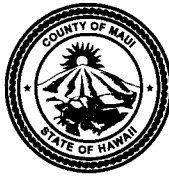


ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director

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OFFICE OF THE COUNTY CLERK
COUNTY OF MAUI
DEPARTMENT OF PLANNING

February 23, 2016

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Mike White, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Alan Arakawa 2/25/16
Mayor Date

OFFICE OF THE
COUNTY CLERK

2016 FEB 25 PM 2:19

RECEIVED

Dear Chair White:

SUBJECT: RESOLUTION NO. 15-112 ENTITLED "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE TO PERMIT AFFORDABLE ACCESSORY DWELLINGS IN RESIDENTIAL DISTRICTS" AND A PROPOSAL BY THE MAYOR TO ALLOW ACCESSORY DWELLINGS ON LOTS LESS THAN 7,500 SQ.FT. AND TWO ACCESSORY DWELLINGS ON LOTS GREATER THAN 12,000 SQ.FT.

This is a follow-up transmittal of the Lanai Planning Commission's response to your letter dated September 14, 2015, transmitting Resolution No. 15-112 entitled "Referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Amend the Comprehensive Zoning Ordinance to Permit Affordable Accessory Dwellings in Residential Districts".

The following is a summary of the Lanai Planning Commissions' comments:

Commission	Public Hearing Date:	Comments and Recommendations:
Lanai	December 16, 2015 and January 20, 2016	After discussion and deferral of the item at its December 16, 2015 meeting, the Commission discussed the item at its January 20, 2016 meeting. The Commission voted to approve Council's Resolution No.15-112 with regards to affordable accessory dwellings. The Commission stressed, maintain the affordability; parking is a concern for Lanai; maintain the limit being proposed which is currently 400 and 450 square feet; not go below 5,000 square foot lots as proposed; and affordable accessory dwelling cannot be converted to STRHs and B&B's.

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Honorable Mike White, Chair
February 23, 2016
Page 2

Attached for your review are the following documents:

1. Minutes of the Lanai Planning Commission meetings of December 16, 2015 and January 20, 2016
2. Minutes of the Maui Planning Commission meeting of December 8, 2015.
3. Minutes of the Molokai Planning Commission meeting of December 10, 2015.

Should further clarification be necessary, please feel free to contact Joseph Alueta, Administrative Planning Officer, at joseph.alueta@mauicounty.gov or Ext. 7743.

Sincerely,



WILLIAM SPENCE
Planning Director

Attachment

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

WRS:JWA:atw

Project File
General File

PLANNING\ALL\APO\Reso 15-112\transmittal\council2\Lanai.doc

**LANA'I PLANNING COMMISSION
REGULAR MEETING
DECEMBER 16, 2015**

APPROVED 01-20-2016

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Kelli Gima approximately 5:31 p.m., Wednesday, December 16, 2015, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

Ms. Kelli Gima: Let's go ahead and get started. Good evening everyone. It is Wednesday, December 16, 2015, and it is now 5:31 p.m. So I'm going to call the meeting to order, and just jump right into it. Item B on our agenda is public testimony. Is there anyone at this time wishing to give testimony? No? Okay, alright, public testimony is closed.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

C. APPROVAL OF THE MINUTES OF OCTOBER 21, 2015 MEETING

Ms. Gima: Let's go to Item C, approval of the minutes of the October 21st, 2015 meeting. Any discussion?

Ms. Beverly Zigmond: Madame Chair, I move to accept the minutes.

Mr. Bradford Oshiro: . . . (inaudible) . . .

Ms. Gima: It's moved by Beverly, second by Brad, everyone in favor of approving the October 21st, 2015 minutes raise your hand. That's five votes...so that passes.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Bradford Oshiro, then unanimously

VOTED: to approve the October 21, 2015 meeting minutes as presented.

(Assenting: S. Ferguson, K. Gima, S. Marlowe, B. Oshiro, B. Zigmond

Excused: J. Aoki, J. Barfield, S. Koanui Nefalar

Absent: M. Baltero)

D. PUBLIC HEARINGS (Action to be taken after each public hearing.)

1. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 15-112 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend the comprehensive zoning ordinance to permit affordable accessory dwellings in Residential Districts. (RFC 2015/0153) (J. Alueta)**

The Council is considering a proposed bill to permit accessory dwellings in residential districts on properties of between 5,000 and 7,499 square feet, for the purpose of increasing the availability of affordable housing.

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

2. **MR. WILLIAM SPENCE, Planning Director, transmitting a proposed bill to the Lanai, Maui, and Molokai Planning Commissions to amend the comprehensive zoning ordinance to allow accessory dwellings on lots less than 7,500 sq. ft., and to allow an additional accessory dwelling on lots 12,000 sq. ft. or greater. Further, the bill proposes to clarify the restriction on covered and uncovered deck areas, measurement of floor area, and to restrict accessory dwellings to long-term residential use. (J. Alueta)**

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

Ms. Gima: Alright, let's go into D, Public hearings, starting off with number one (*Ms. Kelli Gima, Chair, read the above project description into the record.*)

Mr. Clayton Yoshida: Good evening Madame Chair and members of the Lanai Planning Commission, Clayton Yoshida with the Planning Department. With me from the Planning Department is our planning director, William Spence; our Administrative Planning Officer, Joe Alueta; and your Secretary to Boards and Commissions, Leilani Ramoran-Quemado. I guess I would ask that maybe we could, if we could combine public hearing number one, and public hearing number two because they both relate to amendments regarding accessory dwellings. And, I think that's the way Joe has his reports structured.

Ms. Gima: Any objections Commissioners? No? Okay, go ahead.

Mr. Joseph Alueta: Good evening Commissioners. Again, my name is Joe Alueta. I'm the Administrative Planning Officer with the Planning Department. So, primarily there's two methods that which you can amend Title 19. One is via Resolution which is what you have today. The other method is by, initiated by the Department or the Administration, and you also have that happening today. So both of them is trying to deal with, I guess, a larger issue which

is more of an affordable housing but primarily affordable rentals. So there's a, primarily -- there's a task force out on Maui right now where we're all trying to brain storm how we can handle, how can we address some of these issues. A broad issue of both homelessness, affordable housing for purchase, as well as affordable housing for working class people, and there's been basically a shotgun approach of different methodologies. And so Council has taken an initiative on this one as well as the Mayor on trying to look at how you can get units built within the urban core as fast as possible, I guess you could say. So they're looking at 19.35 which is Accessory Dwelling Provisions. So that primarily is, you know, right now in the residential district, rural district, interim lands, as well as apartment areas, you are allowed to build an accessory dwelling on lots greater than 7,500 square feet, and there's a table on that.

Before I get going, you all should have an amendment. Or not an amendment, but a revised staff report. It has the same date, and it was passed out today. The only difference is that the exhibits -- is you weren't able to see the exhibit numbers. I noticed that when I had the staff report, some of the exhibit numbers didn't show up. The exhibit stamp didn't show up when they got photocopied so I just redid it. Also, and you'll also see Exhibit 11. So the main one you want to look at are Exhibit 11 and then the Council's resolution because those, those are basically the two bills. Exhibit 11 was the Mayor's one, and then the Council Reso pretty much starts on the third page of Exhibit 1, okay. So that, those are the two bills that we're dealing with today.

The Council's bill, and in the staff report I provided a quick cheat sheet for you on page 3 of the staff report. And that kind of gives you a summary of the Council's bill, or the Council's changes, 19.35, the Mayor's proposal as well as what's existing in law. As you know I'm famous for my tables. I like to keep things simple so we can see what's going on and make it a little easier to understand. But I'll try walk through a lot --. From the --. The primary --. The Council's Reso is very similar to the one they had, I believe, in 09, 06; and where they are creating a new definition called affordable accessory dwelling in which there's an affordability requirement. And there's a table on the back, you know, on income levels. And basically you would register it with the HUD and with the Housing Department. If you're not renting it, renting it as an affordable unit, you could also rent it to family members. Okay?

The problem that we had with that bill, right, and they're going down to 5,000 square feet lots to 7,499 square foot lots, is enforcement. Because -- because it's in Title 19 that means our zoning inspectors would have to determine if somebody is related to one another. That, that, and that's incredibly hard to do, okay? And so there's an opportunity for what they are saying is being restricted to an affordable rental unless, unless it's being registered to the HUD. They can just build it and say I'm renting it out to my family, and, and basically it's just a market rate. And the Planning is tasked with almost -- is tasked with something that's very difficult to do, if not, impossible, to enforce.

The Mayor's proposal gets away from that because it just -- all we're trying to do is increase the inventory. Just -- we're not worried about trying to . . . (inaudible) . . . or ear mark it for, quote, affordable. This market will, in some aspects, take care of it because one, the size of these accessory dwellings are relatively small. Okay. And also we're hoping that there will be an

increase in inventory would be. And also another provision that the Mayor has that's in here is to help keep these affordable is they would be not only existing ohanas and once it's built, it would also be prohibited from being used as a B&B or a short-term rental. So basically you have a bucket where you're putting housing inventory into that bucket, and there is a hole in that bucket as they say, and it's being leaked out through this, through both legal and illegal vacation rentals and B&B's, especially on the island of Maui. And so this a methodology in which we could plug that hole. The true intent of the accessory ohana homes will be back towards being used for families or for long term rental for the local community.

The other slight difference between the Mayor's proposal and the Council's difference is that the Mayor does not -- is saying any lot below 7,400 square feet -- 7,499 -- can have a second, or can have an accessory dwelling. The -- which basically is saying if you have a 2,000 square foot lot, and you have a house on it, if you have the room and the infrastructure is there, you could still build a small accessory dwelling of 500 square feet. This would allow, potentially, you could have two stories in some areas. And again, you'd still have to meet the building code, the set backs, and...and be able to meet the infrastructure requirements. But it wouldn't basically take it down to almost any size lot. The Council's proposal, the cap says it's down to 5,000 square foot, so that's one of the differences.

Council had a tier system in which they had, you know, on lots between 5,000 and 599, 400. And then between lots 5,000 and -- sorry, between 6,000 and 7,499, they would be 450. Again for simplistic sake the Mayor's proposal is just saying 500 square feet. That's the smallest one. Whereas the other one has a smaller size. Also the Mayor's proposal is looking at for larger lots. These are 12,000 square foot lots and that you would be able to basically built two --. So you could have a house and two accessory dwellings, okay. So that would be -- you'd primarily come into play in maybe the apartment district where people have built a lot on an apartment lot, or in the rural district, or in some cases the interim district where there is a lot. It does not apply to agricultural lot. I've been getting a lot of calls about that. This does not apply to the ag district. The agricultural district does not have any accessory dwellings because any dwelling in the ag district is an accessory to a farm. So it doesn't fall under the 19.35 provision. It's handled separately under 19.30A.

Again, the affordability, there is affordability requirement under the Council's proposal. The Mayor's proposal is basically let's just get inventory, we'll let the market deal with it. Currently under the current County Code there is no affordability requirement. Again, but the original intent back when accessory dwellings or what was called the ohana, the primary intent of it was for long-term rentals for family members, granny shacks, you know, in-law places, stuff like that.

Another interesting thing is that the Council's bill primarily restricts it to the residential district only. 19.35 actually calls out several districts including like as I mentioned apartment district, rural district, interim district. Again, the Mayor's proposal would just all it's doing is adding that tier below 7,500 square feet and another allowing -- another allowance for lots greater than 12,000 square feet.

I covered how the Department has concerns over trying to enforce the Council's bill in regards

the affordable accessory dwellings. That was pretty much one of our main concerns. We also in previous comments we had, we had concerns when you allow another dwelling on a, or an accessory dwelling on lots, small lots, there's a problem with infrastructure requirements. Both the Public Works and the Department of Water Supply state that they would be still reviewing it during the building permit process and they would either require system improvements for those areas that did not have adequacy or they would just deny the building permit which is what they do right now for people coming in for an accessory dwelling.

We took this bill also the Maui Planning Commission. They voted for the Department's recommendations at that time. Some of their discussions -- two members also had, two of the members had concerns over going down below 5,000 square feet lots so that was brought up during their discussion. They also felt that maybe the Council should look at the agricultural district and allowing more dwellings on the ag district. But again that's a separate issue with regards because of the -- ag, ag is suppose to be for agricultural not for development.

We did take this to Molokai also, and they're...they also recommended approval of it. They, they had some -- they brought up a good comment which was on recently the Council had passed a home based business ordinance and they felt that prohibition on accessory dwellings should also extend to that. Meaning not just B&B and STRH's, but they also had voted to recommend that home based businesses be prohibited from being used, being used solely in one of these in, in accessory dwellings. So if you lived in an accessory dwelling and you wanted to run a home based business that was one thing. But what the current home based business bill also indicates is that if you had an accessory dwelling on your property you could in theory use that entire dwelling, the square footage of that, to operate your home based business. So say you lived in the main dwelling, and then you can use, convert your accessory dwelling that you had to your home based business. And they had concerns with that also as taking away from the affordability or the inventory of housing.

That pretty much summarizes both the bills. The, the -- I guess because it is Christmas the Department would like to add a few things to the bill, or to Council's ordinance in that spirit of some ornaments. And one of those things that we want to add, and it's in our staff report, is the amendments to Title 19.08 and 19.09 which is the residential district. This Board, Commission, had recommended approval of that amendments to the residential district some time ago. All three Commissioners, all three Commissions voted for it. It was transmitted up to County Council. At the same time, the hot topic, one of the changes to that ordinance was home base businesses or home occupation. Council essentially stripped out the part about home occupation, put it into their own bill, and then moved forward and adopted a home based business, a home occupation, a home based business ordinance. But they forgot the main purpose that we were trying to amend 19.08 and 19.09 which was we're trying to consolidate the two residential districts into one residential district standards, as well as we wanted to get clarity on...or add new developmental standards which was lot coverage which was 40%. And so we feel that, you know, to preserve the character of the neighborhood as well as density, we wanted to have 40% lot coverage added to, to the residential district so that you don't get what we call, you know, people building lot line to lot line, or setback to setback. You know we call them Manila mansions or Filipino condominiums on Maui where people have just built them to

the max and there potentially are multiple dwelling units and enforcement can be an issue later on. We feel that they should be able to -- the lot coverage just requires that 40% on the, on the dwelling. So, it doesn't change -- it modifies or what currently happens but it primarily will allow for a little more open space on the lot so that people can accommodate a parking situation. It doesn't really change because as we, as indicated in the staff report and in the original residential bill, people are still able to build a large house on a relatively small lots, going two stories. It doesn't, it doesn't necessarily diminish the developmental potential of that. We feel that character wise we're seeing this across the country where as older homes get torn down people are building it to the maximum potential of, like I say, setback to setback.

We're seeing it in California, in Manhattan Beach which is a pretty established community. I mean, I'm seeing it down the road from where I live in Waihee Valley where you had an old plantation style house, typical three bedroom, maybe one and half bath, couldn't be more than 700, 800 square feet. It was torn down recently, and they basically built lot line to lot line, property setback to property setback, two stories. It's a very house but it just when you drive down the road it sticks out like a sore thumb. And then you don't know what the implications in some of the areas where if it's a, if it's multiple families or large family, they, the Code only requires you to provide two stalls per single family dwelling, and one stall for the accessory dwelling. And so in today's day and age when you have big houses and our definition of family includes up to five unrelated people, you could potentially have five cars, if not more, on some of these larger homes.

So again, we're trying to strike a balance. We're trying to increase density, but we're trying to do it in a smart way, and that's how we're trying to introduce it through the 40% lot coverage. Other amendments that we tried to incorporate included limitations on garage sales six times a year. There was just a lot of things that were in there. And basically what we want is Council to take a look at all the things you left behind when you adopted it, and to re, re-do that in Title, in this go around. And that's part of our recommendation.

Ms. Zigmond: Joe, could I ask -- excuse me -- is there a list of all these, these holiday gifts that you referred to that you want us to approve? Because I'm not sure that they're in here, and we kind of have of PTSD about having things changed on us without our approval. So, is there some where?

Mr. Alueta: Yes. If you look on Exhibit...Exhibit 14 and as well as Exhibit 13. On Exhibit 13, that is the summary that is our transmittal letter to Council just a little over five years ago. Exhibit 13.

Ms. Zigmond: So what you're saying is that these bullet pointed items in Exhibit 13 you want to include in the proposal before us.

Mr. Alueta: Correct. Except for the, obviously, the home based business definition because they, they basically stripped that out. So in essence we, I mean, our recommendation is for Council to take a look at all the things they left behind and have a good clean discussion on the amendments that were previously recommended by the three Council, the three Commissions,

and to have a discussion and try to incorporate what they feel is appropriate. We highlighted the 40% because we think that is one of the areas that is critical if you move forward with an accessory dwelling provision because I think that's going to impact density as well as creating a more, a better design when people start to implement, I guess, the proposed changes that both the Council and Mayor has proposed which is adding accessory dwellings to smaller lots.

Ms. Zigmond: So the 40% that you're talking about that's what is referred to on page 5 of the staff report, the last paragraph, where it says having a limit on the accessory dwelling.

Mr. Alueta: On page 5.

Ms. Zigmond: The last paragraph. Because they're talking about not having a size limit on the accessory dwelling and, and that really bothers me so –

Mr. Alueta: Oh, okay. That is --. Sorry. What, what that came about is...that basically that whole paragraph is basically food for thought. As I talked about we are...had been throwing out ideas on how to address...providing more additional dwellings. This, this bill, or both the Mayor's bill and the Council's bill focus in on providing an additional accessory dwelling, of a limited size, meaning 500 square feet or 450 square feet. If you're going to allow for an accessory dwelling and you're going to have a provision of lot coverage, right, do you care that --. So if someone, if someone, they can meet the developmental standards of the setback as well as lot coverage of 40%, if someone decides to have --. So basically you can have two dwellings on the lot. If they choose to build a 4,000 square house, and a 500 square foot accessory dwelling, right? Okay, that's how it would play out under the current, both proposals, or under existing law and the proposals. But do we care if someone decides to build, well, I'm going to build a 2,000 square foot house and 1,900 square foot accessory dwelling. So, and, and that, and that again is something that we threw out. We didn't -- we're not making a recommendation of that. We're just saying, hey, these are some planning thoughts. These are some things that's going on across the country and we wanted to have that. Some, some -- under Maui, some Planning Commissioners wanted that and so, but the overall bill was basically to adopt what was proposed by the Mayor. And so again we brought, we bring it up because our job is to try to look at what's going on nationwide, what are the planning principals that could be applied. And so, again, if that's -- you have concerns over that, then again, that's not part of the proposal. The proposal right now is to have an accessory dwelling that would be limited to 500 square feet on lots smaller than 10,000 square feet. That's the Mayor's proposal. The Council's proposal is to have accessory dwellings of 400 and 450 on lots smaller than 7,500 square feet down to 5,000. So that last paragraph as I've indicated, you know, for suggestions on increasing on one idea. Again, it's just an idea that we brought up. Some of the Commissioners liked it, some didn't. But again, that's not in the proposal.

Ms. Zigmond: I'm happy to hear that. I think we have a horror story here, like you talked about the really huge house. So let me know when we can ask questions.

Mr. Alueta: The only other thing I, I would like to bring up is some of the changes that we are making, the Department recommended is being incorporated into the Mayor's bill is the concept

of having covered decks on the measurements. It's in the staff report. Hopefully, I know all of you read it very well, that is currently we measure or the law states that an accessory -- the square footage for an accessory dwelling is measured by covered area. So basically if you have a covered walkway or a covered deck, that counts towards the square footage. So it's not just the enclosed wall. We feel --. We normally will measure buildings by demising walls to demising -- the inside of the wall. So we would want to have that measurement incorporated and so that we can, so people can have their three foot overhanging and not count against their little 500 square foot. We also want to see that, you know, this is Hawaii, that there should be an allowance of some covered patio or porch area, for these people, in addition to their carport. I mean, and so we put in the standards and that's also in the Mayor's district. And that's on the tables that are on Exhibit 11 on the changes.

We also want to make it clear that it's implied, I guess, you could say in the way the 19.35 is currently written, that you can have an attached accessory dwelling. And we see -- we allow, the County currently allows it, and so, but we want to just make it explicitly clear that that is permissible. And the way it's written is that provided it has a separate entrance and no interior connections. That's how we do it now. So you can have an accessory dwelling above the garage, you know, or you can have, some people have in the back. Or if this bill is adopted, some people who have converted their garage and rent that out can be legal, essentially. You know, that, that's, I think, for many people you're going to see that where they've already done the conversion. Because their lot may be 7,200 square feet, and that you know, that's a good size lot. And so you're not allowed under the current law to do an accessory dwelling and so maybe they've illegally done some conversions, and some people may be qualified under this bill so...and that's pretty much all I have. If you have any questions I'll try to explain that.

Ms. Zigmond: Okay, I have a couple more questions. It looks like HUD guidelines would be used for the definition of affordable. I have to say I agree with the Kihei recommendations to use the 60% and not the 140% because that's not very affordable. And how -- is it determined yet where on that scale whether it's going to be the 60 or 140 or, or how is that going to be determined?

Mr. Alueta: I, I believe the...Council's provision would be basically just, you know up to that 140. And again that is the same thing -- the same, the same concerns that were brought up the first time this bill was brought before the Commissions especially in the Hana Advisory Committee had some concerns over that. How is that affordable if you're going up to 140%. I think the Kihei Association did bring up -- raised that point again, about the affordability. The Planning Department, again, is, sure we like the idea of having affordability. However, it's impossible for us to enforce because if the person is not building that building, building that structure, and renting it to someone that's one the HUD list, right? And they chose to come and build it, and they say, well, I'm going to rent it to my family. That's where we get the issues because the, the provision of the Council's bill is to -- it's either it has to be affordable or it can be, oh, but it can also be rented to a family member. So again once that happens, once you allow that vagueness or enforcability problem, everybody is just going to come and go, oh, yeah, I'm building an affordability dwelling and it's going to be for my cousin. And then you know, then of course, it's going to be on the open market, I mean at the, not a lower rental rate. It's going

to be at whatever the market will bear. And the Department and the, and the Mayor's -- supports the Mayor's proposal is let's not add another layer of regulation and where we have to go out and enforce something that's almost unenforcable. Let's just allow for it and let the market take care of it. Given the size of the units, they should be relatively affordable. And it's -- and then just try to increase the inventory out there with some of these units. Otherwise you're going to end up with --. Again, you're going -- I think a lot of those units are gonna end up just being market rate anyway because they're going to say that's the family member.

Ms. Zigmond: I see the quandary that you are in but I can't help but believe the people that need it most are going to be placed out of that especially on this island.

Mr. Alueta: No that I --. I understand that and that's the same comments we got and even from our staff planners was we'd like to see an affordability, but we are stuck between a rock and hard place because you put that provision in, it's going to be in Title 19, and Title 19 falls under the Planning Department. And our zoning inspectors are going to be the ones to try to determine is that a family member or not, you know. Given -- Hawaii's culture is, you know, with hanai families, it makes it very difficult. I mean, it's --. So it's just --. I mean, is that really something we want to use County resources trying to enforce. And whereas the Planning -- whereas -- what we're trying to do is let's try to get some inventory built. I mean, especially on Maui and Molokai is the same way is there are many, many lots that would qualify under this.

And again from a planning aspect, low hanging fruit. You have existing developed lots in an urban core where water, sewer, power is all readily available. And so building a small accessory dwelling will be affordable. Dave Taylor from the Water Department, he, he was also on this committee of trying to solve affordability problem because all of us could build a house relatively cheaply. I mean, it's when you start putting in that 12-inch water line for that subdivision; when you start putting in the curb, gutter, sidewalks for that subdivision; when you start putting in that new 36-inch sewer line for that subdivision, the cost starts to spiral out of control where that gets tacked on to that house and it no longer becomes an affordable unit. Where this is really targeting existing urban core, existing areas where infrastructure can support another dwelling unit. But I see that and if that's the comments about trying to maintain it as an affordability requirement, that's, that's what we'll take back to Council.

Ms. Gima: Yeah, I would definitely agree with Beverly. I mean it makes sense that the zoning can't go in and enforce who's related to who. But I mean this would be that affordability requirement would need to be enforced or else people are just going to be building, building, building, and then renting out for ridiculous prices which then doesn't solve the housing issues, and the homeless issues, and so forth and so on. So I think that needs to really be straighten out and clear what the guidelines are, who will enforce it, what the process will be to apply so forth and so on.

Mr. Alueta: Madame Chair, we can either -- I can -- if that's the consensus comments I can, from the Board, I can just write it down rather than having to go back through it and taking votes on it if that's -- if you want to proceed that way.

Ms. Gima: Is that all -- does everyone agree?

Mr. Alueta: And then I'd read back your comments –

Ms. Gima: Okay.

Mr. Alueta: -- to make sure you still want it.

Ms. Gima: Okay. Perfect. Thank you.

Mr. Alueta: Okay.

Ms. Zigmond: Joe, I have one other question please. On the Exhibits 13 and 14 where they restrict the home based stuff, that would remain in effect? Like in other words, it's not going to be a car repair shop or those kinds of things.

Mr. Alueta: That was passed. The home based business is basically stricken out from that whole, whole bill because they've already adopted that. And they did adopt some type of limitation on vehicle repairs.

Ms. Gima: And I think I've seen it some where in here about requirements for parking, correct? They have -- so they have the -- all accessory dwellings have to have an attached carport and off-street parking?

Mr. Alueta: The off-street parking -- yeah, the off-street parking would be on the property so that's off-street. So that would be the carport. So they require one stall for every dwelling unit, for the accessory dwelling unit. Two for the main dwelling. So there needs to be at least three stalls, three parking stalls on the property.

Ms. Gima: I know that -- I mean, I know everywhere that's an issue with, with parking and you go into these residential areas, and because there's five families living on the lot, I mean, the streets are just extremely crowded because those three parking areas are used. And nowadays people have two to three cars. I mean, that would be something, I think, need to take into consideration. Maybe upping that requirement to eliminate the crowding of, of the streets in residential areas.

Mr. Alueta: Good point because we are currently in the process, the Department is amending 19.36A which is the parking ordinance, and we are looking at increasing the parking requirement for single family dwelling based on the number of rooms. Or when using DOH standard of rooms, and rooms like rooms, or bedrooms or bedroom like rooms is their term. So we're trying to look at that and we'll see how that floats. I agree. You know, most people have a garage and most times they don't park. I've got a three car garage and I've got a golf cart in it, and the rest of it is junk so I see where that comes into play.

Ms. Zigmond: Downsize Joe.

Mr. Alueta: I like my arcade games and my Coke machines and my other junks but --.

Ms. Zigmond: So I would like to repeat the concern of that not having a size limit on the accessory dwelling is not a good idea.

Mr. Alueta: Correct. That, that is not one of the proposals, so we'll, we'll, we'll make a note of it. And then I'll make a note on concern over parking, in general, over that -- the requirement may be too low for dwelling units as a whole. We can keep that in also. Okay.

Ms. Gima: Anyone else, questions or comments, discussion? At this time we'll open it up for public testimony if anyone from the audience has any questions or comments...on this particular item. Alright, we'll close --. Okay Winnie. Can you --. Yeah, we have a time limit.

Ms. Winnifred Basques: Good evening. My name is Winnifred Basques. You talk about lots, okay. I was the one who brought . . . (inaudible) . . . homestead land on the island of Lanai. From 1994 we started. The lots are, three lots is 12,000, 11,000, and another 11,000. The other rest is all 10,000 square foot lots, okay. The thing is that when we did that we had to go through all the permits with the State. This is underneath DHHL now, not Company. DHHL, Department of Hawaiian Homelands. We did that. We had to get houses, the homes, up and running, built and everything, from 1999 - 2009. It was a 10 year condition that the houses had to be up and running, and people are in the houses. Okay. They did the ohana houses too as well. What they did was they when combine the -- instead of two houses, they make one house. Okay, and that's for a family. We had to go back to genealogy. We don't get anybody coming in and do whatever they want, okay. It had to be established that you was half Hawaiian, and the other half is up to you folks, whatever, on the birth certificate. But the thing is that when we did that, we had conditions. Two conditions. The first one was that you had to be established on the island, up and running and working. Don't go off island, and you go work and you come back. No. That's a no-no. We had a stipulation saying you have to be on that island to work in order to pay for your mortgage or your rental. The second one was you had to prove that had Hawaiian on your birth certificate. And this had to go because we had to do all the genealogy and we had to go back to the archives. We had to do everything. There were 50...50 --. Let's see, let's see -- 50 square foot lots. Out of the 50 you have, altogether, family tree family. Out of that was 25 people...Lanai people was working. You know, had two people when call me to say, I wanna come and stay on Lanai. Oh, excuse me, where do you come from? Waimanalo. You go stay back there. This is only for Lanai.

Ms. Gima: So auntie, are you making a recommendation in regards to what we're talking about? Because it sounds it's different with Hawaiian Homes, DHHL, they have their own process.

Ms. Basques: Yeah, the thing is that, how can you built a 2,000 square foot house on a 500 lot? How can you do that? Is it etiquette? And of course, the other thing is the roads. It's not 16 feet. It's 25 feet from shoulder, middle, shoulder. 25 feet because I use to work on the roads 25 years. Kaunalapau, Manele, Kaupili and Airport road is 25 feet, not 16.

Ms. Gima: Okay. Okay.

Ms. Basques: And furthermore, I hope it goes more into discussion. Because when I look at this papers over here, man, you folks gotta give more education there. I hope so you folks can do whatever you can...especially for Lanai. And the other thing was they wanted 200 affordable homes on Fifth Street connected to homestead land.

Ms. Gima: Okay auntie that is a little bit of a different subject because we're talking specifically about this resolution and, and the proposals from the Mayor. But thank you for your comments. We appreciate it.

Ms. Basques: You're welcome.

Ms. Gima: Thank you.

Mr. Alueta: I wanna pass this out to you. I didn't want to pass it out early because when I passed it out to the last commission all they did was look at this and they didn't pay much attention to me or the report. So this is just a map that we did that shows the lot sizes that would be, that's currently within Lanai town so that you can see where, if this ordinance is passed in some form or another, which lots would be eligible under this provision so hopefully that will --. Madame Chair, did you want to close public testimony?

Ms. Gima: Yeah, we'll go ahead and close public testimony.

