

WATER RESOURCES COMMITTEE

Council of the County of Maui

MINUTES

June 18, 2014

Council Chamber, 8th Floor

CONVENE: 9:04 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Mike White, Vice-Chair (In 9:12 a.m.)
Councilmember Gladys C. Baisa
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr. (In 9:05 a.m.)
Councilmember Stacy Crivello
Councilmember Don S. Guzman (In 9:05 a.m.)

STAFF: Kimberley Willenbrink, Legislative Analyst
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.: David S. Taylor, Director, Department of Water Supply
Paul J. Meyer, Deputy Director, 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

OTHERS: Rosemary Robbins
Seated in the gallery:
Mercer "Chubby" Vicens
Geraldine Carroll

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

CHAIR VICTORINO: . . .(gavel). . . Good morning. I call the meeting of the Water Resources Committee for June 18, 2014 to order. I am the Chair Michael Victorino and I am happy to be back. I've rolled my sleeves up and we are gonna get to work. Right, Madam Chair?

COUNCILMEMBER BAISA: Yes.

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CHAIR VICTORINO: Alright. Right now we only have bare quorum. So please anyone who has to leave, let me know. Others will be here shortly, so let us get started. Right now we have excused, at this time, Mike White, the Vice-Chair, and also we have Don Guzman and Don Couch who will be coming in a little bit later. They are both excused at this time. But present is the Chair of the Council, the lovely lady from Upcountry, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair

CHAIR VICTORINO: Good Morning. And then the handsome gentleman who comes in from East Maui, our Vice-Chair, Mr. Robert Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR VICTORINO: Good morning. And the lovely lady from the island of Molokai, Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR VICTORINO: Aloha. Thank you for being here. And the meeting, let's show that the meeting started at 9:04 a.m., a few minutes late but I am sorry. Today we have, oh wait, before I go on, let me introduce our Administration people that are here. Today we have the Director of the Water Department, Mr. Dave Taylor.

MR. TAYLOR: Good Morning

CHAIR VICTORINO: Good Morning. And we also have the honor of the Deputy Director, Mr. Paul Meyer.

MR. MEYER: Good Morning, Mr. Chairman.

CHAIR VICTORINO: And we have Mr. Ed Kushi, First Deputy Corporation Counsel.

MR. KUSHI: Good Morning

CHAIR VICTORINO: And Jennifer Oana, Corporation Counsel.

MS. OANA: Good morning

CHAIR VICTORINO: Good morning. And then of course our invaluable Staff, Ms. Kim Willenbrink, Legislative Analyst.

MS. WILLENBRINK: Good Morning, Chair.

CHAIR VICTORINO: And Tammy Frias, Committee Secretary.

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MS. FRIAS: Good Morning.

CHAIR VICTORINO: Good morning to all of you. Thank you, thank you very, very much. And let us now check and confirm that we are connected to our sister offices. Let's start with our Hana Office. Dawn Lono, are you there?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office.

CHAIR VICTORINO: Thank you. And also Denise Fernandez, Lanai Office.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai.

CHAIR VICTORINO: Good morning. And of course, our lovely lady from Molokai, Ella Alcon. Ella, are you there?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai.

CHAIR VICTORINO: Thank you and good morning to all of you and welcome back. You know it's been three months or two and a half months hiatus since we last got together and let me recognize guys running in late. But that is okay, better late than never. Our two Dons. Don Couch with his...never mind. Good morning Mr. Couch.

COUNCILMEMBER COUCH: Good morning, Mr. Chair.

CHAIR VICTORINO: And of course Mr. Guzman, Don Guzman. Good morning.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR VICTORINO: Okay. Thank you, gentlemen, for being here. It happens to me too, so don't worry about it. We've been out for about two and half months and I want to say that we are now back and we have a number of issues that we will be taking up very shortly. Today we only have one issue which is the infill and we will cover that a little bit later. But I will ask all of my Members and as well as the public for input as we move along in these various areas because it is so very important. Public input is the essence of us doing a good job for the people of Maui County. And so I would like to encourage input. I was at the meeting with the farmers last night, the farmer's co-op, and it was very exciting and interesting to hear their perspectives on water and other issues. So, like you, Mr. Guzman and Couch and Ms. Baisa and all the rest of us, we really cherish the opportunity to meet with the public one-on-one. It is too bad our Sunshine Law sometimes prohibits more interaction but it is what it is. Okay, so let us move on to our one and only item today. And that is the infill.

MS. WILLENBRINK: Chair.

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CHAIR VICTORINO: Yes,

MS. WILLENBRINK: Testimony.

CHAIR VICTORINO: Yeah, no, no. I just wanted to tell everybody what we going do first.

MS. WILLENBRINK: I am sorry.

CHAIR VICTORINO: That's okay. I wasn't forgetting public testimony. I promise. We only have one item today, and it is the Definition of Infill Development. And this was sent by myself to the Committee to revise an Ordinance for a Bill Amending Section 14.04.040, Maui County Code, Relating to the Definition of Infill Development. So you have mine and you will have one from the Department. In fact, I think they did pass it out, their draft this morning. So we have two drafts that we will be looking at today. So at this time, with no objections, I will do public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. Public testimony will be limited to today's agenda item. If you wish to testify, please sign up at the desk, located on the eighth floor lobby or in any of our District Offices listed on the agenda. Testimony will be limited to three minutes and upon request, one minute to conclude. At the three minutes, the yellow light will go on and the red light will be blinking at four minutes. If you still are talking after four minutes, I will kindly ask you to stop and conclude. When testifying, please state your name and who you are representing. When we have, we have established connections with our District Offices and to be fair I will try to rotate between each site. So with no objections, I think I said that already, we will start public testimony. We have one testifier in the Chamber at this time that signed up, Ms. Rosemary Robbins. Ms. Rosemary Robbins, would you come forward, please. And she will be, we only have one item, WR-11. So, no problem. Good morning, Ms. Robbins.

