

PLANNING COMMITTEE
Council of the County of Maui

MINUTES

Council Chamber

October 30, 2014

CONVENE: 9:04 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Donald G. Couch, Jr., Chair
Councilmember Michael P. Victorino, Vice-Chair (out 9:14 a.m.,
in 9:16 a.m.)
Councilmember Gladys C. Baisa
Councilmember Stacy Crivello (in 9:22 a.m.)
Councilmember Don S. Guzman (out 9:43 a.m., in 9:56 a.m.)
Councilmember Mike White

EXCUSED: Councilmember Elle Cochran

STAFF: Chancy Hopper, Legislative Analyst
Mark Pigao, Legislative Analyst
Yvette Bouthillier, Substituting Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via voice conference)
Denise Fernandez, Council Aide, Lanai Council Office (via voice
conference)
Dawn Lono, Council Aide, Hana Council Office (via voice conference)

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the
Corporation Counsel
Joseph Alueta, Administrative Planning Officer, Department of Planning

OTHERS: Tom Croly (PC-49)
David DeLeon (PC-49)
Plus (7) other people

PRESS: *Akaku Maui Community Television, Inc.*

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

CHAIR COUCH: ... (*gavel*) ... Will the Planning Committee of October 30, 2014 please come to order. It is now 9:05. I'm the Chairman of the Committee, Don Couch. I wanna welcome the Vice-Chair, Mike Victorino.

VICE-CHAIR VICTORINO: Good morning, Chair.

CHAIR COUCH: Good morning. Council Chair Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: Good morning. Excused is Councilmember Elle Cochran. Excused for now is Stacy, Councilmember Stacy Crivello. She'll be here, coming here a little bit later and then Councilmember cowboy Don Guzman.

COUNCILMEMBER GUZMAN: Good morning, Chair.

COUNCILMEMBER BAISA: Howdy.

CHAIR COUCH: Well I like...it's your shirt. And Councilmember Mike White.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR COUCH: Aloha, and we have with us, Joe Alueta, from the Planning Department. Good morning, Joe.

MR. ALUETA: Good morning, Chair.

CHAIR COUCH: And, Michael Hopper, Deputy Corporation Counsel.

MR. HOPPER: Good morning, Chair.

CHAIR COUCH: Legislative Analysts Chancy Hopper, and Mark Pigao.

MR. PIGAO: Good morning.

CHAIR COUCH: Committee Secretary, Yvette Bouthillier. Good morning, welcome to the Planning Committee again. If everybody could please turn off your cell phones or any noise making devices so we can conduct this meeting with, at least put em' on silent mode please, and thank you, I see everybody reaching for their pockets, good. The items on today's agenda are PC-49, which is TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICT and PC-37 TWO FAMILY (DUPEX) DISTRICT, and let me get these guys online...okay, and Members, we're gonna start taking public testimony. For anybody who wants to sign up please, wants to testify, please sign up in the back over there or at the remote locations at the desk. Testimony

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

will be limited to those two items today and pursuant to the Rules of the Council you have three minutes to speak with one minute to conclude. And we'll do a lighting system where the green light will be on for three minutes, the yellow light for one minute, and when the red light flashes, please conclude your remarks. And when testifying, please state your name and the name of any organization you're representing, and Members, without objection, we'll start public testimony.

VICE-CHAIR VICTORINO: No objections.

... BEGIN PUBLIC TESTIMONY ...

CHAIR COUCH: Okay. First one to testify here in the Chambers is Tom Croly, followed by, Dave DeLeon.

MR. CROLY: Aloha, Committee, seems like I'm here every day doesn't it. Thank you, Chair. I'm Tom Croly today I'm speaking on my own behalf on this issue. I support today's measure to codify the grandfathering, the grandfathered use of transient vacation rentals of condos in the Apartment District, those that were built prior to 1989. This Code amendment is appropriate because it brings some more clarity to our vacation rental laws here in Maui County. And while the proposed amendments, they just need to be a few words to make it clear in Code that this use is allowed and legal. I'd like to suggest a couple of additional actions that might clarify things in a more practical sense. I'd like to suggest that the County maintain and publish a list of properties, these properties that would be affected by this and that this applies to. When I bought a vacation rental condo ten years ago, vacation rental was taking place in that building and I didn't think to do any additional investigation to make sure that it was okay, and then when I got involved in the whole vacation rental law thing, I kinda did the work to figure out whether it was, and I couldn't find anything in Code. I realized that my zoning was Apartment and I couldn't find anything in Code that said that it was okay for me to make this use. That made me a little scared because I had this vacation rental that I owned and I wasn't sure if I'd be able to legally continue to use it for that. Well I was able to dig deep enough and find out that this thing that we call the Minatoya opinion, a letter that was written by one of the Council's, County's Attorneys over ten years before is what allowed me to continue this use. But the amendment change that you're, you'll make will make that, you know, a little more clear. Yet I do think that a list that would be maintained and published on the County's website of all the properties that this applies to would be a useful thing to have. If someone's going to buy a property they could refer to that list and they'd know okay, this is good, and as I thought of it further, this list could also be useful for visitors who are coming to stay in such accommodations. Because more and more of my people, the people who get short-term rental and bed and breakfast permits are being encouraged to put on their website, make sure that the place you stay is properly permitted. And now people are calling me sometimes saying is this place permitted and they're talking about a condo and I have to say well yeah, that condo is allowed to do it, they don't have to have a permit. So having a place where they could refer to and know that the place they're booking is legal to do that would be useful. Whether you need to codify that or not, I don't know, I think it would be a good idea to add maybe a line to this that would say the Department of Planning shall maintain and publish

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

a list of properties that, you know, that this applies to. So again I support this measure and... there you go, thank you.

CHAIR COUCH: Thank you. Members, any questions for the testifier? Seeing none, okay. David DeLeon, is next and he's the last one to sign up at this time. Anybody else wants to talk please come on up and sign up in the back, please.

MR. DeLEON: Good morning and aloha. I'm Dave DeLeon representing the Realtors Association of Maui on PC-49, RAM, who wishes to express his appreciation to Planning Committee Chair Couch for bringing this proposed legislation to the floor for action. The goal of this proposal, this proposed action is to fix a puka in the County Code. The amendment to the County's Apartment District was passed 25 years ago, that created two distinct Apartment zoning categories in Maui County, one that permits both long-term and short-term rental uses and a new category that only allows for long-term rentals. The Apartment District in Title 19 of the County Code only recognizes one of those two legal uses. The purpose of this proposal is to correct that, making it absolutely clear in the Code that both short-term and long-term uses are allowed in certain Apartment-zoned properties that have been so entitled since 1989. We would like to emphasize that this proposed action will not create any new entitlements nor change any existing allowed uses. It will not take away nor will it give new rights to any property; likewise condominium CC&Rs will not be affected by this action. This is essentially a housekeeping measure for the sake of clarity and proper notice. We believe it's important to address this issue because they are over 83 condominium properties in Maui County in which both short-term and long-term rentals are permitted. They amount to one-third of the County's condominium stock and include thousands of units. Because they're allowed short term, because of their allowed short-term use these properties generate more vacation rental related business than all hotels do. As such they are a key element of our visitor economy and generate a large part of the County's property tax base. They're such an important element of the, our economy that we believe it's imperative that their zoning be, the zoning status be clearly stated in the County Code. The history of this issue is now well known and documented but these relatively obscure actions of the County Council in 1989 may not be so clearly, so easy to retrace in the future. RAM believes it's important to clearly set that out in the County Code, the zoning status of these, this important element of our economy for the sake of new owners, for property managers, and for County Departments. So anyone can easily ascertain the allowed land uses. We appreciate your support in making the County Code clear on this topic. Mahalo.

CHAIR COUCH: Thank you, Mr. DeLeon. Members, any questions to the testifier? Seeing none, thank you.

MR. DeLEON: Thank you.

CHAIR COUCH: We'll go now to the District Offices. Let's first go to Molokai. Good morning.

