

PLANNING AND SUSTAINABLE LAND USE COMMITTEE

Council of the County of Maui

MINUTES

May 4, 2020

Online Only via BlueJeans Link

CONVENE: 9:01 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Kelly Takaya King
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Yuki Lei K. Sugimura

EXCUSED: VOTING MEMBERS:
Councilmember Keani N.W. Rawlins-Fernandez

STAFF: Ana Lillis, Legislative Analyst
Alison Stewart, Legislative Analyst
Laksmi Abraham, Legislative Analyst
David Raatz, Supervising Legislative Attorney
Richard Mitchell, Legislative Attorney
Clarita Balala, Committee Secretary

Christi Keliikoa, Executive Assistant to Councilmember Tamara Paltin
Sarah Pajimola, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Michele McLean, Director, Department of Planning
John Rapacz, Planning Program Administrator, Department of Planning
Kurt Wollenhaupt, Planner, Department of Planning
Jordan Molina, Deputy Director, Department of Public Works

OTHERS: Paul Carter (PSLU-29)
Jennifer Friedlander (PSLU-29)
Francine Aarona (PSLU-8)
Ann Bassel (PSLU-29)
Marian Prosser (PSLU-29)
Daniel Boren, Skyline Eco Adventures (PSLU-29)
Robert Friedlander (PSLU-29)
April Azar (PSLU-29)
Stephen Hynson (PSLU-29)

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

Joseph Sumerlin, Maui Zipline Company (PSLU-29)

Henry Spencer, Paia Courtyard Project
(3) additional attendees

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

CHAIR PALTIN: . . .(gavel). . . Will the Planning and Sustainable Land Use Committee meeting of May 4th come to order. The time is now 9:01 a.m. If everyone can please silence your cell phones or any noisemaking devices. My name is Tamara Paltin and I'll be your Chair for today's special Planning and Sustainable Land Use Committee meeting. Thank you folks for bearing with us, this is our first Planning and Sustainable Land Use Committee meeting online. I'd like to introduce the Members that RSVP'd to this meeting, it's a special meeting so we had to secure quorum first. And we have with us today, Vice-Chair Shane Sinenci, all the way --

VICE-CHAIR SINENCI: Aloha . . .

CHAIR PALTIN: --from . . .

VICE-CHAIR SINENCI: Aloha kakahiaka mai Hana mai au aloha.

CHAIR PALTIN: Aloha kakahiaka. We also have Member Mike Molina with us today.

COUNCILMEMBER MOLINA: Good morning and aloha, Madam Chair, from Makawao.

CHAIR PALTIN: Good morning. We have our Council Chair, Alice Lee.

COUNCILMEMBER LEE: Madam Chair, we say in Greece, kalimera. So good morning from Wailuku.

CHAIR PALTIN: Kalimera from Napili. Council Vice-Chair and Budget Chair, Keani Rawlins-Fernandez, who led us through this online meetings and shared a month of budget meetings, needed a much deserved break. And she was not a Member that we secured quorum with for this meeting. So, we hope she has a restful week this week and this is a special meeting so it's not . . . it's excused but it wasn't a required meeting. We also have with us Councilmember Kelly King.

COUNCILMEMBER KING: Aloha kakahiaka, Chair. Can you hear me okay? I'm on these headphones, so . . .

CHAIR PALTIN: Aloha kakahiaka. We can hear you great.

COUNCILMEMBER KING: Good to see everybody. Hope everybody had a great weekend, much deserved rest for all of us.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Yeah, and . . .

COUNCILMEMBER KING: And let us know how easy this is, Member Paltin, so . . . Chair Paltin, so we can . . . because we'll be doing it ourselves probably at some point.

CHAIR PALTIN: Yeah. Yeah, let me know how I did afterwards. And next up, last but not least, we have Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Good morning, everybody, from beautiful jacaranda Kula of Maui. It's nice seeing all of you. Thank you very much, Tamara.

CHAIR PALTIN: Thank you. Okay. And our non-voting Members of the Committee are, Riki Hokama and Tasha Kama. And they're welcome to join us at any time. With us today we have, Deputy Corporation Counsel Michael Hopper. Good morning. As well --

MR. HOPPER: Good morning, Chair.

CHAIR PALTIN: --as from the Administration, Department of Planning we have, Director Michele McLean.

MS. MCLEAN: Aloha, Chair. Good morning.

CHAIR PALTIN: Aloha. Thanks for coming. And we have a Planner, Kurt Wollenhaupt.

MR. WOLLENHAUPT: Good morning. Good morning.

CHAIR PALTIN: And Planning Program Administrator, John Rapacz, as well as Deputy Director from the Department of Public Works, Jordan Molina. Our Paia Courtyard representative is Henry Spencer. And our Committee staff today we have Committee Secretary Clarita Balala; Legislative Analyst Ana Lillis; Legislative Analyst Alison Nicole Stewart. As well as our newest addition Legislative Analyst Trainee Laksmi Abraham. Today on the agenda we have two items, PSLU-8 which is District Boundary Amendment, Community Plan Amendment, and Change in Zoning for the Proposed Paia Courtyard Project at 120 Baldwin Avenue (Paia). And PSLU-29 Zoning Standards for Canopy Tour and Zipline Operations in the Agricultural District. I will allow a presentation before public testimony from the Paia Courtyard applicant. After the presentations, Members may ask clarifying questions only. Deliberating on the item is only allowed after public testimony. Let's see. So, at this time if there's no objections, I'd like to proceed with the Paia Courtyard presentation. Any objections?

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Awesome. Mr. Spencer, are you ready to proceed with your presentation?

COUNCILMEMBER KING: He's muted.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Sorry. Mr. Spencer?

PSLU-8 DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN AMENDMENT, AND CHANGE IN ZONING FOR THE PROPOSED PAIA COURTYARD PROJECT AT 120 BALDWIN AVENUE (PAIA)
(CC 17-126)

MR. SPENCER: Okay. There we go. Yes.

CHAIR PALTIN: Okay. Awesome.

MR. SPENCER: Good morning, Chair Paltin and Councilmembers. My name is Henry Spencer, I'm one of the owners of the property in Paia. The current bill that was posted is no longer in effect and I will go through the reasoning how we got to where we are right now with our current request for only a Change in Zoning and change in State land use to match the existing community plan designations on the property. We've had this property for about ten years and over that time we have been working on development plans for the property. Through that kind of entire time there was the underlying . . . I guess you would call it a complaint that certain members in the community were not interested in changing the community plan designation. And that if we were going to do anything with the property that it should only be based on the community plan designation and the zoning and State land use should be matched up to that. And so, that's what is before you today is a straight Change in Zoning, State land use to match the existing community plan designations. Also a part of that is that we are looking to move forward to donate approximately 3 acres in the center of the property to the County of Maui to be developed as a parking lot and we are also looking to run an easement . . .

UNIDENTIFIED SPEAKER: I don't know where in Paia this property is. . . *(unidentified speaker was muted)*. . .

MR. SPENCER: It's adjacent to the post office running along Baldwin Avenue and on the north side of the post office property and inside the mini bypass. It's the 9 acres that are vacant right now with a dirt parking lot on it . . . gravel parking lot. In last spring we held a community meeting at which time it was fairly vocal and the community members were adamant that . . . at that time they did not support a community plan change and they did not want the senior housing, a senior housing component to the project on the backside of the property. So, subsequent to that meeting on May 9th we met with representatives from the County to discuss the possibility of the County wanting the 3 acres in the middle of the property to develop as a parking lot. The idea was well received and subsequent to that we moved forward . . . and on July 31st of last year we had an additional community meeting at which time Mike Molina was present; Michele McLean was present; Mopsy and other members of the Paia community. And they . . . we told them that we were abandoning the development as it had been presented including the senior housing component on the backside of the property and that we were going to donate the parking lot to . . . the 3 acres as a

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

parking lot to the County. It was a hundred percent received positive and supported by the people who attended the meeting. Subsequent to that we continued discussions with the County regarding the possibility of the parking lot and bus loop. And part of the bus loop idea was that as it came . . . the bus would come up Baldwin Avenue, have a bus stop, and then we would also add an easement across the back of the property that went around the post office and came back out onto the mini bypass so that the bus could come back out on Baldwin Avenue and head back down and back wherever it was headed. So at that time we now have . . . the plan is before you. The documents I believe were submitted subsequent to the original bill that only reflect a zoning change, a State land use change and maintaining the community plan designations. The property is divided, it's 9 acres, it's divided into three sections in terms of community plan designations. Along Baldwin Avenue is a 1-acre parcel that is Country Town Business. Along . . . behind that is a 3-acre segment, again on the north side of the post office heading in towards the main part . . . up towards the main part of town is 3 acres that is Public/Quasi-Public. On which you can build a public parking lot amongst other things. Behind that is an additional 5 acres that is in Ag that will remain in Ag and that does not require any changes at all. So . . . and that is also . . . a part of that is where we will be granting an easement to the County for the bus to cross around the back of the post office to get back out onto the mini bypass and back out onto Baldwin Avenue. So, the changes are on the front acre, it will be a zoning change and a State land use change. And on the middle piece it will be matched up with the zoning change to Public/Quasi-Public and also a State land use change. So, I think that covers everything from my side. Thank you.

CHAIR PALTIN: Thank you, Mr. Spencer, for your presentation. Members, is there any need for clarifying questions from Mr. Spencer?

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Member King?

COUNCILMEMBER KING: Thank you, Chair. Hello, Mr. Spencer, how are you doing? Good to --

MR. SPENCER: Hi.

COUNCILMEMBER KING: --see you. So, I just wanted you . . .

CHAIR PALTIN: Let me . . . unmute you here.

COUNCILMEMBER KING: Oh. I unmuted myself but I think he can hear.

CHAIR PALTIN: Oh, okay.

COUNCILMEMBER KING: Can you hear me? Yeah.

CHAIR PALTIN: Yes.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER KING: Okay. So, you just mentioned the State Land Use Commission a couple times. So, you still have to go before the State Land Use Commission for this new request or . . .

MR. SPENCER: We do not. Anything under 15 acres is handled by the --

COUNCILMEMBER KING: Right.

MR. SPENCER: --County of Maui. And so this is actually . . .

COUNCILMEMBER KING: Okay. No, that's what I just wanted to clarify because you mentioned needed the State land use correction but we don't need to go to the State Land Use Commission for that.

MR. SPENCER: That's correct.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR PALTIN: Thank you, Member King. Members, any other clarifying questions? I can only see Member Molina, so if somebody else does have a clarifying question raise your hand. I mean not raise your hand, but unmute yourself and say your name.

VICE-CHAIR SINENCI: Member Sinenci here. Just a clarification question, so the zoning changes from Agriculture to . . . you mentioned the . . . what's the zoning change?

MR. SPENCER: I think, Michele . . . Planning Director McLean, could answer that better than I. But I believe it's from . . . on the three acres for the parking lot it is Interim, I think. Is that correct? And as is the zoning designation for the Country Town Business, it is Interim.

CHAIR PALTIN: Director McLean

VICE-CHAIR SINENCI: Michele, did you want to . . .

CHAIR PALTIN: Did you want to clarify if that's the correct response?

MS. MCLEAN: Yes, Chair, thank you. That is correct.

CHAIR PALTIN: Thank you.

VICE-CHAIR SINENCI: Thank you, Chair.

CHAIR PALTIN: Members, any further clarifying questions for, Mr. Spencer's presentation? Let me just check in gallery view. No further questions? Okay. All right, then at this time let's open it up to public testimony. And our first testifier I believe is Mr. Kurt Wollenhaupt.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. WOLLENHAUPT: Oh, hello, Chair. No, I'm the Planner. I'm not testifying.

CHAIR PALTIN: Oh, you're not testifying?

MR. WOLLENHAUPT: No, no. No, thank you.

CHAIR PALTIN: No problem. Okay. And let me just run down . . . just a sec. Oral testimony via phone or video conference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans meeting link as noted on today's agenda. Testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-888-749-9073 and entering meeting code 256-800-080 also noted on today's agenda. Written testimony is encouraged by sending your comments to pslu.committee@mauicounty.us. Oral testimony is limited to three minutes. If you are still testifying beyond that time, I will kindly ask you to complete your testimony. When testifying please state your name. If you're testifying on behalf of an organization or are a paid lobbyist, please inform the Committee. Staff will post a link to the testifiers' login chat so that testifiers will be able to see where they are on the list. However, please be mindful of the use of chat during the meeting, chat should be limited to items on the agenda and should not be used to provide testimony or chat with other testifiers. If providing testimony, please be courteous to others by muting your microphone while waiting for your turn to testify. Participants who wish to view the meeting only without providing testimony please view a live cablecast on *Akaku* Channel 53. You can also visit mauicounty.us/agendas to access live and archived meeting videos. I remind Committee Members, Administration, and the public to please be patient with us as we continue to navigate through this new platform. Members, I'd like to proceed with oral testimony. Staff has been monitoring people joining today's meeting by phone and by video and we will do our best to take each person up in an orderly fashion. Okay. So, next we have Marian Prosser. Marian Prosser? Okay. I guess the toll-free number is not working, I just got a text. The 408 numbers are working, we have 1-408-915-6290 or 1-408-740-7256. And I also got a message that Marian Prosser is calling for the ziplines. So, next up on the testifier list we have Paul Carter. If he's . . . not sure if he's calling for the ziplines or the Paia Courtyard issue. But, Mr. Paul Carter?

. . . BEGIN PUBLIC TESTIMONY. . .

MR. CARTER: I'm calling about the zipline.

CHAIR PALTIN: Okay. We'll take your testimony --

MR. CARTER: I'm calling for the zipline.

CHAIR PALTIN: --on the zipline issue.

MR. CARTER: Yes.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Unless did you want to just give it already?

MR. CARTER: Yes, I can give my testimony now.

CHAIR PALTIN: Okay. All right, we'll hear your testimony.

MR. CARTER: Okay. So, my name's Paul Carter. I have a small farm out here by the Jungle Zipline and I just wanted to call to support this proposed ordinance from Yuki Lei Sugimura and thank you very much for considering it. I have a few suggestions because the zipline out here is, you know, has been operating illegally for years now, and to the detriment of pretty much everyone, all the neighbors living around. Everyone has had difficulty with it, both with the noise and the traffic and some of the pollution from the original illegal grading that he did to make room for it. The thing I'd like to ask in terms of the proposed ordinance would be that instead of a very distant 2024 date for compliance I'd really request that the date be something like, you know, six months after the ordinance has passed that people are required to apply for this permit, special permit for any kind of zipline. And I think that would be plenty of time for them to apply and for the County to do a review and if the County needed more time they could like certainly make an exception. But as I understand the laws if there are farm dwellings within 1,000 feet of the zipline that they cannot have a permit for that. And that can be . . . that could be done very quickly. And I also would like to suggest . . . I'm not quite sure how it's written but that the County can go ahead and once this ordinance has passed, which I hope it will be, you know, they can go ahead and inspect any current or existing ziplines just to see if they are in compliance. And then, you know, and if not to demand that they shut down until they are. And I can tell you right now, you know, there are a good number of ziplines that are, you know, not in compliance with the ordinance that's written in terms of, you know, being much closer than a thousand feet to some existing farm dwellings. I know that's the case here with the Jungle Zipline. My personal . . . I have a small farm right next to them, you know, grow all kinds of various nuts, chestnut, coconut, macadamia nuts, cashews, and a lot of different fruits too. And it's very disturbing to be here with the ziplines so close and they have not done anything to try and mitigate or be responsive to the neighbors. So, this ordinance that's proposed is a really good one and would really, really help us out, all of those of us out here who are farming, those that are living out in these areas. Thank you very much for listening.

CHAIR PALTIN: Members, do we have any questions for Mr. Carter? I only see Member King, Member Lee, and Member Sinenci. Member Molina, did you have a question or, Member Sugimura?

COUNCILMEMBER MOLINA: Madam Chair, Member Molina. No questions for the testifier, thank you.

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: No questions.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: I did have one question if nobody else had questions. Member Sugimura, did you have a question?

COUNCILMEMBER SUGIMURA: No questions.

CHAIR PALTIN: Okay. Mr. Carter, is it your understanding . . . it was my understanding, but based on your testimony, is it your understanding that this ordinance if passed would apply retroactively to other operations? Because my understanding was it can only apply moving forward to new ziplines that are coming online. Was it . . . is that your understanding?

MR. CARTER: Yeah, that was my understanding that this would require ziplines to comply including the ones that already exist. If not I would certainly hope that there would be some amendment to . . . to respond to those who are in the zipline business.

CHAIR PALTIN: Okay. Thank you. Thank you for --

MR. CARTER: Thank you very much.

CHAIR PALTIN: --answering my question.

MR. CARTER: Yeah.

CHAIR PALTIN: Okay. Next up we have Mr. Dan Boren.

MR. BOREN: Yeah, I'm calling about the ziplines. I was going to testify on the ziplines as well. But I'll wait until after . . . *(inaudible)* . . .

CHAIR PALTIN: After the presentation.

MR. BOREN: Yeah.

CHAIR PALTIN: Okay. Thank you. We'll call you back after the presentation with Marian Prosser as well. Next up on the list we have . . .

MS. PROSSER: Hi, I'm Marian Prosser here. I just got on the call and I missed what was before. So, was my name called or am I waiting to testify?

CHAIR PALTIN: Your name was called. We just had a presentation on the Paia Courtyard and we were giving testifiers the option if they wanted to testify after the zipline presentation or if they wanted to testify before. Mr. Carter had issues with his cell phone connection so he just wanted to testify. Did you want to wait till after the --

MS. PROSSER: Yeah.

CHAIR PALTIN: --zipline presentation?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MS. PROSSER: Yeah, I guess I'll wait until our item agenda comes up for sure.

CHAIR PALTIN: Okay. All right. Next up we have . . .

MS. PROSSER: Thank you.

CHAIR PALTIN: Thank you. Next up we have the testifier with the last four digits ending in 5457. Let me unmute.

MR. FRIEDLANDER: Hello.

CHAIR PALTIN: Hello?

MR. FRIEDLANDER: Hello. Yeah, my testimony is also about the ziplines.

CHAIR PALTIN: Oh, okay. All right. Did you want to wait . . .

MR. FRIEDLANDER: This is Robert Friedlander.

CHAIR PALTIN: Robert Friedlander.