Mr. Alueta: So again right now I have you want to maintain the affordability requirement. There's general concern over parking in the residential district or for having these community dwellings. And then note that no on the unlimited on the accessory dwellings.

The Department is recommending approval of the Mayor's proposal, and so we would --. And the Commission has the options of, as well as the comments that we had with regards to incorporating the residential district. So, and the Commission has the options of either recommending approval of either of the proposed bills to the Maui County Council; recommend approval of either of the proposed bills with amendments to the Maui County Council; recommend denial of either of the proposed bills to the Maui County Council; or vote to defer action on either of the proposed bills in order to gather more specific additional information.

Ms. Gima: So the comments that we -- that you just wrote down, that could be proposed amendments?

Mr. Alueta: That would be, yes.

Ms. Gima: Okay.

Mr. Alueta: That would be number two if you are -- if you're comfortable with the overall --. I mean, which bill you have to look at. Like, do you want to have the lot size be unlimited as the Mayor's proposal or do you like the idea of having a 5,000 square foot bottom basically, and then which is what the Council has. It sounds like you do want to have the Council's

affordability and then -- but you also would want to have that affordability to stay down. And I believe -- I heard 60% if you're supportive of that. I wasn't sure. Right now, again, it would be up to 140% and some of you may not want that. So you need to -- if you could give me some directions on that, I can be more specific when I draft a letter to the Council. And that's pretty much it. I mean, so you have to decide whether or not -- it sounds like you're leaning more towards the Council's proposal. You like that because of affordability. And then again, you have a concern over the lot size.

Ms. Gima: So we're looking at voting on the Council's proposal, and the Mayor's proposal. It's two separate things. Because I understand the difference obviously is that the Mayor's proposal doesn't have that limit on the size, and Council does. So are we voting on those two separate proposals? We're not lump -- it's not lumped together because it's very separate.

Mr. Alueta: You can. You can vote on them separately if you wish. The Planning Commissions, basically, the last two, Maui and Molokai basically accepted the Mayor's one and only made minor tweaks to it. They did not --. They understand --. But, again, those are those Commissions, so this Commission can choose to, like, say, hey we don't like the Mayor's one, we like the Council's one. So basically you're just voting on...a general vote to say this is the one we recommend approval of.

Mr. Ferguson: Question. Joe, on this, on this map you when give us.

Mr. Alueta: Uh-huh.

Mr. Ferguson: You get 'em color coded with lot size, yeah?

Mr. Alueta: Yeah.

Mr. Ferguson: You get the, the smallest color code, you get is lots under 6,000 square feet, but it doesn't give us one clear picture because on the proposal you going, your guys proposal -- the Council's proposal is lots to 5,000. So it doesn't show what lots would be under 6,000.

Mr. Alueta: Oh.

Mr. Ferguson: You know if it showed under 5,000 then I would see, we would be able to see what lots would not fall in that category.

Mr. Alueta: Okay.

Mr. Ferguson: Yeah, it's like 1,000 square foot off, and so we not seeing one clear picture.

Mr. Alueta: I apologize for that. I asked the GIS guy on the 5,000. He must have selected the wrong --

Mr. Ferguson: Unless it's color coded right and that's just one, one typo.

Mr. Alueta: Yeah, it could be. It could be, but I think he primarily --. The instructions were to get them to the 5,000, under 5,000 square foot lots.

Mr. Ferguson: Okay, okay. Because we trying to see which lots wouldn't, wouldn't fall in that proposal, but I not sure what we looking at now.

Mr. Alueta: But I think you guys all have, hopefully you have a general idea where the small lots are, and like ease your concern of going --

Mr. Ferguson: Because on Lanai we've got a lot lots smaller than 5,000. There's a bunch of lots, you know, in the 3,000 range and stuff so, so I not sure if that giving us one clear picture.

Mr. Alueta: Okay.

Mr. Oshiro: I know you already heard that...because the streets on Lanai is really small, yeah. I mean, the parking -- because I see where my dad's house falls under the seven to nine. And that street in front of his house, as it is, there's not enough parking. You know, cause it's like you telling the neighbor, why don't you park on Lanai Avenue instead of parking on Mahana, you know. And then that's why it all gets cluttered, you know. We cannot go in front and say, hey, you get parking space up front, park up front. But it's, it's not going to happen, yeah?

Mr. Alueta: I think that's, and that's where your -- that's why there's a Lanai Planning Commission. Your knowledge of what's on the ground here is going to be important, so the question is for you guys, like, does this bill benefit you or is it status quo? I mean, right now the status quo is 7,500 square feet lots and above. And so if that, that's what the current law is. So does it --. I mean, do you guys see a benefit to this overall or not? I mean, again, that's up to you guys. I mean, our recommendation as a whole is for the, again, for the Mayor's proposal because we feel it's the simplest to administer, for one. It opens up lots that are going to be smaller than 5,000 square feet. However, the catch all is going to be Public Works and Water Department have indicated that there's not -- if there's inadequate roadway, water, sewer, then they're not going to approve the, the building permit for it. And so...

Ms. Zigmond: So we could theoretically say we recommend Plan A or Plan B, except for on Lanai.

Mr. Alueta: Yes. Yes, you could do that. You could --

Mr. Stuart Marlowe: There's a question in my mind, there's nothing in any of these documents that talks about enforcement, and what are the problems or penalties regarding violations or inadequate space. And I know that it's impossible to find out if it's truly your cousin, etcetera, but when someone is applying for the permit, should there not also be something submitted to them that says if these items are violated, here's what it will cost you or your building could be torn down. Whatever it is. It's an enforcement issue that I'm asking about.

Mr. Alueta: That's a good point, and again that's the main -- that's the concern the Planning

Department has is that the, the idea of how this would be enforced is, is basically going to be through Title 19, which is 19.510 which is the enforcement provision of the County Code. And again, the only provision that we would enforce on is if someone is being, it's not being rented to, as indicated in the bill, a family member or HUD. So there's not requirement that, at least we're not seeing it in the Council proposal that, one, prior to the issuance of a building permit, you would have signed an agreement to rent this to a, to an affordable tenant, meaning through HUD, Section 8 or whatever. And that you're agreeing to that so that only people that would occupy this is going to be that. But Council didn't do that. If they did that, right, then it would eliminate a lot of the problems because then all of sudden it all becomes primarily section, or the housing, housing division would be responsible for insuring that the occupancy of that would be one of their clients, you could say, their customers. However, I mean, obviously, if I build a house, and I want to rent it to my cousin or, you know, my mother-in-law, then...they didn't want to go down that path. It makes no sense to do that. And that's why again, the Department fell on the side of the Mayor's proposal because we just felt we were going to be painted into a corner, essentially, in trying to enforce this.

Ms. Gima: You know, and I think a concern too in regards to enforcement is, especially here on Lanai and then on Molokai, I mean, we're out of sight, out of mind. To get any type of enforcement here is...pretty difficult. And so, which I'm sure it is on Maui too. So I'm thinking okay if this, if there's something to this degree here and, and it gets out of hand, how is it going -- I mean, how is it going to get enforced? I mean, don't get me wrong, I think the idea of having affordable accessory dwellings is a good idea. You know, it brings income to people, and more importantly it gives inventory for rentals. But, I mean, yeah, the, the issues that we shared with you and now the kind of lack of enforcement, how, how it will be done, all these little things which are not really little are kind of still unknown. So, yeah.

Mr. Ferguson: So let me get this. If we wanted to just leave it the way the law is set now, we could have Lanai be left alone. Because as far as like she said -- in my, my opinion, some of our streets and our lots are not quite, you know, we, it's cluttered already. I feel, I personally feel that, even the Mayor feels there not a demand for housing here. You know, that was his opinion. And to be honest I think, we, between the Company, there's units here that's actually probably not rented out. You know, houses that they working on and stuff. I no see the demand to, where we need all these other rental units. So I kind of think maybe leaning towards just saying we should just leave 'em at the 7,500 square foot lot ruling law that stands existing. I don't know, I guess, so we could go along those lines, right, instead of adopting any of this, right?

Mr. Alueta: That, that is true. You can make a recommendation that Lanai be excluded from the proposed changes and that your comments -- you know, and then you can just pass on your comments as noted, meaning you like the idea of an affordability even though you have concerns over the enforcement of that. Parking will always be a concern with regards to the standards. And then, the no limit. So you can still voice, voice your opinion, but if you want to be excluded, you want to be explicitly clear.

From a Planning aspect, we hate that. We don't, we don't really like except on Molokai, or

except on Lanai provision. However, however, Council has, has normally accepted that. So they have, they have normally been amenable to include that in the ordinances. I mean, even in the parking ordinance you guys have a separate parking waiver standard that it was added so that's entirely -- again, it's not unheard of. But I would like to get your comments regardless. I mean --.

Ms. Gima: I mean, I think there is a demand for affordable rentals here. Because right now, I mean, we may not visually see it, right, because you have five -- four to five families in just their main, in the main home, right. I think there's a demand, but I'm trying to kind to, kind of wrap my head around this and how realistic it will be. How many people could afford to add an accessory dwelling on their home?

Mr. Ferguson: Yeah, one that would be up and running. You know, how soon you can get something like that. And, I still think, you know, with what the Company planning on, all their renovations of the old, beat up plantation homes, get, get some inventory here that's not being utilized right now. That's my -- I think there's a bunch. You know, I'm not sure, but I think there's, you know, like, at least 30 something plantation houses lined up for renovations or --

Ms. Gima: But difference is it wouldn't be under the HUD.

Mr. Ferguson: Yeah.

Ms. Gima: I mean, that, that's where it could be very helpful, right, is if it's HUD. But then are we going according to Maui's numbers when it's different here. I mean, I'm, I'm going back and forth on this because I think it can be or having the accessory dwellings or ohana units can be really helpful. But there's just all these minor things that end up being kind of a really big things. I mean, I wouldn't want to exclude Lanai because if someone wanted to do that for their family to, you know, to have their son and daughter live in their ohana unit, I think -- and they have the money and space to do that, then why not?

Ms. Zigmond: Madame Chair, let me ask you, would you want, if there was no restriction on the lot size, everybody to be able to put an accessory dwelling. How many construction workers do you want on your street?

Ms. Gima: No, no, no. No, Bev, I agree. I agree with the restrictions on the lot size. I don't agree with what the Mayor is saying in terms of it just be whatever. No. Absolutely not. But I think if there are those set, very set restrictions that it could be a benefit to residents here. How realistic it may be and can people actually do it? Who knows? But to be able to have an option separate from renting from the Company or waiting forever for the County to do their affordable housing project, have that option there.

Any other comments, discussions, questions? I didn't expect it to go this but I'm glad that --. And thank you for all the information and writing down our, our comments and concerns.

Mr. Alueta: I think you guys are having a good discussion. I think everybody -- I think for the

other Commissions, it's just a little easier. I mean, the problem on Maui is very acute. It did take awhile for Maui, but they, they primarily needed -- we needed, I guess you can say, we needed it on Maui more than anywhere else. And so how acute it is here where you're having people live in their cars more than not, that have good jobs, but still can't find a rental. They have money, but it's just there's no units out there. That, that's the ultimate. That's what we're, that's what we're kind of dealing with on Maui. And, and Molokai is, is, not so much that same problem, but I think there's a lot of, like you say, doubling up of families in, in, extended families. And so they're seeing it as ability because a lot of them have land, and they have the ability to build it, meaning they can provide the labor themselves, except the law does not allow them to do it because they, because their lot is 7,300 square feet and they don't meet that provision. And so for them, on Molokai, it was more, we can build it, it's just that we don't have, the law doesn't allow for it.

Mr. Ferguson: Would we be able to get one, one clarification on this if, on that lot size? Because where Brad say, you know, where some of the streets are small, it's showing that, that it's under 6,000 square feet. But not, not knowing if it's under 5,000 square feet, I wouldn't be able to tell if that lot be able. The streets that I, the streets that I know are tight, if they're under 5,000 then I know, okay, then they would be excluded, so then that street wouldn't be one issue.

Mr. Alueta: And again, you can come up with your own number. So if you're comfortable with like, oh, I'm good with going down to 6,000 or 6,500. The would be the number you could use. You don't have to pick.

Mr. Ferguson: But I trying to stick with your 5,000 and up, but I not --. This doesn't show me the 5,000.

Mr. Alueta: Okay.

Mr. Ferguson: If I could see the 5,000 then that would clarify the streets that I looking at, and say, okay, well, right now it just say it's under six. But if it's under five, then I know, okay, those people going be excluding from, from building one unit anyway.

Mr. Oshiro: You know, the only thing, yeah Ferg, no matter, you know, if they build on the old side of the city, you going run into so much problems with parking. Cause look my dad's house, the backside road is private, so I cannot park back there. Okay. So I only get the front of the house. But the guy in front of me, you know, you going run into --

Mr. Ferguson: See, but how big is the lot?

Mr. Oshiro: It's almost 7,000 plus.

Mr. Ferguson: Okay because --

Mr. Oshiro: So you know what I'm saying?

Mr. Ferguson: So most of the, most of the lots they showing under six, but I not sure if it's 5,999 or under five.

Mr. Oshiro: I see what you mean, yeah. Yeah, but what I'm saying is –

Mr. Ferguson: Yeah, yeah.

Mr. Oshiro: -- the older section, we would run with so much problems. Even, you know, even somebody put up --. Like the Nogami house over there, we have by LSC, they put up that monstrosity. I mean, where they parking, you know. And how much inconvenience they putting the people around there. I mean, it's hard to come up and say, yeah, give it a number to, yeah, you can do this on your property, and then next thing you know there's seven cars parked over there. And no got room for one.

Ms. Gima: And even in the new areas too. Look at Olopua. That's a new area, and look how you can barely pass through the streets. So I think, for sure, I think you're hearing the consensus is that parking, the parking requirements and the concerns there. I mean, is every, does everyone agree that there should be this affordable accessory dwelling? Put aside the numbers and all of that for now. Does everyone agree that this concept is good of having affordable accessory dwelling. Because if that's what we all, if we all agree with just that concept then we can start working out what we feel is good in terms of lot size requirements and make those comments. But maybe that's the first step is to see if we're all on the same page with, with the affordable accessory dwellings.

Mr. Alueta: And Madame Chair, like, in the concept of like you're willing to put up with the inconvenience for somebody who use that affordable. And then I can provide you with a new map. That's not a problem. I just don't want to have, you know, you guys, you know, defer; I come back with the new map, and then, and then you guys still decide that we don't want this for Lanai regardless of what I show you on the lot size. So you guys -- I mean, that's, I just don't want to get to the point where if you guys are going to go, we don't want this for Lanai, period. Or, or we're willing to do it provided, you know, with restrictions.

Ms. Gima: Well, I think if, if the consensus is we don't want it period, that's what we'll tell you tonight. But, I mean -- go ahead Bev.

Ms. Zigmond: I agree with the concept, but I am going to stand fast by the restrictions. And so my vote would be predicated on whether or not those restrictions are going to apply to Lanai. It's not a comment that I want it passed on. This is it or not. And, and again, I don't think we could really make that decision without the proper map. But to make a decision today and have you bring back the map next month when there might not be a meeting next month, I mean, it doesn't make a whole lot of sense, but --.

Ms. Gima: So, I know you said, Planning Department doesn't like the Lanai only situation but that is again an option for us to vote and, and have Lanai only requirements.

Mr. Alueta: Yes.

Ms. Gima: Okay.

Mr. Alueta: Or exclusions.

Ms. Gima: Yeah. So that kind of answers your question right there Bev that, that is something that is not just a comment that we can have the exclusions or requirements. And I think it sounds like that is something we would definitely want. What that is, we have to figure out.

Ms. Zigmond: And it would be helpful to have more maps so everybody could be looking at it.

Mr. Alueta: I left them on the printer.

Ms. Gima: Okay, go ahead Stu. You have something to say?

Mr. Stuart Marlowe: I think we just simply should put forth a motion to defer until a completed map is provided. I would like also on that deferment to have clear written regulations as to what would occur if the violations are found out. Whether it's who they rented to or built something larger than what is allowed etcetera. So for that reason, I think our motion is to defer.

Mr. Alueta: Okay. Do you want anything else on the map? As far as enforcement, it's all in 19.510. There's nothing new that would happen. So, that, that's in the County Code already. So we're not going to create any new type of enforcement provision for this bill. And, yeah, I'll go back to my GIS guy and see whether or not that was just a typo or his query was actually for 6,000 square feet lots.

Ms. Gima: Okay. So there's been a motion to defer this to next month's meeting or actually whenever our next meeting is scheduled for.

Mr. Yoshida: So I believe for public hearing number one, it is a Council Resolution. According to the Charter, the Commissions have a 120 days after the Department receives the resolution to transmit the record, its recommendations, the transcripts and so forth to the Council. Or the Council can act without the recommendations of the particular board or commission. So, for number one, there is a time limit because this was received in mid-September, so the 120-days would be mid-January. On item number two since it was introduced by the Department there is not a time limit.

Ms. Zigmond: You know, I think it's really too bad that our meetings have been cancelled and we get this at the last minute, and we don't even get to exercise all the options that, that we should be allowed to vote on, including deferral. It's not our fault.

Mr. Yoshida: Well, I believe the resolution was transmitted to the Commission soon after it was received by the Department. It's the Department's -- the Department also transmitted as demonstrated in the report the resolution to various agencies for review and comments, and

those do take some time. But there is a 120-days limit by Charter.

Ms. Gima: . . . (inaudible) . . .

Mr. Yoshida: I believe we received the resolution in mid-September, so by mid-January. But, I guess the Director might have some comments.

Mr. Spence: And that was going to be my question is how long, much further do we have to go? You know, we -- it -- we can't help when the Council sends a resolution down. It's by Charter that we have to turn it around and get it back up to them. This was the soonest that we could get it to you, so --. Like the options have been laid out. You can make a recommendation on the Council's resolution. One way or another if you want to say it's fore or against or whatever, we're going to transmit those, those comments up to them. We'll also let them know you prefer to have some more time on this so. And then we're happy to bring it back. We're happy to bring back other maps and everything for the, for the Mayor's proposed ordinance.

Ms. Gima: But that has to be done in 120-days which is --

Mr. Spence: The Mayor's no, only Council.

Ms. Gima: No, okay, not the Mayor's. Okay. Okay. So can, so then -- well, there's a motion still on the floor to defer and maybe it can be specified which one we would be deferring to the next month's meeting.

Mr. Marlowe: . . . (inaudible) . . .

Ms. Gima: Yeah, the Mayor's doesn't have the 120-day.

Mr. Spence: Right.

Ms. Gima: Do you want to amend your motion, Stu, to specify it more of which proposal you're asking to defer? You just said to defer, but you didn't --. It's kind of hard because we've been lumping these two together, but they're actually two separate agenda items.

Mr. Marlowe: So the motion should be to accept the Mayor's?

Ms. Gima: Well, you can make whatever motion you want Stu.

Mr. Marlowe: . . . (inaudible) . . .

Ms. Gima: Correct. And the only one that doesn't have the time limit is the Mayor's proposal. The other, the County Council, it sounds like we have to make some form of decision and recommendation tonight. So I'm asking you, in terms of your motion to defer, are you referring to defer the Mayor's proposal until we get the maps for next month's meeting?

Ms. Zigmond: But Kelli the maps don't matter because under the Mayor's proposal –

Ms. Gima: That's right, there's no –

Ms. Zigmond: -- there's no limit.

Ms. Gima: Okay, so then we should –

Ms. Zigmond: And so let me ask you Mr. Spence, you said you, you could take back the suggestion that we have some more time, but there's no guarantee that anybody's going to approve that. And if we don't do something that we want then we're S.O.L.

Mr. Spence: Well, as Clayton points out the Charter says we have 120-days to get, for the Department to get the Council resolution back up to them. You can make any recommendation you want to with that. You can say we have no recommendation. You can say we like this part of it, but not the rest of it. You can say, you know, you, we, we will report to them that you wish you had more time. I don't think they're going to grant any more time, but they, you know, they would have to allow that as well, so.

Mr. Alueta: If I may the, the -- typically even if I make the deadline to transmit everything back to them, right, I would --. And if you didn't have any motion, then I would transmit whatever your comments were. Typically when I do transmit this up to them, it has to -- they don't schedule it right away. So it all depends on how fast they turn around their proposal. I mean, that's, that's one risk that you have, if you do defer with a motion that, that -- and we try to reschedule it, we could, we could still do the hearing with the hopes that we get your comments, and then transmit those as an addendum separately to the County Council before they take action.

Ms. Zigmond: I'm not a gambler.

Mr. Marlowe: Let's start with me withdrawing the motion.

Mr. Yoshida: And Madame Chair, I believe the deadlines are in the first paragraph of the December 1st memo from the Department, to the Commissions, that the resolution was received on September 14th. The 120-day deadline is January 12th.

Ms. Gima: I guess it's just kind of confusing why it wasn't brought to us sooner if it was –

Mr. Alueta: Once it gets transmitted down we have to then transmit it out to agency comments so there's at least a 45-day burnt off on that. And then it comes down to the matter of trying to find an appropriate time for this meeting, do the staff report, and get it all scheduled. And we have 30, a minimum of 30-day notice requirement. So you're looking at -- I get a 40 -- I get my agency comments back, I then have to crank out a staff report, and then I have to calculate backwards with Mr. Yoshida when I'm going to meet the notification deadline for that 30-day because I have to publish at least 30-days.

Ms. Zigmond: I think we should change our meeting date so -- because this has happened before and I get that you're overworked and underpaid, and there's just not enough time, but, you know, we don't always have our meetings either and that really puts another wrench in there.

Ms. Gima: Can we --? Joe, could we take these two separately? And maybe start off looking at the Mayor's proposal so there's no confusion. Because I think it's gotten a little confused. But maybe we can start and address the Mayor's proposal and vote on what our recommendation will be.

Mr. Ferguson: No, shouldn't we look at the one that going expire? The Council one?

Ms. Gima: No. Yeah. I mean, okay.

Mr. Ferguson: Because the Mayor one not going expire, right? I mean, that one no more deadline, the other one get. We should look at that and see what --. Oh, okay, okay.

Ms. Gima: We need to get both of these out of the way. I mean, is there any motion that you have in regards to the Mayor's proposal?

Ms. Zigmond: Yes. I, I make a motion that we reject it.

Ms. Gima: Anyone second that motion? I'll second the motion. Any discussion...before voting? Again, this is the proposal that doesn't have the lot size restriction. There's no affordability requirement. It can be in different zoning districts. The size of the accessory dwellings are different as well.

Mr. Oshiro: Again, the only thing I've got, you know, is that the more the people work on Lanai, the more they bring, they buy cars, you know. When I was growing up, everybody had one. Now everybody get three or four, okay. There's no parking. There's no parking on the street. The one that Kelli and I live on, you better park on your yard or else you ain't going find parking on the street because there's no street parking. So what I would like to see maybe a comment from us on, on the Mayor's is that look at Lanai before you, you put Lanai in this boat because we don't have the parking. Unless you going end up with people getting mad and they going start fighting with each other.

Mr. Alueta: Those are good comments. And again, we, we see the same issues, and again, that's why we tried to incorporate a lot coverage on any new development. So if a lot, if you have a house lot is already built out to the max, they wouldn't qualify under this because they wouldn't meet the requirements.

Ms. Gima: Any more discussions? Okay, so there's a motion made by Beverly to deny the Mayor's proposal, second by me. All in favor of denying this proposal raise their hand. One, two, three, four, five. It's unanimous.

Mr. Alueta: Okay.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Kelli Gima, then unanimously

VOTED: to recommend denial of the Mayor's proposed bill to the Maui County Council.

(Assenting: S. Ferguson, K. Gima, S. Marlowe, B. Oshiro, B. Zigmond

Excused: J. Aoki, J. Barfield, S. Koanui Nefalar

Absent: M. Baltero)

Ms. Gima: And so now it's looking at the County Council's proposal, again, that has the lot size from 5,000 square feet to 7,499 square feet. There is the affordability requirement. There's no allowance for a second accessory dwelling. So it's looking at that page 3 where they're comparing it. Any further discussions, questions, on this? And this is where we could vote with our comments. I mean, submit our comments or –

Mr. Oshiro: This resolution, it has to have an additional carport or garage, right?

Mr. Alueta: Currently, yes. So all accessory dwellings require an additional.

Mr. Oshiro: That would knock Lanai out because there's no room to put another garage or, on any lot.

Mr. Alueta: Again, I'm not sure how often you guys get accessory dwellings constructed. Public Works and -- yeah, Public Works and Water Department would --. I guess you're private water, so Water Department wouldn't really comment, but Public Works would comment on it as far as . . . (inaudible) . . .

Mr. Ferguson: That would all be based on approving the –

Mr. Alueta: Building permit.

Mr. Ferguson: -- the permit, right?

Mr. Alueta: Yeah.

Mr. Ferguson: Like, they would look at the accessory dwelling also having ample space for, for the additional parking –

Mr. Alueta: As well as current –

Mr. Ferguson: On, on, onsite, right?

Mr. Alueta: Yes. Onsite.

Mr. Ferguson: On, on, the property itself, yeah?

Mr. Alueta: Yeah, we use our spy satellites -- I mean, our, no just --. We actually do use . . .
(inaudible) . . .

Mr. Ferguson: So if there were lots that you could probably, you could squeeze a 500, 400 foot square foot, but not have adequate space for the parking, that would be denied, right?

Mr. Alueta: Correct. And you would have to have the two stalls for the main dwelling.

Mr. Ferguson: Oh, two for the main, and one for the additional.

Mr. Alueta: Right. So if you don't even meet --

Mr. Ferguson: All on property.

Mr. Alueta: Right. So if you don't even have --

Mr. Ferguson: So that shouldn't, shouldn't affect street parking. Oh well, you know, depends how many people live in the dwelling, but, you know, you get three in the dwelling and one car space, but...okay, so it would be denied if never have, the lot itself never have enough for one parking.

Mr. Alueta: Correct. And they would have, they would have to meet the current code. Meaning like if they had the main dwelling, if the main dwelling didn't show parking for two stalls then we would not approve the, the accessory dwelling.

Mr. Spence: And just by way, maybe this would give a little context. The power point that I'm going to show, we did a little bit of research, there's like 41 ohanas on this island. That's all. That's not very many. Those are all the ones that have met the lot size requirement, that have met, you know, all the current requirements. They've got the parking, they've got all that stuff already, so it's not too many. So I don't know if that that helps, you know, in the discussions.

Ms. Zigmond: That doesn't necessarily address the future and with . . . (inaudible) . . .

Mr. Alueta: So again, your options are to approve as proposed, approve with amendments, reject the resolution, or recommend against the resolution as a whole. Or you can just, again, you can defer action if you feel that you need additional information that would aid in making some type of determination in the future.

Ms. Gima: Could you read back the comments, to us, that we gave you so everybody is kind of is clear on what we talked about this?

Mr. Alueta: So, so far you have maintaining the affordability of that requirement. You have parking concerns, as a whole, meaning not just having the one, but just in general, there's a parking issue going on for the main dwelling as a whole. You definitely don't want to have no limit on the accessory size so you, you support the limitation that is currently being proposed by the Council which is 400 and 450. And, you do like the idea of limiting the lot size that would be impacted, and right now the Council's proposal is down to 5,000. Those are your comments. Again, if you choose to defer, I just want to make sure, like, because some of your discussion is the lot could be 8,000 square feet and there may not be enough parking. And that's the, if that's the, you know, this island, the way it's structured right now, this bill may not work, I guess, for you guys on a lot of your lots. And so, you may, you may again -- some of your discussions was about trying to exclude Lanai. And, again, we normally don't support that, but the Council has allowed for it if you feel that is best for Lanai.

Ms. Zigmond: What if, what if we put a lot size upper limit on -- I mean, lower limit on our lots for Lanai instead of the...5,000, we could make that 6,000 or I don't know.

Mr. Alueta: Would you like to call for a five minute recess?

Ms. Gima: Let's go ahead and, and do that, and take a quick break.

Mr. Alueta: Thank you.

(The Lanai Planning Commission recessed at 7:00 p.m. and reconvened at 7:10 p.m.)

Ms. Gima: Okay, let's go ahead and call the meeting back to order. And, again, we're now looking at specifically the County Council's resolution. Yeah, it was to take a good idea to take a break, I think, for everyone, to really kind of think about all of this. For me, it's how do you make an informed decision when you're basically being rushed? That, that's a little frustrating especially since our last month's Planning Commission meeting was cancelled, and I mean, we're at this now for almost two hours. I mean, this is something we could have done last month. So I understand that there is a time limit here, but, I mean, yeah, how do -- I'm pretty sure everyone's feeling the same way here, how do you make an informed decision when you're rushed.

And then also, thinking about this, this is something that's really specific to Maui's presenting problem, which is -- and no way saying that it's not a problem on Lanai. We hear that for sure. But basically putting Lanai and Molokai into Maui's issues, it doesn't, it doesn't make sense. Your guys thoughts on, on this? Are you guys feeling the same way about making an informed decision and being rushed on it? So is there a way to request, from the County Council to have an extension here for us to make that informed decision? Cause I don't think anybody here is, through the really good discussions that we've had tonight, are saying "no way, we don't want this." It's really being able to look it at all angles, having the information, and have the time to process this as well. And, and, you know, we have other things on the agenda that we want to get to, and I don't think we should just rush it for the sake of getting an answer to the Council.

I'd rather us take the time and have all the information so that we could provide a really good recommendation to the Council.

Mr. Alueta: Yes. You can, you can make that recommendation to the County Council, and I can actually make a note of your comments and concerns that you've had so far, and then, you know, that you've requested additional time. And when I do my transmittal to the County Council, and that's, again, they may choose to just wait for you. And again, they have done that in the past. I know, you're not gamblers. But it has also to do with like, you talked about making an informed decision. We can schedule this as soon as we get it to you, and all I would do is make a presentation that here's the County Council's resolution, I have no --. Or here's agency comments, but I haven't analyzed them, and there's no staff report. So if you're comfortable with that, you would be stuck in the same position where we don't have adequate information for you. It's just that the Charter, the way it's set up, it's setting that there's a time limit on these Resolutions. And obviously they don't want to have it sat on per se. But I think that, you know, you have a reasonable request. I think this is an important bill. It has a significant impact, County wide, so I think they'd probably will, in all likelihood, defer.