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

PLANNING COMMITTEE
Council of the County of Maui

October 30, 2014

CHAIR COUCH: Thank you. Let's go to Lanai then.

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

CHAIR COUCH: Thank you, and Hana?

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

CHAIR COUCH: Thank you, ladies. Members, seeing that no one here in the gallery is coming down to testify and no one's in the District Offices without objection, we'll close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: Okay, public testimony is closed. Thank you, ladies.

... END OF PUBLIC TESTIMONY ...

PC-49 TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICT (CC 13-403)

CHAIR COUCH: Okay. Members, our first item up is gonna be PC-49, which is Transient Vacation Rentals in the Apartment District. We are in receipt of County Communication 13-403 from me, transmitting a proposed resolution and later adopted as Resolution 14-15, to refer to the Planning Commissions, a proposed bill relating to transient vacation rentals in the Apartment District. There's also a correspondence dated September 18, 2014, from the Planning Director, transmitting in response to Resolution 14-15, a summary of the Lanai, Maui, and Molokai Planning Commissions' comments on the proposed bill and a description of additional recommended revisions to the proposed bill. And then lastly a correspondence dated October 3, 2014, from me, transmitting a proposed bill entitled A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.12.020 AND 19.37.010, MAUI COUNTY CODE, PERTAINING TO TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICT. The purpose of the bill is to permit transient vacation rentals in the Apartment District. It expressly restates Section 11 of ordinance 1797 (1989) which was not codified and declares that the Council's intent in enacting that ordinance was to exclude the requirement of long-term residential occupancy from buildings or structures within the Apartment District having building permits, Special Management Area use permits, or planned development approvals that were lawfully issued by and valid on April 20, 1989. And that's more commonly known in the business as the Minatoya opinion. So, Members, I'd like to hear from the Planning Department first and then we'll go to Corp. Counsel and go to questions.

MR. ALUETA: Thank you, Mr. Chair. I'm sure all of you are aware of our transmittal to the referring back the resolution to you. I do wanna just point out a couple things that we did have within our

PLANNING COMMITTEE
Council of the County of Maui

October 30, 2014

staff report that we presented before the Planning Commissions. One is with regards to our current interpretation, as Mr. DeLeon said history tends to as time goes on, people who know about the Minatoya opinion or about the law that basically excluded these, the certain apartment projects from the restriction on being used only for long-term rental. And that's basically what the original law did, it converted, it said basically said that Apartment Districts and Apartment buildings had to be used for long-term rental only, and what it did was it excluded certain projects and it listed 'em out as it says and that's what, and the Minatoya opinion just goes back and reaffirms or explains all of that through the process. For us we also have, you know, in the way we have been administering as indicated on my memo report, dated June 4, 2014, we note that uses that have a building permit is fine, but it has to be only non, only dwelling structures can be used or converted from a long-term rental to a short-term rental back and forth. So you can't convert a building that was used as an office or a laundry room, or a tennis court facility cannot be then be converted to a short-term rental. And so I kinda explained that also as well as that, you know, for those that have a building permit or an SMA permit under those guidelines, if that, if those structures burn down and need to acquire a new building permit and/or a new SMA they would also lose that ability to do short-term rental. They would, that new structure would then be, it's considered a new structure and would be required to follow the existing law which is they would have to be for, restricted to long-term rental only. We also do not allow for the expansion of an existing structure and have that expansion be used for short-term rental. So if they had a four-unit or ten-unit apartment building and they added on to it the add-on would not be allowed for under the new building permit, would not be qualified under this exception. The only provision as I explained to the Commission to you, if in the planned unit development in which the planned unit development shows that building and that footprint of that building and that building is demolished and they rebuild that building to the same planned unit development approval plans, the non, not non-conform, but the use as a short-term rental could continue. So I just wanna make that clear ideally from a Planning Department aspect we'd wanna have that type of acknowledgement also within the Code. So that it doesn't, people don't construe that they can just willy-nilly convert any structure that had an old building permit on to a short-term rental. Secondly, I think the Department also recommended that Chapter 19.32 Planned Developments also be amended just to clarify and to add that into it. Because you are talking about planned developments and you'll see again on Page 2 of our memo report June 4, 2014, in which you had already amended 19.32 under Ordinance 4063, and that was I guess sometime referred to as the Puamana bill. But we would wanna see you had a list of items are A, B, and C. We would modify that to add a, that to a 1, 2, 3 basically and to include planned developments received...planned developments received a plan, excuse me, a planned development received a planned development site plan approval on or before April 20, 1989, and the land is zoned Apartment and/or, and then that would be added on to the existing other items that are there. So those are our comments on it. I think like I said this was pretty much a housekeeping matter to clarify some long-standing things that have been interpreted and I think it will provide clarity to the Code. Thank you.

CHAIR COUCH: Thank you. Corporation Counsel, do you have any comments?

MR. HOPPER: No thank you, Mr. Chair. I can answer questions if anyone has them though.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

CHAIR COUCH: Okay. Members --

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: --any questions? Yes, Mr. Victorino?

VICE-CHAIR VICTORINO: You know, I guess not so much a question, is we just trying to codify this and I think that's what your whole intent was. Am I correct, Mr. Chair?

CHAIR COUCH: Correct.

VICE-CHAIR VICTORINO: Okay and I think it's been made pretty clear of what and the history and I think all of us understand or at least most of us understand and I won't speak for others. But I, you know, I been around here long enough to know this and so I think it's time to like you say take action and move on. I don't see any impediment and again, you know, if there's a problem in the future we'll find out. But again we've waited this long, let's get it taken care of and I have no real questions other than waiting for your recommendation, Mr. Chair, okay.

CHAIR COUCH: Okay. Other, Members? Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I would like to see it modified to make it clear that you can't take a non-residential unit and convert it into a residential unit because you've got a old building permit. So not sure if the Department has worked out the wording that they would be comfortable with. But I think I would support the intent that they mention there.

CHAIR COUCH: Mr. Alueta, do you have some language that you'd like to, I know you put language in for the planned unit developments. But I didn't see any language in the staff report for the structure, non-residential structure. And I want to recognize the presence of Councilmember Crivello, good morning.

COUNCILMEMBER CRIVELLO: Thank you, Chair. Sorry for my tardiness.

CHAIR COUCH: No worries, thank you. If not we can certainly come up with language if the will of the body is to add that language, you know, we can do a short recess and come up with some language.

MR. ALUETA: That's potential, I mean ideally I guess at the very end of the date and it just says and used as a dwelling unit.

UNIDENTIFIED SPEAKER: And used as a dwelling unit or as...

MR. ALUETA: As used for dwelling purposes.

MITTEE

y of Maui

October 30, 2014

UNIDENTIFIED SPEAKER: Or for built.

MR. ALUETA: Because there's a difference between a dwelling and a office, you know, as far as your occupation, occupancy and what you got your building permit for.

CHAIR COUCH: Well, the real test will be if Mr. Hopper buys in on it.

MR. ALUETA Correct, I'm just...

CHAIR COUCH: Yup, yup. Okay well we'll first of all come up with the question. Are there any concerns with adding that --

VICE-CHAIR VICTORINO: No.

CHAIR COUCH: --Mr. White's comments and Mr. Alueta's comments? Ms. Baisa?

COUNCILMEMBER BAISA: No, Chair, I think it really helps. I think the clearer we make this the better. Because again we know how it is. We all know what we're doing right now, but then somebody else will look in the law a few years from now and say what were they trying to do, so I support the idea.

CHAIR COUCH: Okay. So without objection what we'll do is...Mr. Hopper?

MR. HOPPER: Just clarify, we talked about dwelling unit, I mean right now it says transient vacation rentals in buildings and structures having building permits, Special Management Area use permits, or planned development approvals that were lawfully issued by and valid on April 20, 1989. So they have to be operating as transient vacation rentals or have the permits and I think that was part of the opinion as well. If they have the permits or they have an SMA they're allowed to continue that. I'm not exactly sure what we're adding to clarify. I would just wanna kinda get more detail on that. Because it allows if you've got the permit to do vacation rental operation generally. So I'm not sure what exactly we're going --

CHAIR COUCH: So --

MR. HOPPER: --to be expanding or gonna be clarifying.

