

**MAUI PLANNING COMMISSION
REGULAR MINUTES
DECEMBER 8, 2015**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:11 a.m., Tuesday, December 8, 2015, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Ball: Good morning everyone. Welcome to the December 8, 2015 Planning Commission meeting. We will call this meeting to order and we will move right onto Item B, Public Testimony. Anyone that would like to testify at this time may do so or you may testify when your agenda item comes up.

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

Chair Ball: Seeing none right at this time, we'll close public testimony at this time and move onto Item C, Public Hearings. Director?

Mr. Spence: Good morning, Commissioners.

Chair Ball: Good morning.

Mr. Spence: Really Items 1 and 2 are related and our Administrative Planning Officer, Joseph Alueta is gonna handle both of them. One is a resolution from the County Council to permit more affordable accessory dwellings within the Residential District and I guess we should take them one at a time. Like I said, the second one is related, it's a proposed bill from the Mayor's Office to allow additional accessory dwellings and both of these are in an effort to provide more affordable housing for our residents. Take it away Joe.

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

1. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 15-112 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend the comprehensive zoning ordinance to permit affordable accessory dwellings in Residential Districts. (RFC 2015/0153) (J. Alueta)**

The Council is considering a proposed bill to permit accessory dwellings in residential districts on properties of between 5,000 and 7,499 square feet, for the purpose of increasing the availability of affordable housing.

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

2. **MR. WILLIAM SPENCE, Planning Director, transmitting a proposed bill to the Lanai, Maui, and Molokai Planning Commissions to amend the comprehensive zoning ordinance to allow accessory dwellings on lots less than 7,500 sq. ft, and to allow an additional accessory dwelling on lots 12,000 sq. ft. or greater. Further, the bill proposes to clarify the restriction on covered and uncovered deck areas, measurement of floor area, and to restrict accessory dwellings to long-term residential use. (J. Alueta)**

The proposed legislation is available at <http://co.maui.hi.us/index.aspx?nid=121>

Mr. Alueta: Good morning Planning Commissioners. Again, my name is Joe Alueta. I'm your Administrative Planning Officer. Also work in the Zoning Administration Division. For some of you who don't know me primarily my duties are taking either ordinance either initiated by the Council or initiated by the Administration. So there's two ways in which Title 19 can be changed and that is either by resolution and that's what you have before you today.

As I indicated in the staff report which I'm sure all of you have read and memorized that have...you can see that we also have...we've combined the Mayor's proposal with regards to an attempt to increase the housing stock. I guess that's the way you could look at both these ordinances. And being Christmas time I wanted to add a few Christmas gifts to the Title 19, and amend 19.08 which some of you...you remember when we came through back a while ago and tried to consolidate the Residential Districts into one comprehensive district and introduce probably some interesting things such as lot coverage. And so I felt that and for some reason it was dropped at Council. There were two residential bills going around and at some point in time they carried one, but they left ours by accident. So when went to talk about it we thought it was still active, they said, oh we accidentally let it lapse, so I'm using this opportunity to reintroduce that amendments to it and I've attached that.

In essence, the two, the two main bills, the reso and as well as the Mayor's proposal is amending 19.35 which is your accessory dwelling provision. Both the Council and the Mayor feel that the current housing crisis you could say as far as not just homelessness but this is more addressing toward the affordability...(audio feedback)...toward the affordability of rentals for our working class citizens here on Maui County and we're basically there's a lotta I guess you could say, shotgun approach to this. And so what we're trying to do is in the first area they're looking at to amend is basically 19.35 which is your accessory dwelling.

This is a very similar proposal that happened in 19...excuse me, 2009 with another reso. I have attached that along with your previous comments. It's almost exactly the same that occurred about six years ago with the County Council in establishing what they call an affordable accessory dwelling. And the problems that we had with that, I guess the two main issues that we found that those things are, one is infrastructure where they wanted to put them, the lot sizes. And I've passed out maps to help out with that discussion. As well as enforceability. How do you enforce the affordability of that unit? And once you put it in Title 19, it's the Planning Department that's in charge. I mean realistically that's who is in charge of Title 19. And being that I'm in the Zoning Administration it would be our inspectors that would be going out to try to enforce who's family. It's

easy if the person has decided to rent this new affordable accessory dwelling to...(audio feedback)...to HUD or something like that where they have a voucher, where it's under the Housing Administration and that's not...that wouldn't be an issue, but because it also, I mean obviously you can rent this to family and have family members, how do we enforce that? So the Mayor's proposal is slightly in that it allows for again, another accessory dwelling as I outlined in the table I believe on Page 3 and 4 of the staff report. As some of you know, I'm a big believer in simple tables, try to do a comparison on. So this kinda just gives you a brief summary of basically the two or two proposals as well as what the existing Code is. And so I'm gonna focus in on where the units are gonna be allowed. Primarily the Council's reso will allow for another...will allow for an affordable accessory dwelling down on lots as small as 5,000 square feet and then 450 square...400 square foot access dwelling on lots between 6,000 and 7,500 square feet. Currently the minimum lot size under the Code as most of you know is 7,500 square feet to have an accessory dwelling in the Residential District.

The Mayor's proposal doesn't have a minimum lot so as long as there's room on the lot you can have a house and then have it...so the lot could be as small as 3,000 square feet, okay. So if you can fit a house and then a cottage...and an accessory dwelling it would be permissible. The Mayor's proposal also differentiates in that it gives you if you have a larger lot of 12,000 square feet you would be able to have two accessory dwellings, two accessory dwellings on the property. So essentially, you potentially could have three single family-homes on a lot of 12,000...of lots greater than 12,000 square feet, okay. And I know you guys were analyzing the maps as to where those lots were and quickly calling your broker, but I'll have you guys hold off, hold off on doing that.

So the current, the current as you can see where the current size provisions of the accessory dwellings are on there on the lot, affordability requirement...the Council has this affordability requirement and again, they called it an affordable accessory dwelling and that's the only way they're allowing for it. Again, exactly the same as the 2009 resolution, again, the same issue is who's gonna enforce or how do I check if the property is not being rented to a HUD or some type of voucher, Section 8 or whatever you wanna call family? Someone's gonna have to determine that they're not renting it to a normal citizen at market rate which is basically what's gonna happen.

We feel that from a simplistic standpoint, just eliminate that, don't add that. They Mayor's proposal doesn't have that. It basically is just trying to create an incentive for people to build units right now and to let the market take over. But the key provision I think that the Mayor's proposal has that differentiate sort of from the Council's is that it would prohibit the conversion of B&B and STRHs on all accessory dwellings. So not just on the new ones that would be created, but on any accessory dwelling going forward, okay. So that's currently right now you have when they amended the B&B Ordinance a while back they allowed for B&Bs to be in two dwellings and many of those units that were converted or were allowed in the B&B Ordinance were the accessory dwelling. Same thing in with the STRHs, not only is the main dwelling but the whole property is being used so they may have accessory dwellings, but those just have become additional vacation rentals. So this provision that the Mayor is proposing would make it strictly prohibit that you can do short-term rentals within an accessory dwelling.

Applicable zoning, we...right now both of them are only applying to the Residential Districts and that's why I provided you a map and primarily with the Residential zoning broken down by lot sizes.

Whereas the Mayor's proposal would affect all zoning categories, and you can have...the 19.35 accessory dwelling does allow for an accessory dwelling in the Apartment District, Hotel District, Interim District as well as the Rural areas. So if you have an area that is County Rural like a half acre you would be able to see a house and not just one, but two accessory dwellings on those areas. So I did not cover that in the map, but most of you are familiar like Makawao Highlands, Makawao area...I mean up in Makawao area along Kanani Road you have some large lots in those areas.

This was kind of a add-on by the Department which is the covered deck area. Currently we're trying to clarify, I mean, if you've read 19.35 which is the old accessory...which is the current Accessory Dwelling Code it measures the square footage of those accessory dwellings slightly different than you would measure most square footage. They count covered area. So in reality if you have like a three-foot eave on your house, we actually measure that square footage as if you're looking straight down. We don't measure the inside of the thing. Any...and you're allowed...so any covered area outside of the carport is counted toward the square footage of the unit, of the accessory dwelling. This has been batted around our office and so we feel that one, you should at least have some covered square footage, covered area. We are in Hawaii a lot of people like to hang out on a covered patio and you should be able to have a certain size and so we've limited that basically...right now the current proposal would be if you have a say, a 600-square foot accessory dwelling you'd be able to keep a 600-square foot, you could have another 600-square feet of covered deck. You couldn't enclose it, and we would...there's provisions in the Code that we've written into it that would prohibit that from being converted into additional living area. But a lot people wanna have barbeque area.

The accessory dwelling again, when they wrote this back in the early 80's it came out of another housing crisis of the 1980's, '82 is when the State changed the law and basically allowed the counties to enable or enact an accessory dwelling provision in its County Code again with the same intention of providing housing for our families. Obviously there was some very strict concerns over the size of these dwellings so that's why they wrote in some very unique and complex calculations on you can have this much covered area or the area is covered and then or even decks as well as how big the carport can be. So that's the *Reader's Digest* version of the two. Basically the resolution from County Council, the Mayor's proposal as well as what's in the current Code.

Before I stop talking and take questions, I wanna cover the Christmas tree ornament hanging that like on this bill and that is the Residential District. Again, if you're gonna increase the amount of units, we feel that the amendment that we had in 19.08 and 19.09 consolidations and applying a lot coverage to the Residential District would help with the densities. The main purpose of, I guess, or one of the main purposes was trying to maintain neighborhood character. You see, you see areas where you have a lot and a developed older neighborhood where houses are relatively about the same size as old Kahului and then you have boom, the house that comes in, it gets demolished and they go basically setback to setback. And from a character and density aspect it changes the neighborhood, you don't have...the onsite parking is limited in many of those because the way the house is developed and also it doesn't, it doesn't match necessarily with the character of the neighborhood. This is happening with a lot of areas. I mean, this is not, this is not a Maui phenomenon it is occurring all along in California, Manhattan Beach, they're doing where because they have a new movie studio there they're buying up individual...two lots side by side, tearing down

the two smaller houses and putting up a massive mansion and it creates a lot of friction. And so, sometimes it works, sometimes it doesn't. Most of the time it creates unintended consequences as well as increased runoff, I mean, just in pervious surface. So this is one way to help manage the size of these houses.

And so again, I'd like you to, hopefully you can support our recommendation to you that you recommend Council look at the provisions of 19.08 that we had recommended several years ago that they had ...(inaudible)...on and to reconsider them and to incorporate them into these changes just try to help balance if you're gonna increase the densities within these neighborhoods with additional dwelling units, there needs to be some other, some type of control there and maybe limitation not just the setbacks, it needs the lot coverage which would help add that. And again, we threw out the 40 percent number. Nationwide that seems to be a very good number and that's in the bill also. And there was a few other points but I'll wait to take your questions at this time or you can have public testimony. So if you have any questions, I'll be happy to answer them at this time.

Chair Ball: Okay, we're open this up for public testimony at this time.

a) Public Hearing

Chair Ball: Anyone that would like to testify on this agenda item you may do so at this time, please identify yourself and you have three minutes. Mike?

Mr. Mike Moran: Aloha Chair Ball and Commissioners.

Chair Ball: Aloha.

Mr. Moran: Mike Moran for the Kihei Community Association. Mahalo for your service to the community. Merry Christmas and holiday greetings from the KCA. Our testimony applies to both C1 and C2 as Joe presented them together.

In this season of giving we see these actions as giving to the Maui working community a way to truly help with the lack of affordable housing while liberalizing zoning, code allowing for ohanas to be constructed where they are prohibited now, and restricting them to long-term rental use. We only ask you to ensure your recommendation to the Council ensures the complete package as we can all see allowing more ohanas not restricted to long-term rental is no help to our working residents. We have seen several items come before you claiming to provide affordable housing which we had objections to and doubts, but as we understand this move, this looks like the real deal for the local community so we suggest approval. Mahalo.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you Mike. Would anyone else like to testify at this time? Seeing none, public testimony is now closed. Bring Joe back up and questions from the Commission? I know we have to warm up a little bit. I'll start it out I guess. You talked about the no tie in or sorry, the B&B and STRH and how it's anything moving forward that's built could not or just accessory dwellings on any...

Mr. Alueta: Accessory dwellings as a whole. Currently, and that's the question I guess you guys

can debate or comment on is there's two school of thoughts. Do you...the current accessory dwellings that are currently being used as a short-term rental through a permit, do you allow those to continue and get time extensions or when their time extension comes up, you say you can't do it anymore in that? That's the gist of it. Because right now if somebody comes...I mean, under this proposal, under the Mayor's proposal if that limitation is passed, one thought is that well, it's now prohibited. So when that person comes in a for a permit and they wanna do their B&B or have B&B units in an accessory dwelling we would tell them no, you can't. You would have to amend application or eliminate that or you would say you can continue to do it as long as you have that permit and you continue to get renewals. That's one way. But right now...

Chair Ball: You have a comment on that?

Mr. Alueta: So that's the two school of thoughts on it.

Chair Ball: Director?

Mr. Spence: Well, one of the reasons this bill is here is to get recommendations from the Planning Commission. So you can recommend, I mean, any number of things. You could say it should apply all accessory dwellings all across the board. You could say, you could make a recommendation to Council that it just applies to new accessory dwellings. I know currently it...currently the short-term rental home chapter in Title 19 as well as B&Bs allow the use of accessory dwellings for short-term rentals or B&Bs with a permit. So this would be a significant change to County policy. I mean, and that's probably...I mean, it's really one thing to say do we want more of these? And I think that's you know a pretty easy decision. Do you wanna put, you know, additional restrictions on them or just new ones or whatever, that's a pretty big policy change.

Chair Ball: And that's the issue I see. We don't wanna try and fix everything in this one ordinance. I mean, we have B&B ordinances to address that and they come in to address that and they come into see us and we say yes or no at that time. For us to put it into this one also, I don't know, it's trying to solve the world's problems I think, I mean, in principle. It may be an easy decision for some of the Commissioners because it solves certain issues that they'd like to solve. But in principle, I don't like trying to fix one thing in a different, in a separate ordinance. If it's a problem with the B&B, you solve it in the B&B ordinance not affix it to some other ordinance. Commissioner Robinson?

Mr. Robinson: What's the goals of units and dwellings that we're trying to accomplish to alleviate the housing problem?

Mr. Alueta: The thing is just a supply and demand issue is that we're just trying to, I think both Council and the Mayor is just trying to figure out how do you increase inventory? That's the biggest thing. How do you get inventory built that's gonna be relatively affordable on the rental front not so much on the selling front, on the buyer's side and obviously that's what this is really geared toward. These are units that would be built within existing infrastructural, existing urban areas for the most part and tie in and be the lowest cost for the most part because of the tie into existing infrastructure that's already you know in these neighborhoods.

Mr. Robinson: So there's no goal or target? It's just build them until?

Mr. Alueta: Yeah, there's no goal or target. I mean, I guess you could say the target from the reso from the Council's side was targeting lots that are 5,000 to 7,499. Okay, so that's a specific target area and you can see that on the map and strictly limited to the Residential Districts. So that's the target area that they're get to have more units.

The Mayor's proposal is more broader in the sense that there is no lower edge I guess of the Residential. So some of these older neighborhoods that have two or three thousand square foot lot someone may decide to put or may have, you know, a small 700-square foot house on it, oh if I can build a 400 square foot accessory dwelling, you know, a real tiny house, you know, that might be affordable to you know, a young couple.

Mr. Robinson: So have...have we identified a number of lots that were, that would qualify under the Mayor's proposal? Is it 5,000, 10,000? I mean, can we is there some grasp with all of these different areas and all these different lots if we're gonna go down below five?

Mr. Alueta: Oh yeah...

Mr. Robinson: Is...I mean do we have a number of exactly how many residential lots there are on Maui?

Mr. Spence: No, no.

Mr. Alueta: I mean we can-

Mr. Robinson: Just, let's just start build without a number?

Mr. Alueta: Yeah, and I don't think that the...I don't think like every lot...one, every lot may not qualify I mean in the sense that every...One, they may already have their accessory dwelling and they can't possibly fit it. Some of them may choose not to build accessory dwellings. So you're basically are just opening it up to anyone and the free market will decide who's gonna build it. I think the other issue that, you know, in some of our provisions in clarifying 19.35 is that although not explicitly indicated attached accessory dwellings are permitted and we've allowed for them. So in some areas there may be a place where someone will be able to do a downstairs, a small accessory dwelling or you know, have that all of a sudden that kitchen that they or that wet bar they converted to a kitchen will now become legal because they can then claim that area as their accessory dwelling and so that would...you may in essence just legalize some conversions that are out there now. But I think that's the, you know, at this rate in time, again, I think people are trying to throw out stuff that's gonna stick.

I've been on a few of the committees that are I guess you could say trying to come up with solutions or quickie solutions to build inventory. This was one of them, but time and time again, you know, Public Works and Water Department will tell you that anybody can build a house relatively...I mean, a lot of developers can build a house, the physical house relatively inexpensively that would be affordable for most people. The problem is once you get into the offsite improvements of I need

to put in an eight-inch or a twelve-inch water line to service that new subdivision, I need to put in that new roadway system. And so from a low hanging fruit aspect, you're looking at areas that are already urbanized, already developed, for the most part have an infrastructure in place, and Public Works and as well as the Water Department will be the ultimate decider at the time of building permit. Because if you have a really old neighborhood that's serviced by a four-inch galvanized line, you know down in some of these older neighborhood off of Lower Main, they may not be able to get another meter or be able to up size. So in that aspect that's gonna preclude them from doing an affordable or do another accessory dwelling.

In some areas where there have been improvements, you know, in Kahului or in some other neighbors, there may be more than enough capacity both in water as well as roadways. I think for us, we wanna...from Planning aspect we're looking at the lot coverage because we see that as that's gonna limit how big the location of that accessory dwelling as well as leave that lot open for off street parking because you know, traffic doesn't generate itself, there's always somebody in there. If somebody's living in that house, they're gonna need a car to get somewhere. But again, you're looking at increasing just the low hanging fruit. These are existing infrastructural areas, the existing urban areas that will most likely make it the most affordable for someone to try to do an accessory dwelling. So no, there's no number. We can, I could break down some of those lots. However, I would not know whether or not...I would not be able to break down those lots by which already has an accessory dwelling on it, but you know, we could get a count somewhere.

Chair Ball: Director?

Mr. Spence: And maybe a different way to put it is this just opens the door for lots less than 7,500 square feet. You still have to meet all the infrastructure requirements like Joe's saying. You may already be at your fixture count. So you know, Department of Water Supply and without debating that as a legitimate measure or not, you may already be at your fixture count, there may not be public sewer. You still need...yeah, so okay you can build an ohana now where you couldn't before, you still need space for a parking stall on the lot. So it's not just the room for the ohana, you need the room for a parking stall. So there's a number of... so even though the law would say you could build an ohana, it still depends on the configuration of your lot and the infrastructure available. And it would go through all those checks at the time of building permit.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay, for me this would...the biggest problem in my mind right now is affordable housing. We see it come before us time and time again, when affordable housing comes before us. It's not gonna happen for years to come. Right now with this bill coming before us we have a chance to put affordable housing out there to the residents. I do like the long-term rental thing because if they're going to build it, we're gonna fill up that need that's out there right now too. I mean, long-term rentals there's another big need right now. And for families that have a lot that they can put a house on their kids can build. It gives them a chance to build and to me that's important, and that's one of the biggest obstacles we have right now is where they have a place but they can't build it because of the rules and regulations of that area. I like the Mayor's proposal where he's opening it up and again, there's gonna be scrutiny on where it is built. So I like that because it gives opportunity again for our local folks to get houses here. That's our...that our priority I think

right now is to get this need not resolved but at least moving forward.

I would like it to be opened up to agriculture and I will tell you why. And everybody's like oh that's agricultural land, but agricultural land is big properties. And with these big properties you have big families that own those properties that they can't do anything on it because it's restricted to two houses on Agriculture zoning. And meanwhile they got 10, 15, 20 acres that each, the whole family owns that they can't do anything at all unless they try to subdivide. So I would like to see it open up possibly towards that to give these families again a chance to live here on Maui.

Chair Ball: Let's see, I have another question on, a couple more questions. You know on the you were talking about that barbeque area or the deck space, whatever, so that is if you have a 500-square foot living space let's say, and you have a 500-square foot deck and then garage also you could put?

Mr. Alueta: Carport, yes.

Chair Ball: On that, carport?

Mr. Alueta: Yep.

Chair Ball: Okay. The density. Let's go to the density section and you talked about 40 percent, what was that of?

Mr. Alueta: Of lot coverage. That's on the—

Chair Ball: Is the max at 40 percent?

Mr. Alueta: Yeah, if you look on—

Chair Ball: Do you have that...(inaudible)...down a little bit, if you will?

Mr. Alueta: If you look on Exhibit 14, which is the original amendments to 19.08, 19.09, Residential Districts, this is my Christmas, Christmas ornament hanging. Again, we're trying...originally the whole idea—

Mr. Robinson: You got a page for that?

Mr. Alueta: You're in that exhibit, but go to the beginning of the exhibit and we'll start from there, Exhibit 14.

