

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JULY 8, 2014**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Keone Ball at approximately 9:10 a.m., Tuesday, July 8, 2014, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Vice-Chair Ball: My name's Keone Ball. I'll be chairing the meeting today of July 8, 2014.

B. PUBLIC TESTIMONY

Vice-Chair Ball: Let's see, 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. Okay, so we're on Item C, Public Hearing. Director?

Mr. Spence: Good morning, Mr. Chairman. We have two public hearings and they are very related to each other. One is the comments or recommendations regarding short-term rental homes and other is regarding the B&B Ordinance which was one of the things that the County Council wanted to have was after the passage of the Short-Term Rental Home Ordinance they wanted recommendations after one year of operation, after two years of operation. And so, we've been...as you know, we've been processing a lot of permits, and learned a lot of things, and what we're bringing to you today is what we've learned and the recommendations to you and then up to the County Council. And Gina Flammer has been the point person for the original ordinance as well as the changes, proposed changes and we can go ahead and start with her presentation.

C. PUBLIC HEARINGS (Action to be taken after each 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.

Vice-Chair Ball: Just for the public's awareness we're moving the order of the public testimony to after the presentation so that people can kinda formulate questions as the presentation goes on.

Ms. Gina Flammer: Okay, great and you get the responses to it as well. Good morning, Commissioners. Thank you for having me today. I sent you a packet with the report in it. It's quite extensive. I'm going to give you an overview. We're gonna talk about the Short-Term Rental Home Ordinance first and then as part of the update to the Short-Term Home Ordinance, the Department is also updating the Bed and Breakfast Bill. We're aligning the two requirements between the two. So we'll do that second. So let's start first with the review of the Short-Term Rental Homes Ordinance.

Okay, so just as some background, single-family residences are allowed to be used for short-term rental home use when they're in a Hotel Zone. Sometimes they're nonconforming. It was an allowed use up until '89, in some districts in a'91. So they would have had to continually use it and not have a lapse for one-year, but we do have some of those homes out there. When authorized by a Conditional Permit prior to the Short-Term Home Rental Ordinance that was the permit vehicle to legalize this use.

Bed and breakfast homes happened in 2008, and that's when the owner lives on site. And then more recently in 2011, short-term rental homes were passed by the Council and that's when the owner does not live on the property. So that became legal with a permit in 2012. This body reviewed the bill in 2011. And then the Council spent about six months going through the provisions. The difference between last time and this time, last time it was introduced by the Council the Department then took it to you as part of the process and brought it back to the Council. This time, we are charged with making the amendments and bringing it to the Council. So there's actually a clause in the bill, we don't see it very often, but it brings it back two years of the effective date with recommendations and proposed amendments.

So in the report, I went over and described kinda what happened to the bill during the Council and I did that because we're gonna bring up some of these same issues again. I won't go through each of them but we will as we go through today, through the changes. There were some temporary provisions. Those have expired. Probably the most important one was the waiver of the Planning Commission review who reviews the applications when there's another permitted one within 500 feet that was waived until the end of the year the first year it was passed. So haven't seen a lot. It takes a while to go through the application process, but we predict you'll start seeing many more because of this. More becoming permitted so it's gonna trigger others and there is no longer this waiver.

So Step 1 is quite a process. We had to implement the ordinance and as part of working with our ITS our Information Technology System, we are required to do a flow chart. And this just kinda tells you a little bit about how complicated the bill is mostly because there's so many details in it. So we were required to establish a brand new permitting process. This permitting process has become the model for other permits. How we deal with our applicants, how we do the application, and how we keep the files and all the information. We're slowly trying to bring the other permits, but it takes a lot of time to get organized this way but we're using this as our model for the future. The applications you'll see in there it's very detailed with the checklist, very applicant user friendly. And then we had to work with our Information Technology Services to actually develop programs for the software so we could track and keep the information.

And then as part of the new permit process we adopted a no surprises policy. It was..it's nice when you have a bill like the Bed and Breakfast Bill first so that you can kinda see where the problems

are. One of the problems had been people would submit applications and not know what their building permit status was on their house. So what we've done with the application is all that information is required to come in up front. So people are required to do their own research so then they know what they're getting into.

The other change that we made is an applicant or the consultant can meet with the planner when they're submitting their application. They can meet with us first. We usually offer one or two to get 'em going, teach them how to do it, they call, email. We really walk through the process. We've trained a lot of consultants how to do it also. And then when they come in we can go through the application and make sure it's complete. That way they're not waiting for it to get to be assigned to the planner. Then the planner looks for it then things are missing. It's all done right there. We can sign some of the forms right away for the neighbor notice and get them going on that process as well.

Developing the application. It took quite a bit of time and I put it in there. It's 14 pages. It's a lot. But it's quite intimidating when you first see it, but it's done that way for a reason. It's step by step. The first thing we do is we go through the entire process. I tell people if you read it through several times closely most of your questions will probably be answered. Feel free to call me. Also, we can discuss it. But most of what you need to know is already in the beginning right here.

Then we go into the actual checklist itself. We jokingly call it the take home final but it does have that feel to it. You can kinda work on it when you want. Get the things done that are easiest first. And then when you turn it in, I wish I would have been taking some pictures of people along the way, they are so elated. One woman cried. Had to go find tissue. Because it's a lot to put together all that paperwork, and then they feel like, oh I can be legal now. So it's been quite an experience for the planners also.

One of the other requirements of the ordinance was for the Planning Department to create a home inspection form and part of that was the Council. They want it safe when it's built so we ask for all building permit information, and then they wanna know it's still safe. So what the home inspection form does, we worked...the Department worked with the Department of Public Works and also with the American Society of Home Inspectors. It's a trade group that does a lotta training, high requirements. We worked with one of those inspectors to develop the form.

We had a draft of the rules was reviewed by Public Works, as well as the local certified home inspectors. We had a hearing at the end of 2012 to adopt it. And the response has been very positive. It's a private...you have a choice, you can have the County come out and do a miscellaneous inspection or you can have your private home inspector come out, use the form, you know ahead of time what they're looking for. You can hire someone, your own handyman first to go through, and then when that guy...person comes it's all done or you can have the person come in and he'll give you a list of things you need to do. That form must be completed before you can even apply for the permit.

So I put a copy in your report so you can see what the home inspection form looks like. It's grouped into different areas. And what it is it's the County adopted the...I think it's the IRC in 2006, and what we did is we took super safety items from that. So while not all homes were subject to this while they were built, they will be subject to it with the home inspection form to our current

requirements for a subset of safety items.

The Department also held a lot of...we did a lotta outreach to the public to let them know the bill had passed and how they can come on in. We did a web page. We spoke at various community meetings. We worked with the Maui Vacation Rental Association. They cosponsored a meeting with us that was also shown on Akaku. And then the Realtors Association of Maui also did some training with their own group because it's managers that are required...managers are required to be realtors so we worked with them and their realtors to explain the process and what's required of them as managers.

The public was also informed they can call and talk to a planner. We encourage people to actually come in. We fielded well over a 1,000 phone calls. There was a lot of interest. It was a busy second half of 2012.

So the permitting system has been very successful. This is as of the end of April. We've had over a 160 applications come in. That's a lot. On December 31st when that deadline expired for not having the trigger for Commission if another one is with you. We got 30 permits alone. And that's just for the day that doesn't include the week before. That's not even 30 right there. So it was quite a lot. So far of 160 that have come in, a 100 has been approved, four of them had been denied. They were ones that came to you for neighbor protests. So they were denied by this body.

And this just tells you a little bit about eight of them of the 104 applications that have been fully processed. Eight have met the trigger for a Maui Planning Commission hearing. Five of those were for neighbor protests. The first one passed but then the next four did not. Three came in for having another one within 500 feet and those three did pass. One had been deferred and then it was most recently approved.

So the Council's intent was for most of these permits to be approved administratively by the Department and then kind of for the problems to float to the top and that's where it would come to you to evaluate. That's when there's neighbor protests. They also wanted to look at the different communities and know when there's more than one going in. So those come to you as well. Those are your two biggest triggers.

As part of the outreach effort and just noticed publicity about the bill, we got a lot more bed and breakfast permits too. We've had 31 new applications. Actually more have come in and you've seen seven of those all for being within 500 feet. We do really talk to applicants about our neighbors. We encourage them to go out. We try to reduce those applications that come in due to neighbor protests just so people right up front can know what they're getting into. I know some of the consultants will also advise their applicants to go talk to all their neighbors too and I found that to be really useful. This is all done before they come in.

Because properties that are zoned State Agricultural in the Agricultural District, they're required to have a State Land Use Permit that comes with them. And because of that, we have seen a huge increase in these types of permits. You are the approving the authority for acres under...properties that are 15 acres or less. So you've had 36 new SUP Permits. That's 46 percent. Almost half of all of your agenda items have been for this one permit.

I put in here, you can see Exhibit 28, I drilled down a little bit trying to figure out, you know, what's going on with your schedule, what are we gonna see in the future. So if you look at all the agenda items related to either to the SUPs, the Short-Term Rentals or the Bed and Breakfasts, we're looking at about 57 percent. But if you start looking at the public hearing items, and those are the items that take much longer, you're looking at over two-thirds of the agenda has been spent reviewing these. And remember, this is when the waiver was there for ones within 500 feet so the Department's predicting that you're gonna have many more applications over time.

In terms of staff resources I'd say it's taken about at least 50 percent of the Current Division staff time was needed to establish the permit process and then also to permit, to approve the different applications. It took five full-time planner positions and a portion of three supervisory positions. Also, one to two clerical positions. They're the one that track all of our permits, and then half of an information specialist position. Last year we were chosen as the Team of the Year for the Department because of the amount of work and also we kept a good attitude with all this. It was really, it was really tough at times.

So I showed you also, it's in the report there's been 100 permits issued so far. You can see by community plan district where we're seeing them, Paia-Haiku, and West Maui, Kihei-Makena, the three areas that had the most. And then I just wanna real briefly, it's in the report, but I'd just like to see you, it's kinda hard to see with the pink, but you can kinda generally see where most of the permits are. They're about a quarter of the way through the cap. We got another 300 to go.

So if you look at Hana, we did a lotta outreach. We did a special meeting out there and they're starting to come in. We've had seven issued and we have six pending right now because there are no managers that can qualify as the...that are a realtor, and I'm gonna talk a little bit more about that as we go through this.

Kihei-Makena we're almost a quarter of the way through. And I wanted to show you in here kinda where the concentrations are. So in the report it goes into more detail. So here you can see kinda North and Central Kihei. Maui Meadows has a subcap of five which they reached fairly quickly and that's where those five are. Makena has a few right there, four.

And then if you go to the Upcountry area we only have four right now in the Makawao-Pukalani-Kula Community Plan region. Paia-Haiku, we're 28 out of 88. And then if you take a look at Paia and Kuau you got about half of those right there. And then Haiku is kind of they're spread out.

And then if you go into Wailuku-Kahului, four permits have been issued and most of that is because Spreckelsville is part of the Wailuku-Kahului Community Plan region and you can see them where they all are.

West Maui we've got about 24 at this point with a cap of 88. And then Lahaina, we've seen a concentration. Like I showed you over there where that is. Kaanapali and Kahana not so much, but then when you get up to Napili, again you see a concentration and that's a neighborhood there of all houses that are worth over three million. And that's one of two areas where one of the waivers for allowing someone to hold more than one permit is if the house is valued more than 3.2 million this road was one of them. I think the other one is in the same community plan region as well.

And then Molokai you've had nine permits issued and I just wanted you to see where the groupings are over there. I'm gonna go to the Molokai Planning Commission tomorrow and present this to them.

And then Lanai, we've only had one. And I'm gonna go to Lanai next week and we're gonna talk about how to get more compliance on Lanai.

So enforcement, the bill did require proactive enforcement by requiring the Department to produce an annual list of operators. We did conduct two sweeps of the internet in 2012 and 2013. We have a new program--oh, he's not new anymore--ZAED Program Administrator. He was hired in 2013. We had two vacancies. We were hired by Council to hire two and we had additional vacancies on top of that. So we've put out four offers and we have one out of the four so far. So it's been an ongoing process and quite a challenge.

I did send the bill out for agency comments. The State Office of Planning they supported the Farm Plan requirement. They actually requested in the beginning of the process that we adopt a Farm Plan requirement. Would like to codify that. They recommended lowering the Farm Plan income requirement and they put an attachment that shows what farming does generate and then they also suggested that the County of Maui adopt the Ag Tourism Ordinance which would mean that we would then be able to use the State Law. We wouldn't have to come in for SUPs for every single one of them. The Ag Ordinance would have to put some details as to what would qualify under there.

Real Property Tax doesn't generally comment but they did ask us that we continue to send them to them in the application process not only when we do the approvals.

And then the Police, we used to send a transmittal with every application and renewals as well, and the renewal comes after one year, kinda overwhelmed the Department with requests for information. So what they suggested is that we just use the online system which is the same system that we use and that's been very useful for us. They also put some lighting requirements in there, but when we use the home inspection form we do have the same lighting requirements. If you go through the miscellaneous inspection they generally don't look at the outskirts of the property the way the home inspection form does.

You referred this to the Hana Advisory Committee in April so we went out in May. We met twice. It was two, four-hour meetings with one five-minute break. So we really discussed the issues. There's a lotta public policy in there. And Hana really wants the bill to work with for them. So we spent a lotta time talking about how to handle the lack of realtors out there. In the end, we had eight recommended amendments and we're gonna go through all the proposed amendments. I gave you chart and then at the end we'll go through Hana's. This is basically what they are though, is that they're recommending you can be a manager and not be a realtor, however you still have to comply with State Law. And that's the caretaker provision which would mean you could manage one property. It's kind of the best we could do within the confines of the State Law. As I mentioned we have six applications right now with local, very experienced longtime managers that the Hana Advisory Committee has expressed support for these people, but we're not able to approve those applications right now.

