

PLANNING COMMITTEE

Council of the County of Maui

MINUTES

November 20, 2013

Mitchell Pauole Center, Main Hall

CONVENE: 6:00 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Donald G. Couch, Jr., Chair
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Stacy Crivello
Councilmember Don S. Guzman
Councilmember Mike White

STAFF: David M. Raatz, Director, Office of Council Services
Yvette Bouthillier, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office

ADMIN.: William Spence, Director, Department of Planning

OTHERS: Lori Buchanan
Brenda Kaneshiro, Molokai Meli
Sue Hollins
Artice Swingle, Twin Eagles
Julie Kamakana, Kamakana Country Store
Bev Ferguson
Others (35)

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

CHAIR COUCH: ...*(gavel)*... Will the Planning Committee meeting of November 20th, please come to order. My name is Don Couch. I'm the Chairman of the Planning Committee and with me tonight is the Vice-Chair, Mike Victorino--

VICE-CHAIR VICTORINO: Good evening.

CHAIR COUCH: --good evening. And then Council Chair Gladys Baisa, and then Molokai's own Stacy Crivello--

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COUNCILMEMBER CRIVELLO: Aloha.

CHAIR COUCH: --aloha. And then Don Guzman--

COUNCILMEMBER GUZMAN: Aloha.

CHAIR COUCH: --and Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha.

CHAIR COUCH: --and Mike White.

COUNCILMEMBER WHITE: Aloha.

CHAIR COUCH: Also with us is Will Spence from the Department of Planning, very important to this issue. And then our Staff, we have David Raatz, who's Council Services Director, and Yvette Bouthillier, who's the Committee Secretary, and we have of course, Ella Alcon, our trusty Council Services person here on Molokai. Tonight we're gonna be talking about PC, Item No. PC-33 which is Home-Based Business. Wanted to talk about a little bit about what we're trying to do here since we had a lot of meetings, Committee meetings on Maui. Wanted to bring to you what we've discussed so far. One of the philosophies of this Committee or this bill is to allow for home-based businesses that don't have impacts on your neighbors. Most home-based businesses we had a really nice presentation from a gentleman who's been doing this for 20 years all over the country, and he says it's the same everywhere, and sure enough some of the stuff he was saying is some of the things that we're getting is we wanna make it a impact-based law as opposed to a list of things you can and can't do. If you can drive by somebody's house and not know that there's a business going on or reasonably can't tell that there's a business going on, it's fine. The next...that's one level of home-based business that is outright...that we wanna outright permit. Some of these things are not outright permitted right now. The next level is if it has some sort of impact on the neighbor, the neighborhood, we would like to say, you still may do it, but you have to go through a Special Use Permit process which notify...makes you notify your neighbors saying, look I wanna do this business. So what this bill really is saying...trying to put into law is, you know, be nice to your neighbors, get them involved beforehand, and if you don't have complaints, everything will be fine. That's 90 percent of what this law will do. Now there are gonna be some times when things don't work out right and that's where we have...we have some place to look at, then say, well, you know, that's got too many obnoxious noises or odors or whatever or there's, you know, 50 people coming every day to the business, we gotta get buy-in with the neighborhood. So that's...there's been some misconceptions out in other meetings that oh, we're trying to clamp down on home-based

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businesses. It's quite the other direction. We're trying to allow more, more common-sense, low-impact businesses at home. So, people have also asked what drove this? Several businesses in different islands have been complained on because of personal issues, but people say, oh, they're doing an illegal business so, you know, they sic the Planning Department on the people, and the Planning Department is...their hands are tied saying yeah, you can't do this at home. And so these people have had to be shut down when it was a perfectly legitimate, at least should be a legal home-based business kind of thing. So we're trying to take that tool away from people to, to not have to worry about, you know, retaliation from complaints that are kinda baseless I guess. So I wanna just make sure that everybody is aware that we're trying to help the smaller businesses. And I use this analogy, if you look at Apple Computer, Hewlett Packard Computer, Dell Computer, and even on Maui, Ergobaby, those are multi-million and sometimes multi-billion dollar companies now that started in a garage. Ergobaby sold for up over \$90 million a couple years ago and it started in Makawao in a garage. So we wanna be able to encourage that kind of entrepreneurial spirit. And if you get big then it's fine to go to a commercial area. If you get big enough, good. That means you're doing good work and your business is solid and people like what you're trying to sell, and it's time to move into a commercial area then you'll know and your neighborhood will know. So those, those are some of the things that we're trying to put into law. I know it's common sense, but we have to try and catch at least 80 percent of the issues in the first go-around of the law then we'll enact something and we'll try and move it to a 90 percent effective law in about a year or so after we see how it works. And we'll strive for 100 percent but there's no law that's 100 percent perfect, so we're just gonna keep working on it till everybody's happy if we can get it that way. So that being said, this is a full-on Committee meeting. So we will accept public testimony and the Members may ask you questions or we may ask questions of the Department after hearing what you have to say. We have done this before where somebody would testify and something comes up and so we have to ask the Department saying, what can we do about that? So please know that we are listening to your testimony. Please sign up to testify over here, and if you have a cell phone, please turn it to silent mode. And with that Members with no objection, I'd like to open public testimony.

COUNCIL MEMBERS: No objection.

...BEGIN PUBLIC TESTIMONY...

CHAIR COUCH: Okay, right now we only have two people signed up to testify, but I'm sure more people will come as soon as they hear what we have...what some of the testifiers have to say. So please sign up right over here, and we'll start with Lori Buchanan followed by Brenda Kaneshiro. Please when you come up, come to the microphone, state your name, and who you represent if anybody. And Lori, let's just see if the microphone is on?

