

**PLANNING COMMITTEE**  
**Council of the County of Maui**

**M I N U T E S**

**Council Chamber**

**August 6, 2015**

**CONVENE: 9:01 a.m.**

**PRESENT:** VOTING MEMBERS:  
Councilmember Don Couch, Chair  
Councilmember Robert Carroll, Vice-Chair  
Councilmember Gladys C. Baisa  
Councilmember Elle Cochran (arrived at 9:23 a.m.)  
Councilmember Don S. Guzman  
Councilmember Mike White (arrived at 9:03 a.m.; excused from  
11:00 a.m. through 11:04 a.m.; and left at 11:43 a.m.)

**EXCUSED:** Councilmember Michael P. Victorino

**STAFF:** Jordan Molina, Legislative Analyst  
Greg Garneau, 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 J. Hopper, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
William Spence, Director, Department of Planning  
Simone Bosco, Senior Planner, Department of Planning (Item 17)  
Joseph Alueta, Administrative Planning Officer, Department of  
Planning (Item 28 & 16)

**OTHERS:** David DeLeon  
Michael Atherton  
Thomas Croly  
Stan Franco  
Sananda Baz, Budget Director, Office of the Mayor  
Plus (8) other people

**PRESS:** *Akaku Maui Community Television, Inc.*

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CHAIR COUCH: . . . (*gavel*) . . . Will the Planning Committee meeting of August 6, 2015 please come to order. My name is Don Couch. I'm the Chair of this Committee. And before we get going I would everybody in the room to please turn off their phones or at least silence them or any other noise-making devices. 'Cause if it goes off we'll ask you who was on the phone and make sure everything is okay before we continue. Okay. Today we have with us Robert Carroll who is the Vice-Chair. Good morning.

VICE-CHAIR CARROLL: Good morning, Chair.

CHAIR COUCH: Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: Good morning. Excused is, for now, is Elle Cochran. And Member Guzman, good morning.

COUNCILMEMBER GUZMAN: Good morning.

CHAIR COUCH: And excused is Mike Victorino, and Chair White is on his way up here so he'll be here shortly. With us from the Planning Department, Will Spence will be here but right now we have Simone Bosco who is a...I don't know what your new title is.

MS. BOSCO: I'm Senior Planner, sir.

CHAIR COUCH: Senior Planner. Okay. Great.

MS. BOSCO: Good morning.

CHAIR COUCH: And we have Corporation Counsel, Mr. Hopper.

MR. HOPPER: Good morning, Chair.

CHAIR COUCH: Good morning. And we have our new Analyst Greg Garneau who is sitting in the hot seat over there. Good morning.

MR. GARNEAU: Good morning, Chair.

CHAIR COUCH: And we have Jordan Molina who is waking up the coffee machine in the back. He'll be here. And Committee Secretary Pauline Martins. Good morning. Alright. Members, today's agenda items are PC-17 which is Amending the Maui Island Plan Implementation Program. PC-28 Amending the Comprehensive Zoning Ordinance to Establish Affordable Accessory Dwellings as a Permitted Use in the Residential Zoning District, and PC-16 Amending the Comprehensive Zoning Ordinance Relating to Wet Bars in Dwelling Units. We will be accepting testimony shortly. For anybody willing to testify in the Chamber please sign up at the desk

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outside of the Chamber door. If you're testifying from the remote testimony site please sign up with the District Office Staff. Testimony will be limited to the items that I just listed on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. The Chair will also be allowing an additional minute to conclude testimony. When testifying please state your name and any organization you may be representing. And I want to welcome Council Chair Mike White. Good morning.

COUNCILMEMBER WHITE: Good morning, Chair

CHAIR COUCH: Okay. We'll start with the folks here in the Chamber. There's, I have three people currently signed up to testify. It looks like there might be a fourth in the back. So, first to testify is Dave DeLeon, followed by Michael Atherton.

**. . . BEGIN PUBLIC TESTIMONY . . .**

MR. DeLEON: Good morning and aloha.

UNIDENTIFIED SPEAKER: Good morning.

MR. DeLEON: I'm Dave DeLeon speaking on behalf of the REALTORS® Association of Maui in support of the intent of Councilmember Bob Carroll's proposal to lower the threshold for ohana dwellings to 5,000 square feet. I'm speaking as an officially registered lobbyist. Recognizing our community is now in a housing crisis RAM has been diligently studying the barriers to affordable housing development in Maui County looking for solutions. RAM supports this proposal because it includes a number of triggers RAM believes that are necessary to address our housing shortfall. Those triggers include adding density to existing communities, encouraging private sector development, and government entitlement. Economists tell us there are three basic costs to housing development: land, infrastructure, and entitlement. A major reason for our housing shortfall is our restrictive entitlement system. This measure moves us in the right direction on that score. This proposal does that by effectively up-zoning existing developed land allowing for more density. RAM believes this concept should be used more broadly. Another approach would be to up-zone existing older communities where space and infrastructure is adequate to allow for duplexes, quadplexes, and walkup apartments. The idea is to empower private property owners to build desperately needed rentals in communities that are in need of redevelopment in any case. We all know this process has been happening in Kahului, North Kihei, and \_\_\_\_\_ for at least a generation anyway. So why not up-zone these communities to A-1 Apartment to match the use and get more housing built? That's radical thinking, we understand that but if we do not want to see Maui wrapped in blue tarp homeless encampments like Oahu is we're going to have to get out of our collective comfort zones. The Maui Island Plan says we need 30,000 more dwellings by 2030. DBEDT study on housing says we need an additional 14,000 units by 2025. Last year there was 7,000 marriage certificates issued in Maui County but only 300 residential

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building permits. We are clearly not going to close the housing gap by following the same pattern. While RAM supports Mr. Carroll's concept, RAM also believes that the restrictions it imposes are counterproductive. It is agreed that these properties should never be used as vacation rentals but the concept will only work if it will pencil out. If the allowable rent does not cover the cost of building the unit it won't be built. If the requirements are too steep for the paperwork, it's already difficult enough to get a Building Permit in Maui County again they won't be built legally. All the economists tell us the same thing it's supply and demand. If you restrict supply, the cost goes up. If you flood the market, the cost goes down. If we're going to address the housing shortage we're going to have to build a lot more homes. Mahalo.

CHAIR COUCH: Thank you, Mr. DeLeon. Members, any questions to the testifier? I have one. You mentioned that the restrictions, I'm assuming you're talking about the restrictions of, only at the HUD...hold on for a second...there you go.

MR. DeLEON: I'm being beeped out of existence.

CHAIR COUCH: Yes, I know. At the HUD rate?

MR. DeLEON: Yeah.

CHAIR COUCH: Is that the restriction you're talking about?

MR. DeLEON: Yeah, I'm not trying to dice out the actual numbers of what it costs to build a house but I'm saying if you make it too expensive, I mean if you don't give enough income to return the cost of building a new residence people aren't going to do it. I mean it's going to have to make economic sense. If you want this to happen it has to be able to make economic sense. So, I know this is early in the game. This is going to the Planning Commissions and it's going to be diced and dissected along the way. But I just wanted to raise that reality that if you...so this is allowing for more entitlement but at the same time it's, you know, it's going the other direction and being very restrictive. So be careful of that restriction. And we believe that if you build the houses you're going to end up with the right people in there anyway because the people that are going want a 4,000...a 400 square foot unit on a 5,000 square foot lot are not going to be your Wailea types.

CHAIR COUCH: Understood. You hear stories about people who have containers out there or something like that that are because the rents are so high that they're charging astronomical rates. I think...do you think that some sort of restriction should be put on the cost of the rent so that. . .(inaudible). . .

MR. DeLEON: Supply and demand. Build more houses you're going to get lower rates.

CHAIR COUCH: Okay. Members, any other questions?

MR. DeLEON: I'd like to, you know, speak very briefly on 16 as well.

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CHAIR COUCH: Sure.

MR. DeLEON: I can totally commiserate with what the Department is trying to do and the need to make that existing law work cleaner and to, you know, to handle the guys that are playing games for vacation rentals and such. But again we are running into a housing shortage. We are in a housing shortage and we're going to want to see some homes in the existing Residential Districts go with more density. For that to work they're going to have to have kitchens or at least wet bars or whatever you want to call 'em. People need to be able to cook their food someplace outside of the bathroom where the sink is. So that's just a reality that we're going to be facing if we really don't want to end up like Oahu. Mahalo.

CHAIR COUCH: Okay. Members, any further questions of the testifier? Seeing none, thank you, Mr. DeLeon.

MR. DeLEON: Thank you.

CHAIR COUCH: Next up we have Michael Atherton, followed by Thomas Croly.

MR. ATHERTON: Thank you, Chair. Councilmembers, I'm Michael Atherton from Waikapu, 1670 Honoapiilani Highway. And I'm here today as a developer of Waikapu Country Town to offer support for Bob Carroll's proposal to lower the lot requirement to 5,000 square feet. We're currently looking into a proposal where we would have a single-family plan. The majority of our lots are 6,000 square feet and larger so we have probably 80 percent of our lots are 6,000 square foot. So, we would have a plan that we would pour the foundation and have the foundation for the ohana unit, and encourage the buyer to build the ohana unit later and create more affordability. The supplemental income helps. And I agree with that there should be some types of restrictions and make sure that it works for both people, the County and the homeowner, and the neighborhood. Any questions?

CHAIR COUCH: Thank you, Mr. Atherton. Members, any questions to the testifier? I have one or two.

MR. ATHERTON: Oh, you do?

CHAIR COUCH: Yeah, sure. You talk about...yours are about 6,000 square feet you said?

MR. ATHERTON: Right. The lion's share of the lots on the makai side of the highway are 6,000 square feet.

CHAIR COUCH: Okay. In a 6,000-square-foot lot would it be more desirable to consider an attached unit as opposed to a detached unit?

MR. ATHERTON: It would be, yes. It would be better to have an attached unit.

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CHAIR COUCH: Okay.

MR. ATHERTON: And then you have a single-story which has a bigger footprint than a two-story.

CHAIR COUCH: Right.

MR. ATHERTON: So, sometimes, you know, in your ohana units you tend to go two-story on the primary residence and then you have an attached ohana.

CHAIR COUCH: Okay. Thank you.

MR. ATHERTON: Okay. You bet.

CHAIR COUCH: Members, any further questions? Seeing none, thank you. Next up we have Thomas Croly, followed by Stan Franco.

MR. CROLY: Aloha, Chair. Aloha, Committee. Thomas Croly speaking on my own behalf today. No one is paying me to be here. I submitted some written testimony and I hope that you got it, this one with the picture on it. It looks like maybe you didn't. I did it because I know as an experienced testifier that when something goes this long I'm not going to be able to get it all in in three minutes. But the first issue that I'd like to address is this issue of wet bars and it seems a rather simple thing. We're just defining what a wet bar is in Code. But in the bigger picture what we're doing is we're defining what a kitchen is not. Okay. And I understand very clearly that the difficulty that the Department has in evaluating what's legal and what's not. I showed in this example a picture of something that recently was built, recently was permitted, and signed off on 100 percent. If you look at this picture it's a kitchen. Okay. But the 220 outlet was listed as a kiln and the bar sink grew into a full-size sink. And the only thing when we're all done that actually is out of compliance with this kitchen is that it has a stove in it. Okay. Now, I think anyone in the know knows that when someone gets called out on one of these calls that says there's an extra kitchen in this house the person wheels that stove into the garage and then the inspector comes and there's no kitchen, there's no violation. So, I completely understand, you know, what they're trying to do here with the definition of wet bar. However, I don't think that what's being proposed will solve the problem. And you have three problems. Problem number one is when someone is building a new dwelling and someone is reviewing the plans, how do they review the plans and make sure that the wet bar is a wet bar and that, you know, they're not really building a second dwelling in here and that kind of thing? Problem number two is when someone gets called out on a multi-dwelling situation, which we all know exists throughout Maui, where single-family homes have been split up into multiple dwellings, and they look for that second kitchen. And someone says this isn't a kitchen 'cause it doesn't have a stove, it's a wet bar. And then problem number three, and this was probably the one that prompted it, were some entrepreneurial vacation rental owners who basically built full out kitchens

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lacking a stove. Some of them, you know, decked out with 60 or 80 square feet of granite countertop and so forth but they used this workaround of there's no stove and here you go. Again, I don't think that this definition solves any of those problems really well. I'll give you an example. Who doesn't have an extra refrigerator somewhere in their house? My extra refrigerator is in my office, okay, and that's my beverage refrigerator. Somebody has their extra refrigerator in their living room and there you go. So, limiting the size of a refrigerator I don't think solves the problem. Also, addressing appliances that you would put on a countertop and plug in, I don't know how you enforce that. Someone takes away that thing, you come in, there's no violation they put it back. So, I completely concur with the intent here and I think we need to do something but I don't think that this definition of wet bar solves the definition of kitchen enough to say what is an extra dwelling and what's not. Again, it doesn't look like you got my testimony. Hopefully you will get that testimony and be able to digest everything that's in it. Chair, if I can move on to PC-28?

CHAIR COUCH: Sure.

MR. CROLY: Unless people have questions on ...

CHAIR COUCH: No, we'll get questions at the end.

