

WATER RESOURCES COMMITTEE

Council of the County of Maui

MINUTES

July 2, 2014

Council Chamber, 8th Floor

CONVENE: 9:04 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Gladys C. Baisa
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr.
Councilmember Stacy Crivello
Councilmember Don S. Guzman (In 9:30 a.m.)

EXCUSED: VOTING MEMBERS:

Councilmember Mike White, Vice-Chair

STAFF: Kimberley Willenbrink, Legislative Analyst

Erin Fleming, Legislative Attorney

Tammy Frias, 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.: Paul J. Meyer, Deputy Director, Department of Water Supply

Tammy T. Yeh, Civil Engineer IV, Department of Water Supply

Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel

Seated in the gallery:

David S. Taylor, Director, Department of Water Supply

OTHERS: Greg Kaufman

Seated in the gallery:

David DeLeon

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

CHAIR VICTORINO: ...*(gavel)*... Good morning. I'd like to call to order the Water Resources Committee meeting for July 2, 2014. I would like to ask everyone not only in the gallery but our Members and anyone on the floor to please put their phones on either silent or another

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modem [*sic*] without any noise. Decorum is to be kept in this Chamber. This morning I'd like to introduce the Members that are present. Today excused is our Vice-Chair Mike White. Also running late will be Don Couch and Don Guzman, so we have just bare quorum. And I'd like to introduce the Members that are here. Our lovely young lady from Upcountry, our Council Chair Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Aloha and good morning, Madam Chair. And of course our lovely lady from the island of Molokai, Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR VICTORINO: Aloha. And finally...oh, and Don Couch showed up. From East Maui the good-looking gentleman, Mr. Robert Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR VICTORINO: And the handsome one from South Maui, Mr. Don Couch.

COUNCILMEMBER COUCH: Good morning, Chair.

CHAIR VICTORINO: Thank you for being here. We waited to start until you...

COUNCILMEMBER COUCH: Thank you.

CHAIR VICTORINO: Waited to start when you showed up. And let the record show we started at 9:04. Thank you very much. From the Administration this morning we have the Deputy Director, Mr. Paul Meyer. We have Tammy Yeh from the Department of Water Supply. Jennifer Oana from the...Deputy Corporation Counsel --

MS. OANA: Good morning, Chair.

CHAIR VICTORINO: --and Ed Kushi, First Deputy Corporation Counsel. Our valuable Staff is Ms. Kim Willenbrink, our Legislative Analyst.

MS. WILLENBRINK: Good morning, Chair.

CHAIR VICTORINO: Good morning. And our Committee Secretary, Ms. Tammy Frias.

MS. FRIAS: Good morning.

CHAIR VICTORINO: Thank you. And of course...

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MS. WILLENBRINK: Erin Fleming.

CHAIR VICTORINO: Okay. And we have sitting in in the meeting this morning is Erin Fleming. Good morning, Erin. Okay. We have just one item this morning and we're going to be discussing the Definition of Infill Development, but I'd like to start off first of all with the public testimony. And so with no objections, I will start public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. We have one testifier signed up, so if you...as a testifier you have three minutes to testify, one minute to conclude. And please identify yourself and any organization that you may be representing. I'd like to call up Mr. Greg Kaufman.

...BEGIN PUBLIC TESTIMONY...

MR. KAUFMAN: Aloha and good morning.

CHAIR VICTORINO: Good morning.