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MS. BUCHANAN: Hello.

CHAIR COUCH: Okay, and you have three minutes. Staff will tell you when three minutes are up, if you could wrap up after the three-minute warning is given, I'd appreciate it. Thank you.

MS. BUCHANAN: Maybe, maybe, I was going say, defer to the next...I gotta be honest, I just reading this now. My question to Staff is, on Page 3, Chapter 19.67--excuse me for the record, my name is Lori Buchanan, Molokai resident--is this a existing Code?

CHAIR COUCH: I'm not...I believe...I'd have to look at it. There are two copies out there that...but what was posted for this meeting should be the existing Code.

MS. BUCHANAN: And then the amendments that are proposed are on the front?

CHAIR COUCH: The way it works is anything that is bracketed is to be removed. Anything that is underlined is to be added.

MS. BUCHANAN: Added.

CHAIR COUCH: Unless there's a whole section. There's Section...Chapter 19.67 which is a whole--

MS. BUCHANAN: That's the one I'm referring to.

CHAIR COUCH: --added, it's not underlined or anything. That whole chapter is gonna be added.

MS. BUCHANAN: Ah, okay, I gotta go read this, can I come back?

CHAIR COUCH: That's fine. We'll put you at the back if you'd like.

MS. BUCHANAN: Okay, I'll go speed read--

CHAIR COUCH: Okay.

MS. BUCHANAN: --and then I come back. Thank you.

CHAIR COUCH: Okay, so Brenda you get to come up and hopefully a couple more people. I thought I saw some people go sign up. So please come sign up.

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MS. KANESHIRO: My name is Brenda Kaneshiro and I represent Molokai Meli which is the company that's owned by my family, and I just want to thank you all for coming tonight and for hearing our testimony. And I also want to say I feel very unprepared as do most of us here to speak on this because it's really vague to us. And I was at the meeting this morning, Mr. Couch, and thank you so much for coming and explaining to us, and Stacy, what this is about. To me, and I have been off island for a month so I, you know, I probably don't represent everybody, but I do know that many of us here are not even aware of what's existing. I know in the meeting this morning as I was going through it and asking my questions, it seemed to me that my own home-based business is not even legal at this moment. And I have to say when I started the business in 2004, I went to the County, I went to the State, I went wherever I knew I needed to go and then asked where else to go. And I did everything they told me I was supposed to do, and so I was very surprised to find out that maybe I'm not within the guidelines of the law. And I think there may be many other people besides me. There may be people who didn't go through all of those things, and don't realize that they're within or without the law. So what I'd like to suggest is that we have another way of communication, another way of getting the law as it stands, out to the people first so we know what is and what isn't and maybe in plainer language that we on Molokai can understand. I know that's a big, a big task when it's legal stuff, but that would be my first thing is we first need to know what is current, and then for us to know what exactly is going to be proposed as a change. And I have to say, I'm all for impact-driven. I think that's much better than having a list of do's and don'ts especially when you have a tri-island county. I also would like to say that there needs to be an input system, maybe a little bit different than what's here where you can hear from Molokai residents what's gonna work, and what's not gonna work for us and our neighborhood. That's all I have to say. Are there any questions?

CHAIR COUCH: Thank you, Ms. Buchanan. Members, are there any questions for the testifier?

VICE-CHAIR VICTORINO: Kaneshiro.

CHAIR COUCH: Oh, I'm sorry, sorry. Kaneshiro, yes. Sorry. Making sure everybody's awake. Ms. Kaneshiro?

VICE-CHAIR VICTORINO: Yes, so thank you, and I guess what you're asking for from us or from the Department is a more simplistic explanation of what the current laws and maybe the difference that the new law would bring in?

MS. KANESHIRO: Exactly.

VICE-CHAIR VICTORINO: Okay, I think that may be something we can check with Mr. Spence after this, and see if he can get that done for you, because I agree, it's really

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hard to understand something new when you don't even understand what is old. And I think it's, it's an evolving and something you need to have or all of the people in this room need to have. So if, Mr. Chair, we can request that from Mr. Spence I think that will be something, I think would be very appreciative. Would you guys want it by via e-mail, via hard copy, what would be the consensus of those on Molokai?

MS. KANESHIRO: I think if we could get it by e-mail especially to some of the offices that outreach to others, the Office of Economic Development.

VICE-CHAIR VICTORINO: Like the Kuha`o and the business center and all that?

MS. KANESHIRO: Yes, yes. And then put it out. Even if there's something in the newspaper, something small, an article that just gives the points of what is and what's proposed--

VICE-CHAIR VICTORINO: Yes.

MS. KANESHIRO: --that would be helpful.

VICE-CHAIR VICTORINO: Okay, I think we'll, we'll ask Mr. Spence on that one.

CHAIR COUCH: Oh...Ms....

COUNCILMEMBER BAISA: Actually, I'm just thinking the same thing and I'm trying to think of a vehicle because you know, normal Committee meetings of course, are very hard for you guys to participate in, and we have sat as a Committee and gone through this thing line by line, and I know you haven't had that opportunity. And I was trying to think where you could go and do that, and I agree maybe Kuha`o Business Center could sponsor, you know, a meeting and you could sit there as a community with somebody and go through it, and try to then submit recommendations before we formalize it. But I know that it...a lot of people are confused. I was coming in this afternoon at the airport and they were asking me why are you going to Molokai, people from Molokai. And so I was trying to explain and they were very interested, but they didn't know anything about it either. You know, it's...we have a real problem in trying to get information to people. I don't know, I don't know how to do it, but we obviously do not reach people quickly enough or in-depth enough, and then when we come for a hearing, and we want you to testify, you don't know how to testify because you don't know what you're testifying on.

