

(APPROVED: 04/07/11)

**CULTURAL RESOURCES COMMISSION
REGULAR MEETING
NOVEMBER 4, 2010**

** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, Hawai'i. ***

A. CALL TO ORDER

The regular meeting of the Cultural Resources Commission (Commission) was called to order by Chairperson, Erik Fredericksen, at approximately 10:10 a.m., Thursday, November 4, 2010, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Mr. Erik Fredericksen: Good morning all. Welcome to the, let's see, November meeting of the Maui County Cultural Resources Commission. I hope everybody had a good October. It's nice to have to some rain; a little harbinger of winter to come. If anyone -- before, let's see, well let's go ahead and get approval of the minutes, and then we'll give an opportunity to anyone who needs to -- would like to testify before we get going on the rest of the agenda.

B. APPROVAL OF MINUTES OF THE JULY 1, 2010 MEETING

Let's move to item B., Approval of Minutes of the July 1, 2010 Meeting. Any comments or suggestions?

Ms. Brandis Sarich: I was not here so ...(inaudible)...

Mr. Fredericksen: Okay.

Mr. Bruce U`u: Motion to accept.

Mr. Fredericksen: Okay, we have a motion to accept.

Mr. Ray Hutaff: I seconded it.

Mr. Fredericksen: A second.

There being no discussion, the motion was put to a vote.

It has been moved by Mr. U`u, seconded by Mr. Hutaff, then unanimously

VOTED: to accept the minutes of July 1, 2010

Mr. Fredericksen: Okay, motion passes. Before we get started, if anyone wants to testify on an item that's on the agenda, you may come forward now or testify during the meeting. But if you do testify now, please understand that you don't come back unless you have something new to testify about, to add. Okay, anyone? Come forward and state your name, please.

Ms. Jo Anne Johnson: Aloha. I'm Jo Ann Johnson, and I'm testifying on measure D, which is on your agenda today, which is the submittal of the Resolution 10-43 and the accompanying bill, and I just wanted to let you have a little bit of an idea of why I actually proposed this. Because of Lahaina Town's cultural, you know, importance, really I think in the whole community, and the historical nature of it, what I saw happening is that many times demolition permits or other kinds of permit to dramatically alter or change all of Lahaina Town, it was -- it was evaporating, and many times there were permits where they would be after-the-fact permits because people would do midnight demolition of these beautiful historic homes. So it was making me heart sick because not only were the homes going, but the streetscapes, the beautiful old growth trees are being cut down left and right in Lahaina Town, so I tried to find some way to visit with our staff in Council Services but also Mr. Solamillo, who was really helpful because he saw the same kind of things happening. So, for me, because it's so historic and it's so culturally significant, my thing has always been to put it with the right body who would be reviewing the demolition permits, put it with people who have the expertise and really have maybe a different set of eyes the way they're looking at permits and who can come up with creative ideas how we may save some of these historic structures instead of just demolishing them. So that is where this bill is actually coming from because I believe it rests with the Cultural Resources Commission. And our historic districts, so many times they're already threatened because if you go below a certain threshold of number of dwellings that are of this particular age, once you go below that certain level, it means that you lose that designation, which not only means you lose the expertise and many of the tools that you would ordinarily have to help preserve structures or get the consultations that you need, you just, you know, it's destroying the ambiance and the beauty of Lahaina Town.

So one of the other things that learned in this whole process, which really is, you know, another kind of threat, is that many times the older families, they don't have the money to repair many of these old historic structures, so if we can find a way, and there are grant monies available and even I found out that through the ability for families to file, they are unaware of a really significant tax break where they would just pay a minimum tax if they can go through the process of getting their particular property on the historic register, they would be paying minimum tax instead of paying like some of these individuals who are actually being, you know, basically forced out of their homes because of the thousands and thousands of dollar. A friend of mine actually did this. He went through the process and he now only pays I think it's like \$300 a year as opposed to over \$10,000 a year in taxes. So that is helping these families to maintain the residences.

So there are all kinds of creative ideas we have but if you're not there to help these people through the process, if the process does not support what is actually able to be done to assist them in even some of the studies, sometimes it's asbestos issues, sometimes it's safety on maybe there's termite damage, they look at these bills and they go, oh, I can't afford that, but that's where your expertise, combined with Council grant monies and other monies that we may be able to access, plus the expertise that rests on the advisory board and just you, yourselves, as resources, I think it is invaluable and it is so important that these issues come before you and that's the thrust of the bill to bring you, as the overseeing body, for the demolition permits and for other things having to do with the legislation that's before you.

So I'm just here to support it and if you have any questions, fine. If not, I think Mr. Solamillo will, you know, hopefully be able to answer some of the questions. And if you do find that through the process of discussion that there's things that you can do to recommend improving the bill, I'm totally open to that because this is the bill for your comment and for your review prior to actually being adopted. So I thank you so much for your consideration and the time.

Mr. Fredericksen: Well, and thank you, Jo Anne, for drafting the bill and coming here. I have one question. It's just in -- you mentioned the County grants. What sort of grants are we talking about or are you talking about?

Ms. Johnson: Well, a lot of time we, through either Economic Development, sometimes cultural preservation grants, even if there's a historic property that perhaps we could write a grant to assist individuals or even look at lobbying at the State legislature for grant monies for historic structures because I sent forward another measure to the State to actually help support those cultural icons, if you will, and really historic properties to have the State set aside some money, just like they do for open space or other things, because we're losing our small town, you know, ambiance. We're losing actually history. So I don't want that to go away. So I -- and I'm hoping to have - I don't what -- whether it's on the outside or with new administration, I have no idea what my role will be, but regardless of whether I'm in government, outside government, private sector, whatever it happens to be, I want to help assist because I really believe that grant money, while it's hard to come by these days because of budget constraints, I think if you really can emphasize the importance of maintaining the ties, not only the ties with the buildings and structures, but the familial presence in our communities, having the families that lived their years ago be able to have their offspring or their descendants be able to maintain those homes and live there and have a presence in the community. That, to me, is really important. So whatever I can do to access any monies, whether it's at the Federal level, the State level, or the local level, or even public/private partnerships, like through Historic Hawaii Foundation, these are really important things. So whatever it takes, whatever people need, even some of the studies that would be required, I think we can creative and if nothing else, we can help to

provide expertise, which sometimes defray some of the expenses where you have to go and hire a consultant.

Mr. Fredericksen: Any other questions, Commission Members? Yeah, Bruce.

Mr. U'u: Good morning. Just one question. The potential to lose certain designations in Lahaina with the potential when it falls below a certain percentage, do we have a study on that or where are we in that as we speak now?

Ms. Johnson: I know when we were talking about it with staff and perhaps, you know, your staff member can also assist because, you know, it depends, there's the National Historic and the there's also, you know, other historic designations, so I believe when we last visited, when I was asking that very question, I think we were perilously close because you have to have that percentage maintained. So it may be that we've already crossed that border, I don't believe we have though, because I asked Penny Wakida, in another venue, and she said no, that we had, as far as she understood, we had not yet lost that designation. So I think that it is going to be important and perhaps that's one of the ways that you would be able to actually, because I was never able, we didn't have enough time because this was kind of like in a hail Mary pass, if you will, I didn't have time to do exactly where we are and write whatever letters are required, but I think that you ask a really important question because I know we're close to it though.

Mr. Fredericksen: And I'd just like to make a comment. One of the things was Federal standards or -- yeah, let's just use the word "standards," is that oftentimes, at least in Lahaina's case, they tend to recognize more the existing -- the above-ground architecture and the standards do not necessarily take into account or recognize the importance of the Hawaiian culture, which there's not a lot of above-ground site remnants, it's all underground but that does not mean that it's not there and that the area is not significant. So that's something maybe that we could provide some -- some input on in the process and we'll ask Stanley some related questions. Any other questions for Jo Anne? Yeah, Ray.

Mr. Hutaff: Just a comment, Jo Anne. First of all, thank you for being who you are.

Ms. Johnson: Thank you.

Mr. Hutaff: And thank you for sharing the information that you have. And me, personally, you haven't said anything I disagree with.

Ms. Johnson: Yeah, I really appreciate that, and thank you so much for your service too. I know that you -- you know, it's just like sometimes you look at where certain decision making rests and I can't think of a more fitting place than before the Cultural Resources Commission because you -- you are the ones that have the expertise and have access to

it and, you know, I'll be the last one and the first one to tell you I don't have that expertise; that that's why I feel it rests with you and I really appreciate you even considering this and, you know, potentially undertaking the, you know, the very important obligations that are attached to this. So thanks so much to all of you and for your service as well.

Mr. Fredericksen: Thank you, Jo Anne.

Ms. Johnson: Thank you. Thanks so much.

Mr. Fredericksen: Any other members of the audience wanna testify on this or any other items on the agenda? Okay, if not, as we go through -- work through our agenda for each specific item, then if there are members of the audience who wanna testify for those particular items, you may. Item C, Advisory Review.

Mr. Stanley Solamillo read the following item description into the record:

C. ADVISORY REVIEW

- 1. MS. SHARIANN SYLVA, requesting after-the-fact Historic District design approval for a 6-foot wooden wall adjoining Front Street and Holy Innocence Church, located at 545 Front Street, TMK (2) 4-7-002: 011, Historic District 1, Lahaina National historic Landmark, Lahaina, Hawai'i. The CRC may provide comments and recommendations. Public testimony will be accepted. (E. Wade)**

Mr. Stanley Solamillo: The planner for this is Erin Wade but Erin Wade had to leave Hawaii so she's on the Mainland, so I get to be Erin today. As I mentioned, this is located in Historic District No. 1. It is for an appurtenance, which is being constructed and it abuts Front Street. This is a detail of the appurtenance. Based on Maui County Code, Chapter 19.040.40, there's two classifications for these types of appurtenances: one is a fence, which is an open barrier post and wire, wood, chainlink, or similar material that closes, marks, or borders a field, yard, or lot, and that does not limit by more than 50% visibility or the flow of air and light. A wall is a constructed solid barrier of concrete, stone, brick, tile, wood, or similar type of material that closes, marks, or borders a field, yard, or lot, and that limits visibility and restricts the flow of air and light. For the purposes of this application, the appurtenance is defined as a wall. Under Chapter 2.88, your authority as the Cultural Resources Commission, allows you to provide design review for projects affecting any building or structure, site or district eligible for listing in the Hawaii or National Register of Historic Places, and that includes the Lahaina National Historic Landmark.

I'll remind you that a district possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. And that's a definition from the National Register of Historic Places.

Maui County found that the wall was inconsistent with the Lahaina Design Guidelines and is, in its current state, in need of repair and replacement. Staff, in this case, Erin Wade, I believe, also surveyed fences and walls of nearby properties, and these are properties located within Historic Districts 1, 2, and they are all found within the NHL. You were also provided with copies of the Lahaina Architectural Style Book and that, from the date of the inception of the Lahaina Historic Landmark, was the basis for any construction of walls or fences. Okay, the new pending Lahaina Historic District Design Guidelines is something which has not yet been accepted and adopted, so even though we accept the recommendations from that, the guiding document right now is still the Architectural Style Book.

These are -- the top two photographs; actually, all the photographs, I believe, are shots of the property. These are located at Hale Leilani, a residential condominium project on Front Street between the Holy Innocense Episcopal Church and Kamehameha Iki Park in Historic District No. 1. These are fences and walls which you will find if you do a pedestrian survey through Lahaina. They have a lot of rock walls, lava rock walls. They also have old kuleana walls, which have been, unfortunately, being taken down. They have picket fences. And these are the types of appurtenances, if you will, which were recommended by the Lahaina Architectural Style Book. We have also have, in the case of No. 16, a fence which is similar to the one that the applicant has on the property. For the most part, the fences are 42 inches or lower, and they do not obstruct the views of a pedestrian onto the front yard of those properties; the only exception, of course, is going to be the prison, which I don't think I have a shot of, the prison, which is No. 11, the prison which is obviously -- whose walls are meant to enclose and keep people inside so it's higher than 36 inches. But for the most part, most residence within Lahaina have stuck to the guidelines established by the guidebook.

With this case, we're going to ask the applicant to come up and present her case to the Commission.

Mr. Frank Sylva: Aloha kakou. My name is Frank Sylva. I'm representing my daughter, Shariann Sylva, who own the property, and who built this fence here. The reason for the erection of this fence over the years, without a fence, we a lot of traffic entering the property, using the pipe water, and next to them is 505 Front Street, where there's liquor being sold, and on Front Street. So a few times had people -- get fights, broken glasses in the yard, broken beer bottles. Right across the street is the Lahaina Tennis Courts where drug activity goes on. It's well know in Lahaina that you have drugs right across their house in the Lahaina Tennis Court area. And even sometimes it was observed that drug

deals was going on right in her yard without the fence. So at some point in time, my daughter felt that she should put up a fence to keep those types of activities out. And another thing, this was brought to my attention this morning by Mr. Kapu here, that the fence is up about four or five years not, and what my daughter did, it's one property, the owner on the ocean side of the property, not on the Front Street, I believe went in for a permit and he built his sometime back, so the landowners in the back of this gentleman, all they did was follow his -- his structure of his fence to make it uniform and what they did was just follow that person's wall structure. I believe, coming to mind now, that's all I can remember of saying. You folks have any questions?

Mr. Fredericksen: Thank you. Any Commission Members have question, comment? Yeah, Bruce, or Ray?

Mr. Hutaff: How long has it been up?

Mr. Sylva: I thought was two years, approximately two years, but Mr. Kapu just corrected me, he said the wall been up four to five years now.

Mr. Hutaff: Four to five years, and you are stating that your neighbors, which are makai side your property, just followed the exact same fence that you have there with a permit?

Mr. Sylva: That's correct. She followed them.

Mr. Hutaff: Oh, I see. I see. So they had assumed -- you're assuming -- or you know for a fact that they actually had a permit to put that fence up?

Mr. Sylva: I didn't see the permit, but I believe they had a permit. Maybe he can answer, working for the County, if they had a permit. I kinda more than assume.

Mr. Hutaff: Okay. Thank you.

Mr. Fredericksen: But in this instance, you folks did have a permit or not?

Mr. Sylva: Did not have a permit.

Mr. Fredericksen: Did you have a comment, Bruce, or question?

Mr. U`u: Yeah. Yeah. The height of the wall is six feet?

Mr. Sylva: See on a letter we had from the County it states six feet. Norman ...(inaudible)... and myself, measured this morning before we came here, it was 70 inches. It's two inches below six feet.

Mr. U`u: Because --

Mr. Sylva: Five-ten. Five feet ten inches.

Mr. U`u: And in reading the Department's recommendation, that the applicant be asked to remove sections of the wall immediately adjacent to Front Street and replace these with a wall or fence consistent with the Architectural Style Book and the pending Lahaina Design Guidelines. Are you opposed to what they recommend? I'm just asking if you --

Mr. Sylva: Actually, I no think I can answer that right offhand 'cause I really don't know. Oppose what? She just followed what the neighbors had so -- oh I see. Oh, okay. But to my attention right now, I guess your recommendation is rock walls.

Mr. U`u: That's what the staff recommends but we haven't looked at it as far as --

Mr. Sylva: Oh, okay.

Mr. Fredericksen: Or, I believe, lower wooden fence.

Mr. U`u: Or lower fence.

Mr. Sylva: Oh, okay. What is the law? What is the ruling on the height, you know? I would say a rock wall like this is nice and beautiful, but what is the law? Ten feet? Six feet? Four feet?

Mr. U`u: I think it's six feet, if I'm not mistaken.

Mr. Sylva: I believe it's six feet. I'm not sure. But I believe it's six feet wall so I cannot give you an answer right now on whichever -- like I said, both of them is nice, the height.

Mr. Fredericksen: Stanley, do you know what it is?

Mr. U`u: It's six feet.

Mr. Fredericksen: Just a second.

Unidentified Speaker: ...(inaudible)...

Mr. Fredericksen: Just a second. We'll listen to the planner and then you can come up and ...(inaudible)...

Mr. Solamillo: My understanding was that it was much lower. When you abut Front Street then it has to be 42 inches.

Ms. Brandis Sarich: Yeah.

Mr. Fredericksen: Because it fronts Front Street?

Mr. Solamillo: Right, so if it were further back from Front Street --

Mr. Fredericksen: Then it's six feet --

Mr. Solamillo: Then you can go to a six-foot wall.

Mr. Fredericksen: But along Front Street it's -- is it 42 inches or 48 inches? I can't remember. Brandis?

Mr. Solamillo: I thought it was 42.

Ms. Sarich: I though it was 42 also.

Mr. Fredericksen: Forty-two inches.

Mr. Sylva: Okay, I think, you know, different height dimensions been given us. Good if we can have the facts whether it's 40, 48, 50. People giving different height restrictions. I feel my daughter is the landowner. We wanna know what is the true height. If somebody can gather that for us so we'd find out. And I think we not experts in this field so if you folks can help us and tell us, that would be really helpful for us.

Mr. Fredericksen: Thank you. Did you wanna come up and say something, ma'am? Just please come and state your name for the record. Thank you. Good morning.

Ms. Shariann Sylva: I'm Sharon Sylva. I'm Shariann's mom. And the reason why -- she was told to lower the fence or replace it, and the reason why she's so chose not to 'cause, financially, she can't afford it. She's a single mom. She has two children. One of them goes to Kamehameha Maui and one at Kam III. And she thought, well, at least she'd have to remove it completely if she was asked to, but she's asking that you allow it to stay. Otherwise, she just has to remove it because, financially, she cannot replace it with another wall.

Mr. Fredericksen: Thank you. Any questions? Any comments? Thank you. Any other questions or comments?

Ms. Sarich: I have general comments ...(inaudible)...

Mr. Fredericksen: Yeah. Okay. Oh, but for the --

Ms. Sarich: Representative of the applicant? No? Oh, go ahead, Ray.

Mr. Hutaff: You basically stated that the reason the fence was put up, I mean you told us why you put up a fence, but the reason that you put up a fence was to keep people from going onto your property. Is that correct?

Mr. Sylva: That is correct.

Mr. Hutaff: There's no other reason whatsoever, privacy? It's all basically safety, keeping people out of your property?

Mr. Sylva: Yes, because we had broken beer bottles ...(inaudible)... several times they had fights ...(inaudible)... and there's been some broken bottles, trash in the yard ...(inaudible)...

Mr. Hutaff: Would you say that those items that you found in your yard were thrown there or people were just congregating there and left them there? In other words, did somebody just throw them -- walk on the sidewalk and throw them or would you --

Mr. Sylva: I would say people passing by --

Mr. Hutaff: Just passing by.

Mr. Sylva: ...(inaudible)... on the Front Street just throw them in his yard here ...(inaudible)... people congregating there too, talking story, and even some people felt free to get their lunch and sit in the yard, which is alright.

Mr. Hutaff: Yeah, yeah, yeah, yeah.

Mr. Sylva: But ...(inaudible)... we not going scream at them get out of my yard or whatever --

Mr. Hutaff: Make sense to us, yeah?

Mr. Sylva: So much and so much because, you know, Lahaina growing, business is growing ...(inaudible)...

Mr. Hutaff: Okay. Since you put up that fence, have you found the same kind of problems on the Front Street side of the fence; in other words, is people still throwing stuff down there?

Mr. Sylva: I would say it has been curtailed about 90%. We still going find some beer bottles in the yard, some trash I guess when people walking ...(inaudible)...

Mr. Fredericksen: ...(inaudible)...

Mr. Sylva: Instead of throwing them on the road, throw it over the fence, but according to my daughter she said like about 90% of that has been curtailed.

Mr. Hutaff: Thank you.

Mr. Sylva: Not that much now.

Mr. Hutaff: Thank you so much.

Mr. Sylva: You're welcome.

Mr. Fredericksen: Warren.

Mr. Warren Osako: Mr. Sylva, at the time you constructed the fence or wall, as they call it, were you aware that you were required to have a permit?

Mr. Sylva: Sir, my daughter had constructed the fence without my knowledge 'cause when the fence went up, she said, dad, drive by, you'll see I put up a nice fence. I said, oh, right on. So I drove by and, eh, she get one nice fence. Did you get a permit for that? She said no. I just following my neighbor with the exact fence that they have. It's very similar to what they have. I just followed them. I told her, at that time, I no think that's good enough ...(inaudible)...

Mr. Osako: So at that time when you notified her, did you or she apply for a permit?

Mr. Sylva: No, we did not.

Mr. Osako: So you just wanna let it slide?

Mr. Sylva: Not exactly let it slide. Her conclusion was that, see, this lot here ...(inaudible)... as one lot. We cannot build anything without -- there's an association. It's considered as one lot. So when then people on the beach front area I believe went in for a permit ...(inaudible)... I think they ...(inaudible)... so my daughter thought, oh, a permit had been

granted for this property. I'm just going to follow what he did. That was her understanding. Her intent that, oh, I just follow what they did, and she said this was one property, not six individual lots, six individual properties. She thought she was in compliance. What you think sometimes and what the fact is, is two different things. But I guess she thought she was in -- following -- by following this design and the people in front of her, she thought she was in compliance.

Mr. Osako: Okay, then the question would be for Stanley then, would this be considered condominium or individual as far as the fence? They're saying it's one lot. They're in a condominium situation. One big lot with condominium owners and they have an association.

Mr. Solamillo: I really am not qualified to answer that. I'm sorry. I mean it's called a "condominium." But, technically, in a condominium you have, you know, I'm assuming, one association that acts on behalf of all the members so that's -- that might be perceived as one owner but, you know, this is not my particular case and I can't address that.

Mr. Osako: So being we're not sure if she's individually responsible, in a sense she is because she had it constructed --

Mr. Solamillo: She had the fence constructed.

Mr. Osako: But we should maybe try to find out if the condominium owners association is also responsible.

Mr. Solamillo: If that's what you wish.

Mr. Fredericksen: Bruce.

Mr. U`u: Just a question for Mr. Sylva. I'm familiar with Front Street, but not as familiar as most people here, definitely, on Front Street, fronting Front Street, how much residential homes you get? How much is there in that area on Front Street? And I know it's different because I think the difference will be --

Mr. Sylva: Let's go from what street to what street.

Mr. U`u: Just in your area, by 505. From 505 and down. I think that's the heavier traffic flow areas. I know above or more --

Mr. Fredericksen: Towards Olowalu side?

Mr. U`u: To Olowalu side you get the residential but the heavy traffic would probably start from 505 and work its way down to the Kapalua --

Mr. Sylva: Down to Front Street -- down to --

Mr. U`u: Yes.

Mr. Sylva: Town? Down to Lahaina Town?

Mr. U`u: Not much residential?

Mr. Sylva: Yeah, from 505 Front Street, adjacent 505 Front Street you have the park. What the name of the park? Kamehameha Iki Park. This is right next to Kamehameha Iki Park, which we have I believe six or seven dwellings, six or seven homes, and right next to that is --

Mr. Fredericksen: The church.

Mr. Sylva: Holy Innocent Church. Right next to the Holy Innocent Church is Kamehameha III School, and that is from Shaw Street to Prison Street. That block.

