

**MAUI PLANNING COMMISSION
REGULAR MINUTES
FEBRUARY 24, 2015**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:04 a.m., Tuesday, February 24, 2015, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chairperson Lay: We're gonna start off with public testimony.

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

Chairperson Lay: If anyone wishes to testify at this time on an agenda item that we have today you can go ahead and testify if you have to leave early. But remember if you do testify at this time, you won't be allowed to testify when your agenda item comes before us. Does anyone wish to testify at this time? Seeing no one, public testimony is closed and our first agenda item?

Ms. McLean: Good morning Chair and Commissioners. You have one public hearing item today. That's a request from Michael and Jennifer Mclaughlin for a Bed and Breakfast Home Permit in order to operate the Jasmine House Bed and Breakfast, a three-bedroom B&B located in the Rural District at 883 Kupulau Drive, TMK: 2-1-019: 076 in Maui Meadows, Kihei. And Sybil Lopez is the Staff Planner.

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

- 1. MICHAEL MACLAUGHLIN and JENNIFER MACLAUGHLIN requesting a Bed and Breakfast Home Permit in order to operate the Jasmine House Bed and Breakfast, a three (3)-bedroom bed and breakfast located in the Rural District at 883 Kupulau Drive, TMK: 2-1-019: 076, Maui Meadows, Kihei, Island of Maui. (BBKM T2014/0002) (S. Lopez)**

Ms. Sybil Lopez: Good morning, Commissioners. I'm Sybil Lopez, the Staff Planner on this project. This matter arises from an application for a Bed and Breakfast Home Permit filed on August 14, 2014 by Michael McLaughlin, the applicant. The applicant is requesting a B&B Permit to operate a three-bedroom bed and breakfast home named the Jasmine House located at 883 Kupulau Drive in Kihei, Maui. The bedrooms are located in the seven-bedroom accessory dwelling next to the main dwelling on the property. So if you look at your commission clarification, I'll just read it from there. The subject property known as the Jasmine House is developed with two structures. The main house and a cottage which is shown in Exhibit 2. The owner's main house contains five bedrooms of which three bedrooms are proposed for bed and breakfast use. The cottage is a two-bedroom accessory dwelling used as a long term rental. The owner lives in the main dwelling.

I created a Power Point presentation, short. It's just gonna explain what I...what the project is about. As you see in the area photo the proposed Jasmine House Bed and Breakfast is located in Kihei, where Maui Meadows. This is just a closer look view on the top side. This is the site and parking plan. As you can see the main house is in the front side. The cottage is in the back. That's for the long-term rental. And you have the three proposed bed and breakfast right next to the pool and deck. So the main house is all connected with the proposed area.

So B&B regulations. In Kihei-Makena Plan you have 100 bed and breakfast limit capacity. Of the 100, we currently have 23 permitted B&Bs in that area. Considering 23...(inaudible)...of the penetration. There is one permitted B&B operations within the 500-feet of the subject property which triggers coming to the Maui Planning Commission today. That B&B, permitted B&B is called the Hale Haunani, BBKM 2014/00002.

Of the aerial view you can see within the 500-foot radius where the Hale Haunani is located. You can see an overview of the whole Maui Meadows area and where the proposed area is as well as the Hale Haunani which is that 500 feet radius on the top right-hand corner. And these are just some photographs of what the applicant took within the application packet. So the proposed is on the top two photographs. It's on the left side. The main house is in that front area building and the surrounding areas are vacant land.

And this within, inside within one of the B&B, proposed B&B.

So a little bit about the applicant. They moved to Oahu in October of 2012 from Panama. Jennifer is from Scotland and Mike was from New York. They moved into Maui back in February 2013, and started a scuba diving business in Kihei. And just this past last year they actually purchased that Kihei home in Kupulau Drive. Just a little bit more about them. You know, they met five years ago, living in Thailand and this was always one of their dreams. And just a little bit about what they do as their business.

They have one letter of support. I do have the letter here from one of their neighbors, 867 Kupulau Drive just approving that they want this. So this property is directly next to them. They spoke several times with the owners. You know, and they seem to be clear in all points of concerns that they might have. They're open. I guess the biggest thing that they wanted to see to be addressed was the parking and that they have agreed that the property in front will not be used for their guest parking. So all their guest parking will be on top side within the property. That's it. Mahalo. Thank you. And just for the record, we do have the two applicants here in the room if you have any questions for them. Thank you.

a) Public Hearing

Chairperson Lay: Thank you. At this time I'm gonna open up to public testimony. If anyone wishes to testify, please step forward and you have three minutes. Seeing no one, public testimony is closed. Commissioners, questions or comments? Commissioner Ball?

Vice-Chair Ball: Are there any short-term rentals in the area, in the 500-foot?

Ms. Lopez: Yeah, that's what triggered coming here.

Vice-Chair Ball: Well, there's another B&B, but is there another--

Ms. Lopez: No, the stars are all the short-term rentals. So we have the five stars which reached the Maui Meadows capacity. And the squares are all the B&Bs in that area which is a total of 23.

Ms. McLean: Sybil, could you clarify the 23, there are 23 B&Bs in the Kihei-Makena Community Plan.

Ms. Lopez: Oh yes, I'm sorry. Yes, correct.

Ms. McLean: They're not all in Maui Meadows.

Ms. Lopez: Not all of Maui Meadows. Correct. Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Sybil, in the B&B, means bed and breakfast. What...and these have a little sort of kitchens or something. What is the owner providing in the way of food for breakfast?

Ms. Lopez: I will let the applicant answer that.

Ms. Jennifer MacLaughlin: Hi, my name is Jenny MacLaughlin. We're just providing a light breakfast for the guests. So it would just be nonperishable items. So fruits such as pineapple, bananas, apples, things like that and then prepackaged pastries, so croissants or jam pastries.

Ms. Wakida: And where are these provided?

Ms. MacLaughlin: We have fridges in each of the...each of our guest bedrooms. We can put it in the fridges or the guests can collect them from us in the morning depends on their schedule.

Chairperson Lay: I have a question. Okay, what was this previously before with the new ownership? I mean, it set up very well for bed and breakfast and I was wondering if it was a bed and breakfast previous to this?

Ms. MacLaughlin: Not to my knowledge, no. We know the previous owner and he had the property for maybe five or six years and he'd been doing extensive renovations. So there had always been a tenant in the cottage right in the very back. There's always been a tenant in there and he had a couple of tenants in the smaller rooms, but it's not my knowledge that had been a bed and breakfast. It's always been privately owned ...(inaudible)...

Chairperson Lay: Thank you. Commissioner Wakida?

Ms. Wakida: Are you planning to...you have three separate rooms with bathrooms. Are you planning to rent these to three separate guests?

Ms. MacLaughlin: Yes, yes, that's the plan. We don't really want to have groups and we don't want to have big parties. You know, don't wanna attract a bachelorette party or anything like that. The idea is to have three separate rooms and three separate ...(inaudible)...

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Question for the Director. My understanding was bed and breakfast for one unit. They're saying they have three separate...rent it to three separate renters is this correct?

Ms. McLean: Thank you, Commissioner. Yeah, that's one of the main differences between bed and breakfast and short-term rental homes. Short-term rental homes does not have to have the owner or the operator onsite, but it can only be rented to one party. Bed and breakfast you have to have an owner or operator onsite, and you can rent to separate parties. So if you picture sorta the traditional bed and breakfast, someone living in their home and they're renting out a couple of bedrooms, that's what the ordinance was modeled on.

Mr. Freitas: Thank you.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: And then the cottage was gonna be long-term or was that also...

Ms. MacLaughlin: Yes, that's our long-term rental. We have tenants in that unit.

Chairperson Lay: Commissioners, any more questions? Commissioner Hedani?

Mr. Hedani: This is a question for Staff. Just to verify that everyone within 500 feet of the proposal has been notified of the application?

Ms. Lopez: Yes they have and I have all the records on file of the certified mail receipts from the applicant. So they were noticed for the file of application and they also was noticed, notified about this public hearing today.

Chairperson Lay: Commissioner Duvauchelle?

Ms. Duvauchelle: I have a question for staff. So you verified that everything on the property was permitted?

Ms. Lopez: Yes, yes.