MS. KANESHIRO: Right.

COUNCILMEMBER BAISA: And you know, so it's very difficult. So I understand the problem and I'm sure that Mr. Couch and Will will find a way too so that we can input

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from you guys. It's really important, we want this law to work for everybody; otherwise, what's the point?

MS. KANESHIRO: Right. Right. I appreciate that.

COUNCILMEMBER BAISA: Thank you so much for being here.

MS. KANESHIRO: Thank you.

CHAIR COUCH: Members, any further questions for the testifier? I have a comment. Yes, that was a...you're right, the list of all the stuff that is being removed to change it to impact-based was taken out of this bill only because if we had left it in, there are five or six chapters so the paper would have been about this big. So I made a conscious decision with the Staff to say, look let's not list that, that's already, you know, that is all going to go away. So we can get you that list absolutely. And then, you know, after hearing the other Committee, you know, where we go to all the different districts, I'll be happy to come up with a new, you know, compile what we can and then come out--I can certainly individually come out and maybe meet with the Business Council, and with Ms. Crivello, and maybe Mr. Spence just so we can make sure that you guys are aware. I mean, it was really good meeting this morning, and I really appreciate those that came. Maybe if we can have a bigger meeting and just talk story to say this is what we're trying to do and this is...okay. It will be a little bit less formal. Right now we have to be formal with Sunshine Law and everything, but if there's only two of us, and the Department, we can sit down and talk story. And I'll be happy to come back and do that too.

MS. KANESHIRO: Thank you.

CHAIR COUCH: Okay, next person to testify is Sue Hollins and then, Ms. Buchanan, you're up unless somebody else wants to sign up too.

MS. HOLLINS: Aloha, my name is Sue Hollins. Let me just start by saying I'm not sure I'm supposed to be here. My sense was that this was regarding a homeowner who wants to start a business in their home. I have a rental...I own a home that is a rental property and a nonprofit wants to rent the property, but we have been having difficulty getting a variance on the property so that they can move in. It's different? I thought it might be, but I was told I should come.

CHAIR COUCH: No, that is good. It just depends on what the nonprofit is doing. If it's a, again, a low-impact business, it should quality. It doesn't matter whether it's profit or nonprofit, but I don't know what the nonprofit is.

MS. HOLLINS: It is Child and Family Services.

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CHAIR COUCH: See, you're gonna have a lot of people come in.

MS. HOLLINS: We will be, but there is parking on a lot that is adjacent to mine.

CHAIR COUCH: It's not the parking issue at this point. At this point it would be...fall under a special use. You would have to get a Special Use Permit for the number of people coming into a neighborhood.

MS. HOLLINS: Okay.

CHAIR COUCH: And I don't know how big the lots are in your neighborhood. If you're in two-acre lots or one-acre lots then that impact may not be, but if you're in 10,000 square feet or 7,000 square feet, that might be a big impact. So that's why we would do the Special Use Permit where you would notify the neighbors within 500 feet of you, and get their buy-in. You know, if they say, you know, we don't like that amount of people there then, you know, that's up to the...that would be up to the Planning Commission to decide, the Molokai Planning Commission.

MS. HOLLINS: Okay, so I first check with the neighbors, let them know what the plan is or what we hope to do...it's been crazy, I moved this week, so--

CHAIR COUCH: That's okay.

MS. HOLLINS: --sorry.

CHAIR COUCH: Just keep in mind this bill hasn't passed yet, so under the old, okay--

MR. SPENCE: Yes, Mr. Chairman?

CHAIR COUCH: --yeah, Mr. Spence go ahead.

MR. SPENCE: Yes, hi. I'm the Planning Director. I'm Will Spence. Why don't you give our office a call and we can look up exactly where you live, you know, the parcel you live on, we can look up your zoning and see what's permitted already. Because it could be...I don't know what the nature of the business of the nonprofit. Some things are gonna be allowed by the Code like certain size, you know, a home care or--

MS. HOLLINS: It's counseling basically.

MR. SPENCE: --preschool. I'm sorry?

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MS. HOLLINS: Counseling.

MR. SPENCE: Okay. Still I'd rather look it up to give you a more precise and correct information.

MS. HOLLINS: Alright.

MR. SPENCE: And then it may be something's permitted and then if not, if it is a counseling kind of thing...and who knows, you know, exactly what we'll find, but there may be a Special Use Permit like Councilman Couch is saying, and in which case that's decided upon by the Molokai Planning Commission.

MS. HOLLINS: I will see you after the meeting.

MR. SPENCE: Okay. Be happy to.

MS. HOLLINS: Thank you.

CHAIR COUCH: Members, any other questions of the testifier? Seeing none, thank you. Next up is Artice Swingle. You get a little bit more time.

