

PLANNING COMMITTEE

Council of the County of Maui

MINUTES

November 21, 2018

Council Chamber, 8th Floor

RECONVENE: 1:34 p.m.

PRESENT: Councilmember Kelly T. King, Chair
Councilmember Yuki Lei K. Sugimura, Vice-Chair
Councilmember Elle Cochran (in 1:37 p.m., out 2:40 p.m.)
Councilmember Riki Hokama
Councilmember Mike White

EXCUSED: Councilmember Stacy Crivello
Councilmember Don S. Guzman

STAFF: Traci Fujita, Legislative Attorney
Leslee Matthews, Legislative Analyst Trainee
Rayna Yap, Committee Secretary

ADMIN.: Michele Chouteau McLean, Planning Director, Department of
Planning (PC-22, PC-23)
Jeffrey Dack, Planner VI, Department of Planning (PC-22)
Michael Hopper, Deputy Corporation Counsel, Department of the
Corporation Counsel
(*Seated in the Gallery*):
David Goode, Department of Public Works (PC-22)

OTHERS: Jordan Hart, Chris Hart and Partners, Inc. (PC-22)
Bernie Bays, Attorney, Bays Lung Rose Holma (PC-22)
Dan Blessings (PC-23)
(5) additional attendees

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

CHAIR KING: . . .(*gavel*). . . Reconvening of the meeting from November--what was that--
November 15th of the Planning Committee of the Maui County Council. And we are at
bare quorum, Members, so please let me know if you need an urgent break. My name
is Kelly King, I'm the Chair of the Planning Committee. Today, we have
Yuki Lei Sugimura, Vice-Chair. Good afternoon.

VICE-CHAIR SUGIMURA: Good afternoon.

CHAIR KING: Riki Hokama, good afternoon.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

COUNCILMEMBER HOKAMA: Chair.

CHAIR KING: And Member Mike White, good afternoon.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR KING: Thank you for being here. And the Administration today is, I guess we're still waiting for them, we have Michael Hopper here with from Corp. Counsel. Thank you for being here.

MR. HOPPER: Good afternoon, Chair.

CHAIR KING: And our Staff today is Traci Fujita, Rayna Yap...I don't see the...I guess the Legislative Attorney, Rayna Yap, Committee Secretary, and Leslee Matthews, Legislative Analyst Trainee. I'd also like to mention my staff behind the scenes, Susan Foley and Kate Griffiths. So, Members, we're continuing on with three items on today's agenda.

ITEM PC-11: TRANSIENT VACATION RENTAL ENFORCEMENT (MISC)

CHAIR KING: PC-11, Transient Vacation Rental Enforcement. And if there's no objections, I'd like to defer this one because Department does not have a report ready for this.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: SC, DG)

ACTION: DEFER (no discussion).

CHAIR KING: Okay. Thank you. So, we're down to two items, PC-22, the Community Plan Amendment and Conditional Permit for Maui Oceanfront Inn and Sarento's on the Beach, Kihei, and PC-23, Amending Chapter 16.13, Maui County Code, Relating to Commercial Signs. Public testimony was taken at the recessed meetings on all items and has since been closed. Okay, Members, first item that we're gonna be addressing is PC-11, which...oh, I'm sorry, PC-11 is not on the agenda.

ITEM PC-22: COMMUNITY PLAN AMENDMENT AND CONDITIONAL PERMIT FOR MAUI OCEANFRONT INN AND SARENTO'S ON THE BEACH RESTAURANT (KIHEI) (CC 09-246)

CHAIR KING: PC-22, the Community Plan Amendment and Conditional Permit for Maui Oceanfront Inn and Sarento's on the Beach Restaurant in Kihei. Committee...the Committee's in receipt of the following: County Communication 09-246, from the Planning Director, transmitting the following: a proposed bill to grant a request from

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

Western Apartment Supply & Maintenance Company, an amendment to the Kihei-Makena Community Plan and Land Use Map from Single-Family to Hotel, to reflect the existing hotel on approximately 1.119 acres of State-owned property situated at 2980 South Kihei Road, Kihei, Maui, Hawaii. I'm not sure, Mr. Hopper, is that supposed to be changed to Ruby & Sons or is that the parent, the name of the parent company? I don't know if that's the old company. Anyway, I'm gonna go ahead and read.

MR. HOPPER: For...

CHAIR KING: And B, a proposed bill to grant request from Western Apartment Supply & Maintenance Company for a two-year conditional permit to allow for the construction and use of an offsite parking lot on approximately 35,932 square feet of State-owned property on South Kihei Road, Kihei, Maui, Hawaii, within the County Park District, identified for real property tax purposes as tax map key (2) 3-9-004:149. So, Members, the revised proposed bills approved as to form and legality have been distributed. The bills were originally transmitted by the Department of the Corporate [sic] Counsel on February 14, 2017. There have since been revisions to the bills. The conditional permit for Maui Oceanfront Inn and Sarento's on the Beach restaurant bill has been changed to reflect an additional condition or actually several additional conditions. This conditions states the parking stipulations proposed, the amendment to the settlement agreement, which states that not less than 51 parking stalls shall be designated for public beach access, and no more than 34 parking stalls shall be designated for hotel and restaurant parking. The community plan amendment has been revised to propose that the hotel not increase its current capacity, density, height, or footprint. These are the bills we'll be working from today. The Planning Department, please, do you have any...Michele McLean, Director McLean is here, as well as Member Cochran. Thank you for being here. Department, would you like to make any comments?

MS. McLEAN: Thank you, Chair. I think it had been previously mentioned and I know you mentioned also adding restaurant.

CHAIR KING: Right. To the...

MS. McLEAN: Hotel and restaurant.

CHAIR KING: To the community plan amendment.

MS. McLEAN: Yeah.

CHAIR KING: Okay. Is there any other background you want to give on this community plan amendment? We'll take the community plan amendment up first.

MS. McLEAN: Just as discussed and as certainly heard by testimony the idea's not to allow expansion or redevelopment of this site but to allow the existing hotel and restaurant

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

to continue as they are and to be able to make improvements or renovate but not to expand in any way.

CHAIR KING: Okay.

MS. McLEAN: Thank you, Chair.

CHAIR KING: Thank you. And also Committee Members, just wanted to let you know I did have a meeting with Daniel Ornellas of DLNR yesterday regarding the conditional permit and the parking issue there. And I asked him what he would do if we didn't grant the conditional permit and the hotel stopped paying for it. His response was that we do need maintenance and DLNR would probably look at doing something like they're doing at Iao where they would turn it over to an entity like Diamond Parking and probably still keep it free for residents but charge tourists and commercial, charge for tourist and commercial, so that's another option for them if we don't grant this conditional permit. But do we have any questions from Committee Members? Ms. Sugimura?

VICE-CHAIR SUGIMURA: So, Chair, is there a time schedule we're trying to work with on this?

CHAIR KING: A time schedule for?

VICE-CHAIR SUGIMURA: To take action?

CHAIR KING: Oh, to take action. Well...do you want to answer that, Department, Ms. McLean? I know they're operating on a temporary certificate of occupancy right now.

MS. McLEAN: We extended the temporary CO for six months so to give them a little bit of breathing room and over the holidays and all that trying to extend the TCO would have been stressful to say the least, so they still do have a temporary but that's still confining. So, they wouldn't be able to get a permanent until the entitlements are granted.

CHAIR KING: Okay. There was a statement and I'm not...and I couldn't get a confirmation one way or another from Public Works because all they would tell me is that Planning was holding up the CO, but there was a statement made at the previous meeting that if they didn't get their conditional permit by December 31st they would not be granted another temporary. So, do you have any comments on that? Is that an accurate statement?

MS. McLEAN: I don't know what would keep Public Works from doing that. We did sign off on an extension of the temporary, but Public Works is the final --

CHAIR KING: Okay.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

MS. McLEAN: --issuer.

CHAIR KING: Yeah, I think they were talking about beyond the temporary, you know, because they've been operating on temporary CO so --

MS. McLEAN: Right.

CHAIR KING: --I guess it's up to Planning whether or not they keep getting those, is what I was told by --

MS. McLEAN: Right.

CHAIR KING: --the Department.

MS. McLEAN: Well, typically we will not sign off on a CO at all if we feel that compliance cannot be achieved readily or practically. In this particular case, we do believe that compliance can be achieved and so that's why we would sign off on a temporary that it hasn't been achieved but we feel like it's easily within reach.

CHAIR KING: Okay. Any other...any follow up, Ms. Sugimura? Okay. Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah. Thank you. So, this newly handed out document is adding in item G, the underscored --

CHAIR KING: Right.

COUNCILMEMBER COCHRAN: --is that...

CHAIR KING: Right. And actually, the friendly amendment we made was to say the hotel and restaurant located on the property, so that kind of limits, that specifies that the hotel, the restaurant is also limited from expansion or increasing capacity. This is what Ms. McLean was talking about earlier.

