

**LANA'I PLANNING COMMISSION
REGULAR MEETING
JULY 16, 2014**

APPROVED 08-20-2014

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair John Ornellas at approximately 5:35 p.m., Wednesday, July 16, 2014, in the Lana'i Senior Center, Lana'i City, Hawaii.

A quorum of the Board was present (See Record of Attendance).

Mr. John Ornellas: Alright, the Lana'i Planning Commission come to order. This is the meeting of July 16th. We're a little bit late -- 7:35 p.m. 5:35 p.m. What did I say? I said seven? Time to leave. Alright, we have everyone here but Stuart, so we have quorum.

Alright, first up, Item B on our agenda, amended agenda, is public testimony. Anybody wanna come up and say a few words? We will have -- we'll have other opportunities for -- as we go through the agenda. So, if you don't -- if you don't have nothing to say now and you have something to say later. Dave's got --. You wanna come up now? Okay. You can use that mic right there. Sure.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Mr. Craig Nakamura: Actually, at your pleasure would you prefer to hear testimony on the matter now or would you prefer to wait on until it comes up on the -- on the agenda? I don't -- on Maui, sometimes they do the -- the public testimony first when people have to leave early or something so maybe not related to the specific item, but I'd be happy to either. Whatever you prefer.

Mr. Ornellas: Alright. And you're gonna -- you're gonna testify on behalf of -- yeah, this is his testimony. Alright, you can -- go ahead.

Mr. Nakamura: Thank you very much.

Mr. Ornellas: I'm sure you'll have a lot more to say as the meeting goes on.

Mr. Nakamura: Well, we'll try to limit -- limit that. But -- good evening Mr. Chair, members of the Commission, Lana'i Planning Commission. Aloha. Thank you for allowing me the opportunity to testify. My name is Craig Nakamura. I'm an attorney from Maui. I represent Pulama Lana'i, and I had previously submitted a letter to the Commission which is on the agenda. In addition to that we submitted a -- some written testimony today which is rather long. Really what it does

is it -- it provides a legal analysis as to why condition 23 should be deleted and that's what we're -- that's what my testimony is. But we're here to urge the Lana'i Planning Commission to eliminate proposed condition 23 from the subject Special Use Permit.

As I said, the written testimony has been provided. It is rather long and detailed. And rather than read it out, I'll just try to summarize a few points and we'll be happy to answer any questions that you may have as we go along.

The first point that we raised in our written testimony was that the -- the action of the Lana'i Planning Commission is -- is inappropriate because the State Land Use Commission has already exercised jurisdiction over Pulama Lana'i's use of the ground water. And I referred to a Findings of Fact, Conclusions of Law, Decision and Order issued by the State Land Use Commission on April 16, 1991, which imposed conditions when the land was being classified into the State Urban District. So that's been pending for quite some time as you can see. That -- one of the conditions that were imposed was -- was the -- regarding the use of the water from the high level aquifer. Because the Land Use Commission has already spoken to the issues of ground water management and control, our positions at the Lana'i Planning Commission does not have jurisdiction to impose conditions that relate to the same subject matter that's already been addressed by the Land Use Commission. In that situation -- excuse me -- in addition, the proposed condition 23 deals with an issue that's presently in litigation between Lana'i Resorts LLC, d.b.a. Pulama Lana'i, and the Land Use Commission and other parties. Therefore, because it is being currently -- those issues are currently being litigated, the Lana'i Planning Commission should abstain or should not be involved in imposing any conditions on the Special Use Permit that relate to the subject matter of the litigation.

In addition the State Commission on Water Resource Management has the authority and jurisdiction over water resources in the State of Hawaii. And I -- in our testimony we cite various different provisions from the Constitution and the State law to that effect. Therefore, although the Lana'i Planning Commission's role is very, very important, it does not extend to the regulation of water resources. The Lana'i Planning Commission is a land use authority and does not have jurisdiction or authority to impose conditions that over reach into the -- into the realm controlled by the Commission on Water Resource Management.

Also, the third issue relates to what we call the Nexus. That's kind of a detailed legal argument here, but really the -- when we deal with different types of legal issues we look to how the -- what we call precedence or prior judicial cases how the judges have ruled to see how they would rule if this case came before them again, or if this case was litigated. In -- in those cases that -- the previous cases -- and we site some cases from the United Supreme Court as well as the Hawaii Supreme Court -- the courts have found that you have to have a nexus or essential nexus between the condition and the application, basically. So the land use -- the land use permit conditions must be crafted to offset impacts of the proposed development. There has to be a definite relationship between the conditions and the impacts of the development. In the -- with respect to State Land Use Special Use Permits, the Hawaii Supreme Court has upheld conditions imposed on the permit when the conditions were, and I quote, "*undoubtedly intended to ameliorate deleterious effects of the special use on*

neighboring agriculture." In other words, they have to be very closely related to the -- the conditions need to be closely related to the application at hand. In those instances, the -- the conditions on the Special Use Permit must be tied on the impacts of the proposed land use, and with respect to Chapter 205, must promote agriculture or rural activities. In our case, it's undisputed that the proposed desalination facility will not detract from the island's inventory of agricultural lands, and will not present any adverse effects on agricultural production and that's a direct quote from the Planning Department's report, so there's no relationship where -- the facility itself will not affect agricultural lands. Therefore, proposed condition 23 violates the language and policy underlying Chapter 205 and would be subject to challenge under HRS 91-14. The effect of condition 23 also essentially destroys the legal rights that have long been relied upon by Pulama Lana'i and its predecessors.

Finally, condition 23 is not supported by the record. We are concerned that there are procedural defects associated with condition 23 which provide another basis for our court to reverse the Lana'i Planning Commission's decision. These concerns are based on the fact that condition 23 is not supported by evidence that's on the record. It wasn't included -- for example -- it wasn't included in the Planning Department's report or the addendum. It's clearly adverse to Pulama Lana'i, but we were not given the opportunity to file any types of exceptions in response to the proposed conditions. And we believe that there is not supporting evidence in the record to substantiate condition 23. All of these reasons provide justification for the court to reverse the decision of the Lana'i Planning Commission on condition 23. Thank you.

Mr. Ornellas: Thank you. Members, any questions for the testifier? Hearing none, thank you very much.

Mr. Nakamura: Thank you.

Mr. Ornellas: Members, anyone -- anybody wanna make a motion to --. Okay. So let's -- anybody else have testimony -- make testimony?

Mr. Ron McOmber: . . . (Inaudible) . . .

Mr. Ornellas: We -- we can, but we will take testimony --. Okay, you want --. You want -- come up front. You want to say something Ron?

Mr. McOmber: . . . (Inaudible) . . .

Mr. Ornellas: Yes. Anybody else wanna testify on any of the agenda items? Ron, you're up.

Mr. McOmber: I won't faint, I'll just stand here. You know this is -- to me this is manini. Here we go again. Nothing in this 23 that says that we're taking a poke at Pulama or anything else. This was put in there in case the desal doesn't work, you're not going to use water from our high level aquifer. It's just exactly what it's stated in all of our text. I sit on LWAC. I was at that Land Use Commission hearings in 91, 95, 98, all of those. We're trying to protect our aquifer here. If that desal plant does not work -- and that's all this is about -- or if it has a catastrophic

breakdown. Then the whole island is gonna suffer anyway. Because if that has a catastrophic down there, can you imagine what our city is gonna look like? I'm concerned that this manini little argument over 23 is stupid. This was put in there by our residents because they're concerned about what's gonna happen when there is a catastrophic breakdown. And if those wording's not put in there, somebody doesn't understand that. Because 1991 one doesn't say anything about a desal plant folks. The attorneys failed to say, well, there was no desal plant in 91. We were fighting Castle & Cooke for every bit of water we could get, and we're still doing it today.

You know, I was stopped by five different people today saying, "what's going on with the desal plant, Ron?" Somebody in Pulama is going around and spreading words that if this desal doesn't work the town's going down the toilet. I don't appreciate that kind of stuff. A lot of local people stopping me today, and said, there must have been some meetings last night somewhere that a bunch of local guys are now stopping me and asking me, "what do you think about the desal?" I tell them the same as everybody else, we need to have that if the project is gonna go forward. Pulama cannot do what they gotta do without that desal. And all this thing says is if a catastrophic break down. And we discussed that before with Pulama at the LWAC meetings, what happens if it breaks down? You'll be giving a certain amount of time to get it back on line and get going, and there's water available. But you cannot take our water from the high level aquifer for other than human consumption except for wells 1, 9, and 14. Those are the wells that are still in play. They're in play today. So we're not stopping them from using water if they need to water their stupid golf course. And human consumption for the hotels and the luxury homes and condos at Manele, take it right out of the high level aquifer just like it is today. So if we can't to do this legally that's too bad. That's shame on Pulama, and shame on the attorneys to come up with this crap. Sorry.

Mr. Ornellas: Thank you Ron. Anybody else wanna? Yes sir, Mr. Richardson, come forward.

Mr. Christopher Richardson: Aloha. Good evening. Thank you. My name is Christopher Richardson, Lana'i resident. So there's been a lot of science talk, jargon terms, previously, on this topic. Now we have legal terms, legal jargon, on this topic. To keep it simple, it doesn't matter if it's a high level aquifer, fresh water basal lens, brine, saltwater, sea level, we're talking about the aquifer. Water contained within the boundaries of the island. It's all the aquifer. It's precious, and it's not -- it doesn't occur on every island. This island has a very special aquifer. We're taking a natural resource. This island, in particular, has been subject to the taking of natural resources for more than 200 years. About 1790, sandalwood started to get taken out of all of Hawaii, and that last to the mid-18 -- 1843. We know cattle ranching, farming, and other things have taken natural resources from this island. This plan is to take a natural resource from the island without any idea of how to deal with that. The water is going to come out of the aquifer. And there's a lot of talk about how it's going to magically heal itself. But all you would need is to just think about that for a moment and realize that's not going to work. We're fighting about the reason to do this. We need -- we need to develop. We could discuss the methodology. But this is not the place for it. The developer has proposed a specific plan, and so this board is to vote on this specific plan. As presented, does it follow true sustainability? Whether it affects agriculture, whether affects development, whether affects people in the

community -- we have to make sure that the ecology and the environment are maintained. As proposed, there are many negative effects that will come from this, and we should discuss those negative effects. We should know those negative effects and we should plan and amend the proposed plan to deal with it. Thank you for your time.

Mr. Ornellas: Thank you. Anyone else want to come forward? Yes, sir, Mr. Reilly.

Mr. Pat "Fairfax" Reilly: Thanks guys. Pat Reilly. 35 year resident. Been through it. My concern for you as planner commissioners, and I would highly recommend that you meet with your attorney and have this discussion so you fully understand. Having been in this situation myself -- not in this body, but in other bodies -- the question before is, "do you want to get sued?" I mean, the attorney here has said that they can take you to court. Before you make a decision, meet with your legal counsel. Understand what that means to you personally. Personally. To me you've already passed the permit except -- I don't quite understand that and maybe counsel can explain to the public how this comes backs up -- back up. But that maybe -- that maybe something I don't understand with Robert's Rules and other kinds of things, but the question for us is -- us, being the whole community -- if there's a legal basis for this presentation and your attorney is telling you that, that act on condition 23 only -- the rest of it has already been passed, right? I mean, there may be other portions but that's not for debate tonight. The permit's been passed except for -- well even condition 23 has been passed. Now it's up for reconsideration or maybe that's not the correct word. But if you haven't had an opportunity to meet with your attorney you should understand that if this goes to court it's a big deal, takes a lot of time, a lot of money, and it impacts you personally. And it will impact the whole community. So, I would say, you need to meet with your attorney. Thank you.

Mr. Ornellas: Thank you Pat. Gerry?

Mr. Gerald Rabaino: Gerald Rabaino, Lana'i City. Been a resident from 1971. When I first moved here -- yeah, when pineapple was still around -- water was very good to the aquifers, but we do have leakage from our aquifers. We gotta take care that aquifer. The desalination plant is an added commodity to help the growth of Lana'i. I'm for that. But don't touch the water at the high level, where the aquifer are because it takes time to recharge. I used to take rain gage -- 75 all the up to the 80s. We don't have enough rain to replenish our aquifers. Much of you folks here, may be young, but when I came here, I when learn a lot of stuff from Dwayne. Excuse me, from Sweet Deshay, Bob Kushni -- all these -- them was the one that help educated me to understand about the rain gage and recharging our aquifers. As this letter says over here, under A, we gotta take care of our aquifers. But with that added desalination it would be a plus. But we need to make sure that all of you folks on that board there set some kind of condition as like Ron says if it breaks down where is the water they gonna use? Is the last resort the aquifers? You guys know that Manele is the dry side of Lana'i. We have 18 water wells that supplies this island. Pineapple days was only three. The other water wells may not be active because of their salt contents. You gotta malama the aina, take care the keiki o ka aina. This is our community. You sit up there. All that young generation there, you guys gotta make that wise decision. Either set a condition and pass the desalination, but protect our aquifers. Mahalo.

Mr. Ornellas: Thank you Gerry. Anyone else would like to come up and testify? Yes Gail.

Ms. Gail Riener: I just have a question. Gail Riener. I've been a resident on Lana'i for 10 years. If this, no. 23, is held up and taken to court will that prohibit or prolong the start of a desalination plant?

Mr. Ornellas: As far as the Lana'i Planning Commission, we don't know that. You'd have to ask Pulama that question.

Ms. Riener: Could I ask them that? Would they --

Mr. Ornellas: Not at this time.

Ms. Riener: Okay.

Mr. Ornellas: Not at this time.

Ms. Riener: Okay.

Mr. Ornellas: We're just listening for public testimony.

Ms. Riener: Okay. Thank you.

Mr. Ornellas: Alright. If you stick around, they might have -- they might go into a little bit more. Anybody else? Yes, sir?

Mr. Bradley Bunn: Yes, my name is Bradley Bunn. I'm a resident here on Lana'i. I respect both sides here. I respect everybody's dedication to Lana'i and to its future to taking care of the land and the children. I would echo what Pat had said, seek advice from your counsel and understand these issues because they're complicated. The legal issues are complicated. The intent of what we're wanting to do is pretty simple, and sometimes it gets boiled up into legalese, and we've got to get out the sword and cut Gordian's knot. Understand that what you're willing to accomplish may have already been accomplished by other regulatory bodies and rules that have been agreed to, so there may not be a need to double dip sort of speak. Meet with legal counsel and understand those issues, and, hopefully, you guys can come to an agreement here because I think that all sides here want to do the right thing and move forward for Lana'i. Thank you.

Mr. Ornellas: Thank you Brad. Anybody else would like to testify? Okay, hearing none, we'll close public testimony at this time. I may open it up later on in the evening when we get to the other things on the agenda with the housing. Okay, so we'll go to communications, C, no. 1 (*Chair Ornellas read the project description, agenda Item C1, into the record.*) It also states here an Executive Session may be called in order to -- in order for the commission to consult with its attorney on conditions -- on questions and issues pertaining to the commission's power, duties, privileges, immunities, and liabilities pursuant to Section 92-5(a)-4, HRS. So, do you

wanna say something? Okay, do you guys want to hop to the mic and add anything to this?

