

PLANNING COMMITTEE
Council of the County of Maui

MINUTES

Council Chamber

January 9, 2014

CONVENE: 9:05 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Donald G. Couch, Jr., Chair

Councilmember Michael P. Victorino, Vice-Chair (excused from 9:18 to
9:22 a.m.)

Councilmember Gladys C. Baisa

Councilmember Elle Cochran (arrived at 9:20 a.m.)

Councilmember Stacy Crivello

Councilmember Mike White (left at 10:45 a.m.)

EXCUSED: Councilmember Don S. Guzman

STAFF: Regina Gormley, Legislative Attorney
Pauline Martins, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone
conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone
conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone
conference bridge)

ADMIN.: Michael Hopper, Deputy Corporation Counsel, Department of the
Corporation Counsel

Michele McLean, Deputy Director, Department of Planning

Joseph Alueta, Administrative Planning Officer, Department of Planning

John Rapacz, Planning Program Administrator, Department of Planning

OTHERS: David DeLeon
Dick Mayer
Plus (2) other people

PRESS: *Akaku Maui Community Television, Inc.*

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CHAIR COUCH: . . . *(gavel)* . . . Will the Planning Committee meeting of January 9, 2014 please come to order? It's about 9:06. My name is Don Couch, I'm the Chairman of the Committee. And with us today...first of all, please, anybody in the Chambers, turn your cell phones on to silent mode, please, so we don't have interruptions during the meeting. With us today, we have the Vice-Chair of the Committee, Councilmember Victorino. Good morning.

VICE-CHAIR VICTORINO: Aloha, Chair.

CHAIR COUCH: Aloha. And then we have Council Chair Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: Good morning. And then Councilmember Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR COUCH: Good morning. And Councilmember Mike White.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR COUCH: Aloha. Councilmember Elle Cochran will be here shortly, and excused is Councilmember Guzman. Okay. And, from the Administration, we have Michele McLean from the Planning Department, she's the Deputy Planning Director. Good morning.

MS. McLEAN: Aloha, Chair. Good morning.

CHAIR COUCH: And with her is Joe Alueta who's from the Administrative Planning Department personnel.

MR. ALUETA: Good morning, close enough.

CHAIR COUCH: Close enough.

MR. ALUETA: Close enough for government work.

CHAIR COUCH: And Michael Hopper, Deputy Corporation Counsel.

MR. HOPPER: Good morning.

CHAIR COUCH: Good morning. And our Legislative Staff: Legislative Attorney, Gina Gormley-- good morning --

MS. GORMLEY: Good morning.

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CHAIR COUCH: --and Committee Secretary, Pauline Martins. Good morning. And today, Members, we're gonna talk about PC-38, which is Hotel Districts--we've been working on that a little bit--and then PC-13, which is Change in Zoning Protests; and PC-49, Transient Vacation Rentals in the Apartment District. Alright, Members, without objection, I'd like to open up public testimony.

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. Public testimony is open. For the people in the Chambers, testimony is only on one of the items that I mentioned today and you have three minutes to speak. We're gonna have the lighting system, if it goes on. I don't see the lights on. I'm not sure if it doesn't start until...okay. The green light will be on for three minutes, and then you have one more minute to conclude your remarks during the yellow light. And when the red light comes on, please finish within seconds of the red light; I'd appreciate it. And then the members in the...anybody who's testifying in the district offices, we'll just try to let you know when your three minutes are up and then your four minutes are up. So first person listed to testify is David DeLeon followed by Dick Mayer.

... BEGIN PUBLIC TESTIMONY ...

MR. DeLEON: Good morning, aloha and belated happy New Year's.

CHAIR COUCH: Good morning.

MR. DeLEON: I'm Dave DeLeon speaking on behalf of Maui's 1,300 licensed realtors on PC-49. Realtors Association of Maui proposed this measure in order to bring clarity to the zoning policy affecting more than 83 condominium properties on Maui and Molokai. The far majority of these properties were specifically developed as resort properties and, for the most part, they've been used as such throughout their existence; in some cases, going back 40 years or longer. In 1989, Ordinance 1797 was passed in order to limit the use of Apartment-zoned properties to long-term residential use. However, that same measure also explicitly exempted those properties that have received their building permit, SMA or Planned Development Approval by the date of the passage of the ordinance. Vacation rental use continued to be a permitted use in these properties; however, only the new requirement for long-term residential use was included in the County Code. The provision that allowed the continued vacation rental use for already entitled properties was not codified. These properties amount to about a third of the condominium stock in Maui County. They generate a considerable share of the County's visitor industry income and are a major contributor to the County's real property tax base. As such, they are a large economically important class of properties. This class is so large and so important, in fact, we believe it is imperative that its zoning status be clearly stated in the County Code. The recent Puamana zoning issue is also instructional on this point. Although Puamana operated like a resort property for decades, it actually lacked appropriate zoning for that use. The County allowed the vacation rental use to continue until it was challenged and then shut the use down causing serious issues for the owners in the neighboring community. Puamana has a couple

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hundred units. This bill affects thousands of units. Imagine the economic impact if the existing lack of clarity in the Code led to an attempt to shut them down; that has already happened once. In 2001, the use permitted in Ordinance 1797 was challenged and the Corporation Counsel overruled that vacation rental use was permitted in these properties. Over time, history will fade...but that history will fade into the background. Our concern is that the lack of clarity in the Code on this point will lead to future confusion and possibly new, misguided attempts to shut down this important engine of our economy. Because its permitted use is not set out in the County Code, the average citizen is not given ready access to this important zoning provision. Likewise, County departments are not given clear guidance about the law's intent. The purpose of this bill is to correct that lack of clarity in the Code. The bill does not propose to create any new, permitted uses nor does it expand the class of properties affected by Ordinance 1797, it just proposes to codify the existing permitted use. Now, the agenda you have in front of you today says this bill is about permitting transient vacation rentals in the Apartment District; that's a little bit overstated. We're not asking for new permission, we're just codifying. And I'm getting beeped at, so I have to shut up.

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

MR. DeLEON: Thank you.

CHAIR COUCH: After Mr. DeLeon...or, now, Mr. Dick Mayer is up, and he's the last person to sign up to testify.

MR. MAYER: Thank you very much, Mr. Chair, Council members. I'm speaking on the hotel height issue. This is an issue which came up several months ago, and I think you all remember getting many, many phone calls and e-mails at the time asking you to keep the heights to a more modest level than is being recommended in this bill. The bill recommends 180 feet and, I think as you found out at your last meeting, the highest hotel we have on Maui right now is about 148 feet, the County building's 146 feet, et cetera. What I'm asking you to do is, to change that one number from 180 down to 150; in other words, basically saying, no higher than the present number of hotel heights. An argument was made that many of the hotels have large lobbies with, you know, 20-foot ceilings, et cetera. In most cases, the hotel tower where the hotel rooms are and the one that gets the most height is not over the lobby largely because the lobby's big, open spaces cannot support such a tall building. They usually put it aside and so they could still go even with, let's say, eight to twelve-foot-high room heights. They could still go up quite high. Whether you leave the 12 story there or not is not the important thing. I think most important of all is the height limit. Now I'd urge you to reduce that number down to 150 from 180. I also want you to consider that very often when we have big projects built on Maui, let's say a new hotel as an example or a new airport road or whatever it might be, there's an EIS drawn up. In this case, if there's a hotel, and it could be the Makena Resort for example or Kaanapali Beach Hotel or one of the others that is not up to a very high height at this time, and they wanna come back in and wanna build up to a very high height, there's no public review because it's already Hotel zoned, it's a community plan set up. They could then go ahead without any public review.

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The Department will do it all internally, the public would have no ability to comment. So I think it's very important to establish the criteria, at this stage, in the ordinance of a maximum height of, let's say, 150 feet. One of the general rules that people here on Maui oftentimes talked about, as opposed to Honolulu where you have these towers, is that on Maui, we don't really want things to go much above the height of a palm tree. And since we already have hotels on the island of 148 feet, the Hyatt--most of the others are considerably lower--I think it would be a wise decision to keep Maui different. We don't wanna become Honolulu; that's the expression you've so often heard in your campaigns in talking to public. We just do not want...people who wanna be in Honolulu should go to Honolulu if they want that urban environment. Hotel industry depends on being very unique, and I would urge you to keep it at that height. The other argument that was put forth, I think at the last meeting, was regarding lot coverage and whatever. And I did some calculations, I looked at all of the major hotels on the island, I can give you a chart if you wanna see it. But, mainly, the lot coverages would allow these hotels to expand considerably; in other words, none of them are near the limit right now, and so they would all be able to expand considerably and still stay within the 150 feet and I think be able to better keep the ambiance that Maui is trying to keep. I thank you very much.