Also, the Council has a lot of things on their agenda; the Planning Committee. Again, I'm not sure how soon they want to take this up. But again, that's the risk. They could just say, hey, look, we gotta move forward. They may choose to exclude Lanai right now and say we'll wait if they want to do it, we can amend the bill again. There's not a problem with that too. You know, like you say, hey, for now we're going to move forward because Maui needs this, Molokai needs this, Lanai can wait. And if Lanai wants to jump on this, then we will amend the bill again. That's up to them.

Ms. Gima: And it's really not like we're asking to sit on it for months. I mean, if it's January 12th that, you know, they need it by. I mean, we will probably be meeting the week later, so it's not like a huge extension request. I just don't want to risk, you know, not providing comments, but --. Sorry, I don't know where I going with that. But, yeah, I mean, I would like to make a motion to defer this and have that comment in there that we are requesting additional time. Not a significant amount of time, and to allow you to come back with a better, updated map from the GIS people. Yeah, that is my motion at this time.

Mr. Oshiro: I have one question. Does everybody on this Council see this Resolution when it goes by or it only goes to just like a very few people?

Mr. Alueta: Well, it came out of the Planning Committee, so members of the Planning Committee voted on it to send it out.

Mr. Oshiro: So it's not really the whole Council that looks at it. It goes to the whole Council?

Mr. Alueta: Yeah.

Ms. Zigmond: Madame Chair, I'll second.

Ms. Gima: So the motion been made to defer this to the next, which is the next month's meeting, with the request to have that extension. It's been seconded by Beverly. All in favor raise their hand. One, two, three, four, five. It's unanimous. It passes.

Mr. Alueta: Okay. Thank you.

It was moved by Commissioner Kelli Gima, seconded by Commissioner Beverly Zigmond, then unanimously

VOTED: to defer the County Council's proposed bill.
(Assenting: S. Ferguson, K. Gima, S. Marlowe, B. Oshiro, B. Zigmond
Excused: J. Aoki, J. Barfield, S. Koanui Nefalar
Absent: M. Baltero)

Ms. Gima: Thank you Joe. I mean, I really appreciate you taking the time to go over this with all of us and, and write down our comments. I appreciate it.

Mr. Spence: Just a comment, Commissioners. I think, I appreciate the comments on parking, and your streets are narrower, and everybody loves the narrower streets. I mean, that's part of what makes this city so special. I mean, this maybe, it maybe a very legitimate case for except on Lanai. It, it could very well be.

E. COMMUNICATIONS

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting a bill to amend Chapter 2.80B Maui County Code relating to land use designations in the community plans. (W. Spence)**

The Planning Department will transmit the Lanai Planning Commission's comments on the proposed legislation to the Maui County Council.

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

Ms. Gima: Thank you. Okay, let's go on to the next agenda item, and that is under Item E, Communications . . . (Ms. Kelli Gima, Chair, read the above project description into the record.)

...

Mr. Spence: So this will take a minute to come up. So, anyway, thank you Commissioners. We wanted to bring this to each one of the Planning Commissions, this proposed bill. It, technically it's not a land use bill so it doesn't have to go to the Planning Commissions, but there's been enough discussion in all the communities and we thought that this was important. The...last

time this came up, there was a lot of discussion, a lot of, I think, misinformation. And so we're going out, we're reaching out, so there is some, hopefully some better understanding on what this bill is proposing.

The bottom line of this -- this is, this is the actual text of the bill. There's, as you know, because this Commission just recently looked at your own draft community plan, you looked at, there's a map in there with all the, the community plan designations. You are kind of unique. You have mixed use, you have a couple of other things, you have . . . (inaudible) . . . I'll pull up a copy of that map in a second. Basically what this bill says is when you go to get zoning, the only zoning you can get is what is shown in the community plan. That's what the first one says. A land use designation -- this is in the community plan -- determines the zoning that may be established for a property undergoing a change in zoning pursuant to Title 19.

The second part of it is basically until that zoning is established what can a property owner do with his property, or her, or for abrasion of whatever. And what this is saying is you currently have some kind of zoning under it, under that community plan, they should be allowed to do the things that are permitted by that zoning. It doesn't mean they can subdivide. It doesn't mean they can get SMA permits. But it means that zoning, that's, you know, the zoning that they have is what goes forward right now. This is 35 years of practice. The only reason this comes up -- I'll get to more detail why it comes up -- but the reason this comes up, is a puka in the law. This is the way we've always done it, but it's never been codified. This is the way that planning around the country is done. But in our particular case we never codified it so we're making an attempt to do that here.

Everybody --. And I'll kind of go through this quickly because it's, it's getting a little bit later. You know that you have all these different layers of -- you have your State district; ag, rural, urban, conservation. You have your community plan and your general plan. Then you have zoning and then you have overlays like SMA or things like that. So this is, this is what is being proposed for your community plan outside of Lanai City. The big area to the west of Lanai City, that's your mixed use designation. To the far left is the public quasi/public where there's proposed to be a UH campus and all that. So you would know all that stuff.

The County's zoning layer is very different. You have interim and you have agriculture on the left. That's very different; you have inconsistencies there. And then the State district, the green is the ag district; kind of the white is urban -- it really shows up as grey in the slide; and then the, the kind of orangish piece up at the top, that's rural. You put them together in the different layers and --. So you have the State, the zoning, and community plans. You have inconsistencies with this. The community plan is saying one thing, the zoning is saying something else, and the State is...the State is even different. So to make those things consistent, there's a huge legislative process that has to be undertaken. You have to go to the State Land Use Commission to get urban or whatever that is appropriate for a proposed development. You have to come -- you have to go to the County Council to get the zoning. That comes here to this body for review and public hearing. It comes to the community. But ultimately it has to go and it has to match up with the community plan. So in a nutshell, really

**LANAI PLANNING COMMISSION
REGULAR MEETING
JANUARY 20, 2016**

APPROVED 02-17-2016

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Kelli Gima approximately 5:31 p.m., Wednesday, January 20, 2016, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

Ms. Kelli Gima: Good everyone. I'm going to go ahead and call the Lanai Planning Commission meeting to order. It is January 20th, and it's 5:31 p.m. We do have quorum, so we're going to go ahead and get started. First off, we'll start with public testimony. I don't know if there's a list, a sign in sheet that was circulated. I will open up public testimony again after different items that we're, we're voting on, after you hear various presentations. But we'll go ahead start and the first person is Patrice Moynihan. Come on up Patrice. You can get that microphone or there's one right there.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Ms. Patrice Moynihan: Good evening. I'm Patrice Moynihan. I live at Lanai City Apartments. I just wanted to say I'm looking forward to the final development and approval. Think of the three families who are going to be able to move into those beautiful homes, and I'm sure they'll be as nice as the other Pulama restorations and new constructions that they've given to this island. And it's a real privilege; to thank you very much for coming out tonight. Appreciate it.

Ms. Gima: Thank you Patrice. Next, Ron McOmber. Okay. Moving on, Margie Peary. Okay, so you're not providing public testimony. Okay. Alright. Next is Gail...Reiner. Sorry. Come on up Gail.

Ms. Gail Reiner: Hi, my name is Gail Reiner. I've been a Lanai resident for 11 ½ years. When I first started looking to buy property on Lanai, 12 years ago, those three homes on Lanai Avenue that is in discussion for permitting to go ahead with them, were just abandoned buildings. Nobody lived in them. Since I have been here for 11 ½ years, no one has lived in them until Pulama decided to refurbish, reconstruct them. They were then boarded up and looked...not appealing. And when people come to Lanai and see them, that would be one of the first things you'd see on the way to Koele would be these three buildings, going up, boarded up. So I'm here, again, to ask the Lanai Planning Commission to support and go forward the go ahead to let the permitting process be accepted so that Pulama Lanai can continue and start the construction for these three homes. Again, we do need housing on Lanai. These were three houses that have a huge historical significance. The families and backgrounds, who lived

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there originally has been well documented, and it's a attribute to people who lived attribute to the people of Lanai, and attribute to the future of Lanai. And I am here, again, to ask your support for this permitting, and to let the construction begin, and to support this. Thank you.

Ms. Gima: Thank you Gail. Next I have on the list and I apologize I can't read the, the last name. Hector? Okay, so not providing public testimony. Is there anyone -- I just seen a couple of people come on in -- that would like to provide public testimony at this time? No? Okay. So like I said previously I'll open up public testimony again as we go through the various items. So right now I'll go ahead and close public testimony, and then we'll go ahead and move on to Item C, which is the approval of the minutes of October 21st, 2015 meeting. Commissioners any --. I'm sorry, I'm looking at -- the December 16th, 2015 meeting. Commissioners, any discussions? None? Okay. I'll entertain a motion to approve the December 16th, 2015 minutes.

C. APPROVAL OF THE MINUTES OF DECEMBER 16, 2015 MEETING

Mr. Bradford Oshiro: . . . (inaudible) . . .

Ms. Gima: Okay, Brad moves. Can I get a second?

Ms. Stacie Koanui Nefalar: . . . (inaudible) . . .

Ms. Gima: Stacie seconds. All in favor, raise their hand. One, two, three, four, five. Opposed? None. Okay, so that has been approved.

It was moved by Commissioners Bradford Oshiro, seconded by Commissioner Stacie Koanui Nefalar, then unanimously

VOTED: to approve the December 16, 2015 meeting minutes as presented.

*(Assenting: S. Ferguson, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond)
(Excused: J. Aoki, M. Baltero, J. Barfield, S. Marlowe)*

D. NEW BUSINESS

- 1. MR. KURT MATSUMOTO, Chief Operating Officer of LANAI RESORTS, LLC, a Hawaii limited liability company doing business as PULAMA LANAI requesting an Environmental Assessment Determination on the Final Environmental Assessment (FEA) prepared in support of the Community Plan Amendment from Business to Single Family Residential in order to construct 3 single family homes with carports at 605, 615, and 623 Lanai Avenue, TMK: 4-6-009: 050, Lanai City, Island of Lanai: (EA 2015/0006) (CPA 2015/0005) (CIZ 2015/0006) (K. Wollenhaupt) (FEA previously mailed**

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under a separate cover to the Commissioners. Commissioners, please bring your copy of the FEA to the meeting. Draft EA reviewed at the October 21, 2015 meeting.)

The EA trigger is the community plan amendment. The Commission is the accepting authority of the Final EA.

The applicant has also applied for a Community Plan Amendment and Change in Zoning. The public hearing on these applications will be scheduled after the Chapter 343, HRS process has been completed.

The Commission may accept the Final Environmental Assessment as a Findings of No Significant Impact (FONSI) or take some other action.

Ms. Gima: We'll move along to Item D, which is new business, and the first item on the list is . . . (Ms. Kelli Gima, Chair, read the above project description into the record.) . . . So I will turn it over to...

Mr. Clayton Yoshida: Good evening Madame Chair and members of the Lanai Planning Commission. Clayton Yoshida, Administrator for the Current Division of the Planning Department. With me here tonight are Planning Director William Spence; head of our Plan Implementation Division, Kathleen Aoki; our Administrative Planning Officer, Joe Alueta; our staff planner, Kurt Wollenhaupt; and our -- your Secretary to Boards and Commissions, Leilani Ramoran-Quemado. And, doing the presentation for the Department is staff planner Kurt Wollenhaupt.

Mr. Kurt Wollenhaupt: Good evening members of the Lanai Planning Commission. It's a pleasure to be with you here once again for this project which is known as the Lanai Avenue Homes. We're here today for a Final Environmental Assessment. Now I'm sure that you're all familiar with the process. However, just to give you a brief reminder, on October 21st, 2015, this Commission saw the Draft Environmental Assessment. As you all know, an Environmental Assessment is required when there's a trigger. So what trigger do we have here this evening? We have the trigger because we need a Community Plan Amendment. That Community Plan Amendment is to change the community plan from Business Commercial to Single-Family Residential so that in fact these three homes could legally be built in this designated area.

It's been determined that we have to have an Environmental Assessment. And the Environmental Assessment acts as an information document that all of you will be using once it's been deemed complete, once it's been accepted by the OEQC, once it's passed 30 day challenge period -- it will be the information document that you will use in a future public hearing that will come back to you, in a few months, in which you will consider the Community Plan Amendment and the Change in Zoning. That will be the -- one of the steps in a very -- quite a lengthy process. Once this body, if should they deem a recommendation of approval for the Community Plan Amendment and the Change in Zoning, it will then be sent to the Corporation Counsel for the drafting of an ordinance. Then it will go to the Land Use Committee of the

County Council for their review, and then finally to the Full Council for two readings, and then signature by the Mayor. So we're on the path. We did have the meeting on October 21st, 2015, in which this body declared that it would be the accepting authority and there would be an Anticipated Findings of No Significant Impact.

So where we are tonight is that Karlynn Fukuda, of Munekiyo & Hiraga, along with Lynn McCrory, of Pulama Lanai, will be giving some updates and details of the project so that the Commissioners and all the members of the audience will know exactly the project that we're speaking of. And at the end of that, the Commission will then have all three alternatives to choose. One, they could choose to defer the Final EA because they would need additional information. They could deem that there would be such significant impacts that really there would be no, no type of mitigation possible, and they would have to do a full Environmental Impact Statement. Or, what we would deem probably, the likely result would be that this document would be considered complete, that the Commission would issue a Findings of No Significant Impact. That -- this is known to you as a FONSI. Should that occur, then it would be published in the environmental document of the Office of Environmental Quality Control, and then there would be 30-day legal challenge. After that period expires, then we will come back to you with a full report for the CPA and the CIZ.

So if you have any questions, I'd be happy. Although, Ms. Fukuda has a very complete presentation to talk to the Commissioners about this project. Thank you.

Ms. Karlynn Fukuda: Can everybody see the screen okay? Okay. Good evening Chair and members of the Lanai Planning Commission. My name is Karlynn Fukuda of Munekiyo Hiraga. We are here tonight to present the Draft Final EA for the proposed Lanai Avenue Residential Homes Project. Joining me tonight are Kurt Matsumoto, Chief Operating Officer, and Lynn McCrory, Senior Vice-President of Governmental Affairs for Pulama Lanai, the project applicant. Also shown here are the project's sub-consultants.

As Kurt mentioned the project entails the construction of three replacement homes and three carports located on Lanai Avenue. The property is identified as tax map key: 2-4-9-006-050, or parcel 50. The property is approximately a half acre in size. The table shown here indicates the existing and proposed land use entitlements for parcel 50. As Kurt mentioned the proposed Community Plan Amendment from Business Commercial to Single-Family Residential is the trigger for the Chapter 343, Hawaii Revised Statutes, Environmental Assessment.

This map here is from...the tax map key, and parcel 50 is located here on the corner of Lanai Avenue and Sixth Street, as well as Koele Street. The proposed project involves the construction of the three replacement homes and three individual carports, and the homes will be used for rental use. The homes will be approximately 1,100 square feet in size. Previously the site contained three homes, and one three car carport. The former homes and carport were demolished in August of 2014. The replacement homes will have exterior similar to the former homes with modifications to the interior.

As Kurt mentioned we are requesting approval by the Lanai Planning Commission, or

acceptance by the Lanai Planning Commission of the Final Environmental Assessment document, and an issuance of the Finding of No Significant Impact, or FONSI, determination.

As noted here the former residences were constructed in the 1920's, as part of the original Lanai City development. However, in recent times, they fell into disrepair. There was a structural engineer report that was done that noted the homes were structurally unsafe with termite damage, mold, and deterioration to the foundations. Once the replacement homes are completed, they will be available for rental housing on the island.

The next slide is some site photos of the site as it exists today. And here we have the proposed site plan. Again, this is the boundaries of parcel 50, and we have the three homes and the three individual carports. This next slide -- and I apologize that it's not translating very well -- but this is a floor plan of the proposed replacement residences. Lastly, you have here the front elevation and the side or north elevation of the proposed replacement residences, which, again, match the former exteriors of the homes that were on the site.

As we have talked about, the Community Plan Amendment is the trigger for the Environmental Assessment. The Anticipated Findings of No Significant Impact was published in the OEQC, as Kurt mentioned, Environmental Notice, on October 8, 2015. And this body agreed to be the accepting agency, as well as, reviewed and commented on the Draft EA document at your October 21st, 2015 meeting.

The following table provides a brief summary of some of the comments received during the 30-day comment period on the Draft EA. And I know that the print may be hard to read so we did provide copies of the presentation to the members so that you'd be able to follow along. And also please note that copies of all of the agency comment letters received on the Draft EA, as well as the draft responses are located in Chapter 9 of the Draft Final Environmental Assessment that you all received for your review. I'd like to briefly go through the agency comments noted on the next few pages.

So the first one at the top here we have from the State Historic Preservation Division, or SHPD as a lot of people know them as, or SHPD, And essentially the State Historic Preservation Division had commented that they did not believe that any historical properties would be affected with the implementation of the proposed project. And our draft response noted that the site has been previously graded and was part of a previously developed area in Lanai City. And that in the event any cultural resources including cultural deposits or remains were discovered during the construction of the new homes, State Historic Preservation Division would be notified.

The Department of Health had commented that the waste water disposal information was not included, and so the Final EA has been updated to note that there would be County sewer service that would be utilized for the homes. And that if a noise permit is required, it would be obtained prior to start of construction.

The Office of Environmental Quality Control commented that they support the utilization of

native floral and low impact development, and those comments have been passed on to the design team for incorporation as applicable.

The Department of Land and Natural Resources, Engineering Division, had commented that the site is located in Flood Zone X which is an area of minimal impact for development. And so we basically acknowledged their comment.

The Department of Health, Clean Water Branch, basically said that, you know, they had previously reviewed the document or commented, and they had reviewed the Draft EA, and they basically, you know, just acknowledged that we have to follow Hawaii Administrative Rules relative to the development.

The State Department of Transportation said if the project requires transportation of heavy equipment or materials over state roads, we need to seek a permit, which we acknowledged.

The State Department of Health, Environmental Planning Office, had a number of comments. One of them, including the waste water plans, which, again, as we noted, would be utilized with County sewer service. And again, a noise permit which may be required. And the Environmental Justice Screening tool that had been developed by the Environmental Protection Agency could be utilized.

The County Department of Environmental Management had basically said we needed to have sewer service clean outs, which we acknowledged and noted in our response to them that that will be done. And that a solid waste management plan should be formulated for the construction of the project, which at this point in time would be difficult to be developed but that's something that the applicant would be looking at as construction actually got closer to, to the time.

Department of Planning acknowledged that the Lanai Planning Commission had reviewed the Draft EA document back in October of 2015. The Fire Prevention Bureau, the County Fire Prevention Bureau had stated that they really didn't have any comments at this point, but they reserved the right to comment on the building permit, which we acknowledged. And then there were the other agencies that are listed here; State Office of Planning, County Department of Water Supply, Parks and Recreation, Public Works, County Department of Transportation, the Police Department, the -- and the Department of Human Concerns, which basically submitted letters saying they really didn't have any comments, and we acknowledged that they had no comments on the Draft EA.

So on the Draft Environmental Assessment, when we looked at the project, the site is located in Lanai City. It's outside of the FEMA flood zones, and the tsunami zone. The site was previously developed, and there are no archaeological sites present. Oral histories as was presented during the Draft Environmental Assessment review were done for the families that had formerly lived in those three residences, and has been incorporated into the document. The HABS report is the Historic American Building Survey, so that has also been done. And the Maui County Cultural Resources Commission had also reviewed the HABS report. There

is existing County services to the site for police, fire, medical, and recreational, and educational facilities, as well as existing roadways, utilities and the like. And due to the pre-developed nature of the site, and the non-intensification of use -- basically there were three homes before, there will be three homes after. It was determined that in regards to environment, infrastructure or socio-economic consideration, the project is not anticipated to be contrary to the goals and objectives of the State and County rules, regulations and plans.

This slide is a summary of the various community meetings that has been held on this project. There has been two public informational meetings held by Pulama Lanai; one, in September 2013, and then one in July of last year. And then as I had noted, the Maui County Cultural Resources Commission held a meeting back in October of 2013 here on Lanai, and then on December 5th, 2013. Again, that was to review the HABS report on the three former site, the three former residences. And then, as has been noted before, the Lanai Planning Commission reviewed the Draft EA at the October 21st, 2015 meeting, which also provided the public for an opportunity to comment on the project.

So in summary, we are requesting the Planning Commission's acceptance of the Final EA and issuance of the Findings of No Significant Impact determination. And as Kurt had provided in his opening remarks, the project will be back before the Lanai Planning Commission at the time that the Community Plan Amendment and Change in Zoning are reviewed. This concludes my presentation, and I'm available to answer any questions you may have. Thank you very much.

Ms. Gima: Thank you. Like I said, I'm going to go ahead and open up public testimony again. If there's anyone in the audience that wants to provide testimony specifically on this item, specifically on the Environmental Assessment. Ron? Just state your name for the record please.

Mr. Ron McOmber: My name is Ron McOmber, resident of Lanai for about 40-some years. If you remember Michelle's statement when we were talking about this several months ago, she had her dog buried on that property. I think it would behoove Pulama to find out where that dog burial is, and either solve that problem with her. Because if it was my dog I would want to have it taken cared of. I don't think it's a manini thing, but it, it might be to her. It might be very important to her, so I think Pulama ought to contact her and see where that burial site is and does it come in conflict with the construction going on. That's all I've got to say. Thank you.

Ms. Gima: Thank you Ron. Anyone else. Okay, we'll go ahead --. Oh, go ahead Kathy.

Ms. Kathy Carroll: Kathy Carroll with Mike Carroll Gallery. And we just want to reaffirm our support for the Findings of No Significant Impact, and we're just -- we're really excited to see the homes go back up and to honor that property.

Ms. Gima: Thank you Kathy. Dave?

Mr. David Green: Dave Green, Lanai resident, down at Manele. I'd just like to also recommend that you go along with the Finding of No Significance. I think the process that this has gone

through, the architecture of the sites, the various buildings being virtually identical, I think it's a great thing, and Lord knows we need more rental properties on the island.

Mr. Gima: Thanks Dave. Anyone else? Last call. Alright, we'll go ahead and close public testimony. Commissioners, questions for the applicant? Comments?

Mr. Oshiro: My only concern -- you know, this is a good, good thing that's happening -- but my only concern is the water runoff. Because if you've all been here on Lanai, and you've seen the runoff, you know that the water comes down Sixth Street, it comes down into Nani Street, off of Seventh Street, and over Lanai Avenue and down. And if any more water is added, which happened before, the two restaurants down here gets flooded out. I know it's not Pulama's responsibility, it's the County, but if somehow we could divert the water from coming down Sixth Street, I think we might lift the overflow problem inside the city. And I think most of the roads up, up along that -- above Sixth Street or above Nani Street belongs to Pulama. It's just a suggestion because, you know, if we have a flood again, that the merchants is the ones that's going be losing business because it's already happened more than once. I mean, the drainage is not good enough. I know, it's not Pulama's, it's the County's. But I'm saying if the water can be diverted from the up top, this wouldn't happened. It was mentioned to the previous owner that the water was coming down, and they never did anything, so I just letting you guys know my opinion.

Ms. Gima: Commissioners, any other questions, comments for the applicant? I just want to make a quick comment. I really appreciate having that oral history component in the Environmental Assessment. I thought that was very, you know, sensitive to the previous owners, so thank you for that. If there's no further discussions, comments, or questions...do I hear a motion to -- or anybody wants to propose a motion?

Ms. Koanui Nefalar: I propose to make a motion that we approve with No Significant Impacts.

Mr. Oshiro: . . . (inaudible) . . .

Ms. Gima: Okay, so it's been -- motion been made by Stacie to approve the Environmental Assessment with Findings of No Significant Impacts. Second by Brad. All in favor of this motion raise your hand. One, two, three, four, five. All opposed? None. So that has passed.

**It was moved by Commissioner Stacie Koanui Nefalar, seconded by
Commissioner Bradford Oshiro, then unanimously**

**VOTED: to approve the Final Environmental Assessment with
Findings of No Significant Impact.**

*(Assenting: S. Ferguson, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond)
Excused: J. Aoki, M. Baltero, J. Barfield, S. Marlowe)*

E. UNFINISHED BUSINESS

1. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 15-112 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend the comprehensive zoning ordinance to permit affordable accessory dwellings in Residential Districts. (RFC 2015/0153) (J. Alueta) (The public hearing was conducted on December 16, 2015 and the matter was deferred by the Lanai Planning Commission) (Commissioners: Please bring the Department's report prepared for the December 16, 2015 meeting with you.)**

The Council is considering a proposed bill to permit accessory dwellings in residential districts on properties of between 5,000 and 7,499 square feet, for the purpose of increasing the availability of affordable housing. The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

The Commission may take action on this request.

Ms. Gima: Alright, we're going to move to Item E, which is Unfinished Business, and that's Item 1 . . . *(Ms. Kelli Gima, Chair, read the above project description into the record.)* . . .

Mr. Joseph Alueta: Good evening Commissioners. When we last left you, you guys deferred action. We did get some consensus on some items of the proposals. To refresh your memory, there were two proposals basically. There's the Council Resolution which initiated all of this. Not to be outdone, the Mayor and the Administration came up with their own proposal to try to also address some of the homeless and affordability of -- for rentals, and to get more on the market immediately. The Commission primarily supported mostly the Commission's -- the Council's proposal. You like the fact that you wanted to maintain some type of affordability. Even though from an aspect of enforcement, the Department feels that we will -- it will be difficult if not impossible to enforce. Parking was a concern, especially on Lanai, given your narrow roads -- small town. You noted "no limit" on the accessory dwelling. So you thought -- I think some of you felt that there was -- you, you wanted to have some type of limit -- I mean, no limit on the size of the accessory dwelling, rather than the small size that was being proposed, which is about 450 and 400 by the Council. And you wanted to see it down to -- in your initial review, you felt you wanted to go down to 5,000 which is what the Council proposed to go down to 5,000. But you wanted to see what your lot sizes were within Lanai City because you wanted to know how it's going to impact your community.

I'm going to pass out...the revisions to our -- to the GIS map that shows some of the lots sizes, and they're color coded. So the table's going to show lots less than 5,000 square feet. So it's going to show down lots -- kind of -- based on the color -- hopefully a sand -- no, it's kind of a tan color for less than 5,000 square feet. And then the 5,000 to 7,499 square feet is in red. So that would be...basically what those lots that would qualify under the Council's proposal. Okay. The pink color is basically lots -- and I guess yellow -- are lots that would be, or currently

allowed to have an accessory dwelling under the current 19.35. Okay. And I'll remind you that the reason we're showing lots of 12,000 square feet and over, those are the yellow lots, under the Mayor's proposal he had proposed to have allow for two accessory dwellings, instead of just one on those larger lots.

And again, I'm just here to take your comments. We did transmit the comments that we had to Council because we wanted to make the deadline. However, we had not received any minutes, official minutes from either of the Commissions yet. And, again, the Council has not taken it up, that I know of, nor have they scheduled it. So we -- and again, there's still time. I think they do like to wait for the official minutes. But I do know that it is a hot topic as it is. A hot topic on Oahu and the rest of the State with regards to not only homelessness, but just affordability of rental units, not just affordable houses for fee simple purchases.

Ms. Gima: Thank you. I'll open up public testimony again. Anyone in the audience want to testify specifically on this item? Jon, are you wanting to testify? No? Okay. Sure, come on up and please state your name for the record.

Mr. Jon Bernier: My name is Jon Bernier. I've been on Lanai for 11 years. My question is can these units be used for short-term rentals or would that be prohibited?

Mr. Alueta: Under the Council's provision, they are saying that it has to be an affordable rental. Okay.

Mr. Bernier: . . . (Inaudible) . . .

Mr. Alueta: No, they would have to be -- it would either be rented to family members, or it has to be rented under the affordability provision of the Housing and Human Services. So, it should not be --. In theory, it would not be short-term rental. The -- the...Mayor's proposal, which is a different one, makes it explicitly clear that they cannot be used for short-term rental. And it also makes it explicitly clear that existing accessory dwellings that are currently already constructed, even on lots between 7,500 and above, would also be prohibited from being converted to accessory dwelling -- to transient vacation rentals or B&B. The same way we enforce everything. So that -- in fact, that's easier to enforce than it is the affordability. It's easier to -- it's easier -- it's easier to enforce on, on the TVR aspect because of the advertisement. I mean, obviously everyone's got a Chevy Colbolt -- every tourist -- or convertible Mustang, red. That's pretty easy to find. It's when they rent it on a free market basis to -- and they're say that family members. And that's the provision that we have a problem with on the Council side.

Ms. Gima: Thank you. Anyone else? Okay, we're gonna go ahead and close public testimony. Commissioners, any questions, comments, discussion?

Ms. Beverly Zigmond: Madame Chair? I don't believe that I grasp the idea that Joe just pointed out right now, which is under the Council's proposal. It's not explicitly stated that it doesn't explicitly prohibit short-term rentals, and I would like to see whatever we do on Lanai prohibit short-term rentals in those accessory dwellings.

Mr. Alueta: Just to be clear, this is for the new definition of an affordable accessory dwelling that the Council has created. So it would only -- that would only apply to the lots between 5,000 and 7,499, which is where, currently, you cannot build an accessory dwelling. Okay.

Ms. Gima: Commissioners, any other questions, comments?

Ms. Zigmond: Madame Chair?

Ms. Gima: Yeah?

Ms. Zigmond: Joe, I'm sorry, I am not remembering so much from last time. Do we have in the Council's proposal a limit on the number...of dwellings and, or the size?

Mr. Alueta: Yes. I created on page 3, I tried to create a handy-dandy cheat sheet for you to keep track of, of what's going on. Council's proposal would again, again, only impact lots between 5,000 and 7,499. Okay. So currently under the current law, you are unable to build an accessory dwelling of any size. Council would create a new definition called affordable accessory dwelling that would basically allow for these smaller lots, between 5,000 and 7,499 to build an accessory, an affordable accessory dwelling for lots between 5,000 square feet and 5,999 square feet, they would be able to build a 400 square foot accessory dwelling. And for lots between 6,000 square feet and 7,499 square feet, you would be able to build a 450 square foot accessory dwelling. At the last meeting the Commission noted that they did not want to have any limit on the size. At least that's what I heard and that's what I have in my notes that you didn't want to have a limit on the size of the accessory dwelling. So that you could build a larger accessory dwelling. You felt the 400 and 450 was too small. That would be, you know, for families, I guess you could say, I guess maybe that was your -- the concept behind it and that's where the need was. I'm not sure. I mean, so -- but that was in my notes.

