

**HANA ADVISORY COMMITTEE TO THE
MAUI PLANNING COMMISSION
MEETING OF JUNE 7, 2011**

** 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 meeting of the Hana Advisory Committee (Committee) was called to order by Clayton Yoshida, Planning Program Administrator, at 4:15 p.m., Tuesday, June 7, 2011, Helene Hall, Hana Bay, Hana, Island of Maui.

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

Mr. Clayton Yoshida: Good afternoon, Members of Hana Advisory Committee. My name is Clayton Yoshida. I'm the Administrator of the Current Planning Division of the Planning Department. Let the record show that we do have a quorum of four members, four is a quorums, board members Cashman, Blumer-Buell, Cosma, and Hoopai-Waikoloa. With me from the County Planning Department, we have our Director, Will Spence; we have the staff planners Gina Flammer and Paul Fasi; we have your Secretary to Boards and Commissions, Suzie Esmeralda; we have your Deputy Corporation Counsel, Michael Hopper, subbing for James Giroux, and also Richelle Thomson, from the Corporation Counsel office, who will be James Giroux's successor handling the Hana Advisory Committee.

Since we have our new Planning Director, Will Spence, here, I don't know if he wants to say a few words at this time.

Mr. Will Spence: Aloha, Hana Advisory Committee Members and members of the public. I'm Planning Director, William Spence. I'm here because -- mostly because of the short-term rental bill. I wanna hear what this Committee has to say. I wanna hear it firsthand. I wanna hear what members of the public have to say about it from the Hana area. So, you know, one, I just wanna hear from you; I also, as we got through the process, as we go to the Maui Planning Commission, and then when we go through the Maui County Council, I wanna accurately be able to say this is what they said out in Hana. So, I'm very happy to be here. I'm very much looking forward to hearing what the Committee has to say. And we'll go from there. Thank you.

**B. INTRODUCTION OF NEW COMMITTEE MEMBERS - JOHN BLUMER-BUELL
and ANJOLEEN HOOPAI-WAIKOLOA**

Mr. Yoshida: We welcome our new members to the Hana Advisory Committee, Anjoleen Hoopai-Waikoloa, and returning, John Blumer-Buell, after his stint on the -- well, I guess he's still a member of the Maui General Plan Advisory Committee.

C. ELECTION OF OFFICER FOR THE 2011-2012 YEAR

- 1. Chairperson**
- 2. Vice-Chairperson**

Mr. Yoshida: The first order of business, since this is the first meeting since April 1, is to elect officers for the 2011-2012 year; at least somebody to chair the meeting today if you don't wanna elect the chair for the whole year. So I guess the option is up to the board if they wanna just elect -- since there's only a bare quorum here, if they wanna elect a chair just to chair today's meeting or if they wanna elect the chair for the year, which ends March 31, 2012. Well, we need somebody to chair today's meeting. Yeah, I guess any -- any vote, any action taken by the Committee today will have to be by consensus of all four members as you're entitled to seven members and four is a quorum. So to take any action today, you need four members voting in the affirmative. Okay, so we're open, nominations for chairperson. Okay, any other --

Mr. Ed Cashman: I nominate Lehua for chairperson.

Mr. Yoshida: Any other nominations?

Mr. John Blumer-Buell: I'll second that.

Mr. Yoshida: Second. So it was moved by Mr. Ed Cashman, and seconded by John Blumer-Buell to nominate Lehua Cosma for chairperson. Any other nominations?

Ms. Anjoleen Hoopai-Waikoloa: I'll nominate John for vice-chair.

Mr. Yoshida: Oh, we'll have elections, I guess, one -- one at a time, so first will be chairperson.

There being no further nominations, a vote was taken.

It has been nominated by Mr. Cashman, seconded by Mr. Blumer-Buell, then unanimously

VOTED: that Committee Member Lehua Cosma serve as Chairperson for the 2011-2012 board year.

Mr. Yoshida: Okay, thank you. Congratulations, Lehua. You can preside over the election of the vice-chairperson.

Chair Cosma: Okay, now we're open for vice-chair? Yes. Correct.

Ms. Hoopai-Waikoloa: I nominate John Blumer-Buell for the vice-chairperson.

Mr. Cashman: I'll second.

Chair Cosma: Okay, Anjoleen nominated John Blumer-Buell as vice-chair. It was second by Mr. Cashman.

There being no other nominations, a vote was taken.

It has been nominated by Ms. Hoopai-Waikoloa, seconded by Mr. Cashman, then unanimously

VOTED: that Committee Member John Blumer-Buell service as Vice-Chairperson for 2011-2012 board year.

Chair Cosma: Okay.

D. APPROVAL OF MINUTES OF THE DECEMBER 16, 2010, JANUARY 20, 2011, and FEBRUARY 15, 2011 MEETINGS

Mr. Yoshida: The next item we have is the approval of the meeting minutes from your December 16, 2010, January 20, 2011, and February 15, 2011 meetings.

Mr. Cashman: I recommend approval as written.

Mr. Yoshida: Yes, I believe that Board Member Cashman had moved for acceptance of the minutes. Is there a second?

Chair Cosma: Second. Okay, Mr. Cashman made a motion to approve the minutes. I seconded. All in favor.

Mr. Michael Hopper: Just as a point of procedure, usually the chair wouldn't second.

Chair Cosma: Oh, I cannot?

Mr. Hopper: Since you're the chair.

Chair Cosma: Somebody else?

Mr. Hopper: Yes. Someone else would want to second.

Chair Cosma: Okay. Somebody else can second that?

Mr. Blumer-Buell: I'll second the motion.

Chair Cosma: Okay, minutes approved by Mr. Cashman, second by John Blumer-Buell.

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

It has been moved by Mr. Cashman, seconded by Mr. Blumer-Buell, then unanimously

VOTED: to approve the minutes as written.

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

E. PUBLIC HEARING (Action to be taken after public hearing.)

1. MARK and HAUNANI COLLINS requesting a Change in Zoning from the Urban Reserve District to the SBR Service Business Residential District for the Palemo 3-Lot subdivision and a County Special Use Permit to operate a transient vacation rental at TMK: 1-4-013: 039, Hana, Island of Maui. (CIZ 2007/0010) (CUP 2010/0005) (P. Fasi)

Mr. Paul Fasi: Good afternoon. Just for the record, the item is not as it was agendaed, a 3-lot subdivision, that is an oversight by the Planning Department, so it is not a 3-lot subdivision that we are discussing tonight. We have two items of business regarding this matter. The first matter is a change in zoning from urban reserve to service business residential. The second matter is a County special use permit for transient vacation rental, or as the politically correct term now is "short-term" -- Gina?

So, just as we walked in the door this afternoon, an event happened that will change the direction of this entire application and that is that the applicant wishes to defer the matter on the fish operation portion of his application. So what that means is we are no longer discussing the fish processing operation portion of his application. We are, however, still pursuing the change in zoning from urban reserve to service business residential. And I'm going to turn it over to the Corp. Counsel.

Mr. Hopper: Wouldn't the SBR designation allow that fish processing business as an outright permitted use anyway? Okay, so if the change in zoning is granted, he would be approved for that type of business. I mean he wouldn't have to specifically state,

necessarily, all of the possible uses if there was a straight change in zoning to SBR. He would have the ability to do that business, as I would understand it, without a restrictive condition.

Mr. Fasi: The matter is -- has -- the Department has received a lot of correspondence and communications regarding the fish operation portion of this application and so the Department feels that the matter should be deferred and that portion be left out of the SBR zoning at this time. At a later date, the applicant has the option to amend the permit terms and conditions to revisit the issue without having to reapply for SBR zoning and that matter would then come before this Advisory Committee to be discussed all over again. But the change in zoning would have already been granted if approved by the County Council at that time. I know it's a little unusual, but I think this case, because of the community input and the sensitivity of the nature of the business, that the community needs to revisit this when the matter comes up at that time.

Mr. Hopper: I can advise when that comes up, but there's -- you would need a restrictive condition restricting that specific use with the change in zoning to restrict it. If not, then the person could do that use without having to come back to you. So you'd have to appropriately craft that condition if they would want it. It wouldn't really be a deferral. It would be a restrictive condition you would be requesting the Hana Advisory Committee to put on, and we could get to it after the presentation perhaps, but if this change in zoning goes through without a restrictive condition, that use as well as all the other permitted uses listed in that district can be done without further permitting.

Mr. Fasi: And that's why we bring Corp. Counsel with us. So what the Department will do would then advise the Hana Advisory Committee to specifically condition the change in zoning to prohibit the fish operation business until such time that the applicant deems it appropriate to amend that permit terms and conditions of the change in zoning. So we'll defer to Corp. Counsel on that and we will pursue it in that fashion.

So let me, for the record, state a few facts here. The applicant's requesting approval of the change in zoning and special use permit in order to provide the allowable requested uses and to be in conformity with land use regulations on the State, County, and community plan levels. The applicant is or was requesting to operate a commercial fish processing operation under the newly created service business residential ordinance, which became effective in 2009, and to operate a TVR rental business under the jurisdiction of the County special use permit per the regulations of the SBR ordinance.

The land use designations are as follows: the State land use district is urban; the Hana Community Plan designation is service business residential and also single-family residential; the County zoning is urban reserve; it is in the special management area.

In addition to the change in zoning, the applicant's requesting a County special use permit to allow the use of, as requested, a three-bedroom TVR operation as a special permitted use under the SBR guidelines. The SBR ordinance allows up to five TVR rooms per TMK lot.

Let me, without having to go through every regulatory review, that the property is designated County urban reserve and the applicant is consistent and in harmony with the SBR designation; in other words, as it currently stands, under urban reserve, a transition to service business residential is a natural progression for this stated lot and the applicant's lot is entirely consistent with County and community zoning designation and guidelines. And as a matter of fact, there are one, two, three, four - there are five fairly sizable SBR -- I mean urban reserve lots in the immediate vicinity, so this is not the only one in the immediate vicinity. So, basically, the applicant's proposed request for the change in zoning and the special use permit is consistent with State land use code, County land use and the community plan designation.

I don't have too much more to offer at this time, and I'm going to turn it over to the applicant's daughter, Malia Collins, and I think she'll have a statement to make. If the Committee Members don't have any questions for me, I'll turn it over to Malia.

Mr. Blumer-Buell: You know, during this process, I was part of the 1994 review of the Hana Community Plan and, just for historic purposes, can you -- was there ever -- normally when you do a change of community plan designation, that triggers a EA, and I'm wondering was there ever a community -- an EA done when it went from SBR to urban reserve? And if so, why not? I just -- this is a question I've had for years and I've never heard the explanation.

Mr. Yoshida: Yes, Mr. Blumer-Buell, the Department -- well, we're talking about two different items: one is the community plan, which is kind of a -- has a 20-year planning horizon, which the designation of the property is service business residential, and, two, is the zoning, which is urban reserve, because we did not -- the Department did initiate a comprehensive zoning of the urban areas in Hana Town back in 1996 but we did not have a service business residential district in Title 19, so those who were designated service business residential in 1996, after the Hana Community Plan was passed in 1994, could not apply for service business residential district zoning, so the Department zoned those properties that were designated service business residential to urban reserve figuring that, at some point in time, when a service business residential district was incorporated into Title 19 that they could apply for that. We did introduce a service business residential district bill in 1996, it went to the three planning commissions, and that was filed by the Council in 1998. So then we had to initiate another service business residential bill, and Mr. Collins and others in the Hana area, residents were instrumental in getting that going, and the Department did make it a priority in 2008, and we did successfully get the Council to adopt the service business residential district ordinance. So now some of the owners

of properties that are designated SBR, like Mr. Collins and John Romain, are applying for service business residential zoning to conform with the community plan, but there was no EA done because it wasn't a amendment to the community plan.

Mr. Blumer-Buell: Okay, that answers my question. Thank you, Clayton.

Chair Cosma: I'd like to call Malia Collins up to the stand. Thank you.

Ms. Malia Collins: Hello. Good afternoon. I'm Malia Collins. You all know I'm Mark and Haunani's daughter. And, basically, we're here today to respectfully request SBR zoning for our short-term rental home at 4950 Uakea Road. As you know, they said it was approved by the community plan in 1994 for SBR but that was never created; now it is created, so we, you know, are requesting to have that zoning. Our main reason for requesting the zoning change is to be in compliance or to start to be in compliance with the County rules so that we can continue to operate our rentals without the threat of being shutdown. Our rental, Hana Bay Hale, its been in business since 1992. It was built with the intention to be a short-term rental. It still is a short-term rental. We cater to the local people, as a lot of you know. You've stayed with us or have had family and friends stay with us. You know, we cater to the non-profits in Hana. And that's what we want to continue to do.

With regard to one of the letters from the Trasks, I'd just like to state that there's a lot of misinformation in there. I'm going to leave it at that.

And, you know, as far as the fishing operation goes, yeah. We're not going to make a giant fish operating thing, you know, now or, probably in future, we'll sell fish out of our yard to the local residents, which I'm sure you all appreciate as well. Any questions?

Mr. Mark Collins: I'd like to make a statement. My knees are out. Hi. I'm Mark Collins and I'd just like to make a statement about this fishing because it's gone way the other way. You know, I got to read one letter that came in. It is full of disinformation. I mean it's -- most of the statements are just untrue, and one of the letters just came in so I didn't get a chance to respond or I would have, but we've been in the fishing business out here for 25 years, my son, son-in-law both have their captains license, and we've sold fish, caught fish. It's one of our main -- it's what we do for a living besides the income we get from the vacation rental, short-term rental. I don't want to go to the point 'cause we do fish, you know, that we can't keep on -- what we had in mind is doing a very small commercial kitchen so that we can clean fish because you need a special kind of a trap, as I understand it from the Health Department, for a community kitchen in order to clean fish legally, and you need another different type of trap setup, and it would help the whole community and the fish community if we were able to clean fish and sell them on the outside and it'll make everybody more competitive. And so what we had in mind is a very

small type operation and as far as cleaning the fish, that could be done out at sea or how Mama's Fish House does it, I had an opportunity to help consult, you know, when they setup, is they take the cleaning of the fish, fish ...(inaudible)... grind it up, freeze it, and we use it for bait for crab, shrimp, and lobster. So what I don't want to see happen is be penalized for this zoning because we do fish, I need to have, you know, some new knees put in so it'll be a while before I can fish and that's why, you know, I wanted to sort of hold back, but after reading, you know, that letter that's full of untruths about what we wanna do, I would like it to be known, for the record, that, you know, we have been out here for 25 years, we work for the fishery out here, it's an important part of Hana, it creates a lot of jobs, and we have a potential, the way it's going, to, you know, have many more jobs created by the fishery. So we intend to still be able to sell fish from the yard, which I think is legal anyway because that's what we do and, you know, again what I don't want to have happen, if that's -- if I'm understanding you right, Paul, is to be, you know, penalized that we can't be in the fishing business, you know, out of this change because that would be something that, you know, we have been doing for 25 years and many people in Hana, I think, it would affect, there's a lot of families that do keep their boats and fish and it's part of the community out here. So I'll leave it at that.

Chair Cosma: You wanna say something else?

Ms. Collins: No, no ...(inaudible)...

- a. **Public Hearing**
- b. **Action**

Chair Cosma: No? Are we still on the applicant? Or they're done? Done? Yeah, I'd like to call for public testimony. If anybody signed up, they're welcome to come up and testify. Seeing none, public testimony is closed. John Blumer-Buell.

Mr. Blumer-Buell: Just a point of order for Corp. Counsel. Are we going to allow testimony on this item and then open it up for other agenda items and the -- I wouldn't want to close testimony if we're closing off testimony for the TVR bill or it's the short-term rental bill? So if closing the testimony would, you know, cut people off that, I wouldn't want to close it yet. I got a call from Elaine Wender, from Keanae, and she's finished with her farm work at four and she's planning to drive here to testify, so I said, well, I'll bring it up to try to leave it open for you to testify so that's for Mr. Hopper.

Mr. Hopper: Yeah, the Chair can leave the -- can call for testimony again when item F comes up for testimony on that item. It think it's important to close the testimony on E if there's none because there's certain things that happen that are measured from the date of the close of the public hearing on that item, so the Chair can certainly, if it's her pleasure,

but she can certainly call for public testimony on item F once that item comes up after you're finished with this item. So you could certainly do that.

Chair Cosma: Okay. So I think we'll do that. When we reach to F, we'll open up the public testimony. Yeah?

Ms. Dawn Lono: Lehua ...(inaudible)...

Chair Cosma: Yes, Dawn? Okay.

Ms. Dawn Lono: Thank you. I would like to testify on this item but, unfortunately, I'm relatively unprepared this evening. I was a little bit confused by the agenda when it said there was a three-lot subdivision involved and so I kinda was hesitant to put my thoughts down until I really knew what was going on. So I did talk to Mark last night and he clarified that for me. So in the meantime, I really haven't had an opportunity to prepare a testimony and I don't know if you will get through this item today and get recommendations and move it forward, but I am in support of Mark and Haunani Collins and their SBR change in zoning request. I do think that it needs to be looked at carefully, as we did with Mr. Romain's property, and that appropriate conditions need to be considered and included. I'm not sure what all they need to be at this point, what my recommendations would be, like I said, I haven't really had the time to put it together, but just would like your careful consideration and I know that you will do that. So I just would like to say that I am in support of their change in zoning. And I just wanna say welcome, Anjo. It's so nice to see you up there, and thank you for taking this wonderful responsibility. It's really, really good to see you there. Thank you.

Chair Cosma: Any questions for the testifier, Committee?

Mr. Blumer-Buell: Yeah, Dawn, you were on the Advisory Committee when John Romain's application was passed and I just couldn't remember and didn't have time to go through the minutes, how long was John's application approved for? Maybe John can say too.

Ms. Lono: Gosh, I think it was five years. The zoning is forever.

Mr. Yoshida: Yeah, I think the zoning is permanent until they change the zoning again.

Mr. Blumer-Buell: Okay. And then the conditions of the permit were for how long?

Mr. Yoshida: They run with the land.

Mr. Blumer-Buell: Okay. Okay, thank you.

