

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

**M I N U T E S**

**Council Chamber**

**February 4, 2016**

**RECONVENE: 9:07 a.m.**

**PRESENT:** VOTING MEMBERS:

Councilmember Don Couch, Chair  
Councilmember Robert Carroll, Vice-Chair  
Councilmember Elle Cochran  
Councilmember Don S. Guzman (arrived at 9:11 a.m. and left at  
11:57 a.m.)  
Councilmember Mike White

NON-VOTING MEMBERS

Councilmember Stacy Crivello (arrived at 9:15 and left at  
11:10 a.m.)

**EXCUSED:** Councilmember Gladys C. Baisa  
Councilmember Michael P. Victorino

**STAFF:** Greg Garneau, Legislative Attorney  
Pauline Martins, Committee Secretary

**ADMIN.:** Edward Kushi, Jr., First Deputy Corporation Counsel, Department of  
the Corporation Counsel  
Michele McLean, Deputy Director, Department of Planning  
Gina Flammer, Planner, Department of Planning

**OTHERS:** Madge Schaefer  
Joe Tanaka  
Thomas Croly  
Arik Salvador  
David Dantes  
Plus (9) other people

**PRESS:** *Akaku Maui Community Television, Inc.*  
*Colleen Uechi, The Maui News*

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**PC-10 AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO  
SHORT TERM RENTAL HOMES (C.C. 14-278)**

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of January 21, 2016  
please come back to order. It is now February 4, 2016. My name is Don Couch.

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Before we get started please, everybody, turn off your cell phones or at least turn them into silent mode. We don't want the meeting interrupted by people's phone calls. First of all, we'll talk with, we'll talk about who's here at this meeting that has been reconvened. I'm the Chair. Welcome, Vice-Chair, Councilmember Carroll.

VICE-CHAIR CARROLL: Good morning, Chair.

CHAIR COUCH: Councilmember Baisa is excused. Welcome, Councilmember Cochran.

COUNCILMEMBER COCHRAN: Aloha, good morning.

CHAIR COUCH: Good morning. Councilmember Guzman is on his way in. Councilmember Victorino is excused, and Council Chair White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR COUCH: Good morning. And from the Planning Department, we have Deputy Director Michele McLean and Planner Gina Flammer. Good morning, ladies.

MS. McLEAN: Good morning, Chair, Committee members.

CHAIR COUCH: And we have with us today, we have the privilege of having a extra special Corp. Counsel, Deputy, First Deputy Corporation Counsel Ed Kushi.

MR. KUSHI: Good morning.

CHAIR COUCH: Good morning. And also, we have our Legislative Attorney Greg Garneau. Good morning.

MR. GARNEAU: Good morning.

CHAIR COUCH: And Committee Secretary Pauline Martins, good morning. And we don't have any of the District Offices here because there is no testimony. This is a reconvening of the January 21, 2016 meeting. So, Members, we're gonna get right into it. We have, we're working on PC-10, which is the revisit of the short-term rental homes ordinance that we did three years ago. We've so far had nine Committee meetings. One, last term and eight times this term, to discuss the Department's proposed amendments. The most recent version of the bill is the one attached to the request for legal services dated November 13, 2015. We will continue working from the matrix summary of amendments to the bill that is dated January 21, 2016. It's this green and white paper. You know, we've made a lot of progress. We've just got a couple more things to deal with. And, but first, I wanted to, yeah, we don't have, Mr. Guzman is going to be here shortly. I guess that's everybody. I wanted to let you know that we've been working on this as I said for over a year and we've been making some good progress. There are some concerns and I understand your concerns, but I just want to remind everybody that this is a, not only a Maui County problem, not only

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State of Hawaii issue, it's a, not, and not even a nationwide issue, it's a State, a worldwide issue. I just saw a, an article about Paris is having a, an issue with how to regulate these types of businesses. These businesses are here. They're everywhere. Now I welcome Councilmember Guzman. Gee, I wonder who he's rooting for.

COUNCILMEMBER GUZMAN: Thank you, Chair.

CHAIR COUCH: On Sunday. Anyway, this is a business that a lot of people, I mean, even I, when I went to Europe, I wanted to stay in a short-term rental home. There are people who want to do that. If we don't have that inventory here, they'll go somewhere else. So, this is something I'd rather see here and regulated as opposed to, you know, with the way the internet works now, it would be on the black market and under the radar as much as possible, you know, so, I'd rather have people come out, be able to get a permit and then, do it the right way, legally and according to our regulations. You know, I'm one who doesn't like a lot of regulations, but this is something that we need to at least ensure that the neighborhoods are okay, that there's no disruption. Through, so far, through looking through some of the enforcement issues and the complaints, the ones that are getting complaints are the ones that are not permitted. The people who are permitted, don't want to lose their permit, so they're having their guests toe the line. So it's important, I think, to get these folks permitted, get 'em in compliance and then you'll reach a set, a point of diminishing returns, I guess, or a tipping point where they can start policing, they'll start policing themselves. 'Cause if you get enough folks there with the permits and they have a big enough voice, they're gonna work and police each other, so, that's another extra added benefit in my opinion. We've seen that happen before on other things, so, I just hope we can buckle down and work on this last little bit. I know it's the hardest part, but at least get it done and get something that everybody can live with. Alright. The first thing we wanted to talk about today is on Page 1 and 2 of the matrix. We want, I want to revisit the CPR as separate lots. We had a lot of discussion about it and we wanted to come back with some language and so I did come up with some language and that is on your amendment summary form, Page 1, that's been handed out. It should be in your binder, maybe. At the back of the binder, is that right, Ms. Martin [sic]?

MS. MARTINS: Yes.

CHAIR COUCH: Okay. In the back of the binder, amendment summary form, Page 1, and I'll just read it off. This is what we pretty much discussed on the floor and still open for discussion even before the motion. But essentially, what I'd like to do is have a motion to revise the first full paragraph of Section 19.65.030, Maui County Code, labeled, "A", in the revised proposed bill attached to the correspondence dated November 13, 2015, to the Department of Corporation Counsel by deleting the proposed third and fourth sentences showed in bold facing on the Effect section below and inserting in its place, the following to be appended to the end of the second sentence. And that appendix is, except when lots are subject to a condominium property regime pursuant to chapters 514A or 514B, Hawaii Revised Statutes, the following shall apply: 1. if the applicant owns all condominium lots on the unit, only

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one permit may be granted for that lot; 2. if the applicant does not own all the condominium lots, units on the lot, each condominium unit will be considered a lot for this chapter and each unit owner will be eligible to apply for a short-term rental home permit; and 3. irrespective of ownership, each condominium unit shall be considered a separate lot for purposes of notification and planning commission review threshold pursuant to section 19.65.060(A)(2). What this does, I'll go through each one. This allows for a lot of the, there's a situation on Molokai and a situation here on Maui, a couple, I believe, where there're big, one big lot that is condominiumized to multiple units that were built for short-term rental homes. They are single-family homes and the way the law reads now, they're not allowed, only one of 'em are allowed to get a short-term permit rental home. Then there are other places, a lot in my district and a lot in Ms. Cochran's district that are, they're zoned Apartment actually in, certainly in my district. They're zoned Apartment and they have two or three single-family homes on the lot and they're condominiumized and it's much less density than a full-on apartment would be allowed to be there, so, it's actually a less dense use on that land. But anyway, this will allow each one of those people to get a short-term rental permit if they wanted to. We treat condominiumized units individually when we tax them and several other times, so, I don't see why we shouldn't treat them any different here. So those are some of the, that's what I wanted to talk about for the condominiumization. I don't want to get the motion yet. I'd like to discuss it with the Members and the Department, first, to see if it's something that we want to move forward with. And before we go any further, I want to welcome a non-voting Member, Ms. Crivello, thank you for being here.

COUNCILMEMBER CRIVELLO: Aloha and good morning, Chair.

CHAIR COUCH: Good morning. So, Members, any questions or concerns on the condominiumization? Chair White?

COUNCILMEMBER WHITE: No questions or concerns. I support the change as you've outlined and I think that the wording is something I'm comfortable with and I think it's a fair resolution of the challenge.

CHAIR COUCH: Okay. Department, any concerns, questions?

MS. McLEAN: Thank you, Chair. As we said last time, we're not supportive of the proposed amendment. There aren't any other circumstances in the Planning Department where we treat CPR'd lots as individual lots. We don't see why this particular type of use should change that. The, Gina and I were just talking through some other things. The notification and Planning Commission review thresholds, it can be a little bit tricky because if now individual CPR'd lots are being treated as distinct lots, let's say you have a proposed STRH even, not even on a condo'd lot, but within 500 feet is a condominium building, then, those individual units will be considered individual lots for the purpose of protest thresholds. So that puts the protest threshold much, much lower than it otherwise would be because typically that parcel would be considered one lot rather than all those individual lots. And it does greatly increase the potential

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for STRHs beyond what we felt was the original intent. And we think it does make it problematic that an owner of one condo lot might want to apply for an STRH permit and then, his co-owner next door doesn't, there might be a shared driveway, shared common elements and we'd be saying, well, the other guy, you know, we don't, he doesn't really have much to say. Even though they jointly own those common areas, this guy can still go ahead and apply even if the other guy, who jointly owns common elements, isn't supportive of it and we think that could be problematic as well.

CHAIR COUCH: Okay. Members, any questions to the Department? Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. No really, can you please tell us what exactly is the difficulty in managing or at least enforcing this type of situation or schematics? I'm not sure whether we should be involved in common elements. You know, they, I'm sure condos also have associations, things like that. I really want to know on the Department side of it, what procedures would you have to, is that an additional procedures that you would be burdened on or other than just the idea of commonality and the, we haven't done this before, so, you know, what additional procedures are you looking at or burdens to the Department if this were to be imposed?

MS. McLEAN: Gina brought up a possible scenario. If there's a violation on one of those units, right now, we cite all owners of a property if there's a violation and so there are, you know, both owners would be responsible for that violation, even though it would be occurring only on one of the CPR'd lots. I'm not sure how we would reconcile that by making one owner responsible for something that, you know, truly they really bear no responsibility for. But under our current enforcement code, both would be responsible for that violation as co-owners of the property.

COUNCILMEMBER GUZMAN: I wanna ask Corp. Counsel.

CHAIR COUCH: Go ahead.

COUNCILMEMBER GUZMAN: Chair, may I ask Corp. Counsel if he has any --

CHAIR COUCH: Sure. You bet.

COUNCILMEMBER GUZMAN: --ideas or statements in regards to what the Department has just mentioned? Like a dual responsibility sounds like a joint responsibility, joint liability kinda thing going on.

CHAIR COUCH: You bet. And I do want to remind Members before he answers and give him a chance to get his thoughts together, that if there's an issue between the owners, the other owner has the right to protest and write in protest and, which could possibly trigger a Planning Commission review so. Anyway, Mr. Kushi?

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MR. KUSHI: Yeah. I'm not sure what the problem is, but in terms of condos versus subdivisions, I think our County's position is that if you condominiumize a lot and we're talking about horizontal condos, not verticals, it's clear when you go up right. Okay. And I'm not sure if you allow short term rentals when you go up but, and the reason for condo, aside from one major reason of going horizontal condos is the water meter issue. Okay. I mean, just point blank, that's why it's happening Upcountry. But aside from that, there's joint ownership of common elements, et cetera, et cetera, but legally from the State's standpoint, it's recognized as a single ownership. From our County Code subdivision side, I think the definition of subdivision from the Title 18 is four or more units or lots on a property, then, they would have to apply regardless of subdivision or condo, the condo route. They would have to comply with all the other requirements, street dedication, road widening, parks and playgrounds, et cetera. If they go under that threshold, then we don't even look at it. But in terms of this ordinance, I'm not sure what the problems would be from the Planning Department side.

COUNCILMEMBER GUZMAN: Thank you, Chair.

CHAIR COUCH: Thank you. Members...Chair White?

COUNCILMEMBER WHITE: It sounds like we might have to put something in the ordinance that says that this, the ownership is the owner of the TMK, not the lot, so, I, you know, I don't, I understand the Department's concerns, but at the same time, for taxation purposes, the taxes are on the CPR'd TMK so.

CHAIR COUCH: Okay. Mr. Kushi?

MR. KUSHI: Member White, for, if the property is condominiumized, they have a separate TMK.

CHAIR COUCH: Yes.

MR. KUSHI: They have a, you know, they have a, instead of a four digit, they have a five-digit TMK. So, they're separately assessed.

COUNCILMEMBER WHITE: Yeah. The condo, the common areas, I guess, are under --

CHAIR COUCH: The master.

COUNCILMEMBER WHITE: --the master, but the, but each owner of the CPR'd unit has its own TMK.

MR. KUSHI: Correct.

CHAIR COUCH: Correct.

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COUNCILMEMBER WHITE: So I'm just saying if they're concerned about dealing with lot, the term, lot, then maybe we need to change it somewhere to say, TMK, and I'm not sure where that change would take place but.

CHAIR COUCH: Okay. Right now, the language, the proposed language change says, except when lots are subject to a condominium property regime, if the applicant owns all condominium lots, only one permit may be granted for that lot; if the applicant does not own all the condominium lots, each condominium unit will be considered a lot for this chapter and that's key, too, it's for this chapter, and each unit owner will be eligible to apply for, so we can each, instead of each unit owner, each TMK, is that better? Would that make a difference? Anybody?

MS. McLEAN: Chair, would you mind repeating that? I was talking with Corp. Counsel.

CHAIR COUCH: Sure. It says right here, if the applicant does not own all condominium units on the lot, each condominium unit will be considered a lot for this chapter and each unit owner will be eligible to apply for a short-term rental home permit, instead of each unit owner, how about each TMK owner?

MS. McLEAN: Yeah. I think we can administer it as its...

CHAIR COUCH: As it is now? Okay.

