

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

MINUTES

July 22, 2021

Online Only Via BlueJeans

CONVENE: 9:02 a.m.

PRESENT: Councilmember Tamara Paltin, Chair
Councilmember Kelly Takaya King, Vice-Chair (out 10:30 a.m.)
Councilmember Gabe Johnson, Member
Councilmember Alice L. Lee, Member
Councilmember Michael J. Molina, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member
Councilmember Shane M. Sinenci, Member
Councilmember Yuki Lei K. Sugimura, Member (in 9:14 a.m.)

EXCUSED: Councilmember Tasha Kama, Member

STAFF: Wilton Leauanae, Legislative Analyst
Alison Stewart, Legislative Analyst
Shelly Espeleta, Supervising Legislative Analyst
Richard Mitchell, Legislative Attorney
David Raatz, Deputy Director
Clarita Balala, Committee Secretary
Lenora Dineen, Council Services Assistant Clerk

Kate Griffiths, Executive Assistant to Councilmember Gabe Johnson
Evan Dust, Executive Assistant to Councilmember Tasha Kama
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama
Lois Whitney, Executive Assistant to Councilmember Tasha Kama
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Ana Lillis, Executive Assistant to Councilmember Michael J. Molina
Sarah Pajimola, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez

ADMIN.: Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Michele McLean, Director, Department of Planning
Scott Forsythe, Small Town Planner, Department of Planning
Erin Wade, Chief of Planning and Development, Department of Management

OTHERS: Mahina Martin

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

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CHAIR PALTIN: . . .*(gavel)*. . . Will the Planning and Sustainable Land Use Committee meeting, July 22, 2021, come to order. The time is now 9:02 a.m. And I'd like to wish all my dear colleagues bonjour j'espère que tu vas bien. If everyone can please silence their cell phones or any noise-making devices, we'll get this show on the road. My name is Tamara Paltin. I'll be your Chair for today's PSLU meeting. And with us we have our Vice-Chair, Councilmember Kelly King. Bonjour j'espère que tu vas bien.

VICE-CHAIR KING: Bonjour, and I hope you are well as well.

CHAIR PALTIN: I am. Late night, but I'm good. Okay. And bonjour, Councilmember Gabe Johnson.

COUNCILMEMBER JOHNSON: Bonjour, Chair, and bonjour other Councilmembers. It's a beautiful morning in Lāna'i City, and the birds are chirping and the roosters are crowing.

CHAIR PALTIN: Got to love the roosters. Oh, Member Tasha Kama is excused for this meeting, and we'll see her next week and bonjour, Councilmember Lee, j'espère que tu vas bien.

COUNCILMEMBER LEE: Madam Chair, I hope we're not slaughtering the language. Yeah. So, bonjour j'espère que tu vas bien. I hope you are well, and I'll use your words, welcome to the show.

CHAIR PALTIN: Welcome to the show. I don't see Member Molina. Next up we have Member Rawlins-Fernandez. Bonjour j'espère que tu vas bien.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair, mai Moloka'i nui a Hina. Bonjour, ça va je vais bien. And then I think you said welcome to the show...bienvenue au spectacle.

CHAIR PALTIN: Bienvenue au spectacle. Bonjour, Councilmember Sinenci, and welcome to the spectacle.

COUNCILMEMBER SINENCI: [*French spoken*] Madam. Bonjour, j'espère que tu vas bien. Aloha.

CHAIR PALTIN: I am. Thank you. And, I think Member Sugimura might be a little bit late probably. So...and we also have with us...oh, I just got a message from Member...oh, Member Molina has network issues again, so he'll be with us shortly once he gets that straightened out. With us today we have Deputy Corporation Counsel Michael Hopper. From the Department of Planning, we also have a fellow French speaker, bonjour Director McLean, j'espère que tu vas bien.

MS. MCLEAN: Bonjour, Madam Présidente.

CHAIR PALTIN: And we also have with us today Scott Forsythe, a Small Town Planner. Our

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Committee Staff, we have Committee Secretary Clarita Balala, Assistant Clerk Lei Dineen, Legislative Analysts Wilton Leauanae and Alison Stewart, as well as Legislative Attorney Richard Mitchell. On the agenda today we have two items, PSLU-24, Wailuku Redevelopment Area and Variances, and PSLU-68 Amending Chapters 19.64 and 19.65, Maui County Code, Relating to Bed and Breakfast Home and Short-Term Rental Home Permits on Lānaʻi. This online meeting is being conducted in accordance with the Governor's most recent Emergency Proclamation on COVID-19. Please see the last page of the agenda for information on meeting connectivity. Testimony. Okay, let's begin with public testimony. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans link as noted on today's agenda. Testifiers wanting to provide audio testimony should call 1-408-915-6290, and enter meeting code 149341846, also noted on today's agenda. Written testimony is encouraged and can be sent at any time via the eComment feature at mauicounty.us/agendas. Oral testimony is limited to three minutes per agenda item. When your name is called, please unmute yourself by clicking the microphone icon or, if calling in, please press star four to unmute yourself. Oral testimony is limited to...oh, sorry. I read that already. Please be courteous to others by muting your microphone while waiting for your turn. When testifying, please state your name. Please also state if you are testifying on behalf of an organization or are a paid lobbyist. If you have joined this meeting online, Staff will assume you wish to provide testimony and will add you to the list of testifiers. Once you are done testifying, or if you wish to view the meeting without providing testimony, please disconnect from the BlueJeans meeting. You are welcome to continue viewing on *Akakū* Channel 53, Facebook Live, or on mauicounty.us. Once oral testimony concludes, only Councilmembers, Staff, and designated resources will remain online, and all others will be dropped from the BlueJeans connection. A link to the list of testifiers is posted in the chat; however, please be mindful that chat should not be used to provide testimony or to chat with others during the meeting. Members, I would like to proceed with oral testimony without any objection.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Oh, welcome. Bonjour, Member Molina. Glad to see you got your issues worked out and are back under the bridge.

COUNCILMEMBER MOLINA: Yeah, back under the bridge. My apologies for my tardiness. Again, my network is acting up on me for the second day in a row. So...we'll make it happen. As the old saying goes, better late than never. Thank you.

CHAIR PALTIN: Oh, yes. For sure, for sure. And you're not that late either, so even better. I think we have one testifier today, and I'm assuming that she's going to be testifying on PSLU-24. First up and only, we got Mahina Martin. Bonjour.

. . . BEGIN PUBLIC TESTIMONY . . .

MS. MARTIN: Bonjour. I am impressed by the language practice. But aloha and good morning, everyone. Thank you for the time today. I am offering personal testimony on Item PSLU-

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24, Wailuku Redevelopment Area and Variances. I just would like to go on the record and say that I have serious concerns with a part of the proposed bill. It's on page 66, Item 2, which allows for the BVA...for the Board of Variance and Appeals to apply the Wailuku Redevelopment Area Plan...I guess I don't know what you would call it, a guideline...design guidelines to their decision making. While I agree that the bill in its intent is something I could support, removing authority from the MRA into the Board of Variances and Appeals, what is my concern is this particular inclusion will allow a board, through the BVA action, to approve something which we are trying to avoid from the MRA. So we put in a lot of effort, as you know, when we were--we as Wailuku residents, which I am, born and raised in Wailuku and still here--would like to ensure that future planning reflects today's contemporary needs and desires, including a clear desire from the community to keep Old Wailuku Town a little bit more traditional. And as you may recall, our public disagreement with building a large hotel in the Old Wailuku area kind of spurred this type of action. So I'm not going to go down that road again, quite frankly. That was really frustrating unnecessarily. I am not interested in opportunities to create large hotels. I believe our community does not, including Wailuku folks. I'm sure others feel opposite, and they are...you know, that's their opinion. But in the way this is written today, all it does is transfer that option over to BVA. Now, I've looked at the Members of the Board of Variances and Appeals, and they are terrific members of our community with very strong backgrounds in the building industry, which is what they probably should have in order to review requests that come their way. So I don't have an issue with that. However, that would be their interest, is to look at it from that angle. It would also allow them, the way it is written, to comply with an item in the MRA's old guidelines...or actually, it still exists...but it says that the project, if it eliminates slight [sic] and blum [sic] and forwards the vision, principles, and objectives of the Wailuku Redevelopment Plan, would allow for them to proceed with approving a project. What I would like instead is to remove that section, allow BVA to continue with its existing strict compliance that would cause any economic hardship at no fault to the landowner. That already exists, as I understand. Anything else would be considered a special use or conditional use, and be routed through you, the Council, or whichever Council at that time in history, for review and approval. It would also mean that the community would have their perspective at the table that way, at a community meeting, you know, folks like us in Wailuku. So that is all. Thank you.

CHAIR PALTIN: Thank you, Ms. Martin. So basically you'd like 2(d) removed from page 66, or...

MS. MARTIN: Yes.

CHAIR PALTIN: Okay. I see we have a question from Member King.

VICE-CHAIR KING: Thank you, Chair. Just wanted to thank you for your input, Mahina. I really value your opinion, especially as a resident of this area. And is that your only concern with the proposed changes?

MS. MARTIN: Yeah. You know, it's quite a lengthy document, so a little hard to digest, you know. I think that folks should have a little bit more time understanding this. I know

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there's litigation. I support that litigation. I appreciate that litigation because I felt that the work we did at MRA on that Old Wailuku Town, or the new Wailuku hotel proposal, I was really unfortunate to get that push and pull. But for now, yes, that is my objection.

VICE-CHAIR KING: Okay. All right. Thank you so much for being here.

MS. MARTIN: Okay. Thank you.

CHAIR PALTIN: Members, any further questions for the testifier? And thank you so much for getting all the way to page 66 and probably 67. It is a bit much to digest.

MS. MARTIN: Thank you, Chair. Thank you, Councilmembers. Aloha.

CHAIR PALTIN: Okay. Thank you. I didn't see any further testifiers on the list, so I'll make a last call for testimony. If anyone would like to provide public testimony today, please unmute yourself and begin your testimony. Oh, and bonjour, Member Sugimura.

COUNCILMEMBER SUGIMURA: Bonjour. Good morning, everybody.

CHAIR PALTIN: Good morning. Oh, Erin Wade is requesting to testify. Okay, Ms. Wade, you're up, three minutes. And if you don't mind identifying in what capacity that you're testifying.

MS. WADE: Sure. Good morning. Erin Wade, Department of Management. I have staffed the Maui Redevelopment Agency since 2000 and, let's see six...eight. Sorry, 2008. I just wanted to bring up a couple of things. We fully support pulling the Zoning and Development Code into Title 19. The Redevelopment Agency reviewed the document and supported it. Just a follow up to the section on variances, this was page 66. So if you look at the Board of Zoning and Appeals criteria, as it is now, an applicant has to meet all three of the conditions stated. And one of those conditions is that the use or condition is exceptional and unique, and doesn't happen a whole lot in the neighborhood. The majority of the variances that I have overseen at the Redevelopment Agency are because of a situation that is not unique, unfortunately. In a lot of the cases...the last one that the Redevelopment Agency saw was the old bowling alley. So because the neighborhood was built long before accurate surveys were complete, buildings straddle what are now surveyed property lines, there's lot of encroachments. The buildings don't meet existing building codes in a lot of cases, and so those conditions created by the owner and they are conditions that happen a lot in the neighborhood. So that was the reason...and I wasn't here, you know, I didn't work for the County when this document was originally written, but that was the reason that some of these conditions were created in...for the redevelopment area having special criteria for the zoning. And I fully understand Ms. Martin's concern about them having the potential to be used excessively, so maybe that deserves some more scrutiny. But I would hate for it to create a condition where existing historic buildings could not continue to be used because there's no longer a mechanism for that to happen. So that's all I wanted to share today. Thank you.

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CHAIR PALTIN: Thank you, Ms. Wade. Members, any questions for the testifier? Seeing...oh, Member Sugimura. You have a question for Ms. Wade?

COUNCILMEMBER SUGIMURA: What page, Erin, did you reference again? Sorry about that. I missed it.

MS. WADE: No problem. Yeah, same page.

COUNCILMEMBER SUGIMURA: I didn't hear you, what did you say?

MS. WADE: Page 66.

COUNCILMEMBER SUGIMURA: 66. Okay, thank you.

CHAIR PALTIN: Any further questions for the testifier? Seeing none. Thank you so much. Is there anyone else wishing to testify at this time? This is a last call, and I will unmute everyone. Anybody wishing to testify at this time. Last call. Okay. Going, going, gone. Public testimony is closed. That's like a record for us. Written testimony can be sent in at any time, and I'd like to admit written testimony into the record. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. Thank you.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR PALTIN: Okay. Members wishing to speak during today's meeting should say my name and raise their hand so that I may recognize you. I'd like to ask the Members' indulgence for taking the agenda items out of order. I think that we can get through the Lānaʻi PSLU-68 pretty quickly as it's at least our third time on meeting on this and it's been through the Planning Commission. I think Lānaʻi Planning Commission had seven meetings on it, and we were just about ready to move forward to it...with it, but then Lānaʻi had that COVID situation. And so they've been waiting quite a while. And it's kind of a continuation on our STRH theme that we had from last meeting. So what I'd like to do is finish PSLU-68, I'm hoping it doesn't take more than half an hour, and then spend the rest of the time on Wailuku Redevelopment because that's like a 67-page bill, so that's probably going to take longer. And I'm not sure if Members went back over the old minutes, but we did do quite a bit of work and understanding on the bill. We met, I think, October 13th and December 3rd, and one of the things that Member Molina brought to our attention was that the B&B side and the STRH side needed to be consistent with the 300-foot radii, and so we're going to work on that. And I think also, you know, if they needed to renew, and they happen to be less than 300 feet, then they would be able to renew, but no new ones would be allowed to be within 300 feet or the same block. So that was something that we had worked on. And I think for the most part, that just brings us to setting the numbers. A message that we heard pretty loud and clear from the Lānaʻi Planning Commission was that they did not want to have more

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B&B permits than STRH permits. So even though there was currently no B&Bs, they wanted to keep it that high. I think my suggestion was then let's make them both 15 and lower it by attrition. But I'd like to, at this time, give our Councilmember from Lānaʻi a chance to speak on the bill after Member Rawlins-Fernandez finishes what she raised her hand for.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Just a point of order real quick. So did we change the order of the agenda?