...BEGIN PUBLIC TESTIMONY...

MS. ROBBINS: Good Morning. Good morning, everybody. Water. One thing I would just like to say in terms of process when people come down to, in, out, over, up to the seventh floor here, they try and come as close as possible to the meetings so that they get as much as has been brought forward, and so when there are drafts that get handed out on the morning of the meeting, the citizens don't have a chance to go over that ahead of time. So maybe we could try and get that data in on the afternoon before the meeting instead of the morning of the meeting.

CHAIR VICTORINO: We'll do our best. I mean sometimes Sunshine Law prohibits us from doing all what you just said. We cannot pass certain things out because we don't even get it until we come to the floor.

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MS. ROBBINS: Okay

CHAIR VICTORINO: So we'll do our best to make sure the information is available.

MS. ROBBINS: Everybody is wonderful when I come --

CHAIR VICTORINO: Yes.

MS. ROBBINS: --down like that.

CHAIR VICTORINO: Yes.

MS. ROBBINS: So they are willing to get it out, concerned citizens that are willing to read it.

CHAIR VICTORINO: Yes.

MS. ROBBINS: But it needs to be in time for the best benefit. Yeah?

CHAIR VICTORINO: Yes, we will try our best. Thank you.

MS. ROBBINS: Thank you. Yup, you bet. Okay. When I take a look at this, I'm hoping that the Chapter 14.12, the last section of our statement on today's agenda. It says that Infill development, I'm quoting, "Infill development is exempt from the requirements of Chapter 14.12, Maui County Code, relating to water availability." Most of us are not with a working knowledge of what 14.12 is, but the concern is very heavy and has been for years about availability of water, that's qualitative water, potable water. So I am hoping that when you folks go through your deliberations and explorations this morning that you'll clarify that so that we will be able to, I know you for one are very concerned that the citizens get the drift on all of that, so I'm counting that's going to happen and I certainly support you're doing that.

CHAIR VICTORINO: Thank you.

MS. ROBBINS: You bet.

CHAIR VICTORINO: Any questions for the testifier? Seeing none; thank you, Ms. Robbins, for being here.

MS. ROBBINS: You're welcome.

CHAIR VICTORINO: I see no one in the gallery so let me check with our District Offices. Let me start with Hana. Dawn, is there anyone there to testify?

MS. LONO: Chair, there is no one waiting to testify at the Hana Office.

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CHAIR VICTORINO: Thank you. Denise on Lanai, is there anyone there to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

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

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

CHAIR VICTORINO: And looking in the gallery and seeing no one else except Ms. Carroll, would you like to come and testify, Ms. Carroll?

MS. CARROLL (from the audience): No, thank you.

CHAIR VICTORINO: No, thank you, okay. With no objections, may I close public testimony?

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Thank you very, very much. Okay. Are you going to take care of that? Alright, thank you. Oh, very good. At this time I would like to recognize the presence of the Vice-Chair of the Water Resources Committee, Mr. Mike White.

VICE-CHAIR WHITE: Good morning, Chair.

CHAIR VICTORINO: Good morning.

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

CHAIR VICTORINO: Ladies and gentlemen, we just have one item today, which is defining, Definition of Infill Development. To help reduce urban sprawl, in 2012 we included an exemption for infill development from the Show Me the Water Bill, Chapter 14.12, Maui County Code. The definition of infill may be too vague. In your binder is a bill that I introduced to initiate discussion. On your desk is a draft bill from the Department. We will consider both bills today and hope to, hope to come to some resolution on this matter. At this time, I would like to give Mr. Taylor an opportunity to explain what he want, why his bill is better than my bill and that's fine, and the problems that he will encounter by putting these, this infill in the 14. What is that, 14.--, excuse me, I forgot the number, right there -- 14.12 Maui County Code. Mr. Taylor, would you like to lead us in discussion?

MR. TAYLOR: Thank you, Mr. Chair. In a second, I'm gonna hand this over to Deputy Meyer, who deals with this a little bit more on a day-to-day basis than I do. Let me just say that infill being

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an exemption from the water availability ordinance, is a laudable goal. We have had some implementation issues because there is no definition. So people come in, they claim it's infill, we say maybe it isn't, we go back and forth and we have come to realize, we actually have an appeal that is going to the Board of Water Supply now because we don't agree with the applicants all the time about what is infill and what isn't. So it has just become apparent that we need a definition to further tune what we all mean by infill and what we don't. So we looked at Chair Victorino's bill. We looked at the actual issues that people bring up when they come in, how it affects the maps we look at, and we extended the bill, added some more language to try to fine tune what we really mean by infill in a way that is almost more quantifiable that allows more precision to reduce the discussion and reduce the number of these that go to appeal. So, as far as, if there is any technical issues about why we wrote what, I think Deputy Director Meyer is better prepared to discuss why this particular language is in there and not either language.

CHAIR VICTORINO: Thank you Mr. Taylor. Mr. Meyer, would you like to start your discussion on the bill itself?