MR. FRIEDLANDER: When will that be, the presentation?

CHAIR PALTIN: Right after the Paia Courtyard.

MR. FRIEDLANDER: Yeah, I'll wait as well.

CHAIR PALTIN: Okay. Thank you. Next up we have the testifier with last four digits ending in 9715. Nine seven one five, are you here to testify about the zipline or the Courtyard?

MS. FRIEDLANDER: Yes, hello.

CHAIR PALTIN: Hi.

MS. FRIEDLANDER: This is Jennifer Friedlander. Hi, good morning.

CHAIR PALTIN: Good morning.

MS. FRIEDLANDER: I'm calling also about the zipline.

CHAIR PALTIN: Okay. Did you want to testify after that presentation or would you like to testify at this time?

MS. FRIEDLANDER: If it's okay, I would like to testify at this time.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Okay. Go ahead, let me start the clock. You're good, go.

MS. FRIEDLANDER: Thank you so much. Yes, I would like to call please in support of the proposed . . . sorry. I would like to support the proposed regulations on all the ziplines. And also to say that we are severely impacted by an illegal zipline next door to us, the Jungle Zipline. We have a farm out here in Huelo and it's been excessive the noise. And also as Paul Carter suggested I would like to ask to please come into effect sooner. And would like to request that any illegal ziplines are dealt with. I really appreciate the time to express something towards this and would really appreciate regulations on the ziplines to help the people who are affected by them. And thank you so much.

CHAIR PALTIN: Thank you, Ms. Friedlander. Members, any questions for the testifier? Seeing none, thank you for your testimony.

MS. FRIEDLANDER: Aloha.

CHAIR PALTIN: Aloha. Next up we have the testifier with the last four digits ending in 7637. Seven six three seven, are you here to testify for the Courtyard or the Zipline issue?

MS. AARONA: . . . *(inaudible)* . . .

CHAIR PALTIN: Hello.

MS. AARONA: Hello.

CHAIR PALTIN: Hi.

MS. AARONA: Hi. How are you? Aloha, everyone. This is . . .

CHAIR PALTIN: Good.

MS. AARONA: Aloha, Chair, Vice-Chair and Councilmembers. I'm Francine Aarona, you all know me as Aunty Mopsy, Protect Paia. And I'm here to testify on the Courtyard project. You know protecting Paia is an ongoing journey for many of us who live here and witness all the changes. And, you know, Paia is a classic example of gentrification, a quote by a grandson whose grandmother is 93, born and raised in Paia. And I'm really sorry that the correct proposal bill didn't get posted in time for our community to have the opportunity to discuss and ask questions among themselves. But I want to thank Henry Spencer for presenting the correct bill in its order. You know, they've been faced with the community. They had hard licks, but I believe that Paia 2020 LLC is listening to the community and now it's up to the County to follow through with the parcels that are being donated. You know if the Council is not comfortable with moving forward with these updated bills then, you know, maybe we need to defer. But I really think that this Courtyard project has been in the limelight for a while and unfortunately because of the pandemic and shutdown that we have that the community is not up to par. But it's my job as I say, protect

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

Paia, I try to keep the community informed of the changes and I posted something on Facebook to make them aware that if they're going to testify today to please listen to the presentation, which again mahalo to Henry Spencer for that. So, I am in favor of this. I want us to move forward with this so that we can start to plan while we sit home and think of the new way of life that we're about to experience. So, mahalo to the Councilmembers for all the job that you are doing. Mahalo.

CHAIR PALTIN: Thank you, Auntie Mopsy. And I just wanted to clarify it is posted, it's number 32 on the Granicus' updated version. And so, that's available for anyone to look at, it's . . . if you go under maucounty.us/agendas today's PSLU Committee and click on PSLU-8, it's number 32 on the Granicus. So, the whole item is on there. Members, any questions for Auntie Mopsy? If you have any questions just unmute yourself and --

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: --say my name.

COUNCILMEMBER KING: Chair? Kelly King.

CHAIR PALTIN: Member King.

COUNCILMEMBER KING: Did you call on me?

CHAIR PALTIN: Yes. Member King, go ahead.

COUNCILMEMBER KING: Okay. Okay, thank you. Sorry, you cut out for a second there. Hi, Auntie Mopsy, how are you doing?

MS. AARONA: Hi, Kelly.

COUNCILMEMBER KING: Hi. So, I just wanted to make sure we're on the same page that . . . because what I'm looking at is the most recent is dated April 30th. And that's the one that has removed . . . the bill has the district boundary amendment removed from it. So, I want to make sure that's what you're talking about.

MS. AARONA: Well, yeah. I'm looking at . . . because if I understand it correctly when the County plan was done in 1995 the County zoning was all in Interim. So, nothing was changed at that time to reflect what . . . so, in order for them to move forward they need to change the Interim to match up with the County plan, Public/Quasi, and then the Ag to Urban on the State side.

COUNCILMEMBER KING: Right.

MS. AARONA: Yeah.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER KING: Right. The original . . . the original request when we all were dealing with this last term was also included a district boundary amendment which is not in the bill anymore. So, that's the most recent one that I'm looking at. I just want to make sure that you're looking at the same bill.

MS. AARONA: Yes, yes.

COUNCILMEMBER KING: Okay.

MS. AARONA: Yes.

COUNCILMEMBER KING: Okay, great. Well, thank you so much for calling in and --

MS AARONA: Mahalo.

COUNCILMEMBER KING: --thank you for your work with Protect Paia.

MS. AARONA: Okay. Mahalo.

COUNCILMEMBER SUGIMURA: Tamara?

COUNCILMEMBER KING: Thank you, Chair.

COUNCILMEMBER SUGIMURA: Oh, sorry.

CHAIR PALTIN: Thank you, Member King.

COUNCILMEMBER SUGIMURA: Tamara, this is Yuki.

CHAIR PALTIN: And, Member Sugimura, did you have a question for Aunty Mopsy?

COUNCILMEMBER SUGIMURA: I do. I do.

CHAIR PALTIN: Okay. Go ahead, proceed.

COUNCILMEMBER SUGIMURA: Aunty Mopsy, thanks for being here. So, I just want to be sure, I think I heard you support this.

MS AARONA: Yes, yes.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Any further questions for Aunty Mopsy? Member Sinenci?

COUNCILMEMBER KING: Member Sinenci, yeah.

VICE-CHAIR SINENCI: Yeah.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Go ahead, Member Sinenci.

VICE-CHAIR SINENCI: Aloha, Aunty Mopsy. Good morning.

MS. AARONA: Aloha.

VICE-CHAIR SINENCI: Aloha. So, it looks like the developer will be donating 3 acres for parking. Do you know if this is the existing dirt lot that's being currently used for parking? You know if this is the spot that they're donating?

MS. AARONA: I understand that it is. I'm not clear on the map . . . they provided a map in the last meeting that Henry had with the community along with Councilmember Molina and Michele McLean. And the map showed a division of what was going to be donated. So, I believe that is the area that is being mentioned.

VICE-CHAIR SINENCI: Okay. Thank you.

CHAIR PALTIN: Okay. Any other Members have questions for Aunty Mopsy? Please unmute yourself and just say my name. Okay. Not hearing any other questions, I did have one question for you, Aunty Mopsy.

MS. AARONA: Yes.

CHAIR PALTIN: I just . . . do you consider this updated proposal that you had heard from Mr. Spencer in the community to be fundamentally different than the original proposal?

MS. AARONA: If you're talking about the proposal that's posted.

CHAIR PALTIN: The proposal with the senior housing versus the current proposal from the . . .

MS. AARONA: Yes. Yes. This is way different. They . . . in the last meeting as I shared with Councilmember Sinenci, they had completely retired that proposal and offered this new one to align with the community plan. And the only way that they can move forward in I believe the donation of this parcel is to change the zoning to coincide with the community plan, and that will fall in the County and the State. So, yes, the new proposal that Mr. Spencer has presented to the community this morning is very different from the original proposal.

CHAIR PALTIN: Okay. And just a follow up question, do you feel that your community, Paia community, has had adequate amount of time to review this proposal . . . the updated new proposal?

MS. AARONA: In reaching out to some of them, no. No. Some of them have not had the opportunity. I've been working overtime since Thursday, Friday and getting a post out

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

to make a lot of our people aware of the new proposal. But I wanted them to listen first and then by listening, if they are listening . . . I mean some are texting me while I'm talking. So, I'm sure they may have questions. And I can speak more on it because I've been involved from day one in the meetings, and, you know, Paia 2020 along with Henry Spencer and David Spee. They've used me as a speaking voice to the community and so I hope that I've gotten enough information. But yes, to your question, I am not sure that they are all abreast to what I see in front of me, the information. A lot of them have not been able to fact find or look into the document that you've shared with us. You know, so I completely have a chart and looking at all the things that were provided in the last meetings and that's all I can give them. But the --

CHAIR PALTIN: Thank you.

MS. AARONA: --answer to your questions, I don't think many of them have or --

CHAIR PALTIN: Thank you so much --

MS. AARONA: --understand the updates. Okay.

CHAIR PALTIN: --for your testimony. And for all the overtime work that you've been putting in. We appreciate it. Thank you so much.

MS AARONA: Oh, you're welcome. It's my pleasure. And mahalo to all of you that do such hard work for us, especially in this time. Stay strong, and safe, and healthy.

CHAIR PALTIN: Mahalo. You too, Aunty Mopsy.

MS. AARONA: Aloha.

CHAIR PALTIN: Aloha. The next testifier we have to sign up is testifier ending with the last four digits 0498. Testifier with the digits 0498, it's your turn to testify. We're on the Paia Courtyard issue, if you're talking on the zipline issue, you can choose to testify now or after that item is presented.

MS. AZAR: I'll testify after it's presented.

CHAIR PALTIN: Thank you. Okay, let's see . . . next we have testifier with the last four digits 6125. Testifier 6125? I'm not seeing a 6125 on here, maybe they left the call or they're on the next . . . testifier with the last four digits 0629? Zero six two nine, are you ready to testify? Hello? Testifier with the last four digits 0629?

UNIDENTIFIED SPEAKER: Aloha. I think that's me and I'm just listening to the meeting, I'm not testifying. Mahalo.

CHAIR PALTIN: Okay. Mahalo. Next up we have Ann Bassel. Ann Bassel, are you prepared to testify right now?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MS. BASSEL: I'm calling about the zipline and I could testify afterwards or now, but I don't know what's better. But I am calling about the zipline.

CHAIR PALTIN: Okay. If you need to go, you can testify now. If you want to wait until after your item is presented you can testify at that time. It's your choice.

MS. BASSEL: Why don't I go ahead now since I'm on. Let's see . . . I think I have everything.

CHAIR PALTIN: Okay. . . .*(inaudible)* . . .

MS. BASSEL: Yes. I'm so grateful for this ordinance, I can't tell you. I . . . my name is Ann Bassel, I live on Nohea Place off of upper Kauhikoa. I'm within less than 500 feet from the Northshore Zipline, and that has been hell, absolutely hell, to be within 500 feet and here the screaming and the yelling. It's gone on for years. They've never had permits and by a fluke, in my opinion, they managed to get permission a year ago with some sort of deal made with the Counsel . . . the Corporation Counsel. At any rate they have permission from the County, therefore one of the things that I really appreciate is Section 6 of the proposed ordinance. And that says that an existing zipline or canopy tour that's received approval from the County is continue . . . may continue with a nonconforming use provided that by July 1st of 2024 they have to get a conditional permit. So, I love the conditions of the conditional permit, that would prevent--which is I think is crucial--any zipline within 1,000 feet of a farm dwelling. And my husband and I, Stephen Hynson, have a farm dwelling and we raise goats, we got an aquaponics . . . the noise, we've got horses on the property. The noise is horrendous and so we're only 500 feet . . . 1,000 feet . . . I've already looked at the surrounding, I think 1,000 feet probably is as good as it'll get to keep ziplines away from farm dwellings. This is agricultural land and it should be maintained as agricultural land and not have screaming people. So, I love the ordinance. Thank you, thank you, please pass it as it is. And Section 6 which says that there can be a conditional . . . or nonconforming use until 2024, if that date could be sooner that would be a preference. I understand that you have to give a zipline that has permission, right or wrong, because we're appealing it as a wrong decision, but if it has permission I understand that it's important to give that zipline some time to apply for the conditional permit, which under the new ordinance is required. And so, I love the ordinance and I understand you want to give them time to apply, but surely two years at the most would be plenty.

CHAIR PALTIN: Thank you, Ms. Bassel. Your time is up.

MS. BASSEL: Thank you.

CHAIR PALTIN: Members, clarifying questions for Ms. Bassel? None. If I didn't see you just unmute yourself and say my name. Okay, thank you so much for your testimony. Have a great day.

MS. BASSEL: Thank you very much for all you're doing. Thanks.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Thank you.

MS. BASSEL: Bye.

CHAIR PALTIN: Next up to testify we have Kari Nunokawa.

MS. NUNOKAWA: Oh, no, I'm just listening in. Thank you.

CHAIR PALTIN: Okay. Thank you. It looks like in my list that everyone else on the list is testifying on the zipline item.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR PALTIN: So, we have the canopy tour and zipline operations item. This member . . . this item was PSLU-29 and it was put forward by, Councilmember Yuki Lei Sugimura. Member Sugimura, did you want to speak to this item a little about how you came to this proposal?

**PSLU-29 ZONING STANDARDS FOR CANOPY TOUR AND ZIPLINE
OPERATIONS IN THE AGRICULTURAL DISTRICT (CC 19-94)**

COUNCILMEMBER SUGIMURA: Sure. So, Member Molina and I . . . might want to add to it also, but we both attended at the request of the community, some of the testifiers, to come in and review what's happening in their neighborhood. And so, after that that's when we . . . or I came with this ordinance, and I did talk to Member Molina about it also because we both witnessed and heard from the community members and their frustration with the existing zipline that's in the . . . right next to their houses actually. And the stories and the yelling and screaming and agony that they've been going through. So, and I know it's a complicated issue, which I look forward to hearing from the Department on this and Corp. Counsel if need be. But we came with this proposed legislation just to try to put some regulations into ziplines so that in the future, you know, maybe it will not be harassing the neighbors as it seems like it was for this particular area. I didn't hear from any other zipline businesses or communities, this is the only one. But that's what sparked this interest in realizing that it was being . . . deterring peace and quiet for this particular neighborhood. So, that's all. Thank you.

CHAIR PALTIN: Thank you, Member Sugimura. I didn't realize that you had worked on it with Member Molina. Member Molina, did you want to give a little presentation as to your role in this as well?

COUNCILMEMBER MOLINA: Sure, Chair. Thank you and I just wanted to let you know that Member Sugimura, this is her bill and we did go out and meet with some of the residents out at the affected area. I did as all the Members know now, I have

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

submitted a revised proposal to Member Sugimura's bill. Actually, just something to tweak it to strengthen it and add more clarity and to provide a . . . to cover up any potential loopholes that could exist. So, again this is more meant to help and strengthen Member Sugimura's bill and upon the completion if it's the will of the Committee to implement some of these proposals before forwarding it on to the Planning Commission for their review as well. So, that's where we're at on this and I want to thank all the residents for their manao on this proposal. And you, Chairman, thank you for bringing both of these items up, which occur in my district. Thank you so much.

CHAIR PALTIN: Thank you. Members, are there any clarifying questions at this time before we proceed with public testimony? Member Sinenci?

VICE-CHAIR SINENCI: Yeah. So, Chair, you're just going to . . . can we ask questions later after testimony?

CHAIR PALTIN: Yes. You can ask questions after testimony as well.

VICE-CHAIR SINENCI: Okay. I'll wait till then, thank you.

CHAIR PALTIN: Okay. Any other questions at this time? Seeing none, let's proceed with public testimony. We have Marian Prosser. Marian Prosser. The first . . .

. . . BEGIN PUBLIC TESTIMONY . . .

MS. PROSSER: Hi. I'm here. I'm just on audio, not visual.

CHAIR PALTIN: Okay.

MS. PROSSER: I so appreciate this effort. I appreciate the Councilmembers and Mike coming over and listening to our . . . very plighted situation that we've been dealing with for ten years on the NorthShore Zipline. My husband, Daniel Coltart and I live . . . really just we're the closest property to the NorthShore Zipline and . . . you know, it's completely ruined our lives. In every sense of the word, I won't go into detail but I'm sure it's not hard to imagine screaming bloody murder into every room in your house. I so appreciate you guys actually getting something together on this and putting it forth. I . . . thanks to Ann Bassel, who read through the ordinance that are proposed, we've talked about it. I am in favor of this . . . this bill. I'm in favor of it as is with the exception of . . . I also believe that that date 2024 is, you know, that's another four years of suffering for us. We've been suffering for ten years over this, on a daily basis and there's just no getting away from it. I also believe that two years should be plenty of time, bringing the date up to 2022. At the very most add another year onto that and make it three years, June 30, 2023 at the very latest. Even though sooner would be better. But I was curious as to if anybody had an answer as to why that date was put so far into the future, inasmuch as it would give everybody plenty of time to apply for that permit if we did move the date up. So, I'm very, very pleased

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

with the bill as is, I think it was well written. I'm curious to see . . . I didn't know whether Mike wanted to speak any more about the changes . . . the tweaks that you just talked about bringing forward. I would love to hear about those if you could speak anymore to those. But otherwise I don't know whether we're going to still survive four more years of this. Again, we have a contested case hearing open with the County with the Board of Variances and Appeals, that's continuing to go forward. That continues to be delayed into the next century, probably all the way up to the Supreme Court. We've got . . . the County has an open suit against the zipline for breaching the settlement agreement which evidently . . . it's evident to me that the zipline itself wrote and then breached so many terms on it, so I'm not sure where that's at, but that's a separate issue. Anyway, just again wanted to thank everybody for the efforts on this part, not only for us but for the future of these quiet residential agricultural neighborhoods that are being decimated by these screaming ziplines that it's just untenable. And a 1,000 square feet sounds about right, we're about 250 feet from screaming all day, every day and I tell you as much as I hate the coronavirus it's been some of the most peaceful time in our last ten years of our life not having this zipline running at this time. And, you know, we're getting a taste of really what it's supposed to be like here, nice and quiet with people farming and gardening. And anyway, I think that's about it, I'll wrap it up and once again thank you everybody for your attention and time today.

