

INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

MINUTES

February 23, 2010

Council Chamber, 8th Floor

CONVENE: 9:03 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Bill Kauakea Medeiros, Chair

Councilmember Joseph Pontanilla, Vice-Chair

Councilmember Gladys C. Baisa

Councilmember Danny A. Mateo

Councilmember Michael J. Molina

Councilmember Michael P. Victorino (In 10:03 a.m.)

NON-VOTING MEMBERS:

Councilmember Jo Anne Johnson (In 9:05 a.m.; Out 10:55 a.m.)

EXCUSED: Councilmember Sol P. Kaho‘ohalahala

STAFF: Michael J. Geers, Legislative Analyst
Camille Sakamoto, Committee Secretary

Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Cheryl Okuma, Director, Department of Environmental Management (Item No. 37)
Milton M. Arakawa, Director, Department of Public Works (Item No. 23)
Jeff Hunt, Director, Department of Planning (Item No. 23)
Francis Cerizo, Planner, Zoning Administration and Enforcement Division,
Department of Planning (Item No. 23)
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation
Counsel
Mary Blaine Johnston, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 23)

Seated in the gallery:

Jarvis Chun, Supervising Land Use and Building Plans Examiner,
Development Services Administration (DSA), Department of Public
Works (Item No. 23)

Lieutenant Scott English, Fire Prevention Bureau, Department of Fire and
Public Safety (Item No. 23)

Paul Haake, Captain, Fire Prevention Bureau, Department of Fire and Public
Safety (Item No. 29)

OTHERS: Jim O'Brien (Item No. 23)

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Margy O'Brien (Item No. 23)

Daren Suzuki

Seven (7) additional unidentified attendees

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

CHAIR MEDEIROS: . . .(*gavel*). . . Aloha and good morning, everyone.

VICE-CHAIR PONTANILLA: Morning.

CHAIR MEDEIROS: Members, thank you for being here early this morning, and we welcome those that are in the gallery and watching this meeting on *Akaku*. This is the meeting of the Infrastructure Management Committee, Council of the County of Maui. This is, today is February 23rd, 2010. I am Councilmember Bill Medeiros. I am the Chairperson for this Committee. I will now call it to order. On this Committee, we have seven Voting Members. This morning, present we have Vice-Chair of this Committee, Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR MEDEIROS: Good morning. We have Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR MEDEIROS: Good morning, Gladys. We have Danny Mateo, the Council Chair.

COUNCILMEMBER MATEO: Good morning, Chairman.

CHAIR MEDEIROS: Good morning. We have Michael J. Molina.

COUNCILMEMBER MOLINA: Good morning, Chairman.

CHAIR MEDEIROS: Good morning. Excused from this meeting is Member Sol Kaho'ohalahala and Michael P. Victorino. This morning, with us I'm gonna introduce the representatives from the Administration. From Corporation Counsel, this morning we have Mr. David Galazin, Deputy Corporation Counsel. Morning, David.

MR. GALAZIN: Good morning, Chair.

CHAIR MEDEIROS: From our Committee, we have Committee Secretary to my far left, Camille Sakamoto; and to my near left, we have Legislative Analyst for our Committee,

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Mr. Mike Geers. At this time, I'd like to recognize the presence of one of our Non-Voting Members, Ms. Jo Anne Johnson.

COUNCILMEMBER JOHNSON: Aloha.

CHAIR MEDEIROS: Aloha. Thank you for being here and welcome.

. . . At, currently we do not have anyone from the Administration. We have some members that will be with us in the second item that we have today, in the gallery.

COUNCIL MEMBERS: Cheryl.

COUNCILMEMBER BAISA: Cheryl's here.

CHAIR MEDEIROS: Okay. Yeah. And we have the Director of Environmental Management, Ms. Okuma in the gallery; and walking in, we have the Director of Public Works, Mr. Arakawa; and also from the Fire Department, we have Lieutenant English. Members, this morning. . .we have two items on our agenda. The first item is Item IM-37, accepting dedication of sewerline easements for Maui Lani Subdivision, Phase 7/Increment 4 also known as the Traditions at Maui Lani. And before we accept testimony this morning, I would like to ask everyone--Members and in the gallery--to silence your cell phones or any electronic devices you may have with you so that it will not interrupt our proceedings. Thank you for your cooperation.

. . . We do have people signed up for testimony this morning. . .and I'm going ask you if you intend to testify and have not signed up yet, please go to the entrance of our Chambers, in the lobby area, and you can sign up to testify. And those testifying, these are the ground rules. You have three minutes to testify. When the yellow light comes on, it indicates you have 30 seconds left, and when the red comes on, you should conclude. Testifiers are asked to give their names and any organization that may, they may be representing. At this time, we're gonna call the testifiers up. And first to testify is Mr. Jim O'Brien, and he'll be testifying on IM-23, and he is representing himself. Mr. O'Brien, good morning.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. J. O'BRIEN: . . . Good morning and aloha.

CHAIR MEDEIROS: Aloha.

MR. J. O'BRIEN: My name is Jim O'Brien. I am representing myself as a homeowner at the Kaanapali Royal, and I wanted to testify today just to make sure that everybody here is aware that on February 11th, the Board of Variance and Appeals voted *unanimously* to instruct the County, the Administration, to give us building permits for our enclosed

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lanais. This comes after more than two years and hundreds of thousands of dollars of squandered resources. And so I just wanted to make sure that you were all aware of that, that not, that the, the Administration did not convince a single member of the Board of Variance and Appeals that they have a case.

CHAIR MEDEIROS: Is that the completion of your testimony, Mr. O'Brien?

MR. J. O'BRIEN: Yes, it is.

CHAIR MEDEIROS: Thank you very much. Members, any questions for the testifier at this time?

. . . Seeing none, thank you for being here this morning and for your testimony.

MR. J. O'BRIEN: Thank you.

CHAIR MEDEIROS: Next testifying is Margy O'Brien, and she'll also be testifying on IM-23, and she is representing herself. Ms. O'Brien, good morning. Thank you for being here.

MS. M. O'BRIEN: Good morning. Margy O'Brien, B102 Kaanapali Royal. I was just wondering, back November 16th, the minutes of the Infrastructure Management Committee meeting, Member, Corporate Counsel David Galaz [*sic*] --

CHAIR MEDEIROS: Galazin.

MS. M. O'BRIEN: --Fire Department Lieutenant English, Planning Department Director Hunt, Department of Works [*sic*] Director Arakawa, and Committee Staff Camille Sakamoto and Mike Geers, they were all supposed to get together with Jo Anne Johnson and come to a positive solution to this problem. Because it's not only Kaanapali Royal--the reason *I'm* here this morning is all the other condominiums that have enclosed their lanais. That's really gotta be addressed because we've wasted so much money, and time, stress. I can't tell you, the Council is not very popular with a lot of folks *because* it's been two years. . .that we've been going through this. We come to meeting after meeting, it gets shelved. You, these folks were told back *November* 16th, to come up with a positive solution, and I want to know what the solution is. I pay taxes, I'm a good citizen, and so are all the folks up in the gallery. Time after time, the gasoline that's wasted. Just consider that. Thank you.

CHAIR MEDEIROS: Thank you. Ms. O'Brien, would you remain there in case we have any questions? But thank you for being here this morning and for your testimony. Members, any questions for Ms. O'Brien? Member Johnson?

COUNCILMEMBER JOHNSON: I just wanted to clarify for Margy that we did actually get together. We discussed some possible solutions, but one of the biggest things we wanted

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to do was to find out what the outcome was from your litigation. Because if we proceeded with something and then it didn't match up with what the solution was, then it was kind of like we would be possibly going in opposing directions. So that was kind of what we had all said--we were just waiting and holding that in abeyance. So, that was the *reason* why we kind of had to wait to see, and, and I'm pleased, and frankly I agree with the Hearings Officer on your disposition of your case. Thank you.

MS. M. O'BRIEN: Thank you, Jo Anne. You're a great representative for West Maui.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MEDEIROS: Any other questions, Members, for the testifier? Seeing none, thank you, Ms. O'Brien, for your testimony.

. . . I'm going to ask anyone in the gallery that wishes to testify at this time, if you haven't signed up, this is your opportunity to do so. We had just two members, I mean two people signed up for testimony, the O'Briens, and that's completed, so once again an opportunity to sign up for testimony. Seeing that we don't have any more signed up and we don't see anyone coming forth to testify, Members, without objections, the Chair will close testimony at this time.

COUNCILMEMBER BAISA: No objections.

CHAIR MEDEIROS: Thank you, Members, so ordered.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR MEDEIROS: So Members, today we do have the, two items on our agenda, and I'll reiterate that--IM-37, accepting dedication of sewerline easements for Maui Lani Subdivision, Phase 7/Increment 4 also known as the Traditions at Maui Lani; and IM-23, bill relating to permitting requirements for construction of lanai enclosures.

ITEM NO. 37: ACCEPTING DEDICATION OF SEWERLINE EASEMENTS FOR MAUI LANI SUBDIVISION (PHASE 7/INCREMENT 4 ALSO KNOWN AS THE TRADITIONS AT MAUI LANI) (C.C. No. 10-29)

CHAIR MEDEIROS: Could we have the representatives of the Administration come down please?

. . . And approaching first is the Director of Environmental Management, Director Okuma . . .

. . . And the Chair will ask the Director, at this time, to give an opening statement on IM-37.

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MS. OKUMA: Good morning, Committee Chair Medeiros, Council Members.

CHAIR MEDEIROS: Good morning.

MS. OKUMA: Thank you very much. We're here today regarding a proposed resolution in order that we be able to accept two proposed sewerline easement areas in this particular project site. And basically those...that sewer would connect to an 8-inch sewerline which is along Kamehameha High...Avenue, and that is the County system. Back sometime in December of 2009, these improvements were completed, and they were completed to the satisfaction of the Department in accordance with our County standards, and so we're here to request appropriate action by this Council. Thank you.

CHAIR MEDEIROS: Thank you, Director Okuma. Members, the floor is now open for questions for the Director. Any questions or discussion at this point, Members?

... Okay, seeing none --

COUNCIL MEMBERS: Recommendation?

CHAIR MEDEIROS: Thank you, Members.

... At this time, the Chair will entertain a motion to recommend adoption of the proposed resolution and the filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move to adopt the proposed resolution entitled Accepting Dedication of the Sewerline Easement for the Maui Lani Phase 7/Increment 4 Pursuant to Section 3.44.015, Maui County Code, and the filing of County Communication No. 10-29.

COUNCILMEMBER MATEO: Second.

CHAIR MEDEIROS: It's been moved by Member Pontanilla, seconded by Member Mateo. Members, any further discussion on this item? Seeing none, the Chair will call for the vote. All in favor of the motion, say "aye".

COUNCIL MEMBERS: Aye.

CHAIR MEDEIROS: All oppose, say "no". Okay the...it'll be seven--sorry it'll be ...*(laughter)*... we have one...okay, so it be five "ayes", zero "noes", and we have Member Kaho'ohalahala excused...and Member Victorino. So the motion passes, Members.

