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**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM B.1  
JANUARY 26, 2021**

Ms. McLean: I'll just read the item into the record and then we'll pass it over to you, Scott. This is a public hearing item from myself referring to this commission, a proposed bill to establish a new Chapter 19.39, Maui County Code relating to the Maui Redevelopment...Maui Redevelopment Area, and to amend Chapter 19.520, Maui County Code relating to variances in the Wailuku Redevelopment Area. And Scott Forsythe is the project planner. And again, for those members of the public participating, please mute your video and your audio. Take it away, Scott.

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

1. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a Proposed Bill to establish a new Chapter 19.39, Maui County Code, relating to the Maui Redevelopment Area, and to Amend Chapter 19.520, Maui County Code, relating to variances in the Wailuku Redevelopment Area. (S. Forsythe)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:

**It is proposed that the Wailuku Redevelopment Area Zoning and Development Code will be incorporated into the Comprehensive Zoning Ordinance as a new Chapter 19.39, and that the existing Maui Redevelopment Area (MRA) variance process will be incorporated into Chapter 19.520.050, relating to variance procedures and standards; this means that Wailuku Redevelopment Area variances would be considered by the Board of Variances and Appeals rather than the MRA.**

Mr. Scott Forsythe: All right, thanks Michele and good morning, Commissioners. I'm Scott Forsythe, a planner with the Department of Planning, and I have a presentation to share. So, if you don't mind, I'm going to share my screen right now, help walk us through this. All right, can everyone see my screen?

Ms. McLean: Yes.

Mr. Forsythe: Great. Here we go. So, before proceeding with the presentation, I want to bring to your attention a few public comments or a public comment that was received after posting of the agenda, let's see here, the screen doesn't seem to be...oh, there we to, all right. So, yesterday there were a few testimonies that were uploaded to the agenda website, I believe there were six of those, and since yesterday we did receive one more from Mr. and Mrs. Best, if you would like I could read that testimony to that, however, the tally of the testimonies including the ones that you received yesterday there were seven testimonies in total and they were all in support of the proposed bill. Would you like me to read Mr. and Mrs. Best's testimony or are you good?

1  
2 Mr. Tackett: Yes, please.

3  
4 Mr. Forsythe: Sure. So, the testimony is—

5  
6 Mr. Hopper: Mr. Chair? Mr. Chair? This is Michael Hopper with the Corporation Counsel. There's  
7 been a variety of written and oral testimony on this. Is there a reason why you would read one  
8 particular letter into the record in its entirety? I mean, you've got a lot of testimony that can be  
9 transmitted to the commissioners for their information. Is there a reason you would read one  
10 particular testimony verbatim? We typically wouldn't I don't think do that for a...

11  
12 Mr. Tackett: No, I'm okay with not reading it in. The reason why I chose to allow that one to be  
13 read in because it sounded like it might have happened right before the cut off time and so it  
14 seems like something that maybe nobody got a chance to hear, but being as that they are all in  
15 support, I have no problem waiving the listening to of that testimony. I just thought that possibly  
16 some of the commissioners might not have heard that one because it came in right at the end.  
17 So, if Corporation Counsel, I'm more than willing to go along with your suggestion and so I believe  
18 we'll be waiving the reading of that particular testimony for the record. Thank you for your input.  
19 Please proceed.

20  
21 Mr. Forsythe: Okay. So, this agenda item is for a proposed bill for an ordinance to amend existing  
22 Wailuku Code into Title 19's Zoning Code. To help put this into perspective, I have a few slides  
23 that will provide an overview of the Wailuku Redevelopment Area, Maui Redevelopment Agency  
24 and the Wailuku Redevelopment Area Zoning and Development Code, and since that's such a  
25 long name, I'm going to refer to it as Wailuku Code from here on out.

26  
27 And this photo is of Market Street looking towards Main Street, and I'm thinking it was probably  
28 taken around the '40s or '50s from the cars. So, what is the Wailuku Redevelopment Area? This  
29 map shows the boundaries for the area, which encompasses approximately 68 acres of Central  
30 Wailuku and Happy Valley. It's been documented in plans dating back to the '60s. Now Wailuku  
31 was experiencing effects of decentralization and urban blight was taking its toll as the area was  
32 becoming increasingly rundown and dilapidated. Efforts to revitalize the town have been in the  
33 making for decades, with the 1972 General Plan and community plans from '72, '87 and '99 all  
34 calling for efforts to address this problem. And this culminated with the development of the 2000  
35 Wailuku Redevelopment Plan.

36  
37 What is the MRA? The MRA has existed in various forms since about 1964 as Hawaii law  
38 permitted county boards to create a local redevelopment agency. Later on, Hawaii's Urban  
39 Renewal Law provided powers and duties to carry out urban renewal projects and related  
40 activities. In 1989, the MRA was established in Maui County Code with these urban renewal  
41 powers and was also charged with implementing a plan for Wailuku's redevelopment. Some of  
42 the activities that the agency has oversight and responsibility for includes development plans,  
43 studies, capital projects and community programs. The agency also reviews applications for new  
44 developments and renovation type projects.

45

1 These are the three primary guiding documents for the MRA. There is the 2000 Wailuku  
2 Redevelopment Plan which provides the vision, direction and course of action for the revitalization  
3 of the Wailuku Redevelopment Area. And the plan made it a priority to adopt a Small Town  
4 Development Code, and also to develop the Wailuku Design Guidelines. In 2002, Wailuku  
5 Redevelopment Area Zoning and Development Code is what we're discussing today, and this is  
6 the current code for Wailuku and defines the zoning districts, development standards as well as  
7 application procedures and some other things as well, which I'll get into. And then there's the  
8 2006, Wailuku Redevelopment Area Design Guidelines and these provide the standards that we  
9 assess new developments and rehabilitation projects for when we receive applications.

10  
11 Now the Wailuku Code, the reminder of you know, the slides that I'm going through are going to  
12 get into the code and the proposed ordinance and this slide includes what is in the Wailuku Code,  
13 it's the Table of Contents and to the left are some of the specific sections within the document. It  
14 includes a section for each of the zoning districts in Wailuku and for each of the zoning districts it  
15 identifies the allowed uses and their development standards such as setbacks, building heights  
16 and lot size. It also identifies the administrative procedures and application submittal and review  
17 processes.

18  
19 So, there are a few types of applications for the Wailuku Redevelopment Area and the first one is  
20 Administrative Review Permits, and these are for activities that do not require the MRA's approval.  
21 There are MRA Use Permits and those are for uses already identified in a Code, but require a  
22 determination by the MRA. And there are variances and these are to request a waiver of sorts  
23 from zoning requirements. And then there is the Design Review Application, which I already  
24 explained that the...they are assessed with the design guidelines.

25  
26 This map illustrates the zoning districts within the Redevelopment Area. There is the Residential  
27 District, Multi-Family Business and Multi-Family Commercial Mixed-Use and Public/Quasi-Public.

28  
29 Now I'm moving into the proposed changes. So, the table on your left is the table that was  
30 provided with your agenda packet, and this summarizes the substantive changes made to the  
31 Code that's within the proposed ordinance. The zoning districts and development standards  
32 remain relatively the same, with only a few minor changes. And this includes the addition,  
33 modification or deletion of definitions and some minor text edits. The most significant change is  
34 that the variance application criteria and review process would be incorporated into the existing  
35 Countywide Variance Code and then subject to review and decision by the BVA, the Board of  
36 Variances and Appeals. Another change worth noting is with accessory dwellings, those increase  
37 from one to two per lot and the maximum floor areas increase as well. And this is removed from  
38 the existing Code and would now be referred to in Chapter 19.35 for accessory dwellings.

39  
40 So, why does the Wailuku Code need to be incorporated into Title 19? The Maui County Charter  
41 was adopted in 1969, and established that the Council is the legislative body of the County and  
42 that means every legislative act needs to be approved by the Council by ordinance. This authority  
43 cannot be delegated to the MRA or to anyone else. Zoning and rezoning of land are considered  
44 legislative acts, so that means these land use decisions require Council approval by ordinance.

1 So, why was the MRA making these decisions in the past? The Hawaii Urban Renewal Law gives  
2 some authority and the Wailuku Code was adopted through proper rulemaking procedures. So,  
3 it was assumed that these actions were legitimate. Only after recent scrutiny was it made clear  
4 that this is not the case. That's why the Wailuku Code needs to be incorporated into Title 19,  
5 because it's a zoning document.