MR. MEYER: Thank you, Mr. Chairman. Yes, let me speak for just a minute, if I might. We've struggled as David indicated; we've struggled with applying this over the last almost two years. And we have had a number of issues. Probably a dozen different cases where citizens have come forward wanting to do subdivisions and claiming the infill exemption and it's a, it's a very foggy, the way the statutes currently written, the Code is currently written it's pretty foggy. So we really want to thank, you, Mr. Chairman and the Committee, for agreeing to take up the issue of, of further clarifying exactly what infill is because it is going to save us, and of course, the Corp Counsel a fair amount of time and effort in resolving these disputed determinations which result in appeals and in one case litigation. If we go back to the definition of what infill is, the most common definition is it's an area of land which is currently served by utilities and is surrounded by already developed property. That is as distinct from non-infill, what is not infill property and that is land which is undeveloped and surrounded by green field, more undeveloped property, and the question is where you draw the line between them. It is pretty clear in a general definition infill is surrounded, not infill is not surrounded, it's, it's development in a green field or undeveloped area. We asked Planning Department for a definition and got essentially, not, no useful guidance. We even asked them to make the determination and they did not. They realized it is a thicket. It is a very difficult exercise. So we consulted other jurisdictions that use the infill definition in their own ordinances and statutes to determine things like urban development grants, property tax exemptions, those kinds of things and exemptions from other development requirements because those other jurisdictions, larger cities, et cetera have been dealing with this issue for a much longer time than we have. Almost all of the definitions require that 75 percent or more of the surrounding property be fully developed to its maximum extent possible in order for a land area to be considered infill, and that is a very common element. If you go through the exercise of researching this as we did that seems to be the general consensus of the definition of infill for purposes of urban planning and grants administration, and zoning and that sort of thing. So we came to the conclusion the right definition was 75 percent or more. The second issue is really, why do we need this change? And the answer is, of course, we think that the Department and the citizens would benefit greatly from having clarity, an easily readable, easily determinable

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definition so that 90 percent of the time people can read the law and say yeah, this is infill, no it's not. I am entitled to the exemption or I'm not. And that is the basis of our, of our recommended ordinance or draft ordinance is that we feel that reducing the amount of uncertainty and trying to, trying to reach as much clarity as we can is really a worthy effort. Thank you.

CHAIR VICTORINO: Thank you and I do appreciate that because again my whole, my draft was just to get the discussion started, just to see what first the Department would bring forward and secondly what the Members would think would be very important as what, for the definition of infill. Again, I am very thankful that you guys went through this and I know I met with Mr. Taylor and he gave me an overview of what was coming and I had no problem with that. So Members, I will open the floor to discussion. I will start with Mr. Carroll and work my way right across the room. Mr. Carroll?

COUNCILMEMBER CARROLL: Thank you, Chair. I'm glad that this is finally being addressed over here. That the open-ended one over here about across the road development if that was going to be considered as part of the 75 percent. It is good to be left open to who to make that final determination.

CHAIR VICTORINO: If that would remain that would be by the Director of Water Supply.

COUNCILMEMBER CARROLL: Okay.

CHAIR VICTORINO: He'd have the final say on that.

COUNCILMEMBER CARROLL: Other than that, I read this several times and I think this is appropriate because if anybody else wanted to do anything other than this, it wouldn't be an infill development, it would go through the regular, the regular process. So I think this is really good in making it very clear what it is and I can, except for that one concern, I would propose no changes in how it is written now.

CHAIR VICTORINO: Thank you, Mr. Carroll. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair, my only question is, is this something that would be with our land use more than our water? Trying to understand when we say infill development and when we are talking about residential dwelling units.

CHAIR VICTORINO: No, infill, the reason for infill being here is because of the exemption for show me the water. You know, let's say for example, in Kihei, Central Maui, West Maui there are a lot of areas that have development and then you may have three acres right smack in the middle and you want to develop. If you are going to develop 10 or less homes, you would be exempt from show me the water and that's why this infill definition had to be done or is being done here which will probably be used by other departments because 14.12 will be used by others. But it was really because of the necessity of small developments within areas, their water was available but they would have to go out and show me the water. So we reduced it to 10 or less lots or

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homes or dwellings, and so long as it was infill whether 50 percent or 75 percent it doesn't make a difference. It was done for that purpose so that they would be exempt from going through the whole process of showing me, Show Me the Water Bill.

COUNCILMEMBER CRIVELLO: Thank you Chair, for the clarification.

CHAIR VICTORINO: You're more than welcome. Mr. Couch?

COUNCILMEMBER COUCH: Thank you Mr. Chair. Got quite a few questions so I'll just ask a couple to begin with. Has any, this probably to the Director or Corp. Counsel, has anybody looked at the minutes of the original set, the original hearings as to what they meant by infill --

CHAIR VICTORINO: Mr. Taylor?

COUNCILMEMBER COUCH: --when they came up with this ordinance?

MR. TAYLOR: Member Couch, we didn't go back and read them, but I remember them pretty clearly because I remember having this discussion with the body and mentioning that I was unclear about what it meant, and we went through a number of geometrical definitions and the body said, well we'll just trust you to try your best and if it doesn't work, come back. I mean I was, I was not real happy that there wasn't a better definition, but we've tried for two years, I, I can tell by Mr. White's smirk, he remembers this discussion as well I think.

VICE-CHAIR WHITE: Yes.

MR. TAYLOR: And so we're back because there wasn't any real intent of what this meant. It was just sort of, well, you'll know when you see it. And we've realized that that just isn't really working from a limitation standpoint.

