

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JULY 10, 2018**

**A. CALL TO ORDER**

\*\*The meeting could not be called to order at 9:00 a.m. due to not having a quorum.

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keaka Robinson at approximately 9:32 a.m., Tuesday, July 10, 2018, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Keaka Robinson: . . . He'll be here for another half hour to 45 minutes. I just wanted to let you guys know. We apologize for the delay. Feel free to walk out and come back. But as soon as you see him walk in we will start as quickly as we can. So but our estimation is 9:45 a.m. Thank you.

Hi. Good morning everyone. Thank you for your patience. We do have quorum. Maui Planning Department is – Commission -- Maui Planning Commission is now in session. With us here today we have today is Commissioner Kahu Hill. Good morning.

Kahu Alalani Hill: Aloha Kakahiaka Chair.

Mr. Robinson: Commissioner Lawrence Carnicelli.

Mr. Lawrence Carnicelli: Good morning Chair.

Mr. Robinson: Good morning. Commissioner P. Denise La Costa.

Ms. P. Denise La Costa: Aloha Chair.

Mr. Robinson: And Commissioner Christian Tackett.

Mr. Christian Tackett: Good morning Chair.

Mr. Robinson: We also have our new Planning Director, Michele McLean.

Ms. Michele McLean: Aloha Chair. Good morning.

**B. PUBLIC TESTIMONY** - Public testimony will be taken when each agenda item is discussed. **Testimony will be limited to a maximum of three (3) minutes.**

**D. UNFINISHED BUSINESS**

- 1. MR. JAMES LECRON** requesting a **Special Management Area Use Permit in order to construct the Roddenberry Residence, a 7,825 sq. ft. single-family residence, including a 1,032 sq. ft. detached garage, a 658 sq. ft. accessory**

1 dwelling, a 318 sq. ft. pool cabana, a 218.5 sq. ft. covered lanai, and a 6-ft.  
2 deep swimming pool with spa at 10 Kai Ala Place, TMK: (2) 4-4-014: 001,  
3 Kaanapali, Island of Maui. (SM1 2017/0007) (K. Scott) (Public hearing  
4 conducted at the June 26, 2018 meeting.)  
5

6 **The Commission may take action on this request.**  
7

8 Mr. Robinson: And our Corporation Counsel, David. He doesn't want anybody's e-mails. Is we  
9 have some -- we have on Item D.1. we have a request to postpone their hearing today and with  
10 --  
11

12 Mr. Carnicelli: So move.  
13

14 Kahu Hill: Second.  
15

16 Mr. Robinson: Second by Kahu Hill. All those in favor of postponement raise your right hand.  
17 Okay thank you. We will push that off to the next agenda item.  
18

19 **It was moved by Mr. Carnicelli, seconded by Kahu Hill, then**  
20

21 **VOTED: To Defer the Matter Due to the Applicant Not Being Able to Be in**  
22 **Attendance.**  
23 **(Assenting – L. Carnicelli, A. Hill, C. Tackett, P.D. La Costa,**  
24 **K. Robinson)**  
25 **(Excused – S. Castro, L. Hudson, T. Gomes)**  
26  
27

28 **E. PUBLIC HEARINGS** (Action to be taken after each public hearing.)  
29

30 **1. MS. SHARON WRIGHT of MICHAEL WRIGHT AND ASSOCIATES on behalf**  
31 **of the ASSOCIATION OF APARTMENT OWNERS OF VALLEY ISLE RESORT**  
32 **requesting a Special Management Area Use Permit in order to reconstruct**  
33 **the Valley Isle Resort's fire damaged two-story commercial building at**  
34 **4327 Lower Honoapiilani Road, Kahana, Island of Maui, TMK: (2) 4-3-010:**  
35 **004. (SM1 2017/0003) (K. Scott)**  
36

37 Mr. Robinson: First on our agenda today is E.1. Director?  
38

39 Ms. McLean: Thank you Chair. This is the first of your two -- three public hearing items. A  
40 request from Sharon Wright of Michael Wright and Associates on behalf of the Association of  
41 Apartment Owners of Valley Isle Resort for a Special Management Area Use Permit in order to  
42 reconstruct the Valley Isle Resort's fire damaged two-story commercial building at 4327 Lower  
43 Honoapiilani Road, Kahana, Island of Maui, parcel no. 4-3-10:004, and Keith Scott is the project  
44 planner.  
45

46 Mr. Keith Scott: Good morning Chair and members of the Commission.  
47

48 Mr. Robinson: Good morning Keith.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48

Ms. La Costa: Good morning Keith.

Mr. Scott: The project is a reconstruction of a visitor serving commercial building at the Valley Isle Resort. The project is located in the H-2 Historic Hotel District which allows accessory buildings and activities as long as they are drinking establishments, flower gift and . . . (inaudible) . . . shops, and personal and business services and those sort of activities. Now for the pre-standing buildings are allowed if the parcel of land is in excess of 20,000 square feet and we have over three acres here. There have been no, no notices of violations on the parcel. There have been several RFS, Request for Services, however all of them have been resolved at this time.

At this time I'd like to introduce Sharon Wright of Michael Wright and Associates to give you the details of the project.

Ms. Sharon Wright: Good morning everybody. My name is Sharon Wright. Today I am joined by Mr. Sterling Honea who is the president of the Valley Isle AOA and the president for the board. Mr. Gary Gonder the resident manager. Gary are you there? Mr. Andrew Chanise who is the Valley Isle AOA attorney. I'm not sure if Andrew is back in the room. He stepped out to make a phone call during the recess, I apologize. Mr. Steve Heller our project architect. Derek Ono from Unemori Engineering the project civil engineer. And Mr. Bill Mitchell the project landscape architect.

Okay we are here today because we are seeking an SMA Permit for the Valley Isle Resort proposed two-story commercial building which burned down in September of 2012. And we're going to go through this power point. Valley Isle Resort is located between the Sands of Kahana and Royal Kahana on Lower Honoapiilani Road in Kahana area. In September 2012 a fire broke out in the Maui Muscle Sports Club second floor tenant space. The Maui Muscle and Fitness just so everybody knows is the commercial unit owner within the two-story building. It burned the majority of the two-story common area and the commercial building beyond repair. The structure had to be demolished and along with the porte cochere in 2014, and as of today only the concrete slab remains. And here's a good picture of what it looked like after the fire, and the clean-up.

Prior to the fire the two-story commercial building had an architectural feature which was a volcano cone. And one of the things being proposed in this application is a reconfiguration of the roof line to update it and make it a little more of a usable area. This is the lobby area. So this view shows you the porte cochere and the lobby. The 12-story commercial tower is behind. There is no change to any of the parking, any of the entrances within the Valley Isle Resort so everything remains unchanged. Because of the declaration of the condominium documents we are restricted to building to the exact footprints that exists from this two-story building. So we can't build beyond the footprint based on the condominium documents.

Again this is just another picture showing you the existing parking conditions. On the left is a single story building and that houses the offices and some other tenant spaces, and the office is used by the AOA. This application does not include renovation or reconstruction of those, that single story office space. And in some slides coming further it will be a little clearer as to what that configuration is like. The application does include matching the roofing to the existing

1 single story office space with the new two-story and the store front configuration. So these are  
2 just old plans of the existing, of the original Valley Isle when it was constructed in 1973. And  
3 you're going to see that our new plans they're very similar with each other, but the cone is being  
4 removed.

5  
6 These are just some --. And this was old site plan, and you came in to the porte cochere, a  
7 circular lobby area, and a two-story component up on the left and down on the lower left, and  
8 then there is a landscaped corridor between the tower.

9  
10 Again, here was the old roof line and you'll see at the bottom of the screen the single-story  
11 portion closest to the bottom. Okay so this is just basically talks about you know some of the  
12 condominium requirements that have brought us to the design where we're at. The upper and  
13 lower level commercial spaces within the two-story building were purchased and owned by Maui  
14 Muscle Sports Club, and they were subsequently converted into a fitness center. So they are --  
15 they retain the ownership of the commercial unit within the two-story structure. The governing  
16 condo documents make it the Valley Isle AOA's responsibility to re-build the shell only along  
17 with specific limited common elements which includes the lobby, the restrooms, the walkway,  
18 the porte cochere. So again this application encompasses all of those except there are no  
19 interior tenant improvements for the commercial unit owner. They will need to come back and  
20 permit their own uses once the shell is built.

21  
22 Okay, I am going to turn it over to Steve Heller, our project architect, and he's going to walk you  
23 through the architectural design.

24  
25 Mr. Steve Heller: Hello? Is this on? Yes it is. Hello everybody. Good morning. Steven Heller,  
26 architect. We have been working with the AOA for a while and the plans to redevelop this  
27 two-story structure so I'll take you through some of the slides to describe the architecture and  
28 answer any questions that you may have. This view shows the current conditions. You see an  
29 empty slab, and you see some construction barriers to keep the area safe for pedestrians.  
30 People are still using the hotel, you know, the condominiums.

31  
32 Another view, this looking backwards mauka, in the mauka direction. And that is the existing  
33 parking lot which will remain the same. It's a little bit closer and you can see the original shape  
34 of the lobby which was more circular than it is now as in the new plan. And that's the slab of the  
35 two-story building. And you can see the covered walkway is partially intact. We will be moving  
36 that a little bit, readjusting that. And on the left the single-story existing structure with a  
37 meandering roof. That will remain the same. Again, more slides. You can see the edge of  
38 tower there, the existing swimming pool. On the right now that single-story which again remains  
39 the same, and the covered walkway towards the tower.

40  
41 Street side shots. This is an existing public beach access. Yeah the access is down one  
42 property. Okay so this is a plan, a site plan. Again, on the right the existing parking, the tower  
43 is that t-shaped building on the left, and then more or less in the center above the swimming  
44 pool is where the new construction will occur.

45  
46 This is an elevation of the front view. Where you saw the cone before in this central area we  
47 proposed a split pitch vernacular style roof, a concrete roof tile. This is the existing, this is the  
48 original design for the two-story portion of it. And of course this is the original one-story here.

1 And so I think you will agree that this new look configuration pulled it all together. It's a lot more  
2 sensitive than the original cone design and it brings it into the 21<sup>st</sup> century we believe.

3  
4 Some additional views, side view there. Placing the pool there facing the tower actually. The  
5 slides don't show it very well but we intend to maintain the same color scheme which is basically  
6 earth tones, very neutral.

7  
8 These are some building sections. This is the new look that covers the lobby and you'll see the  
9 two-story portion of the building beyond. The lobby is open air. It ties in very nicely with the  
10 porte cochere. So those basic configurations will remain the same. And so we have, we're  
11 trying to get some nice ceiling heights in there, covered ceilings. And again, it's essentially  
12 planned to be an open aired lobby as it was originally. Again the new architecture ties it  
13 together a little better.

14  
15 Another cross section. This gives you a little more detail of the rendered plans. So again the  
16 open air lobby, the porte cochere, it's open when you walk back this way, to get to the tower.  
17 So new guests arriving would come through here, they have the lobby at their disposal. The  
18 office is existing right now in this, in this location, in the one-story. And then this covered  
19 walkway will be reconstructed. And because of the shoreline setback we've developed a new  
20 entrance to the tower which will occur in this position which is more forward in the mauka  
21 direction. It gets this portion of the building out of the shoreline setback where prior it came  
22 down here.

23  
24 This is a combination of an upper level plan looking down on the lobby roof.

25  
26 Architectural floor plan, again the one-story lease units. This is where the AOA is, open air  
27 lobby, toilet facilities on the ground floor and then two commercial apartments. That's the legal  
28 description of those spaces. Essentially they are available lease space. There's a corridor that  
29 allows access to either of the spaces. A stair to get to the second floor. A small electrical room.  
30 And then additional exit stairs from the second floor. Architectural plan of the second floor again  
31 and the entire roof plan.

32  
33 These are study models which are essentially repeats the same elements in the 3-D, a little bit  
34 easier to see what's going on. Again the new roof over the lobby and porte cochere. It's one  
35 continuous roof. We're looking at a concrete tile, and that's the one-story, two-story in the back.  
36 One-story lobby and then to say one-story existing building which we will be tying into. A couple  
37 more views. That's the relocated access, covered access to the tower.

38  
39 Material samples. That's the concrete tile. Similar roof style in a different location. Textured  
40 stucco. There's the acrylic plaster with the stucco finish. Most of the building. This is a sample  
41 in the existing office, store front, so we'll be repeating the store front elements per the original  
42 design essentially aluminum and glass.

43  
44 The property is located in AE flood zone. You can see this is the flood zone report. You can  
45 see the building is right here. This is the elevation 15, elevation 14, flood elevations. So  
46 because we're located in this area, it's an AE zone which is a technical term it's subject to  
47 flooding according to FEMA. And so our obligation to be able to build this back in its existing  
48 location is to, we had two choices, to lift the building which would be non-functional and it would

1 not be going back the way it was, or we could flood proof the building. So right now what we're  
2 looking at is flood proofing the building essentially up to five feet above the slab. The idea there  
3 is in a flood event you would protect the interior of the building. So our scheme is to protect the  
4 openings of the building and this is a product that we're proposed to use. It's called a flood  
5 panel. The flood panels are held together by a channel on either side of the each opening and  
6 these are aluminum panels. They're a foot tall, two-inches deep, filled with foam. They're  
7 gasket, and in the event of a flood these will be deployed. So what you're looking at here is four  
8 foot panels. This is four feet above the ground. What we're looking at is five feet. So the flood  
9 panels protect the opening. The perimeter walls on the building are masonry walls and they'll  
10 be full water proofed. So again in the event of the flood we're also protect the interior contents  
11 of the building which is what Federal regulations require.

12

13 I'll turn this over to our landscape architect now unless you have questions.

14

15 Mr. Bill Mitchell: This is Bill Mitchell. Good morning Mr. Chair, members of the Commission. My  
16 name is Bill Mitchell. I'm the project landscape architect with Hawaii Land Design. Really not a  
17 lot new landscape here. We're fortunate that we have as you saw in the photos that Sharon  
18 went through the existing parking lot quite a few or existing canopy, mature canopy trees, and  
19 mature landscape around the existing building. So we're primarily filling in and supplementing  
20 what's already there around the existing building. Just a quick shot of some of again the canopy  
21 trees in the parking lot. A combination of Royal Poinciana, and Hong Kong Orchids and Shower  
22 Trees with a fill in of ground cover and shrubs and Coconut Palms and Foxtail Palms around the  
23 new building. Next slide.