COUNCILMEMBER COCHRAN: The whole...okay, wait. This only speaks about hotel though.

CHAIR KING: Right. So, the friendly amendment would be to say the hotel and restaurant located on the property.

COUNCILMEMBER COCHRAN: Oh, okay, on this item G now.

CHAIR KING: Right.

COUNCILMEMBER COCHRAN: Okay, okay, got it. Fine. And then, but I'm looking at the existing on the back, the existing ordinate...bill and on number five I don't recall, did we...at the last sentence in number five, failure to do so, failure to so develop the property may result, is there a more, a stronger word like "shall" or "will" or --

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

CHAIR KING: I'm not sure what...are you on the conditional permit?

COUNCILMEMBER COCHRAN: --versus a "may?" Yeah, if they don't...

CHAIR KING: You might be looking...okay.

COUNCILMEMBER COCHRAN: If representations made to this body is not in compliance, then it should be, it should be revoked or will result in a revocation, not like may or let's think about it. I mean, I think if you have a condition you need to abide by it or else you will be revoked.

CHAIR KING: Okay.

COUNCILMEMBER COCHRAN: So, that's kind of where, word...

CHAIR KING: Yeah, that's not part of the community plan amendment, so we're gonna take up the community plan amendment first and then we'll go to the --

COUNCILMEMBER COCHRAN: Into this more?

CHAIR KING: --conditional permit. Yeah. The --

COUNCILMEMBER COCHRAN: Okay.

CHAIR KING: --conditional permit is the one that has all those numbered conditions.

COUNCILMEMBER COCHRAN: Okay.

CHAIR KING: So, any other questions?

COUNCILMEMBER COCHRAN: And my, I guess, my big general thought in this whole process right now is the big rush and hearing the community about, right, we're coming up on our West Maui, next will be South Maui, people, this has been on the books, yes, for many years, but I think people are wanting to really get more hands on and more discussion and really they don't, we don't understand why the push and they've been granted conditional uses. Why not just give 'em another for two years? Keep it status quo as is, and then by then the full vetting will occur and take it from there I think is the general thought.

CHAIR KING: Yeah, I can..

COUNCILMEMBER COCHRAN: And I'm...still agree with that.

CHAIR KING: Yeah, I can respond to that. I don't see it as a big rush. I see it actually as a big hold up. I was hoping that this would come back on the land use...this didn't originate in the Planning Committee. It originated in Land Use over a year ago, and so

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

it's just been waiting for the folks to sign the settlement agreement. And that went back and forth between the hotel and the plaintiffs, Dana Hall and Leslie Kuloloio, but it got signed within the last month and then it had to get signed by the Mayor. So, if we...the original agreement that gave us 50, gave the public 51 percent has been extended to give the public 60 percent now, and so 40 percent will be for the hotel and restaurant. But my personal feeling about getting this in compliance is that we're out of compliance right now with our own community plan, because the number one issue under land use standards is that all zoning applications and/or proposed land uses in development shall be consistent with the land use map and objectives and policies of the Kihei-Makena plan. So, right now we're not, we're out of compliance with our own community plan that says they have to be consistent. So, if the original intent which is what people are saying the original intent of having that Single-Family, which is kind of conflicts with DLNR is saying. DLNR sent a letter saying that was an error to designate it Single-Family, that it should have been Hotel because it's zoned Hotel, but regardless, if it was the intent to keep the character of the area and keep that hotel small that this is how we can bring it into compliance and make sure that hotel stays that size and doesn't change the character of that area. And there are other parts of this plan that are inconsistent like that, too, that need to be brought into compliance and that one of those is the wetland area that's right now designated Business in the community plan but is zoned Single-Family. So, you know, my intent is to go back in and rezone that to match the zoning as well. Redesignate that to match the zoning, so we don't keep getting people buying that piece of property thinking that they can put a business there. So, it's sort of the same thing on the opposite side, but right now we have some very big inconsistencies and we don't have anything in this plan that talks about keeping the hotel, the size, and footprint, and density that it is now. So, that's what this community plan amendment would do. And I did have a meeting...Mr. White?

COUNCILMEMBER COCHRAN: Wait, I'm not done.

CHAIR KING: Oh, okay.

COUNCILMEMBER COCHRAN: So, yeah, I don't agree actually with that train of thought myself. But my other thing that I still don't have clarification and you wanna, you keep bringing up that there's more percentages of parking. I need to really know what numbers we're dealing with here, because I can't get a straight answer between how many rooms there are, square footage of the restaurant there are, still, I mean, you know, my addition and calculations come up with they're short 13 stalls. Overall, when all is said and done, this is all technically that property would need, but here they are wanting 40 or some odd, whatever amount, so they're going way above and beyond what's currently under our parking standards are.

CHAIR KING: We can bring down the consultant for the hotel.

COUNCILMEMBER COCHRAN: Well, I wanted Planning to chime in on what --

CHAIR KING: Right.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

COUNCILMEMBER COCHRAN: --our books say --

CHAIR KING: Well, --

COUNCILMEMBER COCHRAN: --and our parking standards.

CHAIR KING: ----what our books say about how many hotels, hotel units there are?

COUNCILMEMBER COCHRAN: I want to know what our parking ratio is right now in reference to this property.

CHAIR KING: The parking Code?

COUNCILMEMBER COCHRAN: Yeah, what...so, I'm looking at Ms. McLean, and so I think she has --

CHAIR KING: Okay, Director.

COUNCILMEMBER COCHRAN: --some figures.

MS. McLEAN: Thank you, Chair. The original parking analysis done for the property when the CO first came in was done under an old parking code and that requirement at the time was for hotels. There was one parking space required for every three hotel rooms. And then there's also the lobby and office that gets assessed at a ratio of one parking space for every 500 square feet and then the restaurant gets assessed at one parking space for every 100 square feet of serving and dining area. And the old code also used to have a minimum of three requirement for the restaurant, so all that put together under the old code--thank you, Jeff--54 were required and they have 51 on site. So under the code that was in place at the time when it was assessed for certificate of occupancy they were deficient three stalls and that is the, again, that's what, that's been in place for many, many years. Under the current parking Code, the requirement for the hotel was changed from one space for, per three rooms, to one space per two rooms, and so that increased the requirement by a number of rooms. So, today if we were to apply the existing parking Code, they would be deficient 18 stalls. And then we have a proposed new code that isn't applicable at the time, but so we're dealing with either a deficiency of 18 or of 3, depending on whether you want to apply the existing Code versus the code that was in place when they applied for their CO.

CHAIR KING: Okay. But they...are they obligated to, for the existing Code since they did do some repair work?

MS. McLEAN: We would assess them, we would hold them to...actually, that's...I've heard different things coming from our staff, so that's...if improvements haven't changed the square footage, which I don't believe they have and that's what the analysis is based

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

on, is the same square footage that existed at the time, then we would continue to honor the old code.

CHAIR KING: Ms. Cochran?

COUNCILMEMBER COCHRAN: So, they've been deficient all along and now they're asking for more. They haven't provided all along and now they're taking more than they need.

CHAIR KING: Department?

COUNCILMEMBER COCHRAN: Right? Is that what we're trying to figure...

MS. McLEAN: The reason that the Code has changed is because the requirements that were assessed for different uses have proved to be inadequate, and so even though they are meeting the code requirements that were in place at that time, they have a need for more parking spaces, and the changes to our parking Code would demonstrate that. That the new parking Code goes from one space for every three hotel rooms to one space for every two hotel rooms, so that's an increase in like 14 parking spaces. And even if they're compliant with the Code, if they know that they're generating more, a need for more parking then it would be responsible of them to provide that additional parking and the current Code would verify that.

CHAIR KING: Ms. Cochran?

COUNCILMEMBER COCHRAN: So, this new Code will...how many spaces are they gonna be needing to provide?

MS. McLEAN: The Code that's in place today requires them to provide 18 additional parking spaces.

COUNCILMEMBER COCHRAN: And the new...but there's a new code that could be passing?

MS. McLEAN: There's a proposed new code that was considered in the Land Use Committee. I don't know if it will come out of Land Use Committee, but if that were to come out of Land Use Committee that increases the parking requirement for hotel rooms again to a one-to-one ratio. So, we're going from one-to-three to one-to-two to one-to-one, so that would add a requirement of another 30-something stalls, and so they would be deficient 52 parking spaces, I believe, if the new code were to be enacted.

CHAIR KING: So, you're talking about what's on site, as far as what's on site, not, we're not talking about what's in the conditional permit request, the extra parking spaces?

MS. McLEAN: Correct.

CHAIR KING: Okay, 'cause I'm assuming that's why they haven't been deficient, because they've had these, some extra parking even though it wasn't delineated. They've been paying for this parking lot for several years.

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

MS. McLEAN: They would have to answer as to how they are accommodating their guests and the customers of the restaurant, but in terms of...they haven't been able to get the permanent CO, because they don't have adequate parking on site and they can't get offsite parking approval, because the property where they are conducting the offsite parking has to be permitted for that use. And that's what the conditional permit does is it makes parking a lawful, freestanding use on that site, and so that is what's needed for them to be able do an offsite parking approval.