CHAIR COUCH: Thank you.

MR. MAYER: And I do urge you to remember what all the phone calls and e-mails you got when it was first put on your agenda. Most people don't follow the updates and when you continue the discussions on the issue.

CHAIR COUCH: Thank you, Mr. Mayer.

MR. MAYER: Thank you.

CHAIR COUCH: Members, any questions to the testifier? I have one. Mr. Mayer, you're saying that, for instance, if the Kaanapali Beach Hotel wanted to change their layout and go up higher if they go in narrower because of the area --

MR. MAYER: Lot coverage.

CHAIR COUCH: --floor area, yeah, lot coverage, they wouldn't need any public review?

MR. MAYER: I don't believe they would. I believe they would...my understanding would be...

CHAIR COUCH: I would think there's an SMA is required.

MR. MAYER: Excuse me?

CHAIR COUCH: An SMA is required, which is extensive public review.

MR. MAYER: Okay. Then I stand corrected.

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CHAIR COUCH: Okay. Alright, thank you. Members, any further questions? Sorry, Mr. White, I just...that's the first hotel that came to mind that...

COUNCILMEMBER WHITE: It's alright.

CHAIR COUCH: Thanks. Alright, thank you.

MR. MAYER: Thank you.

CHAIR COUCH: Alright, let's check with the district offices. Hana, can you check in and let us know if you got any testifiers please?

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

CHAIR COUCH: Thank you. Lanai?

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

CHAIR COUCH: Thank you. And Molokai?

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

CHAIR COUCH: Okay. Thank you, ladies, and happy New Year, and you guys are free to go. Thanks. Alright, Members, with that, there's nobody in the Chambers that appears to wanna testify and nobody on the district offices. So, without objection, we'll close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

... END OF PUBLIC TESTIMONY ...

CHAIR COUCH: Okay, great. Thank you.

PC-38 HOTEL DISTRICTS (C.C. 13-285)

CHAIR COUCH: Okay. First one up, Members, is PC-38, Hotel Districts. And this Committee is in receipt of County Communication 13-285, from the Planning Director, transmitting a proposed bill entitled, A Bill for an Ordinance Amending Chapter 19.14, Maui County Code, Relating to Hotel Districts. The purpose of the proposed bill is to amend Chapter 19.14, Maui County Code, relating to Hotel Districts by allowing for cell or radio antenna attached to an existing building as a permitted use, amending accessory uses, consolidating and amending development standards.

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and providing the Planning Director with rule-making authority. And we had talked about this quite a bit. The only thing that was left to discuss, as it was testified, is the height that we wanted to do. And Members wanted to take a look at it visually, so we've passed out a couple of things for you, couple of graphics that hopefully will explain what the issue is between floor-area ratio, lot coverage and height; how they all relate to each other. So, before we get going, I'd like to hear from the Planning Department to see if they have any further comments.

MS. McLEAN: No further comments, Chair. Just wanna say, thank you, though, to Committee Staff for putting these graphics together. I think those are really, really helpful --

CHAIR COUCH: Okay.

MS. McLEAN: --especially the ones that show the lot coverage and floor-area ratio; that really demonstrates how even if a change in some circumstances might allow greater height that that could potentially be curtailed by those restrictions as well.

CHAIR COUCH: Okay. And, Corp. Counsel, any comments?

MR. HOPPER: No, Mr. Chair.

CHAIR COUCH: Alright. Members...oh, I wanted to recognize the presence of Elle Cochran. Morning.

COUNCILMEMBER COCHRAN: Good morning. Aloha, good morning, Chair.

CHAIR COUCH: How are you?

COUNCILMEMBER COCHRAN: Very good, thank you.

CHAIR COUCH: Okay. Members, now it's time for comment on this. You guys had some questions or concerns prior to seeing it in pictures. Now you got it in pictures, hopefully it helps you understand how the whole thing works. Any questions, comments? No? Yeah. Mr. White?

COUNCILMEMBER WHITE: Well, I just wanna thank the Department for putting together the graphics, and I'm comfortable with it. And they also responded and I had a question the last meeting regarding the inclusion of parking garage --

CHAIR COUCH: Parking, yeah, right.

COUNCILMEMBER WHITE: --floor space and whether that was including in the floor-area ratio calculation; and they confirmed that it is not. So I'm satisfied with the bill as it stands.

CHAIR COUCH: Okay. Anybody else, any comments? Alright.

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COUNCILMEMBER BAISA: Recommendation?

CHAIR COUCH: Okay. I'm going to make my recommendation and then we'll talk about potential changes. It's my recommendation that we pass on first...I'm sorry, pass to go to first reading, this bill, and I'll be open for a motion. Mr. Victorino's not here, so Mister...

COUNCILMEMBER WHITE: So moved.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: Second.

CHAIR COUCH: It's been moved by Mr. White and seconded by Chair Baisa to pass this bill, the Bill for an Ordinance Amending Chapter 19.14, Maui County Code, Relating to Hotel Districts. Okay. Now, the next question I have is, is everybody okay with the 180 feet? And I'm fine with moving it down to 150 or somewhere in between. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. You know, I understand the concerns with the 180 feet, but it doesn't seem, to me, to be a huge departure from 150 feet when you consider that we've already got buildings that are at that level. And the reason I'm somewhat comfortable with it is that if there's a, you know, all of these buildings go through, any resort buildings, they're gonna go through the SMA process anyway and they're gonna be significantly put under the microscope. And if this is at least an option, it allows...it may allow some projects to actually make financial sense as opposed to not making financial sense. And if it also allows us to narrow the amount of ground reviews and open up the area between buildings, then I think it's a viable option to have. The Planning Commission and the Planning Department have always had a very keen eye for making sure that recommendations that don't make sense are pushed back on, so I think they would probably do a responsible job with respect to controlling building heights in areas where it may not be as appropriate. So I think, given the option based on the fact that it goes through a significant amount of scrutiny, it's something I'm comfortable with. Having gone through the SMA process, it's exhaustive.

CHAIR COUCH: Okay. Ms. Cochran had her hand up next and then Mr. Victorino.

VICE-CHAIR VICTORINO: No, I had my hand up, but...

CHAIR COUCH: Or...

COUNCILMEMBER COCHRAN: Well...

VICE-CHAIR VICTORINO: Go ahead.

COUNCILMEMBER COCHRAN: Thank you. Yeah, I would much rather drop it down. For me, 30 feet is quite a large distance in my mind and visual and everything else. And I understand the

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SMA process and that, but I mean if it's just, you know, from the get go it's prohibited, then it is. And it won't have to, you know, they won't go there. They won't even try to ask for the 180 'cause the limit is 150. So I would much rather drop it down to the 150. And I believe I've spoken about that prior, in our last meeting, that the highest, you know, is the 148 feet or whatever it is, so no one's really gone to the 180. And I think people are happy with what they see and would not like to have anything taller. So that's my comments, Chair, and hopefully we can find a sorta middle ground with those numbers. Thank you.

CHAIR COUCH: Okay. Mr. Victorino?

VICE-CHAIR VICTORINO: And that's exactly where I wanted to go. I don't agree with 180, I don't agree with 150. I'm going be Solomon, I'll split the middle and go to 165. And, that way, you got everything covered. I mean pretty much, you know, it would give everybody what they want and not what they...and give everybody what they need, I should say, not what they want. Because, I agree, I don't want us to look like Honolulu or L.A. or San Francisco. I don't want us to have these high skyscrapers anywhere in our communities, especially our resorts. And that would give anybody an opportunity if they go 12 stories and sometimes they have to put these additional...what do you call those? Planning, help me. On top of the roofs, lot of times they'll have elevator shafts and other auxiliary structures which increases the height, you know. I don't know if that's taken into consideration when you came up with these numbers. But I know many hotels, you have the hotel and then you got their roofs and on top of those roofs you have elevator shafts, air condition, there're all kinds of things that are added. And some of those facilities are 10, 12, 15 feet in height for the purpose...especially for elevators, you need that spacing. So my question to you on this 12 story...or nine story, 148.5 feet at the...I guess this is, what, the Hyatt Regency, would that be inclusive of any of the elevator towers or air conditioning and other ancillary buildings they...or ancillary rooms that are put above them on those roofs?