Ms. Duvauchelle: Thank you.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Just a clarification from the Deputy Director? Is there a max number of rentals you can have on a property with the B&B Ordinance?

Ms. McLean: The B&B Ordinance allows up to six bedrooms.

Mr. Tsai: Is that including if they have a separate cottage or ohana to be rented?

Ms. McLean: The B&B Permit could theoretically, the applicant could have applied for the three bedrooms they applied for. They could have also asked the two bedrooms in the cottage. So that would still be a total of five which would be less than six. They're only requesting three. So they could have asked for up to six whether in the main house or the cottage, but they're choosing to keep the cottage in long-term rental.

Mr. Tsai: So the total is six, yeah, max?

Ms. McLean: Yeah, there's a maximum of six bedrooms that can qualify for a B&B Permit.

Mr. Tsai: Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: So if they decided down the road that they wanted those two extra bedrooms in the back they would have to apply for that?

Ms. McLean: That's correct. And they would have to notify neighbors and come back to you folks.

Chairperson Lay: Commissioners, any more questions or comments? Commissioner Hedani?

Mr. Hedani: This is a question for the applicant. The designation between a bed and breakfast and a TVR is that the owner resides on the premises on a full-time basis. Running a business, a dive business is it still the intention of one of the owners to be present during the bed and breakfast operation?

Ms. MacLaughlin: Yes, that's right. My husband does the diving and I am...(inaudible)...and I'm a stay at home mom as well. I have little one in the back and another one on the way as well, so I'm at home all the time and so that's the idea is that I'll be there for the guests as well.

Mr. Hedani: Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes, for staff. Since you've been out there. How are these three bedrooms connected to the main house?

Chairperson Lay: Breezeway.

Ms. Lopez: By the roofing. So there's a hallway within...joining the main house and the proposed area together.

Ms. Wakida: So a breezeway or something like that?

Ms. Lopez: Yes.

Ms. Wakida: All right, so it's just the roof line that connects them?

Ms. Lopez: Yes.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Yes staff, what is the maximum amount of people that can stay at this particular property since you got three-bedroom plus two-bedroom cottage, so if you add up the maximum amount that they can stay there, how many people are you including children?

Chairperson Lay: Deputy Director?

Ms. McLean: If I can, thank you. I believe under the B&B Permit or the B&B rooms it's two guests per room. That would be the maximum. And that's the only discretionary approval that's needed. In terms of overall capacity at the property there really isn't a particular standard for long-term or owner occupants of their dwelling. So the only thing that would be regulated through this would be the people who stay in the B&B rooms and that would be two per room.

Mr. Higashi: Pertaining to Mr. Tsai's question about the amount of B&B you can have and you said six. So conceivably can these people come back and build a two-story above the three-bedroom to make it six as a maximum B&B?

Ms. McLean: They probably could obtain a building permit to put on a second story. If they were to use any rooms whether they're new rooms that they build or even existing rooms on the property, if they were to add rooms to their B&B operation they would have to amend their permit and apply for those additional rooms. So assuming there's still another B&B within 500 feet, that amendment would come to the Commission. Even if they wanted to add one room that would come to the Commission.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: The only reason why I ask that question was it seemed like this particular structure the only reason they're considered part of the main dwelling is because there's a roof that connects both buildings. But in essence it's like if you didn't have that roof there would be three bedrooms separate from the main dwelling of two bedroom. And I have a concern about that because that kinda opens up Pandora's box about having more people and what it does in essence is it creates traffic congestion with the amount of people that you have in that area. So that's basically what I was concerned about 'cause the structure the way it's constructed. 'Cause it's not normally the way bed and breakfast is.

Ms. McLean: It is, it is an unusual layout and we do, you know, we have seen these. We actually got into a discussion on that part, sort of a detached layout from a kamaaina family owner occupant who wanted to have sort of a c-shaped house with the kids living on the ends, but the kids having doors outside but not into the main house. And the Code definition of single-family dwelling and the applicable definitions in the Code simply say that the rooms are connected together. It doesn't

mean an interior connection. So this type of construction meets that definition. The other key point in making it one dwelling is it can only have one kitchen. And so that's what we look for. We see that all the time and you folks I have talked about it too, with B&Bs and short-term rentals just one kitchen. These have fridges in them. They have a little pantry area. Those don't qualify as kitchens because you wouldn't. In the B&B rooms the way that they're laid out, you wouldn't live in that full-time. It's not, you know, on a long-term residential basis. It's not...it doesn't have a kitchen facility...(inaudible)...to live there. So the main house has the kitchen. That's what makes the whole structure one under the Code. We grapple with this daily. Believe me for residential occupancy as well as with B&Bs and short-term rentals.

Chairperson Lay: Commissioners, any more questions or comments? Seeing none, can we get the...oh, excuse me, Commissioner Hedani?

Mr. Hedani: I guess this is a question for Staff. The council passed a restriction on TVRs for Maui Meadows at five units. Have they considered establishing a cap for B&Bs as well because in mind the two are very similar, very almost indistinguishable based on the rules of TVRs and B&Bs?

Ms. McLean: I haven't heard that discussion lately but they are now looking at revisions to the Short-Term Rental Bill and to the B&B Bill. And the Maui Meadows cap really came from strong testimony from the Maui Meadows community. And similar testimony wasn't given during the B&B Bill. When Council takes another look at that perhaps there might be at that time, but they probably would need to consider the number of B&Bs that we've been getting.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation.

b) Action

Ms. Lopez: The Maui Planning Department recommends approval of the Bed and Breakfast Home Permit subject to the following conditions: That the B&B Home Permit shall be valid until February 28, 2018 subject to further time extensions by the Director pursuant to the provisions of Section 19.64.060, MCC. The Conditions No. 2 thru 17. In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the February 24, 2015 meeting as a findings of fact, conclusions of law and decision and order and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Vice-Chair Ball: So move.

Chairperson Lay: Motion by Commissioner Ball.

Mr. Tsai: Second.

Chairperson Lay: Seconded by Commissioner Tsai. Any discussion on the motion? Commissioner Hedani?

Mr. Hedani: I don't know if the Council even listens to what the Commission says, but from my

perspective I believe that the Maui Meadows Subdivision in particular is approaching a saturation point for both TVRs and B&Bs. Within the four corners of the law the applicant is legally entitled to apply for what they're, you know, applying for, but I think my opinion is that the Council should seriously reconsider not only a cap for Maui Meadows but a reconsideration of the total cap for the entire Kihei-Makena area with eye toward reducing it from the current level at 100. Because my personal opinion is that it's too high, we're displacing too many units can be used for residential use.

Chairperson Lay: Any more discussion? Commissioner Medeiros?

Mr. Medeiros: I echo Commissioner Hedani's concerns. I agree that there should be a cap. However, with this particular application, it's legit. They seem like good people so I'm gonna support them.

Chairperson Lay: If there's no discussion on the motion can we get the Deputy Director to repeat the motion?

Ms. McLean: To approve the Bed and Breakfast Permit subject to the 17 conditions in the staff recommendation.

Chairperson Lay: Call for the vote. All those in favor? Motion carries. Congratulations.

Ms. Lopez: Thank you.

It was moved by Mr. Ball, seconded by Mr. Tsai, then

VOTED: To Approve the Bed and Breakfast Home Permit as Recommended by the Department.
(Assenting - K. Ball, M. Tsai, J. Medeiros, J. Freitas, W. Hedani, S. Duvauchelle, P. Wakida, R. Higashi)

Chairperson Lay: Our next agenda item we have....Commissioner Freitas you need to set up or anything for this?

D. COMMUNICATIONS

- 1. Proposed moratorium on Short-Term Rental Homes (STRH) or proposal to reduce the cap. (Commissioner Jack Freitas)**

Mr. Freitas: No. But I brought this issue to light because there is a major problem in our community which all of you are aware of unless you got your head in the sand that there is not sufficient affordable rentals out there. And every time you put a long-term rental into...pull 'em from the rental pool. There's one more family without a rental. You have people making \$10 an hour, taking home \$400 a week and there is nothing available out there under a \$1,000. I have no idea how these people can live. This is why daily we see people that are working full-time that is, what you call, on the street not through their choice. Even if you work two, husband and wife work jobs, I cannot see

how they can afford these rentals. There have been no homes built per se. Last year I think there were approximately 200 or a little less homes built on Maui County. We have what do you call, the project growth and the growth last year of 2,000 new residents coming into Maui County every year. With that growth, the houses that have been built because Show Me the Water Bill nobody can build anything. The developers not going...(inaudible)...bills. You have to address Show Me the Water Bill and you have to put a moratorium on this what do you call short-term rentals. And I'd like to send something to Council and let's act responsibly and address both Show Me the Water Bill which wasn't on the agenda, but it's tied to this, and this short-term rental.

