

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 23, 2009**

Approved: 10/27/09

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:03 a.m., Tuesday, June 23, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Hedani: We would like to open up the floor at this time for public testimony at the start of the meeting on any item in order to accommodate those individuals who cannot be present at the meeting when the agenda item is considered. Public testimony will also be taken when the agenda item is taken up by the commission. Maximum time limit is three minutes. A person testifying at this time will not be allowed to testify again when the agenda item comes up before the commission unless new or additional information will be offered.

I have two people that have signed up for testimony at this time. The first individual is Mr. Dave Deleon.

The following individuals testified at the beginning of the meeting:

Dave Deleon -Item B-3, Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions

Eric Taniguchi - Item B-3, Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions

Their testimony can be found under the item on which they testified on.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Director.

Mr. Hunt: Your first item involves Mr. Michael White, General Manager of the Kaanapali Beach Hotel requesting a 3-year time extension amendment to the Special Management Area Use permit and Shoreline Setback Variance to complete construction of the restaurant/canoe hale project at TMK 4-4-008:003 in Kaanapali. The file number is SM1 90/0040. Ann Cua is the planner assigned to this. However, the department is notifying you that this is to be rescheduled and renoticed to the July 14, 2009 meeting due to notification deficiencies by the applicant.

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

- 1. MR. MICHAEL WHITE, General Manager of the KAA NAPALI BEACH HOTEL requesting a 3-year time extension amendment to the Special Management Area Use Permit and Shoreline Setback Variance to complete construction of the restaurant/canoe hale project at TMK: 4-4-008: 003, Kaanapali, Island of Maui. (SM1 90/0040) (A. Cua)**

Recheduled and renoticed to the July 14, 2009 meeting due to notification deficiencies by the applicant.

Mr. Hedani: Thank you very much. Next item.

Mr. Hunt: Your item involves the Kaanapali Resorts AOA requesting a Special Management Area Use Permit for Kaanapali Alii Resort improvements consisting of a) improvements to existing drainage facilities; b) addition of a 1,200 sf swimming pool and a 155 sf keiki pool as well as a new pump station; and c) the addition to the second story to the administration building to create a fitness complex at 50 Nohea Kai Drive, TMK 4-4-008:022 in Kaanapali. The file number is SM1 2008/0012 and Thorne Abbott is the planner assigned to this project.

- 2. KAA NAPALI RESORTS AOA requesting a Special Management Area Use Permit for Kaanapali Alii Resort Improvements consisting of a) improvements to existing drainage facilities; b) addition of a 1,200 sf swimming pool and a 155 sq. ft. keiki pool as well as a new pump station; and c) the addition to the 2nd story to the administration building to create a fitness complex at 50 Nohea Kai Drive, TMK: 4-4-008: 022, Kaanapali, Lahaina, Island of Maui. (SM1 2008/0012) (T. Abbott)**

Mr. Hedani: Thank you very much. Thorne, before you begin, the Chair would like to disclose that the applicant is a member of Kaanapali Operations and as a result, I'll be recusing myself from voting on this item. Please proceed.

Mr. Thorne Abbott: Thank you Chairperson and Commissioners, welcome. The Kaanapali has worked with the department for an extensive period of time on a variety of issues and this particular project they're utilizing their space trying to improve the hotel with some needed improvements and kind of incorporating the idea of managed retreat, you know, moving away from the ocean and the shoreline to the best that they can as well as improving the drainage of the site which is a significant issue there. Reducing any potential for pollution of the ocean. So I'm going to turn it over to the consultant which is Chris Hart and Partners and I really want to thank Jeff Halprin who's here, the president and also the management of the Alii because they really have worked a lot with the department. Not all the hotels are always as conducive to preconsultation with us as the Alii has been. With that Mr. Hart.

Mr. Starr: Mr. Chair I have a question for Thorne before he turns it over.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, Mr. Abbott, I was looking at the report, I was kind of surprised there's not any drawings of what the project's going to be, any photos that show the condition of the shoreline and I'm wondering why we're so kind of lacking in detail? And also, are there still sand bags there and temporary protections?

Mr. Abbott: That's a very good question Mr. Starr, thank you. I believe Mr. Hart has some photographs of the shoreline, the beach area. First off, what they're doing is putting in a second floor over an administration building and putting an exercise room in there and that's well mauka

of the shoreline setback area.

The second thing they're doing is putting in a new pool and that's also behind the shoreline setback area and then within the setback area, basically in their lawn area, they're doing drainage improvements and then resurfacing the pool. So they're not increasing their footprint in the shoreline setback area and more importantly, from their lawn, at the end of their lawn is the walkway because between all the hotels and then they have another strip of grassy area and then the beach. And so the beach comes and goes, extremely rapidly between March and July of 2003, they lost I think an estimated 80-foot of shoreline in a very short period of time. You know, the Alii is well aware of the issues there because they're kind of on a point and a sandspit, if you will. And that sand moves from there down to the Sheraton and Black Rock and then just as quickly it will move back and come back, back and forth and back and forth. So what they're doing recognizing this and recognizing it's a real problem is that their improvements they're doing are all mauka of the shoreline setback area which is 150 feet away from the most eroded area of the beach. It's a 150 feet back from the greatest erosion point that we've experienced in the last five, six years. There are no shoreline hardening, there's no sandbags there. They are working collaboratively with us and the State to respond to those kinds of emergency situations with soft mechanisms like beach nourishment.

Mr. Starr: By not having drawings it makes one feel that something's being put over on us. This is very unusual that we have an SMA especially with setback where there are no illustrations of what's being done.

Mr. Abbott: Okay, I do apologize for that oversight. I believe in the application, there, and again, I think Mr. Hart has some pictures of where the setback line is, and I believe we originally discussed distributing the application to the commission because that would have been a bit easier. However, my report did not have any figures in it. I think what you saw was two aerial photographs.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Mr. Chair, I'd like to suggest that we allow the applicant to present their presentation and then after that if commissioners have questions then we start asking questions.

Mr. Hedani: Okay, Mr. Hart.

Mr. Abbott: And in the future we will make sure those diagrams are in there to be more explicit. Thank you.

Mr. Chris Hart: Thank you Mr. Chair, Members of the Commission. My name is Chris Hart of Chris Hart and Partners and our firm has been working with Kaanapali Alii and also with the Planning Department and also the Department of Land and Natural Resources in the context of this project.

The project team today we have with us Mark Altier who is the General Manager of Kaanapali Alii. We have Patrick ...(inaudible)... who represents the architect, Fred Loesberg Architects and Sarah ...(inaudible)... who is the landscape architect and Trang Nguyen who is the civil engineer and myself as the planning consultant together with Jeff Halpin who is the managing agent on behalf of Classic Resorts and all of these individuals can be available to answer questions that the

commission wants to put forth as far as clarification.

This is the project site at Kaanapali Resort. The actual, this would be the Kaanapali Alii condominium project and to the north is the Westin Hotel and to the south is the Maui Ocean Club which is the Marriott project.

The Kaanapali Alii was originally developed in 1982. That's 27 years ago. It was developed by the Hawaii Omori Corporation. Currently it's in need of upgrades and improvements and these improvements and upgrades have been worked on for several years in terms of the planning process and have gone through the approval process by the correct percentage of the homeowners. So the project is prepared to move forward.

The resort includes four main resort towers, swimming pool, tennis courts and support buildings or resort related activities. In the context of this project before you it consists of basically there's four main towers and I'm sorry, of 11 stories each in height and there are 264 one- and two-bedroom units at Kaanapali Resort.

The project actually consists of three component parts. First, are drainage improvements to the existing storm drainage system. The second is the pool area improvements including new landscape planting, replacement of pool deck and a portion of new pool and spa which is mauka of the shoreline setback line. There's also going to be a new fitness center which is essentially a second story addition to the existing administration building. So it would become a two-story building.

The improvements are in the context of the site plan, this is the ocean and showing the planting and the shoreline walkway. This is the shoreline setback line. The project consists first of all of drainage improvements that will occur in essentially – at the time when the project was built 27 years ago there was more of a reliance on retention and basically areas of the project site actually become flooded during heavy rains and the intention is to actually create underground structures that would retain the storm runoff and actually correct the flooding portions that exist on the site.

The second major part of the project is to actually resurface the existing pool deck that exists within the shoreline setback. There would be no increase in hard surfaces. It's strictly a maintenance upgrade and also enhancement of landscape planting within this area and irrigation. Also, mauka of the shoreline setback line which again is 150 feet there would be in addition of a new pool area and additional square footage area increased to the keiki to the pool.

The third item that's being proposed is a fitness center that would actually be an addition to the existing administration building which exists at the front of the site adjacent to the tennis courts as you drive in. So it would be a second story addition. So it becomes a two-story building.

The drainage improvements. The existing storm drainage system is being upgraded to meet current county standards and to reduce potential adverse impacts on coastal processes. The courtyard currently floods during rainfall due to the basic reliance in the past on an area of surface retention, areas of surface retention. This next slide is an example of that. This is an actual storm condition. These areas, this flooding would be corrected by the upgrade in the drainage system.

The drainage improvements would involve the addition of three new underground retention basins. Again, these retention basins would be outside of the shoreline setback. Existing drain lines would be replaced. There will be a four-inch main and new pump station that would be added and then all runoff conveyed to – will eventually be conveyed to the primary Kaanapali Resort storm drainage system.

The pool area improvements would include new 1,200 square foot swimming pool mauka of the shoreline setback, an expansion of the existing keiki pool by a 155 square feet, then replacement – repair and replacement of the existing pool deck with has been located within the existing shoreline setback and then new replacement of landscape planting and irrigation.

This gives you an idea of in terms of detail of the existing pool. The existing pool was built back when the original project was approved and essentially this pool deck is in need of repair and so that's essentially going to be repaired and together with an additional pool mauka of the shoreline setback line which is shown here.

The fitness center will be created as a new second story addition to the existing administration building. The existing building height currently is 21 feet, 6 inches. The fitness will add 12 feet, 4 inches for a total height of 33 feet, 9 inches. The administration building and fitness center will be LEED certified.

This is the proposed two-story administration on the first floor and fitness on the second floor with the tennis courts behind and the entry drive fronting the administration/fitness building. Thank you.

At this time we're open to questions from the planning commission. And again, I'd like to say that we have worked closely with the Planning Department and Thorne and also with the Department of Land and Natural Resources in the context of this project and I'd like to reiterate that the project is 27 years old and the intention of doing these improvements is to upgrade the project and also after 27 years and also it's a project that I believe because of the improvements is going to actually become more environmentally sensitive and more conservative in terms of being concerned about impacts on the shoreline in terms specifically of the storm runoff. Thank you.

Mr. Hedani: Thank you very much Mr. Hart. Questions? Commissioner Starr.

Mr. Starr: First of all, did you provide your project drawings of what's happening especially regarding the setback area to the department?

Mr. Hart: Oh, of course. This was the report that was filed with the department and it does contain numerous figures that were provided.

Mr. Hedani: Additional questions from the commission?

Mr. Starr: Yes, I'd like to follow up please.

Mr. Hedani: Commissioner Starr.

Mr. Starr: First of all, once again, we are not getting the information we need to do this job and

there's no way that I feel that I can act on this because of that. But without going deeper into that because that's a departmental policy issue which we've discussed a number of times, but considering that over the last 27 years there's been considerable movement in the shoreline. Last time I was down there, there was a wall of sandbags which I understand they're not there now.

Mr. Hart: That's correct.

Mr. Starr: But there was a wall of sandbags and they'll probably be back again before too long. I don't understand why you're maintaining all of that hard area and hard infrastructure in the shoreline setback area. It seems that with the renovation of this magnitude you should be removing some of that concrete out of the setback and I'd like your answer on that. I'd also like to hear from Thorne about why they're being allowed to replace all of that hardening inside the setback, in volatile, volatile shoreline environment.

Mr. Hart: What I can say is that, you know, a couple of things. First of all, in the context of the shoreline setback rules. The shoreline has been certified and essentially there is not – basically the type of erosion that takes place is seasonal in the context of accretion and erosion of sand on the dynamic, really the overall dynamic Kaanapali Beach. And as far as the stability of the structures that were constructed at the time when the project was built in 1982, it complies with the requirements of the shoreline setback at that time. And those are considered existing and nonconforming structures and there's no any proposal to do any expansion to those structures. It's just to repair and maintenance of those structures. Therefore, you know, we have the right to consider that in the context of the shoreline setback rules. In terms of the seasonal issues related to erosion, that's something that Kaanapali Alii has been working diligently with the Planning Department and the Department of Land and Natural Resources. I would like to call Jeff Halpin up to maybe give a little bit of an overview of how this is being looked at in the context of a future project that would actually be probably worked out in concert with the Department of Land and Natural Resources. Now what we're talking about here are repairs to a structure that has been permitted, fully permitted and fully in compliance with the shoreline setback law, repair and maintenance that doesn't include any addition in terms of hardscape and you know, the idea of basically considering demolition of that is not even being considered at this time and it certainly would never be considered.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just a quick question to staff. Did we receive a copy of this SMA Use permit application dated May 2008? Was that distributed to the commissioners?

Mr. U'u: Because I didn't get it.

Mr. Hedani: Mr. Abbott.

Mr. Abbott: Aloha Commissioners, I'll take personal responsibility for the fact that you didn't get a diagram of the shoreline setback variance.

Mr. Hiranaga: No, the entire permit application.

Mr. Abbott: No, you did not get a copy of it. We discussed doing that. It was determined at that juncture not to because of, you know, we're still working that out at the Current Planning Division what you're going to be getting copies of and the cost of administering and timing and those kinds of things whether we should transmit all applications to you. I know with EAs we do, but we don't always do it with the SMA majors.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: In order to save the commission's time today, I can assure you that you will not be getting my positive vote on this application because of the failure of the department's decision to provide this document.

Mr. Abbott: Okay, I'll take account for failing to do that.

Mr. Hiranaga: May want to move on or maybe a motion to defer.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I just looked that over when it got passed around. There's a lot in there we don't need to see. There's a stack of 50 pages of people that were notified. I don't want to see that. But the diagrams would be helpful and some of the other stuff in my mind. I mean, it's hard for you to read my mind and read all the commissioner's minds and know exactly which one of us needs what, but there's clearly some stuff we don't need to see but there's a lot of stuff that would have been very helpful.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I'd like to make a motion to defer.

Mr. Starr: Second.

Mr. Hedani: Moved by Commissioner U'u to defer, seconded by Commissioner Starr. Discussion? Commissioner Mardfin.

Mr. Mardfin: I'm going to vote against this right now because I want to ask a bunch of questions. I'm willing to entertain a motion to defer later on after we've had a opportunity to ask the questions that we want to ask.