MR. KAUFMAN: My name is Greg Kaufman. I'm a landowner and taxpayer here in Maui County. I'd like to tell you my experience with the existing bill and then speak to the proposed amendments. In 2007 I received preliminary subdivision approval for a four-lot subdivision, Rural subdivision in Makena. In 2008 my neighbor I helped him receive approval for a two-lot subdivision. As many of you Council members know six years later in pursuing this matter I finally got the entitlements with the unanimous support of the Maui Planning Commission, with the support of the Maui Planning Department, and unanimous support of this Council. Six months afterwards this body amended the water availability policy ordinance, and shortly thereafter I went in and applied because clearly I had ten lots or less, clearly I met all the criteria of the new ordinance. I was denied. I was told I did not meet the infill criteria. I asked for further definition of why. The law is very straight forward, the ordinance very clear. I was told I could appeal their decision so I sent an appeal in to the Board of Water Supply, and in negotiations with Department of Water Supply I was told that even if I won my appeal they would appeal me and keep my property tied up forever. And in doing so we found that this body who passed this important legislation to help family subdivisions of ten lots or less, we found that nearly 70 percent of them had been rejected by the Department of Water Supply. Why? Because they crafted and defined their own internal rules. They engaged in their own rulemaking, and they apply the 75 percent rule that is not in the ordinance at all. Or using it to deny me and all other applicants except two or three who have been approved since the ordinance was passed. That has to stop. This body is the legislative body, the departments do not mandate legislature, and the ordinance was very clear in its intent. Let me say that what should happen is this body should hold, this Committee should hold Department of Water Supply accountable for their actions. And they should for all of us who applied under the previous ordinance be retroactively given permission because we did comply. Finally, let me speak to these two proposed amendments. These strike me as, these

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amendments strike me as solutions in search of a problem. What exactly is the problem here? Is there an area on Maui in Central and South Kihei that the Department of Water Supply does not want developed? If so, define it, put 'em on a map, show the public, tell the landowners where we're not allowed to develop. But when we have the proper zoning, when we have water supply...I have a 3/4 inch water meter on each parcel, we have a 12-inch water main running in front. When we comply with the terms of the ordinance, how are taxpayers and landowners denied their due process under the ordinance that this hallowed body passes? It needs to stop. So I would think...I'll give you this suggestion, consider that all lands makai of Piilani Highway in Kihei are considered infill because they're developed in that area. Consider anything in the Makena resort and Wailea as a resort infill because it's a developed and zoned area. Consider anything a half mile on either side of Makena-Keoneoio Road as infill. And anything that currently has water supplied to the property should automatically qualify for under ten lots or less. That should be the simple definition, because when you start applying 50 percent and 70 percent, as a scientist I can tell you this, imagine 5 lots in a row vertical, 2 on the outside, 1 on the inside, the 2 inside will never qualify for 50 percent, let alone 75 percent, it will be landlocked forever and unable to be developed under this criteria. Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Kaufman. Any questions for the testifier? Seeing none, thank you very, very much. Let me...you know what I forgot to do, I forgot to check with the District Offices. No, no, no, no. District Offices, good morning. Hana, do you have anyone wanting to testify?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR VICTORINO: Mahalo. Lanai, Denise, do you have anyone wanting to testify?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR VICTORINO: Thank you. And, Ella on Molokai, is there anyone wanting to testify?

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

CHAIR VICTORINO: I look in the gallery, I will give anyone one opportunity to sign up to testify if you'd come forward. Seeing no one proceeding to the podium, with no objections, I am going to close public testimony.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Thank you. Thank you, ladies. Have a great day.

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ITEM WR-11: DEFINITION OF INFILL DEVELOPMENT (CC 14-132)

CHAIR VICTORINO: Okay, again today we have just one item, WR-11 which is the Definition of Infill Development. County Communication 14-132 from myself transmitting a proposed bill relating to the definition of infill. We have correspondence dated June 25, 2014, from the Department of Corporation Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance Amending Section 14.01.040 and 14.12.030, Maui County Code, Relating to Infill Development. The purpose of the proposed bill is to one, amend the definition of “infill development” in Section 14.01.040, Maui County Code, to include development or redevelopment of ten or fewer residential dwelling units on one or more contiguous vacant parcels whose boundaries are surrounded by at least 75 percent of already developed land, contiguous [*sic*] upon certain conditions. And amended, amend Section 14.12.030, Maui County Code, relating to water availability, to exclude any subsequent development or subdivision of any resulting parcels from the infill development exemption. So for your help this morning we put out an urban sprawl in 2012 County, the Council included exemption for infill development from “Show Me the Water” Bill Chapter 14.12, Maui County Code. At our June 18 meeting the Committee discussed in length a bill introduced by the Department. The proposed bill today, on today’s agenda includes some revisions considered by the Committee dated June 25th at the bottom. At present today we have Tammy Yeh from the Department of Water Supply to help the Committee understand some of the issues surrounding the concept of infill development. So also in your possession you have two new written testimony, so if you want to look that over we’ll include that in the record, with no objections.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. At this time...we don’t have a PowerPoint so this is gonna...just present it, yeah, ‘cause we were going to, had a PowerPoint. Okay. So I will ask the Deputy Director, Mr. Paul Meyer to please go ahead and start with the presentation on infill development.