CHAIR PALTIN: Oh, I thought so. Any objection of changing the order?

COUNCILMEMBERS VOICED NO OBJECTIONS.

**PSLU-68 AMENDING CHAPTERS 19.64 AND 19.65, MAUI COUNTY CODE,
RELATING TO BED AND BREAKFAST HOME AND SHORT-TERM
RENTAL HOME PERMITS ON LĀNAʻI (CC 20-484)**

CHAIR PALTIN: Okay. So going right into PS LU-68, Member Johnson, did you have any comments on the bill? And just checking if you caught up with us because it was all from last term that we had heard it.

COUNCILMEMBER JOHNSON: Yeah. Thank you, Chair, for doing all this hard work. And I...you know, I often go to the streets when it comes to this, right. So I went into Blue Ginger Café, we had a big discussion about this. A lot of folks on Lānaʻi agree that we want to do it by attrition, and that's really the overwhelming message that I heard through these discussions with just the word on the street. So I agree if...you know, there is that, you know, between B&B and STH [sic], and I understand that, you know. So I'm okay with that. And as long as...I guess the main point I wanted to just hammer home is that...is I'm okay with the numbers as long as we continue to reduce the numbers through attrition. So I think this discussion has been going on...like you said, the Planning Commission had over seven meetings on it, this is from last year, and I have been, you know, I asked my community. And that's what they were talking about, was they kept saying attrition, attrition, attrition. So that's where I stand in it, and I hope that we work on it through that lens. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Johnson. Committee Vice-Chair King.

VICE-CHAIR KING: Thank you, Chair. So I just wanted to ask Member Johnson...so if we're talking about attrition, so does the community want to stick with that 21 number, or are they okay with the 15 number that the Chair just proposed? They want to stick with the 21...the number of 21.

COUNCILMEMBER JOHNSON: I...every time we've talked about it, it was the number 21. So that's kind of where I'm leaning towards. So that's kind of what I'd like to do with it. But of course, you know, we can all talk about it. That's my stance on it, is the 21.

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VICE-CHAIR KING: Okay. Because my understanding is that there's actually 15 permits. So if we went to 15, then we would be eliminating from there by attrition. I think that's what the Chair was talking about. So that's why I'm confused. So if you only have 15 permits, and we lower it to 15, then, you know, whenever the next ones expire or don't get renewed, then it would go down from there. But if you leave it at 21, I guess that's allowing six more permits to be issued above what's already issued. Is that correct, Chair?

CHAIR PALTIN: I think there's 19 currently. Let's check with Director McLean though, to be certain. Because currently, the moratorium that former Member Hokama enacted is still in place, so nothing has been changed since that moratorium. I think...is that correct, 19 permits currently for short-term rental, and one pending for B&B?

MS. MCLEAN: Yeah. I'm going to look at our latest report really quick, and I can let you know in just a few seconds.

VICE-CHAIR KING: I just was assuming it was 15 since you said 15.

CHAIR PALTIN: I said 15 because that allows for attrition. If we go with 21, that wouldn't be attrition, or 19 wouldn't be attrition either if there is 19 permits.

VICE-CHAIR KING: Oh, I see. So you were suggesting that we go with 15, and then we exempt the...you know, the extra four or whatever until they expire.

MS. MCLEAN: Lānaʻi currently has 17 --

CHAIR PALTIN: Oh, 17.

MS. MCLEAN: -- permitted operations. I don't know how many are in process. I can look that up real quick. And only one B&B.

VICE-CHAIR KING: Okay. So maybe the number should be 17, and then just no additional ones after that or something.

CHAIR PALTIN: Okay. I don't know where I got 19 from...seven and nine look alike, I guess. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Yeah. I think Director said that she didn't know how many applications were pending, or...I don't know. So maybe that's where the 19 came from?

CHAIR PALTIN: Oh, maybe.

COUNCILMEMBER RAWLINS-FERNANDEZ: I don't know, I can look back and...but anyway, yeah. Because I kind of...when you said that, that was kind of what I recalled too, but I don't know. So I'm kind of confused, I guess, and maybe Member Johnson can explain. So if the word on the street is attrition, but you want to stay with 21, then there wouldn't

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be any attrition, it would allow for growth. If you stick with the current number of permits, that wouldn't be attrition either, that would be the current number of permits. Attrition would only occur if there is less than the amount of permits that's currently granted. So would you be able to explain a little more, Member Johnson. If you're okay with that, Chair?

CHAIR PALTIN: Sure. Go ahead, Member Johnson.

COUNCILMEMBER JOHNSON: Yeah. I think what we have now is we're still kind of...we have 17, and then X amount in the pipeline, right. Is that my understanding? So if we're at 17 and then...oh, we're not. You're shaking your head.

COUNCILMEMBER RAWLINS-FERNANDEZ: Director McLean didn't have that number. I'm assuming she's looking that up to confirm with us.

COUNCILMEMBER JOHNSON: Okay. Okay. I kind of...I feel like...I mean, is there a balance? How do we respect what the Planning Commission was saying, which they're saying is 21. And then respect what the people are telling me is okay, whatever the number is, we want to go down from there. So that's the balance I'm trying to meet, is that if they are...if we don't have 21, if there isn't 21 available, then that's not really attrition, right?

CHAIR PALTIN: Yeah.

COUNCILMEMBER JOHNSON: If they didn't reach 21, then we shouldn't do...we shouldn't go there. So I think wherever we're at right now, and then start from...going downwards. Does that make any sense?

COUNCILMEMBER RAWLINS-FERNANDEZ: So if you want to be able to go downwards, then you have to make the number less than what is currently permitted.

COUNCILMEMBER JOHNSON: Okay. So it's currently permitted at 17; is that right?

COUNCILMEMBER RAWLINS-FERNANDEZ: 17.

COUNCILMEMBER JOHNSON: Okay. Good. So then let's...then I would say in order to do that we could go to 15, and then that would be attrition? Is that...that seems like simple math, right? So 15 would be my number then. That would be my recommendation. So that way it would satisfy the community's desire to have attrition, and then that's not too far off of what we already have. That's kind of where I'm trying to find the fair balance on it. So 15 would be my recommendation.

CHAIR PALTIN: Okay. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that clarification. Mahalo, Chair.

CHAIR PALTIN: I see Member Molina's hand and...

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COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, I'm just saying mahalo.

CHAIR PALTIN: Okay. Member Molina's hand, and then Member Sugimura's.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Just one more task for Director McLean. Just out of curiosity, during the pandemic, were there any operators that cancelled their permit because when everything was shut down, no visitors allowed. Were you aware of any cancellations?

CHAIR PALTIN: Director McLean.

MS. MCLEAN: Not that I'm aware of...that I'm aware of. Although I'm guessing the number 21 was chosen in the proposed bills because at that time, that's how many there were, which suggests that four have dropped off since then. But whether they just chose not to renew, or whether they were revoked for...or not renewed for violations, I can't say at the moment.

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

CHAIR PALTIN: Okay. Member Sugimura, followed by Member Johnson.

COUNCILMEMBER SUGIMURA: So Michele, were you going to look at how many were pending? I think you said you were going to check.

MS. MCLEAN: Yes. I'm verifying with Staff. The Lānaʻi Planning Commission met last night, and we always produce an open applications report for them, and there are none on that. So I'm assuming that there are none pending, but I'm just verifying with Staff.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

CHAIR PALTIN: Member Johnson, followed by Member Rawlins-Fernandez.

COUNCILMEMBER JOHNSON: Thank you, Chair. I'll just be real quick. I want to thank the Lānaʻi Planning Commission for their hard work. I know I'm kind of recommending something less than that, but I still appreciate all their discussion on it. My understanding that Hāna also has 15, is that...and I might be incorrect, but I think that's their number as well. So it's all about the goal of protecting our community. So that's all I wanted to add to the discussion. Thank you, Chair.

CHAIR PALTIN: Yeah. And Hāna is also 15 through attrition, and so I'm not sure if the Planning Commission was aware that they could do through attrition choose a number. But yeah, no one disputes how hard our Planning Commissions work. They definitely do a yeoman's job. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I have a question for Director McLean about applications. So for the past two years...has it been two years? I don't know, the pandemic has really warped time for me. So during the time that the

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moratorium has been in place, was the Department allowed to accept applications?

MS. MCLEAN: I would look at the wording. That might be why they're not pending. Maybe we didn't accept them, or maybe applicants just knew not to apply. But I don't know offhand, I can check on that too.

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

CHAIR PALTIN: Okay. So is it that then...okay. So our OCS Staff says that in the October 13th, 2020 meeting, the number of permits for B&B and STRH on Lānaʻi, as of June 30th, 2020, there were zero B&B, and 19 STRH, and there was one B&B permit application in the works. So that was as of 6/30/2020. So if there is currently 17 STRH, then I guess two already dropped off. I guess that's why the number 19 was in my mind. Mystery solved. I'm getting that Members don't feel comfortable voting until we hear if there's pending applications, or are we okay to take a vote?

COUNCILMEMBER JOHNSON: I'm okay to take a vote. That's just me.

CHAIR PALTIN: Okay to take a vote? Okay. Member King, you have something else to say, or was that a yes.

VICE-CHAIR KING: Well, yeah. I was wondering if...so if we vote on the number 15, and there are pending applications in the vote, do we need to make a statement about whether those should or should not be accepted?

CHAIR PALTIN: We probably should, yes.

VICE-CHAIR KING: Because I think that pending...that moratorium should have stopped them from even accepting applications, so I'm kind of surprised that they would have been if they haven't...well, they haven't told us yet.

CHAIR PALTIN: Yeah.

VICE-CHAIR KING: But I think we should make a statement about those.

CHAIR PALTIN: Okay. We're just waiting for verification on that, but...Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So if there are applications pending, the East Maui or Hāna, I can't remember what the bill itself says, there were pending applications, and we did do attrition, and allowing the pending applications to be grandfathered in if they're approved. And so that is...it wouldn't be unique. We've already done that before with Hāna. That's all.

CHAIR PALTIN: Okay. So in that case we don't...

COUNCILMEMBER RAWLINS-FERNANDEZ: So we could use similar language if we....

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CHAIR PALTIN: Oh, I see Director McLean. Yes, Director.

MS. MCLEAN: Sorry to interrupt the discussion, Chair. I did verify that there are no pending applications on Lānaʻi. Whether that's because we didn't accept them or people didn't apply, I can't say, but they're zero.

CHAIR PALTIN: Okay. Thank you. So I guess at this time I'll entertain a motion to set the caps for the STRHs and the B&Bs.

VICE-CHAIR KING: Chair, are you just talking about Lānaʻi now?

CHAIR PALTIN: Oh, yes. Lānaʻi. Member Johnson.

COUNCILMEMBER JOHNSON: I move to make STR and B&Bs 15...the cap of 15 for Lānaʻi.

VICE-CHAIR KING: Second.

CHAIR PALTIN: Been moved by Member Johnson and seconded by Member King to set the caps for Lānaʻi STRH and B&B at 15 through attrition, correct?

COUNCILMEMBER JOHNSON: Yes, that is correct.

CHAIR PALTIN: All right. Thank you. Okay. And then including all the legislative intent that we went over in October, I'll entertain a motion.

VICE-CHAIR KING: Chair?

CHAIR PALTIN: Yes.

VICE-CHAIR KING: I think we need to vote on this amendment first.

CHAIR PALTIN: Oh, yeah. Sorry. My bad. Okay. All those in favor of STRH and B&B cap of 15 through attrition, raise your hand and say aye.

COUNCILMEMBERS VOICED AYE.

CHAIR PALTIN: Thank you. Okay. Motion passes with eight "ayes" and one excused, Member Kama.

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

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Kama.**

MOTION CARRIED.

ACTION: **APPROVED AMENDMENT.**

CHAIR PALTIN: Okay.

VICE-CHAIR KING: And I have a quick question, Chair.

CHAIR PALTIN: Sure.

VICE-CHAIR KING: Just for everyone's edification. So if the number is at 15 now, and say they get...say, three or four people let their permits expire or whatever, and it drops to 15 or below, do we need to then reset the number to lower? Are we going to be doing this like for each community as...I mean, because if it gets to below 15, then it's going to be allowed to go up to 15. So is the intent for the community, Mr. Johnson, to actually at some point get to zero?

COUNCILMEMBER JOHNSON: Yes.

VICE-CHAIR KING: So we need to...we'll need to reset those numbers as they go down then, I guess. Is that we're looking at? I mean, this is a question for all communities too, because...