In addition, the Hana Advisory Committee also recommended an amendment that applicants not only need to...that applicants need to own the property for five years. Not only does the structure have to have been built for five years, the applicant needs to have owned that property for those five years. They recommended reducing the cap from 48 to 30. They wanted bed and breakfast and short-term rental homes to trigger a Planning Commission hearing. Right now if it's a short-term rental home we only look to see if there's short-term rental home within 500 feet. They wanted them counted together. So if there's a B&B that that would trigger a Planning Commission hearing. They wanted all initial applications in Hana to go to the Hana Advisory Committee. We talked a lot about time, having it come back here, we looked at ways could they somehow go directly to the Department but the structure of it just doesn't work that way. One of our proposed amendments is that we have one-hour notice for inspectors to come on the property, they recommended for Hana it be 24-hours since often people are on the other side, it's impossible to get back if needed. They wanted to reserve part of the cap for native Hawaiians, and then they wanted to prohibit people that have an ownership interest in multiple short-term rental homes, and that's in our chart that we're gonna go through. We'll talk a little bit more about that. Right now the Department is recommending if that's the case, it comes to this body for review to look at it. They just wanted to outright prohibit it.

So at today's meeting we're gonna hear testimony from the public. I wanna hear your comments about the report. This is just a trial run before we go to Council who has the approval authority. And then I also want to go through our different amendments, kinda one by one and we can do it fairly quickly. And then also, we're gonna go through the B&B as well. So I'm done with this and then we can open it up to public testimony.

a) Public Hearing

Vice-Chair Ball: Do we have anybody signed up? Nobody signed up, okay. Okay, at this point we will open it up for public testimony. Is there anyone who would like to testify? You have three minutes and please come forward, identify yourself before you start.

Mr. Tom Croly: Aloha, Commissioners--

Vice-Chair Ball: Aloha.

Mr. Croly: --I'm Tom Croly and you know me well. And I was involved in the original Bed and Breakfast Ordinance promulgation as well as the Short-Term Rental Ordinance promulgation. MVRA has been pleased to have participated over past nine years in the formation of both these laws, the Bed and Breakfast Ordinance and the Short-Term Rental Ordinance. And I'm very happy to report to you that all of the MVRA members have either received their permits or have applications that are in process right now.

I'm also pleased to say that Maui County has lead the way not only in Hawaii, but for the nation in regulating this type of use. So places in the nation have just made it an outright ban, you can't do it, and other places in the nation have said it's outright, you can do wherever you want, for example, Florida they passed a State Law that said you cannot restrict someone from renting their home based on the length of the stay. So essentially they said short-term rental is available anywhere ... (inaudible)... by State Law and that no counties, or municipalities could further reduce that. And

then other places and you probably seen in the newspaper and reports and so forth, big cities like New York and Chicago, they're struggling with AirB&B renting out condos in, you know, residential districts and so forth. But here in Maui County we have a regulatory way of going about getting these permits and we're pleased about that.

We've learned over the past five years since the B&B Ordinance was last revised what things we need to do to make this work better and part of it is always streamlining and trying to make it easier for applicants to get through the process, making sure that we've covered everything. This an application that's I'm ready to submit to Gina today, and it's you know pretty extensive. Now I've already prereviewed this and I know that this one's going to fly but there was probably 20 hours of my time as a consultant to put together this application as well as the applicant's time gathering up all the information. So by the time an application is made, by the time it's accepted by the Department a lot of work, has been, has already gone into at that point.

The ordinance revisions that will be suggested by the Department are a very good start to streamlining the process and reducing any extra work that we have to do whether it be this Commission's work or whether it be work that the Department has to do try to try to make this, this a little bit easier to comply with. It's fundamentally our goal that everyone who chooses to do this use throughout Maui County comes and gets a permit first before they choose to open up or whatever. But we don't wanna make the bar so high for them to do that that people say, well you know what I'm gonna take my chances without a permit because it just seems like it's too much work to get through or they're convinced that because of the bars along the way they may not get through. So our goal really is that anyone who wants to do come get a permit. If you do it right, you'll get your permit. If you're a good operator, you'll keep your permit and everyone will be happy, and that's fundamentally what we hope will happen.

I'm here as a representative of the industry and other board members of MVRA are also here to answer any questions that the Commission might have from how would this be, you know, some idea be accepted by the industry. So we'll be here as you deliberate and just as a resource. Thank you for your time.

Vice-Chair Ball: Thanks, Tom. Any questions for the testifier? Seeing none...

Ms. Catherine Clark: Good morning, Commissioners. My name is name is Catherine Clark. I'm also a board member of the MVRA. I'm so pleased to be before you and able to report that all of the properties that I actually work with as a manager and agent now have permits. I've been waiting 20 years for this so this definitely makes me smile.

But for the industry to complete the transition to becoming fully legal we need to entice more of the unpermitted properties to come forward. Many of them are sitting back and feeling that they're safe 'cause there's been no enforcement. It is becoming critical that they unpermitted properties are invited to apply and made aware of the consequences if they choose not to. We are not looking for heavy-handed enforcement. We're really looking more for, for everybody to be made aware of the fact that they even need a permit. I work within the industry and constantly find people that have absolutely no idea that this process even exists. Perhaps they come from another part of the country and they just don't even fathom the idea that they need a permit to rent their home. So it is an education process. As industry we're doing as much as we can, but I think that the

enforcement action or the invitation to apply would move that process forward more quickly.

And then of course, there's always talk of streamlining. So sometimes it's difficult to see changes that can make a difference. I usually have ideas that are maybe a little off base, but what if you removed the entire renewal process? Each year permit holders would make their annual payment to keep their permit valid. Perhaps there's a form they'd fill out that would go with it. No payment, permit is canceled. To make this work the revocation process would need to be strengthened. If there are potentially 800 properties, 400 B&B, 400 STR with five-year permits which is a fairly lengthy time, this would avoid a 160 renewals per year. It would save an enormous amount of time. The bad apples would be weeded out by revoking their permit.

I'll also encourage you to think of the large, luxurious homes as one of the best types of vacation rentals. These homes take absolutely nothing away from the long-term market. What they can actually do are provide excellent income opportunities for the service providers including property managers, local rental agents, maintenance staff, housekeepers, pool cleaners, gardeners. This income allows the local service staff to run their own small business. This allows them to live on Maui in a reasonable lifestyle.

And finally, I really want to commend the Planning Department for the kindness and professionalism they've shown when working with applicants.

Ms. Takayama-Corden: Three minutes.

Ms. Clark: There will always be a few grumblers but the majority of the applicants have been pleased with the assistance of the Department. It isn't often that you hear of people so pleased with a government service. Thank you.

Vice-Chair Ball: Any questions of Catherine? No. Thank you. Anyone else that would like to testify at this time? Seeing none, we will open up for the Commission's questions. Commissioners, questions for Gina? Yes, Penny?

Ms. Wakida: Hi, Gina. Going back to one of your slides...going back to one of your slides on staff resources, do you still require...does the Planning Department still take up five full-time planners and so on that you showed us in this slide? Is that currently what's still happening?

Ms. Flammer: We've lost two planners. We have one new one who's just learning the basics. So right now we have four of us instead of the five that are working on it. So yes, it is still taking a considerable amount of time.

Ms. Wakida: Okay, thank you.

Ms. Flammer: So my suggestion for going through the bill, I've printed up for you kinda a worksheet that we can just go through each of the provisions. What we've done before is somebody can make a motion to adopt the entire bill and then as you do amendments we'll just take it in and then at the end everything's all ready. I can read back to you what the amendments are. If there's no consensus or anything, it's just assumed you're fine with it. There's quite a bit of housekeeping in here. I'm not sure you're gonna wanna discuss some of the minute wording changes or we could

go through one by one and you could do a motion, but that might be kinda cumbersome.

Vice-Chair Ball: Well, let's go one by one and we'll get the comments and then at the end we'll motion it all.

Ms. Flammer: Okay, we can do that. Everybody have a sheet? Okay. So the first one is truly a housekeeping. Right now, it is allowed in the Apartment District because any use in the Apartment District, any residential use is allowed.

Vice-Chair Ball: Sorry, go ahead, Corporation Counsel?

Mr. Hopper: Quick comment for Members Exhibit 33 it looks like on the Short-Term Rental Home Permit Law are the actual is that the Ramseyering of the actual ordinance? So you can see the actual language that's being changed. It's exhibit...just making sure.

Ms. Flammer: It's the last exhibit, it's 33 and I did mark them to correlate to this so you'll see next to them.

Mr. Hopper: Right. So if you want the actual amended wording that will be Exhibit 33. Thank you.

Ms. Flammer: Thanks, Mike.

Vice-Chair Ball: Thank you.

Ms. Flammer: Okay, so the first one just putting it in the apartment, permitted use. Are there any comments on that one? Okay. The next one, properties in the Ag District and I know our Corp. Counsel is gonna talk a little bit about this. When we first passed the bill it's listed currently as a special use without any type of restrictions on it. We talked to the State Office of Planning once the bill was passed. They were very uncomfortable with that. They suggested that we have a highly recommend to applicants a implemented farm plan come in with the application. So that's what we've done. It is part of it. We just like to codify that process. I know there's different ways to do it and Mike can talk a little bit about another way. What we suggested right now is that we move it from special use into an accessory use and with that comes the farm plan, but perhaps that's not the only way. I don't know if now you wanted to chime in Mike?

Mr. Hopper: Yeah, thank you Mr. Chair. We actually wrote a bill for Council on this, a draft that the State Law we never know what is going to happen. And currently the State Law allows a County that has a adopted Agricultural Tourism Ordinance to allow short-term rental homes on Agricultural zoned property in certain limited cases. It has to be in conjunction with a what they call a bonafide agricultural activity which is kind of defined as a very commercial level agricultural use and if it's not then they can't do it under State Law so they would need a Special Use Permit. So the draft that I did for Council a while ago was basically to list it as a permitted use with those limitations but then also list it as a special use if those limitations aren't met. And again, this is dependent on State Law and it's hard to kinda track where the State Law may go, but that's what the current law is right now. So...and it's kinda made more complicated by the fact the County doesn't really have a Agricultural Tourism Ordinance adopted that deals with all kinds of agricultural tourism because that's what the State Law says is essentially that you can allow that use as part of an agricultural tourism

ordinance. So whether it's allowed as an outright permitted use is gonna be or even an accessory use is gonna be kinda of a interesting issue. And classifying a short-term rental home as a accessory use could be difficult as well because it's not like a bed and breakfast where you're required to live on the property. So somebody could be applying and it might not necessarily be an accessory use because the person isn't going to live there. So maybe they could have someone else run a farm dwelling for them and then have them have it as an accessory use. But things are a little complex here and I just wanted to note for the record that we have looked at this and potential language drafting based on the State Law. And so there's a variety of ways to do this and I can't necessarily recommend having it as an accessory use but there's a variety of options based on State Law and we have come up with some language in those cases. So I'm not sure what the Commission wants to recommend but that's an issue that's out there and I'm not sure if the State Law is slated to change again. I think there's been a bill proposed almost every year on this issue. So it's kind of constantly changing.

Ms. Flammer: Okay, thanks. We can talk a little bit about the process. We're gonna make recommendations today and then the Department is gonna get together and we'll probably meet with Mike again and kinda go through the bill one more time. And then when we get to Council, Council will have the opportunity to move things around as well. So any comments you have on the subject, I can just record that.

My only concern is if it's a special use would the applicant still have to come in for a County Special Use Permit then as opposed to a State...if the State Use were no longer required?

Mr. Hopper: Well, I think the County has its own requirements that say you don't have to do that, but the County could change that requirement. The County I think has a requirement that says if you need a State Special Use Permit and you get that State Special Use Permit, you do not need a County Special Use Permit. You can grant an exception from that and say, except with respect to short-term rental homes. But I think you could also say as part of your State Special Use Permit application, you want a farm plan because that shows that you are acting in further of HRS 205 which is one of the requirements of granting a Special Use Permit anyway. So I think you could...the Commission or the County could require that if it wanted.

Vice-Chair Ball: Richard?

Mr. Higashi: I have a question pertaining to Ag certification. If this particular property has preservation of Hawaiian forestry and it takes 10 to 15 years for the product to be completed in order to generate any kinda income. How does it affect the home owner to be able to sustain requirements of annual income when you don't generate monies until 15 years from now?

Vice-Chair Ball: Gina?

Ms. Flammer: Would you like me to take that? That's exactly what Hana talked about. So right now what's required is an implemented farm plan. That process is already in place and it's something that we use when you're building your dwelling when you're on Ag land. It requires that 51...the implemented part, 51 percent of your plan be in the ground. It shows a feasibility for income. We do not currently have an income requirement for reasons that you're talking about. We also allow Conservation which is typically done with a NCRS National Conservation Resource

Service I think, plan. Can't just be oh, that's Conservation. You have to have something documented with that organization. Hana talked about adding an income requirement in addition to the implemented farm plan, kind of a sliding scale, but then from testimony from the public the same question came out. What about koa trees? What about trade? So that motion didn't pass, but I wanted to put it on here so that you could see what some of the previous discussion has been.

Mr. Higashi: Well, the reason why I asked this specific question was because if you have a farm and you're using water, County water there is a classification for Ag water versus Residential. And if you don't generate enough income, according to the Water Department you don't qualify for Ag water. And that's my question is how do you circumvent something like that so that you are in compliance based upon the fact that you have a product that doesn't...you're not gonna produce anything or sell for 10 years or 15 years.

Ms. Flammer: Right. There's three different requirements to deal with water in Maui County. You have Real Property Taxes which have their own rules. Then you have the Water Department which has its own rules which related back to a different ordinance and then you have the Planning Department which has its own rules that relate to a different part of the Code. We've talked about and maybe our Director could talk about that consolidating all of 'em, it hasn't happened. So right now, I can't address any Water Department questions. I remember when they went through the process and added the income. I think they did the \$2,000 is that right? The national standard for farm income? I think that's what it is right now. But the Planning Department doesn't have that same criteria. We want it in the ground.

Vice-Chair Ball: Director?

Mr. Spence: Thank you, Mr. Chairman. Particular to water and then I'll add something about the income requirements. The...each of the departments, I mean we're talking Real Property Tax, Water Department, and Planning, three very different reasons to look at water as, you know, for proving agriculture. You know, the Water Department wants to see that you're actually producing something so you can get your ag water rates. The Planning Department looks are you getting Ag rate water as a provision for approving that you're doing agricultural and Real Property Tax you know looks at something similar. So three very different purposes all looking at the same thing from a different angle. So as Gina commented it be ideal if we could...if the different departments could merge their definition of Agriculture so we could agree on certain...it would make live a little easier.

Mr. Higashi: So is that something that you're contemplating addressing or is it still gonna be separate where you have different requirements?

Mr. Spence: We're informally discussing it those kinds of things. There's no proposal out, no draft ordinances or anything, but the different departments do talk about it.

Vice-Chair Ball: So it's separate?

