

PLANNING COMMITTEE
Council of the County of Maui

MINUTES

December 5, 2013

Council Chamber, 8th Floor

CONVENE: 1:31 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Donald G. Couch, Jr., Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Mike White

EXCUSED: VOTING MEMBERS:

Councilmember Michael P. Victorino, Vice-Chair
Councilmember Stacy Crivello
Councilmember Don S. Guzman

STAFF:

Regina Gormley, Legislative Attorney
Tammy Frias, Substitute Committee Secretary
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference
bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference
bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference
bridge)

ADMIN.:

William Spence, Director, Department of Planning (Items PC-38 and -3)
Joseph Alueta, Administrative Planning Officer, Department of Planning (Items
PC-38 and -3)
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation
Counsel

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

CHAIR COUCH: . . . *(gavel)*. . . Will the Planning Committee meeting of December 5th, 2013, please come to order. It is now 1:31. I'm Committee Chair Don Couch, and with us today is Council Chair Gladys Baisa, good afternoon.

COUNCILMEMBER BAISA: Good afternoon, Chair.

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CHAIR COUCH: And then Councilmember Elle Cochran, good afternoon.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR COUCH: And Councilmember Mike White.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR COUCH: Thank you, guys, for being here. We make bare quorum. We're ready to go. Excused is Councilmember Stacy Crivello, Councilmember Don Guzman, and Councilmember Mike Victorino. And with us also today is from Corporation Counsel James Giroux.

MR. GIROUX: Aloha, Chair.

CHAIR COUCH: And we have . . . is Will coming, do you know, Joe? We have Joe Alueta from the Planning Department.

MR. ALUETA: Good afternoon.

CHAIR COUCH: And of course we have the Committee Staff - Legislative Attorney Gina Gormley, good afternoon; and Committee Secretary Tammy Frias. Good afternoon.

All right, Members, we have a small agenda today. Let's check in, there's nobody here to testify it looks like. Let's check in with the district offices and see how they're doing. Hana, do you have any people there ready to testify?

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

CHAIR COUCH: Okay. Thank you. Molokai. Molokai? We'll come back to Molokai. Lanai.

MS. FERNANDEZ: Aloha, Chair, this is Denise Fernandez at the Lanai office. There is no one waiting to testify.

CHAIR COUCH: Okay, thank you. One last chance for Molokai. Ella? Okay. It looks like we lost connection with Molokai. Members, there's nobody waiting to testify and as of just before this meeting no one was in Molokai waiting to testify as well. So, without objections, we'll close public testimony.

COUNCILMEMBERS VOICE NO OBJECTIONS.

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ITEM 38: HOTEL DISTRICT (CC 13-285)

CHAIR COUCH: Okay. Thank you, ladies; we will see you at the next meeting. Aloha. Okay. Members, we have two items today. We have PC-38, which is the Hotel District, and then PC-3, which is small wind energy systems. We'll start with PC-38, Hotel Districts. You're being passed out a handout and we'll get to that in just a second. This 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 cell or radio antenna attached to an existing building as a permitted use, amending allowable accessory uses, consolidating and amending development standards, and providing the Planning Director with rule-making authority. Members, if you recall, we had most everything taken care of until we got to the point of the height, putting a height limit on hotel buildings. Currently, the way the ordinance reads is the limit is 12 stories but there's no limit to the height of the stories. So conceivably you could have a 12-story building and all the stories are 20 feet tall and that's a 240-foot tall building. While that may not be physically possible, I mean, architecturally possible, it is possible to do that. So what the Chair had and the Department had put in they said let's limit it to 180 feet and make sure that . . . make it so nothing goes higher than that. There were concerns about how high that really was and so Staff, along with the Department, came up with this table of building heights. And as you can see, the Hyatt Regency is 148 feet and 144 feet for their second building. The Kaanapali Alii is 130 feet. And if you go down to Maui Marriott is 120 feet, essentially; a 137 feet Royal Lahaina. And if you look at The Whaler at Kaanapali Beach where it says 12 stories less than 15 feet per story, if you even go to 12 1/2 feet per story that still brings it up to about I believe it was about 160 feet I believe is what I did. I did the math a while back and it was 150, 160 feet. So, to say that we are expanding or increasing the minimum height of the buildings, is not quite so. What we're trying to do is to make sure that they don't go over a certain amount of feet. So 180 feet the Planning Department put out there and there was some concerns. There has never been a 120-foot limit as has been testified to by a lot of people so it's this Committee's charge as to let's get rid of the number of stories as a limit, and put in a number of feet. And the Department said 180 feet was a reasonable amount. I believe Mr. Alueta, if you go 15 times 12, that's 180 feet. And if you remember, if you go to any hotel, pretty much any time hotel, they have at least a 20-foot ceiling and maybe a 20-foot second floor as well. I think this one is a little over 20 feet. And I don't know, Mr. White, how tall is your lobby?