CHAIR PALTIN: Yeah. I didn't realize the intent for the community was to get to zero. Is that...

COUNCILMEMBER JOHNSON: Well, I don't...that's a hard question to answer, that it's...is it the community's intent. I mean...

VICE-CHAIR KING: Okay. And that's what I thought...yeah, that's what I thought we were trying to do with this idea of attrition is get to...eventually get to zero in some of these communities. And so I guess it'll be a matter of revisiting these numbers periodically as...you know, as the permits expire or don't get renewed.

CHAIR PALTIN: Okay. Well, you know, I do have a pretty full master agenda with charter

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deadlines, so whatever you want your final number of STRHs to be, now would be the opportune time to say what you want the final final number to be. Because I can't guarantee that we will revisit in a timely manner with...I mean, even once I get through the charter deadline items on the agenda, they just keep coming. Director McLean's a busy lady, you know.

VICE-CHAIR KING: Yeah. And Chair, I think we're all getting that, and why I feel the same way, but I just wanted to...you know, I mean, for South Maui, I think we're...since we're in the middle of our community plan update, we can put it into the community plan and then it'll come back at some point. But for the ones that have already done the community plan review, you know, Moloka'i was clear about not wanting any short-term rentals. And if Lāna'i...you know, maybe you need to go back to the community and see if that's what they want, then we should express that in the...you know, come back and make a change and express that. Because right now, you only have attrition down to 15 with this...for this amendment. So anyway, I just...I didn't want to make a whole big deal, but I just wanted everyone to be thinking about that.

CHAIR PALTIN: Okay. Well, you know, once...if we pass this bill, we're going to file it, and so there wouldn't be any more items for Lāna'i's STRHs or B&Bs, and I sure wouldn't be introducing another item. So just saying, this would be the time to set your final number if you want. Member Johnson.

COUNCILMEMBER JOHNSON: Yeah, I understand we're getting in the weeds, Chair, and I understand your busy schedule. So 15 was a very good number, they've spoken with a long time. We'll leave it at that. That's my, I would say, recommendation.

CHAIR PALTIN: Okay. Great. Thanks. Glad we're all clear. Thank you for that clarification, Member King. Member Molina, followed by Member Sinenci.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. I know we're on the main motion as amended. Is it okay if I ask Director McLean a question?

CHAIR PALTIN: Sure.

COUNCILMEMBER MOLINA: And hopefully it doesn't...hopefully no more weeds grow from this question. So...I like that, Councilmember Johnson—weeds. On page 3 of the B&B bill, it prohibits B&B operators, service or delivery vehicles from parking on the street. Is there similar language for on-street parking restrictions for the STRH bill? And if it isn't, should it be added for the sake of consistency?

CHAIR PALTIN: Kind of like your 300 radii one, huh?

COUNCILMEMBER MOLINA: I know. I making trouble again. Sorry.

CHAIR PALTIN: While we wait for Director McLean, Member Rawlins-Fernandez, was your question on the topic that Member Molina had?

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COUNCILMEMBER RAWLINS-FERNANDEZ: I was going to...mahalo, Chair. I was just going to suggest that we give Director a couple minutes to find the answer for Member Molina's question, and then maybe we can go to Member Sinenci, who also had his hand up, while we give her some time?

COUNCILMEMBER MOLINA: Yeah. Good suggestion.

CHAIR PALTIN: Okay. Member Sinenci, did you have another question or comment?

COUNCILMEMBER SINENCI: Mahalo, Chair. Yeah, it looks like...just to be clear, Hāna's 15 by attrition was for STRHs, not for bed and breakfasts.

CHAIR PALTIN: Yeah, yeah. Thank you for clarifying that.

COUNCILMEMBER SINENCI: But I did want to address our bed and breakfast numbers as well. So if Director McLean had a number for me, we might want to address that today if can...if possible? Or is it...

CHAIR PALTIN: Oh, I think we would need to agendize Hāna specifically --

COUNCILMEMBER SINENCI: Okay.

CHAIR PALTIN: -- because the agenda says --

COUNCILMEMBER SINENCI: Lāna'i.

CHAIR PALTIN: -- Lāna'i, yeah.

COUNCILMEMBER SINENCI: Okay. Thank you, Chair.

CHAIR PALTIN: You could propose legislation, and then put it onto the Council agenda for referral to my Committee. And then I think the process would be that it would need to then go through the Hāna Advisory Committee, and then the Maui Planning Commission, and then it could come back to me. We can do that direct from the Council instead of going to the Committee, though.

VICE-CHAIR KING: Chair, didn't we already do...didn't we do that with the numbers we...I thought we already sent that to the Planning Commission.

CHAIR PALTIN: Those were all for STRHs, we did not do B&B.

VICE-CHAIR KING: Oh, this is just for bed and breakfast. Oh, okay.

CHAIR PALTIN: Yeah. Okay. Member Lee.

COUNCILMEMBER LEE: Madam Chair, I just wanted to mention to Director McLean that...because I know you were probably working for the Council at the time, but when

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we created the B&B, the reason why we required parking to be onsite was because the owner lived there. So you would have the owner, plus the visitors. With the STRs, which I didn't take part in because I had already left, that came later. Vacation rentals came after B&Bs. I guess the thinking was, you know, it's just pretty much one family, or one, you know, and not two families necessarily, the owner and the visitor. So I'm thinking that's the reason why the on street...I mean onsite...on property parking wasn't required for that. Is that your recollection? Were you there at the time?

MS. MCLEAN: Yeah, I was there when that first B&B bill went through, and it was only up to a maximum of, I think, three bedrooms. It was much smaller than what we have now. There were three different types of permits with different levels of review. I thought the parking was...still had to be onsite though.

COUNCILMEMBER LEE: For vacation rentals? Short-term rentals?

MS. MCLEAN: They didn't have vacation rentals at the time.

COUNCILMEMBER LEE: Yeah, there weren't. But the onsite parking was because there were two...the property owner was there, plus the visitors, yeah.

MS. MCLEAN: Right, right.

CHAIR PALTIN: I see Deputy Director Raatz. Did you have something to add for us?

MR. RAATZ: Yeah, just briefly, Chair. Parking standards are not on the agenda today, that's not part of the recommendation you got from the Planning Commission. So we'd recommend just finishing up the discussion on the number of permits. Thank you, Chair.

MS. MCLEAN: But I do have an answer to Councilmember Molina's question.

CHAIR PALTIN: Great.

MS. MCLEAN: Because the Lānaʻi Planning Commission made a specific recommendation about parking, about their recommendation, the restriction is that parking has to be onsite and can't be on street overnight for bed and breakfast, and the Lānaʻi Planning Commission recommended that be changed to you can't be on the street at any time. I don't think that needs to be added...any changes need to be made to the STRH bill because on page 6, near the top, number 3, which is actually...oh, my gosh, that's a really long subsection...19.65.030(Q)(3), "Vehicles shall be parked in the designated onsite parking area and shall not be parked on the street." So that's where all this . . . *(inaudible)*. . . is all the time in any . . . *(inaudible)*. . .

COUNCILMEMBER MOLINA: Okay. Okay, great. Thank you for pointing out that clarification. All right. I'll speak no further of this so I don't get into trouble with the Sunshine Law police. Thank you, Madam Chair. Thank you, Madam Director.

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CHAIR PALTIN: Okay. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Just a quick question. Do we have a main motion on the floor?

CHAIR PALTIN: Not yet.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Chair.

CHAIR PALTIN: Okay. Okay. Committee Members, the Chair will entertain a motion to recommend passage on first reading of the proposed bills as amended entitled, "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.64, MAUI COUNTY CODE, RELATING TO BED AND BREAKFAST HOMES" and "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.65, MAUI COUNTY CODE, RELATING TO SHORT-TERM RENTAL HOME [sic]" as amended, incorporating nonsubstantive revisions and filing of County Communication 20-484.

VICE-CHAIR KING: So moved. But does this include the amendment we just made then? Because we made the amendment before we had the motion on the floor. I think that's what Ms. Rawlins-Fernandez was speaking to.

CHAIR PALTIN: Oh, we're not allowed to do that?

VICE-CHAIR KING: Well, usually we have a motion for the bill, and then we make the amendments to the motion. But we made the amendment first, so we can go back and do this motion and then we can redo the amendment if we need to. I don't know what the procedure is if we did the amendment first. I was not thinking about the fact that we didn't have a motion on the floor.

COUNCILMEMBER LEE: Just withdraw the amendment motion.

COUNCILMEMBER RAWLINS-FERNANDEZ: No, no, no. We're good.

VICE-CHAIR KING: We already voted on it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Point of order. Point of order, Chair. So we have a main motion by Member King, we don't have a second. After we have the main motion on the floor, we can just amend it to 15 and then we'll have a main motion as amended and then we can vote on it.

CHAIR PALTIN: So that first one was just practice, you guys.

COUNCILMEMBER LEE: Yeah, you have to nullify that. You have to nullify that first motion.

VICE-CHAIR KING: Well, I think it's just nullified by the fact that we didn't have a main motion, so if we could just go forward and...

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CHAIR PALTIN: . . .*(inaudible)*. . .

COUNCILMEMBER RAWLINS-FERNANDEZ: It was informal.

VICE-CHAIR KING: Yeah.

CHAIR PALTIN: Informal poll.

COUNCILMEMBER MOLINA: Consensus, yeah.

VICE-CHAIR KING: So I made the motion, I just need a second.

CHAIR PALTIN: And Member Sinenci second. All those in favor...oh.

VICE-CHAIR KING: Well, let's do the amendment.

COUNCILMEMBER RAWLINS-FERNANDEZ: I move to amend. I move to amend that...the number to 15.

VICE-CHAIR KING: Second.

CHAIR PALTIN: Okay, it's been moved to amend by Member Rawlins-Fernandez, and seconded by Member King to amend the number to 15 for both B&Bs and STRHs through attrition. All those in favor...any discussion, Members? We did that whole practice round. All those in favor raise your hand and say aye.

COUNCILMEMBERS VOICED AYE.

CHAIR PALTIN: Any opposed?

VOTE: AYES: Chair Paltin, Vice-Chair King, Councilmembers Johnson, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kama.

MOTION CARRIED.

ACTION: APPROVED AMENDMENT.

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CHAIR PALTIN: The amendment passes, eight “ayes”, one excused, Member Kama. Back to the main motion as amended, any discussion Members? Seeing none. All those in favor, raise your hand and say aye.

COUNCILMEMBERS VOICED AYE.

VOTE: AYES: Chair Paltin, Vice-Chair King, Councilmembers Johnson, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kama.

MOTION CARRIED.

ACTION: Recommending FIRST READING of revised bills and FILING of communication.

CHAIR PALTIN: Motion passes, eight “ayes”, one excused, Member Kama. And so that is it for Lāna‘i. Good work job...good job, guys.

PSLU-24 WAILUKU REDEVELOPMENT AREA AND VARIANCES (CC 21-156)

CHAIR PALTIN: Okay. All right. Let’s go right into our next agenda item, which is PSLU-24. This one is a little bit more complicated, so yikes. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Just a quick question for you, as...you know, for a timeline.

CHAIR PALTIN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: So it’s about eight minutes before our morning recess time that we usually take. Do you want to take a quick recess before we go into the next item, and then we won’t have to interrupt ourselves.

CHAIR PALTIN: I thought 10:30 was the usual recess time.

VICE-CHAIR KING: Yeah.

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CHAIR PALTIN: But the timeline I had was, you know, hear all the comments from our resources on the bill, get us up to speed, and then take a break before we start the discussion portion.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sounds good. Mahalo, Chair.

CHAIR PALTIN: Okay. Chair Lee.

COUNCILMEMBER LEE: Yeah. Weren't we going to get a presentation from Planning first?

CHAIR PALTIN: Yeah, that's what I meant by our resource.

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: I had a late night last night so my words are not coming out that great. Okay. Okay, PSLU-24 Wailuku Redevelopment Area and Variances. The Committee is in receipt of County Communication 21-156 from the Planning Director, transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH A NEW CHAPTER 19.39, MAUI COUNTY CODE, RELATING TO THE WAILUKU REDEVELOPMENT AREA, AND TO AMEND CHAPTER 19.52, MAUI COUNTY CODE, RELATING TO VARIANCES IN THE WAILUKU REDEVELOPMENT AREA." The purpose of the proposed bill is to reduce regulatory barriers to business creation and investment with the Wailuku Redevelopment Area by providing flexible zoning, building, public works, and fire code standards, outdoor dining areas, street vendors, and entertainment and mixed use zoning, including residential, retail, office, entertainment, specialty restaurants, cafes, and other similar uses. So the Committee may consider whether to recommend passage of the proposed bill on first reading with or without further revisions, and the Committee may also consider filing County Communication 21-156 and other related items. So at this time I'd like to request the Planning Department's opening comments, as well as an update on the item, and then we'll receive a presentation by Scott Forsythe, a Small Town Planner.

MS. MCLEAN: Thank you, Chair. I'd like to just turn it right over to Scott to give an overview of the bill and the process to date.

CHAIR PALTIN: Thank you, Director. Mr. Forsythe, we are ready for you. And if you have the capacity to share screen, we'll entertain that.

MR. FORSYTHE: Sure. Good morning, Madam Chair and Councilmembers. I'm Scott Forsythe, Small Town Planner with the Department of Planning, and I'll do my best to share the screen here, so give me a second.