Mr. Spence: Right. The Commissioner brings up one example of why income would not be such a measure of whether you're doing any agriculture or not. Because you know, raising Koa trees for instance or any other kind of forestry for lumber, you know, it takes a long time or even some fruit trees take a number of years before they start yielding. There's also subsistence farming.

...(inaudible) have a big subsistence community on Maui where they grow water...or excuse me, grow food for their own consumption or just to share, not, you know, just not for sale or income, but in order to share with community and that's a growing trend by the way. And also, I'm familiar with one bed and breakfast in Kipahulu has a bed and breakfast permit that they tried selling and their money was stolen out a little pot, so you know, along side the road, you know, those kinds of stuff. So what they do is they donate. They grow just enormous amounts of bananas and other kind of fruit and they donate it to Kipahulu Community Association and to like the Food Bank. So they really perform a community service but they derive no income from it. They do it because this out of their heart. So putting in a strict income requirement for all these different reasons I think is problematic. There's so many other reasons to be doing farming than just income.

Ms. Flammer: So before we move on for this one, I would just wanna know that are you comfortable with an implemented farm plan as being part of the law?

Vice-Chair Ball: Penny?

Ms. Wakida: Gina, my concern has always been with these farm plans. How the approver determines whether it's a farm plan or whether it's just landscaping. You know we see from time to time applications that to me appear to be no different than what I have in my yard, some fruit trees, some ginger, things like that and we're told that these are for the use of the guests and we share some. Well, that's pretty much island style any type of property you have. So how does the approver of the farm plan decide this is a farm plan versus this is just landscaping of a home?

Ms. Flammer: I'm not the person that does that. I wish I had the farm plan rules in front of me. We have very detailed rules about what's allowed in there. That being said, it's landscaping and farming is not mutually exclusive. You can have a fruits arranged in a decorative order and we wouldn't discount it because of that. Grass does not count unless you are truly a grass farm which they do make money. We do have that, but not a farm that's just your lawn. I don't know if our Director has any other comments about that?

Vice-Chair Ball: Director?

Mr. Spence: Most of the time we see farm plans when people are applying for a new building permit for a farm dwelling. There's long debate on you know which comes first the farm or the farm residence? And you know it's problematic. A lot of people can't purchase a piece of property, implement a farm and not be living on it. It's two mortgages, et cetera, it's very difficult. So what we have is not an ideal system but it's more than some of the other counties have. So mostly the farm plan is supposed to regulate farm dwellings. A lot of times the permits that this Commission sees for special uses those kinds of things, you see a farm plan for something that's already existing that maybe...we started doing farm plans I believe 2000, 2001 something like that. A lot of the requests for permits that this Commission sees are for homes that preexisted that where there was no farming requirement at all. So some of the things you're looking at that look like landscaping it probably was at that time, but you know, we have...the property owners will file a farm plan. We'll send an inspector out to go look and see. Okay, if it's really within the general approvals of the things that we've approved in the past or is this just kinda sketchy or whatever. There is an inspection process. There is an approval process for farms plans for, you know already existing properties as well. It's not a separate process. It's a universal process for all of these. We

don't discount, you know, efforts in the past whether they're trees in a row or edible landscapes or those kinds of things. I understand the concern however, but we do take a look.

Vice-Chair Ball: Jack?

Mr. Freitas: Yeah, this farm plan is the biggest farce there is because no way on two acres you can generate any ag income unless you're raising livestock. I would be in favor of scraping the whole farm plan and just going a different route. Zone it differently if they're not doing ag. If they're doing ag and they can prove they're doing ag whether they're making income or not or for subsistence or just to be doing ag, I believe that's what it should be. It's just another step that we have that is not enforceable once they got the farm plan, the banana trees go away, the trees, the flowers die and I'm in favor of scraping the whole thing.

Vice-Chair Ball: Jason?

Mr. Medeiros: Yeah, the definition of farming you know, we need a definition of farming. Okay, I see gardening, I see landscaping, but I don't see what I deem farming to be. Okay, so I think the State should define farming. Just an idea, I don't know.

Ms. Flammer: Okay, any other comments on that one?

Vice-Chair Ball: Any other comments on that? Penny?

Ms. Wakida: I can defer to--

Vice-Chair Ball: Defer to Wayne. Go ahead Wayne?

Ms. Wakida: Go ahead Mr. Hedani.

Mr. Hedani: I'm not sure how we're gonna handle this you know in terms of I guess it's a recommendation to the Council that we're making preferably in the form of an ordinance that incorporates all of those recommendations, I'm not sure. When I took a look at the ordinance and I took a look at the suggestions, I agreed with a lot of the stuff that came out of Hana relative to the changes to the recommendations and I came up basically with six comments and I'd like to toss it out, toss out the six comments for the Commission's consideration because I don't know how we're gonna handle this in terms of dotting the i's, crossing the t's making sure the ordinance is in accordance with what you're recommending.

Vice-Chair Ball: Okay, you wanna do that now or you wanna wait till the end?

Mr. Hedani: Either way. I'd like to do it now actually so everybody kind of can keep it in their mind when they're taking up each individual item.

Vice-Chair Ball: Okay. Are you ready to take those down?

Ms. Flammer: Go ahead. I got my pen.

Vice-Chair Ball: Go ahead.

Mr. Hedani: My first comment was to disallow new multiple ownerships. That would be one owner owning more than one B&B or more than one short-term rental. Would be a recommendation.

Reduce all of the caps. We have a 175 approved B&Bs and short-term rentals at this point. All of the people that are responsible people that identified the deadlines for submitting the applications have already done so. All of the members or most of the members of the Vacation Rental Association have already come in. So the people that are the most responsible have already responded. I kind of questioned how we came up with the idea of 800 total B&Bs and short-term rentals. If it was just a means of trying to accommodate everybody that's out there or I'm not sure how they came up with that number, yeah. But it seems to me that the numbers are too high, 800 is too high, 400 and 400 I think is too high. I think we heard that coming out of Hana. My recommendation was to cut the 400 and 400 in half. So you end up with 200 and 200 short-term rentals and B&Bs. That would still allow for some growth in terms of new applications coming in, but the bulk of the responsible people as I said have already been covered.

The third recommendation would be to increase the fines and penalties for not being in compliance with the ordinance. And the Council can probably come up with a better hammer in terms of how to put teeth into the enforcement provisions.

My fourth recommendation would be to strengthen the revocation provisions so that if somebody screws up in terms of compliance with the ordinance there be a provision where their permit can be revoked and once it's revoked they cannot reapply or something.

My fifth recommendation was to reduce the objection threshold so that you don't have to have 30 percent of 200 people in order to have the provision come to the Commission for review. We've only rejected four out of 200 essentially I think at this point, but the question is...well, my perspective was if two or three neighbors immediately surrounding the property have an objection it should come to the Commission. At the same time, I questioned the 500-foot radius. Five hundred feet is kind of big. It's from my perspective it's big. It's one and a half football fields away you know in radius, yeah. And from my perspective I think if we're gonna increase the threshold to say two or three neighbors within an immediate vicinity reduce the radius from 500 to say 250 feet so you're looking at people that would be immediately impacted by the property rather than one and a half football fields away.

And the last item that I had was to consider a bill that merges the short-term rentals and the B&Bs together to some degree. From my perspective I think B&Bs and short-term rentals are essentially the same thing. We have had B&Bs come to us where the owner isn't residing in the residence where the B&B is operated so essentially it's the same thing. So I don't think you need both. And those are just my general comments on the bill itself.

Vice-Chair Ball: Penny?

Ms. Wakida: I would like to speak to Wayne's in general because it's something that troubles me as a planning commissioner and that is our scope and responsibilities with neighborhoods. Are we here to help plan for the future or are we just simply here to react to the community as they come

before us? How do we preserve areas that are affordable for families and how do we keep it that way? It seems like there's a lot of emphasis today and it's justified for making things easier for the applicants, but what is our responsibility, our long-term responsibility to our neighborhoods? Not many people have the courage to come before this Commission meeting and speak up and protest about things. So what is our responsibility then as Commissioners to take the bigger picture, the bigger view and say we have these areas of our island that are residential and should remain so for citizens and not become resort destinations which in turn...turn not just changes the character of the neighborhood but drives prices up terribly so that young families can't afford to buy into them? So I have a real question about taking this bigger view because it seems like what's before us now and what we have been doing largely with short-term rentals and B&Bs is reacting to an application. What is our commitment to the bigger picture? And I don't know if the Director has any...could weigh in on that, but I think that the recommendations that Wayne has come up with help to provide more structure for the Commission to preserve areas of our island for our future young people, for our future families.

Vice-Chair Ball: Okay. Jack?

Mr. Freitas: The problem with all of our zoning laws basically, bed and breakfasts and short-term rentals that we put forth all of these rules and regulations and we issue a permit. They go ahead and what do you call, operate. And there is no follow up. There's no enforcement. The enforcement is according to complaint. If you get a complaint that's when there's enforcement. There's nobody that goes and basically once-a-year, twice-a-year monitors the thing. We have the same...and it's a different issue, but it's an example, we have the same thing with the restaurants. You know you got restaurants that hasn't been inspected for three years and they're operating by the Health Department. I think before we put any more rules and regulations out we should have some form of enforcement or monitoring.

Vice-Chair Ball: Director?

Mr. Spence: Okay, there's a number of things floating around on the floor. So I would...perhaps first I should address some of Commissioner Wakida's concerns about long-term responsibility of the community. That's the very reason why this bill is before you is because the zoning ordinances come before the Planning Commission because it has island and countywide implications. And I would say one of the big concerns about this...the short-term rental ordinance has been both providing...well, has been the preservation of neighborhoods. The presumption is if you have one here or there that's not such a big deal and individual...okay, so you're allowed to have one within 500 feet of, you know,...you're allowed to have one every 500 feet or so. As Commissioner Hedani noted that's one and a half football fields away. So that's, that's a pretty fair distance away. If there's one closer together than that it comes before this Commission. So one of the things that you're looking at okay, is this extra permit going to be disruptive to the neighborhood or these other, we've had a couple instances where there's more than one, one additional within 500 feet. It comes to this Commission for this very reason is are these things going to fit in with the neighborhood or are they going to be disruptive? And that's, you know, within this Commission's purview to approve or deny those permits. And as you, as this Commission has voted in the past, you've seen that some operations do not fit in with the neighborhood and that's one of the reasons you have voted to deny.

The other reason a permit would come before this Commission is because of neighbor complaints. So everybody within 500 feet is notified of just an application let alone a public hearing. If the neighbor complaints come in, they go, you know, there's a history here. This neighbor is not being a good neighbor. You know, you hear those things. And you also, you know you always request the little map of where the complaint's coming from. Are they next door neighbors or are they three streets over at the outskirts of that one and a half football fields away? You know, and you weigh those things. So I think this...I think the purpose of the short-term rental bill is exactly and the reason it's here before this Commission is exactly for the reasons that you're asking about, do these fit within these certain neighborhoods and will these individual operations fit within these individual neighborhoods 'cause each circumstance is unique and that's...you know, this Commission takes into account those unique qualities of those neighborhoods and of the individual operations. You've seen applications that don't fit in with neighborhoods. You've also seen applications where there might be a couple of rentals very close together that do operate very responsibly and they have the support of their neighbors. I mean, this is part of your deliberative process. So in my opinion, you know you are taking a long-term look by just reviewing this process altogether.

As to Commissioner Freitas's thought on no enforcement. There actually are is quite a bit of enforcement going on. As far as monitoring, when we do a renewal, do we go back out and this is to--

Ms. Flammer: Only if there's cause. What we do is we check for compliance with the various conditions, the insurance policy, do they have the things on the web that they're supposed to have. This is one-year renewal, and there's a third item that we look for and that's at the one-year. At the three-year it's a brand-new application. It's a renewal application where they come in and they have to show compliance with everything. Sometimes we'll go out. They are required as part of the ag permit to show they're still complying with the farm plan. So we do monitor that as well.

Mr. Spence: Perhaps, I am...I'm throwing this out, I dread the thought of adding, you know, additional workload but maybe one of the recommendations to Council regarding this would be at the time of renewal perhaps we should go take another look at the property. That would be once a year or once every couple years depending on you know how it's structured. Because I know things do somehow magically change between the approval and the time that the permit is approved, not always but in certain cases.

Vice-Chair Ball: Richard?

Mr. Higashi: I totally agree with Commissioner Freitas about enforcement. I think on Maui there's so many illegal rentals that's going along, but nobody's really...you don't get the feeling like somebody's enforcing it. You go down Kamehameha Avenue and you look at the amount of vehicles outside of the home you know definitely there's not just one family. There gotta be more than one family. Who's enforcing that violation? And I think the more we can do that, the people who are applying for those permits should be commended for the amount of work that it takes to get the application and you look at the numbers I think the numbers over weigh the side that there's so many illegal ones occurring that the ones that are doing it legally should be commended for what's happening. And I think part of our job as Commission is to make sure that the enforcement of illegal rentals are either publicized or something so that people are aware of the fact that they gotta go through the County process of getting a permit and if you don't do that, it just prolongs or

encourages illegal rental taking place and we should, we should try to I think put more teeth into our enforcement policy. Because only until then that you do that you're gonna start to make people realize that you the permit process even I'm overwhelmed. I look at your sketch of the flow of how the permit process goes through, if I'm applying as an applicant I would be, I would be shocked to figure out from today when I put in my application when am I gonna get my permit approved? Is it gonna be a year from now, two years from now? You know, so is there some kind of a flowchart that me, as an applicant, I can get and you can say, oh you know today is July 1st, and by December 31st you will be able to get your permit. At least I have a target date as to where it's gonna go. But getting back to the original thing, what Commissioner Freitas is talking about has a lot to do with what we're gonna make this bed and breakfast or short-term rental thing work. And the only way it's gonna work is we gotta put more teeth into enforcement.

Vice-Chair Ball: Director?

Mr. Spence: Thank you. How about if...I'm gonna make a suggestion that at perhaps at some future date we have a workshop for the Commission on enforcement and what the Department is already doing. I know we have...our inspectors are very busy. I mean, they're very busy. You know there are certain things by rules that the enforcement is under this Commission is like SMA, but other things are clearly just under the direction of the Planning Director and the Department. You don't see a whole lot of what kind of enforcement activities take place, so I think probably it be a good idea if we had a workshop so we could explain to you this is not with, you know, there is no vacuum in enforcement. Could it be stronger, yeah, but we're working at hiring additional personnel and those kinds of things, but the inspectors and the enforcement arm are extremely busy right now. It's just that, you know, we don't publicize it. You know, the Commission doesn't see it very often. It is being done.