COUNCILMEMBER COUCH: Okay. Then, my question is, in this, I'm sure where you're getting a lot of your issues is on the edge of a "development", if a parcel is subdivided and this is scheduled to be a development, you've got 20 lots or whatever that's already been, or let's say under 10. It's subdivided, it's been subdivided, there's development up to one side of it. So people start wanting to add to that subdivision. Does each person who builds next to another house, have to do the show me the water as you go along?

MR. TAYLOR: Okay. I think if we go back to the water availability ordinance, Show Me the Water Ordinance, it is about allowing subdivisions. If something is already subdivided --

COUNCILMEMBER COUCH: Right.

MR. TAYLOR: --it doesn't trigger the Show Me the Water Ordinance.

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COUNCILMEMBER COUCH: So, if something, so that is even better then on the tail end of . . . you know at the very end of subdivisions. So if somebody goes to the other side of the subdivision, and wants to do a little family subdivision then they are out of luck. Is that how it works?

MR. TAYLOR: I'm not sure if anyone sitting with me can visualize what you are talking about but I am having trouble visualizing...

COUNCILMEMBER COUCH: So you've got the end of a subdivision, you've got a boundary on your subdivision, and the person who owns this big parcel next door wants to subdivide it for the family into four or five lots next door to a full-on regular subdivision. When they do that subdivision, they have to do a show me the water, essentially?

MR. TAYLOR: It sounds like one large TMK that someone wants to subdivide --

COUNCILMEMBER COUCH: Subdivide.

MR. TAYLOR: --to multiple, is going to trigger this Show Me the Water Bill and they...

COUNCILMEMBER COUCH: Just because it is on the edge and that is the whole to prevent urban sprawl kinda thing?

MR. TAYLOR: Well because it, subdividing land triggers show me the water unless you are exempt. So anyone who would be subdividing, would look where at a potential subdivision would have to say, am I exempt? And are they infill? If that is an infill piece of land, they would be exempt by this ordinance. If they don't meet this, then they wouldn't be exempt.

COUNCILMEMBER COUCH: Okay. So adding on to an existing subdivision, would make you do that. The next question I would have would be you know in the Maui Island Plan, and maybe this is to the Chair, too, the Maui Island Plan, we came up with urban growth boundaries and rural growth boundaries. And saying this is where we say everybody can subdivide and develop and outside that line, you cannot. Wouldn't that all of a sudden kinda delineate where people can subdivide and where they can't? So, therefore, wouldn't that be a situation where we say, okay, if you are inside here, we're ready to go. We're allowing, because we've planned for it, this is what we want, the development, so let's get the water to there? I know that you are planning on doing that, we are working on that issue at this point, developing the source and getting the water to the locations. So I know there is, it is going to be a chicken and the egg kind of thing. Which comes first, the water or the houses? But we've already set boundaries as to where people can develop. So shouldn't they be able to develop inside of that boundary and shouldn't that be included in this potentially? I mean.

MR. TAYLOR: So that would be something fundamentally different than this exemption. If the Council wants to exempt every piece of land that is in and or rural growth boundaries, then the Council could pass legislation saying everything in the urban or rural growth boundary is exempt. But the Council's intention was to just have infill be an exemption not urban growth

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areas be exemptions. So that isn't what Chair Victorino I think, intended to do with this. But if that is a different policy direction the Council wants to go in, I mean that would just be something different than this.

COUNCILMEMBER COUCH: Okay, so it would be something we would have to consider. That's why I asked the Chair.

CHAIR VICTORINO: You know, you know, I wanna remind you now, infill, I can show you an example right here on this mountain --

COUNCILMEMBER COUCH: Uh-huh.

CHAIR VICTORINO: --of what would not be an infill. They have a whole area that they want between Waikapu and Kealani. That is not an infill. It's surrounded three quarters surrounded, yes. But it wouldn't be an infill. It would be a new subdivision. They got to subdivide that whole area. So you don't want to get to that kind of situation where you start trying to say what infill. That's why we also said the ten lot limit or ten dwelling limit. It was really to have like in Central Maui, your area, and West Maui, there has been development.

MR. COUCH: Right.

CHAIR VICTORINO: And there is a lot empty right smack in the middle and you could put five homes, seven homes, whatever. The way the bill reads now, you need to show me the water. We exempted them and put under the "infill", that's why we are trying to get a definition of infill for that purpose for that exemption. It is not to do with urban boundaries. That is something else we got to work on in a future date. But right now, that is what we are trying to focus on, what infill and the definition of infill.

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR VICTORINO: For water purposes more than anything else. Alright?

COUNCILMEMBER COUCH: Thank you.

CHAIR VICTORINO: Mr. White?

VICE-CHAIR WHITE: Thank you, Chair. Just to be clear on this, the, on the second line after infill development, says including accessory dwellings. So, it's a total of ten dwellings, correct? That's just...

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CHAIR VICTORINO: Mr. Taylor?

MR. MEYER: Yes, sir, that's right.

VICE-CHAIR WHITE: What about accessory dwelling?

MR. MEYER: The intention, the intention is to count ohana units as well in the ten unit limit.

VICE-CHAIR WHITE: Okay. Thank you. Then the other question I had was, if there is an area where there is a gulch that is unbuildable but it's the parcel is, I understand the calculation when there is a road there. If there is a road there then if it's developed right across the street, that is part of your 75 percent. If there's an unbuildable gulch and there is a subdivision right on the other side of the gulch, is that going to be considered the same, same calculation or is that going to be disqualified as infill even though it's surrounded on the three or two other sides?

MR. MEYER: If there is Conservation land, or wetlands or ocean or Agriculture, that is not regarded as developed, that is regarded as undeveloped for term purposes of this definition. We thought about that and certainly the Council in its wisdom could decide that the ocean and Conservation land or wetlands or even Agricultural land could be considered developed land.

