaye: Right. So can I have a motion?

Ms. Zigmond: I so move.

Ms. Kaye: Can I have a second?

Mr. Rabaino: Second.

Ms. Kaye: Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay. Now, Erin?

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Gerald Rabaino, then unanimously

VOTED: to allow the Planning Department to publish a public hearing notice on the SMA rules.

2. Information Discussion on the Status on the Demolition of the Old Lanai Senior Center and the Construction of the New Lanai Senior Center. (E. Wade)

The purpose is to obtain more information and for further discussion.

Ms. Erin Wade: Good evening. My name is Erin Wade. I'm the small town planner. The Lana'i Senior demolition and reconstruction is my project. I was asked to come and give you a report on the status of the project. There has been no change since April. At which time, the Mayor sent a letter to Castle & Cooke addressing a few issues that the company raised regarding the construction of the new Senior Center. I sent to you, or I provided to you today copies of the formal communications that I have related to the issue. I hope that this clears up some of the questions that you had on this. I do understand that the Mayor's Office and the company are in discussions about some of the terms of the lease agreement as well. We are not party to that discussion, and I do not know what the status is of that. So, really, they don't need to share any of that with us until they're ready to move forward with a formal project. And it's that way with any developer or any project. That's the status from the Planning Department's perspective, and I guess I would suggest that if you would like more in-depth information about the Senior Center to have Housing and Human Concerns -. We've actually asked them for an update, and they provided you one at the

last meeting which is there's really no change. And I think the Mayor's Office is very busy right with labor negotiations and discussions on Oahu so this hasn't been a top priority at this point.

F. DIRECTOR'S REPORT

1. **Open Lana`i Applications Report.**
2. **2009 Hawaii Congress of Planning Officials (HCPO) Conference - September 23-25, 2009, Sheraton Waikiki**
3. **Agenda items for the August 19, 2009 meeting (Lanai School Cafeteria):**
 - a. **MR. MILTON ARAKAWA, AICP, Director of the DEPARTMENT OF PUBLIC WORKS requesting review and comments on the proposed Bill for an Ordinance Amending Chapter 18.04 of the Maui County Code, pertaining to Subdivision General Provisions. The proposed bill addresses the issue of consistency. (RFC 2009/0199) (J. Alueta) (Public Hearing)**

Ms. Kaye: Okay. So at this point I suppose we can --. Okay, we've done that, we've done that, okay we can save the open Lana`i applications report. The letter on the conference was self explanatory. And we can read the agenda items for August 19th. I will just tell the Commissioners that all of the thank letters to the water workshop presenters has gone out except for Kepa, and I was waiting to read the minutes of his presentation to do that. If anybody would like to see that, any of those letters, just let me know. And again, I am going to be following through on this procedural nightmare that got us here tonight on an issue that shouldn't have been on the agenda. I intend to put it in writing, and ask the Planning Department to schedule at a future date a discussion on how we can better communicate so that we don't have these scheduling errors in the future. So that said, anybody like to add anything else? Otherwise, we will --

G. NEXT REGULAR MEETING DATE: August 19, 2009

H. ADJOURNMENT

Mr. Hopper: Just quickly -- you do have eight minutes -- since these last two items were agenda items, you should probably, even if it's a formality, check for public testimony on those items.

Ms. Kaye: On the Lana`i applications report? On the conference?

Mr. Höpper: No, on the rules and on the Lana`i Senior Center.

Ms. Kaye: Oh, that's right. Sorry. Sorry. Okay, any public testimony on either the rules that were submitted that we have now approved for publication or the status of the demolition of the Old Lana`i Senior Center? I know the one gentleman that wanted to speak left. Gary, sorry.

Mr. Yokoyama: I just wanted to mention that I had submitted some concerns I had concerning the SMA enforcement rules to James Giroux who was the Deputy Corporation Counsel who offered that. I understand that those comments were referred by him onto you Madame Chair, and I don't know if it was shared with the rest of the Commissioners, but I did have some concerns. It's not that the Company opposes the notion of having enforcement because it should have enforcement. All of the other islands have SMA rules that have enforcement provisions. It's just that my main concern is one of fairness and constitutionality. The rules that are proposed by Mr. Giroux calls for penalty which are 10 times the amount that the islands of Moloka`i, or on Maui, provides, so I think that raises equal protection issues. Everybody in the same County should be treated the same. There shouldn't be any reason for having penalties that's 10 times higher on Lana`i than they are anywhere else. And I think because of that, that if these rules are adopted and ultimately you try to enforce them, there's a question of whether they're going to be enforceable because of the violation of the constitution both Hawaii and United States.

Ms. Kaye: Okay, and I'm just going to respond to that really quickly if you're finished Gary?

Mr. Yokoyama: Well, and there are other issues that I raised in my letter, so if you could read my letter, I basically provided the rationale for it. These suggestions that I made.

Ms. Kaye: Okay, the SMA rules are particular to every island, each island. They're not Statewide. So if I break an SMA rule and the Company breaks an SMA rules, we would pay the same penalty. And the penalties, the fee structure, the fine structure, as I understood in our rules and this can be fleshed out at a later time is what the County is going for Countywide. So it's not something that's just going to apply for Lana`i. That's what I've been told, so we'll see as we go forward.

Okay, any other public testimony on those two items? Okay, Planning Department, anything further?

Ms. Castillo: I move that we adjourn.

Ms. Kaye: Second?

Mr. Rabaino: Second.

Ms. Kaye: Thank you. I'll see everybody next month on August 19th at the cafeteria.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:28 p.m.

Respectfully transmitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE

PRESENT:

Sally Kaye, Chair
Stanley Ruidas, Vice-Chair
Beverly Zigmond
Matthew Mano
Alberta de Jetley
Leticia Castillo
Gerry Rabaino
Darlene Endrina

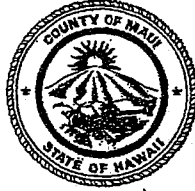
EXCUSED:

Dwight Gamulo

OTHERS:

Kathleen Aoki, Deputy Director, Department of Planning
Joseph Alueta, Administrative Planning Officer
Joseph Prutch, Staff Planner
Michael Hopper, Deputy, Corporation Counsel

CHARMAINE TAVARES
MAYOR



JEFFREY K. ENG
DIRECTOR
ERIC H. YAMASHIGE P.E. L.S.
DEPUTY DIRECTOR

DEPARTMENT OF WATER SUPPLY COUNTY OF MAUI

200 SOUTH HIGH STREET
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July 16, 2009

Mr. Joseph Alueta, Administrative Planning Officer
Department of Planning
County of Maui
250 South High Street
Wailuku HI 96793

'09 JUL 17 P3:29

DEPT OF PLANNING
COUNTY OF MAUI
HAWAII

Re: D.:

Project Name: Proposed Revisions to Title 19:

19.04	Home Based Businesses
19.08 & 19.09	Residential Districts
19.09 B-CT	Business - Country Town Districts
19.16 B-1	Neighborhood Business Districts
19.18 B-2	Community Business Districts
19.20 B-3	Central Business Districts

Dear Mr. Alueta,

Thank you for the opportunity to comment on proposed revisions to County Code Title 19.

It seems that some additional time could be spent to clarify the status of various uses under the proposed ordinances. Considered collectively, we found the ordinances difficult to understand in relation to one another. It appeared that similar uses were referred to differently in different chapters, without any clear explanation as to the distinctions. We have attached a table that indicates our understanding of the status of various uses under the existing and proposed ordinances, and note that although this table took some time to compile, to this date we are not fully certain that each case has been interpreted correctly. Some clarification of the ordinances as a set would therefore be appreciated.