MR. MEYER: Thank you, Mr. Chairman and Members. We have the Corp. Counsel’s proposed version of this ordinance and we’d like to, on behalf of the Department I’d like to say thank you to the Council because this draft ordinance will substantially reduce any ambiguity in the old Code and allow it, allow the Department to with great accuracy and certainty interpret and apply the infill definition. That we think it’s great, the latest draft is the best we’ve seen, and it’s something that the Department recommends. In terms of this exemption which the Council placed into Chapter 14.12, we have done our best to interpret applications for this exemption, and we have approved approximately half of the folks that have come forward with exemptions. We have had an appeal which was subsequently withdrawn, in respect of one of those decisions, and anyone who of course doesn’t like the opinion and determination of the Department can appeal to the Board, the Water Board and also has a recourse to go to the court system to ask for redress. But we’ve done our best to interpret this ordinance, and very much support the proposed amendment.

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We have prepared and one of our engineers Tammy Yeh who's with us today has prepared four exhibits which we think will be illustrative for the Committee, and they're four aerial photographs, pretty good resolution of different examples of properties. And we've tried to mark on them the lots and whether the surrounding property is already developed or not. The first two exhibits, scenario one and two qualify under this definition for the exemption. They would be regarded as infill development. The latter two, scenarios three and four would not. If it's your pleasure, I'd like to walk through each of those, Mr. Chairman?

CHAIR VICTORINO: Yeah, please, if you don't mind.

MR. MEYER: Thank you. The first exhibit, scenario one shows pretty much a residential subdivision with one lot not developed, it's marked with a red border. That would be an applicant coming in for a subdivision request under this exemption, and as you can see, the lots bordering the back of the lot and on either side are developed. Of course under this ordinance if there's a street in front you get to consider whether the parcels across the street are developed for infill purposes. So this lot is essentially surrounded 100 percent by prior developed property. So this would qualify for the infill exemption. Any questions? Thank you. Moving on to scenario two. This is a little tougher because you've got a lot next door on one side of the parcel. The applying parcel for the exemption is outlined in red, and you have a parcel outlined in green on the left there which is not developed. But because that, the rest of the land surrounding the parcel across the street and on all the other sides is developed it would meet the 75 percent test. Because 3/4 or more of the properties surrounding it is developed that would qualify for the infill exemption as well. Any questions?

COUNCILMEMBER COUCH: Yeah.

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Mr. Meyer, for the discussion here. When it says 75 percent of the surrounding, of the parcel's or combined parcels' perimeter is bordered by already developed land. I'm looking at that and because it's...and I'm going to get into nitpicking right now. Because the one side is the long side of the rectangle, area-wise it's not 75 percent of the land. So how are you saying it's 75 percent of the land? If you do the math it is certainly not 75 percent. It's about...

CHAIR VICTORINO: Can you identify which...

COUNCILMEMBER COUCH: The parcel...

CHAIR VICTORINO: In green?

COUNCILMEMBER COUCH: The portion that's bordering the green parcel.

CHAIR VICTORINO: Okay.

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COUNCILMEMBER COUCH: That's a long stretch.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: So that border if you do your math with the area, that border is far more than 25 percent of the whole property.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: It's about 35 percent-ish.