Mr. U`u: The reason I bring it up is because it's in a unusual circumstance where it's a residential neighborhood that's adjacent to all commercial buildings and, you know, when somebody lives there 24/7 and call it a residential home, I think it differs from commercial, and different where you can build one short fence for commercial area where, you know, you can peek over the yard, you know, you gone at 3:40, you gone at 4, or, you know, you not the owners, so I don't know at what point do you say, as a body, or myself, speaking to myself, it's okay to have a six-foot fence for security reasons, you know. That's something I need to ask myself and kinda mull it over or -- and taking into consideration that, you know, people actually live in that area where it's high density, high traffic, so I put myself in your daughter's predicament, and I'm from Paia and Paia get some heavy traffic, and I know some houses in Paia, which is rare, where get residential abutting the town, they get the same fence because of the same reasons that -- that your daughter built it for, for privacy, for safety, and I know the people who live in that area so I don't know how you -- you know, I know we gotta follow the rules and, you know, gotta be one 36-inch fence, 42, we have not idea and you can take over and niele, but I no like nobody picking on my house if I over there and if I get my kids that playing in the front yard in a high density area. So, you know, I kinda stuck in a rock and a hard place where on what to do, so I looking for some guidance from my veterans on the Commission.

Mr. Hutaff: The only answer I have is that it's a Historic District. It has a little different parameters as far as that; definitely sympathetic to the situation too, but we need to discuss it I guess.

Mr. Fredericksen: Stanley, I have a question for you.

Mr. Solamillo: Are you finish with the applicant?

Mr. Fredericksen: Oh, I'm sorry. Excuse me. Any other questions for Mr. Sylva? Thank you. Thank you for your testimony.

Mr. Sylva: Mahalo. Thank you.

Mr. Fredericksen: Thank you. On the -- does anyone else want to testify on this? Please come forward and state your name.

Mr. Keeaumoku Kapu: Hi. Aloha. Keeaumoku Kapu from Lahaina. You know, kinda interesting we talking about walls because when you drive into Lahaina Town, they get the great wall of Lahaina now, and it totally cuts off the historic ambiance of our whole town in the entrance when everybody driving into that, we have to look at this facade on both sides of the freeway. There was a comment that was made that four to five years the wall was up. It was the ...(inaudible)... wall within this condominium project; well, complex. The history of this complex dates back pretty long time. I mean that used to be Kauikeaouli's property, which eventually someday was turned over to Pioneer Mill, which was the manager's residence. So there is a lot of historic properties within the area and within, I would say, the last five years, it went through one drastic change over. A lot of the houses was, on a minor permit, yeah, went inside reservations - total. I mean the renovation was so total, on one minor application that came through this process, that allowed all these houses within the dwellings, now the ocean side to be turned into, I call them "hostels." Yeah? You get one manager's house at nine bedrooms. I think they cut it down to like 14 or 15 bedrooms now, and that's the - what do you call it? The vacationers paradise now within that area. The problems what Mr. Sylva was talking about, and I keen to those problems because I used to be the President of Hui O Wa`a Kaulua, which is right next, and we went in to file a complaint on a wall that was being built, exactly the same, the same thing and everything, but we was more concerned of the subsurface digging that they were doing, they was finding mitten, all different types of historic artifacts. So we called DLNR. They brought one officer down there. They slapped the guy on the wrist. And they left. And what we was requesting for that the SHPD to require a monitor to be present while these guys was uprooting and digging footings so they could put the fences in. I don't know how that went through the discretion of this council to allow them to build that six-foot fence around the whole condominium area. So I think what you have in front of you is something that is even more horrendous that to look at just, basically, one person's intuition to make

sure that he protected his personal property rights on his area by following the condominium or the whatever it is in there, the association, on how they were allowed to do it, they just followed whatever they thought was compliant, and it's not like one huge giant wall, it's just one section of the Front Street wall, which is only I would say from this wall to that wall that is abutting the Front Street Historic District view plain. So we gotta consider those things, but you gotta also consider the fact that the kind of activities that happen within that area. We seen drug trafficking. We seen fights. I mean you look at one of the pictures, the corner of the fence, the reason why the hole is there because had one argument, had one fight, and they went push up against the fence and that piece broke. So many dynamics that you need to consider and my, I guess, I had no idea that this was going to be on, my reasons for coming was to review what is the intent of Chapter 19, 2.88, on your discretion as pertaining to how we need to minimize or how we need to grab more of your responsibilities as a Cultural Resources Commission to be more stringent on certain things, whether or not we should add or change. We have a zoning problem that's most definitely that we have to look at within a historic district. But when you're looking at like how Mr. U`u said, on the condominium versus the residential versus the commercial, what type of zoning, what you guys have in front of you is I would probably say is a kind of complex issue, which basically I would feel that this item should be deferred to try to see maybe the Planning Department could come to some kind of conclusion or remedy with the applicant to discuss those matters on whether or not they -- we need to be diligent on how we going protect the historic properties; at the same time, how we're going to protect the integrity of the town as well as the violations and the rights, especially the rights of the private landowner. The worst time ever happens is Halloween time. That's when you get everything goes on behind fences and not on Front Street, and I not talking about the owners, I talking about the populace, the public, on how that place turns into a mad house. So you guys got one task ahead of you. Whatever the recommendations is, like I said, this item should be deferred to the Planning Commission to come up and, you know, come up with a resolution or to resolve the issue and not put the burden on the applicant because he was only following the condominium guidelines. Mahalo.

Mr. Fredericksen: Any questions, comments? Ray?

Mr. Hutaff: Okay. You're ma`a to that area today. Am I correct?

Mr. Kapu: Yeah.

Mr. Hutaff: Your information, if I asked you if you've observed in the last week or two weeks or three weeks, is the surf school still there? Are the houses up in front still doing business up front?

Mr. Kapu: No. In fact, that was one of the biggest problem too. When you got one surf school going through there, all nine other surf schools think they can use the same spigot.

So when one was operating a surf school within an area, I guess they had some problem with the County on the ordinances of commercial use versus residential, so that spawned sideways, I guess the surf schools are out but -- and they're required to have a shop some place in town in order to operate under, you know, that surfing standard, but it has been one of the major problems with the surf schools.

Mr. Hutaff: So, today, not?

Mr. Kapu: I think it's tightened up, and the residents within that area felt that, you know, the only way that they could tighten this up, the tourists look at this town as being a historic to the fact where they can use anything they see. I mean if you get something lying in your lawn, they'll come up to you and ask you would you like to sell this? And that's how that town is. It's kinda crazy.

Mr. Hutaff: And do you believe that some of those homes in there are being used as vacation rentals or -- I'm going for your belief.

Mr. Kapu: When -- there was some years past that the houses near the oceanfront most definitely was used for hostels and I would say bed and breakfasts. Sure.

Mr. Hutaff: So profit, basically?

Mr. Kapu: Yeah, because I knew couple people that actually - I don't know whether it was a lease or rented that area and it was expensive the rent. So if somebody get one beachfront property renting that place for 5,000 a month and he only living there by himself, you best believe he's turning that into some kind of revenue.

Mr. Hutaff: Okay, so you don't direct knowledge of that?

Mr. Kapu: No.

Mr. Fredericksen: No, and that's completely off the subject that we're looking at.

Mr. Hutaff: Well, I started off, basically, if the homes were being used for profit versus, you know, somebody actually living in there.

Mr. Fredericksen: But those are different homes that aren't associated with this particular fence.

Mr. Hutaff: But if it's a condo, it's actually ...(inaudible)...

Mr. Kapu: And let me be clear, that was before. I don't know about now. I know that now that because of this, this different style. If you look on the Kamehameha Iki's side of the park, they still have the old fence and it only goes from Front Street probably about maybe I would say 50 yards of the white fence, and the rest is this fence, style of fence, going all the way down to the beach. So interesting scenario ...(inaudible)...

Mr. Hutaff: I guess maybe to understand why I was asking is that could those beer bottles and the congregations and the fight actually have started because of the people who are within that area rather than outside the area walking down the street.

Mr. Kapu: No. Because that's -- where that area is, the front, right across is the tennis courts.

Mr. Hutaff: Right.

Mr. Kapu: And what congregates within the tennis courts, it used to congregate within Kamehameha Iki Park until we had to take some stringent measures, and I no like go through those details on what had to occur to make sure that the nuisances was out of Kamehameha Iki Park, but things happen in that area I would say nightly, unless maybe three to five times.

Mr. Hutaff: Wow.

Mr. Kapu: It's horrendous.

Mr. Fredericksen: Any other questions, comments for Keeaumoku? Brandis.

Ms. Sarich: I do have a question for you. I don't live in Lahaina but I admire it as almost a museum that people can learn to see, and I just think about the fact that someone lives in the core and I wonder what your opinion is on if people see people's front yards and actually see that people live there, will they start to learn to respect Lahaina as a really valuable place where people still live and kind of the importance that actually knowing that people live there as opposed to walling up residences so that there's no connection.

Mr. Kapu: I think that's more fear, not just the connection of just that allowing everyone else to be a part of the historic ambiance of the town. That's the question that is in front of us on how that is being deferred for the public trust and their rights under the historic district guidelines. I think when you look at the historic district, it goes from the beginning of Front Street right up to 505, yeah? And that's not even in the historic district. Then you get all these big intrusive walls and all this kind -- then you get from 505 right down to Kamehameha III School, that's Historic District 1. Now everything has to change. Now all of a sudden the residences within this small area shouldn't feel like they -- they're

imprisoned on strict ordinances and guidelines. Then from Kamehameha III School, through the whole whaling district, you have a Historic District 2, which is we're talking about facades, we're talking about sign ordinances, we're talking about all these other things. Then you get to one other Historic 3 District area. Then you start seeing the fence go like this, yeah, and like that, all the way through town. What is the historic district in minds eye or mind set by not looking at the stringent guidelines or policies when you go through one historic district, like if you go through Boston or Philadelphia and you see all these colonial buildings? I see that as a perfect example of a historic national registered area. But when you come into that town, you pass the great wall of Lahaina, and you turn left into Front Street, and, boom, what are you looking at? 505 Front Street and the whole whaling town. Is the history the whaling? Is the history the park? What is the history in this area? So I think you guys need to define for yourself, and it's good that Jo Anne has this -- this other topic on the agenda, which I came to talk about, on how we need to really tackle these issues on taking more of the control from the Planning Department side to put it under your discretion so we not going kinda little bit backwards over here where the Planning is making all these recommendations, not going through this, then all of a sudden we get signs with lights now and this place slowly turns into Disneyland. I think that was where the concern was to not allow this town to turn into one big giant LA or Disneyland. The fence may be a problem but if it's on the Front Street side, then maybe the Planning Department needs to come up with some kind of remedy and not stick it to you guys where all of sudden you guys have to make a determination on this poor family who just wants to protect their property, their interest from the nuisance that happens in that town every night. Mahalo. I hope I answered your question.

Ms. Sarich: Thank you.

Mr. Fredericksen: Thanks, Keeaumoku.

Mr. Kapu: Thank you.

Mr. Fredericksen: Anyone else want to testify on this item?

Ms. Uilani Kapu: Aloha. Uilani Kapu. Okay, we're going to start from the beginning here. One, surf schools do not have any conditions in the houses there. All of those houses are residential. Everything within that complex, and it's interesting to see what it's labeled as - a condominium residential area - only because now looking at the fences and the way it is, it's securing itself as an area of residence. In the past, this house, specifically, has gone through surf schools, drug house -- well, let's take it more back, drug house, surf school, drug house, so now that the Sylvas own it, everybody is knowing it as a drug house, a surf school, so they use as they remember it. Since they have bought it, as a single parent having children, she felt her safety is something that she needs to think about for her children, and I can see that point. We have fought with these walls in this area for a long

time because we knew what historical district considers. What the rules are. What the laws are. So we fought it from the beginning when that back house, that oceanfront, started it. Being that now it's a residential area completely, no commercial in there, now it has to be changed. Because it's a residential commercial area, this one section is now a resident. This one section is now labeled as a "condominium residential area" on Front Street. So the protection of their area, of their community within that area, they do have children running around in that area, so they're only protecting their own lifestyle. They're only protecting everything that's outside. I know there's laws. I know laws shouldn't be broken. I know, for this, it'll make a very big impact on everybody else within the historical district. I know that. Is -- okay, they're here for an after-the-fact permit. I understand that. But we need to understand that this whole section within Lahaina is one residential parcel, and whether they're going to change it to residential, leave it commercial residential, they need to make the decision with your help, with the Planning Department's help, we need to do that. This item should be deferred to look into it more because we can't throw the book at one person for something that she was following with everybody else. This area is a highly significant area. I understand because when they were putting in the pilings, we were right there watching. And it brings me back to why this is the reason why we need a historical officer within Lahaina. It's because of things like this. They catch it right then and there when it happens. They walk those streets every single day and they make sure everybody abides by the rules and regulations within the historical district. We have fought this with the Cultural Resources Commission for years. If it has to fall under, I don't know, Lahaina Restoration Foundation for them to pay it? Then so be it. But you folks, as a Commission, should have jurisdiction of it because this is your kuleana. And I mahalo you folks for that because it's hard. This is a hard decision right now because of the whole complex being a residential, and because of the whole complex having children now, and not surf schools, druggies, and everything else. This is a community. One small community that didn't ask to be put within that district but chose to be there. Didn't understand the rules and regulations that came with it, but they have to abide by it. So I ask you folks to work with them, to help them. Because as the mom stated, she's a single parent. She can't afford it. But let's help her to make it safe for her and also as you folks, as a Commission, to make it where it's not going to set a precedence or anything else because there are residential houses off of Front Street, behind it, right behind the wharf, right along that side street. There's residential right there. So how is this going to help all of us within Lahaina to make the laws stand, to make it stringent for anybody else, but to also help the residents there, right now, that didn't ask for it? So I'm glad I came. And I do wanna review Jo Anne's proposal that she's bringing in front of you folks, and I will as this meeting goes on, but I thank you guys for this and please think about having a historical officer. We really need it for purposes like this. Mahalo.

Mr. Fredericksen: Any comments or questions? Yeah, Bruce.

Mr. U'u: I have a comment. I know when you make the laws stringent, it becomes expensive, and that was always my concerns is when you get the local homeowners who have to abide by certain restrictions where it becomes costly for them and I think Councilwoman Johnson brought up that people who looking to renovate to keep that character and the charm of Lahaina, there's grant money, potential grant money for them to apply, but in this instance, there is none. And I think, at times, you gotta take a case-by-case scenario instead of saying, you know, this property or this area is to be followed by these rules and this area by these rules because I think, as a body, you don't wanna make things hard on certain people, you know, especially when it's a residential that's being surrounded by commercial areas, and I don't wanna stick it to a single family trying to make -- I was raised by a single mom. We had hard time put food on the table let alone build one fence around the yard and I don't wanna make it restrictive or unfair to anyone to -- and that's why I agree with the case-by-case, you know, I know I looking for guidance again, you know. If was me, I let 'em go. Seriously. If was just me. That's how I feel. If you get residential and this the safe -- I think safety outweighs everything when you're looking from that and taking two steps back, and Halloween around the corner or just happened, that's my kuleana on how I would deal with the issue. I would defer 'em, and to defer 'em, for me, would be just to let the I guess the proper people or the staff stew on it for a while and come up with something and give us back something where we can work with instead of removing the fence and then the conscience is on me if something happens throughout the day. I know that place. I know Lahaina good enough where that's a bad place across the street. I know that much. And I wouldn't want my daughter to be living there and to thinking that something bad might happen. I wouldn't be able to sleep at night and I think we all hold that responsibility right now.

Mr. Fredericksen: Any other comments, Commission Members? Ray? Oh, go ahead, Warren.

Mr. Hutaff: No, no, please, I let you go first.

Mr. Osako: Once again, I'd like to go back to whether this is actually a condominium or they're just calling it a condominium to get by the laws. If it is a condominium, then I believe the association should be held responsible. But if they're actually individual homeowners -- because I believe that a condominium means the property is held in common and you own the home. I think we should, you know, find out what it actually is and then if it is a condominium association, they should be held responsible if she built along the guidelines of the condominium association, then the association should be held accountable.

Mr. Fredericksen: So it seems to me that the -- at least some of the Commission feels that there should be a -- some additional time taken to find out, gather some additional information?

Mr. Osako: Correct.

Mr. Fredericksen: Does anyone want to -- any other discussion?

Ms. Sarich: Are we still responding to the ...(inaudible)...

Mr. Fredericksen: I think everything --

Ms. Sarich: Okay.

Mr. Fredericksen: At this point, closed, and we're just doing discussion as a Commission. Oh, Ann? Good morning.

Ms. Ann Cua: Thank you, Chair. I'm sorry I wasn't able to be here earlier. You know, I did just wanna reiterate the Department's position on this one, and we're just throwing the facts out for you, I don't know if the property's held in a condominium property regime. I don't know if the applicant knows that. When you do have a condominium property regime, you own, you know, your unit and if there's, you know, if there's ten units, then one tenth of the common area. I'm not sure how this is owned. We can -- I don't know if the applicant knows that, but we can find that out. You know, the point we wanna make here, there's a difference between Historic District 1 and Historic District No. 2. Historic District 1 are more of your very, very old cultural sites, like the prison and your old churches, and things like that, and I think our point here was that this is the only wall that -- or fence that we're aware of in Historic District 1, not Historic District 2, which is clearly very different, that is of that height, and so it's more information for this Commission, you know, to make whatever decision and that's why we felt that, you know, as a compromise, to have the wall just lowered along the Front Street side, but we understand the safety concerns, it's just that this is Historic District 1 versus Historic District 2.

Mr. Fredericksen: It is in Historic District 1. Before we go on any further, I just wanted to confirm that -- just a second, Stanley, that no one else from the audience wants to testify on this. That being -- okay, briefly. Come forward and state your name, please.

Ms. Ellen Lavinski: Aloha. My name is Ellen Lavinski. I've lived in Lahaina 25 years and I bicycle around town a lot, and I know this area because I used to work down at 505 Front Street sometimes in the evenings and bicycle by, so a lot of times there were kinda scary looking groups of people at the tennis court across the street or walking around that had obviously been drinking or doing something else, and so I understand the security issue on this. Looking at the recommendations that could possibly be a low stonewall with bushes, it takes quite a while for dense bushes to grow, and I just thought, possibly, because this is a visual thing, if they had some plants, native Hawaiian plants, because it's

a historic district, planted right in front of the wood fence that could grow and make more of a appropriate visual situation for that.

Mr. Fredericksen: Brandis, did you have a comment?

Ms. Sarich: Not for Ellen. I just have a general comment.

Mr. Fredericksen: Okay. Thank you. Anyone else wants to testify? Okay, at this point, we'll go ahead and end public testimony. Stanley, sorry I cut you off earlier.

Mr. Solamillo: Yeah, I'm glad that Deputy Director Ann Cua is here because she can address the height issue.

Mr. Fredericksen: Yes.

Mr. Solamillo: If you would, Ann?

Ms. Cua: My understanding is that the limit on the fences in the historic district is four feet.

Mr. Fredericksen: So 48 inches is the height. And the reason for that? Is that along Front Street or --

Ms. Cua: Yes.

Mr. Fredericksen: Everywhere? Okay, so it's specifically along Front Street 48 --

Ms. Cua: That's my understanding.

Mr. Fredericksen: 48 inches?

Ms. Cua: That's my understanding.

Mr. Fredericksen: On our handout that we were given, this is a question for Stanley, and maybe Ann, I'm not sure if you have it, on, let's see, page 71, it says, "Chapter 11," at the bottom right-hand corner, and under item 4, "Fences," "A fence design should appear similar to those seen in the residential area today," and then, "1. A fence that defines a yard is usually low to the ground and transparent in nature. A fence should not exceed 42 inches in height." Now, the term, Ann, that's used there, is that like for a chainlink fence or is that -- would that apply to a wood fence? Do you have that?

Ms. Cua: I'm sorry. What are you reading from again? No, I have the report right now.

Mr. Fredericksen: Okay, it's page -- page -- it's just the item that was copied, it says, "Chapter 11, page 71," down in the lower right-hand corner, and then it's under item 4, which says, "Fences."

Mr. Solamillo: This is from the proposed Lahaina Design Guidelines.

Mr. Fredericksen: Yes. Sorry.

Mr. Solamillo: Which has not yet been adopted.

Ms. Sarich: And we're also looking at a wall.

Mr. Hutaff: You're right. We're looking at wall, not a fence.

Mr. Fredericksen: Okay, so this is yet to happen. So the current --

Mr. Solamillo: The recommendations were mentioned as part of the County's recommendation that you could use this as an appropriate design.

Mr. Fredericksen: And that would be 48 inches or this?

Mr. Solamillo: Well, in this case, it's showing 42 but --

Ms. Cua: I'm sorry. It says 42 here. I'm sorry.

Mr. Fredericksen: Is that what it is currently?

Ms. Cua: But it's a -- it's recommended in the design guidelines.

Mr. Solamillo: Right.

Mr. Fredericksen: Okay. Thank you, Ann. Stanley, did you have anything else to --

Mr. Solamillo: I just wanna reiterate the recommendations which the County made --

Mr. Fredericksen: Yes. Okay.

Mr. Solamillo: In this report, and that was, and before I do, I'll probably say a couple of things. Maui County will be coming sometime with a project and, you know, it's probably expected that this Commission, because that project will occur within Historic District 1, will tell them that you have to do X, Y, Z, you must use a low wall abutting Front Street, and, you know, other things of that nature. And I -- I'm familiar, my family comes from Lahaina,

and I'm familiar to a degree also, even though I don't live there, about Front Street in the evening and night hours, but I think, if you look at Lahaina now, and this is what we've been trying to grapple with as a Commission, if we look at Lahaina now, we deal with fences, walls, signage, paint color, and our challenge is that there is no uniformity, and perhaps, you know, it goes to different decisions being made to each property owner's wishes or otherwise because a lot of things happen without permits and a lot of things get approved after-the-fact, and maybe you have to consider that. What is the overall affect if we begin trying to address the needs of this property owner, and the needs of the next property owner, and the needs -- and on and on and on. In the end, you lose what you've been striving for by having design guidelines, by having any kind of control in a historic district, and that's something that you have to weigh. So based upon that, the recommendations from the County Planning Department are: Remove sections of the wall immediately adjacent to Front Street and replace these with a wall or fence consistent with the Architectural Style Book or the pending Lahaina Design Guidelines; plant dense landscaping inside the new wall or fence to provide increased privacy for the occupants of the dwelling.

Mr. Fredericksen: I have a question about the landscaping vegetation. Is that -- so a -- someone could have a low fence or wall and then something that was very dense that nobody could see through or walk through or both?

Mr. Solamillo: I mean if you look at the fence that surround Kamehameha III School, right, it's a low fence, and it has a real dense planting behind it. So if you wanted to get in there, it's very difficult for you to do.

Mr. Fredericksen: But the planting have to be -- it doesn't have to be a 40-whatever, 42 or 48 inches? It can be higher?

Mr. Solamillo: Well, the planting around the school is low.

Mr. Fredericksen: Oh, I know but let's say at another location, there's no height restriction is there on vegetation? I don't --

Ms. Cua: No, there's not.

Mr. Fredericksen: I've never heard of anything.

Ms. Cua: There's not.

Mr. Fredericksen: Okay. Thanks, Ann.

Mr. Solamillo: Thank you, Ann.

Ms. Sarich: But the point is that you can actually see in the front yard down Front Street.

Ms. Cua: That's the intent.