Mr. Hedani: Commissioner U'u. I agree with Commissioner Mardfin, but more so, I'd like to give comments for them to give something back. I don't see any photos of the shoreline area in this. I know we took a site visit a while back and there was sandbags located there's no pictures of the shoreline area within even this document and I would like to go over the document if we had the time, but time's a factor. So I would like to make comments on what is needed.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I did second the motion, but if there's desire to ask questions, I would be willing to take back the second and allow us to ask a couple more questions before we take a motion if the maker were to agree.

Mr. U'u: Okay, I'll agree.

Mr. Hiranaga: Point of order.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Can we not accomplish the question and answer during discussion with the motion on the floor? Are we able to query the applicant with requests for recent photos, elevations?

Mr. Hedani: We can actually have questions of the applicant, questions of staff. We don't have the staff recommendation at this point. Motion basically to defer was withdrawn with the consent of the second. So at this point we can still open it up for additional questions. I think Mr. Halpin wanted to address the group relative to shoreline processes.

Mr. Abbott: And staff would welcome an itemization of what you'd like to see in this and future applications as well as perhaps a date certain to defer to. How much time you'd like to review that material. My apologies personally.

Mr. Hedani: Mr. Halpin.

Mr. Halpin: As Commissioner Hedani knows we've been very involved in trying to address the erosion issues that affected not only Kaanapali Alii but the entire Kaanapali Resort at various times. I mean, it is a very dynamic sand cell that moves back and forth between the properties. To date, Alii has spent about \$575,000 just to deal with its erosion issues and that's come from the homeowners. We at Alii have also been proactive in getting KOA the resort wide organization to look at solutions on a resort wide basis and so we've had – we've spent several thousand dollars, tens of thousands of dollars from the KOA side to take look at offshore sand sources with the idea of having a resort wide renourishment program. Alii is also, not only lead that effort at the KOA level but Alii has seed money for other consultants, coastal erosion experts and coastal engineers to help us in the planning process.

Alii just hired Sea Engineering again, now to look at with the encouragement of DLNR to look at some solutions, some more permanent solutions to the erosion issue. So we've got – and what's holding up the sand renourishment project right now is there's been a new technology that's been introduced and DLNR is going to run a test on it this summer and it's a dry sand pumping technology where you can pump sand, you don't have to go through these retention basins and all the mess that a normal renourishment project goes, that theoretically we could pump sand from the Sheraton down to Alii during the summer time when Alii needs the beach and we can pump sand back from Alii to the Sheraton during the winter time when the Sheraton needs the beach. So that's one issue that we're looking at right now like I said, with the encouragement of DLNR and they're supposed to be running a test over on Oahu this summer.

But it's not for a lack of trying. I, too, wish we had photos of the Alii beach right now because it's at its widest point. You would never think that we had erosion issues in the past, but again, erosion's not exclusive to Alii. It comes and goes as, you know, on a seasonal basis. There are no sandbags, there are no other armoring structures in place at all. My final comment is that when we've had to put those in place, it's always been done with the counsel and the approval of both DLNR and the County.

Mr. Hedani: Commissioner Mardfin.

Mr. Halpin: One final comment here is, is we have had this application in for several months. We are now in the final throes of finalizing bids and selecting contractors and I would hate to see this to get deferred any longer for basically what is somewhat of an internal issue.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I want to get a picture of your – the report keeps referring to residents and owners. This isn't a hotel?

Mr. Halpin: It has a hotel component. It's a residential resort condominium. Owners choose to participate in rental programs or owners choose to be residents or they use it as a second home.

Mr. Mardfin: Any idea what percent are full-time, year-round residents?

Mr. Halpin: We have very few, probably out of the 263 units we have three permanent residents.

Mr. Mardfin: So basically this is temporary, short term housing, resort housing.

Mr. Halpin: I mean, we have some owners that stay four, six months out of the year.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: This is more for Chris I think. Chris on the diagram for improvements can you show me where the 11 public parking stalls are?

Mr. Hedani: Chris, can you use the microphone please?

Mr. Abbott: You'll see here to the extent of my knowledge the parking lot at the bottom right-hand side of the area that there's no dedicated stalls. The public can park in that area. They just go in the gate, tell you want to go to the beach and drive around the parking area. That's what I've done in the past.

Mr. Mardfin: And where is the beach access path?

Mr. Abbott: The beach access path, first you can walk through here, through there, and down to the beach. Also, the neighboring property, this is a driveway here. There's a little comfort facility here and also parking here to go to the beach. So there's two access points, but this one is on the

neighboring property.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I was not aware that there was public parking in there. In fact, the signage says I believe hotel – residents and hotel guests only. Is there any marking to let the public know that they can park in there?

Mr. Abbott: I'll let Jeff speak to that.

Mr. Hedani: Mr. Halpin.

Mr. Halpin: There is no signage that says hotel guests only. And there was beach access, the blue beach access signs and whether they've been, you know, just taken down – they are still there.

Mr. Starr: I know we had had some discussion and had a made a request based on a letter from Maui Tomorrow for the department to give us a list of the beach parking in the Kaanapali and Wailea Resort areas and also to create a process to evaluate whether that really exists. And once again, I'd like to see if we can do that because to my mind, you know, these are phantom stalls. I know I've gone down there and not been able to park.

Mr. Hedani: Basically from my perspective, I know that there are 10 stalls that exist between the Kaanapali Alii and the Marriott on the Kaanapali Alii property and there's a beach access walkway from those 10 stalls to the ocean. There's also a beach access between the Westin and the Kaanapali Alii to the north although there are no dedicated stalls on the north access and that I believe may exist on the Kaanapali Alii property or on the Westin property, the Kaanapali Alii property I believe. Thome.

Mr. Abbott: This is Thome Abbott. I've just been advised, there's actually a separate entrance to these parking stalls that are just dedicated to the public. And there is a separation between this stall area and these main stall areas. So there's a separate entrance.

Mr. Starr: How many of them?

Mr. Hedani: Ten stalls.

Mr. Mardfin: Report says 11.

Mr. Hedani: Or 11 stalls.

Mr. Starr: Yeah, I'll certainly want to see a photo of that one.

Mr. Abbott: That's fine, we'll provide that.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Earlier you showed us...(inaudible)... Alii and the report refers to drainage issues it says frequently. That is a word that I don't understand the meaning of. Can you be more – is it once a year, once a week, once a month?

Mr. Hart: What I'd like to do is ask the civil engineer to address that.

Mr. Mardfin: Actually the project person would probably have better knowledge of how often it happens.

Mr. Hart: Frequently, basically in terms of the times when there are significant rain storms during the winter month at Kaanapali that's when it occurs.

Mr. Mardfin: Sounds like five times a year to me?

Mr. Hart: Something like that.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: What is the average rate of erosion at this site? We did not have the transects in this our packet? The comments here make it sound like the sand just moves back and forth, but it's also going away.

Mr. Hedani: Mr. Abbott.

Mr. Abbott: Two comments. One on the drainage. My experience with the Kaanapali Alii is that water usually pools for about three days before it evaporates away and this was proposed to basically suck that out with a pump and pump it into the main drainage system. As far as the erosion rate, it's one foot a year for those transects. It's to me not terribly reflective of reality because that's one foot a year looking over a hundred-year time span. The reality is they can lose 80 feet in a weekend which would be a lot of erosion. So a large time frame basis you're not capturing those episodic events where the sand's shifting up and down. So with the erosion rate base setback, their setback would be 75 feet. In this case, their setback is 150 feet, so double what their erosion rate is based on their lot depth. In addition, we had their state certified shoreline survey done in the winter months because that's when the beach would be skinniest if you will rather than the summer when it's not. Right now it's huge. It's like 300 foot deep right now. You'd never know there was a problem.

Mr. Hedani: Additional questions for the applicant or staff? Commissioner U'u.

Mr. U'u: Question on drainage. They said they going put three underground retention basins?

Mr. Abbott: Currently they have dry wells and basically you know, dry wells is a concrete vault with

a grate over it and sand at the bottom. What they're going to do is basically convert those so that they'll fill up, have a pipe and a pump. That pump is going to be outside of the setback area and that will pump to the overall resort, the whole resort community drainage system.

Mr. U'u: So it would be pumped from the basin, the three basins?

Mr. Abbott: Correct.

Mr. U'u: And it will be pumped mauka?

Mr. Abbott: Mauka.

Mr. U'u: Is that the norm that you keep the retention basins in the shoreline setback area or is that common?

Mr. Abbott: Well, they're already there now. And you gotta somehow suck out that water. I mean, they don't really have to do this but they want to improve it because it's also reducing the potential that that water's going into the ocean. I'd much rather have it go into the bigger drainage system, you know, where I think it eventually goes to the golf course. Is that correct Commissioner, Chair?

Mr. Hedani: Right, there's a drainage easement on the mauka portion of the property, the furthest mauka portion of the property.

Mr. Abbott: Correct. Okay. So they're conveying this water even though the whole site slopes makai and they're catching it there and pumping it mauka is basically what they're doing. And to my understanding they're reusing to the extent possible what's already in the setback, these dry wells and turning them to retention basins rather than, you know, excavating and putting whole new stuff in.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'm very happy to see the trend is to move it mauka and to reuse that water. That's a good thing. You know, however, a lot of it certainly is seeping in and ending up in the shoreline area. So I'm wondering what efforts are being made to reduce or eliminate the use of lawn care supplements, nitrates, phosphates, fertilizers, etc., in the plantings, especially in the setback area?

Mr. Abbott: I'll let the manager speak to that because I'm not familiar with that. I do know one of their proposals was to change all their shrub irrigation lines over to drip irrigation rather than the current spray irrigation. Again, to reduce their footprint and impact.

Mr. Hedani: Mr. Hart.

Mr. Hart: Chris Hart. First of all, what I'd like to do is to just identify the area that where we saw the water retention were basically areas that were essentially close to the shoreline and it was the practice, you know, previously in the context of design of projects to essentially provide the areas that would be – would retain storm runoff, water, and a more –

Mr. Starr: Chris, can you move that mauka a little bit?

Mr. Hart: So, the – basically, you know, the project involves the construction of essentially underground retention areas, three of them and they are mauka of the shoreline. Essentially there is also a pump that would pump the water out as Commissioner indicated mauka and into the lagoon that actually exists as the main drainage area for Kaanapali Resort and it's basically, it's actually a water way that actually functions. It has functioned in terms of retaining the drainage runoff but it also is an aesthetic amenity for the golf course and it's used for fishing, they have a big fishing derby and so there's a lot of positives. And then as far as essentially the work that's being done in terms of the rehab of the pool and the landscape planting in terms of the basically the replanting of grass and the regrading, basically it's going to be done with essentially plant material that would be more native and less basically – more drought tolerant and so the intention is to reduce the amount of irrigation and to actually reduce the need for chemical fertilizers and the intention is that all of the groundcover and shrubs would be drip irrigated and also the lawn would be spray irrigation but they are proposing to actually redo the irrigation control system so that it would be essentially a water wise type of system that would reduce the need – that would reduce substantially from about 20 to 40% the amount of water that would be needed to actually sustain the water, the irrigation on site. Also, it's important to understand that the existing water source for this project is a private water source, Kaanapali Resort, it is not a County of Maui water source, but there is definitely intention to upgrade the quality of the landscape planting and to be more environmentally sensitive. As far as the building, the administrative building is concerned, they're looking at basically essentially a silver LEED certified building. So there is definitely an interest on the part of Kaanapali Alii to make these improvements but to be more environmentally sensitive.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: A major portion of this is the expansion of the pool area and I guess, I don't know how you measure pool usage, but is the pool filled most of the time or what's the motivation for expanding the pool area? Is it complaints from visitors that they can't get in or?

Mr. Hart: Chris Hart again. Basically the intention is to upgrade the amenities at Kaanapali Alii. Obviously it was built 27 years ago. There's environmental issues that needed to be addressed. There's also issues with regard to providing amenities that essentially would service the desires of the owners together with the basic marketability of the project as a hotel, as a hotel condominium and so the – for instance, the fitness which is a second-story addition is one of those kinds of amenities. The additional pool facilities, the expansion of the keiki pool also addresses those kinds of concerns. So basically it's an intention to upgrade and to modernize and to essentially make Kaanapali Alii after 27 years more competitive in the market.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Thank you Chris. I just wanted to have some confirmation from the I guess the owners or maybe yourself as to how the impermeable structures, the water is being collected there and I assume these are going to go into the catchment systems or the retention basins and also the impermeability of the parking structure. How is that water treated?

Mr. Hart: Basically all the water on essentially the impermeable surfaces will be collected and directed into the drainage system. As will be the water that would actually fall on the parking lot and the tennis courts, all of that would be directed into the drainage system. The intention is that 70% according to the engineer of all the water that would be generated on the site, that would be the existing as well as the new runoff would be actually retained on site. And that, you know, in the context of overflow that that water would be pumped out to the lagoon. But essentially all of the water would be retained and directed to an underground system.

Mr. Shibuya: Okay, and that would be separate from the overflow of the pools?

Mr. Hart: The pools would –

Mr. Shibuya: That water would be treated differently?

Mr. Hart: That would definitely be treated differently. There's definitely a need that it would have to be a separate dry well system and there would be no direct disposal of the water into the storm water system.

Mr. Shibuya: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, considering there are both drainage problems plus there's an awful lot of concrete going to be poured in the setback area, I would like the applicant to take a look at making as much of the hard surface in the setback area as possible permeable. You'd be able to ameliorate two problems in one shot.

Mr. Hart: Can I just correct you on one point? You know, we're not proposing to pour any concrete in the shoreline setback area.

Mr. Starr: You're replacing –

Mr. Hart: We're replacing you know, the pool deck. Basically I would assume that it's pavers. Pool deck is – theirs one is sandstone and they're replacing that surface with ...(inaudible). So it's not a – you know, the basic impermeable surface exist today and so it's basically a maintenance project.

Mr. Starr: It's going to be pervious or impervious?

Mr. Hart: It's going to be still impervious.

Mr. Starr: Then my comments stand.

Mr. Hart: But the – what's actually being replaced Jonathan is the decorative tile on top of the concrete.

Mr. Starr: I still would like to have the possibility of replacing as much hard surface with pervious surface as possible in the setback area. Will you examine that feasibility?

Mr. Hart: We can examine the feasibility of it.

Mr. Hedani: Any additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Not really a question but a statement. Believe it or not, I do read those SMA permit applications. I'd like to see recent photos of the shoreline so I don't have to drive out there before the meeting. I'd also like to – I see you have a nice rendering of your fitness center, but you have no renderings of your improvements for the other – for the pool deck or the pool, so – you know, the more information you can provide me, the better your chance of receiving my approval because this is a very dynamic beach and it says that many times. And so, I need to be convinced that we don't perpetuate a bad thing and if you're fighting Mother Nature, Mother Nature is going to win so you need to convince me that Mother Nature is not going to win here. That what you guys are doing is a – I know you have a capital, existing capital investment there but do we keep pouring money into a bad location? That's the question that's going to be in my head. You need to convince me that that's not what's happened.