Vice-Chair Ball: Jack?

Mr. Freitas: The reason why I brought that up the neighborhood that I live in there is a bed and breakfast, they did their farm plan, they did their whole thing and now they have nothing. You know, their fruit trees, everything went away and they're still operating. That's the reason why I brought that up. This is something that I'm personally seeing. I know as far as the permits and all of the different...I'm addressing bed and breakfast and short-term rentals. I'm not addressing your driveways and your different things that you inspect.

Mr. Spence: Okay.

Vice-Chair Ball: Okay, with that, we are going to take a break. But when we come back let's try and focus on our chart a little bit more. Wasn't planning on being here at lunch, but it's heading that way. Anyway, we'll take a 10-minute break.

A recess was called at approximately 10:21 a.m., and the meeting was reconvened at approximately 10:36 a.m.

Vice-Chair Ball: Okay, call the meeting back to order. So what we're gonna do is we're on Item 2 Gina, yes? Say yes.

Ms. Flammer: Yes.

Vice-Chair Ball: Okay.

Ms. Flammer: Okay, so I just want you to know Commissioner Hedani I took down your notes. Most of them pertain to existing amendments so when we get there I'll bring them up, but then I wrote the extra ones at the bottom. So I did...we will get to them, we'll just insert them as we go through the bill.

Mr. Hedani: Okay.

Ms. Flammer: Okay, so back to the little chart here. So are we done with 2? Is everybody comfortable about keeping the bill the way it is?

Okay, moving onto 3. This is again is just a housekeeping item. Property subject to a condominium property regime, the Department treats them as a single lot and then we only issue one permit for that lot.

Mr. Hopper: Can just make a comment?

Vice-Chair Ball: Corporation Counsel?

Mr. Hopper: No. 2 was the one that I did have a comment on, so I don't know if that's something that we work out with the Department and the Council as far as appropriate language but just wanted to note for the record that was the, with the agricultural, the income limit or farm plan requirements for and also listing not as an accessory use rather than an as a special use, correct?

Ms. Flammer: Correct, yeah.

Vice-Chair Ball: Director?

Mr. Spence: Yeah, I might make a suggestion for the Commission that we...we could, I mean accessory use that's fine. If we have to keep it as a special use we could perhaps say, "or as otherwise provided by State Law". Because if the State allows these things within the Ag District it would...just State Law could eliminate the need for special uses.

Mr. Hopper: Well, currently the State Law says you can do it under certain restrictions. So the recommendation that I had in the previous ordinance is to say...list it as a permitted use if you meet the State restrictions and the County adopts that as a ...(inaudible)... ordinance and then otherwise as a special use if they cannot meet the provisions of the State Law. That's essentially what we had drafted before. Just to let you know, it's not here, but that's what we had kind of looked at.

Mr. Spence: Okay, and we can work it out.

Ms. Flammer: Okay, so anybody have any strong feeling about condominium property regime parcels? Okay. One of the...when looking at...oh, we're on No. 4. When looking at the ownership, the Council added not just an individual but allowed trusts. One of the things that was forgotten not

known at the time is that Limited Liability Partnerships are a common ownership entity. The Department is comfortable with them. I sure hate making people redo all of their trusts and the State documents and I've had to do that with LLPs. We'd like to just add that in there. Anybody?

Mr. Hopper: Can I make a comment?

Vice-Chair Ball: Corporation Counsel?

Mr. Hopper: Thank you, Mr. Chair. This was a section that we didn't generally advise the Council to make the change to allow LLCs, trusts and partnerships to own, to apply for Short-Term Rental Home Permits and particularly given the difficulty of determining the internal structure. I mean this is a long section that has a lot of, has a lot of requirements for each of the members and is a subject probably to potential abuse of people having multiple properties under different entity names and also it's going to provide for a lot of extra work for the, I think, Department and our office to review potential documents to see who owns what. Now the Department may have not have had many problems with this section, but this was a word of caution that we did give to the Council when they expanded this to allow for LLCs, now LLPs, corporations, and trusts, and partnerships to own Short-Term Rental Home Permit homes. So this was something that we cautioned against. It's not necessarily restricted. You know, the Council doesn't necessarily have to restrict it to the individuals, but this does make the process a bit complex. So just a word of caution there. And again, if the Department doesn't have a problem doing the review that's fine, but it can get extremely complicated.

Ms. Flammer: We actually we ask the applicant to explain it to us. We ask them to explain...first of all, everybody has to be a natural person. So other entities can't own other entities. That's again, when it gets really complex, but it can't be that way, and then everybody has to be related. So when you put in those two provisions, you're really just looking at simple types of structures that own the properties. If I see when reviewing it that another entity owns another entity, I'll send it back to them. Usually it's you're in the review process and I'll ask to get with their attorney and make sure that they meet the Code.

Vice-Chair Ball: What's the relationship defined as?

Ms. Flammer: It's in here. They need to be related and it's fairly broad as to what related is.

Vice-Chair Ball: ...(inaudible)...related or is it--

Ms. Flammer: There's a definition that actually spells it out, mother, father, child, stepparents, adopted. They should be adopted by blood, adoption, marriage or civil union. So that's the requirement. So fairly restrictive.

For No. 5, this is a provision that applies to the island of Molokai. Currently they are limited having only three bedrooms. The Department is recommending that we go to six on that, but tomorrow I'll be on Molokai and I'll get their comments. Any comments on that?

Vice-Chair Ball: Just going back to the LLP in an enforcement scenario, do you have a...let's say a power of attorney, let's say the group is 10 people. Do you chase down 10 people or are you

chasing down one person or have you guys thought about that?

Ms. Flammer: You're chasing down the applicant. The permit holder actually is who you're chasing down. Not everybody that's an owner will come in as a permit holder. So the person that's the permit holder is who.

Vice-Chair Ball: And they're not allowed to either?

Ms. Flammer: They're what?

Vice-Chair Ball: They're not allowed to either?

Ms. Flammer: They can. You can have multiple permit holders.

Vice-Chair Ball: Okay, so back to my question. If you have 10 people on that permit, you know, it starts a whole enforcement game there. Do we wanna head that off now and say look if you're an LLP you have to have a power of attorney for this application?

Ms. Flammer: I think we'd rather be able to go after more people than less, but I guess...maybe when we do the workshop on enforcement that's a question for them to handle. We haven't had any issues with that. Usually the permit holders value that permit greatly so we haven't had anybody trying to duck out as not being a permit holder.

Vice-Chair Ball: Wayne?

Ms. Flammer: Good question though.

Mr. Hedani: One of the questions or comments I would toss out on that is if you have non people as the entity that owns it. If you have an entity that owns it, a corporation out of Maryland that owns the home, how do you file a complaint when you have a complaint?

Ms. Flammer: The permit holder must be a natural person. So the permit holder is different than the ownership entity. So we allow a lot to come in that's owned in a certain way, let's say a trust, a revocable living trust, but the permit holder must be one of the owners or trustees and they must be a natural person unlike an SMA where a company can own it. This time it actually has to be an individual.

Vice-Chair Ball: Thank you. Next.

Ms. Flammer: Okay. Onto No. 6, this is super housekeeping here. We have criteria for evaluating an application in two different places. I know it makes it very confusing for you as Commissioners. We usually try to remind you when we're doing the staff report, but we like to just 'em all in one place just to make it easy. Those are the criteria right there that we wanna move.

No. 7. This came from our Enforcement Division that's looking for a way when they're on the internet to tie that permit number to an actual house. So what they've recommended is that all advertising for that permitted home has to include a TMK or a valid physical address.

Vice-Chair Ball: Wayne?

Mr. Hedani: I would recommend that the advertising include the physical address and the TMK.

Ms. Flammer: Okay. Any other comments? Okay. No. 8 is basically just codifying the home inspection process. It's in the application. It's something we've used. It's been very successful. We just like to make it right in there in the law.

Okay, No. 9. The notice...sign requirements.

Vice-Chair Ball: Corporation Counsel?

Mr. Hopper: Mr. Chair? Is the requirements, I see on Page 8 of the draft ordinance subsection 7 it says, "or with Department approval a certification by a licensed architect of compliance with Maui County Building, Plumbing, Electrical Codes in effect at the time of completion of the single-family dwelling and additions." That's something different than the home inspection form that you guys require.

Ms. Flammer: It's part of the same process. It's part of the same checklist item that we have.

Mr. Hopper: So you're gonna need a new form to draft that certification?

Ms. Flammer: No, we already accept that. What that certification is for is if, we require safe one built so it applies to the safe one built checklist item. There are times when building permits are not...they're gone. The County doesn't have 'em. Owner doesn't have 'em.

Mr. Hopper: It's like you got a certificate of exemption then from the Public Works Department or what exactly what form are we talking about here?

Ms. Flammer: It's a letter that comes in. It's not a form provided by the Department.

Mr. Hopper: Okay, 'cause there's a certificate of exemption form for something like this, but you're saying it's an existing form, this certification form has already been approved by the Department and it's being used or is it--

Ms. Flammer: It's not a form. It's a letter that comes in. What did you call that, certification of exemption?

Mr. Hopper: There's a certificate of exemption I know that gets recorded along with hold harmless agreements for building permits. It says, "or with Department approval a certification by a licensed architect of compliance with Maui County Building, Plumbing and Electrical Codes. In effect at the time of completion of the single-family dwelling and any additions." And normally when someone doesn't have their permits, they have to sign a hold harmless agreement that's recorded on the property with a certificate of exemption. And I'm just not sure what form or I mean normally there would be a form the person would sign to certify rather than just a letter to the Department. So I'm just trying to figure out what, what, so this is a new requirement but you're saying there's existing process for that?

Ms. Flammer: Yeah, so it's been going on. It was our way to responding to the missing permits from the building that had the mold. We don't require them to go through after-the-fact and do all of that. Now they also have to do the home inspection on top of that.

Mr. Hopper: Okay, I just want to try to limit any kind of exception from the Public Works process they have for people that have no building permits so that there's no indication--

Ms. Flammer: Well, no they have--

Mr. Hopper: --that they're okay to continue on if there's no record of building permit.

Ms. Flammer: It's not that there's not a record of building permits, it's usually what's missing is the final. So what's missing is the piece of paper with the final signatures on it. So we will not take a letter when there's not been a building permit issue. We'll only take it when there's a problem with finding the finals.

Mr. Hopper: You may wanna look into this certificate of exemption and hold harmless agreement process because normally I think if there's no inspection completed, the Department's gonna require that for you to be able to essentially complete that without an inspection. It's generally when work's concealed where they can't do an inspection now. I'm just not sure why someone wouldn't be able to give an inspection after they've got an issued permit and they don't have a final.

Ms. Flammer: They can go that route if they'd like also, go through the miscellaneous inspection process.

Mr. Hopper: But I mean to complete the actual inspection that they had.

Ms. Flammer: That would require going through the miscellaneous inspection process. Unless it's only a final signature that's missing and the inspector agrees to do that, but typically they require that you go through which would be the other option that they have. So this is, we don't...well, I'll look into that. Thank you, that's very useful.

Mr. Hopper: Yeah, just a concern that if there's an inspection process under the Building Code that we're not an exception from that for Short-Term Rental Home Permits to not have to complete that inspection process. That's the concern that I was kind of looking at with this new way to have the certification done.

Ms. Flammer: Yeah, it's not an alternative to the home inspection. It's in addition to the home inspection.

Mr. Hopper: All right. But I mean, an alternative to the final inspection by the Public Works Department for that's required under the Building Code--

Ms. Flammer: Right.

Mr. Hopper: --if that's not obtained. If that's obtained then I think there's no problems obviously.

Ms. Flammer: Right, right, understood. Okay. So No. 9, is changing the sign requirement. As you know now we require it to be up five days prior to submitting the application and then it stays up--oh Wayne did you wanna?

Vice-Chair Ball: We're gonna go back--

Mr. Hedani: On No. 8, I would recommend a licensed Hawaii architect instead of a licensed architect.

Ms. Flammer: Okay. Sometimes...yes, they have to be Hawaii licensed. Thank you. And we require that license number, the Hawaii license number.

Mr. Hopper: Does it have to be an architect or could an engineer or contractor also sign that?

Ms. Flammer: No, we only accept it from a licensed architect.

Mr. Hopper: Interesting. Because the certificate of exemptions you can have a contractor, engineer or architect. So that's it. Thank you.

Ms. Flammer: No, we limit it. So the notice sign right now the notice goes up before the application comes in and it stays up all the way till the end of the process. We're, as you know, you drive around, you see the signs. After a while they kinda lose their usefulness so we're suggesting an amendment where the sign would go up during the 45-day notice process and then it could be taken down. And also you can't come in until after your application is in. We do have a couple cases where the people put the sign up and they either get stuck or they just wanna look like they're gonna come in and we really don't have authority at the point.

Vice-Chair Ball: Question on that. So when would the other sign that's required go up?

Ms. Flammer: The permanent sign?

Vice-Chair Ball: Right.

Ms. Flammer: That would go up after they're approved.

Vice-Chair Ball: Do we have a time frame for that or is it?

Ms. Flammer: It has to go up within 30 days I believe the permanent sign. And our rationale for the sign is that the neighbors are getting a notice. At the beginning of the application everybody within 500 feet. You're getting a notice if it's approved and then you're also seeing the sign for those 45 days. If you go to public hearing, you get an additional notice after that and it's also put in the newspaper. We got a lotta complaints about the signs so we're responding to that.

Vice-Chair Ball: Okay.

Ms. Flammer: No. 10, the newspaper notice. Kinda interesting how the law gets developed sometimes. When the B&B law was done the public notice section, they just refer to another

section in the Code, part of that section requires a newspaper notice put in not only by the Department but also by the applicant three times. It's about \$1,000. It's at the very end of the process. We're saying that we're fine without...with only the Department notice going in. The applicant then doesn't have to do it an additional three times. Keep in mind neighbors within 500 feet are already getting notice and the Department already has that newspaper notice going up. Any comments? Okay?

Oh we can get some discussion here. So No. 11, the trigger for Planning Commission. When we first started taking a look at the...your agenda, we got really concerned. The economy is picking up, we're seeing many more permits coming in, we're seeing items deferred. So we started looking at ways to reduce the...your workload. This is one of the things that came. It's really just up for your general discussion. We're recommending that the automatic 500 trigger become a discretionary trigger for when there's more than one with 500 feet. Hana began by saying that they don't support this, and then at the end they wanted to see every single application. So there was quite a bit of discussion. You are the ones that see the application so we'd like to hear what you have to say.