Ms. Sarich: Yeah.

Mr. Solamillo: Yes.

Mr. Fredericksen: Ray, go ahead.

Mr. Hutaff: Yeah ...(inaudible)... changed a little bit because, reading here on page 69 of the landscape of plant materials, one of the things it says, "traditional landscapes should be kept and also to still allow visuals from Front Street to makai and mauka," so if we go by these, then what it's really going to say is that that needs to go and something lower needs to be in its place that fits the design qualities that would pertain to the historic district. To go and address the -- to go and address the security issue of the individual, I think, you know, that's definitely a proper concern. That's something, in my opinion, that the property owner or the homeowner would need to come up with; in other words, if you wanna go ahead and plant a whole bunch of bushes around your house so nobody can see the walls of your house, you're not doing any damage as far the visuals go to makai and mauka because the home is in its way, and then you have that privacy issue there. Having a proper wall or foliage around the house where that fence is today, would be a demarcation line that says, hey, you know, I have to have effort in order to get into your property, therefore, I don't really wanna go ahead and do that, and I think it would still continue to lower the amount of problems you're having with rubbish or broken glass bottles because it's -- people would recognize it. Now, it's just a front yard. We can do whatever we want, okay. And the wall really didn't prevent that anyway a hundred percent although it made a huge difference. The other concern I have too is is that a commercial residential condominium? Because then the whole -- all the rules change as far as privacy goes, okay. If it's only a condominium residential area, then privacy needs to be looked at, and protection, safety needs to be looked a whole lot differently, but still to include the things I just said. I think, you know, I didn't read that page 69, I would have said, gee whiz, sorry. The walls gotta come down. It doesn't fit. But you need to go out there and you need to plant something. You know, the family can go out there and plant something that can be ...(inaudible)... probably read that part says you have to have the visual. It is the rules. It is the law.

Mr. Fredericksen: And that's what is in place at this point and we are the Cultural Resources Commission --

Mr. Hutaff: Right.

Mr. Fredericksen: And that's a historic district.

Mr. Hutaff: You know, we can offer advice, probably, but I think in the end, the rules of what this body has to follow, we have no choice.

Mr. Fredericksen: Bruce, and then Brandis, or Brandis and Bruce.

Mr. U`u: Just to me, the recommendations, where it says, "plant dense landscaping inside the new wall or fence to provide increased privacy," I think the homeowners are not looking for privacy. They're looking for security. And I think that's a big difference. I understand what the recommendations is, but I no think they looking for privacy, I think the issue is security and it's not addressed in the recommendations.

Mr. Fredericksen: Brandis.

Ms. Sarich: Well, I totally understand their desire for security, but I also see that we can't do case-by-case because then everyone in that district would want to have a high wall around their house, most likely, and it seems that there are so many pros of living in a core like Lahaina - you can walk to school; you can walk to many businesses; you live in a museum, basically; you live in an incredibly special place by the ocean, and I think a long with that come with the responsibility of maintaining this special place and part of doing that is, unfortunately, compromising some things and complying with the district. Another thing that I noted is that just wood is supposed to be painted, so perhaps the part of the wall that is left up needs to be painted to comply. So that's one thing that it's not supposed to be stained. And, otherwise, I feel for them but it just seems like you can't let it go in this very small area or else it changes things significantly in the community.

Mr. Fredericksen: Warren, did you have a comment?

Ms. Cua: Mr. Chair?

Mr. Fredericksen: Rhiannon?

Ms. Cua: Oh, I'm sorry.

Mr. Fredericksen: Yeah, Ann?

Ms. Cua: Did you inquire with the applicant if they're part of a condominium property regime?

Mr. Fredericksen: They weren't sure.

Ms. Cua: Oh, they weren't sure.

Mr. Fredericksen: Yeah, so --

Mr. Hutaff: Well, according to what's written here on the application --

Ms. Cua: Yeah.

Mr. Hutaff: It says, "This application relates only to a portion of the property. The property was developed as a residential condominium." But then I heard comments that it's commercial/residential. So I'm confused.

Mr. Fredericksen: Yeah. And I think maybe having the land, the actual -- whatever the land tenure is would be helpful, but I do have to say I agree with Brandis in, you know, this is in the historic district and, you know, it's unfortunately one of those 20/20 hindsight situations where it's, well, if the applicant had checked in the permitting process, they would have found out about the height restriction, and, you know, I certainly empathize with the applicant but, at this point, it seems to me that there's interest on the part of the Commission to find out how is this property held. I mean, Warren, is that -- and, Bruce, that's --

Mr. Osako: Correct. Because they're citing the money problems and whether they can afford it, but if the property is held by a condominium, then actually the County should be going after the condominium, not the individual homeowner.

Mr. Fredericksen: Any other comments or discussion? If one of the Commission Members want to put a motion forward to possibly defer or -- and with some -- we need -- it seems to me that there's an interest in obtaining additional information, which we don't have at this point.

Ms. Sarich: I think that we also need to know if the fence that they were copying was permitted.

Mr. Fredericksen: It's not along Front Street so it's a different -- it's kind of a apples and oranges, is my understanding.

Ms. Sarich: Okay. I just wonder about that view to the makai if it actually --

Mr. Fredericksen: Yeah, and that's --

Ms. Sarich: Yeah.

Mr. Fredericksen: No, and that's a good point too. Okay. Does any Commission Member want to entertain a motion?

Mr. Giroux: Can I just add --

Mr. Fredericksen: Okay.

Mr. Giroux: Stanley, can you add some clarity to this? You guys -- you have the Exhibit 3, which is your Architectural Style Book?

Mr. Solamillo: Again, this is not my document.

Mr. Giroux: Oh, okay.

Mr. Solamillo: So what is your question?

Mr. Giroux: So you know where I'm getting at then? See, you have an Architectural Style Book?

Mr. Solamillo: That's correct.

Mr. Giroux: And that's been --

Mr. Solamillo: That has been adopted.

Mr. Giroux: Adopted by this Commission?

Mr. Solamillo: That's correct.

Mr. Giroux: Okay. And in that, I don't see anything about height. I see -- or can you correct me on that?

Mr. Solamillo: No, there is nothing on that specific graphic that addresses height.

Mr. Giroux: There's nothing on height?

Mr. Solamillo: No. It addresses style only.

Mr. Giroux: And as far as your comment was is that the design guidelines, in Exhibit 4, has not been adopted?

Mr. Solamillo: Correct. It's recommended for adoption.

Mr. Giroux: Is there any adopted guidelines for Lahaina?

Mr. Solamillo: I'll have to defer to Ann Cua.

Ms. Cua: I believe we do have design guidelines that is adopted for Lahaina.

Mr. Fredericksen: That are currently in place.

Ms. Cua: That are currently in place.

Mr. Giroux: Yeah, because if this document doesn't have that, I think it's very necessary for decision making.

Ms. Cua: Right.

Mr. Fredericksen: Okay. Thank you, James. Yes, Bruce?

Mr. U`u: Motion to defer.

Mr. Fredericksen: No, before we get a second, do we wanna add a request for information, and Stanley brought up -- oh, excuse me, James brought up something that I think also would need to be included in the motion regarding what are the existing guidelines requiring for height.

Mr. U`u: I think I'll make a motion and people can possibly bring up their -- what they want added.

Mr. Fredericksen: Before it's seconded?

Mr. U`u: Motion to defer.

Mr. Fredericksen: Okay, now, we're not seconding it yet.

Mr. Giroux: Oh no, you can second it and then in the discussion add the materials.

Mr. Fredericksen: Okay, is there a second?

Mr. Hutaff: I'll second it.

Mr. Fredericksen: Okay, Ray seconds. Now before we vote on it, let's discuss and see what else we wanna add. It seemed to me -- Ann?

Ms. Cua: Do you want us to tell you what we have already that maybe we've heard?

Mr. Fredericksen: Yeah, go ahead and do that and then we can add to that.

Ms. Cua: One is how is the property held in terms of ownership, you know, condominiumized, residential --

Mr. Fredericksen: Because it's, from what I've heard, it's one -- being referred to as one lot. The whole --

Ms. Cua: Yeah, when I look at the actual application that the applicant filed, and I believe I saw it as an exhibit, it says "residential condominium project," but I don't know if whoever put that in, knows that that could have a legal meaning to that.

Mr. Fredericksen: Right.

Ms. Cua: You know, it could be held under a condominium property regime. I'm not sure if they knew that. So that's something that we can verify. Also, we can provide additional clarification on the -- just the height issue of fencing and then --

Mr. Fredericksen: Per existing -- the existing on the book guidelines.

Ms. Cua: Right. Right. As well as not only height requirements, but the design guidelines as well, any adopted design guidelines, and that's the three things that I have noted.

Mr. Fredericksen: Anybody else on the Commission have any additions? Ray?

Mr. Hutaff: I do have an addition, but we're qualifying this as a wall, not a fence. Am I correct?

Mr. Solamillo: That's correct.

Ms. Cua: Yes.

Mr. Hutaff: We're qualifying this as a wall or a fence. Maybe the permit holder would like to come back with maybe, after thinking about it for a while, a compromise also and a length of time that it would take to have that compromise in place. What I'm trying to get at is that --

Mr. Fredericksen: We can't -- I don't believe, and, James, jump in at any time, I don't think we could put that into a motion. I mean we could encourage the applicant to --

Mr. Hutaff: Okay.

Mr. Fredericksen: Communicate.

Mr. Hutaff: That's fine.

Mr. Fredericksen: Yeah, Warren.

Mr. Osako: Yeah, because according to the definition that's been given us, this is a wall, not a fence, so if the applicant calls it a fence, then it's not legal.

Mr. Fredericksen: Any other comments? Rhiannon.

Ms. Chandler: This comment is not necessarily related to the motion but just that I have a concern that it seems like a lot of people are not aware of what the expectations are, and I know that that's very difficult for the Department, but it's also difficult for the Commission when people come after the fact and with hardship cases. You know, if there had been an awareness of the guidelines, this fence may have cost the applicant less money to build in the first place and it would not be an additional burden to take down and rebuild. So if we could just look at that in the future. That's all.

Mr. Fredericksen: Good point.

Mr. Hutaff: That would be a good argument to go back to what we started many months ago, a year ago, two years ago on getting somebody actually in Lahaina to walk around.

Mr. Fredericksen: Yeah. Agreed. Okay, at this point, we've got a motion on the table with three -- it was three -- okay, motion to defer with three requests for information. Anything else wanna be added other than what we've got? Okay, and we've got a second.

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. U`u, seconded by Mr. Hutaff, then unanimously

VOTED: to defer with the three requests for information, as discussed.

Mr. Fredericksen: Okay, so motion to defer is accepted with the three conditions, and then we get that information. And then, Ann, if the applicant has additional questions, they, I'm sure, can contact --

Ms. Cua: Oh yeah.

Mr. Fredericksen: The Planning Department, Erin Wade, who's not here, but she will be back.

Ms. Cua: Right.

Mr. Fredericksen: She will be back, right?

Ms. Cua: She will be back.

Mr. Fredericksen: Thanks, Ann. Stanley?

Mr. Solamillo: Five-minute recess, please?

Mr. Fredericksen: Okay, five minutes. We'll resume in five minutes.

(A recess was called at 11:34 a.m., and the meeting was reconvened at 11:47 p.m.)

Mr. Fredericksen: Okay, let's go ahead and call the meeting back to order. When you're ready, Stanley.

Mr. Solamillo read the following item description into the record:

D. UNFINISHED BUSINESS

- 1. COUNCIL MEMBER JO ANNE JOHNSON, requesting review and comment on Council Resolution No. 10-43, entitled, "A BILL AMENDING CHAPTER 2.88, MAUI COUNTY CODE, RELATING TO THE CULTURAL RESOURCES COMMISSION, and TITLE 19, ARTICLE III, MAUI COUNTY CODE, RELATING TO MAUI COUNTY HISTORIC DISTRICTS." The CRC may provide comments and recommendations. Public testimony will be accepted. *Deferred from the October 7, 2010 meeting. (Joe Alueta, S. Solamillo)***

Mr. Solamillo: And, at that last meeting, we made it to page 5. So we'll begin today with page 6. I wanna thank Deputy Director, Ann Cua, for being here with us. Okay.

Ms. Cua: Could I ask a quick comment?

Mr. Solamillo: Yes.

Ms. Cua: I do just wanna point out that we are required, the Department is required to get comments back to the County Council by the 25th of December, and so we would really like to work with you to wrap it up today so we don't have to push it to your December meeting. Are you going to have a meeting in December?

Mr. Solamillo: Yes.

Ms. Cua: You are? Okay. But, you know, we got comments from the Planning Commission already and, actually, all three commission, so if we could wrap up your comments today, that would be awesome. Thank you.

Mr. Solamillo: Okay, 19.52.050, this is entitled "Demolition or movement of buildings or structures." If you look on the screen, you'll note that the whole paragraph has been highlighted, which means it's changed and, in this case, it is actually located within brackets, which means it's removed and replaced by, "The cultural resources commission shall not issue a letter of approval for the demolition or moving of a building or structure of historic significance, except in one or more of the following instances:" - then we've kept 1, 2, and 3, but replaced on 1., "superintendent" is replaced by "director"; 2. "Such" is replaced by "The building or structure"; 3. "such" is again replaced by "the building or structure".

And the end of that, those three items, we have "In each instance, a letter of explanation must accompany the letter of approval."

Under B, "For the purpose of this article, buildings and structures of historic significance shall be deemed to be those within any historic district," we've got a deletion between brackets and replaced by, "that are more than 50 years old when a request demolish or move the building or structure is made." Any comments?

Ms. Sarich: Yes. Are we going to add something about if we do have documentation?

Mr. Solamillo: That's coming.

Ms. Sarich: That's coming? Okay.

Mr. Solamillo: Yeah. That's under -- actually, you're right on target because that section that it's added to -- on the screen, I've got an addition, which says, "Before the demolition of a contributing building or structure to a historic district or a building or structure which has been determined eligible for listing in the National Register of Historic Places," it should be "Hawaii and National Register of Historic Places," "and the given, the building or structure shall be documented using the standards of the Historic American Building Survey or the Historic American Engineering Record," referred to (HABS/HAER), "which shall

include large format four-by-five black and white photographs, measured drawings, and written historical narrative.”

Mr. Giroux: Stanley, I've got a --

Mr. Solamillo: Yeah, go ahead.

Mr. Fredericksen: Go ahead. Go ahead, James.

Mr. Giroux: I just got a technical question. As far as, you know, when I'm comparing the 19.52 with the -- your 19 -- well, .020 with your .050, one is captioned, "Review of plans," and the other one is captioned, "Demolition or movement of buildings or structures." And I'm just wondering, in the paragraph G, that's completely added, it says, "Within any historic district established in this article, the director shall not approve a building permit application . . ." There was discussion between Public Works and Planning about what does it mean to have a building permit versus a demolition permit. Is there any significant difference? I mean is this something that's going to fall through the cracks where --

Ms. Cua: We could probably provide clarification but, from our understanding, you need a building permit to demolish a building.

Mr. Solamillo: Correct.

Mr. Giroux: Okay, so it's not ...(inaudible)...

Ms. Cua: So we call it a demolition permit, but a person files a building permit application for demolition so that should --

Mr. Giroux: Okay, I think that needs to be clear.

Ms. Cua: I agree.

Mr. Fredericksen: So Brandis -- Brandis's earlier comment about HABS and HAER is going to be handled -- covered under this - what we're going over, and then this building versus demolition permit, it's two terms for the same thing. Is that it, Ann, for the purpose of the Commission?

Ms. Cua: I think it would be clearer if we reference a building permit for demolition.

Mr. Solamillo: For demolition. Correct.

Ms. Cua: Yeah. And then again, we need to make sure that in this section, we're indicating or we're acknowledging that you do not approve demolition permits. The jurisdiction or approval of a - excuse me, I said demolition permit - building permit for demolition, the jurisdiction for that is Public Works. You're a commenting agency. So we wanna make sure, this is the time for us to clean it up and to make it, you know, very transparent as to --

Mr. Giroux: Yeah, because -- I mean, Ann, that's -- I think that's the huge problem with this law is why it's unenforceable is because you have an issue of the authority of the Commission, what they're saying, oh, you have all of this authority, but turn the page, and it's gone. And this is what they need authority over and if you look at B, in 19.52.020, it says they do have that authority. It says that they have applications for the appropriate permit to construct, alter, repair, move or demolish any structure or modification of existing structures and appurtenances --

Ms. Cua: In the historic -- I'm sorry. Maybe I should have clarified. In the historic district. I think -- I think where we run into problems, and maybe I did -- maybe I mis-spoke and it's not so much in this ordinance, it's when you're dealing with the National Historic Landmark District Boundary. I think that's where the challenge comes when there is a demolition permit in that area, this Commission doesn't have jurisdiction. So I am sorry.

Mr. Giroux: Yeah, and I'm not trying to rattle the cage. I'm just saying that this is where our problems come when the inter-workings of the County are not exactly understood by the Commission. And where there's fine jurisdictional lines where people are saying is this law enforceable, and we say maybe, sometimes, that's where the frustration is because we had a project where the house, right on the street, the left side of the street was not in the jurisdiction, and that's really frustrating, I think, when we're looking at solutions, 'cause this is a solution opportunity, but we don't really understand the finites of the problem because we're trying to connect two sections - building permits with demolition permits, and then we have to talk about jurisdiction, and that's where I think if the Department could really give us insight about, you know, this scenario, as the wording is, would give you jurisdiction, as a Commission, to approve or disapprove something. Under this wording, you wouldn't have the ability to approve or disapprove. You would just be a comment agency. And it's very important because -- I mean as the lawyers, as crafters, we're trying not to get into policy, but the frustration is is that when the Commission is frustrated, then they take it out on the Department, and then the Department calls us, and we say, "You don't have jurisdiction." And then we're the bad guys. We're the ones going, "No, you can't. You can't do that." And then they're saying, "What's the problem? Why is this a problem?" Well, the problem is is because the law doesn't say that. And that's where the experts rely on the experts, and that's Public Works and it's Planning, because what we're being told is Public Works is the final -- they have final determination and what -- when you look at G., it talks about the Planning Director. So it says the Planning Director shall not.

Ms. Cua: If I could comment on that. I think, I was just looking on that, on page 5, G, "Within any historic district established in this article, the director shall not approve a building permit application unless . . ." You're talking about that director?

Mr. Giroux: Right. And under our definitions, it's --

Ms. Cua: Director of Public Works.

Mr. Giroux: Public Works.

Ms. Cua: Public Works.

Mr. Giroux: And that's where we need to -- the clarity needs -- you know, so we -- cause we're looking at one section, looking at the next section --

Ms. Cua: Right.

Mr. Giroux: There's gotta be a continuity.

Mr. Fredericksen: Would it -- it sounds -- I don't see "Director of Public Works" anywhere in this. Would it be better to have that, "the Director of Public Works shall not approve?"

Mr. Giroux: Well, it's going to be in your definition section.

Ms. Cua: Right, and it is. If you look at page 3, Section 4, under "Director," and that's what I was commenting on. When the word "director" is used, by definition, "Director" means the director of the department of public works or the director's authorized representative." So --

Mr. Giroux: Okay, Ann, just correct me, please, because I'm looking at 2.88.020, it says, "Director" means planning director of the county." Are we looking at two different things?

Ms. Cua: I'm looking at 2.88.060, page 3.

Mr. Giroux: Right. "Director means director of . . ."

Ms. Cua: So is that a conflict with what you read?

Ms. Sarich: That is confusing.

Mr. Fredericksen: Yeah, and you know what? This is really -- this is confusing, and I think it's nice that you have the definitions noted elsewhere but I think a little bit of redundancy is probably not a bad thing because I mean I'm certainly confused by it.

Ms. Cua: Right.

Mr. Fredericksen: Just so there's no ambiguity.

Ms. Cua: And I think what's -- I mean, obviously, we know that we're dealing with an existing piece of -- an existing law that a resolution is coming down from Council that is trying to address certain issues. What we've been finding is the Planning Department and the commissions, as they go through this, are finding more than what has come down to say that, you know, probably this should be changed, and this should be changed, and so this is really good that you're having this discussion and, you know, where we can either tighten it up or make it more consistent, I think we need to make those recommendations to the Council to do so.

Mr. Fredericksen: Yeah, just so it's, like James aid earlier, just so it's possible to enforce things and make sure that the jurisdiction is not muddy. Can we proceed or is that --

Ms. Sarich: How do we fix that?

Mr. Fredericksen: That's a comment that you will put in, Ann or Stan? Who's -- are you the keeper of the comments on this one?

Ms. Cua: I think Stan's the keeper of the comments for right now.

Mr. Solamillo: So again, the question is?

Mr. Fredericksen: To avoid ambiguity --

Mr. Solamillo: We specify what director does what within the section.

Ms. Sarich: Yeah, instead of two different definitions for director in here.

Mr. Fredericksen: Yeah.

Ms. Cua: Yeah, and I'm assuming the reason why there's two definitions is because --

Mr. Fredericksen: Different sections.

Ms. Cua: Yeah, in one section it is the Planning Director, and in one is section it is the Public Works Director, but I tend to agree with you, and I don't think legally it's a problem, James, if we, in the actual section, say Director of Planning or Director of Public Works.

Mr. Fredericksen: I mean that's not going to slow the process down or anything is it? That's just clarification.

Ms. Cua: Yeah.

Mr. Giroux: Yeah. It's just because we're looking at 2.88 as your structure, and 19.52 is your powers. So we've got two codes. So when you flip over to 2.88, and you're reading, and it says director, director, director, 'cause the Planning Director staffs you, the Planning Director has certain administrative things delegated to it, those types of things, which are more structural. And then in 19, where all your powers are, and that's where it gets confusing because, you know, we're talking building permit but we're actually mean demolition permit. And so we gotta make sure that -- because when it says the director has to review something in a certain amount of time, under Title 19, because where the definition is now, that's Public Works. I think it should carry on through --

Ms. Cua: Yeah.

Mr. Giroux: Through your ordinance; that continuity that if the Planning -- Public Works is in charge of building permits, then they must also be in charge of demolition permits, and are we processing them the same, and is the Commission being given the same opportunity to review these in the same manner, and why would we treat a building permit one way and, yet, a demolition permit something else. And I don't know if that's -- we have to look at the intent, and we also have to look at how it processed through the County because is that our intent to have two different processes.

Ms. Cua: Well, right now, and I think, you know, if you're looking at that word "director" again, just when you look at, you know, 19.52, there are going to be times, like demolition permits right now get issued by the County Department of Public Works. That's the way it is and unless we -- unless that gets changed, that is the way it is. But Planning Department, and on behalf of the Cultural Resources Commission, issues historic district approvals. And, you know, one of the things that we talked about, I believe with this Commission and as well as the Planning Commission, we talked about there have been cases and we wanna make sure we maintain that, you have -- you have relinquished your authority for granting of historic district approvals to the Planning Department in certain cases, and we wanna make sure we preserve that. For something for very minor, we wanna be able to get a much quicker turn around to an applicant and be able to issue that permit quickly if it qualifies as a minor improvement, so in that case, the Planning Director -- you have given the Planning Director authority to do that. So there are --

Mr. Giroux: It was done by rules? That was by administrative rules?

Ms. Cua: I believe it was. I can't recall.