CHAIR PALTIN: Okay. Sounds great.

MR. FORSYTHE: And I don't think it's sharing right now.

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CHAIR PALTIN: Okay. We have it in Granicus, so our Staff may be able to do that if you are unable to, and you can just tell them when to change the slides. Mr. Leauanae or Ms. Stewart, are you able to share the presentation that Mr. Forsythe transmitted?

MR. LEAUANAE: Yes, Chair. I have it available to share.

CHAIR PALTIN: Okay. Is it okay to begin, Mr. Forsythe?

MR. FORSYTHE: Yeah. No, that would be great. I think our BlueJeans setup here at the Department doesn't have the most recent update, but yeah, that works.

CHAIR PALTIN: Okay. Just let them know when to change slide.

MR. FORSYTHE: Okay. And one more second, I think I've lost the connection here with you.

CHAIR PALTIN: Oh, we hear you. We're good. Can you hear us?

MR. FORSYTHE: Yes. I can hear you, I just can't see anybody or the slides. Okay, here we go. All right, we're looking good here. You can go ahead and go to the next slide. All right. So I want to begin by clarifying the agenda stated purpose. On the agenda, the purpose that you just stated is more so the state of purpose for the Wailuku Redevelopment Plan. However, specific to this amendment, the purpose is to incorporate the Wailuku Redevelopment Area Zoning and Development Code into Title 19, and this would be its own Chapter 19.39, and it would have very few changes from what the existing uses, standards, and requirements are within the 2002 Code. The amendment also incorporates the MRA's variance process into the existing County Code section that relates to variance, procedures, and standards, and that would make the Wailuku Redevelopment Area Variances be considered by the BVA rather than the MRA. And next slide. And to put this amendment into context, it's helpful to understand a few things. So I want to provide a brief overview of a few things, including the...what the Wailuku Redevelopment Area is, the Maui Redevelopment Agency, and Wailuku's existing Zoning and Development Code, and lastly why this amendment is needed. And if you can see on this photo, this is of Market Street looking towards Main Street. Yeah, you can go to the next slide. This map shows the Wailuku Redevelopment Area's boundary, which encompasses about 68 acres of Central Wailuku and Happy Valley. Documented in plans dating back to the 1960s is that Wailuku was experiencing the effects of decentralization, and urban blight was taking its toll as the area was becoming increasingly run down and dilapidated. Efforts to revitalize the town had been in the making for decades. With the 1972 General Plan and community plans from '72, '87 and '99, all calling for efforts to address this problem, and this all culminated with the development of 2000's Wailuku Redevelopment Plan. Next slide. The MRA now...the MRA has existed in various forms since about 1964, as Hawai'i law permitted County Boards to create a local redevelopment agency. Later on, Hawai'i's Urban Renewal Law provided powers and duties to carry out urban renewal projects and related activities. Then in 1989, the MRA's Urban Renewal powers were established in Maui County Code. The agency was also charged with implementing a plan for Wailuku's Redevelopment. The agency has a five-member board appointed by the Mayor and approved by the

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County Council. And some of the agency's responsibilities and activities include developing plans, studies, capital projects, and community programs. The MRA also reviews applications for new developments and renovation projects. And next slide. These are the three guiding documents for the MRA. There is the 2000 Wailuku Redevelopment Plan, and that provides the vision, direction, and course of action for revitalizing the redevelopment area, and it made it a priority to also adopt a small town development code, and also develop design guidelines. I'll note that the County Council adopted this plan by resolution, and it was included in your agenda materials, a copy of that resolution. There's also the 2002 Wailuku Code, which is what we're talking about today, and I'll talk more about that, but this is a current code that applies to the WRA. And there's also the 2006 Design Guidelines that provides us standards for how redevelopments are assessed or rehabilitation projects and maintenance high projects as well. And you can go into the next slide. So for the remainder of the presentation-- I have a few more slides to go--I want to highlight that the key elements of the Wailuku Code and this proposed amendment. On this side, on the right, you see the 2002 documents table of contents. Hopefully you can read that. And I believe you have a hard copy as well that may have been provided to you yesterday. And...

CHAIR PALTIN: It's up on the Members' Granicus, if they need to refresh, they can access it through Granicus.

MR. FORSYTHE: All right. Can I continue?

CHAIR PALTIN: Yes, please do. Sorry for the interruption.

MR. FORSYTHE: Yeah, no problem. And then on the left, these are some more of the specific topics within the Code, and it includes the zoning districts, what uses are allowed, types of development standards, regulations, administrative procedures, and the application process. That area, the Wailuku Redevelopment Area, has five zoning districts, and the Code was designed to allow for a mix of land uses and...with standards that help create places to work and shop. And as I mentioned before, there are application types for the MRA, and the MRA has four of those applications. There are administrative review permits, which are required for activities that do not require the MRA's approval. There are MRA use permits, and those are for uses that are already identified in the Code, but require a determination by the MRA Board. There are variances, and as a waiver of sorts from the zoning requirements, and there's also a design review application to assess new projects and making sure their design is appropriate for the Wailuku core. I'll note that of these applications, only the variance application is proposed to change within the amendment. And we can turn to the next slide. This map here illustrates the zoning districts within the WRA. There is five zoning districts: residential, multi-family, business/multi-family, commercial mixed-use, and public/quasi-public. Next slide. Okay, now we're kind of getting into the weeds of why the Code needs to be incorporated into Title 19. The Maui County Charter was adopted in 1969 and established that the Council is the legislative body of the County. That means every legislative act needs to be approved by the Council by ordinance. This authority cannot be delegated to the MRA or anyone else. Zoning and rezoning of land are considered legislative acts. That means these land use decisions require Council approval by

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ordinance. So why was the MRA making these . . . *(inaudible)* . . . HRS 53-5 of Hawai'i's Urban Renewal Law gave some authority, and the 2002 Wailuku Zoning and Development Code was adopted through proper rulemaking procedure. So it was assumed that everything was legit. It was only after recent scrutiny that it was made clear that was not the case, and that's why the Wailuku Code needs to be incorporated into Title 19, and it's because it's a zoning document. Also, under Title 19, variances can only be heard by the BVA. The MRA has been the body that heard and acted upon Wailuku Redevelopment Area variances, but this authority is exclusively vested in the BVA. And by incorporating the Wailuku variance process into Title 19 turns these decisions over to the BVA. Next slide. This item did go to the Maui Planning Commission last January for public hearing, and it was recommended for approval, 7-0, and there were no substantive changes made. Although they did discuss whether to reduce the maximum building height, nothing more came of that. We received seven written testimonies in support of the bill, and five individuals testified; three in support, one in opposition, and one with no comments. You can go to the next slide.

CHAIR PALTIN: Mr. Forsythe, was that one with comment or one with no comment?

MR. FORSYTHE: That was one in opposition, and one with comment.

CHAIR PALTIN: Okay. Thank you. Proceed.

MR. FORSYTHE: You're welcome. Yeah. So now we're moving into the 2002 Code and into the proposed ordinance. And this slide is to indicate that...the substantive changes that have been incorporated into the ordinance. And you probably can't read it too well, but on the left side of the screen are what was presented to the Maui Planning Commission. The items highlighted in yellow at the bottom are the more significant changes that were proposed. And one was that the variance procedures that would...was the variance procedures would be incorporated into the existing Countywide Variance Code and subject to review and decision by the BVA. And that's...if you can see it, 19...which I can't. That's the very last one on the bottom. Also, there was an update to the accessory dwelling standards to what currently applies countywide. And on the right, following the Planning Commission's meeting, the Department recognized that a few other areas needed clarification. And so these items were included in the Council transmittal letter on...dated March 2nd. It's on the second page of that letter. And these also are more substantive in nature, and just more clarification. Sorry, I can't see it on the screen right now, it's not large enough. I'm hoping you can if you have any questions. But let me move onto the next item at this time. And...

CHAIR PALTIN: Mr. Forsythe, can I stop you again. Did you say it was more substantive in nature or more nonsubstantive in nature?

MR. FORSYTHE: It was just less critical elements that were to help clarify things. So it didn't make any major proposed changes.

CHAIR PALTIN: And because it's more nonsubstantive, it doesn't need to go back to the Planning Commission?

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MR. FORSYTHE: I can't answer that directly.

CHAIR PALTIN: Okay. All right. Thank you. Please proceed.

MR. FORSYTHE: And this is the language of the proposed bill, this is what's also included on the agenda. And basically what the ordinance is saying is that the Wailuku Redevelopment Area's Code will have its own chapter in Title 19, alongside all the other County zoning districts, and that Wailuku's variance criteria and process will be incorporated into Title 19's existing variance code, and that would also allow decisions to be made by the BVA and not the MRA. And the next slide concludes my presentation. I was trying to bring up hard copies of that information in case you have questions.

MS. MCLEAN: Chair, you're muted.

CHAIR PALTIN: Oh. Thank you so much, Mr. Forsythe. And before we entertain questions on the presentation, I just wanted to bring Members' attention to correspondence from Mr. Hopper dated June 23, 2021. So the reason why we are hearing this item today is that basically it says there's a lawsuit pending consideration of...scheduled by the Committee, the parties would have the option to continue the lawsuit pending consideration of the ordinance by the Council. Our office believes adoption of the ordinance would resolve the issues in the lawsuit as such, considering and adopting the ordinance could avoid needless litigation in sort. And so they had a motion, I believe, for summary judgment, that was July 27th. And we said, you know, there's no way we can get to second reading by July 27th, but they still asked that we hear it. And to show some forward movement, I think that date has now been pushed back to October. So that doesn't mean we're like off the hook or anything, but I just wanted to give you a little reason as to why I scheduled it, even though our 180-day deadline isn't that close for this one. And we can ask for more information from Mr. Hopper on that, or we can have questions to Mr. Forsythe on his presentation at this time. Committee Vice-Chair King.

VICE-CHAIR KING: Thank you, Chair. Do we know, is the lawsuit being brought against the County by the developers of that hotel, or the proposed hotel?

CHAIR PALTIN: No, it's...I believe the lawsuit is right below that letter from Mr. Hopper. It's between Wailuku Good Government Coalition, an unincorporated association, and Maui Tomorrow Foundation, a non-profit organization, versus Maui Redevelopment Agency, County of Maui, and Does 1 through 27. And it's from the Law Office of Lance D. Collins and Bianca Isaki.

VICE-CHAIR KING: Okay. So that is the organization that is asking us to remand the authority to the BVA?

CHAIR PALTIN: That is the people that are suing the County because ordinances needs to be...I'll let Mr. Hopper explain since he just popped up on the screen and he's an attorney.

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VICE-CHAIR KING: Okay.

MR. HOPPER: Thanks, Chair. I don't want to get necessarily too into the details. We could go into executive session if we want to go over all the discussions of all the different claims and the defenses to them. I think the issue here is that the plaintiffs...to try to boil it down, I think, would like...want to see the standards which only now exist...the zoning standards for Wailuku Town, which only exist as administrative rules that were passed by the MRA, wants to see those adopted as a zoning ordinance by the Council, and to have the Board of Variances and Appeals and not the MRA to have the authority to pass variances. And I think with this, the Planning Department, I think, and our office are...you know, think that's something that should be done as well, or at least if that's something the Council would prefer, to having the MRA have those rules, that's certainly something the Council can adopt and make part of the County Code, like all your other zoning ordinances. So I think because, you know, the County didn't really have a problem with moving forward in that direction, the approach, you know, rather than...I mean, there is a pending motion to dismiss from the County, but rather than get to that and get a decision on that and spend all the time briefing and arguing that, if the, you know, Planning Department and the County Administration are okay with sending...we're okay with sending forward a bill to essentially do what the lawsuit is asking for, which is to put these standards as part of the County Code, make them, you know, something the Council has control over...

VICE-CHAIR KING: Yeah, I understand that...

MR. HOPPER: ...and make the variances passed by the BVA, then that was the direction that was taken, rather than continuing with the litigation.

VICE-CHAIR KING: Okay. I understand that. I have to be places...I'm sorry to cut you off, but I just want to get another question answered. So, you know, we had a resident testifier today push back against the idea of sending those...that authority to the BVA. And I think the understanding that she had was that right now, it sits with the Council. So does it go from MRA to the Council right now the way it is?

MR. HOPPER: I think the issue was currently only the MRA has the authority to grant variances from their code. I think...and I don't want to...as I understood the testifier, the MRA has special criteria that it uses when it determines variances. It's more flexible than what the Board of Variances and Appeals would use. So that was one issue. It sounds like the testifier does not want the more flexible criteria to be applied, and wants the same general BVA criteria to apply in the Wailuku Redevelopment Area. I think Erin Wade testified the merits of having the more flexible...

VICE-CHAIR KING: I'm trying to...I'm trying to reconcile that testimony because she clearly does not want the amendment that would send all that over to the BVA. She wanted to keep that out of the bill. So...but you're saying that the way it is now, there's too much flexibility. But I think her understanding was that she thought that it goes...the MRA makes those decisions, and then it comes to the Council right now, and if the Council...

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MR. HOPPER: No, no, right...well, right now, the MRA has the only authority to grant variances because it's their zoning and development code. If this were adopted as part of the County Code, by Charter, the authority to grant variances would be the Board of Variances and Appeals. Now, the criteria they would use to grant it, that's something the Council can adopt. And the proposal now is to have a more flexible criteria, which is what I thought the testifier was saying that she had a problem with was that the criteria is the more flexible criteria that the MRA can currently use. I don't know if she would have a problem if it was the same criteria used for other variances that the BVA would see for any other properties that were subject to zoning.