6  
7 Also, under Title 19, variances which are the deviations from the zoning requirements, only can  
8 be heard by the Board of Variances and Appeals. The MRA has been the body that heard and  
9 acted upon the variances, but this authority is exclusively vested in the Board of Variances and  
10 Appeals, and by incorporating it into...and by incorporating the Wailuku variance process into  
11 Title 19, it turns these decisions over to the BVA.

12  
13 The proposed bill, this is the language for or the title language for the proposed bill and basically  
14 what it's saying is that the Wailuku Code will have its own chapter in Title 19 alongside with all  
15 the other county zoning districts, and also that Wailuku's variance criteria will be incorporated into  
16 the Title 19 Variance Code.

17  
18 Options for the Commission. You can recommend approval of the proposed bill to Maui County  
19 Council, recommend approval of the proposed bill with amendments to the Maui County Council,  
20 recommend denial of the proposed bill to the Maui County Council or vote to defer action to gather  
21 specific additional information. That's the end of my presentation, so if you have any questions,  
22 I'd be more than happy to answer those, and before moving on this is a photo of the Main Street  
23 Promenade Building and MRA, they have a program for the Small Town Big Arts Project, and the  
24 mural on the side of the building is one of the more recent artistic inclusions here in Wailuku. So,  
25 that's it for me.

26  
27 Mr. Tackett: Thank you. Thank you, for your presentation. So, do we have any, do we have any  
28 questions on the presentation? I'll start with Kellie, and then I'll go to P. Denise.

29  
30 Ms. Pali: Yeah, thank you. Um, if this were to move forward, would it then be effective immediately  
31 for things moving forward or is there any language in this bill that would sort of retroactive the  
32 date that would be my first question.

33  
34 Mr. Forsythe: There is no language in the bill that would retroact the date and after, after going  
35 to County Council, then the bill would become effective after the ordinance approval.

36  
37 Ms. Pali: Great, thank you. And, you know, this is...there's a lot of pages and a lot of legal jargon  
38 that I would admit, even with being around contracts and legal stuff in real estate for 20 years,  
39 there was still a lot of stuff that might go over my head. And so, when you did your presentation,  
40 you had a screen shot of the changes were those just the bigger changes? And would you say  
41 that there might be some minor changes that are in the small print or would you say that those  
42 would really be the only changes in this bill, in this Title 19?

43  
44 Mr. Forsythe: Yeah, so they're...included with your agenda, with the staff memo, those are  
45 the...that's the table of the changes that were included within the slide. And these are the more  
46 substantive changes. There are some other changes that are not in this table, but those are more

1 so reorganization, moving a paragraph here and moving to paragraph there so that it fits more  
2 appropriately within the Title 19.

3  
4 Ms. Pali: Okay, when you, when you reference the table, are you on Page 12 and going all over  
5 the Page 31, is that the table? Can you reference what table or are you just talking about Page 2,  
6 kind of the at-a-glance?

7  
8 Mr. Forsythe: Here, let me bring it up for you, I'll share my screen again.

9  
10 Ms. McLean: Yeah, Commissioner Pali, he is referring to the table in the memo, not the table in  
11 the bill itself.

12  
13 Ms. Pali: Yep. I'm looking at the memo. It's like 67-8 pages.

14  
15 Mr. Forsythe: Yeah, it would be...so here is the memo and it is on Page 2 of the memo.

16  
17 Ms. Pali: So, Page 2?

18  
19 Mr. Forsythe: Yes, it's this right here.

20  
21 Ms. Pali: Okay, that's it for now.

22  
23 Mr. Forsythe: All right.

24  
25 Mr. Tackett: Thank you, Kellie. P. Denise.

26  
27 Ms. La Costa: Thank you, Vice-Chair. Yes, I have a couple of questions myself. First of all, you  
28 mentioned that you got seven letters all are approval. I must have been reading something  
29 different because I read several letters that people were opposed to some of the changes and  
30 specifically, they mentioned the Wailuku Hotel, that wasn't brought up at all and it is part of this  
31 area. So, I'm a little confused of why you said everyone approved it when the...some of the  
32 testimony that I read was not the case. That's my first point.

33  
34 Mr. Forsythe: So, to clarify there, I was tallying up the support for the amendments. Correct, that  
35 the letters do, many of the letters do reference their opposition to the hotel. However, in regards  
36 to this proposed bill for an ordinance, that's what I was trying to refer to, is that there was the  
37 support for the proposed bill for an ordinance.

38  
39 Ms. McLean: If I could, if I could add to that Commissioner La Costa?

40  
41 Ms. La Costa: Thank you, Chair.

42  
43 Ms. McLean: The reason...into this is because under the current Wailuku Redevelopment Area  
44 Zoning and Development Code, the MRA would have the authority to approve variances that the  
45 hotel has requested. Under the proposed bill, variances would have to go to the Board of  
46 Variances and Appeals. So, this proposed bill doesn't change anything related to the hotel, it

1 doesn't change the standards or you know the height and number of rooms and things like that.  
2 It keeps those requirements the same from the existing Code to the...(inaudible)...Chapter. But  
3 the significant change is it would be the BVA rather than the MRA that would hear the variance  
4 request.

5  
6 Ms. La Costa: Director, as always, thank you for your intelligence and your insight. I do have  
7 another question, however. In this document, it does not encourage live/work units in Wailuku.  
8 It talks about new buildings and what they will have to do, all of their parameters, but there isn't  
9 anything about live/work units and I'm wondering if that should be incorporated somewhere so  
10 that it is in the forefront of developers minds.

11  
12 Mr. Forsythe: Within the...(inaudible-feedback)...there are a couple of sections that I can think  
13 of within the general requirements, specific use section, it does address home occupations and  
14 there are certain requirements to having home occupations. However, within the Commercial  
15 Mixed-Use District as well as the Business Multi-Family District, it is encouraged to have  
16 developments or existing structures to have both live/work type of units within the same structure.

17  
18 Ms. La Costa: Thank you, cause we need that. And then my last question—

19  
20 Ms. McLean: Commissioner La Costa, if I can also add to that. What the proposed bill endeavors  
21 to do is to take the exact Wailuku Redevelopment Code and put it in Title 19 without making  
22 changes in uses or standards. Some changes had to occur like the variances that I mentioned,  
23 but otherwise we just tried to take the same thing, the same wording, the same uses, the same  
24 standards and put it into Title 19. So, I don't disagree with your question about encouraging  
25 live/work, but that's, that's why we just tried to replicate it in a format for Title 19.

26  
27 Ms. La Costa: And if, if I might direct this question to the Director also, please, Vice-Chair?

28  
29 Mr. Tackett: Yes, please.

30  
31 Ms. La Costa: Thank you. On Page 7, it talks about joint lot use, and I'm just wondering why  
32 consolidation would not be there instead of, instead of that verbiage. But if you're just mirroring  
33 it and putting it in 19, then that's something that probably can be addressed later. I'm just looking  
34 for simplicity, because as with Commissioner Pali, there is...I'm very experienced at contracts  
35 and some of this I had to go back and read two and three times for it to make sense to me.

36  
37 Ms. McLean: Yeah, it will be a little different for staff too. Right now, if there are two that are used  
38 for the same purpose in any other area of the county, buildings have to be setback from the  
39 property line and this is saying that that would not be the case. They can be considered one lot,  
40 so that's a special treatment, if you will, for the Wailuku Redevelopment Area.

41  
42 Ms. La Costa: And I just had one more if I can beg your indulgence and then I'll be pau. Under  
43 Page 53, 19.39.140, Landscaping, Planting and Visual Screening. On A, it talks about parameter  
44 hedge of not less than four feet abutting the road, and then if you go over to 2A, it talks about a  
45 parameter hedge minimum of 42 inches in height, and I just wondered why it wasn't consistent  
46 one to the other.

1  
2 Ms. McLean: That's a great question. The first is for parking lots, the other is for parking  
3 structures.

4  
5 Ms. La Costa: Right.

6  
7 Ms. McLean: And why they're not consistent with each other I don't know. Again, when...actually  
8 it was Mr. Hopper who did the grueling work of preparing this bill. It was just taking what was  
9 there and replicating it without going through and saying oh we should change this. In your  
10 example, make these consistent weren't proposed, it was just taking the existing language and I  
11 don't know why—

12  
13 Ms. La Costa: I'm just thinking about the consumer and how confusing the permit process,  
14 et cetera is already. So, thank you very much for your time and information Director.

15  
16 Mr. Tackett: Thank you, P. D. Commissioners, do we got any, any other questions at this time?