COUNCILMEMBER COCHRAN: Has that...there's a State lot across the street, has that ever been looked at, do you know? Does anybody know?

CHAIR KING: The...

COUNCILMEMBER COCHRAN: Did anybody looked into that, which would have room for parking?

CHAIR KING: There's a State...are you talking about the one that is Public/Quasi-Public? That's not permitted for parking either.

COUNCILMEMBER COCHRAN: But it could be rather than take away existing uses from people at this spot. So, obviously there's been some type of kind of give and take, kind of, you know, let's work with each other happening and now it wants to be delineated, you know, earmarked, whatever, specific these amount for that use and this amount for that use when it's been kind of, sort of a free for fall working togetherness happening. So, I think that's where the public wants to weigh in and wants to have a little more discussion on it, you know, and then looking at maps there's a really nice parcel across that is State also that as far as I'm told it can be for parking also and I guess no one's thought to look there but is looking at it, at this existing lot, which is, you know, fine, but obviously we're hearing concerns from the community and wanting a lot more discussion on that. But that's...

CHAIR KING: I'm gonna ask Mr. Hart, who represents the hotel to weigh in, but I do, before we say that, I want to mention this letter from DLNR that one of their big issues if the hotel weren't to be paying for this and maintaining it and supervising it is that they require liability insurance use due to care for public safety. Keep the premises in clean and sanitary conditions, not allowing nuisance, unlawful, improper, or offensive uses on the premises, and indemnify the State of Hawaii against all liability, loss, and damage. So, that's what's in the agreement with the hotel since they've been paying for it. But. Mr. Hart, would you like to weigh in on some of the background of why, how we got to...I mean, 'cause I know that hotel's change hands.

MR. HART: Sure. So, Jordan Hart, Chris Hart and Partners. In 2000 is when the hotel leaseholder obtained a revocable permit from DLNR and the purpose of that was to provide additional parking. So, you know, one of the key misunderstandings that's continuing on is it started as commercial parking, leased by DLNR Land Division to the hotel leaseholder, and as a result of the settlement agreement public parking

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

entered into that process, 51 percent. It was the interested parties to the settlement agreement who wanted the parking to be delineated so that they could control and keep the hotel and restaurant guests out of the public parking stalls, and then this updated settlement agreement has increased that parking number in favor of the community. You know, why, some of the other questions that were asked, why are we rushing? You know, part of the settlement agreement, the leaseholder's obligation is that they diligently pursue these applications. So, that's why we have to pursue them. That's also what Sarento's has to prove to the Planning Department each year when they go for a CO renewal is that they are pursuing these and trying to push them forward, you know, otherwise, they can be denied, their CO. Why were other properties offsite or in different locations not reviewed? Basically, it's this is the settlement agreement. They had the long-term lease for the hotel and restaurant parcel and they went ahead and initiated the process of getting the revocable permit for the parking lot area as well as completing the subdivision to create that parcel for parking lot purposes and so when the interested parties entered into a settlement agreement process with the County of Maui and the State leaseholders they were focusing on the package that was leased from the State of Hawaii and not really looking at other unrelated properties that these leaseholders had no relationship to.

CHAIR KING: Okay, thank you. So, originally it was leased as commercial property, parking.

MR. HART: For parking purposes, that's right, revocable permit.

CHAIR KING: Okay. Yeah, and I know, I had discussions with Mr. Hall about the community advocacy wanting to keep 51 percent of that, so we're at 60 percent now. I mean, I think in talking with DLNR they do intend to, at some point, they don't have the funding to do it but they do intend to initiate planning for that area at some point, but they are not willing to look at other parcels for parking until we get a master plan now because that idea of master plan has been floated out there. So, I did go back and talk to them about the neighboring property with the kiawe trees next to it and they said they really wouldn't want to expand into that until they get the master plan done. So, they're gonna be working with KIRC and, hopefully, with the County in that, on that area and trying to master plan that entire area now, and they think it's gonna take them about five years. But this is also, you know, we're not, even though we're not talking about the conditional permit yet, the conditional permit is a two-year permit, so that should actually give us two years to know if it's working or if it needs to be adjusted, or if the hotel is doing what they need to do in maintaining it and enforcing. So, at this point, any...Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. And thank you for mentioning that the calculation was for the on-site parking, because this separate parking is gonna provide them additional offsite parking, but it's certainly not a significant portion of the parking. The other reason I support this is because this is a result of a long discussion over many years reaching a settlement agreement that is very beneficial for the, for both the community and the hotel and restaurant. So, I, you know, we always hear that the community needs more time to think about it, but this has been a process that's been out there in the public and it's been there for quite some time, and

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

I think there's been plenty of opportunity for people to participate, and I appreciate you bringing this forward, because I think it is time to move on with it. Thank you.

CHAIR KING: Thank you, Mr. White. So, any other --

COUNCILMEMBER COCHRAN: So, I have a question --

CHAIR KING: --comments?

COUNCILMEMBER COCHRAN: --for Corporation Counsel. This agreement is...so, the County is a party in this agreement?

MR. HOPPER: The Department of Planning, yes.

COUNCILMEMBER COCHRAN: Okay, 'cause I was...if it's between private people and public but not particular, in particular the County, so but we are as the Planning Department is a party in this --

MR. HOPPER: Yeah, and I would...

COUNCILMEMBER COCHRAN: --settlement agreement?

MR. HOPPER: That's correct. I would reference that the agreement though does recognize that the, there's further discretion from other County bodies including the Council for granting the conditional permit and community plan amendment or denying and that the agreement doesn't affect the ability of the County Council to review the permits and decide whether or not to grant those permits. So, it's not something that's binding on the County, for example, that says the County must grant these permits. It says that the parties, that the applicant agrees to apply for those permits and basically, in good faith attempt to get those permits, but does not bind the County, for example, to grant the permits, so that's not actually something that the Department could agree to 'cause that's the community plan amendment and the conditional permit are within the scope of the Council's review.

COUNCILMEMBER COCHRAN: Right. Okay.

CHAIR KING: Okay.

COUNCILMEMBER COCHRAN: I just want to know what our role is so, you know. You're taking a role and I'm taking a role, so it's kind of where...

CHAIR KING: Okay, Members, I will entertain a motion to recommend passage of the revised proposed bill entitled A Bill for an Ordinance to Amend the Kihei Community Plan and Land Use Map from Single-Family to Hotel for Property Situated at Kihei, Maui, Hawaii, on first reading; incorporating any revisions made by the Committee today; and nonsubstantive revisions; and the filing of County Communication 09-246.

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

COUNCILMEMBER WHITE: So moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR KING: Moved by Mr. White, second by Mr. Hokama. Any discussion? All those in favor, say "aye."

COUNCILMEMBERS: Aye.

CHAIR KING: All those opposed?

COUNCILMEMBER COCHRAN: No.

CHAIR KING: No...four "ayes," one "no," Ms. Cochran. Measure passes.

VOTE: AYES: Chair King, Vice-Chair Sugimura, and Councilmembers Hokama and White.

NOES: Councilmember Cochran.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Crivello and Guzman.

MOTION CARRIED.

ACTION: Recommending FIRST READING of revised bill.

CHAIR KING: Okay, that was the community plan amendment. And any other...did you want to go over the conditional use conditions, Ms. Cochran? You had some questions about the conditions?

COUNCILMEMBER COCHRAN: Well, the "may" should be a yeah, you got to.

CHAIR KING: Which one?

COUNCILMEMBER COCHRAN: Page 5, failure to so...

CHAIR KING: I'm not sure if you're on the same...

COUNCILMEMBER COCHRAN: Wait, let's see, where...

CHAIR KING: This is the conditional...

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

COUNCILMEMBER COCHRAN: Condition five, is that...

CHAIR KING: Condition five.

COUNCILMEMBER COCHRAN: The newly handed out.

CHAIR KING: Right.

COUNCILMEMBER COCHRAN: Does that make sense, Mr. Hopper? Does it strengthen that? I'm just trying to...let me see, reread that. Just wondering if...there was a condition that was kind of not as strong as it ought to be.

CHAIR KING: That . . . *(inaudible)* . . .

COUNCILMEMBER COCHRAN: Shall develop the property in substantial compliance with the representations made to the County Council in obtaining the conditional permit. Failure to do so...failure to so develop the property may result.

CHAIR KING: Did you have a question?

COUNCILMEMBER COCHRAN: So, is this saying so there's going to be a...they represented a certain action and if they do not follow, then it may result in revocation of the conditional use permit and that will be up to this body, to Planning to determine?