VICE-CHAIR KING: Yeah, thank you for that. So what you're saying basically is that the proposal that was before us right now has different criteria for BVA approval than the normal...the normal approvals that they do. That's the problem.

MR. HOPPER: Yeah. The current Zoning and Development Code--and this is part of the Wailuku Redevelopment Plan that the Council had adopted by resolution--was to allow more flexibility in granting variances. So that was carried forward when the Board of Variances and Appeals was given the authority to grant variances in the Wailuku Redevelopment Area. Now, if the Council doesn't want to do that, and then wants the MRA to...I'm sorry, the Wailuku Redevelopment Area variances to be the same criteria as everywhere else, I think you can do that, but I think the...you know, Erin Wade had testified why more flexibility would be desired. That's a policy issue, I think, for the Council to decide on.

VICE-CHAIR KING: Okay. So we could do that and still satisfy the plaintiff's request. So if we wanted to keep the same stringent guidelines for the BVA, but just change the process to the BVA.

MR. HOPPER: Yeah, I don't want to speak too much for the Plaintiffs, but I think that their main issue was that the MRA alone has the authority to grant the variances, and that if this was brought over to the Board of Variances and Appeals, even if they had the more flexible criteria, it would be more consistent with the Code. Now, if they didn't have the more flexible criteria, that would be just like every other, you know, property in the County that's subject to County zoning. Although again, you know, the...Erin Wade had made arguments as to why you may want to keep the more flexible zoning, but I think that's up...or the more flexible variance standards, but I think that's ultimately up to the Council.

VICE-CHAIR KING: Okay. Thank you for that explanation. I'm very clear now on it. Thank you, Chair.

CHAIR PALTIN: Sure thing. And I believe the testifier's main concern was 2(d) on page 66. I'll take Mike...Member Molina, followed by Member Sugimura. Go ahead, Member Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Just as far as how we continue to proceed, since we do have a pending lawsuit, as it was mentioned, what our line of

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questioning is, if we...depending...do we have to consider executive session, depending on how sensitive our questions are? Because as I understand this, the lawsuit was brought by Maui Tomorrow and Wailuku Good Governance to prevent the...I guess the whole nexus of this is the proposed Wailuku Hotel that was seeking a height variance from the MRA. And then I guess to resolve this lawsuit, as I understand it, the Administration has agreed to introduce an ordinance that will give the variance powers to the Board of Variances and not the MRA. So I'm just curious, you know, what our limits are to discuss in open session about this lawsuit? So...maybe Mr. Hopper.

CHAIR PALTIN: So I didn't agendize executive session but, you know, if something comes up I guess we still can go to executive session. But I guess, you know, I don't...I mean, I don't understand the need to talk about the lawsuit that much because we're kind of focusing on the bill. I think everybody agrees the plaintiff, the defendant, that it would be a good thing to incorporate this document into the Code, and the way we do that is by ordinance. So my thinking is the majority of the focus would be on this bill, the contents, and how we pass the ordinance. I mean, not in a vacuum of the lawsuit, but that wouldn't be the main focus to me. The main focus would be the bill because I think at this point at least, everybody agrees that this like 20-year-old document should be made into a zoning ordinance. So if everybody agrees, that's great.

COUNCILMEMBER MOLINA: Yeah. So Madam Chair too, then, the lawsuit is not agendized like the previous item, yeah. Just in case Mr. Raatz...you know, prevent him from coming on again, yeah. So I guess I don't know how detailed we want to get into discussing the lawsuit. But okay. So could I ask Mr. Hopper a quick question then? So the next court date is coming up, and if we pass this bill, then I presume this will resolve this lawsuit. Am I correct with that understanding?

MR. HOPPER: Yes. I think that's the hope. I mean, the lawsuit, I think, challenges the MRA's authority to grant...to take the actions that it's taken, and this would make this part of the County Code, so that issue would be moot. And so I think we could avoid having to argue over the correct system because it would have been changed so that the Council has...you know, has authority over this as a zoning item. So yes, I think that's what would happen.

COUNCILMEMBER MOLINA: Okay. All right, thank you. And of course, I guess the MRA cannot deal with any Title 19 issues by HRS, and that's the reason for this.

MR. HOPPER: There are still a couple of places where the MRA would review things under this proposal, but they would not have the level of authority that it does now to adopt changes to these standards without Council approving that.

COUNCILMEMBER MOLINA: Okay. Thank you. And Madam Chair, just lastly, just an FYI for you and the Members, I had Staff pull up the names of the BVA because I think that was primarily a concern from the testifier, and I think at least five of those names have ties to either building industry or labor union. So just an FYI for the Members. So if anybody wants to look at it, go check it out. Thank you, Madam Chair.

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

COUNCILMEMBER SUGIMURA: Thank you. So Mr. Hopper, how then does this resolution that we're trying to get to with the BVA address Erin Wade's concerns? What would happen to those kind of exceptions to a small town, and trying to keep or capture the essence of small towns? And as you know, all of the small town plantation towns in Makawao, Wailuku, Pā'ia, Lāhainā on the old parts of town are kind of built, you know, with different design standards.

MR. HOPPER: Well, I think you could maybe ask Erin Wade directly those concerns. The...I can just say legally, the difference is that in the current proposal, the Board of Variances and Appeals, if it were asked to review a variance from this Code and the zoning standards in place in Wailuku Town, would be able to review that using the same standards that the MRA currently does, which are more flexible than the BVA's regular standards. And that was something that in the Redevelopment Plan, the...that plan had called for being more flexible with variances because of the character of Wailuku Town. So it's really up to the Council if this...if the more flexible criteria is something that you would like...and again, you know, I understand that there's the hotel issue, but then this would apply to all other properties. So I think it's up to the Council whether you would like to see this criteria apply, which is in page 66 of the bill, or you can see...you can see what the current criteria is, it's right above that. It's not underlined. So that criteria is what generally the Board of Variance and Appeals would look at. So that's the general criteria that in places other than the Wailuku Redevelopment Area, the Board of Variances and Appeals would apply to determine if a variance could be granted. And then they have more detail in their Administrative Rules on how variances are granted as well, but the...I think the Planning Department's desire was to see the variance standards be the same as what the MRA had applied. Ultimately, I think that's up to Council whether it would like to use the standard Board of Variances and Appeals criteria or this criteria, which is specific to the...which was used by the MRA, and is being proposed to be set forth in the County Code now.

COUNCILMEMBER SUGIMURA: Okay. So it would be...protecting the small town character of Wailuku then would be protected, even if we change the appeal process, is what you're saying?

MR. HOPPER: Well, it's a variance process, not an appeal process. The appeal process would still be the same. You know, it's hard for me to characterize whether the small town character would be protected, or that...that's more of a policy thing that I think you could probably ask the Planning Department or Erin Wade about. But the criteria are different. The criteria...if you went with...the current proposal was to be a bit more flexible. The current criteria for the BVA for other variances is more strict, is what I would characterize that.

COUNCILMEMBER SUGIMURA: Thank you. And one last question then. How does HRS 53 fit for all of this? Because I thought that was the State Ordinance that created the MRA and allowed a lot of the processes to exist. So how does HRS 53 fit into this?

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MR. HOPPER: That's a pretty broad question. It...HRS 53 does give pretty broad authority to a redevelopment agency. It's got to be done pursuant to a redevelopment plan that was adopted by Council, it's one of the reasons why I said that, you know, just as some background. So that's where...HRS 53 was where a lot of the powers that the MRA currently has come from. But of course, you know, those are...that plan has to be adopted by the Council. So if the Council would like these zoning standards to be in the County Code and subject to Council approval, that's something that the Council can adopt and require.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

CHAIR PALTIN: Okay. Member Sinenci.

COUNCILMEMBER SINENCI: Mahalo, Chair. Yeah, just a clarifying question, a follow up for Mr. Hopper. So if we go...revert to the BVA, does the BVA, as you mentioned, still have those same MRA standards, or would we want it to have more the stricter County standards? Which standards would...

CHAIR PALTIN: That's a policy decision that we would need to make.

COUNCILMEMBER SINENCI: Oh, okay. All right. Okay. Thank you.

CHAIR PALTIN: Okay. Members, so we have the bill before us, and it's 10:30. I did upload some of the questions I had in reviewing the bill. If you refresh your Granicus, that's the last item. And they were just, you know, general questions. But seeing as it's our mid-morning break time, we can take a 15-minute break if that's amenable to the Members, and we can just, you know, browse through this 67-page bill, and have more questions, or we can get the answers to the questions I submitted in writing, or make it up as we go along when we come back. So, if there's no objection, we'll be in recess until 10:45.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: All right. Recess until 10:45 today. . . .*(gavel)*. . .

RECESS: 10:31 a.m.

RECONVENE: 10:47 a.m.

CHAIR PALTIN: . . .*(gavel)*. . . Will the Planning and Sustainable Land Use Committee meeting of July 22nd return to order. The time is now 10:47. And at this time, if Members didn't have any objection, I was wondering if either the Department or Mr. Forsythe could provide answers to the written questions that I submitted on the bill, or whatever questions you can answer, if the Members don't object.

MR. FORSYTHE: Sure. Yeah, no problem.

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CHAIR PALTIN: Okay, great. And...

MR. FORSYTHE: I will try and share my screen again.

CHAIR PALTIN: Okay.

MR. FORSYTHE: I don't know if it'll work. It's asking for administrative rights, but if it does, then I can bring up your questions and my responses.

CHAIR PALTIN: Oh, great. Okay. And Members, if that doesn't work, my questions are item 9 on Granicus, correspondence from Committee Chair, July 21, 2021. But that's just the questions, not the answers.

MR. FORSYTHE: Unfortunately, I don't think that's going to work, so I'll have to just walk through them.

CHAIR PALTIN: Okay, okay. No problem.

MR. FORSYTHE: However, you do have the questions there in front of you; is that correct?

CHAIR PALTIN: Yeah, it's Item 9 on everyone's Granicus. If it's not there, you might want to refresh, and it should show up.

MR. FORSYTHE: Okay. And I got these questions a little late last night, so I did the best I could to get to this and come up with some answers for you.

CHAIR PALTIN: Okay.

MR. FORSYTHE: And possibly Mike Hopper may be able to jump in if he has any information on these as well. However, for the first one, regarding the boutique hotel not being defined, you're correct about that. It's not defined. And I had seen that word used before in the Code; however, flipping through it, I couldn't find it specifically. I looked in the specific section...I'm sorry. That section refers to the Title 19 definitions. So you're correct, the boutique hotel is not defined. It wasn't defined in the 2002 Wailuku Code, and since it wasn't defined in that version, it would not have transferred over to the proposed amendments version in the definition section. If that's clear?

CHAIR PALTIN: I'm sorry. So it's...can you repeat that last part? Sorry.

MR. FORSYTHE: Yeah. So the last part I was just saying is that the term, boutique hotel, is that within the 2002 Code's definition section, it wasn't defined there. And so since it wasn't defined there, it wouldn't have transferred over to the proposed Code that you're looking at now.

CHAIR PALTIN: Okay. I guess my proposal would be to eliminate boutique hotel then. I mean, we're kind of discussing moratorium on hotels anyway, but that's just for discussion at a later time. Moving on to the next. Baseyard is not defined in this chapter or

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19.04.040.

MR. FORSYTHE: You're correct. It's not defined.

CHAIR PALTIN: Okay.

MR. FORSYTHE: I'm couldn't find a definition for it.

CHAIR PALTIN: As well as energy systems major.

MR. FORSYTHE: Correct. Now, for energy systems major, I did not find a definition for it. And I looked in the 2002 Code, as well as the proposed code. It's not there. However, in looking into the specific zoning districts, it is included within the commercial mixed use district on page...I believe it's page 14. And for administrative review permit, these are allowed, energy systems major, and defines that as...well, the standard is transmission lines and substations only. For energy systems minor, there is no standard. So to gauge what that is, it's a little, I guess, subjective.

CHAIR PALTIN: Okay. Then moving on to number 4, the following language was included in the original Wailuku Redevelopment Area Zoning and Development Code. Any dwelling or structure that was constructed with a building permit that was approved prior to the enactment of this Code need not acquire an Administrative Review Permit, MRA Use Permit, or variances, and may be reconstructed as permitted by the original building permit(s), and such dwellings or structures may be expanded or modified with a building permit, subject to the other provisions of this Code. So as to Ms. Sugimura's want to keep the small town character of Old Wailuku Town, I guess the question is, why was that language omitted?

MR. FORSYTHE: I searched through the proposed Code, and on page 55, it is included in the document.

CHAIR PALTIN: Oh, okay.

MR. FORSYTHE: So on page 55, it's at the bottom, the last one, number 2.

CHAIR PALTIN: Okay. Great, great.

MR. FORSYTHE: That falls under the nonconformities and legal existing uses section.

CHAIR PALTIN: Okay. Perfect, perfect. So that's still in there on page 55 for number 4. Okay. And then number 5 is please provide examples of uses that do not meet the criteria of a permitted use in an eating establishment.