MS. McLEAN: Yeah. We think there could be problems with that but the language itself is --

CHAIR COUCH: Okay.

MS. McLEAN: --I think is clear enough.

CHAIR COUCH: Okay. Any other questions? Members? So, then, in this case because I did an amendment summary form under duress, I would entertain a motion...

MS. McLEAN: Chair, excuse me?

CHAIR COUCH: Yes?

MS. McLEAN: There was one more issue that we had talked about and that was in previous discussion about this topic of allowing separate CPR units to apply. At one point, there was a discussion of still keeping the maximum number of bedrooms at six per lot. I don't know if that's still the Chair's intent, but we wanted to put that out there for discussion.

CHAIR COUCH: I will open it up to the Members. It's the Chair's intent that yeah, if it's, especially places like International Colony Club in Molokai, I think it's called, Molokai Beach Club, if you leave it to only six rooms for the whole lot, then, only either six separate people can have one bedroom at International Colony Club or if there are two

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five-bedroom homes on the condominium lot, how are you going to say, well, you get three, you get two and then, how are you going to enforce that? I think it would be easier to say, you get, it says, permit, each permit and I believe that says further on in our language, that the permit gets six rooms, up to six rooms, no more than six rooms. Do you have that...I'm trying to find it.

MS. McLEAN: If the intent is for each CPR'd lot to be able to get six bedrooms like --

CHAIR COUCH: If they have...

MS. McLEAN: --a regular subdivided lot --

CHAIR COUCH: Right.

MS. McLEAN: --then, I don't think anything needs to be clarified in the language that you have here.

CHAIR COUCH: Okay.

MS. McLEAN: The question was whether by allowing this concept, you would be potentially increasing the density multiple, multiple times on any given lot versus what its allowed today.

CHAIR COUCH: But that's on any given lot that just doesn't happen to be subdivided at this point maybe because it's too small or whatever. It's a situation where, it's something that we allow in the law now to get around other things that we have in the law, so, as far as the Chair's concerned, I think that's okay. But that's up to --

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: --the Members. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And you know, this is not really my favorite subject matter, but I just wanted to try and, Mr. Spence isn't here and I know last discussion he mentioned, I'm thinking was it him, I believe so, but just and Mr. Kushi just now was trying to explain and in my head, I'm trying to distinguish why do people go through CPRs, what are they by-passing, what is the benefit, what is it, what's making it easier for these people to get that designation versus go through the subdivision process and all this stuff. And I think it was mentioned by Mr. Spence or perhaps one of you that, you know, they're already getting these benefits and now we're gonna give 'em more and all this stuff. But I understand, too, that we want revenue and if they're taxed properly, they come legally and taxed properly, then, we could, you know, garner more revenue into our coffers for the County, so I see that part, but if someone can sorta spell it out for me a little clearer as to what, you know, what the difference is and why people go through CPRs to begin with?

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MS. McLEAN: CPR is an ownership mechanism. So, if you have a property, I think one of the typical scenarios that we see, is you have a house and an ohana and the lot isn't big enough to subdivide. It doesn't meet the minimum, you wouldn't be able to subdivide and meet the minimum lot size. Ag land is a good example. That's, it's very, it's pretty common to see that on Ag land. So you have a two-acre Ag lot and you have your main farm dwelling and then you have the farm dwelling that's limited to a 1,000 square feet on a 2,000-square-foot lot or excuse me, on a two-acre lot. That lot can't be subdivided any more. It's a two acre minimum. But you CPR it to create 2 different ownerships, so, 1 owner owns the main house and has exclusive use of the main house and the other owner owns the 1,000-square-foot house and has exclusive use of that. So, you're two separate owners, you know, you can paint, decorate, landscape, however you want to. You own that. There are also and those are each called limited common elements because technically, both people own the property, but they have this condominium agreement that says, I have exclusive use of this, you have exclusive use of that. Then there are also common elements, which are often the utilities. So, when that original property was developed, you know, the utilities came in and went to each, you know, water, electrical and so forth, so those, often a driveway, it's often a shared driveway that goes to both, those are common elements that they own jointly, so, both are able to use the common elements. So, it's an ownership mechanism whereas you wouldn't be able to subdivide and if you were to subdivide, you'd have to have separate utilities and separate driveways. And in some cases, there are other improvements that Public Works or other agencies might require in order to subdivide. And so it's a way to create ownership, but to have exclusive uses of the property.

MS. COCHRAN: Okay. And TMK, so now two TMKs are created for that one lot, I guess, 'cause now you have...

MS. McLEAN: Well, let's say that that parcel was parcel 1234. Now, the one element would be parcel 1234:0001 and the other would be 1234:0002. So...

CHAIR COUCH: Yeah...oh, sorry.

MS. McLEAN: Most TMKs just have four different numbers, but then condos have an additional four at the end that enumerate the units.

CHAIR COUCH: Yeah. If you look at the TMK number, it's the colon and those numbers. Every TMK number ends in colon, either your own lot will have zero, zero, zero, zero on it or if it's a condominiumized lot, it would be 0001, 0002, depends on how many units are on the lot.

MS. McLEAN: But that original TMK number also still exists as, it's called the master.

CHAIR COUCH: The master, yeah.

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COUNCILMEMBER COCHRAN: Okay. And so utilities are now billed single or now two, separate units?

CHAIR COUCH: It depends on how they do it. It, there's a mix.

COUNCILMEMBER COCHRAN: Okay.

MS. McLEAN: It would have, I, they would have to be spelled out in the condo docs.

COUNCILMEMBER COCHRAN: Right.

MS. McLEAN: How it's sorted it out. Because they can be separately metered, you know, electric would probably be separate, but they could be together and then, they just have to figure out how to arrange that.

COUNCILMEMBER COCHRAN: Yeah. I see a lot of that in, up in the Launiupoko area especially so. And I, but Chair, I understand what the intent is and where, you know, you want to go with this, so I just wanted a better picture and I'm hearing Department saying that as written, they can administer. Because that's where I think, you know, those gray lines and how do you, one person interprets it this way and the other person interprets it that way, but if its spelled out correctly and again, not my favorite subject matter, but just want to make sure that it's administered properly and --

CHAIR COUCH: Of course.

COUNCILMEMBER COCHRAN: --people are billed properly and whatever and we get what's due to us properly so.

CHAIR COUCH: Right. And it's the Chair's thought that, you know, if we allow houses to be built on the lots because it's condominiumized, then we should allow the use. Just because it happens to be, if we allow two houses with five bedrooms each, they should be able to use it that way in my opinion. But that's, anyway, go ahead.

MS. McLEAN: Well, the, CPRs don't increase the development potential of the property.

CHAIR COUCH: Correct.

MS. McLEAN: You CPR it, you still get your one house, your one ohana in that scenario. You don't get additional homes because you've CPR'd it. And that's what we're saying is, just because you CPR'd it, doesn't mean you should get more opportunities for STRH permits than what's allowed now. That 2 lot, CPR'd lot, with the 2 structures today gets 1 permit and the proposal would allow them to get 2 permits with, you know, instead of 6 bedrooms total on the property, you could get 12 if you had the 2 homes. Hard to fit 6 bedrooms in a 1,000 foot ohana but.

CHAIR COUCH: Right.

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COUNCILMEMBER COCHRAN: But you can CPR more than, like you can have three different owners.

CHAIR COUCH: You still have the restrictions on whatever the lot is zoned, on how many dwellings you can have on there, especially in ag.

MS. McLEAN: There are some Residentially zoned lots that have a number of dwellings on them and right now, that whole property would be allowed just one permit and six bedrooms and under this, each one could be eligible to apply for six bedrooms.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: Any questions? Yes, Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, that's, for me, I kinda looking at the density issue. Is it a, at the extreme level, would it be, worst case scenario, are we creating small hotels?

CHAIR COUCH: No, because these are all single-family homes.

COUNCILMEMBER GUZMAN: You know, like, I mean, could they come in, you know, just for, you know, like I said, the very worst case scenario where you do have separate owners, ownership and then, they collaborate among each other and somehow, you know, create an LLC, well, they separately go out and get permits individually and then, after they get the permits, create an LLC and each of one of them are members of the LLC and they call it Kumbaya Resort, whatever. Is that a possibility? Because I mean, I'm just thinking outside the box here.

CHAIR COUCH: Sure, sure.

COUNCILMEMBER GUZMAN: Because I don't want to be competing with hotels, because that's a whole different category in my mind.

CHAIR COUCH: Understood. And...

COUNCILMEMBER GUZMAN: Are we creating the ability to compete against hotels?

CHAIR COUCH: I personally don't think so, but I'll ask Mr. White --

COUNCILMEMBER GUZMAN: Oh, okay.

CHAIR COUCH: --since we...but we also have, they could do that, if they wanted to do something like that, they could do it with a conditional use permit already. So, it's one of those things.

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COUNCILMEMBER GUZMAN: I agree. I agree, Chair, but the ability to do it without going to a conditional use permit. I mean --

CHAIR COUCH: Well, they still can't...

COUNCILMEMBER GUZMAN: --like I said, like, individually go out and get their permits and then, collaboratively create some sort of resort/hotel.

CHAIR COUCH: They could do that if they were subdivided.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: Yeah. They could do it if it was a subdivided, two neighbors could do the same thing.

COUNCILMEMBER GUZMAN: I'm just a little bit cautious about the density, you know.

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: Like what Ms. McLean was saying, wow, that's a lot of rooms for one little area.

CHAIR COUCH: It's not, generally, it's not one little area.

COUNCILMEMBER GUZMAN: Well...

CHAIR COUCH: That's the thing.

COUNCILMEMBER GUZMAN: Well, can we have different scenarios, then? Like examples, 'cause I...

CHAIR COUCH: Well, for example...

COUNCILMEMBER GUZMAN: I'm limited in --

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: --what's in my mind, you know, like what you're talking about.

CHAIR COUCH: No, you're not.

COUNCILMEMBER GUZMAN: That sounds really bad. I'm limited to the knowledge of what I...

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CHAIR COUCH: Okay. Understood. Let me see if I can give you a couple examples, extreme examples on either end.

COUNCILMEMBER GUZMAN: Oh, okay, yeah, examples.

CHAIR COUCH: Example one is International Colony Club which was built prior to all of this, all of these restrictions a long time ago as short-term rental homes. There are 28 or 26 homes on a lot, a single lot. They, I think they even have a, an office, a check-in office and whatnot. That was their intent. And now, with the way the law is written, only one of them can get a permit, the rest can't. That's an extreme example and I believe there's a situation like that on Molokai, too. Molokai Beach Club or something like that. The other example on the, in the middle, is certainly my district on Halama Street, maybe Uluniu Street there, way back when they were zoned A-1 and or A-2, but the owner said, no, you know, I don't want to put a big apartment building here, I just want to have a house here and in order to help on the size of the lot 'cause it's an oceanfront lot, condominiumize and put a second house because they're allowed in A-1 and A-2, put a second house and so, we now have two houses. We live separately, but it's condominiumized and they may, I think only one instance so far has asked, want to both be short-term rentals and that's the place you want 'em on the ocean front, mostly and in an area that is kind of, especially Makena, where that's where we're asking people to, tourists to go so. It's one of those situations. And then at the very extreme other end is you've got, as Ms. McLean said, you've got a, one dwelling and then an ohana unit. So, when you add density, if this has six bedrooms and this is a two-bedroom ohana, you're adding two extra for the lot, but why does this person get privileges over this person when we tax them separately? That's...does that help?

COUNCILMEMBER GUZMAN: Yes, yes, yes.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Thank you. Thank you.

CHAIR COUCH: Ms. Crivello...okay, I thought you had questions. Mr. White?

COUNCILMEMBER WHITE: When you ask the competition question --

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: --and, you know, my sense of this has always been that Maui competes against the world --

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: --for visitors. And I don't have a problem with providing accommodations. Basically what this allows Maui to do is provide accommodations in places that are not available now in many cases. Like North Shore, there's virtually

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nothing, but a lot of people want to stay there. I'm happy to have that happen because the way Maui benefits is by having more people occupying seats in aircraft because that ensures that we will maintain the lift, so, you know, I think we all understand that there are limited amounts of capacity that can be expanded in the resort areas, but it's critical that we maintain a good amount of lift for the airlines or we lose the flights. And to put it in perspective, I, and I don't know what the number is now, but an old number was that for every flight that lands, it generates over \$300,000 in economic benefit to Maui's economy. So, those flights are much more critical to all of us than to worry about whether there's, you know, 50 more or 60 more or 100 or 200 more vacation rentals.

CHAIR COUCH: And thank you, Mr. White, for that. I also wanted to remind everybody, you know, we're thinking globally, which is what we do, but keep in mind that there's only 400 permits allowed out of 50,000 single-family homes. So we're talking a really, really, really small amount and of those 400 permits, these, some of these units provide a lot of jobs. They have a housekeeper. They have a pool person. They have a landscaper. And they, a lot of them have property managers. So there are jobs that are created here just so you know. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. And probably this question has been answered or maybe it already explains it, are they taxed accordingly with our real property?

CHAIR COUCH: At this point, yes.

COUNCILMEMBER CRIVELLO: Accordingly like hotel --

CHAIR COUCH: We have like...

COUNCILMEMBER CRIVELLO: --use?

CHAIR COUCH: I believe we have it as Commercial.

COUNCILMEMBER CRIVELLO: Commercial so.

CHAIR COUCH: Because hotels allow for restaurants and retail shops and hotels have...

COUNCILMEMBER CRIVELLO: Well...well, okay.

CHAIR COUCH: Yeah.

COUNCILMEMBER CRIVELLO: So it's Commercial and not necessarily the allowance of the overnight stay like a hotel or whatnot?

CHAIR COUCH: Yeah, it's just slightly below Hotel. Commercial is slightly below Hotel.