Mr. Hart: Can I just, you know, I appreciate the comment. I would just like to say that in the context of what Mr. Halpin said and I think also in the context of the concurrence of Chairman Hedani that the issue of Kaanapali Beach you know being a dynamic beach and essentially subject to seasonal erosion and accretion at all the properties on the beach you know, these improvements have existed in place since 1982, and I think that you know, Mr. Abbott indicated that there's not significant erosion based actual erosion of the property, it's essentially a dynamic accretion and erosion of the sand and I think that that's an important consideration to understand that the dynamics of that beach are really separate from what actually seems to be occurring on site. And they're working with the Department of Land and Natural Resources and it would be the subject probably of another project in terms of dealing with the seasonal erosion so that there wouldn't be lets say basically a development of lets say sand bag revetment you know, for a temporary emergency situation. That there would be a way of dealing with any kind of erosion condition in a permanent sense. So that's something that probably will be considered in the future but these renovations right now are somewhat separate from the dynamics of Kaanapali Beach.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just a follow up. So I mean, I think would be helpful if you had provided all that information to us. You know, looking at what was given to us by staff.

Mr. Hart: I understand.

Mr. Hiranaga: Is to me, grossly incomplete and vague and you know, one mention was cost consideration. So I guess question to staff does department pay for copies of the SMA application or does the applicant pay for those copies?

Mr. Hedani: Director.

Mr. Hunt: We can provide you with more information on this application and in general, I think it was an oversight on the planner's behalf. He's admitted that. We'll try and get back information. The dilemma for us is how much information and as one of your commissioners noted that commissioner didn't believe they needed everything in the application. So it's just a dilemma for us. It wasn't intentional and we'll correct it and we're taking notes and we'll provide any information that you folks request on this application.

Mr. Hiranaga: So the answer to my question who pays for the copies of the ?

Mr. Hunt: We both do.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I have a question for Mr. Hart. Do you have digital reproductions of this file, you could submit?

Mr. Hart: Yes, we do.

Mr. Shibuya: Would it be possible that you exchange this digital file with the County Planning and I don't mind picking up a CD. I can review it on a CD. In fact, I prefer it that way.

Mr. Hart: Okay. We can do that, but we can also, you know, for some of you that might not want that format, we can also provide copies as well.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: If we're into suggesting what information would be helpful, I would appreciate it if it was possible to get photos of the public parking area.

Mr. Hart: Okay.

Mr. Mardfin: And we've heard, the report says there's no signage to the beach access and yet I heard the verbal testimony there was. If that can be resolved so that we know how a public visitor would find their way to the beach would be kind of useful to me.

Mr. Hart: Okay.

Mr. Hedani: Just for the commission's information, there's public, standard public access signage on Kaanapali Parkway as well as at each parking area within the resort In general. Commissioner Starr.

Mr. Starr: Yeah, I will want some photos and drawings showing when the beach at its minimum. I actually found one that I have on my computer. I'm going to ask Mr. Abbott to just take this around and show it to the commissioners so they have an idea of the way it looked a couple years ago. Thorne.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Mr. Hart, Chris, I'm not against the project and I can vouch for the beach parking. I park there. So, was good access for me, I guess it was good for everybody else. But I do believe we need more information.

Mr. Hart: I understand. I appreciate that Commissioner U'u.

Mr. Hedani: Additional questions? Commissioner Sablas.

Ms. Sablas: Mr. Hart, you mentioned that I think in your report there's three drainage systems that's going to be improved, the project is to improve the drainage. And did I hear you say it eventually going to be connected to the main?

Mr. Hart: No, it will be as part of – it won't be eventually, it will be as part of this system it will be connected to the resort drainage system which would be the lagoon in the golf course.

Ms. Sablas: And I understand is, and in reading the report there's more than enough capacity to take this.

Mr. Hart: That's correct.

Ms. Sablas: And also, again, this is to improve the drainage because it does flood in that area.

Mr. Hart: It does, correct.

Ms. Sablas: For me, for the rest of the commissioners, I've worked at Kaanapali since 1963, so I am very familiar with the project area. I am very familiar with the challenges we have with the seasonal shifting of sands, and like any place else, you deal with it and I am very familiar with the applicants always being, I mean, they have to work with the DLNR, Department of Land and Natural Resources. I do think we needed more information, but I also would like to speak in favor of businesses who are trying to survive in this time. And what I see, the applicant is trying to improve a project. It's 27 years old. They're coming before us to help them improve and have a better product and make it LEED. So other than the fact that there were some omissions that we do need, I'm supportive of a project like this because I do understand it. I've been there since 1963, I understand the challenges that are faces with the businesses to keep their employees there. But I think we do need more information and I'm sorry that we didn't get it so that we could move on with this project.

Mr. Hart: I appreciate that and you know, we will make sure that the information is provided for you. We'll work with the staff and we've certainly taken notes so we'll be prepared.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Yeah, I also. Yeah, I also like to make a comment on the pervious to impervious replacement of the existing. I'm not against you repairing what you have existing as far as the

flagstone to whatever you have. But I took that into consideration what Commissioner Starr said because Honua Kai they get that breakable, washable, wash away deck structures. But for me I'll be satisfied with your replacement or removal and ...(inaudible)... existing. I will not oppose that.

Mr. Hart: Just as a follow up, we will be look at ways, you know, if there are ways that we can add to the permeability, you know. But I'm not sure at this time how that might be achieved because it is an existing concrete surface.

Mr. Hedani: Additional questions from the commission? Additional requests for information or any other items? Commissioner Starr.

Mr. Starr: Just that, you know, with this and anything in the future I, for one, am happy to have it electronically. It's even better for me than to have it always in paper. I know other commissioners feel different.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Yeah, I'm one of those that feels differently. I like to write on things and I'm sorry to kill trees but it helps me. One question I'll ask at the next meeting, I don't need the answer today, if there are any standards for the number of public parking lots for a particular size development what it was back then. I presume you met whatever was required back then, but what the standards would be today if this was being built, how many public parking spots would be required.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Yeah, on top of that, additional comment. I know there's a lack of parking there in that area and I know we can pay for beach parking. I know back in the day you'll go there you would run to a store, buy a plate lunch and you could get, you know, get your ticket stamped and off you go. Now, you get one \$25 minimum purchase there to get it stamped. I know we need parking, but if there's empty parking stalls in that area that's not being used because it's not full, I would love to have that as parking and I don't know. I just throwing it out there because I went there about a month ago and there was absolutely no beach parking. And then you know, you figure you go the old way, you go in there, you go to the store buy one plate lunch, now they tell you take \$25 to do that which was easy on my part because we all hungry. But somebody who has a small appetite would run into a problem. That's pretty expensive beach parking. That's needed. Thank you.

Mr. Hedani: Was that at Whaler's Village?

Mr. U'u: Yes.

Mr. Hart: Can I just make two comments? One was, you know, when Kaanapali was being built I remember Peter Sanborne he was the original kind of development person on behalf of Amfac talking about Whaler's Village being the largest beach right of way in any sort at that time. But that's not – like Commissioner U'u says, that's not necessarily the way it works today. There never really has been a standard set for beach parking, the calculation of the requirement for beach parking at Kaanapali. We've worked on, our firm has worked on the Marriott which is right next door

and they have like in the 20's, I'm not sure what that number is, we can verify that and I also know that the Hyatt Host project has a requirement in the 20's as well. But you know, originally when these projects were being looked at in the '80's something like 10 or so was considered appropriate. And since we weren't making any additions in terms of room density, we basically didn't discuss the possibility of increasing the parking. But we'll look at beach parking as well.

Mr. Hedani: Additional questions? If not, thank you very much Mr. Hart.

Mr. Hart: Thank you very much.

Mr. Hedani: Staff. You want to take public testimony at this point, Thorne?

Mr. Abbott: Yes, we'd like public testimony at this point.

a) Public Hearing

Mr. Hedani: Are there any members of the public that would like to offer additional testimony on this subject? Please step to the microphone and identify yourself for the record.

Mr. Tom Dunyan: Good morning Gentlemen, I'm Tom Dunyan. I've been at the Alii for 20 years. I've served on the board for six years.

Mr. Hedani: Excuse me, can you please use the microphone?

Mr. Dunyan: When they were developing this project I was on the board for six years. Thank you for taking as much time as you have taken this morning. I've worked with Classic Resorts. I think they are an extremely competent group of individuals who worked diligently and hard on this project. On the whole, I would like to see it go through. I've worked with them on the beach erosion issues over the years. It's something that they are very concerned about. I can tell you.

Now I'm here today to object to some parts. I'm only here today to talk about the pool improvement area. One of the problems in this, and thank you Mr. Starr for talking about the impervious nature of the project. If you look next door at the brand new Marriott, what have they done? Lots of grass and a little pool. What are we doing now over here at the Alii, big pool, get rid of the grass. I think it's crazy, but that's just me.

The other thing I have, the other problem I have as an individual and owner and I think all of you would like to have a overlay to show what the old versus the new is because I think there's some miscomprehension on the part of Mr. Hart in terms of how much hard space is replacing what we have. If you were to go out there today and see the pervious lawn and the beautiful nature of that and it's being replaced by this, you know, cement area, I object. But my objection runs a little deeper than that. I'm an owner of one of these units which is right here, Mr. Rosentraiter is my next door neighbor here. What they are not showing you, you need elevation. If you're going to evaluate this thing you need to see the elevation. What they're going to do is put a big berm right here. Currently we have a magnificent ocean view we've had for years and years and years and it's wonderful. We sit out there on the lanai. It's great. The problem is, if you're like looking out this

door here, they put up a big berm and what do you see, you see a big berm and that's because they want to raise up the level so some people can come sit and watch the sunset. By God, I think they can walk down to the beach, sit down there and watch the sunset down there as opposed to blocking the views of those of us who are there. The problem is there's a little minor legal issue. Under our bylaws, if you are going to impact someone directly, it's not just the 66%, it's says, "and accompanied by written consent of all apartment owners directly affected thereby," me and Mr. Rosentraiter. Now we want to work with these people. These are great people. I mean, I have nothing but respect for them and I really think they are doing their best on this project, so what we have done is work with a mediator –

Ms. Ramoran-Quemado: Three minutes.

Mr. Dunyan: I'm almost done. Work with a mediator in Oahu. He's coming over the end of July, I think July 27th, we're going to try and work that out in terms of the elevation affecting us. That's the only thing I will object to today. So I'm only asking one, that you defer it until after we've had an opportunity to work with the board, work with Classic and try and get down this berm and try and meet with, you know, just try and compromise. That's all I'm asking and get a little more grass back. Thank you.

Mr. Hedani: Questions for the testifier? Seeing none, thank you very much. Are there any other members of the public that would like to offer testimony at this time, please step to the microphone and identify yourself for the record. Please use the microphone.

Mr. Bill Rosentraiter: My name is bill Rosentraiter and I am in the unit adjacent to the Dunyan unit and we are also impacted by the elevations of this new spa and pool. We're not objecting to the pool and the improvements. We're objecting to the elevations. And as Tom mentioned, the CC&Rs say that you are to have two-thirds vote of the owners of the Alii to be able to pass a project like that which they did, but it also says, "and to have consent of the owners directly affected." I do not consent to the design that exists today. We're asking that they lower the new spa area and the elevations of the pool so it does not obstruct our view. Thank you.

Mr. Hedani: Questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: What floor do you live on?

Mr. Rosentraiter: First floor.

Mr. Mardfin: Okay, thank you. Would this affect anybody on the second floor?

Mr. Rosentraiter: No.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Any additional members of the public that would like to offer testimony at this time? Please step to the microphone and identify yourself for the record. Seeing none, public testimony is closed. Staff recommendation.

b) Action

Mr. Abbott: In light of the additional materials that the commission would like. Actually may I ask one more question of the commission?

Mr. Hedani: Please go ahead.

Mr. Abbott: Could I see by show of hands how many would favor CDs, how many would favor hard copies? CD's four. Mahalo.

Given the lack of information, we, the department, recommends deferral to the July 14th meeting and my apologies for not being effective and efficient in utilizing your valuable time. I will ask for the Director's concurrence on that as far as the deferral.

Mr. Hedani: Director Hunt.

Mr. Hunt: You had some testimony that requested that it be deferred until after a meeting, an internal meeting, and so that's up to you folks whether you want to accommodate that request or not.

Mr. Hedani: Thorne, your recommendation was to what date?

Mr. Abbott: July 14th, and the applicant had requested July 14th.

Mr. Hedani: July 14th was your recommendation.

Unidentified person in audience: July 23rd.

Mr. Hedani: I'm sorry, I'm talking to Mr. Abbott.

Mr. Abbott: I believe the testifier said that they had a mediation on July 27th, apparently it's July 23rd.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Move to defer pending receipt of more information and until subsequent to the mediation meeting on July 23rd.

Mr. Hedani: Is there a second?

Mr. Mardfin: Seconded by Commissioner Mardfin. Discussion? Commissioner Starr.

Mr. Starr: I don't – you know, I was a little bit on staff on this but I think it's a policy item that we're slowly evolving toward and heading in the right direction. So I don't mean to be complaining about staff but rather about old practices that hopefully are changing for the better.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess this may be a question for Corporation Counsel. If we were to approve the SMA application and more specifically with the proposed berm, really the mediation issue between homeowners is a more of a civil private matter and I don't think really is our concern.

Mr. Hedani: Jim.

Mr. Giroux: I think that as far as your ability to analyze the project as a whole, you can take it into consideration but you're not bound by a private contract. So you have to look at in terms of whether or not the project is consistent with the objectives and policies of 205A and if you're more restrictive or less restrictive than the private contract. That private contract would be taken up in the civil courts, circuit court not in terms of 205A. If they had objections to this process they would have to be entered in as parties as intervenors per your intervention process which as the rules state that they have to file their petition 10 days prior to public hearing. Today's the public hearing, therefore, they've past the deadline.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Follow up question. If we make a determination prior to their mutual agreement per the mediation, they can still go to civil court as a independent action beyond the SMA process?

Mr. Giroux: That's correct. The CC&Rs are looked as a private contract between the owners and the developers. So they would have to take that up independently.

Mr. Hiranaga: I would be voting against the motion. I don't want to be holding up the review of this application based upon individual private matters within the development. So I would be voting against the motion and we should place this application back onto the agenda as quickly as reasonably possible is my opinion.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Abbott, I went through this whole document and I don't recall seeing anything about berms. Now I could be wrong. But if berms are being proposed and we're not looking at them I think that's some information we'd really need to be looked at and it should be included in whatever we're deciding on the next time we meet on this.