24

25 And that's another shot looking down the existing, existing parking lot. So pretty much a  
26 renovation and just to compliment the new architectural elements and updating some of the  
27 irrigation system and I think they'll be all set. And I'll turn it over to civil.

28

29 Oh, parking lot lighting will remain. The existing parking lot lighting will stay there. That does  
30 not change and you can see that in those examples and some of the mature landscaping  
31 around the edges of the parking lot as well.

32

33 And there's a parking analysis which you're welcome to read if you want to read the details but  
34 it's there. And next is drainage, and I'll turn it over to our civil engineer.

35

36 Mr. Derek Ono: Good morning Mr. Chairman and Commissioners. My name is Derek Ono and  
37 I'm a licensed civil engineer representing Unemori Engineering. I'd like to briefly discuss the  
38 drainage for this project. The subject property generally slopes from mauka to makai which is  
39 from Lower Honoapiilani Road toward the ocean. So on the screen it would be right to left. As  
40 shown on the site plan the proposed building will be built in the footprint of the previous one so it  
41 will not increase the amount of hardscape on the property which in turn will not result in more  
42 storm water runoff generated during storms. Surface runoff from the building and the parking lot  
43 will continue to flow westward. There's an existing drain inlet in the parking lot that will be  
44 outfitted with a filter to treat any runoff that's headed for the ocean. And aside from the inlet  
45 filter there is no other drainage improvements being proposed. Thank you.

46

47 Ms. Wright: One item I wanted to review with you folks was the shoreline before we conclude.  
48 The -- this shows the old location of the connection of the tower to the walkway. And when we

1 were doing the planning this was the old location of the connection, and you'll see from our  
2 application that we're proposing it here now. But when we -- Valley Isle Resort has sandbags  
3 right now out in the front and so when we were working with Keith the shoreline setback the 150  
4 foot line from the top of the sandbags puts a portion of the walkway in the setback. And so we  
5 didn't want to have to go through and get a variance, and the Planning Department  
6 recommended that we pull it back to 160 even though 150 is the legal requirement. We pulled it  
7 back which would have put all of this portion of the walkway in. So that is the justification as to  
8 why we moved the walkway out of the setback so we never have to worry about coming back  
9 and getting a variance for that portion. But it provides the guests covered protection when they  
10 check in to go to the tower.

11  
12 And here is just an aerial of what you see today with the tower and the shoreline with the  
13 sandbags which are a permitted sandbag revetment. And Valley Isle Resort is participating in  
14 the regional beach nourishment program and they are one of the stewards of the program. And  
15 I think Mr. Scott can expand on that if there are any questions about that. But that concludes  
16 our presentation. Thank you.

17  
18 Mr. Robinson: Thank you. At this time I'll open up the floor for public testimony. Is there  
19 anybody who would like to testify on this item? Seeing none, public testimony is closed.  
20 Commissioners, questions for our applicant? Commissioner La Costa?

21  
22 Ms. La Costa: Thank you Chair. My question is on the exterior of the new building it appears  
23 that the exterior is flat there, that there are no windows or any kind of friendly appearance. So  
24 can you please tell me what the exterior is on the front and the north facing? Thank you.

25  
26 Mr. Robinson: And again Commissioners we are here for an SMA and if you look on the green  
27 recommendations of the second page we have A through L which are required to make sure  
28 that it's okay. And there's also different conditions that -- there's standard conditions as well as  
29 project specific conditions for this project just so you guys know.

30  
31 And please identify yourself again. Thank you.

32  
33 Mr. Heller: Again, my name is Steven Heller. I'm the project architect. The drawings that you  
34 see in front of you, in front of this desk as well as the slide indicate a combination of plaster  
35 walls with store front glass. There's store front glass all around the building. If you look a little  
36 bit closer you can see in the rendering where, where that occurs. And there will be some  
37 additional landscape that will assist in the visual appearance. It's important to understand that  
38 our obligation is to rebuild this building as it was originally designed in the early 70's. And so we  
39 didn't really have the leeway to redesign the facades. So basically what you see is a duplication  
40 of the existing façade. Anything that we've done hopefully enhanced the architecture.

41  
42 Ms. La Costa: Thank you.

43  
44 Mr. Robinson: Commissioner Kahu Hill.

45  
46 Kahu Hill: Mahalo Chair. Steven this is for you and, or who can answer this. I wanted  
47 clarification on how much ground disturbance that there's going to be. There's conflicting  
48 information in the application on page 11 that states little if any ground disturbance is going to

1 be for the project. And then on page 15 the SHPD recommend archaeological monitoring  
2 during the ground altering activities and I noticed on no. 15 that SHPD referenced the  
3 subsurface disturbance which will include excavation to a maximum of two-feet below grade.  
4 So there was different things. I wanted to know will there be disturbance or not, and if so to  
5 what extent.

6  
7 Mr. Heller: Okay. I can certainly address your questions. We're looking towards seeing this  
8 slab. That's the existing slab. Okay. In order to construct this building we need to tear that slab  
9 out. So that would be not necessary ground disturbance, but we're taking the concrete out of  
10 there and we will be moving around in the dirt there. We also have to go a little bit thicker with  
11 our foundation because we're adding additional concrete to the structural slab in order to  
12 balance the building against the uplifting force of any theoretical future flood if that makes  
13 sense. That essentially in the FEMA regulations that is one of the methods that you can use  
14 structurally to resist flood forces. So in addition to flood waters moving something, if the ground  
15 is saturated and it's flooding those forces can also lift the building. And so to counteract that lift  
16 we've added some mass. So that's the disturbance that they're referring to. There is a section  
17 in your application a cross section of the building that gives that in a little bit more detail. It's  
18 basically it's a typical slab on grade thickened a little bit.

19  
20 Kahu Hill: One other Chair.

21  
22 Mr. Robinson: Kahu?

23  
24 Kahu Hill: Mahalo. The SHPD also states in Exhibit-15 that there are historical sites including  
25 subsurface contact habitation site immediately east adjacent to the property and therefore the  
26 AMP was requested for any ground disturbance and the SHPD requires the AMP for submitted  
27 for the, have approval before the permit is issued. So I'm just wondering, I didn't see it, where is  
28 the approval letter for a submitted AMP?

29  
30 Ms. Wright: Yes, the monitoring plan is in with SHPD right now. Cultural Surveys prepared it  
31 and submitted it so we don't have the approval back but it is to monitor for construction.

32  
33 Kahu Hill: Do you know when you might have that back? Is there --?

34  
35 Ms. Wright: Well the Maui reviewer I checked again this morning and the Maui reviewer was on  
36 vacation so they were hoping that they would have some kind -- something back from them  
37 before we came forward but it is in with SHPD.

38  
39 Kahu Hill: Okay, mahalo.

40  
41 Ms. Wright: Yes.

42  
43 Mr. Robinson: I want to follow up on that. Commissioner Hill are you saying that it says here  
44 that before issuing an SMA Permit or a building permit that they need the, they need the  
45 historical?

46  
47 Kahu Hill: It said that AMP was requested for any ground disturbance and the SHPD required  
48 the AMP to be submitted before approval happened before the permit is issued.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Mr. Robinson: Okay. Director is that are we talking building permit or SMA?

Kahu Hill: It's on Exhibit-15.

Mr. Robinson: Corp Counsel you can?

Mr. David Galazin: Yes, thank you Chair. SHPD's comment was in response to the SMA Permit as they received the submittal on February 7<sup>th</sup> of this year. So their recommendation is that the SMA Permit not be issued until the plan, the MP has been submitted and reviewed. What the department's recommendation is that if the permit is --. If the SMA Permit is issued then before a --. There's going to be a preliminary compliance report they would be have to -- it would be submitted before any kind of grading, grubbing or building permit would be issued. And that compliance report would need to include the approved monitoring plan. So SHPD is saying is speaking directly to the SMA Permit, but in Planning's stance on it if I'm reading the conditions correctly are that you could go ahead and issue the SMA and then they wouldn't be allowed to do any ground disturbing activities until they complete the compliance report which sort of captures that AMP, the approved AMP.

Kahu Hill: Mahalo Corp Counsel.

Mr. Robinson: Commissioner Carnicelli?

Mr. Carnicelli: Thank you Chair. I want to talk about FEMA and the flood mitigation you know so the panels. I've never seen anything like that and I'm assuming that this is going to be a temporary. Because you said they would be deployed. It was the exact words that you used and so it's like okay so we think a flood's coming so we run out there and we put these little things in? Is that how it works?

Ms. Wright: Well what happens is they are in AE so not a VE zone, not necessarily from coastal flooding but maybe from the mountain region flood is what the AE is also protected of. But typically the County offers, the Civil Defense offers warning and Valley Isle Resort has an onsite manager, Gary Gaunder. The panels will be stored onsite, and then yes they will be deployed and put in place at a warning of a flood event.

Mr. Carnicelli: If I could Chair follow up. So I guess my question is you know we have to keep the architectural integrity from the 70's and yet we've got a lot of windows that we're now going to have to cover up to five feet that go ground to ceiling. Instead of putting these temporary things in can we just say oh no you know we're going to put concrete to five feet, and the windows is going from five feet to the ceiling rather than from the ground to the ceiling you know as far as if we're talking about flood mitigation.

Ms. Wright: Yes, the design -- and Steve I don't know if you want to comment too -- but the design we have been meeting with FEMA. We spent a couple of years meeting with FEMA and just recently again with Carolyn Cortez and Gary Saldana who are now handling the FEMA requirements. But Valley Isle was advised if they have to -- if they stayed at the existing elevation of the slab which is at 10.5, then they could flood proof. So anything that is not a store

1 front would be flood proofed with a material. But anything that was, was an opening would  
2 receive a flood panel. And I'm going to go back to a slide if you could just --

3  
4 Mr. Carnicelli: Yeah, yeah. Go, go, go.

5  
6 Mr. Heller: Thank you.

7  
8 Mr. Robinson: Please identify yourself.

9  
10 Mr. Heller: Again my name is Steven Heller.

11  
12 Mr. Robinson: Thank you.

13  
14 Mr. Heller: So your question was could we not have built it with concrete those openings, and  
15 the answer to that is in some cases that was an option, that is an option but certainly not an  
16 aesthetic option. But for example there is an entrance on the front of the building facing the  
17 parking lot which is a store front entrance. So we could not close that up because it's a major  
18 access to this side of the building for example to this commercial apartment. So that would not  
19 have been feasible possibility. Again the building is open air. Our scheme is to close up this  
20 corridor back here on a temporary basis in the event of a flooding and that will protect  
21 essentially this L-shaped, two-story shaped building with those panels.

22  
23 The panel, the manufacturer of flood panels is in Florida. They're in that area of the country as  
24 well as the east coast subject to flooding in the areas before us, and also much more familiar  
25 with FEMA regulations and we are now we're just kind of coming in to understanding this and  
26 complying with the regulations. So Maui County is developing their approach to it, the  
27 regulations and this is in process. And that's why we've been meeting with the Planning  
28 Department to ascertain what our regulations are that we're trying to meet. Again wherever we  
29 have openings in walls we're going to use the flood panels to protect temporarily. So this is an  
30 open corridor that will be closed off there. We would have to close off the entrance doors to the  
31 back stairs for example, and also the store fronts face the courtyard. So any glass opening or  
32 door opening. Does that answer your question?

33  
34 Mr. Carnicelli: Yes. Thank you.

35  
36 Mr. Robinson: Commissioners, do we have any other questions? I have a question. Is  
37 construction times and silk screens for the prevention of dust going to our neighbors  
38 surrounding. Do we have a plan for that yet?

39  
40 Ms. Wright: Yes. Those will all be -- the BMP's there will dust fence that goes around. When  
41 the building demoed there was dust fence that was installed and in place. And that dust fence  
42 will be reconstructed around the perimeter of the construction site. And so all of those will be in  
43 the grading plans that will go through the building permit process.

44  
45 Mr. Robinson: Do we have construction times and days?

46

1 Ms. Wright: Well once we get through the SMA approval we are beginning to work on the  
2 construction set of plans for the permitting. So that will take six months, six to eight months to  
3 complete and permit. So we still have a little bit of, quite a bit of time before we --

4  
5 Mr. Robinson: Yeah. I apologize, I mean the time of day.

6  
7 Ms. Wright: Yes. There will be -- it would be from eight to five typically unless something,  
8 unless the other resorts would allow. But typically in a resort area you're not going to start  
9 construction until 8:00 a.m., and the noise permits will be required.

10  
11 Mr. Robinson: And you have adequate parking for the construction workers, their equipment to  
12 be on property as along as with their guests?

13  
14 Ms. Wright: Yes. There's an excess of parking right now on the parking analysis if you take a  
15 look, so there's plenty of parking. And then there's also parking on the side. Bless you.  
16 There's also parking on the side. And there will be dust fence barrier to keep the public out.

17  
18 Mr. Robinson: That's fine.

19  
20 Ms. Wright: I can go back.

21  
22 Mr. Robinson: That's fine. Any other questions? Do I have a motion? I'm sorry, can I get the  
23 recommendations from Keith please.

24  
25 Mr. Scott: I do want to make one point that you know this is on Kahana Bay and Valley Isle  
26 Resort has been very active in pursuing a softer approach to protection of the various condos  
27 and buildings along Kahana Bay. And a contract to develop the Environmental Impact  
28 Statement for the beach nourishment project was just recently signed and the consultant is  
29 working on that now. So just to keep you abreast of what's going on at Kahana Bay.

30  
31 So we do recommend approval of the project. There are 11 conditions and --

32  
33 Mr. Robinson: I think we can waive the reading. Does anybody need to hear the conditions in  
34 the reading? I think you can waive that Keith. Thank you. We've read them.

35  
36 Mr. Scott: I hope so.

37  
38 Mr. Robinson: All right.

39  
40 Mr. Carnicelli: I move to recommend as, as presented by staff.

41  
42 Mr. Tackett: Second.

43  
44 Mr. Robinson: I have a motion to approve, second by Commissioner Tackett. Would you like to  
45 speak to the motion? Carnicelli.