COUNCILMEMBER WHITE: I seem to recall it's fairly tall. No . . . 9 or 9 1/2 feet.

CHAIR COUCH: Oh, really?

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COUNCILMEMBER WHITE: Yeah.

CHAIR COUCH: Oh, okay.

COUNCILMEMBER WHITE: Very low.

COUNCILMEMBER COCHRAN: How long have you been there?

CHAIR COUCH: Yeah. But most hotels have a pretty large lobby and a pretty large second floor. So that's going to throw it over 120 feet real quick. So the Chair agrees with the Department. Department, do you have any further comments on this bill? Everything else everybody agreed on. It's just this one number sticking point.

MR. ALUETA: Thank you, Chair.

CHAIR COUCH: Mr. Alueta?

MR. ALUETA: As we stated before, we basically extrapolated out past practice of how we've interpreted what each story height was. The surrounding zoning categories we typically use 15 feet per story, and so that's how we came to the 180 feet. Most people do not, I guess, or hotels have not built to the maximum because of the floor limit but also other issues such as floor area ratio, lot coverage as well as value engineering when they try to build their structures there's certain limit and cost benefit once you start getting to a taller structure. But I also understand the Council's concern over the concept of 180 feet. So again we provided you with some samples of existing building heights. One thing we do want to note is that if you do set the limit height again we're trying to provide a provision to allow for elevator shafts to go above that as well as potential antenna to be roof mounted. So keep that in mind in your deliberations if you choose a height to bring what we're proposing down to a maximum height of say 155 or something but then account for maybe 155 plus another 10 feet to be allowed on roof for service shafts as well as potential antenna or PV panels or whatnot and maybe roof mounted. We still want to be able to at least account either which way. So you drop the number and account for that extra 10 feet.

CHAIR COUCH: Okay. Members, if you take a look at the County Communication 13-285, it was dated August 19, 2013, at the end is the bill that we're discussing and on Page 4 of that bill where it says maximum building height in feet for H-2 and Hotel is 180 feet. And then under Notes and Exemptions, note that it says except that the vent pipes, fans, elevator, and stairway shafts, chimneys, cell or antenna and equipment use for small scale energy systems on roofs shall not exceed 10 feet above the maximum building height. Mr. Alueta, is that sufficient to take care of your concerns no matter what height we put that?

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MR. ALUETA: Yeah. I just wanted to make you aware of that provision --

CHAIR COUCH: Okay.

MR. ALUETA: --in the Code.

CHAIR COUCH: Members, any questions of the Department?

COUNCILMEMBER WHITE: I got one.

CHAIR COUCH: Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. The question I have is in respect to the lot coverage of 35 percent, are parking garage structures included in that lot coverage calculation? I don't think they should be because you have a parking lot that's not included but it's one of those things that may come up, if it's a separate structure from the building itself.

MR. ALUETA: At this rate, we think it is but we'll call down to find out at the next break.

