

(APPROVED: 02/13/08)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
DECEMBER 12, 2007**

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Chairperson DeGray Vanderbilt at approximately, 10:35 a.m., Wednesday, December 12, 2007, at the Mitchell Pauole Center, Kaunakakai, Molokai.

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

Mr. DeGray Vanderbilt: Okay, everybody, I'd like to call the meeting to order, December 12 of the Molokai Planning Commission meeting. And before we go any further, it's going to take a few minutes but I'd like to read into the record the various documents that were sent out before the meeting and the documents that we received at the meeting, and the reason I'm doing this is because our minutes don't reflect anything that is handed out at a meeting so if anybody's reading the minutes, they don't know what documents are associated with it. So I had hoped that we could have done this in master minute -- minutes that we do at the end but the Planning Department hasn't bought into that yet.

But so in the package that came to us, the Commission, we received the minutes from the October 24 Planning Commission meeting. We also received several letters that were associated with an agenda item on our agenda today, which was the transient vacation rentals and bed and breakfasts. The first was a letter, dated October 20, to Mayor Tavares from Carol Hinton. The second was a letter to Mayor Tavares, dated November 6, from a Katherine Clark. Then we had a email sent from Christine Thevenard to the Mayor on November 8 regarding the TVR's. And also a letter -- email, dated October 9, from Jay Fujimoto to Mayor Tavares regarding the TVR's. Then a letter, handwritten letter, from Paris, France, addressed to the Maui County Planning Department regarding this person's vacation habits on Maui for the last 20 years. Then we had a email, dated November 11, from Arabella Ark regarding the bed and breakfast accommodations. And then a letter from J.M. Buck, an email with a testimony attached that was sent to the Planning at maucounty.gov email address on the TVR's. We also had in our package a letter from Keri Mehling from Kihei, dated November 26, to Mayor Charmaine Tavares and the Maui County Council regarding the TVR's.

In addition, our package of documents included the Hana Advisory Committee meeting minutes of November 26, which was regarding the TVR and B&B issue. Then we received a transmittal from the Mayor to the Molokai Planning Commission enclosing the ordinance

proposed by the Council regarding superstores. Then from our Long Range Planning, we have Section IV, the Themes, Goals, and Objectives of the Countywide Policy Plan, which we'll be taking up later today.

And then -- then at this meeting, before this meeting started, we were handed out the following: A document that is the word -- Microsoft Word version of the Land Use Commission staff report regarding Molokai Ranch's proposed Final EIS. There is a letter, dated December 3, a memo to all employees from Roy Sugiyama, Chief Operating Officer of Molokai Ranch, explaining why they withdrew their proposed EIS from consideration by the commission. And then there's a letter dated November 19 from Ranch attorney, Yvonne Izu, to the Land Use Commission formally withdrawing their Environmental Impact Statement for Laau Point. And Long Range Planning also handed out the Countywide Policy Statement -- Policy Plan Vision Statement, Section V, which deals with the next steps in the policy plan review. And then also a page, Page No. 21, which is entitled "Implementation," and I assume that has to do with the policy plan also.

So, with that, I think that'll be on the record so anybody reading our minutes now will know that these documents are there if they wanna go and see them.

B. PUBLIC TESTIMONY ON ANY AGENDA ITEM FOR THOSE WHO HAVE TO GET BACK TO WORK OR HAVE OTHER SCHEDULING CONFLICTS

Mr. Vanderbilt: So, without further adieu, at this time, if there's anybody that has a scheduling conflict or needs to get back to work, you can come on up and testify and if you testify now, you won't be able to testify when the agenda item comes up. So is there anybody here that wants to testify? Yes? Excuse me one minute. Is there a chair over there? Let's put a chair over there. There you go. Good morning.

Ms. Carol Hinton: Good morning. Aloha. I'm Carol Hinton and I came to recommend that the interim zoning be changed to residential, the whole island pretty much is residential, and it would allow people to get their permits for B&B and also then people would be paying their taxes, and there would be more revenue for the County. That's it for today. Thank you.

Mr. Vanderbilt: Thank you. Does anybody have any questions for her? Thank you very much for your input. Is there anybody else that would like to testify before the agenda items come up? Okay, the next item on the agenda is Item C, and just for everybody's knowledge, we're going to have -- the agenda includes, after we adopt the minutes, we have the continued public hearing on the bed and breakfast and transient vacation rentals, then we'll have a public hearing on the proposed ordinance to prohibit superstores in Maui County, and then, later on this afternoon, we'll be taking up the -- the Countywide Policy

Plan, which we've pretty much voted on but there's some other issues that we need to address at that time, and then there's a few other smaller items on the agenda later.

C. APPROVAL OF MINUTES OF THE OCTOBER 24, 2007 MEETING

Mr. Vanderbilt: So, with that, I'd like to go to Item C, approval of the minutes of the October 24 meeting. Is there a motion to approve the minutes?

Ms. Lynn DeCoite: I'd like to make a motion to approve the October 24 minutes.

Mr. Steve Chaikin: Second.

Mr. Vanderbilt: Okay, is there any discussion on the minutes? Anybody have any changes?

There being no discussion or changes, the motion was put to a vote.

It has been moved by Ms. DeCoite, seconded by Mr. Chaikin, then unanimously

VOTED: to approve the October 24 minutes.

Mr. Vanderbilt: Motion carries. Okay, the next item on the agenda is the continued public hearing regarding the bed and breakfast and TVR's, and the initial public hearing was conducted on October 10, continued on October 24, and on to November 14, and what we are looking at are one, two, three, four, five different ordinances, and one is to amend the bed and breakfast ordinance regarding bed and breakfasts. The second is a bill to amend Chapter 19.40 to eliminate the use of conditional permits for transient vacation rental operations. The next bill is an ordinance relating to permitting transient vacation rentals in hotel districts and in business zoning areas. The next ordinance is to amend the Section 19.30, special uses in the ag district to allow bed and breakfast operations under certain conditions. And the last bill that we'll be looking at is a bill to amend Chapter 19.29 of the County Code relating to rural districts and that would expand the bed and breakfast operations in rural zone districts on Molokai as a permitted use and, currently, bed and breakfasts are now only permitted in residential zones.

So, with that, do we have anybody here that would like to testify on any of these items at this point? Okay, hearing none, Joe? Excuse me?

Ms. Nancy McPherson: Yeah, I wanted to mention, sorry I didn't mention to -- this to the Chair --

Mr. Vanderbilt: Can you identify yourself?

Ms. McPherson: Nancy McPherson, Staff Planner. I didn't mention this to the Chair before the meeting started but there are some people who are coming with a petition at 12:30 and so I'm not sure how the Chair wishes to handle that.

Mr. Vanderbilt: Okay, we'll leave the -- the testimony open at this time because we usually start out meetings at 12:30, we haven't started at 10:30 for a while, and the people with the petitions or anybody in this room now that may wanna testify after listening to some stuff may do so. Okay, Joe? Joe, maybe you could sort of bring us up where we left off. I think it was the October -- was it October 10 meeting?

Mr. Joseph Alueta: Good morning, Mr. Chair, members of the Commission. My name is Joe Alueta. I'm your Administrative Planning Officer for the County of Maui, primarily with the Planning Department. I draft your rules as well as ordinances as well as review ordinances that come down from the Council as well as comment on State legislation. Just before we get going on -- on what will be a very long day, I just wanna make sure that in anticipation of not completing all of today's agenda items, based on past history, I'd like to make sure we have -- we are looking at doing -- recessing this meeting until tomorrow. I believe -- what was the time again, Simone? At 12:00. So I would like to get a headcount as to whether or not we will be having quorum because some of our members will be staying overnight on the lovely island of Molokai and then the rest of us will -- some of us will have to fly back in tomorrow morning. But before we make that final decision, we wanna know if there is going to be a quorum to hold a recess meeting. So with the indulgence of the Chair, I'd like to find out if the Chair will be available tomorrow.

Mr. Vanderbilt: Mr. Alueta, I think that we can take up the idea of whether we're going to recess the meeting at the end of the day.

Mr. Alueta: That would make it very difficult for people to obtain accommodations on this island that late in the day; therefore, if they're going to stay overnight, they need to make their reservation.

Mr. Vanderbilt: Well, I was called -- Planning Staff called to see if we had quorum. Did we have quorum when the Planning Staff called?

Mr. Alueta: I'm getting a no at this point and that's why I'm trying to find out whether or not there is going to be a quorum for tomorrow.

Mr. Vanderbilt: Assuming that we don't finish our business, and I think we can finish our business, but assuming we don't, the meeting would start at what time? 12:30?

Mr. Alueta: 12:00.

Mr. Vanderbilt: Why 12 instead of 12:30. Okay, 12:30.

Mr. Alueta: It will be whatever time the Chair or this Commission decides to recess till.

Mr. Vanderbilt: Okay, well, number one, for anytime tomorrow, who could be available for two or three hours if needed? Is there anybody that could be?

Mr. Alueta: Can we get a show of hands if that's available?