Chairperson Lay: I'd like to ask Corp. Counsel a question on that. Okay, we the ability to take some type of action on this and I'm wondering what choices do we have on that?

Mr. Hopper: I suppose if you wanted to send a letter to Council asking that they look into that issue you could. That would have to be something though that a majority of you would need to be, would have to vote on for that kind of communication. You would all have to agree on the wording of the letter basically and then authorize it to be sent. So it wouldn't just be one member sending a letter, it would be the whole commission. I suppose you could do that.

Again, for any kind of moratorium it would need to be, it would need to be done by the Council and then the questions would be for how long, what would be the purpose, you know, and things like that. So if you wanted to send a letter of any type really you could send that as a commission if you would like.

I mean, I think you recently had an opportunity to make comments on both the B&B and Short-Term Rental Home Bill. So that would have been the ideal time to make comments like that, but I suppose you could send a separate letter if you wanted as a board. But again, you'd have to agree on the wording and that's up to the commission as far as what it would like to actually send if anything to the Council on this.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I'd like to have comments from the other Commissioners because this thing when it was initiated we had a vacancy problem as far as rentals for affordable rentals, but it has gone rampant. It's like a disease. You're gonna see some of your family members out on the street. I'd like to have comments from the other members.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, Commissioner Freitas I don't disagree with your intent so just get clarification is a time line or what is your term? Are you looking for like you know, certain time for this or you're just doing it indefinitely?

Mr. Freitas: I'd like to see a moratorium put on the short-term rentals till such time as we bring the inventory up where what do you call, the working person can afford to rent a home and provide for this family.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I completely agree that we do have a problem and it may semi be affected by this B&B and vacation rental. But the totality of it is less than 400 units island wide. So it's not gonna really solve the problem. I think you're right on the right track of the Show I the Water and the affordable housing percentage and that's why the developers come in and develop. I'm not saying get rid of the affordable housing percentage of course, but when discussions were happening way back when they were saying 20 percent, 30 percent we could live up and they went up to 50 percent. So I think we're feeling those effects. Even Paul Brewbaker the economist when he came to Maui said, you guys are good except for your housing. Your tourism's good, your construction is good, but your housing is gonna be...is way behind, way behind like we have nothing going on, right? So I think that's partially because of the affordable housing, but I mean, of course we need that, but it's kinda the more housing you have, the cheaper it gets. And right now, I totally agree the rental market is ridiculous, ridiculous. This, this one we just approved is like a perfect example of the way I think a B&B should be set up. They have the cottage still in long-term and then they have those units that it's kinda the only way it would function. Like you couldn't really rent that out with those three bedrooms kinda separated like that. I mean, it's like a perfect design for it as far as design go and not so much the interior it, the design of it. Anyway, I totally agree with that and we should...I don't know if putting a moratorium on the vacation rental and B&B is solving that problem because it's just not that many units. I mean, we're not even there. The max is 400, or ish. And we're not even, you know, not even there. It's 400 out of the whole island rental market.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Mr. Ball that's 400 families that don't have a place to rent.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, I think you, Mr. Freitas I think you're referring to just generally speaking short-term rentals, so you're applying for TVRs also or you're just talking about B&Bs?

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: It's the short-term rentals. It's the ones that's coming out. The long-term rentals....the B&Bs I have no problem with it because the person lives on the property. If they live on the property, they're living in the dwelling like the B&B that just came before us they live on the property, they have a cottage that is a long-term rental and they're supplementing their income but with a bed and breakfast. I have no problem with that. Where I have the problem is when something is taken completely out of the rental market and it's not serving none of the community.

Chairperson Lay: For me on this issue of the short term rentals we've given a saturation point, this is our number on saturation point. This is how much we can do. Maybe if we could have some sort of time frame where per year to reach that saturation point we're gonna allow certain amount of short-term rentals available. I mean that might be an option too instead of having a total moratorium on it. That's my feeling on it. I mean we should...we've given a point of how much we can actually put out there but there's no...we can only do it in certain amount of years and to me, everybody's just throwing their hats in the ring on that one. Commissioner Freitas?

Mr. Freitas: I have a question for the Chair. How many homes was built last year?

Chairperson Lay: For the Chair, huh? Are you talking about...

Mr. Freitas: Residential homes, say under \$500,000 home.

Chairperson Lay: One maybe, right? There's been a lot of challenges on the affordable housing like you said. Commissioner Duvauchelle?

Ms. Duvauchelle: You know, I would support a moratorium. You know sitting on both sides of the fence in development and also in construction in the field we have to start somewhere. And I also have a daughter that we've had a really had time finding some place for her to live that affordable. So it may not be the answer, but if we don't start some place, we're just gonna keep digging the hole deeper for ourselves.

Chairperson Lay: I can comment further on that 'cause our children they wanna go out there. They wanna get their own place, but they can't. It's not affordable so they're with us.

Ms. Duvauchelle: Or they're on the mainland.

Chairperson Lay: Yeah, or they moved somewhere else where they can do it. But we want our children to stay here and that we need opportunities for them to purchase or rent a place and now there isn't. Like you said, the competition is too higher. We're competing against people that stay here for a week and can pay the money in that one week where our children cannot. Commissioner Wakida?

Ms. Wakida: I have a question for our Deputy Director. Sybil provided us with the number of B&Bs on Page 5 of her report from the previous applicant. I can't recall, but aren't the numbers the same for the short-term rental?

Ms. McLean: Yes, the only difference with the short-term rental as you just discussed is that in Kihei-Makena there's the cap of five in Maui Meadows and that five is part of that 100.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: When I first came on the Commission and saw these numbers I was shocked. I had no idea that that many B&Bs and short-term rentals had been approved. And I asked several times how this number was arrived at and I never got much of an explanation that somebody had done some study or something based on number of homes. But it seemed high. If there's ever time to do a restriction now is the time when we are not near a saturation point and people are not clamoring and there won't be a ...(inaudible)...cry because we're at a good number below. So I have always felt that this seriously needed to be revisited and these residential, particularly these residential areas and Haiku, Kihei and...well, all over need to restudied from a residential point of view.

Ms. McLean: If I could just for the Commissioners information there are approximately 200 B&B Permits and approximately 200 Short-Term Rental Permits. So I don't have the geographic

breakdown. That's easy for us to get. But we're at about half for each of those 'cause each of these total up to 400 total for each type of permit and we at about half.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: The numbers that you give are incorrect in this respect because there is maybe over 100 illegal short-term rentals out there. I was watching the Travel Channel the other day and Maui came up and this person said, you know, you should do a short-term rental thing and the person called back and said, we're in the short-term rental, but illegally. This was on Maui. We have people...and I believe in property rights, but we have people that don't live on the island that is running a short-term rental basically they're mini hotel and the money, in fact that money there living in the mainland, that money is going off the island and I believe that we should put a moratorium and the reason, the(inaudible)...reason.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: And you make a good point Commissioner Freitas on that is...and it's going to a question to the Deputy on when are we going to start enforcing this because we might solve the problem by shutting all those down and those guys gotta go into long-term rentals, you know?

Ms. McLean: Thank you for bringing that up. When I said there are 200 of each type, that's 200 permitted, you're correct. And there aren't 100 illegals, there are thousands of illegals. And we have started as you're aware our enforcement policy, and this is countywide has typically been complaint based. However, when Council adopted the Short-Term Rental Bill they wanted to give some time for people to come in and get their permits and after that they wanted us to start enforcing proactively which we have recently started to do. It's not that difficult because people advertise online. There are several key websites, AirB&B, VRBO and we're going through those and starting to notify those owners or operators that they need to shut down.

Mr. Freitas: Question for the Director. How many of these illegal that you have contacted that has been prosecuted or what is the penalty for running an illegal bed and breakfast because when you run an illegal bed and breakfast I'm sure they're not paying their TAT tax, not paying GET tax, not paying withholding taxes on it.

