

**PLANNING COMMITTEE**  
Council of the County of Maui

**MINUTES**

**September 5, 2013**

**Council Chamber, 8<sup>th</sup> Floor**

**CONVENE:** 9:02 a.m.

**PRESENT: VOTING MEMBERS:**

Councilmember Donald G. Couch, Jr., Chair  
Councilmember Michael P. Victorino, Vice-Chair  
Councilmember Gladys C. Baisa (in 9:29 a.m.)  
Councilmember Elle Cochran (out 10:33 a.m., in 1:53 p.m.)  
Councilmember Stacy Crivello  
Councilmember Don S. Guzman  
Councilmember Mike White (in 9:07 a.m., out 10:33 a.m., in 11:03 a.m., out 2:37 p.m.)

**STAFF:** Regina Gormley, Legislative Attorney  
Yvette Bouthillier, Committee Secretary  
Pauline Martins, Substitute Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

**ADMIN.:** William Spence, Director, Department of Planning  
Michele McLean, Deputy Director, Department of Planning  
Joseph Alueta, Administrative Planning Officer, Department of Planning  
Scott English, Lieutenant, Department of Fire and Public Safety  
Jennifer M.P.E. Oana, Deputy Corporation Counsel, Department of the Corporation Counsel  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Bradley Johnson, Principal Planner and President, Ground Rules, Inc., AICP  
David DeLeon, REALTORS® Association of Maui, Inc.  
Paul Laub  
Thomas Croly

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Bobbie Patnode  
Dick Mayer  
Madge Schaefer, Maui Meadows Neighborhood Association  
Peter Davis, President, Maui Meadows Neighborhood Association  
Others (10)

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

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**CHAIR COUCH:** ...(*gavel*)... Will the Planning Committee of September 5, 2013 please come to order. My name is Don Couch and I'm the Chair of this Committee. Before we get going, can I tell everybody to grab their cell phone and make sure it's on vibrate mode or off, please. I want to welcome our Committee members. The Committee Vice-Chair Michael Victorino. Good morning, Mr. Victorino.

**VICE-CHAIR VICTORINO:** Good morning, Chair.

**CHAIR COUCH:** Let's just go right down the line. Councilmember Don Guzman.

**COUNCILMEMBER GUZMAN:** Good morning, Chair.

**CHAIR COUCH:** Good morning. Councilmember Elle Cochran.

**COUNCILMEMBER COCHRAN:** Aloha. Good morning, Chair Couch.

**CHAIR COUCH:** Good morning. And Councilmember Stacy Crivello.

**COUNCILMEMBER CRIVELLO:** Good morning, Chair.

**CHAIR COUCH:** Good morning. And excused is Mike White and Gladys Baisa. And we have no non-voting Members today. With us from the Administration we will have Will Spence a little bit later and/or Michele McLean, the Planning Director, Deputy Director. Right now we have Administrative Planner Joe Alueta. Good morning, Joe.

**MR. ALUETA:** Good morning, Chair.

**CHAIR COUCH:** And from Corporation Counsel we have Jennifer Oana. Good morning, Jennifer. And Mr. Hopper will be back here with Mr. Spence after the Land Use Committee meeting...Land Use Commission meeting. And then we have a guest with us, Bradley Johnson, and we'll talk about Mr. Johnson a little bit later. Good morning, Mr. Johnson.

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MR. JOHNSON: Good morning.

CHAIR COUCH: Committee Staff of course is Attorney, Legislative Attorney Gina Gormley.  
Good morning.

MS. GORMLEY: Good morning.

CHAIR COUCH: And Committee Secretary Yvette Bouthillier.

MS. BOUTHILLIER: Good morning.

CHAIR COUCH: Good morning. Members, we have one item on our agenda today, it's PC-33, Home-Based Businesses. And we're going to start opening public testimony in just a second. Before we do, I just want to remember...remind everybody that if you're going to be...if you have questions for the testifiers, especially the remote testifiers, please speak into the microphone so they can hear you on the other end. Alright, without objection, we'll start public testimony.

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay, thank you. First let's check with the...get them on the line, and let's check with the remote sites. Hana District Office, identify yourself and let us know if you've got any testifiers.

***...BEGIN PUBLIC TESTIMONY...***

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana District Office and I have no one here to testify at this time.

CHAIR COUCH: Okay, thank you. Molokai District Office.

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR COUCH: Thank you. And then Lanai District Office.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez at Lanai and we have no one waiting to testify.

CHAIR COUCH: Okay, thank you, ladies. If we...if you get anybody that wants to come in and testify, please e-mail Staff and they'll let me know; otherwise, I won't bother you 'til the

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end of testimony. Okay? Alright, Members, in the Chambers we have a few people signed up to testify. First person is Dave DeLeon, followed by Paul Laub.

MR. DELEON: Good morning and aloha.

CHAIR COUCH: Good morning.

MR. DELEON: Dave DeLeon representing the REALTORS® Association of Maui on PC-33. The REALTORS® Association of Maui supports liberalizing the Zoning Code so that residents can use a portion of their homes to conduct home-based business functions. The association agrees that these businesses cannot be allowed to have a impact, a negative impact of any sort on their neighbors in the surrounding community. RAM strongly supports...strongly agrees that the current home occupation rules found in the County Code need to be replaced because they're overly restrictive. Under the current Code, a property owner who does business on their property cannot have clients come to their house, cannot exchange money. That's pretty hard to do business if you can't do those kinds of things. The other day I sold a treadmill to somebody off of Craigslist, I don't know whether I broke the law or not. They're not even allowed to have UPS or FedEx deliveries to their properties which is, you know, what everybody else can do. So it's kind of, borders on absurd. Our association previously supported the proposal by former Planning Director Hunt that allow for a carefully crafted set of business activities to be allowed as permitted uses. The key to that proposal was that they would have no negative impact. Director Hunt said that the proposal was based on the best practices found around the country. Unfortunately, that proposal seemed to have died after it was presented to the Planning Commission and didn't proceed further. And another form of it came with a Special Use Permit requirement that was really, again, too restrictive to be functional. We would like to suggest a two-tier approach to this issue. We think that businesses that have zero impact on their neighbors should be just a permitted use and retain their Homeowner tax status. By zero impact, I mean if you went by the house you would think it was just a house, and that had a very minimum customer traffic impact. Some, you know, the kind of uses I'm talking about here are like professional offices or the neighbor who cuts hair in his driveway, I mean in his garage for his neighbors. The kind of thing that, you know, it just happens in communities all the time, and should this be considered as a permitted use. Those businesses that have some sort of impact like visual impact such as automobile mechanics or retail sales that attract a regular flow of customers should be required to get a permit and pay the Commercialized Residential tax rate. The permit on this second class would be a mere registration in our mind, and it would not require an elaborate review and approval process. It'd be something like the GET, State GET license, you just go in and sign up and get it. But if the holder of that permit messes up and causes the problems for his neighbors, the County could take the permit away and shut the business down. The issuance of the permit would trigger the change of property tax status. Mahalo.

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CHAIR COUCH: Thank you, Mr. DeLeon. Members, any questions for the testifier? Seeing none, thank you.

MR. DELEON: Thank you.

CHAIR COUCH: I would like to recognize the presence of Councilmember White. Good morning.

COUNCILMEMBER WHITE: Good morning.

CHAIR COUCH: And Mr. Spence is here. Good morning.

MR. SPENCE: Good morning.

CHAIR COUCH: And in the audience we have Lieutenant Scott English who's representing the Fire Chief if we need to talk with him a little bit later. Good morning, Scott. Okay, Paul Laub, and followed by Thomas Croly.

MR. LAUB: Aloha, I'm Paul Laub, and I support this measure. Anyone who needs a little money can make a little money this way. It's really important to be able to reach out and make money in different ways, especially during economic downturns when it's really hard to make your bills. This is really important for development of industry. Hewlett Packard, Microsoft, Apple, all started in people's garages and these became major industries. The history of our nation is a history of cottage industry, and no one should be deprived of working. And we need to be proactive to help people be able to work. A couple of the things that were shut down by the Planning Commission, I support that they were shut down. So that delivery, any delivery can be made, the size is not a factor. The key thing is not disturbing the neighborhood. And it's interesting that that is requested that there be no signs because if somebody was coming up to a new place and wanted to see Bob's Maui Made Boxes and he came up to a house and there's no sign, he'd have to go to some house and knock on the door and say oh, is this where Bob's Maui Made Boxes are? They'd say no, two doors down. And so you go over there and it's closed so he goes back to the other house and says gee, they're closed, do you know when they're open? So no, you know. Now if we had a sign, just a small sign that said Bob's Maui Made Boxes open Monday, Wednesday, and Friday, 10:00 to 4:00, then it wouldn't be disturbing the neighborhood. So the actions that we need to take are those that are positive and oriented toward making this happen as opposed to reacting from a fear-based point of oh my gosh, they're going to make a sign there and that's going to be negative. So I want to thank you very much for looking at this. As far as a tax base, I think that it should stay at the Homeowner rate until it reaches a level of where there's really some serious money being made. If you're only making a couple of thousand dollars a year on

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this which is very helpful to a lot of people but you change the tax rate to where that negates that, there's no value in that. So okay, if the guy's making \$25,000 a year or something, okay, move 'em up, and you'll be able to tell that through the GET taxes. Thank you very kindly.

CHAIR COUCH: Thank you, Mr. Laub. Members, any questions for the testifier? Seeing none, thank you. Next testifier is Tom Croly, followed by Bobbie Patnode.

MR. CROLY: Hi, I'm Tom Croly, testifying on my own behalf. Last week you guys had someone talk to you about form based zoning and some different ideas for how we handle our zoning. This program that we have in front of us is a result of the way we have structured our zoning over the years. We've said we work over here, we live over here, we separate those things. And through the years and through the type of work that we've done, we've seen that that has changed, people don't go to a place to work, they oftentimes do work at their homes. So the, it makes a lot of sense, of course, to be allowing certain forms of work to happen at people's homes. But the issue isn't constructing the box of what are the permitted and non-permitted uses and what should somebody go get a permit for and so forth. It's really addressing the nuisances. So I urge you not to forget that rather than trying to figure out this box that says okay, if you stay within this box, if you have no more than this many people coming to the house per day and you have no many, no more than this much space in your house allocated to it and so forth, then we'll let you do whatever it is you're doing. And think more about what are the nuisances that people would be concerned about, and maybe it's a whole different place we need to go to regulate those nuisances, those nuisances typically being noise, those nuisances typically being excessive traffic, that type of thing. So I just urge you not get too wound up in exactly what this box could be. Because the forms that business takes can be very vast, and it can be very difficult for us to figure out every possible, you know, business and say this business is okay and this one's not and so forth. There's another issue that's kind of part of this but I would believe we'd probably take up in Budget Committee, and that would be, would we change the real property taxation of the property for someone who's doing this? And as Dave pointed out, if someone goes and gets a permit like they do to get a Bed and Breakfast Permit, it makes it simple to track. Okay, you're now in this category and this is how we treat you. But I don't think that we want to create something here where everyone has to go in and get a permit, because I don't think the Planning Department wants that. And then it would become a very difficult thing to manage as far as well that guy's got a business at his house and he should pay higher taxes than this guy who doesn't have a business at his house when neither of them needed a permit to do what it is that they're doing. So I think that we need to have a deeper discussion in Budget about how our tax structure is set up, but I don't think it should become part of this Committee's work to determine what the taxation should be on these home businesses. Thank you.

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CHAIR COUCH: Thank you, Mr. Croly. Members, any questions for the testifier? Seeing none, thank you. Next testifier is Bobbie Patnode, followed by Dick Mayer.

MS. PATNODE: Good morning, Council, Mr. Couch.

CHAIR COUCH: Good morning.

MS. PATNODE: My name's Bobbie Patnode, and I am vice-president of the Kula Community Association. But I'm here today in my role as facilitator for a group that we call the Agriculture Working Group which was convened last June by Don Guzman as a group to help Don with his Committee on Agriculture, and represent the agriculture community. There's about 20 working agriculture members in this group, and for the past three months we've been working on EAR-13 which specifically addresses farm stands and regulation of farm stands. So I just wanted to call to your attention that we have some work underway on this which is not exactly dovetailing what's in this bill. Specifically on Page 5, it talks about what can be sold at a stand, and right now what we're working on is putting into Maui County Code the changes that were made to HRS 205 this year which allows farm stands to sell anything grown in Hawaii, not just in Maui and not just on the premises. So that's one of the major changes that's happening. And also, on Page 6 there's a whole section there that we expect to be rewritten. And we are about 95 percent done with writing this change, and so it would be coming to Don's Committee very soon. And I just mostly wanted to make sure that you were aware of this when you're considering this bill. The other thing I wanted to say is several members of the group had e-mailed me in the last week about this bill, and there's a large concern about the repair of equipment and the hours that you can repair equipment and how many can be repaired. Farmers repair their equipment at night. They work in the day and they repair at night, and the repair isn't just done on the farm, it's often done in somebody's neighborhood home. So just to be aware when we're talking about that, that there is a need to sometimes work after 9 o'clock at night or before 8:00 in the morning. And that's all I have, thanks.

CHAIR COUCH: Thank you. Members, any questions for the testifier? Ms. Patnode, I do have a question. You mentioned the repair, are you talking about the farmers repairing them at their own home or sending them to somebody who does that as a business?

MS. PATNODE: Yeah, they have to sometimes send them off their farm to be repaired, so...

CHAIR COUCH: And...

MS. PATNODE: And sometimes they need it repaired before the next morning.

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CHAIR COUCH: Sure. But in that case, is it done at a commercial location or is at somebody else's home? Say another farmer that knows how to fix...

MS. PATNODE: It could be in somebody else's home, yes.

CHAIR COUCH: And is it done usually for money or is it done hey, it's kokua or, you know, help and I'll give you some corn?

MS. PATNODE: I would guess all different types of arrangements are made.

CHAIR COUCH: Okay, that's good to know. Thank you.

MS. PATNODE: Okay, thank you.

CHAIR COUCH: Thank you. Members, any other questions? Okay, seeing none, Dick Mayer, followed by Madge Schaefer.

MR. MAYER: Good morning. I passed out...I hope you got a copy of my testimony which was sent out last...to the Committee. Did you get a copy? I just want to know...did the Staff get...they got one?

CHAIR COUCH: Yeah, it was given out.

MR. MAYER: Okay, thank you.

CHAIR COUCH: Thanks.

MR. MAYER: It's a two-page item. This ordinance is much needed and long overdue. I hope the Council will move expeditiously to pass this ordinance so that home-based, home businesses can operate legally and neighbors and neighborhoods are protected. Mahalo for placing this ordinance on the Council agenda. I have about seven or eight, nine points here I'd like to make. The following list contains issues that will need to be addressed in the proposed ordinance. On Page 2 of the ordinance, the word "domestic" is used. It's not defined anywhere. Maybe it's elsewhere in the County Code, but I think it's because it's trying to use it as a, in a definitional way, somewhere there needs to be a definition of what "domestic" is. Number two, with regard to employee parking. A non-resident employee is allowed. In other words, this ordinance allows somebody to hire one person, non-family member. Therefore, there should be an off-street parking place for the employee in addition to any other parking requirement. So if there is...the person does hire somebody, they should also be off the street. Number three, there's a need to underline. On Page 3 you have a whole section 19.67, I don't believe that's even part of the County Code at this point, and in this proposed ordinance at least for the public to



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know, this entire section is new. It probably...the whole section should be underlined to mark it off. I have a number three there, a second number three, it should have been written number four. Internet and telephone business activities. Nowadays, so many businesses are done over the Internet which is something that should be allowed to go on in the evenings and off-hours or weekends or what have you. It doesn't interfere with anybody else, and so a provision should be put in there that when you have the hours of operation until 6:00 p.m. in the evening, there should be an exclusion that says the hours of operation should allow for Internet and telephone business activities to be conducted at any hour. In other words, you can't stop when somebody calls you to set up an appointment for the next day, those kinds of things. Next item, hours of operation. The listed hours leave it unclear as to what happens or cannot happen between 8:00 a.m. and 9:00 a.m., if you read the ordinance, and between 6:00 a.m....6:00 p.m. and 9:00 p.m. There's sort of a hiatus there, and they're talked about before that and after that but not what happens in that period of time. So that should be...the hours should be put cheek to jowl continuous during the day. Off-premises goods. There's a sentence in, on Page 5, Line Item 5, do not delete this sentence. Goods produced off premises are expressly prohibited. I would like you to reinsert that sentence to make it very clear what that section is saying. Number seven, off-street parking is not just parking places. Don't only indicate that there's off-street parking that has to be made available but that customers and an employee should be parking off the street, not just that only that the parking is made available. Last few items. Commercialized Residential. This was one that was referred to in the property tax issue. It should be clarified whether the homeowner can retain their homeowner exemption. Furthermore, if a rental ohana unit operates a home-based business with customers and additional parking requirements, does this affect the homeowner exemption? In other words, if your ohana is the business, not the main house, how does that affect things? And that leads to the next item. Nowhere in the ordinance does it mention ohanas, and we have thousands and thousands of them on the island, and they have an impact on neighborhoods in terms of density. So and condominiums are mentioned. So I would urge you to at least insert somewhere in there what the role of ohanas are. Can, for example, the main house and the ohana have a business? The last two items, registration and excise tax. I think you need to have in here some way of knowing that a business is going on, and so I would urge you to have a provision in there. Keep it relatively simple. If a home-based business is being operated, it should be registered with the Real Property Tax Division indicating the name of the operator, type of business, the addresses, TMK, et cetera, and gross tax license. No further approval process, it's not a permitting, it's just a registration. No further approval process is required to meet the requirements of this home-based ordinance. This registration should be updated at least every two years, ideally maybe for property tax purposes you might want to say each year, just send in the form and just indicate so that the property tax people know that there's a business there. And finally there is an issue with, about businesses, and that's garage sales which can become quite a nuisance in a neighborhood since some people do them almost on a regular basis. And so perhaps you

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would want to include in here some provision that says no more than two a year or some other number that you think is the proper number so that it doesn't become a business itself, because there's lots of off-street parking...excuse me, on-street parking that takes place. And that's a home business which sometimes really is a big business for some people.

CHAIR COUCH: Okay, thank you, Mr. Mayer. Members, any questions for the testifier? I have a couple --

MR. MAYER: Please.

CHAIR COUCH: --Mr. Mayer. First of all, can you provide that testimony one more time? I know we have it in e-mail and I'm sure it will get printed out, but I just want to make sure we have a copy to make sure...

MR. MAYER: I'll leave one here with the Staff.

CHAIR COUCH: Yeah, thank you. The other question, you mentioned registering with the Real Property Tax Department. What in your estimation do you think should be done? Because we talk about taxes in here, what is in your estimation do you think should be done for taxing? How should this be? Because it's a home, somebody's home and they are required to live there.