Mr. Giroux: Well, again, that's where, you know, where --

Ms. Cua: I think it's in the rules.

Mr. Giroux: When it's the director, we gotta be really clear about director of -- because we have, again, your power, you have delegated some of them to the Planning Director.

Ms. Cua: Yeah.

Mr. Giroux: So all of a sudden we're -- again, the clarity is a really important thing.

Ms. Chandler: Chair?

Mr. Fredericksen: Yes, Rhiannon?

Ms. Chandler: At the bottom of Section 19.52.050, page 6, the bottom of the first paragraph where it says, "The cultural resources commission shall not issue a letter of approval of the demolition." It makes it sound like the Commission has the authority to approve, so could it say "issue a letter of recommending approval" just so that there's a little bit more clarity because I think sometimes that makes -- that could make people think that we are the --

Mr. Fredericksen: Well in this case --

Ms. Chandler: In this case you are.

Mr. Fredericksen: The proposed change is to make the CRC -- isn't it, James?

Mr. Giroux: Yeah, if I'm reading this correctly, if you connect up that -- added -- that, what was added in .050, that added sentence, and you flip back to .020, Section G, then that would go into G.1. G.1. is "a letter of approval has been issued by the Cultural Resources Commission."

Ms. Cua: And if I could add to that. A letter of approval from this Commission is not a demolition permit, so that's why this language is okay. It's historic -- it's historic district approval for --

Mr. Fredericksen: It's a letter that is --

Ms. Cua: Yeah.

Mr. Fredericksen: Used in the evaluation of the permit.

Ms. Cua: Right. We just don't want to mistake it with your issuing the demolition permit 'cause that is actually a building permit issued by Public Works. So I think the wording is sufficient.

Ms. Chandler: So, ultimately, this body has the ability to approve or deny?

Ms. Cua: In the historic district. In the historic district. Historic Districts 1 and 2 --

Ms. Chandler: Okay.

Ms. Cua: You do have the ability to -- to issue historic district approval.

Ms. Chandler: Okay.

Ms. Cua: But again, not issue a demolition permit or a building permit for demolition.

Ms. Chandler: Okay.

Ms. Cua: I just wanna make that clarification.

Ms. Chandler: And then in -- just below that, where it says no. 1, or the three conditions, unless one of the three conditions is met, under no. 1 it says, "The director or the state department of health deems the building or structure to be a hazard to public safety or health and repairs are impossible." I think that's probably the most common reason why people come here 'cause the other two really aren't, you know, it's usually not a deterrent to a major historic preservation program or something. It's usually that it's termites, you know, we can't fix it, or anything like that. So how do we evaluate repairs are impossible because repairs are often possible, right? It becomes a financial question.

Mr. Solamillo: I'm going to jump in here because what's --

Mr. Fredericksen: Yes, please.

Mr. Solamillo: It's the difference between this and what actually happens, okay? I'm -- my name's Bob and I bought a really choice piece of property and I got a lot of old buildings that I wanna clear, okay. I took some photographs. I put them on a CD Rom and I took them to Public Works, alright, or to DSA. Filled out my permit application to demolish these buildings. Okay, DSA took my photographs and my application for a building permit to

demolish and sent that off to SHPD, and then sent a copy of those, the same things, to a guy named Stan, who's with the Planning Department, okay. Okay, Stan and some guy named Ross, at SHPD, talk to each other, and Ross called him up and said, "These buildings. They look pretty old." And Stan says, "Yep, they're pretty old." What we've just done is done a determination of eligibility. We looked at the buildings and said they had the original doors, windows, roof, massing, all of this stuff, and we made a determination: Are those buildings eligible for listing in the National Register of Historic Places? So if they are, then a demolition is an adverse effect, okay. So that's typically how you evaluate a building. If the buildings have been changed, then there was a lot of additions made in 1974, 1983, 1990, then Stan will probably say, "No. They're not eligible." So you would never hear about them or see them. So in the case where we've got, you know, the eligible buildings where we have something to deal with, that's an intact cultural resource that has to be dealt with a certain way. So if it is an adverse effect in the removal of buildings like that most commonly is, then SHPD issues, in consultation with the Planning Department, something called a "mitigation plan," and that is the letter that then goes to the applicant and says, you know, we want photographs, we want HABS level drawings, we want X, Y, and Z, okay. So only in cases where we've got the NHL, which is the larger district, which was, remember, established in 1966 after Maui County established Historic Districts 1 and 2 as a much larger area where you have buildings, which may or may not be eligible based on those same criteria that I just outlined for you, and that's in the first part of the slideshow we went over last time, which is do they have original windows, doors, the roof's intact, the walls intact, and, you know, who, historically, is associated with the property, in the case of Lahaina because a lot very important persons are, then we bring it to you because it involves the NHL, and we're acting as a Certified Local Government because we are empowered to do so by the Feds through SHPD through a memorandum of agreement. So it gets all really fuzzy, but that's what happens. So when I bring you a demo case for a building that's been altered, it's got jalousie windows which were added in the '50's, it's got vinyl windows, which were added to replace the wooden windows that were there in 1920, the vinyls were put in last year, and now the owner wants to take it down. It's a new owner. If it's been altered like that, it's not eligible. If it's in the NHL, I usually bring it here because I need this body to act on behalf of -- as the CLG. If it's just any 'ole building outside of the NHL, then we usually do it administratively. But it does get complicated. Have I complicated and muddied the waters more?

Ms. Cua: I don't -- I think the question though, and I understand and I can appreciate your question 'cause I wouldn't know how to interpret that, is it says here -- her question is when are repairs impossible? I mean I agree. Repairs are always possible. And so I think maybe we need to further clarify that to help us. Someone may feel repairs are impossible, but I think someone else could always find a way where repairs are possible. So I think that was your question, if I understood you correctly.

Ms. Chandler: And that's exactly my question, Ann. Thank you.

Mr. Solamillo: I'm sorry.

Ms. Chandler: Because that's what people come to the Commission most often for is demolition of a building due to its demise, you know, either from termites or age or whatever, but ultimately they financially feel like they cannot repair it. It is never impossible to repair and that is if we're going to say that you cannot demo a building unless it's impossible to repair, we'll never demo another building in the NHL and we have to stand by that every single time if we approve this that nobody, under any circumstances, because you can always repair.

Mr. Giroux: Yeah, I think what this falls under is that under the law of nuisances that you -- you, basically -- all zoning laws have to be supported by health, safety, that that's your rational basis for all laws in Title 19 - health, safety, and welfare. So if the Hop Sing building came in, it's completely, you know, precious, but somebody bought it and it's a complete hazard, and they come before you, and the director has certified it as a hazard, and the indication is that the new owner, you know, cannot. He would have to make that argument. And he would have to convince you of that. So that's what it's saying is that in a situation where there's -- because that law's gotta be balanced, you know. It has to be balanced. And this is your kind of safe harbor, meaning that, like you said, well, if we just read that part, repairs are impossible, we would never allow a demolition. But the law says, well, there are possibilities. There is times when a demolition will happen. But this is the procedure.

Mr. Fredericksen: So burden of proof is placed on the director and then the State Department of Health.

Mr. Giroux: And the applicant.

Mr. Fredericksen: And the applicant so --

Mr. Giroux: Basically, the director would -- would have to do an evaluation, say, you know, based on these criteria or based on this evaluation, this is the decision, but that would have to be presented to you.

Mr. Fredericksen: Bruce? Oh, Ann. Just a second, Bruce. Ann?

Ms. Cua: Would it have been enough to end the sentence at "Health?" I mean I don't know, and maybe Stan can comment, when Department of Health is rendering their decision, I always understood it that they were saying it's a hazard to public safety.

Mr. Solamillo: No.

Ms. Cua: For the most part.

Mr. Fredericksen: And that supercedes -- that supercedes --

Ms. Cua: But I don't know if it also -- if they're stating or if we're just assuming that repairs are impossible. I don't know about that last three words, "repairs are impossible."

Mr. Fredericksen: Well, here's a scenario. The Department of Health says, oh, it's not a public safety health/health hazard," but from the other side of the coin, it's going to cost a million dollars to repair stuff or the structure, so maybe in that case, that would be more on the director's side. And if it's a health issue, then it would be Department of Health.

Ms. Cua: Well, but the -- see, when they're talking about repairs being impossible, that's still all under the Department of Health, not --

Mr. Fredericksen: Okay.

Ms. Cua: Not the Planning Department rendering that repairs are impossible.

Mr. Fredericksen: So repairs to bring the structure or building up to a place where it's not a hazard to public health and safety ...(inaudible)...

Ms. Cua: Yeah, again, I'm just -- I don't know if, between Corp. Counsel or Stan, if they feel those last three words could be problematic or just by the fact that if DOH determines that the hazard -- I mean the structure is a hazard to public health and safety, that automatically --

Mr. Giroux: I think, Ann, I believe if you were to look at that in the contents of the nuisance law, what you're doing is you're saying, well, there may be structures that are public safety, but if all it takes is moving couple two-by-fours and putting a cement block under the corner, now it's not a public safety 'cause you just spent 50 bucks in repairs. Now, the flip side to that is the building is completely termite ridden and it's a hazard. It's going to fall down. Now, to restore it to standards that it could meet, you know, the historic criteria, again, it could be, you know, a million dollars, and Stan has shown us projects like that. He's shown us where people have spent a lot of money to get a building that most people would have been -- and, yet, a lot of money was spent and it was a nice job. It was beautiful. So I think the -- we're putting a lot of -- if it gets that far, we're putting a lot of weight on what a director of the -- and again, is this Public Works?

Ms. Cua: It's Department of Health.

Mr. Giroux: Well, it says --

Mr. Fredericksen: The director and --

Mr. Giroux: It says, "director," what's added. So the director --

Mr. Fredericksen: Or the Department of Health.

Mr. Giroux: So again, the County is involved, and is that Planning or Public Works? Or the State Department of Health. Because the State could come in and deem something a hazard. Okay?

Ms. Cua: Yeah. We have to clarify "director" ...(inaudible)...

Mr. Giroux: Yeah, that's again the -- my mantra today is we gotta make clear -- clarity 'cause it's the lawyers who get sideswiped by this once it gets -- becomes a law.

Ms. Cua: Yeah.

Ms. Sarich: Could we add some kind of wording to "and repairs are impossible", such as like "the applicant has somehow convinced the commission that repairs are impossible" or --

Mr. Hutaff: What if we use the word "deemed," which is another empty word.

Mr. Giroux: Yeah, the director and the Department of Health would, again, be making that. It's a judgement call, again.

Mr. Fredericksen: "Deemed" is more subjective and I kind of -- I like that term better because "are," I don't know, it seems more absolute, although it's not necessarily.

Mr. Giroux: It is written to be impossible.

Ms. Cua: So we can add "deemed."

Mr. Osako: You know, somebody has to make the decision.

Mr. Hutaff: Yeah, that's what would happen when you use the word "deemed," that somebody's going to have to --

Mr. Fredericksen: It's a decision made by the director or the Department of Health.

Mr. Hutaff: I've made this or because of the information we have or, you know.

Ms. Cua: Okay.

Mr. Osako: Yeah, it's going to have to be decided who is going to make that decision.

Mr. Hutaff: Well, they already did.

Mr. Giroux: Right, and even after that decision is made, I think that the way that it's written is that you're going to review that and ask those important questions, you know, did you go look at the building? Did you get a contractor to look at the building? Or did an engineer get a look at the building? Or did you just deem it impossible? And that's the beauty of the Commission review is that you get a little bit of an interrogation. Somebody makes a hard decision, then it gets a little interrogated, and then you get a reasonable finding.

Mr. Fredericksen: Bruce, I'm sorry, coming back to you, I forgot.

Mr. U`u: No. And I just going back to what James said about impossible. Three out of five attorneys will maybe make something else of impossible, so I'm thinking about the long term, this is James' idea of impossible, and then the next guy we get after him or might see it a different way. I think we need to correct it now so there's clarity, and I like "deemed."

Mr. Hutaff: What if we said --

Mr. Fredericksen: Yeah, 'cause it links it to the director and the -- and/or the Department of Health.

Mr. Hutaff: Then why don't you make it both? Instead of saying "or," why don't you make it both?

Mr. Fredericksen: Probably there would be instances where the County would defer to the Department of Health, right, if it was --

Ms. Cua: Yeah.

Mr. Fredericksen: I mean 'cause don't they ultimately say, oh, something's a health hazard?

Mr. Giroux: Yeah, I'm not sure of the inter-workings between those two departments. You never know how State and County play well together so --

Mr. Hutaff: It's always the State's fault, huh?

Ms. Cua: I think "or" is good.

Mr. Hutaff: You think that'll work?

Ms. Cua: I think it just gives people more options and I do like adding the word "deemed." So if that's the Commission's will that we can make that a comment.

Mr. Fredericksen: I think we all think "deemed" is a better word, yeah? Okay. Okay, Stanley. Oh, Brandis, did that -- that came back -- you're the one who got us going on this.

Ms. Sarich: Yeah. That's good.

Mr. Fredericksen: But that's -- you feel good --

Ms. Sarich: Rhiannon.

Mr. Fredericksen: Oh, was it Rhiannon? Both you gals feel -- okay. Okay, Stanley?

Mr. Solamillo: I'm disturbed that it doesn't match what actually happens.

Ms. Chandler: I agree. And, you know, it's --

Mr. Fredericksen: Say that again. What?

Mr. Solamillo: It doesn't match the process, really. We go through a process determining whether a building is eligible; determining whether a building will be impacted by a certain proposed activity, and none of that is mentioned; determining if it's historically significant, and none of this is part of the ordinance at all.

Ms. Sarich: Have you thought about how to add that language in here?

Mr. Solamillo: No.

Ms. Cua: I think the Department -- I mean the Department can look at that and add some language that affects the process and -- 'cause we're going to be making our own comments as well.

Mr. Fredericksen: There was the one up earlier, which changed from 1910 to the 50 years --

Mr. Solamillo: That we did do.

Mr. Fredericksen: Older. Right.

Mr. Solamillo: Right.

Mr. Fredericksen: But are you -- maybe where that --

Mr. Solamillo: What I was explaining to you how things actually happen, how they come to you, in one instance there was a case within the NHL situation or take the Fred Memorial Baldwin home, okay, 20 years down the road, you all have rotated back on the Commission, and here you've got a designated historic district, right, consisting of 8 buildings, which were done in a certified rehabilitation, with the blessings of the Park Service, and somebody wants to drop them. That becomes your purview because it is a historic district --

Mr. Fredericksen: Right.

Mr. Solamillo: But it's not Historic District Nos. 1 or 2.

Mr. Fredericksen: But the buildings are historically significant.

Mr. Solamillo: Well, they're all still on the register.

Mr. Fredericksen: Right.

Mr. Solamillo: Right. So I mean how do we handle that? That's not -- again, that's a process that's not here in the ordinance.

Ms. Cua: Well, and I think what we're going to have to do because, obviously, we didn't come today --

Mr. Solamillo: Right. We don't have time for -- right.

Ms. Cua: With any recommendations for them to consider, so I think what we need to do is we will be making those comments as part of the Department's comments to reflect actually what the process is and any other recommendations that we have.

Mr. Fredericksen: Because -- excuse me, Ann. Because Council wants to get this by when?

Mr. Solamillo: By the 25th.

Ms. Cua: We have to get it to them by December 25. So we're sending it to all the Planning Commissions now, I think it's gone through possibly all three commissions already, and then we came to you initially and we're coming back today, and so we'll get

your comments, we'll put that together as well, and then the Department will be making separate comments as well.

Mr. Solamillo: Okay, 19.52.070, Variances, with the addition "and Appeals." Entire section is yellowed and bracketed, which means it's been changed, and it says, "Requests for variances and appeals shall be heard pursuant to chapter 19.52 of this code."

Ms. Cua: And, actually, I think what we realized when we went to the Planning Commission is that that is a typo and it should be "19.520."

Mr. Solamillo: Thank you.

Ms. Cua: 'Cause 19.520 is where we deal with variances and appeals.

Mr. Solamillo: Joe, would you like to join the stand?

Mr. Joseph Alueta: Sure, where are we at?

Mr. Solamillo: Alright, under 19.52.080, Appeals. The entire section is deleted. Section 14, 19.52.090, there's a deletion under "Regulations for historic districts no. 1 and 2. A," within brackets, which means a deletion of Establishment of Plan. And it says, "For historic district no. 1 and historic district no. 2, the plans, reports, manuals and guidelines set forth in subsection 2.88.080 of this code on file with the department of planning shall be used as a guide for," replacement, "for the determination of the required land use, height of buildings, style of architecture, parking requirements, yard spaces and lot areas, and any other matter pertaining that particular historic district." B. "Use Regulations" has been deleted. Do we have any comments on that last section?

Ms. Sarich: Yes.

Mr. Solamillo: Go.

Ms. Sarich: Now, can we add the -- the entire district into this? I mean it's kind of -- I guess when I was looking at this at first, it says, "to Maui County historic districts," so this only means districts 1 and 2, but can we add or do we want to add all of the national historic into it?

Mr. Fredericksen: The National Landmark?

Ms. Sarich: Yeah.

Mr. Hutaff: I don't think we can.

Ms. Sarich: Okay.

Ms. Cua: No, this ordinance pertains to Lahaina Historic Districts 1 and 2. That's what the ordinance pertains to.

Mr. Fredericksen: Yeah, that's -- yeah, and -- so Wailuku wouldn't be included because this is only for Lahaina.

Mr. Solamillo: Okay. Under B, Use Regulations is within brackets so it's deleted, and "Within historic district no. 1 and historic district no. 2, no building, structure or premises shall be used, and no structure shall hereafter be erected, structurally altered, replaced or enlarged, except for one or more of the following uses:" "One-Family Dwellings" has been replaced with "Single-family dwellings." "Parks and," a deletion and replacement by, "playgrounds - community, public, or privately operated." That was under B.3.

Under 8, the change is "Federal" is changed because of spelling. "State" is also changed because of spelling, uppercase to lowercase.

Under 9, "Two-family dwellings." I'm sorry. That remains the same.

Under 10, "billiard halls or poolhalls" has been replaced with "pool halls" only.

Mr. Fredericksen: Stanley?

Mr. Solamillo: Yes?

Mr. Fredericksen: Just a -- this is under B, but question on this, what we had on the agenda today, fences/walls. Where would something, an item like that, fall under this category? Where would that be?

Mr. Solamillo: I would defer to Joe Alueta.

Ms. Cua: Or I can comment on that.

Mr. Solamillo: Or Ann.

Ms. Cua: You know, a fence or a wall is not a use. This section here -- you're talking about the use section?

Mr. Solamillo: Yes.

Ms. Cua: Yeah. This section deals with permitted uses so, obviously, a single-family residence or a duplex dwelling, those are permitted uses. Hotels. I mean they're all permitted uses. And then if they have associated construction, like walls, those will all -- walls or fences, those would all be permitted as part of the use.

Mr. Fredericksen: Or would it be under C, the next -- I know we're jumping ahead a little bit. So if there's an existing building, and then ten years later they wanna put in a wall or fence in Historic District 1, there -- where would that fall?

Mr. Alueta: Currently -- hi. I'm Joe Alueta.

Mr. Fredericksen: Good morning, Joe.

Mr. Alueta: Currently, that's sort of, I don't wanna say a loophole, but as Ann said, it's allowed within each of the zoning categories as an accessory structure and they would -- currently, they're only regulated by building code as well as by the height. Okay, so, theoretically, your height -- you could build whatever the height limitation is for that historic district. You could build a wall or a fence, if you could engineer it, to that height. And because it's not considered a building, it would not be subject to the setback rules. We have this similar situation where we're correcting that loophole within all of the other districts in which we are adding, as an allowed use, fences and walls.

Mr. Fredericksen: Joe, excuse me. Where would that be within what we're reviewing? Is that in a different -- under a different alphabetical subcategory?

Mr. Alueta: Yeah, we --

Mr. Fredericksen: Sorry. I'm just trying to understand and --

Mr. Alueta: Yeah. Exactly. So, as Ann was just telling me, it's like it's considered -- for us, in all the other districts, those things are considered to be an accessory use or accessory structure, and then we would go to your design guidelines for that type of regulations.

Mr. Fredericksen: Okay, so that's -- so the existing guidelines that are in place would be what -- the document that the Planning Department would refer to.

Mr. Alueta: Right. That's my understanding with regards to the historic district.

Mr. Fredericksen: Okay. Thank you. Sorry, Stanley. Let's continue where we left off. I think it was 10 or 11. I remember "pool halls."

Mr. Solamillo: 10 or 11. We were on "billiard halls or poolhalls."

Mr. Fredericksen: Yeah.

Mr. Solamillo: Okay, that's no. 10, under B, page 7. That was a word replacement. The next replacement comes on no. 16, "Baths--," plural, "Turkish and the like."

Mr. Hutaff: Do we wanna leave that one in there?

Mr. Solamillo: That is being left in there but what is being deleted is "including masseurs."

Mr. Hutaff: Can we just go back to this like ...(inaudible)... so maybe you can just help me get passed it by either agreeing or disagreeing with me, "servants' quarters."

Mr. Solamillo: Where is it?

Mr. Hutaff: Under B.1. "Single-family dwellings. There may be accessory buildings located on the same lot, the use of which is customary and incidental . . ." Do we still actually use that word "servants' quarters" in building permits? I mean I have a, you know --

Mr. U`u: Maybe kids' room ...(inaudible)...

Mr. Hutaff: Well, it's the word "servant." I mean we use "housekeeper" now. We have a little, you know, what do we call it?

Ms. Sarich: Domestic --

Mr. Hutaff: "Environmental engineer." "Servant" just kinda bothers me a little bit. Does anybody agree with me on that?

Mr. Fredericksen: Yes.

Mr. Alueta: Yeah.

Mr. Osako: ...(inaudible)...

Mr. Hutaff: That's true.

Mr. Alueta: The code, if I may, the code is old and we are in the process of updating it. We also have reference to "chattle," which is slaves.

Mr. Fredericksen: Yeah.

Mr. Alueta: So we -- or slaves or personal property.

Mr. Fredericksen: Yeah.

Mr. Alueta: So there's also reference to that in the County Code today and we are currently removing all of those or updating the code as we go through it. So when I get to this, right, when I get to -- I'm on 19.31, so we're not too far down, I'm going to -- this code will -- I will come back before you and it'll be restructured. And Commissioner U`u --

Mr. Fredericksen: More appropriate.

Mr. Alueta: For more appropriate language as well as the structure and organizational structure of the code, and Commissioner U`u is familiar with some of the past ordinances that we've taken before the Planning Commission and has gone up to Council and it's just, you know, it's a big document that we have to do one step at a time so, for now, I mean I would just encourage you, this is just a resolution from the Council. It's kinda like, the way I look at it is, when it's drafted by the Council, it's kinda like a pandora's box. You don't know what you're going to get. You're just trying to do damage control to make sure whatever they're proposing isn't going to create an adverse impact on your job, on the Planning Department's job, and the public. And so we just try to focus in on what's -- what are their amendments right now and are those amendments going to create more problems than fixing.

Mr. Osako: I have a comment there.

Mr. Fredericksen: Warren?

Mr. Osako: Actually, while we might not think it politically correct, some of the old plantation manager's houses especially had those little servants' quarters in the back, and that's what they were. It doesn't bother me. You know, my mom used to go and work for one of the people up the hill.