46  
47 Mr. Carnicelli: Yeah Chair I obviously made the motion in favor of the motion. I do believe that  
48 this is just kind of trying to put back what was there you know and trying to --. Even like to what

1 Keith had said Valley Isle has been very proactive as far as shoreline management trying to  
2 really to you know take care of that area. I think that the impacts are minimal and so therefore  
3 I'll be supporting the motion.  
4

5 Mr. Robinson: Thank you. Commissioners, are there any discussion on the motion? Seeing  
6 none, I'd like to take a vote. All those in favor of the motion please raise your right hand.  
7

8 **It was moved by Mr. Carnicelli, seconded by Mr. Tackett, then**  
9

10 **VOTED: To Approve the Special Management Area Use Permit as**  
11 **Recommended by the Department.**  
12 **(Assenting – L. Carnicelli, C. Tackett, A. Hill, P.D. La Costa,**  
13 **K. Robinson)**  
14 **(Excused – S. Castro, L. Hudson, T. Gomes)**  
15

16 Ms. McLean: Five ayes.  
17

18 Mr. Robinson: Five ayes, motion has passed. Congratulations.  
19

20 Mr. Carnicelli: Chair if I could make one comment please.  
21

22 Mr. Robinson: Yes please.  
23

24 Mr. Carnicelli: In the future since the was it shoreline erosion -- shoreline vulnerability and  
25 adaptation report whatever is now adopted by the County and the State as part of what it is  
26 we're supposed to do, and I get that our setbacks and laws aren't a part of that. But in future  
27 presentations for SMA I would just like to see the overlay right now from you know if we have  
28 the viewer you know just include that in the packet in future presentations from staff please.  
29 Thank you.  
30

31 Mr. Robinson: Thank you. Director?  
32

33 Ms. McLean: Chair if you would like to consider Item C on the agenda next.  
34

35 Mr. Robinson: Yes please.  
36  
37

38 **C. RESOLUTION THANKING OUTGOING PLANNING DIRECTOR WILLIAM SPENCE**  
39

40  
41 Ms. McLean: The next item is a resolution thanking outgoing Planning Director William Spence.  
42 Shall I read the resolution in full?  
43

44 Mr. Robinson: Please.  
45

46 Ms. McLean: Resolution of the Maui Planning Commission.  
47

1 Whereas, Mr. William Spence has served the County of Maui with distinction and with a high  
2 degree of professionalism as Director of Planning from January 2<sup>nd</sup>, 2011 to June 30<sup>th</sup>, 2018;

3  
4 And whereas, Mr. William Spence has spent tireless hours and contributed greatly to the  
5 profession of land use planning in the County of Maui;

6  
7 And whereas during Mr. William Spence tenure as Director of Planning the Department of  
8 Planning -- Department of Planning's accomplishments include the following:

9  
10 No. 1, the adoption of the Maui Island Plan by the Maui County Council in December of 2012.

11  
12 No. 2, the adoption of the Lanai Community Plan update in June of 2016.

13  
14 No. 3, transmittal of the Molokai Community Plan update to the Maui County Council after the  
15 review by the Molokai Community Plan Advisory Committee and the Molokai Planning  
16 Commission in May of 2016.

17  
18 No. 4, transmittal of the Digital Zoning DSSRT Map to the Maui County Council in 2018 after  
19 public hearings by the three planning commissions in the Fall of 2017.

20  
21 No. 5, transmittal of the results of the Zoning Code Title 19 Audit conducted of Orion Consulting  
22 in 2017 to the Maui County Council. Received funding in the FY 19 Budget to implement  
23 several of the recommendations.

24  
25 No. 6, proposed various updated amendments to the Maui Planning Commission's Special  
26 Management Area and Shoreline Area Rules.

27  
28 No. 7, conducted a comprehensive review of the Lanai's Special Management area boundaries  
29 resulting in the revision of the boundaries by the Lanai Planning Commission in February of  
30 2018.

31  
32 No. 8, foster the review of the Maui County Council initiated Short-Term Rental Home bill to the  
33 Hana Advisory Committee, the three Planning Commissions, and the Council Planning  
34 Committee resulting in the enactment of an ordinance in May 2012.

35  
36 Submitted various proposed revisions to Short-Term Rental Home ordinance and the Bed and  
37 Breakfast ordinance to the Hana Advisory Committee, the three Planning Commissions, and the  
38 Maui County Council in May of 2014.

39  
40 No. 10, introduced various streamlining measures within the Department.

41  
42 No. 11, introduced various streamlining measures to the permit processing.

43  
44 No. 12, hosted the 2014 Hawaii Congress of Planning Official Conference at Kaanapali, Maui.

45  
46 And whereas under the leadership of William Spence the Department was faced with healing  
47 and focusing efforts with the compassion after the February 2014 Lanai plane crash when the  
48 lives of two department staff members were lost and several County staff were critically injured.

1  
2 And whereas William Spence was appointed as the Director of the Department of Housing and  
3 Human Concerns effective July 1, 2018.

4  
5 Now therefore be it resolved that the Maui Planning Commission hereby commends Mr. William  
6 Spence for his outstanding dedication and services to the people of the County of Maui.

7  
8 And be it further resolved that the Maui Planning Commission does hereby express its deepest  
9 gratitude and appreciation to Mr. William Spence for his service and does hereby extend its best  
10 wishes in his future endeavors.

11  
12 And be it further resolved that copies of this resolution be transmitted to the Honorable Alan M.  
13 Arakawa, Mayor of the County of Maui, and the Honorable Mike White, Chairperson of the Maui  
14 County Council.

15  
16 Mr. Robinson: We'll let you take your breath for a couple of seconds. And that is just a few of  
17 the things that you have done on Maui. It is, it is inclusive and not exclusive on what you've on  
18 this Commission as well as from the people of Maui we'd like to thank you and recognize you at  
19 this time.

20  
21 Mr. William Spence: Thank you. Thank you Mr. Chairman and members of the Commission. It  
22 really has been an honor to be Planning Director for so many years for this County. Quite a list  
23 of things that I don't know that I would...I would've put down, but it's true. You know I had a  
24 definitely a significant part in all of this. One of my -- in the future years -- I think one of my  
25 favorite things is going look back on serving this Commission through some amazingly difficult  
26 projects and topics to you know some of the easier things. But honestly it's really been a  
27 pleasure to serve this Commission and I look forward to helping this Commission in a different  
28 capacity. You know as I'm the -- excuse me -- the Housing Director has me come before you I  
29 will definitely look forward to that.

30  
31 As the Housing Director now I've always even back in college I've always been interested in  
32 serving communities. Part of that has been for housing purposes, creating a sense of  
33 community. Boy, I don't listen to chair's instructions pretty well; my apologizes. So being  
34 Housing Director now is a good fit. I look forward to helping the people of this County find  
35 places to live, seeing more units built, and predominantly my interest is in for the residents of  
36 this County so I look forward to serving in that capacity.

37  
38 Thank you for your congratulations. I sincerely appreciate it. Thank you.

39  
40 Mr. Robinson: Thank you. At this time we'll take a five minute recess.

41  
42 (A recess was called at 10:20 a.m., and the meeting was reconvened at 10:20 a.m.)

43  
44 Mr. Robinson: Planning Commission is now back in session. Commissioners with your  
45 approval I'd like to jump to Item E-3 with the ag and auxiliary uses. That all right with you folks?  
46 Okay, good. Thank you. Director.

47

1 Ms. McLean: Thank you Chair. This is a transmittal from the Planning Department with  
2 proposed amendments to Title 19 of the Maui County Code to allow in the Agricultural District  
3 structures to be located on the same lot as farm dwellings if the structure's use is customary,  
4 incidental, and usual to the farming dwellings. David Raatz is the Department's Administrative  
5 Planning Officer and he'll be presenting the proposed changes.

6  
7 **3. MICHELE MCLEAN, Planning Director, transmitting proposed amendments**  
8 **to Title 19 of the Maui County Code to allow in the Agricultural District**  
9 **for structures to be located on the same lot as farm dwellings if the**  
10 **structure's use is customary, incidental, and usual to the farm dwellings.**  
11 **(D. Raatz)**  
12

13 Mr. David Raatz: Thank you Director. Good morning Chair and Members. I'd like to please call  
14 your attention to a memo dated July 10<sup>th</sup> titled Accessory Uses for Farm Dwellings. And just for  
15 a little bit of quick background before we get into the substance of the proposal we have before  
16 you this bill for an ordinance relating to accessory uses in the Agricultural Zoning District is a  
17 land use ordinance. So under the Maui County Charter, we're asking for the three planning  
18 commissions to provide recommendations and findings to the Maui County Council that we will  
19 then transmit to the Council and they can consider enacting this bill as an ordinance as we are  
20 proposing.

21  
22 This is an amendment to the Comprehensive Zoning Ordinance for the County of Maui.  
23 Generally speaking in most zoning districts there are principle permitted uses and access  
24 permitted uses. Typically the accessory permitted uses are customary and incidental to the  
25 principle permitted uses. So specifically this bill would amend the Agricultural Zoning District  
26 Ordinance, Chapter 19.30A of the Maui County Code where agricultural uses are the principle  
27 permitted uses and among the accessory permitted uses are farm dwellings. The question  
28 before the body today is those accessory uses known as farm dwellings should they have their  
29 own accessory uses like other dwellings in other zoning districts?  
30

31 And as is pointed out in the July 10<sup>th</sup> memo, as we get into the discussion of the bill on Page 2,  
32 the County Code currently doesn't describe what if any accessory uses are to be permitted for  
33 farm dwellings. And again, for a farm dwelling to be in existence there's a presumption that  
34 there is a valid principle permitted use of agriculture occurring on the lot. So you've got  
35 agriculture use as the principle and then you have a farm dwelling or multiple farm dwellings as  
36 the case may be as accessory uses.  
37

38 What accessories to the accessory uses will be allowed and as pointed out in the memo on  
39 Page 2, the Code doesn't give direction. There's a lack of clarity but yet in fact the County has  
40 given the go ahead to things like garages, swimming pools, other things that would probably by  
41 most people's definition be understood to be accessory to a dwelling. And we're asking for that  
42 principle to be codified in the County Code so that we have a clear policy direction on what  
43 accessory uses will be permitted for farm dwellings.  
44

45 And then if we go down to the bill itself which is attached to the memo, again, it's titled, A Bill for  
46 an Ordinance Relating to Accessory Uses in the Agricultural Zoning District. It says, commonly  
47 the case when we're proposing amendments to the County Code the format is Ramseyering  
48 style which means that new text, proposed new text for the County Code is underscored and

1 content that we're proposing for deletion is in brackets. And if we go to Page 2 of the bill there  
2 are two underscored sentences that represent the primary policy proposal in this legislation and  
3 again it's under the heading of accessory uses, Subsection B, and then Subsection B.1 talks  
4 about how two farm dwellings per lot are accessory permitted uses in the Agricultural Zoning  
5 District. To provide the clarity that we see is currently lacking in the County Code the bill would  
6 add the following two sentences, "Included may be structures located on the same lot the use of  
7 which is customary, incidental, and usual to that of the dwelling use. Above ground structures  
8 are limited to 1,000 square feet and counted toward the developable area of the lot." So that's  
9 the entirety of the new text in substance that we're proposing in this bill.

10  
11 There is one other element of substance if we scroll down to the end of the bill on Page 4, and  
12 this is again the list of accessory uses in Subsection 15 the current language says, other uses  
13 that primarily support a permitted principle use, however such uses shall be approved by the  
14 appropriate planning commission as conforming to the intent of this chapter. I would like to  
15 point out we have typographical error in that section. There's an open bracket and we didn't  
16 close the bracket. So the bracket is opening before the provision that says, "Such uses shall be  
17 approved by the appropriate planning commission". So we would put the closing bracket at the  
18 end of that phrase so the sentence would read, "Other uses that primary support the permitted  
19 principle use". So at least for discussion purposes the proposal would be that that would be a  
20 call that the Department could make and in fact regularly does make as opposed to having the  
21 requirement that the planning commission approve an accessory use that's not specifically  
22 listed and we would certainly welcome your guidance on that.

23  
24 Mr. Carnicelli: So wait, wait, a closed bracket is at the end of the sentence?

25  
26 Mr. Raatz: Yes, and I'm sorry...so the sentence would read in its entirety if this bill is approved  
27 in its current form, "Other uses that primarily support a permitted principle use." So it would be  
28 kind of a catch-all.

29  
30 Mr. Robinson: Period.

31  
32 Mr. Raatz: Right, period. It would end right there. Whereas right now the Code says the  
33 planning commission would have to approve that other use as supporting the permitted principle  
34 use.

35  
36 Unidentified Speaker: It was all confusing.

37  
38 Mr. Raatz: We did send this bill out for agency comments. We haven't heard back from any  
39 agencies yet unfortunately. The Department of Public Works told us their general support.  
40 They don't have any specific comments. We did get a response from the Office of Economic  
41 Development. Mostly comments were very helpful but they don't directly relate to the proposal  
42 that we have before you today. There are proposed amendments to other elements of the  
43 Agricultural Zoning District that we'll take under advisement and we'll consider at a future date.  
44 I did want to thank the Office for pointing out the typographical error in Subsection 15 that I just  
45 referenced. And with that Chair, we'd be happy to answer any questions either now or after  
46 testimony.

47  
48 Mr. Robinson: Thank you David.