MR. MAYER: And I really cannot give you a clear answer. You may decide that it should have no effect. On the other hand, you may decide that you want to know where these are, you want to be able to...and you also use the term "Commercialized Residential" in the ordinance, and that would change its tax status. So I think it should be very explicit so somebody knows if they're going to have a home business, what effect that might have on their homeowner exemption. It should be just very explicitly written in there. You may...and this I leave it up to your Budget Committee and the Council, I have no particular opinion, it should be taxed or it should not be taxed. If it's not a nuisance to the neighborhood, it's not bothering anybody else, you may say well we have...and there's a corollary to that. One of the reasons why I'm in favor of home businesses is it takes a lot of cars off the road, and that's a benefit to all society. It cuts our costs down for road repairs, road widening, et cetera. So there is a benefit of having home businesses, it's just that...and so you may say well we would like to encourage people to work at home. Let me give you an example, quick example. My son works for a major corporation, he works in his bedroom for the corporation, doesn't commute out in the roads, and yet it's a business operation. He's an employee, not owning the business. So you have all these categories. And so I think there are benefits for it, and so I'm not essentially saying we have to tax these people.

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CHAIR COUCH: Okay, thank you. Members, any further questions? Seeing none, thank you, Mr. Mayer.

MR. MAYER: Thank you.

CHAIR COUCH: And Madge Schaefer, and Ms. Schaefer is the last person to sign up to testify. Anybody else wants to testify, please let us know.

MS. SCHAEFER: Good morning. Well before my time starts I'd like to tell you my experience this morning in trying to find a parking space. I arrived here at five of 9:00 and I figured this Chamber must be overflowing, because I finally found a parking space 20 minutes later going all around in a gigantic circle four blocks away off-street because someone was pulling out. You've got a parking problem there for civilians.

Thank you for the opportunity to comment on this ordinance. I am speaking on behalf of Maui Meadows Neighborhood Association. The board, in a collaborative effort that concluded after a lengthy discussion at our board meeting has made suggestions in a letter to this Committee, which I trust you all have received. The overwhelming concern expressed was that the residential nature of communities be protected and preserved. Our homes are our sanctuaries. The perfect home-based business is one that exists without any impacts to the neighbors or the neighborhood. To summarize our letter, we support the ordinance language that addresses changes to the exterior appearance and signage. We support the prohibition of, regarding raising, professional services related to animals. We believe there should be a limitation on percentage of lot use, the storage of goods not only to be out of public view but also out of view from the adjacent neighbors. Parking should not be disruptive for neighbors, and operation of businesses that generate customers should be limited to Monday through Friday. Under accessory uses, the keeping of livestock, hogs, poultry, fowl, and game birds is permitted in the RU zone. The operation of miniature farms or ranches are inconsistent with residential character of Maui Meadows, and we hope that you will address that. It seems strange that you can't have a kennel for dogs and cats but you can raise pigs, cows, goats, horses, et cetera. We support the prohibition of baseyards but ask that they also be defined. We have a problem with baseyards in Maui Meadows and I've taken some pictures, and you can see they go in various stages. I'd like to pass those out, if I could. Shall I give them...

CHAIR COUCH: Staff will come up and get it.

MS. SCHAEFER: Oh, okay. They're paper clipped together because the, they're all of the same parcel, those that are clipped together. We support the prohibition of baseyards but ask that they be defined, because they are not defined in Chapter 19. We do not support the provision allowing repair of automobiles. We believe that this use is inconsistent with the residential character of the neighborhood and should be prohibited. Car repair shops

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raise safety and environmental concerns. In commercial settings, such businesses are subject to strict regulations protecting the general public. In our residential setting these protections would not apply. The nuisance to neighbors from body and fender repairs which would be allowed the way this ordinance reads, painting, et cetera, is potentially huge. We are thinking of noise, noxious odors, abandoned car parts, and the like. Another point, per the parking section of this ordinance, service stations, repair shops, and garages must enclose vehicles and parts with a six-foot fence. How about a home-based repair business? If such businesses are allowed, surely the same restrictions should apply. The language of the ordinance limits the number of repairs in progress at any time, it does not address the issue of other vehicles awaiting repair. If car repair is allowed at all, we would like to see language that bars street parking of vehicles awaiting repair. Without such language, an unlimited number of vehicles could accumulate outside of a repair business and remain there for unlimited periods of time, hardly fitting for a residential neighborhood. Because many homes in Maui Meadows have ohanas, the issue of multiple business operations per lot could occur. We would suggest that it would be consistent to allow only one business per lot. Our letter offers further specifics. Finally, if the proposed ordinance is in conflict with the Zoning Code, which prevails? In closing, the board supports the Council's desire to facilitate small business but believes that the interest of both parties must be carefully balanced. We ask that you consider the potential impacts to Maui Meadow's neighborhood. Thank you.

CHAIR COUCH: Could you just...

MS. SCHAEFER: And I do have a picture of a home repair.

CHAIR COUCH: Okay. Thank you, Ms. Schaefer. Members, any questions of the testifier?  
Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I have a question. Does the Maui Meadows have CC&Rs?

MS. SCHAEFER: Yes, we do.

COUNCILMEMBER GUZMAN: Okay.

MS. SCHAEFER: But those CC&Rs were written in the 1970s and they...we have contact, for instance, one of the lots that has a cement truck and the cement debris in the pictures. We have contacted the owner who lives out of the country over and over and over and have no response. So our first...what we do first is we write a letter to the owner based on someone raising a complaint, but then we have no place to go if the owner doesn't respond. And I think by addressing and defining baseyards in this ordinance by saying they're prohibited would give us another opportunity to have enforcement. As you can

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see from the pictures, some of them are not bad and the neighbors may very well not complain, but there's one of them that's just terrible that's got four vehicles on it, two big Matson containers. The owner does not live there, the owner lives elsewhere on the island and is using this as a storage yard.

CHAIR COUCH: Okay? Any further questions?

COUNCILMEMBER GUZMAN: I don't have any questions, I just would have a comment on...

CHAIR COUCH: Go ahead.

COUNCILMEMBER GUZMAN: You wouldn't be fining that person, that homeowner and then from the fines accumulated put a lien on the properties as an association would eventually do. I mean that's just one --

MS. SCHAEFER: Well as...

COUNCILMEMBER GUZMAN: --remedy. I have nothing further.

MS. SCHAEFER: Our CC&Rs are six pages long and I think were written before lawyers. . . *(chuckles)* . . . That's the most polite way that I could put it. It gives us very little muscle, it doesn't give us the ability to fine.

COUNCILMEMBER GUZMAN: Thank you.

MS. SCHAEFER: Thank you.

CHAIR COUCH: Okay. Members, further questions? Thank you, Ms. Schaefer. Ms. Schaefer is the last person to sign up to testify. It looks like somebody else is willing to testify. If you come up, please give your name and then afterwards please sign up in the back.

MR. DAVIS: I hadn't intended to testify. My name's Peter Davis, I am currently the president of the Maui Meadows Neighborhood Association. I just want to address the issue of our CC&Rs. The developer put CC&Rs into Maui Meadows but did not establish a homeowner's association, and therefore, there is no association which can enforce the CC&Rs. They exist but the only enforcement is any given lot owner in Maui Meadows can privately initiate a lawsuit to enforce the CC&Rs. That is the only vehicle that's available. They have to come up with their own money, initiate the lawsuit. If they prevail, the CC&Rs provide that they will be entitled to reimbursement in a judgment against the offending party, but it has to go through that process. And that's why enforcing our CC&Rs is not something that's easily done.

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CHAIR COUCH: Okay.

MR. DAVIS: Thank you.

CHAIR COUCH: Thank you. Members, any questions for the testifier? Seeing none, Mr. Davis, you're going to fill out a form? Thank you. Mr. Davis was the last person to testify. I'd like to acknowledge the presence of Council Chair Baisa. Good morning.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: We'll go to Hana. Hana, do you have anybody signed up to testify?

MS. LONO: The Hana Office has no one waiting to testify, Chair.

CHAIR COUCH: Okay, thank you. Lanai?

MS. FERNANDEZ: The Lanai Office has no one waiting testify.

CHAIR COUCH: Thank you. And Molokai?

MS. ALCON: There is no one here on Molokai waiting to testify.

CHAIR COUCH: Okay, thank you, ladies. We will talk to you at our next meeting. Members, without any objections, I would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Thank you. Public testimony is now closed.

*...END OF PUBLIC TESTIMONY...*

**ITEM NO. 33: HOME-BASED BUSINESSES** (CC 12-74)

CHAIR COUCH: Members, before we get going into the depths of this bill, I wanted to introduce, we're gonna have a presentation. I wanted to introduce Brad, Bradley Johnson who is a planner from the Indianapolis area. Mr. Johnson has been working for 20 years as a planner and has made it his focus, if you will, on home-based businesses. He's had a home-based business himself for a long time, and he's going to share with us his knowledge and research on his home-based business, and he's helped write legislation for that. Mr. Johnson.

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MR. JOHNSON: Very good. Yeah, we're going to start a presentation here momentarily to go through the details of that. I'm very pleased to be able to be here. Some of the testimony will sound familiar to you. In my presentation as well I'm gonna certainly talk about several of the issues that were brought up and how we have solved some of those issues ourselves in a variety of communities around the Midwest, so I look forward to that presentation time.

CHAIR COUCH: Okay. Members, just for the record, we're working on PC-33 which is Home-Based Businesses. We're in receipt of the following: County Communication 12-74 from Planning Director, transmitting in response to Resolution 11-97, a summary of the Maui, Molokai, and Lanai Planning Commissions' comments to a proposed bill entitled A Bill for an Ordinance Amending Title 19, Maui County Code, and Section 4.38.305 [*sic*], Maui County Code, Relating To Home-Based Businesses. The purposes of the proposed bill are to establish standards and restrictions for the regulation of home-based businesses, establish a home-based business as a permitted use in Residential, Rural, and Agricultural zoning districts, and classify home-based businesses as Commercialized Residential for real property tax purposes. With that we're going to go into recess to set the room up for a presentation, and we will be back in two or three minutes. This meeting is in recess. . . .(*gavel*). . .

RECESS: 9:39 a.m.  
RECONVENE: 9:42 a.m.

CHAIR COUCH: . . .(*gavel*). . . Will the Planning Committee meeting of September 5<sup>th</sup> please come back to order. Mr. Johnson, go for it.

MR. JOHNSON: . . .(*PowerPoint presentation*). . . Very good. Thank you. Before I begin I wanted to speak a little bit to just the concept of preparing zoning regulations, and you certainly heard bits and pieces of this in testimony. You'll continue to hear bits and pieces about mismatches in zoning. What I want to specifically say is that we write black and white documents that are on two-dimensional pages to try to address every possible three-dimensional issue in a very colorful world, and just inherently, just inherently zoning ordinances just cannot possibly foresee every possible solution that is out there in the real world. So there's always some degree of frustration with zoning regulations. What we try to do is write regulations that are working in the high 90 percentile. So 98 percent of the times the regulations result in what the community is really hoping for. So that's just a quick introduction to what we mean with, when we're preparing zoning regulations. In this presentation I hope to address some of these big questions. What is a home business? Why are they important? How should they be regulated? And how can we enforce the regulations after we have them in place? Some other things that I'll touch on are whether or not licensing or registrations are a good idea, and how they may

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dovetail into economic development strategies. Don gave a little bit of a presentation, little bit of information about myself. I am a former home business operator, I've been a chamber of commerce director. I'm currently a planner and the principal for Ground Rules, Incorporated. I've been practicing planning for over 20 years now, 17 of those years particularly focused on preparing zoning regulations for communities of all types, the very, very remote rural communities all the way to large metropolitan areas, from tourism communities to cultural communities. I've had the opportunity to do work in Australia, New Zealand, across the United States, and the diversity in communities is pretty staggering. The thing that I want to also point out is I only represent communities. I get calls from developers, I get calls from attorneys representing property owners, et cetera, asking me to help them defeat a zoning ordinance. I've always stayed on the side of trying to help communities prepare ordinances that further the community in a positive way and not get mired into disputes and the controversies with private entities. Not to say that that's not an important part, but I've just tried to stay on that side of the fence throughout my career. Alright, moving on. Some things that I wanted to just start off with are that to me it's not a home occupation and it's also not a home-based business. To me those two terms in themselves are flawed. So what I mean by it's not a home-based business, oftentimes and somebody mentioned this even this morning is that somebody maybe works from home but they are not the owner of the business, they're an employee that's telecommuting from their home in their bedroom. They're working in their pajamas, whatever it may be, but it's not based in that home. And that should be part of this umbrella. We should always be focusing on it's the fact that somebody's working from their home whether they own the business or not. Also, occupation implies that the person is getting their full income or their primary income from this operation, and many, many times they're actually not. It's subsidies to their primary occupation that they may go to on a five-day-a-week cycle, and then on the weekends or evenings they're subsidizing their income through some kind of entrepreneurship out of the house or off of their property. So we prefer the term "home business", and I'm going to use that term hopefully consistently throughout the rest of this presentation. So why are these home businesses so popular? Well first of all, a lot of people need extra money. Whether it's just, you know, whether it's for savings purposes, whether it's to put their kids through college...oops, pardon me. Whether it's for luxuries that they want in their lives or just really staying afloat, economic recessions from time to time have an impact on how many of these enterprises exist. I find it interesting, I sort of laughed when I put these pictures on this slide, but this woman looks awfully happy about the...if you can count the money there, it's 56 bucks. So sometimes it doesn't...what I was trying to get there, get at there is the fact that some of these are not meant to be major income earners, they're meant to be subsidies to the primary income into the home. So we do get excited sometimes about 56 bucks. Flexibility is another major factor for folks to get involved in home businesses, so whether it's a dad that wants to stay home and be a part of raising their children, somebody that just wants the comforts of not having to commute, fight traffic. Although you don't...I know that some of you say that we have a traffic problem, I haven't seen



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any of that yet compared to some of the communities I've been in. But nonetheless, we have lots of reasons, flexibility certainly is one of those. The ease of startup. As time goes on, it seems to get easier and easier to start businesses. We have...whether it's books that give us step-by-step instructions on how to start a business, you know, everyone's got an idea, everyone has something that they think they can offer, and some people pull the trigger on that and move forward and other folks sort of just sit on the sidelines and wish they were making more money. But it's, the point is is that it is, it's never been easier to start businesses. Propaganda also has a factor in getting people interested in home businesses. A lot of these are scams, you see them come across your e-mail accounts, you see them in magazines, you see them in newspapers, you see it pretty much anywhere, and it gets people really excited, hey I can make a six-figure fee if I just start my own business. Well people are oftentimes disappointed in the end results of that, but nonetheless, these do whet the appetite of folks to get involved in it. Somebody...I read a book one time and a quote from that book was, you know, business is easy, all you have to do is provide a service or a product for less money than you're charging somebody for that product or service. And then there's the dot, dot, dot, and a million other things, because it does seem that easy to start a business. But once you get into the reporting and regulations, et cetera, et cetera, managing employees, managing product coming in and out, it is quite, quite complex. So some other reasons, I've mentioned here, just the other day on the Today Show there was a, you know, an expert that came in, was talking. I clipped a shot from that. But there's magazines, there's significant efforts in our nation for minority and women-owned businesses. If you look at those publications, they're oftentimes suggesting that it's time to start a new business and you can base it out of your home. Okay, so what is a home business? So these are a few common definitions that you might find if you go out on the web. One's from Wikipedia, the other's from Entrepreneur Magazine. A home business is a small business that operates from the business owner's home office. I've underlined a few key words here that I'm going to touch on in a moment. A business whose primary office is in the owner's home. The business can be any size or any type as long as the office itself is located in a home. These definitions are really flawed in the sense that maybe these are good lay terms for somebody that's having a conversation at a party, but it's probably not the best terms to be using in a zoning code. So here's...you know I went to a source, The Zoning Dictionary. There's a book out there called The Zoning Dictionary. It has this collection of terms that are used in zoning codes, and I thought okay, there's got to be a good zoning definition in there. This is what they came up with. An occupation--I've already talked about the word occupation, don't like that--which provides a service as an accessory use within a single-family dwelling performed by one or more of its residents. Such occupations may include services performed by, and then it lists the land uses. Again, I take issue with the land uses here. Okay, here's the problems with those definitions. First of all, businesses primarily imply that they have a tax ID number, that they are somehow recognized by the IRS. And that, many, many cases is not true. Another thing is is that they are not occupations, we've touched on that. Home, just the

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term home in itself can be a challenge in a definition. You know whether, you know, maybe it's on the lot, maybe the business is on the lot, maybe they grow something. Maybe they use an accessory structure but the business has no place at all inside their home. So again, we want to be sure to not box ourselves in and just talk about these operations being in the home itself. Oftentimes we see people that have say a commercial business, they, really all they do is drive their commercial vehicle home with them at the end of the day. So maybe they drive a commercial vehicle, yeah, their checkbook is at the house but other than that they use an iPad, they drive their truck, they provide a service and then they come home. Well again, they're not really using the home for that business. And then the fourth item there is listing specific uses. For one is that you can get into a situation where it may say a hairdresser is permitted but what about a barber? What about somebody that does nails? What about somebody that does, you know, pedicures or, you know, again, it's sort of close but it's not specifically listed so therefore they're forbidden. So it can be a really, really tricky thing. We've had, there was I think the city of Kansas City had tried at one point to write a zoning code that identified and permitted or disallowed every possible zone or every possible land use. So they went through a phonebook, they went, you know, and sort of surveyed what people did, and they had a list of, you know, several hundred, you know, six, eight...nine hundred land uses and they just kept finding more. And they eventually said, you know, it is a futile pursuit to try to recognize this. And I'll just give you an example, too, is that if we would have said to you 20 years ago we're going to have not only gas stations but we're going to have gas stations that have fast food restaurants woven into them and maybe dry cleaners. And the thing is is that what we...or check cashing places. I don't know if you have many of those here or not, but that land use didn't even exist ten years ago. So if you are trying to pursue listing out every possible land use, it's a futile pursuit because there's always new ones, they're always changing. I look at codes that have been updated in recent years and I still find land uses like typewriter repair services, and I was like, didn't you ever stop and think that that probably needs to be struck from your code 'cause no one's doing that anymore? So we just do a really bad job of managing our codes when it comes to specific land uses. So when I talk about that, too, is that telecommuters, technically that's not a home-based business in a lot of definitions, they don't have tax ID numbers. You know also the definitions imply that it has to be for money, well what about barter? If that's always how they sort of, how they're providing their services, that needs to be included in the definition and in the regulations. Home parties, you know, I don't know if you have Arbonne or Pampered Chef parties here or not, but that is a type of commerce that's being held in people's homes. As, you know, you're the host, so does that mean that one day you're a home business? Swim coaches, authors, you know, somebody that writes a book or somebody that writes article for magazines, they probably don't have a tax ID number, they're not operating as sort of a commercial business, but that is their livelihood, that's their occupation. And there's some other ones there as well. And honestly I could just wear you out with scenarios that really play themselves out in the real world. Sorry for some of these, this text in color

