

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

**MINUTES**

**October 3, 2013**

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

**RECONVENE:** 9:07 a.m.

**PRESENT: VOTING MEMBERS:**

Councilmember Donald G. Couch, Jr., Chair  
Councilmember Michael P. Victorino, Vice-Chair (out 10:05 a.m., in 10:08 a.m.)  
Councilmember Gladys C. Baisa (out 10:47 a.m.)  
Councilmember Elle Cochran (in 9:12 a.m., out 10:10 a.m., in 10:24 a.m., out  
11:30 a.m., in 11:32 a.m.)  
Councilmember Stacy Crivello (out 10:10 a.m., in 10:24 a.m., out 10:46 a.m.,  
in 10:48 a.m.)  
Councilmember Don S. Guzman (out 9:55 a.m., in 10:00 a.m., out 11:26 a.m., in 11:29  
a.m.)  
Councilmember Mike White (in 9:11 a.m., out 10:41 a.m., in 10:43 a.m.)

**STAFF:** Regina Gormley, Legislative Attorney  
Kimberley Willenbrink, Legislative Analyst (PC-33)  
Yvette Bouthillier, 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  
Joseph Alueta, Administrative Planning Officer, Department of Planning  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation  
Counsel

**OTHERS::** Others (1)

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

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CHAIR COUCH: . . .(*gavel*). . . Will the Planning Committee meeting of, actually, it started on October 2<sup>nd</sup>, it is now October 3<sup>rd</sup>, we're going to reconvene a recessed meeting. Members, we don't need to go through the formalities because we have. . .or do we? Do you, Staff, do you need a roll call or anything like that? Okay, but those of us who are here on Wednesday, or Thursday the 3<sup>rd</sup> are the Committee Vice-Chair Michael Victorino.

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

CHAIR COUCH: Good morning, Mr. Victorino. And then our Council Chair Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: Good morning. And then Stacy Crivello from Molokai.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR COUCH: Good morning. And Don Guzman from Kahului.

COUNCILMEMBER GUZMAN: Good morning.

CHAIR COUCH: Good morning. And we have Mike White, who's getting some information, he will be here shortly and same with Ms. Cochran, but for now they're excused.

**ITEM NO. 38: HOTEL DISTRICT (CC 13-285)**

CHAIR COUCH: Members, we left off yesterday talking about the Hotel. We were going to start with the Hotel District, PC-38. The Committee is in receipt of County Communication 13-285 from the Planning Director, transmitting a proposed bill entitled, A Bill for an Ordinance Amending Chapter 19.14, Maui County Code, Relating to Hotel Districts. The purpose of the proposed bill is to amend Chapter 19.14, Maui County Code, relating to Hotel Districts, by allowing for cell or radio antenna attached to an existing building as a permitted use, amended the allowable accessory uses, consolidating and amending development standards, providing the Planning Director with rule-making authority. And wanted to open the floor for discussion from the Planning Department and Corporation Counsel first. With us from Planning today is Director Spence and Joe Alueta from the Administrative Planning Division.

MR. SPENCE: Good morning, Mr. Chair.

CHAIR COUCH: Good morning.

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MR. ALUETA: Good morning, Chair.

CHAIR COUCH: So fire away with your. . .what we're trying to do with Hotel.

MR. ALUETA: Okay.

CHAIR COUCH: And we'll get to testimony in a minute.

MR. ALUETA: Okay. So 19.14 is your Hotel Districts.

CHAIR COUCH: Yes.

MR. ALUETA: Essentially, some of the key changes is, again, is our standardizing of the ordinances as we go through Title 19 to move a lot of the development standards into table format rather in doing a math word problem as we went over previously at. . .with some of the other bills. So again, standards that are in the Code now are being basically put into a table format rather than being all over the sections as far as FARs, heights and whatnot. We also getting rid of stories as you know, as you saw with the other districts such as residential business bills, we no longer refer to stories. A story height has normally been taken as being 15 feet, and so that's basically where we come up with the maximum height. People are not so much concerned with the story as they are with how tall, what's the maximum height of the building that you could possibly do. That's why I think people are. . .when they look at the Hotel District, we have a maximum building height for the H-2 in Hotel District at 180 feet, that's basically existing, okay, that's. . .we haven't. . .if someone came in two years ago, five years ago, and said they were going to build a 180 foot building, we would still allow them to do that because the previous Code allowed for 12 stories, okay. The other thing that the Council, I guess, and over the years as, is elimination of either policy memos or interpretations by the Planning Director, one of them has been that's been around for at least 15 years has been the allowance for cell or whip antennas to be attached to the side of the hotel buildings. And so therefore, we're just codifying to allow for antennas, it makes sense the Hotel Districts, especially the H-2 District is one of your districts that you have the tallest buildings, makes sense to collocate cellular antennas onto those structures to provide the best coverage as well as rather than having these standalone 180 foot or 199 foot antenna, which we do have out in the middle of the Agricultural Districts in Ulupalakua and whatnot. But in your Urban areas, I don't think you can disguise a 180 foot tower, I mean they make them look like palm trees but you kind of know that they're an antenna, alright, so it's easier to collocate on the rooftop and have a ten foot or have a small four-by-one side-mounted panel that's painted the same color as the building and so it blends in with the structure, that's kind of the Code. The other one is adding hotel to the standards. If you notice on Page 4, on the table, on the districts you have H-1, H-M and Hotel or H-2 and you have H-2 and Hotel. This is very similar again what we talked about with when the County changes the names

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of its districts in its...in the Code book but doesn't realize that you've named those...you didn't make the changes on the zoning map and/or you didn't make a comprehensive change to it. So again, when we adopted the rule districts, we used to have a County rule and then we adopted the new RU-0.5, RU-1, and more recently RU-2, RU-5 and RU-10. However, we didn't realize that on the zoning map, we have a County rule and there was no provision within the comprehensive zoning to say if you were County rule, you are now RU-0.5 or anything like that. Similar to the hotel, we have on the zoning maps Hotel zoned lands. It's not H-M, not H-1, it's not H-2, but when the County's adopted the Comprehensive Zoning Ordinance and they created the H-1, H-M and H-2, they did not iterate saying all lands that are hotel now fall within this district or one of the development standards that are now outlined. We want to make sure that we don't run into that issue. So those are some of the things. Other changes again is more generic on the accessory uses, again you have to be a hotel of a certain size to qualify for accessory uses. We've tried to make them standard as well as allow for other accessory uses, provided that the Director agrees that, you know, that's not a principal use, you're no longer turning the hotel or converting the hotel into some other use other than being a hotel without going through proper either zoning change and whatnot. We're also changing...it said...before it was 20 rooms, if you look on the standard on Page 3, criteria or limitations, where it talks about how big a hotel needs to be or apartment type, hotel apartments have to be, they said 20 rooms. As we know, some of the hotel rooms now are multiple rooms, I mean you rent a unit basically, so we've changed it to rent to identify those as rental units. Again for the most part, it is formatting the development standards. We are not proposing any changes from what we currently have, they're just being put in a table format.

CHAIR COUCH: Okay.

MR. ALUETA: Any questions?

CHAIR COUCH: Does Corp. Counsel have anything on this?

MR. HOPPER: No, Mr. Chair.

CHAIR COUCH: Okay. Before I go any further, Members and anybody in the audience, please put your cells on silent mode because we usually do that at testimony. And I wanted to, before we go further from that, is...Facebook is a wonderful thing sometimes but when there's either misinformation or incomplete information brought out, it results in a lot of e-mails and phone calls we may have been getting this morning. Just to remind everybody that 19.14 states that no hotel can be more than 12 stories, period, end of story. No pun intended. However, as Mr. Alueta said, there's no definition of the height of story. The average that the Planning Department has used is around 15 feet; however, if you go into, say the lobby of any of some of these hotels, you can see that some of these

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lobbies in the first stories on the lobbies are 20 feet, you know, the ballrooms, 20 feet tall ceilings, so potentially. . .and then you have to also deal with the floor-to-area ratio. Potentially each story can be 20 feet tall, so. . .or 30 feet tall if someone could design it that way, so a building could be 360 feet tall, if we leave the definition as it is now, the restriction as it is now. What the Planning Department is trying to do is to say, no, we don't want 240 foot, 300 feet buildings, we only want 180 feet buildings. Now if you were. . .because of the floor-to-area ratio, I'm not sure you can fit 13 stories in 180 feet, anything more than. . .maybe you might be able to get 13 stories but I don't think you can. I haven't done the math but, you know, when people are saying, please leave it as it is, as it is right now, you can potentially have a 360 foot building. I don't think we want that. So for those out there who wrote in, thank you for your concerns, we certainly are looking to keep a maximum height which can potentially half what is available out there now, so given that to the Members, I know you've. . .I've got about 20 phone calls and/or e-mails. You can use some of this as a response to the e-mails, we are looking out for the height. I believe a quick calculation was done just on the Hyatt in Kaanapali and rough estimate it's a little bit above 130 feet. I haven't had a chance, because of all, you know, answering the phone calls and whatnot, getting the actual height from somebody, unless the Planning Department knows how high it is. I don't think they would, it would be more of a Public Works Department in the plans, but already. . .and it's 12 stories so. . .and for everybody to wonder why we would need a 15-foot story is a lot of times in between each floor there's a lot of stuff that goes in there as Mr. Alueta said yesterday, duct work, plumbing, all kinds of stuff goes in between the floor, so it's not just a floor and then a next floor and the next floor, not like a home. So you can tell your constituents who are e-mailing you and calling you that we are looking at it, provided, of course whatever we do today but that's what the proposed plan is in front of you. Having said that, Members, any questions for the Department? Mr. White.

**COUNCILMEMBER WHITE:** Not so much of a question but just to put everybody's fears of little bit to rest. The floor area ratio limits what you can do on the property anyway and it significantly limits what you can do. To put it in perspective, you're able to use a footprint of 35 percent of your lot size as your building footprint, so I know we had a wonderful math day yesterday so I thought, well, we might as follow up with some math today. But if you take the 150 percent floor area ratio means you can build 150 percent of your lot size, but if your footprint is 35 percent, we divide 35 percent into the 150. If you use up the entire 35 percent with the current floor area ratio, you can only go up 4 stories, little more than 4 stories. So the height is not the issue because if you want to translate that floor area ratio into a very tall building then your building footprint shrinks down to, if you go up 18 stories, you're shrinking your footprint down to less than 10 percent of your property, and if you go up 12 stories you're at about 12 percent. So, you know, the height is. . .it's a factor but the main limiting factor is in the other ratios. And, you know, I'm reasonably comfortable bringing the height down a little bit from 180 because I think it's unlikely that anyone's going to want to build a 15-foot story floor

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to floor. Lobby areas, meeting rooms, and all those are often significantly more than 15 feet, but as you're building the guest room floors, you know, we don't have any duct work, it's all chill water system so it's all pipes, and so in our structure in six floors, our, the top of our building is something in the neighborhood of fifty...maybe 56 feet. So, you know, if we want to do something I would bring the height down and expand the floor area ratio to maybe 200 percent. But, you know, the other perspective that, you know, I give the Department credit for is that, you know, these are the areas where we generate the lion's share of our property tax, and we need to make it reasonably easy for us to continue to upgrade and build out some of the properties that have the capacity remaining to do so, and the degree to which we limit it, we're limiting our own ability to generate jobs and generate an increase in our tax base. So it's probably a larger discussion than this bill will allow, but I give the Department credit for moving the needle a little bit because, let's face it, as we've talked about in this Chamber before, just the increases that have been awarded over the last several months will result in an increase in our tax base, without an increase in services, of \$45 million. If we're not building some new stuff, we're all going to be faced with a minimum tax increase of little over 20 percent. So, you know, I take my hat off to the Department for moving in this direction a little bit, but anyway that's just my two cents.

CHAIR COUCH: Thank you. Members, any other comments? Mr. Victorino.

VICE-CHAIR VICTORINO: Thank you. And for the Department, so if I understand you correctly, Mr. Alueta, as stated by our Chair, 12 stories is the maximum based upon the formula Mr. White was talking about, but 12 stories is the maximum anyone could build out, not, build up I should say.

MR. ALUETA: In the H-2 District --

VICE-CHAIR VICTORINO: H-2 District, I apologize for not being. . .

MR. ALUETA: --the current ordinance specifies 12 story height limit.

VICE-CHAIR VICTORINO: Okay.

MR. ALUETA: But it doesn't. . .we extrapolated out 15 feet per story from the other adjacent districts 'cause I don't believe there is any definition of story --

VICE-CHAIR VICTORINO: Okay.

MR. ALUETA: --on the height, and so but we as you know in the Residential District and the Commercial District, it typically goes as 15 feet per story and that's typically what has. . .that has been used in the past.

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VICE-CHAIR VICTORINO: Okay. And so are you saying that maybe one of the other challenges we may have to look and maybe this is not the conversation now but maybe something we need to work on in the near future is defining what a story is, or you using it basically off of this formula, 'cause you're saying 15 feet is what we normally use.