CHAIR VICTORINO: I think you are talking more about untenable land, land that cannot be used --

COUNCILMEMBER WHITE: Right.

CHAIR VICTORINO: --pretty much like in Maliko Gulch. That's many people that buck up to Maliko Gulch. On the other side somebody builds but there is nothing in between. I think that's what he is trying to refer to. The other ones, yeah, we would have to consider that also but, unusable land, land that you know that you really can't use. How would you answer that Mr. Meyer?

MR. MEYER: As it stands right now, what's been proposed is that it not be considered developed. So that, and we run into this kind of situation a lot in Kihei where there is wetland areas or Conservation areas or water courses running through or running adjoining developed land. Those for purposes of the definition we wrote would not be considered developed. In other words, they would count against the 25 percent maximum allowable in terms of surrounded undeveloped property. Again the Council members' wisdom could decide that if it is undevelopable, i.e. it's beach front or say along Halama Street or something like that or if it's wetlands or Conservation land, land that is zoned Conservation or dedicated conservation you could consider that developed. Another issue might be parks and schools, so more examples.

VICE-CHAIR WHITE: Yeah. It seems, that if we, if we don't include undevelopable, which would include beach front, streams, gulches and parks and schools and so forth, we are not, we may be avoiding the use of something that's exactly what we are trying to allow.

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MR. TAYLOR: Member White, that's really up to the Council to decide what you are trying to allow. Go back to South Maui, Piilani Highway. Let's look at all the mauka land. Mauka of Piilani Highway, that is in the urban growth boundary in the Maui Island Plan. Let's just say that really far mauka is all undevelopable. Let's say it's all Conservation land. Is it your intention that a new mauka development that isn't really, doesn't really, it's not surrounded by anything but because there is a road on half of it, and Conservation land on the mauka half of it, and there is only 100 feet that is developable along its perimeter, is that automatically going to qualify as infill just because you cannot develop anything around it? We are not really sure what it is your intention whether, do you want something like that considered exempt or not. Same as if someone has a little peninsula out into the ocean, you know, 80 percent of it is surrounded by ocean, do you mean that is infill just because there is a house on the makai side or not? So this is the difficulty we've been having over the past year is basically everyone who comes in is an outlier. I mean there is no consistency. We are trying to be consistent but without having clarity what the Council is intending it is very difficult for us to implement this in a consistent matter. Because there isn't language or clear or clear idea of what you want included or what you don't. There is no pictures, there is no geometry. So that's actually why we're here is we are having a lot of difficulty administering this.

CHAIR VICTORINO: And that's why I brought this forward, because...

VICE-CHAIR WHITE: I can see why.

CHAIR VICTORINO: It's like many of our other definitions, it seems very simple, very clear-cut until you start saying, what about this and what about that and all of a sudden you get way out there and like you just said, now a peninsula. Okay, I don't know how many peninsulas we have in this County but if somebody has a peninsula now wants to develop it for some reason or another, does this fit in? I don't know. But I guess, we will continue the discussion and come up with a reasonable solution, I hope, that's what the intent was today. Any other questions, Mr. White?

VICE-CHAIR WHITE: No, those were the questions I had. I think that last one is perplexing.

CHAIR VICTORINO: What's new this week?

VICE-CHAIR WHITE: Thank you.

CHAIR VICTORINO: Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. Thank you also for bringing forth this issue. Difficult issues are --

CHAIR VICTORINO: You should know.

COUNCILMEMBER GUZMAN: --somewhat sometimes hard to have the strength and the courage to bring up. But I do appreciate the, your ability to do that.

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CHAIR VICTORINO: Thank you.

COUNCILMEMBER GUZMAN: Chair, and also thank you for the background information. I too, was following up on what, it's quite funny that Mr. White actually asked the same question about the Conservation and Agricultural lands which is under my Committee, and so I was concerned about how that mechanism or that issue was brought forth and you did explain it. It sounds very difficult and I think it needs more analysis to it as to when in fact we're going to call those areas. The other point I would have here is the definition of already developed land. On the last portion of that definition it says cleared for occupancy. How do you define or identify cleared for occupancy?

MR. MEYER: That's a good question too. Because some people want to build a big house, some people want to build a small house, some people want a house and an ohana if it's permitted. Other people don't want an ohana. So the question is what is developed, is that developed to the maximum extent possible or is it simply developed with a permitted dwelling and that is, has a proper building permit and an occupancy certificate? We came to the conclusion that developed would mean not necessarily developed to the maximum density possible rather just that there was a dwelling or a building on it with a valid certificate of occupancy and a valid building permit.

COUNCILMEMBER GUZMAN: Okay, okay. So that's what cleared for occupancy means?

MR. MEYER: Correct.

COUNCILMEMBER GUZMAN: Okay. You might want to narrow that definition a little bit because it's a little bit broad.

MR. MEYER: A good question.

COUNCILMEMBER GUZMAN: Yeah, thank you.

MR. MEYER: These are all very good questions and as Dave pointed out, they really get a lot of pressure and intensity when it comes to individual cases where people own land and there is maybe a lot of money at stake.

COUNCILMEMBER GUZMAN: I could see that, that wording cleared for occupancy would be a good argument to make if I was an applicant's advocator or something. Okay, but anyways, if you take a look at that language appreciate it. Thank you, Chair.