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probably doesn't show through real well here. But this is getting closer to a preferred definition. This is not a one-size-fits-all for all communities, so I would not suggest that this is what fits your county, but here's a shot at it. The utilization of a single-family residential dwelling, accessory building, and/or property or a multifamily residential dwelling unit to provide a service, produce a product, sell merchandise, or otherwise engage in an activity for the pursuit of remuneration; excluding the sale of the property and its improvements, garage sales, and infrequent sale of personal merchandise--i.e. on Craigslist--consistent with use of the property exclusively as a residence. So the last paragraph there, that last...I should...last, part of that sentence there is getting at even if you aren't conducting a home business, you're going to sell a bike at some point in your life or you're going to sell something that's gotten old and you've replaced. You're going to have a garage sale possibly from time to time, and I agree that there should be some reasonable limits on how frequently somebody should be able to have those types of sales. But I've even, I've read some definitions that imply that you selling your property for profit, using the property for any purpose to gain profit is considered a home business. Well we obviously don't want to have the home sale itself be what classifies you as a home business. I've just touched on several of these as I went over that definition. But the purpose of a definition is to describe the big picture of what is a home business, it's not to regulate the home business. So make sure that the definition is just that, a big picture description, not the regulations. Do consider multi-family units. You know people that may be renting an apartment, they themselves may have a computer, same thing is you would never know that they're operating a business but they can out of a multi-family unit just the same. Some kind of a statement about it not being specifically for cash money, because again, we catch or find that many communities have a type of barter or other types of compensation that play into it. Let's see. And definitely don't define specific uses. Alright, so what do these things look like? Well first of all, they look like any other house that you, any house that you drive by and see every day. The insides of them, it could be on the right, top right, it could be a space inside of a closet, it could be a dormer on a second floor. It could be a kitchen, a desk that's just set up in the kitchen. It could be a mess like the bottom right-hand corner, I'm sure that everyone's seen that before. Don's volunteering his offices. Actually I took that...no, I didn't take that picture at his office. But other interiors may look like these, you know, maybe a scooter repair shop, it could be a small bakery, it could be a barber chair, wood crafts, sewing, et cetera. Some of the alternatives that we see from time to time is a detached structure that is used for an office purpose, not workshops, not, you know, where there's materials coming and going, but just trying to escape the confines of the house. Noticeable home businesses may be something where you see apparatus equipment outside parked on a regular basis, the commercial vehicles parked in the driveway, signs, or just maybe an oversized, out of character for a residential area, an accessory structure. It may not even have to have signs on it but obviously it changes the character of the residential neighborhood. Some other noticeable home businesses, an accessory structure with signs. Sometimes people put signs out at the street or up next to

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the house, and those are more noticeable. So why are home businesses important? A lot of people want to know some information about why we try to do this. It was mentioned in a testimony earlier that quite a few corporations that we all know and love or at least like, you know, this is Dell headquarters on the bottom right, and I don't think that's Michael Dell's original house, I kind of cheated there. I didn't have access to his homestead to be able to take a picture of it. But nonetheless, from garages to major corporations, it does happen. So they are incubators for great businesses. They're initial, at least initially they have a competitive advantage over commercial properties. It provides that additional income for the household. They are based on our heritage and our history. I mean we've all heard the term cottage industry, now that's what they are. I mean and if you go back to the earliest day of our time, people ran businesses out of their homes. So there's history to it. We got away from it for a period of time when zoning really sort of came to be in our community. Somebody talked about that as well where isolate business over here and industry over there and houses over there, we kind of stripped away the cottage industry opportunity, but that is coming back. Local economy, you know, it adds vitality to the local economy, I'll talk about some specific numbers. Allowing that lifestyle and it really is in many cases an America dream. Those are some corporations on that first bullet point of companies that you've all heard of, Dyson, Nike, Amazon, all home-based businesses at one point. The category of home businesses is likely a five hundred plus billion dollar category, if you could just isolate that alone. I will say that all of the data that I'm going to share with you here in a moment is sketchy at best, because none of the data can really capture the babysitters out there, the kid next door that maybe maintains the lawn next door and gets paid for that, or the authors or the writers as I've mentioned before. This is really keying in on people that really do have a tax ID number and are operating "legitimate" IRS types of businesses. So this number probably is even much bigger than 500 billion. So it's estimated right now from the Small Business Administration that 12 percent of all households in America have a home business, one out of ten. Fifty-two percent of all businesses were home businesses, so out of all tax ID numbers out there, 52 percent of them are home-based businesses. So it's a lot, it's a lot. And again, that's not picking up on the ones that don't have the tax ID numbers. More and more of these operations...again, as technology evolves, as we can telecommute and we can have a virtual storefront on a website, we can have a virtual office on the web, people can have the sense that they are a major corporation yet they're working out of their bedrooms. So as that all has sophisticated, it has provided more and more sophistication with these types of enterprises. Some statistics. Fill in the blank here. There are X million home businesses in the United States. Some numbers suggest that it's around 14 million, 19 million, 38 million. I think it's even higher than that, again, based on the fact that we're not really counting these non-tax ID number types of operations. It's a lot. Thirty percent of the home businesses are known to fail over a three-year period of time versus 70 percent of businesses that start in commercial districts. Major differentiation. Seventy percent of the home businesses are the primary income for the household. Now this is again where the numbers are off. I've already

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mentioned that the vast majority of these operations are for subsidies to the primary income instead of the primary income. Now this is again based on the ones that we know of that are tax IDs. They're the ones that we can send surveys to, and we know what their business is, we can ask them for responses, and those typically are the primary source of income. So the start-up cost is less than \$5,000 and...in many cases. Some other data that's interesting to take a look at is 58 percent of women-owned businesses or businesses that women own a 50 percent share in are home-based businesses. Forty-six percent, same thing, are a minority on businesses. Forty eight or 47 percent of the operators of those businesses have bachelor degrees or greater compared to 20 percent, 27 percent of the general population. So it tends to be an educated population that is leaning more towards these home businesses. Median incomes differ quite a bit, 63,000 versus 46,000. Those are national averages, but still points out that these are operations that are legitimate in their nature. And we often...if you looked at zoning codes you would think that 100 percent of home businesses or 90 percent of home businesses were professional services. Most zoning codes specifically say it needs to be this type of professional office, you know, doctor, lawyer, blah, blah, blah. But the fact is is that they're not, it's much less than that. So what are the issues? Depreciation of...what neighbors are concerned about and what the communities typically are concerned about, this is not the business owner's concerns but the neighbors and the community in the neighborhoods, depreciation of property values. The time we hear this often, you know, it's going to take me forever to sell my house on the market with that big commercial vehicle always parked out in front. Reduced enjoyment of their property, maybe there's noise. Decisions not to invest, what I mean by this is that it's an unintended consequence sometimes of allowing home businesses is that somebody may have the means, the financial means and interest in adding on to their home or making some kind of, maybe putting a new roof on their house or maybe adding a porch, whatever it may be, but they choose not to because of what's happening in their neighborhood or what's happening next door. And so sometimes we don't see the investment in a neighborhood where there's some sort of nuisance. You can list...take a look at the other list there, noise disturbances, vehicular traffic. We'll talk about those more. I think the greatest threats though and again from the community's perspective, the neighbor's perspective is escalation. So let's say that somebody does have a successful business, they need to hire a second person, that kind of goes unnoticed for a while, they need to hire a third person, a fourth person. They get into this mode of growth, and we have seen in rural areas particularly where they are de facto industrial districts. So somebody maybe had a small shop that became a small tool and die shop that became a large tool and die shop that became a major supplier, exporter of products and, you know, products and services. And that is when they can become problematic. And even in subdivisions and neighborhoods, escalation is usually what is the greatest threat. The unwillingness to move oftentimes then plays into that. So what we...and I'll talk about this more, too, is that we try to have economic development efforts that are identifying and tracking these businesses, and that are providing business coaching or business mentoring where once

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they get to a certain point is that they are hand held and segued into a commercial district where they can thrive even more. Enforcement and monitoring is some of the greatest challenges. Traffic, structural alterations, and then managing the issues that come up. I mean the last thing you want to do as a government entity is to have to be pulled into lawsuits between two parties and trying to sort all of that out. So if we can create regulations that avoid these things, that would be good. So these issues though get ugly, so, you know, there's...and I've rode out with this person, if you can't read what's on the garage door or try to read the white text there, somebody had an operation nearby that was using a kiln and so there's wood smoke that's drifting to this person's house. And he's got, you know, medical issues, he doesn't feel like he can even leave his home because of what's happening next door to him. It gets really ugly though...and this is when the red flag should go up and we should start to ask ourselves how can we mitigate the issues better than we have in the past? And if you look at the case law for home businesses, these are just some quotes pulled from court briefs. You know, after complaints regarding traffic increase...;you know, car restoration business was granted variance, neighboring property owner sued. I mean there's just case after case after case where home businesses have caused consternation in a community. I like this one, an archery repair business displayed and sold merchandise. The town tried to close the operation, the courts decided that the town had previously interpreted home business to include the sale of products and services, musical instruments. So they already had precedent for. So if you treat one one way, you have to treat them all the same way, generally speaking. Some regulatory issues. In your code you will want to have some kind of standards for signs, whether you're permitting them or not, but the time, place, and manner standards, as our US Supreme Court uses as a term for regulating signage. You know, how big can it be; how tall; can it be lit, illuminated; where is it out on the property; those types of things. Regulating deliveries. Not to suggest that deliveries should be forbidden, it's just that you may want to have it addressed. So and I'll talk about how we typically guide communities through this process, but we do have situations where somebody has a full semi-tractor trailer being delivered into a residential area where the streets are not configured for that type of vehicle. The vehicle has to be straddling the road to make the delivery, thus gumming up the traffic. So obviously it can go way wrong, but there are ways to mitigate that. Increase of traffic, speeds of traffic. I like the middle picture at the top, these are cardboard cutouts that you can have of your kids holding a slow sign, and then you stake it up at the entrance to your neighborhood. And it looks to the driver like some kid is actually out there asking you to slow down until you realize that it's two dimensional as you drive by, and they're on the left side and you see that. We've had some communities that have had the police departments actually distribute radars to and then report license plate numbers of people that are speeding through their neighborhood. Interesting, lots of interesting things. Parking, you've seen some of this here in your community as well where every improved surface as well as the non-improved surfaces are parked by cars, sidewalks are blocked by cars, cars are parked in both directions on a single side of the road, temporary storage

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containers. All of those things can be signs of a home business gone awry. Regulatory issues, here's another one for commercial vehicles. You know it used to be this nice little magnetic sign, maybe two square feet at most, just magnetically connected to the door of your car and that was your commercial vehicle. Now they're wrapped in graphics, and it can potentially change the character of a neighborhood. If your neighbor has two or three of these vehicles parked in their driveway, it looks more like a business than it does a residence at that point. Environmental and public health. Site clutter. That's obviously not a business there, that's somebody gone crazy with Christmas decorations, but that is possibly what can happen with businesses as well. Okay, so the...and here's just a few other regulatory issues that we try to address in zoning regulations. So the laws and regulations that applied, these are pretty, this is a pretty brief section because I don't know a whole lot about your enabling legislation at the State and what your case law is here in the State. But generally speaking, we use state licensing or related regulations, state preemptions sometimes come into play. There are some states that actually say as state law that you are allowed to have a daycare center in your home, and zoning cannot affect that at all. So it's, zoning is preempted 100 percent by the state regulation. Sometimes our state legislation also limits where we can go with our zoning codes. Obviously CC&Rs, the covenants, zoning ordinances, and then processes I want to point out is also a really effective way to regulate businesses. Enforcement. Well, we typically find the major violators through the top bullet point here which is the neighbors complaining. Sometimes staff and, you know, community officials will also drive by something, it'll catch their eye and they'll report it to staff to investigate further. But inspecting is wildly unpopular, because the last thing that you want to do in America is to go into somebody's home, their sanctity of their home and see what they're doing. So planners typically don't want to be in that business at all. A lot of times it's even hard to get permission to enter onto a property to really investigate, and that in itself becomes a challenge. So one thing that we can do in some communities is use the special use permits or conditions on those permits to limit the duration so that they have to come in on an annual basis or a five-year basis or ten-year basis, whatever your tolerance level is for that to have that permit reissued. And at that point, staff will take a look at the operation and make sure it hasn't escalated beyond what was originally permitted or that it's not exceeding what the code allows. And not to be the bad guy and coming in and slap hands, but it's more to again, identify them and help them transition to a better space or to help them mitigate the impacts to the neighboring properties. Sometimes communities will ask for annual reporting and possibly have those forfeitures of their permit. Some advice to the communities. Well, licensing or registration programs, they can be effective, but I at least and this is just general advice, this is not for Maui County specifically, I don't know enough about your community to give specific guidance here. But I would suggest most communities should not have a full licensing or registration program for all home businesses. For one, it's futile. You're not going to get the writers/authors to register themselves as a home business because they don't even see themselves as a home business. Babysitters, lawn care, you know, just high school kids

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needing to make a little extra money in the summertime, you're not going to get them to register for these home businesses. It also criminalizes good people, you know, trying to do what's right and having no impact on the surrounding community. If you do require it, it should be those that have impacts like the ones that have employees, the ones that have signs, the ones that have accessory structures that are being used for their operation. So our grand advice, though, too, is that you regulate based on impacts and not at all or very, very little on uses so we don't get into the game of trying to identify specific uses. It's all about the impacts. You create categories as well of home businesses. I'm throwing out an example here of three different types. What I would call the type one is benign businesses. You could drive by them 100 times in one day and you would never see anything out of character that would suggest that there's a business being operated out of that home. There's no semi-tractor trailer in front, there's no sign, there's no extra cars in the driveway, there's no extra driving, you know, people coming in and out, there's no exterior changes to the structure, the list goes on. So you have to identify them to be able to exempt them. I would rather you not have a situation where you regulate the Type 2s and 3s in this example and just ignore the Type 1s, we want to define the Type 1s and make sure that they are fully permitted by right. Now Type 2, Type 3 and you could just go on, 4, 5, 6, if you wanted to, are where you start to see impacts. So the Type 2, it's hierarchical here. So Type 2 is where you would start to see some very minor impacts or very minor differences. You might drive by there and there's a FedEx truck in the driveway and a UPS truck in the driveway the same day. Or maybe you see a small, you know, two square foot sign by the front door. Or you see an extra car parked in the driveway during business hours. Then there's the Type 3. Type 3 might be where you actually are using accessory structures for the business. Very little of it is probably being operated out of the house, most of it is in the accessory structure. Maybe the garage doors are open, you can kind of see in and see what's going on there and you know that there's a business. It's the much more conspicuous types of operations. Now how we, what we do with these types is that, like I said, Type 1 is benign, they are permitted by right. Type 2, they're permitted, maybe you just keep an eye on them every five years or some kind of a larger cycle. Type 3 maybe has to come through a special permitting process where you can and cannot add conditions to their operation, where you invite the neighbors in to let them know that your neighbor is wanting to do this. It's something that may have some impacts. Through that process you can negotiate where they store their vehicles or where they put their sign or where they change the property, and so the neighbors actually feel like they have some say in how the neighbor does it. They don't necessarily take issue with it, it's just let's do it sensitively to the neighbors. And oftentimes things come up like oh, I hadn't thought about that but you're right, that'd be easy for me to do that, you know, I'd like to be a good neighbor to you, I'll definitely make that change. So it forces that conversation to take place. Some other advice is that, again, using tiers is that some of the categories are by right, some may have to have a special use, some may actually have to go through other processes, licensing, et cetera. We would typically have a section called uses but it's not there to list



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uses unless there's something that's strictly prohibited. Sometimes there is a use that has come into play into the community and people are just up in arms about it and don't want it. You could actually list some prohibited uses. That's one way to sort of go at it the opposite way. Instead of listing the ones that are permitted, you list the ones that are prohibited. Usually we have a general statement there though that would say something like a business that is clearly incidental and secondary to the use of the property of the home, et cetera, as a residence. So if they're using 95 percent of the building as their business and they have a little cot on the back porch, we would say that that's probably no longer a residence. And so you want to have some kind of language that suggests that people are really still living there. We also like to see a discretion statement where the zoning administrator is who interprets whether or not somebody's meeting the intent. Now that works in some communities and doesn't work in other communities, but we will typically have a discretion statement. Personnel. One thing I'll point out here, too, is that it's important to clarify residency. So if somebody maybe has a house someplace else and lives there seven months out of the year and they live in this particular house where the business is five months out of the year or two months or one month out of the year, is that still residency? So either through a definition or through your regulations, it's important to note how somebody qualifies as that being their real home. But also clarifying what's, what is an employee and whether or not employees are permitted. The Type 1, we typically would allow, I mean most of our communities would allow one employee, you know, whether that's an administrative assistant or a second person running a sewing machine. And I'll get to you how we regulate that a little bit more here in a moment. But then the operations, whether or not they're creating noise, vibration, smoke, dust, heat, glare, you can list out a variety of those. But what is considered a nuisance? I'll point out one thing with nuisances though is that that too is a real challenge. How do you measure vibration? How do you measure smoke or particulates in the air? We use those statements very broadly, and it's all an administrative interpretation of whether or not somebody is complying. So if the zoning administrator stands on the property next door and they're feeling the ground vibrate, they don't need to have a meter telling them that the ground is vibrating. We've had communities that have tried to quantify smoke, vibration, noise, dust, heat, and they cannot usually without any doubt know if that noise is really coming from the house next door or the street or the other houses next door. And so it's just an interpretation made by staff, and then that goes through the process. It's not as scientific, but the way the laws typically are upheld is that it is up to the violator or the potential violator to prove that they're not in violation. It's not up to the municipality as much to prove that they're out of compliance. Does that make sense? Is that if you say that they are breaking the law, they have to prove that they're not, and if they can't prove that they're not then you're right. So traffic, we would typically have a statement...and again, this is not specific numbers, but it would say that we're not generating vehicular traffic greater than what is typical in that neighborhood or customary in that neighborhood. So if you see, you know, ten years ago the same thing is that if you went into a neighborhood you might see a UPS truck or

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FedEx truck in that neighborhood one time a week. Today with all the shopping online and shipping...

UNIDENTIFIED SPEAKER: ...*(inaudible)*... closer.

