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**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM B.2  
SEPTEMBER 28, 2021**

Ms. McLean: The first, therefore, the first public hearing item that we have is from myself transmitting Resolution No. 21-92 that refers to the commission, a proposed bill to amend Chapter 19.40 of the County Code relating to conditional permits to remove the planning director's authority to approve non-substantive amendments that do not result in significant impacts above what would result from the approved conditional permit. So, this is a council-initiated bill that they've sent to all three planning commissions for review and comment and our Administrative Officer, Jacky Takakura, will be giving a brief overview, so I'd like to hand it off to Jacky.

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**B. PUBLIC HEARINGS**

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- 2. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution No. 21-92 referring to the Maui Planning Commission a proposed bill to amend Maui County Code Chapter 19.40, Conditional Permits, to remove the planning director's authority to approve non-substantive amendments that do not result in significant impacts above what would result from the approved conditional permit. (J. Takakura)**

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The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/127556/Resolution-21-92-Referring-to-the-Planning-Commissions-a-Proposed-Bill-Relating-to-Conditional-Permit-Amendments>

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Ms. Takakura: Thank you, Director. Good morning, Maui Planning Commission, Chair Tackett, Vice-Chair La Costa.

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Mr. Tackett: Good morning.

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Ms. Takakura: So, I don't have a PowerPoint presentation for this one. This one's pretty brief. And this public hearing is regarding a proposal from the County Council to undo a streamlining measure that was added to Chapter 19.40 about a decade ago. 19.40 is the chapter on conditional permits, which is the permit you need to do a use that is not allowed in a zoning district. And throughout the three islands of the county, there are 47 approved conditional permits and they are approved by ordinance.

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In 2011, a number of improvements were made to various parts of the Maui County Code relating to the Planning Department. The purpose of the updates was to address complaints about the prolonged permitting process. And this came about after discussions with the county administration, developers, professional planners and design professionals.

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The update to the chapter on conditional permits was to allow for non-substantive amendments to be reviewed by the planning director, notification to be provided to the Planning Commission, and then the commission can review the revisions and take action or waive review. This provision is limited to amendments that are non-substantive and do not result in significant impacts above what would result from the approved conditional permit. So, any amendment that does not meet

1 this limited criteria goes to the County Council. This is only for non-substantive and does not  
2 result in significant impacts.

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4 So, now the council is proposing to take this away. We don't know the reasoning for this proposed  
5 change and we have not heard from the community that there are problems with the procedure.  
6 As you can see in the memo report, what the long range plans have to say about, you know,  
7 streamlining, and this current proposal is contrary to those long range plans. The existing rules  
8 they only apply to limited, non-substantive amendments, not big things which go to the council for  
9 their review and approval, and therefore, the Department is recommending that the Planning  
10 Commissions recommend denial of the proposed bill to the County Council. So, that's it in a  
11 nutshell. The Director and I can answer your questions. Thank you.

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13 Mr. Tackett: Thank you, Jacky. Commissioners, any questions? Go ahead, P Dee.

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15 Ms. La Costa: Thank you, Chair. So, Jacky and Director, I heard you say that you did not know  
16 what the impetus was for the initiation of this bill is that correct?

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18 Ms. Takakura: That is correct.

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20 Ms. La Costa: Okay, so how much time or maybe you don't know the answer to this, will this add  
21 to the permitting process so that it will be bogged down even further than it already is for which  
22 we get hundreds, well, maybe not hundreds, but a lot of complaints about how long it takes. Can  
23 you quantify that?

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25 Ms. Takakura: If I may? So, if something were to come in, it would, in addition to going to the  
26 planning commission, which it already does, it would have to go to the County Council, and then  
27 be referred to a committee, and they have a couple of meetings perhaps, and then it goes back  
28 to the County Council, and that, there's usually a first and a second reading, so all that could take  
29 maybe a year or maybe longer, depending on the, you know, how busy the County Council  
30 agendas are.

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32 Ms. La Costa: Okay, I was going...the next question is now moot because I was going to ask you  
33 how long it would take to do that. So, I appreciate very much for your time and your presentation,  
34 Jacky. I'm finished, Chair. Thank you.

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36 Mr. Tackett: Thank you, P Dee. Commissioners, anybody else have any questions? I have, I  
37 have a question. Jacky, could you give me a few examples of things that would be considered  
38 non-substantive?

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40 Ms. Takakura: Yes, thank you, Chair. I had to ask that question, too, you know, what, what is  
41 substantive and what is non-substantive? And so, I asked the planners, and I have a few  
42 examples. One of them was like a bathroom renovation. One of them was just correcting the  
43 metes and bounds on a map. Another one was the procedures for an application, so those were  
44 considered non-substantive. And we have seen other things that are substantive, that have gone  
45 to the County Council like a B&B ownership, you know, from a parent to a daughter. So, you

1 know, they try to really keep it to the non-substantive things that don't result in significant impacts.  
2 There's not that many. I had to ask.