MS. SWINGLE: And again, I only just picked this up. Okay, my name is Artice Swingle. I live up in Kalae. And we do have a small business in our home. We are Twin Eagles, Incorporated. My husband does upon occasion, build furniture or have items that are for sale. We don't like to sell them. Usually people come to us and order a specific item that is made. We have approximately a quarter acre, most of that is under cultivation. We raise 50 percent of our food and there are occasions when I trade or, you know, would want to sell a plant. Now it says here that greenhouses, flower and truck gardens, and nurseries provided that there shall be no retailing or transacting of business on the premises. Now, I'm wondering why? If I wanted to sell one of my plants, why is that wrong? I'm in a neighborhood, nobody gives a care. I have Bennett's Pottery right across the street from me. You know, he's having his big sale next weekend. We supply him with his parking when he does it. As a community, we get together and we understand that if somebody is selling something then we all hui up and help out that person. But I don't see why there should be something about greenhouses and flower gardens and I'm also looking at, okay, Residential Districts. I'm looking at Mahana Gardens, now what do you define as a Residential District? They got like four residences out there. Now is that Residential District? Obviously, Dusty's running his own corporation, you know, with small engine repair and Mahana Gardens is operating as a nursery and yes, there are four residences there, okay. So I don't...you know, I think that we gotta have something that's really flexible for Molokai. So that's, that's about, you know, and maybe you can ask some more questions about that, but I see a lot of people

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operating out of their home doing very small business, very small business or even if it's their livelihood, they're not impacting the residential area.

VICE-CHAIR VICTORINO: The question I have for you is really simple. You're not really a retail.

MS. SWINGLE: No.

VICE-CHAIR VICTORINO: You're almost...you're like a wholesale. I mean, you built...well, wait, wait now, follow me--

MS. SWINGLE: Yeah, yeah, yeah, yeah.

VICE-CHAIR VICTORINO: --Retail is when I make something, take it to another person for them to sell it, and they make...I sell it them, and they sell it again.

MS. SWINGLE: Okay.

VICE-CHAIR VICTORINO: That's retail.

MS. SWINGLE: Okay, I got it.

VICE-CHAIR VICTORINO: Okay, and anybody in this room can correct me if I'm wrong. Okay. Wholesale is when you build or grow or whatever and you turn around and sell it to me.

MS. SWINGLE: Okay, good.

VICE-CHAIR VICTORINO: So, so, what you just described if I got my definitions correct, and if I'm wrong, let Webster come see me, you're, you're okay.

MS. SWINGLE: Okay.

VICE-CHAIR VICTORINO: You know, so you guys would not be impacted by this change. But retail means a lot of times in our minds, people coming to your property, you know, in big numbers and you have other property or other...you bought from him, you bought from her, you bought from him, and then you're selling it now.

MS. SWINGLE: No, we don't do that.

VICE-CHAIR VICTORINO: Yeah, so, so that doesn't fall under that.

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MS. SWINGLE: No, you're right.

VICE-CHAIR VICTORINO: You know, 'cause retail is when somebody buys something from...wholesale is what you grow and you sell directly.

MS. SWINGLE: Okay, yeah we are direct. We only do direct--

VICE-CHAIR VICTORINO: Yeah, so I would say that's where you fall not into the retail...

MS. SWINGLE: --and we really on do it on, you know--

VICE-CHAIR VICTORINO: Yeah, yeah, yeah.

MS. SWINGLE: --you order it. We deliver it.

VICE-CHAIR VICTORINO: And I think that's where you would fall--

MS. SWINGLE: Okay.

VICE-CHAIR VICTORINO: --so I don't think you have a major problem, but you know, again, we're gonna tweak it and we're going...so we need to hear from you folks, and I think Mr. Couch and your Council Member, Ms. Crivello, will come back and talk some more with you guys. So maybe you gotta look it over and talk some more and then try to get something together.

MS. SWINGLE: Okay.

CHAIR COUCH: Okay, and let me point out too that, that's a permitted use at this point. One of--

MS. SWINGLE: It may be further described in here.

CHAIR COUCH: --yeah, one of many including, it goes from "A" through "K", and "J" says, home businesses pursuant to provisions of Chapter 16.67. So you can, you can do it if it's okay if it's okay in 16.67 which if there is a conflict, and I'm not sure how the Department and Mr. Spence maybe will take a look, if there's a conflict which one has precedence? Because in 16.7, 19.67, sorry.

MS. SWINGLE: Yeah, I was gonna say--

CHAIR COUCH: Which is page--

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MS. SWINGLE: Which page are we on here?

CHAIR COUCH: --it starts Page 3.

MS. SWINGLE: Yeah.

CHAIR COUCH: And basically Page 4 tells you whether it's outright permitted or special use permitted. So if you look at that, it says you can sell stuff, I believe.

MS. SWINGLE: Yeah, customers shall be limited--

CHAIR COUCH: Yeah.

MS. SWINGLE: --to two at any given time--

CHAIR COUCH: Right.

MS. SWINGLE: --with a total of 16 customers per day.

CHAIR COUCH: So again, we would ask Mr. Spence how that--

MS. SWINGLE: Yeah, we would fall within that.

CHAIR COUCH: --would be.

MS. SWINGLE: Well, okay. I'm just looking at Bennett's Pottery and when he has his annual sale, it's definitely more than 16 customers per day, but you know, I--

CHAIR COUCH: But that's...and again, Mr. Spence, that's a one-off, annual thing?

MS. SWINGLE: Yeah.

MR. SPENCE: We would, we would look at an annual sale not a whole lot different than like a garage sale.

MS. SWINGLE: Yeah, and we have those all the time, yeah.

MR. SPENCE: I mean, that's, that's totally fine.

MS. SWINGLE: Okay.

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MR. SPENCE: What we would have a hard time with was if you had a shop, it was open every day, and you know, people...a large amount of people were visiting every day.

CHAIR COUCH: And again, that's an impact. If you have a low-impact on your neighbors, and they don't complain...first of all, if they're not gonna complain then you're okay regardless because it's a complaint-driven enforcement anyway. But if you wanna be...yours sounds okay anyway, and you might wanna check with mister...