C. COMMUNICATIONS

- 1. MR. CRAIG NAKAMURA of CARLSMITH BALL LLP, attorney for PULAMA Lana'i, requesting by letter dated July 8, 2014 that the Lana'i Planning Commission amend its decision concerning condition no. 23 of the State Land Use Commission Special Use Permit approved by the Commission at its June 18, 2014 meeting regarding PULAMA Lana'i's Reverse Osmosis Desalination Facility and Distribution System including the development of reverse osmosis desalination plant facility, administration building, water generation facility, and related improvements within the Manele Project District at TMK: 4-9-002: 001 (por.), 4-9-017: 009 (por.) and 010 (por.), Manele, Island of Lana'i. (SUP2 2013/0028) (PH2 2013/0001) (B. Sticka)**

AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SEC. 92-5(a)(4), HRS.

The Commission may consider a Motion to Rescind or a Motion to Amend the above-referenced State Land Use Commission Special Use Permit approved by the Lana'i Planning Commission on June 18, 2014. If either motion is approved by majority vote, the Commission may take action related to the State Land Use Commission Special Use Permit.

Mr. Nakamura: Thank you for the opportunity again, Mr. Chair. Craig Nakamura on behalf of Pulama Lana'i. But, I don't think we have anything else to add at this point unless you have any questions.

Mr. Ornellas: Okay. Great. Thank you.

Mr. Nakamura: Thank you.

Mr. Ornellas: Members, do -- somebody wants to make a motion to go into Executive Session? Nobody. Alright, so let's not -- so let's just give the mic straight over to the -- to the lawyer and Corp Counsel and have her tell us what -- what we're missing.

Ms. Richelle Thomson: Okay, so you have -- you have before you a request from the applicant regarding a Special Use Permit that has been approved at the last meeting. The question is as to condition no. 23 which was included in that approval. They've requested that you remove that condition in its entirety. So the -- there are questions that pertain to your legal rights, obligations and potential liabilities that we need to discuss in Executive Session. It's not the

kind of thing that I can address in open forum. As far as the actions that you could potentially take -- what's been agendized is the possibility that someone could offer a motion to amend your prior decision either by -- it would be up to the maker of that motion to -- it could be amended in part, removal of the condition or something other related to condition no. 23. So an amendment would need to relate to that condition because that's what's been agendized. If something else was amended, it would need to be done at a subsequent meeting.

This -- there was a question from one of the testifiers as far as what rule does this fall under? So this is under Robert's Rules of Order, and it's -- the procedure is a motion to amend an action previously taken or a motion to rescind. They're handled the same as a regular motion. Someone would make a motion, second, discussion and then action on that. So procedurally that's what's happening today. There's been a request, and you can choose to take action on it or not. But as far as this commission's potential liabilities or the issues related to that condition and to this request, we would need to discuss those in Executive Session.

Mr. Ornellas: Okay, so then I'll call for an Executive Session again -- a motion to go into Executive Session. Hearing none. Let's --

Ms. Thomson: The second part of this agenda item is whether the Commission wishes to make a motion to amend this condition no. 23 on this Special Use Permit. So you have the options since that is agendized. If you don't feel that you need the advice of legal counsel in Executive Session, you're not obligated to seek it.

Mr. Ornellas: Joelle, you want to make a -- you wanna say something? Go ahead.

Ms. Joelle Aoki: So let me get this clear, if we do not request for an Executive Session, you are not at liberty to discuss with us our options in open forum? Is that correct?

Ms. Thomson: I can discuss some of them, but I can't get into the nitty gritty of potential liability or the ramifications of that condition as relating to the Commission or individual members. I can't discuss that in open session.

Ms. Aoki: Can you give us a minute Mr. Chair?

Mr. Ornellas: Sure. Go ahead. Let's take a short little five minute recess. Thank you.

(The Lana'i Planning Commission recessed at 6:05 p.m., and reconvened at 6:08 p.m.)

Mr. Ornellas: Get back to business here. So, do -- what did you guys decide?

Ms. Shelly Barfield: I make a motion to hear what -- to go into Executive Session and hear what legal counsel has to say.

Mr. Ornellas: Can I have a second?

Ms. Aoki: I second the motion.

Mr. Ornellas: Okay. Any discussion, members? All in favor of going in to Executive Session please raise your hand? It doesn't pass.

It was moved by Commissioner Shelly Barfield, seconded by Commissioner Joelle Aoki, then

VOTED: To enter into Executive Session. -- MOTION FAILED
Assenting: J. Aoki, S. Barfield
Dissenting: K. Gima, S. Koanui Nefalar, J. Ornellas, B. Oshiro,
B. Zigmund
Excuse: S. Marlowe

Mr. Ornellas: Okay, so let's move on to the --. You go ahead and say what you can say in open session.

Ms. Thomson: If you don't feel that you have sufficient information to take any action on this, you could consider deferring it. Otherwise, the communication would be filed without action. Those are your choices at this point unless someone wants to offer a motion to amend the Special Use Permit, and then we can discuss -- we can discuss that further. But, right now, I don't have anything further to add.

Mr. Ornellas: Members, any questions?

Ms. Aoki: I believe today is 30 days since the last meeting, why are there no minutes from the last meeting? I was not present at the last meeting.

Mr. Ornellas: That's --

Mr. Clayton Yoshida: The minutes from the last meeting. Yeah, I guess they haven't been completed for distribution to the Commission. Under Chapter 92, they're required to be produced within 30 days after the meeting. We're still within that 30 day time frame.

Ms. Aoki: Isn't today 30 days?

Mr. Yoshida: 30 days from the June 18th meeting.

Mr. Ornellas: Let me ask Corp Counsel. Anybody else has any questions? Let me -- hang on here. I'm looking through our rules here. I saw something that I wanna ask her. Okay, it's 12-401-84, Reconsideration. Now, in his letter, it doesn't give anything about reconsideration or to change anything except for -- I mean, he doesn't use the words in our -- that are in our rules. But the closest thing that I could see was the 401-84, Reconsideration, and it says that -- let me read it first and then you can --. It says:

“Any person admitted to the proceedings as a party may file a written petition with the commission requesting reconsideration of the commission’s final decision and order or ruling. Such petition for reconsideration must be filed within ten days after service of said final order or ruling. Within thirty days of receipt of a timely filed petition the matter shall be scheduled for hearing, and the notice of the hearing shall be sent to all parties.”

Okay, so just that one -- that one paragraph says that it must be -- it must be a timely filed petition and ten days after our decision of June 18th. This -- the letter that we got from Carl Ball -- hang on let me finish -- the letter that we got from Carlsmith Ball was stamped July 8th, so that's over ten days. And I don't think -- I'm not a lawyer but I'm gonna have to depend on you -- I don't think this is the correct -- the correct avenue or the way to do a reconsideration by sending us a letter saying us to change 23. So, anyways, go ahead.

Ms. Thomson: That portion of your rules is -- it falls under Chapter -- hang on one second. So this is -- it's under Subchapter 5 of your rules, Post Hearing Procedures Where Intervention is Granted. There was no intervention in this application so that -- these chapters don't apply to the circumstance because intervention wasn't a part of this application or procedure. So what you're left with is the -- when you have, you know, one party it was not opposed of -- there's no formal intervention. You're left with falling back to Robert's Rules of Order which do allow a motion to be amended or rescinded at a subsequent meeting, not indefinitely. The applicant, if they receive a decision that's adverse, and if they want to take this action they can appeal it to Circuit Court. I believe they're appealing to you. Not appealing in that legal sense, but they're requesting of you to reconsider this permit condition and then -- you know, based on your action or if there's no action, they'll need to consider what their next steps are.

Ms. Beverly Zigmond: Could you please repeat that on the intervention piece? I don't see that being intervention.

Ms. Thomson: There was no intervention. No parties sought to intervene as a party in this application so there was no intervention. And if -- if someone did intervene, then the rules that the Chair cited would apply. So you do have this procedure for reconsideration and appeal, if intervention is granted. If it's not granted, if it's not part of the formal proceedings, then that part of your admin rules does not apply. It's something that -- this is a separate topic -- but it's something that you might consider changing your admin rules if you feel like it would be an appropriate path for both applications like this that don't have formal intervention as well as those that do.

Mr. Ornellas: So this is a proper way of letting us know that -- so this is just a letter asking us to do this. Members --

Ms. Thomson: Before we move on from this item, you know, I did want to stress that I think an Executive Session is proper here. As your legal advisor, I would really like you to have the best information that -- that I can give you so that you can make a decision well informed. I don't have to agree with your decision -- you know, like it, not like it -- that's not my role in your

proceeding. My role in your proceeding is to provide you legal advice and to help you apply the law to the circumstances of your applications, and to, to see where you are in relation to the law and the application, conditions. So that's my role here, and I can explain a great deal more in Executive Session regarding this request, regarding condition 23, and if you would like to hear that information I cannot provide it in open session. And your choices now would be to, you know, file, file the communication and take no action, or if you'd like to reconsider and somebody offer another motion for Executive Session you could try that route.

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Go ahead Bev.

Ms. Zigmond: We have twice failed in that motion to have an Executive Session. And with all due respect to our Corp Counsel, I believe it's our kuleana to call for that Executive Session which, twice, we have decided not to do. So, we appreciate your concern, but I remember that in the June meeting we did have that discussion with you. And so I don't see why we have to have a third time, when we already, twice, said we don't want it.

Mr. Ornellas: Bev, I'm not asking for Executive Session, so we're not having one. We've already done it twice. Alright, so, can I have a motion to -- to file this with no action? Because we've -- as far as I'm concerned, we made that our decision back on the 18th, and 23 was part of our decision, so can I have a motion to -- to -- to file this with no -- with no action?

Ms. Kelli Gima: I make the motion to file this, as is, with no action.

Mr. Ornellas: Second please?

Ms. Zigmond: Second.

Mr. Ornellas: Any more discussion? Seeing none, all those in favor -- wait a minute, go ahead.

Ms. Aoki: I still want to know what she has to say. I just want it on record. Joelle Aoki.

Mr. Ornellas: She's not going to -- she is not going to say.

Ms. Aoki: Right. I understand that, but I still feel that there is a lack of information in all avenues -- just to get the information.

Mr. Ornellas: Alrighty. We have a motion on the floor and it has been seconded. So if it doesn't pass, then maybe you can ask for a deferral maybe. And so we can defer until -- until next meeting. Okay, so let's -- let's take care of business at hand. Go ahead, discussion.

Ms. Aoki: Okay, so if there's no deferral, and there's no approval to -- to approve as is or no action, then what happens? Can you please tell us what --

Mr. Ornellas: No, we can -- we can -- let's -- we'll get there when we get there. Let's take care -- right now, there's a motion, we're discussing this motion about filing it with no action. No, we're gonna stick with this. Okay.

Ms. Aoki: But you asked for question, so I'm giving you a question.

Mr. Ornellas: You're too -- let's get through this motion, and then we'll go to the next one.

Ms. Aoki: Okay.

Mr. Ornellas: Okay. Then you can ask more questions about deferrals, and what's next after that. We go to jail I guess, so --. Alright, so, any more discussion on this issue? So the motion is to file as is, no action. All those in favor, raise your hand. Four. We need one more? So it passes. Okay, so next on our agenda --. Leilani, did you get that vote? Okay, you had Joelle, Shelly, myself. Oh, you're looking for the nays. Okay, I called for ayes, that's right. And so the nays are Joelle and Shelly. Okay. Sorry. So we're on to --

It was moved by Commissioner Kelli Gima, seconded by Commissioner Beverly Zigmond, then

VOTED: To file, as is, with no action.
(Assenting: K. Gima, S. Koanui Nefalar, J. Ornellas, B. Oshiro, B. Zigmond
Dissenting: J. Aoki, S. Barfield
Excused: S. Marlowe)

Ms. Aoki: So Mr. Chair?

Mr. Ornellas: Yes, ma'am?

Ms. Aoki: Are you going to answer my question now? Could Corporation Counsel please respond what happens with no action? Please, could you answer that question? I'm sorry, but I wasn't at the last meeting, there's no minutes. I -- I'm blind, so I'd like to know more information please.

Ms. Thomson: As it is currently, the Special Use Permit was approved as of June 18th with several standard conditions and several add on conditions including this condition 23, so that's the -- that's kind of the state -- the state of it. It has been passed, and now the applicant has the option of appealing to court.

Mr. Ornellas: She answered your question? Alright. Great. Okay, so let's move onto Item D, public hearing, action to be taken after the public hearing. No. 1, *(Chair Ornellas read the following project description into the record)*.

D. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.65 of the Maui County Code relating to Short-Term Rental Homes. (G. Flammer)**

The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Short-Term Rental Home Ordinance No. 3941.

Ms. Gina Flammer: Okay.

Mr. Ornellas: After she's -- after she's done, and then we will ask her some questions and then I'll open it up for public testimony, alright?

Ms. Flammer: Okay, you're going to do public testimony afterwards.

Mr. Ornellas: Yes. They're just waiting to hear what you have to say.

Ms. Flammer: Okay, no, that's great. I'm going sit just because of the way the room is configured. Is everybody okay with seeing? Okay. Well thank you for having me this evening. I know you received the report. There's a lot of information in it. I'm not going to summarize the entire report but I'm going to just give you some highlights. As background, I wanted to first explain that there's currently five different types of single-family dwelling visitor accommodations in Maui County. You can have those located in a hotel -- thank you -- you can have them located in a hotel zone. There we go. It can be legally non-conforming and that's what you hear when they're grand-fathered. They can be authorized by a Conditional Permit. It's a very lengthy process. And then in most zoning districts you can have a Bed and Breakfast (B&B) home and the owner lives onsite and gets a permit, or in 2012, the short-term rental home ordinance became effective. Lana'i reviewed the bill on June 15th, and then again in July in 2011, and then it went to the County Planning Committee and it spent six months, the Planning Committee did discussing and revising the bill. So a lot of work went into it, there's a lot of details in it.

What I wanted to first state is, you know, where does the bill apply? I said most zoning districts. However, I know this body has talked about the project districts. We talked about it three years ago. Did you want to have them in your project districts and if so we would need to write in special language for that. The decision at the time was, no, they did not want -- you did not want to do it. I talked a little bit to the community. There was really no push to do that. Therefore, it wasn't included in there. I did give you both project districts, what the current code is, and the ordinances that pertain to that as well as a map, too, just so you can take a look. You can see what the different permitted uses are. None of them talked about the short-term rental home use or allow it.

So why are we here today? We usually don't have bills where you come back and revisit them two years later. But Council, they realized there's a lot of details in the bill and it's kind of a new program with the short-term rentals when the owner doesn't live there. So they asked us to come back, two years, to come to you and ask how was your experience been. I did a report that talked a lot of details about Countywide, and then we have some recommendations and a proposed amendment.