MR. MEYER: That's correct. I think what you're referring to is the linear footage facing in that direction. You're not referring to in effect the angular measurements. And...

COUNCILMEMBER COUCH: But it says, in the law it says the minimum of 75 percent of the parcel's or combined parcels' perimeter, and that is part of the perimeter.

MR. MEYER: But is bordered by.

COUNCILMEMBER COUCH: Right, is bordered by already developed land. That green area is not already developed land.

MR. MEYER: Right. The...well maybe that needs to be changed. The intention is to try to conform this to the generally accepted definition of infill which is applied by lots of other states, counties, and jurisdictions. And that really applies to the land surrounding the parcel in a directional basis, so that if you drew a line from a rectangular parcel you would have 75 percent of the angles surrounding the property. And that's the usual definition. Because what's to be avoided by using a definition of infill is greenfield or development into which protrudes into undeveloped areas.

COUNCILMEMBER COUCH: Sure and I understand that, and it's obvious from when you look at this picture that this is definitely infill, not a question. I'm concerned about the actual wording of the language, so that's where I want to...

MR. MEYER: Understood. There...it might be worthwhile then refining that further if, with the Council's understanding to take into account both the linear footage because that does come into play in some examples as well as the three of four sides of a rectangular-shaped parcel. That would be I guess an alternate definition I guess for qualification for the --

COUNCILMEMBER COUCH: Right.

MR. MEYER: --exemption.

COUNCILMEMBER COUCH: But I'm just going literally by what it says on the, in the ordinance.

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CHAIR VICTORINO: Okay. Ms. Baisa.

COUNCILMEMBER BAISA: I share Mr. Couch's concern. You know when you look at it, it certainly looks like my goodness the whole length of it is not developed, and so how do you do 75 percent. So I agree, I think we need a better definition. What's going to happen is we're going to run into the same situation that the testifier brought up, and that is five of us sitting here and knowing exactly what we're thinking, and a year from now or two years from now when I'm not here, or somebody's going to say what were they trying to do? So we want to be really careful, it's really important. You know to the landowner this is critical and we cannot afford to leave it to interpretation. We gotta be...we gotta sit here and craft a definition, Chair, that makes sense.

CHAIR VICTORINO: Thank you very much. Ms. Oana, the 75 percent that the, the concern of the Members. A minimum of 75 percent of the parcel or combined parcels perimeter is bordered on already developed land. Okay. As an attorney how would you define that, that 75 percent? Should we have linear feet?

MS. OANA: Well, the way it is stated now it does contemplate linear footage I believe, but we can keep that line in and maybe add an "or", bordered by already developed land on three sides or some kind of language like that.

COUNCILMEMBER BAISA: There you go.

MS. OANA: We can keep that in and then have an "or".

CHAIR VICTORINO: Okay. Why don't we go ahead and do that for clarification, and that way we'd eliminate this discussion. Okay. Other questions for this particular scenario number two? I'm not going to go any further than scenario number two. Any further questions? Okay. Mr. Meyer, will you move on to three, please.

MR. MEYER: Thank you, Mr. Chairman. And thank you, Mr. Couch, that's a good refinement of the language. Scenario three shows a parcel again requesting exemption for subdivision, outlined in red. And you have already developed land outlined in blue on clearly on two sides, across the road and on the lower portion below the property. You have undeveloped land on the upper side, and what's regarded as undeveloped land, the ocean side, the beachfront. So this parcel would be surrounded on two sides by developed and two sides by undeveloped property and therefore would not meet the requirements for exemption. This brings into play the paragraph here which says that Conservation zoned lands, Agricultural zoned lands, beaches, and the ocean shall not be considered already developed land regardless of the presence of any structure. This is again a further refinement of the original law. Any questions?

CHAIR VICTORINO: Questions for Mr. Meyer? Don, just ask the question.