Chair Cosma: Thank you, Dawn. Anymore? Anybody else wanna testify? Seeing none.

Mr. Blumer-Buell: Lehua, could I ask Mark and Haunani a question? Would that be okay?

Chair Cosma: Yeah, you can.

Mr. Blumer-Buell: Yeah, I just wanted to say for the record, and then ask that, you know, I attended the meetings of the 1994 Hana Community Plan and I give Mark and Haunani credit for coming forward at that time and they were trying to resolve it, and, you know, there's a lot of history with the County and so forth since, but at the time, you were looking to just legitimize the three units and that was it. You know, what are you expecting to wanna build, you know, additional rental units or, you know, what do you anticipate? I mean, at the time, you were just wanting to legitimize those units, now you're contemplating, you know, perhaps more units or, you know, coming back to maybe try to do a fish operation.

Mr. Collins: Yeah, ever since the Hana Village Marketplace, we, you know, have been wanting to have a little fish market and fish store to sell fish we catch out here, and we put a lot of time and energy into that, it didn't work out too well, unfortunately, and that's always been our intention and when we do, you know, catch fish, we do sell them from the lot, keep them on ice, you know. We do know the rules and have been educated to that. So, basically, you see a lot of these small stands around Hana and what we're thinking about doing is being able to sell fish, fresh fish, and maybe prepared fish in the same way that a lot of the stands - I don't know if they're legal or not - are operating, you know, in the daytime and offer that. That's, you know, basically selling the fish that we catch off our boats in a small type, you know, trailer or legal type of building. Oh, and excuse me, John. We wanna build our own -- we, for some time, wanted to build another house, you know, for ourselves and what's allowed by the zoning for our kids and grand kids. I mean that's the idea, as time goes on, of course.

Mr. Blumer-Buell: Yeah, I was somebody that was hoping there would be a fish restaurant at the Hana Village Marketplace so -- but one of the things I have and just, you know, not to get too long-winded, but, you know, the Trask ohana has raised some really serious issues and I believe Paul Fasi has, you know, raised the idea of, you know, conditioning this zoning without the fish operation at this point, and so that, you know, I think Mr. Hopper will have to work on that, but how do you see this getting resolved with this issue with the trask? I mean they're your closest neighbor and I do think that there is a lot of, you know, there's a lot of issues that aren't really part of the application today. How do we -- you know, how would we get through those?

Mr. Collins: Well, in 15 years, I've spoken with the Trasks two times, and they've been there a handful of times. You know, they really haven't lived there. Those letters that

they've written are untrue. They're false statements. Ninety-nine percent of what they say, and I wish I could have responded to the other one, it's not true. I mean what they're coming up with, you know, I mean everything they've said in there is, basically, you know, I'll stay short of saying the "L" word, but they're as false as can be. And, you know, we're looking at always trying to cleanup the yard, and one of things that this would allow us to do is to build, you know, a garage to put the boat and stuff in, make it a little more neat, and it's just been tough to do that with the zoning that we have 'cause it doesn't allow you to do, basically, anything so, you know, we're going to keep fishing and I don't think it's illegal on any property to park your boats or your trucks on the property. I've not had an ice machine operating for three years. I haven't been fishing myself the last year because of my knees, you know. And so it's -- to see something like that, they don't know what they're talking about because they haven't been here. They're fabricated, you know, and they're fabricating what I wanna do, you know, what my wife and I and my family wants to do. It's not true. You know, we've been here a long time and all we're looking to do is continue fishing, contributing to the Hana fishery, and selling, you know, our fish, and making the fishery stronger out here and, hopefully, you know, so we can develop more jobs and opportunities.

Chair Cosma: Thank you.

Ms. Collins: Yeah, just can I add to that real fast? Yeah, what the Trasks said in the letter, I mean really it wouldn't be an issue because we're not planning on doing what they stated we're planning on doing so, you know, they shouldn't have a problem with a small, basically what we're doing now, a small fish operation.

Chair Cosma: Thank you, Malia. Anymore questions?

Mr. Cashman: I have one question for Fasi here. You know if I make the motion, if I make the motion, do I have to put in the one you said about the -- they cannot do the fishing? Or I can just make the motion as they applied?

Mr. Hopper: I would need to know -- to help draft the motion, I would wanna know what you would want. I can tell you what they're asking for at this point, and again this is a recommendation to the Planning Commission that will then act on the special use permit for the vacation rental after the Council acts to change the zoning. It's a unique situation because a special use permit for SBR allows transient vacation rental use, but they would need to get the SBR zoning first in order to be able to have that special use permit granted by the Planning Commission rather than the Council. So you would make your recommendations on both, I mean really that's a timing issue that will have to be worked out at Planning Commission, but what they're requesting in their application for a change in zoning, it's not -- getting the change in zoning is not like a use permit. A use permit is typically someone says I'm going to try to do a certain use and you'd say yes or no to that

particular use. The change in zoning would allow whoever gets the change in zoning to do any of the permitted uses listed under that change in zoning without further review. And for SBR zoning, here are the permitted uses that the person could with their property: single-family dwellings, duplex dwellings, green houses, truck gardens and nurseries, SBR service establishments, SBR mixed-use establishments, and bed and breakfast homes if they get a bed and breakfast permit. So SBR service establishments and SBR mixed-use establishments are defined elsewhere in the code; essentially, they are small business operations. They're supposed to be no more than 2,000 square feet, include what they call "neighborhood-scale commercial services," and would allow retail, would allow business operations, and whoever would get that SBR zoning would not have to come back to the Planning Commission or the Council to have those business uses. It's the same way that any zoning would work. If, for example, if they currently have urban reserve zoning or if someone were to have interim zoning, they can do any of the uses in that zoning category without any further review. Now, as far as the transient vacation rental under SBR, that is listed as a special use, and so in order to get a transient vacation rental permit, they would need a special use permit from the Planning Commission; they're requesting that as well today - that you give a recommendation on that. So if you wanted to go through and insure that there is no -- that if for whatever reason you didn't want them to do any fishing operation, you could either try to spell out that operation and say that is prohibited in a condition in your change in zoning, or you can eliminate uses number 4 and 5 on that list that I read to you of SBR service business establishments and SBR mixed-use establishments, that's also an option as well. You can say change in zoning except you can only do uses 1, 2, 3, and 6 six, for example. So those are a couple of legal ways, you can just grant the change in zoning, but if you grant the change in zoning, they would be allowed to do any of these uses as per permitted without further permits. So it's up to you how you'd want to craft it and I can help, but we would need to understand what you wanted to do.

Chair Cosma: So it would be like placing conditions --

Mr. Hopper: Yes.

Chair Cosma: Right, attached to this?

Mr. Spence: Madam Chair, if I could -- let me add something to this. Okay, what Deputy Corporation Counsel is saying is correct. If you were just to grant straight zoning, these would be all the permitted uses. That said, I -- this property is still in the special management area. If they were going to add, you know, a bunch of buildings or something like that, that SMA permit is going to trigger, you know, it's going to come back to this body. It's going to come back to the Planning Commission. The -- and the reason I bring this up is I look at the -- Ms. Trask's letter here and it -- the concern, at least to me, the impression I get, is the concern is about the scale of the operation. I see the claim of harvesting

thousands of tons of fish or many boats, ice machines, other equipment, all that stuff would all have to somehow fit on that lot. They can't just, if they're granted zoning, they can't just put all this stuff on the lot. They just can't get a building permit and put up all kinds of buildings and do a big commercial venture and all this. That has to come back to this body. This body is going to have a lot to say about the scale, does it fit into Hana. I believe the, somebody can correct me, I believe the service business residential has to meet certain design guidelines, so it has to look like it belongs in Hana. You can't just put up a steel butler building so it's -- you know, that's going to house all these obnoxious things. You know, there's going to be a lot more say-so about what goes on on this property than just, you know, whatever permitted uses. So they're not -- if they were given zoning today, they're not at the end of the road if they wanna build something. They're going to have to come back and there's going to be more review of whatever they wanna do.

Mr. Blumer-Buell: My question is just with, you know, I read the Trask letter and I'm very concerned that their concerns will be unmet. I mean Corp. Counsel made a suggestion of leaving out permitted uses 4 and 5 as a possible solution. Is there -- theoretically, if we left out a couple of those conditions, could they come back to reinstate them?

Mr. Spence: Well that --

Mr. Blumer-Buell: You know, if was conditioned where permitted uses 4 and 5 were excluded from the zoning, could they come back and change it?

Mr. Spence: Okay, well, let me give two answers to that. One, like I said, it seems to be the concern of this letter is the scale. I mean if you were going to pull thousands of tons of fish out of the waters around Hana, that would be a concern, I think, for everybody. There's no place to process it. The processing, the scale of that, if it's just a small operation, I think my question to the Advisory Committee is: Is a small fishing operation, you know, cleaning, and packaging, and all that, is that acceptable? Well, at some point, they're going to have to come back and, you know, with a building design and say this is what we wanna do. Is this okay with you guys? Is it okay with the Planning Commission? That's where the SMA permit -- so they're not going to be able to do some great big huge operation. That's just end of story. But, specifically, to Committee Member Buell's question on would they have to come back if they wanted to change the terms of their zoning - yes, they would. We're talking about a multi-year process, you know, come back; file the applications; do all the reasoning why; come back to here; go the Planning Commission; go to County Council. It takes two -- I know of applications that have been up there like five years. So it's a very difficult thing to do. I think the control, I'll offer you my personal opinion, is that the control of the scale of any operation within Hana Town is much closer to home with the Hana Advisory Committee and the Planning Commission.

Mr. Blumer-Buell: I would ask for a little -- you know, some clarification on scale because "scale" is a word that could mean a hundred things to a hundred different people and so, you know, I don't have, you know, I mean just to -- I don't have a problem with the SBR zoning recognizing the existing transient vacation. I've got a real problem in Hana, I mean this Hana Advisory Committee is here because of the huge controversy back in the 1980s when the Planning Commission did not listen to the people in Hana, so I'm somebody that really believes that, you know, that, you know, when your closest neighbor has a big problem, we have to find a way to, you know, to work that out and resolve it, so the idea of scale doesn't really answer the question for me. You know, I mean can we really nail this down so that there's, you know --

Mr. Spence: Well, see, that's the question I'm asking is if the concern from this letter is pulling thousands of tons of fish out of the ocean in Hana and processing those thousands of tons of fish, if you're really concerned about that, you might also ask the same question: Would a little bit be okay? That's what I'm talking about in scale. You're talking thousands of tons versus I don't know how much. When they go to start operating, they're going to have to build -- let's just say for a second they were going to build a small building or build any building on their property to process to process the fish, they're going to need an SMA permit. They have to come back here. You don't like the design, you know, and they're limited by how big their property is anyway. They already said that they wanna build another house. That's taking up part of the room on it. You have to look at the size of the property and see how big of a building could they build. It's, you know, one, they're limited by the constraints; two, they're limited by the design of the building because there's certain Hana Design Guidelines that they have to adhere to, and then also, you know, just the whole process of coming before this body and then the Planning Commission again to put limitations, put conditions on an SMA permit.

Mr. Blumer-Buell: I think my last question is that SMA permits sometimes are, my understanding anyway, is that they're triggered by dollar amounts or, in this case, would it be triggered automatically.

Mr. Spence: I think it probably -- it would probably be triggered automatically because when -- I mean there's certain triggers for the special management area, dollar amount is only one of the items, the placement of solid materials, etcetera, etcetera, erection of buildings, all that stuff that qualifies as a development. There are certain circumstances you could find that it was exempt. I can't imagine a -- like single-family residences can be exempted. A commercial building that would process fish commercially, now I can't imagine an exemption for that. There is going to be a permit required.

Chair Cosma: Mr. Fasi?

Mr. Fasi: Thank you. At the beginning of this presentation, we need to stay on track, the applicant has said that he's not going to pursue the fish operation business, so this whole discussion on the fish operation and size and scale is a little premature 'cause he's not going to do it. The simplest and quickest solution to this matter is to condition the change in zoning, and that is simply to say that the approval of the change in zoning is subject to the following condition, and that is: That the proposed commercial large-scale fish processing operation shall be prohibited. And that's all we need to say. It's very clear and concise. And so what we're talking about today, and trying to get through, is the change in zoning from SBR -- I mean sorry, excuse me, urban reserve to SBR. Now, if, as Corp. Counsel suggested, if you take out conditions 4 and 5, and you eliminate 4, which says, service business -- "SBR service establishments," and if you look under the definitions of "service establishments," he will then be precluded from opening up a professional office operation, for example. It's too broad. So you don't want to preclude him from his other options and just do it with a broad stroke and take out these conditions. We are here, specifically, to address this commercial fish processing operation and that's the thing that needs to be eliminated, and so that's what we've addressed, and that's what the applicant has said he doesn't want to pursue. He is raising his hand. I think he's probably going to amend my statement.

Mr. Collins: Yeah, when we came in, I'm sorry, Paul, we didn't talk about, you know, not -- amending -- I didn't say we didn't want to be in the fish business because we've been in the fish business for 25 years. What we were talking about is, you know, a commercial kitchen.

Mr. Fasi: The language that I crafted here does say that the proposed commercial large-scale fish processing operation -- large-scale fish processing operation shall be prohibited. It doesn't preclude you from doing your fish processing operation on a neighborhood scale, so won't entirely be denied, you know, what you're doing now.

Mr. Collins: That's what I just wanted to make sure that we weren't going there because that would affect a lot of people.

Mr. Fasi: And that is understood.

Mr. Collins: Okay. Thank you.

Mr. Fasi: So the Department just wants to keep us on track and condition the change in zoning, and we still have to move on to the special use permit, and we still have to talk about the short-term vacation rental thing. We've got a long way to go so we need to keep this thing moving.

Mr. Cashman: Before I make the motion, my feeling is if Mr. Collin's going to do a large scale, we're going to know about it. I get no problems with what he's doing now. So my motion is to approve a change in zoning from urban reserve to service business residential with no conditions.

Mr. Fasi: If I may amend your motion -- excuse me.

Chair Cosma: Okay. Right. Do we have a second on that?

Mr. Blumer-Buell: I'd like to ask Corp. Counsel is it okay to just second for the purposes of discussion?

Mr. Hopper: Yes you can, and then you can propose amendments later.

Mr. Blumer-Buell: Right. Okay.

Mr. Hopper: You don't have to vote in favor if you second it.

Mr. Blumer-Buell: I don't support the motion as made. I would support the motion with the condition that Mr. Fasi read, and I think that's in line with what the applicant is thinking and that will -- also addresses the biggest concern of the immediate neighbor, which I'm, you know, I'm very concerned about that. So I would, hopefully, as a friendly amendment, support your changing it from urban reserve to SBR with the condition regarding the fishing operation.

Chair Cosma: Okay --

Mr. Hopper: Is that a second of the Commissioner's motion? Is that a second for discussion of the Commissioner's motion? That would bring it before the body with your second, and then you can propose your amendment. So that was the second of his --

Chair Cosma: We needed a second for --

Mr. Hopper: To get to the point where you can start to offer amendments --

Mr. Blumer-Buell: Okay, I did second Ed's initial motion for the purposes of discussion and then I maybe jumped into the discussion. Anjo had something to say I think.

Mr. Hopper: Normally the chair would say "are there any further motions" and then you would offer the amendments.

Chair Cosma: Okay, what just happened was Mr. Cashman made a motion to approve the urban to the SBR with no conditions, and then John Blumer-Buell came in with a second so we could discuss. So anymore questions from the Committee? Anjo, you wanted to say something?

Ms. Hoopai-Waikoloa: I guess for me I'm more -- I support the change from urban to SBR with conditions.

Mr. Hopper: I'm sorry. I had to confer with the planner on a separate issue. I'm sorry.

Chair Cosma: Okay, right now the motion is to approve the urban to SBR with conditions.

Mr. Hopper: I would wanna read, speaking with the planner about the condition, I wanted to make sure the condition -- I think the condition said, "the proposed large-scale," and I wanted to make sure if it's being read to not allow what's being proposed, then that could be a problem. If your intent is to make sure that the fishing operation is kept at a, I don't know, small neighborhood-scale, or language to that effect, the allowed use is SBR service establishment, and that says, "It means a structure from which neighborhood-scale commercial services are provided to the public from a gross floor area not greater than 2,000 square feet, including display, storage, and accessory areas. That's already in there. Now, if you want to further restrict by saying something along the lines of the fishing operation of the -- any fishing operation on the property shall be kept at a small neighborhood scale, or something along those lines, that's fine, but if you're saying that the proposed commercial large-scale fish processing operation shall be prohibited, because it says, "the proposed," it sounds like you're not allowing what they've proposed and I don't know if they've proposed a large-scale operation in your mind. Basically, I'm saying to more clearly define what he would or would not be able to do on the property. Saying "the large-scale operation proposed is prohibited," sounds to me like they can't do any -- that the proposed operation is what's being prohibited and that would be the concern somebody interpreting this later. If your intent is to keep it at a small neighborhood-scale, then you could say, "Any fishing operation shall be maintained at a small neighborhood-scale," or something along those lines. I mean you can adopt it with this condition but I would say it's iffy because it says, "the proposed use would be prohibited," even though it says, "large-scale." So I think it's interpreting the proposed use as a large-scale use and saying it's prohibited.

Mr. Cashman: Just one comment. I think we make it without a condition and then if, like the Planning Director said, if they go and they wanna build, they're going to come back to us, and then we can make the corrections then. It's just my view.

Mr. Hopper: I would say, without the condition, it is stated that a structure from which neighborhood-scale commercial services are provided to the public from a gross floor area

not greater than 2,000 square feet, including display, storage, and accessory areas. Mr. Spence is correct that if there was going to be another structure built that was commercial, he would need to go for an SMA application, it may be either a minor or major permit, but he would need further permitting. But right now, it does say that whatever uses you do, whatever type, do have to be neighborhood-scale, and they do have to be in a gross floor area not greater than 2,000 square feet including everything - storage, all of that stuff - so those are the current restrictions on the property that they would be operating under if approved.

Chair Cosma: Anjo.