Mr. Hutaff: I was looking at it as sort of upgrading the word to something that's more appropriate. It's the same action. You're right. It doesn't change the action. I'm going to go over there get paid to clean your house, okay. And no. 16, to tell you the truth, I'd really like to see Turkish baths get out of there. I don't think it deserves anywhere on Front Street. Period. End of sentence. Not that I have anything against the Turks. It's just what it represents. I'm sorry, I do, you know. We can pass by it and go, sorry, Ray, you're a little weird, but I just have that feeling.

Mr. Solamillo: Okay, and that's --

Ms. Cua: Mr. Chair, again, just a quick comment. I don't know if, just expanding on Joe's comment a little bit, it would be an endeavor to go through every single use --

Mr. Fredericksen: Yeah.

Ms. Cua: And decide, okay, is this appropriate? Or do we have to say -- do we have to mention all kinds of different office types of uses or, you know? Now, what Joe's doing, section by section in the code, is he's going through all our outdated codes and he's kinda bringing it up to date to reflect what kind of uses exist now and like, for one example, "general office use" is a category as opposed to identifying specific types of office of business uses. We're trying to generalize it a little bit more. So the intent of commenting, again, as Joe mentioned, on the proposed resolution is there have been some changes recommended by Council and, you know, we wanna look to those and see if you're okay with that in terms of what you do in your responsibilities, but know that, in the future, when Joe gets to that section of the business ordinance, 19.52, or historic districts, that we would -- that's something that he would take one use at a time.

Mr. Osako: Okay. Thank you.

Mr. Fredericksen: Okay, Stanley.

Mr. Solamillo: Next change is under 9 -- 43, which is on page 8, "Shore stores," single word changed to two words; 45, "lodginghouses," changed to two words, "lodging houses." Next change is under item 53. Go ahead.

Mr. Hutaff: You know I wanna comment.

Mr. Solamillo: Okay.

Mr. Hutaff: I think that we should eliminate that word "only motor vehicle(s)."

Mr. Solamillo: Where is it?

Mr. Hutaff: No. 53, "Historical tours; provided, however, that only motor vehicle(s) . . ."

Mr. Solamillo: The Planning Commission agreed.

Ms. Cua: Maybe -- Mr. Chair, if we could. Maybe at this point in time, the Planning Commission spent quite a bit of time talking about this area and maybe Joe could let you know what their comments were.

Mr. Alueta: Okay, for -- one of the uses that was wanted to be added by the Planning Commission was "traditional Polynesian protocol including, but not limited to, awa ceremonies." They wanted to specifically list it in.

Mr. Hutaff: Cool.

Mr. Alueta: And then -- and then they also had on, with regards to the historic tours, they wanted to amend 53 to say, "Historical tours, excluding motor vehicles . . ."

Mr. Fredericksen: Yeah.

Mr. Alueta: And then continue -- oh, "conveyance or walking shall be parked or stored in an off-street parking area and that all customer transactions shall be conducted within a wholly commercial building as used in this subsection."

Mr. Hutaff: So they're going to allow walking tours, basically, and --

Mr. Alueta: Or bicycle tours.

Mr. Hutaff: Bicycle tours and you can drive through and do a tour, but if you're going to collect any kind of money, you can't be anywhere along that street. It has to be an office setting.

Mr. Alueta: According to the way -- that's the way it is now and that's the way it's proposing. I think they wanted to get away or simplify, from the Planning Commission's standpoint, they wanted to, one, eliminate duck tours. They were concerned with that issue. But also they -- they felt that the way it was worded was just too cumbersome because it defined what a motor vehicle was, and we wasn't sure what they were trying to prohibit and -- or what they were trying to encourage, and the way I read it was that they were trying to say --

Mr. Hutaff: No rickshaws

Mr. Alueta: Yeah, that the way they were saying it is -- the way it's written now I guess is that they wanted to say you could only do motor vehicles, you couldn't do a bicycle tour, or you couldn't do a petty cab, you couldn't do a rickshaw. Whereas, now I guess the opposite is true is that people are saying, no, we don't want to have the motor -- we don't want the buses come through. We would rather have a walking tour. We would rather have a petty cab tour or -- rather than -- and then also not so much as tweaking it, but their recommendations was to Council was to look at making Front Street a pedestrian -- for pedestrian and bicycles, open for service vehicles only during restricted hours, from Papalaua to Front -- Papalaua to Shaw.

Mr. Hutaff: That's good. My only concern is, one, that they allow, you know, walking tours.

Mr. Alueta: That they do or do not?

Mr. Hutaff: That they do.

Mr. Alueta: Okay. Yeah.

Mr. Hutaff: Absolutely.

Mr. Alueta: Okay.

Mr. Hutaff: Everything else, I'm -- if I have to vote right now, I'd say "nothing with wheels," including those little things you run around with unless they're wheelchairs.

Mr. Alueta: Oh, okay.

Ms. Cua: So maybe, you know, if the Commission wants to spend some time talking about that because we would like to know what is the consensus of this group on your feeling on that particular issue. What comment -- we know what the Planning Commission is saying, Maui Planning Commission, but we'd like to know what would you like to tell the Council about historical tours. What form.

Mr. Hutaff: At least having the ability to have walking tours. The way that it sits now, it eliminates that.

Mr. Alueta: Is there an opposition to motor vehicle tours or bus tours?

Mr. Hutaff: I'm opposed to it.

Ms. Sarich: I think that for some people it might be the only option.

Mr. Hutaff: Well, the thing is is if I drive - I own a tour company - okay, when we drive down Front Street, we may point out certain areas, like in front of the library, blah, blah, blah, but it's not a very specific tour about Lahaina. You see what I mean? It's not that we pickup at the Cannery Mall and we're going to slowly cruise down Lahaina District, and then turn around, and go back down the other way. Right. Okay. It's just, okay, I'm going to pickup at Lahaina Shores so, by the way people, before we pickup, I'm going to talk about that place this afternoon. I don't consider that a tour of Lahaina. That just information. You know.

Mr. Fredericksen: So in this -- in this document, a tour is specific to something that is just only occurring in Lahaina Town?

Ms. Cua: This is within the historic district --

Mr. Fredericksen: Yeah, in the historic district.

Ms. Cua: 'Cause it's under Chapter 19.52, so within the Historic Districts 1 and 2.

Mr. Hutaff: Maybe go ahead and leave the motor vehicles, and the rest of the statement is just, you know, allow foot tours, and then if it becomes a problem with us tour companies, then we can get challenged.

Mr. Alueta: Okay.

Ms. Cua: Do you wanna comment on bicycles 'cause that's something else the -- the Planning Commission commented on?

Mr. Fredericksen: What comments did the Planning Commission have on bicycles?

Ms. Cua: Well --

Mr. Alueta: They --

Ms. Cua: They had a separate -- I mean they kinda went beyond. I mean they had separate comment that said, with regard to Front Street, they supported -- they want the Council to consider that Front Street, from Papalaua to Shaw Street, only allow pedestrian and bicycle traffic only, and that it would be open during restricted hours for service vehicles. So that's a pretty bold, you know, statement. But that's what they thought since they're just -- Council is asking for comments --

Mr. Fredericksen: Yeah.

Ms. Cua: They would give that as a comment. That's their comment.

Mr. Alueta: And they specifically asked does that change their position on bicycle tours, and they -- if the Council does not close Front Street.

Mr. Fredericksen: So what's the position on bicycles?

Mr. Alueta: They said -- they didn't change it. They just said to allow it. Their thing was not to allow motor vehicle tours.

Mr. Fredericksen: Yeah.

Ms. Chandler: And -- I'm sorry. Chair?

Mr. Fredericksen: Go ahead, Rhiannon.

Ms. Chandler: How would you be able to regulate something like that because it seems like it's pretty loose and if we're going to restrict motor vehicle tours, then how do -- how do you even determine if that's happening in a vehicle, or are we going to start stopping vans that drive down Front Street? I mean we don't want this law to become very difficult for anybody else either. So that's my only question.

Mr. Hutaff: Well, I think if you don't -- if you don't disallow it, it's assumed that you allow it, okay, so that's how I would approach it. Maybe we just -- but you were -- if you wanted to change 53 to, you know, no -- no surface to air, and no surface to ocean vehicles allowed to make sure duck tours don't come in again.

Mr. Alueta: Yeah.

Mr. Hutaff: And leave everything else alone then that would allow foot traffic, that would allow bicycle traffic, that would allow, you know, not having to worry about, okay, is it a tour of Lahaina, or is it tour that includes Lahaina.

Mr. Alueta: Well, I think any tour in Lahaina Historic District will be prohibited in a -- I mean the way -- and, again, that is just the Maui Planning Commission's comments back to Council, okay. So that's different from what you guys -- we're trying to get your comments as to what you think should be the methodology of the tour. I mean, currently, again, you're reacting more so toward --

Mr. Hutaff: The foot traffic.

Mr. Alueta: Well, what is the Council's -- what is Council's proposal, which is --

Ms. Chandler: That it be motor vehicle tours only.

Mr. Fredericksen: Yeah, and I certainly disagree with --

Ms. Chandler: Yeah, I do too.

Mr. Fredericksen: Just having it motor vehicle only. I mean that's -- that's not a good thing. I mean it's so much -- I mean people would have a much better experience if it's on the ground, so to speak.

Mr. Hutaff: My only concern is if we -- if we say we can't have motor vehicle tours in there is that someone's going to say I have to be quiet all the way down Front Street. For me, that's impossible ...(inaudible)...

Mr. Alueta: As I put out to the Planning Commission, the commissions itself, you wanna just allow tours, all you have to say is "historical tours," and just say that -- and that all transactions shall be conducted within an enclosed vehicle. Strike everything else. And that would allow for walking, biking, motorized -- any tours you want. So you just say, "Historical tours," and then you just say all -- I mean "all customer transactions shall be conducted in a wholly enclosed building." And that pretty much would allow for historic tours, except for the transaction to be conducted in a building.

Ms. Sarich: And we want the parking to be off of Front Street.

Mr. Hutaff: Yeah. And I think my reasoning is is that as having a tour company and is to be able to enlighten and educate our visitors about Lahaina and lele, and all of that, and I may have to drive down there to point things out. I don't want that as a restriction. I would like to see that actually encouraged. At the same time, I don't want to see it where it's like, you know, buses going, hop on, and I'll give you, you know, for six bucks, you know, I'll give you a tour of Lahaina and keep going around in circles. I don't think that that's going to be appropriate.

Mr. Alueta: Okay.

Mr. Hutaff: That's where I'm going --

Mr. Alueta: Okay.

Mr. Hutaff: With that.

Mr. Alueta: Yeah. And I can help you draft it. I mean we can just strike, when you read it, it says, "Historical tours; provided, however," you cross out "that only," you cross that out, and you put, "however, motor vehicles shall be parked or stored on off-street parking." So you strike out "that only," and then you strike out "shall be used and," and you know, so you strike out that portion, so that will leave you with, "Historical tours; provided, however, that motor vehicle(s) shall be parked or stored on off-street parking areas and that all customer transactions shall be conducted within a wholly enclosed commercial building."

Ms. Cua: I don't know if you -- if you wanna think a little bit about bicycle tours. If this is going to allow for bicycle tours, what do you feel about -- where do these bicycles go? Is it important that they also be, I would think, parked --

Mr. Hutaff: I have no idea about that. If somebody came to me and said, hey, would you wanna run a bicycle tour down Front Street, I'd say, heck no. I don't want nobody to die.

Ms. Sarich: Yeah, that sounds really impossible.

Mr. Hutaff: You know.

Ms. Chandler: If there were to be a bicycle tour company on Front Street, likely they would have to create some kind of bicycle rack structure thing and that would need to come through the Commission anyway, or do we need to put a provision in? 'Cause it seems like -- I don't know. I really like his suggestion that we just, yes, historical tours, strike the "only," and, you know, provided that motor vehicle(s) are parked off-site. It leaves it open for other tour options and that, I think, if any of those options come through and need to create anything that would -- would create havoc in the historic district, I'm sure it'll come through the Commission at that time.

Ms. Cua: So if you -- if the Commission agrees with that, then that can be your comment to council.

Mr. Fredericksen: Any thoughts on that?

Ms. Chandler: I agree.

Ms. Sarich: I agree.

Mr. Fredericksen: Sounds fine.

Mr. Hutaff: Okay.

Ms. Cua: Thank you. We can move on.

Ms. Sarich: I just had a comment about public parking areas, I mean I know we're not talking about that, it's not changing, but there is a parking lot right on Front Street, so do we wanna allow that?

Ms. Cua: I'm sorry, what are you --

Ms. Sarich: I mean no. 49 says that --

Mr. Fredericksen: That's a County lot though, Brandis.

Ms. Sarich: But it is on Front Street.

Mr. Hutaff: It is public.

Mr. Fredericksen: But it says, "private." Doesn't this one say "private?"

Ms. Sarich: It says, "Public parking areas; provided that none shall abut Front Street."

Ms. Cua: Yeah, and I believe that parking lot that does exist on Front Street, when that came in, what we actually required them to do, initially, because they had expanded their building and they needed additional parking, and so we required them to add additional landscaping along the street so that there was more of a buffer of landscaping that directly abutted the street and parking lot -- the parking stalls started further beyond. What has happened since though is they do have permission to building a kiosk there so that, you know, the building would be on Front Street and the parking would be on the back. But I think that was intentionally done many years ago and that's something that, when we get to the point where Joe is going to look at the whole ordinance and all the uses, that's something that can be revisited, but I think the intent of that was to not have a sea of asphalt right along Front Street within the historic district. We would much rather see historic buildings or buildings that reflect the historic character of Lahaina or landscaping.

Mr. Osako: So the pedestrian mall thing, that's not on the table right now, correct?

Ms. Cua: It's not unless you want it to be. We just wanted to share with you the comments that we had received from the Planning Commission, and that was one comment, they went there with that.

Mr. Osako: Oh, okay, just because I commute from Lana`i to these meetings, if Front Street becomes a pedestrian mall, you cut off access to the harbor if no vehicles can travel on Front Street, or are you going to let taxis and rent-a-car vans and buses, are you going to have those or if it's totally restricted, what about the cruise ships and those hundreds of people and stuff, are you going to cut all that off too ...(inaudible)... unless you have a corridor where they can access the harbor?

Ms. Cua: I think it really depends on, again, it was just a recommendation that came from the Planning Commission, the Department's not advocating one way or the other on that, we just wanted to let you know. I think that could depend on how -- where you restrict traffic on Front Street. You could cut it off at different points to allow for that harbor traffic. So again, it's something that the commission commented on; whether this body wants to comment on that same issue or not, that's totally your prerogative.

Mr. Osako: Okay, and I don't know if anybody here has been to Singapore, but they restrict traffic in the downtown area by permit only for -- and even the taxis, if you do go into the downtown area during the business hours, you do have to pay a higher fee. That's how they restrict traffic in that downtown area. So that's another way you can do, you know, cut out traffic.

Mr. Fredericksen: Manage it, yeah. Stanley? Any other comments, Commissioners? Lunch is here. Do we want to eat and continue through? Okay, let's have a five-minute break and then we can, well, eat lunch and continue the meeting. Let's break for five minutes.

Ms. Cua: Mr. Chair?

Mr. Fredericksen: Yes?

Ms. Cua: Is it possible to break a little longer 'cause the staff --

Mr. Fredericksen: Okay.

Ms. Cua: The staff should be able to have some time to eat some lunch.

Mr. Fredericksen: Okay.

Ms. Cua: And they may not have --

Mr. Fredericksen: We're going to eat here. I mean is that enough -- ten minutes, is that enough time to go buy something like at the okazuya or --

Ms. Cua: Could we do 15 maybe, if that's okay? Thank you.

Mr. Fredericksen: That's fine - 15-minute break? Okay, 15-minute break. Thanks.

(A recess was called at 12:58 p.m., and the meeting was reconvened at 1:24 p.m.)

Mr. Solamillo: We should be now on page 8, Height Regulations. "Height Regulations" has been bracketed and highlighted on the screen, which means it's deleted, and the sentence begins with "No building with historic district no. 1 and historic district no. 2 . . ."

And under D., Yard Spacing, "Yard Spacing" has been bracketed and highlighted, it's deleted, and the sentence begins "Within historic district no. 1 and historic district no. 2," "one-family" has been bracketed, highlighted, and replaced with "single-family."

On section E, "Selling in Public Places" has been bracketed, highlighted, and deleted.

On section F, "Drinking in Public," as the title, has been bracketed, highlighted, and deleted, as well as definitions within section F, "including alcohol, brandy, whiskey, rum, gin, okolehau, sake, beer, ale, porter, wine or other spirituous" --

Mr. Alueta: Excuse me, Mr. Chair?

Mr. Fredericksen: Yeah?

Mr. Alueta: Just for your information, the Planning Commission, I guess, at its review, considered just deleting the whole section because we're unsure as to whether or not you have the authority to regulate it at all.

Mr. Fredericksen: Drinking?

Mr. Alueta: Yeah. So it's just -- it's just something to consider. We were going to review whether or not -- because this code was written before I was born, and probably several people in this room, before several people in this room were born, and the liquor laws may have changed with regards to who has the actual authority. We're going to do a little more research on our side to see whether or not there is -- you have such an authority.

Mr. Fredericksen: Okay.

Mr. Hutaff: That's pertaining to the "Drinking in Public" only, right?

Mr. Alueta: Yes.

Mr. Hutaff: I mean to F?

Ms. Cua: And, Chair, if I could I just add to that. They just wanted -- the commission felt that it just may be -- this section just may be redundant with our current liquor laws so --

Mr. Fredericksen: Okay.

Ms. Cua: And this is where they -- oh no, this is where they brought up, you know Joe had mentioned about the acceptance of awa ceremonies, adding that as an allowable use, and so that's something that they did under allowable uses.

Mr. Solamillo: Okay, the last part of Section 14 is "H. To preserve the many fine trees that now exist in the historic area and that are deemed invaluable to the historical setting of these districts, written approval from the cultural resources commission shall be required before any large tree can be removed. A large tree shall be defined in this subsection as any tree with a trunk circumference greater than sixty inches."

Ms. Chandler: Chair, can I comment on that?

Mr. Solamillo: Comment?

Mr. Fredericksen: Sure.

Ms. Chandler: I have a question about, I know that the arborist -- is it the Arborist Committee that governs trees in general?

Mr. Fredericksen: Yeah.

Ms. Chandler: Are they aware of this and does there need to be any communication between us and them?

Mr. Fredericksen: Good question.

Mr. Alueta: The Department will be sending this down --

Mr. Fredericksen: To the Arborist Committee?

Mr. Alueta: Yeah.

Mr. Fredericksen: Okay. Good question. Thanks, Rhiannon.

Ms. Cua: The one thing we do wanna mention about this section that the Planning Commission recommended to be consistent with 19.52.020.F, it gives a 90-day time limit and so they wanted to add a 90-day time limit to approve or review these requests.

Mr. Fredericksen: So I may have missed something, but why is Section H - that's not being deleted, that's added, right?

Ms. Cua: Correct. They just wanted to add a time limit to that.

Mr. Fredericksen: Okay.

Ms. Sarich: What if we decide -- what was our recommendation with the time limit last time? I know we discussed it a lot that we didn't want things to just go through because we couldn't get to it.

Mr. Fredericksen: No, I think it was 90 days, wasn't it?

Ms. Sarich: But we had to say they had to have substantial -- they had to have actually completed their application.

Mr. Fredericksen: Oh right.

Ms. Cua: Right.

Ms. Sarich: And that they couldn't just say they got it in the works and then didn't respond.

Mr. Fredericksen: Yeah, and it wasn't a complete application.

Ms. Sarich: Yeah.

Mr. Fredericksen: Ann, what --

Ms. Cua: Right, I remember that discussion. See, in this particular case, I remember you did use the word "completed application." On this particular item, I don't know if you necessarily need to -- they wanna remove a tree. They wanna ask for removal of a tree. I don't know if we're --

Mr. Hutaff: We did have that problem with that mango tree the guy cut down across from the --

Ms. Chandler: Is there currently -- Chair, sorry. Is there currently an application process to remove trees? Is there like a form or a permit they would fill out?

Ms. Cua: No, there's not.

Ms. Chandler: So then in order to remove a tree, what process would you need to go through right now? This is it? This is the new process? Okay.

Ms. Cua: It probably would have to be a historic district approval. If you're removing -- we could use the existing application, the historic district application, and then we'd bring it to the Commission. So we're just letting you know that they recommended a time limit. It's up to you. You don't have to recommend one as well.

Mr. Fredericksen: But the recommended time limit is 90 days?

Ms. Cua: Correct.

Mr. Hutaff: That means if we don't get to it in 90 days, it's automatic approval though, right?

Ms. Sarich: Right.

Mr. Hutaff: Did we go 180 on that?

Mr. Fredericksen: ...(inaudible)... completed application was filed.

Mr. Hutaff: The last one?

Ms. Sarich: No, we changed something. But we definitely wanted whatever information we're supposed to get to be in so that people couldn't just turn something in, and then you needed more information and we never got what we needed until the time ran out, and then we couldn't -- and then it would pass.

Mr. Alueta: On -- if I may, on page 5, section C, "The cultural resources commission . . ." your comments was to insert "complete" into the application -- ". . . director of the filing of a complete application," --

Mr. Hutaff: Right.

Mr. Alueta: "unless otherwise mutually agreed upon by the applicant and the cultural resources commission, and shall review the plans according to procedures set forth in this article." And you wanted it in section C.

Mr. Hutaff: And it went from 45 days to 90 days, right?

Mr. Alueta: Correct. And then on section F --

Mr. Hutaff: Is where it went.

Mr. Alueta: Is where the proposal from the County Council is to extend that to 90 days.

Mr. Fredericksen: Assuming that the application is complete to start off.

Ms. Sarich: Right. But here we have no application, so how do we even know that they're planning on it?

Mr. Fredericksen: How about that question?

Ms. Cua: What was that question?

Ms. Sarich: I mean you said there's no application so how would we even know they wanna do this?

Ms. Cua: No, what I'm saying is that if someone -- if this is in effect, and if someone wanted to demolish a tree within the historic district, a large tree, they would need a historic -- we have a historic district application already.

Ms. Sarich: Oh, okay.

Ms. Cua: Yeah, we would use what we have. We wouldn't have to necessarily -- because it is getting your approval, historic district approval, so I don't think we would need to come up with a brand new application for historic district tree removal application. I don't think we need to be that specific. We could use our application.

Ms. Sarich: And so that application has photos and everything that goes with it?

Ms. Cua: It has requirements for -- and we could take a look at that. We need to see, obviously, if things are not applicable, you know, building plans, building construction plans, obviously, you know --

Ms. Sarich: Right.

Ms. Cua: It's for a tree. So I don't know. We could take a look at that.

Mr. Solamillo: Next section, 19.52.100, "Regulations for historic district no. 3. A." The title "Use Regulations" is bracketed and highlighted and removed. The sentence begins "Within historic district no. 3, no building, structure, or premises shall be used, and no," addition, "building or structure shall hereafter be erected, structurally altered, replaced, or enlarged . . ." Next paragraph, "Single-Family Dwellings" has been bracketed, highlighted, and changed in spelling, uppercase to lower.