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VOTE: AYES: Councilmembers Baisa, Mateo, Molina, Vice-Chair Pontanilla, and Chair Medeiros.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Kaho'ohalahala and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution and FILING of communication.

CHAIR MEDEIROS: And we now move on to the item number two on our agenda, if you will turn to that, Members.

ITEM NO. 23: BILL RELATING TO PERMITTING REQUIREMENTS FOR CONSTRUCTION OF LANAI ENCLOSURES (C.C. No. 09-217)

CHAIR MEDEIROS: Item number two is IM-23, and coming down to join us from the Administration is the Director of the Department of Public Works, Director Milton Arakawa . . .

. . . and joining us from Corporation Counsel is Mimi Johnston. Thank you for being here. IM-23 is a bill relating to permitting requirements for construction of lanai enclosures. So, Members, at, at this time, I'm going to ask the Director of the Department of Public Works, Director Arakawa, for an overview and opening remarks on this item. Director?

MR. ARAKAWA: Thank you, Mr. Chair. The item that you have before you pertains to a proposed bill introduced by Councilmember Johnson, and the bill proposes a building permit exemption on work to enclose a lanai or patio in which no square footage is added to an existing structure. At previous Committee meetings on this subject, we have noted our strong objections to the bill as it's written. The main purpose of the Building Code is to ensure that erected structures or renovations or improvements to structures, meet certain standards of health, safety, and livability. Without any permit reviews, the health, safety, and livability of occupants cannot be assured. There are also structural integrity concerns which would not be addressed without permit reviews. So in a worst-case scenario, structural failure and loss of life is a possibility. In a related matter, an owner of a Kaanapali Royal unit, Mr. Uwe Schultz, filed an appeal of the Department of Public Work's decision to not approve his after-the-fact building permit for enclosure of his

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lanai. Mr. Schultz enclosed a lanai of his unit without applying for or obtaining a building permit. He was joined in his appeal by owners of six other units who have lanais which have been enclosed without building permits. This went to the Board of Variances and, Variances and Appeals. They selected the Hearing Officer, retired Judge E. John McConnell, to hear the evidence and make a recommendation. Mr. McConnell's report stated that the decision to not approve the after-the-fact application was based on an erroneous application of the law. The Department of Public Works and the Department of Fire and Public Safety filed a challenge to the recommendation. The Board of Variances and Appeals heard this at its February 11th meeting. At that meeting, the BVA voted to accept the Hearing Officer report; however, we would still note that we have some questions as to the applicability of the decision. While Mr. Schultz's unit was previously discussed in terms of the appeal, it is less clear to what extent the BVA decision affects owners of the other six units which joined in the appeal, much less the owners of other units in Kaanapali Royal who enclosed their lanai without a building permit. In the event, in any event, the final written decision of the BVA still has not been issued; thus, it's premature to come to a final conclusion on this matter. And, if you have any questions regarding what went on at the BVA, Mimi Johnston from Corporation Counsel's Office is here. That concludes our comments on the matter.

CHAIR MEDEIROS: Thank you, Director. Before I call on the Corporation Counsel, so that we, we know what information may be needed, I'm gonna extend this time to Councilmember Johnson, who was the introducer of the bill. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, thank you, and I still continue to try to find a proactive and a positive solution because I believe *sincerely* that this *problem* does not just exist at Kaanapali Royal, but throughout the entire County. And my whole goal and objective, because the Administration failed to submit any legislation that I had asked for repeatedly to address this issue--it is counterproductive to have citizens spend more than a \$100,000 to get the answer that they got. And I will say the same thing I said in a previous meeting, we are public servants. I'm a public servant. My role and goal and objective is to facilitate or to *try* to find a win-win situation so that we can move on to other things. The Administration--and with all due respect to, you know, opinions that differ from mine--the Administration has really not been what I would call proactive over the last several years in finding a *cooperative* solution to this. So in my frustration, that's why I sent forward this, this request for this ordinance. It may not be perfect, but as was reiterated at the last meeting, there will be units whose fines will still continue to accumulate. There may be other people that may find themselves similarly situated to the people of Kaanapali Royal. As a person who does her best to try to address issues that crop up in the community, I would like to, for a change, actually have people feel good about government. Feel good in that we are trying to find solutions that *do* address all the issues that Mr. Arakawa addressed, that Mr. English have addressed. It, it's time for the Administration to just simply stop saying no, no, no, no, no, and offer something. Offer something constructive, instead of being obstructionists. This for me, and being a

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Non-Member of this Committee, is extremely frustrating because we have *so* many other, what I consider to be serious situations of whole buildings that have been constructed without any permits. This is not the case. I would ask very respectfully that the Members, if no language can be offered from the Administration to address what their issues are at this meeting, you know what, move on. Just move on. Pass the bill as it is. If it is something that is so heinous and reprehensible and putting everybody at risk in this County, I'm *sure* that the Administration, by the time it gets to the full Council, will have some kind of constructive suggestion so that we may actually get something meaningful done. Because how many meetings have we had, Mr. Chair, on this issue?

CHAIR MEDEIROS: This is number four.

MS. JOHNSTON: Number four. Well, there you have it. You have *way* more important things to do than to be dealing with this. And personally I have worked for the last several years to try to resolve this in an amicable win-win situation and not gotten anywhere. So I just ask for *your* cooperation in moving it forward. If the Administration has something to offer, let them offer it. But this is not, to me, productive. It is not really responding to the needs of the community at large, because this issue will not go away because there are other people outside of this complex who I guarantee will get these violation notices. And so rather than cloud the issue, let's clarify it, and if this needs tweaking, well fine. Let the Administration meet the challenge. Thank you.

AUDIENCE: . . . *(applause)* . . .

CHAIR MEDEIROS: Thank you, Member Johnson. At this time, I'm going to ask Corporation Counsel if they will make comments on it, and I believe Mimi Johnston, who represented the County in this will be the one to give the first comments.

MS. JOHNSTON: Thank you, Chair--

CHAIR MEDEIROS: Would you please?

MS. JOHNSTON: Thank you, Chair Medeiros. I want to clarify exactly what went on in this particular case and this particular hearing. There...it was an appeal by Uwe Schultz of a denial or refusal to process his after-the-fact building permit. . .based on the decision by the Department that the lanai enclosure created a fire, is a fire-safety, life-safety threat. There were a number of other unit owners who intervened, who had also received letters denying the processing of their after-the-fact building permit. The...there are no fines. No fines were ever imposed on any of the people in this particular building. The decision by John McConnell, Judge McConnell...the, the key finding was that he found that denying...I'll read it for you. The Department of Public Works, in denying the after-the-fact building permit application, determined that the structure was dangerous only because of a lack of automatic fire sprinklers--that was the one basis. And he found that was an improper basis for denying the issuance of the building permit. In going through

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the hearing, the testimony as to Mr. Schultz's application, he was questioned about and answered, and a determination was made that all other, in all other aspects, the way in which he had done his lanai enclosure did meet the Codes. That is from the materials that were used, the glass that was used, the, the size of the opening that complied with the access requirements of the Code, and the fact that he'd installed a smoke detector. All of those were considerations that are made any time a building permit application is put in, whether it's before-the-fact, or after-the-fact. And those don't change. Those are critical that they be considered or the Department be given a chance to determine whether those requirements have been met. The order that the Judge entered, and I would like to read that to you...this was also adopted by the, the Board. It is recommended that the Director of the Department of Public Works and the Department of...Director of the Department of Fire and Public Safety be directed to rescind their disapproval of the after-the-fact building permit applications, and further be directed to process the after-the-fact building permit applications, and issue such after-the-fact building permits. Okay, so all that was ordered is that, okay we found that your refusal to process it, you can't do that. Take that back, then process the building permit application. It doesn't say that you can then bypass every other consideration, every other part of the...any of the Codes as far as whether that particular enclosure meets the other Code requirements. The intervenors, I think there's six or seven of them, intervened on the basis that they had all...their after-the-fact permits applications had also been denied from being processed. There is nothing in what they presented that was ruled on or considered to determine whether the way in which *their* lanais had been enclosed in all other respects met the Code--whether the windows were the right size, the glass was the right grade, the rail was the right height, the access. So those are all things that still need to be considered by the departments, and which they will be doing pursuant to the, the Judge's decision here. That's all that was decided. There is still a key needed...I will say that Mr. Schultz, during the testimony...this is a very small lanai. This is...the only issue was what they called the mauka lanais. They were six feet by six feet, or 36 square feet. All these buildings also have a makai lanai, which is like about 420 square feet, a *much*, much larger lanai. And during the, the hearing when asked, Mr. Schultz was asked--Mr. Schultz, who is an architect and very familiar with code provisions--whether he felt he would have to get a permit if he decided to large...enclose the large lanai, he said yes. Now didn't explain what, what the difference was, but that was, that was his testimony. So I think that the, that this decision deals with the particular issue of Mr. Schultz and the other persons in this, in this building that put in for an after-fact, -the-fact building permit that the, the denial based on the lack of a sprinkler system will be set aside, and the departments will go ahead and review the permit applications and make a decision based on whether or not in all other respects the Codes are met. And I think that is critical. It is my understanding that what you're looking at, the amendment would *completely* take any review by the departments of these enclosures out of the loop, and there are many, many other safety issues that are, that are *attached* to this kind of process that weren't part of this hearing. So, you know, that's the best I can explain to you, you know, what the decision is and what the impact is on the people in the Kaanapali Royal. They, you know, they've gotten over the first, first hurdle, so to speak, but they're each gonna have

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to show that their enclosure complies. Some of these people did it themselves. We didn't know, maybe they put, you know, cardboard walls. We have no idea until the Department looks at it. But the departments have gotta be given a chance to look at it because otherwise they can't make, come to a reasonable decision about the safety issues, other safety issues. And that's, you know, in a nutshell, that's. . .that's about all that I have. And the decision hasn't been, the, the...there has to be a *written* conclusion, order signed by the Board, and that has not been done yet. Probably be about another month before that is completed. I'm happy to answer any questions anybody has.

CHAIR MEDEIROS: Thank you, Ms. Johnston--

MS. JOHNSTON: Thank you.

CHAIR MEDEIROS: --for that information.

MS. JOHNSTON: Okay.

CHAIR MEDEIROS: Mr. Galazin, would you want to add any comments to that?

MR. GALAZIN: Uh, no, Chair. I think that about sums it up.

CHAIR MEDEIROS: Thank you. Members, the floor is now open for questions for Director Arakawa or Corp. Counsel. Counsel Chair Mateo?

COUNCILMEMBER MATEO: Mr. Chairman, thank you. Ms. Johnston, thank you for the information. Can you also tell me what the implications are with Judge McConnell's determination relative to the issues that is being cited by the Department, which is primarily safety ...

. . . fire concerns?

MS. JOHNSTON: The, I, this is what I understand Judge, what Judge McConnell considered.