CHAIR PALTIN: Thank you, Ms. Prosser. Members, any questions for the testifier?

COUNCILMEMBER KING: Chair, just a quick clarifying question.

CHAIR PALTIN: Sure thing, Member King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for your testimony, Ms. Prosser. I just . . . so were you able to find the changes that Member Molina posted? Because they were on . . . I believe they were on . . . they were posted. But you seem to be speaking to the version of the bill before the changes . . . without those changes.

MS. PROSSER: You know, Ann, if you're on there, is the bill that we've been revising together is that the revised one that Mike came up with or is that . . . is that not revised? Do you know, Ann?

COUNCILMEMBER KING: Okay. That was kind of my point of trying to clarify. Maybe Mr. Molina should give a brief presentation on his changes before we . . . because I'm hearing testimony on the bill as is, but not sure if everyone's talking about the same bill. So, anyway that was just my concern, Chair, is that, you know what, which version are we talking about. I have the bill with the . . . with Councilmember Molina's changes in front of me, but I'm not sure if that's what everyone else is looking at.

MS. BASSEL: I have the one . . . this is Ann Bassel. And the one I'm looking at is the one that Yuki Lei presented and that's the one that I'm looking at. I don't know anything

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

about changes. We're seeing what I think was the one that's being discussed today, which we're obviously very much in favor of. So, thank you.

COUNCILMEMBER KING: Okay. So, the main concern that I hear, Ms. Prosser, is the four years more that you have to live with the existing nonconforming . . . what you're categorizing as nonconforming, so you'd like that date moved up.

MS. PROSSER: Yeah, very much so.

COUNCILMEMBER KING: Okay.

MS. PROSSER: As soon as possible, you know, because we're suffering on a really daily basis. Not right now because the zipline is closed, thanks be to God. But it's, you know, we're suffering on a daily basis. So, if that can be moved up at all, you know, as far closer as possible. Thanks, Kelly.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR PALTIN: Thank you.

COUNCILMEMBER KING: Thank you, Chair.

CHAIR PALTIN: Members, any further questions? Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. So . . .

CHAIR PALTIN: Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. So, it looks like in . . . Ms. Bassel mentioned Section 6, that it says that any nonconforming use in accordance with the County section. However, no later than 2024 the owner or operator of any zipline shall either obtain a conditional permit or cease operation of the nonconforming use. So, they feel . . . are they okay with the current operation getting a conditional permit or do they feel that, you know, the operation will not conform to the . . . for a conditional permit?

CHAIR PALTIN: Ms. Prosser?

MS. PROSSER: Well, we know that they won't conform. Our particular plight will not conform to a conditional use permit. We're a little bit in a little bit of a different situation because of the . . . there was a settlement agreement made between the County that we're in I guess you'd call it litigation with the Board of Variances and Appeals. So, you know, we have this big looming, you know, idea that the zipline is going to try and grandfather in under this settlement agreement. And I don't know whether there's any way that we can close that loophole for them and say no matter what agreements were made before or whether we're just going to have to fight it out. You know, I have a lot of confusion about how it's all gonna go forward, but because

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

we have a unique situation where we were in the middle of a special use permit hearing, and in the middle of that hearing the County signed off on a special behind closed doors confidential settlement agreement with the zipline giving them the ability to continue to operate under certain criteria, which they've breached and breached and breached and breached for years now. And there doesn't seem to be any way to really stop them, that's why we're in the middle of a contested case hearing. The County has filed suit against the zipline for breaching the settlement agreement, we . . . our concern is closing the grandfather clause in. And I know that this gets complicated, maybe more so, we want this bill to go forward without getting bogged down in detail. But that's our main concern is that this NorthShore Zipline is going to try and grandfather in so that they don't have to gather this special use permit . . . not a special use, I'm not using the right term, I'm sorry.

COUNCILMEMBER LEE: Conditional.

MS. PROSSER: But anyway, that's our concern is they're going to try and grandfather themselves in around this clause.

VICE-CHAIR SINENCI: Okay. Thank you, Ms. Prosser. Thank you, Chair.

CHAIR PALTIN: Thank you. Members, any further clarifying questions for the testifier? Okay. Seeing none, our next testifier is Daniel Boren.

MR. BOREN: Hi. Thank you, Chair. Yeah, my name's Daniel Boren. I'm the owner of Skyline Eco Adventures, so we are a zipline operator on Maui. So, first off I'm against the bill as written. I've heard obviously from the folks that have testified so far, pretty clearly, and I think everyone on this call has probably heard it pretty clearly. There's specific operators that are causing problems for the neighbors and their neighborhood and I absolutely sympathize with those folks. I think that . . . I think that the problem with this bill fundamentally is that it takes all zipline operators that are currently in existence and groups them with the people that are causing problems for their neighbors. Just to be clear NorthShore Zipline and Jungle Zipline are not the only two ziplines on Maui, there's Piiholo Zipline, Kapalua Zipline, Haleakala Zipline, Kaanapali Zipline, Maui Zipline, Flyin Hawaiian Zipline, and I don't hear anyone complaining about any of the other operations. So, this bill penalizes everyone equally. Our operation just as a quick historical, we're the first commercial zipline operation in the United States. Starting a business is not an easy thing to do, starting an industry in the entire country is a very, very difficult thing to do. I was raised here on Maui, I taught at Seabury and while I was teaching at Seabury I got a contract with Haleakala Ranch to provide zipline tours as a first . . . the first zipline tour in the country up there on Haleakala. And spent time working with John Min, back in 2002, so 18 years ago to get approval because there was no process to get approval. But I went through that process, worked with Chris Hart & Partners. And once we had approval that existed at the time the type of approval was a letter of approval, we went ahead and built our tour up there as a way to supplement income for the ranch, which does not make money as a cattle ranch. And from the very beginning we tried to be a sustainable business operation. Since we've started operations we've given

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

\$1.8 million to nonprofit groups on Maui. Every September we do free zipline tours for the Maui community, last year we gave 13,000 pounds of food to Maui Food Bank. Every September Maui Food Bank does a Battle of the Businesses, last year the total cumulative Battle of the Businesses brought in 16,000 pounds of food which included our 13,000 pounds. So, about five years ago they stopped making the Battle of the Businesses about who brought in the most weight, because we'd won it every year for five years running and they made it a lottery. So, we've tried to give back to the community. I'm from this community, my family and my wife's family is fifth generation, and we do everything that we can to try to give back. We employ 92 people. And the way that this bill is currently written we would have to go through this approval process and our Haleakala operation is within 1,000 feet of our nearest neighbor. We've got a good relationship with our neighbors. Our nearest neighbor, their kids actually were guides for us. So . . .

CHAIR PALTIN: If you can wrap it up.

MR. BOREN: And I can go on and on, but the point is that I think that you're lumping in the worst of the industry with everyone else who's not creating a problem. I think that's a huge problem, I would recommend highly that you say anyone that has gotten approval, you know, that's been in operation for more than ten years is waived from this ordinance or something to that effect, grandfathering in those operations.

CHAIR PALTIN: Okay. Thank you so much, Mr. Boren. Members, questions for Mr. Boren? If you have a question unmute yourself and raise your hand. Okay. Mr. Boren, I had one question. So, you're operating on agricultural lands?

MR. BOREN: Yeah. We operate on Haleakala Ranch land. And I would say we could just move our zipline more than 1,000 feet from the nearest residence, but unfortunately the way the ziplines work it's based on topography. So, you design a course to work with the flow of the land, and because of the way that Haleakala Ranch is set up . . . we've looked over different areas of their property and it's very difficult for us to move to a much more remote area. I think everybody on this call can appreciate that Haleakala Ranch is an agricultural operation. So, we used to zip over cows back in the valley like when we first started, they eventually moved them into a separate area. We've restored almost 10,000 native trees in our area. I mean there's a litany of things that we try to do for the community, and I'm proud of it, but I'm always . . . there's always like a knife in my gut every time we as a company or our friends at Piiholo or our friends at Kapalua or the different operators that have been trying to be upstanding, a lot of time we're roped in with folks from different operations that don't try to do the right thing. And I feel like it's a bad precedence to set to penalize because I honestly could be perfectly blunt, I think the people like us that try to abide by the rules are the people that will shut down. I think the people that don't follow the rules are the only ones that you will have be the last people standing because they will ignore the rules.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Thank you. My second question, other than that 1,000 feet from the nearest residence do you think other than that you would be able to comply with the conditional permit and get the permit?

MR. BOREN: I believe so. I think that's the only thing that for us would be an issue. And it's only an issue in that one location because we also operate our Kaanapali tour. But, you know, generally speaking I think . . . just to be clear I think there should be a zipline rule. In fact I've sat down with Director McLean on a few occasions and I do think that there should be some kind of a rule about this because it's been so long. But I think those of us that took the time and effort to go through the processes in place at the time, not retroactively through lawsuits, but like actively before we ever started work on the project, I think we shouldn't necessarily be rolled in with folks that didn't do that.

CHAIR PALTIN: Can you tell me what is the distance to the nearest Residential zoning or Rural --

MR. BOREN: I don't know offhand.

CHAIR PALTIN: --Rural . . .

MR. BOREN: It's probably like . . . it's honestly probably 400 feet or something like that would be my guess. For our closest zipline most of our course is further away. I think, I think, I mean I've not done Jungle Zipline or NorthShore and I don't want to talk whatever, but I believe those parcels are much smaller and that more of their course is close to live residents. Our operation is only a single line that's really kind of close. So, it kind of is separate but there's no neighbors on both sides, it's like just open pasture on both sides, just on one side we have neighbors by . . . near one of our lines.

CHAIR PALTIN: Okay. And then right now with the shutdown you guys aren't getting any business?

MR. BOREN: I mean the COVID-19 thing is a whole other animal. I'm . . . *(inaudible)* . . . to stay financially afloat for 92 employees. And like honestly the four years seems like a long time out there, but anyone who runs a business . . . I know Councilwoman King probably is aware of this kind of stuff, it's like, you know, we're probably going to spend two, three years just digging ourselves out of the hole to get back up to . . . to get our head above water as a business. So, I mean like to try to do that and then throw a million dollar bill on top of rebuilding our whole course is . . . it doesn't make sense. So, I mean it's . . . if we, yeah, four years is a very short timeline in terms of . . . especially with the current financial situation.

CHAIR PALTIN: Okay. Thank you so much. Thank you for your testimony. No further questions from any other Members? I only see Member Molina, King, and Sinenci. Oh, Member King. Member King has a question for you.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER KING: Thank you, Chair. Well, you asked some of my questions that I had. But since Mr. Boren invoked my name, I just wanted to know if you . . . because I know you've been operating a long time, I know you've been doing a lot of sustainable effort, but if you had to . . . if you had to get a petition from those that are within that area, you know, saying that we support the business, do you think you would be able to get that support?

MR. BOREN: Probably. I mean I've not had any complaints from anybody, and we've had an open invitation for free zipline tours for everyone and many of them take us up on that over the years. I would think most of them would actually endorse us. I don't know, like I don't interact with all of our neighbors on a regular basis. But I mean I certainly could try.

COUNCILMEMBER KING: Yeah, I just . . .

MR. BOREN: I think it's decent chance I could. And honestly if this does go through, I would try to figure a way to redesign our course. But I just think it would cost a ton of money and it would be very difficult to do and . . .

COUNCILMEMBER KING: Yeah, I know. I feel for you, and I think that the Committee doesn't want to have unintended consequences by shutting people down who are doing the right thing and who have gotten their permits. But there's a . . . we're trying to find a balance --

MR. BOREN: . . . *(inaudible)* . . .

COUNCILMEMBER KING: --of how to address, yeah. So anyway, I appreciate your testimony and I appreciate your predicament too. So, thank you for being here.

MR. BOREN: Thank you.

CHAIR PALTIN: Thank you. Are there any other questions for the testifier? Just unmute yourself and say my name.

COUNCILMEMBER SUGIMURA: This is Yuki. Yuki.

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah. So thank you, Mr. Boren, for being here. I think we've probably heard loud and clear from complaints, and I'm glad to hear all the . . . all that you do in terms of giving back to the community. And which makes you a viable business, you know, as part of the community, so I really appreciate that, versus things that we read in the newspaper. But I wondered what kind of permit do you have for your operation and if you started with John Min, that was a long time ago. I think it must have been in the early 2000's I think --

MR. BOREN: Two thousand.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER SUGIMURA: --when he was Planning Director. I think.

MR. BOREN: Yeah.

COUNCILMEMBER SUGIMURA: But what kind of... what kind of regulations do you... are you required to follow now?

MR. BOREN: Yeah, so... I mean well it depends on what you're talking about with regards to that because like for instance there's a... there's a one of the provisions in here says you need to have proof of insurance, inspection records, maintenance records. Those are all things that we have, and most any operation probably would have, and they absolutely should have just for safety. So, from regulations on safety side we adhere to the Association for Challenge Course Technology standards. So, there's a variety of things with that, but as far as land use we engaged, you know, Chris Hart, back in 2002 and met with John Min a few times and whatnot. And basically, I mean it's kind of hard to flash back, like... but people didn't know what a zipline was mostly unless you had done it at a camp at some point back in 2002. So, we had to try to explain what it was and actually our approval calls them skylines not ziplines because they didn't, you know, was not even in the approval called ziplines. But we basically got approved as a hiking tour that involved traversing impassable areas with a skyline or zipline. In the fashion that if you guys remember the swinging bridges hike that used to be up Waihee, I use that as an example. Said look, this goes over these areas, it's not kind of...

COUNCILMEMBER SUGIMURA: Mr. Boren? Sorry. So, you're following all the requirements in terms of insurance and, you know --

MR. BOREN: Yeah. Yeah.

COUNCILMEMBER SUGIMURA: -all the safety things that would not be difficult for you to comply with because you're a viable business and...

MR. BOREN: Yeah.

COUNCILMEMBER SUGIMURA: So, you're looking at probably a change would be grandfathering in for a business as long as yours.

MR. BOREN: Yeah.

COUNCILMEMBER SUGIMURA: Not having to get the conditional use permit... go through that process.

MR. BOREN: Yeah, yeah. I think that some sort of a time... like a, you know, business is in operation for ten years or whatever the timeline is determined is appropriate. Because I know there's other operations like Kapalua and Piihola, I've not heard any complaints about either. I don't know what their permit status is but, you know, I

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

think that there's a way to sort of divide a line there and say, you know, people who have never --

COUNCILMEMBER SUGIMURA: Okay.

MR. BOREN: --had any negative complaints about, you know, and have approval.

COUNCILMEMBER SUGIMURA: Yeah. Thank you. Thank you very much, appreciate it.

CHAIR PALTIN: Thank you, Member Sugimura. Any further questions for the testifier? Seeing none, thank you for your testimony, Mr. Boren.

MR. BOREN: Thank you.

CHAIR PALTIN: Okay. Next up we have Mr. Robert Friedlander. Robert Friedlander, are you available to testify at this time?

MR. FRIEDLANDER: Hello, this is Mr. Robert Friedlander. And I have a testimony about the zipline. I live on West Waipio Road, Haiku area, and the Jungle Zipline is next to my property. I spent ten years dealing with the County to get everything legal to make a legal homestead for myself and my family, and my grandkids and my daughter live next door. And while I was building my second permitted house the Jungle Zipline got put in and with no input from neighbors whatsoever. And so, I want to say that I think that a very important thing about ziplines is that the neighborhoods should have input, they . . . you have to have input when you put in a bed and breakfast. And a bed and breakfast is nowhere near as annoying to the zipline. It just goes on and on and on and on and on and I'm in favor of this proposal, this bill. Again, the sooner it can go into effect the better and the sooner that . . . you can shut down the illegal ziplines the better. And, you know, I just heard the testimony about Haleakala Ranch, and I feel for the guy. I feel for what they're doing and I don't exactly know what the proper solution for that is, but for me the proper solution is that these people who don't have a permit or have gotten a permit just recently and doesn't . . . don't comply with these standards should be shut down immediately. Like I said this zipline is . . . my border is 25 feet from my house and the zipline is 20 feet away from that. And when I complained to the guy about the zipline and complained to the County, he immediately set up cages all along the border of my property and put roosters there. I mean it is endless. This guy doesn't give anything to the community and he is one of the bad ones. And I don't know what else to say other than I would like to see this bill go through and I would like to see this particular zipline as well as the one on Kauhikoa, which I've been supporting the closure of as well. I hope that that one will get closed and then it will set a precedence for this one. Thank you for hearing me. This is the first time I feel like I've been heard and I appreciate the bill.

CHAIR PALTIN: Thank you. Members, any questions for the testifier? Please unmute yourself and say my name. Hearing no questions, thank you so much for your testimony, Mr. Friedlander.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. FRIEDLANDER: Thank you very much.

CHAIR PALTIN: And our last testifier signed up to testify today is testifier with the last four digits 0498. Zero four nine eight, are you available?

MS. AZAR: Yes. I'm April Azar. I'm calling in support of the ordinance. I have a question about somebody who said they created the ordinance, but it was only about the Kauhikoa zipline. My concern is the Jungle Zipline as it's less than 200 feet from my house and runs along my property about 100 feet away from my property at the most. So, I'm in support of the bill and I hope that the people can figure out a way to have everybody be . . . who is so directly impacted so close that has never been able to be heard because actually I'm still concerned that it's just about the Kauhikoa zipline. Thank you.

CHAIR PALTIN: Thank you. Members, any questions for the testifier? Please unmute yourself --

VICE-CHAIR SINENCI: Chair?

CHAIR PALTIN: --and say my name. Member Sinenci?

VICE-CHAIR SINENCI: Thank you. I was just wondering if some of the testifiers that are calling in about the specific . . . is there a way to get any pictures just to show the scale, the distance if they can send in some, if they have any to the PSLU Committee that we can just see some of the proximity to the zipline. Thank you, Chair.

MS. AZAR: Like right now? Yes, I can send it in.

VICE-CHAIR SINENCI: Thank you.

CHAIR PALTIN: Okay. Members, any further questions for the testifier? Seeing none . . . oh, seeing no questions for April, thank you so much for your testimony.

MS. AZAR: Well, wait. Can I . . .

CHAIR PALTIN: Mister . . .

MS. AZAR: I'm asking who I'm supposed to submit photos to? PSL [sic] Committee.

CHAIR PALTIN: PSLU.committee@mauicounty.us.

MS. AZAR: And then what?