And the exhibit before is just a transmittal. So back in 2010, we originally transmitted and that's on Exhibit...that's Exhibit 13, that was the transmittal. And you can see what your original comments were back on June and August of 2009 when you guys heard that residential bill. Again, the main...the reason that it kinda got bogged down was they liked one provision of the residential bill and the Council decided to take just that part and make their own bill and so that was the Home Occupation Home-Based Bill. And so and they kinda forgot all about the rest of the important stuff

that was in the residential bill. And so that is the part that we're, we're trying to get the rest of the nuts and bolts of the residential bill. And that was primarily you know, we wanted to clarify garage sales because we know all do them. We have some neighbors that have a Monday, Wednesday, Friday, Saturday garage sale which we do not think is appropriate in the Residential District. But primarily we wanted to clear up, you see the bulk of it on Page 3 of Exhibit 14 where that...where you start getting into the nuts and bolts dealing with clarifying accessory structures that are allowed within the Residential District and then on Page 7, of Exhibit 14, again, my favorite is always tables, I just took all of the development standards that were written out in the current Code and put it into a table format, tried to clarify what you can and can't do, lot sizes and stuff like that, and then again, we added, if you look down on the third column, I mean, sorry, third row, I mean, the second to the last row, lot coverage 40 percent is that where as part of the development standards for the Residential District that's what we wanted to add.

Mr. Robinson: Chair?

Chair Ball: Sorry, Commissioner Robinson?

Mr. Robinson: On your maximum clients, so when you open up to any lot size, you guys have a suggestion on what the limit of clients are you opening it up to?

Mr. Alueta: Again, that was taken care of during the Home-Based Business Bill. So they actually...I wanna say a maximum of like 12 clients or two an hour or something like that. I think that's what they, they came up with on this home-based bill. So that's already been adopted, whatever the...and that may not be what it is today. The bill was adopted and amended significantly by the County Council. So they currently have a Home-Based Business Bill that was adopted and so, so primarily the only thing...they basically did that and didn't adopt the rest of the bill. They basically took all the home-based business out, made their own bill and moved forward with that and they said, we're gonna come back to the proposal we had and they for some reason it never got carried over in a calendar year and everybody thought it did, but in reality it didn't and that's why I'm trying to get it back up there and say, hey this is the rest of the bill that you forgot that we would like to see adopted. And you know, at least have a discussion on it. If you don't wanna adopt it, great, no problem. If you don't want lot coverage, fine don't adopt it.

But I think what we're trying to do is get this structure for Title 19, for the residential bill cleaned up, you know, 'cause we use this everybody. These bills, these ordinances are extremely old. I mean, they're written, I was in Junior High. So I think we just need to sorta update it and make it simple to understand and simple to read for the general public and that's the main goal. So again, all of the development standards of the lot sizes as well as what can be clarified and what could be within that setback area, you know, I mean, right now it's more of a policy. You have a setback area. Can you have a mailbox? Can you have boundary walls? I mean, what's allowed? And so we wanted to clarify all of that.

I know some people freaked out on the freestanding antenna or wind turbine structure and setbacks. We're not talking about cell towers. We're talking about noncommercial antennas. The Federal Law has trumped the County on a couple of occasions with regards to allowing for Ham Radio Operators and private, and so we've had to grant variances. This would allow us to basically,

you wanna do your whip antenna, you meet these setback requirements and we're not prohibiting it. And so that way we stay in compliance with the Federal Government. And then on Page 9 of that we kinda, you can see the samples of what would be a...the 40 percent as well as this figures on R-0 Overlay, I mean R-0 setbacks. So again it's kinda the things that we were trying to get incorporated, it makes it a lot simpler. We like, we like pictures for people to understand what's going on so that's the main gist of it.

Chair Ball: I have a question. Oh, go ahead, Commissioner Hedani?

Mr. Hedani: Joe?

Mr. Alueta: Yes?

Mr. Hedani: It's too complicated for me to make heads or tails you know, on this particular measure so I depend on Staff who's familiar with the bill, familiar with the history, and familiar with the recommendations to come forward with a recommendation for us to support. I think from my perspective anything that increases affordable housing is good. The question that I have is, a couple of questions actually, we already have a problem with transient vacation rentals, short-term homes, homes being used for short-term rental. When we create 5,000, 10,000 additional accessory dwellings, does it make the department's job impossible to administer what happens once that happens? How do you keep those accessory dwellings from becoming 10,000 additional short-term rentals?

Chair Ball: Director?

Mr. Spence: And just on...before I answer that, I sort of broken it down into five different areas that we could request input from the Commission, but specific...and so we can talk about that later...but specifically to Commissioner Hedani's question about how would we administer this if it's...I mean, if it's all ohana units, that's pretty simple we would just deny short-term rentals from here and out you know, if that's what Council adopts. If it just applies to ohanas built in conjunction with this, somebody comes in for...with an application for a short-term rental, we would just look in KIVA, you know, we would look in the County database when was this built? Was it before or was it after a bill was adopted? So if it was built after, sorry no qualify. And it would be pretty simple I think. I'm sure I have administrators back in the office going no, no, it's gonna be harder than that.

Mr. Alueta: Thank you, Mr. Director, but yes, that we would just rather have if it's prohibited, it's prohibited. The Current Division would not approve any, would not recommend approval for any new bed and breakfasts on any accessory dwelling. They would have to be in the main dwelling. That's the simplest way. Currently B&B or I just say, any type of short-term rental within the Residential District is prohibited by law unless you get a permit. Okay, so from an enforcement aspect it's just like anything else. If we get a complaint...if someone is doing it, we know it, and they don't, and there's no permit for that property, it's a violation and as far as enforcement goes. So these again, if you look at it, just having increased inventory, okay maybe, you know, I'm kind of a realistic person, so say you build 5,000. This results in 5,000 new housing units. That would be wonderful. I mean, we are currently short you know, in that neighborhood. If you assume three to six percent loss as you say through illegal TVRs you're still ahead of the game. That's the way I

mean, I'm just trying to play the numbers. I'm just trying to get units built because when you know, building a brand new house in a brand new subdivision, you guys know what the minimum is gonna be, and 300,000 and up is what they're calling affordable and that's not...chances are is not gonna be affordable and so...as far as a rental. This at least allows for a, you know, if you build a 400-square foot accessory dwelling on an existing property, yeah, like you say, your children may wanna build that or someone would be able to rent that because the size of it is gonna limit the overall what you're gonna be able to rent for it. And I think...and there's a lotta, like I say, young couples, single moms that would be happy, would be happy to live in a 400-square foot house or a single guy I mean, in a 400-square foot house. They gotta...I mean, we gotta provide housing for a lot of our local families and...that are trying to—

Chair Ball: There's a family of four that would love to live in a 400-square foot house...(inaudible)... now. That's reality.

Mr. Alueta: Yeah. And that is, again. So we...I think that anything we can, we're just trying to go for the low hanging fruit. Again, I'm talking about this is within an existing...we're looking at existing subdivisions, existing zoned property and most likely in existing areas where infrastructure is available. And the number will be...whether or not they can or cannot is gonna be determined by Public Works and the Water Department ultimately from the infrastructure standpoint. But I think for the most part, this is gonna open it up for many people who have that 7,200-square foot lot, you know what I mean? There's a lotta of those guys that are out there and so...

Chair Ball: I have a follow up on that. You talked about there was a...probably a lotta existing rentals that are currently illegal because of the size of lot or whatever. Is there any proposal for there to be an amnesty period for those units to come in and get legal or has there been any talk about that of trying to get the units that are already out there to become legal and get counted if you will?

Mr. Alueta: I think from the County's histories with amnesty programs is really poor. I mean, we have a bad, a bad...it doesn't work. So I don't it's...I think that from that aspect I think most times people are gonna come into conformance when there is a change in ownership, meaning when they...if they're not being caught, right? And we deal with...I mean, I supervise basically the guy who reviews all of those after-the-fact permits, okay. And I can tell you there's a pile of them. So they do come in and primarily they're happening either they were caught or they're trying to sell the property. And so at that aspect, they're gonna come in and make the conversion legal. I think, and I mean, so I would just wait. I don't think amnesty works that well. I mean, maybe the Administration has a different philosophy on it, but...

Chair Ball: Well, the problem is when you do that and then they don't pass, you know what I mean, they come in for the permit, they don't pass their permit requirements—

Mr. Alueta: Right.

Chair Ball: —now they've, you know is the County gonna go back after they expose themselves you know.

Mr. Alueta: Right.

Mr. Spence: Mr. Chairman?

Chair Ball: Director?

Mr. Spence: Just commenting, if right now there's a lot of conversions, garages, full on building additions, full on you know you see the Shed Man advertisements on Craigs List, those kinds of things. They're illegal to build. You can't get a building permit if you tried because for in...you know, for instance, you know, your lot's smaller than 7,500 square feet. But if you open the door to lots smaller than 7,500 square feet all of sudden you could legalize it by getting an after-the-fact permit. It still has to go through inspection, it still has to, you know, meet Building Codes, stuff like that, setbacks, but I mean, so I'm not sure you would need an amnesty period at all.

Chair Ball: Yeah, maybe that was a bad term for that.

Mr. Spence: Yeah, and after-the-fact permits they're not totally budget killers.

Chair Ball: Public Works?

Ms. Dagdag-Andaya: When you talked about amnesty period we did look at several models from other counties and cities throughout the U.S. In fact, we had someone from the Mayor's Office go and do research on them and we had a Permit Improvement Process...Permit Process Improvement Team that met and looked into all these different models, but each time there was always different issue and it just didn't quite work out. There's a lot of loopholes that we couldn't close up. What we've tried to do in the past few years was work with the Realtors Association, work with individual homeowners and educate as much as possible. We're not, you know, we're not enforcing 'cause to enforce, but we also wanna help people come into compliance.

Chair Ball: Yeah, and I understand there's a public safety aspect of it too, but it be probably helpful if there was a chart for you know, if you wanna make yourself, if you wanna make your property legal, these are the things you can check on right now is your water meter big enough, are your setbacks, you know these are the setback requirements for this and so on and so forth, so they could just look at that list and if they're not gonna pass that right then and there, then they won't even bother coming in which is another way to do it, but that's probably too helpful.

Mr. Alueta: And a lotta people do that. They will do that preliminary check especially like I say when they're transferring ownership and the new owner is doing the due diligence, they're trying to find out, okay, can I get this legalized, and how long...and then that normally goes into that how much are you gonna offer for the property because either I gotta tear it out or I gotta go through the expense of bringing it up to Code.

Chair Ball: It starts with I have a friend, right?

Mr. Alueta: Yes...

Ms. Dagdag-Andaya: And we've seen, we've seen a lot of that happening in the past, I wanna say in the last three to four years, the first year and a half that I was in I mean, that was always an issue, the after-the-fact permits. But as we got into more of the educating the community, hosting meetings for people to come in to discuss issues that they've had, we've seen a number of requests for service come in asking what's existing on my property, what can I do to fix it or how can I close this one permit that's been open for many years now? So the more we try to educate folks on the permit process, and what's involved and what the codes are I think the more, you know, well, homeowners will be a little bit more successful.

Chair Ball: Commissioner Hedani?

Mr. Alueta: And I think this bill by giving them the opportunity to legalize some of their add-ons would go a long way to allow them to do that especially with like I say, with these homes with two kitchens in them. You know they could convert one of those areas to an ohana unit or accessory dwelling. I think that would go a long way toward that. But again, I think it's for a lot of the lots that, I mean, I guess I'm ...(inaudible)..... a lotta people follow the law. There's a lotta people who are honest out there, who go I'm on 7,100 square feet, I can't do an ohana, I can't do an accessory and this would open up that ability.

Chair Ball: Commissioner Hedani?

Mr. Hedani: My personal opinion is that I think we made a mistake, well somebody made a mistake in terms of approving short-term rental homes. That's my opinion. B&Bs is another story. Short-term rental homes I think was an error. And I think if this is a means of backdooring a revocation of the short-term rental bill by making them expire at a certain point in time, I would be all for that. I would absolutely support that. Because I think we shot ourselves in the foot when we approved short-term rental homes in residential areas that previously were available for long term use.

Mr. Alueta: There was a...I mean, the law was adopted so that's the law we follow right now.

Chair Ball: Let's stick to the topic on this.

Mr. Alueta: Yeah.

Chair Ball: I have another question on the 5,000 square foot, how did you come up with that?

Mr. Alueta: That was Council's proposal at 5,000. That was their proposal in 2009. Again, the Mayor's size was no size. So you could...it was you could go down to-

Chair Ball: As long as you met the 40 percent.

Mr. Alueta: -as long as you met the lot coverage, I mean, or the current setbacks then you would be allowed to do it.

Chair Ball: Director?

Mr. Spence: Mr. Chairman, something we haven't really touched on as part of the Mayor's proposal is if you have a lot over 12,000 square feet you could have two ohanas. So when we actually get down to making a recommendation I'll break it out into these different sections and see what the Commission's pleasure is. So that's...I mean, just I need to raise that ...(audio static)...

Chair Ball: Commissioner Hedani?

Mr. Hedani: Yeah, getting back to my previous point, I think it is, I think it is on subject because the question in my mind is when these five to ten thousand additional homes come on line what's gonna happen to them? Is it truly gonna, you know, is it truly gonna address affordable housing or is it just gonna be 10,000 opportunities to get rich with a short-term rental? And if-

Mr. Alueta: You saw that thing Commissioner Hedani, sorry to interrupt. You saw that with the testifier from Kihei, the Kihei Community Association where they felt that that...those two key provisions of one allowing people to do accessory dwellings, but also truly making them limited to long term rentals. Those two have to go hand in hand. You can't, you can't all of a sudden go, okay we're gonna allow accessory dwellings on smaller lots and then all of a sudden that portion of the bill gets dropped later on. I think that was point by the KCA was that you gotta keep those two provisions together.

Chair Ball: And I guess just debating that a little bit, and I agree with that also, and I think that the properties that we're discussing are lending themselves to that. I don't think we're gonna have very many bed and breakfasts or TVRs coming through with those properties that we're talking about because they're just you know, the land size is just too small. It just doesn't lend themselves to it. But we're talking about affordable rentals also here not affordable ownership I guess, if you will. Commissioner Robinson?

Mr. Robinson: I wanna touch on enforcement with you. So is your department in charge of enforcing all the illegal short-term rentals right now?

Mr. Alueta: Yes.

Mr. Robinson: How are we doing with that?

Mr. Alueta: Pretty good. I mean, it's...I mean like I say it's they have been sending out quite a few Notices of Warning and Notices of Violation. We are also implementing the ban. So if we catch...you're caught and it's not overturned on appeal, you are prohibited from applying. So you can't just get caught and say, oh let me get my after-the-fact STRH or...you will be banned for five years from applying. And the word has gotten out that if you want...if you're truly are interested in doing an STRH and you don't have one then you had better shut down before you come in to the office.

Mr. Robinson: How about the people that don't care about getting a permit and just operate illegally what happens to them? Or what has happened to them in the last couple months?

Mr. Alueta: You get a Notice of Warning, you get a Notice of Violation, and then you go fines and

we try to either have them shut down and then we try to collect the fines and we go through that process.

Mr. Robinson: And have we collected fines?

Mr. Alueta: I don't know the number on it. I know that we have settled on a few. The Director probably know more about settlements than I.

Mr. Robinson: You know where I'm going Director?

Mr. Spence: Well, I know you're talking about enforcement.

Mr. Robinson: Yeah.

Mr. Spence: I think as I recall we've issued about 500 warnings. You know, the Administrator for that division will readily admit we got a little bit far ahead of ourselves on warnings. We're going back to see, okay, did these people remove all their advertising, did they shut down, did they open up under some other name? You know, so they're going back and double checking that. And I can't tell you how many violations we've issued but the number of violations are increasing and we've worked some things out with Corporation Counsel so that the violation issuance is more streamlined. It doesn't have to go to...I mean there's still valid violations, but it's...we've made it...we've worked some things out. It makes it easier to issue violations. And it's gonna be a matter of going back and collecting fines if the person doesn't shut down. So we're...the enforcement is working. It's working, and like Joe said, there is word getting out. We've had people come in and apply for permits. And so there's, there's the one thing, one part of it where people are operating without any permit and have no intention to come in and get a permit. Okay, and then there's the other group of people that go, oh I better go get my permit and they don't shut down while they're applying and you know, there's a provision in the law that says if you're operating while you're applying, you're banned for five years. You know, if you're operating before getting a permit, you're banned for five years from even applying. So we've...banned a number of people that turning into...it's very effective and people are very unhappy.

Mr. Robinson: And part of this proposal, do you guys have a proposed budget to the Council that you're gonna ask for more building inspectors, more enforcement officers to get more people to help guys enforce plus permit to get all these new...these 5,000 homes built at all different locations instead of a big development?

Mr. Spence: No. This is...these bills in front of you right now are just focused on opening the door for more...for property owners to build more accessory dwellings. The enforcement thing exists separately whether these bills are here or not. A couple of budget meetings ago, the Council gave us three more enforcement positions and it's been fairly effective. And I'll just...and I should leave it at that.

Mr. Robinson: Okay.

Mr. Spence: So, but that the enforcement effort goes on and has been pretty effective regardless

of whether these other bills exist or not.

Mr. Robinson: Okay, I have a question about 40 percent.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I'm not sure of the Building Codes. So currently I see a lot of homes that have upstairs, downstairs, right and that's a single home and that's all permitted rentals. That's not an auxiliary, right? So if we had a, we had another unit that say was 500 square feet that could also be a two-story to be with under the 30 feet or are we only allowing a single story?

Mr. Alueta: You could have...like currently we allow for an attached accessory dwellings. So you could have like a 2,000-square foot structure and have 1,500 square feet be the main dwelling and 500-square feet within that two-story structure to be the accessory dwelling. Most common as the Director pointed out like people will convert their garage and a back room and that will be, so they'll live upstairs and then they'll have downstairs they may have another bathroom and kitchenette and that will be the accessory dwelling.

Mr. Robinson: But with this proposal a 500-square foot can be it two-stories up to 30 feet and can two families be living in that unit?

Mr. Alueta: That would be a small-

Mr. Robinson: With code?

Mr. Alueta: Yes, you could stack two cargo containers up on top of each other and you would meet the-

Mr. Robinson: Well I mean, I mean of course it can only be one cargo container then another person could live on top of the other cargo container, right?

Mr. Alueta: That is possible, but right now the occupancy of that 500 square feet or that 400 square feet accessory dwelling would be limited to one family and have only one kitchen. So you couldn't have basically a duplex of the accessory dwelling.

Mr. Robinson: And we would enforce that with warnings?

Mr. Alueta: Yeah, and violations. And it would come during the Building Code, you know...we look at all, I mean, that's the biggest hot topic wet bars or I should say kitchens, additional kitchens that people put in. We see that all the time and we try to eliminate those at the beginning of the building permit process. So...

Mr. Robinson: Yeah, I mean, I've been to a couple properties this past month because I was looking for a 1031 and I saw six families living one two-story home plus an extended unit, they're making walls, they're using gas stoves as their kitchen. So I'm with you. There is a need there, but the safety, the density, the...you know, the quality, you know, and the enforcement and that's what

I'm worried about. If we go through this, the Council is gonna have to give you guys staff to make sure that the safety is there. I notice the Police Commission didn't...the Police didn't do any comments, the Fire didn't do any comments and for safety wise, you know, it's getting people living there. I know we're all on the same page, we all want people to have a house, I want people to have a roof over their heads and their kids some place to sit down. It's you know, how do we do it, you know, in a smart comfortable way instead of just a knee jerk reaction.

Mr. Alueta: I think that one, Public Works would also be enforcing the Building Code side. From our aspect again if this bill passes in some form and you allow for additional accessory dwellings to be constructed that demand where people are forced into a situation as you described would hopefully lessen meaning you're not gonna have people desperate enough to rent that type of situation and they could actually get their own little 400 square feet rather than have multiple families living in and putting in the gas top or the small electric top which again can be very dangerous especially I mean, my grandmother almost burnt down our house when she lived in the back of our house. You know, we had that...everyone has that grandma addition and you're parents get, your grandparents get older and they still think they can cook and they leave the stove on. And so it's a real situation where it can be hazardous and you wanna be able to allow for more legal means in which people can develop these accessory dwellings. So you do not force the people on the bottom rung of our economic ladder to...into those types of potentially dangerous situations.

Chair Ball: Okay, let's take a five-minute recess.

A recess was called at 10:17 a.m., and the meeting was reconvened at 10:34 a.m.

Chair Ball: Back to order. Where are we? I think the Director had some comments? Yes, Joe did you have something?

Mr. Alueta: If you'll look on Page 6, basically your options we are recommending approval of the Mayor's proposed bill to the County Council. The Commission can also have the following options, can recommend approval of either of the proposed bills to the Maui County Council. Recommend approval either the proposed bills with amendments to the Maui County Council. Recommend denial of either proposed bills to the Maui County Council or vote to defer action on either of the proposed bills in order to gather more specific additional information. But again, the Department is recommending approval of the Mayor's bill with again, the add-on of having the Council incorporate the provisions and amendments to the Residential District that are also attached on Exhibit 14 'cause that was...they've had it, they've seen it, you've already reviewed it several times, so we'd just like to have some of those provisions especially the lot coverage incorporated into that.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: I move to accept the recommendation of Planning. However, I'm open to friendly amendments if anybody wants to add something else.