MR. HOPPER: Well, it references a Code section, 19.40.080, and I believe that talks about, I believe that was, has language from the original 1988 Conditional Permit Ordinance, which talks about the Planning Commission reviewing and potentially revoking permits, which is a bit unusual. I think a revocation type of a process--I don't know if we've gone through it--would probably involve the Planning Department as an enforcement action and would also involve the Council in a manner because the conditional permit's adopted by ordinance, so generally the Council would look at revoking it by ordinance. So, with this condition, I think, whether you use "may" or "shall" there would still need to be a finding of violation of the condition and most likely Council determination to revoke the permit. Of course, the permit's only valid for two years as well, so that's another thing. So, if there's a decision not to renew it or something that's another issue. But the revocation process, I don't see how that would happen without the Council being involved because I don't believe the, you know, the Planning Department can enforce conditions and issue things like notices of violation, for example, but as far as revoking the actual permit that may be a difficult thing for the director to actually do. There is some authority among the director to extend permits and to amend permits in certain cases, but as far as revoking the permits, I believe, that'd be something that would have to come to Council and, you know, as changing "may" or "shall," you would still need to have a finding of a breach of the condition and the applicant, I'm sure, would argue, well, may argue against that and the Council, I think, would need to review that and make that determination if you're talking about essentially undoing an ordinance.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

CHAIR KING: Okay. So, you also have a handout that's got seven, eight, nine, these are three additional conditions. Did everybody get that handout? Looks like this. So, these are three additional conditions for the conditional permit. Number seven being that Ruby & Sons and Sarento's shall be responsible to prevent the guests, employees, invitees, and agents of the hotel and restaurant from using the, at least 51 parking stalls dedicated for use by the public for public beach access. Eight, that Ruby & Sons shall be responsible for the maintenance and upkeep of the parking on tax map key (2) 3-9-004:149. And condition nine that Ruby & Sons shall be responsible for clearly marking with signage the at least 34 contiguous parking stalls on that tax map key designated for use by the hotel and the restaurant and the at least 51 parking stalls designated for public beach access. So, those are additional, these are additional conditions that we are putting into the conditional permit. They're actually in the settlement agreement, but we put them into the conditional permit just to be that specific.

COUNCILMEMBER COCHRAN: Okay. So, for number five, I mean, all seven, eight, and nine all have the word "shall," if "shall," it's a "shall." I mean, we should just use shall, but as you say, Mr. Hopper, it has to come back to this body should there be any discrepancies occurring, so I don't see the "may" or "shall." I understand it still has to be vetted through this body, but I don't, so I don't see why, but, I mean, "shall" seems a lot more protective if they're not abiding by what they say that they're gonna then it should be granted it'll come through this body but I think it's...bottom line is if you're not following what you said you were then you should have things revoked. That's...I mean, that's just my take to replace "may" with a "shall" in number five, which also goes in line with all the three additional amendments you mentioned, too.

CHAIR KING: What does that mean, Mr. Hopper, failure to develop the property?

MR. HOPPER: I think that'd be, for example, the easiest thing would be any conditions. So, if the, for example, they don't provide the number of parking stalls required by the conditions or any other condition that the Council puts on the property or if they represent something to the Council that they don't abide by primarily embodied in the conditions, then the permit could be revoked for failure to basically abide by the conditions of the property. So, I think the easiest things would probably be maintaining the parking 'cause that's a condition...it's always good to put these in conditions, you know, providing the adequate number of parking stalls, marking the parking stalls, things like that. That's a common phrasing of a condition. We do talk about representations made, but it is certainly easiest to enforce against specific conditions that say what has to be done and if there's evidence they haven't been done that would be a clear example of develop, not developing the property consistently with the conditions and as represented.

CHAIR KING: Director?

MS. McLEAN: Thank you, Chair. I'm trying to think of a circumstance where they might technically be in violation of the permit and, but where revocation may not be appropriate. So, one of their requirements is to provide parking stalls designated for

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

beach access parking. So, if there was a big storm and branches and debris fell in those parking spaces and they were no longer accessible to the public for a day or so until that could get cleared technically they would be in violation because they wouldn't be providing those stalls. To the Planning Department, that wouldn't be a basis for revocation, if we knew about it and they weren't acting on it we would contact them and make them clear the debris and come into compliance. We issue as you know hundreds of permits a year, we enforce all kinds of things, and more often than not it's inadvertent, it's unknown to the permit holder, and so we just want them to do what they need to do to come back into compliance. We had a similar situation, we were talking about the Charter amendment to increase the fines for short-term rental homes and bed and breakfast homes that are operating illegally and wanting to make sure that that same thing didn't apply to permit holders who circumstances beyond their control are complying with their permit condition. One of the permit condition is to post your sign. There's an operator who's had their sign stolen. That's not their fault. We're not going to revoke their permit for not having a sign. So, there are situations where they're not knowingly violating, they're not being negligent. If you put "shall" in there that's absolute, so that would be a concern because there are situations where it really isn't under the applicant's control or they're not knowingly or negligently violating. Thank you, Chair.

CHAIR KING: Thank you. Any more...

COUNCILMEMBER COCHRAN: Okay. I mean, I know there is a fallback where it gets vetted through, but, you know, I think a lot of people get way too many leeway's around here, so.

CHAIR KING: Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. Yeah, I'm comfortable leaving it as "may" because this is as you mentioned just a two-year permit and they're gonna have to come back to Council for reauthorization. And also I was concerned and Ms. McLean outlined the concern much better than I could have that sometimes something small might result in a violation or lack of complete compliance and to have a "shall" there in those kinds of circumstances is, I think, pretty harsh. So, I'm comfortable it's a two-year permit, I'm comfortable that the option is there. If there is a significant violation that it can be brought back to the Council and the permit can be revoked if the Council chooses. So, I don't think it's necessary to amend it at this point.

CHAIR KING: Okay, thank you.

COUNCILMEMBER WHITE: But I support the other amendments that you mentioned.

CHAIR KING: Yeah. My concern is if you put "shall" in there it's an automatic revocation.

COUNCILMEMBER WHITE: Right.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

CHAIR KING: And so, it really should come back to the Council. So, okay, Members, I...if there are no other questions, I'll entertain a motion to recommend...

COUNCILMEMBER COCHRAN: So, wait, I have a question.

CHAIR KING: Ms. Cochran?

COUNCILMEMBER COCHRAN: Should a new parking code come into play, the numbers here will stay as is? This does not change, right?

CHAIR KING: Director?

MS. McLEAN: That's correct.

CHAIR KING: Unless we change it in the next...

COUNCILMEMBER COCHRAN: And...

CHAIR KING: When we renew it. If we renew it in two years.

COUNCILMEMBER COCHRAN: And even with this, they're deficient, is that right? These numbers, they're not...

CHAIR KING: I don't think so. Ms. McLean?

MS. McLEAN: Yes, they're currently deficient. They provide 51 spaces on-site already and they are 3 short under the Code that was in effect when they were first assessed.

CHAIR KING: But they have this extra spot...

MS. McLEAN: Oh, I'm, sorry, even if this were adopted and they were able to use those spaces then, no, they would not be deficient. They would meet the requirements that they're required to meet.

CHAIR KING: Okay. All right. Members, I will entertain a motion to recommend passage of the revised proposed bill entitled A Bill for an Ordinance Granting a Conditional Permit to Ruby & Sons Hospitality, LLC, for the Construction and Use of an Off-site Parking Lot within the County Park District for Property Situated at Kihei, Maui, Hawaii, on first reading; incorporating any revisions made by the Committee today; and nonsubstantive revisions; and the filing of County Communication 09-246. And the revisions made today include the number, the conditions seven through nine just to reiterate.

COUNCILMEMBER WHITE: So moved.

CHAIR KING: Moved by Mr. White.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

COUNCILMEMBER HOKAMA: Second.

CHAIR KING: Seconded by Mr. Hokama. Discussion?

COUNCILMEMBER COCHRAN: So, Chair, currently as the Code is written for parking stalls they only would need to provide 18, is that right?

CHAIR KING: Ms. McLean?

MS. McLEAN: Under the current Code, if the current Code were applied to the property --

COUNCILMEMBER COCHRAN: Yes.

MS. McLEAN: --they would be delinquent 18 parking spaces. They would be short 18.

COUNCILMEMBER COCHRAN: Delinquent?

MS. McLEAN: They would be short 18 parking spaces. They need to provide 18 beyond what they have on site.

COUNCILMEMBER COCHRAN: So...and not...so, what they have now, they're gonna tack on 34 more, is that what this is telling me or is that the number nine item?

MS. McLEAN: Number nine says that they would be entitled to 34.

COUNCILMEMBER COCHRAN: Thirty-four, right. But technically, they only need 18 though, is that...that's what I'm...

MS. McLEAN: Under the current Code.

COUNCILMEMBER COCHRAN: Yeah.

MS. McLEAN: Yes.

COUNCILMEMBER COCHRAN: So, they only need to provide 18, but this is giving them 34. So, I want to drop that down to 18 to be in compliance with today's current Code. Why are they taking more than they need to provide because now the public is being shorted actually?

