

PLANNING AND SUSTAINABLE LAND USE COMMITTEE

Council of the County of Maui

MINUTES

July 9, 2020

Online Only Via BlueJeans

CONVENE: 9:02 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Kelly Takaya King
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Keani N.W. Rawlins-Fernandez (in 10:55 a.m.; out
12:00 p.m.)
Councilmember Yuki Lei K. Sugimura

STAFF: Ana Lillis, Legislative Analyst
Alison Stewart, Legislative Analyst
Laksmi Abraham, Legislative Analyst
David Raatz, Supervising Legislative Attorney
Richard Mitchell, Legislative Attorney
Clarita Balala, Committee Secretary
Jean Pokipala, Council Services Assistant Clerk

Kate Griffiths, Executive Assistant to Councilmember Kelly
Takaya King

ADMIN.: Mimi DesJardins, Deputy Corporation Counsel, Department of
the Corporation Counsel
Michele McLean, Director, Department of Planning
Jordan Hart, Deputy Director, Department of Planning
Tara Furukawa, Planner, Department of Planning
Linda Munsell, Deputy Director, Department of Housing and
Human Concerns
Clyde "Buddy" Almeida, Housing Administrator, Department of
Housing and Human Concerns
Jessica Crouse, Assistant Housing Administrator, Department of
Housing and Human Concerns
Jordan Molina, Deputy Director, Department of Public Works

OTHERS: Bruce Purvis
Scott Shapiro

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

Sandra Duvauchelle, Lehua Builders, Inc.
Howard Kihune, Aina Lani Pacific, LLC
Jeff Kihune, Aina Lani Pacific, LLC
(8) additional attendees

PRESS: *Akakū: Maui Community Television, Inc.*

CHAIR PALTIN: . . .*(gavel)*. . . Aloha. Welcome to the Planning and Sustainable Land Use Committee meeting of July 9, 2020. The time is now 9:02 a.m. Will the meeting please come to order? And if I can ask everyone at this time to please silence your cell phones or any other noisemaking device.

My name is Tamara Paltin, and I'm the Chair of the Planning and Sustainable Land Use Committee. With us today we have my Vice-Chair Shane Sinenci from East Maui.

VICE-CHAIR SINENCI: Aloha kakahiaka kākou mai Maui hikina hau`oli o wau ma `ane`i. Good morning from Hana, is happy to be here.

CHAIR PALTIN: Aloha kakahiaka. Happy to have you. And we have Councilmember Mike Molina.

COUNCILMEMBER MOLINA: Aloha, Madam Chair. Blessings to you, my colleagues and everyone else. And a big shout out to the Maui Fire Department and Maui Police Department for doing just a fantastic job containing that fire yesterday, that occurred the previous night, and preventing a lot of property damage and loss of life. I mean, these folks are our heroes, and we love them, and they're out there putting their lives on the line 24/7. So mahalo to all of them. Thank you.

CHAIR PALTIN: Aloha. True, true. And Skill Village, they made that big fire block around it, so that was awesome. We also have Council Chair Alice Lee. Aloha kakahiaka.

COUNCILMEMBER LEE: Madam Chair, we say in Korea, and to all of our Korean friends on Maui, Annyeonghaseyo. Annyeonghaseyo.

CHAIR PALTIN: Annyeonghaseyo to you too.

COUNCILMEMBER LEE: Thank you.

CHAIR PALTIN: And I received word that Council Vice-Chair Keani Rawlins-Fernandez will be about thirty minutes late today. So we will await her arrival. We also have Councilmember Kelly King from beautiful outside South Maui.

COUNCILMEMBER KING: Aloha kakahiaka, Chair. Yes, I'm taking a page out of your book and enjoying the beautiful outdoors. I don't hear any chirping birds so far, but if I do I'll go on my headset.

CHAIR PALTIN: Awesome. Awesome. Hopefully it doesn't rain, or maybe. . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: Oh, it's a pretty good bet in South Maui that it won't.

CHAIR PALTIN: And last, but not least, we have Councilmember Yuki Lei Sugimura, looks like from the building.

COUNCILMEMBER SUGIMURA: Yep. So good morning, everybody. I just want to also commend the Fire and Police Department, all the Emergency Management. I'm sure that everybody on our team was working last night. As I drove to the building, Haleakala Highway, I was surprised. Yesterday I saw the fire on the Kihei side. And actually, where it burnt the most is on the Haliimaile side. So Mike, they were relatively deep into your district about Skill Village and having to do the fire break. But it was pretty amazing. The drive home was pretty amazing last night too. So commending everybody. I stand by you, Mike, what you just said. And I want to thank also everybody in the Administration, who I know was also working in MEMA. So anyway, good morning, everybody from the County Building. Nice to see you all.

CHAIR PALTIN: Morning. And today with us, our non-voting Committee Members are Riki Hokama and Tasha Kama. They're with us in spirit because they're not here, but they're welcome to join at any time. From the Administration, Corporation Counsel...Deputy Corporation Counsel Mimi DesJardins. Good morning.

MS. DESJARDINS: Good morning, everybody. Hi.

CHAIR PALTIN: Hi. And from the Department of Planning, we have the Deputy Director Jordan Hart. Good morning. And also, Planner Tara Furukawa. Good morning. And from the Department of Housing and Human Concerns, we have Deputy Director Linda Munsell.

MS. MUNSELL: Good morning, Chair.

CHAIR PALTIN: Good morning. And also, Buddy Almeida is with us as well. Good morning.

MR. ALMEIDA: Good morning, Chair.

CHAIR PALTIN: Morning. From Public Works, we have Deputy Director Jordan Molina, who should be joining us probably after the public testimony. And from Kilohana Makai representatives, we have Sandra Duvauchelle from Lehua Builders, Incorporated. Good morning.

MS. DUVAUCHELLE: Good morning, Chair and Councilmembers.

CHAIR PALTIN: Good morning. As well as Howie Kihune from Aina Lani Pacific, LLC. Good morning. Looks like he's joining...in the process of joining.

MR. H. KIHUNE: Good morning.

CHAIR PALTIN: Good morning.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MR. H. KIHUNE: Good morning. Thank you.

CHAIR PALTIN: Good morning. And we also have Jeff Kihune from Aina Lani Pacific, LLC as well.

MR. J. KIHUNE: Good morning, everybody.

CHAIR PALTIN: Good morning.

MR. J. KIHUNE: Aloha.

CHAIR PALTIN: Aloha. Our Committee Staff with us today, we have Clarita Balala, the Committee Secretary. Good morning. As well as Jean Pokipala, Council Services Assistant Clerk.

MS. POKIPALA: Good morning, guys. Good morning.

CHAIR PALTIN: Good morning. And Legislative Analyst Ana Lillis.

MS. LILLIS: Good morning, Chair.

CHAIR PALTIN: Oh, we got plenty today. We got also Legislative Analyst Alison Stewart. Good morning.

MS. STEWART: Good morning.

CHAIR PALTIN: One of our newest Legislative Analysts, Laksmi Abraham. Good morning.

MS. ABRAHAM: Good morning.

CHAIR PALTIN: And Legislative Attorney Richard Mitchell. Good morning.

MR. MITCHELL: Good morning, Chair. Good morning, Committee Members.

CHAIR PALTIN: Morning. Okay. So today we have a reconvened (*sic*) agenda item, PSLU-56, Change in Zoning for the Proposed Kilohana Makai Workforce Housing Project in Kihei. Let's see, how many...it looks like we have eight folks signed up to testify. So I'll go through the spiel.

Begin with public testimony. Oral testimony via phone or video conference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans meeting link as noted on today's agenda. Testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-408-915-6290 and entering meeting code 944504421, also noted on today's agenda. Written testimony is also encouraged by sending your comments to pslu.committee@mauicounty.us.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

Oral testimony is limited to three minutes. If you're still testifying beyond that time, I will kindly ask you to complete your testimony. When testifying, please state your name. If you are testifying on behalf of an organization or are a paid lobbyist, . . . *(inaudible)* . . . Staff will post a link to the testifier's log in the chat so testifiers will be able to see where they are on the list. However, please be mindful of the use of chat during the meeting. The chat should be used for items on the agenda and should not be used to provide testimony or chat with other testifiers.

If providing testimony, please be courteous to others by muting your microphone while waiting for your turn to testify. Participants who wish to view the meeting only, without providing testimony, please view a live cablecast on *Akakū* channel 53. You can also visit mauicounty.us/agendas to access live and archived meeting videos.

I remind Committee Members, Administration, and the public to please be patient with us as we continue to navigate through this new platform. Members, I'd like to proceed with oral testimony. Staff has been monitoring people joining today's meeting by phone and by video, and we will do our best to take each person up in an orderly fashion.

So the first person signed up for testimony today is Tim Mead. Tim Mead, are you there? Tim Mead, if you would please unmute yourself. Looks like you're muted on your end. I can't unmute you. You'll need to press...click on that little microphone thing. Are you wanting to provide testimony, Mr. Mead? Okay. Maybe not. We can come back to Mr. Mead.

Let's see who's next on the list. Will the testifier with the phone number ending in 0530 please unmute yourself?

COUNCILMEMBER KING: Chair, point of. . .

CHAIR PALTIN: Yes, Member King?

COUNCILMEMBER KING: I just wanted to maybe note if they have problems that they should put, you know, write in the chat box if they're trying to . . . *(inaudible)*. . .

CHAIR PALTIN: Okay. Testifier ending in 0530. Please state your name and begin your testimony.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. PURVIS: Yes, this is Dr. Bruce Purvis. Can you hear me? Hello?

COUNCILMEMBER KING: Yes, we can hear you.

MR. PURVIS: Yes. Actually, I just phoned in to listen today, but what I had found is that callers have to unmute themselves not by clicking the microphone, but to click star four.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

So if Tim Mead is still on the line, if he hasn't clicked star four, that might work for him. Otherwise, I just wanted to listen in today. Thank you.

COUNCILMEMBER KING: Chair, you're muted.

CHAIR PALTIN: Thank you, Mr. Purvis. I don't see Mr. Mead as a telephone caller. He's connected by computer. We can try one more time. Mr. Mead? Do you want to unmute yourself, Mr. Mead? Okay. That's not going to happen, I guess.

Next up we have Mr. Scott Shapiro. Are you there, Mr. Shapiro?

MR. SHAPIRO: I think I'm here. Can you hear me?

CHAIR PALTIN: Yes.

MR. SHAPIRO: All right. Well, by default, I'm the first testifier, I guess. So good morning, everybody. Thanks for listening to testimony today. My name is Scott Shapiro. I'm testifying on behalf of myself. And I agree, a shout out to the Fire Department and all the first responders to that fire, it was a big challenge that we're facing.

First off, I wanted to...this is on PSLU-56. I wanted to first thank the developer, Councilmembers King and Paltin for having and attending meetings with the neighborhood boards and creating two online forums for discussion for this development. So thank you. This outrage has allowed people to voice their thoughts on how to make this a welcome development. As far as I can tell from attending most all of these meetings, we all want more affordable housing, but we all come from different perspectives.

I've boiled down what I can see five desires of the Committee, so five points to make this project a nice addition to South Kihei. There were more that I could add, but I'm going to keep it at five.

The most important, Number 1, no ohanas. This is probably the biggest concern in the community. It decreases traffic, parking density and brings the development more in line with the surrounding neighborhoods. The developer said many times in the meetings he does not care to build these, but I think he feels like the County is making him provide a space because of the law that's on the books. All the neighborhoods have stopped these within their CC&R's. So I hope that you can make this a conditional approval that no ohanas are allowed, and I think he'd be fine with it.

Number 2 are the ingress and egress points for the neighborhood. Right now, one of these is directly across from Ponana. It sounds like the best alternative would be to move this ingress/egress between Ponana and Ahekololo Streets. So it would basically divert traffic from going straight up Ponana. People would have more choices. The second part is having a secondary ingress/egress either onto Kilohana Drive, if that's available. And I know the developers are working on this, so hopefully that'll work. But if not, it has to be onto South Kihei Road somewhere. That would stop, again, concerns

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

of the neighborhood that all the traffic is going to be pouring up those streets. So I think either of those would be a welcome addition.

Number 3, providing walkthroughs. Providing a walkthrough at the bus stop across from the Mana Kai entrance road. A four-foot wide walkthrough would be one place, and a second place would either be on the Kilohana Drive extension if that opens up or the South Kihei Road entrance, somehow getting there from that end of the . . . *(timer sounds)*. Is that my time? You're muted.

CHAIR PALTIN: Yes. That's the time. Can you please conclude within thirty seconds?

MR. SHAPIRO: Sure. So two other points. Number 4 is landscaping; provide dense, no see through barrier or landscaping along Wela Street. Wela Street walking and driving traffic would look directly into the backyards of these residents. This would provide for security and privacy of the new residents of this new development. Mr. Kihune has said yes, landscaping is possible, I just want to make sure it's thick enough.

And then Number 5 is create a well-funded homeowner association. That's really the biggest thing. I do have one thing on the sewer lift station that's there if anybody has a question on that. Thank you.

CHAIR PALTIN: Thank you, Mr. Shapiro. Members, questions? Vice-Chair Sinenci, followed by Member King.

VICE-CHAIR SINENCI: Yeah. Thank you, Mr. Shapiro. Yeah. Go ahead and provide your thoughts on the sewer.

MR. SHAPIRO: Okay. Thank you. So it was brought up to Mr. Kihune by me at one of the meetings there's a sewer lift station, and the homes are going to be surrounding that sewer station; lot number 14, which looks like that might not be a house right now. And then on the other side of the sewer lift station is potentially a drainage lot. Walking that area a lot, that sewage lift station on calm wind days smells to high heaven. It's really a bad, bad smelly place. And I can't imagine living right close by to that.

So I know Mr. Kihune said that the County has updated some lift stations that gets rid of that smell. So I would either, you know, make sure that the Department of Public Works takes a look at that to see if they could do anything with that, or maybe the developer can add that as part of his project, just to be aware. Yeah. That's all.

VICE-CHAIR SINENCI: Mahalo, Mr. Shapiro. Thank you.

CHAIR PALTIN: Member Sinenci, any further questions? Member King.

COUNCILMEMBER KING: Thank you, Chair. So Mr. Shapiro, did you get a chance to look at the additional proposed conditions? I don't know, I think they were just posted this morning, so I'm not sure if you had a chance to look at them by Member Paltin and myself, and some of them are overlapping.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MR. SHAPIRO: Yeah. I did. I don't have them in front of them right now. I'm happy to pull them up and then come back later if you want...if there's anything there. But I didn't see...I was good with all of those. Basically, everything was, you know, the more conditions the better, I think. The one thing that was lacking was, you know, any discussion about sea level rise on South Kihei Road in the future. I have a huge concern about that. What is going to happen to South Kihei Road without, you know, regard, you know, in regard to sea level rise?

And so I just fear that in the future, you know, we should be planning for that. One thought I did have on that, if you can just abide my one second here. Those houses that are going to be along Wela Street, the backyards. If there was enough of a buffer zone, if there was space between Wela Street and the homes, Wela Street could potentially be widened enough to handle South Kihei Road in the future. So somebody may want to look at that bypass.

COUNCILMEMBER KING: Okay. Well, thank you. Yeah, that was...that could be an issue like when they tried to widen Kenolio and take away our front yards after the fact.