COUNCILMEMBER WHITE: It is excluded or included?

MR. ALUETA: It is included.

COUNCILMEMBER WHITE: Then I would have a problem with that.

CHAIR COUCH: Sure.

COUNCILMEMBER WHITE: Because in playing around with these calculations even with the extreme height, even with the 180 feet in height, the lot coverage calculation becomes problematic if it's inclusive of parking structures.

CHAIR COUCH: Yeah, and I'm trying to figure out where in the Code because it doesn't really say it's inclusive or exclusive if you take a look at it. Because it talks about hotel buildings, maximum building lot width, I'm sorry not lot width but coverage. Where's the coverage? Yeah, maximum lot coverage at the bottom of Page 4. Should we put a definition in there saying that or actually, Mr. Giroux, is there any . . . if you were to look at this can you argue that it does not include or it does include the parking structure?

MR. GIROUX: Um . . .

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COUNCILMEMBER WHITE: I would say stand alone.

CHAIR COUCH: Stand alone, right.

MR. GIROUX: I think if it's silent or if there's ambiguity you want to add language to clarify. Otherwise, it becomes part of the Administrative, you know, they're going to have to make those calls, make rules that govern how they do those types of calculations . . . just like we have floor space, just like we have with lot coverage, those types of things.

COUNCILMEMBER WHITE: Uh-huh.

CHAIR COUCH: Mr. Spence?

MR. SPENCE: I'm going to try to look up in the Code if we have a definition for lot coverage.

CHAIR COUCH: Okay.

MR. SPENCE: I didn't bring my . . .

CHAIR COUCH: All right. While we're discussing that, any other questions? Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. I hear the concerns of the additional height but I get the . . . I understand why we're here is because we need to define what is a story as you stated in your opening comments, Chair. But looking at the numbers here, height and feet, per . . . for all existing buildings today and none of them come close to 180 foot height. So I just want to know why Department feels it . . . why do you want to bump it another 40 or more feet in height when none of our existing buildings even come close right now? And hearing the concerns of the community not wanting anything taller than what is already existing, I kind of have a problem with going up that 180.

MR. ALUETA: Again, we use 15 feet per story as a typical thing. Department is moving away from the use of having stories in there. But right now we consider one story to be 15 feet. If you look at the residential district it's two stories 30 feet all over Apartment Districts, Business Districts same thing. It's all been 15 feet per story or floor. We now get away from that in our Code of having the term story because sometimes that gets a little confusing for people and we are more concerned about what is the maximum height because we have been using the standard of 15 feet per story. The existing Code is 12 stories without any definition. We just extrapolated the 15 feet from the other districts that we have and we've come to 15 feet. So 15 feet times 12 comes out to 180. Again, I understand your concern if you want to drop it. What I've said is that, even though the Code already allows as of today if someone came in and they said they were going to build 180 foot building in the Hotel District and have only 12 stories, we would allow

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them to do so. The controlling factors that have prevented anyone from so far doing that has been lot coverage, floor area ratio, and value engineering meaning that a lot of times to build that high of a building requires greater engineering, _____ with the foundation but also the walls that support that structure. So, again, it doesn't mean that just because someone, no one has done it, doesn't mean they may not do it in the future. Again, but we share your concern. Other controlling factors that had been . . . especially in the Kaanapali area and Wailea area, a lot of those are in the SMA view plane or view corridors come into play, and during the design phase of the project many of the hotels come in and they will sometimes will pare down the size or the height of their building to get approvals through the Design Review. But I think the majority of them have not exceeded or come close to being the 180 just because again I think value engineering comes into play for the most part. But again we are trying to get a definitive height.

COUNCILMEMBER COCHRAN: Right.

MR. ALUETA: And again we're not concerned so much with the story. So if somebody can get you know in a 150-foot building 15 stories and still meet the floor area ratio then great. And again, the same thing is the same thing we're doing in the Residential District. We no longer have that two story height limit, at least the way we've proposed it, is if somebody wants to do three stories or have three floors and stay under that 30 feet in the Residential District, the way we're proposing to amend the Code, it will be the same way.