CHAIR KING: Well, I'll let Mr. Hart answer that if you're okay with that why they need to...

COUNCILMEMBER COCHRAN: Not really. I mean --

CHAIR KING: Okay.

COUNCILMEMBER COCHRAN: --I rather just abide by what our County Code is. I don't think that's fair. How is it that we're giving them more than what they need to abide

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

by, to be in compliance with our written Code as is? It just doesn't make sense to me. Of course the project wants more.

CHAIR KING: Yeah, I'm gonna --

COUNCILMEMBER COCHRAN: But they don't need to be given more.

CHAIR KING: --let Mr. Hart comment on that, because I had a conversation with him yesterday and it relates to one of the reasons why we are looking in at increasing that number. So, Mr. Hart.

COUNCILMEMBER COCHRAN: And it'd be nice and maybe Corporation Counsel, I think, legally-wise I'd like to hear too. And I think any of these conversations that have been being had somewhere with agencies and planner and whoever should be in writing for all of us to see to vet through. That would be really nice, too. But sure, since he's here.

CHAIR KING: Mr. Hart?

MR. HART: Thank you, Chair. So, you know, the Department does have a draft on 19.36B that's currently with the Land Use Committee and the purpose of that is to update parking requirements including hotel, which basically doubles the requirement for hotel, so while technically we do meet 19.36A, it's understood by everyone including, you know, the Council and the Department that hotel probably hasn't been sufficiently assessed previously. So, we will be providing more than is technically required under 19.36A, and we will be slightly under in the event that 19.36B is adopted. And to go all the way back to the beginning of the settlement agreement as mentioned, the revocable permit was obtained because Maui Oceanfront and in Sarento's restaurant did have a shortage of parking, a practical functional shortage of parking. Also because of the way that their parking lot is designed it's just a straight shot all the way down to Sarento's and they had vehicles that would go down there and have a difficult time figuring out what they were doing and coming out. So, the additional parking was required practically and then when the interested parties became involved they also agreed that practically there is insufficient parking and so they wanted to see it organized and delineated with the stalls reserved for the general public. So, while it's agreed that we don't meet the current Code, it's also understood by everyone involved that there is an upcoming County Code that we will be closer to. I'm certain that Councilmember Cochran doesn't want us to ask for as many parking stalls as we would need in order to be compliant with 19.36B, and so we're satisfied with what we have now. One thing I do want to bring up that I think is really important for when we go through the final CO process is to remind everyone that we are talking about a gravel, unpaved parking lot because typically, you know, ZAED is used to seeing fully paved parking lots. And the other item I want to bring up is that this settlement agreement was established in 2005 when the County was operating under 19.36, which included compact stalls and that is how the total count of parking is able to be arrived at. That was acceptable to the interested parties at that time. I still do think

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

that it's relevant and useful and helps maintain the stall count, so I want to make sure that that's, you know, towards the top of the minutes in that context.

CHAIR KING: Okay, so you're...I thought you were planning on putting a mix of compact and...

MR. HART: It is. But I just wanted to say that, you know, under our current and under 19.36B, compacts are not accounted for but this agreement, which is much older than that is established on that, and so that's what our conditional use permit request is for the Council to grants us the approval to develop an unpaved parking lot, which is a deviation from Code and as well as compact stalls.

CHAIR KING: Do you know how many you have?

MR. HART: Yeah, I do. A total of 28 compacts, I believe, with the hotel taking 15 of those.

CHAIR KING: Okay. Okay. So, there's 13 in the public side. Okay, so what is your plan then if this other one passes and you're gonna be three stalls short? Are those...are they able to find those sites, those on site?

MR. HART: Thank you, Chair. I think that that's a really relevant thing to talk through right now, you know, existing nonconforming status is something that all properties, not all properties, but at some point any property is developed and over time if it doesn't change, you know, the codes change around it, and so, you know, let's say 19.36B is adopted in February, you know, hypothetically, we would or let's say later on we'd be existing nonconforming. You know, that's a real issue to consider because the hotel was fully built out under a one stall per three hotel ratio in 1973 and here we are in 2000...approaching 2019, so it's just always a moving target with any project that gets developed, it's subject to the codes that it's developed under and if time goes by it become existing nonconforming.

CHAIR KING: Okay. All right, thank you. Any other comments? Councilmember White?

COUNCILMEMBER WHITE: Thank you, Chair. My recollection and Planning can confirm it is that the new code will apply to new construction, it doesn't necessarily apply to existing construction at the time the code has passed. That's my understanding anyway.

CHAIR KING: Department?

MS. McLEAN: The changes to the Parking Code don't have a provision specific to that. It's more what the practice of the Department is and because this was built when it was built and the codes in effect at the time it was built, those continue to be honored like with any nonconforming use. If there are changes, those changes have to come into compliance with the new code, so that's just...there's a whole section in Title 19 on nonconforming uses, nonconforming structures, nonconforming parking, and so it's generally, if the nonconformity, which was lawful at the time stays as it is then it can

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

continue to function under the Code in existence at the time it was built or the use was established. Then if it's a change or there's a suspension in the use, then new requirements apply.

COUNCILMEMBER WHITE: Okay, thank you. Thank you, Chair.

CHAIR KING: Okay.

COUNCILMEMBER COCHRAN: So, I think I had some outstanding questions, and I think I wanted a comment from Corporation Counsel too. So, if they only technically need 18, how did this 34 come about? And then Code or no Code, new, old, whatever, I mean, there's still not gonna be...they'll still be deficient all the way through. So, it just seems like they're taking more away from the public and in the end and not being in compliance...they're gonna be existing noncompliant all along and I don't know it just seems like this constant circle of noncompliance and given 'em exemptions and I don't...what's that all about? I mean what are we trying to get to here? I mean...

CHAIR KING: Director?

MS. McLEAN: I would defer to the applicant on how the number 34 came about. I don't know where that specific number came from. In terms of the current requirement of 18, the Code requirements are the minimum required under the standards in the Code. Applicants, owners, developers can certainly provide more parking than what's required. The parking requirements are not intended to be peak and so that's why you see like at the mall there are often empty parking spaces but then at Christmas time it's packed and you can't find a place to park, so it's not intended for peak use. And there are different types of uses, different businesses that provide more than what's required simply because they know that they're going to need it, they're going to have more customers or more vehicular traffic than the Code would account for. So, it's not unlawful for them to do that. In terms of the proposed new code if that is able to be enacted, one of the provisions in there is a reduction modification flexibility provision that doesn't exist in the Code now. Also, as a related aside, it also allows for gravel parking, which the current Code doesn't. So, the flexibility allows accounting for, what we call, same user. So, if the hotel guests, for example, are among the customers at the restaurant, then we could look at reducing the parking requirement accordingly. So, there are different ways to account for because we don't want more parking than what is needed. And so, in that area there are in addition to the Maui Oceanfront Inn, there's the Mana Kai, there's Kihei Surfside, there are other places that are within walking distance, and so that would be an opportunity for us to talk with them to see how much of Sarento's clients come from within walking distance and don't drive, so then their parking could be reduced accordingly. So, I don't know if that would be enough to go down to 34 from the requirement of 52 or somewhere like that, but it would probably get closer to it. But in terms of how the number 34 came about, I don't know specifically how that exact number was arrived at.

CHAIR KING: Mr. Hart, do you want to give us your...

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

MR. HART: Sure, Chair. So, just to go back a little bit, again, initially the hotel leaser approached DLNR Land Division and obtained a revocable permit for the purpose of creating a commercial parking lot. They also got this lot subdivided out, so the entire parking lot was originated as commercial parking. When the interested parties got involved, the settlement agreement was created and it basically, part of the settlement, was that 51 percent of those stalls be to the general public and 49 percent be to the hotel. And then following the last community meeting that we had in Kihei there was an expression of desire not to have the parking lot paved and also to have some more parking for the general public, so as a renegotiation between the leaseholders and the interested parties to amend the settlement agreement down to the current number. I do think that, you know, we just talked through everyone's awareness that the current parking ordinance may not be sufficient for hotel uses, and so there is a need to have a little bit more. Also, Sarento's is actually a very popular restaurant and so, you know, not planning to accommodate the parking that will be coming to Sarento's is just irresponsible so, you know, the combination of those two things is the reason that the hotel believes that they need, you know, the parking that they're asking for. And I think that it's also important to bring up that they're the ones that created the parking lot, have been maintaining this entire time, and will continue to maintain it, and, you know, in that context, you know, there's some relevance of them to have some share of the parking.

COUNCILMEMBER COCHRAN: So, I think --

CHAIR KING: Thank you, Mr. Hart.

COUNCILMEMBER COCHRAN: --if I can get clarification, though. So, for them to be compliant technically with this current Parking Code they really need only three spaces, is that right?

MS. McLEAN: For the Code that was in effect --

COUNCILMEMBER COCHRAN: Yes.

MS. McLEAN: --when the property was developed, yes.