MR. FORSYTHE: I do have an answer for you, I'm just flipping back and forth. So the eating establishments, it's kind of a...sort of a two-part answer. One, it requires looking at the definition section. So if you were to go to page 4 in the definitions...well, let me back up. In the commercial mixed-use district, and I'll give you the page here, there

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are...under the uses on page 12, it has eating establishment. And through the other various zoning districts, that use may be there too. What it does require is going to the definitions section, and if you were to go to page 4 now in the definitions, it defines eating and drinking establishments, and eating establishments fast food. So it would be...

CHAIR PALTIN: It would be one or the other.

MR. FORSYTHE: Yes, exactly.

CHAIR PALTIN: Oh, okay. Okay. Got it. Chair Lee.

COUNCILMEMBER LEE: Maybe when you ask the question...oh, well. I know we're reading the questions, but we have no context. I mean, why are you even asking that question? Because you came across something that could be a conflict of some kind?

CHAIR PALTIN: I'm asking the question because I want to have a thorough understanding of the bill before I pass it.

COUNCILMEMBER LEE: I mean, we all do. No, but I'm just wondering. Some of the questions, like where are they coming from?

CHAIR PALTIN: From me.

COUNCILMEMBER LEE: I mean, why would you ask that question?

CHAIR PALTIN: Because I didn't know the answer.

COUNCILMEMBER LEE: Okay. All right. Okay.

CHAIR PALTIN: Okay. I guess then in that case, let's skip ahead to number 7. Development standards list a maximum height as 35 feet. However, with the permitted approval of the MRA, buildings may be up to 60 feet in height; is that correct?

MR. FORSYTHE: Yes and no. So for instance, if you go back to the development standards...we'll use commercial excuse as an example. On page 17, the development standards for the commercial mixed-use district. It allows for varying maximum height types. So 30 feet is allowed for lots whose greatest street frontage is along the following streets, and it identifies the streets where the maximum height could be 30 feet. Below that is the 45-foot maximum height, and that is for those specific streets. And the 60 feet is for those specific streets, and that is an allowed standard. So as far as your question with permitted approval of the MRA goes, it does not require like a use permit because that standard is allowed.

CHAIR PALTIN: Okay. And it would be in our purview to lower that to 45 feet max...oh, I see we got a question from Mr. Hopper. Go ahead, Mr. Hopper...or maybe an answer.

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MR. HOPPER: Just to follow up on that, I think where you may be getting the approval of the MRA is specifically in the public/quasi-public district. There's a footnote 9 that says, maximum height 35 feet in the public/quasi-public district. This is on page 31 of the ordinance. It does say up to 60 feet may be permitted with the approval of the MRA. And so that's an area...I assume that's where you got your question from because that's the area that it does say with approval of the MRA up to 60 feet. But again, that's only in the public/quasi-public district, so that doesn't apply throughout the Wailuku Redevelopment Area. With respect to making the substantive change of heights, I did advise the Planning Commission I had a bit of a concern with making a change like that when the noticed bill went to the...was to adopt the standards that the Council...or that was already in the Zoning and Development Code. So that could result in some non-conformities that I don't think were necessarily noticed as part of what went out to public hearing to the Planning Commissions. I think ultimately, once this is adopted, you guys...the Council can make whatever standard changes it would like. But I think this current one was sent out as adopting the MRA...the Zoning and Development Code with some changes, but to do things that would cause nonconformities like that, I did have a concern with that, given that...the notice that had been given. But again, once this is part of the Code, I think you can make whatever changes the Council would like to it. But with the current proposal making a height change like that, I have raised that as a notice issue when the Commission had asked about it.

CHAIR PALTIN: Okay. I have a question based on that recommendation. In the public/quasi-public, where it says up to 60 feet may be permitted with the approval of the MRA, and it's not directly related to the bill, but it's related to the bill in that, you know, MRA permitting and MRA approval, it's not super clear if they've been changing zoning on their own, and if they've been granting variances on their own, is that to no longer continue, changing zoning, granting variances on their own, and the scope of their authority moving forward? Is it clear to us what that is? Like do we have to allow them to grant these permits, MRA permits according to this bill, or is that something that we can change as well, or not change?

MR. HOPPER: I think who grants things, that's not going to have a substantive effect necessarily on a property owner. So if you read this and...this does maintain some MRA authority as far as granting use permits and things like that. But this is the County Code. So if you do not want the MRA to be the one to review that, then I think that you could change that if you would like. I don't see an issue with who reviews it to allow them the greater standard. It's just that, you know, changing the maximum height from 60 to 45 or something like that for that, that would affect existing properties. But I think the idea behind putting this in the County Code is this would be like every other area where you have zoning, which is the zoning is decided by the Council, variances are decided by the BVA, and if you are going to delegate some review authority and approval authority like you do, for example, with Planning Commissions with special permits and short-term rental home permits, you could do that with the MRA also. And some of that's retained in here because currently, they would do administrative review permits and things like that. So that was put in here, and has the MRA reviewing those. So ultimately though, if the Council does not want the MRA to do administrative reviews, it doesn't have to require that. And as far as going forward with zoning and things like

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that, yes, the MRA would not have authority to adopt zoning standards anymore once this is adopted in the Code. That would be the Council's purview because it's an ordinance, so that's...I think was the intent.

CHAIR PALTIN: And I just want it to be clear that personally, I don't have any problem with MRA review, it's final decision-making authority that I'm considering. Is that also within our purview? Like I mean, it's great to have this dedicated board to review it, it's kind of similar to the Ha'ikū-Pā'ia Community Plan Advisory, or Advisory Committee idea, similar to the Hāna Advisory Committee idea, similar to the South Maui Advisory Committee idea. We have...this Committee's focused in on this Wailuku Redevelopment Area to review things, but would we need to give them final decision-making authority, or just be...can they be just advisory in the same sense that those other advisory committees are?

MR. HOPPER: Yes. I don't think you have to give them final decision-making authority. I think...one of the reasons I had attached the Redevelopment Area Plan was that in adopting that resolution, the Council had said in a lot of areas that it wanted the MRA to go about adopting more flexible standards and apply those standards to those properties. Now of course, that was adopted by Council, so if the Council would like to...would rather have this be a zoning ordinance and governed as a zoning ordinance everywhere else, I think that's ultimately something the Council can decide to do. Because again, they...the Council adopted the resolution to adopt that plan, which sort of...that gave the direction to the MRA, adopt some more flexible standards here and apply them. So I think that if the Council wants to essentially say, we want this to be as part of the County Code, we want the standards to be in the County Code, it can do that. And if it wants certain types of permits to be reviewed by the MRA, as this currently is here, I think you had mentioned that signed variances would go to the MRA also, then I think that's something that through the ordinance, you can make clear that that's a power the MRA would have in that case for zoning. You know, MRA's have a lot of other powers and other things they can do. They can acquire property, they can do a lot of things that...you know, that they haven't necessarily been doing right now, but again, that's something that's got to be done through a redevelopment plan that's adopted by the Council by resolution. So if this is...if this ordinance with the Council having the authority over this like it does overall other areas as far as zoning, that's certainly something the Council can do and require that...you know, and determine who decides who...you know, the final authority for permitting in this area.

CHAIR PALTIN: And just to be clear also on the time frame, so the resolution was passed in 2000, and then in 2002 they came up with this zoning plan, and then in 2006 they came up with the Urban Design Guidelines. And now here we are 20 years later, trying to codify the zoning. Is that correct as far as you understand?

MR. HOPPER: I did my best to look back and research that. I was not here for all that time, but I think that that sounds correct, that the MRA was seen as, you know, a force to sort of, you know, encourage development in Wailuku Town through those documents. Now what would be done is that the zoning standards would be adopted as part of the County Code, and so the zoning standards would end up applying to the property

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owners as part of the County Code. I think the current proposal, with a few changes, nothing, I think, major, was to adopt the Zoning and Development Code that has been in place and has been applied to properties in the Wailuku Redevelopment Area as is, or as close as possible to as is, the variance changes being, you know, one major difference as part of the County Code. So, you know, I think the intention was to have, you know, not as little change as possible to the property owners in Wailuku Town, but the...you know, certain changes like the variances being approved by BVA, you know, a part of that. But, you know, so this would ultimately be a part of the County Code like every other zoning ordinance, where if the Council wanted to make changes and if, you know, the Planning Department has the comprehensive review of Title 19, it could have this looked at as well and...you know, but I don't think it was intended to necessarily provide all required updates to this 20-year-old Code. I think it was to get into the County Code, and then certainly, there may be things that the Department or the Council sees that it would want to update. But right now, there's nothing in the County Code that provides these standards for property owners, and so it's done by Administrative Rules in the MRA. And this would make this part of the County Code, and certainly more consistent with the approach of zoning that the Council has taken.

CHAIR PALTIN: Okay. Thank you. I'll take a break in my questions. If they don't get all answered, we can have those transmitted back to us in writing. At this time, for the first go around, I'd like to give Members three minutes each to ask questions about the bill or anything else they need to ask. We can start with Member Sinenci. Mr. Leauanae, can you put three minutes on the clock please?

MR. LEAUANAE: I will, Chair. Thank you.

CHAIR PALTIN: Okay. Go ahead, Member Sinenci. Begin with your questions or comments or what have you.

COUNCILMEMBER SINENCI: Mahalo, Chair. Yeah, I just wanted a follow-up question for Mr. Hopper. So it looks like through the bill administrative review, all the administrative review would go to the Council?

CHAIR PALTIN: Mr. Hopper.

MR. HOPPER: I don't know of any cases where the Council would be actually reviewing permits here. As far as making zoning...adopting the zoning standards would be something the Council would have the authority to do. But administrative reviews would generally be, you know, similar to what other zoning ordinances have. Those would be done by the Planning Department or the MRA in some cases, and then obviously, the zoning code has cases where the Planning...or the Planning Commissions could review them. So those are...when you talked about administrative reviews, those are generally who would do those. Administrative review permits, I believe under this, would go to the MRA as proposed; but again, the Council can ultimately decide who reviews those. The Council generally wouldn't review those though. It would either generally be the Planning Department or the MRA or the Planning Commission would be bodies, you know, where in the Code, you have administrative review. That's why it's administrative rather than

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legislative review.

COUNCILMEMBER SINENCI: Oh, okay. So zoning reviews would potentially come to the Council, yeah.

MR. HOPPER: If a property...yes. If a property wanted to change their zoning classification, yes. That would have to come to the Council if they wanted a zoning change.

COUNCILMEMBER SINENCI: Okay, thank you. And then would conditional permits fall under that zoning?

MR. HOPPER: You know, conditional permits, now this is part of the County Code. I suppose somebody could ask for a conditional permit to do something that's not allowed in the Code, and that would be something the Council would have to review and approve after Planning Commission review.

COUNCILMEMBER SINENCI: Oh, okay. All right. Thank you, Mr. Hopper. Thank you, Chair.

CHAIR PALTIN: Thank you, Mr. Sinenci. Anyone else? Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Sorry, I've been having network issues. I think Member Molina is contagious. I caught it from him. Okay. So I have a question for Ms. Wade, if...I don't know if she's still on. Okay. If not, I guess I can ask...oh, okay, she is still here. Okay. Oh, okay, you're Management Department. In your testimony, Ms. Wade, you talked about potential...or your concerns about not having the flexibility for the Wailuku Redevelopment Area. I guess I don't fully understand. So if variances are already granted, and you know there's nonconforming...existing nonconforming properties, and that's all been settled I would think by now, would you explain like what your concern would be in the future? Is it like maintaining these buildings that you would be concerned not having this flexibility?

MS. WADE: Chair...is it okay for me to answer, Chair?

CHAIR PALTIN: Oh, yeah, sorry. Go ahead, Ms. Wade.

MS. WADE: Yeah. So maybe anecdotally I can share with you a couple things that have come before the board in the past. So the bowling alley, for example, the back of the bowling alley encroached into the neighboring property, it was built that way. And then the existing nonconforming, just like you said, the issue became then that the bowling alley wanted to purchase that back portion from the neighboring property, but it would have made that neighboring property nonconforming as being not wide enough. So it didn't...it would no longer meet the minimum lot width. And that's really typical in the neighborhood. There's a lot of properties that don't meet the minimum lot width, certainly more than you could say it was an unusual or unique situation. So this ultimately could be remedied when...as Planning Department's looking at their Title 19 updates, they could just reduce the minimum lot width size and take care of a bunch of that. If the lot minimum lot width came down to 30, I think there's only two or three,

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then, properties that are no longer noncompliant. With the 45-foot minimum lot width, there's a whole lot of properties that fall in that category of being noncompliant. And then when things like this...you know, when the bowling alley comes in and wants to renovate and it threatens to make a new property nonconforming that was previously nonconforming, that's when the variance becomes required. And in this neighborhood...and frankly, in a lot of the small towns where properties do come in to renovate and improve . . . *(timer sounds)*. . . and resolve some of these long term issues, this is the stuff that comes up.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Wade. Mahalo, Chair.

CHAIR PALTIN: Thank you, Ms. Rawlins-Fernandez. Anybody else? Wow, okay. I'll go then. To follow up on Ms. Rawlins-Fernandez's question to Ms. Wade...Ms. Wade, would just removing 2(d) on page 66 satisfy the bowling alley requirements still...or not the bowling alley, I guess. If they purchased the other lot, and then that was now less than a 45-foot frontage or whatever the case was, would it still be able to go forward with the (a), (b) and (c), and not the (d)?