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COUNCILMEMBER COUCH: I'm asking.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: Well I beg to...I mean by the definition yes, but when you look at it any reasonable person will see that this is infill, there's development on both sides of the area, not necessarily the particular lot. I wasn't here when this was done, I wasn't a part of this Committee, but I can imagine, I know the folks that were on that Committee. I can imagine that that probably would have been defined as infill, and if it wasn't at that time I would debate that on the floor heavily that that is definitely infill in my opinion. I don't know, Mr. Chair, what the thought was of the Committee last term, but that seems to be an obvious infill.

CHAIR VICTORINO: This is why I brought this forward.

COUNCILMEMBER COUCH: Yeah, yeah.

CHAIR VICTORINO: Pictures worth thousand words.

COUNCILMEMBER BAISA: Yes.

COUNCILMEMBER COUCH: Yeah, exactly they are.

CHAIR VICTORINO: You guys talking too much --

COUNCILMEMBER COUCH: Yeah.

CHAIR VICTORINO: --here's the picture, now you tell me --

COUNCILMEMBER COUCH: Yeah.

CHAIR VICTORINO: --I can tell you what I think but I'm letting you talk.

COUNCILMEMBER COUCH: Sure.

CHAIR VICTORINO: So go right ahead and tell me what you want done and let's get it done. I don't want us to prolong this long conversation, tell me what you want done.

COUNCILMEMBER COUCH: So how would we fix that by the attorneys?

CHAIR VICTORINO: Mr. Meyer.

MR. MEYER: Let me suggest, we've gone back and forth on this within the Department as well because it's a tough call, and it really is a call that's entirely appropriate for this Committee and the Council. What I might suggest is that in the definition it says "already developed land shall

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mean all State, County parks, public and private schools.” One way to solve this issue would be to treat beachfront as in the same way we treat County and State parks and public and private schools as already developed property. And I think your point, Councilman, is that the beach is undevelopable and therefore it is perhaps more appropriate to consider it already developed.

CHAIR VICTORINO: Ms. Oana.

MS. OANA: That’s fine. I defer to you all folks.

CHAIR VICTORINO: That’s right. That’s right. And we went through this whole discussion and I, what did I say? The beaches, they’re going to bring it up, right? Everything I’ve said they’ve brought up today, but that’s fine, you know. So if you want to include beachfront in that definition, we can. Is that what the Committee would like to add?

COUNCILMEMBER CARROLL: Chair?

CHAIR VICTORINO: Yes, Mr. Carroll.

COUNCILMEMBER CARROLL: Yes, I was looking at...it’s always been a problem and in Land Use we’ve always had that problem, too. One of the things we discussed before and I don’t know if this Committee had talked about it but when you have a subdivision that’s approved by the Land Use Committee, the zoning for a subdivision, that once that subdivision is approved and subdivided that anyone inside there, as that subdivision is built out, any lot within that subdivision would be considered an infill project whether it had 75 percent bordering or if it was a gulch or whatever. As long as it was fell within that approved subdivision it would be considered an infill project, because it’s already been approved, the subdivision has been approved, the water, electric, everything else, and you don’t have to worry about borders and measuring and what. And I thought that was for...and that, of course that would just be for subdivisions but at least that would make it much, much simpler when we were looking at subdivisions if we want to...and that should be considered infill. The subdivision was approved, it has all the amenities in it, somebody waited because, you know, a lot didn’t sell, it might be on the edge, it doesn’t have, it wouldn’t meet the qualifications under this but it should. And I was hoping that perhaps we could consider wording similar to what I just said. It seems like it would be only right. I can’t see a subdivision, you buy into a subdivision and then you’re not able to in Kahului or any other place and that subdivision is approved and then you come, somebody buys ten years later, buys a lot inside there and you don’t qualify as an infill. And I think that does need to be addressed because many of them might not fall within your 75 percent or with other things. It could have...that subdivision could be approved and the lots all on one side. For instance in Lahaina we have several, and there’s a gulch over there and after that it’s all on the other side of the gulch is all Agricultural land even though that subdivision was approved, everything, and there’s houses over there, if you have a lot over there on that same gulch side it would not qualify under this. So I think we need to consider a qualified subdivision that has been approved by the County of Maui, subdivided and approved and homes are being built, that that would fall under infill.