On page 10, item 3, "playgrounds--Community" has been bracketed and highlighted, change in spelling, lowercase or uppercase to lowercase on "community."

Next item is item 5, with the recommended change, bracketed, uppercase "State" to lowercase "state." B. Bracketed and highlighted "Special Uses" deleted as a title. And the sentence changed to "The following special uses may be allowed with written approval of the," bracketed and highlighted for deletion, replacement with "cultural resources commission.

On item C, brackets and highlights for "Building Height and Special Spacing regulations." The sentence has been changed to read as "To preserve the historical setting and the open space around the historic structures, all new construction shall be limited to building heights of two stories and not more than thirty-five feet in height . . ." And comments on C or the above?

Mr. Fredericksen: Brandis? Anybody? Any other Commission Members?

Mr. Solamillo: Okay, item D, bracketed and highlight, "Off-street Parking Regulations" sentence changed to read "Off-street parking facilities shall be provided in connection with the erection or increase in size of any building or structure in historic district no. 3, as provided for in article II of this title. . ."

Item E, bracketed and highlighted for deletion "Yard Spacing." The sentence begins "Within historic district no. 3, the required yard spacing shall be as follows . . ."

Item F, bracketed and highlight for deletion "Protection of Trees." The sentence has been changed to the following: "To preserve the many fine trees that now exist . . ." Did we pull that someplace? It looks like it's been moved. We just did this, right?

Mr. Hutaff: Yeah.

Mr. Solamillo: Page 9, under H. So it's been moved. H on page 9 was protection of -- or the tree protection section, and now we've got it on F. Where do you want it, Joe? It's a different district, right?

Ms. Sarich: District 3.

Mr. Solamillo: Okay, we'll leave it.

Mr. Alueta: Yeah.

Mr. Solamillo: Sorry. Okay, change, brackets for deletion, "written" change in spelling, upper to lower.

Mr. Fredericksen: Right -- just the sentence or the phrase prior to that?

Mr. Solamillo: Yeah.

Mr. Fredericksen: "To preserve the many fine trees that now exist in the historic area and that are deemed invaluable to the historical setting of this district . . ." Okay. Never mind. I saw "commission" and I thought it was historical commission.

Mr. Solamillo: Okay.

Ms. Sarich: I have a question about C, which we can go back to. Do you wanna do it now or at the end of the section?

Mr. Solamillo: Let me just finish reading it --

Ms. Sarich: Okay.

Mr. Solamillo: And then we'll be done with this. "County historic" has been bracketed and replaced with "cultural resources commission." That ends that part for F. Let's go back to C.

Ms. Sarich: So this would be saying that -- how does that work with an addition?

Mr. Fredericksen: What are you thinking of, Brandis, like an addition to a --

Ms. Sarich: Well, I mean maybe I'm just reading it wrong, but if we wanted to do an addition, like the thing that we looked at last time, to the Pioneer Mill Store, how does that work? 'Cause this says it needs to -- new construction needs to be really far away and we were touching that building.

Mr. Fredericksen: Oh, so it would have to be a case-by-case basis, I guess.

Mr. Solamillo: Well, I mean if you look at --

Mr. U'u: What's the maximum square footage.

Mr. Solamillo: If I may just interject. Consider the buildings which are located in Historic District No. 3. Would you put an addition on any of them? I mean these are like one of a kind. This is essentially the government quad and then buildings associated with the Hawaiian Evangelical Association, Alexander settlement, these are buildings that probably an addition would not be a good idea.

Ms. Sarich: Okay, so they cannot have a -- alright. I just wanted to understand that.

Mr. Solamillo: Okay.

Ms. Sarich: Okay.

Ms. Cua: It's in the ordinance right now the way it is. They're just doing some minor changes to that section.

Mr. Solamillo: I wanna change Dickie's building right across the street.

Mr. Alueta: They did.

Mr. Solamillo: Did they really?

Mr. Alueta: Well, they added on the -- you mean the post office -- I mean the library?

Mr. U`u: Library.

Mr. Solamillo: No.

Mr. Alueta: They added that whole section on the back.

Mr. Solamillo: No, this one across here. I thought it was the State.

Ms. Sarich: ...(inaudible)... that one?

Mr. Alueta: Yeah. Yeah. Yeah.

Mr. Solamillo: Yeah.

Mr. Alueta: They did add a couple in the back.

Mr. Solamillo: Oh. Okay. So that means that they have made additions, which are outside of the public --

Mr. Fredericksen: View.

Mr. Solamillo: View, and outside the public right-of-way. So do we change this to reflect what's on the ground?

Ms. Sarich: Well, I mean, of course, I would rather not see them get changed, but I don't know if that means the alternative is to try to --

Mr. Solamillo: Tear 'em down.

Ms. Sarich: Get rid of the building. So I'm much more for additions and adaptive reuse that are done well.

Mr. Solamillo: Or just in the elevator.

Ms. Sarich: Right.

Mr. Solamillo: Suggest language, please?

Ms. Sarich: Me?

Ms. Cua: Has it been a problem though? I mean is there a problem that we need to fix here?

Mr. Solamillo: Well, if what's on the ground is that buildings have been added to 'cause you know the history better than I do of these particular buildings.

Mr. Alueta: Well, you know from the -- I'm sorry. But you can -- just by looking at the buildings, you can see, and if you've been in the back parking lot of the old thing, they've added that whole wooden structure that's been added in the back, and then you have the library, which is historic -- I mean I'm not sure if that's in the historic district.

Mr. Solamillo: Yeah, they are.

Mr. Alueta: And then that's -- you could tell that the -- the Hawaiiana section with the flat roof --

Mr. Solamillo: Right.

Mr. Alueta: Is just --

Mr. Solamillo: Slapped on.

Mr. Alueta: Your typical -- I mean if you go to any neighborhood, everybody's just got a lean to --

Mr. Fredericksen: It filled in.

Mr. Alueta: Yeah. They just put a ...(inaudible)... and went straight across and that's pretty much -- and they just poured a slab. It looks like it may have been an enclosed -- or a patio, but they basically enclosed it and put a semi-flat slight slope roof onto it and then -- so -- and it does -- I mean, like I say, we can -- this is existing language, we can try to work on this --

Ms. Sarich: Yeah.

Mr. Alueta: When we come back around in --

Mr. Solamillo: So why don't we just note it as an -- amend the language to reflect additions.

Ms. Sarich: I think -- yeah, we need to talk about additions and say that we want them to follow the Secretary of the Interior Standards or something like that.

Mr. Solamillo: Absolutely.

Mr. Alueta: Okay. Alright.

Mr. Solamillo: Thank you. That was C. on 10. Okay.

Ms. Cua: I don't know if we need -- do we need to go through the rest of these to tell you something's been bracketed or can we just ask, at this point, in the interest of time, if you have any comments on the rest? Could we do that?

Mr. Solamillo: Thank you.

Mr. Fredericksen: On page 11?

Ms. Cua: 10 or 11. I think we're still on --

Mr. Solamillo: We were on F. We just have Signs and -- so we just have G and H.

Ms. Cua: So maybe if anybody has any comments on F, we could take those at this point.

Mr. Alueta: If I may, Mr. Chair, just to make one note. With regards to the trees, Department staff did want to recommend that it be measured from -- it says 60-inch, you know, circumference, or whatever, diameter, it didn't say where do you measure it from. The Planning Department is recommending I believe it was 42-inches above the base.

Mr. Fredericksen: Up from the --

Mr. Alueta: Yeah.

Mr. Fredericksen: From the trunk?

Mr. Alueta: From the trunk. So you get where you're going to measure it from. Yeah, above ground.

Mr. Fredericksen: Not ten feet above ground?

Mr. Alueta: No. No.

Mr. Fredericksen: Okay, so it would be 42 inches above ground would be the point of measuring to determine if the tree meets that 50 or 60-inch circumference criteria. Yeah, Brandis?

Ms. Sarich: ...(inaudible)... tree. Oh. Yeah.

Ms. Chandler: I have a question about trees now that this is a totally new concept, which I think is fantastic. What do we do with like after-the-fact tree removals, and is there going to be a fine system put in place for that or anything?

Mr. Fredericksen: Good question.

Mr. Alueta: There's -- as noted in part of the changes, it makes reference to the enforcement provisions. As you noticed, they took out all the enforcement and made it as part of 19, yeah, 520, as far as the enforcement. So the fines would fall under that for violations and then, again, the only after-the-fact permits would be potentially doubling of the fees, but that's it. You could get them on the violations.

Mr. Giroux: So as far as zoning too, you can look at it as a criminal offense too, if it came to that.

Mr. Alueta: Correct.

Mr. Giroux: 'Cause zoning violations can be pursued as misdemeanors.

Mr. Fredericksen: Okay.

Mr. Hutaff: Question on the tree with the measurement. How would the banyan fit into that because some people consider the roots branches? If we go 42 inches, some of the trees branch out little --

Mr. Alueta: Right. But you would take the main trunk.

Ms. Cua: It's from the main trunk. It's from the main trunk.

Mr. Hutaff: The main trunk.

Mr. Alueta: Right.

Mr. Hutaff: So there was five of us that went I never even seen the trunk of the banyan tree.

Ms. Cua: Oh yeah.

Mr. Alueta: Yeah, they got the main -- massive.

Mr. Hutaff: 'Cause I climbed them, but I don't remember -- not in the historic district recently but at Kapiolani Park -- oh don't do that.

Mr. Fredericksen: Okay, and, let's see, any public comment, testimony? At this time, we'll take it. Oh.

Ms. Sarich: I'm sorry.

Mr. Fredericksen: Hold on.

Ms. Sarich: My brain is moving slowly today. Back onto C.

Mr. Fredericksen: Building height again. Okay.

Ms. Sarich: Are there residences in district 3 here?

Mr. Fredericksen: Yeah.

Ms. Sarich: Would we ever want to in-fill in those areas rather than expand out?

Mr. Solamillo: The reason why I'm hesitating is because, as it is now, it's -- it's a cultural landscape, right? Lots of grass, you know, and lots of space between buildings. I don't know. That's something I think we'd have to debate as another issue.

Ms. Sarich: Okay.

Mr. Solamillo: Because it's definitive the way it's purposely laid out.

Ms. Sarich: Okay. Thank you.

Ms. Chandler: I just have one more question. All of these are kind of responses to degradation, I guess, within the NHL, but what about preventative measures? Is there any precedent set in the historic districts where there's an expectation that people will maintain their buildings on an annual basis or every ten years do a tenting or something because, essentially, as it is written, if I know that I want to demolish my building and I have to wait until the Health Department says that it's, you know, it's a hazard, then I'm just going to leave it until it rots, really?

Mr. Solamillo: Demolition by neglect.

Ms. Chandler: Demolition by neglect, yes, so is there anything -- 'cause that's malicious to me. I mean 'cause some people really don't value the historic character of a building.

They wanna build a really big house. So is there anything that can be done, while we're in this process right now, or have you seen ever any kind of precedence for preventative measures to preserve buildings?

Mr. Alueta: Condemnation. That is the ultimate and, you know, and that's why you're -- you have people who review these and who are actively participants, I mean in the historic -- in the various historic districts and you feel that there's a tree -- a house that is noteworthy and is being neglected and there is always the County -- the County can always come in and condemn the property, condemnation, and buy it for the County because we're always -- the County's going to be here forever. We're always going to need buildings. We can always find a use for it.

Mr. Fredericksen: Does that ever happen - condemnation? No?

Mr. Alueta: We do it mostly for -- again, it's only for --

Mr. Fredericksen: The roads, yeah, but --

Mr. Alueta: Roadways.

Mr. Fredericksen: But for buildings. That's a interesting point that you brought up. I'm just curious if it has -- if that has ever occurred here.

Mr. Alueta: The only time we've ever threatened to condemn and take a property was when the Grand Wailea under valued their parking structure in the open space in Wailea, and they said it was worth only 20,000, so we said, fine. We'll condemn it. We'll take it at your own assessment of what it was worth. So that's only time that I know that we've ever threatened to take a building, but other -- but as boards get more active, as the County becomes more progressive, it's always a possibility. It all depends on how active you get your County government to be.

Mr. Fredericksen: Thank you. Warren.

Mr. Osako: But these apply only to historic district, correct?

Mr. Alueta: With these rules?

Mr. Osako: Yeah.

Mr. Alueta: Yes. But condemnation applies Countywide.

Ms. Chandler: Condemnation applies across the board. Is it similar to something called "eminent domain" or is that -- yeah. Okay.

Mr. Fredericksen: Any other questions or comments before we take public testimony on this? Okay, now, let's go ahead and have public testimony.

Mr. Keeaumoku Kapu: Hi. Aloha mai kakou. Keeaumoku Kapu from Lahaina. I guess point of clarification. Hopefully, later on that this Commission will truly view the intent of what this resolution, basically, is about and it doesn't hinder the process on what you're responsible of doing. What I see is on a lot of definitions and clarifications that it's kinda premature to me that I sitting here listening to the recommendations that came from the Planning Commission and this is evidently a ordinance or a resolution as to go in front of the County Council that talks about your responsibilities. So I think what you might wanna do is to make sure there's a check and balance within your fiduciary duties as a Commission here and that it sways heavily on your decision-making based upon the historic preservation of these properties and not have it rely in the Planning Commission repertoire or decision-making process. And the reason why I bring that up is, you know, first of all, I'm the chair of the Native Hawaiian Historic Preservation Council and an advisory to the Board of Trustees, Office of Hawaiian Affairs, and we give recommendations to all these different types of projects that may affect historic properties and we're sort of under a different guideline but, basically, it's all the same. What your guidelines is under versus what our guidelines, basically, are complying to are similar in many ways so when it becomes a horrendous decision on your part, then it relies totally on the Planning Department and might have some confusion with the State Historic Preservation Division as it has been in the past, and certain things that we've seen in the past. I give you one perfect example, like the Public Works Department is not necessarily or doesn't necessarily review historic preservation applications that it's to the purview of the Planning Department through you guys, and I've seen many times where recommendations have been given in despite of recommendations from here or SHPD that went totally to the Planning Commission and went right through to the County Council. So the horrendous responsibilities that you all have to give definitions to a lot of things I feel needs to have more input from the public trust because when you're talking about historic districts, there's different kinds of dynamics within the historic districts, for instance, the perfect example of ...(inaudible)... defining what this so-called complex is - commercial residential - and it's always been a mission for the Lahaina Restoration Foundations as well as the organizations that, basically, ran this town, yeah, always tried to foresee or pursue the endeavors of shutting down Front Street entirely for a more friendly pedestrian, you know, kinda that but don't really know what is going to affect the residential of the long time kuleana families that living within those areas; now, they going feel that they going be restricted to doing certain things all based on tourism. Tourism, out of -- I hear a lot of the concerns that came from here, that concern went to the Planning Commission, then the Planning Commission gave the recommendations based upon what they see that you

should recommend. I think you should look at that pretty heavily on how that is going to levy your decision-making on this change in this preservation to allow for other types of uses within that historic district that don't infringe upon the right of these kulenana within those areas. We have other concerns that may trigger constitutional rights, Article 12 sections have -- it may have other things that may trigger just the mere access rights under the PASH decision, yeah, 7-1, native Hawaiian -- Hawaii Revised Statutes, 7-1, 1-1, and that's your guys' job. You guys supposed to review these kinds of things on how these planning processes not going to infringe upon not only the public trust now, but upon the people and the character of this town that is pre-contact. What I hearing here is just a discussion what is there existing now, which may deter from other projects that are pursuing other things, like Moku`ula, bringing back more of the past times ...(inaudible)... and how this process is going to be even more horrendous for them to pursue these kinds of things. The harbor is getting impacted. They wanna do a harbor expansion, which may affect the ferry from the families that have a relationship from Lahaina to Lana`i. It's their common -- their common way. So when you review these kinds of things, look at the commonality of life on how Hawaii used to be because that's what your job is. That's what all our job is and, you know, I just sitting here and I thinking, gee, I can be at home playing in the rain in my taro patch; doing other things that is more beneficial and healthy for me that you can see present, well, now we get two sitting in the audience diligently because we know that these kinds of actions may affect our kids tomorrow and I hope that the window of opportunity for all of you, you all Commissioners, to get together as well people who still care within this historic district to really compile something that'll be helpful for the County side, the State side, the people of that place, and the community in whole because every time people get one problem, they going come to you. But if they no longer know it's a problem, I guess the Planning Commission going have lines of people waiting outside and you guys not going even have anybody inside here listening to you guys because you just gave away all your guys' responsibilities to somebody else. Just hang in there, stick in there, ask the right questions, make sure you get everything down on the dotted line. One more technical question I wanted to bring up is the thing such as -- where that thing come from - liquor versus awa? You know what I mean? That's a question that should be asked in here, which you open up to the public comment period as pertaining to how people feel about using religious -- hallucinogens for religious purposes versus the liquor ordinance in that town that you can get fined for drinking in one historic district twice as much as you can get fined in drinking in the historic district -- I mean the outside area that's not within one historic district. Kinda funny, huh? Our enforcement and our management is within that area so that question was totally - I don't know where it came from from the Planning Commission side on how we need to look at, you know, allowing these types of ceremonies being that it's a -- the drug is the same, basically. It's a hallucinogen, yeah. CRC versus Planning Commission. And one more thing I wanted to add inside here was on the complications versus the Planning Commission and the Cultural Resources Commission on vehicles, motor vehicle being allowed within the district. I think the reason why that was

a -- was a complication in your review because it was dealing with the - what is that? The ugly duckling, yeah, in town. I see that ugly duckling stay in Waikiki now.

Mr. Hutaff: No, not anymore but it was.

Mr. Kapu: Okay. Well, we shot down that and you gotta go back to the core reason as pertaining to why that happened, not get mixed up in all these other kinda ideas, well, if we do this, are we going to open up later in the future for this. My recommendation is keep all the buses out of town because if you say they cannot down Front Street, where they going? Right in the residential area and you know how all those telephone wires and the poles and the roads are so narrow. They drive down there already. Keep them totally out. The buses I mean. Everything else, eh, I can see. The buses is a nuisance because it, you know, the toxic that come from those buses is -- is horrendous. I can see vans. I can see all kinds of other way, but the buses definitely is a nuisance because that is -- that town is like kinda confined in many ways. And I hope that in despite of what's happening here, that there is a window of opportunity that we can later on give recommendations to the Planning Commission as well as the Cultural Resources Commission on how we feel about certain things. Mahalo.

Mr. Fredericksen: Ann? Hold on, Keeaumoku.

Ms. Cua: Chair, is it okay if I address the speaker?

Mr. Fredericksen: Yeah, please.

Ms. Cua: So I just wanted to kinda reassure you that this ordinance here, 19.52, although because changes are being requested to Title 19, that's why it had to go -- we had to submit it to the Planning Commissions for their comments. But in terms of jurisdiction, jurisdiction won't change. The jurisdiction for the Historic Districts 1, 2, and 3, is with this body. So -- but again, anytime, through the Maui County Code, that there is a change made to Title 19 anywhere, Joe has to take those changes to all three Planning Commissions. We actually weren't legally required to bring these changes to this body. We decided, as a Department, because they have jurisdiction under this that we needed to bring it to this body. So I just wanted to share that.

Mr. Kapu: And mahalo for that. You see where I coming from?

Mr. Fredericksen: Yeah, Keeaumoku.

Mr. Kapu: Okay. Mahalo. Thank you.

Mr. Fredericksen: Got a couple comments. Go ahead, Rhiannon.

Ms. Chandler: Thank you for clarifying that and I -- I was just wondering why that is the case because this bill is directly related to the Cultural Resources Commission and that it goes to the Planning Commission first, and I'm reading Councilwoman Johnson's letter where it says it goes back to the Planning Commission for their review also as time permits, so it's like it begins and ends in a commission other than ours when it has to do with us and that's why I'm wondering why that is.

Mr. Giroux: And if you want me to address that.

Ms. Cua: Yeah, that's a legal --

Mr. Giroux: The way that -- that laws come through the County, the Planning Director can initiate a law, and then it'll go up and come down, and goes through and everything, or the Council member -- Council member can initiate a law and then it has to, by charter, go to the commissions if it has to deal with a land use issue, and since we're in Title 19, we're considered a land use issue. So then it goes through them and then it goes back up. The thing is is under your own powers, you can actually initiate the process too and, in fact, we were in the middle of it, Stan and I, were in the middle of basically looking at what we're looking at today and getting into the progress of actually having this come out of this Commission and go to Council as a recommendation with the Director's support. So, basically, Jo Anne Johnson kinda got a half-a-step ahead of us and that's what we're doing. We're actually just using the process that's rolling fastest, but even if this goes through this process, gets through, becomes a law, you still have jurisdiction to put it on your agenda and say, well, here's the things that didn't get changed that we want changed, and Joe was alluding at that that he's even in another path going through it just changing haberdashery, Turkish bath, doing that kinda cleanup. So it's an organic law. It's always changing. You guys can -- it's just that, for some reason, for 60 years, this sat there with no changes and you can see, when we're looking at a historic building as being something built before 1910, it's an indication that the law needs some wrenching on, and so it's, as Keeaumoku said, it's your jurisdiction. Always look at the laws that affect your jurisdiction. Look at your rules. Look at your laws. Always rehash it. Are they working? And then it can go on your agenda, we can talk about it, draft it, you know. There's always work to be done in the rule-making and lawmaking arena. So always remember that, as a Commission, you have, under Chapter 91, those powers to create your own rules, change your own rules, and you also, under your powers under the County Code, to recommend changes to -- to any law that affects cultural resources. So it's very important.

Ms. Chandler: Mr. Chair, I just wanted to say thank you then to the Department for allowing us to look at this if it wasn't even part of the process.

Mr. Hutaff: Okay, you know, you mentioned about the big buses and stuff like that, and just kind of a word of caution because they've actually tried to do that on the Hana Highway,

unfortunately, the Department of Transportation and legal people said that if we start to eliminate the size of certain vehicles, other than the safety on the weight of the bridges out there, what we'll do is we'll be setting ourselves up to continually diminish to a point where we may not be allowing any vehicles out there whatsoever, which goes back to what you said, if we don't have the big vehicles go down Front Street, then it will set the standard for all of a sudden it's going to become pedestrian traffic because we began that process. Conversely, okay, as being a mechanic for 35 years and knowing the Department of Transportation rules and the EPA rules, if you get next to a bus that's running and your are offended by that, okay, you call the Department of Transportation with the vehicle number, they will come out and make sure it's meeting Federal standards as far as its emissions because in today's world, most of the vehicles we have on the road today are vacuum cleaners. They literally suck in the bad air and put out good air --

Mr. Kapu: Wow. Interesting.

Mr. Hutaff: Based upon the emission standards and those things. It's no longer that 14 gallons of air gets contaminated for every gallon of gasoline, okay. They are pretty much clean now and buses, if they're built -- if they're made after a certain year have to use the low sulfur fumes. If there is a mechanical problem with it, it is not supposed to be on the road. So you have recourse.

Mr. Kapu: I was just referring to within the historic district area.

Mr. Hutaff: Well, you know, to be honest with you, I used to drive 57-passenger, 65-passenger buses and I hated going down to the back of the wharf, okay, not so much --

Mr. Kapu: But they still do, don't they?