Ms. Hoopai-Waikoloa: I have a question for Mark and Haunani. Since we're clarifying small scale neighborhood and my questions is with, if we go forward with that and you have some small kitchen, certified kitchen thing, what is the affects as far as the fishing? Do you go out more often to bring in more fish because you have a -- more like a stronger running business just -- I don't want -- because it's Hana, I don't want it to further where we're end up losing fish and then it, you know, we don't have for our future generations.

Mr. Collins: Yeah, actually, I was part of the West Pac First Sustainable Fishery, that's what we're all about. And to answer your question, fishing is a tough business. You know, the way we fish here by hook and line, and especially pelagic fish, most of that comes back to Hana so we're not going to affect, you know, in an adverse way the fishery, the population of the fishery, to help the fishery. In fact, we have been working with the council on tagging fish and getting -- you know, spreading the education to do just what you're talking about, to educate the fishermen out here and act with NOAA and the West Pac Fishery Council, and Hana's been involved with a unique plan that's now taking, you know, affect all over the State with these buoys, and it's very effective and it does exactly what you're talking about. So the answer's no. When we go out, it's a tough business. We try to catch, on a good day, we catch, you know, maybe a thousand pounds, usually a few hundred pounds, and nothing like tons. It's not going to happen unless some great thing changes. So, you know, no.

Chair Cosma: Thank you, Mark. That was good to know 'cause I know some people who go out there fish, not for business, but to bring food home to their families, so that means a lot to know that. John Blumer-Buell.

Mr. Blumer-Buell: Yeah, just a point of, you know, clarification for discussion, that's that, you know, when I read the application, there were exhibits in there from the western fisheries regarding the fish aggregate devices and so forth, and the letter from Mama's Fish House, and so forth, so from the exhibits, you know, I have the impression that this was not -- this was really not a neighborhood scale, this was, you know, we're into a bigger situation than that so I would -- I'm still looking for the right wordsmithing regarding the condition.

I would still support a condition and, you know, I'm hoping there's somebody that can wordsmith it correctly.

Mr. Collins: John, if I may answer that?

Mr. Blumer-Buell: Sure.

Mr. Collins: Yeah, West Pac, they're developing those buoys and whatnot to keep track of what's caught and to empower small communities, like Hana, that are rural and dependent on fish for their own survival, for not jobs, but subsistence. We really depend on that out here and that's -- actually, those buoys are to give us a fair chance, make it safer for the small boats that are used, you know, in rough waters, and to keep control on how much fish are caught. So they're actually, you know, not designed to create some big boats or long-liners from coming here, but to empower and make fishery safer and more sustainable.

Chair Cosma: Okay, anything else? So, in other words, what we need to do is make a motion, yeah.

Mr. Hopper: I should have read the whole SBR service establishment definition. In addition to the requirement of 2,000 square feet, including display, storage, and accessory structures, and that these are neighborhood-scale commercial services, in addition it says, "retail establishments in which products are sold to the general public for direct consumption," so the point being is that the definition of SBR service establishment already has several restrictions on it, I don't know if they're sufficient for you, but it's not a typical, you know, restaurant or store or whatever as defined as, there are some restrictions in the designation - just for your information in crafting a condition.

Mr. Blumer-Buell: As far, you know, I don't want to be argumentative, but one of the things here is that what our Corp. Counsel just read is that the neighborhood-scale commercial uses that are determined by the Planning Director to be of similar character and use, so I'm just wondering if there's really, you know, some, you know, real assurance that the Planning Director could give that, you know, that this would trigger an SMA, you know, anything like this, and this, I understand what you said, is that the Collins may decide to develop this in another way altogether, which could foreclose on the idea of doing a fish processing.

Mr. Spence: Madam Chair and Committee Members, I agree -- actually, what Mr. Fasi and I are pretty much talking about the same thing, they're just -- you know, you get one part of the elephant in the front and you get one part in the back - it's the same elephant. We're both talking about how limiting to the a neighborhood scale, and Deputy Corporation Counsel Hopper, what he's pointing out in the law, it's already limited to a neighborhood

scale. Okay, that being the case, and then the Planning Director has to be satisfied that it's also a neighborhood scale, it still does not alleviate the requirement for a special management area use permit. That's by State law. That authority to approve that is really under the Planning Commission's rules. I can't imagine, again, I can't imagine that a commercial building could be built with just a minor permit. I think there probably is going to have to be a public hearing. The Maui Planning Commission, traditionally, brings that public hearing out to Hana. You review the plans. You're going to have to also be satisfied that it's a neighborhood scale. Neighborhood, as fits in Hana, not neighborhood as fits in Kahului or the west side or Honolulu, but neighborhood scale what fits in Hana. And then that would go back to the Planning Commission. The Planning Commission, you know, is the ultimate authority on the SMA. So it's not the checks and balances aren't just with me, it's with other bodies as well, including this one.

Mr. Cashman: Maybe you can help us make the motion then.

Mr. Spence: It could -- well, my personal feeling is the restriction is already there. It's inherent in the code. I don't think you need a ...(inaudible)...

Mr. Cashman: So the motion as I made it, it's good enough.

Mr. Spence: That's my opinion. That's -- I mean but, you know, I'm not the decider on the motion. That's between the Members here. I used to ...(inaudible)...

Chair Cosma: John.

Mr. Blumer-Buell: Yeah, I hope we're reaching a conclusion. I still Paul Fasi's condition and it's because it really raises a red flag on the large-scale commercial operation. If the Collins come in for a neighborhood-scale operation that is -- goes through an SMA process, then it'll be dealt with that way. I just think -- I like the, you know, the red flag; that's really what it is, particularly because of the neighbor's concern, and, you know, that's all. I mean it's not -- putting Paul's words on it are not going to restrict them from doing a neighborhood-scale operation.

Mr. Cashman: One comment, yeah? How would we define what is a neighborhood and what is a large, you know, 10,000, 20,000, you know? Neighborhood can mean something to me and something to John, you know, so I don't know.

Mr. Spence: Neighborhood, I mean like I was saying before, you're limited by the size of the lot, they already wanna build say another house on the lot, so you're taking up room there, so then the only other thing -- and then you're limited to 2,000 square feet of any other building. That would be in a neighborhood square. I'm trying to -- I was looking around the room trying to imagine what 2,000 square feet was. I'm going to guess like from

this door - I'm guessing, okay, I'm not an architect, I'm a planner - from like this door back to where the separation is back there, that looks to me to be about 2,000 square feet. Now, if they were going to have a little commercial operation so they have a little retail up front, they would the fish processing in the back, hard to say that that's large scale, my opinion.

Ms. Hoopai-Waikoloa: I believe somewhere I read though I think from the Collins where the 2,000 square feet would be more of a two-story. Was that from you guys? I read it somewhere, like 1,000 square feet below and then the other 1,000 square feet on top so it doesn't look so like taking up so much space.

Mr. Spence: Yeah, yeah. And see that goes to design. That design, that's what I'm talking about but that's --

Chair Cosma: Can we take a five-minute recess?

Mr. Spence: Yes.

Chair Cosma: Thank you.

(A recess was called at 5:29 p.m., and the meeting was reconvened at 5:37 p.m.)

Chair Cosma: I'd like to call the meeting back to order. Thank you. Okay, we were in discussion on the motion to approve the urban to SBR and with conditions.

Mr. Blumer-Buell: Yeah, I agree with Mr. Fasi's interpretation that with the condition that a commercial large-scale fish processing operation shall be prohibited, and, you know, I think that covers it.

Chair Cosma: Any second?

Ms. Hoopai-Waikoloa: I second that motion.

Chair Cosma: Okay, John Blumer-Buell made a motion to approve the urban to SBR with a condition prohibiting the fishing.

Mr. Blumer-Buell: Yeah, that a commercial large-scale fish processing operation shall be prohibited.

Chair Cosma: Commercial large-scale operation shall be prohibited.

Mr. Blumer-Buell: Right.

Chair Cosma: That was the condition placed with the motion.

Mr. Hopper: Is there any chance you could phrase that as a large-scale commercial versus commercial large-scale? The only difference being if you didn't want any commercial fishing in there versus just staying along -- I'm just looking down the line if --

Mr. Blumer-Buell: Yeah. No, I will be happy to do that. That a large-scale commercial fish processing operation shall be prohibited.

Chair Cosma: Okay, and we'll need a second for that.

Ms. Hoopai-Waikoloa: I second that motion.

Chair Cosma: Anjo second that motion. All in favor? Oh --

Mr. Blumer-Buell: Yeah, I would speak in favor of the motion if we can pass this, we're moving ahead, and we've started to -- you know, the whole SBR issue has been a difficult one for the community because it is not what was represented to us in 1994, so I am making every effort to move this SBR issue forward.

Chair Cosma: All in favor of the motion?

Mr. Cashman: Question. So we're voting on the amendment then? Or we're voting on the main motion?

Mr. Hopper: Oh no, this is the amendment to that main motion, so this would be to amend the motion to add this as a condition, and I guess you've got the applicant that has an issue I guess.

Chair Cosma: Question?

Mr. Collins: Yeah, you know, I don't have a problem with it but I think we need -- if they're going to -- I think we need to define what a large operation is. You know, I don't have a problem. I don't think there should be a large commercial operation either but that could be defined by different people in different ways. The Trasks might think a boat bigger than five feet is too large, you know, if you go with the rest of their writings, so I think we need to define what we're talking about what a large operation would be.

Mr. Fasi: I believe the ordinance specifically states "neighborhood-scale," and I think the intent of that, using that broad term is so that you don't specifically define it but it has to be neighborhood scale, so it's kind of a judgement issue and it would probably basically come

down to a corp. counsel interpretation of the definition. But neighborhood scale is what it is.

Mr. Hopper: There is a limit of 2,000 square feet of gross floor area, that's what it says, including display, storage, and accessory areas. Of course, that limitation is in there regardless of any conditions that you add, so that is existing right now. If you think that's too big, then I'm not sure where we would go, but that's what's allowed right now in the SBR establishment so it appears that the Council, when they defined this, thought that a -- going greater than 2,000 square feet for a display, storage, and accessory area total was beyond the neighborhood scale, and so that appears to be what the Council had looked at. So that's our definition at this point as far as what neighborhood scale is. As far as what large scale is, I mean you're still limited to whatever this neighborhood scale is so I wouldn't -- if asked, that's what I would look at.

Chair Cosma: Is that okay? So, we need to vote.

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

It has been moved by Mr. Blumer-Buell, seconded by Ms. Hoopai-Waikoloa, then

VOTED: to amend the main motion to include the condition: That a large-scale commercial fish processing operation shall be prohibited.

(Assenting: J. Blumer-Buell; E. Cashman; L. Cosma; A. Hoopai-Waikoloa)

(Excused: K. Kaina; T. Kahula)

Chair Cosma: Four ayes. It's amended. Motion carried.

Mr. Cashman: I think just to make it clear, like we just voted on the amendment, then now we vote on the main motion.

Chair Cosma: Okay.

Mr. Blumer-Buell: Please clarify. I assume that what we just voted on was regarding the amendment, the condition that I proposed.

Chair Cosma: Right.

Mr. Blumer-Buell: So what are we doing with the main motion now? What is the main motion or what are we voting on?

Mr. Hopper: Unless the Chair corrects me, I believe that the motion was to grant or recommend granting of the change in zoning from urban reserve to SBR with the condition that Mr. Blumer-Buell had proposed and was voted on. I think that's the main motion before you right now.

Chair Cosma: Anymore discussion on that? No?

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

It has been moved by Mr. Cashman, seconded by Mr. Blumer-Buell, then

VOTED: to recommend granting of the change in zoning from urban reserve to SBR with the condition: That a large-scale commercial fish processing operation shall be prohibited.

(Assenting: J. Blumer-Buell; E. Cashman; L. Cosma; A. Hoopai-Waikoloa)

(Excused: K. Kaina; T. Kahula)

Chair Cosma: Motion carried. Okay, so that was -- yeah.

Mr. Fasi: Thank you for moving the SBR portion of this matter along. The second item regarding this matter is the County special use permit, and a County special use permit is triggered by the SBR change in zoning, and the only reason the special use permit is in here is to allow the short-term rental use. Let me repeat that. The only reason why the special use permit's in here is to allow the short-term rental use. The applicant is requesting a three-room operation. The Department does have eight conditions here and we will have to make some amendments based on what just happened to the SBR portion. That's all I have to offer from the Department's perspective unless the Committee has questions for the Department.

Chair Cosma: Any questions for the Department? John.

Mr. Blumer-Buell: I'm supporting the special use permit for the three units. I would like you to go over the eight conditions then maybe we could get to a vote.

Mr. Fasi: The County special use permit is recommending for approval subject to the eight conditions: The County special use permit shall be valid until June 30, 2021; no. 2, It shall not be transferred without prior written approval of the Planning Director; no. 3, it's a standard clause for the County of Maui pertaining to liability; no. 4 is a standard clause that full compliance with governmental requirements shall be rendered; no. 5, That the applicant shall submit to the Planning Department five copies of a detailed report of compliance; no.

6, that the applicant shall develop the property in compliance with representations made to this body - there is no development at this point being proposed. Project Specific Condition No. 7 will be deleted because it pertains to construction of the project and a completion date of the project -- Condition No. 7 is recommended for deletion. Condition No. 8 and the last condition: That the TVR accommodation or the short-term rental accommodation shall be limited to the lesser of, and there are three options here: the amount allowed by the service business residential ordinance, which is five rooms, the amount allowed by the current zoning regulations, and the amount allowed by the Hana Community Plan. Number 2, the amount allowed by current zoning regulations, I put that in there because the current draft ordinance is still being crafted and depending on when this is approved, it may or may not come into place. And the amount allowed by the Hana Community Plan is the amount subject to the County special use permit. And so those are the eight conditions, minus one, so seven conditions as recommended and updated by the Department.

Chair Cosma: Anymore discussion?

Mr. Blumer-Buell: I have a -- this isn't a sticking point, but I would just like the Planning Director to comment, and we heard this during the last hearing with Ala Kukui, and Condition No. 2 in here is: That the County special use permit shall not be transferred without the prior written approval of the Planning Director. And, you know, I would -- I'm not going to make this a sticking point on this particular application, but I think that people out here would always like it to say, "after a public hearing in Hana." In other words, giving people a chance to comment on it. And, like I said, it's not a -- it's not going to change my thinking on this but that I think generally you're going to see that a lot where people maybe request more often than should be that things need to come back here. Thank you.

Mr. Spence: Committee Member Buell, I'm not exactly sure what you would like me to comment on. This is a pretty standard condition that we apply to all of these operations. I mean they would have to sell the property and then they would have to come in and, typically, what would happen is the applicants would have to sell the property first, then the new people would have to come and they would have to say director -- Planning Director, whoever is in there at the time, is -- can this permit be transferred, and it would go through not quite as a rigorous of review process as this is, but they would still come in and show we still intend to operate it in the same scale, in the same number of rooms, you know, that all these conditions still apply and this is how we're going to comply with all these conditions. I mean it -- because somebody else would come for approval to operate, you know, the short-term rental, they're not getting out of any of the conditions on this so --

Mr. Blumer-Buell: Just to be clear, I was -- you know, it came up because in the Ala Kukui hearing, the Planning Commission did, you know, grant the -- if it transfers for it to come before the Hana Advisory Committee, one shot at that, and I appreciate that you and your

-- the Arakawa administration are trying to streamline things, you know, a bit; at the same time, I'm still concerned that, you know, that the community has its chance for input that's all.

Mr. Spence: Well, I would say that the, you know, the community has a chance for input along the way, all along the way. If there's some kind of problem with the way that it's currently operating, you know, once they are operating, you know, with the permit, if there are problems with that, they can still come to the Planning Director and the Planning Director will assign staff to do whatever and checkup on, you know, what's the issue; can we correct it; etcetera, and still has the discretion to say, hey, maybe we should go back to the Hana Advisory Committee.

Mr. Blumer-Buell: Okay. I just wanted to raise the point and I'm not going to vote against this because of that, if we leave it. And, secondly, you know, congratulations to Mark and Haunani, if they get the permit through for ten years, so that's -- that would be a lot of assurance for them. The last question I have is for Paul Fasi. When you brought this forward, you said -- I thought you said regarding the three rooms, you know, the three rental units they had now, this Condition No. 8, does that override the three rooms?

Mr. Fasi: It does not preclude them from having five rooms.

Mr. Hopper: That was a question I had as well. Number 8 now make it have -- I know it was a request for three bedrooms, but would they have the right to run a five-bedroom TVR because that's what Condition 8 seems to suggest? So I don't know if the -- if that's okay with the Committee. The application was for a three-bedroom and it looks like the approval is for a five-bedroom, so they could do two extra bedrooms if they wanted, I don't know if they want to, but that's what the condition says.

Mr. Blumer-Buell: Yeah. I mean they were asking for three and that's what I'd be comfortable with is to give them what they're asking for.

Chair Cosma: Mark Collins.

Mr. Collins: Yeah, thanks. Mark Collins. Well, since this has become an issue, and I haven't really asked, but the way that we had designed that about 15 years ago, there's two long breezeways, and what we found is we get a lot traffic coming back from the national park, people wanting to spend the night, and we could extend those breezeways into just two studios without changing the footprint at all, and the parking is already there and behind, which would add two more spaces; if we weren't allowed to do that, we'd probably just expand the existing units by -- it'll probably be about 500 square feet, at the most, but I think it would serve a purpose in a lot of times when we do get people, you know, wanting

to not make the drive at night, and it wouldn't change the footprint and the way the place looks or is run at all. So I would ask -- consider that we have that ability in the future.

Chair Cosma: Thank you. Anymore discussion? So do anybody wanna make a motion?

Mr. Cashman: I make a motion to approve the County special use permit with the standard conditions that is provided by the County.

Chair Cosma: Second?

Mr. Hopper: Just to clarify, there's a set of conditions that says "Standard," and there's two Project Specific Conditions. Did you mean also to include the Project Specific Conditions 7 and 8?

Mr. Cashman: Excuse me, yeah, with the specific conditions too.

Chair Cosma: Second on that?