So our first step as the Planning Department was implementing the ordinance. It's one thing to have a law past, it's another thing to put it into action. So when we do our computer system, our ITS programs, we're actually legally required to put this chart together and it kind of shows you the process. So part of establishing a brand new permit process we had to first decide what we wanted to do with it. We decided we wanted to be kind of the new model for all permits with the way we track information and the way we interact with the public. Our -- we also decided with the bed and breakfast home we learned that people didn't always know what was going on with the building of their home, so we adopted a no surprises policy. That's where we have everybody fill out all the information ahead of time so they understand what they need to do so we don't tell them later. We also set up a program where they can come in and meet with us so we do a lot of work over the telephone or via e-mail with people, and we really kind of walk them through the whole application.

I included a copy of the application. It's long. It's 14 pages. It's the opposite of many of our other applications. It gives you a ton of information. Just the first three pages are all on the process and how it's going to work. I usually tell people if you take the time, you read through, you'll be surprised at all the questions that get answered. We also developed a check list, so everybody could just walk through it. We, we call it the take home final. It really has that kind of feel to it. It's a little bit of a chore, but there's nothing in there that's too difficult overtime. There are consultants also that do it. I hear people when they first see the form they're very intimidated by it, and it helps, with the department, where we actually sit down with people and walk them through everything.

The other thing that Council asked us to do was create a home inspection form. They wanted to make sure the house was safe when it was built and they also wanted to make sure that it was still safe when they came in. So the department, we worked with the Department of Public Works and also some home inspectors, and we developed the application, the home inspection. It's a private application. It's an alternative through going through the County, and it lets the, the homeowner ahead time what kind of fixes they need to make with the house. I usually tell people your insurance agent is going to be really happy that you've gone through and brought everything up to speed. I included that in there so you can see that we've got some of the main areas that we hit. We kind of call them super safety areas.

So as of now our permitting system has been very successful. We've had, well, or actually more than 160 applications. I put this together a few months ago. We had a deadline in there that waived one of the requirements, and we learned people love a deadline. So on December 31st, 2012, we got 30 applications just on that day. So far 100 have been approved, four have been denied by the Maui Planning Commission, so we fully processed 104.

Staff resources. It has really been tremendous effort by the Planning Department, and the planners have really come through with this. It took about 50% of our current division staff time to implement the ordinance, get the application up, figure out how to process all the applications, and then actually handle the volume of it. 160 applications is a lot of applications. We've got about five full-time planners. I think we're down to four that are working on them that are doing it, so it takes a lot of time. A lot of time you spend with the applicant. The short-term rental home team was chosen team of the year in 2013 partly just from the volume and we also managed to keep our spirits up and have a good attitude towards the whole thing.

I included for you what are the caps, and where are we with them in the different community plan districts. Lana'i does have one. I know there are -- is someone working on the application and then also I know there's someone working on a bed and breakfast application right now. So here's where your one is. It's in Lana'i City. It's Jasmine House and that was granted in 2013. I wanted to let you know on Molokai, there's been nine permits issued. I went to Molokai last week. And then if you look at Maui, there's actually 90 permits that have been issued on the island of Maui.

Enforcement. We always talk about enforcement whenever we talk about short-term rentals. The bill didn't -- the Council put in there proactive enforcement provision. One is being an annual list that has to be provided. They go on the internet, they take a look at the advertisers. We've conducted two sweeps of the internet since the bill has been passed. I usually get asked what's the status of staffing. We've had a lot of vacancies. We've had a really difficult time filling them, but we're still working on it.

Part two, you also have with you a bed and breakfast report. That is part of the effort to align the bed and breakfast and the short-term rental home requirements. We'll go through that at the end of this if there's time. So the ordinance, the B&B bill, was passed at the end of 2008. The short-term rental home was modeled after that bill, so there's been a lot of refinements with it. We've had 75 B&B permits issued since it was first approved by the Council, and then I give you a little chart to show you where they are. Lana'i does not have any B&Bs right now. Legal, that has come in, that are permitted.

Hana Advisory Committee met in May. They have been reviewing a lot of applications out in Hana, both for the short-term rental home, bed and breakfast and also the State Land Use Special Use Permit that comes with it when you're on ag zoned land. They recommended eight different amendments, and you can see the letter. That's the first part of your report. I just wanted to let you know that one of things they talked about -- we spent a lot of time in Hana talking about this -- is they don't have anybody that's a qualified manager right now. There are no State licensed realtors that are able to be managers because there's no realtor brokers out there willing to take on the business. I know Lana'i has something a little bit similar. You don't have a lot of realtors out here that are interested in doing this kind of business. We understand that. So what --. Oh, and then I took this to the Maui Planning Commission on July 8th, and they came up with two different recommendations as well, and you can see what those are. If I can go back to Hana for just a second. What Hana decided to do is -- there's a provision under State law that governs realtors and it does allow a caretaker. That caretaker provision

allows one person to work for one owner because you can only have one permit as an owner it's really one person for one permit, one manager. So it wasn't the best that we wanted to get out of Hana, but it's the best we can do under State law. So I took it to Maui Planning Commission, then I took it to the Molokai Planning Commission on July 9th as well, and then you can see what their amendment was.

So at today's meeting, we're going to hear some public testimony just on this issue. And then you folks are going to ask me questions, make general comments about the report. And I'd also like to give, or go over, I grouped the different amendments into different categories just to make easier, so we'll pull out this and work through it when we're done with the public testimony and the questions. And then also I'd like to go over the B&B amendments if we have time. Well, we'll already have pretty much talked about them because it's bringing them into line with the short-term rental home, but you, you probably have some questions and comments about that as well.

And then in your packet, you have the letter from Hana in there, you have the report itself which goes into different things, and then I gave you lots of different handouts which I think you can see. The different district ordinances. I know there's questions about what the notification distance is so I did some maps for you take a look at. And then also the proposed bill as exhibit 33. And I did number it with the changes since there are so many, but I think going through, using the table will be the easiest for us. So if there's any questions, we can go that and then maybe the testimony.

Mr. Ornellas: Any questions for Gina, members? That's a lot of stuff that we hoped we would've got sooner before than, than just today. Nobody wants to jump up and say anything? Alright, I guess not. So, so let's open it up for public testimony. Gina, please. I'm sorry, Gail, please.

Ms. Gail Riener: Hi. Gail Riener, I've been a resident on Lana'i for 10 years. Last meeting, on June 18th, I came and presented some frustrations I've had with my neighbor across the street with an illegal, operating an illegal rental unit in their house. To give you some background, the owner has a -- I have their TMK right here -- they have a, a two bedroom, one-and-half bath house. Initially it had five residents in it, now, it currently has between 18 and 19 residents, five to seven days a week in that one facility, that one building. I presented my frustrations last week and was recommended to send a letter to the Director the Planning Commission. I'm sorry, Mr. Spence, and to cc Mr. . (inaudible) . . . and Mr. Chair, of course, which I did two days following the meeting. I received no response from Mr. Spence or Mr. . . (Inaudible) . . . After two weeks I called and left a voice mail message for Mr. Spence. Again, I received no response from him. I called a week later, again. I got transferred to Mr. Spence's secretary. I got a call back two days later from Jay at the Planning Commission who said he would get back to me. I still have not heard anything. So my frustration is we have a taxed -- we have a licensed -- what do you call. We have a two bedroom, one-half bath house, across the street from me. They did a 3,000 square foot addition. They have five main residents. They get one or two residents off and on. We've had six people coming and going from there, running their vacuum. Currently we have 12 every Monday at six o'clock, two vans pull up, 12 contractors get out, and every morning after they all leave. Sometimes they stay on the weekends. I did speak with

Sammy from . . . (inaudible) . . . on one of concerns, and he said he would to talk to Group Builders because they're the contractors who are occupying it. It's not just Group Builders, they're doing this for other people. But the coconut wireless says they're renting \$10,000 a month renting this unit out. It's not a licensed rental.

So, in all those paper works for short-term, long-term, there's nothing about people who illegally renting and abusing the system in this manner. So I wanted to testify my frustration with that. And in parallel, I have a copy the -- in parallel to that, I just wanted to bring up my frustration that we now have people adding to their houses as well, adding monstrosities, another 3,000 square foot under terms, and this is putting a strain on parking, water use, sewage use, traffic. When Pulama does buildings, they have to tell you how much water they're gonna use, everything. When these are done, they just get a permit from the County to addition. They don't say anything about, oh, we're gonna have 15 people living in these houses or anything. So I printed out for people who don't live in Lana'i, who haven't seen this compound going up behind the gas station. That is Group Builders. At some point they're gonna have a lot of people living in that house again, who are not family members, and this is starting to be a big problem in Lana'i. And I just want to share my concern at some point this issue needs to be addressed with these multi level, large dwellings being added on to our little plantation houses, and they're not, these communities are not designed for that many people. And at the last Planning Commission I was told that, quote, a legal family resident is nine people, and I haven't been able to find out if that is the ruling in Maui County and that is what they can talk to my neighbor about or is it unlimited, however as many people you want to put in a building. So thank you for letting me testify.

Mr. Ornellas: Thank you Gail. 'Cause does a -- Gina, you have anything, off the top of your head? I mean . . . (inaudible) . . .

Ms. Flammer: I wish . . . (inaudible) . . .

Mr. Clayton Yoshida: Yeah, we would note that Gail's letter to the Director was received on June 25th. It has been referred to the Zoning Administration and Enforcement Division of the Department who's in charge of zoning enforcement. I talked to the head of the zoning inspectors who said that he did talk to Gail and that the inspector, one of his inspectors, is working on her complaint as listed in her letter to Director Spence.

Mr. Ornellas: Slowly, but at least things are moving, Gail. I'm sorry it's taken so long. You know what as I was looking through our plan, our, the Lana'i Planning Commission rules, I came across a thing called adoption of Chapter 405, Lana'i Planning Commission rules relating to community design guidelines. So I've already talked to Clayton and we're gonna start working on, on this. So that way -- I mean, we may not be able to do anything about that monstrosity by Lana'i City Service, a new Hotel Lana'i, but further down the road we, you know, if we get any more of these houses, this city will look like crap, and we don't want that to happen, so, so these guys will start putting this stuff together for us to come, to come up with guidelines. And we hope that the community would show up when we have public hearings and stuff to give their, to give their, just add to the discussion, so that we get a good cross between the

community and the Lana'i Planning Commission. Thank you. Anyone else wanna testify? Mr. Green. You can use Bev's.

Mr. David Green: Dave Green, Lana'i resident. I was on the Planning Commission back in 2011 when this bill was originally discussed, and a couple of things I -- as this went through the approval process I think I testified at the time, or I commented at the time, and I think from the things I've read from the other planning commissions, what everybody's concerned about was that enforcement has always been the Achilles heal to any of these programs. And, I think that one thing that happened is this short-term rental home bill would not have passed if the County had not, or they I don't know who in the County process had significantly strengthen the enforcement rules, but I'm disappointed to hear that some of these positions have not been staffed yet, and it's going to ruin everything. And, and there's going to be a public outcry and people are gonna want this bill rescinded if enforcement doesn't happen. And I would go on to say that given the monstrosity that's been built, I have no idea how that could be built and it's not -- probably doesn't necessarily apply to this. But if somebody does something that's illegal and they're not required to tear it down because they didn't get the right permits, then I think that's a real, a real shame. Enforcement is critical. This will not work any where unless enforcement happens, and it happens easily and quickly. Thank you.

Mr. Ornellas: Good point. Thank you Dave. Alberta, then Richardson.

Ms. Alberta de Jetley: My name is Alberta de Jetley, and I'm speaking on behalf of myself. I hope that the commissions, the commissioners, will consider the care taking clause and allow personal caretakers for private homes, one home only, because we do have a shortage of realtor brokers who are willing to take on vacation rentals. My next door neighbor originally sold their house about five years ago, and they have had a long-term tenant in it, and it was managed by a, a realtor. It was a very uncomfortable situation for me because of the noise and the traffic and the late night parties. The present owner has asked me to be their caretaker if and when it becomes possible for them to do it as a short-term rental. If I were their caretaker I could monitor the house for them and keep it in good order. And there are several, a number of different short-term rentals in town that are very well run and are very, very needed, especially now that our hotel rates are so high. So I would like you to seriously consider, you know, making it a condition that you can have a caretaker if it is only one person for one house.

The other thing that I'd like to address is the vacation rentals and bed breakfasts. It seems as if whenever any one talks about bed and breakfasts they keep saying that Dreams Come True is not a legal bed and breakfast. Dreams Come True has served an important part in our community. It is a much needed service and I hope that the commissioners and the Planning Department will do everything possible to make sure that they, they are legally accepted as a bed and breakfast as they have served our community faithfully for many, many years, and offer a much needed service. Thank you.

Mr. Ornellas: Thank you. Richardson.

Mr. Richardson: Thank you very much. Chris Richardson. Just the point I want to make is

about any plan that comes forth before this commission has to follow a good model of sustainability, and this problem is a result of not following that model. That means the inputs into the proposed development weren't managed. They weren't managed closely enough so that unforeseen monstrosities, as quoted, occur. So if we managed our inputs, then this doesn't happen. Outputs -- pollution, somebody was talking about flushing toilets, and, and crime, and, and crowding, and traffic problems and parking. Those are, those are outputs. So that's why it is important, whenever something is brought before this commission is that it is really thought through, the inputs and the outputs. Then the production. What are we producing here? That the idea of producing something has to accord with it. It has -- whatever you're producing must, in the end result, have a positive effect in the environment, and the ecology, and our local community. Thank you very much.

Mr. Ornellas: Thank you. Anyone else? Gerry? Yes, ma'am. Please come forward. Please state your name.

Ms. Margaret Perry: I'm Margaret Perry. I'm a relatively new Lana'i resident. Happy to be here. I'd like to reiterate and to dovetail, I guess, off what's already been said about enforcement. But I'm coming from the side of being a renter in a short-term rental. When I first came to Lana'i, I was in a situation where the person does advertise regularly. When I got there I rented a room with a bathroom, my own bathroom. I had my own outside entrance. What I noticed right away when I went to open the windows, they came out in my hand. There was no track. There, there were just sit, sitting in there, so when I went to open the window, it just -- there was nothing to hold it open. Anyway, so two windows that did not open. Well you could open them, but they would slam shut. There was obvious big patch of mold on the ceiling in the bathroom. Very obvious. I mean, you didn't have to wonder what it was. It was mold. Okay. There was, after a day, I kept thinking what is this smell. What am I smelling, in the bathroom, under the vanity? So when I finally poked around under there, there was an obvious leak from the sink, and rather than fix it, they just put a big towel down there. So the towel was filled with mold, okay. The first time I went to blow dry my hair, in the bathroom, I plug in my dryer and nothing. And so I try both prongs, and nothing. My dryer worked fine before I came to this property. So I went out into the livingroom and plugged it in and it worked. So the plug was dead. And, the list just went on and on.