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CHAIR VICTORINO: Okay.

COUNCILMEMBER CARROLL: Thank you, Chair.

CHAIR VICTORINO: All right, thank you. Thank you, Mr. Carroll, for that suggestion. Okay.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: But before I go on to you, Ms. Baisa, let me ask you guys this question, you know, 'cause, you know, I'd like to move this along so I'm going to go right to the points, I'm not going to waste time today. Beachfront, do you want that included along with parks, schools and have that inclusive? Would that what the Members would like?

COUNCILMEMBER BAISA: That's not my question.

CHAIR VICTORINO: Okay. Well I'm asking that question first. Okay.

COUNCILMEMBER BAISA: I need to answer my question.

CHAIR VICTORINO: Okay, go ahead, Ms. Baisa.

COUNCILMEMBER BAISA: How is this red outlined lot zoned?

CHAIR VICTORINO: Mr. Meyer.

MR. MEYER: Could you repeat the question?

COUNCILMEMBER BAISA: How is it zoned?

MR. MEYER: You know I'm not really sure, I'd have to ask Tammy that question. I suspect it's either Residential or Rural. Tammy?

MS. YEH: Residential.

MR. MEYER: Residential.

COUNCILMEMBER BAISA: It's Residential.

MR. MEYER: Yes.

COUNCILMEMBER BAISA: Well that only and for me reinforces what we're saying. If it's Residential and everything around it is developed, why would we then say okay you poor guy, you can't do anything with yours. It doesn't make any sense to me, I'm sorry. You know if we

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were looking at a beach and there was nothing on it, I have no problem in saying leave that alone, but we're looking essentially at a residential subdivision. I cannot agree. Thank you.

CHAIR VICTORINO: Okay.

MR. MEYER: Thank you.

CHAIR VICTORINO: Okay. So what you're saying then just for clarification, this lot that's in red that they would say would be infill development exemption --

COUNCILMEMBER BAISA: Should be allowed.

CHAIR VICTORINO: --should be allowed.

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: Okay. Mr. Couch.

COUNCILMEMBER COUCH: And I agree with you, we have to determine whether or not we want to allow, you know, add beachfront to, oceanfront to the language. I guess my concern is then we're going piece by piece --

COUNCILMEMBER BAISA: Yeah.

COUNCILMEMBER COUCH: --and tweaking the language and then what are we doing for some of the other things, if we tweak for this what happens to the other? So I'm a little worried about the tweaks. Yes I agree with it but what's the collateral damage, if you will, if we, to other different -

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COUNCILMEMBER BAISA: Yes.

COUNCILMEMBER COUCH: --parcels that we just don't have pictures of here.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: I really appreciate the pictures 'cause it --

COUNCILMEMBER BAISA: Yes.

COUNCILMEMBER COUCH: --brings out what the problem is.

CHAIR VICTORINO: Right, right.

COUNCILMEMBER BAISA: Yes.

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CHAIR VICTORINO: Well that's why I brought pictures.

COUNCILMEMBER BAISA: Thank you.

COUNCILMEMBER COUCH: Yeah, thank you.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: Okay. So what I'm going to do then if that's the case then I'm going to stop here, adjourn the meeting and have the Department come back with 25, I want 25 different scenarios so that they can see the pictures. Because the only way we can make decisions basically would be with the pictures.

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: Okay. I mean 'cause this is going round and round and round, okay. And as I told you guys in the meeting, that's exactly is what was going happen is happening, right? Did I not warn you folks? You know trust me, I know what I'm talking about. So with no objections, I'm going to adjourn this meeting with those concerns, and I'm going to defer the matter. Don't get nervous. Don't get nervous. So that at least now we can also address the other questions that have been brought up with pictures. I think this is what we need. Yes, Mr. Kushi.