MR. SHAPIRO: Yeah.

COUNCILMEMBER KING: Okay. Thank you, Mr. Shapiro.

MR. SHAPIRO: Thank you.

CHAIR PALTIN: Any other further questions from any of the Members?

Seeing none, our next testifier has signed in with the name of Wayne. Wayne, can you please unmute yourself if you wanted to give testimony today, or chat if you are having problems unmuting yourself. You're muted on your end so you'll have to unmute yourself. Okay. Well, moving right along. We got next up, William Snipes. Mr. Bill Snipes. Are you here to provide testimony this morning? If so. . .

MR. SNIPES: No, Chair. Just listening in. Thank you.

CHAIR PALTIN: Okay. Awesome. Thank you, Mr. Snipes. Next we have Kalei. Kalei, are you here to give testimony today? I see him still on the call. Is there a Kalei? Maybe a lot of people just listening in. Looks like he disconnected. Mike Moran. Good morning. Are you here to give testimony? If so, please unmute yourself and you would do that pressing the little microphone on the side. No? Okay. Next up, we have Kainoa. Kainoa, are you here to give testimony today? If so, please unmute yourself. There's a little microphone on the side. Oh, he's not here for testimony, he put in the chat. Thank you, Kainoa, for letting us know.

Next up, it says Jeff. I'm not sure if that was for Jeff Kihune. I only see one Jeff on the call, and that's probably Jeff Kihune. So he's with the project.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MR. J. KIHUNE: Chair. Yeah, that's not for me. It wasn't me. Sorry.

CHAIR PALTIN: Okay. No problem. Okay. Marlayna, are you here to give testimony today?

MS. MARLAYNA: Not right now. Thank you.

CHAIR PALTIN: Okay. Thank you. Thanks for letting us know. And the last one on the list that I seen was Mike, with no last name. Mike, are you here to give testimony today? Just let us know or unmute yourself. Oh, he said no in the chat. Thanks for letting us know.

All right. That was fast. All right. So is there anyone else at all out there wishing to testify? Please just unmute yourself within the next five to ten seconds and let us know. Okay, I'm not hearing anyone. Seeing that there are no more individuals wishing to testify, without objection, I will now close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR PALTIN: Thank you. Members, any objection on receiving written testimony into the record?

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR PALTIN: Okay. Awesome. So received.

. . .END OF PUBLIC TESTIMONY. . .

**PSLU-56: CHANGE IN ZONING FOR THE PROPOSED KILOHANA MAKAI
WORKFORCE HOUSING PROJECT (KIHEI) (CC 20-191)**

CHAIR PALTIN: I can see everybody today, but if...in case I don't see you, raise your hand, just unmute yourself, and say my name and I'll recognize you. Okay? I guess I kind of have it easier since we're only a seven-member Committee, I can see all of you guys on my screen at once.

So today's agenda is PSLU-56, Change in Zoning for the Proposed Kilohana Makai Workforce Housing Project in Kihei. The Committee is in receipt of County Communication 20-191 from the Planning Director, transmitting a proposed bill entitled, A Bill for an Ordinance to Change the Zoning from Open Zone to R-1 Residential District for 6.943 acres in Kihei, Maui, Hawaii, identified as Tax Map Key (2) 3-9-004:141. The purpose of the proposed bill is to change zoning from Open Zone to R-1 Residential District Conditional Zoning for approximately 6.943 acres at South Kihei Road and Kilohana Drive, Kihei, Maui, Hawaii.

So this is a continuation. We had a couple Committee meetings about this, and then we went to the community, had a couple community meetings...not we did, but the

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

developer and Member King, and the Chamber of Commerce, and got some good feedback. And so now we're just coming back after the feedback.

At this time, I'd like to ask Deputy Director Jordan Hart, do you have any opening comments that you'd like to make at this time?

MR. HART: Chair, thank you very much. The opening comments I'd like to make is that, this first step is a land use designation step. The project is located within the special management area, which involves a robust community outreach process, agency comment process, and review prior to the authorization of any sort of development by the Maui Planning Commission. So I want to encourage the Councilmembers to try and leave the project as open to its potential as it can be, and let it be defined through the more robust community outreach process that occurs through SMA review with the Planning Commission, rather than making final project configuration decisions right now before there is an opportunity to flesh these things out further.

I would also like to say that ohanas are a very important facet of the affordable housing portfolio for the County; and that whenever there are opportunities to provide them, I think that the County should take those opportunities. We just recently revisited our Accessory Dwelling Unit ordinance, and increased the capability of providing those units. And so I think that this is an example of how that potential can be realized.

And I think that's the extent of what I want to say for now. I do want to point out that as a switch of the agenda, the State Land Use Commission. So I will be going to the State Land Use Commission meeting now, and Michele McLean will be coming in to take my place. And I think that she's just arrived now.

CHAIR PALTIN: Thank you. Member King, I was going to just ask for all the departments to make opening comments, and then let Members just ask any department that they want, if that's all right.

COUNCILMEMBER KING: Okay. I just wanted to ask Mr. Hart before he leaves about one of his statements.

CHAIR PALTIN: Okay. Go ahead.

COUNCILMEMBER KING: Okay. Thank you, Chair. Because you're asking, Mr. Hart, for us to approve something which will be...I just want to get your agreement, this is our final approval for the Council. So once...if we do this approval, we have no input after this on behalf of the community.

MR. HART: Sure. And let me try to provide context for the Councilmembers of why I would say something like that. If you look at a lot of the way that the land use approvals happen in the County of Maui, there's conditional zoning. So the County of Maui has our zoning code, and it provides for a set of uses that are... had been determined by the Council to be appropriate uses for that zone. But what I've seen happen in my work experience in the past is that when Council tries to foresee how things should be

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

handled in a certain location over the long term, it's pretty difficult because things change. The community changes around the property, but it'll be encumbered with this ordinance that limits how things can happen.

So anyway, for that reason, I would encourage you to leave the existing criteria of the R-1 zoning and have it take its effect as it had been intended to, rather than trying to pre-plan a project at the Council level, which becomes in perpetuity unless they come in for a different change in zoning later. And that's just a philosophy opinion of my own that I wanted to share.

COUNCILMEMBER KING: Okay. So that's your own philosophy. Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you, Member King. I just wanted to remind everyone that is not to be used to make a running commentary, and we can remove you from this meeting. There's options to watch on *Akakū*, or also on mauicounty.us. So we'll be strictly enforcing that if you cannot control yourself. We won't continue to allow that. So that's kind of the way it is here. Thank you.

Okay. So moving on, may I please get some opening comments from the Department of Housing and Human Concerns.

MS. MUNSELL: Good morning, Chair, and thank you for allowing me to be here today. My name is Linda Munsell. I'm the Deputy Director for the Department of Housing and Human Concerns. And Kilohana Makai Project is a much needed affordable housing project in an area that most of our workforce would never be able to afford to live. You've all heard me say before, "The 2019 Hawaii Housing Planning Study," which was just completed a few months ago. But it showed a very definite need for housing and the income levels that this developer is proposing. And it also clearly showed that our workforce homebuyers prefer single family homes, such as these that are being proposed by the developer.

I do want to express some concern about the addition of conditions that...and I know that one of the questions that we got is to address this item here. But I do want to express some concern about adding conditions that conflict with the requirements that are outlined in the law that the Council actually passes. Developers look to the law for guidance as to the expectation of the County for the developments. And they submit their projects in good faith, based on the laws that the Council pass. When we're changing the laws in the middle of a project, or adding conditions to the project, it actually creates an environment of uncertainty where the developers no longer know what to expect when they come to you and ask for things.

So I just wanted to express that. I wanted to tell you that we do appreciate all the work that you do, and we really like this project and would like to see it move forward. And of course, we'll be here to answer questions if you have some. Thank you.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Thank you, Ms. Munsell. Is...I'd like to ask, is Deputy Director Jordan Molina on the call from Public Works? Thank you. Hi. Any opening comments?

MR. MOLINA: Hi. Good morning, Chair and Members.

CHAIR PALTIN: Oh, we just lost him. It shows that he's still connected. Okay. We'll come back to Public Works while he works out his technical difficulties. Any opening comments from the project representatives today? Either of the Kihunes or Ms. Duvauchelle, did you have any opening comments you wanted to make?

MR. H. KIHUNE: Thank you, Madam Chair. I think we're just going to wait to hear all the departments. And then if we do, then we'll chime in at the end, if that's okay with you?

CHAIR PALTIN: Okay. And I see...and thank you, Mr. Kihune. It looks like Public Works' BlueJeans crashed on him. So Members, any questions for Housing and Human Concerns, or Planning, or the project representatives at this time, while we wait for the Public Works to get back on?

Oh. Sorry, do you mind? Public Works just got back on. Can we hear his opening comments and then we'll go back? Thank you. Go ahead, Mr. Molina...or Deputy Director Molina.

MR. MOLINA: All right, let's try this again. Sorry about that. Jordan Molina here with the Department of Public Works. I guess just a few things. We had not responded to the Committee's correspondence from June 10th.

So real briefly, there were several questions about what construction permits would be affected by the change in zoning. The response is, there is no effect on the construction permits. The change in zoning...I guess, unless you guys are going to require certain or impose certain requirements that might be related to a permit, the change in zoning has no effect on which permits apply to the project.

There's a question about the storm water retention basins. So we have very robust drainage rules, the gist of which is that developments are not supposed to increase runoffs. So there's criteria which the designers have to meet; but as far as the specific technologies and, you know, yeah, the engineer technologies, we don't specify. We allow the flexibility of the applicant and the designer to figure out what works best for their project and for their needs.

There was another question about iwi. Typically, the process is inadvertent discoveries, which means discoveries that were not...or historic properties that were not previously known get reported back to SHPD, who then makes a determination on the integrity of the find, and also what the mitigation would be.

And then there's a question about ingress/egress. At this time, Ala Koa and Wela Street are private roads. Wela Street is not even a road, it's just an easement. So from the Department's standpoint, ideally less connections to our roads is better to keep South

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

Kihei and Kilohana flowing more smoothly, but we would want to see a traffic study done for any new connections. The assessment that was provided only looked at Ala Koa; and considering the build out of this project with ohanas and also the neighboring...or the State's development across the street at the KIRC facility, the overall traffic impacts were minimal for the assessment. And so no additional road improvements wouldn't be required. For the most part we concur, but yeah, we haven't seen any detailed study on Wela Street. And if Wela Street connects to Kilohana, we would want to see that, we would want the recommendations from the traffic report come out for that.

Lastly, there's a question about community facility district. We don't oppose that. I mean, it's really a burden on the developer to go through the process of getting one created and all the questions that need to be answered to impose one. But it is...would help as a financing tool if these conditions blow up the cost of the project. That is one way the County can help, you know, help them get through the financing, is through the CFD.

I did briefly browse through one of the conditions. There's one that talks about the use of permeable pavement. Again, the drainage rules would allow something like permeable pavement and depending on how the calculations pan out, whether it's viable or not. But I would just comment that permeable pavements are maintenance intensive in order to keep them functional. I'm not sure if you want to impose that kind of maintenance burden on an affordable housing project or not.

And I believe that's all we have from Public Works' perspective. Thank you.

CHAIR PALTIN: Thank you, Deputy Director Molina. I really appreciate you being able to answer the questions today.

Members, at this time, I will open it up for questions to any of the Departments or the project representatives. I think I saw Member King and then Member Sugimura, and then Member Molina's hands up. Is that correct?

COUNCILMEMBER KING: Yes.

CHAIR PALTIN: Okay. So, we'll proceed in that order. Member King, go ahead.

COUNCILMEMBER KING: Okay. Thank you, Chair. My first question is for the Housing Department, Ms. Munsell. And I just wanted, you know, you made a statement about developers don't know what to expect. And do you understand that that's kind of the reason we encourage developers to go to the community first so that they will know what to expect, they will know what concerns the community has, and that this particular project did not happen that way?

MS. MUNSELL: Thank you for the question. Actually, what I'm referring to are the changes to...that you're trying to make that are not in accordance with 2.96. So. . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: I understand that. But what I'm saying is that the changes result from community concerns, and so, you know, that's my big push is to get developers to go to the community. And the ones that have been very successful and been able to live with the conditions because they've gotten community support. But this project did not happen this way.

MS. MUNSELL: I appreciate that. I guess I'm not seeing that the community was asking for a thirty-year deed restriction. I'm not sure that the community was asking that the unit be sold in the same AMI category, or whether the community was actually addressing the appreciation model should be a 3 percent model.

So I'm staying in my lane. I'm, you know, there are a lot of planning and other things that I'm not an expert on. But when I'm looking at some of the change in zoning conditions that are being proposed that do have to do with Housing, then I do become concerned. And yeah, if the public is insisting that we have a much longer deed restricted period, then that's something that I think is coming out pretty consistently. And the Council should address that through a change in the ordinance perhaps, rather than individually on every project. Because I think it makes a very uncomfortable and very insecure feeling when a developer, even of a wonderful project like this that's going to be 100 percent affordable, doesn't know what to expect when they come before you. And that's my point in bringing that up. Thank you.

COUNCILMEMBER KING: No, I appreciate that. But I think that's one of the reasons why developers try to talk to Councilmembers first, and this one just kind of came out of the blue from a different Councilmember that doesn't live in this district. So thank you for that. But...so for Public Works, Chair, can I ask questions of Mr. Molina?

CHAIR PALTIN: One more question, and then let's give the other Members a chance.

COUNCILMEMBER KING: Okay. So Mr. Molina, are you there? Oh. Okay. I know you're having some connection problems. Yeah. I had several questions, but I'll start with this one. On the issue of Wela Street, because all the community seems to agree that we need a second egress. And is it possible to keep that street...to use that as an egress and still keep it private? I know you have other concerns, but one of the issues that came up was keeping that street private because the developer wanted people to be able to park on that road. And so there's not the same restrictions for parking if it was public as keeping it private. So would it have to become public if it was an egress?

MR. MOLINA: No, there's no requirement for projects to dedicate their roads.

COUNCILMEMBER KING: Okay.

MR. MOLINA: I guess ideally they would want to in the big scheme of things and the maintenance cost because now the HOA is going to bear those costs for the road maintenance, as opposed to Public Works. But at this time, Wela Street would remain private, Ala Koa would remain private, and the internal. . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: Oh. We lost him again.

CHAIR PALTIN: Okay. Your question got answered, that it's not necessary that it needs to be dedicated.

COUNCILMEMBER KING: Okay. I have other questions, but I'll yield for now.

CHAIR PALTIN: Okay. Ms. Sugimura, I hope your question wasn't for Public Works.

COUNCILMEMBER SUGIMURA: So I'm just curious...for Linda Munsell. Thank you very much, Linda, for your hard work and commitment to Housing. So you mentioned 2.9, the 2019 Housing Study. Can you tell us what the levels are, the AMI levels, from that Housing Study? Sorry about that. Or we can come back to you.

MS. MUNSELL: Yeah. Thank you for the question. I actually do happen to have that. So this project is proposing units between 80 and 140 percent AMI. And according to the Housing Study...and of course, we rely on these developers, private developers to provide those units. We try not to have to subsidize them. So, for those units, it looks like we need something like fifteen hundred units in those categories, between 80 and 140 percent AMI.

