

**MAUI PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 13, 2016**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Sandra Duvauchelle at approximately 9:03 a.m., Tuesday, September 13, 2016, 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.)

Ms. Sandra Duvauchelle: . . . ask your patience. First time I've ever done this. That the Maui County Planning Commission meeting of September 13 is now in session. Okay, this morning we'll start with public testimony. You having a hard time hearing me? Okay. Yeah, this morning we'll start with public testimony. Each testifier will have three minutes. If you testify now on your agenda item you will not be able to testify again later when the agenda item is heard. Okay, so on our list of testifiers, our first one is -- and you can either testify now or pass. So our first testifier is Harry Vant Groenewout.

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.

Mr. Harry Vant Groenewout: Aloha. Thank you for letting me speak to you at this time. My name Harry Vant Groenewout. I came to Maui in the 60s, not long after Statehood. I went to high school and college here. Got married to my loving wife in 1969, who is born and raised in Maui. I retired from the Maui County Fire Department, and also the American Medical Response as a paramedic. My father-in-law was the first post master in Kihei, and my dad was a district executive for the Boys Scouts helping the Maui youths for many years. I'm here to voice my opinion against the potential of stricter enforcement policies as well as the ever increasing difficulty in renewing permits and the potential of establishing easier methods in revoking permits for the short-term rental businesses. After the passing of my in-laws, my wife insisted on obtaining the family property in Kihei to keep it in the family for our children. In order to purchase the property, maintain the high mortgage as well as my regular mortgage, and the high cost of living in Hawaii as we all know, and to augment my already meager retirement income, my only option was to create a vacation rental for a portion of the property, and a long-term rental for the remaining portion. As turning it into just a long-term we're not even begin to cover enough of the mortgage to hold on to the property. I applied for the initial permit and succeeded in jumping through all the hoops, the additional expenses, not to mention all the time it took. I feel some of the hoops are excessive and unrealistic, but I completed it anyhow. Now that I'm up for renewal, I, again, been given additional hoops to navigate. I feel this is unfair for a local resident trying to establish a comfortable economic existence. I understand there are those that despise short-term rentals in Hawaii, but I must point out that pineapple and sugar have gone away of dinosaurs, and the only large income source now for the state is tourism and

short-term rentals, I believe, are an excellent and economic companion to the higher price condominiums and hotels, to bring even more tourism traffic and money for the State of Hawaii.

I have thought about this quite a bit, and, and it is very difficult for a local resident to try to maintain and, and to hang on to an existence here because of the high cost of living. I noticed a lot of my friends having to leave and go to the mainland. I've established a system for myself in order to enable to be here and to take care of my wife and to exist here, but now it's becoming more and more difficult to maintain that financial situation due to the high cost of living. My first job it was \$2.85 an hour over here at the Kahului Airport back in 1969. Yeah, I was paying \$650 month for a two-bedroom long-term rental. Now a days, okay, they're making \$13.50 and \$18.20 and \$29 an hour and people are still requesting that short-term rentals do not exist, that long-term rentals, you know, should be in there as well. I think both can exist equally and I that's where my stance is on this, and I would really appreciate any consideration into negating any additional problems for people to, to continue with short-term rentals. I also have a lot of good ideas on the problems facing short-term for out of state people, so are there any questions?

Ms. Duvauchelle: Okay, commissioners, any questions for the testifier?

Mr. Carnicelli: Good morning Harry. I'll try to talk really loudly so you can hear me. Is -- I've got a couple of questions for you. First off where is your vacation rental?

Mr. Vant Groenewout: Kihei.

Mr. Carnicelli: If I could?

Ms. Duvauchelle: Go ahead.

Mr. Carnicelli: Is -- do you currently have a permit and did you operate that vacation rental?

Mr. Vant Groenewout: I did.

Mr. Carnicelli: Did you operate without a permit prior to getting your permit?

Mr. Vant Groenewout: Not. I was informed --. You know, no, no I did not, put it that way. Yes.

Mr. Carnicelli: Do you live on that property or is it a, a second home?

Mr. Vant Groenewout: It's a second property. I live in Kula.

Mr. Carnicelli: Okay, thank you.

Mr. Vant Groenewout: Yes.

Ms. Duvauchelle: Any other questions? Thank you for your testimony. Next on the list is David Dantes.

Mr. David Dantes: Good morning Madame Vice-Chair and members, Mr. Director. My name is Dr. David Dantes, and I'm testifying about Resolution 16-93. I'm speaking on behalf of a group of informal North Maui, North Shore Maui bed and breakfast owners who feel it would be important for the Planning Department to have more accountability to respond to Request for Service about illegal rentals. There's a system where a member of the community can submit a request for service if he feels that there's an operation of an illegal B&B or short-term rental, and provide the Planning Department with details. But a loophole in the law makes it possible for the Planning Department to ignore those Request for Service. The Zoning Administrator gave a report a couple of years ago that the department had received about 1,300 citizen Request for Service about illegal rentals. And at that point in time, zero Notices of Violations had been issued. So the Council Chair Mike White has come up with some proposed language that you'll find in today's ordinance, under 19.65.080D, under Correspondence section of the bed and breakfast law, that's designed to make certain that a Request for Service properly filed by a community member will be responded to in a reasonable length of time by the Planning Department. In other words if a citizen submits evidence that there's an illegal advertisement online, provides a link to that, and supplies a valid physical address that can be verified, then the Planning Department will in fact need to investigate, and if appropriate, they'll need to issue a warning, and if the warning is disregarded they'll need to start a daily fine.

This provision is not going to apply to a huge number of operations. Only those or someone from the community takes it upon themselves to make a report and supplies the details. And with those details, the Zoning Department inspector doesn't even need to leave his desk. He can simply look online to verify that there's an advertisement that needs a permit number and doesn't have a permit number. So I'm urging you to give consideration to the language in that section that I cited and I hope that you'll indicate to the Council's Planning Department that you're in support of it. Thank you.

Ms. Duvauchelle: Thank you. Any questions for the testifier? Thank you for your testimony.

Dr. Dantes: Thanks. I apologize that I have to leave right away, but thanks for your attention.

Ms. Duvauchelle: Next on our list is Jack Riley. Okay. Alright, then we'll move on to our first agenda item. Director?

C. RESOLUTION THANKING THE SERVICE OF COMMISSIONER JASON MEDEIROS

Mr. William Spence: Good morning commissioners. First off, we have a resolution thanking the services of Commissioner Jason Medeiros and I'd like to read that in its entirety.

*This is a resolution of the Maui Planning Commission.
Whereas the Maui Planning Commission was established in 1958, and
Whereas in April 2013, Jason Medeiros has served as a member of the Maui
Planning Commission and has served as Vice-Chairperson of the Maui Planning
Commission from April 2016 to July 2016, and*

Whereas Jason Medeiros has served the Maui Planning Commission with dedication and provided valuable guidance in serving the needs to the people of Maui County, and

Whereas Jason Medeiros passed away on July 22, 2016.

Now therefore, be it resolved by the Maui Planning Commission that it does hereby express its deepest gratitude and appreciation to Jason Medeiros for his service during the past three years and four months, and does hereby extend its deepest condolences to his family.

And be it further resolved that copies of this Resolution be transmitted to the Honorable Alan M. Arakawa, Mayor of the County of Maui, and the Honorable Mike White, Chairperson of the Maui County Council.

And I would say we would also, we will also reach out and provide copies to the family.

Ms. Duvauchelle: Commissioner Castro would like to say a couple of words regarding Commissioner Medeiros.

Mr. Stephen Castro: Thank you Madame Chair. I've got -- I got to know Jason for a great number of years, and we became very personal friends, and he spoke from the heart, and he spoke with dedication. And little did I know that he was my, my wife's classmate, you know, so it made that extra special. And he believed in what he said and held working people to his heart and did what was in the best interest for working people and he was also an active member of ILWU Local 142. And if you had any children, all these kids they all knew him as Uncle Jason. We really, we really miss him. You could call him Mr. Coffee because he was a Starbucks fan, and he's going to be sorely missed and...with all the friends, the family...they held him in a very, very high respect and we will miss him.

Ms. Duvauchelle: Thank you Commissioner Castro. Alright, director?

Mr. Spence: Commissioners, we're passing this resolution around for your signature, and you can give it -- you can hand it back to me when everybody has signed and we...we'll distribute it as soon as we can.

Okay, commissioners we have three public hearing items this morning. First off is we're transmitting Council Resolution 16-93 to the Lanai, Maui, and Molokai Planning Commissions to amend the comprehensive zoning ordinance related to bed and breakfast homes and short-term rental homes, and our staff planner this morning is Gina Flammer.

D. PUBLIC HEARINGS (Action to be taken after each public hearing.)

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 16-93 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill Amending the Comprehensive Zoning Ordinance relating to Enforcement Procedures for Bed and Breakfast Homes and Short-Term Rental Homes. (G. Flammer)**

Ms. Gina Flammer: Good morning commissioners. I'm going to give some background on --. We have two different bills to go through. The second one is really only one issue. It won't take as nearly as long. The one that we're about to go through has a lot of different issues, so there will be a lot of discussion.

So I'm going to give a little bit of background on it even though Dr. Dantes just gave you some of it. The core of the bill that's before you where we're calling the enforcement bill came about in --. After the short-term rental home bill was passed in 2012 there was kind of an unwritten agreement between the County and operators that in passing the bill it's creating a regulated market. And in doing so it wants to reward the people that come forward to get permits. The reward is proactive enforcement. It did take the department a while to get the staffing to get familiar enough with the provisions in the Code to get up and running and doing that. The group started meeting with County officials 2012, 2013, 2014, still weren't seeing a whole lot of enforcement. We're feeling the effects of unpermitted operations, the unregulated market on their own businesses, those businesses that don't pay taxes, don't have permits, aren't paying higher tax rates could charge less rates. They wanted to see provisions that would mandate the department. They recognized that in the past year, year and a half, the department has started doing more proactive enforcement. They've started implementing a five year ban, but they would like to get something codified that would keep it that way. They're worried about the future, future administrations, future funding for the department, and having the enforcement division just stretched a little bit too thin. Our enforcement division is responsible for enforcement of all of Title 19 as well as parts of the State Code. You guys know that you, yourself make decisions on the SMA. Our enforcement division is also responsible for that, so they have a lot of work to do. So taking on proactive enforcement of vacation rentals was a huge task. They're working on it now, but the bill, the intent of it is to make sure they're mandated to continue doing that.

So the department in receiving the bill --. Actually, what happened with the bill is it went to the Council. Then it went to Council Services to be put into a bill. They took the provisions from the short-term rental home bill and they moved over those enforcement sections into the B&B bill. The short-term rental home bill was updated at the end of or at the beginning of this year. We finished most of the committee testimony. I think there was about 11 hearings; almost as much discussion as the initial bill. I think it would be useful for me to first go through what those changes were with you. I'm just going to give the broad based changes. There was a lot of housekeeping clarifying, but there were some policy changes. The department is also using this particular bill as a vehicle to update some of those amendments, or to clarify them. Some things were thrown at the end and as we're implementing them we're saying, uh, we wish we had better language. So the bill that's before you is designed to create stronger enforcement, and it's also being used to update the current bill. So let me go through with you just as a platform to start our discussion the changes that happened over the past two years to the short-term rental home bill. And I know many of you were here when you commented on it, and I don't know if you stayed with all of the discussions that were going on so you may not know about of some of this. It is online, you know, but there's a lot to the new bill.

Okay, so getting to the core of the bill that applies to the short-term rental home. One of the most important things for us was it grouped all the short-term rental home criteria into one place

so it will make it easier for you when you review them. In your staff report will be all the criteria, all listed right there. That's what you use when you're evaluating the bill. Interestingly at the end, the Hana Advisory Committee had recommended reducing the cap for short-term rentals from 48 down to 30. You saw that when it came through here. The Council went ahead with that, and they did make that change, so now the cap for Hana is 30. They decided not to have a cap for Molokai. And interestingly I just went to Molokai last week, and they're fine without having a cap.

At the end of the process, Council Member Baisa added a new certification form that goes with the application. It's designed to help the department with enforcement over time. We're going to go through this table as we go it, and in the table --. I'll go more into detail about the certification form. Basically what it does is the applicant has to attest that they have not been using it as a short-term rental, that they've not previously advertised. Also, that they have no financial interest in another property that has a short-term rental home permit. That becomes a trigger to come see you. That was one of the new things added to the bill. If there were any violations those need to be paid before. And then...in the future if we find there had been any advertising that's enough right there to revoke the permit.

The new certification bill, there was an amnesty to the five year ban. A six month amnesty. The certification does include some language with the amnesty, so as we go through those changes we're recommending that those, that language be taken out, but I'll go into more detail about that.

Also one of the changes that was passed is that the sign that goes up notifying neighbors that sits out in front of the house, it used to have to be up for the entire duration of the permit. It actually had to go up before the permit came into the department. It was kind of the easiest thing to do. People often put the sign up, and didn't come in for months. We would get phone calls, we wouldn't know anything about the application or sometimes there were problems with the application and the sign would just stay up endlessly. So the new law now says that the signs only stays up for 45 days. It goes up once we accept the application. And then once the 45-day notice period to neighbors over the sign can come down. If there is a public hearing, however, there is notice that goes out to everybody with 500 feet.

There was another requirement tucked in the bill which you folks probably -- you didn't probably know about. The applicant used to have to put three notices in a County wide newspaper, so that would be The Maui News. So not only did everybody within 500 feet get noticed, the Department put a newspaper ad, they also had to do it for three times. It was about \$1,200. It's kind of a big expense right towards the end. The Council decided that we didn't -- they didn't need to do the newspaper ad. The department still does the ad, the agendas are still posted seven days in advance, and the applicant still must notify everybody within 500 feet.

Probably the biggest change affecting you folks here is that the Council decided that you can have two short-term rental homes within 500 feet without coming to the Planning Commission for review. So right now it will be the third one that triggers the Planning Commission review. If there's a second one it can be done administratively. Again as I mentioned earlier they added a new trigger to the -- to come see you guys for review and approval, and that is if they have a

financial interest and another short-term rental home, even if it's husband and wife. We still want you guys to take a look at it, see if you're comfortable with it.

Another big change is first time permits used to only be issued for one year, and that was kind of interesting in the very beginning. It was really the vacation rental association that said, hey, if there's any problems let's catch them early. You know, we don't want bad apples tainting the reputation of everybody. Just make it for one year, but make it so that the department does kind of a pro-active renewal. The department tried this approach. It was really hard for us. It didn't work that well. So now the Council changed it so that the permit can be issued up to three years just like the bed and breakfast.

Another change that was made is that...our conditions in the permit used to say that a renewal application had to be filed prior to 90-days from the expiration date. When our lawyers looked at it they thought, you know what by saying that that is the expiration date, can you guys change that language? So Council changed the language. They said that permit renewal applications must be submitted within 90-days prior to the expiration date, no problem. But then we started implementing it, and we had people that said, hey, I don't want to wait three months, I'm taking reservations six, nine, 12 months out, why can't I come in earlier. So the department said we're proposing something as we going through this, where they can come in 180-days now in advance. I think it's a classic case of trying to solve one problem and kind of creating another so we're using this bill to recommend that change even though it's an enforcement bill.

The other thing the bill did is that it, it created a whole new section for non-renewal procedures. It's the same criteria that we use for revoking a permit, but we just made it really clear legally so that if we don't renew a permit these are the criteria that we used. So that if we do to the BVA or we do go to court it's really easy for us to cite specifically why that permit was not renewed. And again that was kind of the regrouping of the permit criteria, there really wasn't much new. We are going to suggest some cleaning up of that language. We've also added a two-year wait period if the permit is not renewed. We did have a couple of cases where people weren't renewed and, you know, within 48-hours they had a new application in and, you know, we had to process it, and that's just what happened. But now there will be a two-year wait period that's in the law.

We are using the same criteria for revoking a permit. That was kind of always in there. Again, we just regrouped them all into one place. And again we are recommending some cleanup clarity for that language. And then like I mentioned earlier, the Council, there were a lot of discussion about the five-year ban. It really went down to the end of it. They probably could have discussed it forever but budget really forced the artificial timeline on the whole thing. Council decided to go ahead to give a six-month amnesty period. Anybody that has received a notice of warning, or the department has found their advertising for operating illegally they had received the ban. Those people can now come in till the end of the year provided that they do certain thing. They have to go back and pay taxes. They have to show they actually had a GET and TAT while they were operating. They have to cease all their operation and they cannot resume during the application process. They have to pay an after-the-fact short-term rental home application fee which I think is \$1,850. One thousand eight hundred fifty dollars. They cannot have taken the homeowners exemption anytime during this period however. These are

some things that are in the certification bill. So that in six months when the amnesty period expires we'd like some of those items taken out. It makes it confusing. If someone checks the box saying they've operated it will automatically disqualify them six months from now.

So those are the basics. There are some more, smaller changes in here. If you're interested, you know, the bill is online or you can come talk to me. I think the easiest thing to do when going through this type of code is I put it in a table format. I just gave you a bigger version. I broke it down into housekeeping versus what's really a policy change. The policy changes are the ones in color. I did go through everything with Hana. It just took a really, really long time. So if we're going through, and you see something in a noncolored area that you want to talk about, feel free to bring it up. But it will just be easier for us today, I think, if we go through the policy changes. So I'm ready to dive in unless anybody has any questions about what was passed.

Okay. Let me, let me add one more just a clarifying thought. At the very end, before Council went ahead and passed the bill there was still some outstanding items that hadn't been fully vetted. I mean this went all the way through once it was referred out of committee into the Council. Second reading they were still discussing policy options. So what the Chair decided to do was those items that were still outstanding, the enforcement and a couple of other things, the five year bill that we're going to talk about afterwards, they moved them out of the changes, into new bills and they adopted on what they already had decided on, so that's what we're looking on. So they got as far as they could. Anything extra they lumped over into these bills that we're talking about today. And the enforcement bill covers bed and breakfast so you're going to see a lot of changes in the beginning that were just short-term rental home code that are now being introduced into the B&B bill.

So the very first item that we're looking at here on the chart is it applies to B&Bs. It's a department recommended change. And what we're recommending is that the short-term rental home bill, one of, one of the policy change is that an applicant now has to have a 50% minimum ownership interest, or a combination of applicants together for short-term rental homes. The department is recommending that we go ahead and put that in for bed and breakfast.

I think what might be the easiest way of taking this all is if you want to do it by consensus we can talk about each provision and you can let me know, and then at the end if you want to just make general comments and about whether you support the entire bill. Chair, is that what you think would probably be? Okay.

Ms. Duvauchelle: That's fine.

Ms. Flammer: Okay, so let's just discuss each one. The 50% minimum ownership for B&Bs.

Ms. Duvauchelle: Yeah, comments after.

Ms. Flammer: No, no, we'll do comments after each of the items I think would be the easiest.

Mr. Lawrence Carnicelli: Thanks Gina, is -- and I'm sorry I'm going to beat this up all through the course of this. Shall versus must.

Ms. Flammer: Yeah, but right now we're going to go through each of the --

Mr. Carnicelli: No, I get it. But I'm saying if we look at the change here, the owner proprietor, the owner of the properties proprietor shall hold a minimum. So I'm just saying is it must or is it shall?

Ms. Flammer: It's shall, and shall is a legal term for has to be, no way around it. It's different than may where you can use discretion and say --

Mr. Carnicelli: Okay, so shall in this case there's going to be no difference between shall and must.

Ms. Flammer: In a colloquial sense, yes, but legally there is.

Ms. Duvauchelle: Director?

Mr. William Spence: Yeah, I was just going to comment that it's the saying to us, when somebody say shall, it's not an option.

Mr. Carnicelli: I got it.

Mr. Spence: There's no may, could, should, none of the option words; it's you will be.

Mr. Carnicelli: Okay because I know that some of the testimony that came through that that's what they were talking about. Like the director shall or you know, it's just like they were saying the director must so that's why I was hung up on that.

Ms. Flammer: No, that's the core of the bill and we'll get to that in a minute.

Mr. Carnicelli: Okay. Got it.

Ms. Flammer: But now do you guys have any --? How do you feel about having a 50% minimum ownership for a B&B applicant to apply? I don't know who's been on here back when we did have someone come through with a 1% interest as the applicant.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: You know my only thing with this is going to be how do handle LLCs?

Ms. Flammer: Right now in LLC there are criteria for when they're accepted in the short-term rental home bill, and the B&B amendments have not be taken up to the Council. But in what's sitting waiting to come up we just take the short-term rental and allow LLCs for B&Bs but they haven't been adopted yet.

Mr. Carnicelli: So it can be an interesting thing then because if you're 50% ownership of an LLC that has a 51% ownership in a property are we saying that you're now 25% owner in that property or are we saying like no that LLC is 51% and you're part owner in that LLC? You know what I'm saying it can get really convoluted. So is there clarity in that?

Ms. Flammer: Well for the B&Bs is, has to be -- ownership has to be either an -- it has to be natural person. You have to own it out right. It can't be owned by another entity. Short-term rentals are different. They've been updated, but the B&Bs has not. So you can't come in as an LLC for a bed and breakfast.

Mr. Carnicelli: Got you.

Ms. Duvauchelle: Any other questions? Go ahead Gina.

Ms. Flammer: Now how do you guys feel about that? Is there anything you want to tell Council?

Ms. Duvauchelle: Commissioner Hedani?

Mr. Wayne Hedani: Why do you, why do you elect the 50% . . . (inaudible) . . .?

Ms. Flammer: It's Council, remember that. Council talked -- at one point Council was at 51%. And the reason that they kind of -- they looked at the difference between 50, 51, 75, 100 is because of families. You have a number of properties that have been passed down where you have children that own it, so they recognized that you can have a five --. They had a lot of discussion about what do you do with a four person family versus a five person family because it used to be 25%. So what they decided is that they were comfortable with 50% of grouping the applicant together. If you have a family of five, in that case you have to have three of the siblings must be named as the applicant.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: I'm actually okay with this, this language proposed to say that, you know, it's got to be 50% B&B. I think that's, it's -- because, you know, again we can't legislate or chase every single person that's trying to get one over. You know, but this, so you know, to say, okay, I got you, it has to be this or it has to be that, we're not going to build a better mouse trap, but I think that I just, I like this provision.

Ms. Flammer: Do you guys want to do it by consensus or do you actually want to take a quick vote on each one? If you want to do it by consensus I need to see nodding heads. Otherwise the Chair can do a quick.

Ms. Duvauchelle: Vote or shake our heads, yes or no.

Mr. Spence: Well, shaking heads doesn't show up very good on the tape.