MR. JOHNSON: Oh, sorry. Thank you. Is that we see those types of vehicles in neighborhoods every day. And so a business that's having a delivery really is not creating any additional impact than they had been or than what is customary in that neighborhood. Customers. It depends on which type of home-based business. Again, if you have three types, five types, whatever it may be is that some of those types may allow visitors. And we find that some of the most, the types of businesses that get the most complaints are the ones that you would not think would get the complaints. So somebody that maybe offers swimming lessons in their pool, they have, you know, ten kids coming at one time and there's ten cars parked in the neighborhood. Or a piano teacher or music teacher that is tutoring kids on a half hour cycle throughout the entire day, so there's new cars coming in on a frequent basis. There's one coming to pick up, there's one coming to drop off, and it just is overwhelming, it can be overwhelming. Whereas the accountant that may have somebody coming in once a week and maybe only has ten clients overall typically you wouldn't see much generation of traffic from those. The hours, this is really important. I talked about employees. When you talk about regulating the hours of operation, you've got to differentiate between employees, the resident, and customers, and I would clearly differentiate those. So employees can be there from, pick your number, 7:00 a.m. to 6:00 p.m. Residents should be able to operate at any time of the day, so if they're the one that run the business, they're the one that lives there, if they're typing away at 3 o'clock in the morning because they've got a deadline the next day, they shouldn't be in violation of your zoning code because they're typing away. Also, if your hours for customers or your regulations for customers is different and it likely may be in some of these types, is that talk about when it is okay for customers to be coming in and out of this operation. So maybe it's after the school buses come through the neighborhoods so you don't have that conflict of customers and school buses. Maybe it's, you know, weekends, evenings, I mean whatever it may be, you can sort of dial that in, but it shouldn't be one-size-fits-all employees, residents, and customers. The design of the structure. I don't know if you can see that top picture very well but there's two front doors. There's the commercial office door and then there's the door that goes into the residence. That's a pretty big structural change. That changes the character of the neighborhood but it also creates obsolescence, meaning that when that house goes on the market for sale, it may be sold at a lesser price point which then based on comps, you know, if you're a realtor and you're looking for comparables, that may just be looked at as a regular single-family residence but it was something that was significantly modified for business, therefore it really shouldn't be used as a comp. But it ends up going into the database nonetheless, and it can have an effect on property values. The bottom one is somebody bridged the gap between the house and the garage and made that their business

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space. In rural areas...in other areas that may be a good configuration. But if you...the alterations to primary structures typically talks about the exterior alterations or the home no longer looks like a home, it looks more like a business, that's something to be significantly concerned about. The exterior...the percent use of the home I'm not as worried about unless, again, it goes back to where it's a really big number and they're just sleeping in their, you know, have a cot in the back. The accessory structures, you can have size limits, you can have percentage of that space being used for the business. I talk about door and window positions. If you have a mechanic or somebody that's using their garage or a detached structure for an operation, most of the complaints come from the visual clutter they see inside the doors 'cause they're maybe always up and maybe there's tools and stuff strewn around the front of those bays. Maybe people are hearing the air ratchets, maybe people are hearing banging noises, et cetera. The thing is, is that in these standards you can actually say that it has to be an enclosed space. Now they can open up the door to get the car in, they can open up the door to get the car out, but otherwise, the regulations could say that the doors and windows have to be closed at all times, thus mitigating the noise, the dust, the sprawl of that operation to the outside. It just means that the person has to be a little bit more astute with how they're operating their business, but do think more creatively as to how you might mitigate some of those situations. Parking and loading. Your regulations can say where they're able to locate, whether it has to be on a hard surface, an improved surface or not, and even the quantity. Give somebody an allowance for how many cars should be able to be there for the residence itself, you know, the kids, the adults that live there, but then where do the employees park and have specifics as to where that might be and how many of those there might be. Exterior storage. Maybe the business has a stockpile of something or needs to store outdoors, address that. Certainly wouldn't allow that in a Type 1 or Type 2 but maybe in the Type 3, 4, 5 some of that could start to be allowed, and maybe it requires screening. Maybe you have to have a minimum lot size to even qualify for that. So if somebody has ten acres and they want to do some outdoor storage, is it really going to have any impact if it's 300 feet away from their nearest neighbor and it's a woods in between the two? Probably not. So under certain circumstances, some of these modifications or uses of their property would make total sense. In other cases it doesn't, so calibrate in where some of these would maybe be permitted and where they may not be permitted. Utility services. We've seen home businesses that have had, you know, 400 amp services. You know so, you know, most homes would have 100 amp service, some large homes may have a 200 amp service, but you receive 400 amp services into a home, that's...you start asking yourself, why would they need that, and you find out that they've got industrial lathing machines or equipment that's in there, running major equipment, and it's probably not a home business at that point. Or maybe that's at least a breaking point for whether it's a home business or not. Signs, max/min, height, location, type, quantity, et cetera. Economic development. This really is where Steve Jobs and Wozniak started building the first Apple computers, just as an example. Encouraging home businesses is a good thing. Having that safety net of economic development

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strategy where you can help them move to the next phase of their operation, get out of the incubator stage and into full operation mode is a critical part of the dialogue that I think that any community should have when they're regulating home businesses. And believe it or not--I hope I haven't put too many people to sleep--but that is the end of the presentation. I'd be happy to answer questions if you have any.

CHAIR COUCH: Okay. Members, thank you for sitting through this long presentation. It was a very good, very comprehensive presentation. We're at our mid-morning break time so this meeting will be in recess until quarter till. Okay. . . .(gavel). . .

RECESS: 10:33 a.m.  
RECONVENE: 10:54 a.m.

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of September 5<sup>th</sup> please come back to order. Alright, Members, I wanna thank Mr. Johnson for coming up with a very comprehensive PowerPoint and hopefully you've taken some notes, have some questions for him, but I first wanna have Mr. Spence make some comments on what he saw and compared to what we have before us.

MR. SPENCE: Good morning, Committee members. And first I want to thank Bradley for the presentation. I...so many of the things he said resonated with us. I think it's remarkable that as he went through these issues and these are the things you're going to encounter and these are the problems that people have and this is how to address it, that so much of that was so many of the things that we're thinking of or wondering about. I thought that was just a very excellent presentation. My feeling on this bill and on...I mean a bill in this direction, whatever form it takes. When we, you know, we're always talking about the cost of living in Hawaii and, you know, diversifying our economy, providing opportunity for our residences, and, you know, our Zoning Code to this point we've allowed, you know, home occupations which that was a major step all in itself. People selling stuff on eBay and then taking it all to the post office and mailing it out, you know that, you know, I would hate to ever have to enforce on that kind of thing, so we finally made that legal. Now we're taking another step where, you know, perhaps we can have incubator type businesses, people can start something and contribute to our economy and contribute to the betterment of their own lifestyle and the affordability of living in Hawaii. I think this is just a very, very positive step in our Zoning Code and towards the betterment of our community. The...I had opportunity...and this is something that I've thought about since even before becoming Director and one of the things that Bradley spoke of is we have tried so hard with our traditional Zoning Code to list out all the conceivable uses that, in our Codes of what's permitted, what's not permitted, and it hasn't worked. You know I mean our Zoning Code was formed before we had cell phones, before we had Internet, before we had, you know, I mean if everybody

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remembers there landline Internet access, you know, the sound of your modems going off and the little handshake and everything. I mean we've come just an amazingly long ways from those days. Our Zoning Code has not kept pace with technology and with innovation, and I think the proper way to go with this is to focus on the impact and the nuisance base rather than focus on the use. Like I said, I had opportunity to be on Don's Tuesday morning show and that's one of the things that we talked about. I think that's something we should focus on for the good portion of our Zoning Code, not just the use but what is the impact of those. Because those are the things that when things come down to it, those, that's what we deal with. We deal with noise, vibration, odor, smoke. The Fire Department was here, we could talk about hazardous materials. Let's deal with those things. Let's deal with the character of a neighborhood or, you know, if you want to talk about in other areas, you know, let's talk about the impacts or appearances. Let's get away from so much the way we've traditionally thought about our zoning. So perhaps just a couple of thoughts on the testimony and, that we heard. I really appreciate a lot of the comments that have been made, they're very thoughtful. Specific to one, they were concerned about repair of farming equipment. We would consider that already a permitted use within the Ag District. If you get over into Rural, we would think about, you know, we would look at that a little more carefully, but right now, you know, I think everybody understands farm equipment has to be repaired, and, you know, we're supportive of that. And I'll speak with the testifier on that. Garage sales, we, I agree. A long time ago when I was single I actually dated somebody who had an almost daily garage sale, and that was a major problem. And I even asked her about that. But, you know, parking alongside the road, the traffic, the noise, the cluttery [*sic*] appearance. I understand we're, we are dealing with that in a proposed amendment to the Residential Code. I would also point out to the Council as far as these kinds of, you know, we're talking about businesses in residential areas. We already allow childcare, you know, and it's based on the size of lot they already own. But, you know, there you have pickup and if you want to term it in this way, pickup and delivery, you know, already, you know, and during peak hours. You know and we consider that, you know, an important public function. So we're, you know, we're talking about something that's not unusual already, and we don't have that many complaints within our, you know, Department regarding noise from childcare, occasionally but not that often. And maybe the last comment I'll have on this and I look forward to discussing all of these things, the enforcement aspect. The complaints are not about a specific use, the complaints are about noise and like what Mr. Bradley pointed out, they're complaints about noise, odors. The predominant one is noise. You know so there is dealing with the nuisance and not so much the use. We are complaint driven predominantly. If, you know, if somebody calls in and files a complaint about somebody repairing automobiles and that's probably, as far as noise based we probably get, first one is probably vacation rentals, the second number, frequency of complaints will probably be auto repair. So, you know, there was testimony about that, so, you know, certainly we can talk about that. But again, it's about nuisance, it's not

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about the specific use. So, you know, we're happy to discuss all of that with the Committee. So I think that . . .*(inaudible)* . . .

CHAIR COUCH: Thank you, Mr. Spence. We have Lieutenant English here, too, as well from the Fire Department. So if you have any...I think you have a couple comments you'd want to make. So if you can swap with Mr. Johnson real quick and let's hear your comments.

MR. ENGLISH: Thank you, Chair. Good morning, Council. Lieutenant Scott English from the Fire Prevention Office. Just a few concerns. Like I said, we've been through this process with the Special Use Permits for home-based businesses before. The concerns is where do we draw the line as far as a small business or a major business from a home use. Our Fire Code addresses special occupancies as far as, I mean automotive repair, car painting, industrial baking. So do we allow these in these residential areas? Do we would have to meet the Fire and Building Code once they apply for these special uses? Other issues is access, Fire Department access road. So if, I mean we have substandard streets in a certain area and we allow these businesses to operate, now these cars may be hindering the access for other buildings in the area because they're using the streets for parking. So it's, like I say, it's going to be a tough one. As far as a small business operating a computer out of a home, we don't see a problem with that, but where do you draw the line as far as allowing a small business come to the outside of a...come into a more commercialized business as far as maybe doing some kind of industrial baking, automotive repairs, maybe you have a company bringing in special type of chemical to make some kind of suntan lotion. It's like I said, where do we draw the line as far as how much chemical can you bring in to operate your business? And like I said, the enforcement...after we do allow it then the enforcement is going to be very critical, and if we do have enough, Planning or Fire or Building Department have enough people to do this enforcement to regulate these businesses. Thank you.

CHAIR COUCH: Okay, thank you. Okay. We're going to have Mr. Johnson come up. And, Members, in your copious notes you've been taking, I hope we have some questions for Mr. Johnson. So any opening remarks before we get to the questions, Mr. Johnson?

MR. JOHNSON: Yes. Actually I'd like to make two additional points as well --

CHAIR COUCH: Okay.

MR. JOHNSON: --as one clarification. The two additional points, one is that home businesses can be a direct competitor for your commercial districts, and if you allow those businesses to be so easy to have a home-based business that is competing at a lesser price point than the commercial spaces in your community, you may see a transition of those going vacant. So the, your commercial districts will possibly have some impact. Now

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somebody that's doing international business and they're providing a service likely is not going to be someone that would have been in those commercial districts to begin with, but if it's something that is shifting out of your commercial districts, you may want to have some, at least keep an eye on that and make sure that it is not having some unintentional consequence. The second thing is is that we as...I myself have always taken an approach of innovating. Instead of searching the web and trying to find what other communities have done, what we do...what I do is I really take a step back and start to really think about the issues and really think about what the solution should be. And we're...I often am sort of inventing new directions for regulations. And something that just came to mind while I was or after I presented is that you can have voluntary restrictions apply. So say there is a neighborhood in your County that wants to have a stricter standard than the code would allow. So maybe the code allows a Type 2, Type 3 home occupation in a neighborhood and that neighborhood doesn't want to have the Type 3s. Is voluntarily if they could petition for an overlay or just for a lack of a better term, that would apply to just their neighborhood. It's not something the County would imply on them or enforce, or force on them, it's something that they would volunteer to do, thus protecting their neighborhood. It's a situation where if covenants aren't strong enough to protect them from that, and the code is not strong enough to protect them from their fears, is that they can self-impose a regulation. So that's the second point. The clarification I wanted to make is that I did state...in the presentation I probably stated it too cryptically as far as who's responsible for proving that they're right or wrong if there's a violation. Zoning is a police power and it is treated the same way as an officer that may have witnessed you driving erratically or maybe you went across the center line and they thought you were driving recklessly. It's an opinion. I mean that person is making a judgment based on their professional experience, based on their observations. Now they've got cameras in their cars so I guess they can prove it, but historically we didn't have that evidence. And so zoning is the same thing is that if you observe as a zoning administrator where you believe there to be a violation or there's enough evidence that you feel like you need to pursue remedy is that if that person feels aggrieved, it's up to them to prove that they are in the clear. It's not up to the municipalities to hire a bunch of experts, to hire a helicopter to fly over their house, to take video camera shots of it and just sit out on the side of the street and count cars and to provide all that evidence. If they feel like and they have enough intuition and enough evidence, it doesn't all have to be scientific evidence, is that they can pursue remedy of that situation. And it's, again, it's just like a police officer, they're using their intuition, their best experience to enforce their laws. It's the same thing with zoning. And there's sometimes the misperception that the county would have to have overwhelming evidence against somebody before they can take an action, and that just generally has not played out that way in the courts. So not to say they can't. and what I really want to clarify is that Planning staff couldn't just go in and knock on the door and say you're in violation and have nothing, they have to have some degree of evidence and be able to document that, but it doesn't have to be

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as scientific or as thorough as some people may imagine. So that was the clarification. Thank you.

CHAIR COUCH: Okay, thank you.

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Yes. Members, I was just going to ask for --

VICE-CHAIR VICTORINO: Oh, okay.

CHAIR COUCH: --questions. Go for it, Mr. Victorino.

VICE-CHAIR VICTORINO: Thank you, Chair. And, Mr. Johnson, thank you very much. This is a dilemma that has existed in almost all communities, it's not just unique to Maui, and we've discussed this as many years as Ms. Baisa and I have been here. And you hit some very interesting concerns that I have. You know the first one you just brought up is the unfair competition, you know. If I do it out of my house, I pay no rent, probably no insurance, probably no utilities other than my home, and I'm already paying that. And so what does that do to the guy who has a retail outlet or has a business outlet who pays all of that, who's a community-minded person, contributes to the community in many ways you know both for our nonprofits and for our schools and all these other things? There's a whole bunch of issues that, you know, we fail to see until we start to lose them, then we see what we failed to do.

MR. JOHNSON: Right.

VICE-CHAIR VICTORINO: And I think this is important. You mentioned about traffic, that don't put the number of cars, but what would be the usual amount of traffic coming in and out of that neighborhood. Well that can vary from time to time. I can see neighborhoods right up here that at 7 o'clock in the morning you've got lots of traffic 'cause there's two schools right in this...one mile apart, another school right here. Okay, so traffic even in neighborhoods can vary greatly. So how do you say what's traditional or what's regular traffic? Okay. So that was another one that hit me right away. Another one that hit me was the nuisance issue. What's nuisance? Because nuisance to me may be not to him or to you or to others. Right now in my community, in my little neighborhood a residential house that was originally owned by an elderly lady who had retired, built the house, then she decided to sell it. And then a young couple bought it with a little, sweet little girl which my wife dearly loved and we were very close to them, but they moved back to the mainland because they had something but they didn't sell it, they're renting the house out. Now who's in there? A solar company. A solar company. There's two trucks, there's cars, there's a change in the neighborhood.



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MR. JOHNSON: Right.

VICE-CHAIR VICTORINO: And none of us because we're local really make a big issue of it. And okay, and there is, that's the other part of this community. You have variable tolerance levels depending on the neighborhood in general. Okay. So I mean to understand, I'm just trying to give you a better overview, you know, to understand our community is real different. So again, the question I have for you and I like that statement was to kind of set up what you think your community could tolerate. And I brought another issue, Mr. Chair, to Madge and I think this is very important, sometimes I hear this from people out there that say you exempt Molokai, you exempt Hana, you exempt Lanai, how come you don't exempt Wailuku? Why can't Wailuku decide what they want? Interesting parameters. You know we're one island but we're individual communities, and you mentioned that, the community should have that ability to make decisions on what should and shouldn't be there. And what communities...Kehalani, Wailuku Country Estates, I got various communities that would think very differently, very differently than each other. So, you know, I like the idea and you've got a good...I think the thing I like about this is impact based. You know if we can figure out what impact is and what impact really means to people in that community, I think that's important. I think society, our American society went from where it was where everything was kind of self-contained and everything was together and you had a lot of businesses, too. Separating business and residential, and now it kind of went back. It seems like we kind of revert back to the past when we come into the future. The past is the future. It's funny how we do that. But anyhow, my question is this impact and community-based decision making, how prevalent could that be? Because if one community, for example in my area, I have an agricultural community right up here called Wailuku Country Estates. A lot of them do ag, it's rural...I mean it's actually zoned Ag and they do ag. And right across the hillside is Wailuku Heights and a very urban, Kehalani, are very urban areas. Basically urban, and they're not even a mile apart, there's just a valley that separates the two. How do we address these communities in having a business here and a business there? And, you know, again, I know we're in the early stages and there's a lot of work to be done, but I think the concern I have is it's really broad based and when we have sharp attorneys out there that take that and use that against you in a court of law, that's no fun anymore. So anyhow, I think I've given you three or four questions. Please forgive me.

MR. JOHNSON: Sure.

VICE-CHAIR VICTORINO: I think you've given a great presentation. I think you've given us a good track to run on, but there's a number of concerns and I think others have some, too.

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MR. JOHNSON: Sure. The unfair competition, I just, I spoke to that a little bit. It's, it's just you've got to find the sweet spot, meaning that you're not draining your commercial areas and you're not closing off all opportunities for home businesses. There's got to be a nice compromise. Now home businesses, if they're subsidies to an income, they typically aren't going to compete with your commercial districts. But if they're full enterprises, they are more like an occupation, those are the ones that potentially are competing with your commercial areas. And there's not any perfect solution, but just like any regulation in a zoning ordinance, you have to try something and evaluate its success and tweak it, recalibrate it, again revisit it after six months or a year and just keep doing that. Part of that's communities evolving and you're learning new things, but also it's just maybe you didn't draft it right the first time. But here's a little hint as well which is that you can write a zoning ordinance or a section within a zoning ordinance, you can get 80 percent of it right in about a month's time, because it's just sort of obvious stuff. We don't want there to be 50 cars parked on a residential lot. I mean you can dial in the big numbers pretty quickly. It will take you six months to address the next 10 percent and calibrate it. It'll take you another two years to calibrate the next 10 percent. So the thing is is that you don't want to hold up that 80 percent that everyone can agree on, you want to get to a point where you can all say let's try this and not get mired down in year after year of trying to create something that's perfect on day one. And honestly, most zoning codes, we as a company, my policy has always been that you've got me for a year after you adopt it, because you're going to learn all kinds of things that we would have never learned prior to adopting it. And I'm here to take care of you and make sure that that next draft also gets adopted. So you adopt my code and then we learn all we can over the next year and then we calibrate it again, and that's what, that's when I really part ways with that community. But we can really dial it in so much better after that year of using it. So I would encourage you to not get mired down in trying to get a perfect code but get something that everyone generally agrees to, try it out for a year, and then recalibrate it again. You sort of spoke about just the uniqueness of districts or sub-districts within the County, and it's not as common but it is certainly something that we've been a part of. I've written codes where the east side of a community has one regulation, the west side gets, and just for simple terms, gets a different regulation because they're unique. Or the core of the urban area gets one standard and the suburban areas get something else and the rural areas get something else. Now, you know, theoretically you could up with in this, on this...in your community you could probably come up with 50 sub-districts, and you don't want to have 50 home business regulations. It would be maddening for Planning staff to try to regulate or to enforce that. But some reasonableness of calibration, so maybe you have two different Type 2 home businesses, one that's for one part of the island, one's for another part of the island, and they're calibrated to sort of meet those thresholds of what's tolerable and what's not tolerable. You know those are reasonable. But again, you just gotta be real careful not to create so complex of a system that it then starts to have unforeseen consequences.