CHAIR VICTORINO: Thank you. And again, this is for discussion today. We want to try to, I was hoping to wrap this up today, if not, at least put in all the concerns you've brought up today and try to see, and again I understand what the Department is really asking for is a clear picture, a clear definition so when someone walks in, yes, you qualify, no you don't. And right now it is

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very vague and ambiguous, you know. So they're making their best calls and then they're getting challenged. Anyhow, they may still get challenged in, by the Board of Water Supply and the adjudication. But I think if we can give 'um a clear definition and they're happy with it, then the challenge may become very much minimal and at best. Yup. Yes, Mr. Taylor, you wanted to...

MR. TAYLOR: I completely agree with what Chair Victorino just said and that's really our intention. So two years ago when this was passed we were concerned that there really wasn't any definition. So we see how many there've been and the difficulty we've had. We feel that if the Council passes our draft, those will be limited, there still may be a few that are up in front of the board, but the board can probably handle a few and they can appeal you know my decisions, if applicants don't like it. Maybe two years from now we come back again and say well, we still, we've identified this one last little thing we want to clear up. So I don't know that we need it to be perfect today. We feel that just doing this now will severely shrink the uncertainty to the point where it is probably manageable, the board can manage and make decisions on the rest and maybe we'll come back in two years to add a sentence or two. So, I don't think we need to solve every single little problem today. I think we just need to peel it down to a manageable amount to go to the board.

CHAIR VICTORINO: Thank you, Mr. Taylor. I think this Council is renowned in trying to get everything done so we don't have any challenges in the future and that is our whole objective. Madam, Chair?

COUNCILMEMBER BAISA: Thank you very much, Chair. It is always interesting when you are at the tail end of...

CHAIR VICTORINO: Mr. Guzman, please. Thank you.

COUNCILMEMBER BAISA: It's always interesting when you are at the tail end of the line.

CHAIR VICTORINO: You know that

COUNCILMEMBER BAISA: A lot of the things that you were thinking about have already been asked. But I have an interesting question to ask.

CHAIR VICTORINO: Please, go ahead.

COUNCILMEMBER BAISA: Nothing like raising problems. I understand what we are trying to do here and we definitely are not in the creating work for the lawyers' business. So we want to make sure we have the best definition we can get. They have more than enough to do already without having to deal with appeals and we don't understand what this means and lack of clarity. But I was interested when you made the statement that this definition would be for water purposes only. What that brings to my mind, as everybody on this Council knows for years we have been dealing with the conflict in the Ag definition and we still have not solved it. The

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problem is that Tax has one definition, Water has one definition, Planning has one definition, and I'm concerned if we are going to create a definition with the idea of only addressing how it applies to water, how does it compare and have we looked at the definition that the Planning Department uses when they look at infill? You know when we were working on the General Plan right from the GPAC days that was a major issue. The people on the GPAC were okay with infill development and they wanted to see development concentrated in infill, and I just want to make sure we don't have a conflict and I think that comparison should be made before we make a decision if it hasn't already been done. 'Cause if we develop a conflict, we are going to be right where we were with the definition of Ag.

CHAIR VICTORINO: I won't disagree with that, however, because we have existing legislation the Show Me the Water Bill. This is the whole purpose behind it, it is not to, and again Ag was based upon Ag rates. Again we specifically go into certain areas because that is what we're dealing with. Now, Mr. Guzman has been working on a general Ag so that everybody kinda follows the same thing. But again, there always will be little deviations here and there. But I will let Corporation Counsel answer that question. Ms. Oana, would you like or Mr. Kushi, give us a little insight, please.

MS. OANA: I believe according to the Maui Island Plan in the glossary, infill is defined as development of land that is largely vacant or underutilized within areas that are largely developed. So, it kinda has the same ring --

COUNCILMEMBER BAISA: No more specifics?

MS. OANA: --to what we're doing, but their definition is still a little vague for the Department of Water Supply.

COUNCILMEMBER BAISA: Thank you. I'm trying to see if we can get as close as we can, because I think that it solves a lot of problems when developers or whoever is going to do something knows that the County's definition of infill is this. And, obviously, there may be small divisions in special circumstances but I think we need to get a little close. That doesn't address ten homes, doesn't address 75 percent, I mean, so here we go.

CHAIR VICTORINO: And again, I will repeat this is for the purpose of Show Me the Water Bill. If we had no Show Me the Water Bill, this would not have to come forward. Okay, Mr. Kushi, you had something to say?

MR. KUSHI: Yes, just following up on that.

CHAIR VICTORINO: Yeah.

MR. KUSHI: This bill and the whole concept of this bill is tied in to the water availability, which is the Show Me the Water Bill. And basically, it's a subdivision ordinance. It governs subdivisions because we have a lack of water supply. Again, you created this exemption for infill. Again,

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understand it's only for ten lots or less. The Department has had problems regarding the interpretation so that's why we are here. Just looking at the Department's proposal, I have a problem about, I have a concern about their definition of already developed land in number two where it states Conservation and Ag land shall not be considered already developed land regardless of the presence of any structure or land, structures on said lands. I mean Conservation is its own animal. It is defined by State law rather than County regulations. However, we do have these Agricultural subdivisions, two acres or less. Just look up any mountain on this island, you've got this farm lots, two acres or less. So if this stands, that means anything bordering that two acre subdivision, the parcel that is bordering that cannot count the Ag subdivision as already developed land. So just understand what you doing and what you are saying. Anything near Launiupoko, anything near Kula 200, anything near, I think there is a couple in Kihei. Parcels adjoining that cannot count on that heavily populated Ag subdivision as already developed. You can do what you want. But just know what you are doing versus someplace like in Lahaina, a parcel that wants to be developed and be deemed infill borders Maui Land & Pine's Ag land, 300 acres, now is subdivided. That is a true undeveloped Ag land verses Launiupoko. So I mean that's my concern. But, again, this is the body, if you want to exempt that it's up to you.