CHAIR COUCH: --so with the language as it states a, let's say a garage gets turned in, you know, garage unit at the apartment complex gets turned into more rooms, that won't pass this test?

MR. HOPPER: Well it says in buildings and structures having building permit, Special Management Area permits, or planned development approvals before, so that the key issue would be when it got its building permit. The Departments saying only units in operation at that time --

CHAIR COUCH: Okay.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

MR. HOPPER: --or I just wanna get that clarified.

MR. ALUETA: No we, I think that the concern from staff at the time when we reviewed the bill was that if you had a, an existing structure that was built prior to '89 but was not used for dwelling purposes could you...because you don't necessarily need to get a new building permit to convert it. Okay it may not always trigger, convert a permit and therefore could they just take the use of say of a office or in the extreme case a garage and use it for transient accommodations? Because it just says building permits and I think the Code, and the way we interpreted right now is that if it was being used for either short-term or long-term use and it was built prior to the date you could go back and forth. So you can have it as being short-term, you can have it as long-term. So if it's being currently being used as long-term you can convert it to short-term right now, under if it was built prior to the date and you met the qualifications. You could not do that for a structure that may have been built prior to the date but was never used as a dwelling structure either for short- or long-term. I think that's...

MR. HOPPER: I don't know if we're gonna be able to come up with language on a fly for something like this, I just that's, it's a bit new to me. I'm not saying it's, there's a problem necessarily, but that's not necessarily. This mirrors essentially the language that was in, and just to clarify what we're talking about this is oftentimes mentioned as a Corporation Counsel legal opinion, but what this bill did was essentially mirror the language that we have in Ordinance No. 1797 in 1989, which was the bill that required long-term residential use of Apartments, in the Apartment District. In one of the sections of that ordinance, it said this ordinance shall take effect upon its approval provided that this ordinance shall not apply to building permits, Special Management Area use permits, or planned development approval which were lawfully issued and valid on the effective date of this ordinance. And so what this bill was going to do was copy that, because that language is in existence but it just happened to not be part of the Code, which is typical with bills where you say what the effective date is and what it doesn't affect. But in order to clarify that, essentially that language was copied and pasted into the Code here to mirror that. If we're going to make additional changes to that I think we need to take a look at that and kinda figure out how to, the best way to do that, because this was really limited to kinda of copying and pasting that at this point.

CHAIR COUCH: Well the question I would have I guess for Mr. Hopper first is as it's written in H, can what Mr. Alueta hypothesizes will happen, can that, will H prevent that from happening?

MR. HOPPER: Well, the first question I'd have is this has been administered for over 20 years now and would like to know how that's being administered currently. Because this basically says if you have, if you, if you're a transient vacation rental and the building or structure had an SMA permit or planned development permit that's generally the issue. I know there's a ton of potential variations on this theme, and we can talk about them, but that was not a particular one that I had researched before this meeting and it's a bit difficult to come up with language like that on the fly.

PLANNING COMMITTEE
Council of the County of Maui

October 30, 2014

MR. ALUETA: We're currently administering it the way I said we were and as long as you're aware of it that's how we're going to continue it, with or without adding the language. So I'm comfortable with the bill going forward, I think that's the intention is just to clarify it. But I just want, put on the record that, that's how we been administering it for over 20 years and we're gonna continue it.

MR. HOPPER: And again I'm not saying that there's any issue with that. It's just I have, do not have language nor do I necessarily believe that it would, that I could come up with language I'm comfortable with or that the body's comfortable with in a brief recess for something like that. It's the only caution that I would have.

CHAIR COUCH: And the question I have for Mr. Alueta, and then I'll get to Mr. White, is in the 20 or so years that you've been administering this, has a dwelling or I mean a structure that was not a dwelling been converted to a dwelling and then have you allowed transient vacation rentals in that?

MR. ALUETA: Not that I can recall. I do know that we have had in the Apartment District, apartment unit, non-apartment units be converted to an apartment but it was an allowed use.

CHAIR COUCH: Okay.

MR. ALUETA: But it's not necessarily being used for transient accommodations.

CHAIR COUCH: I'm guessing the one thing that I could see is they've got a storeroom that's about the size of an apartment, they say okay, we don't need the storeroom and now it's a, an apartment so. Okay Mr. White, you had a question?

COUNCILMEMBER WHITE: I think I'm comfortable leaving it as is because it does say transient vacation rentals. And if it's a storeroom it's not a rental.

CHAIR COUCH: Yup.

COUNCILMEMBER WHITE: So I think the way they're administering it is probably supportable and maybe we don't need to change anything.

CHAIR COUCH: Okay, Members, any other comments on that? Chair Baisa?

COUNCILMEMBER BAISA: Just one more thing that I think we might wanna put somewhere if we can and that is that we get the Planning Department to maintain and publish a list of properties where TVR use is allowed.

CHAIR COUCH: Okay. I know that was brought up as a, from the testifier. Let me ask the Department or the Corporation Counsel what does the feasibility of that is.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

MR. HOPPER: Well, I think it's gonna be the Department, their input will be very important, but my one concern I would have with that is that if it's done on a property-by-property basis, if there are alterations done to the building or if somebody reads that and thinks oh I can do TVRs for to whatever extent not limited by 1989, they could just, they could think that and then maybe do a major expansion that requires a new SMA permit or a new building permit without that's actually not allowed, that would be my only concern with that in that this is not an outright permitted use in the sense that it just says transient vacation rental uses allowed in this District, it's a pretty specific allowed use that I think it's almost like a zoning conformation type thing where the Planning Department on a case-by-case basis would need to actually look at the history of a particular property. And even after that, it's not a blanket you can do TVRs forever on this property like you, if it was a permitted use then you could expand your use and just say I wanna, I want to add several new rooms or something like that. But that's my only concern is that someone relying potentially on that list and then expanding beyond what they would normally be allowed. I don't know if the Department has comments on something like this. But I think normally how they would do something like this is if a property owner had a question about their property they could come into the Department just like they would for a zoning confirmation and ask can I do this use and the Department could research that. But that's my one concern as far as a reliance on that list for, you know, people may think they have more of a right to expand or do other things than they actually do, and that would be my only concern with something like that.

CHAIR COUCH: Okay. Mr. Alueta?

MR. ALUETA: I kinda, I'm on the same track as Mr. Hopper is as far as our concern that, you know, someone may come in for modifications and lose that ability to do the transient vacation rental and the list is not updated, and then someone uses that list that's on our website as the end-all, be-all, and it's not really, and so we constantly do zoning confirmations and interpretations all the time and for that specific reason, and I would rather just have it like that. I think we do try to work with the real estate agents of Maui in developing the list in general form but not so much as this is the list that's, where transient vacation rentals are allowed.

COUNCILMEMBER BAISA: Chair, would you have an objection to my asking the testifier why he wanted this, why is it so important?

CHAIR COUCH: I have no objection to that. Members?

COUNCIL MEMBERS VOICED NO OBJECTIONS

CHAIR COUCH: Mr. Croly, I believe is the one that asked for that.

MR. CROLY: Thank you for the question. You know, when I bought my condo, I wanted to make sure it was right. I didn't know when I bought the condo whether it was okay or not. I had to depend on perhaps a realtor saying to me yes, it was or wasn't. I don't think that our Code should depend on every realtor knowing what the thing is. That's why I think that it's better that I hear it from a County authority whether or not I'm allowed to make this use. Digging into the Code

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

and figuring out whether or not a property qualifies based on, okay it says if the building permit was issued by this date I know where to go find the building permits and then look them up, that's cumbersome, okay. I think the whole goal of this measure is clarity, and having some type of a list would make clarity. The list doesn't add any additional rights as was pointed out by Mr. Hopper, the list would simply be okay, you call up the County or you go online and you find this and you say cool, it's I can rent there or I, you know, it whether it be a visitor checking out, is the vacation rental that they're going to rent allowed or whether it be a potential buyer wanting to check it out. I think that the County maintaining such a list would definitely add clarity and that should be the goal of this measure. Thanks.