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4 Mr. Tackett: Commissioners, anybody else have any questions? Uh, Commissioner Thayer, go  
5 ahead, please.

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7 Ms. Thayer: Thank you, Chair. So, I just want to make sure I understand what the process is for  
8 the event of a non-substantive change that would be presented to the Planning Commission. So,  
9 it would be like a list like how the, like the SMA minor are or it would be like a short presentation  
10 to explain what's going on or what would be the...our review that we're reviewing?  
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12 Ms. Takakura: Director, can you help me with that one?  
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14 Ms. McLean: Sure, actually, if Ann Cua is on the call, she offered to provide a little bit more detail  
15 because she is a supervising planner. She, herself has handled these and also oversees planners  
16 who do them, so she can give you the nuts and bolts. Thanks, Ann.  
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18 Ms. Cua: Sure, thanks. Good morning, Chair and Commission Members. So, it is, it is somewhat  
19 similar to like an SMA when we come and we ask you to waive your review. So, what would  
20 normally happen is we have to do like an internal assessment first, because if you read the Code,  
21 it says the Director may approve amendments to the conditional permit if the amendments are  
22 non-substantive and do not result in significant impacts. And then it says, before approving such  
23 amendments, the Director shall notify the prospective planning commission. So, we have to know  
24 before we put it on your agenda that we feel it's non-substantive and why. And so, we would do  
25 like an internal analysis and we would have to go back to how the permit was initially granted.  
26 So, again, in the Code, it talks about you know, when you're, when you are reviewing an initial,  
27 initial conditional permit, you have to find that the proposed use would not be significantly  
28 detrimental to the public interest, convenience and welfare and will be in harmony with the area  
29 in which it is to be located. So, we would still have to come up with that conclusion. So, if you  
30 approve the use, and now they want to do a bathroom addition to that type of use, something like  
31 that, we would probably consider non-substantive because it would, it would still be in character  
32 with the neighborhood. And so, that, that...we do that little assessment, if we feel it's okay, then  
33 we put it on your agenda as a communication item, so not as a public hearing where we have to  
34 notify people within 500 feet, we put it on as a communication item, we forward the applicant's  
35 letter of request to you, like how we do with a SMA extension request, and then the planner would  
36 you know, present, present the project to you and you know, probably let you know why we felt it  
37 was...you know, we'd have to let you know why we felt it was non-substantive.  
38

39 Now, the...what Jacky was, what you had asked about that Jacky responded, if that process didn't  
40 take place, then it would have to be processed just like a conditional permit would, which is we'd  
41 have to put it on your agenda. So, we'd have to get on your agenda first. You would hold, it may  
42 or may not have to be a public hearing, and then you make a recommendation, and then we'd  
43 have to send it to the County Council, and that's why the one year is definitely a reasonable  
44 amount of time. And that could happen if you want to add a bathroom, that would happen if you  
45 want to just add a bathroom to a use that you already permitted. So, you know, it is it is significant,  
46 and it was a streamline...streamlining effort that was initially proposed.

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Ms. Thayer: Thank you for the explanation.

Mr. Tackett: Thank you, Ann and did that answer your question? Outstanding. Commissioner Edlao, go ahead please.

Mr. Edlao: Thank you. So, Ann, if we go as you know, with the non-substantial thing, how long would the process take?

Ms. Cua: Oh, it could take a couple of months because we just have to notify...so we notify you...that doesn't mean you're not going to review it. You could say, okay, we heard what you said, Planning Department, but we still want to review it.

Mr. Edlao: Okay, yeah.

Ms. Cua: So, well that could happen at that meeting.

Mr. Edlao: Okay.

Ms. Cua: You know, so it could be two to three months, maybe at the most. There would be—

Mr. Edlao: Okay.

Ms. Cua: ...if it's not a public hearing, we could put it on the agenda right away.

Mr. Edlao: But you guys would do all the vetting and everything else and come out with the—

Ms. Cua: Absolutely because, again, if we're...saying that it's not...we think it's non-substantive, we have to go through a little exercise before we're even able to tell you that.

Mr. Edlao: Okay, thank you.

Mr. Tackett: Thank you, Commissioner Edlao. Commissioners, anybody else have any questions? Director, is, is there public testimony on this?

Ms. McLean: Uh, yes, sure there is. And so far, we have one person who wishes to testify and that is the ever-faithful, Tom Croly.