1  
2 **a) Public Hearing**  
3

4 Mr. Robinson: At this time we're going to open the floor up for public testimony. We have here  
5 to testify Bobby. Please state your name and you have three minutes for your testimony.  
6

7 Ms. Bobbie Patnode: Good morning my name is Bobbie Patnode and I'm speaking for myself.  
8 I'm a general partner in Patnode Family Farm and a member of the Ag Working Group. The Ag  
9 Working Group is made up of farmers and ranchers and was formed in 2013 to help provide  
10 input to the County Council on agricultural issues. We have representation from both the Farm  
11 Bureau and the Farmer's Union as well as commodity groups such as Cattlemen's Association  
12 and Maui Coffee and community associations.  
13

14 The Ag Working Group has had an opportunity to discuss this bill and are in favor of allowing  
15 accessory structures for farm families such as garages, pools or tennis courts. Since this is not  
16 clear in our County Code we should make it clear. The language concerning buildings in the  
17 Rural zone is clear on this and could be used for the Ag Zone as well.  
18

19 The Orion audit of Title 19 recommends that we codify administrative rules when it makes sense  
20 to do so. So that the intent of the Code is clear and does not require additional interpretation by  
21 admin rules or by the director's discretion. The second farm dwelling, the 1,000 square foot one  
22 can create issues for Planning's enforcement staff if the accessory structure is attached to the  
23 1,000 square foot building. Does the attached structure expand that 1,000 square feet so it's no  
24 longer legal? It would make sense to include in the Code that these allowed structures should  
25 be separated by a solid wall from the dwelling.  
26

27 Regarding the 1,000 square foot limitation. You may not be aware that our Real Property  
28 Assessment Division has changed how agriculture homesites are assessed to start using the  
29 Dilmore Adjustment Method. Now ag homesites are appraised just as residential lots. If a two-  
30 acre farm property were zoned Rural they would be allowed to have accessory structures for  
31 their home with no limitation on the size. I think if farm homesites are taxed the same as Rural,  
32 they should be allowed the same as...they should be allowed the same structures as those  
33 properties which are zone Ag.  
34

35 And just one final note for the commissioners. There is a bill being considered which would  
36 allow changes for accessory dwellings for properties zoned Rural or Urban but it doesn't include  
37 Ag. Ag zoned properties are limited to farm dwellings, one which can't be greater than 1,000  
38 square feet. I've heard many times from farmers that this rule should be changed to allow two,  
39 500 square foot buildings as the law used to allow. Farmers want to help with our housing  
40 shortage and this could be a way to help our local people.  
41

42 Ms. Takayama-Corden: Three minutes.  
43

44 Ms. Patnode: And that's all I have to say, thanks.  
45

46 Mr. Robinson: Commissioner Carnicelli.  
47

1 Mr. Carnicelli: So if I could just for clarity 'cause the added changes is two sentences and they  
2 go in two completely different directions. One, is you know the accessory use and defining that  
3 and you guys are in favor of that?  
4

5 Ms. Patnode: Yes.  
6

7 Mr. Carnicelli: And then there's the second sentence which is limiting all of that to 1,000 square  
8 feet and you're against that?  
9

10 Ms. Patnode: I am against it.  
11

12 Mr. Carnicelli: Okay, thank you.  
13

14 Mr. Robinson: Any other questions? Commissioner Kahu Hill.  
15

16 Kahu Hill: Aloha. So but you are in favor as others supported of two buildings of 500 square  
17 feet each on that one issue?  
18

19 Ms. Patnode: Yes, I think that...I'm not sure how the other bill is working. It's allowing changes  
20 to the size of the ohana on the property in the Rural and Urban areas. We should be looking at  
21 what we can do in the Ag zone as well. And one of the things farmers has suggested is we  
22 used to be able to do two, 500s. So if we were able to do that we would immediately be able to  
23 have more housing for our workers, family and everybody in the Ag zone.  
24

25 Mr. Robinson: I have a question is and when you say farmers and the people that you're  
26 associated with what type of size are we talking about as farmers? I mean, are you guys 20-  
27 acre farms, you guys couple hundred-acre farms, how large are these farmers that they're apart  
28 of?  
29

30 Ms. Patnode: Most of us are smaller size. You know, I'm one of the very smallest. I have a  
31 2.76-acre farm. But we also have several people who are ranchers who are leasing hundreds  
32 of acres of property. So we have the Farm Bureau who I think are usually the bigger farmers  
33 and we also have Farmer's Union people who are the smaller farmers. So it's pretty big range.  
34

35 Mr. Robinson: A range. Thank you so much Bobbie.  
36

37 Ms. Patnode: Thank you.  
38

39 Mr. Robinson: Thank you. William Jacintho. Hi, you have three minutes and please identify  
40 yourself.  
41

42 Mr. William Jacintho: Thank you. Good morning Maui Planning Commission Members. My  
43 name is William Jacintho. I'm here to testify in support of Title 19 proposal. However, I'd  
44 include in the proposal some specific language that would prohibit structures from having any  
45 type of living quarters in order to keep in compliance with Department of Planning regulations.  
46 A lot of times this is what goes south and a lot of times there's question in even approving you  
47 know, things like that necessities because right away the gut feeling is oh, someone's gonna

1 live in it. So I think if you put in a clause that it is not allowed for living areas, it's for you know  
2 uses, I think that would be a good thing.

3  
4 In addition, there are cases where there may be a need for more than a thousand square feet to  
5 accommodate their size. It all depends on the family size or farm size. There should be a  
6 process or something to allow that type need, you know, not go ahead and allow things to just  
7 go crazy. That's all I have to say, thank you for the opportunity. I made copies if anybody  
8 needed. I wasn't sure of the procedure.

9  
10 Mr. Robinson: Commissioners, do we have any questions for the testifier?  
11 Commissioner La Costa.

12  
13 Ms. La Costa: Mahalo Chair. Thank you very much for coming today. So your proposal is that  
14 the size of the dwelling can be more than a thousand feet but you don't want that dwelling used  
15 for residential occupancy period?

16  
17 Mr. Jacintho: No, I think the proposal is like an accessory to the dwelling and that's when  
18 Department of Planning have a lot of problems with enforcement and having people not occupy  
19 those as a residence. So I believe the proposal is an accessory to the dwelling.

20  
21 Ms. La Costa: Thank you.

22  
23 Mr. Robinson: Thank you. Thank you for your testimony.

24  
25 Mr. Jacintho: Thank you.

26  
27 Mr. Robinson: Is there anybody else like to testify on this item? Hi, please identify yourself.

28  
29 Mr. Tom Croly: Aloha Chair. Tom Croly speaking on my own behalf. I always like when items  
30 come forward to help clarify the Code because the Code is not easy for people to understand.  
31 But I'm not sure if this one does whether it clarifies or muddies to some degree. With respect to  
32 the Department I understand their concern. We have an accessory use of an accessory use  
33 and are we allowed to do that and so forth. But the sentence that's here seems to open it up  
34 more broadly than one might expect and my concerns would be when we say above ground  
35 structures are limited to 1,000 feet, I'm guessing that that means that swimming pools can be  
36 larger than 1,000 square feet as you know, why we're saying above ground versus underground  
37 structures. So again, I would want more clarity there. And also support what I just heard  
38 William say, we need to be crystal clear about the use of any of these structures for dwelling  
39 purposes for people to live in. For example, I have seen pool cabanas be built and a pool  
40 cabana is a necessary thing sometimes. A place to change and shower for the pool, but it's so  
41 easy to turn a pool cabana into a dwelling, right? So I think that this could use a little more  
42 massaging to be more clear about what it is enabling and what we specifically do want to forbid.  
43 That's my comment on it. Thank you.

44  
45 Mr. Robinson: Commissioners any questions for the testifier? Thank you. Like to testify?  
46 Please. Hi, please state your name, you have three minutes.

47

1 Mr. Hugh Starr: Hi, good morning Chair Robinson, Commission Members, my name is Hugh  
2 Starr.

3  
4 Mr. Robinson: Excuse me, your complete name please.

5  
6 Mr. Starr: My name is Hugh Starr.

7  
8 Mr. Robinson: Hugh Starr, Hugh.

9  
10 Mr. Starr: Sorry, I'm slurring my words. Hugh Starr. And I'm also a member of ...we're a  
11 Agricultural Working Group with Ms. Patnode and William Jacintho. And I'm surprised to say a  
12 48-year land broker and land consultant for ranches and farms on Maui. I'm in favor of the first  
13 sentence of the proposed amendment which is to include accessory uses. I am opposed to the  
14 second sentence which limits the size of any accessory structures to a thousand square feet  
15 and I feel that way for a couple of specific reasons.

16  
17 First, not being a really active farmer rancher myself, but working very closely with them and  
18 have all my career honestly I'm shocked at how tough a business it is. I mean in terms of it's a  
19 great lifestyle. Everybody admires it but it's really hard to deliver a bottom line. . So everybody  
20 in the business is using everything on their farm for, you know, drying mamake leaves to you  
21 know, keeping their tack dry to storing equipment and you know, et cetera. So it's a complex  
22 business. And we talk about accessory uses on agricultural land it's not so simple and clear cut  
23 as is one would hope.

24  
25 And then there's of course this dichotomy between true agriculture and the gentleman farmers  
26 and there's this tension and the Planning Department with all due respect has to deal with the  
27 gentleman farmer dilemma because it's all considered "agriculture". I and they represent true  
28 agriculture which is protected by our Constitution. The only land use that really is. So the  
29 problem with the accessory limitation of a thousand square feet is that it's difficult and  
30 problematic for true farmers and ranchers. I can think of a number of instances if you're  
31 interested. But also, I think it's important to draw your attention as commissioners to the fact  
32 that the Planning Department is proposing new ag accessory uses as a new category to the  
33 existing rules, administrative rules. And those accessory uses are extensively defined in those  
34 proposed rules. And if you go through those accessory uses and you actually try to apply them  
35 to real case scenarios it creates problems. So this needs to be sorted out for our true ranchers  
36 and farmers. So I'm opposed to the thousand square foot limitation, but I'm not opposed to the  
37 accessory use being included in Title 19. Thank you very much.

38  
39 Mr. Robinson: Commissioner Carnicelli.

40  
41 Mr. Carnicelli: Thanks Hugh. Just because of your experience and working with those folks for  
42 that long do you have an opinion on Item 15, you know, the back end where we're deleting out,  
43 "however such uses shall be approved by the appropriate planning commission as performing to  
44 the intent of this chapter," you know we're deleting that and just going, "other uses that primarily  
45 support permitted principle use." And we deleted out the other part. How do you feel that that  
46 impacts you know the farming community?

47  
48 Mr. Starr: Okay, I apologize because I've actually haven't focused on that particular thing.

1  
2 Mr. Carnicelli: Okay.  
3  
4 Mr. Starr: It was more focused on the underlying in the Code itself.  
5  
6 Mr. Carnicelli: Yeah, it was a little confusing 'cause there wasn't the double bracket there.  
7  
8 Mr. Starr: Okay, so take what I say with a bit of grain of salt I may be misconstruing it.  
9  
10 Mr. Robinson: So Hugh would you like to read it before you answer it?  
11  
12 Mr. Starr: Sure that be helpful. I appreciate that. Thank you.  
13  
14 Mr. Robinson: Number 15.  
15  
16 Mr. Starr: Other uses that primarily support a permitted principle use, however such as  
17 uses...such uses shall be approved by the appropriate planning commission. That's being  
18 proposed to be—  
19  
20 Mr. Carnicelli: Deleted.  
21  
22 Mr. Starr: Deleted.  
23  
24 Mr. Carnicelli: The bracket...(inaudible-not speaking into mic)...  
25  
26 Mr. Starr: Yeah okay. So, thank you. I guess the best way I can answer that if I understand it  
27 and I'm not...promise I understand it 'cause I may not is that...and the Orion report speaks to  
28 this, which the Orion audit of Title 19 which was a very interesting read for those of you who  
29 haven't had a chance to read it, especially with respect to ag lands, the rules can be...exactly  
30 what's a rule and what's not a rule can be vague. And so they need to be regulated very  
31 stringently and this is what Orion, the consultant recommends, they recommended actually no  
32 rules, no new rules should be adopted nor current policies that are being treated these rules  
33 should be really enacted until those enabling ordinances much like what is before you today.  
34 So if something isn't explicitly in the ordinance then it's problematic to enforce it as a rule. I  
35 mean that was Orion was saying. Now whether that's addressing this question that you're  
36 asking I'm not 100 percent certain but I'm more for being very explicit about what rules are and  
37 having as much ability for everybody to be clear about what the rules are, that they're explicit,  
38 everybody can understand, there's no confusion. So if towards that end,...(inaudible)...that  
39 paragraph solves that or makes it worse, I suspect it might make less accountability, that's a  
40 tough word to use, but anyway. I'm rambling. Sorry I don't know if I answered your question or  
41 not.  
42  
43 Mr. Carnicelli: You answered it but it's still not clear. So that's all right.  
44  
45 Mr. Starr: Okay, sorry about that. I apologize.  
46  
47 Mr. Carnicelli: No, that's okay. No, no, no.  
48

1 Mr. Robinson: Commissioners any other questions? Commissioner Kahu Hill.

2

3 Kahu Hill: Mahalo Chair. Hugh I just wanted to hear one of your examples whether it be for  
4 acreage or how big farms are why you don't feel a thousand feet is good and what you are in  
5 support of.

6

7 Mr. Starr: Actually maybe I answer the second question first. To my knowledge no zoning  
8 category has a limitation on accessory uses. So I'm in favor of no limitation on accessory uses  
9 as long as it's permitted. And I think to that issue where there's confusion with farm dwellings is  
10 that when you read the Code as I read it, it's very clear, a farm dwelling is single family  
11 residence. It's defined as such. So putting aside the confusing semantics of "farm dwelling".  
12 It's a single family residence in Maui County Code and single family residences have accessory  
13 uses. So accessory uses should be permitted and they are. Any confusion that might be  
14 suggested that because the farm dwelling is actually an accessory use to another use that it's  
15 not...it's problematic to have an accessory to an accessory use is in my view the way I read the  
16 code it's not an issue. Farm dwelling is a single family residence and you have accessory uses  
17 and that's what we're talking about. So coming to your first question, I think if Annette Niles who  
18 is on our Ag Working Group, she's...one of her besides, she's a very multi-tasking woman, one  
19 of the things she does is mamake tea. She grows mamake. She has to dry her mamake. She  
20 doesn't dry it indoors, she dries it on a porch. So right now it's not really an issue but the  
21 proposed rules will consider that her porch which is perhaps...and I don't know exactly what her  
22 porch looks like but if it has screens on three or more sides, it's considered enclosed living area  
23 as though it were inside the house and that gets counted as though it's her enclosed living area.  
24 So this is merging of the use of the word accessory in the code with how the proposed rules will  
25 use the word accessory and it's problematic for ranchers and farmers because so many things  
26 just get, you know, thrown into the soup. And I know it's not super clear, it's even hard for me to  
27 understand this myself. I have to read it over and over again and really you know, 'cause you're  
28 putting two or three different documents together and trying to make sense of them. So it's  
29 confusing, but that's an example of someone using a use that we might think of as being  
30 outside, but it will be considered an inside use. And you start to add up the inside uses and  
31 you're out of luck if you want to go do something else you can't get a permit.

32

33 Mr. Robinson: Kahu Hill.

34

35 Kahu Hill: Just a continuation because I have dried a lot of mamake and laaulapaau over the  
36 years and herbs. My understanding that if you were to dry laaulapaau or you were to dry  
37 gourds or hula implements or even firewood living up in place that that would also be counted in  
38 that area and the screened if you left it covered outside.