However, because I said something, by that Friday I was served with a 40-day notice to leave. I have never been asked to leave any where. And it was because I made too many complaints. So, enforcement is really important. These are not properties that are secret. These properties are put on Craigslist. They're posted on every bulletin board outside of the stores that we shop in, and wherever they can put them, they put them. And I did get out of the house because I also felt physically threatened. I most definitely felt physically threatened. And had it not been for the help of Alberta de Jetley who I ran into at the Cat's Meow, and then it was determined that where I was staying, it was well known that there was a problem and, yes, I did need to get out, and Alberta helped me do that. But people who, you know, we put our money down and we go there in good faith, we don't expect. Even the windows, I said, look, I'll put wood. Get me some wood I can stick in the window to keep it up. I'll do that. I never even had a key. I never had a key. You know these are just things that need to be dealt with, and enforcement

needs to happen because these are health and safety issues. So, I, I just ask that the Planning Department try to put more emphasis on enforcement. Thank you.

Mr. Ornellas: Thank you. In the State of Hawaii there is called the Tenant Landlord Code. You might want to read that before --. Because there's, there's avenues for you to follow and how to get compensated as well as get those things taken cared of. Yeah, understood. But the Tenant Landlord Code is, is very important to what happens to renters and that kind of stuff here on Hawaii. Thank you for testifying. And was there somebody else raising their --? Onaona?

Ms. Onaona Maly: Aloha. I'm Onaona Maly, resident of Lana'i. And I did -- I don't know if you guys got it -- I did do a written testimony, so I'm just gonna kind of sum it up. Just sharing, our lot is close to half an acre in comparison to the typical plantation home lot in the city, cottage and resident are fully permitted. So I'm here tonight because I believe the 500 feet notice is too much for our island. I would rather you recommend a shorter distance for us. And I'm also concerned about keeping the decision at the local level because I did see on the part of the changes that they wanted to take it away from the Planning Commission, and I think it's important to keep it local. But what I was worried about was having a Planning Commission added a much larger expense. So, you know, if we can work something out together and trying to make it more affordable and easier on the local residents. You know, can we do some kind of a Lana'i only type of, you know, application process, that perhaps that too can help all of us because it's strict. I'm looking at that whole list and it's a lot of work that needs to be done, and, I mean, I don't know, but I'm going to try my very best. So, again, yeah, keeping it at the local level is important. And I believe, well, I don't know, but the sign, four by four sign, seems kind of large for a small community. And it seems to be kind of a long -- it's like 95 days or more that you have to put the sign in front of your house to share that you are, you know, applying for a bed and breakfast permit. And going back to the 500 feet, I don't know if you guys understood what that meant, but it was, you would have to send a, a letter to everyone within 500 feet of your home. And not only that letter, so you send it returned receipt and all that kind of stuff, so that anybody that makes a complaint, I guess, I'm not sure who they bring it to. But then also if you do bring in front of the Planning Commission, again, not only do you have to pay more, but then you have to send another letter of the same type to the all the same guys you already sent a letter to. So that kind of seems kind of an extra burden for everybody.

And, yeah, there's no question B&Bs are critical to the island of Lana'i because not everyone can afford a Four Seasons rate, and we should make the process as easy possible for Lana'i for those who can provide reasonable cost alternatives for times when have reunions, weddings, funerals and other events that bring extended families home to Lana'i. And, I don't know, if you guys got questions, that, that's it. Mahalo.

Mr. Ornellas: Thank you Onaona. Any more testifiers? Yes, Winnie, please come forward.

Ms. Winifred Basques: Hello, good evening. My name is Winifred Basques. W, I, N, I, F, R, E, D. B, in boy, A, S, Q, U, E, S. Hi Lei. I've been on this island eons. Past 40 something odd years, and I seen the changes. But talking about your situation with that house, it's ridiculous.

Who when give 'em the permit? Who signed the paper? And how come they allow this kind projects come up in the back of the house, one small house. It looks ridiculous. I hate to say it, what is going on here? Don't they have inspectors to think about checking on the water, the light, the sewer, everything else, and yet they still building that monstrosity. It is ridiculous. It's stupid. Eon, think about anything else you can think in your mind.

Okay, now, there's another thing. The bed and breakfast. Who goes to hunting, on the island of Lana'i? You get hunters comes in. Okay, they ain't going to no hotel. Forget it. With the price they paying for the plane fare, the vehicle, the food, and they going to the hotel? I don't think so. And they ain't going to take no carcass over there because they going tell, out you go. Where are they going to put the carcass? That's why you have bed and breakfast, vacation rentals to help out the people. But excuse the word is that the other person he don't think about that kind stuff. The one, the landowner. I sorry to say. I did not work for Mr. Murdock or Mr. Ellison. I retired from the State of Hawaii for 20-something odd years. I seen these changes. But the thing is, is it going to improve the economy over here, or is it going to be lack of employment when everything goes down with the weather as well as the cost. Who is gonna pay for all this -- money? Who's going pay for it? Taxpayers. We going be taking care of them. And you know something about what Gail said and what Ron said, as right, it is true. You know, we live on this island. Okay, I going tell you folks, I've been this island 51 years. As a long time. And can tell you everybody where they live. And the thing is that when come to houses, you know, I mean, several years ago I went to this convention and had this person he claimed he's over here when he was with Mr. Murdock at that time. So I walk up, I tell, excuse me, are you working for Castle & Cooke? He say, yeah. Listen to this guys, two bedroom house, 3,000 square foot lot, \$400,000 and it hasn't been termite nor treated, no more nothing. But now when you have this new engineering coming around, I don't think so, man. Go back from where you came from. We don't need you anymore. Thank you very much.

Mr. Ornellas: Thank you Winnie. Gerry, you want to say something?

Mr. Gerald Rabaino: Gerald Rabaino.

Mr. Ornellas: I got, I got you on the clock.

Mr. Rabaino: I know. Okay, as far as -- I agree with everybody that these testimony on enforcement, okay. The bottom line is when you have an extension of a home. A permit is suppose to be displayed, number one. It's not happening. Number two, the building inspector, regardless where, what department they come from, they only come once a month. You, the County government, needs to send them over, more often, unannounced. That's where the problem lies for enforcement, okay? When a house from a senior that sells it outside, private home, they sell it outside, the senior going to move to Maui for home care whatever, they gotta classify when the agent sells that home, if it's gonna be a short-term rental or not. Not just move in, remodel inside, and hello, move in and next thing you know it's a short-term rental. Lalakoa III has three, okay. I live in Lalakoa III. Policeman go down there because you have a house that house three people, three individuals that's not complying with the noise. They come home late at night, not enough parking. So, my dear, your office should send more,

unannounced inspectors checking up electrical and so forth. Any house for real estate that turns over, that is sold by all these agents on Lana'i should really comply and tell you folks if the intention behind it is gonna be a short-term rental. Okay, again, I going back on the enforcement. We need them here, in our little small community because we having all this popcorn showing up all over the place. Thank you.

Mr. Ornellas: Popcorn? Alright, Gerry. Go ahead Warren.

Mr. Warren Osako: First of all I'd like to say that we do need these short-term rentals especially with the situation here with all the construction. Housing is in short supply. And I know at one point Pulama said that, you know, if they needed to they would shuttle people back and forth everyday, but it is putting a strain on the short-term rentals. I just had a group of family here for the weekend for a family gathering, 17 people. Luckily we were planned well ahead so we had reserved Dreams Come True, the whole house, and they gave us a discount because we're residents. But it's getting pretty bad in the, the rental area. You know, there's been cases of people kicking out their renters because they could get more from contractors, and I don't think Pulama kept up the promise of keeping the contractors out of the housing market. So I think, you know, we, we need to address that as a community. Thank you.

Mr. Ornellas: Thank you Warren. Anyone else? Alright, Ron? You're gonna say anything Ron? Do we need a vote? Alright, we'll close public. We're gonna close, we're gonna close. Yeah, we'll take a 10 minute break. We'll come back at 7:15 p.m. Yeah, we'll close public testimony and we'll come back and figure this out.

(The Lana'i Planning Commission recessed at 7:03 p.m. and reconvened at 7:16 p.m.)

Mr. Ornellas: Alright, let's come back to order. So, yeah, we have enough -- there she is. So, so when, this right here, is, is this accurate? Okay, so this is basically some of the changes that

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Ms. Flammer: What I did is in the report is a table with all of the changes. There's also the bill. But I thought it would be easier to group kind of the housekeeping ones, and then go into the more meaty one, than going through one by one. Yeah, so that's why I just grouped them and kind of tired to color code them. So you let me know if you're ready to dive in.

Mr. Ornellas: Yeah, we're ready.

Ms. Flammer: Okay.

Mr. Ornellas: Members, do we have any questions for Gina? I have a few. Go ahead.

Ms. Shelly Barfield: So this is just gathering information or is it final? Is it gathering information, right?

Ms. Flammer: No, this is -- it's -- there's a proposed bill that's attached with all that.

Ms. Barfield: Right.

Ms. Flammer: This time it's department initiated, which means it comes to you folks, and then it goes to the Council for review, so you will be, hopefully, voting tonight on the proposed bill. The proposal bill is in there, but these are the amendments that are in the proposed bill.

Ms. Barfield: So if we wanted to add anything, we could?

Ms. Flammer: Yeah, you can do that tonight. Yes.

Ms. Barfield: Oh, okay.

Ms. Flammer: So you'll see the last orange section is for me to write down anything that you want for Lana'i.

Ms. Barfield: Okay.

Ms. Flammer: Okay. Just so you guys know, Exhibit 33 is the bill itself that's Ramseyer. So this is the proposed bill in here. It's just kind of hard to read proposed bills so that's why I pulled it out that. If you have trouble sleeping I did number them for later on. Okay, so the first -- what I did is I grouped them. The first ones are the housekeeping types of items. Feel free to interrupt me, but I'll just kind of look to you to see if there's consensus on these. But I'd like to read them to you. Okay, so the first one is short-term rental homes, and we're talking about homes, not apartments or multi-family units. Only single-family homes. They are currently allowed in the apartment district, but they're not -- it's not spelled out so we'd like to just make it clearer and just actually write it right in. Okay, seeing no comments.

The next one is properties in the ag districts. When it was first passed, they were put in as a Special Use, an implemented Farm Plan was not written right into the code. When we started processing applications we send it to the State Office of Planning who said, hey, maybe you guys ought to think about a farming requirement and strongly recommended that you put in a farm plan. So applicants are doing that now. We just want to codify that process. And we'd like to move it from a Special Use to an Accessory Use as well.

Mr. Ornellas: Does that still -- will it require a, an agriculture?

Ms. Flammer: It, it requires an implemented Farm Plan, which means it actually has to be in the ground. Not just future plans on paper, it needs to -- we have an inspector come out -- our zoning inspector actually does it. The planner does a site visit as well, but the zoning inspector comes with the Farm Plan. It's a separate process. It's the same process you use for building a home if you're on ag land. Oh, the only difference with this is it needs to be implemented, which means everything needs to be in the group. 51% of the property has to either be in agriculture or conservation. And typically the conservation needs to be approve with the NCRS

conservation plan.

Mr. Ornellas: Okay.

Ms. Flammer: Okay, any comments?

Mr. Ornellas: So, so, and that is being -- what was Maui's and Molokai's response to this?

Ms. Flammer: We're doing it now, so they agreed with it.

Mr. Ornellas: So they agreed with the rationale?

Ms. Flammer: They did. We have talked about farming requirements over time. There was some discussions about that, but nobody -- currently there, in the bill, if you have \$35,000 or more you have, per income, per two years in a row, you can skip the implemented Farm Plan. We've never had anybody come in under that, so there was some discussions about changing that dollar amount or not, but nobody could really come to any kind of agreement, and everybody decided the implemented Farm Plan was working.

Mr. Ornellas: Okay, great. Yes, go ahead Joelle.

Ms. Aoki: So you mean, there were no seniors that testified on behalf that they may be living on a farm, on ag, and now have had to diversify to short-term home rentals or vacation rentals as supplemental income because they are no longer are able to farm the land?

Ms. Flammer: You know, we haven't had -- we had testimony with the bed and breakfast home on this in 2008. I remember because it was my neighbor, and he had had a tractor injury. Elderly, had to go to short-term rental. But since then I haven't heard about that. Typically if you are farming and the plants are in -- or if the plants are in the ground and they're being taken cared of, that will still qualify for your implemented farm plan.

Ms. Aoki: Or livestock.

Ms. Flammer: Or livestock. Grazing as well, pasture lands.

Ms. Aoki: So what is construed as 51% when you have livestock?

Ms. Flammer: The area --

Ms. Aoki: Large animals.

Ms. Flammer: Okay, so the area that would be enclosed for the pasture is included as part of that going into the 51%. If you have a gulch that's on farmable, and I mean something steep, that's farmable, that generally gets excluded. Now this is for the whole farm plan. So if you're building, it's the same process as it is for short-term rental.

Mr. Ornellas: Okay. Anyone else? Go ahead, continue.

Ms. Flammer: Another kind of clean up thing was there's property subject to a condominium property regime, and that's where it's divided up for ownership purposes, but the County still considers it a single lot. So how we treat those now is you can have one permit. So even if something's CPR'ed it's only one permit. You either have on house or both houses on there. It's how we're doing it now. We're recommending that we just clarify it.

Okay, the next item is a limited liability partnership as a qualifying ownership entity. As background when Council looked at the short-term rental home bills they recognized that some times properties are owned by trusts. We require that the applicant be a natural person though, but we're not making people take their homes out of their trust or we also will allow a family corporation. Everybody has to be related and they all have to be natural persons. We weren't sure how that was going to be as planners, but we've done a pretty good job at taking a good at people's trust document and being able to figure out who, who they are and if they meet the requirements or not.

The next housekeeping item is we had the application criteria in two different places. Some times that happens when you bring a bill to Council, and you talk about things at different times, and it gets inserted in different areas. Well, we're just recommending that we just move everything all to one, so when you get your staff report it's all in one area. Yeah.

Mr. Ornellas: Gina, on the, the LLP, how did --? You know, when you go through this, can you just kind of say what Molokai and Maui?

Ms. Flammer: Oh, yeah, I'm sorry I had a chart, but it was just too much. I'll let you know when they -- they recommended approval on all of these items. It's the amendments that I showed you in the power point when they didn't. So as I hit them, why don't I let you know.

Mr. Ornellas: Okay.

Ms. Flammer: What the hot issues are.

Mr. Ornellas: Alright. Great.

Ms. Flammer: Yeah, the chart was so busy when I had everything there.

Mr. Ornellas: Okay. Alright. Thank you.

Ms. Flammer: Okay, the next item, the inspection process. It's something that we came up after the bill was passed by Council. It's that home inspection process, as well as, we have another requirement showing us how the house is built. It's in the application so we're looking to put that in the law. The next item deals with just adding the word "renewal" into the title. It wasn't only compliance that dealt with the renewals. They just left that out.

The next item that we have was a one year renewal. We currently have a one year renewal, but the language is really unique. It, it was intended to be auto initiated by the Department, which it is, which is -- we don't -- our computer system, our KIVA system isn't -- we're getting a new one, yes, that will be able to track permits better and notify applicants when their extension is up. That will make it much easier. But in the mean time, we're looking to just make it one year renewal and leave it at that.

Ms. Barfield: So right now, the permits you have to renew every year?