Chair Ball: Okay, probably gonna hold on the motion for right now and we're gonna go down some of the items just to make sure we have a consensus. Director?

Mr. Spence: Thank you, Mr. Chairman and Commissioners. Because there's a number of provisions in each one of these bills I thought I'd break down the primary things first. Let me go over these real quick and then we can take one at a time.

First, do you want to allow ohana units on less than 7,500 square feet? Then if that is the case, do you wanna go with the Council's recommendation of down to 5,000-square foot lots or would you wanna go with the Mayor's recommendation on any size lots?

The third one, and this makes it easier to report to Council as well. The Mayor's proposal to allow two ohana units on lots that are larger than 12,000 square feet. I heard one...Commissioner Lay say it should apply to the Ag District too. Ohana dwellings are not...in the Ag District they're farm dwellings, but it would take a major rewrite of that section of the Code, but I would...since it came up I think we should at least discuss that a little bit.

And then the last thing or Christmas present as Joe keeps talking about just for the Planning Department's administration of this section of Code that would be really helpful. So we, you know, we're breaking it up into chunks and looking for your input on each one of those. Does that make sense Mr. Chairman?

Chair Ball: Yes, I believe so.

Mr. Spence: Okay. Commissioner Robinson?

Mr. Robinson: Director, can you explain that Christmas ornament for you again real quick? I heard it twice but I still didn't grasp it?

Mr. Spence: It's things like the current Code that covers accessory dwellings is ancient. It hasn't really been updated like we count square footage of the ohana's not interior space but we count it where the eaves are. So if you have a four-foot eave, we're counting that as part of your floor plan so the actual living space would be very small. Joe should probably, just on this portion?

Mr. Alueta: Yeah, we currently...like I said, it's in the Mayor's...it's incorporated into the Mayor's proposal where you would have a new method of calculating the square footage of these accessory dwelling and where we would basically measure the square footage. Currently the Code says you count covered walkways and covered decks as part of the square footage of the accessory dwellings. We currently do not want to count that as being the limitation on the size of the accessory dwelling. So if you're allowed...and then this goes to the existing lots too. Like so if you have a 10,000 square foot lot in Kahului, you can have a 600-square foot accessory dwelling and we would just count the exterior wall space like we normally do in review of building permits and we would also give you some additional covered deck that you could also have separate and so there's a separate provision for that in the table format and that's all in the Mayor's proposal. And so that would clarify for us how we calculate and allow for some covered area for the...

Mr. Spence: ...(inaudible)...

Mr. Alueta: Besides the-

Mr. Spence: Square footage.

Mr. Alueta: Yeah, we've expanded the square footage...I mean, like I said how we calculate the floor area, open deck area would also be allowed not counted towards square footage and then again, we talked about separately in the 19.08 the Residential District provisions that we wanted to have incorporated.

Mr. Lay: So not under the eaves, right?

Chair Ball: Commissioner Lay.

Mr. Alueta: Yeah, not under the eaves. So I think the way we have it written is if you go out to three feet, anything...it would not count. And then if you...if it's larger than three feet then we'll count it as part of a deck, as far as covered deck square footage.

Chair Ball: Following up on that. So now is this...that's an ordinance for all accessory dwellings? So in Ag District it would be the 1,000-square foot would be living area not the eaves then? We'll change all of that, right across the board?

Mr. Alueta: This is only for the accessory dwelling provision.

Chair Ball: But that would be an accessory dwelling, right?

Mr. Alueta: No. In the Agricultural District it's, those are second farm dwellings.

Chair Ball: Farm, okay.

Mr. Alueta: They are limited to 1,000 square feet.

Chair Ball: Okay.

Mr. Alueta: And so again, we would...basically we would use the same methodology in which calculate any house in Maui County and just use the interior walls.

Chair Ball: Commissioner Robinson?

Mr. Robinson: This is for you Chair and maybe you too, Max. So real estate wise if we're gonna change how we calculate rental sizes and square footage and appraisal per square foot, you know we're looking at if the whole County's now gonna change how they measure stuff. That's a...isn't that another layer we need to look at as far as appraisals? You know what I'm saying? And square...I mean if it was roof before and ...(inaudible)...you know, for square footage and now we're going interior which I'm not opposed to, what happens to all those things that have been appraised at using lanai coverage as a square foot, covered, you know, that's all been part of sales price for properties.

Mr. Spence: It wouldn't change very much. I mean, it is what it is whether you...I mean, under the

current Code or under the proposed Code if you build 500-square foot cottage or you know, measuring to the eaves of 500-square foot cottage measuring out. I mean, the interior space could still...whatever is built is what built and it goes to the value of the property. It's not gonna...it's not gonna present a major change.

Mr. Robinson: Well, yeah I'm just saying for, you know, the real estate side 'cause does it go by livable square feet and not roof square footage, you know, for the, for how the appraisals are done?

Chair Ball: Maybe, but I don't...I'm with the Director—

Mr. Robinson: You don't see a problem with it?

Chair Ball: —I don't see it as a major problem.

Mr. Robinson: Yeah, I mean, it's not gonna stop the project, I'm just saying as a classification that somebody have to look at through your guys real estate side.

Chair Ball: Appraisers, appraisals...appraisers may look at it different, but as far as realtor's side I mean, it's gonna be whatever is listed on the County's square footage is what we put down, so...

Mr. Alueta: And that would only be if I may, it's only how...to provide consistency for our plans review because there's been again, an inconsistent method in which some people calculate the square footage for the permissible use. So somebody may come in with a cottage and they show 600-square feet of interior wall space and they may approve it, not seeing the eaves as being covered walkway. Another plan review person may say, no the Code says covered eaves count as square footage, but on the building permit, it's gonna...it would show and as well as Real Property Tax, when Real Property Tax goes out they're gonna measure the outside of the wall. They're not gonna care about the eaves. They're not gonna care about...that's only for us as far as the Title 19 provision for us to do our review. But as far as what's considered floor area from everybody else, appraisers, whatever it's only gonna be the interior walls. We're...it's only for our administration of 19.35 in the Planning Department where we get into that issue of is it covered or uncovered, I mean, so...

Chair Ball: Yeah.

Mr. Robinson: Thanks

Mr. Spence: And we would like to be able if we measure...if for our purposes in the Planning Department if we can measure it a different way we would like err on the side of allowing a little bit larger structure for people to live in.

Chair Ball: Commissioner Lay?

Mr. Lay: For me, I like the covered deck area because right now people are building as big as they can build without...that's how they're doing it, we're getting boxes.

Mr. Spence: Right.

Mr. Lay: With this deck areas, we're adding more character to the area. I like that.

Chair Ball: Yeah. Commissioner Hedani?

Mr. Hedani: Are we still taking comments?

Chair Ball: Yes.

Mr. Hedani: Four hundred square feet I think is too small. The end of this desk over here to that wall is 400 square feet. If you put a bathroom, a bedroom, a kitchen, and a living area, one bedroom and that's really tiny. The first apartment I moved into when we first got married 40 years ago was 700 square feet and that was a one-bedroom and that was nice. It was comfortable. And it's something that I think people would be happier than a 400-square foot box.

Mr. Alueta: The Mayor's proposal is to limit it at 500-square feet and so...and I'll tell you like-

Mr. Hedani: Okay, and that moves it to this desk.

Mr. Alueta: Yeah. Well, to give a better...I lived at Lao Parkside. My first place was a one-bedroom, one-bath unit at Lao Parkside for \$103,000, and it was 523 square feet. That 23 square feet included part of that, that outside storage whatever. So that was...so if you've been in Lao Parkside of any of those standard one-bedroom, one-bath, and not...like I said, I lived there with my wife so that was a starter package for most people.

Chair Ball: Well and if you look at Dream City those houses there are three-bedroom, one-bath, and then you get the half or so outside, those are all under 800 square feet, and you know, that served the community forever. But I like the outside livable area, you know, the deck area because most people are gonna be out there and create a space out there too which helps with that limited size. I think they'll be thwarted too by the size of the lot under the 40 percent density. They're gonna be thwarted on the size. Commissioner Hedani?

Mr. Hedani: I think the controls on each lot should be based on the setbacks that you think are appropriate. The ability to handle runoff on the site onsite, to contain...to address the problem of flooding. I also think that they're not going far enough but these are baby steps that we're taking toward housing.

Mr. Alueta: So just to clarify Commissioner Hedani so you think the setbacks requirement is enough and you don't need to have the 40 percent lot coverage?

Chair Ball: Commissioner Hedani?

Mr. Hedani: I'll leave that to the Department's analysis and recommendation.

Chair Ball: Director?

Mr. Spence: Okay, so Commissioners if I could go through each one of these?

Chair Ball: Sure.

Mr. Spence: Okay, so Commissioners I'd really like to go through each one of these and get a recommendation on each. I sort of, like I said, I sort of broke it down. It will make it much easier once we get to Council to say, the Planning Commission really liked this provision but they didn't like that one or they liked all of them or whatever. They're going to...I mean, and they're gonna specifically ask those questions. So it would be nice if we could break 'em out. So the first thing is what would the Commission recommend on allowing ohana units on less than 7,500 square feet?

Chair Ball: Commissioner Hedani?

Mr. Hedani: Need a motion or?

Chair Ball: Just a consensus probably.

Mr. Spence: Yeah, consensus would probably be fine.

Mr. Hedani: Personally I would support ohanas on any lot, residential lot.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, I'll go with the Mayor on this one which doesn't have any restrictions.

Chair Ball: Commissioner Hudson?

Mr. Hudson: I concur. I would be you.

Chair Ball: Commissioner Lay?

Mr. Lay: Also.

Mr. Spence: Okay. And I see Commissioner Robinson.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Yes.

Mr. Spence: Shaking his head yes.

Mr. Robinson: I don't wanna see a lot, a second house on a lot smaller than 5,000 square feet. I don't believe in just any size. I know the 40 percent takes care of it, but I think, I think it should be 5,000 and above.

Mr. Spence: Okay, that covers the first two questions.

Chair Ball: I'm kind of with Commissioner Robinson. I think there needs to be a little bit more study into that, what does that mean on...what does that look like visually if we open it up to any size lot 'cause you don't wanna create this houses on top of houses on top on houses either 'cause it changes the neighborhood as much as the big house changes the neighborhood, all these ohanas on these properties also...(inaudible)...

Mr. Robinson: If somebody sold the driveway easement and built a house on it, you know.

Mr. Spence: Well, it would still have to comply with all the other Codes.

Mr. Robinson: But the setback?

Mr. Spence: Oh, they still have to comply with setbacks. They still have to have one parking stall for that unit. That's just a part of...all the other Codes still apply. So if...what it's saying is if you have room, and you can meet these other codes, you can have this. So all the other Codes don't go away.

Chair Ball: But I think in theory that sounds good, but just don't know enough.

Mr. Spence: Okay, okay. What about...what's the Commission's thoughts on if you have a lot that's over 12,000 square feet? Should you...and provided you have the room, and all that should you be able to have more than one ohana, if you could have two?

Chair Ball: What were the sizes of that?

Mr. Spence: ...(inaudible)...

Chair Ball: The size of the ohanas?

Mr. Spence: I think it's 500 square feet.

Chair Ball: Well, wouldn't that be under this...am I looking at the right...oh, sorry, that's the deck size, that's the wrong one, seven, eight and a thousand, right depending on what the size of the property is?

Mr. Spence: Yeah, it's--

Chair Ball: On that chart. I'm looking at the chart on Page 3, one, two, three.

Mr. Spence: Correct. At least the way that this showing what our current Code says, if you have a lot between 10,000 and 21,000 square feet, you could have a 600-square foot ohana. So I guess the question is could you have a second one? If you have room and parking and infrastructure and all of that.

Chair Ball: And if you went to 21,000 to an acre and you could have a main structure and then two, 700--

Mr. Spence: That would be–

Chair Ball: –potentially two, 700.

Mr. Alueta: I'm not sure if that's what the Mayor wanted to have the second based on the same size or the second accessory being 500 square feet.

Mr. Spence: I don't think the bill–

Mr. Alueta: Limits it.

Mr. Spence: –limits it.

Mr. Robinson: Didn't I read somewhere where you said it was gross so he could have...he was saying if it's one's 1,000 and one's 1,000 gross is 2,000 he's fine with that. Is that what the people were saying there?

Mr. Alueta: No, that was a discussion on, on–

Mr. Robinson: Oh, just discussion?

Mr. Alueta: –different methodologies in which you could come to same conclusion which is separate from the proposal. Meaning one planning aspect, and I guess you could say just even from a principle, planning principle aspect if you're limiting it to the lot to the lot coverage and so if somebody wants to build two, 2,000-square foot houses on a lot, right or...and one is called the main and one is called the accessory dwelling, what's the difference between having two, 2,000-square foot and having one, 4,000-square foot house and cutting out 500 square feet. I mean, is there a difference I guess, the main aspect of that is, one is gonna be is, you're gonna have larger families living in that unit. From that aspect, you're gonna have a little more densities, on I mean, from that. Also, you may limit the affordability of that because of the limited size in the accessory dwelling it makes it, by market forces more affordable than say another 2,000 square feet because someone is not gonna pay the same amount of money for a 2,000-square foot house as they will for a 500-square foot.

Mr. Robinson: Is that, is that part of this discussion or is that just something you guys discussed internally?

Mr. Alueta: It was something that we put out as for discussion purposes for the Commission, but what...as the Director is doing is he's going down, let's look at the proposals that are actually out there for you to review are really the Mayor's and the Council's bill, and so, and I think he's just trying to get...we're just trying to get an idea of like...you're clearly allowed–

Mr. Robinson: The discussion was not part of this?

Mr. Alueta: Yeah, it's not part of the bills. It was just something we–

Mr. Robinson: But I like it.

Mr. Alueta: Yeah, that will be—

Mr. Robinson: You get more square footage that way.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay for me, I feel the larger property you can build bigger houses. You have a chance of fitting more people in need of affordable housing, bigger families like you said, and to me that's the important part. If we're just gonna hit one section and we're still gonna have that need later on, and if we can address it now and take care of it, to help take care of it, I should say, I think that's a good thing. I mean, if we're gonna wait, we're setting back families from getting homes that need a larger place. So if we can fit in a bigger property, a bigger house, I'm for that.

Mr. Robinson: And so in essence will that open up...so say we have an acre, acre lot, right so if it's an accessory dwelling, it won't be a barn so he could theoretically have a 1,500-square foot house, a 1,200-square foot accessory dwelling plus a barn and then he won't have to subdivide this way and say the people that have those properties can just put up houses and rent them out doesn't haven't to subdivide?

Mr. Spence: So long as it's and we're still talking accessory dwellings so that applies to our Residential Districts and Rural Districts. It's not to farm, not the Agriculture right now.

Mr. Robinson: So how big does the Rural go to?

Mr. Spence: Rural, we...typical Rural lot is half acre. We have a number of different districts however. We have Rural half, one-acre, two-acre, five and ten. And we have yet to use the two, five and ten.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, I'd support it too. If they have the room, you know, and they meet all of the Codes, you know, I think that they should be afforded the right to build two if they have the room and they can meet all the Codes. This is all about taking care of what I would call the hidden homeless. I know people with three, sometimes four families living under one roof and if their lot is big enough, you know, they would have the two dwellings and not everybody would be cramped into one roof. And let's take care of the hidden homeless. I know the homeless people are getting all the headlines but these poor families that are living together because that's the only way they could live. So take care of them too.

Mr. Alueta: So is there a...I mean, I'm just trying to get a feel for...so is there a—

Chair Ball: I think it's a yes.

Mr. Alueta: So you don't have a concern with increasing the size of the proposed accessory

dwelling. So if somebody is allowed to build an accessory dwelling, how big...

Unidentified Speaker: Forty percent coverage.

Mr. Alueta: As long as they meet the setbacks and the 40 percent coverage they can build whatever size accessory dwelling provided they meet those development standards and it's allowed.

Mr. Robinson: I encourage that. There a place for somebody to rent....get stuck at the 500.

Mr. Medeiros: My answer to that would be hell yeah.

Mr. Alueta: Okay.

Mr. Spence: Okay. Okay, then the next question because Commissioner Lay brought it up and it is not a part of the proposed bills would you like to entertain the thought of having more than one...I guess it would be the third farm dwelling on an ag lot?

Mr. Lay: Frankly I brought that up because again I said there's families that own large portions of land and they're very limited on putting homes on there. Even if they have agriculture on that property on these large acreage it won't affect it that much and the help is there. And if it's a family they have a chance to live on that property and be a part of the whatever they have with the agriculture. For me, it's a big step to go in the right direction. Everybody thinks of it taking away ag land that can be developed. A lot of these properties nowadays aren't developed. The families aren't working them because there's nobody there. There's no one to help work out these properties. If they have a chance to build on this property they have a chance to work the ag on that property so I'm for this.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I'll support him on this because there is a need for it and it's a great idea. It should be considered.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Commissioner Lay are you thinking for family as a restriction or just open it up for anybody and for it to be rented?

Mr. Lay: For me I would like...I mean, if any thing I'd like to start off as family that's how I feel because once you go open it, it changes, yeah.

Mr. Robinson: So non-rental unit, but just-

Mr. Lay: But I don't know how we can put those provision in there but you know...

Mr. Spence: Yeah, that would be difficult. Right now in the Ag-

Chair Ball: Director?

Mr. Spence: –Ag zoning there is a provision to have a third or more farm dwellings, but the people who qualify are like Ulupalakua Ranch or Haleakala Ranch that it's really clear that there's like three criteria, ag water rates, more than 35,000 gross income and one other that I'm forgetting at the moment. So there are these criteria to be met, but so what...what the Commission, what I hear the Commission saying is we would like to consider it making it easier to get a third dwelling on the property.

Chair Ball: And I don't know if we can do this on this ordinance–

Mr. Spence: No, it's not a part of it.

Chair Ball: –'cause it's, I mean–

Mr. Spence: It would not be a part of this bill.

Mr. Robinson: Just want the Council to–

Mr. Alueta: It would be something we'd note to the Council, but again–

Chair Ball: It may be another ordinance that would come through actually, right?

Mr. Alueta: Yeah, right.

Chair Ball: See how this one works and then add that one on.

Mr. Alueta: Currently as the Director pointed out in the Agricultural District on lots greater than five acres that either have ag water rate or have...show a \$35,000 in farm income for the prior two years they are allowed to build basically a farm...another farm dwellings. So for the real farmers that are making it, you could have a main dwelling of any size, another accessory dwelling, I'm sorry, a second farm dwelling of 1,000 square feet and then you could have a farm labor dwelling also for every five acres.

Chair Ball: And that ordinance is made for farmers and it's not being used for that.

Mr. Spence: Correct.

Chair Ball: So something major has to change. That's why I'm saying–

Mr. Alueta: Oh okay.

Chair Ball: –you probably can't answer that in this group. Some of those things, in theory yes, that's what it's for and that's the way the ordinance was written. But in reality. They're pretty fancy farm dwellings, it's not accessory dwellings and all that. So I know we can't go there today but...and some that is...

Mr. Alueta: Correct.

Chair Ball: ...(inaudible)...problem too.

Mr. Spence: And I'll just say—

Chair Ball: Director?

Mr. Spence: —part of the restrictions, and I was trying to look up the Code here, part of the restrictions in the Code is to prevent the abuses that we have witnessed with the multi-million dollar second farm dwelling and those kinds of things. So it's a fine line, but it's something that could perhaps take a look at.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Yeah, on that subject, my opinion is that I think we really need to take a look at the Ag Subdivision Law.

Chair Ball: Yeah, I agree.

Mr. Hedani: Because I've seen too many lawns come in as agriculture.

Chair Ball: Or too many Corian counter top farm dwelling, accessory farm dwelling.

Mr. Hedani: Right.

Chair Ball: Anyway, let's continue on.

Mr. Spence: Okay, and then the last thing, Joe's pretty much explained the revisions that the Planning Department wants that are incorporated into the Mayor's bill, and just basically changing the way that we measure the square footage of the structure and some other housekeeping items. Does the Commission have any recommendations on those?

Chair Ball: Commissioner Hedani?

Mr. Hedani: I think the recommendation about looking at interior living space is a good one and that's something that they should really think about working with.

Chair Ball: I have a...you know, the title of this is affordable accessory dwelling and I think we should be going with the Mayor's proposal and eliminating that affordability requirement because it may stifle some of the people building the projects. I can understand the intent but the more you build in theory it should be, it should adjust that affordability. So I think we should address that also.

Mr. Spence: Okay, the Mayor's affordability provision.

Chair Ball: Requirement is taken out. On the Council's it's in there. Current Code doesn't have

one.

Mr. Spence: Okay.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I'll support Keone's recommendation. I support Keone's recommendation. I agree with him that, you know, if you take it out the affordability part, we'll have more houses and the market will take care of itself.

Mr. Spence: Okay.

Mr. Alueta: So right now if I may, Mr. Chair is basically, so you do support the Mayor's provision as he has it basically to allow for a 500-square foot accessory dwelling on lots less than 7,500 square feet. To allow for a second accessory dwelling on lots greater than 12,000 square feet. To allow for them to be on basically all of the current zoning classes that allow for accessory dwelling right now and to the other...and to not have a restriction on it to be affordable. Did you have a support...I mean, to let the free market decide whether or not it's gonna be an affordable unit or not. But also then the other provision of did you have a desire to ...(inaudible)...the Mayor's proposal was to eliminate B&Bs and any accessory dwelling to be used as a B&B or STRH so that the market forces that drive the value of these accessory dwellings would be limited to the long-term rental and local housing market. Is that? Okay, I see nodding heads that...