39

40 Mr. Starr: Yeah. Yeah so the...I mean I actually had written and in the proposed rules which is  
41 they actually haven't been adopted yet, but they're poised to be adopted by the Department and  
42 I don't know whether the commission, I don't know whether you the commissioners will actually  
43 be reviewing those and commenting on those rules before the Director has the authority to  
44 adopt the rules and I don't know that. That's a legal question and I'm not a lawyer but let's  
45 assume what the proposed rule is saying with respect to enclosed living area, a new definition in  
46 the rules is any portion of a dwelling, this is ag, any portion of a dwelling that covered by a roof  
47 and is surrounded on three or more sides by a constructed barrier such as a wall, lattice, canvas  
48 or screening that is greater than 42 inches in height, okay, that would be considered enclosed

1 living area so now that gets added to our house, so you start to see that there's this real  
2 confusion. Now I understand the dilemma the Planning Department's in. It's this dichotomy  
3 between true ag and gentleman farmers, but the gentleman farmers we true ag people feel it's  
4 an enforcement issue. But we have to be careful to protect agriculture because that's really  
5 what ag's all about really at the end of the day and the future is huge and it's changing. We're  
6 no longer...we all know we're no longer, no longer, it's gonna be a different day and we need  
7 diversity, we need complexity, we need everything that we can't even foresee now related to  
8 agriculture. It's about food security, self-sufficiency and all the rest. So sorry to ramble but  
9 thank you for the question.

10  
11 Kahu Hill: Mahalo Hugh. Mahalo Chair.

12  
13 Mr. Robinson: Thank you. Anything else?

14  
15 Ms. La Costa: I have a question for the planner.

16  
17 Mr. Robinson: You have a question for...yeah, when we come to them. Okay. All right thank  
18 you Hugh.

19  
20 Mr. Starr: Thank you.

21  
22 Mr. Robinson: Is there any other testifiers at this time?

23  
24 Mr. Peter Niess: Good morning Commission.

25  
26 Mr. Robinson: Good morning.

27  
28 Mr. Niess: My name's Peter Niess. I'm a local architect here on Maui. I think Hugh Starr said  
29 well right at the end there where it's the dichotomy between the gentleman farmer and real true  
30 ag and that there's a fear of it getting...these accessory uses which will be accessory to  
31 dwelling use will get abused, but it's an enforcement issue. I think it's important to keep that  
32 separate and hopefully the enforcement is going to pick up and hope resolve some of the illegal  
33 rental issues and whatever, whatever else is going on that isn't correct.

34  
35 But overall I brought this up in our last AIA meeting. We talked about it with a bunch of  
36 architects and everyone seemed really positive. I'm presenting today on my own behalf not  
37 for the AIA just to be clear. But we talked through it and increasing clarity is very much  
38 appreciated. We know that the people reviewing the plans are smart and they see right through  
39 it when a client's like oh no, they're telling us they're gonna do something and we all know  
40 they're doing something else. So increased...I think it will help a lot the first sentence allowing  
41 the dwelling to be a primary use and then things such as swimming pools and cabanas being  
42 the accessory use to that will help out a lot. And after listening to real ranchers and farmers  
43 speak it sounds like the thousand square feet could be a hindrance, yeah, but I have to think  
44 about that one some more, but yeah it could be an issue I guess.

45  
46 Mr. Robinson: Thank you. Would anyone else like to speak at this moment? Please identify  
47 yourself. You have three minutes before questions.

48

1 Mr. William Spence: Okay, thank you Mr. Chairman, Commissioners. My name is William  
2 Spence. In my former life as Planning Director this is a bill that I wanted to see come forward  
3 and first before I get into why I have a little disclosure to make. I own a piece of agricultural land  
4 and as a result of wanting to see this bill come forward I went to the Board of Ethics last month  
5 and requested an advisory opinion of whether I have a conflict or not and whether it's improper  
6 for me to go ahead and pursue this. They voted that no, I...well I do have a conflict but it's no  
7 greater than the other thousands of agricultural property owners within the county. So I'm  
8 perfectly okay to do this. That opinion will be adopted by the Board of Ethics tomorrow. And  
9 I'm, of course I'm happy to provide anybody with a copy of that.

10  
11 Okay, my hope is that this bill or some form of it will be adopted that will allow accessory uses s  
12 related to the dwelling. The farming issues that's kind of a separate issue. When we start  
13 getting into getting permits for swimming pools, you know how is that allowed? Somehow we  
14 have approved hundreds of swimming pools in the Ag District, but somehow that's...I mean,  
15 how is that part of the farm dwelling. We've had varying opinions on how we could do this  
16 including maybe the swimming pool should be indoors only that then you could say it's a part of  
17 the accessory or part of the dwelling unit. There have been some interpretations that, you know  
18 for garages, you can't just have a standalone garage even though we've approved some of  
19 those. Somehow those need to be connected so they can say, we can say that's a part of the  
20 farm dwelling. To me I think we should be allowing these kind of uses just as a part of, as a part  
21 of the farming dwelling we shouldn't have to pretend that they're related to agriculture. It's just,  
22 you know, you have your 50 percent, 51 percent of your property set aside for farming you  
23 should be able to do other things with your property.

24  
25 This bill will help the little property owner as you know, if I had a couple million dollars to spend  
26 on a house I could just...if I wanted a workout room or I wanted an art studio I could just add  
27 onto the house. But for the regular property owner, he wants to build, he or she wants to build a  
28 little structure for that use that's—

29  
30 Ms. Takayama-Corden: Three minutes.

31  
32 Mr. Spence: --pretty easy to do. I'll finish up here. The other counties, it should be noted the  
33 other counties allow accessory...these accessory structures as just a part of their zoning code  
34 and I found no limitations on size or particular use. So this would make us consistent with the  
35 other counties.

36  
37 Lastly, I'm not...I'm not too concerned with abuse of this. Allowing these as opposed to any  
38 other district that we have. Somebody in the Single Family Residential District, they convert a  
39 garage they're in violation of the Code. I don't see how this would be any different. I know  
40 this...it's not promoting any kind of abuse of accessory uses. So anyway, thank you for allowing  
41 three minutes. I'm happy to answer any questions.

42  
43 Mr. Robinson: Thank you. Any questions from the Commission? Commissioner Carnicelli.

44  
45 Mr. Carnicelli: Thank you for being here Mr. Spence. I kinda look at this bill has three separate,  
46 you know, substantive changes. The two sentences adding and then the deleting of the  
47 backend. So when you testified you were saying that you...you found no size limitation in other  
48 counties, and yet, you said that you were okay with this when it says that it's gonna limit it to a



1 thousand square feet. So I mean I guess I'm a little bit confused as to which way you're going  
2 with it then.

3  
4 Mr. Spence: The thousand square feet comes from the Title 19 definition of a private garage  
5 which is limited to a thousand square feet. That being said, that was kind of a something of an  
6 internal discussion. I would be perfectly fine without that limitation. The size would still be  
7 limited by the "developable" area of the lot.

8  
9 Mr. Carnicelli: Right.

10  
11 Mr. Spence: Not everything can just be built as big as everybody would like. You're still limited  
12 within the confines of the Zoning Code.

13  
14 Mr. Carnicelli: Thank you Chair as a follow up. You know Hugh had talked about we get caught  
15 in these semantics of dwelling unit, accessory dwelling unit, everything like that...it's a house,  
16 let's call it...you know, let's call what it is, I mean it's a single family residence and so we're  
17 saying like accessory to accessory and it gets sorta like muddied in this and people go like oh  
18 wait is this the main dwelling unit, second dwelling unit, accessory use to the dwelling unit, it's a  
19 house.

20  
21 Mr. Spence: Yes.

22  
23 Mr. Carnicelli: Okay. And then back into this, in you know say other uses primarily supported  
24 by a permitted principle use, period. How will that change people coming forward and is there  
25 something coming that's going to be the administrative rule that would tie into this that's not a  
26 part of the code I guess is.

27  
28 Mr. Spence: And that, you're referring to that number 15?

29  
30 Mr. Carnicelli: Number 15, and do you want to read it as well?

31  
32 Mr. Spence: I'm...I think that would be a fine deletion out of the Code. I know that the only  
33 application that I'm aware of that took place with this provision was when Kealii Reichel came  
34 forward to this commission to request permission from this commission regarding a hula halau  
35 and all the uses that went along with that on a piece of ag land up Piipolo Road. So...

36  
37 Mr. Carnicelli: Thank you.

38  
39 Mr. Robinson: Anyone else has a question? Commissioner Tackett.

40  
41 Mr. Tackett: Yeah, Mr. Spence what's your, what's your feelings on prohibiting new structures  
42 from having any type of living quarters as was brought up by William Jacintho?

43  
44 Mr. Spence: Yeah, the idea is right now you have...in the Ag District you're allowed two homes.  
45 One of relatively any size and then one limited to a thousand square feet. The idea is to permit  
46 accessory structures, not other homes. That would be if...there's a lot of discussion on other  
47 farm dwellings for workers and stuff. I think that's a worthy discussion for a different time. Right  
48 now we're talking about having a garage that's just related to the house or having a swimming

1 pool and eliminating the question of is this permitted? Is a pool permitted or is it not? Is a pool  
2 cabana permitted or is it not? We're just...just let's clarify the Code to say these are fine.  
3 Somebody converts an accessory structure like what I'm taking about to a dwelling that's an  
4 enforcement issue and they should be cited. So...They should not be converted to other  
5 dwellings.

6  
7 Mr. Tackett: Thank you.

8  
9 Mr. Robinson: I have a question and I'm trying to find the, I'm trying to find the benefit of having  
10 ag lands compared to rural. I'm trying to find the preservation of ag compared to letting  
11 somebody who owns his land does what he wants with it. I own acreage as well as a lot of  
12 other people do and there's that, well this is my land I wanna to do what I with it. I wanna build  
13 a second house. I got kids, I wanna build a third. I want a tennis court. I want a swimming  
14 pool. You know, but then there's the other side, well then shouldn't we be looking at changing  
15 zoning instead of trying to change uses inside the ag itself. Instead of ag being five acres and  
16 we only use two and a half of it. Should we be then be looking at a zoning difference because  
17 things change, right? Everything, you know, we're hit right now with vacation rentals. Fifteen  
18 years from now it might be something else. We might become self-sustainable. There might be  
19 difference with the ...(inaudible)...you know things never ever stay the same. So us allowing to  
20 let things infringe on our ag land to me is a concern. So it's not about what's allowed or what's  
21 not allowed, right. If you have a tractor, a 1,000 square feet in a garage ain't going to be  
22 enough to put a big tractor and if you're going to do large stuff. So 1,000 feet don't make sense.  
23 If you're gonna have a farm and you're gonna have that much, you know, like the old days,  
24 people would come and they would live as rent subsidies to work on these farmlands. They do  
25 in Honolulu. That's why they don't have this regulation, but on Maui you know not as much, but  
26 that's something that we can move towards like other countries do. You work for a week for  
27 your rent and you travel around. So trying to make it simple and allowing everything because  
28 it's 51/49 to me is problematic. How do you feel about zoning instead of trying to add uses?

29  
30 Mr. Spence: I think our Rural District is extraordinarily underutilized. We have lots of gentleman  
31 estates, that topic keeps coming up over and over again and those are really rural land uses.  
32 They're not agricultural. I mean, you go to Launiupoko, you go to Haiku Makai, Haiku Mauka,  
33 just to name a few. There's a bunch in Kula that are predominantly residential. I think all of  
34 those should be rural and just call it what it is instead of pretending that it's agricultural. So  
35 that's something I have always looked forward to as Director and seeing some of those changes  
36 made, the political climate just hasn't been right for that yet.

37  
38 Mr. Robinson: And the follow up with that is we know it should be called Rural but it's not, so  
39 how do you change, you know, Kula 200, how do you change Launiupoko? How do you move it  
40 to Rural without it...because it's not supposed to be Rural? Right, these are agricultural lots  
41 that's supposed to remain in agriculture.

42  
43 Mr. Spence: Right.

44  
45 Mr. Robinson: So do we...is do we look at predevelopment and try to change the whole thing to  
46 Rural, you know, 'cause I mean, you brought up the point about...put in R-1, R-2, it's you know,  
47 they're adding this, they're adding that, but that's residential that's not really preserved because  
48 people are gonna maximize living spaces or not. While us we're doing it the opposite. We're

1 trying to limit living quarters in agricultural, you know. So that's the dilemma. So how would we  
2 move agriculture into rural in large developments such as Launiupoko?

3  
4 Mr. Spence: Well, Launiupoko in the Maui Island Plan is shown as Rural. It's within a rural  
5 boundary and so it would take an act of the County Council to redistrict it and rezone it.

6  
7 Mr. Robinson: We could do it the opposite way. We could redistrict it, rezone it and then people  
8 could apply for an ag exemption for taxes.

9  
10 Mr. Spence: Yes, they could.

11  
12 Mr. Robinson: Right. Instead of the other way around.

13  
14 Mr. Spence: Absolutely.

15  
16 Mr. Robinson: Which makes too much sense.

17  
18 Mr. Spence: I concur. Or there's another way perhaps when the Title 19 rewrite comes through  
19 I know a couple of the other counties have different agricultural districts. I want to say on the  
20 Big Island they have a Family Agricultural District, small lots, predominantly, it's much more like  
21 Rural and then they have a Ag District that's really much more about commercial agriculture and  
22 there's different permitted uses and limitations on that. That might be another way to deal with  
23 this, but I agree, it should be a different district altogether.

24  
25 Mr. Robinson: And it can be, right?

26  
27 Mr. Spence: Yes, it can be.

28  
29 Mr. Robinson: Any other questions Commissioners? Thank you.

30  
31 Mr. Spence: Thank you Commissioners.

32  
33 Mr. Robinson: And remember you're supposed to add housing, so...

34  
35 Mr. Spence: Yes. Oh, that's like trying...

36  
37 Mr. Robinson: Is there any other testifiers? Seeing none, public testimony is closed. At this  
38 time, Commissioners we have questions for David? Commissioner La Costa.

39  
40 Ms. La Costa: Thank you Chair. I also would like to address the second sentence. To me it is  
41 conflicting because one, two farm dwellings per lot, one of which shall not exceed 1,000 square  
42 feet of developable area included may be structures usual to that dwelling use. And then it says  
43 aboveground structures are limited. Well, you're contradicting because one can be and one  
44 cannot be. So now it's saying that the aboveground structures cannot exceed 1,000 square  
45 feet. So living on an ag lot that means that none of my structures, if I build a main home it  
46 cannot exceed 1,000 square feet because of that "s". Am I reading it correctly or no?

47

1 Mr. Raatz: Thank you Chair. Thanks for the question. I think we're...I don't think that's an  
2 accurate reading of it.

3  
4 Ms. La Costa: Structures is plural, yeah?

5  
6 Mr. Raatz: Well, maybe the Director wants to help me out?

7  
8 Mr. Robinson: Yes, please Director.

9  
10 Ms. McLean: Thank you for the question. I don't think that's the intent but I can see how it can  
11 be read that way so that should be clarified that in that second sentence that the reference to  
12 aboveground structures relates to the structures that are being added by this amendment that  
13 that aboveground structures does not relate to the two farm dwellings. That's a very good  
14 clarification.