Ms. Flammer: No, just for the first one.

Ms. Barfield: First initial?

Ms. Flammer: Yeah.

Ms. Barfield: You go, you go through this whole process?

Ms. Flammer: Yeah.

Ms. Barfield: And it's one time fee?

Ms. Flammer: Yes. No, it's per year. So you pay for your one year up front, and then when you come up for the renewal you can have an additional one year or an additional two years. Each year --

Ms. Barfield: You're paying?

Ms. Flammer: -- is \$200.

Ms. Aoki: You mentioned the KIVA system?

Ms. Flammer: Yeah.

Ms. Aoki: So when you're gaging, and I'm sorry this is actually off the point, forgive me, but since you mentioned that. When you look at your boundary for neighbor notification, when you use the KIVA system, I believe it has a, a glitch in the system that if, if you have a home that has parks, declared parks near it, it extends it, it extends that boundary to residential areas within a -- beyond the 500 foot radius. So in some areas of Lana'i City it could take up, it could consume almost three-quarters of the city.

Ms. Flammer: Is that Kiva or is that the Real Property Tax site?

Ms. Aoki: It's Kiva --

Ms. Flammer: KIVA?

Ms. Aoki: Because it's a tool that is utilized for short-term home rentals to gage the GIS on the map, mapping boundary of the 500 foot radius. So that, that can, I believe, the parks and public, public use properties are excluded so it stretches that boundary out further. So this would be not -- if you actually try to pick a house elsewhere on the map, you pick a couple of points of interest, you're going to see that it stretches that boundary out and can consume almost three-quarter of the city.

Ms. Flammer: That's good to know. We have other glitches as well. I didn't know about that one.

Ms. Barfield: Can I ask about the 500, you know, radius around? Why is it -- is it 500 for the whole County? Can we tailor it just for Lana'i and lessen that?

Ms. Flammer: You can make an amendment to do that. It was tied to other permits. We try to be consistent. We have 40 plus permits we administer so they try to keep the requirements the same. So it's that way with other Change in Zoning types of permits, so they just moved it over to the short-term rental. You could do that now with the amendment or -- well, there's two ways we can go about doing the bill. Somebody can make a motion to adopt the bill and you can go through and make amendments as you go along. Or, you can tell them to me, and I can read them back to you when you go to adopt the bill at the end.

Ms. Barfield: And the reasoning for the 500?

Ms. Flammer: It's because it's tied to the other permits, the Change in Zoning and other things that are already in the law, so they just figured for consistency. I printed out the map because I know it's been talked about on Lana'i.

Ms. Aoki: 500 foot radius can make a difference when you have very small lot sizes on Lana'i, and can be, can be up to 500 homes, or even 400 homes, which makes a difference at \$10.00 or \$12.95 for a certified mail return receipt for every person you have to mail to which can be construed up to \$3,500 is the way I did the math. Just for the mailing.

Ms. Flammer: Yeah I will --. I know, and if you happen to have a condominium next to you, yeah, it's, it can get prohibitive actually. I will let you know that the department read through the regulations more closely. You don't need the return receipt of the initial mailing. Those drop the price a little bit, but I'm happy to write down your amendment when you would like to talk about that.

Mr. Ornellas: And also we can make changes, we can, we can advise changes to this that is Lana'i specific, alright. So, if we want to go, if we want to change something, then it doesn't go for the whole County. It just stays with us, so --

Ms. Flammer: I would recommend keeping your Council member in the loop on your amendments too just so when it's time before Council you've got him bringing them up besides just the department. Okay, so I'll continue going through this. So the next one we go to, are

the non-renewals. Again, we're talking housekeeping items. It just cleans up the language that allows any kind of violation or non-compliance would be a reason for not renewing. The next one has to deal with tax filings. The current bill -- and this is picked up from the bed and breakfast -- it requires people to submit their tax filings each year to the Planning Department. We're just not staffed to review people's tax information every year. Other bodies, that's their job. And we do ask for it upon renewal to make sure people are paying. We ask for a tax clearance form actually. We let the State decide whether they're in compliance.

Our next item has to do with when you get your permit, you are required to send notice to your neighbors. The Council put in there that the entire permit letter is sent to neighbors. I don't think I -- we didn't have -- well, we have some B&B permit letters, but those are long. They list all the conditions. They can be eight, nine pages long, and we've learned they kind of confuse the heck out of the neighbors. So we're recommending maybe just a notification sheet or something to let them know who the manager is and who contact if there's a problem, and when the permit comes up for expiration.

The other thing that was in there is the Council thought, well, you know what, we need to just let people right in the area have this information of who the manager and all of that is. So they said adjacent to adjacent neighbors, and sometimes it's not until you start administering a bill that you realize, oh, maybe this doesn't make so much sense. We found that people miss it most of the time. They don't catch the adjacent to adjacent. They have to redo to those other people. And also sometimes those people outside the 500 foot list. If you're dealing with large ag lots, and it's the very time somebody gets a notices, and, oh my god what is this, you're up there, you know, you're pretty far away, so we're recommending it just goes to your next, your next door neighbor is the adjacent people.

Okay, and then there was just the housekeeping on the wording under compliance and revocation. And that's again just if you're not in compliance then that can be taken in consideration if a permit is revoked. So moving to the blue section, the big changes, and I know we'll talk about the first one, the department, we were asked to take a look at how to reduce -- well, how to reduce the schedule for the Maui Planning Commission. We took a look at how many permits they're seeing. If you combine the bed and breakfast, the short-term rental home, and the Land Use Permits to go for ag land, they're spending 67% of their time on these types of permits. So we suggested that we move -- there's a trigger, if there's another approved one within 500 feet that you come to the Commission for review. We've been -- we're going to revisit this again, but we've been recommending that it become, instead of an automatic trigger, it's a discretionary trigger by the department. I will tell you Hana didn't agree with it nor did the Maui Planning Commission. And it is the Commission's schedule so we respect that they're fine with, with reviewing all of these as well. So I don't know if you have any comments or not on that.

So how it works now is the first permit for a short-term rental home is administrative. The department can, if, if there are no protest provisions met or any other triggers, the variance is attained, if it's in the Hana area and more than four bedrooms, or if there's another one within 500 feet that's already approved. It's not just an operating one, they have to have a permit. So

if they meet any of those triggers, they come to you for the permit to be reviewed. And it's meant as a tool to take a look at the character of the neighborhood more than anything.

Okay, so the next one, our enforcement division requested that we add a couple of provisions. This is one of them. They'd like when there's any advertise -- advertising of a permitted one that it includes an address or a TMK, not just a permit number. Their concern is that other permit numbers are going to be used on there and they're not going to be able to match them up with the right one.

The next sign, the next one is the notice sign requirement. Currently the sign gets put up before the application is submitted, and then the sign is up until there's a final determination on the permit. We're little quicker with the short-term rental homes and everything now because they have to come in with all their paper work. Before we were seeing signs that would be up for a long time, before that permit was approved. What we're recommending now is that that notice sign coincide with the same notification period. It's 45-days that you send, the neighbors have to turn protest. And those protest can trigger a Planning Commission hearing. So we're recommending that the sign goes up for 45-days and that it goes up after the application has been submitted and reviewed by the department. We've had cases where signs have gone up and nothings ever come in and there's nothing we can really do about that. The sign just stays up.

The newspaper notice. So what happened when we were doing the bill and the noticing requirements is we, to be consistent, we tied it to other application notice process. That other process, it's 19.510, requires that the applicant put a newspaper notice in the paper once a week, in a newspaper that's published twice a week, that's Maui News for this County. It's at the end of the process, it before you go to public hearing. It can cost up to \$1,000. It's at the end of the process I find for applicants after they've already laid out all the other costs. Keep in mind that the department also publishes a newspaper notice of all of our hearings, so that would remain. And also, anybody within 500 feet gets a letter or a notice of the public hearing.

The next item deals with people holding multiple permits. We came to learn -- again, sometimes it's not until you start administering a bill that you kind of find your loop holes -- the current permit or law says that one person, one permit. We did come to find that people were finding a way around that by creating trusts with different trustees and just put one trustee on there. Some of the other -- so we're recommending that that be a trigger for a planning commission, for you need to see, then you can evaluate it. Sometimes you'll see a house owned by a husband and wife, and they may each own one. I've had a case -- it hasn't happened yet -- in a case, a father called about a daughter, or you may just have one individual and you'll take a look at all those different trusts. I will tell you that Hana decided to outright prohibit multi ownership, not even have it come for review, that it would just, they wouldn't allow it.

Enforcement. Enforcement is requesting that there be a one-hour notice before they show up for an inspection. I heard somebody talk about unannounced inspections. Again, sometimes it takes implementing a bill. If you give someone notice, sometimes you'll show up at the

property and things will look fine, and then you'll leave and they'll go back to what they were before. So, our enforcement division is asking that it be -- you get up to an hour to get ready for us to come in. So there has been some discussion. In Hana, they were concerned that the one-hour wasn't enough for people. If somebody's on the other side, the manager, they didn't want the enforcement officer disturbing the guests, so they were concerned about that. Maui Planning Commission taught that an hour was fine.

The next one, again, we're back to the advertising and our enforcement division trying to figure out what the advertising is and where the house is. They're recommending that any advertising has to have a tax I.D. or an address. So if they find something on the web you're in violation if you don't have the address or the TMK. They're just looking for more tools to make enforcement a little bit easier.

And then Joe Alueta came to you with a separate department amendment on enforcement maybe two meetings ago where you had to have the NOV, so I just included it in here in case. I mean, those bills will probably come at the same time.

Then if we go to the back page, I wanted to let you know what some of the provisions were that applied to other islands. The department had put forth that having six bedrooms on Molokai, instead of three, but the Molokai Planning Commission wasn't comfortable with that. They'd like to keep it at three. And then Molokai renewals, currently, they do have to renew every year, so we were recommending putting in the bill that it could be up to five years for those permits. And then Hana currently has a trigger and I mentioned it earlier where if there's four, five, or six homes that it goes to the Planning Commission. We were looking at the Hana Advisory schedule and we met a lot of times. We actually only had one that came in for more than four bedrooms, and he was coming in for another permit any way. We're thinking it might be one of the obstacles to compliance. Hana said that actually they would like to see every application, not just the ones with four or five or six bedrooms. So, we'll pass that along to the Council.

So that's where we are with the department ones. I know you have special circumstances on Lana'i, so we should talk about that.

Mr. Ornellas: Okay, members? You want to start Joelle? You have questions? Or comments or whatevers?

Ms. Aoki: I apologize. I, I wish I had more time to review this. I know there are many, many homeowners on Lana'i who would want to know this information and would want to have input on the process. I have some suggestions. I'm sure a lot of the commissioners, all of you have some suggestions as well. But personally I'd like to hear more from homeowners from Lana'i because everyone has a special set of circumstances. So, just out of curiosity, do we have to make a decision tonight with recommendations, or can we make recommendations and still leave it open? What are our options? So that way we can get more information back because I actually got three texts tonight saying, I didn't realize that short-term home rentals was tonight, yadda, yadda, yadda, and so, okay, fine. They didn't -- they were not aware of it. However, I think it's important for us because Lana'i has very unique circumstances to hear from everyone

because we have different types of lots, different types of homes. It's very different from from other islands. But for me, I'm ready to give some suggestions. That, that's just my share.

Mr. Ornellas: Gina, is there, is there a clock ticking somewhere?

Ms. Flammer: I should have Clayton answer this one I think.

Mr. Yoshida: There isn't a clock, like, with the Council resolution, the one that you dealt with last month. But, you know, the Council did say two years ago that they would like the Commissions and the Council to review the legislation in two years, so this is -- two year anniversary is May 2014. So, we'd like -- you know, as soon as possible we'd like to try to transmit the package to the Council with the recommendations from the various planning commissions. So there's no set time frame, but we would like to try to submit it to the Council fairly soon.

Ms. Flammer: I will let you know when we went to Hana -- I don't know if, if we're going to get through the B&B tonight. Okay, okay. That would be great. Thanks.

Mr. Ornellas: Any members? Anybody else?

Ms. Stacie Koanui Nefalar: I just have a question or clarification. The slide show, the power point you have for Molokai, it says keep the maximum number of bedrooms on Molokai as three instead of six. But on the, I guess on your, your handout, it says allow six instead of three.

Ms. Flammer: Yeah, we proposed that to Molokai, and they told us they would like to keep it at three.

Ms. Koanui Nefalar: Keep at three.

Mr. Ornellas: Okay. Go ahead Joelle.

Ms. Aoki: Okay, so, you ready for recommendations? I mean, I don't know how we're gonna --

Mr. Ornellas: I'm, yeah, that was going to be my next statement to you.

Ms. Aoki: Okay, so I'd like to recommend that we decrease the boundaries, and this is based off one comment from a community member who could not be here tonight that it should just be the adjacent neighbors.

Mr. Ornellas: For the 500 foot?

Ms. Aoki: Yes.

Mr. Ornellas: Okay. So, just the adjacent.

Ms. Aoki: Just adjacent which I don't know how to clarify adjacent.

Mr. Ornellas: That, that's it.

Ms. Aoki: Adjacent owners.

Mr. Ornellas: Just, front, back, side to side, that's it.

Ms. Flammer: Yeah, we call it adjacent or across the street in the current ordinance.

Ms. Aoki: So adjacent neighbors, which would decrease the notification boundary. To decrease the sign size to be more coherent to our, our environment here in Lana'i. Just because, I think, Onaona shared this tonight and another homeowner shared with me that signage draws people in from the street, and it also disturbs neighbors because the homes are so close together. Like, in a lot of neighborhoods you might share a driveway, or you might not have a driveway and you're like five-feet literally out the window to the next neighbor's home. And so it was just very obtrusive to have such a large sign. I'm not sure if it's –

Mr. Ornellas: It's six. What is it now? It's –

Ms. Aoki: Six by eight.

Mr. Ornellas: Six square feet?

Ms. Flammer: No, that the bed and breakfast sign is four by four. It's 16 square feet. It's hard to miss. I don't even bring directions when I do my site visit, I just look for the sign.

Mr. Ornellas: So on this one –

Ms. Flammer: But the --. That's what I'm looking at now. The short-term rental home sign is, is much smaller. I think it's two by two. I don't know if any of you saw Jasmine House's out. And I didn't -- I had -- when we first did it I had a picture of it. But, yeah, it's two by two. It's not nearly as large as the bed and breakfast.

Ms. Aoki: It was -- it still was large. I went by to look at. One of the other commissioners had mentioned it to me and I drove by, and it seemed very large with homes. Yeah, this is –

Ms. Flammer: Yeah, that's it. Yeah. Four tiles.

Ms. Aoki: One by one? Okay, and then the number of notices were, are extravagant. I guess if we decrease the notification boundary to adjacent that would take care of that.

Ms. Flammer: . . . (Inaudible) . . . public hearing is still tied to another requirement. It's –

Ms. Aoki: The caretaker clause to allow for one caretaker. Now, would that be one caretaker

for one home? Not a real estate agent unless it's the owner? So, let's say, or neighbor, right?