MR. KUSHI: Yeah, Mr. Chair, before you defer it, I think you need to be advised, especially to Member Carroll's question or comment that, you know, these scenarios, these parcels in red, they are not subdivided, they want to be subdivided. So the exemption we're talking about is an infill exemption, an exemption to the "Show Me the Water" Bill. "Show Me the Water" Bill stops a subdivision, so your statement about already subdivided, that's not the case. These parcels in red want to be subdivided but "Show Me the Water" Bill prevents that subdivision unless they're exempted as an infill. Lastly, you haven't talked about the scenario four which is the Ag lots.

COUNCILMEMBER BAISA: Let's do that.

MR. KUSHI: And the testifier who testified I believe his appeal applied to Ag lots, I'm almost certain, I'm not sure. If that's the case, no matter what you do today that appeal would not...your decision will not affect that appeal, if you're exempting Ag lots. If it's not Ag lots it's something else.

CHAIR VICTORINO: Okay. Well we can look at scenario number four, but, you know, again since all these questions were brought up I feel like, you know, at this point I'd like to have more pictures, more scenarios so that the Council members can see the variations and then, you know, be able to make a decision informed. 'Cause right now there's a lot of questions being asked that we don't have something to show for or show about I should say, and so I think this is what makes

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me concerned that we want to move something along however it becomes difficult. So let's go to example four, scenario four. Mr. Meyer. Please.

MR. MEYER: Thank you, Mr. Chair. Moving on to scenario four. This shows an Agricultural subdivision. The land is actually zoned Agriculture. The minimum lot size is two acres, roughly what, 85,000 square feet. And the, you'll see the parcel outlined in red here surrounded by what appears to be developed land in terms of having homes and having agricultural activity conducted. But because this land is zoned Agriculture, because the lots are two-plus acres they are regarded as undeveloped land as far as the ordinance is concerned. The reason is that most of the definitions of infill apply to urban property and this is land which is Residential or Rural half acre with already served by utilities, et cetera. And clearly two-acre Agricultural, Ag-zoned lots don't, wouldn't be regarded as an urban criteria, and infill in the generally accepted sense of other jurisdictions, states, and counties. That's why the ordinance was drafted the way it is to consider Conservation lands, Ag lands, in other words land zoned Conservation or Agriculture and should not be considered already developed even if they have a home on them or a home and an ohana or something like that. Thank you.

CHAIR VICTORINO: Thank you, Mr. Meyer. Questions for the Director? Yes, Mr. Couch.

COUNCILMEMBER COUCH: Thank you. And I understand what you're trying to go at here, but typically I mean these appear to be two-acre lots as you were saying, they can't be subdivided any further because of the sliding scale law. Is that correct, Mr. Kushi or Ms. Oana?

MR. KUSHI: Yeah but it looks like a...I mean according to the aerial it looks like an Ag subdivision and the parcel in red wants to further subdivide.

COUNCILMEMBER COUCH: But they can't 'cause it's two-acre lots.

MR. KUSHI: But so it wouldn't apply.

COUNCILMEMBER COUCH: Right. So if these were just for sake of argument at this point each five-acre lots then it's potentially possible for that one to be --

MR. KUSHI: Yes.

COUNCILMEMBER COUCH: --subdivided even if it, as long as it meets the criteria of the sliding scale law, right?

MR. KUSHI: Right. So assuming that the scenario number four, the parcel in red is let's say six acres or four acres, that would be the situation.

COUNCILMEMBER COUCH: And again, Mr. Chair, it's totally up to you as what the Committee did last term, but that almost seems like it would be infill there. That's one a hard one and I don't

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know what the discussion was, you have that memory. So I'm not sure what the discussion was and the reason for not allowing something like that.

CHAIR VICTORINO: In the Ag --

COUNCILMEMBER COUCH: Yeah.