MR. CROLY: Yeah. Yeah. Okay. On PC-28 these two things kind of relate in a big way. Okay. On...as was already discussed and I wanted to say about PC-28 perhaps attached ohana units make more sense on these smaller lots than detached ohana units. And in a case like Mr. Atherton just talked about where we're developing something from scratch, well then you've got a lot more flexibility. But when you take a house on a 5,000 square foot lot that's already existing and now try to cram in something else I think you're going to have a lot of disappointed people who can't figure out any way that they can add that extra dwelling to their existing lot. So, the idea of attached kind of feeds right into this wet bar issue. When someone has now taken a garage for example and they've finished out that garage and now there's a wet bar in that garage. Well, we currently sometimes have some difficulty permitting that and opening up the door to being able to permit that and that wet bar/kitchen in the garage can be made legal. Again I think that's a good idea. But these two things relate in a big way because an awful lot of our affordable housing, okay, that's on Maui right now, affordable rentals I should say, are these folks using these "wet bars" as their kitchens. And again I don't want to create a situation where someone is going to potentially lose their rental because now with this definition their existing wet bar/kitchen is no longer conforming and someone can say you have to take it out, and what problem have we solved there? So, again these two things relate in a big way. I know the big concern of trying to get rid of these really kitchens that are getting through the permitting process as wet bars.

CHAIR COUCH: Mr. Croly, let's stick with 28.

MR. CROLY: Yeah, yeah. Keep them separate.

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CHAIR COUCH: Okay.

MR. CROLY: Thank you. Thank you. So that's all.

CHAIR COUCH: Okay. Members, any questions to the testifier? Seeing none, it sounds like on 28 you're okay with it just we have to be careful with what's going on with the wet bar.

MR. CROLY: It needs full vetting. It needs discussion of what the parking, how the parking requirements would be --

CHAIR COUCH: Right.

MR. CROLY: --set. And I am concerned about existing folks who say great now I can do this but then they find out, they go forward and find out well because of the setbacks and because of the parking requirements you can't get that. I don't want to set these folks up for disappointment.

CHAIR COUCH: Okay. Thank you. Members...thank you, Mr. Croly. Next up is Stan Franco. And Mr. Franco for now is the last person to sign up to testify. It looks like one more has come up and we'll go to the, after Mr. Franco we actually will go to the District Offices.

MR. FRANCO: Good morning.

CHAIR COUCH: Good morning.

MR. FRANCO: Councilman Couch and Members of the Planning Committee, I'm glad to be here. My name is Stan Franco. I am the co-chair of the FACE Maui Housing Committee. We believe that the affordable housing is the biggest problem facing Maui County. So we support this proposal to allow ohana units on 500-square-foot [sic] lots. There may be objections that this allows overcrowding in residential communities. Families are currently struggling when their loved ones cannot afford to rent or buy housing and ask them to move in. So we have kids moving in with mom and dad or grandkids moving in with grandma and grandpa. This will allow families to make room for their family members who cannot afford to rent or buy because of our high housing costs. We all have been talking about finding multiple approaches to affordable housing for our people. Developers have complained that developing vacant land is too costly and therefore they cannot build affordable housing because it does not pencil out. So allowing the building of ohana units on 500, 5,000-square-foot lots on already developed properties is one of the solutions for the affordable housing problem in Maui County. My question is why should we not take this step for our people? Thank you.

*[Note: Councilmember Guzman's cellphone rang.]*



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CHAIR COUCH: Thank you. You got that one? I told you we'd bring it up. Do you need to go out and take the call?

COUNCILMEMBER GUZMAN: No, no.

CHAIR COUCH: Thanks. Thank you, Mr. Franco. Members, any questions to the testifier? Seeing none, alright. Thank you. Alright. Let's go to the Hana District Office.

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

CHAIR COUCH: Okay. Molokai District Office.

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

CHAIR COUCH: Thank you. And the Lanai District Office.

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

CHAIR COUCH: Okay. Thank you. And we have one more person who has come up to testify. Let me see if I can pronounce this correctly, Sandy Baz.

MR. BAZ: Good morning, Mr. Chair and Members. My name Sandy Baz. I am the Budget Director for the County but I'm here individually speaking on my own behalf. And I don't...you don't see me down here very often but this topic especially PC-28 is incredibly important. The ability for us to have affordable housing that people can live in that's adequate is something that, you know, in my prior role as the head of MEO, we dealt with on a regular basis. And working with the Maui Nui Housing Task Force and all those efforts, this adoption of the ability to provide accessory dwellings on 5,000-square-foot lots I think is a wonderful idea. I think the Code 19.35 which allows for accessory dwellings was developed quite a long time ago. I think Maui is ready for higher density in currently developed areas like Kahului. I live in Kahului and it is a big benefit to have affordable, I mean, affordable rentals for, you know, rentals but also for family. You know we live on family property so it makes it so that's it's a big benefit to us to be able to support each other there in having these accessory dwellings. I also believe that maybe 19.35 should be changed a little bit to allow for larger accessory dwellings on especially larger properties. If you have a 7,500-square-foot lot, that's a pretty large lot and I think a 800-square-foot house on a 7,500-square-foot lot is not that big of a challenge. And I mean you still have square footage requirements as far as coverage of the total lot and I think that's important but maybe having a 800-square foot-house on a 7,500-square-foot lot, and 10,000 and above maybe having a 1,000-square-foot property. I think those are reasonable amounts. And make it so that a family can actually live and grow on that same

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property without having to be restricted and kicked out or living in these little 500-square-foot houses. I know I use to live in 500-square-foot house. I know what that's like and it's really, really small, and we had 4 of us in a 500-square-foot house and it was just way too small. And so I would encourage you to send to the Planning Commission a request maybe to look at larger accessory dwellings on these type of lots as well. So that's my testimony and I thank you for reviewing this, Mr. Chair, and bringing this up in your Committee and I look forward to future discussion on this as well. Thank you.

CHAIR COUCH: Thank you, Mr. Baz. Members, any questions to the testifier? I have a question on the 800 and the 1,000 square foot. This is...your basically, intent to allow for families to stay there longer if necessary?

MR. BAZ: Yeah. If you have a current family living in a house and in Kahului and, you know, you get one of the kids growing up to have their own family and then having their own kids then, you know, restricting that size of house on a lot...I can understand a total coverage area of the property because you don't want a 5,000-square-foot home and a 1,000-square-foot accessory dwelling on the same property. But if you have maybe, you know, a 1,500-square-foot home and a 1,000-square-foot home on a 10,000-square-foot lot that's still not very much coverage on that property and you still can have 2 actual housing units that our residents can live in. And, you know, it's all about smart growth too. To retroactively allow these Residential zoning lots to have...smaller lots to have units and larger lots to have larger units it's also increasing the ability for us to have people where the infrastructure is. And so from my Budget Director's hat I'm saying it's going to cost us less money than the sprawl that we sometimes see now.

CHAIR COUCH: And then the other question. Ms. Baisa, do you have a question for him?

COUNCILMEMBER BAISA: I have a question but --

CHAIR COUCH: Go ahead.

COUNCILMEMBER BAISA: --it's for later. Thank you.

CHAIR COUCH: Oh, okay. The other question I would have. You did mention infrastructure. That has always been "the concern" is that we may or may not have enough capacity for water or sewer for more families, bigger, you know, bigger density. What's your...as Budget Director or?

MR. BAZ: Well, you know, we'd have to analyze every single road and see to that capacities, but if you look at in Kahului you drive down the roads now you'll see that there are quite a few people living in those properties now. So I think what this is doing is just making it so that it becomes a legal, you know, living area that's conforming to our laws which we want people to conform to our laws.

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CHAIR COUCH: Okay. Members, any questions? Seeing none, thank you.

MR. BAZ: Thank you.

CHAIR COUCH: Anybody else wishing to testify? Going once, going twice. Okay. Members, seeing nobody coming up wanting to testify and nobody in the District Offices that are there to testify, without objections, we'll close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: Okay. Public testimony is closed.

**. . . END OF PUBLIC TESTIMONY . . .**

CHAIR COUCH: Okay. Let's get these guys.

*[Note: A cellphone in the gallery rang.]*

CHAIR COUCH: Uh-oh.

COUNCILMEMBER BAISA: . . .*(inaudible)*. . . alive

CHAIR COUCH: Just another reminder please turn off of your cell phones. If you think it's off double check.

**PC-17 AMENDING THE MAUI ISLAND PLAN IMPLEMENTATION PROGRAM**  
**(CC 15-79)**

CHAIR COUCH: Okay. Members, first up is going to be PC-17. Now, PC-17 is we're in receipt of County Communication 15-79, from the Planning Director, transmitting comments in response to Resolution 14-97 referring to the Maui Planning Commission a proposed bill to amend the Maui Island Plan Implementation Program by identifying alternative and existing revenue sources to support infrastructure improvements. You also have a correspondence dated July 30<sup>th</sup>, from me, transmitting a proposed bill entitled A Bill for an Ordinance Amending the Maui Island Plan Implementation Program. The purpose of the proposed bill is to amend the Maui Island Plan Implementation Program by identifying alternative and existing revenue sources to support infrastructure improvements. Members, we took this up last term I believe and sent it out to the Planning Commission. They took a look at it and if you look in your Planning Commission minutes it might have been a three-minute meeting. They liked it and they sent it right back to us. So, this is the final thing for the Maui Island Plan. Ms. Baisa took two years to get to us and get it passed and we had a couple other little things hanging and this is it. So, with that we will open the, we'll talk to

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the Department, Ms. Bosco. I want to recognize that Mr. Spence is here and recognize Member Cochran. Good morning.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR COUCH: Alright. Mister...actually, Ms. Bosco or Mr. Spence, who wants to do it?

MR. SPENCE: Thank you, Mr. Chairman. This is one of those items we did as you said with regards to the Maui Island Plan. And in the idea of simplifying that plan a little bit and making it not over really burdensome that table was removed. The Committee thought maybe we should put it back and, you know, to me it's six and one half dozen of the other. It lists out some alternatives for financing but it doesn't have a requirement that you use them. So it's more of a reference table and it's fine to go back in.

CHAIR COUCH: Okay. Corp. Counsel, do you have any comments?

MR. HOPPER: No, Mr. Chair.

CHAIR COUCH: Okay. Members, any questions? I think everybody was here for that term so we know what we sent and it doesn't look like it's changed. In fact, the minutes show that it's exactly what we sent down. So, if I see, if nobody has any questions or comments I'm open for a recommendation. You guys want a recommendation?

COUNCILMEMBER BAISA: Recommendation, Chair, please.

CHAIR COUCH: Okay. Thank you. I'll entertain a motion to recommend passage on first reading of the proposed bill entitled A Bill for an Ordinance Amending the Maui Island Implementation Program; incorporating any non-substantive revisions and filing of County Communication 15-79.

VICE-CHAIR CARROLL: So moved.

COUNCILMEMBER BAISA: Mr. Chair, I second the motion.

CHAIR COUCH: Thank you. So, it's been moved by Member Carroll and seconded by Member Baisa. Is there any comments? I just want to say thanks to the Department to getting this back to us. And, Ms. Baisa, this is it. This is the last part. Now everything is going to be revisions but this is it. So, yes, Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair, but I don't deserve the kudos. You were my Vice-Chair and did a yeoman's job at helping me move the issues. And I think all of the Council worked very, very hard. We spent hours and hours and hours as well as the community. And so this is one of those it takes a village to get it out of here. So, I'm very, very happy to vote in favor of this today. Thank you.

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CHAIR COUCH: Thank you. Members, any further comment? Hearing none, all those in favor say "aye"?

COUNCILMEMBERS VOICED AYE.

CHAIR COUCH: All those opposed? Motion carries. One, two, three, four, five...six "ayes," zero "noes," and one excused.

**VOTE: AYES: Chair Couch, Vice-Chair Carroll, Councilmembers Baisa, Cochran, Guzman and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Victorino.**

**MOTION CARRIED.**

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

CHAIR COUCH: Thank you, Members. Thank you, Ms. Bosco, that we didn't get to hear from you but thank you for being here.

**PC-28 AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO ESTABLISH AFFORDABLE ACCESSORY DWELLINGS AS A PERMITTED USE IN THE RESIDENTIAL ZONING DISTRICT (CC 15-196)**

CHAIR COUCH: Okay. Members, on to our next item. Item PC-28, the Committee is in receipt of County Communication 15-196, from Councilmember Robert Carroll, transmitting a proposed resolution entitled Referring to the Lanai, Maui, and Molokai Planning Commissions Draft Bills Amending Chapters 19.08 and 19.35, Maui County Code, Relating to Residential Districts and Accessory Dwellings Respectively. The purpose of the proposed resolution is to refer to the Planning Commission the following: (1) a proposed bill entitled A Bill for an Ordinance Amending Chapter 19.08, Maui County Code, Relating to the Residential Districts; and (2) a proposed bill entitled A Bill for an Ordinance Amending Chapter 19.35, Maui County Code, Relating to Accessory Dwellings. Members, before we get started I wanted to point out that I have passed out, Staff has worked on, and we have passed out...basically what we've done is we've combined the two bills that I just mentioned into one because there are

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logistic issues, et cetera, if we had 'em in two separate bills. What if one passed and the other one didn't and all kinds of things. So, what we did, what Staff did in, you know, consultation with Mr. Carroll, we combined the bills into one bill and we changed the resolution into, to just note that we have just the one bill as opposed to the two. So, if everybody got this, I'm sure everybody has this, we'll be working off that today with, if there's no objection.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: Okay. Good. And also, we should have passed out just for your information, Chapter 19.35 Accessory Dwellings. This is the Maui County Code for your reference if you need to take a look at it. You should have that. Do we not? Oh, we didn't pass it out.

MR. MOLINA: Mr. Chair? Thank you.

CHAIR COUCH: Yeah.

MR. MOLINA: We did not pass that out; however, the revised proposed bill that you distribute today completely goes through the entire Chapter 19.35.

CHAIR COUCH: Oh, right.

MR. MOLINA: So, the entire Chapter is able to be referenced through the bill.