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COUNCILMEMBER CRIVELLO: No, I understand that, Mr. Couch. I'm just thinking that we should reap the benefits that, what we're allowing and I think that's sort of like in respond to Mr. Guzman's concern as far as the density so, that's my concern.

CHAIR COUCH: Okay. And I know Mr. Hokama's gonna bring up the taxation on these in Budget. He just told me this morning. Ms. Cochran?

COUNCILMEMBER COCHRAN: And so, Chair, primarily, CPRs, are they mainly done on ag lots?

CHAIR COUCH: That's a good question.

COUNCILMEMBER COCHRAN: Majority or 'cause I think Ms. McLean mentioned there's a residential that did but it sounds to me, I'm just, 'cause I'm picturing Launiupoko area --

CHAIR COUCH: Launiupoko is one.

COUNCILMEMBER COCHRAN: --really went full bore on this.

CHAIR COUCH: Right. And I know --

COUNCILMEMBER COCHRAN: CPR stuff

CHAIR COUCH: --several, quite a few on Halama and Uluniu.

COUNCILMEMBER COCHRAN: Peahi, right? The land that we purchased, that's how I think they did all those.

CHAIR COUCH: Peahi?

COUNCILMEMBER COCHRAN: Well, anyway, that's different subject. But, so, I don't know, they're kinda --

CHAIR COUCH: Yeah, they're huddling there.

COUNCILMEMBER COCHRAN: --doing their own thing over there but. Department?

CHAIR COUCH: Okay, Department?

COUNCILMEMBER COCHRAN: Hello? Sorry.

MS. McLEAN: Sorry. We're drawing maps and trying to figure it out.

CHAIR COUCH: The question was --

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MS. McLEAN: Sorry.

CHAIR COUCH: --are CPRs mostly in Ag or are they all over the place?

COUNCILMEMBER COCHRAN: Done in different zonings?

MS. McLEAN: We, they can be done anywhere.

COUNCILMEMBER COCHRAN: Okay.

MS. McLEAN: They can be done commercially. I don't know, we have seen them everywhere.

COUNCILMEMBER COCHRAN: Okay.

MS. McLEAN: Well, we've seen them in many different zoning districts. I wouldn't want to answer that it's more prevalent in one than in the other.

COUNCILMEMBER COCHRAN: Okay. Well, just hearing density and the numbers and Ag being, right, Ag lots, they didn't change the zoning and all that stuff into Residential, Rural, Urban whatever and so, now, we're adding more into these lots that originally were large lots, do some farming, do some ag things, but now we're starting to subdivide it out. I mean, you know, cut it up and allowing these other types of uses and income, and this and that, so, your infrastructure really was never intended to have 12 bedrooms on this lot. Initially, it was supposed to be a home with ohana and now we're extending it to more and more, you know, uses.

CHAIR COUCH: No, there is some confusion. There is no increase in density. This doesn't increase any density of the allowable rooms or allowable size of the homes. If it's an Ag lot, two-acre Ag lot, you get, you can have, you know, 25 rooms if you want in your main house, but you only get a 10,000 or 1,000-square-foot ohana, period. So, there, we're not increasing any density that isn't already allowed, whether it's long term, short term or, you know, long-term rental, long term living in it or short term, same amount of people in those units at one time, that make sense?

COUNCILMEMBER COCHRAN: Yeah. But I guess it's a different kind of usage, right, rather than a family living there full time having a few cars versus day in and day out, maybe it can be switching over to new transient people. So I think there's a...

CHAIR COUCH: But they're still sleeping and they're still eating.

COUNCILMEMBER COCHRAN: Right. Right. So, I don't, I mean, I'm just trying to wrap my head around the, there's, it's different. It's not the same, otherwise we would be...anyways. Okay, Chair.

CHAIR COUCH: Okay?

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COUNCILMEMBER COCHRAN: Again, not my favorite subject.

CHAIR COUCH: Well, yeah, understood. Anything else on this one? Okay. Chair's open to a motion as, do I need to read it, Staff, or are you, you have the amendment summary form here?

MR. GARNEAU: I think it would be more clear if you just read it in.

CHAIR COUCH: Okay. We'll read it into record. So open to a motion to revise the first full paragraph of Section 19.65.030, Maui County Code, labeled "A" in the revised proposed bill attached to the correspondence dated November 13, 2015, to the Department of Corporation Counsel, by deleting the proposed third and fourth sentences and inserting in its place, the following to be appended to the end of the second sentence and that is, except when lots are subject to a condominium property regime pursuant to chapters 514A or 514B, Hawaii Revised Statutes, the following shall apply: 1. if the applicant owns all condominium units on the lot, only one permit may be granted for that lot; 2. if the applicant does not own all the condominium units on that lot, each condominium unit will be considered a lot for this chapter and each unit owner will be eligible to apply for a short-term rental home permit; and 3. irrespective of ownership, each condominium unit shall be considered a separate lot for purposes of notification and planning commission review thresholds pursuant to section 19.65.060(A)(2).

VICE-CHAIR CARROLL: So moved.

CHAIR COUCH: Thank you.

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: Okay. It's been moved by Member Carroll and seconded by Chair White. Any further discussion, Members?

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: In our green and white pages...

CHAIR COUCH: Yes?

COUNCILMEMBER COCHRAN: We've had like three different, I think, Corporation Counsels with us discussing this. Jen Oana, I think we had Ueoka last time, now, we have Mr. Kushi. So, I'm just...no, because --

CHAIR COUCH: Hopper, it was Mr. Hopper.

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COUNCILMEMBER COCHRAN: --when we originally sat down and talked about this item and it has that Corporation Counsel to research and come back, item deferred, I don't believe we ever had that Corporation Counsel come back after such research since we deferred, originally. So I just want...

CHAIR COUCH: That was on 11/19, but last meeting we had a discussion on it.

COUNCILMEMBER COCHRAN: Yeah, but it was Ueoka who said, that wasn't me, that was Jen. So now we have a third Corporation Counsel who I'm sure is probably can say the same thing, because he wasn't here either.

COUNCILMEMBER GUZMAN: It was Mr. Hopper.

COUNCILMEMBER COCHRAN: So what was it? It was Jen Oana, I have notes.

COUNCILMEMBER CRIVELLO: Yeah.

COUNCILMEMBER COCHRAN: And we haven't seen her since she said this.

COUNCILMEMBER CRIVELLO: Yeah.

COUNCILMEMBER COCHRAN: So what was it? Maybe Department knows.

MS. McLEAN: Yeah. We did follow up with her after the meeting when Jeff Ueoka was here to follow up and she did some research looking into State law and actually came to the similar conclusion that Mr. Kushi shared which is that, yes, they can be considered individual lots. She didn't go any farther than that. She just wanted to make sure that there wouldn't be anything on the State level that would make it problematic to treat them as individual lots and that's what she found, that it would be okay.

COUNCILMEMBER COCHRAN: Okay. Well, thank...

MS. McLEAN: And that is as far as her research went. It didn't go into any more detail or any policy implications.

CHAIR COUCH: And that's what she was going to research was, is it okay.

COUNCILMEMBER COCHRAN: Okay. Alright. Well, thank you very much. I got my answer. Because I recall it's been several Corporation Counsels later and --

MS. McLEAN: It was a couple of meetings ago, yeah.

COUNCILMEMBER COCHRAN: --never really heard...well, I have notes.

CHAIR COUCH: Yeah. Yeah. Understood. Understood. Any further comment? Okay. It's been moved that we add that language. All in favor, say "aye."



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time or at least for, what we're trying to do is get, we've got 150ish, 130 permits now, we want to get compliance. We want to get people paying their fair share of taxes and following the rules. We have strict rules here for short-term rental homes. If they're not following, if they're not permitted, they're not following the rules, so we want to get people into compliance. So we do that for every permit we have here in the County. We have after-the-fact permits. We have the ability to come in and become compliant. That's the whole idea. To have this one sector say, well, you've been operating illegally, and you're trying to come in now, but you've already operated illegally, so, it's five years, you're banned immediately. I think we need to be a little bit lax on the first time. If there's any other concerns, then, I'm fine with banning forever. It's one of those things. But I want to try and get people in and licensed and permitted. That way, we get things copasetic. Any thoughts, Members? I know Mr. Guzman thought a two-year ban, I think he mentioned a two-year ban. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I went back to my hotel after our last meeting and pulled out my TAT license and the license says, you know, when it started. So, I'm still in favor of a five-year ban. If somebody has been operating and not paying TAT and GET, I think we got some testimony sent in, that I think makes some good sense. My feeling is, if somebody is unaware of a County law, I can somewhat buy that, but if they're operating and not paying GET...well, I can understand they may not, you know, realize that they may be subject to TAT, but I can't ever buy that somebody's operating without the understanding that they would have to pay GET. I mean, sorry, you're not gonna convince me on that.

CHAIR COUCH: Agreed.

COUNCILMEMBER WHITE: You're gonna have a really hard time convincing me on TAT. I can accept the fact that they might have missed what we were doing even though it was very well publicized, so, my feeling is the, a possible approach to this is if you can show that you have a GET and TAT license and you can show proof that you've paid TAT and GET during the time that you've been operating, then, I'm willing to give you some slack.

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: But if you have not, if you can't provide proof that you, and if we find that you've been advertising and operating and you aren't paying TAT or GET, then, you are subject to the five-year ban.

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: So sorry. Because I can't buy that you, you know, that those two taxes and GET, especially, are simply something you're totally unaware of.

CHAIR COUCH: Right.

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COUNCILMEMBER WHITE: I just can't buy that. And I think there's got to be, I mean part of what Mr. Rapacz was sharing with us was that the five-year ban is what's making people come in and apply.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: And so, I don't think it's appropriate for us to take that away.

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: If they've been operating and maybe even if you can show that you've been paying TAT and GET, maybe there should still be somewhat of a ban, you know, and maybe they should be subject to, if you want a permit, then, you've got to pay for the period you've been operating, you gotta go back and pay the taxes at the Commercial rate or whatever the rate is assigned to your type of operation. But I agree that it's, you know, the ban is a challenge, but it's there for a purpose and so, I'm, I think there's some room for us to play with.

CHAIR COUCH: Sure. And it's the Chair's concern is that, you know, if somebody gets a Notice of Warning because they've been maybe unknowingly breaking the law but who knows, ignorance of the law is no excuse, but if they're given a warning and say, oh, okay, I'm gonna come in and apply because I didn't know I had to and then they, the Department is saying, and that's the way the Code is, saying, well, you've been operating, so, you're banned for five years. We can't let you apply. So that's...but I see adding your...

COUNCILMEMBER WHITE: I'm not in favor of just simply giving them a pass the first time.

CHAIR COUCH: Correct.

COUNCILMEMBER WHITE: Because we've got too many people out there that we know are screwing with us.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: For lack of a better term or artful term, but.

CHAIR COUCH: So I agree with your comments as far as, you know, if they've been thinking they've been doing it, they've got GET and they've got TAT and they've been going along, even putting their, I think they're required to put their TAT number on their advertisement, according to the State, I think. So, they think they're going along, okay, and didn't know about the County and they get their warning, I think they should be allowed to, like you say, pay any back property taxes and continue on. But if they haven't been paying any of their even GET or TAT, I can see that, you know, you're messing with us.

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COUNCILMEMBER WHITE: No slack.

CHAIR COUCH: Right. Any other comments? Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah. I like the train of thought that Mr. White is heading down. And, you know, in the Federal, on the Federal side, on the IRS when they see companies that are illegal and they call it de facto corporations, they go back and say, hey, you look like a duck, you quack and you walk, you're a corporation, so, they tax them on the back taxes that they have to pay and based off of the de facto type of definition. But yeah, I like that idea. If they're able to prove that they've been paying their taxes and pay any back taxes on the property, then, maybe we can lessen the five-year ban to maybe, two or one. But one issue is, how do you prove when they started?

CHAIR COUCH: Well...

COUNCILMEMBER GUZMAN: Like, how, when, they could say, oh, yeah, we just started a year ago, so they, you know, pay a year's worth of taxes and then one year worth of...

CHAIR COUCH: I've seen a copy of Mr. White's TAT license and it has right on there, start date. So, they have to prove that they've gotten the TAT and it says when they started so.

COUNCILMEMBER GUZMAN: Yeah, I like that exception. And then lessen the ban maybe to two instead of the five. I don't know, or one or six months. I don't know, whatever you guys, but that concept of keeping the five-year ban and allowing an exception if such elements are proven --

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: --then, yeah, we can lessen the ban.

CHAIR COUCH: In lessening the ban, I would think that during the application process, which apparently is taking around eight months already or close to, is you stop operating, you show your proof of tax compliance and you pay your back taxes, you should be able to, I would think, okay. You know, somebody came and told me a story that they, you know, and I don't know if they're telling a story or if they were legitimately, they went to the State Tax Office and got their TAT tax and it says right on there, you know, I, this is your, you've got your tax now, your tax clearance. I don't think it says the word, permit, on there. I can't remember now. But, so, they said, oh, okay, that was easy. I got my permit, I'm ready to go, not knowing that there's also the County level and when they found out, they said, oh, my gosh, I didn't know. I don't know if that's legitimate, it seemed that way. I'm sure there are people out there like that, but there are also others that are trying to game the system as there are everywhere. You had a comment, Mr. Chair?

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COUNCILMEMBER WHITE: No I'm just, I'm feeling like, and I'm really kind of uncomfortable with how quickly I'm moving in this direction, but I'm kind of feeling like if you've been paying your GET and TAT and you can prove it, then, you should be able to apply without a penalty, and whether, you know, without going back two years or a year or whatever. But I think that should maybe be a grace period again and the door has to close again. And following that, even if you have been paying, you're going to get a two-year ban. You know, we've got to give the Department some sort of a hammer --

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: --to hold over people's heads or they're not gonna come into compliance and they're going to be chasing after all these illegal's --

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: --for way too long.