CHAIR PALTIN: That was a request from, Member Sinenci.

MS. AZAR: We've had people from the Planning Department here taking pictures and things. So, it's not like it's been not reported before.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: We don't work for the Planning Department so we . . . we're part of the County Council.

MS. AZAR: Okay. Yes. I'm happy to send photos of the proximity. Thank you.

CHAIR PALTIN: Okay. Thank you. All right, so we don't have anyone else signed up to testify.

MR. HYNSON: Hello, this is Stephen Hynson. Is it possible to sign up?

CHAIR PALTIN: Yes.

MR. HYNSON: I just got online.

CHAIR PALTIN: You have three minutes to testify on any item on the agenda. Let me just start the timer, just a sec. All right, go ahead, Mr. Hynson.

MR. HYNSON: Yeah, my name is Stephen Hynson. I live at 88 Nohea Place in Haiku, just a couple lots mauka of NorthShore Zipline. And I want to speak from a personal point of view that I've been personally impacted as has my family by the presence of a zipline within the thousands of feet. And I fully support this change to the ordinance. I think the conditional permit approach is the right approach. I agree with the 1,000 foot limit and also with the grandfathering, though I would really like to see the grandfathering in at a shorter time. But if 2024 is the best you guys can do that's great. But the impact of these ziplines in an ag district that . . . is just totally unacceptable, and I would hope this Committee would forward the amendment as it stands to the County Council. Thank you.

CHAIR PALTIN: Thank you. Is that the end of your testimony?

MR. HYNSON: Yes, Ma'am. Is anything else . . . any other information I'd be happy to volunteer it.

CHAIR PALTIN: Okay. Members, any questions for Mr. Hynson? Please unmute yourself and say my name. Hearing none, thank you so much for your testimony today, Mr. Hynson. Have a good day.

MR. HYNSON: Okay. You're welcome. Aloha.

CHAIR PALTIN: Aloha. Is there anyone else online wishing to testify at this time? Oh, Mr. Joseph Sumerlin. Are you there?

MR. SUMERLIN: Hello.

CHAIR PALTIN: Hi.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. SUMERLIN: Hi, thanks for this opportunity.

CHAIR PALTIN: Sure. I'm starting the clock . . .

MR. SUMERLIN: My name is Joseph Sumerlin. I'm a co-owner of Maui Zipline Company and we operate out of the Maui Tropical Plantation in Wailuku. And I just wanted to say that I do not support this . . . this bill. I believe that something does need to be done but the way that this one is written I believe that it could negatively impact the companies that are doing the right thing, that have been around for a while. And specifically relating to the one with a second zipline within a certain number of feet, I believe that could affect our operation at the Maui Tropical Plantation because of the close proximity to another zipline that's on an adjoining property. But I'm just calling to . . . I sympathize with the neighbors. I live in Haiku on an ag property and I can't imagine having a zipline in my backyard. But I think that are properties . . . ag properties that are . . . acceptable properties for this type of activity and I don't think that the companies that have gone through the process of getting the permits to operate could be negatively affected by this bill. We went through the process. We delayed our construction of our zipline course for over a year waiting to get the proper permits in order. And so, I don't think that grouping every operator into this group of the few bad actors out here in Haiku is fair on the other businesses in the . . . so I'd like to see it . . . this be reworked. I'd like to see . . . I just found out about this bill a half hour before the . . . you know, at 9:30 this morning. So, I know not all of the operators have an opportunity to maybe find out about this or testify, you know, in a timely manner. And I just thank you for this opportunity, I think it's something that needs to be done, but I think if you . . . if we looked at it a little bit closer we could get a better bill that would . . . that would take care of the ziplines in these neighborhoods but also not negatively impact these businesses that are . . . that have been following the rules all along. That's all I have.

CHAIR PALTIN: Thank you, Mr. Sumerlin. Members, any questions for the testifier?
Member King?

COUNCILMEMBER KING: Thank you, Chair. Can you hear me, Mr. Sumerlin?

MR. SUMERLIN: Yes, I can.

COUNCILMEMBER KING: Okay. Thanks for being here. I just wondered when you got your permit how long is your permit good for? Your current permit?

MR. SUMERLIN: That's a great question. I'd need to pull it out and take a look.

COUNCILMEMBER KING: Okay.

MR. SUMERLIN: Once we got the permit we filed it away and it's been almost ten years now.

COUNCILMEMBER KING: And is it a special use permit or a conditional use permit?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. SUMERLIN: Believe it's a conditional use permit.

COUNCILMEMBER KING: It is a conditional use permit. Okay, but you don't know how long it was good for when you . . . oh, I see, Director McLean, shaking her head. So, maybe it's a different type of permit that you got. But I think that has a lot of bearing on this whole grandfather thing, is how long the permit was originally. So, if you have that information you can e-mail it to the Committee that would be helpful.

MR. SUMERLIN: I can certainly do that.

COUNCILMEMBER KING: Okay. Thank you. And Chair, is it okay if I ask Director McLean what type of permit that was?

CHAIR PALTIN: Can we do that during the --

COUNCILMEMBER KING: Sure.

CHAIR PALTIN: --discussion portion?

COUNCILMEMBER KING: Sure.

CHAIR PALTIN: Thank you. Any further questions for the testifier? Are you finished, Member King?

COUNCILMEMBER KING: Yeah. I was just, yeah, I was just curious to what kind of permits these . . . the operators have and how long they're good for, and I saw Director McLean kind of shaking your head. So, I'll wait till we get to the subject. Thank you.

CHAIR PALTIN: Okay. Thank you. Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. Yeah, a question for Mr. Sumerlin. He mentioned that he's right next to another zipline operation, for number one, no zipline shall be permitted on a lot whose boundaries within a mile radius of the boundary of a lot in which another zipline is operating. Just clarification, did he say that he was close to another one?

CHAIR PALTIN: Mr. Sumerlin, are you still there?

MR. SUMERLIN: Yes, I'm still here. Yes, that's correct, there's another zipline that operates called Flyin Hawaiian Zipline and they're above the golf course in the West Maui Mountains. And I believe that, you know, as the crow flies from our lease agreement with the property we have with the Maui Tropical Plantation and the . . . the property that zipline's on, I would say that it could be within a mile, yes.

VICE-CHAIR SINENCI: Okay. Thank you. Thank you, Chair.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Thank you. Anyone else have a question for the testifier, please unmute yourself. Okay, I don't see any other Members with questions. I just had one quick question, hopefully it's quick. You said your zipline operates on the Maui Tropical Plantation. Mr. Sumerlin?

MR. SUMERLIN: Yes.

CHAIR PALTIN: And I just was wondering because this Committee passed the Waikapu Country Town project. And I had thought that they were going to start building homes. So, did you have an end date for your zipline project?

MR. SUMERLIN: No, we do not.

CHAIR PALTIN: Was it your understanding that when the homes are built for Waikapu Country Town that you would stay in the Country Town and still operate your ziplines?

MR. SUMERLIN: I believe they've talked about another location within the Waikapu Country Town that, you know, I'm not sure on all the current plans, but it sounded to me like there was a possibility of Maui Tropical Plantation being relocated at some point. And we could still operate within the new location of the Tropical Plantation. But like I said I don't really know what's going on with that at the moment.

CHAIR PALTIN: So, you're . . . to clarify, you're somewhat prepared to relocate your operations when your lease is up or when the Country Town plans come to fruition or are you aware?

MR. SUMERLIN: Yes. That's correct.

CHAIR PALTIN: Oh, okay. Okay. Thank you so much. I don't have any further questions. Seeing no further questions from the rest of the Members, we thank you so much for your testimony. And if you did get that permit information, the e-mail for this Committee is pslu.committee@mauicounty.us. Do you need me to repeat that? Mr. Sumerlin?

MR. SUMERLIN: I got it. Thank you.

CHAIR PALTIN: Okay. Thank you. Is there anyone else wishing to offer testimony on these two agenda items? Seeing none, any objection to closing testimony at . . . public testimony at this time?

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Okay. Public testimony is closed.

. . .END OF PUBLIC TESTIMONY. . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: We're at 10:36. Any objections to taking the morning recess?

COUNCILMEMBERS: No objections.

CHAIR PALTIN: No objections. Okay. So, what do Members prefer, a 10 minute, 15 minute, 5 minute?

COUNCILMEMBER SUGIMURA: Ten minutes.

COUNCILMEMBER KING: Fifteen minutes.

CHAIR PALTIN: Five, 10, 15, okay. Let's see, let's take the median there and go with the ten minutes. We'll be back at 10:47, ten minutes. This meeting is in recess. . . .(gavel). . .

RECESS: 10:37 a.m.

RECONVENE: 10:51 a.m.

CHAIR PALTIN: . . .(gavel). . . Aloha. Welcome back to the Planning and Sustainable Land Use Committee meeting of May 4th. The time is 10:51 and we're returning to order.

PSLU-8 DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN AMENDMENT, AND CHANGE IN ZONING FOR THE PROPOSED PAIA COURTYARD PROJECT AT 120 BALDWIN AVENUE (PAIA)
(CC 17-126)

CHAIR PALTIN: The first item on our agenda is PSLU-29, oh, sorry, I mean PSLU-8, District Boundary Amendment, Community Plan Amendment, and Change in Zoning for the Proposed Paia Courtyard Project at 120 Baldwin Avenue (Paia). And this item I had met with Member Molina, Mr. Spencer, and Director McLean. And they requested that this item be heard on the agenda. You know, they asked for it to be heard prior to the budget. And we went into budget and so they had to wait a few months because we had the pre-budget presentations. So, that's why we're having this special meeting today outside of the normally scheduled time. As you heard in the opening presentation this is an updated bill from the 2017. And so now it's A Bill for an Ordinance to Amend the Paia-Haiku Community Plan and Land Use Map from Public/Quasi-Public and Agriculture to Business/Commercial for Property Situated at Paia, Maui, Hawaii, Tax Map Key (2) 2-5-005:063 (POR). Also, A Bill for an Ordinance to Amend the State Land Use District Classification from Agricultural to Urban (Conditional Boundary Amendment) for Property Situated at Paia, Maui, Hawaii, Tax Map Key (2) 2-5-005:063 (POR). As well as A Bill for an Ordinance to Change Zoning from Interim District and Agricultural District to B-CT Country Town Business District (Conditional Zoning) for Properties Situated at Paia, Maui, Hawaii, Tax Map Key (2) 2-5-005:063 (POR). So, that's the updated request, it's a little different than the

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

original application. At this time I would like to ask Planning Director Michele McLean for any opening comments she would like to provide on this item.

MS. MCLEAN: Thank you, Chair. As Councilmember Molina and the applicant Mr. Spencer described, I did attend a number of meetings . . . a couple of the public meetings in Paia. And then meetings with them to talk about this project and also since I now serve on the MPO, which is relatively new, talking with Director of Transportation Mark Takamori and also Lauren Armstrong about the benefit of having that parking lot as a future bus turnaround, which was one of the tasks listed in the long-range transportation plan. So, those things sort of merged together at the same time and we met with the Mayor to see if there was County interest in acquiring the parking lot parcel. And there is, for public parking initially and then potentially at some point in the not too distant future for a bus turnaround. So, this seems like a win-win at this point. Auntie Mopsy was also at those meetings and is a very effective voice with the community and getting folks to come out and also conveying what the public sentiment is and she held up that community plan in one of those meetings and said we want to follow this and . . . so, that's what the proposal on the table is to do because the property right now is . . . actually it's split zoned, Interim and Agriculture. So, the portion in the back that will be staying . . . that isn't affected at all by these current bills would be staying community plan Ag, State Ag, and zoned County Ag. The portions that are zoned Interim are the ones that will follow the community plan to be zoned Business in the front, and then Public/Quasi-Public in the back for the public parking lot. The Department supports the revised plan and as a Paia resident I support the idea of having more parking. And it is . . . one of the testifiers asked if this is the gravel parking lot area and it is, so it's already used by the community for parking. So, having it improved and run by the County would be a bonus. Thank you, Chair.

CHAIR PALTIN: Thank you, Director McLean. I just got a message that Member Sugimura's computer went down. Members, do you mind taking a recess until Member Sugimura can join us again or did you want to not wait for her?

COUNCILMEMBER MOLINA: Madam Chair?

CHAIR PALTIN: Yes?

COUNCILMEMBER MOLINA: Did she give any indication how soon she could get her computer up?

CHAIR PALTIN: The message that I got is Ms. Milner is helping her over the phone and they're not sure when they can get her computer back up.

COUNCILMEMBER MOLINA: Oh, okay. Madam Chair, just my thoughts on this, maybe we can still proceed with just some line of questioning but then prior to decision making if she's still not up then maybe we can recess and then get her involved with the decision making itself. So, just my thoughts. Thank you.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Okay. Member Lee, did you . . . or Chair Lee, did you want to say something?

COUNCILMEMBER LEE: Yeah. I agree with Member Molina. But I do think she should be involved in the voting because . . . especially on the next item. Thank you.

CHAIR PALTIN: Okay. All right, thank you. I'll ask that if she can watch on *Akaku* so she's kept up to speed as to the proceedings that are going on and the discussions that we have. Okay, moving along. Mr. Spencer, I know you gave your presentation, did you have any opening comments for this . . . the updated application?

MR. SPENCER: Is my microphone on now?

CHAIR PALTIN: Yes, it is.

MR. SPENCER: Thank you. Yes, thank you for the opportunity. The only thing I would add is that . . . we met with the community on July 31, 2019. At which time Mopsy, Councilmember Molina, and Planning Director McLean were present and the plan that we presented at that time and that was accepted by the members of the community who participated in that process has not changed since that day. And so, I would just . . . that's all I wanted to say. The plan that we came up with and presented on July 31st is the same as is in the bill that's presented today. Thank you.

CHAIR PALTIN: Thank you, Mr. Spencer. And so, Yuki Lei is trying to join via tablet and there were a couple suggestions for her to try call in by phone, so that's the status update on that. Moving forward with discussion I'll take Member King, followed by Member Molina.

COUNCILMEMBER KING: Thank you, Chair. So, just a couple questions. One for Mr. Spencer, on the . . . in that meeting that you discussed was that well attended by the community? I mean do you have . . . do you know how many people attended that meeting?

MR. SPENCER: I believe there were 30 or so people that were present at the meeting. Some came in and out at different times but somewhere around 30 people.

COUNCILMEMBER KING: Okay. And you had pretty much general acceptance of the --

MR. SPENCER: It was . . .

COUNCILMEMBER KING: --proposals?

MR. SPENCER: There was no one present at the meeting at that time that did not agree with the plan as it was proposed.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER KING: Okay. And thank you for that. And then if I could ask Director McLean, the parking lot area, is that the . . . is that the one on this map that says area D?

MS. MCLEAN: No, I believe it's area B. B as in . . .

COUNCILMEMBER KING: B, okay. Is it that . . . is that whole area B?

MS. MCLEAN: The current parking lot is in some of area A and some of area B.

COUNCILMEMBER KING: Oh, okay.

MS. MCLEAN: It doesn't . . . it goes any deeper than that because its right on the . . . right in the front. I think Mr. Spencer wants to confirm or clarify that.

MR. SPENCER: The proposed parking area is all of area B.

COUNCILMEMBER KING: All of area B, okay. That's . . .

MR. SPENCER: All of area B which is just a hair under three acres is going to the County along with an easement along the . . . I believe whatever that back portion is, the five-acre portion. There's going to be an easement that runs around behind the post office to the mini bypass also granted to the County so that the bus can travel around and continue in a continuous loop.

COUNCILMEMBER KING: Okay. That looks like the easement goes across area C.

MR. SPENCER: That's right.

COUNCILMEMBER KING: Okay. And then the only other question I had for the Director is . . . because I was looking at one bill but we're looking at actually three separate bills that we're passing today . . . no two separate bills. And so, one of them has a district boundary amendment and that doesn't . . . that doesn't . . . that's in compliance with the community plan?

MS. MCLEAN: That's correct. The lines for area A and area B follow the community plan lines.

COUNCILMEMBER KING: Okay.

MS. MCLEAN: So, area A is currently community plan Business. So, that's proposed to be changed to B-CT Country Town Business zoning. Area B is currently Public/Quasi-Public in the community plan and would be zoned Public/Quasi-Public. And both of those areas are proposed to go to the State Urban district. Area C is Ag, Ag, Ag and will --

COUNCILMEMBER KING: Okay.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MS. MCLEAN: --remain all Ag.

COUNCILMEMBER KING: Okay. And you feel like that meeting you went to was representative of the community?

MS. MCLEAN: Ultimately --

COUNCILMEMBER KING: I was just . . .

MS. MCLEAN: --yes.

COUNCILMEMBER KING: Okay. I was just asking because, you know, Aunty Mopsy, just wasn't sure if everybody had been made aware of the changes, so. Thank you. Thanks for the input.

MS. MCLEAN: Right.

COUNCILMEMBER KING: Okay. Thank you, Chair.

CHAIR PALTIN: Thank you, Member King. I just wanted to recognize that I believe Member Sugimura has joined us via telephone. Is that correct, Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, thank you. I'm locked out of my computer, so. Thank you. I'm here.

CHAIR PALTIN: Okay. All right. Just I'll check in with you every so once in a while, if you have any questions. I believe Member Molina was up next after Member King.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. And again thank you, Mr. Spencer and Director McLean. I support your revised proposal. Now, despite the fact that the incorrect bills have been posted, I'm hoping that we can possibly amend these bills to reflect the revised proposal that you've offered, Mr. Spencer. So, you know, Madam Chair, if anything I'd like to ask Corporation Counsel can we do this today because the bills as noticed to the public reflect Mr. Spencer's original proposal which was to do . . . build some structures on the site. So, can we act on this and revise it or do we need to possibly repost the bills . . . the newer bills with Mr. Spencer's intent?

MR. HOPPER: I think you have a variety of options. But if you wanted to do floor amendments to the current bills to make those changes I think that you could. I mean you would have to make the changes on the floor and make the public aware of what changes you are making. And that of course would be a recommendation to the . . . to the full Council. So, there would be another posting and a meeting at full Council. Another option is as you said, defer action, post the bills with the changes in them, and move forward from there after posting those bills. So, I think that you could do either one. It's not uncommon for the Council to make, you know,

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

amendments to Change in Zoning and . . . and district boundary amendment bills after they're posted. But I think that the Council could have either of those options.