Mr. Blumer-Buell: I'll second for the sake of discussion, if that's okay. My question is, they're asking for -- applied for three and this is -- would this imply that they would have to have, if they're going to expand their operation for vacation rentals, they would have to have completed that by June 30, 2013, which is no. 7, that I had -- was that going to be deleted? I mean I had the impression it was deleted and then I had the impression it wasn't.

Mr. Fasi: That is correct. Condition 7 is recommended for deletion 'cause it's not applicable.

Mr. Hopper: I would make that clear. I'm sorry, I should have caught that because he had said it earlier. I guess that should probably have been part of the motion that all the conditions with the exception of Condition 7 'cause it doesn't apply. There's no construction, I guess, that needs to happen. So I'm sorry about that. I failed to mention that.

Chair Cosma: Okay. So should he restate his motion to include that?

Mr. Hopper: I think you could say, with no objections, Condition 7 will be deleted from the proposed recommendation, and if there's no objections, then it'll be deleted.

Mr. Cashman: With no objections, I delete the Specific Condition 7.

Chair Cosma: Okay, so all in favor?

Mr. Blumber-Buell: This includes everything, it includes Condition 8 but not 7?

Chair Cosma: But no 7, correct.

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

It has been moved by Mr. Cashman, seconded by Mr. Blumer-Buell, then

VOTED: to approve the County special use permit with the standard conditions nos. 1 through 6, and project specific condition no. 8, deleting no. 7, that was provided by the County.

(Assenting: J. Blumer-Buell; E. Cashman; L. Cosma; A. Hoopai-Waikoloa)

(Excused: K. Kaina; T. Kahula)

Chair Cosma: Okay, motion carried.

Mr. Yoshida: Thank you, Madam Chair. Moving on, first of all, I guess I would advise the Committee that we do have a time constraint, that the meeting needs to end by 7:45, at the latest, because of commitments.

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

F. COMMUNICATIONS

- 1. Council Planning Committee Chair Don Couch and the Maui Planning Commission requesting comments on the following Council Resolution:**

MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 11-24 referring to the Lanai, Maui, and Molokai Planning Commissions containing a draft bill amending Title 19, Maui County Code, relating to Short-term Rental Homes. (G. Flammer)

The Committee may take action to provide its comments on the proposed legislation.

Ms. Gina Flammer: Good evening. I'm Gina Flammer. I'm a staff planner with the Current Division. I wanna thank you for giving me this opportunity to come and discuss this bill with you. Thank you too for the work that you guys do. I know it's 6:00 at night and here you are out in the community doing some good work.

So what I've done, I just passed out a handout, and I think it'll probably be the easiest way to go through the bill is to walk through it, and I won't read it verbatim and put you all to sleep, but I'll use for some talking points. So as Clayton -- oh, actually he didn't mention this. We do have -- the bill came down from the County Council. It's the short-term rental home bill. It was transmitted to our Department to go to the different commissions for review. The bill is written very broadly. It's based on our bed and breakfast bill. It's written with the intent to incorporate community input. It's also written with the acknowledgment that we have a large underground industry that's been fueled by a move towards alternative tourism and alternative accommodations that have come with that.

So, to start with, we'll talk about the community outreach. Our Department needs to have comments back to the County Council by July 22. We're going out -- we're here tonight in Hana; we're also going to be going to the Maui Planning Commission next week; then Lana'i; then, two weeks later, we're going to be going out to Molokai for their input. We've also been going out to different community associations and getting their input as well. We're going to be incorporating that into the Department's recommendations that go to the County Council.

So if we take a look at the next, I would say "slide" normally, but the next piece of paper, at the purpose of the bill. Basically what we're doing with the bill is we're acknowledging that we have this industry, we'd like to regulate it, tax it, and at the same time, we really need to balance kind of tourism policies along without our housing policies, and the bill has provisions to do that.

So in terms of looking at operations, that's the next page, the bill only applies to homes, it doesn't apply to condominiums. It only applies to two dwellings per lot can be used for the rental, but there is a maximum of six bedrooms that can be used for rentals for both dwellings, except on Molokai where the number of maximum number is three. The maximum occupancy is two people per bedroom. And we do have parking requirements, one stall for each bedroom used. When we're looking at the ownership of these properties, anyone can own the rental home and be the owner applicant. There's no percentage of ownership in the bill that's spelled out. If you're not a Maui resident, the bill does require that a resident manager or a State licensed real estate professional who's accessible 24-hours a day be used. Like the B&B bill also, permit cannot be held by corporations, partnerships, limited liability, etcetera. We're really looking -- you know, it has to be a natural person that the permit is held in. One person may only hold one permit. The permit's nontransferable. And you can only have one permit per lot. The home also needs to be fully constructed prior to filing an application for the short-term rental.

When we look at the neighbor notification provisions, right now, and this again is based on the bed and breakfast bill, there is a notice of filing that needs to go out to all neighbors -- all owners of properties that are located within 500 feet of the boundary. That notice does

include a provision that says that owner can file a written protest, and if we get 30% of those owners, it will trigger the application to go to the Maui Planning Commission. On Lana`i and Molokai, all initial applications are reviewed. So then if an application does go to public hearing, and there are other reasons which we'll go into, then a second notice of public hearing does go out to neighbors, to owners, so they get two notices, generally. There's also a notification sign. I know this one's a little smaller than under the B&B. I'm sure, if anyone's ever seen the B&B ones, they're hard to miss. This one's only a four-foot project notice sign. It has to be posted at the front of the property along the main access road. It has to be placed five days before the application goes in, and then it needs to be taken down five days after. Now, in Hana, you guys recommended with the B&B bill, so it's in with this one too, that a permanent sign be up that's a square-foot that's got the permit number on it. On Molokai, they want to have the telephone number of the owner, caretaker, or manager also on that sign and that's what stays up at all times.

When we look at application processing, now this isn't the bill, this is just how we do business but I thought you guys might be a little curious about it, once we get an application, it's up to the planner to go through and make sure we have all the information that we need. Once we get that, we transmit it out to different agencies for review, like we do with all of our applications. I put the agencies on here just so you can see. Public Works is going to go through and make sure that the home is fully permitted; that they need to be in compliance with building codes. Water Supply's going to take a look; look at the meter; they're going to look at some other things. Department of Health is going to take a look at whether or not you have a cesspool or a septic and if that's approved. Police Department's likely going to take a look at what egress, ingress in there, what's safe for vehicular as well pedestrian movement. Real Property Tax just wants to know for tax purposes. Zoning Division's going to take a real close look at the parking and also whether or not -- you know, setbacks, things that they normally look for. If it does happen to be on ag land, it will go to a State agency to take a look at that as well. So Fire Prevention Bureau has standard conditions. They've said they don't wanna see every application. They've just given us a set of conditions that need to go on there that relate to fire safety and that's having evacuations plans, your windows need to be 44 inches or lower so you can get out, and certain sizes, things like that.

So how does it get to review for Planning Commission? Well, in Hana, if you have three or more bedrooms -- if it's greater than three, if you have four to six bedrooms, you're going to come before this -- you're going to come before the Planning Commission and they're going to review it just based on that fact. I assume it would come to this body as well. If you're within 500 feet from another operation, you're going to go to Maui Planning Commission for review, and that's so they can review on a case by case. If you have written protests from owners, 30% or more, during that 45-day period when that notice is sent out, it will kick it to Planning Commission. There's a variance used to meet the requirements for the home, it'll kick it again to it. And all initial applications on Molokai and

Lanai. And also, due to State regulations, if you're on State ag lands, you're going to need another permit and that's a State land use special permit and that's going to come Planning Commission because that's where those permits get reviewed.

So what about ag zoned land? In order to have it on ag zoned lands and to even get yourself to Planning Commission, you have to have an implemented farm plan, and that means that 50% of your land has to be either in ag or agricultural land conservation. I know you guys got your report a little bit late. There's a lot of information in there. If you're real curious about how it works, I did put a lot in there about the farm plan. That has to be done and signed off by our Zoning Division, and it has to go onto your warranty deed before it can even be considered to go before the Maui Planning Commission. So in addition to that, if you have a property that's five acres or more, that owner-applicant would need \$35,000 of gross sales in order to be eligible to even do this type of operation. If your property's listed on the Hawaii Register or National Register of Historic Places, then regardless of your size, you can qualify to apply for this. On Molokai, ag land, you may not -- you're not eligible for this type of permit.

So what happens when you're under five acres, which is, you know -- a lot of two-acre parcels you'll see. You have to have the farm plan, your lot must have been created before November 1, 2008, and if you have a condominium property regime, then you're not eligible for the permit.

So how long can these permits be issued for. In the beginning, they can be issued for up to three years or shorter periods to mitigate impacts; that would be commission or planner discretion. Renewals could be granted for up to five years by the Planning Director, except on Molokai where they're renewals are issued only for one-year time periods. We have to see compliance reports when those renewals come in and that's gotta show evidence of tax payments, and it's gotta show evidence of compliance with all of the other conditions of the permit as well. We do have a denial clause for renewal and that is, "No permit shall be renewed if the operation has created adverse impacts on the neighborhood or has otherwise caused the loss of character in that neighborhood."

So when the County Council was talking about the bed and breakfast ordinance, there was a lot of discussion about how do we mitigate impacts on our local housing market from this, so one of the ways, the tools that they used was a community plan district cap. You're only allowed to have so many of these types of operations per community plan. Now, remember again, the Planning Commission's going to review any within 500 feet so they're going to decide on a case-by-case basis; if there's going to be a concentration in one area or not. I want you to take a look at the caps. We're going to look a little closer later to kind of delve into those. Now these caps were based on a study that was done that showed the actual number or the best the study could do, the Hawaiian Institute study of what the numbers were, and I believe the number was cut in half, and then kind of divvied up. So

they looked at reality, and how many are out there, and tried to come up with something. When our Department looked at it, they also looked at it from the housing inventory perspective, and I'll show you something in a couple pages here where we came up with that.

So what about taxes How are we going to tax these? The bill doesn't specify a tax category. It's, basically, left up to the County Council Budget Committee to do that. It does, however, prevent these short-term rental home properties that do get a permit from receiving the homeowners exemption. The Department of Finance did state that if the Budget Committee doesn't come up with anything, they'll be taxed at the hotel rate. All applicants have to have a current transient accommodation tax and a GET license. We need to see those licenses before we'll issue a permit. And then we have to see payment of those taxes when they come for renewal.

So what does the Planning Department think? We recognize that the bill was based on the bed and breakfast bill and that it's a broad -- it's a broad bill to start with. We'd like to add more, even the Council asked us to look at -- to go out to the communities and to find some more neighbor input provisions to give neighbors a little more of a say on what's going on. And we'd like to add some additional review of some of these due to the absentee nature of it. We think it's a little bit different than a bed and breakfast. But we wanna hear from the communities. We don't wanna dictate to you. We wanna hear what you guys have to say. But we did wanna come up with some amendments, a way to get some discussion going and to kinda gage, you know, which side you are. So I'm going to just run through these amendments.

First of all, we had concerns about an off-site manager being available. I mean what does "accessible" mean? So, basically, as we've said is is you have to either have your business or home in that community plan district or you have to be within 15 miles of that short-term rental home. If there's a problem and someone calls that manager, needs to be able to be there in a very short period of time. The second thing that we recommended, which we had heard that it was supposed to be in the bill but we can't find it, and that is that the home is supposed to be rented to one group at a time, and that's kinda to mitigate some of the impacts. It'll reduce cars. We're recommending that if it does go that way where that is a requirement of the permit, then we're going to -- we think reducing the number of parking stalls is only appropriate. We also came up -- you know, we had a bill a couple years ago where we approached this from a completely different perspective. We said why don't we just outright permit them in certain resort areas. It didn't gain much traction. But we decided that there's a lot of appeal to that. So if the Council decides that they'd like to deem a couple areas as resort areas and have it be an outright permitted use, that we're okay with that, depending on where it would be. We'd also like more triggers for review, so we've started with applications where two or more protests are received during that 45-day period from when they get the notice, that's when they file the application with

us, that if they are adjacent or directly across the street, it goes to Planning Commission for them to review, much more stringent than the current bed and breakfast bill. We also want the option to be able to transmit applications to the Planning Commission, with reason of course, but there are times when you can tell looking at something you'd like a little more review from that, so we're asking for that.

Now with renewal, we think if there's some problems, that we ought to have more review on that, so we're looking at applications again where you're looking at two or more protests from your either adjacent neighbors or someone across the street that your renewal's going to go back to Planning Commission and they're going to take a look at exactly how you're running your operation. And then also, if you have 20% or more of the noticed owners within that 45-day period, well, then that needs to go before the commission also for some review.

We're also going to be looking at our enforcement and where appeals go, and we're going to be working with our enforcement division on how to make enforcement a little bit simpler for them and more effective for everybody. We're looking at enforcement of non-permitted operations as well as enforcement of permitted operations.

So the permit caps. When we drill down and look at some of the data of where we're at, what I did is, out of concern for what this would have -- I mean it's going to affect the housing inventory. Whenever you take any houses out of there, you're reducing your supply. We wanted to keep the affect of that to a minimum. So what we've done is we took the caps and we compared it with the single-family dwellings in that district and came up with a percentage of what these -- if you max out your cap, how much are you taking out of there. So I want you guys to take a real close look at Hana and the other areas. And then also, we realize, you know, we don't wanna have this be set in concrete. If we have certain areas where they reach their cap, we have a provision where it can be reviewed again, and that's if three of the six districts are within 5% of the cap. So that's my broad overview for you guys. I'd love to answer some questions, hear some public testimony, and we can go from there.

Chair Cosma: Thank you, Gina. Anybody from the public wanna testify? You can come up. State your name, please, for the record.

Mr. David Greenberg: Yes. Hi. My name is David Greenberg, and I've had a vacation rental for quite a while here in Hana. I have my particular property as -- first of all, I think vacation rentals, short-term vacation rentals are really important to the County of Maui. I have a 20-acre piece of property that I've been trying to do agriculture on for like 30 years and the property has a lot of properties and -- but, actually, one of my jobs in this world is I'm involved with sustainable ruralism in Southeast Asia and actually right here in Hana, and it's my job, you know, to figure out how to make nice rural areas remain nice and yet

still be sustainable. And the work that I do in Southeast Asia, which is in China, Vietnam, and Cambodia, is to design sort of eco-tourist areas where, actually, some specific eco-tourist areas and poverty reductions where they have a lot of local farmers and small communities that are not quite making it and, you know, almost starving and that's when the young kids go into the cities, leave the small areas, because they have to make money, going to the cities in China like Shenzhen and Guangzhou, here it's like Kahului or Los Angeles to get jobs, and they leave the rural areas because they are forced to because they just can't make a living, and what eco-tourism allows for, and what I'm hoping this bill will allow for, is for people and families that kind of compliment their income from what little farming they do by having some small income and their spare rooms, and this is what I've been trying to do.

I have a 20-acre piece so, you know, I would have to show \$35,000 worth of, you know, agricultural income. You know, and I've been trying to make my place more sustainable and more agriculture over the years, I have quite a few papaya trees, and quite a few banana trees, and quite a few avocado trees, but, you know, it doesn't come up to \$35,000 a year. I also, two years ago, when stuff started happening, you know, when guava started happening, whatever, you know, and when the last mayor kind of clamped down on vacation rentals and had to -- you know, we had to stop, I mean totally, no advertising or anything, and so I decided to make an agricultural plan in the future that would bring in some income. So I, you know, looked around and what I did was I planted, you know, an acre or two of really beautiful construction grade black bamboo and guadua because, you know, my particular land doesn't relate to having like, you know, large flat areas of growing things that you can just like do that so -- but the bamboo can work. But the bamboo takes five years, and we're into the third-and-a-half year right now, and, you know, eventually, you know, maybe, you know, in a few years or several years, you know, we may be making \$35,000 in the agricultural part but, you know, it would be impossible for me to comply now, and it would be impossible for me to continue with the agricultural direction I'm going. I couldn't pay people and workers to help me if I didn't have that vacation rental on the side.

So I think it's a really good bill on a lot of levels, and I think that, you know, the Hana area has to be sustainable, and what will make Hana area a sustainable rural area and keep its rural and nice thing, and keep the people here, is if it works, and one of things that's working, you know, 'cause Hana's a special case. I mean some of these roadside stands, you know, really help it make a lot of the farming land sustainable, you know, the best food growing places is the kinda like Chinese fish restaurant on Kala Road and Hana Highway but they wouldn't be able to do that agriculture if they didn't have that little stand, which is a little illegal 'cause they cook fish there, you know, and Chinese food, but so I mean you have to look at Hana as being a very special case and I think that one of the things is you have to delete that \$35,000 agricultural thing in the Hana area because a lot of people are not in that level of business. That's not how Hana is. You know, that's like big business, 35. Did anybody ever look -- did the Planning Department ever look at \$35,000, what it

means to have income of \$35,000 a year in agriculture? It's like -- it's like saying a million dollars in Hana, you know, or ten million dollars.

Anyway, so I would really like to look at that and, you know, so it's like maybe five and, you know, and even ten. I mean my particular case it's like 19.8 acres, you know, and a lot of it is just so hilly you couldn't do anything on it anyway, and so it depends on the land, you know, what the land's capable of doing and what Hana's capable of doing. I mean you can't get so many workers all the time that wanna do farm work that'll make that \$35,000. So anyway so that's the main thing I wanna say, but that I also wanna say that vacation rental business as it's been going on for a long time has really been good for Maui on a lot of levels. What it will do in future, and now with the pineapple gone and some day the sugar will be gone, it'll allow small people to do agriculture, which is happening in Hana and in the Kipahulu area. What's happening in the Kipahulu area is unbelievable. All that is real sustainable ruralism there, organic farms, Lualaba and the Whispering Winds and the fruit farms there and the things that are happening and -- and I think Hana and Kipahulu can show, you know, the direction that a lot of Maui should be going into, you know, and -- but it's a very special case and it has to be dealt with specially and carefully and these laws, like five acres, it's just -- anyway, that's all I have to say, but that it's really important, this bill is really important because it can allow for small scale agriculture all over the island which is going to be necessary, but \$35,000 is not small scale agriculture; that's big scale agriculture, you know, and that -- that what this bill can help is the agriculture and the way it's written, it won't. Thank you.