CHAIR COUCH: Through the bill. Okay. Great. Thank you. Thank you, Mr. Molina. Okay. So, before we get started with the Department let's talk to Mr. Carroll since he's the one that introduced this bill. Mr. Carroll, you have the floor.

VICE-CHAIR CARROLL: Thank you, Chair. The intent of this proposed bill is to allow owners of real property with 5,000 to 5,499 square feet to build accessory dwellings for the purpose of providing affordable housing. There's no doubt that we need this housing. Jo-Ann Ridaio noted to me before her departure that only 43 percent of families with Section 8 vouchers can find dwelling units to live in. We have thousands of families waiting on a list for affordable housing. The County typically relies on developers and nonprofits to create the housing. Even though we have obtained affordable housing from these entities it is not nearly enough. Many communities using accessory dwellings to supply affordable housing; San Antonio, Seattle, Minneapolis, Vancouver, Austin, Santa Cruz, San Francisco have all adjusted their land use requirements to accommodate more affordable housing. San Antonio states in their municipal code that accessory dwellings have become an important method to permit families to remain in their homes while at the same time providing affordable housing for the elderly, single-person households and students, and other needy populations. Seattle's Guide to Building Backyard Cottages notes that backyard cottages can create attractive affordable rental opportunities for Seattle residents. I believe we have to create various options. There's no one answer to the affordable

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housing crisis. It has worked in other communities. I hope we can give it a chance here for our families. I'd request that we don't...we keep focused on what we have to do. This is an opportunity to make a difference. Me and my staff have worked extensively on this and the Chair's Staff, Mr. Couch's staff, and him have also done extensive research on this. And I hope between us that we can answer any questions that the Members might have here today. Thank you, Mr. Couch.

CHAIR COUCH: Thank you, Mr. Carroll. Planning Department, having looked at this any comments?

MR. SPENCE: Yes. Thank you, Mr. Chairman. We are in support of this with...we're going to propose some changes to the actual wording just from an administrative point of view to clarify some things so we can make it, you know, clear for us to be able to administer. I don't know if you want to go...I wouldn't think you would want to go into it quite yet. I appreciate some of the testimony that's been brought forth today. The, you know, maybe we should be revisiting some of the square footages on all the properties and we can go from there. We did have some questions about, you know, availability of infrastructure. For instance when we start getting into 5,000 and 6,000-square-foot lots some of those areas are not sewered in Maui County. If we're going to add density, you know, there's a concern about being able to accommodate wastewater, those kinds of things. But, you know, those are pretty easily worked out I think. Also this morning I have with me Joe Alueta. It seems to me this concept came up in 2010 and we did some analysis for the Council at that time and he's here to answer any questions on how those studies came out.

CHAIR COUCH: Okay. Good morning, Mr. Alueta. I'll remind the Members, I think everybody was on this Committee last, I think it was last term, it might have been two terms ago, that we did have a bill from former Councilmember Molina and it was asking that we allow 6, ohana units on 6,000 square foot or higher lots. And we did not pass that out. We filed that one because there were concerns about infrastructure, et cetera, but also there were no restrictions on who they can rent to. So, this bill differs in that it sets the lot limit down to 5,000 square feet and there are restrictions on how, who you can rent to on those lower limits. So just to remind everybody that this subject has come up before and I think that's what Mr. Spence was referring. So, I guess we'll open up the floor to discussion. Anybody? Ms. Baisa?

COUNCILMEMBER BAISA: Okay. Well, I'm happy that we're here discussing this and I'm trying to keep in mind that what we're doing here today is to decide whether or not we want to forward this to Planning Commissions which I think is appropriate. You know the whole issue of affordable housing as we all know is on our minds. It's just out there constantly. And it's very interesting, I have had guests from Mexico for the last two weeks, and in the short time they are here was very interesting to hear the older women with me after reading the news and watching TV and all the stuff that's been going on, she informed me the other morning that our two biggest problems on Maui are water and housing. So to me that tells me something that it didn't take very long for someone to come and visit and put their finger right on the problem. So to me this

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is a step of course in the housing, solving the housing equation and I'd like to see it go forward. I did have one question and I like a lot of what's in the bill and it addressed something that I was really concerned about because I'm old enough to remember when we called them ohanas. That was the idea that came up. And when we were doing ohanas we had this lofty goal of they were going to be mother-in-law cottages, as they're known on the mainland. You hear people talk about we're putting in a mother-in-law cottage. I bet if you went through Maui you'd find very few mothers-in-law in the cottages. I know I live in the neighborhood and I know that a lot of people have cottages and they don't have family in them. They are just straight out rentals. And of course what I was really afraid about was I wasn't so worried about not having family in them but I was worried about them becoming vacation rentals. And although we have that in the ordinance, that proposed ordinance, I'm concerned about enforcement. You know it's one thing I can go in and swear that I'm going to build a cottage for my child and then turn right around and do something else. So, is there a section in here or did I miss it about how we're going to enforce this? And I realize we're talking about making agreements with Human Concerns and all of that but somebody has got to go out and make sure that that's the truth. So that's my concern but I don't want that to stop us from building 'cause I think we need to build, we need the housing. So that's my concern.

CHAIR COUCH: Okay. Thank you. And just to follow up on what Ms. Baisa was saying about sending this to the Planning Commission, yes, this is the idea of this meeting is we're going to send it out to the Planning Commission. But we've been requested by the Planning Commission to, you know, make our changes that we feel are important and then send it out so that they, you know, they aren't crafting laws and we are. So and I agree with that. If we have concerns with what's in there now let's work on it and send it out to 'em in the form that we like. Okay. Mr. Carroll, looked like you wanted to respond, and then mister, Chair White.

VICE-CHAIR CARROLL: Thank you, Chair. In another city we looked at, San Antonio required a covenant to be signed to be recorded to ensure owner occupancy. We would like to tweak that to have that covenant to have either owner occupancy or to be only used for affordable housing and that would be via contract to Housing and Human Services who would then be responsible for it. And I think this will work. There are questions still about the enforcement that we always have with everything that we pass out over here but I think that can be worked out with Housing and Human Services because they do similar enforcement with Section 8 programs and other programs they have. And I think that can be morphed into the enforcement for this at this time although, of course, we haven't worked with them on that yet but I feel that that's a viable alternative.

CHAIR COUCH: Okay. As a follow up to that to Mr. Spence. When, if this were to go to the Planning Commission would you have a representative from Housing and Human Concerns in there because it does mention them. . .*(inaudible)*. . . Do you typically do that or no? Whomever.



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MR. ALUETA: Thank you, Mr. Chair. We would transmit to Housing and Human Concerns and we, I guess since it does impact them we would probably request a representative at the meeting.

CHAIR COUCH: Okay. Alright. Good. We didn't have them here for this meeting because we are sending it out to Planning Commission and then when we come back we certainly will have them here for that. Okay. I think Mr. White. Chair White is up.

COUNCILMEMBER WHITE: Thank you, Chair. For the Director. I'm assuming that this change in the ordinance would not adjust setbacks. The setbacks in the residential areas would remain the same?

MR. SPENCE: That's correct. You would still have to meet all the setbacks. You know there are instances where there's zero lot overlays and those kinds of things, and for such small lots we heard testimony today that the, you know, some people would prefer attached ohanas and that might be reasonable on a lot of this size. It also makes it more affordable since you're sharing plumbing and electrical and all those things.

COUNCILMEMBER WHITE: Right. I don't think we need to change the bill at this point for this next item but I'd like the Department and the Commissions to consider whether or not there might be a benefit to looking at a larger size ohana unit if the structure, the primary structure is a two-story structure. Because the footprint is not going to be as large as if it's a one-story structure. To me the size of the ohana looks a little, a little small but at the same it's, it is adequate but if we can allow it to be a little bit larger say 30 or, you know, 30 to 50 percent larger if the primary structure is a two-story structure then I think, you know, we're not, we're not creating any more encroachment into the setbacks by doing so. I think that's something that I would be comfortable looking at.

CHAIR COUCH: Okay. Is that...are you talking about if it was an attached ohana as opposed to a detached?

COUNCILMEMBER WHITE: Either one. I think the idea of an attached ohana at 5,000 square feet is probably the reasonable way to go. I'm just suggesting that if it's a two-story structure we may be able to be a little more generous on the square footage of the ohana.

CHAIR COUCH: Right. And that kind of was my concern too is on a 5,000-square-foot lot a detached ohana may not fit unless it were in a zero lot line because you're running up against some pretty heavy duty setbacks already.

COUNCILMEMBER WHITE: Right. So, not something we need to consider today but ...

CHAIR COUCH: Right. But that doesn't make sense if it's on a second, the bottom story or even, you know, the top story of a two-story place why not?

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COUNCILMEMBER WHITE: As you know I like seeing drawings to see what. . .(inaudible). . .

CHAIR COUCH: Yeah.

COUNCILMEMBER WHITE: Without the drawings I'm kind of floundering. Thank you, Chair.

CHAIR COUCH: Okay. Mr. Guzman?

COUNCILMEMBER GUZMAN: Sorry. Go ahead.

COUNCILMEMBER COCHRAN: No.

CHAIR COUCH: After Mr. Guzman we'll go with Ms. Cochran.

COUNCILMEMBER GUZMAN: Okay. Very good. Yeah, I just wanted..just a quick comment. Yeah. I would support Mr. White's not argument but proposal in maybe looking at being more generous on a two-story. If we're looking at lot size 5,000, yeah, I know it does work. I see it all the time in Kahului but I think by using that type of method of, you know, calculating by two stories would, I don't think it's going to hurt anybody or that's very odd but. My other question would have been the deed restrictions that run with the land that you're proposing here in Section B, how is that going to...I don't know how you're going to do that if it's already built or? And covenants that Mr. Carroll was talking about, what is the procedure to implement that? Because I can't get a grip of what they're trying to do here on the deed restrictions itself.

CHAIR COUCH: That's a good question. I don't know if that works for...Mr. Carroll, how do you propose the deed restrictions to, I mean, is it something that has to be recorded with the Bureau of Conveyances or attached to the deed? I don't know how that works.

VICE-CHAIR CARROLL: Thank you, Chair. When a lot owner wishes to pursue this and goes to the Department of Housing and Human Concerns they have a contract to meet certain requirements that we are going to come up here with today. And we touched on some that already and whatever comes out from this. And those it is intent that that contract goes with the land. Now how they go over there and make it a deed restriction I'm not sure of the mechanism for doing that but you can put that on there and I would think that Mr. Spence could probably address that better how you make that restriction. But this contract is binding and it goes with the land. Now how to make sure that's on the deed itself, that technical aspect I'm not sure about. I think Mr. Spence might be able to help us with that.

MR. SPENCE: I think...Mr. Chairman? Really the...having a deed restriction I think that's more of, sorry to put Corporation Counsel on the spot, I think that's more of a legal question as to the form and all those kinds of things. I mean you can record anything

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at the Bureau of Conveyances against a property but it's, how effective that's going to be we're going to have to bounce around a little bit.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Eventually, you know...Chair?

CHAIR COUCH: Go ahead.

COUNCILMEMBER GUZMAN: I guess I'm bringing that up is because it may lead to unintended consequences because maybe some of these homes that are building these additional dwelling are taking out loans, you know, from the banks. And then now you're talking about who has priority and now you've got a lien that says hey there's deed restrictions on it and then at the next, the owner wants to sell it or on who wants to buy a property with deed restrictions and how do you implement these deed restrictions? Is it via contract law or are we going straight into covenants into the deed itself? I don't know the mechanism here. I mean it's nice and fancy words but how do you implement? Maybe Corporation Counsel has an idea but this is, you know. . .*(inaudible)*. . .something that needs to be worked out.

CHAIR COUCH: But is that something that normally shows up in Code or is that a procedural thing that works with the department and the ...

COUNCILMEMBER GUZMAN: I don't know how they would ...

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Maybe Corp. Counsel would know.

MR. SPENCE: I mean the way that the draft is written it's with Housing and Human Concerns. There's a notice that's required when somebody goes to sell a property. And if you were to go buy a property you would be getting your title report, preliminary title report and that restriction is going to show up. I don't know how banks will look at it. You know Mr. Guzman raises some questions that I think should be worked out but I'm also not a loan officer so I don't know

COUNCILMEMBER GUZMAN: I mean we're...this is quite different than what...that we deal in Ms. Crivello's Committee in, you know, affordable housing units.

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: Because these are houses owned by, you know, private sector and the main house and we're talking about the dwelling which is I mean the accessory but dwelling. So, I can't, in my mind, I can't see the analysis of how you're going to be able to do a deed restriction on those accessory dwellings. So, unless you

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guys can work it out I would love to \_\_\_\_ into analyzing it but I can't get my mind around that whole covenants and deed restrictions on an accessory dwelling.

CHAIR COUCH: Well, I'm assuming that the deed restrictions the way it's written goes with the whole property saying that you've got this dwelling here you can only rent it out to either a relative or affordable housing, you know, the HUD rates essentially.

COUNCILMEMBER GUZMAN: Yeah, I think that --

CHAIR COUCH: Yeah.

COUNCILMEMBER GUZMAN: --needs to be explored on the --

CHAIR COUCH: Yeah.

COUNCILMEMBER GUZMAN: --mechanism.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Okay. Thank you.

CHAIR COUCH: Okay. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR COUCH: Oh, I'm sorry. Mr. Hopper had a response to ...

COUNCILMEMBER COCHRAN: Oh, fine. Yes. Go.

CHAIR COUCH: Yeah. Sorry.

COUNCILMEMBER COCHRAN: No problem.