MR. ALUETA: Correct. We're not. . .what we're doing is we're getting away from the use of story in the sense of how you measure height, okay. So all of our districts that we've come before you where they said, they would often say two stories and 30 feet, no more than 30 feet. In the case of in other areas they do the same thing, but we no longer want to do that because we're more concerned with the overall height, so we're getting rid of the definition, I mean, not definition, we're getting away from the referencing story when you talking about what is the maximum height your building could be, and so we're eliminating that reference in this code, in this section and just referring to the maximum, the building height which is 180 feet.

VICE-CHAIR VICTORINO: Okay. And again, just so these people are comfortable and I'm comfortable with this because I don't know, you only got 20, I got about 40 calls and e-mails, so I mean they were really ripping I guess on me. But I agree with their concern, you know, I do not want this to be another Waikiki, I don't want this. I think we've been very, you know, if one of the things I hear are constantly from our visitors and people who visit from other jurisdictions, other counties is that, wow, you've guys done a real nice job in your resort areas keeping height limitations, seeming the aesthetics, keeping the landscaping, all the things that need to done and you have it where people can be happy going there. You go to Waikiki, you just fearful of just getting through the traffic, let alone getting in the elevator and go 32 stories to your room. So I understand how they feel, and I'd like to preserve that. I do not like, I do not want to ever see mega stories built here. Now if I'm gone and buried then that's another story, but so long as I'm alive, I'd like to do everything possible. So, Mr. Spence, I think you're kind of gleaming in your eyes and you have some responses, but this 180 feet I understand is the limitation on height, but also I'm concerned that somebody with smart math, as it may be used, could get around this somehow and, you know, we're not going to be here forever, so I just want to ensure that what we do and maybe we have to take further action in the future will preserve that this is the height limitation and we're not gonna have a 20-story building somehow someday. So a guy decided to go four feet, I don't know, I don't wanna go there. I'm going there, I'm going to places where I don't want to be, I apologize.

CHAIR COUCH: Thank you. Mr. Spence.

MR. SPENCE: Just a. . .thank you, Mr. Chairman, just a couple of comments on that. Like maybe to put it a different way what Joe's been saying, we don't. . .you can go, you

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know, 12 stories now. I think everybody has been to a ballroom, a function in a ballroom at one of our great hotels, those ballrooms are really high, they're higher than this and I think, you know, everybody would agree Chambers, this is like, I don't know, maybe 15 feet or something like that. I've been in ballrooms that are, you know, much higher than that, that's a single story, so we don't have a definition of. . .and then you get up to the guest rooms, those are single story, so we don't have. . .you can't just measure by stories. You can't just say 12 stories because those stories could be, you know, that 25-foot high ballroom or they could be the 10-foot high, you know, counting everything up in the ceiling or in the floor, you know they could be, like the guest rooms so it doesn't give you anything. So, you know, we can discuss how high things should be but just by saying stories that's not an accurate way to put it. To go along with that, Mr. Victorino's comment on how Maui has done a good job of keeping things in a little bit smaller scale and more of a livable scale and beautiful landscaping, et cetera, that's a product of the Special Management Area, that process, I mean, we're talking any of the hotels that we're talking about with this are going to be in the SMA. They have to go through site review, they have to go through a lot of architectural, you know, everything before the Planning Commission, before the Urban Design Review Board, and one of the things in the Special Management Area is public views, et cetera, we can go on down the list of criteria. When people. . .so to me the comment that Mr. Victorino made was a Special Management Area works. It's a much nicer environment, our resort areas are to me a much nicer environment than Waikiki. I really appreciate how this whole process has worked. The. . .and I would remind if the Members just a couple years ago the intervention that was on the Grand Wailea expansion, you know, so on the one hand we have our own process that we go through that kept things pretty good, but then if it tends to go over what the public thinks is bad, that intervention on the Grand Wailea expansion, front page news for I don't know how many months, that brought it down even more. It's a system, I don't like adversarial systems, but the system has worked and it's resulted in the quality of resorts that we have today. So I would be, you know, we can say 180 feet. I wouldn't be too afraid of that because we have a whole other process for design and public review process that has worked for however many years, how many decades and resulted in some of the great places that we have.

**VICE-CHAIR VICTORINO:** Thank you, Mr. Spence, and although I agree with you to a degree, we also gonna have to consider outside of resort areas. The day will come when Central Maui may be getting a hotel and they may use that because it's not a Special Management Area, you know, so. . .or Wailuku, you know. So, you know, you're gleaming but the eventuality that could happen, that could happen and we are moving as a community, and a lot of people that come here for all kinds of functions, Mr. Chair, don't want to stay in Kaanapali and don't want to stay in Kihei, and right now we have very limited rooms. You know, so when we have other venues, sports, family, all kinds of issues happen here, business meetings, people like the Courtyard at Marriott because why, because it's convenient, you know. But what I also am concerned about, Mr.



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Spence, is that if you go to Wailea, a lot of Wailea was built in, okay, so where is the height restrictions now again, because Kaanapali is mostly flat except maybe if you go to the Sheraton, you know. You know, right, that was built on flat surface but then you get Wailea which was built into hill sides, many of the properties were built into hillsides. So where do you measure the 180 feet from, from the back end, well, I mean, okay, from the front end, is that what you're saying, Mr. Alueta?

MR. ALUETA: Points directly below on each, everywhere you go through the building.

VICE-CHAIR VICTORINO: The 180 feet would be from. . .

MR. ALUETA: Every point along the building --

VICE-CHAIR VICTORINO: Okay.

MR. ALUETA: --going down to the original grade.

VICE-CHAIR VICTORINO: Yeah. The original grade.

MR. ALUETA: The original or finished grade, which are all --

VICE-CHAIR VICTORINO: Finished grade.

MR. ALUETA: --depending on how you guys --

VICE-CHAIR VICTORINO: Yeah. Yeah.

MR. ALUETA: --change your definition.

VICE-CHAIR VICTORINO: Yeah. See, so, you know, again definitions change from one aspect to another. And I'm sorry, Mr. Chair, if I'm taking. . .but this is very important because again, Special Management Area, if you're talking Wailea and West Maui, probably okay, but there's other areas in the future. And who's to say not only hotel, you know, other things might and I don't want people to use this against us and, you know, we're still getting e-mails right now, right this very minute from people saying don't do this, you know. So I'm to the philosophy, I agree with Mr. White that maybe some restrictions may have to, maybe lessening of that, you know, maybe something I consider, but I'm not exactly sold on the 180, you know, I concern myself with that one. And again, I look at it from a perspective I've loved these islands all and the neighbor islands especially, they've never been allowed to build...

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MR. SPENCE: Right. And again, I'm saying that, you know, let's discuss that 180 feet. The Marriott in . . .down by the airport, that's in the SMA. The other two hotel sites in Kahului, those are in the SMA. Any other, if there was going to be a new hotel, they would have to go through Change in Zoning in which this body would see it. So there are built-in protections. I'm just. . .I'm not saying yes or no on 180 feet, I'm just. . .I'm trying to explain to the Committee Members and to the people who are watching that there are built in protections already and those protections are going to be site specific based on a particular proposal.

VICE-CHAIR VICTORINO: Okay. Thank you. Thank you, Chair.

CHAIR COUCH: Thank you, Mr. Victorino. I want to welcome, Mr. White, with whom we already heard from and Ms. Cochran. Thank you for making it.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR COUCH: Okay. Ms. Chair Baisa has a comment then Ms. Cochran.

COUNCILMEMBER BAISA: Thank you very much, Chair. Obviously the Blackberry's and phones and whatever have been running hot from last evening and there's a lot of passion about this subject. Therefore, I think I want to be extremely careful about what we decide. You know, I can listen to all of the explanations about floors and stories and this one's high and that one's long and ground space and percentage of this, that, and the other thing, but I think for all of us, we have to come up with a very succinct and carefully worded explanation about what we're doing here. And I don't have that, I couldn't right now text somebody back and say, relax because of this, okay. That 180 feet is debatable. All we've been told is that the current limit is on 12 stories and that could equate to something higher than that. I would be much more comfortable with a straight out, no taller than or no higher than. I think that this community is ready for something like that. You know, we went through that whole General Plan process and if there was anything that I got out of it, it's that people want to preserve Maui. We don't want to look like Honolulu, and so we need to put into this law whatever teeth we have to put so that we are sure. I don't care about interpretation or who's gonna to come ten years later or twenty years later. I think we need to be very clear about what we want our buildings to look like, and so that's where I'm at.

CHAIR COUCH: Okay. Thank you, Madam Chair. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you and I completely concur with Chair Baisa in her comments. My messages have been off the hook also. And I hear the concern but I understand too where Department's coming from and trying to give a definition to the

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word, story, 'cause we've been using it and for. . .we need to put some type, equate it with a number and I guess the number or. . .no, I see Mr. Alueta shaking his head.

MR. ALUETA: Yeah. I'm sorry.

COUNCILMEMBER COCHRAN: So maybe you want to try me real quick.

MR. ALUETA: Okay. Yeah. We. . .there is a definition of story but it doesn't necessarily relate. . .every district has a different relationship with regards to how they measure it. Okay, story is just the separation from one floor to another, okay, and you measure that for your floor area ratio. Our problem is that there is no height, there is no feet or definitive answer on what is the feet for a story, and right now the Department's policy because you could say is that we use 15 feet in the determination for stories, okay, in the Hotel District and Apartment District. That's right now. . .the Code only references 12 stories. There is no finite height limit, and the point of this change is to give it a finite height limit, and that's our biggest concern is that we are trying to codify policies that currently protect or limit the maximum height of within the Hotel District. But I think as Councilmember White pointed out that you're looking only at one limiting factor and that is the height. The other limiting factors are lot coverage and floor area ratio, because you will never and as most people have found out they are not able to maximize height per se that they're allowed, and that's why it's kind of like we have a giant box of what they potentially could go in, but for the most part, once they do their calculations, they're always within that envelope. They don't really exceed that 180 feet or, you know, the 12 feet, I mean, it's potential that someone could build a 15 story hotel but they would be below the 180 feet but given the lot configuration and FARs as Mr. White says, it would be a really skinny, a really small building so. . .

CHAIR COUCH: Just to say FAR is floor-to-area ratio.

COUNCILMEMBER COCHRAN: Okay. So yeah, I. . .sorry, to move on, Chair, thank you and thank you, Mr. Alueta. But yeah, that's kind of what I was going to try and say is that there needs to a number, I guess, a measurement, I guess, to what a story is, and the Department has been using 15 feet at this point, so this is why you want to codify the 180, twelve times that is 180. So and then I hear Mr. Spence's, the other protection in place, I guess, in SMAs areas and all of that, but you know what comes to my mind is on Kauai, Kokee was proposing a hotel up in Kokee and that is like proposing a hotel up at Haleakala or, you know, so that where Mr. Victorino is saying there's areas that are not in SMA and in the future, who knows, maybe Pulehunui wants to put a hotel in there, right, we're going to have this big convention center and parks and whatever we want visitors to come and stay. Anyways, I mean, that's in a future we can't predict but, you know, again I do want to make sure that it is specific, succinct as Chair Baisa has mentioned so in the future wonderful SMAs have these out of protections but what about

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these other areas, you know, what about places like Auwahi, you know, Kahiki. . .I don't know, just in these areas.

MR. SPENCE: And that's also what I tried to point out with the Change in Zoning. It's up to this Council what's going to be zoned H-2, which allows the height, or H-1, which is much lower. That's the determination within this body. There are going to be places where you want the density and there's going to be places where everybody agrees that that's just not possible and it just should not be. Like up in Pukalani we have Hotel zoned property. That's the lower one and nobody wants the Grand Wailea in Pukalani, that's just not going to be happen so --

COUNCILMEMBER COCHRAN: Right.

MR. SPENCE: --there are those protections in place.

COUNCILMEMBER COCHRAN: Right.

MR. SPENCE: And a lot of them are with this body, not with the Planning Commission.

COUNCILMEMBER COCHRAN: Right. And I appreciate, you know, you pointing that out also, so hopefully this body in the future that may sit in these seats, you know, understand what we're talking about here today, but again, you know, we're not ...*(inaudible)*... than the numbers and the figures and the codification of this will stand true to what we're trying to get at here today. And again I don't have the exact answers and definitions, but I believe that's why we're here to work on it and figure something out. But I just want to allay the fears as you say, Chair, of the comments and phone calls and e-mails we've been receiving that we are here and hearing them out loud and clear and here to discuss something that can, will make everybody happy I guess in a sense or feel, you know, give them confidence that we're hearing them out.

MR. SPENCE: And on the. . .Mr. Chairman.

CHAIR COUCH: Sure.

MR. SPENCE: If I could just offer, the. . .whether we put a number on story or actually I would much rather talk about this, the maximum height rather than the height of the story because of the variables that we've pointed out. Let us do a little bit of research. What's the highest that we have so, you know, everybody knows pretty much all the buildings here on Maui. Let's talk about. . .let us go do some research, see what we have, you know, how high Mr. White's building is, how high some of the other ones on the West Side or in South Maui are, and so we have an image in our mind. We can report back on

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what these things are, and then if. . .it's hard for me to imagine going higher than what we already have but there may be some cases. Let's. . .we'll bring that as a discussion.

COUNCILMEMBER COCHRAN: Chair. . .wait.

CHAIR COUCH: Thank you and Ms. Cochran.

COUNCILMEMBER COCHRAN: Sorry, I know Mr. White has his hand up. But real quickly, what's the height of this building? 'Cause I think we are the tallest, right? No. I thought we. . .in Wailuku, I think we are the tallest.