CHAIR COUCH: Ms. McLean?

MS. McLEAN: Well, we have a hammer. And the hammer clearly hasn't been working given all of the illegal operations that are out there. It's one of the strongest enforcement tools that we have and we beg you not to take that away. Gina mentioned to me...actually, I should just have Gina tell you herself.

MS. FLAMMER: I seem to get all the calls. Enforcement refers the calls to me for the people that receive the ban, so I've talk to a lot of people. They know they needed to get a permit. They tell me, I was waiting for the County to catch me, is typically the response. I was waiting for them to notify me and then I was gonna come in for compliance. I didn't know that if I violated the law and got caught, it would have implications, so, that's typically what I hear.

CHAIR COUCH: How many of those do you get?

MS. FLAMMER: Oh, wow, 20 so far maybe.

CHAIR COUCH: Wow.

MS. FLAMMER: It's really hard to talk to people, but if you're very honest with them, and I often ask them questions. Were you aware of it? And then, I want to know, why didn't you apply? Well, I didn't know what would happen with my real property taxes. I saw the application, it just looked so complicated. I have some things that aren't permitted, so, I knew that would be a problem. That's typically what I hear from people.

MS. McLEAN: And we feel that a shorter ban would just get written off as the cost of doing business, that while I operate, I may or may not pay my GET and TAT, but I'm not

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paying my real property tax and so over this stretch of time, you know, I'll be generating this much income, then, if I get caught, okay, so I'll stop operating for a year or two years, but in all that time leading up, you know, that was my business choice. And Gina mentioned, she believes Real Property said that they can't back tax for an illegal use, so, in terms of recouping property tax, we don't know that they'd be able, that Real Property would be able to recoup property tax.

COUNCILMEMBER WHITE: Yeah, I'm not suggesting that they would be the ones that would have to enforce that. I'm suggesting that as a part of getting a permit --

MS. McLEAN: Oh, there'd be a penalty.

COUNCILMEMBER WHITE: --you would have to be, you would have to pay those back taxes. I don't see that as being an enforcement action by the Tax Department, but rather, part of the deal. If you're...and that's just...

MS. McLEAN: A challenge with...sorry.

COUNCILMEMBER WHITE: Yeah, you've got to be responsible for paying your taxes and if you're not, then, tough luck.

MS. McLEAN: We would have to try to reconcile how long they've been operating versus how long they've been paying their taxes. So, if they had three years of their tax records, but we could find evidence that they were operating prior to that, you know, that they weren't paying their taxes the whole time they were doing it, I don't know how that would fall out with, you know, the idea that you were talking about. We just, again, I have sat here, I know Will has sat here, John has sat here, getting understandably pounded for our lack of enforcement from the community, from the Council and this is one hammer, as you've said, that we have and we just really ask that it not be taken away.

CHAIR COUCH: Okay. Members, we're gonna take a, probably a ten-minute break. I see people wandering off to take care of needs, so, we're going to take a ten-minute break, actually, a break 'til 10:20. We're in recess. . . .(gavel). . .

**RECESS: 10:11 a.m.**

**RECONVENE: 10:33 a.m.**

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of, I'm gonna, it's the January 21<sup>st</sup> meeting, but with the February 4<sup>th</sup> addition, please come back to order. Alright. Members, we left off with this concept of the five-year ban and paying back taxes, et cetera. Department, what are your thoughts on the whole paying, you know, if they've been operating and paying the back taxes?

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MS. McLEAN: The payment of back taxes isn't so much a land use and planning issue. I would think there should be some mechanism to get payment of GET and TAT, but that's not something that the Planning Department would go after. But again, just reminding everyone of what Gina was saying about how operators know what the requirements are and following that thought, she wanted to give a little bit more information on how operators were notified after the original bill passed and that the five-year ban, we really didn't start imposing until May of last year. So, in terms of people knowing the permit process after the original ordinance was passed, they had quite a few years to come in to apply and even if we were enforcing and they were getting Notices of Warning, they were still able to come in and get and apply for and obtain their permits up until about May. But applicants were consistently notified and informed they could come in and apply.

CHAIR COUCH: And did they?

MS. FLAMMER: Yeah, in the beginning, I would get a lot of calls from people. I didn't know the bill had just passed, can you help me and then, we would help them get organized. Less so, over time, that became less so. I would get comments that would be more, well, I got my notice, so now I need to apply was kind of the standard reaction that I had. And then we would help the people come in and fill out the permit up until, I think about May is when we started enforcing the ban. But it's not that we weren't doing enforcement or notifying people prior to that date. We were doing that. It's just that the ban didn't take effect until recent, 'til about three years after the initial permit passed. And it's interesting because I would often talk to people about the other requirement just to make sure that they were aware, did they realize if they're not living in the State of Hawaii, did they know they needed to have a realtor and did they realize that the, about the GET and the TAT and that their license needs to go on their advertising and for the most part, people, they would know that. They had to pay Hawaii State income tax on any income tax earned in the State. There's a lot to running of this business. Thanks.

CHAIR COUCH: Let me ask, you know...

MS. FLAMMER: Oh.

CHAIR COUCH: Go ahead.

MS. FLAMMER: Oh, I just wanted to make one other point. I've been really curious about what happens with people that get the ban and a number of them have, I discuss with them their options and what they can do, that they can go to a long-term rental and in a lot of cases, I have heard that that's been their choice is to convert it to a long-term rental, which I think is a nice public policy solution.

CHAIR COUCH: So let me ask you this. The ordinance said, when we passed it said, within 60 days of the passing of the ordinance, you shall notify and you're saying you have?

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MS. FLAMMER: Yes. In the beginning, we had a campaign where we did send out notices through VRBO. In the beginning, we sent them directly to people and then, later we put a link in, which we heard was problematic, but we, anytime a complaint came in, we did send out a Notice of Warning and the Notice of Warning did instruct them that in order to do this use, you needed to obtain a permit.

CHAIR COUCH: So it came in only on, it was on the ones that you got complaints on, not...I can't remember...

MS. FLAMMER: We did proactive in the very beginning.

CHAIR COUCH: Okay.

MS. FLAMMER: And I actually went as far as to say, it's okay to put my phone number and then I kept track of the calls and I think I had 800 calls over a year period. There was a lot of interest in it, but not everybody could qualify because of permitting issues.

CHAIR COUCH: Okay. When you say, permitting issues?

MS. FLAMMER: Usually I screen the people when they call. I've received a warning, I'd like to apply. What do I need to do? And I'll go over with what the requirements are. And the number one reason I hear that they don't apply is because they need to go get, that it has to be properly permitted in order to come in, it needs to be safe so that's often why people don't come in.

CHAIR COUCH: Okay. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. I wanted to follow up on a, I guess, a question or clarification. You said that you started imposing the five-year wait period or the ban last May, 2015? I don't read it where it's discretionary. Shouldn't you have been imposing this ever since the passage of the ordinance itself? And why, I guess the second prong, second question to that would be, why haven't you, why weren't you imposing it prior to May, 2015? Thank you.

MS. McLEAN: The simple answer to your question is that yes, we should have been imposing it once the ordinance was enacted. It took us quite a while to develop the application procedure. The ordinance, as you know, is very detailed. To figure out how we could ensure that the structures were safe we, applicants have the choice of doing miscellaneous inspection with the Public Works Department or doing a home inspection, it took a while for us to create the home inspection form, so, there were a lot of procedural and administrative steps that we needed to figure out that, where we weren't completely able to process all the applications efficiently upon enactment of the ordinance, so, it took us a while to do that. And then, we were also trying to do some of the proactive enforcement or I should say, proactive notification to get people to come in and it didn't make sense at that time for us to be contacting people, telling them to come in and apply and then to say, oh, ha-ha, you've been operating, sorry,

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you're banned. So, we did want to give people an opportunity. We did want to do outreach and then, last year, when we were really pressed to start doing proactive enforcement is when we started imposing the ban.

CHAIR COUCH: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you. So, there was a, when the ordinance was originally enacted, there was a grace period. And how long was that grace period?

CHAIR COUCH: Almost a year.

COUNCILMEMBER WHITE: One year.

COUNCILMEMBER GUZMAN: One year? Is that...

UNIDENTIFIED SPEAKER: Almost.

MS. McLEAN: I don't, it wasn't quite a year. It was, I want to say, it was roughly six months. I think it was a date that was specified in the ordinance.

COUNCILMEMBER GUZMAN: Right.

MS. MCLEAN: It was a date certain and --

COUNCILMEMBER GUZMAN: Yeah, it was a date certain.

MS. MCLEAN: --the ordinance was enacted roughly six months prior to ...(inaudible)...

COUNCILMEMBER GUZMAN: So six months or whatever that grace period was. Up until May of 2015, you never implemented the five-year wait period or the ban, so basically, you've given them an extension of the grace period for a couple years?

MS. McLEAN: Yes.

COUNCILMEMBER GUZMAN: Okay. Thank you, Chair.

CHAIR COUCH: Thank you. Members, any other comments or questions? Chair White, do you have any proposed language that you would want to propose for the part about the GET and the TAT?

COUNCILMEMBER WHITE: No, but I would trust the Department and our attorneys or our Corp. Counsel to come up with something, where to put it there.

CHAIR COUCH: Okay. So, it's, so far what I'm hearing is that if they've been given a Notice of Warning and they can prove that their GET and TAT have been paid while they were operating, that they are allowed to apply, is that your...

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COUNCILMEMBER WHITE: I don't think having a Notice of Warning should be a part of the trigger because I'm sure there are folks out there that are operating without having received a warning at this point.

CHAIR COUCH: Okay, so, at maximum a Notice of Warning, if they've been given a Notice of Violation, too bad so sad, is that what you're saying? But if they've only been given a Notice of Warning or not and can prove that they've been paying their GET and TAT, that they be allowed to apply, so long as they pay back taxes. Now...

COUNCILMEMBER WHITE: As long as they agree to pay back taxes.

CHAIR COUCH: Agree to pay back taxes. Let me ask Corporation Counsel if that, if we can put that into, I mean, we can put anything in an ordinance, but is that, how applicable, enforceable is that?

MR. KUSHI: Yes, Mr. Chair, this is the first time I've heard about it and I'm not sure if the Committee has discussed it before, but my initial question is or response is, why should the County be the tax collector for the State?

CHAIR COUCH: No, no, I'm sorry. The back taxes, property tax?

MR. KUSHI: Property taxes?

CHAIR COUCH: Yeah.

MR. KUSHI: Not TAT?

CHAIR COUCH: Correct. We're just seeing that if they have been paying the GET and TAT, if they have been, we just want to back tax them at the highest and best use which...

MR. KUSHI: I thought Councilmember White was saying GET and TAT, which does not go to this County.

COUNCILMEMBER WHITE: No, not to pay back. If they have a license and they have been paying TAT and GET and they can prove that, then, they can proceed with an application only if they agree to pay the back taxes at the rate that would have applied had they had a permit.

MR. KUSHI: Real property taxes?

COUNCILMEMBER WHITE: Real property taxes.

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: Not the TAT or GET.

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MR. KUSHI: Well, I'm sure there's one way to mesh this chapter into 3.48, which is the Real Property Tax Code.

CHAIR COUCH: Would we have to do that or can we say that in here?

MR. KUSHI: You'd have to make reference to both chapters.

CHAIR COUCH: Yeah, yeah.

MR. KUSHI: Where there's a will, there's a way, I guess, you know. Again, you know, my initial thoughts about this penalty period or the five-year ban or is that, I'm not sure it's challenged yet, but it'll make a good argument for any applicant to state that, you know, look County, you passing a law that I need to comply with. I'm trying to comply, but yet, I'm banned from complying. So, you know, any restrictions on real property rights, you need to have the owner, give the owner an avenue to comply. But setting up this ordinance, he's banned. Fines and appropriate penalties are appropriate for violations of law and it's in the Code already, but banning the application to comply may be troublesome.

CHAIR COUCH: Thoughts? Comments?

COUNCILMEMBER WHITE: I'm still okay with the ban.

CHAIR COUCH: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, I appreciate and understand Corporation Counsel's statements. I look at it as, yeah, we do need an avenue to allow them to comply, so that's why I do appreciate Mr. White's suggestion of a hybrid to basically to allow an exception if they can prove certain elements, then, maybe we're going to a monetary fine or a lesser year in ban or lesser in years for the ban. If they can prove that, number one, they've been paying their taxes and number two, they pay back taxes on the property --

CHAIR COUCH: Correct.

COUNCILMEMBER GUZMAN: --and then, number three, would be, I'm not sure if there is a number three. But if there is a number three, we'd have to put that down as one of the elements that they need --

CHAIR COUCH: Sure.

COUNCILMEMBER GUZMAN: --to present in order for them to be exempted --

CHAIR COUCH: An after-the-fact fee.

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COUNCILMEMBER GUZMAN: --from the five-year ban --

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: --but and maybe it may be the exception would be a one-year ban to six months at the discretion of the Director probably. Because it sounds as though they were using discretion at some point because from the grace period up until 2015 in May, they weren't really enforcing the ban, so it was kinda like to me, discretionary. So maybe if that's, they need a hammer, they can have the discretionary element. Once the applicant has proven that they've, you know, all the conditions and presented those elements to the Director, then, it would be the Director's discretion to either allow them to continue on a one-year ban or a six-year ban or whatever.

CHAIR COUCH: Six month?

COUNCILMEMBER GUZMAN: Six months, six months, sorry. It could be at their discretion.

CHAIR COUCH: Okay. Mister, Chair White?

COUNCILMEMBER WHITE: The reason I'm comfortable with the ban is because if we're implementing the ban based on the fact that they've broken two State laws and not paid the appropriate amount of taxes, I think that's enough reason for us to be able to satisfy the need for any legal qualification. Of course, it's easy to say, I'm not a lawyer.

CHAIR COUCH: Yes, Ms. McLean?