COUNCILMEMBER SUGIMURA: Okay. So those were the exact targeted housing units that were needed...I'm sorry, AMI. So that's great because that's what this project is doing for income levels for single family. And I hear your concerns about us following 2.96, so thank you for expressing that. I guess we also heard it from the Planning Department in their opening with Jordan Hart.

And I guess I had one for Jordan Molina, so I'll wait until Public works comes back on. Thank you.

CHAIR PALTIN: Thank you, Member Sugimura. Oh, he's back on. Go ahead. Your second question, Member Sugimura.

COUNCILMEMBER SUGIMURA: So thank you for...permeable pavement. So you're saying this was suggested by one of us, and you said it would be high maintenance and you don't recommend that. If the roads then were turned over to Public Works, are you saying though that you would have to provide that?

MR. MOLINA: Yeah. I believe it was in the list of conditions recommended by...or transmitted by Councilmember King.

COUNCILMEMBER SUGIMURA: And it's not something that we do. It's not a standard for Public Works that. . .

MR. MOLINA: Correct. I believe there is one project in the Kihei area that did install permeable pavement, but those roads remain private. We don't have any such permeable pavement right now. That would be a new maintenance responsibility we'd have to become

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

equipped for. But generally, with these low impact development technologies, you know, the intent is great, but the maintenance hasn't quite caught up and so they can be maintenance intensive. And the maintenance is critical because if they're not maintained, they don't function as designed, and the whole intent of having a low impact facility doesn't work.

COUNCILMEMBER SUGIMURA: Okay. Thanks for that explanation. That's all.

CHAIR PALTIN: Thank you, Member Sugimura. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Thank you. I have a question for Director Munsell.

CHAIR PALTIN: Go ahead. Ms. Munsell.

COUNCILMEMBER MOLINA: Good morning, Director.

MS. MUNSELL: Morning, Sir.

COUNCILMEMBER MOLINA: Morning. The developer, as to my understanding, will receive 21 of the 28 units as credits. And if ohana units are developed by the developer and used as affordable rentals, will the developer receive credits for those units as well?

MS. MUNSELL: Thank you for the question. The number of credits that are allowed to the developer is actually defined in their workforce housing agreement. So in that workforce housing agreement, we're indicating that he'll be allowed 21 credits. It won't matter if he builds additional ohanas, the credits are 21.

COUNCILMEMBER MOLINA: Twenty-one. Okay. Very good. Thank you. And Madam Chair, can I ask Director Molina a quick question?

CHAIR PALTIN: Sure thing.

COUNCILMEMBER MOLINA: Thank you. Good morning, Director. I like your last name, by the way. Anyway, first time I get a chance to ask you a question. But following up on the permeable asphalt question from Member Sugimura. When you say, "maintenance intensive," is that something that's going to have to be, you know, once the project is built and if this condition is allowed, the cost of future maintenance that will be, I guess, the responsibility of the property owners then? They all have to...homeowners association; I mean, how would that work? Because I don't believe the developer would be responsible for long term future maintenance of this. Would I be correct in that?

MR. MOLINA: Yeah. Typically, the common areas get turned over to an HOA. The HOA would have to be responsible for that maintenance.

COUNCILMEMBER MOLINA: Yeah.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MR. MOLINA: Yeah. Essentially these pavements get clogged up and require cleaning in order for them to remain permeable.

COUNCILMEMBER MOLINA: Okay. Is it. . .

MR. MOLINA: So depending on the kind of pavement technology they choose, will have its own proprietary cleaning requirements and equipment, which they will have to consider in their operation of the common areas.

COUNCILMEMBER MOLINA: Cost wise, any estimates?

MR. MOLINA: It depends on what kind of technology they choose to install. So I can't answer at this point.

COUNCILMEMBER MEMBER: Okay. All right. Thank you. Thank you for the response. Thank you, Madam Chair.

CHAIR PALTIN: Thank you, Member Molina. Member Sinenci or Member Lee, did you have any questions before I go back to Member King?

COUNCILMEMBER LEE: No. Thank you. I have no questions.

CHAIR PALTIN: Thank you, Member Lee. Vice-Chair Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. I did have a question for Jordan Hart, but I think he's off though. I'll wait until he comes back. Thank you, Chair.

CHAIR PALTIN: Oh, I think he did say that Director McLean is available, and I would assume that she could answer questions in a similar manner as the Deputy Director if you wanted to ask Director McLean.

VICE-CHAIR SINENCI: Okay. Thank you, Chair. Yeah.

Director McLean, so you mentioned about going to the Planning Commission for the SMA review. So the difference between the Council today reviewing the project, and the Planning Commission reviewing the project, are there major...in your perspective, what are the major differences between us and the Planning Commission reviewing the project?

MS. MCLEAN: Thank you, Councilmember. That's a great question. There are procedural differences, and there are substantive differences. Procedurally, with the Planning Commission, this would be an SMA major application. And so notification to surrounding property owners is required...property owners within 500 feet, and also publication of the public hearing notice in the newspaper. So procedurally, those things are quite important.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

Substantively, the Planning Commission would be evaluating the SMA major permit with the State SMA criteria. Those are different criteria then the Council looks at when it evaluates a change in zoning. So the Department did its analysis for the Planning Commission to make its recommendation to you for the change in zoning, and those were the criteria that we followed. But that didn't get into the kind of, really, site specific and environmental issues that would be assessed during the SMA review.

So...also, because this is a somewhat unique situation...because when the Council initiated this change, I don't know if there was a particular developer in mind. There might have been, and Mr. Kihune or Ms. Duvauchelle might be able answer that. But usually you have a developer that is the proponent all the way through. And so when Council initiated it and when it went through Planning Commission, there was sort of a general idea of what they were going to do, and they did some sort of 30,000 foot studies of civil, and housing, and so forth.

At the SMA level though, there has to be a very specific site plan because they will be bound to that, and more detailed studies on that plan will be done. So like I said, there are procedural changes, but there are also substantive changes.

VICE-CHAIR SINENCI: Thank you, Director. And would there be traffic mitigation studies as well?

MS. MCLEAN: Yes. The traffic study would be among the studies that they would have to put together for us to process the SMA major permit.

VICE-CHAIR SINENCI: Okay. Thank you for that clarification. Thank you, Chair.

CHAIR PALTIN: Thank you, Mr. Sinenci. That was a very good question. So let's go back to Member King. I think she said she had a couple additional questions?

COUNCILMEMBER KING: Yes, for Mr. Molina. If he's...I know he's been dropping on and off.

CHAIR PALTIN: He's still on. Go ahead.

COUNCILMEMBER KING: Okay. Are you still there, Mr. Molina?

CHAIR PALTIN: Yeah. I see him.

COUNCILMEMBER KING: Okay. Just wondering if he's got audio. Okay. Can you hear? I don't think he's. . .

MR. MOLINA: Yes.

COUNCILMEMBER KING: Oh, okay. So the other questions I have are, have you talked to Parks Department at all about permeable pavement? Because they've been talking about that, and planning that for some of the pavements for the parking lots along this area because of the drainage issues.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MR. MOLINA: No, we have not.

COUNCILMEMBER KING: Okay. That might be...it might help you just to learn more about that. Those are big issues for our community because of runoff along the beach. The drainage rules that you said are very strict, Public Works drainage rules, but there's no specific technology. Is there a requirement for proven technology, or do you...I mean, is there a way that you evaluate the proposed technology for drainage or the proposed drainage to make sure that it's going to work and serve the purpose?

CHAIR PALTIN: Director Molina.

MR. MOLINA: We would rely on the design engineer to provide that analysis and certify that they are sized accordingly. Typically, there's a maintenance program that we also ask them to submit. In general, what happens, people or projects default to basins. Basins address two components of the drainage rules, both the flow is just a volume, as well as the treatment as basins serve to...as sediment basins help remove sediment. So generally, the default becomes a basin because it captured both purposes.

COUNCILMEMBER KING: And do you have the engineer in your office, or are you relying on the developer's engineer?

MR. MOLINA: We would check that the analysis complies with the drainage rules, but the specific technology and the design would be on the professional engineer, which is hired by the developer who will be certifying and stamping the construction plans at the time.

COUNCILMEMBER KING: Okay. So you don't have an engineer in Public Works that has that knowledge that can approve plans that are brought to you?

MR. MOLINA: They would...like I said, they would review to make sure that the analysis was done per the drainage rules. So we're not going to say, you know, Company A's product is approved, and Company B product isn't.

COUNCILMEMBER KING: I don't think that's what I'm asking. I'm just asking if you have somebody on staff that can say, yes, this will work, as an engineer, you know, because I know you have engineers on staff. If somebody would say, yes, this is a valid technology for drainage and it will work in this area.

MR. MOLINA: If it's a new technology, all we can really do is review the analysis, the engineering analysis, to certify that the capacities and the treatment would be adequate. Whether that product is proven and tested, we don't have people that just go around and look at what the newest products are.

COUNCILMEMBER KING: So what happens when this. . .

MR. MOLINA: Then they're going to have to mitigate if the runoff is not being contained.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: Okay. And you guys monitor...your Department monitors that?

MR. MOLINA: Yeah.

COUNCILMEMBER KING: Okay.

MR. MOLINA: So if we get complaints about drainage, we would have to go and investigate.

COUNCILMEMBER KING: Okay. The last question I have is on the CFD. Is that...was that, in your estimation, was that intended for housing developments? Because, you know, my understanding was that the Community Facilities District was intended for special projects, that the community would come together around. I know, the Kahana condos are using it as, you know, to help fund their beach re-nourishment projects. It's been looked at in Maalaea for potential wastewater development projects. So I wasn't aware that it was used to actually fund housing developments.

MR. MOLINA: I'd maybe defer to Planning, who's been looking at it a little more closely. But my sense of it is because the property owners are going to bear the full cost of paying it back; to me, it doesn't seem like we need to limit, per se, what types of projects they undertake. So in this case, if it helps get an affordable housing development built, I don't see why we need to limit those community improvements.

COUNCILMEMBER KING: Okay. Maybe that's a question for Planning.

CHAIR PALTIN: I listed that on my questions to the Department of Public Works because that's how the Waikapu Country Town had intended to proceed with their housing project. Mike Atherton was a big proponent of CFDs to get Waikapu Country Town there. So that's where I had seen it before when we had that discussion there. But, Director McLean. . .

COUNCILMEMBER KING: My discussions with Mr. Atherton was that he was planning...going to try to use that to do his wastewater treatment plant but, you know, not necessarily. . .

CHAIR PALTIN: Wastewater plant, his water, and I believe the Waiale...the roads as well. So I mean...but Director McLean, did you want to weigh in?

MS. MCLEAN: Thank you, Chair. I'm going into Granicus now to look at the correspondence because I'm not sure why the CFD...you just explained why the CFD question came up for this project.

CHAIR PALTIN: Okay. Yes.

MS. MCLEAN: I'm not...that's really the first time that I've heard about a CFD for this. Usually it's for improvements that have a more regional benefit, even though the properties that immediately benefit from the improvement would be the ones to pay the special tax. The improvement itself is a public improvement that benefits on a much broader scale. I'm not really sure that that criteria would apply for this project because it is smaller. That's

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

not to say it's impossible, but I don't know who would be paying the tax to fund that improvement. That wouldn't be clear to me in this case, especially if we're talking about an affordable housing project. We don't want to add that additional cost. So I'm sorry I'm coming in late to this particular issue.

CHAIR PALTIN: Oh, yeah. No problem. When I proposed that question on the June 10th correspondence to Public Works, my intention would be all the surrounding areas that would benefit and were asking for it. So there's, I believe, four surrounding homeowners' associations that were specifically asking for it. So it wasn't my intent only for this developer to be the CFD; I mean, it's everybody that wanted it would benefit from it, and that was my understanding of how CFDs work. It wasn't my intention, in the course of asking that question to the Department, to have the affordable housing developer to be the only entity, but it was just a question to explore the possibility of it.

Because in the discussion that I had with the developer about extending to Kilohana, that seemed like a good idea because of the concerns about sea level rise. And the benefit that I could see was to not only the surrounding homeowners; but in addition, if the sea level rise gets up that high, then that area is somewhat taken care of (*sic*) of, in that they could go up Kilohana Drive and across Wela Street. So that's the reason why I asked the question, and that was my intention in the question, not simply for the affordable housing development, but everyone that would benefit and want it. But, you know, that may be something for the Planning Commission to discuss further, as you said, they look at it in a lot more detail. It was just for my pure knowledge.

COUNCILMEMBER KING: Okay. So...but Ms. McLean, the Community Facilities District isn't something that the Council or the Planning Commission imposes on communities. Doesn't it have to arise from the community coming together, being willing to pay that tax and wanting those? So it would be sort of an after the fact kind of a thing for this area.

MS. MCLEAN: The CFD process can get started either by Council initiative or by the community. I would think it would be the Council's preference for it to come from the community, even though any enabling ordinance, the Council has the authority to initiate it. But the Planning Department doesn't have that authority. The Planning Commission doesn't have that authority. But I would think in this case, you know, particularly with the testimony that's come forward, both prior at the Planning Commission and now with the Council on this project, it would be something you'd want the community to initiate if they wanted that.

COUNCILMEMBER KING: Okay. And so even if the Council were to initiate it, it still requires a vote of the CFD area, doesn't it? My understanding is that we need 55 percent or more of the ownership of the area to vote in favor of it?

MS. MCLEAN: Actually, 55 percent would have to vote against it. It's a very low percentage that if it's a community initiated, then 25 percent of the affected parcels would have to sign that petition. So it only takes 25 percent support to get it going. Then at any... whether it's community initiated or Council initiated, it takes 55 percent to dictate it.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: Okay. Thank you for that clarification. Thank you, Chair.

CHAIR PALTIN: Thank you, Member King. Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Yeah. Thank you. I just have a question for Director McLean related to the correspondence that was sent June 24, 2020 in our Granicus. And attached is the comments from former Planning Director, Mr. Spence. And in it it says, "The order of the recommendations are based on the ease of land use changes required for the parcels offered for development." Of the thousands of parcels in the County, how did this parcel rise to the top as, I guess, a first recommendation? And were there other factors besides ease of land use changes that caused this to be the, I guess, the first choice? I know you were Deputy at the time and it may be hard to, you know, interpret Mr. Spence's comments, but anything to add to that?

CHAIR PALTIN: Director McLean?

MS. MCLEAN: Thank you. With this project in particular, because it's community planned for the use that's a, you know, that's a big plus. And also, because it's infill it's surrounded by other residential development of various densities, and it's ready to hook up to public infrastructure. So those are the factors that went into putting that together. Actually, SMA would work against it because if we're looking for affordable housing, that's just another entitlement step. But that wasn't enough to overcome the positives related to this. So it's...yeah.

COUNCILMEMBER MOLINA: Okay. That's great. And then just your recollection, did that assessment from Mr. Spence include all vacant lands in the County, as far as you recall?

MS. MCLEAN: Gosh. I think so. The request came from the Council, and I believe it asked for lands that were community planned for residential development. The response went a little beyond that because it did look at some properties that weren't community planned, but the Department felt that they were still good candidates. I don't believe it asked for redevelopment opportunities. But I don't think it specifically said vacant, but it takes a lot to propose new development for a property that has some development on it. So that's, you know, there are different considerations if you include those in the mix.