COUNCILMEMBER COCHRAN: Right. You know so I'd like to drop the footage on a story. Nobody has even come close to the 15 foot max. And, for me, it's not good enough just to have you know the controlling factors as you just stated - SMA, the value engineering, on and on. So why not just . . .

CHAIR COUCH: We're taking the story definition . . . we're not even using the word "story" at all now.

COUNCILMEMBER COCHRAN: No, I know, but we need a footage and that's how they've come up with the 180. And that's how you determine Kaanapali Alii as 12 stories at 130 feet in height. And if you divide that then you get what each story is per footage.

CHAIR COUCH: On average.

COUNCILMEMBER COCHRAN: So I'm just trying to average it out with existing buildings and go closest to that like at 150, 148.5 is the tallest, the Hyatt. And so it's only nine stories but that's the tallest in feet and just say at 150 max. Nobody is even, I mean, they're the closest to it at 148.5 and what is that come down to in footage per, if we don't want to use story but per level or whatever you want to call it in the building, I don't know.

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MR. SPENCE: Right. And again, we're good with placing a different height limit. But I want to get away from saying a story is a maximum, you know, so much is for a height limit. I think we've all been in the ballroom at the Grand Wailea and that thing is like way up there. So it's going to vary from building to building according to each architecture, each architect, however each building is built. I don't want to give a maximum on a story to maybe instances where we want a much higher first story but will get fewer overall floors you know if we just put a maximum height on it. So we're good with just calling it a, you know, --

COUNCILMEMBER COCHRAN: Height limit.

MR. SPENCE: --putting a maximum height . . . leave a --

COUNCILMEMBER COCHRAN: Okay.

MR. SPENCE: --number of stories alone.

COUNCILMEMBER COCHRAN: All right, just a follow-up, Chair, real quick.

CHAIR COUCH: Okay. Sure.

COUNCILMEMBER COCHRAN: So, yeah, I mean, I'm good with that because we're using story in this little data sheet too. But I would rather see the max 150 --

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: --if we're going to go somewhere, you know, 150 max because as it is today nobody has gone above it. And I think people are happy, well, as happy as they're gonna with what they see but they just don't want any more. So that's my comment.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR COUCH: Mr. White?

COUNCILMEMBER WHITE: Just to add another perspective is I understand where Member Cochran is coming from. One of my bugaboos is that we have a lot of buildings that spread out instead of up. And so as you drive by certain areas you can't see through to the oceans, and I'm kind of wondering whether going a little higher if it shrinks the size

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of the building because most people are going to try to max out the 35 percent coverage and the floor area ratio. If the building is a little bit higher, it's going to be a little narrower. And, to me, I like that better because you're able to see between the buildings as opposed to the building blocking everything. The question I had was with the 148 1/2 at Hyatt, is that the roof line or the top of the elevator shafts and whatever kind of mechanical equipment they may have on the roof?

MR. ALUETA: It's the highest points of the elevator shaft, mechanical elevator shaft.

COUNCILMEMBER WHITE: Okay. So that's actually not even, it's not even the blockage. It's just a couple of boxes on top.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: I don't know . . . I'd like to see it get a little higher than 150. Maybe 160, 170; I'm comfortable with 180 because it might shrink some of these buildings.

CHAIR COUCH: And to the public, for the public, as our Wailuku member always likes to say, if we do go higher as Mr. White says, because of the other things called maximum lot coverage and maximum floor area ratio that means you have to make it a skinner building.

COUNCILMEMBER WHITE: Right.

CHAIR COUCH: So, when you drive along and you can see a tall building but a lot of open space in between or do you see a shorter building and less open space in between I think that is . . . it doesn't mean that if you have this wide of a building, it can still also go up to 180 feet because of the maximum lot coverage . . . I'm sorry, maximum floor area ratio. So I agree with you, if you allow for a little bit taller than that makes . . . it forces the building to be narrower. So, Chair Baisa, any comments?