The Department has concerns about existing as well as proposed Title 19 provisions in regard to system adequacy. The existing and proposed code seems to allow for many "commercialized residential" uses in residential districts where fire protection is often inadequate. The proposed title revisions also seem to allow for additional permitted uses in community business and central business districts.

While we have no objections to the uses themselves, we do have concern that infrastructure be adequate for the safety of consumers, structures and operations, or at the very least meet requirements for residential areas.

Concerns arise in particular when a given use could add to water system burden in one of four ways:

- 1) Added safety risk or added likelihood of fire, or added risk of backflow or aquifer contamination
- 2) Added liability risk
- 3) Increased domestic or peak demand
- 4) Additional financial burden to systems without compensation

By Water All Things Find Life

Safety, Fire or Water Quality Risk

Proposed uses involving welding, kilns, soldering, ovens, open fires, or use of chemicals that could cause water quality, backflow or contamination problems should not be permitted without certification of system adequacy and backflow prevention.

Liability Risk

Uses such as day care and elderly care may not pose a risk of additional fire hazard, chemical contamination or backflow. However, they do create an increased risk of exposure to liability. Should a fire occur, children and senior citizens may be less able to evacuate in a rapid and orderly fashion. Such operations do increase both the business owner's and the County's exposure to liability should a worst case situation occur. Such facilities should not be certified without meeting proper safety standards.

Increased Domestic or Peak Demands

Uses such as bakeries, catering, food preparation and others can cause additional demand on the system. These may be individually insignificant, but cumulatively they can add to an already underfunded and, in some locations, substandard situation.

Uncompensated Financial Burden

Consider the images shown below.



Areas shown in red indicate that the water system in these locations is substandard even for residential use, whereas areas shown in red, yellow or even aqua may be substandard for commercial use.

As you can see, even in many business or commercial district areas, water infrastructure is not adequate for business zoning. Where a building permit or subdivision is involved, the Department of Water Supply has an opportunity to ensure that infrastructure is adequate.

However, where existing buildings were either constructed as homes exempted from fire protection requirements due to first and second dwelling exemptions, or pre-date the rules - converting these structures to business uses, can exacerbate the problem of system inadequacy. Adding to unfunded infrastructure burden only makes this situation worse. In turn, this deteriorates service to existing customers.

There is a historical context in which systems developed initially for irrigation of fields, now serve communities of large residences; or systems developed for a few small homes are now serving what have become commercial centers. Three fundamental causes of this widespread inadequacy are: 1) the first and second dwelling exemption, which enables increasing residential burden on inadequate systems; 2) the fact that there is no opportunity to mandate requirements at change in zoning other than conditions of discretionary approval, and 3) the fact that there is no opportunity to mandate requirements at special use other than conditions of discretionary approval. Intensified zoning issued after a given system exists can render entire areas sub-standard for zoning with one decision.

Both the rules of the Department and its philosophy have been to require improvements necessary to prevent deterioration of service to existing customers. Lacking a mechanism to insure that system standards are met for such a large range of uses inevitably means that the Department is chronically short of adequate funding to maintain, replace and improve system elements as necessary to serve the public needs.

Adding to the list of uses permitted without opportunity for infrastructure review and improvement only exacerbates this situation. A similar concern arises in cases where uses of fuels, paints, glazes or other chemicals could be approved without adequate review for pollution prevention.

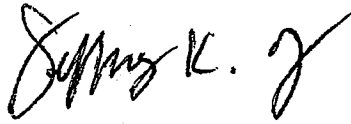
Recommendation

We would recommend at least some review of any use that meets one of the four criteria specified above. Even if an expedited review process is desired, we would recommend that it be based upon demonstration that the following conditions have been met.

1. Verification that water infrastructure is able to meet or exceed all applicable standards for fire protection, irrigation and domestic service, as certified by a licensed engineer or architect with submittal of fire flow, domestic and irrigation calculations prepared and stamped by a licensed engineer or architect.
2. Sumbittal of a map identifying:
 - a. location of property, structures, and proposed uses within the property
 - b. locations of hydrants and or standpipes in the vicinity of the property.
 - c. location of approved backflow prevention devices, along with make, model, installation and approval dates. If none exists, plans must be submitted for approval and verification that installation and approval have been completed.
3. Certification that sprinklers have been installed, inspected and found operational according to applicable standards of the Department of Fire and Public Safety.
4. Verification that smoke detectors have been provided
5. Verification that manual extinguishing equipment has been installed in accordance with NFPA 10 Standards for the Installation of Portable Fire Extinguishers, or other standard as set by the Maui County Fire Department.
6. Verification of liability insurance coverage where applicable due to risk or liability that could result from the use.
7. Verification that all structures on the property have been fitted with low flow fixtures. Applicants should check with the Department of Water Supply to see which fixtures are available or appropriate to the use.

Should you have any questions, please feel free to contact our Water Resources and Planning Division at 244-8550.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey K. Eng". The signature is written in a cursive style with a large, stylized initial "J".

Jeffrey K. Eng, Director

attachment:
Table Summarizing Impacts of Proposed Ordinances

Key: P=Permitted (proposed & present) N=Not Permitted N/A= Not Applicable A=Permitted Accessory S=Permitted Special Use PI=Newly Permitted AI=Newly Permitted Accessory SI=Newly Permitted Special Use NI=Newly Removed <i>Italics=portion changed</i>	Res 19.08	B-CT 19.15	Neigh Business 19.16 B-1	Community Business 19.18 B-2	Central Business 19.20 B-3	Comment
Chapter 19.09 is Repealed	P1	N/A	N/A	N/A	N/A	Chapter 19.09 consolidated with 19.08. Zero Lot Line, R-0, included w/R-1, R-2, R-3.;
Use-Chapter 19.16.040 B-1 & 19.18.040 B-2 Special Uses	N/A	N/A	***	***	N/A	*** - Section Reserved & Specifically Left Blank at this Time in B-1 & B-2.
Amusement & Recreation, in Enclosed Bldgs	N	P	N	P	P	
Animal Hospitals	N	P	P (Similar)*	P similar	P	Except on Molokai (BCT); Language Removed. Permitted under "Personal & Business Services" (B-2/B-3); *Chapter 19.16 O. Other similar retail businesses or service establishments which supply commodities or perform services primarily for residents of the surrounding neighborhood; provided, however, such uses shall be approved by the commission as conforming to the intent of this title.
Auctioneer Establishments	N	N	N	NI/P	P	Language Removed. Permitted under "Gen. Merchandising" (B-2/B-3)
Auditoriums	N	P	N	P	PI	
Auto - Vehicle Bodywork, Frame or Body Parts Straightening, Welding, Vehicle (NonOperating) Storage/Tire Recapping/Regrooving, Vehicle Steam Cleaning, Painting	N	S	N	N	NI/A	All Work Done in Enclosed Bldg/With Comm. Approval (B-CT); Vehicle Steam Cleaning, Painting Removed from Permitted (B-3)
Auto Services/Repair In Enclosed Bldgs or Garages	N	P	N	P	NI/N	In Enclosed Bldgs; No Tire Rebuilding/Battery Mfg. (B-2); "Automobile services" means a facility providing fueling, greasing, lubrication and cleaning services for vehicles. Additional services may include, but are not limited to, minor engine repair, such as replacement of spark plugs, batteries and tires; minor repair of engine parts such as fuel pumps, oil pumps and lines, belts, carburetors, brakes, mufflers, and emergency wiring; radiator cleaning and flushing; towing; safety inspections; and motor adjustments not involving repair of head or crankcase. Services not included are tire recapping and regrooving; body work, such as straightening of frames or body parts; steam cleaning; welding; painting; and storage of automobiles not in operating condition.
Auto Service Station w/no auto Repair	N	P	P	P	PI	W/no Repair, Operated as Adjunct (B-1)
Auto Upholstery Shop	N	N	N	P	NI/N	
Baseball/Football Stadiums; Other Sports	N	N	N	P	PI	
Bath Houses, Commercial/Turkish incl. Masseurs	N	N	N	NI/P	P	Language Removed, but Permitted under "Personal & Business Service" (B-2/B-3)
Car Lots-New	N	N	N	P	N	
Car Lots-Used	N	N	N	P	NI/N	
Ch-Churches	S	P	P	P	N	Not Permitted in B-3/IA Noted
Ch-Philanthropic Soc./Benevolent/Relig./Civic Organizations	N	P	N	P	P	Permitted under "General Office" (B-2/B-3)
Dy Cr-Day Care Facilities: Day Care Homes, Day Care Cntrs, Nurseries, Babysitting Services/Child Care Homes, Adult Daycare Homes/Adult or Multi Generational Day Care Services	S/A	P	P	P	N	Facilities Covers ALL (Adult & Children) DayCare-IA; # of Clients Subject to Lot Size in Accessory Use: Sect. 19.08030H - <7500sf, 6 Clients; 7500-9999sf, 8 Clients; >9999sf, 12 Clients. Serving > # Permitted in Accessory Use May be Permitted under Special Uses, with Commission Approval (Res): Except on Molokai (BCT); Change from daycare centers & nurseries to facilities(B-1); IA Made Note that Daycare is Not Permitted in B-3
Dy Cr-Nursing/Convalescent Homes	S	P	P	P	PI	Except on Molokai (BCT)
Dy Cr-Other like facilities located in private homes used for child care services serving ># defined in Sect. 19.08030H	S	N/A	N/A	N/A	N/A	Sect. 19.08030H - Subject to Lot Size, See Above