Mr. Abbott: Correct. I concur entirely. The only thing I would ask is that you do pick a date certain so we don't have to renote this and that would either be July 14th, July 28th or August 11th are the next three meetings.

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: First of all, part of our SMA purview relates to the view planes to the shoreline and from the shoreline. So I do feel it certainly is relevant and we need to be made aware of what changes and I'd like to suggest a friendly amendment that the item be placed on the agenda on the August 11th meeting.

Mr. Mardfin: Secunder will concur.

Mr. Hedani: So the motion is to defer until the August 11th meeting?

Mr. Starr: 11th meeting and there will be no mention in the motion regarding the mediation but just the date of August 11th.

Mr. Hedani: Additional discussion? Commissioner U'u.

Mr. U'u: Can I ask the applicant how that would affect them?

Mr. Abbott: Sure.

Mr. Hedani: Mr. Hart.

Mr. Hart: Obviously the applicant wants to proceed as soon as possible and basically I'd just like to say that in the context of the issue of the berm, it's really if you notice the design of the swimming pool basically there's going to be some plant material. It's not really a raised berm. It's basically the elevation is higher than basically the ground surface that exists there. So it's not actually a physical berm. And the project, you know, was reviewed by the Urban Design Review Board and so the feature itself is going to fit naturally into the basically the grading of the lawn. What we would like to see is, is like the 14th or the 28th being the dates that we would come back to the commission, of July, 14th of July or the 28th of July.

Mr. Hedani: Any additional discussion on the motion on the floor? Commissioner Mardfin.

Mr. Mardfin: I'd like to request that my colleague Commissioner Starr consider amending this to the July 28th. It seems like it would accomplish, give them time to meet, they could give testimony at the July 28th meeting.

Mr. Starr: That's fine.

Mr. Mardfin: And yet we're not delaying it unnecessarily longer than we need to.

Mr. Hedani: Okay, so the motion has been amended to read, deferral of the subject until the July 28th meeting. Do we have a meeting on the 28th? Additional discussion? All those in favor signify by saying aye. Opposed nay.

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

VOTED: To Defer the Matter to the July 28, 2009 Meeting for Additional Information.
(Assenting - J. Starr, W. Mardfin, B. U'u, J. Guard, D. Domingo,
W. Shibuya, L. Sablas)
(Excused - J. Guard)

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Ramoran-Quemado: Three minutes.

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

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

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

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

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

Mr. Starr: And roosters?

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

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: He asked my question.

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

Mr. Deleon: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Hedani: Commissioner Mardfin.

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

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

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

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

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

Mr. Hedani: Commissioner Shibuya.

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

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

Mr. Shibuya: Thank you.

Mr. Hedani: Commissioner U'u.

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

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

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

Mr. Hedani: Commissioner U'u.

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

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

Mr. U'u: Just in Kahului?

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

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

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

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

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

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

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

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

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

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

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

base.

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

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

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

Mr. Hedani: Commissioner Mardfin.

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

Mr. Hunt: Page 3 of the bill?

Mr. Mardfin: Of the bill, line 13.

Mr. Hunt: Yes, that should be I.

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

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

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

Mr. Hedani: Commissioner Starr.

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

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

Mr. Hedani: Commissioner Mardfin.

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

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

Mr. Mardfin: Okay.

Mr. Hedani: Commissioner Shibuya.

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

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

Mr. Hedani: Commissioner Shibuya.

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

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

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

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

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

Mr. Hedani: Additional questions? Commissioner Hiranaga.

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

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

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

Mr. Hiranaga: Mr. Chair?

Mr. Hedani: Commissioner Hiranaga.

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

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

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

Mr. Hedani: Commissioner Shibuya.

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

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

Mr. Hedani: Commissioner U'u.

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

Mr. Hedani: Mr. Miyamoto.

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

Mr. Hedani: Commissioner Mardfin.

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

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

Mr. Hedani: Commissioner Starr.

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

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

Mr. Shibuya: I'll second it but –

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion?

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

Mr. Starr: Okay, first meeting in August.

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

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

Mr. Shibuya: Second.

Mr. Hedani: Discussion? Commissioner Mardfin.

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

Mr. Hedani: Commissioner Hiranaga.

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

Mr. Hedani: Commissioner Starr.

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

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

Mr. Hedani: Commissioner Hiranaga.

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

Mr. Hunt: Correct.

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

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

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

Mr. Mardfin: Point of Parliamentary Procedure.

Mr. Hedani: Commissioner Mardfin.

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

Mr. Hiranaga: True.

Mr. Starr: I'm willing to withdraw.

Mr. Shibuya: We withdraw.

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

Mr. Starr: Okay.

Mr. Hedani: Commissioner Hiranaga.

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

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

Mr. Hedani: Commissioner Hiranaga.

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

Mr. Hedani: Commissioner Starr.

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

Mr. Hedani: Commissioner Mardfin.

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

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

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

Mr. Hedani: Commissioner Hiranaga.

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

Mr. Hedani: Commissioner Shibuya.

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

Mr. Hedani: Additional discussion? Commissioner Mardfin.

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

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

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

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

Mr. Hedani: Commissioner Starr.

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

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

Mr. Hedani: Commissioner Hiranaga.

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

Mr. Mardfin: Footprint?

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

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

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

Mr. Hunt: Okay.

Mr. Hedani: Commissioner Mardfin.

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

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

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

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

Mr. Mardfin: Okay.

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

Mr. Mardfin: It is an issue.

Mr. Hedani: Commissioner Shibuya.

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

Mr. Hedani: Commissioner Starr.

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

Mr. Hedani: Jim.

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

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

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

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

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

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

Mr. Hedani: Commissioner Mardfin.

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

Mr. Hedani: Additional discussion?

Mr. Mardfin: We need some reasonableness in this.

Mr. Hedani: Commissioner Hiranaga.

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

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

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

Mr. Hedani: Additional comments? Commissioner Mardfin.

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

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

Mr. Hedani: Commissioner Starr.

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

Mr. Hedani: Additional comments? Commissioner Shibuya.

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

Mr. Hedani: Commissioner Starr.

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

Mr. Hedani: Commissioner Mardfin.

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

Mr. Hedani: Additional comments?

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

Mr. Hedani: Commissioner Mardfin.

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

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

Mr. Mardfin: We all love you.

Mr. Hedani: Additional comments, Commissioner Starr.

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

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

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

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

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

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

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

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

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

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

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

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

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

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

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

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

change. FEMA is revising our maps. And it's effective on September 25th 2009. So we have kind of a short window to have it approved, and I'm sorry to put the pressure on the Commission, but I have the Planning Commissions to go through this week. And we're trying to get on the agenda early part of next month or in September, August. So I'm gonna give a little overview on – before I take any – I know there's quite a few changes on the map itself, I mean, on the ordinance. And before that, I wanna just give you a little overview on the – just the maps itself because it's kind of a new item.

So this is a live view of our map. And this is down by Kenolio Road near Kalanihakoi Gulch. And it takes a few seconds to load up, but this is Kalanihakoi Gulch near Maui Lu. And the difference between the new map is that these are all digital. So these are all online. This a live view.

We have different zones that we're gonna talk about today. V Zones are zones along the coasts. It's usually with velocity. The source of flooding is tsunami-generated or hurricanes. We have A Zones. A Zones, those are riverine-induced flooding. And when we have areas that are on the fringes, these are our X Zones. X-shaded, those are 500-year floods. So we also have AO Zone. And that zone is more of a shallow flooding. The water just kind of settles there maybe because there's no – it's just a ponding, and there's no velocity or much movement.

Other areas that we have from . . . (inaudible) . . . This is near Kalama Park. And we have a new area that's being flooded that's on the flood maps. And we're having – one of the things that we wanna inform the County is that there's lots of areas that's gonna have new maps. And one of the change – one of the reasons why we're here is to decide – tell you about the maps is that it – you have to get flood insurance, basically. If you're on the map, you get flood insurance. The code changes that we're proposing, there are two types of code changes: one that is a – that's mandated by FEMA. You shall change your map – I mean, your ordinance to conform. You have to meet these minimum requirements. And then there's the CRS rating that is a voluntary code enforcement. It's the same as the fire rating system. The lower your rating, the lower your premium. So we'll be looking at different areas on the island. This is down nearby Polo Beach Club. This is at the end of the highway. This is near Wailea, Kealani Hotel. This is the new area. A Zones are an area that you don't wanna be. It's like being in purgatory. It's like you're flooded but you don't know how much it's flooded. So you have to do more studies than the normal.

The new mapping provides very detailed information. We have topo information that's available in some areas. So it's a good tool for developers, or engineers, or even ourselves when we give information out. We're saying that your elevation of your property is this, and the flood height is so high and you have to raise it up to that elevation. They can figure out how high your building's gonna be.

So I pointing on premium cost, CRS rating would give us – you have a better rating because we adopt certain regulations, we have discounts. Every year – not every year, but right now we have a saving – we have a CRS rating of eight. And that gives the County a 10% discount. So we have an approximately, \$300,000 of saved premiums for all the premium holders on the County. We're looking at a – going to a – a Class 6 would give us a – double the amount. Every class you get, you get a 5% discount. So just to see what kind of insurance premiums you have, these are – this is for a residence – a residential type of construction. And for building contents and the dwelling itself,

their premium is \$388. And it depends on – commercial gets a little more pricey. You're looking at \$2,500 to \$4,200. Now, these are in areas that have low risk. So those are areas like – it's shown on the map as not flooded. But practically speaking, about 20% of all the flooding that occurs is outside of the flood zones. So this is in some areas is a good way to go, but now, going to A Zone, which is a high risk zone, remember we saw A Zones, A0, A5, the premium goes up to standard premium. Instead of hundreds of dollars, it's \$2,800. And going into V Zones, which is along the coast, it goes up to almost \$6,000. Now, commercial rates is even crazier. You look at annual premium rates of \$11,000 for someone who's doing business in Kihei in a flood zone. This is the A Zones. When you go in the V Zones, you're looking at \$30,000. So these prices in the CRS makes a big difference. Right now, we have a 10% break on that. And then you're looking at going for a 20% break. So that's substantial as far as homeowners and business owners and so forth.

Okay, one of the – I'm just gonna through the CRS programs that – discounts that we're looking for are shown – One of the first ones we're gonna do which is the easier one is the free board. And I'll be showing a little sketch on how that works, but a free board usually is an additional height on a requirement.

The other one is cumulative substantial improvements. We have buildings that are in the flood zone built in the '60s and the '70s never – it doesn't comply. So they would come in and they would build an addition. As long as the addition or the improvement of the structure is less than 50% of the value of the structure, it's okay. So what we've seen in the past is that you go in there, you put in 50% today. As soon as that's done, you can actually come in again, and do another 50%. So after like a year or so, you have a brand-new building. Then it gets – in a couple of years, it gets flooded, then you go through this whole cycle of these lawsuits. So one of the provisions that we're trying to – or loopholes we're trying to close is to adopt a substantial improvement clause.

Okay, a couple more that we're gonna be implementing or proposing is zero rise. When you're in a flood zone like in Kihei, whenever someone builds, it's like building in a pool. You put in a little fill there. Maybe the pool is like – there might be a foot leeway. You put in a little house in there. It fills up. Pretty soon, it starts overflowing. So it's the same way in the floodway. We're proposing to – when you build in flood prone area, there shall be no rise. What happens is that it protects your adjacent property from getting flooded 'cause it's always a little – you know, I'm just putting one house. But every time you do that, it's getting higher and higher. That's one of our major ones. There's some other ones here that we already do an open space preservation which is along the coast. We have setbacks, shoreline setbacks, for example. We have – that is an accredited activity.

So we've gone through the CRS portion. We're doing basically – the part that we're – the added-on value is the CRS program because it's giving us savings for the County and also it's helping out the community so that we don't flood our properties.

So substantial improvements is another issue. You know when a house is this bad, you can't build. So we're looking at a lower value over at a long time. And our proposal is that instead of having it over – we're giving it a time limit, and the time limit is ten years. So if you start building, and if you hit that 50% value which is a threshold, over a ten-year period, then you would have to – you can't

do it like every year. So it's gonna close the loophole.

In riverine flooding, we're gonna increase the free board and also we're gonna preserve storage. Where you have the no rise, that's the way we're gonna accomplish that through the code.

This is just a visual as the pool. Here's the pool water. As you build on the outside, it rises. We're gonna make it so that when you fill in here, you can't make it – you can't raise the water. And the way that happens is that – or you do it is when someone fills here, you might have to do a little – replace that storage somewhere else. And this even could be, you know, a community area where you have a community project. So someone could actually have a lot that's I'm going to make a fishpond or wetlands. And he creates this large wetland, and he creates all these extra storage area, and he can actually sell it out. So that's one way of doing it.

And coastal flooding, what are we doing? Oh, back on the previous one. I'm sorry. The free board, we're doing the same kind of free board, but it's a one-foot free board. So in the riverine flooding, we're looking at a one-foot rise to the top of the floor. It's a little different than those in the V Zone where it's to the bottom of your structure. One other thing that we're doing in the V Zone area is that we're gonna restrict the storage area on the bottom under the building. There has been – people would tend to enclosing the entire bottom and then at first they're supposed to be breakaway walls. And pretty soon, they have a little storage area. And it gets bigger and people start moving in. So we're highlighting that area. One thing that people don't understand is that when you have more storage area on the bottom, if it exceeds 300 square feet, you're insurance rate just goes sky high. So we're just gonna put that in an ordinance. If you are 300 square feet or more, your insurance rate is gonna go higher and that's usually a deterrent. It's kinda too late later on. They have to pay this– Someone says, you know, I'm paying \$6,000 a year in insurance. And the guy next door is just paying \$2,000. What's the – you know, why? And he said, well, you know, you enclosed the whole bottom floor. So this is – we're putting that in the code so that people will – it'll be more of an announcement. This is the V Zone construction where you build it to the bottom. And this is the A Zone construction where you build it to the top.