CHAIR COUCH: Yeah, tallest in Wailuku. I think the Hyatt or the Marriott in Kaanapali is taller, I think.

COUNCILMEMBER COCHRAN: But you wouldn't have a guestimation on the height of this County Building?

MR. SPENCE: We'll find that out.

COUNCILMEMBER COCHRAN: Okay. I was just curious. Thank you.

CHAIR COUCH: Okay. We have Mr. White and Ms. Crivello.

MR. WHITE: Let her go first.

COUNCILMEMBER CRIVELLO: No, I just want to have, I mean, we keep talking about 12 stories and 15 feet or what have you, but in the. . .I guess the submission of proposal, you're having your maximum building height in feet for 180 for the H-2 and Hotel. So my understanding that's probably equivalent to 12 stories in trying to be more definitive or what you'd like to have really not changing anything basically if I read this correctly, yeah?

MR. ALUETA: That is correct.

COUNCILMEMBER CRIVELLO: Okay.

MR. ALUETA: We are not changing anything from the existing practice, okay. So like I say, we currently extrapolate 15 feet per story within the Apartments and Hotel District and in many of our districts as being a story. However, again that's arbitrary, I mean, someone once told me half of planning is bluffing your way to get people to do stuff, and we have never been challenged on it because it's the Director's job to interpret the Code, okay. So

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we've made the call that is 15 feet, okay. I really don't want to be challenged on what the height or foot of every story is, --

COUNCILMEMBER CRIVELLO: Right.

MR. ALUETA: --and so we would rather just have a . . . put it in black and white, this is how tall your building can be. If you somehow can put 15 floors, instead of story, floors of a building into 180 feet, god bless you, alright. So that's the, I mean. . .

CHAIR COUCH: But you still have FAR.

MR. ALUETA: You go figure out the FAR, if you can do it with all the limitations, setback limitations because there's setbacks still, floor area ratio and lot coverage, okay. I, you know, you going to have to be very creative and. . . but that doesn't have the impact that the community sees is the overall visual height of it.

COUNCILMEMBER CRIVELLO: Right.

MR. ALUETA: Whether there are two floors in a 180 feet or 15 floors in 180 feet, the visual impact to the community is that. Now we'll get into the FARs and the lot coverages get into your other environmental, your impacts on infrastructure and all that. But for the most part, the community is really concerned with the visual impact of the maximum height, and that's what we're trying to establish is this is now the. . . this is the maximum height, that's always been what we've established as the maximum height. It's just that I don't think anyone has ever gone to the maximum height because of the other limitations with regards to lot coverage and floor area ratio.

CHAIR COUCH: And thank you for that, Mr. Alueta. One thing I do want to correct, not necessarily correct, just to expand on what Mr. Alueta said, we are sort of changing what's existing now in that. . . we're adding a limit. Right now, there's no limit.

COUNCILMEMBER CRIVELLO: I understand.

CHAIR COUCH: Yeah.

COUNCILMEMBER CRIVELLO: I was just clarifying, Chair, that the 12 stories is equivalent to the 180 feet, which sort of. . .

CHAIR COUCH: Potentially --

COUNCILMEMBER CRIVELLO: Yeah.

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CHAIR COUCH: --but it could go up to 300 feet if you want. If you have really tall. . .

COUNCILMEMBER CRIVELLO: No, that's not what's in here. That's my clarification.

CHAIR COUCH: Right. What's in here is we're. . .sorry, I'm talking about existing law. The existing law just says 12 stories and they could be 20 feet tall each. And so what I'd like to ask while we're listening to Ms. Chair Baisa's question. . .actually Mr. White was next and then Chair Baisa. Mr. Alueta, can you give us, you know, kind of an example of floor area ratio and lot coverage and height, kind of work out a number, you know, on paper and then. . .or do you have it real quick? Just so everybody understands how that work. I know some of us do but. . .oh, Mr. White.

COUNCILMEMBER WHITE: I can just repeat what I said earlier. If you take the 35 percent lot coverage.

CHAIR COUCH: Let's say a five acre lot.

COUNCILMEMBER WHITE: Let me use ten.

CHAIR COUCH: Okay. Ten.

COUNCILMEMBER WHITE: It means you can build. . .the footprint can be about 155,000 square feet. Your total lot or your total floor area based on a ten acre site is going to be somewhere in the neighborhood of 670,000 square feet of building area. So you divide the 155,000 square feet into 672 and you can only go up four stories before you've used it all up. So the higher you go, the more the footprint shrinks. So the footprint shrinks if we were to go up 12 stories, the footprint shrinks to, I believe, 56,000 square feet from 155 so. . .

MR. ALUETA: Let me give it a shot. If you have a 10,000 square foot lot, the current proposal for. . .in the. . .this is the Hotel, H-2 District, okay. The maximum floor area is 150 percent, so if you have 10,000 square foot lot, you could do 15,000 square feet of floor area, okay. And your lot coverage is 35 feet. . .35 percent, so given the 15,000 square feet, you could approximately do three stories of 5,000 square feet, so it'd be each one, each floor would be 5,000 square feet, okay. Now the thing is this is that to get skinner, so if you had a 10,000 square foot lot and you covered, say, did a footprint of 2,000, you could potentially go up to. . .then you could probably get your 12 stories. So you'd have to be about 20 percent lot coverage

COUNCILMEMBER WHITE: Well, it's less than that.

MR. ALUETA: Yeah, less. . .little bit less.

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COUNCILMEMBER WHITE: Twelve percent.

MR. ALUETA: Yeah.

COUNCILMEMBER WHITE: Chair, what I was going to suggest was that, you know visuals make a big difference.

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: I think that would help a lot of we could have a number of different scenarios. So showing that, you know, use a ten acre spot or twenty acre spot and show what height, you know, what the floor area. . .gives us a mix of height limitations and floor area, percentages, and so we can see what it is, because it's, you know, I think there's not just a concern about the height limit, but I think there's also the added concern of walling off a property, right? So, you know, we haven't discussed building separations, but that's, you know, I don't like driving by places like KOR where you can't see through at any point. So there are a number of issues that I think are important to consider and visuals would help all of us get a better handle on what it is that we're deciding.

CHAIR COUCH: And I'm fine with that, I think if the Department can come up with something or if you have the knowledge and time, I'm fine with that. I really want to thank the public for bringing this up, you know, because it's something that we want to be concerned about, and I think we have some people on our Staff too that can do height. Okay, somebody else had a question. Chair Baisa and then Mr. White.

COUNCILMEMBER BAISA: Mr. White was very close to where I was going. What I was trying to find out is if anybody could tell us what 180 foot tall building looks like if there is one on the island. Can we go take a look at it so we can see?

COUNCILMEMBER WHITE: Well, the Hyatt and the Marriott in Kaanapali are around 130.

COUNCILMEMBER BAISA: So it could be much taller than that.

VICE-CHAIR VICTORINO: Fifty feet more.

CHAIR COUCH: Fifty, well, fifty feet, yeah.

COUNCILMEMBER WHITE: I don't. . .I couldn't measure the height of the Marriott because it's got a peaked roof so it may be a little higher, it may be 140.



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MR. SPENCE: We can find out.

COUNCILMEMBER BAISA: Yeah. I agree that we need some visuals. This is too difficult to try to explain.

COUNCILMEMBER WHITE: It's too abstract.

CHAIR COUCH: Yes.

COUNCILMEMBER BAISA: Give it to us and I can go and explain this to anybody who's asked me this question, I'm sorry. And until I can do that, I cannot vote. Thank you.

CHAIR COUCH: Sure. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you and I concur again with Chair Baisa. So Mr. Alueta mentioned that, you know, nobody's ever applied or reached this limit, this number that we're looking at, and I think Mr. White mentioned, well he's comfortable with dropping it down. So I'm wondering is there... 'cause if you mentioned that Marriott and Hyatt are at 130 around about and now we're looking to tack on another 50 feet on some of our tallest buildings in West Maui then, you know, perhaps we can drop this number down comfortably, because as you say nobody's challenged it, nobody's gone this... gone to this height, and maybe if we just settle a limit now, nobody's really going to be up in arms because nobody's ever ever asked for it anyways or gone there.

MR. SPENCE: And part of the reason why I suggested let us go found out how tall some of these buildings are --

COUNCILMEMBER COCHRAN: Okay.

MR. SPENCE: --and we'll bring them back to this Committee and then we have one we, we have something to compare to, but too, I mean, I don't like to artificially set... if we're going to place some limitations on something let's have a rationale behind it rather than just picking a number.

CHAIR COUCH: I agree 'cause we don't want to cut anything off that's maybe existing. Just real quickly, crack Staff found out that the County building is at 140 feet, just so you know. Anyway, Mr. White.

COUNCILMEMBER WHITE: Thank you. Yeah and conversely, if we're going to be expanding something we need to have a rationale behind that as well.

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CHAIR COUCH: Yes. Mr. Victorino.

VICE-CHAIR VICTORINO: Thank you and I'm glad we've gotten the discussion to the point where we need more work on it. I think that's what fear, the public feared more than anything else is we just going to make an arbitrary and capricious 180, that's it and because we thought it was the right thing to do based on the Department and no offense to Mr. Alueta 15 feet times 12, okay, 180, we got it. It's not always that simple and I'm glad that we've come to this point. So, Mr. Chair, I look forward to the research.

CHAIR COUCH: Yes.

VICE-CHAIR VICTORINO: And my other question is when you say 140 feet, this is our building, 140 feet, is that inclusive of all the AC and other things that are put on top of it? Because, you know, when you're building height, if you're talking where the height ends, many of the buildings like in Kaanapali, I know, I worked in most of those hotels, when you go to the top story or the roof there's air conditioning, there's storage, there's all kinds of stuff that is added on the top.

CHAIR COUCH: But that's an accessory.

VICE-CHAIR VICTORINO: But I'm saying height, you know, you going. . .

CHAIR COUCH: Extra ten feet, you get extra 10 feet on that.

VICE-CHAIR VICTORINO: Well, a lot of them may be even more than that. I going tell you there are more than that. Some of the air conditioning systems over there are more than 10 feet. Okay, I'm opening Pandora's box and I shouldn't but. . .

MR. SPENCE: No. Those are questions that regularly come to the Department. So yeah, we'll deal with that.

VICE-CHAIR VICTORINO: Okay. I just. . .so long as we all on the same page. Let's get very specific in what we are trying to accomplish and that way the public can feel very comfortable and it's not something we're trying to slide under the door and try to get something accomplished without their knowledge, yeah. I think that was another thing, everybody was taken by this and I guess the only reason it was brought up, you know, Mr. Mayer brought it up at the. . .and then the word got around and 47 e-mails later and they're still coming. So thank you, Mr. Chair, for your indulgence.

CHAIR COUCH: Thank you. And we will do that, we will ask the Department to do that. But I still want to continue. . .there are other things in here that we need to discuss. Let's get those out of the way as long as we have a little bit of time to do that.

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MR. ALUETA: Mr. Chair, can I just --

CHAIR COUCH: Yes, Mr. Alueta.

MR. ALUETA: --make one comment with regards to the height of this building. . .this building and the area here. The height limit in. . .for this building is also 12 stories in height, but it has a maximum floor area of 300 percent of lot coverage.

CHAIR COUCH: Wow. So that's twice this.

MR. ALUETA: I mean. . .so it has a larger floor area ratio.

CHAIR COUCH: Mr. White.

COUNCILMEMBER WHITE: Were you able to check on the floor area ratio for Waikiki?

MR. SPENCE: We can do that.

COUNCILMEMBER WHITE: But I. . .my staff looked it up and it's confusing because I don't know what Waikiki is, 'cause there's a resort level which is 1.4 compared to our 1.5, but what. . . there's no way that's Waikiki. I just wanted to get a. . .

CHAIR COUCH: Sure, we'll add that to the mix of stuff to give. . .

COUNCILMEMBER WHITE: Oahu goes to 400 percent. But I don't know that that's. . .I can't imagine that's Waikiki either. That's probably downtown Honolulu.

CHAIR COUCH: Chair Baisa.

COUNCILMEMBER BAISA: One more question to be looked into as we try and make this decision. As you know, the e-mails have been running crazy. Question, can the fire trucks reach 180 feet? Something to think about.

CHAIR COUCH: Mr. White.

COUNCILMEMBER WHITE: I just point out that they can't reach the makai side, the makai buildings anyway, the makai side of the buildings anyway.

CHAIR COUCH: I don't think they can reach the top of this, can they?

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VICE-CHAIR VICTORINO: Nope. Mr. Chair, can we request from the Fire Department what is the maximum height with their ladder trucks, 'cause we just recently purchased a new ladder truck and they gave us some answers to that, but I've forgotten about it, so could we ask them?

CHAIR COUCH: Sure.

VICE-CHAIR VICTORINO: Please.

CHAIR COUCH: Sure. I've been kind of in communication with Chief Murray as we speak but he doesn't know the exact height in feet, just stories.

COUNCILMEMBER WHITE: It all depends on how close they can get, too.