Unidentified Speaker: Yes.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I wanna go back to the Mayor's below 7,500 square feet lot?

Mr. Alueta: Yes.

Mr. Robinson: But it wasn't to zero. It was a couple of us had you know, 5,000 was the minimum, not zero but the other, I think while the majority had zero.

Mr. Alueta: Yeah, I can note that that two members felt that there should be—

Chair Ball: For me on that last one about the B&Bs and all that, I think that needs to be looked at a little bit more. To have that just thrown in there, I don't know, I think we have an ordinance for B&B. B&Bs gotta come through here. If it doesn't look right, then we stop that here instead of saying...I guess I don't understand fully are they saying from now on forward any accessory dwelling is not gonna be allowed for a B&B.

Mr. Alueta: Yes.

Chair Ball: And anything that is previously and then when they come up for renewal or no that's—

Mr. Spence: No, those would be allowed.

Chair Ball: That's still allowed. So it's basically anybody that's in now. But what if when it sells, right it's not transferrable. So now that one is not allowed to do it anymore so eventually you'll eliminate all of the B&B short-term rentals if the properties keep selling and selling.

Mr. Alueta: Correct. Illegal ones yes.

Chair Ball: And eventually we'll have eliminated that, right?

Mr. Alueta: But they're be allowed within the main dwelling of the house. So...which is, but predominantly a lot of them are in the main dwelling of the house, but in this case the accessory dwellings that are constructed under 19.35 would be restricted to a long-term—

Chair Ball: So you would have, you would still have it for main dwellings, but if you have a house and a cottage, the cottage would always have to be in long-term rental where the short-term you could have it on or can that be reversed? Can you have a main dwelling be long-term rented and the cottage be a short-term you know what I mean?

Mr. Alueta: Not under, not under this provision. This provision would eliminate that. So you have..what you have now under the current practice I guess you could say some people choose, the operator of the B&B chooses to live within the cottage and rents out as the B&B operation within the main dwelling. But you also have those who choose to live in the main dwelling and then just have their accessory dwelling. So it goes back and forth. The goal of this provision is to say, you cannot use the accessory dwelling because that was always earmarked and you were granted that additional density of an accessory dwelling for that residential lot to help provide housing for the long-term market not for the short-term rental market.

Mr. Spence: Right.

Mr. Alueta: And I think that's where the current proposal is that the Mayor is saying we need to have these accessory dwellings that were previously permitted as well as what could be constructed under this provision to be limited to long-term rental.

Chair Ball: Now under that is the B&B then if they're renting out the main house as the B&B and they're living the cottage, right?

Mr. Alueta: Right. That would still be allowed.

Mr. Spence: Yeah.

Mr. Alueta: So someone living in a main dwelling...I mean living in the accessory dwelling could still run the B&B in the main dwelling.

Chair Ball: And if that property sold and then the new person came in to get a new permit they could still do that—

Mr. Alueta: Correct.

Chair Ball: –Saying I’m gonna live in the cottage, but I’m gonna rent the main house out.

Mr. Alueta: That is correct.

Chair Ball: And could they then reserve that and say, well I wanna long-term rent the main house and vacation–

Mr. Alueta: No.

Mr. Spence: The way...Mr. Chairman?

Chair Ball: Director?

Mr. Spence: The way that the Mayor’s proposal is no cottages or accessory dwelling, attached, detached or whatever could be short-term rented. So that’s end of story.

Mr. Hedani: Makes sense.

Mr. Spence: I mean, so that the ones that already have permits those would be grandfathered. My thought is the Commission could support that. They could support all accessory dwellings built as of the date of this bill or they could recommend against that provision altogether. It be nice to have a recommendation, but–

Mr. Robinson: We can give you one.

Chair Ball: Commissioner Lay?

Mr. Lay: I’ll go with the Mayor’s recommendation.

Chair Ball: Consensus, yes?

Mr. Medeiros: Second that.

Chair Ball: Okay, we’ll go with that. Next?

Mr. Spence: That’s all I have.

Chair Ball: Commissioner Hedani?

Mr. Hedani: One of the curves this thing is gonna create is that right now the Commission considers things that come before us and we kind of take a wishy washy position on private covenants. A subdivision is developed by a developer, they set down with that subdivision CC&Rs. CC&Rs say no short-term rentals, no bed and breakfasts, no accessory dwellings, et cetera, et cetera, et cetera. This kinda takes it one step further to the point where a subdivision that

has...well, take Wailuku Heights that's the subdivision I live in, no accessory dwellings, period in the CC&Rs. It doesn't matter if you have 20,000 square feet or 8,000 square feet. This is gonna spawn a whole bunch of litigation in terms of when I purchased my home, I purchased into a bundle of rights in this particular subdivision that was protected by the CC&Rs. The County comes along and says, we don't give a rat's ass if you wanna build an accessory dwelling go ahead and do it.

Mr. Alueta: This would not...this ordinance does not overturn any private covenants or homeowner's association rules.

Mr. Spence: Right.

Mr. Hedani: But what about the resident that challenges that CC&Rs? He says, it's perfectly legal according to County Code.

Mr. Alueta: That all depends on how they frame it. In some instances there has been successful lawsuits against CC&Rs but it has primarily to do with rights, outright permitted or definition of families and stuff like that against the CC&Rs. Such as you can like say, CC&Rs limits the amount of people in the house, but the State Law says, this is the definition of family. It goes beyond that. There has been very few cases, but I've seen it on Oahu in the Zoning Bulletin where those have been happening.

Mr. Hedani: My only comment is I think the Council should consider that point in terms of whether or not there should be a provision in the document that says this does not supercede—

Mr. Alueta: I'll defer to Corp. Counsel.

Mr. Hedani: —this does not supercede private contractual agreements.

Chair Ball: Corporation Counsel?

Mr. Murai: Commissioner Hedani, I understand...I think I understand what you're saying and I'd be reluctant for the Department to speculate on the outcome should there be a homeowner who seeks to enforce or to challenge their CC&Rs. Certainly it's within the Commission's authority to make the recommendation you suggest that would be up to you folks. Again, my main concern is that I don't the Department should be speculating on possible...you know, what might happen to the homeowner should he challenge his CC&Rs. But I think, you know, Mr. Alueta is correct his general perception that generally speaking CC&Rs are usually challenged on things that are more fundamental rights like you know, who you can associate with or things of that nature. Otherwise CC&Rs as we all know they're contractual, they're something that the homeowner I guess agrees to when they purchase in that subdivision. They agree to take the property on those terms.

Mr. Hedani: Okay.

Chair Ball: Okay, Commissioner Robinson?

Mr. Robinson: I think you have challenges in Wailuku Heights. There's plenty of land there and

you know, people are growing older and parents are gonna wanna live in the back in their own space, but I wanna get back to the accessory dwelling and we...the Mayor have the people that already have permit are allowed to continue. What are you gonna do with the people in the permitting process right now that have filed their applications? What's the recommendation there?

Mr. Spence: Usually when...Mr. Chairman?

Chair Ball: Director?

Mr. Spence: Usually when people are in the process the County Council adopts a section in the Code that says, effective date of this ordinance is such, you know, whenever it's signed. Those within the permitting process already you know are good to go, those that start...you know, this is effective for those applicants starting after, after the enactment of the ordinance. A lot of times there's a grandfathering.

Mr. Robinson: How many applicants do you have right now?

Mr. Spence: Oh, I have no idea.

Mr. Robinson: Ten, twenty?

Mr. Spence: I don't know.

Mr. Robinson: No?

Mr. Spence: I don't know. Our office has approximately 2,000 applications of all types at any one time. I can't keep track. I don't know them all personally.

Mr. Robinson: Categorizing helps.

Chair Ball: Okay, Commissioner Hedani?

Mr. Hedani: One last comment while we're passing things onto the Council. I think they can solve the affordable housing issue overnight. You take all of Kahului and we change it from Single-Family Residential to Apartment, six stories.

Mr. Robinson: All of Wailuku Heights.

Chair Ball: Might as well make it 20 stories. If you're gonna dream, dream big you know. Director?

Mr. Spence: Mr. Chairman, just a comment. We have recognized with the Council that there are portions of Kahului that have multi-generational, multi-family you know, you know, multiple families living within a single house. One of the things that I've wanted to do is look at the general locations and patterns of larger homes within Kahului and consider upgrading them, up zoning them to like duplex, triplex, fourplex because it's already being done. Let's legitimize it. ...(inaudible)...let's provide that opportunity for under utilized lots to expand. So we haven't made much progress on

that yet, but that is a concept that's been floated around.

Chair Ball: You would do that island wide though, it wouldn't just be for Kahului, right? Because like Lahaina has tons of that also.

Mr. Spence: Yeah.

Chair Ball: And would benefit a lot from that sort of thing too.

Mr. Spence: Not just, you're correct, not just portions of Kahului. We would be looking at parts of Kihei, Lahaina area.

Mr. Alueta: We have...we do have this obscure process, I think it's called the community plan process in which they would...people would come together and there would be an advisory board and they would kinda recommend areas that they'd like to see changed or up zoned for the future...to plan for the future growth and they actually do these little studies, the infrastructure studies. So hopefully when each community plan comes about and they will come before each...all of them will come before at least before this commission at the least the one on Maui, all of them on Maui that you'll have an opportunity to say, hey maybe this area along Papa Avenue next to Lihikai School or something like that should be zoned this because it be ideal to have you know multi-family in that area, what do you know, across the street from a school. Kinda make it convenient. So you have to look at that. Hopefully the CAC, whatever they're called advisory board is called will be able to look at that and take into consideration the affordability that is so desperately needed as well as sea level rise because I'm not sure how much of Kahului will be under water at some point, but I would rather have high densities on the higher hills you know, you know, on the dune system.

Mr. Hedani: Ocean front.

Mr. Spence: That's right. Now ocean front property.

Mr. Alueta: Now ocean, yes, yes.

Chair Ball: Okay.

Mr. Alueta: So I got affirmatives for the most part on everything that the Mayor has proposed. And you know, there was some basic discussion on both the covered deck area that was seemed to be a consensus that you were okay with that. There was also some consensus on I think on trying to have the Council relook at the residential bill as far as the lot coverage as well as the other provisions of the residential bill. I wasn't...we didn't get into any specifics but just to have them take a look at it again and see what provisions—

Chair Ball: Does deck space count towards the 40 percent density? Or is that just the living area that counts towards that?

Mr. Alueta: It would be footprints, building footprints.

Chair Ball: So yes?

Mr. Alueta: Yeah, it would be, deck and covered area would count.

Chair Ball: Be part of that 40 percent.

Mr. Alueta: Correct.

Chair Ball: Commissioner Hedani?

Mr. Hedani: One last question. How does the idea of doing this comport with the philosophy of smart growth? Does it make sense?

Mr. Alueta: In the sense, and from a general planning perspective any time that you increase the density within the existing urban core that's pretty smart. Rather than moving, I mean, we were joking around about build 'em up, build 'em up, you know, having Pearl City type towers you know where you get the higher density. I think there's a...you have to balance that and I think that what this, again, that's what we're trying to do is we wanna see some additional densities within our urban core as well as areas where there's infrastructure to support it. That's the main thing. That's always a smart growth. So I think that's...it does comport for that aspect. And once you get the increased densities like I say, Kahului I mean we looked at complete streets where you can finally improve some of these roadway systems where you have a higher density. I mean, I grew up in Kahului and there was no sidewalk in front of my house even though there was lots of room, and nobody wanted the sidewalks 'cause they didn't want their taxes to go up. That was the rational. I mean, everybody was poor and middle class and you were happy to have that 750-square foot CMU house, and everybody was just making it trying to pay the mortgage. So the kids didn't mind making their own cow paths along the roadway. But I think today, I mean the County is looking at it as you increase the densities with more cottages, larger homes, the infrastructure of bike paths, the infrastructure of sidewalks becomes more of a necessity.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Good answer. Thank you.

Chair Ball: Director?

Mr. Spence: Last thing, Mr. Chairman. We will make note in the transmittal letter that a couple Commissioners had questions about lowering it below 5,000 square feet.

Mr. Alueta: As well as expanding, potentially expanding to ag or looking at ag also.

Mr. Spence: Yeah.

Chair Ball: Okay, Commissioner Robinson?

Mr. Robinson: I just have one last comment. I think these auxiliary dwellings are gonna help.

Unfortunately, it's the people that live in the more congested areas they're the one that's gonna be helping this problem instead of developments or the affordable housing percentages that we hope that, you know, in the planning five, ten years ago was gonna help and it wasn't. Hopefully the County will look at that especially when we're granting people from Ag to Residential properties that you know that they really try to...instead of just making, you know, making new houses, lotta money off it, they also try to really concentrate on getting some more affordable houses going. Thank you.

Chair Ball: Okay, thank you Joe for all your hard work on this. And...

Mr. Alueta: Is there a general motion or does there need to be one?

Mr. Murai: It sounds like there's a consensus.

Mr. Alueta: Okay, I'm good. Thank you very much. Appreciate it.

Chair Ball: Thank you.

The Commission was in consensus with the recommendations of the Department and in the transmittal letter to the Council the Department will note the questions/comments of the Commissioners.

**Commissioners Present: J. Medeiros, L. Hudson, I. Lay, M. Tsai, W. Hedani, K. Robinson
Commissioners Excused: R. Higashi, S. Duvauchelle**

Chair Ball: Okay, let's move onto Item 3, Director?

Mr. Spence: Commissioners, we are at C3, Kaanapali Beach Hotel requesting an SMA Permit and Shoreline Setback Variance time extension for the Kaanapali Beach Hotel. Our Staff Planner, it is still morning, is Ann Cua.

- 3. KAA NAPALI BEACH HOTEL requesting Special Management Area Use Permit and Shoreline Setback Variance time extensions to extend the period to complete construction of the project until August 31, 2020 for the Kaanapali Beach Hotel Restaurant/Canoe Hale at 2525 Kaanapali Parkway, TMK: 4-4-008: 003, Kaanapali, Lahaina, Island of Maui. (SM1 90/0040) (A. Cua)**

The project includes the construction of a 9,940 square foot (sq. ft.) commercial restaurant and a canoe hale for outrigger canoe storage at the existing Kaanapali Beach Hotel.

Ms. Ann Cua: Good morning, Mr. Chair, Members of the Commission.

Chair Ball: Good morning.

Ms. Cua: Although this is a time extension request, we are having to conduct a public hearing and the reason for that is that an intervention was granted as part of the SMA permit process. This

permit has a lot of history. It goes back to 1990. Because of the fact that they did have intervention and they were not able to secure written waivers of the public hearing from all parties, that's why we're here for a public hearing. So I just wanted to clear that up upfront. And then at this point, I'll turn it over to Tessa from Munekiyo Hiraga and she'll take you through the background history of the project and what they're requesting and then also, after that I'll come back on and I do have some comments I wanna add.

Chair Ball: Okay, thank you. Commissioner Hedani?

Mr. Hedani: Yes, I wanted to note for the record that Kaanapali Beach Hotel is a member of Kaanapali Operations, the company I work for so I'm gonna be recusing myself from voting on this item although I will participate in discussion.

Chair Ball: Thank you. Okay, Tessa. Wayne can you get the lights way over there too, please?

Ms. Cua: Excuse me, can we get a two-minute break, computer is not working?

Chair Ball: Oh okay. We'll be in recess for two minutes.

A recess was called at 11:25 a.m., and the meeting was reconvened at 11:31 a.m.

Chair Ball: Tessa?

Ms. Munekiyo-Ng: Good morning Chairperson—

Chair Ball: Good morning.

Ms. Munekiyo-Ng: – and Members of the Commission. My name is Tessa Munekiyo-Ng from Munekiyo Hiraga and we're here today on behalf of the Kaanapali Beach Hotel who is requesting a time extension for the Special Management Area Use Permit and Shoreline Setback Variance for their restaurant and canoe hale project. And as Ann mentioned, the reason why we're here today is because although time extensions are typically granted administratively, we're coming before the Commission because the intervention was granted in the original proceedings. I'd like to introduce the team we have with us today. From the applicant, Kaanapali Beach Hotel we have Dee Coyle, Tom Fairbanks and Sol Kahoohalahala, and we have the project architect Ron Agore with us as well today.

I think most of you are familiar with the Kaanapali Beach location. It's located in the heart of Kaanapali Resort on Kaanapali Parkway. The Sheraton is to the north, The Whaler condominium to the south, and Whaler's Village beyond and the Kaanapali Golf Course is to the east.

As Ann mentioned there is quite a bit of history for this project and I'd like to go over that briefly to begin. Kaanapali Beach Hotel did receive a SMA Use Permit from the Planning Commission in 1994, a larger hotel improvement project that included a number of components included 215 new hotel rooms, a five-story parking structure and a new restaurant.

KBH subsequently decided not to construct the 215 new hotel rooms, the three-story parking structure was completed in May of 1999, and in 2001, the Planning Commission approved the relocation of the new proposed restaurant to its currently proposed location. And as part of that because the new location of the restaurant placed a portion of it within the shoreline setback area, a Shoreline Setback Variance was granted by the Commission at the same time.

Construction of portions of the project began in February of 2004. There were some accessory components including a beach activity shack, two new garden haies, realignment of the beach board walk and new walkways.

Condition No. 2 of the SMA Use Permit and Shoreline Setback Variance required completion of construction within five years. So I mentioned that construction began in 2004 which would have required construction to be completed in 2009. In July of 2009, the Maui Planning Commission granted a three-year time extension for completion of construction. So currently as of 2009, the condition reads, "that the construction of the project shall be completed by August 31, 2012. No further extensions to complete construction of the project will be granted beyond this time period, and failure to complete construction of this project will automatically terminate the subject SMA Use Permit and Shoreline Setback Variance."

For a number of reasons including external economic conditions beyond KBH's control, they have not been able to complete the construction of the project and so we're here today to respectfully request a time extension to complete construction of the restaurant and canoe hale project by August 31, 2020. A time extension was filed in May 2012 prior to the expiration of the condition, and originally requested a two-year time extension until August 31, 2014. Obviously that time passed. And I'll go into a little bit more later in my presentation about the progress that's been made since that time, but we are requesting today a time extension to complete construction by August 31, 2020 and to delete the provision of the condition that currently reads that no further time extensions would be granted.

Just to give you a little bit of background on the project scope, KBH is proposing a new restaurant and canoe hale. The restaurant will be 7,300 square feet with indoor and outdoor seating, a bar and lounge and kitchen equipment, mezzanine and storage. It will utilize pier construction that raises the restaurant approximately six feet above grade and the interior design will be focused on canoeing and Hawaiian navigation. An outrigger canoe storage will be located below the raised portion of the building and the canoe hale will be integral component of the KBH's Pookela Program which is its educational program for its guests and employees. The new restaurant will replace the existing restaurant at the hotel that's currently there.

This is aerial map of the property. As you can see the existing buildings kind of form a U-shape. The courtyard in the middle is approximately four acres and this is where the restaurant will be located. This is a site plan showing the proposed restaurant. The orientation is a little different here, so the ocean is here, out here. This is the U-shape, horseshoe shape, of the existing buildings. This the proposed restaurant/canoe hale structure.

So the red line here is the 150-foot shoreline setback. The proposed restaurant would be setback 85 feet from the shoreline but it is more mauka than existing building...the existing buildings that

form this horseshoe. So this wing here is setback 45 feet from the shoreline and the south wing is setback 95 feet. So if you were to draw a line between the two most makai portions of the existing buildings the proposed restaurant is setback further than the existing buildings.

In terms of the purpose of the project it's to expand the hotel's Pookela Program and educate people on canoe culture, fishing, navigation, and cultural practices relating to the ocean, but also provide a better dining experience for visitors and create a more competitive restaurant environment which will provide improved opportunities for hotel employees including the opportunity to make better tips and just have I guess, better dining experience for both the visitors and then that will translate into more opportunities for the employees.

These are some photos of the existing Tiki Restaurant at KBH. You can see that it's...portion of it is covered in a tent. It's located in the existing kind of mauka end of the horseshoe built of the buildings and there's currently no ocean view from the restaurant. It's looking out into the courtyard.

This is a rendering showing the proposed restaurant and canoe hale. You can see that it will be constructed of wood construction with a thatched roofing and the canoe storage would be below the raised portion of the restaurant. And this is a view of...what a view from the proposed restaurant location so you can see that it would be a significant improvement for hotel visitors, guests, and others dining at the restaurant.

In terms of assessment of project impacts, the project was assessed at the time of the original application and again in 2008 a infrastructure assessment was conducted by Belt Collins. Because this is replacing the existing Tiki Restaurant and there will be fewer seats at the new restaurant compared to the existing restaurant there will be minimal impact to existing infrastructure facilities. There'll be a net decrease in the peak flow sewage generation and negligible increase in the average daily potable water demand. So the existing utilities are adequately sized and in 2012 Belt Collins did confirm that these findings remain the same.