Mr. Vanderbilt: Yeah, Joe, I'll handle this. Can we have a show of hands of who can make it tomorrow at 12:30 if needed? We got one, two, three. So we don't have a quorum. Mikiala, four? Tomorrow? Oh, okay, we got four right now. So I think we'll need to move along and get our work done today if we can.

Mr. Alueta: That would be wonderful.

**D. CONTINUED PUBLIC HEARING (Action to be taken after public hearing.)
(Initial public hearing conducted on October 10, 2007 and continued on
October 24, 2007 and November 14, 2007.)**

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting the following bills for ordinances addressing the issues of bed and breakfast (B&B) operations and transient vacation rentals (TVRs) operations, including the expansion of B&B operations into the rural and agricultural zoned lands and the expansion of TVRs into business district zoned areas such as Kaunakakai. (J. Alueta, Administrative Planning Officer) (Department Staff Report was distributed at the October 10, 2007 meeting. Commissioners: Please bring your copy.)**

The proposed bills can be viewed at the Molokai Planning Commission office at the Mitchell Pauole Center (contact Nina at 553-3221) or at the Molokai Library. The proposed bills can also be viewed on line at:

<http://www.mauicounty.gov/departments/Planning/pdf/Revised092107TVRBill.pdf>

- a. A Bill for an Ordinance to Amend the Bed and Breakfast Ordinance, Chapter 19.64 of the Maui County Code regarding Bed and Breakfast Homes.**

The proposed amendments add that breakfast shall be made available to onsite guests and that bed and breakfast operations within the

residential and rural zoning districts (currently B&Bs are permitted by B&B permit only in residential zoned districts) shall be limited to existing single-family structures; a 16 sq. ft. project notice sign shall be posted at the front of the property along the main access road; the application shall be subject to 19.510.20, the planning director shall approve or deny the bed and breakfast permit application; conditions under which the appropriate planning commission would approve or deny the permit; and provisions for renewal of bed and breakfast permits.

- b. **A Bill for an Ordinance to Amend Chapter 19.40, Conditional Permits prohibiting transient vacation rental operations from being established via the conditional permit process.**
- c. **A Bill for an Ordinance Relating to the Permitting of Transient Vacation Rentals.**

The purpose of the ordinance is to allow transient vacation rentals only in the following instances: (a) in zoning districts where they are a permitted use (currently in the airport and hotel districts), (b) in business zoning districts, and (c) in the destination resort areas of Wailea, Makena, Kaanapali, and Kapalua. The Planning Department is also recommending that the operation of TVRs be expanded within the resort destination area of Kaluakoi.

- d. **A Bill for an Ordinance to Amend Section 19.30A.060, Special uses of the Maui County Code, relating to the Agricultural District.**

The bill would include bed and breakfast operations that are operated in conjunction with: 1. A bonafide agricultural operation with an annual gross income from agricultural products of \$35,000 as a accessory use. 2. Located in a structure that is listed on a State or National Register of Historic Sites. Bed and Breakfast operations shall be subject to the provisions found in Chapter 19.64 and shall be subject to Chapter 205, Hawaii Revised Statutes. Currently B&B operations on Molokai are allowed in residential zoned districts by B&B permit.

- e. **A Bill for an Ordinance to Amend Chapter 19.29.030, relating to the Rural District.**

The bill would expand bed and breakfast operations into rural zoned districts on Molokai subject to the provisions and restrictions of Chapter 19.64 of the Maui County Code as a permitted use. Currently,

B&B operations on Molokai are allowed by B&B permit in residential zoned districts.

- 1) **Continued Public Hearing on the various proposed bills**
- 2) **Action on the various proposed bills**

Mr. Alueta: So, as far as the summary so far, you've held public hearings on the item, I believe, three, maybe four times so far. This would be a fifth meeting. You've made no action. That pretty summarizes the concept of what the Molokai Planning Commission has done so far on the five ordinances that you have before you. It is about five ordinances and they amend about eight -- ten sections of Title 19, okay.

As far as, I will not, again, summarize the bills. I think everyone has seen the bills. I will summarize what has happened on the other two commissions, which are the Lanai Planning Commission, the Maui Planning Commission, as well as what has occurred at the Hana Advisory Committee.

Mr. Vanderbilt: Okay, Joe, you -- and, before you go any further, I'd just like to put on the record that -- I mean you mentioned we met five times and that's about all we've done on this bill and taken no action but a lot of those meetings we deferred action on this because we had some very important issues come up at the last minute. We had to rush around and put together testimony for the Land Use Commission on short notice. We had the policy plan deadlines. And this Commission has a 120 days from the date of the close of the public hearing in order to make a decision on this and we felt that this was not a priority item for this Planning Commission at this time based on the time extension that we have to get this thing done and so that's -- that's where we are and not we're back to it and, hopefully, we can wrestle with this thing today and come up with some recommendation to send on to the Council. So, with that, Joe, did you -- did you complete the review of all the -- the bills, summary of all the bills at the last meeting or whenever -- when was that? On 20 -- on the 10th, I believe?

Mr. Alueta: Yes, the department has done -- made -- actually we made three presentations on the bill. We made two on one day, in the morning and in the afternoon, and then we again did it again at the last time that you were able to have some type of discussion on it. So it's been presented in some form or summary, so the discussion formed three times.

Mr. Vanderbilt: Okay. Now with that, does everybody have copies of the bill and if not, maybe we can make sure you do have copies? Everybody got a copy of the five ordinances? Okay. Now based on that and the summaries that we received from the -- from the Planning Department plus the various testimonies for and against various items, is there -- does anybody have any suggestions of where you want to go from here? Commissioner Chaikin?

Mr. Chaikin: Thank you, Mr. Chair. I mean I hate to throw a monkeywrench in this whole thing but, you know, we can't move forward because we have testimony coming up at 12:30, so we can't close the public hearing, so we can't deliberate, we can't take any action, so it would be nice if we were actually working on something that we could take action on because we can't really do a lot. We can deliberate on this item until we close the public testimony. So I would like to see if we could work on something that we could be more productive with between now and 12:30.

Mr. Vanderbilt: Thank you. Thank you, Commissioner Chaikin. So with that input, I would entertain a motion that we amend the agenda and move up Item E, which was the public hearing on a proposed ordinance to prohibit -- excuse me.

Mr. Alueta: If I may, Mr. Chair, I haven't -- you did request that I give you a summary of the other commissions; I haven't done that yet. So are you not interested in the summaries of the -- what the other commissions voted on or -- we can do that.

Mr. Joseph Kalipi: Commissioner Chair, if I could respond. We are very interested. I guess the timing was if we should tackle it one time or if we could make a decision. But according to procedures, I believe that all public testimony is going to be taken at 12:30, therefore, it wouldn't matter what issue we tackle on now. So if we do preliminary discussions, and then have public testimony at 12:30 and then do deliberation and come up with some conclusions that we can take action, that would be great. I do want to hear, and I know Lynn here also wanna hear what the commissioners -- what was the outcomes of it. So I just put that in for you input.

Mr. Vanderbilt: Okay, thank you very much, Commissioner Kalipi. So maybe we could just get some of the background on what the other commissioners -- other commissions have done. I had requested that the Planning Department include the six items with our package. I asked them when one of the things was a written summary of the Lanai and Maui Planning Commissions but Joe's going to give us a verbal one. And then I asked for a detailed explanation of the zoning enforcement of the proposed TVR plan for Molokai, you know, how's it being done now and what the involvement of our Molokai Planner, Nancy McPherson, is. I was told that Joe would give a general overview or somebody would give a general overview of the enforcement policies but they were not going to talk about Nancy McPherson's involvement in the enforcement process. I asked for a written summary of the specifics about the Maui Planning Commission's recommendation to approve conditional permits recently for B&B or TVR in Makawao, and a written summary of the Council's recent approval of two conditional permits for B&B's and -- or TVR's and was told that that wasn't relevant and --

Mr. Kip Dunbar: Yeah, Mr. Chair, could I intercede here for a moment? You know, we're here to listen to what the agenda has to say, and I know that you sent out an email to

everybody saying what you wanted and they're saying what they wanted and you said you want this and you want --

Mr. Vanderbilt: What's the point mister -- what's the point, Commissioner?

Mr. Dunbar: Okay, the point is is that we need to follow the agenda so that we can get through this, and I know that we've talked about this five times, I'm willing to hear each one of the separate 19.64, go right down the list, and make a determination. You know, I can't help that there's going to be petition coming here at 12:30, you know. I mean the -- we publish the agenda, we've had this on the agenda now for five times, and either we can get through it because we can't have a quorum tomorrow, or they go back and they have the Maui Planning Commission make a decision for us or just they'll say, "Here it is. Here's what Hana said, here's what Lanai said, and Molokai didn't respond in time." So for my five cents, you know, I say we get on with the agenda and we do it. I mean we have people that are sitting here that are waiting to testify and they're not going to be sitting here waiting till 12:30 to testify because someone wants to bring an agenda. You know, they came in here at 10:30 because that's when they said the meeting was.