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Et-Catering w/no > 5 Persons Employed	N	P	N	P	P1	
Et-Deli/Ice CreamStores/Snack Counter	N	P	P	P	P1	
Et-Restaurants, Cafes/Bars, incl. Drive-Ins/Eating/Drinking Establishments	N	P	P (Similar)*	P	P1	*Chapter 19.16 O. Other similar retail businesses or service establishments which supply commodities or perform services primarily for residents of the surrounding neighborhood; provided, however, such uses shall be approved by the commission as conforming to the intent of this title.
Equipment Rental/Sales Yards	N	N	N	P	NI/N	Permitted Under General Merchandising (B-2)
Fit-Fitness Centres./Gymnasiums	N	P	P (Similar)*	P	P1	
Gov't. Bldgs/Premises, for Public Uses, including Community Cntrs	N	P	N	P	N	
Gov't. Bldgs-Libraries	P	P	N	P	P1	
Greenhouses, Nurseries, Flower/Plant/Truck Gardens	P	P (Similar)*	P (Similar)*	P (Similar)*	N	*Chapter 19.18 65. Any other retail businesses or commercial enterprises which are similar in character of rendering sales of commodities or performance of services to the community & not detrimental to the welfare of the surrounding area; provided, however, such uses shall be approved by the commission as conforming to the intent of this code; No Business Transactions (Res); Unsure if applies to 19.15.020 permitted Uses 11. Hardware, feed, & garden stores, or *Chapter 19.15.040 Special Uses
Hospitals, w/ 75% of Property Owners' w/in 500' Permission	S	N	N	N	N	
Hotels	N	S	N	N	N	Previously a Declared Conditional Use (B-CT);
Laundromats	N	P	P	P	P	Permitted under "Personal and business services" (B-2/B-3)
Lite Mfg. Ice Cream/Milk Mfg./Candle Making, per 19.15.020, Contained in Business Establishment, Goods Sold Onsite Employing Not > 25;	N	S	P (Similar)*	P	N	Goods Sold Onsite -New Requirement.
Lite Mfg. Leather Crafting/Sewing, per 19.15.020, Contained in Business Establishment, Goods Sold Exclusively Onsite	N/A	S	P (Similar)*	P (Similar)*	N/A	Goods Sold Onsite- New Requirement.
Marinas	N	N	N	P	P1	
Medical Facilities (Medical & Dental Clinics)	N	P	P (Similar)*	NI/P1	P1	Except on Molokai (BCT); Language Removed. Permitted under "Personal & Business Services" (B-2/B-3); *Chapter 19.16 O. Other similar retail businesses or service establishments which supply commodities or perform services primarily for residents of the surrounding neighborhood; provided, however, such uses shall be approved by the commission as conforming to the intent of this title.
Miniature Golf Courses	N	N	N	NI	N	
Mortuaries	N	N	N	P	S1	w/Commission Approval (B-2)
Museums	N	N	N	N	P1	
Music Studios	N	P	P (Similar)*	NI/P	P	Permitted under "Education, Specialized" (B-2/B-3)
News/Magazine Stands	N	P (Similar)*	P (Similar)*	P	P1	*Chapter 19.15.040 Other uses that are similar in character to permitted and special uses and consistent with the unique character, identity, and needs of the country town, & that are not detrimental to the welfare of the surrounding area.

Key: P=Permitted (proposed & present) N=Not Permitted N/A= Not Applicable A=Permitted Accessory S=Permitted Special Use P1=Newly Permitted A1=Newly Permitted Accessory S1=Newly Permitted Special Use N1=Newly Removed <i>Italics=portion changed</i>	Res 19.08	B-CT 19.15	Neigh Business 19.16 B-1	Community Business 19.18 B-2	Central Business 19.20 B-3	Comment
Ofc-Banks	N	P*	P (Similar)*	N1/P	P	*19.15.020 6. Business, financial, & professional offices; Permitted under "Business, Financial, & Professional Ofc." (B-CT); Language Removed, but Permitted under "Personal & Business Service" (B-2/B-3)
Ofc-Business Offices & Agencies/Professional Offices	N	P*	P (Similar)*	N1/P	P	*19.15.020 6. Business, financial, & professional offices; Permitted under "General Office" (B-2); Business, Financial, & Profes. Ofcs?(B-CT))
Ofc-Charity Relief Organizations	N	P*	P (Similar)*	P	P	*19.15.020 6. Business, financial, & professional offices; Permitted under "General Office" (B-2)
Ofc-Financial Offices	N	P*	P (Similar)*	P	P	*19.15.020 6. Business, financial, & professional offices; Permitted under "General Office" (B-2)
Ofc-General Office	N	N	N	P	P	Permits Many Uses (B-2/B3); "General office" means facilities used for the practice of a profession, the conduct of public administration, or the administration of business or industry. Examples include offices for government agencies, nonprofit organizations, financial, insurance, and real estate companies, professional practices (except medical and dental), and television and radio stations; Unclear how definition relates to B-Ct & B-1
Ofc-Private Clubs or Fraternal Organizations	N	P	P (Similar)*	N1/P	P	Permitted under Benevolent/Civic(B-CT); Language Removed, Permitted under "General Office" (B-2)
Ofc-Radio/TV Stations	N	N	N	P	P	Permitted under "General Office" (B-2)
Parcel Delivery Stations	N	S (Similar)*	P (Similar)*	N1/P	P	*Chapter 19.15.040 Other uses that are similar in character to permitted and special uses and consistent with the unique character, identity, and needs of the country town, & that are not detrimental to the welfare of the surrounding area; Language Removed, but Permitted under "Personal & Business Service" (B-2)
Parking Lots	N	P	N	P	P1	
Parks/Playgrds/Certain Refresh. Sales in Parks by Gov't.	P	N	N	N	N	
Pet Shops, Not Boarding Animals	N	P*	P (Similar)*	P	P1	*19.15.020 7. Commercial Retail Establishment; *Chapter 19.16 O. Other similar retail businesses or service establishments which supply commodities or perform services primarily for residents of the surrounding neighborhood; provided, however, such uses shall be approved by the commission as conforming to the intent of this title
Pools; Hot-tubs	A1	N/A	N/A	N/A	N/A	
Public Utilities Substations; Non-hazardous/nuisance	S	S	N	N	N	