Ms. Flammer: Not right now. It can only be a licensed relator. The caretaker allows one person to care take for one owner. So one person could basically only be a caretaker, in this case, for one house. Yes, thank you. And I did include in -- at the very end of your packet are the real estate laws. We did our best out in Hana to try to figure out how to make it work for the community. But the State law is what it is and the best we can do would be the caretaker provision. We talked about changing the definition of a hotel, but that would have to be done at the State level to include the short-term rental.

Ms. Aoki: Is this separate from -- in the case that the owner is not managing, right?

Ms. Flammer: Yes. That's in case the owner doesn't live within 30 miles. Keep in mind, the owner can also have a family member manage for them. That is allowed as well.

Ms. Aoki: Thank you.

Mr. Ornellas: So your definition of caretaker and property manager are different. One is managed by the State as a property manager?

Ms. Flammer: No, the property manager is the property manager. They would be considered a caretaker under the State law which would allow them to be a manager without a real estate license. We used the word property manager. The State law uses the word caretaker.

Mr. Ornellas: Okay, so -- so as far as being Lana'i specific. What would, what would basically what -- who -- how many -- we would have caretakers.

Ms. Flammer: Yes, but that caretaker could only work for one property, for one owner.

Mr. Ornellas: Okay, and then --

Ms. Flammer: That is due to State law.

Mr. Ornellas: So what if somebody, what if a caretaker has more than one house?

Ms. Flammer: We wouldn't, we couldn't accept the application.

Mr. Ornellas: Okay, so how -- instead of making them criminals how do we make them compliant?

Ms. Flammer: Well, we spent eight hours in Hana.

Mr. Ornellas: Is that, is this State law or County law?

Ms. Flammer: Yes, this is State law. The caretaker provision is State law. State law says that

if you are not in the State of Hawaii you must designate somebody as your property manager. That property manager must hold a real estate license. There are some exceptions, and one exception is a caretaker who can act in that capacity but they can only do it for one owner. So that owner could have multiple properties, but they're only allowed to have a short-term rental permit for one.

Mr. Ornellas: Okay. Alright. I guess we've got to live with it.

Ms. Aoki: Can I continue Mr. Chair?

Ms. Koanui Nefalar: Wait, question. Can the caretaker -- does the caretaker qualify if they're a relative?

Ms. Flammer: Oh, so we were able with County law. It does say that the property manager can be the owner if they lived within 30 miles or it can be a family member that also lives within 30 miles can be a, the property manager -- instead of the realtor. Thanks. And it's a pretty liberal definition of family too that was written right into the law.

Ms. Thomson: And just -- and the caveat is that regardless of what the County law says the State law as to real estate licensing and all is, you know, trumps.

Ms. Flammer: The thought was that unless that having it be a relative you're unlikely to come across somebody with multiple properties unless they have a lot of different relatives that own. But we haven't, we haven't seen that yet. It's worked so far.

Ms. Gima: I just need to get some clarification. So let's say there's a family and -- a husband and wife and they're married and they have a couple of properties that they would like for short-term rentals, so one gets permitted and the wife could be the caretaker for that property, and they get another permit and the husband could be the caretaker for that property?

Ms. Flammer: Yes. And they would, they'd also be able to be the permit holders in that case. They'd serve as both.

Ms. Gima: Okay. Okay.

Mr. Ornellas: I remember this discussion in 2011, and we were not, Planning Commission was not in favor of a 30 mile because that puts, that puts the property, caretaker or manager, you know, at the beach in Kaanapali.

Ms. Flammer: Yes, we did talk. You have a good memory. Yes.

Mr. Ornellas: Okay, so I think we changed it. I think, I think the, I think we were looking to change to 10 miles.

Ms. Flammer: It says driving. That's how Council dealt with it. It's driving miles. It's not as the

quail flies or the boat goes, it's driving.

Mr. Ornellas: Okay.

Ms. Flammer: And that was because of the comments made from the Lana'i -- yeah. Okay, so I have three so far that we could --

Ms. Aoki: Okay, and then -- one moment. Okay, let me go down the list. We did adjacent.

Ms. Flammer: You guys going to do all of the voting at the end?

Ms. Aoki: Yes.

Ms. Flammer: And all of the discussion now?

Mr. Ornellas: Yeah.

Ms. Flammer: Okay.

Ms. Aoki: So, can I go to your, your spreadsheet?

Ms. Flammer: Yeah.

Ms. Aoki: Number 18 I would like to request if everyone is in --

Ms. Flammer: Tax filings? No, which one?

Ms. Aoki: The tax filings.

Ms. Flammer: Oh, okay.

Ms. Aoki: Omit the tax filings.

Ms. Flammer: Oh, you want us to review them every year?

Ms. Aoki: No.

Ms. Flammer: Oh, the amendment is actually that we don't have to review them every year.

Ms. Aoki: Yes. Yes. I support that. Okay. And then in support of neighbors getting just the notification sheets, our adjacent neighbors rather than the full application. And --

Ms. Barfield: . . . (Inaudible) . . .

Mr. Ornellas: This is just, this is just the changes.

Ms. Barfield: . . . (Inaudible) . . .

Mr. Ornellas: Just the changes. Yeah.

Ms. Aoki: Okay.

Mr. Ornellas: We support a lot of things, but let's work on change for now.

Ms. Aoki: Alright. So, the size of the home –

Ms. Barfield: . . . (Inaudible) . . .

Ms. Gima: . . . (Inaudible) . . .

Ms. Aoki: Three.

Ms. Flammer: No, you can have up six. It's only Molokai that requested it be less.

Mr. Ornellas: Six bedrooms.

Ms. Flammer: Six bedrooms. And that's property wide. So if you have an ohana that includes the ohana.

Ms. Barfield: Could it be, could it be because of the parking? Does it require parking?

Ms. Flammer: The parking isn't -- the parking for the short-term rental different from the bed and breakfast, is -- your size -- you're two stalls for the house which is what's required when you build a house. Council did say if you have four, five, or six bedrooms, you just need one extra. But the requirement is you rent the entire house out, not room by room. I know you guys have hunters different than every where else, too, that might be some thing you want to discuss. So right now when Council changed the, reduced the parking requirements in the original bill they added on a clause that says the entire house must be rented to one. And the thought was you're renting it out to families. It's too hard to manage multiple people if the owner doesn't live there.

Ms. Barfield: So it's one parking stall.

Ms. Flammer: It's two parking stall for one house. Yes. Unless it's an accessory dwelling, ohana unit.

Ms. Barfield: On property, not County right of way?

Ms. Flammer: Yes. It's actually -- yeah. And I know that's hard here. We spent a lot of time in 2011 talking about different, yeah, how to deal with the parking.

Ms. Barfield: Yeah, because our streets are substandard. They're not -- there's no curb side, there's no nothing.

Ms. Flammer: Yeah, the bill doesn't allow parking on the street for reasons like that.

Ms. Aoki: And so we can't make any modifications or suggestions specific to Lana'i because of the substandard roads?

Ms. Flammer: No, no. This is a County bill. You have amendments that would --

Mr. Ornellas: You want to change it just put it out there.

Ms. Barfield: So if we change it and we request that amendment then the cops won't be putting tickets on the cars then, right?

Ms. Flammer: Oh, we can't change the --

Ms. Barfield: Enforcement.

Ms. Flammer: The, the -- we can't -- the criminal code.

Ms. Barfield: But that's the whole part, that's the whole point of it because, you know, they're parking. Hunters are parking and they come back and say, oh, we got tickets on our cars because we were parking on County right of way.

Ms. Flammer: It's a different, it's a different set of regulations and those are based on health and safety and getting the fire trucks through the roads basically. You could make your own parking requirements different, but they still wouldn't be allowed to, to park on the street. If, if you don't allow street parking.

Mr. Ornellas: Are, are you finish?

Ms. Aoki: I think for Lana'i we should allow multiple people in one home due to the limited housing availability. But we do need to set a max of maybe 12?

Ms. Flammer: Right now it's two because the maximum for, in the bill --

Ms. Aoki: Because you're looking at children too are considered bodies, right?

Ms. Flammer: How it works now is it's two persons per bedroom is your maximum occupancy of the entire dwelling. So if you have three bedrooms you can have six people, maximum, in, in there. We do have a department policy that says children under two -- we went with the airline policy -- don't count towards that, but over that age they do.

Mr. Ornellas: So and this is already, this is already written?

Ms. Flammer: It's the current code.

Mr. Ornellas: It's the current code.

Ms. Flammer: Yeah.

Mr. Ornellas: So, so let's, let's bring up the, this monstrosity. So they got a permit for 12 rooms. I mean, this, this is a huge house. I don't know if you've seen it, but Clayton has.

Ms. Flammer: No.

Mr. Ornellas: But there, there are, there are, there's gotta be at least a dozen rooms in this house. So they can actually put 24 people in this?

Ms. Flammer: No, the current bill has a maximum of six bedrooms that you can use for short-term rental home use, so you'd be looking at a maximum of 12 people there. And they could only come in for six bedrooms. Unless they wanted to come in for a Conditional Permit. It's a completely different process. That goes to you and then the Council. And you we could take a look at something outside of the short-term rental home.

Ms. Aoki: I think we should just -- I suggest we leave it at six bedroom, unless somebody else has a suggestion. Leave it as it is?

Mr. Ornellas: Yeah, we'll just leave it as it is.

Ms. Flammer: Did you want rooms to be rented individually or you're fine?

Mr. Ornellas: Yeah. We're gonna keep it that way for, for the hunters because we do have people that manage.

Ms. Flammer: That would require an, an amendment to the current code. It says right now they have to be rented to a single family.

Mr. Ornellas: So we can't change it now?

Ms. Flammer: Oh, yeah. That's what I'm saying, we just need an amendment.

Ms. Koanui Nefalar: Chair?

Mr. Ornellas: Go ahead.

Ms. Koanui Nefalar: Six bedrooms is a lot if for a short-term rental, you know, with one family, six bedrooms. And, and, you know, you gotta consider because our homes are so close together, that kind -- the parking, the traffic coming in, it might disturb the other homes.

Mr. Ornellas: Okay, what would you recommend then?

Ms. Koanui Nefalar: Four?

Ms. Aoki: Then we have four people that are currently renting short-term rental that would be excluded because I know of four homes on Lana'i that have six bedrooms that they made into one unit because of the law –

Ms. Koanui Nefalar: For short-term rental like one family would come and rent our six bedrooms?

Ms. Aoki: No, but we're saying that we're going to do it individually right where you can rent out to different people. That's what we were also saying.

Ms. Koanui Nefalar: Like an apartment?

Ms. Aoki: Like for hunters you could have two rooms for four people, or three rooms for another group of four people because of the lack of housing. But, these homes that have six rooms in it were technically they built an ohana on but now that ohana wall has been taken out to make, to be in compliance with it being one unit. So I think we, if it's preexisting and we say, no, we want to go four, we would exclude these four families. And then if we said individual rooms, then they could do the individual rooms like they may be doing now.

Ms. Koanui Nefalar: So four families, how close is the neighbor? You know, those, those four homes you're talking about, how close is their neighbor? I mean, is their neighbors okay with having –

Ms. Aoki: Well, that's why they would have to give that notice to the adjacent neighbor.

Ms. Koanui Nefalar: -- that many people?

Ms. Flammer: When your hunters come, do they come as one group under one rental agreement, or do they come separately?

Ms. Aoki: Most come under one group, under one rental agreement, in the case that they have two or three hunters that can't find accommodations because people have -- they're, they're saying they only want to rent the house to one group at a time.

Ms. Flammer: Well, when we say one group, we mean one rental contract. We don't mean you don't have to be related -- come on vacation together or if your work is together. But it has to be one rental contract.

Ms. Zigmond: Mr. Chair? I agree with Stacie. I think six bedrooms are too much.

Mr. Ornellas: Is there a grandfather clause to this?

Ms. Flammer: Not currently, no.

Mr. Ornellas: So if we make that decision, less than six, then we turn those four houses noncompliant.

Ms. Flammer: No, they just wouldn't be allowed to come in for a permit to become legal.

Mr. Ornellas: We'll just do what we do now. I mean, isn't the, isn't the whole thing about this is try to bring people –

Ms. Flammer: Into compliance.

Mr. Ornellas: Make them compliant?

Ms. Flammer: Uh huh.

Mr. Ornellas: So why are we trying to say that you can't be compliant if you have six and they changed, we changed the rules before. There's got to be way of bringing these people into, keep them compliant.

Ms. Aoki: Could -- Mr. Chair, if I could please? -- could we say six bedrooms constructed prior to a certain date. Because then we couldn't have anybody else new coming in, right, that didn't have it constructed prior to that date. That way we would be able to include everyone and those who are building these monstrosities could not come in.

Ms. Gima: . . . (Inaudible) . . .

Ms. Aoki: True. But I'm just, in terms of –

Ms. Flammer: There's another clause that effects this too. There's a clause in the bill that says the home has to be built for five years. Before it can come in. There's a clause right now in the short-term rental home bill that says the home must have been built for five years. Council inserted that to, as an effort to protect residential housing. They didn't want new construction going for short-term rental use. They wanted new construction for long term rental use. I will tell you Hana built on that and said not only do you have to have it built for five years, you need to have owned it for five years.

Ms. Koanui Nefalar: Chair, I have a question.

Mr. Ornellas: Go ahead.

Ms. Koanui Nefalar: So right now, currently it's six bedrooms.

Ms. Flammer: Yes. Uh huh.

Ms. Koanui Nefalar: So those four people if they are not compliant, what makes you think they're going to be compliant after we, after we say six or four, right?

Ms. Gima: Yeah, I think this specific topic is a hard one. I mean, I think we all recognize that there is a need for short-term rentals that have a variety of rooms due to housing issues, due to being able to supplement people's income especially during hunting season. But, yeah, I mean, if you have the max amount of rooms and all these people in the house, like, you know, Gail was talking about earlier, extra cars, extra noise, extra traffic, I mean, it's hard weigh out the pros and cons for this.

Ms. Barfield: If we leave it at six could there be a condition where if you come in and inspect it if the house, the streets are too narrow, you can limit to the number of bedrooms? Can you do that?

Ms. Flammer: Well, they're currently not allowed to park on the street. You'd have to alter that. I don't think the Planning Department would have the expertise to come out and take a look at the road width and determine.

Ms. Barfield: I mean, everybody know that the roads are narrow already. The planners approved the permits prior them, they should know what our streets are, you know, the width and everything. So, I mean, if -- let's say you get a 3,000 square foot property, and they have only two bedrooms. I mean, you know, you can't go for the six bedrooms. But if somebody comes in with the six bedrooms, then you would have to evaluate the parking, you know, the distance between the neighbors and see the noise. I mean, could you do that?

Ms. Flammer: We do that now. However, if they meet the requirements and they don't trigger -- a lot of times when you have problems you get protest and then they go before the Planning Commission. And then you guys look at it on a case by case decision and decide.

Ms. Barfield: Does it come to the Planning Commission at this time for all permits?