MS. McLEAN: Regarding Council Chair White's proposal, if it could apply, as you said, to applications in which no enforcement action has been initiated, then, that would narrow it down quite a bit. It wouldn't take away our enforcement initiative. If it were to apply to people that we had already cited, that could be difficult for us to administer. It pulls the legs out from under our enforcement efforts. But if, as you said, a Notice of Warning hadn't been sent out yet, you know, these are applicants that haven't been subject to enforcement so far, if they come forward and apply and we look and see that they've been operating, but they show us their taxes, then, I think that's something we can work with. But if enforcement has already started on them, I don't know how we can pull back on that enforcement.

CHAIR COUCH: I'd like to respond to that and then, go ahead, Mr. White. My comment was Notice of Violation, if they've received a Notice of Warning, that's the whole intent of a Notice of Warning is to get them to comply. But if they received a Notice of Violation, you're right. They've had their chance.

MS. McLEAN: But the ordinance says that once you get to the Notice of Warning stage, because advertising is considered evidence of operation, there really isn't, the only thing that can be done at that point is for them to refute that they were advertising by,

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you know, a ghost website or something like that. That really doesn't ever happen. The advertising is legitimate. It's, we've had past applicants who have stopped advertising. They were operating. They were advertising and they stopped in order to apply and those might have ghost websites out there, but it's very, very unlikely that when a Notice of Warning is issued, that there wasn't operation. So, the violation has occurred. And correcting the violation is, what they do to correct the violation immediately is to stop advertising. It's hard for us to say whether they've stopped operating. That's very difficult to prove without advertising.

CHAIR COUCH: Right. Right. Well, and I think that's why we're here to fix any problems that we've had with the ordinance and this seems like, I think the intent of the body has always been, you know, if you get the Notice of Warning, you gotta come in. But the way it's written, I guess we made it a little too strict. Yes, Ms. Flammer?

MS. FLAMMER: In this scenario, I have two questions. First, what would be the incentive for anybody to come in prior to receiving a Notice of Warning and then, second question is when I'm now dealing with somebody who's gotten a Notice of Warning and they're trying to show me their taxes, but taxes aren't due 'til up to a year after you've collected the money, what do we do in those cases?

CHAIR COUCH: Oh, you're hypothetical on that?

MS. FLAMMER: Well, I'm just wondering, how am I gonna as a Planner, how am I gonna suddenly have to go through somebody's, how are they gonna produce taxes if they're telling me I've only been doing this, you're showing me I've only been advertising since a month ago, well, my taxes weren't due. I just started that day, by the way.

CHAIR COUCH: We're talking about GET and TAT.

MS. FLAMMER: Right. That's not due in advance.

CHAIR COUCH: They have a license they're issued before they can do it and it has a start date on that license.

MS. FLAMMER: But your taxes aren't due on that date and their self, you tell them what it is. It's not like the State is there monitoring. You're just putting down whatever number you want. So those are just two things. One, what's the incentive under this scenario for anybody to comply and two, how do we actually administer that, the looking at the payment of the taxes?

CHAIR COUCH: Well, it's not...well, yes, for tax clearance. If it's within the year that they've applied, if their TAT notice, which has the start date on there, if it's within the year they applied, I'm guessing, that's not an issue.

MS. FLAMMER: So we're just going to make sure they have a tax license?

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CHAIR COUCH: They have the license and if it's within the year they applied, then, yeah, of course, you can't look back because they're not due until the end of the year. But if it's for four years...

MS. FLAMMER: But we're not gonna have an advertisement from four years ago. We're gonna have an advertisement from last month.

CHAIR COUCH: No, understood.

MS. FLAMMER: Right.

CHAIR COUCH: But when you look at their TAT license they say, oh, they've been, have a TAT for four years, so, they have to show that they have been paying for the last four years, which they can with the tax clearance and then, they pay property taxes, you know, back taxes for those four years. You have, I mean, it's right there, it says, hey, I've had my TAT license for four years.

MS. FLAMMER: That works under the scenario when somebody gets a TAT license just for that use. Often businesses combine their different businesses under one license, but it, I suppose we could look at ways. If you wanted to be real clear about how we were to do that.

CHAIR COUCH: Well, but a TAT license is a TAT license. It's separate from GET.

MS. FLAMMER: So they'd need both, not just a W number.

CHAIR COUCH: Right. Okay. Ms. Mclean and then Mr. White. Sorry.

MS. McLEAN: Just again, if a Notice of Warning has been issued, we've already started enforcement action. That means there was a complaint, most likely that there was a complaint. It just, as Gina said, what would the incentive be for someone to proactively apply, you know, if this moves forward as we're discussing, then we're not gonna get new applicants in until they get a Notice of Warning. Then they'll come in and show their licenses, you know. The idea is to get people compliant and this is, you know, really a big break for a lot of operators to have the chance to come in and not be banned, but to say that oh, you can still get a Notice of Warning, the County can still start enforcement action against you and then, you have to be compliant. It just, it takes away from our enforcement power.

CHAIR COUCH: Mr. White and then, I'll comment.

COUNCILMEMBER WHITE: Well, I think it provides an incentive to come in if you're operating, you know, if you're one of those who didn't realize that a County permit had to be gotten until you were already operating and you're paying your GET and you're paying your TAT, then, if we do this, you're gonna have an incentive to come in and

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apply for the permit. Now, that doesn't mean you're gonna get it because you may be kicked out because of other reasons.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: So this is just simply eliminating one, you know, one problem by having them show that they've paid their other taxes so.

CHAIR COUCH: And in, you know, in all other enforcement instances through the Department, the whole idea with the Notice of Warning is to get people to come in and comply for after-the-fact permits or whatever else that you issue Notices of Warning for. To treat this differently seems to be a bit unfair, but I guess that's up to the Committee. I mean, everything else, we say, you gotta get an after-the-fact permit, we fine you an after-the-fact permit fee, which is what we can do for this. We can, I guess, we enable a fee, an after-the-fact fee, so it can be more than \$1,000, I think. But you can, we have an after-the-fact permit fine fee, we call it and then they're, they get their permit and they get compliant. And that's what we're trying to do here as well. But it all happens at the Notice of Warning time, not prior to Notice of Warning in all other instances except this, unless I'm mistaken.

MS. McLEAN: Then you can stop giving us a hard time about enforcement of this particular use.

CHAIR COUCH: Mr. Guzman and then, Mr. White.

COUNCILMEMBER GUZMAN: I kind of, I guess in my thoughts, I kind of agree with the Department on what exactly is the incentive of coming in prior to getting a notification. You know, so, if I am operating say, without, you know, a license or permit, what's the incentive of me to just come in because now you're saying, oh, come in, if you can prove that you have your GE tax and blah, blah, blah, I won't do it. I mean, I'll just sit back and just be like, okay, I'll just wait until you catch me.

CHAIR COUCH: Well...

COUNCILMEMBER GUZMAN: And then once you catch me, then I'll come in and 'cause what are the probabilities? I mean, look at the probabilities of DUIs, people still do it, but the probability of getting caught is like, you know, .05 percent, something like that. I'm not sure if those numbers are correct, but it's very low. So, hey --

CHAIR COUCH: Not in this case...

COUNCILMEMBER GUZMAN: --most people would probably take the chances of not coming in and just taking the chance of, you know, maybe someday I'll get caught. I'm just trying to figure out what is the incentive --

CHAIR COUCH: Right.

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COUNCILMEMBER GUZMAN: --for them to come in?

CHAIR COUCH: My thought is this is a different scenario because they're actually advertising that, hey, I'm in business. So, it's easy to see and we have enforcement going on as we speak that, you know, you're advertising. You know, when you're DUI, you don't advertise that you're DUI other than the way you drive.

COUNCILMEMBER GUZMAN: No, yeah...

CHAIR COUCH: But the other thing is is if you were to put an extra room on your house and not get a permit and then somebody comes by or you want to sell your house and they say, hey, this room is not available, I mean, has not been permitted, you have to pay an after-the-fact fee and get the permit.

COUNCILMEMBER GUZMAN: Well, but, Chair...

CHAIR COUCH: You don't have any incentive to do that unless you get caught.

COUNCILMEMBER GUZMAN: So...

CHAIR COUCH: It happens in every other instance where we issue permits, we give them the chance to come back and pay an after-the-fact fee in my understanding. I may be...

MS. McLEAN: No, there are instances where people have to remove...

CHAIR COUCH: Sure. Or get a permit.

MS. McLEAN: Where they cannot be compliant or perhaps they might apply for a variance that they may or may not get and they have to remove.

CHAIR COUCH: I.e. a ban, same thing as a ban. They have to, if they can't comply, they get banned. I mean they get banned anyway. See, I'm trying to find out where the fairness is. Mr. White has been waiting patiently to respond.

COUNCILMEMBER GUZMAN: Actually, I...

COUNCILMEMBER WHITE: No, he's still got the floor.

CHAIR COUCH: Oh, you still got it. Okay. Go for it.

COUNCILMEMBER GUZMAN: Go Broncos! Anyways, Chair, so, I still don't understand the incentive like, for instance, if you, the intent is to bring them in, and you're saying, okay, once you've been notified, you produce that, this type of evidence and then you can actually apply, what is the incentive actually to come in initially? I think the, it's so narrowly tailored to those people who are completely just forgot about that third

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step in applying.

CHAIR COUCH: Or didn't know.

COUNCILMEMBER GUZMAN: Yeah, or didn't know. How many of that category of applicants exist, you know, like, number one, they would have to forget to do, excuse me, strike that. They would have to, they've applied for a GE tax, they applied for the license, they, their, they've done the business side of it and then, they just completely forgot about the property taxes or coming in. I don't know how many, it's so narrowly tailored to one category of a violator. I'm not sure if that's, this is what, you know, it's going to resolve a lot of the issues, but maybe, in a way, we can do another grace period and say, okay, if you produce all these documents within the next six months, then, you can go forward. And then after this additional grace period is over, that's it. Five-year ban, it's just, that's it. I guess I'm, I would be willing to look at that. It's just, expand, I guess, have another grace period, but they've got to supply the evidence as stated by Mr. White and that's it.

CHAIR COUCH: Okay. Mr. White then, Ms. Cochran.

COUNCILMEMBER WHITE: No, let...

CHAIR COUCH: Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, I haven't spoken much.

CHAIR COUCH: Go for it.

COUNCILMEMBER COCHRAN: Because it's not my favorite subject, but I'm with the five-year ban and I like, there was a point that Ms. Flammer brought up earlier where some of the people she knows, not with the ban, they were like, well, they just went to long term. You know, and here we've been talking where are families moving, where are the rentals? And, obviously, some of these were turned into some of those types of, you know, housings and dwellings that are needed on this island. So, I'm for that ban and I'm looking through, and thank you for all these reports, I wish there was a way to, I was trying to cross-reference if there's all through these years, if there's the same names popping up, who said, yeah, yeah, okay, I'm illegal, I'll shut it down. Then, oh, next year, here they are again. And there's a gentleman in here who actually got extensions on his warnings or whatever because he was pre-booked and God forbid him having to not let these people, they had nowhere else to go. And that, you know what, that's not happening. So, I, Chair, I'm for, yeah, the ban instantly. Thank you.

CHAIR COUCH: At what point?

COUNCILMEMBER COCHRAN: Well, from the warning.

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CHAIR COUCH: Even if...

COUNCILMEMBER COCHRAN: From when the...

CHAIR COUCH: From the warning, okay.

COUNCILMEMBER COCHRAN: Yeah.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: The way it's written.

CHAIR COUCH: Mr. White, Chair White?

COUNCILMEMBER WHITE: I'm, if the interest is to have people come into compliance, I'm willing to give 'em a break if they've been paying the GET and TAT. That's really what it boils down to and because I can understand somebody not follow...I know it's hard for us in this room to think that everybody on Maui follows what we do. but, you know, I'm okay with giving a little bit of slack if they've at least followed those two laws and if they haven't followed those two laws, the five-year ban is implemented and you're out of luck.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: Quickly and I do agree with Mr. White.

CHAIR COUCH: Okay. Now, Mr. Guzman brought up an interesting thought as well. Whether it's Notice of Warning or no Notice of Warning for the next six months, this is your last chance. Any thoughts on that, Members?

COUNCILMEMBER WHITE: I know where Ms. McLean is coming from and Ms. Flammer about not allowing it to apply to a Notice of Warning. But I have a problem if we're gonna do it for people who haven't been caught yet, there's really not that much difference from the people that have been caught. So, if our intent is to have more people comply --

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: --then, I'm okay doing it as I've stated. If the Committee wants to say, well, it's only for those who have not yet had enforcement action, not yet had a warning, then I'm okay with that, but I think that's going to be a pretty small number.

CHAIR COUCH: Right, but I think Mr. Guzman's point was if you've paid your tax, your GET and your TAT, in the next six months whether you got a warning or not, you come in and apply, which is what we're trying to do is get them to apply and comply, you're good, but after six months, no ifs, ands or buts.

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COUNCILMEMBER WHITE: I guess I've been blinded by his jersey today, but if that's what he said, then I would be in agreement with that.

CHAIR COUCH: Mr. Guzman? Go Broncos!

COUNCILMEMBER GUZMAN: Go Broncos! Anyways, yeah, that's exactly what I was trying to convey, was okay, if we are going to do a grace period and another grace period, the conditions as set forth by Mr. White have to be part of that grace period. It can't just be an outright --

CHAIR COUCH: Correct.

COUNCILMEMBER GUZMAN: --open grace period, you know. It's for, you know, if we impose a six months grace period, yes. Anyone and everyone can come in, but you're only going to be allowed to apply if you fulfill the conditions, like GE tax, pay back the back taxes on the property, then, I'm okay with, you know, that type of grace period and then, after that grace period, five-year ban no matter what.

CHAIR COUCH: No ifs, ands or buts.