MR. HOPPER: Just to be clear there are multiple instances in the County Code where similar restrictions are required. For example family subdivisions the Code actually requires that the Department review the conveyance documents to make sure that there's, they are held subject to the requirement that the property only be transferred to essentially immediate family or siblings. Changes in Zoning is another example there's a unilateral agreement recorded on the property when a Change of Zoning is requested that runs with the land in perpetuity. So any future owner is required to abide by the conditions of zoning. So, it would need to be something along those lines where there's in exchange for being allowed to construct the dwelling, to get the Building Permit basically, that meets this requirement they would need to be, in theory, and again I haven't gone through the particulars here 'cause this has not been approved as a form and legality yet. It's just going to the commissions. But I think in looking at this there would need to be either a unilateral agreement or some type of

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agreement recorded on the property that makes it very clear that there are covenants that run with the land that restrict the use similar to what a Change in Zoning condition may do. I mean there are Change in Zoning conditions for example that say no ohana units are allowed. So even though the Code would allow them the Council could decide that no ohana units are allowed in a certain case. And by way of another more recent example I think just on, just a few weeks ago the Council when it passed a Change in Zoning restricted the types of permitted uses on the Change in Zoning and said we know that this zoning district has x amount of permitted uses but we're going to restrict some of those uses. That gets put in a unilateral agreement, is recorded against the property so the future owner knows that even though my zoning allows certain uses I can't do certain other uses and that's recorded on the property such that whenever someone would do a title search for the purpose of sale that would come up and they'd see, oh, we have to abide by these, you know, these restrictions. So, I think in theory that's what would be, you know, looking at whether the actual implementation of that and how the Department would monitor something like that may rise to some, you know, to a significant challenge level. I'm not sure what they would need to say about that because you're talking about people maybe moving in and out of a dwelling. But in theory it wouldn't necessarily be different than a Change in Zoning where you'd have recorded on the whole property restrictions that could affect, go down and affect, you know, individual landowners and their future rights to use the property. So that's in general I think how something like that would work. Those agreements, there's a variety of situations where they appear in the Code. Another of them is Hold Harmless Agreements it allows people that may have not gotten an inspection on work or had work that was unpermitted that is concealed to agree to not have that work inspected in exchange for recording a agreement on the property saying that they absolve the County of any liability and having a contractor say the work was done pursuant to Code. That's in the Building, that's essentially in the Building Code provisions and we deal with a lot of those, several per week our Office actually sees and signs off on. And so, you know, I'm not saying it's a good or bad idea either way. That's a policy issue but that's I think in general how something like that in reading the proposed ordinance would be implemented.

CHAIR COUCH: Okay. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And first off, I support referring this to the Planning Commissions. I thank Councilmember Carroll for bringing it up through your Committee. And, you know, in the tail-end of all this though as Ms. Baisa brought up earlier it's the whole enforcement part of this whole thing that I, very lacking. It's not here at this point. And again that's going to be a challenge to enforce that what we're talking about will be complied with in perpetuity and so on. You know there needs to be a hefty penalty then to just make people not even want to go there. Confiscate your house. I mean you're found, you know, dealing drugs out of a house that's illegal. They can take away your house. I mean that's...sounds pretty strict but I'll tell you right now a lot of things are happening that we can't get a handle on and we hear every day here. So that part is a huge concern at this point but I know it's a work in progress. Number one just for my own reference, how much square footage in

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an acre? Acre? What's an acre come out to? 'Cause I mean you guys are adding up 5,000 all the way up to 8,700 square feet, I'm thinking okay I know that there's a property at 10...8 of those, what is?

CHAIR COUCH: About 43,000 square feet.

MR. SPENCE: Forty-three thousand five hundred and sixty.

COUNCILMEMBER COCHRAN: Forty-three thousand five hundred and sixty square feet?

MR. SPENCE: Yes.

COUNCILMEMBER COCHRAN: Okay. So the 87,000 is about a 2-acre lot and you're saying a 1,000-square-foot dwelling on 2 acres?

MR. SPENCE: That's the standard, yeah, that's --

CHAIR COUCH: That's the ...

MR. SPENCE: -- what we use in the Ag District.

CHAIR COUCH: That's the existing Code too.

MR. SPENCE: Yeah.

COUNCILMEMBER COCHRAN: Right. No, I'm just trying to get an idea of, you know, the reference between 5,000 feet with 400 and only 600 more square feet for 2 huge acres. I mean it doesn't...like the ratio seems quite kind of off that way. But anyhow so just, I was just looking at that. And I don't know if anyone took a gander at Ms. Wade's testimony and she has some good points and we all know she's from your Department but is testifying on her own behalf and I think has some great input here. And so hopefully we can implement some of her recommendations. And in regards to the infrastructure, you know, being capable of handling additional with the law that passed through that for cesspools and septic. Currently, I mean if you're just going to sell that property you need to upgrade it and tie it into our existing infrastructure. So how is this, is that going to be worked in with this? I mean if you're going to add on to an existing property that's on cesspool or septic are you now going to have to expand it, improve it?

CHAIR COUCH: There's no law that...that was a proposed rule that I don't think got adopted.

MR. SPENCE: Right.

COUNCILMEMBER COCHRAN: It didn't go through on the State level?

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MR. SPENCE: There was a State proposal to require upgrade to septic any time a piece of property was sold if you have cesspool. That was going to be applied anywhere, anytime and regardless of whether there was groundwater to be, you know, for drinking water or anything like that. And it was...there was considerable testimony of people who, I mean some people testified it would be \$100,000 to convert even though I'm not even over a potable drinking water supply. So the Department of Health went back and they did adopt a rule but it's, as I understand it and I haven't reviewed, so apparently they haven't adopted a final rule but there was a proposal for more shoreline properties. I don't know where that's gone as of right now. But just as a practical matter on 5,000-square-foot lot you probably don't have room to upgrade to a septic and that was part of the discussion. So and that's a choice, you know, one that's going to be a policy call by the Council but, two, right now Department of Health rules are if you're going to, you need at least 10,000-square-foot lot in order to build a house. I'm not quite sure how they treat ohanas, I would think the same. So I mean unless of course you're attached to the, you're connected to the public sewer system. That's a different matter.

COUNCILMEMBER COCHRAN: Right. Okay. No, I just thought if there was any kind of correlation on something we need to be discussing in relation to that proposal I guess that are sort of being discussed right now in regards to cesspools.

MR. SPENCE: I would just point out ...

COUNCILMEMBER COCHRAN: And them adding on top of it.

MR. SPENCE: Mr. Chairman?

CHAIR COUCH: Yeah.

MR. SPENCE: The Members bring up really good discussions that are outside of the scope of this bill. When, the zoning can allow something, there are still a whole lot of health and safety regulations that they are going to be encountered when somebody goes to submit a Building Permit. Department of Water Supply is going to look at it. Department of Health is going to look at it. I'm not sure all what else, I mean we're talking about, you know, what about financing, what about the deed restrictions, all those things. So there's a whole lot of other things. This is...we're just dealing with the zoning aspect in allowing it but there's a whole lot of other things that a potential builder is going to encounter in getting a permit. The fixture counts, you know, all those kinds of things.

COUNCILMEMBER COCHRAN: Right. Okay. And Fire, we were just talking with --

MR. SPENCE: Absolutely.

COUNCILMEMBER COCHRAN: --the Water Department so gotta make sure there's adequate flow or --

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MR. SPENCE: Adequate flow --

COUNCILMEMBER COCHRAN: --. . .(inaudible). . .contain fire.

MR. SPENCE: --the separation between units, between buildings.

CHAIR COUCH: And there's nothing in this ordinance that doesn't say that they still have to qualify, I mean they have to follow all those rules. This is just allowing --

COUNCILMEMBER COCHRAN: Right.

CHAIR COUCH: --if they can follow all the other restrictions that we have then they can do this but if there's not enough adequate, if there's not adequate infrastructure, if you will, by all the different departments then they can't do it anyway.

COUNCILMEMBER COCHRAN: Right. And if I may, finally, in regards to Ms. Wade's testimony she's saying this affordable accessory dwelling is this intended to be allowed in addition to the regular accessory dwelling.

CHAIR COUCH: Yeah, I have that --

COUNCILMEMBER COCHRAN: Or is this ...

CHAIR COUCH: --noted as not and I called her just before this meeting just to find out what she meant by that. And we'll, yeah, that, she was mentioning that the way the wording is it might be a little bit tricky that it can allow for both.

COUNCILMEMBER COCHRAN: Right.

CHAIR COUCH: So, and so what we would like to do is come up with the Department to find out how we can make sure that it is only one. So, we'll have that discussion.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: Ms. Baisa has a question and then we'll get into that.

COUNCILMEMBER COCHRAN: Good.

CHAIR COUCH: Okay. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Not a question, I'd like to follow up on what Mr. Spence mentioned in regards to those rules that we were so concerned about with cesspools. We've received notice that the Department of Health will be holding and I'm trying to get this information out to the public, so thank you, they're going to be holding hearings on those to discuss the proposed changes and one will be



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held on Maui on Tuesday August 18 at 5:00 p.m. at the Kula Community Center. I think it's very important that the public come out and testify. And those rules can be available, I think we're doing a piece in *The Maui News* this weekend. Thank you.

CHAIR COUCH: Okay. And I'd like to see if we can get those on our, on the Council website if at all possible, a link to that.

COUNCILMEMBER BAISA: Thank you.

CHAIR COUCH: So people have a chance to look at it.

COUNCILMEMBER BAISA: I think the Chair's Office is taking care of it. Thank you.

CHAIR COUCH: Yup. Okay. Alright. Mr. Alueta, you had some concerns about the --

MR. ALUETA: Not ...

CHAIR COUCH: --essentially the affordable accessory dwelling and how we can clear that language up.

MR. ALUETA: Well, I don't have concerns, just more like comments and trying to figure out what the direction is so when I go back, when I do take it before the Planning Commissions I'll have answers on what direction the Council is leaning or what their thoughts are on some of the points. I also had the concern of is it the intention to allow the current accessory dwelling as well as an additional affordable housing dwelling? So, if you have a 10,000-square-foot lot in Kahului you can have your or 10,050-square-foot lot in Kahului you can have your 600-square-foot accessory dwelling plus add another 450-square-foot affordable dwelling. Is that, if that's, I just want to make sure if that's the case.

CHAIR COUCH: I will ask Mr. Carroll but I don't read that in there. I'm not and I couldn't, you know, when Ms. Wade told me too I couldn't read that, I didn't see where that was allowed but you guys are the ones that interpret this stuff so. But we'll ask Mr. Carroll if that was the intent.

VICE-CHAIR CARROLL: No.

CHAIR COUCH: Thank you.

MR. ALUETA: Okay. So I mean there can be some quick changes but the way it is written now that's how I would read it.

CHAIR COUCH: Really?

MR. ALUETA: If you separate it out between the accessory dwelling and then you create a separate category called affordable accessory dwelling. So and you set it for

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5,000 square feet and more. So, I think Mr. Hopper has some simple amendments that...I just wanted to make sure what is your intention. Okay. Second, you also have only Residential zoned. Currently the accessory dwelling provision of 19.35 allows other zoning categories. So, again do you want it to be applied or is it only to Residential zone? So that would be R-1, R-2, R-3, and R-0 Districts. Okay. So, but if simple, again if you want it to apply to the other districts that are listed in 19.35 then we just want to know if that's the case. Again, simple amendments to the thing to just expand, basically expand the accessory dwelling provision to smaller lots that all are already currently allowed. You would just add it to the table and then establish certain restrictions, the restrictions of affordability that you have for units that are built on lots that are 5,000 square feet and smaller or allowed on 5,000 square feet or smaller.

UNIDENTIFIED SPEAKER: Or less than 7,500.

MR. ALUETA: Yeah, or less than 7,500 square feet. So that would be...that's the simplest way.

CHAIR COUCH: Can you point out other than Residential, I know on Apartment people can build single-family homes. Is there a lot of that out there where there are single-family homes on other than Residential zoning?

MR. ALUETA: Yes.

CHAIR COUCH: There's a lot?

MR. ALUETA: Yes.

CHAIR COUCH: Okay.

MR. ALUETA: So, I mean it's in the Rural District. So, you have...given the geography and the history of Maui and it's...you have nonconforming lot sizes in variety of zoning districts. And so it is not uncommon for you to have a substandard Apartment lot size. All of Lower Main has industrial areas on 4,000-square-foot lots where the minimum lot size is something else. And you have, and in those industrial areas you have single-family homes built on them. So, it's...there's a lot of non-conformities and so we just want to make sure what your intention is. It makes it simple if you're just going to say Residential zone then you can either spell out the zoning that you're going to allow for it and that would be the cleanest or if you're going to allow for the affordability on any lot as allowed in 19.35.

CHAIR COUCH: Well, that's a good question to discuss right now and I think this is a Committee decision on whether or not we should have it just for Residential areas as opposed to any place that a single-family home is allowed. I'll ask Mr. Carroll what his intention was but I think this is a bigger issue that the Committee needs to chime in on.

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VICE-CHAIR CARROLL: Interesting.

CHAIR COUCH: Yes.

VICE-CHAIR CARROLL: The intention, the original intention when we started this was substandard lots for size, I mean, excuse me, lots of the specific sizes we had 5,000, under 7,599 square feet, to allow these dwellings to be under contract as we stated the first time. And that was the only consideration we're having right now in what I presented before us. Anything else would be a new consideration that I'm not too, I'm not comfortable right now going with anything else over there.

CHAIR COUCH: Okay.

VICE-CHAIR CARROLL: Any other structure.

CHAIR COUCH: Okay. Members, any comments on this? 'Cause this is, it's a policy decision whether we want it on just Residential or anything else that allows single-family homes. And as it stands it's just for Residential zoned, R-0, 1, 2, and 3. Not Rural and not Agriculture and not Apartment. There are a lot of single-family, I don't know if there's a lot but there are single-family homes that are on Apartment that would not be able to do this. There are single-family homes ...