Ms. Flammer: Oh no, I can speak back to what --. If you want to do a quick hand raise that works as well.

Mr. Gary Murai: Madame Chair if I may. The main thing that I would be concerned about is that whatever method the commission decides to adopt that we have a clear record of what the commission's wishes were, and that could be by taking each amendment individually or it could be doing a wholesale at the end, you know, adopting them, you know, wholesale, or, and course, you know, the commission is free to, you know, I guess, make other recommendations in addition to what the department is recommending as well. So, again, whatever, whatever methodology the commission elects please keep in mind that our major concern is that we have a clear record and so that later on we'll know what exactly what we did or didn't do, and it makes it a lot easier for the department to, to memorialize and then transmit those recommendations clearly to the Council.

Ms. Flammer: The department would prefer to do each item separately. Council's going to hash out each, each one in extensive detail. It would be for us to provide comments while they're discussing each one. If you want to do a quick hand raise that's fine us.

Ms. Duvauchelle: Or we could possibly poll each commissioner at the end, to see if they have additional comments, and we could take a vote at the end.

Ms. Flammer: At the end of the entire bill.

Mr. Spence: I think we're going to take a very long time if we have to vote on each one of these. We have 17 pages, 18, over 17 pages worth of amendments.

Ms. Flammer: I'll tell you how I did it with the other two commissions. We did it by consensus and there was just -- everybody was just kind of in agreement on things. You guys may be all over the board. If you want to do it at the very end, you just going to need to tell me comments for each specific one and what you want to send to the Council.

Mr. Spence: And...I know the way that, that Council does it is they'll move to approve and then they'll amend on the issues that they have problems with.

Mr. Murai: That would work. Is that the wish of the commission?

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: Just a general comment. The fact the B&B bill on an amendment has 17 pages of recommendations I think shows that the bill in its original form wasn't ready for prime time. It was passed in a rush and it created hosts of problems for the department as well as the public in terms of enforceability. Just the fact that we have 17 pages of items that we need to review, to me means that that the original bill was sloppy, it was messy and it wasn't ready for prime time. And I think that holds true for both the B&B as well as -- and more so for the short-term rentals. Generally speaking I don't have a problem with B&Bs and I think the rule should be simple, we should be clear, and they should be concise. And when I looked at all of the items

that are being recommended, it's just, it's just a mess in terms of trying to understand what they're trying to say. That's just my general comment.

Ms. Flammer: Okay, so let's do this, let's take it at the end and then if you guys disagree anything I'll star it and you can go back and make amendments at the end.

Ms. Duvauchelle: Okay.

Ms. Flammer: Okay, great. So moving on. The next two that are on here are really just housekeeping as you can see. We just changed the name of one of the sections, and we just kind of changed the wording just to be better English frankly on the next one.

So if you look at the bottom item here, this, this is what I talked about where it allows the applicants to come in 180-days in advance to apply for a renewal. And then there's also a provision that said if, if it was -- the application, the renewal application was received on time, the department doesn't get it approved by the time the permit expires, the permit can continue on and be valid while the department is processing it. It's currently how we do it. If someone turns -- someone is allowed to turn in their application the day before it expires, we can't really turn it around in 12 hour, an 8 hour day. But legally they can do that. Okay, moving on?

Ms. Duvauchelle: Any discussion commissioners? Yeah, we'll move on.

Ms. Flammer: Okay, so if you go to page 2, the first three are where we regrouped. And again this is the short-term rental home stuffs coming into the B&B bill, so we wouldn't be sitting here if Council had taken up the B&B bill, and they will at some point. But since this is going to come first this is how it's working. So the short-term rental regrouped all the criteria. This is just the attempt to do that. If you go to the bottom this the criteria, the director may decline to renew. This is the new language and it puts all those criteria in. Now because it was the short-term rental home language coming over into the B&B, one of the criteria for the short-term rental home is evidence of a non-responsive applicant. But in here, they, Council changed to owner proprietor. The short-term rental home bill does actually clarify in another section what it means to be non-responsive, but the B&B bill doesn't. So we're just asking, if you look over to the right, we'd like to define what evidence of non-responsive owner proprietor is. I will tell you this, this description is a little more general than the short-term rental home. Short-term rental home says you have an hour. This one give a little more discretion. I don't know if you have any comments about that.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: So, does anywhere in the bill, does it define what a reasonable amount of time is?

Ms. Flammer: No.

Mr. Carnicelli: Should we define what a reasonable amount of time is?

Ms. Flammer: Sounds like you think that's a good idea.

Mr. Carnicelli: I think that it would be a good idea to rather than just saying a reasonable amount of time. I mean, that, I guess, maybe you could defer to Corp Counsel on that. Do attorneys know what a reasonable amount of time is?

Mr. Murai: Sure. I mean, reasonable -- what's reasonable can be inferred, but certainly you can further clarify by setting time phrase.

Mr. Carnicelli: And then the other, the other question I'm going to ask is item #1 of this where it says the director may decline to renew. Again, I'm just going to look at the word may.

Ms. Flammer: Yeah, we were uncomfortable with having shall because every situation is so different. So some of these are pretty broad. So if it's something where the owner proprietor is delinquent in payment of their taxes, but they're in a tax payment plan, you know, do you deny them because of that?

Mr. Carnicelli: Right.

Ms. Flammer: And is one enough or do you want a couple? So we want to be --. So how the law is currently written is that we have the discretion to go through it and just see to what extent. Non-compliance with permit conditions, well, to what degree. So it allows the department the ability to take a look and have some discretion with that.

Mr. Carnicelli: Okay. So then going back to reasonable amount of time. Do you have, you know, from the department's standpoint, you know, what do you guys feel would be a reasonable amount of time for a non-responsive owner?

Ms. Flammer: We haven't hit it yet, so. Short-term rental home does say one hour. One of the reason we're back here is once you start to implement things it gets a clear of how it works. I'm not sure what -- I didn't write this so I'm not sure what the reasoning was.

Ms. Duvauchelle: Commissioner Hudson?

Mr. Larry Hudson: I think one hour is sufficient especially if it's a bed and breakfast. I mean, the person has to be onsite anyway.

Ms. Duvauchelle: Any other discussion? And for myself, I mean, they should be able to -- what if they're going to shut down and go to the mainland for 30-days? I mean, what if they don't have access or on vacation, the B&B is not operating? I mean, I'm thinking more like at least a 48-hour period.

Ms. Flammer: To answer your question, if they go away, they have to --. If they go away and they're not operating there shouldn't be any problems.

Ms. Duvauchelle: Right.

Ms. Flammer: If they go away and they are operating, they have the option to designate a temporary manager, and that temporary manager is then responsible for responding.

Ms. Duvauchelle: . . . (inaudible) . . .

Ms. Flammer: Yeah, the question is do you want to define it or do you want to leave more discretion?

Ms. Duvauchelle: Commissioners?

Mr. Carnicelli: I'd go ahead and say let's -- if we've already got a one hour with the STRs then let's just mirror it. Again going to Commissioner Hedani's thing is...if we can keep this as simple as possible, it's probably simple is better rather than trying to make everything different all over the map. Just for -- I mean, I guess, just for consistency sake. I don't know. Director? You don't look terribly comfortable with it.

Mr. Spence: The thing is that --. I mean, what if it's, what if it's a Haiku bed and breakfast, and the people are at an awards dinner at Kaanapali. Reasonable amount of time. You know, they've got their phones turned off at the awards dinner. And then it's pau, and then you look at it, and you go, oh my god. And, you know, it's, you know, an hour, depending on traffic around the Pali, it's an hour or more home. You know, even calling back, that could still be several hours. So it's -- there has to be some discretion built into. But I agree, I mean, the owner operator should be prompt, as prompt as possible in responding.

Ms. Duvauchelle: Commissioner Hudson?

Mr. Hudson: With the short-term home rentals, the one hour limit is there, they would run into the same problem, right?

Mr. Spence: They could.

Mr. Hudson: So, so, so the same scenario would be in both areas, so how do you deal with it now? What language is in there for the short-term home rentals if the person is in Kapalua, and they call and they say there's noise over here, call the number, and it's going to take way more than an hour even if they left when they were suppose to leave.

Mr. Spence: Yeah.

Mr. Hudson: How do deal with it now? If it's in existence already, how does it help?

Ms. Flammer: I can explain that. So as we talked about earlier, it say the director may decline to renew. So what we do is that becomes a complaint or a problem. And as the problem starts to add up, and you see some consistency of continued lack of response, that's when it really comes into play. It's not that the first time you're a Hana manager and you're shopping at

Costco and you can't get back, bam your permit's gone. That's where the discretion comes into the department for short-term rental homes.

Mr. Hudson: So then why wouldn't it be the same for the bed and breakfast...if we're trying to keep everything consistent?

Mr. Spence: You know, we could, and that's part of the reason for 17 pages of amendments is to try to make them, you know, as consistent as possible.

Ms. Flammer: And we're here to get your views because Council is the one put the bill forth.

Mr. Spence: If you want to say one hour, I think that's fine, and so long as we say the director may decline to renew.

Ms. Duvauchelle: I would support that.

Ms. Flammer: Okay. Alright do you want me to come back at the end, and you can amend it, or do you want to do it just right now?

Ms. Duvauchelle: Let's -- we can do it at the end like everything else.

Ms. Flammer: Okay. I put a star by it just to remind me. Okay, so moving along.

Mr. Carnicelli: If I could just, just for the record is if for some reason we want to move it beyond an hour then let's consider doing the same thing with the STR. You know we'll just -- you know, if we're going to say it's going to be four hours because whatever it is, let's move -- yeah, let's make the change consistent. That's all, just for the record.

Ms. Flammer: Thank you. Yeah. I didn't recognize the importance of that until we got new planners, and here I was trying to explain all of the -- how the bill works and they were just like oh my god.

Okay. So moving on to page 3. The short-term rental home bill and this came from way back in the beginning of discussing it. It says that neighbor complaints of noise counts against you but only when there's three and they come from two different properties. So again we started implementing the bill. We've had three years. Now we're going to have four years with it. We've come to find out that complaints can come sometimes from without of the 500 foot if they're up high and the noise travels down. Hana's got an issue with that. And also sometimes you have a corner lot where you really only have one property affected, but they're seriously affected. So what we're recommending is that we broaden this so that complaints of noise and other disturbances related to the operations from lots within 500 feet. So we're not limiting it to three and we're not limiting it to two people. It just allows the department a little more latitude and considering all complaints. I don't know if you have any comments. Okay, I'll move along. I see some nodding heads. Okay we have a commissioner that has a question.

Ms. Duvauchelle: Sorry, Commissioner Hedani.

Mr. Hedani: Just in terms of how we're doing this, so all of the comments that I have I made on the Ramseyer edition of the bill so we know what we're talking about, what we're opposed to or what we're in favor of. And by going through the matrix, we're not even looking at the bill itself and the language of the bill so --

Ms. Flammer: You can do both. I put the line numbers to the left. Now remember that the items that are proposed by the department won't have, won't be in that bill, what's in there. But --

Mr. Hedani: Okay. Well, I appreciate the amount of work that went into creating a matrix like this, but just to give you an example, 19.64060, paragraph B, halfway down the paragraph I highlighted, retain in my comments and the Ramseyer edition says delete. (*Mechanical problems with the audio system*) It doesn't like that. It says delete, no permit shall be renewed if the operation of the bed and breakfast home has created adverse impacts on the neighborhood in which it's situated or has otherwise caused the loss of character of the neighborhood. And my comment was that should be the retained. I think in your matrix you picked up that it's picked up somewhere else.

Ms. Flammer: It's picked up in the --. It's right here on page 2. It's one of the ones that isn't highlighted because that's one of the places that we -- that whole section was expanded. It was expanded into an entire new section that's below it that's all those criteria. The feeling by Council was that it was difficult to state exactly what that means. So what we did is we then regrouped and added all these other criteria that we used in lieu of just saying the, the neighborhood has been affected. I don't know, does that help? Well Council does, just so you know how they do it is they use the chart and then the use the thing, I guess, the Ramseyer draft bill at the same time. Then they just go back and forth with the two.

Mr. Hedani: Yeah, my comment was -- my comment is that from my perspective a neighborhood does understand when they're adversely impacted. You know it's not vague to them. It's a real impact to them. So the language should be retained.

Ms. Flammer: Okay. Do you want --? It's actually -- it is in another section. It's under Restrictions and Criteria. It directs the department and you folks when we're looking at permits including renewals, it has to conform to the neighborhood. Little different language. So you're recommending that that language stay in addition to all the other criteria?

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: I'm just having trouble understanding what they're doing, and why they're doing it, and how they're going about it.

Ms. Flammer: Okay. Yeah, let me explain that to you then in a little more detail. The language that you just read is vague and very generalized. The department wanted very clear criteria so that if something is challenged and we go to court it's much easier to use these criteria to pinpoint exactly. These are the exact violations from the State Health Department. These are the exact complaints that came in. These are the exact times that the owner was non-

responsive. These are the police reports for problems. These are the neighbor complaints of noise and other disturbances. There's no reason we can't have both in, but I think to -- I think the intent of the department was to make it more defensible. To take something like a neighborhood character has changed and put it into these -- I don't know, whatever these is -- eight different types of criteria as to how or why it's changed.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: Gina, isn't, isn't this -- wasn't it moved to 19.64.065? Isn't that -- isn't all that language that was stricken part of this new section that was then added?

Ms. Flammer: I got --. Yeah, exactly. However, they didn't retain that exact same language. But what they did is they just used all these different specific things when put together.

Mr. Carnicelli: Okay. Yeah, that's what I thought so, it just can't move.

Ms. Flammer: Well, they didn't retain the exact language.

Mr. Carnicelli: Right.

Ms. Flammer: So if you feel there's some value in the exact language I can tell Council that you feel there's value.

Ms. Duvauchelle: Commissioner Hedani, do you want to make that amendment at the end? That we retain the language, Commissioners?

Mr. Hedani: No, as long as it's covered in another section.

Ms. Flammer: And you feel that what was replace was adequate?

Mr. Hedani: Well, I think the more ammunition you have to respond to --. It seems like what we're trying to do is to defend against lawsuits and the more ammunition that you have in terms of language that tries to identify the intent of the bill will give you a better chance of being . . . (inaudible) . . . in court.

Ms. Flammer: Okay, and it also helps the applicant understand a little more clearly what's expected of him. Okay, so moving down then. If we go to the next section on page 4, it's the same criteria only this is what it's -- we use this specifically for revoking a permit. Again, we, we define what a non-responsive owner is, so I'm going to assume you have the same, if you vote at the end, you'll have the same comment on that one. And again it say that we can -- the department's recommending that we can consider all complaints, not just under this criteria of two 12 months, or three 12 months from two different lots. Okay, I don't see any comments.

Ms. Duvauchelle: Commissioner Higashi.

Mr. Richard Higashi: I'm having difficulty with the language and I think one of the things that anytime you set any kind of rule that if you use the same language or word it makes it simple and precise. When you start using may and shall interchangeably, then, then it becomes confusing again. Why can't you keep it all consistent with shall? Because the director is going to be the one responsible to make the determination whether that permit should be revoked or not. And there's a following criteria of the things he should consider.

Ms. Flammer: If it's shall, the director has no discretion. If it's may, the director has discretion?

Mr. Higashi: Well my point is if the director is responsible, he should have the discretion to say shall rather than may.

Ms. Flammer: Okay. Yes.

Mr. Higashi: I mean, what --? I don't, I don't understand the point.

Mr. Spence: Yeah, the point is that --. I'll just tell you honestly we ran into a case where the director did because of the shall revoke a permit that if something was found, and we got it with the attorneys. We got a re de mandamus from the Hawaii State Supreme Court saying, no, you didn't give this guy his due process rights, so we're building some discretion into this so you know that there's some process involved in revoking a permit. So the may in this case is very important.

Mr. Higashi: So, why don't you change it all to may?

Mr. Spence: It says the director may revoke.

Ms. Flammer: The department is recommending everything be may, but the enforcement language that's coming through wants shall so that they feel like there's action that has to be taken. We're going to hit that in just a minute and that's going to be the core of our discussion.

Mr. Carnicelli: Okay, I also, just for the record, because so it can come up in Council, I know that I read in the testimony somewhere around, and it may be more in the enforcement part than, than this, is the director rather than the department. It was at, it was at -- when I read in the testimony, was that more around the enforcement part that the department shall?

Ms. Flammer: It's always the director.

Mr. Carnicelli: The director, okay.

Ms. Flammer: That's how the law works here in Maui County.

Mr. Carnicelli: Okay.

Ms. Flammer: We hold one person responsible.

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: I concur with Commissioner Higashi's comment. The more discretion you give the department, the less clear you make the law, the more fuzzy everything gets, and the more cases you're going to end up in court with because of that fuzziness.

Ms. Flammer: Okay, thank you for that. Okay, so moving down. We're on page 5 now. The language that's in there comes right out of the short-term rental home bill where advertising a property in itself means operating and that we can send out a notice of warning. It's been a great tool we've used that other counties have looked at adding. So what it's doing is adding it into the B&B bill. The only change the department is recommending is that the old language says that within seven days of issuing the NOW, the department is recommending that it's seven days within receipt of the NOW or within the posting of the Notice of Warning (NOW). We recommend that sometimes there's three-day holidays or a person --. We had a case where one of my applicants didn't pick up her mail after a three-day weekend for two days and by the time she finally gotten the notice she accrued \$10,000 worth of fines. I mean, she called, she wanted to pay it off immediately, but it -- that's what the law said. That's what we had to work with. So what we're recommending is that it goes from seven days to receipt or the posting of it on the property.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: Thank you Chair. Just for clarity sake, within seven days receipt of postal -- you know, like return receipt mail --

Ms. Flammer: Certified.

Mr. Carnicelli: Certified and then posting of notice on the property? I mean because posting could be posting in the newspaper. It could be --. You know, so I'm just saying for clarity sake, posting of Notice of Warning onsite, you know --

Ms. Flammer: That's a good question.

Mr. Carnicelli: -- and then return receipt on, on -- of the . . . (inaudible) . . .

Ms. Flammer: Yeah, I'm looking at our Corp Counsel. That's a really good question. I'm going to follow up on that and find out if we need. I feel like that is taken from another section of the law where posting is defined. But I'm not sure if it's a rule.

Mr. Murai: Well, generally speaking, you know, posting basically means like, you know, nailing it to the door, or, you know, taking it to some place on the Courthouse, that kind of a thing, so perhaps there could be some clarification as to where the posting would occur.

Ms. Flammer: Okay. I'm going to follow up with your comment. Thanks. I'm going to follow up on that. So the next section there, it's the same thing, but it refers to when there's e-mails that are used instead of advertising. So somehow you hear word of mouth so an e-mail gets sent,

the person says, yes, I'd be happy to rent that to you. That right there is operating. And again it gives them seven days to get everything down, to get into compliance.

Okay so we hit page 6. Here's the core of the bill. This is what started with that group, The Northshore Operators. Again we talk about advertising, you know, short-term rental going into B&B so it's kind of confusing addressing it this way. But advertising again without a permit is prohibited. So then we go to the next one, one, the alleged violator shall be notified within seven days, that everything has to be taken down within seven days. Again, we're recommending that those seven days be from receiving it. And that the Notice of Warning shall specify that failure to cease everything shall result in an NOV. Interestingly our current Notices of Warning say will. They don't say shall. We're recommending the use of the word may against discretion.

Mr. Carnicelli: Why?

Ms. Flammer: Discretion. So if the department is -- if there is an owner that is diligently working to get everything down off the web, we don't want to have to issue them the NOV. The whole enforcement program is based around gaining compliance. It's not gained around collecting fines. So we have cases sometimes where it does take a little bit of time to get advertising down. There are a lot of third party operators out there. I do want to say that this provision does only apply to the wording of the NOW...in it. Why don't I go through these and then you can give me your comments on may versus shall.

Ms. Duvauchelle: Commissioner Hedani.

Mr. Hedani: One comment that I had, Gina, on Notice of Warning is why do they have it. Why don't they just go straight to Notice of Violation? Because nobody's monitoring the Notice of Warnings. Nobody's following up on the --. The department is being overwhelmed by complaints and by illegal activity. Why not get rid of the Notice of Warning? Go straight to Notice of Violation once you have the evidence that something is being violated.

Ms. Flammer: Yeah. Interesting, Maui County Code doesn't talk about Notice of Warning. It's Hawaii State law that mandates it. I don't know. Our Corp Counsel knows the provision. Mike Hopper talks about it a lot in Council exactly what it is. There is a specific provision in the State law that requires you to give a notice to correct before issuing a violation, and that's why. We don't have it in our County Code. We don't recognize it, but we are forced to follow it because it's in the State law.

Mr. Hedani: So the State is forcing the County to enforce something that they don't enforce themselves?

Ms. Flammer: Yeah. Well, they may with their own actually. They -- they don't give a Notice of Warning for DLNR for violations?

Mr. Hedani: No, I'm asking if they -- they're not responsible for monitoring and enforcing Notices of Warnings for this particular case.

Ms. Flammer: Oh, correct, but we still have to follow State law.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: Okay, I'm going to ask you a question I know I should probably know the answer to, but this like trying to take a sip of water from a fire hose right now. You give a Notice of Warning, I take everything down within the seven days, I'm good. Six months later you catch me again. Is it another Notice of Warning, or is now a Notice of Violation?

Ms. Flammer: It's a Notice of Violation.

Mr. Carnicelli: Okay. So you get one warning.

Ms. Flammer: Yeah.

Mr. Carnicelli: One.

Ms. Flammer: Unless there's some extenuating circumstances such as the house was sold.

Mr. Carnicelli: Right. New, new owner, right?

Ms. Flammer: Yeah. Okay, so number two, for a complaint of advertising without a valid permit number that's initiated by the public then confirmed by the department that NOW should be sent within 30-days of receipt of that provided that the person who initiated that request supplied a physical address for the property. So the intention of this provision is to provide for quick enforcement of the complaints that are filed by the public and that include everything that needs to be issued in the NOW. So the department really doesn't have a problem with this, but they do want to note that the department, it's very rare that they get something in where they don't have to spend time confirming it.

So this -- so our comments are, one, this provision is extremely limited. It only applies to those cases where it comes from the public and it has everything we need in it, and it does not take any time. We are again recommending that instead of shall, it gives us some discretion and say may. Actually we're recommending that number two be deleted altogether. Again we want people to come into compliance. And sometimes removal of the third party advertising can take a little bit longer. And we just don't support mandatory timeframes in general because we don't have any flexibility for extenuating circumstances. There's concern that it could be perceived as inconsistent or selective enforcement if there are precise timeframes if they're not met due to circumstances beyond the department's control. But again this is really me listening to you folks. I'm not here to convince you of our position.