COUNCILMEMBER MOLINA: Thank you very much, Mr. Hopper. Thank you, Madam Chair.

CHAIR PALTIN: Sure thing. Member Lee? You had a question, Member Lee?

COUNCILMEMBER LEE: Yes. Yes, I did. But I can wait until after Mr. Sinenci.

CHAIR PALTIN: Oh.

COUNCILMEMBER LEE: I think you called on him first. Okay.

CHAIR PALTIN: Okay. Vice-Chair Sinenci, did you have . . . *(inaudible)* . . .

VICE-CHAIR SINENCI: Thank you, Chair Lee. Yeah, I just had a quick question for Mr. Spencer. So, in the new revised plan, I'm just checking, do you still have . . . I've got the one that says 6 two-story mixed use and 56 independent senior living apartments. Has that changed in the new revised plan?

MR. SPENCER: The answer is yes. The 56 senior housing units is removed because the . . . it was all based on opposition to changing the community plan designation and the subsequent zoning and State land use to go along with that. So, that back portion is community planned Ag and the community spoke loud and clear and said we do not want that community plan designation changed and matched up with zoning and State land use. The others . . . because now we're proposing to give the parking lot, the other proposed development is off the table because it's affected by the middle section being given away. And at some point we'll come back based on what the community is interested in, we would still have to go through a Planning Commission review, public review on that, and Urban Design to be able to do any development on that front one acre.

VICE-CHAIR SINENCI: Okay. So . . .

MR. SPENCER: So, everything's gone at this point. And never to come back is anything on that. At this point because it's Ag and is going to remain Ag there will be . . . there is no proposed development on it.

VICE-CHAIR SINENCI: Do you still have the mix use retail and office buildings with upper story residential units?

MR. SPENCER: There is not . . . that has been removed as well. And that's what I told the community on July 31st that at some point in the future we would work with them and the Planning Commission to . . . to find . . . to fill whatever the needs were of the community at that time.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

VICE-CHAIR SINENCI: Okay. Thank you, Mr. Spencer. And then for Director McLean, I'm in receipt of the map with all the different areas and so I'm just trying to . . . clarification, where does the Paia mini bypass . . . does it go around the building, there's an existing easement. Or does it go around the property or does it go through the property?

MS. MCLEAN: The bypass is behind the property and comes way above it. Above the property, mauka of the property is the Paia Post Office and the bypass comes out above that. So, the property does abut the bypass in the back on area C, the ag portion, and then it continues mauka from the property above the Post Office.

VICE-CHAIR SINENCI: Oh, okay. So, would there be any access from the bypass to the property or would it be on Baldwin Avenue?

MS. MCLEAN: The . . . the property would be accessed by Baldwin Avenue, the only access off the bypass as Mr. Spencer described would be an easement for the Maui Bus to make the turnaround easier. But other traffic, on or off the bypass would not be allowed other than the bus coming off.

VICE-CHAIR SINENCI: Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: Chair Lee?

COUNCILMEMBER LEE: Thank you, Madam Chair. Hi, Henry, it's been awhile. Did I hear you mention something about the one acre abutting Kaunoa earlier? The one acre we negotiated.

MR. SPENCER: The . . .

COUNCILMEMBER LEE: No.

MR. SPENCER: No, it's a coincidence that the commercial portion along Baldwin is also an acre. No, the County . . . I did donate that one acre contiguous to the Kaunoa Senior Center several years back and they are using it at times for parking and such. But that's a separate . . . totally separate thing.

COUNCILMEMBER LEE: Good. I'm glad to hear that. Thanks, and good to see you, Henry.

MR. SPENCER: Yeah, nice to see you, Alice.

CHAIR PALTIN: Let me just check in with Member Sugimura. Did you have any questions?

COUNCILMEMBER SUGIMURA: Yes, Tamara, if I could. Thank you. I'm listening to this. So, Mr. Spencer, excuse me if I missed this. But your area one of your map, which is that one acre abutting Baldwin Avenue, you have no plans for what it will be currently?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. SPENCER: That is correct.

COUNCILMEMBER SUGIMURA: Okay. This is significantly lower in terms of development and very generous of you to donate that land. As you know parking is a problem in Paia Town, so I appreciate that and for keeping the open space too, so. Chair, I'm done. Thank you.

CHAIR PALTIN: Oh, okay. And I believe . . . did everyone have a chance to ask questions that wanted to? Oh, Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. If I could again ask Corp. Counsel a question. On April 30th, the revised bills that reflects Mr. Spencer's proposal was sent to committee. Could we act on those today in place of the old bills that's currently posted on the agenda?

MR. HOPPER: I think you would need to do those as floor amendments and basically say we're amending the bills that were posted to reflect the differences that are in the revised bills. I think the most significant . . . I mean for one thing there's no community plan amendment anymore. So, that's a major change. The other issue is that the Change in Zoning--I'm bringing up the bill now--the Change in Zoning . . . the Change in Zoning in the first bill in the Planning Department's letter that was sent, originally it was going to change the zoning from . . . from Interim I believe to Business Country Town. Instead the change is going to be from Interim to Public/Quasi-Public. So, that's . . . those are probably among the most significant changes. But I think you would do them . . . as I understand it, and you know, maybe we can talk to OCS about this because they generally work more on a day-to-day basis with postings and making these changes. But my understanding was that the option of the Council would be to make amendments to the posted bills to reflect the changes in the bills that were sent, they weren't posted. But, you know, the Council frequently makes changes to bills that aren't necessarily, you know, contemplated at the time. You guys come up with amendments and I think as long as they are within the scope of the, you know, of the same proposal that you're okay with that. We did have a discussion about, you know, the most significant part is probably the Change in Zoning was originally going to be to Business Country Town. Now it's going to be to . . . now it's going to be to Public/Quasi-Public, which is actually as I understand it consistent with the community plan. That wasn't reviewed by the Planning Commission, so they haven't seen that zoning change. But in reviewing the issue, seeing that it was the same classification as the community plan and a somewhat lesser classification than Business Country Town, I was comfortable with approving those ordinances as to form and legality. The only other thing is that there are no conditions on these proposed . . . on the Change in Zoning. So, the issue about the donation it's not a condition of zoning or anywhere stated in the proposals as I understand it. So, you know, I'm not sure how that's going to be enforced or reflected, but that's not something that's part of the proposal. So, again I think your options are to defer and post the bills with the differences or make floor amendments, and I don't know under Robert's Rules of Order or what other method would be best. I don't know if you would substitute the bills for the new bills or amend them such that they read

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

consistent with the new bills. But I think that's something maybe with OCS we can discuss about the precise motion. But I think you can do . . . you can do it, and I would just be clear what changes you're making. And again, if this does pass out it's going to be posted again at full Council for full Council's review and action.

COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Hopper. So, Madam Chair, just a question for you then. Would it be possible if this Committee decided to take action that could Committee Staff come up with some suggested amendments that reflect Mr. Spencer's intent with these bills that are posted? Is that something for consideration? I mean and I guess the other option too is just simply defer and take up the revised bills at another time, but for today's sake can that be done if your Committee Staff could come up with suggested amendments to these bills that reflect Mr. Spencer's intent?

CHAIR PALTIN: By Committee Staff you mean the Legislative Analysts, or . . .

COUNCILMEMBER MOLINA: Correct. Yeah.

CHAIR PALTIN: I think they could if it's not being passed today, we could work on something. Did you want to hear from the OCS attorneys as well?

COUNCILMEMBER MOLINA: Sure.

CHAIR PALTIN: Okay. Mr. Raatz or Mr. Mitchell, if you're on the line . . . I'm not sure who was tracking this item, but any comment to Member Molina's first question or concurrence with Mr. Hopper?

MR. MITCHELL: Chair Paltin?

CHAIR PALTIN: Mr. Mitchell?

MR. MITCHELL: We agree with Mr. Hopper's analysis. There's also another option in response to Member Molina's question. And that is the Administration could itemize with particularity the changes from the old to the new, so that's . . . that could be incorporated into a motion. And since they probably have that information available to them a little quicker than we do, that could expedite things.

CHAIR PALTIN: Okay. So, that's another option of just itemizing the changes from the 2017 proposal to the 2020 proposal?

MR. MITCHELL: Correct. And that would help with the formation of the motion to amend the old proposal so it includes the new proposal's changes.

CHAIR PALTIN: Understood. Thank you.

COUNCILMEMBER KING: Chair?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Member Molina, any further questions on that response from the OCS attorneys?

COUNCILMEMBER MOLINA: No, no, that's fine. And I guess . . . your call, Chair, whichever you think is the best way. But if . . . you know, my preference would be if we can expedite it out, with that option for floor amendments if that's possible. If you're comfortable with that I'm fine with that, but again I'll leave it to you as the Chair of the Committee. Thank you.

CHAIR PALTIN: Okay. Member King, did you have a question?

COUNCILMEMBER KING: I do, Chair. Thank you, Corp. Counsel, and our own OCS legal staff. But one concern I have and I like the proposed changes to the bills, but in the past when we actually had to change titles of ordinances, that's been a problem. So, I just wanted to make sure that since we're changing . . . we're going to these other bills that aren't on the agenda, it looks like we would still need to change the titles. Is that an issue, Mr. Hopper and Mr. Mitchell?

MR. HOPPER: You bring up a good point because the most specific change . . . one of the bills isn't happening and one of the changes is actually going to be . . . have to be made to . . . let's see, I believe the posted bill for the Change in Zoning would have said to Business Country Town, because that was originally the proposal. So I mean those are a good points, and I mean if you're going to . . . and in addition in order to go through all of the things that are different from the 2017 bill may take some time rather than just reposting those bills. So, I mean you do bring up a good point. Again, I think that, you know, you've in the past frequently made amendments to bills after they've been posted as long as it's within the same scope of what you're doing, it affects the same property. And in this case you're changing instead of to B-CT you're changing to Public/Quasi-Public. So, again I think you could make that change, but if there's concern over the public notice to that, then I would advise reposting. I think it's legal --

COUNCILMEMBER KING: Yeah. So I . . .

MR. HOPPER: --to make the changes . . .

COUNCILMEMBER KING: Okay. So if it's legal that's fine. But I know in the past we've been told by Corp. Counsel that we can't take the same bill and make amendments to it because we can't change the title. So, that was my main concern, is that we are now looking at changing the titles of these bills.

MR. HOPPER: Well, I mean . . . listen, we can . . . sorry, go ahead.

CHAIR PALTIN: Oh, no, finish . . .

COUNCILMEMBER KING: I thought was . . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. HOPPER: Yeah, again you bring up a good point. And, you know, I'm not sure exactly what the circumstances was . . . were in the past with that issue. If we want to have a conservative approach of this, then I like it's probably a good idea to defer and repost. Because, you know, generally the changes you would make would be to things like conditions of zoning to, you know, maybe delete things out. You are talking about changing the title of the bill. But I don't think it's necessarily that strict where you can make no changes that will affect the title to the bill ever as long as you're within the same scope of the ordinance.

COUNCILMEMBER KING: Okay.

MR. HOPPER: But again --

COUNCILMEMBER KING: That's fine. I just wanted to . . .

MR. HOPPER: --you bring up a very good point.

COUNCILMEMBER KING: Yeah. I just wanted to make sure that that . . . because that that would be the case in the future to. Because we've been kind of . . . you know, had to defer other issues because of bill titles, so that was my only concern.

MR. HOPPER: And again, I'm saying I don't know exactly what happened in that other case. Again, we had a long discussion with the Planning Department on this issue about the fact that the Planning Commission did not review the change to Public/Quasi-Public versus Business Country Town. And I did want to make it clear that this doesn't give carte blanche I think after review of the Planning Commission to make any changes that you would want without sending it back to the Commission. I was comfortable in this particular case because the community plan was already Public/Quasi-Public and because the . . . that type of use for this project was already discussed at the Commission that it was okay. But, you know, going out of Commission and then having the Council say, you know, completely changing to a different zoning category that would have, you know, substantially higher impacts may not be possible in other cases. But I was okay with that in this case. But, you know, you do bring up a good point with the title issue because you would need to change, you know, the community plan bill would be . . . would not be acted upon. I don't think that's a problem. The Change in Zoning and community plan amendment would be for a smaller area, so that wouldn't result in changes to the title of the bill. The senior living apartments are not part of the proposal, so that's also not there. And so, you would be making a substantial amount of changes to . . . well, in actuality the title itself to the agenda item does say . . . does not actually specify the Change in Zoning, like the categories. So, you've got the description of what was posted.

COUNCILMEMBER KING: So, we can work within the existed titles and make amendments.

MR. HOPPER: Yeah. The agenda item is I think broad enough to include it.

COUNCILMEMBER KING: Okay.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. HOPPER: Yeah, the agenda item just gives an address and the fact that there's changes. You wouldn't be doing the community plan. There would be an amendment to the description, but I don't think that's as much of a problem.

COUNCILMEMBER KING: Okay.

MR. HOPPER: The . . . and then the . . .

COUNCILMEMBER KING: I'm fine with that. I just wanted to make sure that we're being consistent, you know, we're applying with past practices.

MR. HOPPER: Yeah. And again, I can't say that in another, yeah, and I can't say on another case you wouldn't have a potential issue with making a change. I just want to make that clear that there could be potential issues. In this case I think I'm okay with that. It is true one of the posted . . . the posted bills do discuss the changes in other items. The agenda item itself though is relatively broad in this situation.

COUNCILMEMBER KING: Okay. Well, I . . . so I just kind of, you know, concur with, Member Molina, and leave it up to you, Chair, how you want to proceed and if you want to try to make those changes or defer it and work on it some more. Thank you.

CHAIR PALTIN: I'd just like to hear Mr. Raatz or Mr. Mitchell, weigh in on the change in title and what they think about there being significant changes and whether or not it does need to return to the Planning Commission because of the changes. Either, Mr. Raatz or Mr. Mitchell.

MR. MITCHELL: Chair, this is --

MR. RAATZ: Thank you.

MR. MITCHELL: --Richard Mitchell. I'll defer to, David, on this one.

CHAIR PALTIN: Okay. Thank you. Mr. Raatz?

MR. RAATZ: Thank you, Chair. David Raatz of the Office of Counsel Services. And there are two distinct issues, the Sunshine Law issue on the one hand and the Charter issue about Planning Commission review on the other hand. Sunshine Law, we do note that the Governor has suspended Chapter 92 of the Hawaii Revised Statutes. So . . . and that's where the Sunshine Law is housed, so technically you're not restricted by the Sunshine Law right now. But you've expressed to staff that you want to do your best in good faith to comply with Sunshine Law requirements as if they were still operational. So, with that understanding there is an OIP opinion from several years ago that says, for a legislative body to act on bills or resolutions you need to have the bill or resolution title listed on the agenda. So, that's why our meeting agendas when we foresee action always include titles. The opinion doesn't say that you're prohibited from amending a title, you're not stuck with a title forever. As Mr. Hopper said

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

it's, you know, a more conservative approach probably would be to repost with the titles of the new bills, but we can't say that the Sunshine Law would mandate you to do that. On the question of Maui Planning Commission review the Charter does say, before the Council can act on any land use we need to give the applicable Planning Commission the opportunity to provide guidance to you on that land use ordinance. So, we did get the Maui Planning Commission's comments on the originally submitted bill in 2017. The bills that were submitted last week of course have not been reviewed and we've looked at prior Corp. Counsel opinions on the question of when you're amending a land use ordinance that's already been reviewed when do you have to send it back for Planning Commission review. And the question is whether the new bills are so fundamentally different from the original bills as to transform them into new proposals. So, that's a standard, is whether there's fundamental differences or not. And that does leave some room for a judgment call. We don't have a lot case law on that question. So, but I . . . we would request if the body is going to move forward on passing the . . . *(inaudible)* . . . today that as the Council's land use advisor and the Corporation Counsel as the legal advisor to the Maui Planning Commission, to reiterate for the record I think what we've been hearing is that they don't believe these new bills are fundamentally different from the old bills and therefore Planning Commission review is not triggered. Thank you, Chair.

CHAIR PALTIN: Thank you. So, just to clarify, you're saying that if the bills are fundamentally different they go back to the Planning Commission?

MR. RAATZ: That's correct, Chair. That's what we've seen in prior Corp. Counsel opinions over the years.

CHAIR PALTIN: Director McLean, I had a question, if it did need to go back to Planning Commission review how soon do you think it could get through that? Do you have a full agenda?

MS. MCLEAN: We are a little bit backlogged because we didn't have any decision making meetings for the month of April and the set meeting in March. So, we missed three meetings. So, we are a little bit backlogged, but it's not an item that we need to send for agency review or anything like that. So, in that way, you know, it's not as if it's a new application. But it would be a couple of months I would think. If I could add, generally this is scaled back from what the Commission saw. The notable difference is the parking lot no longer being zoned B-CT, it would be zoned Public/Quasi-Public instead. But the idea for that area was always a parking lot. So, really it's scaled back from what the Commission saw, there isn't anything new being added, there are only things being taken away. To me that doesn't necessitate Commission review again because they have reviewed everything that you're looking at with the exception of the parking are being zoned Public/Quasi-Public rather than B-CT, for what that's worth. Thank you, Chair.

CHAIR PALTIN: Thank you, Director. So, I'd just like to do a temperature check among the Members. What is your feeling as to whether the changes made in the original application and the updated application, do Members feel that we would like the

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

Planning Commission to review the updated application or do Members feel that it's similar enough that it doesn't need further Planning Commission review? Might just . . . okay, Member Molina?

COUNCILMEMBER MOLINA: Yeah, Madam Chair, I'm okay with Director McLean's comments because when they reviewed the original bills there were things being added whereas now the new bills, it's again taking things away. So, personally I don't think it would require another review by the Planning Commission, but again, you know, that's just my opinion. So, and of course we know it's still going to be a while before the Commission gets to review. As Director McLean stated they are backlogged because of COVID-19 all boards and commissions not meeting. So, personally I'm okay with it not having to go back to the Planning Commission. Thank you.

CHAIR PALTIN: Okay. Member Lee?

COUNCILMEMBER LEE: Madam Chair, I agree with Member Molina. I think as the Director said, the project is scaled back, impacts are less. And the general purpose of the property is in compliance with the community plan. So, under those circumstances I don't believe there's a need for review again by the Planning Commissions. Thank you.