CHAIR COUCH: Yeah. That's the other thing. So, Members, there are. . .that was just one, one little number in one column. We've got. . .yeah, and that's a huge thing. I'd like to go from Page 1 of the bill to see if anybody has any questions and then just. . .it's only three, four pages so it's going to be really quick supposedly. Anybody have questions on Page 1? I know I have one but, Mr. Spence or Mr. Alueta, it says the Hotel District is a high-density multi-family area bordering business districts and ocean fronts. So in reading that, I know the existing language already, so does that mean you have to be on the ocean front and bordering a business district?

MR. ALUETA: No. It just means that's the guidelines in which you typically have a Hotel District.

CHAIR COUCH: Okay. But it's not a requirement and you're okay with that, Mr. Hopper?

MR. HOPPER: Usually the purpose and intent is to describe the purpose and intent of the district. If there needs to be a revision the Committee can revise or the Department can revise, if they believe there would be a better way to describe the district. But the actual whether or not a district is a Hotel District depends on what the zoning designation is so --

CHAIR COUCH: Okay.

MR. HOPPER: --you wouldn't invalidate a zoning designation because it's not on a business area but this is giving guidance as to where the zoning could be or should be.

CHAIR COUCH: Okay. I just want to make sure that we're not limiting ourselves to that. Members, anybody else with anything on Page 1? Mr. White.

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COUNCILMEMBER WHITE: The permitted uses seems quite limited.

CHAIR COUCH: That's the existing permitted uses at this point.

COUNCILMEMBER WHITE: I know but it doesn't include restaurants.

CHAIR COUCH: Those are under the accessory uses.

COUNCILMEMBER WHITE: Oh. You want to make it. . .well, I mean. . .

CHAIR COUCH: No. Understood.

COUNCILMEMBER WHITE: An accessory use almost sounds like you have to go get a separate permit to have a restaurant.

MR. ALUETA: No. It's an outright, it would be just permitted within the hotel as long as the principal use is one of the principal uses listed as being permitted in the Hotel District. So restaurants are typical within it but again there's a limitation on you don't want to have or at least initial drafting of this ordinance limit it to hotels or condo hotels of 20 units or more.

CHAIR COUCH: And if I might add, Mr. White, we have this situation happening in Kihei as we speak. We have some H-2 zoned land that is empty. Somebody wanted to put at this point food trucks, but if they wanted to put a restaurant they couldn't unless the hotel existed already.

COUNCILMEMBER WHITE: Okay. Yeah, that makes sense.

CHAIR COUCH: Yeah. That's the reason it's accessory. Okay, any other questions on Page 1 and/or now we're going to 2. I only have a . . .just a . . .I think it's a technical, it's nonsubstantive area, but down where it says cell or radio antenna attached to an existing building, shouldn't that be numbered H under permitted uses? Staff or Joe? 'Cause you have a list of permitted uses on Page 1 and it goes to G and then you. . .

MR. ALUETA: It is H, it's just that there's a big bracket from accessories.

CHAIR COUCH: Oh. The bracket.

MR. ALUETA: There's a little bracket that takes, removes all of that.

CHAIR COUCH: Okay. Got you, that's where the bracket is. Thank you. Members, anything on Page 2. Page 3?

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COUNCILMEMBER WHITE: Chair?

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: On the matrix, under H-1, maximum building height.

CHAIR COUCH: Oh. No, we're on Page 3. We're on the one that came out of Planning Commission, that's at the end of the Planning Commission minutes.

COUNCILMEMBER WHITE: I'm just using the most recent one that came on August 19<sup>th</sup>.

MR. ALUETA: No. That's our transmittal and then. . .

CHAIR COUCH: Yeah. August 19<sup>th</sup>, in the back, the last four pages.

MR. ALUETA: Yeah. The very end is the final bill that came out of Corporation Counsel.

CHAIR COUCH: So this the last three pages of that stapled group. . .

MR. ALUETA: It's right before your e-mails.

CHAIR COUCH: So we're on Page 3.

COUNCILMEMBER WHITE: Well, I like my Page 3 much better.

CHAIR COUCH: Okay. While he's checking that out, I was going to ask where it says under criteria or limitations, number 1, it says all hotel and apartment hotel buildings in which such accessory uses shall be permitted and allowed shall contain more than 20 rental units and such accessory uses shall be permitted and allowed only as an adjunct to and as part of the main building and no other. Not quite sure what that means. It means that if the main building has to be the hotel and it's accessory to that hotel and not any other use on the site, is that what that?

MR. ALUETA: I going to defer to Mike but that's existing language. The only thing that we changed in that existing language was from rooms where it says 20 rentals units, that used to say 20 rooms.

CHAIR COUCH: Okay.

MR. ALUETA: But the gist of it is that, yes, you have to have the principal use of the hotel or apartment hotel first before you can establish --

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CHAIR COUCH: Do any of the other stuff.

MR. ALUETA: --any type of accessory uses to it.

CHAIR COUCH: Great.

MR. ALUETA: So as you pointed out, you can't have a standalone restaurant on the hotel lands if there's no hotel on the property.

CHAIR COUCH: Okay. Now Page 4, which I think Mr. White has some questions on.

COUNCILMEMBER WHITE: Well, not anymore, because --

CHAIR COUCH: Because it's fixed.

COUNCILMEMBER WHITE: --this one is fixed.

CHAIR COUCH: Anybody else have any questions on that other than the 180 feet? And we're going to get that taken care of. And Page 5, so ground signs can only be 8 feet high, which is, I mean, that's pretty high. That include the. . .

MR. ALUETA: No. It says except if greater height is allowed by Chapter 16.30, which allows, which is a sign ordinance, which allows for 12 feet heights for ground signs.

CHAIR COUCH: Okay. Any other comments? So aside from the 180 feet, everybody's good with what's in there? I'm sure if you find something else, we're going to have another chance to discuss it. So without objection, we'll defer this item.

COUNCIL MEMBERS: No objections.

**ACTION: DEFER pending further discussion.**

CHAIR COUCH: Okay. And we'll also. . .it's a perfect time for our break. So if we could be back here at 10:20, that would be great. This meeting is in recess. . .(*gavel*). . .

RECESS: 10:10 a.m.

RECONVENE: 10:23 a.m.

CHAIR COUCH: . . .(*gavel*). . . Will the Planning Committee meeting of October 3<sup>rd</sup> please come back to order. Members, thank you for that lively discussion and very informative

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somewhat. We have to get more information before we continue on, but everything else seems to be just in very good order.

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

CHAIR COUCH: Alright, we're now on PC-33, Home-Based Businesses. And, you know, we talked about this at length last meeting and talked about having you guys take a look at it and see what you had, what kind of questions you would have, and potential changes so that we can it out, take a final bill or release a final draft of what we would like to see out to the communities and have them a chance to. . .give them a chance to have a crack at it as well. So I'm hoping that if you have any changes we've got them ready to go today. What was handed out to you this, just now was a clean version of the, you know, the tracked changes version removed of the marked up version that we worked on. Nothing was changed, it was just taken out, all the red so you can go back and forth from the clean version to the marked up version if you want. But let's go right away from the top -- and Kim, did you hand out this one, too? Okay. Also handed out to you was House Bill 46-17 that defines nuisances. So we might be referring to that a little bit here and there. Let's just start on page. . .yes, Mr. Victorino.

VICE-CHAIR VICTORINO: Before we even get started on first page, just starting out with nuisance.

CHAIR COUCH: That's the first thing we're going to start out with.

VICE-CHAIR VICTORINO: Okay. So since we're starting off with that, you know, as the law reads here, any provision of law to the contrary notwithstanding -- oh, I love those kinds of words, it's attorney's language again -- the County may. . .the Council of County may adopt and provide for enforcement of ordinance in regulating or prohibiting noise, smoke, dust, vibration or odors, which constitutes a public nuisance. No such ordinance shall be held invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State law, provided that any case of conflict between the statute or rule and an ordinance, the law affording the most protection to the public shall be applied with the exceptions of. . .and then you have the two exceptions, right, ordinances shall not be effective to extend that it is inconsistent with any permitted, any permit for agricultural burning, granted I guess that's the HC&S rule. And then the second one which I thought was quite interesting, an ordinance shall not be in effect to extend. . .to the extent that it is inconsistent with any noise rules adopted by the Department of Health or under the authority of Chapter and then it goes on with Chapter 3.42 F and then on and on and on. But I find that kind of curious, Mr. Chair, that nuisance is provided only if number one, we abide by their rules and that we adopt, if we adopt anything, more stringent than their rules. Am I correct in reading this? And maybe I'd ask Corp. Counsel --



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CHAIR COUCH: Corp. Counsel.

VICE-CHAIR VICTORINO: --yeah, could, you know, expound on that please.

MR. HOPPER: Well, I think, Mr. Chair, that it's pretty clear that they want the Department of Health to be the authority when it comes to noise rules so you wouldn't be able to preempt the Department of Health. It's saying in other areas that you could, that you wouldn't. . .the County wouldn't be preempted in adopting its own ordinances, if it's inconsistent that the more strict would apply it appears to say in that case, but for noise rules it does say they really want Department of Health to be the ones to. . .they don't want you to be inconsistent with those rules. Keep in mind the draft here is not to have general nuisance laws.

VICE-CHAIR VICTORINO: Right.

MR. HOPPER: It is for home-based businesses and home-based businesses only.

CHAIR COUCH: Right.

MR. HOPPER: And again the concern raised in this was not necessarily the County's authority to do this, although normally this is handled as I understand it by private lawsuits, but still the County's ability to interpret and enforce a nuisance as it. . .with respect to a home-based business in a case and to have the personnel that are trained to be able to do that and that are confident in doing their enforcement. But I think you're correct that the noise ordinance that, under number two here, it basically says that no County ordinance will be effective to the extent that it is inconsistent with any noise rule adopted by the Department of Health under 3.42 F, so that's one limit on the County's powers there.

VICE-CHAIR VICTORINO: Okay. I think that's very important, Mr. Chair, and I'd like to call upon if somebody can pull up 3.42.

CHAIR COUCH: We're working on it.

VICE-CHAIR VICTORINO: Yeah, 'cause I think that's important if we're going to be discussing something, we ought to know our limitations on what we're discussing. So, I mean, if you don't mind, Mr. Chair, and if you shame tell me no. . .

CHAIR COUCH: No. We're working on it. Seeing what is coming up and we'll get a printout of that as well.

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VICE-CHAIR VICTORINO: Okay. Thank you, Chair. I just wanted. . .just because we're going start off with nuisance, I wanted to bring that up, because we're using the term nuisance to mean and then you go down, but there is such a thing as public nuisance. So are we making a distinction between public nuisance or nuisance?

CHAIR COUCH: Well, let's get into that in just. . .I mean, right now.

VICE-CHAIR VICTORINO: Okay.

CHAIR COUCH: Right now, we have all throughout Title 19, the word nuisance here and there. We saw a couple examples yesterday and it was specific to small energy systems, but there are other places in Title 19 where nuisance is there and it's just not defined. I'm just curious how the Department or Corp. Counsel kind of would enforce something like that, where it's just saying, yeah, you can't create a nuisance. For instance, we'll use the small energy systems, it says, provided it doesn't create a nuisance for the neighbors. What does that mean? Is it like. . .I think for the Members who weren't here for Mr. Kawahara's definition, it's like what he said, there is like trying to define pornography, you don't know. You can't define it but you know what it is when you see it. Is it nuisance the same way, you can't really define it but you know what it is and is that defensible. Anybody?

MR. ALUETA: You know, I can, Mr. Chair, I'll just relate to with regards to how it's being. . .it's used with regards to small based energy systems small scale and I guess what we're trying to use nuisance for in this instance. I think the concern is that we don't want to be the nuisance police per se like that's not the violation. The violation is or the determination is, is it a nuisance or detrimental to the neighborhood probably for a small scale energy in which we would determine whether that use isn't allowed or acceptable accessory use. In the case of this one, we're determining whether or not you can have a small based business, to establish a type of entitlement, provided you do not create a nuisance. It doesn't mean that. . .I guess in that instance, we're only trying to use it for the determination of the home-based business. We're not trying to establish a general nuisance ordinance in which the Planning Department has to then enforce.

CHAIR COUCH: Correct.

MR. ALUETA: Okay. So. . .or. . .okay, I think that's the issue that we're more concerned with right now.

CHAIR COUCH: But you're comfortable with going to a home-based business and say, yeah this is creating a nuisance, saying you can't do that business and being able to defend that decision. Yes or no?

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MR. SPENCE: Mr. Chairman, if I could offer. . .

CHAIR COUCH: Sure.

MR. SPENCE: For the purposes of a home-based business or any other items in Title 19, I would rather have the parameters and standards outlined as part of the Zoning Code rather than saying nuisance. I mean, I look at this definition and it could still mean way too many things to way too many people. What is a nuisance on a small scale energy system for one person may be the most beautiful thing in the world to another. So that is an incredibly ambiguous thing to try to enforce.

CHAIR COUCH: Yeah.