Ms. Duvauchelle: Go ahead.

Mr. Carnicelli: So I -- the whole mandatory response time to me is an interesting one because I don't -- I didn't read anywhere in this that let's say you guys have to respond within x-time, and you don't.

Ms. Flammer: You mean currently.

Mr. Carnicelli: Right. Or, no, I'm just saying in the changes.

Ms. Flammer: Well no, the changes, this one specifically says 30-days. If an RFS comes in from the public and it has the link and it has the physical address, then we don't have to do anything. They want us to get it out in 30-days.

Mr. Carnicelli: Right, and if you get it out in 35-days, then what?

Ms. Flammer: There's another provision later on that says if we don't do it on time it still counts.

Mr. Carnicelli: No, and I get that, but so, and I did read that, so that's the part where I should go in, okay, it just means they have a five day leeway. You know, so to put this mandatory timeline on you to say like, okay, you have to, and I think even in your comments, you said, listen, it's not like we're not trying. You know, it's, it's not like, okay, this mandatory timeline is going to make you work harder or faster or, you know, do your job any better. All it is is this fictitious thing of saying, no, you have to do this. Oh, and by the way, if you don't, it's okay. I mean, this is -- I mean, am I wrong? It sort of seems like that's what it was.

Ms. Flammer: Sounds like you'd rather to comment.

Mr. Carnicelli: Yes, I read some of that.

Ms. Flammer: Yeah, but we're here to hear it. But Council wants to know what you folks think. I mean, that's . . . (inaudible) . . .

Mr. Carnicelli: I just think, you know, the other -- and I know that it was addressed but my only other concern would be is, and I think you said, is it doesn't suddenly mean that if you don't respond in 30-days that I'm off Scott free. Like that to me is the important part of saying, okay, if you're going to put these mandates on the department, it doesn't mean that if you don't hit those, then now suddenly I'm okay. Like that to me is probably the biggest part of it.

Mr. Spence: No, I would agree with --. In every case we try to respond as soon as we can. We had an incident a couple of months ago where some very pro-active member of the public filed about 100 RFSs within two days. So could we send out notices, 100 notices of warning within 30-days? It's possible. It's difficult. But first you have to find the property, then, you know, look up the owner. I mean people send us a link to an ad on Airbnb or the RBO or some other website, there's no, there's no address on that ad. There's no name of an owner. They will say, you know, Jenny is your host or something like that, well, we have no idea who Jenny is. So it takes some effort to go, to go find out exactly where that property is, and find out who the owner is, and then properly address it and all that. So we are making every effort to be as responsive

as possible. I think even, even the people who proposed this language, you know, they understand that it's sometimes hard to find the operator. We know a general area; Haiku, Maui Meadows, you know, there's a lot of homes in Maui Meadows that we have to search through.

Ms. Flammer: Here's the other problem we're running into is that the illegal operators are getting more sophisticated. So the newest thing is to post a picture of your neighbor's house and their address so that when you look at the map it shows kind of where it is, and you're like, oh, that's exactly where I want to stay. And then the e-mail comes right before you go to stay there, and it's like, no, no, that's not the address, here's the address, it's right next door. Yeah, so that's what our enforcement officers are running into. So, again, you know, we don't have a problem with the intent at all. It's just that it's just very rare that once you get in, it has everything you need and it only takes five minutes to get out.

Mr. Carnicelli: So then if I could, Chair, then for the record and the sake of this being there is, to me, I would actually like to see the hammer get bigger then. You know, as far as like, you know, it's like, okay, the fine is \$1,850 or something like that, well, and then okay you can, you know, there's all these maze in there and whatever else there is, but it's just like --. If the hammer -- because that's the only way really is if it hurts. You know, if it's \$1,800 it's just the cost of doing business.

Mr. Spence: Right.

Mr. Carnicelli: You know, I'll write that check all day long because that's, you know, a half a week's rental and no problem. So, you know, I guess, I would like to see the hammer get to where it's like if you get caught and it's going to sting.

Ms. Flammer: You remembered the last election where there was a Charter Amendment where they had the fines be more than \$1,000?

Mr. Carnicelli: Right.

Ms. Flammer: That's what we tried, yeah. That's what it would take to make that happen. Yeah. I don't think we did a very good education campaign for people to understand that that's really what that was about.

Mr. Spence: As an internal policy we recommend -- we recognize exactly Commissioner Carnicelli is explaining or is saying so often enforcement is the cost of doing business. You can get up and running, and if you get caught you pay the after-the-fact fee and everything is fine so we're making an internal policy that, no, if enforcement should cost more than just the cost of doing something after the fact because that's what we have been pursuing.

Ms. Flammer: Okay, so moving down the line here. Number three says that a Notice of Violation shall be sent to the property owner and the violator within 60-days of the deadline if the advertising continues. This is again, this is a shall versus a may. Again this provision only applies to advertising within the control of the owner, such as a paid site like Airbnb or the RBO. The creators of the bill, they felt that 60-days was adequate time for the owners to remove the

advertising, for the department to write the NOV, and for Corp Counsel to review an NOV. The department, again, we like to have a little discretion in case, you know, we have a 100 come in all in one day or --.

Sometimes we have other types of violations that come in mass. I don't know if you remember the sign violations from a couple of years ago where somebody got a fine for signs. It started in Maalaea, and they started turning everybody in. Our department became the sign police for the next six months, I think. That's pretty much --. I mean it was a large volume. Well, we only have so much staff. Council has been very thin with their money. They don't want us doing overtime, so we just have, you know, certain capacity there.

Okay, number four, again, this only applies to advertising within the control of the owner, and it doesn't provide a time limit for issuing the NOV. But it does say that all repeat violations for advertising without a permit shall result in an NOV. Again, we just want a little bit of discretion with this. We're fine with may.

And then number five here on the next page that we talked about, the department's failure to serve a Notice of Warning or Violation within any time limits specified in the section shall not invalidate the Notice of Warning or the Notice of Violation. Though we're recommending that two and three be deleted. If they're not deleted by the Council, we need number five to stay in there. So those are our comments.

Okay, the next item down. Again, if Council Services got the bill and they went and applied it to the B&B, I did talk to them, they did feel that this was the intent. It adds the five year ban to B&B operators. So the proposal came from the Planning Committee and apparently it was discussed, and the intent is to treat all violators the same whether you're a resident operating in your own property or whether you're somebody that doesn't live on that property. The rationale behind this as I was told is that illegal vacation rentals, putting B&Bs, contribute to the shortage of available long-term housing. And the intent of the ban is the same for both; to discourage people from operating illegally. However, I will say the department doesn't necessarily support the five year ban for B&Bs. We feel the resident should have more flexibility to become legal, but we'd like to know how you feel about that.

Ms. Duvauchelle: Commissioners?

Mr. Carnicelli: I'll go ahead. I would have to agree with the last part that you said. I mean, I personally feel more lenient towards people that live here and operate rather than the, you know, STRs of some. You know, of course, we all want to paint it as some multimillionaire sitting in California or whatever it might be and running his so I mean I...I think I'd like to hear some of the public testimony on this particular item before I actually weigh in as to whether I'm thumbs up or thumbs down on it. I think that it's important, you know, to hear a little bit more of the testimony on that because I feel a little bit caught by it. You know, there's a part of me that likes it, then there's a part of me that doesn't like it, and I get the intent, but you know, what are the unintended consequences that I might not see in that, so I think, before I weigh in either way on it, I'd like to hear some of the public testimony.

Ms. Flammer: I'm going to star it to come back.

Mr. Carnicelli: Okay.

Ms. Flammer: Okay.

Ms. Duvauchelle: Any other comments? Commissioner Hedani?

Mr. Hedani: One comment that I had is that, in general, I think the short-term rental bill should be revoked, just done away with. That will eliminate half your problem. And then just concentrate on the B&Bs. People that live here, that occupy the residence, that doesn't displace housing, is responsible for the guests on his property, I have no problem. I'll insert that everywhere we go along this merry way.

Ms. Duvauchelle: Thank you. Gina, go ahead.

Ms. Flammer: Okay. So for the B&B the last two, or the last two pages here are basically just some language clarification. And then at the end, again, it's coming from the short-term rental home, the Council would like -- they'd like -- the department, the State Department of Taxation and the RPT which we do now, but also the Council wants to see all the NOVs that were issued for unpermitted B&Bs. They want to see all the Notice of Violations, all the appeals and the outcomes of appeals. Yeah, we don't have any problems with that. We just don't differentiate between unpermitted and when it's a violation of a current one, so we're just saying we'll just give you the whole list there. And we're fine with sharing the appeals and the outcomes of the appeals. We actually had only one appeal that's recent for an NOW for illegal operating. We were really surprised about that. I think people know when they're caught that what you're going to say when you go to BVA?

Ms. Duvauchelle: Mr. Hedani?

Mr. Hedani: Is there a way, Gina, that we can get from the State Department of Taxation an identification of all the properties that have registered for GET for a short-term rental or a B&B?

Ms. Flammer: From what I understand with our discussions with Deputy Director who has talked to them, the answer is no. We've asked in the past --

Mr. Hedani: So a recommendation would be to encourage the Legislature to pass the bill that would require them to identify their property as a B&B or short-term rental at the State Legislature so that that information can be secured by the County in enforcing who has a valid permit or not.

Ms. Flammer: Yeah. They've gone in that direction where you have to post it. There should be way, yeah.

Mr. Hedani: But I would like that to be a recommendation moving forward to the Council to ask for that business.

Ms. Flammer: Do you want to take that up now or do you want me to star that to come back?

Ms. Duvauchelle: We'll star that, and we'll do the amendments at the end. And then if we don't mind, is everybody okay to take a, before we go into short-term rental home, can we take a five minute break?

(The Maui Planning Commission recessed at 10:18 a.m. and reconvened at 10:24 a.m.)

Ms. Duvauchelle: Proceed.

Ms. Flammer: Sure. This next part will go a lot quicker because it's just a repeat of -- much of it is a repeat of what we talked about with the B&B bill. Okay, start with the first one. So the first line here we have on page 9. There are no changes in the bill that that's in your report. And it's only out there if Bob Carroll's amendment, the five year ownership requirement passes, but we are just interested in your thoughts on permits transferability.

So what it says is that currently the short-term rental home permit is non-transferable, however, the idea has been floated at Council that if a property that had a short-term rental home permit is sold the new owner may apply for a permit provided they do within -- hold on a second. The new owner may come in provided that the transferred is approved by the same authority that approved the original permit. I think the intent is so that the five year ownership requirement works. But I think the intent also is so that the people that have reservations it's seamless. There's not a cancelling of someone's reservation. The new owner comes in and then...reservations can come back up again. If you read our report the department has concerns about this, so we wanted to get your opinion on the transferability of permits.

Ms. Duvauchelle: Commissioners, comments? Commissioner Hedani?

Mr. Hedani: I think the permit should not be transferrable. And, in general, I think, on short-term rental homes because there's only a limited number of short-term rental homes that can be approved, the question that I would pose to the Council is why should the people that own the short-term rental home permit retain it in perpetuity as opposed to giving somebody else an opportunity of operating a short-term rental home if that's the case.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: So for me I would have to agree with Commissioner Hedani in, in the transferability because then what happens is we're no longer selling real property. We're now selling a business, you know, that's, that's the difference in this now. And so now suddenly the value of that particular property isn't based on the comps in the neighborhood, it's based on what it can generate. And we're now selling -- we really truly are selling commercial property then if it's transferrable.

Ms. Flammer: Good comment. Thanks. I'll come back again at the very end just to summarize.

Ms. Duvauchelle: Director?

Mr. Spence: And just for the record also I've, I've thought about this quite a bit myself after signing this recommendation. What Commissioner Carnicelli is saying is absolutely true. The original intent was that the concern that there be inflated property values and those kinds of things, we were trying to discourage that by not making them transferrable. I think that --. There should be -- I don't know how to do it. There should be some provision where a new owner can apply and upon on, I don't know, during the purchase or something like that but it's still can't just be transferrable only because then it is as he was saying it is a commercial property, you're purchasing a permit, you're not buying a home.

Ms. Flammer: Right. We go into more detail on that when we hit the next section, the five year ownership. Again, we just wanted to hear what the different commission thought about that since it came up at Council.

Okay, so the next couple sections that are not highlighted apply to condominium property regime. It looks like we have another.

Ms. Duvauchelle: Oh, sorry, Commissioner Hedani.

Mr. Hedani: To back up a little bit on what Commissioner Carnicelli just said, one thing the Council should take into consideration is setting up a system so that when a short-term rental home is sold and that income, that income stream is sold, that valuation does not affect the valuations for real property taxes of the entire surrounding neighborhood.

Ms. Flammer: Currently it doesn't affect real property tax because they're in a separate category. What happens however is that the purchase prices will be higher because the permit is --

Mr. Hedani: That's my point.

Ms. Flammer: Right.

Mr. Hedani: If Real Property Tax Division does their survey for assessment purposes, they should exclude all of the B&Bs and the short-term rental homes from the market valuation so that it doesn't skew the entire neighborhood.

Ms. Flammer: They do. According to them they do. But what it doesn't take into consideration is that the purchase price is just higher so the comps then are higher so when the appraisal comes through the appraisal is higher. But RPT says it's apples and oranges so when they do their comps they do it based on tax classification.

Mr. Hedani: The property tax assures you that they take out all the B&Bs and short-term rental homes on assessment?

Ms. Flammer: Yeah, they came here. We actually made them come here, and asked them that direct question and they, because it's a different tax classification it's not supposed to. But like I said what does happen is it gets folded into the price and that price is then higher so your appraisal is higher so it affects the comps out and you know. You can't regulate the market, but you can to only to some degree.

Mr. Hedani: Well, what I'm saying is that they should exclude those appraisals.

Ms. Flammer: They do. RPT does. When they're doing -- when they're setting or doing their calculations because it was in a different tax classification they don't put it into that residential or that homeowners, according to them.

Mr. Hedani: They don't count it as market value?

Ms. Flammer: They don't count it as in the same pool that they do for the other properties, according to them.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: I guess just for the record I'm going to use a metaphor just for the record because I know Council Member Carroll is a fisherman. So when you buy a commercial boat, you're not buying the value of the boat or the value of the slip, you're buying the value of that enterprise that you're buying. You know, so it's like when you go -- you know if you were to sell I don't know pick one of the boats in Maalaea or Lahaina Harbor you're paying way more than that boat or that slip is worth because you're buying, you know, the entity with which is operating that, and so I think this is similar to that.

Ms. Flammer: It's so interesting you would use that. When this -- when Council first discussed in 2012 whether or not it should be transferrable, Council Member Mike White used the Maalaea boat slips as the example. He didn't want it to become that because you cannot get a slip in Maalaea unless you buy a boat. And because there is a cap that will get filled up some time, he didn't want that to happen so that is good.

Ms. Duvauchelle: Commissioner Higashi?

Mr. Higashi: So Gina on this particular proposal are we eliminating transfer or what is the language?

Ms. Flammer: We're going to come back to it. I'm going to come back to it, but it sounds to me like there's going to be amendment that you do not agree with it, and I'll have, I'll recap some of your discussion when we do that.

Mr. Higashi: So you'll take it separately?

Ms. Flammer: Yeah. We have about three so far that you're --. You're going to -- it sounds to

me like you're going to vote to approve the bill with the exception of these couple of things that I've starred.

Mr. Higashi: Okay.

Ms. Flammer: Okay so back to the condominium property regime, Council in their amendments they allowed CPR properties, and I'm assuming everybody knows what that is, that's on the commission. Okay. For the audience it's when you take a --

Ms. Duvauchelle: Mr. Hedani?

Mr. Hedani: Where are you Gina?

Ms. Flammer: I'm on page 9, and I'm on the, the non-colored CPR section, on the white. And so one of the changes that came in the bill that is law is if you have a property that's been divided, ownership only, into a condominium property regime, we used to do the permit for the whole property and you know that from reviewing these you've seen quite a number of them. So that if somebody came in to, both units came in, they're under one permit. A lot of discussion about this at Council. Council decided you know what we're going to allow them to have separate permits unless the person owns both. So it passed. We're now implementing it. There's been some confusion as to what the notice is. Do you notice from that individual CPR unit or do you notice from the entire lot? We've come to the conclusion that just for simplicity sake it's much easier if you notice from the entire lot. That's what RPT has. The owner then doesn't have to go do their own measurements. So the next, I think there's four different areas in the law. We're just clarifying that that's...that's the easiest and best way to do it. So that's the first two on page 9.

Number 10, actually, we, we skipped the CPR for now. This is the language that refers to that certification form. So if you look in the left column it is the existing code, and it tells you all the things that's on the certification form. When the certification form was written it was assumed that the five year ban was going to go away. So it's written in a way that says you can check this box that says I was using it for a rental, but, you know, I paid all of my taxes, I have a tax clearance showing that I paid them, I paid my after-the-fact permit, and then you can come on in for the permit. Well, when the amnesty permit expires what's going to happen is people are going to check this box that I've advertised and then they're going to be banned. But the language is very misleading. It looks like if I go do all these things I'm going to be okay. So we're just asking. It's most likely this bill we be taken up after the six month period is over. At least finalize that we should just remove those sections for clarity for the applicant. Council may, again, you know, they may rehash this five year ban and they can adjust this as such.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: I'm sorry to do this I'm just going to back up on the CPR on page 9.

Ms. Flammer: Sure. We're going to hit on it again on 11 anyway.

Mr. Carnicelli: Okay, well then let's --

Ms. Flammer: No, go ahead.

Mr. Carnicelli: I mean it seems a little bit innocuous, just like, okay, yeah, you know, you can do this. But, I guess, my question is how is this going to affect code because what we're really doing is saying this is now a separate and complete parcel is really what we're doing. By saying this is, you know, rather than saying like, okay, it's a CPR property, but we're now saying, like, no, no, this is a separate parcel. I mean, at least, am I overreaching that or not? Because it seems kind of innocuous but it's like what affect or effect is this going to have with other things where people can say no, no, it says here in the Code.

Ms. Flammer: Yeah, that was the department's argument is that both Planning and Public Works treat CPR properties as the entire lot. So the density stays the same, but the whole thing stays together really even for enforcement. RPT use them as separate for ownership, so we just thought it was kind of inconsistent and confusing to have that individual unit; only for this specific purpose we treat it separately. But, Council felt differently so they had us write it in.

Mr. Carnicelli: Well, because CPR is a State --

Ms. Flammer: Yeah.

Mr. Carnicelli: It's a State ordinance, it's not a County ordinance so that's where it's a little bit conflictual in that.

Ms. Flammer: Yeah, but to them, you know, they're the policy -- they make the policy, we implement it.

Mr. Carnicelli: Okay. Yeah, I'm just curious about the ramifications of it. So anyways, thank you. Move forward again. Sorry.

Ms. Flammer: Yeah, yeah. Okay, so at the bottom of 11 we deal with the CPRs, and again it deals with where does the written notice goes. And we're just recommending that the entire 500 foot is measured from that, from the entire lot.

Okay, so now we're moving on the page 12. Again, it deals with the CPR and noticing. If you go down to the bottom, we're dealing with the permit renewal criteria, or the permit renewals. And again like we talked about with the B&Bs we'd like to give applicants 180-days to come in. And also if the department doesn't get to officially approving their renewal by the time it expires that the permit stays valid until we deal with that...provided that they gave us something that was complete.

And then again if you keep going to page 13, like we discussed for the...non-renewal procedures we'd like to be able to look at all complaints of noise, not just with these specifics. And then we kind of cleaned up the language a little bit. Noncompliance with permit conditions

and other government regulations is all in one instead of having it in three. Again, when we go down to the next section, the revocation procedures it's the same that we discussed before.

So now we're on page 14 and we're back again at the core of the bill dealing with enforcement only now we're in the short-term rental home section. I can take your same comments that you gave that you're going to talk about and apply them to both unless anybody feels differently that short-term rentals and B&Bs should be different.

Ms. Duvauchelle: Commissioner Hedani.

Mr. Hedani: Going back to 19.65.070B on page 12 on permit renewal.

Ms. Flammer: Yeah.

Mr. Hedani: It seems that you're adjusting from 90-days to 180-days because of the work within and people are interpreting within to mean no earlier than 90-days prior to. So wouldn't it be better to approach it from language that says at least or something like that? If the timeframe that you want the application in is 30-days before it expires then you should say...at a minimum of so many days before it expires you need to come in for a renewal. So that gives them a year ahead if they want to apply; if I wait a year in advance for a renewal. Rather than trying to peg it at 90-days or 180-days or some other figure.

Ms. Flammer: Do you have some specific language? It sounds like what you're recommending is how we used to do it.

Mr. Hedani: Did it work?

Ms. Flammer: It worked until our attorneys looked at and said legally by saying you have to come in 90-days that is your expiration date. So we deferred and changed it.

Mr. Hedani: Why don't you just say prior to expiration of the permit?

Ms. Flammer: They have to come in prior to the expiration of the permit. Oh, you mean just give them -- they can come in three years in advance.

Mr. Hedani: They can come in any time prior to the permit expiring.

Ms. Flammer: I think our concern would be is if you gave them a five year renewal and they came in three years in advance.

Mr. Hedani: Sometimes it takes us two years to review it, a permit, right?

Ms. Flammer: No these. Not a renewal. Unless there's --. We'd some issues with the State issuing the A-6 tax clearance. But other than that we've really streamlined our renewal process. So if somebody comes in, they don't have a lot of complaints, they've gotten that A-6 with no problem, we can turn it around pretty quickly.

Ms. Duvauchelle: Commissioner Carnicelli.

Mr. Carnicelli: I had the same thought, and then the thought that, you know, followed that thought if I can follow my own thoughts is -- let's just say they came in a year ahead of time, and then there were violations or things like that that would disqualify them. You know, so to give them, you know to say, hey listen you can come in any time prior, to me, was a little bit like, well, just to use a ridiculous they come in three year ahead of time and all of sudden, you know, we give it to them and then, you know, they completely screw up for the next two years but we've already given them. So I like the fact that there's at least some kind of time line there that says something. That was just my kind of thought.

Ms. Flammer: I think our former language was at least 90-days in advance. So actually we did have someone apply a year and a half early but that's because that person was taking reservations a year and a half out, and was just kind of nervous. So, we have some really good applicants that really do --. Yeah, it's really -- yeah, it's nice to work with them.