These lots would still be...subject to meeting the provision for infrastructure. One of the main concerns that we had, when this Bill, as I had pointed out, had come around about six years -- seven years ago, in 2009, was that the lots of these size typically are within your older communities. We had, again, did a similar map like this that was passed out between on Lanai, as well as Maui and Molokai, which shows the neighborhoods that would have it, and most of them are within your older neighborhood where they lack side walks. I went running today, your sidewalk system is very unique. I had to cross the road several times to get on the sidewalk so -- but it --. And then most of your main residential roads, obviously, there was no sidewalks, so -- and that's not so much of a problem. The infrastructure that we'll be looking for is primary sewer capacity, sewer -- not just in the -- not just in the plant itself, but within the pipeline itself and the pump stations that go along with it, as well as the water services that would be needed to supply depending on -- I'm not familiar with how well the water system is here. In some areas of Maui, most of them have been upgraded. However, some are may still be under a cast iron -- I mean, not cast iron, but under galvanized pipe and -- you know, in some of older neighborhoods, so they don't have enough water pressure. But that would still be, again, the comments from Public Works and Water Department, they were like, we've got no problem with it, as long as we still have the veto power when the lot comes in for their building permit, we're

going to say there's inadequate capacity. So, just because you approved it down to 5,000, doesn't necessarily mean that every lot is going to qualify for it. It's all going to still come to down to -- unless the Council says you don't need to. But who knows what they do. But it's -- that's typically what the comments are coming back from. And that was our concern the last time that many of these neighborhoods -- maybe they make the water, maybe they make the sewer, but as you all know and you voiced at the last meeting that you start putting in another family of four, where do they park? So, you know, and from that aspect.

Again, the comments that we had at the previous meeting was, and, you know, it was Christmas time, so I was trying to Christmas tree, hang, put the ornaments of my residential ordinance. And the residential ordinance that, you know, the Council did not approve everything. They only took a part of it, and they didn't approve what I considered, or the Department considered to be important components. And one of that was the lot coverage which would have been the 40% lot coverage. So that if you have a house or the footprint of the dwellings only cover 40% of the lot, there's still a potential for room for one, percolation, but also for parking, so that you don't have setback to setback construction. Which is what you typically --. I mean, I think there's a few aspects of it here, so -- but that's, that was our concern on Maui, as far as that, you get the setback to setback construction. And all of sudden there the minimum of two stalls per dwelling unit, and one per accessory dwelling. And they work based on mini -- small lot size. I mean, small size that Council is proposing. Because if, you know, 400 or 400 square foot accessory dwelling, if that's only rented to one person, no problem. Maybe a couple, but most people, almost everybody has one car per person now, so that's where we run into trouble.

But, again, to summarize back at your comments at the last, and what you've said so far I got, you wanted to maintain affordability; parking in a concern as I talked about; noted you didn't want the have limits on the sizes because you felt the size was too small for family to really make it useable. Again, you want it down to 5,000. You didn't want to go down below 5,000 on the lots. And then the concern also was to make it clear that TVR's would be prohibited somehow in that definition that they've created.

Ms. Gima: Thank you for that recap because, yeah, it was a month ago, and a lot, I think, has slipped many of our minds. So Joe what is the specific action or decision that we're making? To just approve? No, it's not approving.

Mr. Alueta: If you are comfortable with the Council's proposal, you can recommend that you support or you recommend approval of the Council's Resolution, and you can put in certain modifications that we talked about, such as....I guess for you guys, you would, probably your notes would be that you would want to see an increase in the size of the accessory dwelling at 400 and 450. Under the affordability, it may be too small for families. And then also to make it explicitly clear that it should be no TVRs allowed. But everything else they're proposing which is -- and we'll make a note of it is that you want to maintain that affordability, you want to -- and we'll put all the notes -- we just didn't get a formal motion. So if you want to just formally make, support with these comments, these five comments that I have, then that would be the motion basically.

Ms. Gima: Commissioners, any other questions? Go ahead Stacie.

Ms. Koanui Nefalar: I'm not fully comfortable with having -- with it -- with not having a limit for me. I wouldn't want my neighbor, both neighbors on the side of me to be setback to setback. Like, it's just going to be so crowded. I don't want to live like that, and I don't think any other community people would want to either. We do need housing. You know, we do want our families that have moved away to be able to come back. So having a, having an accessory dwelling on a property would be, would be nice, but not to the point where it's overcrowded.

Mr. Alueta: Okay, when you're talking limits, that's why -- the limits that was previously discussed was on the square footage of the accessory dwelling, not so much on the number of the accessory. It's pretty clear they will be allowed one. So you have your main dwelling, and then you'll be allowed to construct a one accessory dwelling. Part of the provisions that we also want clarified within 19.35 -- again, one of my Christmas tree ornaments. I wanted to add on to the existing bill was to make it clear that, that you can have an attached accessory dwelling. That is -- it's, it's explicitly implied based on the designs, on the standards that are in 19.35. But we want to make it clear that, you know, this accessory dwelling can be attached. So essentially you'll have one large, or a house that could be divided and have two kitchens in it. So you could have an area walled off, and you would have one area that's 450 square feet which could be conveniently the size of the carport, enclosed, and then a kitchen added, which is, you --. And then the next one is that there's a main dwelling has its own kitchen. And so you basically have two units. One is just designated as the accessory dwelling. So that's pretty much how --. I think -- and that's where some of this, like I said, if this is passed in some form or another, you'll -- you may just have a lot of illegal accessory dwellings become legal now. Especially on Maui, there's quite a few, I mean, that, that we have to deal with. But that's kind of where we're -- you're kind of headed. So if your, if your concern is the number of accessory dwellings, then you're still only going to have one. If you're concerned a number by region that's, again, not going to be able to be stated without -- I guess the only limit would be based on infrastructure.

Ms. Koanui Nefalar: Yeah, my would be more of -- I'm more concerned of size.

Mr. Alueta: The 400, 450.

Ms. Koanui Nefalar: Well, if we not put a limit on it, then would it be too big? Like how --

Mr. Alueta: Again, I'm just repeating what you guys -- that was my interpretation from last, last month was that -- last year that you --

Ms. Gima: I don't think, and correct me if I'm wrong Commissioners, I don't think we recommended that there not be a limit. I think, if anything it was the opposite.

Mr. Alueta: Okay, that's, that's --

Ms. Gima: Yeah.

Mr. Alueta: -- great. I mean...but if that's -- if you want to say that, like I said, your formal motion is to maintain those limits of the 400 and 450. So that would be -- you can change it to that or that can be the motion. So note that to maintain the limits on size.

Ms. Gima: Yeah, that, that sounds more accurate. When I heard you say that I -- it, it sounded a little off. I don't, I don't think we ever said that not to have a limit on the size of accessory dwellings.

Ms. Zigmond: No, because my stomach tightened that, and so thank you Stacie for bringing that up. Because we talked about all those construction workers.

Mr. Alueta: I, I think the reason it came about was that we had -- again, there was a lot of things going on, a lot of concepts being thrown at you, some new, some familiar. One of the concepts was, that came out, that was supported by a few Commissioners on Maui was that don't have a limit. You can have two dwellings. Two. You can have one main and one accessory dwelling. What's the difference if somebody builds a 2,000 square foot house and a 450 affordable accessory dwelling, as opposed to somebody building a 1,500 square foot house and another 1,500 or a 1,000 square foot square foot accessory dwelling. The impact is you still have two dwellings on the lot, and so I think that's where you guys had kind of said, hey, maybe we like that concept and we want to see no limit. And that's where -- sounds familiar. So I don't --. Again, I'm not trying to put words in your mouth. I'm just saying how I came to that, on my notes, that's where -- I'm trying to track back to where it could. So if you want the limits, or you like the limits that are being set by the Council in their proposal then, then this should be a slam dunk. You just make a motion to approve the Council's Resolution as, as they have it, and then we note your concern on maintain that affordability, parking is a concern on Lanai and that may be addressed by having a stricter parking requirement, note to keep the limits of the 400 and 450...don't go below the 5,000 square foot in the lot size that's being proposed, and make it clear that these can't be used for transient vacation rentals or B&B.

Mr. Oshiro: Joe, the Mayor's and the Council, they say that on each property there's suppose to be two parking space per dwelling, plus another one for the accessory? Three?

Mr. Alueta: Yeah. That's, that's in 19.36, the parking ordinance, and it doesn't change. And none of them have made any provisions to change that. And I take it that there was no, no support for having more, more accessory dwellings on larger lot. Okay, so just as the proposal is pretty much. Okay.

Ms. Gima: No, we're not talking about the Mayor's. We only have the Council's Resolution in front of us. I think we decided on that.

Mr. Alueta: You made it pretty clear you didn't want to deal with the Mayor's one.

Ms. Gima: Right, we did that at our December meeting, so it's specifically just the Council's resolution. So is there anyone wanting, you know, to make a motion? Joe just kind of gave a good overview of how he would word it with out comments.

Ms. Zigmond: Madame Chair, I will make a motion to approve what Joe just said with the correct understanding this time, and noted comments...for the Council's proposal.

Ms. Gima: Okay, so Beverly made the motion, Brad second. Joe, can you just read it again for the record exactly what you said earlier?

Mr. Alueta: Sure. My understanding right now is that you're making a motion to support Council's Resolution 15-112 with regards to affordable accessory dwellings. You want to stress that it should maintain the affordability; parking is a concern for Lanai; note that you don't want to see any changes to the limit that's being proposed which is currently 400 square feet and 450 square feet on the affordable accessory dwellings; do not go below the 5,000 square foot lot size as proposed; and to make it explicitly clear that no -- none of these affordable accessory dwelling units can be converted to a TVR or B&B.

Ms. Gima: And before we vote, any discussion Commissioners? No? Okay, so all in favor of the motion raise your hand. One, two, three, four, five. Any opposed? None, so that passes. Thank you Joe.

Mr. Alueta: Thank you very much.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Bradford Oshiro, then unanimously

VOTED: to approve Council's Resolution 15-112, with regards to affordable accessory dwellings. And stress, it should maintain the affordability; parking is a concern for Lanai; maintain the limit being proposed which is currently 400 and 450 square feet; not go below the 5,000 square foot lot as proposed; and affordable accessory dwellings cannot be converted to TVRs and B&Bs.

(Assenting: S. Ferguson, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond)
(Excused: J. Aoki, M. Baltero, J. Barfield, S. Marlowe)

F. COMMUNICATIONS

- 1. Planning Department transmitting a status report memo on the Planning Department's study to amend the Lanai Special Management Area (SMA) boundaries (First presented at the October 21, 2015 meeting.) (K. Aoki)**

There may be ongoing community discussion.

Ms. Gima: Up next we have our Item F, which is Communications. Is it -- am I looking at the right thing? Yes. . . .*(Ms. Kelli Gima, Chair, read the above project description into the record.)*

Mr. William Spence: Good evening Commissioners. I know this is a long time coming. There's a lot of comments and a lot of, you know, discussion with everybody. What we did, we listened last time, and I know you said you didn't want any maps, but we provided you some maps anyway. Not, not a proposed SMA boundary, but just the kinds of information that we're going to be using to help you develop the new boundary for the SMA. The -- I brought with me, Kathleen Aoki. Some of you may know her from before when she --. At one time she was a member of the Long Range Division. She was a member of the Current Planning Division, working under Clayton. She was Deputy Planning Director, and actually did a time as the Planning Director. She left for Kaunoa Senior Center, and is now coming back to head up the Planning Implementation Division. This is a small division that we're -- that we recently formed. You know, one of the biggest complaints is nobody does anything with our communities plans, and you know -- right on Ron -- so, so you have things in your community plans that, you know, do this ordinance or that ordinance. You know what, it's, it's small, and our community plans are very ambitious, but at least we've started the division to be tasked specifically to do those things. So I welcome Kathleen back into the Planning Department. She has a lot of experience and a lot of knowledge in these areas, so anyway, this is going to be her assignment now, and we'll see where this goes.

Ms. Kathleen Aoki: Thank you Director Spence. Yeah, so far for those of you that I don't know, it's nice to meet all of you. I think Beverly is about the only one that I kind of remember. Yeah. So Will has asked me to take on this task to look at and amend the SMA boundaries for Lanai. What I wanted to do today was basically sort of -- if you'll humor me -- start off on a fresh slate because I really don't know the specifics of this body and what it is that you wanted to look at. And so I wanted to just sort of have an informational gathering meeting for you to tell me what concerns you have with the current boundaries, if there's specific areas that you want to look at. We can bring my GIS person over who can show you different layers a little bit more in detail than what these maps provide. But I wanted to at least give you something to start with. There's other layers we can look at too. I just want it to be clear that the layers that we look at, a lot of them, are things that are already produced by other entities, agencies, the State, so they're only as good as the information that they have gathered. So you may ask for things that we may not necessary be able to provide because there's just not the information out there. But you can always ask and we can check and get back to you. So with that, I'll leave it up to you Chair. That's how I'm kind of looking at this. If it pleases you, we can start that way.

Ms. Gima: No, yeah, that's fine. I'm glad you want to gather information from us. This was brought up back when John Ornellas was chair. This was his, his thing that he wanted to get on the agenda. And when I was reviewing my notes, I mean, he's been requesting to have this looked at since 2013. So it's been some significant time, and we made those requests, didn't get it on the agenda. I wish he was here tonight; he isn't. But correct me if I'm wrong, other Commissioners, his intent to bring this to our meeting on the agenda was, one, just to do an overall review of the SMA guidelines. Review it. I don't think there's been any major changes or amendments since its inception. So just wanting to do a general review. And then, two, I know he was looking at when it comes to the shoreline setback -- I'm trying to remember here -- he was wanting to look at the boundaries being an elevation versus going back. I'm pretty sure

that's what it was, and I can try and get more information from him because really it was his little, you know, his...thing to get on the agenda. So like I said, I wish he was here tonight. I appreciate you coming and listening to us, and wanting to gather information. And...I mean, I'll open it up for public testimony in a few minutes as well, so if anyone else from the community wants to comment. But that, kind of in a nutshell was the reason he brought it up and -- and anything else?

Ms. Zigmond: Madame Chair? I -- I believe that in addition to it being John's request for a long time, it will be helpful for all of us because of various changes that are going on the island and proposed changes and etcetera, so if we have some idea --. And I'm actually you put the maps even though we said we didn't need them, but thank you because that was very helpful. And I think the discussion is going to be valuable going forward for all us as...as we continue to see the changes that are going on the island so thank you for that.

Ms. Gima: Yeah, and think also, just in additional to what Beverly is saying, you know, we have new Commissioners that come on. Obviously we have SMA applications that come before us and the community might not be aware of certain things, so I think, just having an overall review will be helpful especially during the times where we don't have big action items on our agenda. This is something that we can be doing that I feel will be really productive not only to the Commissioners, but to the, to the community as a whole.

Ms. Zigmond: Madame I, I...I believe that since -- I don't know how many years ago it was -- but we did amend the Rules so that this Commission reviewed exemptions. I believe that was something we did.

Ms. Gima: Right. Yes. You're right Bev. So what I'm going to do, I'll, I will open for public testimony, just so Kathleen, so that you can hear from the community, get some feedback as well. Who would like to start off? Ron? Okay, come on up.

Mr. McOmber: Yeah, this is really frustrating. My name is Ron McOmber. I'm a member of the CPAC. I remember when the CPAC asked specifically if we could deal with this issue, and we were told at the CPAC that it was not anything that we could do or deal with, with the SMA because it's already a boundary set. Because there are some spots on the island that we thought that we needed to change, either the height of the setback because some of it is right down on the ocean and some of them are cliffs. We wanted some stuff above the cliffs that would be protected. But we were told specifically -- now this is frustrating to me because the CPAC specifically asked if we could deal with this and be brought before you folks as a final thing with the community plan. This is not -- I'm really frustrated about this. This is one of the reason we're upset about what's going on with the County right now and our community plan. This is a big chunk that should have been addressed at the CPAC level. And now they're coming up with this document? I wished this document had come out while we were sitting at the table with the CPAC. This is, this is not comfortable for me, as a member of the CPAC. We asked if we could do this, and we were told flat by the Planning Committee you can't do it, and, and it's not a questionable thing.

Ms. Gima: You asked to do what specifically? To make –

Mr. McOmber: To address some of the, some of the SMA setbacks around the island.

Ms. Gima: Okay. Not to make any amendments at that time; just to address this.

Mr. McOmber: Yeah, no, but we did -- what we were -- as part of doing the planning, there were areas that we thought that should have been, the SMA distance should have been changed, either in height or in setback. And we were told specifically by the Planning Department, at that time, we couldn't do it. Now, this, this thing came out. I wish this has come out a year ago then we could address it where it should it been. Not only in your laps, but it should have been done with the CPAC. CPAC should've addressed this. And we specifically asked for it. And so it's really frustrating from my side of the thing.

Ms. Gima: Well, the good news is it's better late than never, and it's here now, and members of the CPAC can be here in the audience to provide comments. I mean, it's here now. It is what it is, and so moving forward, you know –

Mr. McOmber: I understand that, but still what's frustrating is it wouldn't have been so bad if we had to ask for it in the first place.

Ms. Gima: Okay.

Mr. McOmber: And now, and now it shows up a year and half later.

Ms. Gima: Okay. Yeah.

Mr. McOmber: This is, this is not acceptable. I'm sorry. Thank you.

Ms. Gima: Thank you. Anyone else? Stan.

Mr. Stanley Ruidas: Hello, Stan Ruidas, Lanai resident. When I was part of the Planning Commission back in, I guess, 2008, I initiated this under Clayton, and Kathleen was the Director. So that's the history of when it started. The reason why it started is because we don't have a definition of the SMA. It's just a thin line around the island without the definition of how far it is from the waterline. So, while looking at the island and talking to Kepa back in those days, we didn't want to put -- well, we didn't want to mark all the archaeological sites because then people would come and disturb them, okay. So we went with like a -- like for, like, the west side, you cannot go to elevation because it starts off at, I don't know, 1,500 feet or something. So you would go with a distance. So round number would have been around 1,000; 1,000 feet from the shoreline. But then when you run into areas where, like, on the east side you got, you got sites way up above, so that's why the elevation proposal came into play and that was a round number of 1,500 feet. But it could be a 1,000. So if you make it a 1,000, 1,000 and when people come in for an SMA whichever proceeds the other will take effect. So that was the thought about defining our SMA and updating it.

Ms. Gima: And so what happened when you brought that up?

Mr. Ruidas: Well, you know how meetings go on Lanai. We cannot have a meeting just to have a meeting. That, that is what was written in my e-mails. When we brought it to the CPAC, we had put it in and the County had take it out. So, at least, you know, now it's on the table.

Ms. Gima: So, it, it, it sounds like since about 2008, the community has been asking to review this, and proposed amendments, and nothing has happened.

Mr. Ruidas: Yes. And the sad part is this is the Planning Commission's SMA. So if you cannot change your own rules, why have rules? You know, you cannot manage rules that you cannot define, so, so that's what I have.

Ms. Gima: Thank you Stan. That was really informative and helpful. Thanks.

Mr. Ruidas: You're welcome. And thanks to Will and Kathleen for bringing it up. At least it's on the table.

Ms. Gima: Any other community members, questions, comments? None? Okay, we'll close public testimony. Commissioners, any responses to what either Ron or Stan brought up?

Ms. Zigmond: Madame Chair, I remember there being resistance at any attempts to change our rules or boundaries, so when Stan say you can't just have a meeting to have a meeting I -- thank you for saying that Stan. So, again, I'm glad that this is here, and I think maybe we need to make sure it stays here until we are happy...with what we want. Thank you.

Ms. Gima: Commissioners, anyone else? Kathleen, any specific questions or for the two gentlemen that testified?

Ms. Aoki: For Ron, he mentioned, you know, in the CPAC discussions there were specific areas. It would be helpful if either he can share that with you if you're willing to have that discussion...so that I can start looking at these areas. Because what, what would probably -- you know, you can do it kind of you can look at the entire island which I would recommend, you obviously look at the entire island. But there could be areas where you're fine where it's at. So you would to relay that, you know, this is okay, this is not, there is where we really want to look at. What we did with one of the maps is we provided you the proposed Community Plan map that is going up before Council so that might be something you'd want to look at in the areas that are proposed for expansion. I think what's important to remember with the SMA is that your focus --. There's --. You know, we provided you with Chapter 205A, so all those different things is what you're suppose to be looking at. We have to remember that it's a coastal management program. So, somehow wherever you make that line there has to be a rational nexus to what it is that you're trying to protect and all those, you know, things that you're looking at. So, you know, it's going to be hard to try to say, okay, well, there's this feature or it, you know, the runoff might come down, you know, from up here, there still has to be that nexus. So to say, oh, there's a -- and also archaeological. That's why we put that specific map in. But if there's

something that's two miles off the coast, you know, you can't be drawing lines that goes like this and come back down. So I think as long as you understand -- you keep that in mind on it's a coastal protection, what it is you're trying to protect. You know, you want to maintain your access. You want to maintain your scenic view plains. All of those kind of things that you want to have a little bit more scrutiny over when somebody comes in to do a development. Because it may not necessarily just be a hotel or something like that, it could be your neighbor that wants to do something eventually down the road, in 20 years, in this area. So what is it, you know, what is it that you're trying to protect. So, Madame Chair, again, if Ron happens to remember the specific areas that the CPAC mentioned, and then you guys can discuss it, but that would be helpful.

Ms. Gima: Well, Ron is still here. Do you remember the specific areas that you folks spoke about and would like to share with us?

Mr. McOmber: Ron McOmber again. As Stan would say, and it would really be hard to go back now and, and go through that unless you're giving us the time to do that. You're taking it basically out of our hands. We have nothing to do with this anymore at CPAC. And as far as the statement she had made about well some of it's going to be up and some are -- yes, it is because the shoreline isn't just straight going all the way around. There's some canyons, and there's some hills, and there's some stuff that needs to be protected. We wanted to address that at the time so we wouldn't have this problem now. And it would come forward. It may have been thrown out like some of the other stuffs that had been thrown out, but, you know --

Ms. Gima: But do you remember the specific areas that you guys --?

Mr. McOmber: No.

Ms. Gima: No. Okay.

Mr. McOmber: I think we need to sit down with the map again and talk about it. I mean, it doesn't make any sense. We were cut off. We were just told we couldn't do it any way. So we would take the boundary that you see on the map, and it's this all the way around the island. It didn't make any sense to us.

Ms. Gima: Would you be able to talk with some of the other CPAC members? Maybe they can recollect, you know -- because Kathleen just wants to know what you guys were referencing when you were looking at the different maps. And then kind of find out those specific locations and areas.

Mr. McOmber: Well, I think -- I think if that is going to be the case then we need to get back together and sit as a group, and sit and talk about it. I mean, it's not just my personal opinion or Stanley's personal opinion. Your dad may have the same opinion. There's all kinds of people that sit on that CPAC, and there's some people that didn't give a damn, but some of us did. And so I don't know. Maybe this is the way to solve but I'm a little hoo-hoo that we were basically told you couldn't do it.

Ms. Gima: No, I, I understand. I, I just wanted to address her specific question right now about the specific areas.

Mr. McOmber: Well, I mean, I can sit down, but there are other people on this island that we referenced and talked to -- fishermen that hang out in these areas that I don't hang out in the areas.

Ms. Gima: So it sounds like it would be very helpful to have this again on the agenda specifically to gather community input whether it's previous CPAC members that -- and then Kathleen you would be able to take that information and then we can see where we're going to go from there. Yeah, because I understand Uncle Ron. It's not just CPAC, it's not just the Planning Commission, there's many other community members.

Mr. McOmbers: Whether we had brought it to you with a final package, you would have looked at it say, oh, this makes sense.

Ms. Gima: Sure.

Mr. McOmber: I don't know, I hope you would say that but we were shut off. We were just told you couldn't do it. It -- you can't change the SMA, and we were a little upset about that. I mean, that was basically taken off the itinerary. Thank you.

Ms. Gima: Right. Thank you.

Mr. Spence: Just a comment, Madame Chair. And I can -- I can appreciate Mr. McOmber's frustration with it. The CPAC was time constraint; six months. You know, a lot of stuff happened and everything. But they had six months to complete what they were suppose to do, and it's very well laid out in the County law what the CPAC is suppose to review. SMA is not one of those. Even if, even if the end the CPAC felt constrained for time. If we took a lot of time doing something that was not prescribed by law, that would take away time from doing other things like land use and these other policies. The...if you look at the very first page of this memo, we include, regardless of whether the CPAC got to look at the SMA boundaries or not, we're following up with one of the, one of the policies in there to review the SMA boundaries and make changes as necessary to comply with the objectives and policies defined in 205A, Hawaii Revised Statutes. That process is really more properly in front of this Commission. And, and...these are your boundaries. They're set by you. I remind you that, you know, it has to go through review, not just here, but also the Mayor has to sign it. Whether it --. You know, Mayor has to sign it, it has to go for review with Office of State Planning, who implements the CZM Program for the State of Hawaii. But, this is a very public process. Anybody, as you've pointed out, anybody who wants input into this, we welcome that input.

Ms. Gima: Yeah, and thank you Director Spence for pointing out that it is this body's boundaries and we're the right entity to look at it. And regardless of what didn't happen in the past because, I mean, again, as Stan said, this has been brought up back in 2008. Whether it was brought up back in 2008, or when CPAC, or when John had requested for it, I think we need

to focus right now that it's here now. We obviously have someone assigned to this task which is great, and that you guys have finally heard us that this is something we want to do. So I think it can be really exciting moving forward especially getting the community's input –

Mr. Spence: Right.

Ms. Gima: – on this. And, you know, I look forward to, to working with you more on this Kathleen, and moving forward for our community.

Mr. McOmber: Madame Chair, may I?

Ms. Gima: Yes.

Mr. McOmber: William said that we had six months. Now how come it took us nine months? It took us nine months.

Ms. Gima: No, I understand Uncle Ron.

Mr. McOmber: Well wait.

Ms. Gima: No, no.

Mr. McOmber: The argument is we had so much stuff thrown on the table when we first started because Pulama come up and threw a whole bunch of stuff that we –

Ms. Gima: Okay, Uncle Ron, I gotta stop because I hear you. I hear you completely, and I know that you might have been –

Mr. McOmber: This was more important than what Pulama was throwing.

Ms. Gima: Okay. But this is -- it's here now. What happened six months ago, happened six months ago. Not to say that I agree with it, but it's here now and we are moving forward. It's on the agenda.

Mr. Oshiro: I've got a question. Okay, I remember when I first came on the Commission, when we were doing -- I don't know what we was doing -- we met on a Saturday, and they brought in, the County brought in University of Hawaii Oceanography and they said that in 18 -- I mean, 30 years the ocean going rise 18 inches, which pretty much going wipe out the east end of the island. So are we going to draw a new boundary in 18 years, I mean, in 30 years, or what's going to happen? You know, I just kind of throwing that question out at you.

Mr. Spence: I think that -- I should really give this to Kathleen. But this is all sea level rise, coastal hazards; those are things that are addressed in 205A. So as we bring this forward to you, bring it for information, those are things for you to consider. The SMA boundaries are not adjusted very often. I forget, like, probably 80's per . . . (inaudible) . . . maybe, maybe earlier

than that. So, it's, you know, my opinion perhaps it has been really too long since we've looked at where the location is. The...I know Maui is long over due for this as well. But...they should be reviewed periodically. What period of time that is, I can't exactly say. I think 20 years is too long, or more.

Ms. Zigmond: Madame Chair? Thank you. I'm delighted to hear you say that, and we are just the people to do it, so I'm going to make a request, Madame Chair, that we have a standing agenda item and every time that it is possible without going over the limits of, you know, midnight or whatever need be, that we talk about it because it is going to be a process as everybody is saying. So, we can get other the CPAC members here, we can get the fishermen, the fisherwomen, whoever needs to come, but I think it should definitely be something that's ongoing and we don't let it slide again because shame on us if we do.

Ms. Gima: Yeah, I mean, I, I, I like that idea Bev. Again, obviously, if we have a long agenda item of things that we need to vote, we wouldn't get to it, but just having it there, I think reminds everyone, the Commissioners, Planning Department and the community that this is on everyone's minds and it would be great to continue to get the feedback from Kathleen. If there's any updates on your guys end, I think that would be good for all of us. Back there sir, I need you to come up to the mic.

Mr. Bernier: I have a request for this that since you haven't looked at it in 20 years or so that someone put it on, like, Google maps or something on the computer so you can blow up and expand as opposed to just passing handouts around. And then when it comes time for the community to come up with suggestions, they can all go to their computers in advance and, you know, look at the areas that are under consideration. Because going through with, you know, lots of talk and lots of things, unless you can see it specifically, and I don't know if that exists in your system, that would really be helpful for everybody.

Ms. Gima: Sir, can you just state your name for the record, again.

Mr. Bernier: Jon Bernier.

Ms. Gima: Thank you. I, I like that request. I think that would be helpful. Any other community members...want to comment on this? Okay. Kathleen, I think you've heard from us, pretty much, what we'd like to see moving forward.

Ms. Aoki: Yeah. So what we can do is, like you say, put it on as an agenda item, and each time I come, if I have information to share or more maps or whatever it is, we can have that discussion. So I'm fine with -- you know, it's going -- as long as nobody has any kind of expectations on that sort of format that it's going to get done in two months, because it's not. Yeah. Okay. So, I'm totally fine with that, and gathering information, and listening to the public, and having you folks comment on it. I think that's about the only way this can kind of work.

What I wanted to say to this gentleman is the SMA boundary maps are located -- they are available on the State -- okay, Clayton help me -- it's on the CZM link for the State Office of

Planning. So if you go to the State Office of Planning, and you navigate through to their coastal zone management section, you will see SMA maps. So it's going to look like this. And you can, you can, you can hone in on certain areas and kind of look.