MR. ALUETA: Interim District.

CHAIR COUCH: Oh.

MR. ALUETA: That's where a lot of your non-conform going to be.

CHAIR COUCH: Interim.

MR. ALUETA: But 19.35 already lists the zoning categories in which an accessory dwelling can be constructed. So if you want to just allow for it in the same categories that you currently have, where you currently allow accessory dwellings but are you just allowing it for lots that are smaller than 7,500 square feet? And just have a certain restriction, that's the simplest methodology.

CHAIR COUCH: Ms. Baisa?

COUNCILMEMBER BAISA: At first blush I think what Mr. Alueta just said was definitely what I had in mind when I read this that we would be consistent with what is, you know, allowed already but then talk about smaller lots.

COUNCILMEMBER GUZMAN: Yeah, Chair? That's my assumption too when first looking at the bill. You know, I'm still trying to figure out what would be the incentive of doing this if I'm the homeowner with all these restrictions on this? I mean if I'm a

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homeowner and I want additional income and with these restrictions on it, I don't know whether I'm going to pencil out at all. So what is the benefit? What is the incentive of me as a homeowner to build an accessory dwelling, an affordable accessory dwelling? That's my question, maybe it could be posed to Mr. Carroll. I don't know. I understand the idea of wanting to create more affordable units but what, how, what is the incentive for homeowners to build that, these accessory dwellings? 'Cause it looks as though, you know, they've got to abide by HUD provisions, you know, almost like they've got to go through HUD to --

CHAIR COUCH: Almost, yeah.

COUNCILMEMBER GUZMAN: --for the rate. Yeah.

CHAIR COUCH: Yeah.

COUNCILMEMBER GUZMAN: And be referred, you know, their rent, the tenants are almost like referred by HUD and that's how I'm reading the last few sections here but ...

CHAIR COUCH: And I understand your question and it is a valid concern is that, you know, why would we want to do this if there's all these restrictions? The other half of this or the other portion of this it's for families related by blood or --

COUNCILMEMBER GUZMAN: Oh yeah, yeah.

CHAIR COUCH: --your family. So, if you have your family you want to do it but I'll let Mr. Carroll answer that.

VICE-CHAIR CARROLL: Thank you, Chair. The reason that many people would be doing this, first of all, a large portion of them are going to be doing it because of their expanding families. They're not going to be concerned about income. The ones that are concerned about income and want to help, remember when I said you had 46 percent of your Section 8 people can't find a place. With the Section 8 assistance that's a substantial income. And there are certain people outside there that there are people that are willing to take a lower rent just because they think they should do it. So there are incentives out there. For different people there's different reasons they would do it. In the future, I think we'll be discussing other ways of making it more attractive to have affordable rentals but that's not on the discussion today. But in the future we are looking at, and I believe the Chair is looking at different ways to make it more attractive. But I don't think we can get into that today, that wouldn't be appropriate for this discussion. But we don't know how far this will go. We don't know how many people are going to be attracted by it if we pass this out. However, the only way we're going to find out is to put it out there. And of course one of the attractive parts is if this works out and the enforcement with Housing and Human Services who I really have a lot of confidence in more than other departments really to be able to keep track of this and keep a handle, especially if it's Section 8 we don't have to worry about enforcement. And if it's the other side we can work that out, but I

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am hopeful that we will have quite a few people and it will have a substantial impact. Thank you.

CHAIR COUCH: Okay. And let that, you know, this is kind of a call to the folks that may not have known about this or not been able to come and testify. We could use some more input from the public on this especially at the Planning Commission. You're going to have a chance, if this goes to the Planning Commission you're going to have a chance to rally the troops and get them out there and then bring 'em here and talk to us about too because it's something that we need to hear from the public a little bit more than what we have now. And I understand this is just sending it to the Planning Commission but I'd like you, I'd like to charge you with following this all the way through the process and getting out support. Written testimony is quite good and then, you know, if you want to bring people in here and have a couple people testify and point...have everybody stand up that's also helpful as well. So as we go through this I'd like to see what kind of public support we have on that. We mentioned something, Mr. Carroll and I mentioned something about families are going to do this and I wanted to bring it to the Members' attention, and then I know Mr. Alueta has more things to discuss. In one of the, on Page 6 of the bill it talks about in 19.35.110A it talks about family members related to the applicant by blood, adoption, or marriage including spouse, children, and siblings or nonrelated persons of very low income. Okay. So that's when you get to siblings that talks about the family members. I know in, I believe it was several of, you know, I think it was short-term rentals and few other I mean I think it was home-based business in this Committee when we talked about family members. We also wanted to include hanai. We actually wanted to add the word hanai in that. So without objections, I'd like to ask Staff to add that before we send it in to the Planning Commission. Any concerns with that?

COUNCILMEMBER BAISA: No objection.

CHAIR COUCH: Mr. Guzman may have an objection. Go ahead.

COUNCILMEMBER GUZMAN: I'm sorry. But I don't want to get technical but I just was like how do you legally prove that they're hanai? You know I don't have a ...

CHAIR COUCH: Mr. Hopper?

MR. HOPPER: I'd have a concern with that as well. I mean the family subdivision ordinance we have when we've had cases with entities where we basically said no the entity is not related to somebody even if it's a trust or something like that. But I mean we have pretty strict criteria for something like that and I don't know that...I'd really like to know how that, we would expect to enforce something like that. It seems very difficult to determine something like that for purposes of an actual, you know, legally binding document that's recorded on the property.

CHAIR COUCH: Okay.

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MR. HOPPER: And I don't think that was actually put into the, I mean maybe it was, but I don't think that was part of the short-term rental home ordinance.

CHAIR COUCH: We did something. I can't remember which ordinance but I thought we had thrown it in there.

MR. HOPPER: We did it in the community plan I believe but I don't recall it being a application requirement that I can think of. I mean --

CHAIR COUCH: Okay. That's a good point.

MR. HOPPER: --that's a bit of a difference I believe.

CHAIR COUCH: Alright, maybe that's something that we can discuss, have it discussed at the Planning Commission and back up here. So let's leave it out for now.

MR. MOLINA: Mr. Chair?

CHAIR COUCH: Yes.

MR. MOLINA: There is a reference to hanai children in the short-term rental code as far as restrictions where it says a permit holder shall serve as a manager provided that he may designate family members and it specifies hanai children.

CHAIR COUCH: Okay. Thank you. Mr. Hopper, any concerns?

MR. HOPPER: That's a very difficult one to enforce and I think that this would be a very difficult one to enforce particularly if you're talking about recording it on the property and saying you can't sell this and a person can't actually live there unless they prove that. It's going to very difficult. I think it's a bit different than saying someone else can, for a short time, while you're off island look at a property.

CHAIR COUCH: Okay.

MR. HOPPER: You could probably designate a real estate agent to do that also I would believe.

CHAIR COUCH: Yeah.

MR. HOPPER: So that's a bit different than saying you have to be blood related before you sell this property.

CHAIR COUCH: Okay. Members, that was one of the things that I had. Mr. Alueta, you had another item that it looked like you were ready to go with another question or concern?

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MR. ALUETA: I have two more --

CHAIR COUCH: Okay.

MR. ALUETA: --that I came up with here. So whenever we...if you're going to touch a code, you know, it's like Pandora's Box.

CHAIR COUCH: Oh, yeah.

MR. ALUETA: But we also look at it as an opportunity to make some long-standing corrections too that may be policies and so we try to eliminate those written policies that we have. On the area count that occurs with the accessory dwellings, they...we always have...it's measured differently than everything else. Okay. One other thing is that if you look at the specifics of it it includes covered walkways and...hold on let me stop my buzzing. Anyway, the covered walkways and overhangs, so any covered areas. So when we measure for accessory dwellings on the square footage, right, we basically will, if there is a paved area underneath eaves, that area is covered, is considered covered walkways and that goes with the calculation of the accessory dwelling. So, if you have a cottage and then you enclose, you put the water heater outside and you build a enclosure for that water heater that square footage counts toward the accessory dwelling size. And so a lot of times you'll get people they'll come in with their stock size and it will be exactly 500 square feet and then they'll have, a lot of times they'll be 5 square feet over because they have a covered walkway around or they paved the area. So either get rid of that restriction so that you basically are taking it, \_\_\_\_\_ the outside wall, how we measure everything else, outside wall to outside wall. If it's a covered lanai that's one thing but if it's just the eave overhanging and you paved around that eave area maybe up to, I mean it may be set, you know, or just exclude it in some fashion by saying up to three feet around the outside as long as it's not enclosed. I think that's the main thing that we're trying to get to.

CHAIR COUCH: Yeah, and I think Ms. Wade in her testimony, I don't know if you have a copy of her testimony, she...that was the first thing she mentioned is to consider including only interior floor area in the maximum essentially.

MR. ALUETA: Yeah we prefer to measure from the outside wall rather than the interior.

CHAIR COUCH: Okay.

MR. ALUETA: There's a lot of...because that would be consistent with how everybody else measures it including Real Property Tax as well as other places. Something to consider and that's what we will be proposing to the Planning Commission most likely so that we can clarify that up. This is the thing that my plans review people come across all the time. Also, I'd like to remind you that we do have a current amendment of 19.08 that is, which is the Residential District that is floating around here at Council.

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CHAIR COUCH: Yeah.

MR. ALUETA: One of those provisions that is...that's different from other places that we're including lot coverage. So that's something to consider. That would help in the sense that you will not have these basically building from setback to setback on the properties. It would have a certain lot coverage for Residential Districts. We feel that's a good thing to have so you don't have these massive houses built like I said building setback to setback with nothing else. If you do...if you take that into consideration, if you do pass it so that, you know, if you have such an accessory dwelling ohana units that could be either attached or on the second floor but also we would count that, you know, so that in the limitation of the lot coverage. So think about how that's going to affect.

CHAIR COUCH: Okay.

MR. ALUETA: That's all I had.

CHAIR COUCH: Before we get much further I just want to point out to the Members that HRS 587A-4 defines hanai relative meaning adult other than a blood relative whom the court or department has found by credible evidence to perform or to have performed a substantial role in the upbringing or material support of a child as attested to by the written or oral designation of the child or of another person including other relatives of the child. So there is a State HRS definition of hanai so we might consider that. Members, as you can see this isn't cut and dried so it's up to us to decide whether or not we want to make some changes here now, here and now and then pass it down to the Planning Commission. Or we can send it to the Planning Commission with our concerns and Mr. Alueta had mentioned too and that's the time when they can, they can do their amending to it too because they deal with this in more depth than we do. So I don't have a problem with sending it down to them as is with our concerns noted to see if they have amendments. . .*(inaudible)*. . . I know Mr. Hopper has a couple amendments that can get around some of the things that, the concerns that the Department has. And I have no problem with sending it down as is and kind of noting our concerns and...which are mainly the same concerns as the Department. Any thoughts on that, Members? Ms. Baisa?

COUNCILMEMBER BAISA: Chair, I personally have no objection. I think that our concerns have been noted and that our discussion today can go along with the bill so they have some idea about what we think. You know I can understand the Planning Commission wanting to know well how does the Council feel 'cause they don't want to go through all this and then they send us stuff, we say oh, no. At least they have an idea of which way the wind is blowing but I'd like to see what they come back with because they have the mechanism to get this way out and have a whole lot of people come and all --

CHAIR COUCH: Right.



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COUNCILMEMBER BAISA: --the testimony and then we benefit from that. So, I'd like to just move it on because I think it's important for us to hear what a larger community thinks about it. So, I'm okay if you want to do that.

CHAIR COUCH: Okay. Mr. Carroll?

VICE-CHAIR CARROLL: Thank you, Chair. I would like to see it go to the Planning Commissions and while it's in the Planning Commission I have a lot of other information over here that I can work on and me and my staff. I have the verbiage for the agreements, the legal language that other places have used that's similar to ours. And there's a lot of things that came up over here that even while it's at the Planning Commission level that we can still work on and answer some of these questions and we could always pass that on afterwards to them too by attachment. So, I'd really like to see it go to the Planning Commission.

CHAIR COUCH: Okay. Members, any other comments?

MR. SPENCE: Mr. Chairman?

CHAIR COUCH: Yes, Mr. Spence?

MR. SPENCE: If I could just bring up a couple of others and the...and I agree with the discussion thus far that a lot of these questions came up internally in the Planning Department. On Item B-4 I'm wondering what the ...

CHAIR COUCH: Which page?

MR. SPENCE: Nineteen...it's Page 2. Okay. Looking on the new one, on the one handed out today that would be Page 6.

CHAIR COUCH: Page 6. Okay.

MR. SPENCE: Okay. So 19.35.110B-4, the property owner must notify the Director of Housing and Human Concerns of the intent to sell the property. What the purpose of that is for and if it means taking, you know, is that part of the...if somebody is going to sell their property, well, I'm just curious what the purpose is and what the, what happens to the restrictions if the property is sold?

CHAIR COUCH: Well, go ahead, Mr. Carroll.

VICE-CHAIR CARROLL: Your question is what happens to the restrictions if the property is sold?

MR. SPENCE: Yeah. It says the deed restriction runs with the land so I'm not sure why we would be notifying Housing and Human Concerns.

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VICE-CHAIR CARROLL: That would be the restrictions would go with the property.

MR. SPENCE: Right.

VICE-CHAIR CARROLL: Yes. . . *(inaudible)*. . .

CHAIR COUCH: And they would have to I guess if there's this contract it has to be with the new, the new owners.

VICE-CHAIR CARROLL: The contract would be...you never find anything when you're looking for it.