COUNCILMEMBER BAISA: Thank you, Mr. Croly, and thank you, Mr. Chair. What I think I heard was from the Department, and from Mr. Alueta was they were concerned about the list maybe not being updated or current or accurate or whatever. We couldn't put some kind of a disclaimer on it?

CHAIR COUCH: Or misleading, I think the bigger issue is if somebody wants to do a new addition on a property that is already existing that addition doesn't get to be a transient vacation rental, and if you just see that on the list it might imply that everything on this property is good to go.

COUNCILMEMBER BAISA: So rather than just going to a list what I'm hearing is that they need to go to the Planning Department and ask.

CHAIR COUCH: And they and, you know, the Planning, Members, the Planning Department does do a lot, I mean that's one of their biggest requests is zoning verification. May be something and I would rather this be a policy and not in the law that they, you can say on the site if, a site that person would wanna look at say hey, if you have a question call this number and we can tell you the status of that property kinda thing.

COUNCILMEMBER BAISA: That might take care of it but maybe something just, you know, we talking about clarity. People are always trying to figure out where to go --

CHAIR COUCH: Yeah.

COUNCILMEMBER BAISA: --where do I go, who do I ask. You and I probably get those kinda questions more than anything else.

CHAIR COUCH: Yup.

COUNCILMEMBER BAISA: Thank you.

CHAIR COUCH: Okay. Members any other comments on that? Again I would prefer to have it to be a policy and through the minutes of this meeting that the Department knows that, that's a policy to have that available so when people call and something on the website. But if we have to...if we have to put it in law we can, I'm, I think what I'd like to do is pass it out with what we've got

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

today, and again it's one of those 80 percent, 90 percent things, if it's a, if it's an issue that keeps coming up then maybe we can throw it, we can revisit it. I think it's a bit of a minor issue compared to the big picture on this legislation at this point. If the Chair, you brought this subject up, do wanna make a motion to, or not make a motion ask that it be put in or as a piece of law? Oh, Mr. Hopper?

MR. HOPPER: Again I would strongly advise against that.

CHAIR COUCH: Okay.

MR. HOPPER: I, because inevitably somebody's going to look at a list like that, rely on it and something's going to happen and they're gonna come back and go after the County for that. I mean if it's a different issue if there's research done, it's actually verified in that particular case. But if there's just a list out there that people want to rely on, it's, there are potential problems with that, in my opinion with a determination like this, that is not a, this a very specific case-by-case determination, it is not a blanket, everybody in this District is allowed to do a certain use. That's relatively simple. This is a more complicated issue that again I would caution against that.

CHAIR COUCH: Okay. Madam Chair?

COUNCILMEMBER BAISA: Yes. I'm okay, Mr. Chair, you know, I have great respect for Corp. Counsel, they generally give us very good advice and I don't want to put the County in any situation for liability, that's not my job, thank you.

CHAIR COUCH: Okay. Mr. Alueta, you mentioned and, Members, if you turn to the staff report dated September 18, 2014, in Page 2 of the staff report, or the transmittal from the Planning Department back to us. It mentions there, it says the planned development, they wanna change the wording to say transient vacation rentals shall be permitted in planned development except for developments that have been publicly funded, provided that either the planned development receive the planned development site plan approval on or before April 20, 1989, and the land is zoned Apartment or and then finishing up that. Question on, Mr. Alueta, I know you mentioned it, can you explain in further detail why we would need that there as opposed to the language that's already in the bill?

MR. ALUETA: I think it would, it just, it provides again clarity in another location in the Code. When somebody looks up the planned unit developments section that they are in, that they would see that language because the languages that you have are slightly different. The dates are different. So if they are within the Apartment District or, and their date is a little later. That's why so they don't, them, to match 'em up.

CHAIR COUCH: Okay. And then my question to Corp. Counsel would be this isn't mentioned, this section isn't mentioned in the bill at all, Chapter 19.32.040, so even though and the Planning Department did recommend that being put in there. But what about noticing requirements

PLANNING COMMITTEE
Council of the County of Maui

October 30, 2014

et cetera on adding it? I guess it would be a section, it'll be a new section for and then go from there?

MR. HOPPER: Well, the agenda item title is Transient Vacation Rentals in the Apartment District, and this PUD addition does say, if and the land is zoned Apartment, and it was discussed in front of all of the Planning Commissions, so I don't necessarily see it as a problem to add. I would be more curious as to whether or not there're actually any projects that are covered by this that did receive the approval before '89, zoned Apartment as a PUD. I mean do we know? If we knew that, that may be interesting, or are, there are no projects that are covered by this? But as far as adding it, it's, it, I did, I do see that it talks about the land is zoned Apartment. So it actually is an Apartment District weighted item that was discussed by the Planning Commissions, so I don't see a problem with this language from that perspective but would be curious to see if there are actual projects that meet that criteria. Because the Puamana bill was, did have a handful of projects that it affected specifically and that were in mind when it was adopted so that would be the only thing that I would ask about.

CHAIR COUCH: And Mr. Alueta, any thoughts off the top of your head on that?

MR. ALUETA: Yes there are projects that I think would qualify under that. That and they have, and they've probably been operating as transient vacation rentals already.

CHAIR COUCH: The question I would have is, because they meet the other criteria of that planned unit development clause that wouldn't that make them okay?

MR. ALUETA: Well you have it where it says, the planned development must be located in a parcel with the, has leased some Residential District zoning.

CHAIR COUCH: Oh, I see.

MR. ALUETA: Whereas that, whereas, you know, Puamana was Residential. You have some planned unit developments, planned developments that are in the Apartment zone.

CHAIR COUCH: Okay. Members any thoughts on that? You know, I'm, it's a recommendation from the Planning Commissions, and I, you know, they've had some discussion about that and I'm willing to do that if it doesn't affect getting it out today. I think it's just a little extra clarity for them, I don't know that it's as necessary, and I don't know that I, you know, I don't know that there's any, gonna be any complaints or enforcement issues at that point, but... I think maybe, Mr. Alueta, if you've had any complaints in that specific area where your enforcement officers or your Enforcement Division will say, it's hard to determine.

MR. ALUETA: Again and I was talking to Corp. Counsel. It's just we're just duplicated it, right, it was just to provide another area where it's clear in the Code for that area. I'm trying to think of where we would have a problem. I know that we, it was thoroughly discussed with my Deputy Director, and I'm, but my memory is faded on the exact details on the few items, but I do know

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

that we wanted it in just to be clearer. If there is a problem, if you have a problem with including it and you exclude it and the Department feels and then comes up with more specific reasons why it should be added in then we can always come back on our own and amend the Code.

CHAIR COUCH: Yeah. Let me ask...that was my next question. Mr. Hopper, if we pass the bill as is without adding that language and it turns out that the Department really after having worked with this for a couple years says oh, we really need that language in there. Would it have to go back to the Planning Commissions, since it's already been suggested by the Planning Commissions?

MR. HOPPER: Well if the item is passed and the bill passes and there's an amendment to a bill that's not a new item, then yeah, I believe it would go back to Planning Commissions. I know that would've, there be an agreement that it was reviewed, but I think traditionally if the item is completely closed out and amended and the bill amended by passing legislation and then that item is essentially pau, then having to come back, that's generally how it would be handled. So I think yes, they would go back to the Commissions after that once the item is passed out. It appears to be basically a restatement adding that section to the Planned Unit Development Section itself. Right now the language is in the Apartment Zoning District, but not in the Planned Unit Development District. To me I can't see a difference between the language in the Planned Development law that's being added here and what's in the Apartment District, it seems like it's just in another place so that if you're reading the Planned Unit Development law you will see oh, here's an exception for transient vacation rentals. But the language appears to mirror. Because the language in the Apartment District says if or if it got a Planned Development approval by and valid on April 20, 1989, that's the same language that's in the PUD, it's just being duplicated in another place in the Code. I guess the Department wanted that, I don't wanna speak for them but it seems like they wanted that in another place so that if someone was reading that section of the Code they would see it.