Vice-Chair Ball: Penny?

Ms. Wakida: This is recommending that the 500-foot rule be removed?

Ms. Flammer: It would become discretionary.

Ms. Wakida: To what for example?

Ms. Flammer: Well, the Department would decide based upon how many are in the neighborhood, what kind of complaints have been received. We might have some other criteria whether or not to send it to you.

Ms. Wakida: I think this is kind of a risky thing to do. It takes away the opportunity for the Planning Commission...my initial comments on helping to preserve neighborhoods. So if there's already another short-term rental within the neighborhood. I think, yeah, I'm not in favor of taking that away. We can talk about reducing the 500-foot rule to another distance but...

Vice-Chair Ball: I have a question of this. Why was this proposal changed?

Ms. Flammer: It started, yeah it started at the beginning of the process when we noticed your agenda. Later on at the very end when I kinda really drilled down to what permits are taking so much time it's really the SUPs that are on the agenda that are taking up the bulk of the time. We're also, not so much the neighbor protests. We're also a little bit concerned that the 500-foot exemption waiver for that first year is now gone. So you're gonna start seeing many more applications. We just were brainstorming as to ways that we can...I mean, or we could meet additionally, that would be another choice, but we didn't think you guys would wanna come in for one more meeting. We were trying ways to deal with your schedule, but maybe you're not feeling the pressure. I don't know.

Vice-Chair Ball: Well, I mean, we sign up for this knowing that we have duties and responsibilities

to our community and if that's the rational then I would agree with Penny on leaving it alone because don't worry about that we are...we have too much to do because I know for one, me I don't feel that way. I mean, we're still only meeting twice a month and we usually don't meet all the way through the day. But if that's the rational then I think that's a disservice to the public. And I wouldn't agree with that.

Ms. Flammer: Okay. Do you want me just to flag this as an amendment that we're gonna come back to, since you haven't adopted the whole bill? I'll read you the amendment the end?

Unidentified Speaker: Yeah.

Ms. Flammer: Yeah? Okay, good we're gonna do that. Okay. Okay, any other comments on that one? Okay.

Mr. Hedani: I'm trying to understand the process basically. I kinda agree with what Keone is saying. Whatever the load is, is what the load is and the Commission has to address it. From the standpoint of identifying what comes before us, what I would like to see is, the threshold lowered for the trigger if there's a complaint and possibly a reduction in the 500 feet to half that, 250 feet or something as a recommendation to the Council to consider and chew on.

Ms. Flammer: Right.

Mr. Hedani: About who's immediately impacted and those kinda offset each other. One increases it and the other one decreases it.

Ms. Flammer: What I'm hearing though is you're fairly comfortable with your current workload. There's no concerns about--

Mr. Hedani: What you're saying is that the workload is gonna triple very shortly.

Ms. Flammer: It will depend on the number of applications coming in. At the beginning of a law you get a lot of applications. If enforcement were to bring in another wave, it could be problematic.

Mr. Hedani: If we cap it at only what's been applied so far then we've solved the problem, right?

Ms. Flammer: Yes, that would really do it. Okay, No. 12, is Hana. Again, on the vein what we've done is removed the trigger for the Hana Advisory Committee to review when there's four, five or six bedrooms. They're the only one that has this. We only have one permit right now in Hana for five bedrooms and they had to come in for State Permit and I talked them into it. So I'm thinking it might be an impedance to compliance there. I did talk about it with Hana. They decided again, they'd rather just see all of the permits. That was their solution. I don't know how you...you are the body that refers them to Hana. I don't know if you have any thoughts?

Vice-Chair Ball: They do all the work so...

Ms. Flammer: Yeah, yeah, okay. They like meeting. Okay, No. 13, this is where we're gonna get to Wayne's one of his first one.

Vice-Chair Ball: Director?

Mr. Spence: My recommendation would be that the rules would apply evenly to all the different districts. I'm not sure why Hana would be...I mean, if it qualifies, if it meets the criteria and the standards why have another public hearing? I would, would...there might be, I haven't looked at the Hana Advisory Committee Rules in quite a long time but there may be some procedural issues with I believe it has to take this Commission to say, Hana Advisory Committee go and hear this.

Ms. Flammer: You're looking at six months to a year that you're adding on a permit when you go out to Hana.

Mr. Spence: Right.

Ms. Flammer: And I think that's one of the reasons people just decide not to come in for the permit.

Mr. Spence: And that was part of the goal of passing this ordinance regulating short-term rental permit so people would actually come in and apply because we've had so many that were not. So the only other option available prior to this permit prior to this process was a Conditional Permit and that could take, easily take two years to accomplish and you're required to pretty much hire a consultant to navigate the process. I mean, really does...I refer to one applicant in Kipahulu renting one bedroom. They have a one-bedroom bed and breakfast. It took a Conditional Permit for approximately 200 square feet. So you had Hana Advisory Committee time, you had Planning Commission time, you had County Council time. They needed to pass an ordinance to be able to allow a mom and her daughter to rent out about 200 square feet of their home. So that's you know, sort of an extreme case. So that's sort of the genesis for these kinds of ordinances is to bring some kind of sensibility into the permitting process. So I'd rather not step back you know, into the other direction. These things can be tightened up, I agree, but I don't wanna go back and have more public hearings than is necessary. And there are times when it is very necessary and they shouldn't have public hearings, but not just as a preference.

Ms. Flammer: Not only that, we've had trouble getting quorum out there. So we've driven out twice now not knowing if we were going to have quorum, and both times we got lucky.

Vice-Chair Ball: So is it the Department's recommendation then not?

Mr. Spence: Yeah, to not have all-

Vice-Chair Ball: All applications to go-

Mr. Spence: -applications go to Hana Advisory Committee.

Vice-Chair Ball: Keep the process that's in place now.

Ms. Flammer: No, we'd like to have it. There's a trigger that was probably suggested by the Advisory Committee during the B&B that just got picked up then. That they wanted to see when the house is larger, they just wanted to see the houses that had four, five or six bedrooms.

Vice-Chair Ball: Do we have rational on that?

Ms. Flammer: No, I did not go back and read those minutes. It's a good idea before Council.

Mr. Spence: They see...I would also comment, Hana Advisory Committee already sees most of them because most of them are in the Ag District. So...

Ms. Flammer: They do. And they've been very supportive of them, but they're long meetings and the applicant when they don't live on island they're required to be there and they're required to be here as well too. It's hard when they have to wait to operate to ask them to wait that long.

Vice-Chair Ball: Okay.

Ms. Flammer: Okay so No. 13. We talked about this a little bit earlier holding ownership interest in short-term rental or B&B properties. Already we say a permit holder can only hold one permit. However, now that we've been doing this for two years, we get to pick up on the loop holes, we've had cases where someone has been in a trustee in multiple...in one entity and that entity has owned multiple ones and they've just put different trustees on. So we thought we could either outright prohibit it or we could bring it to you if it's a married couple that's one thing. I've seen father-daughter cases. You might be okay with something like that. Somebody that just happens to have different family members as trustee you might not be okay with. But we thought it's definitely a reason for more review.

Vice-Chair Ball: Any comments on that?

Ms. Flammer: We're recommending it be a trigger. I know Commissioner Hedani had talked about an outright prohibition. Hana did discuss an outright prohibition. Okay. No. 14, are we moving on?

Vice-Chair Ball: Yes.

Ms. Flammer: No. 14 is clearly a housekeeping. We just wanted to add the word, "renewals". Okay, No. 15. Right now-

Vice-Chair Ball: Wayne?

Mr. Hedani: Can we back up on No. 13?

Ms. Flammer: Yes, okay.

Mr. Hedani: What are we saying that you cannot hold multiple permits?

Ms. Flammer: Well, already the law says you cannot hold multiple permits. We're saying when there's let's say a revocable living trust that comes in and there's two people on that revocable living trust you can be one of them or it's both. It can be permit...usually one is the permit holder. If they come in for a second property, that's when you start seeing the multiple ownership.

Mr. Spence: You would have the other person on that revocable trust for the second one.

Ms. Flammer: Thank you.

Mr. Hedani: And that's permitted?

Mr. Spence: Right now it is. We're saying...what we're suggesting to the Commission is that if that...if multiple properties are owned by a trust and you know, one member of the trust owns one...or is the manager for one short-term rental home and another one comes in owned by that trust and those same people are on that trust it may be a third or a fourth, perhaps the Commission should see the additional properties, the additional applications.

Mr. Freitas: I would like to see an outright prohibition against that. You know, that's...you're basically running a rental business and it's another loophole that you can create a monster basically because now all of us are on the trust, all of us own a home, and that is not the intent of the law. I would to see, my suggestion, outright prohibition against it.

Vice-Chair Ball: Wayne?

Mr. Hedani: I agree.

Vice-Chair Ball: Jason?

Mr. Medeiros: Yeah, I agree with both of them. There should be a prohibition. This all came about to my understanding as a way for local people to generate some income to get them through, okay. It was not about it being a business vacation rental. And you know I don't wanna see, you know a bunch of trustees owning this property and this. That makes it a small business, a small family oriented business home-based into a business. You know, we wanna keep it neighborhood. And we wanna help out with bed and breakfasts and everything, them renting a room or a cottage, you know, to supplement their income. I'm all for that. They live there. It's home. Not some place where you come for six weeks out of the year and rent 'em out and say, oh yeah, but I'm hiring all these people. You know, reality you're not.

Vice-Chair Ball: Okay, so the question is how many of those interests do we have if we create a prohibition then what happens to them?

Mr. Freitas: One.

Ms. Flammer: I'm only aware of one which was revoked already, so...

Vice-Chair Ball: So we have none?

Ms. Flammer: I think we have one right now where it's a family and they own two on the same block.

Mr. Freitas: There you go.

Vice-Chair Ball: Okay, so what happened to them?

Ms. Flammer: I think it's grandfather-granddaughter maybe?

Mr. Hedani: I would say you can grandfather the ones that have already been approved and then prohibit it for future applications.

Mr. Freitas: I'll go along with that.

Ms. Flammer: So if I'm hearing you correctly you don't wanna review these. You're just...you're looking for an outright prohibition?

Mr. Freitas: 100 percent.

Ms. Flammer: Okay.

Mr. Spence: So if...in the future with new...what I hear the Commission is saying is for new applications if you have even multiple trusts and the same members show up on those multiple trusts they should really own...only have one or it could be one per trust or...

Mr. Freitas: If it's a separate, being that I did, I'm supporting an all out prohibition, if it's a separate trust that's a separate trust altogether. What I'm talking about is the same trust and you have multiple people on the trust owning multiple properties. It should be per trust, one ownership per trust.

Mr. Spence: Okay.

Mr. Hedani: Yeah. I can agree with what Jack's saying. The only thing more clever than people trying to write a law to prohibit something is the people trying to get around it, yeah?

Vice-Chair Ball: Penny?

Ms. Wakida: Just to clarify. If the trust or corporation has six people. The permit holder is one of those people?

Ms. Flammer: Or more and they all have to be related to each other.

Ms. Wakida: So let's, let's supposing it's one person, if a second person in that corporation who is not the permit holder chooses to have a short-term rental what are we saying, what's the law saying?

Ms. Flammer: Right now, it's not addressed in the law. We're recommending that it come you for review. You're telling me you'd rather see an outright prohibition.

Ms. Wakida: So if a second person who is a member of that corporation or trust but is not the permit holder wants to have a short-term rental they are not allowed because they're...in this suggestion?

Ms. Flammer: Yeah.

Ms. Wakida: Okay. Just wanted to understand what we're...

Ms. Flammer: Yeah, thanks for making it clear. Okay, we'll come back at the very end. Obviously this is one of the two I'll read back to you. Okay, so now we are on 15. This is the one-year renewal, what happened...I'll give you a quick history. What happened at Council is it was...when the bill went to them, when you reviewed it, then the bill went to them the initial first time they were approved for up to three years. It was actually the association, the Vacation Rental Association during the Council hearings that wanted to make sure that there were no egregious operations, the kinda the poster boy. So they wanted a tool for us to be able to get rid of that right in the beginning usually the first year is when you know that there's problems. So they put in or they recommended that we do a one-year renewal and then it's kind of an auto department initiated renewal based upon complaints. We're wanting to just clarify it. Our computer system makes the Department initiated renewals very difficult. We're wanting it to be you come in after that first year, you file some kind of paper that just says here's my money, here's my application for a second renewal. Here is how I'm in compliance. It would give us a little bit more flexibility in not renewing a permit if there is a problem. So you can see when you go to Exhibit 33, we're just taking out a little bit of language in the Code right there.

Vice-Chair Ball: Okay.

Ms. Flammer: Everybody seem okay with that?

Vice-Chair Ball: Director? Wayne?

Mr. Hedani: Gina, what is the logic behind the renewal process? Once a permit is approved, once a person gets his permit to operate a short-term rental or a B&B is it the intent of the Department that that person operate that short-term rental or B&B forever?

Ms. Flammer: No. Houses get sold and sometimes people are out of compliance and they don't get renewals.

Mr. Hedani: Well, suppose we don't sell it. Is it the intent to...only those people that get anointed with holy oil by the permit process get to operate a short-term rental and only they can get renewals in the future. And is there a drop dead date to this at some point where after 10 years the permit ceases?

Ms. Flammer: No, we don't have an ending like that. It's a fairly new permit so that's a new idea. The thought was that slowly over time houses turn over and the permit's not transferrable. The biggest concern at the time, I mean these are kinda second generation ideas that after you've been in it for a while you start thinking about. The concerns when we first went through it were that a property would not be locked into...would not have a permit that ran with the land. I think if the intent was to always have a parcel be in that type of use then it would run with the land like an SMA Permit does. This runs with the owner and it's nontransferable. So when the house is sold, the owner passes away that permit then goes away and opens it up for somebody new. That could be an amendment, an idea that you can only hold it for so long.

Mr. Hedani: Here's what I was thinking. Just thinking out loud.

Ms. Flammer: Yeah.

Mr. Hedani: A person that operates a short-term rental or a B&B basically is entitled to make a hell of a lot of money for a period of time. Establish a period of time where that person can make a hell of a lot of money and then at the end of that period have it expire and the property turn into a long-term rental. They made their money. They paid their mortgage. It reverts back into the inventory of rental within the housing market and somebody else gets the opportunity to go after that permit.