COUNCILMEMBER COCHRAN: So, 34 is way more than 3 and I think 18 would be a nice chunk. And that's, you know, what needs to be provided, what have you, is a given and how they get it shouldn't be taking away from public spaces and beach and, you know, you, we had Aha Moku come here and testify and 140 bucks, yeah, they'll pick up that tab any day. I think anyone would in this public for parking and to make it for the people and to have it for those types of uses versus commercial business and every. So, that's their bad if they can't provide, you know. There's the State lot across the street I mentioned, there's ways, they have the money to figure this out, but not on the backs of this community and the public is how I look at it. So, that's why I think the community wanted a lot more vetting, a lot more seat at this table. Obviously, there's been a lot of behind the scenes discussion that hasn't been really forthcoming to this body and especially to this community. And so, yeah, I take a lot of offense and

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

issue to how we're doing this right now. And I think give 'em to what's Code, period, and stay at that and no take anymore. That 34 number, I don't agree with it. I think it should just be the three, so they be come into compliance and be done with it. In two years, we can re-vet, community plan should be kicking into high gear by then, and let's have that really deeper discussion, but the way this is going down, I don't know, you know, people might have a bigger picture plan here, but it sure as heck isn't being forthcoming and open and transparent as far as I can tell. So...

CHAIR KING: Okay. Thank you. My...Chair's opinion is that this is a commercial, actually, started out as a commercial parking lot. It was paid for as a commercial parking lot all these years and the negotiations were to ask for the majority of it to be used for public. They were given that and the consent agreement has been worked on all these years, and it's been worked since I got on, you know, it came up when I got this Council and we were able to actual able to negotiate a few more parking spots, so the fact that this is a commercial, was a commercial property, but the other thing that people have to keep in mind is this can be revoked with a 30-day notice at any time. So, you know, we actually don't have...we have a two-year conditional permit, so that's gonna come up in two years, but if DLNR has an issue with it or decides to take it back they can give 30-days' notice and that's the risk that the hotel is taking by buying insurance and maintaining this parking lot and enforcing to keep the folks who don't, aren't going to the beach and the commercial users out. So, I'm gonna call for the vote. We have a motion on the floor. All those in favor?

COUNCILMEMBERS: Aye.

CHAIR KING: All those opposed?

COUNCILMEMBER COCHRAN: No.

CHAIR KING: No...Four yeses, measure passes. One "no," Elle Cochran.

VOTE: AYES: Chair King, Vice-Chair Sugimura, and Councilmembers Hokama and White.

NOES: Councilmember Cochran.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Crivello and Guzman.

MOTION CARRIED.

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

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

ITEM PC-23: AMENDING CHAPTER 16.13, MAUI COUNTY CODE, RELATING TO COMMERCIAL SIGNS (CC 18-393)

CHAIR KING: Okay. Members, the last item on the agenda is amending chapter...it's PC-23, County Communication 18-393, Amending Chapter 16.13, Maui County Code, Relating to Commercial Signs, and this was proposed by Councilmember White. Is this something that the Department should present first or, Councilmember White, do you want to present it?

COUNCILMEMBER WHITE: They can go first.

CHAIR KING: Department, you can...you want to give your...

MS. McLEAN: Thank you, Chair. We are concerned about the proposed amendment could it...it would essentially double the number of business ID signs that are out there today. The amendments that we made the last time the ordinance, the sign ordinance came before you made a change to business ID signs by taking the total square footage and rather than it being one sign it allowed that same square footage to be separated into two signs with the total still being the same square footage. And the proposed bill would change that to two business ID signs of that same total size, so in effect, businesses would have double the amount of sign area. The changes that we proposed were in response to some concerns that were raised and the specific instance that prompted it and there was a testifier at the last meeting who spoke about this. Those issues have been resolved. What's preventing that particular business from getting their signs is that the comprehensive signage plan that applies to that property does not allow for signage on one of the streets that that business faces. And so that comprehensive signage plan needs to be amended, we actually proposed the amendment and presented it to them and the property manager has yet to return in. So, we're stuck wanting to and ready to issue the permits for that business but we're not getting the changes back from the property manager, so that particular situation is on the verge of being resolved and it's not the sign Code that's keeping it from being resolved. The other amendment had to do with visibility versus legibility, whether a sign is visible or legible and legible just puts it into a much more discretionary realm than visible, so we would be concerned about changing that. Visible is can you or can you not see it. Legible is can you read it, well, if I squint maybe I can, oh, your eyes are better than mine. That's a little discretionary, so that would be our concern with that change. Thank you, Chair.

CHAIR KING: Okay, thank you, Department. Councilmember, Council Chair White, you proposed this bill, would you like to go over the changes, the amendments proposed?

COUNCILMEMBER WHITE: Yeah, basically, the challenge with many laws is in the implementation and the interpretation and the concerns that were brought forth were that, for example, if you have a building on a corner and you want to have a sign on this street and a sign on that street your next door neighbor if they have just one frontage they're gonna have a sign that can be twice as big as yours because yours has

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

to be split because it's the combined size. So, you can have one of the same size of the allowed size on one side, but then you can't have another one on the other or you can split it and have two sides that are half the allowed size because the combined portion is what you're allowed. So, for me, this is a fairness issue and if you're fronting two streets you should be able to have a regular sized sign on both sides so that you're visible from both directions. And the degree to which it is legible versus visible, you know, those of us who have less than perfect eyesight...if something is a ways away the sign is visible but it may not be something you can read and this all started from an issue where the signs that were up were hardly visible or legible from one of the streets. So, this is simply to help the business community have a little more certainty with which to deal with their signage and provide an opportunity for us...basically a lot of businesses their only marketing is their signage or a significant part of their marketing is their signage. And their...they depend on their signage to make it possible for customers to find them easily. So, I don't want us to be putting businesses in a position where I'm guessing that there are probably quite a number of businesses that have two regular sized signs one facing one street and one facing another. Now...you know, we passed this last year, I'm concerned that if we don't correct it, we're likely to have the Department go and make issue with those owners and say you have cut, you have to take one sign down or you need to cut both signs in half. So, that's my concern. These are very, to me, pretty insignificant changes but they mean a lot to the folks that are running businesses out in our community.

CHAIR KING: Okay. Do you want to respond, Department?

MS. McLEAN: If I could make one comment, I'm sorry, I don't have the proposed amendment in front of me, but it could be that your proposed amendment was drafted from the old code because looking at the current code for business ID signs it says two per business frontage, and as I said that could be split for the total combined size, but then it goes on to say one additional sign may be permitted if business is adjacent to more than one street.

CHAIR KING: What page is that on?

MS McLEAN: Well, this is in Chapter 16.13. I don't have the proposed bill in front of me. I grabbed the wrong folder coming over.

CHAIR KING: Okay. Do you know the number, 16.13...

MS. McLEAN: Sixteen-thirteen-oh-seven-oh in the chart, for business ID sign.

CHAIR KING: One additional sign may be permitted if business is adjacent to more than one street. I think Mr. White's concern is the size, so if you're allowing one additional sign but you're not allowing the size to be equal because the total amount of signage has to be considered. Is that the...

COUNCILMEMBER WHITE: Yeah. It's basically maximum size on Page 5 of the bill, it says see chart below for a total --

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

MS. McLEAN: Okay.

COUNCILMEMBER WHITE: --combined...or the previously it said total combined size of all signs per exterior building side. So, if you can have two signs that still is requiring you to combine all allowable signs as I read it.

MS. McLEAN: Well, the Department wouldn't object if that's what the intent is to allow buildings that are adjacent to more than one street to have the same size signage on each side. We wouldn't object to that as it's drafted. It would allow essentially twice the square footage and that's what we would be concerned about for all businesses regardless of where they're situated. So, we wouldn't have an objection to that one additional sign also being the 16 square feet rather than it being included in the 16 square feet, so we could come up with language if that's what the goal is rather than doubling the number of signs for any business. If it's just for those on it...that are on a corner lot that they get 16 square feet on each side, we wouldn't object to that.

CHAIR KING: So, Mr. White, so you're...the part of your amendment that references is on Page 7 of our...on Granicus?

COUNCILMEMBER WHITE: It's on two pages. The term "combined" is used on Page 5 and on Page 8.

CHAIR KING: Right, no but your amendment is on Page 7 where it says maximum sign area is calculated with reference to the size of the relevant building's setback and the size of the relevant building frontage or business frontage. In cases where there are two building setbacks separate adjacent roads shall be used as reference points.

COUNCILMEMBER WHITE: Correct.

CHAIR KING: That's your amendment that takes care of that.

COUNCILMEMBER WHITE: Right.

CHAIR KING: Okay. 'Cause she doesn't have that, so she doesn't have a hard copy of that. Any other question? Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chair. I can appreciate Mr. White's proposal, Chair. A couple of questions 'cause on Lanai I have a, unique situations. For those that know our commercial Dole Park area, that's the 8th Street where the company runs their own store against our families, Richard's. You go down further on 8th Street by Ilima Avenue, we have a family business the Honda's Pine Isle Market. Their uniqueness is their building covers three streets, the front street and the two side streets. So, they can have three signs? And while you're thinking about the response, Lanai we moved forward Country Town Business, okay, where we set our own

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

standards. So, does our standards override this, because we have our own Country Town Business standards?