CHAIR COUCH: That's okay. I think I can answer that for you, Mr. Carroll. The contract that it talks about in here with one owner has to go to the new owner or the new owner may decide, okay, I'm going to do it to a blood relative. I'm going to allow a blood relative to live there or may not want to rent it out at all.

MR. SPENCE: It's...would already be a deed restriction so that runs with the land. What I'm asking is, okay, why are we, what's the purpose of notifying the Director of Housing and Human Concerns?

VICE-CHAIR CARROLL: I'm sorry, repeat that.

MR. SPENCE: The item says 19.35.110 proposed Section B-4 the property owner must notify the Director of Housing and Human Concerns of the intent to sell the property.

VICE-CHAIR CARROLL: That might not be necessary.

MR. SPENCE: I'm just wondering what the purpose of that is.

VICE-CHAIR CARROLL: Well, it was to make sure that the property remained in the same use was the intent.

MR. SPENCE: Okay. I just don't know what Housing and Human Concerns is going to do with that information. If they're required to keep track of 'em all, if they're supposed to write a letter to the new owners and say, you know, you recognize that this is a --

VICE-CHAIR CARROLL: To recognize what ...

MR. SPENCE: --restriction or whatever the ...

VICE-CHAIR CARROLL: Yeah. Well, to recognize, yeah, that the restrictions are there. So somebody going inside knows what they're getting into, if that answers your question.

CHAIR COUCH: Yup. And also, there was some discussion amongst Staff and I'll bring it up to the Members about potentially having Housing and Human Concerns have a

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database of all these to be aware of it and so they can periodically check as well. If they're going to have Section C of that same Code says applicant must sign an agreement with the Department of Housing and Human Concerns agreeing to rent the unit consistent with this section. So, when they build it they have to sign this and when they sell it the new people have to say we're going to do that too. Essentially they have to do it anyway. Right. So, I think we talked about, with Staff, about potentially seeing if there's a database, maybe requiring the Housing and Human Concerns to have a database. There aren't going to be a lot of these but at least, you know, have that database there. They're only going to have it for the HUD group it's my understanding so no sense not having it. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And Mr. Guzman brought up an interesting perspective in regards to what's the incentive. The accessory dwelling rule on the books now allows for such, I guess this is for smaller --

CHAIR COUCH: Smaller lot sizes. Yeah.

COUNCILMEMBER COCHRAN: --square footage. But I think even if it doesn't, if that's not the section someone wants to address in the other ways they could build out and rent and, you know, for high-end or they could...they have more flexibility in how they can utilize that dwelling. So I see the, yeah, the idea of going down, downsizing on smaller properties. So the opening comments by Mr. Alueta I heard kind of some consensus here I also agree with that intent and the thought process behind what this is to address. So I agree with that and I still think the whole enforcement making sure that people comply is going to be a challenge.

MR. SPENCE: Yeah, I agree. I don't know who's going to walk up to the door of the small dwelling and say prove you're related by blood or prove that, you know, you're, you meet this low-income threshold. I don't know how we would do that. I'm not sure it would become a problem either but --

CHAIR COUCH: Right.

MR. SPENCE: --in any case ...

CHAIR COUCH: And my guess is it would be A, complaint driven, and B they do it now at Housing and Human Concerns or at least they are supposed to be doing it now with the HUD certificates, et cetera, so I think they may have a mechanism for that. Any other questions? Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah. Thank you, Chair. Maybe when this bill comes back from Planning Commission we could maybe have the Housing --

CHAIR COUCH: Oh, yeah, we intend to have --

COUNCILMEMBER GUZMAN: --people to look at it with.

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CHAIR COUCH: --them here. Yeah.

COUNCILMEMBER GUZMAN: Okay. Okay.

CHAIR COUCH: You bet. There's another question that that, you know, I always like throwing monkey wrenches into things. What happens if the property is foreclosed on? What happens there? Because generally you're going to have a renter who may or may not be kicked out.

MR. SPENCE: Or family member.

CHAIR COUCH: Yeah, sorry, Mr. Carroll. Just, you know, we have to look at all contingencies.

MR. ALUETA: That's not our concern.

CHAIR COUCH: Yeah, you're right that may not be our concern.

MR. HOPPER: Mr. Chair?

CHAIR COUCH: Yes, Mister ...

MR. HOPPER: I wouldn't think of it as any different than if there's Change in Zoning conditions or other conditions that are required to be recorded on the property. The future owner still has to abide by those conditions.

CHAIR COUCH: Okay.

MR. HOPPER: So they would still apply.

CHAIR COUCH: Okay. Thank you. Alright. Members, if there's no further comment, I'd like to make a recommendation?

COUNCILMEMBERS: Recommendation.

CHAIR COUCH: Alright. It's my recommendation that we pass this bill. So what I'm going to do is I'm going to entertain a motion.

MR. HOPPER: Reso.

CHAIR COUCH: The reso, yes, I'm sorry the reso. I want to entertain a motion to, yeah, we have different titles now so I have to find the right reso. Here it is. Okay. The Chair will 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

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Amend the Comprehensive Zoning Ordinance to Permit Affordable Accessory Dwellings in Residential Districts. And that's the one that I handed out.

VICE-CHAIR CARROLL: So moved.

COUNCILMEMBER BAISA: Second.

CHAIR COUCH: Okay. It's been moved by Member Carroll, and seconded by Member Baisa. Any comments?

COUNCILMEMBER COCHRAN: Chair, sorry --

CHAIR COUCH: Yes.

COUNCILMEMBER COCHRAN: --before we call the vote. I just wanted to quickly I meant to ask Department, Mr. Alueta or Director, in regards to increasing the square footage of lots 10,000 square feet or larger. Did you folks have any comment in regards to that? Did the numbers look good here?

MR. SPENCE: As far as increasing the size of the permitted ohana?

COUNCILMEMBER COCHRAN: Right.

MR. SPENCE: We can sure discuss that, you know, as we go to the Planning Commissions.

COUNCILMEMBER COCHRAN: Okay. Sounds good. Thank you. Chair, that's all. Thank you.

CHAIR COUCH: Okay. Yeah, and I'm thinking that when you discuss that in Planning Commission that that will be fully vetted I'm sure. Okay. Any further comments? And I just wanted to reiterate the Chair is going to entertain, has entertained the motion. The motion is to adopt the proposed resolution referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Amend the Comprehensive Zoning Ordinance to Permit Affordable Accessory Dwellings in Residential Areas; allowing Staff to make nonsubstantive changes and filing of...do we want to file this communication? Staff?

MR. MOLINA: Mr. Chair, if ...

CHAIR COUCH: Oh, no 'cause it's going to come back.

MR. MOLINA: Yeah.

CHAIR COUCH: You're right. Sorry. It has to come back. Alright. So that's what the motion is. Any further discussion? All those in favor, please say "aye"?

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COUNCILMEMBERS VOICED AYE.

CHAIR COUCH: Opposed? Let the record show six "ayes," zero "noes," and one excused Member Victorino.

**VOTE: AYES: Chair Couch, Vice-Chair Carroll, Councilmembers Baisa, Cochran, Guzman and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Victorino.**

**MOTION CARRIED.**

**ACTION: ADOPTION OF REVISED RESOLUTION.**

CHAIR COUCH: Members, let's go, we went a little long, I'm sorry about that. So let's go 'til five minutes 'til 11:00 for this next item, for our break 'cause we have to setup the room too. So we're on recess until five minutes 'til 11:00. . . .(gavel). . .

**RECESS: 10:43 a.m.**

**RECONVENE: 11:00 a.m.**

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of...what is today?

UNIDENTIFIED SPEAKER: Thursday.

CHAIR COUCH: Thursday August 6<sup>th</sup> please come back to order. It's been a long day already.

**PC-16 AMENDING THE COMPREHENSIVE ZONING ORDINANCE Relating TO WET BARS IN DWELLING UNITS (CC 15-66)**

CHAIR COUCH: Alright. Members, we're on our final item and it's Item No. 16, which is the Committee is in receipt of County Communication 15-66 from the Planning Director transmitting a proposed bill entitled A Bill for an Ordinance Amending Chapter 19.04, Maui County Code, Relating to the General Provisions and Definitions. The purpose of the proposed bill is to establish within the Comprehensive Zoning Ordinance a

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definition for a wet bar and to limit the number of wet bars to one per dwelling unit. Okay. So, for those of us who need to know what is a wet bar. Mr. Spence looks like he's got a PowerPoint for us.

MR. SPENCE: Yes.

CHAIR COUCH: So, Mr. Carroll, if you can't see it or, Ms. Baisa, if you can't see it --

COUNCILMEMBER BAISA: No, we're fine.

CHAIR COUCH: --scoot on down.

MR. SPENCE: Okay.

CHAIR COUCH: Okay. Go for it.

MR. SPENCE: Thank you, Mr. Chairman and Committee Members. This is...this bill is initiated by the Planning Department. We...it should be self-explanatory as we go through it but we really have a need to define what a wet bar is just as, you know, as we're going through building permits. The...there are enforcement issues involved, you know, and I know the Council wants us to enforce and all those things. So, let me go through this and we'll just --

CHAIR COUCH: Okay.

MR. SPENCE: --see where this goes. And, you know, there's...I have no doubt towards the end there will be a whole discussion of, you know, what's wrong with two kitchens per house. You know those kinds of things I understand, particularly Mr. Guzman's district and other, there's other districts however that, you know, you have multi-families, multiple families living in a home. You know we're not trying to create a problem where people are illegal or whatever but, well, let's go through this and see where it goes. We'll have a good discussion on this matter. Okay. Right now these are definitions out of the Zoning Code. A dwelling unit which a single-family house would be, so would condos; they all have one kitchen. One and that's all. But a kitchen, now look at the definition here, means a room or a portion thereof designed, arranged, intended or used for cooking or otherwise making food ready for consumption and within which there may be appliances for the heating or cooking of food. That's really broad. When people come to us and they say, you know, hey I want to have a wet bar in my house. We go okay show us your plans, and we look at the plans and we think that wet bar that they're calling a wet bar really is a kitchen. And so then you end up with more than one kitchen in the house or we say no you don't, you know, you cannot have this, remove it from your plans. And this happens probably a dozen times a year and it goes to an inordinate amount of discussion in the Director's Office when I shouldn't be involved with building permits at all. It should be much more black and white as to what you can have and what you can't have. But we need a tool. This is what we think of with a wet bar. You have a small sink, it's a

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limited space, you have a small sink, some cabinetry. There's under the counter refrigeration. Here again, and if you look over to the right there's the kitchen in the background but this wet bar is separate. This is also a wet bar. It's actually more like a bar but you don't see a stove, you don't see a full-size refrigerator and it's a very nice entertainment area. But this is...I'm going to show you what we do see, this comes from a bed and breakfast home application and once upon a time the way that the Planning Department ran prior to this Administration, the interpretation of what a kitchen was was like you need three things. You need a refrigerator, you need a sink, and you need a heating element. And those things make, three things make a kitchen, lacking one it's a wet bar. So let me show you how that interpretation came out. This is the Honolua Suite. This is one of six wet bars in this house plus there's the owner's kitchen. This house was built specifically for vacation rentals, actually bed and breakfast. That's one. See it's lacking the, it has a puka for a stove but it's lacking a stove. So even though there's a microwave up above. This is the second wet bar. It's a lot nicer than the kitchen I have in my personal house. There's number three. Number four that's in the basement. Number five this is in the Paia Bay Suite. And this one I'm not sure where it's located in the house. I suspect this is also in the basement. But lacking a definition of a wet bar this is the kind of thing that has resulted. Now, we're swinging the other way where we're looking at the definition of kitchen and it could potentially apply to a whole lot of other things because it's really, I mean this is clearly a room arranged for the preparation of food. But even those little wet bars that we saw at the beginning that everybody thinks of as a wet bar, those are also potentially areas and we want to be able to allow those. We want to be able to allow wet bars within homes. Right now all we have is the definition of a kitchen which would encompass a whole lot of other things. Let me mention right now on, within our Zoning Office reviewing a, two Building Permits. Two Building Permits for two homes, each of those homes has 12 bedrooms. Each one of those homes has a full kitchen plus five wet bars each. They're labeled as wet bars. They're right next to 220 outlets. There, you know, there's all these other things going on, and these are actually "farm dwellings." So in reviewing these Building Permits we're going, okay, how do we treat this? Certainly 12 bedrooms, I mean the gentleman may be perfectly legitimate in all the things he wants to do in these, on his properties. We want to make sure that that's the case. So here we have a definition of a kitchen and we also have the definition of a wet bar, our proposed definition. So a wet bar would be other than a kitchen. It could not be in a bedroom. We have certain limitations to the size of the sink, under counter refrigeration, small mixing, blending appliances. We're proposing no appliances for the heating or cooking of food such as microwaves which I understand that's going to be problematic. No 220, no gas or propane fixtures, et cetera, so, and anything exceeding this configuration would be considered a kitchen. And so when I look at this and I look at, and I kind of ran out of time to do this PowerPoint, when you start looking at what really a kitchen includes and what a wet bar should not. Has a full stove, has, a kitchen would have a stove, would have range or a hood. Your stove either runs on 220 or it's gas. That's pretty simple. Kitchens, full kitchens have full -size refrigerators. They have larger sinks or double sinks. They have a dishwasher and garbage disposal. I'm aware that some wet bars would have dishwashers. I'm not aware of any that have garbage disposal. Maybe I



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live in my own world and other people, you know, they...yes, yes, I am the dishwasher. And they also have relatively large amounts of counter space. But the problem is lacking a definition of wet bar, I mean we're making decisions looking at people's Building Permit plans and we don't have something solid to hang on to. We want people to be able to look at some of these plans and go here's a wet bar, that's perfect. Stamp it and we're done. But the way that it is now we have to stop and think about it. It causes delays. The applicant is calling, where's my Building Permit? I promise you, you know, I'm not going to use it for anything other than mixing drinks and, you know, we all have experienced how far some of those promises go. It's a difficult situation so we're looking for something that we can hang our hats on. Our proposed definition went through all three Planning Commissions. They all recommended approval. You know we're certainly willing to discuss should there be more than one in a house. Even as something separate should there be more than one kitchen in a house so that to me that's a separate matter. Right now we're just talking about getting through this wet bar issue. So thank you, Mr. Chairman, and, you know, we're open to discussion.