So getting back to the ordinance, you know, we have ten pages of ordinance changes, and basically, that's where the changes are highlighted. We have– In here, we have several that's – these are the CRS items where we have the added value. And we can go through those if you prefer, but it's basically what we just went through. And if there's any questions on any one of these items? You know, you might ask how much is this gonna cost because there's gonna be – you know, you raise up your building, it's gonna cost money. So for fill construction, for a thousand square foot building, they're looking at just under the building, it's about \$8,500. And you have to dress out the outside. And these are all structural engineered fill. So it's – but basically, the whole house is supposed to be all engineered fill, but just that added fill is about – let's say it's about \$10,000. On post and pier, it's a little cheaper. It's just extended another foot. So they're looking at – for shorter buildings, it's about \$4,000. And when you get into the V Zones where it's a higher type structure, it starts about \$7,000. It could go more. So that's just for the added foot. It really depends on how high your building is. In some areas like on Lanai, we saw areas that the flood height is at 48 feet. So that's the height of the wave. So depending on high the ground is, you might not even be able to build that house which is a good thing. You shouldn't be building in that deep of water. But in some areas, you might be elevated 15 feet above the ground, and you raise

it up another foot. Just being 15 feet aboveground, it's kind of hard to construct anyway. So they're telling us that the higher you get, it's gonna be more costly. But we're looking at – the \$7,000, that's just a basic thousand square foot building in the V Zone. And it's a wood construction or piling.

So that's – if you have any specific questions on any part of the code, we can go through the parts that you would desire. So any questions?

Mr. Hedani: Commissioner U`u?

Mr. U`u: Question: and more realistic, how would it affect some of the homes on Front Street?

Mr. Cerizo: On Front Street right now, the flood height in that area is relatively shallow. It's kind of a protected area. As you get out towards Kapalua, that side, the wave is a little higher. The flood height is a little higher. You're looking at elevations of eight, seven, eight in town. And some of the houses near the Mala Wharf, it's just about a foot or two above the ground. So it's not that bad, but you still– There's a new study out, the hurricane – I don't want to jump the gun, but there's a new study out that's coming out next year, and we'll be bringing that map here also, but it may increase the flood heights a little more.

Mr. Hedani: Mr. Mardfin?

Mr. Mardfin: Would you go back? You had a diagram showing V and A. And you had a picture of the height. And I wanted you to go through that little bit more carefully with me. It was a diagram, not a photo. I think you just passed it. That one. Could you explain it a little bit more?

Mr. Cerizo: Okay, there's two types of flooding, flood zones: there's a V Zone and the A Zones. Typically, A Zones are those lower velocity type waves. We have Coastal A Zones. In this case here, when you have the wave come in, it's like when you go down to the beach, you stand in the water down at Big Beach, and if you just your ankles wet, the water just kinda like you sink in the ground a little. You go out a little deeper, and you're about waist deep, it starts dragging you out. So the deeper it gets, and the threshold here is four feet. Once you get up to an elevation of four feet or a depth of four feet, that's when it becomes worse. So that's where the break between the A Zones and the V Zones are. In V Zone construction, you build your building so that it's above the water. So in this case here, that's the flood elevation, and your lowest member is at or above the base flood elevation. With our regulations, we're gonna bring this whole thing about a foot higher. We're gonna require that we have an additional foot. And one of the main reasons for that besides there's debris, there is global warming, there's sea level rise, you know, there's all these prudent – you know, these are scientific findings that there is a rise that's eventually so these are in anticipation or just to mitigate those rises. In the A Zones, both riverine and Coastal A Zones, the requirement is to build your floor at or above – your finished floor at or above the base flood elevation.

Mr. Mardfin: So a foot lower than if it was a V Zone?

Mr. Cerizo: Well, you just have whatever your floor member or your floor section is, you'd go to the lowest cross member for a V Zone. On the A Zone, you can have it the top of your slab or the top

of your wooden building.

Mr. Mardfin: May I do a followup?

Mr. Hedani: Commissioner Mardfin?

Mr. Mardfin: Can you explain to me--? I'd download, in preparation for this, I downloaded the maps for Hana, so I'm -- there were two numbers that we tend to get: V23 and V29. Could you explain what those are?

Mr. Cerizo: Okay, one time the flood zones were given a rating. That's why they call it, flood insurance rating map, FIRM maps. The new maps are different. They're only gonna give-- On the V Zones, as you can see, we have a -- it's only a VE Zone.

Mr. Mardfin: VE?

Mr. Cerizo: VE.

Mr. Mardfin: Victor and Europe.

Mr. Cerizo: Victor Europe. There's no number, there's no suffix anymore. The grading has been taken away and what they have replacing that is just elevations. In this case here, we have an elevation 8 and like on Lanai, elevation 42, 48 and --

Mr. Mardfin: In the old system what did V23 mean and what did V30 mean, 29 mean?

Mr. Cerizo: The higher would be you have a worse type of flooding. So it would be a higher rate

--

Mr. Mardfin: V29 is worse than a V23?

Mr. Cerizo: That's correct.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'm glad to see that you provide incentives for say, creating wetlands and that actually creates it's my understanding a barterable commodity in terms of more ability to soak flood waters. As a corollary are you creating any kind of disincentive for adding greater amounts of impervious surfaces?

Mr. Cerizo: That's not considered in our ordinance here, but I know Public Works one of the things that they do in their design is that should try to maintain the existing flows. So that's a challenge whenever you develop, you know, you develop, you have hard surfaces, how do you counter act that? So, they do wetlands or retention basins. You know, there's an area where you can have

that mitigated, but unpaved roads or less paved roads, you know, that's another way.

Mr. Hedani: Additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Regarding cumulative costs in your 10-year threshold or 50% improvement are there going to be any allowances for historic structures?

Mr. Cerizo: There's always allowance for historic structures. That is one of those provisions that if the structure becomes not historic, you know, you improve it so much that it's not historic anymore. You elevate it like the court house in Lahaina. If you had to elevate it 10 feet, I mean, it just wouldn't, it wouldn't work or even Pioneer Mill. So there is provisions for historic structures in the Code. Let me, might be able to see that, – so we have a definition for historic structure and it's on page 3 of 15 and line 35. That hasn't changed, but it takes in account historic structures. It defines historic structures and there's provisions in the Code itself that deals with the construction or the rehab of historic structures. So that's somewhat left unchanged.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: I kind of like the substantial improvement clause, but I wonder if anybody thought of the fact – that it gets away from the loop hole that they can do a 50% improvement now and 50% again, they can't do that, but what that will mean I think is that they will allow housing to deteriorate. They'll fix it 50% and then let the rest just go.

Mr. Cerizo: Well, you know, it's a nonconforming structure. That's the from the flood perspective, we would prefer that the building be conforming, but we understand that you know, if you have a structure that is, that may need to have some rehab just to make it safe, the 50% is a substantial amount. But if you have a real old house, maybe it's you know, it shouldn't be saved.

Mr. Mardfin: Well, as a follow up, I'm not talking about a historic one, but what's likely to happen are people will just – rather than tear the thing down and totally rebuild they'll just say, we'll let this thing deteriorate, I won't put any more money into it and so the unintended consequence could be some housing will deteriorate in value.

Mr. Cerizo: No, that's true.

Mr. Mardfin: And safety.

Mr. Hedani: Additional questions? Francis, when you raise the level by one foot in the VA area does that mean everybody suddenly becomes nonconforming?

Mr. Cerizo: This is for new construction. So anything that we call, all the regulation is based on new construction and substantial improvements shall comply.

Mr. Hedani: Second question is if we don't take action at this meeting today, what happens?

Mr. Cerizo: It kind of jeopardizes our plan. I mean, if it's you have any questions that I can answer

now, that would be good or if there's any recommendations, I mean, we can bring it to the next level to Council that you had some reservations or recommendations. We'd prefer that you have, you give comments that we can actually extend it to the Council.

Mr. Hedani: So your purpose today basically is to get a recommendation from the Commission to take it forward to the Council?

Mr. Cerizo: That's correct.

Mr. Hedani: Within the time frame that you're working with.

Mr. Cerizo: That's correct.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: On page 4, you have a definition of market value, near the top, line 3.

Mr. Cerizo: Yes.

Mr. Mardfin: "Market value is determined by estimating the cost to replace a structure, a new condition, and adjusting that cost figure by the amount of depreciation." And then item 6, it says how to do that, "the cost shall be based on square foot cost factor determined by reference to a building cost estimating guide," and I wanted to know whether that is community specific. I know for my insurance, I live in Hana, I have to pay, they take what the cost of rebuilding would be in Kahului and then add 40% or some amount to it. Is the market value going to be community specific in that regard?

Mr. Cerizo: Yes, yes. It gets adjusted. There is a national standard. They have several standards that the assessors, whenever there's an assessment or when you have a property that is valued by the bank, they have a very detailed analysis in determining the square footage value. Basically they go and they – you do a complete reconstruction cost and based on the area, based on, you know, you're in Hawaii, the cost factor, well that's factored in, and they run a depreciation based on, you know, all those factors. It's used whenever, when someone actually gets very close to the 50% we require that they do a detailed assessment versus – the simple assessment is using the Tax Office. They go, you know, Tax Office says your house is valued at \$100,000 and if you're at, you're doing \$30,000 worth, we say that's fine, but once you get to the \$50,000 we required you to go and get a professional to come out with a more accurate number and this is where this market value, an explanation of how it's done, we've had a lot of debate in the office so we're just putting in here this is how you do it. This is a – this template actually wording came from another community, they just changes in their determination on how market value is determined.

Mr. Mardfin: But it is community specific?

Mr. Cerizo: Yes, it is.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I was just wondering, Francis, can you tell me the applicability of this with the Kahului treatment plant as well as MECO generating plant? Some of these publicly used type facilities.

Mr. Cerizo: It applies to them also. It applies to all– we're not exempted from the regulations.

Mr. Shibuya: So, we're going to have move that sewage treatment plant a foot higher, huh?

Mr. Cerizo: Well, in this case – see, a lot of that they're now is a existing nonconforming. They were built in the '70's, so if they do their – and the value of the whole plant my understanding is that it's like a half a – \$500 million. So they have a lot to play with. You know if they just doing – it's going to take a lot to get to the \$250 million or the – well, they still have to, you know, depreciate it, but the work is, the existing infrastructure is quite substantial.

Mr. Shibuya: And the applicability to historical preservation type of restrictions, it doesn't apply right?

Mr. Cerizo: That provision hasn't changed and there is some protection for historic structures.

Mr. Shibuya: Yeah, but we don't want to preserve something that historical lets say, now we have to go against that historical aspect of it when we want to improve the sewage treatment plant. So we get tied up into this bureaucratic type of a Gordian knot.

Mr. Cerizo: Well, historical from the state side is the general rule of thumb is something that's over 50 years old and the treatment plant is not over 50 years old, close but not.

Mr. Hedani: There should be nothing historical about the sewage treatment plant. Additional discussion? What's your recommendation Francis?

Mr. Starr: We need public testimony.

Mr. Hedani: Are we doing – does anybody have any additional questions for Francis?

a) Public Hearing

Mr. Hedani: Does any member of the public wish to offer testimony on this item? If so, please step to the microphone and identify yourself. Seeing none, public hearing is closed. Recommendation.

b) Action

Mr. Cerizo: Our recommendation is that we recommend approval of the changes to the Council.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: In light of the fact that I think this is an excellent piece of work that's been done and will

raise a bar in helping protect our communities from unsafe conditions in the future, I move that we recommend adoption of the ordinance as placed before us.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion? Commissioner Mardfin.

Mr. Mardfin: I agree with Commissioner Starr that this is very good piece of work. I had a couple of questions but they got answered. Just as a suggestion, I like that diagram that you showed and I don't know exactly how it fits in, but if that diagram could be forwarded with this to the Council I think that would help where the Planning Department's encouraging the use of good solid diagrams to help the people understand what's going on. So I would recommend that.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of recommending approval as presented, signify by saying aye. Opposed nay.

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

VOTED: To Recommend Approval of the Ordinance to the County Council, as Presented.
(Assenting - J. Starr, W. Shibuya, K. Hiranaga, B. U'u, W. Mardfin, D. Domingo)
(Excused - J. Guard)

Mr. Hedani: Carried. Thank you.

Mr. Cerizo: Thank you.

Mr. Hedani: Okay, it's 12:15 p.m., why don't we go ahead and take a break for lunch and then we'll reconvene at 1:15 p.m.

A recess was called at 12:17 p.m., and the meeting was reconvened at 1:17 p.m.

Mr. Hedani: Planning Commission meeting of June 23rd is back in session. Director.

Mr. Hunt: We're continuing on with unfinished business. Your first item is the Planning Director transmitting Council Resolution No. 09-21 to the Lanai, Maui and Molokai Planning Commissions containing a draft bill to amend Section 19.14.020 of the Maui County Code relating to eliminating the stacking of Residential and Apartment uses in the Hotel District. The file number is RFC 2009/0028 and Joe Alueta is the planner assigned to this project. He is on vacation and so I will substitute for him as best I can today.

C. UNFINISHED BUSINESS

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-21 to the Lanai, Maui, and Molokai Planning Commissions containing a Draft Bill to Amend Section 19.14.020 of the Maui County Code relating to eliminating the stacking of Residential and Apartment uses in the Hotel District. (RFC 2009/0028) (J. Hunt for J. Alueta) (Public hearing conducted on May 26, 2009.)**

Mr. Hunt: I a little bit of background. There was two Council bills that came before you recently and the other one was on industrial uses and stacking and this body did forward a recommendation regarding that bill. The other planning commissions are also done with both bills and so this is the last step on these two bills. It's important that everyone remember that this is a council initiated bill, the Planning Department did not draft it and we weren't even involved with it. Sometimes Council initiated bills they do involve us and we appreciate that. In this case, there was no consultation with us until it was sent down to us.

The bill would as proposed eliminate the language that references uses that are allowed in a residential and apartment district. The department report that was distributed at a prior meeting mentioned some concerns that the department has with that language. Particularly we believe there's some uses that are mentioned in the Apartment District and the Residential Districts that should be allowed in the Hotel District specifically parks and schools and government building are allowed in the Residential District.

In the Apartment District, the department does not support the deletion of the provision for apartments because we interpret our code as that is the provision that allows us to approve condominiums. And in talking to the hotel developers on the island and we talked to them a lot they argue that that is just about the only way you're going to get a hotel any more in this current market. For my experience, there has been a couple pure condominium hotels that have been built recently. There have been several that were mixed where there was some hotel portion of it but some condominium. I'm not aware of any pure hotel that has been built in the last few years on Maui. So the department doesn't support that elimination of the apartments from the Hotel District.

In regards to the single family residential use, the department, again we didn't create this bill but in trying to just analyze it we thought that that has some merit or at least it's worthy of discussion and the concern seems to be that to get away from eroding our Hotel Districts by using them for single family dwellings and there has been some applications recently where this has been proposed. The concern is that if we allow single family dwellings to take over our Hotel Districts, the Hotel Districts eventually will need more room quicker than they would normally and they'll be standing at the podium asking for a zone change somewhere else on the island to a Hotel District understandably. But that whole idea of creating additional Hotel Districts can be alleviated if we use our existing, the whole idea of creating new Hotel Districts can be alleviated or at least postponed if we use our existing Hotel Districts efficiently.