CHAIR PALTIN: Thank you. Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. Yeah, I concur with everybody. I don't think . . . it is scaled back. I just had a . . . so he said that they're taking away all the buildings, is it just a parking lot right now or there's still some buildings on there?

CHAIR PALTIN: Your question is for Mr. Spencer?

VICE-CHAIR SINENCI: Sure.

MR. SPENCER: There are no buildings.

VICE-CHAIR SINENCI: Just a parking lot.

MR. SPENCER: Correct.

VICE-CHAIR SINENCI: Okay. Thank you.

CHAIR PALTIN: Thank you. Member King?

COUNCILMEMBER KING: Thank you, Chair. I just had a quick question for Mr. Spencer. Is there an urgency to get this passed that you have deadlines for?

MR. SPENCER: Specifically none. It's just a matter of wanting to take this step so that we can start working with the Administration on the parking lot and with the community on what we might do and need in the future on the parcel along Baldwin Avenue. But

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

given that retail space is in . . . was in less demand at the end of 2019 and given the COVID-19 circumstances that we now live with and that we can all pretty much be guaranteed that there . . . our reality is not going to be the same as it was going in terms of retail and commercial. Such that whatever we end up doing is going to take a while to . . . to flesh out and it could be going back to something we had discussed in the past with medical services and other services. And we've . . . as we've discussed amongst ourselves the demand for retail is down. So, we just want to get on with the next step in the process and start dealing with the planning and the building of the parking lot and the planning of whatever we do end up doing. We realize again given the circumstances that it's going to take a fair amount of time to get there.

COUNCILMEMBER KING: Okay. Thank you. Thank you for that assessment. So, Chair, I'm okay with whatever your recommendations are. I think . . . I don't see an urgency but I also realize that, you know, this has been going on for quite some time since last term. So, you know, I just await your recommendation.

CHAIR PALTIN: Member Sugimura, did you have a feeling on whether it should go back to the Planning Commission for review or that their initial review was substantial enough?

COUNCILMEMBER SUGIMURA: Thank you, Chair. Yeah, so I agree with Mr. Molina and Chair Lee as from what I heard. And as the Director said this is a scaled back project, you know. And that I think they've done in general a lot of community input. They were before us I think our last term, talking about this project and trying to move it forward when it was a larger project. And I would like to see this move forward as Mr. Molina said. Thank you.

CHAIR PALTIN: Thank you, Member Sugimura. I had one question for Mr. Spencer. You know, in moving forward I think the Planning Commission when they originally heard this had put a number of conditions on the project based on the senior housing component. And now that that has been removed the conditions are then removed, and so my question is would you be open to a condition on the Change of Zoning that . . . the parking lot donation is a condition of the Change in Zoning?

MR. SPENCER: Yes, I am okay with that. And obviously the devil is in the details in trying to figure that out. But we have in good faith been dealing with the Administration on getting this into the County's hands and figuring out how to do the bus loop, working with the Director of Transportation, Planning Director. And so, we intend . . . it is our intent to do that and so I don't know how that's properly worded but we have no problem if that's a condition as long as it's worded in a way that allows us to get there. So, Michele might have . . . I think Michele might have something in addition to say to that, hopefully.

CHAIR PALTIN: Director McLean, did you have anything to add on to that?

MS. MCLEAN: No. I think we'd want to get Mike Hopper's input just to make sure it's a . . . that the rational nexus test is met. I could be something like within a certain

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

amount of time after the approval of the Change in Zoning, maybe six months or a year, probably six months that the applicant shall propose a memorandum of agreement to the Administration for the Administration to acquire the parking lot parcel area B, and then let the process run its course from there. Because we've talked about a couple of different options for that, whether the applicant actually constructs the parking lot and then the County purchases it for the construction costs or whether it's simply donated to the County at no cost as raw undeveloped land for the County to then develop the parking lot. So, something like a MOA has to be submitted and then it will allow that discussion to transpire.

CHAIR PALTIN: Okay. I'll take Mr. Spencer followed by Mr. Hopper.

MR. SPENCER: And those are the details that I was referring to. And we have absolutely no problem of agreeing to enter into a memorandum in earnest regarding the transfer of the piece to the County.

CHAIR PALTIN: So, your understanding of that transfer would be . . . you would donate the land and then you would construct the parking area at cost?

MR. SPENCER: We . . . that's one of the options that we're discussing and we're not opposed to that. And it really . . . we can't . . . we can't force the County to agree to that. It's based on conversations and discussions as to what is in the best interest of the County and how best to get this done in a timely fashion. Those are the details that we're willing to discuss and the range of options that we're open to are run from just getting the land into the hands of the County to being involved in the planning and construction of the parking lot. And transferring those costs . . . only the costs for the improvements to the County and the land no matter what situation we're under, the land will go to the County for free. Does that make sense?

CHAIR PALTIN: Yes, it does to me. Mr. Hopper or Mr. Mitchell, did you want to comment on that as a condition of the zoning?

MR. HOPPER: My point earlier was that I did not see that other than the representation being made, I didn't see the fact that there was a donation reflected really anywhere in the documentation, so I just wanted the Council to be aware of that. If you did want to draft a condition, we can look at the language for it. If there's still something to be determined you may not want to be, you know, very specific as to those items if it's possible to leave it open while still requiring the donation. And then I think, you know, the . . . I presume the purpose would be to mitigate the parking impacts that, you know, a new development would have, particularly the B-CT area. But also I think it has been represented as part of the proposal by the applicant in order to, you know, to look at that as the full proposal. If it's . . . that sounds like to me what is happening, is that the applicant revised the proposal and said we will also dedicate land at this point to the County. Now as far as the specifics I have not been privy to the discussions between the landowner and the Department so I'm not sure exactly what the terms are or what's being negotiated at this point, but would be happy to review any sort of condition if you wanted to, you know, come up with one.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Thank you. Mr. Mitchell or Mr. Raatz, is that your understanding as well?

MR. MITCHELL: Chair Paltin, this is Richard Mitchell and that also is our understanding and I don't have any additional comment to Mr. Hopper's comments.

CHAIR PALTIN: Okay. Thank you so much. So, given everybody's input my recommendation would be . . . I think that we don't need to go back to the Planning Commission because it's kind of a downgrading. And before they make use of their area A, I think they would still need to go back to the Planning Commission at that time and they can get additional conditions if necessary put on at that time. As to the other issue with the titles and the 2017 bills, I think I would like to rework that and put it on the May 18th agenda if there's no objections. And we can come up with the wording for the condition for the area B and run it through Corp. Counsel prior to the meeting. So, if everybody doesn't have any further questions or discussions on this matter that would be my recommendation to defer for this week, post on the next meeting agenda and just be ready to take action after hearing the area B condition, which will hopefully be signed off by Corp. Counsel. Any objections?

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: KRF)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: So, my recommendation I will defer this item and we'll put it on the May 18th agenda. All right. Thank you, Mr. Spencer.

MR. SPENCER: Thank you very much and I'm fine with that as well. Thank you.

CHAIR PALTIN: You're available on May 18th as well?

MR. SPENCER: I believe I will be on island and ready, yes.

CHAIR PALTIN: Thank you. Thank you so much.

PSLU-29 ZONING STANDARDS FOR CANOPY TOUR AND ZIPLINE OPERATIONS IN THE AGRICULTURAL DISTRICT (CC 19-94)

CHAIR PALTIN: Okay. For the next item we have PSLU-29, Zoning Standards for Canopy Tour and Zipline Operations in the Agricultural District. And this item was requested specifically by Member Sugimura to be on the agenda today. And let's see, Director McLean, do you have any opening comments on this item?

MS. MCLEAN: Thank you, Chair. Yes, we had worked with Councilmember Sugimura, gosh it's going back almost a year now when the bill was first drafted, and we made some

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

comments on that, it appears they were incorporated. We did also review Councilmember Molina's bill, which has the same content but I think structurally it's a little bit cleaner. We have a couple comments to make as we get into the details of it. But opening remarks, we support the idea. We had done a similar thing in our agricultural rules that were adopted at the end of 2018, this goes a step further. And we're ready to take this to the Commission as soon as the Council passes it out. Thank you, Chair.

CHAIR PALTIN: Thank you, Director McLean. Member Molina, did you want to go through the amendments that you had proposed for the . . .

COUNCILMEMBER MOLINA: Yeah, Madam Chair. But if not if you'd like to give . . . since Member Sugimura's the author of the bill if you want to give her opening comments and then I can follow up with my proposals if that's your pleasure.

CHAIR PALTIN: Okay. Member Sugimura, did you have any opening comments?

COUNCILMEMBER SUGIMURA: Yeah. Actually, I wanted to ask the Department a question if I could?

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: Oh, okay. So, Director, based upon the testimony we heard today and we can . . . I can tell or we heard that there were businesses that really started this on Maui 18 years ago as well as some of the more recent ones. So, do you have any kind of timeline that you can give us for the zipline businesses? How long they've been in operation or any data that your Department could give us?

MS. MCLEAN: Yeah, thank you for that question. We were researching that earlier today when we heard the testimony and wanting to find out when some of the other ziplines and operation got approvals from the department. And for the most part those approval letters were not permits, they were letting the operator know that the Department found the operation to be an accessory agricultural use. So, some of those happened as far back as 2006, others were in 2010. And so, after around 2010 is when some of the newer ones have come in that have not received approvals from the County. They just operated on their own and we have enforced against those, they have appealed the enforcement action. So, those are pending with our Board of Variances and Appeals and are decked up waiting for the Northshore Zipline to be heard before they get heard. So, there's sort of a cutoff around 2010 for older operations that got written approval from the Department and then the more recent ones that really haven't gotten any sort of written approval.

COUNCILMEMBER SUGIMURA: Thank you. So, would it be fair to amend this to basically say that the businesses that got . . . are legal and have gone through the permitting process with the Planning Department or the County of Maui, then could be grandfathered and not have to go through this conditional use permit process?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MS. MCLEAN: I think it would be helpful to get Corp. Counsel's input, but I think that could be done relating to Section 6.

COUNCILMEMBER SUGIMURA: Right.

MS. MCLEAN: The ones that got approvals through 2010 perhaps could be left out of Section 6, just the ones from 2011 forward might be subject to that. But I... we need to get Corp. Counsel's thoughts on that.

COUNCILMEMBER SUGIMURA: Oh, okay. So, Mr. Hopper, do you have any thoughts on that?

MR. HOPPER: Well, this bill we haven't approved yet. It hasn't gone to the Commissions yet, so it's sort of in the preliminary stage and we haven't gone through the whole thing. In general, how you sort of phrased things is the default I think in the County Code. Regardless of when you started operating, if a use is allowed, is currently permitted... *(inaudible)*... a law into place that says use is not allowed. There's a provision in the Code that deals with nonconforming uses, and basically let's that use continue unless it's ceased for a period of 12 months... 12 consecutive months or certain other requirements. That's generally the default, so if you wanted to just say, if businesses are lawful at the time... lawfully conducting zipline operations at the time of the ordinance and then they wouldn't have to get a conditional permit, you could specify that. Sounds like what you may be talking about is saying that businesses and operation lawfully for more than... a certain period of time would not be affected by this ordinance. And I don't know if we've done something like that before, it may be possible, but I don't know what the basis is treating someone who's operated for ten years versus, you know, one year, assuming that they are lawfully allowed to operate. That's again an important assumption. And then there's the other issue is are there lawful operations that you want to amortize out is the wording there. Are there lawful operations that you think over time should be phased out. I think there's a basis to do that in HRS, it may be difficult and may involve legal claims to have someone cease a business that they're lawfully allowed to do, but again that's another option. Generally though the Council adopts laws like this to deal with uses that haven't started yet or certainly those that are not legally permitted. So, that's normally what these laws would affect. So, it depends on what you want to do, you have a variety of options but in general, yes, you can say those that are legally operating as the effective date of the ordinance wouldn't have to get a conditional permit. That's an option.

CHAIR PALTIN: Mr. Hopper, can I clarify your answer to that? It seems like Director McLean said they don't have permits they just have written approval. Is that something that would also mean legal authorization --

MR. HOPPER: I think...

CHAIR PALTIN: --as opposed to...

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

MR. HOPPER: Yeah, that may . . . would need to be clarified in the ordinance. If you're talking . . . it sounds like there are some of these that, you know, it's easy to track like short-term rental homes if you've got a permit for something, that's one thing. But there are cases . . . it sounds like here where there's been a determination by the Department that you didn't need a permit for certain uses and that they were allowed as a matter of right. And I think that if somebody had that notification then, you know, that would normally be something that would be considered a nonconforming use. I think the definition talks about it basically being, you know, permitted under the law. So, whether you needed a permit to get it or whether you just, you know, you operated . . . you operated and the use was allowed without a permit, you would be considered, you know, a legal nonconforming use in that case. So, normally those would be considered, you know, those that would be grandfathered in, but again you would probably want to specify that in the ordinance. But there's a definition in Title 19 of nonconforming use and those are generally uses that are lawful before they become not permitted. And that's regardless of whether they needed a permit or were able to operate without a permit.

CHAIR PALTIN: Okay. Thank you for that clarification. Member King, did you have a question on Mike Hopper's answer?

COUNCILMEMBER KING: Yes, I did. Thank you, Chair. So, under the definition that Director McLean just gave us as far as approval because we're not talking about permits, we're talking about approval. Then the one that . . . the zipline that we've been getting all the testimony on would be considered legal and approved because they . . . because the Planning Department approved it?

MR. HOPPER: Well, right now my understanding is that that was done by a settlement agreement that basically said, and Director McLean can, you know, discuss this more. It basically said if you do certain things, operate in a certain way you're an allowed use. And a couple things have happened with that in particular I think. One is that has been appealed to the Board of Variances and Appeals and they along with potentially a court can . . . will determine if the use is lawful or not. The . . . and so that's an issue. Another issue is I think there may be issues with actually complying with the terms of that agreement. Again, there's others in my office that are representing the County in those matters, they're particular litigated matters and would want to get more details from them on where they're at. But that's my general understanding is that there's some discussion and debate over whether or not the zipline use is an allowed use under the Code. And even if that current zipline is in compliance with the terms that the Department said it would . . . that would be acceptable for it to operate as a permissible use. So, those are two outstanding issues with that specific one. But in --

COUNCILMEMBER KING: Okay.

MR. HOPPER: --general, yes. You would need to have established that your use is lawful and see the tough thing with the ziplines I think is that the specific facts of each one is important. Are you actually doing something that's accessory to agricultural uses or

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

not? Are you doing something that's accessory to a historical use or is the zipline the main use on the property? And so, I think that's where, you know, this . . . a type of an ordinance like this to clarify this is very helpful. But to date I think that's been an ongoing issue.

COUNCILMEMBER KING: Oh, okay. So, and in this particular legislation that we're looking at, the Corp. Counsel has not signed off on yet. Is that what you said earlier?

MR. HOPPER: Well, it hasn't gone to the Commissions yet. So, generally we would not . . . I mean it wasn't sent to us for review. But in general this is a resolution that's going to send them to the Planning Commissions. They may have additional comments, the Planning Department may have additional comments. And we . . . our review as to actual signoff is generally going to happen after the Commissions are done. But I believe before the Committee takes a look at it.

COUNCILMEMBER KING: Okay.

MR. HOPPER: But we can look at and see if we see outstanding issues now. But our formal signoff happens after Commission review.

COUNCILMEMBER KING: Oh, okay. So we . . . this one we would be required to send it to Planning Commission?

MR. HOPPER: Yeah. In fact on your agenda that's what the resolution is.

COUNCILMEMBER KING: Right.

MR. HOPPER: It's to send it to the Commissions because they haven't seen it yet as I understand it.

COUNCILMEMBER KING: Right. Okay. All right, thank you. Thank you, Chair.

MR. HOPPER: Yeah, again you're not passing out this ordinance to the full Council today, you would be acting to send it to Commission for their . . . to begin their review. In fact it would go to all three Planning Commissions.

CHAIR PALTIN: Member Sinenci, did you have a clarifying question for Mr. Hopper?

VICE-CHAIR SINENCI: Yeah, thank you, Chair. So, just . . . Mr. Hopper, so are ziplines allowed on Agriculturally zoned properties? Is that one of the permissible activities on Ag?

MR. HOPPER: Right now, and I think I'll let Director McLean go into the details on this because I'm sure the Department's looked at this. But it's not listed as a permitted use. But there are certain, I think, accessory uses that talk about not specifically ziplines, but similar activities that I think can be construed to allow ziplines. So, that's why I think clarifying this with the definition is important. But to go through

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

the history of how the Planning Department has looked at this, I think is important. Because though ziplines aren't specifically listed there's some general categories of I believe accessory uses that are . . . that are listed in the Code that may allow for zipline uses in specific cases.

VICE-CHAIR SINENCI: Okay. And then could the Commission also consider looking at a cap on ziplines in the County?

MR. HOPPER: I mean I imagine the Commission can make whatever comments it would like. If they had comments, for example, of saying cap this or if they wanted to, I don't know, say they should get a special use permit from the Commission instead of a conditional permit or want some other type of criteria to apply. I think that's the purpose of sending it to them for comments. So, I mean I do think it's unusual to have a conditional permit with this type of criteria, I think in general conditional permits are reviewed by Council and are sort of . . . give the Council some discretion there. We've seen conditions like this more commonly in special permits, would be one of my reviews . . . special use permits that the Commission would review. You know, because you have a criteria here that says you can grant a conditional permit but only if X, Y, and Z. And I don't know if there's a lot of other conditional permits that are granted like that because the Council grants those and usually they're sort of free to put whatever conditions they want and allow things in different circumstances. So, that's a bit unusual as part of the ordinance, but sorry, your question was if the Commission can make recommendations. Yes, they can make recommendations on really anything that's pertinent to the proposal.

VICE-CHAIR SINENCI: Thank you, Mr. Hopper. Thank you, Chair.

CHAIR PALTIN: Thank you. Okay, Member Molina, did you want to go through your amendment at this time?