Chair Cosma: Thank you. Any questions for the testifier? No. Okay. Next person to testify, please state your name.

Elaine Wender: Good evening. My name is Elaine Wender. I was late for your meeting and thought I would be going to miss it, but you spent enough time on the other item that I didn't, because I had a group of volunteers assisting me today on my small farm in Keanae and it would have been foolish of me to turn down much needed help. And that, in a nutshell, illustrates part of what is fundamentally wrong with this proposed bill. It forces those of us who had the legitimate expectation that we could spend out time and energy working with the `aina instead to have to repeatedly plead with government bodies to not turn our agricultural communities into resorts. Let us remember how this began.

The initial rationale for allowing B&Bs outside of resort areas was that it would allow local families, who had a vacant room in their house because they were empty-nesters, to supplement their income by renting a bedroom to tourists. But when the 1997 law was revised in 2008, late in the game, the definition of a B&B was greatly expanded to include what had previously been considered a transient vacation rental or a TVR: An additional structure on the same parcel which is not owner occupied. These units are commonly referred to as "ohanas" as the original purpose, their original legal purpose was to provide

additional space for family members on lots where, previously, only one residence was allowed.

Since the definition of a B&B has now been expanded to include what used to be a TVR, there's absolutely no need for this new legislation. The intent of helping local families secure additional income from their homes has been more than adequately provided for.

The new bill provides an economic benefit, not to local families, but to those who wrote it; persons wealthy enough to own investment property, and Exhibit 25 is an excellent critique, and I know you got your packets late and some of you may not have had time to read it. If you haven't, I would really suggest you take a short recess and read it because it's extremely well thought out, has many suggestions, and I'm going and try not to repeat all the suggestions that the couple who wrote it have include it, and I'm going to just limit my comments to the effects on ag land.

The encroachment of what are really small hotels in the agricultural district conflicts with many existing State and County laws protecting agriculture. Importantly, one of those many laws is the Hana Community Plan, which very clearly states, "Discourage transient rental accommodation uses outside of the Hana urban area." Okay, that's pretty clear. On Molokai, not even B&Bs are allowed on ag land and, as you heard, they will not be permitted under this, TVRs will not be permitted under this rule, or whatever they're now called, STRH, yeah. The Hana District deserves at least as much protection as Molokai. Applicants should be required to obtain a change in zoning. There is a way you can do it, but you've gotta go through a lot of hoops, and you should have to because you're getting a goldmine when you get these permits. It shouldn't be easy.

The central issue is maintaining the integrity of our ag lands. It's not about whether TVRs provide economic benefits, so do so many other illegal activities, like gambling. We have not, in Hawaii, responded to illegal gambling by bringing the activity into compliance and legalizing it. We arrest lawbreakers. So I urge you to do what you did last time a TVR bill came before you in 2006 and reject this in its entirety. If you choose not to do so, there are various exemptions you could make. You could ask that the Hana District be exempted as Molokai is exempted from this bill. If you decide you want them in Hana, then I implore you to exempt the Moku of Ko'olau, from O'opuola to Makapipi. So far as I know, we do not yet have any vacation rentals in the Ko'olau District. Please don't force us to fight them one by one. Keanae-Wailuanui is still a viable Hawaiian agricultural community, celebrated for its unique cultural landscape in the Planning Department's 1995 study. The incursion of vacation rentals could quickly change the nature of the community and its cultural landscape. Becoming more dependent on tourism does not diversify our economy. Compromises were already made when the first B&B ordinance was passed and, again, when it was expanded. We've already given away too much of our island to tourists. No

more. Don't allow Maui to be transformed from an island with resorts into a resort island. Thank you.

Since you don't seem to be setting time limits on speakers, if you'd like, I didn't have time in my three minutes but I do have a list of possible restrictions if you decide to pass the bill.

Chair Cosma: Thank you, Elaine, but maybe our Committee have questions for you. Anybody?

Mr. Blumer-Buell: Well, I would like to hear your list of restrictions. I'm glad that today we've really had the opportunity for everybody to discuss everything that goes to the previous application, so, you know, I'd like to give Elaine enough time, you know, understanding we've gotta go through this, just to give her additional concerns, and I don't want to -- I would like to come back to David for a second, not after Elaine's finished, a very quick answer. What's the financial threshold you could live with? Now, I don't want to -- you to wait till after Elaine but that popped up. Thank you, Elaine.

Ms. Wender: Okay. And there are a lot of suggestions they mention in appendix -- in Exhibit 25 and I'm not repeating them, I mean they go into great detail about some of the restrictions, but these are just my quick ones. First of all, all applications should be heard by the Planning Commission. There should be public input on all of them. The entire property should be taxed at the hotel, which is, I understand, is what will happen if the Council does not act to change it, but not just a little footprint of the residence, but the whole parcel because people don't come and just be in the little residence, they are on the property. Legal notice should be given to all owners within a quarter mile and written -- and it shouldn't be that you have to protest, it should be that the applicant gets the written agreement of two-thirds of the neighbors within a quarter mile for the application to go forward. So that have to affirmatively go out and get support rather than relying on people to go against their neighbors and file a complaint, which none of us like to do. Require all owners of the parcel to be named on the permit because the way it's setup now, for instance, they're saying only -- a person can only hold one permit, but a couple, a husband could have one, the wife could have one on a different parcel, so if you're really trying to spread the wealth, then all owners of the parcel should be on the permit, that no one who holds a B&B permit should be allowed to also hold one of these permits for that parcel or for any other parcel. And also to prohibit anyone who has operated an illegal vacation rental from obtaining a permit or, at a minimum, prohibit them from applying for a permit for at least two years after the law comes into effect. Because the way it is now, people who have been law abiding and who have not operated illegal transient vacation rentals, which everybody knows, especially on ag land, you know, are not permitted, those people would not have a chance because all the illegal owners would come in and snap up all the permits, so if they get to stand in line at all, which I don't think they should, I don't think there should even be a line, but if there is a line, I don't think they should be in it, but they

certainly should be at the rear of it. And if they are allowed on land zoned ag, I suggest that tax returns must be submitted to prove that the gross income from the land, from agriculture, exceeds the projected gross income from short-term rentals. So, yes, this would mean that while your bamboo's growing, you can't have one of these. Too bad. You should already be -- I mean if you're going to allow this, then it should be for a farm that really is a farm and is already producing and is already making, whoever owns it, they gotta show their tax returns and show that the majority of their income comes from there and that that exceeds whatever could be expected to be gained from the vacation rental. So those are just a few things that -- oh, and also, I didn't see that Office of Hawaiian Affairs had been solicited for comments and usually they are on these kinds of bills and they have expressed concern in the past about possible impacts, especially in rural Hawaiian communities, which generally oppose transient vacation rentals, so I think they should -- or maybe they were and they didn't submit? Okay, well, that's too bad. So somebody should ask them. Okay, so that's just what came up to me this morning when I was typing this up.

Chair Cosma: Thank you, Elaine. Anybody else?

Ms. Wender: Thank you.

Chair Cosma: No. Mahalo.

Mr. Greenberg: John, I didn't understand your question.

Mr. Blumer-Buell: I just wanted a very short answer. You said that 35,000 was not -- you know, you said you couldn't live with that. Now, here's why I'm asking the question; then just give me a one-line answer. In the County Council Water and Resources Committee, they had a standard for getting for agricultural rate water that was based upon income. So I'm just -- you know, there's been some different standards so that for ag, my recollection is that the water resources committee had a lower threshold to get ag water but, you know, if you had to come up with 10,000 a year to prove that, could you do that? What's your number?

Mr. Greenberg: A number. You got four days. You've got four days if the planes and ships stop coming to Maui and to Hawaii to find food. I think this -- I think the Hawaiian Islands have four days if Maui County and Hawaii doesn't figure out how to get people all over the island that own ag land to start doing some agriculture. It's really a serious thing, you know, about the agricultural situation, and you're talking what kind of rules and figures like this, and that one -- there's a good thing about this bill and if it's somehow directed to get people with ag land to start growing things, you know, and not because a lot -- you know, no one's going to have this 35,000. You know, that's ridiculous.

Mr. Blumer-Buell: Okay, well --

Mr. Greenberg: Okay, you want a short answer to your question? It's gotta be really low.

Mr. Blumer-Buell: Okay, because when the threshold came up before, there was a lot of people that said 35,000 no problem. That's all.

Mr. Greenberg: Where was this?

Mr. Blumer-Buell: When they've heard other bills.

Mr. Greenberg: In what part of the island?

Mr. Blumer-Buell: I think even in Hana.

Chair Cosma: It came through here at one time.

Mr. Blumer-Buell: Yeah, and you had some flower growers, and I know you can't eat heliconias, but, you know, I'm just saying that there was a threshold that people could live up to that's all.

Mr. Greenberg: The flower farm -- I mean I have a flower farm. I used to have a really going flower farm, and then it got down to the situation where, you know, Hana was, you know, competing with, you know, Costa Rica, and only two, or three, or four flower farms kept going. You know, just all the small ones went out of business. So, yeah, they're either those ones that are doing \$35,000 a year or doing less than 3500 a year, you know, and if you want a number, I would say 3500, not 35,000.

Mr. Blumer-Buell: Okay, thank you.

Mr. Greenberg: Because what that does is it cuts out the small person. You're talking about 35,000. It cuts out the small person. I'm talking about the small person.

Mr. Blumer-Buell: Okay.

Chair Cosma: Thank you.

Ms. Wender: Can I ...(inaudible)...

Chair Cosma: Yes, you may.

Ms. Wender: I just wanted to make one comment on the caps that even with the reduced numbers for Hana, the percentage is still three times as much as any other district. So if you look at that on the last page, that 2.7% is way higher than anyplace else, so I don't think that's really fair. And the other thing is about the notice period, 45 days, you know, I don't get to the continent very often, maybe every 5 years; when I go, sometimes I go for 45 days, and so I think that should be 3 months. I mean I think 45 days is reasonable if you're talking about living in California, but when you live in Hawaii, when you do go somewhere, sometimes it's for a long time. So it would be easy to go away and come back and find out you have a vacation rental next door. That's all.

Chair Cosma: Thank you. So do we wanna make more discussion or make --

Mr. Cashman: You know, I have a comment. Yeah, I just picked up my packet today at 1:00 so I'm not -- I haven't read it, to be honest with you, but my personal view is transient vacation rentals should only be permitted in the urban core period. Because I live at Hamoa and, you know, you have these rules about 500 feet, but 500 feet is another illegal rental, and the one next to that is illegal, and you take like Maka`alae, you get 10 houses and 8 is illegal vacation rentals. So it's obvious to me it's not regulated. The illegal's not going to complaint. You can go 5,000 feet, and they all illegal. I mean you take that Maka`alae stretch, and you look, there's maybe like two, three families that live there; the rest is rentals. So, you know, my view is they gotta start enforcing 'cause you folks put in the bed and breakfast, I only see I think three of them applied. That's telling you they don't wanna be legal because they cannot qualify. So they just going keep operating. But like where we live, I mean I don't wanna complain, but one of the illegal vacation rentals, they put in a permit to build another one next door, and they don't live there, and they're always rented. They get luas. They get -- I mean I've had family rent that house and they get twenty-something people. So we complained 'cause that's the only way we was going stop the permit. We had the hearing here. And they stopped for a little while, and then they started up again. And when I talked to the enforcement, I mean like I wish I taped it. I mean he gave me every excuse in the book. But where does that leave us? The character of our neighborhood, and we live in a village, like maybe like 20 homes, I mean you get people all times of the night going back and forth, and we don't know who they are. I mean it's just like -- that's why I retired from the Fire Department and we moved here in 1995. I mean -- but we've had -- it's a family home. My wife's grandma had it since 1935. But we don't know who our neighbors are 'cause it's all vacation rentals, and it's -- I mean I can go complain about everyone, they're going to stop, and then, boom, they're right off again. I mean even our former councilman, his home address was a illegal vacation rental. I mean so how I going complain? I mean that's the address he's using and they're renting it \$450 a night, 3 nights minimum. I mean I wish I could do that. I mean like no use we propose a bill when we cannot enforce it. Enforce it first. Shut all these illegals down. And then we going see who wants to be legal. Thank you.

Chair Cosma: Thank you, Mr. Cashman. I'd like to make a comment. Thank you, Elaine, for reminding the last page of the permit caps. Yes, it's very surprising that Hana has the highest number for this, and it tells you why, because everybody's trying to come here because we're one of the last Hawaiian places that's left compared to all these other concrete places that's going. But it's very important that when we make decisions that, like Mr. Cashman said, which is so true, I find, for myself as a Hana resident, that we are being controlled now by all these vacation rental. We have to make sure the neighbor is quiet because there's guest now in the house over there, and it shouldn't be. This is, you know, our nice rural area and that's why they say business should be in a business area, not in remote areas where family lifestyle continues today but now cannot because too much noise to the vacation rental homes, so it makes a big difference in all of this and when I saw 2.7, I said, "wow," it's clear that why it's growing because this is one of the last Hawaiian place and in order to keep it the last Hawaiian place, we have to set rules, make regulations before approving anything. Mahalo. John?

Mr. Blumer-Buell: ...(inaudible)...

Chair Cosma: Anjo.

Ms. Hoopai-Waikoloa: I, going off of Auntie Lehua's comment, that was something I looked at also, and it's funny because this is like the smallest place on the island, yet we have the highest percentage, and, yes, it's because people wanna come here, but, at the same time, the reason they wanna come here is the reason why we have to leave it the way it is because if more come here, it's not going to be the Hana it is today. So looking at this, that is scary. So for me being the youngest here, it's keeping Hana at its natural beauty, keeping it at its best, and for it to remain that way so my grand-kids can see what I see because if we allow all of these vacation rentals and everything, everything changes. So for me, it's just scary and not something that I would be supportive of. Thank you.

Mr. Blumer-Buell: Yeah, I agree with everything my colleagues up here have said, and for those of you that, from the County, that may not know that I mean I think you know Hamoa or Haneo`o and that would really -- you know, that was a village, I mean really, and now you have, you know, there's one problem I see, you have people that apply for vacation rentals, one in Hamoa, Haneo`o, and another one is Maka`alae, which is a area largely of interim rural, and so they have these signs up, you know, we're processing the thing. They've been up there for more than a year. So what seems to be happening now is if you apply for something, you're protected even though you're an illegal operation. So if you apply and you put up one of these signs, that seems to be the get out of jail card, and I don't agree with that. I think people need to -- it needs to stop until we can really implement this. Now, the problem of vacation rentals was identified during the 1993-94 Hana Community Plan. No question. We -- I was in all the meetings and the community knew this was becoming a problem; they knew it was starting to impact land sales; it was

starting to impact housing for local people. It was definitely displacing some people. And so here's why the community recommended, and the County Council and Planning Commission agreed, in 1994, to conduct an inventory and study of existing nonconforming uses, including vacation rentals, to determine: one, their numbers; two, geographic distribution, and, three, affects upon the local housing and real estate markets and the local economy, and identify recommendations for resolving nonconforming use issues. So all these years later, we're still -- we're still in the place except that it's very clear that the land use laws of the County are not being enforced in the Hana District. They are just not being enforced. And I agree with Ed and the others who've said that, you know, the people that are financial benefitting from these operations are not local people, primarily, that's supplementing their family income, it's people that are willing to break the law and speculators. So, you know, the idea of vacation rentals, the concept that I supported, was the idea that a local family, in their own home or on their property, could supplement their income a little bit, give tourists a real -- you know, more of a local experience, and it would help out their ohana, and that's why I'm opposed to, for example, any, you know -- you're saying one per -- I'm opposed to caretakers or managers off property. I think that this will work for Hana only if it is -- if it is owned and operated by the local families; that means, you know, you have live here, you have to live on your property, and then you're eligible. The -- on that, you know, I listen to this and the Council and everybody refers to this, the complaint-driven enforcement system we have, and I just wrote down, the often referred to complaint-driven enforcement system is illegal in itself. It's a contradiction in terms. There's no complaint-driven enforcement system. That idea undermines land use laws and gives the impression that land use laws don't matter as long as no one complains. If you have a law, you have a law. And if you drive through your car through a red light, it is breaking the law even if no one complains. So I hope I'm making the point that there's just -- I just think that this bill is -- can't even start to work until there is real enforcement, and I think if you have to shut everybody down, then that's what you gotta do and encourage people to come in. Another thing, and I would compliment the Planning Department and Gina for this report, I mean I think there's -- I had written down stuff from the Hana Community Plan and found it in your report, so that's good, and it says, objectives and policies in the Hana Community Plan, "Discourage urban land uses and special use permits outside of the Hana Town area except for those," and so forth. I mean "discourage" is one of these words that's, you know, interpreted. I could go through the Hana Community Plan and make a case for or against just about anything by selectively using the language, and that's pretty common as you know. Now, the other thing that Ed mentioned, and it's in the Hana Community Plan, is: "Discourage transient rental accommodation uses outside of the Hana urban area." And what is being done to discourage it? Absolutely nothing. And another -- I'm just kind of going with the train of thought here, but we've had this -- the County has been in a budget conversation for months and I assume they passed it today, but I watched a lot of it and the amount of -- you know, people are very I would say "self-righteous." I pay my transient accommodation taxes. You know, I pay this and that. But you know what? They don't pay property taxes based upon the hotel or transient

accommodation use. I'll bet there's more money that could be recovered, millions of dollars, if people were paying based upon their use. So there's another thing about a tax issue. Some of these -- you know, some I think you've dealt with it, but it's come out over and over that many people that are running illegal vacation rentals don't even live there are claiming the home exemption. So, you know, we have laws. I think it's time to really make it clear that the County's going to enforce the laws and to go after people. There are substantial fines. And until we have a system and laws that people can respect and try at least to understand, I don't think any of it's going to work, frankly. I mean I know what Ed's saying, I mean Haneo`o, the Hamoa area, I mean that was, if you go back even 25 years, 35 years, that was a village unto itself, you know. There just wasn't -- and now it's -- Ed lives there, there's vacation rentals all over the places, illegal. Same thing. I see Ed walking from Hamoa through Maka`alae. It's nothing but illegal vacation rentals. Very few Hana people, and the Hana people are putting up with a lot. You know, they're putting up with a lot. And I've got more but I'm going to hand the microphone to somebody else for a minute.