MR. SPENCE: Again, I was not, I didn't listen to this, to the discussion yesterday, but I do recall in a previous meeting Mr. Victorino saying that maybe we should just have a nuisance ordinance. And we can really have that discussion of what is a nuisance and lay out the, you know, I don't know. . .measureables, whether it's DBAs or. . .I mean, we can do that in a separate ordinance. Zoning Code is not supposed to be nuisance abatement, and I know the Deputy Director had previously said that and I agree with her. We're not supposed to be saying, you're playing your television too loud. You know, and then, you know, you have feral chickens on your property, Planning Department go take care of my neighbors feral chickens, you know. That's. . .we're getting into something way too broad and way too, you know, ambiguous. I would rather see something, I mean, if you lay out standards for home businesses, you know, this is what you should do, it's got to be in the character of the neighborhood, we can go out and make those determinations, and let's, you know, work on what the character of the neighborhood is. But if we just say the home-based business can't be a nuisance, that means almost anything. And we already get as a part of enforcement one neighbor warring against another or, you know, tenants mad at their landlords or something like that, and it just creates all kinds of problems. The clearer we can make it for zoning enforcement purposes, let's, you know, by setting up standards let's do that rather than throwing the word nuisance in there.

CHAIR COUCH: Do you have any suggestions?

MR. SPENCE: Let's not use the word nuisance.

CHAIR COUCH: Yeah. But. . .

MR. SPENCE: My suggestion was let's set up the standards like you're talking about. I looked through this proposed ordinance and I so definitely agree, you know, let's. . .I would rather work on the definitions of what is the character of the neighborhood, 'cause neighborhoods vary by, you know, in character from neighborhood to neighborhood,

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some lots are larger, some lots are smaller, some almost in. . .some cases almost everybody has an ohana, other cases they do not, some neighborhoods everybody parks on the street, or has, you know, extended families living within, you know, within the home. I mean it's gonna vary from location to location, so let's discuss things we can use to enforce in the definition of what the neighborhood is rather than laying out nuisance.

CHAIR COUCH: Okay. Members, any comments to that? Okay. Let's by the way work off the clean copy if you don't mind. If you have any notes on your marked-up copy you just kind of follow along if you can. So it sounds like the will of the Department is to remove the definition of nuisance from 19.040, 19.04.040, is that right, Mr. Spence?

MR. SPENCE: That would be correct and although with the, in the same breath saying that I think perhaps. . .well I know Corp. Counsel has advised against coming with a nuisance ordinance for hereabout, if I got that correct.

MR. HOPPER: Mr. Chair, it's not necessarily. . .that's a policy decision. It's just cautioning that if something like that's done, we should have clear standards for enforcement and personnel that can do the enforcement of that type. I wouldn't necessarily want to advise against that broader policy decision, just recognizing that it can be difficult and there should be a lot of consideration there. I'm going through the State ordinance a bit and it's on noise alone, and there's an awful lot of provisions and would be interested in hearing from the State Department of Health on their enforcement of, you know, how that's gone. I imagine it's probably, you know, difficult in some cases. Are you measuring decibel levels at a certain time, you know, are you prosecuting people based on that? That would be. . .those are my main concerns. It's not necessarily the overall policy decision. It's just be aware of issues with implementation, but again a broad nuisance ordinance isn't what we're talking about here and I would prefer from an enforcement perspective, I think to see in the standards of what is allowed in a home-based business to have enforceable standards of, you know, what the business can be. And again it's going to be difficult if we're going to have outright permitted businesses to do some enforcement because they're going to just start up rather than apply for permits from the Department. So the Department may not see some of these until a complaint is made and so they may not be aware of everything going on so all of these standards may not necessarily be met. People may be starting out businesses but this. . .these are the restrictions, but in any case if you have a clear set of restrictions that talk about what has to be done and what doesn't have to be, that is easier to enforce, I think for the Department and easier for me to advise the Department on and that's generally true.

CHAIR COUCH: Okay. Mr. Alueta.

MR. ALUETA: Just from. . .since we're dealing with Page 1 in this section --

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CHAIR COUCH: Certainly.

MR. ALUETA: --on home business, on the definition, I think Department had discussed about adding somewhere that subject to the restrictions and the standards of Chapter 19.67 within that, referencing in and the definition.

CHAIR COUCH: And what's 19.67? It would be this one, yeah? No? Yes.

MR. ALUETA: Correct but in 19.04.040, you're creating a definition for home business and--

CHAIR COUCH: Correct.

MR. ALUETA: --it means, you know, enterprise or activities, and then somewhere in there that is subject to the restrictions and standards of Chapter 19.67 and, you know, conducted by. . .I mean just somewhere it needs to modified that it's, it references that Chapter.

CHAIR COUCH: Right. Members, any concerns with that? Okay, we'll add that. So the Department wants to remove nuisance. Concerns about that, Members? I'm sorry, the definition of nuisance and then go by impact. . .more of an impact base.

VICE-CHAIR VICTORINO: I think I agree with the Department on this one basically because we're talking a business aspect versus the general public. There really is a difference there and I think we should have a specific so long as it says not lesser than the Department of Health's rules on noise.

CHAIR COUCH: In a separate issue, yeah.

VICE-CHAIR VICTORINO: I mean, we got to cite those issues. . .that particular ordinance, but I think it would be better that we have something based upon business, home-based business, is that what we're working on. And then at a later point I am working on something for nuisance and we'll bring that forward in another maybe policy, I don't know. This just won't be the place and time to talk about it, yeah. But I think we need to separate the two so unless my colleagues feel differently. That's my *... (inaudible) ...* with the Department.

CHAIR COUCH: Ms. Crivello.

COUNCILMEMBER CRIVELLO: I agree with my colleague. If we put something in place and we can't enforce it, it's mute, so I agree that we. . .if the Department recognizes that it's an additional cost as well as personnel then I would take their recommendation to have it removed.

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CHAIR COUCH: Any other comments? Okay, we'll put that in the final draft. Page 2, anybody have any questions on that? Yes, Mr. Hopper.

MR. HOPPER: I would just have a suggestion that home-based businesses or home businesses maybe are more appropriately listed as accessory uses rather than outright permitted uses, because normally you would have that accessory to the business. There is a statement in the definition, in this section where home-based or home businesses are established. It talks about them being accessory, but it would appear to be consistent with that statement, they would be listed in the accessory use section of. . .except for, with the exception of the Ag District in the accessory use section of the districts in which it's allowed. In addition, I would also note that it should probably be listed also in any of the districts that the Council would like to allow for home businesses. Right now, it looks like we've got Residential Districts and Agricultural Districts listed in this ordinance unless I'm mistaken. If there wanted to be additions allowing home-based businesses in for example, Apartment Districts, Rural Districts, other areas like that, there would be required amendments to those sections to list that, and I would also I think recommend adding that as an accessory use in those areas unless the Department sees this more of a permitted use, but I would see it as an accessory use otherwise someone could come in and establish. . .seem to establish a business as the primary use of the property, which I don't think is consistent with the definition.

CHAIR COUCH: Okay. We do. . .I believe on Page 5 it talks about all the Rural Districts and we did Agriculture. I thought we did, but we'll make sure that we have it in the Districts that I thought we put it in there but I'll have to go back through again.

MS. WILLENBRINK: Chair?

CHAIR COUCH: Yes.

MS. WILLENBRINK: Yes. On Page 6, it is listed as a permitted use under, in the Rural District.

CHAIR COUCH: Right.

MS. WILLENBRINK: You can see home occupation is already there and that is being bracketed out which I think you're going to entertain that discussion today as well.

CHAIR COUCH: Right. That was the next thing on the list.

MR. ALUETA: Right. Yeah, the Department, Mr. Chair, would want to see home occupation, yeah.

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CHAIR COUCH: Well, we'll get to that in just a second. We're going. . .still taking with looking at Mr. Hopper's comments. I think. . .I believe in Residential, we don't have accessory uses, do we defined or is it special uses we don't have defined in Residential? I believe that's why we said it would be as a permitted use. That's one of the reasons, the other reason is home occupations already listed as a permitted use and we are folding home occupations into this.

MR. ALUETA: Correct but the way home occupation is defined. . .if you look at the standards for the home occupation, it basically established it as an accessory. . .has to be accessory to within the family dwelling.

CHAIR COUCH: Yeah. Right, and that's. . .this one does as well.

MR. ALUETA: I don't think your definition how your home-based business definition folds in that it's still an accessory to a single-family dwelling and in, but again in Title 19, the 19.08 and 19.09 Bills that you have reviewed once, I guess, because established the accessory uses. So if you recall long ago there was bills for 19.08 and 19.09 with the Residential Districts. You then decided to and it included home-based businesses within that bill, and you chose to separate out home-based business as a separate item, which you have today, and then you somehow tabled or the amendments with 19.08 and 19.09, which was the Residential District never got reheard, I guess you could say, but it was under that provision that you were going to have these home-based businesses as an accessory use.

CHAIR COUCH: Do we have accessory uses listed in home-based businesses as right now? I mean, I'm sorry, Residential?

MR. ALUETA: In the current Residential Ordinance, in the current law, no, it's not listed as an accessory use. That's why home-based businesses was listed as accessory use 'cause we were establishing accessory use --

CHAIR COUCH: Gotcha.

MR. ALUETA: --category in 19.08.

CHAIR COUCH: And in 19.08, we did. . .I just jogged my. . .refreshed my memory. We did pass that with the changes or is it still down at Planning?

MR. ALUETA: No. It's. . .we transmitted it up to here. It was 19.08 and 19.09, it was --

MS. WILLENBRINK: Chair?

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MR. ALUETA: --amendments in which we were consolidating the two.

CHAIR COUCH: Yes.

MS. WILLENBRINK: That is PC Item Number 27 pending under Committee.

CHAIR COUCH: Okay. So we're still working on that. So we would. . .we're kind of trying to get the, yeah, crossing and we want to make sure we're doing it right. So yes, I definitely want to make home-based businesses an accessory use. There's no question to that and. . .

MR. HOPPER: Mr. Chair.

CHAIR COUCH: Yes.

MR. HOPPER: I think I understand and I did look at Residential Districts and it does look like we have Bed and Breakfast homes, home occupations and short-term rental homes listed as permitted uses. And I think in the definitions and restrictions themselves, it's understood that they are accessory and they are in the nature of accessory uses. The District also lists accessory dwellings and buildings as permitted uses. They obviously should kind of be listed as accessory uses but that kind of permits, the definition. So I mean I think we can appropriately number them and I apologize for not seeing that there are no places for accessory uses in that area.

CHAIR COUCH: Right.

MR. HOPPER: But I think to the extent we have accessory use sections, it should be listed there, if not, it should be very clear that it's supposed to be accessory to a permitted use. So maybe in the language when we place it into the District that should just be clarified.

CHAIR COUCH: Correct. And I think that's what we'll do and then when we get with PC-27, when we get to Residential, then we'll have home-based businesses defined and put in as accessory use in the accessory use section. So that'll mesh them altogether well. So and that leads us directly to home occupations. And part of it. . .in part of the thing was we wanted to put them all into one category and basically say these are accessory uses and then if you want to do a Special Use Permit for something that may have some impact on the neighborhood, we need to let the neighbors know. That's what the intent was. 'Cause right now home occupations are listed as a permitted use, but they have some stricter restrictions than what we are putting on as home-based business, just floor area and a couple other things. So we're trying to see whether or not these should be separated out as listed as they are now in the Code or merged with home businesses. So, Mr. White, you have a question?



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COUNCILMEMBER WHITE: Yeah. I was under the impression that we were looking at approaching this, excuse me, from the standpoint of home occupation would be something that isn't bothering anybody and wouldn't require any permitting.

CHAIR COUCH: Correct.

COUNCILMEMBER WHITE: You simply just do it.

CHAIR COUCH: Correct.

COUNCILMEMBER WHITE: And that home business would require some level of approval or at least review.

CHAIR COUCH: Yeah. Some home businesses we were going to kind of meld into home occupation, what we define now as a home occupation and make some changes, and anything that we felt would have more impact than that would become a special use and that's where you would get the permit situation. But in home occupation, I believe it says. . .I think we passed out that information as well, I'll. . .

COUNCILMEMBER WHITE: I think the concern was that the home occupation. . .if we're putting it altogether, the concern was that home occupation which is now allowed without any change in taxation or anything, any requirement for permitting could possibly be swept into the same category as home business if the home business ends up becoming a Commercialized Residential tax category. So I think I'm more comfortable keeping home occupation and home business clearly separate, but I may not be understanding it correctly.

CHAIR COUCH: Yeah. That's the question if. . .I believe we passed out -- Kim, we passed out a while back the definition of home occupation, the existing definition?

MS. WILLENBRINK: I'm not certain it got passed out. I know you had a copy for your reference that I can look in one of the binders very quickly.

CHAIR COUCH: Or can we just pass out the definition of home occupation? Basically, home occupation has, is. . .it was?

UNIDENTIFIED SPEAKER: It's in there.

CHAIR COUCH: Oh. It's in there, okay, good. All this paperwork.

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VICE-CHAIR VICTORINO: Oh. Yeah, yeah, yeah, okay, I see 'em. Got 'em. Thank you. It's right in front of it. Right in front of the old version, Mr. Chair.

CHAIR COUCH: Gotcha.

VICE-CHAIR VICTORINO: You know the original version you had passed out last week, or yesterday, or last week. Thank you.