Mr. Tackett: Okay, I'd like to open public testimony, please.

Mr. Tom Croly: Aloha Chair. The ever-faithful Tom Croly reporting from the public.

Mr. Tackett: Good morning.

Mr. Croly: I would encourage you as a commission to deny or recommend that you...that this be denied, okay. I just want to bring you a little more perspective to this. Conditional permits, you

1 see them occasionally. They take years to get through initially, okay, because the person will  
2 submit an application. That application will be reviewed by the Planning Department then it'll get  
3 sent out to all the various agencies, state and local agencies, who will make comments, and then  
4 the applicant oftentimes will have to make changes to the to the property and put in things before  
5 it even moves on from that point, then it will eventually make its way to the planning commission  
6 and you'll have your comments and then it'll eventually make its way to County Council and then  
7 County Council may grant it. That usually takes two to seven years, okay, to get through the  
8 process.

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10 Now, what they're saying is if that person even wants to make the slightest change to the property  
11 now it should have to go through that whole thing again. That's, that's what this measure that  
12 you're looking at. It's not affecting the initial permitting, which, which still is a two to seven-year  
13 process for someone to get through. But it is affecting if they ever make any small change, then  
14 it would have to go all the way through that process again and go all the way back to the County  
15 Council.

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17 Now, the Planning Department was being kind when they said we don't know why this is being  
18 proposed. I think I know why it's being proposed. I watch the County Council very closely and  
19 the County Council recently had something before them that was a change in zoning and they  
20 said, we'll approve this change in zoning or a particular council member did, if it's just for this  
21 person, but if they ever sell the property, then we want it to revert back to the old zoning. So,  
22 that's what they're talking about here. They want to be able to determine whether or not they like  
23 the person, not whether it's good policy in any way, shape or form, but whether or not they like  
24 the person who is applying for the permit. You understand though, the, the planning...the County  
25 Council is not listening to the Planning Commission. You guys have made your recommendations  
26 before and they completely ignore them and they don't even review the record and they don't  
27 even review the testimony that has been sent in. So, it isn't gonna really matter what you, what  
28 you say today on this issue or the next one, most likely. But that, that is why it's before you. It's  
29 because they want to determine whether or not they like the person who holds this conditional  
30 permit or not. They're just trying to gum up the words, and I would recommend that you  
31 recommend denial of this.

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33 I do want to take one personal moment to wish Dale Thompson a very happy birthday and to  
34 thank him for the service that he's providing to the county on his birthday because everyone  
35 should be able to enjoy that time, and I hope he's enjoying himself today. So, happy birthday,  
36 Commissioner.

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38 Mr. Thompson: Thank you very much, Mr. Croly. Always nice to see you. You let the cat out of  
39 the bag. I could of got away with it here. I'm old now.

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41 Mr. Croly: Yes, I did.

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43 Mr. Tackett: Thank you, Mr. Croly. And before you go, I missed a small segment. I need you to  
44 promise that the testimony you just gave was truthful.