MR. ALUETA: If I may, Mr. Chair?

CHAIR COUCH: Sure.

MR. ALUETA: On some of the numbers that I did provide to the Council Services on it, they did incorporate...they took the highest point of the building which was the extended elevator shaft or rooftop-mounted equipment. In some of the numbers, they did not have it. Many of the height numbers that were provided were actually provided by Kaanapali Association --

VICE-CHAIR VICTORINO: I see.

MR. ALUETA: --and so most of 'em did...a lot of 'em incorporate that. In fact, some provided me with some building plan elevations that I was able to take the final number from the top of the elevator shaft. I will note that in our ordinance at this time--if I may, Mr. Chair?--is that the way we have it structured right now, it's 180 feet, there is no stories, so we're not gonna count how many stories there are.

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VICE-CHAIR VICTORINO: Right.

MR. ALUETA: So it's just 180, but there is also a provision for a ten-foot bonus to go above that. So when you talk about your numbers, you wanna go to...if you are planning to reduce the number, think of it as that number and then having an allowance of up to ten feet above the roof structure or above that maximum height for these elevator shafts and rooftop equipment as well as antennas. Also, we note on this is that the way it's worded, there's two ways that we've worded "accessory structures" on roof materials. Some, we have said, it's ten feet above the maximum height, which is what it...so somebody could have a 100-foot hotel, and based on whatever your maximum height, could technically go put a 50-foot tower on top of it. If that's not the vision you have for the area, then the language can be modified so that the maximum they can go above the roof structure would be the ten feet. And we've done that in some of our districts and we've...I mean based on the Planning Commission. So it's just a matter of how you word this last accessory structure to allow for these rooftop structures.

CHAIR COUCH: And, Members, he's talking on the August 19th communication, Page 4.

COUNCILMEMBER BAISA: Chair?

CHAIR COUCH: Yes, Ms. Baisa?

COUNCILMEMBER BAISA: If we...and I'm, you know, very open to dealing with this either way, but I want us to achieve what we wanna achieve. And, if I hear us correctly, there is a strong sentiment that we want to control height.

CHAIR COUCH: Uh-huh.

COUNCILMEMBER BAISA: We don't want Maui to look like some of the other things we see that, really, we don't wanna be. So and I understand what I hear very clearly what Member White is saying and, you know, he lives in the practical world of making this work financially and, you know, dealing with permits --

COUNCILMEMBER WHITE: Or at least I'm trying.

COUNCILMEMBER BAISA: --or at least trying--you know, and getting permits and, you know, doing all that stuff. And, of course, he also is dealing with economic viability, which all of us need to deal with because we don't wanna destroy our hotels. We know that they have to make it financially and we all want everybody to have jobs and we need tourists taken care of. So this is not simple, it's complicated. If we try to do the 180, then the fear is, well, you know, the SMA process might not control it and they might, you know, get more than we want them to. If we do the 150 and they go before Planning Commission and Planning Commission decides that because of the specific issues of the project that is before them, can they waive it so that they can go higher than that?

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CHAIR COUCH: Department?

MS. McLEAN: No.

COUNCILMEMBER BAISA: No. So there is no possibility of going higher; if we say, 150, that's it?

MS. McLEAN: Correct. With the exception of the additional ten feet that Joe just mentioned for...

COUNCILMEMBER BAISA: Okay. So there's no...

MS. McLEAN: Or they could get a variance. But the Planning Commission wouldn't be authorized to go beyond what the zoning requires.

COUNCILMEMBER BAISA: So there's no way that they could go to the 180?

MS. McLEAN: Not without a variance, no.

COUNCILMEMBER BAISA: Well, I think that's really relevant in this discussion because, you know, you can have it one way, but you can't have it the other way. So we need to think about that.

CHAIR COUCH: There is a method, it's the Board of Variances and Appeals, but it would have to provide a hardship and a few other things through the Board of Variances and Appeals. But it's not an easy process at all.

COUNCILMEMBER BAISA: Well, it shouldn't be.

CHAIR COUCH: Yeah. Mr. Victorino?

VICE-CHAIR VICTORINO: Yeah, thank you. And I'm also cognizant of, you know, the industry and what they're looking for and, you know, we wanna help them in every way possible. But I'm also hearing from the public, and that's not the people that came and testified and wasn't only the e-mails. Anywhere in this town you walk, people want to keep Maui Maui and they don't want high-rises. So I think 165-foot level would give that an additional 15 foot. And, based upon the ten-foot addition for towers or elevator shafts and other, what I call, ancillary structures that need to be put on the top of a building, you're pretty much...you're really close to that 180 in totality. So and, that way, I think everybody wins and nobody loses. I mean that 15 feet can really make a big difference in somebody's, you know, setup and still not be so obtrusive, you know. Fifteen feet versus 30, I agree with Member Cochran, you know, 30 feet is pretty substantial, 15 is pretty big, but 30 is substantial. So I would tend to, you know, say that that's where I'd like this to go to be fair to all parties, to make sure that everyone gets what...and make sure that the Department knows that 165 feet is the limit. Because all the other Board of Variances and going through all of that is very cumbersome, costly and, you know, you never know what you're

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gonna get at the end. And so, if we don't and we let them decide, then who's to say a 240-foot structure?

CHAIR COUCH: Right.

VICE-CHAIR VICTORINO: I'm just being, you know, but it's a possibility when you allow people to make variances, that could occur.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: So that's my suggestion. I've thought about this for a long time when we were looking 150, 180, you know, and feeling that 180 was a little bit too much in my mind. I agree, the 30 feet, you know. Economically, the 15 still fits in and helps a lot of these hotels if and when they decide to either expand or a new one is to be built in these districts, so...

CHAIR COUCH: Okay. Well, I'm open for a motion. Anybody wanna make a motion if they wanna change it? Right now, it stands at 180 feet. The current motion on the floor is to pass the bill with 180 feet.

VICE-CHAIR VICTORINO: Well, I'll make the motion to change that 180 to 165 with a ten-foot, ancillary tower or any ancillary --

CHAIR COUCH: Auxiliary?

VICE-CHAIR VICTORINO: --auxiliary, okay, if you wanna use the word--"auxiliary" tower that needs to...not tower. What do you call those things? I'm sorry Mister...help me on this one. Mr. Alueta.

MS. McLEAN: Antenna or elevator shaft stairwell?

VICE-CHAIR VICTORINO: Oh, wait, you know...

CHAIR COUCH: That language is already in there, so we're okay.

VICE-CHAIR VICTORINO: That's...okay.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: Okay. I just wanted to make sure that nobody gets, you know, all excited and all that, okay. That's my motion.

CHAIR COUCH: So do I have a second?

VICE-CHAIR VICTORINO: Okay.

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CHAIR COUCH: No second? Okay. So it's still at 180 as far as I can tell.

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Yes?

COUNCILMEMBER COCHRAN: Yeah, I mean I really love that 150 number and I understand that we're all justifying why let's be, you know, make everybody happy. But the 165, then you add the ten feet for the additional accessory things on top, that's close to the 180 again. I mean I understand it's not gonna be an entire floor of the, you know, the additional ten feet, it'll be a chimney or a vent or a whatever.

CHAIR COUCH: Uh-huh.

COUNCILMEMBER COCHRAN: But I'd like to...I mean I'll make a motion to amend to 160, you know, I mean I --

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: --really want the 150, but I can see where everyone's like not all that happy. But, you know, I think even dropping...so 160 with the additional ten, that's 170. And, you know, I can live with that and I think, visually and aesthetically and all that other stuff, so that --

CHAIR COUCH: So you making a motion --

COUNCILMEMBER COCHRAN: --for me, I'm making a motion, yeah, to drop it down, yeah --

CHAIR COUCH: --to change the 180 to 160?