. . . Really the main issue that we...well, there were two. One was a very legal issue about whether or not *enclosing* a lanai added square footage to the unit or not. And the Department, the Department of Public Works took the position that yes, because before it was inhabitable space and now you've made it habitable space. But the, the Judge ruled against us on that. But the real issue was whether by take, taking off the lanai doors, which provided pretty direct access in permitting a wall, glass windows to be put in...that a person in order to get out of, say there was a fire in the bedroom, they couldn't go out through the front door, open the glass window, you've got to get up three feet, and climb over about a foot of rail 'cause they, they left the railing there. And then you gotta stand on a little ledge waiting for rescue. And the Fire Department's position was that created a life, what they call a life safety problem. It was a threat to the life of the person. It

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made it much more difficult for that person to exit in the case of fire or smoke. Judge McConnell's decision was that because the opening that the person had to go through, notwithstanding...and we raised the argument, like Mr. Schultz has macular degeneration, so he's already facing a problem, a vision problem. People in, with wheelchair or having to use walkers or canes would have a very difficult time, instead of just going out on the lanai and closing the door and waiting for rescue, now they have to get up and over. But he rejected that on the basis that the opening through which the person had to escape was...met the Code requirements for an *access* window in a bedroom. In other words, you're, you're required to have an access window in like a bedroom like this so that the, mostly 'cause it's so the Fire Department can get into to deal with the fire. But because that access window met the Code in situations where there would be no lanai or no rail or anything to stand on, he felt that the configuration met the Code, and therefore it was, you know, that it didn't pose any more of a life safety problem than existed in many other condo units, houses, and so forth.

COUNCILMEMBER MATEO: Would--

MS. JOHNSTON: And I think that's his, that was the basis that . . .(*inaudible*). . .

COUNCILMEMBER MATEO: Would this decision set any kind of precedent--

MS. JOHNSTON: Well, it's Administrative--

COUNCILMEMBER MATEO: --for other abuse?

MS. JOHNSTON: --decision. Probably not. It certainly will be considered if, you know, other people come in and say, look that you did this over here, but it, each...really this case turned on the specifics of Mr. Schultz's case because all the information was presented. Whether or not the issue of whether square footage was added or not, that wasn't even really determined by this. It was just that no you, I mean, well, he did say yeah, he found that there was no additional square footage that would trigger that part of the Building and Fire Codes, but I don't know...I'm sure that if anyone else is in a similar situation that they would come back, and say yeah, this was the decision in the other. But as far as a legally binding, unless it went to court, and it was a court decision, it really wouldn't, you know, would not create a precedent that would apply in every this case. You're still going to have, the departments are still gonna have to look on a case-by-case basis as to whether that particular enclosure, either whether it's after-the-fact or before-the-fact, meets other Code requirements.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

CHAIR MEDEIROS: Thank you, Council Chair Mateo. Members, any other questions?
Member Molina?

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COUNCILMEMBER MOLINA: Thank you, Chairman. Good morning, Ms. Johnson [*sic*].

MS. JOHNSTON: Good day, Mr. Molina.

COUNCILMEMBER MOLINA: Thank you for the overview. In light of the nature of the case, and, you know, we're still waiting for the opinion to be given to us officially in writing, or the Board's decision, is there any kind of information that may be sensitive in light of the possibility, again it depends on what happens here, you know, potential litigation down the road? I mean, should we consider executive session as it would...in light of the information you have, you have something that may be of sensitive nature...at this point?

MS. JOHNSTON: I don't think so. I think--

COUNCILMEMBER MOLINA: Okay.

MS. JOHNSTON: --I think the . . .

. . . I believe his, well, the decision will just, it'll be entered and then proceed at pace. And probably will not be an appeal of, of that.

COUNCILMEMBER MOLINA: Okay.

MS. JOHNSTON: If that's the question you're asking?

COUNCILMEMBER MOLINA: Yeah, I guess so. Because--

MS. JOHNSTON: Okay.

COUNCILMEMBER MOLINA: --it seems like you know the Administration is showing some real resistance to, to this bill.

MS. JOHNSTON: Right.

COUNCILMEMBER MOLINA: So that's the reason I'm asking that.

MS. JOHNSTON: Okay.

COUNCILMEMBER MOLINA: Do you know on, on what...when, when the written opinion from the Board should be, or decision should be coming to us?

MS. JOHNSTON: I . . .let's see. I think . . . I'm trying to remember the hearing dates. Uh . . .I think it's sort of, the 23rd of March, but I'm not quite sure when the . . .

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NOTE: Pause.

MS. JOHNSTON: . . . I think, I think the 25th of March would be the meeting that they'll, it'll be in final form and actually sign off on, yeah.

COUNCILMEMBER MOLINA: 25th? Okay, thank you. Thank you, Chairman.

CHAIR MEDEIROS: Thank you, Member Molina. Member Baisa, followed by Member Johnson.

COUNCILMEMBER BAISA: Yes, thank you, Chair. It distresses me that this is our fourth meeting on this issue. I'd like to ask Administration if they have any kind of amendment to the bill as it exists that would make it a little more acceptable to them.

CHAIR MEDEIROS: Okay. Director Arakawa?

MR. ARAKAWA: Mr. Chair, actually the BVA decision is still pending, so we're still waiting to see how that will affect us in terms of, you know, how we're gonna deal with all the other units within Kaanapali Royal as well as other units throughout the County. So at this point, we don't have an, an alternative bill.

COUNCILMEMBER BAISA: Okay, then I have one more question for Ms. Johnson [*sic*]. And that is, we have heard essentially what that decision was. Will that change substantially in a *written* transmittal?

MS. JOHNSTON: You mean from...so I understand your question. I've read, I've read the order...is that what you're saying, will that change?

COUNCILMEMBER BAISA: Yes.

MS. JOHNSTON: I don't anticipate that it will change. There, we may seek clarification on the part says "issue such after-the-fact building permits". There are other approvals that have to be obtained, such as, there has to be...this is an SMA zone. They have to get either a exemption or meet those requirements, and the permit probably can't be issued, you know, without that input. But as far as...I think it's clear that. . .it's really focused that you can't use, in this case, in this apartment, for this person, Mr. Schultz, lack of sprinkler systems as the basis for not processing his after-the-fact building permit application. You gotta process it and make whatever decision on the materials in front of you, and presumably on the intervenors and all the other people that weren't part of this proceeding, they will have to provide all the information the draw, like Mr. Schultz did-- the plans showing exactly, you know, the specifications of everything he did. And that will be the same. And that would be something as, I think, I think that you can say that especially the Fire Department feels very strongly about. Because if you put a lanai in there, you put a window in that doesn't even meet minimum Code requirements for

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access or exit, then that would be something that the person seeking the permit would have to address and perhaps alter. But if you have no review because you don't have to get a permit, then people can put anything in they want, safety, not safety. And I, I think that I speak, you know, I don't know. The Administration...that's the real concern, is the safety issue.

COUNCILMEMBER BAISA: Thank you very much. What I'm trying to ascertain, not being much of a legal person, and not very familiar with the legal system, I try to stay away from it as much as I can . . .*(laughter)*. . .

MS. JOHNSTON: Good, good, good, good, good policy.

COUNCILMEMBER BAISA: . . .*(laughter)*. . . I'm trying to, you know, we've heard several people, in fact yourself and the Director mentioned that we are waiting for a written whatever it is you're waiting for, explanation or, you know, the decision or whatever it is you're gonna get, that is gonna have more information. I was trying to determine was it worth waiting for that. Is it gonna, you know, differ substantially, or should we act and then wait for that on...when this comes before the full Council? So that, that's why I'm asking the question. I'm trying to find out what information are we gonna get in the written form that we don't have today.

NOTE: *Silence.*

MS. JOHNSTON: . . . It will just be for the...probably Judge McConnell to clarify that when he...this is not an order that this permit, and I'm talking about one permit has to be issued, or that the other permits have to be issued, not even, even if there are other things about what has been done to enclose don't meet Code. So. . .and I'm, I feel pretty confident. I did talk to him after the hearing before the BVA, that he said that he felt that maybe there could be clearer information. And so I think that's the only clarification. Definitely the...the rescind, the disapproval and not processing the permits will be rescinded, and those after-the-fact applications will be processed and reviewed, and a decision made. If things, alterations need to be made to conform to the Code--like you have to have a smoke detector, period. I mean that's, that's absolutely cut in stone. But if you don't have the person's permit or an opportunity to go back and see if they've complied, you know, then you really are creating a, you know, a potential safety hazard. I think that, that there will be a clarification that--

COUNCILMEMBER BAISA: Okay.

MS. JOHNSTON: --you don't disregard all the other parts of the Codes when you're processing the permit.

COUNCILMEMBER BAISA: Okay, thank you very much.

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MS. JOHNSTON: Okay.

COUNCILMEMBER BAISA: I'm a lot clearer now. Thank you. Thank you, Chair.

CHAIR MEDEIROS: Thank you, Member Baisa. Member Johnson, before you speak, I want to tell the Members that we, yeah, we did have, including today, was four meetings. The first one was August 31st, 2009; the second one was November 16th, 2009; then we had the third meeting February 1st, 2010; and today of course is February 23rd, 2010. May I also...advise the Members that we have representatives of other departments here, should you need them--we have the Department of Planning, we have the Fire Department, and we have a representative from Development Services Administration as part of Public Works here. And finally the other note that I want you to consider is this is a bill that will affect Countywide. Okay? It's not specific to any particular *building*, but this is a bill that would be applied *Countywide*. Okay? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and I just want to get back to some fundamentals. In the first place, when I started investigating the whole issue, my view of the lanai enclosure--if you put in sliding glass doors, for example; many times on the mainland, you'll see when you put up storm windows for the winter months--it's something that could be temporary. It's something that doesn't necessarily require structural changes because it is temporary. But when I started investigating and having conversations about why this was, at one point in time, why there was this confusion, why people in the last 30 years never had an issue, and all of a sudden now it's an issue. I kept trying to figure out, well, okay, if you're not adding any square footage to the unit, if you're just simply enclosing it, people are out on their lanais anyway. You know, they're doing barbequing, or every other manner of stuff out on the lanais. They have candles, all kinds of other safety hazards which are subjected to winds, they're subjected to a lot of other elements where you don't have control. I said, there's gotta be a way we can address this. There's gotta be a way that we, much like exemptions that we grant for other situations, there's gotta be a way that we can do it. So that was what prompted a creative or a positive solution that, look, let's just not have this issue re-surface. I got tired of arguing with the Administration about *my* view versus their view. And I said, look, let's come to, you know, *come* forward with something constructive so that we can actually have a win-win, so that other people that are doing this don't have to go through all this rigmarole, as long as they are applying with the Code. And I want to point out to the Members, it says unless otherwise exempted by the appropriate Plumbing or Electrical Codes, separate plumbing and electrical permits will be required for the above-mentioned exempted work. And it also goes on to say, that the exemption from the permit requirements of this Code shall not be deemed to *grant* authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of this jurisdiction. So at some point in time, somebody's gonna have to, in *that* Department or Planning or wherever make that determination--do they meet the Code anyway. If you have an architect or if you have a builder or whoever the devil it is that you're asking I want to be exempted from this work, it's not requiring all this rigmarole, then what is the