15  
16 Mr. Robinson: Commissioners any other questions? Director, would you like to comment?

17  
18 Ms. McLean: Thank you Chair. I'd like to give just very briefly some background. I have some  
19 spent some wonderful time with the Agricultural Working Group working on the rules that they  
20 referenced. And the challenge as you've touched upon today is supporting agriculture on the  
21 one hand which generally means being permissive versus wanting to curb the abuse on the  
22 other hand which generally means being restrictive. So that's a hard balance to achieve and  
23 working with the Ag Working Group we would discuss some of the abuses that we've seen and  
24 they would feel like oh, yeah, you can't allow that, you can't allow that. But if you take that same  
25 circumstance and sort of translate it to a real farmer or rancher they say, oh well no we need to  
26 be able to...we need to be allowed to do that. So it's a very difficult challenge. Just to  
27 establish, I don't know of a circumstance where we, where the Planning Department has not  
28 signed off on a building permit for a garage. If it's a garage with a tile floor and 220 electric and  
29 plumbing we might have issues with that. But if it's what's clearly a plain garage we have  
30 signed off on those. We have signed off on swimming pools because there's not a concern that  
31 a swimming pool might be converted to something else. There's not a concern that a tennis  
32 court might be converted to something else. There is a concern that that these types of  
33 structures could be converted to something else. And the only reason we're concerned about  
34 that is because the code calls for that 1,000 square foot limit on the second farm dwelling if you  
35 allow these other structures then that 1,000 square feet sort of becomes meaningless. The  
36 example that was given is if you have your unlimited size farm dwelling and you want to build a  
37 workout room or a media room you can, but you can't do that for the thousand square foot farm  
38 dwelling and the answer is well, yeah, that's because it has a limit of a thousand square feet.  
39 So it's...of course we want the farm dwellings to be livable and certainly any use is needed for  
40 agriculture we want to be permissive with but it's trying to find that balance of opening it up for  
41 abuse so that if allow these additional structures that aren't agriculture related, they're related to  
42 the dwelling then why do we have that thousand square foot limitation on the second farm  
43 dwelling. That's the real challenge here. Thank you Chair.

44  
45 Mr. Robinson: Corporation Counsel.

46  
47 Mr. Galazin: Thank you Chair. I don't want to speak for the Department necessarily I'm just  
48 trying to provide you with some things to consider. With this bill I think you're looking at a

1 subset of a category which already, you're talking about the Ag District, you have your permitted  
2 uses, you have your accessory uses. Well, those accessory uses happens to be a farm  
3 dwelling. Dwellings themselves typically, you know, are allowed accessory uses but because  
4 that's not spelled out in the Code these things would presumably have to be accessory to  
5 farming or find somewhere within this existing section of the Code for an accessory structure.  
6 And I think what the Department is trying say is that, they've considered these dwelling units as  
7 they would any other dwelling unit and if somebody wants a garage, that's you know, a  
8 accessory for any type of dwelling. Well, the Code as it currently reads technically may not  
9 allow that. The Department's view has been that well, these are dwelling units we shouldn't  
10 treat them any different than any other dwelling unit.

11  
12 I'd also like to comment to Commissioner Tackett's earlier point we do have a definition for  
13 accessory building or structure and that is within Title 19, and again, it contains the same  
14 language you know which is attached, it's from the principle building, it's customarily incidental  
15 and subordinate to the principle building or use, but it also ends with, and not used for human  
16 habitation. So I don't think you need to clarify or suggest clarifying language within what the  
17 Department's proposing that this accessory to the farm dwelling can't be used for habitation  
18 because by definition it can't be used for habitation. And as the Housing Director pointed out  
19 there are always going to be abuses no matter, you know, whatever district you're talking about.  
20 So I do think clarification is important because Planning needs some way to be able to  
21 legitimately provide these, you know, permit these accessory structures which would be normal  
22 to any kind of dwelling unit you know whether it's a garage, whether it's a small outdoor storage  
23 shed and what have you. And so you're making a recommendation to the Council on this  
24 ordinance, you can go where you will with it. I just wanted to give you some points to think  
25 about as you discuss and before you make your recommendation.

26  
27 Mr. Robinson: So David I got a question for you and I want to go with the criteria. One farm  
28 labor dwelling per five acres of a lot area. Two out of the three. So I want to go with B, provide  
29 certification by Department of Water Supply that agricultural water rates are being paid if the  
30 subject lot is served. So we're asking, we're asking that they have agricultural water? I mean,  
31 'cause on a building permit you have to have water calculations, you know, and so this is where  
32 I'm at. So if you want a second building the water calculations and not having enough water is  
33 not going to qualify you for your calculations you know, and then if you had a swimming pool  
34 that you know all these things are supposed to add up in a different code not necessarily this  
35 area. But in B, you're asking that they have to have ag. So what if somebody has a one-inch  
36 ag line and then now they all of a sudden they have enough water to not use on ag and they're,  
37 they're you know if...and I'm sorry I'm rambling, but somebody has a five-acre lot and they're  
38 using four acres for farm land and they have a water line for ag then they're able to you know  
39 put an auxiliary dwelling on or a housing dwelling are they allowed to use that ag water for that  
40 other dwelling because they're already permitted that and is that something that the Department  
41 would look at when permitting other structures. You know, is swimming pools 'cause swimming  
42 pools take water is that being calculated for additional water usage just like an extra room would  
43 be? How is the Department dealing with that?

44  
45 Mr. Raatz: Thank you Chair I don't have the answer to that. Be happy to look into that. For the  
46 record, in this bill we're not proposing to change that particular subsection relating to farm labor  
47 dwellings. It's the prior subsection of farm dwelling which is different concept technically.

1 Mr. Robinson: I know but you're asking, you're asking for if they have farming water, right?  
2 They have agricultural water rates and why you're asking if they have agricultural water rates?  
3 Because if they had standard water rates to me it's the opposite. Am I reading this wrong? Am  
4 I misconstruing what this sentence means?

5  
6 Mr. Raatz: No, I think it's a valid area of inquiry. In preparing this bill we haven't looked at that  
7 issue, but we'll take that into consideration.

8  
9 Mr. Robinson: Yeah, I know but what we're adopting we're only changing certain things. So  
10 that's...yeah, what I'm saying what we're looking at is like...and you know we're looking and I  
11 guess what we're thinking about is the auxiliary use of a house if we're using more units, you  
12 know for recommendations. So I mean, Corporation Counsel please.

13  
14 Mr. Galazin: Yeah, thank you Chair and maybe I can, maybe I can clarify something for you.  
15 So in Item 1 what the Department's is proposing to change is to farm dwellings which is defined  
16 in Title 19 as basically a single family dwelling that's located on and used in connection with a  
17 farm. What you're talking about is in Section 2, a, b, and c, that's a farm labor dwelling and  
18 that's defined for a unit that's used exclusively by agricultural employees employed full-time or  
19 seasonally in the county located on the farm. So that's, that would be for somebody working on  
20 the farm and they're an employee and that is you know, the farm labor dwelling. That's  
21 supposed to be just for the workers. I think that's why it has different criteria. What the  
22 Department's trying to do right now is just to address the issue of farm dwelling which it would  
23 be, you know, you have the house.

24  
25 Mr. Robinson: I guess my question is why are we asking if they have agricultural water rates?  
26 Is there a different permit to get agricultural water rates and therefore they look at different  
27 criteria for housing and other second farm dwellings. That's what I'm trying to say is there  
28 something that's connected to trying to get that agricultural water rate 'cause that to me  
29 is...that's what stands out for the auxiliary dwellings. Is there another permit? Go ahead  
30 Director.

31  
32 Ms. McLean: Thank you Chair. And one of the folks from the Ag Working Group can clarify  
33 this. But that is a process you go through with the Department of Water Supply and it has to do  
34 with income derive from your farming or your ranching. So you demonstrate that through tax  
35 information that you provide to the Water Department to demonstrate that you have commercial  
36 agricultural income and if you and then the Water Department charges you agricultural water  
37 rates it isn't a separate water line, you don't have ag water and non-water. It's just the water  
38 that serves your home is...costs a lower rate than everybody else and that's one of the tests  
39 that can be passed in order to have that farm labor dwelling that you're already showing  
40 commercial agriculture production. It's a pretty low threshold I understand, \$1,000. So it's not a  
41 difficult test to pass.

42  
43 Mr. Robinson: Thank you. Commissioner La Costa.

44  
45 Ms. La Costa: Thank you Chair. In addition to that, this says and I understand this is not being  
46 changed but my question was it says if the subject lot is served by the County water system.  
47 There are a lot of private water systems also and I think that that's kind of nebulous because if

1 you don't have County then it doesn't apply. So why should that not apply to all ag water  
2 systems?

3  
4 Mr. Carnicelli: Point of order Chair? What we're tasked with here today is we're given a  
5 proposed amendment to Title 19 by the Department to then give our recommendation on their  
6 proposed changes to the County Council. I understand that we have the entire  
7 Chapter 19.30A.050 but what we're tasked with here today is not to revisit the entire chapter but  
8 to make comment on what it is that they're proposing. So all of these are great comments and  
9 probably things that should be addressed. However, what we're tasked with here today is to  
10 make a recommendation to the Council on the Department's proposed bill.

11  
12 Mr. Robinson: Is...thank you for your comment and I understand what you're trying to say, it's I  
13 want a clarification on what the category is labor dwelling 'cause it's auxiliary dwelling or another  
14 dwelling of a thousand feet. And so I think that ties into are we going to allow structures of a  
15 thousand feet, where's the water is coming from and they have to qualify with the Department of  
16 Water so I was trying to find where that connection was of this criteria of what actually is a labor  
17 dwelling 'cause a labor dwelling is different than a auxiliary dwelling. So if we're gonna open up  
18 and recommend that we take away that thousand square feet or that we keep it I know that the  
19 labor dwelling is still gonna be protected as a separate item. And I understand where you think  
20 it's a tangent but I wanted to just get that clarification. It had nothing to do with...that was where  
21 my connection was.

22  
23 Mr. Carnicelli: Okay.

24  
25 Mr. Robinson: Kahu Hill.

26  
27 Kahu Hill: Just on a separate matter. I'm just wanting a...even though I'm here, knowing more  
28 about Maui looking at our other islands that this is a Countywide ordinance and so I'm wanting  
29 to know if Lanai and Molokai was reached out to and any of the people there and their ag lands  
30 and if they chimed in on any kind of testimony or are the planning commissions there?

31  
32 Mr. Raatz: Thank you for that question. We're going to the Molokai Planning Commission  
33 tomorrow and the Lanai Planning Commission next week. We've advertised those meeting  
34 agendas and we certainly hope we get a lot of public input.

35  
36 Mr. Robinson: Thank you. Is there any other questions or comments?

37  
38 Mr. Raatz: Chair if I may just real briefly?

39  
40 Mr. Robinson: Please Dave.

41  
42 Mr. Raatz: Wanted to point out when we're dealing with agriculture uses there's always an  
43 overlay of state law, HRS Chapter 205 restricts some of what the County can do with regard to  
44 Agricultural zoning. And there was a case from the Hawaii Supreme Court back in 2005 that  
45 clarified under State Law that the accessory to accessory concept is valid and that was  
46 regarding Hawaii County Code where they were seeking approval of a garage as an accessory  
47 use to a farm dwelling and the Supreme Court said under both the Hawaii County Code  
48 because they had the provisions for accessory dwelling and HRS 205 that that was appropriate.

1 So we feel comfortable that if this passes and the County Code will be consistent with the  
2 overlaying state law as well.

3  
4 And just finally, what we are asking for is your recommendations and findings to the Council and  
5 as usual that means there's four main routes you can take, you can recommend that the Council  
6 pass the bill as is, you can recommend that the Council pass the bill with amendments, you can  
7 recommend that the Council not pass bill or you could defer consideration pending further  
8 information from the Department. Thank you very much.

9  
10 Mr. Robinson: Thank you. And again, Commissioners it's a recommendation so it doesn't have  
11 to be unanimous. We can have five different ideas on it and recommend all five and the Council  
12 will take and choose as they wish anyway regardless if we are unanimous or not. That having  
13 said, does any Commissioners have something they'd like to put on the docket for them?

14  
15 **b) Action**

16  
17 Mr. Carnicelli: Thank you Chair. I'd like to make a motion to transmit this for the Council to  
18 approve, however to delete the sentence that says, above ground structures are limited to 1,000  
19 square feet and counted toward the developable area of the lot. So all the other changes would  
20 remain, however that particular sentence would be deleted is my motion.

21  
22 Kahu Hill: Second.

23  
24 Mr. Robinson: Seconded by Commissioner Hill and La Costa. Discussion on the motion?

25  
26 Mr. Carnicelli: So Chair I do believe that you know as multiple people have said this is that  
27 balance, right? This is the gentleman farmer versus the real rancher farmer and where do we  
28 split that? So I am however concerned about the limitation of the thousand square feet and yes,  
29 does that open the door for abuses and all of that other stuff? It can, however we can't legislate  
30 enforcement. So that's why I think that it's better to I guess allow the ranchers and farmers that  
31 option. I like your idea of you know Ag to Rural, is it needed? Absolutely it's needed and  
32 maybe you know the Department will bring something here in the next...or what you're clock's  
33 ticking five and a half months whatever is left. The living quarters I think Corporation Counsel  
34 addressed that. I think the one testifier bringing in you know how this is appropriate in  
35 regards...or in comparison to real property taxes and rural is appropriate. And you know, we're  
36 always going to be limited by developable area anyways as far as the thousand square feet  
37 goes. So that's why I'm gonna support the motion to transmit it to the Council. Thank you  
38 Chair.

39  
40 Mr. Robinson: Thank you. Discussion anyone? It's is I have a property on the Big Island and  
41 it's Rural until I prove that I get an exemption for Ag.

42  
43 Mr. Carnicelli: Right.