Ms. Flammer: Okay. Did you want to take that up during the amendment time or did you wanna see?

Mr. Hedani: Food for thought.

Ms. Flammer: Okay. We'll have an opportunity at the end too. Anybody over lunch comes up with something. Okay. So No. 16, we're back to Molokai. On Molokai the renewal for some reason is just one year. And then it goes every year after that. We're looking to make all three islands consistent and we're looking for subsequent permit renewals to be the same as everybody else where they can be up to five years. They can be less, but they can be at least up to five years. Again, I'll be on Molokai tomorrow.

Vice-Chair Ball: Penny?

Ms. Wakida: Is there any revisiting of the farm plan on Ag renewals?

Ms. Flammer: Yes, the last condition which I think is No. 7 it says that the farm plan must stay implemented throughout the duration of the permit and then when they come in for renewal they must submit evidence but then we also go out and do an inspection. Okay.

No. 17, again, you guys touched on this a little bit giving us a little more strength when it comes to not renewing. It adds a provision clarifying that if there are recorded complaints or noncompliance with the permit or other government requirements then the permit may not be renewed. Sounds really obvious, but we just want to write in the Code.

Okay, again No. 18 is complete housekeeping. It removes the requirement for applicants to submit verification of their tax filings every single year. They do that at renewal and the Department is not equipped to be doing these State and County Finance Department functions.

No. 19. Again when I sat down with our Enforcement Division, they're looking for a way to be able to get in and do their compliance. Right now it just says at an appropriate time with the appropriate credentials but we wanna put in there actually it needs to be within one-hour. Sometimes these properties are gated and we're not allowed access. We'd like it if you don't let us on onto the property then that could be a reason for revoking the permit. And the reason it's the one-hour it doesn't give you enough time to make a lotta changes. Again, Hana thought that the hour was a little quick for out there. They wanted to give a little more time.

Vice-Chair Ball: I don't understand the...(inaudible)...out there though for that. I mean, it's property, it's property. Whether it's in Hana or Kapalua or...

Ms. Flammer: Well, they were concerned that sometimes you have the manager come over here to go to Costco, and then if they get call they don't want the enforcement officers showing up with the guests there. They wanna accompany the enforcement officer or at least be able to reach those people and let them know they're gonna have somebody—

Vice-Chair Ball: Well, I think 24 is extreme compared to one. So, I think we need to address that.

Ms. Wakida: Yeah, I agree. I think you can make the same argument for a lotta places on this island. I mean, if you live out in you know Honokohau, the same...I mean, you might be at Costco as well, so...

Vice-Chair Ball: Right.

Ms. Flammer: Okay. Any other comments on that? Okay, moving along we're doing great.

No. 20. Right now we ask that upon approval that the applicant send the entire permit approval letter to their neighbors. I don't know you guys probably haven't seen our approval letters. They're about 10 pages long. Yeah, it confuses the heck out of the neighbors. But what we're recommending is that either a one-page information sheet get sent, but they definitely have to send information about the permit, who the manager is and what that contact information is.

Mr. Hopper: Could I make a comment?

Vice-Chair Ball: Yes, Corporation Counsel?

Mr. Hopper: Just a comment. I don't know if you're gotten to Section F about revocation procedures yet, you've passed that or you're not quite there yet?

Ms. Flammer: Oh, we're on D, right now, but we can go ahead.

Mr. Hopper: Was that the next thing up or afterwards?

Ms. Flammer: It goes D, then E, then F.

Mr. Hopper: Right.

Ms. Flammer: I'm sorry.

Mr. Hopper: Did you have any other changes you wanted to reference in between this and F?

Ms. Flammer: No. 21 and 22.

Mr. Hopper: Okay.

Ms. Flammer: You wanna wait and then we'll...

Mr. Hopper: Yeah, sure when it comes up.

Ms. Flammer: Okay. So everybody is okay with...saves on postage too.

No. 21. The Council also you know it's interesting when you go through the legislative process, kinda towards the end of the hearings they had decided that for the notification it should go to not just adjacent neighbors but adjacent to adjacent neighbors which we came to learn once we were doing the permit that sometimes those people are outside of the 500 feet and it's the first time they're getting notice of anything. And also, this is probably the number one thing I have to correct on when I get the information back from the applicants and then they have to redo the mailing. It just...we'd like Council to take another look at it. Looks confusing, it may not be necessary. They could keep it within the 500 or they could just have it be adjacent. Everybody good on that one? No. 22, housekeeping. We just add again, it's that noncompliance with permit conditions or other government regulations can be considered when a permit is revoked and then I think we have...

Mr. Hopper: Now you're under F.

Vice-Chair Ball: Corporation Counsel?

Mr. Hopper: Thank you, Mr. Chair. Under F, the first section I think is fine. It deals with standard revocation and enforcement, but Subsection 2, I don't know if the Departments ever dealt with this but this was a very different portion of the law that the Council added. It says, "if the Department receives at least three complaints about a short-term, short-time, I guess that's a typo, short-time rental home within a 12-month period and the Director's investigation of the complaint is inconclusive, the Director shall refer the complaints to applicable planning commission for determination of whether the permit shall be revoked. Complaints must be from property owners or lessees of record located on two more different lots." Essentially it creates a totally different enforcement process that I don't know if the department's every worked on and I don't think I've ever seen, and would generally recommend that the, that this section be enforced like the...generally like the other sections of Title 19, and that this section be deleted. I'm frankly not sure why it was added at the time and still question why it's, why it's there, and exactly how the Director would be referring complaints to the Commission as far as the standard practice. I don't know if the Director has comments on if they've ever used this provision before, but to me it's very unclear if he would exactly a, the Director's investigation is inclusive would mean. That's different from what I have seen and would recommend that you keep it to the 19.30.030 process that you have in the Code already rather than adding this section. So I just recommend deletion of that section in general. I don't know if the Department has comments on it, but this was one I had marked to bring up because it's very unclear to me how this is intended to be...how this is intended to work really.

Vice-Chair Ball: Director?

Mr. Spence: Thank you, Mr. Chairman. We've never used this provision. And I'm not as...it would make things simpler if we just went by the regular provisions of 19.530 and to be honest I don't recall why the Council wanted to put this within the, you know, within this ordinance. Because if somebody calls in and they file a Request for Service we will go out and investigate and we will...we take seriously when people do file complaints, you know, against people with permits. So and we go out and investigate and enforce as appropriate.

Mr. Hopper: If you wanna add that criteria under 2 a, b, c, d, e, f, maybe you could move a, b, c, d, e and f to under No. 1 as basis for revocation if you wanna strengthen revocation. But that Subsection 2, I just have to note I've not seen anything like that in any other section of the law. I'm not sure what inclusive complaints are, how they'd be referred to the Commission for enforcement. I mean, you guys would normally be the body that would hear appeals or the BVA would hear appeals, but still it's, it's very odd.

Vice-Chair Ball: Noted.

Ms. Flammer: Okay. That came from Council.

Vice-Chair Ball: Twenty-three.

Ms. Flammer: Thank you. Twenty-three this is similar to what we talked about earlier. It would require that any advertising whether permitted or not have the tax i.d. or the address of it, of the property on it. Again, this is an attempt for Enforcement to be able to find kinda seasoned operators that try to hide their location on their internet advertising.

No. 24 was a separate amendment that you heard maybe a month ago from Joe Alueta. I just wanted to put it in here just in case it reached, we reached Council before that one did. You all remember it? And that was to amend the enforcement section's five year ban and that was to require that a violation before the five-year ban took effect. Kinda cleaning up the language in there. Okay, those are the 24 that we have for the Department. I've captured four other ones if you want me just to run into those before lunch?

Vice-Chair Ball: Let's keep going.

Ms. Flammer: Yeah, maybe we can wrap this up right before lunch and then do the B&B before or after. Okay, No. 25. I had caps. You wanted to revisit. Have a discussion about the caps?

Ms. Wakida: About the what?

Ms. Flammer: Permit caps, was that discussion you wanted to have?

Vice-Chair Ball: What was it on?

Ms. Flammer: The permit caps, the caps for each community plan area, the caps.

Vice-Chair Ball: Is there any other interest on reducing the number of permits? Penny?

Ms. Wakida: I have from the beginning been questioning what criteria was used to establish those to begin with because I felt they seemed both high and arbitrary. I think I was given an explanation once about some study that they did per households, but I agree with the recommendation that they could easily be cut in half and going on Hana's suggestion, I mean they wanna cut theirs down. And that sounds like communities that are aware of these caps are taking a keen interest.

Vice-Chair Ball: Wayne?

Mr. Hedani: I'd like to suggest that they consider 50 percent of the existing quotas or some kind of mechanism possibly like in Hana's case, you know, they suggested 30. Maybe in each community plan region, the community plan can designate a cap or the community plan advisory group can designate a cap that they recommend to the Council for each region or something like that because each region might be different and have a different capacity to absorb. But to me I think the problem is we've taken a 175 homes and we've converted them to 175 hotels and there is zero possibility for residential housing in those 175 units that we've already approved. And during that time frame of two years we've placed virtually zero new units onto the housing market. And if we do a really good job and go twice as fast we could reduce housing further and increases prices even faster.

Vice-Chair Ball: Jack?

Mr. Freitas: Echoing Wayne's thoughts that is the reason why I'm 100 percent against short-term rentals as an individual and the reason is that we, we reduced the rental market and the residential market where to 120 some odd homes and what we did, we drove the price of the rentals up which we have for the growth of the population and the influx of people that we have we do not have enough, what do you call, rental units and where people can afford them. People cannot afford them. I know of people that are living in their automobiles and working because they cannot afford homes. And that's why I'm 100 percent against short-term rentals till such time as we build up the rental inventory and residential inventory, I think there should be a moratorium on short-term rentals.

Mr. Spence: Comment, Mr. Chairman?

Vice-Chair Ball: Director?

Mr. Spence: Commissioners, we're happy to pass these recommendations along to the County Council. I would say however, the community plans are not in place for placing caps on a piece of legislation because the community plans are visionary documents. This is how we, you know, where growth is going to take place. These are, you know, the kinds of things that we wanna see in our community, the character of our community. And certainly some of the community plans have considerations for short-term rentals and bed and breakfast. But to place a hard number on, on the number of rentals is more appropriately the call of the County Council, you know, with the recommendations of this Commission and the Planning Department as opposed to putting it in an aspirational document like the community plans. So that's my recommendation to the Commission on that. But otherwise, we're very happy to, you know, pass these recommendations onto the Council.

Vice-Chair Ball: Wayne?

Mr. Hedani: You know, as a suggestion what I would recommend is taking this as a group because we pretty much hashed through all of them and to me they seemed like good recommendations coming from both the Hana Advisory Committee and the Department. Anoint it with holy oil if that's what they need and move it forward to the Council and then attach to that other comments and recommendations from the Commission separate from the hard stuff that's already been worked on.

Ms. Flammer: Am I hearing you don't wanna do an amendment, you just want this as a suggestion? But that this particular one you don't wanna do an official amendment, you would like to just have it be listed under comments?

Vice-Chair Ball: What I'm hearing is that you probably want them to look into it some more.

Ms. Flammer: Look it into—

Vice-Chair Ball: Look into the number. I mean, cause we have a lot of suggestions on numbers but we don't have any concrete...but if they start looking into the numbers and looking back at how they came up with those numbers and maybe they say yeah it's good or whatever.

Ms. Flammer: Okay, that's very useful. Thank you. Okay, the other thing I had was did you want to discuss increasing penalties. Was that something you wanted to do as a suggestion as well? I'm gonna have comments about the need for enforcement. I wrote down a lot of your individual comments. That will go in that section.

Vice-Chair Ball: I think when this originally came out, the biggest thing that I remember was people saying well, there's no enforcement so it's all a bunch of nonsense anyway. So I think if we give them the tools to do the enforcement then it will help I guess if the penalties are severe enough. Penny?

Ms. Wakida: Gina, do you happen to know what the fines are now or maybe the— or a ballpark?

Ms. Flammer: The biggest, the most dramatic one that's in this particular law is you get banned for five years. The owner gets banned for five years for applying for a permit. That was kinda the teeth that Council put in there. I'm not sure what other separate...

Vice-Chair Ball: Corporation Counsel?

Mr. Hopper: There's a limit in The Charter of a \$1,000 for a violation of any County Ordinance.

Ms. Wakida: A \$1,000 per violation or \$1,000 per day per violation?

Mr. Hopper: We can do a \$1,000 per day considering each day as a new violation. That is...there's a proposal I think it is, it's either gonna be on the ballot or it's being considered by the Council, I'm not sure if they passed it out, I think they have to increase the Charter penalty from a maximum of \$1,000 which was set in 1983 and hasn't been changed since for any County Ordinance violation. That's a cap and it's frankly kind of unusual to have a cap overall. I think they're going to go up to \$20,000 for a violation of one County Ordinance, but it's still well short of State Law allows \$10,000 a day and a \$100,000 initial for SMA violations which is something that you also have jurisdiction over. But for County Ordinance where this would fall because it's a zoning restriction, the most right now is a \$1,000 per violation and each day the County considers a new a violation if there's continued operation. But that's the max we have right now. This has...it's consistent with 19.530.030 which is the enforcement for all of Title 19, and that sets a maximum of \$1,000 a day.

And then the Department of Planning has Administrative Rules which say for use violations which is a type of zoning violation, the fine is actually \$1,000. So if someone violates this law, the initial fine would be a \$1,000 and for each day it continues would be a \$1,000 under the current rules. If the Charter is amended then the County Code can be amended to increase that maximum fine from a \$1,000 up to \$20,000 but the County Council would have to take action to pass an ordinance after the Charter provision changes. So that's what we're at as far as a cap on fines. It's up to a \$1,000 a day per violation.

Vice-Chair Ball: Jack?

Mr. Freitas: Yeah, a question for Corporation Counsel. Would the, and maybe the Director too, would they be given an opportunity to correct the violation before you fine them?

Mr. Hopper: Well, in general under the rules for...before you can institute a fine anyway they would need to be given a written warning and then they can be given a Notice of Violation. That's for fines. For revocation and other things there can be...there's different notice procedures but in order to fine somebody they are given a Notice of Warning and there's actually some processes in the Code that again, I think I'd recommend maybe tweaking a bit as far as giving warning to the person to correct the advertising. There's a general requirement of a Notice of Warning to be given to somebody and then they generally would have a chance to correct before a fine's instituted and then if they don't it then the fine's instituted.