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criteria? Who the devil looks at that stuff? So use your noggin. You're going to be doing it anyway. If it's supposed to be up to Code, then it's up to Code. It doesn't *exempt* that. So to me, I'm just *tired* of getting the *run around*. We are the Council. We are supposed to use our brains for the *benefit* of other people in our County. I say, take action, do something that's constructive because the Code still protects the work. We did it and I can't remember what the, you know, I think, was it, maybe Mr. Pontanilla was doing it, and that was another situation where it was called Plan Review Waiver. We *trusted somebody* that *somebody* was looking and saying, yes it's up to Code. We *still* have that. The Department had no problem with *that*. In fact, you know, they, they basically, you know, said oh it's fine as long as somebody's willing to certify that. These things don't exempt anybody from any of the things that are currently in the Code. And *somebody somewhere* has got to be able to make a determination, look, it's okay. It's an administrative thing. Somebody's gonna say these are the plans, yeah, they meet the Codes...everything, you do everything up to the Code and standards. I wouldn't want to be the one putting in all those improvements and then find out that the guy that's doing the improvements didn't meet the Code because then I'm gonna have to go and deal with the County. I might have to rip everything out. So there's the protection. And my, my *fondest* wish...one of the things that I would *love* to see is for us to *actually* do something. Do something constructive and positive, and not have other people go through this. There will be many other things--as, as I said, the plumbing, the electrical, as was mentioned the fire sprinklers--that's, that, that will be taken care of. But do that. Do it so we do not have to come back again and again and again. Not just on this condominium association, and not just on other lanai enclosures, but all of them that meet these criteria. And not all of them will necessarily meet that criteria. There's still the permit process if it involves any plumbing or electrical. So to me, the protection is there. I don't really *care* what the Administration thinks at this point because they haven't offered anything and they just keep delay, delay, delay. That's why we're into this for two years, Mr. Chair, and I'm *sorry* if I'm expressing my frustration, but I *thought, mistakenly* perhaps, that I was here to actually serve the public who is paying my salary. So I want to help them and do what I can to just move this thing off the dime. Let those guys get on with other things. They're gonna have the review at some point anyway, to just make sure that it's up to Code. And move the damn thing out of Committee. Thank you.

AUDIENCE: ...*(applause)*...

CHAIR MEDEIROS: Director Arakawa, you have any comments to respond?

MR. ARAKAWA: Mr. Chair, I, I think our earlier comments still apply. As I mentioned, the *main* purpose of the Building Code is to ensure that erected structures or renovations or improvements to structures meet certain standards of health, safety, and...livability. So obviously, we, we would need a permit review in order to ensure that. Without any permit review, there is no way we would *know*. And basically if things like this are exempted from permit reviews, then we're really talking about the health and safety of

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the occupants of the building. And we really need a permit review in order to do that. Councilmember Johnson brings up Plan Review Waiver. That certainly is an *option* for people to proceed with, however, as you know, what that process entails is that a, an owner or a contractor may go ahead and actually do the improvements in *advance* of getting the Department's or agency's approvals. However, upon completion they still need to comply with all applicable requirements. That's an option for these owners as well. They can proceed with that, however, that does not *exempt* them from complying with all of the, the requirements. So, anyway, our...we, we have a strong objection to the *bill*, and it's primarily for the health and safety of the occupants of the building. Not only the occupants of Kaanapali Royal, but other occupants of structures within the *County*, the whole County.

CHAIR MEDEIROS: Thank you, Director. Corp. Counsel, would you want to--

MS. JOHNSTON: Yes.

CHAIR MEDEIROS: --add any comments or response?

MS. JOHNSTON: Yes, I'd like to respond to Ms. Johnson.

CHAIR MEDEIROS: Okay, Ms. Johnston.

MS. JOHNSTON: Mr. Schultz's enclosure did not entail any plumbing or any electrical work at all. So my understanding what's being proposed here is there would be no *process* by which his plans and what he was proposing to do would ever be subject to review by anybody, except maybe after there's been a problem. "Lanai" is not defined in the Building Code. It is in the Housing Code. It is mentioned as being expressly excluded from being considered *habitable* space. So one of the things that, that we argued during the, the hearing on this is that by enclosing a lanai, which by the Housing Code is specifically not habitable space, and adding it to your bedroom, you're making it habitable space. And therefore, there was an extension in the square footage of the habitable space. Now Judge McConnell ruled against us. But when you say enclosing a lanai, this is a six by six foot square lanai. There's the 450 square foot lanai. The people that have houses that maybe have an 800 square foot lanai that goes off of the kitchen, extends into the yard, I think that without any kind of specifications as to how *exempting* somebody from having to go through the review of their plans is going to leave it open to anybody that calls anything they want to call lanais. They'll say I don't have to, I want to close this, I gonna make two more bedrooms and I'm not going to put plumbing or electricity, you know, I'll maybe put electricity. But how does *that* even get for permit review? *How* if you're in a Special Management Area? You don't have to get a permit, you don't have to get a building permit. I think, I think. . .whether the. . .the *intent* is maybe good to address the problem. In this particular project, these very small lanais. . .no big deal. But it's going to apply to *everybody*. . .whatever the size of the lanai. And unless there's something built in that at least Plan Review Waiver or at least

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you go for an exemption, like you go for an exemption from SMA permit, maybe that's the way to do it, exemption from having to get a building permit. But at *least* it gives the departments--the Fire Department and the Building Department, anybody else who is involved--an opportunity to look at those plans and say, you know, this is, this is a fire hazard or this is, you know, not to Code. But otherwise I don't see any *mechanism* for getting any kind of review, under what's proposed here.

CHAIR MEDEIROS: Thank you, Ms. Johnston. Members. . .Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Thank you, Ms. Johnson [*sic*], for, you know, providing us with a lot of information. And what interests me is that on the first complaint by Mr. Schultz, he was the only one that was reviewed in regards to the type of materials that he used. Because he's an architect, you know, basically he knew what type of materials that would be fire resistant, the whole bit. Now, *if* the other people had built their unit exactly the same, I see no problem. But really we don't know. And I think Mr. Arakawa, you know, has some valid concerns in regards to, you know, what type materials that, you know, everybody was using, you know, based on Judge McConnell's decision, was strictly based on Mr. Schultz's appeal.

MS. JOHNSTON: That's correct. No, nothing about any of the other units was put in front of him about how they were built or how the plans were . . .(*inaudible*). . .

VICE-CHAIR PONTANILLA: Yeah, but this is something that, you know, as Council Members, we need to resolve because it *has* big implications. Where do we draw the line in regards to having a building permit or a review, you know, in any case? You know, 36 feet, yeah, maybe we don't have to need a permit, but a review of some kind need to be done to ensure that the materials that are being used are safe materials. If something should happen, you know, what is the implication to the County? I don't know.

. . . I don't know. And these are some of the things that, you know . . .(*laughter*). . . really I need to consider in regards to where do we draw the line in lanais. Thank you, Chairman.

CHAIR MEDEIROS: Thank you, Member Pontanilla.

COUNCILMEMBER MOLINA: Question.

CHAIR MEDEIROS: Any other Members, any questions? Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Chairman. Maybe Corporation Counsel or Mr. Arakawa can respond to this. You know, so from what we're hearing, the bill is currently presented provides no...mechanisms for department review in, in the event someone wants to enclose their lanai. That's what I'm getting. And I'm just trying to put out a potential scenario here. If somebody goes ahead and, you know, a bill like this is

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passed without any, the mechanisms as the Administration claims. . . a person encloses their lanai, fire happens, a person dies of smoke inhalation--does this bill as presently written, does it increase the County's exposure towards liability? I mean, I need to know this because I'm sort of torn, because I certainly want to provide some assistance to those folks concerned about this, as well as, you know, Mr. Chair, as you mentioned this is a **Countywide** issue. We have a responsibility as elected officials to uphold this County government and minimize any exposure to liability on behalf of the taxpayers. So I'm. . . you know, I'm, I'm torn, Mr. Chairman. Can, can I get a response from Corporation Counsel in terms of the, at least the portion of the exposure to liability? Like for example, again, somebody encloses their lanai, a fire happens, a person, you know. . . dies from smoke inhalation or whatever. . . are we opening ourselves up to a lot more liability now?

CHAIR MEDEIROS: Mr. Galazin?

MR. GALAZIN: Thank you, Member Molina. There's a couple issues I want to, I want to touch on in regards to your question. The first, just to expound a little bit more on what my colleague was saying about the review process. If it were the intent of the Committee to pass something the way that it's written right now, exempting it completely from the building permit review process, you have to understand these **reviews** that the Administration keeps talking about are generally tied by Code, sometimes by statute, to the building permit. In order to **make sure** that there was a mechanism by which they could be reviewed, you would need to go through and kind of...do an overhaul, a legislative overhaul at least on, on the County's side in order to find out at what points the building permit is used as a trigger, and then modify that to allow for some review, you know, SMA, Historic Preservation, what have you. So that would be something that would be ancillary to passing this, that I would recommend. The second question you raise about the liability issue, you would have to consider in situations where somebody replaces sliding doors, for example, and puts in a small access window. . .if that might still be appropriate for, for human safety. That would be fine, but if you exempted, if somebody takes out the sliding doors and just puts in a **brick wall**, you've completely cut off the access altogether. But if there's no building permit, if it's exempt, we're not gonna know that. And I think that certainly **has** a potential to increase the County's liability if we're going to, if we're going to allow that. I can't say to what extent, obviously, but that, that is a concern. I'm glad you brought that up.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Chairman.

CHAIR MEDEIROS: Thank you, Member Molina. Member Johnson?

COUNCILMEMBER JOHNSON: I know I'm not a Member of the Committee, but I have a question. When someone comes into an existing department and they ask, they're making an inquiry about whether or not, am I exempt, am I not exempt? What is the **mechanism** by which they do that? Because **somebody's** gotta make a determination as

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to whether they are or whether they *aren't*. So *who does that currently?* Is it some big *elaborate* process that . . .(sigh). . .

NOTE: Silence.

CHAIR MEDEIROS: . . . Director, would you want to respond to that?

MR. ARAKAWA: Councilmember Johnson, there are Building Code exemptions, and they are clearly listed in the County Code.

COUNCILMEMBER JOHNSON: Yeah, but when you go--and I've had people come, and they go and they go for...I'm gonna use an example because I know somebody has done this already. They went in and they said, oh, am I subject to having to file, I guess an SMA minor or whatever it is, you know, so it's under a certain amount, so they represent to the County in a simple little form that the *value* of my work is under \$125,000. And you know, Mr. Arakawa, that *plenty* of those people do not tell the truth. So *what* do you do when they're making a representation on that little form that states, very clearly, their work is under a certain threshold or, you know, isn't there some *simple* little administrative form that could be easily developed to say that they would certify that all of the things are up to County Code and that they would have an exemption that they're gonna comply with every aspect of the Code? Is that *possible*?