CHAIR COUCH: There it is. Okay, if you look at home occupation, for instance, number two, well, actually even number one, we're a home-based business versus home occupation. We're saying you can have one employee but it's still. . .it's basically beefing up home occupation. This bill beefs up home occupation and then sets out separate businesses that might be of an impact where that gets the special permit and that special permit would then trigger the tax implications. What we're trying to say is that the existing stuff that is going on now is permitted and there's no way that they're going to get taxed at a different rate because that's just, I mean, you know, when you go home and work at your office, are you all of a sudden now being Commercialized Residential? If you actually have to pull a permit, any kind of permit whether it's special use or whatever then that's when you jump up to the Commercialized Residential. Does that make sense?

COUNCILMEMBER WHITE: Yeah. But you were. . .reason I was getting concerned was you were saying we're wrapping them into the same. . .wrapping them together, and I'm just want to be sure that the end result is that they're clearly. . .there's a clear distinction between what you can do without permit and what you will need a permit for.

CHAIR COUCH: Right. And then. . .yes, Mr. . . .

COUNCILMEMBER WHITE: As long as you can do it without a permit then there's no change in your taxation.

CHAIR COUCH: Correct. Mr. Hopper.

MR. HOPPER: Thank you, Mr. Chair, I think that would highlight one of the other comments that I had and should have mentioned earlier was when listing the uses in the districts it may be helpful to list as accessory uses, home businesses pursuant to 19.67.040, which is one type of home businesses, and then under the special use section, I know it already says in that section you need a special use for this, but maybe to list in the special use section of the law under, you know, home businesses under 19.67.050.

CHAIR COUCH: Okay.

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MR. HOPPER: 'Cause though you're calling them both home businesses in 040 and 050 of those sections, there are essentially two different types of home businesses, one that needs a Special Use Permit and one that doesn't.

CHAIR COUCH: Correct.

MR. HOPPER: And maybe recognizing. . .either calling them something different like type one or type two or simply listing them in the different districts, and then that could maybe give you the basis for a separate classification. As far as home occupations and home businesses, merging the definitions, I wouldn't see a substantive use change, provided that the home business definition encompass all of the home occupations. As far as tax classification, I'm not sure about that. But you could have a distinction at least between the businesses allowed by 040 which are just allowed as a outright permitted use and then 050 with a Special Use Permit and then list those two separately in each zoning district just to be clear this type is a accessory use and then the other type is a special use with a permit.

CHAIR COUCH: I think I followed that. Did you catch that, Kim? Little bit, alright, we'll discuss that with Mr. Hopper when we. . .

MR. HOPPER: Yes. When it's listed in the district, you'll have your permitted accessory and special uses.

CHAIR COUCH: Correct.

MR. HOPPER: Right now, the proposal is to just say, home businesses pursuant to 19.67, period, as a permitted use. Instead, I would recommend listing in the permitted or in the accessory use section, home businesses pursuant to 19.67.040, which are the types that don't need Special Use Permits --

CHAIR COUCH: Right.

MR. HOPPER: --and then in the special use section of, for example the Residential District Ordinance say, home businesses pursuant to the provisions of Chapter 19.67.050.

CHAIR COUCH: Okay.

MR. HOPPER: Or something like that just to be clear there's a type that needs permits and a type that doesn't.

CHAIR COUCH: Correct.

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MS. WILLENBRINK: Chair?

MR. HOPPER: Right now it's a bit. . .they're both listed as either permitted or accessory uses, I believe.

CHAIR COUCH: Okay. And Kim.

MR. WILLENBRINK: I believe what I understand Mr. Hopper did say is that it should be more specific on the cross referencing out the. . .

CHAIR COUCH: Yes.

MS. WILLENBRINK: Thank you.

CHAIR COUCH: Okay. We got that clear? In the districts, we'll list it as a special use with 050 and accessory use with 040. Members?

. . .*(sneezing)*. . .

CHAIR COUCH: Bless you. Okay. Yes, Mr. Spence.

MR. SPENCE: Just so I'm clear. So in merging those two definitions, they. . .in just the accessory uses. . .what you can. . .what businesses you can conduct in your residence, are we. . .one of the earlier reasons was to distinguish between the two of them for Real Property Tax purposes. Are we saying that. . .

CHAIR COUCH: But let me put it this way, if we were to keep home occupation as a definition, a lot of. . .we were. . .we would increase the, some of the things that can be done there, not a lot, but some of the things that can be done there and then define home-based businesses as a special use. If we could go that way as well. We're just trying to make it a little more simple saying this is home-based business that is permitted as an accessory use, and this is in home business that is permitted as a special use. Does that make sense?

MR. SPENCE: It. . .well, my question was about taxation. So. . .

CHAIR COUCH: But taxations only on the special use.

MR. SPENCE: Okay. That's what I was getting at. Thank you.

CHAIR COUCH: We haven't gotten to that section yet because that's at the end of the bill so that's the intent is to do it that way. Now, who knows what the Committee wants to do when we get there? So we go back to and I think it's more like, it's kind of potato,

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potato. We were just trying to make it a little more unified just calling it one thing and not having two different things. So given that, if it's okay to remove occupations and call them home-based business either accessory or special use. Is the Committee okay with that? Any concerns, Mr. White? You kind of have a . . .

COUNCILMEMBER WHITE: Say that again.

CHAIR COUCH: Instead of calling it home occupations or accessory uses outright no need a permit or anything and listing what the restrictions are, and then saying home businesses are a special use and you need to get a Special Use Permit, just say, home businesses are either an accessory use and here are the restrictions or a special use and here are those requirements to go special use so that we don't have two different definitions of kind of the same thing.

COUNCILMEMBER WHITE: Yeah. My. Only concern is just having a distinction between what we can do now without a permit and --

CHAIR COUCH: Correct.

COUNCILMEMBER WHITE: --and what we're going to be expecting of people if they want to do something beyond what, you know, what I would say is a home occupation. I'm not certain that when you start bringing employees in, that that's a home occupation.

CHAIR COUCH: Right. And that's where we're trying to . . .that's essentially what we trying to do. Right now, we're trying to see what we're going to call it and once we figure out what we're going to call it then we can figure out what the parameters are.

COUNCILMEMBER WHITE: To me, home occupation's easy.

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: Easy because you're working out of your home, you're on your own, and no one's going to even know what you're doing and we shouldn't care.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: But once. . .to me the differentiation is once you start bringing other people into your home or doing something that's visible outside or noisy or taking up parking spaces, that's when it becomes something that is going to create a problem for the neighborhood and should. . .and we should have some level of permitting required. But I don't want to be dealing with. . .I don't think the County ought to be dealing with things that nobody knows about or cares about.

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CHAIR COUCH: Right. Well, currently if you look at the current definition of home occupation, they do allow for students or one-on-one student. . .so little things like that but they don't allow any customers in that.

COUNCILMEMBER WHITE: Well, yeah, this one says that no person other than a member of the family residing on the premises of the dwelling shall be employed by the occupation.

CHAIR COUCH: Correct. Right. And we've had requests, but and again that's what this meeting is all about. Do we want to increase that a little bit or do we want to just leave it as it is and anything more than that is going to be a Special Use Permit? That, in my mind, would discourage. . .again we talk about the person who let's say cuts hair, one person in the garage cutting hair or a room cutting people's hair because of the times, you know, have gone down and they just. . .that's what they do. If they start getting more than one, but that allows for customers. . .you know, one customer every. . .

COUNCILMEMBER WHITE: I don't see anything in this that restricts customers coming.

CHAIR COUCH: Yeah. It said, number eight, that clients, patrons and customers of the home occupation shall be prohibited on the premises. So that's where I'm. . .that's where we have to find. . .it's a really fine line and. . .

COUNCILMEMBER WHITE: And that's really where we need the community input because it's their community and. . .

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Yes, Mr. Victorino.

VICE-CHAIR VICTORINO: I tend to agree with Mr. White saying. These are things we can bring out, bring forward and then allow the community to chime in to give their. . .what they feel is appropriate or not. . .I think. . .we try to figure everything out and then we go out to the community, we're going to get a whole bunch of changes there. So I'd rather just leave it the way it is, give them an opportunity to say, yeah we like this, we don't like this, 'cause that's your plan, right, to take it to communities.

CHAIR COUCH: Yeah.

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VICE-CHAIR VICTORINO: And I think then we'd have a better feel of what our communities would really want. Then when we come in when we come back, we're going to be kind of working on what I consider the version.

CHAIR COUCH: Okay.

VICE-CHAIR VICTORINO: The version that. . .

CHAIR COUCH: So you're okay with the way everything is. . .well, now we just got a little bit of a twist, because right not the way everything is removes home occupations. So now that we want to put it back, put that definition back. . .yes, Mr. Hopper.

VICE-CHAIR VICTORINO: I would say, yeah, let the Department. I was going to wait for Mr. Alueta.

MR. HOPPER: Just as a comment, right now the proposal, it doesn't. . .it would. . .a home occupation is something that's allowed outright, and a home-based business or home business, the non-special use home business is also something that's allowed outright without any permitting. So it's actually not going to change if you're a home occupation and under those standards right now, you would, provided that everything is still lesser than the special use level, you would still be treated the same way. If the. . . 'cause right now the non-special use home occupation or the home business doesn't require any permitting. It has certain --

CHAIR COUCH: Correct.

MR. HOPPER: --restrictions and things like that but it doesn't require permitting so it's allowed outright. So it's no substantive difference from home occupation right now. If the concern is that it does appear to the Committee to be a higher level and you wanted to have an administrative type permit or some other type permit to distinguish between home occupation and the non-special use home business then that would be an appropriate distinction, but if right now you're talking about an outright permitted use as a home occupation and an outright permitted use as a home business and they both include. . .and the home occupation is in. . .whatever you want to do there is included in all of your home business uses, then on special uses then it's really not a substantive difference. I mean, you could keep the two definitions, but if in both cases they're permitted uses, there wouldn't be substantive difference unless, you know, again the Committee wants to have another level of review, maybe an administrative permit for a home business for non-special use home businesses and then leave home occupations as something that is just outright permitted. But right now home occupation and non-special use home business are outright permitted uses and, you know, appear to include each other, you know, everything in home occupation would be allowed by the home business

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non-special use. So it's not really a substantive difference in that it appears to be what the objective was, so keeping them separate would be appropriate. I would advise if you wanted to have different requirements to be, to have one or the other.

CHAIR COUCH: Joe.

MR. ALUETA: As Mike was indicating, you know, right now you. . .between the non-special use home business and the current home occupation, they're both going to be done by right. I guess from an administrative, I mean from administering it, right, I almost want to have you merge your home based, you're non-Special Use Permit home-based business with home occupation.

CHAIR COUCH: Yeah.

MR. ALUETA: Just substitute out but keep the term home occupation in the sense that that way it says it's distinctly separate and then you have home-based business which is going to be --

CHAIR COUCH: The permitted use.

MR. ALUETA: --only be as a. . .you're calling it something different.

CHAIR COUCH: Yeah. Okay.

MR. ALUETA: However, I don't know. . .as you indicated you kind of want to go out. How big is the circle? You know what I mean, that was always how much are you going to include?

CHAIR COUCH: Exactly.

MR. ALUETA: The whole idea of this original home occupation rise was to get a good chunk of people, I mean to get the really low-hanging fruit of people who are architectural, working out of the house, they don't have clients come to their house, so you got a good chunk. And then people started saying I want to be included, I want to be included. They didn't want to be kicked up to a Special Use Permit, they want to be something slightly different, and so if you're going to create as Mike indicated potentially a home occupation which you have and then two separate layers, one as being administrative review home-based business and then a Special Use Permit, we're going to have to come up with another name. One of my mantras when I first took the job was no new permits.

CHAIR COUCH: Yes.



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MR. ALUETA: But that's basically what you're going to be doing. You're going to be creating two new permits, an administrative review of home based business and a Special Use Permit for a home-based business. So you're creating two new permits and. . .

CHAIR COUCH: Well, but that's a little bit off because there's no permit for home occupation or home-based business of that sort.

MR. ALUETA: --Correct.

CHAIR COUCH: It's an outright permitted use as an accessory use. So the only new permit would be a Special Use Permit, which already exists for if you wanted to go outside of the parameters of home, what we are now calling home occupation.

MR. ALUETA: Right. And that's why I'm saying is try to merge. . .you're merging it, that is correct, but I would rather have you give it a new name --

CHAIR COUCH: Okay.

MR. ALUETA: --or give the name of home occupation.

CHAIR COUCH: Which is fine.

MR. ALUETA: Even though as, you know, there is some outside employees and then just keep home-based business separate as being a special use.

CHAIR COUCH: Yeah. And that's what I think we'll move towards is. . .that's how it's going to be. Accessory uses is going to be a home occupation in my opinion expand it a little bit and then the special use will be home business.

VICE-CHAIR VICTORINO: Sounds good.

CHAIR COUCH: That's what I'm going to try and do. Now where do we draw that line? Do we want to try and talk about that now or do we want it when we go out to the communities to see where that line is? Are you guys okay with this, just let's hear what the community has to say with the existing. . .I mean the lines are existing now, okay, with home occupation versus anything else. Or do you want to have a little bit of say as where to at least start the line? Mr. Hopper had a comment and then Mr. White.

MR. HOPPER: Just as a comment. It appears that you're looking at 19.67.040, simply changing that to home occupation or calling that a home occupation --

CHAIR COUCH: Yes.