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VICE-CHAIR VICTORINO: Well thank you, Mr. Johnson. And you have echoed what I've said many times in this Chamber, there is never a perfect policy, perfect ordinance, perfect law.

MR. JOHNSON: There's not.

VICE-CHAIR VICTORINO: And until you get to a point where you've seen it and the residual effect and only then you really know what you need to do --

MR. JOHNSON: Right.

VICE-CHAIR VICTORINO: --to make changes. So thank you.

MR. JOHNSON: You're welcome.

VICE-CHAIR VICTORINO: That was good clarification in my mind, because I agree, the 50 neighborhoods with 50 different rules, my God, I mean Mr. Alueta, his hair would definitely be grey and gone by that time. No offense to you, Mr. Alueta. The beard would get long. But, you know, I think we're on a, this is a good first step. You know there's so much more to discuss, and this is not going to be done today or next week or next month, but I think you've heard the testifiers, very unique in their own areas. We've got ag, we've got rural, we've got urban. Not too much urban in this County, you know, most of urban is right here in my district, you know, and in Mr. Guzman's district, but the rest is pretty much rural, some in South Maui so. Anyhow, I'll let the others ask questions. I have a few more but I'll wait and see if they ask them. If they ask them then I'll get the answer, if not, then I'll come back and ask again.

CHAIR COUCH: Thank you, Mr. Victorino. Members, go right down the line. Mr. Guzman, any comments, questions?

COUNCILMEMBER GUZMAN: Oh, thank you, Chair. I'd also...I just want to make a comment of thanking you and the Council Chair for allowing Mr. Johnson to be present. I know he traveled from the mainland. But I believe that his presentation was an eye opener for me. In originally reviewing the draft ordinance it seems very general, but then after reviewing the presentation, wow, we have a big job ahead of ourselves in tightening this ordinance and maybe even revamping the entire process, the entire ordinance. I'm particularly interested in the regulating impacts, you know, the different types that they have, the benign, special use, and so on so forth. And so I think those are, those factors or components need to be reexamined as well. My other comment would be enforcement. I don't know how we would go about enforcing all of these type of home-based businesses. And number two, how many are existing right now out there? And number three, what is the group or constituents that are in support of this, like how many

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people want to go into home businesses? And so those are different factors that need to be looked at as well. Is it really something we really need to do or is it just a small minute minority that really, I mean, are we going to change the entire way of life here to accommodate? You know those are some factors that I want to look at. Thank you, Chair.

CHAIR COUCH: Okay. Just to point out some of the statistics that as Mr. Johnson said were, you know, really tentative at best, but the best that are available at this point that 52 percent of all businesses in the United States are home-based businesses, home businesses. I think it was saying 12 percent --

MR. JOHNSON: Yeah.

CHAIR COUCH: --12 percent of --

MR. JOHNSON: Households.

CHAIR COUCH: --are --

MR. JOHNSON: Right.

CHAIR COUCH: --have some sort of business coming, going out of them. So that's, those are pretty large numbers, and that's from the US Census and a few other things. And so that appears to be along the numbers that we can see and we hear about in our complaints in our offices, at least my office and I'm sure other people. That, those numbers seem to be fairly reasonable or fairly close. So we're looking at some numbers. I don't know that the exact numbers, but we're looking at some numbers that we will be at least affecting so we can enforce kind of thing or allowing people to do things that they've been doing for a while that now make them legal or vice versa. People who are doing things that just don't fit in a neighborhood, we can now say, hopefully after this we can be able to enforce upon them either complaint based or otherwise. So those are some of the things, the intent of this legislation and why we're going after it today. Any comments on Mr. Guzman's comments?

MR. JOHNSON: I think you've touched on a couple of the...I mean how to enforce, that's the biggest one I think for most communities is that you never have enough planning staff, you never have enough neighbors that are calling in for, you know, their concerns, they don't want to ruffle feathers, they don't want to have issues with their neighbors or raise those issues. So in some communities it's a cultural thing. So some communities you'll actually find that the neighbors are reporting their neighbors because that's part of the culture, they're comfortable with that, and other communities are very shy to do that or fear repercussions for doing that.

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COUNCILMEMBER GUZMAN: Right.

MR. JOHNSON: So and I think that that's going to vary from community to community, state to state, but, and maybe even district to district here, but always is going to be the toughest issue. But the, if I could say one thing is that sometimes we have testimony in a community where somebody will say why are we going to have all these regulations, we don't have the staff to enforce it, and my counter to that is that it's not about having regulations that perfectly match up with what you're capable of enforcing. Because it's the case that comes to your attention five years down the road that if you don't have something on the books to be able to enforce it --

COUNCILMEMBER GUZMAN: Right.

MR. JOHNSON: --then you're out of luck. So if you could only draft regulations that you're capable of daily enforcing, you would only be able to regulate the most heinous things that could go wrong in your community. And there's not one community that I've ever been introduced to that has the staff capacity to enforce everything on a frequent basis, it's just not possible. So you're not anywhere out of norm in that regard, but those principles, those regulations are at least there as a backbone for some kind of silly thing that happens in the future for you to take action on and to protect the neighborhood.

CHAIR COUCH: Okay?

COUNCILMEMBER GUZMAN: Oh, just one more comment --

CHAIR COUCH: Follow up? Sure.

COUNCILMEMBER GUZMAN: --Chair. On the, on Pages 5 and 6 I just wanted to follow up with the Agricultural Districts. I know...

CHAIR COUCH: Five and six of our Code?

COUNCILMEMBER GUZMAN: Of the, yeah, of the code, yeah, Page 5 and 6.

CHAIR COUCH: Well before we get to the...let's let him go...let's do what we can with him and then when we --

COUNCILMEMBER GUZMAN: Alright.

CHAIR COUCH: --when we get into the meat of the thing...

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COUNCILMEMBER GUZMAN: Okay. Sure, sure.

CHAIR COUCH: And like you say, potentially we're gonna, we may have to scrap this whole thing and go a different direction if that's the will of the Committee. So I'm not sure, at least now while he's here that we'll get that deep into the Code.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: Okay, so hold...

COUNCILMEMBER GUZMAN: So let me ask Mr. Johnson.

CHAIR COUCH: Yeah, go ahead.

COUNCILMEMBER GUZMAN: Have you had an opportunity to review the draft?

MR. JOHNSON: I got a copy of it yesterday afternoon, so with all the other things that have been happening, I have not had a chance to read through it all.

COUNCILMEMBER GUZMAN: Oh, okay, okay.

MR. JOHNSON: I've perused it but not thoroughly yet.

COUNCILMEMBER GUZMAN: Okay. But in your, I guess, brief review of it, your recommendation or your experience would dictate it needed more work on it, is that correct?

MR. JOHNSON: Sure. I mean for instance as I gave in the presentation some thoughts about timeframe. So the hours of operation just as one thing I would point out here is that it just talks about the hours of operation of the business, but to me, it needs to be broken into the employee that may be working there, when's their hours. The homeowner should be able to work around the clock if that's their choosing. Well I'll say that with a caveat of if it's an outdoor, you know, an auto repair business, you don't want them working at 3 o'clock in the morning and keeping the neighbors up. So but I think that you need to drill into that instead of having sort of one general statement is to think about the telecommuter that may be working on a project in the Middle East and there's a time difference. So they actually have to be on their phone or on their computer at a time that it's convenient for their client in the Middle East. So to me it's just, that's just too general of a regulation. So that's just one example.

COUNCILMEMBER GUZMAN: Chair, can I ask --

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CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: --the Planning Department more questions?

CHAIR COUCH: Sure, sure.

COUNCILMEMBER GUZMAN: So I'm a little bit, you know, not confused but if you can clarify. We have our residential Business Districts, correct? Or Business Districts, you know, and we have special conditions on what you can use for business in those areas. So if this was implemented, this home-based business, what would be the difference between Residential and the other zoned areas where it's Business, R-1 but R-2, you know, where you're having hybrid type mixed use? I mean I don't see the difference anymore, why even have a Residential zone if we're going to implement a home-based ordinance like this?

MR. SPENCE: Okay. And I think that's a valid question. The first thing that comes to mind is scale. You know our Business District you can have, you know, a 300,000 square foot shopping center. You know this is required to be...if you allow somebody...first off, the business person has to be the occupant of the house, so, you know, and it has to be in the scale of the residence, and it can't be distinguishable, at least the way this is written it cannot be distinguishable from any other house in the neighborhood. I mean so you're, the character of that residential neighborhood is to be maintained. So by, just by nature it's going to be really small, it has to be quiet, otherwise there's other issues that kick in. You're, you know, it's just you're limiting, the way this is written you're limiting the amount of customers you can have, et cetera, et cetera. So it, there really...I think this is much more codifying what's already happening in our residential neighborhoods rather than adding something, and, you know, it's providing some balances. So we're allowing what's already happening in our neighborhoods but not too far. Putting a limit on what we could do. So yeah, they're two very different things.

COUNCILMEMBER GUZMAN: But...

MR. SPENCE: I had...is...Mr. Chair?

CHAIR COUCH: Go ahead.

MR. SPENCE: I had a comment on enforcement and I appreciate the comments already made. Maybe just for clarification, our enforcement is predominantly complaint driven. And then, you know, and we talked about there's cultural differences between neighborhoods and whatnot. The, we do see, there's a lot of these home-based businesses are, that exist. Nobody knows what they're there, that they're there, nobody...I mean some of our really prominent architects, you know, work out of their houses. I note the, when you go to get

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a marriage license, those businesses licensed by the State are in residential neighborhoods. Nobody complains about those, I mean nobody. The ones that we get complaints about are noise, clutter, we occasionally get one about smoke, you know, somebody who's doing something and it smells throughout the neighborhood. I mean it's the really obnoxious things that...and people feel really justified in calling those things in. Other than that, I mean it's...and traffic is one, but we, other than that, those are, you know, there's a lot of businesses operating right now that nobody knows about and we never will, and that's fine because they're doing their thing and they're being good neighbors so.

CHAIR COUCH: Okay. Thank you, Mr. Spence. You --

COUNCILMEMBER GUZMAN: Oh...

CHAIR COUCH: --ready to pass?

COUNCILMEMBER GUZMAN: I just need one more question.

CHAIR COUCH: One last one.

COUNCILMEMBER GUZMAN: So, Mr. Spence, when you do find those people who are, I guess, allegedly nuisances, what does your Department do at that point?

MR. SPENCE: Well, there's two different ways or two different sections of Code that we enforce under. I shouldn't say Code. One is under the Zoning Code, it's 19.5.30, and that lays out enforcement. And then there's also, if you're in the Special Management Area then we have Planning Commission rules that we can enforce under and it reflects State law. So under the Zoning Code we--and we have administrative rules for those as well--we issue a notice of warning first. Somebody calls in, we'll go out, we'll send an inspector out and if there's something perfectly obvious, we'll talk to the guy and...or girl, and if there's a real problem there, we'll issue a notice of warning. Okay, that's a written document that we send certified mail, and so they're on notice that they have an issue. And they either need to stop that activity or, you know, we'll sometimes send them another notice. Sometimes we can even go, you know, to violation. Under SMA rules we can go straight to violation without a notice of warning. So like somebody builds a seawall with no permits or repairs or adds on to a seawall or, you know, builds structures on the shoreline or any number of things in violation of SMA, you know, we can go straight to violation and say hey, you have to stop this, you have 30 days to take it down or whatever the terms are. And they need to do something about that, and then fines start kicking in.

COUNCILMEMBER GUZMAN: Yeah.



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MR. SPENCE: And in SMA, fines need to be settled by the Planning Commission. For regular zoning violations under Zoning Code, we can approve settlement or--I forget--which needs to be, go to BVA and they get approved there. But they can appeal. Yeah, we can approve, Planning Department under zoning, we can approve settlement of fines. If they decide to appeal, there's always a case to appeal either to the Planning Commission or to the BVA if they think the fines are excessive or they're not violating any law, you know, there's always that right to due process.

COUNCILMEMBER GUZMAN: Kind of complicated in terms...

MR. SPENCE: It is.

COUNCILMEMBER GUZMAN: Yeah.

MR. SPENCE: It is.

COUNCILMEMBER GUZMAN: Thank you, Chair.

CHAIR COUCH: Thank you. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. And thank you for bringing Mr. Johnson over, I think he's done a great job of clarifying some issues and adding some very valuable perspectives. One of the things that I was happy about is the, you know, the Type 1, 2 and 3, and I totally agree that we want to leave the Type 1s that aren't hardly even noticeable businesses going on in neighborhoods. Because I don't want us to be overbearing and I, and also it makes no sense to put that additional burden on the staff. But the question that I had for you was in the Type 2 and Type 3 circumstances, would you recommend that we have a minimum lot size tied to each type? Because I, my general feel is that there, once you go out of the home itself and you start working in the garage or doing things outside that are going to cause more opportunity for becoming a nuisance, distance helps solve some of the challenges. So have you seen situations where lot sizes have been implemented or minimum lot sizes have been implemented?

MR. JOHNSON: Sure. Good question. The, and again, just if you think about this as, is regulating impacts or managing impacts, if somebody...and I'll use this...you know in my zoning codes we don't typically recognize retail uses and list them all out and say this kind of retail use is permitted, this type is not. I'm just going to use this as an example. But we would allow an automobile dealership in the, as a Type 1 retail use or a Type 5 retail use. Now, you know, Type 1 would be allowed like neighborhood commercial whereas a Type 5 would be edging on the side of more of an industrial park or, you know, stuff that you may not want to have. And I bring this up because if the dealership

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“sells” a type of car and it’s all contained in a single building and their clientele is very small. In my town, in the town that I live in I don’t know how it came to be but there’s a Bentley dealership and there’s not even one in Chicago, so why it’s in 25,000 population Zionsville, Indiana just outside of Indianapolis no one knows. It used to be a Rolls-Royce dealership before Rolls-Royce stopped making cars. But the point that I want to make here is that this dealership is a very small building with a big picture window across the front or, you know, a series of windows and there’s two cars in there. It can only hold two cars, it’s so small, and they have one small bay in the back where they repair those cars, the door is always down. You could picture this operation next door to your neighborhood, but most people would say well I don’t want a car dealership next to my neighborhood. The point being is that depending on how it’s designed, depending on how it’s operated, it, that’s what determines its impact. There’s another great example that I can picture in my head of an automobile repair shop, a full commercial operation that’s immediately adjacent to a car dealer...or to a neighborhood, and the neighborhood loves it. They love it because there’s no outdoor storage of vehicles at all. The bays are off on an alley, so the front that everyone sees from the road is all, it looks like storefronts. The building’s been really well designed to fit into the character of the community. And there’s just no...you could drive by it ten times and you would never know that it was an automobile repair shop. They’ve mitigated the noise, everything. So to your question, I would say that certain potential impacts you could have a minimum lot size. So if they have, if they are going to use external buildings, if they’re going to use, if they’re going to have more than five employees where they have to have spaces for those employees to park or if they’re going to have outdoor storage, I did mention outdoor storage possibly having a minimum lot size. But otherwise, I don’t know that I would put a minimum lot size on there, because again, it’s about how they operate the business. I mean you could have a motorcycle repair shop in somebody’s garage and you drive by it 100 times and you would never know that it’s there. The neighbors may not ever know that it’s there. Just because it’s an accessory building doesn’t mean it’s going to be an impact. So again, I would just focus in on the impacts that could have, and say that yes, we need a buffer separation from the neighbors in this particular case.

COUNCILMEMBER WHITE: And the second part of the question is for Types 2 and 3, is there a change in the handling of the tax classification or the rate?

MR. JOHNSON: Good question. You know that scenario doesn’t play out that much at least in the states that I work in, meaning that the county doesn’t have that authority, it’s all state driven, and so local jurisdictions just don’t even have the options of doing that. And so the assessors though, unless it was a clearly commercial evolution to that property, meaning that it has gone from predominantly residential to predominantly commercial, they probably wouldn’t take any notice of it and would not change their tax status. But that’s the Midwest. Home businesses certainly can get, go beyond residential character, and I think at that point you want to, you would want to disincentivize somebody going

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beyond that point. And so using that financial burden or additional cost of doing business would be probably effective. And this is going back to the earlier question of unfair competition. Is that if you allow all residences in the County to be de facto Business Districts, you are going to bleed out the vitality of your Business Districts, because...

COUNCILMEMBER WHITE: Right.

MR. JOHNSON: So somebody in your Business District is viable, somebody starts a home-based business that starts stealing their clientele, their only resort is to open up their home-based business to be able to compete with the other one. And so at some point if you say that you're a very vibrant and no longer a residential character, you're going to pay a higher tax rate. Maybe it keeps it from being a major competitor with your commercial districts, I don't know. I mean, again, that's something that you just have to calibrate over time of using it and figuring out what the best solution might be. But I could see that as a good, possibly a good thing.

COUNCILMEMBER WHITE: We do have that authority here.

MR. JOHNSON: Yeah, I understand that.

COUNCILMEMBER WHITE: We have a situation where we've allowed for bed and breakfasts --

MR. JOHNSON: Right.

COUNCILMEMBER WHITE: --and obviously the person is a homeowner. So their tax classification provides a higher rate of tax, and so it's, as you say, it's a balancing. And I'm not sure that we could do a great job of coming up with something that makes financial sense for each kind of business, but it's something we're going to at least have to take a --

MR. JOHNSON: Right.

COUNCILMEMBER WHITE: --run at.

MR. JOHNSON: But the tax rate would be the stick version, meaning that you're using something that, to sort of prevent somebody from going too far with their home business.

COUNCILMEMBER WHITE: Right.

MR. JOHNSON: But the carrot option is where you have an economic development infrastructure that is handholding them through, mentoring them through an evolution

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process where they get into your Business Districts and even into subsidized situations where an incubator that's actually in your Business Districts that is the next step in their evolution and then, you know, really helping them to grow as a corporation. I mean that's a better, I mean I'd always like to see the carrot come out before the stick. But I do think that you've got to figure out some way to keep those from getting too big and therefore diminishing property values, quality of life in the rest of the neighborhood.

COUNCILMEMBER WHITE: Right. Thank you.

CHAIR COUCH: Mr. Spence wanted to comment on that, too.