Ms. McLean: Right. We don't do tax enforcement.

Mr. Freitas: I understand.

Ms. McLean: We...the process for us is we initially send a Notice of Warning that says we believe that...and this is true for any type of zoning violation so it's not specific to this. Either we've received a complaint or we believe that you are doing a, b, and c which is not allowed by the Zoning Code. So you have "x" number of days to stop or to seek permits. And then after that time transpires if we haven't heard anything, we'll check on it again. If we see that the violation is continued then we'll send a Notice of Violation that says, you know, you have to stop. Your violations are, you have an initial fine of, it can be up to I believe \$1,000 a day for a zoning violation or initial fine of a \$1,000 and up to a \$1,000 a day until the violation is cured either by stopping or by getting permits. For this in particular we haven't gotten past the Notice of Warning stage yet.

So we've done some of the initial contact, but it hasn't progressed to the next step yet.

Vice-Chair Ball: Because they fall into compliance or just the time in not done out on that yet.

Ms. McLean: The time has not run out and also manpower just to follow up too. 'Cause the warning it has...when we issue a violation, we need to have a lot of evidence before we issue that violation. The warning we base it on ...(inaudible)...advertising 'cause the law says that that's evidence of operation. But to...so if they take down the advertisement that doesn't necessarily mean they've stopped operating. So then we...you know, it's a manpower issue to investigate to see whether...

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah Deputy, in this process here do you have actually dedicated manpower, staff to oversee this or you have to share among other staff and also the question too is when you say you verify that, once the warning letter is issued, how do you verify? Do you actually...I guess, does the Department ever actually go out there and check on it or this is all done remotely?

Ms. McLean: As much as we can do, we try to be as efficient as we can with our time...oh, to answer your first question. We have six zoning inspectors. One of those positions is vacant. We've had a very hard time in the past couple of years filing those vacancies ...(inaudible)...We have five filled now. So we have one vacancy. Hopefully we'll fill that soon. We try to do...you know we try to be efficient with our time and gather as much evidence as we can online. And truly if the operators are told to stop advertising and we can track that. We've gotten pretty good at that, that goes very, very far to curbing their operation. If they're not able to advertise they're not gonna get business. So that we can do from the office. In trying to gather evidence beyond that, you know we'll look at different...like Trip Advisor where people send their reviews. You know, so we try to see, okay, people are still staying there. That's how we can verify people are still staying. We don't go and stake out the property, see if people come and go. I mean, we do...we have gone to properties before, but that's hard to verify from an in person inspection...(inaudible)...

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I totally agree with Commissioner Freitas about setting moratorium. The only caution I have on there is that we don't enough enforcement. In other words, this might create more illegal. We're now having legal people coming here to apply for bed and breakfast and short-term. Now if we shut it down, we're gonna have more people who's gonna advertise...I have a problem with if you have enough inspectors to be able to get a point where you can start issuing enough fines and so forth so people will realize it is important to go through the process. Right now we have people going to through the process, but if you take the percentage of the amount of illegal ones versus the ones who are coming to apply, I think there's a major problem with that.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: So Deputy if you were fully staffed would that solve the problem or would you think of needing more staff, like a dedicated person that would just sit there and work on those? And the reason why I ask that is that I think if it does help to get more staff, if you can fill the position that

is, I think a letter to the Council to fund that position would be...it would be a first step then you know shutting down, I mean, they're not gonna, I don't think they're gonna do that. But if we could get the enforcement side of it up and running then we kinda can balance that with what we've already been established, you know, we've seen 400 of these applicants come through or whatever, if we set up the enforcement side and see what happens, and see how many rentals come out of the enforcement side. 'Cause then we have more evidence to then go and say, hey look this is a bigger problem than we thought or maybe it's not. Maybe all those rentals, I don't know.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Well, Director, on the...from the length of time that you get the complaint to send out the letter and back and forth to the point where now you are gonna initiate some legal action which has not been done, what you say, a year, six months, the length of time because you're short staffed?

Ms. McLean: This is for an illegal short-term rental?

Mr. Freitas: Yes Ma'am.

Ms. McLean: Well if we...I'll actually need some of Mike's input on this because before we send out the Notice of Violation, Corp. Counsel reviews them to make sure that they're...that we have everything documented properly. So for a short-term rental, we'll send out the Notice of Warning...this is my understanding of the steps we're taking. We'll send out a Notice of Warning telling them to stop advertising immediately and to cease operation. I don't know what time frame we give on ceasing operation because we do wanna be mindful of guests that they might have or bookings that they might have. This was in consultation with the Hotel and Lodging Association and the Visitor's Bureau for us to suddenly say, you know, you're gonna be facing these fines if you don't stop and if they have. I'm sorry you don't like it, but this is what our process is. They have to stop advertising immediately, and then I'm not certain--it's a relatively short amount of time, 30 days or something like that.

Mr. Freitas: Thirty days?

Ms. McLean: Thirty days or sixty days. It's a relatively short amount of time we give them to stop operating. Then after that time, 30 or 60 days, when we go to follow up, I don't know that we follow up on the 31st day or the 61st day. That might be a manpower issue for us to follow up on that. When we get to that point we'll accumulate what evidence we can. If they haven't...you know, if people are staying, if they're still advertising then we'll draft a Notice of Violation that has to get reviewed by Corp. Counsel, and I think Mike turns them around within a week or so. They're pretty routine at this point.

Mr. Hopper: We've only gotten a couple of those for the short-term rental or B&Bs because I think as they said the enforcement's been....well, it's not lacking, but I mean that they had the permitting, permitting was relatively recent. They let the permitting go for a bit and then there's the time for those to stop operating. So I think now you're...I'm seeing more Notices of Violation. I see them for other things, SMA, a lot of other things, but the short-term rental and B&Bs haven't seen very

many but there's more coming in the last few weeks there's been more than I've seen in the past certainly.

Chairperson Lay: Commissioner Ball. Question for the Deputy. So you have those enforcement officers, where does this topic that we're talking about set up in their priorities of enforcement? Is it the bottom or is it, and where's the direction from the Director and Deputy to them as far as...

Ms. McLean: The short-term rental home proactive enforcement as been an ongoing effort for a couple of months. At the same time we continue to get complaints every day that we follow up on as they come in. And that's everything from sign violations to SMA violations. So the complaints that come in those are handled generally on a first come, first served basis and at the same time, time is also given to...(inaudible)...So it's not a high or lower priority.

Vice-Chair Ball: It's just when they come in.

Ms. McLean: ...(inaudible)...

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I would like to follow up on Commissioner Ball's ...(inaudible)... recommendation. I think that's a good idea of how we can move forward is to, is perhaps have a letter from the Commission recommending that the Council hire more inspectors in order to...and the whole, the whole point of this is to protect our local residents, is to protect our community and the economy of the community. And then secondly, I would like in our recommendation that they set up a task force to evaluate the number of STRs and make a recommendation of lesser amounts or at least come up with justifications on why, why they think these amounts are appropriate. I am in favor of Jack's recommendation on a moratorium, but I don't know if we can realistically push it that far. But at least getting the inspectors out there and taking care of those problems I think 'cause we may need to get some action on that.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, definitely I agree with everybody's concerns and inputs and I think, I support definitely Jack's, Commissioner Freitas's motion or intent. My concern is that to have it I guess the time line, I think it will be very hard to monitor or quantify if we don't put a more direct time line for, you know, how do you measure at which point the saturation point exceeds and we gotta put a definition to that and quantify it somehow. I would recommend doing that and also I guess follow up with another question for the Corp. Counsel is you recommend, you know, we putting to separate letters like say this is sent to Council regarding one is moratorium that we're discussing and then the other one is enforcement which is...is that two separate issues we should...in case we go you know?

Chairperson Lay: Corp. Counsel?