Mr. Hutaff: True. Just because I hated it, it didn't mean it was required to, and certainly it was a choice - do I have a drive, or do I drive a bus? I changed jobs, okay, but not because of that but for a lot of reasons, but the idea is is that we again have to be careful because if you don't allow one thing or if you push to not allow one thing, you may end up with something you don't really want in the end.

Mr. Kapu: No, then my question is, basically, I guess the dynamics of that town and the mission that has been there for many years of trying to shutdown Front Street entirely then we have a different spin on how we need to look at the management and enforcement of those areas. So my recommendation is to minimize, you know, just that intrusive impact because I mean we fought to shutdown two, maybe three tour ships coming in, yeah, because of the pedestrian impact on the harbor as well as the land. I mean every time when you get this other -- these tour boats come in holding one capacity of the biggest ship is 950 rooms, that's times 2 people, how much they impacting a small little boat harbor

inside there and if you know they are offloading that much people, then how many buses they going have to bring in in the morning to load up all that cattle and get 'em out of our town. They not keeping them in the town. They taking them out. So there gotta be some kind of way to levy this thing and say, you know what? They going come to Lahaina, you stay in Lahaina, yeah, because we need the business, but where they take them? Iao. Kihei. All these other kind places. Hana. Exactly. So if we looking at keeping the integrity and the historic of this place, maybe we can think of ideas as pertaining to sharing the wealth when it come to tourism and not load 'em in a bus, like cattle, and taking them out of our town. And I no totally favor tourism. I think they the most invasive creatures on this earth, that's my opinion. I know what you going say because, eh, we dependent on tourism. I mean that pays for the milk and bread we gotta put in the icebox.

Mr. Hutaff: No, you know, what my personal feeling is, and I always get in trouble because I am in "the tourist industry," is tourism sucks. Tourists are fine. They're people, okay. We need to put the culture first so that everybody can survive. The visitor will come. The good people will come. It's how we've -- it's how we've treated tourism and how we've circumvented the culture using tourism that we're actually going to lose tourism because of the way we circumvented the culture. So we need to put the culture first.

Mr. Kapu: Just as a reminder to the Commission, if you guys really wanted to really do something, I know this body can really put something together to -- to make a motion or something, or recommendation to the Planning on what your thoughts is on how this town has been drastically impacted for the past hundred and something years on how this town has decreased in its historic properties for so long, yeah, and the abuse and the character that have changed for all these times that, you know, your review is sign ordinances and these, you know, these kind of things and I would hope that there is an entity for myself because the State hasn't been doing their job. In fact, the State is dysfunctional at this point. And I hope that Uncle Neil will solve all those little problematic situations that we've been facing for a long time. And I sort of put myself and tap myself on the shoulder a lot of times because I get one up front meeting with him coming up in the next two weeks to figure out who going be the new director of Department of Land and Natural Resources. So we always trying to figure out some way of minimizing these intrusive attacks that we having on our dear towns and our islands and I just hope that within the County Charter somewhat that this entity, being that it's a small kind of - I don't know - horrendous process to go through the Cultural Resources and that you can really put your minds together because our islands are at stake and its being attacked. Thank you.

Mr. Fredericksen: Thanks, Keeaumoku. Any other testimony? Okay. Commission Members, we'll close public testimony. Any discussion, further discussion, comments, or questions? Nope. Stanley?

Mr. Solamillo: Next item on the agenda.

Mr. Hutaff: Do I apologize now or wait till later?

Mr. Solamillo: No. No need. Poor Ray.

Mr. Hutaff: No worry. Go for it. I'm fine.

Mr. Solamillo: We have email dated October 8, subject: defining culture, and I propose to --

Mr. Fredericksen: Stanley?

Mr. Solamillo: Yes?

Mr. Fredericksen: Going back to the -- what we were just discussing, the Lahaina architectural integrity, etcetera, any other comments on that folks? Yeah, let's go ahead, Ann, you have a way of getting us comments that we've put in.

Mr. Alueta: From the two days or from just today?

Mr. Fredericksen: Well, probably both days.

Mr. Alueta: Okay.

Mr. Fredericksen: Refresh our memory from last month.

Mr. Alueta: I will try to do my best to refresh your memory.

Mr. Fredericksen: Thanks, Joe.

Mr. Alueta: Going from page 1, on section B, you had changed to "demonstrated experience," so this is for special interest. This is for the qualifications for --

Mr. Fredericksen: Oh, okay.

Mr. Alueta: Commission members. You wanted to have "demonstrated experience." On page 2, section C, again, you wanted to insert "or persons with demonstrated experience" to be added in. This is again on C. with regards to qualifications for members and the Commission makeup.

On page 3, K., "The commission," it's not "may," it says "shall," and then "have the authority to review and comment archaeological reports submitted as part of development proposal . . ." Going to page 4 --

Mr. Solamillo: ...(inaudible)...

Mr. Fredericksen: Yes, Stanley?

Mr. Solamillo: That is was to remain as "may" and not "shall."

Mr. Fredericksen: May?

Mr. Solamillo: Yes.

Mr. Hutaff: ...(inaudible)... K., right?

Mr. Alueta: That was -- okay.

Mr. Solamillo: Yeah, because "shall" requires review of all.

Mr. Alueta: Okay. Alright. So strike "shall." Page 4, I have under "Architectural style," the comment was insert "shall be constricted in keeping with the Department of the Interior Standards for in-fill structures," and this is going from -- so reading it, it would be "The exterior of all new buildings constructed within the historic district," and then you crossed -- you wanted to eliminate "must be in keeping with the architectural style." So --

Mr. Solamillo: That's under "Architectural style?"

Mr. Alueta: It's under "Architectural style," page 4, A. That was the note that I think Ann had taken the majority of the notes from the first day. And then page 5, under plans review --

Mr. Solamillo: I have another comment. I'm sorry.

Mr. Alueta: Oh okay.

Mr. Solamillo: "Monterey" is struck.

Ms. Sarich: I think we were going to add "plantation vernacular."

Mr. Solamillo: Yeah, we were doing "plantation vernacular." "Monterey" is not a style that's applicable any longer.

Mr. Alueta: Oh, okay.

Mr. Fredericksen: That's going to replace item 3?

Mr. Alueta: Yeah.

Mr. Solamillo: Yeah.

Mr. Alueta: So you're going to strike it and put in what - "plantation?"

Mr. Solamillo: "Plantation vernacular."

Mr. Alueta: Oh, plantation --

Mr. Solamillo: Corrugated iron roofs, corrugated metal. And it was "single-family dwellings and commercial buildings."

Mr. Alueta: Yeah, I'll get that from Stanley.

Mr. Solamillo: Sorry, go ahead.

Mr. Alueta: And then, let's see, for plans review, again, replace with "authority," on page 5.

Ms. Sarich: And that's "approve or disapprove all plans."

Mr. Alueta: Okay. I'm sorry.

Ms. Sarich: Didn't we change that, Stanley, where it says ". . . commission shall have the authority to approval or disapprove all plans . . .?"

Mr. Alueta: ". . . authority to approve all plans . . .?" Or -- okay, ". . . to approve or disapprove . . ." Okay.

Mr. Solamillo: Thank you.

Mr. Alueta: And then you also had comments that says, "once notification of CRC of administrative approval wants ability to delegate authority." So you wanted some type of language in which --

Ms. Cua: And that was what we talked about where we needed to memorialize the process that is in place right now where you've allowed the Planning Department, under certain circumstances, through your rules, you've allowed us to do administrative approvals on your behalf, and so we just wanted to make note of that here because then it would be consistent with your rules. You know, I didn't catch this the first time, but can we go back to that first paragraph where it says, "Within any historic district established in this article, the cultural resources commission shall have the authority to approval all plans" --

Mr. Alueta: Or disapprove.

Ms. Cua: Oh, and then it -- oh, and then it just stops at that, right? The rest is deleted, which is good 'cause I was concerned -- sorry, I didn't catch that "superintendent of building inspection," that's like old, old, old language. We don't have a superintendent of -- so I was going to say "Public Works, but no. It stops right there so that's better.

Mr. Alueta: Yeah.

Ms. Cua: That's good.

Mr. Alueta: Okay.

Ms. Cua: Sorry.

Mr. Alueta: Let's see, on section C, we wanted to insert "completed application as determined by the Planning Department," inserted.

And then on G, insert "historic district," "A letter of historic district approval . . ." And, again, insert "Planning Department." So it says, ". . . has been issued by the cultural resources commission or the Planning Department." Again, just to memorialize authority where it's been delegated. Page 6 is --

Ms. Sarich: I'm sorry, could we add section 3 there about minor alterations, established events, and other minor applications. Yeah.

Ms. Cua: Where is that?

Mr. Alueta: You have that --

Mr. Solamillo: Can you read your copy, please.

Ms. Sarich: Under G ...(inaudible)... sorry. Okay, so under G, I think we added a no. 3, something about minor alterations, established events, and other minor applications approved by the planner.

Mr. Alueta: Stan, can you type that so I can --

Ms. Cua: Oh, was this just to reflect the authority that we have to grant on your behalf?

Ms. Sarich: Right.

Ms. Cua: Okay. I don't know where I put that language.

Ms. Sarich: I'm sorry I don't have it written ...(inaudible)...

Mr. Alueta: Can you read it one more time? I'm sorry, Commissioner.

Ms. Sarich: So --

Mr. Alueta: Just a new 3 that -- what's the gist of 3, is that to just --

Ms. Sarich: The gist of 3 is we're just kind of spelling out what things we don't need to necessarily ...(inaudible)...

Mr. Alueta: Okay.

Ms. Sarich: Like minor alterations, established events, and other minor applications that are approved by the planner. Did you write down anything else, Stanley?

Mr. Solamillo: Established events and what?

Ms. Cua: I don't know about the last one, minor alterations approved by the planner because I think that would fall --

Ms. Sarich: I'm sorry, minor applications.

Ms. Cua: Minor applications approved by the Department.

Mr. Solamillo: By the Department.

Mr. Alueta: Yeah, Planning Department. We can work on the language.

Ms. Cua: I don't know if this is where we'd actually put it 'cause it says, "Within any historic district . . . the director shall not approve a building permit application . . ." and this would be the Public Works Director, correct?

Ms. Sarich: Yeah.

Ms. Cua: ". . . shall not approve a building permit application . . ." 'cause they approve building permit applications unless a letter of approval is issued by the cultural resources commission, special management area, which is the second one, and this would be -- and then the third one would probably be administrative review granted by the Planning Department for minor alterations, established --

Mr. Alueta: No, it says "director." If it's director, it means Planning Director. "Director" means the Planning Director of the County.

Ms. Sarich: It does?

Mr. Alueta: Yeah. So that means when we get the building permit, we wouldn't sign off on the building permit unless we get -- those are done.

Ms. Cua: Okay, well, and we'll go look at that "director" again because there's a constant problem with Planning Director, Public Works, and I think in 19.52, there's areas where you refer to Planning and you refer to Public Works.

Mr. Giroux: Ann, I just want to -- the comment I made about the building permit, to make it -- to clarify, I think a good place would be, if you look at the top, 19.52.020, subsection B., if you go "Application for an appropriate," insert "building permit," or just insert "building," "Application for an appropriate building permit to construct, alter, repair, move or demolish any . . ." so it's very clear that building permit means any -- any permit to construct, alter, repair, move or demolish.

Ms. Cua: But a building permit. And I think that would -- and then --

Mr. Giroux: And so we know when we use the word "building permit," we are also talking about demolition.

Ms. Cua: Okay. And then also, I think we wanna be clear in here that we wanna stay focus that really what's under your jurisdiction is building permit. So if somebody wanted to do something that didn't require a building permit, technically, your review may not be needed. I don't know if in section A, we just talked about section B, but in section A, do we need to add something before the last word "plans?" "Within any historic district established in this article, the cultural resources commission shall have the authority to approve all building permit plans?" Again, it all links back, this ordinance was initially created to be linked to the building permit and I think if we just say "all plans," that could be --

Mr. Alueta: Kind of vague.

Ms. Cua: Is vague because in B, you've been more specific, so I think, and I don't know if you agree, James, that we'd want more specificity.

Mr. Giroux: Yeah.

Ms. Cua: So should we say "all building permit plans" or --

Mr. Giroux: As long as that's not limiting you. I mean if it's not limiting you to any -- because we're not talking about all the other historic review things you bring before the Commission, right? I mean there's a lot of --

Ms. Cua: Well, I think the question, in the past, has been was all of those things supposed to come to this Commission; we were just kinda -- you know, we were just bringing it for their approval.

Mr. Giroux: Well, I think this would put a little, you know, do on the *i* if you make it very clear that your --

Ms. Cua: Your jurisdiction is what --

Mr. Giroux: You're given very strong jurisdiction to building permits in this district.

Ms. Cua: Yeah.

Mr. Giroux: To this Commission.

Ms. Cua: And I think that was the intent.

Mr. Solamillo: Does it need to be "shall" or should it be "may?"

Ms. Cua: No, I think "shall." It think it's "shall."

Mr. Solamillo: "Shall" construed as mandatory or discretionary?

Mr. Fredericksen: Yeah, because "the authority" to do something.

Ms. Cua: So are you okay with -- would your comment be, in section A, to add "all building permit plans" just to further clarify like how we've done in B? Would that -- could we get consensus on that or --

Ms. Sarich: I have a question.

Ms. Cua: Yes?

Ms. Sarich: Sorry, I'm just getting confused.

Ms. Cua: Okay.

Ms. Sarich: So this section has nothing to do with the trees or the events or anything else we would review ...(inaudible)...

Ms. Cua: Well, see, events -- events normally, and that's what we need to -- events normally have structures with them, structures associated with them, and that's how normally these events would come before you. I think, technically, if an event wanted to happen and they did no structures, then, technically, it wouldn't have to come to you because of how the ordinance was originally tied to a building permit application. If somebody wanted to do something just in an open air area, but they weren't building anything, I think it's questionable whether we could bring it to you. The thing is, it's always come as a package, for the most part - they want a stage; they want food booths; they want this; they want that --

Ms. Giroux: Or they wanna use County property, which would be the banyan tree --

Ms. Cua: Correct.

Mr. Giroux: Or any -- in that area.

Ms. Cua: Correct. Or they wanna use County property.

Mr. Fredericksen: So if somebody wanted to use the banyan tree, they have to have a permit no matter what. It doesn't matter if they're not building -- if they're not building anything. They have to have a permit period. Okay.

Mr. Giroux: Use of a historic property, which is owned by the County.

Ms. Sarich: Right, but this doesn't say that we actually look at that, right, if we change it to building permits? Do we wanna look at that?

Ms. Cua: But it might be in another section.

Ms. Sarich: Okay.

Mr. Fredericksen: Maybe we should leave it vague, like just plans, 'cause then that would be a plan, technically, wouldn't it?

Ms. Chandler: I guess --

Mr. Fredericksen: Yeah, Rhiannon?

Ms. Chandler: You know, administration change and so we never know what is going to be brought to the Commission and what isn't and what an administration is going to think is appropriate for the Commission to look at, and that is maybe important to this body, so if we could -- I mean is there anything that we can think of that we don't want to be a decision made without the Commission's review or anything? I mean even I would welcome you to tell me what you think what you don't want to have to make a decision on or --

Ms. Cua: Well, if somebody on their private property wanted to -- or, okay, let's say the Lahaina -- or a run through Lahaina that maybe just involve they were putting up no tents, no structures or anything, no -- maybe they were just going to run on the sidewalks --

Mr. Alueta: ...(inaudible)... permit.

Ms. Cua: Yeah, there's -- what I'm saying is that there's other -- it has to go through the Police Department, that's the jurisdiction when it comes to the road and stuff, you know.

Ms. Chandler: 'Cause right now there's -- there's permits that come through and they're just, you know, small reoccurring events and they're just approved by the Department. They have it in the historic district but there's no need to bog this agenda down with those smaller things, right?

Ms. Cua: If it originally came to you.

Ms. Chandler: If it originally came to us.

Ms. Cua: Yeah.

Ms. Chandler: So, is that language -- maybe that's helpful, like nothing that -- no new projects or something like that.

Ms. Cua: Well, those, for the most part, like I said, how it all started -- well, those normally do have structures that are tied to the building permit. What I'm saying is that how this ordinance was originally created was to be linked to a building permit. It says, "the superintendent of the building division." You know, if you go back to the -- here, "Within any historic district . . . shall have the authority to approve all plans and the superintendent of building inspection of the county shall not issue a building permit unless a certificate of approval has been issued by the historic commission." Okay, we deleted that language but that was intent of how this was originally drafted to be, if you need a building permit, you gotta come to the CRC.

Mr. Alueta: I guess what Ann is trying to say is that if we -- say you had a 5K race and it started at Puamana, not in the historic district, and ended at Canoes, which is -- I don't think is in the historic district either, there's no aid station, all I'm doing is running on the road, do I need a -- we don't think you would need a historic permit. And the big gorilla in the room is, if somebody came in during Halloween and said I wanna get a -- I wanna close the road, I'm not putting up any structures, I just want a permit to close the road, and the merchants get together because they feel it's easier to have -- to close the road, does that require historic district? We're thinking that the intent is you don't need to get a -- you don't need authority from the historic commission -- I mean the Cultural Resources Commission to close the road because they're not putting on an event. They're just closing the road.

Ms. Cua: My point was that normally an event does come as a package. It has historically been that way where they maybe want crafters, an event would wanna have crafters, they wanna have a stage, they wanna have maybe aid stations that maybe have shelter, you know, I -- usually associated with some kind of a building, even though it may be temporary that they're going to breakdown, but it would require a building permit, but it came as a whole package as like a whole event, but I'm saying that I think we've got a little cloudy in terms of, you know, maybe just bringing everything that, technically, may have not had jurisdiction here so --

Ms. Chandler: It's a good point.

Ms. Sarich: I wondered if we do want that, if we changed "plans" to "applications?" That we may review applications or something?

Mr. Fredericksen: Yeah, that sounds -- that's a good word. How about changing -- Brandis had a -- I like that, just changing "plans," the word "plans" to "applications."

Ms. Sarich: That instead of "shall," "may review applications" or something?

Mr. Fredericksen: Instead of "shall look at plans."

Ms. Cua: Well, again, that just -- we're trying to make it clearer to the public and to everybody as to what actually is to be reviewed by this body, and again, our point was that the initial intent of how this law was written, and you can recommend to change that, but the intent of how this was written was linked to a building permit application, and our attorney, I think, could, you know -- if you read the language that is there, that's -- even some of it's been taken out, you know, "the superintendent of building inspection," it was always linked to a building permit and I think we just need to be more focused so that - and clearer in the law in case there was any ambiguity.

Ms. Sarich: Then can I bring up another issue? Because the trees don't require a building permit, how does that work?

Ms. Cua: That's a good --

Ms. Sarich: We thought we were just going to quickly review this.

Ms. Cua: You would say "all building permit plans and tree removals." I mean it is specific. That's what you're supposed to do. We don't want to have it so vague that there's question from the public - do I need a permit and --

Ms. Chandler: So vague that there's question between the Department and the Commission as to what it is that we're --

Ms. Cua: Right.

Ms. Chandler: Because right now I understand that it's kind of like an unspoken practice that some things are reviewed and some come to the Commission --

Ms. Cua: Right.

Ms. Chandler: But, ultimately, actually it's the Department that makes that choice what is going to come to the Commission, right? I mean since -- since this wasn't written anywhere.

Ms. Cua: Well, for the most part, all applications come to the Department. Based on the authority that you've given us, you've allowed us to act on your behalf only in certain instances. Other than that, we bring it to you. So, in that sense, we choose, but we're choosing based on your direction.

Ms. Chandler: Yeah.

Ms. Cua: Yeah.

Mr. Fredericksen: Let's insert those three words --

Ms. Chandler: Tree removal --

Ms. Cua: Building permits plan and tree removal.

Mr. Fredericksen: Yeah.

Ms. Cua: And then, you know, acknowledge that there may -- you know, again, we wanna be clear because we want it to be out there and honest that, you know, if there is a run through Front Street, and that's all they're doing, and they're not setting up a stage, they're not building, then they need to get approval from the Police Department. They don't need to, you know, get approval from the CRC in that particular case.

Mr. Alueta: Can we change that to "review of building permits or tree removal as described under section H" because --

Mr. Fredericksen: Yeah, it just makes it more ...(inaudible)...

Mr. Alueta: Yeah. So "or tree removal as described under the section referring 19.52.H," whatever it is. I don't know if there's a number on it - 090 -- 19.52.090.H.

Ms. Cua: Okay.

Mr. Fredericksen: Stanley, do you have a comment? Oh. Let's --

Mr. Alueta: So --

Mr. Fredericksen: Boogie on here.

Mr. Alueta: Did we jump back -- how far did I get, or are we still on page 5? 'Cause we had --

Mr. U`u: You're on 6.

Ms. Cua: 6 now.

Mr. Alueta: Okay, 6, and then --

Mr. Fredericksen: You got down to the bottom of page 5, so we're on page 6.

Mr. Alueta: Okay. Oh yeah, minor alterations, etcetera, okay. And then -- okay, added "historic district approval" for demolition. You just want to make sure it's historic district. Same thing on 19.52.050, section 3, "historic district. And then we added on section B, of that same area, before demo --

Ms. Cua: Can we go back to 1 though. We gotta add the word "deemed."

Mr. Alueta: Oh, "deemed."

Ms. Cua: You weren't here for that one.

Mr. Alueta: Okay, I'm sorry.

Ms. Cua: ". . . are deemed impossible."

Mr. Alueta: "The director of the state department . . ."

Ms. Cua: "The director of the state department of health deems the building or structure to be a hazard to public safety or health and repairs are deemed impossible."

Mr. Alueta: Oh, "deemed." Okay, sorry. Oh, okay. And then you had -- insert "demo" by -- B, it says, "For the purpose of this article, buildings and structures of historic significance shall be deemed to be those within any historic district that are more than fifty years old when a request to demolish or move the building or structure is made." And then you have before demo, made -- oh, made before demo.

Ms. Sarich: And we had to other things that we put in that section; one was in the main section, "demolition or moving a building or structure," that new sentence, "The cultural resources commission shall not issue a letter of approval." I think we wanted to change "approve any plans for demolition or removal," or something like that. Because we don't issue letters or something, right?

Mr. Alueta: ". . . shall not issue a letter of" -- well, I have ". . . letter of historic district approval for the demolition . . ." So we added the words "historic district."

Ms. Cua: And that's okay. Again, we wanna clarify the difference between a historic district approval and a demolition permit approval. Demolition permits are issued by Public Works. In the historic district, you have to grant historic district approvals for a demolition. So that's why we say "a historic district approval." So you're granting an approval, but a historic district approval, but a demolition permit approval.

Mr. Alueta: Right.

Ms. Cua: But that's the difference.

Mr. Giroux: Ann, just for consistency in G, .020, you just call it "a letter of approval?"

Ms. Cua: Okay, then we should change --

Mr. Alueta: That should also be changed then.

Ms. Cua: Well, is it the same -- is it the same --

Mr. Alueta: No, no, we added in "a letter of historic district approval." I went over that one.

Mr. Giroux: Alright.

Ms. Cua: Thanks for catching that.