CHAIR COUCH: As a bit of a flag. Okay.

MR. HOPPER: I suppose that's why it's being added.

CHAIR COUCH: Yeah. Members, any thoughts on whether or not to include this?

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Mr. Victorino?

VICE-CHAIR VICTORINO: It seems like the Department would like it in there. Am I correct, okay, and Corporation Counsel said if we wait till later then we gotta redo this whole, so I'd move to include it. I don't know what kind language you wanna be specific with, Chair. But...

CHAIR COUCH: Well they actually --

VICE-CHAIR VICTORINO: Yeah.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

CHAIR COUCH: --provided the language, we would have to add a sections, to add, and I'd be looking to Staff on this one. I would think since the language is in the Page 2 of the Planning Commissions' report and if we use that exact language, you just add that section to amend, blah blah.

VICE-CHAIR VICTORINO: I'd be perfectly comfortable with that.

CHAIR COUCH: I'm fine with that, if you guys are fine with saying okay, if they add that language as is, we can pass it out now. You don't have to see a copy of it in rewritten.

VICE-CHAIR VICTORINO: That's fine.

CHAIR COUCH: Are you okay with that, Members?

COUNCILMEMBER BAISA: Fine.

VICE-CHAIR VICTORINO: That's fine.

CHAIR COUCH: Do I have consensus? Okay.

VICE-CHAIR VICTORINO: Consensus.

CHAIR COUCH: Okay. Staff you aware of what we want? No, we checked there is no notice problem. Because it is listed in the, okay. Any, okay, so we'll do that then, we'll ask Staff to do that.

COUNCILMEMBER BAISA: No objections.

CHAIR COUCH: Okay. One last thing on this bill and I think you alluded to it a little bit, Mr. Alueta, but I just wanted to be double, you know, triple sure of what's going on. Say whatever complex is in the appropriate District, it got their building permit or what all the approvals lawfully issued by and valid on April 20, 1989, and I don't know, we have an earthquake and the whole building is destroyed and so they wanna rebuild the building exactly the same. Will they still fall under this because now they have to have a whole new building or let's say a fire burns the whole building, now they get a new permit and they were permitted before and now they're not, you know, it's a new permit now, even though they did everything exactly the same would they still be able to do their transient vacation rentals?

MR. ALUETA: No. Because a new building permit would be for the building. It would be a new building permit. If a new building permit is triggered they would lose their conformity.

CHAIR COUCH: And that's a concern I would have.

MR. ALUETA: For the structure?

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

CHAIR COUCH: Right. That's the concern I would have and again, Members, given the likelihood of that happening, completely destroying a building, at this point I would rather pass this out now and then have the Departments, both Corporation Counsel and Planning, and the Committee take a look at that and see how we can write that in as a amendment later, you know, come back and redo the bill and if they wanna put in, you know, anything else after we've seen how it's going after two years. Any thoughts on that...Mr. White?

COUNCILMEMBER WHITE: Would that type of amendment require going back to the Planning Commission as well?

CHAIR COUCH: Well if, I would think if we put it in now...I don't know, Mr. Hopper?

MR. HOPPER: If you're going to add something like that now, I mean you, I think you'd potentially be doing more than what the current law allows. But it's something that certainly germane to the, to this bill so that's something certainly the Planning Commissions could have commented on or added themselves so I don't see a problem adding it now. Of course if it again if it this passes out like this and there's a new proposal that generally would go --

CHAIR COUCH: Sure.

MR. HOPPER: --to the Planning Commission. Because it's a brand new item that would --

CHAIR COUCH: Right.

MR. HOPPER: --that all would have to be referred by resolution or by the Department as well. But an addition like that now, I think the additions like that are common in general for new uses, and I think you'd say something like if the building is destroyed it may be reconstructed pursuant to the original building permit, SMA permit or Planned Development approval. Something like that, but again that might not have been...I don't know if that was really part of the original law if the Department is not allowing that. But and I don't know if the Department's commented on a provision like that. But in order to write something like that I think we can come up with language like that 'cause it's relatively common.

MR. ALUETA: And again, Mr. Chair --

CHAIR COUCH: Mr. Alueta?

MR. ALUETA: --thank you, again that was that whole premise and discussion was presented to the Planning Commission. And we explained how we interpret the law, how we have been interpreting the law, and how we would continue to interpret the law and that was made very public. I mean it's obviously on my, in our staff report. The, all the Commissions acknowledged that and they made no objections to that and to that current interpretation of the law. And so and no one else, I don't believe any one testified regarding that either. But it was clear that, that's

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

how we have been interpreting that, and that's how we're gonna continue to interpret it, and that's why I pointed out to you guys, if you guys saying that's how I interpret it, if you got a problem with it speak now.

CHAIR COUCH: Yup. Mr. White?

COUNCILMEMBER WHITE: Yeah. I have a real problem with taking people's rights away because of a disaster. And I, you know, I understand the interpretation, it just doesn't sit well with me that we, you know, you have a building burned down or just, you know, two parts of a building or, you know, or an earthquake, or something that severely damages the building to the point where it has to be torn down. And you can rebuild it but you can't continue the previous use. But that just seems a bit contrary to what we've been discussing with this bill.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: I would prefer fixing that now rather than --

CHAIR COUCH: Yup.

COUNCILMEMBER WHITE: --ending up having to put it back to the Planning Commission later, but I think that's an unfair way of proceeding in my point of view.

CHAIR COUCH: Let me ask the Department this. Let's say a fire got to the building and they have to tear it down and or if it's a wood building it's just gone and it's on the coast. Would it be able, if it's more than 50 percent destroyed. Would it be able to be rebuilt and if it's within the new shoreline setbacks and all the other new laws that have come up now? Would an existing property that was there for a long time, be able to rebuild, be rebuilt if it got more than 50 percent destroyed?

MR. ALUETA: Not with, not without a shoreline setback variance. An EA and a shoreline setback variance approval, and whether or not they would be able to get one, is questionable. Again the way this bill, I mean and Mr. Hopper can correct me if I'm wrong, and the way that the original ordinance that allowed for these, is kind of in between a grandfathering 'cause it wasn't grandfathering, and an outright permitted use. Okay. It wasn't saying these are outright permitted uses. It's allowed under these circumstances. Okay. And now and so in our interpretation of it is that once those circumstances change, you then have to conform to the Code as it is written now. Okay. As opposed to a lesser one would've been existing non-conforming use meaning, you're doing transient vacation rentals, you can continue to do transient vacation rentals. If you stop doing it, where if, you or stop for more than a year then you no longer can do it. Okay. This is kind of in-between the way I look at it and that's how we've said, so it basically is saying you're not, you don't have zoning, you, we didn't zone you Hotel or we're gonna give you Hotel like uses in the transient accommodation, provided you still, provided still in the same, you have a valid building permit, your SMA, and the PUD. Once you lose those, meaning either by as I said disaster, old age, it becomes to the point where you no

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

longer can repair and maintenance effectively, or if you had to get a new building permit either for reconstruction or then, you then no longer qualify under the way the law was written. And so I guess I would disagree with that is that I think it is fair if you, it burns down you now have to conform to the law just like anybody else. But if you wanna, again this is your bill, you can write it the way you want and we'll administer it the way you want us to administer it.

CHAIR COUCH: Members, comments? I think, Mr. Victorino, did you have a comment?

VICE-CHAIR VICTORINO: Well, something very simple it's sure taking us a while...

CHAIR COUCH: Yup.

VICE-CHAIR VICTORINO: So much for simplicity, Mr. Chair. You know I understand what, Mr. Alueta's saying because that's pretty much true no matter if you live in any special District, Conservation Districts, and/or even the Historic Districts if something happens you gotta go through the whole process. Is that correct, Mr. Alueta?