Mr. Hopper: I think if you do send a letter you could address both in one letter. I think one thing you could do is have Staff draft a letter and at the next meeting consider adopting it. And I do think your point is taken though. The legal issue with moratoriums and things like that can be difficult if

there's not a certain period of time. It's usually an actual time frame, a year or something like that to address a specific issue. Now enforcement is a general issue regardless of a moratorium. There are two separate issues. One is the number of permitted and then the other is the amount of illegal and whether or not whatever you do with the law as far as permitting the illegal vacation rentals are going to be an issue because they'll be there anyway. I'd also note that there was a proposal, \$1,000 right now per day is the maximum fine allowed by Charter. There was a proposal on the ballot to increase that to \$20,000 but it did not pass. That's been in place since 1983 the limit of \$1,000 for a violation of any County ordinance in fact. So any ordinance the Council passes, the maximum fine anyone can be fined is \$1,000 and that's been in place since 1983, and that was why on the ballot there was a...something to change that to \$20,000 maximum for any ordinance the Council adopts and that failed. So you still have \$1,000 limit and that could be a potential issue if the activity is not ongoing you couldn't do for example a fine \$10,000 for a violation for a first-time violation that would maybe carry more weight than \$1,000 particularly considering if the operations making more than that per day. So I just wanted to note that it right now the fines are the highest, the monetary fines are the highest that they can be for a vacation rental violations.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: The monetary fines is a moot issue because nobody has been fined. Till such time as somebody is called on the carpet and fines start going out and they start prosecuting, this thing will continue. This will be moot issue. You must have enforcement. We have too many, what do you call, ordinance and rules on the books, not just in Planning or...it's across the board in all the industry that there is no what do you call, law enforcement, none whatsoever. The only enforcement that you see come down is from the State that they said the Health Department. The rest of the what do you call, industries people run rampant.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Question for Mike. Is it realistic to think that we could change that fine structure to make it a category instead of these blanket fines ...(inaudible)...for the County to say okay, there's a first offense, there's second offense, third offense to pull those items out and make them, make different fines for different items. I mean it would take a lot of work, but I mean, it's not even realistic to you think that something like that could change in this...(inaudible)...

Mr. Hopper: Well, a couple of things. One is that that people have been fined for operating vacation rentals. I know of at least three different cases where fines have been issued. One case settled for I think around \$30,000 in fines and another case was a bit less than that, but they did result in Settlement Agreements. In one enforcement case right now is...there's actually a couple enforcement cases ongoing right now that are in the Board of Variances and Appeals, and actually I think in front of the Planning Commission for some other cases as well. But as far as fines the problem is the Charter sets that limit. There's actually a Charter limit on any Council ordinance violation. So you wouldn't be able to go higher than \$1,000 per day. That's gonna be the maximum until the Charter gets changed which again, there was a...that's why it had to go onto the ballot 'cause it's a limit that's in the Charter that's been there since 1983 and that hasn't changed since 1983. So I don't know if there'll be another crack with more of an awareness campaign or something to let people know, hey the highest fine possible is \$1,000 and that's been in place for over 20 years or if there's not gonna be another chance at that. But that would need to change

before you could consider \$2,000, \$3,000 and that type of a scale like I think you're thinking. The first violation \$1,000, you know, if it's a second violation to have a different category. SMA for example is a different animal because that's not an ordinance under the Charter. That's a separate State Law that you have enforcement authority over so there's a \$100,000 maximum fine allowed there, but that's by State Law and the Charter limitation doesn't apply to that because the Charter doesn't set those fines, State Law separate from the Charter sets those fines. But again, since it's a County Ordinance you're talking about violating, the maximum fine is gonna still be \$1,000 and that's a Charter issue. That's not something even the Council could change without having the Charter changed. That's the challenge there.

Chairperson Lay: A question on the moratorium. Say for instance we do have this moratorium, for those in the pipe line, you're saying there's 200 at this point that are trying to get permits for that and would be...to follow up on that too, would it be where they're grandfathered in because their applications are in or once the moratorium goes in everything ceases?

Ms. McLean: There are approximately 200 permits that have been issued that's not applicants who are in the pipeline. There are a probably a few dozen, several dozen that are in the pipeline now. If a moratorium were to be established by Council then it would spell out, it could spell out who that applies to. It could say it doesn't apply to applications that we received by whatever date. So it could allow those in the pipeline to be processed.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Deputy, the...would there be enough complaints on this topic alone for one person to fill their days and weeks with work or are we not there yet with complaints relating to this?

Ms. McLean: The more people we have, the more we could do for sure.

Vice-Chair Ball: No, but my thought is trying to, you know, get you more staff to work on this, but if there's not that many complaints that we're, you know...

Ms. McLean: They're...just complaints coming in we're doing a reasonable job at maintaining those. It's the proactive side that is a huge undertaking. So if you want us to be proactive then you know, we're doing what we can with the team that we have. But to be more effective proactively then more people would allow us to be more effective.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I guess what we're trying to ask you is what kind of resources do you need if we do go into this moratorium will be more enforcement exactly.

Ms. McLean: I would need to check with our enforcement team and see what they would recommend. I mean, for the Commission's purposes, I don't know that you would need to be specific to Council and say something to the effect of provide enforcement...that provides sufficient enforcement to have effective proactive effort. 'Cause I don't know, I don't know if our...you know, we have like I said six positions, five are filled. If they would say, oh two more would do it or no, we need ten, I don't know. I don't wanna speak for them.

Vice-Chair Ball: Can we find that out for the next meeting or whatever?

Ms. McLean: Sure. I might be able to find out before the end of this meeting.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: In regards to your comment there is several dozen I guess, you know, in the pipeline in the past I guess what is typical time frame when they start the application process before it gets to us?

Ms. McLean: Most applications don't have to come to you. You only see the ones that there's another operation within 500 feet or if there were complaint letters that hit that trigger or if it requires a State Special Use Permit because it's on ag land. So those are the only ones that come to you. Because...well, we can take a look at the one that was just presented to you in Sybil's report she would probably indicate what date the application was submitted. The one that you just approved, the one in Maui Meadows, the applicant did the Notice of Application in early November so that was November, December, January, less than four months from the time they started the process until it got to you. And keeping in mind that because this is a public hearing item, the public hearing notice needs to go out at least 30 days prior to this meeting. So already have a built in month there in order to do that public notice. So these are relatively quick.

Mr. Tsai: So if it doesn't come before us I assume it would be quicker, more expedited within your Department?

Ms. McLean: If there aren't any issues. Sometimes there are issues that we need to work with the applicant on. If we find out that there's an unpermitted structure on the property that has to be taken care of before we'll issue the permit. But if everything is clean and no issues and that everything's compliant then it's pretty fast.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I would support Commissioner Freitas moratorium. Now however, like him I don't have a problem with bed and breakfast okay, 'cause these are local people establishing home-based business you know. The key word is home. Like Commissioner Freitas the problem that I have is people coming in and wanting to subsidize their investment. You know, it's not their home, it's their property. I have no problem with people trying to make an honest buck, trying to may their mortgage and you know to protect their home. You know, the moratorium as far as I'm concerned should be made for the investors. Protect the locals. I don't care how long you've been here. If you bought property and you have a home and you're living in it, you're local, pau. You know, take care of the locals first. How you go about it legally that part is...that's in your court. But I would like to point out that some of this home-based business it's a good...takes care of local people you know and we need more housing and that's what Jack is fighting for, more housing for local people and I going support that.

Chairperson Lay: So we're going to need a letter drafted with all of us agreeing to what's stated on the letter. Commissioner Freitas?

Mr. Freitas: Let me...there was an issue on the time length of the moratorium. I'd like to have the moratorium go in as quickly as possible and I would...and until such time as we could bring our inventory up and start building houses so that people can live in. And when we have what do you call a surplus of housing...(inaudible)...they can go back into what do you call short-term rentals, but at this time, we don't have one house available for short-term rental as far as I'm concerned because there's not enough homes for people to rent long term.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'd like to get an answer to Penny's question. Penny's question basically was how did they come up with the numbers for short-term rentals and for B&Bs to begin with? Was it a process where you know it was open to public hearings and every community plan adopted its own limit or did we just pull it out of the air?

Ms. McLean: We have a couple members of our Staff who are on the B&B team. I don't know if they recall. Gina or Kurt, do you recall how the community plan caps were determined for B&Bs and then short-term rentals, how those numbers were picked?