So that's the issue. Based on that the department's recommendations on your staff report is apartments not be deleted from the Hotel District. And then rather than deleting any use permitted in the Residential District we suggest that the language state "except that single family dwellings shall only be allowed as an accessory use." And then we also suggest if the bills pass that

language be added to assure the existing single family dwellings do not become non conforming.

There's some maps that we passed around at the last meeting you requested additional information where are these existing single family dwellings and so there's maps. There was also a request for specific language and we passed that around too. There's a page that shows a Ramseyer version of what the bill would read. It's very simple language at this point but it's to give you an idea of what we're proposing. And again, we don't have our heart set on this. We didn't propose this bill. The idea of single family dwellings in our Hotel District I think is worthy of some analysis and with that, I'll turn it over to the Chair.

Mr. Hedani: Any questions from the Commission? Okay, we're going to go ahead and open it up for public testimony at this time. Are there any individuals that would like to offer public testimony? Please step to the microphone and identify yourself for the record.

Ms. Carol Reimann: Good afternoon, my name is Carol Reimann and I'm with the Maui Hotel and Lodging Association. We'd like to thank the Planning Department for recommendation that apartment hotels remain as permitted uses on hotel zoned land. However, we do not support their recommendation to amend the hotel zoning ordinance to restrict single family dwellings as accessory use only.

We believe that there's no indication that the current ordinance is inadequate or that it needs revising. The recommended revisions will cause confusion and will be difficult to administer. It will also impact existing single family dwellings and cause issues for future developments. Specifically our concerns are as follows:

We do not feel that there's a problem that warrants changing the code. There's no data present, presented to support the position that hotel zoned lands are being or are in danger of being used up by single family dwellings. It's been the Planning Department's stance not to support any development that is not recognized in the proposed General Plan. They've indicated that these projects should not move forward until the General Plan is adopted. Likewise, we should also not move forward on any zoning code amendments at least not until the General Plan is adopted. If at some point in the future a problem were to arise then at that point, that would be an appropriate time to amend the ordinance. It would be difficult to administer the proposed exclusion of existing single family dwellings and lots. It will require that provisions of the current ordinance remain in effect but not for any new homes and/or partially developed lots. The most intensive use of land is being recommended while excluding the use with extremely low impact. That goes against decades of planning policy and this particular use should not be singled out for treatment that is opposite of all other situations.

The Planning Department, the GPAC and the planning community in general support mixed uses in all other circumstances and there is confusion as to the meaning of their recommendation. Currently hotel zoning allows single family dwelling use which includes owner occupancy, long term rental as well as TVR and short term rentals. The Planning Department's proposed revision to the bill would allow single family dwellings as accessory to, however, it would need to be clearly specified that single family dwellings that accessory to a hotel can be owner occupied, long term

rented or short term rented.

The recommendation conflicts with future developments. There are parcels out there that are currently zoned hotel but which are subject to specific county conditions and restrictions that prohibit hotel use on these parcels. There are also parcels that are zoned hotel for which developmental development approvals have been granted that would allow single family dwelling use.

During these tough economic times and for our future viability of the visitor industry we need to have some flexibility to adapt to changing times and we encourage leaving the ordinance status quo. We urge that the Maui Planning Commission not support the Planning Department's recommendation and the provisions of the hotel zoning ordinance be left unchanged. Thank you for the opportunity to testify.

Mr. Hedani: Thank you very much Carol. Any questions for the testifier? Seeing none, are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Director.

Mr. Hunt: The recommendation from the department is to – our recommendation is to propose or recommend to Council that the language regarding single family dwellings be revised but not as proposed by the Council. Again, this is, we're not wed to this if there's concerns. We can talk to you about it. I think it is an issue that's worthy of some discussion.

The rest of the bill I think there's very little support except on Molokai there was support for deleting apartments, but well know Molokai is a little bit different and I mean with all love in my heart. I think they take pride in it actually.

Mr. Hedani: You're going to the next Molokai Planning Commission meeting.

Mr. Hunt: I was there when they recommended it. So again, there's very little support outside of Molokai for deleting apartments. So then it gets down to are we going to delete single family, are we going to delete the reference to the residential district? The department feels that's even too broad because we believe parks and schools and government buildings should be allowed. So we're narrowing it down to okay, what about single families in the hotel district and that's where our recommendation is to make them an accessory use. You've heard testimony the other way. We're here to help you folks craft a recommendation. Hopefully we can get it out today.

Mr. Hedani: Commissioners what's your pleasure? Commissioner Hiranaga.

Mr. Hiranaga: How do you define accessory use, by square footage of the buildings on the property? When does it become a – how do you determine what's the primary use and what's the accessory use?

Mr. Hunt: Your code states that it's incidental or subordinate. So we would probably look at a subordinate as being less than. I think somebody could push that and I'm just thinking out loud, this isn't a formal interpretation by the department but I think somebody could push that to say well,

49% of our project is single family dwellings and therefore, it's subordinate to the 51% of our project which is hotel.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: When we were talking about this last, my recollection or at least my notes, I don't recall it very well, was that we were talking about 13 parcels that were single family residences in this area. The map shows 17, but I presume that's the revised number after looking again?

Mr. Hunt: I believe that's the most current update.

Mr. Mardfin: And so, my recollection also is that that's a small number of non conforming uses that can be handled in some reasonable fashion and that we might want to pass this – recommend passage of this revised language so that we don't have the problem going forward in the future is that correct?

Mr. Hunt: I think that's a legitimate position. I think somewhat reflects our recommendation.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: I just have a question in terms of clarifying it for myself. I would like to know the background for this proposal because I'm not too sure I understand the problem and so if somebody can enlighten me as to why this problem is generating proposal then I can better understand the whole picture here. Would staff be able to help me on this?

Mr. Hunt: I can try. Again, we didn't craft the bill, we didn't proposed the bill, we weren't even involved in crafting the bill, so I'm left to speculate and I hate to do that but in answer to your question, we believe the concern is that Hotel Districts are being eroded away by other uses than hotels. And it's similar to the argument that was based in the Business District, in the Industrial District about businesses coming and eroding out the industrial base of our community. We understand that argument and we think it's a legitimate concern. In the Business District the amount of nonconformity was so huge, we just said, no, lets do it a different way. Lets attack the problem a different way. In this case, we believe the non conformity is somewhat small based on our analysis. And while don't relish anyone having a house that's non conforming I think that because of the small numbers we can probably deal with it either through the language that we're proposing or through the fact that there's only a small number of them.

Mr. Shibuya: In the industrial area, oh excuse me Mr. Chair?

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Yeah, in the industrial area I could understand even proposing just a simple industrial type of zoning specifically for that in restrictive and exclusive for industrial purposes. But in this particular case for hotels because of the limited areas on land, I almost cannot fathom why they want to be so exclusive only for hotels and that's my problem and I'd like to understand that. I realize that the public is viewing this and so this would be helpful for educating the viewers in terms

of what the problem is.

Mr. Hunt: And if you read their bill, it would eliminate – the council bill, it would eliminate virtually, well, it would eliminate a lot of non hotel uses. So it would eliminate apartments. It would eliminate single family dwellings altogether, and parks, government buildings, hospitals, etc. All those uses that are listed in the residential district. So the intent seems to be if we got a hotel district, lets try and make sure that hotels are built there.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd also like to respond to Commissioner Shibuya's concern. The original item we had – we had two last time. One was on industrial uses and we said, – we recommend that you don't do this, that was silly. This one, the department sort of finessed it and basically said, we're going to take – we think – I'm putting words in their mouth, that they will deny and properly so because I am making this up, but my interpretation of it is that they were saying this is a silly bill too but rather than do two in a row like this we will gut it except for single family dwellings. The rational being that we don't want to – we want to limit the area that we call hotel and we don't want to crowd that out by taking a lot of lots in there and making them very low density single family dwelling. We're not going to talk about apartments or anything else which is relatively higher density and isn't part of the issue. As I reading this now my concern, my memory is coming back a little bit and our concern was what to do about those 17 properties that are already there and we don't want to put an undue burden on them and so the department came back with this new language called Section 3, saying basically if they already exist we're going to not treat them as non conforming. They can just continue like that indefinitely. If they burn down they can rebuild. None of the issues about non conforming property. But by passing this, we would prevent the perceived problem from growing in the future by having more single family dwellings built in hotel zone which might eventually lead us to have to expand hotel zoned lands. So I think the department has done exactly what we talked about last time and I'm pretty happy with it.

Mr. Hedani: Additional discussion? I'd like to offer a few comments. From my perspective, when I investigated this particular bill a question came up as to who introduced it and why. The introducer of the bill was Riki Hokoma who's no longer on the Council and when he was asked what the rational behind it was his response was that he couldn't recall. From perspective, personally I oppose it. I oppose the language that's being proposed because it doesn't seem to make sense. It seems like it's contrary to smart growth. It seems like it's contrary to the concept of preserving open space and view planes and all the other things that we fought for over time. The Land Use Research Foundation has just submitted testimony to us that they oppose it on that same basis because it's contrary to master planning. There may be some truth to the fact that in the future, you know, if you're not going to zone any more lands for hotel, I don't think any more lands are probably appropriate for hotel at this point, then two things can happen. You can increase densities on existing hotel property and the second thing is that we've just approved 200 or 400 mini hotels in the form of B&Bs eventually possibly crossing the question of TVRs as well. TVRs are permitted in resort destinations areas so a single family residence could technically now be operated as a TVR within a resort area, a mini hotel. So while we have a dozen hotels that exist today, in the future we're going to have 400 and a dozen hotels spread all across the island. So from the standpoint of absorbing future hotel customers, it actually provides more opportunity for the people

that are in B&Bs and outside. The people in the industry within Kaanapali are opposed to this bill not because they want to preserve hotel uses but because it merely changes something that doesn't need to be changed and creates problems that are possibly avoidable. I think they should fight crime, address the litter problem on the roads or do something other than stuff like this. That's just my personal opinion. Commissioner Shibuya.

Mr. Shibuya: Yes, I totally agree with you and having served on the GPAC, I picked up a lot of public opinion on that regard. And the multi-use of this properties does add to the uniqueness as well as to the qualities of our environment for both the visitors as well as for people looking for employment. And so, I am all in favor of not even addressing modifying what is currently on the books. Leave what we have now, it's not broken because I haven't heard anything that's broken and so that's – if somebody tells me what is broken then I'll be willing to address it at that time. Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Well, I would have been happy to work with the versions submitted by the, revised by the Planning Department, I can count numbers here and I can see no more than four people and maybe only one person that would approve that. So I will in the interest of expediency I will move that we recommend to the County Council that they do not adopt Resolution 09-21.

Mr. Shibuya: Second.

Mr. Hedani: Instead of a negative motion, maybe that could be worded as a motion to file rather than –

Mr. Mardfin: File would not – File would not let them know what our views were. We need to express to them what are views are. And our views are that this is an unwise bill.

Mr. Hedani: Well, okay, Jim do you have a comment?

Mr. Giroux: Yeah, I'm on a different track. As far as a technical issue is that you're actually commenting on the bill and not the resolution. The resolution is to transmit to you for discussion.

Mr. Mardfin: Correct.

Mr. Giroux: Just so when it gets up there they know what you were talking about.

Mr. Hedani: Maybe you can restate it.

Mr. Mardfin: I'll restate the motion. The motion is to recommend that the Council not amend Section 19.14.020 of the Maui County Code.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion? Ready for the question?

Mr. Mardfin: I want to say one thing.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: The reason I wanted to make the motion is because I don't want it to refer to the Planning Department's Recommendation for change which I think was a good one. It's the bill itself that is the problem.

Mr. Hedani: Any further discussion? All those in favor of the motion to recommend not approving changes to 19.14.020 signify by saying aye. Opposed nay.

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

**VOTED: To Recommend to the County Council not to Amend Section 19.14.020.
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, D. Domingo,
L. Sablas)
(Excused - J. Guard, B. U'u, J. Starr)**

Mr. Hedani: Carried. Thank you. Director.

Mr. Hunt: Your next item involves the – pardon me, your next item is the Action minutes of the June 9, 2009 meeting.

D. ACTION MINUTES OF THE JUNE 9, 2009 MEETING

Mr. Hedani: Is there a motion for approval?

Mr. Shibuya: So move.

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

It was moved by Mr. Shibuya and unanimously voted to approve the Action Minutes of the June 9, 2009 meeting.

Mr. Hedani: Carried. Thank you.

Mr. Hunt: The next item is the Director's Report. The first item being the Director notifying the commission pursuant to 12-202-17(e) of your rules, your SMA Rules of the intent to issue time extensions on the following requests and we have two of them.

The first request is Milton Arakawa, Director of the Department of Public Works requesting a two-year time extension on the Special Management Area Use Permit and the Shoreline Setback Variance for the Lahaina Watershed Flood Diversion System project at TMK: 4-7-001: a portion of

Lot 2 and a portion of Lot 18 and also TMK 4-7-002: portion of Lot 4 in Lahaina. The file number is SM1 2003/0005 and SSV 2003/0001. Jim Buika is the planner assigned to this project and again, the action is the commission shall acknowledge receipt of the request and the commission may review the time extension request or waive its review.

E. DIRECTOR'S REPORT

1. **Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following requests:**
 - a. **MR. MILTON M. ARAKAWA, AICP, Director, DEPARTMENT OF PUBLIC WORKS requesting a two-year time extension on the Special Management Area Use Permit and the Shoreline Setback Variance for the Lahaina Watershed Flood Diversion System project at TMK: 4-7-001: 002 (portion) and 018 (portion) and 4-7-002: 004 (portion), Lahaina, Island of Maui. (SM1 2003/0005) (SSV 2003/0001) (J. Buika)**

Mr. Hedani: Jim.

Mr. Jim Buika: Yes, some short introductory information. Again, this is an amendment to Condition No. 1 for a two-year time extension to June 30, 2010 to begin the project. This is the second time extension. In 2004, the commission did give this project some good scrutiny and there are some excellent mitigation, best management practices incorporated into the project to protect the coastline and the nearshore waters. The purpose of the project is to control historic flooding that occurs from the Lahaina watershed, the chronic problem. There are two of these projects or two of the watershed. It's a major Public Works project and the reason for the extension is finalizing land acquisition for the project. As you can see there's a site map that has – it extends for quite a ways and it requires land acquisition. I have with us here Joe Krueger from the Engineering Department of Public Works if there are any questions. Also Mike Miyamoto and Walter from the Real Estate Section of Public Works who can answer any questions. So I'd like to ask that the commission waive review and allow the Planning Director provide administrative review of the project.

Mr. Hedani: Commissioners? Commissioner Mardfin.