COUNCILMEMBER BAISA: Chair, I've listened carefully not just to what's being said today but at the other meeting and I think that the Planning Department is making a recommendation because they have the experience and the angst of having to deal with these applications and what might come up in the future. And I certainly understand where Member Cochran is. You know, none of us want to have Maui look like Honolulu. We don't want ugly tall buildings all over the place. But with the law written the way it is now, it could happen. It's dangerous. And so I can support their recommendation. Thank you.

CHAIR COUCH: Okay. Ms. Cochran?

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COUNCILMEMBER COCHRAN: Thank you, Chair. And right now as Chair Baisa mentioned for future applications perhaps how . . . I guess, what is the potential of having new hotels being built? I mean, in zoning wise, I suppose where can someone put in an application right now and shoot up a sky rise at 180 feet? Would that just be all through the Kaanapali area still, out in the Kapalua area still, Wailea-Makena just in those sections? Right here, maybe Maui Beach where Maui Beach is?

MR. ALUETA: Yeah, and there might be a few H-2 Hotel, I mean, again, the tallest height that we're talking about is only for H-2 Hotel, not H-1 or H-M.

COUNCILMEMBER COCHRAN: Right.

MR. ALUETA: There might be a few lots or split lots in the Kihei area, along South Kihei Road somewhere.

COUNCILMEMBER COCHRAN: The H-2s?

MR. ALUETA: Right.

COUNCILMEMBER COCHRAN: Anything in Kaanapali?

MR. ALUETA: Most of them are H-M. And then again, in Kaanapali that's where majority of your hotel or H-2 is.

MR. SPENCE: And I'm not too familiar with what's vacant. I mean, there's very little. I think I'm aware of one lot in Wailea.

CHAIR COUCH: There's one in Kihei as well.

MR. SPENCE: What's that?

CHAIR COUCH: There's one in Kihei as well next to the Maui Coast hotel.

MR. SPENCE: We're not talking about really big lots where somebody is just going to go skyrocketing. We're talking about small lots, again, where they're constrained by the floor area ratio and other things. The . . . if somebody wanted to build something really big they would probably have to demo existing hotels and then rebuild after that. That's we're talking really big bucks at that point. A hundred million dollar hotel is talking . . . I don't know how much for demolition but a whole lot, and a whole lot of permitting and everything else . . . a whole lot of public scrutiny. So it's not like it's going to jump out and buy this tomorrow.

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COUNCILMEMBER COCHRAN: Okay, all right; thank you, Chair.

CHAIR COUCH: Okay.

MR. SPENCE: Mr. Chairman?

CHAIR COUCH: Yes.

MR. SPENCE: We do have a definition of lot coverage.

CHAIR COUCH: Okay.

MR. SPENCE: Okay, so lot coverage . . . means the area of the lot occupied by all roof structures whether open, boxed, latched roof or fully roof, including buildings, accessory buildings, carports, garages, etc. So the parking structures that we've been talking about would be included in that.

COUNCILMEMBER WHITE: They don't have roofs.

MR. SPENCE: I'm sorry?

CHAIR COUCH: They don't have roofs.

MR. SPENCE: It specifically says garages.

CHAIR COUCH: Oh, it does.

MR. SPENCE: So whether we argue that whether it has a roof or not, it's still a garage.

COUNCILMEMBER WHITE: Well, I would recommend that we take that out of, or just put in not to include stand alone parking structures instead of garages.

CHAIR COUCH: I think that's something we can discuss. I tell you what -- why don't we defer this for now --

COUNCILMEMBER WHITE: Fine.

CHAIR COUCH: --so you can come up with some discussion with the Department to see what you can come up with and then we can talk with Ms. Cochran too about the whole area . .