COUNCILMEMBER GUZMAN: That's it. This is, you know, I'm tired of --

CHAIR COUCH: Right. Right.

COUNCILMEMBER GUZMAN: --giving exceptions.

CHAIR COUCH: Department looks like they want to say something.

MS. McLEAN: We were actually discussing that same concept, if we could combine those two ideas and give the six-month grace period if the taxes are paid. And then after that six months, then, it's back to --

CHAIR COUCH: Yeah.

MS. McLEAN: --status quo. We can live with that.

CHAIR COUCH: Okay. Let me throw in another monkey wrench. How about an, you know, we have an after-the-fact fee, can we have an after-the-fact STRH fee, of like 5,000 bucks or...

MS. McLEAN: I think that would have to be put in the budget because our...

CHAIR COUCH: Would that be something that we would want to consider? We already charge after-the-fact fees elsewhere so.

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COUNCILMEMBER WHITE: But I don't think we can do more than 1,000.

CHAIR COUCH: It's an after-the-fact fee. Mr. Kushi?

MR. KUSHI: Rates and Fees are set by the budget. Fines, you're limited to a 1,000 per Charter.

CHAIR COUCH: Because I think some of the after-the-fact...

MR. KUSHI: You can do 1,000 a day now.

CHAIR COUCH: Pardon?

MR. KUSHI: You can do 1,000 a day.

UNIDENTIFIED SPEAKER: What about . . . *(inaudible)*. . . application.

CHAIR COUCH: Or something like that. Or, yeah, an after the fact...

MR. KUSHI: Application fees will be budget.

MS. McLEAN: So it could be an after-the-fact application fee.

CHAIR COUCH: 'Cause I believe some after-the-fact SMA stuff is 50 percent of the...

MS. McLEAN: But that's in the SMA rules.

CHAIR COUCH: Right. Right.

MS. McLEAN: Which isn't subject to the County...

CHAIR COUCH: But there's precedence, right?

MS. McLEAN: For higher? Yeah. Yeah.

COUNCILMEMBER GUZMAN: Included in proving that they've got their taxes and their licenses, sorry, and paying back any property taxes. In addition to that, yeah, they should, if they've been operating for the last five years, five years times whatever the application fee per year is should be paid to the County.

CHAIR COUCH: Well, an application fee?

COUNCILMEMBER GUZMAN: Or well, you know --

CHAIR COUCH: Right.

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COUNCILMEMBER GUZMAN: --after-the-fact --

CHAIR COUCH: Application fee.

COUNCILMEMBER GUZMAN: --application fee.

CHAIR COUCH: Okay. Members okay with that?

COUNCILMEMBER GUZMAN: With penalty.

CHAIR COUCH: So...yeah, well, no, you can't call it that. So, Members, if you're okay with our crack Staff coming up with the right language, we'll have that for the next meeting.

MS. McLEAN: Chair, one question.

CHAIR COUCH: Yes. Yes.

MS. McLEAN: What about people who have already, who are already subject to the ban?

COUNCILMEMBER WHITE: My feeling is if they can show that they were paying their TAT and GET while they were operating, then, we should treat them the same way. 'Cause we're changing the ground rules here.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: And I don't think it would be fair to treat someone who's been paying their taxes any differently than someone who's paying their taxes.

CHAIR COUCH: Okay. So, if you're okay with that and. Members, you know, we have NACo coming up and we were gonna cancel this, my next meeting, but I think I will stay back one day and not cancel the February 18<sup>th</sup> meeting so we can finish this up.

COUNCILMEMBER WHITE: Or you could move it to a different date.

CHAIR COUCH: Everything's all messed up there, so I'm gonna just leave it. I think everybody's gonna be here February 18<sup>th</sup>, but I'll double check, because I want to get this finished if we can't finish it today.

COUNCILMEMBER WHITE: We have Tuesday.

CHAIR COUCH: Okay, good.

COUNCILMEMBER WHITE: We have Tuesdays available.

CHAIR COUCH: Okay. Okay. So, we're gonna try and, I think we're good with that. We're gonna get the language taken care of, right, Staff?

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MR. GARNEAU: Yes, I will do that.

CHAIR COUCH: Okay. So, we'll go with that and we'll come back with that. Now, as part of this, how about this look back? Right now, what happens is when they go for the five-year ban...I guess we don't need a look-back provision if there's, if we have the grace period, after that, boom, you're done. So I don't think we need to deal with look-back language. What that is, is, right now, what they've been doing they said, somebody comes in and wants to apply, and they look back to the beginning of the ordinance and say, well, you've been operating, they've found evidence you've been operating, so you can't apply, you're ban. That will happen after the six-month period. You know, they'll take it up unless we change a, give them direction on how far they can look back. Any concerns, questions on that, Members?

COUNCILMEMBER WHITE: After the six-month period, you know, gig's up.

CHAIR COUCH: Yeah.

COUNCILMEMBER WHITE: Sorry.

CHAIR COUCH: Yeah. I think that's fine. Staff? I'm sorry, Department?

MS. McLEAN: Yeah, I agree. There's no need for it.

CHAIR COUCH: Okay.

MS. McLEAN: Your, I think that's very generous given the grace period.

CHAIR COUCH: Okay. Alright, Members, we're on to density-related trigger to planning commission review. You know, we talked about...this is, right now, if there's 1 STRH unit within 500 feet, it goes to Planning Commission and we heard Planning Commissioners, we had 'em up here, so thank you for the request, Mr. Guzman, but we heard one Planning Commissioner said we made a mistake by making this law. Well, we're the Council, we're the ones that set the policy. If he doesn't like it, that's his opportunity to come in and either lobby us or, you know, run for Council and change the law. We have some Members here that don't like it, but we're a majority body, so, that's the right at this point, the policy set by the Council. But you still have A) at least one Planning Commissioner who is basically saying and has several quotes in several minutes saying, I don't like this, I'm not gonna vote for 'em. So, having them go to the Planning Commission just because there's another 1 within 500 feet is a little onerous to me. This doesn't mean that if somebody protests within 500 feet, that rule still stands. If you get the 2 protest within 500 feet, they're gonna go to the Planning Commission. But if somebody has neighbors who like it and say it's fine and yet, there's 1 within 500 feet of 'em, you still have to go to the Planning Commission where they're predisposed, at least some of them, to not allow the permit. I think that's a waste of County time and I don't think that's something that we need to do.

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So we talked about this a little bit before. It was to prevent clustering. We turned out there isn't been a whole lot of clustering going on and the idea is get people through and get them the permits and get them compliant. So, I've submitted ASF No. 2, excuse me, my voice is going, that looks at the number of lots located within 500 feet. If existing STR permits are over 10 percent, the planning commission review is triggered. What that means is if you've got 20 homes within 500 feet, then you get up to...I'm sorry, let's say, 25 homes within 500 feet, you can have up to 3 within 500 feet because that's 10 percent. That's in the amendment summary form No. 2, but in discussing that with the Department, Ms. Flammer, came up with some very interesting statistics, especially in Paia.

COUNCILMEMBER COCHRAN: Chair?

MS. FLAMMER: I'll try to remember...

CHAIR COUCH: Hold on.

COUNCILMEMBER COCHRAN: Real quick, sorry. So, Chair, basically, we have gone through this, so I was kinda referencing off our green and white pages.

CHAIR COUCH: Yes.

COUNCILMEMBER COCHRAN: But this section you, we're talking about now, is something that we already had gone through and consensus and now you, as Chair, are bringing forth this amendment that you would like us to discuss right now?

CHAIR COUCH: I don't think we had consensus.

COUNCILMEMBER COCHRAN: It's not part of --

CHAIR COUCH: Yeah, I don't think we had consensus.

COUNCILMEMBER COCHRAN: --the green and white page that's why, so...

CHAIR COUCH: Right. Right.

COUNCILMEMBER COCHRAN: I...

CHAIR COUCH: This, the green and white is what the Planning Department suggested. Now we're going into, we've had testimony and the Chair's suggestion. This isn't the Planning Department's suggestions. That, the green and white, the matrix...

COUNCILMEMBER COCHRAN: Is only...okay.

CHAIR COUCH: Was only their --

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COUNCILMEMBER COCHRAN: All right.

CHAIR COUCH: --suggested revisions. Now, the Committee gets to make their suggested revisions as well.

COUNCILMEMBER COCHRAN: Okay. I thought we had, those are just things we wanted to go back to, we deferred because of initial discussion and sorta we had, you know, all sides did.

CHAIR COUCH: Yeah, we hadn't come to any kind of consensus on the 500-foot trigger.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: And again, keep in, and I'd like you all to keep in mind that it's not 500-foot notification. That's still there. And any, that can send people, if the neighbors have an issue. Our, my concern is that if the neighbors don't have an issue, then why do they have to go to Planning Commission? And so, I came up with that 10 percent thing, but Ms. Flammer had some very interesting comments, so, Ms. Flammer?

MS. FLAMMER: Oh, okay. I just want to preface, state first, that the Department would like to reduce the amount of applications going to Planning Commission, just because of the amount of work that it takes to bring 'em to Commission and the amount of time that it takes the Department in which to do that. Part of the reason the Planning Commission schedules aren't so full is because we don't have the time and the staff now to spend on some of these other applications to bring before them. So in your binder in the first page is an analysis of how much time it's taken and up until July 2015, we've spent about 4,000 hours.

COUNCILMEMBER COCHRAN: Wait, hold on, hold on.

CHAIR COUCH: Wait, wait.

MS. FLAMMER: In the very beginning, it starts with correspondence from August 14, 2015 in a response and then, in Exhibit A, I did go through how many hours staff is spending on this.

CHAIR COUCH: Okay.

MS. FLAMMER: So it's the very first one to make it easier for you. If you just go to the very beginning and go two pages, three pages back. And there's color striping on the bottom that'll help you.

CHAIR COUCH: Oh, yeah. Okay.

MS. FLAMMER: Okay. So given that, it is our job to balance what we bring, at the same time, protecting the character of the neighborhood is our larger mission. So, we're not

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saying, we don't want to see this number change, but my first comment when I looked at the table was is it's kind of upside down in that the areas where you have smaller lots and higher densities, where you'd generally have the higher impacts. So the areas that we look to protect Paia, the Shark Pit neighborhood, even some lots in other areas in the West side, you're gonna have lots of lots. For example, in Paia, one of the ones we permitted on Nalu Road, you have 88 lots within 500 feet, so I don't know, is the intent to allow 8 within 500 feet without any review of the neighborhood, I don't know that that is. It might be easier for the Department, just to have a number of 3 within 500 feet, so the fourth, fifth goes, it would be easier to administer. And I think we'd be comfortable with that.

CHAIR COUCH: And having heard her say that at the break, it seems that that, yeah, you're right, that's the more compact. But if you look at some of those, especially on Nalu where you're saying, on Nalu Street, are some of those, you know, are couple blocks away or how's that work?

MS. FLAMMER: No, it's 500 feet, so you... well in that particular case, you really do only have one access road.

CHAIR COUCH: Okay.

MS. FLAMMER: There's maybe another one behind that some of the lots could be hitting. Sometimes, you do have two different access roads.

CHAIR COUCH: Okay.

MS. FLAMMER: And I see that the impacts could be less with that. The other thing I just wanted to point out is that when you're looking at CPR lots, we would just want to know, it seems like with what we just passed that this would also include the CPR lots, so in an area like Launiupoko where you would have 16 master lots and only have 1 allowed under this, instead of the 3 that we're suggesting, you would really have 32 lots. So all of a sudden you'd be allowing three, just because of the CPRs. These are just the two things that struck me as I looked at it.

CHAIR COUCH: Okay. So, Members, we have a choice. We can still consider the 10 percent, which is what I've done in Proposal No. 2 in the amendment summary form or what the Department had said, sounded like you said, four or more.

MS. FLAMMER: Well, that would be...

CHAIR COUCH: You said, four, five or six would be...

MS. McLEAN: Right. The fourth one would have to go.

CHAIR COUCH: Okay. The fourth one would have to go. So they're saying, just say, if there's 3 within 500 feet, we're good to go. You don't have to go to Planning

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Commission, but if there's the fourth, we go to Planning Commission. I'm fine with that. I've actually put that in a supplement one that we handed out at the break and...

MS. McLEAN: I believe the amendment says, three to four and actually --

CHAIR COUCH: I know and I'm gonna change that to four.

MS. McLEAN: --that's fine with us as well. Three or more is fine.

CHAIR COUCH: Yeah, but you just said four, so I'm fine with four. Members, any thoughts on just saying, you heard the Department saying that, you know, they're trying to cut down on the amount of applications that go to the Planning Commission and because they've got other stuff to do, other work. And, so any thoughts on making that, if it's three or less, it's fine, it doesn't have to go, it doesn't trigger, that one particular thing doesn't trigger. You still have the 500-foot notice rule that if neighbors object, then, yes, it does go to Planning Commission. But that's why, that's the initial reason we wanted it to go to Planning Commission is because neighbors object. And the Planning Commission is really good at discerning whether it was really a frivolous objection or an actual objection. And that's, I mean, we discussed that from day one, so, I'm fine with saying, unless the neighbors object, if there's three or less, it doesn't have to go to Planning Commission. Any concerns, Members? Mr. White, Chair White?

COUNCILMEMBER WHITE: I don't know why you were looking at only me while you were going through your...

CHAIR COUCH: Because you're standing...you're sitting right there.

COUNCILMEMBER WHITE: It's because I've been objecting to changing this. I would be okay with the way the Department stated it the first time. If there were three or more...or the way you stated it the first time, if there were three or more, then it would go. So if there are two there --

CHAIR COUCH: You're good.

COUNCILMEMBER WHITE: --It's okay.

CHAIR COUCH: If there's three?