Okay, so if we continue back down. I think we're back -- we're back at that core of the bill. Like I said if anybody has any comments that are different for short-term rentals than B&Bs now is your time.

Other than that if we go to page 16, and that's where there's a change. So the first thing that's in the bill is it changes -- right now it says this is a five year ban. It says you are banned for five years, or ineligible to apply for a permit for five years. Council Services is recommending that it's from the date from the most recent department notification of unlawful operation. We call it kind of a rolling date. We have had some people that have gotten Notices of Violation and they just keep operating and keep operating, and that's just fine. So that five year date, it doesn't mean if you continue operating for five years you can now come in. It means as long as we're notifying you that date moves.

We're also -- we are recommending, it's not currently in the bill, but we're recommending that illegal short-term rental home operators not be able to apply for a B&B. We've had a couple cases where the people lived on the mainland, all of sudden they're applying for a B&B, we show up at the house, there's a lock key on there, and then, you know, all of sudden you're like, huh, how do we prove they live here. It's become a little bit of a loop hole. So we're recommending if you were found to be operating short-term rental, you didn't live there, you cannot come in for a B&B. The other thing that we're recommending, but we really want to hear what you think about this is that the property itself becomes banned. Another loop hole we found is that they changed the ownership entity and then they come in. It would also affect, though, if the property was sold. So we're curious with what you think about that. And then we're recommending that any of the amnesty provisions be removed once that time period is passed. And then the rest of them are pretty much what we talked about for the B&B, just clarity. And again we're fine with, with recommending, showing them -- include Council as well as the tax departments how many NOWs, NOVs, and appeals and their outcomes. So that's where we get to the end. So I'd love to hear general comments on enforcement that I could pass along to Council as well as go back and just hit those couple.

Ms. Duvauchelle: Commissioner Carnicelli.

Mr. Carnicelli: So, we kind of skipped over there. The, the aspect of, okay, you get caught running a short-term, you cannot apply for a B&B. I'm in favor of that. I like that because that's, you know, to me that's not trying to make a better mouse trap. That's kind of pretty straight forward one. You know, that's not like trying to find, you know, every loophole that some guys going to make or not. The one that is is to say, okay, does it run with the property or does it run with the owner, it becomes a little bit more nebulous in that. You're saying, okay, I have a short-term rental, I screw up, I sell my property, the guy that buys can't, you know, operate that. However, you know, I mean is that then a disclosure item? I mean, is that just a disclosure item so when you buy that property you know, okay I can't run, you know, a vacation rental for five years because the guy previous it's like a disclosure. Or, is it really kind of hindrance on someone that, you know, is, is not knowing. Again, I think that's one of those I want to hear public testimony on as well to kind of --

Ms. Flammer: Unless anybody has any questions before we hear public testimony.

Ms. Duvauchelle: Alright moving on then. If anybody would like to testify on this agenda item. We had one gentleman that registered, Jack Riley. You have three minutes.

Mr. Jack Riley: Okay, thank you, Vice-Chairwoman and members of the Council, I'm not here to testify about this bill.

Ms. Duvauchelle: State, can you state your name please? And pick up your microphone. Thanks.

Mr. Riley: Jack Riley. But the reason as I listened to the testimony is I have a house up in Kula. I've been renting it to a single woman with a child for five years. Now a few months ago, and I've informed later that I guess this 100 complaint RFS that you got, my tenant, unbeknownst to me had put it on Airbnb. Her lease with me prohibit any short-term rental, but I got the certified letter which could have resulted in a ban. Now the Planning Department was super. The day I got it was the 7th day. I picked up the phone, I called, we got the woman on the phone, she said I didn't know, we took the ad off. And I was informed that the warning was satisfied. But here I am providing housing, and actually I give her a discounted rate of what the market is, and I'm going to end up being banned? So I think this is some, you know, again the unintended consequences right then and there. I'm trying to do the right thing and I ended up getting up a certified letter. So I don't know the answer to it, but I do know that here's a real world, this happened, and you know, maybe this lends some more precedence to why the director of goes may's instead of shall's. And in this case, I think the may prevailed and, you know, stopped something that shouldn't have gone on. But I wanted to bring that to your attention that this is something that really happened, and I don't think anybody wants to tie up people that are providing long term rental housing. And the may and shall, maybe that's the answer. But I certainly wanted to bring it to your attention.

Ms. Duvauchelle: Any questions for Mr. Riley? Thank you. Sorry, Mr. Castro.

Mr. Castro: Was the advertisement removed?

Mr. Riley: Yeah, you know, I texted her and I said are you doing this? And she said, well, yeah I just put it on. So I said you take it off right now. I send her an e-mail. I said you're violating your lease with me. And then we got the representative from the Planning Department, and she and I were on the phone and we went --. She said do you know which one it is? Because I didn't know where to find it? I've never been on Airbnb. And so, but your staff member, she found it, and she says, okay, it's gone now. I said, so are we okay? And she says, yeah, you're okay. But again the staff was, you know, excellent and my compliments to him, but it's a strange case and I think as you, you know, try to cover all these mouse holes and things, this is something that I don't think anybody wants to penalize people that are just doing long-term rentals and create a consequence like that.

Ms. Duvauchelle: Mr. Castro?

Mr. Castro: Yes. The reason I asked that is there was a case years back now when I sat on the Board of Variances and someone had put in an advertisement in one of the search engines. And even though they attempted to take it off, when all the other search engines pick it up, you've got about like now 14,000 to 16,000 advertisements out there, so it's just a concern.

Mr. Riley: Yeah, it's the world that we live in today. It's not like the newspaper or something simple where, you know, the way it used to be. But, anyway I wanted to get that in front of you all to take it into consideration please.

Ms. Duvauchelle: Thank you. Anybody else wishing to provide testimony on this item?

Ms. Kathryn Clark: Aloha, my name is Kathryn Clark, and I'm a board member of the Maui Vacation Rental Association. Previously we've been before you to ask for a fair permit process. Even though that's important, it's only part of the vacation rental equation. The other part is enforcement. Although we believe in the right to a fair process, we also believe that enforcement must be swift, decisive and effective. It's not effective to give a warning which includes banning a property from applying for five years, but not follow through to be sure that they remain closed. It's infuriating to see properties that have five or six RFS still advertising, still operating. Or those that shut down for a few months after an NOW and then start up again. And equally frustrating is to see properties that have been advertising for years with no contact from the County. So what is the solution? There's always talk, but the problem still exists. We've talked about enforcement since the 90s, but still seem to have many unpermitted rentals. Do we really believe that changing a few words in the ordinance is going to magically solve this problem? Will putting mandatory time requirements into the enforcement process help? Perhaps, but it would only apply to the non-permitted operations submitted to the County via RFS. In other words it would the burden of enforcement on members of the community. The only way that this problem will be solved is if the enforcement department wants it to be solved and makes a long-term commitment to it. It's time to think outside the box and get expert help. On June 16 a mainland company made a presentation to the Planning Committee outlining their program for researching and identifying most unpermitted short-term rentals. This program

seems to be working in other areas, why not here? More than any other action this problem will be solved by consistent, diligent affects in monitoring the advertising. At one point the County was doing this and the results were really noticeable. It seems that proactive enforcement is no longer as aggressive as it was, and new unpermitted ads are popping up. This process is tedious but we're at the point where it's actually manageable. The County cannot rely on the public to be the enforcers via the RFS process, and must make a commitment to proactive enforcement. Thank you.

Ms. Duvauchelle: Any questions for Ms. Clark? Thank you.

Mr. Tom Croly: Aloha Chair, aloha committee members, Tom Croly speaking also on behalf on the Maui Vacation Rental Association. And I submitted some written testimony. You only got it this morning. I'm not sure if you've had a chance to review it, but I'd be happy to answer questions on that. A couple items that I just want to make a point about. First, you're kind of reviewing the entire B&B and STR ordinance and I want to be clear that those in those industry, those with permits, those with permit applications in process, the Maui Vacation Rental Association hasn't been consulted in any way, shape or form about all these changes that you're making. So we would like to be part of that process and part of the discussion about, about these things, but we have not been, been part of the discussion as to what you're going over today.

To that end, I want to point out that everyone has a role to play in the success or failure of any law. We can never say it's the police's job to, you know, to take care of every law. Every citizen has a, has an obligation to play in that. Just as with the short-term rentals, every operator has the responsibility to understand the laws, and to do their best to comply with the laws. Now you guys are listening to what the laws are right now, and you can see right away that they're not straightforward. They're kind of complicated. And I spend a lot of my personal time talking to people on the phone and explaining to them what the laws are and what they have to do to get a permit and that kind of thing. I also help people as you know put together applications, and that becomes incumbent upon the Planning Department and the planners to properly process those permits and to fairly process those permits that doesn't, you know, scare away that applicant. And then this body has a very significant role to play to address any concerns that might have been raised by the, the public, and maybe to mitigate those with conditions and on occasions, of course, say no to a permit that just is not, not correct.

The Zoning and Enforcement people also have an obligation to consistently enforce. Now, as Kathy just pointed out, adding a few lines that says you must or you, in seven days must, that's not really going to change this process. But if we do have consistent enforcement taking place and if people will recognize they can't get away with doing whatever they want to do. We did have some proactive enforcement taking place about a year and a half ago, and it's unfortunate that that has ceased completely. And that was having an impact. People were recognizing, I guess I have to go get a permit. I don't think that it helps in any way, shape, or form when someone understands that they have to get a permit that they find out now it's too late, now you can't get a permit. You know, we really want to try to give them the path that they can walk that would be correct even if they've made a mistake in the past. Something as simple as the B&B, the 50% ownership thing. We can talk here and we can think about one situation that it might fit

for example. But there's hundreds of different ownership situations. A family owns the property, the father and the mother own the property, they let their kids live in the property. The kids are not 50% owners of the property, but they are owners of the property, and now you're going to say they can't run a bed and breakfast. There's all kinds of different scenarios that might come up.

And to that end, I just want to point out all the different rental type people. There's the people that I call the home sharer. That's a person who rents a property. They're a long term tenant in the property like Jack Riley's tenant that says I've got an extra bedroom I'm going to put it on Airbnb and rent it. Okay, there you go, that's the home sharer. Then there's the sub lender. There's the guy who actually rents a property for the sole purpose of turning it into a vacation rental and just renting out that property, doesn't live there. We don't even have a, a, a permitting process for either of those guys. Then there's the entrepreneur and you guys know that guy. He finds a property, he buys it for a low price, he says okay I can make more money vacation renting and put it into vacation rental. There's the second home resident. That's a resident who might own the home right next door to himself. And he owns that home next door to himself because he wants to know who's going to live there, you know, and he might decide he wants to use it for vacation rental because he can control that.

Ms. Duvauchelle: Mr. Croly, please wrap up.

Mr. Croly: Okay. And then there's the second home visitor, and those are the typical ones that, that come in for permits. But my point is we just can't distill this down to one little, you know, group of people and one scenario because it really is much broader than that.

Ms. Duvauchelle: Thank you.

Mr. Croly: Thank you.

Ms. Duvauchelle: Any questions for Mr. Croly? Commissioner Carnicelli.

Mr. Carnicelli: Thank you for being here Tom. So as the --. Are you the president of the TVR Association?

Mr. Croly: I'm one of the board members, and I'm the primary spoke person for the --

Mr. Carnicelli: De facto.

Mr. Croly: -- for the Maui Vacation Rental Association.

Mr. Carnicelli: So -- okay, I kind of look at you as an expert in this regards because you --. Anyways, I get what you're saying, you know, painting a broad picture here. I think that we all kind of agree that there's a problem, right? That we have a problem. I don't think there's any disagreement in the room about that. It's all just how we're facing that. So without getting into it, you know, I'm going to kind of put a little bit shackles on you, without getting into a 30-minute dissertation, what are the solutions? Like, you know, can you give me directly when you say,

like, okay, because we've looked at a couple of things, like, you know, 50% ownership, the five year ban, you know, things like that. So if you're emperor for the day what are your direct solutions?

Mr. Croly: Right. Well, one of the, one of the solutions Kathy made, made reference to and that might be having a third party do the monitoring of the improper, you know, that not permitted rentals, and maybe initiate the initial contact with that person. So it's not coming from the County, it's coming from a third party who then says, hey, you know what you're doing is not legal, and it's subject to this, this and this. But if you want to get a permit, here's how to do that. That would be one way to invite people into the system and also for those people to recognize I can't hide. Companies that, that as Kathy mentioned that are doing this, they're using sophisticated online resources that go beyond just somebody looking up an address and matching it to an ad. There's actually, you know, more big data that they can put together to do that. So that's one, identifying that.

When it comes -- when that person comes in whether it be for a permit or whether it be for an enforcement action, we do need consistency about, you know, how that, that gets processed. And, and it can't stop and start, and you know, if someone is going down the road of trying to comply they should be -- hold their hand and help them down that road, help them through the compliance. The idea that anyone who we find doing this we're going to bang over the head. We talked about that for years, but it really doesn't work, you know. We really need voluntary compliance with this whole thing. So it's a hand in hand thing between permitting and making, getting a permit a reasonable option for most people provided that they follow the rules, and enforcement where occasionally we have to employ Corp Counsel to take it all the way to court and that kind of a thing.

Ms. Duvauchelle: Does that answer your questions?

Mr. Carnicelli: It does. Just -- what do you feel about transferability?

Mr. Croly: Transferability was something that was long discussed when we, when we first, you know, created the B&B ordinance and the short-term rental ordinance at Council. And the feeling was, as was expressed here, we really don't want to make these permits, whether it be a B&B permit or a short-term rental permit transferable because it does exactly as you talked about, it increases the value of the property. Council Member Carroll put this provision into this, this, the next item that you're going to hear and we can talk more about the pros and cons of that item once it comes up. But we're not in support of strictly transferring a permit, but we do believe that a permit, the new owner should always have the option to get permit just like anyone else. You shouldn't say to someone, well, the previous owner had a permit so you can't get one if they, if they follow the criteria. Because keep in mind, we don't issue permits through properties. It's really important to understand what a short-term rental permit or a bed and breakfast permit is. It's a permit issued to an individual. Okay, that's very karma to it. It's not like a zoning variance that gets recorded on the property. It's an individual who is getting that permit. So the idea of transferring it to another individual, no, it should follow the process for going through. It's not that the property gets this, you know, this right to continue.

Mr. Carnicelli: So just one last thing. Are you going to stay around because in case, like, there's some question that I didn't have or might want to refer to you just because you kind of have your own expertise?

Mr. Croly: Sure. Thank you.

Mr. Carnicelli: Thank you.

Ms. Duvauchelle: Anyone else wishing to testify?

Mr. Jordan Hart: Hello, my name is Jordan Hart. I just wanted to make a couple of comments on this. We do process short-term rental home permits. One of the things I would like to say is, is that short-term rental home process is actually pretty difficult. We do Changes in Zoning, SMA Major Permits, EAs, and it's probably one of the more meticulous applications and it becomes more contentious. One of the problems that I see with that is that it sounds like in talking to the Planning staff there's about one half of the outstanding permits still open. At the same time you have violators. And so I think that shows you that it's not feasible or, or enticing enough for violating people to just come right in, get normalized, making sure they're paying all their fees, and have a safe property. I think that that's an important thing to make a process -- simplify the process to the point where there's no excuse for them to be out there operating in violation.

The other issue that seems to be in the background is the affordability of residence, or dwellings for residences. And I don't really think that this and the volume of units that we're talking about here is going to solve that problem. I do think that there's it's kind of a like an in your face issue where you have people who are looking for housing and they're seeing uses like this happening. It's frustrating, but I think that the affordability issue is more related to water infrastructure in our County, and also are properly -- providing density in areas where there could be more development. If you at look at Wailuku or Kahului when you're driving through it you see that the residents are already trying to, you know, go over the density that really permitted to do. So maybe areas like that could be revisited for duplex or four-plex development and I think that...I think that would help relieve the pressure on affordable units more than actually kind of investing a lot of time to really refine the rules of a permit process that isn't really being embraced by the community of people that do this business. That's all my comments. Thanks.

Ms. Duvauchelle: Any questions for Mr. Hart?

Mr. Carnicelli: Sorry it's me again.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: Thank you for being here Jordan. I'm actually quite shocked for someone that does what you do for a living, to do SMAs, EAs, you know, Zoning Changes to say this is the most difficult thing that you do is actually quite shocking to me. From your perspective what would you do to, I guess, lubricate the process?

Mr. Hart: One of the main difficulties is that there are a lot -- there's a long a checklist of items, longer than other applications, and the application isn't seen as, as accepted until all of those are completed, and that's not the case for all application process, but it's really enforced for this one. And I think that that's a way that people are caught up trying to get into the application process, and they don't actually get in and they don't actually get issued a permit number and get into the process. I think if there was a situation where you're accepting these applications, and potentially you have conditions of approval where they have to complete the checklist before they're operating you might get faster engagement there.

Mr. Carnicelli: Thank you.

Ms. Duvauchelle: Any other questions? Thank you Mr. Hart. Anyone else wishing to provide testimony? Okay, hearing none, public testimony is now closed. Director?

Mr. Spence: I'm waiting for a response back from Mr. Rapacz. I mean, certainly the --. I mean, we heard some testimony that we are no longer doing proactive enforcement, and that is certainly not the case. We -- when we started proactive enforcement we opened about, I think, between 1,000 to 1,500 RFSs of our own. We are methodically going through and following up on those, so the, the...we are indeed doing proactive enforcement. It takes a while to, to take an ad, go through, find again where the owner lives, send them a Notice of Warning, and then later on go through and search again to see if the same thing is up running or not. Regardless of whether there's -- we hire a service to do this or not, you can't just farm out to a non-government agency some kind of enforcement to send out Notices of Warning. That has to come from the County. In fact, you just can't do whatever. So we -- the Notices of Warning have to come from us and we have to follow through to issue violations. When there are violations issued, you know, those people have a right to appeal that. As Commissioner Castro he sat on the BVA, I don't know you head any of those, but I'm sure you're heard appeals. So if we send out -- I don't know how many violations, it is quite cumbersome to follow up and process any number of appeals, but, you know, we're certainly dedicated to do it. I don't -- I don't want any thought in the commissioner's minds that our Planning Department does not want to resolve this issue. Quite the contrary, this department is working very hard to, to follow up and enforce the ---. We have six enforcement people. That's more than -- that's as many as City and County, that's more than the Big Island has, so please do not think that we are not trying and we're not trying to be consistent.

Ms. Duvauchelle: Commissioner Higashi?

Mr. Higashi: Yeah, what is the average time that it would take for, example, a person who wants to apply for a short-term rental permit? From the time they apply to the time they receive it?

Ms. Flammer: Well, it depends. If it's an administrative permit where they don't come to you folks it's about 60-days.

Mr. Higashi: 60-days.

Ms. Flammer: It's 60-days because the 45-days are the neighbor notice period so we can't, we can't issue it until that period is done with. The problem that Mr. Hart was talking about is that we require the checklist all items to be complete before we can accept the application. We've had problems in the past where we had incomplete applications and they just sat open. The application -- probably the hardest part of the application is we require everyone to have building permits. So in order to get a building permit, it can take a year and a half. We didn't want these permits being conditioned on a process that's a year and a half. We didn't want it to sit open with the department for a year and a half, and we sure do not want guests in there in an unpermitted house.

Ms. Duvauchelle: Gina, you're speaking about after-the-fact permits, right?

Ms. Flammer: For the most part, yeah. Yeah. So when they come in and it is all complete, you're looking at about 60-days. If they come before you, if there's a trigger that's being met, it takes us about another 45-days to schedule the hearing, maybe sometimes 60-days out.

Mr. Higashi: So what's this building permit that you're talking about prior to the permit?

Ms. Flammer: Sure. One of the requirements of the permit is if you're going to rent your house out short-term you have to have building permits for your property.

Mr. Higashi: That's a separate...process?

Ms. Flammer: That's one of the checklist items. Yeah, there's been a lot of construction on the island without building permits. When I did the training for the short-term rental home, we had inspectors that went out for some of the applications and they showed pictures of chandeliers and showers, steps that didn't have handrails. It's really about providing a safe environment for a guest. So legally, you know, you have to have a building permit for the structure that you're coming in. It has to be fully permitted. That permit has to have been closed. It needs to have been inspected. That's probably the biggest stumbling block for people.

Mr. Higashi: Okay.

Ms. Duvauchelle: Any other discussion before Gina reads the amendments?

Mr. Carnicelli: Yeah, question for the director. Just again this is for the record so when we go over to -- I mean, you go to Council it's there -- is it seems like one of the themes to this is enforcement. Do you need additional staff? I mean, is this -- you smile riley for the record just so it's on there.

Mr. Spence: Smiles don't show up.

Mr. Carnicelli: Right, that's why I'll say it on the record that yes the riley smile is present. So I guess just for the record so it's part of the discussion. You know, I mean, obviously you would always like more staff, but is there somebody -- you know, is there a specific position or

something like that you would want to go to say hey listen if we had this particular man or lady doing this particular thing it would help with the enforcement?

Mr. Spence: One it's -- D, all of the above. It's a, it's a constant -- it's a constant pursuit to improve the efficiency of enforcement, and if we can get additional people, that would be good. Council is, is hesitant to provide more bodies. Understandably so because it's a big budgetary constraint and when you get into retirement and all that you . . . (inaudible) . . . so --. I'm sorry?

Ms. Duvauchelle: I said overtime would be nice.

Mr. Spence: Overtime -- we pay a lot of overtime already so...yeah, that's something we're constantly looking at.

Mr. Carnicelli: On the record.

Mr. Spence: Yes.

Ms. Duvauchelle: Yes. Okay, any other discussion? Mr. Hedani?

Mr. Hedani: Okay, I have five comments. These are mostly general comments after reviewing this entire packet. So I'm going to walk through them all. I've already covered some of them. One item that I had was, number one, is delete the Notice of Warnings. If it's a State requirement that we have Notice of Warnings, then consider the Notice of Violations a warning. They have an appeals process, so there's a process from which they can, they can appeal. It will cut the department's workload in half, and Notices of Warnings, generally speaking, are useless. It's like a free pass for them to violate the ordinances that you have with no punishment.

The, the third comment that I had is where is teeth? You need clear punishment for violations and if there's no clear absolute punishment that's guaranteed when you have a violation that's adjudicated then there's no enforcement.

The fourth comment that I have is allow B&B permits to rotate out to new applicants. Since they're revising the law, they should revise the law. Should the permits be given in perpetuity to one property? When you only have 400 permits that you can give out, do you anoint 400 people with holy oil forever and ever and everybody else is tough luck? Or, at the end of five years, at the end of 10 years, whenever it expires, do you rotate that out to somebody else? You know, so somebody else can also participate in the fruits of prosperity.

Five, fifth comment is hire guys. If the government cannot enforce because a shortage of manpower, the private sector, and you've seen a case of this today, where the private sector is coming to the County saying you need to do a better job of enforcement. We're trying to dot the I's, cross the T's, you know, follow the law with all of the regulations that you have, but all of these guys from the outside are making more money because they avoid all of that and do it illegally. Put a bounty over them. Go to the private sector and say contract with a hired gun, if you go out and you identify somebody that's operating illegally, bring that case to us at the

County and if we prosecute that through to completion you get a piece of the fine that's generated from that person. You use the power of the problem to solve itself. The money that's generated from the fines, it's used to compensate the guys that's willing to bring those people in and put them before the County. Those would be my five comments, other than get rid of the STRs.

Ms. Duvauchelle: Thank you. Okay, so is there any discussion or any of the items Mr. Hedani just brought up, does anyone feeling like we need to add amendments or shall we have Gina read what we have now? Commissioner Hedani?

Mr. Hedani: I thinking comments. You know, the Council is asking for comments so comments should be given to them whether they're anointed by everybody or not.

Ms. Duvauchelle: Okay. I know we were trying to get consensus but I, I agree. Go ahead, Gina, read the amendments.

Ms. Flammer: We can do both. I just noted all your comments, and I'll put them in there as your comments. If the group decides I'll noted them as the group's comments. Okay, so there were four areas that you wanted to come back to.

Ms. Duvauchelle: Excuse me? Commissioner Hedani?

Mr. Hedani: Yeah, one more item. If the State Tax Department does not provide us with a list or currently does not provide us with a list, request that the State -- request our legislatures to provide legislation which would require the State Department of Taxation to identify transient accommodation facilities that would allow the County an easy way to identify people that are operating as a transient accommodation for enforcement purposes. And from that perspective you don't have to be chasing ads and everything else. You'll have a checklist to go from for each particular item that you can work with.

Ms. Duvauchelle: Sounds great.

Ms. Flammer: Thanks. I got that. Okay, so the four items. The first one had to do with a non-responsive owner operator which is a B&B operator, and do you want to put that they have to come within an hour or are you okay with leaving it as reasonable?

Ms. Duvauchelle: I think we wanted to add the hour.

Ms. Flammer: The hour for --

Ms. Duvauchelle: To be consistent with the short-term rental.

Ms. Flammer: The short-term rental. Okay, great, I got that. Next one...and I'm putting that for both the revocation and the non-renewal sections. The five year ban to bed and breakfast, you wanted to hear some testimony before you commented on that.

Ms. Duvauchelle: Any discussion? Yes, please?

Mr. Carnicelli: Yes, I'll, I'll go ahead and weigh in here. Again, I'm...I feel more lenient towards a resident who's a B&B owner than I do, you know, STRs. The five year ban if it were to go into place, I don't think I'm okay with it running with the property, but it's definitely to the permit holder or --. I'll put it this way, anyone on title, not just the permit holder, but anybody currently on title. So even if they're like a 51% owner, and there's 49% somebody else, and, you know, they're the 50% owner, or 51% owner, so anyone on title, and that would then, you know, say include them starting up another LLC or something like that. So even it's an LLC -- oh, I guess and LLC can't get a B&B, but --. Anyways, that's, that's, I think, after hearing some of the testimony where I would be is instead of running with the land, is anyone that's actually on title.

Ms. Flammer: Okay. Are those only your comments or does everybody --? How do others -- do you care or do you --?

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: Another comment that I had is that enforcement action should not be complaint based. I don't think we should wait for somebody to come in to us before we do enforce. I think enforcement should be pro-active in terms of identifying violations that are out there, including complaints, but that it should be more than just complaint based.

Ms. Flammer: Okay, good.

Mr. Murai: I'm sorry, Gina, I think what you asked was, whether Commissioner Carnicelli's comment was his own or adopted by the Commission as a whole. And I'm not sure whether you're preparing two sets of, you know, comments of the commission as opposed to just comments of individuals.

Ms. Flammer: I am. What's going to happen at the end is when you adopt the bill with the department's recommendations is right now as it stands you don't support a five year ban for bed and breakfast operations because that's what's on the table.

Mr. Murai: So commissioners, let's do Gina a favor and help her when she -- because she's the one who has to write all of this up -- to let her know whether this is a --. And of course, you know, I guess it just goes without saying that if it's a recommendation that's adopted by the commission that probably carries more weight I would think with the Council. So let's help her out by giving her a clear direction as what the recommendations are the recommendation of the commission.

Ms. Duvauchelle: So, what are the recommendations and what are just comments.

Ms. Flammer: Well, whether or not you agree with what's being recommended in the bill and by the department. Right now what's going to be -- the motion that you're going to make at the end is to adopt the bill with the department's recommendations if you -- and that's what's you're supporting. If anybody, if the group feels differently I will note with these exceptions. And any

comments from individuals that I don't see adopted as the group will go as comments by particular a commissioner.

Ms. Duvauchelle: Commissioner Higashi?

Mr. Higashi: I recommend that we take each item and then vote on it as to whether we agree or disagree because there's a lot of items we might not agree on all, but we might agree on some. But as she goes through each item, we can all say, okay, we all agree on this particular recommendation or whatever it is and move on. That might simplify what you're writing because --

Ms. Flammer: It might have had we decided that two hours ago.

Ms. Duvauchelle: Yeah.

Ms. Flammer: We chose to do it a different way.

Ms. Duvauchelle: We had decided to take it all at the end. Yeah. So, but you will have the chance to make recommendations and discussions.

Ms. Flammer: Okay, so right now I'm just going over the starred items that you asked me to star to come back to.

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: The question that I have is given what you've heard today from all of the commission members, Gina, are there other items that we should be considering as changes?

Ms. Flammer: Well, I'm going to ask you that at the very end, do you have any general comments that you want to --?

Mr. Hedani: No, I'm asking from the department's side.

Ms. Flammer: I'm not understanding what you're asking.

Mr. Hedani: Other than what you've provided us with today, after having heard everything that you heard today, are there other comments from the department, speak now or forever hold your peace, in terms of changing of law so that it's more easy to administer?

Ms. Flammer: With the exception of all the B&B recommendations that are just sitting at Council right now, we're comfortable with what's in here. But again, remember, this came from Council that this isn't a department initiated bill. We've asked for a couple of provisions in there, but, yes, we've vetted the bill, we've gone through it. If we saw something else that was important we would have attached it in here. But what we're really doing is this was sent out by Council so my job is really to hear your opinion on what Council wants.

Mr. Hedani: Let me ask the question in another way.

Ms. Flammer: Sure.

Mr. Hedani: Is there anything in here that you don't want to see passed?

Ms. Flammer: Just the items in the right column that we don't like. Everything's in --. All our comments are already in the bill that we've made. There's nothing that's not on this piece of paper that we haven't said.

Ms. Duvauchelle: Okay, go ahead and continue with our items.

Ms. Flammer: Yeah, I'm going to continue.

Mr. Carnicelli: What number are you on?

Ms. Flammer: We have four starred items. I just went through the first two. The third starred item was page 9 dealing with permit transferability. And what I heard the group say is that you don't agree with permit transferability due to the limit of availability of permits. Why should the cap be -- why should a property be able to keep a permit in perpetuity. And also the comment that selling it as a business -- with permit transferability comes selling the property as a business not as a house and that can affect comps in the neighborhood and that's negative.

Mr. Carnicelli: I'm in agreement.

Mr. Hudson: So am I.

Ms. Flammer: How about the others guys? I'm seeing nodding going on that everybody --

Ms. Duvauchelle: Gina, on commissioner Hedani's comment about the B&B, well, I mean, once we've reached the cap and there is absolutely no more B&B permits available for application, is there -- can we add to that as, as what he called a rollover, a roll out program? Where maybe in a renewal process somebody who's been on a waiting list forever has an opportunity.

Ms. Flammer: Yes, you can. However, there is a provision in the bill that once they reach the permit cap it goes back to Council for consideration to expand the permit cap. But what I'm hearing is a little bit different. Once you reach the cap that --

Ms. Duvauchelle: Once the count, once the count for Maui has reached the cap the application renewal process is just not automatic. It gives the opportunity on a waiting list for people to be heard. Did I say right, Mr. Hedani?

Mr. Hedani: Yeah.

Ms. Flammer: Is that from the group? Do you want to do hands?

Mr. Carnicelli: I would agree with that in, in -- except I don't -- five years might be too short. Maybe to say, you know, okay, if you've -- you know, maybe it's a 10 year. Like if you've gotten one renewal, you've now had your B&B for 10 years and there's a waiting list that, you know, we do that rollover thing. It would be a little, make a little bit more sense. And again, like, say if the whole thing gets capped and there's a waiting list, and it goes back to Council, they're going to make a different decision anyways. But for the sake of the conversation, and agreeing with, you know, what Commissioner Hedani is saying is, yeah, I guess could agree with that just for the sake of, you know, the recommendation to the Council.

Ms. Flammer: So how would that language read? Once the caps are reached, application renewals are not allowed? I mean, it sounds like -- it's a little different.

Ms. Duvauchelle: Yeah, that wouldn't be right.

Ms. Flammer: Are limited? And let them figure out what that means?

Mr. Hudson: Like term limits?

Ms. Flammer: Yeah.

Mr. Carnicelli: Limited to one renewal.

Ms. Duvauchelle: Limited to one renewal. I would support that.

Ms. Flammer: Okay. I'm seeing consensus on that. Alright. Okay, and also I note this idea that you don't support transferability which I heard loud and clear. Okay. And then the final area you wanted to come back to, I believe, was the...the ban. Do you ban the property? And someone that's been banned from a short-term rental not applying for a B&B.

Ms. Duvauchelle: We all support that, I think.

Ms. Flammer: The property ban, I heard something a little different.

Mr. Carnicelli: Wait, wait. Which -- where are we at again?

Ms. Flammer: We're on page 16 now.

Mr. Carnicelli: 16. Got it.

Ms. Flammer: Banning the property from receiving permits if it's --there's a notice of -- if they are illegally operating. First of all, are there any general comments on the ban itself? I know Council will discuss it, it will come up.

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: Unless the enforcement has teeth then the ban . . . (inaudible) . . . Or, at the end of the renewal period, if it's not renewed, the non-renewal is meaningless unless there's enforcement. Because they go from a permitted person to a non-permitted person and they just keep operating.

Mr. Carnicelli: If I could jump as well.

Ms. Duvauchelle: Mr. Carnicelli?

Mr. Carnicelli: Thank you Chair. Is -- I'm going to have to agree with, with Commissioner Hedani on this one, as well, because, you know, one of the testifiers brought up voluntary compliance, you know, and we've got some stuff here without no teeth. And so if we ban someone, or, you know, somebody's operating illegally, without the teeth then there's no reason for them to come forward, especially if it's pain in the rear end to come forward. And I rather beg for forgiveness than ask for permission, you know. So it seems as though, you know, until we get some ump and there's some teeth somehow, some way, that this is going to be something that people aren't going to raise their hand. They're not going to say, okay, you know what, this makes it worth it for me, there's value in coming forward. Right now there's value in not coming forward. So, you know, at least it seems that way. So, what can we do to make voluntary compliance? You know, there's the carrot, and there's the stick, and we kind of got to go both directions which is what I think we're trying to do. But the stick isn't big enough, and I know that, you know, the fine part of it we can't really do. You know, I think the banning the particular person like we talked about earlier, that's a good one. I, I think, fundamentally I'm against banning entire property. I think that's just -- you know, it's -- you know, I think as Mr. Croly had said, you know, it's a person that's getting a permit, not a property. So in a way, you know, fundamentally, I can't necessarily ban a property, and yet what's before us is...how do we try to fix this? So I don't know if I'm even giving you an answer other than just sitting and waxing poetic.

Ms. Flammer: So right now the department supports the ban on the property. If you adopt the bill are you adopting that?

Ms. Duvauchelle: Any discussion?

Mr. Carnicelli: I don't think, I don't think -- I will have to say no on that. I mean, if -- you know, there's five votes for yes, and I'm a no, then that's fine. I'm perfectly okay with that, but I don't think I can support an actual ban on the property itself. And also for the conversation of too, I want to add in, we haven't talked about, and I know it's been thrown around is the dollar amount of what's the property worth, right? Like, oh, it's over a million dollars, then it's a different animal. And if it's under a million dollars, then it's --

Ms. Flammer: We're, we're going to get to that, that's the next one.

Mr. Carnicelli: Okay.

Ms. Duvauchelle: Okay.

Mr. Carnicelli: But even within this, it's like, because if we're saying we're going to ban a property, well, you know, are we going, are we going to put that magical, mythical number on this? So I'm saying, okay, well, if you get caught and your property is over worth, you know, over worth over x. I don't know. Maybe it's -- I'm making it more way complicated than it needs to be.

Mr. Spence: Part of the -- as, as Gina pointed out the thought of banning a property comes about by...we have an owner who's operating, advertising with no permit and so they get banned for five years. So they just put the property in an LLC, the quit claim it into an LLC, and then all of sudden they're eligible to apply again. So, I'm not sure how to resolve that except maybe if those owners of the LLC are the same, or the corporation, or the trust are the same as those folks who have been banned earlier.

Mr. Carnicelli: Yeah, that makes more sense. It kind of goes back to what we were talking about earlier which is, like, okay, anyone on title. And then, okay, let's say we quit claim it to an LLC, well if anybody that was on title has any ownership of the LLC that's . . . (inaudible) . . .

Mr. Spence: Right.

Ms. Duvauchelle: So what we're saying is that, like, it would be the permittee and not the actual property.

Mr. Carnicelli: For me. I mean, if you guys want to go a different direction, that's perfectly okay. I'm just saying, for me, is to attach it to, you know, the real, the real property. It's just fundamentally, I, I --

Ms. Duvauchelle: Yeah, it should run with -- I would think it should run with the property.

Mr. Carnicelli: But again we're also not --. You know, we're setting a perfect loophole for someone then -- we're also setting up a perfect loophole for someone so.

Ms. Duvauchelle: Any other discussion? Agreement? Commissioner Hudson.

Mr. Hudson: If you ban the property then, then you can change, you know, the owners can change or whatever. It would be nice to ban the owners and the property so that you would have loopholes anywhere. I mean, that would, it would shut it down in my opinion.

Ms. Flammer: That's what's on the floor right.

Mr. Carnicelli: And, and, you know, I'm kind of speaking out of both sides of my mouth. I get it. Because on one hand I'm saying we need a hammer, and on the other hand I'm saying well, yeah, maybe not this one, so I get that I'm kind of, you know, speaking with four tongue right now. I understand that because this would be a hammer. Because it would essentially devalue

the property, and you know, that's kind of the hammer. You know, the hammer is you can't -- you know, you get caught, and you say, okay, I'm just going to sell it and move on. Well, that next person has to know. I mean, that is a disclosure. That's a material factor that have to be disclosed upon sale, so now it suddenly becomes -- that runs with the land.

Ms. Duvauchelle: Gina?

Ms. Flammer: You want to just do a vote up or down on it just to see where we're at? I mean, on that particular amendment?

Ms. Duvauchelle: Can we take that one individually? Okay, you want to read what we're voting on here?

Ms. Flammer: Okay, you're voting to take the department's recommendation to not only ban the property owner, but the property themselves for coming in for a short-term rental home property if they've been caught operating illegally.

Ms. Duvauchelle: Any discussion? Do I have a motion? Or are we just voting?

Mr. Murai: Actually -- well, just to clarify. My understanding -- and I stand to be corrected -- is that Gina is like recording all of the commission's, you know, recommendations, and at the end we're going to vote on these as a package. Is that correct?

Ms. Duvauchelle: That was my understanding.

Mr. Murai: So, I think, we can just -- it's almost like, I don't want to say straw vote, but it can be just by a simple vote or the folks here as to which recommendations go in and we formally adopt them all at the end. So in other --

Mr. Carnicelli: I think what we're doing is we're voting to see if this is going to be the commission recommendation or just a sole recommendation.

Ms. Flammer: It's kind of an amendment to the main motion.

Mr. Murai: Yeah, basically what we're -- what's on -- what is before the commission is the department's recommendations. So, correct me if I'm wrong, director, but we are -- what we're asking -- what the department is asking the commission to do is to adopt these. However the commission may modify, add, detract, and comment. Is that correct, Will?

Mr. Spence: Yeah.

Mr. Murai: So --

Mr. Spence: Yes.

Mr. Murai: -- in the end, I, you know, we're going to be asking the commission to vote on the

department's recommendations as amended by the commission. So we're going to clean it all up at the end and vote on the package. Is that accurate way to put it?

Ms. Flammer: Yeah, that makes sense now. If we were talking about doing something different, you might do an amendment, but since it is the department's current recommendation -- you have to vote against the main motion if you disagree with this. And since it's the last one it makes it easy.

Ms. Duvauchelle: Okay, so we will not vote on that straw issue, and we will go back to voting on --

Ms. Flammer: The main motion which is to adopt the bill and the department's recommendations.

Ms. Duvauchelle: With the following comments and amendments.

Ms. Flammer: That you already gave me, yes.

Ms. Duvauchelle: Okay. Alright. Are we ready to vote? Director, do you want to --? No you don't. Alright, so, Gina, one more time.

Ms. Flammer: Sure. You're taking a vote to recommend the department's -- to recommend the bill with the department's recommendations to be sent to the County Council.

Ms. Duvauchelle: Alright.

Mr. Murai: So we need a motion to, to insert the amendment, the last one about the ownership, banning the property as well as the license holder.

Ms. Flammer: That, that's in the current bill, so you don't need to amend that.

Mr. Murai: Okay.

Ms. Flammer: But there's been three other amendments that we just talked about. You want a one hour response time for consistency sake. And you don't like the transferability; that's in there.

Mr. Murai: Alright, so commissioners, are we clear? That, that what we're voting on is what the director, the department has recommended with the three amendments that they, commissioners, has already insert, as Gina just read.

Mr. Carnicelli: So move.

Mr. Hedani: Second.

Ms. Duvauchelle: All those in favor?

Mr. Spence: Five ayes.

Ms. Duvauchelle: Five ayes.

Ms. Flammer: Great, unanimous. Thank you.

Ms. Duvauchelle: Thank you.

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

**VOTED: To Recommend Approval of Council Resolution No. 16-93 as Recommended by the Department with Recommended Amendments to the County Council.
(Assenting – L. Carnicelli, W. Hedani, L. Hudson, S. Castro, R. Higashi)
(Excused – M. Tsai, K. Robinson)**

Ms. Flammer: And then I'm going -- I have got separate comments, I think only from Commissioner Hedani. I might have some of yours; they're separate, but I think they fell in line with, with everything else. Okay, thanks. Do you want to go right into the five year?

2. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 16-94 to the Lanai, Maui and Molokai, Planning Commissions containing a Proposed Bill Amending Section 19.65.030 of the Maui County Code to Establish Ownership Durational Requirements for Short-Term Rental Home Applications, (G. Flammer)

Ms. Duvauchelle: Yes.

Ms. Flammer: Okay.

Ms. Duvauchelle: Do you need to read that or no? Okay, so we'll go on to the next agenda item.

Ms. Flammer: The next agenda item is draft bill sent from the County Council amending the Title 19, Maui County Code, relating to the ownership durational requirements for short-term rental homes. So what this bill does is it requires that a property owner own a property for five years prior to coming in for a short-term rental home permit with three exemptions. Those three exceptions are, first, a six month grace period. So any applications submitted within six months after the date of enactment would not be subject to the five year ownership requirement. Houses with a building value over one million dollars. You can cross out my under, that was a mistake. So any --. And that number will be discussed at Council. So any thoughts you have about that number is useful. And then, third, this is where the transferability we just discussed. The third exception is previously permitted properties. So properties that have already have

had a short-term rental home permit where the new owner applies for a new permit within three years of purchasing property are exempted from the five year ownership requirement.

I gave you a lot of background on it. If you want some more, it's all in the report. I could go into it. The main reason stated by Council Member Carroll who supported this is that Hawaii's low tax rate really encourages off shore investors to come and buy a property and convert them from long-term housing into short-term. Hana has seen a lot of this out there. He's the Council Member representing Hana, and this is why he put it forward. There were some comments from other members such as Council Member Baisa who thought that this effect is minimal and that we don't want to cut off the economic engine of tourism, and that was the other side of it. But we're really here today to hear what you think about that, and what you hear about \$1 million mark. Council did ask me to provide a chart of all current permitted properties, and their real property building values. I did go ahead and just put in the entire property assessment. I'm sorry it's so small, but it is here. There are very few properties with a building value of over a million dollars. It's not the property itself, it's just the building value. I did notice a huge difference in property values. You have a couple of million, million two-five, maybe a million five. These are for existing permits. And then they jump right to three, four, five, six million, and I didn't see a lot in between there. But I think there is a misconception that most of these short-term rentals are not in the residential housing market. But I think if you look at the chart, and I think if you talked to the planners, they'll go out to see the houses. It's really only a small fraction that is that super high end, ultra luxury. And if you look at the chart, most of them are in West Maui.

Ms. Duvauchelle: Okay, so we will --. Any -- we'll open the floor for public testimony for this agenda item. Anybody wishing to testify please come forward.

Mr. Jack Riley: Members of the commission, Vice-Chairman, Jack Riley again. I am a . . . (inaudible) . . . Just to tell you a little bit about me and why I'm here. I've been -- Jack Riley -- and I've been an affordable housing developer for almost 40 years now. I've done 1,000's of units throughout the western US. I also did the last affordable housing, rental project in the west side of Maui in 1999. There hadn't been anything built in the last 20 years before that. It was a very difficult task but we got it done. I moved back on island. I raised my family here. We had to move away for a little while for some schooling issues with our daughter, but I'm back and I've seen over and over again in the newspaper, in conversations the affordable housing prices. I live in West Maui. West Maui is, is unbelievable how bad it is over there. So I put a lot of thought into this, you know, how to make it better, what can we do as a community, and I came up with an idea that I bounced off quite a few people and who really have a hard time finding a negative. And I put it in written testimony to you all and we've been taking some time to kind of put together a draft to show some of the nuts and bolts of how it would work. But the bottom line is to allow a different fast track permit processing for homes over \$2 million which will never be long-term rental homes. And I own long-term rental homes as you know, here before, living, I'm happy to do it. But I believe that if we create -- what I put in my communication there or something like it, we can cause these \$2 million plus homes to generate now, not a year from now, not two years from or 10 years from now, affordable housing for the working people. To cut to the chase for you, it really says you got a guy who wants to buy or he owns a house that's worth more than \$2 million. He's going to have to provide one unit of rental, affordable rental

housing, which means deed restricted, the rents are lower, in order to get the fast track permit processing. You heard Mr. Hart earlier say that an STR permit is harder than an SMA which is kind of, you know, it is what it is. So as a developer --. You know we work with many jurisdiction, this is, this is one of them. I feel this is my home. I've been around here since the 70s. I've seen a lot of change. And what I feel here is something that I think can really work and at no cost to the County, no cost to the residence. You've got home sitting empty. They provide the multi-generational vacation experience for a lot of people. I heard Councilman Victorino, you know, the Council, your -- you'll say, you know, his son plays baseball, they're trying to get some of their friends and family to come out here, and they can't find any house to stay in because it's too hard to do and no one's doing it so --

Ms. Duvauchelle: Please wrap up Mr. Riley.

Mr. Riley: Yeah, my thought at this point when I heard that this was going through I would submit this to you all and at least try to get it in the realm of conversation and consideration, and maybe actually really do something and provide affordable rental housing now...at no cost.

Ms. Duvauchelle: Thank you. Any questions? Commissioner Carnicelli.

Mr. Carnicelli: Thanks again for your testimony, Jack. So here's --. When I read what you had to say, of course, I went to the building a better mouse trap and try to see what, you know, what's the work around here and I'll just use a real life example. I have a friend of mine who's a caretaker of a house at Keawakapu Beach. It's worth \$10 million plus or whatever the ridiculous number its worth. I can see very much that owner saying, oh, the ohana is affordable rental. I -- you know, the guy who lives there now for free, he charges them \$400 and says I've now created an affordable rental to be able to do my STR. So are you okay if I say, if we're going to try to adopt your plan in some way, shape or form where I say it cannot be on the same property.

Mr. Riley: Absolutely.

Mr. Carnicelli: That affordable rental needs to be someplace else.

Mr. Riley: Absolutely. And I think it should be within the general jurisdiction. You know, these are really resort areas. If you're going to do a deal let's say a house in west Maui, you've got to provide that affordable rental in West Maui.

Mr. Carnicelli: I like that as well.

Mr. Riley: No over somewhere else where you can buy something cheap, and the rent differential doesn't really help anybody. My, you know, my sole intent is to help working people. Life's been good to me. I'm okay and all the years I've been doing affordable housing, and I'm working on some stuff here in Maui County right now. But, you know, the State resources are so limited, and with the population --. Maui gets about one project, 34 units, every two to three years. That's island wide. Now, there's another way to do it that -- some of my friends are working on, on projects, but the funding gaps are huge, and I can go into a long dissertation but

I don't want to do that to you. But they're -- you need to get out the box a little bit to try to help all these people here. I mean, I look at West Maui now. Okay, the hospital broke ground, next phase is the bypass. Is there anything that's going to house these people on the board? The answer is no. We got to do something.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: One last question is are you marred to the \$2 million number?

Mr. Riley: No. We just --. You know, there was this \$1 million I saw in here. Okay, we'll create another level not to confuse it and to make sure that it stays within the boundaries of the lot.

Mr. Carnicelli: Thanks Jack.

Ms. Duvauchelle: Thank you Mr. Riley. Any other questions? Thank you for your testimony.

Mr. Riley: Thanks.

Ms. Duvauchelle: Anyone else wishing to testify on this agenda item?

Ms. Clark: Aloha, my name is Kathryn Clark, board member of the Maui Vacation Rental Association. Although I understand what this is trying to do, I do feel there's some situations that haven't been taken into account. To use my own family as an example. Let's assume that my husband and I passed away, and our home is left to our daughter. She was born and raised here, she fully intends to return to Maui in the future. Perhaps she wants to keep the property and use short-term rental as a way for her to continue to come home until such time as she would move here permanently. This would generate income to manage the upkeep of the property, take care of maintenance expenses. But she would not have own it for five years so wouldn't be able to vacation rent it so she can use it when she comes back on, on her trips away. That's the first one.

But the next thing is that this permit opportunity is actually being used by a good number of local people. For example, the list in the department's report for Hana shows only one owner with an address outside of Hawaii. So what are we hoping to change here? For Paia, Haiku, 26 of the 41 permits went to locals residents. For Lahaina, it's 14 out of 40. I don't think that anybody is saying that local people shouldn't have this opportunity, yet this changed could impact them. The number of remaining permits is in the range of 200. Is it really necessary to take such drastic measures to eliminate a permit opportunity for a percentage of those that might have purchased recently? Is a high value house taking residential housing away or is it perhaps providing an opportunity to create jobs? These homes are serviced by a high number of people. But also please be careful not to confuse the need for enforcement with the requirements for a permit. If only the permitted properties were operating I'm not even sure we'd be discussing this as a potential change. Thank you.

Ms. Duvauchelle: Any questions for Ms. Clark? Mr. Hedani.

Mr. Hedani: Hi. From the staff point of employment, from your perspective, do short-term rentals employ more people than B&Bs?

Ms. Clark: Probably so because the owner's not here to take care of it. So right off the top you've got a slice of approximately 30% of the rent going to a local manager, local agents that provide the clients for the housing. And then on down to the things that a B&B owner can himself. He cuts the grass, he cleans the units, all of those things are done by local people for STRs.

Mr. Hedani: Let me ask the question in another way. If short-term rental were -- if the short-term rental ordinance were revoked and it was no longer, it's no longer legal to have a short-term rental --

Ms. Clark: Right.

Mr. Hedani: Vacation home --

Ms. Clark: Right.

Mr. Hedani: And the only option was B&Bs, would...destination management companies be able to service B&Bs?

Ms. Clark: No.

Mr. Hedani: No?

Ms. Clark: If you were to look at the number of B&Bs permits that have been issued and the configuration of those properties, they just don't hold the multi-generational family in the same way as an STR does. You know, you can't put mom and dad in the cottage, and the two little kids up in the B&B room in the main house. It just doesn't work the same way.

Mr. Hedani: So from the --. Sorry.

Ms. Duvauchelle: Go ahead.

Mr. Hedani: So from the standpoint of administrative services, if I were a B&B owner and I wanted you, say, as a contractor to take care all of these problems for me, set up the landscaping, set up the maintenance, set up the servicing of the . . . (inaudible) . . . or whatever, wouldn't you be able service them?

Ms. Clark: We would be able to do it, but it's highly unlikely that they would ask us to.

Mr. Hedani: It's something they can do for themselves is what you're saying?

Ms. Clark: Exactly.

Ms. Duvauchelle: Thank you.

Mr. Croly: Aloha committee, I'll be as brief as possible, Tom Croly again on behalf of the Maui Vacation Rental Association. You know, we all know what we all know until we don't know what we don't know and, and I think we all know that short-term rentals are taking away from our housing. But do we really know? Have we quantified that? And I submitted some, some testimony, some written testimony and there's a little chart on here that I'd just like to explain. We created the, the short-term rental ordinance in 2012. Since then 161 properties have been granted short-term rental permits. I went back and took a look at the sales over the last 15 years and where those properties that were sold whether they got a permit or not. And what this shows is that of all the properties sold over the last 15 years, single-family home residences that may have been eligible to, to apply for a permit, one half of one percent have come forward to get a short-term rental permit. So this idea that we need to protect the inventory of homes for sale from being bought up by people who want to use them for this use is not supported by what has happened over the last 15 years. Only one out of 200 homes sold over the last 15 years is someone who later came forward to get a permit. So this idea that this is driving the market, that this is driving up the prices and, or, driving, you know, what's happening in the market, this data says it's not. Now whether or not people are buying properties and then illegally renting them is another issue. But saying to someone you can't get a permit, I don't know that that stops the person who intends to just do it illegally, right? The path to a permit, I think, should be clear and consistent for everyone. And saying to someone you can't get a permit because you bought this property recently, I think, it only leads to less compliance rather than more compliance. So, for that reason I don't support this idea.

But if the idea were adopted specifically to protect the homes of residents to say we want to make sure that these, that these homes aren't sold to someone who would convert it to a short-term rental, then I think we do need to look at where that break point would be. Where is residential -- does residential housing kind of end and luxury housing begin? And I would, I would say that million dollars break point makes sense. So we might apply this five year rule to the properties under a million dollars. But for properties over a millions, you've heard testimony to say maybe there should be a different path to, to permits for that. So, thank you.

Ms. Duvauchelle: Any questions for Mr. Croly? Chair Carnicelli?

Mr. Carnicelli: Thank you. Tom, just for clarification. On your chart here...this is people that had STRs.

Mr. Croly: What, what -- yeah just to be clear on this chart. Each year it shows the total number of single-family homes sold.

Mr. Carnicelli: Right.

Mr. Croly: And then looking back whether those homes that were sold during that year, who got a permit. So let's say --

Mr. Carnicelli: The new owner.

Mr. Croly: The -- well, right, the current owner.

Mr. Carnicelli: Right.

Mr. Croly: The current owner. So let's say in 2001, okay, of the homes sold in 2001, a 1,000 homes were sold, three of those later went on to get a permit.

Mr. Carnicelli: Got it. Thank you. Cool.

Ms. Duvauchelle: Thank you. Commissioner Higashi.

Mr. Higashi: With your statistics, you didn't verify whether those people who bought those homes illegally started renting. You only have the ones that shows that they've rented.

Mr. Croly: Exactly.

Mr. Higashi: So you don't have data on how many of them that were bought are now doing it illegally rather than doing it.

Mr. Croly: Correct. I don't have that. And those people wouldn't be applying for a permit, would they? So --

Mr. Higashi: Right.

Mr. Croly: So --

Mr. Higashi: Okay. I just wondered.

Ms. Duvauchelle: Okay. Commissioners, any further discussion on the --. Oh, I'm sorry. Is there anyone else wishing to testify at this time? If not, public testimony is closed. Gina, you want to read the --

Ms. Flammer: Okay, the department's recommendation --. Actually, we're just taking your comments today, on the bill, so the three...the three different things. The five year with the three different exceptions. We do actually have some comments at the end, and I did give you all the different policies...community plan policies. This really is a public policy issue where you kind of have to navigate where you want the line. There's -- and you'll see that as you read through all the community plan policies. It really puts residential housing policies with economic policies. I think that's where the compromise was with the Council trying to find a number for exception of houses.

So what the department recommends is we support the proposed bill with the exception of the transferability exception. We do think that maybe the evaluation exception should be a little bit

higher and we're happy to discuss that with County Council. And my recommendation is at the end here. So you do have the option. You can recommend approval of the proposed bill as it is, you can recommend approval with the amendments that the department is suggesting which is we just don't support the transferability exception, you can recommend denial of the proposed bill, or you can vote to defer and ask for additional information.

Ms. Duvauchelle: Commissioners, any discussion?

Mr. Carnicelli: Chair?

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: So -- I mean, a couple of comments. One, is to the million dollar mark, I get that's to the structure, only, correct? That's not the complete valuation of the property, just the structure only?

Ms. Flammer: Councilmember Victorino is the one that put that in there, and he recommended that it be the building value.

Mr. Carnicelli: Okay. Which -- I mean I get that, I guess -- let's see. It's tough because what we're going to do is go off the tax roll, correct?

Ms. Flammer: Yes, we're going to use their valuation. That's what --

Mr. Carnicelli: See so we're suddenly going to it's, you know, an arbitrary number that's actually two years old.

Ms. Flammer: Well, actually if you're dealing with a house that was purchased within five years, I do believe RPT uses the purchase price at one point as part of the --

Mr. Carnicelli: No.

Ms. Flammer: No, they don't? Not --

Mr. Carnicelli: No, they don't. See that -- we're not a State that -- or a County that does. We don't revalue upon sale, so again it's going to be, you know, if we got a rapidly climbing or de-climbing market, you know that valuation is going to lag. You know, is there a better way to do? I don't know. I mean, are we going to go out and get a valuation or an appraisal of every single property. You know, is that something that we're going to add to the list of what they have to do? I don't know. You know, so that's --. You know, anyways, it is what is, but I just want that to be part of the record.

The other thing too is I believe, and again, this is total valuation of the property, not just the structure, is right now median home prices are about that. I, I think that the numbers just came out last week for August sales and median home prices is about a million bucks. So is that --

you know, I mean, but that's for everything. That's for land and structure. This is just for structure, so I get it, it's a little bit different there. But that's just for the sake of talking about it.

The six month grace period, okay, no. That is what it is. But my biggest concern is is the data that we got from Mr. Croly. I mean, I think that's -- it's like we're trying to fix something that is a myth is what it seems like.

Ms. Flammer: Keep in mind that that's taking in properties before it became legal, to short-term rental and --

Mr. Carnicelli: I guess that's true. But even if we go from 2012.

Ms. Flammer: Yeah. It might be a little more useful to look at --. Well, that may be useful. Council specifically asked us to show real property tax and what current permits look like. And it shows on there whose come in the past five years.

Mr. Carnicelli: Got it. So is what I also like to do is go back to, to Mr. Riley's testimony because I think that what part of what we're trying to do here is we're trying to put our finger in the . . . (inaudible) . . . because of affordable housing. And so what we're doing is we're going after these STRs thinking that that will actually solve some of affordable housing thing over here, when there's nothing in here for affordable housing. So I just kind of feel like it's well intended legislation, but I think that it's missing the mark. It's not really doing what it intends to do which is saying, okay, we have these STRs and that's the bad, you know, that's the bad kid on the playground right now. But is it really giving us more affordable housing? I don't know. Just by saying, you know, you now have to own your property for five years. I don't know if that's creating more affordable housing for us or not.

Ms. Flammer: I will just let you know the Council acknowledged it's only a band aid. It's not a solution, and then they were okay with it being a band aid. That they recognized it's not a long term solution for affordable housing. Only increasing inventory is a long term solution for that.

Ms. Duvauchelle: Commissioner Higashi?

Mr. Higashi: Yes. I would generally go along with this five year ownership idea, however I think also we left out a part about local people who are coming back to islands like a daughter or a son who is inheriting a house. And yet at the same time with this requirement, if they inherit the house they still have five years before they can rent it. And I see a problem with that. And if there's some way we could phrase it so that we are taking care of our local population who are coming -- who wants to come back. But with this clause might have some problems with financial situations where they might be able to compensate that . . . (inaudible) . . .

Ms. Flammer: Yeah, Molokai brought up that up, the legacy properties. This was not intended to not allow legacy properties. And there's two different way legacy properties pass. They can pass in trust where they stay in trust, and if you look at the bill there are a number of legacy properties on here especially down in Makena. And those ownerships don't show as being changed probably because they've stayed in the living trust, and the trustee changes out or the

beneficiary then becomes the owner so it doesn't change. However as we discussed on Molokai there are times when it is willed to somebody, not through a trust, but it's just through an outright and it would --. That is -- that's something they asked me to follow up on. And I think everybody was in agreement that this wasn't intended to flag legacy properties. So I've been given some -- asked to do a little bit of research about that, and I'll pass those, Kathy's comments as well, too about that. That was excellent. Thank you.

Ms. Duvauchelle: Okay, any further discussion? Commissioner Hedani?

Mr. Hedani: I only have three comments. The first comment is revoke the short-term rental bill. Second comment is allow only B&Bs. If you want to double the number of B&Bs in order to make up for the short-term rentals that you revoke, fine. But allow B&Bs which do not displace resident housing to accommodate visitors. Let all of the existing short-term rental homes permits, the 167 that we talked about expire when they expire. And let them apply for a B&B permit if they're willing to put their bodies into their homes and service the property. Those are the three comments that I have. And I don't have an objection to the five year requirement.

One other comment. On the million dollar question, it seems strange to me that you would allow an exception for the extremely wealthy to be exempted from provisions that otherwise would apply to those that are less wealthy. It seems unfair to me. If that's the case, then there should be no exception.

Ms. Duvauchelle: Anything else? Go ahead.

Mr. Hedani: And I disagree that short-term rental homes do not displace residential housing. For the 167 permits that we've approved, and for the 400 permits that we're going to approve over the course of the legislation, that's 400 homes taken out of inventory that otherwise would go to long-term rentals.

Ms. Duvauchelle: Commissioner Carnicelli?

Mr. Carnicelli: So I also for the record want to include and I actually think that Mr. Riley's idea might, you know, as far as, you know, including a short-term -- or, I mean an affordable house for every STR, maybe that should have gone into 16-93 as far as if we are changing the ordinance. You know, what I'm saying the one previous rather than, you know, this one here. That might have been actually something that we would put in 16-93.

As far as, and also for the record, to say, I don't even know if it would have to be a fast track on, you know, houses over two million dollars as he had suggested. What if it's just every single STR has to provide that? I mean, what if we just say that's the adoption? We're saying like if you want --. And not B&Bs because that's people that live here, that's residents. But if you're an STR applicant, you've got to, you know, you've got to provide. You know, you're, you're -- you know, we're calling you, or deeming you, we're tagging you as a rich, you know, STR owner that lives someplace else that wants to rent to the rich and famous because, you know, you won't fit into a B&B. Well, then you've got to provide, you know, affordable housing then as

well. You know, maybe that's just what we do, and maybe again is it's -- we've already voted on 16-93 so that's not there, but I wanted that to be on the record as well.

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: Picking up on that comment. In the past when a hotel came in for approval, this a hotel on a hotel zoned property, the hotel was required to provide affordable housing based on the number of units that they were going to build. I believe that same principal should be applied. If you're going to keep short-term rental homes as a legal entity then what's good for the goose is good gander. If they're into the hotel business, if they're displacing residential housing, they either provide for an affordable housing unit which to some degree locks it up to those that they prefer to rent to, which I'm kind of uncomfortable with. Or, the alternative would be to pay an assessment like a hotel would pay an assessment into the affordable rental housing fund so that they are participating in producing affordable housing.

Mr. Carnicelli: If I could then --. I'm going to go ahead and -- we'll go back and forth here -- is I'm not okay with paying into the affordable housing fund because in, in knowing what I know about building affordable housing here, credits don't work and paying into the fund don't work. Providing the actual house is actually does, so that, that part, you know, I would just differ with you on.

I also differ with you in, in feeling that STRs don't have a place. I think that they do, personally. I think that there is a market for them and they do provide, you know, unfortunately, you know, with HC&S closing we don't have a second tiered industry on Maui. We are, you know, we've got all of our eggs in the tourism basket and to move the folks that go to the STR rather than the B&B I think that that's something that, you know, we may not like it, but it's just reality. That is part of our market right now, so I would just disagree with getting rid of them and going solely to B&Bs. But I do like the idea of saying, like you said, hotels used to have to provide workforce housing, and it was, I think it was even called workforce housing. Why not now? Why not, you know, also include that in today's discussion?

Ms. Duvauchelle: I'm going to interrupt you here. Do we want to continue this after lunch or shall we -- are you comfortable enough now to go ahead and make a recommendation? Commissioner Hedani? Go right ahead.

Mr. Hedani: When I suggested that we get rid of short-term rental homes, I'm talking about short-term rental homes that's hotels in residential districts. Condominium units, apartments that are in hotel districts that have been anointed hotel districts would still exist as short-term rental homes as part of an apartment condominium project so it's not banning them altogether. It's just saying stop invading neighborhoods and taking away homes that are intended to be homes.

Mr. Carnicelli: And, and I agree with you Commissioner Hedani, you know, in that regard, just the little difference is, you know, I don't think that the \$10 million house on Keawakapu Beach is taking away short-term, you know. Or, you know, I think we just approved one down on Palama Street, you know, a couple of --. You know, that, that owner is never going to put a long-term

tenant into his particular property so there are certain things where I say, okay, you know, that particular guy that would rent that. But I agree with you, the condo thing, yeah, I'm not thinking do you want to take that off but --. There is a market for the high end which I think on Maui we kind of made --. You know, we made a decision back in the 70s or 80s or whenever it was where we said listen we're not going to follow Waikiki. We're not going to try to get every single tourist, we're actually going to try to get some of the high end. Like we started to try to differ ourselves in that and, and so it's unfortunate. You know, whether we like it or not, it's still kind of part of it in today's market and it's part of what we're going to have to just live with.

Ms. Duvauchelle: Okay, Commissioner Higashi, and then if we're not done we're going to break for lunch.

Mr. Higashi: Consider your suggestion if, if the meeting is going to last another hour, I suggest we go through and finish our agenda. If it's going to be beyond an hour let's break for lunch.

Mr. Carnicelli: I'm done.

Mr. Hedani: I'm done.

Ms. Duvauchelle: Alright. Alright, Gina, okay.

Ms. Flammer: Are you done with discussion?

Ms. Duvauchelle: We're done discussion.

Ms. Flammer: Maybe you can just vote.

Ms. Duvauchelle: Yeah, let's vote. Can I --. As far as Mr. Higashi, do we want to? This is going to take longer, I believe, than another hour? Do we want to power through it or do we want to -? Yeah, okay. Then we're going to finish this up and break for lunch. Go ahead Commissioner Hedani, do you have --

Mr. Hedani: Just had a question on what the position is of the department . . . (inaudible) . . . have to do with the one million dollar threshold?

Ms. Flammer: Here I'll tell you. It's in the report. It's on page 18, department recommendations and options. The department supports the bill with a revision to the valuation exception and without the transferability exception. The department recognizes the need to balance competing policies at this point in time. They need to correct, protect the residential housing market is a greater need than the need to grow the visitor economy. The bill does not restrict the total number of permits that maybe issued for short-term rental home use. Instead it restricts the type of home that maybe used. When the permit caps have been reached, they will be held by owners who have a long-term investment in Maui housing, and they likely will be homes that have provided long-term residential housing either for the owners previously or for tenants. The permits will also be held by high value homes that provide a higher economic value in terms of tax assessments and local employment opportunities while also attracting high

end visitors who spend more tourism dollars per day than budget travelers. Therefore the department supports the proposal bill and recommends the Planning Commission support the bill with the exception of the transferability provision. So we're okay with six month grace period. We're okay with the dollar value with an exception. We're not sure a million dollar is enough. Council will make that final decision. But in general we do support the five year ownership requirement.

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: So the department is recommending retaining the one million dollar threshold as an exception?

Ms. Flammer: We're recommending it be a little bit higher, but we recognize that it's really Council's decision and we're happy to provide whatever technical assistance they need to, to come to a dollar number.

Mr. Hedani: From a philosophical standpoint, are we saying that those that are -- that the wealthy are entitled to more exceptionalism than those that are less wealthy?

Ms. Flammer: No, what we're saying that those high end homes provide a higher economic benefit in employment opportunities, and in attracting high end tourism, and that creates a higher value right there. And higher tax assessments because they are taxed at a higher rate with short-term rental homes. But that's our opinion, not yours. So we're here today to ask your opinion, and then Council will make the ultimate decision.

Ms. Duvauchelle: Commissioners, are we comfortable going --

Mr. Carnicelli: No, I'm sorry, Gina, I'm still --. Can you give me your recommendation again? So you're for it.

Ms. Flammer: Sure. The department supports the bill with the exception we don't support a transferability clause...for the reason that you stated earlier. We think that would inflate housing prices more, and we're not okay with that.

Mr. Carnicelli: But you're for --

Ms. Flammer: We're, we're --

Mr. Carnicelli: You're for you have to own it for five years.

Ms. Flammer: Yes.

Mr. Carnicelli: Got you.

Ms. Flammer: But again remember this is the Council's bill --

Mr. Carnicelli: Right.

Ms. Flammer: -- and that the Council that's putting this forward and they will make the decision.

Ms. Duvauchelle: So shall we take a vote? Somebody want to make a recommendation on approval with department's recommendations?

Mr. Hudson: I'll make it.

Ms. Duvauchelle: Okay.

Mr. Hudson: Recommend approval of the proposed bill to the Maui County Council.

Mr. Higashi: I second it.

Ms. Duvauchelle: All those in favor?

Mr. Carnicelli: Wait, is that with discussion? I'm sorry.

Ms. Duvauchelle: Yeah, I'm sorry.

Mr. Carnicelli: Just the motion and with the department's recommendations or the --

Ms. Duvauchelle: Yes, with the department's recommendation. Okay, discussion?
Commissioner Higashi?

Mr. Higashi: Yeah, based upon the premise that the five year ownership requirement for applicants, are they gonna, are they gonna pursue that or are they going to leave it as is?

Ms. Flammer: Who the Council?

Mr. Higashi: The proposed bill.

Ms. Flammer: The proposed --

Mr. Higashi: That establishes the five year ownership requirement.

Ms. Flammer: The proposed bill has in it a five year minimum ownership requirement.

Mr. Higashi: So there's, there's no exception to the rule on providing for inheritance or like I was mentioning?

Ms. Flammer: No, you can add that in, but that, that's one of my comments actually.

Mr. Higashi: Can that be an amendment?

Ms. Flammer: Yeah, yeah. I had it right in the comment section, but yes, it can --

Mr. Higashi: I'd like to amend that motion.

Ms. Flammer: Yes.

Mr. Higashi: To add it.

Ms. Flammer: So did Molokai. That's -- yeah, that's great. Okay, good. So that's formally. Yeah, okay. So that would be with an exemption.

Ms. Duvauchelle: Do I need a second?

Mr. Murai: Is there a consensus on the amendment?

Ms. Duvauchelle: Do I have a second?

Mr. Higashi: I made an amendment.

Ms. Flammer: A friendly amendment.

Mr. Murai: The motion to amend needs a second.

Mr. Hudson: I second.

Ms. Duvauchelle: Okay. All those in favor or discussion or favor of the amendment.

Mr. Carnicelli: Can you repeat the amendment?

Ms. Flammer: Well, it's a friendly amendment.

Ms. Duvauchelle: Okay, all those in favor, raise your hand.

Mr. Spence: Five ayes.

Ms. Duvauchelle: Thank you.

Mr. Murai: Now there's a vote on the motion, main motion as amended.

Mr. Spence: Right.

Ms. Flammer: So the main motion again is to support the five year, to support a six month grace period, to support an exception for houses over a million or some number the Council comes up with, to support an exception for legacy properties, but not the transferability clause.

Ms. Duvauchelle: And that's been moved by and seconded. Any other discussion? Commissioner Hedani?

Mr. Hedani: I'm stuck on the million dollars. The rich get an exception, the poor can go to hell. That's what we're saying. The rich get an exception from the rule, everybody else suffers. Why? Why would we make an exception? Throw them in with the rest of the people that are applying for a permit and have to go through the same gyrations. It doesn't make sense to me.

Ms. Flammer: It's a question for the Council. It came out of the Council, and there will be a lot of discussion about that when we get to Council.

Mr. Hedani: Okay, I got it off my chest.

Ms. Duvauchelle: Okay. So we have a motion on the table. All those in favor please raise your hands. Opposed?

Mr. Spence: That's three aye. That's two nays.

Ms. Duvauchelle: Do I have to vote or it won't matter.

Mr. Spence: No, it still won't help.

Ms. Duvauchelle: We still won't have --. Okay.

Mr. Carnicelli: Would you vote for it without the million dollars?

Mr. Hedani: I propose that we accept the department's recommendations on the proposed bill with an amendment that we eliminate the exception for properties over a million dollars.

Mr. Spence: Yeah, and do you want to keep the legacy?

Mr. Hedani: Right, and the legacy issue.

Ms. Duvauchelle: So we're adding the amendment to exclude properties over a million dollars. Do I hear -- is there a second?

Mr. Hudson: I'll second it.

Ms. Duvauchelle: Discussion? Okay... Commissioner Hedani?

Mr. Hedani: What we're doing is we're amending a bill that shouldn't exist. But given that that's not going to happen, I think making these changes is a step in the right direction.

Mr. Murai: Just so we're clear, Mr. Hedani what you're doing is your moving to adopt the department's recommendations with -- and then you're making an amendment. Is that clear commissioner?

Ms. Duvauchelle: Yes.

Mr. Murai: Okay.

Ms. Duvauchelle: So, all those in favor of Commissioner Hedani's amendment to exclude the million dollar clause raise your hands. Opposed?

Mr. Spence: Four ayes. Two opposed.

Mr. Murai: Chair vote.

Ms. Duvauchelle: For. Aye.

Mr. Spence: That is five ayes.

Ms. Duvauchelle: Okay, so we'll go back to the original motion on the floor or are we --

Mr. Murai: That was it.

Ms. Duvauchelle: That was it. We're done.

Ms. Flammer: Okay. Good. But you're okay with the transferability.

Ms. Duvauchelle: Yes. Alright, I guess that's it. Planning Commission will adjourn for lunch. We'll be back in session at...1:20 p.m.

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

**VOTED: To Recommend Approval of Council Resolution No. 16-94 as Recommended by the Department with Amendments by the Commission to the County Council.
(Assenting – W. Hedani, L. Hudson, S. Castro, R. Higashi,
S. Duvauchelle)
(Dissenting – L. Carnicelli)
(Excused – M. Tsai, K. Robinson)**

(The Maui Planning Commission recessed at 12:20 p.m. and reconvened at 1:20 p.m.)

- 3. MR. DAVID A. LAND requesting a Bed and Breakfast Home Permit in order to operate the Maui Meadows Retreat, a four (4)-bedroom bed and breakfast in two (2) dwellings located in the Rural District at 485 Kumulani Drive, TMK: 2-1-013: 028, Kihei, Island of Maui. (BBKM T2016/0003) (R. Quigless)**

This application is being brought to the Planning Commission for review because there is at least one permitted bed and breakfast home operation located within 500 ft. of the subject property.

Ms. Duvauchelle: It's 1:24 p.m., September 13th, 2016, Maui Planning Commission is now in session.

Mr. Clayton Yoshida: Good afternoon Madame Chair and members of the Commission. Clayton Yoshida with the Planning Department subbing for Planning Director Will Spence who is attending a Council Economic Development Committee meeting at 1:30. I believe you're under the third public hearing item which is . . . *(Mr. Clayton Yoshida read the above project description into the record.)* . . . And the staff planner on this application is Ryan Quigless.

Mr. Ryan Quigless: Aloha. Good morning Commissioners. My name is Ryan Quigless. Can you hear me now?

Ms. Duvauchelle: Yes.

Mr. Quigless: Aloha and good afternoon. My name is Ryan Quigless, planner with the Maui Planning Department. Our meeting today arises from an application for a bed and breakfast home permit filed on May 7th, 2016 by consultant by Mr. Jolyn Bien on behalf of the owner applicant Mr. David Land. Mr. Land is requesting a B&B permit to operate the Maui Meadows Retreat Bed and Breakfast. I'd like to present a brief description about the project details before I pass the microphone over to the consultant to present further details.

As you can see by slide one, the proposed B&B home property is 0.5 acres located at 485 Kumulani Drive within the Maui Meadows subdivision in Kihei Maui. The proposed B&B operations take place and alternating between the three bedroom, 1,680 square foot B&B home with two bathrooms, a full kitchen, living room, dining room, recreation room, and a one bedroom, 520 square foot B&B cottage dwelling with one bathroom, a full kitchen and a living room area. Pursuant MCC 19.64.050A3C, the Maui Planning Commission is the approving authority for the permit because two existing permitted bed and breakfast homes are operating within 500 feet radius of the proposed bed and breakfast home. A map of the other permitted B&B locations is provided as Exhibit 4 for you.

The land use designations for the property are Rural and State Land Use District, the Maui Island Plan, Kihei Community Plan and County Zoning. The surrounding uses for the property are residential in all directions. The property is located with flood hazard zone X, an area of minimal flooding risk, and flood permit is not required. As of July 8th, 2016, there were 32 permitted B&Bs in the Kihei-Makena Community plan region, and the cap for this region is 100 permits. Now at this time I'd like to turn the microphone over to the consultant, Mr. Jolyn Bien, of Omni Quest Inc., on behalf of the proposed B&B owner applicant David Land to continue, and the department will follow with its recommendations after.

Mr. Jolyn Bien: Good afternoon Commission. I'm here again from last month. My name is Jolyn Bien for the record, of Omni Quest, and consultant for David Land. As you saw, there's the

Maui Meadows subdivision and the highway here. And the location is pretty much on the south side, just about a block away from, I guess, what you would call the Wailea 670. I forgot what it's called now. It's also on the second busiest thoroughfare through Maui Meadows, and it's right on the corner here where people turn to go up the hill. Of course a little closer look on that corner. And I point out, there's a vegetation line which is very tall. You'll see in later pictures virtually it's not visible from the other side of the street and to his neighbors. So the existing B&Bs are here and here, and I will disclose that B&B right there, that's mine, that's where I live. I have no objections to him there. As you can see there's letters of support that we received and have been filed. Those are from his neighbors right there in those existing lots. Again, you saw that, there's the layout, site and the parking map. There's parking here. It's for his three bedrooms, plus he keeps the garage open there because he still does work a little bit, and has all this tools and garage in there, and so that will be open. This is...I'm showing you pictures that didn't work. Let me go back.

So that's how the parking lot. It has a lot of gravel on the side so there's plenty of parking for actually almost four cars there. That's on the cottage, and then -- the other didn't show up, but that's okay.

The owner, he's David Land, and here's today. He's the owner of Pro Interiors, so the interiors of these houses are quite well down because that is his business company. The . . . (inaudible) . . . constructed in 1985, and 86. He purchased the property in 2001, and he added the pool in 2005. And his goal is to provide, include an alternative for vacationers and to remain in good relations with his longtime neighbors which I'm one. And intended operation he's going to rent each dwelling as to one party and then move into the other easily. He's single and a bachelor, you know, it's just -- you know, he doesn't mind going back and forth.

Those are our house policies. They run in line with the County ordinances; 9:00 p.m. and 8:00 a.m. for noise, parking on street. And basically if you go through that, it's just the rest of the house rules.

So he has a thick perimeter landscaping and fences for noise, and site buffers for guests and surrounding neighbors. That is looking directly off of Kumulani Street, towards the main house. It's not visible. Over here, you have looking down Kumulani, and there's the main house looking up Kumulani. It's not visible. Here's the cottage from Kumulani, and here's the cottage from Hoala Street, so just the roof line showing. On the back of this, later, on the back of the property there's also a brick wall here. This is facing north towards his neighbor. So it's pretty thick as far as noise or --. Actually he's pretty quiet anyway, but if guests come --. And again, the vegetation line around that.

Floor plan for the main house, 1,600 square feet, there's a large deck lanai, and there's three bedrooms here. 520 square foot cottage. It's one bedroom. These are the bedrooms in the main house, and cottage. In the main house you have the living room, the dining room, your kitchen, some of the interior, the bathroom there, and has a pool in the back...yard there, the swimming pool.

As far as safety, there's smoke detectors not only in each one of the bedrooms, but also in both kitchens and the hallways, so a little over done too, so there's plenty of smoke detectors. And there's the fire escape plan. Breakfast items would be providing these pastries, jams, fruits, cereal, milk, coffee, tea, and fruit juices. And that's it. Do you have any questions for me, fine. If you have some for Mr. Land, he's right there. Thank you.

Ms. Duvauchelle: Yes? Before the department's recommendation I'd like to open the floor to public testimony. Anybody wishing to testify on this agenda item please do so now. Seeing none, public testimony is closed. Department's recommendation?

Mr. Quigless: Ryan Quigless, Maui Planning Department, planner. The project was analyzed under the following criteria for compliance: population growth, socio-economic compatibility, land use, environmental impacts, and its cultural resources effect. The proposed project is in conformance with the goals, objectives and policies of the Hawaii State Plan, and the County General Plan. The B&B is also in compliance with the requirements for the County of Maui Bed and Breakfast Permit, and the proposed bed and breakfast will provide additional opportunities for employment and economic growth in the visitor industry.

No environment impacts -- no environmental impacts are anticipated at this point in the application. As of September 12, 2016, 16 letters of support from neighbors within 500 feet were forwarded to the department by the applicant provided in Exhibits 10 through 25 in your packets. And the department has not received any letters of protest at this time, and recommends that the proposed project for approval subject to the 17 standard conditions listed in the department's recommendation report.

Ms. Duvauchelle: Thank you. Commissioners, questions, comments for the applicant? Commissioner Carnicelli?

Mr. Carnicelli: Ryan, I have a couple of questions. One being if you go to the parking, the picture on the parking...is, I guess my concern is ingress, egress because it looks --. I mean, I don't know, you know, is it looks like that we put gravel down on the side to be able to get in. But let's just say that, I don't know, at some point in time, curbs, gutters and sidewalks go in there, and, you know, will we still have the same access to, to the four wide for the main house and the two wide for the cottage?

Mr. Quigless: Jolyn, do you want to address that?

Mr. Bien: Sure.

Mr. Carnicelli: It's also just, you know --.

Mr. Quigless: This one over here?

Mr. Carnicelli: Yeah. Either that one or I think there was an actual picture. So what do we have for, as far as ingress, egress, that goes there?

Mr. Bien: Okay, for the cottage --. Excuse me, this Jolyn Bien. So again for the cottage you're going to have ingress egress off the street. It's required B&Bs one stall per bedroom. So if they have two cars, is that what your concern is?

Mr. Carnicelli: I was just -- the fact that you're showing two parking stalls, and I didn't know --. We legally had two, you know, . . . (inaudible) . . .

Mr. Bien: It's not --. No, we're only designated one parking space.

Mr. Carnicelli: Okay, and that's fine.

Mr. Bien: And, and --

Mr. Carnicelli: Just for clarity.

Mr. Bien: As you can see --

Mr. Carnicelli: Yeah, there we go.

Mr. Bien: That's it. Yes, there's gravel on there. You could put two cars. You could put four cars there if you really wanted to.

Mr. Carnicelli: But you only need one.

Mr. Bien: You only need -- you're only required to have one.

Mr. Carnicelli: Got it.

Mr. Bien: There that plan came up. There's -- that's for the other three, but there's actually, and width wise, you've got one, two, three, four, five. He even parks his truck back over here in the gravel and you know, he's got a spare car up in back here.

Ms. Duvauchelle: Commissioner Carnicelli.

Mr. Carnicelli: So I don't know if this is for you or for the applicant, but within your presentation you said that, at least I heard, maybe you didn't say, but I heard was, is that the applicant would move from house to house. Or, is he going to live in the cottage, B&B, the main house or is he going back and forth?

Mr. Bien: . . . (inaudible) . . . one at a time. He wouldn't do both because then he wouldn't have a place to live, so, yes, he plans on moving to the cottage and he rents the house. And if he rents the cottage, then he'll just move into the house. He won't run both of them at the same time because you can't. He has to be on the property.

Mr. Carnicelli: Right. I, I --

Mr. Bien: When someone comes in for a vacation I have other friends that have a B&B and they are licensed to do that, they move from their main house to the cottage if they rent the main house. Because when they rent the main house, it's three times as much as the cottage, so obviously they're going to, you know, do that for their...income.

Ms. Duvauchelle: Any other?

Mr. Carnicelli: If I could?

Ms. Duvauchelle: Yes.

Mr. Carnicelli: No, I'll just wait for the comments.

Ms. Duvauchelle: Commissioners, any other questions? Commissioner Hedani?

Mr. Hedani: I'm not sure who this is for. Are two driveways allowed for a single-family residence? Or is it because it's a corner lot or something it's allowed? I guess it's a Public Works question.

Ms. Duvauchelle: Deputy Director?

Mr. Yoshida: I'm not the Deputy Director.

Ms. Duvauchelle: Acting Director.

Mr. Yoshida: I guess I'm --. I'm not exactly sure. You know, probably that's a Public Works issue. We can, you know, try to find out.

Mr. Carnicelli: More than one driveway per single family?

Mr. Paul Fasi: How many driveways can a single family residence have? Is that the question?

Ms. Duvauchelle: Yes. Commissioner Hedani?

Mr. Hedani: I don't have a problem with this particular case because it's a very large lot. I guess it's a half acre lot, but it's just a question from a technical stand point.

Ms. Duvauchelle: Thank you. We don't have anyone here from Public Works to answer today so --. Alright, any other questions commissioners? Okay, no other questions? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Ms. Duvauchelle: Do I hear a second?

Mr. Hudson: I'll second.

Ms. Duvauchelle: Okay. Discussion on the motion.

Mr. Hudson: I have a question.

Ms. Duvauchelle: Commissioner Hudson.

Mr. Hudson: During the permitting process do they, do they --. During the permitting process, do they review the driveways? Because the buildings have to be permitted, wouldn't the driveways be under review at that time?

Mr. Fasi: Yeah, that's correct. I think they also check for a line of site clearance . . . (inaudible) .
..

Mr. Hudson: Thank you.

Ms. Duvauchelle: Any other discussion?

Mr. Carnicelli: Yeah, I, I, I do have discussion just because of the, I guess, the, the tenor of the discussion today and, and the previous things on the, on the agenda that we're sitting here talking about. B&B ordinance, we're talking about the STR ordinance, and a big part of this discussion is around, or it's inferred because of the need for affordable housing. We just approved an STR -- I know that this is a B&B -- but we just approved an STR in Launiopoki, a couple of weeks back where we separated out the cottage and said that has to be long time rental. And, you know, the main house could be --. So since we're already gone down that bunny trail, I'm kind of looking at this, saying, okay, we have a, a house and a cottage, of which the applicant has already said that he would go back and or for. I'm not going to go into the whole, well, he could actually turn this into a TVR and like live in one and, you know, then do that whole thing, even though he's on property. But let's say he lives in the main house, he rents out two rooms, and then the cottage is long-term rental. You know, I mean, is...you know, that's really kind of one the things that we're really addressing and trying to look at. As a County, this is...I'm looking at the picture right there and going, yeah, there's, there's a one bedroom house, right there, that, that, you know, a person or family could rent. You know?

Ms. Duvauchelle: Any additional discussion? Okay. Commissioner Hedani?

Mr. Hedani: Getting back to my question on the two driveways, I think paragraph 9 of the recommendation states compliance with all governmental regulations and ordinances so I trust the department would make sure that whatever requirements are required.

Ms. Duvauchelle: Okay, well we have a motion and a second to approve as recommended. Do I want a show of hands? All those in favor, aye? All those opposed?

Mr. Yoshida: Four ayes, one no.

Ms. Duvauchelle: I'm an aye.

Mr. Yoshida: Five ayes, and one no.

Ms. Duvauchelle: The motion carries. Thank you.

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

VOTED: To Approve the Bed and Breakfast Permit as Recommended by the Department.
(Assenting – W. Hedani, L. Hudson, S. Castro, R. Higashi, S. Duvauchelle)
(Dissenting – L. Carnicelli)
(Excused – M. Tsai, K. Robinson)

Mr. Quigless: Thank you Commissioners.

E. ADOPTION OF THE WRITTEN DECISION AND ORDER

1. **Action taken at the February 23, 2016 meeting on MR. TOM PIERCE and MR. PETER N. MARTIN (of counsel), attorneys for the ASSOCIATION OF APARTMENT OWNERS OF KIHEI KAI-NANI, PHASE ONE, INC., submitting a Petition to Intervene and Request for Stay of Contested Case Proceeding dated February 9, 2016 on the applications by VICTORY DEVELOPMENT for a Community Plan Amendment from Multi-Family to Hotel and a Special Management Area Use Permit for the Nani Loa Condominium Hotel project, a 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032, Kihei, Island of Maui. (CPA 2015/0002) (SM1 2015/0004) (P. Fasi)**
 - a. **Substitution of Applicant's Counsel**
 - 1) **July 15, 2016 Notice of Withdrawal of Counsel for VICTORY DEVELOPMENT, INC. from attorneys CRAIG G. NAKAMURA and ARSIMA A. MULLER of CARLSMITH BALL**
 - 2) **August 17, 2016 Notice of Appearance of Counsel for Applicant VICTORY DEVELOPMENT, INC. from attorneys DEBORAH K. WRIGHT, KEITH D. KIRSCHBRAUN, and DOUGLAS R. WRIGHT of WRIGHT & KIRSCHBRAUN**
 - b. **Adoption of Written Decision and Order**

- 1) **April 1, 2016 Proposed Findings of Fact, Conclusions of Law, and Decision and Order relating to Kihei Kai-Nani Phase One, Inc.'s Petition to Intervene submitted by CRAIG G. NAKAMURA and ARSIMA A. MULLER, of CARLSMITH BALL, attorneys for Applicant VICTORY DEVELOPMENT, INC.**
- 2) **April 6, 2016 submittal from attorneys TOM PIERCE and PETER N. MARTIN (Of Counsel) regarding ASSOCIATION OF APARTMENT OWNERS OF KIHEI KAI NANI, PHASE ONE, INC.'s Objections to Proposed Findings of Fact, Conclusions of Law, and Decision and Order relating to Association of Apartment Owners of Kihei Kai Nani, Phase One Inc's Petition to Intervene.**

The Commission may act to adopt or modify the proposed written Decision and Order or take some other action.

Ms. Duvauchelle: Okay moving on to our next agenda item.

Mr. Clayton Yoshida: Thank you Madame Vice-Chair. Under Item E we have the adoption of the written Decision and Order pertaining by the Commission's action taken at its February 23rd, 2016 meeting on Mr. Tom Pierce and Mr. Peter N. Martin, attorneys for the Association of Apartment Owners of the Kihei Kai Nani, Phase One, Inc. submitting a petition to intervene and request for stay of contested case proceeding dated February 9, 2016 on the applications by Victory Development for a Community Plan Amendment from Multi-Family to Hotel, and a Special Management Area Use Permit for the Nani Loa Condominium Hotel Project, at 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-20:parcel 32, Kihei, Island of Maui. Staff planner is Paul Fasi.

I guess, first of all, we have a substitution of applicant's counsel by notice of withdrawal of counsel dated July 15, 2016. Craig Nakamura and Arsima Muller, of Carlsmith Ball, filed this notice of withdrawal of counsel for Victory Development. And then we have the August 17, 2016 notice of appearance of counsel for applicant Victory Development from attorneys Deborah Wright, Keith Kirschbraun, and Douglas Wright of Wright & Kirschbraun.

Ms. Duvauchelle: Paul, before you begin, I'm going to ask Corporation Counsel to recap what the Commissions' duties are in this, in this matter.

Mr. Murai: Unless Paul's going to that.

Mr. Fasi: Yeah, I'll do it. Yeah, if you don't mind.

Ms. Duvauchelle: Okay.

Mr. Fasi: So to bring you up to date, at the last meeting, on February 23rd, this body recommended approval on the Community Plan Amendment to the Council. There were two applications that were under consideration, the Community Plan Amendment and the Special Management Area Use Permit. So, at the end of the day this body recommended approval on the Community Plan Amendment to the Council, and deferred on the SMA Use Permit because the CPA needs to pass first, then it comes back to this body for the SMA Use Permit. Also, in addition to that decision, they also voted -- it was unanimous, eight to zero -- to deny the intervention.

Okay, so just to bring you up to date on the -- where we're at -- on February 9th, 2016, the Planning Department received the Petition to Intervene from the Kihei Kai Nani AOA. Tom Pierce is representing Kihei Kai Nani. Mr. Pierce is here today.

February 17th, 2016, the Planning Department received a motion in opposition to the Petition to Intervene from Victory Development's attorneys. At that time it was Carlsmith. April 2016, the Planning Department proposed -- the proposed D&O from Victory Development attorneys we did receive. On April 6th, the Planning Department received the objections to the proposed D&O from the Kihei Kai Nani attorney, Tom Pierce. July 15th, 2016, the Planning Department received a notice of withdrawal of counsel for Victory Development, and what Clayton Yoshida was just discussing was that the counsel has shifted from Carlsmith to Doug Wright from Wright & Kirschbraun. Mr. Doug Wright is in the -- he is here today. So on August 17th, 2016, the Planning Department received the notice of appearance of counsel for Victory Development from Kirschbraun...attorneys.

So today what we're doing is we're going to do two things. We're going to substitute -- agree on -- to accept the substitution for the applicant's counsel, from Carlsmith to Kirschbraun & Wright. And the second thing is the adoption of the Decision & Order that was at the Planning Commission earlier. And that's where we are today. Thank you.

Mr. Murai: Madame -- Madame Chair if I may?

Ms. Duvauchelle: Please.

Mr. Murai: So as Mr. Fasi pointed out we're simply -- we're acknowledging that there's been a withdrawal and substitution of counsel, and also to approve the Decision & Order that generated from that February hearing. And I realized that there's been some turnover in the Commission, and that some of the Commissioners that are here today may not have been here in February. Now with regard to the approval of the Decision & Order, your options would be to adopt the version that was submitted by the then-counsel Carlsmith Ball to -- or to --. Now I, I know that Mr. Pierce has filed objections and the...the Commission could do one of several things. The Commission could say, well, yes, we'll adopt Carlsmith Ball's proposed Decision & Order, or the Commission could say, well, Mr. Pierce does have some valid points regarding, say, for example, the scope of the Findings of Fact and Conclusions of Law. And if -- if for the sake of discussion, the Commission does not adopt Carlsmith Ball's proposed Decision & Order, the Commission could then either instruct Mr. Pierce to prepare the order or the Commission

could instruct the Department's staff and myself to prepare its own order. And of course now we are -- we're -- I just want to remind the Commission that we are limited to the facts that were deuced at the February, I believe was, 23rd hearing. And so I would urge all the Commissioners to review the minutes that were included for that meeting -- were included in your packet, and remind you all that the scope of whatever -- the scope of the Decision & Order that the Commission approves will be limited to what was the record that was created in February.

Ms. Duvauchelle: At this point we'll open the floor for public testimony. Anybody that would like to speak on this agenda item please do so. Seeing none, public testimony is closed. Okay so are we handling this separately as far as the approval of the change in representation?

Mr. Murai: Madame Chair, I don't think we need to approve it. We just need to acknowledge it.

Ms. Duvauchelle: Okay. And then discussion on the adoption of the Decision & Order. Commissioners, any questions? For Paul? Okay.

Mr. Murai: Well, I think what we need to do is -- is as I laid out earlier we can either -- the Commissioners' options are to adopt the proposed order submitted by Carlsmith Ball, or to instruct Mr. Pierce to prepare the order. In other words, if the Commission believes that there's some merit to his objections. Or, the Commission could instruct the Department staff as well as, you know, working with me to prepare -- to prepare a Decision & Order consistent with the record.

Ms. Duvauchelle: Does anybody have any recommendations on, or questions on those three options? Commissioner Carnicelli?

Mr. Carnicelli: I guess -- thank you Madame Chair -- what I'd like to do, I guess, at this time is just, I'd like to hear from Mr. Pierce, in his objection. I just -- over and above say what has been submitted, is there anything in addition that he'd like to add?

Mr. Tom Pierce: Good afternoon everyone. My name is Tom Pierce. I represent Kihei Kai Nani, and I know that some of the Commissioners have changed since the -- in the last -- since the last hearing. I guess that, you know, we feel like our -- keeping it on the shorter side to begin with -- we feel that our objections fully set forth our concerns with the decision that was made before. And I'm not sure that we're really in a position to reconsider that decision so it really boils down to our obligation, you know, my obligation on behalf of my client to make sure that we have a clear record of what we -- what our position was at the prior hearing. We do think that, in short, in trying to summarize a couple of the main thoughts that are in our objections that the primary one is that we think that once an applicant files for a consolidated application -- files a consolidated application, which is a choice of the applicant, it's -- it's -- the rules permit you to go and do it. What it would be in the old days, the only way that used to be - - able to do it, I remember back when you had to go get a Community Plan Amendment first. You go through that process, the whole administrative process, and then you would come back and request your Special Management Area app -- you'd file your application for a Special Management Area application and do it that way. And so those were -- there would be two separate hearings. But at some point -- Mr. Yoshida would probably remember -- but at some

point that, that rule changed and the Planning Commission then permitted there to be what were called consolidated applications. So with the consolidated applications they could both be filed at the same time. But the way that we read the rules is that one --. And the reason that was done was it would help an applicant to get through the process more quickly. They could have both of their applications heard at the same time, and then depending on what was going to happen after that, they could both potentially be heard and resolved at that point in time depending on what was happening.

So what our position is is that we think that the reason that the application was split on the day of the hearing was because they knew that we were seeking to intervene, and I think that there was a decision made by someone in the Planning Department that -- that rather than have the Community Plan Amendment get bogged down that they wanted that one to go through and it was their position that they could suddenly without any notice and without any change in the application bifurcate the two applications. So that suddenly what had been a consolidated application, suddenly on the day of the hearing became one that was going to go forward, the Community Plan Amendment, while the SMA was not going to go forward. And the thought I think was -- and I respect where the Planning Department is coming from -- was that was the way to avoid -- that would avoid us having and their position standing to move forward because clearly under the SMA Rules, my clients, the Kihei Kai Nani Association would have standing.

So our primary objection is that once an applicant makes that decision, that critical decision that they want to go with a consolidation application it's our position that the Planning Commission at that point does not have the, the scope or authority to suddenly bifurcate the two applications and to have them suddenly go off in different tracks. But I understand that you -- your Planning Commission was, I think, acting upon guidance of counsel and so that be that. But that's primarily where we -- where we would differ from a legal perspective. And then we had other objections that are in there but I'll leave on the record unless, unless folks have specific questions of us. Thank you.

Ms. Duvauchelle: Thank you. Alright, any other discussions, questions? Mr. Hedani?

Mr. Hedani: Since we -- since we heard one side of the story, I'd like to get the applicant's --

Ms. Duvauchelle: Mr. Wright?

Mr. Douglas Wright: I promise to keep it brief. This is Doug Wright for Victory Development. I know that you folks have already been through this process with a lengthy hearing and lengthy testimony before, and you are charged with making recommendations, conclusions of law, and findings that are going to be transmitted to the Council. We've done that part. And it has been stated by everybody else this is not something that will be up for reconsideration today.

Carlsmith's proposed findings set forth the necessary facts that were discussed and served as the basis to make the recommendation which you folks did according to the law which was also sided by Carlsmith and its proposed findings. Those proposed findings are limited to only what is necessary to make the recommendation and discharge your duties. The opposition that I reviewed and which was briefly discussed just now presents either argument for the most part

or new issues that are just being raised which are not previously discussed and open for reconsideration. Therefore, the proposed findings that are before you, which do meet the minimum requirements and don't go beyond what is necessary for you to make the recommendation which you did find, are the appropriate findings which should be adopted and forward on to the Council. Thank you.

Ms. Duvauchelle: Commissioners, questions? Okay, Commissioners, so based on the conversation and Corp Counsel, does any, anyone want to make a recommendation on the -- on the acceptance of the Decision & Order from Carlsmith, Mr. Pierce's objections or are we -- would we like the Department and staff and Corp Counsel draw up the final Decision & Order taking into account all of the information?

Mr. Carnicelli: I would make a motion to accept the Carlsmith Ball proposed order.

Mr. Hudson: Second.

Ms. Duvauchelle: Okay. Is there a --. A motion was made and seconded. Discussion on the motion. Mr. Hedani?

Mr. Hedani: In reviewing the...in reviewing the proposed Decision & Order it reflects, you know, in my mind, correctly . . . (inaudible) . . .

Ms. Duvauchelle: Any other discussion? Mr. Carnicelli?

Mr. Carnicelli: Yeah, just for the record I would say, I mean, I wasn't here for the February hearing, but in reviewing everything that was submitted for this particular agenda item and, you know, basically hearing what I've, I've had and under the scope of what it is we're supposed to make a decision on, I'm comfortable with, I guess, my own motion.

Ms. Duvauchelle: Okay, any further discussion? Alright --

Mr. Murai: So for the record, Commissioner Carnicelli, you correctly know that you weren't present, but you were able to review the minutes and --

Mr. Carnicelli: Correct. I was able to review the minutes and the submissions by Counsel on each side.

Mr. Murai: So you familiarized yourself with the prior proceedings.

Mr. Carnicelli: Correct, I did.

Mr. Murai: Thank you.

Ms. Duvauchelle: Okay. Alright, then let's go ahead and take a vote. All those in favor of accepting the written Decision & Order in your packet, as submitted by Carlsmith Ball, please have a show of hands?

Mr. Yoshida: Five ayes.

Ms. Duvauchelle: Okay, thank you very much. Moving on.

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

**VOTED: To Adopt the Proposed Written Decision and Order.
(Assenting – L. Carnicelli, L. Hudson, W. Hedani, S. Castro,
R. Higashi)
(Excused – M. Tsai, K. Robinson)**

**F. ACCEPTANCE OF THE ACTION MINUTES OF THE AUGUST 23, 2016 MEETING
AND REGULAR MINUTES OF THE JUNE 14, 2016 MEETING**

Mr. Yoshida: Under Item F, Madame Vice-Chair, we have the acceptance of the action minutes of the August 23rd, 2016 meeting, and the regular minutes of the June 14th, 2016 meeting.

Mr. Hedani: Move to approve.

Mr. Higashi: Second.

Ms. Duvauchelle: All those in favor? Aye.

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

**VOTED: To Accept the Action Minutes of the August 23, 2016 Meeting and
Regular Minutes of the June 14, 2016 Meeting.
(Assenting – W. Hedani, R. Higashi, L. Hudson, L. Carnicelli,
S. Castro)
(Excused – M. Tsai, K. Robinson)**

G. DIRECTOR'S REPORT

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

Mr. Yoshida: Thank you Madame Vice-Chair, moving to Item G, under Director's Report, the department has circulated the SMA Minor Permit report and the SMA Exemptions report.

Mr. Hedani: Move to accept.

Mr. Carnicelli: Second.

Ms. Duvauchelle: All those in favor? Thank you.

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

**VOTED: To Accept the SMA Minor and SMA Exemption Reports.
(Assenting – W. Hedani, R. Higashi, L. Hudson, L. Carnicelli,
S. Castro)
(Excused – M. Tsai, K. Robinson)**

3. Discussion of Future Maui Planning Commission Agendas

a. September 27, 2016 meeting agenda items

Mr. Yoshida: Okay, under Item 3, discussion of future Maui Planning Commission Agendas. Your September 27th meeting, regular meeting, will be conducted in the Council Chambers on the 8th floor, so the building next door.

Ms. Duvauchelle: Okay.

Mr. Yoshida: Largely because we have a presentation from Mr. Mark Fenton on walkability and complete streets. Mark will be attending the Hawaii Congress of Planning Officials Conference next week on Kauai as a guest speaker. He was here six or seven years ago to address the commission on, on these issues, but --. So that's a large reason why the meeting will be there. We have two public hearing items.

Mr. Hudson: I have question regarding --

Ms. Duvauchelle: One moment. Commissioner Hudson.

Mr. Hudson: Oh, you're going --

Mr. Yoshida: That will be Item D, Workshop on Walkability and Complete Street.

Mr. Hudson: Okay, and the next one, Ms. Wilson, we had public testimony again. Are we having public testimony again on that?

Mr. Yoshida: Well, I guess, we would just like to set a, for the Commission, to select a date when they would want to continue review of the applications. As you recall at your last meeting on August 23rd, it was an all-day meeting and we had -- we started up here, and it was standing room only. We had over 90 people that signed up to testify and by the end of the day, we could just close the public hearing on public testimony, but the Commission was not able to act on the petition to intervene or the application themselves. So, I guess with a fuller commission, hopefully, you know, they can determine when would be, what would be the next date.

Mr. Hudson: . . . (inaudible) . . . is it going to -- is there going to be more public hearing on that?

Mr. Murai: Clayton, if I can interject. You know, I hear what Commissioner Hudson is saying and I think --. I just want to be clear so in my own mind, this is just to set the date, right?

Mr. Yoshida: Yes.

Mr. Murai: Because, you know, if we're concerned that we're going to have another 40 or 50 people coming to testify, our --. The law allows the Chair great discretion on this kind of item. We will be required to accept public testimony on the date setting, but the Chair would have the discretion to say, no, we're not going to hear testimony about the merits of the intervention, or the merits of the application. That's, that's my take on it. Because this agenda item is only limited to --

Mr. Yoshida: Yeah, I think -- we'll make it clear on the agenda, it's just to set the date.

Mr. Murai: Set the date. Date setting. . . (inaudible) . . .

Mr. Yoshida: We're not taking any action on the petition to intervene or the application.

Mr. Murai: Right. So, you know, because the Sunshine Law would require us to accept public testimony on the agenda item, and if it's not --. If it's public testimony so any other than what's on the agenda, then it's the Chair discretion to allow or disallow depending on, you know, how much time we have, those kinds of considerations.

Mr. Carnicelli: So, so, if I could then re-ask a question, and that is, okay, so we put on the agenda to say we're going to solely pick a date. That's it. We're picking that date, and the date is, I don't know, October 30th. And we decide, okay, yes, that's the day we're going to do, and then we actually open up that day, we now then we take public testimony again because the Sunshine Law. So basically we could end up in the same situation where every time we bring this up, we get 100 people showing up to testimony, it's now 5:30 and we're all saying, oh, we don't have enough time to make a decision. And it could happen every single time that we actually try to make a decision on this. Correct?

Mr. Murai: Which is why we try to finish in the time we have. And, you know, one of the problems we had last time was we just ran out of time. We, we had to vacate the room. And so when we pick the date, we'll be picking a date when the commissioners are prepared to -- and order dinner this time too.

Mr. Hudson: And a venue, a proper venue.

Mr. Murai: Right. And some place where we have more control over the, over the room.

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: In this particular case -- excuse me -- can the Chair restrict testimony? You know

like if a person testified the first go around, can we restrict testimony to new testifiers, or do we have to allow them a second . . . (inaudible) . . . ?

Mr. Murai: You know, that, I'm not sure. I'm not sure, you know. Just thinking out loud, we could call this a continued, you know --. I take it back, the public hearing was closed, so I think next time, it's going to be -- we're going to start off with the Petition to Intervene. So I think that allows a new round of testimony. But then again too if the first thing we're hearing is the Petition to Intervene, then the, I believe the Chair could limit the public testimony to the issues raised by the intervention only. In other words, the Chair would have discretion, if someone wants to talk about whether it's a good idea, bad idea, overall, then the Chair could say, you know what we don't have enough time for that today, we'll take testimony only on the issue of intervention. But then once the intervention is, you know, ruled on then we're going to proceed, right, so, to, to whatever the next thing would be. So, I think to some degree we kind of got to play by ear where the chair -- we'll look at how much time we have, what kind of work we need to do, and, you know, allow the chair the discretion to kind of control the public testimony to the extent, you know, permissible by law.

Mr. Hudson: Chair, I have a clarification question. When they closed public testimony on anything, under what grounds can you re-open public testimony? I mean, if it's closed --

Mr. Murai: No, no, we finished the public hearing.

Mr. Hudson: Okay. Yeah, but I'm just talking about not, not the intervention or anything like that because honestly 68 people takes an awful lot of time. So if they closed public hearing, then under what --. If it happened today, we closed public hearing, what . . . (inaudible) . . . public hearing is closed. How can somebody come and talk about . . . (inaudible) . . . if the public hearing has already been closed?

Mr. Murai: Well, because it's on another agenda on another day.

Mr. Hudson: Okay.

Mr. Murai: See that's the thing, right. If it was the same day, the same session, then you can say, no, you had your one, one opportunity. But when we pick this matter up again, it will be a separate issue at a totally separate hearing on a different, under a different session.

Ms. Duvauchelle: But it would be nice to know if on the application portion if we can restrict it to . . . (inaudible) . . . testify prior. So you can't testify again.

Mr. Murai: Probably not. Probably not. Again, which is why, you know --

Ms. Duvauchelle: Because, yeah, I mean, I can see the logic where is if maybe the day of the last hearing somebody had to work, couldn't be there, they see it on the agenda, say oh great I can be here today.

Mr. Murai: And, and, you know, the thing is we want to, as much as possible, you know, in

keeping with the spirit of the Sunshine Law, we want to allow as much public testimony as possible and practicable. Which is why one of the things that we're going to do when we do -- you know, when this matter, when the date setting is up, is to make sure we look for a date where we have more time.

Ms. Duvauchelle: Nothing else on the agenda.

Mr. Yoshida: I think we would just be restricting it to this one item.

Mr. Castro: It would just give them the opportunity to repeat themselves and possibly add something they . . . (inaudible) . . .

Mr. Murai: And that's, that's called democracy.

Ms. Duvauchelle: That will do it. Commissioner Higashi?

Mr. Higashi: Yes, I need to know when it's scheduled because I excuse myself on the application. So as soon as you schedule it, then I will officially state that I will excuse myself from participating in that particular...agenda.

Mr. Carnicelli: And, and just for clarity sake too we're going to pick a day that's not a normal scheduled day. We're going to pick like a separate day? Like, I don't know, like a Thursday or something like that or no? It's going to be a regularly --

Mr. Yoshida: I think that's up to the body.

Mr. Carnicelli: Okay.

Ms. Duvauchelle: Alright.

Mr. Yoshida: Okay. We also have two public hearing items. One is -- the first one is for 17 short-term rental home permits at the International Colony Club on the west side. And the second one is for amendments to Chapter 19.62 of the County Code, the Flood Hazard Districts, as recommended by the Federal Emergency Management Agency.

Ms. Duvauchelle: Okay. Thank you. Any other questions, comments? Commissioner Higashi?

Mr. Higashi: So does this mean that Item C1, Director's Report, will not be part of the agenda that I can attend the meeting on the 27th, or is it --

Mr. Murai: Commissioner Higashi, you're certainly welcome to attend, and you can simply just recuse yourself from voting on Item C1. In other words, you don't have to like absent yourself from the entire meeting.

Mr. Higashi: So one and two is okay.

Mr. Murai: Right. Right.

Ms. Duvauchelle: Commissioner Hedani?

Mr. Hedani: So on September 12, Items C2, 3, and 4 are not going to be discussed.

Mr. Yoshida: Yeah, we're not taking any action on either the Petition to Intervene or the applications.

Ms. Duvauchelle: Okay. Okay Commissioners, so our next agenda -- next meeting --. Oh, Commissioner Hudson?

Mr. Hudson: I'd like to thank the acting or the Vice-Chairperson. . . (inaudible) . . .

Ms. Duvauchelle: I'll get, I'll get better. Thank you. Thank you. Alright, so our next meeting date, September 27th, 2016. Thank you.

Mr. Hedani: Question...before you, before you hit the gavel.

Ms. Duvauchelle: Yes, Commissioner Hedani?

Mr. Hedani: Is there any progress in appointing a ninth commissioner?

Mr. Yoshida: Yes, I believe that the Policy Committee did consider the nomination of Doreen Canto, Pua Canto to the Planning Commission, and they recommended approval. I believe the nomination comes up before the Council at Friday's regular meeting.

Mr. Hedani: Thank you very much.

Ms. Duvauchelle: Alright. Thank you. Meeting adjourned.

H. NEXT REGULAR MEETING DATE: September 27, 2016

I. ADJOURNMENT

The meeting was adjourned at 2:15 p.m.

Submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Stephen Castro
Sandy Duvauchelle, Vice-Chair
Wayne Hedani
Richard Higashi
Larry Hudson

Excused

Keaka Robinson
Max Tsai, Chair

Others

Will Spence, Director, Planning Department (9:00 a.m. – 12:20 p.m.)
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel
Clayton Yoshida, Current Division Planning Program Administrator, Planning Department
Gina Flammer, Staff Planner, Current Planning Division
Paul Fasi, Staff Planner, Current Planning Division
Ryan Quigless, Staff Planner, Current Planning Division