44  
45 Mr. Robinson: Three acres. You know I have to prove that we use it and then you get the  
46 exemption. It's not the other way around. You know, and it's hard for the...and it may be a  
47 monetary thing but it's just a...it's just a neighborly thing or we're all in it together type of thing  
48 when we see gentleman estates that are in ag land that are paying ag rates, you know. I live in



1 Kahului it doesn't affect every day but the point is we all should be able to follow the same rules  
2 and we all should be reasonable, you know, and it does come with enforcement. But knowing  
3 that we have a lack of enforcement, you know, I think is a consideration, you know. It shouldn't  
4 be, we shouldn't have to worry about it, but you know, it's...like I learned the last session with  
5 our Corp. Counsel that permits stay until they mess up which means everything's grandfathered  
6 in which means, you know, we allow 49 percent of a property of ag to become unag and it's  
7 pool, it's a tennis court it may not ever return and it could be prime land. We have, you know we  
8 would be howling a little bit more if that was green, lush acreage up in Launiupoko but we know  
9 it's not. You know we know it's dust storm area and it's rocks. And we can't look in the future.  
10 So I think, I think what we recommend is good. I think the thousand, the thousand square feet I  
11 think people want to use it, but I think we should look at it for different size properties. You  
12 know I see a half-acre ag lot having unlimited size, auxiliary dwelling you know towards a—  
13

14 Mr. Carnicelli: ...(inaudible-not speaking into a mic)...buildable area.  
15

16 Mr. Robinson: Yeah, I mean I saying to where it is as compared to somebody that has  
17 50 acres, you know who has a huge tractor. You know once we open it up, we open it up and  
18 why is it above ground? You know why aren't we counting under the ground? You know, is  
19 buildable area again is buildable area, you know. Is so with losing that thousand feet do we  
20 address the porches, the drying, the screen structures? David I think so we do, right? And I  
21 think that's what we heard today, you know. So is my only recommendation is that is that we  
22 recommend to the Council to look at changing designations from ag developments into rural  
23 developments and let people you know come back and ask for ag with a simple...and again,  
24 and guys on the Big Island the guy drives by, he sees my ag, he sees my cows, he sees  
25 whatever it is and it's done. It isn't a 50 you know whatever type of page and you gotta have  
26 planners come out. It's a simple, they look, yeah okay this is a ag house and they move on.  
27 You know, but if I have cabanas, if I have a second dwelling, I have, you know a bunch of quads  
28 and motorcycle bikes and you know, you guys know, you guys have seen it. You can go online  
29 and you can see these ag lots being sold as vacation rentals. I think that's what we want to kind  
30 of limit and keep the ag, ag. Okay, so besides that recommendation is that it?  
31

32 Ms. McLean: There's a motion on the floor.  
33

34 Mr. Carnicelli: We have a motion on the floor.  
35

36 Mr. Robinson: Yeah, I know. Is I don't know if we want to add on. Okay, but again, it's a  
37 recommendation we don't have to even be unanimous. I think we can agree that we're all...we  
38 all agree to that motion by Commissioner Carnicelli. All in favor of recommending that? Okay,  
39 that's five. And I'll just put my recommendation you know that, that they should seriously look at  
40 changing the ag to rural.  
41

42 Mr. Raatz: Thank you very much.  
43

44 Mr. Robinson: Thank you.  
45

46 **It was moved by Mr. Carnicelli, seconded by Kahu Hill, then**  
47

48 **VOTED: To Recommend Approval to the County Council of the Proposed**

1                   **Amendments to Title 19 of the Maui County Code as recommended**  
2                   **by the Department, with the deletion of the sentence, “Above-ground**  
3                   **structures are limited to one-thousand square feet and counted**  
4                   **toward the developable area of the lot.” Also, to forward a**  
5                   **recommendation made that the Council look at changing**  
6                   **designations from ag developments into rural developments and let**  
7                   **people come back for ag.**

8                   **(Assenting – L. Carnicelli, A. Hill, C. Tackett, P.D. La Costa,**  
9                   **K. Robinson)**

10                   **(Excused – S. Castro, L. Hudson, T. Gomes)**

11  
12 Mr. Robinson: Director next on the agenda and we will get out of here hopefully by lunch.

13  
14 Ms. McLean: Thank you Chair. And this is your final Public Hearing item. A request by  
15 Mr. Tien Doan for a Bed and Breakfast Home Permit in order to operate Maui Paradise, a three-  
16 bedroom bed and breakfast located at 372 (368) Front Street, Parcel 2...excuse me,  
17 Parcel 4-6-005: 006, Lahaina, Island of Maui and Tara Furukawa is the project planner.

18  
19 **E. PUBLIC HEARING**

- 20  
21                   **2. MR. TIEN DOAN requesting a Bed and Breakfast Home Permit in order to**  
22                   **operate Maui Paradise, a three (3) bedroom bed and breakfast located at**  
23                   **372 (368) Front Street, TMK: (2) 4-6-005; 006, Lahaina, Island of Maui.**  
24                   **(BBWM T2016/0002) (T. Furukawa)**

25  
26                   **There is at least one permitted bed and breakfast home operation located**  
27                   **within 500 ft. of the subject property.**

28  
29 Ms. Tara Furukawa: Good morning Commissioners. This item has come to you for review  
30 because there's one B&B within 500 feet. The applicant is proposing a three-bedroom B&B in a  
31 single-family dwelling along Front Street. The applicant and his wife will reside in the accessory  
32 dwelling located just adjacent to the proposed B&B. The consultant for the project is  
33 Debbie Mitchell and she'll present to you the project and respond to any questions that you  
34 might have regarding the application.

35  
36 Ms. Debbie Mitchell: Good morning Commissioners. My name is Debbie Mitchell and I'm here  
37 representing Mr. Tien Doan in his application for a bed and breakfast permit for his home at 368  
38 and 362 Front Street in Lahaina.

39  
40 Just to give you a little idea where this is located. It is south of...on the south part of Maui and it  
41 is...I'm sorry, of Lahaina and it's just south of Shaw Street. Moving in a little bit further it's in a  
42 residential not far from the oceanfront. As you come in you can see that this is a neighborhood  
43 and they're all similarly, age similarly constructed homes.

44  
45 The house itself sits, there are actually two houses in this project. It has one house which is  
46 372 Front Street which is the subject of the rental application and 368 Front Street which is  
47 where the owners will live. They're both under the same tax parcel number and half of the  
48 records at the County show that the information is under 372 and half of it is at 368 so we had

1 kind of combine them. The house itself sits on a lot that's 10,630 square feet. There are three  
2 bedrooms in this permit application and three bedrooms in the owner's residence next door.

3  
4 This is some of the views around the area. You see looking northward on Front Street and  
5 looking south as well, and directly across the street. There is ample parking. We have seven  
6 parking spaces which is adequate for a bed and breakfast. There are additional parking  
7 requirements for the bed and breakfast and so we have adequate parking for that with seven  
8 spaces. The interior...exterior of the house is shown here. It is very nicely wooded...has a lot  
9 of mature landscaping which is wonderful noise abatement.

10  
11 The views from around house. This shows you again, the character of the neighborhood, the  
12 quality of the street and again, on the bottom right, the denseness of the local landscaping of  
13 the property. The layout of the house itself that is under review today. It is three bedrooms and  
14 two bathrooms. It has a second floor which is a large family room and a large backyard area  
15 with a gazebo for relaxation. Again, the entry into the house. The interior of the house, this is  
16 the kitchen, the living room and the sitting room. The three bedrooms, the two baths and the  
17 gazebo outside.

18  
19 The particulars of this application. All the neighbors were notified about the permit application  
20 and the public hearing by mail as required. There is one other permitted home, B&B home  
21 within 500 feet so that is why we are here speaking with you today. The owner also placed the  
22 required ad in the Maui News for three consecutive weeks regarding the public hearing and in  
23 terms of the protest letters, five protest letters were received from neighbors who live within the  
24 500 feet radius of the property. Efforts were made to contact these neighbors. A little  
25 interesting note about this application. This application was originally filed back in August, on  
26 August 10, 2016. And it was signed for notification of neighbors and that notification went out in  
27 November of 2016. And then right around March, after the notification was mailed, we did  
28 receive four letters at that time. But back in March of 2017, ZAED tagged the application for not  
29 enough parking spaces because the application was originally for five bedrooms. So the  
30 information went out to those neighbors that filed a protest for a five-bedroom house. So at the  
31 point that ZAED flagged that, we reviewed the application to be only three bedrooms. So that  
32 was just a little change from what these neighbors actually were thinking about the application.  
33 And then unfortunately due to the confusion between the two property numbers, a  
34 miscellaneous inspection was required by Planning and when we requested the building,  
35 electrical and plumbing they kept going to the wrong house and so they found nonconforming  
36 items at this house because they were not in the correct house and it was just a matter of how  
37 that tax parcel number because it was one tax parcel number they were not...they were  
38 confused. So unfortunately a lot of work was done to bring the house into compliance when it  
39 was actually just the wrong house that they were in. So that is why you see such a large gap in  
40 the time period between when we first mailed out, we first applied and mailed notice and then  
41 when it actually came time to come forward to public hearing. So again, we sent out the public  
42 hearing notices as required.

43  
44 We did receive a feedback from two out of the neighbors within 500 feet in opposition. We  
45 again reached out to them and tried to tell them, explain to them how it went but they were firm  
46 in the opposition. I'm sure you've seen the letters in the packet. We did however, the owners  
47 were extremely proactive with their neighbors, they went door to door explaining the situation,  
48 explaining how it would be run and they were able to get five letters of support from neighbors

1 two of which were adjacent neighbors and then the remainder as you can see from the green  
2 dots shows you where the remainder of the support letters were from and in addition to that they  
3 received seven letters of support from people that know them as their...in their business, they  
4 have their own business so they received a total of 12 letters of support altogether. So they  
5 have been very reactive with their neighbors attempting to explain this to them.

6  
7 Just want to introduce you to Tien and his wife, Amy, and their children Patrick, Paris, and  
8 Celine and they thank you for your time today and hope that we can answer any questions you  
9 might have. Mr. Doan is here today in case you have questions of him as well. Thank you very  
10 much for your consideration.

11  
12 **a) Public Hearing**

13  
14 Mr. Robinson: Thank you. At this time we'll open up for public testimony if anybody here would  
15 like to testify. Seeing none, public testimony is closed. Commissioners any questions for the  
16 applicant? Commissioner La Costa.

17  
18 Ms. La Costa: Thank you Chair. I was looking through the letters both for and against and I  
19 notice that there were three family members. This is for one tenant, five that were actually not  
20 neighbors even though the letter said I live in the neighborhood and then four that actually were  
21 in the neighborhood. So this might be kind of manini but I wondered why included in the packet  
22 were letters that says I live in the neighborhood when five people actually do not and they aren't  
23 actually affected by the home. So I would like some clarification please. Thank you very much.

24  
25 Ms. Mitchell: Certainly. Any time that I deal with these applications the one point that I ask for  
26 owner support or owner cooperation is with support letters. And so I provided the owners with a  
27 sample support letter so they understood what they were asking for and at that time they took  
28 the support letter and printed it and then they went from neighbor to neighbor. So they just...it's  
29 essentially the same letter but they also received support from other people who know them as  
30 business people and would be willing to support them as well, but unfortunately the same...they  
31 took the sample letter that I had provided with them instead of having each of the people do  
32 their own, write their own letters. So that was just a unfortunate error in that part.

33  
34 Ms. La Costa: Thank you.

35  
36 Mr. Robinson: Commissioner Kahu Hill.

37  
38 Kahu Hill: Debbie? So yeah I was noticing that the letters from before did not support this  
39 project. Very much I was looking at the Lindseys because banyan tree was planted 145 years  
40 ago and they are firmly rooted.

41  
42 Ms. Mitchell: Sure.

43  
44 Kahu Hill: As well on that street and concerned about the environment and also a testimony  
45 about the children, walking their children to school. They took time to make these testimony  
46 and the other ones they just signed this letter just wondering where that might be as far as  
47 concerns about the environment, the ocean, safety for the children 'cause there's no crosswalks  
48 and things that were brought in testimony.

1  
2 Ms. Mitchell: Certainly, obviously the rules, the house rules for the bed and breakfast  
3 themselves state obviously the...especially the quite hours, the understanding of how the bed  
4 and breakfast will be run. The fact that the owners are right there on property and will greet  
5 each guest will be heavily involved with each guest. It's not just like a short-term rental where  
6 they are separate. This is their home as well and so that is something that we would attempt  
7 impart when guests are welcomed in was that this is a neighborhood and this needs to remain  
8 as such. So your quiet...your hours, your quiet...you're looking into the street being very  
9 careful, just recognizing it is a neighborhood would be important to apply each guest as they  
10 came in. And with the owners right next door they are there to do so when the guests check in.  
11 So that would be how they would handle that.

12  
13 Mr. Robinson: Commissioner Tackett.

14  
15 Mr. Tackett: I got a question on the third structure on the parcel. Is that a permitted structure  
16 and what is its use?

17  
18 Mr. Robinson: Could you please approach the podium and give you name?

19  
20 Mr. Tien Doan: My name is Tien Doan. I'm the owner. Yes, this is a storage. It's the three  
21 structure that was when we bought it was on the County record.

22  
23 Mr. Tackett: So you bought it existing?

24  
25 Mr. Doan: Yes. It was like that. It was right...same like that, since we bought.

26  
27 Mr. Tackett: Okay, thank you.

28  
29 Mr. Doan: Thank you.

30  
31 Mr. Robinson: Any other questions? I have one for the applicant please. Hi, I notice that  
32 you've been accused twice of renting out your home without a permit in 2014 and again in 2015.  
33 You've been VRBO.

34  
35 Mr. Doan: Yes.

36  
37 Mr. Robinson: And you also have a website.

38  
39 Mr. Doan: Yes.

40  
41 Mr. Robinson: And were you not aware of the law the first time?

42  
43 Mr. Doan: Yeah, we didn't aware the law the first time. And after we got the letter we stop right  
44 away and we worked with County and we, we applied right away that we want to apply the  
45 permit for it. So we was talking to the person were enforce Lahaina and that person say that  
46 and then we stop right away as soon, and we refund all the money to the people that we rented,  
47 we didn't know at all.