COUNCILMEMBER WHITE: But if there's three or more, then, I still think it's, you know, I still have a challenge with us having too many, you know, in one area and I thought that that there was going to be a proposal coming back and saying, in this area, this area, this area, the density is kind of okay, you know, to increase. But in other areas it's not, but that's not what we're getting. We're doing a blanket change with...

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CHAIR COUCH: Yeah, and that was the initial intent with the percentage if there's more. That was kind of trying to make a compromise. I understand what you're saying.

COUNCILMEMBER WHITE: I know, but the challenge with a percentage was a high percentage.

CHAIR COUCH: Yeah. Yeah.

COUNCILMEMBER WHITE: And so, anyway, I'm okay with 2 within 500 feet, you're okay. But once there's, if you're the third, you got to go to --

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: --Planning Commission.

CHAIR COUCH: Now, are there any areas that... 'cause I know in, certainly in my district and in some in Ms. Cochran's district, like Kalama Street and Uluniu and down in Makena all along the ocean, that, especially in Makena, that's what they're, I mean, they are second homes, they are, I mean, they've been there for a number of years, being, you know, a second home or a rental. Is there a, an option to say, well, if you're on the oceanfront other than Front Street, that that 500 foot rule doesn't apply because they're all in a line?

COUNCILMEMBER WHITE: I'm not comfortable with that.

CHAIR COUCH: Okay. I'm just thinking because that is, those are resort areas, well, maybe more like Napili and where, they are resort areas. That's what it supposed to be. It's just that they happen to have a single-family home there that aren't, they aren't going to be long-term rentals, not at...

COUNCILMEMBER WHITE: But you know, I understand that argument, but I don't quite accept it because there are a lot of rentals in Lahaina that are rooms for rent or pieces of houses. So just to say that it's on the beach and that's it's not gonna, or on the coastline, that it's not going to be available for a long-term rental in any way, shape or form, I don't think is correct so.

CHAIR COUCH: Okay. Any...Department? We're good to go?

MS. McLEAN: We can do it.

CHAIR COUCH: Alright. So, Members, if you look at Proposal No. 3, which is a separate ASF, it basically says, I'll accept a motion to revise Section 5 of the revised proposed bill attached to the correspondence dated November 13, 2015, to the Department of Corporation Counsel by deleting the bill's version of Subsection 19.65.060(A), Maui County Code, and adding the attached version of the subsection in its place. It's a long one, so, if you take a look. Essentially, e. says, Three or more existing short-term

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rental homes are operating within a five-hundred-foot radius and then, on the back, and this is because of the condominiumization No. f., where it says, an owner of the lot for which a short-term rental home permit application has been submitted or a trustee, partner, or corporate shareholder, or limited liability company's member of the entity which holds the title to the lot is also an owner, trustee, partner, corporate shareholder, or limited liability company member of an entity which holds title to or an ownership interest in a lot with a short-term rental home permit. So that basically makes sure that you can't have the same owner right next to each other. Are there any questions on this? Mr. White then, Ms. Cochran.

COUNCILMEMBER WHITE: Yeah, we had discussed changing the three to a two.

CHAIR COUCH: It says, three or more, then, they go to Commission, which is two.

COUNCILMEMBER WHITE: Yeah, I said I'm...

CHAIR COUCH: Which is two, they don't go...

COUNCILMEMBER WHITE: Okay. Okay.

CHAIR COUCH: Yeah. Okay?

COUNCILMEMBER WHITE: Yeah.

CHAIR COUCH: Ms. Cochran?

COUNCILMEMBER COCHRAN: That was my question.

CHAIR COUCH: Okay, yeah. So when it says, three or more, then, this is, these are triggers to going to the Planning Commission. So, 3 or more existing short-term rental homes are operating within a 500 foot radius of the proposed home, they goes, it goes to Planning Commission. You okay with that?

COUNCILMEMBER WHITE: I think so. As long as we're gonna be looking at this again when we come back with the other --

CHAIR COUCH: Yeah.

COUNCILMEMBER WHITE: --wording changes.

COUNCILMEMBER COCHRAN: And...

CHAIR COUCH: Yeah. Yeah, yeah. Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: And just to double, triple, quadruple make sure that this isn't taking away the other, if there's a protest --

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CHAIR COUCH: Oh, no, yeah.

COUNCILMEMBER COCHRAN: --it's still...right, that section is...

CHAIR COUCH: Yeah, the protest still stands.

COUNCILMEMBER COCHRAN: There's nowhere in this that's --

CHAIR COUCH: Correct.

COUNCILMEMBER COCHRAN: --sneakily changed or...

CHAIR COUCH: No, no, no, no, we don't do that.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: So, yes, Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah. Just to clarify. On the, so if there are 2 existing short-term rental, not business, homes in an area within 500 feet, if there's another house that wants to do it, then they have, that third one has to go to the Commission?

CHAIR COUCH: Correct.

COUNCILMEMBER GUZMAN: Okay. And the fourth one...anything thereafter?

CHAIR COUCH: Yeah, anything after that, right.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: Yeah.

COUNCILMEMBER GUZMAN: Lucky the first two people.

CHAIR COUCH: Staff, can I do this by consensus or do I have to do an actual motion?

MR. GARNEAU: I think you've already asked for a motion, Chair.

CHAIR COUCH: I actually haven't, but I will. Alright. So, the Chair is open to a motion to revise Section 5 of the revised proposed bill attached to the correspondence dated November 13, 2015, to the Department of Corporation Counsel by deleting the bill's version of Subsection 19.65.060(A), Maui County Code, and adding the attached version of the subsection in its place.

VICE-CHAIR CARROLL: So moved.

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CHAIR COUCH: Okay. Do I have a second?

COUNCILMEMBER WHITE: I'll second it.

CHAIR COUCH: Okay. Discussion?

COUNCILMEMBER GUZMAN: Just with reservations.

CHAIR COUCH: Yeah. Well, we'll see the language.

COUNCILMEMBER GUZMAN: That's all. Okay. Thank you.

CHAIR COUCH: We'll see the language. We're not gonna pass it out today, unfortunately, because I would like you to have a complete version of the bill so you can see it. I would like to get it passed out today, unless the Chair's okay with people looking at it in Council and if they have any concerns or changes, that we can make 'em on the floor.

COUNCILMEMBER WHITE: Well I'm still little bit uncomfortable with the three or more because right now it's, if there's one.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: So, we're not saying there's, we're not doubling it to make it two because three or more means that there's three there instead of two there. So, your parsing of words tricked me for a little while, but I think I'm more comfortable saying, if there are two or more.

MS. McLEAN: Yeah. You're correct that if the intent is to say, two would be allowed, the third one triggers Commission review --

CHAIR COUCH: Right.

MS. McLEAN: --then this wording should say, two or more.

CHAIR COUCH: Oh, okay.

COUNCILMEMBER WHITE: Two or more.

CHAIR COUCH: Alright. Well, yeah, that was the intent.

MS. McLEAN: Yeah.

CHAIR COUCH: Okay. So with two, change that language to two or more. Okay.

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COUNCILMEMBER WHITE: Yeah. Then I'm okay with it.

CHAIR COUCH: Okay. So, we'll add that. Mr. Chair, you heard my proposal, I mean, I'm willing to pass this out today and have the clean version for not the next Council meeting, but probably the following Council meeting, and if the Members have any amendments that they want to make, we can do that on the floor? Or would you rather one more meeting with a clean...

COUNCILMEMBER WHITE: No, I think...and we can do a special meeting next Tuesday, if you want.

CHAIR COUCH: For this? I don't know that we have...

COUNCILMEMBER WHITE: Staff would have to double check that before we conclude the meeting to be sure that that's open.

CHAIR COUCH: Okay. Do we have everybody coming that day?

COUNCILMEMBER COCHRAN: What's the date?

COUNCILMEMBER WHITE: We're supposed to leave Tuesdays open.

COUNCILMEMBER COCHRAN: What's the date?

CHAIR COUCH: We are supposed to. Ninth? The 9<sup>th</sup>.

COUNCILMEMBER COCHRAN: I'm in Hana.

CHAIR COUCH: Therefore, the answer would be, no.

COUNCILMEMBER COCHRAN: But, Chair, I know, Department, everybody, well, not every --

CHAIR COUCH: Right.

COUNCILMEMBER COCHRAN: --wants to get this out today and you're trying to make it so we can and then, have it, you know, in its full written form at full Council and then, we kinda sorta do Committee work at that time and asking...

CHAIR COUCH: If there are concerns.

COUNCILMEMBER COCHRAN: No, right and, I mean, I prefer to just have a nice clean copy to do another once over and then do the, you know, any tweaking or whatever needs to be done at that point. So that's just my take and I understand we're all kinda strapped for time due to the NACo and --

CHAIR COUCH: Right.



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CHAIR COUCH: One, two, three, four...five, yes. Okay. Alright. The next item is, we've been getting, again, this isn't in the matrix anymore. We've been getting requests, all kinds of different requests, but one of 'em is, let's see, we have established caps in Section 19.65.030 of the Maui County Code. The caps are Hana: 48, Kihei-Makena: 100; provided that, there are no more than 5 permitted short-term rental homes in the subdivision commonly known as Maui Meadows. Makawao-Pukalani-Kula: 40. Paia-Haiku: 88. Wailuku-Kahului: 36. In West Maui: 88. And I just remind the Members, we've had testimony both ways on increasing the Maui Meadows cap from, well we've had people say, they want to just get rid of the Maui Meadows cap because, why is that one neighborhood being sectioned out, but I understand that it's on the border between a resort area and not, so I understand and it is easily determined, delineated, so I can understand that. So, somebody has requested that we don't change the cap. Somebody has requested we remove the cap, and several people have said, you know, just double it or make it 15, 10 or 15. Any preferences from the Committee? Mister, Chair White?

COUNCILMEMBER WHITE: As I said at the last meeting, this was a, was part of what brought a resolution to the initial passage --

CHAIR COUCH: Okay.

COUNCILMEMBER WHITE: --of the ordinance and so I'm comfortable leaving it as is. We've made a bunch of other changes. I think there's a concern that there's already a bunch of B&Bs that have, you know, the number of B&Bs has grown and so I don't know that we can look at just the STRs without looking at the impact of B&Bs at the same time, so, I'm not real comfortable moving it, moving on that at this point. But, you know, the others may feel differently.

CHAIR COUCH: Okay. The Chair, you know, part of this was, you're right, it was part of the initial thought. I would like to ask the Department, have you had any more complaints in the Maui Meadows for the permitted ones? Have you had any complaints on the permitted ones?

MS. McLEAN: Not that I know of, Chair.

CHAIR COUCH: Okay. If you've had, I know we've had complaints on unpermitted ones, quite a bit --

MS. McLEAN: Correct.

CHAIR COUCH: --and most of that is because they're, I mean, the complaints are that they are unpermitted and they're operating.

MS. McLEAN: Correct. Correct.

CHAIR COUCH: Any noise complaints, do you recall in that area?

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MS. FLAMMER: We've had one. The complaint was about the children, the noise from children, so we didn't give them a violation because of that.

CHAIR COUCH: Okay. And I, there were concerns about parking on the street, that's, they're required to park off street, so, generally, when you see the parking on the street, I used to live up there and it's basically the people who live in the, you know, the neighborhood that are parking on the street, at least that's been my experience. I used to walk around it quite a bit and knew where the, at that time anyway, where the B&Bs were and everything and that they weren't an issue with parking on the street there. So I have mixed emotions on that one. Anybody else have any thoughts on this? I know that there are folks that have come up here and said that, hey, they live there, but they want to be able to go for a couple of months and go on the mainland or wherever and be able to rent out their place and they're prohibited from doing that right now because there's only a cap of five. And the Chair's open to moving it to ten. I'm certainly not open to removing it at all and 15 might be a little high, but the Chair's open to another 5, if the Members are open to another 5.

COUNCILMEMBER COCHRAN: Chair? You're looking to raise the cap across the board by five?

CHAIR COUCH: No, just Maui Meadows' cap.

COUNCILMEMBER COCHRAN: Oh.

CHAIR COUCH: And, you know, and I'd even be willing to qualify that to say, look, it's only, you have never been, you have not been able to operate before. If you have operated before and are unpermitted, you don't get part of that five because that's a commodity right now and, you know, the more limit, the more you have a limit, the more it becomes a commodity like taxi medallions and everything so, right now, the Maui Meadows thing is sort of a commodity other than you can't transfer it, but it's still something that people hold on to. So, any concerns, questions, comments on that? Yes? No? Leave it? I know Chair White said he's, he'd prefer to leave it. Mr. Carroll? No comments? Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah. I can appreciate both sides of the coin. I'd rather see it be left in place, but if it's going to be done, I would only raise it to two.

CHAIR COUCH: Two more?

COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: Okay. That's an interesting compromise. Ms. Cochran?

COUNCILMEMBER COCHRAN: Leave the cap, no changes.

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CHAIR COUCH: Leave the cap? Okay. And you're leave the cap as is? I can count. Well at this point, I guess we're leaving the cap as is. The next one is, okay, Corp. Counsel had made some recommendations on the State special permit and real estate license issues. I believe we have that language, but I believe Department has looked at that language, isn't happy with that language, so, Department?

MS. McLEAN: The Committee had previously agreed to have STRHs as an accessory use in the County Ag District and the amendment relates to when it was listed as a special use, but the concern we have with the language as it's written says that STRHs in the State Ag District have to get a State special use permit. If State law were to allow STRHs outright, we don't want the County Code to still say, you have to get a State special use permit. And so, we would be fine with making a clarification that short-term rental homes in the State Agricultural District have to comply with State law and whether that means a special use permit if that's what State law calls for or not, if it doesn't. It just, calling it to people's attention that the County Ag District is one thing, but the State Ag District has other requirements, so, that's all that we would suggest, but this section has already been moved.

CHAIR COUCH: Pardon? When you say, it's already been moved?

MS. McLEAN: The Committee previously voted. It's one of the items on the big matrix.