COUNCILMEMBER COCHRAN: ----to 160.

CHAIR COUCH: Do I have a second for that one?

COUNCILMEMBER CRIVELLO: Second.

CHAIR COUCH: Okay. Alright. Any further discussion? Okay. All those in favor, say "aye"...oh, what? Sorry, Chair Baisa?

COUNCILMEMBER BAISA: No.

CHAIR COUCH: Anybody else? Okay. So the motion on the floor is to amend the existing motion to change the 180 feet to 160 feet on Page 4, Maximum building height (in feet); and, also, that

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would necessitate a change on the side just the discussion...I mean the delineation down there, too. So without further...yes, Mister...

MR. HOPPER: Mr. Chair, just assuming that the language to the right of the building height number is remaining the same.

CHAIR COUCH: Correct.

MR. HOPPER: Correct.

CHAIR COUCH: Correct. Okay. Hearing no further discussion, all those in favor say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed?

COUNCIL MEMBERS: No.

CHAIR COUCH: Okay. We're gonna have to do a roll call. There you go.

MS. GORMLEY: Councilmember Stacy Crivello?

COUNCILMEMBER CRIVELLO: Aye.

MS. GORMLEY: Councilmember Elle Cochran?

COUNCILMEMBER COCHRAN: Aye.

MS. GORMLEY: Councilmember Mike White?

COUNCILMEMBER WHITE: No.

MS. GORMLEY: Council Chair Gladys Baisa?

COUNCILMEMBER BAISA: Aye.

MS. GORMLEY: And Committee Vice-Chair Mike Victorino?

VICE-CHAIR VICTORINO: No.

MS. GORMLEY: We have three "ayes", two "noes".

VICE-CHAIR VICTORINO: Wait.

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COUNCILMEMBER COCHRAN: Oh, wait.

MS. GORMLEY: Oh, I'm sorry --

COUNCILMEMBER COCHRAN: And Chair.

MS. GORMLEY: --and Committee Chair Don Couch?

CHAIR COUCH: Thanks. Aye.

MS. GORMLEY: We have four "ayes" and two "noes", motion passes.

VOTE: AYES: Chair Couch, Councilmembers Baisa, Cochran and Crivello.

NOES: Vice-Chair Victorino and Councilmember White.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Guzman.

MOTION CARRIED.

ACTION: AMEND.

CHAIR COUCH: Okay. Well, that was interesting. So, now, it's been amended. The Chair would like to mention a couple things and it might be just nonsubstantial changes, but it may be important. If you look at Page 1 of the ordinance where it says, "Purpose and Intent", it says, "a hotel district is a high density multiple-family area bordering business districts and ocean fronts". I think we should say, and/or ocean fronts, on there. You know, it might be a nonsubstantial change, but it might be significant. Any thoughts on that?

COUNCILMEMBER COCHRAN: Sorry, where are you?

COUNCILMEMBER WHITE: I think that's more accurate.

CHAIR COUCH: Yeah, 'cause it's not only ocean fronts where we can have hotels. Okay.

COUNCILMEMBER COCHRAN: Chair, sorry, where are you?

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CHAIR COUCH: Page 1, 19.14.010, the Purpose and Intent. Wanted to add a /or after "bordering business districts and ocean fronts". So I want it say, bordering business districts and/or ocean fronts.

COUNCILMEMBER WHITE: No objection.

CHAIR COUCH: Okay. I don't think we need to have a vote on that.

COUNCILMEMBER COCHRAN: Yeah, just consensus then.

CHAIR COUCH: Yeah, we got consensus on that one. And the other question I have, on Page 3--this is more for the Staff or the Department or both--Page 3 under criteria or limitations for eating and drinking establishments, No. 1, it says, All hotel and apartment-hotel buildings in which such accessory uses shall be permitted and allowed shall contain more than twenty rental units, and such accessory units [*sic*] shall be permitted and allowed only as an adjunct to, and as part of, the main building and no other; is that "no other" what or are you just saying, nothing other than the main...I'm not sure if that's clear to me, but maybe if it's clear to the Department, we're okay, or Corp. Counsel. Is that clear to you guys? If it's clear, I'm fine. But I think it might be...yes. Ms. McLean?

MS. McLEAN: We're thinking about it over here, but that's actually existing language, so that's not proposed, new language. It doesn't mean that we can't clarify it and improve upon it, here. But just as a initial comment, that wasn't language that came up as part of this update.

CHAIR COUCH: Okay. So you guys are living with that right now, and that you're interpreting it as meaning it's adjunct to and as part of the main building and no other building?

MR. ALUETA: I'm sorry.

CHAIR COUCH: Mr. Hopper?

MR. ALUETA: Oh, yeah, thank you.

MR. HOPPER: Well, Mr. Chair, it's in existing Code and I think is what it's saying is that it's part of the main building and no other. I guess you could add "building" if you want, but I think that that's the intention. It's the main building...

CHAIR COUCH: Per structure or...

MR. HOPPER: No other building, is what the intent is there. Again, I don't think the goal of this was to totally rewrite every section. But I mean if there's a clarity issue, then, yes, it could be clarified to say, and no other. I would also point out that that's not just a criteria or limitation, as I understand it, on eating and drinking establishments, that's for any of the accessory uses.

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CHAIR COUCH: Oh, okay.

MR. HOPPER: There's general language in the existing Code. I think the intent is to carry it over. And I mean if we need to clarify that, frankly, to me, that would be a more important clarification. But, and no other, I would say, and as part of the main building and no other building, you know. I think that's what it means, is that the accessory use has to be part of the main building and not basically I think--and Department can correct me if I'm wrong--like a detached accessory building or something like that if the use has to be within the building.

COUNCILMEMBER WHITE: Chair?

CHAIR COUCH: Yes, Mr. White?

COUNCILMEMBER WHITE: I don't think that's how a lot of resorts operate, because the restaurants are not necessarily in the main building. Humuhumu restaurant is not in the building. So I wouldn't wanna leave language that infers that all restaurants and accessory uses have to be within the main building.

CHAIR COUCH: That's true. I mean, again, case in point, your place --

COUNCILMEMBER WHITE: Yeah.

CHAIR COUCH: --and several other. And --

COUNCILMEMBER WHITE: Yeah, in . . . (*inaudible*) . . . --

CHAIR COUCH: --Grand Wailea.

COUNCILMEMBER WHITE: --which is the main building?

CHAIR COUCH: Right.

MR. ALUETA: I would go...

COUNCILMEMBER WHITE: And same thing with Royal Lahaina.

CHAIR COUCH: Uh-huh.

MR. ALUETA: Yeah, I would agree that we have allowed and I mean, in the past development, we have allowed separate stand-alone restaurant structures as part of as an accessory to the hotel resort.

COUNCILMEMBER WHITE: Right.

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MR. ALUETA: I think the primary issue here is that they don't wanna forward...they're setting a minimum size that you have to have a hotel in which you can have accessory uses and that is for a restaurant, and that is twenty rooms. And, secondly, there has to be accessory to it, so you don't have a large restaurant, right, where the principal use of the property is the restaurant --

COUNCILMEMBER WHITE: Uh-huh.

MR. ALUETA: --and not necessarily a hotel property. So that was, I think, was the gist of it, of what they were intending to do. 'Cause we do have a...it would make it clear that as long as it...I think you probably almost could drop that part --

COUNCILMEMBER WHITE: Yeah, I do, too.

MR. ALUETA: --because we're already clarifying that it has to be an accessory to, and then...

COUNCILMEMBER WHITE: Essentially, we're establishing non-conforming uses if --

CHAIR COUCH: Correct.

COUNCILMEMBER WHITE: --we pass this or leave it in. Excuse me.

MR. HOPPER: Well, I...Mr. Chair --

CHAIR COUCH: Yeah?

MR. HOPPER: --this is in the Code right now.

COUNCILMEMBER WHITE: Right.

MR. HOPPER: I mean if it's being interpreted a certain way, but it says that the accessory use shall be permitted and allowed only as an adjunct to, and as part of, the main building and no other; that's existing Code. If there's a problem with the existing Code, that should be amended. But this is the current law right now and if it's...how it's being applied, if...being applied a bit differently than it reads, then I think an amendment would make sense.