Mr. Vanderbilt: Alright, are you finished, Commissioner Dunbar?

Mr. Dunbar: So I'm saying let's move it ahead.

Mr. Vanderbilt: Alright, we'll move it ahead. I'm just putting some things on the record that we asked for that would be helpful for us to make decisions, and we don't have to make a decision today. There is no requirement for us to make a decision for another 90 days. So if it takes us --

Mr. Dunbar: I don't know -- I don't know if that's true or not. All I know is that ...(inaudible)...

Mr. Vanderbilt: Excuse me. Alright, well let's get it cleared away. Commissioner Alueta, under the -- or maybe our Corp. Counsel, under the rules that we operate under with regard to this ordinance, we have 120 days in order to make a decision on this and when does that 120 days start?

Mr. Michael Hopper: The Charter says you have to make your recommendations no later than 120 days after the final public hearing on the item. The issue that has come up that I think is on precedent for the County is the Planning Department may send up the recommendations of the other commissions without Molokai if Molokai doesn't make their recommendations. Then we would have to look at does the language in the Charter, which is kind of broad, there's no more specific code language that says you have to make your recommendations no later than 120 days if that would prohibit the Council from taking

action on the ordinances without Molokai's recommendation and if so, what type of vote. There's a very different and far more precise procedure if the ordinance is proposed by the Council, which is what you'll see later today. But that's the language of the Charter that we have right now.

Mr. Vanderbilt: When does the Planning Department anticipate getting this -- sending this up to the Council based on the Lanai and Maui Planning Commissions?

Mr. Alueta: We haven't established a date. We're hoping to get all three commissions. As indicated by our Corporation Counsel, there's some precedent that there's been sort of an abuse of the rules in which this Commission has not closed the public hearing and, therefore, have stalled the clock so that's --

Mr. Vanderbilt: So has Lanai and Maui finished with the bills?

Mr. Alueta: Yes.

Mr. Vanderbilt: Have you sent theirs up yet?

Mr. Alueta: We wait. No, we have not. We wait for all three commissions.

Mr. Vanderbilt: But according to the Planning Department, you don't have to, right?

Mr. Alueta: I'm not -- I haven't talked to my boss as to whether --

Mr. Vanderbilt: Well, all I'm saying it's not scheduled. If it takes us another meeting to do it right and we do it -- it's hard for me to believe that the Planning Department would not send our recommendations up after they sent the Lanai and Maui Planning Commissions because they're not going to schedule a hearing on this before the Council just like that.

Mr. Alueta: You are absolutely correct. We are attempting to be courteous to all three commissions and to hold off so that the Council, when they do receive their packets, they receive all three commissions at the same time.

Mr. Vanderbilt: Has the Council given you any indication that they will try to take action on this before the budget starts sometime when ---

Mr. Alueta: Yes.

Mr. Vanderbilt: They are going to try to take action on this?

Mr. Alueta: The Planning Committee Chair is -- she is very anxious to get this item --

Mr. Vanderbilt: Thank you.

Mr. Alueta: To her body.

Mr. Vanderbilt: So, in light of that, it would be good if we can make a decision today on this, as suggested by Commissioner Dunbar. But if we have to make it in the first meeting in January, I don't think we'll miss the first Planning Committee meeting on the issue before the Council if the Planning Department is willing to send up ours under separate cover after the January 9 meeting. So with that, go ahead, Joe.

Mr. Alueta: Okay, madam -- Mr. Chair. With regards to the Lanai Planning Commission, they pretty much accepted the -- they had no objections to as far as 19.29 dealing with the rural bill. The only changes they made to our -- the department's recommendation, they had no objections to that, to allow B&B or properties within the rural district to apply for a bed and breakfast permit. With regards to 19.30A, in the agricultural district, they are okay with allowing bed and breakfasts within the agricultural districts. They did amend the income threshold or recommend the income threshold be changed from 35k or 51 percent of the household income of the property. This would allow for smaller farmers that where farming is still the predominant or majority use on the property. With regards to 19.64, they agreed with the Maui Planning Commission's amendments --

Mr. Vanderbilt: Which one was that, Joe? What's the title on that?

Mr. Alueta: 19.64, with regards to the bed and breakfast, they agreed with that. The only provisions that they included or amendments they recommended was that 19.64.060, Paragraph C, they wanted to change that to "intentionally provided" and this is with regards to whether or not there was a violation, as well at 19.64.060-C.3, "knowingly violated." We have an attorney on our -- on the Lanai Planning Commission and so she wanted to make sure that rather than -- so knowingly violated. With regards to 19.38, which is regarding the transient vacation rental allowing TVR's as an outright permitted use within the destination area resorts. She had -- or they added a Section D throughout, which would include in areas defined by the community plans. As you know, Lanai does not have any destination area resorts so they wanted to have their community plan decide, when they come around to it, where they wanna segregate or allow for TVR's whether by geographic region or coming up with a finite number of how many TVR's they would allow. At the same time, they wanted to keep 19.40, which is the conditional permit process, which is how all transient vacation rentals are currently being approved via the Council conditional permit process. So they -- they kept it but they wanted to say, "Except for Lanai Community Plan area." And they have a caveat with keeping that --

Mr. Vanderbilt: Excuse -- excuse me. What section was that on?

Mr. Alueta: 19.40. On the conditional permit.

Mr. Vanderbilt: Thank you.

Mr. Alueta: They wanted to keep "except for Lanai Planning Commission." The wording within the department's proposal is that transient vacation rentals would not be allowed to apply to the conditional permit process closing that loophole. In essence, what we've done is we're saying we're going to allow TVR's in a geographic region known as the destination area resort; at the same time, we're closing the ability for people to obtain TVR permits outside of these areas via the conditional permit. Lanai is taking two methodologies in which they wanna keep that Lanai or the conditional permit open for the Lanai area up until -- up until one year from the adoption of their community plan, okay. And what Lanai is attempting to do is they want to, during the community plan process, say we're going to allow transient vacation rentals on Lanai in this area or in this manner and establish their -- how they will attempt to regulate them either by a finite number or not, and that'll be defined within their community plan process. After that has been defined, one year after the adoption of their community plan, they're saying we agree that no conditional permits should be granted, so what they're going to do is they're hoping to establish a process, during the community plan process, and then once that happens, they don't want someone coming in and exempt themselves, basically, from the community plan and go back to Council and get a conditional permit.

Mr. Vanderbilt: Excuse me, Joe, could I just ask you one question on that? That was on the conditional permit but they were okay with B&B's or transient -- okay, that only applied to the transient vacation rentals so they were okay with B&B's in rural and ag and that doesn't involve the conditional permit, right?

Mr. Alueta: Correct.

Mr. Vanderbilt: Okay, thanks.

Mr. Alueta: Right. Like I say, our goal is to try and simplify the permit process. Currently, if you wanted to do a B&B, a real B&B where your owner lives in the same structure within the agricultural or rural district, you are required to not only obtain a State Special Use Permit, you're also required to get a conditional permit. What we're hoping to do and by allowing B&B's in the rural district, you will no longer be required to get a State Special Use Permit and the only permit you would have to get is a bed and breakfast permit as outlined under 19.64. With regards to the agricultural district, you will still have to get a State Special Use Permit, however, all you would need to obtain is a bed and breakfast permit without the need for the conditional permit. That's the intent of the amendments with regards to B&B.

Mr. Vanderbilt: Excuse me, Joe. The B&B on ag, so you could have a six-bedroom house, just say at Papohaku we had some large homes down there that are now transient vacation rentals, but if one of those wanted to become a B&B, or if somebody wanted to build a house that would be a B&B, they could do that, they could build a structure and maybe only have to have a farm plan that had no qualifications regarding income or anything. Is that correct? On ag land?

Mr. Alueta: The proposal that we have requires a \$35,000 --

Mr. Vanderbilt: No, no. But I'm -- what I'm -- all I was trying to say is you can build the home, you can build the mansion down there and -- and you don't -- and it doesn't really have to be attached to any ag other than the County's farm plan, which means you have to leave half your land in ag conservation. But if you wanna change that to a B&B, then you have to meet some standards of farming.

Mr. Alueta: That is correct.

Mr. Vanderbilt: Thank you.