Chair Cosma: Okay, what I wanted to say is we hear all these serious concerns taking place, but what do we actually, as a Committee, wanna do with this bill in front of us? Yeah, we could start with the caps, you know.

Mr. Blumer-Buell: I guess so. I was going to -- I went through the Planning Department's report and wrote a number of things. You know, I'd just like to maybe be given five minutes at some point just to go through 'em. I'm happy to start to wherever the Planning Department would like to start. My feeling is that, at this point, is that the Hana District should be excluded from this bill and we should send -- we should spend some time, as a community, including people that have ideas, like David Greenberg and so forth, to really come up with something that's going to work for this community. And then let's really enforce it, and make it work, and make sure the benefits are really going to the people of this community, not to somebody on the Mainland, you know. There's, Hana Bay, there's probably ten illegal vacation rentals right on Hana Bay and they -- you know, do they pay any hotel tax? No. So, anyway, I'll be quiet for a minute. Thank you.

Chair Cosma: No, but that's a wonderful idea and I think that's something we should pretty much enforce before we get into any of this. We need to expedite, you know, get this meeting going. Can we put that into a motion, what you just said?

Mr. Blumer-Buell: Well, when I thought about this whole thing, I thought that it would be constructive for the Planning Department, I know our time's limited, to hear as many specific things as we had to offer, you know, and for them to hear these things, I don't have that much more, and then, you know, I would have a motion, at this point. But I would like to, you know, I would like to -- if I could have five minutes just to quickly go through things that I highlighted in the report because I know that Will and Gina, and I think they've done

a good job, are gonna take what we're saying regardless, and they'll hear it, and we can influence how this bill turns out regardless of our recommendations.

Chair Cosma: Okay, then the Chair would like to recommend that you take five minutes to go over that.

Mr. Blumer-Buell: Okay. The ownership and operations, page 2, I just said I want to see onsite owners. I don't wanna see the same family - a husband, wife, kids, grand-kids - all have a different TVR. I want one unit per ohana. And I don't want to see this turn into everybody in the family has one of these things. The permit process, I think, you know, the first thing we talked about on the GPAC, the General Plan Advisory Committee, the very first meeting was we talked about ahupua`a, and it's still the ahupua`a of Hana and the moku, and Elaine referred to this, I think that you really have to maybe broaden the - I don't even wanna call it a "complaint" - I think you need to have the support of the ahupua`a and what is appropriate for each geological area. You know, I think that's real important. And I don't agree that you're going to get -- that you should go out and if there's one or two complaints. You know in Hana there's areas where probably everybody within 500 feet is an illegal vacation rental. They're never going to say anything. So, you know, that needs to be changed. And people, generally, don't complain out here. Recommend that the studies be done. The -- once again, I said this, that the signs announcing that vacation rental permits are in thing have been up for years, there's no enforcement. The study that I refer to needs to be looked at, and I did, in the neighborhood input, page 4, I've said that I really do think we need to be looking at the ahupua`a system, and this is not some idealistic thing, we had the State Legislature recognize, in a legitimate way now, the Ahu Moku Council and it's coming. It's going to become I think relevant and what the part of that is to bring in the kahuna, these are the kupuna and people that have lived in these districts and really have a feel for 'em, and I think if you get people to sit down and really tell you what you think, you're going to have a real different picture of the whole thing. I don't know the right way to do that, but I think if you sit down with -- if you had a meeting with a hundred Hawaiian people and they told you what they thought, we'd have a completely different bill, you know. Question on water. It says that the Department of Planning has, you know, talked with the Water Department about whether these things are considered residential or commercial use. I mean, to me, it's pretty clear that it's commercial use. On page 9, you have discussion about expanding housing opportunities for residents. This bill restricts housing opportunities for residents. Again, the plan that we called for in 1994 has never been done. Part of this, on page 18, is the community wants to support -- really wanted to support the Hotel Hana Maui, that's page 18 of the Hana Community Plan. You know, I don't think we've taken a hard enough look at that. We've had new owners. We got lots of people laid off. That used to be one of the two top employers in Hana and that's just the job thing has just been decimated there. I'd like to see the hotel brought in to see how we can make that work 'cause that directly employees local people. The final thing that I will say is that when I first -- just for the Planning

Department to know, I got this packet, this report in the packet, I picked it up out of my PO box on Saturday, and I got a yellow card, which means you have a box, so yesterday, I picked up the big box with this great piece of work you put together - thank you, Clayton, and everybody that did that - it has all the community plans and the ordinances and so forth, but, you know, we had literally one day to do this. Now, something that I think is really important, and Elaine Wender mentioned this, but I really want the Planning Department to take a very close look at that, and this is Exhibit 25, by two people from Kihei, a Thomas H. Luten and a Susan Burnett Luten, and they have put together, I think, an incredible piece of work. This is also Exhibit 26. I urge you to pay very close attention to this. I mean I think they've done a great, really great work. When I first got this, I just happened to go to the back and I thought I was reading a government report. It was so well done. I mean so, anyway, that's all that I'll take your time for and I hope others will -- sorry, if I took too long.

Chair Cosma: Anymore discussion? Mr. Cashman. I want -- a short one. My view is, when I look at the computer and you look how many vacation rentals, I mean we have 80-90, my view, we cannot start at 80-90, and then figure out where we going. We going down to 48 or we going a full 48 plus 80? We gotta be at zero, and then we move forward. So if 48 is the number, we end up with 48. Right now, I'm pretty sure we double that. It's just like it doesn't make sense what we're trying to do. I mean we get 80 illegal, and now, okay, we wanna approve 48; to me, it's an insult to us. We sit here and these guys come in and they've been illegal for 15 years, and they didn't shutdown, and they're telling us now they wanna be legal. If you wanna be legal, shutdown and be, you know. I mean to me it doesn't make sense. And I've tried, what John was saying when you complain, it's not as easy as it is 'cause that's not our nature. I mean I didn't retire to complain about my neighbors, even though I don't know who my neighbors are. All I see is people walking back in the night, they all drunk. I mean, yeah, they on vacation. We not on vacation. We wanna go sleep, you know, and I call the police and they said, "Why don't you tell your neighbor?" In fact, I just did that the other night. They were blocking the road. The cars couldn't go. So I told them, "You guys cannot park here. The road is not wide enough." They looked at me like -- they slammed the door. They getting out. So I told my wife, "Call the police." The police came and he says, "Well, you gotta tell your neighbor." I said, "My neighbor don't own the road." You know, I mean like who do I complain to? These people going back and forth. I mean all times of the night. It's not fair to us. And me and my wife, we're older. I just made 66 yesterday. I mean I don't wanna go out there and confront people. That's not my job. That's why we have the laws. We have to start at zero. We cannot have 80-90 illegal and say, oh, we quota of 48, so what are we doing - eliminate 30-40 or we add? Eliminate 'em. I don't see the hard part of enforcing it. You go in the computer, there it is. They're advertising. Call them up, book, when the money exchange, they're illegal. It's that simple. I mean it's not like -- it's not rocket science. If you can book, and you pay your money, they're operating illegally. Shut 'em down. I mean you don't have to warn them or anything. Just call 'em up, hey, I wanna book three days. Go

over there and pay your money and then the guy's illegal. You cannot show me one permit to operate, then you illegal. It's that simple. Thank you.

Chair Cosma: Thank you. Anjo?

Ms. Hoopai-Waikoloa: I'd like to add. I think the bill should exclude Hana completely and our cap should be at zero and the County enforcing the laws and stopping all this illegal action going on. And if it is tourism that is coming into Hana, eh, we have a beautiful hotel that really needs help and they can stay there, and then that way, the money that comes into Hana, you know, it -- that's the place the employees are our people, not a lot because a lot has been laid off, but then that money can go back into the community instead of vacation homes whose owners are wherever and not here. And like Eddie said, he doesn't even know his neighbors. His neighbors changes every time there's a new renter and, especially in his area, that's a constant battle and I don't think it's our responsible as the local residents to be complaining. It's the responsibility of the County to enforce the law. But it is our responsibility, as residents, to protect what we have. So thank you.

Chair Cosma: Thank you, Anjo. So with that being said, -- oh, do you wanna say something?

Mr. Spence: Yes, Madam Chair, if it's okay, if I could ask the Committee just a couple of questions?

Chair Cosma: Sure.

Mr. Spence: And first of all, I'll relay by telling a story when we went to Molokai on -- for a completely different matter, and one of the commissioners came up to me and said, "Are you going to allow hotels out here?" And I said, "Well, it's not really my call. You know, it's the Council." But we talked about it a little bit. He knew that this bill was going to come before the Molokai Planning Commission and he said, "No vacation rentals on the East End. Never. Ever." And I was a staff planner when we permitted Kip Dunbar's vacation rentals out there on the East End. And so I asked the guy, "So what about Kip Dunbar?" He goes, "Oh, those are okay, but nobody else." And so my -- I think my question and the point, you know, I was trying to make to that particular commissioner was: I can appreciate if this Committee is recommending no vacation rentals whatsoever out here, but you're also saying there's no possibility -- there's no conceivable circumstance that something could be permitted, I, you know, I --

Ms. Wender: ...(inaudible)...

Mr. Spence: No. Okay, the -- I think about a couple of instances -- well, Guy -- I don't know what's going on the property anymore, when I was a staff planner, I also worked with Guy Aina, I don't know which -- if there's a particular name for that section of town.

Chair Cosma: Wakiu.

Mr. Spence: Wakiu. Okay, you also have the Bamboo Inn, at least it used to have the sign out on there. I don't know if that's an instance where you would want to permit something. So if you say zero, you know, you're saying that guy couldn't even get. So I'm not saying, you know, you should, but you know what I'm getting at? I'm saying if you say zero, then there's no conceivable instance that something could be appropriate or something could be good for Hana, or maybe something could provide jobs.

Chair Cosma: John?

Mr. Blumer-Buell: Yeah, thanks for your story and comment. You know, I just wanna say that, you know, I appreciate this is the first time this particular Committee's met and I think there was a good dynamic tonight; there was some give and take on some things. The Committee voted to let Mark and Haunani Collins expand their vacation rentals by two units. Ed Cashman has expressed the -- what the community plan says is that we should discourage vacation rentals outside the Hana urban core. That's what we're needing to define. Anjo and myself have expressed support for the hotel. In 1988, we had a knock down drag out fight regarding the old Kaukea Cottages, where Guy Aina is, there was a proposal to build up to a 104 apartment units on that property, and the same -- and that was -- you know, and there was a community plan designation that led to problems. We discussed the Heavenly Hana Inns. The community has conceded to kind of pre-zoning. The Heavenly Hana Inn was built right on the middle line of two lots; that was ...(inaudible)... but I mean the community settled with that and I think, at least for me today, I've been really had to kind of give and take on this whole SBR thing, it's been a real problem out here, and this community's -- I mean I've looked at the SBRs and I wanna get to settle down and solve, and this is going to be -- we're going to legitimize, if things went like they were today, more units within the core of Hana. So my point is -- I mean you know this already, we're not -- I don't think we're, you know, we're not strictly opposed, we're not saying zero, that I think we've really talked about what's not right and we're trying to all make things better. I know that's you too.

Mr. Spence: And I would also say Committee Member Anjoleen's comments about people love it out; that's why they come. They love it so much they can, you know, pretty much love it to death, in so many words. You know, that's one of the dichotomies we deal with as planners, you know, you want to allow people to love a place, but you also don't want to destroy it in the process of that. I'm listening very carefully to what everybody is saying. I think I would want to -- one thing I would recommend, if there is any agreement that there

could be some -- I'm not pushing some being permitted, okay. I'm just saying if this Committee said that there could be a few or some; one, maybe how many, but, two, certainly you would make the recommendation that, and I would even make the recommendation to the Council, that any such short-term rentals come before this body and the Planning Commission. So I think that's sort of a given. I also do appreciate Member Cashman's comments on enforcement. Enforcement's a little more complicated than that, but I know that -- you know, I go down to Haneo`o too, I don't live down there obviously, but, you know, when I go drive, I mean the vacation rentals are obvious and, you know, I got plenty of stories about who and what they're doing and etcetera, so I -- enforcement is something that, as the Planning Director, I really want to work on so when people complains, something happens, and when the inspectors go out, something happens rather than just, you know, they disappear for a while and then they come back.

Ms. Flammer: To followup on that, we wanna use this bill as a vehicle to do that, to give us more tools for enforcement. If you read the section in the code now, the 19.53, I think we don't have a whole lot of tools, but we're hoping we can incorporate some of them into the bill and we're going to work within our division to try to come up with that so that way when we do tell people you're not permitted, they have an avenue, but then we have, you know, kind of the carrot and the stick, you know, but the stick's gotta work.

Mr. Spence: Yeah. I know we have -- we need to reach into the Charter Commission's request. I don't know if we can make some quick recommendations to the -- and maybe --

Mr. Hopper: I just noted for Director Spence, there's a Charter Commission item, they want their comments by June 30, I don't know if the Department's going to come back before June 30 or not. The -- this bill, I'm not sure if there's a deadline on it for comments but I do know the Charter Commission, just to inform you, says they want their comments by June 30, apparently, so with -- I guess there's now 30 minutes left in the meeting time because I guess the Department has to leave, but the -- that was just to make you aware, and the Department can come back before June 30 and you could just do the comments then too which are -- but I just wanted to point that 'cause it's on your agenda next and you can, as a Committee, you can handle it however you want, but I didn't want to go without saying that and then have the time end and have that happen.

Chair Cosma: Are you done, Mr. Spence? Okay, real quick, Elaine.

Mr. Spence: We'd certainly appreciate some recommendations.

Chair Cosma: Thank you.

Mr. Spence: Thank you.

Ms. Wender: There is a route. B&Bs are legal in Hana. Owner-occupied B&Bs. People can have alternative vacation rentals. They can also get a change in zoning, and then be zoned appropriately for a vacation rental. So I don't think it's quite true to say that if you turn this down, it's zero. And I think, from the sentiment I've heard, the easiest thing to do is to make a motion to turn down this bill. That you don't want it. Either you don't want it all together, or you don't want it for Hana, and that -- because they are here seeking your input. What do you want? That's what they're here for, not to tell you what you want. And if that's what you truly feel that you don't want these things permitted in Hana at this time or you don't want them permitted anywhere in the County at this time, then say that. This is the chance you're going to have to say that.

Chair Cosma: Thank you.

Ms. Wender: ...(inaudible)... or one. There's one.

Ms. Flammer: We have a conditional permit out here.

Ms. Wender: Yeah, there's one. So there's lots of opportunities for people to get B&B permits if that's what they want.

Mr. Blumer-Buell: Just as a suggestion to the Chair, maybe we can finish up on this side and then go to the agenda item dealing with the Charter Commission because I did hand-deliver something from Ward Mardfin regarding that agenda item and we don't -- you know, I just think that we should acknowledge that he's given us that.

Chair Cosma: So let's finish this business first. You want to --

Ms. Flammer: Before you move on, if I am going to have input from you, it needs to be a little more formal, or you need to let me know what your comments are as opposed to individual comments.

Mr. Blumer-Buell: Okay, well, at this point, I would make a motion that our recommendations to the Maui Planning Commission be that Hana, the Hana District, be excluded from this bill, and I don't -- that's the motion. I'll wait till someone seconds it. I do have something to say about that.

Chair Cosma: So we need to second that motion. Second by Mr. Cashman. Any discussion?

Mr. Blumer-Buell: Yeah, this, my motion to excluded Hana from this particular bill comes with a, you know, a commitment and feeling that we can work with this Planning Department and this administration to -- let's craft something that, you know, let's be

idealistic and craft something that we think will work for the Hana District and not just say no. I mean we're saying no to this bill but I know there is -- we have positive ideas, I know we're not opposed to, categorically opposed to people staying in this district that's for sure. So I don't know how we can do that. I just wanted the Planning Director and the Planning Department to hear that. We need to have a series of workshops or can we just start to have a written dialogue and expand that kinda thing? I mean I'd like to see, you know, and -- I just think that Hana has a lot to offer and we don't wanna just say no. We have positive things we wanna suggest so if that's -- thanks.

Chair Cosma: I think what John just said is pretty much what I wanted to see too. Instead of just saying down, no to anything, is that, in Hana, we create like a task force on this subject. We form a committee and make it right. That's the only way we can control something that's out of control right now is that keep it going but make it right. Go through the process, not behind. And I think, you know, that would work, working with the Planning Department and the community. That's something might work. So anymore discussion?

Mr. Blumer-Buell: I think in terms of the practical situation that this SBR designation is -- I mean it's been problematic and caused a lot of problems for a long time. I mean I think that we have -- if we can go through, somehow if we can bring all the people in that have that SBR designation, they're all along Uakea Road and, you know, right around Hana, downtown, that if we can bring them in and say, look, we've solved this problem and we get these people permitted in a way that the community supports, that's a good starting point, you know.

Ms. Flammer: Can I clarify? You're saying you're comfortable with the SBR having it be a permitted use?

Mr. Blumer-Buell: No, I'm just saying there's been a lot of problems. We've taken a couple steps and kind of, I think, painfully are working our way through it with John Romain at the previous hearing, and then the Collins. See, my point is we have another nine or so SBR designations and maybe that's a good place to start, to bring those people in, and then try to make it work, I mean, you know, to try to demonstrate that we can try to make this work if people come in, you know. I mean is that clear? Oh, I'm just saying that, you know, I'll put it another way. We had Chubby Vicens during the General Plan Advisory Committee brought up the idea that people and companies that had entitlements that didn't use them for ten years should have them taken away and that set off a lively discussion, but the point is is that if people have -- if they have these -- if they have what could be entitlements, and they're not willing to act upon, then maybe they should lose them, you know. So I'm just -- I'm looking for a way to constructively bring people in and try to make the vacation rental situation work; that's all. So -- and I think Lehua's, you know, suggestion, a task force, working together, this would be part of that brainstorming, you know, so -- I know everybody here would help out.