Mr. Bernier: . . . (Inaudible. Did not speak into a microphone) . . .

Ms. Aoki: I don't know. I think they're just PDF maps. They're not GIS kind of layers or anything.

Ms. Gima: But you guys have the way to do that if you guys presented to us, here, correct?

Ms. Aoki: Right.

Ms. Gima: Because I think we've had that before I think when we were reviewing the community plan.

Mr. Spence: I think what we can do, we can -- we can put a link to the Office of Planning website where this is located. We can put that on the County website. But also...as information is provided to this Commission, we can also make sure that gets up on the, on the County's website and it can be downloaded for the general public. So, if, if that's -- if that's enough information on that, I'd sort of like to ask what this Commission wants to see next time.

Ms. Gima: For me, I think, next time just --. Because again, yes, Kathleen, we recognize that it's a process, and I think part of that process is engaging the community and...allowing them to voice their concerns, or opinions, or thoughts, and kind of not just the regular people that are attending the meetings, and having a more, kind of diverse group. So I think that would be a start. I think it would be helpful to know from you specifically kind of what you would want to know from the community, or specific questions that you would have. But I think that would kind of have to start the process because we can sit here and tell you A, B, C and D, but if the community is not engaging --. And they might not. But I think having that option or having that on the agenda as, you know, Kathleen is coming to gather information from the community.

Ms. Koanui Nefalar: Madame Chair? Kathleen, did you say earlier that you could bring a GIS person?

Ms. Aoki: Yeah. I, I have a staff person who is a GIS analyst, so...part of it though, I think, is that we have to make sure there's Wi-Fi. Don't they have to get on to some -- or he downloads it on to his computer. I think there's kind of a mix of everything. So, I'll have to talk to him and see. But he does know that he's going to be asked to come here, to, to answer those sort of technical questions when it comes. And then he can, you know, enlarge areas, or tell you elevations. Again, you want to have a sound basis for why it is you're drawing a line where you're drawing it.

Ms. Gima: So maybe that would be great, for the next, to have those visuals here so when the community does come out and wants to provide feedback that those visuals or those maps are,

are an option. Another -- I think we had when we reviewed the community plans, Tara Owens.

Ms. Aoki: Okay.

Ms. Gima: She did the sea level rise coastal hazards. I think that would be great to have kind of someone with that expertise to come and talk about that as we move forward and, and looking at possibly making amendments to the SMA.

Ms. Aoki: Okay. Would you want her --? I mean, has everybody heard her presentation?

Ms. Gima: No every one this Commission. Because not everyone sitting here was reviewing the Community Plan, and not everyone in the community as well. That's just a thought. Not to say that it needs to happen right away, but just a thought.

Ms. Aoki: Yeah. Okay. That's -- yeah, like Will was saying, it will be multi-meeting kind of thing.

Ms. Gima: Sure. Sure. Absolutely.

Ms. Aoki: Okay.

Ms. Gima: We're not asking you, we're not asking you to get all of this for next month.

Ms. Aoki: Okay.

Ms. Gima: Yes, multi-meeting over a time; just some suggestions.

Ms. Aoki: Okay. No, I appreciate that.

Ms. Gima: Commissioners, any, anything else that you want to share with Kathleen? Anything else Kathleen, Director Spence?

Mr. Spence: The -- Madame Chair, the only thing I wanted to really point out is because we included the 205A, Hawaii Revised Statutes 205A. We included those because this -- this is what your boundaries, the goals of your boundaries. Okay. We'll start of 205A-2, the Coastal Management Program. The objectives and policies, like recreational resources, we can map those. Historic resources, we can map those. We don't want to give away too much stuff away to the general public, but we're, I like to call to them treasure hunters. We see that unfortunately. Scenic and open space resources, coastal ecosystems. We have, we have data layers for each one for those things. And so what we would like to do, at least to me, your boundaries should -- could and should give consideration to all of these different objectives...and the policies, the --. And then there's some specific things also, in later on in 205A is 21, Special Management Area the findings and purposes. And the County Special Management Boundaries, the law regarding that. And so these are the things that and -- that we're going to try to follow is we go through, you know, this process. It's technically, I know that we use SMA for project review. It's not suppose to be. It's suppose to be more of an

environmental review. So, there's some, there's some boundaries that we need to observe, but within those boundaries, I think there's a whole lot of flexibility on what this Commission and what this community wants to see, so --.

Ms. Gima: Yeah, I think it would great to see those, those various layers and have those visuals, so that's something definitely that we can look forward to. Not saying that it has to happen month, but it's great to hear kind of the ideas moving forward.

Mr. Spence: And let me, let me just ask one question. Do, do you think...if we have more for the next meeting, do you think a bunch of members from the public would show up or --

Ms. Gima: Yeah, I think so.

Mr. Spence: Okay.

Ms. Gima: I think if we got the word out, and explained specifically -- I mean, a lot of people may not even know what SMA is, and so getting it out there, well in advance, if we know that this going to happen, I think a lot of people will come out.

Mr. Spence: Okay. That's --. Okay. I'll say something on one of the next agenda items, but we'll see what we can...we can bring forward at the next meeting.

Ms. Gima: Okay. Thank you again, for getting this moving forward. Thank you Kathleen.

Mr. Spence: And...you know, I, I know there's been a lot of delays and stuffs. We just -- there's a lot of reasons for it. It's not -- I know there's perceptions that there's been resistance to this. I don't think it's been so much resistance as much as its been not staffing, or you know, focused on other things, or whatever. But, you know, we're adopting a new plan. I know this is a long standing request to this Commission, so let's go forward and take a look at it.

Ms. Gima: Thank you. I know we only have a few items left, but I need to take like a few minutes break, restroom break. Like, like -- no, no, I can't -- like, three minutes.

(The Lanai Planning Commission recessed at approximately 7:05 p.m, and reconvened at approximately 7:08 p.m.)

G. DIRECTOR'S REPORT

1. Open Lana'i Applications Report as distributed by the Planning Department with the January 20, 2016 agenda

Ms. Gima: Okay, let's resume the meeting, and going on to the last few items on the agenda. Under Item G, Director's Report, the first item, open Lanai applications report as distributed by the Planning Department with the January 20th, 2016 agenda.

Mr. Yoshida: Yes. Thank you. First of all, Madame Chair, I have to apologize. We also have from the County our, your Deputy Corporation Counsel, Richelle Thomson, who sees that we don't go too far astray from the parameters of the law. We have circulated our Open Lanai projects by TMK report if there are any questions by the members.

Ms. Zigmond: Clayton, I'm sorry, I don't have my cheat sheet of the, the acronyms, so could you reminder us what CP and SUP2 is please?

Mr. Yoshida: CP is a conditional permit...that's for uses that are not specifically listed as permitted uses or special uses in the particular zone district. SUP2 is a State Special Use Permit of 15 acres or less, where the Commission is the final authority. Primarily for uses within the State Ag or State Rural districts.

Ms. Zigmond: Okay, I'll ask another question then too, I think we asked this last time, do we know where the Hale Ohana is, other than Lanai City?

Mr. Yoshida: Hale Ohana. I believe I would ask Kurt.

Mr. Wollenhaupt: I don't have the specific address. We're just in the process of sending Donna Lowy her permit. There were no complaints. I believe it's across the street -- I pointed it out to you, that's on...right, between the -- by the fire station, on the other side of the street. So there were no complaints and she had met all the requirements.

2. Agenda Items for the February 17, 2016 Lana'i Planning Commission meeting

Mr. Yoshida: Are there any other questions on these items? If not, our next -- your next meeting is scheduled for February 17th. We have scheduled the Conditional Permit application from Pulama Lanai to conduct up to 40 special events at the Manele Golf Course. The Department is moving forward in scheduling the meeting the four o'clock on that day. 4:00 p.m. to 5:30 p.m. so we can catch the 6:45 boat back to Maui.

Ms. Zigmond: Clayton, don't we get to vote on that? I, I, I object to that. I totally object to that.

Mr. Yoshida: I think there was a discussion at the last meeting that pretty much they -- I think the members there left it -- well, some --. Where we left it is they left it to the Department realizing that at times there may be difficulty in obtaining quorum.

Ms. Zigmond: I, I object to that. Let's go for Saturday then. We asked you to consider that. We are working people. And the public's not going to come. Kathleen, we were just telling her we're going to have public, people from the community come and testify or to, to listen, to give their comments on the SMA and you're shutting everybody out by doing that.

Mr. Spence: Okay. Madame Chair, just a comment on that. Part of -- part of the things we've

always said about starting at 4:00 p.m. is that if we have a big project, you know, if we're anticipating a lot of people, a lot of testimony on something, we will be staying the night. And so, that was one of the -- if -- I would anticipate members of the community coming out to discuss the SMA boundaries, sharing their manao, and a presentation of all the different data layers is going to take some time.

Mr. Oshiro: And, you know, the problem is yeah, okay, you probably not going to the president and the vice-president here because they work till 4:30 p.m. You not going get them at 4:00 p.m. come here. Who's going to open the meeting? I ain't opening the meeting. You know what I'm saying? You not going get the president of this committee, and the vice-president; they work till 4:30 p.m. So how do you expect, you know, us to get anything done?

Ms. Gima: And we shared that last time that, you know, if you start it four, there will probably at least four people who won't be here directly at 4:00 p.m. And so if they're okay with that after hearing it, then it's unfortunate for applications that come before us and need to be voted on a timely manner.

Mr. Spence: I know. And as I recall the last time that we met, it was sort of a "you know, you gotta do what you gotta do." And you know, this isn't as an easy decision for us so I don't think Commissioners should consider that we're -- you know, I don't want to go to the litany reasons why, you know, why the Department has constraints, etcetera. I mean, if we have to hold it off till 4:30 p.m., then we have to hold it off to 4:30 p.m. That's, you know, something else.

You're going to have meetings where things are going to get done really quickly, you're going to have -- and that's going to be pau. You're going to have meetings that are going to be really long, and involve a lot of discussion and testimony, and we're perfectly willing to stay for those.

Ms. Gima: So this is not set it stone that every meeting is going to be 4:00 p.m. to 5:30 p.m. Because, I mean, I think we need to see how this plays out. I mean, because we could come next month and it could be a complete mess so this is not set in stone for every single meeting moving forward.

Mr. Spence: We would -- we need to start earlier so if we can get home, we can. If not, then, you know, we, we're going to stay the night. Just looking at the agenda items, you can pretty much anticipate the level of public participation and the questions the Commissioners are going to have.

Ms. Gima: Did you guys consider what we had suggested at our last meeting about Saturday visits? I mean, Saturday visits, Saturday meetings?

Mr. Spence: Again, we start running into things where we're asking staff to give up their Saturday to be here. We're asking one Saturday. We're asking this Commission to start.

Ms. Zigmond: Again, we did not approve that. The community had input before. You, you can't just arbitrarily say you're, you're going to change our meeting.

Mr. Spence: This is not arbitrary. We've been talking about this –

Ms. Zigmond: And we've refused. We've said no.

Mr. Spence: Okay, then, you know, I think if, if Commissioners can't make it at 4:30 p.m., you can't make it. We need to try this.

Ms. Zigmond: . . . (inaudible) . . .

Mr. Spence: Okay, we need to try this, okay.

Ms. Zigmond: . . . (inaudible) . . .

Mr. Spence: Okay.

Ms. Zigmond: . . . (inaudible) . . .

Mr. Spence: We're asking for an hour and half, once a month, rather than --. Hang on. Rather than asking staff to give up an entire Saturday. Asking the tax payers of this County to spend \$4,000 every meeting. That's basically what we're asking.

Ms. Gima: Can I just, just state that I think many of us who committed to volunteering our time to be on this Commission did it knowing what the hours were. So...you guys are going to do what you guys are going to do, and...and we'll see how it works next month.

Ms. Koanui Nefalar: But I think you would need community. Since we're talking about tax payers, we should ask the tax payers what they want. What is easy and –

Mr. Spence: I know this isn't popular.

Ms. Koanui Nefalar: Not that it's popular, it's just it's not...not wanted, not like –

Mr. Oshiro: You know, I'm the only one that can make it at 4:00 p.m., okay, because I'm retired, okay. The rest of the people that sit up here work till 4:30 p.m. And you've got a guy down here that owns a restaurant. And on Wednesday we get barge, so he's -- he, he might even be here. You know, if you push that to 4:00 p.m., he might be working. So what you going to do? I going to sit here by myself?

Mr. Spence: Well, if nobody shows up, nobody shows up.

Ms. Gima: And that's a complete waste of the taxpayers' dollars after us telling you that, that could happen.

Mr. Spence: Somehow we can't --. I'm telling this Commission we cannot continue the practice that we have been going on. It used to be we flew back the same night. We can't do that. We

also can't just stay over; come over for a meeting, talking about a couple of SMA permits, and then spend the night.

Ms. Koanui Nefalar: Did you folks -- when the budget committee was in session, did you folks ever figure out to increase the budget for Lanai so you folks can stay over?

Mr. Spence: It's more than just a budgetary item. It takes about -- it, it takes almost two full days out a person's life. They get up in the morning, they pack, they make the arrangements if, if they have to make arrangements for children or for pets or whatever.

Ms. Gima: Director Spence, I'm going to stop you because I think we all that understand when we travel off island for work. We all get it. I mean, we understand it, but we do it.

Mr. Spence: We do it...but it's 48 hours of time for a two hour meeting.

Ms. Koanui Nefalar: These are -- this is our lives. These our lives, you know, what we're planning for people's --

Mr. Spence: Absolutely.

Ms. Gima: I'm going to propose --. We're going to open up public testimony because I think I see a lot of --. I mean, this is a community, they're allowed -- they want to be here, they want to provide testimony, so I'm going to open it up to public testimony. If there's anyone in the audience that wants to comment on this. So we'll start with you ma'am. Yes, please go on the mic and state your name.

Ms. Margaret Peary: My name is Margie or Margaret Peary, and it's kind of disappointing to hear this that the time will change. Like you said, you're all volunteers, most of you work, and just the --. I wish I had written down your comment, Director, like "oh well, if nobody shows up, nobody shows up." I think that was the comment and I was shocked because these are important decisions that are being made here and, and just that flippant remark if nobody shows up, oh well. Well then how does this Commission function? There -- they don't have a quorum if, if four people are not going to be here, particularly our chairperson and their vice-chair. It, it just, it is unconscionable as far as I'm hearing. And you signed up for this, you're being paid for this, these folks are not, our community needs our Commission, and I quite frankly am very disappointed. And if -- and I wasn't here to hear the previous remarks but it sounds like the Commission has said this is not okay, in the past, and they have reiterated it, and yet all of sudden it's being proposed and kind of put, like, oh well, if people come, they come. If they don't, they don't. I don't think that's a very professional attitude to take, and you guys need to figure something else out because 4:00 p.m. just isn't going to get it.

Ms. Gima: Thanks Margie. Let Jon, then Butch.

Mr. Bernier: Jon Bernier again. I'm going to take the other view point because I understand the, the people that come over here from Maui. That's asking a lot of them to do that. Yes, it's in

their job, but their job is not to spend that much time over here, so there's got to be some other way to do it. I don't know, maybe the ferry can leave an hour or later or something that one day a month; maybe not. But there's got to be something else that's got to be done. I understand your issues, and I understand their issues. And to say that, you know, making people stay a night over here on Lanai, that's not unacceptable. I understand their point of view. So there's got to be some way of people get together to figure another way, like starting at 4:30 p.m. But other wise, or other wise, just make sure that you keep the agenda items to fewer agenda items, and maybe meet more frequently or something like that. I have no idea what it is. Maybe you meet three times in two months, but you make sure that the people that come here can get back that evening. And so, you know, I understand both sides. You guys work and you guys want to finish your work and then go to this. And they have, you know, they have their work to do. So, there's got to be some other work around that can appease both sides, and I don't think enough time has been spent on thinking about it. I mean, I'm not -- I haven't heard all of the stuff, but there's got to be something else.

Mr. Reynold "Butch" Gima: It seems like the decision -- I agree with Bev. It seems like it was a unilateral decision. And I'm -- it also appears that the Planning Department is making this based on fiscal reasons, and I don't think that's wise to do that because I think in the end planning in general and our community loses out. Will, I think your reason about 48 hours is kind of weak, and I think if you were to understand what Lanai people have to do when we have to travel to County meetings or State meetings and the preparations that goes into it, having to accommodate Island Air or Ohana, and, you know, renting cars. So, like I said, I think, I think that's a weak reason. When the Mayor came over in 2014, community members offered some suggestions. And I don't know if you guys worked out the number with those suggestions. One of them being, as Kelli said, coming over on Saturday. The other one was chartering Expeditions which is a lot cheaper obviously than flying. I don't know if you guys cost it out that...recommendation. If you didn't then it makes the Planning Department's suggestion even weaker. By starting at 4:00 p.m., I mean, you put the Commissioners in a bad situation because either they come to the meeting late, possibly cancelling the meeting, or forcing them to take vacation which is costing them money out of their own pocket having to take vacation.

And I think it's weak too, Will, if you said, well if the meeting goes longer, then we'll find a place, we'll stay over night. Well, I think you just can't stay overnight on a whim. You, you guys are going to have to call ahead and say, Hotel Lanai or Manele, do you guys have room? So I don't think you can just say, oh, we're going to come over and then if the meeting is going longer, we're going to stay unless you bunk up at Ron's house or, you know, somebody's house. And, and, and that...and that just reinforces the concern that the Commissioners have had for, for many years, not only with the Planning Commission, but with many other State and County meetings where they get here and the people who come from Maui and Oahu are always fidgety about are we going to finish on time so we can make the plane or the boat. And that's not fair to the process, it's not fair to the volunteers in, in the meeting, and obviously it's not fair to our community. So I would tend to agree with Kelli. Okay, I heard a compromise, let's check it out. But if it doesn't work, then we gotta go back to square one. And if you guys have not checked out, costed it out Expeditions, you know, please do that before the next meeting. Thank you.

Ms. Gima: Thank you. You know, one other thing too, it's not fair to the applicants, you know, when their, their application is on our agenda and it's being rushed or we don't have quorum. And then secondly, I think we also spoke about in the past, other than the Saturday option was having, like, a video conference available, so you're not having to bring, five, six, seven people with you. You know, two people -- three people can stay back, join on video conference, present on their specific applications and then sign off versus coming and paying their way, staying overnight, another person to add to the rental car. I think something as simple as video conference would, could be very beneficial. Sure, there are specific people that have to be here every time, like, Clayton, Corp Counsel, Leilani. But you know when -- I'm just using you as an example, Joe, you were here for one application, Kurt same as you, if you're done, you can sign off the video conference and that saves x-amount of money right there. So that's also another option I know we brought up in the past as well. Well, yes...I mean, it -- you guys have made up your mind about next month. Whether we like it or not, Commissioners, that's what's going to happen. We're need to move forward with that, see how that goes. We all kind of have our, our...we see, we know kind of will happen, but I just ask that this not be set in stone. And if it doesn't work that we need to revisit this. And please look into the video conference option.

Mr. Spence: Okay, if this is --. A couple of things, it is much more than fiscal, so that's -- and I know I've said that, but I want to reiterate it. It's much more than fiscal. I have to look out for staff. I have to look out for all of these people's time, as well as yours and getting the goals of the Commission done. If it helps, we can start at 4:30 p.m. I still anticipate next time it's going to take longer if we're going to put up GIS maps and, and all that, so we're going to be staying over any way.

The -- we can look at an agenda. We can look at, oh, Pulama's wanting to do this. We know that's going to be a long meeting. You know, we can plan accordingly as far as reserving a place to stay and all that. But when it's a, you know, a bed and breakfast, an SMA Minor, you know, those should not be taking --

Ms. Gima: Remember how long it took for the -- our last meeting for the Resolution for the accessory dwelling. I think nobody anticipated it was going to take that long.

Mr. Spence: Okay, and those things are going to happen. But we have to try something different.

Ms. Gima: Sure. Okay.

Mr. Spence: If you want to do 4:30 p.m., we can start at 4:30 p.m. Okay.

Ms. Zigmond: So what will constitute it doesn't work for you?

Mr. Spence: I can't say that right now.

Ms. Zigmond: So if there's no quorum, then that doesn't work?

Mr. Spence: Well, right now we're cancelling meetings because we don't get quorum or we have no agenda items.

Ms. Zigmond: Very rarely has this Commission had to cancel a meeting for lack quorum.

Mr. Spence: Okay.

Ms. Zigmond: Very, very rarely.

Ms. Gima: It's probably happened once or twice since we've been on.

Mr. Spence: Okay. You know, I know this isn't population. I'm sorry, but we have to do something different so –

Ms. Gima: Okay, we can –

Mr. Spence: If you're better starting at 4:30 p.m., we can do that.

Ms. Gima: What I would suggest is that you guys take really what was said tonight, look into those other options, and we'll hear from you what our start time will be for the next meeting. I think you've heard from all of us what our thoughts are, you heard from the community, and so we'll just honestly at this point wait to hear from you guys. I don't think there's much more convincing we can do at this point. I think you've heard it. We've heard your guys reasons as well.

Mr. Spence: I've heard it a number of times, and we've told you a number of times. So I don't know how many more times we have to discuss we have to try something –

Ms. Gima: – Yeah so that's why I don't want to continue to beat this subject.

Mr. Spence: Okay, that's fine.

Ms. Gima: Let's move on and we'll hear from Leilani when she e-mails us about our meeting.

Mr. Spence: Okay.

Ms. Gima: Okay. Anything else Clayton that you have?

Mr. Yoshida: That's all we have to report.

Ms. Zigmond: So what you were in the middle of talking of our agenda items when you threw that in, Clayton, could you reiterate the agenda items please?

Mr. Yoshida: We have scheduled the public hearing on the conditional permit for Pulama Lanai to conduct up to 40 special events at the Manele Golf Course. I believe you folks want to

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continue discussion on the SMA boundary review so we can get more CPAC members or whoever, resource people, community people.

H. NEXT REGULAR MEETING DATE: FEBRUARY 17, 2016

Ms. Gima: Thank you. Item H, our next meeting date, February 17th, 2016, and we will wait to hear regarding the time. It is now 7:33 p.m. and our meeting is adjourned.

I. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 7:33 p.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Stephen Ferguson
Kelli Gima, Chair
Stacie Lee Koanui Nefalar, Vice-Chair
Bradford Oshiro
Beverly Zigmond

EXCUSED:

Joelle Aoki
Marlene Baltero
Jarrod Barfield
Stuart Marlowe

OTHERS:

Will Spence, Planning Director
Clayton Yoshida, Planning Program Administrator, Current Planning Division
Kathleen Ross Aoki, Planning Program Administrator, Planning Implementation Division
Joe Alueta, Administrative Planning Officer, ZAED
Kurt Wollenhaupt, Staff Planner
Richelle Thomson, Deputy Corporation Counsel

**MAUI PLANNING COMMISSION
REGULAR MINUTES
DECEMBER 8, 2015**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:11 a.m., Tuesday, December 8, 2015, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Ball: Good morning everyone. Welcome to the December 8, 2015 Planning Commission meeting. We will call this meeting to order and we will move right onto Item B, Public Testimony. Anyone that would like to testify at this time may do so or you may testify when your agenda item comes up.

- B. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed.

Chair Ball: Seeing none right at this time, we'll close public testimony at this time and move onto Item C, Public Hearings. Director?

Mr. Spence: Good morning, Commissioners.

Chair Ball: Good morning.

Mr. Spence: Really Items 1 and 2 are related and our Administrative Planning Officer, Joseph Alueta is gonna handle both of them. One is a resolution from the County Council to permit more affordable accessory dwellings within the Residential District and I guess we should take them one at a time. Like I said, the second one is related, it's a proposed bill from the Mayor's Office to allow additional accessory dwellings and both of these are in an effort to provide more affordable housing for our residents. Take it away Joe.

C. PUBLIC HEARING (Action to be taken after public hearing.)

1. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 15-112 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend the comprehensive zoning ordinance to permit affordable accessory dwellings in Residential Districts. (RFC 2015/0153) (J. Alueta)**

The Council is considering a proposed bill to permit accessory dwellings in residential districts on properties of between 5,000 and 7,499 square feet, for the purpose of increasing the availability of affordable housing.

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

2. **MR. WILLIAM SPENCE, Planning Director, transmitting a proposed bill to the Lanai, Maui, and Molokai Planning Commissions to amend the comprehensive zoning ordinance to allow accessory dwellings on lots less than 7,500 sq. ft. and to allow an additional accessory dwelling on lots 12,000 sq. ft. or greater. Further, the bill proposes to clarify the restriction on covered and uncovered deck areas, measurement of floor area, and to restrict accessory dwellings to long-term residential use. (J. Alueta)**

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

Mr. Alueta: Good morning Planning Commissioners. Again, my name is Joe Alueta. I'm your Administrative Planning Officer. Also work in the Zoning Administration Division. For some of you who don't know me primarily my duties are taking either ordinance either initiated by the Council or initiated by the Administration. So there's two ways in which Title 19 can be changed and that is either by resolution and that's what you have before you today.

As I indicated in the staff report which I'm sure all of you have read and memorized that have...you can see that we also have...we've combined the Mayor's proposal with regards to an attempt to increase the housing stock. I guess that's the way you could look at both these ordinances. And being Christmas time I wanted to add a few Christmas gifts to the Title 19, and amend 19.08 which some of you...you remember when we came through back a while ago and tried to consolidate the Residential Districts into one comprehensive district and introduce probably some interesting things such as lot coverage. And so I felt that and for some reason it was dropped at Council. There were two residential bills going around and at some point in time they carried one, but they left ours by accident. So when went to talk about it we thought it was still active, they said, oh we accidentally let it lapse, so I'm using this opportunity to reintroduce that amendments to it and I've attached that.

In essence, the two, the two main bills, the reso and as well as the Mayor's proposal is amending 19.35 which is your accessory dwelling provision. Both the Council and the Mayor feel that the current housing crisis you could say as far as not just homelessness but this is more addressing toward the affordability...(audio feedback)...toward the affordability of rentals for our working class citizens here on Maui County and we're basically there's a lotta I guess you could say, shotgun approach to this. And so what we're trying to do is in the first area they're looking at to amend is basically 19.35 which is your accessory dwelling.

This is a very similar proposal that happened in 19...excuse me, 2009 with another reso. I have attached that along with your previous comments. It's almost exactly the same that occurred about six years ago with the County Council in establishing what they call an affordable accessory dwelling. And the problems that we had with that, I guess the two main issues that we found that those things are, one is infrastructure where they wanted to put them, the lot sizes. And I've passed out maps to help out with that discussion. As well as enforceability. How do you enforce the affordability of that unit? And once you put it in Title 19, it's the Planning Department that's in charge. I mean realistically that's who is in charge of Title 19. And being that I'm in the Zoning Administration it would be our inspectors that would be going out to try to enforce who's family. It's

easy if the person has decided to rent this new affordable accessory dwelling to...(audio feedback)...to HUD or something like that where they have a voucher, where it's under the Housing Administration and that's not...that wouldn't be an issue, but because it also, I mean obviously you can rent this to family and have family members, how do we enforce that? So the Mayor's proposal is slightly in that it allows for again, another accessory dwelling as I outlined in the table I believe on Page 3 and 4 of the staff report. As some of you know, I'm a big believer in simple tables, try to do a comparison on. So this kinda just gives you a brief summary of basically the two or two proposals as well as what the existing Code is. And so I'm gonna focus in on where the units are gonna be allowed. Primarily the Council's reso will allow for another...will allow for an affordable accessory dwelling down on lots as small as 5,000 square feet and then 450 square...400 square foot access dwelling on lots between 6,000 and 7,500 square feet. Currently the minimum lot size under the Code as most of you know is 7,500 square feet to have an accessory dwelling in the Residential District.

The Mayor's proposal doesn't have a minimum lot so as long as there's room on the lot you can have a house and then have it...so the lot could be as small as 3,000 square feet, okay. So if you can fit a house and then a cottage...and an accessory dwelling it would be permissible. The Mayor's proposal also differentiates in that it gives you if you have a larger lot of 12,000 square feet you would be able to have two accessory dwellings, two accessory dwellings on the property. So essentially, you potentially could have three single family-homes on a lot of 12,000...of lots greater than 12,000 square feet, okay. And I know you guys were analyzing the maps as to where those lots were and quickly calling your broker, but I'll have you guys hold off, hold off on doing that.

So the current, the current as you can see where the current size provisions of the accessory dwellings are on there on the lot, affordability requirement...the Council has this affordability requirement and again, they called it an affordable accessory dwelling and that's the only way they're allowing for it. Again, exactly the same as the 2009 resolution, again, the same issue is who's gonna enforce or how do I check if the property is not being rented to a HUD or some type of voucher, Section 8 or whatever you wanna call family? Someone's gonna have to determine that they're not renting it to a normal citizen at market rate which is basically what's gonna happen.

We feel that from a simplistic standpoint, just eliminate that, don't add that. They Mayor's proposal doesn't have that. It basically is just trying to create an incentive for people to build units right now and to let the market take over. But the key provision I think that the Mayor's proposal has that differentiate sort of from the Council's is that it would prohibit the conversion of B&B and STRHs on all accessory dwellings. So not just on the new ones that would be created, but on any accessory dwelling going forward, okay. So that's currently right now you have when they amended the B&B Ordinance a while back they allowed for B&Bs to be in two dwellings and many of those units that were converted or were allowed in the B&B Ordinance were the accessory dwelling. Same thing in with the STRHs, not only is the main dwelling but the whole property is being used so they may have accessory dwellings, but those just have become additional vacation rentals. So this provision that the Mayor is proposing would make it strictly prohibit that you can do short-term rentals within an accessory dwelling.

Applicable zoning, we...right now both of them are only applying to the Residential Districts and that's why I provided you a map and primarily with the Residential zoning broken down by lot sizes.

Whereas the Mayor's proposal would affect all zoning categories, and you can have...the 19.35 accessory dwelling does allow for an accessory dwelling in the Apartment District, Hotel District, Interim District as well as the Rural areas. So if you have an area that is County Rural like a half acre you would be able to see a house and not just one, but two accessory dwellings on those areas. So I did not cover that in the map, but most of you are familiar like Makawao Highlands, Makawao area...I mean up in Makawao area along Kanani Road you have some large lots in those areas.