48

1 Mr. Robinson: You actually have two...you have two citations for operating illegally, one in  
2 2014 and then another one in 2015 of September. Are you aware of these two citations?  
3  
4 Mr. Doan: No. We just have the letters notify that we...that is illegal and then we stop right  
5 away. We don't have any citations at all. We just got the letter from them, from the County and  
6 we stop completely.  
7  
8 Mr. Robinson: Thank you. Tara are you able to corroborate this? I have a RFS ending in 965  
9 and then I have another RFS ending in 1492.  
10  
11 Ms. Furukawa: Yeah, yeah two Notices of Warning were issued.  
12  
13 Mr. Robinson: Can you verify that one was at 9/17/2015, the other one was 6/25/2015, three  
14 months apart?  
15  
16 Ms. Furukawa: Yeah. June 26...wait hang on a second. February 9, 2015, June 26, 2015 that  
17 was when it was confirmed there were no more ads.  
18  
19 Mr. Robinson: That's when it was confirmed?  
20  
21 Ms. Furukawa: Yeah.  
22  
23 Mr. Robinson: By the neighborhood watch?  
24  
25 Ms. Furukawa: By our inspectors.  
26  
27 Mr. Robinson: The inspector.  
28  
29 Ms. Furukawa: Yeah.  
30  
31 Mr. Robinson: And does it show when the notice went out to the applicant?  
32  
33 Ms. Furukawa: Okay, sometime before February 9, 2015.  
34  
35 Mr. Robinson: Okay.  
36  
37 Ms. Furukawa: Yeah, for one of them and then the other before June 26, 2015.  
38  
39 Mr. Robinson: Director.  
40  
41 Ms. McLean: Thank you Chair. It looks like the 2014 RFS was entered in October,  
42 October 8, 2014.  
43  
44 Ms. Furukawa: Yeah.  
45  
46 Ms. McLean: And then the Notice of Warning was sent out on February 4, 2015 asking for  
47 compliance by February 9, 2015. And then it appears that there wasn't any other follow up until  
48 another RFS was submitted on June 9, 2015 and enforcement did not find any ads and didn't

1 find any evidence of illegal operation so that 2015 RFS was closed. That's what it looks like to  
2 me.

3  
4 Mr. Robinson: So Director it's just one RFS and the other RFS was just to verify that it was a  
5 second inspection is that what you're saying?

6  
7 Ms. McLean: Well, the conclusion from the 2015 RFS was that the activity had stopped. That  
8 we could not find evidence that it had continued after they were told to stop in February that in  
9 June we couldn't find evidence that it was still going on.

10  
11 Mr. Robinson: So there's just one violation notice?

12  
13 Ms. McLean: One Notice of Warning.

14  
15 Mr. Robinson: Okay, thank you. Commissioner La Costa.

16  
17 Ms. La Costa: I'd like clarification please on the RFS 14-0001492 received 10/8/14, under  
18 comments it says, website advertisement shows three separate dwellings on the subject  
19 property and all are being rented on a per night basis. Earlier when Mr. Doan commented he  
20 said that the third structure was storage so I'd like to know if that's ...(inaudible)...

21  
22 Mr. Robinson: Well, yeah I mean the RFS is just...it's not a investigation is that's what  
23 somebody reported that they're doing it. It's a claim and you just heard the Director say that  
24 they did a follow up a year later to verify that it was not being rented out any more.

25  
26 Ms. La Costa: I beg your pardon.

27  
28 Mr. Robinson: No, no problem. Anything further? Director.

29  
30 Ms. McLean: Just to confirm that the initial investigation showed that three separate dwellings  
31 were being rented but then that all of that activity did stop.

32  
33 Ms. La Costa: Did stop so it was rented.

34  
35 Mr. Tackett: So it was rented at one time...(inaudible)...

36  
37 Ms. McLean: According to our enforcement notes that three dwellings were...three separate  
38 dwellings were being rented.

39  
40 Mr. Tackett: Okay.

41  
42 Mr. Robinson: So again we have three options. We can approve, we can deny and we can  
43 defer. There are five of us so it has to be unanimous in no matter what we do. Commissioner  
44 Carnicelli. Would you like the Department's recommendation?

45  
46 Mr. Carnicelli: I would love the Department's Recommendation.

47  
48 Mr. Robinson: Tara please.

1  
2           **b)     Action**  
3

4 Ms. Furukawa: So as mentioned by Debbie, there's one permitted B&B operation located north  
5 on the property about five properties away. There are three permitted STRHs within 500 feet as  
6 well. As of March 31, 2018 there are nine permitted B&Bs and the cap is 88 and then there are  
7 78 permitted STRHs in the region but now with the Minatoya ruling there are now 56 permitted  
8 STRHs in the region and the cap is 88. There are no open RFS. There are four protest letters  
9 and the consultant responded to each letter and there are five support letters. So the  
10 Department has no recommendation on this particular B&B. We're requesting that the Maui  
11 Planning Commission decide without our feedback this time. And the Department is asking that  
12 the MPC authorize the Director of Planning to transmit the written decision and order on behalf  
13 of the Planning Commission.  
14

15 Mr. Robinson: Thank you that's what we're here for. That's rare but that's what we're here for.  
16 Would you like to...anybody to discuss...would like to make a motion either way for discussion?  
17

18 Mr. Carnicelli: Hang on a second if I—  
19

20 Mr. Robinson: Sure.  
21

22 Mr. Carnicelli: I'm gonna...'cause do we have conditions if—  
23

24 Ms. Furukawa: Yeah...  
25

26 Mr. Carnicelli: Do you have conditions in case—  
27

28 Ms. Furukawa: Yeah, just the standard conditions for a B&B.  
29

30 Mr. Carnicelli: Okay, so we don't have any site specific conditions?  
31

32 Ms. Furukawa: No.  
33

34 Mr. Carnicelli: Okay, so Chair I will make a motion to approve with the 17 conditions placed in  
35 the staff report.  
36

37 Mr. Robinson: Thank you. Do we have a second? Seeing none, would somebody else like to  
38 make a motion?  
39

40 Mr. Carnicelli: Motion fails.  
41  
42

43 **It was moved by Mr. Carnicelli to approve the Bed and Breakfast Permit with the**  
44 **17 conditions as noted in the staff report. There being no second, the motion FAILED.**  
45  
46  
47  
48



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48

Mr. Robinson: Commissioner La Costa.

Ms. La Costa: I would like to move that this permit is denied based upon the letters and the density of current short-term rentals in the area.

Kahu Hill: I second that.

Mr. Robinson: I have a motion to deny, Commissioner La Costa, second by Kahu Hill. Would you like to speak to the motion?

Ms. La Costa: With the updated figures that were presented it seems that the density for the short-term rentals and bed and breakfasts in that area will cause more congestion and have a safety issue. And I just feel at this juncture that it is not applicable to issue the permit.

Mr. Robinson: Thank you. Discussion?

Kahu Hill: I'm also agreeing with Commissioner La Costa and it seems like it's changing the neighborhood. It sounds like a beautiful house for a B&B. I just looking at the amount that's happening in the area and the testimonies that were given feeling that it's all too much that maybe there is already so much B&B and STRHs there. So it seems with the density and possible safety 'cause of sidewalks and the traffic that I'm with as what she say as well.

Mr. Robinson: Corporation Counsel.

Mr. Galazin: Thank you Chair. And Commissioner La Costa in helping us make sure we have an accurate record specify within the restrictions and standards of 19.64.030 which subsection to which you're referring for your recommendation?

Ms. La Costa: I'm sorry Corp. Counsel I don't have a reference here that I can.

Mr. Galazin: It should be within the staff report.

Ms. Furukawa: Under the recommendation portion, there's A thru S.

Ms. La Costa: Thank you.

Mr. Galazin: Yes, as the Staff Planner mentioned. So if you go to the first page, it's got...So I think, I think you may be...I don't want to speak for you but perhaps looking at the bottom of Page 3 of the staff report's recommendation, Subsection M, it says, no bed and breakfast home shall create any impact greater than those there to for existing in that district and shall conform to the character of the neighborhood. I'm not sure if that's the one to which you're alluding.

Ms. La Costa: That is correct and thank you for your assistance.

Mr. Galazin: Thank you.

1 Mr. Robinson: We have any discussion? Commissioner Carnicelli.

2

3 Mr. Carnicelli: Well, I mean we are in a quandary because as you said Chair we need a  
4 unanimous decision. So anytime we're in a bare quorum situation the minority has the power  
5 unfortunately.

6

7 Mr. Robinson: We have extreme opportunity here is what we have.

8

9 Mr. Carnicelli: There you go not power, yeah it's opportunity. You know, I guess, I wanna say  
10 I'm not sold hard either way on this particular application. I understand why the Department  
11 gave no recommendation. They didn't recommend approval, they didn't recommend not  
12 approval because I can see all sides of this. One thing that I would like to put on the record  
13 that's not a part of this decision but I would like to put on the record for future applicants is that I  
14 think you alluded to it Chair in your questioning and that is had you been operating illegally in  
15 the past, I think that that is something that the commission is impacted by and I think that that's  
16 something that the people that are operating illegally right now and saying like okay, catch me if  
17 you can and then they get caught and then they go okay, now I'll go ahead and become "legal",  
18 more and more I'm having a very hard time with those types of folks. But again, not making that  
19 as part of my decision right now. If the four of you feel as though that you would like to support  
20 the motion, I will also support the motion and I have reason that I can, you know do that. I can  
21 see the impacts to the neighborhood. I can see the protest letters as the reason for that and so  
22 if the four of you would like to support the motion, then I will actually go with you because I can  
23 see that that would be the case. So I will leave it at that.

24

25 Mr. Robinson: You have anything to say?

26

27 Mr. Tackett: I believe the letters that we read all support what...(inaudible)..has to say that if  
28 those letters are saying that that what has already gone on in that neighborhood is impacting  
29 the neighborhood and that to increase it by one is just gonna have a more significant impact.  
30 So I'm gonna be in favor of the last motion.

31

32 Mr. Robinson: You know, it's I think it's a good point about, about people not following the law.  
33 2014 was a long time ago and I do wanna, I do wanna give him credit that he stopped. Is I did  
34 read the support letters and I did read the opposition letters. Opposition seemed to be in the  
35 neighborhood. Support letters seem to speak more of the individual than of the area and of the  
36 rental. I think that weighted my decision and also it's in Front Street and the area, and the area  
37 as a whole you know it's we have businesses that take over houses there that we allowed you  
38 know. We have people that moved their offices into these homes because there wasn't enough  
39 office space and now rental home is also another business and I think it's unfortunate that the  
40 housing crunch as it is. But having said that I have to support the motion that it's just not in the  
41 right area, the opposition letters. The letters didn't speak to this business benefiting the area or  
42 the character of the neighborhood. At this time, Director?

43

44 Ms. McLean: Chair there's a motion on the floor to deny the application.

45

46 Mr. Robinson: All those in favor please raise your right hand.

47

48 Ms. McLean: Five ayes.

1  
2 Mr. Robinson: All right thank you. Motion has carried. The application has been denied.

3  
4 **It was moved by Ms. La Costa, seconded by Kahu Hill, then**

5  
6 **VOTED: To Deny the Bed and Breakfast Permit based upon the letters and**  
7 **the density of current short-term rentals in the area.**  
8 **(Assenting – P. D. La L. Carnicelli, A. Hill, C. Tackett, P.D. La Costa,**  
9 **K. Robinson)**  
10 **(Excused – S. Castro, L. Hudson, T. Gomes)**

11  
12 Mr. Robinson: Moving onto the next item Director.

13  
14  
15 **F. DIRECTOR'S REPORT**

16  
17  
18 Ms. McLean: Chair under the Director's Report we have the SMA Minor Permit Report and the  
19 SMA Exemptions Report as well as the memorandum for the items as of today scheduled for  
20 your next meeting.

21  
22 **1. SMA Minor Permit Report**

23  
24 **2. SMA Exemptions Report**

25  
26 Mr. Robinson: Does anybody have any questions regarding the SMA Minor, SMA Minor with  
27 conditions, seeing none. All those in favor raise your right hand.

28  
29 The Commission unanimously approved the SMA Minor and Exemption Reports.

30  
31  
32 **3. Discussion of Future Maui Planning Commission Agendas**

33  
34 **a. July 24, 2018 agenda items**

35  
36 Mr. Robinson: You guys have any questions regarding the memorandum for our next meeting?

37  
38 Mr. Carnicelli: I may not be here. I know we've got issues of quorum but I got something that  
39 might come up.

40  
41 Mr. Robinson: Yeah, so Commissioners if you're not able to make a meeting can you please  
42 text or email myself and Carolyn at the same time as well as if we're going to be tardy if you can  
43 get to me and Carolyn, then we'll try to send it out to you guys. We understand everybody's  
44 busy, things happen so that's not a problem at all, but as long as you keep in the loop then I'll  
45 try to...I'll try to keep the count of quorum. Okay, you know, it's hopefully the person that was  
46 supposed to be on our agenda today shows up at our next meeting, Lecron which we asked to  
47 defer. If not, then we might have to...we might have to make a motion to deny because we will  
48 run out of time and I think that's something that we can also bring up as far as our 120 days.

1 We can shorten it, longen it. I think we can also discuss and please think about us wanting to  
2 talk about different things on our topics such as the setbacks, you know, that we're going to go  
3 to and try to find ways that we can help the Planning Commission help ...(inaudible)...easier  
4 and or those that you guys want to recommend for agenda. Commissioner Carnicelli.

5  
6 Mr. Carnicelli: So on that, I believe...you know we talked about the setbacks, but then we've  
7 also talked about the SMA line is that something that we're going to be able to get to and have  
8 time for by the end of the year, yeah?

9  
10 Ms. McLean: We are hoping to have some proposed amendments to your SMA Rules with  
11 companion amendments to the Shoreline Rules and it would be great as a part of that if we  
12 could have a revised shoreline setback formula. So we are hoping to have that to you within a  
13 couple of months.

14  
15 Mr. Carnicelli: Okay.

16  
17 Mr. Robinson: And Commissioners we are the decider of the shoreline setback so we could  
18 have a formula or we can have a powwow and decide that we want to move it either way. We  
19 are the, we are the deciding factor on the shoreline setback distance.

20  
21 Ms. McLean: Yeah, right now it is a formula with a minimum.

22  
23 Mr. Carnicelli: Right.

24  
25 Ms. McLean: And we would be proposing incorporating sea level rise into that part.

26  
27 Mr. Robinson: Not saying that we wouldn't use a formula.

28  
29 Ms. McLean: It's up to you.

30  
31 Mr. Robinson: Yeah. Anything else? Commission is now adjourned.

32  
33  
34 **G. NEXT REGULAR MEETING DATE: JULY 24, 2018**

35  
36  
37 **H. ADJOURNMENT**

38  
39  
40 The meeting was adjourned at approximately 12:05 p.m.

41  
42 Submitted by,

43  
44  
45 Carolyn Takayama-Corden  
46 Secretary to Boards & Commissions II  
47  
48

1 **RECORD OF ATTENDANCE**

2

3 **Present**

4 Lawrence Carnicelli

5 Kahu Alalani Hill

6 P. Denise La Costa

7 Keaka Robinson, Chairperson

8 Christian Tackett

9

10 **Excused**

11 Steven Castro

12 Larry Hudson, Vice-Chairperson

13 Tina Gomes

14

15 **Others**

16 Michele McLean, Director, Planning Department

17 David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

18