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Res-1 or More Dwelling Units Above or Below the 1st Floor to the Permitted Uses in the District	N/A		P	A1	A1	
Res- Single Family Dwelling per Lot	P	P	P	P	N	Or Living/Sleeping Quarters For Single Family Constructed Above Ground Floor of Business Bldg., If 6,000 sf left after Business/Pkg. Subtracted. (B-1)
Res-Apartments	N	P	N	P	P1	Dwelling, apartment house. "Dwelling unit, apartment house" or "apartment house dwelling" means the same as "dwelling unit, multifamily."
Res-B & B Homes	A	P	P	P	N	Subject to 19.64.030
Res-Bungalow Cts., Duplexes	N	P	N	N	N	Except on Molokai (BCT)
Res-Combinations of Dwelling Units w/Other Permitted Uses in Same Bldg	N	P	P	A1	A1	Except on Molokai (BCT)
Res-Housing for Low-Mod. Income/Nonprofit Operated (DU density not to increase >10%)	S	P	P	A1	A1	Permitted under MF Dwelling (B-CT); Permitted under Apt/>1 DU (B-1, B-3)
Res-Housing for the Aged Gov't/Nonprofit Operated (population not to increase >10%)	S	P	P	A1	A1	Permitted under MF Dwelling (B-CT)
Res-Mixed Lots Size w/in R-1, 2 &3, But not <6,000sf. Removed Residential Planned Developments Only	S	N/A	N/A	N/A	N/A	
Res-Multi Family Dwellings	N	P	N	A1	A1	Except on Molokai (BCT)
Res-Ohana Units	A	P	P	P	N	Subject to 19.35 (Res); With Restrictions (B-CT, B-1,
Res-Schl.-On-Campus Dormitories	P	P	N	P	A1	JA-Permitted under MF Dwelling (B-CT) Permitted under "Educat. Institutions" (B-2)
Sanitariums	N	N	N	P	P1	
Schl.-Colleges	P	P	N	P	P	Permitted under "Educational Institutions" (B-2)
Schl.-Dancehalls, Dancing Studios/Dancing & Hula Studios	N	P	N	P	P	Permitted under "Education, Specialized" (B-2)
Schl.-Education, Specialized	N	P	N	P	P	Permitted under "Educational Institutions" (B-2)
Schl.-Educational Institutions	N	P	N	P	P	Permitted under "Educational Institutions" (B-2)
Schl.-Educational/Research/Trade/Person. Skills Learning Centres.	N	P	N	N1/P	P	Trade Schools Language Removed; Permitted under "Educational Institutions" (B-2)
Schl.-Schools/Elementary/Intermediate/High Schools	P	P	N	P	P	Permitted under "Educational Institutions" (B-2)
Schl.-Kindergarten/Nurseries/Nursery Schools/Pre-School Kindergarten	S/A	P	N	P	P	# of Clients Subject to Lot Size (Res); Permitted under Daycare Facilities/Except on Molokai (B-CT); Permitted under "Educational Institutions" (B-2)

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Shp- Commercial Retail Establishments	N	P	N	N	N	
Shp- General Merchandising	N		N	P	PI	Permits Many Uses (B-2/B-3); "General merchandising" means businesses within permanent enclosed facilities engaged in the retail sale or rental of goods, including, but not limited to, retail stores, drugstores, department stores, electronic and communication stores, hardware stores, home furnishing stores, pet stores, garden shops, and equipment rentals.
Shp- Personal & Business Services	N		N	P	P	Permits Many Uses (B-2/B-3); "Personal and business services" means establishments that offer specialized goods and services frequently purchased by individual consumers and businesses. Examples include barber shops and beauty salons, medical, dental or similar health care services, massage services, photography laboratories and studios, financial institutions, tailor and seamstress businesses, post office and parcel delivery, travel agencies, laundromats, and printing and duplicating shops.
Shp- Personal Services Establishments	N	P	N	N	N	"Personal services establishment" (B-CT) means any business or commercial activity involving the care of a person or his or her apparel, including, but not limited to, barber shops, beauty shops, garment repair, laundry cleaning, pressing, tailoring, and shoe repair.
Shp- Antique Shops	N	P*	P (Similar)*	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Gen. Merchandising" (B-2/B-3); *Chapter 19.16 O. Other similar retail businesses or service establishments which supply commodities or perform services primarily for residents of the surrounding neighborhood; provided, however, such uses shall be approved by the commission as conforming to the intent of this title.
Shp- Art Galleries	N	P*	P (Similar)*	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Gen. Merchandising" (B-2/B-3); *Chapter 19.16 O. Other similar... See Above
Shp- Auto Parts Stores	N	P	N	N1/P	P	Language Removed (B-2); Permitted under "Gen. Merchandising" (B-2/B-3)
Shp- Awning/Canvas Shop	N	N	N	P	N1/P	Language Removed (B-3); Permitted under "Gen. Merchandising" (B-2/B-3)
Shp- Bakeries	N	P	P (Similar)*	N	N	*Chapter 19.16 O. Other similar retail businesses or service establishments which supply commodities or perform services primarily for residents of the surrounding neighborhood; provided, however, such uses shall be approved by the commission as conforming to the intent of this title.
Shp- Baker Goods Stores	N	P	P	P	P	Permitted under "General Merchandising" (B-2/B-3)
Shp- Barber/Beauty Shops	N	P	P	P	P	Permitted under Personal Services Establ. (B-CT) Personal & Business Service (B-2/B-3)
Shp- Book/Stationery Stores	N	P	P	P	P	Permitted under "General Merchandising" (B-2/B-3)
Shp- Candy Stores	N	P	P	P	P	Permitted under "General Merchandising" (B-2/B-3)
Shp- Dress Making Shops (Custom Dressmaking/Millinery; Tailoring Shops)	N	S (Similar)*	P (Similar)*	N1/P	P	*Chapter 19.15.040 Other uses that are similar in character to permitted and special uses and consistent with the unique character, identity, and needs of the country town, & that are not detrimental to the welfare of the surrounding area; Language Removed. Permitted under Personal Services Establ. (B-CT), "Personal & Business Service" & "Gen. Merchandising" (B-2/B-3)
Shp- Drug Stores	N	S (Similar)*	P	P	P	*Chapter 19.15.040 Other uses that are similar in character to permitted and special uses and consistent with the unique character, identity, and needs of the country town, & that are not detrimental to the welfare of the surrounding area; Permitted under "General Merchandising" (B-2/B-3)