Ms. Flammer: All bed and breakfast permits currently come, and then if you meet -- it can be approved, the short-term rental, administratively unless you meet one of the triggers. One of the triggers is if another one is, a permitted one, is within 500 feet. I know Lana'i City is not huge. You would see it in that case. You'd also see it if two adjacent neighbors or one across the street protests, or there's another protest provision of 30% and there's more than 40 lots, or if there's 15% for under 30 lots, it would come before you.

Ms. Barfield: So can we keep it whereas if there's a permit that comes in for short-term and B&Bs that it does come to Lana'i Planning Commission?

Ms. Flammer: Oh, you mean all permits?

Ms. Barfield: All permits.

Ms. Flammer: Yeah, you can make a -- Hana made that recommendation.

Ms. Barfield: Yeah, I would like to make that recommendation that all permits come to the Planning Commission.

Ms. Koanui Nefalar: Chair, I have a question regarding the bedrooms. If we limit it to four, can we say anything over four come for a special consideration?

Ms. Flammer: Yes.

Ms. Koanui Nefalar: Or can we override anything over four depending on -- you know, we can use their lot size, their address, and their road size and all of that as consideration?

Ms. Flammer: Molokai had a similar discussion to what you're having now. They decided for the bed and breakfast, instead of keeping it at three, they would like to, they would like to review applications that had four, five, or six bedrooms, and decide on a case by case difference. It sounds like that's what you're talking about but it's for short-term rentals. That could be -- that's just like what Hana has. You want me to put that on the list and read it back to you at the end?

Ms. Aoki: Now I didn't, I don't have -- I don't know if you have it any where in this material but is there anything in the material for permitting, that the information for permitting, that says anything to the building codes because for some people these homes are very, very old and --. It's old.

Ms. Flammer: Yeah.

Ms. Aoki: And, you know, I mean, I had one homeowner that expressed to me that every year her revenue is, is outside of her mortgage payment -- because she has a mortgage payment -- is so little that she, it takes, it took her literally three years to save to buy the windows. And then three years to save to do the floors. And so this individual is working really hard to keep the home because it's a home that's been in the family for many, many decades. And so is there anything in the, in the requirements that you might want to call to our attention that we may want to look at or we -- that we can have the ability to look at?

Ms. Flammer: Well, let me tell you how it now and then you can kind of decide where you would want to go with this. So right now what Council told us is they want the house built safe, it has to be built to code, and then they want to know the house is still safe. So we have two different check list items on our application. The first one asks for proof that the house was built to code. Now, if it's built before 1958, and we do have some older houses, you don't have to meet the County Code. This is before Statehood, that's the rule. However, the second one, still safe, we have two ways you can meet that. You can go through a Public Works Miscellaneous Inspection through the County -- plumbing, building and electrical -- or you could do the private home inspection. And I included that form in there. It's what I talked about during the presentation. And the form goes through kind of super safety items. We take a look at railing size. Things that have changed over the years. We started with the most recent building code

and we just pulled some of those areas. We want to make sure that the window can open and they're the correct size so that there's a fire somebody can get out, the fireman can get in. We want to make sure that the stairs are the correct height so somebody doesn't fall downstairs. We want to make sure --. And they're all in there. I'm just kind of hitting on some of the bigger ones. The electrical outlets are safe too. The inspector takes a look at that. They want to make sure that the railings are more than the four inches or more. Some of the older homes they were wider. And you go through the home inspection form, and the nice thing about that is the person can go through that prior to coming in. They know ahead time where their house is at and they can decide, then, do they want to put the money to fix it or not.

Ms. Aoki: So with the home inspection my homework, I found that it costs, the cost to the homeowner to bring someone who is licensed to do the home inspection to Lana'i was approximately \$2,700.

Ms. Flammer: You might want to shop around. I don't know if there still is. There was somebody that was willing to travel at one point and charge much, much less. We do require it be an ASHI Certified, an American Society of Home Inspectors. There is a list on the website. We have a link right in the application. I don't know, this other person is currently not doing inspections for just a little while. I don't know if any of the other ones will travel. I think on Maui, the inspection's any where from \$350 up to \$700. You could also go with the Public Works, and I think that is -- I feel like it's \$80 an inspection. And they will come out and do it for that price. Yeah, the homeowner has to pay for the improvements though.

Ms. Aoki: So in reference to the cost with the inspectors, are there any other costs that we might want to be aware of besides the certified mailings, the permit fees, the home inspector cost, the publication. Oh, the publication fees, can we say that for Lana'i they would publish once or twice -- what do you folks think? -- in the, in the newspaper, in the Maui News or wherever. What would you --?

Ms. Barfield: Lana'i Today.

Ms. Aoki: Lana'i Today, once a month.

Ms. Flammer: Well, we're recommend, we're recommending that only the department has to publish in the newspaper and we, we bear the cost of that. We're not -- we're recommending we take out the provision that requires the applicant to do it three times. That was one of the pricier -- it is one of the pricier requirements to fulfill. That's if you go to public hearing, you'd have to put it in the newspaper. The applicant does in addition to the department. Only for the public hearing. Yeah. You're, you're changing your, your notification from 500 feet to adjacent neighbors will reduce mailing costs. The application fee itself is \$650. Yeah, the initial. Then if you trigger a public hearing, it's another \$500 for the hearing, and then it's the newspaper notice. So at the end of the process, some people often, you know, they'll have to shell out \$1,500.

Ms. Barfield: Why would you trigger a public hearing?

Ms. Flammer: We have a couple of triggers for that. One, a public hearing is triggered if there's another one within 500 feet. The public hearing means it comes to you for review and you're the approval authority. So the triggers are if there's another permitted one within 500 feet, if you have two adjacent neighbors or across the street protest it comes to the commission. And Maui Planning Commission has seen this a number of times. If -- there's other protest provisions. If 15% of your neighbors complain it comes to the commission for review if there's 30 lots. It's 30% if there's more, if there's 40 or more lots. If a variance was obtained -- we've only had that once for someone who received a variance for multiple kitchens. Or if you're at Hana and there's three or more bedrooms. Those are the current triggers for a public hearing.

Ms. Gima: I think for Lana'i you have to take out the -- if the trigger if another one comes up within 500 feet because it's such a small community there are going to be quite a few within 500 feet so I think that needs to be taken out. Because if not, everybody's going to public hearing quite often.

Ms. Flammer: Yeah, I've gotten phone calls about that. Once they hear that, it kind of just -- I feel like, am I going to see an application.

Ms. Gima: Like I can see if like your neighbors are like protesting and totally against it going to public hearing, but not when another short-term rental pops up 500 feet. Because 500 feet on Lana'i well --

Mr. Ornellas: We get, based on, on the, one of the exceptions that we're gonna vote on is that we see all permits.

Ms. Flammer: Yes.

Mr. Ornellas: So, it still comes before us anyway.

Ms. Flammer: It would come before you, but it wouldn't be the additional \$500 fee. Is that right Clayton? It's just rolled into the whole thing when it's --. Like for initial B&B we don't collect the extra? It, it just goes. I think it's all wrapped into one when it's -- without a trigger it automatically goes?

Mr. Yoshida: For B&Bs? Yeah, I guess for B&Bs they automatically go for Molokai and Lana'i.

Ms. Flammer: So there's no additional public hearing fees for those application? So if Lana'i were to want all applications to come before them, the applicant does not pay the extra \$500 for a public hearing? Is that correct?

Mr. Yoshida: Well, the applicant would pay the cost of the notification to the neighbors. I don't think we charge the extra \$500.

Ms. Flammer: Yeah, that's what I thought.

Mr. Yoshida: Yeah, because it has to automatically come before them anyways.

Ms. Flammer: Right. Okay.

Mr. Ornellas: Okay. So, can you make sure that, that \$500 is, is taken out?

Ms. Flammer: Yes, we just clarified that. Yeah.

Mr. Ornellas: Yeah because --. And if, and if we're gonna vote on everybody comes before us, I mean, it's not like we're gonna be holding meetings every week to go over all these permits so -- since we've only got one so far.

Ms. Flammer: You'd be surprised.

Mr. Ornellas: Well, I guess when we get to that point we can have that discussion about maybe changing the rules again. But, for now, I, I agree with Shelly just everything, every B&B, every, every short-term rental comes before us.

Ms. Flammer: Do you want me -- not if there's four, five or six bedrooms, just all.

Mr. Ornellas: All. That way we get them all. And we can ask all the questions we want.

Ms. Flammer: Well, you'll review each one on a case by case basis.

Mr. Ornellas: Yeah, we're not dealing with -- we're not dealing with a 100 at a time so --. Any more Joelle? You're okay? Thank you. We haven't gotten to the bed and breakfast yet.

Ms. Flammer: . . . (Inaudible) . . .

Mr. Ornellas: Yes, we've got to vote on what we've done for short-term rentals. So, anybody want to add to --? No, I'm sorry. You know what, yes, go ahead. Come and, come and ask your question because I'm not, I'm not familiar. You have to do it on a mic. Just tell us who you are and --

Ms. Eppie Agtarup: My name is Eppie Agtarup, and I've lived -- I'm a Lana'i resident for, more or less, 40 years. I, I just need a clarification about if husband and wife owns several properties and they would like to apply for a short-term rental, I kind of heard only one, or like two? One for each spouse. Is that -- I want a clarification on that.

Ms. Flammer: Yes, thank you for that question. We did talk about. So, currently what the bill says is that one permit per person. So, if you have a couple that owns multiple properties, the most you can come in for would be two. The -- one for the wife, one for the husband. The Planning Department is recommending that in cases like that when the second one comes in that it be reviewed by the local planning commission.

Ms. Agtarup: . . . (Inaudible) . . .

Ms. Flammer: You have to --. We've had that question. They have to be legal age, so they would have to be over 18, and they would have to hold title to the property. Their name would have to be on the deed or in the trust as well.

Mr. Ornellas: But, if, again, if we handle all the permits, we can ask her questions like that, and then if we feel confident that, you know, she does have three, four houses that they both can do it and they've --

Ms. Flammer: Well, here's the thing is you can't come in for the application if you already have one. You can only have one. You'd have to change the rules so that you would review other cases. Right now it says only one person may hold one permit.

Ms. Gima: But they could have another caretaker, like a relative caretaker, within 30 driving miles.

Ms. Flammer: No, the permit holder has to hold legal title to the property. No, no, not by themselves. We have cases where there's families and, and --. We have not defined the percentage of ownership at this point. And again, this is done in the name of protecting residential housing, and not having it be an investment vehicle.

Ms. Aoki: So, if you have couples who own multiple homes, that were not necessarily purchased, but inherited, more than two, and they would therefore have to find a caretaker --. Oh, no, they would, they would -- it would have to -- it would have to be put into a deed.

Ms. Flammer: Yes, the other person's name would. Yes. So even if it's a child, they'd have to have some percentage of ownership in the property. And we do that so that somebody's accountable. So if there is trouble enforcement, we actually have a person we can contact. They have a legal obligation. They own the property. They're invested in it.

Ms. Aoki: Just ask the question. So if, if we had a special set of circumstances where we had multiple families where husband and wife own multiple properties, that were not investment properties but inherited properties, how would they handle that?

Ms. Flammer: You would have to change. You have to make an amendment. It would have to get passed by Council to, to address that.

Mr. Ornellas: And we can do that when we review the permits?

Ms. Flammer: You could do that now. You'd have to do it right now. You'd have to change the law to allow them to come in. And I'd assume you'd want to review them.

Ms. Aoki: Specific to Lana'i.

Ms. Flammer: Specific to Lana'i. Well, it's up to you really, but you can make it specific to Lana'i. And then you just have to give me some reasons behind it so when I bring it to Council I can explain it to them.

Mr. Ornellas: And it has to go on with this permit?

Ms. Flammer: Yeah.

Mr. Ornellas: So how, how would it be worded? Can I get some help here as far as how it would be worded?

Ms. Flammer: Okay, yeah. That's my job. Okay, so we would go to the restrictions and criterions and we would find the section that say, only one permit per. Hold on a minute, wrong one.

Ms. Aoki: Can I say something? So if -- is there a way that she could help us say but still -- I know that we're requesting for the Lana'i Planning Commission to review, but is there a way we could put in a request to have that amended, but, but with a stipulation --. I don't know how --

Mr. Ornellas: That's what we're doing now.

Ms. Aoki: That's okay. I'll wait, I'll wait for your recommendation. I'm sorry.

Ms. Flammer: Okay, it's number H. It's on page 6, of Exhibit 33, an applicant may hold no more than one short-term rental home permit except, and these have expired, but they had a provision that allowed people that had a house that was worth \$3.2 million or more. They were looking for a number that was kind of out of the residential range, if you came in within one year. H would be the section that a, an exception would get put. You could say except on the island of Lana'i, with Planning Commission approval or something to that effect. I'd assume you'd want to see them.

Mr. Ornellas: So what would the motion be again?

Ms. Flammer: Your language specifically would be to, well, to allow additional permits for --. Oh, you'd have to write it under H, and you'd have to say something, except when, and then you could put number 3, and number 3 would say, on Lana'i when the Lana'i Planning Commission, with Lana'i Planning Commission approval. I don't know. Richelle, do you have any? We can wordsmith. We understand your intent.

Ms. Thomson: Maybe just a maximum number too if you think that one is, you know, not necessarily what you want to do, you could do two or three, you know. If you wanted to do a specific . . . (inaudible) . . .

Ms. Flammer: You could, you could give a deadline too so those families come in. I mean, that's another --. Within two years of the adoption of the ordinance, or you could leave it in

perpetuity.

Ms. Aoki: . . . (Inaudible) . . .

Ms. Flammer: Yes. So what I said is you could put a deadline on it so those existing families have motivation to come in for the permit. You could give them two years to come in or one year to come in with that.

Mr. Ornellas: But aren't we changing the one per?

Ms. Flammer: That's what I'm saying. If you wanted to get compliance you can give them, if they come within a year or come within two years, they would be allowed to come in. Or you could just leave it that's just the rule. It's up to you.

Mr. Ornellas: Okay. You confused me.

Ms. Flammer: Did I confuse you?

Mr. Ornellas: Yes.

Ms. Flammer: Okay, so the recommendation that I'm hearing from you is you would like to allow owners to own more than one short-term rental home permit. You could put that -- on Lana'i. So, you could put that in there. The current exception had an expiration date. Council wanted -- they had specific people in mind when they wrote that. They wanted those people to come in for the permit so they gave a year deadline for that. And that way your future people that are looking to invest on Lana'i that the provision would be gone by the time, maybe, they got around to it or --

Mr. Ornellas: Okay. So sticking to the one year, but giving, giving -- do we want to give a total or do we want to just, just leave it open?

Ms. Aoki: With, with multiple houses what kind of expense is that for them? Would two years be more?

Mr. Ornellas: No, we're talking about how many units that they can --

Ms. Aoki: Oh, are we on units? I'm sorry.

Mr. Ornellas: Yeah we already --. Okay, so you want, you want instead of one year, you want two years.

Ms. Aoki: No. I re-track that. I apologize.

Mr. Ornellas: Okay, so one year. So how many units?