An updated drainage report was also prepared in April of 2012, 100 percent of the onsite disposal of the net increase in runoff will be provided via four seepage wells. And a updated shoreline survey was certified by the State in November of 2012. There's been no significant change to the shoreline in over 20 years.

So now to get into why we're asking for a time extension. As I mentioned, the Planning Commission last approved the time extension in 2009, and this was at the height of the great recession. The tourism industry was particularly hard hit. As you may recall, Aloha Airlines and ATA Airlines went bankrupt in 2008 which significantly reduced the mainland flight capacity to the islands. And there was an overall sense of economic uncertainty and reduced consumer confidence that led to significant reduction in visitors and that's what's shown here on the graph. This shows the annual visitors to Maui, number of visitors shown on the Y axis here. So 2009 again, was when the last time extension was granted and that was only time since 2000 where we had fewer than 2 million visitors to the island of Maui, a significant drop off from 2007. So it was really a challenging time for the tourism industry. Statewide hotel occupancy fell to 65 percent in 2009 compared to 75 to 81 percent in the three previous years. And KBH was not immune for

these challenges. Between 2007 and 2009, the hotel saw occupancy drop significantly and that corresponded with declining room revenues, food and beverage revenues. In total, the hotel revenues dropped by 37 percent between 2007 and 2009. Due to the economic climate, the hotel ownership and management decided to postpone construction until the economy stabilized. The management's focus at this time during the downturn was to keep employees working and limit nonemployment expenses without impacting guest experiences. So a building permit had been submitted in October of 2008, but it lapsed during this time and the project as the economy showed signs of recovery the project was reinitiated in 2011.

I mentioned that a time extension for completion of construction was submitted in May of 2012, and since that time KBH has been working on a number of things. A building permit was filed in June of 2012, and they are working to address the final comments on the building permit. It's almost ready for pickup. An archaeological inventory survey was completed and approved by SHPD. In addition, an archaeological monitoring plan was also approved. An erosion mitigation plan was prepared by Sea Engineering, a coastal engineering firm and a preliminary compliance report for the permit was approved by the Planning Department.

Recently KBH has met with some its neighbors including The Whaler Condominium, the Sheraton to the north, Whaler's Village and Kaanapali Golf Course and we've received letters of support from The Whaler...The Whaler Board, Whaler's Village and Kaanapali Golf Course as well as another property in the resort and you have copies of those letters of support as well.

In terms of justification for the time extension. It's really important for KBH to have the flexibility to choose when the best time is to construct the project to minimize the impacts on the hotel and its operation. The construction will impact its room, 62 percent of the rooms will be directly impacted, another 25 percent will be affected by vehicular access and only 12 percent will be of the rooms that are facing the Sheraton Maui will be unaffected. So with this, some of the rooms will need to be taken out of service while others will be significantly discounted at construction rates and the hotel anticipates losing most of its international business which currently accounts for approximately 26 percent of its customers.

The project construction cost is \$6.5 million, but on top of that there will be impacts to the hotel revenue due to the discounted rooms and lower occupancy. So the hotel estimates that the revenue impacts will be \$6 to \$8 million more as the project if the project is done during a period of high occupancy rather than a period of low occupancy. And so this is the reason why it's really important for KBH to be able to choose the best time to undertake their project to minimize impacts to the hotel, its operations and its employees. And I, I just wanna point out that you know in hindsight 2009 actually would have been a good time to do the construction of the project because occupancy was low and it would have...occupancy was already low, but hindsight is 20/20 when you're in the middle of a significant recession, don't know what the future is gonna hold there was no way to know that the economy would start to rebound in the next few years. So, again, that is why it didn't move forward in 2009.

And the only other thing I would wanna point out here is that significant impacts in occupancy affects all employees at the hotel and not just the food and beverage employees so that's why they are really trying to determine what's the best time to undertake the construction to minimize impacts

to the hotel.

As part of the time extension request an analysis was conducted to determine there have been any changes within the SMA that would have a substantial adverse environmental or ecological effect or adversely effect the capacity or condition of the infrastructure. There have been no major changes in the project vicinity since the Planning Commission last assessed the project in 2009.

So that's all I really had to say about the time extension, but we did want to request one other change and that's related to Condition No. 33 of the approval which was added by the Planning Commission in 2009 when the Commission granted the time extension. And Condition 33 states that, "as represented by the applicant construction materials for the restaurant/canoe hale shall consist of Ohia wood posts with thatched roofing." KBH's preference was to use the Ohia wood posts in the construction. It's been in the news recently, I'm not sure if you've heard but there is a problem on the Big Island currently with Ohia Wilts which is also known as Rapid Ohia Death. It's a deadly fungus that's attacking Ohia trees in East Hawaii island and in August the State Board of Agriculture placed a ban on the intrastate movement of Ohia plants from the Big Island to try to contain the disease and prevent further spreading of the Ohia Wilt. As far as KBH is aware the only commercial distributors of Ohia wood are on the Big Island. So the ban that was put in place by the Board of Agriculture would limit their ability to obtain Ohia wood posts for the construction. So due to these restrictions, KBH would respectfully request that Condition No. 33 be amended to state "that as represented by the applicant construction materials for restaurant/canoe hale shall consist of Ohia wood posts or similar material with thatched roofing". And the added portion here being the, "or similar material". And this is something that just came up, came to our attention recently so it wasn't part of our original request but we did wanna bring it up to the Commission just because it is something that is kinda beyond their control at this point.

So just to summarize, we're respectfully requesting a time extension to complete construction of the restaurant/canoe hale project by August 31, 2020, and an amendment to Condition 33 to allow the use of alternate materials in the event that KBH is not able to obtain Ohia wood due to the State imposed restriction. That's the end of our presentation and I'll just go back to the aerial map which I think Ann wanted to speak to.

Ms. Cua: Okay, Tessa's report was extremely comprehensive and I don't have to add too much to that. I do wanna add a couple of things though. You have four letters before you that we passed out today and they are from The Whaler which is the adjacent neighbor to the Kaanapali Beach Hotel, The Whaler AOA, Whaler's Village, the...a letter from William Duschar which lives here or owns this property here. That's my understanding. Applicant can correct me if I'm wrong. And then we have a letter from Kaanapali Golf Course here. So as you can see the majority of the neighbors have written letters in support of the time extension.

Another thing I wanted to point out was with regard to the use of the Ohia wood. When the applicant submitted their compliance report, we asked them to submit an updated compliance report in 2015 because you know the extension request was back in 2012 and they were trying to get full compliance with SHPD's requirements which they did in 2014. So before we came to Commission I asked them to do an updated compliance report which they did August 24, 2015. And even back then on August 24th, they had full intention of using the Ohia wood. Their response

to that condition says that. It was after that that they realized the ban from the Department of Ag and so that's why we have that matter before you today. The Department does not object to adding the words, "or similar material" to the condition. And we can go over that when we get to that point.

Other than that, I have nothing else to add. At this point, we can take questions either of the Department or of the applicant.

Chair Ball: Thank you, Ann. At this point, we will open it up for public testimony.

a) Public Hearing

Chair Ball: Anyone that would like to testify at this time on this matter may do so by coming forward? Seeing none, public testimony is closed.

b) Action

Chair Ball: Ann, can we have the recommendation from the Staff please?

Ms. Cua: Assuming there's no questions—

Chair Ball: There will be.

Ms. Cua: Oh, okay. First our conclusions of law on Page 10 of our staff report. The proposed amendment to extend the time period to complete construction of the project and delete the language that states, "that no further time extension shall be granted for this permit," is reasonable under recent economic conditions and slow recovery. And the applicant is confident that they will complete the project by August 31, 2020.

In addition, the request made before you today to add additional language regarding the Ohia posts we feel is also appropriate in light of the recent happenings on the Big Island with the fungus and the ban put on by the Department of Agriculture on the transport of this type of wood.

The proposed amendments comply with the applicable regulations for a Special Management Area Use Permit. And the proposed amendments also comply with the applicable regulations for a Shoreline Setback Variance. The Planning Department therefore is recommending approval of the SMA Permit and Shoreline Variance amendment to amend Condition No. 2 of the permit to extend the time period to complete construction of the project by August 31, 2020 and to delete that portion of the condition that states, "that no further extensions to complete construction of the project will be granted beyond this time period subject to the following conditions," And if you look on Page 11, I have the condition there. In addition, we would want to amend Condition No. 33 which basically states, "that as represented by the applicant, construction materials for the restaurant/canoe hale shall consist of Ohia wood posts, and we'd like to add the three words, "or similar material" with thatched roofing. So we would add three words to that condition. Any questions?

Chair Ball: Okay, thank you for that. We'll open it up this time, at this time to the Commission for questions.

Mr. Robinson: I'll start.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Hi Ann.

Ms. Cua: Hi.

Mr. Robinson: Ann, on the top of the photo that I think it's 14 or 15 it has the setbacks?

Ms. Cua: The setback of the restaurant and then the two buildings, the 25 feet and—

Mr. Robinson: Yeah.

Ms. Cua: This is one tower.

Mr. Robinson: And it's 85—

Ms. Cua: This one's 45. This one is 95 and the restaurant is 85.

Mr. Robinson: Eighty-five. What's the, what's the date of that? I know Tessa said that there's been no change in the last five years, but there's been significant change in the sand and the shore back and that's why we have these new setbacks. So what date is that 85 from? Is that a current one?

Ms. Cua: Maybe...I'll have Tessa respond.

Ms. Munekiyo-Ng: The most...the latest shoreline survey was certified by the State in 2012, November 2012. That survey actually showed a little bit of accretion from the previous shoreline survey that had been completed. There have been no significant changes in this particular area of Kaanapali Beach. It's not as a—it's not susceptible to the seasonal erosion that some of the other properties in the resort see. And the other thing I'd like to point out with respect to the shoreline setback is it was...the siting of the restaurant was specifically located based on its relative position to the existing buildings rather than being a certain distance from the shoreline with the understanding that there will be some, you know, fluctuation within the shoreline over time. For that reason, the restaurant was specifically sited to be more mauka of the line that the two wings of the horseshoe form so that the new structure would not be any more makai than existing building.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Commissioner Hedani, can you verify that there's been no change in the shoreline at that location?

Mr. Hedani: Ann, if you can go back to the aerial photograph of the hotel?

Ms. Cua: I'm sorry, what? Oh.

Mr. Hedani: The shoreline along this area we've been working with Sea Engineering since 2006 to work on a beach replenishment project. And as part of that analysis, this is called the Hanakaoo...the Kekaa cell, I'm sorry. The Kekaa beach cell, it stretches from the Sheraton to the Kaanapali Alii Point. This particular section of the beach gets subjected to what they call, "seasonal erosion," which means in the wintertime it moves in one direction, in the summertime it moves in the opposite direction. The Kaanapali Beach Hotel is located in the center of that pattern, and as such, the beach will widen on one side, and decrease on the other and it will alternately in the next season widen on the bottom side and decrease on the top. Because they're at the fulcrum of that system their shoreline basically doesn't move and that's why it's been stable over the last 40 years essentially. I have seen an erosion event on time in the past that came close to the building on the north side of the project, within 20 feet of the building basically. But since that time it's been relatively stable.

Mr. Robinson: How far is the sidewalk from that one building?

Chair Ball: Commissioner Robinson address the applicant not the Commissioner. You should be addressing your questions to the applicant.

Mr. Robinson: I apologize it's just that he probably knows more than--

Chair Ball: Yeah, but he's not the applicant.

Mr. Robinson: Okay, I got you. I gotta question for the Director. Director, the purpose for setbacks?

Mr. Spence: Purpose of setbacks. You know it stems for State law though it's the Commission who implements that law. Basically so you don't build buildings where the shoreline gonna continually erode and eventually threaten the building. So you wanna make sure that you build the buildings far enough away from the shoreline so, one, for the safety of the building, but two, to just allow natural shoreline processes to continue. Does that answer?

Mr. Robinson: So with that being said, we allow people to build that that...in unsafe areas?

Mr. Spence: No--

Mr. Robinson: With a special permit?

Mr. Spence: That's not to suggest we let them build in unsafe areas. A lot of, a lot of the structures that are too close to the shoreline right now were constructed before we understood, you know, shoreline dynamics. We have amended your shoreline rules a number of times over the last couple of decades as our understanding grows so that's you know, there's not a whole lot you can do with buildings that are already...that are now too close to the shoreline. But with, you know, with new construction you can set them further back, you can...our regulations would require their further back out of harm's way for at least 50 to 100 years. In this case, as and I just trust Commissioner Hedani knows more about this particular location than most, you know, they're at the fulcrum and that's a fairly stable location. I trust his opinion on that. This is, I think what the

question is, why is it now, why are these building now in the shoreline setback area? Probably because our Shoreline Rules have changed. So...

Chair Ball: Commissioner Robinson?

Mr. Robinson: A few months ago, it's higher up on the shoreline we had a couple permits for some remediation of some sand. There's I think K'Shores had a restaurant where the water was coming through because of the things going through and so as a County we're taking steps to protect that property and stuff like that, and I'm not against Kaanapali Beach beautifying their property and bringing more tourists and I think it's awesome that they're gonna invest money into Kaanapali. My question is when we got through these setbacks and five, ten years from now we find out that that restaurant might be in harm's way, does the County then make moves to do that because they're for that or does that fall back on the Kaanapali Association?

Mr. Spence: It's gonna fall back upon the landowner. What I'm understanding is that this area of the beach is fairly stable so it's not...I doubt if we're gonna be running into a situation-

Mr. Robinson: But it's not a County thing, it will be the landowner problem?

Mr. Spence: The landowner would come back to us.

Mr. Robinson: Thank you.

Chair Ball: At this time, we'll take a recess we'll take a recess till 1 o'clock.

A recess was called at 12:02 p.m., and the meeting was reconvened at 1:08 p.m.

Chair Ball: We are on Item C-3, Kaanapali Beach Hotel, Special Management Area Use Permit. Commissioner Lay?

Mr. Lay: Motion to accept the Department's recommendation.

Mr. Robinson: Second.

Chair Ball: There is a motion and a second. Discussion?

Mr. Lay: Under the circumstances that they were under during(inaudible)...with the decline in our economy, I see, you know, I understand the reason for this time extension and the Ohia wood we can't get it right now so that's also understandable.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I'd like to note for the record that when the downturn occurred in 2008-2009, Kaanapali Beach Hotel was one of the few hotels that didn't lay off their employees.

Chair Ball: I have a question. You know, sometimes we see that the start date of construction and

at other times we see completion of the project as dates on the application. One, in general, why does one go versus the other and in this specific case, why are we saying the completion and not the start?

Ms. Cua: Because they've started construction already. In addition to this restaurant there were other components of the project. And as Tessa mentioned, some components of the project they decided not to do, but there were some small components that they did like a beach shack or different things like that. They started construction with that portion of the project. So they actually have a start date of construction. So they met that portion of the condition. The part that they haven't met yet is completion of the project and that's why we're here only addressing the completion portion.

Chair Ball: Okay, so with that in mind, we are looking at a five-year build out?

Ms. Cua: Well, I don't know in terms of build out, but I know that the extension actually when you do the math because the permit was set to expire August 2012, and they did file their request for time extension in a timely fashion, but it took so long to try and get SHPD's approval and so they've gotten that and so technically the extension is for eight years from 2012 not five years. How long they plan to take to construct and complete construction, that you know, specific construction time table you would have to ask them. I'm not sure.

Chair Ball: Can we get an answer for that Tessa?

Ms. Munekiyo-Ng: Construction is anticipated to take six to eight months.

Chair Ball: And you've already started or is that?

Ms. Munekiyo-Ng: Not on the restaurant component of the project. So once that restaurant/canoe hale component starts it will take six to eight months.

Chair Ball: Okay, and so what are we looking for as far as getting...once you leave here, let's say?

Ms. Munekiyo-Ng: So the building permit is in process. There's just a few final things remaining to be addressed. That should be ready for pickup shortly in several weeks or so. What that...what the building permit, that's really the last thing they need so then it's just a matter of them deciding when to actually pull that permit and get going, but they have the approvals from the management to proceed with the project at this time.

Chair Ball: Okay.

Mr. Robinson: With the less impact they talk about.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Sorry. So with the less impact that they talk about it might be for September...the hotels are full during summer and spring.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Tessa, so the request here is...well, the owner has decided not to redo the 215 room hotel, right?

Ms. Munekiyo-Ng: Yes.

Mr. Hedani: So that portion will not be completed by 2020?

Ms. Munekiyo-Ng: Correct.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I like the way that they are working around this project so that it will minimally impact the employees. You know, I don't wanna see anybody laid off, and you know, and they have been consistently really good about that. For as long as I've been going to KBH, we're looking at 1968, you know, it's a good job.

Chair Ball: So back to that, is...why are we asking for...why are you asking for five years then if we're looking at a year to complete?

Ms. Munekiyo-Ng: So it is, you know, six to eight months to actually construct, but what the hotel is asking for, the reason why they want until 2020 is so they can decide when to actually do that construction. Yes, the building permit may be ready in a few weeks, but timing wise, you know, if occupancy is looking like it's gonna be really high for the next year say, maybe it's better for them to wait another year and actually start construction in one year. So really the five years...the five-year request is to allow them that flexibility to choose when to do the construction to at least have the least impact on the hotel and its employees.

Chair Ball: Okay, I understand that, but I'm just looking back at the old time extension. And it's actually the...it's what the Commission wanted back then is we're not giving out another time extension. We want you to do this thing now, right? So for us to, I mean, to grant the time extension makes sense, but to give it another five years from now is...I just don't know why they...at that point they were like this is it, we're giving you the time extension, we're done. You cannot come back for a time extension which we're doing now. But then for this body to give another five years on top of thing that shouldn't even be...we shouldn't even be discussing this right now. And I can understand the timing and all that, but it's never a good time. I mean, you just gotta kinda bite the bullet and do that. My personal, I don't like permits left way out there forever. I mean, this is going back now to '07 I think or something, right with the original...

Ms. Cua: 1990.

Chair Ball: It's worse. So, you know, I mean it hasn't been a good time in the last whatever 20, 30 years now is what we're looking at. So I mean, if they're gonna get a permit for this and do it, get a permit and do it. Don't get a permit and say, hey we might do this in the next five years because a previous Commission didn't want this to happen, didn't want you to be here today.

Ms. Munekiyo-Ng: I think if I could just bring up one slide that kind of summarizes why, again, the five years is...This point right there, the revenue impact is \$6 to \$8 million more if the project's done during a period of high occupancy rather than a period of low occupancy so that's really what the hotel is grappling with. You know the project construction cost itself is \$6.5 million and then on top of that there's gonna be losses to revenue because of the lower occupancy and loss of international business and all of that. So this reason here is really why they are requesting the five years to complete construction just to—

Chair Ball: I understand all that, but it's never...I mean, you have a high and low season, that's the way it is. You're gonna keep going high and low, high and low, high and low. Like you said in the testimony, you never know until it's past—

Ms. Munekiyo-Ng: Right.

Chair Ball: That that was when we should have done it.

Ms. Munekiyo-Ng: Right.

Chair Ball: So you know, I don't, I don't, personally I don't like that as a criteria for us pushing out to five years, but you know, it's a collective issue, so our vote...Commissioner Hedani?

Mr. Hedani: I think part of the, part of the reason we went through that analysis on the last go around on this was because there was a desire to put construction workers back to work at that point and the Commission used the language I think to try to push construction in order to get employment back up. Now we're at a stage where construction is actually quite busy I think if I'm not mistaken and timing wise it might be good to allow them the flexibility to fill a gap.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Well, obviously their intention didn't work because they didn't construct because they're gonna construct when it's the most feasible and I get it. I don't have...I mean, you know, we can try and make 'em construct, but again, they're gonna do it when it's a downturn and do you wanna propose a lesser time?

Chair Ball: Not necessarily, but one of the issues I have is why are we even here today? The last Commission said, hey we're not gonna allow another time extension, right? And this may be for the Director, I don't know, but just...not talking about this application in particular but you know, we figure we put those things on there so it makes it that people do it. But now we're here doing another time extension after the previous Commission body had said, no that's it. You do it or you gotta back I guess and redo the whole application, right? So how did we get here today?

Ms. Cua: I can take a stab at it. I mean, you know, any condition that you have on your permit the applicant has the ability to come back before you and ask for consideration, modification, deletion, and that's how we got here. It's totally the Commission's you know, in the Commission's purview to decide if it's appropriate if they wanna not approve it at all and let the condition stand, therefore the permit would expire or to propose an additional time.

Chair Ball: And I'm just speaking not on this particular matter but just for future for the Commission to day, look don't do that because it's a waste of time to say, look you gotta do it within this time frame. It's obviously not a big threat because we can just come back and anybody can come back and present to the Commission which I'm not for or against. I just wanna make sure we're not wasting time up here by trying to do these extension...you know do this final extension and then it's all for naught. It's a big waste of time. Director?

Mr. Spence: Comment. Because the Planning Commission is the authority for Special Management Area and Shoreline Setback you know, ultimately...you can look at your conditions and say, okay there's reasons to justify changing it or whatever or I mean, you could just look at the...and I think a landowner has the ability to come back to you and say, petition the authority for SMA and shoreline issues and say, would you wanna modify this? You being the authority you can just say, no because that was our condition or you can say, like I'm not...you can also say, well there's extenuating circumstances, you know, crash of the economy, Ohia blight whatever the case may be, which isn't exactly... Ohia blight is not exactly the reason we're here, but I mean, so you can consider those things just because you are the authority on these matters.