CHAIR COUCH: Yeah.

COUNCILMEMBER WHITE: Yeah, I agree.

MS. McLEAN: Thank you, Chair. Thinking through all this, 'cause we...this is, you know, new to our thoughts, I believe the important component of this is the twenty-room requirement. Going beyond that, as specifying where that use takes place and what part of the structure it takes place in, is more restrictive than how "accessory use" is defined in Title 19. So if we don't make that clarification about that accessory use then, because this is in the accessory use section of the

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district, we would refer to the definition of “accessory use”, which is, a use of land or of a building or portion thereof which is customarily incidental and subordinate to the principal use of the land or building and located on the same zoning lot as the principal use. So, by putting that twenty-room threshold, you’re establishing that the hotel needs to be at least that large and then any of these uses have to be incidental and subordinate to that. So, beyond that, it doesn’t seem like it needs to be specified what structure those uses might be located in. So, from after the word “rental units”, could be deleted.

CHAIR COUCH: Everything can be taken out from there?

MS. McLEAN: I think so. I think it would refer back to this general definition of “accessory use”.

CHAIR COUCH: Okay. That’s probably the preferred and more clear method. Any comments on that? Take a look at that for a second and digest it.

COUNCILMEMBER WHITE: You said, rental units. My version has, “more than twenty rooms”.

CHAIR COUCH: On the August 19th, at the very end?

COUNCILMEMBER COCHRAN: Mine’s, “rental units”, yeah.

CHAIR COUCH: Mine says, “rental units”.

COUNCILMEMBER WHITE: I’m looking on Page 2.

COUNCILMEMBER COCHRAN: Three.

CHAIR COUCH: It said, Page 3.

MS. McLEAN: There are two version of the bill in that packet. The original bill --

CHAIR COUCH: It’s the last one.

MS. McLEAN: --and the last one, so look at the version that’s towards the end of the packet.

CHAIR COUCH: It’s the second to the last page in the whole packet.

MR. HOPPER: Yeah, Mr. Chair, to clarify, there’s a signed bill later on in the packet. It has my signature on the end of it on Page 5. The original one, I think, is what was transmitted to the Planning Commission and the change is incorporated, I think, at the commissions and otherwise were incorporated. And so the signed version is the one that, as my understand is, that was...

CHAIR COUCH: Yeah, that’s the one I’m working off of.

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COUNCILMEMBER WHITE: Okay.

CHAIR COUCH: Okay. You got it?

COUNCILMEMBER WHITE: Yeah.

CHAIR COUCH: Okay. So your suggestion is, Ms. McLean, is to say, after it says, "more than twenty rental units", and that's it. And then everything from, and such accessory units [*sic*], all the way to "and no other" be removed?

MR. ALUETA: Just for that one, No. 1.

CHAIR COUCH: Yes, just for that one, No. 1, yeah.

COUNCILMEMBER WHITE: Right.

CHAIR COUCH: Members, any objection to that?

COUNCILMEMBER WHITE: No objection.

CHAIR COUCH: Is that substantial enough that we...

COUNCILMEMBER BAISA: Consensus.

COUNCILMEMBER COCHRAN: Yeah, consensus.

CHAIR COUCH: Okay. Alright, so we'll remove that. Okay. Thank you, Members. I think those are the only two things I had to...a concern. Just to remind you, on Page 4, we changed that to 160, under "Maximum building height". And if you go down to "Side", then it has a qualification here, "Building height in feet", then it has a list of ranges. So that "120 to 180" will become 120 to 160; that's just a technical change. Okay.

MS. McLEAN: Chair?

CHAIR COUCH: Yes?

MS. McLEAN: Excuse me. Based on the point that Joe raised on Page 4, with the "Notes and Exceptions" --

CHAIR COUCH: Yes?

MS. McLEAN: --about that additional ten feet --

CHAIR COUCH: Okay?

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MS. McLEAN: --the way that that reads now, it says, you can have these uses, they shall not exceed ten feet above the maximum building height.

CHAIR COUCH: Uh-huh?

MS. McLEAN: The intent is to allow the additional ten feet above the roof. So if you have a 40-story hotel and you're allowed to go to 160 feet, then you could have this humongous cell tower or antenna, which isn't the intent under this current language. So we're suggesting that that language be amended rather than saying, "shall not exceed 10 feet above the maximum building height", to instead say, may extend an additional 10 feet above the building roof.

CHAIR COUCH: And I'm fine with that. Depends on what...for instance, this building's roof, there's a railing around that, does that count in the height? I mean if you've ever been up there, it's not really a roof, but it's part of the building, so does that...

VICE-CHAIR VICTORINO: I think it's much clearer with the word "roof"...

CHAIR COUCH: Okay. I just wanted to make sure there are things like this that may...Ms. McLean?

MS. McLEAN: Well, the language we're suggesting would be ten feet from the roof not ten feet from the top of the railing.

CHAIR COUCH: Okay. Any concerns, consensus?

COUNCIL MEMBERS VOICED CONSENSUS.

CHAIR COUCH: Okay. So, Ms. McLean, you're gonna have to give that to Gina, so...

MS. McLEAN: Okay.

CHAIR COUCH: Alright, anything else on the proposed motion that we have in front of us? Alright, so we now have the main motion, still, as amended to pass to the full Council for first reading, a Bill for an Ordinance Amending Chapter 19.14, Maui County Code, Relating to Hotel Districts. Any further discussion? All those in favor, say, "aye"

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed? Motion passes...one, two, three, four, five, six "ayes", zero "noes" and two "excused". I'm sorry, one "excused"; that would be Mr. Guzman.

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VOTE: AYES: Chair Couch, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Crivello and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Guzman.

MOTION CARRIED.

ACTION: FIRST READING OF REVISED BILL AND FILING OF COMMUNICATION.

CHAIR COUCH: Okay. Thank you, Members. I'm glad we were able to come up to a compromise on that.

PC-13 CHANGE IN ZONING PROTESTS (C.C. 13-76/13-402)

CHAIR COUCH: Now we're on PC-13. And this Committee is in receipt of the following: County Communication 13-76, from Council Chair Gladys Baisa, transmitting a proposed resolution to refer to the planning commissions a proposed bill entitled, A Bill for an Ordinance Amending Section 19.510.040, Maui County Code, Relating to Change of Zoning Protests. The purpose of the proposed bill is to clarify how the percentage of owners or lessees protesting a Change of Zoning is to be calculated; and County Communication 13-402, from the Planning Director, transmitting, in response to Resolution 13-66, comments from the Maui, Molokai, and Lanai Planning Commissions on the proposed bill. Members, just for your information, we're way to the back again. I believe it's the January 6th communication, from me, and that's what we'll be working off of I believe, yeah. So, starting from there, let's talk with the Planning Department. Any comments?

MS. McLEAN: Chair, we just wanna note that we did work with Council Chair Baisa on the language and we think it's a very positive and needed clarification.

CHAIR COUCH: For the people who are in the gallery and on TV land, can you explain what this is going to do for us?

MS. McLEAN: It involves when the protest provision for a Change in Zoning is invoked. And the language, right now, makes it unclear whether you calculate the percentage based on land area or the number of parcels. And so if there are a few parcels, but one is a huge size and the other ones are smaller, it was questionable, well, does each lot owner have an equal say or is it based on

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area? So the one huge lot owner would have much more control over the outcome. What's being proposed is that each parcel is counted equally, and so it would be by the number of actual parcels not by their area. It also makes it a lot easier and much less subjective on calculating that percentage 'cause land area could be argued and debated, but parcel lines are much more definitive.

CHAIR COUCH: Okay. Chair Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair, and I'm extremely happy that this is before us. This has been hanging around for a while. It became an issue long time ago when I was Land Use Chair and we were debating the Hanzawa Store thing.

CHAIR COUCH: Hanzawa Store, yeah.

COUNCILMEMBER BAISA: And the protest was made, and it became, you know, we became aware at that time that the law needed some tweaking. And so, what's before us, I'm really excited about and I think it makes it very clear so that the next time a protest is invoked that we have clear guidelines for Planning Department, for the public and for everybody. So I am in full support, thank you.