MR. ALUETA: That is correct.

VICE-CHAIR VICTORINO: Okay. So to say we exempt this but we don't exempt others wouldn't be fair either. Would I be correct in saying that, Mr. Hopper?

MR. HOPPER: I'm sorry could you rephrase or could you repeat?

VICE-CHAIR VICTORINO: Well, I mean we make others if they're in Historic Districts and other special Districts, an old home burns down or old structure burns down. They've gotta comply with whatever ordinances or Special Management that's been put on this area or the zoning that has been done for this particular area or whatever other special quote.

MR. HOPPER: Oh, that's gonna depend on the District and the ordinance --

VICE-CHAIR VICTORINO: Yeah, well --

MR. HOPPER: --sometimes there's ordinances that do say --

VICE-CHAIR VICTORINO: Yeah --

MR. HOPPER: --if you burnt, the normal law that generally applies is if you burn down, you have to comply with all the current ordinances. That is accepted in a lot of ordinances. Sometimes there's things written in that say, except that if the building burns down basically or it's destroyed, they can reconstruct pursuant to the original building permit and continue the uses. That's gotta be something the Council puts in special for those Districts; otherwise, the general law of non-conforming uses would apply.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

VICE-CHAIR VICTORINO: Okay.

MR. HOPPER: This language in fact that we're codifying now --

VICE-CHAIR VICTORINO: Yeah.

MR. HOPPER: --was such an instance where the Council decided we're not gonna just say this takes effect on approval and if it burns down, so be it. This language which we're just copying here says something different and that's why it's an exception that says that your use, basically that ordinance requiring long-term residential use is not gonna apply to you if you got a building permit before a certain date. And that actually was such an exception that we had to the general non-conforming use law, which would say if you stop operating for more than a year you lose your right. This says if you had a permit before then you have that right, you know, continued on. But it's different if you burn, you know, if the structure is destroyed and the new use comes up that's something that's perhaps we could clarify now on this bill, you know. I think the important thing is what does, I mean this is here for this reason so that the Legislature can clarify and the Legislature has the ability to deal with this issue now and so if, you know, you're being told the, how it's being administered now and if there's a problem with that we can certainly deal with it through language that says something like if a building is or structure is destroyed it may be reconstructed pursuant to the original building permit, SMA permit, or plan development approval and continue such transient vacation rental use or something like that or not and then it would be the way that the departments administer it.

CHAIR COUCH: Mr. oh, go head, Mr. ...

VICE-CHAIR VICTORINO: Well after hearing all that, you know, again if we can fix it here and now make sure it doesn't affect somebody who is destroyed then fine, you know, I have no problem with that. But so long as we can do it and like, Mr. Hopper said we giving our exemption to this, the only thing I always worry exemptions sometimes are used by others in other areas or other places and then we get into another whole gamut of challenges. But being what it is, I'm willing to amend if you so choose, Mr. Chair.

CHAIR COUCH: Well let me hear, Mr. White had a comment.

COUNCILMEMBER WHITE: Thank you. I like the suggestion from Mr. Hopper. I certainly understand the need that if something gets burned that what is built, what is rebuilt should be built to Code and it should comply with all the other, you know, building ordinances that have been changed, Building Code ordinances that have been changed. But to simply say that because it's gonna take you a year to replace it or sometime time frame within which it's gonna have to be rebuilt that you in fact lose your ability to continue to use it the same way. I just think that's really unfair. I would have a real problem with that, because then if you're not able to use it the way you have been using it then it may well not be rebuilt, period, and I, you know, I just don't think that's fair. So I would prefer to go along with Mr. Hopper's suggested language.

NG COMMITTEE
f the County of Maui

October 30, 2014

CHAIR COUCH: Anybody else commenting on that? From what I, what Staff heard and what I heard adding to H on Page 2 of the bill, right after on April 20, 1989, buildings and structures with such permits and approvals may be reconstructed and continue to have transient vacation rentals as a permitted use. Is that language kinda what you were saying, Mr. Hopper?

MR. HOPPER: Well reconstructed pursuant to the original building permit or SMA permit, or something like that to make clear that it's not a reconstruction of whatever person would like. It's a reconstruction pursuant to, I don't know if you wanna say the footprint of the building or something like that if that's the intention. And then also just to reconstruct does that mean they could tear down the building whenever they want, or are you talking about specifically if a natural disaster causes the destruction, or can if someone can just replace a structure and expand it, which again I mean the Council could look at, the Council could allow it as, you know, for a variety of uses but, you know, I think a little bit of fine tuning there would be in order.

CHAIR COUCH: Okay. And good point, is termite damage where it eats the whole place out is that make it, is that a natural, you know, something like that where you would have to reconstruct? That, I mean, see we're getting into all kinds of nuances now, Members, so I'm thinking along Mr. Hopper's language at least pursuant to the original permit language. What, Ms. Chair Baisa?

COUNCILMEMBER BAISA: You gonna put prior to 1989, in there somewhere.

CHAIR COUCH: Well it says buildings and structures with such permits, which refers to the planned unit development approvals, Special Management Area use permits, and building permits prior and valid on April 20, 1989, I would think. Mr. Hopper?

MR. HOPPER: Well then maybe clarify that the new permits would still have to meet the Building Code but that the use would be allowed and I don't know if Staff has additional changes that we need to look at. But, you know, it's hard to visualize all of this just by orally saying, you know, getting it out there. But --

CHAIR COUCH: Right.

MR. HOPPER: --we'd wanna see it maybe on paper. But something to that effect that it still would have to conform to Building Code but still be in the same footprint, and I mean again, I need some guidance on what the body would like, but I think we can work out some sort of language 'cause that is not uncommon in ordinances like this.

CHAIR COUCH: Okay. And keep in mind, Members, this is for the Apartment District only at this point. My concern about the original footprint and all that if there's an issue with the new shoreline certification, et cetera and set new shoreline setback rules is it now the original footprint and that kind of thing. That's, yeah, Mr. Alueta? I see that...

MR. ALUETA: Again I just have especially if you, I have concerns over if you're saying footprint because I can see a lot of accidental fires, a building burning down of a six-plex apartment

CHAIR COUCH: Accidental fires?

MR. ALUETA: --yeah, or, you know, that will take place if you don't clarify that it has to be the same, built to the original building, specs of the original building permit with the same floor area and same density, and then that way it would cover those who have, you know, a small 20-unit apartment complex that's being used and part of it burns down as long as they put back the same units and same square footage then I can see that you would be continuing the use and the rights that they I guess they currently have. Again for us, you know, zoning changes are always gonna happen and we're trying to get people to move toward what is the new Zoning Code and so we try to phase out at some point, some of these uses that we don't feel is the appropriate use that another zoning should be applied for eventually, you know. And that's, you know, I think that is the long-term answer is that if somebody's got this and they wanna do transient vacation rentals then they should just apply for the Hotel zoning, if that's your intention, so if you wanna in perpetuity, in perpetuity allow these units that meet this definition then maybe you should just change their whole, them to Hotel and then that way there's never a question. But you need I mean or allow them them the use and wreak havoc on our affordable housing. But that's your, you can pick your poison.

CHAIR COUCH: What about this, Members, and then I'll get to Mr. White. If we leave it as is...and it's a one-off situation, it would be, how about if they come back to Council. If the building burns down and they wanna rebuild it that they would have to come back to Council to, for Council to say yeah, that's okay either by, well see if you do a Change in Zoning then there's all kinds of hoops that they have to jump through there. But I don't know...Mr. White?

COUNCILMEMBER WHITE: Chair, I think, I agree with, Mr. Alueta. We don't wanna open the door -

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: --just by saying on the same footprint. Can we solve that by saying as originally permitted or if we need to add square footage or whatever to it? But I think as originally permitted, if you guys, would you interpret that as meaning the same square footage and same footprint?

CHAIR COUCH: Even if it had to move a little bit further back, that kind of thing?