Mr. Alueta: A bed and breakfast is an additional entitlement. It is not an outright permitted use. Any use or structure within the agricultural district needs to be subordinate and supportive of an agricultural activity. The County has taken a very liberal stance with regards to allowing the first dwelling. We've allowed people to construct the first dwelling within the agricultural district with only a farm plan. Any subsequent structures need to be showing that you implemented that farm plan. Currently, the County has taken a very liberal, contrary to what some of the State agencies have said, but we've taken a liberal stance in which we've allowed ag conservation. However, we are trying to encourage what we call "real farming" in which you're actually trying to grow a crop. And we feel that if you're going to seek an additional entitlements, and that is a bed and breakfast operation, you need to do some real farming and not just mow your lawn, and that's what we're attempting. Some people have disagreed with regards -- with the income evaluation, \$35,000 has come about as a result of what's in the existing code for a third structure on five acres or more. The Farm Bureau has come out and said \$2500 is what an annual income is considered to be a farmer. We have a 1958 interim ordinance which set a commercial farm at \$1500 in 1958. That's what is defined in the interim district as a commercial farming. So there's a variety of numbers and income levels that have been thrown out and that's a good segway into the Maui Planning Commission recommendation with regards to 19.30A. They felt that --

Mr. Kalipi: Excuse me, Joe. Before you continue on, can I make some inputs, Commissioner Chair, and the reason being is that you're presenting to us, in my understanding, Lanai and Maui and Hana's findings and so forth, and there are some

questions on the floor that may not even pertain to what you have just presented to us, but just a suggestion, maybe we could kind of focus on Lanai's proposal. If there needs some clarification or some understanding, then we can kind of have dialogue just on Lanai's proposal. For example -- or if we would accept Lanai's proposal as our own, how that would affect Papohaku Ranch Lands if so and so. That way we're not going all over the map. Just for our focus that we're dialoguing in the same page and I'm not talking apples and then you're talking about banana. So what I'm -- I do have a couple of questions concerning just for clarification for Lanai's proposal. I think it's really good, first of all, of some of things that really matches their community, and they did do their homework, and I guess there's an attorney on top their board that kind of helps that process. Just for clarification, 19.30A, you said they went from 35,000 to -- did they replace the 35,000 to put 51 percent, or did they -- they add just the 51 percent of the income to the 35,000?

Mr. Alueta: They added 51 percent of the household income on the property. They added it to the 35,000.

Mr. Kalipi: Okay, so it's an additional. They didn't take out the 35,000, they just said 51 percent because, as you mentioned, that some of the farmers that might be their dominant way that they do agricultural but they not necessarily reach the 35,000, therefore, they put in the 51 percent.

Mr. Alueta: So they could -- yeah, so a smaller farmer who doesn't make 35,000 could still meet that. It's 35,000 or 51 percent. So it's a either/or.

Mr. Kalipi: Okay, thank you. And the question I had, under 19.40, the understanding is that they wanna keep the conditional permit. They wanna keep the conditional permit that is consistent with their community plan because, therefore, they don't have a community plan right now, it's going to come out, but after they come out with the community plan, then they wanna keep the conditional permit only for one year after the community plan and then it's going to dissolve. So what they're attempting to do, according to what you said, you know, just fill in, correct me and everything else, they're attempting to regulate transient vacation rental, getting them established, regulating them, and then closing the window that there'll be no more transient vacation rental after that one-year of their community plan.

Mr. Alueta: Yes and no. What they're attempting to do is, currently, their community plan is silent on how transient vacation rentals should be dealt with, okay, and it's -- and the methodology of regardless, right? Transient vacation rentals have been coming in and being established via the conditional permit process. They don't want to close that ability for existing operators or future operators within Lanai to legalize themselves via the conditional permit process. What they wanna do is establish some legal methodology that will be defined within their community plan that is yet to be adopted. Once they adopt their community plan and set up the process or define the process for which TVR's could be

established in Lanai, they will then -- they want the conditional permit option for TVR's to sunset one year after their adoption of their community plan. So what happened is there's no community plan or that deals with TVR's so they don't wanna close -- our proposal is to eliminate the conditional permit process. They wanna keep that CP process open, but they don't wanna keep it open forever. They agree that this needs to be taken care of and that the CP process is a bad process in which to deal or to issue these TVR permits. So what they wanna do is once they come up with a process or a number or whatever they decide, cause they may say, "We're going to limit it to this area of Lanai," or they may say, "Anybody in Lanai can come in for one, you're going to go through a special use permit process, County Special Use Permit, and we're going to limit the number to 40 for the entire Lanai." And after that -- and then if that's the case, then they'll say nobody -- "One year afterwards, if you didn't get a conditional permit, we're going to close that opportunity for you to be legalized through the conditional permit process." So they're going to sunset the CP process once they come up with a methodology in their community plan.

Mr. Kalipi: So they're kinda giving themselves a buffer of one year to come up -- or let their community plan to be established and, therefore, try to ride or in agreement with the community plan align it with their TVR's and B&B's -- only TVR's.

Mr. Alueta: They're basically keeping the CP process open as a buffer in between -- in between now and the time the community plan gets adopted, or one year from the time the community plan gets adopted, so they wanna keep that window there's a -- because what happens is if this ordinance is adopted as we're proposing and the conditional permits are eliminated all together, between that point and the time they establish the process, there is no process for conditional permits, and they felt that was too harsh, so they wanted to come up with leave the CP process open but not forever.

Mr. Kalipi: Thank you.

Mr. Vanderbilt: And to follow up to what Joe said, so, therefore, if they get into their community plan and they decide something else other than what they might have approved in these ordinances, then they would have to go back and amend the ordinances. Is that correct, to be consistent with their community plan? You see what I'm saying, Joe? If they agree to these five ordinances in some form, then they go to their community plan and they're trying to figure out where they want them and what process, if they come out with something in the community plan that's contrary to the ordinances they approved, then they'll have to go back and amend the ordinances. Is that correct?

Mr. Alueta: Potentially. We don't anticipate that given that the commissions have a comment or a have a voice in the community plan process. So whatever -- they're fully aware of the issues and so, therefore, they're very motivated that when they do get the

community plan, and the people who are on the community plan process are very motivated to come up with solutions for Lanai.

Mr. Vanderbilt: But the community will have input into that?

Mr. Alueta: That is correct.

Mr. Vanderbilt: Thank you.

Mr. Dunbar: Joe, help me with this. I'm a bit confused. If -- I mean our recommendations to the Council are just that. I mean they're just recommendations. They don't have to buy into anything Lanai says or the Hana Advisory, or Molokai, or anything. It's just if they choose to go left, even though we say we want them to go right, I mean we don't --

Mr. Alueta: That is correct.

Mr. Dunbar: Yeah. There is no assurance that what we say we want them to do, you know, will be done for our community even though everybody professes that the community plan is, you know, the leading law, and it's just not. So if we -- if we say that these are some of the recommendations that we wanna make to these ordinances, I mean there's -- there's no guarantee they're even going to look at it.

Mr. Alueta: Correct. Death and taxes are still your sure bet.

Mr. Dunbar: Right.

Mr. Vanderbilt: So, Commissioner Dunbar, what's the point?

Mr. Dunbar: Well, so the point is, I almost think it's better to reject all of their recommendations and stick with what we got, then versus to try to make new recommendations that we're not guaranteed that anything's going to happen anyway. I mean there's no way that they're going to come in and -- I mean they don't have to. And seeing as how we only have one vote on the Council, you know, it's almost better to go with a process that you know with than try to change a process that you have no -- no idea is going to -- even going to occur.

Mr. Alueta: That's why they -- that's why they've sort of hedged their bets that they're saying that we want to keep the conditional permit process for Lanai open and then until one year after the community plan is adopted, and they're hedging that they'll be able to come up with a process during their community plan.

Mr. Dunbar: Well, I think the Hana Advisory also said that just in --

Mr. Alueta: That is correct.

Mr. Dunbar: The other side.

Mr. Alueta: Right.

Mr. Vanderbilt: Commissioner Dunbar, I think Corp. Counsel Hopper wanted to just respond to --

Mr. Hopper: I just wanna say too, just out of sort of due diligence, they requested that the Planning Department come up with something to change the law or to basically -- they filed the previous bill, they didn't like it, but they requested that the Council -- or that the Planning Department initiate something cause they thought that they needed to look at change the current rules. So if I were to guess, the Council may be inclined to make some sort of change, whether it's based on your recommendations or others, but potentially they could file the bills as well, but because it's initiated with Council basically telling Planning we'd like to see something, Planning coming out with it, there is a good chance that there may be a change, so I mean I would recommend that you -- I mean if you think the current laws are good the way they are, you could certainly recommend that but I wouldn't do that for the -- because of the sole reason that you just don't think the Council's going to change something because they very well may.

Mr. Vanderbilt: Joe, is the -- Lanai's worried about certain things and giving people a fair break, are -- is the enforcement -- is the enforcement proceedings going to be in abeyance and -- between now and when the Council makes a decision or --

Mr. Alueta: We're enforcing the laws as they currently stand.

Mr. Vanderbilt: So you'll be enforcing the laws all the way up until a new law's on the book that might amend those enforcement?

Mr. Alueta: That's the normal procedure.

Mr. Vanderbilt: Okay.

Mr. Alueta: I've tried arguing with the policeman that I shouldn't get a speeding ticket cause I was amending the law to get the traffic signs changed from 45 to 85 --

Mr. Vanderbilt: Alright, we're not talking about speeding. Thank you, Joe.

Mr. Alueta: However, he felt I needed the ticket anyway.

Mr. Vanderbilt: Thank you, Joe.