CHAIR VICTORINO: See nothing is very simple when we look at everything. Nah, you know and that's why we have the attorneys here. They help us. So, again my whole intent was to get the discussion, I would like to see something passed. I know Mr. Taylor would like to see something passed but if there is more work that needs to be done I would prefer to come up with as clean and as a concise as possible so that we don't have to be challenged in court. I think that's what Ms. Baisa was basically saying. Now as far as the Maui Island Plan, it is really difficult because theirs is very vague. They're not very specific. So if we're more specific than somebody else, then I don't know if that's a problem other than this is for that purpose of water allocation. Ms. Baisa?

COUNCILMEMBER BAISA: I think my concern is that the new Maui Island Plan, my understanding is that it has the force of law, and so I don't want some developer to say well it's not clear and the Maui Island Plan says I can because it doesn't have these limitations and the Water Department says I can't, because it does, and here we go with the lawyers again. So I just bring it up as a caution and I think as we do it, we need to think about that and how we deal with it, I don't know, Chair. I'm going to depend on you and your experts to figure this out.

CHAIR VICTORINO: Well, thank you very much. I like that last statement. Thank you, Madam Chair. Again, you know, Mr. Taylor, I think, and I would like further discussion, I want further questions, kinda want to get as much info as we can so that when we go back and sit down, we can put something together so that on our July 2nd meeting we can come back with something more comprehensive if that's what we need to do. So my question to the Members is, what would you like to see added or what definitions would you like clarified? Like you, Mr. Guzman, you had a certain question on I think, occupation or something, I forgot what exactly what you...

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COUNCILMEMBER GUZMAN: Chair, it's, my issues are very similar to Corporation Counsel's which is the definition of already developed land, number two --.

CHAIR VICTORINO: Okay. Yeah. Okay.

COUNCILMEMBER GUZMAN: --the Conservation and --

CHAIR VICTORINO: Very good. Okay.

COUNCILMEMBER GUZMAN: --Agricultural lands.

CHAIR VICTORINO: Thank you

COUNCILMEMBER GUZMAN: I don't have a solution, Chair, right now. I just --

CHAIR VICTORINO: No, no, no

COUNCILMEMBER GUZMAN: --would like that re-examined or analyzed.

CHAIR VICTORINO: And I think, you know, I come to a point where I feel like we need to say enough and let them go take it from there. I will do that. So, I will ask everybody if you have specific concerns or questions. You had yours, you have anything else, Mr. White?

VICE-CHAIR WHITE: No, I think ...(clears throat)... excuse me, no, I think that the concern about undevelopable land should be addressed.

CHAIR VICTORINO: Exactly, yes.

VICE-CHAIR WHITE: And I think most of us would be comfortable with some limitation on ocean front to take care of the peninsula plot.

CHAIR VICTORINO: And I thought about that one but that's fine. Thank you.

VICE-CHAIR WHITE: And being more of a visual person,

CHAIR VICTORINO: Yeah.

VICE-CHAIR WHITE: I'd love it if they could come back with showing us what some of their challenges have been, showing us the parcels that they have been presented with --

CHAIR VICTORINO: It's a great idea.

VICE-CHAIR WHITE: --and why --

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COUNCILMEMBER BAISA: Yes.

VICE-CHAIR WHITE: --they're, and what's driven them to come back to us, because a lot of the stuff for me would be real simple if I was looking at maps.

CHAIR VICTORINO: Thank you. I wholeheartedly agree. A picture is worth a thousand words. So Mr. Taylor and Mr. Meyer, could we count on that on the next meeting to bring some pictures to us?

MR. TAYLOR: Corp. Counsel just informed me while this was being discussed.

CHAIR VICTORINO: Yes.

MR. TAYLOR: We're in litigation. So as long as there was a executive session where we could show this and have this discussion but we are actively . . . our issues are here's the picture, here's what we think, here's what they think, we're in appeals process with these things. So as long that's possible, we can do that.

CHAIR VICTORINO: We can always go into executive session. That not an impossibility.

VICE-CHAIR WHITE: Chair.

CHAIR VICTORINO: We've done that for every other Committee.

VICE-CHAIR WHITE: I think to make it simpler, all I'm looking for is hypotheticals.

CHAIR VICTORINO: Yeah. Yeah. You know, again . . .

MR. TAYLOR: We can come up with hypotheticals on top of, you know, Google Earth or something like that and we can show you what we're talking about very easily.

VICE-CHAIR WHITE: I mean similar, similar properties.

CHAIR VICTORINO: Yeah, but again if you really, really and I wouldn't have mind going into executive session to really get specifics so that you see what the challenge is. I think that may be even more important. So we can consider that at our next meeting, the July 2nd meeting. So Mr. Taylor, you know, I'm going to say bring some hypothetical and if we get to a point where we really wouldn't, may not really understand the challenge and we need to go into executive session, have that available also. Is that okay, Ms. Oana? Okay, thank you. I had to check Corporation Counsel first. Mr. Couch?