Chair Cosma: Anymore discussion?

Mr. Cashman: One of the reasons I said or made the condition that it be in the urban core because I think couple months ago, we approved the Romain one and then we just did it for -- so why approve it is because it's in the urban core; anything else, I would have to really look at it. You know, you're going to have to convince me. So if we say no, we can't really say no because we already did it with, you know, that's why I made it that way, and my understanding, that's where the community plan. Until we update the plan, '94 is, you know, until we update it, we gotta go with what the plan says. And if we wanna go beyond that, then you folks have to come back to us and then we put the committee together. I mean it's, you know, that's the way I look at it.

Chair Cosma: Thank you, Mr. Cashman. Anymore?

Ms. Hoopai-Waikoloa: I'd just like to say thank you to Mr. Spence for using Guy Aina as an example because when we think -- when I think about short-term vacation rental homes, Hamoa always pops up, so I will forget about our little local ones that that is their livelihood. So for you using him as an example, it brings more light to me and different ways of how we can accommodate those, and I guess it's more our residents that I would support compared to those who are, like in the Hamoa area, who we have no idea where they live. So thank you for bringing him as an example.

Mr. Spence: And I would just comment, he's probably an example of a bed and breakfast, but he is grandfathered in from, we did lots of research, grandfathered from long, long ago so --

Chair Cosma: Thank you. And thank you, Anjo, for bringing that up. It's a very good point. So do we wanna -- we have a motion, we have a second. So do we -- you wanna read the motion again? Okay, please make -- if you can say the motion again so that we understand it.

Mr. Blumer-Buell: Yeah, the motion, which I clearly blurted up during the discussion, was simply that we ask the Planning Commission and Council to exclude the Hana District from this bill period, and I hope that it can be conveyed that we want to work on something for this district. The motion is to please exclude the Hana District from this bill and period.

Ms. Flammer: So if I incorporate some of your early discussion from before into this where you want to show support for the hotel, where you're interested in having it be residents that run these operations - what were some of your other reasons? You already feel overwhelmed?

Mr. Hopper: If there's something besides recommend be exempted, you would wanna have that adopted as your comments too by motion. There's a lot of discussion beforehand and to be sure that it's not just one individual member but the actual Committee's comments, you would need to be clear in that motion. If all you want to be transmitted is the minutes and then that as your recommendation, then that's been made clear I think. If the planner's kind of not understanding that, I think you would incorporate that into your motion, but I think your motion right now, for me, sounds like you want to be -- have just Hana be exempted from it; the rest of the comments will come in the form of minutes but they won't be official comments of the Hana Advisory Committee, and I think Gine was just making sure that's what your comments were.

Mr. Blumer-Buell: Could we transcribe the minutes or in the motion, could we adopt the discussions among the Advisory Committee as our recommendations to go, or whatever, to go along with that? Would that be helpful?

Mr. Hopper: No. Typically with Committee recommendations, there would be a series of comments that planner would write and you would either say motion to -- and then she would read them back to you, and then you would say motion to have those adopted as our comments. If you wanted to, you could also say, if there's no objections, those will be forwarded as our comments, and, you know, so that would be something -- 'cause if you just refer to the minutes, then the Council could look at that and wouldn't be sure if this is just, you know, Commissioner Blumer-Buell's speaking or if that's the Hana Advisory Committee's formal recommendation. That's the problem that would be with that. So you can expand on your recommendations, certainly, but I think you would say, you know, they come as individuals, you would say, okay, I would like to make the comment that X, Y, Z, the planner would note it, and then as a body you could say, after all the comments are read back to you, motion to adopt those as comments. Sorry if that process wasn't clear because I guess we didn't know when you were coming into your commenting, but, you know, the comment they would get from you right now is that you would be -- wanna be excluded from the draft bill.

Chair Cosma: Okay.

Mr. Blumer-Buell: I just don't know how, in a very short period of time, we could compile our comments in a way that, you know, we could so --

Ms. Wender: Couldn't you request that they refer to the minutes ...(inaudible)...

Ms. Flammer: The minutes talk about also supporting it in the urban core so it's kind of a little --

Mr. Hopper: The minutes will be included. They have to be. They're transmitted to the Planning Commission and the Council. But again, they're not your official comments as a body. They would look at it and see Mr. Blumer-Buell said this, and I mean I guess they could -- you could -- I've never seen minutes adopted as the comments of the body is what I'm saying and I'm not sure if it would be confusing. Honestly, you seem to all kind of be in general agreement with all the comments that have been made, but I'm not saying it'd be a big problem, but I've just never seen it done that way in my experience. That's all.

Mr. Blumer-Buell: Would it be appropriate to transcribe the comments that were made during the meeting and then have our Chair sign a letter to that, you know, after this meeting? I don't think we have time to go back through everything, from what I understand, but could we work with the Planning Department and Lehua to, you know, to get those?

Mr. Hopper: Okay, actually the planner has the comments. She could read them back. I would just note that it seems -- the comments, I don't want them to be construed as inconsistent with the formal vote. If your vote was to exclude Hana from the ordinance, I wasn't sure if your comments were to mean for everybody else besides Hana, or meaning in the event that you don't exclude Hana, we also want these changes to be made to the ordinance. I'm not sure. But the planner has said that she has comments that she's written down. I don't know you want to hear them and then adopt them, but usually comments are reserved for if you're in favor of passing the ordinance with some amendments; if you would be saying we want this ordinance completely excluded from us, I'm not sure how the comments would apply to -- 'cause the comments are not to the Council on the issue of vacation rentals normally. They are on what you think of the draft ordinance and how it would affect -- I mean the comments, you can adopt whatever you want as comments, let me just say, but I would -- that's the only caution is that I don't want them to contradict each other and then the Council or the Commission say I'm not sure what they were saying.

Chair Cosma: So you want Gina to read the comments back or?

Mr. Blumer-Buell: I'm not sure how they'd be interpreted. We're sending a pretty clear message by asking to be excluded from the bill and I think that's a very clear message. I think we should, at some point, you know, go back through the minutes and transcribe them and offer -- maybe offer suggestions at some point. But I wouldn't wanna be -- I mean I wanted to go through the exercise to -- because the Planning Department's here and I think it served a purpose for them to hear all this.

Mr. Spence: Yeah, it certainly serves a great purpose, you know, to hear everything. I think what Corporation Counsel's pointing out, on the one hand, we're saying, okay, let's exclude Hana from this bill. So we're saying no vacation rentals whatever -- whatsoever. But then we also hear comments that, okay, but the urban core is okay. So that's a contradiction. And so what we would like to do is maybe the -- I'm not -- please, I do not

intend to put words in anybody's mouth - I said but perhaps the motion should be exclude Hana from the bill except for - you can just say the urban district of Hana, and that's very clear. You would have to be within the urban district. You're already dealing with SBR. I don't know what other rentals are right here in town.

Chair Cosma: So if the Chair can made a recommendation that we make a motion to exclude Hana from this bill, but support it in the urban area, to keep it in the urban area, and to allow the businesses, vacation rentals that are already in place, like that's grandfathered in, like Guy Aina, for example. You know, that if he's fine, and if it's in the urban area, then I guess it's okay. Otherwise, we want to exclude Hana from this bill besides that. Is that okay? Understand?

Mr. Blumer-Buell: Yeah, I understand. I'm looking to just simplify it that we'd like to be excluded from this bill but would request that we can work with the Planning Department to setup appropriate standards for the Hana District.

Chair Cosma: With those included, along with what the Chair just recommended?

Mr. Blumer-Buell: I don't know. I think that those, you know, that your comments, although I know what they mean, but I'm afraid that they'll be misinterpreted and taken out of context. I mean, at this point, we have, you know, we have, through the B&B bill, we do have the ability for people to get permitted and people can still come and file for an SUP or conditional use permit; even on ag land, they still have that ability to do that right now. So I'm just saying, if we're excluded, if we just -- I would just go -- let's keep it simple and be excluded from this bill. We know that people could still apply for a vacation rental on ag land or anywhere else. If they go through the right process, they can still do that. We're not turning down that opportunity.

Chair Cosma: Go ahead.

Mr. Hopper: Very sorry. Just to clarify, Planner Flammer is going to put this in a letter, put your formal comments in a letter that goes to the Planning Commission and then on to the Council. In that comment letter, I believe, there will be a list of specific comments that were made. Is that correct? I know that's what typically happens with comment letters.

Ms. Flammer: ...(inaudible)...

Mr. Hopper: Right. So -- well, and so she will send a letter on -- what usually happens is a letter is on with the specific comments made, only the ones that are adopted, and so I think what she's looking for guidance is when she reports to the Planning Commission and the Council, what specifically you want her to tell them were your comments as a body. And so that's what I think we're going for and the stuff that needs to be voted on. If you

want her to say only that it be excluded, that's fine. If you want her to say exclude it with several exceptions, that's fine too. It can be whatever you like. But she just needs to know kind of how to report I think, I don't want to explain to her, but I know that's what's been done in the past with a recommending body.

Ms. Hoopai-Waikoloa: I think we need to do exclusion with recommendations, yeah?

Ms. Flammer: Often it's nice to know why - when you're reporting to a body. I mean I could write the motion, and that it was passed, and you'd have one sentence, and that's the end. Or you can have why you feel that you recommend this. It probably carries a little more weight.

Mr. Blumer-Buell: I mean I suppose I mean do you think we can get this done right now or is this something you should work with our Chair on? I mean I would just say with the following, you know -- if it's legal, I would think Lehua could run the draft by each of us and see if we agree to it.

Mr. Spence: Sure. No? Oh. Yeah. That darn Sunshine Law.

Mr. Blumer-Buell: But she'd only be talking with one person at a time, yeah.

Mr. Spence: Okay. Maybe I can just recap. So I hear exclude Hana from this bill except for the urban district and grandfathered uses. Even those things, if they need a permit, they gotta come before this body. And then further than that, this body wants to work with the Planning Department to come up with standards, permitting special to Hana.

Ms. Hoopai-Waikoloa: Do we have to take an action tonight as far as a motion, agreement, because now my head is spinning.

Mr. Spence: Yeah, I know. I hear ya.

Ms. Hoopai-Waikoloa: So I wouldn't, right now, I wouldn't feel comfortable saying this exactly, like I would wanna have more reasons, you know, to back it up.

Mr. Spence: When do we go to -- Planning Commission's next week.

Ms. Flammer: Planning Commission is next week. Our comments aren't due to Council till July 27. I did talk to Dawn about coming back out to meet with other groups before that 22nd date.

Chair Cosma: So you are coming back to Hana?

Ms. Flammer: We haven't scheduled anything but I told her I'm more than happy to if she would like me to.

Mr. Spence: Well, I think the, and question for Corp. Counsel, this is the Hana Advisory Committee to the Maui Planning Commission, so if we couldn't just easily pull this body back together because then there would have to be a subsequent Planning Commission meeting and I don't think we have time to do that between now and the time we have to transmit back up to Council.

Mr. Hopper: So you're saying that there's the Council deadline; that the Committee, couldn't they meet next week or in two weeks?

Mr. Spence: They could but this is their -- this is an Advisory Committee to the Planning Commission. The Planning Commission would then have to have another meeting.

Mr. Hopper: Right, and they said July 22 is the date for -- the final day for comments?

Ms. Flammer: For my report.

Mr. Hopper: For your report. Okay. Well, then you could have a meeting in the next two weeks here, and then two weeks later, go to the Planning Commission, right?

Mr. Spence: Clayton?

Mr. Hopper: There's a Planning Commission meeting every two weeks, right?

Mr. Spence: Right.

Mr. Hopper: Typically. I don't know. I would rely on your guys for scheduling but I --

Mr. Yoshida: There is a Planning Commission meeting, Maui Planning Commission meeting twice a month, it's just we've already got two public hearings and a possible reconsideration of a permit issued for the June 28th meeting.

Ms. Flammer: Didn't Council ask us to come to Hana Advisory Committee?

Mr. Yoshida: Don Couch asked us to come to Hana Advisory Committee.

Ms. Flammer: Don Couch, not --

Mr. Yoshida: It's not in the resolution that we go to Hana Advisory Committee.

Ms. Flammer: Okay.

Mr. Yoshida: Only Don Couch asked us to come to Hana Advisory Committee.

Ms. Flammer: Okay. Can we give informal comments?

Mr. Yoshida: Well, the Commission had asked that we go to Hana Advisory Committee after they got the letter from Don Couch, at the last meeting last week.

Mr. Hopper: Is there enough time to have another meeting of the Hana Advisory Committee, if you can get quorum, and then go to the Council? Or if you wanna -- and if you wanna make your recommendations right now, that's fine. But if you're not sure what you wanna recommend, then you can look into this. It's up to the body. If -- is there enough time to have another Hana Advisory Committee meeting before another Planning Commission meeting?

Mr. Yoshida: We would have to kind of find a date, I mean when we can get a facility.

Chair Cosma: John?

Mr. Hopper: So right now the answer is you're not sure?

Mr. Blumer-Buell: I pulled up Don Couch's letter and he said, "May I please request that you also transmit the bill to the Hana Advisory Committee for their review and comment. And I further request that you transmit the Committee's," I'm assuming that's the Hana Advisory Committee's, "response along with the comments from the Planning Commissions." So he's referring this to this Committee's comments as separate from the Planning Commissions, the other commissions - if I'm reading it correctly. That means we would have time to come up with our own comments and transmit them directly to Chair Couch of the Planning Committee. Am I reading it correctly? I mean it says, "May I further request" --

Mr. Yoshida: Yeah.

Mr. Blumer-Buell: Yeah.

Mr. Yoshida: Yeah, I mean his -- the request to go to Hana Advisory Committee did not come from the Council in the Council Resolution. They only said go to the three planning commissions. Subsequently, in May, Don Couch said go to the Hana Advisory Committee.

Mr. Hopper: I think what you're getting at so there's no legal requirement it should go to the Committee. You were requested by a Councilmember to do it, and you've decided to

do it, and you're going to transmit. Typically, Hana Advisory Committee's comments, even though they are made to the Planning Commission, are still transmitted independently to the Council. I've seen that in most bills, right?

Mr. Yoshida: Yeah, we can transmit comments. We've transmitted comments of the Hana Advisory Committee on other legislation to the Council.

Mr. Hopper: Okay.

Mr. Yoshida: But we would like to have the Maui Planning Commission have the recommendations of the Committee as part of their deliberative process on the legislation because it is an Advisory Committee to the Planning Commission.

Mr. Hopper: That's fair. Fair enough. So can the Committee have another meeting before -- can the Committee have another meeting and make its comments? That's a scheduling issue, purely, I think to meet the 22nd deadline. I know there's the deadline in the charter. Typically, the Council can still act after that deadline, I've seen it done, but I mean I don't know -- this is a Department issue. I'm just giving -- trying to give legal advice so that this doesn't leave the Committee and they never see it again and there's no recommendation transmitted.

Mr. Yoshida: Well, we have a public hearing scheduled with the Maui Planning Commission on Tuesday. The Maui Planning Commission may choose to act at that meeting with or without the recommendations of the Hana Advisory Committee.

Mr. Hopper: Okay, so that's good to know. So if you wanted to have your comments to the Planning Commission before this comes up for hearing, then you would need to act today. That's good to know.

Chair Cosma: So I think it's best then that we have the opportunity now tonight instead of passing it to later. We might miss that chance.

Mr. Cashman: What the Planning Director said earlier, I think we should adopt that. I kinda -- you know the one keep it to the urban core, permit the grandfathered ones, and you said something else.

Mr. Spence: My suggestion was, okay, you're saying this bill would only apply to the urban district of Hana. So when you get vacation rentals right around here, right in the urban core, they could come get a permit. They would still have to come to you. The grandfathered ones, if they could prove that they're grandfathered, those would be allowed to continue. Anything else --

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

Mr. Spence: "Grandfathered" is already defined in law. The ones that have been operating continuously for I forget how many years and haven't let the use lapse for more than a year. Those are considered grandfathered.

Mr. Hopper: Yeah, to note, just the urban core, do you mean anything that is State urban?

Mr. Spence: Yes. That's what I said, State urban, urban district.

Mr. Hopper: So State urban, do we know where the State urban lands are in Hana?

Mr. Spence: Yes.

Mr. Hopper: Because the permit that just came in was State urban as well so we'd be looking at -- yeah, so anywhere that's urban, you would -- the Committee would be saying they're okay with them being permitted in the State urban district. And then grandfathering, just to let you know, is already permitted under the law. If someone establishes that they had the right to operate prior to 1981, and operated continuously without stopping for year, from 1981 to the present, and its their burden to show that they didn't stop operating, then they have the right to continue operating right now anyway.

Mr. Spence: Right.

Mr. Hopper: So that can be made as a recommendation but it would not require any new legislation as far as I can understand.

Mr. Spence: Right. Correct. And then so but what you're -- physically, what you're saying, excluding right now is rural lands, like down at Hamoa area, any State agricultural lands. You're saying no permits for them at all right now. And then come back to this body and we can work out our own standards and permitting that would work for Hana.

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

Mr. Spence: I'm going to try. Okay, right now, this bill would only apply to the urban district of Hana. People could come in and apply for permits and would come before this body for those permits; then off to Planning Commission. Nothing in the State rural or in the State agricultural district and, of course, grandfathered uses would be allowed to continue. Further, there would be -- the Planning Department should work with this body to come up with some kind of permitting system for rural and ag.

Chair Cosma: Is that okay?

Mr. Blumer-Buell: One of the things we talked about was not being happy with the percentage, you know, the percentages allowed so I would -- you know, I don't think we should necessarily apply that to Hana Town either at this point. We have a big part of our residents live right in Hana Town and we may be seeing some unexpected consequences if we endorse that percentage of houses in the urban --

Ms. Flammer: You get the option to recommend a different cap number.

Mr. Spence: Yeah, and I think it's clear that, you know, the cap is -- that's too much.

Chair Cosma: Okay. So somebody wanna make a motion?

Mr. Cashman: I make the motion that's stated by the Planning Director.

Chair Cosma: Second?