MS. SWINGLE: Yeah, I'm just thinking about some of the others, you know...any structure associated with the home business shall not require the installation of mechanical equipment other than which is common in a residential dwelling. We have a whole lot of mechanical equipment and it's not common to a residential.

CHAIR COUCH: Like a lathe maybe?

MS. SWINGLE: We have saws, extensive saws, you know, I mean, we've got a whole shop. I forget, you know, 42 feet by you know, maybe 25?

CHAIR COUCH: See that would probably --

MS. SWINGLE: It's not typical.

CHAIR COUCH: --be a special use, but...

MS. SWINGLE: It was already there when we moved. That was 12 years ago.

CHAIR COUCH: Just because it was illegal to begin with ...*(laughter)*...

MS. SWINGLE: Well, and I'm also thinking of like Mahana Nursery with Dusty's, you know, engine repair. I mean, you guys came up with this thing that we couldn't have any container businesses in town.

CHAIR COUCH: Right.

MS. SWINGLE: So then he had to move out to where his residence was. Alright, so that's a going business and a needed business.

CHAIR COUCH: That's the other, that's the other question we had is, are you in an Agricultural District or are you in an actual Residential--

MS. SWINGLE: No, I'm not. I'm in a Residential District.

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CHAIR COUCH: But is it, do you know, is that what the zoning is?

MS. SWINGLE: Yeah, ours is Residential.

CHAIR COUCH: Okay.

MS. SWINGLE: I don't know what his is.

CHAIR COUCH: 'Cause there are...some engine repairs are allowed in Ag already, farm implement repairs.

MS. SWINGLE: Well, this is small engine repair. It's not...

CHAIR COUCH: That may be a special use requirement.

MS. SWINGLE: Oh, god.

CHAIR COUCH: We don't, we don't know. Again, you'd have to look because the problem with Agricultural land is that there are some State restrictions that are pretty onerous. If it's not a permitted use, you have to get a special use. Even if we wanted to make it a permitted use, you still have to get a State Special Use Permit.

MS. SWINGLE: Well, and I'm not saying...see I don't know.

CHAIR COUCH: Right.

MS. SWINGLE: He may very well have a special use.

CHAIR COUCH: Correct.

MS. SWINGLE: I'm just thinking of Molokai as a community and where I see people having businesses and they're out of their homes.

CHAIR COUCH: Right, and that's what we're trying to allow as much as we can--

MS. SWINGLE: Yeah, I'm just saying--

CHAIR COUCH: --without having it overrun.

MS. SWINGLE: --gotta be flexible, and again, you know, just like Brenda said, we gotta have this in our hands or have some way to deal with it ahead of time, and I love the idea of the workshops over at the Business Center. You know, that at least would give the

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community access to the information ahead of time instead of stupidly getting up here and testifying about something that you don't know anything about.

CHAIR COUCH: No, that's not stupid.

MS. SWINGLE: No?

CHAIR COUCH: It's not stupid at all.

MS. SWINGLE: Well, I mean, I feel like, okay, whoo, alright.

CHAIR COUCH: Members, any other questions? Thank you very much. Alright, following...the next testifier is Jule Kamakana.

MS. KAMAKANA: Aloha. My name is Julie Kamakana, and I have owned two businesses in town, and now I own a business called Kamakana Country Store which is on DHHL land. It is agricultural and it is residential also. When I started my businesses in town, as the owners got a little more greedy, and a little more greedy, and a little more greedy, rents went up significantly. So I had first a little art store. And my art store started out with 16 people that I was representing, and at the end of the five years that I owned it, I had over a 150 artists on Molokai that I was representing. And the rents went from approximately a \$1,000 a month to around \$2,000 a month. When that got to be too much, we figured we would do a little bit, something a little bit different. And so I sold my business and started another business in a place that was starting out with more square footage and at the \$2,000 rent also. That went up to \$3,000 a month. Now when you're selling, and it's around 2,000, a 1,800-2,000 square feet, and you're paying that kind of money that's Downtown Honolulu prices, and we have this on this little island. And you're saying, one size fits all. You're saying what we wanna do over on Maui is the same kind of thing is what we wanna do on Molokai? We have...it's ludicrous to think that. It's we need to have some special breaks. I ended up by giving up the store, selling everything out, and my husband said let's just bring it home. And I asked DHHL, they all came. All of the members of the DHHL came and visited what we were doing because we have mango orchards. We have citrus things that we have. My husband and I do cut glass and we etch on glass and I'm an artist and I sell my art and my cards, but there were other people that also wanted to have some of their artwork in my little place, and I now had been known as having about the best little gizzys, and gadgets and stuff in the kitchen and I've kept that up too. So I have a little of wholesaling, a little of resaling and it's a small 200 square feet little place. And we sell plants that my husband grows, and so it's just a little small place. I would like to say we have 18 people a day that come in, but that would be a stretch, but we still have enough business to keep it operating. But if we end up by not being able to do that, and it's illegal, we have a problem.

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CHAIR COUCH: Okay, thank you.

MS. KAMAKANA: Thank you.

CHAIR COUCH: Members, any questions of the testifier? Yes, go ahead.

COUNCILMEMBER WHITE: Not a question for the testifier, but question for Staff whether we have jurisdiction on DHHL lands? I kind...I don't think, I don't think we do.

UNIDENTIFIED SPEAKER: I don't think so.

COUNCILMEMBER WHITE: Yeah, yeah.

MS. KAMAKANA: Okay, okay. Thank you. Thank you very much.