Chair Ball: Commissioner Hedani?

Mr. Hedani: One other consideration in this case and I find it actually amazing that they got a letter of support was The Whaler was in opposition to intervene in this particular case on the construction and was threatening litigation in fact to try to stop the construction of this particular restaurant and for them to come around to the point where they're supportive of it right now I think is a plus in terms of Kaanapali Beach Hotel's willingness to work with them. And I think the other thing relative to the Special Management Area is time constraints are set so that it can be reconsidered to see whether or not conditions have changed to the point where it may be shouldn't go forward. In this particular case, the conditions are pretty stable in this area fortunately for them. We can have 70,000 cubic yards of sand move on Kaanapali from the Sheraton to the Alii in one season and then move back next season. But for them because they're in the center they've been lucky and the conditions have been fairly constant during that time frame.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, I've sat here and had to vote on reconsideration on TVRs, you know. I mean, for them to come over here and ask us yea or nay I can live with that. If I was against it I would just vote nay, but I have not problem with them coming back and asking like had to make a decision on TVRs reconsideration. I think it's okay to make reconsider their request.

Chair Ball: Other comments?

Ms. Cua: Just a clarification based on Mr. Hedani's comment regarding The Whaler. The Association of Apartment Owners of The Whaler was one of the people that petitioned to intervene. It's on Page 4 of the Findings of Fact, Conclusions of Law, and Decision and Order. They, however, withdrew their petition after reaching a settlement with KBH and this is a lotta years ago, but just to give you that background information. But still to get a letter of support today I think is very important.

Chair Ball: Any further comments?

Mr. Robinson: Nobody has a condition. We should just vote.

Chair Ball: Do we have a motion?

Mr. Spence: Yes.

Commission Members: Yes.

Chair Ball: Who was the, who was the...? Was that before lunch or? All right all those in favor of the motion please raise your hand and say, "aye".

Mr. Spence: Okay, that's four ayes, five ayes.

Chair Ball: Five ayes. Motion carried.

Mr. Spence: And one recusal.

Ms. Cua: Yes.

It was moved by Mr. Lay, seconded by Mr. Robinson, then

**VOTED: To Approve the Time Extension for the Special Management Area Use Permit and Shoreline Setback Variance as Recommended by the Department.
(Assenting - I. Lay, K. Robinson, J. Medeiros, L. Hudson, M. Tsai)
(Excused - S. Duvauchelle)
(Recused - W. Hedani, R. Higashi)**

Chair Ball: At this time we're gonna go into a quick executive session, and it should be only five minutes, ten minutes. So we'll have to have the room cleared.

Mr. Murai: We need a motion to move into executive session.

Chair Ball: Sorry. Do we have a motion to go into executive session. Moved, seconded by Medeiros. All in favor? All opposed, any opposed? One opposed.

Mr. Murai: For the record, the purpose would be to discuss the powers and duties of the board and in order to consult with legal counsel.

Chair Ball: Motion carried. We are in executive session.

The Commission went into executive session at approximately 1:26 p.m., and the regular meeting was then reconvened at approximately 1:34 p.m.

Chair Ball: Okay, moving on Item 4, C-4. Director?

Mr. Spence: Commissioners, this is your last public hearing item of the day. Mr. Bruce Newnan requesting a Short-Term Rental Home Permit to operate the Holomakani Retreat Short-Term Rental Home. Our Staff Planner this afternoon is Tara Furukawa.

- 4. MR. BRUCE NEWNAN requesting a Short-Term Rental Home Permit in order to operate the Holomakani Retreat Short-Term Rental Home, a four (4) bedroom short-term rental home located in the R-3 Residential District at 34 Holomakani Place, TMK: 4-4-009: 028, Lahaina, Island of Maui. (STWM T2015/0015) (T. Furukawa)**

The application is being taken to the Maui Planning Commission for action because there is a permitted short-term rental operation located within 500 ft. of the subject property.

Ms. Tara Furukawa: Good afternoon, Chair and Commissioners.

Chair Ball: Good afternoon.

Ms. Furukawa: This item's under your review because the applicant is requesting a Short-Term Rental Home Permit to operate an STRH that's within 500 feet of an existing permitted STRH. At this time, I will present to you what the scope and details of the proposed project and then provide you with the Department's recommendation.

The proposed Holomakani Retreat STRH is located at 34 Holomakani Place within the Kaanapali Vista Subdivision along the Kaanapali Golf Course. The owner, Bruce Newnan has owned the 10,657 square foot lot from 2010. He purchased the property from his brother, Captain Craig Newnan's estate. Captain Craig Newnan was the original founder of Expeditions, the Lahaina ferry.

One dwelling is proposed for STRH use. The four-bedroom dwelling built in 1975 has a kitchen, one living room, one family room, two full bathrooms, a laundry room, walk-in closet, three lanais and enclosed garage. The permit request is for all four bedrooms in the dwelling. Now to speak in even more detail about the proposed STRH here's the applicant Bruce Newnan.

Mr. Bruce Newnan: Thank you Commissioners for allowing me to speak at this. I've been coming to the islands since the '80s and my brother used to invite me over and we'd spend a week or so and really enjoyed it. Craig came to the islands back in the early '70s he originally built a big project on Hilo and then came to Maui and built two of the high rise places down there on Kaanapali. So he then did other building and then while he was here he certainly noticed the plight of the Lanai peoples over there on Lanai where they stuck at the company store and you know, that gave him the idea, you know, he could put together a great service for them and that is where he, you know, got the desire to build Expeditions. And for the Lanaians people he certainly did allow them free transit for all medical and very cheap shopping fares so they could get off the island and do their shopping, so basically pay for that. Craig was a wonderful guy and he built the house in 1975.

We're one of the 37 homes within the Kaanapali Hotel District originally in and around the golf course. So it was a wonderful place to be and it's only a 10-minute walk to the beach. And so it's a wonderful time to go down and enjoy right there in the resort as well.

And with that, here's the basic floor plan, but in this...the point that I wanna make when looking at the floor plan is it has a master bedroom upstairs with, you know, its bathroom suite that is both for the common areas as well as itself, but then the lower part...(inaudible)... has a nice there and you look out that's half the 180 degree view that we have towards the ocean. So it's a very nice view and we love it out there. The lower bedrooms we actually have three-bedrooms and one bath and that's one of the reasons why the house is not well suited for a party house. It's now well suited for couples. We'd like to see it as a family house when we bring our grandkids over. And so it's well suited for a family and say grandparents and some kids to come stay in it. So the house is really a nice sized house with lanais. It's more like 2,400 square feet with the separate spaces, two different family living areas with the upstairs living room and the downstairs family room, and lots of space.

The gardens is great from the standpoint that at all four sides it's well protected with large hedges and so because of that, we don't get to see our neighbors and we don't hear very much of them either. Now we have pools on three sides of us. We hear more of the splashing of the kids in the pool than anything else. And the gardens are such that basically we get to hear the birds chirping in the morning more than we hear of the neighbors sound. Likewise they don't get hear us very much either. So it's very nice that we have...the front yard is the one with the car showing in there. It's blocked off by the palm hedge. And then backyards are there sides and all faced with those high hedges there. So you really can't see the homes in back of them and that gives both the noise and privacy for the place. It's a full quarter-acre lot.

In considering how we are running this place, we've set it up so that we do good screening on clients. That we're not looking for the couples crowd. We're looking for basically the extended family thing. We know that when we had family over there, you know, if we had...like we used to over there and spend the month of February, all the month of February. I'd come over and do a week of work and then my wife would bring a gaggle of girls over and that would kinda work out and they'd have a good time. I had to go home and work. But it really doesn't work out well, to have you know, people don't know each other very well in the house because of the bathroom situation. So you know, we have one bathroom downstairs for the three bedrooms and the main bath upstairs for the master bedroom, et cetera. So that's how it is. So that means that we really select clientele from the extended family kind of a situation and we believe that the house will work well in that situation. Of course, and standard things, with house rules and all the rest of this is we maintain what the Commission likes to have quiet hours. The neighborhood itself has working families around us and so we certainly respect that. And when we're over there, we always...we talk with our neighbors. We're on good relationships to them, but we know that they go to work the next morning and so that means we've always respected them and we go around and talk to them and see how things are going in the neighborhood and are up on the common things that are going on.

So next slide. Parking issues. We have a two-car garage is completely open for guests as well as a large driveway that can certainly fit actually three cars, but we're only showing two at this time. So it's long enough to fit three cars in the driveway. So with a extended family there's usually like

we've had guests over no more than another car so it means two cars on the property during the time when we have a full houseful. So parking works well and it's all off street.

This is how the thing will work using the VRBO, but from a liability standpoint, I personally don't like to look at clients from other than the United States and Canada or a local on island. We've had friends from Upcountry come down and have a...(inaudible)...you know a week for instance they'll bring in family and friends from California and stay at our place because it's more convenient to some of the nice golf courses and the beaches than Upcountry. So but, we'd like maintaining a common source for advertising.

Certainly we have, we meet all the criteria of what you people have laid out for short-term rentals. We certainly have local clientele, I mean, servicers, service providers such as my property manager, Walter Bissett. He lives on the west side, so he's within the 30-mile criteria. He's a real estate person. Of course, garbage, we have lawn service and maid service and all those other kinds of things that we do already have engaged in the past and will continue the services. So we've maintained the house over the years while we're not on island.

So other things to note, that's about right. I already have a long established record with working with the Bank of Hawaii as Expeditions had the original working relationships with Bank of Hawaii and I do my business and checking, savings accounts and loan at Bank of Hawaii personally.

Captain Craig, you know he started that business back in '75 and as I mentioned earlier, it's because of his commitment to the Lanaians that he went out of his way to make sure that they could get off island to do shopping and because of his philanthropic in the Rotary Club he was given the Paul Harris Fellow Award.

So my wife and I, as I said we've been coming here since the '80s. When Craig passed in 1999, I became part-owner of the house. My mom actually took over the business at that point in time and over the next three years we sold the business to the employees. And Steve and...(inaudible)...you know, I've heard and worked with them a little bit on Expeditions. They've done a good job with growing the business and continuing forward with that.

Since 2009, my mom passed away and bought my brother and sister out of the house at that point in time and started moving. I've had 40 years worth of work in the industry of basically as a defense engineer working electrical software, systems engineer, building very complicated systems for the U.S. Government and with that then it was 40 years of an exciting career, but my work's not done yet. And here we have strong ties in California and also I've been to, our church over here, Our Lady of Victory over in Lahaina several times and have been asked to join the Knights of Columbus. So I'm setting ties down here. You know, we're doing all the right things to retire in a couple years.

My wife and Betty and I we thought about well why do STRH versus long-term renting or something like that? And that is, well the work on the house isn't done and ready for us to retire. We also have a 98-year-old mother-in-law that lives with us and you know, since she was over here, you know, she can't come over here anymore. She needs a full-time caretaker that kinda limits our options. And so we're kinda...Betty's full-time job is doing caretaking for her mother. And so as far as I go, is I'm looking forward to the time when our work will done in San Jose and we'll be able to

come over here and live full-time.

In the meantime, we've done a number of upgrades to the house. Put full solar on. You know, upgraded the siding of the house to help out the insulation from the heat it's facing the west side, so you know, working with windows and double-pane windows and we will have to be putting in more windows and things like that. And we're not rich, we're...you know, I'm just working engineer with retirement around just to make it work and half my retirement is actually with working with the short-term rental or augmenting our income from a pension to make it work. So that's the reason why we're looking at short-term rental so I can continue to work on the house, get it ready for when we're moving over here full-time.

So otherwise, why it works for us is long-term and short-term rental generates I estimate about a grand a month in extra taxes that come directly to the County and that's nice besides paying, you know, the cleaners and the yard people who take care of that, maintenance people and folks. It's a good revenue source for the County and half of that would go away if it's long-term rental. So we're looking at you know, how to make ourselves going so we can keep the house and move over here in a couple years. It make the most sense to us to do a short-term rental.

Ms. Furukawa: Staff Planner, Tara Furukawa. As you can see there are two approved STRHs within 500 feet of the proposed Holomakani Retreat. One of them, Hale Evans is located west of the proposed STRH. The other, Kaanapali Home is located on the other side of Hale Evans. Currently there are 34 permitted STRH operations in the West Maui Community Plan region out of a total maximum limit of 88 STRH operations. There are no permitted B&Bs nearby.

A protest letter was received from a letter who was concerned about the amount of short-term rentals surrounding her home. She said the ambiance in her neighborhood changed and there are more cars parked on the street. The applicant tried to reach out to this neighbor to discuss the concern, but despite numerous attempts the neighbor was never available to speak with the applicant. Neighbor notice was provided twice. Once for the STRH application and more recently for the public hearing. Two letters of support were received, one of which was from the next door neighbor who's also operating a STRH, the other is from a neighbor across the street and the neighbor noted that vacation renting is less of a burden than a regular household would be in his opinion.

The application complies...oh, I'm sorry that's my recommendation. This concludes our presentation for today.

Chair Ball: Okay, thank you. If we can have the lights on.

a) Public Hearing

Chair Ball: At this time, we'll take public testimony. Anyone that would like to testify on this item may do so at this time? Seeing no one, we will close public testimony. Tara can we get the recommendation from the Department?

b) Action

Ms. Furukawa: The application complies with the applicable standards for a short-term rental home permit and as such, the Department recommends approval of the permit subject to 23 standard conditions and recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the December 8, 2015 meeting as its findings of fact, conclusion of law, and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chair Ball: Okay, questions from the Commission? Commissioner Hedani?

Mr. Hedani: Tara, in this particular case in the photographs I didn't note smoke detectors or fire extinguishers were those provided in every room?

Mr. Newnan: Photographs were certainly provided for where the smoke detectors are in each of the rooms and usually above the door, exit door there along with a sign posting the exit strategy for each room. We even have a exit fire ladder off the main going down to the second floor. Fire extinguishers are within the 75 feet. We have two of the Class C, you know, regulated type of ...(inaudible)...big canisters. One in the kitchen, one in the garage.

Chair Ball: Commissioner Hedani follow up.

Mr. Hedani: If you're into designing systems, I'm sure you would address those concerns. The other question that I had was does that...does the Kaanapali Vistas Subdivision have covenants against short-term rentals?

Mr. Newnan: No it did not. Originally back in the '70s when the covenants were originally created. Then it did not have anything precluding the use of rentals in the neighborhood at that point. Now since then though they have gone bankrupt.

Mr. Hedani: Oh. Thank you.

Chair Ball: So the answer's still no I think. Further questions? Commissioner Robinson?

Mr. Robinson: Was this property previously used as a illegal short-term rental?

Mr. Newnan: This house was rented out to only my friends and family when we were on island for weeks at a time?

Mr. Robinson: That's yes then or no? Short-term is less than—

Mr. Newnan: Yeah, less than six months, yes to family and friends.

Mr. Robinson: Three months?

Mr. Newnan: No.

Mr. Robinson: Not less than three months?

Mr. Newnan: No. Excuse me, what's the three months having to do?

Mr. Robinson: You rented it out for three months at a time? Less than six-

Mr. Newnan: No, no, no, less than that. Usually when family and friends come over it would be at a week or two at a time.

Mr. Robinson: Okay.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Motion to approve as recommended.

Mr. Medeiros: Second.

Chair Ball: Motion by Hedani, second by Medeiros. Discussion?

Mr. Robinson: Did we get the recommendation/

Chair Ball: Yes we did. Discussion? Further discussion? Seeing none...yes, Commissioner Robinson?

Mr. Robinson: I got a question on the testimony. There's one testimony where the letter says that there's six short-term rentals in the area but we show only four? There's only one dissenting letter.

Chair Ball: I think there's only three and the one is the subject to make it four.

Mr. Robinson: Exhibit 11.

Ms. Furukawa: There are four total in the subdivision. Two are outside of the 500-foot area.

Mr. Robinson: So this is an erroneous where it says there have been at least six homes approved so far in my subdivision?

Ms. Furukawa: Yes.

Mr. Robinson: That's incorrect?

Ms. Furukawa: Yes.

Mr. Robinson: Thank you.

Chair Ball: Anything further? Commissioner Medeiros?

Mr. Medeiros: Yeah, I seconded the motion 'cause you know, I know of Captain Craig and if you're half the man he is, I want people like you to retire on Maui. You complied with everything. I vote

for good people and I think you're good people.

Chair Ball: Further comments. Seeing none, all in favor of the motion raise your hand and say, "aye".

Commission Members: Aye.

Mr. Spence: Six ayes.

Chair Ball: All opposed?

Mr. Spence: One opposed.

Chair Ball: Motion carried.

It was moved by Mr. Hedani, seconded by Mr. Medeiros, then

VOTED: To Approve the Short-Term Rental Home Permit as Recommended by the Department.
(Assenting - W. Hedani, J. Medeiros, L. Hudson, I. Lay, M. Tsai, R. Higashi)
(Dissenting - K. Robinson)
(Excused - S. Duvauchelle)

Chair Ball: Okay, we are moving onto Communications, D-1, Director?

Mr. Spence: Commissioners, No. 1 is Burnham USA requesting design modifications to the approved SMA Permit for the Wailea Old Blue/Shops on the Green and Candace Thackerson is the Staff Planner.

D. COMMUNICATIONS

- 1. BURNHAM USA requesting design modifications to the approved Special Management Area Use Permit plans for the Wailea Old Blue/Shops on the Green project at TMK: 2-1-008:118, Wailea, Island of Maui. (SM1 2012/0001) (C. Thackerson)**

Ms. Candace Thackerson: Aloha mai ka kou.

Chair Ball: Aloha.

Ms. Thackerson: The item before you is a site design modification request of a previously approved Special Management Area Permit for the proposed redevelopment of the existing Wailea Old Blue Pro Golf Shop and restaurant building. At your regular meeting on April 9, 2013, the Maui Planning Commission reviewed this application, accepted testimony, and after due deliberation unanimously approved the SMA Use Permit subject to 13 conditions, and I have the original approval letter in

your packets. They have filed for a preliminary compliance report as work has begun on the property which we have reviewed and accepted.

Since then the ownership has been transferred which I actually couldn't get onto this agenda it was so full. I'm gonna get that onto the next agenda. In the meantime, they've kinda started on the site and realized they wanted to make some site plan modifications. We have taken this to the Urban Design Review Board and they were really impressed with the changes. They had no comments at all or suggestions to the Planning Commission. The applicant has also met with the Wailea Community Association and the letter of support is in there. We also have Bud Pikrone from Wailea Community Association is here to speak on behalf of it. As well as meeting with the neighbors up the way, Ekolu, the subdivision up the way just because that's kind of in their view plane. So anything that changed, we just wanted to make sure with them that they weren't getting surprised with any information, and they also supported the project which is the letter that I just distributed to you. Other than that there's really no changes when it comes to drainage, parking, traffic, everything's remaining the same because the square footage is staying the same. It's really just kind of a shift in the site plan, but it is a significant shift so we wanted to bring it before you to acknowledge the changes and see if that's acceptable with the commission. The applicant's going to give a brief presentation of what the changes are and we'll go from there. Thank you.

Chair Ball: Thank you.

Mr. Steve Marlette: Aloha, my name is Steve Marlette, I'm with MC Architects. My client is Burnham USA. They are the group that have purchased the property somewhat recently. Scott Burnham is here today. He has long term roots in Wailea and for the past 35 years approximately, and purchased this project from the previous owners and hired my firm to initiate the design and construction documents of the overall project.

As we started looking at some of the detail of the project we sort of came to the conclusion that yes, it's possible to execute the previously approved design, but we wanted to make some tweaks to that design to make it a little bit better for both the users of the facility, the developer and long-term benefit to the overall community. With that in mind, I'll give you a little bit of an overview of where we're at generally. Just orientation, Wailea Ike Drive on the left hand side, Wailea Nui Drive down here. Shops at Wailea down at the lower portion. This is the existing Wailea Blue retail and clubhouse. And so the parcel that we're talking about is outlined here in red. Burnham when they purchased the property purchased the entire parcel outlined in red. So again, we're only talking about modifications to this area. Some of the work done by the...approved by the previously approved SMA Permit was within the clubhouse and retail shop area that the first two phases of work had been completed on that. And so we're talking about the ongoing phases for the rest of it.

Again, orientation the original...these are the original approved plans they're flipped a little bit. Wailea Ike is on the top side, clubhouse here, this is the configuration that was previously approved. It was a five or six building configuration. Lower Building C, D, E, F, G, and H. Parking on the upper side overlooking a portion of the golf clubhouse and parking...existing parking down on the lower side. Enlarging that a little bit more, again, so it's now people can actually see it. Buildings on this area were single-story buildings centered around a plaza area, free standing

building located here, and two, free standing single-story buildings here. What we have determined when we started working with the overall grades on the site is there is about a six-foot grade change generally from this side of Building C to this side of Building C and the design resulted in a lot of retaining walls that are actually shown on here previously as well as stairways and things like that and it became a very unfriendly sort of place to get to. Similarly up in here there's a grade difference of roughly of 14 feet from the lower portion here to the upper portion here which again resulted in retaining walls along this side of the building, and along this side of the building, and the relationship down here, same thing. In order to flatten this plaza out we ended up with very large retaining walls separating the project from the existing retail and golf course configuration as well as retaining walls all the way along the side.