17  
18 Mr. Freitas: Commissioner Freitas has a question, maybe you can't see me.

19  
20 Mr. Tackett: Yeah, you're stuck, but go ahead Commissioner Freitas, thank you.

21  
22 Mr. Freitas: I've been many things, never stuck. Okay, question, so everything in all the rules  
23 listed in here, we can't at least make a recommendation? This question is to Mr. Scott Forsythe.

24  
25 Mr. Forsythe: Yes, you can. One of the options that the Commission has is to recommend  
26 approval of the proposed bill with amendments to the Maui County Council.

27  
28 Mr. Freitas: Okay, good. Thank you. My question is after hearing testimonies previous about  
29 construction in this area, height has always been a problem. Height limit. As I read through some  
30 of these, you have, you have three categories, and you have a 30-foot height, 45-foot height, 60-  
31 foot height, and as I look up, I have no idea what that pertains to. I would highly recommend that  
32 one of the biggest things that was a problem was the height of that proposed hotel. I would like  
33 to add a recommendation to eliminate the 60-foot height and make 45 be the maximum with the  
34 understanding that if someone really wants one bigger, they would have to go through a process  
35 of approval. Can we look...do others feel the same way or is there a real need because when I  
36 look at these...that map of where all of these are, it looks like low lying, low homes, it's void of the  
37 County Building and State Building which are high and we can't change that already, but  
38 everything else it seems like the community wanted things low. Anyway, can we consider that or  
39 discuss that? Any other Commissioners wanna talk about that?

40  
41 Ms. Pali: I'd like to jump in if I can, Commissioner?

42  
43 Mr. Tackett: Yeah, go ahead, go ahead, Kellie.

44  
45 Ms. Pali: Uh, yeah, Commissioner Freitas I like the idea of considering what's been done may  
46 not be what's good for today. I definitely am on the same page with you on that. I just feel for

1 me, I would need a lot more research before me kind of come in with that kind of adjustment. And  
2 the other thing I try to look at is I know that this proposed bill would impact the immediate project  
3 ahead of us which is the Wailuku Hotel, but it's also going to impact all future, so I try to look past  
4 just sort of the present. And also, you know, Wailuku really well it's actually really sloped and  
5 there's a lot of low spots, and a higher elevation spots. It's not flat. And so, to make a judgment  
6 call without further investigation, to cut the 60 to 45 when, when that might be different in different  
7 spots. I don't know that I would be comfortable with that quite yet. I like your idea. I like where  
8 you're going with it. And I still like the fact that, the fact that we're putting it into Title 19 is now  
9 giving us more control because there's a different vetting process. And remember, when County  
10 Council goes to approve these things, we get to come and have public testimony, public  
11 transparency, and that's when we can do a little bit more research and then come and have a say  
12 again at the table. I think that might be the idea of why we're trying to put it into Title 19. So, I  
13 think that just doing this today is going to give us that opportunity to speak up, opportunity for the  
14 voices to be heard, and that public transparency. So, I think your idea of revisiting some of this  
15 is going to be solved with Title 19 without having to maybe take a firmer spot on the reduction  
16 without really necessarily looking at how that would impact future projects, putting the current one  
17 on the side. That's just my two cents.

18  
19 Mr. Freitas: That's all I have, Vice-Chair.

20  
21 Mr. Tackett: Thank you, Kawika. Thank you, Kellie. Does anybody else have any, any questions,  
22 any comments? I'm not sure if I'm seeing everybody because like I said, and possibly I labeled it  
23 incorrectly, but you, you weren't stuck to Kawika but you were frozen and you're still frozen on my  
24 screen, so I cannot, I cannot really tell. So, does...do any Commissioners, any Commissioner  
25 that has a question for this agenda item, please go ahead.  
26 If not...

27  
28 Ms. La Costa: I have, I have Vice-Chair, this Commissioner La Costa, I have one more question,  
29 please.

30  
31 Mr. Tackett: Okay, P. D., go ahead.

32  
33 Ms. La Costa: Thank you. Um, this probably will also go to the Director or maybe Mr. Hopper. I  
34 just need some clarification on some of the language on Page 55. Under, it looks like B1B and  
35 Number 3.

36  
37 Ms. McLean: Okay, what is the question?

38  
39 Ms. La Costa: Will the...the sentence, the burden of proof to establish that the destruction of a  
40 structure was due to accidental means as described above, and that the structure was legally  
41 nonconforming shall be on the owner. Does legally mean that it was previously existed as and  
42 overlooked. I didn't think that nonconforming was a legal aspect.

43  
44 Ms. McLean: Well, you can have legal nonconforming and you can have illegal nonconforming.  
45 A nonconformity is when something isn't compliant with the current code. A legal nonconformity  
46 is it's not compliant with the current code, but when the structure was built or when the use was



1 initiated, it was allowed. And so that can be demonstrated by having a building permit or some  
2 other type of approval. In the case where throughout the County we have structures that were  
3 built before building permits were required, and so generally the Tax Office has field notes going  
4 back, way back then to show that the structure existed. So, there is a way, there are ways to  
5 document that a structure was, was legal. Usually, it's a building permit that shows that it was  
6 permitted or if it was before building permits were required. There are other ways to show that it  
7 existed.

8  
9 Ms. La Costa: And then on Number 3, any nonconforming structure may be repaired, expanded  
10 or altered in any manner which does not increase its nonconformity. So, when I say expanded,  
11 I'm thinking about it expanding in size and going by the original building permit how would that fall  
12 in line if it does not increase its nonconformity but can be expanded?

13  
14 Ms. McLean: Well, if the nonconformity is that it's built in the current setback then the structure  
15 could expand but it would have to expand away from the setback. It couldn't expand farther into  
16 the setback, but it could expand in the other direction in a way that was...(inaudible)...

17  
18 Ms. La Costa: I'm sorry, I'm full of questions today, so, and if I might, Vice-chair, one more please?

19  
20 Mr. Tackett: Go ahead.

21  
22 Ms. La Costa: On Page 63, under C, 1A, upon receipt of the application, the Director shall review  
23 the plans for compliance in the Wailuku Redevelopment Area Guidelines. Does that mean that  
24 you review every plan or does some of your staff do it? And if some of your staff does it, perhaps  
25 it should be changed to say or appointed staff just to make sure that we are clear within the bill.

26  
27 Ms. McLean: Throughout Title 19, there's reference to the Director and then I delegate those  
28 responsibilities to staff because if I had to do everything that Title 19 says I have to do, I'd never  
29 see my husband, and things would take a lot longer than they take now, and they already take  
30 longer than some people want. Maybe Mr. Hopper on that legality of referring to the  
31 Department...to the Director and I, it probably comes from the Charter where the Charter  
32 authorizes the Director to perform certain functions, not staff. So, then I in turn, can delegate that  
33 to staff. Mr. Hopper might have more to say about that as to why it says the Director and not the  
34 Department.

35  
36 Mr. Hopper: Thank you.

37  
38 Ms. La Costa: ...(inaudible)... Director and/or delegate, so that's why I was bringing that up.

39  
40 Mr. Hopper: In Title 19, the definition of Director means the Director of the Department of Planning  
41 or the Director's authorized representative. So, that's consistent throughout Title 19, so I think  
42 putting this into Title 19 would make that clear that that's...that delegation is permissible.

43  
44 Ms. La Costa: Thank you very much, Mr. Hopper.

45  
46 Mr. Edlao: I have a question.

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Mr. Tackett: Okay, Jerry, go ahead.

Mr. Edlao: Yeah, I've got a question for the Director, Michele. My question is, anything that falls under this new chapter, whatever the case may be, do we get to review these things or goes to Council, Board of Variance and Approval?

Ms. McLean: Well, if there are, there are certain permits in here that the MRA would still have the authority to review. Variances would have to go to the Board of Variances and Appeal. I don't believe there is anything in here for the Commission, for the Planning Commission to review. Scott or Mike can, can confirm that. But approvals, there are a lot of administrative functions which the Department would continue to handle. The current MRA functions would continue for some types of permits and variances would then be the BVA. Scott or Mike can you confirm that?

Mr. Forsythe: Yes, that's correct, Michele.