CHAIR KING: Department?

COUNCILMEMBER HOKAMA: 'Cause our standard is built for our community setbacks, our community street widths, and how Jim Dole had planned out our island a hundred years ago.

CHAIR KING: Mr. Hokama, on the example you gave us that has three sides, are there setbacks on all three of those sides?

COUNCILMEMBER HOKAMA: As it was built in the 1920s.

CHAIR KING: Okay. Because this amendment just references in cases where there are two building setbacks. Separate adjacent roads shall be used as reference points. So, it would allow them to decide which corner they want that sign on.

COUNCILMEMBER HOKAMA: And that's why I was...I'm...one of the things that I wish we would clarify is what is frontage, yeah, 'cause to me there's only one front of a building. You cannot have a frontage on three sides of a building. There's only one front side, one back side, and the sides. Okay, so what is frontage? Can a frontage be more than just the front of the building?

CHAIR KING: I think...okay, so the other...in 16.13.030 there's an amendment at the bottom of that page that adds a statement that says in cases where it is not clear, the business shall designate which side of the business unit is the front, so they have to say this is our front, this is our side.

COUNCILMEMBER HOKAMA: And I appreciate that, I mean, for most of us, I mean, we know which is the front of the store, most of us use the back of the stores, but, you know. I mean, I appreciate. My concern is more is that we have worked through our own Lanai Country Town Business zoning standards, and I'm just wondering if this is going to trump our standards we've set for our own island Business District. Because I always think our specific zoning on Lanai would out trump because it fits our standards and our measurements.

CHAIR KING: Department?

MS. McLEAN: I do recall when the latest design guidelines were going through their process and going to the Planning Commission that we did review those with our Zoning Administration and Enforcement Division to see that they were in sync. I was looking in the rest of the sign Code to see if there is a provision relating to design guidelines.

COUNCILMEMBER HOKAMA: Okay.

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

MS. McLEAN: But I believe what's in the Lanai BCT design guidelines now is in conformance with this.

COUNCILMEMBER HOKAMA: One of the things that I did make an amendment to and the Council supported me was that because originally we had Lanai Business Town District guidelines, the Department didn't take that as anything but a recommendation, so I changed it to say now Lanai Country Town is Country Town Business standards and guidelines, okay, I've added the word "standards." So, our language now is a standard to be measured and used for review and approvals for Lanai's request to fit Lanai's needs. And that's why I made the change that it be Lanai Business Country Town standards and guidelines. And that would be my question for Corp. Counsel, would this proposal supersede my specific Lanai zone business standards?

MR. HOPPER: The design guidelines would be adopted under, I believe, 19.15 for areas zoned BCT. Those are adopted as law, I believe. I think what would end up happening is that you would have to comply with the stricter of the two, that they would both apply unless there is some statement in Title 16 and I can look at it because that's not something that I had looked at prior to this meeting 'cause I didn't think necessarily there'd be BCT issues today but to see if there's a statement in Title 16 that says something like, for example, any BCT sign standards adopted shall apply instead of these or something like that. And normally if you have two sets of standards you would have to comply with the stricter of the two because they would both be applicable, so in substance you'd have to do that.

COUNCILMEMBER HOKAMA: I just bring it up, Chair, 'cause I want to make sure that if possible we protect our Lanai standards that we've reviewed and set with the community's input.

CHAIR KING: Okay.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR KING: Thank you, Mr. Hokama. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I'd be happy to insert language to that effect, but I think Mr. Hopper's point is --

CHAIR KING: Okay. Probably at the end.

COUNCILMEMBER WHITE: --well taken. That there's probably something in here that says the stricter of the two would apply, but I'm happy to...

CHAIR KING: We might not want to say that because there might be areas where his aren't as strict, so we might just want to put the statement in that this sign ordinance does not supersede the standards on Lanai or something.

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

MR. HOPPER: Well, I mean, I don't know if this new, these new requirements would affect anything, any BCT related items. I also don't know if BCT items were noticed as something on the agenda. I mean, if these could potentially affect them then maybe just for these few changes we can look at making that amendment but if we're going to make a general amendment that would say something like any BCT guidelines adopted shall be, shall supersede the sign requirements, I don't think that's something that was really noticed for this meeting. So, that's, I think, beyond the scope of this particular meeting. Now, if we're going to look at only these changes and how they would affect those then I think that's fine. But I think we're talking about a broader change that could involve zoning issues as well. So, I don't know about making that change with these, which I think there's only several issues, business frontage that were to deal with relatively specific situations.

COUNCILMEMBER HOKAMA: Chair?

CHAIR KING: Mr. Hokama?

COUNCILMEMBER WHITE: I'd be happy to have...oh.

COUNCILMEMBER HOKAMA: Chair...

COUNCILMEMBER WHITE: If I could just finish up.

CHAIR KING: Oh, I'm sorry, you were not done.

COUNCILMEMBER WHITE: I would be happy to have that, the appropriate language posted as a change for first reading.

CHAIR KING: For first reading.

COUNCILMEMBER WHITE: Yeah.

CHAIR KING: Okay.

COUNCILMEMBER WHITE: If this bill passes out.

CHAIR KING: Okay. Any other comments?

COUNCILMEMBER HOKAMA: Chair, and again, I just appreciate the consideration of the Committee. You know this is something that I'm aware we've done for Lanai and I just want to try and ensure that whatever makes sense for Lanai we maintain, because we worked hard regarding the standards of what is Lanai and how to protect it to make sure that our uniqueness is still available. So, thank you, Chair.

CHAIR KING: Okay, thank you, Mr. Hokama. Ms. Sugimura, you have a comment? Do you want to wait 'til a motion and then give a comment or do you have a question?

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

VICE-CHAIR SUGIMURA: I have a question.

CHAIR KING: Okay.

VICE-CHAIR SUGIMURA: So, based upon your opening comments regarding that this would increase the number of signs, do you still have that same concern with these, this discussion?

MS. McLEAN: I do because looking at the chart again and Traci gave me a copy of the amendment so I have it in front of me, again, for business ID sign it's the total size of all signs per exterior building side, so that if a business does have two sides that's the square footage per side. And so if you have two sides...if you have one side, you know, depending on your setback you get 24 square feet, if you get two sides then you get 24 square feet per side and that can be split into two signs, you know, one can be perpendicular and one can be parallel but that's the same one. And but what the chart would do is if you have two signs, that square footage is no longer combined, it would be per size...per sign, so rather than 24 square feet separated into two signs it could be 24 square feet and 24 square feet and same on the other side so it really is doubling the square footage. To address Mr. Hokama's comment about Pine Isle Market with the three sides, in that first provision where it says one additional sign may be permitted if business is adjacent to more than one street it could simply say one additional sign may be permitted per side if business is adjacent to more than one street, so then if it is on three streets or four streets, if it takes up an entire block it could have one per side. But I still don't agree with the change to the total square footage, deleting the word "combined." And lastly, with the language that's proposed for beneath the chart and the calculation I don't have a concern with the intent of it, I would suggest different wording but I don't have a concern with the intent that you measure the setback from whichever street you're dealing with. Thank you, Chair.

CHAIR KING: Okay. Mr. White?

COUNCILMEMBER WHITE: Thank you. If you don't mind Dan Blessings is here. He's one of the testifiers and if the Committee is okay with it, I'd like to have him come up and address the examples that he's able to provide --

CHAIR KING: Okay.

COUNCILMEMBER WHITE: --to provide some clarity.

CHAIR KING: Any objections?

COUNCILMEMBERS: No objections.

CHAIR KING: Okay. Come, Mr. Blessings.

MR. BLESSINGS: Thank you very much. The only confusion that I see in the discussion right now is the information that this is going to double the square footage. I believe

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

that's inaccurate. I have the 2010 bill, I have the 2002 bill, two signs at the normal square footage have been allowed for all that time. The word "combined" has only been added in the '17 bill. So, to make an indication that somehow this bill is going to allow double signage now is not accurate. It's been that size since '02. This bill in '17 is cutting it half, so I would challenge those comments. Was there a specific question, Mr. White, that you would like me address?

CHAIR KING: Mr. White?

COUNCILMEMBER WHITE: No, I think that covers my, majority of my concerns because my recollection is when you and others first brought this up it wasn't necessarily future signs, it was people who already were in compliance with the previous signing Code with two allowable size signs of, I guess, 24 square feet now being told you have to take one down or have two small signs.