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Go ahead.

Ms. Zigmond: We're reviewing them all on a case by case basis, right?

Mr. Ornellas: That's -- it hasn't been approved yet by us, but we're working towards that.

Ms. Zigmond: Right. I mean, that's what we're --. Because I'm not so sure I feel comfortable about just letting everybody come in with, for multiple permits. I'm not comfortable with that.

Mr. Ornellas: Okay. So, Gina, if, if we -- so when a permit comes in and the person says, well, we have -- we want --. So, they're gonna only come with permits for one house then, right? They're not going to come in for four houses or three houses.

Ms. Flammer: Well, they could -- I did have a case in Hana where they came in for one house, and they actually ended up converting the other one to long term. They didn't decide that was, that was all they could do.

Mr. Ornellas: Okay. Yeah, you know what, I mean, there's very, very, very few exceptions. And then if we're, we're able to make that decision or if we're gonna see all permits, then we can make that decision, we can make that decision at that time.

Ms. Flammer: The numerical decision, how many.

Mr. Ornellas: Yeah.

Ms. Flammer: Yeah, you can. I would put in review for Lana'i Planning Commission in the specific clause just to make sure it's, it's right there. Yeah.

Ms. Aoki: But that doesn't prohibit. But that still prohibits one, one, a couple who has multiple homes deeded to them to apply for more than two homes.

Ms. Flammer: . . . (Inaudible) . . .

Ms. Aoki: For short-term, right?

Ms. Flammer: Yeah, so what I'm hearing from you that you're going talk about as an amendment is to allow more than one permit, per person, on Lana'i, with your Commission approval. As long as they come in within one year from the date the amendment is passed.

Mr. Ornellas: That's fine.

Ms. Flammer: Is that what . . . (inaudible) . . .

Mr. Ornellas: That's fine. Okay? Okay. Alright, so let's, let's get through this because my teddy bear is getting cold. Anything else? Anybody else got something? No.

Ms. Aoki: So -- and I'm sorry -- I just want to make sure because cost, Onaona testified tonight about the cost, I want to keep our mind on that. Is there any other large expenses that would be incurred to apply for this permit for Lana'i people because it's such a small market for them?

Ms. Flammer: I think you hit on the major ones. The only other one I could think of would be a consultant fee if they chose to hire a consultant and not do the paperwork themselves. I will walk people hand -- I will hold their hand through the whole process.

Mr. Ornellas: Okay.

Ms. Aoki: Thank you.

Mr. Ornellas: Alright, so anybody else has?

Ms. Barfield: I know Onaona had asked about why does the length of time for the sign notice has to be 55 days? Can it be less than is what she's asking? Why is it 55 days?

Ms. Flammer: It's 45-days.

Ms. Barfield: Oh, it's 45.

Ms. Flammer: In 45 days it's because it's tied to the same period as the notification to neighbors when we can receive protests. So the thought with sign is if you have renters, they may, they may not get the notice from the landlord, but they can see the sign. Or if you have other community members that maybe don't live within the 500 feet that are concerned about the neighborhood, they can see the sign. Their protest won't count, but a letter will go to the Commission if it's triggered.

Mr. Ornellas: Okay? Alright, so we're ready for decision making? Alright so --

Ms. Flammer: You want to hear the amendments?

Mr. Ornellas: Let's go for it.

Ms. Flammer: Okay. Okay. So, your motion would be to approve the proposed bill with the following amendments to the bill. First off you would like to decrease the neighbor notification for the notice of filing, the initial bill, and make that only adjacent neighbors. Your second one is you would like to reduce the notice sign to one by one. Your third one was you'd like the same caretaker clause as Hana. We would just add Lana'i on with that one. Your fourth one is you would like to see all initial permits come to the Planning Commission. And then the fifth one would on Lana'i, one person can have -- well, it would be better wording -- one person can have multiple permits with commission approval. You did discuss lowering the number of

rooms, but there was nothing decided on that.

Mr. Ornellas: . . . (Inaudible) . . .

Ms. Flammer: The one year, oh, they have to come in within one year if they're doing multiple. Thank you for that.

Mr. Ornellas: Okay.

Ms. Aoki: Just clarification on that. So multiple meaning more than one per person.

Ms. Flammer: Yes, we're not going to use that wording. I think it's -- that I -- but we know what you mean.

Ms. Aoki: No, no, just asking you.

Ms. Flammer: Yes. Yeah, I think we'll use something like more than except -- it will say except -- one person can hold one permit except, and then there will be a number three and number three will say on Lana'i with Planning Commission approval when -- it might be broken up to three or four -- when the application has been submitted.

Ms. Aoki: Okay, thank you.

Ms. Flammer: Yeah.

Mr. Ornellas: Are any of this, any of these costs -- if you're a senior do you have a discounted?

Ms. Flammer: No. That's a good.

Mr. Ornellas: You're not. You're not a senior. Your husband maybe, but not you. Is there, is there discount for kupuna?

Ms. Flammer: No, our fees falls under the County fee schedule so that's set by the County Council Budget Committee, and I don't believe they have anything like that.

Mr. Ornellas: Okay, so is that if for --

Ms. Flammer: That's the five . . . (inaudible) . . .

Mr. Ornellas: Anybody else want to add to this? You're okay with, with what we put down? Alright, so then let's -- I'll take a motion to accept, to accept the short-term rental proposed bill with amendments. So who's going to make motion?

Ms. Barfield: I make the motion to accept the five amendments presented to us for the short-term rental.

Mr. Ornellas: Wait, wait, you're, you're -- you've got a short-term rental with amendments.

Ms. Barfield: With amendments, yes.

Ms. Gima: I second.

Mr. Ornellas: Alright, any discussion? Hearing none, all those in favor raise your hand?
Unanimous. Thank you.

**It was moved by Commissioner Shelly Barfield, seconded by
Commissioner Kelli Gima, then unanimously**

**VOTED: Approved proposed bill with the amendments.
Assenting: J. Aoki, S. Barfield, K. Gima, S. Koanui Nefalar, B. Oshiro,
B. Zigmond
Excused: S. Marlowe**

- 2. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.64 of the Maui County Code relating to Bed and Breakfast Homes. (G. Flammer)**

The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Bed and Breakfast Home Ordinance No. 3611.

Ms. Flammer: Okay, do feel like you want to tackle the B&B? We can --

Mr. Ornellas: No, let's, let's --

Ms. Flammer: Okay. Now can I ask you, we're going to come back I take it on the B&B. Do you want a similar? I mean, I have a, I have a chart in the B&B report I gave you. Do you, can we -- almost all of it is kind of housekeeping. Did you want me to try to do that or did you want me to do something like this again?

Mr. Ornellas: Yeah.

Ms. Flammer: You like the chart. Okay, I'd be happy to --

Mr. Ornellas: It's a heck a lot better than all this crap.

Ms. Flammer: Yeah. Okay. Alright. All my hard work.

Mr. Ornellas: Okay, so, you know what, I know, I know you really have a great time coming over to Lana'i, so –

Mr. Bradford Oshiro: John? John?

Mr. Ornellas: Yes, sir.

Mr. Oshiro: I get one question. Can you please put it on the -- e-mail us the amendments and all this because I'm allergic to paper and you guys keep giving us paper. I mean, I'd appreciate it. I really would. Then I don't have to wear gloves.

Ms. Flammer: Yes. Okay. Yeah, it's okay we can work around that. Yeah, I did -- we did do an email to Hana so I can reduce the size and we can --. Now, I don't have any additional paperwork except the --. Do you want me to send you this? Yeah, I'd be happy to do that.

Mr. Ornellas: Yeah, and in fact you should send it as soon as you can because we'd like to read it before our meetings.

Ms. Flammer: Yeah. I'm on vacation. I have two hours tomorrow in the office, and then –

Mr. Ornellas: Okay, that's a good enough excuse. We'll let you go. We haven't seen your request so –

Ms. Flammer: Okay, so what you're going to get though is just the exact table that's already in the report. I'm just going to make it easier to work with so there will be no new language in there. Did you -- do you also -- why don't I update this what you just did.

Mr. Ornellas: Yes.

Ms. Flammer: Bring it back to you.

Mr. Ornellas: Yeah. Changing them. Put it down, and then put a column there with, with our changes, Lana'i specific.

Ms. Flammer: Yeah, yeah. I'm going to do that any way. I'm not going to have the letter that goes to Council then because you won't have --. Oh, I could actually because that would be --. But then it needs to get signed. I might have that for you as well since it's just --. You're done with short-term rental. You're not going to revisit any of this when we come back?

Mr. Ornellas: No, we're done.

Ms. Flammer: Okay, I might have the letter done. I'm not sure.

Mr. Ornellas: Bed and breakfast is next, and we'll do that next meeting.

Ms. Flammer: Great. That's great. Okay.

Mr. Ornellas: Well, I'll take that back.

Mr. Yoshida: Well, I guess for purposes of the public hearing notice can we accept testimony on the bed and breakfast home amendments just so that we can say a hearing was held on July 16th? Otherwise, we gonna have to re-notice again.

Ms. Thomson: There may be none.

Mr. Ornellas: There may be none? Oh, yeah. Yeah, we'll run through the gamut for bed and breakfast next time.

Mr. Yoshida: No, we want at least the public hearing portion because it was duly noticed in the newspaper. If you can conduct that tonight, and then we can defer the B&B matter till the next meeting.

Mr. Ornellas: Yeah. Whatever, whatever is legal. Like, like I followed our lawyer's recommendation this morning. Oh, call for public, right now? Why, there's nobody here except -- oh, okay. Alright. Okay, alright, I'll call for public hearing for the, for the bed and breakfast. Is there somebody wants to come up and say something? Oh, somebody will. Alright.

Mr. Kepa Maly: Aloha. Thank you for your duty to our community. My name is Kepa Maly. And what I just wanted to --. As you all know, you've belabored this for, for many years and many of you grew up in it. Lana'i, of course, has a really fascinating history, particularly after World War II becoming really a bed and breakfast community. Always was from that time. Our families, you remember growing at homes, our families always hosted friends or even if you didn't know them, someone would say, oh, someone wants to come, our doors were always open. You know, were way -- it wasn't always because you were exchanging money, but, you know, people never left and never -- they didn't just walk into house, pop down, and then walk out. They would leave money, they would come back. You know, my father is a contractor came and help Uncle Sammy folks built, built extension on their house and stuff like that. You know, it was how it was. You brought food, you left money behind. So, so bed and breakfast as a community concept on Lana'i is one that has a long tradition. We just didn't call it that. We were ahead of our time.

So I wanted to just come in on that is where we've lost track a little bit is with the influx, as development occurs, and I don't think we've recurred from the previous ownerships, the major impacts on this community -- the social, justice issues, and just of wide range of things. So what I'm hoping is that maybe on this one I think you folks really went through the discussion through the short-term rentals of what would be pretty much applicable to the B&B.

As a quick example, I'm sorry I'm just going to give you our personal thing. So, we bought a house. We came home, you know, once things settled down, came home, bought a house, it had a guest cottage attached to it. It was our understanding that we could, if we chose to, that

we could rent it out to someone that may want to come for a weekend or something like that. We found out later that, \$50,000 later, we had to put in a septic tank, the guest cottage and even the awning over our patio hadn't been permitted. And so we had to get full sets of blue prints drawn up for the house. We had to go through all this crap. After we spent -- I'm sorry, I'll just -- after we spent \$790,000 on the house so we're in debt longer than I'll be alive. And so indeed, you know, for us, with our little bed and breakfast -- and Onaona is not making breakfast for anyone -- but it's a beautiful one bedroom cottage, cedar wall lined, beautiful bedroom, separate bathroom, a little kitchenette and a living area, you know, like that. We're actually renting it so that we can actually make our mortgage payments. So what we're hoping is that it will be a fairly simple process. We're lucky because as Onaona said earlier we actually have a fairly large lot for where we bought -- sorry to say holy camp, but you know -- you know, versus right in town. And so our impact and reality is if you do go with this amendment of adjacent, we've got a company house owned in front of us, and then what they call the captain's quarters who is in and out, and he rents it out once in a while, those are really our only adjacent neighbors. So for us, what you've looked at this evening for short-term would be very easy and it would be very appreciated. So I just wanted to say, remember we have a history as a community. What we need to do is maintain that aloha and that sense that there are boundaries that are really critical for us to continue to maintain. So that's just my hope. I realize you're going to postpone, but since it was an agenda item, I appreciate the opportunity to come up and just add a couple more thoughts. Go with the same ideas.

Mr. Ornellas: Thank you Kepa. Anybody else want to testify? Hearing none, we'll close that, and then can I hear a motion to defer this to our next meeting? Bed and breakfast ordinance for the next meeting?

Ms. Gima: I make a motion to defer the bed and breakfast ordinance till the August meeting.

Mr. Ornellas: Second?

Ms. Barfield: Second.

Mr. Ornellas: Discussion? All in favor raise your hand? Alright, so the --. And then let's also defer -- any objections to deferring the Director's Report?

It was moved by Commission Kelli Gima, seconded by Commissioner Shelly Barfield, then unanimously

VOTED: to defer the bed and breakfast ordinance until the August meeting.

Assenting: J. Aoki, S. Barfield, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmund

Excused: S. Marlowe

Both reports are available on the County website at: www.mauicounty.gov

(<http://www.mauicounty.gov/index.aspx?nid=121>)

E. DIRECTOR'S REPORT

1. **Open Lana'i Applications Report as distributed by the Planning Department with the July 16, 2014 agenda**
2. **Agenda Items for the August 20, 2014 Lana'i Planning Commission meeting.**

Mr. Yoshida: Well, we would just move to Item 2 which is the next meeting we're going to deal with the bed and breakfast home amendments, and we also have to reschedule our October Planning Commission meeting. I'm informed that there is a large wedding party coming to Lana'i from October 15th to the 20th. They've rented every hotel room, every transient vacation rental. So unless we can stay in Chair Ornellas' living room, we do not have any place, we don't have any place to stay. So we want to talk about rescheduling that October meeting.

Mr. Ornellas: . . (Inaudible) . . .

Mr. Yoshida: This is under number 2 agenda items for August 20th Lana'i Planning Commission.

3. **December meeting to be held at the Lana'i School Cafeteria as the Lana'i Senior Center is unavailable.**

F. NEXT REGULAR MEETING DATE: AUGUST 20, 2014

G. ADJOURNMENT

Mr. Ornellas: Okay. Alright, so, you'll put it on the -- you'll put it on the next agenda right? Okay. Alright, so any objections to deferring the, the Director's Report? Hearing none, we'll defer. And then so our next meeting is August 20th. All in favor of adjournment? Alright, this meeting is adjourned.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:40 p.m.

Respectively submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Joelle Aoki
Shelly Barfield
Kelli Gima
Stacie Koanui Nefalar, Vice-Chair
John Ornellas, Chair
Bradford Oshiro
Beverly Zigmond

EXCUSED:

Stuart Marlowe

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
Ben Sticka, Staff Planner
Gina Flammer, Staff Planner
Richelle Thomson, Deputy Corporation Counsel