Mr. Mardfin: I move acknowledge receipt of the request and waive its review.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Seconded by Commissioner Domingo. Discussion? Was it Mike dragging his heels again Jim?

Mr. Buika: No, not at all. I will defer to Mike. Mike has a perfectly legitimate reason for the time extension. Mike any comment? Mike please, defend yourself.

Mr. Miyamoto: Thank you Mr. Chair. The funding for the condemnation, land condemnation was finally approved, I think it's first reading. I'm not sure is it first or second reading Joe today at Council. This is second reading in Council. So we are moving ahead with land condemnation and then we can just move in towards the construction phase next.

Mr. Hedani: Congratulations. Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I Just had a question. Are they starting the construction or at least proposed construction from the bottom end or the top end? And if so, why so?

Mr. Buika: I'd like to have Joe Krueger from Public Works answer that question.

Mr. Hedani: Mr. Krueger.

Mr. Joe Krueger: We always, almost always start at the outlet that way when you do portions of it you always have a place for the water to go. If you start at the inland side then you would have no place for the water to go. So we always start at the outlet.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: The reason why I ask this is because you have on the upper end is where the problem of flooding occurs. And we're not addressing that, the immediate problem of flooding.

Mr. Krueger Correct. We have to have some place to put the water.

Mr. Shibuya: I understand.

Mr. Krueger: If we picked it up on the upper end where is it going to go? And we couldn't do the whole thing at once because of the funding issue so we broke it up into three or four phases maybe five. So we're doing the outlet first.

Mr. Hedani: Joe, is this one of the projects that would qualify for stimulus funding and all that kind of stuff?

Mr. Krueger: No.

Mr. Hedani: No. Okay, any additional questions from the Commission? Ready for the question? All those in favor of the motion to acknowledge receipt and waive review, signify by saying aye. Opposed nay.

It was moved by Mr. Mardfin, seconded by Ms. Domingo, then

**VOTED: To acknowledge receipt of the request and waive its review.
(Assenting - W. Mardfin, D. Domingo, K. Hiranaga, W. Shibuya,
L. Sablas)
(Excused - J. Guard, B. U'u, J. Starr)**

Mr. Hedani: Carried. Thank you.

Mr. Hunt: The next time extension involves Mr. Mike DezaHD request a two-year time extension on period to initiate construction on the Special Management Area Use Permit for the Kihei Hanalei Condominium project, a four-unit condo project at TMK 3-9-005: 019 in Kihei. File number is SM1 2004/0037. And Gina Flammer who is our newest planner on our department staff is the planner assigned to this. Again, so you might cut her a little slack because she's new at this, but the actions are the commission shall acknowledge receipt of the request and the commission may review the time extension request or waive its review.

Mr. Hedani: Gina.

- b. MR. MIKE DEZAHD requesting a 2-year time extension on period to initiate construction on the Special Management Area Use Permit for the Kihei Hanalei Condominium project, a 4-unit condo project at TMK: 3-9-005: 019, Kihei, Island of Maui. (SM1 2004/0037) (G. Flammer)**

Ms. Gina Flammer: Good afternoon. The purpose of the application is to approve a time extension for two years. This is the second time extension. A previous one was granted August 31, 2007. Actually it was granted September 11th. The property is at 2811 Alii Road in Central Kihei. It's located between Cove Park and Charlie Young Beach on the mauka side of the road. The reason for the request, several factors were cited including difficulty initiating the project.

In 2007, contract negotiations between the permittee and the design build contractor reached an impasse. Following this setback, then the global economic downturn has created a situation where the applicant is finding it hard to get financing. So they are requesting a two-year extension because of that. Any questions?

Mr. Hedani: Commissioners, what's your pleasure? Commissioner Mardfin.

Mr. Mardfin: I have a question for her. What makes you think that the funding will be any better within the next two years?

Ms. Flammer: I could have Glenn Tadaki answer that question if you'd like.

Mr. Hedani: Mr. Tadaki.

Mr. Glenn Tadaki: Good afternoon Mr. Chairman, Members of the Maui Planning Commission. My name is Glenn Tadaki with the land use planning and landscape architecture firm of Chris Hart and Partners. In response to your question Commission Mardfin, your guess would be as good as mine to tell you the truth. If we all had a crystal ball and could forecast what the economy would be like in two years we could make some reasonable assumptions. In this particular case, it's really hard to say. You know, I can offer my own personal guess but then you know, there would be as many estimates as there are economists. So I'm hoping that you know, within the next month to two years that the economy will have improved to such a point where you know, feasible financing can be obtained and you can initiate construction.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to follow up. I am a professional economist and I totally agree with you. I was asking because the implication is that in two years it will be cleared up. I suspect you're right. I'll give it about a year and then you're going to have a year – in the next year you're not going to find of much I would guess. The year after that you probably will find some stuff, so a two-year time extension seems about right to me.

Mr. Tadaki: Thank you.

Mr. Hedani: Any further questions? Commissioner Hiranaga.

Mr. Hiranaga: What is the underlaying zoning, community plan designation?

Mr. Hedani: Gina.

Ms. Flammer: Okay, the underlaying, I believe it's apartment but let me get the correct – the land use district is urban, the community plan has it listed as multi family and the county zoning is A-1, Apartment.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: I'm ready to make a motion.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Could you brief us on the drainage plan for this project?

Ms. Flammer: I sure can. I'm going to have Glenn address that.

Mr. Hiranaga: Specifically, pre and post development storm surface runoff retention since this property is across the street from the ocean.

Ms. Flammer: I'll attempt to answer that while he's looking for that. I do have the preliminary drainage report that was done originally for the project back in November 2004. I'll read you the paragraph that specifically addresses that. "After the development of the proposed project it is estimated that the 50-year storm runoff will be a 100cfs, is that cubic foot per square, a net increase of .71 cfs. Onsite runoff will be intercepted by grated catch basins located within the paved parking and landscaped areas. The runoff will be conveyed to an onsite subsurface drainage system which will be located in the landscape area. The subsurface drainage system consists of a perforated drain line embedded in crushed rock which will be wrapped with a layer of filter fabric. Surface runoff entering the perforated pipe will be allowed to infiltrate in the ground. The system has been designed and sized to accommodate the increase in surface runoff volume from a 50-year, one-hour storm created by the proposed project."

Mr. Hedani: Any additional questions from the Commission? Commissioner Hiranaga.

Mr. Hiranaga: You know, drainage in SMA areas has become a sensitive issue with some of the members of this commission. I'm wondering if we could have a short recess so that staff could make a photocopy of what you just read to us so I can look at it in writing?

Ms. Flammer: We can do that. Do you want to discuss how time extensions are – you have two options, you can waive the review or if you want to fully review it, you could request to do that at the next meeting if want to go into a lot of detail, I could photocopy now and we could continue on. I'll defer to the director.

Mr. Hiranaga: Well, I'd like to just start with that with that one page, and then if we feel we need more information we can look at that. Maybe a five-minute recess to allow the staff to make a photocopy of that report?

Mr. Hedani: Okay, why don't we take a five-minute break.

A recess was called at 1:52 p.m., and the meeting was reconvened at 2:05 p.m.

Mr. Hedani: Planning Commission is back in session. When we last left the discussion, I think there was a motion on the floor.

Mr. Mardfin: I was ready to make a motion but I had not yet made it.

Mr. Hedani: Okay, so we didn't have a motion on the floor at that point yet. Any further questions for staff? Commissioner Hiranaga.

Mr. Hiranaga: I'm wondering if the applicant can retain the entire 1.00 cfs that's generated by a 50-year, one-hour storm on site?

Ms. Flammer: I'm going to have Glenn respond to that.

Mr. Hedani: Mr. Tadaki.

Mr. Tadaki: The response to Commissioner Hiranaga's question, personally I don't feel it to be a problem. There's just a slight difference between the .71 and the 1.00 cfs. To me, it would just be a matter of adding additional length of perforated pipe for the subsurface drainage system and you know, if that's the tipping point then I don't foresee any problem with the permittee consenting to that.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to move that we acknowledge receipt of the request, that we waive review. However, request that the director take into consideration the suggestion by Commissioner Hiranaga.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Seconded by Commissioner Domingo. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'm wondering why we just don't make that an additional condition to the SMA permit since the applicant has no objection. Why leave it to the discretion of the director? Just add a additional condition that all pre and post development runoff shall be retained on site.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: The reason I made the motion the way I did is because if we go down that route we're not waiving review and I would just assume, waive the review with the director knowing what our concerns were and being able to handle it internally rather than have to not waive review and then go into a big thing.

Mr. Hedani: Director Hunt.

Mr. Hunt: My understanding is in order to change the conditions of approval, you'd have to not waive your review, we would schedule it for an agenda item and then we would – you could basically have at it again. So as the process is set up, your opportunity is either to waive review or at a further time, and I think James can correct me if I'm wrong, at a further meeting, you can dive into the application. But to put conditions on it today, I think isn't one of your options.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'll be voting against the motion because this is their second request for an extension I believe. Their SMA permit was approved in 2005, August and they're not really proposing initiating construction until August 31, 2009? Is that correct or is it 2011?

Mr. Hedani: Gina.

Ms. Flammer: The first extension request covered from 2007 to 2009. The next one would cover until 2011.

Mr. Hiranaga: Right, and the permit was approved in August of '05.

Ms. Flammer: Yes, that's correct.

Mr. Hiranaga: So that's a lapse of six years with no affirmative assurance that they're going to start construction within those two years. If we're required to pull it back for review, I really don't see why we should not be doing it because you know, I think the philosophy of the community has changed in four years and I think we should take a look at it. We just keep extending things and extending things based upon the old review. You know, I think applicants should realize that when they ask for these extensions it's not going to be handed out without thought and as we – this project is across the street from Charlie Young's Beach I think we should take a look at it.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: I'm a newbie, new guy on the block here and I have not had the privilege of taking a

look at this and I would like to take a look and review this matter and so therefore, I'll probably be voting against it. I would like to take it up and review this matter just like Commissioner Hiranaga mentioned.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of the motion to waive review subject to recommendation that Commissioner Hiranaga's recommendation for retention of drainage be kept on site signify by saying aye. Opposed nay.

Mr. Hiranaga: Point of order. Was that your motion?

Mr. Mardfin: My motion was that we acknowledge receipt, that we waive the review and ask the director to look into in his decision about the review have additional condition that would deal with your position.

Mr. Hedani: Motion is lost. What's your pleasure gentlemen? Commissioner Mardfin.

Mr. Mardfin: I move that we acknowledge receipt of the request.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion?

Mr. Hiranaga: So what happens with acknowledging receipt of the request.

Mr. Hedani: We essentially waive review. We just acknowledge receiving it.

Mr. Mardfin: Yeah, then there can be another motion.

Mr. Hiranaga: If we acknowledge receipt, we're waiving review?

Mr. Hedani: Director?

Mr. Hunt: There's two actions. Most of the time, you take care of it with one motion, but at this time, it sounds like Commissioner Mardfin is suggesting we break them out into two motions. So the motion before you is merely acknowledge receipt of the request.

Mr. Hedani: Let me see I can shorten this thing. Glenn, if we waive review of the request at this time will you agree to accommodating pre and post development on site?

Mr. Tadaki: If it means getting the commission's approval on the time extension request, I would offer to retain the 1.0, entire post development runoff.

Mr. Hedani: What about the pre development runoff?

Mr. Tadaki: The pre development runoff –

Mr. Hiranaga: That's both, pre and post equals that 1.0.

Mr. Hedani: Pre and post equals 1.0.

Mr. Tadaki: Right.

Mr. Hedani: So you would agree to retaining the 1.0?

Mr. Tadaki: Right, because currently it's I believe .71 or somewhere around there. So, just you know, agree to store the difference between the .71 and 1.0.

Mr. Hedani: So that's a yes?

Mr. Tadaki: Yes. It's a affirmative.

Mr. Hedani: Okay, thank you. Commissioners? Is there a second to acknowledging receipt of the request?

Ms. Domingo: Warren seconded it.

Mr. Shibuya: Yeah.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I second it.

Mr. Hedani: Seconded by Commissioner Shibuya. Commissioner Hiranaga.

Mr. Hiranaga: It seems that our Corporation Counsel is researching something. So I'm just wondering from a procedural standpoint since we now seem to be placing a new condition if what we're doing is allowable.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: The motion on the floor is just to acknowledge receipt of request. If this passes then we can deal with another issue about waiving. It doesn't require the Corp. Counsel to do anything. All we're saying is we got the request.

Mr. Hedani: Further discussion? Jim, are you going to jump in here and stir up the pot a little bit for us?

Mr. Giroux: I'm just trying to see because it's a fairly new rule so I'm just trying to see how this is going to play out with the various motions on the table, but when we wrote this rule, the idea was to have the director actually do an analysis of whether or not there was of substantial adverse environmental or ecological effect. You know a change in condition during the time of the extension and the idea was that if there wasn't any change then they would do a preliminary analysis that's recommending granting the change. You know as far as adding conditions and the such, you

know, as long as it's done with consent, you know, I wouldn't worry too much. But I wouldn't look at this as some kind of precedence of every time somebody comes in for an extension that you start adding conditions because it really, you know, the conditions have to be reasonable based on the actual conditions as they are today. And I think as the director stated, you know, a more proper procedure might be that if there is that type of concern that you do a further review. You don't review, but you actually do a review because then you would be justifying the adding of an additional condition. Just reading the rule, you might not get that but I think that in all fairness those are the options I think to in order to meet a rational basis test is basically what we're trying to do. And also preserve due process in the meantime.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So on this particular request for an extension, there was no notice to the 500-foot radius of property owners?

Mr. Hedani: Gina.

Ms. Flammer: No, there was not. In 2007, that was waived. There were no intervenors which didn't also require that.

Mr. Hiranaga: If we brought it back for review then you would also have to have a public hearing and thereby notify the 500-foot radius?

Ms. Flammer: I'll defer to the director.

Mr. Hunt: I believe we would if it's back at a public hearing. Clayton, correct me if I'm wrong.

Mr. Yoshida: I guess for the time extension, the public hearing could be waived by the Planning Director unless there was a petition to intervene that was filed previously.

Mr. Hunt: So if the director waives the public hearing, we don't have to notify neighbors. They could just simply deal with this as business issue?

Mr. Yoshida: Yeah, if they find that there's not any substantive changes they could waive.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: How would property owners know that they want to intervene if they're unaware of this process?

Mr. Yoshida: If they're in receipt of the agenda or they pick up the agenda on the website or they request to be notified if they need time extension or amendments are filed for the particular project.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I'm in the opinion because I'm brand new on this particular issue, I would really like to have a thorough review which includes a public hearing or public input on this and for me, if I

approve this now, I haven't seen all of the paperwork so therefore, it is truly my rubber stamping this. And I don't believe that I was put on this commission to do that so therefore, I would perhaps make a friendly amendment here that we acknowledge receipt and that we ask that this extension be reviewed.