Mr. Hopper: Yeah, the only, the only situation, I don't know if there's the potential to apply for a conditional use permit or something, in which case you'd be a recommending agency to the County Council. But because the existing Code was for the MRA for either their review or to have staff review, the original did not have the Planning Commission doing any reviews. So, it...it's mirroring that. I suppose the Council could decide to make a change and have the Planning Commission do a review instead of certain other agencies, but at this point, the Planning Commission wouldn't really have much to review. There's not, there's not county special permits and other permits. I would say that's probably generally the case with most zoning ordinances. The Planning Commission would review things like county special permits and maybe conditional permits. But the day-to-day approvals and variances are something that the planning commission generally doesn't, doesn't get involved in unless there's a, like I said, a conditional use permit or county special permit and that's not in this ordinance.

Mr. Edlao: Okay, thank you.

Mr. Tackett: Thank you, Jerry. Do we have, do you have any other questions at this time? Hearing none, could we could we get a motion on this matter?

Ms. McLean: Chair?

Mr. Tackett: Yeah.

Ms. McLean: Excuse me, we haven't taken public testimony yet.

Mr. Tackett: Oh, I didn't know we had public testimony on this, sorry.

Ms. McLean: Yes. So far, we have two people signed up to testify.

Mr. Tackett: Okay.

1 Ms. McLean: The first is Jonathan Starr, and he'll be followed by Robin Knox. This is not a  
2 contested case item, so you don't need to swear in the testifiers. Jonathan, if you want to unmute  
3 your audio, and if you wish, unmute your video.

4  
5 Mr. Tackett: Uh, I can't hear anything. Commissioners, can you guys hear anything? Jonathan,  
6 you got no audio at this point.

7  
8 Ms. McLean: Think he's going to try to call in.

9  
10 Mr. Tackett: Okay.

11  
12 Mr. Jonathan Starr: Hello, am I...is my audio coming through? Okay, let me just mute it locally.  
13 Okay, thank you for bearing with me. My name is Jonathan Starr. I've been a property owner in  
14 Wailuku for about 25 years. I've also served for most of those 25 years in various boards and  
15 commissions, including as Chair of the County Planning Commission, on the MRA, Board of  
16 Water Supply, State Water Commission, et cetera, et cetera. Anyway, I've been involved in  
17 Wailuku and the attempt to move it away from being a area of slum and blight as it's categorized  
18 by the Federal Government. It's improved somewhat, but I think there's still a ways to go. We  
19 still have people selling methamphetamine on the corner of Central and Main most every day.

20  
21 There's been hundreds of public meetings, thousands and thousands and thousands of  
22 community members and property owners involved over these 20 years, and it's moved to a point  
23 where there has been a desire and that's been very clearly laid out by the County after a lot of  
24 consultants have been involved to try to create development and more density and more activity  
25 in Wailuku, and it was starting to move forward, and now here this seems to be a step to  
26 completely turn that around, and to stop any efforts to improve the town and make it economically  
27 viable.

28  
29 I don't really understand why this happened. I have spoken to a number of other major property  
30 owners. None of them seem to know anything about this. None of them have been contacted.  
31 This is a very major change. It's being made to look like it's a very minor change, but it's not, it  
32 completely changes the...in terms of process and in terms of what the property owners have to  
33 get through to make any changes or they get value out of their property. It's a pretty major taking  
34 without any public outreach. It's being done in the height of a pandemic and it's being done in the  
35 dark, and it seems to be very much against what's supposed to be happening. The fact that the  
36 Chair of the body did not realize there's supposed ... (inaudible-technical difficulties)... testimony  
37 and allow deliberations to take place before public testimony has been received is just indicative  
38 of the way this is being handled. I think a little bit more thought and a little bit more time and a  
39 little bit more outreach needs to be done before this sort of thing would or should occur. Thank  
40 you very much. Aloha.

41  
42 Mr. Tackett: Thank you for your testimony, Mr. Starr. Do we have any other testimony on this  
43 item?

44  
45 Ms. Pali: Chair, I have a question for the testifier.

46

1 Mr. Tackett: Sure. Go ahead.

2

3 Ms. Pali: Hi, Mr. Starr. Thank you for your testimony. I just want to reconfirm what I think I heard  
4 you say in the testimony. Did you say you believe that this change to put everything under Title  
5 19 would greatly hurt the current owner's ability to make changes that they believe are profitable  
6 to the area and their own properties?

7

8 Mr. Tackett: Mr. Starr, are you still there?

9

10 Ms. Pali: I see him nodding his head, so that would be a yes. Okay, shoots, I shoots, I suspect  
11 you've already hung up the phone. I would have one further question to sort of go into a little bit  
12 more detail because you're saying that you believe this process is more in the dark. And I viewed  
13 it as it being more in the light. So, I do want to just explore that. If you could call back in and just  
14 explain that, because I want to make sure I have a full understanding of this before I make a  
15 determination, please sir.

16

17 Mr. Starr: Am I back in the audio?

18

19 Ms. McLean: Yes, we can hear you.

20

21 Mr. Starr: Okay, please, could you repeat your question?

22

23 Ms. Pali: Yes, you, in your testimony, you believe that this process would put it into the dark  
24 where decisions would be made, made in the dark, where people would not have that  
25 transparency. And I was actually thinking the opposite. It was my initial look that putting it in this  
26 process would make it more open. And so, can you just further explain your position?

27

28 Mr. Starr: Well, I can a little bit. The fact that you were just told that the bill before you is not the  
29 complete text of what is being contemplated by the Planning Department would be one thing.  
30 You know, six, seven, eight months ago, the MRA was told that they could not do any decision  
31 making and then the next thing that happens is rumors are around about some lawsuit, and then  
32 some settlement that the County had done with some people from outside the Wailuku area or  
33 outside that, you know, on the mainland or whatever about changing all the rules for Wailuku, but  
34 no one has ever seen that settlement or understand what that's about. And there's never been  
35 an explanation of why this is all being done. You know, there's rumor that it's because of some  
36 settlement, but that settlement done by the County is being kept in secret. So...also, I spoke to  
37 several other property owners and they have no idea that this is going on, so if that's not in the  
38 dark, I don't know what is. And so, I would think that it would create contentiousness in the future  
39 when the community has been working for 20 years with one voice to do one thing and then  
40 everything gets changed without anyone knowing why. Thank you.

41

42 Ms. Pali: Yeah, I think if I could just wrap it up, Commissioner Chair Tackett. I don't know about  
43 what you spoke of, so I cannot really speak on that, but I suspect if the County through whatever  
44 process, revealed that the initial process that they set up, maybe not, could not hold water legally,  
45 it almost makes me feel like we should be doing things accurately, whether we were doing them  
46 inaccurately in the past, and so, can you just answer one last question? Do you feel like Title 19

1 would help current owners make profitable changes or hinder them from making profitable  
2 changes to their properties?

3  
4 Mr. Starr: I think it would hinder, it would give the only ability to be done...to do anything would  
5 be to recourse, how about all the projects that were approved under something that we're told  
6 now is defective, and how about the buildings, you know, that were built or whatever under  
7 processes? Remember, before this Code came in, everything was 12-story with variable zoning.  
8 So, if that's being said that is defective then that to me is a case will likely be made that it should  
9 revert back to the original 12-story and then a new start should be made. So, I think if this is going  
10 to create a lot of confusion and it has...(inaudible-technical difficulties)... the goal, then that is  
11 what we'll likely...(inaudible-technical difficulties)...

12  
13 Ms. Pali: Thank you. Thank you for your time. Thank you, Chair.

14  
15 Mr. Tackett: Thank you, Kellie. Thank you, Jonathan. Do we have any other or any other  
16 questions for this testifier? Okay, could we have our next testifier please?

17  
18 Ms. McLean: Yes, Chair, and the next testifier is Robin Knox, and she will be followed by  
19 Albert Perez. Robin, you can unmute your audio and if you wish you can unmute your video.

20  
21 Ms. Robin Knox: Aloha, good morning. My name is Robin Knox. I just wanted to say I think this  
22 is a good thing to move the decisions on variances to the Board of Variances and to move, you  
23 know, these...this into Chapter 19. I did want to call out one thing that is unclear to me about  
24 home-based businesses or home occupation that I believe there's another part of the Maui County  
25 Code that says that that use is only for businesses that don't have employees and that doesn't  
26 make sense to me in the context of the virtual world that we all live in now. When I read this text,  
27 it seems acceptable to me because it doesn't have that specification. It just says that it is  
28 something that your neighbors basically wouldn't notice and that it's, you know, contained within  
29 the extent of the home and things like that. So, I'm just wondering if, if there is, if that other part  
30 of the County Code would also apply and if there's a conflict between this and that, and I think  
31 that home-based occupations and businesses should be able to have, you know, virtual  
32 employees who aren't coming and going to the home, but who are employed by the business.  
33 So, those are my two comments. Thank you.