COUNCILMEMBER MOLINA: Okay. And then finally, just the reasons for presenting this information to the Committee, what relevancy does this have to the change in zoning and impacts to the neighborhood, as it relates to this information? Was this more to just to get more additional background for this project and, I guess. . .

MS. MCLEAN: Yes. It was to show that this property has been under consideration for affordable housing development for a while and initiated by the Council. I mean, that's what initiated the process that's in front of you today, but also, the Council back then was interested in the Council being proactive with looking at rezoning opportunities.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER MOLINA: Okay. Great. Thank you for your responses. Thank you, Madam Chair.

CHAIR PALTIN: Thank you, Member Molina. Any Members have additional questions for our resources at this time? Seeing none.

I would like to move on to the amendment summary form that I submitted. It's in Granicus dated July 9, 2020, Proposed Conditions from Committee Chair. If Members could pull that up on your screens. And I'd like to recognize Member Molina, this...many of these started out with his proposed conditions, and then I worked with our Committee Staff to get it in a format that they felt...we all felt comfortable with...they felt, I felt comfortable with. And a lot of these were discussed in our previous meeting.

And I just wanted to make some points that the Ferreira Family Partners, LP are listed as who must do it and that was suggested by Committee Staff because they're the current owners, and if we impose this as conditions, the conditions would run with the land and...regardless of who owns the property. So if that's confusing to anyone, I just wanted to point that out. That's the reason it would...that's how it would be worded in the unilateral agreement. And so that's the reason for that.

Did Members want to take a quick break to read over these conditions, and possibly Member King's conditions as well? And then we can come back and discuss it in more detail. Member King, followed by Member Sugimura.

COUNCILMEMBER KING: Thank you, Chair. Yes. That would be great. But these...so I just want to understand. These include the conditions from Member Molina that we discussed in a previous PSLU meeting? Or are those in addition to the ones that we discussed from Member Molina?

CHAIR PALTIN: So not in its entirety. Some of them I didn't put in because it was already required by law, like 2.96 already covered it. Let's see. Some are in addition. But there is some changes, like I don't think...I think Member Molina had a different thing about accessory dwelling units. So it's not exactly the same as Member Molina's, but we worked with Member Molina's as a starting point, and then there were a couple things taken out.

In my opinion, the things that were taken out were kind of covered by law anyway. For the most part, that it would have been a little bit redundant to put it in as a condition. And then the things that were in there that are changed a little bit was like, you know, kind of form and legality type of things that the Committee Staff recommended.

COUNCILMEMBER KING: Okay. Well, I just was wondering because a lot of yours overlapped with mine too, so we don't have to go through. If we go through yours first, then that will take care of some of mine as well. I just want to make sure that we are encapsulating Mr. Molina's...Member Molina's proposal because we had discussed that and we had, you know, we had kind of massaged that. So...okay.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Yeah. So maybe during the recess we can compare and contrast the three different proposals and then see, Member Molina, if there is anything that I missed off of your conditions that you really wanted in there, please let us know.

COUNCILMEMBER MOLINA: Okay. Will do, Madam Chair.

COUNCILMEMBER KING: Okay.

CHAIR PALTIN: Members. Was that all, Member King?

COUNCILMEMBER KING: Well, actually I just wanted to also...well, I don't know if he's still on, but I did want to thank Mr. Bill Snipes for helping us out with the town hall meeting. And I know he was on during the meeting, but he didn't testify, but I just wanted to acknowledge him. He's been a really great community liaison for the South Maui area.

CHAIR PALTIN: Thank you, Mr. Snipes. Member Sugimura, did you have your hand up for a question?

COUNCILMEMBER SUGIMURA: Basically, that was a clarification that I wanted. So we don't...and I want to hear from the developer too. So as we go through this, I would love to hear from what the Kihunes have to say. Thank you.

CHAIR PALTIN: Okay. So at this time, any objections to a 15-20 minute recess? Do you guys need longer than that? A lot of it is stuff that we went through or it was mentioned in public meetings. So what do you guys want 15?

COUNCILMEMBER KING: Twenty minutes will be good if we're going to compare.

CHAIR PALTIN: Okay, 20 minutes.

COUNCILMEMBER KING: So, yeah.

CHAIR PALTIN: So it's 10:15 right now. Let's come back at 10:35.

COUNCILMEMBER LEE: Okay.

MS. MCLEAN: Chair, could I jump in for a quick second? I just wanted to let Members know, I'm sure you'd all be interested in this. The reason that I joined the meeting late is because the State Land Use Commission this morning adopted the Stipulated Decision and Order for the Pulelehua Project.

CHAIR PALTIN: Oh, wow.

MS. MCLEAN: So that will now move forward with its next phase, which would be phase two approval with the Maui Planning Commission. So that's finally moving along. I know you've all been following that closely, so just wanted you to know.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: That's great.

MS. MCLEAN: Thank you.

COUNCILMEMBER MOLINA: Thank you.

CHAIR PALTIN: Thank you, Director. That's good news. Okay. So 10:35, let's come back at this time. The meeting is in recess. . . .(gavel). . .

RECESS: 10:16 a.m.

RECONVENE: 10:36 a.m.

CHAIR PALTIN: . . .(gavel). . . Will the Planning and Sustainable Land Use Committee meeting please come back to order? It is 10:36. We took a brief recess to go over proposed conditions to zoning. And if it's all right with Members, let's just go down the list and we'll start off with the amendment summary form that I submitted. It's on Granicus. And as I went over it and compared it to Member Molina's, a lot of Member Molina's ones are in there in some form or another. We can go over condition by condition.

I think I took out Number 3, because that's pretty much within 2.96, as part of the criteria. So if there's no objections, at this time, if Members are okay, we can just say consensus. Consensus or not.

So the first condition on my amendment summary form is basically carried over from the Planning Commission, what they wanted. It says the Ferreira Family Partners LP must develop the property to include only residential workforce housing units and no other dwelling units. Do we have consensus on that one?

COUNCILMEMBER SUGIMURA: Tamara?

CHAIR PALTIN: Yes, Member Sugimura?

COUNCILMEMBER SUGIMURA: So are you going to ask the Kihunes about this before we go through it? Did they see this before?

CHAIR PALTIN: No, they didn't. We can ask them to comment.

COUNCILMEMBER SUGIMURA: Because they're going to have to execute. So I would love to hear what they have to say.

CHAIR PALTIN: Okay. From Aina Lani, do we want one of the Kihunes, or do we want Ms. Duvauchelle?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MR. H. KIHUNE: Madam Chair, this is Howard Kihune, Jr. I can respond. No problem. So regard with that my only question is, does no other dwelling unit...does that mean an ohana or does it mean a storage area? Or...I'm just curious, that's all.

CHAIR PALTIN: It just means that all of the dwelling units need to be residential workforce housing units. So it shouldn't be market value units. And this was a condition that we worded...our Committee Staff recommended as a wording for the condition that the Planning Commission recommended.

MR. H. KIHUNE: Okay. I mean, yeah, we're fine with no other...I mean, just to include only residential workforce housing units. No problem. Yeah. We're good. Yeah. I just wanted to clarify that. I wasn't sure if that meant no ohanas, or...yeah.

CHAIR PALTIN: Yeah. That one doesn't mean no ohanas. I believe that condition proposal is further on down the line. Member King, any questions?

COUNCILMEMBER KING: Yeah. I have a question for Planning, for Director McLean, is normally when we do these conditions, we refer to applicant so that it stays with whoever the applicant is. And this one specifically says Ferreira Family Partners LP. And I know the Chair, you know, mentioned that this would transfer. But just to be more specific, the wording that we generally use for conditions seems to be more accurate when we refer to the applicant.

MS. MCLEAN: I think the term "applicant" is more common, but it also isn't uncommon for the property owner to be the named entity in the conditions because they're the ones ultimately responsible for the use of the property. But of course, ownership can change.

COUNCILMEMBER KING: Right, that's...it's the ownership . . . *(inaudible)* . . .

MS. MCLEAN: So either one...either one.

COUNCILMEMBER KING: So what happens when the ownership changes?

CHAIR PALTIN: The condition runs with the land. So in this case, the owner is not the applicant, and the applicant is not the owner, and that's the reason why we went with this. Like Planning Director Ms. McLean had earlier stated, it's kind of a little bit of an unusual circumstance.

COUNCILMEMBER KING: Okay.

CHAIR PALTIN: But these conditions run with the land, and the current owner is the Ferreira Family Partners LP, and the applicant is not the current owner. And so if we put the condition on the applicant and the owner sold to somebody else or decided to develop it themselves, then it would be kind of a moot point. But --

MS. MCLEAN: Well, the way that zoning conditions become binding, as you said, Chair, they run with the land. And that's because the applicant owner executes a unilateral

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

agreement before second reading. And that unilateral agreement refers to the name of the entity that's executing that agreement, and also makes it binding on its successors and assigns. So that's binding not just on, let's say, Mr. Kihune purchases the property at some point, it becomes binding on him. Then when the lots are subdivided and sold, they become binding on those homeowners.

COUNCILMEMBER KING: Okay.

MS. MCLEAN: It's the successors and assigns that's really important, but it's...for the sake of the zoning, it's whoever owns the property has to be the one to execute that agreement.

COUNCILMEMBER KING: Okay. Before they sell it. No, some report it. . .

MS. MCLEAN: Before they sell it, but they're the ones who own it now. And so for a unilateral agreement to be executed with your zoning conditions, it has to be the owner of the property to execute that agreement.

COUNCILMEMBER KING: Okay. Okay. So it doesn't matter who the owner is.

MS. MCLEAN: Oftentimes the owner and the applicant are the same person. But in this case, because the owner is not the applicant, then the term "applicant" shouldn't be used because it's the owner who has to execute the UA, but then becomes binding on any successor or assign.

COUNCILMEMBER KING: Okay. So we don't need to specify that in the conditions; that's already in the law?

MS. MCLEAN: That's how the process works. Yeah.

COUNCILMEMBER KING: All right. Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you. Thank you, Director McLean, for clarifying that for us. So do we have consensus for Condition Number 1? Okay. Looks like that's a yes. Okay.

Condition Number 2 and 3 corresponds to Member Molina's Condition 1(a) and 1(b). Condition 2 says, Ferreira Family Partners LP must ensure each unit on the property is owner occupied for a period of 30 years from the date of the unit's initial purchase date. And 3 says, Ferreira Family Partners LP must ensure homeowners who sell the units within 30 years of a unit's initial purchase date may not sell the unit for more than 3 percent appreciation per year from the initial appraisal as defined in the residential workforce housing agreement. So this corresponds with Member Molina's 1(a) and 1(b).

COUNCILMEMBER LEE: Madam Chair?

CHAIR PALTIN: Yes, Member Lee.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER LEE: Can we get a comment from Department of Housing and Human Concerns? Ms. Munsell. Please.

CHAIR PALTIN: Sure thing. Ms. Munsell, are you available to comment on Condition 2 and 3 in the amendment summary form? Thank you.

MS. MUNSELL: I am. Thank you. Thank you for the question. The Condition Number 2, indicating that it's a 30-year requirement; I'm a little bit concerned that that might make this very difficult to sell to a homebuyer. We have seen where the upper AMI levels are not interested even in obtaining units that have got short affordability periods. And those units have typically gone...been sold at market undeed restricted. Now in this case, what you're saying is that this must be a workforce housing project, and they must be sold to workforce housing folks. And so my concern would be first, by putting that long deed restriction on there you might make this unsaleable for the developer. I think the developer is already offering a 10-year deed restriction on this. He feels confident that he can sell it. But that would be my concern on Number 2.

On Number 3, in 2.96 we already have a shared appreciation model that we apply to projects. And it's a model that's based on the increase in value of a home while the homebuyer owns that unit. And so what I would encourage you to do is to go back to 2.96 and use that model rather than creating a new model that the Department will have to monitor. We know that the model in 2.96 is an effective one. And that was it. I see that they had removed the sale of the units to the same AMI category, which might have been very problematic. So thank you very much. Those are my comments.

COUNCILMEMBER LEE: Ms. Munsell, could you tell us what the 2.96 model is for shared equity?

MS. MUNSELL: Yeah. Sure. When a home is sold, when a workforce housing unit is sold, we get an appraisal on that unit. And so that unit becomes...that appraisal becomes part of the record. If the homeowner sells that unit before the affordability period is over, a second appraisal is obtained, and what the homebuyer gets is 25 percent of the increase in value. And so they're limited to a 25 percent change in the value of that unit. We don't know what's going to happen with the 3 percent. It may be...the price of the home might go up, and it might go down. And what the model in 2.96 does is ensure that it's actually reflective of the model. And it's not guaranteeing a price to the homebuyer that has not been...is not a fair one.

COUNCILMEMBER LEE: Okay. Thank you.

CHAIR PALTIN: Members, further questions for Ms. Munsell or any of our resources or the developer? Member King.

COUNCILMEMBER KING: Yeah. I thought that the developer had told us last time that he was hoping for a 15-year deed restriction. So I thought what we were looking at was maybe some kind of compromise between the 30 and 15, you know, Mr. Molina's proposal on the 15 years. But I think that's where we're starting from.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Okay. So Members, compromising; would folks be open to 20 years?

COUNCILMEMBER MOLINA: Madam Chair?

CHAIR PALTIN: Yes. Member Molina.

COUNCILMEMBER MOLINA: Can we hear from Mr. Kihune on this, just to reiterate what was said at the last meeting?

CHAIR PALTIN: Sure thing. Mr. Kihune, Jr., are you available?

MR. H. KIHUNE: I'm here, Madam Chair. With regards to Number 2, we're committed to 15 years. We feel it's appropriate. It's a generation. I know some of the neighbors, the surrounding HOAs, were concerned in having a length that was 30 years or longer. And you know, I think you'll notice that, you know, within a 15 year...15 years is appropriate for, you know, a young family. Kids go to school. They can refinance to send their kids to college, stuff like that. So I think putting a burden on the buyer is probably...I'm very reluctant, but 15 years we think is...it works really well for the project. It gives the buyers time to settle in, it gives them time to assess their family situation. And then should, after 15 years, their family is older and they wanted to downsize, that's up to them to sell and move on. But I know for a fact that a lot of the members from the HOA did not want something too long...the surrounding HOAs.

CHAIR PALTIN: Members, questions for that response?

COUNCILMEMBER KING: I thought this. . .

COUNCILMEMBER MOLINA: Thank you, Madam Chair.

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Member King.

COUNCILMEMBER KING: Yeah. I didn't put this in here, but I thought that this came from the surrounding community.

CHAIR PALTIN: What came from the surrounding. . .

COUNCILMEMBER KING: The idea of a 30-year deed restriction. So, you know, but I was just curious because Mr. Kihune said that they did not want longer than 15 years.

MR. H. KIHUNE: Can I answer?

COUNCILMEMBER KING: Yeah.

CHAIR PALTIN: Go ahead.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MR. H. KIHUNE: So Ms. King, to answer your question, they were concerned about a long-term situation with buy-back or deed restriction. We had talked about 10, 15 years; and 15 years of what most, and I said most, the majority of the homeowners had mentioned that they were good with. Thirty years was well beyond what they felt was... was something that, you know, there's a stigma. They think the affordable workforce housing people will take down the value of their property, and that's exactly what's come out of those meetings that we've had.