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COUNCILMEMBER COCHRAN: Height.

COUNCILMEMBER WHITE: My recollection, Chair, was that somebody was going to do some visuals.

CHAIR COUCH: I did that on my blog . . . on the Council blog. It has the visuals on how that works. Would you like us to pass those out as well?

COUNCILMEMBER WHITE: I thought that was for the Committee.

CHAIR COUCH: I can certainly pass that out, I mean, that shows how that works.

COUNCILMEMBER WHITE: I think it would be --

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: --helpful next time.

CHAIR COUCH: Okay. Well, I'll bring that next time.

COUNCILMEMBER WHITE: The discussion we had last time was that we're all visuals.

COUNCILMEMBER BAISA: Yeah, we want pictures.

COUNCILMEMBER COCHRAN: And I'm not a blogger. I don't blog.

CHAIR COUCH: Okay. I'll have that printed out and we'll get that to you at the next meeting.

COUNCILMEMBER WHITE: Okay.

CHAIR COUCH: So, any other concerns? I mean, we talked about everything else and everything seems to be okay. If Mr. White wants to talk about the garages, parking garages, that's fine. Discuss that with the Department and see what you can come up with, and then we can bring that back up. So, any other concerns with this bill? If not, without objections we'll defer this.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MPV, SC, DSG).

CHAIR COUCH: Okay, so that's deferred.

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ACTION: DEFER pending further discussion.

ITEM PC-3: SMALL WIND ENERGY SYSTEMS (CC 10-11)

CHAIR COUCH: Okay, Members, turning your attention now to PC-3, small wind energy systems. The Committee is in receipt of the following: County Communication 10-11, from Council Vice-Chair Michael J. Molina, transmitting a proposed resolution to refer to the Planning Commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO SMALL WIND ENERGY SYSTEMS". The purpose of the proposed bill is to establish small wind energy systems as permitted uses in all zoning districts subject to various standards; and a correspondence dated October 26, 2010, from Council Chair Danny A. Mateo, transmitting correspondence dated October 25, 2010, from the Planning Director, transmitting comments from the Maui, Molokai, and Lanai Planning Commissions in response to Resolution 10-17. Department, any comments before we move on to that?

MR. ALUETA: Sorry, Mr. Chair, I just have to refresh my memory on what was the comments that came back.

MR. SPENCE: I would comment, --

CHAIR COUCH: Go ahead.

MR. SPENCE: --Mr. Chairman, as a matter of course we've been . . . as we've been going chapter by chapter through Title 19 one of the things that we've been including is small energy systems. I'm not sure . . . I would have to review the bill more closely but I'm not sure that we're leaving anything out or how many other chapters need to be amended.

CHAIR COUCH: Right. And that's my recollection too. We've discussed small wind energy systems before and heights and whatnot so, and that's what I thought we were doing. And Members, it was the Chair's intent probably to file this today because we are doing it through the other, as we go through the Code. But if you, Members, have any concerns or questions, I'd be happy to listen to it and then make that determination. Anything . . . yes, Mr. Alueta?

MR. ALUETA: Thank you, I just quickly refreshed my memory, yes, I do recall this reso and I think the issue that we had was that it should really be, the standards should be within the Building Code or Title 16.

CHAIR COUCH: Uh-huh.

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CHAIR COUCH: Thank you, Members. Thank you, Staff. That's all we have for today. And this is the last Planning Committee meeting for the year. So Happy Holidays, cause the next one is . . . been cancelled because of the Kaanapali Beach or the senior's function. So I really appreciate working with you guys all this year. So, Merry Xmas, Happy Hanukah. This is the last day of Hanukah and Happy New Year! We'll see you next year. This meeting is adjourned. . . .(gavel). . .

ADJOURN: 2:02 p.m.

APPROVED:



DONALD G. COUCH, JR., Chair
Planning Committee

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Transcribed by: Jo-Ann C. Sato