34  
35 Mr. Tackett: Thank you. Does anybody have any questions for the just for the testifier? Thank  
36 you very much.

37  
38 Ms. Knox: You're welcome.

39  
40 Ms. McLean: Chair, Commissioner La Costa raised her hand.

41  
42 Mr. Tackett: Oh, okay. Go ahead P. D.

43  
44 Ms. La Costa: Thank you, Chair. So, my question is to Ms. Knox, do you operate a home-based  
45 business right now and do you or do you not have virtual employees?

46

1 Ms. Knox: I do. I operate a home-based business that has virtual employees, but I have had  
2 landlords you know, put in the lease that I have to meet a certain definition and the definition says  
3 you can't have employees which doesn't make sense to me if the employees never come to the  
4 place, if they're working at job sites and their, you know, activities related to the home are totally  
5 virtual.

6  
7 Ms. La Costa: Thank you, and perhaps Mr. Hopper, if you could please chime in so that Ms. Knox  
8 and myself and other Commissioners is there language in the rest of Title 19 that is in conflict with  
9 this new proposed bill? Thank you.

10  
11 Ms. Knox: I apologize that I don't have that citation. I tried to find it, but I couldn't.

12  
13 Mr. Hopper: There could be some places in Title 19 where there's definitions that I think the intent  
14 and again, Planning Department can comment on this because that's, that's something generally  
15 that's going to have to get clarified, is that this ordinance, at least with respect to the area zoned  
16 in the Wailuku Redevelopment Area would apply over those definitions to the extent they're  
17 inconsistent. We could at clarifying language to that, but there is a definition for home occupation  
18 or there's a definition for home-based business in here. And it said if these, if the definitions are  
19 not included in this section, the Title 19 definitions will apply. So, I think the options would be to  
20 have the, have it clarified that the definitions in this section as well as the substantive terms would  
21 apply over Title 19, but right now there is a statement that the definitions in this section apply if  
22 there's not a defined term in Title 19 or if there's not a, if there's not a defined term in this ordinance  
23 that the definition in Title 19 would apply. So, this ordinance would apply over that. But we can  
24 add additional clarification to that with respect to businesses. And I don't know if the Departments  
25 look at that from a policy perspective if they'd prefer that the universal definition or not, but right  
26 now, it says the definition in this Code would apply and if it's not defined in this Code, then the  
27 definition in the Maui County Code would apply.

28  
29 Ms. La Costa: Thank you, Mr. Hopper. I don't know if I speak for everybody else, but it's really  
30 difficult to have this new code and then the existing code and someone will say, oh, no, Title 19  
31 says you cannot have employees. And then, oh, but look we have a new bill that says so. So,  
32 the conflict is is going to be an issue to the public, and I think we're here to make things easier for  
33 the public and as well as continue to be legal. So, I think that, that needs to be looked at so that  
34 they are the same. Thank you.

35  
36 Mr. Hopper: If you wanted to make it so it's restricted like the rest of Title 19. I think that's an  
37 option but you'd want to be clear. Here this says, that this section would apply. So, if it's more  
38 permissive, it would apply with respect to the Wailuku Redevelopment Area, but if you want to  
39 make it consistent, you would need to amend the rest of Title 19, which is not part of this, this bill.

40  
41 Ms. La Costa: I understand. No, I meant the whole Title 19 should be consistent. It was a blanket  
42 statement versus this makes more sense what is stated here as far as a home operating business.  
43 That's it, Chair. Thank you.

44  
45 Mr. Tackett: Thank you, P. D. Do we have any more questions for the testifier? Hearing none,  
46 could we have our next testifier, please, Director?

1  
2 Ms. McLean: Yes, Chair. The next person, and so far, the last to sign up is Albert Perez.  
3  
4 Mr. Tackett: Go ahead Albert.  
5  
6 Mr. Albert Perez: Aloha, can you hear me?  
7  
8 Mr. Tackett: Yes, I can.  
9  
10 Mr. Perez: Good morning, everyone. Albert Perez with Maui Tomorrow and we are here to  
11 support the proposed ordinance. Legislative authority resides with the County Council, so land  
12 use decisions cannot be made by the MRA, the Maui Redevelopment Agency. Similarly,  
13 variances can only be heard by the Board of Variances and Appeals, so they cannot be heard by  
14 the Maui Redevelopment Agency, and so this ordinance would correct the current situation to  
15 comply with the law. I want to point out that the Maui Redevelopment Agency reviewed and  
16 recommended approval of the proposed bill. I think it was unanimous. I'm not sure about that,  
17 but I think it was. As far as the process, there are no changes proposed in the process. The  
18 zoning must still be complied with and variances must still be obtained. The only change is in  
19 which bodies will be making those decisions in order to comply with the law. The Maui  
20 Redevelopment Agency doesn't have that authority, so this corrects that situation. We support  
21 this ordinance and we urge that you recommend approval by the Maui County Council. Mahalo.  
22  
23 Mr. Tackett: Thank you, Albert. Do we have any questions for Mr. Perez? I don't see any at this  
24 time. Please speak up if you have a question. Thank you, Albert.  
25  
26 Mr. Perez: Okay, mahalo.  
27  
28 Mr. Tackett: Do we have any other testifiers that are wanting to testify that have not signed up at  
29 this time?  
30  
31 Ms. McLean: Chair, I'm looking in that chat and it looks like Kaneloa Kamaunu has just indicated  
32 he wishes to testify.  
33  
34 Mr. Tackett: Okay, thank you.  
35  
36 Ms. McLean: You can unmute your audio and if you wish, unmute your video.  
37  
38 Mr. Kaneloa Kamaunu: Aloha mai kakou Kaneloa Kamaunu. I'm not sure what the right agencies  
39 are, but with what's going on, I think with...I've been involved in a lot of projects because of the  
40 iwi kupuna. There needs to...I think the, you know, the ones that actually have the responsibility  
41 to make sure that all members of the community are actually engaged should be the party if that  
42 be the County Council, I'm not sure of all the parties that would weigh in on this. But I think a lot  
43 of times, you know, it's in the wrong, it's in the wrong venue. And the venue that it goes into  
44 sometimes is quite short-sighted and not all aspects are looked at especially when it comes to  
45 the culture area. When, when depending on what area it goes into or agency, you know, not  
46 everything is considered. They only look at their directives and sometimes are short-sighted on

1 the full scope of impact that whatever decision they make is going to have on others that may not  
2 be directly involved say in redevelopment or who may be against it, but a lot of times they don't  
3 get heard. And being one that has been advocating for protection of our iwi and have found many  
4 walls that actually stop us from engaging because the outline of that agency or commission that  
5 is involved doesn't look at that. Is, you know, it becomes highly prejudicial. It's usually one-sided,  
6 and you know, they tend to side to the areas supposedly that they're just restricted to. And so,  
7 either the outline of the agencies need to be redefined and their direction, but I believe that, you  
8 know, that the agency involved in making decisions should be one that actually takes into  
9 consideration all aspects of the community. And, you know, it's sad to say that even though—

10  
11 Ms. Takayama-Corden: Three minutes.

12  
13 Mr. Kamaunu: Yeah, and it's sad to say that even though we live in Hawaii that the culture of  
14 Hawaii is really not looked at and its importance unless it's dealing with tourism. Thank you.

15  
16 Ms. Pali: All right, Chair, we can't hear you.

17  
18 Mr. Tackett: That would explain a lot. Thank you, Kaneloa for your, for your testimony. Does  
19 anybody have questions for Kaneloa at this time? Please speak up if you have any questions,  
20 because I cannot see all of you at once. Okay, thank you. Director, do we have any other testifier  
21 signed, signed up at this time?

22  
23 Ms. McLean: Chair, yes, we do. Carol Lee Kamekona has also indicated she wishes to testify.

24  
25 Mr. Tackett: Thank you.

26  
27 Ms. McLean: Carol, can you unmute your audio, and if you wish, unmute your video.

28  
29 Ms. Carol Lee Kamekona: Aloha kakahiaka ia oukou, can you hear me?

30  
31 Mr. Tackett: Yes, I can.

32  
33 Ms. Kamekona: Mahalo. Mahalo, Chair, mahalo, Director, and mahalo and good morning to  
34 Commissioners. With regard to the Redevelopment Agency, I believe that if there is an entity that  
35 is specifically been established in order to handle certain issues, i.e., the Board of Variances and  
36 Appeals, then I believe that this ordinance is a good way that allows that allocation to a specific  
37 entity that has been developed for that reason. And therefore, with regards to what  
38 Mr. Albert Perez said from Maui Tomorrow, I do support this ordinance moving forward. Mahalo.