MR. ALUETA: Right. I think they, if you, as I said if you, if they're, if it's reconstructed or, you know, reconstructed wherever you want it, however you wanna call it, as originally permitted with the same square footage and density. Then we would, so if they had a 40-unit or a 20-unit --

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

CHAIR COUCH: Square footage, density.

MR. ALUETA: --complex, you know, all of them were of 1,200 square feet units as long as they met that same density. You just don't wanna have them all of a sudden having 2,000 square foot units and having 80 units. I mean that's the intention is just you wanna put back what they originally had. Obviously there's gonna be variations based on the Code, you know, a few square foot here, 50 foot here, we're not gonna, the Planning Department normally doesn't mince. I mean we don't normally go to that detail. We're gonna catch if they're doubling the size or, you know, adding way more units than was originally under the original permit.

CHAIR COUCH: Okay. So it's my feeling that everybody's okay with something to allow them to rebuild to the original density and square footage if there were, is at any time or if there's only a natural disaster or some sort of disaster that destroys the building? Members, this is asking you, because --

VICE-CHAIR VICTORINO: When you, let me verify...

CHAIR COUCH: --let's say it's an old, you know, 60-year old building or whatever and they say well let's just tear it all down and build, rebuild it and we still get the use, is that gonna be acceptable or it has to be only if it gets destroyed by an event?

VICE-CHAIR VICTORINO: I would check with Corporation Counsel on that one because I believe by an event probably would be safer. But what extent is an event --

CHAIR COUCH: Correct.

VICE-CHAIR VICTORINO: --I mean you mentioned the termite issue --

CHAIR COUCH: Yup.

VICE-CHAIR VICTORINO: --that's an event but how do you measure that event. I think, this is where I have a real challenge with putting in specifics is then, how specific do you get and then how does the legal world take that specificity and start using it in other ways, I'm asking.

CHAIR COUCH: Yeah. And, Mr. Hopper, do you have any comment on that?

MR. HOPPER: Well, Mr. Chair. If it's reconstructed pursuant to the original building permit then, I mean you're not talking about any kind of expansion so if whether, I don't know what the Department's position is. But it may be difficult to define what a natural disaster is --

CHAIR COUCH: Right.

MR. HOPPER: --like you were saying. So if you say reconstructed pursuant to the original building permit --

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

CHAIR COUCH: No matter what.

MR. HOPPER: --something like that, and if it's, you know, that's gonna have to be as long as there's something the Department and, you know, the Department of Public Works is comfortable interpreting, and I do know I've seen that language in other ordinances then that's what you're talking about for whatever reason you can reconstruct it, you know, but you'd be reconstructing only to build the same thing that you just had. It would maybe newer, a newer building obviously but it would be still the same building so it wouldn't be a, an expansion of the use.

CHAIR COUCH: Okay. Members, is that satisfy any concerns you have? What I'd like to do or we're running, coming up to our morning break. I'd like to take a 15-minute break. Do what you guys need to do and I'll work with Staff and Corp. Counsel, to come up with the appropriate language to add into that as long as I am clear as to your, the Committee's intent and that is that if it's to the same square footage and density, no matter how it gets reconstructed we're good. Any comments?

COUNCILMEMBER BAISA: No, we're good.

CHAIR COUCH: Okay, so let's be back at 10:30. This meeting is in recess. . . .(gavel). . .

RECESS: 10:14 a.m.

RECONVENE: 10:49 a.m.

CHAIR COUCH: ...(gavel)... Will the Planning Committee meeting of October 30th, please come back to order. Alright, Members, sorry it took a little bit longer but we have the language. It's been thoroughly digested through the Department and the Corporation Counsel and our Staff. It's being passed out now. Thank you very much, guys, for taking care of this as best as you have done. So Members, take a look. We've also added the, this other section that the Planning Department wanted to add, from the Planning Commission, so that's why there's so much yellow. But essentially this is what we want, what we have and I'll read it to the, for the public. We're adding the original bill's language saying transient vacation rentals in buildings and structures having building permits, Special Management Area use permits or planned development approvals that were lawfully issued by and valid on April 20, 1989. Buildings--and this is the new part now--buildings and structures with such permits and approvals may be reconstructed and transient vacation rental use shall be permitted provided that one, the reconstruction conforms to the original building permit plans, Special Management Area use permits or planned development approvals; and two, the reconstruction complies with the Building Code and all other applicable laws in effect at the time of the reconstruction. Department, you're good with what the intent is here?

MR. ALUETA: All good, sir.

PLANNING COMMITTEE

of the County of Maui

October 30, 2014

CHAIR COUCH: Okay. Corporation Counsel?

MR. HOPPER: Yes. Again our Office is going to have to fully review this after --

CHAIR COUCH: Sure.

MR. HOPPER: --but at first glance I think that this is acceptable.

CHAIR COUCH: Okay. And Members, any thoughts on that? This is basically what we, our intention is. Okay. Any discussion? All right, well then I'm ready to make a recommendation.

VICE-CHAIR VICTORINO: Recommendation.

COUNCILMEMBER BAISA: Recommendation, Chair.

CHAIR COUCH: Thank you. Let me get to what we're gonna do here. I'm gonna entertain a motion to recommend passage on first reading of the proposed revised bill entitled A BILL FOR AN ORDINANCE AMENDING SECTIONS 19.12.020 AND 19.37.010, MAUI COUNTY CODE, PERTAINING TO TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICT; and to allow Staff to make nonsubstantive revisions; and the filing of County Communication 13-403.

VICE-CHAIR VICTORINO: Mr. Chair, I make the motion.

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: Okay, it's...we have a motion from Mike Victorino and seconded from Mike White, and yeah...and we're also gonna add...I'm sorry, Members, with...because of the, what the Planning Commission wanted...actually there's 19.32.040 as well in the title and you'll see that in yellow on your title. So without objection that, can we add that to the motion?

VICE-CHAIR VICTORINO: No objections.

COUNCILMEMBER WHITE: No objections.

CHAIR COUCH: Okay. So it's been moved and seconded. Any further discussion? I just wanna say thank you for putting up with the little bit of a delay, but I think this is something that's been in the making since 1989 ...*(chuckled)*... apparently. We wanna get it done. There've been interpretations and other interpretations and we finally wanna get it codified as it was intended in 1989. So without, if there's no further instructions, all those in favor, please say "aye".

COUNCIL MEMBERS VOICED AYE.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

not file the County Communication, so that we could consider extending the District to other types of buildings such as triplexes and quadplexes. I would like to have a discussion on this and if appropriate I will ask Staff to prepare a bill for future consideration, this is not passage of a bill today. Staff is handing out a copy of Chapter 19.10, Maui County Code, Two-Family Duplex District, with possible changes to allow triplexes and duplexes. I think, Planning, you may have seen this, if you haven't it's being passed out as we speak so take a look at it. Basically what we're trying to do is we discussed this when we had the bill up before when you were making your revisions, Mr. Alueta. But we wanted to include triplexes and quadplexes. Because that will help in we're trying to increase some density as in areas inside the Urban Growth Boundaries and this will help in that situation. So having received it, Mr. Alueta, and taking a look at it, do you have any comments?

MR. ALUETA: I think we talked about this a little earlier, Mr. Chair. I don't have a problem with you guys going ahead and creating a definition for three-family dwelling or a four-family dwelling. The current, currently the Planning Department just looks at anything over a duplex or a three or more is considered an apartment, is a multi-family structure and is considered an apartment and therefore would be only allowed within the Apartment District as it is now. So the first, I think the first thing would be to first create the definition of what a triplex and a quadplex I guess would be and then define where you would want them to be located. Obviously your first location would be in the Duplex District, you know, or Multi I don't even know what that word is.

CHAIR COUCH: Multiple-Family District.

MR. ALUETA: Yeah.

CHAIR COUCH: Put your glasses on, Mr. Alueta.

MR. ALUETA: Okay. Sorry, Multi-Family District --

CHAIR COUCH: Multiple-Family.