This was kind of a add-on by the Department which is the covered deck area. Currently we're trying to clarify, I mean, if you've read 19.35 which is the old accessory...which is the current Accessory Dwelling Code it measures the square footage of those accessory dwellings slightly different than you would measure most square footage. They count covered area. So in reality if you have like a three-foot eave on your house, we actually measure that square footage as if you're looking straight down. We don't measure the inside of the thing. Any...and you're allowed...so any covered area outside of the carport is counted toward the square footage of the unit, of the accessory dwelling. This has been batted around our office and so we feel that one, you should at least have some covered square footage, covered area. We are in Hawaii a lot of people like to hang out on a covered patio and you should be able to have a certain size and so we've limited that basically...right now the current proposal would be if you have a say, a 600-square foot accessory dwelling you'd be able to keep a 600-square foot, you could have another 600-square feet of covered deck. You couldn't enclose it, and we would...there's provisions in the Code that we've written into it that would prohibit that from being converted into additional living area. But a lot people wanna have barbeque area.

The accessory dwelling again, when they wrote this back in the early 80's it came out of another housing crisis of the 1980's, '82 is when the State changed the law and basically allowed the counties to enable or enact an accessory dwelling provision in its County Code again with the same intention of providing housing for our families. Obviously there was some very strict concerns over the size of these dwellings so that's why they wrote in some very unique and complex calculations on you can have this much covered area or the area is covered and then or even decks as well as how big the carport can be. So that's the *Reader's Digest* version of the two. Basically the resolution from County Council, the Mayor's proposal as well as what's in the current Code.

Before I stop talking and take questions, I wanna cover the Christmas tree ornament hanging that like on this bill and that is the Residential District. Again, if you're gonna increase the amount of units, we feel that the amendment that we had in 19.08 and 19.09 consolidations and applying a lot coverage to the Residential District would help with the densities. The main purpose of, I guess, or one of the main purposes was trying to maintain neighborhood character. You see, you see areas where you have a lot and a developed older neighborhood where houses are relatively about the same size as old Kahului and then you have boom, the house that comes in, it gets demolished and they go basically setback to setback. And from a character and density aspect it changes the neighborhood, you don't have...the onsite parking is limited in many of those because the way the house is developed and also it doesn't, it doesn't match necessarily with the character of the neighborhood. This is happening with a lot of areas. I mean, this is not, this is not a Maui phenomenon it is occurring all along in California, Manhattan Beach, they're doing where because they have a new movie studio there they're buying up individual...two lots side by side, tearing down

the two smaller houses and putting up a massive mansion and it creates a lot of friction. And so, sometimes it works, sometimes it doesn't. Most of the time it creates unintended consequences as well as increased runoff, I mean, just in pervious surface. So this is one way to help manage the size of these houses.

And so again, I'd like you to, hopefully you can support our recommendation to you that you recommend Council look at the provisions of 19.08 that we had recommended several years ago that they had ...(inaudible)...on and to reconsider them and to incorporate them into these changes just try to help balance if you're gonna increase the densities within these neighborhoods with additional dwelling units, there needs to be some other, some type of control there and maybe limitation not just the setbacks, it needs the lot coverage which would help add that. And again, we threw out the 40 percent number. Nationwide that seems to be a very good number and that's in the bill also. And there was a few other points but I'll wait to take your questions at this time or you can have public testimony. So if you have any questions, I'll be happy to answer them at this time.

Chair Ball: Okay, we're open this up for public testimony at this time.

a) Public Hearing

Chair Ball: Anyone that would like to testify on this agenda item you may do so at this time, please identify yourself and you have three minutes. Mike?

Mr. Mike Moran: Aloha Chair Ball and Commissioners.

Chair Ball: Aloha.

Mr. Moran: Mike Moran for the Kihei Community Association. Mahalo for your service to the community. Merry Christmas and holiday greetings from the KCA. Our testimony applies to both C1 and C2 as Joe presented them together.

In this season of giving we see these actions as giving to the Maui working community a way to truly help with the lack of affordable housing while liberalizing zoning, code allowing for ohanas to be constructed where they are prohibited now, and restricting them to long-term rental use. We only ask you to ensure your recommendation to the Council ensures the complete package as we can all see allowing more ohanas not restricted to long-term rental is no help to our working residents. We have seen several items come before you claiming to provide affordable housing which we had objections to and doubts, but as we understand this move, this looks like the real deal for the local community so we suggest approval. Mahalo.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you Mike. Would anyone else like to testify at this time? Seeing none, public testimony is now closed. Bring Joe back up and questions from the Commission? I know we have to warm up a little bit. I'll start it out I guess. You talked about the no tie in or sorry, the B&B and STRH and how it's anything moving forward that's built could not or just accessory dwellings on any...

Mr. Alueta: Accessory dwellings as a whole. Currently, and that's the question I guess you guys

can debate or comment on is there's two school of thoughts. Do you...the current accessory dwellings that are currently being used as a short-term rental through a permit, do you allow those to continue and get time extensions or when their time extension comes up, you say you can't do it anymore in that? That's the gist of it. Because right now if somebody comes...I mean, under this proposal, under the Mayor's proposal if that limitation is passed, one thought is that well, it's now prohibited. So when that person comes in a for a permit and they wanna do their B&B or have B&B units in an accessory dwelling we would tell them no, you can't. You would have to amend application or eliminate that or you would say you can continue to do it as long as you have that permit and you continue to get renewals. That's one way. But right now...

Chair Ball: You have a comment on that?

Mr. Alueta: So that's the two school of thoughts on it.

Chair Ball: Director?

Mr. Spence: Well, one of the reasons this bill is here is to get recommendations from the Planning Commission. So you can recommend, I mean, any number of things. You could say it should apply all accessory dwellings all across the board. You could say, you could make a recommendation to Council that it just applies to new accessory dwellings. I know currently it...currently the short-term rental home chapter in Title 19 as well as B&Bs allow the use of accessory dwellings for short-term rentals or B&Bs with a permit. So this would be a significant change to County policy. I mean, and that's probably...I mean, it's really one thing to say do we want more of these? And I think that's you know a pretty easy decision. Do you wanna put, you know, additional restrictions on them or just new ones or whatever, that's a pretty big policy change.

Chair Ball: And that's the issue I see. We don't wanna try and fix everything in this one ordinance. I mean, we have B&B ordinances to address that and they come in to address that and they come into see us and we say yes or no at that time. For us to put it into this one also, I don't know, it's trying to solve the world's problems I think, I mean, in principle. It may be an easy decision for some of the Commissioners because it solves certain issues that they'd like to solve. But in principle, I don't like trying to fix one thing in a different, in a separate ordinance. If it's a problem with the B&B, you solve it in the B&B ordinance not affix it to some other ordinance. Commissioner Robinson?

Mr. Robinson: What's the goals of units and dwellings that we're trying to accomplish to alleviate the housing problem?

Mr. Alueta: The thing is just a supply and demand issue is that we're just trying to, I think both Council and the Mayor is just trying to figure out how do you increase inventory? That's the biggest thing. How do you get inventory built that's gonna be relatively affordable on the rental front not so much on the selling front, on the buyer's side and obviously that's what this is really geared toward. These are units that would be built within existing infrastructural, existing urban areas for the most part and tie in and be the lowest cost for the most part because of the tie into existing infrastructure that's already you know in these neighborhoods.

Mr. Robinson: So there's no goal or target? It's just build them until?

Mr. Alueta: Yeah, there's no goal or target. I mean, I guess you could say the target from the reso from the Council's side was targeting lots that are 5,000 to 7,499. Okay, so that's a specific target area and you can see that on the map and strictly limited to the Residential Districts. So that's the target area that they're get to have more units.

The Mayor's proposal is more broader in the sense that there is no lower edge I guess of the Residential. So some of these older neighborhoods that have two or three thousand square foot lot someone may decide to put or may have, you know, a small 700-square foot house on it, oh if I can build a 400 square foot accessory dwelling, you know, a real tiny house, you know, that might be affordable to you know, a young couple.

Mr. Robinson: So have...have we identified a number of lots that were, that would qualify under the Mayor's proposal? Is it 5,000, 10,000? I mean, can we is there some grasp with all of these different areas and all these different lots if we're gonna go down below five?

Mr. Alueta: Oh yeah...

Mr. Robinson: Is...I mean do we have a number of exactly how many residential lots there are on Maui?

Mr. Spence: No, no.

Mr. Alueta: I mean we can-

Mr. Robinson: Just, let's just start build without a number?

Mr. Alueta: Yeah, and I don't think that the...I don't think like every lot...one, every lot may not qualify I mean in the sense that every...One, they may already have their accessory dwelling and they can't possibly fit it. Some of them may choose not to build accessory dwellings. So you're basically are just opening it up to anyone and the free market will decide who's gonna build it. I think the other issue that, you know, in some of our provisions in clarifying 19.35 is that although not explicitly indicated attached accessory dwellings are permitted and we've allowed for them. So in some areas there may be a place where someone will be able to do a downstairs, a small accessory dwelling or you know, have that all of a sudden that kitchen that they or that wet bar they converted to a kitchen will now become legal because they can then claim that area as their accessory dwelling and so that would...you may in essence just legalize some conversions that are out there now. But I think that's the, you know, at this rate in time, again, I think people are trying to throw out stuff that's gonna stick.

I've been on a few of the committees that are I guess you could say trying to come up with solutions or quickie solutions to build inventory. This was one of them, but time and time again, you know, Public Works and Water Department will tell you that anybody can build a house relatively...I mean, a lot of developers can build a house, the physical house relatively inexpensively that would be affordable for most people. The problem is once you get into the offsite improvements of I need

to put in an eight-inch or a twelve-inch water line to service that new subdivision, I need to put in that new roadway system. And so from a low hanging fruit aspect, you're looking at areas that are already urbanized, already developed, for the most part have an infrastructure in place, and Public Works and as well as the Water Department will be the ultimate decider at the time of building permit. Because if you have a really old neighborhood that's serviced by a four-inch galvanized line, you know down in some of these older neighborhood off of Lower Main, they may not be able to get another meter or be able to up size. So in that aspect that's gonna preclude them from doing an affordable or do another accessory dwelling.

In some areas where there have been improvements, you know, in Kahului or in some other neighbors, there may be more than enough capacity both in water as well as roadways. I think for us, we wanna...from Planning aspect we're looking at the lot coverage because we see that as that's gonna limit how big the location of that accessory dwelling as well as leave that lot open for off street parking because you know, traffic doesn't generate itself, there's always somebody in there. If somebody's living in that house, they're gonna need a car to get somewhere. But again, you're looking at increasing just the low hanging fruit. These are existing infrastructural areas, the existing urban areas that will most likely make it the most affordable for someone to try to do an accessory dwelling. So no, there's no number. We can, I could break down some of those lots. However, I would not know whether or not...I would not be able to break down those lots by which already has an accessory dwelling on it, but you know, we could get a count somewhere.

Chair Ball: Director?

Mr. Spence: And maybe a different way to put it is this just opens the door for lots less than 7,500 square feet. You still have to meet all the infrastructure requirements like Joe's saying. You may already be at your fixture count. So you know, Department of Water Supply and without debating that as a legitimate measure or not, you may already be at your fixture count, there may not be public sewer. You still need...yeah, so okay you can build an ohana now where you couldn't before, you still need space for a parking stall on the lot. So it's not just the room for the ohana, you need the room for a parking stall. So there's a number of... so even though the law would say you could build an ohana, it still depends on the configuration of your lot and the infrastructure available. And it would go through all those checks at the time of building permit.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay, for me this would...the biggest problem in my mind right now is affordable housing. We see it come before us time and time again, when affordable housing comes before us. It's not gonna happen for years to come. Right now with this bill coming before us we have a chance to put affordable housing out there to the residents. I do like the long-term rental thing because if they're going to build it, we're gonna fill up that need that's out there right now too. I mean, long-term rentals there's another big need right now. And for families that have a lot that they can put a house on their kids can build. It gives them a chance to build and to me that's important, and that's one of the biggest obstacles we have right now is where they have a place but they can't build it because of the rules and regulations of that area. I like the Mayor's proposal where he's opening it up and again, there's gonna be scrutiny on where it is built. So I like that because it gives opportunity again for our local folks to get houses here. That's our...that our priority I think

right now is to get this need not resolved but at least moving forward.

I would like it to be opened up to agriculture and I will tell you why. And everybody's like oh that's agricultural land, but agricultural land is big properties. And with these big properties you have big families that own those properties that they can't do anything on it because it's restricted to two houses on Agriculture zoning. And meanwhile they got 10, 15, 20 acres that each, the whole family owns that they can't do anything at all unless they try to subdivide. So I would like to see it open up possibly towards that to give these families again a chance to live here on Maui.

Chair Ball: Let's see, I have another question on, a couple more questions. You know on the you were talking about that barbeque area or the deck space, whatever, so that is if you have a 500-square foot living space let's say, and you have a 500-square foot deck and then garage also you could put?

Mr. Alueta: Carport, yes.

Chair Ball: On that, carport?

Mr. Alueta: Yep.

Chair Ball: Okay. The density. Let's go to the density section and you talked about 40 percent, what was that of?

Mr. Alueta: Of lot coverage. That's on the—

Chair Ball: Is the max at 40 percent?

Mr. Alueta: Yeah, if you look on—

Chair Ball: Do you have that...(inaudible)...down a little bit, if you will?

Mr. Alueta: If you look on Exhibit 14, which is the original amendments to 19.08, 19.09, Residential Districts, this is my Christmas, Christmas ornament hanging. Again, we're trying...originally the whole idea—

Mr. Robinson: You got a page for that?

Mr. Alueta: You're in that exhibit, but go to the beginning of the exhibit and we'll start from there, Exhibit 14.

And the exhibit before is just a transmittal. So back in 2010, we originally transmitted and that's on Exhibit...that's Exhibit 13, that was the transmittal. And you can see what your original comments were back on June and August of 2009 when you guys heard that residential bill. Again, the main...the reason that it kinda got bogged down was they liked one provision of the residential bill and the Council decided to take just that part and make their own bill and so that was the Home Occupation Home-Based Bill. And so and they kinda forgot all about the rest of the important stuff

that was in the residential bill. And so that is the part that we're, we're trying to get the rest of the nuts and bolts of the residential bill. And that was primarily you know, we wanted to clarify garage sales because we know all do them. We have some neighbors that have a Monday, Wednesday, Friday, Saturday garage sale which we do not think is appropriate in the Residential District. But primarily we wanted to clear up, you see the bulk of it on Page 3 of Exhibit 14 where that...where you start getting into the nuts and bolts dealing with clarifying accessory structures that are allowed within the Residential District and then on Page 7, of Exhibit 14, again, my favorite is always tables, I just took all of the development standards that were written out in the current Code and put it into a table format, tried to clarify what you can and can't do, lot sizes and stuff like that, and then again, we added, if you look down on the third column, I mean, sorry, third row, I mean, the second to the last row, lot coverage 40 percent is that where as part of the development standards for the Residential District that's what we wanted to add.

Mr. Robinson: Chair?

Chair Ball: Sorry, Commissioner Robinson?

Mr. Robinson: On your maximum clients, so when you open up to any lot size, you guys have a suggestion on what the limit of clients are you opening it up to?

Mr. Alueta: Again, that was taken care of during the Home-Based Business Bill. So they actually...I wanna say a maximum of like 12 clients or two an hour or something like that. I think that's what they, they came up with on this home-based bill. So that's already been adopted, whatever the...and that may not be what it is today. The bill was adopted and amended significantly by the County Council. So they currently have a Home-Based Business Bill that was adopted and so, so primarily the only thing...they basically did that and didn't adopt the rest of the bill. They basically took all the home-based business out, made their own bill and moved forward with that and they said, we're gonna come back to the proposal we had and they for some reason it never got carried over in a calendar year and everybody thought it did, but in reality it didn't and that's why I'm trying to get it back up there and say, hey this is the rest of the bill that you forgot that we would like to see adopted. And you know, at least have a discussion on it. If you don't wanna adopt it, great, no problem. If you don't want lot coverage, fine don't adopt it.

But I think what we're trying to do is get this structure for Title 19, for the residential bill cleaned up, you know, 'cause we use this everybody. These bills, these ordinances are extremely old. I mean, they're written, I was in Junior High. So I think we just need to sorta update it and make it simple to understand and simple to read for the general public and that's the main goal. So again, all of the development standards of the lot sizes as well as what can be clarified and what could be within that setback area, you know, I mean, right now it's more of a policy. You have a setback area. Can you have a mailbox? Can you have boundary walls? I mean, what's allowed? And so we wanted to clarify all of that.

I know some people freaked out on the freestanding antenna or wind turbine structure and setbacks. We're not talking about cell towers. We're talking about noncommercial antennas. The Federal Law has trumped the County on a couple of occasions with regards to allowing for Ham Radio Operators and private, and so we've had to grant variances. This would allow us to basically,

you wanna do your whip antenna, you meet these setback requirements and we're not prohibiting it. And so that way we stay in compliance with the Federal Government. And then on Page 9 of that we kinda, you can see the samples of what would be a...the 40 percent as well as this figures on R-0 Overlay, I mean R-0 setbacks. So again it's kinda the things that we were trying to get incorporated, it makes it a lot simpler. We like, we like pictures for people to understand what's going on so that's the main gist of it.

Chair Ball: I have a question. Oh, go ahead, Commissioner Hedani?

Mr. Hedani: Joe?

Mr. Alueta: Yes?

Mr. Hedani: It's too complicated for me to make heads or tails you know, on this particular measure so I depend on Staff who's familiar with the bill, familiar with the history, and familiar with the recommendations to come forward with a recommendation for us to support. I think from my perspective anything that increases affordable housing is good. The question that I have is, a couple of questions actually, we already have a problem with transient vacation rentals, short-term homes, homes being used for short-term rental. When we create 5,000, 10,000 additional accessory dwellings, does it make the department's job impossible to administer what happens once that happens? How do you keep those accessory dwellings from becoming 10,000 additional short-term rentals?

Chair Ball: Director?

Mr. Spence: And just on...before I answer that, I sort of broken it down into five different areas that we could request input from the Commission, but specific...and so we can talk about that later...but specifically to Commissioner Hedani's question about how would we administer this if it's...I mean, if it's all ohana units, that's pretty simple we would just deny short-term rentals from here and out you know, if that's what Council adopts. If it just applies to ohanas built in conjunction with this, somebody comes in for...with an application for a short-term rental, we would just look in KIVA, you know, we would look in the County database when was this built? Was it before or was it after a bill was adopted? So if it was built after, sorry no qualify. And it would be pretty simple I think. I'm sure I have administrators back in the office going no, no, it's gonna be harder than that.

Mr. Alueta: Thank you, Mr. Director, but yes, that we would just rather have if it's prohibited, it's prohibited. The Current Division would not approve any, would not recommend approval for any new bed and breakfasts on any accessory dwelling. They would have to be in the main dwelling. That's the simplest way. Currently B&B or I just say, any type of short-term rental within the Residential District is prohibited by law unless you get a permit. Okay, so from an enforcement aspect it's just like anything else. If we get a complaint...if someone is doing it, we know it, and they don't, and there's no permit for that property, it's a violation and as far as enforcement goes. So these again, if you look at it, just having increased inventory, okay maybe, you know, I'm kind of a realistic person, so say you build 5,000. This results in 5,000 new housing units. That would be wonderful. I mean, we are currently short you know, in that neighborhood. If you assume three to six percent loss as you say through illegal TVRs you're still ahead of the game. That's the way I

mean, I'm just trying to play the numbers. I'm just trying to get units built because when you know, building a brand new house in a brand new subdivision, you guys know what the minimum is gonna be, and 300,000 and up is what they're calling affordable and that's not...chances are is not gonna be affordable and so...as far as a rental. This at least allows for a, you know, if you build a 400-square foot accessory dwelling on an existing property, yeah, like you say, your children may wanna build that or someone would be able to rent that because the size of it is gonna limit the overall what you're gonna be able to rent for it. And I think...and there's a lotta, like I say, young couples, single moms that would be happy, would be happy to live in a 400-square foot house or a single guy I mean, in a 400-square foot house. They gotta...I mean, we gotta provide housing for a lot of our local families and...that are trying to—

Chair Ball: There's a family of four that would love to live in a 400-square foot house...(inaudible)...now. That's reality.

Mr. Alueta: Yeah. And that is, again. So we...I think that anything we can, we're just trying to go for the low hanging fruit. Again, I'm talking about this is within an existing...we're looking at existing subdivisions, existing zoned property and most likely in existing areas where infrastructure is available. And the number will be...whether or not they can or cannot is gonna be determined by Public Works and the Water Department ultimately from the infrastructure standpoint. But I think for the most part, this is gonna open it up for many people who have that 7,200-square foot lot, you know what I mean? There's a lotta of those guys that are out there and so...

Chair Ball: I have a follow up on that. You talked about there was a...probably a lotta existing rentals that are currently illegal because of the size of lot or whatever. Is there any proposal for there to be an amnesty period for those units to come in and get legal or has there been any talk about that of trying to get the units that are already out there to become legal and get counted if you will?

Mr. Alueta: I think from the County's histories with amnesty programs is really poor. I mean, we have a bad, a bad...it doesn't work. So I don't it's...I think that from that aspect I think most times people are gonna come into conformance when there is a change in ownership, meaning when they...if they're not being caught, right? And we deal with...I mean, I supervise basically the guy who reviews all of those after-the-fact permits, okay. And I can tell you there's a pile of them. So they do come in and primarily they're happening either they were caught or they're trying to sell the property. And so at that aspect, they're gonna come in and make the conversion legal. I think, and I mean, so I would just wait. I don't think amnesty works that well. I mean, maybe the Administration has a different philosophy on it, but...

Chair Ball: Well, the problem is when you do that and then they don't pass, you know what I mean, they come in for the permit, they don't pass their permit requirements—

Mr. Alueta: Right.

Chair Ball: —now they've, you know is the County gonna go back after they expose themselves you know.

Mr. Alueta: Right.

Mr. Spence: Mr. Chairman?

Chair Ball: Director?

Mr. Spence: Just commenting, if right now there's a lot of conversions, garages, full on building additions, full on you know you see the Shed Man advertisements on Craigs List, those kinds of things. They're illegal to build. You can't get a building permit if you tried because for in...you know, for instance, you know, your lot's smaller than 7,500 square feet. But if you open the door to lots smaller than 7,500 square feet all of sudden you could legalize it by getting an after-the-fact permit. It still has to go through inspection, it still has to, you know, meet Building Codes, stuff like that, setbacks, but I mean, so I'm not sure you would need an amnesty period at all.

Chair Ball: Yeah, maybe that was a bad term for that.

Mr. Spence: Yeah, and after-the-fact permits they're not totally budget killers.

Chair Ball: Public Works?

Ms. Dagdag-Andaya: When you talked about amnesty period we did look at several models from other counties and cities throughout the U.S. In fact, we had someone from the Mayor's Office go and do research on them and we had a Permit Improvement Process...Permit Process Improvement Team that met and looked into all these different models, but each time there was always different issue and it just didn't quite work out. There's a lot of loopholes that we couldn't close up. What we've tried to do in the past few years was work with the Realtors Association, work with individual homeowners and educate as much as possible. We're not, you know, we're not enforcing 'cause to enforce, but we also wanna help people come into compliance.

Chair Ball: Yeah, and I understand there's a public safety aspect of it too, but it be probably helpful if there was a chart for you know, if you wanna make yourself, if you wanna make your property legal, these are the things you can check on right now is your water meter big enough, are your setbacks, you know these are the setback requirements for this and so on and so forth, so they could just look at that list and if they're not gonna pass that right then and there, then they won't even bother coming in which is another way to do it, but that's probably too helpful.

Mr. Alueta: And a lotta people do that. They will do that preliminary check especially like I say when they're transferring ownership and the new owner is doing the due diligence, they're trying to find out, okay, can I get this legalized, and how long...and then that normally goes into that how much are you gonna offer for the property because either I gotta tear it out or I gotta go through the expense of bringing it up to Code.

Chair Ball: It starts with I have a friend, right?

Mr. Alueta: Yes...

Ms. Dagdag-Andaya: And we've seen, we've seen a lot of that happening in the past, I wanna say in the last three to four years, the first year and a half that I was in I mean, that was always an issue, the after-the-fact permits. But as we got into more of the educating the community, hosting meetings for people to come in to discuss issues that they've had, we've seen a number of requests for service come in asking what's existing on my property, what can I do to fix it or how can I close this one permit that's been open for many years now? So the more we try to educate folks on the permit process, and what's involved and what the codes are I think the more, you know, well, homeowners will be a little bit more successful.

Chair Ball: Commissioner Hedani?

Mr. Alueta: And I think this bill by giving them the opportunity to legalize some of their add-ons would go a long way to allow them to do that especially with like I say, with these homes with two kitchens in them. You know they could convert one of those areas to an ohana unit or accessory dwelling. I think that would go a long way toward that. But again, I think it's for a lot of the lots that, I mean, I guess I'm ...(inaudible)..... a lotta people follow the law. There's a lotta people who are honest out there, who go I'm on 7,100 square feet, I can't do an ohana, I can't do an accessory and this would open up that ability.

Chair Ball: Commissioner Hedani?

Mr. Hedani: My personal opinion is that I think we made a mistake, well somebody made a mistake in terms of approving short-term rental homes. That's my opinion. B&Bs is another story. Short-term rental homes I think was an error. And I think if this is a means of backdoor a revocation of the short-term rental bill by making them expire at a certain point in time, I would be all for that. I would absolutely support that. Because I think we shot ourselves in the foot when we approved short-term rental homes in residential areas that previously were available for long term use.

Mr. Alueta: There was a...I mean, the law was adopted so that's the law we follow right now.

Chair Ball: Let's stick to the topic on this.

Mr. Alueta: Yeah.

Chair Ball: I have another question on the 5,000 square foot, how did you come up with that?

Mr. Alueta: That was Council's proposal at 5,000. That was their proposal in 2009. Again, the Mayor's size was no size. So you could...it was you could go down to-

Chair Ball: As long as you met the 40 percent.

Mr. Alueta: -as long as you met the lot coverage, I mean, or the current setbacks then you would be allowed to do it.

Chair Ball: Director?

Mr. Spence: Mr. Chairman, something we haven't really touched on as part of the Mayor's proposal is if you have a lot over 12,000 square feet you could have two ohanas. So when we actually get down to making a recommendation I'll break it out into these different sections and see what the Commission's pleasure is. So that's...I mean, just I need to raise that ...(audio static)...

Chair Ball: Commissioner Hedani?

Mr. Hedani: Yeah, getting back to my previous point, I think it is, I think it is on subject because the question in my mind is when these five to ten thousand additional homes come on line what's gonna happen to them? Is it truly gonna, you know, is it truly gonna address affordable housing or is it just gonna be 10,000 opportunities to get rich with a short-term rental? And if-

Mr. Alueta: You saw that thing Commissioner Hedani, sorry to interrupt. You saw that with the testifier from Kihei, the Kihei Community Association where they felt that that...those two key provisions of one allowing people to do accessory dwellings, but also truly making them limited to long term rentals. Those two have to go hand in hand. You can't, you can't all of a sudden go, okay we're gonna allow accessory dwellings on smaller lots and then all of a sudden that portion of the bill gets dropped later on. I think that was point by the KCA was that you gotta keep those two provisions together.

Chair Ball: And I guess just debating that a little bit, and I agree with that also, and I think that the properties that we're discussing are lending themselves to that. I don't think we're gonna have very many bed and breakfasts or TVRs coming through with those properties that we're talking about because they're just you know, the land size is just too small. It just doesn't lend themselves to it. But we're talking about affordable rentals also here not affordable ownership I guess, if you will. Commissioner Robinson?

Mr. Robinson: I wanna touch on enforcement with you. So is your department in charge of enforcing all the illegal short-term rentals right now?

Mr. Alueta: Yes.

Mr. Robinson: How are we doing with that?

Mr. Alueta: Pretty good. I mean, it's...I mean like I say it's they have been sending out quite a few Notices of Warning and Notices of Violation. We are also implementing the ban. So if we catch...you're caught and it's not overturned on appeal, you are prohibited from applying. So you can't just get caught and say, oh let me get my after-the-fact STRH or...you will be banned for five years from applying. And the word has gotten out that if you want...if you're truly are interested in doing an STRH and you don't have one then you had better shut down before you come in to the office.

Mr. Robinson: How about the people that don't care about getting a permit and just operate illegally what happens to them? Or what has happened to them in the last couple months?

Mr. Alueta: You get a Notice of Warning, you get a Notice of Violation, and then you go fines and

we try to either have them shut down and then we try to collect the fines and we go through that process.

Mr. Robinson: And have we collected fines?

Mr. Alueta: I don't know the number on it. I know that we have settled on a few. The Director probably know more about settlements than I.

Mr. Robinson: You know where I'm going Director?

Mr. Spence: Well, I know you're talking about enforcement.

Mr. Robinson: Yeah.

Mr. Spence: I think as I recall we've issued about 500 warnings. You know, the Administrator for that division will readily admit we got a little bit far ahead of ourselves on warnings. We're going back to see, okay, did these people remove all their advertising, did they shut down, did they open up under some other name? You know, so they're going back and double checking that. And I can't tell you how many violations we've issued but the number of violations are increasing and we've worked some things out with Corporation Counsel so that the violation issuance is more streamlined. It doesn't have to go to...I mean there's still valid violations, but it's...we've made it...we've worked some things out. It makes it easier to issue violations. And it's gonna be a matter of going back and collecting fines if the person doesn't shut down. So we're...the enforcement is working. It's working, and like Joe said, there is word getting out. We've had people come in and apply for permits. And so there's, there's the one thing, one part of it where people are operating without any permit and have no intention to come in and get a permit. Okay, and then there's the other group of people that go, oh I better go get my permit and they don't shut down while they're applying and you know, there's a provision in the law that says if you're operating while you're applying, you're banned for five years. You know, if you're operating before getting a permit, you're banned for five years from even applying. So we've...banned a number of people that turning into...it's very effective and people are very unhappy.

Mr. Robinson: And part of this proposal, do you guys have a proposed budget to the Council that you're gonna ask for more building inspectors, more enforcement officers to get more people to help guys enforce plus permit to get all these new...these 5,000 homes built at all different locations instead of a big development?