CHAIR COUCH: But that, you know, Members that brings up a point if she wasn't on DHHL land and it was Ag land, those are some of the things that we're trying to talk about and try and get it into, into the law to allow for things like that as long as the neighbors and the State is fine with it. So alright, following Ms. Kamakana, nobody else has signed up to testify, so we'll bring up Ms. Buchanan again.

VICE-CHAIR VICTORINO: Just go ahead...go ahead and sign up. Yeah, you can. ...*(inaudible)*...

MS. BUCHANAN: Wow, and I cannot really speed read, but I tried to. Hi, for the record my name is Lori Buchanan. This document that was given to us by Staff with the underlying, Section 19.04, I guess is a definition of the home business. And I already have some questions about the definitions. And it says, there's the first paragraph, home business means an enterprise, activity conducted blah, blah, blah. And then it says, nuisance means an activity which arises from unreasonable, unwarranted or unlawful use by property owner, blah, blah, blah, blah, blah. So I wanted you to define "unreasonable" for me. Is there a metadata within the County that defines "unreasonable" in this section?

CHAIR COUCH: We'll get to answering questions--

MS. BUCHANAN: Okay, that's my first question.

CHAIR COUCH: --okay, good.

MS. BUCHANAN: Because I wanna know who defines, "unreasonable" and "unwarranted"? And it goes on, material annoyance, inconvenience, discomfort to the neighborhood or to the public that could cause resulting damage, offensive noise, vibrations, smoke, you

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know, all that sounds pretty vague without...I mean, if you going start defining stuff, you know, that's pretty vague. And then the permitted uses within a Residential District, where can I find the definition for "Residential District"? That's another question. On Item B, under Permitted Uses, 19.08, greenhouses, flower and truck gardens, and nurseries--also what's the definition of a "truck garden"--provided that there shall be no retailing, blah, blah, blah. On the following page, this does not apply to the square footage I'm assuming where you start at 7,500 square feet. That's another...that's just for testimony. And then on the next page, Page 2, you go in and start talking about the square footage that you need for the permitted uses, starting off at the 7,500 square feet or more. And then on Item H, you talk about daycare, nurseries and daycare centers, but it's also followed by used for childcare services. Am I correct that this would only be applicable to childcare services and not adult care services? That's my other question. And then you go onto the lot size again, any lot sizes of less than 7,500 square feet. You know, that's not very big. And then okay...but then again to apply that with the parking structure on the associated pages gets really tricky especially in residential neighborhoods like Ranch Camp. Chair, am I allowed to go on since I have three minutes already?

CHAIR COUCH: A couple more minutes.

MS. BUCHANAN: Okay. Well, it's a long document. So, I humbly ask you for little bit more time.

CHAIR COUCH: Well, let's do this, let's if the Members are okay with this, we can kind of answer the questions real quickly if possible.

MS. BUCHANAN: Or I can just provide the testimony. I mean, it's a hearing, up to you.

CHAIR COUCH: Members? Okay. Yeah, I don't have an objection. Members, any Members we can kinda...let's go, let's go through your questions again. You were talking about nuisance. See the unreasonable, et cetera, we're trying to not be so specific because in a-

MS. BUCHANAN: Okay.

CHAIR COUCH: --7,500 square-foot lot subdivision, something that is somewhat noisy is maybe unreasonable, but if it's in a two-acre subdivision--

MS. BUCHANAN: Right.

CHAIR COUCH: --that may not be. So it's really hard to pin down. And I realize that that's difficult and it's...it's up, it will be up to the Planning Department to determine that.

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Generally it's one of those things again if you can drive by it and not know there's a business there, it's permitted.

MS. BUCHANAN: Okay.

CHAIR COUCH: But if you get, if you're making so much noise that your next door neighbor which is right next door to you--

MS. BUCHANAN: Okay.

CHAIR COUCH: --stays up at night then maybe that might be something you'd need to go somewhere else.

MS. BUCHANAN: Okay.

CHAIR COUCH: So that was one...your first question. Your other one was...

MS. BUCHANAN: Residential District any, any--

CHAIR COUCH: That's in 19.04.

MS. BUCHANAN: Okay.

CHAIR COUCH: We didn't...I mean, 19, Chapter 19 is huge.

MS. BUCHANAN: Right.

CHAIR COUCH: And this is just some of the things that are changing. So Residential District there's a very big definition in Residential District. Mr. Spence?

MR. SPENCE: Mr. Couch, just so everybody knows that first page where it says 19.08.020, Permitted Uses, even to the second page, 19.08.030, that's already the law.

MS. BUCHANAN: Okay.

MR. SPENCE: The only changes are what's...for those two pages is what...and actually the top of Page 3, that's already the law.

MS. BUCHANAN: Okay.

MR. SPENCE: Just the underlined part is new.

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MS. BUCHANAN: Okay.

MR. SPENCE: Proposed new.

MS. BUCHANAN: And the ones with parenthesis you're taking out?

MR. SPENCE: Right.

MS. BUCHANAN: Okay.

MR. SPENCE: Yeah, just the new stuff where it says, 19.67 on Page 3.

MS. BUCHANAN: Okay.

MR. SPENCE: Everything past that, that's new.

MS. BUCHANAN: Alrighty.

CHAIR COUCH: You know what Ms. Buchanan?

MS. BUCHANAN: Yes?

CHAIR COUCH: I'm more than perfectly willing to have this discussion with you either right after this meeting or in a informal session right after this--

MS. BUCHANAN: Okay.

CHAIR COUCH: --or when I come back. I definitely will commit to come back, give everybody a chance to really read this and work with the Business Center to see what their interpretation is and work with the Planning Department. We can certainly correspond back and forth, but I definitely will come back with--

MS. BUCHANAN: Okay.