39  
40 Mr. Tackett: Thank you. Do we have any questions for the testifier, please? Hearing none,  
41 Director, do we have any other testifiers?

42  
43 Ms. McLean: No, Chair, there is no one else who has signed up to testify.

44  
45 Mr. Tackett: Okay, since we have no more testifiers, I believe we're moving on to deliberations  
46 and motions is that correct?



1  
2 Ms. McLean: We could first ask if there is anybody else on the call who wishes to testify on this  
3 item.  
4  
5 Mr. Tackett: Okay.  
6  
7 Ms. McLean: Please, please jump in and offer your testimony. Okay, it looks like you're in the  
8 clear Chair.  
9  
10 Mr. Tackett: Outstanding.  
11  
12 Ms. McLean: You can, you can formally close the public hearing on this item.  
13  
14 Mr. Tackett: Thank you. So, I'd like to formally close the public hearing on this item and open the  
15 floor to, to motions and deliberations. So, do we have any, do we have any motions or, or  
16 deliberations that we got to work through at this time?  
17  
18 Ms. Pali: I have a question, Chair.  
19  
20 Mr. Tackett: Go ahead.  
21  
22 Ms. Pali: I think this might be to the Director. You may not have this information like dialed in  
23 exactly at your fingertips since you didn't see this coming, but I'm just curious, so I would allow  
24 any form of good estimate if you, if you were that in tune with the numbers, but since the Wailuku  
25 review committee, I guess you guys are calling it MRA, sorry. Yeah, MRA. When that was  
26 originally created, was there...you guys must have had to find some legal aspect that allowed that  
27 to be a legal change if you did it. I have a hard time believing that something was done that was  
28 screaming illegal. So, what do you know off the top of your head, what...is there some little rule  
29 that says on the authority of somebody, you can create this separate review that makes the area  
30 exempt from a total, you know, Title 19? I mean, can you just give us a little background there?  
31  
32 Ms. McLean: I'll say what I understand, and Mr. Hopper, might—  
33  
34 Mr. Hopper: I could.  
35  
36 Ms. McLean: I think he wants to—  
37  
38 Ms. Pali: Yeah, let's go. Mr. Hopper.  
39  
40 Ms. McLean: First crack at this.  
41  
42 Mr. Hopper: Yeah, I did research the background on this. There was a...there's...I don't want to  
43 get into too much 'cause this is a subject of a lawsuit. I think I can say publicly what happened  
44 was, was that there was a, there was an action taken by the Maui County Council under the State  
45 Law HRS, I believe 53 which is the State's Urban Renewal Law which allows the creation of a  
46 Redevelopment Agency, and that Redevelopment Agency has broad powers to do various things.

1 The MRA was created, eventually it resulted in an adoption in 2000, the year 2000 of a Wailuku  
2 Redevelopment Plan, I'm skipping over a variety of history for brevity, but in around 2000, the  
3 Wailuku Redevelopment Plan was adopted. In that plan which was adopted by the County  
4 Council by resolution, there were several statements about the MRA adopting flexible zoning and  
5 development standards by Administrative Rule that's what the Council had adopted by resolution  
6 in order to do that. Two years after that, the Wailuku Redevelopment, the Wailuku Area Zoning  
7 and Redevelopment Code which is essentially the text you have here that's being moved into the  
8 County Code was adopted by the Maui Redevelopment Agency by Administrative Rule. That,  
9 that...and that was consistent with Corporation Counsel opinions at the time which stated that  
10 that was a permissible action to do the basis being the Urban Renewal Law allowing broad powers  
11 to redevelop the area, and so that happened...that happened around 2002, that was adopted by  
12 Administrative Rule and it's been applied to those properties up till today. However, the original  
13 authority to do that was done by the County Council. They adopted the Wailuku Redevelopment  
14 Plan. So, if the County Council eventually would want to say we want this in the Zoning Ordinance  
15 instead of it being Administrative Rule they would very much have that authority to decide that by  
16 ordinance which is what this ordinance would do that they want that to be done through the regular  
17 process that all other zoning goes through which is through Title 19 of Maui County Code, and  
18 the process by which all other variances go through which is through the Board of Variances and  
19 Appeals.

20  
21 Now there has been a lawsuit filed on this. I would say that we don't agree that the process to  
22 date has been illegal. We would disagree with that. However, I think the Council does have it  
23 fully within their authority to decide this should be part of the Zoning Code like the rest of the  
24 County. And so, I think that that's something that the Council can decide. This is part of that  
25 process. I think the Planning Department wanted to go forward with that as well, and so, you  
26 know, we have this ordinance to make this more consistent with the rest of the of the law. So, I  
27 think that's, that's sort of the background here. I would note that as part of this ordinance, at the  
28 very end, it states that all approvals of any kind granted by the Maui Redevelopment Agency,  
29 Planning Department or other agency prior to the effective date of this ordinance, in accordance  
30 with the Wailuku Redevelopment Area Zoning and Development Code dated September 2002,  
31 including variances shall remain in full force in effect and shall not be impaired by this ordinance.  
32 So, it's basically saying that any action taken to date, the Council is saying that's all valid and I  
33 think that that's fair because those actions were taken and development done, you know,  
34 consistent with that. And again, I would, I think, dispute that anything illegal was done, but I think  
35 it would be cleaner to have this as part of Title 19 to be consistent with what's done throughout  
36 the rest of the county, even though this is a bit of a special area because a Redevelopment  
37 Agency was created to manage this area. I think we support that that change. Well, we support  
38 that it is legal for that change to be made. Our office doesn't necessary formally support any  
39 particular action, but that's an action that can be taken. And that's what this ordinance would do.

40  
41 Ms. Pali: Thank you so much, Mr. Hopper. That is super clear, I think, because sometimes as  
42 Commissioners, we get a little confused when testifiers use language and we forget that we still  
43 have the responsibility to fact check that language. And so, it was a little odd to hear that we  
44 would do something illegal. I suspect if you're in a lawsuit that's yet to be determined. But it is  
45 interesting to know that the County Council at that time themselves created this, approved it, and  
46 then adopted a resolution in 2000, so that does make me feel a little better. And I do believe that

1 I agree that if this new Council on this new day and age and maybe over the last 20 years, that  
2 board served its purpose and now moving forward, it may be more consistent. I do believe that  
3 that might be the step in the right direction. So, thank you.

4  
5 Mr. Tackett: Kellie, you got any other questions? Kellie, do you have any other questions?

6  
7 Ms. Pali: Sorry, Chair. I shook my head. No, I do not. Thank you.

8  
9 Mr. Tackett: No problem. Commissioners, anybody have any other questions at this time?

10  
11 Mr. Freitas: Vice-Chair, Commissioner Freitas.

12  
13 Mr. Tackett: Thank you, Kawika. Go ahead, my brother.

14  
15 Mr. Freitas: My question is in support of Mr. Kamaunu's testimony and his concern for, and our  
16 concern for iwi kupuna. As I look through this bill, there's nothing that suggests if anything is  
17 found, that SHPD is notified. Is that because this is just a guideline and it falls under another  
18 rules for building that that would be covered? I want to make sure if it's not that something be put  
19 in here. I mean, we have how high a hedge should be, but we put nothing about our iwi kupuna,  
20 that's kind of a bad oversight. Mr. Hopper can you explain that?

21  
22 Mr. Hopper: The Planning Director could add as well, but you generally you deal with...and I don't  
23 think there's much about the iwi kupuna in Title 19. That's generally dealt with when construction  
24 happens. So, I think in the Building Code, in the Grading Ordinance and then independently  
25 through State Laws, HRS 6E and the other Administrative Rules those will apply and have various  
26 requirements if there's going to be work done on historic properties, if there's gonna be grading  
27 done, that's universal regardless of the zoning. So, whether you're zoned in the MRA or the  
28 Wailuku Redevelopment Area now, the WRA or your zoned somewhere else, those laws would  
29 generally apply to you regardless of where you're at, so I think that's why you wouldn't see  
30 something specific in a Zoning Ordinance to deal with, with that issue because it's generally dealt  
31 with in the various building, grading and obviously State Law would deal with that in general no  
32 matter what zoning you're in. So, you wouldn't do it specific to each zoning district because that's  
33 supposed to apply universally to the work that you're doing regardless of the zoning district you're  
34 in'

35  
36 Mr. Freitas: Okay, thank you. One more thing I would like to ask and not just to you Mr. Hopper,  
37 I want to go back to my height limit comment I made earlier. It's still bothering me as one of the  
38 main things on here. I respect Commissioner Pali's response, it's a very good response.  
39 However, some of these that were written and were passed we're passed like ten years ago or  
40 seven years ago, but since that time, there's a lot that has changed and it's very evident in  
41 testimonies that I've heard and presentations that I've attended that height limits are a big concern.  
42 Now, if we approve this bill to pass it forward with recommendation, am I correct in saying that  
43 County Council will look at it again and they can throw it out, but just note that that was addressed?