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Shp-Dry Goods	N	S (Similar)*	N	N1/P	P	*Chapter 19.15.040 Other uses that are similar in character to permitted and special uses and consistent with the unique character, identity, and needs of the country town, & that are not detrimental to the welfare of the surrounding area; Language Removed. Permitted under "Gen. Merchandising" (B-2/B-3)
Shp-Department Stores	N	P*	N	N1/P	P	*19.15.020 7. Commercial Retail Establishment, If not big box (B-CT); Language Removed, Permitted under "Gen. Merchandising" (B-2/B-3)
Shp-Florist Shops	N	P*	P	P	P	*19.15.020 7. Commercial Retail Establishment; Permitted under "General Merchandising" (B-2/B-3)
Shp-Gift Stores	N	P*	P	P	P	*19.15.020 7. Commercial Retail Establishment; Permitted under "General Merchandising" (B-2/B-3)
Shp-Grocery Stores/Meat Mkts.	N	P*	P	P	P	*19.15.020 7. Commercial Retail Establishment; Permitted under "General Merchandising" (B-2/B-3)
Shp-Haberdasheries/Women's Apparel Shops	N	P*	P (Similar)*	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Permitted under Personal Services Establ. (B-CT), "Gen. Merchandising" (B-2/B-3)
Shp-Hardware Stores/Feed/Garden; Garden Supply	N	P*	N	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Permitted under Personal Services Establ. (B-CT), "Gen. Merchandising" (B-2/B-3)
Shp-Jewelry Stores or fine Art Shops, inc. Interior Decorating	N	P*	N	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Gen. Merchandising" (B-2/B-3)
Shp-Liquor Stores (Package Only)	N	P*	P	P	P	*19.15.020 7. Commercial Retail Establishment; Permitted under "General Merchandising" (B-2/B-3)
Shp-Nurseries, Flower/Plant	N	P*	P	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Gen. Merchandising" (B-2/B-3)
Shp-Photo Studios	N	P*	P (Similar)*	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Personal & Business Service" (B-2/B-3); *Chapter 19.16 O. Other similar...See Below.
Shp-Physical Culture Studios	N	P*	P (Similar)*	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Education, Specialized" & "Personal & Business Service" (B-2/B-3); *Chapter 19.16 O. Other similar...See Below
Shp-Plumbing Shops (W/in Enclosed Bldg & <6 Employees (B-2)	N	P	P (Similar)*	N1/P	P	Language Removed (B-2); Permitted under "Gen. Merchandising" (B-2/B-3); *Chapter 19.16 O. Other similar...See Below
Shp-Printing Establishments/Block in Enclosed Bldg (Lithography)	N	P	N	N1/P	P	Language Removed (B-2); Permitted under "Personal & Business Service" (B-2/B-3)
Shp-Shoe Stores	N	P*	P (Similar)*	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Personal & Business Service" (B-2/B-3); *Chapter 19.16 O. Other similar...See Below.
Shp-Canvas/Sign-Painting Shops, Contained in Business Establishment, in Enclosed Bldgs	N	S	N	P	P	& Not >5 Persons Employed (B-2); Permitted under "Gen. Merchandising" (B-3)
Shp-Skating Shops	N	P*	N	N1/P	P	*19.15.020 7. Commercial Retail Establishment; Language Removed (B-2); Permitted under "Gen. Merchandising" (B-2/B-3)
Shp-Surfboard Making Shps, Contain. w/in Business Establishment	N	S	P (Similar)*	P	P	*Chapter 19.16 O. Other similar retail businesses or service establishments which supply commodities or perform services primarily for residents of the surrounding neighborhood; provided, however, such uses shall be approved by the commission as conforming to the intent of this title.

Key: P=Permitted (proposed & present) N=Not Permitted N/A= Not Applicable A=Permitted Accessory S=Permitted Special Use PI=Newly Permitted A1=Newly Permitted Accessory S1=Newly Permitted Special Use N1=Newly Removed <i>Italics=portion changed</i>	Res 19.08	B-CT 19.15	Neigh Business 19.16 B-1	Community Business 19.18 B-2	Central Business 19.20 B-3	Comment
Shp-Tailor Shops	N	P	P (Similar)*	N1/P	N	Permitted under Personal Services Establ. (B-CT), Personal & Business Service (B-2); *Chapter 19.16 O. Other similar...See Above
Shp-Upholstery, Contained in Business Establishment	N	S	N	N	N	
Storage Facilities Not Associated w/Permitted Use	N	S	N	N	N	Storage Facilities Removed in B-3
Storage-Warehouses & Yards, Storage Bldgs. & Warehouses, sep. fr. Main Bldgs/Storage Yards	N	N	N	A	N1	
Tur-Freestanding Antenas, Towers, Wind Turbine		S1				
Tur-Wind Turbine Structure Attached to Bldg		A1				
Telecommunications Ofc. & Facilities, w/Prop. Line Setback & Screened	N	S	N	N	N	
Theatres	N	P	N	P	PI	
Use-Traditional Domestic Type Businesses in the Home that do not Meet the Home Occupation Standards, Provided there will be no detrimental or No Nuisance effect upon the Neighbors	S	N/A	N/A	N/A	N/A	
Use-Any Use permitted in a B-1 Neighborhood Business District, however, No Living or Sleeping Quarters Shall be Permitted in any Detached Accessory Bldg. or Structure on Same Lot	N/A	N/A	N/A	P	N/A	
Use-Other Uses that are Similar in Character to Permitted & Special Uses & Consistent w/Unique character, identity, & needs of the Country Town & that are not Detrimental to the Welfare of the Surrounding area	N/A	S	N/A	N/A	N/A	
Use- Other Similar Retail Businesses or Service Establishments which supply commodities or perform Services Primarily for Residents of the Surrounding Neighborhood; Provided, however, Such Uses Shall be Approved by the Commission as Conforming to the Intent of this Title	N/A	N/A	P	N/A	N/A	
Uses-Following Uses & Structures, located on the Same Lot, are deemed accessory, customary, incidental, usual, & necessary to the above permitted principal uses in the district: Fences, Wall, Patio, Deck, Other Land Features; Garages, car ports, porte-cochere, mailbox, trash; Subordinate Uses & Structures which are determined the the Director of Planning to be clearly incidental and customary to the permitted uses listed herein.	A1	A1	A1	A1	A1	
Use-Within the B-3 District, There Shall be Permitted any Use Permitted in a B-1 District & B-2 CBT with the Following Exceptions: Living/Sleeping Quarters in Detached Accessory Bldg., Auto Repair & Garages, Auto Painting or Steam Cleaning, Auto Upholstery Shop, Awning/Canvas Shop, Equipment Rental/Sales Yards, Hatcheries, Lumber Yards, Machine Shops, Plumbing Shops, Storage Bldgs. & Warehouses, sep. fr. Main Bldgs., Storage Yards, Trucking & Storage, Used Car Lots	N/A	N/A	N/A	N/A	N1	Language Removed. There Shall NOT be Permitted any Use-Within the B-3 District just because a Use is Permitted in a B-1 District & B-2 (JA)
Uses-Energy Systems, Small Scale	A1	N	A1	A1	A1	
Use-Within (Res, B-1, B-2) districts, the following uses & Structures shall be Permitted:	P1		P1	P1		