CHAIR COUCH: Okay. Any comments from Members or Corp. Counsel or Department still? 'Cause I have some questions.

MS. McLEAN: The two other clarifications it would make is, there's been debate or confusion about whether County-owned parcels or public parcels are included, and this clarifies that yes, County-owned parcels are included. And, also, what if a parcel has multiple owners and some of the owners protest but others don't, how do you determine how that parcel is counted? And this clarifies that even if one of the owners protests, then that parcel will be counted as protesting.

CHAIR COUCH: Okay. And that I believe, also, that it says if it's a Change in Zoning initiated by the Planning Director or Council, notification is not required?

MS. McLEAN: And that's also a clarification, that has been the practice; and so this just codifies that --

CHAIR COUCH: Okay.

MS. McLEAN: --notification isn't required for a County-initiated application.

CHAIR COUCH: Okay. One of my questions, it was, and I think you might have answered it a little bit is that so you have a parcel that has permitted four or five units, I don't know how or how that would be, maybe an RU-0.5 that's a 5-acre parcel so it has ten units on it, let's say, but that's one parcel. Are those ten units counted in the percentage?

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MS. McLEAN: Again, we would look at the ownership of the parcel. And if the parcel has ten owners and one of those owners protested, then the parcel would be counted as protesting.

CHAIR COUCH: But it says, "owners or lessees". So what if they're all rental units kinda, long...

MS. McLEAN: If it's a recorded lessee, which is actually unusual.

CHAIR COUCH: A little different, I guess.

MS. McLEAN: It would have to be a recorded lessee.

CHAIR COUCH: Okay.

MS. McLEAN: If it's, you know, a residential property with a tenant who has a year-long lease, typically those leases are not recorded.

CHAIR COUCH: Gotcha. Okay. That's one question that I had. Now, the other question is, this is only for Change in Zoning, is that correct? We have all kinds of other notification requirements, but I thought those requirements kinda point to this section or do they have their own?

MS. McLEAN: This is just for Change of Zoning.

CHAIR COUCH: Okay.

MS. McLEAN: And the protest provision relates to having a super-majority vote of the Council.

CHAIR COUCH: Okay.

MS. McLEAN: So if that protest percentage is achieved which is 40 percent or more, if 40 percent or more of the parcels within the 500-foot radius protest the application, then seven votes of the Council would be needed to approve the application. Code says, "seven". Oh, I'm sorry, this would change it to six. Code now says, "seven". I apologize, Code now says, "seven", and the bill would change that to six.

CHAIR COUCH: Okay. Now, the reason I ask that is because, you know, we ran across this in the short-term rental ordinance situation where people closer, abutting that parcel may or may not have more of an interest than people a couple rings out from that parcel--if Members remember that discussion we had--if it affects somebody closer, they may or should they have more of a say than somebody who's three parcels down who doesn't care about it? I was wondering, I know we talked about it in the short-term rental discussion, have you guys talked about that at all, things along those lines on any kind of notification?

MS. McLEAN: There have been informal discussions not specifically relating to this proposed ordinance. Because a parcel could be abutting, but the way that the subject parcels are developed

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or the way that the roads served them, you could have parcels that abut that really have no impact on each other at all.

CHAIR COUCH: Right. But the other way is that if...

MS. McLEAN: And it becomes very difficult to make a determination that this one is gonna have an impact and this one isn't, so your protest matters more than that one. It's trying to make it as black and white as we can.

CHAIR COUCH: Okay.

MS. McLEAN: And it just really opens it up to so much discretion. You also have the development potential of a property that oh, it's not built on now so this use next door isn't gonna have an impact; oh, but I plan to build my home there, and if this use goes in next door then it will impact me even if the property's vacant today.

CHAIR COUCH: Okay. That makes sense. Members, any questions, comments about this? Yes. Ms. Cochran?

COUNCILMEMBER COCHRAN: On Section No. 4, the, you know, where it shall not apply this Change in Zoning initiated by Director or ourselves, I think it hinders...I mean I'm for one always wanting community input and public involvement; and so, for me, this paragraph totally prohibits or inhibits their, you know, it hinders public input. And I, personally, am not comfortable with that. So I really do not like No. 4 --

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: --whatsoever.

MS. McLEAN: Chair, again, that has long been the practice that notification isn't done when it's County initiated. And, generally, that's because there's a pretty high standard for when the County would initiate a change typically for public quasi, public uses or if there's a really bizarre mapping error and making the change doesn't affect the use or development potential of the property. But it's something for the Administration and the Council to be mindful of if a change is initiated. There's nothing that would prohibit the County from taking that initiative to notify people if the County chose to. This just says it's not required. It's also a time-consuming and expensive process that is usually the burden of the applicant. So that's something, again, for the Council or Administration to be mindful of if that is initiated and there is a notification requirement being prepared to do that with certified mailings and notices.

COUNCILMEMBER COCHRAN: Well, that's fine. And I hear that so often that it's a burden to the applicant. Well, you know, sometimes things are huge enough to where you gotta go through the hoops, you know, I think it's appropriate. And to call it "a burden" to one is not to another. And so I, again, you know, I mean just saying that we get directorship changing all the time,

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Administration, what have you, so who's to say, who comes down the road years later and perhaps does stuff and it's not mandatory to alert the public. So I, again, you know, for me, it's just one of those things where it can be something that can be, you know, passed through and not brought to the attention of people who should be concerned about it. So, anyways, I don't feel comfortable with it. Thank you.

CHAIR COUCH: Okay. Mr. White?

COUNCILMEMBER WHITE: Thank you. I agree with Ms. Cochran's sentiment about being concerned about the notification. But any zoning change has to come through this body anyway whether it's Director initiated or initiated by us. And I would like to think that if we have a change, you know, rather than placing the notification requirement on all Changes of Zoning. I think we should feel comfortable with the fact that if a zoning change comes to us that we feel is in an area where notification would be appropriate, we can always do that before we take any action. Because I totally agree with her concern, but I'm not sure I would wanna put it on every single item that we may deal with. An example is, one of the things that we've done was to fix a...I'm not sure this is a zoning change, it's a community plan change, but it was a mistake that the County made. If we did something in error, I would hate to have to go through that entire process of notification just to fix an error. So I'm not sure if that's...

CHAIR COUCH: Yeah, that makes some sense. My concern along with Ms. Cochran's is, this actually happened to something similar next to the area that you're talking about where the zoning was changed and the property owners didn't know about it and weren't notified of it. And then now, when they're trying to move on and do some remodeling, they're finding out they're not in compliance now and they have to go through Change in Zoning. So we've initiated the Change in Zoning...a re-change in zoning, but the initial Change in Zoning, they weren't notified. So I'm wondering if something, if we can throw something in there to not necessarily make it mandatory, but make it strongly suggested. I don't know. Members, help me out on this one. I'm not quite sure how you wanna do this.

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Yes, Mr. Victorino?

VICE-CHAIR VICTORINO: You know, in listening to the concerns, I think, Ms. McLean and Mr. Hopper, if you could, can we figure out some language that would make it somewhat...and I understand what you're trying to say.

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: We need some kinda notification for any Change in Zoning that affects anybody. I don't think you can say, oh, if it's County initiated, we don't have to let people know. Because, just what Mr. Couch has said and there's been others that have come to us and said, hey, this was changed, I didn't even know about it. And it could been...and I know there's been

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a couple instances where I found out that when I researched it, it was the prior owner who didn't let the new owner know that had been changed, but that's another issue. But sometimes...give me some idea what we can do. Mr. Hopper, you're the legal beagle, you know, what could we put in there that would ensure that notification would be given to the various individuals?

CHAIR COUCH: When necessary or completely? If completely, we can just remove that. But I agree with Mr. White that...

VICE-CHAIR VICTORINO: But what's necessary?

CHAIR COUCH: Right.

VICE-CHAIR VICTORINO: Yeah, but what constitutes --

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: --when necessary?

CHAIR COUCH: Right.

VICE-CHAIR VICTORINO: You know, those are one of those kind of statements that makes it very difficult.

CHAIR COUCH: Understood. And I'm hesitant to make it yes or no, a yes or no.