So I understand where they're coming from. I understand...again, I think...we think one generation is great. Our other project in Kaanapali is 10. We did this on our own. We like to see the neighborhood...should someone need to sell after 15 years, then everybody sells. Or a couple people can sell. The current 2.96 is 10 years, 7 years, and 5 years. And I would not want to see a neighborhood change under a workforce housing project in that order. I think they should all go out, if that's the case, at the same time, so.

COUNCILMEMBER KING: Okay. I appreciate that response, Mr. Kihune. I just...we spent half a day yesterday talking about the circuit breaker tax break, which happened, you know, which is necessary because of the values going up around existing homes. And so, you know, we're kind of in this Catch 22 of, you know, wanting...developers wanting the values to go up. And that causes people who may have been long-term in those neighborhoods, their taxes go up because their values go up. So, you know, it's just kind of a double standard that we're looking at. But not your fault. You know, I just wanted to reiterate that that was what you had said last time was 15 years.

MR. H. KIHUNE: Correct. Yes.

CHAIR PALTIN: Okay. I'll take Vice-Chair Sinenci, followed by Member Molina.

VICE-CHAIR SINENCI: Mahalo, Chair. I just had a question for Deputy Director Munsell. So at 15 years, should the owner sell, does 2.96 have any stipulation in it where it would have to sell at the bought price?

MS. MUNSELL: Thank you for that question, Mr. Sinenci. The 2.96 says that once...well, indicates that once the affordability period, the deed restricted period ends, then the homeowner is allowed to sell at whatever price they would like. So whatever the market price is, they've been released from their deed restriction, and they can sell it at whatever price they choose.

VICE-CHAIR SINENCI: So the 15 years would be the deed restriction timeline?

MS. MUNSELL: That's correct. Yes.

VICE-CHAIR SINENCI: Nothing different in 2.96?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MS. MUNSELL: Well, this would all be, you know, laid out in the workforce housing agreement. So 2.96, of course, has shorter affordability periods. But what Mr. Kihune is indicating is that he would be giving a 15-year deed restriction. And any time during that 15-year deed restriction, that unit would have to be sold using the shared appreciation model that is outlined for this project. So any time prior to the 15 years being completed, it's the shared appreciation model; and then after that, they are released from all the deed restrictions.

VICE-CHAIR SINENCI: Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you, Vice-Chair Sinenci. Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Chair. You know, as part of this Condition 2, I had in my Condition 1(a), the developer may request of the Council, via resolution, an adjustment of the deed restriction. Would that cover that? I mean, maybe...I don't know if this was a recommendation from staff to take out that language. Can I get further clarification on that?

CHAIR PALTIN: Sure thing. Either Mr. Mitchell or Ana, would you like to comment on that?

MR. MITCHELL: Ana, are you available to comment?

MS. LILLIS: Yes. Thank you, Chair. This is Ana with Office of Council Services. We're under the impression that the developer may already request this, regardless of it being a condition, and it does not need to be a condition of zoning. They can already request it regardless.

COUNCILMEMBER MOLINA: Okay. So no resolution needed then. Is that what you're saying?

CHAIR PALTIN: No. It doesn't need to be...they can request it of Council through a resolution, but it doesn't need to be included in the condition. That's their right as the developer. Whether it's a condition or not, they can go ahead and do that.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR PALTIN: Thank you, Ms. Lillis. Oh, it looks like Member Rawlins-Fernandez has just joined us. Aloha kakahiaka Vice-Chair...Council Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair. E kala mai for my . . .
(inaudible) . . .

CHAIR PALTIN: A`ole pilikia. Okay. We were just going over the amendment summary form in Granicus, and we were on Numbers 2 and 3, just to catch you up. Going off of Councilmembers previous 1(a) and 1(b), it was 30 years, and the developer had committed to 15 years, just to catch you up. And Condition 1 was adopted...not adopted, but kind of consensus, minus you, but hopefully you agree with us on Number 1.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

Okay. So it kind of looks like we don't have consensus on Number 2 and 3; is that correct? Or is there consensus? Member Sugimura.

COUNCILMEMBER SUGIMURA: The developer had agreed through Mr. Molina's document... and not 30, but 15. So I think that's what I'm agreeing to...I'll agree with, I guess I should say for Number 2.

CHAIR PALTIN: Okay. Member Lee.

COUNCILMEMBER LEE: Yeah. I think 15 years is reasonable. I think that there isn't a lot of opposition to 3 either way. In other words, either we follow 2.96, or the 3 percent appreciation per year. I don't think anybody has really strong feelings about that one. So I think that's kind of open.

CHAIR PALTIN: Okay. So for Number 2 we have Member Sugimura and Member Lee preferring 15 years. Member Molina?

COUNCILMEMBER MOLINA: Yeah. Madam Chair, based upon the conversations the developer had with the community, and taking into consideration, you know, we certainly don't want to do anything to impede the selling of these units and people not, you know, people losing interest in purchasing it, I'm amenable to reducing that 30 year down. Thank you.

CHAIR PALTIN: Okay. Member King?

COUNCILMEMBER KING: Thank you, Chair. Yeah. I think it's...I'm a little confused about, we keep quoting 2.96, but since the developer isn't getting any affordable housing funds, are they held to the restrictions in 2.96, Ms. McLean?

CHAIR PALTIN: Director McLean?

COUNCILMEMBER KING: Or maybe Director Munsell. I'm sorry.

MS. MUNSELL: Actually, thank you for the question. The affordable housing funds, that's governed by 3.35. It's not part of the 2.96 requirements. We often refer back to 2.96 in the affordable housing fund, but it's not the other way, so.

COUNCILMEMBER KING: Okay. So what holds them to the restrictions in 2.96, since you're saying that we should do that instead of Condition 3?

MS. MCLEAN: On Condition 3...so part of their affordable housing agreement they will have to execute an agreement with us, and part of it is following the 2.96 requirements. And so we would have that included in their workforce housing agreement.

COUNCILMEMBER KING: Okay. So does that need to be a condition to...if we're going to keep referring to that, then should an agreement to follow 2.96?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MS. MCLEAN: No. I don't...it doesn't actually need to be a condition. It'll be an automatic inclusion in their workforce housing agreement.

COUNCILMEMBER KING: Okay. So yeah, Chair, you know, I talked to the surrounding community, and I don't believe that they had any objections. I'm hearing from people in the community that they didn't have objections to the 30 years. But if we're talking about a generation, a generation is usually 20 years, which is I think what you proposed. So, you know, I would support that.

CHAIR PALTIN: Okay. Member Sinenci.

VICE-CHAIR SINENCI: Yeah. I like the compromise. I think if we can meet in the middle and, you know, include everybody in this decision. So I'm supportive of 20.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Oh.

CHAIR PALTIN: I guess the discussion is 30, 20, 15, affordability periods.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I'm all for not continuing to perpetuate the lack of affordable housing. And we heard earlier that 30 years does not prevent banks from being...or you know, creditors from being able to fund projects. So I am for the 30 years. And then that way, you know, in 10 years or in 20 years, the next Council or the next Committee won't have to continue to deal with this moving out of affordability. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. Okay. Based on the discussion for Number 2 and 3, I'd like to propose 20 years from the date of unit's initial purchase. And just so the math works out on Number 3, a 5 percent appreciation per year from the initial appraisal. If...I'll entertain a motion to adjust the conditions in 2 and 3 from 30 years to 20 years, and the percentage from 3 percent to 5 percent, so the math works out.

VICE-CHAIR SINENCI: So moved.

CHAIR PALTIN: Moved by Vice-Chair Sinenci. Does he have a second?

COUNCILMEMBER KING: I have a question.

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: Can you just explain the math of increasing the appreciation to 5 percent?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Sure thing. At appreciation of 5 percent a year for 20 years, after 20 years they can sell the property at 100 percent appreciation. The 30 and 3, the math didn't really work out.

COUNCILMEMBER KING: Does that take into account compounded appreciation?

CHAIR PALTIN: No.

COUNCILMEMBER KING: Okay. So...I mean, if we could take these one at a time. It's just... I'm not comfortable with that 5 percent.

CHAIR PALTIN: Okay. Member Sinenci, would you care to withdraw your motion and apply it only to Condition Number 2 for 20 years?

VICE-CHAIR SINENCI: Yeah. I could amend just for Amendment Number 2.

CHAIR PALTIN: Okay. Does Member Sinenci have a second for 20 years affordability?

COUNCILMEMBER KING: Second.

CHAIR PALTIN: Member King, second. Okay. It's been moved and seconded for Condition Number 2, Ferreira Family Partners LP must ensure each unit on the property is owner occupied for a period of 20 years from the date of the unit's initial purchase date. Member Sinenci is the movant. I'll give you the first opportunity to speak.

VICE-CHAIR SINENCI: Thank you, Chair. Yeah. We're hoping that, you know, I think this is a compromise within all the people who have provided testimony, for those who believe, you know, the 30 years, and just considering the lending institutions. So I think this is a good compromise.

CHAIR PALTIN: Thank you, Member Sinenci. Member King as the seconder, followed by Council Chair Member Lee.

COUNCILMEMBER KING: Yeah. I agree. It's a good compromise. If this doesn't pass, then I would vote for the 30 years. But yeah, I just was disappointed to hear the comments from the developer that this is what the neighborhood wanted because nobody has said anything. Nobody has said anything in the town hall about their housing values, you know, wanting their housing values to stay up. And, you know, I think we should try, you know, let the developer speak for the developer and the community speak for themselves instead of, you know, we were all there. And you and I were there and, you know, that was not brought up at all. But even if it was an issue, the fact that we spent three hours talking about the circuit breaker tax yesterday, and how we don't want these surrounding housing values to go up and burden long-time residents with higher tax rates that, you know, to me that's a little bit of a conflict there.

CHAIR PALTIN: Thank you, Member King. Member Lee.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER LEE: Madam Chair?

CHAIR PALTIN: Yes.

COUNCILMEMBER LEE: Ready? Okay. Thank you. I'll be voting against the motion. If anything, I would have prepared...preferred the 15 years. On average, the national average of people staying in their first home is 7 years. And the reason for that is because changes happen to most people's lives. They have more children, or there's some kind of tragedy in the family, or they relocate for job reasons, or grandma and grandpa comes to live with them. There's a host of reasons why people shouldn't be confined to something that they have no control of...over. They don't have control over all these life circumstances.

So I think, you know, I feel really sorry that oftentimes policy is really not taking into consideration real life issues, especially with regard to those who don't have as much money...for the less fortunate. We're actually making them have less options by making...putting all these restrictions on them. It's really not the developer, we're putting the restriction on the homeowner. So for those reasons, I'm not going to support it. I can support 15. Thank you.

CHAIR PALTIN: Thank you, Member Lee. Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah. I'm going to be voting against the motion also. I believe that 2.96 says 10 years. And if the discussion is about 20 years or whatever, I think 15 years is another compromise based upon what they actually are mandated to do from 2.96. So I'm voting for 15 years and against this 20 year motion. Thank you.

CHAIR PALTIN: Thank you. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. I appreciate the compromise, but again, this is a 100 percent affordable housing unit project. The 30 years that I put out initially, that was something we put in, I believe, with the Makila project, but there was a marketing component attached to that affordable housing project. So it wasn't 100 percent affordable. So upon hearing, you know, the concerns, you know, that we actually may be just punishing the homeowners, the workforce housing people. In good conscience, I cannot support 20, so I'm going to stay with 15. Thank you.

CHAIR PALTIN: Thank you, Member Molina. Are we ready to call for the question? Oh, Member Rawlins-Fernandez. Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I, like Committee Vice-Chair King, would have preferred 30. I guess I'll be willing to vote for 20, since it's seeming that 30 is not something that would be amenable to majority, but 20 could be. And so I'll vote in favor of the motion.

I guess for me, I don't see this as locking people in homes because where the second part of this motion that we'll take up after this is allowing the homeowner to sell their...

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

sell this house and recoup some of their costs and possibly even make some money off of it. But that's not what these houses are for. And, you know, we talk about tourism being the biggest economic driver, but really, it's real estate. Real estate by far is the biggest...what is it called, GSP, gross state product. And we continue to allow, you know, our housing inventory to be exploited, particularly by those that come in and are speculators, and it has a detrimental effect.

We talked about it yesterday with Member King's own home that, you know, she purchased at like 60,000, and is now valued...I can't remember, like 600,000 or something. It went up by like a hundred times. Oh, even more than 600,000. And that's the impact that these are having. And I, in good conscience, don't call this affordable. My community wouldn't be able to afford the price of these houses.

So even at where it's at now, I would prefer to keep it there and not go any higher because we're allowing residents in the surrounding area, as Member King mentioned, you know, their housing property values to go up, and they won't be able to afford their property taxes or will need circuit breaker to help them afford it.

So there's just so much ripple effects and impacts to this that I...I ran on, you know, and I think we all did, on affordable housing, increasing affordable housing for our community. And increasing affordable housing to our community, you know, looks different in a lot of different ways and this is one of them. Keeping it affordable for as long as possible. And so again, that's what I campaigned on, and so that's why I vote the way I do. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. I'll take the opportunity of the last speaking. I'll support 20 years and, you know, the reason I see 20 years as a generation. And also, you know, the situation, if you have visited the site, this is practically oceanfront. You cross South Kihei Road and you're right there and we all know what oceanfront is going for right now. I mean, easy million dollars. You know the houses that these builders built in Kaanapali after 10 years? I think they could sell them for a million dollars easy, you know. And so, what happens after 15 years to the other folks that this is their forever home? And I agree, you know, with Member Lee that, you know, these folks might not live here more than 7 years, but we can address that in Number 3, that they do get some appreciation. And if they move before 20 years, it gives another local family an opportunity to get an affordable home, which we need so badly, instead of in 15 years, flipping over to market value. So I'll support the motion. I mean, I entertained it, so that was kind of obvious.

But I'll call for the question, all those in favor, please raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: All those opposed, please raise your hand and say no.

COUNCILMEMBER LEE: No.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER MOLINA: No.

CHAIR PALTIN: Motion passes. Those up against the motion, Member Sugimura, Lee, and Molina.

**VOTE: AYES: Chair Paltin, Vice-Chair Sinenci, and
 Councilmembers King, and Rawlins-Fernandez.**

NOES: Councilmembers Lee, Molina, and Sugimura.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT TO CONDITION 2.

CHAIR PALTIN: Okay. So Number 2 has been amended to...from 30 years to 20 years and with the understanding the developer may request of the Council, via resolution, an adjustment of the deed restriction. Okay.

Moving on to Number 3, which is Ferreira Family Partners LP must ensure homeowners who sell their units within...that would be now 20 years of a unit's initial purchase date, may not sell the unit for more than 3 percent appreciation per year from the initial appraisal as defined in the residential workforce housing agreement.

So I guess our options are, you know, 3 percent, 5 percent, or the existing 2.96 shared appreciation model. I'll entertain discussion from Members which...what they would like to see for Number 3, if anybody has any input at this point. Member King.