COUNCILMEMBER WHITE: Oh, sure.

MR. SPENCE: And this partially goes along with the question Mr. Guzman asked earlier. I agree there could be people leaving the Business District or our Light Industrial District, because that tends to be the lower rent and the, where the incubator, the really small businesses start out because rent's lower, it's not very attractive, et cetera, et cetera. But you also think about...I want to alleviate some of the concerns with, you know, our Business Districts, you know, evaporating. You know we're not going to have Guri Guri running out into, you know, the Residential area. We're not going to have a Starbucks, you know, open up next door to anybody here. We're not talking about restaurants. You know we're not talking about any of the higher volume kinds of places that would, the volume that would, that is required for a successful business. I don't think you're going to see sporting goods stores. Maybe you'll get the archery person like he was referring to, but you're not going to have Sports Authority or you're not going to have, you know, any of those kinds of things, it's just because it requires a larger space. I mean so keep...when, as we go through this, you know, the requirement that it be within the scale of a residence, and where at least as it's drafted there's a limitation on the floor space that could be used. Or just, you know, Bradley alluded to, I mean there are built-in limitations. I don't think we're going to see a mass evacuation of our Business Districts. But, you know, I would think some of the very smaller businesses, you know, yeah, they'll probably take advantage of the opportunity.

COUNCILMEMBER WHITE: Okay, thank you, Chair. I'll look forward to your upcoming draft.

CHAIR COUCH: Chair Baisa?

COUNCILMEMBER BAISA: Thank you very much. We've been looking forward to this day for a very long time as Mr. Victorino mentioned. I think for the past seven years we've been hoping that at some point we would get to crafting a home business ordinance, and now it's even more complicated 'cause we're not sure about the title of this. But anyway,

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thank you for all the information you brought today. It certainly helps us, you know, have a broader concept of what we're talking about. But for me I've always wanted to see this happen, and the reason I want to see it happen is because I know it exists. I don't think we can be in denial. I can describe a neighborhood for you, a residential neighborhood with quarter acre lots and some smaller that have a hairdresser, a childcare facility, landscapers, a trucking company, a floral company, auto repair, and they constantly do garage sales and home parties. That's just one block. So, you know, this is something that is prevalent in our community, and when we craft an ordinance we have to be very careful because we also, you know, while we have to think about the impact on the businesses and the unfair competition, we also have to think about the impact on people's income. A lot of those people are able to be in those homes because they're earning money to pay the mortgage. So we have to tread carefully about how we go about this, and, you know, we have to look at all sides. I want to be fair to existing businesses, and I also want to be concerned about not taking away what pays the bills for people. We have enough problems, and so we have to go about this carefully. I like the idea of the impact-based system. I agree with Councilmember White about the types. I think that's very important. You know there's some that, you know, really have no impact. You know if it's a hairdresser and one lady goes to her house and she takes care of that one, and that one goes and another comes, or somebody who does nails or, you know, one customer at a time, one car in the garage or on the driveway really doesn't kill anybody. But then when you got somebody that constantly has a sale going on and every weekend, and they gum up all the traffic and, you know, you can hardly get through the street, that's something to take a look at. But again, I want to be real careful as we do this, because I'm concerned about, you know, disrupting people's income. The thing that Councilmember White mentioned where I was going and that was with the taxation, 'cause one of the things that was mentioned was not having a GET license. And that's kind of a tough one because we're responsible for finding money to run this County, and, you know, a lot of the non-GET appliers, that's a lot of income that we don't know anything about. And I don't know if that's something we need to be looking at, because like he said, we have crafted this Commercialized Residential tax category. And it was explained to me that we would have that Commercialized Residential category because people were earning income in their homes. Well, if it's good for bed and breakfast, it's very hard to explain why it's not good for anybody earning money in their home. So, Chair, we have a lot of issues. And, you know, one of the things that you mentioned and this is the thing that really bothers me is enforcement. You know you come from Indiana and you may not really totally understand the culture here, but people, local people are brought up to not be aggressive about their neighbors or their friends or their family or whatever. And so to get people to sign a complaint, register a complaint and have to be identified is like pulling teeth, because who of us wants to rat on their neighbor or their cousin or their aunt or whoever? Because, you know, this is a small community and we run into each other every day. So I don't know if a complaint-driven system would keep

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this under control. So that's why when you say no permit for all these little things, I'm torn between where do you draw that line. Your comments?

MR. JOHNSON: Sure. Very good statements and questions. The, you know, the first, the place to start with any of these types of regulations is to identify what would commonly be supported as egregious, meaning that the worst violators, the worst circumstances, and make sure that the regulations are handling that. So and where I'm going with this is that some ordinances would say you cannot use more than 10 percent of the floor area in your home for the home business, and that's their way of ratcheting down the possibility of it being a major enterprise. I would rather see those numbers be higher so that, you know, if I have a businesses in my home and so one bedroom is dedicated to that but then I have a closet in another room that's used for my files, and then I have a basement that's used for...the thing is is that is that really any different if somebody can drive by my house multiple times and never know that I'm running a business? So instead of trying to tighten those types of numbers up...and the likelihood of you going into somebody's home and measuring what percentage is almost zero. I mean we're just not going to do that as, 'cause it's the sanctity of somebody's home. So rather than having lower numbers there, I would suggest having larger numbers there, 40 percent, something like that. As far as the neighborhood, clearly retail types of operations have probably the greatest impact, and then the outdoor use of property where mechanical or manufacturing production, those are the types of uses that are going to likely result in complaints more than anything. So you've kind of keyed in on it, the barbershop or the hairdresser, the nail salon, whatever it may be, it's one client at a time. And I think it's pretty easy for folks to rally around that idea that those are fitting within a neighborhood. So again, my advice would be to start with the really bigger issues and make sure that that gets woven into this first draft of the Code, and then over time as to continue to tighten it up a little bit here and there instead of trying to find something that fits perfectly. It's a tremendously complex issue. It sounds so easy on face. I mean oh we're just going to regulate home businesses, but there's so much variety in what those businesses are and so many examples of where they can go wrong that again, you want to start to make sure that the bigger issues are being maintained. Where the complaints are coming into the office, where people have the boldness and the comfort 'cause they've gotten so bad to call, is to make sure that gets dialed in first. And then as you identify other complaints that are coming in is to then ratchet it down and keep tightening it up until you get to that comfort level, that sweet spot. Did I answer...seems like there's one more that I've forgotten to answer of your...

COUNCILMEMBER BAISA: Tax, taxes.

MR. JOHNSON: Oh. The bed and breakfasts have always been a...I can't say that word, an anomaly. Maybe it's a lack of sleep, I don't know. But the, they've always been an outlier in zoning codes because we're introducing a commercial use in residential areas

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oftentimes, and so and I'll just mention something and this is not meant to really change your direction with the Code. But if you get too loose in what you are allowing business-wise in Residential Districts, I know of some court cases where a community said we don't want businesses in our neighborhoods and one of those businesses was a cell tower. I mean cell towers are a commercial enterprise. So a cell tower company was wanting to go into a neighborhood, they had purchased the property, and the community said whoa, whoa, whoa, you're not going to put a cell tower in a residential district. And they sued the community and it went to court, and the court sided on the cell tower, for the cell tower company. The reason for that is in that zoning district for residential, they allowed golf courses, they allowed home-based businesses, they allowed bed and breakfasts, they allowed...and just they had several, not just one, but several commercial uses. And they said you can tell us all day long that you have residential districts, but they're not, they're mixed use districts and therefore you cannot forbid the use of, you know, the installation of cell towers in those residential areas. So you gotta be careful a little bit. If you really want to preserve that perfect neighborhood where people can live in harmony, you've got to be careful if you've not gone too far and really created commercial districts where then it's hard to reel back the other things that could happen there. But with bed and breakfasts, they've just always been an anomaly, they've always been treated a little differently, and for that reason I think that you have justification for taxing them uniquely and you don't necessarily have to treat home-based businesses the same as you would those bed and breakfasts. That's my opinion about it.

COUNCILMEMBER BAISA: Do you know if it's done anywhere?

MR. JOHNSON: I don't.

COUNCILMEMBER BAISA: You don't. Okay. Thank you very much.

MR. JOHNSON: You're welcome.

COUNCILMEMBER BAISA: And thank you, Chair.

CHAIR COUCH: Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR COUCH: And your unique situation is --

COUNCILMEMBER CRIVELLO: Yeah --

CHAIR COUCH: --noted.

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COUNCILMEMBER CRIVELLO: --they are. But I think overall, all of Maui County has its own uniqueness. Thank you for being here and thank you for your presentation. If I were to reflect on our own present Molokai Community Plan, it does encourage and supports the cottage so-called mini-industry. And but I think as a whole it says but it has to be compatible, maybe not the exact words but compatible with its surroundings in the neighborhood. So likewise I think what my colleague Mr. Victorino mentioned is, you know, what is compatible for the different districts in his community overall of ours. So I think first of all what we have to keep in mind to me is to make sure we provide in preserving the, I guess the character of the intent of our neighborhoods. You know Molokai is an entirely different but, you know, this involves all of Maui County unless we're going to make exceptions, you know. But if we talk in general, in today's economy and it's, we're forever trying to recover on my island, and reason, too, why the home-based or cottage industry is of value, whether we don't have enough flights to bring people into our island or new monies flow in, or whether or not they will be welcomed or not welcomed, or if they have the infrastructure to spend some time on our island. So the cottage type or home based is a value because you can, you know, create your products and send it out and then new monies can come in. So I think that's kind of an important economic base and what's value for the home based. But I'm wondering...and it's also the incubator which we cross our fingers that we'll be able to expand someday. We, you mentioned home occupation and then there's the home based. I believe with the home occupation we have the owner occupier exemption for taxes, I believe. And then does the home based allow that, the home-based business? And can we include both? I mean how much of a difference is it? Does home based allow more activities, then it becomes more commercialized? Or is the home occupation more specific and not so much of an intrusion in a neighborhood?

MR. JOHNSON: The terms that you're using are reflecting the regulations that you have on the books today, and I'm not terribly familiar with those and how, what the nuances are with one versus the other, so I'm not sure if I can answer that question. The, to me, it's one label, home business, and it doesn't matter if it's their primary source of income or a subsidy to their income. They would be regulated the same because we're regulating the impact to the surrounding properties. And it's not out of the, it would be out of the ordinary but it would not be something that I would shy away from is having some of those impact regulations be based on lot size, based on, you know, Councilmember White had suggested that maybe the regulations are different or maybe they require a minimum lot size. But if somebody has 50 acres and they have the long driveway and the structures are in the middle of the property and whatever they do there likely wouldn't impact anyone, maybe it's a laxer standard in those instances. But instead of trying to draft a document that foresees all of these possible variables, what would be a better solution is to write a simple statement in the document that gives Administration discretion, a range of allowance that they can permit by right. So if they find no impact for onsite parking of employees because of the size of the lot or because of the terrain or because of whatever



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it might be, environmental features that are there, is that they can waive...I shouldn't say waive because that implies like a formal approval, but they can determine that it meets the intent of the code, meaning that there's no impact to their surrounding properties. And I think that that instead of writing ten types for ten types of home occupation or trying to write something special for each individual district is that...and there's different types of, there's different ways to do discretion in an ordinance. There's the clean slate option which is the staff can do anything they want to, and I'm saying this sort of tongue and cheek, but sometimes you see these statements that or give staff a lot of latitude to approve and deny something. And the fear there is always well will they treat everyone equal and are we going to get into a discrimination situation. Instead of that typical, that's probably the more typical way you see it written into a code, is to give them limits. So for large lots if they can show that A and B are true then they can allow such and such to happen, and it gives them quite a bit of flexibility. You have very few cases then going to your board of, your BVA, which is all good. You know the last thing you want is somebody to get caught up in a three month process getting through a BVA hearing when common sense, you know, 99 out of 100 people in a room would say of course they need to get that approval. Staff should be able to just get those processed and to have some degree of discretion.

COUNCILMEMBER CRIVELLO: Are you familiar with the most recent California state law passing of the cottage law?

MR. JOHNSON: I'm not, I'll have to look that up. I'm always looking for new information.

COUNCILMEMBER CRIVELLO: Yeah. Yeah, it's, you can from your kitchen, from your home kitchen, I believe, you can prepare and...from your home. The, it has to be non-potentially hazardous type of food like maybe dried fruits, you know, or nuts, something that cannot have spoilage, I guess. And you can --

MR. JOHNSON: Okay.

COUNCILMEMBER CRIVELLO: --have some baked goods if there's no custard or cream.

MR. JOHNSON: Right.

COUNCILMEMBER CRIVELLO: Yeah.

MR. JOHNSON: So they're waiving the requirement for a commercial kitchen --

COUNCILMEMBER CRIVELLO: Yes, yeah.

MR. JOHNSON: --and health department --

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COUNCILMEMBER CRIVELLO: Right.

MR. JOHNSON: --involvement.

COUNCILMEMBER CRIVELLO: And they recognize that as, for the economics where they see that the cottage industry can be of value to sort of I guess empower, empower people.

MR. JOHNSON: In all likelihood they're mirroring that off of Vermont, has kind of been the pioneer with that type of regulation. Vermont has allowed home kitchens to be used for cottage-scale industries, and they've been kind of leading the way. And it's good to hear that California is heading in that same direction. You know would you feel any less safe buying a baked good from your neighbor versus a commercial kitchen? I'm almost more fearful of the commercial kitchen, honestly. So I think that it's a common sense evolution in our regulation system that people are really celebrating.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR COUCH: Okay, Members, it is little bit past our lunchtime break. So I would like to recess this meeting 'til 1:45. I would like to come back 'cause I handed out, you know, you wanna take a look at this packet that I handed out. One of the items is our definition of character of the neighborhood from our Short-Term Rental Bill that we already have on the books. Then this is home business standards that of which I think Mr. Johnson had some hand in writing, just as a sample of what he means and how it can be worked into our bill possibly. So if you get a chance, take a look at that at lunch or after your lunch break, and then we'll come back and discuss and see where we wanna go further. Mr. Victorino.

VICE-CHAIR VICTORINO: Yeah, Chair, will Mr. Johnson be back this afternoon with us?

CHAIR COUCH: He is. . yeah sure. His plane, his flight is later on this evening and I'd sure like to have him see some more of the just, I showed him already West Maui and the issues we have there, and I'd sure like him to go down and take a look at South Maui and he's been through Wailuku as well. So but he's, his first charge is to be here as long as we need him so.

VICE-CHAIR VICTORINO: Yeah 'cause I still have a few more questions and . . .(inaudible) . . .

CHAIR COUCH: You got it.

VICE-CHAIR VICTORINO: So I just wanted to make sure he's --

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CHAIR COUCH: Yep.

VICE-CHAIR VICTORINO: --going to be back.

CHAIR COUCH: He'll be back.

VICE-CHAIR VICTORINO: Okay.

MR. SPENCE: Mr. Chairman?

CHAIR COUCH: Yes, sir.

MR. SPENCE: After lunch I need to run off to the Land Use Commission.

CHAIR COUCH: That's fine.

MR. SPENCE: Just in general, I think the, I'll just say I think this draft ordinance is a very good starting place and something to work from. As I, I read it pretty carefully and as I listened to the Members with their questions and concerns, I think a lot of those things are addressed in here, and it can be tweaked and added to and whatnot that we could probably find something acceptable for Maui County.

CHAIR COUCH: Okay. With that, we'll be in recess until 1:45. . . .(gavel). . .

RECESS: 12:10 p.m.  
RECONVENE: 1:53 p.m.

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of September 5, 2013 please come back to order. Members, thank you for getting back here at a reasonable time. We last left off, everybody had a chance to ask Mr. Johnson questions that they had from his presentation. Ms. Cochran, you weren't here. If, you're more than welcome if you have any questions. Likely we've had them answered but if you have some, fire away. Members, I also wanna recognize Mr. Hopper from Corporation Counsel. He's back and dapper as ever.

MR. HOPPER: Good afternoon, Chair.

CHAIR COUCH: Good afternoon.

COUNCILMEMBER COCHRAN: Thank you for the opportunity, Chair, but we discussed a minute ago, and no, I'm good. I just appreciate you bringing this wonderful, you know,

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wealth of information here to us, and this discussion and this topic matter, it's a huge one, and I think it sounds like you bring a lot to the table in vetting out issues throughout the country and then some. So of course we are a different animal here in Hawaii, but it's, I, as I take it, mister...Councilmember Couch had taken you to some different areas of the island including West Maui where I represent. So you've seen the congestion and things within the subdivisions and the issues and concerns that are occurring as we speak. So I'm looking forward to further discussion and seeing how we can better utilize what is going on and somehow incorporate it into a useable, workable, you know, venue for our community and our people. So thank you, Chair, for this time.

CHAIR COUCH: Okay. Thank you.

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Mr. Victorino.

VICE-CHAIR VICTORINO: Thank you, Chair. And I think what I'd like to see us do from this point, Chair, and I don't know what the other Members think, but I feel like in what we've received today, what we have on the table today, I'd like us to maybe go back and put or incorporate. 'Cause a lot of this is good stuff. A lot of this stuff is very valid. And you, thank you for going through my community like you went through West Maui, South Maui. All the communities although different have many similarities and you've seen that, congestion, street parking. I mean, you know, it's not unusual for West Maui. I got it here more than she has it over there. We have big homes here, just like Central Maui, Kahului. They have mega mansions they call but they're families who are working, multiple families who are working. So there's a lot of different things that go on throughout this community that are different but yet when you put it together they're very similar. So I like what we've received, Mr. Chair. I'd like to see you put together...and again, I like these concepts, I like what we have. And like Mr. Alueta said, we already basically have a very similar setup in our Codes, now we need to start tweaking them. So taking some of this, putting it with that, and then come back and see what the community thinks about some proposals. Because I think the testifiers all agree that they're willing to look for change, they're willing to make updates, because some of our Codes were done many years ago when we were more plantation oriented and now we've moved on to more visitor oriented and there's changes around us. So, Mr. Chair, I'd like to, you know, specifically I like his concepts and I'd like to see them incorporated. I don't know if you want us to do it or, you know, you and the Department get together and really maybe make it more harmonized and then come back and say here, what do you guys think, and then we can take a crack at it at that point. I'm not sure what the other Members, but that's what I would say is you've brought a lot to the table today, a lot of positive changes that I think I'd like to see done. Now it's a matter of us sitting down, kind of putting something together, incorporating what we have, and

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let's see how it works. And I agree with you, 80 percent maybe be done and we'll have 10 percent in the next 6 months and 10 percent the next year. You know and I've always said there's no perfect law, code, ordinance that we've ever come out of this Committee, out of this Chamber, out of this County. And that's why many times now I have pushed and we continue to push reviews after a year or two or three, because you don't know the impact until you hear it from the people. The other thing that was mentioned as you well know, Mr. Johnson, this community a lot of times don't say anything unless it gets really, really ugly, and by the time it gets really ugly and really dicey for them, it's really a lot of work for us to correct. So by making reviews after a year or two, whatever it might be, it's really helped us to make changes systemic to the challenges that ordinance has brought forward. So that's all I got to say, Mr. Chair. I will leave it up to the rest, but that's my feeling. I...enforcement, everything you've mentioned today I think we can work on and better it in its totality. And it falls back on the Department, 'cause once we come up with whatever we come up with, it's up to Michele and her group and Mr. Alueta and all of those guys to go out and enforce everything. So I'm willing to hear what others have to say, but that's my suggestion, Mr. Chair. Thank you, Chair.