MR. ARAKAWA: Well, first of all as far as SMA permits, that's not handled by our Department. That's handled by the Planning Department. There are various levels of permits as you know. There are major permits, there are minor permits, and there are also exemptions. So those go through varying degrees of review. As far as building permits per se, as I mentioned there are exemptions. Anybody can come in, talk with our clerks or any of our staff to determine whether they fall within the exemptions. If *not*, they would have to file a building permit. And there are, again, various degrees of review for different types of building permits. Once the building permit application comes in, it gets routed to various agencies for review. In this particular case, it had to go to the Fire Department, and the Fire Department had some comments as well.

COUNCILMEMBER JOHNSON: So what I'm asking, Mr. Chair, is couldn't there be a mechanism whereby work to enclose a lanai or patio, you know, and then all the verbiage after that where it says specifically that they must meet the Code in order to be exempt--wouldn't it, you...we would *think*, be *really easy* for the Department to have a simple form, which I've seen some of the forms, you can download them on-line to facilitate making a determination whether or not they actually are *exempt* from this? I mean that would seem *logical* and reasonable, that through an administrative procedure or drafting or modification of Administrative Rules, that they would be able to come up with a simple form. You would still say to the person who's gonna make the modification, look you're not off the hook because you could have to rip everything out if it doesn't meet this, but first of all in order for you to be *entitled* to an exemption, it's

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wise for you to actually contact the County. And my *biggest bone* to pick with the Administration is, yeah, they go through the permit process but deny, deny, deny. And then they make them jump through every hoop where you can't get there from here. *That's* why these people spend \$100,000 or *more*. *Because these guys would not issue the permit*. So you have a process, but if you got, if, if you have people that love the word no, and they *really, really* can't come up with a logical reason, you know, I have a problem with that. The permit process is one thing. But if you have somebody who just is *difficult*, who is not gonna give you that permit simply because they don't want to give you the permit, that's the other end of the problem. So to me . . . *(sigh)*. . . I can't tell Administration what to do. I can't tell them how to do their job. But we can, as a Council, try and make it, the, the process *easier*. We talk about doing things more user friendly, being more responsive to the public, being all these wonderful grand and glorious things so that we can have people feel good about government. Come up with a form that you're required then to say, okay, somebody makes a determination as to whether you're exempt or not exempt. That is a no brainer. I come from business. I don't come from the school of obstruction, so, you know, pardon me if I see things differently, but I'm here to try to make things easier for the public who is *frustrated*. *I'm* frustrated because I can't even get the *Committee Members* to get off the damn *dime* and do something. So I'm saying *fix it*. Put in a simple requirement. The Administration is totally capable of doing that. And I. . . I frankly think it's a *waste* of time for me to keep coming, for these people to keep coming if you're not gonna do anything.

CHAIR MEDEIROS: Thank you, Member Johnson. Any response from the Director of Public Works or Corp. Counsel?

. . . Director?

MR. ARAKAWA: Mr. Chair. . . I actually take offense to Councilmember Johnson's remarks. We have tried very hard to make the permitting process as simple and easy as possible. As I mentioned, there are various degrees of permit reviews that would be required. And Plan Review Waiver was mentioned earlier. That is an option that people *can* still pursue, and that would allow them to proceed, but that doesn't *excuse* them from complying with all of the necessary requirements. So these things are possible. If there's an SMA issue, you still have to work with the Planning Department and get the necessary approvals from the Planning Department. But again even there, there are varying degrees of hearing requirements--whether it's. . . you have to go to a full blown public hearing or just get a minor permit, which is just an administrative approval, or an exemption. So there are already varying degrees to *deal* with these types of issues. And as I mentioned, the permit reviews are absolutely necessary in order to protect the health and safety of the public.

CHAIR MEDEIROS: Thank you, Director. Corp. Counsel, did you want to make any remarks, and response to Member Johnson?

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MR. GALAZIN: . . . Yeah, I just want to make sure that we're all...when we talk about this ordinance, that we have to understand that we're also talking about, at the same time, the BVA decision and we're also talking about the situation that exists--not only for everybody in the County, but, but yes, the Kaanapali Royal. And the biggest issue why permits weren't issued has to do with the fire sprinklers. And what you're talking about is the, the existing *Fire Code* which is, you know, to be administered concurrently with the Building Code. But it's main thrust is of protection of safety, of human life. And we don't want to get in a situation where we're subverting the requirements of the Fire Code just to make a *building permit* process easier. I think it's, I think it's important that you know, you as a legislative body has passed the Fire Code. Now you've also passed the Building Code. You know, you thought that these requirements are, you know, useful in protecting life and safety. And I would just make sure that we don't lose sight of that in, in terms of our discussion of this issue.

CHAIR MEDEIROS: Thank you, Mr. Galazin. Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Mr. Arakawa, when you mention about exemptions, how can one get an exemption in regards to requiring a building permit? You know, I, I look at Mr. Schultz case. Like say, you know, every...if every...everyone that had built lanais or enclosed their lanais in this one particular condo, if they all followed the *same* process, the *same* materials were put up. . .is there a way to. . .provide an exemptions through, I guess, on-line?

. . . Number one, you're gonna get the address, you going get the name of the applicant when you file for this exemption. The Department goes out and inspect prior to, or even when, you know, it's completed. . .when covering lanais, strictly lanais.

CHAIR MEDEIROS: Director?

MR. ARAKAWA: Councilmember Pontanilla, first of all, there are. . .a long, there's a long list of exemptions currently in the Building Code. These are specific activities where you don't have to apply for a building permit. Just to give you some examples, these are like if you re-roof your house with the same type of material; if you do improvements to a structure, basically under, I believe it's like, \$2,000 worth of work. So it's a very low threshold that we're talking about. The Council itself may want to consider lanai enclosures *as* an exemption. However, as you've heard, we have a strong objection to that *because* of the health and safety issue involved with not having a review for a lanai enclosure. But again, you know, if, if that's the legislative prerogative that you want to pursue then, you know, that's fine. But we, we do have a . . .(*sigh*). . . a huge problem with that from a health and safety standpoint.

VICE-CHAIR PONTANILLA: So it's the *review* that you're, you're really concerned of?

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MR. ARAKAWA: That is correct, because there's not only the, the fire safety aspect, but there's all these other Building Code aspects, structural integrity, livability aspects that we would also review in terms of Building Code compliance.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MEDEIROS: Thank you, Member Pontanilla. And the Chair would like to acknowledge the presence of Member Victorino at this time.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair.

CHAIR MEDEIROS: Good morning.

COUNCILMEMBER VICTORINO: I, I--

CHAIR MEDEIROS: You have a question?

COUNCILMEMBER VICTORINO: Yeah, and I am sorry I am late, and so I know a lot of discussion has been going on prior to me arriving, and I was observing some of it on the TV earlier. Mr. Arakawa, I guess my question to you is, and to Corp. Counsel, so this, it's a dual edge question. I know common sense, expediency, most of us think government really . . . *(sigh)* . . . sometimes lack that ability to, to see between the trees and the forests, and, you know, between what reality is and making things simple, so I'll leave that one alone. But yet, on the other side when you talking the safety of people, Corp. Counsel, I'll start with you and then I'll go to Mr. Arakawa. When you *willfully* or knowingly allow something to be exempt for which at a later date some tragedy occurs. . . there is a possibility the County then could be pulled into a suit, should that have occurred--because again, it's the willful and *knowledge* of allowing something to happen, or allowing something to go on which we know could result in some kind of tragedy. And again, I'm going to these extensions and I don't know if the sprinkler system is the only issue and whatever, whatever, somebody falls through a window, I don't know what could happen, you know, but these lanais are extended and something happens after-the-fact and we have allowed it based upon Fire Codes or whatever, and we said yeah, go ahead, we exempt you, and then something happens. Is there a much stronger case in the case of litigation, Mr. Corp. Counsel?

CHAIR MEDEIROS: Member Victorino, we also have Ms. Johnston, who's with Corp. Counsel. Yeah.

COUNCILMEMBER VICTORINO: Either one can answer the question, and I, I... 'cause they . . . *(laughter)* . . .

MS. JOHNSTON: . . . *(laughter)* . . .

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COUNCILMEMBER VICTORINO: . . . he was talking first--

MS. JOHNSTON: Yeah . . .(laughter). . .

COUNCILMEMBER VICTORINO: --so I just assumed. Yeah, get Corp. Counsel, get right here. Okay . . .(laughter). . . go ahead.

MS. JOHNSTON: Well, let me--

CHAIR MEDEIROS: Ms. Johnston?

MS. JOHNSTON: Because I'm in the litigation side, let me answer first then he can correct me.

COUNCILMEMBER VICTORINO: Yes.

MS. JOHNSTON: It's, it's an interesting problem because if you go through the building permit review process--and in this case the, neither the Fire Department or the Building Department would sign off because they had concerns about the safety. Okay, now we're ordered to put those aside and sign off on the permits. Will the County be liable if there's a problem? I don't know, I can't answer that. I mean it, we, it, you're forced to sign off against your better judgment. I don't know how that one's gonna come out. If you have a...

. . . I, I, the real problem I see with this, this bill is that this is saying you don't have to go for a permit for a lanai, whatever size, whatever shape, wherever it is, you don't even have to go there. Now. . .Ms. Johnson is suggesting some kind of review for an exemption like they have in the, the Planning Department when they administer the SMA. And correct me, Director Hunt's here so if I misspeak maybe he'll correct me. But if you want an *exemption* from the requirements of the SMA, there's a form. You put in the form, you attach your drawing of what you're proposing to do, you're putting in the amount, it's reviewed administratively, and usually I think that either granting the exemption or not granting the exemption is done in a very short space of time, unless there are follow-up questions. That, perhaps, could be something that could be done. But that's not what this bill says. This bill says, I look up...open my Maui County Code, and say oh, I'm gonna enclose my 800 square foot lanai and do whatever, whatever, and I don't have to go for a permit. And then I'm out of the loop totally. The fire concerns, if I'm gonna do something that's a fire problem, it never gets looked at. And if I do something that's a Building Code problem, it never gets looked at. I suppose that would...ultimately, the County *wouldn't* be liable because you just did it on your own, but, you know, then they get sued for not having made the requirement that it be reviewed for health. And it's, it's kind of, it's kind of Catch-22. I mean the County's always gonna be looked at if there's a problem, you know, whatever their actions are.

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COUNCILMEMBER VICTORINO: Well, thank you. I mean that, that at least puts some, some clarity to the issue--

MS. JOHNSTON: Thank you.

COUNCILMEMBER VICTORINO: And, and, and my *business* experience, especially my 27 years in insurance has taught me that when willful and negligible actions are taken, the strong possibility you could be pulled in. And that's the fact of life. I mean, you know, I can show you many court cases that have done that.

MS. JOHNSTON: Yes.

COUNCILMEMBER VICTORINO: When you show willful and *negligible* actions--

MS. JOHNSTON: Actions, right.