VICE-CHAIR VICTORINO: May I make a suggestion, Mr. Chair?

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: Maybe this is one of those that they need some time to research, you know. And maybe we could take our morning...

CHAIR COUCH: Well, it's about time for our break.

VICE-CHAIR VICTORINO: Yeah, and give them some time to research it. And, if not, if they need to go back and do some really, you know --

CHAIR COUCH: Sure.

VICE-CHAIR VICTORINO: --still research, we'll defer it --

CHAIR COUCH: We could defer, yeah.

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VICE-CHAIR VICTORINO: --then and you can bring it, you know, 'cause I hate to half-assedly do something . . . *(inaudible)* . . .

CHAIR COUCH: Exactly.

VICE-CHAIR VICTORINO: Yeah.

CHAIR COUCH: Mr. White?

COUNCILMEMBER WHITE: Yeah, just to put this in a bigger context, I know that Department, at some point, is gonna come back to us with recommendations on what to do with Interim-zoned properties.

CHAIR COUCH: Yeah, exactly.

COUNCILMEMBER WHITE: And we've got tons and tons and tons of those.

CHAIR COUCH: And that's the one I was talking about, yeah.

COUNCILMEMBER WHITE: And if we say, we have to send out a notification to every single person within 500 feet of every piece of Interim-zoned property, that's gonna run in...I don't know what the mailing bill would be for that, but it's gonna be huge. So I would hate to put something in that requires it in every situation.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: But, you know, I agree with Ms. Cochran that, you know, people should be aware. And it gets back to the challenge we have all the time with, you know, we put notices in the paper, we put notices online; but if people aren't checking, they're not gonna find out. And the mail is...I mean maybe we need to start setting up an e-mail notification, you know, getting property owners' e-mails so that we don't have to put a letter in the, you know, snail mail.

CHAIR COUCH: Ms. McLean?

MS. McLEAN: If I could make just a quick comment? Again, the long-standing practice has been that for County-initiated changes, notification is not done the way that it is for privately initiated changes. There's also another section in 19.510 for County-initiated changes, and it lays out a different procedure than it does for applicant-initiated ones. So, again, this isn't a change from existing...

COUNCILMEMBER WHITE: No, I understand that.

MS. McLEAN: And, again, that doesn't mean that it can't be done. But it would up to the Council if the Council initiates it or do the Administration if the Administration initiates it if it's a situation

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where, oh, notification should be done here. So the Administration could do it, the Council could do it if the Council initiates. Also, if it's something that the Administration initiates and the Council isn't satisfied, oh, notification wasn't done on this, it should be done, then Council doesn't have to take it up until notification is done. When it comes back to Council, Council could say, no, you know, we'll schedule this. And in the Land Use Committee, you say, hey, notification wasn't done, that's not right. Planning Department, notify people. And then Council will take it up then. So I think there are opportunities for that to happen. It would be hard to codify when it needs to happen and when it doesn't.

COUNCILMEMBER WHITE: Right.

MS. McLEAN: But none of these can ever get approved without Council's final approval, so --

COUNCILMEMBER WHITE: Right.

MS. McLEAN: --Council can put the brakes on it, you know, can require that upfront or toward the end if it wasn't done.

COUNCILMEMBER WHITE: Uh-huh.

MS. McLEAN: Last thing is, what this language...the proposed language also does is to say that the protest doesn't apply for County-initiated ones, either. So I just wanna...to note that that's also what this language would accomplish.

CHAIR COUCH: You know what, Members, let's do our mid-morning break till 25 after and see if you guys can think of something that you wanna do with this, you know. Take a look at it, read through it and then we'll come back at 25 after and finalize this. So, at this point, we are in recess. . . . (*gavel*) . . .

RECESS: 10:12 a.m.

RECONVENE: 10:32 a.m.

CHAIR COUCH: . . . (*gavel*) . . . Will the January 9th meeting of the Planning Committee please come back to order? Alright, Members, thank you for the little extra time. There was a big huddle over there that I kind of poked my head in once in a while. But, Department or Corporation Counsel, do you have any comments that you would like to make, after our discussion?

MR. HOPPER: Thank you, Mr. Chair. I just wanted to note that under the Code, a Change in Zoning initiated by the...excuse me, yes, this is in 19.510.020B. It states, all amendments...it talks about, there's different requirements for changes to zoning ordinances, land use ordinances, zoning maps and regulations and any amendments of those proposed by the Director, County Council or Planning Commission versus a private owner. And in a situation where--and this is current law--in a situation where the Change in Zoning is initiated by the Planning Director,

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County Council or the Planning Commission, there is no requirement for notice to neighbors within 500 feet of the parcel. This is for both individual parcel changes and for comprehensive ordinance changes. For example, the ordinance that you just reviewed this morning...or earlier this morning for changes in Hotel Districts, the Council obviously did not have to give notice to everyone within 500 feet of a Hotel District for that change. This also applies to changes to zoning maps. So that's the starting point here. So if there's going to be a change where the Council would like either Planning Director or Council-initiated Changes in Zonings to be required under the law to give notice to people within 500 feet, that is a larger change than it is contemplated by this ordinance and would need to be initiated with a separate ordinance or sent to Planning Commission, so I just wanted to note that. Now, this brings it back to the current Code. My understanding is that in past cases, the Council or Planning Director, even though they were not required to give notice to neighbors within 500 feet, have, in the past, decided voluntarily, we are going to send out mailed notice to people within 500 feet; again, this is my understanding with the Department. We haven't done extensive research into this, but the main point being, under the Code, right now, there is not a requirement for the Council or Planning Director, if they're initiating a Change in Zoning, to give notice to neighbors within 500 feet, that only applies if it's a private owner of a parcel. I wanted to note that for the record. The protest provisions under the Code, however, do apply in either case, it appears; that's a bit odd, because there'd be no requirement for notice to people within 500 feet. But, if people within 500 feet happen to file an adequate number of protests, it appears that the super-majority vote would be required. So I think No. 4, the intention, it appears--and, you know, this is up to the Council--is to say that the Director or Council, unless they otherwise specify in writing at the time of the Change in Zoning that, apparently, that if they want the protest provision to apply, that unless they do that, the protest provisions under this section would not apply to the Change in Zoning initiated by the Planning Director or Council. And hopefully the Department, if they have any clarification, can provide it. But my understanding is that there was a case where, even though notice wasn't required, there were protests filed and that was considered to be a requirement to have a super-majority vote. This would say, there would be no requirement to have a super-majority vote unless the Council or Planning Director, at the time they initiate the change, would say, this is subject to the protest provisions.

CHAIR COUCH: Okay. Department, anything to add to that or you're okay with what he...

MS. McLEAN: No, I think Mike covered it really well. Again, this will always come back to the Council. And if it's Council initiated, it's Council's prerogative to require notification. If Council's doing it, initiating a Change in Zoning on behalf of a specific property, they could ask that property owner to do the notification or Council Staff could do it or we could work with Council Staff, that Planning Department could work with Council Staff to do it. If it's Administration initiated, by the time it comes to Council, if Council isn't satisfied with public notice, then Council could see that notification is done before Council schedules it for consideration. I would also add that the three planning commissions reviewed the bill and they're very mindful of public input and public notification, and they didn't have concerns with this particular provision. The concern for the Department is when we do comprehensive zoning changes. We have the DSSRT project moving forward, coming to the Council sometime soon.

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We'll be recommending a number of changes and we will publicize in the paper, we'll do a lot of outreach for that project and we can work with Real Property Tax to send maybe just postcards out to every property owner so we can reach out to Mainland owners. But to have a formal notification process would just be staggering to accomplish.

CHAIR COUCH: Okay.

MS. McLEAN: Thank you, Chair.

CHAIR COUCH: Thank you. Members, any comments, questions? Mr. White?

COUNCILMEMBER WHITE: Thank you. And thank you for bringing up the fact that the planning commissions are comfortable with the wording. I would be very ready to require notification in specific instances that come before us, and I think we all should be. But noting the extreme measures of dealing with the DSSRT program that's gonna come before us, my recollection is that's potentially hundreds of parcels and I don't know how many people we would have to mail notifications to. So I totally agree with Ms. Cochran's concerns, but I think the size of the rezoning process in certain instances is just too significant to have this as a requirement. So I think I support the bill as it stands and, at the same time, would be ready to support notification in certain instances where it's appropriate.