CHAIR COUCH: Thank you, Mr. Victorino. And it's the Chair's intent to get comments as much as we can from the Members and go back to the drawing board and see if we can craft this a little bit, incorporate some of the ideas with the Department after hearing what you guys have to say and your concerns, and then come back with a new draft. So this is kind of an information gathering session to see what the concerns are and how, if you've had a chance to read some of the samples here to take a look and see what kind of suggestions you might have. So, Mr. Guzman, any comments?

COUNCILMEMBER GUZMAN: Thank you, Chair. Yeah, just in reviewing some of the samples here I . . . *(coughs)* . . . excuse me. Earlier I believe Councilmember White was talking about the regulation, regulating the impacts, and we had those three types, the benign, special use was number two, number three special use and renewed permits. And I know that the discussion lead into a possibility of considering lot sizes, and then it went on into how do we deal with our property taxes and the other forms of taxes, how do we apply Residential versus Commercial at that point. And just reading some of the samples here, it looks as though on one of it, it says the home businesses shall not exceed 5 percent of the square footage of the dwelling unit. So it has been done in the past, and I was also thinking since we do have somewhat of a system where, when we're dealing with agriculture. I know agriculture communities if, owners need to submit an agricultural plan, and so maybe as part of the process maybe a business plan that shows what part of the properties are going to be used as the business portion. And then use a percentage of if it's more than 50 percent then it could be considered as Commercial taxation or, you know, less than 50 percent. But I'm just posing that out, you know, thinking outside the box. Since we're doing it for agricultural process and proving whether, you know, and taxation-wise the first requirement is agricultural plan. Right?

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So if we apply the same concept, maybe a business plan showing, you know, what part of the dwelling is going to be used, we can actually use a percentage and maybe implement a taxation standard to it. Thank you, Chair.

CHAIR COUCH: Thank you. And, you know, I'm sorry, Mr. Alueta, I know you wanted to make some comments. Let me get, have you make some of those, and then we'll continue on down the line if that's alright, Mr. White? Thank you.

MR. ALUETA: Oh, okay. Thank you, Mr. Chair. Yeah, just a couple once we get into the nitty-gritty is some of the concerns is or discussion points we should look at is you have to...don't use what is the worst impact that's already allowed, okay, in the Residential District as sort of your test of what, how much of a business use you're going to allow under these types of bills. And what I mean by that, a lot of times you'll get the argument well, my neighbor has multiple dwellings or has a large family and they park all the cars out on the street, why can't I do that for my business? Okay. Or and you'll hear a lot of the same thing or my neighbor plays music, loud music all the time, once a weekend or has large parties. And a lot of times it's like the community tolerates residential, normal residential uses more than they're going to tolerate a business, a pure business type use. So keep that in mind in your measuring of what the community may tolerate. A lot of times we talk about trying to manage impact limitations on the...and not trying to set a firm number but just do it by does it have an impact. I think that's great, I think we already have some of that in our Code now, but a lot of times from hearing from the community and looking at some of the comments we got from the commission is you still need to create some type of cap on either a percentage of the square footage, percentage of the home with a cap on the square footage. 'Cause we do have large homes. Okay. Or as a percentage of, predominantly being used for a residential purpose. I think you have to keep those types of things in mind, because we are talking about residential type districts, not so much in the business Code. Also, you try to look at...*(coughs)*... excuse me, what we're trying to build off of, I mean try to hit the, as you talked about trying to get the 80 percent. And I think from a low-hanging fruit aspect, we got the Home Occupation Bill passed a few years ago which really captured a lot of the Internet type of businesses, your stay-at-home accountants and those types of uses. And pretty much we're trying to now capture what are the lower impacts that potentially have customers as we talked about, you know, a salon or a massage person or an architect that meets with that. And I think those, again, as, can be categorized in maybe, as what he's calling a Type 2, okay. And I guess the way we would rather keep the nomenclature or what we use as standard language in the regulations to what we already, what the Planning Department, what the enforcement, what the communities are normally used to. Okay. We have home occupations...*(clears throat)*... excuse me, which is allowed as a permitted use, so it's an allowed use by right and it has a definition of what can be. And so that, again, that caught a lot of people or caught a lot of small businesses as being legalizing those small businesses. The

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next level as you talked about is the low impact. Those potentially could be categorized as maybe an accessory use, right, that is determined by the Director as being appropriate. Okay. We already have some amendments coming before you for the Residential District or whatever, but you could list a home, this type of low-impact home-based business as an accessory use in certain categories, right, and then therefore the impacts and set up your basic parameters, okay. And that would be sort of what, as his presentation talked about is your Type 2 home-based business. We already have what we call Special Use Permits in the County, in the Residential District, but in the County Code for those areas. Those require a public hearing, go before...and is at Planning Commission level. That can be as what he talked about, your Type 3 type of permit. So the foundation is there, okay, within the Code with some minor tweaking, and it's just a lot...and that could easily dovetail into our existing Code from what has presented today. I think there's a lot of...it's a good base but it can be dovetailed into what we already have, and that's my main thing is just trying to make sure we can get it to work with our existing Code without uprooting it altogether, okay. Again, Zoning Codes as he talked about is a police power. And again, I talked...but also so a lot of our Code is, if it's allowed it's listed, if it's not listed it's not permitted, and that's how we currently operate. But the community also lists uses that they're trying to encourage. They may have some type of impact but they are uses that they're going to tolerate the impact, such as, you know, someone doing a baby party for the first, first birthday party in a family and it has a big impact, but that's an allowed, I mean that's a normal function of a home here in Hawaii. Other uses that are listed in the Code that could potentially have impact but is desirable is we have daycare centers listed. And again, so again there's already an example of what a type of home-based business could be, but again, it's a use that is tolerated because the use is something that's desirable for the community, and that is having affordable childcare nearby. And it's also viewed as being sort of a normal function of the home. So keep...*(coughs)*... excuse me, keep that in mind when you go through the Code itself in trying to figure out what uses I'm going to allow or what impacts I'm going to tolerate, because again, there's a fine, a slight nuances there between impacts from a use that is tolerable by the community...*(clears throat)*... and excuse me, and the impacts that are purely business based.

CHAIR COUCH: Thank you. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Question for Mr. Johnson. The Type 3 limits the square footage of the dwelling used to 5 percent. Is that because of the option of using accessory buildings to 100 percent?

MR. JOHNSON: The example that you have in front of you is just that, it's a single community, it's not meant to be a model.

COUNCILMEMBER WHITE: Best practice?

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MR. JOHNSON: Right. And so that is the end result after it went through the meat grinder of a steering committee and public workshops and, you know, council review, that type of thing. So not all of the concepts...and you'll see there in the Type 3 that's, specific land uses are expressly permitted, and everything else is, you know, as Joe just mentioned, would be not permitted. So we were just not able to in that particular community to get to the same level as I'd hope to in all communities. But so, yeah, don't take that, what's written there as what I think is the best practices.

COUNCILMEMBER WHITE: What would you suggest is the best practice for that? This is the use in the home dwelling.

MR. JOHNSON: Right. For the Type 3 in that particular case it was trying to shift the business into or recognize the types of businesses that were operating out of the home in an accessory structure. And honestly, I think that the same standards for the home would apply as it would in Type 2, so whatever percentage they had dialed into Type 2, I would apply that to Type 3. But then grant the allowance for the accessory structure, too. So that allows the home to be used as an office space and the accessory structure to be the workshop.

COUNCILMEMBER WHITE: Right.

MR. JOHNSON: Yeah.

COUNCILMEMBER WHITE: Yeah, that would make much more sense.

MR. JOHNSON: Yeah.

COUNCILMEMBER WHITE: And with the comments from Mr. Alueta, I think we've got a, we're off on the right footing with not requiring permits for home occupations. And so basically if I heard you correctly earlier, you said that it's probably best not to bother with permitting those because they should have the right to use their house as they see fit as long as there's no impact on their neighbors.

MR. JOHNSON: Correct.

COUNCILMEMBER WHITE: And so that just moves it to Types 2 and 3, and we'll have to come up...I'm sure Mr. Alueta will be able to come up with the right name for those if Type 2 and Type 3 doesn't work for him. But I would like the Department to give some thought to whether or not there should be some minimum size, minimum lot size numbers assigned to those, to two and three. Because two includes employees and customers coming to the site, and I just, I have a hard time feeling that that's an easy use



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on some of our real small lot subdivisions without having further impact. And Type 3 is clearly not something that would be something that could be done in a neighborhood where the lot size is, you know, 5,000 square feet. So I would appreciate the Department's thoughts on that as we go through this process. But other than that, I like the way all three of these are drafted with a couple of adjustments. So I think we're headed in the right direction. Thank you very much.

CHAIR COUCH: Thank you, Mr. White. Just to remind people, Members, that, and the public who may have gotten this and are now watching this after their lunch hours on, at home, these are just samples of how we can do this. These aren't exact requirements, and I'm not advocating for that, these exact words. It's just this type of listing is what I found very interesting and very useful.

COUNCILMEMBER WHITE: And I think it's fairly clearly laid out.

CHAIR COUCH: Yeah, very clear.

COUNCILMEMBER WHITE: So whether it's stated exactly the way we would want it stated, the layout makes it pretty easy to understand.

CHAIR COUCH: Okay. Chair Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And sorry for my tardiness but I'm trying to be in two places at once, doesn't work very well. But I do agree that I totally like the idea of the Type 1, 2, and 3. Just a little bit of explanation on what Member White mentioned about two and three, and having concerns about lot size because of either customers coming there or employees. Customers coming there doesn't bother me so much. I could put that in a one, if it's the beautician who has one client at the time, the nail lady who has one client at a time as long as that car is parked in her driveway and it's not taking up any space on the road or anything. So I think we want to be, we want to think about that. I can see if you're going to have two or three or four people and you're going to have employees, I think that's another story. But this one-on-one thing which I participate in, I admit, I'm not doing it but I'm a beneficiary of it.

CHAIR COUCH: Customer.

COUNCILMEMBER BAISA: I have no problem with it because it doesn't affect anybody, but I think once you have, you know, a lot of cars and a lot of people in and out, then of course, you know, I think that's where the regulation begins. But I like the layout, I think it's a real logical way to go. And I think impact-based home business is probably going to be the only way we can come to terms with this. I don't know if it was said during my

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absence but I was trying to recall during lunch hour why I was so hot on this a few years ago, and I remember what it was. I was trying to justify home business from the idea of, you remember when we were so concerned about traffic here at one point, it was a couple years ago. I mean, you know, we go from topic to topic. One year it's affordable housing, another year it's something else, and one year it's traffic. Well we were in the traffic mode and we were saying how this would really cut down on traffic if people could work out of their homes and of course save energy and all of that. But there was the other side of it and that was the idea that care giving could be done at home. You know a lot of people have responsibility for aging parents and this is a growing concern for all of us, and some people have children, you know, infants or whatever, so they have to work at home or they can't go out to work, they can't afford the babysitters or the infant care centers that charge six, seven hundred dollars a month. And so this is a good way to keep families at home and together and to provide care for those who need. So I think that's a strong argument in favor of permitting this or allowing this. So, Chair, that's it. I think until we have another draft, I'm okay for now. Thank you.

CHAIR COUCH: Okay, thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: No, no further comments from me on...I believe, you know, I concur with what Ms. Baisa's comments are. And I think, you know, this is just the first step in the direction and discussion, and again, just looking forward to further dialoguing on this. But thank you, Mr. Alueta, for your take on all of this and suggestions and what have you. So yeah, at this point I'm good. I like the direction we're headed and I'm happy to be a part of it, and looking forward to vetting it through the different communities. Again, like Mr. Victorino mentioned, we may be different but yet there are tons of similarities, too, so just again, looking forward to the further discussion. Thank you, Chair.

CHAIR COUCH: Okay, thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. I think this is a good template for us to work out of. And, you know, I think Type 3 we've got to give some serious consideration on where actually they will, and how they'll be conducting their business. I think, too, I'm looking at where we would address like the hula instructors, the...but I think we have that existing now, right?

CHAIR COUCH: Uh-huh.

COUNCILMEMBER CRIVELLO: Yeah. So that's addressed, yeah. Other than that, I think this is all good as long as we don't...we allow things to happen legally and not what I've heard when they talked about bed and breakfast, why go for a permit if they can get away with taxing or what you. But hopefully it can be done that everybody would like to sign

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up for their permit because that's the thing to do, you know. But I think if we work towards that then it makes all the sense for us with, without having to have more people to enforce it, you know. I mean I've had a friend of mine who lives in Kihei says that there's like tree trimmers, there's...9 o'clock they have, the cars get towed in to the residence and, you know, I don't see Kihei...and it's a subdivision area. So that's the kind of stuff I think we have to be more cognizant on as far as coming up with all the changes. Thank you.

CHAIR COUCH: Okay, thank you. Members, I have some questions for Corp. Counsel actually. So thank you for being here, Mr. Hopper. One of these...huh? Yeah, the dapper Mr. Hopper. You know we're talking about impact based and whatnot here and in Residential Districts at this point. What, if we were to go on this impact route and list, you know, these are the impact if it was impact based, how does this affect...would this be affected in Ag Districts? What, you know, because of our interesting relationship with the State and Ag Districts, what would we have to do if we were to go to sort of an impact-based thing? Would essentially anything in the Ag District end up being a, for lack of a better term at this point, Type 3 or a special use?

MR. HOPPER: Well, Mr. Chair, the problem with the Ag District is that you also have a State law that only allows certain limited commercial uses without a State Special Use Permit. So if you did so-called impact-based and did not list anything about what the type of use was, whether it was for example related to agriculture, involved selling crops which is already permitted to a certain extent in the Agricultural District versus an auto repair shop in the Agricultural District, you would have potential problems because an auto repair shop is not permitted in the State Agricultural District. At the very least you'd need a State Special Use Permit and it could perhaps be difficult for something like that to receive such a permit. So as it's currently listed and I've advised I think Council Staff of this, I would advise that the, if you're going to take a very general approach similar to short-term rental homes, listing them as a special use or in the alternative, listing certain types of home-based businesses that are already allowed as outright permitted uses in the State Agricultural District. Because when you look at HRS 205 both in -4.5 which deals with lands classified as A and B or I think 205-...there's another section, I don't know it by heart but that deals with general zonings in other areas with soil classifications. Outright commercial uses are not permitted. There's very limited commercial uses that are permitted on the Agricultural Districts, and therefore to, in order to do those uses, the applicant would need a State Special Use Permit issued by the Planning Commission. And in the past we've kind of listed them in our County zoning and not necessarily been very specific, but I think would advise based on there's an Attorney General opinion dealing with short-term rental homes in the Agricultural District, I think I would advise some clarity with respect to allowing home-based businesses in the Agricultural District. Just so if we're going to have this outright permitted use type of approach, there's no confusion of that person that, of that business that they, you know, they see it in the

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Code, and they say okay I can do this, but in actuality under State law they would need at least a Special Use Permit from the Planning Commission. So I would advocate for being as specific as possible, at least in the Agricultural District because the counties do not have the same authority that they do in zoning in those districts that they would under Residential Districts that would be in State Urban Districts. So those would be my comments, and I did provide an e-mail to Committee Staff on this. And it does sound like we're going to look at a lot of different approaches, but just to keep in mind that there will be limitations on uses in the State Agricultural District by State law.

CHAIR COUCH: Okay, thank you. The other question I would have, you know, we talk about salons and businesses like, you know, somebody who cuts hair or does nails. Some of those types of businesses require State licenses and sometimes those State licenses say you can't do those in home based, in, out of a house. How can we write or what kind of language can we put in there saying this is permissible as long as that it's permissible with the State, you know, or with whatever regulatory agency deals with your type of business? And maybe that's to Mr. Hopper, Ms. McLean, or even Mr. Johnson.

MR. HOPPER: Well, Mr. Chair, I think that's a good question. I would also point out that all of these businesses would need to comply with other County Codes as well, including Fire Code, Building Code, Plumbing and Electrical Codes. So they wouldn't be exempt from those Codes even if permitted under Title 19. But as far as that approach, I don't know if you'll be able to necessarily go over every single potential other business requirements that there may be, so an approach of saying something like shall be required to follow all other, you know, laws, applicable laws or things like that I think may be the best approach, because there could be a lot of different types of businesses that are regulated by a number of different agencies. But just to be clear, by allowing this...this covers whether or not they're allowed in the zoning district listed, it does not cover if they can do this under the Fire Code, if they need upgrades as far as other issues, you know, issues like that. Those could still possibly exist. If they're in the Special Management Area, could potentially be issues, perhaps not if it's just an internal use issue. But, you know, things like that can still apply to these. So this is to deal with Title 19, and I think a statement that we have on other permits from time to time saying shall apply with all other applicable laws may be the right approach. But I would say even if that's not listed in there, other laws by State and County governments would still apply to the use.

CHAIR COUCH: Okay, thank you. Ms. McLean, anything to add to that? Or Mr. Alueta or Mr. Johnson?

MS. McLEAN: I don't have anything to add to his response to your question. I do have some comments at some later point.

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CHAIR COUCH: Okay, we'll get to those. Mr. Alueta, Mr. Johnson, as far as things that, other industries that are regulated in other ways.

MR. JOHNSON: Yeah, I mean that's not too uncommon to have say massage therapy being a regulated use that they don't want to have necessarily in a household for its potential abuses. The, you know, if there is...what I try to do in codes is if there is a regulation elsewhere or a standard elsewhere that is frequently being missed by the petitioner or the homeowner, is that try to put a cross reference into that or some kind of a note to that. But otherwise, I think the general statement as Counsel has suggested that all other, you know, there may be Fire Code, there may be...is perfectly fine. And so again, it's just to me, I write codes from the perspective of the end user, trying to create as user friendly of an experience as possible. And I want people to be able to within five minutes find a conclusive answer to any question they have. It's a tall task to try to do that, but on the other hand if we're always saying there might be something else out there, that doesn't necessarily serve that end user very well. Now and again it's just impossible to be exhaustive with those lists, especially if the state code changes or a county code changes, it's hard to remember that oh, we have a cross reference to that, I better change all the cross references, too. So it's...when I look at older ordinances, 10-20 years old and you look at the cross references to other documents, 50 percent of them are no longer accurate. So you gotta be real careful not to get yourself in a situation where you have obsolete linkages to other documents. But again, anything that's frequently coming up as an issue, those are really helpful to have in there.

CHAIR COUCH: Okay, thank you. Mr. Hopper?