1 Mr. Croly: Yeah, I do promise to do so, but I don't think this is a contested case so I don't know  
2 that that matters, but I promise that all the statement I made are truthful to the best of my  
3 knowledge.  
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5 Mr. Tackett: Perhaps you're right because I see Mr. Hopper.  
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7 Mr. Croly: Because Mr. Hopper has appeared.  
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9 Mr. Tackett: It's very nice to see you, so I believe I'm gonna let Mr. Hopper weigh in on this and  
10 if I overstep myself, I apologize. Go ahead, Mr. Hopper.  
11  
12 Mr. Hopper: Well, I think it's always appreciated that everyone testifying is should be truthful.  
13 This item and the next one are your review of legislation, so there's not a requirement to swear in  
14 testifiers or allow cross-examination of testifiers. So, just to note. Thank you.  
15  
16 Mr. Tackett: Outstanding. Thank you very much. One less thing. Thank you., Mr. Croly.  
17  
18 Mr. Croly: Have a great day.  
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20 Mr. Tackett: You too. Director, do we have any other testifiers?  
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22 Ms. McLean: Chair, it looks like we do have one more testifier. Miss Pamela Tumpap.  
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24 Mr. Tackett: Pamela, you have three minutes.  
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26 Ms. Pamela Tumpap: Aloha. Thank you for allowing me to testify on Item 2. Sorry, I don't have  
27 my video on. I just wanted to...again, I was actually here to testify in Item 3, but as I listened to  
28 this on Item 2, it's deeply concerning to me, and I agree with what Tom just said. It takes a very  
29 long time to get a conditional permit approved, and you have opportunities to ring in on that and  
30 I'm very concerned about anything that causes great delays, particularly if it's a slight change, so  
31 we too, from the Maui Chamber of Commerce would ask that you deny this request.  
32  
33 Mr. Tackett: Thank you for your testimony.  
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35 Ms. Tumpap: I'll be back on Item 3, mahalo.  
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37 Mr. Tackett: Director, may we have our next testifier, please?  
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39 Ms. McLean: Chair, there's no one else who has indicated they wish to testify using the chat  
40 function.  
41  
42 Mr. Tackett: Okay, if there's anybody else that wishes to testify, please come forward at this point.  
43 Going once, going twice. going three times. Director, can we please close public testimony.  
44  
45 Ms. McLean: Yes, Chair. Public testimony is closed.  
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1 Mr. Tackett: Outstanding. All right, I believe discussion is next. If we have any discussions, if  
2 there's no discussions, then I would, I would, I would be open to any motions. I believe  
3 Commissioner Freitas was first. Go ahead, Commissioner Freitas.  
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5 Mr. Freitas: Thank you, Chair. When I read the information in our packet, I really liked how the  
6 packet was prepared to show how this portion was created in 2011, I believe, and the comments  
7 stated by then Vice-Chair Gladys Baisa about the reason why it was put in, and that is to speed  
8 things up with permitting processes that are non-substantive or whatever. And I think the sharing  
9 of some of the examples that have been used in the past, it was great information to say, yeah,  
10 good thing they did that. There's one, though, that I think would have asked to go ahead and  
11 listen to, and I believe it was a parking lot area for a resort, but other than that, I think most of  
12 them fit right in with why this was done. And I agree with Mr. Croly, we should not recommend  
13 removing this section from the bill that they're trying to do. So, that's what I wanted to share.  
14 Thank you.  
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16 Mr. Tackett: Thank you, Kawika. P Dee, go ahead, please.  
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18 Ms. La Costa: Thank you, Chair. I would like to make a motion if discussion is over, I would like  
19 to make a motion to recommend denial of the proposed bill to the Maui County Council.  
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21 Mr. Tackett: Okay, we have a motion and we have a second from Mr. Freitas. P Dee would like  
22 to speak to your motion?  
23

24 Ms. La Costa: Thank you, Chair. In a nutshell, we don't need to have the process take any more  
25 time than it already does. And I think that we have enough credible, knowledgeable and  
26 community minded people in the Planning Department that they're not going to approve anything  
27 that is substantive. And again, like Ms. Cua said, it will come back to us. So, I think that this is  
28 not a good thing. Maui needs to move forward, not backward. Thank you, Chair.  
29

30 Mr. Tackett: Thank you, P Dee. And Kawika would you like to sum up as a, as a finishing  
31 statement for your second or are you good.  
32

33 Mr. Freitas: No, I already shared. Thanks. I'm good.  
34

35 Mr. Tackett: Outstanding. Commissioners, anybody else want to speak to the motion before we,  
36 we call on the vote? See none, Director, could we please have a roll-call vote on the, on the  
37 motion on the floor?  
38

39 Ms. McLean: Chair, the motion is to recommend denial of the proposed bill to the County Council.  
40 Commissioner Edlao.  
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42 Mr. Edlao: Yes.  
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44 Ms. McLean: Commissioner Freitas.  
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46 Mr. Freitas: Aye.

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2 Ms. McLean: Commissioner Lindsey.  
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4 Ms. Lindsey: Aye.  
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6 Ms. McLean: Commissioner Pali.  
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8 Ms. Pali: Yes.  
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10 Ms. McLean: Commissioner Thayer.  
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12 Ms. Thayer: Aye.  
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14 Ms. McLean: Commissioner and Birthday Boy Thompson.  
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16 Mr. Thompson: Aye. Thank you.  
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18 Ms. McLean: Vice-Chair La Costa.  
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20 Ms. La Costa: Aye.  
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22 Ms. McLean: Vice-Chair La Costa was that an aye?  
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24 Ms. La Costa: Aye.  
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26 Ms. McLean: And Chair Tackett.  
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28 Mr. Tackett: Yes.  
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30 Ms. McLean: Chair, that's eight ayes and one excused, Commissioner Hipolito. The motion  
31 passes.  
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33 Mr. Tackett: Thank you, Director.

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

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37 **VOTED: To Recommend Denial of Resolution No. 21-92 to the County Council.**  
38 **(Assenting – P D. La Costa, K. Freitas, J. Edlao, A. Lindsey, K. Pali,**  
39 **K. Thayer, D. Thompson, C. Tackett)**  
40 **(Excused – M. Hipolito)**  
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42  
43 Respectfully Submitted by,

44  
45 CAROLYN TAKAYAMA-CORDEN  
46 Secretary to Boards and Commissions II