So we looked into how can we make this a little bit better, how can we make it a little bit more customer friendly and came back with a configuration that looks about like this. This is actually the final configuration where what we're proposing to do is a single building up in this area, a single building here and a single building here. So reducing the number of buildings from six buildings down to three buildings. The previous slide here is the shaded areas in pink here are the previous approved locations of the building and the black and white is the proposed locations of the building. Building C which was located down here we've just due to grading concerns and just very unfriendly sort of environment to get to and everything, we decided not to build that building at all. Building D and E in the pink were previously approved as two separate buildings, we've determined is probably better suited as a single, two-level building in this location. In the shaded areas Building E, F, and G out here were all single level buildings previously, we've determined that we're better suited off to do a two-level building in this location and single level building at this location, enlarge the overall plaza area and essentially eliminate all the retaining walls that were in the previous design.

To further explain that, I guess, is a site section. So again what we're proposing, two-level building here, two-level building here, single-level building looking out onto a large plaza and essentially we're working with the existing grades. We determined that they're some where in the range of 12 to 14-foot grade difference between the lower portion of the building and the upper portion of the building and then rather building up the site with large retaining walls on the side, we've determined to stack the retail portions thus reducing the overall footprint on the property by roughly 40 percent and then putting that area back in the plaza area. So essentially we're built into the hillside with the lower level and so we can walk in on grade from the parking lot to the upper level and the lower level looks out onto the plaza areas below.

Footprints of the various buildings. This is Building D, approximately 3,100 square foot per level stacked on top of each other. A little outdoor seating area on the upper area. We're anticipating potentially a restaurant on the upper level and potentially a bank with a potential drive-thru on the lower level. Building E and F, I guess we're calling it E right now, this is the lower level. Small retail located back into the hillside, a grand stair in the middle, upper level associated with the parking lot and upper level. You can walk through with a promenade on the second level, outdoor seating on both ends of the building for potential restaurants. The third building that we're proposing is similar in size to what was previously approved. Two building scenario, potential restaurant again.

Preliminary elevations. This is Building D, it's the building up towards the corner of the property.

So from the mauka side of the property it appears entirely as a single-story building. From the makai side of the property where the grade change is, it appears as a two-level building. Lower level built into the hillside and the upper level perched generally above it. We did have...our only real concern that we had expressed by anybody associated with the neighbors was from Ekolu. Their only concern was they did not to see a two-story building that would potentially block their view plane. And so from their view plane perspective all of the buildings are just a single level building and they're not any higher than what was previously approved as part of the original SMA approval.

Building materials and colors and everything. Colors and materials are similar to what was previously approved. It's very low profile building. Plaster exterior. Wood trellises and everything that looks like the existing Wailea Blue and retail. We do have a color material sample board that is being proposed. The Building E is again, the lower one is a view from what Ekolu would see on the mauka side, single-story building. A break down of the facade elements, some horizontal sidings, some plaster siding. On the makai side you get a view from the main entry which is an open stairway that goes in between the two levels and the architecture is very similar to what you see at the Wailea Blue Clubhouse.

Building E or Building F, excuse me, is a single-story building similar to what was originally approved just the exterior aesthetics have changed ever so slightly with materials. Again, take off on the existing Wailea infrastructure.

This is a view from the plaza area, centered by a very large Monkey Pod tree overlooking the plaza area. Again, we think that just the stacking all of the footprints on top of each other is a great benefit to the overall site, allows us a lot more flexible community area out in the front, allows view planes to and from it in the interaction of the general public with the overall development. This is a view what you would see from Wailea Ike Drive and sort of the entrance to the overall project.

So our parking overall is just about exactly the same. It is a increase of actually four stalls from what was previously approved. Our overall building area is a decrease of 217 square feet. For our parking configuration, our circulation, our drainage, our landscaping are just minor variations of what has been previously, generally approved. So architectural style is approximately the same.

Generally the feedback that we're getting from Wailea Community Association, Ekolu apartments, and everybody we...Urban Design Review Board has been very positive and that it's moving in the right direction. So again, we would like to propose these modifications to this group to get approval to proceed on it, and just make the project overall a little bit better. Any questions?

Chair Ball: Let's see, does that conclude your presentation then, Candace?

Ms. Thackerson: Yes.

Chair Ball: Great. If we can have the light on. At this time, we'll open it up for public testimony. Anybody that would like to testify on this item may do so at this time? Please identify yourself and you have three minutes.

Mr. Bud Pikrone: Bud Pikrone, Wailea Community Association. Thank you for giving me some time here since I drove all the way here today, spent the day. This project as you heard has been in the books, on our radar for a number of years. We are very happy with design. It is completely much better than we think the other one was. For instance, instead of three buildings being right up against Ike Drive there's now one which really now sets everything back off the road and presents a better visual as you come into the resort.

I have spoken with the Ekolu Board and they're satisfied with this project. They like the fact that it stayed at one-story building. Matter of fact, what we were talking about is some of the owners want to know when it's gonna start because they'd like to have a number of those big, ugly kiawe trees out their views. That's the way they are. So they felt this was much better than what's there now. So our design committee did review this completely and they were very satisfied with the overall look of the project and we'll work with the builders and developer as the project progresses. But again, we're very satisfied and very happy that this project is being presented as it is today.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Would anyone else like to testify on this item? Seeing none, public testimony is closed. Candace can we get the recommendation?

Ms. Thackerson: Yes you can. Subject to Section 12-202-17 of the SMA Rules any person is allowed to amend the Special Management Area Use Permit for a time extension request, site plan modifications or to amend any of the conditions placed upon the permit. So the Department is recommending that the Commission approve the proposed site plan design modifications of SM1 2012/0001. The plans are dated August 28, 2015 and thereby the applicant will not be in conflict with Condition No. 4 of their previous approval that says that the applicant will develop the property in substantial compliance with the representations made to the Commission at that time. So in order to not be in conflict with that, I'd like the...The Department recommends that you accept the design modifications.

Chair Ball: Thank you. Questions from the Commission? Commissioner Tsai?

Vice-Chair Tsai: The applicant please? If you get approval when you do expect to start and your time line for completion?

Mr. Marlette: We would complete our construction documents and forge through the permitting process and so we would like to presume that somewhere around July of next year to start potential construction. And they're on a very quick time line and they would like to finish it as quickly as possible per request of all of the neighbors and community association to not drag this construction out any longer than needs to.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: And your estimated cost and do you have funding in place?

Mr. Marlette: The funding is in place and they do have estimates of cost, but I'm not sure if I know what they actually are right now. But yes, they've looked at all those items and the project will

proceed.

Vice-Chair Tsai: Yeah, I mean, the only reason we ask this is we have times people come forward and you know, funding it's been an issue in the past before. But as long as you have that in place it's good.

Mr. Marlette: Yes.

Chair Ball: Further questions? Commissioner Medeiros?

Mr. Medeiros: If there are no questions, I'd like to make a motion. I move to accept the recommendation.

Vice-Chair Tsai: Second.

Chair Ball: Moved by Commissioner Medeiros, second by Commissioner Tsai. Any discussion? Commissioner Robinson?

Mr. Robinson: I just have a question. Do you have an actual photograph of the area besides renderings?

Mr. Marlette: We have—

Ms. Thackerson: Are you talking about from aerial view or from the road?

Mr. Robinson: Yeah, all the maps kinda got me...I wasn't here at the original one. So this is where the dive shop is and Manoli's is, is that correct?

Mr. Marlette: Right.

Mr. Robinson: And that's gonna be where the new...everybody's gonna now go there? I mean, two years to do the golfing, they're gonna park their cars there or is this something separate?

Mr. Marlette: The golf, the golf course parking is in place right now. So main entrance to the golf course right now, this parking lot has already been constructed and the golf course parking is in place. The upper parking lot again has already been constructed and is already in place. And so again, we're only talking about this portion of the overall site that sort of adjoins the existing golf course as well as your ...(inaudible)...shops.

Mr. Robinson: So the dive shop and Manoli's is on the bottom?

Mr. Marlette: Correct, correct.

Mr. Robinson: Just to reconfirm that.

Mr. Marlette: Correct. Manoli's—

Mr. Robinson: So that upper level parking that's where all the brand new construction is gonna be?

Mr. Marlette: Correct.

Mr. Robinson: Below...(inaudible)...

Mr. Marlette: That is correct. Primarily there's a drainage ditch that's located right in there, right in that area.

Mr. Robinson: See I just trying to get my bearings straight. Thank you.

Chair Ball: Commissioner Hedani? Put the lights back on Jordan. Thank you.

Mr. Hedani: How much of the impervious surfaces...it looks like there's a lot of impervious surfaces. Is the drainage gonna be contained on site?

Mr. Marlette: The drainage does come all on site actually, and they have... you can very vaguely see it, there's a pond located down here that was originally constructed to handle all the drainage from this and so there's sheet drainage generally that comes all the way down into this retention area. So the drainage is exactly the same pattern, quantities and everything that was approved previously and a portion of it has already been constructed.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay this is a nice project. I like it and I like your concept of keeping with the ground level, your second level is below that. I only hope that you'll be using our local contractors here on this, for this project.

Mr. Marlette: I'm not sure that we have any choice do we?

Mr. Lay: Good answer. Good answer.

Mr. Marlette: If you can find some local contractors that you know, in today's market they seem to be hard to come by that has the time to actually build it.

Chair Ball: Further questions? Seeing none, do I have a motion?

Mr. Medeiros: ...(inaudible)...

Chair Ball: All in favor of the motion then? It's late, it's after lunch. Raise your hand.

Mr. Spence: That's seven ayes.

Chair Ball: Motion carried.

Ms. Thackerson: Thank you.

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

**VOTED: To Approve Design Modifications to the Approved Special Management Area Use Permit as Recommended by the Department.
(Assenting - J. Medeiros, M. Tsai, L. Hudson, I. Lay, W. Hedani,
K. Robinson, R. Higashi)
(Excused - S. Duvauchelle)**

Chair Ball: Okay, let's take a five-minutes break while we get the other guy set up.

A recess was called at 2:18 p.m., and the meeting was reconvened at 2:24 p.m.

Chair Ball: Back to order. We are on Communications, D-2, Director?

Mr. Spence: Commissioners, this will probably be the toughest decision that you make all day. Very controversial. This is Mr. T.J. Gomes Trucking requesting a transfer of Land Use Commission Special Use Permit from Mr. Jack Freitas, to T.J. Gomes Trucking and our Staff Planner is Evelyn Aako.

2. T.J. GOMES TRUCKING CO., INC. requesting a transfer of the State Land Use Commission Special Use Permit from JACK FREITAS to T.J. GOMES TRUCKING CO. INC. in order to operate truck and towing, automobile storage, processing, and baseyard operations at 301 Hansen Road, TMK: 3-8-001: por. of 002, Puunene, Island of Maui. (SUP2 2008/002) (E.Aako)

Ms. Evelyn Aako: Good afternoon, Chairperson.

Chair Ball: Good afternoon, Evelyn.

Ms. Aako: Good afternoon, Commission. So again this item is under your review because the applicant, T.J. Gomes Trucking Company is requesting that the State Special Use Permit or SUP currently held by Mr. Freitas be transferred to their ownership. Real, really brief I'm just gonna give you a time line of the SUP's history.

So it was initially approved by the Commission in April of 2009, and it was approved for three years so the expiration date was March of 2012. In December 2011, a time extension request was filed and in December of 2014 so just about a year ago, a 20-year time extension was granted so that means that the current SUP expires in March of 2032. Jordan Hart is here of Chris Hart and Partners and he'll give a Powerpoint presentation and then I'll come back up and I just have a few brief Department comments.

Chair Ball: Okay, thank you. Jordan?

Mr. Jordan Hart: Good afternoon, Chair and Commissioners. My name is Jordan Hart of Chris Hart and Partners. As discussed this is a transfer of an existing Special Use Permit. Jack Freitas is the

transferor and T.J. Gomes Trucking Company, Inc., is the transferee.

The area is 12.778 acres in size, the area of the Special Use Permit. The access is off of Pulehu Road. This is the location map of the project area. This is an aerial photograph of the area covered by the Special Use Permit. This is a site plan of the Special Use Permit and uses. As discussed this is an existing trucking and towing and vehicle storage baseyard. The transfer proposes to use the same uses.

This is the State Land Use District Boundary map. The project is located in the State Ag District. The project is now located in the Maui Island Plan Urban Growth Boundary. It's community planned for Light Industrial and it's zoned Ag. Again, this is the site plan. It's in Flood Zone X which is an area of the lowest risk of flooding hazard. This is the Special Use Permit criteria just to reiterate the existence of the Special Use Permit, but it's not contrary to HRS 205. The surrounding uses are consistent with the proposed use. There won't be any impact to the intensive sugar cane cultivation that surrounds. It's also nearby to the mill, the dump and other similar and associated types of uses for a trucking and towing baseyard. And there's no unreasonable burden on public agencies by the development of this property as a baseyard.

There is an increased demand for heavy industrial uses. This is in effect the heavy industrial use. There's a limitation on available heavy industrial lands especially at the time where Mr. Freitas requested this Special Use Permit and it continues today. And in addition to that the project site has been used for non ag uses since 1913 when the hospital was originally constructed on the site. The existing hospital remains in place. The remaining portion of the hospital remains in place and unused in the central portion of the project site. These are character photographs of the area. Hansen Road and Pulehu Road looking over the project site. More of the same. That's really all the presentation I have today.

Chair Ball: Thank you. At this time we'll open it up for public testimony. Anyone that would like to testify at this time may do so. Seeing none, we will close public testimony and we will get the staff's recommendation.

Ms. Aako: So just a few quick, quick comments before I go into recommendations. So if you guys will look in your staff report, Exhibit 1 there is a notarized letter from Mr. Freitas requesting the transfer of ownership. And on the second page of that exhibit, the applicant acknowledges the existing conditions of the SUP and agrees to comply with all conditions so just to note that. And Exhibit No. 3 is a copy of the SUP if you wanted to look at that.

Because the applicant is not requesting any changes or amendments to the SUP at this time, it wasn't sent out for agency comments. They have indicated that some time in the future they might pursue some expanded uses, but that will be dealt with after the completion of the transfer of ownership.

So the application complies with the applicable standards for a State Special Use Permit and as such, the Department recommends approval. Again, approval is based upon the 15 conditions detailed in the SUP time extension approval dated December 8, 2014. In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt

the Planning Department's report and recommendation prepared for the December 8, 2015 meeting as its finding of fact, conclusion of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chair Ball: Okay. Questions from the Commission? Commissioner Hedani?

Mr. Hedani: Evelyn, I saw a letter requesting change of...to accommodate rock crushing?

Ms. Aako: Yeah, so that's what I was mentioning at this time, we're just dealing with the transfer of ownership and then they've indicated I think the initial plan was to try to do it all at once, but we weren't able to...the time didn't allow to deal with the change in uses. So we're just dealing with the transfer of ownership today, and then some time in 2016 we'll come back for expanded uses or amendments.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Medeiros: Second.

Chair Ball: Second by Medeiros. Discussion? Commissioner Robinson?

Mr. Robinson: Jordan can you clarify the ownership and the transfer that we're...that on the page where it says that Jack had ownership, and also is this a ground lease or who actually owns the land?

Mr. Hart: My understanding is A&B is the owner of the land at this time. The land is going to be purchased by T.J. Gomes. And so I think that that was both of your questions in one is that right?

Mr. Robinson: So...

Mr. Hart: Oh, okay. The other thing is so the property is not...it's not closed now, it's closed on pending the transfer of this Special Use.

Mr. Robinson: And how long is the ground lease for with A&B?

Mr. Hart: It's indefinite.

Mr. Robinson: Can you adopt me Jack?

Chair Ball: Any further questions? Commissioner Medeiros?

Mr. Medeiros: I seconded this motion. Straight up Jack Freitas is one of the most honest men that I know. Sometimes he's brutally honest. You know, and he would not sell to anybody that wasn't honest. You know, and that's why I seconded the motion, that's why I support him.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Jordan, the use is Heavy Industrial, the community plan is Light Industrial. Is there a community plan amendment that needs to be executed?

Mr. Hart: There was...at the time that this was being processed there was a proposal to do two tracts. As a result of the economy, it became kind of the one tract at the time. And so it's kind of a defacto Heavy Industrial because the vehicle processing is not permitted in the Light Industrial. So it's kind of a more intensive.

Mr. Robinson: Heavy Industrial.

Mr. Hart: That's right, yeah.

Chair Ball: Follow up?

Mr. Hedani: I know that there's a need for heavy industrial and this is the appropriate site for it. I just didn't know how you reconcile a community plan with that?

Mr. Hart: So the Special Use Permit you know, allows for the use because the community plan is the future proposed zoning so the...at the time these applications--

Mr. Hedani: We accommodate it through the SUP?

Mr. Hart: That's right.

Mr. Hedani: Okay, gotcha.

Chair Ball: Any one else?

Mr. Robinson: Can we question Mr. Gomes?

Chair Ball: Go ask him.

Mr. Robinson: Can I speak to the applicant please, Mr. Gomes?

Chair Ball: Not you Freitas.

Chair Ball: Keoni Gomes is here from T.J. Gomes.

Mr. Keoni Gomes: Good afternoon, my name is Keoni Gomes. I am the representative for T.J. Gomes Trucking Company. My parents have owned and operated the company for going on 42 years now.

Mr. Robinson: Aloha. Do you have any plans for changing any of the business practices in the next 20 year as long as this lease is?

Mr. Gomes: At this time, we had looked at purchasing a property for our trucking operation to use more of as a overflow baseyard to our current facility. And I think in the near future we will apply to amend the permit for future uses, but we are not sure at this time what they are.

Mr. Robinson: So you're gonna be the landlord for a lotta people now?

Mr. Gomes: We're gonna be the landlord for once we purchase the property for Mr. Freitas who resides on this property and we hope he stays for a very long time.

Mr. Robinson: But besides Mr. Freitas, didn't I see on that map there's three other people that are on there, no? That wasn't? The maps moved pretty fast.

Mr. Hart: That was his uses.

Mr. Robinson: Oh, that was his uses, all Mr. Freitas' uses? Okay, thank you. Nice to meet you.

Chair Ball: Commissioner Hudson?

Mr. Hudson: Pardon me, just because I'm curious what are your plans with the old hospital building?

Mr. Gomes: Right now, we have no plans for the old hospital building. I have talked to A&B Properties who is the current owner and reviewed plans that they have. The existing wing that is there was the last wing that was ever built for that facility. The originally hospital was more centrally located towards Pulehu Road and no longer exist. So I'm trying to get more information on what the exact uses was for that wing, but I have not yet determined what that was.

Mr. Hudson: Thank you.

Chair Ball: Any further comments? I'm voting in favor because we have the same name, but other than that...no, I've known Keoni Gomes a long time and they're a hard working family.

Mr. Robinson: With an "e" too?

Chair Ball: No with "l", but you know, close enough. Any further comments or questions? Seeing none, is there...we already do a motion? Okay, all in favor say, "aye", raise you hand?

Commission Members: Aye.

Mr. Spence: That's seven ayes.

Chair Ball: Motion carried.

Mr. Gomes: Thank you.

Mr. Lay: Merry Christmas, Jack.

Vice-Chair Tsai: Merry Christmas, Jack. Congratulations.

Chair Ball: He can retire now.

It was moved by Mr. Hedani, seconded by Mr. Medeiros, then

**VOTED: To Approve the Transfer of the State Land Use Commission Special Use Permit From Jack Freitas to T.J. Gomes Trucking Co., Inc., as recommended by the Department.
(Assenting - W. Hedani, J. Medeiros, L. Hudson, I. Lay, M. Tsai,
K. Robinson, R. Higashi)
(Excused - S. Duvauchelle)**

Chair Ball: Okay, we are on Unfinished Business Item E. Director?

Mr. Spence: Commissioners, this is Unfinished Business for Mr. Michael and Lynn Fleetwood requesting a Short-Term Rental Home in Napili on Lower Honoapiilani Road. Our Staff Planner is Mr. Kurt Wollenhaupt.

E. UNFINISHED BUSINESS

- 1. MICHAEL AND LYNN FLEETWOOD requesting a Short-Term Rental Home (STRH) Permit to operate a four (4) bedroom STRH, Serene Napili Hale STRH, in the County R-2 Residential Zoning District and State Urban District on approximately 22,000 square feet of land located at 5150 Lower Honoapiilani Road, TMK: 4 3-003: 040, Lahaina, Island of Maui. (STWM T2015/0007) (K. Wollenhaupt)**

The application is being brought before the Commission as there is another permitted STRH located within 500 feet of the subject property and two (2) or more adjacent neighbors filed a written protest within the specified 45-day time period. (Deferred at the September 22, 2015 meeting.)

Chair Ball: Do we need five minutes?

Mr. Kurt Wollenhaupt: We are ready to go. Good afternoon, Members of the Maui Planning Commission.

Chair Ball: Good afternoon.

Mr. Wollenhaupt: The item before you today is a item that was deferred from consideration on September 22, 2015 at which time the Maui Planning Commission conducted a public hearing on an application from Michael and Lynn Fleetwood for a short-term rental home located at 5150 Lower Honoapiilani Highway in Lahaina for a four-bedroom short-term rental home.