COUNCILMEMBER MOLINA: Sure. Thank you very much, Madam Chair. And, Members, thank you for allowing me to propose my tweaks to this bill and I thank Member Sugimura. Again, the tweaks still protects the intent of the bill, but basically would strengthen . . . more clarity to the bill and close any possible loopholes. So, if the Members would like to follow along starting with Section 19.04.040 of Definitions. I'm recommending removal of the definition of amusement park and carnival. Both of these definitions are not mentioned in the proposed bills so I don't see the need for their having to be defined. And I understand these terms are used in the definition of canopy tour, but I feel these terms may possibly confuse . . . add confusion to the definition. And speaking of canopy tour I recommend the removal of the reference to amusement park and carnival as well, again same reasons, don't understand the need for a reference to an amusement park or carnival in the definition of canopy tours. I think the addition of these terms suggest a possible exemption for canopy tours or ziplines in Ag districts if they are in an amusement park or carnival. Next Section 19.30A.065 remove the reference to Agricultural District. This section says a zipline or canopy tour in an Ag District requires a conditional permit. And my question would be what if the zipline or canopy tour is in another district, would it then be allowed to

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

occur without a conditional permit. So, by removing the reference to Ag . . . Agricultural District in this section my intention is to require a conditional permit for any zipline or canopy tour regardless of the district. And then moving down to subsection 19.30A.065(B), I'm suggesting some slight changes to allow the subsection to be a little less wordy and maybe possibly interpret it a little bit more smoothly. I'm proposing to delete subsection B(1), and 2 and I've revised the section to read as follows. This is the new proposed Section B "Conditional permits shall not be issued if any of the following exists, 1) if a property line or boundary is within a one-mile radius of another zipline or canopy tour operation; 2) a proposed zipline or canopy tour is within 1,000 feet of R-1, R-2, R-3, A-1, A-2, RU-0.5, RU-1, RU-2, RU-5, and R-10 districts or farm dwelling." And then for subsection 19.30A.065(C) I've created a new subsection C by using the language which was in subsection B. So, subsection C is revised to read as follows "C, The following conditions of approvals shall apply" and the numbers have been changed now from three to number one, "hours of operation shall be limited to no earlier than 8:00 a.m. and no later than 5:00 p.m., except hours of operation may be more limited if the council deems it advisable." Number two, "it shall be unlawful for a person to consume any intoxicating liquor or on the premises of a zipline or canopy tour operation." And three, "the operator shall maintain the following records for the duration for the conditional permit and make them available to the director upon request, such as having a) proof of insurance, b) inspection records, c) maintenance records, and d) a signed participant acknowledgements of risks and rules of conduct." So, C, the new subsection B sets forth restrictions, the new subsection C sets forth conditions of approvals. So, there are my proposals Members, so I'm open for any questions. Thank you.

CHAIR PALTIN: Thank you, Member Molina. Any questions? I'll first give Member Sugimura the opportunity. Any questions?

COUNCILMEMBER SUGIMURA: I appreciate what Mr. Molina has done for clarity and to make it, yeah, more smoother for implementation. And I just wonder about the . . . well, that's fine with me, I have an amendment later. So, I'll defer to other Members.

CHAIR PALTIN: Okay. Thank you, Ms. Sugimura. Member Lee?

COUNCILMEMBER LEE: Thank you, Madam Chair. Mr. Molina, is there any reason why you didn't include R-0?

COUNCILMEMBER MOLINA: You know, the thought didn't occur. But if that's something the body would like to implement in that as well I'm fine with that.

COUNCILMEMBER LEE: Okay. I would suggest R-0. Thank you.

CHAIR PALTIN: Do you accept that as a friendly amendment, Member Molina?

COUNCILMEMBER MOLINA: Yeah.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: R-0. Okay. Friendly amendment, R-0 is now included. Member King?

COUNCILMEMBER KING: Thank you, Chair. So, one friendly amendment, in C could be to change the word "intoxicating liquor" to "intoxicating substances." Because I think all liquor is intoxicating, but we also want to maybe address other substances. And then the other question . . . the other concern I have is under B if a property line or boundary is in a one-mile radius of another zipline. I wouldn't personally have a problem with ziplines being within proximity to each other, as long as they're away from residents and these farm dwellings. Because if we were going to have . . . I'd rather, rather than have them spread out I'd rather have them in one section if they were going to be in one section. Because, you know, the whole idea of them being annoying is like, you know, let them be annoying together away from where everybody lives. But, you know, and then we are immediately going to have a problem with couple of the ziplines that seem to be in proximity to each other. So, that was just one concern about maybe . . . maybe not worrying if they're within proximity to each other as long as they're not in proximity to where they're bothering people. And then, you know, I think we have to work on Section 6 a little bit. I think that's kind of the ongoing issue that we've been talking about, so anyway those are my thoughts on the amendments. Otherwise I support the . . . I do think it's good to take out amusement park and canopy tours out of that. So, that was a good amendment. And that's all.

CHAIR PALTIN: Member Molina, do you have objection to friendly amendment on substances?

COUNCILMEMBER MOLINA: No. No objections.

CHAIR PALTIN: Okay. So, we got substances. And then did you or Member Sugimura have a rationale for the Part B, Condition 1 as to why you didn't want a one-mile radius on the boundary of a lot in which another zipline or canopy tour is operating, if you wanted to explain that? Either . . . I guess Member Molina first and then Member Sugimura.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. I'll yield to Member Sugimura, that was in her original bill, the one-mile radius. I'll yield to Member Sugimura for comments. Thank you.

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, so . . . thank you. I think we heard from a testifier on that Maui Tropical Plantation although it wasn't definitive that that might be a problem the way that they're situated. So, I'm open to changing it. I agree that . . . I think what we're more talking about is that it doesn't affect residences and that maybe this can be changed to reflect that more than the one-mile radius from another zipline. I'm open --

CHAIR PALTIN: Okay, so . . . *(inaudible)* . . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER SUGIMURA: --to that.

CHAIR PALTIN: Any objection to striking Number 1 in Part B and renumbering?

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: Thank you, Councilmember Sugimura.

CHAIR PALTIN: Take out that Part 1 and now we just have . . . I guess we just have that one about proposed zipline or canopy tour is within 1,000 feet of R-0, R-1, R-2, R-3, A-1, A-2, RU-0.5, RU-1, -2, -10 districts of farm dwelling. And I had a question how that 1,000 feet number came up. Was that based on any kind of a noise study or anything like that or was it . . . *(inaudible)* . . . Member Sugimura?

COUNCILMEMBER SUGIMURA: Okay, I'm unmuted now. So, the 1,000 feet came just as a thought with . . . when the Planning Commission . . . it wasn't tied to a sound study or anything like that. But basically when the Planning Commission notifies people of any kind of changes they use 500-foot radius, so we just thought, you know, that we would increase it to 1,000. And, you know, we're open to reducing it if you think that's also . . . you know, 'cause it was just kind of an arbitrary guess is what we did to tell you the truth.

CHAIR PALTIN: Okay. I know that . . . I think the Skyline . . . I didn't write down his name. The one gentleman had said that his operation is around 400 feet away, but . . . and then I guess the question I had besides if it was a guess was you wanted it to be 1,000 feet away from the zoning of that or the nearest structure of that or both?

COUNCILMEMBER SUGIMURA: We're looking at the structure. We weren't looking at it like properties or zoning like that.

CHAIR PALTIN: Okay. And, Member Molina, was that your understanding as well?

COUNCILMEMBER MOLINA: I can't recall. I know the community has suggested 1,000 feet but again I guess that's a number that can be played around with but I heard the number 1,000 tossed out. Some even said as low as 500 feet, and I think . . . if I'm correct in this morning's testimony there was one testifier that said it's like 500 feet away from her dwelling, so I'm not sure. But yeah, it ranged from 500 to 1,000 feet.

CHAIR PALTIN: But as far as the proximity to the zoning or proximity to the dwelling?

COUNCILMEMBER MOLINA: I believe it was to the dwelling, I may be wrong but I recall it was more towards to the dwelling.

CHAIR PALTIN: Okay.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER SUGIMURA: I agree with dwelling.

CHAIR PALTIN: Just because it's . . . the way it's written it says a proposed zipline or canopy tour is it within 1,000 feet of R-0, R-1, and all these districts or farm dwelling. So, do you want to just say is within 1,000 feet or however many feet of any dwelling because we're not going only on agricultural based on your amendment? So, maybe we don't need the zoning types and we just need a dwelling within 500 or 1,000 feet of any dwelling?

COUNCILMEMBER SUGIMURA: I would defer to . . .

COUNCILMEMBER MOLINA: I'm fine with that. Or . . . and maybe get . . . I'm fine with that but may be good to get input from Director McLean on that as well.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR PALTIN: Director McLean, any comments on the discussion if you've been listening to us talk?

MS. MCLEAN: Yeah. And John Rapacz is here in my office. I think it's cleaner for it to be from property line to property line instead of trying to measure from the operation itself to where a structure is located. Because structures can get additions put on them, you know, changes could happen, and you can dispute, you know, where a proposed zipline might go. If you use property boundary to property boundary that's clean and really is unlikely to change. That's my only comment on that one. I don't have a comment on the distance.

CHAIR PALTIN: Thank you. That makes sense, and to clarify this proposed wording would be for those . . . mainly those that aren't built yet so then they can . . . they can do it based on the property line. Okay, all right. That makes sense. Thank you. Members, any further discussions or questions about anything? Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. Yeah, I just . . . I just wanted to propose to the Members would the Committee consider a cap on ziplines. Is this something we want to include for the Commission to review? Just a question I have for the other Members.

CHAIR PALTIN: I'll entertain a motion to amend if you'd like to propose one.

VICE-CHAIR SINENCI: Yeah, I mean . . .

COUNCILMEMBER MOLINA: Madam Chair? Oh, I'm so sorry. Okay, no, go ahead.

VICE-CHAIR SINENCI: I mean . . . okay, I'll do a motion and then we can discuss it. Just to propose that no more than ten permits will be allowed . . . additional permits be allowed.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Okay. I have a motion from Member Sinenci to cap the number of permits at ten. Is there a second for discussion or . . .

COUNCILMEMBER MOLINA: Second for discussion.

CHAIR PALTIN: Okay. Member Sinenci, as the movant.

VICE-CHAIR SINENCI: Yeah, I mean just, you know, again just speaking to, you know, having this activity upon Agricultural zoned lands. You know, it's we're making a lot of these concessions on Agricultural zoned lands, so I was just thinking if we are putting these conditions, maybe just limiting them as another level of I guess, you know, vetting them on agriculture lands. I'm open to Members . . .

CHAIR PALTIN: Thank you, Member Sinenci. Before I recognize Member Molina, I just wanted to clarify, I think his amendment didn't limit it to Agricultural zoned lands for permits. He made it for any lands for permits. Is that correct, Member Molina?

COUNCILMEMBER MOLINA: I'm sorry, could you repeat the question again, Chairman?

CHAIR PALTIN: Sure. I was just clarifying that your amendment that you had proposed didn't limit this to just agricultural--

COUNCILMEMBER MOLINA: Yeah.

CHAIR PALTIN: --lands. So, it's --

COUNCILMEMBER MOLINA: Yeah.

CHAIR PALTIN: --Countywide.

COUNCILMEMBER MOLINA: Right, basically all districts, not confined it only to Ag districts.

CHAIR PALTIN: Yeah. So, anybody who wants to do a zipline or a skyline operation they will need to follow this process to get a permit. Okay. Just clarifying that. Go ahead and speak to the motion as the seconder.

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Just had a question for Director McLean, currently how many zipline businesses are there and has there been a proliferation of these businesses since the first one came into being? Do you have that history for us, Director?

MS. MCLEAN: Thanks for the question. There wasn't a proliferation after the first one after Skyline was established. It was quite a number of years before any others were established. Then there were a number around 2009-2010, and then after that there seemed to be a little bit of a drop off and then maybe one every year or two since then. We guess that there are 10 to 15 operating in the County now.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Director. Thank you, Chair.

CHAIR PALTIN: Members, any further discussion? Mr. Hopper?

MR. HOPPER: I just wanted to point out that the bill right now is only amending Section 19.30A, that's the Agricultural District zoning. If you're going to try to establish a bill that's going to say you cannot do ziplines anywhere in the County, I would advise establishing a new section that would just say, throughout Title 19 you cannot do conditional permits. It'll be very odd to amend the Agricultural District zoning area, 19.30A and say you cannot do this in any other district. So, I would advise if you're going to go do that. The other thing would also be we need to check every single other zoning district and see if there's any conflicts. I don't know if ziplines are allowed anywhere else as a use listed. I don't know if you can get a special permit for them in other districts. I mean, I don't know if there are any in other districts. I would think it would be tough to do that in a Residential District given the space. But that's something that I think would be reviewed. If you're going to take about expanding this beyond which . . . I mean, this was . . . this was sort of proposed and posted as amending the Ag zoning district to prohibit this use in the Ag District. If you're going to prohibit it in all districts I think you are talking about a different proposal where . . . you know, we have it. It would be sort of similar to short-term rental homes, where you have a separate Code section that says here's where and how you can do short term rental homes. And then amend each district to say where it's allowed or if it's not allowed as an outright use just say, you know, conditional use. But the structure I think is sort of fundamentally different if you're moving toward actually dealing with other districts. So, I wouldn't advise passing the bill as proposed or sending the bill as proposed without making further amendments to deal with other districts. You'd probably put it in a different section, like a brand new section.

CHAIR PALTIN: Thank you, Mr. Hopper. Mr. Molina, any comment on that, how you want to proceed with your amendment? If you wanted to keep it in Ag or if you wanted to change it to apply to all of --

COUNCILMEMBER MOLINA: Yeah.

CHAIR PALTIN: --Chapter 19?

COUNCILMEMBER MOLINA: Well, Chair, I guess for the sake of expediency we can just let it go for now. It's just the Ag districts and then . . . but include maybe in comments that the Committee did consider the possibility of applying these restrictions to all districts, where all companies have to apply for a conditional use permit no matter what the district. But for the sake of the bill and so at least it can move forward to the Commission to get a discussion initially, maybe just leave it for now for Ag districts and, but include in the proposal that the Committee did consider the possibility of having this apply to all districts, and see what kind of comments we get back from the Planning Commission on that. That's one option.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Okay. Mr. Hopper, would that be okay if we take it out of . . . just leave it in Ag and ask the Commission to consider all districts?

MR. HOPPER: You are looking at a pretty structurally different bill. The . . . let me check what the agendized item is. I don't know if it said if it's just ziplines or actually dealing with . . .

CHAIR PALTIN: The title does say Ag--

MR. HOPPER: Yeah, you know . . .

CHAIR PALTIN: --District.

MR. HOPPER: Yeah, the posted item is zoning standards for canopy tour and zipline operations in the Agricultural District. So, I mean, I don't think you have a lot of freedom there. That's not to say you couldn't create another item and send that to the Commission and say we want you to consider banning these in all districts. And again, I don't know how much of a big deal that is because there may not be any practical way to do these outside of the Agricultural District. I don't know, I'm not an expert in zipline use. So, that's maybe a way you only see them in the Ag District although I don't know if they're only in the Ag District. But right now I think, yeah, you can push this bill forward to the Commission, but I think they would be limited to consider this ban in the Agricultural District at this point because of how the item is agendized. Another option is to defer, create a new item or amend the item in a way that says zipline operations or just something more general and then send it under that item.

CHAIR PALTIN: We can do similar to the other bill because we can add it on to the May 18th agenda if we're ready to go. We've had pretty good discussion. Mr. Boren did mention that he thinks that majority are in Ag land and one might be in Commercial. So, we can rework this, defer, and come back on the 18th with something ready to go to the Planning Commission. We did go over the amendment, make a couple tweaks to the . . . the tweaks. Is that something that you want to do or were Members hoping to get this to the Commission and move it out of Committee today? Member . . .

COUNCILMEMBER SUGIMURA: Chair?

CHAIR PALTIN: I'll take . . . yes.

COUNCILMEMBER SUGIMURA: Oh, sorry. Oh, Chair, thank you.

CHAIR PALTIN: Was that Member Sugimura?

COUNCILMEMBER MOLINA: Member Sugimura.

COUNCILMEMBER SUGIMURA: Yeah. Yeah, sorry I'm a kind of little out of sync just being only on voice. But I wanted to also do an amendment to Section 6 before you finalize.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

I like your idea of rewriting this and bring it back on the 18th if Mr. Molina would agree to it.

CHAIR PALTIN: Okay. Yeah. We can discuss . . .

COUNCILMEMBER SUGIMURA: Yeah. And I have . . .

CHAIR PALTIN: We can discuss Section 6 before we do that so that we're all good on the 18th--

COUNCILMEMBER SUGIMURA: Okay.

CHAIR PALTIN: --and there doesn't need to be that much discussion. So, any objections to discussing Section 6 at this time?

COUNCILMEMBER MOLINA: No objections.

VICE-CHAIR SINENCI: Chair, we had a motion on the floor.

COUNCILMEMBER KING: No objections. Oh, there's a motion on the . . .

CHAIR PALTIN: Oh, sorry.

COUNCILMEMBER KING: Mr. Sinenci, has a motion.

COUNCILMEMBER SUGIMURA: That's right. The cap.

VICE-CHAIR SINENCI: Yeah, to put the cap but, Chair, I can withdraw just as long as during deliberations with the Planning Commission that they bring up the idea of a cap. If they can have that in their conversations.

CHAIR PALTIN: Well so, if we go back and make it apply to all districts and kind of rework this bill so that it doesn't only apply to the Agricultural districts. Then we can also add that in if either Member Molina or Member Sugimura would entertain that.

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Is that . . . yes?

COUNCILMEMBER KING: Chair, it might be easier just to vote on the motion. Because I don't think you can automatically assume that the Planning Commission is going to take up an idea that we haven't sent them. So, either we should just vote on the motion or . . . and if the motion doesn't pass then Mr. Sinenci can go to the Planning Commission and testify in favor of that. But I think it's difficult to say that we're requiring them to discuss something that we haven't passed out of our Committee.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Okay. Any objections to voting on capping the number of permits that will be given out at ten?

VICE-CHAIR SINENCI: No objections.

COUNCILMEMBER MOLINA: Just a --

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: --question, Chair. Yeah, just a question for Mr. Sinenci. Because we heard from the Director it ranges from 10 to 15 businesses. Do you still want to stay with 10 or . . . because I know we don't have an exact figure yet of how many of these businesses are in existence.

VICE-CHAIR SINENCI: Well, it was going to be . . . Member Molina, it was going to be no new permits. So, we could bring down that number if we wanted to. But it was no . . . 10 new permits.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR PALTIN: So, just to clarify, Director McLean, that cap of 25 if there's 15 existing.