Key: P=Permitted (proposed & present) N=Not Permitted N/A = Not Applicable A=Permitted Accessory S=Permitted Special Use PI=Newly Permitted AI=Newly Permitted Accessory SI=Newly Permitted Special Use NI=Newly Removed <i>Italics=portion changed</i>	Res 19.08	B-CT 19.15	Neigh Business 19.16 B-1	Community Business 19.18 B-2	Central Business 19.20 B-3	Comment
Existing Home Occupation from Chapter 19.08.030 F:						
<p>Uses-Home Occupations (HO) 1-7: 1)That no person other than a family member residing on the premises of the dwelling unit (DU) shall be employed by the HO; 2)That no more than 25% of the floor area of the DU shall be used by the HO; 3)No group instruction classes or group sales meetings shall be permitted in DU; 4)No product shall be exchanged by the operator of the HO or the operator's agent to any other person on the premises of the DU for consideration; 5)No sign, display or change in the exterior appearance of the DU to advertise; 6)No goods, chattel, materials, supplies or items of any kind shall be delivered either to or from the premises of the DU used for a HO other than by a vehicle owned by the residents of DU & limited to cars, jeeps, vans, with a maximum capacity of 9 passengers, & 4-wheel drives and trucks with a maximum load capacity of 3/4 ton; 7)Any storage of goods, samples materials or objects used in connection with the HO shall be stored within the DU & shall receive the approval of all appropriate gov't agencies;</p>	A	N/A	N/A	N/A	N/A	Home Occupations (HO) 1-7; (NOTE: Excel limits the # of characters allowed /cell)
<p>Uses-Home Occupations (HO) 8-9: 8)Clients, patrons, & customers of the HO shall be prohibited on the premises except for educational services on a 1 on 1 pupil-teacher basis so long as such activity is limited to a total of 8 persons/day; 9)That the following occupations shall not be construed to be a HO & herefore shall not be permitted: a.The repair, manufacture, processing, or alteration of goods, materials, or objects, except making, dressmaking, tailoring, & the manufacturing of arts & crafts items. b.Harboring, training, or raising dogs, cats, birds, horses, or other animals. c.Automobile &/or body fender repairing.</p>	A	N/A	N/A	N/A	N/A	Home Occupations (HO) 8-9; (NOTE: Excel limits the # of characters allowed /cell)

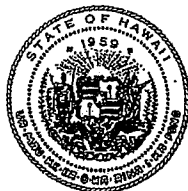
<p>Key: P=Permitted (proposed & present) N=Not Permitted N/A= Not Applicable A=Permitted Accessory S=Permitted Special Use PI=Newly Permitted A1=Newly Permitted Accessory SI=Newly Permitted Special Use NI=Newly Removed <i>(italics=portion changed)</i></p>	Res 19.08	B-CT 19.15	Neigh Business 19.16 B-1	Community Business 19.18 B-2	Central Business 19.20/B-3	Comment
<p>Proposed Home Occupation Amendments to Chapter 19.04 Home Based Business from Department of Planning Transmittal dated June 17, 2009:</p>						
<p>Uses Home Based Business(HBB)1-9: 1)Only 1 person other than family member residing on the premises of the dwelling unit (DU) shall be employed by the HBB; 2)Same; 3)Same; 4)Retail sales shall be limited to products produced by the HBB; 5)No sign or display shall advertise the HBB & there shall be no change to the exterior appearance of the DU to accommodate the HBB; 6)Deliveries either to/from the premises of the DU used for HBB shall be limited to 2-axle vehicles, between the hours of 9am-5pm; 7)Storage of goods, samples, materials or objects used in connection with the HBB shall be stored within DU or screened from public view; 8)That customers shall be limited to 2 customers at any time & a total of 8 persons/day between 9am-5pm; 9)The HBB shall not impact the residential character of the property or neighborhood;</p>	A1	N/A	N/A	N/A	N/A	<p><i>Uses Home Based Business 1-10: 1) Changed to 1 person other than family member (A1); 2) and 3) Same; 4) Changed to: That retail sales shall be limited to products produced by the home based business (A1); 5) Same but re-worded; 6) Changed to: size limited to 2-axle vehicles, w/delivery hours of 9 am - 5 pm (A1); 7) Changed to: Storage of goods within DU or screened from public view (A1); 8) Changed to 2 customers at any time & a total of 8 persons/day between 9 am - 5 pm (A1); 9) Added: That the home based business shall not impact the residential character of the property or neighborhood (A1);</i></p>
<p>Uses Home Based Business(HBB)10: 10)The following shall not be construed to be a HBB & therefore shall not be permitted: a. Harboring, caring, training, or raising dogs, cats, birds, horses, or other animals; b. Repair of automobile/other vehicles w/internal combustion engines; c. Contractor headquarters or dispatch centers to other locations; d. The repair, manufacture, processing, alteration of goods, materials or objects that produce noise, dust, smoke, glare or odors that negatively impact the neighbors</p>	A1	N/A	N/A	N/A	N/A	<p>10) Removed exceptions; Added "Contractor headquarters or dispatch centers to other locations"; Added "caring" for animals(A1)</p>

Key: P=Permitted (proposed & present)
 N=Not Permitted N/A= Not Applicable
 A=Permitted Accessory
 S=Permitted Special Use
 PI=Newly Permitted
 AI=Newly Permitted Accessory
 SI=Newly Permitted Special Use
 NI=Newly Removed
Italics=portion changed

	Res 19.08	B-CT 19.15	Neigh Business 19.16 B-1	Community Business 19.18 B-2	Central Business 19.20 B-3	Comment
Following Exceptions Removed from B-3:						
Auto Painting/Steam Cleaning					NI/N	Exceptions Removed (B-3); Listed Above
Auto Repair Shops & Garages					NI/N	Exceptions Removed (B-3); Listed Above
Auto Upholstery Shops					NI/N	
Awning/Canvas Stores					NI/P	Exceptions Removed (B-3); Listed Above
Equipment Rental & Sales Yards; Used Car Lots					NI/N	Exceptions Removed (B-3); Listed Above
Mumbing Shops					NI/N	Exceptions Removed (B-3); Listed Above
Storage Bldgs. & Warehouses, sep. fr. Main Bldgs					NI/N	Exceptions Removed (B-3); Listed Above
Storage Yards					NI/N	Exceptions Removed (B-3); Listed Above
Living/Sleeping Quarters in Detached Accessory Bldg.					NI/N	Exceptions Removed (B-3); Listed Above; Ohana Permitted in Res
Hatcheries					NI/N	Exceptions Removed (B-3)
Lumber Yards					NI/N	Exceptions Removed (B-3)
Machine Shops					NI/N	Exceptions Removed (B-3)
Trucking & Storage					NI/N	Exceptions Removed (B-3)

09/8445

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

STP 8.3323

July 7, 2009

Mr. Jeffrey S. Hunt, AICP
Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

'09 JUL 20 P2:24

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

Dear Mr. Hunt:

Subject: Title 19 Updated to Chapters 19.08 and 19.09 Residential Districts

Thank you for requesting the State Department of Transportation's (DOT) review of the subject action amending Section 3: Title 19.04, Maui County Code by adding the definition for "home based business" in residential districts.

The proposed changes do not appear to affect DOT's land use review process (i.e., review of land development projects for transportation impacts, submittal of comments and recommendations for mitigating measures and improvements).

DOT requests that a copy of the approved, amended codes be provided when the subject amendments are adopted. DOT also wishes to continue to be consulted on all land development projects with any potential airport, harbor or highway facilities impacts.

DOT appreciates the opportunity to provide comments. If there are any questions, please contact Mr. David Shimokawa of the Statewide Transportation Planning Office at (808) 587-2356.