MR. HOPPER: Mr. Chair, thank you. Just to add one more thing. It's also...I think it's obvious if there's no permitting involved then it can be more difficult for somebody to find out something like that than if there is either administrative permit or Special Use Permit that gets routed to other agencies for comments. I don't know if that would be what would happen in these cases, but if something like a Building Permit that gets routed to Fire and there's a review of Electrical and other Codes, it is one example of a type of permit that other agencies may take a look at and look at fire and other types of issues. If there's no permit, if there's an outright permitted use, that's certainly easier for the person to operate, but they also wouldn't necessarily have any department reviewing their, you know, their fire protection issues or other types of issues, so just that as a comment. Obviously with, if there's more permitting there's a longer wait but then there could be more review of other issues like Fire, Plumbing, Electrical Code, State codes, et cetera.

CHAIR COUCH: Okay, thank you. Members, any further questions? Ms. Baisa.

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COUNCILMEMBER BAISA: Memory coming back about this discussion that was held a long time ago. I remember at one point when we were discussing home business we were talking about having a really, really simple, not so much a permitting requirement but more of a registration online where you could go on and say okay, I'm Gladys Baisa and I'm going to do fingernails in my home and this is the address. And, you know, this is who you call in case of an emergency, or some kind of registration. And we were talking about that for the reason of government being able to have a contact if there was any complaint or also for economic data that we might want to have, you know, about what kind of businesses are going on and where they're going on. And I don't know if you've ever run into anything like that, Mr. Johnson.

MR. JOHNSON: You know it's always tempting, I mean to have that data, to have that contact, to have that information, but honestly, I think it's, you know, it's hard to figure out where to stop. I mean who would you want to register? Is it the high school student that's babysitting and that's a significant source of income for the summer? Is it the author that's writing a book? Is it...you know we could say, well yeah, we want the hair salons to be registering [*sic*], but it's really hard to figure out which ones should and which ones shouldn't. So for that reason, I just think it's a lot of effort for very little gain. And that's just, I mean I'd love to know that data myself. As I mentioned in my presentation, the statistics about home businesses are sketchy at best, because we don't know much about these ones that are not operating as tax ID sort of legitimate businesses based out of homes. And that's the challenge.

COUNCILMEMBER BAISA: I have a feeling we're scratching the surface with the numbers that we have, only from my own personal knowledge.

MR. JOHNSON: Yeah.

COUNCILMEMBER BAISA: Yeah. But, you know, if it's not worth doing then it's not worth doing, but I remember us talking about that.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: We didn't want to turn it into you have to go somewhere and apply for a permit, maybe just very simple to register.

CHAIR COUCH: And I think some of the intent here as Mr. Alueta and Mr. Johnson have both mentioned that we have a certain set of levels, outright permitted uses and then accessory uses and then special uses, Type 1, 2, and 3 kind of thing. I would think under special use would be then when you start getting the --

COUNCILMEMBER BAISA: Yeah.

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CHAIR COUCH: --permit.

MR. JOHNSON: If I may add to the comment I was just making. Now Type 2, Type 3 as I call them, those I think you should know more about. The Type 1s are the ones that I just think that that's impossible really to or very, very difficult to try to get those folks to register. And honestly, entrepreneurs are a funny bunch, they don't necessarily like that Big Brother feel that somebody's tracking them, even though they're 100 percent legitimate, they're all doing, you know, they're doing the right thing. So you may dissuade folks from wanting to start that business just because they don't want to be tracked. Type 2, Type 3 I think it's very fair game.

CHAIR COUCH: Okay.

VICE-CHAIR VICTORINO: Chair? Chair?

CHAIR COUCH: Mr. Victorino...are you done, Chair?

VICE-CHAIR VICTORINO: Oh, sorry.

COUNCILMEMBER BAISA: Yeah, it's okay.

CHAIR COUCH: Okay. Mr. Victorino.

VICE-CHAIR VICTORINO: Oh, I thought...I'm sorry. If you're not done I'll wait.

COUNCILMEMBER BAISA: No, no, go ahead.

VICE-CHAIR VICTORINO: What I wanted to question, you know, again, one of the whole, a whole part of this deal just like the B&Bs and TVRs was to bring all this underground businesses out to the open, for many reasons. Most importantly is to make sure that they feel that they can do their business and not be hounded by government. I think that's, you just kind of hit that nail on the head. And, you know, I have a granddaughter who babysitted [*sic*] two of her cousins over the summer, didn't go back to her retail job because the two aunties wanted her to just take care of the kids and pay her. So how do we classify that? 'Cause that's not a daycare, you know, she didn't have to go out and get license, but she took care of the two little ones for the whole summer. And there was remuneration given for that effort. So I mean, so you have that and then you have those that...and again, this is where I have the real challenge, is how far do you get or let that business go before they have to go out and get a retail space? How big do they have to get? Dollars? I think this is one of those big questions, because once somebody starts and they're making money and they're comfortable at home and, you know, and it grows

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and it grows and it gets exponentially big, but maybe the neighbors don't want to say nothing. But is that fair? And I'm not worried even for the retail competition but just fair for that person to have that advantage of doing everything out of their house, and maybe they're making \$25,000 a year. But they're not, you know, and a lot of it's cash so they don't say it. I don't know, you know, there is some real challenge behind of this, but again, I think you've given us a good template as was mentioned earlier. I think that's important. And it's really us now deciding where the, pardon the expression, the line in the sand is going to be drawn, where specifically, and I think we've come close. For tax purposes, square footage, you know, you've heard everything, but I still believe I don't want neighborhoods...and I say this in all honesty, I don't want our neighborhoods just like when we were talking B&Bs, we limited, and TVRs we limited. I don't want promulgation of every business you can think of. So you start from this corner to that corner like Ms. Baisa mentioned and you had a trucking company and right down the row and every house is a business. That takes away from the neighborhood, and I think most people will tell you they want their neighborhood to be a neighborhood. And then those who need to make money will say let me make some money and keep my neighborhood a neighborhood. So again, how do we come up with this, you've given us some good templates, it's really up to us now to where...and again, another question I had for you, Mr. Chair, is there any public process beyond public testimony? Are you looking to do anything once we kind of get a real nice package together? Is that one of your intents?

CHAIR COUCH: Yes. I would like to see some public...I mean it's up to the will of the Committee, going out to the districts and getting public input on this.

VICE-CHAIR VICTORINO: Well we'll, I know Ms. Baisa is always one that likes to hear from the public, so I think --

COUNCILMEMBER BAISA: I think we should.

VICE-CHAIR VICTORINO: --we could convince her --

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: --if we need to, Mr. Chair.

CHAIR COUCH: Okay.

VICE-CHAIR VICTORINO: Yeah, she's putting her fingers up so I think it's all good. Thank you, Mr. Chair.

CHAIR COUCH: And I want to remind Members, too, that the first page of this packet that I handed you is the language we used in the Short-Term Rental Homes Bill to define the



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character of a neighborhood. This is something we can do to help define the character...to set the tone of our bill is to say, okay, this is what we consider as defining the character of a neighborhood, and then go and...the use shall not...or if it's a Type 1 the usage shall not affect and go on from there. So that's kind of the intent of the Chair. I know, Ms. McLean, you had some comments you wanted to make.

MS. McLEAN: Thank you, Chair. And it's a good follow-up to some of Mr. Victorino's comments. And I'm at a bit of a loss because I wasn't here with you folks this morning so I might be repeating some of the things that you've already discussed. But I was just quickly making a comparison chart between what's permitted in the Code now as a home occupation and what's being proposed in the bill as it's drafted as a home-based business. And the difference is...in a lot of ways they're very similar, the main differences are home occupation allows just the one resident of the dwelling, the proposed home-based business would allow the one resident of the dwelling plus another person, so you'd have an employee. Home occupation is 25 percent floor area of the dwelling, the proposed home-based business is 40 percent. Both of them would not allow group instructions, neither would allow signs, neither would allow business-like deliveries, just residential-scale deliveries like FedEx. Neither would allow additional storage. Both have restrictions on some of the higher impact uses. One difference is that home occupations would not allow any onsite retail sales, the proposed home-based business would allow retail only for products that are produced on the site. Home occupations do not allow any clients to come except for one-on-one instruction, so like piano or something like that. Home-based business allows 2 customers at a time with a maximum of 16. That to me is the biggest difference, that and allowing one employee. Those to me are the biggest differences. Home-based business has hours of operation. So again, to me, the two big differences are allowing the one employee and allowing customers come to the house. Then beyond what's proposed in the home-based business and those would be permitted outright, no permit, no registration, beyond that would require a County Special Use Permit which gets issued by the Planning Commission. So anything beyond that, additional employees, additional area, additional customers, some of those higher impact uses, any of those that exceed the parameters would require that Special Use Permit. So I just wanted...that helps me think about where we are and if we're talking about Type 1, Type 2, Type 3, that's sort of the Type 1, 2, and 3 to me, so then it's kind of simple coming down to how do you want to refine those? So in terms of moving forward when we do move forward, there really aren't that many areas where, you know, getting the community input and so forth and figuring out the distinction between what we already have now is Type 1, let's call that a home occupation, and then where you want to go with Type 2 and Type 3. Another couple of issues that also need to be discussed and part of this is reflected in the draft set we're provided or the samples that were provided. Does the Council want to look at this being allowed in the primary dwelling only or in the accessory dwelling only or in accessory structures on the property? That can be defined a little bit better. And the language as Committee Chair

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passed out, ensuring that the character on the residential neighborhood not be impacted, and that can include visual impacts. And then the lot size limitation as Councilmember White suggested. So I think, you know, there's a really good framework here already, there're just a few areas where I think we can focus and then we can make changes to the draft accordingly. Thanks.

CHAIR COUCH: Okay, thank you. And, Mr. Alueta, you had some comments?

MR. ALUETA: No, I think you...we covered it pretty well there.

CHAIR COUCH: Okay.

MR. ALUETA: Yeah.

CHAIR COUCH: Okay. Members, any other comments? If not...oh, I did have one other question. Mr. Hopper, you brought up something that we kind of haven't really looked at yet as well is what happens...and maybe this will also go to Mr. Alueta or Ms. McLean. What kind of things would trigger SMA concerns if somebody wants to do their home-based business in an SMA?

MS. McLEAN: It would really be physical changes to the property. If they were, wanted to put up a storage shed or something like that, that would trigger SMA review.

CHAIR COUCH: Things like that is what would trigger...

MS. McLEAN: But just going from purely residential use to suddenly having 16 clients a day come to the house, that wouldn't trigger an SMA review.

CHAIR COUCH: Okay. Alright. Any closing comments from anybody? Mr. Johnson?

MR. JOHNSON: Just a few other things that, through this last bit of dialogue came to mind. I know that you're trying to weave these home business regulations and sort of thinking of ag tourism in the same light. Just for sake of sharing information, we typically don't...I would typically not have the home business standards applying to agriculture. We try to permit ag tourism just by right as an Agricultural District, and that be part of the function or part of the opportunities to agriculture. And I understand you have State statutes that, and a process there that doesn't allow you to, you know, have an overnight stay at the agricultural location or them to bring in products that are not related to the farm. So but if that were ever to be relaxed to some extent, to me that's a fourth type or just regulating it as by right, part of your entitlements in the Agricultural District, and not try to make home business standards apply to farms. So to me that is a fourth type, and what you would allow on a farm is really quite different I think than you would allow or would

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have in a neighborhood or elsewhere. Another thing that just I wanted to share is that defining employees, if you're going to allow employees is a really tricky thing, because I think somebody mentioned it earlier that a tree trimming company may have ten employees but they never actually come to the home. They are just texted an address that they're supposed to show up at or they are, maybe they come for a five-minute meeting in the morning and then they're gone. Or I mean there's just lots and lots of scenarios. Maybe their employees are also working out of their homes someplace else. So it's really what we're trying to permit in the codes that I write is how many employees can there be at that home throughout the day, not how many employees they have in total. So there are many business models where they have 50 employees but you would never know that. Maybe they're in a warehouse on the mainland, but it's, they're technically employees of that company. So it's not who's on their payroll, it's who's coming to the home. And it can also be based on sort of a full-time equivalent, so maybe they have a part-time person that comes in the morning and another part-time person that comes in the afternoon. That would be considered one employee even though, just because they're not there at the same time. Maybe one comes on Tuesdays, one comes on Wednesdays. So try to define that and make sure that somebody is not getting penalized for having additional employees that are never in the home. The last thing really is to Joe's comments about your existing terminology. Don't get hung up on Type 1, Type 2, Type 3, that is really sort of a novelty of the codes that I write. It's the nomenclature that we weave into our documents. If you...something that's, that can be really important is to give the end user consistency, and so if people are familiar with the term home occupation and they're familiar with the term home-based business and they differentiate that in their minds, if there's no major reason to shift to new names then don't feel like you need to do that. 'Cause all of a sudden somebody goes oh no I'm Type 1 now, what, and then they think that the world's changed even though it's really just a name change that took place. So and that really probably, the terms that you use probably fit better into the fabric of your ordinance today. Now if you overhauled your ordinance and you changed it in a way, maybe that's the time to introduce new terminology, but there's really, it still functions as a Type 1, Type 2, Type 3, even though you keep your names, and I think that's probably the right choice.

**CHAIR COUCH:** Thank you. You did, your comments did bring up another question I would have and I guess again for the Department or Corporation Counsel. What do you do about the, you know, you've got a farm and you've got the mom and dad are doing the farming and then the son helps out or the daughter helps out occasionally on the farm, but they're also a CPA or they're a writer or something like that, so they're doing their stuff from their home office, if you will, there's an office in the home where they're doing their computer work, whatever it is, whether it's CPA, web designer, author, all kinds of stuff that are essentially Type 1 or home occupations. What happens to those in Ag if they happen to be on the farm, which I'm sure that happens a lot around here? Do they have to get a Special Use Permit or?

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MR. HOPPER: Well, Mr. Chair, they would need to be, that would need to be a permitted use under the State agricultural law. I mean you would have to look there and it would need to be something that you could establish as a permitted use, and I'm not sure if a CPA business is something that is a permitted use in the Agricultural District. There's an HRS 205-5, it says that counties may establish agricultural tourism which include accessory uses to a working farm. But other than that, the list frankly is relatively restrictive. You know so that would need to be something that would be, need to be established before the counties could permit that, and if we need to ask the State for a clarification of, you know, part of their law, that's an option. But you would need to be an established, allowed use. There's not a general that I know of accessory use that...you know, it's different than if, you know, if you establish the business there, that's one thing. Someone taking work home with them, you know, where they work in an office and bring home work with them, I mean that's I think a separate issue, but if you're actually running a CPA business or other business, I think you're looking at, you know, most likely a requirement for a Special Use Permit unless you can fit it in one of the allowed uses under State law. And I'm not so sure that a business like that would qualify.

CHAIR COUCH: Mr. Alueta?

MR. ALUETA: Thank you. I think that's part of that danger of defining everything --

CHAIR COUCH: Right.

MR. ALUETA: --that we ran into when we decided first home occupation and set out the standards for that. I think it's also clear that we, as part of those standards you say what's not included or what is considered to be just a normal function of a home. I think Councilmember Victorino talked about like a girl home for summer watching the brother and the sister and then deciding to watch some other family members but being paid. Is that really a business? I mean she's getting paid but or is that just considered to be a normal function of the home. And I think you need to figure out these things that are just considered normal functions of the home and they're not really needed to be regulated in any fashion.

CHAIR COUCH: Right.

MR. ALUETA: And if you need to, I mean I don't want to create that alphabetical list of uses but there has to be some level of common sense of that it's a normal function of the home. Again, with the State on Agricultural land, it's always a sticky question because we would have to get some kind of clarification from the State Land Use Commission and Office of Planning because you, the requirements. The State does list as an accessory use, they define a single-family home, and so I'm not sure if some fashion we

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can get around that certain things are considered, if they are considered to be a normal function of a single-family home then by that nature it is allowed within the Agricultural District. But we would have to, again, as Mr. Hopper explained, get clarity from the State on that. I'm always leery about moving things that are not related to the ag into the Agricultural District, that's always...because it's sort of a...it is a commercial operation but it's sort of a protected commercial area for ag, and that's why the State does take such, sometimes a very conservative approach because food security or whatnot, just the idea of protecting of agricultural lands for that main purpose.

CHAIR COUCH: Which is an interesting side note to a conversation that I had with Mr. Johnson on the way back from lunch. You know we have, we want to preserve ag, we want people to do ag. It's very expensive to do that here, especially if you have a smaller farm it's very expensive to do that here. So our idea was look, why punish somebody who wants to really do ag by not letting them raise money doing something else in the meantime. So then there's these accessory uses that we're talking about, but if that accessory use happens to make more money than the ag and they're still doing the ag, why punish them for being successful and they're still doing the ag? I would say if they're real successful here and they stop doing the ag, that's an issue. So those are some of the things that I guess we have to talk amongst ourselves and with our State representatives to kind of talk out that philosophy. You know we're punishing somebody for being successful, for trying to supplement their agricultural income which isn't all that good unless you've got acres and acres of land and have employees. You're having...you're...you hear all the time at that stand that people are struggling with their farms. Well if we can allow them to do something else, you know, on their spare time and they happen to make good money at that, then they can do their farm at a thinner margin. I don't know, that's just a philosophy that we were discussing in the car. So we may want to consider that at some other time, maybe in Mr. Guzman's Committee. I want to thank...Mr. Johnson came on a...oh, you have...go ahead.

COUNCILMEMBER GUZMAN: Oh, no. I just wanted to follow up. You know, Chair, we do have in my Committee that roadside stand bill that we've actually gone further with it in trying to incorporate the HRS 205 as well as the ag tourism as part of that HRS 205. So that's why it's taking a little bit longer to draft it and get it into this Committee.

CHAIR COUCH: It's a tough job.

COUNCILMEMBER GUZMAN: Yeah. So...*(inaudible)*...

CHAIR COUCH: That's very tough. I want to thank Mr. Johnson for coming. He came on a last-minute notice and he came last night and he's leaving tonight, so he didn't even get a chance to see much of Maui. We did get to show him Wailuku and West Maui.

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Hopefully he has some time to go see South Maui now. Upcountry's going to be next visit. Sorry.

VICE-CHAIR VICTORINO: What about Molokai? What about Lanai?

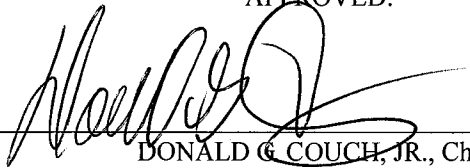
CHAIR COUCH: Molokai and Lanai is gonna be...he wants, yeah, I told him about both islands, too, and he's, wants to see it all.

**ACTION: DEFER pending further discussion.**

CHAIR COUCH: But I want to thank you very much for giving us your, sharing your thoughts. We call that sharing your manao. We really appreciate it. Staff, thank you for being here, Administration and Corp. Counsel. Members, unless there's any other comments you wanna make? Nope. Seeing none, this meeting is adjourned. . . .(gavel). . .

**ADJOURN: 2:55 p.m.**

APPROVED:



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DONALD G. COUCH, JR., Chair  
Planning Committee

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Transcribed by: Daniel Schoenbeck

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CERTIFICATE

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

DATED the 19<sup>th</sup> day of September, 2013, in Kula, Hawaii

  
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Daniel Schoenbeck