Ms. Flammer: Sure. Staff Planner, Gina Flammer, good morning. From what I understand it was our former Director Jeff Hunt...this is during the B&B so it's about 2008, 2009 there was a study commissioned. I think it was commissioned by the Realtors Association of Maui. The Kauaian Institute is who did the study. They looked at the total number of short-term rentals. I don't know what definition they used for that, but they came up with the cap times two. So it would have been much less than it is now. The Director at the time decided to cut that number in half. So the study would have shown there were only 800 on the island. He thought cut it in half and then I think, I don't know if the study broke it down by the areas or not, but that's kinda where it came from. When we did the analysis of the short-term rental home bill the first time around the Department took a look at it from a different perspective. We looked at it as what percentage is it of the inventory of housing. And we've come up some numbers, if you'd like we can provide you information with that it was at that time. I recall that it was under 3 percent of the single family inventory at the time. And that also we found that about 24 percent of properties left vacant. But when we did the study we didn't take that into account. We just looked at if everything were rented out for long term what would the effect be. But if you're interested we can do some more analysis from that perspective.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just as a principle I'm dead set against moratoriums, but in the perspective of what we're talking about I agree with Jack. The process right now is kind of out of control and the situation now I think is different from the situation in 2008. If you walk along the beach you'll find seven families living in tents under the trees because there's no housing and that's a situation that shouldn't be. On the measure that we looked at today, it's perfectly legal. The i's are dotted, the t's are crossed. I was gonna vote against it just out of principle because I felt that the system was out of control. It's not the fault of the applicant. They did everything right. They're following the law. They're within their rights. And you cannot, cannot have your own prejudices about an issue force you to vote against it. This Commission could vote against every single TVR that comes up before us and Michael would be busy 24-hours a day with the lawsuits that would stem from that

and that's not the right way to do. But I think Jack is right. I think the system is cockeyed right now and we need to do something and with that, I would support having a letter sent, a simple letter sent to the Council that said think about this and because we think we're headed down the wrong road.

Chairperson Lay: So the question is who's gonna draft this letter?

Ms. McLean: If I could...I did hear back from our supervising zoning inspector. They estimate that there about 2,500 to 3,000 illegal short-term rental homes. And I asked how many inspectors do you think it would take for us to be effective proactively with enforcement, and I said, 2, 10? And he responded back 10. If I had said 2 or 5 he probably would have said 5, but I gave him the option of 10, and he said 10.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: That's fine.

Ms. McLean: If I could, if you wanna see a draft letter at the next meeting that's fine. The sort of the preamble if you will, the notes that I took would say that feel that are insufficient affordable rentals. There are few new homes being built due at least in part to the Show Me the Water Bill and the prior affordable housing requirement plus with projected growth, just regular natural population growth would put an additional demand on housing inventory. You feel that B&Bs are acceptable because they do have long-term occupancy. There's a concern that a moratorium could make it worse because that would mean even more illegals but overall there is the need for improved enforcement. You'd like to see more enforcement positions budgeted. And that you'd like to...budgeted and devoted to short-term rental enforcement. And you'd like to see the cap reduced or a moratorium established until the inventory is up or until units become available due to enforcement. Was there anything more that needed to be put in there?

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Go back to Corp. Counsel's recommendation which I brought up initially I think there needs to be some sort of time line to make the moratorium effective. I mean, we can make it a number of years whatever we agree to, and then maybe put a clause in there at which point where we'll revisit and look at whatever the saturation whatever point is, but there should be some sort of time line to make this effective.

Mr. Hopper: And then yes, I'd echo that as far as the timeframe. And if the purpose is to allow for certain actions to happen it'd be a good idea to define what specific actions you're talking about. And in addition, this is a...you know, the Planning Commission wears a variety of hats and does a lot of different functions. This would be part of the advising the Council on legislation and planning matters. This is separate from the Commission's function to act as far as hearing contested case hearings and making determinations on specific short-term rentals and bed and breakfast home permits. The Council's given that responsibility in certain cases for the Commission to review specific permits and I think the point was made that when those permits are before you there is a requirement to follow what the criteria are for granting or denying those permits in deciding what to do with those permits. That is a separate function from advising the Council saying I think you should look at changing a law or look at different aspects of the law. That doesn't mean that the

Commission wouldn't have to still follow the current law but can certainly make recommendations and it's part of the Charter function of the Commission to advise the Council on planning and land use issues like this. So I think that that's the hat that the Commission is wearing in this case in sending this letter.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Deputy Director your inspector came back and he gave the number 10. This may be difficult to predict but if you had today 10 inspectors and they did a blitz, how long would it take to get violations to all 2,500 to 3,000 short-term illegal rentals? Could it be in a year?

Ms. McLean: Oh yes within a year.

Ms. Wakida: 'Cause my suggestion is if you plug in a number like 10 that that maybe that could be followed by this would only a short-term appointment in order to accomplish this one goal and then once it's under control that number can be scaled back.

Ms. McLean: Good point.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Yeah, and that I think it would be hard to hire somebody through the County process that way but it may be up to the Council to direct, maybe I don't the Mayor or the Mayor directs, I don't know how directs who over here, but instruct the Director of the Department, look this is your priority and you gotta put 4 of your 5 people or whatever it turns out to be on this one item until it's, I don't know, solved or whatever. I think it would be possible, it be a better way than hiring people on a temporary basis just because it would take too long to do that. You have a Personnel Services, whatever you call it.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: A couple things. I'd like to hear the Deputy's opinion on the path we're traveling right now because I value your opinion. And the second thing is that in terms of a determinant timeframe for the moratorium to last one of the triggers, at least in my head, one of the triggers that makes sense is for each community plan area to adopt the number that they feel comfortable with which is, it can be a very long timeframe depending on how long it takes for us to get through all the community plans. But rather than us deciding here or the Council even deciding amongst nine people each community should decide on what that cap should be whether it's zero additional or 100 additional, but that would be one way of establishing a timeframe if we do have a timeframe for the community plans to get adopted.

Ms. McLean: My opinion on the path that you're taking is I wish you had done it when Will was in this seat and you were reviewing 19.65 several weeks ago. Thank you very much for the opportunity. I think your feedback's very valuable. And when you established, you know, a very legitimate and reasonable basis for wanting to curb this. I, being responsible for the enforcement side, I have to assume some of the blame if you will for the problem being what it is. The Council's hope in establishing this bill was that it would have all the operators coming in to get their permits

and the illegals would stop operating. You know that was the hope. And we've seen that's not the case. There I think initially it was the illegals were pretty quiet and then when enough came in and got permitted it emboldened the illegals because you know there's so many permitted ones out there now, they can operate and people don't really know what's illegal and what's not. So, I don't think it had the desired effect. So you've seen enough of these that you have a good basis for letting them know you're concerned about it. I think writing a letter is a good way to accomplish that and I think it would be meaningful to them. I did do some more work with our enforcement guys to try to narrow down, you know, time frames and personnel and what it might take to really get a handle on it 'cause having it be a short-term project might be a good way to tackle it. We wouldn't...one option might be for it to not be County personnel because that is a very long process to hire people into the Civil Service system but it could be just a contract where we train people, but it's you know, a one-year contract and we train them on what to do, and then we let them work through it. That might be an option.

Vice-Chair Ball: Jack's first on the list.

Ms. McLean: We're gonna deputize you Jack.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Michele, just to add. I don't know if you'll include this comment but I think we're all aware that short-term rentals drive up prices in a neighborhood which is a contributing factor to why local families can't afford to buy those homes in that area because it now becomes a commercial area as well as destroying the residential character of the neighborhood. But I think driving up prices is one of the most destructive things about short-term rentals. You can go to any neighborhood, any working class neighborhood and the homes are now \$600,000 or more. It's just unbelievable.

Chairperson Lay: I think in the past, Commissioner Hedani had mentioned where you have a community where this starts to happen and slowly it starts to spread out, more and more start to happen and it makes it where the local people can't purchase that area because the price has gone far too high for anyone, well, for us local folks. Commissioner Hedani?

Mr. Hedani: One other comment that I had was that I think the existing fine is a \$1,000 but it's each day is an additional violation so in a month it's \$30,000 yeah. I think the vote in the Charter loss because you cannot go from \$1,000 to \$20,000 and have \$600,000 worth of fines per month for something, you know, and at that point government is kind of out of control. But moving from \$1,000 to \$2,500 I think is something that would have passed if it was a Charter amendment that was explained in that manner. And the other question is in the case of transient vacation rental if they have six rentals is that six violations as an interpretation of rules inside of the Charter?