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

Mr. Spence: Urban district only. Nothing in rural or agriculture right now until we come up with, like you were suggesting, some kind of working system with this body. And then, of course, the grandfathered stuff can continue to operate.

Ms. Hoopai-Waikoloa: Can somebody clarify to me the boundaries of the our urban core in Hana?

Mr. Spence: We'd have to show you a map. We do have a map.

Mr. Hopper: Again, that's a community plan map. It might not follow the State urban district, which is what I'm assuming was based on that area.

Mr. Spence: It's roughly, I'm going to just say "roughly," and it's going to be right by the police station, down Uakea Road, that's Waikoloa, not too far on Waikoloa but kinda cutting down to the edge of the harbor; over this area is within the urban district; the hotel; Kauiki Head is not in the urban district as far as I know.

Chair Cosma: Pretty much to Hasegawa Store, right?

Mr. Spence: Up by Hana Ranch Store. And just a little bit out Hana Highway.

Ms. Hoopai-Waikoloa: From the police station to Hasegawa's?

Mr. Spence: Pretty much.

Chair Cosma: And pretty much that's our business town right there, yeah?

Mr. Spence: Yeah.

Ms. Hoopai-Waikoloa: I will second the motion.

Chair Cosma: Okay, second by Anjo. All in -- oh, any discussion? We just pau discuss.

Mr. Blumer-Buell: Just a question for the Planning Director and that's just that I mean just to be clear that the people that want to apply for uses in the ag and rural and so forth still can. That's under the existing the special use permits and conditional use permits. Then the other question is: Anybody that applies in the urban area would still come through the Hana Advisory Committee?

Mr. Spence: Well, any special use permits or conditional permit applications come before you too.

Mr. Blumer-Buell: Okay. I mean, you know, I'm concerned about that, the cap, right now, you know, that we're somehow endorsing the cap.

Chair Cosma: Oh, I see.

Mr. Blumer-Buell: You know, that we're endorsing --

Chair Cosma: We're saying, otherwise, this is okay.

Mr. Blumer-Buell: Yeah, we're saying that's okay, which I don't --

Mr. Spence: No, I think it's clear that this body is not endorsing that cap.

Chair Cosma: So we need to put it in, like a recommendation? So the Chair would like to recommend that the Hana Advisory is not in agreement with this cap right now, and so that's my recommendation, just for the record.

Ms. Flammer: Is that a friendly amendment to the motion? Do you want to vote on this motion and then make your motion a separate one, just a separate --

Mr. Blumer-Buell: ...(inaudible)...

Mr. Spence: Yeah. I know. Probably easiest if there was a motion made - well, there was like several motions made I think - a motion made just whatever I had just said about the

urban district, nothing in the ag or rural, grandfathered stuff could continue. If the Committee agreed on that, vote on that, and then we'll take another motion on the cap.

Chair Cosma: Okay. So --

Mr. Spence: That would be easiest for us to remember.

Chair Cosma: Okay, so earlier we had a motion by Mr. Cashman, seconded by Anjo. We had discussion.

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

It has been moved by Mr. Cashman, seconded by Ms. Hoopai-Waikoloa, then unanimously

VOTED: that this bill would only apply to the urban district of Hana. People could come in and apply for permits and would come before this body for those permits; then to the Planning Commission. Nothing in the State rural or in the State agricultural district. And grandfathered uses would be allowed to continue. Further, the Planning Department should work with this body to come up with some kind of permitting system for rural and ag.

Chair Cosma: Now, the Chair would like to -- can I make a motion, or just a recommendation?

Mr. Hopper: The chairperson could recommend -- also, I do remember someone saying that they wanted all of the short-term rental permits, even in the urban core, to come through the Hana Advisory Committee?

Mr. Spence: Yes.

Mr. Hopper: Was that one?

Mr. Spence: That was a part of it?

Mr. Hopper: Oh, it was?

Mr. Spence: It was.

Mr. Hopper: Okay. We can make that clear.

Mr. Spence: That was a part of my --

Mr. Hopper: Okay. Yeah. So, yeah, the chair can make a recommendation as to the cap or whatever number; it still has to be put in a form of a motion by somebody though.

Chair Cosma: So the Chair would like to recommend that this body, the Hana Advisory, is not in agreeable with this cap right now on this bill, which is 48, so --

Mr. Blumer-Buell: I'll second that.

Chair Cosma: If somebody wants to make a motion to my recommendation?

Mr. Blumer-Buell: Oh, okay. So moved. I so move.

Chair Cosma: Okay.

Ms. Hoopai-Waikoloa: I second that.

Chair Cosma: Second by Anjo. Thank you.

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

It has been moved by Mr. Blumer-Buell, seconded by Ms. Hoopai-Waikoloa, then unanimously

VOTED: to recommend that the Hana Advisory Committee is not agreeable with the cap stated in the bill for Hana, which is 48.

Mr. Spence: Okay, great. So the cap does not apply here at all.

Chair Cosma: Yeah.

Mr. Spence: It's basically anything is going to come to you and you're going to decide.

Chair Cosma: Okay.

Mr. Blumer-Buell: How will we, you know, transmit our discussions? I think there was a lot of good things that came up. Is there a way we're going to do that other than the minutes or -- what do you recommend?

Mr. Spence: We're going to have a letter to the Planning Commission from this body but also it's going to -- and, of course, the minutes will go, and then that's part of the reason I wanted to come out 'cause I didn't wanna just look at a letter and go: "What did they mean by that?" I wanted to hear the comments from this body and I'll explain these things to the Planning Commission and when we get to the Council.

Mr. Hopper: Your only official comments are what you voted on in the motion.

Mr. Spence: Yes.

Mr. Hopper: The minutes will be transferred and Director Spence can make comments based on his interpretation of the -- what went on. But the only official thing that absolutely have to be sent is the recommendations your made and the minutes, at this point. And you can amend your specific recommendation, add additional stuff if want to be a hundred percent sure, but you're basically relying on Mr. Spence and Ms. Flammer to - if someone asked, "Hey, what went on in Hana?" And hasn't ready through all the minutes, they're going to be interpreting for you.

Mr. Blumer-Buell: When are the minutes usually transcribed for Hana? I mean how long do we need to wait for those?

Mr. Spence: I'm looking at staff.

Chair Cosma: Suzie, would you know?

Mr. Hopper: There's a 30-day requirement for minutes to be prepared under the Sunshine Law, at least a draft is supposed to be prepared. Now, I don't know if that happens every single time, but that's the State law requirement that something be produced within 30 days.

Chair Cosma: Okay.

Ms. Wender: The chair signs off on the comments, right?

Mr. Hopper: I don't think the chairperson signs off on comments. They're --

Ms. Wender: ...(inaudible)...

Mr. Hopper: Do you physically have the chair sign something? I've never --

Mr. Spence: I've been signing stuff from the Hana Advisory Committee for the chair, but we can, you know, we can ...(inaudible)... a draft.

Chair Cosma: I think it would be good.

Mr. Hopper: If you want the chair to look at the letter that ...(inaudible)... that's fine.

Chair Cosma: Just to make sure that's correct what's being transcribed.

Mr. Spence: Yes. Absolutely.

Chair Cosma: Thank you. So if we're done with this, can we move on?

2. MR. JOSHUA STONE, Chair of the MAUI COUNTY CHARTER COMMISSION submitting a May 10, 2011 memo asking for comments from the boards and commissions by June 30, 2011.

The Committee may act to make comments. Comments from the board should relate to its powers, duties, and authority.

Mr. Yoshida: Very quickly, Madam Chair, we're at 7:58, kind of 12 minutes past the deadline, but we do have a request from Josh Stone, Chairman of the Maui County Charter Commission, asking for comments from the Committee. And as Mr. Blumer-Buell stated, we do have the testimony from Ward Mardfin, testifying as an individual and a resident of Hana regarding -- which has been distributed to you. The Charter Commission I guess is doing an outreach. They've gone to all the departments; all the boards and commissions. They'll be going out to the community sometime this summer to hear if people have input regarding amendments to the charter, Maui County Charter, as the Charter Commission is -- reviews the charter every ten years. So if there's any input for the Charter Commission, we can transmit that -- from the Hana Advisory Committee, we can transmit that to the Charter Commission for you.

Chair Cosma: Thank you, Clayton. Okay, John?

Mr. Blumer-Buell: I would just suggest that we -- that we not, unless somebody really feels strongly we should transmit something, I think we should just say that we received this from Ward Mardfin, as an individual, and pass it on to the Charter Commission. I mean I'm personally planning to make some recommendations. This letter, Ward's letter, which is speaking against a Hana planning commission, is only relevant if there is the idea of a Hana planning commission on their agenda. So at this point, I don't know that there even is so these comments, you know, are -- I don't know if they've -- I don't think anyone has suggested a Hana planning commission at the charter at this point unless somebody knows better than that. It's certainly been talked about in County Council for years.

Mr. Yoshida: Yeah, there was a proposal from Councilmember Medeiros when he was on the Council for a Hana planning commission and that still -- it was referred to the Policy Committee; that still rests with the Policy Committee. The Council also can propose amendments to the charter as well as the Charter Commission.

Mr. Hopper: Just to note, this is soliciting comments from you so they know what they should put on their agenda, so if you know of anything in the charter that you think should be amended as the Hana Advisory Committee, you can make that recommendation and then, I think, they can take that up and make that happen.

Chair Cosma: It's pretty hard right now for me to give any comments when I don't even know too much of the charter.

Mr. Blumer-Buell: I don't know if it's -- if this is coming from us. This is --

Chair Cosma: Right.

Mr. Blumer-Buell: Ward Mardfin. I don't know if he should just submit this as an individual. Can Mr. Hopper comment on that?

Mr. Hopper: You can all submit as individuals. It just won't be on a letterhead of the Hana Advisory Committee.

Chair Cosma: Right. It'll be as individuals.

Mr. Hopper: It would be as you, as an individual. But, yeah, any citizen can send stuff to the Charter Commission; it just wouldn't have the weight of being from the Hana Advisory Committee as a body.

Chair Cosma: Is there a deadline for this?

Mr. Hopper: June 30th.

Chair Cosma: June 30th.

Mr. Blumer-Buell: Well, I would make, for the sake of discussion, the way that you meant, please correct me, Corp. Counsel or anybody else, the way the Charter Commission will work is that they will be considering all kinds of suggestions regarding voting districts, planning commissions, everything else. At some point, they'll have a vote to see what actually goes on the ballot for the people of Maui to vote on next year. And so, you know, based upon -- because this is already being discussed, I would make a motion that the Charter Commission consider the idea of a Hana charter commission; that puts it on their

agenda and means that it would be discussed, and I'm making that as a motion to solicit some comments.

Chair Cosma: Okay, John just made a motion.

Mr. Hopper: Just to clarify, you mean Hana planning commission? I think you said Hana charter commission.

Mr. Blumer-Buell: I'm sorry. Hana planning commission. And I would ask if it's possible for the best way to put this in light of the County -- it already being in the Policy Committee, is there a way that this should be put forward since it's already in the Council Planning Committee?

Mr. Hopper: The only thing on your agenda is for the -- this will be going to the Charter Commission. You can put it on another agenda as making comments to the Council maybe, but you could note that to them that this is already something that's in, you know, in the Council's -- on the Council's agenda as well.

Mr. Blumer-Buell: So I will, you know, strictly stick with the motion, which was to ask the Charter Commission to put the subject of a Hana Planning Commission on their agenda for discussion, and that Ed has already second that.

Chair Cosma: Okay, John made the motion. Mr. Cashman second. Any discussion? Anjo?

Ms. Hoopai-Waikoloa: I'm kind of don't completely understand this. The Maui County Charter Commission. So my question, I don't know who can answer this, but what is the purpose of a proposed Hana Planning Commission in regards to the Hana Advisory Committee?

Mr. Hopper: Great question. Whatever's defined in the charter as what the commission's duties are. Normally, a planning commission, like Maui, looks at special management area permits, approves special use permits, reviews changes in zoning. Essentially, you would do what the Maui Planning Commission does in the Hana area only. I think that's one proposal; although you can kind of -- it can be established, since you're drafting it from scratch, to do whatever you want, so that would be something you could include in your recommendation as well.

Mr. Spence: I think the big difference is decision-making authority as where this body is right now making a recommendation to the Maui Planning Commission, a planning commission actually has the authority, as Deputy Corp. Counsel is saying, is actually has decision-making authority on special use permits, on changes on zoning - well, that would

still go to Council, special use permits, SMA permits, all the things that the Maui Planning Commission does, all the things the Molokai or Lanai --

Ms. Hoopai-Waikoloa: Specifically for Hana?

Mr. Spence: Yes.

Chair Cosma: I'd like to make one comment. I recall now Councilman Medeiros trying to introduce, Hana to be -- to have their own planning commission, like Lanai, Molokai, and, to me, it's just so that it gives you more power instead of just recommending. We have the say instead of letting the Maui Planning Commission decide for what Hana wants, in other words. That's my interpretation.

Mr. Spence: And I just have to say, so everybody understands, I have really mixed feelings about another planning commission just as far as staffing, as far as getting quorum, you know. It's a very small community. The same problems we run into with Lanai. It's such a small community. You'd have such a really limited number of people who can participate. You know, there's issues that go along with it. So just so everybody knows what I'm thinking anyway.

Mr. Blumer-Buell: Well, I just wanna thank Planning Director for the comments but it's been discussed because it means -- I mean in an ideal world, if there is really people from the community at this meeting, and we came from a real community consensus, we would be making the decision. Right now, we just make a recommendation to the Planning Commission so these decisions would be made in Hana and, hopefully, with the consensus of the community.

Ms. Hoopai-Waikoloa: Is Ward our only Hana representative?

Mr. Blumer-Buell: Ward is the Hana District representative; one out of nine on the Planning Commission. And, you know, I would say that I would -- I think I stick with my motion that we should have them consider -- it should be considered because this is part of the debate. We have had proposals for Hana, the Hana District, that where we have had three or 400 people in this hall and with very strong opinions, and there's been a couple instances I could think of where if the planning -- if there was a Hana planning commission and there was decision made that the County followed through with, there wouldn't have been lawsuits, you know. So it's a way to -- and I agree with Will, I have mixed feelings too because the challenge is to get the community really involved and to get the community informed and to come out to the meetings, but in -- when important things come up, it's great to have the final word right here, you know, so I think we should at least put it on their -- pass it on as something for discussion.

Chair Cosma: We had a motion, right? You made a second, Anjo. We had discussion.

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

It has been moved by Mr. Blumer-Buell, seconded by Ms. Hoopai-Waikoloa, then unanimously

VOTED: that the Charter Commission consider the idea of a Hana planning commission.

Chair Cosma: Motion carried.

Mr. Blumer-Buell: Just to be clear with Deputy Corporation Counsel, should we just advise Ward to submit this on his own or should we --

Mr. Hopper: I would be very surprised if Ward doesn't know that, but I think that -- I think that -- just because he's very well informed, but I don't know if he needs an official correspondence coming from you to do that. If you want to put that as part of your recommendation, you could as well.

Mr. Blumer-Buell: No, it's not part of my recommendation at all, but I think this is -- you know, he's debating it when it's not even an issue at this point, so I was -- I mean Ward gave -- Ward was leaving town; he called me up and said, "Could you submit this for me?" And I hadn't split my page on the agenda so I didn't know it was there. I said, "Sure." So he gave me the copy so I still haven't read it.

Mr. Hopper: I mean my view legally is you could add it as a comment or you could advise Mr. Mardfin to forward it on to the Hana Advisory Committee -- or the, sorry, to the Charter Commission by himself ...(inaudible)

Mr. Blumer-Buell: Yeah. I think that's the best protocol really.

Chair Cosma: Yeah. I think so too. So if there's nothing more on the agenda, then --

Mr. Blumer-Buell: Could I --

G. DIRECTOR'S REPORT

- 1. Scheduling of other Hana Region Applications**
- 2. Status of Vacancy on the Hana Advisory Committee**

Mr. Yoshida: We would just say that we did receive the resignation letter today of Tina-Marie Leimomi Kahula from this Advisory Committee so you have two vacancies, and we'll push the Mayor's office to try to fill those two vacancies.

Chair Cosma: Who's the two? I only know Tina. Who's the other one?

Mr. Yoshida: They never replaced one -- they only replaced one member last year when we lost two members.

Chair Cosma: Okay, now, we have a problem with Kawika not showing up. I think he missed like three, four meetings already, so maybe we have three.

Mr. Yoshida: Well, so, yeah, you have two vacancies now.

Mr. Blumer-Buell: We will try to get the word out. I have something, if I could, and I know we can't -- I wanna have an issue I wanna bring up. I would like to have on each of our agendas a place for new business or old business so that we can suggest things as an Advisory Committee, not just have our agenda handed to us. I mean there's some things that have -- decisions that have been made that I think that need to be revisited but that's not on the agenda today. But I would like, on future agendas, to have a place for old and new business for just a short discussion or suggestions, and also make a respectful request that we get our packets, if possible, a week ahead, and I think the Committee did very well tonight on very short notice, but I mean some of our members only got their information today, so mahalo to everybody.

Chair Cosma: Okay, mahalo. But I think we have Director's Report right now. Is that correct? On the item?

Mr. Yoshida: Yeah, that's all we have. The other thing was we don't have any pending land use applications so we won't be meeting for a while unless we have some legislation the Department proposes or the Council proposes some legislation for your review.

Chair Cosma: Okay, so Chair would like a recommendation that the meeting is adjourn. Any second?

Mr. Blumer-Buell: Second.

Chair Cosma: Mahalo everybody for coming. Thank you.

H. ADJOURNMENT

There being no further business brought before the Committee, the meeting was adjourned at 8:15 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Lehua Cosma, Chairperson
John Blumer-Buell, Vice-Chairperson
Ed Cashman
Anjoleen Hoopai-Waikoloa

Absent

Kawika Kaina

Others

William Spence, Planning Director
Clayton Yoshida, Planning Program Administrator
Paul Fasi, Staff Planner
Gina Flammer, Staff Planner
Michael Hopper, Deputy Corporation Counsel
Richelle Thomson, Deputy Corporation Counsel