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MR. HOPPER: --as a potential thing, and you'd still be talking about the same standards but to avoid confusion, you wouldn't be talking about the 040 home business versus the 050 home business, you'd be talking about home occupation and 040 with all those requirements there, and then 050, you could call a home business to distinguish between the two.

CHAIR COUCH: Correct.

MR. HOPPER: I mean that's a potential and then you can determine one set of standards for home occupations in 040 and then eliminate home occupations otherwise --

CHAIR COUCH: Exactly.

MR. HOPPER: --if that's what you want to do.

CHAIR COUCH: Yes. That's exactly what we want to do. Members, okay with that? That's what we're going to do there. Then now, Mr. White, we're talking about now where, do we leave the line as is or do we have some discussion on that before we take it out to the community?

COUNCILMEMBER WHITE: I think I would, you know, it's up to you, Chair, but if the Committee is okay with the 040, the way it's stated ,but then I think that's a reasonable first proposal --

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: --to take to the community.

CHAIR COUCH: Yeah. Then 050, we're okay with taking to the community as that. Now looking at 040 real quickly. The one thing that I know is going to be controversial there, and do we want to talk about it now or not, is the repair of automobiles and other vehicles with the internal combustion engines. That can be defined a lot more tightly if you will, if we wanted to, and the reason I bring it up is there are people that don't want any auto repair at all at someone's home. It's kind of hard especially in bigger lot areas to distinguish between somebody doing it as, I mean, a hobby or, you know, they're into racing or whatever and so they have all that equipment as a hobby and then, you know, you go over there and say, hey , I've got this, can you fix my car for me, I'll buy you a dinner or something like that and pay for the parts. It's. . .there's a huge gray line there and I don't know if we can narrow it down or if it's something that we're just going to have figure out. Again is it impacting the neighborhood? Can you. . .do you know that that's a car dealer. . not a car dealer, a car repair shop by driving by or living next door

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other than seeing a car out there, or vice versa where we have and certainly in my district and I've seen it in other districts too, people who have cars parked everywhere and piled up on jacks. That's obviously not a nuisance but impact on the neighborhood. So where do we draw that line if any, or do we just say no car repair at all for money? And then it's going to be dinner or for, you know, parts or whatever, I don't know how that works. Mr. White.

COUNCILMEMBER WHITE: You bring up I think an important distinction. In ag areas the lot sizes are much larger, in rural areas the lot sizes are larger, so it may be appropriate in those districts but not in others, because obviously the smaller the lot size, the more of an impact you're going to have on your neighbors because of closer proximity and the overflow of vehicles that isn't necessarily going to happen in an Ag zone.

CHAIR COUCH: Right. But you go down to a neighborhood in anyone of our districts almost and you'll see these cars on jacks and whatnot. And then are people getting paid to do that or is that just their hobby, you know? Mr. Hopper looks like he's ready to chomp. . .okay, okay.

VICE-CHAIR VICTORINO: Chair.

CHAIR COUCH: Yes, Mr. Victorino. You were done, Mr. White?

VICE-CHAIR VICTORINO: Oh, I'm sorry.

COUNCILMEMBER WHITE: I was just going to say my wife just got her car repaired in a residential area by a person who does a whole lot of stuff out of his house, and driving up and driving by, you couldn't even tell.

CHAIR COUCH: Right. So do we penalize those guys for the other guys that are piling their cars up? So that's, I guess that's the question that we have to deal with and it's a tough one.

VICE-CHAIR VICTORINO: Yeah. And this may be the toughest of all of them.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: Because I think if there's something that people that is making our neighborhoods look number one, like a junkyard, this would be one of the keys right there, and I think you can drive in anywhere in this County, rural, ag, urban, or any place in between and you'll find a few houses like that. You go Kihei. . .I can even give you names of streets ...*(inaudible)*...

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CHAIR COUCH: Yeah. Same here.

VICE-CHAIR VICTORINO: Whoa, you know. Same thing in Wailuku, I mean, they're all over the place. West Maui, I mean, you name it, we can find it. So how do we address this? I think some of the ideas I have is, number one, if they are one-on-one or the maximum of two vehicles at any given time maybe something we don't want to put in --

CHAIR COUCH: Right.

VICE-CHAIR VICTORINO: --okay, I mean, so that, you know, you can't pile up seven, eight, nine, ten cars.

CHAIR COUCH: Right.

VICE-CHAIR VICTORINO: You know, in other words, you working on one, you may have another one ready to work on, that's it. You know, so that you're not piling them up. Now I know you going to say, well, what about if the guy cannot order and lot of times the real hang-up is ordering parts, especially for older vehicles, sometimes they're not so readily available. Well something has to be done so that, first of all again, they don't pile up to become an eyesore or even come down to a point where maybe you have to vector control going in because rodents and other things --

CHAIR COUCH: Exactly.

VICE-CHAIR VICTORINO: --are in these vehicles and so that's number one. Number two is depending on the size of the property, may be another issue. If you have, say for example, Wailuku Country Estates, let's go right over here, my district, right? You have two acre lots, so you could have something in the back of the house that nobody can see from the road, and you maybe have two, three cars and I can tell you, you drive up there, there's some of the lots with three, four, five cars there. Some are farm equipment or trucks that are used for the farming. So, you know, again and one of them has two on jacks. I guess they doing some repairs. So, you know, these are. . .that's the other aspect, how big the size of the property, the square footage, that might be another way of that. So those would be my first two suggestions and there's many others, you know, how far the next house is. If you go right over here to my district here in Kaimana and Kehalani, I mean, if you sneeze you hit the other house. I mean, there's zero lot lines. They're called zero lot lines. There's three feet to the fence and three feet from that fence to the next house. So I mean, you talking six feet so you kind of know what your neighbor does no matter what he does or she does, you know. So there is zero lot lines, so again that might be another consideration if you're talking density, you know. And then the final one is if you have apartments like around Wailuku, we got a lot of apartments and there are times when people are doing repairs in those apartment complexes and, you know,

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they were in the parking lot doing something for cars, and the final one is remuneration. How do you determine remuneration? If you do it. . .if I do it for you and I just give you a dinner at Kobe's, that's a nice remuneration if you ask me. Under the IRS, that is, you know, that's a benefit. There's a word called benefit under the IRS. So if you do enough of this, you're taxable and that's taxable income. So there is. . .there's a number of steps that we have to look at. This is probably. . .if I was to pick all of these out, this is the hardest.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: This is what I've heard the most complaints and as well as the guys who do it and people I know that like to do it says, you know, Michael, we do it, we don't bother nobody, like you just said, Mr. White, that your wife did one and you drove in, drove back, you never saw a difference in the rest of the neighborhood. Unfortunately there's many who don't, that don't accommodate in that sense. So that's by manao. I guess there's a bunch of steps we have to take, Chair, but, you know, unless we define it and this is the one I say we need to set some definite parameters.

CHAIR COUCH: Yes.

VICE-CHAIR VICTORINO: So that when we go out to the public, then let them give a yea or nay, do this more, do that less, or whatever. But I think we have to have parameters. This is the one I would say definitely needs parameters. Thank you, Chair.

CHAIR COUCH: Ms. Cochran, I think you had something?

COUNCILMEMBER COCHRAN: No.

CHAIR COUCH: Okay. So any comments on the parameters? Because you know the question was, well what about doing auto body repair where there's somebody that has to repaint. Well, you've got issues there with hazardous materials or even, you know, somebody pulls the gas tank off, you got to take. . .drain the gas, that's a hazard. You know, auto repair facilities have all kinds of environmental controls so where do you go there and I'm open to suggestions on how we do this. Any ideas?

COUNCILMEMBER WHITE: We'll follow the Chair's lead.

VICE-CHAIR VICTORINO: Chair? Yeah, we'll follow your lead, but why don't we start with specific concerns and then go. . .let's say, first of all, number of vehicles. I think we all agree that if you've got more than two and I don't know, I'm even willing to look at three vehicles on your property at any given time that is being repaired, I mean there should be some limit. I think two is a better number but I don't know what my colleagues feel but

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maybe setting a limit of number of vehicles that could be accommodated, and if you want to use size, then you can say for a two acre lot maybe you can go three, if it's a 10,000 square foot lot then maybe you got to go with two and if it's a zero lot line, one. I don't know. I just. . .you asking for suggestions.

CHAIR COUCH: Yeah. Those are good suggestions.

VICE-CHAIR VICTORINO: I'm putting them out just so that we can start real substantial discussion, because I see my colleagues are like rolling their eyes like, oh my god here we go, you know, but this will be the most contentious.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: I swear this will be the most contentious other than if you have a business that has a lot of traffic. I don't know what that might be but foot traffic. One that would come to mind right away, Mr. Chair, and I don't know of how much they do around town, I know they still exist, but I went to many Amway meetings at people's homes and there was like 15 or 20 of us there, and I can tell you the street was full of vehicles up and down, and I'm not trying to pick on , there's Shaklee and there. . .you wanna go on and there's on and on.. I 've been approached by everybody and their cousin to sell something in my day. So but those are businesses that really are conducted out of homes, and they may have foot traffic issues depending when they have their meetings, how they pick up stock, you know, that was another issue. You had to go pick up the stock. I don't know if they still do it the same way so I'm only assuming when I was doing or was told about this some 25 years ago, you know you had to pick up from your distributor, what you needed and, you know, there's all kinds of issues. I don't know. . .so that's another one. But I think the auto one, that's would be my first three suggestions. As far as hazardous material, I don't know what to do with that one, because hazardous material even if, no offense to Mr. White, they're fixing his wife's car, what if the oil leaks or the gas starts leaking, that's hazardous material. Do we like we have in others, permeable. . .surfaces that cannot. . .things cannot seep through.

CHAIR COUCH: Right. Because then you go to the question as to, alright, what happens when I go change my oil and forget to put the filter back on and you just dump a couple quarts of oil on the ground.

VICE-CHAIR VICTORINO: I say, fine you to the hilt. That's my personal answer to that.

CHAIR COUCH: Unfortunately I'm in an apartment zone where we can't do that.

MR. SPENCE: I know the. . .I believe it's State Department of Health in some of their administrative rules for people who work out of their homes, they say no more than

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household quantities, where you would typically find in a household, you know, you would have five gallon gas cans, you, you know, if you change your own oil, you might save that in five gallon cans or something like that and then take it to the recycler. 'Cause that might be something for the Committee to consider.

VICE-CHAIR VICTORINO: On the hazardous -- I'm sorry, Mr. Chair -- you're referring to hazardous material?

MR. SPENCE: Yeah.

VICE-CHAIR VICTORINO: Following those guidelines?

MR. SPENCE: Yeah. I'd have to find out what those guidelines are but I can look that up.

VICE-CHAIR VICTORINO: Yeah. I . . . Mr. Chair, I think that's a good idea. That's a starting point again.

MR. SPENCE: I'm sure the Fire Department would have something to say about that.

VICE-CHAIR VICTORINO: Yeah. I don't think they like you storing even five gallons of gasoline under your house nowadays, but that's another conversation.

CHAIR COUCH: Mr. Alueta.

MR. ALUETA: Thank you, Mr. Chair. I'm just trying to make sure I'm following along with the conversation is that right now the discussion is on 19.67.040 on the uses and the standards for those that are going to be permitted with no permits.

CHAIR COUCH; Correct.

MR. ALUETA: Okay. And then right now you've got some discussion on the number of vehicles and potentially scaling that to the lot size.

CHAIR COUCH: Potentially, yes.

MR. ALUETA: I mean that's potentially but again, we're dealing with just on no permits, no review, just an outright permitted use?

CHAIR COUCH: Correct.

MR. ALUETA: Okay. I just wanted to be clear.

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VICE-CHAIR VICTORINO: Well, I think that brings up. . .

CHAIR COUCH: There you go.

VICE-CHAIR VICTORINO: Yeah. Maybe this is one that has to be permitted even if you doing one car. You know, maybe this is one --

CHAIR COUCH: Yeah. Absolutely.

VICE-CHAIR VICTORINO: --that needs to be permitted, and I, you know, I think that's maybe a good point. I don't know what my colleagues think, but I believe anytime you going to deal with a potential hazardous issue, noise issue, all kinds of other possibilities, maybe this is one of those that we need to have. .

CHAIR COUCH: Go into 050.

VICE-CHAIR VICTORINO: Yeah. Yeah, maybe.

CHAIR COUCH: Yeah. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. Wait, permitting, like so my own vehicle, I want to, you know, change the oil or. . .

CHAIR COUCH: No, it would a business.

COUNCILMEMBER COCHRAN: Okay. Strictly business, so not personal stuff, just so I know, yeah, . . .(inaudible). . . get a permit, I got a backhoe, I got a truck.

VICE-CHAIR VICTORINO: Well, you should have permits for all of that but that's another story.

COUNCILMEMBER COCHRAN: No, for fixing.

VICE-CHAIR VICTORINO: You asked the question. I'm sorry. I'm being facetious. I apologize.

COUNCILMEMBER COCHRAN: That's ridiculous.

CHAIR COUCH: But then that goes to our even more rural areas, Mr. White's and Ms. Crivello's areas that, you know, do we need, do they need a. . .as long as it's not in agricultural, do they need a Special Use Permit to work on vehicles out there and when they don't if it's agricultural, they don't if its agricultural equipment. So I mean



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there's. . .then you get into well, if they can fix a tractor, why can't we fix a car? It's a big can worms. Mr. White.