CHAIR COUCH: --with Ms. Crivello and probably Mr. Spence or somebody from the Department, and we'll do an informal--

MS. BUCHANAN: Okay.

CHAIR COUCH: --fill the room if we can, and we'll just chat.

MS. BUCHANAN: Okay.

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CHAIR COUCH: Because there, I mean, and then I can report back to the Committee--

MS. BUCHANAN: Okay.

CHAIR COUCH: --and say what Molokai would like. Because if you notice, if you kinda look through here, some of the stuff that we're changing, all we're doing is changing the way they're spelling Molokai and Lanai now, but there is a lot of exceptions for Molokai and Lanai. So we're not averse to having exceptions for Molokai and Lanai as far as I can tell. I mean, you can see it in the laws.

MS. BUCHANAN: Yeah.

CHAIR COUCH: So we wanna make it work for Molokai, and if it's--

MS. BUCHANAN: Okay.

CHAIR COUCH: --different from Maui, that's fine. We're okay. I mean, you know, that's part of our job is to--

MS. BUCHANAN: Okay.

CHAIR COUCH: --'cause we are so, such diverse communities, we can't--

MS. BUCHANAN: Yeah.

CHAIR COUCH: --one size fits all. So we're more than willing to work with you on that.

MS. BUCHANAN: Okay. I just have one really important thing--

CHAIR COUCH: Okay.

MS. BUCHANAN: --then I just have say is that I appreciate the hard work that went into this, in trying to set up a framework for the home business, but I was wondering what the Planning Department and the County Council was going to do to budget for the enforcement to deal with the ramifications from this new rules. And then I noticed that at least on Molokai when you have like on Page 10, and you have the...all the parking restrictions, it puts a burden on local law enforcement that's already very burdened. And when I put in a request for service when I'm reporting my neighbor's business, when can I expect somebody to respond? And I don't know if our Zoning Officer, if we funded more Zoning Inspection Officer positions, because in the past when we've requested for service and put in complaints, knowing that the Department is complaint-driven, it takes

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very long for those issues to resolve. So when you start putting a document like this together that makes allowances for home businesses and you open the door and you say, you know, call me if, if it becomes a pest, you really put...you initiating a basis for you to now have bad relations with your neighbors because those little issues can now, you know, are resolving themselves other than calling the Police and requesting for service from the County. And so now when you're putting something into black and white and you saying, you know, I can come and complain about that you're a nuisance and it's unwarranted, and then it goes well, I think this and you think that. So that's how come I said, you know, what is the basis, what cases have you, you know? I know it's a problem on Maui, and it's a problem here, but that's, that's what I see when I read this is that. And I understand so, I always fall back to the status quo and say, except on Molokai. You can do all this on Maui except on Molokai, and you know, the testimony by...we know who's doing business and who not, you know. And if you nevah hear about 'em, they okay, but they not, they not. But so this framework, you know, be careful and we'll talk about it later.

CHAIR COUCH: Thank you. Thank you. Members, any further questions? Okay, anybody else? Oh yeah, one person, Bev Ferguson.

MS. FERGUSON: Hi, my name is Bev Ferguson, and I live in East, East Molokai, I'm a homeowner. I'm not entirely clear whether I'm fully at...we're an agricultural use area. Our lot is just under an acre. But there are homes close to each other, so I'm not, I'm not entirely sure if it falls somewhat in residential even though it's within an ag use area. But I was just called today, so I heard there was some kind of meeting about home-based businesses, so I apologize for not being, you know, properly prepared or dressed for this. But I'm getting a sense of what it is that you've come all the way over to Molokai to discuss with us. What I wanted to share with you is that just as it's...it would be impossible to birth a full-grown sized, you know, child, you know 100 pounds, there's a reason it starts small. It's the same thing as birthing a home business or any business. And so, whatever laws that you make and restrictions and size, if you are pushing a business into taking its first steps, giving birth to that business, and forcing it to be more expensive and more elaborate then it puts a clamp on it, because you have to have the ability to start very small and very inexpensively without, you know, loans and expensive equipment and sizes and buildings, and I'm sure you get that. So I think other people have said, keep it simple for us, allow us to start very small and inexpensive so we're not priced out of even trying to pursue a dream. As regards myself, I'm...my question is, is there anything in this or in your intent for ag use areas that would disallow raising chickens and selling eggs from your premises or plants, because I'm concerned about that permitted use, "B", where it says on the second part of that, that there shall be no retailing, and I understand your definition, but then when it says, or transacting of business on the premises, I'm wondering whether selling eggs constitutes transaction on the premises?

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CHAIR COUCH: Okay.

MS. FERGUSON: So I would like to see that language taken out of it if that's the case.

CHAIR COUCH: Let me, let me just tell you that that is the existing language in the law now that currently exists. So whatever is not underlined or not bracketed is already there.

MS. FERGUSON: Okay.

CHAIR COUCH: I mean, so in your case we don't know what your zoning is. If you're zoned Ag, that's all okay. The stuff, chickens and eggs all on your land, that's pretty much okay. Is that right, Will?

MR. SPENCE: Yes. If you're on the East End, you have two zonings out there. You have Agriculture and Rural, and you should be fine on either one of those.

CHAIR COUCH: On both of those zonings.

MS. FERGUSON: Okay.

CHAIR COUCH: Yeah, this where you say, you know, "B", where you're talking on "B", that's for just Residential Districts actually zoned R-1, R-2, R-3--

MS. FERGUSON: Okay.

CHAIR COUCH: --which is usually 5,000 square-foot lots, 7,000, 10,000 up to less than an acre.