Mr. Alueta: So moving on to -- to segway into the Maui --

Mr. Vanderbilt: Wait. Was there -- are you finish, Commissioner Dunbar? Okay. Are there any other comments right now? Okay.

Mr. Alueta: Okay.

Mr. Vanderbilt: Excuse me.

Ms. Lori Buchanan: I'm sorry. Can I interrupt and do public testimony? I'll stick to less than three minutes.

Mr. Vanderbilt: Okay. This is --

Ms. Buchanan: Because this is too painful. I gotta go.

Mr. Vanderbilt: Okay. Come up.

Mr. Alueta: I'll go to the bathroom then.

Ms. Buchanan: And you can go to Maui and he going to the bathroom and they can eat and pupu and whatever. Okay.

Mr. Vanderbilt: Can you identify yourself, ma'am.

Ms. Buchanan: Lori Buchanan, Molokai resident. I going make 'em real simple. To all the ordinances, I don't agree. I actually agree with Kip. For every ordinance at the end of this ordinance I would put "except for Molokai." Okay? Except for Molokai. That making it simple. And reason except for the Molokai is because this is a compromise, okay. All the changes in the ordinances are compromising because you got 9,000 TVR's and B&B and people yelling at you to do something and change the law in order to allow an action that not even supposed to have taken place. Now you talk about Lanai and that conditional thing about waiting for the one year till they stuff is done. You know something? I love conditional use permit. I love it. I would never get rid of it. Never in a million years. Another thing I would never do is have any wording like number one that gives my Planning Director all the power to do stuff. Forget that. No way. Okay? How long we fight for this power for our island. To just give 'em away now? The answer is no, okay. So that's it. The reason why except for Molokai and we going status quo is because the process to do the action is still there. Hello. Kip know. He's got one bed and breakfast. How did he get it? He went through the process. Who's the process? You the process. You the

conditional use process. You the last say. If we -- well, yes. You shaking -- Corp. Counsel is shaking his head. I mean Council. That -- okay. He's the last say. Anyway, all I saying is the process for Molokai to determine its own future through the conditional use process in the SMA is our strong point. And the reason why I no agree with Lanai is because if you read our community plan right now without changes, what they said ten years ago was we want all the development down West End. Oh, yeah, good, good. We no like development on the East End. Put all the development on the West End. That was wrong. And the reason that was wrong and narrow sighted was because we told them put all the hotels in the desert when we knew there wasn't never going have the water. To me, that's not fair. That was shortsighted and narrowminded on that community plan. How can you say go develop someplace where you know damn well you not going give them water? That's not fair to everybody that went buy and moving down West End, okay? So that's why I no trust the community plan to make important research and technical decisions about water and just putting one dot on the map and saying put your TVR over there because I no like you as my neighbor down Mana'e. Okay? That's the problem I see with the community plan. If you stick with the conditional use permit and the basis of how to get your TVR, I would say for all TVR's, all B&B's gotta come through the Planning Commission. I no care how they going word 'em on this ordinance, whether you accept it or not, that's the bottom line and there's no compromise in between. Okay, thank you.

Mr. Vanderbilt: Thank you, Lori. Any questions for Lori? Commissioner Dunbar.

Mr. Dunbar: Yeah, Lori, yeah, I support exactly what you're saying. I -- there is, however, I think the Planning Commission is the cap. You know, enough is known about vacation rentals that we know one, two, three, four, five there's no harm. What we do know is that if there's a whole pile of them and they're only building them for that purpose, then we know that's a harm and the buck stops here. It's where it should always stop. So I agree with you a hundred percent.

Ms. Buchanan: I agree with that.

Mr. Vanderbilt: Well, Commissioner DeCoite.

Ms. DeCoite: So, Lori, you know just cause I've been listening to testimony at I don't know how many meetings already, so how would you feel if a, you know, you, as a resident, had a vacation rental in your area or how would you feel about the constant flow of people coming through, different people, every weekend or week, however the vacation rental is handled?

Ms. Buchanan: I think the same as everybody else would feel, and I have a vacation rental in my next neighborhood and I already put in one complaint about it because I like to know my neighbors. I live in one neighborhood where kids walk around ten o'clock at night

because it's a subdivision, and the cars speeding around don't know that the kids hanging out by the streetlight at ten o'clock at night riding skateboard or whatever and that's the whole point of you living in one neighborhood like -- one island like Molokai cause everybody know everybody. So I don't want that to change. But on one other subject, and I think that's what you getting at, is that I can understand the good points of vacation rentals and B&B, but also remember that there's good points about hotels and resorts. And although the locals -- the problem should be the locals should be exempted from paying resort fees at hotels, then we could afford to stay at one hotel and we wouldn't need to go look for one vacation rental. And we like Kaluakoi open up again. Your vacation rentals and your B&B's going take away from establishing that business and I support hotels. I actually like hotels and resorts. Instead of Laau Point 200 houses, I would have had one -- one Ritz-Carlton, and no be shock when I say that, and that's because you going get union workers who going be making union money, and everybody is happy, and everybody fly in and they fly out and they not going stay there for one vacation rental so --

Mr. Vanderbilt: Thank you.

Ms. DeCoite: Thank you.

Mr. Vanderbilt: Yeah, and I just, as far as the conditional permit, of course that would come to us but, again, like Commissioner Dunbar brought up on the recommendations on these ordinances, we're only recommending to the County Council. If we say no, they can say yes. If we say yes, they can say no on the conditional permit.

Ms. Buchanan: Everything is a recommendation. They have to take your recommendation. That's how come on the law now you have ...(inaudible)...

Mr. Vanderbilt: No, no. No, I know. I was just bringing that point up that --

Ms. Buchanan: So I going leave but I going leave food here ...(inaudible)...

Mr. Vanderbilt: You can have another three minutes. Okay, Joe?

Mr. Alueta: So thank you, Mr. Chair. I just wanted to clarify real quick is that the Lanai doesn't necessarily mean that they're going to keep the -- during their community plan process they may, like I say, choose to have a special use permit or County Special Use Permit be the vehicle in which to regulate transient vacation rentals. If that's the case, then it would be the commission level. So the clamor from some of the industry people is to simplify the process, not leave it at the Council. And if you truly want to have home rule and be the decider or the approval, then the conditional permit is not necessarily the factor as is try to simplify the process but establish a process that's consistent with your

community plans, and I think that is what Lanai is attempting to do is to try to come up with a process that's consistent with their community plan.

Mr. Vanderbilt: So, Joe, following that line, right now, is there an alternative to the conditional use that's on the books that would allow the buck to stop here with the Planning Commission?

Mr. Alueta: Just the B&B.

Mr. Vanderbilt: Just the B&B.

Mr. Alueta: Correct.

Mr. Vanderbilt: Oh, excuse me.

Mr. Alueta: But for TVR's there isn't. There's only conditional permits.

Mr. Hopper: You should -- you should know the special use permit is your decision. That's only if it's in ag or perhaps -- not rural? They don't have to get one if they're in rural?

Mr. Alueta: Yes, they do but --

Mr. Hopper: They do.

Mr. Alueta: But what I'm saying is, Mr. Hopper, is that we have a permit process called the County Special Use Permit, which is for County lands, and so, yes, that would be true for the ag and rural district for the State, but if it's not within those districts and it's on the County side, such as the residential district, right, they would have to get some type of permit. Right now, the only vehicle is is a conditional permit.

Mr. Hopper: Right, the point being if a conditional use permit is decided on by the Council. They don't have to take your recommendations or listen to you on that. And I believe historically they have actually never denied a conditional use permit for a TVR in their history. So that I think is worth knowing. But, again, if you recommend denial, they could recommend approval and would not have to have the two-thirds vote or anything. They could just not go with your recommendation.

Mr. Vanderbilt: So, let me get this straight, you said something, Joe, you said they would have to -- if you have a TVR in the ag or rural, they would have to get a State Special Use Permit? Is that correct?

Mr. Alueta: Yes, as well as a conditional permit from the County.

Mr. Vanderbilt: Okay, now if they got the conditional permit from the County but we -- we did not give them the special use permit on the rural, could they operate?

Mr. Alueta: No.

Mr. Vanderbilt: So, in effect, we do have the power through the special use?

Mr. Alueta: For ag and rural lands only.

Mr. Hopper: Ag and rural only, not residential or anywhere else someone would want to do the TVR.

Mr. Vanderbilt: Thank you.

Mr. Alueta: So moving on to Maui Planning Commission's comments. They voted to keep, as far as the conditional permit, they voted not to eliminate it, to keep the conditional permit process. As far as 19.30A, which is the agricultural district, they voted to have -- is to have a 2,000 in income. They set the income level for bed and breakfasts within the agricultural district to set it at \$2,000 if the lot is greater than two acres, and 1,000 if the lot is less than two acres.

Mr. Vanderbilt: Joe, can I ask you something on -- on just the -- whether it's 35,000 or 2,000, how is that determined? I mean I think Commissioner Chaikin brought up that somebody could just sell an orange to some guy for 2500; he could turn around and give him the \$2500 back six months later, but he could show that he sold an orange for 2500. Is there any way --

Mr. Dunbar: Was that with interest or no?