MR. BLESSINGS: Yes, sir, that is correct. Under the '10 bill and the, excuse me, '02 and '10 bill the 24 square foot, the number we use now has been allowed all that time. Only in the '17 bill was the word "combined" inserted where if you had two signs the reference was made that they now allow two signs in '17, that's not true. Two signs have been allowed for 16 years, and yes, there are many businesses across the County based on the 2017 bill that when they hit a trigger point and I say a trigger point because there's certain conditions, a new owner, new sign, et cetera, they will have to meet this new Code and they will find their sign allowance size cut in half, and it only came about in the 2017 bill where the word "combined" was added. Before that the chart with the square footage that was shown, that's never changed. We're not asking for any change, we're asking to keep what was there since the last two previous bills.

COUNCILMEMBER WHITE: Okay, thank you. Ms. Sugimura has a question.

CHAIR KING: Do you have a question, Ms. Sugimura?

VICE-CHAIR SUGIMURA: Yeah, so based upon what the Department is saying that they're waiting for your shopping center or to answer their response and --

MR. BLESSINGS: Yes, I would have...

VICE-CHAIR SUGIMURA: --it should solve your problem.

MR. BLESSINGS: No, ma'am, I would disagree with those statements and a spokesman for management of the center is here. There has been a challenge from the Planning Department for quite some time ordering, in my words, ordering management to come up with a new comprehensive sign package, because it's their contention that the CSP did not allow a second sign in the back of a building. We disagree with that. The very approval letter from the County attached the very front of the CSP gives the three conditions of approval and approval number three gives the statement that two signs are allowed. They keep ignoring that. Their own letter has given approval for two signs.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

CHAIR KING: Another question? A comment from the Department?

VICE-CHAIR SUGIMURA: I would love to hear what the Department has to say --

CHAIR KING: Department, do you have a comment?

VICE-CHAIR SUGIMURA: --if we're making that decision.

MS. McLEAN: Thank you, Chair. I pulled up Ordinance Number 4434, which is the 2017 amendment and it clearly shows business ID sign was one per business frontage, and that ordinance changed it to two. I don't know what the gentleman is referring to but I'm looking at the ordinance. So, that was the most recent change to the sign Code. Maybe at some point in the past it was two, but these are for signs in the Commercial districts and there's several charts, maybe, in a different district it was two, but that was the ordinance that was last passed. In terms of the current status with his business and that property, I convey the information that my staff provided to me. I would be happy to go back and look at the status and try to get this cleared up and resolved once and for all. So, I can't answer specifically what that is. I can only convey with staff told me. Thank you, Chair.

MR. BLESSINGS: Chair, I have one more comment if possible.

CHAIR KING: Mr. Blessings?

MR. BLESSINGS: I am holding the 2010 ordinance and the 2002 and both of them show, let me read from the 2010, under business identification, Page 2, one business frontage and then it says one additional sign may be permitted if business is directly adjacent to more than one street. That is the same language in '02 and '10, so I don't understand why there would be a claim in the 2017 that they've now allowed a second sign. It's been in these bills from, like I said, '02 and '10.

CHAIR KING: So, the language you just read off is one per business frontage --

MR. BLESSINGS: Yes.

CHAIR KING: --and one additional.

MR. BLESSINGS: Right and one additional, thus two.

CHAIR KING: Okay. Just one...okay, so the one we're looking at that's current says two per business frontage, one additional sign may be permitted.

MR. BLESSINGS: Well, if anything they've changed the language giving the permission of two, which was really...I think it's just a language change. We're not increasing the signs. Two were allowed before. It's just changing how you're saying it.

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

CHAIR KING: What, Ms. McLean, what does that mean? Does that mean you can have two, it says two per business frontage, one additional sign may be permitted if business is adjacent to more than one street. So, is that giving you a third sign? It's kind of confusing.

MS. McLEAN: That would be a third sign on the other side. That was the situation that Council Chair White raised. That if a business is adjacent to more than one street it could have the one additional sign on that side.

CHAIR KING: Okay. So, this would allow you to have one in the front, one on the side, and one on the back. Because it says two per business...or are you saying the two on the front and then one on one of the sides? I think the whole question here anyway is the whole idea of combine, isn't it?

COUNCILMEMBER WHITE: Correct.

MR. BLESSINGS: Right.

MS. McLEAN: Right. And the, again, the...what the Code used to say was one per business frontage, and I think the gentleman agrees with that that it used to say one per business frontage and now it says two per business frontage.

MR. BLESSINGS: That is only part of the sentence. I continue to say the additional sign is allowed.

CHAIR KING: With one additional, so that's like a third one that you're allowing. I think that's the confusing, but again...

COUNCILMEMBER WHITE: It's also confusing because it says two per business frontage. So, if it's fronting two streets that indicates that you can have two on each street plus an additional one. Is that...am I reading that correctly?

CHAIR KING: I was actually reading that as two on the front, which was confusing to me. Is it two per business frontage or is it one for each frontage?

MS. McLEAN: There is a definition for business frontage in Chapter 16.13, and that definition reads, the widest length from demising wall to demising wall of the front of a building unit occupied by a business establishment rounded to the nearest foot.

CHAIR KING: Okay. But you're...are you saying you can have two signs on that one frontage?

MS. McLEAN: Yes.

CHAIR KING: Okay.

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

MS. McLEAN: And that was the whole intent. If you...there are many businesses that have a sign that's against the wall, so that's parallel to the street and then they also have a hanging sign that's perpendicular so that you can see it when you're walking on the sidewalk. And it used to be that you could only have one, you had to choose one or the other and you had a square footage limitation for that sign. And the change that was adopted in 2017 gave you the option of having two signs but the total square footage would still be the same.

CHAIR KING: Mr. White?

COUNCILMEMBER WHITE: Yeah. There, again, that's my issue is that it's giving you an additional sign but no additional square footage, so your signs have to be smaller, so.

CHAIR KING: Okay. Well, there are no other questions then I'll...we don't have a motion yet. So, I will entertain a motion to recommend passage of the revised proposed bill entitled A Bill for an Ordinance Amending Chapter 16.13, Maui County Code, Relating to Commercial Signs on first reading; incorporating any revisions made by the Committee today; and nonsubstantive revisions; and the filing of County Communication 18-393. And I think we made...we didn't make the revision but we are, we have a commitment by Mr. White to bring it to the first reading with this statement about the not superseding the Lanai Code. Is that correct?

COUNCILMEMBER WHITE: That wouldn't be incorporated in this. It would be...we would post that change before the bill would come to the Council.

CHAIR KING: Right.

MR. HOPPER: And, Madam Chair, again, that would be with respect to these amendments only. The broader change, I don't see that as something that was noticed for this meeting for discussion that we could really have. It's a lot broader than just these changes is all I'm thinking.

CHAIR KING: Okay.

MR. HOPPER: And it's probably an important issue but not really something that was part of this particular bill.

CHAIR KING: Okay. So, right now we have no changes to the amendments that have been proposed.

COUNCILMEMBER WHITE: You haven't gotten the motion yet.

CHAIR KING: Right. Okay.

COUNCILMEMBER WHITE: I'll so move.

CHAIR KING: Moved by Mr. White.

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

VICE-CHAIR SUGIMURA: Second.

CHAIR KING: Second by Ms. Sugimura. Any discussion?

COUNCILMEMBER HOKAMA: Chair?

CHAIR KING: Mr. Hokama?

COUNCILMEMBER HOKAMA: I appreciate comments from Corporation Counsel, but I would ask you as our Chair that in your Committee report we state the concern of Lanai, please.

CHAIR KING: Okay.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR KING: Mr. White?

COUNCILMEMBER WHITE: I'm still comfortable putting such language in to take care of the Lanai issue as it pertains to these issues.

CHAIR KING: As it pertains to these issues.

COUNCILMEMBER WHITE: Yeah.

CHAIR KING: Okay. Well, we will still note the concerns of the, about the Lanai sign Code in the Committee report, but yeah, we're not voting on that today, but you are making a commitment to come forward with that at a later date.

COUNCILMEMBER HOKAMA: Yeah. I'll work with you, Mike.

CHAIR KING: Okay. Any other comments? If not, all those in favor, say "aye."

COUNCILMEMBERS: Aye.

CHAIR KING: Aye. All those opposed? None opposed, four "ayes", measure passes out of Committee.

PLANNING COMMITTEE MINUTES

Council of the County of Maui

November 21, 2018

VOTE: AYES: Chair King, Vice-Chair Sugimura, and Councilmembers Hokama and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Cochran, Crivello, and Guzman.

MOTION CARRIED.

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

CHAIR KING: Thank you, Committee Members, and for staying and thank you, Mr. Hokama, for staying beyond what you promised and the meeting is adjourned. . . .(gavel). . .

ADJOURN: 3:08 p.m.

APPROVED:


KELLY T. KING, Chair
Planning Committee

pc:min:181121r:mb

Transcribed by: Michelle Balala

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 21, 2018

CERTIFICATE

I, Michelle Balala, 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 13th day of December, 2018, in Kihei, Hawaii



A handwritten signature in cursive script, appearing to read "Michelle Balala", is written over a horizontal line.

Michelle Balala