COUNCILMEMBER VICTORINO: --on the part of the entities, especially governmental entities. But that's another story, another conversation. Mr. Arakawa, in this case, and. . .I guess my question to you is this.

. . . We go ahead and say exempt, you go ahead and exempt, and you have a challenge but you go ahead and exempt it, and Fire says okay, we exempt them. And what's the Corp. Counsel has been pointing out to us now is that I've got a lanai that's probably. . .900 square feet, I've got a big lanai, so I can go enclose it tomorrow, not a problem, don't have to come see you, just call somebody up, and say hey, go enclose my lanai, and whatever I do within that lanai is not a problem. Is that your understanding of this bill?

NOTE: *Silence.*

CHAIR MEDEIROS: . . . Director?

MR. ARAKAWA: Uh, well, Councilmember Victorino, the bill basically exempts all lanais from any permit reviews. So. . .in the case of Mr. Schultz, they were talking about basically a very small area.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. ARAKAWA: There's no size limit as to the amount of lanais that may be exempted. We of course would not know how it's going to be enclosed. We do not know...we wouldn't know what the load-bearing capacities of the lanai would be, and we won't know, you know, if there are any adequate fire protection that may be carried out. There's, there's a lot of things we won't know, obviously, if we don't have any permit reviews. So, that's our big concern.

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COUNCILMEMBER VICTORINO: Okay, thank you. And thank you, Mr. Chair, for allowing me to ask that questions. And, again I apologize if those questions were asked prior to me arriving. And thank you for allowing me, Mr. Chair.

CHAIR MEDEIROS: Thank you, Member Victorino. Member Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. I have two questions. First one is, you know, in listening to the presentation in regards to the case that was heard by BVA, I *heard* the words, and maybe I heard wrong, so I want 'em repeated--that the decision was that they should *process* the building permits. Is that correct?

CHAIR MEDEIROS: Director or Corp. Counsel?

MS. JOHNSTON: Let me, let me, I'll read you the, the...

COUNCILMEMBER BAISA: Would you please?

MS. JOHNSTON: I would. The order that was proposed by Judge McConnell --

COUNCILMEMBER BAISA: Yes.

MS. JOHNSTON: --and approved by...to be adopted by the BVA. Accordingly, it is recommended that the Director of the Department of Public Works and the Director of the Department of Fire and Public Safety be 1) directed to rescind their disapproval of the after-the-fact building permit applications, 2) further be directed to process the after-the-fact building permit applications, and 3) issue such after-the-fact building permits.

COUNCILMEMBER BAISA: Thank you very much. The reason I, I...that resonates in my mind, is the, that the...the order was to *process* the permit. He didn't say you have to *approve* it. What's the difference?

UNIDENTIFIED SPEAKER: ...*(laughter)*...

COUNCILMEMBER BAISA: You know and what we want, of course, for these folks is an *approved* building permit. He's saying they need to *process* one. Does that mean they now begin the *process*?

CHAIR MEDEIROS: And, and that's a good question, Member Baisa.

MS. JOHNSTON: That is the lack of clarity that probably we'll seek. I don't think that Judge McConnell was saying you gotta issue the permit no matter what.

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COUNCILMEMBER BAISA: Right.

MS. JOHNSTON: But you then go back, but you can't then, you can't not issue it because of the lack of fire sprinklers. That, that's what this holding says.

COUNCILMEMBER BAISA: Okay.

MS. JOHNSTON: In this, in *this case*, for *this unit* on the, on this particular condominium for the facts shown in this case. Whether or not it would have application in any other situations, we don't know.

COUNCILMEMBER BAISA: Okay.

MS. JOHNSTON: But that...I read it to me mean, that you, yes, you can't just say no we're no gonna process it because of lack of fire sprinklers. We're gonna process it, and if, you know, you meet all other requirements, the permit will be issued.

COUNCILMEMBER BAISA: Okay in light of that clarification, that he's really saying, okay now you process this building permit, and he didn't say just grant 'em the building permit, it appears to me that while we can sit here and talk about exemptions or applying for exemptions--okay, I want to enclose my lanai, so I come in and I'm gonna apply for an exemption. . .there will be a *process* that is gonna through, they're gonna go through to give me an exemption. and in that *process*, they're gonna say, oh, no, you can't enclose that, you know, 'cause you have to have this kind of glass and you have to put the door over there and the window, and it's too big or too small, or whatever. What is the difference between *that* and applying for a building permit? We're not saving anything. The people still gonna go through the process. So I don't know how we *circumvent* a building permit process. I don't...I just don't see it in lights of, in light of the fear that somebody's gonna get sued, somebody's gonna get hurt, and the concerns for health and safety. What I would like us to focus on--and I don't see that--is we have a situation here and that's *complicating* our discussion of this law. If we *didn't* have that case and you took away that case, this law would be very simple to decide. I think we would decide we cannot give a building permit exemption because of health and safety and litigation. What is clouding this is the situation that we're dealing with, which is a building that is already built and lanai enclosures that were already done, and apparently, innocently. And we're trying to put these two things together and create a law to help them, but yet create a...a situation of liability for ourselves. And *that's* what we're caught up in. Is it *possible* that we might separate these . . . *(laughter)* . . . two things?

CHAIR MEDEIROS: Any further comments on Member Baisa's ...

. . . None? Let, let me say this. What the Chair hears. . .in this meeting and in previous meetings, and especially in *this* meeting is we have the testifiers and, and Member Johnson, the introducer of the bill, asking us to *act* on it. Now if we're gonna act on it,

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you know, we're gonna vote it up or down. Okay? *If* there's not enough information, as some other Members are saying, that would continue the process, which would make *more* meetings. So we, as Members, and as the Chair of this Committee have to decide that at some point. Right. And for those people in the gallery raising your hands, I, I'm sorry we...I won't address you because it's not allowed in our proceedings. You can bring your questions to your representative if you want to, but we, we do not allow questions from the gallery at this point of the meeting, when testimony has been already closed. Thank you for your understanding. Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank, thank you, Chair. If I could ask the Department, I guess Mr. Arakawa, if the Members would look at the bill. . .Number 28, Page 4? The bill I'm looking at is attached to a September 9th letter. . .excuse me, September 4th letter that was addressed to Director Hunt. If we were to add additional language...I'll read 28. . .as it is written right now. Number 28: work to enclose a lanai or patio in which no square footage is added to an existing structure--and this is all underscored. If we were to add verbiage to read, "provided an exemption is applied for", is that something that the Department could tolerate? Or is that, you know, will it, will that make it work?

. . . Yeah, and, and I don't know if Corp. Counsel want, want to also chime in on that as well, or Ms. Johnston.

CHAIR MEDEIROS: So, Director Arakawa and Corp. Counsel, if you would, please?

MR. ARAKAWA: Councilmember Molina, our exemption process to the Building Code is slightly different from, say an SMA exemption. Our, our exemption process currently is basically, you come in, talk with the clerks. If they believe that your *work* doesn't require a permit, then you're home free. You just build whatever you need to build and you get an exemption. This is *different* from an SMA exemption where you must actually *file* something with the Planning Department, give your justification for *why* it's an exemption, and they would then review it, and give you a written determination. So, there are those two types of ways to do it.

. . . We would prefer to keep the way we currently do it, it's basically an exemption now where people just come in, it's a very low threshold for when a permit is required. If you're gonna do, institute some sort of a *written* exemption now for building permits, it...to me it's basically the same thing as applying for a permit because we would then need to see if all of the applicable requirements would apply, in any event.

COUNCILMEMBER MOLINA: Okay, well . . .

COUNCILMEMBER JOHNSON: . . .(laughter). . .

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COUNCILMEMBER MOLINA: I don't know if this...so, so you're saying that if we add in this language then it's basically the same, same process which you, you folks have always...well, at the way the law is currently is right now then?

MR. ARAKAWA: The, the provisions that. . .any applicant would need to comply with would still be in the Code. So we would still be required to enforce it.

COUNCILMEMBER MOLINA: Uh-huh. Okay. Thank you, Chair. Just thought I'd throw, throw that out to find some resolution to all of this, Chairman. So--

CHAIR MEDEIROS: Thank you--

COUNCILMEMBER MOLINA: --thank you.

CHAIR MEDEIROS: --Member Molina. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah, I, I, the, the people wanted me to remind...or just ask Corporation Counsel, Ms. Johnston--finding number three *does* direct the issuance of the building permits. Is that accurate?

MS. JOHNSTON: Uh--

COUNCILMEMBER JOHNSON: On finding number three, it directs the Department to issue the building permits.

MS. JOHNSTON: After, after they have *processed* the permit applications.

COUNCILMEMBER JOHNSON: Yeah, but it...

MS. JOHNSTON: And that's, that's what we'll be seeking clarification--that if for some reason...many of these people bought units with in--

COUNCILMEMBER JOHNSON: Right.

MS. JOHNSTON: --the lanais already enclosed. So they had no idea, they had no, you know, responsibility. But if you, if somebody went in and put in, you know, non-fire proof materials, or wrong kind of glass, then that would be, come up for review. And I would think that the department, the Fire Department, Building Department would note that that has to be corrected--either you put another kind of glass. And I will say that there were some early lanai enclosures where the people removed the, the metal rail that had been on the lanai, about a four foot high rail. And when they enclosed their lanais, they put glass and they took the rail off. And the condo association made them put the rail back on. So that's the kind of thing that would still have to be looked at and still have to be analyzed as to whether the other requirements of the Code have been met. It's just that in this

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building, which was built before the requirement of sprinkler systems, the decision is you don't have to have a sprinkler system, you can move forward. But there's no, as far as I read the order, there's no *guarantee* that once your permit application is looked at...many of 'em haven't it, they've all been kind of pretty much on hold pending the outcome of this case. It will now go back in the departments, the Fire Department and the Building Department will look at each of the applications and what has been put in to see whether the other Code requirements have been met. And if they haven't, they'll say you gotta correct it before we can issue the permit. So, it's not just like, you put it in and you're home free, and we don't look at anything else.

COUNCILMEMBER JOHNSON: Okay. With regard to exemptions, like let's say, and I know Mr. Arakawa cannot speak for, you know, the Planning . . . *(laughter)*. . . Department, but when exemptions--'cause...obviously there is this form that's filled out, representations are made, because I've seen the form before--

MS. JOHNSTON: Yeah--

COUNCILMEMBER JOHNSON: --basically certifying that you are...everything is in compliance with the Code, that it's being signed off on by an architect or a builder or whoever it is that all of these things are being done in accordance with the Code. Is *that*...are you saying, basically because Mr. Arakawa's saying, oh, well, we shouldn't do that, we should have a permit, that now we should change that other procedure, too, to really ensure health and safety of the public? You know, because . . . *(laughter)*. . . I mean, let's be *consistent* at least. If you *have it* in one area of the Code which allows for an exemption to be applied for, which makes less work for the Department because somebody's certifying that all these things are done, why go through, you know, this process?

CHAIR MEDEIROS: Before you answer, Corp. Counsel, Member Johnson, if your questions are more applicable to the Department of Planning, we have their representatives here to answer the questions. Because I don't think Public Works or Corp. Counsel wants to answer questions regarding planning.