COUNCILMEMBER WHITE: Yeah. My neighbor has an auto body shop, he works on all kinds of things, but it's far enough away from me that I, unless the wind is blowing in my direction, I don't hear it. So I don't hear it, no one can see it except one neighbor on the other side, so there's almost no impact regardless of how many vehicles he's working on so. . .I can hear it but it doesn't. . .I can live with it.

VICE-CHAIR VICTORINO: But isn't that in Agricultural?

COUNCILMEMBER WHITE: Yeah.

VICE-CHAIR VICTORINO: Okay, again in Agricultural. . .

CHAIR COUCH: That's in Agricultural which should be, would be a special use.

VICE-CHAIR VICTORINO: Yeah. And I not worried about ag, I think that's. . .that I can handle that part, you know, I'm talking rural and urban, which many of our districts, Westside's, my side, even yours.

COUNCILMEMBER WHITE: We have it, too.

VICE-CHAIR VICTORINO: Yeah. Yeah, so I think that's what I'm trying to get to. I'm not worried what ag does, I don't even want to get involved with ag if you know what I'm saying, but I like to make sure that again some kind of restrictions are put on, and I think auto would be one of those that if you're going to do a auto repair business then some permitting or some kind of. . .I don't know, you know, something needs to be done for that, especially when you talking urban and rural areas. Okay. Agricultural, I have no problem with that.

CHAIR COUCH: Okay. Of course, that's a special use anyway because. . .

VICE-CHAIR VICTORINO: Yeah. Well. . .

CHAIR COUCH: Unless it's a tractor or piece of. . .and, Mr. Alueta, say you use a pickup truck around, you know, on your farm taking hay bales or whatever, crops, whatever and then you want to get it fixed, is that allowable on Agricultural? Or, you know, you can have it taken to the guy who fixes those vehicles.

COUNCILMEMBER WHITE: If it's not we got a whole lot of people breaking the law.

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CHAIR COUCH: Yeah. I know.

MR. ALUETA: There's a little debate going on right now.

CHAIR COUCH: That's fine.

MR. ALUETA: But at this time, if it's considered farm equipment, anybody can have their farm repaired on their property whether it's. . .

CHAIR COUCH: On their property, but can they take it to somebody else who does nothing but fix farm equipment? I think we had a testifier in here who says, yeah, she takes her farm equipment to a guy who fixes agricultural equipment on his lot at home.

MR. SPENCE: I think if. . .I mean, if. . .I mean, you sort of bring up the idea of the. . .I'll try to draw a parallel here where, you know, you have your hobbyist hot-rodder --

CHAIR COUCH: Correct.

MR. SPENCE: --you know, his buddy brings his car over, as a favor they. . .because the hot-rodder probably has, you know, a little bit different equipment or something like that. I would see the same parallel in the Ag District, where if I have a tractor and my fellow farmer has a --

CHAIR COUCH: Flatbed.

MR. SPENCE: --flatbed or a special equipment or something like that, so you take your tractor over and he repairs it for you. I don't see that as a big deal. If you have a baseyard, a full-on light industrial baseyard within the Ag District that repairs farm equipment, I would have a problem with that, but just as an occasional use or something like, I don't see a problem but. . .and really who's really going to know. But as far as. . .I mean, we have problems with baseyards in the Ag District as it is.

CHAIR COUCH: Yes.

MR. SPENCE: So that's. . .I can see that as completely different animal.

MR. ALUETA I think you. . .

CHAIR COUCH: Mr. Alueta.

MR. ALUETA: Just to give you a scale, if there're two farmers and one guy takes in other parts, he has a repair shop for his farm and he takes in repair for a neighboring farm, that would

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be an allowed use. The . . . where we've allowed that is you had Wailuku Agribusiness had their repair shop down on Waiko Road, and it was in the Agricultural District for years and years, and it repaired all of their pineapple trucks, which they were on their contract when they grew from Maui Land & Pine. Maui Land & Pine also sent their trucks there to be fixed by Wailuku Ag mechanics because they already had a facility there. So it works vice versa even though, I mean, it was in Agricultural District. It was . . . they were repairing their own trucks, but they also took in other people who had the same type of specialized equipment, but they were both large agricultural operations. You could not deny that they were not farmers. So in that sense, it's an accessory use to a permitted agricultural operation. So . . .

CHAIR COUCH: But you get into how is that any different from . . . I mean, somebody's repairing this big huge truck in an agricultural area, all kinds of whatever hazardous potential, but I can't bring my car to have that fixed there and have . . . pay the guy and then it's illegal?

MR. SPENCE: No because one is clearly related to agriculture. Maui Pine's now, you know, Haliimaile Plantation, their repair of their trucks is related to their primary use of agriculture, or HC&S, you know, they do all their repairs, they happen to have heavy industrial on that property, but, I mean, they can, you know, their vehicle repair, equipment repair is related to the plantation. I mean, we permit sugar mills within the Ag District. That's big heavy industrial use, but if . . . but just to have a standalone equipment repair business like the Caterpillar shop down on right there on Hana Highway, that would not be allowed at all. I mean because that's its business and that's sole purpose of that business is to sell and repair Caterpillar equipment. I see that as a distinct difference. One is a part of an agricultural use, the other is just standalone.

CHAIR COUCH: And remember, Members, too that we're trying to make this as an impact-based ordinance as opposed to this is what you can and can't do. Just certain things like this, where's the impact, you know, how much impact are we going to allow, and so that's why we're having the discussion. So I'll . . . we'll sit down with the Department a little bit more. We're already scheduling the meetings, so we'll have something for at least the first community meeting unless somebody has anything else throughout this bill that they really just don't like or would like to see in there. For instance, on Page 4, 19.67.050 B, I believe it should be a County Special Use Permit. We talk about State Special Use Permit in A and so B should be County, and that's kind of nonsubstantial change but I just wanted to let you know with that's, we're going to do something like that.

MR. ALUETA: Mr. Chair.

CHAIR COUCH: Yes.

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MR. ALUETA: On. . .if, I, going back to your topic of impact on. . .going back to 19.67.030 A.

CHAIR COUCH: Okay.

MR. ALUETA: We have home-based businesses and then the Department had some discussions on that, and they wanted to see it as home-based businesses as defined in Section 19.04.040, shall be conformed to the character of the existing neighborhood in which they are situated. For the purposes of this Chapter, factors that contribute to or impacts that can determine neighborhood character include but are not limited to traffic, parking, visual, noise, vibration, odor --

CHAIR COUCH: Oh. There you go.

MR. ALUETA: --smoke and chemical exposure.

CHAIR COUCH: Okay.

MR. ALUETA: So that was. . .

CHAIR COUCH: Can you submit that to Staff and we'll get that put in there. Members, are you okay with that? That seems more succinct and clear. Then that gets rid of the nuisance definition and. . .

MR. ALUETA: And that's put in your beginning of your standards and. . .

CHAIR COUCH: Yeah. Under general 030, okay. I'm fine with that and Members seem to be fine with that so we'll include that. Anybody else have any comments that they want to add? Mr. Hopper.

MR. HOPPER: Thank you, Mr. Chair. Just to go over the comments I had from the last meeting. That change takes away the reference to CC&Rs which is good, so obviously that's something that I would recommend. The other issues were in subsection C, over 040 and subsection F under 050, it says a home business shall not generate traffic in greater volumes than would normally be expected in the neighborhood in which it is located. I'm not sure how that's measure or if you do have people driving to the property, it would be higher than the current level, so I don't know if the word substantially, in substantially great volumes or something like could be looked at there or how the Department would measure something like that, because you are by definition allowing a increase in traffic by a bit even if it's, you know, one customer every, you know, every few hours so we may want to look at that.

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CHAIR COUCH: Okay.

MR. HOPPER: So the definition in I of 19.67.040 I, goes over baseyards and it said baseyards are prohibited. For the purposes of this sections baseyards mean a portion of property that has a home business where material, vehicles not in service or equipment are stored, and that seems to perhaps limit the storage of materials on any portion of the property. We may need to look. . .unless there's something that the Department sees, you know, that's not problematic. That seems to be a very restrictive definition.

CHAIR COUCH: Right. I had that question too.

MR. HOPPER: So I think that should probably be looked at and then also 19.67.050 E, says, the home business may use up. . .may use 100 percent of any accessory building on the lot. We may need to look at that as a potential loophole. This would be something I think that you would want to specify if approved by the appropriate Planning Commission, and if they can use 100 percent of an accessory building, we would envision there is that they just a complete business in an accessory building, which could be, you know, about the size, you know, of a substantial size, so that you may want to take a look at that. Those are just the quick comments we had. . .that I had. I think I made them last time but I wanted to get them on the record again --

CHAIR COUCH: Sure.

MR. HOPPER: --for this one, so that if we're going to try to make edits in addition to the things mentioned today, we would maybe want to look at those as well.

CHAIR COUCH: Okay. And for the Department along the lines of that last one. Do you see in here, you know, we're trying to figure out if you're in a residential area and have the main dwelling and then a ohana, trying to keep it to one business in that, especially the Special Use Permit, you can't. . .so that you don't have. . .you have your ohana over here and then somebody's running a business out of that, that takes customers and then you have the main house over here and somebody else is running a different business out of that. Do you see anywhere in here where that is protected that you can't do that or do you need more language?

MR. ALUETA: I don't see anything that prohibits it. Is there. . .it says they're both accessory to the principal use.

CHAIR COUCH: So you need a little bit more language? And Members, then the question is do we want to prohibit that? It's my. . .I think we kind of have to be careful at least on a special permit side. We shouldn't be able to give two special permits for two different

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things. I would think especially in, you know, 7,500 square foot lot residential area. Yes, Mr. Hopper.

MR. HOPPER: Yes, Mr. Chair. I think you identified that there's no distinction between types of businesses here, they're all based on standards, so either in 040 or in 050, it doesn't really care what kind of business you're doing, it's just certain floor area limitations, customers, things like that, but you could really do any type of business here that you could conceive of without naming types of businesses as long they meet these requirements.

CHAIR COUCH: Correct.

MR. HOPPER: Yes. There's no limitation, one way or the other that.

CHAIR COUCH: But I guess the question to the Members is and the Department is, well, should there be a limitation as to a number of businesses on a lot?

MR. SPENCE: I think that's a policy call for the Committee, I would suggest, I think that's pretty easily accommodated it in just the definition of a home business means that an enterprise or activity conducted by an occupant of. . .somehow limited to just say occupant of a single dwelling unit per lot that involves the growing, processing, and manufacturing.

CHAIR COUCH: And we could do that but, I guess the question to the Members is do we want to limit it to that or not? And maybe bring it up to the communities as well, is to say look, is it okay maybe on the size of the lot or the size of the. . .if it's a RU-1.0 then that may be okay but maybe not in a resident. . .I don't know. So, Members, think about that when we go out to the communities as well whether or not more than one business is allowed on a single lot. That was the only other question I had on in those lines. Mr. Alueta.

MR. ALUETA: Thank you, Mr. Chair. Another thing that Department discussed is that there should be some type of introductory language such as the following standards and restrictions shall apply to all home-based businesses that are conducted as uses in any zoning district in which they are permitted and this is for 19.67.040. The Department did like to see some of the language from the previous bill --

CHAIR COUCH: Okay.

MR. ALUETA: --in keeping language that did provide some specific terms such as, you know, for deliveries, storage being hidden, so those are deliveries and pickups by package services must be done within the residential common carriers, e.g. USPS, UPS and

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Fed Ex. All goods, samples and materials or objects used by the home-based business shall be hidden from public view and stored within buildings or structures. Onsite sales and service operations shall be limited to the hours of 9:00 a.m. to 6:00 p.m. and then quiet hours for the home business operations shall be maintained from 6:00 p.m. to 9:00 a.m. And again, this is for your 040 which would be an outright by right.

CHAIR COUCH: Can you submit that to us?


MR. ALUETA: Yeah. I can give you. . .I'll turn these in. These are just my copies from my. . .one of my bosses.

CHAIR COUCH: Okay. Anybody else have any comments? We'll make the fixes and then submit it to the Committee and put it online as well so that it's available prior to us going out to the communities. I think we can do that. I'm pretty sure we can. . .Sunshine Law. Then we would post it on the website and submit it to the Committee. Yeah, okay, anything else, Members? So we're getting ready to wrap this up and put it into a neat package that we send out to the communities. Let's hear what they have to say and then we can really dig in if necessary compared to what the communities say.

**ACTION: DEFER pending further discussion.**

CHAIR COUCH: Okay, thank you, Members, for another good discussion on what we need to do. It's not simple but we're trying to nail it down. It's like herding cats almost. Thank you, Department, for coming up with your comments and concerns, and thank you, Staff. Members, this meeting is adjourned. . . .(gavel). . .

**ADJOURN: 11:45 a.m.**

APPROVED:  
  
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DONALD S. COUCH, JR., Chair  
Planning Committee

pc:min:131003r: mb

Transcribed by: Michelle Balala

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**CERTIFICATE**

I, Michelle Balala, 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 24<sup>th</sup> of October 2013, in Kahului, Hawaii.

*Michelle Balala*

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Michelle Balala