COUNCILMEMBER KING: Yeah. Chair, I guess my input is, it seems like if we were going to give a 30-year deed restriction, we're giving them less percentage per year, but the...when they made a commitment to 30 years. Now we're reducing the commitment to 20 years, and we're giving them a higher percentage per year. So I'm not sure. Is that the model, Ms. Munsell? Is that what the intention is? I mean, I understand getting to 100 percent at the end, but it seems like there's less restriction and there's a higher percentage of profit per year.

CHAIR PALTIN: Director Munsell.

MS. MUNSELL: Yes. Actually, well, this model is being proposed by the Council, not by the Department. I know that in the past, we have had a model where the buyer was promised a specific increase every year. I think that that...it was much higher. I think it was 7 percent in the old days. And what that model eventually caused was that when

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

the market went down, the County's buy-back option for that model was higher than the actual market price because of the way the model was set up. So 5 percent, I think, would be concerning to me if the market had a downturn like we experienced a number of years ago. What would happen is then the County would not be able to buy that house back, and it would then be released to market. It would be sold on market rather than remain an affordable home. So I understand what you're trying to do is limit the increase . . . (*inaudible*). . . value.

COUNCILMEMBER KING: Well, yeah, I'm not trying to limit. I'm just trying to figure out what's the best, what is the best option for the County to be, you know, so that if they do try to exit before that 20 years, that our buy-back options are good. So are you saying that...I just wanted to get your take on...are you saying that the shared equity that's in the 2.96 right now is the best option for the County?

MS. MUNSELL: That's, you know, that's the one that was put in the ordinance by the Council. And it was discussed and, you know, vetted through prior Councils. I would be very hesitant to go back to a guaranteed amount every single year, just because of the market fluctuations and our experience the last time. And losing units that were affordable because we couldn't afford to buy them back. So...yeah.

COUNCILMEMBER KING: Right. But regardless of what other Councils have done. So we're in this Council, so I just want to know your opinion that the shared model that's already in our ordinance is the best option for the County, should we be in a position...because we have bought back, you know, a unit, I think, in the last couple of years.

MS. MUNSELL: Yes. Actually, we have. We've...I've been with the County and seen multiple purchases. I've seen a purchase under the guaranteed 7 percent, where the market had fallen and the County was left holding the bag. It cost us a lot of money in that case. So I would prefer to stick to the 25 percent, based on the actual increase in value or decrease in value at the time that the individual asks to sell.

COUNCILMEMBER KING: Okay. Even if it's, like, the next year?

MS. MUNSELL: Yes.

COUNCILMEMBER KING: I mean, that's a huge increase. Because I think, you know, I agree with Member Paltin that, you know, they turn the key into the house and it's probably already worth a million dollars from being across the. . .

MS. MUNSELL: Yeah. Thank you. Let me just clarify.

COUNCILMEMBER KING: Okay.

MS. MUNSELL: When they buy the house, we actually get an appraisal that tells us what the market value is. And so that's not the sale price that they are purchasing it at. So if they buy it at \$500,000, and the house is actually worth a million the day they walk through the door, and then it increases, you know, from that; it's the difference between

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

the market price when they buy and the market price when they sell, not based on their purchase price.

COUNCILMEMBER KING: Okay. That makes sense.

MS. MUNSELL: Thank you for asking for the clarification.

COUNCILMEMBER KING: Oh, no, thank you for clarifying it because that's what I remembered, you know. Anyway, thank you for that. Okay. Thank you, Chair.

CHAIR PALTIN: I think I'd seen Member Rawlins-Fernandez hand up. Did you have a question?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Yes. So I got a little bit of that clarification. So Deputy Director Munsell, so you said that the houses are...so the houses will be appraised, and that appraisal price after construction is what will be used to subtract from the price of...or the value of the house if they wanted to sell it in seven years. So if this year...so at the time of completion of the construction and the person, the property owner purchases the house, it's valued at a million dollars. And in seven years, it's valued at 1.5 million dollars, we would take the 1.5 million and subtract that by one million, which would be \$500,000, and the shared equity, or the shared appreciation model in 2.96 would allow the property owner to take 25 percent of that subtracted value, which is \$500,000. So \$500,000 times 25 percent equals \$125,000. So in seven years, if the property owner, for whatever reason, wanted to get out of that deed and sell the house, they would walk away with \$125,000 in that shared appreciation...in the 2.96 shared appreciation model?

MS. MUNSELL: It's possible. If the price increases are that dramatic by 50 percent, yes, in seven years.

COUNCILMEMBER RAWLINS-FERNANDEZ: Right. So I didn't do the math on the 3 percent appreciation per year, but what if we did something...because I heard the comments before. So what if we did both? I heard your comments about the market reduction and the impact that it would have on the County where we would then owe the property owner more than what the house is valued at because of the guaranteed percentage. So what if we did something like another compromise or a combined idea of putting the 2.96 model and the 3 percent appreciation per year, and say whichever is less, or something.

CHAIR PALTIN: Director Munsell?

MS. MUNSELL: Yeah. Thank you. I mean, certainly, that's possible if that's what you want to do. I don't want to give a lot of uncertainty to the homeowner either. But I do understand what you're saying. I mean, the location of this particular project so close to Wailea means that the home values are going to be higher. So I understand what you're trying to achieve, and still give a fair deal to the buyer of that home. I'm going to

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

leave it to this body, assuming that there's no legality questions here, to make that determination.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Deputy Director Munsell. So I was just trying to address the concerns that you shared about using one model over the other. And with the 3 percent appreciation per year model, what happened in the past was the County was left paying more. And so by proposing this amended condition, that would address your concern, correct?

MS. MUNSELL: You know, I guess I'd have to run some numbers and take a look and see how it would be structured before I could say yes or no. I understand what you're trying to achieve. Yeah. Unless I run numbers, I won't know.

COUNCILMEMBER RAWLINS-FERNANDEZ: Right. But what I said was that it would be the 2.96 shared appreciation model or the 3 percent appreciation per year model, whichever would be less, would address your concern because it has the 2.96 model in this condition.

MS. MUNSELL: Yeah. Possibly. Yeah. I understand what you're saying. I'm going to leave it to you guys to decide though.

COUNCILMEMBER RAWLINS-FERNANDEZ: So what you said was if we use the 2.96 model, that would be okay.

MS. MUNSELL: That's the model in the ordinance. I understand why we want to use that model rather than an automatic guaranteed increase. I understand also running the numbers on a project that is likely to become very expensive. I understand what you're trying to achieve. Will we achieve it by having both of those models in there? I think it's going to complicate it for the Department, not that that can't be overcome. And if this body decides that that's what you guys want to do, then I will concede.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Deputy Director. I'm sorry. Last question, Member Paltin, and I'll make it quick. In the past, when using the 2.96 shared appreciation model, if the property was assessed at \$1 million upon purchase and in seven years, the opposite happen and it's now worth \$700,000, would the property owner walk away with any money from...is there any...there's no shared appreciation to be had. So would the property owner walk away empty handed?

MS. MUNSELL: In the old model, they were guaranteed a 7 percent increase in equity per year. So in the old model, if someone came to us and said, we want to sell, we would do a buy-back calculation, and we would calculate what the County's buy-back obligation would be. If that obligation was higher than the market value of the home, then our option was to release them from their deed restriction, and then they could sell that home on the market; in which case they could experience a loss if that home sold for less than their purchase price.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

My...and I don't remember whether that occurred, but it was possible for that to happen, yes. Under the proposal that we're having now, where we're saying in 2.96 currently where it's a 25 percent shared appreciation, it is also possible for them to not walk away...to walk away without money. So in the case of decrease in equity...or increase in sales price...so it would be below, you can't...we're not going to take 25 percent of their purchase price away from them. We're just not going to share equity with them. So if they bought it for half a million, and the price decreased, and that meant their equity was minus \$25,000, we're not going to take that away from them.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Deputy Director. Mahalo, Chair.

CHAIR PALTIN: Thank you. I see Member Lee. I just had a quick question if you don't mind, Member Lee. Would the initial appraisal, in any case, ever be lower than the initial purchase price?

MS. MUNSELL: Thank you for that question. Actually, so the sales price, the maximum sales prices are set by the affordable sales guidelines, right. No one...unless they're doing a cash purchase, there's no way a bank is going to allow you to pay more than the appraised value of a property. And of course, our requirements for qualification would mean that you wouldn't have assets in excess of, you know, half a million dollars and be qualified for affordable housing. So the initial sale should never be more than the appraised value, no.

CHAIR PALTIN: Okay. The only reason I was asking that is I'm looking at their other project, their most expensive house lot was 650,500, but the new residential dwelling permit amount was \$241,077. So that new residential dwelling permit amount, is that the value of the house, what they...or do you know what that new residential dwelling permit amount represents?

MS. MUNSELL: I'm sorry, I don't actually do permits, so I don't know how they're valued. I do know that if you're talking about their project out in Kaanapali that, yeah, they did get appraisals on those. And so it would be based on the appraisal price, not on their permit cost.

CHAIR PALTIN: Okay. Director McLean, do you know what that new residential dwelling permit amount represents?

MS. MCLEAN: I don't. I'm sorry.

CHAIR PALTIN: Okay. Deputy Director Molina? Do you know what the new residential dwelling permit amount represents?

MR. MOLINA: Yeah. So if it's a permit amount, it's the cost of constructing the house. It's not related to the cost of the land and the structure, which would be your purchase price. So roughly, it's about half typically.

CHAIR PALTIN: Okay. Thank you. Sorry, Member Lee, I cut in line. Go ahead.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER LEE: Oh, that's okay. I was just wondering if this conversation wouldn't be better when we review the entire ordinance of 2.96 because I think this provision is possibly a very good one, but it requires more thorough analysis. And at least right now...and this is not coming from the developer, it's coming from us, you know, this change. So we're only talking about 28 homes. So, you know, if we're talking about thousands in a project; yeah, then maybe you want to stop and work on this. But considering the few number...comparatively speaking, the few number homes, it's... we're only on Number 3 and we have a ways to go further. So. . .

CHAIR PALTIN: So, Member Lee, are you suggesting that we just stick with the 2.96 model?

COUNCILMEMBER LEE: Yes, for this project. And then refer this item to the Housing Committee so that it can be taken as either a whole, as part of a review of the whole ordinance, or just that.

CHAIR PALTIN: Okay. So if we go by the 2.96 model, then we don't need Condition Number 3 at all because it is currently the Workforce Housing Ordinance, which they have signed with it. Quick poll of Members. Who would like to go with the 2.96? Do we have consensus on that?

COUNCILMEMBER SUGIMURA: Consensus.

COUNCILMEMBER KING: Question, Chair.

CHAIR PALTIN: Yes, Member Lee.

COUNCILMEMBER LEE: Oh, no, not me.

CHAIR PALTIN: Member King.

COUNCILMEMBER KING: I think that was me. That's okay. So Ms. Munsell, where are you? Where are you, Linda? You were here a second ago. So I just wanted to...just to model out the example we're using. So if we use an example of a house appraised at a million dollars, and it got 3 percent appreciation per year based on that original million dollars, after seven years that would be 210,000, correct? Or is it compounded on top? I don't know, but roughly 210,000 after seven years? Is that what we're saying?

MS. MUNSELL: Yeah. I'd have to run the model. Yeah. Sorry. If that's what. . .

COUNCILMEMBER KING: I'm just trying to do a comparison. But if we use the shared 25 percent, then after seven years, say it's valued at 50 percent higher; that would be 125,000. So actually, that would be lower than doing the 3 percent per year. Am I correct in that math? I don't know, maybe our Chair...since she's a mathematician, she can tell me if that was right. Is that what you were thinking?

CHAIR PALTIN: I was thinking simple, I believe, you know, each year, the percentage.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: If it's three...the 3 percent every year, but it's based on the initial appraisal, which we're just saying for argument sake is a million dollars. After seven years, that would be...210,000 would be the equity. Whereas if we did 2.96, which is the 25 percent, and say the value went up to 1.5 million, then I think we ascertain that that would be...the equity would be 125,000. So it's actually lower if we adhere to the 2.96, is kind of what I'm trying to get at.

MS. MUNSELL: Yeah. I just ran the number right here, and that appears to be correct. The question would be is whether you're applying that to the appraised value or the purchase price, which might be different. So if they're purchasing it at \$500,000, and you're applying a 3 percent interest to it...let me just run that.

COUNCILMEMBER KING: It says in the...in the condition, it says, initial appraisal. So I'm just assuming it's based on what like, you know, I'm going to say that these houses are going to be initially appraised much higher than what the homeowners are buying them for, which is the point of affordable housing, right. Is that you normally would have to pay a lot more, but we're going through this process to make sure that we provide something that's affordable for our residents.

So if that's the case, then it seems like the 2.96 formula would work. I mean, our goal is to make these homes affordable as long as they can be, make sure the people who are moving in, you know, have the best of intentions of living there, not selling their house, not speculating and looking at it as a profiteering investment. I mean, when I moved into my house 35 years ago, it was on a federal affordable housing program. And, you know, here we are, 35 years later and, you know, that was the intent, was to have a house to move into and live in, not something to sell and make money off of in 10 years. And I understand that things happen, but we should be aiming at the best intent of what affordable housing means, not trying to make allowances for people to make a lot of money off these homes because we're giving some entitlements based on, you know, the fact that they are going to be for our residents that have a great need for affordable housing.

MS. MUNSELL: Yeah. So excuse me, Chair?

CHAIR PALTIN: Yes. Director Munsell.

MS. MUNSELL: I guess if you wanted to stay with the other model, my recommendation would be not to go off the initial appraisal price, but off of the actual investment that they are making, and that's the purchase price that they are using. But again, I would be a little concerned that if a market downturn, you're guaranteeing them a return on investment. And maybe it's true that a \$500,000 home purchase, over seven years, the market price wouldn't go below, you know, the \$600,000, which would be our buy-back price at that point. But I would like to find some way to guarantee that the buy-back price cannot exceed, you know, the market value of the home somehow.

COUNCILMEMBER KING: Right. Right.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

MS. MUNSELL: Without them moving straight to market undeed restricted.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR PALTIN: Okay. So it looks like there was support for removing Condition 3. Do we need to take a vote or shall we go with consensus?

COUNCILMEMBER KING: Chair?

COUNCILMEMBER SUGIMURA: Consensus.

CHAIR PALTIN: Yes. Member King.

COUNCILMEMBER KING: So because our Housing Director is recommending that if...so if we go with the shared equity that's in there, we don't need an extra protection for the County, you know, for the buy-back price. Is that what you're saying, Ms. Munsell?

MS. MUNSELL: No. What I said was, if you stay with the one in your proposal, I would suggest two things. First, not use the appraisal price, use the actual purchase price, number one; and then second, somehow find a mechanism for. . .

COUNCILMEMBER KING: But no, but my question was if we go with what's in 2.96, then we don't need that protection for the County to make sure that we're not buying it above market price.

MS. MUNSELL: Yeah. If you use that, you can't...you won't be going above market.

COUNCILMEMBER KING: Okay. So, that's what I wanted an answer to.