Mr. Spence: No. This is...these bills in front of you right now are just focused on opening the door for more...for property owners to build more accessory dwellings. The enforcement thing exists separately whether these bills are here or not. A couple of budget meetings ago, the Council gave us three more enforcement positions and it's been fairly effective. And I'll just...and I should leave it at that.

Mr. Robinson: Okay.

Mr. Spence: So, but that the enforcement effort goes on and has been pretty effective regardless

of whether these other bills exist or not.

Mr. Robinson: Okay, I have a question about 40 percent.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I'm not sure of the Building Codes. So currently I see a lot of homes that have upstairs, downstairs, right and that's a single home and that's all permitted rentals. That's not an auxiliary, right? So if we had a, we had another unit that say was 500 square feet that could also be a two-story to be with under the 30 feet or are we only allowing a single story?

Mr. Alueta: You could have...like currently we allow for an attached accessory dwellings. So you could have like a 2,000-square foot structure and have 1,500 square feet be the main dwelling and 500-square feet within that two-story structure to be the accessory dwelling. Most common as the Director pointed out like people will convert their garage and a back room and that will be, so they'll live upstairs and then they'll have downstairs they may have another bathroom and kitchenette and that will be the accessory dwelling.

Mr. Robinson: But with this proposal a 500-square foot can be it two-stories up to 30 feet and can two families be living in that unit?

Mr. Alueta: That would be a small-

Mr. Robinson: With code?

Mr. Alueta: Yes, you could stack two cargo containers up on top of each other and you would meet the-

Mr. Robinson: Well I mean, I mean of course it can only be one cargo container then another person could live on top of the other cargo container, right?

Mr. Alueta: That is possible, but right now the occupancy of that 500 square feet or that 400 square feet accessory dwelling would be limited to one family and have only one kitchen. So you couldn't have basically a duplex of the accessory dwelling.

Mr. Robinson: And we would enforce that with warnings?

Mr. Alueta: Yeah, and violations. And it would come during the Building Code, you know...we look at all, I mean, that's the biggest hot topic wet bars or I should say kitchens, additional kitchens that people put in. We see that all the time and we try to eliminate those at the beginning of the building permit process. So...

Mr. Robinson: Yeah, I mean, I've been to a couple properties this past month because I was looking for a 1031 and I saw six families living one two-story home plus an extended unit, they're making walls, they're using gas stoves as their kitchen. So I'm with you. There is a need there, but the safety, the density, the...you know, the quality, you know, and the enforcement and that's what

I'm worried about. If we go through this, the Council is gonna have to give you guys staff to make sure that the safety is there. I notice the Police Commission didn't...the Police didn't do any comments, the Fire didn't do any comments and for safety wise, you know, it's getting people living there. I know we're all on the same page, we all want people to have a house, I want people to have a roof over their heads and their kids some place to sit down. It's you know, how do we do it, you know, in a smart comfortable way instead of just a knee jerk reaction.

Mr. Alueta: I think that one, Public Works would also be enforcing the Building Code side. From our aspect again if this bill passes in some form and you allow for additional accessory dwellings to be constructed that demand where people are forced into a situation as you described would hopefully lessen meaning you're not gonna have people desperate enough to rent that type of situation and they could actually get their own little 400 square feet rather than have multiple families living in and putting in the gas top or the small electric top which again can be very dangerous especially I mean, my grandmother almost burnt down our house when she lived in the back of our house. You know, we had that...everyone has that grandma addition and you're parents get, your grandparents get older and they still think they can cook and they leave the stove on. And so it's a real situation where it can be hazardous and you wanna be able to allow for more legal means in which people can develop these accessory dwellings. So you do not force the people on the bottom rung of our economic ladder to...into those types of potentially dangerous situations.

Chair Ball: Okay, let's take a five-minute recess.

A recess was called at 10:17 a.m., and the meeting was reconvened at 10:34 a.m.

Chair Ball: Back to order. Where are we? I think the Director had some comments? Yes, Joe did you have something?

Mr. Alueta: If you'll look on Page 6, basically your options we are recommending approval of the Mayor's proposed bill to the County Council. The Commission can also have the following options, can recommend approval of either of the proposed bills to the Maui County Council. Recommend approval either the proposed bills with amendments to the Maui County Council. Recommend denial of either proposed bills to the Maui County Council or vote to defer action on either of the proposed bills in order to gather more specific additional information. But again, the Department is recommending approval of the Mayor's bill with again, the add-on of having the Council incorporate the provisions and amendments to the Residential District that are also attached on Exhibit 14 'cause that was...they've had it, they've seen it, you've already reviewed it several times, so we'd just like to have some of those provisions especially the lot coverage incorporated into that.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: I move to accept the recommendation of Planning. However, I'm open to friendly amendments if anybody wants to add something else.

Chair Ball: Okay, probably gonna hold on the motion for right now and we're gonna go down some of the items just to make sure we have a consensus. Director?

Mr. Spence: Thank you, Mr. Chairman and Commissioners. Because there's a number of provisions in each one of these bills I thought I'd break down the primary things first. Let me go over these real quick and then we can take one at a time.

First, do you want to allow ohana units on less than 7,500 square feet? Then if that is the case, do you wanna go with the Council's recommendation of down to 5,000-square foot lots or would you wanna go with the Mayor's recommendation on any size lots?

The third one, and this makes it easier to report to Council as well. The Mayor's proposal to allow two ohana units on lots that are larger than 12,000 square feet. I heard one...Commissioner Lay say it should apply to the Ag District too. Ohana dwellings are not...in the Ag District they're farm dwellings, but it would take a major rewrite of that section of the Code, but I would...since it came up I think we should at least discuss that a little bit.

And then the last thing or Christmas present as Joe keeps talking about just for the Planning Department's administration of this section of Code that would be really helpful. So we, you know, we're breaking it up into chunks and looking for your input on each one of those. Does that make sense Mr. Chairman?

Chair Ball: Yes, I believe so.

Mr. Spence: Okay. Commissioner Robinson?

Mr. Robinson: Director, can you explain that Christmas ornament for you again real quick? I heard it twice but I still didn't grasp it?

Mr. Spence: It's things like the current Code that covers accessory dwellings is ancient. It hasn't really been updated like we count square footage of the ohana's not interior space but we count it where the eaves are. So if you have a four-foot eave, we're counting that as part of your floor plan so the actual living space would be very small. Joe should probably, just on this portion?

Mr. Alueta: Yeah, we currently...like I said, it's in the Mayor's...it's incorporated into the Mayor's proposal where you would have a new method of calculating the square footage of these accessory dwelling and where we would basically measure the square footage. Currently the Code says you count covered walkways and covered decks as part of the square footage of the accessory dwellings. We currently do not want to count that as being the limitation on the size of the accessory dwelling. So if you're allowed...and then this goes to the existing lots too. Like so if you have a 10,000 square foot lot in Kahului, you can have a 600-square foot accessory dwelling and we would just count the exterior wall space like we normally do in review of building permits and we would also give you some additional covered deck that you could also have separate and so there's a separate provision for that in the table format and that's all in the Mayor's proposal. And so that would clarify for us how we calculate and allow for some covered area for the...

Mr. Spence: ...(inaudible)...

Mr. Alueta: Besides the--

Mr. Spence: Square footage.

Mr. Alueta: Yeah, we've expanded the square footage...I mean, like I said how we calculate the floor area, open deck area would also be allowed not counted towards square footage and then again, we talked about separately in the 19.08 the Residential District provisions that we wanted to have incorporated.

Mr. Lay: So not under the eaves, right?

Chair Ball: Commissioner Lay.

Mr. Alueta: Yeah, not under the eaves. So I think the way we have it written is if you go out to three feet, anything...it would not count. And then if you...if it's larger than three feet then we'll count it as part of a deck, as far as covered deck square footage.

Chair Ball: Following up on that. So now is this...that's an ordinance for all accessory dwellings? So in Ag District it would be the 1,000-square foot would be living area not the eaves then? We'll change all of that, right across the board?

Mr. Alueta: This is only for the accessory dwelling provision.

Chair Ball: But that would be an accessory dwelling, right?

Mr. Alueta: No. In the Agricultural District it's, those are second farm dwellings.

Chair Ball: Farm, okay.

Mr. Alueta: They are limited to 1,000 square feet.

Chair Ball: Okay.

Mr. Alueta: And so again, we would...basically we would use the same methodology in which calculate any house in Maui County and just use the interior walls.

Chair Ball: Commissioner Robinson?

Mr. Robinson: This is for you Chair and maybe you too, Max. So real estate wise if we're gonna change how we calculate rental sizes and square footage and appraisal per square foot, you know we're looking at if the whole County's now gonna change how they measure stuff. That's a...isn't that another layer we need to look at as far as appraisals? You know what I'm saying? And square...I mean if it was roof before and ...(inaudible)...you know, for square footage and now we're going interior which I'm not opposed to, what happens to all those things that have been appraised at using lanai coverage as a square foot, covered, you know, that's all been part of sales price for properties.

Mr. Spence: It wouldn't change very much. I mean, it is what it is whether you...I mean, under the

current Code or under the proposed Code if you build 500-square foot cottage or you know, measuring to the eaves of 500-square foot cottage measuring out. I mean, the interior space could still...whatever is built is what built and it goes to the value of the property. It's not gonna...it's not gonna present a major change.

Mr. Robinson: Well, yeah I'm just saying for, you know, the real estate side 'cause does it go by livable square feet and not roof square footage, you know, for the, for how the appraisals are done?

Chair Ball: Maybe, but I don't...I'm with the Director--

Mr. Robinson: You don't see a problem with it?

Chair Ball: --I don't see it as a major problem.

Mr. Robinson: Yeah, I mean, it's not gonna stop the project, I'm just saying as a classification that somebody have to look at through your guys real estate side.

Chair Ball: Appraisers, appraisals...appraisers may look at it different, but as far as realtor's side I mean, it's gonna be whatever is listed on the County's square footage is what we put down, so...

Mr. Alueta: And that would only be if I may, it's only how...to provide consistency for our plans review because there's been again, an inconsistent method in which some people calculate the square footage for the permissible use. So somebody may come in with a cottage and they show 600-square feet of interior wall space and they may approve it, not seeing the eaves as being covered walkway. Another plan review person may say, no the Code says covered eaves count as square footage, but on the building permit, it's gonna...it would show and as well as Real Property Tax, when Real Property Tax goes out they're gonna measure the outside of the wall. They're not gonna care about the eaves. They're not gonna care about...that's only for us as far as the Title 19 provision for us to do our review. But as far as what's considered floor area from everybody else, appraisers, whatever it's only gonna be the interior walls. We're...it's only for our administration of 19.35 in the Planning Department where we get into that issue of is it covered or uncovered, I mean, so...

Chair Ball: Yeah.

Mr. Robinson: Thanks

Mr. Spence: And we would like to be able if we measure...if for our purposes in the Planning Department if we can measure it a different way we would like err on the side of allowing a little bit larger structure for people to live in.

Chair Ball: Commissioner Lay?

Mr. Lay: For me, I like the covered deck area because right now people are building as big as they can build without...that's how they're doing it, we're getting boxes.

Mr. Spence: Right.

Mr. Lay: With this deck areas, we're adding more character to the area. I like that.

Chair Ball: Yeah. Commissioner Hedani?

Mr. Hedani: Are we still taking comments?

Chair Ball: Yes.

Mr. Hedani: Four hundred square feet I think is too small. The end of this desk over here to that wall is 400 square feet. If you put a bathroom, a bedroom, a kitchen, and a living area, one bedroom and that's really tiny. The first apartment I moved into when we first got married 40 years ago was 700 square feet and that was a one-bedroom and that was nice. It was comfortable. And it's something that I think people would be happier than a 400-square foot box.

Mr. Alueta: The Mayor's proposal is to limit it at 500-square feet and so...and I'll tell you like--

Mr. Hedani: Okay, and that moves it to this desk.

Mr. Alueta: Yeah. Well, to give a better...I lived at Lao Parkside. My first place was a one-bedroom, one-bath unit at Lao Parkside for \$103,000, and it was 523 square feet. That 23 square feet included part of that, that outside storage whatever. So that was...so if you've been in Lao Parkside of any of those standard one-bedroom, one-bath, and not...like I said, I lived there with my wife so that was a starter package for most people.

Chair Ball: Well and if you look at Dream City those houses there are three-bedroom, one-bath, and then you get the half or so outside, those are all under 800 square feet, and you know, that served the community forever. But I like the outside livable area, you know, the deck area because most people are gonna be out there and create a space out there too which helps with that limited size. I think they'll be thwarted too by the size of the lot under the 40 percent density. They're gonna be thwarted on the size. Commissioner Hedani?

Mr. Hedani: I think the controls on each lot should be based on the setbacks that you think are appropriate. The ability to handle runoff on the site onsite, to contain...to address the problem of flooding. I also think that they're not going far enough but these are baby steps that we're taking toward housing.

Mr. Alueta: So just to clarify Commissioner Hedani so you think the setbacks requirement is enough and you don't need to have the 40 percent lot coverage?

Chair Ball: Commissioner Hedani?

Mr. Hedani: I'll leave that to the Department's analysis and recommendation.

Chair Ball: Director?

Mr. Spence: Okay, so Commissioners if I could go through each one of these?

Chair Ball: Sure.

Mr. Spence: Okay, so Commissioners I'd really like to go through each one of these and get a recommendation on each. I sort of, like I said, I sort of broke it down. It will make it much easier once we get to Council to say, the Planning Commission really liked this provision but they didn't like that one or they liked all of them or whatever. They're going to...I mean, and they're gonna specifically ask those questions. So it would be nice if we could break 'em out. So the first thing is what would the Commission recommend on allowing ohana units on less than 7,500 square feet?

Chair Ball: Commissioner Hedani?

Mr. Hedani: Need a motion or?

Chair Ball: Just a consensus probably.

Mr. Spence: Yeah, consensus would probably be fine.

Mr. Hedani: Personally I would support ohanas on any lot, residential lot.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, I'll go with the Mayor on this one which doesn't have any restrictions.

Chair Ball: Commissioner Hudson?

Mr. Hudson: I concur. I would be you.

Chair Ball: Commissioner Lay?

Mr. Lay: Also.

Mr. Spence: Okay. And I see Commissioner Robinson.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Yes.

Mr. Spence: Shaking his head yes.

Mr. Robinson: I don't wanna see a lot, a second house on a lot smaller than 5,000 square feet. I don't believe in just any size. I know the 40 percent takes care of it, but I think, I think it should be 5,000 and above.

Mr. Spence: Okay, that covers the first two questions.

Chair Ball: I'm kind of with Commissioner Robinson. I think there needs to be a little bit more study into that, what does that mean on...what does that look like visually if we open it up to any size lot 'cause you don't wanna create this houses on top of houses on top on houses either 'cause it changes the neighborhood as much as the big house changes the neighborhood, all these ohanas on these properties also...(inaudible)...

Mr. Robinson: If somebody sold the driveway easement and built a house on it, you know.

Mr. Spence: Well, it would still have to comply with all the other Codes.

Mr. Robinson: But the setback?

Mr. Spence: Oh, they still have to comply with setbacks. They still have to have one parking stall for that unit. That's just a part of...all the other Codes still apply. So if...what it's saying is if you have room, and you can meet these other codes, you can have this. So all the other Codes don't go away.

Chair Ball: But I think in theory that sounds good, but just don't know enough.

Mr. Spence: Okay, okay. What about...what's the Commission's thoughts on if you have a lot that's over 12,000 square feet? Should you...and provided you have the room, and all that should you be able to have more than one ohana, if you could have two?

Chair Ball: What were the sizes of that?

Mr. Spence: ...(inaudible)...

Chair Ball: The size of the ohanas?

Mr. Spence: I think it's 500 square feet.

Chair Ball: Well, wouldn't that be under this...am I looking at the right...oh, sorry, that's the deck size, that's the wrong one, seven, eight and a thousand, right depending on what the size of the property is?

Mr. Spence: Yeah, it's—

Chair Ball: On that chart. I'm looking at the chart on Page 3, one, two, three.

Mr. Spence: Correct. At least the way that this showing what our current Code says, if you have a lot between 10,000 and 21,000 square feet, you could have a 600-square foot ohana. So I guess the question is could you have a second one? If you have room and parking and infrastructure and all of that.

Chair Ball: And if you went to 21,000 to an acre and you could have a main structure and then two, 700—

Mr. Spence: That would be—

Chair Ball: —potentially two, 700.

Mr. Alueta: I'm not sure if that's what the Mayor wanted to have the second based on the same size or the second accessory being 500 square feet.

Mr. Spence: I don't think the bill—

Mr. Alueta: Limits it.

Mr. Spence: —limits it.

Mr. Robinson: Didn't I read somewhere where you said it was gross so he could have...he was saying if it's one's 1,000 and one's 1,000 gross is 2,000 he's fine with that. Is that what the people were saying there?

Mr. Alueta: No, that was a discussion on, on—

Mr. Robinson: Oh, just discussion?

Mr. Alueta: —different methodologies in which you could come to same conclusion which is separate from the proposal. Meaning one planning aspect, and I guess you could say just even from a principle, planning principle aspect if you're limiting it to the lot to the lot coverage and so if somebody wants to build two, 2,000-square foot houses on a lot, right or...and one is called the main and one is called the accessory dwelling, what's the difference between having two, 2,000-square foot and having one, 4,000-square foot house and cutting out 500 square feet. I mean, is there a difference I guess, the main aspect of that is, one is gonna be is, you're gonna have larger families living in that unit. From that aspect, you're gonna have a little more densities, on I mean, from that. Also, you may limit the affordability of that because of the limited size in the accessory dwelling it makes it, by market forces more affordable than say another 2,000 square feet because someone is not gonna pay the same amount of money for a 2,000-square foot house as they will for a 500-square foot.

Mr. Robinson: Is that, is that part of this discussion or is that just something you guys discussed internally?

Mr. Alueta: It was something that we put out as for discussion purposes for the Commission, but what...as the Director is doing is he's going down, let's look at the proposals that are actually out there for you to review are really the Mayor's and the Council's bill, and so, and I think he's just trying to get...we're just trying to get an idea of like...you're clearly allowed—

Mr. Robinson: The discussion was not part of this?

Mr. Alueta: Yeah, it's not part of the bills. It was just something we—

Mr. Robinson: But I like it.

Mr. Alueta: Yeah, that will be—

Mr. Robinson: You get more square footage that way.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay for me, I feel the larger property you can build bigger houses. You have a chance of fitting more people in need of affordable housing, bigger families like you said, and to me that's the important part. If we're just gonna hit one section and we're still gonna have that need later on, and if we can address it now and take care of it, to help take care of it, I should say, I think that's a good thing. I mean, if we're gonna wait, we're setting back families from getting homes that need a larger place. So if we can fit in a bigger property, a bigger house, I'm for that.

Mr. Robinson: And so in essence will that open up...so say we have an acre, acre lot, right so if it's an accessory dwelling, it won't be a barn so he could theoretically have a 1,500-square foot house, a 1,200-square foot accessory dwelling plus a barn and then he won't have to subdivide this way and say the people that have those properties can just put up houses and rent them out doesn't haven't to subdivide?

Mr. Spence: So long as it's and we're still talking accessory dwellings so that applies to our Residential Districts and Rural Districts. It's not to farm, not the Agriculture right now.

Mr. Robinson: So how big does the Rural go to?

Mr. Spence: Rural, we...typical Rural lot is half acre. We have a number of different districts however. We have Rural half, one-acre, two-acre, five and ten. And we have yet to use the two, five and ten.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, I'd support it too. If they have the room, you know, and they meet all of the Codes, you know, I think that they should be afforded the right to build two if they have the room and they can meet all the Codes. This is all about taking care of what I would call the hidden homeless. I know people with three, sometimes four families living under one roof and if their lot is big enough, you know, they would have the two dwellings and not everybody would be cramped into one roof. And let's take care of the hidden homeless. I know the homeless people are getting all the headlines but these poor families that are living together because that's the only way they could live. So take care of them too.

Mr. Alueta: So is there a...I mean, I'm just trying to get a feel for...so is there a—

Chair Ball: I think it's a yes.

Mr. Alueta: So you don't have a concern with increasing the size of the proposed accessory

dwelling. So if somebody is allowed to build an accessory dwelling, how big...

Unidentified Speaker: Forty percent coverage.

Mr. Alueta: As long as they meet the setbacks and the 40 percent coverage they can build whatever size accessory dwelling provided they meet those development standards and it's allowed.

Mr. Robinson: I encourage that. There a place for somebody to rent....get stuck at the 500.

Mr. Medeiros: My answer to that would be hell yeah.

Mr. Alueta: Okay.

Mr. Spence: Okay. Okay, then the next question because Commissioner Lay brought it up and it is not a part of the proposed bills would you like to entertain the thought of having more than one...I guess it would be the third farm dwelling on an ag lot?

Mr. Lay: Frankly I brought that up because again I said there's families that own large portions of land and they're very limited on putting homes on there. Even if they have agriculture on that property on these large acreage it won't affect it that much and the help is there. And if it's a family they have a chance to live on that property and be a part of the whatever they have with the agriculture. For me, it's a big step to go in the right direction. Everybody thinks of it taking away ag land that can be developed. A lot of these properties nowadays aren't developed. The families aren't working them because there's nobody there. There's no one to help work out these properties. If they have a chance to build on this property they have a chance to work the ag on that property so I'm for this.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I'll support him on this because there is a need for it and it's a great idea. It should be considered.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Commissioner Lay are you thinking for family as a restriction or just open it up for anybody and for it to be rented?

Mr. Lay: For me I would like...I mean, if any thing I'd like to start off as family that's how I feel because once you go open it, it changes, yeah.

Mr. Robinson: So non-rental unit, but just--

Mr. Lay: But I don't know how we can put those provision in there but you know...

Mr. Spence: Yeah, that would be difficult. Right now in the Ag--

Chair Ball: Director?

Mr. Spence: --Ag zoning there is a provision to have a third or more farm dwellings, but the people who qualify are like Ulupalakua Ranch or Haleakala Ranch that it's really clear that there's like three criteria, ag water rates, more than 35,000 gross income and one other that I'm forgetting at the moment. So there are these criteria to be met, but so what...what the Commission, what I hear the Commission saying is we would like to consider it making it easier to get a third dwelling on the property.

Chair Ball: And I don't know if we can do this on this ordinance--

Mr. Spence: No, it's not a part of it.

Chair Ball: --'cause it's, I mean--

Mr. Spence: It would not be a part of this bill.

Mr. Robinson: Just want the Council to--

Mr. Alueta: It would be something we'd note to the Council, but again--

Chair Ball: It may be another ordinance that would come through actually, right?

Mr. Alueta: Yeah, right.

Chair Ball: See how this one works and then add that one on.

Mr. Alueta: Currently as the Director pointed out in the Agricultural District on lots greater than five acres that either have ag water rate or have...show a \$35,000 in farm income for the prior two years they are allowed to build basically a farm...another farm dwellings. So for the real farmers that are making it, you could have a main dwelling of any size, another accessory dwelling, I'm sorry, a second farm dwelling of 1,000 square feet and then you could have a farm labor dwelling also for every five acres.

Chair Ball: And that ordinance is made for farmers and it's not being used for that.

Mr. Spence: Correct.

Chair Ball: So something major has to change. That's why I'm saying--

Mr. Alueta: Oh okay.

Chair Ball: --you probably can't answer that in this group. Some of those things, in theory yes, that's what it's for and that's the way the ordinance was written. But in reality. They're pretty fancy farm dwellings, it's not accessory dwellings and all that. So I know we can't go there today but...and some that is...

Mr. Alueta: Correct.

Chair Ball: ...(inaudible)...problem too.

Mr. Spence: And I'll just say--

Chair Ball: Director?

Mr. Spence: --part of the restrictions, and I was trying to look up the Code here, part of the restrictions in the Code is to prevent the abuses that we have witnessed with the multi-million dollar second farm dwelling and those kinds of things. So it's a fine line, but it's something that could perhaps take a look at.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Yeah, on that subject, my opinion is that I think we really need to take a look at the Ag Subdivision Law.

Chair Ball: Yeah, I agree.

Mr. Hedani: Because I've seen too many lawns come in as agriculture.

Chair Ball: Or too many Corian counter top farm dwelling, accessory farm dwelling.

Mr. Hedani: Right.

Chair Ball: Anyway, let's continue on.

Mr. Spence: Okay, and then the last thing, Joe's pretty much explained the revisions that the Planning Department wants that are incorporated into the Mayor's bill, and just basically changing the way that we measure the square footage of the structure and some other housekeeping items. Does the Commission have any recommendations on those?

Chair Ball: Commissioner Hedani?

Mr. Hedani: I think the recommendation about looking at interior living space is a good one and that's something that they should really think about working with.

Chair Ball: I have a...you know, the title of this is affordable accessory dwelling and I think we should be going with the Mayor's proposal and eliminating that affordability requirement because it may stifle some of the people building the projects. I can understand the intent but the more you build in theory it should be, it should adjust that affordability. So I think we should address that also.

Mr. Spence: Okay, the Mayor's affordability provision.

Chair Ball: Requirement is taken out. On the Council's it's in there. Current Code doesn't have

one.

Mr. Spence: Okay.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I'll support Keone's recommendation. I support Keone's recommendation. I agree with him that, you know, if you take it out the affordability part, we'll have more houses and the market will take care of itself.

Mr. Spence: Okay.

Mr. Alueta: So right now if I may, Mr. Chair is basically, so you do support the Mayor's provision as he has it basically to allow for a 500-square foot accessory dwelling on lots less than 7,500 square feet. To allow for a second accessory dwelling on lots greater than 12,000 square feet. To allow for them to be on basically all of the current zoning classes that allow for accessory dwelling right now and to the other...and to not have a restriction on it to be affordable. Did you have a support...I mean, to let the free market decide whether or not it's gonna be an affordable unit or not. But also then the other provision of did you have a desire to ...(inaudible)...the Mayor's proposal was to eliminate B&Bs and any accessory dwelling to be used as a B&B or STRH so that the market forces that drive the value of these accessory dwellings would be limited to the long-term rental and local housing market. Is that? Okay, I see nodding heads that...

Unidentified Speaker: Yes.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I wanna go back to the Mayor's below 7,500 square feet lot?

Mr. Alueta: Yes.

Mr. Robinson: But it wasn't to zero. It was a couple of us had you know, 5,000 was the minimum, not zero but the other, I think while the majority had zero.

Mr. Alueta: Yeah, I can note that that two members felt that there should be--

Chair Ball: For me on that last one about the B&Bs and all that, I think that needs to be looked at a little bit more. To have that just thrown in there, I don't know, I think we have an ordinance for B&B. B&Bs gotta come through here. If it doesn't look right, then we stop that here instead of saying...I guess I don't understand fully are they saying from now on forward any accessory dwelling is not gonna be allowed for a B&B.

Mr. Alueta: Yes.

Chair Ball: And anything that is previously and then when they come up for renewal or no that's--

Mr. Spence: No, those would be allowed.

Chair Ball: That's still allowed. So it's basically anybody that's in now. But what if when it sells, right it's not transferrable. So now that one is not allowed to do it anymore so eventually you'll eliminate all of the B&B short-term rentals if the properties keep selling and selling.

Mr. Alueta: Correct. Illegal ones yes.

Chair Ball: And eventually we'll have eliminated that, right?

Mr. Alueta: But they're be allowed within the main dwelling of the house. So...which is, but predominantly a lot of them are in the main dwelling of the house, but in this case the accessory dwellings that are constructed under 19.35 would be restricted to a long-term—

Chair Ball: So you would have, you would still have it for main dwellings, but if you have a house and a cottage, the cottage would always have to be in long-term rental where the short-term you could have it on or can that be reversed? Can you have a main dwelling be long-term rented and the cottage be a short-term you know what I mean?

Mr. Alueta: Not under, not under this provision. This provision would eliminate that. So you have..what you have now under the current practice I guess you could say some people choose, the operator of the B&B chooses to live within the cottage and rents out as the B&B operation within the main dwelling. But you also have those who choose to live in the main dwelling and then just have their accessory dwelling. So it goes back and forth. The goal of this provision is to say, you cannot use the accessory dwelling because that was always earmarked and you were granted that additional density of an accessory dwelling for that residential lot to help provide housing for the long-term market not for the short-term rental market.

Mr. Spence: Right.

Mr. Alueta: And I think that's where the current proposal is that the Mayor is saying we need to have these accessory dwellings that were previously permitted as well as what could be constructed under this provision to be limited to long-term rental.

Chair Ball: Now under that is the B&B then if they're renting out the main house as the B&B and they're living the cottage, right?

Mr. Alueta: Right. That would still be allowed.

Mr. Spence: Yeah.

Mr. Alueta: So someone living in a main dwelling...I mean living in the accessory dwelling could still run the B&B in the main dwelling.

Chair Ball: And if that property sold and then the new person came in to get a new permit they could still do that—

Mr. Alueta: Correct.

Chair Ball: –Saying I'm gonna live in the cottage, but I'm gonna rent the main house out.

Mr. Alueta: That is correct.

Chair Ball: And could they then reserve that and say, well I wanna long-term rent the main house and vacation–

Mr. Alueta: No.

Mr. Spence: The way...Mr. Chairman?

Chair Ball: Director?

Mr. Spence: The way that the Mayor's proposal is no cottages or accessory dwelling, attached, detached or whatever could be short-term rented. So that's end of story.

Mr. Hedani: Makes sense.

Mr. Spence: I mean, so that the ones that already have permits those would be grandfathered. My thought is the Commission could support that. They could support all accessory dwellings built as of the date of this bill or they could recommend against that provision altogether. It be nice to have a recommendation, but–

Mr. Robinson: We can give you one.

Chair Ball: Commissioner Lay?

Mr. Lay: I'll go with the Mayor's recommendation.

Chair Ball: Consensus, yes?

Mr. Medeiros: Second that.

Chair Ball: Okay, we'll go with that. Next?

Mr. Spence: That's all I have.

Chair Ball: Commissioner Hedani?