44  
45 Ms. McLean: Commissioner Freitas, I think the Commission could make a specific  
46 recommendation or just a general recommendation. You know, you could recommend specifically

1 that the height be reduced to a certain foot level or you could make the general recommendation  
2 for the Council to consider lowering the height. So, it's up to the Commission.

3  
4 Mr. Freitas: Okay, okay, thank you, Vice-Chair.

5  
6 Mr. Tackett: All right, so Kawika do you have, do you have a recommendation like that, that you  
7 would like to bring to the floor or what's you're—

8  
9 Mr. Freitas: I would like to go to the middle column which was 45 feet and bring that as to the  
10 maximum height limit.

11  
12 Mr. Tackett: Go ahead, Mr. Hopper.

13  
14 Mr. Hopper: Just to...I know that this is a bill to...it's essentially to adopt the current code into  
15 the, into existing Title 19. If you're going to look at changing the existing height limit to 45 feet in  
16 areas where it's 60 feet, I think that that may be an issue that you're going to want to notice  
17 publicly as a separate issue and give notice to people that that's, that's going to happen. I mean,  
18 I think you're going to have to deal with people who have existing buildings that are over 60 feet.  
19 I don't know how many of them there are, but the way this was noticed today, it was I mean, I  
20 think you can make some changes. So, if you want to recommend to the Council that they  
21 examine changing the height. But if you're going to do it now after I mean, there hasn't been really  
22 public notice of the fact that the 60 feet is you know, that the height limits in the existing areas are  
23 going to change, you, you may want to consider having that as a separate bill, I think would be  
24 my recommendation so you don't deal with the argument that, you know, this was not publicly  
25 noticed as part of the hearing because that's for existing buildings that can be a major change.  
26 Not to say you couldn't do it, you can change height limits, but as far as doing it, as part of this  
27 bill, I don't think I'd recommend doing that. I think you could recommend to the Council that they,  
28 they consider maybe not in this exact go around, but that they consider examining changing that  
29 height to 45 feet.

30  
31 In addition, the Planning Commission at a later date could also propose its own change plan. The  
32 Planning Commission does have the authority to propose changes to Title 19, so it could, it could  
33 do that separately but with today's public hearing notice, I would have issues I think with changing  
34 the height, the existing height limits in those areas without, without having that as noticed as part  
35 of the original bill.

36  
37 Mr. Freitas: Thank you, Mr. Hopper.

38  
39 Mr. Tackett: Go ahead, Jerry.

40  
41 Mr. Edlao: Okay, Mr. Hopper, with that said, then why are we reviewing this and it says here we  
42 can make recommendations or changes to this title? I mean, it doesn't make sense. I mean, you  
43 guys are asking us to review this and put comment to make or changes but now you're telling us  
44 that any changes we make has to be notified for the public for comment. I don't understand this,  
45 so kinda clarify this. Why would they, if that's the case, why the hell are we looking at this for  
46 then?

1  
2 Mr. Hopper: There's a state law that talks about when there's a public hearing or public notice  
3 required for either changes to rules or ordinances, and the issue is whether or not the changes  
4 will make this an entirely different proposal in this situation. You could make the argument that  
5 changing the height limit to 40...from 60 to 45 feet is not an entirely different proposal from what  
6 has been proposed. My advice to you is that doing that with this particular ordinance, and that's  
7 the case of any proposed bill that comes to you, remember when a bill comes to you that has  
8 been published in the newspaper with the text of the bill, and so the public will see here's what's  
9 being changed in the bill so they can come in and check and see what changes are being made  
10 and decide to come and testify at the hearing or not testify at the hearing based on the changes  
11 that have been made. In general, there are state law that says that if you publish the notice and  
12 then the changes you make are so substantive that it essentially is a different proposal than that  
13 which was originally proposed that it's totally different essentially then you have to go back and  
14 have another public notice so the public knows that. That's the case law there. That standard  
15 can be difficult to evaluate. But I'm saying with respect to this one, I would recommend that that  
16 change not be made because I can see an argument that that change would render this an entirely  
17 different bill with respect to the fact that it reduces the height, the maximum height allowed in  
18 certain areas where there you could have existing buildings by, by 15 feet, which can be  
19 substantial. So, that's what I'm saying with respect to this this particular bill. If you, you want to  
20 defer action and have another public hearing notice where that change is made maybe that's  
21 another option because you're not at County Council yet. So, you could do that. I think that could  
22 be a potential option. You in the newspaper wait another 30 days and then and then do that. But  
23 I think it would probably be easier to make that as a separate proposal to this ordinance. And I  
24 can give you the case law citations if you'd like because there's a pretty substantial body of law  
25 on those issues.

26  
27 Mr. Edlao: Okay, then in my mind, the changes, you know, taking away that 60 and just going to  
28 the 45 like Kawika says, in my mind, I don't think that's a substantial change. Even if we did make  
29 that change it wouldn't affect what was happening prior to this because whatever happened prior  
30 to this, once it's approved, you know, won't change that. I mean, this is just the changing would  
31 be moving forward. I beg to differ that the...that would be changing height would be a substantial  
32 change, but you know, you are the lawyer, so you know, that said, end of my question.

33  
34 Mr. Freitas: Vice-Chair, can I add to my original question?

35  
36 Mr. Tackett: I got, I got a question, I got a question for you Kawika. Seem like there's a little bit  
37 of confusion here. I thought that perhaps you were making a recommendation for the Council to  
38 look at that. I thought that that's where you were going with that, that that was your  
39 recommendation to Council. I did not feel like you were trying to change it right here in this  
40 particular meeting. Mr. Hopper is, is, are those two distinctly different things and is that something  
41 that Kawika could do?

42  
43 Mr. Hopper: I think you can definitely recommend to Council that they consider changing the  
44 height to 45 feet as part of a future bill. With the...I don't think the Council could do that...you  
45 see, any time the Council makes a change to a zoning ordinance, they have to give public hearing  
46 notice and you have to have a hearing on that issue. I don't think when this goes up to them as

1 part of this bill they could make that change. I think that they could either initiate another bill to  
2 do that or you, again, as the Planning Commission can initiate that as a separate proposal. My  
3 main issue is that you have a public hearing with it published in the newspaper that everybody  
4 who has a height limit of 60 feet, all those properties are now going to have a height of 45 feet  
5 and that get publicly noticed and people are aware of that, of that issue because that's not part of  
6 these original bills. But I think, yes, you can tell the Council, the Council should examine that. Of  
7 course, you yourselves, if you want to do that as part of a future meeting, could do that too to  
8 initiate that or the Planning Department could initiate that. I don't know if, if there's support for  
9 that or not, but that's, legally you can, you could do that. But I don't think the Council could pass  
10 that change as part of this bill. But I think you could recommend to them that they, that they  
11 consider lowering the limit to 45 feet and doing that through, through a noticed, properly noticed  
12 proposal.

13  
14 Mr. Tackett: Thank you, Mr. Hopper. Kawika, what you, what you got?

15  
16 Mr. Freitas: A quick question and clarification. So, the 60-page document that we got talks about  
17 heights, and you're saying, this is to Mr. Hopper that the public did not know that height limits are  
18 part of this. You giving me different mixed information here. If this is what we're reading, I'm  
19 assuming this is what the public get to look at. So, the public was able to look and see that there  
20 are 30, 46, 60 feet limits, and I cannot even understand what category or what...I guess if you're  
21 in the front of Main Street, had some kind of a details, but it's in here. So how are you saying that  
22 the public didn't know so that we can't make a recommendation?

23  
24 Mr. Hopper: I am certainly not attempting to send mixed signals here. There is no change stating  
25 that the 60 feet maximum height limits are changing to 45 feet in the existing areas. Remember,  
26 this is an existing area that is subject to these requirements already. And so right now, it says  
27 that it's 60 feet and you're adopting that consistent with that. If the proposal was, we're going to  
28 reduce the height limit by 45 or by 15 feet for all properties that have 60-foot height limit, then  
29 that's something that you could do. At this point, I'm saying, that if you did that, I'd be concerned  
30 that there would be a lawsuit for lack of public notice and that we would have trouble defending  
31 that lawsuit that's what I'm explaining to you right now and stating my concern.