CHAIR PALTIN: Okay. So it seems consensus to just stick with 2.96 model, remove Number 3 and we can address it later as we look at 2.96. Moving on.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: Yes. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Really quickly, and I wanted...to Chair Lee's point of working on 2.96. I did submit a proposal to amend that 2.96 bill last year some time in like, October, November, and it's been sitting in Affordable Housing. And so I would love to get back to amending 2.96 to something that this Council will be supportive of. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. Okay. So Number 4 condition, which, we're striking Number 3, Number 4 correlates to Member Molina's 1(c), and this is upon recommendation of Committee Staff. Ferreira Family Partners LP must ensure that all units in the project are only used for long-term residential use. And the reason

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

we didn't say transient or short-term rentals as in Member Molina's 1(c) is we wanted to leave it open in case there's, you know, some sort of thing that we haven't thought of in the future like, you know, we started with TVRs, then there's STRs, then there's STRHs. So, you know, the purpose of the condition was long-term residential use, and that will encompass anything going forward that we haven't experienced or created yet. So asking for consensus, and this is basically against transient usage, short-term rentals.

COUNCILMEMBER SUGIMURA: Consensus.

COUNCILMEMBER MOLINA: Consensus.

CHAIR PALTIN: Okay. All right. Flowing right along. Number 5.

COUNCILMEMBER KING: Question, Chair?

CHAIR PALTIN: Member King.

COUNCILMEMBER KING: Yeah. I just want...and maybe Ms. Munsell can answer this, if somebody had some kind of a...I don't know what, if we're talking about an emergency or change in plans, as Member Lee was talking about, and needed to rent their place out to a resident long-term, what would be the process for that? Would they have to go through this sale issue or...I mean, you know, because now we've approved that it has to be owner occupied for 20 years. So what if they, short of that, decided to rent it out. What would be the procedure?

MS. MUNSELL: Thank you for the question. In the past, when we've had these kinds of projects, they would actually write a letter to the Department, and the Department would evaluate their circumstances. So there's situations where they might be posted overseas if they're military, or there might be situations where they have to go somewhere for medical treatment. And in those cases, we would give them permission, for a period of time, to rent those units on a leased basis, not a short-term rental basis, but it would have to be a leased basis to another person.

COUNCILMEMBER KING: Okay.

MS. MUNSELL: It would be a limit duration.

COUNCILMEMBER KING: Okay. So it would be like...it has to be like at least six months. So it's another resident is what we're looking for, but you would recognize that there has to be an emergency situation. So, you know, obviously we don't want people buying these houses out just to turn around and rent them out. So...okay. I appreciate that answer. Thank you. Thank you, Chair.

CHAIR PALTIN: Yeah. And I just would like to comment that, you know, this wouldn't preclude anyone from taking in a renter or, you know, in my experience, upon my research for the Kaiaulu O Maui in Kaanapali, about one-third of their residences had filed as

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

non-owner occupied; and realistically, they're all owner occupied. So some of those are under appeal. And I'm not sure why they weren't helped or told that they should apply for a homeowner's exemption. But it doesn't seem that it's that strict on that, but you know, this is just to kind of prevent TVRs and STRHs. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. For this Condition 4, does it become a deed restriction so it runs with the land? Okay. I see Director McLean nodding her head. Okay. So that's a yes. Mahalo for that clarification.

CHAIR PALTIN: Consensus?

MS. MCLEAN: Chair, if I could also add back to the discussion about the owner occupancy requirement. Deputy Director Munsell was talking about them notifying Housing and Human Concerns, and that might be appropriate for restrictions that they administer. But Condition 2 is a zoning restriction. So really, there would have to be exceptional circumstances, and they would have to notify the Planning Department because we're the ones that enforce zoning conditions. So the circumstances that Deputy Director Munsell described would be acceptable to us, but they wouldn't just have to notify Housing, they would also have to notify us because we enforce the zoning conditions. Thank you, Chair.

CHAIR PALTIN: Okay. Flowing right along, Number 5. This correlates with Councilmember Molina's 1(d), and it states, Ferreira Family Partners LP may not allow the conversion of the project or any unit into a condominium or further subdivision of any lot. So this is, you know, CPRs and what not. Can I get a consensus?

COUNCILMEMBER MOLINA: Consensus.

COUNCILMEMBER KING: Consensus.

CHAIR PALTIN: Okay. Cool. And then moving right along, Number 6. This is similar to Councilmember King's Number 2, and a little bit different than Councilmember Molina's 1(e). Something that we heard a lot from the surrounding community. Number 6 is Ferreira Family Partners LP may not allow accessory dwelling units.

COUNCILMEMBER KING: Consensus.

CHAIR PALTIN: Consensus? Member Molina.

COUNCILMEMBER MOLINA: Yeah. Madam Chair, I believe, you know, when I asked for that consideration, no ohana in Number 6, but I did mention, I think, ohana units would be okay if rented affordable. So I wanted to just, you know, throw out that language that was part of number 1(e), but I guess this is a proposal to restrict. Yeah. You know where it says accessory dwellings shall...yeah. It's totally different, yeah? Because. . .

CHAIR PALTIN: Yeah. Totally.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER MOLINA: Yeah. My only concern is that I think the property owners would have...they're entitled to build an ohana if they want to, am I not correct? Can I get a comment from Director McLean?

CHAIR PALTIN: They're entitled to unless we put this as a condition of zoning. So everyone on any size lot is entitled to one accessory dwelling unit. In the course of changing the zoning, we as the Council or the Committee are entitled to put a condition on zoning, and this is something that we heard from the surrounding neighborhoods. So for me, I just gave it to them. Threw it out there. I'm not sure if we have consensus or not.

COUNCILMEMBER MOLINA: Okay. All right. Thank you, Madam Chair.

CHAIR PALTIN: Did...yes, Member Sugimura, followed by Member King.

COUNCILMEMBER SUGIMURA: So since this is an important issue, I think, and the developer has gone...what did you say, the Chamber, as well as...had a town meeting with Ms. King and has talked to the neighborhood. I wonder if the developer has anything that they would like to comment.

CHAIR PALTIN: Just in the interest of time, the developer said they're okay one way or the other, many times in the past. If we can...we have about 15 minutes left, if that's all right.

COUNCILMEMBER SUGIMURA: Okay. As long as he's fine. He went and he heard everybody. So I just want...this is his last chance.

CHAIR PALTIN: Mr. Kihune, Jr., would you like to comment briefly?

MR. H. KIHUNE: Thank you, Madam Chair. We are fine with not allowing ohanas. I'll leave that up to this Committee and the Council. We're fine either way. I know the neighbors had asked to not have it. And we had mentioned that if the Council and the Committee desires to not allow ohanas, then we're fine with that. It was never our intention to have ohanas. I explained this before in the past with the neighbors and this Committee, that it was part of our traffic assessment because changing to R-1 allows for ohanas. So we needed to show that traffic assessment with the ohanas, and that's where that popped up. But other than that, we're fine with no ohanas.

CHAIR PALTIN: Thank you. Members, consensus?

COUNCILMEMBER MOLINA: Consensus.

COUNCILMEMBER KING: Consensus.

CHAIR PALTIN: Okay. Number 7 was correlate with Member Molina's Condition Number 2, Ferreira Family Partners LP must maintain Lot 14 for open space or park usage. Any discussion? Member Molina.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Can I ask Director McLean to just check if there are any development restrictions for lots in a tsunami zones (*sic*) as it relates to this condition? Any comment on that?

MS. MCLEAN: Thank you, Chair. The lot is in the...this portion of the property is in the tsunami evacuation zone. As far as I know, there are not development restrictions. Looking at the map, there are...all of the shoreline properties there are within the zone, as well as some on the south side of Kilohana. So no, I don't see any restriction relating to the tsunami evacuation zone. I would like to request or suggest, I should say, clarification rather than referring to Lot 14 because site plans can change, lot numbers can change. So you could say Lot 14 as noted in the conceptual subdivision plan dated 12/17/18, which is the one that you've been looking at. So that's how you identified Lot 14. So just to qualify what Lot 14 refers to, or you could say the approximately 8,000 square foot area south of the wastewater pump station. They're just either way to identify, so that it's clear in the future, that area that you're referring to. Thank you, Chair.

CHAIR PALTIN: Thank you, Director.

COUNCILMEMBER MOLINA: Thank you, Madam Chair.

CHAIR PALTIN: Thank you, Member Molina. Is this condition is adopted, we'll make the appropriate changes. I believe the staff has that listed down. Member King.

COUNCILMEMBER KING: Thank you, Chair. And this kind of relates to one of my proposed conditions about usable park space but, you know, I thought we had heard that part of this is going to be needed for drainage. So maybe, Director McLean, if you could comment. I don't think if it's drainage it could really be considered park space, could it? And I've been getting a lot of...I've been seeing a lot of pictures of flooding in this area in the past. So I have some concerns about if we're going to set aside property, are we setting it aside for drainage, or park, or can it be both?

CHAIR PALTIN: To clarify for you, Ms. King, the drainage lot is mauka of the lift station; and then on the opposite side, it has a drainage like that. So Lot 14 was not in their description...the drainage. It was, I believe, going to be a house.

COUNCILMEMBER KING: Okay. So...but that's not needed for additional drainage? I guess the. . .

CHAIR PALTIN: Not in their representation.

MS. MCLEAN: I would just add that there are plenty subdivisions throughout the County that use park areas for drainage in the event of significant rain events. So that wouldn't be unusual at all. But I agree with Chair Paltin that on the site plan, Lot 14 is not indicated to be a drainage lot.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: Okay. It may end up being inadvertently because the way water flows. So...and as long as you're good with, you know, because I know, you know, this Kulanihakoi greenway that the Mayor proposed to purchase is part of it as parkway, but it's going to be major drainage during certain events. So I'm good with that.

CHAIR PALTIN: Okay. Members? Member Sugimura.

COUNCILMEMBER SUGIMURA: Can you ask the developer about that? I don't have a notation when we talked about it with Mr. Molina, and you might have talked about it. His Number 2 is similar. So, what did the Kihunes say about this, having an open space for property.

CHAIR PALTIN: Sure thing. Mr. Howard Kihune, Jr., can you comment on Number 7 for Lot 14 as indicated in the diagram for open space or park use.

MR. H. KIHUNE: Thank you, Madam Chair. With regards to that area, there is some utility that exists under that area. And as Director McLean had mentioned, there are a lot open areas or parks that have drainage in them. Whether we're going to put drainage in there, we don't know; the complete designs haven't been done yet. But I can let you know that all the subdivisions above us, the neighboring, all have areas of drainage that are parks. Small little areas that have drainage. So they're very similar.

So I don't know yet because we haven't finalized that, but if that area is with us, it's fine for now. We just don't know exactly until we get the final approved civil drawings completed as we go through the SMA, what that's going to look like. But at this point... go ahead. Sorry.

COUNCILMEMBER SUGIMURA: No, I guess the question is, are you open to having an open space or for park use? Maybe the Lot 14 at this point may be irrelevant to be so specific until you have your plans. I guess the question is, are you open to having this for a park or open space within your project?

MR. KIHUNE: Yeah. To answer your question—thank you, Councilmember Sugimura—we're okay with that area being in a grassed area or somewhat of a park, if that's what you want to call it. Again, there may be some drainage in there because it's very consistent with developments in the area. There is, again, there are some easements that go under that really close to the wastewater lift station, so we couldn't build in that area anyway so...because of those easements. There is utilities that go underground. So to answer your question, yeah, we're fine. We just don't know what it's going to look like yet, that's all. Yeah.

COUNCILMEMBER SUGIMURA: Okay. So you don't want to be tied to a certain lot or acreage either, but you're willing to have some open space.

MR. KIHUNE: I think the area, like Director McLean had mentioned, you know, 8,000 square feet, or whatever that may be, that should be fine with us. It doesn't exclude us from

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

using that as a roadway; and if you look at our current plan, that does cross over there. So, yeah.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

MR. H. KIHUNE: Thank you.

CHAIR PALTIN: Members, to the modifications Director McLean suggested for Condition 7, everyone okay?

COUNCILMEMBER KING: You're talking about the wording?

CHAIR PALTIN: Yeah.

COUNCILMEMBER KING: For description.

CHAIR PALTIN: Seven with the modifications as described by Director McLean. Consensus?

COUNCILMEMBER MOLINA: Consensus.

COUNCILMEMBER KING: Consensus.

CHAIR PALTIN: Thank you. Okay, Number 8 corresponds with Member Molina's Number 4. It says, Ferreira Family Partners LP may not place any restriction on homebuyers in their choice of lenders, or in the pre-qualification process. Consensus?

COUNCILMEMBER MOLINA: Consensus.

CHAIR PALTIN: Okay. Thank you. And Number 9 corresponds with Member Molina's Number 5. To minimize the need for lengthy commutes, reduce greenhouse gas emissions, and foster community cohesion, Ferreira Family Partners LP may give homebuyer preference to applicants employed or residing in the Kihei-Makena Community Plan area. It was suggested that I just double check with our attorney if this is a legal request. So if Members don't mind, Ms. DesJardins, any comments on Number 9?

MS. DESJARDINS: Thanks. You know, I like Number 9 because it's flexible. Where the...I think the biggest issue with this would be under the Fair Housing Act, that the pool of applicants as looked at, you could see whether or not there's possibly an unintended discriminatory impact by who's applying for these houses. But I have one suggestion in terms of your justifications, and what I would suggest is just putting: "To minimize the need for lengthy commutes," and then strike "reduce greenhouse gas emissions" because I think that's covered under lengthy commutes, and instead put in "To promote smart growth development and jobs housing balance,". Because those are two of the considerations that I see a lot in the case law, is justifications for allowing these types of housing requirements. So that's my only suggestion. Otherwise, I think it gives a lot of good flexibility to make sure it's applied lawfully.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Okay. Members, any... do we have consensus with the modifications recommended by Corp. Counsel to Condition Number 9. Member King?

COUNCILMEMBER KING: Yeah. I like those conditions, but I still...I think there needs to be language to make sure it's fair to all residents or people employed within that area, so it doesn't give the appearance of picking and choosing favorites within that area. So how can we make that an obvious. . .

CHAIR PALTIN: The end part says, may give homebuyer preference to applicants employed or residing in the Kihei-Makena Community Plan area. Is that not what you mean, or you mean something different?

COUNCILMEMBER KING: No. What I'm talking about is that everybody within that area has an equal opportunity to be in a lottery to draw these homes, and there's not somebody picking and choosing, you know, their favorites in that area, in the Kihei-Makena plan area. So there has to be...I think that falls within the Fair Housing Act, to make sure that everyone who applies is being equally considered. . .

MS. DESJARDINS: So I think...sorry. I think the way that it is, it gives enough of a broad discretion to make sure that doesn't happen. Because under the Fair Housing Act, for example, if you had a large pool of one race of applicants, and then you had folks who did not live in the Kihei-Makena Community Plan area, or reside there that wanted in as well, then you would really have to look at that pool and make sure that you weren't falling into some unintended discriminatory impact. So I think the way it's written allows the Fair Housing Act to be taken into consideration in that pool because there will have to be adjustments made to make sure there isn't preferences like you're referring to or unintended racial impacts.

COUNCILMEMBER KING: So we're still looking at a lottery? Maybe Director Munsell can. . .

MS. DESJARDINS: Yes. I'm sorry, I thought that's what was intended. Yeah.