Mr. Alueta: Yeah, it's in there. Insert "historic district approval." And then you also wanted to insert "the Planning Department," in there. And then 3 again, you added the "minor alterations" one. Page 7 --

Ms. Sarich: Wait. On page 6, did we the thing about the documentation in there? Yes?

Mr. Alueta: What section, Stan?

Mr. Solamillo: Page 6 --

Mr. Alueta: Oh, this is your comments regarding --

Mr. Solamillo: Yeah.

Mr. Alueta: Yeah. Yeah, that's going to be under -- that's going to be a new section. Add a section C, under B. And then page 7 and 8 there's -- oh, 7, there's nothing. On 8, you're going to change -- the recommendation was "Historical tours; provided, however, that motor vehicles shall be parked or stored in an off-site parking area, and that all customer transactions shall be conducted within a enclosed commercial building as used in this subsection." So you struck "that;" crossed out "only" before "motor vehicle;" you kept "shall be," and you struck "used, and the same." Okay?

Page 9, I didn't have any that I caught. Ann, did you catch anything on page 9?

Ms. Cua: Well, I think we talked about it in separate section but, you know, under the trees at the end, we gotta add about measuring where we measure from, 42 inches above ground.

Mr. Alueta: Yeah.

Ms. Cua: And we didn't include a 90-day time limit here, correct? We mentioned to you that the commission did, but I did not hear back that you wanted to also include a 90-day time limit or did you say --

Mr. Fredericksen: From the time the application is -- the completed application is submitted? I mean what do you have to submit?

Ms. Cua: Yeah.

Mr. Fredericksen: I'm assuming it's simpler than a demolition permit.

Ms. Cua: Right. We can, if you're okay with it, do you want us to use the same language as the completed --

Mr. Fredericksen: Yeah.

Ms. Cua: Okay. Alright.

Mr. Fredericksen: 90 days after a completed permit --

Ms. Cua: Application.

Mr. Fredericksen: Is submitted.

Mr. Alueta: Okay.

Mr. Solamillo: Sent to the Arborist Committee?

Mr. Fredericksen: Yeah.

Mr. Alueta: So H, at the very end, we'll just have "as measured 42 inches above grade." And then we'll add the 90-day clause. Okay. Let's see --

Ms. Sarich: But we don't know if we have any authority over drinking or not?

Mr. Alueta: Correct, over drinking. The Department -- that was out of -- I'm not sure if you guys wanted it or even if -- again, the Maui Planning Commission's comments were is this a redundancy of existing liquor laws? Are you okay -- if it is a redundancy, do you have any problem with removing it?

Mr. Giroux: Joe, try to -- from the testimony, Keeaumoku seemed to believe that there was actually a higher penalty for drinking in the district. Can we confirm that?

Mr. Alueta: Well, it says \$500.

Mr. Giroux: And if we have a general no drinking in public law, what's the fine for that if we can just ...(inaudible)... on that?

Mr. Alueta: James, I believe you're the only one who's ever been busted for that so I think you need to --

Mr. Giroux: It was an empty can.

Mr. Fredericksen: An empty can?

Mr. Giroux: I was picking trash.

Mr. Hutaff: It was still cold.

Mr. Alueta: It was in the back seat, come on now.

Mr. Hutaff: If I'm not mistaken, it's a thousand dollar fine and up to six months in jail.

Mr. Alueta: Okay.

Mr. Hutaff: But it's never -- it never goes that route.

Mr. Alueta: Okay, so it's --

Mr. Hutaff: Is the maximum fine.

Mr. Alueta: Okay, so that's -- so right now it says "not more than 500." So this one says "not more than 500 or imprisonment for not more than 30 days or both."

Mr. Hutaff: I think if we just leave the existing liquor laws of drinking in public.

Mr. Alueta: Okay, so if it's redundant, do you have any objection to removing this section?

Mr. Fredericksen: No.

Mr. Alueta: And then did you have an objection, again, even though it doesn't specifically -- even though it's excluded because kawa is not an alcohol I guess, that the Maui Planning Commission did recommend that Polynesian --

Ms. Cua: They said, "Polynesian traditional protocols, to include awa ceremonies, be allowed and encouraged." They wanted that in a separate section under a permitted use. They just said they wanted to --

Mr. Fredericksen: And so there would be a permit that would be applied for that?

Ms. Cua: No.

Mr. Fredericksen: It would just be a permitted use.

Mr. Alueta: An allowed use.

Ms. Cua: Again, so let's take that. Let's just take that for discussion purposes. So if somebody wanted to do a ceremony on private property, and they weren't going to be doing, you know, a stage, and they're not going to be doing buildings, and it's a permitted use, then that's a situation where they wouldn't need to come before you.

Mr. Fredericksen: No, that's fine.

Mr. Hutaff: I agree.

Ms. Chandler: Do we -- gosh, I'm so sorry even to go here again.

Mr. Fredericksen: No, let's go.

Ms. Chandler: Okay, what about if it's over a certain size, like the gathering is going to be over a certain size, is there a threshold that - I don't know --

Ms. Cua: Again, if -- well --

Mr. Hutaff: If it's over a certain size, good. No, seriously. Good. When we did the protocols when the mayor came from Palau, there was 600 people there. If there was 6,000 people there, I would have said good.

Ms. Cua: Well, just in terms of management though I think is what you're talking about. I don't know. I think it's hard to regulate size and I don't think there's going to be many. I think the --

Mr. Fredericksen: Well --

Ms. Chandler: Oh yeah, I'm sorry.

Mr. Fredericksen: If that happens down the road, then that's something that --

Ms. Chandler: Yeah, I'm not speaking specifically about awa ceremonies but just about -- 'cause you were using it as an example of, say for instance, if somebody wanted to do this,

this is an example of things that may be administered -- administratively, you know, allowed but, anyway, okay, thank you.

Mr. U`u: We should practice that right here.

Mr. Alueta: And then - let's see, reserve -- sorry. And, yeah, I think on building height, on page 10, that -- oh, additions to follow the Secretary of Interior Standards. Yeah, and then again on the measuring of the tree, it would just be "as measured at 42 inches above grade," and that would be on F, for the protection of trees. Yeah, and that's it.

Mr. Fredericksen: Any other comments, Commissioners, on this? Okay.

Ms. Cua: So we will put those comments in a letter and forward that to the --

Mr. Fredericksen: Yeah. Are we going to do this by consensus on these comments that we've got? We good with them?

Mr. U`u: Yeah.

Mr. Hutaff: Yes.

Mr. Fredericksen: Okay. That's adopted.

Ms. Cua: Thank you. Thanks, Joe.

Mr. Alueta: Thank you.

Mr. Solamillo: Thank you, Joe; thank you, Ann.

Mr. Fredericksen: Yes, thank you folks.

Ms. Cua: I'm staying.

Mr. Fredericksen: Okay, Stanley?

- a. **E-mail, dated October 8, 2010, from Commissioner Hutaff, Subject: "defining culture."**

Mr. Solamillo: The next item was an e-mail, dated October 8, 2010, from Commissioner Hutaff, the subject: "defining culture." I'm suggesting that we move it to the December 2 discussion on the agenda so we can put that together with another -- another topic, which has been proposed by another Commissioner.

Ms. Cua: And can I ask maybe what, I'm just curious, the issue on that was?

Mr. Hutaff: Somebody had made a comment about what is culture anyway, and then I answered back that I had researched that very question, and came up with culture, the definition highly misunderstood and misused, thus the need for an explanation was needed. And we left it at. And went on. And what I did is I tried to e-mail everybody where I got that information from so they could look it up themselves to see what culture was, and then added one more in there that's like about 65 pages long with graphs, and charts, and pie charts, which really destroys the whole meaning of culture, in my opinion. And then I only had a few of your e-mail address but I felt that it was like something that as information, you know, that just to give a concept so when we talk about culture, we're all kind of on the same page.

Ms. Cua: So is this -- did we need to have a discussion on it or was it something you just wanted to -- because you've submitted it to some members, we wanted to get it to all the members?

Mr. Hutaff: No, I actually didn't want to give it all members and then I was tagged as maybe violating the Sunshine Law.

Ms. Cua: Right.

Mr. Hutaff: So that I believe that that's what they're -- it's not the e-mail that sent, it's the issue. It's the fact that maybe I violated -- I mean did I violate the Sunshine Law?

Mr. Giroux: Well, I think what we try to establish is that if you e-mail out information to the members, for one thing, we want all the members to get it, but also the chances with e-mail are so high that if somebody presses a button and responds, that's when --

Mr. Hutaff: Discussion takes place.

Mr. Giroux: Discussion takes place and that's where you're going to find yourself with the, you know, headlines of *The Maui News - Ray Hutaff violates* -- so, basically, this is the -- the safeguard is e-mail it to -- e-mail information to the Department, have them put it on as a communication to the board, and if we -- once it's on as a communication, at the meeting we can have this discussion - do we wanna talk about it more? Is this just for information - FYI? Is there a dialogue that needs to go on? Does somebody have another website that we need to look at? Whatever.

Mr. Hutaff: Okay. I got it.

Mr. Giroux: So that's how we can get these dialogues on. I know it's a little cumbersome, but with technology, that's the fear is that once something goes out, somebody presses a button and it comes back, now we're in that world of discussion - have we just had an illegal off record meeting, and we just wanna avoid that whole scenario all together.

Mr. Hutaff: With that all being said, I apologize to the Commission, to the Chairman, to the public, to microphone, to Stan, to the Planning Department, and to Suzie over there, and I generally don't repeat my mistakes.

Mr. Giroux: As Corp. Counsel, we don't wanna be reprimanding this kind of idea, it's just that the methodology just to keep you guys out of that firing lane because you never know when somebody picks it up and decides, hey, I'll just make a lawsuit just to have fun. So we wanna keep you guys out of that stuff.

Mr. Hutaff: Thank you. And by the way, since you did that, at least everybody got a copy of the e-mail.

Mr. Fredericksen: Yes.

Ms. Cua: So, can I ask a question, Chair? So again, in terms of agenda and our time, we'd like to kinda guesstimate how heavy our agenda's going to be. Am I assuming that -- is this all the information or you said you have another document?

Mr. Hutaff: It's actually in there that you guys can go look at. I don't have -- I don't think it should be on our --

Ms. Cua: Oh, so this is it then? So do we even need to put it on the agenda?

Mr. Hutaff: No. No.

Ms. Cua: Okay. So I would -- that's why I'm asking. Thank you. So I think you have the information and we don't need to -- unless you guys wanna talk about it now, we don't need to --

Mr. Hutaff: No, it's 15 years of information. I'm sorry.

Ms. Cua: Okay. Thank you. Thank you so much.

Mr. Fredericksen: Okay, Stanley.

E. DIRECTOR'S REPORT

1. Kanaha Pavilion (requested by Commissioner Rhiannon Chandler)

Mr. Solamillo: Next item is Kanaha Pavilion. I'm just going to ask, Commissioner Chandler, if you'd like to say anything or no or since her knowledge on this project is fairly ...(inaudible)...

Ms. Chandler: Do we have that kind of time or do you want to defer it to the next meeting?

Mr. Solamillo: Probably deferring it is best.

Ms. Chandler: Okay.

Mr. Fredericksen: Yeah.

Mr. Solamillo: And I apologize to the Commissioners.

Mr. Fredericksen: Oh, you gotta go - you gotta go. That's fine.

Mr. Solamillo: Yeah.

Mr. Fredericksen: So item 2?

2. Moloka'i CRC Meeting (requested by Chair Erik Fredericksen and Moloka'i Commissioner Veronica Marquez)

Mr. Solamillo: Director's Report, this Moloka'i CRC Meeting. Ann, would you like to address this really briefly?

Ms. Cua: Sure, I can. Yeah, just very briefly. It is something that we are looking into, looking into the most expeditious way to try and make this happen, recognizing that it is not easy, it is not the -- it is not -- okay, let me try again. It takes a while for the County to be able to accept money. There's a whole process. So we're looking at if there's other avenues to be able to achieve the same result but not have to go through a really arduous process. So we will be in contact directly with you about that.

Mr. Hutaff: It's drawing interest so it's fine.

Ms. Cua: Yes, it is.

3. Eliminating Duplication in Historic Preservation Reviews/Determinations of Eligibility and Effect/Mitigations (SHPD and Maui County)

Mr. Solamillo: Okay, the next item, under Director's Report, is Eliminating Duplication in Historic Preservation Reviews/Determinations of Eligibility and Effect/Mitigations, and I'll try to make this short and sweet as well. In an effort, by the administration, to streamline the processes as we as improve working relationship and practice between SHPD and Maui County's Planning Department, we had an opportunity to actually eliminate some papers so instead of having to have two letters from -- one independent letter from SHPD and one independently from Maui County, from the Planning Department, you can satisfy your permit requires with only one letter. So, essentially, if I get a hot one that comes through and I get to it first, then my letter will satisfy the requirement of having the determination of effect and eligibility made and we won't -- all I do is copy SHPD. You don't have to have a second letter from SHPD.

Mr. Fredericksen: Stanley?

Mr. Solamillo: Yes?

Mr. Fredericksen: I have a question. When I was on the Commission the first time, there was a concern that the Commission get all these letters that State Historic Preservation was generating on projects within Maui County where, you know, it was something that was significant. From what I got this time, it looks like the only letters that we're getting are, one, there's very few reviews, I mean was this it on the letters that SHPD generated in October - six letters?

Mr. Solamillo: I don't know. I'd have to ask Suzie.

Ms. Chandler: We usually get like 50.

Mr. Solamillo: Yeah, we usually get 50.

Mr. Fredericksen: Because that's -- I mean it just doesn't seem -- it seems very --

Mr. Solamillo: Thin.

Mr. Fredericksen: Thin.

Mr. Solamillo: Yeah.

Mr. Fredericksen: And the other comment I'll make is there's no letter that's directed to any -- any consultant firm, whoever the principle investigator happens to be.

Mr. Solamillo: Are those in archaeology or architecture?

Mr. Fredericksen: Archaeology.

Mr. Solamillo: Okay.

Mr. Fredericksen: And there's nothing --

Mr. Solamillo: Well, that is generated out of Hinano's office by Morgan.

Mr. Fredericksen: Yes. But what I'm saying is this is what the County got for all of the letters or is SHPD just going, oh well, we're only going to copy the Cultural Resources Commission ...(inaudible)...

Mr. Solamillo: No. This is actually with architecture. This doesn't involve SHPD archaeology.

Mr. Fredericksen: Okay, well, the ones I'm looking at is all Morgan Davis.

Mr. Solamillo: Okay.

Mr. Fredericksen: She's the archaeology -- they're all -- this is all Morgan Davis.

Mr. Solamillo: Okay, and then --

Mr. Fredericksen: Everything's Morgan Davis.

Mr. Solamillo: Okay, that's coming out of archaeology.

Mr. Fredericksen: But my question is it's --

Mr. Solamillo: I can't answer that because I don't know.

Mr. Fredericksen: Okay, who can answer that between now and next time, next meeting?

Ms. Cua: We can try and -- I know they comment on projects all the time.

Mr. Fredericksen: Oh yeah. This is the first time, in all the -- I don't know how many packets of information I've gotten, this is my eighth year, some total, and this is like never ever have I seen this little bit.

Ms. Cua: Maybe I can ask Suzie a quick question. Has the process been whatever letters you got on your desk --

Mr. Fredericksen: Something changed?

Ms. Cua: You would give to the Commission?

Mr. Fredericksen: Yeah. Yeah, all letters from SHPD that had anything to do with substantive permits.

Ms. Cua: We can check on that.

Mr. Fredericksen: Okay.

Ms. Cua: I'm not sure what happened. I don't know of any change. So I mean she got what she got.

Mr. Fredericksen: Right, and I'm just curious if it's something SHPD is kinda willy-nilly done something on.

Ms. Cua: And you get this every month?

Mr. Fredericksen: Yes.

Ms. Cua: And so you're saying even from last month to this month --

Mr. Fredericksen: And as the archaeologist representative, I'm -- yeah, this is not -- I know this isn't what was generated in October.

Ms. Chandler: Every month we get about 50 to review, sometimes more. This is the first time -- I was like is this for real? Did we change already our -- 'cause we had talked about this, right, maybe we were only going to review some but I didn't think that it was decided on so thank you.

Ms. Cua: We'll check on that. We wouldn't know that anything -- we haven't -- and we've been in contact with SHPD quite a bit. We brought them in for a workshop with the Planning Commission, and we had them at our -- just our all planners meeting, so we

haven't heard of anything different. We know they're very, very backlogged, we know that, but --

Mr. Fredericksen: Yeah, but if they're backlogged, there should be more letters than that being generated. There should be a bunch, and then we get them, and the next month they get -- they may still be a 300-project backlog but there still should be a good volume each month coming out.

Ms. Cua: Right. I hear you.

Mr. Fredericksen: That was all the reason why I was asking. And the reason I asked for that too is sometimes there have been projects which would not necessarily come before the CRC just because there's no action being proposed but we still get the archaeological review letter, which does provide some level of advance like warning about, oh, if something's actually going to happen essentially down the road.

Ms. Cua: Okay. We'll check into that.

Mr. Fredericksen: Thanks, Ann. Thanks.

4. December 2, 2010 CRC Meeting Agenda

Mr. Solamillo: Okay, next item, since we're not going to talk about culture, no Commissioners are interested on placing culture on the agenda, we did have one Commissioner that suggested an agenda item, Commissioner Sarich, at the last meeting, so if Commissioner Sarich wouldn't mind, I guess presenting it to the Commission and asking them if they wanna vote on placing it on the agenda.

Ms. Sarich: So I would like to review our indigenous housing code and have us start looking at that in terms of how to make it actually --

Mr. Fredericksen: So it could be used.

Ms. Sarich: Yeah. So it can actually be used the way its intended instead of just be hale structures that can't have use in them very much. So I would like us to start reviewing that. So do we need a motion to do that?

Mr. Fredericksen: We're just requesting it's on the agenda next time.

Ms. Cua: No.

Mr. Fredericksen: Yeah, as an agenda item.

Mr. Solamillo: And then remember, you'll be making recommendations to the committee that has actually crafted this.

Mr. Hutaff: Is somebody going to notify Francis Sinenci?

Mr. Solamillo: Yeah, I mean if you would like me to do that, then I can or -- I've never met Francis.

Mr. Hutaff: I think it's kind of important.

Mr. Solamillo: Yes, it is.

Mr. Hutaff: I believe he's the one who spearheaded the fact that it even got to a point where it has some permitting ability and he also has the technical expertise on how to build them so if we had questions or we came up with design ideas or lack of design ideas, he'd be able to make sure that they worked or didn't work. I mean he's the man. He just got done building the biggest hale in the world.

Mr. U`u: ...(inaudible)...

Mr. Hutaff: No. Bigger than that, brah.

Mr. U`u: Are you kidding?

Mr. Hutaff: In Hana ...(inaudible)... place. Yeah, we took the old, they built a new one on top. He was going to add 15 feet more in the front; 15 more feet in the back ...(inaudible)... that's a lot of work.

Mr. Solamillo: Would you like to contact him 'cause I've never met him?

Mr. Hutaff: Yeah, just tell me what I have to tell him

Mr. Solamillo: ...(inaudible)...

Ms. Sarich: Yeah, I guess --

Mr. Solamillo: Originally when -- my I guess -- my understanding was we wanted to talk about the hale pohaku.

Mr. Hutaff: The what now?

Mr. Solamillo: The hale pohaku, which is the kaupo house, which is a hale with rock walls.

Mr. Hutaff: Right. That's fine.

Mr. Solamillo: And because it's left out of the entire code and it seemed --

Mr. Hutaff: Then how's he getting permits to build them?

Mr. Solamillo: I don't know, but it's not included in the code. So it seemed rather odd that it wasn't because it's such a prominent house type on East Maui. So that was my understanding and maybe Commissioner Sarich wants to do more than that. I just need to know which way you wanna go.

Ms. Sarich: I mean I guess I would like us, I know you have so many incredible presentation on the -- I just wanted to start the process. I don't know if we can actually do everything in one meeting but if we could just have some presentations and then, hopefully, in future meetings, continue to discuss it and I don't know if I would be ready for recommendations next month already. I'm still learning.

Mr. Hutaff: Maybe what I can do is I can contact Francis, it's obviously Sunshine Law would apply.

Mr. Giroux: You can let him know that we're having a meeting.

Mr. Hutaff: Right, but he could contact Stan there --

Ms. Cua: Yeah.

Mr. Hutaff: And give him the input whether he's already permitted, what the things are, and, you know, maybe help with the agenda and the pictures and stuff like that and see if it fits that he should be here. Rather than he and I discuss it --

Ms. Cua: Or --

Mr. Hutaff: What if I just have him contact Stan?

Ms. Cua: Yeah, I think we -- 'cause we should get him an agenda and stuff so --

Mr. Fredericksen: Yeah.

Ms. Cua: Maybe you could contact him or just give Stan the number.

Mr. Fredericksen: Yeah, call him and see if it's okay to -- for you to pass Stanley the number and then he can contact him or something.

Mr. Hutaff: Yeah.

Ms. Cua: And then we'll contact him and get his address and then we could send him an agenda, you know, when we send out the agenda packet.

Ms. Sarich: Could we have a consensus that we'll add for review the indigenous housing code and the rock walls combination hale. Okay. And I have one other item. Reading through these, there's a subdivision, the farm subdivision in Makawao, and do we have no authority over that kind of stuff?

Mr. Fredericksen: Which one is it, Brandis? I'm sorry.

Ms. Sarich: I'm sorry. It's the October 5 and it's Honokala Farm Subdivision.

Mr. Fredericksen: Okay, it's in Makawao District.

Ms. Sarich: Yeah.

Mr. Fredericksen: Which is over Haiku side, Honokala.

Mr. Giroux: Twin Falls. That's my backyard.

Mr. Fredericksen: What's your question?

Ms. Sarich: Well, I mean when I read this, I get upset because I don't like this as a planning thing. I would much rather see, you know, less farm subdivided into --

Mr. Fredericksen: Into gentleman farms which --

Ms. Sarich: Yes ...(inaudible)... but I don't know if I have any authority to weigh in on this or not.

Mr. Fredericksen: James?

Ms. Cua: No, you don't.

Ms. Sarich: Okay.

Mr. Fredericksen: My understanding is no.

Ms. Sarich: Thank you. Alright.

Mr. Fredericksen: It's frustrating. Anything else, Commission Members? Okay, well, let's see, if someone wants to make a motion that we adjourn, I'll entertain that.

Mr. Osako: Well, I move that we adjourn the meeting.

Ms. Sarich: I'll second.

Mr. Fredericksen: Okay, so moved, and everybody's -- if anybody has an objection, please say nay.

Mr. Solamillo: Thank you, everyone.

Mr. Fredericksen: Thanks, everybody. Be safe.

G. NEXT MEETING DATE: December 2, 2010

H. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 3:04 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Erik Fredericksen, Chairperson
Raymond Hutaff, Vice-Chairperson
Rhiannon Chandler
Warren Osako
Brandis Sarich
Bruce U`u

Excused (E)/Absent (A)

Makalapua Kanuha (E)
Jacey Laborte (A)
Veronica Marquez (E)

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Others

Ann Cua, Deputy Planning Director
Joseph Alueta, Administrative Planning Officer
Stanley Solamillo, Cultural Resources Planner
James Giroux, Deputy Corporation Counsel