32  
33 Mr. Freitas: Okay, thank you.

34  
35 Mr. Tackett: Thank you, Kawika. Commissioners, is there any other issues that we have to work  
36 through before we put a motion onto the floor?

37  
38 Ms. Pali: P. Denise, ...(inaudible)...

39  
40 Ms. La Costa: Yeah, Vice-Chair, you probably can't see me. I have an additional question for  
41 Mr. Hopper on this line of questioning, please.

42  
43 Mr. Tackett: Okay, go ahead, P. Denise.

44  
45 Ms. La Costa: In this document there, I read that if there was a building and/or a use that was in,  
46 that was currently being used for that use or for that height, that it would be grandfathered so to

1 speak, if that's the case, then anyone who lives in a building over 60 feet, the height limitation of  
2 45 feet, if that were to be the recommendation, would not apply because it was already existing.  
3 I can't find that where in this document it says that, but I do remember reading that it was whatever  
4 is existing is considered grandfathered. So how does that conflict with us putting a  
5 recommendation forward of 45 feet when that is in the document that was published.

6  
7 Mr. Hopper: Okay, if we need to discuss this further, I may recommend we go into executive  
8 session. I want to go into the details of, of the potential claims against the County on this issue.  
9 There's a nonconformity section in this ordinance and it states that if you, if you're a  
10 nonconforming building that you can continue to be nonconforming, but if something happens like  
11 a fire or the nonconforming use, that's a use, but if a fire happens in and the building is destroyed,  
12 generally, you cannot rebuild at that height. In addition, there could potentially be other owners  
13 who, who would have to, who may be considering building that wouldn't have had notice of this  
14 of this change, and that would apply immediately. But in addition to all of that, again, the issue is  
15 public notice with respect to this. And there's case law on the issue of public notice with respect  
16 to is this a substantively different procedure? We may be able to win the lawsuit with that  
17 happening. I'm not saying that that's not an argument you can make, but I have to give legal  
18 advice that in this case is in the best interest of the County and protects the County with respect  
19 to this. So, I think that, that's the best advice I can give. The nonconforming height section or  
20 nonconforming I think it would be structure or building section, I can read to you. You would be  
21 rendering any building over 60 feet as nonconforming and that could potentially impact the  
22 continued use of that building if certain things were to happen. So, it's not...you could put in  
23 language that says, that if buildings were already built at 60 feet, then that new height limit doesn't  
24 apply at all. You could do a variety of things, that wasn't considered as part of this bill. You have  
25 probably a variety of options to do that if you want to reduce height limits. But if we were going  
26 to do that in any, any district, I think we would look at the language that deals with the existing  
27 buildings and things like that. But the, that I do not believe was something that was contemplated  
28 by, by these original changes was to, was to change the height limit to 60 feet or to 45 feet. Again,  
29 that's only for portions of the, of the properties that are zoned. It's not everywhere. But again, I  
30 think it's more of a public notice issue, and if we want to discuss that further, and in more detail,  
31 we can go into executive session. But I again, I think I've raised the concerns that I would have  
32 with, with doing that as part of this particular proposal.

33  
34 Ms. Pali: Chair, if I may jump in and assist Mr. Hopper, 'cause my brain is kind of funky. Chair's,  
35 Chair and Commissioners, I think what he's saying is that there's two issues. The first issue at  
36 hand today is creating and moving over existing policy under Title 19. That's what's at stake,  
37 that's what's been posted, the public notice that we want to move it where it's at into Title 19. And  
38 the confusement for you guys is that you're seeing the whole policy, existing policy attached  
39 because we have to show what we're moving into Title 19. But just because the policy is attached  
40 doesn't mean we gave the public notice that we would actually be changing existing policy that's  
41 a second issue. Issue one, move it to Title 19. Issue two, let's now look at the existing policy and  
42 let's update it. So, Chair Freitas, you might actually right in the fact that it needs updating, but  
43 there is no public notice that we were going to update the current policy. The only public notice  
44 that was given is that we're moving it to Title 19. So, I feel like that's the confusion that you guys  
45 may be having, the struggle. And so, recommendation is, if you want to update the policy, it's

1 probably a good idea, but we have to give proper public notice. We have not done that today.  
2 Can't hear you Chair.

3  
4 Mr. Tackett: I said, thank you very much Kellie for your description of that. I actually fully  
5 understood that from the beginning so I don't know where, where you found that I was remiss in  
6 that. I believe these, these questions are coming from my commissioners and I'm just trying to  
7 be unbiased in my approach and give everybody the ability to voice their concerns. Actually, on  
8 this issue, I am completely against changing the heights, and I'm completely against changing  
9 the heights because that is a main hub for this island and those heights are, are allowed in very,  
10 very specific areas for very specific reasons. So, like I said, I just haven't weighed in on it because  
11 it's not my time to weigh in on it, it is not that I don't understand and I do agree with what you're  
12 saying—

13  
14 Ms. Pali: Sorry, I didn't mean it for your Chair. I didn't mean it for you, I was just trying to help  
15 the others, that's all.

16  
17 Mr. Tackett: Yeah, so I appreciate it. Thank you very much, Kellie, and I think, I think that I view  
18 it the same way as you. But that being said, I'm gonna take the rest of the...I'm gonna take  
19 whatever, whatever input I have from the rest of the...oh, I got Mr. Hopper again. Mr. Hopper, go  
20 ahead.

21  
22 Mr. Hopper: Just, just to clarify, this was not an intention to be in favor of or against a height  
23 change proposal. It's something you can certainly do. But my concern is you would go through  
24 and do it and the Council could potentially do it and then it could all get undone if there's a notice  
25 issue, and I just wanted to avoid that. So, if you want to go ahead and look at changing the height  
26 limit, if this is adopted as part of the Code, that's something within your authority to do, certainly.  
27 But I just wanted to have that clarified that this is not a statement in favor of or against doing that,  
28 it's an issue of if you do, it will stand up, and I have concerns in that situation.

29  
30 Mr. Tackett: Thank you. Thank you, Mr. Hopper. I think that you've been very clear on that. So,  
31 I believe everybody understands that. Commissioners, does everybody understand what he's  
32 saying is, is to either convey this document or don't convey this document and make  
33 recommendations to this document, so that's...but that the document remains the document.  
34 Anybody, anybody else have any questions that they need answered from either Mr. Hopper or  
35 the Director or deliberations with each other on this issue? I can't see everybody at all time, so if  
36 somebody has something to say, please speak up.

37  
38 Mr. Freitas: Vice-Chair, no one's saying anything can, can we make a motion to vote on this? I  
39 would like to make the motion to recommend approval of the proposed bill.

40  
41 Mr. Tackett: Okay, go ahead. P. D. can I let him make his motion or request?

42  
43 Mr. Freitas: Looks like she's seconding.

44  
45 Ms. La Costa: I was seconding it.



1 Mr. Tackett: Oh, better yet. Thank you, P. D. Okay so we got a motion and a second. And what  
2 is your motion, Kawika?

3  
4 Mr. Freitas: Recommend approval of this proposed bill.

5  
6 Mr. Tackett: Okay, and I got the second on that, and then, all in favor? And all opposed? Director,  
7 can...do you have the count on that?

8  
9 Ms. McLean: Yeah, Chair, the only person I couldn't see is Commissioner Pali 'cause she's frozen  
10 on screen. She's been frozen on my screen for like an hour with her coffee mug right up to her  
11 mouth. It's a great screen shot of her.

12  
13 Ms. Pali: I voted in favor, Director.

14  
15 Ms. McLean: Okay, so that's seven ayes, Chair.

16  
17 **It was moved by Mr. Freitas, seconded by Ms. La Costa, then**

18  
19 **VOTED: To Recommend Approval of the Proposed Bill to the County Council,**  
20 **as Recommended by the Department.**  
21 **(Assenting – K. Freitas, P. D. La Costa, S. Castro, J. Edlao,**  
22 **M. Hipolito, K. Pali, D. Thompson)**

23  
24 Mr. Tackett: Thank you, Director and thank you, Commissioners for bearing with me, I appreciate  
25 it.

26  
27  
28 Respectfully Submitted by,

29  
30  
31 CAROLYN TAKAYAMA-CORDEN  
32 Secretary to Boards and Commissions II