MS. WADE: Thank you, Chair. I think it probably would if that's the element that's sort of rubbing folks the wrong way, I can understand that. The three components, the (a), (b) and (c), topography, local practices, and then providing the equivalent desire and utility, we work with the Building Department quite a bit to try to get close to what the Building Code intends, but in another way utilizing this section of the Code. And like for the overhangs and canopies, for example, all of the overhangs in Wailuku are over public sidewalks, which isn't permitted typically; but utilizing this, we can allow those historic canopies to be continued. So if (a), (b) and (c) remained, I think we could still accomplish a lot of the historic preservation goals of, you know, this section of variance that was intended.

CHAIR PALTIN: And follow up on that, would it need to satisfy (a), (b) and (c), like you said meet all three, or no need, for the Wailuku Redevelopment Area.

MS. WADE: I think how it's written, it says one or more. Yes. Economic or better, and when one or more of the following conditions justify the variance is what it...as it reads.

CHAIR PALTIN: Would meeting all three be a hardship, do you think, or...

MS. WADE: I do, because it's rarely an issue of topography. It's occasionally an issue of topography, but that's certainly not the most common reason. The local practices and customs, I mean, the way that that's stated is intentionally generic so that as an example, the Uptown Chevron's sign out front, they were allowed to retain the size of that sign for years based on the fact that the original sign was that size. But it exceeded the new sign standards, so that's since been updated, but I mean, that's an example of a local practice and acceptability where the community wants to maintain a specific aesthetic that...you know, that (b) has been allowed. And then...but again, like I don't think (b) would have applied to the bowling alley situation because it was a new condition that was being created, you know, it wasn't...we're just maintaining an old

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condition. So...

CHAIR PALTIN: Okay. Okay. So any one of those could be a situation for a variance. And if the variance is denied, is that the end of the applicant's chances to do what they want, or could they like apply for a conditional permit, or change in zoning, or other means to do the things that they'd like to do?

MS. WADE: I think that would be on a case-by-case basis, Chair. So, you know, in some cases there may be other avenues, and in other cases, you know, the variance process is the end of the line.

CHAIR PALTIN: Okay. Chair Lee.

COUNCILMEMBER LEE: Okay. The reason why originally I didn't have any questions because this is like...you know, it seems like we don't have too many choices here. We have this impending litigation. We have this controversial MRA, and we don't seem to have a whole lot of time to delve into the weeds. So I was wondering if Erin could come up some specific possible amendments as this goes to first reading because honestly, we just don't seem to have the time to get into a lot of the details. And not knowing the specifics of the litigation, and yet knowing there...you know, there is this time constraint with the litigation. So I was just wondering, you know, if the Chair is not going to propose any amendments, that maybe Erin can come up with some signed...some kind of solution in terms...or compromise in terms of addressing, you know, the major concerns you may have and, you know, we can deal with it at first reading, rather than now because we don't seem to have the time to do it, nor the ability to go into executive session, it appears. So that's where I am, and that's why I didn't have too many questions, Madam Chair.

CHAIR PALTIN: Okay. Mr. Leauanae, can you stop Chair Lee's clock? I just wanted to interject. So the summary judgment hearing date has been moved back to October, is my understanding. So I don't feel like a pressure for us to move this out today. I don't want us to like, you know, rush anything that we would feel uncomfortable with, it's just a get to know you kind of moment with this bill. And so, you know, if Members have questions...I understand like, you know, it's a lot to digest for one Council meeting, and we have the 180-day clock, which I think would bring us to like sometime in September, and I did set aside some time for that. So I mean obviously, if Ms. Wade has some suggestion, we're totally open to it, but I just didn't want Members to feel like we're under pressure to pass it out today because of the summary judgment date of July 27th because my understanding is that's been pushed back to October. One thing that I did hear Mr. Hopper say that is within our authority is to say who would review it, who would have final decision-making authority and whatnot. And while it's not necessarily on the agenda, I think amongst ourselves, maybe not in this meeting, but we should have some sort of idea of what role that ultimately we'd like the MRA to play. Chair Lee.

COUNCILMEMBER LEE: Yeah. And I'm pretty sure we can't decide that today, but I don't feel like we have all the options on the table, you know. I think Erin has made a few points

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but, you know, it would be more helpful if you made it so that it would be a proposed amendment type of suggestion. So the other option, of course, is if she's concerned about losing some flexibility, we could probably give the BVA more flexibility in terms of small town...you know, small town variances, you know. So there's more than one way to deal with this. But what I'm trying to find is basically a common ground and compromise so that we can address your concerns. Because let's face it, we haven't dealt with this on an operational basis as you have. So we can talk about the academics of, you know, ordinances and policies, but implementation is something we're not that aware of. On the other hand, what we are very aware of, I am aware of, is that, you know, we try and avoid litigation to the extent possible. And there...you know, there is a constituency that was very much against some of the components of the proposals for Wailuku Town Redevelopment. The height of the hotel, you know, the community center, civic complex, you know, a lot of things like that. So it's not that the community is rallying around this, you know, something to this redevelopment agency. There are a lot of issues involved. So that's why to me, you know, the more specific you can be in terms of making a recommendation, the better it is, the easier it is for us. And then the next time, if we have another meeting, I think we need to know the details of the litigation and not just the overview. Thank you, Madam Chair.

CHAIR PALTIN: Okay. And I'm not sure if that would be in my Committee or Member Molina's Committee if we're talking litigation, but I see that Ms. Wade had her hand up.

MS. WADE: Thank you, Chair. I just wanted to clarify that it's Planning Department that's moving forward the change in zoning, so I want to make sure that I'm not stepping on their toes. We're doing a handoff at this point, so the Maui Redevelopment Agency no longer will have authority over the zoning in the redevelopment area. We're doing a handoff to Planning, so I'm definitely happy to share any thoughts and ideas about changes that could probably improve the processing of permits and the preservation of the neighborhood to Planning, but it will certainly be them that takes the lead on working with you folks on those changes.

COUNCILMEMBER LEE: On this...

CHAIR PALTIN: Okay. Yes, Chair Lee.

COUNCILMEMBER LEE: Well, let's comment, for the record. I know people are saying we want to preserve Wailuku Town, but...okay. Member Sugimura and I are basically from Wailuku, yeah. I went to school in Wailuku my whole life. She grew up in Wailuku as well. It is not like it was before. The town has changed, you know, unbelievably. I drive through the town today, it's almost like driving through Pā'ia, like Mr. Molina. Honestly, you know. You see a lot of people that you never saw before, and a lot of them are transients. So there's like a bifurcation in that town. The old...you know, the true traditional Wailuku Town, and then the new town. So that's why there's all of these conflicts, you know, because it's not quite the same. And the people have changed quite a bit, and the vocal ones are really not the old timers. Right, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Yeah.

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COUNCILMEMBER LEE: So, you know, it's...that's why it's hard for me to be passionate about this because the changes have...you know, the place has changed so much that it's hardly recognizable, Old Wailuku Town. Thank you. Thank you for letting me vent.

CHAIR PALTIN: Oh, no, I think maybe we all see that in maybe all of our places that we grew up. Not Moloka'i, I don't know, but where I grew up is almost unrecognizable as well. Member Sugimura.

COUNCILMEMBER SUGIMURA: Yeah, interesting, Alice. Thank you for bringing that up. And I will tell you that I can drive through Wailuku Town and tell you all the old stores that used to exist on Market Street, and the places that I used to play, and the parking lot where our grandparents' home was and all these, you know, different things. But what I would like to just add to what Chair Lee said is that what the MRA to me is, right, is not to be the same people or the same businesses, but is to keep the character of the town in terms of the structures. So when I first came into the County in 1999, I pulled off a map--I was in OED--I pulled out a map. It was from the Managing Director's Office, whoever it was in Planning. And what it was was to demolish the whole town. It was to get rid of all the buildings and demolish the town. And that was a plan on this bookshelf that never went anywhere because the town didn't want it to be. They wanted to keep the character of the town. And so that's where, over the years that I was in the Office of Economic Development with Mayor James Kimo Apana, the MRA was part of my kuleana, and we helped develop the Wailuku Redevelopment Area Plan. I wish Erin was there when I was working on this, because she's a great planner. I worked with John Summers, he was like super good too. But it is not the people in the town, but it's to keep the character of the town, which keeps the town unique and special. And then you have these old buildings that are built unlike, you know, with modern codes, right. You can't build those kind of buildings anymore without, you know, big variances. But I always thought that the MRA, the purpose of it was to be able to keep the character of the town. Yeah, the businesses have changed, the...you know, the structures are there, but it's to reuse, right. So it's to bring those buildings and the town to the current economic development that's happening as things have changed. So just to kind of add to what Alice is saying. But it is a huge important...the Zoning and Development Code element of the Wailuku Redevelopment Area Plan. I guess it's something that we needed to do, and thank you for doing this now. I look forward to...you know, I called Erin during the break just to make sure that from all her knowledge of what she's done with Wailuku and in Planning, that we would be able to keep the character of the town. Because I still believe that the character comes from those buildings and...you know, the businesses have changed and the people have changed, and the uses have changed. But that's my Wailuku speech. But I love that town, and it represents to me a lot of the things that have...and, you know, you see in Makawao...I mean, look at the Molina family, I mean what they've done through a lifetime, and then you have Pā'ia, you know, just the different things that have happened. And it really is what makes . . . *(timer sounds)*. . . Maui and the character of the old plantation days and bringing them forward. I mean that, to me, makes Maui special. Otherwise we would look like any old place, any old...you know, any old...anything, right. So thank you.

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CHAIR PALTIN: I just wanted a clarification on Chair Lee's request to Ms. Wade about bringing forward amendments, and Ms. Wade saying it would come through the Planning Department...I guess it would go to Mr. Hopper. And you said that what we had before us was this plan, and you told the Planning Commission that we couldn't...or they couldn't change the heights because what was before them was either adoption of the plan or not adoption of the plan. And so what is it that can be amended, and what is it that can't? You say the heights can't be changed. Can like a word like boutique hotel be taken out, or could Ms. Wade recommend amendments in conjunction with the Planning Department that would make streamlining permits easier? Because I think Chair Lee alluded to that as well, we don't have all the options on the table. So what options do we have on the table?

MR. HOPPER: My concern were to substantive changes that would affect existing property owners, like cutting the height 15 feet for existing owners and things like that wasn't really noticed. The hotel issue, you know, the use of the term boutique hotel where it's not defined, if you have issues with that, that's...I think you could delete the words boutique hotel. But what hotels are allowed and where are more in the uses allowed rather than the purpose section. So you would go to each district and see what's allowed. And the current uses allowed and things like that are things I would advise not, you know, deleting uses or things like that or adding new uses. That wasn't really part of this bill. It was to take what's existing in the Code and put it in the Zoning and Development Code, and put it into the County Code as the first step because it wasn't in the County Code. Now, if there's...so I don't know exactly what amendments you're going to discuss, but that's the type of thing that I had a concern about was, you know reducing the height such that it would affect existing property owners. Things like how permits are processed and things like that, I think that's something that was, you know, discussed with the Commission. I think that's something that you can have some leeway in reviewing. But I don't know exactly what...and certainly things to address ambiguities that you're unclear on, yes, I think you could definitely do things like that. So...but that was just the caution that I had was dealing with a change to a substantive standard that's existing in Wailuku Town that may have not been, you know, noticed as part of the public hearing proposal. But I mean, it's hard to say overall if something's, you know, something that we think is, you know, was noticed at the Commission level. But I mean, you have a fair amount of leeway with permit processing and who decides how to process the permit and things like that, I think. And I'm not sure what amendments Erin would be considering, it's just...it depends on what the Committee wants to look into, I think.

CHAIR PALTIN: Okay. And so...I mean, some of the amendments that I'm considering would be page 66, eliminate 2(d) specifically, eliminating the word boutique hotel in the purpose and intent. And then the permitting authority and whatnot, I think ultimately we need to have an idea in our head what role we envision the MRA having going forward because they won't be in charge of zoning anymore, they won't be in charge of variances anymore. Personally, I'm okay with them reviewing permits and giving input. I'm not sure if I'd like them to be the final decision-making authority, but those are some of the things that I'm looking at. I certainly have no objection to Ms. Wade, in conjunction with the Planning Department, reviewing the bill and trying to improve upon it. But

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just a temperature check for Members, we're about 23 minutes out from the ending time of the meeting. You know, I can reschedule this before the 180-day deadline, and Members can come back with having met with people that are passionate about the Wailuku Redevelopment Area and the Maui Redevelopment Agency, or passionate about the lawsuit, or whatever it is and, you know, just get some feedback. There's things that we can do, things that we can't do. I'm assuming, based on what Mr. Hopper had said, that if we change the height, the folks with the different height wouldn't be grandfathered in, or is it that...is the concern that we're changing the height and they might have had plans to be a taller height than they were going to do? Because wouldn't grandfathering in...or I guess it wouldn't be grandfathered in because it wasn't never an ordinance, is that the height issue?

MR. HOPPER: I think you can change the height at some point. The concern was that this got noticed as adopting the Zoning and Development Code as is existing with some changes to it, and that that went out as a public hearing item, the Commissioner reviewed it like that. And then to vary those standards without having that, you know, re-noticed, I think I had an issue with that. If the Council sees these heights as problematic and wants to propose, you know, once this is part of the Code, a change to that, to reduce that, I think you could do that and have those be nonconforming uses. So ultimately, I think you can decide what the heights are in these districts, it's just that this particular proposal was dealing with adopting this as the existing Code as part of the County Code and . . . *(inaudible)*. . .