Very truly yours,

Francis Paul Keeno

f w BRENNON T. MORIOKA, Ph.D., P.E.
Director of Transportation

09/8995
PHONE (808) 594-1888

FAX (808) 594-1865



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

'09 JUL 20 P2:23 HRD09/4540

July 17, 2009

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

Jeffrey S. Hunt, Planning Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawai'i 96793

RE: Changes 19.08 and 19.09 Residential Districts, County of Maui.

Aloha e Jeffrey S. Hunt,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated June 17, 2009. The County of Maui is proposing that "home based businesses" be allowed in the Residential District. OHA has reviewed the submission and offers the following comments.

Our office has no specific comments regarding the proposed changes to Title 19.04, Maui County Code.

Thank you for the opportunity to comment. If you have further questions, please contact Jason Jeremiah by phone at (808) 594-1816 or e-mail him at jasonj@oha.org.

'O wau iho nō me ka 'oia'i'o,

A handwritten signature in black ink, appearing to read "Clyde W. Nāmu'o".

Clyde W. Nāmu'o
Administrator

C: OHA Maui CRC Office

09/9/78

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS JUL 29 A9:42

200 SOUTH HIGH STREET, ROOM NO. 434

JUL 29 A9:43 WAILUKU, MAUI, HAWAII 96793

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

July 27, 2009

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

MEMO TO: JEFFREY S. HUNT, A.I.C.P., PLANNING DIRECTOR
FROM: *Jr* MILTON M. ARAKAWA, A.I.C.P., DIRECTOR OF PUBLIC WORKS
SUBJECT: **PROPOSED BILL FOR AN ORDINANCE REPEALING CHAPTER 19.09, MAUI COUNTY CODE, AMENDING TITLE 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS, AND AMENDING TITLE 19.04, MAUI COUNTY CODE, RELATING TO GENERAL PROVISIONS AND DEFINITIONS**

These are general comments regarding the proposed bill (Draft 4):

1. Since a "home based business" may require stricter building code requirements to residential structures, will the Department of Planning require an approval or permit prior to the establishment of a "home based business" so that building code (and other agency) requirements can be imposed?
2. The definition of "dwelling unit" in building and housing codes does not address "home based business" uses. The 1997 Uniform Building Code requires the "home occupation business" to be separated by a fire wall/floor from the dwelling portion of the house if the "home occupation business" uses more than ten percent (10%) of the gross floor area of the house. In addition, a residential structure with a "home occupation business" may require a wider property line setback for fire resistance.

The 2006 International Building Code (which the County will be adopting) requires that the residential structure to comply with the most restrictive requirements of each occupancy/use.

3. The Title 19 definition of "Home Occupation" allows day care for a maximum of 12 clients, but the building code classifies day care for

more than six (6) people as a Group E, Division 3 occupancy. Day care for more than six (6) people will change the house from a Group R, Division 3 occupancy to a Group E, Division 3 occupancy. The E-3 occupancy also requires a ten (10) foot setback from property lines.

The 2006 International Building Code reduces the number of people (from six [6]) to five (5) and older than 2-1/2 years of age. The house would have to comply with the most restrictive requirements for each occupancy/use.

4. Maui County Code, Section 19.09.090(D) is being eliminated, thus the requirement for a maintenance easement on the adjoining lot has been eliminated. By a directive from the former Director of Public Works, walls on the zero lot line have not been required to be fire-rated if a five (5) foot maintenance easement was provided on the adjoining lot. The elimination of the maintenance easement will require wall and opening protection based on distance from property line.

These are specific review comments of the proposed bill (Draft 4) by page and section number:

5. **§19.04.040(2)**

Consider rewording *"That no more than twenty-five per cent of the floor area of the dwelling unit shall be used by the home occupation;"* to *"That no more than twenty-five per cent of the floor area of the dwelling unit shall be used by the home based business;"* since "Home based business" is being defined.

6. **§19.04.040(7)**

Is the storage area included in the total area allowed for the home based business? Consider limiting the storage area by square footage.

7. **§19.04.040(10)**

Consider rewording *"That the following shall not be construed to be a home based business and therefore shall not be permitted:"* to

Memo to Jeffrey S. Hunt, A.I.C.P., Planning Director
July 27, 2009
Page 3

"That the following shall not be permitted as a home based business:" since a person engaged in a home based business should not be prohibited from having pets and doing car repairs which are normal activities in the residential district.

If you have any questions regarding this memorandum, please call Michael Miyamoto at 270-7845.

MMA:MMM:ls

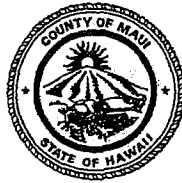
xc: Highways Division
Engineering Division

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CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

July 17, 2009

MEMO TO: JOSEPH ALUETA
F R O M: AARON SHINMOTO *Aaron Shinmoto*
SUBJECT: AMENDMENTS TO TITLE 19, HOME BASED BUSINESSES

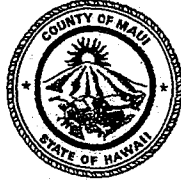
We have reviewed the subject amendment and offer the following comments.

1. The definition of a "home based business" states that the activity must be conducted by the occupant of the dwelling. But, the ability of having a "person other than a member of the family residing on the premises of the dwelling" to also be employed by the home based business appears contrary to the definition.
2. Determination of "floor area of the dwelling" used for the business should be clarified similar to determining floor area for accessory dwellings (Section 19.35.020, Maui County Code).
3. If retail sales are allowed, provisions for vehicular parking must be addressed. Must parking stall requirements be based on parking ratios established for commercial districts and then be paved, striped, and landscaped?
4. Allowing retail sales appears to contradict the prohibition of transacting business in the residential districts for greenhouses, flower and truck gardens and nurseries (Section 19.08.020(B), Maui County Code).
5. The location of any storage for the business should be further identified. Is the storage to be confined within the 25% floor area limitation for the business or is a garage or detached storage building acceptable? If a garage is used, provisions to replace the garage parking must be addressed. Also, should a size limitation be placed on any detached storage building?
6. The limitation on customers would be difficult to enforce and needs clarification. If more than two customers visit the business, are only two allowed at a time into the residence? Is the owner now in violation because he/she has other customers waiting outside (exceeding the limitation), but on the property? Do the others who are on the premises but do not enter the dwelling count as part of the "eight per day"?

However, if retail sales are not allowed, the limitation on customers is no longer an issue.

xc: Francis Cerizo
s:\zoning\reply\2009reply\HomeBasedBusinessOrd2009

09/8897
CHARMAINE TAVARES
MAYOR



JEFFREY A. MURRAY
CHIEF

ROBERT M. SHIMADA
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY
FIRE PREVENTION BUREAU

780 ALUA STREET
WAILUKU, HAWAII 96793
(808) 244-9161
FAX (808) 244-1363

July 13, 2009

'09 JUL 13 P1 33

Jeffrey S. Hunt
Department of Planning
200 S. High Street
Wailuku, Hi. 96793

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

Subject: Title 19 Up dated to Chapters 19.08 and 1909

Dear Mr. Hunt:

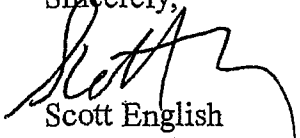
Thank you for the opportunity to review and comment of the subject application. At this time the Fire Prevention Bureau has three comments on the above subject.