MR. ALUETA: Multi-Family --

CHAIR COUCH: Yeah.

MR. ALUETA: --which we basically again consider this an Apartment. I think you, the other thing is like, you know, there's not much duplex properties out there.

CHAIR COUCH: Right. At this point I believe there's a few zoned areas that are quote unquote duplex.

MR. ALUETA: Right. And I think if I understand what your intention is to allow more flexibility but also create greater densities on certain properties without going to basically an Apartment

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

Zoning, and I think that should be some of your direction that you give to the community plans members when they start looking at it, as to look at where on Maui, where you have existing maybe potentially large lot Residential and/or Business Districts. But mostly probably in some of your Residential areas where you have the infrastructure that can support a higher density such as, you know, we talked about maybe like along Papa Avenue or Kamehameha Avenue or some areas within central areas where you have both infrastructure to support a higher density than what is currently there which would be more Residential in nature. I think that should be one you start. First define what these are and then go back and then look at the community plan areas. Look at the zoning, some of the zoning classifications that you would want to potentially up zone something to a Duplex District --

CHAIR COUCH: Right.

MR. ALUETA: --to take fully advantage of the, of adding these types of new structures. But that's pretty much my comments at this point in time. Thank you.

CHAIR COUCH: Yeah, and Members, we did change the name from Two-Family or Duplex District to Multi, Multiple-Family, we don't have a Multiple-Family District we do have an A1 and A2, which is Apartment District. And I think the intent of your Chair is to separate those two Districts so we can have bigger density but not the full apartment if there are areas in any of the communities that want to be able to have that flexibility. So that being said, Members, this is kind of an attempt at what the language would look like if we were to pass a bill. Are there any concerns? And you know, this is just kind of a follow-up conversation from when we passed that other bill. Do you have any concerns on the intent here or the language? Mr. White?

COUNCILMEMBER WHITE: I don't, I don't have concerns. I recall the discussion we had and I think it's appropriate for us to look at this as an option. You've left a question mark in the minimum lot area, which I think is obviously something that needs to get some additional discussion. I think it would need to be larger than the 10,000 square foot lot allowed for the duplex, but I'm also wondering about the minimum setbacks whether that should be a little bit, increased a little bit. But I think that the concept is worth evaluating. Because I think triplexes and quadplexes are something that are allowed elsewhere but not in our County that I'm aware of. But...

CHAIR COUCH: Unless they're in an Apartment District.

COUNCILMEMBER WHITE: In the Apartment District --

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: So I agree with the direction you're going...

CHAIR COUCH: And what the intent for this meeting is to hear your comments and concerns, and the reason the question marks are there in D3 and D4 is for Planning and to hear what we have to say and what we may want a minimum lot area, and then we'll come up with a bill and put it to the

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

Planning Commission and continue on from there. But what, based on your input at this point. Mr. Alueta?

MR. ALUETA: I guess, thank you, Mr. Chair. I guess from our aspect if you're trying to increase density don't increase the lot size. You're trying to put a higher density on less land, you're trying to put more units on less land --

CHAIR COUCH: Right.

MR. ALUETA: --not, so you kind of defeat your purposes of actually creating, increasing the density. So I and I at the same time as, you know, urban design has become more and more important, and so where you put these is not so much the sitting of these things and setback is no longer the issue nowadays. Nowadays it's more build to lines. Don't, when the Duplex District first came about, it, it's actually a carryover from, you know, from our '60, '67 Code, I mean it's pretty, it's been in there for a long time. And they basically, like I say, copied the Residential District standards of having setbacks, side yards, and front yard. But in reality when you have these duplexes, you kind of want them in a more urban, you're gonna have them in an urban setting for one thing. But you kinda wanna more have a build to line, meaning have them build the front door right up to the road or right up to the sidewalk as opposed and as opposed to having a setback like a Residential. I mean it, but it's again it's how you want these and where you site these. If you're gonna site a duplex in the middle of a cul-de-sac Residential area then obviously you're gonna want it to have a Residential character. Okay. But if you're sitting these on a major arterial road in either in Kihei or in the middle of Kahului you may want it to where you want, where you have the sidewalks and there's a, and you're trying to develop more of a walking community then you're gonna wanna move it toward the front and then move the parking toward the rear. Meaning move the front door and the entrance to the front or to the front of the property and the sidewalk, put the parking in the back so it's where. Because you obviously gonna create more parking situations and then, you know, from that aspect you're gonna create a better design, I mean so again sitting is always gonna be important as well as infrastructure and that's why I say these things really need to be looked at when you get to the community plan and you should really instruct some of your community plan members that are on the board. Hey, this is what your thinking is, we would like to see higher densities but we don't wanna see a full-on apartments. We think duplex could be solved where in the community can we, could this be a good location, and I think that way you'll be again it's a dog wagging the tail not the tail wagging the dog. I mean I think that that's, that should be more important for it.

CHAIR COUCH: Okay. Members, any further comment? Mr. White?

COUNCILMEMBER WHITE: I agree with, Mr. Alueta's perspectives. With the only exception being that as we increase the size, we're gonna have to have increased parking. So --

CHAIR COUCH: In the back, yeah.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

COUNCILMEMBER WHITE: --yeah and whether that's in the back or the front it may require a little bit larger lot size, but we may be able to accomplish that with the same lot size but anyway. That's why it might be nice to have them take a whack at this first.

CHAIR COUCH: Yeah, they, it, the reason we're doing is because it's they're doing a whole lot more at this point of the rest of the Code and this wasn't high on their radar. We're just kind of giving our input so that when, you know, we can initiate it and then have it go through their process and then come back to us, only because we just wanted to clean up something that's just been sitting there and we discussed, so I wanted to make sure that we had this discussion and then send it down to them.

COUNCILMEMBER WHITE: Okay.

CHAIR COUCH: I hear what Mr. Alueta is saying to either have smaller lot sizes for D1 and D2 and them maybe D3 and 4 be at 10,000 or keep everything at 10,000 for two, three, and four. I'm very open to that and it looks like we wanna lower the setbacks on the front and the side. But maybe increase the setback in the back, for parking because of the whole walkable, but you wanna walk on the street and go right in and then all the parking and whatnot would be in the back. Is that what everybody's kind of hearing and is okay with at this point? Okay. So I've got, we've got our discussion which is a, you know, just some input that we're gonna do. We, this Committee, your Committee Chair will submit a bill to the Department and for resolution to go down to the Planning Commission and go through the whole thing and see what happens when it comes out at the other end. So if there's no other questions or comments on this I'm, you know, do we wanna go all the way to six? I don't think so...essentially we can try and increase the density in certain areas that we don't wanna go all the way up to apartments, and with that if there's no other comments what I wanna do is defer this so that we can come up with the actual language, send it via resolution and start the process.

VICE-CHAIR VICTORINO: No objections.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: No objections.

CHAIR COUCH: All right. Well thank you, Members. Sorry the meeting went a little bit longer than I expected, but I think we're good. What we're gonna do is defer this item and when it's, when we have our meetings, we'll send it through and bring it back up as a resolution. So with that, this item is, without objections, this item is deferred.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

PLANNING COMMITTEE

Council of the County of Maui

October 30, 2014

CHAIR COUCH: Okay. And with that meeting is adjourned. Thank you very much. And by the way, before I pound the gavel, you know, this is the last meeting before a certain event on Tuesday. Good luck to everybody and...be thankful it's over. It'll be over by the next time we meet and we'll have little more vibrant faces here. Some of us are pretty tired. Okay, meeting is adjourned. ... (*gavel*) ...

ACTION: DEFER pending further discussion.

ADJOURN: 11:08 a.m.

APPROVED BY:



Donald G. Couch, Jr., Chair
Planning Committee

pc:min:141030

Transcribed by: Jean Pokipala


PLANNING COMMITTEE
Council of the County of Maui

October 30, 2014

CERTIFICATE

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

DATED the 24th day of November, 2014, in Wailuku, Hawaii



Jean Pokipala