CHAIR PALTIN: So it's more of a...

MR. HOPPER: What's that?

CHAIR PALTIN: More of a Sunshine Law noticing issue than anything else.

MR. HOPPER: Yeah, that type of thing, and the public hearing notice issues is what we had. I think ultimately you can decide what heights you'd like, as long as you provide for the non-conforming, you know, nature of existing properties that are already built.

CHAIR PALTIN: Okay, okay. Thank you for clarifying that. Chair Lee.

COUNCILMEMBER LEE: I need to refresh my memory on the powers and duties of the MRA because it's...to me, more than just an Advisory Committee, like Hāna Advisory Committee, because they have, I believe, authority to borrow money, bonds, et cetera. And then there's tax incentives and tax implications for a development area. So I think that their duties are a lot more extensive than just an Advisory Committee on various issues on growth in a particular area. So I think we need to...or somebody needs to give us a summary on their role and responsibilities so that when we start to take away their duties, you know, that we're not impacting their other responsibilities, yeah.

CHAIR PALTIN: Yeah, yeah. I agree, and I'm sorry if I wasn't clear. I meant their roles and responsibilities in relationship to this bill. We can evaluate their role and responsibility in general under a different item at a different time if we so choose, but in terms of this

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bill, we should have an idea of what their roles and responsibilities are. Like would they be the final decision-making authority to grant the permit, or would they review it and with some other entity, have the final decision-making authority based on their feedback? I think that's the main one in relationship to this bill is their...MRA's permitting authority would be what we're considering. And also, I think as Mr. Hopper said, on page 31, number 9, about PQP height, if they would be the final decision-making authority of 35 feet being able to go up to 60 feet in the PQP district. For that, I mean, I kind of...I don't think that MRA is a board or a commission that is televised on *Akakū*, so it's not that people are watching or seeing what's going down, and that's part of the issue. Yes, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think now that all the meetings are online, that the meetings are now all archived under *Akakū*, all the boards and commission meetings.

CHAIR PALTIN: Okay. Great. And Chivo just said yes, it is. He texted. Okay. So yeah, I mean, I don't know how much people are comfortable like with five appointed members confirmed by the Council deciding like, hey, 60 feet, go for it, in a PQP zoned area which, you know, given, I think, Mr. Forsythe's presentation, there isn't that that much PQP it looked like, but those are some things to think about. You know, I don't know if everybody like read through the bill with a fine-tooth comb or whatever, but I don't want to rush folks on a 67-page bill with a litigation kind of...you know, not on July 27th anymore, on October, and I definitely would like to pass a bill out before October for their summary judgment deadline. But I'd like to give Members some time to go back and see, and maybe propose amendments based on Mr. Hopper's guidelines. I guess it won't be height related in this go around, except for, you know, that page 31 one. But maybe I'll bring this back up in a month or so, and maybe everybody will be familiar and ready to go with any amendments. Possibly we can...if folks feel like it would be helpful to them, reach out to Ms. Wade and the Planning Department on things that could possibly improve the bill if...I think that's what she said she could provide, and Chair Lee would like to see. So maybe...I don't know if Chair Lee wanted to work with Ms. Wade and the Planning, or not, or...I mean, because Wailuku is a residency area.

COUNCILMEMBER LEE: Sure, sure. Right. I'll do that. I'll work with them.

CHAIR PALTIN: Okay.

COUNCILMEMBER LEE: Yeah.

CHAIR PALTIN: Okay. And for me, the amendments that I had...I would probably propose would be take out boutique hotel from purpose and intent, and remove 2(d) from 66. And then, you know, I'm not sure about that permitting authority, I will look a little bit further into that, as I hope we all will, and then come back and then we've got the basic idea of what's going on. If folks want to know more about litigation, I mean, I think we can meet with Corp. Counsel individually if we have more questions about that. We could meet...most all of us know Mr. Collins and Maui Tomorrow folks, we could ask them questions. I don't know if Mr. Molina has any desire to hear the litigation in his

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Committee, but that's his purview. I'm not trying to assign him anymore work. Mr. Hopper.

MR. HOPPER: Yeah. I think one thing, if you take out section (d) on page 66, there's other language there that I think is meant to apply generally to those variances that are actually restrictive, so you may want to look at that. And then the other thing is that while we can certainly have...you know, we can have discussion with you on the litigation. I'd strongly advise against discussing this case with the plaintiffs in the lawsuit while the lawsuit is going on, you know, certainly not without our office present, and that's general advice we would give for anybody who is suing the County for any reason. But that's just a comment that I would make on that.

CHAIR PALTIN: Okay, okay. Thank you. And so maybe I will try to reach out to Ms. Martin and see if we can amend 2(d) in some way that addresses her concern, but keeps the limiting part of the language in there. I'll take that on. Yes, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think what you're outlining for us is a good plan. Mahalo. In moving forward, the next time we schedule the bill, because we were limited in the areas that we were able to amend pursuant to Mr. Hopper's recommendation or advice, we'll notice it on the agenda to open up the entire bill to amend? Is that...

CHAIR PALTIN: Oh, would that work, Mr. Hopper? Oh, sorry to cut you off, but would that work?

MR. HOPPER: I think if you sent that back to the Planning Commission and the Planning Commission had a public hearing on that, you could. But my concern is with the timing of this bill to deal with the litigation, I thought the timing might be tough for that. You could do...you could certainly do something separate to deal with that, although the timing would be a little weird because this isn't adopted as part of the Code yet. I suppose you could do it entirely...this bill with those changes you'd want to see or with those, you know, topics as items, you know, the change in those standards. But yeah, the main issue would be, is that something that went out for public hearing notice to the Planning Commission, you know, as part of that. So that would be my only concern is to have that as part of a...you know, as part of a Planning Commission item, realizing there's, you know, current property owners that that would affect. So that was my only concern. And I'm being a bit conservative on this one because of the background, but that's, I think, what I would advise.

CHAIR PALTIN: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. And then I just had a follow-up question for Mr. Hopper. Yeah.

CHAIR PALTIN: Yeah, I was going to ask it, but I figured you could cover it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, did you have a follow-up question to the

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notice?

CHAIR PALTIN: You go first. Go first.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay, okay. Mahalo, Chair. So I just wanted to clarify for the record, for the public, it was kind of not clear earlier about who had exclusive zoning authority, and that would be with Council, because there was discussion about MRA, but that's...it's not authority under MRA.

MR. HOPPER: This goes into some of the issues directly related to the lawsuit. There is background on this, there's written Corporation Counsel legal opinions on this item of what the MRA's authority is and the ability of the existing regulations. So I...to get into those details, I think I'd want to go to executive session because it relates very directly with the lawsuit, specifically whether or not the current standards in place are valid standards in Wailuku Town because they've been adopted as administrative rules. I think I can say, if the Council wants this as part of the County Code and to have exclusive authority over zoning in this area, it could do that by adopting this in the Code. But if we're going to get into the validity of the existing rules that are in place that are currently applying to landowners right now, I would want to go into executive session because there is a pretty extensive background on that, which again involves written legal opinions from our office dating back a while, and deals with the MRA's authority under HRS 53. Basically, the plaintiffs in the lawsuit has...have argued the MRA does not have that authority, and the County has disputed that. So that's part of what's going on in the lawsuit. But this being adopted in the County Code would resolve that because the Council clearly would be the one with the authority to do the zoning.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So that...there is an inconsistency by the County's doing that was improper, but zoning authority is Council.

MR. HOPPER: I would...

COUNCILMEMBER RAWLINS-FERNANDEZ: So you mentioned HRS 53. So the MRA is still held to HRS 53 in its entirety?

MR. HOPPER: Well, I believe HRS 53 deals with...HRS 53 is going to deal with a variety of powers from the MRA. The MRA has those powers by adoption of a redevelopment plan. That's something that it has to do. So those powers are basically as set forth in the redevelopment plan that's adopted, if I recall HRS 53, and whatever powers that they can have. And the process for adopting those would be involving, you know, going through...I believe Planning Commission reviews them, the Council adopts them by resolution, and there's a fair amount of notice. That's one of the reasons I attached the 2000 Wailuku Redevelopment Area Plan. So again, there's a lot of different things an MRA can do. And as part of that plan, something that was set out was for the MRA to adopt flexible zoning standards, so that's in that plan. And having those standards adopted as part of the County Code, though, would give the Council clear purview over that as opposed to the MRA. So that's what this proposed bill would be doing, would be to take that from Administrative Rules passed by the MRA and put in the County

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Code as something that the County Council would have exclusive authority over.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Hopper. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. Member Sinenci, did you have your hand up?

COUNCILMEMBER SINENCI: Yeah. Real quick, Chair, I guess for Mr. Hopper, clarification. So the County is representing the MRA because MRA is under the Maui County, are they under the Planning Department?

CHAIR PALTIN: Mr. Hopper.

MR. HOPPER: I can talk to our...you have a litigator assigned to this, she may be more into the details there about, you know, representation and things like that. But I think generally, the MRA is independent...it is a County agency, but it's a bit independent, so I don't think it's under the Planning Department necessarily, I think the Department of Management generally staffs it. But yeah, they're a County agency, so they'd be represented in that litigation.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: So my follow-up question was, could we do the public hearing to the Planning Commission concurrently while this bill is being heard? Like not...obviously not this Friday's Council meeting, but could we put up a bill to send to the Planning Commission to review, like, height standards for the Wailuku Redevelopment Area, and they'll be going over that as we're passing this. And then once this gets passed, we're...already set ourselves up to decide on the height or whatever...other substantive changes. Could that happen concurrently, theoretically?

MR. HOPPER: I mean, you could...if it's a Council change, it would be a resolution. The odd part though is that there's no existing County Code that you would be amending because this is adopting this for the first time in the County Code. So the timing would be odd. I don't know if the...I don't know if the way to notice that would be to do a resolution with this exact same bill, but with the heights changed or something like that. So I mean, that would maybe...it's an interesting proposal. You know, if this passes it's a lot easier because then it's just a change to the existing Code. Right now, I don't even know what you'd be Ramseyering because there's no existing Code. So it's a little awkward. I don't know if the best way to do it would be to just have this same bill, but then if that bill is referred again...it's a bit awkward. I'm sorry that I don't have an answer right away, I mean, on that, but theoretically . . . *(inaudible)* . . .

CHAIR PALTIN: This whole item is awkward, so don't apologize. I mean, it's all pretty awkward to me because are we taking away somebody's authority that they didn't have or...all very awkward. So yeah, no...feel no need to apologize, it's all awkward. Awkward. Member Rawlins-Fernandez.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Right, very awkward. Mahalo, Chair. I had a question for Mr. Hopper, because then as you succinctly summarized, Chair, if we were to pass this bill, then Council would be conceding that the MRA did have that authority, which goes to the crux of the case, right?

MR. HOPPER: I don't...I certainly don't think that's the case. I mean, there's...the point is for this area right now, there is a zoning...there's a zoning for this area, and there's no zoning standards that apply there. The only standards that apply are what's been adopted by the Maui Redevelopment Agency that go over building heights and all those different things. These would...by adopting this in the Code consistent with what the zonings are, that would adopt standards for this area. I'm hesitant to say the MRA does not have any authority to pass standards for here; and again, there's background on this, and I can provide that to you...I think we would disagree with that. But in any case, there's nothing in the County Code right now that talks about what zoning standards there are for Wailuku Town. This would adopt those standards that would apply, and so I think that that's what this would do. If we want to get into a...I think interesting, but potentially lengthy discussion over the history of the Maui Redevelopment Area and how the zoning has applied there historically, and the arguments for why the MRA could be doing this by administrative rule and the arguments against that, we can do that, certainly. I had to delve into that in working on this...on this issue, and it's a relatively long history. But...so we can do that, and I think having those answers can be important. So...but, you know, right now, I do not think adopting this legislation would be acknowledging that the MRA had authority or did not have authority to do this. I think this would say regardless of whatever the MRA did, this is what's going to apply going forward, and Council is going to regulate through zoning.

CHAIR PALTIN: Okay. Well, that brings us up to the 12:00 hour. And the next meeting, if Members could come with their...whatever amendments they propose ready, and I'll leave it up to Member Molina if he wants to take up the litigation aspect...no pressure. I mean, it's fascinating stuff and all but, you know, your call. So then Committee Members, if there are no objections, the Chair will defer this item and assign you guys all some homework to come back the next time.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: TK and KTK)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: All right. Consider this item deferred. So we moved one out, and we deferred one. Good progress. Three hours...not bad, and we'll see you all at 1:30 --

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: -- or seven of you, or six of you.

COUNCILMEMBER SUGIMURA: Yeah.

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CHAIR PALTIN: Have a good lunch.

COUNCILMEMBER SUGIMURA: Going to be back at 1:30. Thank you, everybody.

COUNCILMEMBER JOHNSON: Thank you. Thank you, Chair.

COUNCILMEMBER SUGIMURA: Thank you. Good meeting.

CHAIR PALTIN: This meeting is adjourned. . . .*(gavel)*. . .

ADJOURN: 12:00 p.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use Committee

pslu:min:210722

Transcribed by: Terianne Arreola

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CERTIFICATION

I, Terianne Arreola, hereby certify that pages 1 through 49 of 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 20th day of August 2021, in Wailuku, Hawai'i

A handwritten signature in black ink, appearing to read 'Terianne Arreola', is written over a horizontal line.

Terianne Arreola