Mr. Vanderbilt: An orange-and-a-half back. But so is there any standards tied to the farm income? Do they have to say that it came from selling 15 baskets of strawberries or --

Mr. Alueta: No. They just have to show it on their General Excise Tax License as well as their Income Taxes. So, like I said, no matter what law you write, there are people who are going to abuse it.

Mr. Vanderbilt: That's the unfortunate thing. You're right though.

Mr. Alueta: Okay, so it doesn't matter if you set --

Ms. DeCoite: Mr. Chair, and I think the last time we --

Mr. Vanderbilt: Commissioner DeCoite.

Ms. DeCoite: I think the last time we had this conversation was that even if, you know, the apple, oranges, or whatever that was sold, you know, all they had to do was have the General Excise and, at the same time, you guys didn't have the enforcement to go out and do a field inspection and say, okay, these guys actually being real farmers and that was the -- the deter in my eyes of why leaving the \$35,000 was there as a real farmer. What I don't want to be taken away from it is that bed and breakfast becomes the sole operator in an ag zoning and why I say that is because ag now we're looking at conservation and all these other stuff. You guys know you guys cannot enforce the General Excise part of it because, in the long run, the person on the bed and breakfast is making more money anyway on bed and breakfast versus ag. You know, they're not farming. They're using it as an income. When you took the ag zoning, you took it on agricultural, you submit the farm plan, and that did not happen and the buck should have stopped right there. So I no like that part that, you know, along the way it starts to drop because everybody going start moving into that and you going take away from the farming anyway. So, if that's the case, then switch your ag zoning or whatever because you're taking away from the real farmer.

Mr. Vanderbilt: Thank you, Commissioner DeCoite. Joe?

Mr. Alueta: So, again --

Mr. Vanderbilt: Excuse me. Commissioner Feeter?

Mr. Feeter: Yeah, thanks Chair. As terms of income, what if we had a solar income.

Mr. Alueta: No. It has to be farm income from farming that -- at least -- unless you define as some other methodology and that's what you're here today is to come up with your input and give us your comments. But, right now, I'm only giving you what Maui has come up with, okay, and how the details would be worked out. But as far as for them, they wanted to reduce the -- they didn't like our 35,000. They said they wanted it to be 2,000 for greater than -- lots greater than two acres, a 1000 for less than two acres --

Mr. Kalipi: Joe, excuse me, sorry.

Mr. Alueta: And farm plan for and implementation on five acres or greater.

Mr. Kalipi: Okay, can you refer to the section so when I follow you and then I have questions later, I can refer back to the section please?

Mr. Alueta: Yeah, this is for the farm, 19.30A.

Mr. Kalipi: 19.30A.

Mr. Alueta: And the only amendment to 19.30A that the department has made is to include bed and breakfasts as an opportunity or an option. But we feel because it's in the agricultural district, you need to have -- it has to be subordinate to a permitted use within the agricultural district. We think that the permitted uses, the listed permitted uses that would be compatible with bed and breakfasts are farming, so you can prove you're farming, or if you have a State Registered and National Registered Historic Site, or building or structure. So those are the two options with regards to 19.30A and, like I said, in the rural district, the amendment to include B&B's in the rural district was approved or recommended for approval by the Planning Commission.

With regards to the business districts, the amendments to the business B-1 district, they changed -- they wanted it from units to room or to be further limited by the applicable community plan. So in the B-1, and B-2, and B-3, B-R, and country town business district, they would be able to have to a 20-room transient vacation rental, or 20 unit, up to, it doesn't mean they're going to build the 20, it means they can do up 20 units, or it could be further limited by the community plan. So there may be community plans that say we're going to allow for small inns within the business district but we're going to limit it to 12 units or 12 rooms. All of these would be subject to the Urban Design Review Board with the exception of those in the B-R and the country town business district because the designs within the country town business district, there is a design guidelines. Molokai has their own guidelines for country town business district so whatever structure is built would have to be compatible with that. Further, the commission didn't feel the B-R needed to have Urban Design Review Board because they were subject to the SMA and they're going to have to go to -- they didn't have to have that requirement. But for B-1, B-2, B-3 districts, they wanted Urban Design Review, and for all of the districts, those could be limited further by the community plans. So, again, the commission was trying to make a -- the Maui Planning Commission was trying to make a tie in between the department's proposal as well as the community plan input.

19.64, which is the bed and breakfast ordinance, they wanted to have no lessee. They wanted to have owner or a part owner be the applicant. They didn't want to have a lessee apply for a B&B permit. They wanted to amend 19.64.050.3, which was change it from 40 percent to 33 percent. This is for the amount of the neighbors that can -- can protest if someone comes in for an applicant -- application. Change that. So they reduced the number, the percentage of landowners in the area. They wanted to allow for grasscrete as required parking. Allow for tandem parking, so people can come in and they can do tandem parking. In 19.64, Section 030F, they wanted to allow for minor children 12 and under and a maximum of two in addition. Currently, under the B&B ordinance, you're allowed to have two people per room. They would allow an additional two minor children to be allowed in that same room with the adults. And they wanted to also add that a one-

by-one identification sign be attached to an existing structure, such as a mailbox or a fence. This would help identify the bed and breakfasts. And they also wanted a new section that would allow for the appeal of the director to the commissions.

As I indicated, we're trying to simplify the process from being a permit that is either done up to one and two bedrooms under the existing process. One and two bedrooms are done administratively. Three and four bedrooms are done by the commission. And five and six are done by the Council. We have moved all of that permit process down to an administrative function meaning you come in, if you meet the criteria and you're compatible with the surrounding neighbors and communities, the director could approve up to a six-bedroom bed and breakfast. It doesn't mean that he is going to approve a six-bedroom bed and breakfast. He may say, based on your lot size and the character of the neighborhood, we'll only approve three bedrooms. The applicant has the right -- would -- the commission wanted the applicant to have the right to appeal the director's decision and go before the commission and have a public hearing and state their case as to why they should have more rooms approved as their bed and breakfast process. Currently, the only -- besides this option, the only other times that the commission would be -- hold a public hearing for the granting of a bed and breakfast application is, one, if 33 percent of the landowners complain or voice objections to the bed and breakfast, it would then be kicked to a public hearing item. Or if you have an existing bed and breakfast operation within 500 feet, it would be then kicked up to a public hearing and it would come before this Commission. So a third option would be that it is the applicant's choice to hold a public hearing before this body because he doesn't like what the director approved for their --

That pretty much summarizes all of the changes that the Maui Planning Commission did to the existing -- to the department's proposals. Hana, with regards to Hana, they did -- their original recommendations to the Planning Commission that they made change with the exception they wanna keep the conditional permit process also for Hana. They also are looking to try to figure out how to deal with these issues on a more community plan level. Again, people are trying to bring the community plan process into how these are regulated. You have any questions at this time?

Mr. Vanderbilt: Thank you, Joe. Any questions for Joe? Commissioner Kalipi.

Mr. Kalipi: I have no comment for the Maui one, first of all. But the Hana, that's it? That's the only thing that they kinda said out of all the -- they just said they wanna keep the conditional permit and --

Mr. Alueta: Yeah, if you look, you were given the Hana Advisory Committee's minutes --

Mr. Kalipi: Yes.

Mr. Alueta: Of their last meeting in which we took it to Hana one time, and we went through the whole ordinances, they had no problems or concerns, they agreed with some of the comments coming from -- from Maui with regards to -- actually, they came up with the idea of a identification sign, they also wanted the signs to be taken down earlier. And if you look through my staff report, when I go -- when I analyze each of the proposed changes, you'll see under agency comments, Hana Advisory is listed as one of the agency comments sort of of what they said, and so that's where you have the Hana Advisory's input with regards to each section of the -- or each of the proposed changes. Their main change from the last time we went, from our last meeting that you have minutes, was that they -- they basically said, yeah, we'll keep the same comments with the exception that we have the conditional permit -- they keep the conditional permit process in. Originally they had said they didn't want -- they agreed with the department's recommendation to eliminate it; they also wanna keep it open at least until they figure out what they wanna do.

Mr. Kalipi: Okay. Thank you.

Mr. Dunbar: Joe, I have a question for you, Mr. Chair.

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: With regards to the B&B ordinance, I think it's 19.64, they're requesting a 16 square foot sign, which I think if posted on the road is pretty ugly, what is -- what is the rationale for a 16 square -- a 4-by-4 sign on the road? Is it -- I mean is this -- where does that come from? Is that part of the --

Mr. Alueta: I'd like to answer that, Mr. Chair, but then if I may, I'd like to, to make things more efficient, what we've done with the other two commissions as well as the Hana Advisory Committee is that we went down the agenda, and we went through the ordinance the way it's listed in the agenda, and then we made changes, we discussed them, and if -- and commissioners made -- if they had -- if they wanted to make proposed changes, they made it. If there was a consensus by the board, then that change was recorded as being an action by the -- by the commission, and then that's the most efficient methodology. But, if I may, that would be the fastest way rather than jumping back and forth between the variety of ordinances.