CHAIR VICTORINO: --yeah, the two. Well sliding scale was part of it, you know, so that was discussed, and so obviously this would not qualify as infill based upon that only if you wanted to start that. On top of that many of the Ag lots and you go beyond and again Upcountry was exempt from this, you know, Upcountry the meter list is the one that is the driving force for water Upcountry. So this would be only applicable to areas where Wailuku County Estate, areas where borders on Urban in the first place. You know so I think at this point this one, this scenario I have no problem saying it would not be considered infill, especially if it's two acres or less. I mean, you know, it falls into that sliding scale, yeah. So I agree with you and I'm not something. However, just so that I, you know, so that we move on and I wanted to ask couple of basic questions so that when we come back I would like to get them to get...and I say 25, I really do mean 25 so that you really compare, truly compare what infill is versus Urban versus Rural versus even Ag. And if you can find me five, couple of five-acre lots that could fall into this category, because I think we want to make sure, you know, that we come back with a definition that can be worked on or used and it be applied very fairly. And I knew this one wouldn't fly, I knew this, and I think I warned you didn't I, Mr. Meyer, that they would...that we have some challenges on this one. Any...you know but before I go, any other concerns so that, you know, we can, you know, get the Department to work on those concerns? Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I don't really have any more to add to the concerns, but I do want to thank you very much for the direction you're going in. You know we can sit here and talk and talk and talk, but there's nothing like looking at some specifics to help us prepare for unintended consequences. We don't want to pass laws that are going to cause more trouble, we want to do a good job. So thank you very much.

CHAIR VICTORINO: No and I appreciate that. And again like I said when I started the meeting, I wanted to try to either complete it or get back to where we need to so that we can come back and finish this once and for all. Because there are many people that are still waiting out there that need to know if it's infill or not, and so I'm committed to get this done. And so this will probably not show up for us 'til July...

UNIDENTIFIED SPEAKER: Towards the end.

CHAIR VICTORINO: Yeah, end of July because July 16's meeting I think is going to be cancelled because all of us are heading to NACo for the annual conference, and so most of us will be coming back either on the 16th or 17th so we don't have meetings that week. So I'll ask the Chair if there's, you know, maybe some space on an extra work week, maybe have...'cause I'd like to try to get this done ASAP.

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COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Madam Chair, yes, go ahead.

COUNCILMEMBER BAISA: Yes, well of course many of the Council, the Committee chairs are trying to reschedule meetings because of that lost week.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: So we'll do the best we can to accommodate.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: Okay. So I will forward you an e-mail and then you tell me what we can do.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: And so just be prepared, the next week probably a lot of special meetings for all the Committees. I think all the Committee Chairs are looking to do that the following week. So --

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: --anything...yes, I'm going to defer.

MS. WILLENBRINK: I have a question, please.

CHAIR VICTORINO: Yes.

MS. WILLENBRINK: Did you want the Department to come back with a new bill as well as pictures or just continue...

CHAIR VICTORINO: I think before I going ask 'em to do anything new we can amend --

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: --we can make the changes. We need the pictures to put perspective in any change we want to bring forward. How's that sound?

MS. WILLENBRINK: Thank you.

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CHAIR VICTORINO: Yeah? Okay. So I think I'll do it this way, instead of asking them to make any further changes, let's get together at our next meeting with those pictures and then we can cover all these concerns and amend and make the changes then and then. Okay, is that all right with the Committee members?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Okay. So with no objections, I'm going to defer the infill legislation, WR-11.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections?

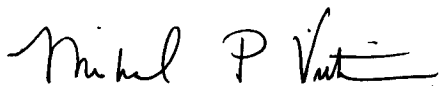
COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MW).

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Thank you very much. Thank you for being here. And I'm sorry that we weren't able to get it done, Department, but I think the next one we'll get it, okay. So thank you, Department, for being here. Thank you, Staff. And this meeting of the Water Resources Committee is adjourned. . . .(gavel). . .

ADJOURN: 9:45 a.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:140702:ds

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

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

DATED the 8th day of July, 2014, in Kula, Hawaii



Daniel Schoenbeck