CHAIR COUCH: Okay. Thank you, Mr. Spence. Alright. Members, there's a lot of issues and Mr. Spence pretty much brought 'em all up. So, I'll open the floor to you folks to see if you have any concerns or questions. I know I have a few but you guys fire first. Anybody? I know Mr. Guzman has a few. Go for it.

COUNCILMEMBER GUZMAN: Thank you, Chair. Yeah, I believe I think my district may have the most of these type of wet bars or double kitchens. And I guess one thing that's I guess foremost in my mind is, and I know it might be a little bit irrelevant but the amount of kitchens allowed in a single dwelling, why is that the triggering factor to determine a single home or at least using that as the condition of, you know, restricting more than one family or determining whether it's a single dwelling or a double dwelling or whatever it may be? Why is that the kitchen? Because like for instance restrooms, bathrooms, you can have multiple. I mean there's no limit to the bathrooms that you can have in your house.

MR. SPENCE: Right.

COUNCILMEMBER GUZMAN: So why do you have to limit the kitchen and use that as the determining factor of it's more than a single dwelling home?

MR. SPENCE: Okay. I'm not sure when this definition was written. It could have been in the '60s when the Code was still adopted but that's pretty traditional that a house has a single kitchen. And to go along with the discussion that you're bringing up particularly about your district and even the former discussion about affordable housing. Maybe we should take a look at allowing duplex housing or triplex housing within certain districts on the island or, you know, those kinds of things. And I think that's a legitimate discussion. For right now this is the definition that we have a house has a single kitchen, actually, a dwelling unit which could be an apartment or whatever has a single kitchen. So we're working with that. And again the definition of

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a kitchen is super broad and, you know, we would like to be able to make a determination between what's a wet bar and a kitchen.

COUNCILMEMBER GUZMAN: Maybe we could go by instead of just saying a single wet bar maybe go by square footage and have like a formula. Like you have two if you're bigger occupancy, you know, in terms of square footage versus. The only thing that I can think of right now is that, you know, every house that I've gone to in terms of parties in Kahului there's what we call a "dirty kitchen." And we have one kitchen that is primarily used for preparing food but then we have a "dirty kitchen" that we fry fish is very common and we use for the "dirty kitchen" where everything is really hardcore cooking is done. And then the other kitchen is where the, you know, maybe the salad is prepared and things like that. But one could be used as a wet bar but then if you're talking about excluding propane fixtures that pretty much counts out that "dirty kitchen" altogether but anyways.

MR. SPENCE: Yeah. But part of that is my understanding about "dirty kitchens" is it's largely in the garage or the carport and we don't count that as would being a kitchen within the house.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: And, Members, I just want to remind you, you know, we have community plans that people are asking that we, you know, listen to the community on, which is rightly so. And in the community plans it says this district, whatever district we're talking about, including, you know, Mr. Guzman's where we're talking there, those districts are for single-family residences as opposed to other districts with multi-family residences. So we're getting into an area where, you know, the community has spoken saying this is what we want but now we're looking for more density. So do we change the community plan to say okay these places that have single-family homes that we now want to allow, and again this goes back to the last item as well, do we want to allow multiple families in a single-family dwelling, what we would consider a single-family dwelling. So those are some of the things that we have to consider that we have community plans that define what goes in what district. So that, and that's the issue that the Department is wrestling with, okay, yeah, this is a single-family district why do they need, you know, three or four kitchens or even two kitchens. I can see why two kitchens are necessary in certain places so that is another issue but you see what they're having to enforce on.

COUNCILMEMBER GUZMAN: Yeah, I can appreciate it.

CHAIR COUCH: Yeah, he's got the picture. So, it's a big dilemma and it's something that we want to give them some sort of direction on. So any thoughts with those things in mind? Alright. Mister...Chair White and then Ms. Baisa.

COUNCILMEMBER WHITE: Thank you, Chair. I think a concern that Mr. Guzman has and I think most of us would have is because we understand we have areas in Kahului and

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other parts of the County where people have built out a certain number of units within one TMK. I guess the question is are we looking at this as a measure that will allow us to go back and enforce things that have already been done or is this something that we're using as a measure to prospectively approve new developments or new houses?

MR. SPENCE: Okay. Right now on this kind of thing it's complaint driven. The only proactive enforcement we're doing, well unless something is blatantly staring us in the eye. But the, pretty much the...what we're doing proactive enforcement on are vacation rentals. We do get complaints about too many people living in a house, and too many units within a house, those kinds of things. I actually don't, I don't know when the last time we got a complaint about Kahului is. So we're, you know, we're not going to go looking for trouble. You know if we go looking for trouble we're going to find something on a good portion of the homes within Maui if we go by the strict letter of the law. Technically right now if somebody has changed the interior of their house or they have several kitchens it's already in violation. This isn't something new that we're trying to create to create an enforcement tool. This is mostly when we're doing inspections on bed and breakfasts and vacation rentals but also and really larger, a larger issue is when we review Building Permit applications.

COUNCILMEMBER WHITE: Right.

MR. SPENCE: So I want to know how to treat the gentleman with one full kitchen and 5 wet bars in his proposed 12-bedroom farm dwelling.

COUNCILMEMBER WHITE: You know I think the definition as you've outlined is, seems pretty effective to me. So good job.

MR. SPENCE: And, thank you. And I also recognize there are going to be instances where people want more than one but, you know, that's a part of the discussion.

CHAIR COUCH: I believe Ms. Baisa was next.

COUNCILMEMBER BAISA: Is he, is Chair done?

CHAIR COUCH: Yeah he's done.

COUNCILMEMBER BAISA: Okay. Well, I've heard about this wet bar thing as long as I can remember and people have complained to me about it over the years and said, you know, it's a stupid law because everybody is turning their wet bars into kitchens. And this idea of not having a stove is really funny 'cause there's a lot I can do in my kitchen without a stove. I have a convection oven and it's in my family room.

MR. SPENCE: We'll be right over. We'll file the RFS.

COUNCILMEMBER BAISA: I mean come get it, you know. But the reason I do that is because I used to at one point bake a lot and a convection oven is much better for

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electricity consumption then a 220 oven. And so we've been taught to do energy conservation, ha-ha. So, you know, I understand the dilemma that we have here in trying to enforce this law but it's so kind of hypocritical. And that's a strong word and maybe that's not appropriate but, you know, we're trying to deal with housing and is it practical to tell a family who has a huge home with a basement and their son or daughter and family want to live in the basement that they cannot have one of these kitchens meanwhile causing all kinds of inconvenience for the family because I don't want anybody else in my kitchen, I'm sorry. I don't care if they're family. And so, you know, it's really hard for us because we know the law and we need to enforce it but yet we also are dealing with this other issue of many people living in one house. And I don't care if you want to call it single-family, you can call it whatever you want but we all know there's sometimes two and three families living in a house. And it's only cause they've got no choice and I'd rather have them there then on the sidewalk.

MR. SPENCE: Yes.

COUNCILMEMBER BAISA: And so, you know, we're stuck in a very difficult situation here along with our Department. And what is practical and what makes sense? And, you know, there are places we know in the country and I mean we have them here on Maui. We have these huge luxury homes and when I look at them I always think of mini hotels and, you know, those luxury homes sometimes have a kitchen even in the bedrooms. You know not too long ago my brother-in-law was in the hospital in California and his room was a suite and they had a kitchen in it. So, you know, if you have a real fancy house you might have a kitchen. So this is not an easy one, Chair, and it's not easy for the Department, not easy for us. I want to think that as we make laws and we make changes that we try to do no harm. We don't make things worse for people. We want to make things better. And I understand your enforcement dilemma of trying to enforce the law and yet have some compassion for people. So this is a tough one.

MR. SPENCE: Okay.

COUNCILMEMBER BAISA: I don't know if I want to support having only one wet bar in a house. I don't know if that's practical. Thank you.

CHAIR COUCH: Thank you. And, you know, if this is a situation where you're trying to prevent somebody from coming up with a funky short-term rental type situation I'm wondering if in the short-term rental ordinance or some other place we can deal with that there. If someone is going to build something and they want 5 wet bars in some of the rooms in a 12-bedroom home, yeah, I mean if it walks like a duck and talks like a duck, but still if somebody has got enough wherewithal they're going to bring friends over all the time. They're not renting it out and it's kind of an upstairs/downstairs thing, what's wrong with that? I think if they're going to be doing short-term rentals, if you suspect that they're going to be doing short-term rentals then put 'em on a list and then as soon as they occupy the place look at that as opposed to...I don't know. I mean that's one way to look at it is, you know, let 'em have as much, as many

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kitchens or whatever. If there's an issue with the TVR or B&B then let's attack it that way as opposed to the other way. I don't know. That's a potential. Mr. Spence?

MR. SPENCE: I'd like to really separate out a couple of things. Right now it is the law you can only have one kitchen.

CHAIR COUCH: Correct.

MR. SPENCE: Right now with the definition of kitchen that we have we can look at any wet bar and say that's a kitchen and you're already illegal. We can look at any set of Building Permit plans right now that propose wet bars and say we can't approve that because that fits the definition of a kitchen. We're trying to resolve that so we can go through building permits. So we can go through short-term rentals homes and say yeah you have a kitchen and you have a wet bar or two of them and that's fine. We're wanting to be able to clearly be able to go this is okay. So right now we're not creating a problem, the problem is already there. We're trying to clarify, you know, what is the dividing line between a kitchen and a wet bar.

CHAIR COUCH: Okay. And I don't think that there's an issue with the actual definition of wet bar, I mean I think everybody is fairly fine with that. It's the number of wet bars allowed. But, Ms. Baisa?

COUNCILMEMBER BAISA: I think this was mentioned by Member Guzman earlier and I have the same question. Why did we decide that the kitchen was the issue?

CHAIR COUCH: Correct. That's another, that was done way back when and I think that's, the Department is looking at that because that's what the law is. Maybe another issue and it certainly I don't think is doable in this bill but another issue is do we have a problem with more than one kitchen in a single-family home? I don't, I personally don't have a problem. If somebody is going to break the law whether it's for short-term rentals or even for long-term rentals then we have laws to handle that. As far as more than one kitchen in a house maybe that's something we want to bring up, maybe Mr. Guzman can send up a bill or something like that or we can and deal with that on a separate issue. But I certainly think wet bars, you know, maybe you can have so many per so many bedrooms or something like that. I don't know. I don't like the limit of just one for whatever reason. And again it's on the, you know, all kinds of different reasons. Maybe you do want to have the family, the kids, you're okay with the kids staying in the basement or in the two rooms over there and give 'em a wet bar to do most of their, whatever they want but you still have the kitchen. I don't know. I don't have a great love for may contain a single wet bar. The definition I'm fine with. Okay. So, the Department can say okay. The whole thing about a sink I'd be happy to bring that up in another, as another item and that would be a long discussion in itself. Members, any other comments on this one?

MR. SPENCE: And ...

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CHAIR COUCH: Yes, Mr. Spence?

MR. SPENCE: And I would also add that, you know, you have areas on the island like Kapalua, Makena, Wailea where, you know, you have some really large very nice homes. That, you know, you have upstairs, downstairs. You have game rooms. You have --

CHAIR COUCH: Media rooms.

MR. SPENCE: --media rooms. You know you have all those places. I don't see I mean personally if I was to purchase a property down there, if I could purchase a property down there, the, you know, I might want more than one wet bar. One in my media room so I don't have to go out to the kitchen while the movie is playing or whatever is going on. You know so, you know, we've brought a bill before this Committee and if the Committee wants to say two wet bars are fine or something like that, you know, we're open to entertaining that. And then again as, you know, as a separate topic maybe not for today but let's talk about should we have more than one kitchen in a house and should we...or designate areas for, you know, multi-family that are currently designated for single. You know that's a good topic for discussion.

CHAIR COUCH: So any thoughts? Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And, yeah, I like the definition, number one, and I hear all the concerns. So, could it not be determined per plan? I mean like you just stated, Mr. Spence, a huge mansion with, you know, those different types of rooms it would make sense to allow more than just one or more in that type of dwelling. So, could you not...but it would limit, with this wording here today, limit it to only just one room with a wet bar. So, I hear that example of yours and there's many in the area that I live up above, not my neighbors per se but and I can see where they would like something like that. But at this point you're not able to allow it so I, you know, there's kind of, yeah, it's hard you can't say well in Kahului no but, hey, in these big high-end gated communities sort of fits, you know, in the size of their homes and what have you but. So, I don't know if...I have concerns with that single also.

CHAIR COUCH: Right.

COUNCILMEMBER COCHRAN: And then in relation to multiple kitchens would that then determine a dwelling to be a duplex or a triplex like you were saying? Would that now put it into a different type of structure or zone, you know?

CHAIR COUCH: Well that was my comment is if you have three kitchens in a house, if it's a single-family home then you're only allowed to have a single-family in that home --

COUNCILMEMBER COCHRAN: Right.