CHAIR COUCH: Yes.

MS. McLEAN: So it's no longer in the, listed as a special use in the County Ag District.

CHAIR COUCH: Yeah, that's what I thought we had done and Corp. Counsel wanted to see if they can add some language and I'm not supportive of this language either because we discussed it.

MS. McLEAN: But if, see, if we can say as far as County zoning is concerned, it's allowed as an accessory use, but there's still a State requirement that needs to be met.

CHAIR COUCH: A State requirement, sure.

MS. McLEAN: And calling that out is fine.

CHAIR COUCH: Sure.

MS. McLEAN: Just to put people on notice that even if County zoning allows it one way, you still have to comply with State requirements.

CHAIR COUCH: Right. Okay. Members, you were handed out what Corp. Counsel wanted to do and that goes against what we had talked about before, we agreed to before, so I'm not willing to change the language to this, other than, you know, potentially saying, you gotta comply with 205(h) [sic], which you have to anyway. It just kinda

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calls it out and points out that anybody who's looking at it, you have to get a State special use permit if that is required.

COUNCILMEMBER WHITE: If I'm not mistaken, what the Department is saying is if State law changes to allow it outright --

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: --then there is no State special use permit.

CHAIR COUCH: Correct. This language says you gotta get one. The language that she's suggesting just say you gotta follow the requirements of 205(h)...205?

UNIDENTIFIED SPEAKER: 205.

CHAIR COUCH: You just have to follow the requirements of 205, if there are no requirements, then, you're good to go.

COUNCILMEMBER WHITE: And you're saying you don't want that?

CHAIR COUCH: I want that. I, this language that Corporation Counsel wanted to add that I just passed out, restricts it to, you gotta get a State special use permit, it says, you must. I'm saying I don't like that. I just say, you gotta follow whatever 205 requires, HRS 205. And I think everybody else is fine with that, too. Okay.

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: So it is permitted on State, on the State...

CHAIR COUCH: As an accessory use, County zoning, but the State still requires a special use permit at this time.

COUNCILMEMBER COCHRAN: I thought it was...

MS. FLAMMER: Can I provide a little clarification?

CHAIR COUCH: Sure.

MS. FLAMMER: Okay. So the State special use is for any type of use on Ag land, whether it's a concrete batching plant, a boys and girls club or a bed and breakfast or a vacation rental unit. By moving it to the accessory use section under the County Ag, we're requiring that it be accessory to the ag use, which means you need an implemented farm plan.

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CHAIR COUCH: Correct.

MS. FLAMMER: So that, we're not saying, no farming. We're saying this use is for the farming district for this vacation rental, but you still have to have an implemented farm plan, whereas the State, it's just a special use. You just show it's special. The special use doesn't have any requirements for farming because you're doing something special. It just seems more appropriate in the accessory and we're still requiring that implemented farm plan.

CHAIR COUCH: So the County zoning still requires ag, you gotta really do ag. Okay?

COUNCILMEMBER COCHRAN: And this language we're looking at was provided by Corporation Counsel?

CHAIR COUCH: Yes.

COUNCILMEMBER COCHRAN: And so can we get comments from Corporation Counsel?

CHAIR COUCH: Okay. It wasn't provided by this Corporation Counsel.

COUNCILMEMBER COCHRAN: Oh, see, we've not...if Mr. Kushi knows the origin of this and intent and reason?

MR. KUSHI: No, I don't.

COUNCILMEMBER COCHRAN: Okay. So that answers that. . . .(inaudible). . .

CHAIR COUCH: But, Mr. Kushi, are you okay with it just referring to the requirements of 205?

MR. KUSHI: Yes. Whatever satisfies the Planning Department.

CHAIR COUCH: We need Mr. Kushi \_\_\_\_\_ more often. Any concerns, Members?

COUNCILMEMBER COCHRAN: And the ask is what? To not accept this --

CHAIR COUCH: Not accept that.

COUNCILMEMBER COCHRAN: --and keep it as is?

CHAIR COUCH: Right.

COUNCILMEMBER COCHRAN: Which we already vetted through...

CHAIR COUCH: Right, we already vetted through.

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COUNCILMEMBER COCHRAN: ...*(inaudible)*...

CHAIR COUCH: Yeah. Does Corporation Counsel, we had asked Corporation Counsel, they asked if we could put that in and I said, I'll bring it up. I don't particularly agree with it and we discussed it at, pretty lengthy last, couple meetings ago so.

COUNCILMEMBER COCHRAN: Is there something that we need to worry that's like defensible, not defensible...

CHAIR COUCH: I think Mr. Kushi says that's, it's okay.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: Yeah.

COUNCILMEMBER COCHRAN: Alright. Just wanted ...*(inaudible)*...

CHAIR COUCH: Okay? Alright. Now, the last thing on the list is Mr. White's...

MS. FLAMMER: We have one more comment from Corp. Counsel.

CHAIR COUCH: Okay.

MS. FLAMMER: With some amendments on the same list.

CHAIR COUCH: I'm sorry?

MS. FLAMMER: No. 2, the real estate license issue, did you wanna, Mike's comments?

CHAIR COUCH: Oh, I see. You wanted, oh, there's two different things. Yeah, that's right. Okay, so they have recommended, Corporation Counsel has recommended language on the real estate license issue. They are recommending changing 19.65.030(D)(2)(B), saying, An individual with an active State of Hawaii real estate license to serve as manager, these are people who are allowed to be managers, to the extent such a license is required by law except for properties located in the Hana or Lanai community plan areas where an individual may act as manager if allowed by state. That was, certainly in the Hana area, there are no realtors at all, I think. I think there might be one, but he's not willing to do property management and I think that's the same in Lanai as well. They don't have a pool of realtors to draw from, therefore, they can't comply with this because there's nobody to do it. Mr. White?

COUNCILMEMBER WHITE: The challenge with this, I think, is that it's State law that says, that you have to have a real estate license if you're gonna manage more than one.

CHAIR COUCH: More than one.

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COUNCILMEMBER WHITE: Right. So this would allow somebody to manage one, but not two.

CHAIR COUCH: Correct. Any...Ms. Flammer?

MS. FLAMMER: So the only, our, the Department's only comment is that we don't need the language to the extent that such a license is required by law. The Council wanted it to be a real estate agent, except in these other two areas so that they would be collecting the money and they would be using an escrow account and following all those rules. If for some reason the State law changes, I don't believe you would not, you would no longer want a real estate licensed person handling that from what I can recall of the earlier discussions. I think that was put in place for the consumer protection, not simply because it was a State requirement. So what happened with the Hana and Lanai is we are allowing the caretaker provision for those two areas, which is allowed by State law, but it was decided those two areas have unique circumstances which warranted that. So I think the Department would just like what's underlined, to the extent such a license is required by law, doesn't need to be in there. We'd prefer to have that taken out so that you don't have the caretaker provision for anywhere. It's only for these two small areas.

CHAIR COUCH: Members?

COUNCILMEMBER WHITE: I'm okay.

CHAIR COUCH: Okay with that? Mr. Guzman? You're okay? Ms. Cochran? Mister...okay, Mr. Carroll? So, without any objection, we'll add that language. I don't hear any objection. Okay.

COUNCILMEMBER WHITE: No objection.

CHAIR COUCH: Thank you. Lastly, Mr. White, you had some amendments?

COUNCILMEMBER WHITE: Yes. In your binder, there's an amendment, a couple, well, if you want to deal with this at the next meeting, I'm okay doing that. I have a highlighted version --

CHAIR COUCH: Oh, okay.

COUNCILMEMBER WHITE: --just showing my changes. So I'm happy to provide...

CHAIR COUCH: Yeah, 'cause we can't do this in five minutes, I don't think.

COUNCILMEMBER WHITE: No. So, if you don't mind, I'm happy to take it up at the next meeting and I'll provide highlighted versions at that time.

CHAIR COUCH: Or prior to? You can submit it to the Chair and we can --

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COUNCILMEMBER WHITE: Yeah, that's fine.

CHAIR COUCH: --post it. Members, any concerns about that?

COUNCILMEMBER COCHRAN: No.

CHAIR COUCH: Ms. Cochran?

COUNCILMEMBER COCHRAN: And also, Chair, in the green and white matrix --

CHAIR COUCH: Yes.

COUNCILMEMBER COCHRAN: --from Planning, I guess, the last item which we haven't gone to, but it says, slated for deletion, the 19.65.080?

CHAIR COUCH: What page?

COUNCILMEMBER COCHRAN: The last page of that matrix.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: The green and white, the green section. So, I had comments, but if we're gonna continue on to another meeting, then, I can just touch on that at our next meeting.

CHAIR COUCH: Go ahead, real quick. I believe...why did you submit this, Department?

MS. McLEAN: This was the grace period for the Commission trigger, is that right?

CHAIR COUCH: Oh, yeah, this is the one that, now, because of the grace period, we put this in there, but the grace period's over, so there is, their basic, this basically requires the Department to notify --

MS. McLEAN: Right.

CHAIR COUCH: --listed operations of the need for a short-term rental home permit, but now, well, we could still leave this in at this point because we have the second grace period.

MS. McLEAN: But if it's left in, we would want to know, I mean, there's not any specificity of, you know, the kind of effort we need to make, what kind of notification, how often do we need to make it, what happens if someone isn't notified, that's a big question. If someone for some reason doesn't receive notification from us and they don't make it in the six-month grace period, how does that leave it up to them? We just want it to all come out.

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CHAIR COUCH: Alright, well maybe this is, we'll let the Committee take a look at that some more and see how it fits with the rest and we'll bring that up when we bring up Mr. White's amendments.

COUNCILMEMBER COCHRAN: Yeah, so, 'cause this is under the revocation and enforcement heading, right? And basically, my thought process is in regards to homeowners exemption or circuit breaker or any type of credit they had gotten and we find, do they, you know, can we get reimbursement for those? If they claimed and they weren't truly allowed to utilize those, I guess something like that, to recoup monies back?

CHAIR COUCH: That's kinda with the whole back tax thing we...

COUNCILMEMBER COCHRAN: Would that apply? Did we, we didn't really talk about, you know, if they had claimed the homeowners or were in the circuit breaker or...

CHAIR COUCH: Well, that's...

COUNCILMEMBER COCHRAN: So that's why I mean there's more...

CHAIR COUCH: That's part of the back tax thing. If they claimed homeowners and circuit breaker and were operating they have to pay those back taxes including the exemptions and whatnot so.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: Yeah.

COUNCILMEMBER COCHRAN: So that is, there is a trigger for that to happen? It doesn't...

CHAIR COUCH: When we, the language that we're gonna add, yeah.

COUNCILMEMBER WHITE: They're working on that language for next time.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: Yeah.

COUNCILMEMBER COCHRAN: Alright.

CHAIR COUCH: And that's what we'll have next time so people can take a look at it.

COUNCILMEMBER COCHRAN: Okay. Well, very good. So, yeah, I'm good to see what comes out and then we can --

CHAIR COUCH: Okay.

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COUNCILMEMBER COCHRAN: --address and make sure...

CHAIR COUCH: So we'll bring that one up as well.

COUNCILMEMBER COCHRAN: Yeah. Yeah, please.

CHAIR COUCH: Thank you for catching that. Okay, Members, I will see, because I'm not sure when the other Members are headed out to NACo, I know I was heading out on the 17<sup>th</sup>, but I will not head out on the 17<sup>th</sup>. I'll go on the 18<sup>th</sup> and we'll, we will not cancel our meeting, I don't think we've officially cancelled it yet.

MR. GARNEAU: No, I haven't yet.

CHAIR COUCH: Okay. So February 18<sup>th</sup>, we still have a Committee meeting scheduled. It's been scheduled, so, and we'll get this out. This will be the only thing on the thing, but it, which would mean it would be a short meeting hopefully in my humble opinion.

MR. GARNEAU: Chair, can I ask you a question?

CHAIR COUCH: Yes, Mr. Garneau?

MR. GARNEAU: We had, since we're gonna be talking about the enforcement section, last time on Page 7 of the matrix to 8, there was some language that showed stricken and that's actually incorrect and so...

CHAIR COUCH: Oh, yes. That's right.

MR. GARNEAU: And just so the Committee knows that was not decided by the Committee yet.

CHAIR COUCH: Right. Page 8, at the top of Page 8, it shows there's some, No. 1 and No. 2 has been stricken. It was per Corp. Counsel's request at the November 5<sup>th</sup> meeting, but we had not discussed it and we had talked to them about it before and since we're gonna discuss enforcement in general on the next meeting, it's the Chair's intent that we're not gonna strike this language. It was Corp. Counsel's request. They didn't want it in to begin with when we first made the bill and they wanted to take it out this time. I understand their concern, but again, we'll discuss this at length at the next meeting, which will hopefully be the last meeting on this item. Alright. Any other questions, comments? Staff? Members? Thank you so much. We're there. We're just there. The enforcement is the last thing and we're ready to go. And you, we'll have the language, I hope before the next meeting for the grace period thing and so that, please look at it beforehand and if you have any questions, be ready to bring up your concerns and your potential amendments so we can get through this.

**ACTION: DEFER.**

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CHAIR COUCH: Department, thank you so much for your wonderful work and comments, and, Staff and Members, thank you so much. This meeting will be adjourned and we will have another full meeting on the 18<sup>th</sup>, so, this meeting is adjourned. . . .(gavel). . .

**ADJOURN: 12:02 p.m.**

APPROVED BY:

  
\_\_\_\_\_  
DON COUCH, Chair  
Planning Committee

pc:min:160204r

Transcribed by: Joanne Bista

CERTIFICATE

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

DATED the 26<sup>th</sup> day of February, 2016, in Kahului, Hawaii

A handwritten signature in cursive script that reads "Joanne Bista". The signature is written in black ink and is positioned above a horizontal line.

Joanne Bista