MS. FERGUSON: Okay.

CHAIR COUCH: So...

MS. FERGUSON: I didn't have time to read everything.

CHAIR COUCH: No, that's fine.

MS. FERGUSON: So that's why I'm asking.

CHAIR COUCH: And the other comment you made, and that's what we wanna do is allow you to start your business at your home so long as it doesn't impact your neighborhood, and sounds like in your neighborhood, you got neighbors that are pretty far away from you,

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you know, relatively as opposed to some of the stuff in a subdivision where everything is...

MS. FERGUSON: But we're fairly, we're close to our neighbors even though the lots are big, just the placement. But no, the idea is that you get along with your neighbors--

CHAIR COUCH: Right, and that's what we're...

MS. FERGUSON: --and you, and you have to be aware of them regardless of something you might be technically right and permitted to do something by law that really offends your neighbors--

CHAIR COUCH: Right.

MS. FERGUSON: --and you have to adjust accordingly.

CHAIR COUCH: Right.

MS. FERGUSON: Is there anything in here or in the intent that would disallow a commercial kitchen to be built on such a premise in order to sell prepared products?

CHAIR COUCH: The only thing would be is if you have your customers coming to your house. If you were to do the cooking and sell it somewhere else, that would be fine.

MS. FERGUSON: I'm talking about on-farm sales.

CHAIR COUCH: On farms is it?

MS. FERGUSON: Yeah.

CHAIR COUCH: Then it goes by the number of customers, that's the, that's the huge thing.

MS. FERGUSON: So you'd have to put up a chain after...

CHAIR COUCH: And it wouldn't be not permitted, it would be...it would be not outright permitted. It would be...you'd have to get a Special Use Permit for that. Yeah, a commercial kitchen always has their Health Department and all that. That's what defines it as a commercial kitchen--

MS. FERGUSON: Right.

CHAIR COUCH: --the State will give you that label.

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MS. FERGUSON: Right.

CHAIR COUCH: But if you're gonna have people coming and going in the neighborhood, then that would probably...more than, I believe right now we have 16.

MS. FERGUSON: So they can come and go to buy my eggs, but if I made goat cheese they could not come and go?

CHAIR COUCH: Well, but you're in Ag, see. You're in Ag, so Ag is different.

MS. FERGUSON: Well, that's why I'm saying for this type of property, is there anything in the language or in your intent that would disallow something like that?

CHAIR COUCH: I would have to talk with Mr. Spence on that one.

MR. SPENCE: I don't, I don't see anything in this proposed bill that would affect your agricultural activities on your property. This is mostly for like in town, in what we call the urban areas even though, even Kaunakakai is not very urban, you know, that's mostly what this bill is for. You can do agricultural processing on your property out in...you know, if you're Ag or even Rural, we allow agricultural activities out there. On Ag land you can have a farm stand. So you can do that kind of retailing. If you were to build like a neighborhood store on your property, we would have a problem with that. But that's not what I'm hearing.

MS. FERGUSON: We're close to the neighborhood store as it is.

MR. SPENCE: Yeah, you're probably ...*(inaudible)*...

MS. FERGUSON: So we don't have to duplicate it, but I did want to be clear that if this is something that you were trying to, to make not legal I wanted to say--

MR. SPENCE: Yeah, no, we're trying to make--

MS. FERGUSON: --please encourage as much of this activity as you can and make it as easy to do.

MR. SPENCE: Yes. The purpose for this bill is to make more home-based businesses legal.

CHAIR COUCH: Right. Yes.

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MS. FERGUSON: Okay. Okay, thank you for, thank you for clearing that up. I won't take more of your time.

CHAIR COUCH: No, that's what we're here for.

MS. FERGUSON: Okay.

CHAIR COUCH: And we'll be here for a informal after too if you'd like.

MR. SPENCE: Yeah.

MS. FERGUSON: Thank you for coming and listening.

...END OF PUBLIC TESTIMONY...

CHAIR COUCH: Members, Ms. Ferguson was the last person to sign up to testify. Does anybody else wanna come up? That being said, Members, one other thing, there was a question that arose about Hawaiian Home Lands, and the DHHL website says that the Hawaiian Home Land. . . Hawaiian Homes Commission has authority to determine land use on Hawaiian Home Lands, and Chapter 19, Title 19 is land use. So all this does not apply to Hawaiian Home Lands, so you know. What the County does have the right to deal with is the building, plumbing, electrical, and grading permits just for safety sake that's what the County has. So Members of the Committee and members of the audience, that's the answer on DHHL. Folks, thank you very much for coming. Again, I'll be hanging around a little bit afterwards if you would like to chat with us although we haven't had dinner yet so. . .but I will come back. I will commit to coming back before we pass this bill and talk to you. So with that, Members, this meeting is adjourned. . . . (gavel) . . .

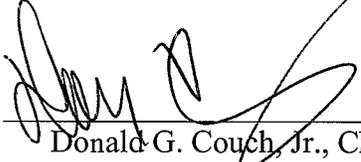
ACTION: DEFER pending further discussion

ADJOURN: 6:52 p.m.

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APPROVED BY:



Donald G. Couch, Jr., Chair
Planning Committee

pc:min:131120-Molokai:ctc

Transcribed by: Carolyn Takayama-Corden

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I, Carolyn Takayama-Corden, 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 9th day of December, 2013, in Makawao, Hawaii

A handwritten signature in black ink that reads "Carolyn Takayama-Corden". The signature is written in a cursive style with a horizontal line underneath the name.

Carolyn Takayama-Corden