But to answer Commission Dunbar's question, like most places, the only time you know something is happening is when the building starts, and that's the biggest complaint that we get from the neighbors is that, wow, I never knew something was going up until the building started. Why didn't I know about this? Cause not everybody reads the notices in the paper. So we felt that the easiest way is to put a sign up saying this person has applied for a bed and breakfast application. If you have a concern, let us know. Let -- and put the contact information of who they need to appeal to. And a four-by-four sign was what we

just come up with. It's about the size of that, maybe smaller than that brown area on that board actually.

Mr. Dunbar: Oh, yeah, I understand how big it is; that's why I'm saying how ugly it is, but that's okay.

Mr. Alueta: But people are going to notice and if they got a problem with someone coming in for a B&B, they're going to let us know. I'd rather have them say, hey, wow, that's an ugly sign. What's on that ugly sign? Oh, somebody's coming in for a B&B. Okay, now I know and that sign is --

Mr. Dunbar: So it's taken down after?

Mr. Alueta: Oh, most definitely. It's not a permanent sign. The only permanent sign to identify the property, should they be granted a bed and breakfast, is a one-by-one sign.

Mr. Dunbar: Okay, now --

Mr. Alueta: That's the only permanent sign that will potentially be allowed.

Mr. Dunbar: Okay, moving on, and I know what you have to say about going on down the list, and I think that's is the most efficient way to do it, but I'm just -- I'm trying to get some answers here, and this has to do with 19.30A, as you know, that's one of my favorite ordinances.

Mr. Vanderbilt: What, it's 19.30A?

Mr. Dunbar: Yeah, 19.30A, that's just one of my very special ordinances, and we're in to changing this ordinance because you wanna add the exclusion of TVR's and that's, you know, I know what you're trying to do and you're trying to add the bed and breakfast and the income, but because we're changing this, I need to have the, you know, Commissioners take another look at 19.30A. And if you go to Page No. 3, I don't know if you have it, but it's 19.30A.030, district standards. I just want you folks, as a Planning Commission, to be aware of this. If you go down to No. G, which is Line 28, it speaks of the maximum number of lots, okay. Those maximum number of lots, and this really doesn't have too much to do with TVR's but it does have to do with changing your land into conservation at a later date so you choose to do it, it talks about the tax map key being the gross area of your lot, okay. On Molokai, there's been a number of situations where a single tax map key is made up of a number of different royal patent grants, land patent grants, kuleana involved within the district. I, in particular, have one. And what this matrix does is it commits you to this matrix system, regardless if you have two lots, two bonafide lots on that. They can be, you know, goes all the way back to the -- to the, you know, Hawaiian

Kingdom. You are -- you cannot expand those lots more than this matrix says you can, even though you have two fully identified separate lots, okay. It is a -- it is a real taking of people that have property on Molokai, it doesn't have too much to do with TVR's, but it does have a lot to do with establishing a value that can then be used in a conservation donation aspect in easements, you know, if you ever going to take a look at it. So, again, I'll let it go with my -- my three minutes, but I think that also needs to be looked at if we're looking at 19.30A.

Mr. Vanderbilt: Well, I think we'd have a problem moving into -- I mean I agree with you that there's some major changes that need to be made in the ag ordinance period and -- but I think, at this point, since we've notified that the changes that we're looking for had been pretty specific, it'd be pretty hard to be moving into other --

Mr. Alueta: Thanks, Kip, I will --

Mr. Dunbar: It's on the agenda.

Mr. Alueta: Okay --

Mr. Vanderbilt: So maybe you could speak to that about --

Mr. Hopper: Yeah, I would recommend staying within your agenda. Just cause it list the ordinance, it doesn't necessarily mean you can amend anything in it. And even if it has to do with TVR's and B&B's, it appears to be broad enough but -- well because someone from public, you know, if the issue was we're going to change the ag ordinance, which a lot of things could probably be changed in there, you'd probably have a lot different people who'd be interested in that meeting than if the change was based on TVR's and B&B's so that would be the idea.

Mr. Vanderbilt: And I think in our agenda we tell people where they can go and review the changes that are being considered by the Planning Commission so I think that's going to have to be at another time but I think that you would have a lot of allies as far as wanting to change the ag ordinance so anyway --

Mr. Dunbar: Thank you for my spiel. Commissioner Chaikin.

Mr. Chaikin: Thank you, Mr. Chair. Joe, before I forget, I just wanted to make sure I thank you for giving us all those zoning maps. I think that was like the biggest advancement that I've seen for this Commission since I have been on this Commission, so I wanted to make sure that I took the time to acknowledge you for that. The only thing that I regret is that they weren't small enough that we could actually, you know, have them and be able to look at them cause I only got a quick glance at them that day that we had them up. But it kind

of moves to the point when we're dealing with TVR's and B&B's, we're really talking about short-term rentals on this island, and there's a whole lot of different short-term rentals. We have the Kaupo Camp. We have The Lodge up in Maunaloa; Ke Nani Kai; Paniolo Hale; Kaluakoi Villas; yeah, Molokai Shores; we've got Wavecrest; we've got the old Pau Hana Inn; there's Puuohoku Ranch. These speak to these different areas. I mean how are they zoned and are they going to be -- I'm just wondering, I mean they can't all be hotel, so where do we stand? I'm just -- cause whatever we do here could drastically affect some of these developments. So I'm just wondering, could you speak to that?

Mr. Alueta: That's the biggest myth that those who are opposed to our bills have put out. This does not impact existing hotels or condo-hotel operations. If you're existing and legal, either existing legal non-conforming, you're legal. This bill does not amend your entitlements so you have -- if you have entitlements to operate short-term rental, transient vacation rental, a campground, or whatever, this bill does not amend that, does not change that.

Mr. Chaikin: Okay, well, you just said an important word. You said "if" you're legal. Can you speak to specific condo complexes here on the island?

Mr. Alueta: No.

Mr. Chaikin: We got Molokai Shores that are just normally rent out shore-term. We have Wavecrest. And there are other areas too. I'm wondering if they're legal currently.

Mr. Alueta: All I can tell you is that prior to 1991, okay, the way the ordinance was written back in '91 that prohibited short-term rentals within the apartment and business districts, right, the apartment districts, they stated that if you had an apartment, right, or you had a complex and your condominium documents allowed for short-term rental, and your complex was built prior to 1991, you would -- you could continue to operate as a short-term rental within those apartment complexes. If your complex was built after 1991, then, no. You couldn't do short-term rentals regardless of what your CC&R's said, okay. If you were in an apartment complex and you were built prior to 1991, and your condominium documents did not say you could do short-term rental, then you couldn't do short-term rental only if you change that condominium documents with a majority and they set out a parameter of how those documents could be changed, you could then do short-term rental, okay. So all of -- that's a totally separate issue, a sidebar issue from what this transient vacation rental ordinance bill does. This TVR bill sets out a geographic limitation to where additional transient vacation rentals could be. At the same time, it attempts to close the loophole of the conditional permit that allows for these spot hotels or spot TVR's outside of the resort areas, and that's the intent of what we're trying to do. At the same time, we're attempting to simplify the bed and breakfast permitting process, expand where you can do a B&B because that's what we find more appropriate, and that -- we're hoping that we're doing two

things, you know, we're doing the carrot and stick. We're saying yes here, simplify a process there for B&B's and TVR's, and no, this is not where we want a TVR, and that's the whole intent of these ordinances.

So, if I can, I'd like to go through the -- by the agenda, which is the first item would be the bed and breakfast ordinance cause I think that's going to make the biggest difference. That made -- that made the biggest difference. Are we breaking ...(inaudible)... oh. Are we going to get kicked out of here?

Mr. Vanderbilt: Is that -- is that -- was that 12 that we had to move at 12? Okay, we need to take a break anyway.

Mr. Alueta: Why don't we go till -- well, I would prefer to, if we can, I'm sorry, Mr. Chair, we've got the pizza on order for 1:00 so --

Mr. Vanderbilt: 1:00, but, no, I'm just trying to figure out was that 12:00 move time mandatory cause somebody else needed the room or what?

Mr. Alueta: Okay, I'm sorry. The public hearing is at 12 in the other room so I guess we do have to move.

Mr. Vanderbilt: Okay. Okay, let's recess the meeting until 12:30.

(A recess was called at 12:00 p.m., and the meeting was reconvened at 12:55 p.m. Commissioner Pescaia was excused from the meeting during the recess.)

Mr. Vanderbilt: If we could, Commissioners, I'd like to get back on the record here. Alright, Commissioners, we're back on the record. Joe, I think we're going to go ahead with this going through the ordinances but I would like to start out with the rural -- what is it? 19.64?

Mr. Alueta: Yeah, 19.64 is the first one here.