1. The Fire Code requires an approved fire lane (20 feet wide) to be within 150 feet of all exterior walls of the proposed building. (UFC 1997 sec. 902) This access is required for a quick access to the building for fire protection.
2. The Fire Code requires an approved water supply capable of supplying the required fire flow for fire protection be within 300 feet of all exterior walls of the proposed building. (UFC 1997 sec. 903) This will insure that we have enough water for fire protection.
3. Set back requirements, Business building requires to be a minimum of ten feet from property lines or the walls and openings shall be rated. This requirement will protect other building in the area from fire exposure.

The fire protection requirements for a Business are greater then for a Residents for the following reasons, too protected the building so there is no lost of jobs, or lost of income.

If you have any questions, please call me at 244-9161.

Sincerely,


Scott English
Fire Plans Examiner

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M. D.
DIRECTOR OF HEALTH

LORRIN W. PANG, M. D., M. P.
DISTRICT HEALTH OFFICER

STATE OF HAWAII
DEPARTMENT OF HEALTH
MAUI DISTRICT HEALTH OFFICE
54 HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2102

June 25, 2009

Mr. Jeffrey S. Hunt
Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawai'i 96793

Attention: Joseph W. Alueta

Dear Mr. Hunt:

Subject: Title 19 Updated to Chapters 19.08 and 19.09
Applicant: Jeffery S. Hunt
Description: Changes 19.08 and 19.09 Residential District

Thank you for the opportunity to review Title 19 updates to Chapter 19.08 and 19.09.

We have no comments to offer.

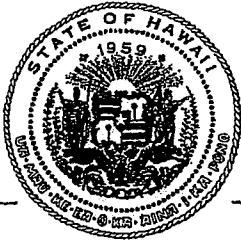
Should you have any questions, please call me at 808 984-8230 or e-mail me at patricia.kitkowski@doh.hawaii.gov.

Sincerely,

A handwritten signature in cursive script that reads "Patti Kitkowski".

Patti Kitkowski
Acting District Environmental Health Program Chief

✓ 09 JUN 26 12:22
DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR
ABBEY SETH MAYER
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Ref. No. P-12636

July 1, 2009

Mr. Jeffrey Hunt
Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

'09 JUL -6 P1:30

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

Dear Mr. Hunt:

Subject: Proposed Changes to Allow "Home Based Businesses" in the Residential District

Thank you for the opportunity to review and comment upon the proposed changes to Title 19.04, Maui County Code, to allow "home based businesses" in the Residential District. The Office of Planning has no comments at this time. In so stating, the Office offers no judgment of either the adequacy of the document itself or the merits of the proposed project.

If you have any questions, please contact Scott Derrickson of our Land Use Division at 587-2805.

Sincerely,

Abbey Seth Mayer
Director

Please first identify any comments and second identify any recommendations you would like the Department of Planning to recommend as conditions of project approval. Please also provide any previous comments, letters, etc. pertinent to this application. Submit your comments directly to me by July 17, 2009. A comment box is also provided to further assist you. If no comment, please sign the "No Comment" box below and return. Thank you for your cooperation. For additional clarification, please contact me via email at planning@mauicounty.gov or at (808)270-7735.

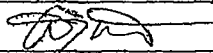
Sincerely,



JEFFREY S. HUNT, AICP
 Planning Director

xc: Project File
 General File

JSH:atw
 P:\FORM\Agency Transmittal.doc

NO COMMENT			
Commenting Agency:	Real Property Tax Division	Phone:	270-7796
Signed:		Dated:	June 29, 2009
Print Name:	Arlene Taketa	Title:	RP Appraiser VI

COMMENT/RECOMMENDATION BOX			
The updates to Chapters 19.08 and 19.09 does not seem to effect property tax assessments.			
Commenting Agency:		Phone:	
Signed:		Dated:	
Print Name:		Title:	

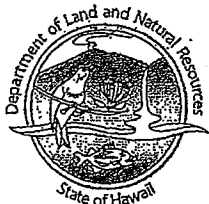


09/8923

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 13, 2009

09 JUL 14 12:48

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

Attention: Mr. Jeffrey S. Hunt, AICP

Ladies and Gentlemen:

Subject: Changes to Title 19 Updated to Chapters 19.08 and 19.09

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR), Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comment.

Other than the comments from Engineering Division and Division of Aquatic Resources, the Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0433. Thank you.

Sincerely,

Morris M. Atta
Administrator

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 23, 2009

MEMORANDUM

TO: DLNR Agencies:
 Div. of Aquatic Resources
 Div. of Boating & Ocean Recreation
 Engineering Division
 Div. of Forestry & Wildlife
 Div. of State Parks
 Commission on Water Resource Management
 Office of Conservation & Coastal Lands
 Land Division -

RECEIVED
LAND DIVISION
2009 JUN 30 P 2:23
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

FROM: *for* Morris M. Atta *M. Atta*
SUBJECT: Changes to Title 19 updated to Chapters 19.08 and 19.09
LOCATION: Island of Maui
APPLICANT: County of Maui, Department of Planning

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by July 10, 2009.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *C. T. ...*
Date: 6/30/09

09 JUN 24 PM 1:03 ENGINEERING

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

LD/MorrisAtta

Ref.: Changes Title 19 Updated Chapters 19.08 & 19.09

Maui.463

COMMENTS

- () We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone ____.
- () Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone __. The National Flood Insurance Program does not have any regulations for developments within Zone __.
- () Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is ____.
- () Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- () Mr. Robert Sumitomo at (808) 768- 8097 or Mr. Mario Siu Li at (808) 768-8098 of the City and County of Honolulu, Department of Planning and Permitting.
 - () Mr. Kelly Gomes at (808) 961-8327 (Hilo) or Mr. Kiran Emler at (808) 327-3530 (Kona) of the County of Hawaii, Department of Public Works.
 - () Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
 - () Mr. Mario Antonio at (808) 241-6620 of the County of Kauai, Department of Public Works.
-
- () The applicant should include project water demands and infrastructure required to meet water demands. Please note that the implementation of any State-sponsored projects requiring water service from the Honolulu Board of Water Supply system must first obtain water allocation credits from the Engineering Division before it can receive a building permit and/or water meter.
 - () The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.
 - () Additional Comments: _____
-
- (X) Other: We do not have any objections to Title 19 Updated to Chapters 19.08 and 19.09. The Maui County, Department of Planning is proposing that "home based businesses" be allowed in the Residential Districts in addition to the proposed revisions that were transmitted on December 16, 2008.

Should you have any questions, please call Ms. Suzie Agraan of the Planning Branch at 587-0258.

Signed:


ERIC T. HIRANO, CHIEF ENGINEER

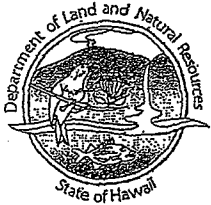
Date:

6/30/09

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 23, 2009

AQUATIC RESOURCES: 2444

DIRECTOR	
COMM. FISH.	
AQ RES/ENV	
AQ REC	
PLANNER	
STAFF SVCS	
RCUH/UH	
STATISTICS	
AFRC/FED AID	
EDUCATION	
SECRETARY	
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MEMORANDUM

TO:

DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division -



FROM:

for Morris M. Atta *Mailewa*

SUBJECT: Changes to Title 19 updated to Chapters 19.08 and 19.09

LOCATION: Island of Maui

APPLICANT: County of Maui, Department of Planning

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
2009 JUN 26 P 3:18
RECEIVED
LAND DIVISION

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by July 10, 2009.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *[Signature]*

Date: 25 June 2009