Mr. Freitas: That's fair. Thank you.

Vice-Chair Ball: Wayne?

Mr. Hedani: Here's the thing, yeah. A \$1,000 fine is the cost of doing business. If their vacation rental can go for \$5,000 a night then a \$1,000 of that profit covers the fine. So the existing enforcement is no enforcement. If the existing law says a violation means you cannot be renewed for five years and you're conducting an illegal activity, it means the illegal activity cannot be conducted in the future for another five years in which case they would just ignore you and do what they were doing anyway, right. So it's no teeth. So I would suggest that the fine be tied to a point at which it doesn't make sense for them to incur the fine. If they can rent the unit for \$5,000 a night then the fine should be \$5,000 per day. You work really hard and get nothing to show for it basically. But it has to be significant enough to be a deterrent.

Vice-Chair Ball: Richard?

Mr. Higashi: I agree with Commissioner Hedani that the fine should be significant enough that it makes an impact.

Vice-Chair Ball: Corporation Counsel?

Mr. Hopper: Just a note, however, there's a Charter provision that says the most you can do per day is \$1,000. If that gets changed in the Charter, then yes, it can be higher than that, but for now the most the County can fine somebody for a ordinance is a \$1,000 a day. And I think as Commission Hedani pointed out that can be maybe not high enough in certain cases to deter the

action.

If the enforcement continues and there's a...and the County which it has done in at least case finds that the violation's ongoing, it can actually go to court and seek injunctive relief which is basically a court order saying you have to stop violating...you have to stop operating short-term rentals or else, you know, the Court can sanction the person or put them in jail even and have that order enforced by Court. That's kinda the next step if the fines don't deter the activity and it's an ongoing violation. But as far as fines, you know, a \$1,000 is the most that can, we can do at this point until the Charter would be changed which again, I think is going to be on the ballot this, this coming election. So, that's where we're at now, but it could change in the very near future actually.

Vice-Chair Ball: Jack?

Mr. Freitas: Have any permit holders been issued any violations since this law went into effect?

Vice-Chair Ball: Director?

Mr. Spence: Yes, and I'm not sure how much I can go into that at this time.

Mr. Freitas: That's fine. I just wanna know. That's important.

Mr. Spence: Yes, and we have used the provisions of this law to do so.

Vice-Chair Ball: Wayne?

Mr. Hedani: The other thing that I was curious about was I saw somewhere that we had something like 59 requests for service or I translate that to 59 complaints. So what I would like to see is a summary of the 59 complaints and have that go forward to the Council as well. So they know the kinds of problems that people are having with the things as they are today.

Ms. Flammer: I almost included it. It wasn't a summary but it was all the printouts about this thick, and I thought, are they gonna wanna see that, is it just gonna make the report huge. But we do, we do have a printout of what they are.

Okay, reducing the neighborhood threshold for a trigger. Currently it's two adjacent neighbors or across the street or 15 percent if there's less than 40 lots within the 500 feet or 30 percent if there's more lots. Is everybody comfortable with that?

Vice-Chair Ball: It's confusing enough.

Ms. Flammer: We know it. So I tell people you better talk to your neighbors especially your adjacent neighbors, but it is two not just one.

Vice-Chair Ball: Penny?

Ms. Wakida: Excuse me, I wonder...I'm interested in the suggestion to reduce the number of objections and I wonder if Mr. Hedani was interested in, if he had any more comments on that?

Mr. Hedani: I think what I heard Gina say was that all it takes is two neighbors complaining and it comes here.

Ms. Flammer: They have to be adjacent or across the street neighbors.

Mr. Hedani: Right.

Ms. Flammer: Yeah. Or if you're looking at the whole 500-foot list which can be...I usually see between 40 to 80 on that list. It's either 15 percent or 30 percent of all of those. Council is where this originated and they thought the biggest impacts are generally on the immediate neighbors. When you're looking at noise disturbances not so much looking at the community. The 500-foot triggers what's supposed to bring it in for the entire neighborhood. Okay. I can put some in the comments section a little bit about what was discussed earlier about that. The 500-foot radius we're gonna talk about it on Lanai next week, make it a little bit smaller. Any comments here besides what was said earlier?

Vice-Chair Ball: Maybe going back to that complaint. What if you have an owner that's never there and then the person that lives there all the time and they're the ones that complain because they're there all the time? How do you handle that? I mean, obviously it doesn't come to us under the current rule, but how would you handle that in-house if that happened?

Ms. Flammer: If you have one adjacent neighbor?

Vice-Chair Ball: Or if you have two adjacent owners, but one complains 'cause the other one's never there.

Ms. Flammer: No, yeah, I'm talking about the protests. If there's a compelling reason we have the ability to bring it to you.

Vice-Chair Ball: Okay.

Ms. Flammer: Yeah, I'm thinking back. They also have the ability...we have the three complaints that we talked about earlier can bring it back from different neighbors. So we do talk to the neighbors about if you are having a problem you really need to let us know there are things we can do. And the permit is only for one year initially so if there are problems there are things we can do. And we'll kinda listen to what the complaints are. Usually if there's one and it's problems from past operating there's more than one, sometimes it's about other things, family matters, it just turns out after hearing several complaints it turns out they're related and it had nothing to do with the rental but their own relationship. So we'll look a little bit deeper when we talk to those people.

Vice-Chair Ball: Okay.

Ms. Flammer: Okay, let me just go real quickly through Hana's and you can...why don't you let me know if there's any of the eight that you would like to endorse? These will all go...the letter is gonna go to Council just like it came to you, but you want me to pick 'em up on yours?

Mr. Hedani: No, I had a comment on. Did we have a line for the 500 feet question?

Ms. Flammer: I do. It's the radius. The 500-foot radius that was number--

Mr. Hedani: I would suggest reducing the 500 feet to 250.

Ms. Flammer: To 250.

Mr. Hedani: As a recommendation or as a comment.

Ms. Flammer: Okay.

Mr. Hedani: For their consideration, but also, you mentioned that there was a trigger at 30 percent of the neighbors in 500 feet?

Ms. Flammer: If there's more than 40 lots.

Mr. Hedani: Right. I would suggest reducing the 30 down to like 10 percent.

Ms. Flammer: Again, do you want this in your comment section or is this is something you wanna take as a vote?

Mr. Hedani: I would suggest that, I would suggest it as a comment.

Ms. Flammer: As a comment.

Ms. Wakida: And I support that. I think...I mean, 30 percent of 80 people, that's 24 and that's onerous.

Vice-Chair Ball: Director?

Mr. Spence: I just wanted to comment on the 500-foot radius. That's a consistent number with our other permits and other statutes that require notice within 500 feet. I don't disagree that it's a very large distance. But I just wanted to note that it's consistent with the other, with the other provisions of other permits. And when we get into...one of the problems with Maui County's permitting processes is there's so many different processes. There's not a consistent manner from type of permit to type of permit to type of permit. They're all different and it's very, it's very difficult...it makes it difficult to comply. And one of the reasons why you must hire a consultant because you need somebody that knows the difference between a Short-Term Rental Home Permit and a SMA Permit and a County Special Use Permit and all those different requirements. We're advocating more consistency between those permit types rather than different permits.

Mr. Freitas: Please do.

Mr. Spence: Okay.

Ms. Flammer: Okay, so how about--

Mr. Spence: I understand the comment.

Vice-Chair Ball: Wayne?

Mr. Hedani: The other comment that I would have is if...well, say if we stay with 500 feet have the 500 feet mean something like if you're gonna prohibit more than one short-term rental or B&B within the 500-foot radius then it means something, yeah. We've had cases where we have four short-term rentals right next to each other in Paia and the 500 feet doesn't mean anything at that point, yeah. So my recommendation would be to make the 500 feet a prohibition of another short-term rental or B&B either or not, you know, only...

Mr. Spence: Okay. And my comment was more of a general comment for the Commission's awareness not to say that that isn't a valid point at all. Because I recognize that is a valid point. If there's an impact it's gonna be more immediate rather than-

Mr. Hedani: Right. I can see for SMA when you're dealing with hotels, you need 500 feet because hotel properties are huge. They're 10 acres in size or 15 acres in size and when you're dealing with a single-family residence, you're dealing with 5,000 square feet or 10,000 square feet.

Vice-Chair Ball: I would use caution on prohibition on the 500 feet. I mean, I think the thing is in place because if you have multiples in an area like Paia where we saw all of those come through, I think that's why it's there so we can use our best judgement on whether you know, whether we should allow for next door. But if it's all out prohibition it's gonna affect many areas like that Paia section, like Maui Meadows, it's gonna have some unintended consequences understanding that what you mean is we'd have to look at it better.

Mr. Hedani: My perspective was you can always grandfather the people that have already applied. Give them a bonus for having come forth early and then whoever is next up, is subject to the higher hurdle. Makes our job easier in the future 'cause there'll be less and less applications.

Ms. Flammer: Everybody comfortable with those comments including the caveat that you have mixed feelings about a prohibition for more than one in 500 but it was discussed? Hana, you guys wanna pick up any of those as your own even though they do go to Council?

Vice-Chair Ball: Penny?

Ms. Wakida: I was wondering what triggered No. 7?

Ms. Flammer: On Hana?

Ms. Wakida: Yeah, for Hana the cap. How did that happen to come up?

Ms. Flammer: One of the Advisory Committee Members brought it with him. If you look at the handouts in the report, I think it's the last...the second to last one. He wrote it up and brought it with him. So he's got his rationale in there. I looked up the census numbers they were thinking that 75 percent is native Hawaiian. I think it's 50 or something, but a very high percentage of their residents are native Hawaiian and they don't see them coming for permits. There is one that's I know they're native Hawaiian they came in administratively but everybody else they've seen has been people that don't...that came from another area basically.

Ms. Wakida: So how is this cap gonna change their coming for a permit if they're not coming for permit?

Ms. Flammer: Yeah, that's a good question.

Ms. Wakida: I have concerns about that.

Ms. Flammer: Yeah, they had concerns themselves. They wanted to make it as a statement I think that they support that community and they'd like to see them get some of the economic benefits from this type of business.

Vice-Chair Ball: Okay, No. 12.

Ms. Flammer: Twelve?

Vice-Chair Ball: We're working off of this sheet, not...

Ms. Flammer: Oh, I'm done with that. We're done with this sheet. We've taken the extras for short-term rentals. I'm asking if there's any of the Hana, one of the eight. Any of the one through eight that you wanted to...

Vice-Chair Ball: Well, I don't know where No. 12 is on that-

Ms. Flammer: No. 12, No. 12?

Vice-Chair Ball: On this old thing, the summary.

Ms. Flammer: Oh, the Hana trigger.

Vice-Chair Ball: Right, and that's in this. Did you wanna cover those notes? We'd make a determination on that.

Ms. Flammer: For No. 12? Yeah, you guys decided that you didn't have any feelings about it and that I should go back and read the minutes from where that came from?

Vice-Chair Ball: I think we...

Ms. Wakida: No.

Vice-Chair Ball: -I think the Department said that they were not in favor of this. I believe-

Ms. Flammer: The Department. The Committee said they wanted to see all of them.

Vice-Chair Ball: No, Will was asked whether he was in opposition of this, he said yes. So we need to discuss it.

Ms. Flammer: Oh, okay. Maybe you can clarify what...

Mr. Spence: Yeah, I would...I think our preference should be that...I'll say the Department's preference should be that Hana be treated the same as all the other areas where there's a public hearing required either by number of complaints or Special Use Permits or being within 500 feet of another rental, Hana Advisory Committee should see it, but if there is, you know, no reason then no reason. So it should just be the same as every other location.

Ms. Flammer: Okay.

Vice-Chair Ball: Do we all agree on that?

Ms. Flammer: Okay. From the Hana Advisory, the two meetings where they came up with the eight different amendments were there any of those eight that you wanted to adopt as your own amendments?

Vice-Chair Ball: What about that one-hour, 24-hour thing?

Ms. Flammer: It looks to me like you kept the one-hour in your version. So the new ones that Hana came up with that we haven't discussed already were the exemption for the caretaker under the State Realtor's Law. The first one on this if you look at the Hana letter, the first one. We didn't discuss that. And we discussed property ownership. We discussed the community plans. The 500-foot, all initial applications going to Hana, notice for enforcement that's what we just did, the cap for native Hawaiians and then we did discuss ownership and multiple short-term rentals.

So perhaps it's just the managers in Hana. Maybe we could get a little bit of discussion. So what's happened out in Hana is you have some realtors, but there are no brokers that are willing to sponsor a short-term rental business. It requires a certain amount of insurance and some other types of things that the business needs to do. So anybody that's been permitted now has been a resident that's lived within 30 miles and qualifies as their own manager. There are, and I gave you a list in here, there are four managers out there that have been doing it for a very long time, but because they don't hold a realtor's—actually one does hold a realtor's license, but she doesn't have a broker that's willing to do this business. The other three do not. So they're not able to come in. We're also not accepting any applications anymore because we realize that we've got a problem out there.

The best that the Hana Advisory Committee could do would be to come up with the exemption under State Law and I included the handouts for the State Law in here as well. It's kind of in the back. And basically any owner or landlord who resides outside out side of the State must have an on island person. That on island person must hold a real estate license unless they are deemed a caretaker. A caretaker can only work for one owner. So in Hana that's the best they could do. So these people could each manage just one property and that's the amendment that they're asking for.

Ms. Wakida: If this recommendation is accepted then that will be the law forever?

Ms. Flammer: Just for Hana until it's changed.

Ms. Wakida: Until it's changed, okay.

Ms. Flammer: But it's only one person working for one owner and because one owner can only have one permit it's really one manager, one property. Doesn't totally solve their problem out there but it gets them a little bit closer. We're still hoping that we're gonna find a broker that's willing to take on that business.

Okay, I can just pass the Hana's recommendation onto the Council. Do you guys wanna go ahead and take a vote on the proposed bill and the two amendments that we have right now that you've come up with?

Vice-Chair Ball: Which were?

Ms. Flammer: I know, I'm going to, okay. Page 5 of this big hand out here. The Planning Commission trigger. You do not wanna see it moved. You'd like to see the law the way it is where if there's another permitted one within 500 feet then it comes to you for the approval authority. And I have all kinds of good comments that it takes away your ability to help preserve neighborhoods. You guys are fine with your schedule. It's currently working the way it is. You think it would be a disservice to the public and perhaps you may wanna see a higher threshold and more applications. Okay, and the second amendment that was adjusted was holding multiple permits instead of having it be a Commission, you discussed having it be an outright prohibition. I don't know if that was consensus but it sure...I saw an awful lot.