Mr. Mardfin: I don't accept that as a friendly amendment. I want to do it in two pieces. I want to just acknowledge receipt since we did get it. That's all my motion said. Then you can make a motion to not review, but the motion on the floor is to acknowledge receipt.

Mr. Hedani: Ready for the question? Question on the floor is to acknowledge receipt of the request. All those in favor, signify by saying aye. Opposed nay.

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

VOTED: To acknowledge receipt of the request.
(Assenting - W. Mardfin, W. Shibuya, D. Domingo, L. Sablas, W. Hedani)
(Dissenting - K. Hiranaga)
(Excused - J. Guard, B. U'u, S. Starr)

Mr. Hedani: One nay. Motion passes. Commissioner Mardfin.

Mr. Mardfin: I don't want to make the next motion because I think we ought to waive review and I think that will fail, so in the interest of time I'll let somebody make the motion not to waive review.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I make a motion to not waive review and that we would be having a review and the information provided to all the members.

Mr. Hedani: Is there a second? Seconded by Commissioner Hiranaga. Discussion? Director Hunt.

Mr. Hunt: I respect the right for the commission to review any of these and that's part of the process that we set out. You also have to keep in the back of your mind that the attempt was to streamline the review of these projects and I think there was talk from your Corporation Counsel about setting a precedent or kind of changing the tide and I just want to hope that we don't start reviewing all of these. And one of the most common things that I hear as a planning director is streamline your permitting and that's what we're trying to do here.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'll be voting against the motion to not waive review partially for streamlining. We talked in the Maui Island Development Plan a portion of our commission to let things go. I have great faith in the director. I think we're just heading down a funny path. Future projects, I have no problem with Commissioner Shibuya's concern about this. All future projects we do this. But this is merely a time extension of something a previous commission thought was proper. I don't view as a rubberstamp. I'm relying on my – I didn't see this project either. It came before I was on. All I'm doing is acknowledging what the lawyers called ...(inaudible)... that's been decided by an earlier

commission we ought to uphold unless there's extraordinary reasons not to.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'm not sure if any of the commissioners were seated at the time this were approved. Okay, Mr. Hedani, and then I guess Mr. U'u. This property is located across the street from Charlie Young Beach. Some of you may not know where that is but it is a very nice sandy beach. It states in here that the surface runoff enters Iliili Road moves makai and eventually enters the ocean. So I think we need to look at it.

Mr. Hedani: Additional discussion? The motion on the floor is to not waive review and request the review of the time extension request. And if we have no further discussion, all those in favor signify by raising a hand. Two, three. Opposed same sign, one, two.

It was moved by Mr. Shibuya, seconded by Mr. Hiranaga, and

The Motion to Not Waive the Review and Have the Commission Review the Time Extension, Died.

(Assenting - W. Shibuya, K. Hiranaga, L. Sablas)

(Dissenting - W. Mardfin, D. Domingo)

(Excused - J. Guard, B. U'u, S. Starr)

Mr. Hedani: Motion dies. Any further discussion? Commissioner Mardfin.

Mr. Mardfin: I move we waive review and leave it in the director's hands.

Mr. Hedani: Is there a second? Chair will second. Discussion? Commissioner Mardfin.

Mr. Mardfin: I think we ought to do these things. While I understand Commissioner Hiranaga's concern about this one particular place, it seems to me that what we need to do is not hold them up unnecessarily. I think that they can and voluntarily will make the adjustments they need to make and I think we need to get along with it.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: It's been four years since this project was approved and they're asking for another two-year extension with no definitive reason for the delay except for financial reasons. So I don't see how we're holding them up by scheduling a review because I don't think construction is eminent. They're waiting for the economy to turn and some people said maybe a year, maybe two years from now, so I'm not sure what we're holding up.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of the motion to waive review signify by saying aye. Opposed same sign.

It was moved by Mr. Mardfin, seconded by Mr. Hedani, and

The Motion to Waive Review of the Time Extension, was Lost.

(Assenting - W. Mardfin, D. Domingo)
(Dissenting - K. Hiranaga, W. Shibuya, L. Sablas)
(Excused - J. Guard, B. U'u, S. Starr)

Mr. Hedani: Three nays, two ayes, motion is lost. Have you ever got the feeling that you wanted to go and really just wanted to stay? Commissioner Mardfin.

Mr. Mardfin: Failing to get a motion to either waive or – not waive, I think we should move onto the next item on the agenda. We've acknowledged receipt of the request.

Mr. Shibuya: I agree.

Mr. Hedani: Director Hunt. I would ask that you seek legal counsel as to if you can't pass a motion to waive the review, what's the default, what's the action.

Mr. Hedani: The commission has decided that they haven't received this –

Mr. Giroux: We have that cleared up. We actually did receive it. No, just – being that both motions failed, I would say that the default is that you've taken no action. So you've acknowledged receipt and you have not decided whether to waive or to review. So it's going to – by default it's going to be on the next agenda and hopefully you'll have full quorum. You have three missing members and then you can take both motions up again.

Mr. Hedani: Glenn, how's that? Commissioner Mardfin.

Mr. Mardfin: May I add that since that's likely to be what's going to happen that a written commitment from the project as to what they are willing to do might aid their situations.

Mr. Hedani: Okay, since we've beaten that one to that. Well, let me add just one final comment on the issue. I was told that due to process for the permitting system there's a billion dollars worth of construction that is currently being held in abeyance in Maui because of staff interpretations, not from the Planning Department, from another department on a particular question that one staff person is in charge of. This holds up a billion dollars worth of construction and I think what the director is trying to convey to us is that when we hear people come up time and time again and complain about streamlining process and making it faster, that's kind of what we're talking about. In this particular case, we've waived review, delegated that to the department. The department is complying with our wishes by bringing it up and letting us that they've done this or have received this and are proceeding along these lines and I think at some point we need to make progress in terms of actually trying to streamline the process. That would just be my bit of advice. I'm not going to be here much longer so you can do whatever you want to do. Director, next item.

Mr. Hunt: Next item involves planning commission projects and issues. This is your opportunity to raise issues of concern. We'll either try and address them immediately or more than likely come back with information.

2. Planning Commission Projects/Issues

Mr. Hunt: Hearing none. The next item involves discussion of future Maui Planning Commission agendas.

3. Discussion of Future Maui Planning Commission Agendas

a. July 14, 2009 meeting agenda items

Mr. Hunt: You have a meeting on July 14th, that's your next regular meeting and there's five public hearing items. Kula Beach Hotel, there's Puamana renovation, second dwelling in Spreckelsville, a change in zoning to light industrial and a Wailea self storage. You also have two draft environmental assessments. So you've got a fairly busy agenda.

Mr. Hiranaga: Mr. Chair?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I did not receive a copy of the handout.

Mr. Hunt: I'm not sure we got one this time.

Mr. Yoshida: I did one, and Carolyn went home sick yesterday afternoon. We do have five public hearing items and two draft EAs that Hale Hui Kai and the Lahaina McDonalds as well as the time extension for the Maui Palms Hotel SMA.

Mr. Hedani: Any additional comments? Director.

Mr. Hunt: The next three items involve reports, your standard report in your packet, the EA/EIS Report, the SMA Minor Report and the SMA Exemptions.

Mr. Hedani: I'm sorry, Clayton did you want to bring up that item for Kihei on the meeting on planning meeting agenda items?

Mr. Yoshida: Maybe we could address it as part of item 8, that July 7th meeting.

Mr. Hedani: I'm sorry, Director.

Mr. Hunt: So this is your opportunity on items 4, 5 and 6 to ask any questions regarding those three reports.

Mr. Hedani: Don't you miss Doc Iaconetti?

Mr. Hunt: I do miss him, not for that though.

- 4. EA/EIS Report**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report**

Mr. Hunt: Item 7 is you have a special Maui Planning Commission meeting on the Maui Island Plan review and that's June 30th, that's in this room, though it is a regional meeting for Wailuku. So it starts at 1:30 and that will go to 8:00 approximately. We're trying to get the Waiehu or the Waihee, whatever the community is that has expressed interest in the proposed development in their neighborhood. Is there anyone who will not be at that meeting that we know? Okay, we should have quorum then.

**7. Special Maui Planning Commission Meeting on the Maui Island Plan Review
- June 30, 2009, 1:30 p.m., Planning Conference Room, Wailuku, Island of Maui**

Mr. Hunt: Number 8 involves another special Maui Planning Commission meeting and this is again on the Maui Island Plan review. This is for July 7th in Kihei and since it's a regional meeting it may start at 2:00 I'm not sure. I believe it starts at 2:00. Your agenda says 1:30 but check your – today's agenda says 1:30. When the actual agenda for that meeting comes out be sure and check it because as I recall it's 2:00 due to some scheduling use of that building. So lets do it this way. Unless stated otherwise or we'll inform you otherwise, it's at 2:00 not 1:30.

Mr. Mardfin: Mr. Director, will somebody be able to give me a map to get to Kihei Community Center?

Mr. Hunt: Yes, we can do that.

**8. Special Maui Planning Commission Meeting on the Maui Island Plan Review
- July 7, 2009, 1:30 p.m., Kihei Community Center, Kihei, Island of Maui**

Mr. Hedani: Clayton.

Mr. Yoshida: Mr. Chairman, we've circulated this request from the consultants on the Grand Wailea Resort and the Wailea Renaissance project asking for a site visit. These are two projects that Ann Cua is handling and the thought was potentially since you're in Kihei on the 7th, if you want to do the site inspection in the morning. It will make for a long day, again, that will not necessitate Commission Mardfin having to come out twice for the Kihei Maui Island Plan meeting and for the site inspection. But it's a preference, if not, we can come back and try to schedule it.

Mr. Hedani: Commissioners what's your pleasure? Commissioner Hiranaga.

Mr. Hiranaga: How long do you think these site inspections will take?

Mr. Yoshida: I think about an hour per. I mean, they're doing a lot of improvements at the Grand Wailea and it's a fairly large property but it helps to kind of walk it and kind of see like, oh yeah, they're putting up two more stories on this building.

Mr. Hedani: How many units in the addition, Clayton?

Mr. Yoshida: Projected 300.

Mr. Hedani: 300. What's your pleasure? You guys want to do site inspection that day or not?

Getting nods, yes. What time would you schedule that for us, like 10:00 ?

Mr. Yoshida: Well, depends on how much of a lunch break you want between that and the 2:00 Maui Island Plan meeting. We could start at 9:00 or 10:00.

Mr. Hedani: Does that include a lunch break at the Wailea Grand Hotel?

Mr. Yoshida: Well, we could look into that.

Mr. Hedani: Okay, so you can get back to us on a time if we agree to go ahead and do the site inspection on that day.

Mr. Yoshida: We'll try to go back to the consultants and try to come back with an agenda by your next meeting on the 30th.

Mr. Hedani: Okay. Is that okay with everybody?

Mr. Hunt: Does 10:00 seem to work? Can we get a head nod on that?

Mr. Hiranaga: There's no public notice requirement on the site visit?

Mr. Hedani: Clayton.

Mr. Yoshida: Yes, we will be filing an agenda for the site inspections.

Mr. Hedani: It's two weeks.

Mr. Hunt: Under the Director's Report we wanted to remind everyone that on July 9th at 9:00 a.m. we're holding a public hearing regarding rules for administrative procedures and fines for violations of your zoning code. Essentially the rules would adopt the Public Works rules that we have been using and make them almost verbatim Planning Department rules. However, we are adding some changes.

One would allow notice of violations to be filed in the newspaper or with direct delivery to the home. Some people start getting a little gun shy and they refuse our certified letters if they see it's from the county.

The other item is that we are proposing to raise the daily fine for a use violation up to a thousand dollars a day. Right now it's at a hundred dollars a day and some of these uses generate so much money that a hundred dollars a day isn't much of a deterrent.

So those are probably the three biggest aspects of those rules. Again, 9:00 on July 9th.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Since you opened the door about certified letters, you know, someone was doing a SMA project and I guess I happen to be in the 500-foot radius and so the mail was delivered and

I wasn't home and so it says you must come to the post office to pick it up. And so I went to the post office and it was this notice and I'm like, man I had to make a special trip to the post office not knowing what it was for, so is there some way you can document that it was delivered but not require people to have to go to the post office to pick it up? We could do that but it wouldn't be certified mail. I mean, they have to sign for certified mail. Some jurisdictions just simply say you have to deliver the mail and if you deliver it twice they assume that it's been received even though people argue otherwise.

Mr. Hiranaga: Return receipt is just basically? What is return receipt? Mail carrier documenting that it was delivered?

Mr. Hedani: It's acknowledgment of receipt basically.

Mr. Hunt: Clayton can you help us? Do you know the difference between return receipt and actual certified letter? Because return receipt they just state they delivered it.

Mr. Yoshida: I think if it's sent just certified mail, I guess the return receipt provides, gets proof that, well supposedly provides proof that the addressee actually got it and signed for it. If we just send it certified mail, then it was sent certified. And we have a mail receipt and that was date stamped that it was sent to this address, but we don't know necessarily if, who received or whatever. If it's a return receipt we know somebody at that address signed.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So certified receipt does not require a signature from someone confirming receipt, certified.

Mr. Yoshida: The certified mail receipt is just that I mailed on this date to this address and they stamp the date on the receipt.

Mr. Hedani: So technically the post office received it and mailed it or got it to –

Mr. Hiranaga: You may want to look if certified is – because, you know, it doesn't say who the letter is from. It just says you have a letter that needs to be picked up at the post office. You don't know if it's IRS or the State Department of Taxation.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Just to make my colleague feel good, we don't have home delivery mail in Hana. You have to have a post box.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I was just trying to think of how we can incentivize this process here. What if we, the county put in a three dollar or five-dollar check in their mail with this and when they cashed it in we knew they received it. Lawyer is that acceptable practice. You're shaking the head the wrong way.

Mr. Hunt: We'll explore the certified versus registered and come back and make a brief report. That's the last item that we had. Again, your next regular meeting is on the 14th and we've already discussed that.

Mr. Hedani: Okay, if there are no other items for the good of the order. We're adjourned. Thank you very much.

F. NEXT REGULAR MEETING DATE: July 14, 2009, 9:00 a.m.

G. ADJOURNMENT

The meeting was adjourned at 2:40 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Bruce U'u, Vice Chairperson (excused @ 12:00 p.m.)
Donna Domingo
Kent Hiranaga
Ward Mardfin
Lori Sablas
Warren Shibuya
Jonathan Starr (excused @ 12:17 p.m.)

Excused

John J.B. Guard IV

Others

Jeff Hunt, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works