COUNCILMEMBER JOHNSON: Yes. Well, if the other Members don't object, I'm not a Member of the Committee, but I would like to know what the logic and reason is, because of what's Mr. Arakawa is saying, is that, oh, well, it's the same thing. Then why are we not at least *consistent* throughout our entire County Code, in saying no, you have to go through a process?

CHAIR MEDEIROS: Okay, at this time, Members, without objections, I'll ask the representatives from the Department of Planning to come down to answer those questions. Any--

COUNCILMEMBER VICTORINO: No objections.

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CHAIR MEDEIROS: Any objections? No objections?

COUNCILMEMBER VICTORINO: : No objections.

CHAIR MEDEIROS: Director Hunt and Mr. Cerizo, if you're also coming down?

NOTE: Pause while Administration personnel approached the floor.

CHAIR MEDEIROS: . . . Okay, Director Hunt is here from the Department of Planning. Director Hunt, would you introduce your colleague, and his position with the Department?

MR. HUNT: Good morning, Chair. With me is Francis Cerizo, he's the section chief of the ZAED, he does a lot of the work on the SMA, and he's very familiar with the exemption process, so.

CHAIR MEDEIROS: Thank you, Member Johnson, would you want to direct your questions now?

COUNCILMEMBER JOHNSON: Yes, and, and I just want to understand so that I'm clear in my mind. When somebody files for an exemption, you know, and let's say if it's an SMA minor, if there's a determination or if it's just an exemption, is there a process, is there a fee, is there an application form when they're asking for any kind of an exemption, and you know how, how does that actually take place?

CHAIR MEDEIROS: Director Hunt?

MR. HUNT: There is a process and I'll turn the microphone over to Francis very quickly. The *difference* that everyone should be aware of is that the rules and the regulations that that exemption on an SMA is applicable to are different than the Building Codes. So it's a whole *separate* process. And Francis, you want to outline the process?

CHAIR MEDEIROS: Mr. Cerizo?

MR. CERIZO: Thank you. We have a . . .a, a list of exemptions that are listed, that's listed on all applications. And this is listed as a...in our development, our SMA assessment application. When we...in order to determine if a property is exempt or if a structure or a project is exempt, an application is submitted to the County. There is a fee, and fees are typically based on value; however, when there is an after-the-fact application, the fee, there's a minimum fee of \$1,000, plus there's a fee of, that's added on to it depending on the type of work. There's a fee that can be...it's between 10 percent to 50 percent of the value of the construction that's being proposed. The application is reviewed, if there's, if there's no impact--and that's one of the things that we do, there's a...in the assessment,

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we check if there's cumulative impacts that's being created by the project. If there's no impacts, we would issue the exemption letter.

COUNCILMEMBER JOHNSON: Okay, and, and do the people...are they able to download that *form* off the internet or do they have to come into your office to do that?

MR. CERIZO: There...it's, it's on-line, so you can download it.

COUNCILMEMBER JOHNSON: Okay, all right, and, you know, you've heard the discussion going back and forth. And I'm not asking you to answer for the other department because obviously it's a different situation, but simply because we're doing things in a particular way, let's say if your Department found a better way to handle, you know, even right now, we're going through some of these, you know, the stands, I guess up in Launiupoko, it only applies to that subdivision where they had the metering things done. Is there a mechanism whereby people can be *grandfathered* or something, if they've done something in the past and it's unclear if this is structurally sound, if it was to be permitted or not permitted. . .is there any mechanism whereby they can come into--'cause our whole goal and objective is compliance with the County Code? Is there any mechanism by which they may do that within your Department. . .so that, you know, they can meet whatever those requirements are?

MR. CERIZO: Yeah, unfortunately, we don't have any grandfathering . . .

COUNCILMEMBER JOHNSON: Uh-huh.

MR. CERIZO: . . . in the, in the rules--

COUNCILMEMBER JOHNSON: . . .*(laughter)*. . .

MR. CERIZO: --or in the SMA assessment. And if there is any kind of grandfathering, it . . .it would have to an action on, on, by Council --

COUNCILMEMBER JOHNSON: Okay.

MR. CERIZO: --to include that.

COUNCILMEMBER JOHNSON: Okay. And, Corporation Counsel, then, we were advised at a previous meeting that grandfathering was not going to necessarily . . .*(laughter)*. . . cure the problem because we don't know whether or not some of things, the lanais or whatever the enclosures were, were necessarily in compliance with the Code--which is the requirement under the current ordinance, it says that you must comply. So do you have any suggestion as to how we might address the issue, having heard what the Planning Department, the mechanism that they use?

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NOTE: *Pause.*

MR. GALAZIN: . . . I think when you look at, if you're talking about SMA exemptions. . . an entirely different class, obviously, of categories that people are looking at. If you look at the way that the bills drafted . . .

. . . and I'll pull it out. But if you want to look at the exemptions that are currently listed, the 27 items that are exempt from building permits. . . by and large you're not talking about habitable spaces, with the exception of if you're doing, you know, repair of the same materials and the same place for a very small amount of money. You know, you're talking about temporary structures, tool sheds, outdoor stuff like that. It's a **big leap** to move from exempting things like that to exempting **interior** habitable spaces that could be, you know, in Member Victorino's case it could be 900 square feet. And I think no matter what kind of **process** you want to look at in terms of **how** that exemption is granted, in Public Works' case, you know a lot of times somebody will look, you know a builder will say, well a tool shed, tool shed doesn't require a permit. They build a tool shed. That's all they **do**. They don't necessarily come in and sit down talk with everybody. And if an inspectors goes out responding to a complaint from the public, and says, oh, well, somebody built something, I don't think they had a permit. They go out and they look, and they say, okay, well, that's a tool shed, it's fine. You're not talking about **any** kind of review. I think to try and get to the level of review that you're **talking** about would require a very extensive overhaul, not only of the County Code, but, you know, **probably** of the practice of the Department. I don't want to speak for them, but I will just **caution** in terms of just looking at granting an exemption in the Building Code. If you look at all the existing exemptions, this seems a, a far **different** class of construction that we're talking about here. And you know, to get back to what Member Victorino said, that might be something that. . . would begin to open us up to more liability--just based on its nature, no matter what size we're talking about. And in this case we're talking about a limitless size.

COUNCILMEMBER JOHNSON: Well, assuming that I'm right, you know, in terms of the Code, the, the way that I read, even the existing legislation, is anything that is listed on any of those areas with having to do with exemptions still must comply with all components of the County Code--which means fire sprinkling, you know, whatever, plumbing, electrical, all those things would basically still be required to be kept to Code. So I find it rather curious how **we** could be held liable when somebody is saying, oh, I have everything up to Code, and then it's not up to Code. **That's** where, you know, for **me**, I, I don't see that. I mean I see the protection is already there--that they're required to keep it in accordance with County Code, so how could we **possibly** be **liable**?

MR. GALAZIN: Well, sure in any situation, you know, the people who are building it are the primary guarantors that the construction is done safely and in a manner adequate to protect human life. But that does not stop people from looking to the County--especially in a situation where you've completely exempted an activity from review under the

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building permit process, which as we've said before, is the trigger for all these other reviews. You know, unless you want to go through and find out every time a building permit is used as a trigger for some other departmental review, be it Historic Preservation, SMA, or public safety, then that's what you're gonna face. But if you want to go ahead and try and identify all those other places and concurrently change those so that there is still a review *process* for it--but if you're exempting it from a building permit, you're exempting it from that process. That's what you have to understand, the way that it's currently drafted.

COUNCILMEMBER JOHNSON: Okay. Let me ask you one final question and maybe this will be a different approach instead of opening up Pandora's Box. If the Administration were to have or the Council were to have a window of time in which people could file for after-the-fact building permits, but be charged perhaps the same, you know, like in *this* particular situation be charged, you know, maybe not a huge penalty, because many of these people did not *know* that they had to enclose these lanais. This is not the only complex that has the problem, incidentally. I realize we need more money, too. So if you come up with a *creative* and positive constructive solution that you put out notices to *everybody*, you know, page ads, whatever they might be, everybody that has enclosed their lanai and been advised that they have not obtained a building permit during the next 12 months, we will be accepting permits for those structures and doing reviews, whatever. Something in a proactive way. 'Cause if the Fire Department is concerned about public safety, if the . . .the, you know, Land Use and Codes is concerned, let's say about public safety, if the Committee is--and that's all I've heard is public safety. You know, if Mr. Arakawa's concern is public safety, then wouldn't you want people, if the issue is safety, to be aware that they *must*. . .during this period of time we're gonna give like a window of opportunity, so to speak, to come in and come into compliance and have a review and at least have that structure be looked at to make sure that it is sound?

MR. GALAZIN: Member Johnson, you bring up an interesting point. And one way that you might try and address that is looking in the fee section of the existing Building Code because that's set by ordinance already--when they come in for an after-the-fact permit that, you know, there's a flat rate. I think it's, you know, either a certain amount or double the permit fee, whatever it might be. But *that* could be something that you might look at as a legislative fix and perhaps clarify that section of the Code for a certain time period, for a certain *class* of, of permits. I will, I will say that the genesis of the extra cost is to reimburse the County for the extra level of review that these after-the-fact permits generally go through and the extra scrutiny and time that it's gonna take to process them. So you don't want to necessarily cut them down too much and, and perhaps hamstring the County in what the Department's able to do in the review. But that, that might be one area that you would look at if you're trying to alleviate some of the burden on people who perhaps bought into these things without knowing. So that could be a suggestion.

COUNCILMEMBER JOHNSON: Yeah. I, I, Mr. Chair, my goal and objective is to try to deal with the fines, is to try to deal with the whistleblowers who've turned in other people

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. . . *(laughter)*. . . because this is not going away. It's to try to find a way to deal with a situation that has actually persisted for more than, in some cases, 30 years. So these are, these are not new problems. But if we continue to just ignore them and do nothing, then to me, the doom and gloom and the threat of human life, loss of human life, if this really is, you know, this huge problem, if *that's* what the concern is--and that's what I'm hearing from every department, that's there concern, is protecting human life--then why would we not try to bring people into compliance to create an awareness that we're bringing people into the fold? So, I just throw that out as a challenge. If you don't like my bill, well, then, just *file it*. . . but do *something*.

CHAIR MEDEIROS: Okay, thank you, Member Johnson. Director Hunt, you want to respond?

MR. HUNT: Well, not necessarily to that in particular, but--

CHAIR MEDEIROS: Okay.