At that meeting, Debbie Mitchell, the consultant presented their Powerpoint presentation. She'll be

happy to go through it again. We have included it for the Commissioners in the report or she can do an abbreviated one to update you on what's happened since the last meeting. That being the case, all of the Commissioners have been given a full briefing of the exhibits and the minutes that occurred on September 22, 2015.

To update you from that meeting, the reason that we're here today, and the reason that we were here on September 22nd was there was more than one short-term rental home within 500 feet. One of them is Mr. Jay Moore across the street. Another one is at the extreme boundary of the 500-foot. Since that time this Commission has given approval for another one at the extreme boundary, that would be for Breanne Fortun that was approved because of deferral at the last meeting. Therefore, in consideration of the one that was just approved today there are now 35 out of 88 in the West Maui District. So we're nowhere near coming to the 88 which is the maximum of short-term rentals in the area.

The second reason that we were here for a public hearing was that there were two residents to the south one of which had written a letter opposing this and one of which had done a signature against it. That however, needs to be considered in balance that there are residents immediately to the north who support the project in letter form. So we had the Eubank letter who was against it, we have the Arreola signature on a petition who was opposing it. However the Savages and Engmans to the north of the property are supporting it with a letter and we have support letter from Mr. Moore who is directly makai across the street. So there's not a preponderance of evidence against it or necessarily for it. There's seems to be a balance perspective here.

The letter does mention some issues about financial considerations of an individual. The Department does not consider what we may or may not believe an individual has, owns that part of the letter we would consider it what it was in the letter. They did mention that they had concerns about the tourism in the area.

That being the case, the Commission, there was a recommendation for approval which garnered three votes. That failed. There was a recommendation for denial that garnered three votes. That failed. Just to...Commissioner Robinson had recused himself due to issues that he could explain today if he wishes so he was not part of that voting block. Therefore there was a motion then to defer the item at such time as there would be additional commissioners here. There are additional commissioners here, but unfortunately, we have also lost one today, so we do have a few more commissioners here today.

Now I think it's germane simply because it's part of the record, in *The Maui News* it was on the front page, "Short-Term Rental Home Approved for Helen Hunt, Denied for Fleetwood." Well, that was an incorrect headline. It was not denied. It was deferred. It's my understanding that that article while it was retracted in a smaller correction and a couple days later inside the newspaper that this headline, and gave the neighbors who may have been willing to reconsider now less desire to reconsider as they felt that it had been denied. So going to the neighbors of which Ms. Mitchell has done multiple times trying to explain to the neighbors who opposed to it this headline has not assisted in that matter. That's just a matter of fact that this is what had transpired.

Therefore that leads us today. I have given the members the letter of deferral sent from the

Planning Commission, the approved minutes that shows the votes and the discussion, the applicant's update on contacting neighbors and a copy of the applicant's Powerpoint. Therefore, Debbie Mitchell can update you on what's happened and she can either go through the whole Powerpoint again or she can do an abbreviated version with an updated map and as such as however you wish. So I'm here to answer questions if you'd like or we can move right to Debbie?

Chair Ball: Commissioner Members are you comfortable with abbreviated presentation or would you like the full presentation again?

Mr. Robinson: An extremely abbreviated version.

Mr. Hudson: Abbreviated.

Mr. Medeiros: Abbreviated.

Chair Ball: I need everybody's affirmative on that or we'll have a complete presentation. Okay, we can go with the abbreviated.

Mr. Wollenhaupt: So Debbie will update you on what's transpired.

Ms. Debbie Mitchell: Hello Commissioners.

Chair Ball: Hello.

Ms. Mitchell: Mr. Spence, Counselor. Actually these are the two responses that we made to the letters that we received originally. And originally there were three individuals, actually four individuals, one of whom also wrote a letter that had just signed a statement that they were in disagreeable. Well, we reached out again to them just explaining that we would like to have you understand that we have a process in place now to deal with any complaints rather, you know, before calling the police was all they had, but now there is a full-time manager, 24/7, we have quiet hours, we have a permanent sign, you know, all of these will be in place if the permit is granted.

We had actually established with one of the more vocal, Mr. Eubank deferrers and sadly this, as Kurt mentioned this came out in the paper, followed by this correction a couple of days later. Unfortunately, the damage is done. Mr. Eubanks lives in Oregon and he...all communications ceased. So his daughter currently lives in the house right now. We reached out to her. She didn't want to make any waves with her dad so she declined. So we really feel like it hurt us a lot to have that kind of negative idea out there. But we did once again, by letter and by phone without, you know, it got to the point where I didn't want to make myself an annoyance. So, anyway we did reach out very much to those folks.

Anyway, this is again showing what the visual was on that. So this is just explaining what I just stated that we contacted everyone we had a phone number for. Mr. Fleetwood, who unfortunately could not be here today he is touring so he is not available. But he has authorized me to speak for him. Was very important to try to reach out to these folks because these are his neighbors and all of this negative lead back to one particular group that was staying there before he was aware that

it was even illegal to do this. So you know, as soon as he was aware that it was illegal he shut down all advertising, hired me, and we did it the right way. So we are hoping that you will allow the process to work there at the house which the ordinance puts in place.

So anyway, we just ask you once again to think of this applicant, you know, some the letters had some rather derogatory things to say, but this is actually a Maui resident. He lives here on Maui. He employs 150 to 200 people on this island. He is on the board of the hospital. This is somebody that's heavily involved in Maui's economy and culture. And we just ask that his contributions to the Maui economy and culture...oh, thank you, Kurt....just that that be taken into account. This isn't somebody from the mainland who's coming in to try to, you know, get rich off of something when they don't even live here. This is someone who lives here.

And also, another point to consider is that there is a cottage, a two-bedroom cottage on the property right now, but that is not a part of this. That's being kept separately where he can either house a caretaker or possibly even a long-term renter which is more, it's a more affordable dwelling for a long-term renter than the main house would be. So he has deliberately done that to show that he is interested in long-term local folks not only employing them, but also providing housing...(inaudible).... So anyway, that is my presentation for you. Mr. Fleetwood thanks you for attention, and if you have any questions please let me know. Thank you.

Chair Ball: Thank you. At this time, we'll open it up for public testimony. Anyone that would like to testify at this time may do so? Seeing none, we will close public testimony. Can we get the recommendation from the Staff please?

Mr. Wollenhaupt: In light of the totality of the evidence, the criteria under which the Department reviews short-term rentals, the opportunity to have a rental on this property, the Department does continue to recommend approval recommend this short-term rental home subject to the 23 conditions. Those conditions are outlined in the original recommendation report which provide for extremely well-mannered, full-time, on island management an opportunity for any neighbor that may have concerns today to be certainly listened to in the future were they to file a written objection if this were to be approved then the Department and Commission can review this in the future and then pull their permit away. So we would want to look at this application again in its totality and we continue to recommend approval.

Chair Ball: Thank you. Questions from the Commission? Commissioner Hudson?

Mr. Hudson: Thank you. This question is for Ms. Mitchell. Good afternoon.

Ms. Mitchell: Hi, good afternoon.

Mr. Hudson: I'm looking at your email dated 11/16 at 1351 hours to Kurt.

Ms. Mitchell: Yes.

Mr. Hudson: In the email you said that you contacted the daughter of the author of the letter. She said that she didn't wanna go against her father so she declined...she declined to what, say

anything to you?

Ms. Mitchell: She declined to make a statement that she was coming out for it. She just wanted to keep silent about it. She didn't wanna go on record as opposing her father and—

Mr. Hudson: So my question is, she didn't going on record saying that she was for or against it. So she didn't wanna go against her father?

Ms. Mitchell: Correct. Correct.

Mr. Hudson: Okay. All right. Thank you.

Ms. Mitchell: And just an small explanation. Her father is in Oregon and it's very difficult for even her to reach him, so...

Mr. Hudson: I understand the daughter not wanting to go up against her father.

Ms. Mitchell: Right, okay.

Mr. Hudson: But that being said, the daughter didn't also write a letter of support for the father.

Ms. Mitchell: No, she did not.

Mr. Hudson: But she was completely silent.

Ms. Mitchell: She remained mute.

Mr. Hudson: Yeah, okay. Thank you.

Ms. Mitchell: You're welcome.

Chair Ball: Further questions? Commissioner Medeiros?

Mr. Medeiros: Yeah, the first time you came I remember...the first time you came around I had asked you about the plans for the cottage.

Ms. Mitchell: Yes.

Mr. Medeiros: And at that time, you said...well, Mr. Fleetwood said he had absolutely no plans for the cottage. Now, you're saying that you're looking at maybe a long-term rental or a manager?

Ms. Mitchell: That is correct. Either a manager for the property on site or perhaps a long-term rental. He is willing...he has opened up that discussion.

Mr. Medeiros: Okay.

Chair Ball: Further questions? Commissioner Tsai?

Vice-Chair Tsai: Kurt, okay, you had stated earlier in your presentation that we had denied one permit in the same 500-yard radius and we approved one right before. I don't remember that approval that we did.

Mr. Wollenhaupt: I don't believe there's been any within this 500-foot radius that have been denied. The situation was with...on Papaua Place there are admittedly quite a number which this...which is outside the 500-foot boundary in part, but of which two of them one owned by Trig Fortun, the other owned Breanne Fortun, father and daughter have been approved. So what the issue might be is with regards to Breanne Fortun. Hers was deferred two times and then deferred a third time which actually then makes approval automatic because there could not be a decision made with five members. So the Fortuns have two within 500 feet both of which have been approved and Jay Moore right across the street, he has one that was approved administratively because it came back in in 2011. So no denials have been done, but we did have this odd deferral approval.

Vice-Chair Tsai: Right, I don't remember approving any within the 500-yard radius here in this body so...

Mr. Wollenhaupt: That's right because of them would have been administrative. Jay Moore administrative because it came in at the very beginning. It was the only one within 500-feet. Trig Fortune because he was brought in at the very beginning of the process by which there could be any number within 500 feet in the first year, and then Trig...and then Breanne, his daughter who was approved via the deferral method by this Commission. So that's right there's only been one that this Commission has seen.

Chair Ball: Okay, further questions? Commissioner Hedani?

Mr. Hedani: Kurt, we have two protests in red on this exhibit, and a bunch of support letters and three that are in yellow identified as statement what does that mean?

Mr. Wollenhaupt: Okay, that's what I was referring to. Ms. Nelson, she does not live adjacent to it. She wrote a opposition letter for this one. She also wrote virtually the identical letter for Breanne Fortun. That's one of the red letters. If the mark was in red that means an actual letter was sent as the Eubank letter was sent which Commissioner Hudson had alluded to with regards to that actual letter, someone had written a letter. So the red marks are actual letters that were received by the Department. That would be from Ms. Nelson who's on the makai side of Honoapiilani Highway further down the road and then also the adjacent neighbor Mr. Eubank.

The yellow dots, there was a one-sentence essentially I guess we would call it a petition that I will read, "We the owners are unified in agreement of our protest for the short-term rental," and one...there was also, Mr. Eubanks signed that. This was in the original report, and then the...another adjacent neighbor, Mr. Arreola, he also signed it. So by signature, it's not a letter, it is a statement saying that they are in opposition and then there were four signatures. So there was just a distinction there that we wanted to make note it's simply is a fact of the matter one is a letter, one was more of a signature petition. So that was on the original report right after the Eubank letter

and right before the GNB, Denton-Nelson letter. So two letters and then we have this signature page. I think you're coming to it. There you go, top of that, exactly. That was the Eubank letter that you're looking at now, then that was a separate...essentially it's a one sentence opposition and then four signatures that came in which according to our rules that is a written protest which whether it's a signature or a letter there were two written protests by adjacent neighbors.

Mr. Hedani: Okay, my question is between the last meeting and this meeting have any of the yellows changed their mind?

Mr. Wollenhaupt: None of the yellow, no one has changed their mind as far as I...no, they have not. They haven't. They have been reached out to, but they've not changed their mind.

Chair Ball: Further questions? Commissioner Tsai?

Vice-Chair Tsai: Kurt, on that automatic approval, maybe this is a question for the Director, I understand there's a time limit. What is that time limit if they come?

Mr. Wollenhaupt: That's 120 days from the date of the original public hearing. So when the...in the case Breanne Fortun this Commission met three times, the final third time they deferred and the next day was the end of the 120 days. A deferral then made approval automatic on the next day.

Vice-Chair Tsai: Okay, thank you.

Mr. Wollenhaupt: For this case, we are approximately at the 90th day.

Vice-Chair Tsai: That's what I was gonna ask next.

Mr. Wollenhaupt: So it's been about three, September, October, November, we're getting close to about three months. Whether or not there would be another meeting, it could be deferred to the January 12th meeting.

Chair Ball: I don't think we're there. Let's not discuss that. Any further questions? None. Motion...to adjourn? Motion one way or the other. Well, actually sorry, the motion...the recommendation is to approve. So is there a motion to approve? Commissioner Higashi?

Mr. Higashi: For further discussion, I recommend approval.

Mr. Hudson: Second.

Chair Ball: Moved by Commissioner Higashi, second by Commissioner Hudson. Further discussion? Commissioner Higashi?

Mr. Higashi: Getting back to the applicant itself, how many vacation rentals is within that 500 feet of her residence?

Mr. Wollenhaupt: Oh okay, Debbie's the applicant, but how many, how many vacation rentals are

within 500 feet of the proposed Fleetwood residence?

Mr. Higashi: With that residence.

Mr. Wollenhaupt: There would be no bed and breakfast approved so zero B&Bs and there would be Jay Moore, that's number one across the street, and there would be at the very furthest boundary on Papaua Place which is a cul de sac, there would be Trig Fortun and Breanne Fortun so three.

Mr. Higashi: Away from the area.

Mr. Wollenhaupt: Two of them are at the very furthest boundary, one of them is across the street.

Chair Ball: Further comments? Commissioner Lay?

Mr. Lay: And how much in the Napili area altogether?

Mr. Wollenhaupt: I'm gonna have to do a little count here.

Mr. Lay: And also how much is allotted in that area?

Mr. Wollenhaupt: Well, all of West Maui can have 88 and right now as of today there's 35 that have been approved.

Chair Ball: On the whole west side.

Mr. Wollenhaupt: Probably if you take Napili in of itself, I would say, seven of which six are all on Papaua Place. There is a map if you wish to see it.

Chair Ball: Commissioner Lay?

Mr. Lay: Follow up on that one. So when we say the west side, what are we looking at? We're looking at from Honokowai, I mean from Launiupoko all the way to Honolua or what?

Mr. Wollenhaupt: The west side covers everything on the western peninsula in the community plan so everything, so all of Launiupoko, Ukumehame, Lahaina Town, Kaanapali, Kahana, Napili, Kapalua. It's geographically probably one of the largest districts.

Chair Ball: Ukumehame? So Olowalu, all that?

Mr. Wollenhaupt: Yes.

Chair Ball: End the Pali then all the way around.

Mr. Wollenhaupt: Yes. Kahakuloa—

Mr. Spence: Because we go by community plan districts. So there's seven on Maui. All of them are fairly large districts.

Chair Ball: Further questions? Further questions? Jason, sorry, Commissioner Medeiros?

Mr. Medeiros: I'd like to...I voted for it the first time, but I had reservations about that cottage. Now that he's changed his plans about the cottage, I'd like to hold him to that that the cottage will be filled with either a full-time manager or long-term rental, and not be just a shrine for his mom like he wanted to do the first time around.

Chair Ball: Okay, further comments? All in favor of the motion raise your hand and say, "aye".

Commission Members: Aye.

Mr. Spence: That's four ayes.

Chair Ball: All opposed? Abstentions? One abstention. Chair votes in favor. Motion carried.

It was moved by Mr. Higashi, seconded by Mr. Hudson, then

VOTED: To Approve the Short-Term Rental Home Permit as Recommended by the Department.
(Assenting - R. Higashi, L. Hudson, J. Medeiros, M. Tsai, K. Ball,
Abstained - K. Robinson)
(Dissenting - W. Hedani)
(Excused - S. Duvauchelle)

Chair Ball: So Item F-1. Director?

F. SMA SETTLEMENT AGREEMENTS

- 1. Approval of Settlement Agreement with the owner of the Maalaea Yacht Marina for doing minor concrete repair work without submitting an SMA Assessment application for property at Maalaea, Island of Maui.. (C. Cortez)**

Mr. Spence: Commissioners, we've distributed to you an approval of a settlement agreement with the Maalaea Yacht Marina. They had an SMA violation, and let me go a little bit into the background with this. When...basically any time there's a negotiated settlement with someone who has a violation in the SMA they...this Commission has to approve those...has to approve that negotiated settlement. The...I mean, if it's just straightaway they just pay the fines and everything. That's okay, that's fine, that's not negotiated. They just pay it, and we're pau. In this particular case, the Maalaea Yacht Marina they were doing some painting, they came across some spalling. They did a fair amount of repair work, not large with...for the whole property, but still they...something that should have...they should have filed an SMA permit, an Assessment, they did not do so. So we warned them. They still did not get an Assessment, and as a result we issued a Notice of Violation. The sum total of all the fines was \$10,100 by the time they came in and

applied and we reviewed it, et cetera. The negotiated fines however, we don't think \$10,000 that's like way more than the actual project was worth. So we negotiated the fines down to \$3,000. And so we're coming to you today to accept that agreement if that's fine with you. We think that's a lot fairer to the Maalaea Association and they're agreeable.

Chair Ball: Thank you. We'll open it right now for public testimony. Anyone would like to testify on this agenda item? Seeing none, okay, public testimony is now closed. Questions from the Commission? Commissioner Medeiros?

Mr. Medeiros: The fine was 10,000 and you guys think that 3,000 fair, more fair?

Mr. Spence: Much more fair.

Mr. Medeiros: Okay, good enough for me.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Was the fine a procedural thing or did they do any damage?

Mr. Spence: Procedural.

Mr. Robinson: Thank you.

Chair Ball: Commissioner Lay?

Mr. Lay: How did you guys get notification on this infraction?

Mr. Spence: We received an RFS. We received a complaint. RFS is Request for Service. You know, you can file online with the Department. So received the complaint, we investigated, somebody said there's a scaffolding, you know, they were supposed to be preparing for painting and for some reason the scaffold stayed up for quite a long time and so we went and investigated and told, hey you need a, you need to do an assessment for this, we don't know how extensive this work is, the possibility of material going in the ocean, whatever. And so we followed up with a warning and then a violation.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Move to approve the settlement.

Mr. Medeiros: Second.

Chair Ball: There's a motion by Commissioner Hedani, second by Commissioner Medeiros. Further discussion? Seeing none, all in favor raise your hand and say, "aye".

Mr. Spence: That's seven ayes.

Chair Ball: Motion carried unanimously.

It was moved by Mr. Hedani, seconded by Mr. Medeiros, then

VOTED: To Approve the Settlement Agreement.
(Assenting - W. Hedani, J. Medeiros, L. Hudson, I. Lay, M. Tsai,
K. Robinson, R. Higashi)
(Excused - S. Duvauchelle)

Chair Ball: Moving onto Acceptance of Action Minutes of the November 24, 2015 Meeting.

G. ACCEPTANCE OF THE ACTION MINUTES OF THE NOVEMBER 24, 2015 MEETING

Mr. Lay: Motion to accept.

Chair Ball: Motion by Commissioner Lay.

Mr. Higashi: Second.

Chair Ball: Second by Commissioner Higashi? Any discussion? Seeing none, all in favor of acceptance of the minutes raise your hand and say, "aye".

Commission Members: Aye.

Chair Ball: Motion carried unanimously.

It was moved by Mr. Lay, seconded by Mr. Higashi, then

VOTED: To Accept the Action Minutes of the November 24, 2015 Meeting.
(Assenting - I. Lay, R. Higashi, J. Medeiros, L. Hudson, M. Tsai,
W. Hedani, K. Robinson)
(Excused - S. Duvauchelle)

Chair Ball: Letter H, Director's Report.

H. DIRECTOR'S REPORT

- 1. SMA Minor Permit Report**
- 2. SMA Exemptions Report**

Mr. Spence: Commissioners, you've received the SMA Minor Permit Report and the SMA Exemptions Report. This is for your notification. If you have some questions on it that's fine, otherwise, acknowledging receipt.

- 3. Discussion of Future Maui Planning Commission Agendas**

a. January 12, 2016 meeting agenda items

Chair Ball: Okay, next meeting will be on January 12th. Before you leave, Candace has a Christmas present for you all. It's the Environmental Assessment determination on Walgreens.

Ms. Thackerson: Yeah, it's the final EA so it's gonna have the strikeouts in it with all the revisions. I did a little memo cover letter, but you all get a copy for your homework reading over the holidays until I see you guys on January 12th and we'll review this item then.

Chair Ball: Alright, well, if nothing further, Happy Holidays to everyone and we'll see you on the 12th of January. Meeting adjourned.

I. NEXT REGULAR MEETING DATE: JANUARY 12, 2016

J. ADJOURNMENT

The meeting was adjourned at 3:10 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Keone Ball, Chair
Wayne Hedani
Larry Hudson
Richard Higashi (in attendance at 1:10 p.m.)
Ivan Lay
Jason Medeiros
Keaka Robinson
Max Tsai, Vice-Chair

Excused

Sandy Duvauchelle

Others

Will Spence, Director, Planning Department
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works