Mr. Hedani: One of the curves this thing is gonna create is that right now the Commission considers things that come before us and we kind of take a wishy washy position on private covenants. A subdivision is developed by a developer, they set down with that subdivision CC&Rs. CC&Rs say no short-term rentals, no bed and breakfasts, no accessory dwellings, et cetera, et cetera, et cetera. This kinda takes it one step further to the point where a subdivision that

has...well, take Wailuku Heights that's the subdivision I live in, no accessory dwellings, period in the CC&Rs. It doesn't matter if you have 20,000 square feet or 8,000 square feet. This is gonna spawn a whole bunch of litigation in terms of when I purchased my home, I purchased into a bundle of rights in this particular subdivision that was protected by the CC&Rs. The County comes along and says, we don't give a rat's ass if you wanna build an accessory dwelling go ahead and do it.

Mr. Alueta: This would not...this ordinance does not overturn any private covenants or homeowner's association rules.

Mr. Spence: Right.

Mr. Hedani: But what about the resident that challenges that CC&Rs? He says, it's perfectly legal according to County Code.

Mr. Alueta: That all depends on how they frame it. In some instances there has been successful lawsuits against CC&Rs but it has primarily to do with rights, outright permitted or definition of families and stuff like that against the CC&Rs. Such as you can like say, CC&Rs limits the amount of people in the house, but the State Law says, this is the definition of family. It goes beyond that. There has been very few cases, but I've seen it on Oahu in the Zoning Bulletin where those have been happening.

Mr. Hedani: My only comment is I think the Council should consider that point in terms of whether or not there should be a provision in the document that says this does not supercede--

Mr. Alueta: I'll defer to Corp. Counsel.

Mr. Hedani: --this does not supercede private contractual agreements.

Chair Ball: Corporation Counsel?

Mr. Murai: Commissioner Hedani, I understand...I think I understand what you're saying and I'd be reluctant for the Department to speculate on the outcome should there be a homeowner who seeks to enforce or to challenge their CC&Rs. Certainly it's within the Commission's authority to make the recommendation you suggest that would be up to you folks. Again, my main concern is that I don't the Department should be speculating on possible...you know, what might happen to the homeowner should he challenge his CC&Rs. But I think, you know, Mr. Alueta is correct his general perception that generally speaking CC&Rs are usually challenged on things that are more fundamental rights like you know, who you can associate with or things of that nature. Otherwise CC&Rs as we all know they're contractual, they're something that the homeowner I guess agrees to when they purchase in that subdivision. They agree to take the property on those terms.

Mr. Hedani: Okay.

Chair Ball: Okay, Commissioner Robinson?

Mr. Robinson: I think you have challenges in Wailuku Heights. There's plenty of land there and

you know, people are growing older and parents are gonna wanna live in the back in their own space, but I wanna get back to the accessory dwelling and we...the Mayor have the people that already have permit are allowed to continue. What are you gonna do with the people in the permitting process right now that have filed their applications? What's the recommendation there?

Mr. Spence: Usually when...Mr. Chairman?

Chair Ball: Director?

Mr. Spence: Usually when people are in the process the County Council adopts a section in the Code that says, effective date of this ordinance is such, you know, whenever it's signed. Those within the permitting process already you know are good to go, those that start...you know, this is effective for those applicants starting after, after the enactment of the ordinance. A lot of times there's a grandfathering.

Mr. Robinson: How many applicants do you have right now?

Mr. Spence: Oh, I have no idea.

Mr. Robinson: Ten, twenty?

Mr. Spence: I don't know.

Mr. Robinson: No?

Mr. Spence: I don't know. Our office has approximately 2,000 applications of all types at any one time. I can't keep track. I don't know them all personally.

Mr. Robinson: Categorizing helps.

Chair Ball: Okay, Commissioner Hedani?

Mr. Hedani: One last comment while we're passing things onto the Council. I think they can solve the affordable housing issue overnight. You take all of Kahului and we change it from Single-Family Residential to Apartment, six stories.

Mr. Robinson: All of Wailuku Heights.

Chair Ball: Might as well make it 20 stories. If you're gonna dream, dream big you know. Director?

Mr. Spence: Mr. Chairman, just a comment. We have recognized with the Council that there are portions of Kahului that have multi-generational, multi-family you know, you know, multiple families living within a single house. One of the things that I've wanted to do is look at the general locations and patterns of larger homes within Kahului and consider upgrading them, up zoning them to like duplex, triplex, fourplex because it's already being done. Let's legitimize it. ...(inaudible)...let's provide that opportunity for under utilized lots to expand. So we haven't made much progress on

that yet, but that is a concept that's been floated around.

Chair Ball: You would do that island wide though, it wouldn't just be for Kahului, right? Because like Lahaina has tons of that also.

Mr. Spence: Yeah.

Chair Ball: And would benefit a lot from that sort of thing too.

Mr. Spence: Not just, you're correct, not just portions of Kahului. We would be looking at parts of Kihei, Lahaina area.

Mr. Alueta: We have...we do have this obscure process, I think it's called the community plan process in which they would...people would come together and there would be an advisory board and they would kinda recommend areas that they'd like to see changed or up zoned for the future...to plan for the future growth and they actually do these little studies, the infrastructure studies. So hopefully when each community plan comes about and they will come before each...all of them will come before at least before this commission at the least the one on Maui, all of them on Maui that you'll have an opportunity to say, hey maybe this area along Papa Avenue next to Lihikai School or something like that should be zoned this because it be ideal to have you know multi-family in that area, what do you know, across the street from a school. Kinda make it convenient. So you have to look at that. Hopefully the CAC, whatever they're called advisory board is called will be able to look at that and take into consideration the affordability that is so desperately needed as well as sea level rise because I'm not sure how much of Kahului will be under water at some point, but I would rather have high densities on the higher hills you know, you know, on the dune system.

Mr. Hedani: Ocean front.

Mr. Spence: That's right. Now ocean front property.

Mr. Alueta: Now ocean, yes, yes.

Chair Ball: Okay.

Mr. Alueta: So I got affirmatives for the most part on everything that the Mayor has proposed. And you know, there was some basic discussion on both the covered deck area that was seemed to be a consensus that you were okay with that. There was also some consensus on I think on trying to have the Council relook at the residential bill as far as the lot coverage as well as the other provisions of the residential bill. I wasn't...we didn't get into any specifics but just to have them take a look at it again and see what provisions—

Chair Ball: Does deck space count towards the 40 percent density? Or is that just the living area that counts towards that?

Mr. Alueta: It would be footprints, building footprints.

Chair Ball: So yes?

Mr. Alueta: Yeah, it would be, deck and covered area would count.

Chair Ball: Be part of that 40 percent.

Mr. Alueta: Correct.

Chair Ball: Commissioner Hedani?

Mr. Hedani: One last question. How does the idea of doing this comport with the philosophy of smart growth? Does it make sense?

Mr. Alueta: In the sense, and from a general planning perspective any time that you increase the density within the existing urban core that's pretty smart. Rather than moving, I mean, we were joking around about build 'em up, build 'em up, you know, having Pearl City type towers you know where you get the higher density. I think there's a...you have to balance that and I think that what this, again, that's what we're trying to do is we wanna see some additional densities within our urban core as well as areas where there's infrastructure to support it. That's the main thing. That's always a smart growth. So I think that's...it does comport for that aspect. And once you get the increased densities like I say, Kahului I mean we looked at complete streets where you can finally improve some of these roadway systems where you have a higher density. I mean, I grew up in Kahului and there was no sidewalk in front of my house even though there was lots of room, and nobody wanted the sidewalks 'cause they didn't want their taxes to go up. That was the rational. I mean, everybody was poor and middle class and you were happy to have that 750-square foot CMU house, and everybody was just making it trying to pay the mortgage. So the kids didn't mind making their own cow paths along the roadway. But I think today, I mean the County is looking at it as you increase the densities with more cottages, larger homes, the infrastructure of bike paths, the infrastructure of sidewalks becomes more of a necessity.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Good answer. Thank you.

Chair Ball: Director?

Mr. Spence: Last thing, Mr. Chairman. We will make note in the transmittal letter that a couple Commissioners had questions about lowering it below 5,000 square feet.

Mr. Alueta: As well as expanding, potentially expanding to ag or looking at ag also.

Mr. Spence: Yeah.

Chair Ball: Okay, Commissioner Robinson?

Mr. Robinson: I just have one last comment. I think these auxiliary dwellings are gonna help.

Unfortunately, it's the people that live in the more congested areas they're the one that's gonna be helping this problem instead of developments or the affordable housing percentages that we hope that, you know, in the planning five, ten years ago was gonna help and it wasn't. Hopefully the County will look at that especially when we're granting people from Ag to Residential properties that you know that they really try to...instead of just making, you know, making new houses, lotta money off it, they also try to really concentrate on getting some more affordable houses going. Thank you.

Chair Ball: Okay, thank you Joe for all your hard work on this. And...

Mr. Alueta: Is there a general motion or does there need to be one?

Mr. Murai: It sounds like there's a consensus.

Mr. Alueta: Okay, I'm good. Thank you very much. Appreciate it.

Chair Ball: Thank you.

The Commission was in consensus with the recommendations of the Department and in the transmittal letter to the Council the Department will note the questions/comments of the Commissioners.

Commissioners Present: J. Medeiros, L. Hudson, I. Lay, M. Tsai, W. Hedani, K. Robinson

Commissioners Excused: R. Higashi, S. Duvauchelle

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Keone Ball, Chair

Wayne Hedani

Larry Hudson

Richard Higashi (in attendance at 1:10 p.m.)

Ivan Lay

Jason Medeiros

Keaka Robinson

Max Tsai, Vice-Chair

Excused

Sandy Duvauchelle

Others

Will Spence, Director, Planning Department

Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel

Rowena Dagdag-Andaya, Department of Public Works

It has been moved by Commissioner Racine, seconded by Commission Davis, then unanimously

VOTED: to approve the department's recommendation as amended.

Mr. Rogers: It's unanimous.

Ms. Lopez: Thank you.

Mr. Yoshida: Thank you. I guess the department would request if we could combine public hearing items no. 3 and 4 because we're talking about accessory dwellings.

Mr. Yoshida read the following agenda items into the record:

3. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 15-112 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend the comprehensive zoning ordinance to permit affordable accessory dwellings in Residential Districts. (RFC 2015/0153) (J. Alueta)**

The Council is considering a proposed bill to permit accessory dwellings in residential districts on properties of between 5,000 and 7,499 square feet, for the purpose of increasing the availability of affordable housing.

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

4. **MR. WILLIAM SPENCE, Planning Director, transmitting a proposed bill to the Lanai, Maui, and Molokai Planning Commissions to amend the comprehensive zoning ordinance to allow accessory dwellings on lots less than 7,500 sq.ft, and to allow an additional accessory dwelling on lots 12,000 sq.ft. or greater. Further, the bill proposes to clarify the restriction on covered and uncovered deck areas, measurement of floor area, and to restrict accessory dwellings to long-term residential use. (J. Alueta)**

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

Mr. Yoshida: Presenting will be our Administrative Planning Officer, Mr. Joe Alueta.

Mr. Joseph Alueta: Good afternoon, Commissioners. Again, my name is Joe Alueta, I'm the Administrative Planning Officer for the Planning Department, I'm also a Supervisor with the Zoning Administration Division. Currently, my primary duties as APO is to bring forth bills both from the administration as well as the County Council, and to review them for you. There's, basically, two methodologies in which you can amend Title 19: one is either by a resolution, which is what you have, or amendments can be proposed by the director of the administration and, in that case, you have the Mayor's bill. Currently, we have 19.35 is the accessory dwelling provision within the Maui County Code, this allows for accessory dwellings to be built on certain lots. There's been an ongoing, I guess you could say, cycle of crisis with regards to housing, affordable house, but also affordable renters for our working class citizens. Both the County Council in the past have always tried to assert some type of bill. As I indicated in my staff report, this is a very similar bill that you reviewed by in 2009, 2010, by the County Council that was also introduced. Our concerns then were pretty much the same as today, and I guess you could say, not to be outdone, the Mayor has also proposed a similar bill that would address the chronic rental housing needs for local citizens. I've been sitting on other boards, I guess you could say, that where we're trying to brainstorm on trying to figure out how do we get more inventory, either build affordable housing, or dealing with the homeless or whatever, but, primarily, the goal is to try to increase inventory or these types of units as quickly as possible. Yeah, there's long-term bigger picture ideas where people are trying to develop raw land, however, this is kind of a low-hanging fruit where you're trying to increase the density slightly within our urban cores where potentially the infrastructure, such as water and sewer and whatnot are available to these citizens.

And so if you look on page 2 and 3 -- I'm sorry, on page 3 of the staff report that I presented, I kinda tried to give a summary of what was comparing the existing law as well as the council's proposal as well as the Mayor's proposal. In short, both of the proposed amendments to 19.35, again, the goal is to increase inventory. The council's provision would allow for an additional accessory dwelling where allowed in the residential district on lots that are 5,000 -- between 5,000 square feet and 7499. Again, the current threshold for an accessory dwelling in the districts is at 7500 and above. The Mayor's proposal would eliminate -- would allow for an accessory dwelling on any lot less than 7499 square feet. So essentially, if you had a 2,000 square-foot lot or a 3,000 square-foot lot, and you had a dwelling unit on it, and you had the room, if you had the room, you would be able to add an accessory dwelling. Accessory dwellings can also be attached dwelling units, that's currently allowed, and so someone could potentially either expand their current house or enclose maybe an existing patio area legally and get a permit for that and rent that out separately and have a separate distinct kitchen, so that's one option that the Mayor has proposed. The other provision that's slightly different from the council's proposal is that lots that are greater than 12,000 square feet would be allowed to have a second accessory dwelling, so if you had a large residential lot, or a large lot in the interim district, that was

more than 12,000 square feet, you could potentially have a house and two accessory dwellings based on the size of your lot.

The council's resolution would only impact single-family -- sorry, residential zoned properties, whereas the Mayor's proposal would impact -- would allow for an accessory dwelling in all of the districts that allow for accessory dwellings, so here on Molokai, it would be -- which you don't have much residential land actually, zoned residential land, it would be on lands -- so interim and rural lands would be the primary areas where Molokai would have the greatest impact. And I know there's a lot of confusion. I get calls all the time. I got another call yesterday. This does not impact the agricultural district. Accessory dwellings are not allowed in the agricultural district. You're allowed a farm dwelling, and a second farm dwelling limited to 1000 square feet. So again, the accessory, 19.35, does not have a bearing with regards to the agricultural district.

Affordability. Just like the previous bill in 2009 by the County Council, they basically are establishing a new definition or a new category called "affordable accessory dwelling," and that's the type of -- that is what you would be allowed to build on lots smaller than 7499 square feet in the residential district. And again, the primary I guess you could say "flaw" within that is that the broad base of what they're calling affordable, the range of affordability is such that it really is not limited -- it's not targeted towards your very low income or 60% of the median income, it's actually farther up the chain is allowed. Secondly, we would be allowed -- because it's in Title 19, the Planning Department would be in the business of enforcing that affordability because you can have the affordability if you like say have it registered with the housing -- HUD or -- but you could also rent it out to family members. So say someone came in, built their "affordable accessory dwelling" on a 5500 square-foot lot, they would rent it out. They could potentially rent it out to anybody, which is fine. But that would be a violation of the way the council's bill is written. They would have to rent it out to either family or be to someone who qualified under the affordable housing provision. If they rented it out at market rates to a non-family member, we would have to go there and try to prove are you a family member or not a family member, and in Hawaii, that can be very difficult, and I don't think that's a position that anybody would wanna be in much less put one of our zoning inspectors in the position. The Mayor's proposal is basically aimed at we need to gain inventory. I mean the free market will dictate what the price is, but if we increase the inventory, that would hopefully drive the demand -- the rental cost down as well as the pure fact that you have a house or a dwelling unit that's going to be 500 square feet or less in size on these smaller lots. So just the market forces will determine that that hopefully would be an affordable rental.

Another provision that I guess is differentiated between Mayor's and the council's proposal, the council's proposal, as I talked about, has this affordability requirement; the Mayor's proposal would prohibit the use of any accessory dwelling to be used for short-term rental or bed and breakfasts. Currently, we have issued permits for that. If this bill passes, we

would not issue -- we would not recommend approval for bed and breakfasts or short-term rentals that use an accessory dwelling as part of that. So in this prohibition that is currently proposed would apply not just to new accessory dwellings, which qualify under -- on smaller lots, but it would apply also to all accessory dwellings that are current built, either built or built in the future. I think that's a key component. It was mentioned several times, not only by commissioners on Maui, but also the Kihei Community Association that you kinda have that link where you're increasing the inventory, increasing the densities in some areas, which can be truly affordable, but if you have a hole in the bucket in which these units that are meant to be for long-term rental are being syphoned off as being vacation rentals, you're not really solving the problem. It dilutes the problem. So I mean it only exacerbates the problem and so I think that provision is a key differentiation in the proposals.

Another thing that I guess the department would support is we're trying -- we want to take this opportunity to try to simplify 19.35 with regards to how we measure dwelling -- the dwelling size as well as allowing for a covered deck. Currently, if you come in for a permit for an accessory dwelling based on the size, the way 19.35 reads it dictates how you measure that size area; that size area could be -- it, basically, says if it's a covered deck area, it counts towards the square footage, or even -- or covered walkways, such as eaves, so if you build a standard structure and you have three-foot eaves on that dwelling, we would count the area below the covered eaves as square footage toward that accessory dwelling, and we've had where people have designed their house, come in, oh, it's 600 square feet, yeah, for building code it's 600 square feet, but when you, because it's an accessory dwelling, when you measure it, it's bigger than 600 square feet, and maybe that the limit for their lot size, and they can't do it. They either have to make adjustments to their plans for that reasons. We would rather have the measurement of the size of that dwelling unit be consistent, not as far as what we measure for building code, but also what they measure for real property tax measurements, and also for this. So we would rather not count the covered deck toward dwelling area. So the standard three-foot eave would be allowed on a -- and we would only count the interior walls.

The other provision is covered deck, we do want to allow for some covered deck area that not count it toward living area, and so we have a table there where we've added provision for covered decks area as well as how it will be controlled so these covered deck areas do not become enclosed living spaces.

Some of you were on the Commission when we reviewed a residential bill, which would amend 19.08 and 19.09. Unfortunately, when that bill went up to council, a provision within that bill included the home-based business and home occupation. The council was very hot and heavy on trying to establish home occupations and home businesses throughout the County of Maui, and they pretty much focused in on that portion of our residential bill. They then stripped that portion out of our residential bill, put it into their own bill, and they

adopted that, and they said they would come back to our other portions of our Title 18 -- Title 19.08, the residential district. They thought they carried that portions over into the new fiscal years, they never did, and it got filed by accident, and so we're hoping that you will look at our residential bill and support the department in having the council relook at that bill as part of these amendments to 19.35. And the reason that we think they're interconnected, from a planning aspect, the principles that we put in the residential bill, one of them, on the development standard size, was lot coverage and having a -- right now, you have standard setbacks, 15-foot front yard, 6-foot side, and 6-foot rear on residential lots. What we're finding is that, in some neighborhoods, older houses are being torn down, small houses that may had been to scale within that neighborhood, and people are building these what some people call "Manila mansions" or "Filipino condominiums," and they're building lot line to lot line, okay. What this does is that it would have a 40% lot coverage requirement in addition to it, and that would keep -- we feel that -- and that's pretty much a planning standard across the nation for residential districts, and that would create buildings and building masses to scale to the residential -- within those residential districts especially if you're going to add another dwelling, such as another accessory dwelling onto smaller lots. You want to be able to keep that character of the neighborhood within reason, and so we feel the 40% is an appropriate standard to also be incorporated. So I think, hopefully, you'll support us on it, it is the Christmas season, so I'm hoping you'll be able to add that to the bill for us. It would be a nice gift.

And I pretty much -- that pretty much summarizes the bill. So, basically, going back, you have primary amendments to 19.35, one being proposed by the County Council, that's the main resolution, another amendment to 19.35, very similar with slight nuances that I talked about coming from the administration or the Mayor, and then the cherry on top is the residential district amendments that you previously had reviewed, your comments are actually incorporated, are in the packet, when you look at it, when you first saw them, and again, we'd like to see a lot of the changes and clarifications that we wanted in 19.08 and 19.09 to be resurrected, I guess you could say, in the Christmas spirit, to resurrect that bill and ordinance and have that adopted by the County Council as part of this overall amendments to Title 19. With that, I will take questions or can take public testimony. It's up to you. Do you any questions for me, Chair?

Mr. Racine: You mentioned not syphoning off these accessory dwellings for the purposes of businesses or bed and breakfast or short-term rentals, but am I reading this wrong? But in Exhibit 1, it's called out as permissible use or permitted uses, and then re-lettered from J, K, and L, to I, J, and K, but they're listed as permitted uses of the accessory dwellings. Am I reading that wrong?

Mr. Alueta: On which portion are you reading currently, sir?

Mr. Racine: It's the titled ordinance no. blank, but Section 1 for Section 19.04, and defining accessory dwelling, 19.08.020, permitted uses, go down to the new paragraphs I, J, and K, and it's listing bed and breakfast, home businesses, and short-term rentals.

Mr. Gary Murai: ...(inaudible)...

Okay, the underlined. Okay, but they're still there.

Mr. Alueta: Correct. That's in 19 -- that was the bill that we had, in 19.08, in 19.08, the original -- our original residential district bill current, and we're not changing that, that it would be an allowed use within the residential district. B&Bs and short-term rentals are allowed in the residential district by permit in 19.08 currently, and the current Mayor's proposal is to say that for accessory dwellings within the residential -- any accessory dwelling would not be allowed to use as part of a B&B or short-term rental. So we would make amendments or corrections to the overall code. Is that what you're referring to?

Mr. Racine: Again, it's bouncing back and forth from 19.35 to 19.08. It's asking us -- I mean it's asking to change the definition of "affordable accessory dwelling" in 19.35, but it's still in 19.08 calling as a permitted use. I guess I'm --

Mr. Alueta: Again, in the residential district right -- 19.08 is the residential district, okay. In standard residential district, you're allowed a single-family dwelling, okay, and then you're also allowed an accessory dwelling is also allowed as an accessory within 19 -- within the residential district limited by 19.35, which is the standards for accessory dwellings, okay. So what this -- if the Mayor's version of these amendments pass, you would still be allowed to do a bed and breakfast or short-term rental in the main dwelling on the residential district, but any accessory dwelling that's currently there or constructed within the residential district would not be allowed to seek permits for short-term rental or B&B, okay. So in the residential district, you're essentially -- where the lot size permits, you're allowed to have a main dwelling and an accessory dwelling. We are not -- I mean so -- I understand why you're slightly confused because, one, you have the existing code, you have amendments that are being proposed by council, and amendments being proposed by the Mayor.

Mr. Racine: Well, see that's why -- I don't see the restriction from those uses in the subsequent language, in the proposed -- the Mayor's --

Mr. Alueta: In the Mayor's one?

Mr. Racine: Call out a chapter or section for me. I'm having a hard time seeing it.

Mr. Alueta: It says --

Mr. Racine: It doesn't say specifically restrict the use, it defines the allowed use, which is the low term -- I mean the low cost rental. Okay, so it's by omission that it's restricted. Thank you for your patience. But is that enough to restrict the cottage industry, or it allows cottage industry to proceed within the main dwelling, but the accessory dwelling, it just says -- the only restriction I see is you can't use it for short-term rental or market-rate rental. So you mentioned a number of times, you know, a commercial endeavor, a cottage industry, but that's not critical?

Mr. Alueta: There isn't in -- yeah, currently, there isn't a restriction on that with either one, either of the Mayor's or the council's proposal, but that is a good point that accessory dwellings constructed under these provisions could potentially be used for a home-based business or a home -- I mean home-based business. So if that's a comment that you want to make that should they be limited so that they can't -- because there is a separate bill that allows for home-based businesses, and so if you want to restrict that from being done, then I would -- I would encourage you to make that comment.

Mr. Racine: Would that constitute a syphoning off of the necessary units for low-cost rentals or are we straining ...(inaudible)...

Mr. Alueta: I think you raise a -- I, personally, think you raised a valid point that you're, one, you're allowing people to do an accessory dwelling on smaller lots than currently permitted, and the main reason that both County Council and the Mayor is attempting to have -- or allow for these lots to allow for an accessory dwelling is for the purpose of long-term housing, long-term rental, and so I don't see that as being unreasonable and I think we'll point it out also that do you also want to restrict it to that home occupation or home-based business could not be conducted, I guess, within -- within an accessory dwelling like that.

Mr. Racine: We don't want to extend a special restriction to a low-cost housing tenant. The only thing that comes to mind is if the owner of the primary residence use the space for a cottage industry. If he rents to somebody, we're not going to restrict someone from doing, you know, their own home-based business, but it would have to be though under the name of and operated by the individual renting the property. I don't know. That's -- we're not going to have a special restriction for a tenant, but the owner can't build it and use it for that purpose. Does that make any sense?

Mr. Alueta: I'm sort of getting -- I mean so --

Mr. Racine: Currently, we allow property owners in their primary dwelling to have a home-based business. If we restrict the use of the accessory buildings for a home-based business, does the tenant -- does that restriction apply to the tenant? I'm trying to apply the restriction to the primary owner or, you know, so he can't just build a building to start another business under the auspices of making it a low-cost rental.

Mr. Alueta: Okay.

Mr. Racine: The tenant, if they want to do Christmas ornaments, you know, for sale, they should have that freedom because it's extended to everybody else. Just make it clear that the primary owner doesn't build this for the purpose of work space.

Mr. Alueta: Okay.

Mr. Rogers: The occupant. It's gotta be the occupant.

Mr. Racine: Yeah. It has to be tenant, not the primary owner. conducting business in that.

Mr. Alueta: Okay, so, essentially, you want to make sure that any accessory dwelling constructed under the provisions of this ordinance would be restricted to long-term rental and not be -- not be used as primarily for a home-based business.

Mr. Racine: Yes. That's the direction we're going. That's what I heard from you and it's valid, so I wanted to make sure that's -- we kept going down that track.

Mr. Alueta: Okay.

Mr. Racine: But not restrict a tenant from conducting business within their dwelling.

Mr. Alueta: Okay. What we can do is we can add that to the Mayor's provision, which would basically read, "No accessory dwelling shall be used for occupancy periods of less than six months and shall not be used as a bed and breakfast home, short-term rental home, or transient vacation rental unless such use has already been lawfully established." And then just add on, "Nor shall any new accessory dwellings built under this provision shall be used for the principal purpose of a home-based business." Okay. I can work with Corp. Counsel on the exact language, but I understand the gist. It's basically if we're allowing you to build an accessory dwelling on a smaller lot than currently allowed, that dwelling has gotta be used for long-term rental and it can't be used for the current homeowner, I guess, on the property to just build it and then use that whole building as their home-based business operation. Is that -- okay. Okay, I got you. I understand. Thank you. Is the -- just so I get -- is there a consensus on the Commission that that's comments that you would want, that you agree with that you would want to put forward to the council? Okay. Thank you.

Mr. Rogers: Chip, you got any comment? Public testimony? Not a whole lot of public left now. Sybil, staff recommendation. Joe, staff recommendation.

Mr. Alueta: Okay. I take it you closed public testimony?

Mr. Rogers: It appears to. Yeah.

Mr. Alueta: Okay. On page 6 is our recommendation. Essentially, the Planning Department is recommending approval of the Mayor's proposal to the Maui County Council with the, again, with the proviso of having the council look at the amendments to 19.08 and 19.09, the residential district, and to incorporate that bill within the changes as they're being reviewed. Although that's our recommendation, you don't have to go along with us. The Commission has the following options: They can recommend approval of either of the proposed bills to the Maui County Council; they can recommend approval to either of the bills with amendments to the Maui County Council; they can recommend denial of either of the proposed bills to the Maui County Council; or they can vote to defer action on either of the proposed bills in order to gather more specific additional information.

Mr. Rogers: Discussion? Motion?

Mr. Racine: I recommend approval of both with the recommendations that we've discussed about restrictive language about the primary owner -- you're going to work out the language?

Mr. Alueta: On the home -- yes. Okay.

Mr. Lasua: I'll second that.

Mr. Rogers: Okay, we have a motion, second.

There being no further discussion, the motion was put to a vote.

It has been moved by Commissioner Racine, seconded by Commissioner Lasua, then unanimously

VOTED: to recommend approval of the proposed bill with the amendments as discussed.

Mr. Rogers: It's unanimous.

Mr. Alueta: Thank you very much. I appreciate your time today.

Mr. Rogers: Thank you, Joe.

Mr. Yoshida: Okay, which brings us to Communications, Mr. Chair, unless you want to take a short break?

Mr. Rogers: Let's get it done.

Mr. Yoshida: You're just going to power -- or you want to power through?

Mr. Rogers: Yeah. I do. Anybody object? Keep on rolling.

Mr. Yoshida: Okay, seems like you want to power through.

Mr. Yoshida read the following agenda item into the record:

E. COMMUNICATIONS

1. **MR. WILLIAM SPENCE, Planning Director, transmitting a bill to amend Chapter 2.80B Maui County Code relating to land use designations in the community plans. (W. Spence)**

The Planning Department will transmit the Molokai Planning Commission's comments on the proposed legislation to the Maui County Council.

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

Mr. Yoshida: And the department thought it would be a good time to discuss the role of the community plan in relation to zoning, or zoning in relation to the community plan as you embark, next month, on your decision making on the Molokai Community Plan update, so with that, I'll turn it over to Planning Director, William Spence.

Mr. Spence: Good afternoon, Commissioners. I'm Will Spence. I don't get over here as often as I would like, but I think as we pick up the community plan, I hope to see you more often.

This particular bill, this is before the County Council right now, it's not really a land use bill, but what it does is affects the way that the community plans are administered, and so the Planning Department voluntarily is taking this to the Commission for your input and just, you know, see if you have any comments, whatever. The -- on Maui, the first time this was introduced, it raised a lot of controversy and there was a lot of misunderstanding of what this bill was, so I thought -- and actually had a couple members of your community fly over to Maui to testify to that effect, so it's kind of surprising, you know, we have a couple members of the public here and maybe they'll testify on it, I'm not sure, but -- but I thought we'd come where people, you know, had some concerns about it.