MR. HUNT: --in regards to doing *something*, there are some solutions from the *Planning* Department's perspective. And I, we don't...we're not the central agency on building permits. So that should be clear. And we don't administer the Fire Code. So you still need to work with those departments. And we don't want to appear to be undermining them, but from *our* perspective in trying to find some solution to *offer* some options, the Planning Department could explore a *blanket* SMA exemption on a building-specific basis so that we could not require everyone individually to come in and get an exemption. We have that ability, and we'd be happy to explore that as *one* way to streamline this. The other issue is the after-the-fact fee. And the Code right now requires that. If Council, in a bill or through resolution directed us to waive that fee, we would certainly be okay with that, if there was a firm basis for it. There's been allegations that officials from the County informed people that didn't need building permits, something like that. And we would suggest that you make a finding to base that on, give us some firm direction, either via ordinance or...or resolution, and we'd be happy with waiving those fees. So those are two steps that we can help to move this issue along. But again, you're still gonna have to wrestle with fire and, and building permits. The Department, frankly, does not *support* the, the bill as worded, that would exempt lanais from building permits. From our perspective, building permit review allows us to review these lanais for impacts to parking, impacts to square footage that affects the farm dwelling, impacts to historic districts, et cetera. So we don't support the bill, but we're here to try and offer some other options that perhaps we could address this issue out in our community.

CHAIR MEDEIROS: Okay, thank you, Director Hunt. Members, at this time, we've been going for quite a while. I'm gonna take a recess for you to take care . . . *(laughter)*. . . of your needs, and I'm gonna consult with our Staff. So the meeting will be in recess and we'll reconvene at 11 o'clock. Meeting in recess. . . *(gavel)*. . .

RECESS: 10:41 a.m.

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RECONVENE: 11:01 a.m.

CHAIR MEDEIROS: . . .(*gavel*). . . The meeting of the Infrastructure Management Committee meeting on February 22nd, [*sic*] 2010, is now reconvened after the recess. Members. . .the Chair had a time to consult with our Staff and with our legal department, and the Chair is ready to make a recommendation, unless there are any other discussions.

COUNCILMEMBER VICTORINO: Recommendation?.

COUNCILMEMBER BAISA: Recommendation?

VICE-CHAIR PONTANILLA: Recommendation.

CHAIR MEDEIROS: Thank you, Members.

. . . The Chair. . .you know gave, I believe, ample time for this item, today making four meetings. And we know that this is a Countywide application and effect that this bill has, so the Chair's recommendation after all the both, all the information has been provided and we have discussed it and deliberated on it, the Chair will entertain a motion to recommend filing of the communication.

VICE-CHAIR PONTANILLA: Mr. Chairman, I, I move to file County Communication Number 09-217.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MEDEIROS: It has been moved by Member Pontanilla, seconded by Member Victorino. Any further discussion, Members? Seeing...uh, Member Pontanilla?.

VICE-CHAIR PONTANILLA: Thank you. I, I know we've had many meetings regarding this particular issue, and it's not a simple one. And based on comments from the people that came from Lahaina, as well as coming from Administration, I think we need to find a solution in regards to satisfying. . .people that had enclosed their lanais, either through a different ordinance or create an ordinance and have a definition for lanai, what can be constructed on a lanai, and what is required to do that. So that is my comments in regards to what we've discussed for, I think, was five meetings now. Thank you.

CHAIR MEDEIROS: Mahalo, Member Pontanilla. Any other discussions, Members? Seeing...Member...Chair, do you have...

COUNCILMEMBER MATEO: Chairman, thank you, real briefly.

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CHAIR MEDEIROS: Go ahead.

COUNCILMEMBER MATEO: Real brief. I, I concur with Member Pontanilla, and I think, I think the fact that the issue has once again arisen, it's, it's not gonna go away until, until we actually come up with a determination. And I think the urgency at this point for us is the fact that Judge McConnell came up with a ruling that went contrary to the County's or the Department's own belief or practice. So I think the time has come for us to, to really address this, you know, a lot more seriously than we have had in the past. And it'll only happen in conjunction with the departments, the various departments--Planning, Public Works, and Fire to be able to help us craft something that is acceptable to us. And it's something that we cannot wait very long in coming up with, Chairman. So, thank you for the opportunity.

CHAIR MEDEIROS: Chair Mateo, thank you for those comments. Member Baisa, followed by Member Molina, followed by Member Victorino.

COUNCILMEMBER VICTORINO: I'm last . . . *(inaudible)* . . .

COUNCILMEMBER BAISA: Thank, thank you very much, Chair. I . . . will be supporting your, your recommendation. It's kind of a heartbreaking situation because of the amount of time and . . . and the, you know, the situation that is not a good one. But I think it's the rational solution at this point, after we've examined this *carefully* to try to, way to deal with it. And I don't think that a blanket exemption is the answer, based on everything that we've heard. Just saying, oh well, you know, all lanais are exempt is not gonna work. So we have to find something, and we have to find a way of helping these people who inadvertently find themselves in this situation. And I know that this Chair, you, Chair and the departments will try to work diligently to come up with another proposal. So I'll be supporting it. Thank you very much.

CHAIR MEDEIROS: Thank you, Member Baisa. Member Molina?

COUNCILMEMBER MOLINA: Thank you, Chairman. I'll also be supporting your recommendation to file. One, I do want to extend my appreciation for Member Johnson's passion. That . . . that is one thing for sure, they can't be denied. She's certainly passionate about this issue and in representing her constituency. In light of Judge McConnell's findings, as a Council Chair Mateo had mentioned, as well as the decision by the BVA, I think the door is still open to resolving this issue, and I'm hoping that Member Johnson will continue to work with the departments to find some type of resolution towards this. And if a new bill is proposed down the road, the bottom line is also consistent enforcement as well, 'cause that's always been an issue with basically almost any law we have--is to make sure we enforce consistently. So I would hope those things are kept in mind. So, Mr. Chairman, I will certainly support your recommendation and thank you for your facilitating these, I guess the fourth meeting on this particular item as well. Thank you.

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CHAIR MEDEIROS: Thank you, Member Molina. Member Victorino?

COUNCILMEMBER VICTORINO: Thank you, and when you come late, you the last one.

CHAIR MEDEIROS: . . .*(laughter)*. . .

COUNCILMEMBER VICTORINO: So that's punishment, thank you. And I gotta tell, you know me, Boy Scouts honor, I gotta tell the truth, the whole truth, nothing but the truth. I made a mistake. My lanai is not 900 square feet, it's 330 square feet, 'cause I when go verify, so I apologize to those out there 'cause I had...somebody asked me, whoa, you get one big lanai. How big is your house? And I had to go back and double-check. So I truly apologize for *that* mistake, Mr. Galazin, and all the rest of you, okay. With all that said and done, I will support your filing of this, and I do admit Ms. Johnson, with the passion she has, and I think the resolve both the Planning, Public Works, and the rest of the departments, including Fire. . .want to come some, to some kind of resolve, you know. But we've gotta also do this right because the one thing--we kept saying public safety, but if you look at all the other exemptions, all 27 *other* exemptions, *really* they're *non*-living facilities, tool sheds, and, you know, all these things, and I keep seeing not occupied, unoccupied. You know, so--

CHAIR MEDEIROS: Uh-huh.

COUNCILMEMBER VICTORINO: --so that's something a little different. That's a thing I'll have to say, you know. No offense to these people, I am really truly sorry you're caught in a quandary, and, and I want to resolve it so that you and the rest, and some of you bought these after-the-fact, thought it was okay, and these are the challenges we face. What happened in the past, we always seem to pay for it in the future. And unfortunately, these people are getting caught in, in that realm. But, you know, I want to see it where again, if safety is an issue, yes, I agree, like everything else we do in here, we want to do it like Mr. Galazin said, you know, the possibility of know...knowingly and willfully allowing something to happen. and like he gave me an example--if I gave my 13-year-old daughter the car keys and said here go drive the car, you let somebody do that and you know was wrong, then you're gonna get sued. And that's something we want to avoid. We've been in court too many times, Mr. Chair. We've been in here in this room in executive sessions too many times. And I want to make sure that we can avoid it whenever, and wherever possible, yeah. So, I can support this. I really believe between Ms. Johnson, the departments, and I'll offer any help I can be, we can...get a resolve, get something here that will resolve their situation and many others who *may* be very, in very similar situations--

CHAIR MEDEIROS: Uh-huh.

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COUNCILMEMBER VICTORINO: --and all that may have had other properties which lanais were enclosed because they thought it was okay also. And that in the future, you know there's a process, a specific process, Mr. Arakawa, and planning and, you know, whoever else that you gotta follow and no questions asked. So again, Mr. Chair, thank you for your facilitation. I know this has been many meetings, but I can empathize with you because I get things all the way to second reading and then go re-commit, so you don't want to do that either, right? Go all the way to a second reading and get it re-committed. So I can empathize, but I can also realize that this is important. Let's get it done *right* so that the welfare and safety of the people of Maui County is *not* compromised. Thank you, Mr. Chair.

CHAIR MEDEIROS: Thank you, Mr. Victorino. Any more discussions, Members? Seeing none, and before I call for the question, I too agree, that I think we, we need to continue the work on this, in whatever form it may take on the next introduction to the Council. I know Member Johnson, in her advocacy for this, will be continuing the process under a different communication of sorts. So we look, I look forward to working with her and the departments in resolving this. So at this time, Members, without any further discussion, the Chair will call for the question. All in favor of the motion, say "aye".

COUNCIL MEMBERS: Aye.

CHAIR MEDEIROS: All opposed say "no". Okay, the motion passes. Six "ayes"; and one "excused", Sol Kaho'ohalahala.

VOTE: AYES: Councilmembers Baisa, Mateo, Molina, Victorino, Vice-Chair Pontanilla, and Chair Medeiros.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kaho'ohalahala.

MOTION CARRIED.

ACTION: Recommending FILING of communication.

CHAIR MEDEIROS: Members, we have completed the business of this Committee for today and I thank you for your presence. Uh, Member Victorino?

COUNCILMEMBER VICTORINO: Mr. Chair, if you would allow me real quickly? I would like to pass, if I may, a hearty and warm Happy Birthday to my granddaughter who turns

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16 years old today. And so, Kelsey, congratulations and Happy Birthday. Thank you, Mr. Chair, for allowing me to do that.

CHAIR MEDEIROS: Mr. Victorino, you're welcome, and you may have to have that keys ready.

UNIDENTIFIED SPEAKER: . . . *(laughter)* . . .

COUNCILMEMBER VICTORINO: Uh. . .the. . .uh. . .thank you, Mr. Chair . . . *(laughter)* . . .

CHAIR MEDEIROS: Okay, Members, any other . . . *(laughter)* . . . announcements? If not, I want to thank the representatives that have been here from the Administration--from Planning, Public Works, Fire Department, and DSA, and thank you to Corp. Counsel for being here also. Ms. Johnston, thank you for being here as a expert person to have and answering the questions. And thank you to my Staff, Camille Sakamoto and Mike Geers, for their help and dedication to this Committee. So without any further announcement, Members, the meeting of the Infrastructure Management Committee of February 23rd, 2010 is now adjourned . . . *(gavel)* . . .

ADJOURN: 11:13 a.m.

APPROVED:



BILL KAUAKEA MEDEIROS, Chair
Infrastructure Management Committee

im:min:100223

Transcribed by: Susan Taketa

CERTIFICATE

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

DATED this 16th day of March, 2010, in Wailuku, Hawaii.



Susan Taketa