CHAIR COUCH: Okay. And keep in mind, Members, that this is formal notification: certified return receipt requested, that kind of stuff, so very expensive.

COUNCILMEMBER WHITE: Very.

CHAIR COUCH: Whereas a notification of sending something out with, you know, just a postcard or whatnot to a couple addresses is a whole lot cheaper. So that's where we'd...yes, Mr. Hopper?

MR. HOPPER: I just wanted to clarify again, this ordinance is dealing with protest requirements --

CHAIR COUCH: Correct.

MR. HOPPER: --it's not dealing with notice requirements in the Code, it's dealing with people filing protests not whether or not notice has to be given. If we're gonna deal with those general requirements, which seems to be a topic of discussion, that's really something that would need to be done in another bill. This just says, what happens if after the notice or after the filing of the...or after the resolution is sent to the commissions and what happens when protests come in. It doesn't deal with the notice on the front end; that's a separate, broader section of the Code and would need to be considered separately. I just wanted to reiterate that.

CHAIR COUCH: Okay. Thank you. Comments?

COUNCILMEMBER COCHRAN: Right.

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CHAIR COUCH: Ms. Cochran?

COUNCILMEMBER COCHRAN: Chair, and so towards what Mr. Hopper just said, I, again, believe that protests should be able to occur, you know, if we or Department decides to change some zoning. I mean they shouldn't be not allowed, period. I think that's people's rights. If they wanna stand up and say, no, I don't agree with this or whatever, then they have that right. But this is saying, you cannot, does not apply; if we do the changes, sorry, go away, don't tell us what your thoughts are about the changes.

CHAIR COUCH: I'm gonna have to --

VICE-CHAIR VICTORINO: Disagree.

CHAIR COUCH: --disagree completely with that, that does not say that. It says that the super-majority requirement for Council doesn't apply. Everybody has the right to protest and can protest, this does not change that. Corp. Counsel, is that correct?

MR. HOPPER: Well, Mr. Chair, anybody could send in public testimony or testify. It would be that if they did that in a Council or Department-initiated change, that if 40 percent of the owners did that, the Council would still be able to pass the Change in Zoning without getting a super majority of votes.

CHAIR COUCH: That's what that provision is. That make more sense?

MR. HOPPER: Deals with only with protests. I mean anybody can send a letter of protest, but that would not possibly trigger the Council needing six votes instead of five votes to do the Change in Zoning.

CHAIR COUCH: That's what that provision says, huh, on No. 4?

MR. HOPPER: Correct.

CHAIR COUCH: Does that make better sense?

COUNCILMEMBER COCHRAN: Yeah, okay.

CHAIR COUCH: Okay. Any further discussion on this? We haven't had a motion yet, and if we have no more discussion, I'm ready to give my recommendation.

COUNCIL MEMBERS: Recommendation?

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

CHAIR COUCH: Now, on to Item No. 49. Item No. PC-49 is, Transient Vacation...the title is, Transient Vacation Rentals in the Apartment District. The Committee is in receipt of County Communication 13-403, from me, transmitting a proposed resolution entitled, Referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Amend Sections 19.12.020 and 19.37.010, Maui County Code, Pertaining to Transient Vacation Rentals in the Apartment District. The purpose of the proposed resolution is to refer this bill and the purpose of the proposed bill is to permit transient vacation rentals in the Apartment District; that's what's on the agenda. The real purpose of this bill is to codify an opinion that has been out there since...I forgot when the opinion started, but there's an opinion out there that Planning Department has been using to say whether or not vacation rentals are allowed in Apartment Districts. And this is for when condo complexes, as the testifier said, were built for the specific purpose of short-term rental or transient vacation rentals. And then in 1989--was it?--I believe that a law was made that said, well, you can't have short-term rentals in Apartment-zoned locations. But that same ordinance said, except for anybody who's been already existing. That portion never made it to the County Code. I think we've passed out that old ordinance right here. And it says further, in Section 11 on the old ordinance, Ordinance 1797, that says, the 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. So that section never really made it to Code, that's what this bill is going to do. And it's gonna go down to the Planning Commission; we're here for a resolution to send it down to the Planning Commission. So that's the intent of that; that's essentially codifying a Corp. Counsel opinion because, as we all know, opinions can change. So, with that, I'd like to have the Department say a few words about it, and Corp. Counsel; and then, Mr. Victorino, you're first up.

VICE-CHAIR VICTORINO: Oh, okay. Thank you.

MS. McLEAN: Thank you, Chair. We have worked with you on the language of the bill. And, essentially, it seeks to codify a certain grandfathered provision in the Code, so it just makes it clearer that we're not relying on having to dig back to this 1989 ordinance and look up what approvals might be in place, that it puts it right into Title 19. So that just makes it easier to administer this particular type of grandfathering in this particular district. One of the questions that the proposer asked us was, how this relates to or conflicts with the recently passed Puamana bill, as we refer to it; and it doesn't seem that there's a conflict at all. There could be a really obscure way that the two might overlap. We're gonna look into that some more. And if it does seem that there's an overlap and some clarification needs to be made, we'll introduce that when we take this to the planning commissions so that they can be discussed together and then it'll come back to you in one package. It may not be that that clarification is needed. We need to look into that a little bit more. But if it is, we'll take that through the commissions as well and bring that back to you.

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CHAIR COUCH: Okay.

MS. McLEAN: Thank you.

CHAIR COUCH: Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you. That was my question. You answered my question. I love it. You know, that was exactly where I was going with, what the testifier had brought out. And so, if you're going to incorporate it, fantastic, 'cause that way when it comes back, it's all packaged together and should take us just one round and not another extra meeting to go through what, already, we all know we intend to do, so...

CHAIR COUCH: Okay.

VICE-CHAIR VICTORINO: Okay. Very good.

CHAIR COUCH: Any other comments from anybody?

VICE-CHAIR VICTORINO: No.

CHAIR COUCH: Okay. If not, I'll make my recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR COUCH: Okay. I'll entertain a motion to recommend the adoption of the proposed resolution entitled, Referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Amend Sections 19.12.020 and 19.37.010, Maui County Code, Pertaining to Transient Vacation Rentals in the Apartment District.

VICE-CHAIR VICTORINO: So moved. Mr. Chair.

COUNCILMEMBER BAISA: Second.

CHAIR COUCH: Okay. It's been moved by Mr. Victorino and seconded by Chair Baisa. Any further comments? Hearing none, all those in favor, say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed? Motion carries, five, zero with Mr. White and Mr. Guzman "excused".

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VOTE: AYES: Chair Couch, Vice-Chair Victorino, Councilmembers Baisa, Cochran and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Guzman and White.

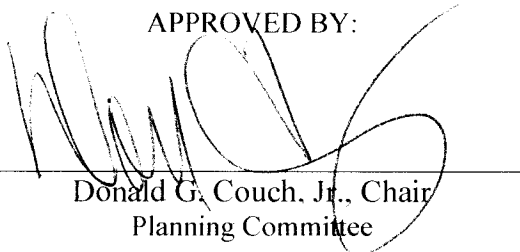
MOTION CARRIED.

ACTION: ADOPTION OF RESOLUTION.

CHAIR COUCH: Members, that's the last thing we had on our agenda today. I wanna thank you very much. Welcome back to hopefully a really productive nine...2014 . . . *(laughter)* . . . yeah, 19-Department, thank you very much, for all your discussion, both Corp. Counsel and the Department. Staff, thank you, welcome back. And I think we're settled for a while for our Staff. And, Members, thank you and we will see you next time. Aloha. . . *(gavel)* . . .

ADJOURN: 10:50 a.m.

APPROVED BY:



Donald G. Couch, Jr., Chair
Planning Committee

pc:min:140109:ry

Transcribed by: Raynette Yap

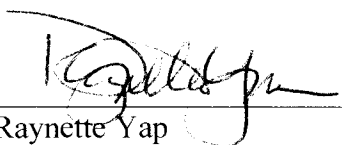
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CERTIFICATE

I, Raynette Yap, 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 27th day of January, 2014, in Kihei, Hawaii



Raynette Yap