Mr. Hopper: Just as a comment though, the Charter cap would still require the Council to pass an ordinance and then set a limit in that ordinance as it does now. So the Council would still need to pass a law that says the fine for this new law is \$20,000 and that would have to go through all of the public process that all the other laws do. Frankly, there should be no limit in the Charter as far as a fine because the Council can set the limits when it passes each ordinance. If you have a limit in the Charter that says the Council can't do that...well, I mean I suppose there are people can

argue but that was the theory originally was to have no limit in the Charter and then Council changed it \$20,000 and frankly saying to get rid of a proposed limit may have frankly been more successful than saying \$20,000 because that number sticks out to people rather than saying, no limit, limits to be set by Council ordinance. And if the Council was excessive then the law would be voted down and they wouldn't be able to pass the law. But the idea is that the Charter limit of \$1,000 is set from that far back when State Law allow the, you know, the Planning Commission through its rules to have fines of up to \$100,000 initially and \$10,000 per day for SMA violations is a bit...versus \$1,000 for any Council ordinance is an imbalance. I can understand why that did or didn't pass but you know, the Council would have to set that by ordinance and it does. But now every single Council ordinance says \$1,000 at this point is kind of the result. Some of them say \$500, but the vast majority I think, violations are \$1,000 at this time. But I think the point's taken as far as what happened in the election. But that is going to particularly for maybe violations that aren't ongoing or it's difficult to prove the use continuing for every single day you may just have \$1,000 in some of those cases. As soon as the ad comes down, someone maybe tries to argue I didn't operate any more after that. So you'd have to prove the violation was ongoing for that time. It may be easy 'cause you have a calendar or something or it may be harder.

Chairperson Lay: Any more discussion? Commissioner Hedani?

Mr. Hedani: For what it's worth, I think the discussion on the \$1,000 limit is valuable and perhaps a note could be forwarded to the future Charter Commission so they can take it up for consideration when it comes up every ten years I think it is. I served on the Charter Commission. We didn't focus on \$1,000 per se you know, in terms of the depth of the discussion that we had today and I think it would be valuable for them to get a copy of the discussion for consideration.

Ms. McLean: So at the next meeting we'll have a draft letter for you to review and approve or for the Chair's signature perhaps?

Mr. Hopper: Yes, and as an alternative to a moratorium obviously the law could be repealed as well. I mean if you don't think that short-term rental home law is...you know, could be repealed and then reinstated. I mean, no, no, I mean here's the thing. It's not taking...as long as you don't take away a vested right which are people that have applied for permits then that's not going to be a problem. It's not a moratorium on development for example. You're not saying that homes in this area are not allowed to be built. That's the type of moratorium that can lead to, you know, claims and difficulties. You're talking about the right to do a short-term rental home which is not a vested right unless you've applied for a permit or you've received a permit. So you've got a little more flexibility there. It's just with a moratorium generally for a purpose to avoid that turning into a repeal it may be easier just to consider repealing the law just as far as logistics of it because a moratorium to do a certain thing it may be more difficult to define just saying that, I mean, it's a Council law. The Council has the ability to do with it which would it would like and I'm not saying anyone's in favor of that, but I'm saying that is a tool that is available for this specific type of legislation provided that no one who has permits already or that's applying for a permit is affected.

Chairperson Lay: I have one concern on the penalties because for one person the penalty might be devastating. For somebody who doesn't live here at, who's in the mainland and it's just a flick of the wrist to write the check and there's your money. That's the only thing I have a concern about is where the penalty like you said if we go excessive it could be devastating, you know, if they are

breaking the law like that, but we don't wanna ruin these people, and then for the other person it's like that, right? Flick off his shoulder it didn't even matter. So we might wanna address that a little bit more thoroughly on that one. Commissioner Freitas?

Mr. Freitas: Well, on the penalty issue they will be sent warnings, they will be sent cease and desist orders. They will choose whether to continue or not illegally. I think the penalty issue is a moot issue because they're taking all of the steps to give them an opportunity to suspend. And a second note, I'd like to add, or repeal the law.

Chairperson Lay: We're not gonna talk about it now. Commissioner Tsai?

Mr. Tsai: Well, I know Michele there's a little concern, you're sweating—

Ms. McLean: No.

Mr. Tsai: So what is the difference in the process, one, if we repeal. I assume that will go to the Council anyway to repeal a law that's existing. So it's basically waiting for them to approve or not approve.

Mr. Hopper: Well, any of this stuff would have to come back through you, to the Planning Commission, whether it's a moratorium and any changes they make to this law other than the ones you know, were proposed that are up there now for the B&B review would have to go back through the Planning Commission. It have to be something enacted by the legislature. Whether you say it's gonna be moratorium saying this law will not be in effect for I don't know, a year, two years or to say that this law will be...this law is repealed like any other law can be repealed, any of those actions because either one of those...because neither were part of the proposed amendments or really not even dealing with the topic at all of the amendments that were proposed that you already reviewed. Those would have to come back to the Planning Commissions through the regular legislative process and they'd have to be adopted like a land use ordinance. So there be changes to Title 19 that would have to come back through this Commission and that's assuming that the Council even wants to refer or the Department wants to refer an ordinance to that effect. And if that, they don't want to then that's not gonna get referred anyway.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: So when...can we repeal certain clauses? I'm not sure how the short-term rental law is written. I mean it seems to me this is more general, all encompassing repeal?

Mr. Hopper: Whatever the Commission would like to do to a law. I mean, you can propose changes to a law. I mean, that would have to be set forth in an ordinance, Ramseyed so if you wanted to get rid of certain sections you didn't like that is more of what was done in kind of 19.65 and 19.64 changes that came back through this Commission. Those were more of those types of changes where they said, all right this section's not working let's reword this. This one's not working, let's delete it. So that's more of an amendment type thing if you're talking about changing different sections and things. And that is something you guys just reviewed within the last few months and made your comments to Council on. And Council will be taking those up once they're ready to go, I believe. So that's something that did happen and happens from time to time with

legislation. In fact, it had to happen with the B&B and Short-Term Rental Home Laws I think because there was a requirement in those laws for the Council to revisit them in a certain period of time which is arriving now.

Chairperson Lay: Did you get all that?

Mr. Hopper: It comes down to what the Commission wants to do here. I mean, you can talk about the moratorium too. The Council's gonna have to propose something back to you anyway as far as the specific action if it wants to take that type of action. You're going to have to reconsider and have that discussion again. So now you can kind of talk about the letter in principle. You don't have to write the change right now and I don't know if Michele wants to spend her time writing the change a whole new Ramseyered law after the B&B and Short-Term Rental Home Laws have just been...are going through that process right now, so...

Chairperson Lay: Okay, Commissioners. Are we set in our letter?

Mr. Freitas: Yes.

Ms. McLean: I think so. We'll have a draft for you at the next meeting.

Chairperson Lay: At this time, I'll take a break. Come back in ten minutes.

A recess was called at 10:35 a.m., and the meeting was reconvened at 10:48 a.m.

Chairperson Lay: ...come to order. Our next agenda item?

E. ACCEPTANCE OF THE ACTION MINUTES OF THE FEBRUARY 10, 2015 MEETING AND REGULAR MINUTES OF THE DECEMBER 9, 2014 AND JANUARY 13, 2015 MEETINGS

Ms. McLean: Chair, the next item is Acceptance of the Action Minutes of the February 10, 2015 Meeting.

Chairperson Lay: Has everybody had a chance to take a look at it? Any changes.

Mr. Freitas: So move.

Vice-Chair Ball: Second.

Chairperson Lay: Motion to accept by Commissioner Freitas, seconded by Commissioner Ball. Let's have a show of hands of all approve the motion. Those opposed. The motion is carried. Acceptance of our Action Minutes.

ACTION MINUTES OF FEBRUARY 10, 2015

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

**VOTED: To Accept the Action Minutes of the February 10, 2015 Meeting.
(Assenting - J. Freitas, K. Ball, J. Medeiros, M. Tsai, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: Our next agenda item?

Ms. McLean: You also have the acceptance of the Regular Minutes of the December 9, 2014 and January 13, 2015 meetings.

Vice-Chair Ball: So move.

Mr. Freitas: Second.