COUNCILMEMBER COUCH: Thank you Mr. Chair. Just for clarity on for purposes of this definition, number one, already developed land, I believe it's talking about commercial structures that has been cleared for occupancy is just for commercial structure and they get a certificate of

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occupancy. I believe that that's what that's talking about. If it needs to be more clearer because residential there is no certificate of occupancy for residential areas so that you know that or talks about commercial structures that have been cleared for commercial occupancy before the first of March of the prior fiscal year. So you can probably say have received the certificate of occupancy and that should clear that everything up on that. The other one is, you keep talking about ten lots and potentially it could only be five lots because if the way we have it now where it says including accessory dwellings.

CHAIR VICTORINO: Up to ten lots.

COUNCILMEMBER COUCH: Right, up to ten lots.

CHAIR VICTORINO: Remember we did put specific numbers but accessories would cut it down now. If you have everyone --

COUNCILMEMBER COUCH: So it would be five lots.

CHAIR VICTORINO: --five lots.

COUNCILMEMBER COUCH: Ten. You're looking for ten --

COUNCILMEMBER BAISA: Dwellings

COUNCILMEMBER COUCH: --dwellings. Okay.

CHAIR VICTORINO: Ten structures.

COUNCILMEMBER COUCH: Well this talks about residential dwelling units. So if they wanted to make commercial, its wide open, they don't need to do it?

CHAIR VICTORINO: I don't think we have considered commercial, have we, Mr. Taylor? Commercial runs on a whole different gamut of water usage and all that. So I think this was very specific as far as residential. But you are thinking some of the definitions because that's what they put in as could be used by a commercial entity, yeah? Mr. Taylor?

MR. TAYLOR: So to be clear, Mr. Couch, are you asking if we had a commercial district that at a big undeveloped space in the middle and somebody, say, changed the zoning to residential and came in and wanted to do a ten lot subdivision, is that...

COUNCILMEMBER COUCH: Or vice versa. You've got a residential area that they wanted to put a little community commercial area where they wanted to subdivide, put a little this, you know, and sell the commercial pieces, you know, we are trying to have the little village stores et cetera. Would that be, would they be exempt or not exempt ever? It seems like the way it reads, they would not be exempt which is fine with me. I'm just curious.

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MR. TAYLOR: That's a good point, I think we are gonna have to take a look at that.

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: Anybody else? Anything else? This is great. You guys, after weeks of sitting down and reviewing this, you guys have come up with ten different things I, we never thought about, Mr. Taylor. You and I gotta get our, never mind.

COUNCILMEMBER COUCH: Everything else is fine. Yeah, thank you.

CHAIR VICTORINO: Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: No, nothing else, thank you.

CHAIR VICTORINO: Thank you. Mr. Carroll?

MR. CARROLL: Thank you, Chair. Just the document itself as I said the first time I don't have any problems with this. If there is any way to clarify or make for instance, commercial development or anything else it could be used, any wording that could be put inside to make this intent clearer that's fine with me. But to change anything to include business or something like that, that changes the entire document.

CHAIR VICTORINO: Exactly, yes.

COUNCILMEMBER CARROLL: So, I would be opposed to any changes in the intent of this document on how it is written. If the intent of any Council members is to make it more clearer what this document infers, that's fine. But I don't think any changes in this would be appropriate. After evaluating land use for many years, this is something that I like, I like looking at this. It's a, it was always a question. They use the term land fill to add subdivisions on to places before. Saying that was an infill. So I really like this document as it is. If my fellow Members, or the Chair, or the Department wants to have any clarifying language to make sure that everybody understands this and there can be no questions, that's fine, but I like the document as it is. Thank you.

CHAIR VICTORINO: Thank you, Mr. Carroll. I believe that's what the questions have been for clarification and so that when we bring back the document in the far July 2nd meeting, many of these concerning questions would be answered and it would be very clear including what Corporation Counsel has brought up. So, I have no objections to that. I don't think it is changing the intent. I think it's for the purpose of clarification and so that bill coming forward would be something we can work with and not be in court with. I think that's what we are trying to avoid. I appreciate that and I appreciate everyone's comments. Everyone brought good, good and again, just like every other Committee, we start here and we go there and then come back there. Right? Am I missing the boat? No. I think everyone of us have that same challenge,

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right? Thank you. That's what makes this Council what it is, a workable group of people with great ideas, just figuring out how to place it all in place. That's our, that's where the Chair comes in. Okay, if there is anything else you'd like to bring up because, if not, I would prefer to recess the meeting. Not recess, adjourn the meeting. Do we have to just defer, yeah? Yeah. With no objections, I would like to defer this matter to July 2nd. That is my plan to bring it back on the July 2nd meeting.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS

CHAIR VICTORINO: No objections.

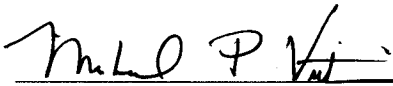
ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Thank you very, very much. Thank you for being here. . . you know, that's a pretty good meeting. In one hour we brought in a lot of the items that Mr. Taylor and I and others have not thought about, but I want to thank you guys very much. If there's anything else, please you can feel free to give it to Mr. Taylor directly if you have any concerns that you would like him to look in before we come back. Okay?

So with no objections, the meeting of the Water Resources Committee--uh, what is today?--18th of February [*sic*] is now adjourned. . . .(*gavel*). . .

ADJOURN: 9:58 a.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:140618

Transcribed by: Bernadette Haupu

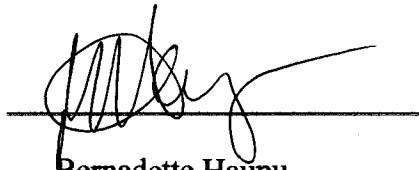
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CERTIFICATE

I, Bernadette Haupu, 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 10th day of July, 2014, in Haliimaile, Hawaii


Bernadette Haupu