COUNCILMEMBER KING: Yeah. It kind of gives a little bit of license to pick and choose from that area. So I just want to make sure that...and it looks like Director Munsell has something to say, so.

CHAIR PALTIN: You want to add to the conversation?

MS. MUNSELL: Yeah. Chair, in 2.96, it actually outlines the process by which the applicants and the homebuyers are chosen. And it eliminates...or the intent is to eliminate the picking and choosing of who gets it. And the Department oversees that whole process. So there's a waitlist that's created and we attend...we typically attend the drawings. And of course, you would be invited to come as well, so that you can actually see who's chosen for each one of those houses. It's a really goose bump experience. So if you haven't done it before, I really encourage that you do. It's . . . (inaudible) . . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

COUNCILMEMBER KING: No, I have. So I just wanted to make sure it was that same process and that...I mean, that we can do that restriction within the community plan area for working or living in that area, and that we can do it in a fair way so that everybody who, you know, first who qualifies in that area has equal opportunity for these homes.

CHAIR PALTIN: Member Sugimura. You're muted.

COUNCILMEMBER SUGIMURA: Yeah. So are you saying then just eliminate this because 2.96 will take care of it --

CHAIR PALTIN: Deputy Director Munsell.

COUNCILMEMBER SUGIMURA: --based upon what she said?

MS. MUNSELL: Chair, no, I mean, this actually says, I mean, so what we're eliminating is the picking and choosing that I think Mr. Molina had put in his item Number 3, where he was asking that the Department actually do the waitlist and the drawing. But what this is doing is saying, hey, we're going to give a preference...assuming there's no disparate impact to other minorities, right, to people who live in this community plan area. But because 2.96 covers the rest of it, and we're going to provide oversight to the waitlist, there will be no picking and choosing once they are qualified on the waitlist. Does that answer your question, I hope?

COUNCILMEMBER SUGIMURA: So do we need to keep this language in there then? You're going to oversee it, right? And. . .

MS. MUNSELL: Just the Number 9. Yes. We would like to...we would keep that. Yes.

COUNCILMEMBER SUGIMURA: You want to keep that? Okay. You're fine with that, Mr. Molina?

COUNCILMEMBER MOLINA: Yeah, I'm fine.

CHAIR PALTIN: Member King.

COUNCILMEMBER KING: Thank you. So thank you for that, Director Munsell. So the...and the way it's worded is it says, applicants employed or residing. Because part of the goal is to...if you're living in Lahaina and you're working in Wailea, you know, we would much rather have you be living in an area where you're working. So it doesn't necessarily mean you have to be living in that area, but you have to be living or working in that area.

MS. MUNSELL: My apologies. Yeah. You are correct.

COUNCILMEMBER KING: I just want...yeah, I think you knew that, but I just wanted to clarify that. That that's the goal, is to get people living and working in the same community so they cut down their commute.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Consensus?

COUNCILMEMBER KING: Consensus.

CHAIR PALTIN: And Chair recognizes that Member Rawlins-Fernandez may need to leave. We have four more conditions on this document. Do you think that we can push through, or would you like to recess? Push through?

COUNCILMEMBER KING: I'd like to recess.

COUNCILMEMBER SUGIMURA: Push through.

COUNCILMEMBER KING: Especially if we have one member leaving soon.

CHAIR PALTIN: Okay.

COUNCILMEMBER LEE: These are pretty basic standard.

CHAIR PALTIN: Yeah. Let's see.

COUNCILMEMBER KING: Chair, but then there are other conditions I think that I would like to consider because there's another proposal and some of them are. . .

CHAIR PALTIN: Let's see what we can get through in the next ten minutes. Number 10, Ferreira Family Partners LP must offer a homebuyer financial education program at no cost to residential workforce housing unit applicants. This is similar to Number 6, but a little different from Member Molina's. You know, it's just basic stuff. I think we covered it. When we went over Member Molina's one, it just got tightened up by staff a little. Can we get consensus?

COUNCILMEMBER MOLINA: Consensus.

CHAIR PALTIN: Okay. Moving on.

COUNCILMEMBER SUGIMURA: So what is the cost to the developer? How much do they cost? Linda?

CHAIR PALTIN: I'm not sure, but they agreed to it. Member...Director Munsell.

MS. MUNSELL: So generally, we do require them to take a homebuyer class, and I know that the class offered through Hale Mahaolu cost about \$75. There are other people who offer those classes as well, and they may be more or less costly. But if you're requiring the developer to pay for everyone who applies, they could have 350, 400 applicants for this project, and that would...at \$75 apiece, that would be, you know, \$22,000, \$25,000 cost for them. So I just wanted to throw that out.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Okay. So is your suggestion to change it from applicants to the awardees?

MS. MUNSELL: Yeah, I...if you're going to have them pay for it, I mean, I personally think that homebuyers need to make some investment themselves, and \$75 to own a home next to Wailea is not that much of an investment or shouldn't be that much of a barrier to them. That's just my opinion.

CHAIR PALTIN: Okay. So what are the Members ruling on?

COUNCILMEMBER SUGIMURA: Take out at no cost.

CHAIR PALTIN: Well, then we don't really need the condition because they are required to do it.

COUNCILMEMBER SUGIMURA: Take it out then.

COUNCILMEMBER KING: Yeah. That was my question. Chair, was are we talking about, I mean, it's a requirement for homebuyers to have this class, correct? So the condition is that the developer pays for it. But you know, my...oh, I guess my question is don't we have nonprofits that do these types of classes for free for homeowners or do they charge?

COUNCILMEMBER SUGIMURA: Seventy-five dollars.

COUNCILMEMBER KING: So all of the nonprofits that are. . .

MS. MUNSELL: There are, Chair, there are at least two organizations that I know of that provide the education. Hale Mahaolu does it, and the County provides assistance to them to keep that price low. I believe Habitat for Humanity is certified, but I'm not positive. I don't remember that off the top of my head. And I know that Hale...there was one more that also offered, but I think it was only for their own homebuyers. But yeah, they've got some options.

COUNCILMEMBER KING: Okay. So if we're requiring the developer to pay for it, when...are we already subsidizing it, so it's actually a partnership with the developer? If we're saying that we're subsidizing Hale Mahaolu to keep the cost down?

MS. MUNSELL: Yeah. Chair, and I don't remember the grant amount this year, but we do try to ensure that that training is available because we do care about people being able to... we do make it a requirement of these programs. So we try to make it as affordable as possible for them. You know, my. . .

COUNCILMEMBER KING: So, we're not asking them to cover the costs that can't cover the County's costs too. We're still subsidizing it. We're just asking them to cover the subsidized...the amount above the subsidy, which I think is reasonable. Seventy-five dollars for 28 homes should be.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: Okay. So consensus to Condition 10, taking the word "applicants" out and replacing it with "awardees". Member Molina.

COUNCILMEMBER MOLINA: Yeah. I'm okay with the awardee part, but I wanted to just throw out a suggestion. Instead of, you know, people paying individually, have them do it as a group effort, you know. One time for all participants. That way it might be cheaper that way if you go in as a group, you know. You'll have about 28 people that got selected. I mean, I'm just throwing it out there for consideration.

MR. H. KIHUNE: Madam Chair?

COUNCILMEMBER MOLINA: We want to keep costs down.

MR. H. KIHUNE: Madam Chair?

CHAIR PALTIN: Sure. Who's speaking? Oh.

MR. H. KIHUNE: Howard Kihune, yeah. I want to let you know that they have to have their homeowner's certification prior to turning in their application. So if there's 400 applicants and it's \$80 a person, or whatever it is, you're talking \$30,000. And what's going to happen is that we're going to take it out of the house, because that's an awful expensive price to pay. I mean, like Ms. Munsell had mentioned, they've got to have a little bit of skin in the game, and \$75 is not a lot of skin in the game to be in a lottery.

So I would ask that, you know, we do this anyway with all our projects. Some of the homeowners have absorbed the costs. It's a small price to pay to hopefully have a home. Yeah.

CHAIR PALTIN: Okay. Then can we get a consensus to strike Number 10?

COUNCILMEMBER SUGIMURA: Consensus.

COUNCILMEMBER MOLINA: Okay. Madam Chair, I'll say consensus. But again, I just threw this out there because we had conditions similar to this for other affordable housing projects in the past. But I'll go with the group on consensus on this. Thank you.

CHAIR PALTIN: Thank you, Member Molina. I'd like to skip ahead to 12 and 13 because I think we can get through those a little faster. Number 12 is similar to Number 7 from Member Molina, and it says, Ferreira Family Partners LP must comply with all applicable laws in developing and managing the project. And I guess it's not really necessary, but it's, you know, in there. Consensus?

COUNCILMEMBER SUGIMURA: Consensus.

CHAIR PALTIN: Okay. And then Number 13 is similar to Member Molina's Number 8, which is Ferreira Family Partners LP must develop and manage the project in substantial compliance with all representations made to the Council and its Planning and

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

Sustainable Land Use Committee to obtain this change in zoning. And that's, you know, our standard line. Consensus?

COUNCILMEMBER SUGIMURA: Consensus.

COUNCILMEMBER MOLINA: Madam Chair? Can I hear from the developer on this one? Number 13?

CHAIR PALTIN: Mr. Kihune, Jr.

MR. H. KIHUNE: Thank you, Madam Chair. Thank you, Councilmember Molina. It is vague. I just want to let you know, we're going to comply with whatever laws and ordinances to develop this subdivision. But I just want to let you know from a legal standpoint, it's awfully vague because it's subject to interpretation, and it's very subjective. So we need to be a little bit aware that, you know, if I say I'm going to put in two sinks, and we end up designing the house and put in one sink, we're not in compliance.

So you need to understand that as we go through the process, we'll share all of our plans through the SMA application process should we get there, and I think all those decisions will be made there. But we will represent what we discussed, but we just don't want to be...we don't want it to be something that's so subjective that we get held up. So...but that would be our comment.

CHAIR PALTIN: I just wanted to comment that you haven't represented any amount of sinks to us.

MR. H. KIHUNE: Sorry. You know what I'm trying to say. Yeah.

CHAIR PALTIN: And then also, it would be subject to whatever the Planning Commission's ultimate decisions are on, you know, like how Vice-Chair Sinenci had asked Director McLean. They kind of go into the deeper dive more detail but, you know, just in general.

COUNCILMEMBER SUGIMURA: So Chair, then. . .

MR. H. KIHUNE: So my question, oh, I'm sorry, can I...one quick question. Sorry, Madam Chair. But then could we have that changed to be made...representations made to the Planning Commission at the time of the SMA application?

CHAIR PALTIN: Okay. Representations made to the Maui Planning Commission at...are you sure you want that though? Because you might get more detailed at that time.

MR. H. KIHUNE: Correct.

CHAIR PALTIN: And then you would be held to that.

MR. H. KIHUNE: Yes.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CHAIR PALTIN: So you want it to say that?

MR. H. KIHUNE: Yeah. Whatever we put forth in Planning Commission at the SMA process, we're going to basically be held for ultimately.

CHAIR PALTIN: Okay then. Is everyone good with that? Maui Planning Commission at time of SMA major application.

COUNCILMEMBER SUGIMURA: So Chair, it doesn't sound like we need to have this because they are saying they're going to comply with whatever they are proposing to us and to the Planning Commission. So it doesn't look like this is necessary. They are going to be doing substantial compliance, it sounds like he's, you know, he had a cute example, which is, you know, you have these unusual circumstances that may happen and we cannot, you know, not have this project because you said you were going to do two sinks, and you're only going to do one for whatever reason. I don't want us to get so into minutiae that we kill this project over something that's not necessary.

CHAIR PALTIN: I think that's why it's intentionally vague. You know, it's like a good faith standard wording, you know, kind of like, yeah, we agree, this is what it was, it's pretty vague, but.. Member King.

COUNCILMEMBER KING: Yeah. No, I agree with you Chair. We've done this for other projects before, and some of them were a lot smaller projects, and it's the representation they are making to us as the Council that we're asking them to adhere to. If we're going to do a zoning change and we're putting conditions on and we're having these discussions, we want to make sure that they are meaningful. They're going to be captured in the Committee report. And, you know, it says substantial compliance. So I think it's the main issues that we're talking about here and, you know, I don't see any harm in doing this. But I think that if the Planning Commission wants to put those things, stipulations on their requirements, they can; but we should be just be talking about what's being represented to us here in the Council.

CHAIR PALTIN: Yeah. And I think it's intentionally vague so that you're not held to that, like you said. We didn't have any discussion about sinks, so you wouldn't be held to any kind of sinks or islands, or kitchen, tubs, toilets and what not, it's just...I mean, if you get more detailed, then you're being held to a much more detailed version.

MR. H. KIHUNE: No. Thank you, Chair Paltin. Yeah. As long as we're not held in, you know, held in a shoebox or held to a pigeonhole, we just want to make sure we can move laterally so we can make this project work for everybody. That's all.

CHAIR PALTIN: Yeah. Yeah. I think...I mean, if you're not in substantial compliance, there would be a logical reason given. And then we'd be like, oh, they're not going to do that because of this, this, and this, you know.

MR. H. KIHUNE: Yeah. We're okay with it. We're okay with it as it is. No problem.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

July 9, 2020

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Consensus?

COUNCILMEMBER MOLINA: Consensus.

CHAIR PALTIN: Okay. All right. So we still have Number 11 and Member King's conditions, and it's been ten minutes. So shall we recess until next week Thursday? Member King.

COUNCILMEMBER KING: Yes, recess. And I think that will allow the community members to absorb what we've done so far because they never got to see the conditions that you, Chair, or myself published until this morning because there wasn't time to put those together before you posted this meeting. So they didn't get posted early. So this would give another opportunity for the Committee to absorb where we're at and where we're headed with this project.

CHAIR PALTIN: As well as the developer. Okay. So in that case, do Members think that we can get through the rest and vote on something within an hour, hour and a half?

COUNCILMEMBER KING: Well, it kind of depends on how much testimony there is, so.

CHAIR PALTIN: Well, I'm planning on recessing, so there won't be any testimony. I'd like to schedule a couple items at probably 10:30 then, if that's okay. We'll recess this meeting until. . .

COUNCILMEMBER KING: But, Chair? Oh, so we're going to schedule this as a reconvene and then schedule a second meeting on the same day?

CHAIR PALTIN: Yeah. So we'll recess this meeting until next Thursday, 9:00 a.m., and then I'll put together a small, little agenda for 10:30 because, you know, folks got things that made it through the Planning Commission and what not. I'll try to put maybe one item together for 10:30.

COUNCILMEMBER LEE: No objection.

COUNCILMEMBER MOLINA: No objection.

CHAIR PALTIN: We can come back at 4:45 today. No? Okay. All right.

So this meeting is in recess and will return next week Thursday. What's the date on next Thursday, 16? Thursday, the 16th at 9:00 a.m., and I'll put together a small, little agenda for 10:30, probably on something that went through the Planning Commission.

Thank you, Members, for your hard work and diligence putting in that seventeen minutes of overtime. This meeting is now in recess. . . .(gavel). . .

RECESS: 12:17 p.m.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:min:200709

Transcribed by: Terianne L. Arreola

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

July 9, 2020

CERTIFICATE

I, Terianne Arreola, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 24th day of July, 2020, in Makawao, Hawaii


Terianne Arreola