Chairperson Lay: Motion by Commissioner Ball, seconded by Commissioner Freitas. Can we have a show of hands of acceptance? Those opposed? None. Acceptance of the minutes.

REGULAR MINUTES OF DECEMBER 9, 2014 AND JANUARY 13, 2015

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

**VOTED: To Accept the Regular Minutes of the December 9, 2014 and
January 13, 2015 Meetings.
(Assenting - K. Ball, J. Freitas, J. Medeiros, M. Tsai, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: Our next agenda item.

Ms. McLean: We have two items under Director's Report. The first is from Planning Director notifying the Commission pursuant to Section 12-202-17(e) of your SMA Rules of his intent to process a two-year time extension administratively for Mr. Tae Murphy. Again, this is a two-year time extension on a Special Management Area Use Permit condition to initiate construction of an office building at 40 Halekuai Street, TMK: 3-9-051: 019 in Kihei. And again this is on the agenda for your acknowledgment of the request of the request and you can decide whether to waive your review or review the time extension yourself at a future meeting. And Scott is the Staff Planner.

F. DIRECTOR'S REPORT

- 1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension request administratively:**

MR. TAE MURPHY requesting a two (2)-year time extension on the Special Management Area Use Permit condition in order to initiate construction of the Office Building at 40 Halekuai Street, TMK: 3-9-051: 019, Kihei, Island of Maui. (SM1 2005/0040) (K. Scott)

Mr. Keith Scott: Good morning, Commission. The original use permit was approved for this project November 3, 2009, and a two-year time extension of construction till October 31, 2014 was approved in August of 2012, and October 9th of last year the applicant submitted a request for a two-year time extension. There have been no changes in the Special Management Area that would cause any concerns and in terms of moving this project forward, the project is a 5,000 square foot, two-story office building on a 10,000 square foot lot in the Kihei Business Park. And August Percha, the architect is here to answer any questions you might have about the project.

Chairperson Lay: At this time, I'm gonna ask for public testimony. If anyone wishes to testify please step forward, identify yourself and you have three minutes. Seeing no one, public testimony is closed. Commissioners, any questions? Seeing no question...

Vice-Chair Ball: Why was it-

Chairperson Lay: This is acknowledgment.

Mr. Tsai: And waive review.

Vice-Chair Ball: Why are we extending this? Applicant, question?

Chairperson Lay: Yes, please step up to the mic and identify yourself.

Mr. August Percha: Good morning, my name is August Percha. I'm the project architect. We're asking for an extension 'cause we're in the process of processing our building permit application. It takes a lot of time these days.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Is the funding in place to go ahead?

Mr. Percha: Yes. We're anxious and we pray for an extension. I believe we can wrap it up this year, get underway.

Chairperson Lay: Commissioners, any more questions? Can we get the Department's recommendation on this?

Ms. McLean: The Department's recommendation is to waive review.

Mr. Freitas: So move.

Vice-Chair Ball: Second.

Chairperson Lay: Motion by Commissioner Freitas, seconded by Commissioner Ball. Any discussion on the motion? None. Call for the vote. All those in favor?

Ms. McLean: Eight ayes.

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

**VOTED: To Acknowledge Receipt of the Request and Waive Review of the Time Extension Request.
(Assenting - J. Freitas, K. Ball, J. Medeiros, M. Tsai, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

Ms. McLean: The next item under Director's Report is notification of the issuance of two Special Management Area Emergency Permits. Both of these relate to the Papakea project in Lahaina. These were emergency permits to temporarily fill cavities formed in the rear yard behind an existing seawall. The property's located at 3543 Lower Honoapiilani Road, at TMK: 4-4-001:055 in Lahaina. Again these are two SMA Emergency Permits that were issued within just a few days of each other. Keith Scott again is the Staff Planner.

- 2. Notification of the Issuance of the following Special Management Area (SMA) Emergency Permits:**
 - a. January 29, 2015-approval letter to MR. FRANK RICE of ALLANA BUICK & BERS on behalf of the PAPAKEA AOA for a Special Management Area Emergency Permit to temporarily fill large cavities formed in the rear yard behind an existing seawall at the Papakea Condominium, 3543 Lower Honoapiilani Road, TMK: 4-4-001: 055, Lahaina, Island of Maui. (SM3 2015/0002) (SSA 2015/0007) (K. Scott)**
 - b. February 6, 2015-approval letter to MR. FRANK RICE of ALLANA BUICK & BERS, INC. on behalf of the PAPAKEA AOA for a Special Management Area Emergency Permit to temporarily fill additional large cavities that have recently formed in the rear yard behind an existing seawall at the Papakea Condominium, 3543 Lower Honoapiilani Road, TMK: 4 4-001: 055, Lahaina, Island of Maui. (SM2 2015/0003) (SSA 2015/0008) (K. Scott)**

Mr. Keith Scott: There were two permits issued because there was work done prior to actually getting permits. So the first permit that was issued was an after-the-fact permit. And then they discovered that there were two additional holes or cavities that formed after the Kona storm we had in January and we issued a second emergency permit for those two to be taken care of. I have more detailed information to pass out if you're interested. Other than that, that's all I have to report.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: And this is a temporary fix?

Mr. Scott: That's correct. All this does is it fills the holes for the time being. They are required to come back to us within another 30 days with an assessment of the entire seawall. What are the weaknesses, what needs to be taken care of and they are required within a 180 days of the permit being issued to come back with an application for a permit for the permanent...for a more

permanent solution.

Vice-Chair Ball: Follow up to that?

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: And so what kind of...is this a seawall with concrete or is it just rocks piled up?

Mr. Scott: It's rock and concrete.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Scott, do you know when this seawall was originally built?

Mr. Scott: I believe this one was built at the time that the condominium complex was built so it be in the 70's.

Chairperson Lay: Commissioners, any more questions?

Vice-Chair Ball: Are we taking these together or separately?

Chairperson Lay: It's just for notification.

Ms. McLean: There's no action to be taken. Just notification has been given.

3. SMA Minor Permit Report (Appendix A)

4. SMA Exemption Report (Appendix B)

Ms. McLean: The next items under Director's Report are the SMA Minor and Exemption Reports.

Chairperson Lay: Any questions?

Vice-Chair Ball: I have a question on this first one on the Minor. ...(inaudible)...they're doing it like a shower I guess. This doesn't come to us because it's too small in scope or too far away?

Ms. McLean: No, this would be an SMA Minor which means that first of all it's not Exempt. So if there's a project in the SMA that is not exempt. It's either Minor or a Major and that's determined by valuation, and it's half a million dollars is the threshold.

Chairperson Lay: Any more questions?

5. Discussion of Future Maui Planning Commission Agendas

a. March 10, 2015 meeting agenda items

Ms. McLean: The next item is Discussion of Future Planning Commission Agendas. You have your memorandum from Mr. Yoshida. Right now it looks like we just have three Communication items. Two of them I hope, since Will will be back, I hope it has as much lively discussion from Commissioner Wakida's request as Commissioner Freitas request had today.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Will the Department be providing the communications again on this?

Ms. McLean: In the packets?

Ms. Wakida: Yeah.

Ms. McLean: Sending them out again, sure we can.

Ms. Wakida: Because this, my request was just following up with Kihei Community Association's request. And the...(inaudible)...

Ms. McLean: Right, we'll have those letters.

Ms. Wakida: Yeah, so I don't personally have a you know, position on these. Just that I wanted them on the agenda.

Ms. McLean: Okay.

Chairperson Lay: Any more questions, Commissioners? Motion to adjourn?
Commissioner Medeiros?

Mr. Medeiros: I just wanted to acknowledge these two guys because not only do they work hard, I consider them to be my friends and I going miss them. Jack going be crying after the meeting so you know everybody can pat 'em on the back. But I'll wait until next month.

Chairperson Lay: If there's nothing else, a motion to adjourn?

Mr. Medeiros: So move.

Chairperson Lay: ...(gavel)...

G. NEXT REGULAR MEETING DATE: March 10, 2015

H. ADJOURNMENT

The meeting was adjourned at approximately 10:58 a.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Keone Ball, Vice-Chair
Sandy Duvauchelle
Jack Freitas
Wayne Hedani
Richard Higashi
Ivan Lay, Chair
Jason Medeiros
Max Tsai
Penny Wakida

Others

Michele McLean, Deputy Director, Planning Department
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)