Mr. Freitas: Yes, that's the one.

Ms. Flammer: So if someone...the procedure would be someone to make a motion for the bill with those two amendments.

Mr. Freitas: So move.

Mr. Hedani: Second.

Vice-Chair Ball: All in favor of the motion?

Ms. Wakida: Wait. Will you repeat the motion?

Ms. Flammer: The motion would be—oh, I'll let Will.

Mr. Spence: The motion is to approve the bill with the two amendments as recommended by the Maui Planning Commission.

Vice-Chair Ball: Clear?

Ms. Wakida: Is this a bill or is this just proposed amendments or is that the same thing?

Mr. Spence: That's the same thing.

Ms. Flammer: The actual bill as Mike Hopper pointed out to us in the beginning is included as Exhibit 33 in the report.

Ms. Wakida: Okay.

Vice-Chair Ball: Any other further discussion? All in favor, raise your hand please?

Ms. Flammer: Is that unanimous?

Mr. Spence: Six ayes.

It was moved by Mr. Freitas, seconded by Mr. Hedani, then

**VOTED: To Recommend Approval of the Bill with the Two Amendments as Recommended by the Planning Commission to the Maui County Council.
(Assenting - J. Freitas, W. Hedani, J. Medeiros, M. Tsai, P. Wakida, R. Higashi)
(Excused - S. Duvauchelle, I. Lay)**

Ms. Flammer: So we have the B&B which could be really quick if you wanted or we could have lunch and talk a lot. I'll leave it up to...the B&B amendments are basically the same—we've already basically discussed them.

Vice-Chair Ball: What's the pleasure? Shall we pound it through or go till 12:15 and see how far we get?

Mr. Hedani: I only have one comment on B&Bs and that was ditto for everything that we did on the short-term rentals.

Ms. Flammer: I don't even have a chart for you actually. I have the table that ...(inaudible)...that we gave you.

Ms. Wakida: I'm fine with powering through. We just have this and then a...I defer to the majority.

Vice-Chair Ball: Shall we try to go till 12:15 and see where we get? It's 20 minutes, yeah? Great.

Ms. Flammer: Okay, let's do that. Let me notify the next person that they might need to be here.

Ms. Flammer: Okay, so for you folks we're gonna go to...there was two reports that were mailed to you. This is the skinner one, it's the bed and breakfast.

Vice-Chair Ball: Let me do this, under Item C, Public Hearing, Item No. 2, Director?

Mr. Spence: Thank you, Mr. Chairman, I did sort of introduce these together since they are related, but yes, this is also a review of the Bed and Breakfast Ordinance. This is Item C-2 on your Public Hearing list for this morning and our Staff Planner is Ms. Gina Flammer.

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. Gina Flammer: Hello. Similar subject we're kind of already gone through it. What the Department is recommending that as we're doing the update to the Short-Term Rental Home Bill that we also update the Bed and Breakfast Bill. We've gotten lots of requests for this over the past couple years. What we're recommending is that the provisions from the Short-Term Rental Bill be aligned with the Bed and Breakfast provisions. So what I've done is when you get to the report past Hana's letter I describe what we're doing, and then I go right into a table. And again, you can see here that we've issued 75 B&B Permits since probably 2009. The cap is 400, and I've gone ahead and I put them in two different tables. The first one are amendments that are consistent with the current Short-Term Rental Home Ordinance. It's a lot of it is just housekeeping. We've talked about most of the provisions in here. The second table that we have deals with amendments to the Short-Term Rental Home Bill that we talked about that were not in the B&B, so I just grouped those into a separate set and those are 10 of them right there. It might be easiest just to have you go ahead and ask any questions on any of the items since we've discussed most of the issues themselves.

Vice-Chair Ball: For one, can we include all the comments that we had in the short-term rental and Corporation Counsel's comments also?

Ms. Flammer: Yes. I will. That's what we did for Hana too 'cause you kinda talk about them at the same time. So I'll move them over.

Vice-Chair Ball: Jack?

Mr. Freitas: I mean, how many what do you call applications do we have in the pipeline now that is applying for a bed and breakfast?

Ms. Flammer: I don't know off the top of my head.

Mr. Freitas: Approximately?

Ms. Flammer: I wanna say maybe 20 at the most. I mean, 10 to 20.

Mr. Freitas: We're way off the number.

Ms. Flammer: Yes. Much less for the bed and breakfast because we require the owner to live on the property.

Vice-Chair Ball: Wayne?

Mr. Hedani: Maybe the Vacation Rental Association can answer this question, but one of the questions that I had was how many operations are out there operating illegally that exist today?

Mr. Tom Croly: Tom Croly, on behalf of Maui Vacation Rental Association. I don't have a definitive answer for you on that, but I can tell that yesterday I was reviewing some of the records that the Department has put together in terms of looking at the internet and finding ones. And it becomes sometimes very difficult to look at an ad and determine whether or not it's a legal one or an illegal one because in some cases, the permit number isn't visible, okay. In other cases, a single property might be advertised as five different things. Like for example, a bed and breakfast where you've approved five rooms. They may have a name for each of those rooms. So then when you go onto the VRBO for example, you have the Ohana Cottage and you have the Mango Suite, and they're all advertised as different things, okay. But you look on the VRBO and you say, wow what is this? But it could all fall under one permit. Now having said that, there are more short-term rentals and bed and breakfasts today unpermitted than there are permitted and that really is our goal to try to swing towards the more that are permitted than unpermitted and then do everything that we can to get rid of the unpermitted ones as far as that goes.

And one of the, one of the latest iterations is something called AirB&B and you guys may not have ever heard of it or you may know about it, but it's popped up all across the nation and it's this thing that allows someone to rent out as small as a couch in their living room to as big as whole estate, okay, and they do it kind of under the you do business with AirB&B, AirB&B does business with the owner. So the owner's not really advertising, AirB&B is advertising so it becomes almost impossible to track that guy down, okay. So you know, it's a much bigger problem to manage than just a simple answer of well, there's 23 guys out here and if we get on 'em we'll...

Vice-Chair Ball: Thanks Tom. Wayne?

Mr. Hedani: So a follow up question then.

Mr. Croly: Yes, sir.

Mr. Hedani: If the cap were doubled the 175 at 350, we would have everybody covered?

Mr. Croly: You know, yeah it's hard for me to say how many people will ever come in.

Mr. Hedani: Well, let me ask the question another way. If the existing 800 was reduced to 400, we'd probably have just about everybody covered?

Mr. Croly: Yeah, I can't answer that question because what I don't know is how many would not be able to comply? You know, some people they operate but there's some aspect to the ordinance that would keep them from applying and I'll give you an example. Someone who rents a home, okay, is not eligible for a Bed and Breakfast Permit. They must be the owner of the home. But I know that there are many people who will go rent above their means, okay, they'll go rent a \$3,000 house and then they'll start renting out the bedrooms in order to make enough money to afford their rental. They are not eligible for a Bed and Breakfast Permit. So eventually you have to shut them

down, but would they fit within the cap, no.

Mr. Hedani: Okay.

Vice-Chair Ball: Jack?

Mr. Freitas: The financial impact on this illegal rental, could you put a dollar figure on what approximately, what you would think the financial impact would be?

Mr. Croly: You know, way back when the study was done in 2005 or 2006, when essentially everyone was illegal at that time because we didn't have a Bed and Breakfast Ordinance that extended beyond the Residential District and beyond rooms in your own home and we didn't have a Short-Term Rental Ordinance at all. So there was a very small handful of permitted places. At that time, the estimate was there were 1,200 operating operations. And there were...that the financial impact on the County collectively was \$320 million a year.

Mr. Hedani: So we triple the fines and double the salary of the inspectors, yeah we got it covered.

Ms. Flammer: And planners.

Vice-Chair Ball: Okay. Any further comments? Wayne?

Mr. Hedani: Move to approve as recommended.

Mr. Freitas: Second.

Vice-Chair Ball: Any more discussion? Director repeat the motion?

Mr. Spence: The motion is to recommend approval as recommended by Staff.

Vice-Chair Ball: All in favor?

Mr. Spence: That's five ayes.

Vice-Chair Ball: Motion carries.

Ms. Flammer: Thank you.

It was moved by Mr. Hedani, seconded by Mr. Freitas, then

**VOTED: To Recommend Approval of the Bill as Recommended by the
Department to the Maui County Council.
(Assenting - W. Hedani, J. Freitas, M. Tsai, P. Wakida, R. Higashi)
(Excused - S. Duvauchelle, I. Lay, J. Medeiros)**

Mr. Spence: The minutes.

D. ACCEPTANCE OF THE ACTION MINUTES OF THE JUNE 24, 2014 MEETING AND REGULAR MINUTES OF THE FEBRUARY 25, 2014, MARCH 11, 2014 and JUNE 10, 2014 MEETINGS

Vice-Chair Ball: Okay, Item D. Acceptance of the Action Minutes of June 24th--

Mr. Freitas: Move to approve.

Mr. Hedani: Second.

Vice-Chair Ball: --and Regular Minutes of February 25th, March 11th and June 10th.

Mr. Freitas: Move to approve.

Mr. Hedani: Second.

Vice-Chair Ball: Any discussion? All in favor raise your hand. Any opposed? That's five ayes.

It was moved by Mr. Freitas, seconded by Mr. Hedani, then

VOTED: To Accept the Action Minutes of the June 24, 2014 Meeting and the Regular Minutes of the February 25, 2014, March 11, 2014, and June 10, 2014 Meeting.
(Assenting - J. Freitas, W. Hedani, J. Medeiros, M. Tsai, P. Wakida, R. Higashi)
(Excused - S. Duvauchelle, I. Lay)

Vice-Chair Ball: Thank you. Item E, Director's Report. Director?

Mr. Spence: Thank you, Mr. Chairman. The first one is notification of issuance of transfer of a Special Use Permit, and our Staff Planner for this particular project for Elleair Hawaii to MP Venture, LLC, Staff Planner is also Ms. Gina Flammer. It's the Flammer day in Planning Commission.

E. DIRECTOR'S REPORT

- 1. Notification of the Issuance of the transfer of a Special Management Area Use Permit pursuant to Section 12-202-17(d) of the Maui Planning Commission's Special Management Area (SMA) Rules:**

MR. WILLIAM SPENCE, Planning Director by letter dated June 10, 2014 approving the transfer from ELLEAIR HAWAII to MP VENTURE, LLC of the Special Management Area Use Permit for the Maui Palms Hotel Redevelopment Project on property situated at 170 and 170A Kaahumanu Avenue, TMK: 3-7-003: 007 and 009, Kahului, Island of Maui. (SM1 2001/0012) (G. Flammer)

Ms. Gina Flammer: The Maui Beach Hotel was recently sold, and when that happens we're able to transfer the SMA Permit. You heard their time extension a couple months ago. Mark Roy, the consultant is here also if you have any further questions.

Vice-Chair Ball: Do we have any questions for Mark? Anyone, questions for Mark on that? He walked all the way across the street. All right.

Mr. Freitas: Move to approve.

Ms. Flammer: You acknowledge receipt.

Mr. Spence: It's just an acknowledgment that you've received the notification.

Mr. Freitas: Fine.

Mr. Hedani: Second.

It was moved by Mr. Freitas, seconded by Mr. Hedani, then

VOTED: To Acknowledge Receipt of Notification.
(Assenting - J. Freitas, W. Hedani, J. Medeiros, M. Tsai, P. Wakida,
R. Higashi)
(Excused - S. Duvauchelle, I. Lay)

Vice-Chair Ball: Okay, Item No. 2, SMA Minor Permit Report.

Mr. Spence: Commissioners, that came as part of your packet as well as the SMA Exemption Report.

- 2. SMA Minor Permit Report (Appendix A)**
- 3. SMA Exemption Report (Appendix B)**

Mr. Hedani: Move to approve.

Ms. Wakida: Second.

Vice-Chair Ball: Any discussion? All in favor raise your hand please?

Mr. Spence: That's five ayes.

It was moved by Mr. Hedani, seconded by Ms. Wakida, then

VOTED: To Accept the SMA Minor and Exemption Reports.
(Assenting - W. Hedani, P. Wakida, J. Freitas, J. Medeiros, M. Tsai,
R. Higashi)
(Excused - S. Duvauchelle, I. Lay)

4. Discussion of Future Maui Planning Commission Agendas
 - a. July 22, 2014 meeting agenda items

Mr. Spence: Okay, Commissioners your next planning commission agenda, July 22nd, you have two...three public hearing items. First is Kahana Sunset requesting Community Plan Amendment and Change in Zoning as well as SMA and Shoreline Setback Approval for some shoreline improvements. The second one is State of Hawaii, Department of Accounting and General Services looking for a Special Use Permit for the Maui Veteran's Cemetery in Makawao.

Vice-Chair Ball: Which were handed out today, so please take these and bring them back, CD and maps.

Mr. Spence: And then the third public hearing item is Mr. Edward Gramit of Mahina Surf requesting a Change in Zoning from R-3 to A-1 Apartment also on the west side. New Business, Mr. Greg Lundberg, General Manager of Westin Maui requesting review and comments of the Draft Environmental Determination...Assessment Determination for Shoreline Setback and other improvements at the Westin in Kaanapali.

Unfinished Business, Item C, the June 30, 2014-withdrawal of a Notice of Appeal to the Maui Planning Commission by Isaac Hall and parties related to the resurfacing of the runway.

Then Item D, Adoption of a Decision and Order for one of the short-term rental home permits that this Commission denied. Actually, it was denial of the Special Use Permit, oh, and yes, and the Short-Term Rental Home Permit. Any questions, Commissioners?

Vice-Chair Ball: Any questions on that?

F. NEXT REGULAR MEETING DATE: JULY 22, 2014

G. ADJOURNMENT

Mr. Freitas: Move to adjourn.

Vice-Chair Ball: Seeing none, we will adjourn.

The meeting was adjourned at approximately 12:10 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Keone Ball, Vice-Chair
Jack Freitas (in attendance at 9:45 a.m.)
Wayne Hedani
Richard Higashi
Jason Medeiros
Max Tsai (in attendance at 11:13 a.m.)
Penny Wakida

Excused

Sandy Duvauchelle
Ivan Lay, Chair

Others

Will Spence, Director, Planning Department
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel