

**LAND USE COMMITTEE**  
Council of the County of Maui

**MINUTES**

**October 26, 2018**

**Council Chamber, 8<sup>th</sup> Floor**

**RECONVENE:** 8:41 a.m.

**PRESENT:** Councilmember Robert Carroll, Chair  
Councilmember Riki Hokama, Vice-Chair  
Councilmember Stacy Crivello  
Councilmember Don S. Guzman  
Councilmember Yuki Lei K. Sugimura  
Councilmember Mike White (in 8:44 a.m.)

**EXCUSED:** Councilmember Alika Atay  
Councilmember Elle Cochran  
Councilmember Kelly T. King

**STAFF:** Carla Nakata, Legislative Attorney  
James Krueger, Legislative Analyst  
Rayna Yap, Committee Secretary

**ADMIN.:** Michele Chouteau McLean, Planning Director, Department of  
Planning  
Joseph Alueta, Deputy Planning Director, Department of  
Planning  
David Raatz, Administrative Planning Officer, Department of  
Planning  
Michael Hopper, Deputy Corporation Counsel, Department of the  
Corporation Counsel

**OTHERS:** (5) additional attendees

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

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CHAIR CARROLL: . . .(*gavel*). . . This Land Use Committee meeting, recessed Land Use Committee meeting will come to order. And this is the meeting that was recessed October 23, 2018 to today, October 26, 2018. I'm Councilmember Robert Carroll, Chair of the Land Use Committee. First, may I request if anything, if anybody has anything that makes noise please turn it off, or put it on the silent mode. With us this morning, we have the Vice-Chair of the Committee, Mr. Hokama.

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VICE-CHAIR HOKAMA: Chairman.

CHAIR CARROLL: Mr. Guzman. Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

CHAIR CARROLL: And Ms. Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR CARROLL: Excused this morning, we have Alika Atay, and Elle Cochran, and Kelly King. Mike White should be joining us shortly. Corporation Counsel we have Michael Hopper, Deputy Corporation Counsel; Michele McLean, Planning Director; Joe Alueta, Deputy Planning Director; David Raatz, Administration Planning Officer, Zoning and Enforcement Division, Department of Planning; Glen Ono [sic], Department of Public Works, on call; and David Goode, Director of Public Works on call from 9:30 this morning. Committee Secretary, Rayna Yap; Legislative Attorney, Carla Nakata; and Legislative Analyst, James Krueger. At this reconvened meeting of October 23, the Committee received...closed public testimony on October 23.

**ITEM LU-10: AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO ACCESSORY DWELLINGS** (CC 15-196, CC 16-301, and CC 16-302)

CHAIR CARROLL: Members, we recessed this meeting, and we're reconvening today, continue our discussion on LU-10, Amending the Comprehensive Zoning Ordinance Relating to Accessory Dwellings. Amending the Comprehensive Zoning Relating to Accessory Dwellings. As a reminder the proposal before the Committee will allow lots under 7,500 square feet in size to have an accessory dwelling on the lot. Lots with areas 7,500 square feet and above can have two accessory dwellings on the lot. These allowance apply to only certain zoning districts. During the meeting Tuesday, the Committee discussed...agreed on revisions to the measure. Staff has distributed a sheet containing these revisions for your reference, as well as a revised proposed bill with these revisions incorporated. As noted in the handout, the Committee's revised proposed bill increasing the maximum gross covered floor area, this is in the right-hand column of the table in Section 19.35.020. The Committee also struck Section 19.35.090(B) in its entirety. The Committee also revised Section 9 of the proposed bill to allow for applications for bed and breakfast home permits, short-term rental home permits, and other lawful transient vacation use accessory dwellings deemed complete as the effective date of the ordinance to proceed under the existing law to be eligible for permit renewal under existing law. Members, to proceed we first need a motion to reconsider the main motion as amended. To recommend passage on first reading of the proposed bill and file County Communication 15-196, 16-301, and 16-302. In accordance with Robert's Rules, a motion to reconsider must come from someone on the prevailing side of the motion, someone who did not vote on the motion at all. Since the motion failed, this would mean Member Guzman who voted no, or Mr. Hokama, who was not present at that time. At this time, the Chair will entertain a



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address today. The main issue the body must consider, what is to...what to include in the bill as it relates to bed and breakfast homes, short-term rental homes, and transient vacation rentals. Before we get to this, I'd like to address a couple of other issues. First, on Page 4 of the revised proposed bill, Section 19.35.090(A), deals with adequacy of sewage disposal systems, but requires the Director of Public Works to make the determination. To update this reference, the Department currently has jurisdiction over wastewater, the Chair will entertain a motion to amend Page 4 of the revised proposed bill, Section 19.35.090(A), Maui County Code, and bracket out Public Works, and insert after the brackets, underscoring the phrase environmental management.

COUNCILMEMBER SUGIMURA: So, Chair, the...it's --

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: --gonna read A. Adequacy of sewage disposal system. This shall be secured in writing from the, and you're deleting Department of Public Works here, and you're adding...

CHAIR CARROLL: And we're deleting that and putting in Environmental Management which is the appropriate agency.

COUNCILMEMBER SUGIMURA: Okay, I move...I so move.

CHAIR CARROLL: Been moved that...second? And Mr. White has joined us, and thank you. Alright, all in favor signify by saying "aye."

COUNCILMEMBERS VOICED AYE

CHAIR CARROLL: Opposed? Motion carried.

**VOTE:           AYES:   Chair   Carroll,   Vice-Chair   Hokama,   and  
                  Councilmembers Crivello, Guzman, Sugimura, and  
                  White.**

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   Councilmembers Atay, Cochran, and King.**

**MOTION CARRIED.**

**ACTION:           APPROVED AMENDMENT.**

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CHAIR CARROLL: Next, by Correspondence dated October 24, 2018, the Department of Fire and Public Safety transmitted a proposed revision to the bill. The Department has indicated that the proposed Section 19.35.050(A)(3) is not necessary because they will be able to review building permit applications for accessory dwellings by making a request to Department of Public Works. The Chair will entertain a motion to amend Page 3 of the revised proposed bill, Section 19.35.050(A) by removing Subsection 3.

COUNCILMEMBER SUGIMURA: Zero five zero A, oh.

COUNCILMEMBER WHITE: Could you explain the reason again, Chair?

CHAIR CARROLL: Do I have a second? I'm sorry.

COUNCILMEMBER WHITE: Oh, did we have a motion?

COUNCILMEMBER SUGIMURA: Not yet. Wait.

CHAIR CARROLL: Did anybody make a motion that I missed over here?

COUNCILMEMBER SUGIMURA: No. Can we just have clarification? So, can you say that again?

CHAIR CARROLL: Alright. The Chair will entertain a motion to amend Page 3 of the revised proposed bill, Section 19.35.050(A), by removing Section 3.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR CARROLL: And this again is because the Fire Department says this is not necessary.

COUNCILMEMBER GUZMAN: So moved.

COUNCILMEMBER WHITE: Second.

CHAIR CARROLL: Been moved, and seconded by Mr. Guzman.

COUNCILMEMBER SUGIMURA: Second by Mr. White.

CHAIR CARROLL: Mr. White. Thank you. Discussion? Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, Chair, according to your last meeting, the Department...Fire Department indicated that they don't actually utilize this section here, and they have other provisions that they follow through with the process. That's all.

COUNCILMEMBER SUGIMURA: So, Chair?

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CHAIR CARROLL: Thank you. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: And I think that...I just want clarification from the Department 'cause the discussion came up that Fire wanted to be sure that they did see permits so they could comment, but when I talked to Fire in one of the recesses, they said that it will happen through the process. So, can, I don't know, can Planning or somebody comment on that to be sure that Fire will get applications?

CHAIR CARROLL: Mr. Alueta?

MS. NAKATA: Mr. Chair? Excuse me, Staff would just note that we did receive correspondence dated October 24, 2018, from the Department of Fire and Public Safety, indicating that they've discussed the issue with Public Works and that this language is not necessary.

COUNCILMEMBER SUGIMURA: Okay, thank you.

CHAIR CARROLL: Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, I understand it may not be necessary for the Department, since we assume they know their job, okay. This is for the applicant community side of the issue that needs to know what is required for application to be processed and finally approved. So, I won't support the motion. Thank you.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR CARROLL: Any further discussion? All in favor of the motion, signify by saying "aye."

COUNCILMEMBERS VOICED AYE

CHAIR CARROLL: Opposed?

VICE-CHAIR HOKAMA: No.

CHAIR CARROLL: One "no," five "ayes," motion carried.

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**VOTE:           AYES:   Chair Carroll, and Councilmembers Crivello, Guzman, Sugimura, and White.**

**NOES:   Vice-Chair Hokama.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   Councilmembers Atay, Cochran, and King.**

**MOTION CARRIED.**

**ACTION:                   APPROVED AMENDMENT.**

CHAIR CARROLL: Thank you, Members. The issue we left off on Tuesday relates to whether to prohibit the use of accessory dwellings for bed and breakfast homes, short-term rental homes, or transient vacation rentals, as proposed in Section 19.35.010(D), Maui County Code, would provide as follows, no accessory dwelling shall be used a bed and breakfast home, short-term rental home, or vacation rental. The floor is open to discussion. Mr. Guzman?

COUNCILMEMBER GUZMAN: Oh, thank you Chair. You know, prior to the last meeting on Tuesday, I believe this ordinance was in this Committee at least three times, and in those three times, not once did this provision come up where you're outright banning accessory dwellings...future accessory dwellings from being used for B&Bs and short-term rentals, and this current version, which was proposed by Planning, inserted this language. So, all...prior to this last Tuesday's meeting, I believe that you had a general consensus on the floor that we were going to proceed with your language that we had in the original bill, and at this last meeting, you proposed that same language, and I support it. And the language that you're proposing, Chair, is very...it's in line with the intent of the bill, which always was to increase density on these smaller lots, not to create a complete ban on accessory dwellings to be used for B&B and TVRs. I don't support the language that the Planning Department has inserted in this new version, only because of the fact that we already have provisions and regulations that govern B&B and TVRs, inclusive of caps, so each district has caps...amount of caps that a certain number that you cannot go over. So, for example, if we were to use this language that's inserted currently, I'm gonna give a simple example, so if we...if you are a current owner of a accessory dwelling, you have the ability, according to our ordinances to go in and apply, because in your district, and this is just a hypothetical, in your district your cap is still available, there's still a certain number of available permits in that district. So, you go on and you apply and get that...you apply for that process. Now, the neighbor who doesn't have an accessory dwelling, if we were to insert and utilize this bill, he would not have the ability to even avail of the application process, which is unfair, completely. So, even though the cap hasn't been reached, he would not be able to build an accessory

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dwelling for the purposes of TVR and B&B, so what is, so my point is what is the purpose of even having these types of regulations. And we...in addition to that, Chair, we have a \$20,000 fine that's coming up for vote, which would increase, or enhance the ability of enforcement. All of this stems, you know, the issues that arise from TVRs and B&Bs stem from enforcement, in my opinion, and we haven't been able to utilize or be effective in enforcement, I think that's the key there, not shutting down an entire industry. So, I do support your original amendment that you proposed on the floor last Tuesday, and for the record, I would like to motion for that amendment to be proposed and inserted and delete the language that is proposed by the Planning Department. And if I may, Chair, may I make that motion now?

CHAIR CARROLL: You can make that motion now.

COUNCILMEMBER GUZMAN: Okay, thank you, Chair.

MS. NAKATA: Excuse me, Mr. Chair, could Staff request a short recess?

CHAIR CARROLL: I'm sorry?

MS. NAKATA: Could Staff request a short recess?

CHAIR CARROLL: Short recess.

COUNCILMEMBER GUZMAN: Okay, thank you.

CHAIR CARROLL: . . .*(gavel)*. . .

**RECESS: 8:58 a.m.**

**RECONVENE: 9:00 a.m.**

CHAIR CARROLL: . . .*(gavel)*. . . We are back in session. Alright, it's been called to my attention that just like the original we had to go over there for your consideration because you cannot make the motion, it would be...

COUNCILMEMBER GUZMAN: Someone else because...

CHAIR CARROLL: Yeah, it would either have to be Mr. Hokama or Mr. White to make that motion. You know, since it's like that, let me go try to clarify a little bit before we get into the...

COUNCILMEMBER GUZMAN: Okay, okay. I will yield, Chair.

CHAIR CARROLL: Thank you. Members, I drafted some potential language for us to consider for this section. Staff, is that passed out already? Staff is going to pass out...and this is pretty much what had on the first time with some little changes, but this is something that could be considered. In Section 19.35.010(D), is amended with

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this language. Bed and breakfast homes, short-term rental homes, and other transient vacation rentals would not be allowed on lots smaller than 7,050 [sic] square feet. On lots 7,500 square feet or greater these could be permitted. One accessory dwelling only if there's another accessory dwelling being used for long-term rental purposes for nine months out of the calendar year. The reason Mr. Guzman brought up, what was the reason why we had the new ones on the, what were substandard lots before was because you're going to have a greater number of homes in a tighter area, and it was...concerns were brought out before that because of these smaller lots, and adding more in there, that having vacation rentals would be detrimental to the community because of the smaller area and the impacts would be greater. And that's why I didn't want to allow vacation rentals in the...what the proposed bill is addressing, because it would just be too much for those communities, 'cause, remember, that's 7,500 square feet, and all the way down its...would be a substantial impact. If you have permanent residence, it's something else. To have vacation rental traffic in that type of area would be difficult. Does everybody have the, that proposal? Mr. White?

COUNCILMEMBER WHITE: Chair, I'll make that motion. And I'll...well, I'll make that motion.

CHAIR CARROLL: Oh, okay. For the...what I just read?

COUNCILMEMBER WHITE: What you...

CHAIR CARROLL: What you have before you.

COUNCILMEMBER WHITE: Right. I'll make the --

CHAIR CARROLL: Is there a second to that motion?

COUNCILMEMBER WHITE: --motion on what you...what you've just read and handed out to the Committee.

CHAIR CARROLL: Oh, and seconded by Ms. Crivello. Discussion? Mr. White?

COUNCILMEMBER WHITE: Chair, I'm, as you know that our last meeting I was not comfortable with this motion, but I've been reminded that a newly built ohana unit cannot be used as an short-term rental home for five years. So, because the intent of this bill is to generate new housing for long-term rental purposes, and the fact that as Mr. Guzman points out, we have a cap that limits the number that can become short-term rentals or bed and breakfasts, I'm willing to support this at this time.

CHAIR CARROLL: The Chair would note that anyone over 7,500 square feet, there are no changes, it would be addressed the same way it is now under current law. Mr. Hokama?

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VICE-CHAIR HOKAMA: Chairman, I appreciate Members like Guzman and White's comments this morning, but as I see the bill being currently proposed, I'm not going to agree that Lanai stays with Maui, I'm not going to agree with this 7,500 line for accessory dwellings for Lanai. Our island's problem is we have a lot of legal non-conforming lots that are of smaller lot sizes, okay. The only guys who have big lots is what I would call non-Lanaians. Okay, so I'm not so concerned about them, they have the ability to afford and pay what they want, okay. So, my concern is the existing community, and with this bill, although you say Fire will review, I don't think it's fair for, to wait for an applicant to come before the departments can tell us we don't have capacity in our waterline, our sewer line, for small communities like Lanai, okay. We built that a hundred years ago with Jim Dole, it's basically the same grid of that original construction. We have different situations and requirements to deal with, Chairman. So, for one, in this version I'm going to recommend that Lanai be split out. Like we recognize uniqueness of Molokai, which I support, I will say let's split Lanai off of Maui too, 'cause we don't deal with those 7,500, 87,000 square...we're talking about two acres now, Chairman, you're allowing a house that is 1,200 square feet. Lanai, lucky our people get 700-square-foot houses, you telling me accessory dwellings can be twice the size of the main house, for us? No, no, I'm not supporting that.

CHAIR CARROLL: And again that, anybody applying for this would have to get all the proper permits, and everything from sewage to everything else, from...

VICE-CHAIR HOKAMA: That's right, Chairman, we're going to have to pay for increased water \_\_\_\_ capacity, increased the sewage capacity, of those existing areas, okay. We need to know what kind of money we talking about to allow this to happen. If this is a smart move increasing that, let's move forward, but let's be real with the community, on what it's going to take to make the infrastructure fit the increased densities. That's the fairness to the tax base, Chairman.

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you, Chair. I appreciate Mr. Hokama's comments, and this language, Chair, I see the advantage of this language for Central Maui, because of the fact that we do have...and may I say, some illegal housing going on, on smaller lots, and so this language would allow those accessory dwellings to become legal. I'm not necessarily sure whether this is appropriate for Lanai, and I have no objections in excluding Lanai, but I know that this language will help Central Maui. And I concur with Mr. White, I think we're in agreement with this proposed language, and so I will support this amendment, Chair. If Mr. Hokama would like to add his exceptions, or exemption to Lanai, I have no objections to that as well. Thank you.

CHAIR CARROLL: Further discussion? Members...

COUNCILMEMBER SUGIMURA: Chair?

CHAIR CARROLL: Yes?

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COUNCILMEMBER SUGIMURA: Could I ask a question? So, on this amendment, as it reads, what is the purpose for the nine, at least nine consecutive months of a calendar year, so that it's saying if a lot is 7,500 square feet or greater, it may only be permitted in accordance with the provisions of this chapter for bed and breakfast, short-term vacation rent, or transient vacation use, if there are two accessory dwellings on a lot, and one is used for long-term rental purposes for at least nine consecutive months of the calendar year. What is the nine consecutive months? I thought we tried...

CHAIR CARROLL: That was brought up by somebody, somewhere along the line over there, that nine consecutive months is 180 days, and that's a matter of discussion, if wanted to leave it like that, or go back to the 180 days. You know delete that and put 120 days...180 days inside.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR CARROLL: You know --

COUNCILMEMBER GUZMAN: Chair?

CHAIR CARROLL: --to make it maybe a little clearer, I'd like to \_\_\_\_ under existing law, one accessory dwelling only can be built on a lot that is 7,500 square feet or larger. Currently, an owner may apply for a permit to operate a bed and breakfast home, short-term rental home, or transient vacation rental home from that accessory dwelling, provided specific criteria are met. Under existing law, an owner with a lot of less than 7,500 square feet in size cannot build an accessory dwelling on that lot. An owner of that lot, 7,500 square feet or larger can build an accessory dwelling on that lot. The Chair would like...the Chair would ask that the Committee be reminded the intent of the legislation is to increase the County's housing inventory by allowing one accessory dwelling to be built on a lot where currently none is allowed, or a second accessory dwelling to be built on a lot where currently only one is allowed. This legislation will allow for 20 percent increase in the size of an accessory dwelling for to promote livability. I think we can all agree that it's not this body's intention to increase density on lots, therefore increasing infrastructure demands only allow for additional short-term rentals can be accommodated. The proposed bill as submitted prohibits short-term rentals and accessory dwellings, period, unless an operator already has a permit for the property. For these owners with permits, the proposed bill allows renewals, provided they meet requirements for renewal. On Tuesday, this Committee revised a proposed bill to allow completed applications to operate short-term rentals from an accessory dwelling to proceed. The Committee considered completing proposed...proposals to amend the proposed bill as it relates to the provision on short-term rentals. We left on Tuesday with an impasse. The last two amendments considered by the Committee were as follows, first to preserve the status quo by allowing accessory dwellings that can already be built under existing law, to apply for a permit, to operate short-term rentals, or second, to allow only accessory dwellings issued building permits for construction prior to the enactment of this ordinance to be used for short-term rentals. The proposal I presented today is yet

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another compromise between these positions that prohibits an accessory dwelling on less than five...7,500 square feet from being used as short-term rental. Proponents of both amendments supported this. It also prohibits short-term rental use on a second advisory [sic] dwelling on a lot, unless the other accessory dwelling is used for long-term rental purposes. Your Chair feels that this is the appropriate compromise between the two positions because it promotes long-term rental use where currently there may be none, and rewards that use by allowing an application to be considered for short-term rental use in one of two accessory buildings. As noted previously, with the ability to pursue short-term rentals use in accessory dwellings, it is already permitted under Chapter 19.35 in the appropriate zoning districts. I hope that clarifies that a little bit. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. I would like to also add, just for clarification for Ms. Sugimura's purposes, is that I believe that the nine consecutive months is included in there because that's what determines a long-term rental. Anything less than nine months, I believe would be in the category of short-term rentals. So, it might...we might want to get a clarification from Corporation Counsel, just to verify that.

COUNCILMEMBER SUGIMURA: I thought it was six months.

CHAIR CARROLL: Corporation Counsel, could you make comment please?

MR. HOPPER: I believe the definition of transient vacation uses six months as the...as sort of the cutoff date, that long-term rental is considered six months or more. But also, I think this provision, its clarification would be, I think welcomed on the enforceability...or what's the criteria for nine consecutive months in a year, does that mean every year there needs to be proof that there was a unit rented for nine consecutive months for the B&B or short-term rental home permit to continue to be renewed? Or how exactly that process would work. Or is it you rent it out for nine consecutive months one time, then you get to apply, and then if it's granted there's no more checks, or something like that. I think that would benefit from some clarification as to the enforceability of that provision.

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: So, we're adding...so, Chair, may I?

CHAIR CARROLL: Yes, proceed.

COUNCILMEMBER GUZMAN: So we're adding additional three months to the standard six months, just to make sure that it is a long-term? I mean, just, just adding additional three months just --

CHAIR CARROLL: That's how that came about, yes.

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COUNCILMEMBER GUZMAN: --for the security purposes, or the, I guess satisfaction, or I don't know what the intent was to add on three additional months, but you are the maker of the, or the drafter of the language, so may I ask you, Chair, why you added an additional three months?

CHAIR CARROLL: That was in there from discussions quite some time ago, and I can't really remember how it got there to tell you the truth. It was, the rationale was to make sure there was long-term rental, but we can change that back to 180 days before we approve this.

COUNCILMEMBER GUZMAN: Yeah, I just kind of wanted to question that because that I...if you're going to enter into a six-month lease, it's a six-months lease, and then you go, once that expires, then you go month-to-month, so you would be on a month-to-month for the last three months of your nine months. So I would rather it be straight out six months, and then providing proof to the, maybe the Department that there was a six-months lease agreement on record, because other than that, people would have to change their leases to nine months, which is not standard.

CHAIR CARROLL: I agree.

COUNCILMEMBER GUZMAN: 'Cause usually they go month-to-month after the six months, yeah.

CHAIR CARROLL: I agree. Would you like to make a motion to change that to 180 days?

COUNCILMEMBER GUZMAN: Yes, please.

CHAIR CARROLL: Second? Made by Crivello. Further discussion? Mr. Hokama?

VICE-CHAIR HOKAMA: I'm trying to recall what our legal advice was regarding a domicile, what is a domicile, because I think that is the definition we used for the long-term component, what is a domicile. Because you only can register one domicile as your home, legally, and that's part of our criteria of who's a residential homeowner or not. What I would bring up though, Chairman, is, you know, we've been...again we know that Planning is coming up with a comprehensive review of zoning, and at the same time I would say it makes sense for us to review our property tax categories at the same time. When we did review, and I proposed the adjustments on the condo bill, one of the provisions was to codify how we can provide under long-term rentals, some real property tax support that we give property homeowner...homeowner residents. Okay, it's something we can do, I've proposed it, I guess I didn't explain it well enough, the Committee did not support that. But I still think that's worthy for us to bring up, and for me it better makes sense with this land use component that's tied into it, for us to justify why we give certain long-term rentals...homeowners break, Chairman. So, I would just say think about those things when we make our decisions because that is one way we can also help those that get into housing, how to keep housing, is by adjusting what we feel is appropriate tax adjustments. Thank you.

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CHAIR CARROLL: Further discussion?

COUNCILMEMBER WHITE: Chair?

CHAIR CARROLL: Ms. Sugimura, followed by Mr. White.

COUNCILMEMBER SUGIMURA: So, Chair, I'm kind of having hard time with this whole concept of trying to mix oil and water together, where...I think we're, I thought the accessory dwelling concept which was good. I liked Mr. White's idea about the increases of square footage, and I liked the concept, but I still want to support the working families, and the moms who tell me that their kids are moving to Las Vegas because...and I was just at, I was just doing a talk yesterday at a high school, and talking to students that one day are going to graduate, and go off to school, and I hope they come back, you know, I hope they have some place to come back to. And I like this idea of providing accessory dwellings, and I did check by the way, Honolulu did implement this, and I asked, well I heard that it was not having, you know, was not going gangbusters, and what they said was that the provisions and the process is very good, and it's the economy, people need to, you know, have the money to pay \$100,000 to build the accessory dwelling, but they're standing firm that it's for families, and working families, and not mixing short-term vacation rentals with, you know, let's let them have this other use. So, I cannot support that part of this bill, Chair. I just want to stick to, let's support working families, let's commit, stick to...I think Mr. Alueta, when he opened up this discussion of this proposed bill, he talked about that they took the Administration, and the Council's bill, put it together, and they kept the intent of trying to keep accessory dwellings for working families, or for our families. So, I mean, short-term vacation rental, yes it has a whole process, it...I mean there's a lot of good in it, there's also a lot of illegals, that I don't know how we're going to prove that somebody was there for nine months, or six months, and then, we have a hard time just doing what we're doing now, and we're going to add another element of us having to do investigation. I think we need to, you know, triple our investigators, or, so that we can do a better job of it if we're going to keep on adding more and more and more. But, I'm having a hard time with that, Chair. I mean, the short-term vacation rental people, they come here, they testify, they have, you know, the legal ones, right, they do it all right. And then you have us hearing about all the illegals, and we were creating another opportunity of us now having to go into, like, homes in Kahului that have all these, you know, accessory dwellings, and now, you know, you got to prove, from your neighbor, and it just to me gets very messy, and I rather just keep it for families, working families.

CHAIR CARROLL: If I could clarify, the only thing this bill addresses is these cottages on lots under 7,500 square feet, and those can only be used, they cannot be used for vacation rentals and what, that is the only change in the law, nothing else. There is no other changes. It, all it does is allow those cottages to be built on lots 7,500 square feet or under to 5,000, 5,050. And they cannot be used for vacation rentals or any of those uses. Everything else stays the same exactly as it is now, there are no changes.

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COUNCILMEMBER SUGIMURA: So, right now, you're saying that this bill then, for units that are, or lots that are over 7,500 square feet?

CHAIR CARROLL: They are...all are handled under the current law, and the current regulations.

UNIDENTIFIED SPEAKER: Chair?

COUNCILMEMBER SUGIMURA: Which allows short-term vacation rentals, and which allows...over...

CHAIR CARROLL: The ones they can have vacation rentals as long as they qualify for that second unit. If they want to add another, they have a vacation rental they want to add, another unit, one of them needs to be...

COUNCILMEMBER SUGIMURA: Long-term rental.

CHAIR CARROLL: Yeah, one needs to...if they're going to add, put two on top there, one needs to be long-term.

COUNCILMEMBER SUGIMURA: Joe...

CHAIR CARROLL: But they already can have one vacation rental in there.

COUNCILMEMBER SUGIMURA: Joe, can you, Mr. Alueta, can you clarify my confusion?

MR. ALUETA: If I may?

CHAIR CARROLL: Mr. Alueta?

MR. ALUETA: Thank you, Mr. Chair. Again, just to reiterate, the Department is, position is basically we'd like to get back accessory dwellings back toward being purely used for long-term rental and for... 'cause it is a core component of our affordable housing out there in our communities. I understand the Chair's amendment; however, the back, last provision of that amendment actually creates more confusion because it implies that you could rent it for nine months, and then do short-term rental after that, in that even if you have a bed and breakfast permit for these things. That...we would rather just have it say that you must have one. If you're going to allow short-term rental in an accessory dwelling, and on lots greater than 7,500 square feet, and have a requirement basically that says you can have it in a accessory dwelling if you have another...provided that the second accessory or some accessory dwelling on the property is used for long-term rental. 'Cause that's...and I was just listening how Mike, how Corp. Counsel interpreted it and I was like, that's a different way from the way I read it, which is basically...so we would rather just say that you have to have at least one, one of the accessory dwellings have to be used for long-term rental, period. Because it implies that you could use both accessory dwellings --

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COUNCILMEMBER SUGIMURA: If one is for nine months.

MR. ALUETA: --one for nine months, and then you could use the second one for, after the nine months you could use it for short-term rental, and as Mike was indicating, does that mean as long as you do it every year, does that mean I have to check every year? The Department would have to enforce that? So, we would rather just say it has to be used for long-term rental, that's...we just, and we would enforce only, so if they use, if there's an ad up for short-term rental for that second accessory dwelling, then we would be able to enforce easier. But again, our main thrust is again, to get all accessory dwellings to be used for long-term rental.

COUNCILMEMBER GUZMAN: Chair?

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah...

COUNCILMEMBER WHITE: Actually, Chair, I was next.

COUNCILMEMBER GUZMAN: Oh, sorry.

CHAIR CARROLL: Oh, I'm sorry.

COUNCILMEMBER GUZMAN: Sorry. Sorry, Mr. White.

COUNCILMEMBER WHITE: No, no problem.

CHAIR CARROLL: . . .*(inaudible)*. . . the other end of the Chamber over here.

COUNCILMEMBER WHITE: But I want to ask Mr. Alueta, I understand there may be some confusion in enforcement if we allow one to be long-term rental, and one to be short-term rental. I'm just wondering if he could share his concerns about enforcing, enforcing the uses.

MR. ALUETA: In general we would be, we would have to, we have to enforce on all dwelling units, we would check all dwelling units so this would just be added investigations; however, primarily we look for what, you know, is prohibited. So, if its, if you don't have...if you're doing short-term rental, it's easier for us to try to prove that you're doing a short-term rental, because there's ads, signage, there's stuff like that for us to do. It's, the way this is worded, I guess, with the nine months, it's a little confusing because it goes away from the standard, and it sort of implies that as long as you rent it for nine months, you'd be able to do a short-term rental, and we'd just rather, we'd rather just have it prohibited, you can't do short-term rental, it's be easier for us to prove, basically prove.

COUNCILMEMBER WHITE: In relationship to Ms. Sugimura's concerns, would it make more sense for us to simply say if, just if you have one accessory dwelling on your property,

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you can rent it short-term, but if you have two, both have to be long term? It eliminates your challenges with trying to determine which one should be used. And which ones being used as long term, which one's being used as short-term.

MR. ALUETA: I guess so, if that, you know, if that's how the Council wants to go down that line. Yeah.

COUNCILMEMBER WHITE: Well, if you have room for two, it's going to generate you a bunch of more money than staying with one, and vacation renting it. That's my guess anyway, I may be wrong.

MR. ALUETA: That's an interesting trade off, so again it may, if someone is doing a short-term rental in a accessory dwelling now, it may discourage them from building a long-term dwelling also. So, it's...but I see your economics of it where having two accessory dwellings might off-weigh, offset the benefits of having the short-term, one short-term rental only. But again, just to clarify, it's easier if you keep with the existing laws of what's long-term, what's short-term, and definition, and if you list the prohibit...if you want to prohibit short-term rental to say that you want to prohibit short-term rental in one of the dwellings, and that way we would be able to enforce it a little easier.

COUNCILMEMBER WHITE: How many accessory dwellings are allowed currently? If you have a lot of say 15,000 square feet, are you allowed to build two accessory dwellings now? Just one right?

MR. ALUETA: Dependent on the zoning, so if you have a lot of 15...if you had a large lot of 15,000 square feet, right, you...and it was zoned R-3, then you would only be able to build one house and one accessory dwelling based on the size, based on the lot size criteria. If you had a 15,000 square foot R-2 lot, you would be able to build two full-size houses, and one accessory dwelling.

VICE-CHAIR HOKAMA: On one lot?

MR. ALUETA: On one lot, without subdividing. So...

COUNCILMEMBER WHITE: What about R-1?

MR. ALUETA: If you had R-1 and you had 15,000 square feet you would be, under the zoning provisions, you would be allowed to build two full-size houses and one accessory dwelling.

COUNCILMEMBER WHITE: Okay.

MR. ALUETA: Because the minimum lot sizes, minimum lot size is 6,000 for R-1, and 7,500, so as long as you have that much for each one, so from a zoning standpoint, that's how many houses, and subdivision does not kick in I believe until the fourth, third or fourth dwelling, I'm not exactly...

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COUNCILMEMBER WHITE: Okay. And, yeah, that's all I had, thank you. Thank you, Chair.

MS. NAKATA: Mr. Chair?

CHAIR CARROLL: Oh, I'm sorry.

MS. NAKATA: Mr. Chair? Staff would just point out that we are still on the motion to amend to change nine consecutive months to six consecutive months.

CHAIR CARROLL: Yes, we still have that motion on the floor, to go to 180 days.

COUNCILMEMBER GUZMAN: Yeah, Chair, that, that's...if I may? Is there, is someone ahead of me? Okay. That was my motion for the six months, because it was more in line with the long-term leasing, but I understand the Department's concern on enforcement. So, is there a way I could withdraw that motion? And I have another motion that just to delete the sentence.

CHAIR CARROLL: So, you want to withdraw your motion?

COUNCILMEMBER GUZMAN: Yeah, I withdraw the motion for the six months.

CHAIR CARROLL: Alright, the motion is withdrawn.

COUNCILMEMBER GUZMAN: And I'd like to have a, I'm going to motion that we delete the wording right after "purpose" on the last sentence. So, purposes would be a period, and then deleting for at least nine consecutive months of the calendar year, so it would read as follows, an accessory dwelling on a lot that is 7,500 square feet or greater may only be permitted in accordance with the provisions of this chapter for a bed and breakfast home, short-term rental home, or transient vacation rental use if there are two accessory dwellings on the lot, and one is used for long-term rental purposes, period.

COUNCILMEMBER WHITE: Second.

CHAIR CARROLL: Been moved and seconded. Further discussion? Mr. Guzman?

COUNCILMEMBER GUZMAN: That's, I think that should be very clear for the Department to enforce.

CHAIR CARROLL: Any further discussion to the motion? All in favor, signify by saying "aye."

COUNCILMEMBER SUGIMURA: Wait, I have a comment.

MR. ALUETA: We were just discussing in, that issue, maybe potentially could be used for long-term occupancy purposes, that way an owner could live in it. If you...

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COUNCILMEMBER GUZMAN: Long-term occupancy purposes. What is...may I ask the question, Chair?

MR. ALUETA: So, it does necessarily mean it could be rented, it could be the owner living in it.

COUNCILMEMBER GUZMAN: Oh, right because they changeover, okay.

COUNCILMEMBER WHITE: Or a mother or father...

COUNCILMEMBER GUZMAN: Mother or father, yeah, okay.

MR. ALUETA: Or for its real...the actual ohana.

COUNCILMEMBER GUZMAN: Yes, yes I agree. So, Chair, as a friendly amendment, may I include in my amendment language --

CHAIR CARROLL: Can you read the whole thing again?

COUNCILMEMBER GUZMAN: --occupants, purposes, period. So, I will be amending that section to delete the language after the word "purposes" on the last sentence, deleting for at least nine consecutive months of the calendar year, and including the word "occupancy" before the word "purposes," and add a period. And for the record to read as follows, an accessory dwelling on a lot that is 7,500 square feet or greater may only be permitted in accordance with the provisions of this chapter for bed and breakfast home, short-term rental home, or transient vacation rental use, if there are two accessory dwellings on the lot and one is used for long-term rental occupancy purposes, period.

COUNCILMEMBER WHITE: I think we need to take out the word rental, don't we?

COUNCILMEMBER GUZMAN: Rent...

COUNCILMEMBER WHITE: Long-term occupancy...

COUNCILMEMBER GUZMAN: Occupancy, okay, to delete the word "rental," and replace it with the word "occupancy," purposes, period. Did you...

CHAIR CARROLL: Any objection to this...

COUNCILMEMBER WHITE: No, I agree.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR CARROLL: Yes, Ms. Sugimura?

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COUNCILMEMBER SUGIMURA: So, can I just have before you vote, so if this passes, right, this is my, just question about short-term vacation rentals, so if approved, would it have to come before the Council for a conditional permit? Would it come before use for review, in the process? If you took an accessory dwelling, and you're saying okay, you have the second accessory dwelling on the lot, does it come before Council to say, yes, you can or cannot use it as a short-term vacation rental? In the process?

CHAIR CARROLL: Mr. Alueta?

MR. ALUETA: No, it'd be prohibited. So, you wouldn't...I guess it's on your interpretation of what, when a person can apply for a conditional permit. I think there's been a very liberal application of the conditional permit process, meaning if it's something that you want to do, and there's no other methodology, you come in for a conditional permit, as opposed to if you know what the uses are, you know what the impacts are, you can then, you shouldn't be able to apply for a conditional permit. That would be the more conservative, because you already know what the impacts are of short-term rentals, you already know what the impacts are with regards to, we already have established a zoning category called Hotel District, for short-term rental. And then people came in and said I want to do a short-term rental in the Residential District, and the...I guess the liberal interpretation of it was that, well they can apply for a conditional permit. Rather than saying it was prohibited, they went down the road of, you can apply for a conditional permit, because it's for uses that the impacts are unknown, and for use \_\_\_\_\_. Well, we already knew that, but that's not how it was interpreted, so that's why we went down that whole rabbit hole of conditional permit processing for transient vacation rentals and bed and breakfasts. It should be uses, for uses you have no idea, you've never seen the use, you don't know what zoning provision it goes in, and that's why you use a conditional permit. That's, again in my experience that's, in other communities, that's how you use it, not as a quasi-zoning variance is the way people, or...so I would interpret this as you've already made a determination of what uses are allowed in the residential, or in accessory dwellings, and you allow, and you set a limit already. And therefore you wouldn't be, you wouldn't qualify for a conditional permit, you don't qualify for that. It's just you either file for a transient vacation rental and you get...or a B&B permit, but to say oh, I want an exemption from that provision or limitation that this Council has already...I can get a conditional permit. That is, to me, absurd. So, no, you would not be able to use a conditional permit process.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR CARROLL: Further discussion? Mr. Hokama?

VICE-CHAIR HOKAMA: Could they go through a variance, ask for a Board of Variance approval?

CHAIR CARROLL: Mr. Alueta?

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MR. ALUETA: I'm going to have to do research on that, I'm not familiar with...I don't believe use variances, I'm not sure how that would be applied. I would have to do some research on that.

MR. HOPPER: And, Mr. Chair, just to be clear, conditional permits have been granted for short-term rental, and bed and breakfast use, it's up to the Council to evaluate the criteria, and determine if the use is appropriate or not, so that has happened in the past in certain cases. Now, of course, a lot's happened since those cases, but just to note that conditional permits have been granted for those uses in the past, as the Council has found that criteria have been met in the past, but again, that's a case-by-case evaluation by, for the Council to make for permit applications of that nature.

VICE-CHAIR HOKAMA: Okay, thank you, Chairman.

CHAIR CARROLL: Any further discussion to the motion on the floor?

MS. NAKATA: Mr. Chair? Mr. Chair?

CHAIR CARROLL: Yes?

MS. NAKATA: Excuse me, Staff would just ask, there is a second component to this proposed amendment that was distributed in the handout, and that is to make revisions for consistency on Pages 10 and 12 of the revised proposed bill with respect to Sections 19.64.030(A) and 19.65.030(A), respectively. If the body has no objection to incorporating that as part of the motion.

CHAIR CARROLL: You have that before you. That's right below that first one we passed out. And that would be in addition, saying second, making revisions for consistency on Page 10 and 12, the revised proposed bill, Section 19.64.030(A), Maui County Code, and 19.65.030(A), Maui County Code, respectfully [sic]. And I would be making the changes to make it consistent, what is before us, the motion.

COUNCILMEMBER WHITE: Yeah. Mr. Chair, I think --

CHAIR CARROLL: Yes?

COUNCILMEMBER WHITE: --that is, has to be added to my initial motion, rather than to Mr. Guzman's subsequent motion.

CHAIR CARROLL: Yeah.

COUNCILMEMBER WHITE: So I would agree to add that to my initial motion if...

CHAIR CARROLL: Any objections to adding that to the motion?

COUNCILMEMBER GUZMAN: But...

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CHAIR CARROLL: Just make consistent right through.

COUNCILMEMBER GUZMAN: No, I agree with Mr. White; however, how do you add on to a motion that's already been passed?

COUNCILMEMBER WHITE: It hasn't been passed.

COUNCILMEMBER GUZMAN: Oh we haven't...okay, okay.

CHAIR CARROLL: We haven't voted yet.

COUNCILMEMBER GUZMAN: Okay, I have no objections.

COUNCILMEMBER WHITE: We're on your amendment to my--

COUNCILMEMBER GUZMAN: To your...

COUNCILMEMBER WHITE: --initial amendment.

COUNCILMEMBER GUZMAN: Yeah right, to your initial. Okay, I have no objections to that. Yeah, it's fine. Thank you.

CHAIR CARROLL: Alright, now back to the amendment as amended. Any objections? All those in favor of the motion, signify by saying "aye."

COUNCILMEMBERS VOICED AYE

CHAIR CARROLL: Opposed?

VICE-CHAIR HOKAMA: No.

CHAIR CARROLL: One "no," five "ayes."

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**VOTE:        AYES:    Chair Carroll, and Councilmembers Crivello, Guzman, Sugimura, and White.**

**NOES:       Vice-Chair Hokama.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Atay, Cochran, and King.**

**MOTION CARRIED.**

**ACTION:       APPROVED AMENDMENT.**

CHAIR CARROLL: Alright, Members, moving on. We're gonna take a recess for two minutes over here. Please remain seated. . . .*(gavel)*. . .

**RECESS:       9:42 a.m.**

**RECONVENE:  9:46 a.m.**

CHAIR CARROLL: . . .*(gavel)*. . . This Land Use Committee meeting is called back to order. Alright, now we're back to the amendment as amended. And, striking the language in 19.35.010(D), and inserting in its place, no accessory dwelling on lots less than 7,500 feet shall be used for bed and breakfast home, short-term rental home, or transient vacation rental. An accessory dwelling on lots of 7,500 square feet or greater may only be permitted in accordance with the provisions of this chapter for bed and breakfast home, short-term rental home, or transient vacation rental use. If there are two accessory dwellings on a lot, one is...one long-term occupancy purposes...for long-term occupancy purposes, and second, making revisions for consistency in Pages 10, 12, the revised proposed bill, with respect to Section 19.64.030(A), Maui County Code, and 19.65.030(A), Maui County Code, respectfully [*sic*].

COUNCILMEMBER WHITE: So moved.

COUNCILMEMBER GUZMAN: Seconded.

CHAIR CARROLL: Been moved and seconded. Any further discussion?

MS. NAKATA: Oh, excuse me, Chair, I think that motion is already pending.

CHAIR CARROLL: Oh, I'm sorry, the motion is already made, we're back to this motion. It's not that we need to make a motion again. Alright, any further discussion to the motion on the floor? Ms. Sugimura?

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COUNCILMEMBER SUGIMURA: So, clarification, so now we're voting on the proposed amendment, right? We just...

CHAIR CARROLL: Yes.

COUNCILMEMBER SUGIMURA: What we did vote was Mr. Guzman's to that change was made, and so now we're voting on the entire motion.

CHAIR CARROLL: Yes.

COUNCILMEMBER SUGIMURA: So, I want to let you let you know that well, where I stand on this is that I think we should stick to the intent of what the Department said, which is the language in, on Page 2, D, to remain that no accessory dwelling shall be used as a bed and breakfast, short-term rental home, or transient vacation. And leave the accessory dwellings to be used for families, or grandparents, or whoever that we heard about yesterday, or long-term rentals for...long-term rentals, whoever they want to rent to, but not mix short-term vacation rentals, and have that as part of the mix. So, I'm gonna stick to, I guess I'm voting against the motion, Chair. Just wanted you to know.

CHAIR CARROLL: I'm sorry, you're making a motion?

COUNCILMEMBER SUGIMURA: No, I'm voting against the motion.

CHAIR CARROLL: Oh, okay, thank you. Any further discussion? All in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE

CHAIR CARROLL: Opposed?

COUNCILMEMBER SUGIMURA: No.

VICE-CHAIR HOKAMA: No.

CHAIR CARROLL: How many "noes?" Raise your hands. Two "noes," motion fails.

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**VOTE:        AYES:    Chair Carroll, and Councilmembers Crivello, Guzman, and White.**

**NOES:       Vice-Chair Hokama and Councilmember Sugimura.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Atay, Cochran, and King.**

**MOTION FAILED.**

CHAIR CARROLL: Alright, we're back to where we were the last meeting. Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, I want to make a motion regarding Section 19.30.050 [sic], under A, delete Lanai, create a new Subsection C, state Lanai, one accessory dwelling unit may be permitted on a lot that is 7,500 square feet or greater. That would be my amendment.

CHAIR CARROLL: That's your motion.

COUNCILMEMBER SUGIMURA: Could you repeat it?

CHAIR CARROLL: Do we have a second?

COUNCILMEMBER SUGIMURA: Could he repeat it?

VICE-CHAIR HOKAMA: This is as it relates to Section 19.30.050(A) [sic], under A, delete Lanai from Lanai and Maui. Add a new section C called Lanai, and it will state one accessory dwelling may be permitted on a lot that is 7,500 square feet or greater.

COUNCILMEMBER SUGIMURA: Second.

CHAIR CARROLL: Been moved by Mr. Hokama, seconded by Ms. Sugimura.

COUNCILMEMBER WHITE: Chair, can we have a page reference from the...

VICE-CHAIR HOKAMA: That's Page 3, Members. My apologies.

CHAIR CARROLL: Does everyone have that?

COUNCILMEMBER WHITE: I heard the word 19.30, but I don't see a 19.30 on Page 3.

MS. NAKATA: Mr. Chair, the section reference is 19.35.050.

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COUNCILMEMBER WHITE: Oh, okay.

VICE-CHAIR HOKAMA: So again, in the middle of that page, Members, yeah, under A right now it's Lanai and Maui, I'm asking that it be split, and then I'll leave the Maui portion as is, create a new section letter C, Lanai, and under Lanai it will say one accessory dwelling may be permitted on a lot that is 7,500 square feet or greater.

CHAIR CARROLL: Any further discussion to the motion? All in favor signify by saying "aye."

MS. McLEAN: Excuse me, Chair?

CHAIR CARROLL: Yes?

MS. McLEAN: Chair over, other side. Other side.

CHAIR CARROLL: Hi. Yes, Ms. McLean?

MS. McLEAN: Hi, thank you. Subsection B has similar language for Molokai, except it uses "shall" rather than "may." If may is going to be used, that suggests that there is some sort of discretion involved in whether to allow it, and so if you wish to use the word may, then we would want to understand what circumstances it would be allowed, or what circumstances it wouldn't be allowed.

VICE-CHAIR HOKAMA: Well, that's why I would want...that's why I'm happy this is going to go to the Planning Commissions, okay. They gonna have to review this bill right, Chairman? This is not gonna go to Planning Commissions, since it impacts --

MS. McLEAN: It has...

VICE-CHAIR HOKAMA: --their ability to make certain decisions?

MS. McLEAN: It has already gone through the Planning Commissions.

CHAIR CARROLL: It's already gone through.

VICE-CHAIR HOKAMA: So, it...okay.

MS. McLEAN: We went to the Lanai Planning Commission earlier this year.

VICE-CHAIR HOKAMA: Okay. So, my thing is still, I prefer may. Okay, like I said, our issue on our island is not the issue of large lots, our concern and challenge is the legal undersized non-conforming lots, okay. So, my thing is there's many things that will not be allowed because it just doesn't work, it doesn't fit on our island, okay. So I don't want no guarantees that we shall approve anything on Lanai until it is reviewed within our capacity, and within our limits, okay. We're not gonna change our road widths, we're a community of one-way streets, okay. And that is my other issue that I'm gonna bring up after, Chairman, is off-street parking. Our policies don't work,

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look at around just this building, every day we have violations of overnight parking, on-street parking, okay. Police is not addressing it, our inspectors not addressing it, we expect to put more vehicles on our road. We talk about off-street parking, but come on, be real, let's be real, okay. Most of those families that have rented out now maybe they had two cars, so they rented out. They have four bedrooms, guess what, there's four cars, so at least two cars on the road every day, every night. That is not creating safeness regarding road systems and pedestrian safety. They're blocking intersections, they're illegally parking all over the place, okay. Do I know a fire truck can come and rescue me on Kanoa Street? I doubt it, with all the illegal parking we allow, or shouldn't be allowing. So, these are the things, Chairman, when we want to increase density that's great, but let's make sure our departments understand the reality of people's actions, okay. People really nowadays as I see it don't really give a rat's okole where they park. They park right on, around the intersection, blocking pedestrian view, vehicular view, line of sight. We need to find better ways, Chairman, and maybe one of the things for me on the long-term is we need to adjust our economy, this is not working under tourism for us. We better be smart and looking at changing our engines to create better economic jobs so that we can adjust our...what we do within housing, 'cause it ain't working the way we're working it now. We only look at housing in one perspective, okay, through the tourism lens and perspective, we got to change that. This County needs better engines, better paying jobs to increase a middle class that can finally afford an affordable house, not a subsidized affordable house, an affordable house. Like goes with a job and an economy that provides those opportunities. It ain't gonna happen with us staying in tourism, Chairman. Sorry for my rant, Chairman.

CHAIR CARROLL: Any further discussion before we take the vote on the motion on the floor?  
Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, just for...oh, just for clarification with what Planning said then, if we use the word "may" versus "shall," then with may you're asking the Council to define what is the may? I mean what other conditions...

CHAIR CARROLL: Ms. McLean?

MS. McLEAN: Yes, thank you for the question. Shall is very clear, that means they're allowed outright, may suggests that they may be allowed, they may not be allowed, and so, how do we know in any given circumstance if it's allowed or not? What standard or criteria should we be looking at to make that determination?

VICE-CHAIR HOKAMA: You're gonna look at water capacity, sewer capacity, road capacity.

MS. McLEAN: That happens now.

VICE-CHAIR HOKAMA: Right, that's right. So until then...it's satisfied, you don't sign off on a permit, right?

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MR. ALUETA: The current, currently, if I may just, maybe Section 19.35.090, public facilities required, even though it says shall, that means they have the land use entitlement; however, during the building permit process, they would have to still meet the criteria under 19.35.090. So, for Lanai, I don't know the circumstances, but they would have to be during the building permit process, Fire as you heard, as well as the Department of Water Supply would have to review for the adequacy or they would have to get a letter saying that there's adequacy from the purveyor. So, I'm not sure if it addresses all of your concerns, Councilmember Hokama, but I think that 090 would definitely play a part, and as we indicated, even with the passage of this bill, not everyone would qualify for an accessory dwelling because of the infrastructure limitations. Build out of the existing lot does not meet certain setbacks, as well as, you know, other limitations, whether it be roadway, or water system, or sewer capacity, or lack of a sewer system. So, because...so I think 090, I mean 35.090 captures a lot of the concerns you have, not all of them, because as you know people are going to illegally park, and that's under the Police provision as to whether they enforce it, or whether the roads are designated as no parking also, so that's part of the provision. But again, that's all I can...I wanted to add to that. Thank you.

CHAIR CARROLL: Any questions? Yeah, Corporation Counsel?

MR. HOPPER: Just to be clear, the 19.35.010 states the following, the limitations and requirements of this chapter shall apply to any accessory dwelling, so you have to comply with this Code. There's also Section A that says any person who wishes to construct or in any manner otherwise establish an accessory dwelling shall apply for a building permit therefore in accordance with this chapter. So, that would be required as well. Now, saying "shall be permitted," in these situations, you would still need to get a building permit and comply with the County Code in general. If you're going to add may, then if there are other special criteria for permits on a different island that should be specified. If there's no other special criteria for that type of permit, I think I would advise to use shall, consistent with the other terms. If that does not happen, and "may" is here, I think it would...we would need to clarify that it would not be a director discretionary decision whether or not to grant a permit if there is no separate criteria. They would still be subject to everything the other accessory dwellings are subject to, such as building permit requirements, and those permits are routed to appropriate agencies, and the requirements of this chapter, and the rest of zoning. But if there's going to be a desire to add another additional criteria that could be specified, if that's the intention with respect to those types of permits. So, I wanted to note that for the record, that in the very beginning of this section, there are statements that all of this criteria applies to any accessory dwelling whether or not it says shall, and that there is requirement for a building permit which, even if it wasn't specified here, the Building Code would require that as well, so I wanted to make that clear. So, if the wording "may" is used and there's no additional criteria, I think that would still be read as a...the building permit requirements and zoning ordinance requirements as would apply to other permits.

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VICE-CHAIR HOKAMA: Chairman? I am thankful that Corporation Counsel stated that on the record, with his comments on the record, I..with no objections from the Members, a friendly amendment to make the adjustment from “may” to “shall.”

COUNCILMEMBER SUGIMURA: Good.

CHAIR CARROLL: Any objection?

COUNCILMEMBER SUGIMURA: No objections.

CHAIR CARROLL: So be it.

COUNCILMEMBER SUGIMURA: Agree.

CHAIR CARROLL: Alright, back to the motion, the amendment as amended. All those in favor signify by saying “aye.”

COUNCILMEMBERS VOICED AYE

CHAIR CARROLL: Opposed? Motion carried. Six “ayes,” and no “noes,” with three excused.

**VOTE:           AYES:   Chair Carroll, and Councilmembers Crivello, Guzman, Hokama, Sugimura, and White.**

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   Councilmembers Atay, Cochran, and King.**

**MOTION CARRIED.**

**ACTION:           APPROVED AMENDMENT.**

CHAIR CARROLL: Alright, Members...

VICE-CHAIR HOKAMA: Chairman?

CHAIR CARROLL: Yes?

VICE-CHAIR HOKAMA: May I bring up another section of your proposed revised bill for some consideration please?

CHAIR CARROLL: Yes, proceed.

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VICE-CHAIR HOKAMA: This would be on Page 4 of your revised bill, Mr. Chairman, 19.35.070, under off-street parking required. You know, my thing here yeah, Chairman, again since you...one of it is to consider expanding the sizes of the dwellings, including accessories of the covered walkways, whatnot, I don't know if this off-street parking is good enough proposal as it is. And I understand because, yeah, I have friends who live in the cottage because they...either the kids with the bigger family or for whatever purpose, rent out the main house, so I can see this being a reality and regular use for our residents. My point though, Chairman, is if you can build up to 1,200-square-foot accessory, I'm thinking, you know, all depends if you looking at plantation size, it could be five bedrooms at least, okay. And the reality of what we deal with now days, Chairman, is if they got a five bedroom, more than likely you're going to have five drivers, which will means, there'll be five cars, okay. So, my point is, whatever the accessory dwelling is proposing, so if it's five bedrooms, show us five off-street parking lots, I mean parking stalls on your lot, 'cause we don't need those cars on the road for parking. I think we need to relate dwelling size and parking requirements a little bit more smartly than what we have now, 'cause it's not working with the streets, okay. We cannot have our first responders unable to traverse in response streets that are blocked with parked cars, I will not support or tolerate that type of situation, Chairman. So, my point of bringing this up, I don't know the answer, all I...my simple basically is, one bedroom, one car. You want five bedrooms, you better get five parking stalls for five cars.

CHAIR CARROLL: Are you making a motion, Mr. Hokama?

VICE-CHAIR HOKAMA: I'm making the discussion now because I want to know whether or not people agree that parking is an issue for our moving forward.

CHAIR CARROLL: Any comment on Mr. Hokama's comments?

COUNCILMEMBER SUGIMURA: I would like to, Chair, I would like to --

CHAIR CARROLL: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: --hear what Planning has maybe to say about what the impact would be for that. I mean, I totally understand what he's saying 'cause if you drive around, and you see these gigantic homes coming up, and they're like almost, you know, on the whole lot, and that means everybody has to park on the street, so it's happening. But I just wonder what the impact is, I support what he's...I support Member Hokama.

CHAIR CARROLL: Ms. McLean?

MS. McLEAN: Thank you, Chair. There is also an item in your Committee of proposed revisions to the Parking Code, and we spent a lot of time looking at the parking requirements for dwellings, and looked at other municipalities and how they assess parking for all types of uses, but really specific to dwellings. And there are some

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places that do it by bedroom, there are other places that also do it by the square footage of the dwelling, and that's the approach that we have proposed in the bill that's in front of you to amend the Parking Code for dwellings. Partly because if we were to do it by bedroom, then we know that we'd be getting floor plans showing two bedrooms, and a media room, and a craft room, and a den, so we wouldn't necessarily be able to know what a bedroom, what's a bedroom, and what's not a bedroom, so we did it based on square footage. So, some of the larger homes that we see, you know, those are really large homes, we don't know how many bedrooms are in it, but we can assess parking based on the square footage, so that's the approach that we've put forward in the bill that's in your Committee, to revise the Parking Code. Thank you, Chair.

CHAIR CARROLL: Mr. Hokama?

VICE-CHAIR HOKAMA: So, again, as an example and I'm, you know, again, it's hypothetical, I'm not sure if there's even a house that exists this way on Maui, but, Central Maui, 7,500 square foot, they made all the setbacks, but they maximized the building area on a lot within the legal setbacks, so Oahu calls it monster houses, okay. So, they got permitted, but you look at the house and you going, where are they parking vehicles since the whole yard now is the house, and you know they got maybe at least six bedrooms, why are we allowing those type of permits approvals?

CHAIR CARROLL: Ms. McLean?

MS. McLEAN: The current Parking Code only requires two parking spaces for a dwelling, regardless of its size, and so you're absolutely right, we have not been assessing homes like that to provide greater parking, which we know they need. So, what's, what the proposal is, if that home, that 7,500 square foot home came in today, we would approve it with just two parking spaces, and they'd have to be shown on the site plan as off-street. Under the proposed Code change, I think for a 7,500-square-foot home, and I'm guessing maybe David can correct me, I think for a 7,500-square-foot home it would be six spaces, they're looking at it right now. So, if they came in for an additional to that house, or they came in brand new to build that house on a vacant lot, we could allow that square footage, but only if all of the required parking spaces are shown on the site plan as being provided on site. So, if you are gonna build a huge house like you can today, you might not be able to have that same footprint because you'd have to show the parking on site.

VICE-CHAIR HOKAMA: Okay.

MS. McLEAN: So, yeah, we recognize the problem and there, as I mentioned, there are two ways to approach it, based on the square footage of the dwelling, or on the number of bedrooms, and we went with the square footage approach rather than the bedroom approach just because people will say different things on the site plan and we can't say for sure that you're gonna use that media room as a bedroom.

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VICE-CHAIR HOKAMA: No, I understand your comments, Director, I appreciate it, 'cause yeah, we know what people will do to get around things, so unfortunately...but yet, I hope we need to continue to express the message that we're approaching it from the side of public safety, okay, that is our concern, health and safety. Whether it's Health Department, or State statute, or County Code, it's from regarding health and safety concerns we're looking at this matter, so I appreciate your comments on that. Chairman, again, you know, I don't know, I have no silver bullet on this, all I know is we need to try and make it as best we can to not increase the issue, and try and mitigate it. And my thing is this island has a major parking issue, and safety, okay. And so, for me, you know, I think we need to start making attempts on increasing and enforcing the need of more parking for our facilities, and if not, let's look at other ways of adjusting it. This is a big concern for me, Chairman, the parking, because I've seen a fire truck unable to respond going up a cul-de-sac since both sides of the cul-de-sac had parked cars, okay. And good thing nobody got hurt or no house burnt down, but that truck couldn't go and respond properly, okay. That is a crime, Chairman, that is a crime. So, thank you, Chairman. Again, you guys feel that this is still sufficient, 500 square feet, whether it's a 1,200-square-foot unit or a 700-square-foot unit?

MS. McLEAN: The existing Code allows only a single car carport.

VICE-CHAIR HOKAMA: Yeah.

MS. McLEAN: You still have to, and you'd still have to provide your parking on site but under the livability objective of the bill, we proposed allowing a garage, and 500 square feet would easily allow two cars, so that's the size that we proposed. And it could be a garage, or a carport, or it could just be without any structure. But if it were to be a garage, then the size would be limited to 500 square feet.

VICE-CHAIR HOKAMA: So your estimation of a 500-foot car facility can handle what, three vehicles, four vehicles?

MS. McLEAN: Five hundred square feet could easily handle two, I don't know that it could take three. You could take two, and a lot of your stuff for storage.

VICE-CHAIR HOKAMA: Yeah well, then that's not good enough for me, Chairman. Thank you, Chairman.

CHAIR CARROLL: Thank you. Yeah, that having to where you could have two carports or a garage that was one small way we were trying to improve on the parking problems. Any further discussion on the bill?

COUNCILMEMBER GUZMAN: Chair?

CHAIR CARROLL: Yes?

COUNCILMEMBER GUZMAN: Did Mr. Hokama make a...are we still on the motion?

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VICE-CHAIR HOKAMA: No I didn't make a motion, I just wanted the discussion on this.

COUNCILMEMBER GUZMAN: Oh, it's just discussion.

CHAIR CARROLL: It's just discussion.

COUNCILMEMBER GUZMAN: Oh okay, okay.

CHAIR CARROLL: Alright, we are back to the main motion as amended. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. Considering the fact that Mr. White's and, I guess, your proposed language failed, and we are now back to 19.35.010 language, letter D, for the record stating no accessory, no accessory dwelling shall be used a bed and breakfast home, short-term rental home, or transient vacation rental. So that language to me basically puts a complete ban on any accessory dwelling to be used for B&Bs and short-term rentals, and there is no additional language that excludes existing accessory dwellings being currently used as B&Bs and as STRs, and any pending applications that are being reviewed right now. So, this is basically, that language is a basic ban, so why even have, why do we even have the B&B, STR ordinances that are in existence right now to be followed? I just don't get this language, I know we've worked on it at the last meeting, and Mr. White proposed some changes to it that would be addressing those pending and existing, but the current language that we have right now in this bill, puts a straight on ban, so I can't support this. I didn't support it the first time, and if we're gonna put a ban, put it on everything including Mr. Alueta's TVR, STR, you know, so just do away with the entire ordinances with STRs and B&Bs, 'cause that's, this is exactly what this language does. This is a backdoor, hijack of the entire industry.

CHAIR CARROLL: Mr. Alueta, do you have any comment on Mr. Guzman's remarks?

MR. ALUETA: Thank you, Mr. Chair. For the record, I do not own an STRH permit, or have any rental, thank you. Let's see, I believe that you had an amendment, Mr. Chair, that was passed out, which was Section 9, which read that any...of the...

COUNCILMEMBER GUZMAN: That amendment is not on the floor, Mr. Alueta, and you can't make that amendment.

MR. ALUETA: I...

COUNCILMEMBER GUZMAN: That was Mr. White's amendment. And it didn't...it failed. In order to get reconsidered it'd have to be a motion to reconsider, and you, Mr. Alueta, cannot do that.

MR. ALUETA: I understand that, I believe it was the Chair's passed out...

CHAIR CARROLL: Actually, I just asked Mr. Alueta to discuss what we were talking about...

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COUNCILMEMBER GUZMAN: The discussion is clear, Chair. Since your amendment, or Mr. White's amendment, that you handed out, did not pass, we were back to the original language in the bill, which is a straight on ban, and then I'm just setting forth my opinion as to that. That...

CHAIR CARROLL: Do you have any proposed...

COUNCILMEMBER GUZMAN: I don't have any proposed because at your initial meeting that we had last Tuesday, I opposed this language, and you had, Chair, you had submitted to the Committee a proposal, and you were in disagreement with the original language proposed by the Planning Department, and you had submitted to the Committee an amendment. I supported that, it did fail, and then we were at an impasse, so it was continued to today, and you submitted another amendment which I, which Mr. White and I both agreed on that, and it failed again. So, now we're back to the original language, and I'm just setting forth my original objection to the, to this language that's in the Planning Department's proposal.

CHAIR CARROLL: Could everybody remain seated while I take a two-minute recess over here and try to see what I can resolve?

COUNCILMEMBER GUZMAN: Okay, thank you.

CHAIR CARROLL: Recess, very short recess. . . .(gavel). . .

**RECESS: 10:18 a.m.**

**RECONVENE: 10:22 a.m.**

CHAIR CARROLL: . . .(gavel). . . Land Use Committee meeting is called back to order. Alright, Members, on the bill, on Page 2, please turn to Page 2, section D, the only thing in section D is no accessory dwellings shall be used as bed and breakfast home, short-term rental home, or transient vacation rental. Alright, discussion? The Chair would accept the motion to remove section D.

COUNCILMEMBER GUZMAN: To delete.

CHAIR CARROLL: Yes.

COUNCILMEMBER GUZMAN: So moved.

CHAIR CARROLL: And moved to delete section D, and along with section D of course you would have the other two sections 19.64.030(A) and 19.65.00(A), 3...030(A).

COUNCILMEMBER SUGIMURA: Could you repeat what you just said?

CHAIR CARROLL: I'm sorry?

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COUNCILMEMBER SUGIMURA: Could you repeat what you just said? The motion is to delete...

CHAIR CARROLL: Oh, okay, to remove Section D.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR CARROLL: And then if that is removed, would need to...revisions consistency with Page 10 and 12 would have to...Sections 19.64.030(A), Maui County Code, and 19.65.030(A), Maui County Code, respectfully [sic], would also have to make changes over there.

COUNCILMEMBER SUGIMURA: Okay, I understand.

CHAIR CARROLL: And we have a motion, but no second. Motion fails, alright. Would anybody consider reconsidering any of the other motions that went through in this yesterday or today to reconsider and possibly change or put to a vote. And if we reconsider, you know the restrictions on reconsidering. Mr. Hokama is the only one would probably be free on most of them, and depending on who was on the losing side...or winning side.

COUNCILMEMBER GUZMAN: So, just for clarification, Chair, for reconsideration the only persons, I guess, Members that could motion for...is the lose...is the winning...no, sorry, is the losing...no sorry, excuse me, the winning --

CHAIR CARROLL: Yeah.

COUNCILMEMBER GUZMAN: --votes.

CHAIR CARROLL: Right, so if the person...

COUNCILMEMBER GUZMAN: So but if it was...

CHAIR CARROLL: Yes, like if you made a motion and four people said aye, and you said no, you would be the winning side.

COUNCILMEMBER GUZMAN: Right, right. So, for the last motion that Mr. White put on the floor, which was your original, which was your proposed amendment, that could only be motioned by either Mr. Hokama or Ms. Sugimura for the reconsideration?

CHAIR CARROLL: Yes.

COUNCILMEMBER GUZMAN: Okay, I would plead with either colleague to try motion that back on the floor.

CHAIR CARROLL: Alright, Members, I don't want to get us stuck over here, but we seem to be unable to come to some meeting of the minds to get some consensus. The Chair

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made his motion, the original one, that was rejected, then we've had several other ones trying to find some ground, including the ones that the Chair brought up again. You all know that the objections that you had as individuals, does anybody have any proposed language to address your concerns for why you do not approve? It's that simple. If you have any language that you would like to bring forward that would address your concerns why you cannot approve this bill. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, Chair, just clarification based upon what Mr. Guzman was saying. The impact of this, then, for people who have short...accessory dwellings that are now being used as short-term vacation rentals it seems to be the sticking point, they're gonna still continue doing what they're doing provided that they're legal, right, provided that they're not illegal short-term vacation rentals. So, I'm just looking...I'm just thinking about some of the testifiers that came forward at our last meeting basically saying that, you know, they have short-term vacation rentals, they have, I don't know, different ag lots, and they have short-term vacation rentals provided that they have gone through the process and they're legal, there's no problem, it's not gonna change that, is that correct, Department?

CHAIR CARROLL: Mr. Alueta?

MR. ALUETA: Yes, as well as anyone who has filed for an application and an application has been deemed complete that we are currently processing would be also not subject to the prohibition of using an accessory dwelling for either a B&B or a short-term rental.

COUNCILMEMBER GUZMAN: Chair? Chair?

CHAIR CARROLL: Mr. Guzman? Are you...

COUNCILMEMBER GUZMAN: Are you finished --

COUNCILMEMBER SUGIMURA: I'm done.

COUNCILMEMBER GUZMAN: --Ms. Sugimura? Now, while you're still here in two months that's your interpretation but that's not what this language says. This language is an outright ban. No accessory dwelling shall be used as a B&B home, short-term rental, or transient vacation rental. None. There is no exception there.

MR. ALUETA: Not...

MS. NAKATA: Excuse me, Mr. Chair? Mr. Chair?

CHAIR CARROLL: Yes?

MS. NAKATA: Staff's understanding is that at Tuesday's meeting there was a main motion pending and there were three amendments that carried, those were distributed in the handout today. One of those three is to insert at the end of Section 9 the following language, any application for a bed and breakfast home permit, short-term rental

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home permit, or other lawful transient vacation rental use in any accessory dwelling deemed complete as of the effective date of the ordinance shall be processed under the standards in effect prior to enactment of this ordinance, and if granted shall be eligible for permit renewal under the standards in effect prior to enactment of this ordinance. When the body carried the motion to reconsider the main motion as amended at the start of today's meeting, Staff's understanding is that those revisions that were made on Tuesday still apply to the resurrected motion on the floor.

COUNCILMEMBER GUZMAN: Did we take a vote on that revision?

CHAIR CARROLL: Yes we did. That was voted and approved.

COUNCILMEMBER GUZMAN: Okay. Stand to be corrected. I still believe that this language in here that prevents future buildings of accessory dwellings is not fair across the board, because if you own an accessory dwelling right now and there is...the cap hasn't been filled, and I build my accessory dwelling after the, after this is executed, I am prevented from even going through the application process, notwithstanding that there's still available slots on the permit regarding the cap. The cap is still not full, but yet I build my accessory dwelling after this, and I comply with all the regulations under the B&B and STR ordinances, I can't even apply, I can't even go through the application process even though there is availability of permits. That's the unfairness of it. So, those who have an existing dwelling that is currently being operated can continue to operate, and those that are having pending permits can still go through the process, but now you're putting a complete ban on any future accessory dwellings that are, that's gonna be built. And the ban is basically banning those new accessory building...accessory owners from even going through the application process, even though it's available, there's available slots in the cap. That's the unfairness of it.

CHAIR CARROLL: And again, that's why we brought up this other amendment, no accessory dwellings on a lot less than 7,500 square feet shall be used as a bed and breakfast home, short-term rental home, transient vacation. Accessory dwellings on lots that are 7,500 square feet or greater may be only permitted in ordinances with this provision of this chapter for bed and breakfast homes, short-term rental home, or transient vacation rental use. The two accessory dwellings on lot one is used for occupancy.

COUNCILMEMBER WHITE: Chair?

CHAIR CARROLL: And then of course the revisions and that was supposed to try to address those concerns.

COUNCILMEMBER WHITE: Chair?

CHAIR CARROLL: Yes, Mr. Chair...Mr. White?

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COUNCILMEMBER WHITE: I move to insert the word “new” after the word “no” in section D, so it’d read no new accessory dwelling shall be used as a bed and breakfast home, short-term rental home, or transient vacation rental.

CHAIR CARROLL: Do I have a second?

COUNCILMEMBER SUGIMURA: Second.

CHAIR CARROLL: Been second by Member Sugimura. Discussion?

COUNCILMEMBER GUZMAN: I still stand on my objections because it just comes down to a fairness, those who have existing dwellings can go through the application process and they’re free to do so, but any new accessory dwellings, even though the cap hasn’t been fulfilled, filled, is prevented from even applying. We have these ordinances and restrictions and vetting processes through the ordinance that we currently have, and including the \$20,000 fine that we will be voting on, which I’m fairly confident will pass, that inclusive of looking at the real issue is enforcement of these illegals. This Department has not done a very effective job in the last eight years. We need to make sure that we start really focusing on the enforcement, and to put out a straight ban for any new accessory dwellings, I just feel it’s just unfair, and I will stand on my objections, and no vote as I did the first meeting we had on Tuesday when this Planning Department’s proposal was placed on the floor.

MR. HOPPER: Chair?

CHAIR CARROLL: Yes, Corporation Counsel?

MR. HOPPER: I think I would ask for a clarification of what a new accessory dwelling would be, what’s the date after which dwellings are considered new or not. If you’re just putting it in the Code, there’s nothing, there’s no date referenced. If you’re putting it in the other section where we have the other amendment that talks about this ordinance doesn’t apply to current permits and permits in the pipeline, then that can be used because that’s the effective date of the ordinance, but we would want...I think it would be important to clarify what’s meant by new. If the intention is to, yeah...that’s all I would say because just saying new accessory dwellings in this section if one would just open the Code and look at that, it would be a bit ambiguous, so some clarification would be, I think requested there.

MS. McLEAN: Chair? Chair?

CHAIR CARROLL: Yes, Ms. McLean?

MS. McLEAN: If I could also add, I think it’s important to point out that 19.65, the STRH ordinance already requires that any structure to be used for short-term rental home has to be, had to have been built within at least the previous five years, and there’s also the ownership requirement now. But that’s been in the ordinance for quite a while that the structure had to have been in place for at least five years, so if you’re

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talking about new ones, that sort of overlaps with that restriction that's in place already. That's just for the Members' information in discussing this.

COUNCILMEMBER GUZMAN: And, Chair --

CHAIR CARROLL: Mr. Guzman?

COUNCILMEMBER GUZMAN: --and my point taken, it's already in the Code, so basically what you're saying is any new...regardless you just might as well wipe out the existing STR/B&B code because this language put a ban on any future STR, TVR, B&Bs, so you might as well disregard what's, basically what Ms. McLean said, because it won't be applicable. Doesn't matter five years, doesn't matter, what this language does is that any future, and there are certain circumstances where, and I'm just gonna bring it down to the bare, you know, minimum facts, like what happens if a family builds an accessory dwelling for their grandmother and she passes away, and the family that owns that property can't afford having to sustain that dwelling. They...at least give them an option, they can either go long-term or go through the process of a TVR/B&B and whether or not they'll be granted that, but give them that option, give them the chance to survive. That's why we have these codes, so that they will have the option to go through an application process and get vetted. Don't put a full-on straight ban on future families that want to survive, give them that option and let them go...give them that ability go through the application process. That's what I'm asking our Members to consider. Don't place this language as a complete ban on future TVR/B&Bs, give our people an option.

CHAIR CARROLL: Alright, Members, we do have a motion on the floor, Mr. White's motion in adding the word before...

COUNCILMEMBER WHITE: Yeah, I agree with Corp. Counsel that it needs to be clarified and so I would change my motion to add that language, the necessary language to the section at the end of the bill and allow Staff to make the appropriate language, or put the appropriate language in to effectuate that no accessory dwelling permits filed after the enactment of this bill would be allowed to use, or any home authorized after the enactment of the bill would be allowed to be used as a bed and breakfast home, short-term rental home, or transient vacation rental.

CHAIR CARROLL: Alright, is everybody clear on that, or we need to repeat it?

MR. HOPPER: Mr. Chair?

CHAIR CARROLL: Yes?

Mr. HOPPER: Just for clarification, is this intending to alter in any way the current language that's in Section 9 of the bill, to either allow for more short-term rental homes, or anything different than that? Because as I think was clear the current language says that if you have already applied for a short-term rental home permit or a B&B permit on one of these ohanas where you won't be allowed to anymore, or you already have a

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permit, then you can continue to either operate, or have your application processed on the current rules as of the effective date of the ordinance. If...is there an intention to permit additional short-term rental home or B&B units than what is already in Section 9? That would help in crafting what we want, would need to craft.

COUNCILMEMBER WHITE: Chair?

CHAIR CARROLL: Mr. White?

COUNCILMEMBER WHITE: If what Mr. Hopper is saying is that the bill as drafted already protects those that are, I'm sorry, protects those that were already permitted, then I'm comfortable withdrawing my motion. But I know we are running short on time, because we have somebody who has to take a flight, so. And so, you know, we may need to take vote on the, on the, on the main motion of the bill and see where we go from there.

CHAIR CARROLL: We...alright, any more discussion before we get back to the main motion as amended? Alright, Members, I appreciate your diligence in trying to craft something that's acceptable.

COUNCILMEMBER CRIVELLO: Chair, I just want to make a comment.

CHAIR CARROLL: Ms. Crivello?

COUNCILMEMBER CRIVELLO: And I'm the one that has to go do some drop-offs at the airport. I hear Mr. Guzman, what he's saying and, you know, actually it's gonna come down to it. If the homeowner is going to invest in an accessory dwelling and they're not, you know, unless they're gonna rent it out to family, and/or take care of grandma or grandpa, then they would consider it worthwhile. And I don't see, you know, I think the homeowner will make that decision whether or not they want to build for long-term rentals to begin with and how they will pencil back, pencil out their investment, and then unless that's for family, that's what I'm hearing. They want to build accessory dwelling to have their families in there. And I understand what Mr. Guzman is saying that if I'm a homeowner and I want to be able to pay off for my investments whether it's the mortgage on the main dwelling, as, and then have the second dwelling be able to have some earnings, I think it's for the Department or our policies to be able to make sure it's compatible to parking, compatible to everything else that's in the neighborhood. But we don't give the homeowner the opportunity to decide if I'm gonna build an accessory dwelling, how do I make my monies back, you know? So, I think let's face it, you know, it's land and everything else has become a commodity instead of a necessity for us to raise our families and what have you, so, I understand both sides...how, what is meant to. Just my comments, thank you.

CHAIR CARROLL: Well, and keep in mind too that not allowing vacation rentals, or with the language had, transient vacation rentals or what, we're not taking away, it's not a taking because they can always rent long-term, they always have the option if they

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need more money, they can always rent long-term, so it's not a taking; however, I think we've exhausted the discussions already. I cannot...yeah, Mr. Hokama?

VICE-CHAIR HOKAMA: So, Chairman, is Mr. White's proposed amendment before us currently or--

CHAIR CARROLL: No, he withdrew it. He withdrew it.

VICE-CHAIR HOKAMA: --just the main motion as amended?

COUNCILMEMBER WHITE: No, I withdrew it.

VICE-CHAIR HOKAMA: Oh, okay, thank you. So, Chairman, just some comments on the motion as amended before us at this time. For me, Chairman, you know, we've been challenged for decades, scores of years, for residential housing, okay, and that's what we hear even this election cycle, residential housing requirements and needs, yet we're arguing this morning, or debating because, again, I appreciate this discussion, it's very healthy, I appreciate Mr. Guzman's points of view, Mr. White's, but for me, Chairman, at this time, the crux is under residential housing crisis, yeah. And so, for me, I'm looking at how to support that component as my priority, yeah, not the visitor needs of accommodation, not the temporary interim needs of an accommodation, I need something more for the people who have to live here, our people, okay, our island people. So, for me, if this is...for me I'm looking at this as a tool to encourage and support greater residential housing opportunities, not short-term visitor accommodations, okay. I think we have enough zoned properties to allow those things in its appropriate places, okay. Where I don't have to deal with small road widths, or on-street parking issues, because we've designated appropriate areas with the appropriate requirements to do such activities, okay. I'm tired of us bastardizing our current zoning categories, okay. And that's why I'm looking forward to this comprehensive review that Planning intends to take us through in the near future, as well as then we can relook at our tax categories and make sure it's an appropriate component of land use. So, at this time, Chairman, I will continue to support what I believe will further the residential needs first. Thank you.

CHAIR CARROLL: Members, as I've said all along at the beginning...

VICE-CHAIR HOKAMA: Chairman, I wanna, and I know, I just wanna make one last thing, I apologize for interrupting you.

CHAIR CARROLL: Proceed.

VICE-CHAIR HOKAMA: And in this discussion this morning, which I thought was very helpful for me yeah, because now I'm sure some State person is gonna say the County is talking about investment properties. This is an invest...the way we've discussed it, someone from the State going say, see, even they looking at as investment to protect an investment options of, a property owner now can retain it through an investment option, whether it can be justified or not, I can see someone making that case against

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us, okay. And that is what a proponent of our...an amendment this year went after investment properties, okay. So, I'm just saying, you know, there's many people looking at the pot, and how we're gonna do things, Chairman, and just know that sometimes our best intentions gonna bite us right back in the butt. Thank you.

CHAIR CARROLL: Alright, Members, as we've said in the beginning, I'll say it one more time, if somebody wants to talk afterwards, they have a few minutes before we lose Members, the whole purpose of this, and the whole purpose of this exercise was to make more housing available for local people that are really stressed, and that is the whole purpose of this bill. The Chair, along with his Staff, and along with many people have been involved, Mr. Guzman, a lot of others that have been involved with this from the beginning, that has been our goal. Now, there's a lot of things that have come up, the Chair feels that we have the best bill that I could, we could put together, with the amendments that we had on Tuesday and today. And I would obviously, I would hope this passes, I support it. But either way, and no matter how the vote goes, I appreciate the concerns, and I appreciate the discussion. If there is nothing further...Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you. Thank you, Chair. All along I agree with the original intent was especially for Central Maui, was to look at the smaller lots and allow accessory dwellings for those 5,000 to 7,499, and I also agree that those accessory dwellings shall be limited only to long-term renters or occupancy dwellers. I don't agree with expanding this language, this current language into a full-on future ban for all accessory dwellings whether big or small. It to me is a language that basically puts a ban on any future accessory dwellings to be utilized or even the opportunity to enter into or apply through the process, and to me that's not fair. Okay, so thank you, Chair. I've stated my position. I've killed the horse ten times, so, but let's move on to the vote and how it goes, it goes.

CHAIR CARROLL: Alright, we have about five minutes more if anybody wants to make a final closing statement before I call for the question.

COUNCILMEMBER WHITE: Call for the question.

COUNCILMEMBER CRIVELLO: Call for the question please.

CHAIR CARROLL: Alright, all those in favor of the motion, the main motion as amended, please signify by saying "aye."

COUNCILMEMBERS VOICED AYE

CHAIR CARROLL: Opposed?

COUNCILMEMBER GUZMAN: No.

CHAIR CARROLL: How many "noes?"

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COUNCILMEMBER GUZMAN: Me.

CHAIR CARROLL: Alright, five "ayes," one "no." Motion passes.

**VOTE: AYES: Chair Carroll, Vice-Chair Hokama, and Councilmembers Crivello, Sugimura, and White.**

**NOES: Councilmember Guzman.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Atay, Cochran, and King.**

**MOTION CARRIED.**

**ACTION: Recommending FIRST READING of revised bill and FILING of communication.**

CHAIR CARROLL: Thank you. And thank you all, I really appreciate all what we've gone through. Having no further business, this Land Use Committee meeting stands adjourned. . . .(gavel). . .

**ADJOURN: 10:50 a.m.**

APPROVED:



ROBERT CARROLL, Chair  
Land Use Committee

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Transcribed by: Melissa Agtunong

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CERTIFICATE

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

DATED the 20<sup>th</sup> day of November, 2018, in Kahului, Hawaii

*Melissa Agtunong*

Melissa Agtunong