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CHAIR COUCH: --which is fine to have multiple kitchens because if that's your, you know, up in Wailea, Makena, or Kapalua, something like that it's a big enough house to have three kitchens for whatever reason. But if you have more than one family you're breaking a different rule as opposed to number of kitchens.

MR. SPENCE: Mr. Chairman, I believe the definition of a family is up to...okay, six unrelated people. Okay. So you can have a dozen family members, multigenerational that are all, you know, part of a family but it's the unrelated people to have in a house.

CHAIR COUCH: Right. So the number of kitchens shouldn't matter in my opinion when we get to that discussion.

MR. SPENCE: Right when we get to that discussion.

CHAIR COUCH: Right.

MR. SPENCE: I mean...Members, where we would totally be open to the idea of two per dwelling, two wet bars or if somebody wanted to even...I mean we're just looking for clarity to be able to --

COUNCILMEMBER BAISA: To enforce.

MR. SPENCE: --to go and review building permits and other things. So, two is good, three I'd rather not but if that's the wish of the Committee. And then as a completely separate matter, you know --

CHAIR COUCH: Deal with the kitchens.

MR. SPENCE: --deal with the number of kitchens and everything.

CHAIR COUCH: Mr. Chair, I thought I saw you raise your hand and then Mr. Guzman.

COUNCILMEMBER WHITE: Thank you, Chair. I agree the kitchen should be a discussion for another day.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: But, you know, Ms. Cochran brings up a really, I think an important point that the high-end houses that we tax, we get the most tax out of, you know, you see movies where people have a wet bar in their den. They have a wet bar by their pool. They have a wet bar where the...in the game room, you have another one in the family room. So, you know, I just, I don't want us, I mean we've all heard the stories of people who come here from somewhere else and want to build a big house and feel absolutely whacked over the head by all the regulations that they've got to go through. You know whether, you know, you have to have, well, I know this has changed a bit, but...well I won't get into all the variations. But so I would agree that

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we need to be a little bit more expansive on the number of wet bars that we allow just because we've got houses that we tax pretty significantly and there's a part of me that says you want to build it and you don't mind us taxing you, go for it.

CHAIR COUCH: Mr. Guzman and then Ms. Baisa.

COUNCILMEMBER GUZMAN: Yeah, I would agree with Mr. White in terms of his analysis. If we are going to limit...I mean consider the definition of this wet bar, I would propose it unlimited or you would tie it down to or you connect it with how many bathrooms you have. Because in my house you kind of determine, you know, bathrooms are kind of set where, you know, they're organized in a way that, okay, upstairs I have one for my kids, and I've got one for me, and I've got one for people downstairs.

CHAIR COUCH: So you can have a wet bar for your kids upstairs.

COUNCILMEMBER GUZMAN: Yeah, so if you got three bathrooms, you know, and then you got a wet bar of course the house is kind of, you know, portioned off into regions, you know, or sectors. So, I would have proposed that for every bathroom you have you're allowed a wet bar 'cause that kind of ties into one another in some ways. You know you drink you need to use your restroom. So, you know, that's one way or we go unlimited, you know so.

CHAIR COUCH: Okay.

MR. SPENCE: And so ...

CHAIR COUCH: Yes.

COUNCILMEMBER GUZMAN: Thank you.

MR. SPENCE: One it's, administratively it's easier to deal with a single number but, two, the examples that I showed on the thing where the gentleman has six wet bars, we're getting back into homes being built specifically for short-term rentals. I mean that one house is, it's a hotel.

CHAIR COUCH: With a kitchen.

MR. SPENCE: Yeah.

CHAIR COUCH: 'Cause hotels don't have kitchens supposedly.

MR. SPENCE: Supposedly according to the community plan. But we're trying to avoid abuses as well.

CHAIR COUCH: Yeah. Ms. Baisa, you had a comment.



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COUNCILMEMBER BAISA: I understand, you know, the position of the Department. You know I've been working with several departments closely recently and I know that what they want from us is very clear direction and they want the rules to be pretty clear 'cause it helps them a lot in not having to deal with a lot of discretionary decisions. 'Cause when they make discretionary decisions they take a lot of heat and everybody wants to know why you're picking on me. So, they're kind of looking at us and saying okay tell us one kitchen, two kitchens, one wet bar or three wet bars. I mean what do you guys want and we'll enforce it. And so I think that's what, you know, our job is here, and I for one like I said feel uncomfortable with a limit of strictly one --

CHAIR COUCH: Right.

COUNCILMEMBER BAISA: --'cause I don't think it's realistic. We all live in the real world and we know what's going on and every one of us, I don't have wet bar in my home but I have lots of friends who have them. My sister has two, you know, one in her bar and one in her living room, her family room and she has a big kitchen on top of it. So, you know, I think that we want to be realistic when we make laws because that takes away a lot of the pain that the departments have to deal with in trying to administer. And I'm also concerned about making rules that affect housing in any way.

CHAIR COUCH: Right.

COUNCILMEMBER BAISA: We want to be really cautionary about making rules that affect housing because we're in this mess that we are in. And a lot of people are living in very different circumstances. No longer is it a single home with a single family. Most of us have multi families in one house. I don't care if it's zoned Single-Family. The fact of it is not happening 'cause we got people moving in with mom and dad 'cause they have no place to go or two sisters or brothers or I don't know. I know there's a lot of this going on.

CHAIR COUCH: Right.

COUNCILMEMBER BAISA: I live in the real world with real people.

MR. SPENCE: Right.

COUNCILMEMBER BAISA: And so we want to be careful when we create these laws. So, I don't know if we're ready to make any kind of decision today or should we talk about this a little bit more and let the community talk about it a little bit more and get some more input.

CHAIR COUCH: And I agree, you know, we have a really nice definition of wet bar --

COUNCILMEMBER BAISA: It's wonderful.

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CHAIR COUCH: --which is good.

COUNCILMEMBER BAISA: Yes.

CHAIR COUCH: Although I do have a question on the 220 and we'll get to that in a minute. But if we can define what a wet bar is and set a limit or have no limit onto the number of wet bars because I think the Department's intent here, part of the Department's intent is to help them a little bit with illegal uses in other portions of the Code. I understand that they want to do that but I don't know that this is the place to help them with that. We have other places we can do that. So that's why the single, maybe we just take that line out and that will help. I don't know what the ramifications is so I wouldn't want to pass that bill today. I would want to say, you know, let's see what happens if we take that out and then have the Department discuss it amongst themselves in their, you know, in their staff meeting saying okay what happens if they take this out. Is it going to be more proliferation of short-term rentals or illegal short-term rentals? If that's the case that's fine we'll deal with it on the short-term rental side or the TVR side as opposed to, you know, if a mega mansion wants to have ten wet bars in their house why do we need to stop them on that? So, Members, if you have, if there are any other comments I think it's going to be something that we'll want to defer for the moment. I know that they have some issues with certain permits that they wanted to try and figure out how to deal with but if you have further comments to the Department, why don't you sent 'em to 'em. I personally think that, and it sounds like the Committee is willing to take out that line that say and may contain a single wet bar and deal with, we'll deal with kitchens later. But right now... go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: I'm sorry. Can I ask one question?

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: On the property that you referred to earlier with the ten rooms. Does each of the rooms have a bathroom in it?

MR. SPENCE: No. And it's actually 12 bedrooms.

COUNCILMEMBER GUZMAN: Twelve bedrooms but how many bathrooms?

MR. SPENCE: I don't recall.

COUNCILMEMBER GUZMAN: Oh, okay.

CHAIR COUCH: Yeah, and, Mr. Guzman, you may have a point, say hey, you know, if you have four bathrooms then you can have four wet bars. That kind of thing, that's potential. My quick response on the 220, you know, there are workshops or if somebody wants to have, I think Mr. White has, sorry, he's got a workshop that it's got a lathe and I don't know if that's 110 or 220, you know. Yeah, see 220. So but that

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could be enclosed in the house or, you know, as part of the house. You can go and do a workshop room or somebody may have an art studio that has a kiln that's on 220. So, I may have some concerns with the 220. And laundry rooms have a sink. Could have a refrigerator I'm not sure but they are 220. Definitely anything with a dryer is generally 220. So, I have a little concern about the 220 limitation at this point because of other ...

MR. SPENCE: Chairman, we're not talking about eliminating 220 from a house --

CHAIR COUCH: No but you're talking about ...

MR. SPENCE: --or from a laundry or from a kitchen.

CHAIR COUCH: Okay.

MR. SPENCE: We're talking about not having 220 sitting next to your bar.

CHAIR COUCH: Okay.

MR. SPENCE: That's all.

CHAIR COUCH: Sitting next...we're going to have to figure out ...

MR. SPENCE: No it's really this is...the way this is --

CHAIR COUCH: For use as part of the wet bar. Okay.

MR. SPENCE: --written it's really easy for us.

CHAIR COUCH: Okay.

MR. SPENCE: What I would like to do, I mean in further discussion probably what we'll come back to the Committee is we'll probably say like 2 wet bars in homes up to 7,500 square feet or 3, for greater than 7,500 square feet you can have 3 or 4. Something like that. I mean we can do that right now on the floor if you want but it doesn't sound like anything is going to go. We'll discuss it in our office and we'll come back. It's very helpful for us to have a definitive number rather than you don't have any idea how much we struggle with sliding scales and all that kind of thing. So, and we don't want to be arbitrary with the public. We want to be able to definitively say this is what you can do.

CHAIR COUCH: So, I guess the first suggestion was, you know, if we eliminate "and may contain a single wet bar" what concerns would, and I'd like you to bring it to your staff in your staff meetings and say hey what kind of concerns will we have here. If, keeping in mind, that if you're concerned about, you know, a bunch of short-term

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rentals or a bunch of, you know, multi-family dwellings we can deal with that in other portions of the Code keeping that in mind too.

MR. SPENCE: Well, short-term rentals start out as single-family dwellings. We deal with it here. It already deals with short-term rentals --

CHAIR COUCH: Right.

MR. SPENCE: --and in a very publicized case that we just settled there was multiple, well, there was multiple kitchens and that was some of citations that we issued and they were very clearly kitchens. So this helps in those kinds of situations as well.

CHAIR COUCH: Okay. Alright. Members, any further comments for the Department? Okay. It's going to be the Chair's recommendation that we defer this but I ask the Department to discuss amongst their staff the number that we're looking at. Right now, it's the Chair's recommendation to be unlimited but I know that kind of messes with your guys' head. You heard Mr. Guzman's potential, the same number of bathrooms and wet bars potentially. You know so you have some ideas and but one is not a good one and I don't even know three. Depending on, it might be, like you said it might be a square footage kind of thing. So discuss it and see what you can come back with to make, and make sure it's not substantially...I don't know. Mr. Hopper, if we were to change the number of wet bars in a home that's not substantially, substantial enough to send it back the Planning Commission or is it?

MR. HOPPER: Mr. Chair, if you're dealing with the same general topic as the original bill generally it's not a problem, so if you're dealing with the number of wet bars allowed in a dwelling unit I don't think that's necessarily a problem.

CHAIR COUCH: Okay. Thank you. So, Members ...

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: You know how we love to hem and haw about shall and may.

CHAIR COUCH: Yes.

COUNCILMEMBER COCHRAN: This has a may and I think Mr. Shibuya said something about that word too, the "shall." So this is a may or it may not sentence. And I mean if it ...

CHAIR COUCH: Which one?

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COUNCILMEMBER COCHRAN: The opening, the very, dwelling unit means a room or group kitchen and may contain a single wet bar.

CHAIR COUCH: Correct.

COUNCILMEMBER COCHRAN: Or it may not and it may be more. So it doesn't say shall contain a single meaning only to the one. So I don't know if that's, you know, is a little more open to us all. To say it's not really saying it only has to be the single. It may, it may not. I don't know if it's --

MR. ALUETA: Mr. Chair?

CHAIR COUCH: Yes.

COUNCILMEMBER COCHRAN: --read that way.

MR. ALUETA: The primary definition for what a dwelling unit is or a single-family dwelling is the kitchen. And so, what we're doing is we're just incorporating that there could be potentially to allow for wet bars and so we don't count that as a kitchen. So basically that's why the may is...otherwise anything that doesn't meet the definition of a wet bar the way we would want it would be basically we would count it as a kitchen. That's our issue right now.

COUNCILMEMBER COCHRAN: Okay.

MR. ALUETA: So, I think may is appropriate in this instance.

MR. SPENCE: Right. And so --

CHAIR COUCH: Yes.

MR. SPENCE: --when we come back to the Committee it says and may contain a single wet bar. We'll probably change that because the way it's written right now you're saying you can have a kitchen and you might, you could have a single wet bar only one, so, or you might have none. It's up to the homeowner.

CHAIR COUCH: Right.

MR. SPENCE: So ...

CHAIR COUCH: Well, at this point it's the Chair's preference to just strike that whole, you know, and may contain a single wet bar.

MR. SPENCE: Okay. We'll deal with that.

CHAIR COUCH: But then, you know, Mr. Guzman had some suggestions and --

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MR. SPENCE: Right.

CHAIR COUCH: --you had some suggestions. So using that and our concerns, come back with something that you feel that is a win-win for everybody as much as you can. Alright. Members, any other comments or questions? Seeing none, without objection, we'll defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS.

**ACTION: DEFER.**

CHAIR COUCH: Okay. And then that is the last item on our agenda. So, Members, thank you very much. This meeting is adjourned. . . .(gavel). . .

**ADJOURN: 11:50 a.m.**

APPROVED BY:



DON COUCH, Chair  
Planning Committee

pc:min:150806:cs

Transcribed by: Cathy Simmons

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CERTIFICATE

I, Cathy Simmons, 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 this 31<sup>st</sup> day of August 2015, in Wailuku, Hawaii.

  
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Cathy Simmons