MS. MCLEAN: Our understanding is that there are 10 to 15 existing ones. And we'll do our best to come up with an accurate number for your next meeting. Then if you want to allow a number of additional ones, assuming that all of those come in and all of those get permits, then that would be correct. If there's 15 existing ones and the idea is to allow 10 new ones, then yes, the cap should be 25 if you believe all existing ones would get permits under the bill.

CHAIR PALTIN: Okay. Member Sinenci, was that your intention, 25 or was it 10 total?

VICE-CHAIR SINENCI: With that new information I would entertain 20 total. So . . . and five . . . five new permits. Thinking that the 15, you know, may go through the process.

CHAIR PALTIN: Okay. Member Molina, is that okay with you as the seconder?

COUNCILMEMBER MOLINA: Yeah. Fine, support.

CHAIR PALTIN: Okay. Everybody had a chance to speak to it. Is it okay if I call for the question? No objection?

COUNCILMEMBER SUGIMURA: Question. No --

CHAIR PALTIN: Yes, Member Sugimura?

COUNCILMEMBER SUGIMURA: --objection.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CHAIR PALTIN: Okay. All right. All those in favor of Member Sinenci's motion to cap the amounts of permits issued at 20, raise your hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: All those opposed, raise your hand and say no. Member King, I'm not sure how you voted.

COUNCILMEMBER KING: Chair, I'm not in favor at this time. So --

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: --I'm going to vote no at this time and wait for more information.

CHAIR PALTIN: Okay. So, I believe it passed four-two. So, motion passes to cap the number of permits issued at 20.

**VOTE: AYES: Chair Paltin, Vice-Chair Sinenci, and
 Councilmembers Molina and Sugimura.**

NOES: Councilmembers King and Lee.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Rawlins-Fernandez.

MOTION CARRIED.

**ACTION: APPROVE AMENDMENT TO CAP THE NUMBER OF
 ZIPLINE PERMITS ISSUED AT 20.**

CHAIR PALTIN: Now let's move on to, I believe, Member Sugimura wanted to discuss Section 6. Member Sugimura?

COUNCILMEMBER SUGIMURA: Can you hear me?

CHAIR PALTIN: Yes, I just unmuted you.

COUNCILMEMBER SUGIMURA: Oh, thank you. Okay. So, Section 6 I wanted to know if it would . . . an amendment to read an existing lawfully zipline or canopy tour in the County Agriculture District that received approval from the County on or before 2010 as the effective date of this ordinance may continue as a nonconforming use in accordance with Maui County Code 19.50 . . . 19.500.110, provided, however that no

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

later than July 1, 2023 the owner or operator of any such zipline or canopy tour shall either obtain a conditional permit or cease operation of the nonconforming use.

CHAIR PALTIN: So, that's your motion?

COUNCILMEMBER SUGIMURA: Yes. That's my motion.

CHAIR PALTIN: Is there a second? Okay. I don't see a second so that motion fails. I had a question, I think it's either for Director McLean or Mr. Hopper. So, the people that operate that have their structures wouldn't be able to get a conditional permit. So, then they would have to cease operations, is that what Section 6 means? Director or Mr. Hopper?

MR. HOPPER: Well, again I haven't been over the bill with a fine tooth comb or anything at this stage yet. But what I think Section 6 says . . . I mean right now is that if it's existing . . . it says approval from the County, but I think you can maybe change that to lawfully operating. It says that if you're lawfully operating as of the effective date of the ordinance you can continue to operate . . . but that by July 1, 2024 they have to . . . they have to have received a conditional permit or you're not allowed to do a nonconforming use. So, if you're allowed to operate as of the effective date of the ordinance you can keep operating until 2024 but up until that date you have to . . . as of that date you either have to get a conditional permit or you have to cease operating. So, I think that's what that says.

CHAIR PALTIN: So, the folks like Skyline and Piiholo and like that wouldn't be grandfathered in past 2024, July 1st?

MR. HOPPER: Not unless they got a conditional permit before then according to this language.

CHAIR PALTIN: Okay.

MR. HOPPER: Generally the . . . what you have . . . what you would do with nonconforming uses is say that if you operated legally as an outright permitted use prior to the effective date of the ordinance you can continue to operate. And there's a Code section that goes into that and says that if you cease for more than 12 consecutive months or if the property burns down or something like that then you have to stop. That's your default. Frequently you have things that are a little bit more permissive than that. You would say even if you burn down you can rebuild and continue to operate. It's rare, but I think legal to have what's done here which is to say even if you're operating lawfully you have to stop by a certain date or get this special permit. And so, that's what the proposal . . . that's what the language says right now.

CHAIR PALTIN: Okay. Thank you. Member Sugimura, did you have a comment to that?

COUNCILMEMBER SUGIMURA: Yeah. So, I just was, you know, by listening to the testimony today and understanding what Director said about the businesses and, you

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

know, when they got permitted to operate or license to operate. And it seems like that 2010 was a . . . the date that, you know, most of the lawfully running businesses were permit. I wanted to create some kind of grandfather clause so those businesses that have been there and operating without any complaints from the community, never heard anything. And I just wanted to say that, you know, continue doing the good work that you're doing. So, that's what I was trying to achieve by that . . . by that amendment to Section 6.

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Okay. Did you want Mr. Hopper or Director McLean to speak to that? Or that was just your . . .

COUNCILMEMBER SUGIMURA: Yeah. If they could . . . that's what I would like to accomplish. So, if they could speak to that or recommend some kind of amendment that might make sense to them.

CHAIR PALTIN: Okay. Director McLean, you have any recommendation for Member Sugimura?

MS. MCLEAN: Well, I agree with the intent, which is that the oldest operating ziplines be given a different status than the newer ones. But I think Corp. Counsel has said you can't make that distinction, that you have to treat the use consistently the same way. And if ones got approvals and are considered legal right now . . . essentially what the bill would be saying is that these uses are not allowed in the Ag District. But we recognize that there's some that got approvals so they're going to be given a certain amount of time to come in and get the permits that we say they need. And if they don't they're phased out. That's what he was referring to, the amortization clause. So, I support the idea of treating the older, more established ones differently, but I think the advice that he's giving is that . . . is that that can't lawfully be done. Is that . . .

CHAIR PALTIN: Mr. Hopper?

MS. MCLEAN: Get his concurrence.

MR. HOPPER: I mean, I'd want to understand the basis for treating someone who's operated for ten years versus somebody who's operated for, you know, two years, why you would . . . I mean, why would you make one come in to apply for a conditional permit and not make the other one come in. I'm not saying that you wouldn't grant one that's operated properly and then not the other. But, you know, that's the . . . that's the change . . . that's the potential issue. But, you know, I think you've got a fair amount discretion to look at that. If you got a basis, you know, between for . . . if you've got a basis for making those distinctions then we can discuss them. But, you know, in general the cutoff date is if you're operating prior to the effective date of the ordinance lawfully or you've got your permit within a certain period of time prior to the ordinance. So, it may be hard to treat somebody who says we've operated for ten

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

years versus others. I'm not saying there's never a chance for, you know, that there'd be no basis for that. But that hasn't really been articulated at this point. And we can discuss and, you know, review a potential amendment. I think any amendment like that would be done in Section 6. And that's going to be sort of the crucial section to be dealt with. But it's, you know, this is similar to what was done with short-term rental permits on Molokai, where you phased out the ability to have them renewed. This is a little different because you're phasing out a use that had been established as either permitted or accessory use and taking that out. And you've done that in other districts but usually when you do that you let one . . . are continuing to operate or that they're operating as of the effective date to continue to operate. So, it's a little odd. It'd be like saying that you can't have a grocery store in . . . *(inaudible)* . . . district, that previously allowed them, and then you say, okay, well after this ordinance if you're already operating a grocery store that's fine but you have to . . . you, you know, can continue after that under certain conditions. Then you would say, but if you've been operating a grocery store within ten years, then you can continue to operate without any limitations. So, that's the sort of distinction we're looking at. And I'm not sure of the basis there. I think the key distinction is were you legally operating before the use became illegal, and to say you've been legally . . . I mean I guess you're saying you've been legally operating a longer period of time. So, maybe you've had more invested. But again, I'd want to . . . *(inaudible)* . . . that basis and have that discussion.

CHAIR PALTIN: Thank you, Mr. Hopper. Member King?

COUNCILMEMBER KING: Thank you, Chair. So, this is a question for, I think, Mr. Hopper, and possibly Director McLean. Is there a way to put in . . . because I think we all want to do the same thing. We all want to honor those who have been doing a lawful business that has added to the community rather than disrupted the community. And is there a way to give discretion to the Director for expedited permits for those who have been operating, you know, legally and within the . . . within the . . . I forgot how you put it, Michelle. But, you know, the description of the actual operation, you know, the confines of what a good zipline would be, you know. So, I'm just trying to figure out if there's a way to . . . because all the permits would have to go through the Council eventually anyway, but if there's a way to expedite. Because I think that was one of the issues that some of these . . . that the testifiers had is that, you know, now we have to go through this conditional use permit. And that takes a long time and has an expense and usually have to hire a consultant. But if there's a way to grant an expedited conditional use permit to those that have been operating correctly with approval and not putting --

CHAIR PALTIN: Thank you, --

COUNCILMEMBER KING: --dates in it.

CHAIR PALTIN: --Member King. And, Director McLean or Mr. Hopper, if I can add on to her question, would striking the item in Part B of Member Molina's amendment accomplish that? If the Council is having the final say on a conditional use permit, then we can make that determination ourselves and it wouldn't hamper the existing

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

operations that are in good standing of their neighbors. Director McLean, followed by Mr. Hopper.

MS. MCLEAN: I think the cleanest way to do it would be to amend Section 6 in a way that says the existing ones have a certain amount of time to come in for a permit but would not be subject to the conditions that are listed in the rest of the bill. So, that the Council could tailor make the conditions for existing operations based on what works for those operations. But any new ones would have to comply with the conditions in the bill at a minimum.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Right. That brings me to one comment that I made before. It is very unusual . . . I don't know if it's ever been done in the Code to put a . . . put standards like this in for conditional use permits. Because they're granted by the Council and generally the Council has the ability to craft the conditions and whether or not to allow it. The Council's allowed . . . that's generally where you would go to allow use . . . *(inaudible)* . . . anywhere in the Code. And, you know, whether that's a good thing or bad thing, you know, can be debated, but I don't know of any other case where there would be limitations on the Council's ability to grant permits as you would be putting in here. This to me reads like these are special use permit conditions that you would impose on the Planning Commission, like for short-term rental homes. So, that's very unusual. As far as the ability to expedite permits for existing operators, I think that if you're doing this under the conditional permit Section 19.40, you would have to process everyone's permit consistently. One option could be to say that if someone submitted a complete application, then they can continue to operate pending the Council's decision. That can be dangerous because as we've seen in the past with TVR's for example, it could be a decade before the Council acts on a conditional permit request. So, you know, that might be a tough thing to deal with. So, as far as expediting permits, how they're handled I think that's something that generally all the permits have to be treated relatively equally, although I don't know if the concern is losing the right to operate because the Council or the Department didn't process the permits efficiently. We've had court cases where the Council has a fair amount of discretion processing permits, that we were sued for the short-term rental home permits section for not acting on a timely manner in permits. And the court determined that you didn't have a right to operate until you get a decision on your permit, even if in certain cases it would take . . . some of the permits have been held for a decade. So, if you're going to go the conditional permit route I think you would still need to follow the application and timing requirements for that. But if it's a conditional permit the time for having those heard by the Council, as you know, is up to the discretion of the Council, when it can find time on its agenda and those other things. So, I don't know if there's a way to require that to happen other than, you know, the department making an effort to expedite those permits, or potentially looking at language that would say you can continue to operate pending a decision on your permit. Similar to expirations, which we considered a bit earlier to say that if your permit expires but you got your application in in time you can continue to operate until the decision. So --

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER KING: So, Chair, can I . . .

MR. HOPPER: --those are some of your options I think.

COUNCILMEMBER KING: Can I follow up? So, I think . . . I think we're all trying to do the same thing, and you're talking about treating everybody the same, which, you know, is valid except that everyone's not acting the same. So, how do we account for the bad actors in this bill, is what I'm asking. Like we have some that have multiple complaints from, you know, pretty much everybody in that area. And is there no way to say that . . . you know, I mean, to differentiate between the ones that have these multiple complaints and the ones that are operating with support from the community?

CHAIR PALTIN: Member King, I mean . . .

MR. HOPPER: Well, I think . . .

CHAIR PALTIN: I would say that removing the Section B about conditional permits shall not be issued if any of the following exist. And leaving it up to the Council to, you know, issue the conditional permit if they're in good standing with their neighbors and applying . . . we as the Council being free to make that criteria in the future that we don't want this. But if they're existing currently and they have . . . they're not up to this criteria then that's okay. But that would be a call by the Council if it's a conditional use permit. Is that . . .

COUNCILMEMBER KING: Yeah. It's just that it doesn't solve the problem of the folks that are saying that this is an additional burden on their business to have to get a conditional use permit when they've already got approval for this type of, you know, that's . . . I guess that's the big thing, is, you know, how do we --

CHAIR PALTIN: It's . . .

COUNCILMEMBER KING: --allow them to, you know, continue to operate under the existing approval. And I think this is all stemming around one or two bad actors, is the problem with it. And that those are . . . one of them is in litigation right now. So, I don't know what the answer is --

CHAIR PALTIN: I . . .

COUNCILMEMBER KING: --but maybe sending it back to Corp. Counsel to have them write . . . rewrite Section 6 for us.

CHAIR PALTIN: But by removing part B I think that would make it at least possible for them to get a conditional permit, whereas with part B in there, because of the structures that they had built they wouldn't even be able to satisfy the criteria to get the conditional permit. Mr. Hopper?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER KING: Yeah. It's just the . . .

MR. HOPPER: Yes. If . . . certainly, you shouldn't establish criteria that will be impossible for people to meet if those are uses that you would like to allow. That's certainly true. And again, I don't know of any case where you have criteria like this for a conditional permit. It's a Council action, you actually pass it by an ordinance. Again, there is some criteria in 19.40 but it's definitely an unusual thing that I don't know if it's been done before to have these limitations like this.

CHAIR PALTIN: Okay. Members, it's getting close to one o'clock, I'll just check in with Member Molina and Member Sugimura, if you want to try to pass it on as it is today without the . . . without removing the Agricultural District and the other friendly amendments that we made and have the Planning Commission review it as is. Or if you wanted to try and make some further tweaks and resubmit it for the May 18th meeting. Member Molina?

COUNCILMEMBER MOLINA: Madam Chair, I'm actually fine with passing it on to the Commission as it is today for the sake of expediency. You know, the folks that are being affected by these ziplines have waited a long time. So, at least just to generate the initial discussion of this, so personally I'm fine with sending it out as is for now. Thank you.

CHAIR PALTIN: And, Member Sugimura, do you agree with Member Molina?

COUNCILMEMBER SUGIMURA: I actually would like to rework this based upon the discussion. Because I think . . . I think it was a very good discussion, and hearing the testimony from the residents, which Mr. Molina and I had meetings with them and they're still voicing their same concerns. That is a problem, but based upon this discussion I think that we're hearing the broader voices and I would like to have the Section 6 reworked. And it's making me think that maybe the conditional . . . conditional use permits would come to us and I don't if this is possible for those situations that are for businesses that are not in good standing. And those that are operating, you know, for 18 years or more, have no complaints on the neighbors, and they seem to be doing all the right things by giving back to the community. I'd hate to penalize them as Member King, you know, distinctly said it, you know. So, if there's a way of reworking it so that we could, you know, capture everyone. I would prefer that, and if you could bring it back on the 18th.

CHAIR PALTIN: Member Molina, are you amendable to Member Sugimura?

COUNCILMEMBER MOLINA: Yeah. Either way I'm fine. Whichever . . . if we want to discuss it again on the 18th. It's not that far away, so either way I'm fine. Thank you.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR PALTIN: Okay. And then . . .

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBER SUGIMURA: Yeah, I appreciate you scheduling it.

CHAIR PALTIN: Thank you. And one final question for Mr. Hopper. Would it be a problem to post it with zoning standards for canopy tour and zipline operations and just leave out the Agricultural District part based on what I have on my master agenda for May 18th?

MR. HOPPER: That's something I'd want to discuss with OCS. I don't get involved in how you amend the agenda item titles. I know they normally come from full Council, and I don't know to what degree within your own Council rules you can make those changes. I don't think that would affect the Sunshine Law issue, because it would deal with whatever's posted on that agenda. But I think that's more of an internal Council rules thing, is how much can you change the title of your agenda items without having it...having to have the Council reissue a, you know, sending something to you. But this current item is based on the Ag District only. So, that could be a potential issue, but I wouldn't see it as a Sunshine Law issue, but would want it investigated from that perspective.

CHAIR PALTIN: Okay. Mr. Mitchell, any comment on reposting it as a zoning Countywide versus just Agricultural District? Mr. Mitchell, you're muted. I'm not sure if you're trying to talk. If you can unmute yourself or Mr. Raatz.

MR. MITCHELL: Can you hear me, Chair?

CHAIR PALTIN: Yes, I can hear you.

MR. MITCHELL: Yes. I agree with Mr. Raatz's [sic] comments, and I'm okay with the reposting.

CHAIR PALTIN: You're okay with the reposting?

MR. MITCHELL: Yes.

CHAIR PALTIN: Okay. Awesome. Okay. So, Members, if there's no objections the Chair will defer this item with the understanding that Ms. Sugimura will do a little bit extra work and reach out to some of the existing operators that testified today, Mr. Boren and Mister. . . .

COUNCILMEMBER KING: Sumerlin.

CHAIR PALTIN: The other guy. Any objections?

COUNCILMEMBERS: No objections.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: KRF)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: Okay. So moved. Defer item. And if there's nothing further, no objections, I will adjourn this meeting.

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Meeting adjourned. . . .(gavel). . .

ADJOURN: 12:53 p.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:min:200504:aj

Transcribed by: Ashley Joan

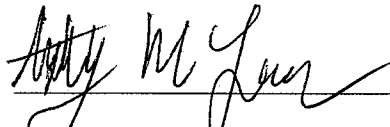
PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

May 4, 2020

CERTIFICATE

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

DATED the 28th day of May, 2020, in Pukalani, Hawaii



Ashley Joan