Mr. Vanderbilt: Then go to bed and -- then go to the rural districts, ag districts, the conditional use permit, and then TVR. Is that okay?

Mr. Alueta: Okay, so we have to reorder your agenda items. So you're going to take a. first, which is the 19.64, and then you're going to take Item e. second, and then b., c., and d. are your last ones. Which one did you like?

Mr. Vanderbilt: No, c. is the last one, that's five, b. is four, d. is three --

Mr. Alueta: Okay so --

Mr. Vanderbilt: a. is one, and where is two?

Mr. Alueta: And then e. is two.

Mr. Vanderbilt: Okay. Yeah, now so do we -- do we have to -- we can reorder these? We don't have to amend the --

Mr. Hopper: If there's no objections.

Mr. Vanderbilt: Yeah, now if there's no objections, does anybody have any problem with just amending the agenda so we can -- okay. Thank you. Okay, at this point, we mentioned that there would be testimony. Joe, I think you're going to have to wait just a minute --

Mr. Alueta: Okay.

Mr. Vanderbilt: Because our agenda calls for testimony on an item starting at 12:30 and I think we need to at least take the public testimony for anybody that wants to testify regarding the public hearing on the Council Resolution No. 07-107, Referring a Bill for an Ordinance to Prohibit Superstores in Maui County. Is there anybody here that would like to testify on this ordinance? And, basically, it says that superstores will not be allowed in Maui County or Molokai if they're in excess of 90,000 square feet and have 20,000 square foot grocery stores within them. But, anyway, it came to the Molokai Planning Commission. It has to go to all the Planning Commissions when an ordinance comes out of the Council so if anybody would like to testify on that -- excuse me. Yes, sir? Yeah, go ahead. Come on up here and just state your name for the record, please, and --

E. PUBLIC HEARING (Action to be taken after public hearing. Public hearing to begin no earlier than 1230 pm)

- 1. MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 07-108 referring A Bill for an Ordinance to Prohibit Superstores in Maui County to the Lanai, Maui, and Molokai Planning Commissions. (RFC 2007/0099) (J. Alueta)**

a. Public Hearing

Mr. Brian Halsey: Good afternoon, Chair and council members or Commissioners, my name is Brian Halsey. I'm the Market Manager over the operations for all the Wal-Mart stores for the State of Hawaii. I'm based on Oahu and I wanted to thank you for the opportunity to testify today. One thing I would like to start off with is we have no intentions

of coming to Molokai. It does not fit in our business models so I don't -- I want you to rest at ease with that. But I am here to testify on behalf of the superstore bill.

This bill's aimed directly at Wal-Mart. The only company's that have large stores that include supermarkets with grocery and general merchandise are Target and Wal-Mart. If the community is sincere about store development, we need to pay attention and be flexible as we can. Retail stores are actually part of the community's infrastructure, just as water and electrical systems are part of the infrastructure. Retail stores and the distribution centers that support them are the infrastructure which food and other necessities of life are delivered to our communities.

Because of the geographical location of our islands, we actually are very unique to our whole company. In the State of Hawaii we have over 24 buyers that work on our island of Oahu that focus nothing but on sourcing merchandise locally. In the last fiscal year, we spent approximately 188 million dollars for merchandise and services from over 488 Hawaii based suppliers and vendors. More than 50 of those suppliers are based in Maui County, and that's supporting over 18,000 jobs, supplier jobs.

Our Maui store, we provide work for almost 500 associates now. Our start wage at the Maui store -- at the store is \$12.00 an hour, and that's for very minimal work experience, cashier with work experience and additional things would -- can make starting off at over \$14.00 an hour.

Some other things that we've been doing in the communities, just on Maui County, the store's given over \$50,000 in grants. In the last six months, there's been over \$2,000 come to Molokai; one was for a Chamber of Commerce event that they did, and one was for a scholarship to one of the students here.

Wal-Mart stands ready, willing, and able to sit down with County leaders to discuss community problems and concerns and to find fair solutions that do not restrict free competition and unnecessary burden on island residents. Our goal at Wal-Mart is to be able to serve our communities with the best service and the best quality and selection. We held our customers save money so they can live better; after all, that's what the residents of Maui County deserve and we are definitely opposed to the bill and we urge you to vote against it. Thank you for the opportunity to testify.

Mr. Vanderbilt: Thank you. Are there any questions for the testifier? Commissioner Chaikin?

Mr. Chaikin: Thank you for your testimony. You did say that we can rest assure that there's not going to be a super center here on Molokai.

Mr. Halsey: Yes, sir.

Mr. Chaikin: We represent Maui County. You guys have any plans, currently, of moving forward with any super center on the island of Maui?

Mr. Halsey: We actually don't have any plans. We had a super center we were working on in Hilo and we've actually pulled out of that, and we have -- the only other expansion plans we have for the State of Hawaii is a site that we bought in Kapolei that -- that's even down the road now so --

Mr. Chaikin: Okay, you know when you -- when you read this proposed ordinance, there's numbers of square footage and stuff, and let me just throw some of these numbers at you and I don't want you to comment back to me on these, it says, "Superstore means a business exceeding 90,000 square feet, offering for sale more than 25,000 different stock keeping units, and dedicating more than 20,000 gross square feet of floor area to the sale of groceries." So what they're saying is, the first cut, is you have to be more than 90,000 square feet. I just was glancing, you guys are already way over that, right?

Mr. Halsey: We're 141 on the Maui store.

Mr. Chaikin: Right, so you guys are already over that. Now, on the -- on the 20,000 gross square feet of groceries, do you have -- do you know how much you guys have in that store of groceries?

Mr. Halsey: No, but there's already quite a bit of expanded food, we don't have the produce and everything else, but we would not be able to -- with that bill, we would not be able to add much more groceries in there.

Mr. Chaikin: So do you know how many square foot of groceries you guys currently have in that store?

Mr. Halsey: Not -- not on that particular store. No. But if this bill was to pass, we wouldn't be able to add very much more if at any.

Mr. Chaikin: Okay, and then the other item, number that's listed in here is 25,000 -- what is that? Stock keeping units or something. Do you know how many stock keeping units you guys have in your store currently?

Mr. Halsey: Right now, currently, we have over 120,000.

Mr. Chaikin: Okay, so as it stands right now, it sounds like the -- the store wouldn't even qualify for this. It seems like it's too big. Maybe. We don't know what they square footage of groceries are. But -- and then there's -- it's not just you guys, there's other stores too that I'm concerned about this ordinance, like there's Costco for instance, are they not going to be in compliance with this. We haven't heard from Joe yet on this and he's gonna, you know, he's going to basically tell us, you know, a little bit more about what all these things

mean. But one of my problems that I've got with this ordinance is that basically when it describes a super center, it does so in like one or two sentences and what I've seen, from my little bit of time sitting here, you can say one or two sentences and ten people will interpret that ten different ways --

Mr. Halsey: Yes.

Mr. Chaikin: So you have to be abundantly clear. Here it's talking about groceries. Do you know specifically what groceries are?

Mr. Halsey: It could be defined as a lot of different things.

Mr. Chaikin: That's right and that's what we're dealing with in this ordinance. It's kind of vague. And I think, you know, in these ordinances we have to go over -- overboard in being clear so everybody's absolutely clear what the ordinance means. But, anyway, thank you. That's all the questions I have.

Mr. Vanderbilt: Are there any other questions? Commissioner DeCoite.

Ms. DeCoite: You know, I love Wal-Mart, but that's outside of the point. How much more you guys plan on expanding if -- you know, if you guys plan expanding Wal-Mart?

Mr. Halsey: As far as in the State of Hawaii?

Ms. DeCoite: In Maui?

Mr. Halsey: In Maui, right now we don't have any plans to expand in any of our outer islands.

Ms. DeCoite: So you're looking at that point right there that's it?

Mr. Halsey: Well, right now. I mean I'm not saying what they would do in three, five years down the road. But unless things drastically change, and even at that point, it would be very limited.

Ms. DeCoite: Okay, thank you.

Mr. Vanderbilt: Is there any other comments? Yeah, Brian, thank you for taking the time to come over here. And as I mentioned, we have a lot of emphasis in our community to try to protect our mom and pop stores and, as I mentioned to you earlier, if you get a chance before you leave, go check out Molokai Drugs and -- and Rawlins Service Station and some of the other small stores, Friendly Market for instance, and these are wonderful businesses that have stable employment and good benefits and they're real community assets, and for instance, as I mentioned, Longs, if Longs Drugs sent in a satellite store,

David Makami would probably have to sell out, and if 7-Eleven came in, it might affect Rawlins, which really has sort of a little 7-Eleven in there. So we're very conscience of this and you may not come in with a superstore, but do you ever come into smaller communities with like small satellite stores? Could you do that on Molokai?

Mr. Halsey: We've had, not on Molokai, there's -- and we wouldn't have any intentions to come here anyways. The island is beautiful. Each area is different anyways. And you look at what the community concerns are. And we've been adjusting even our formats. I don't know if you've ever visited the newer store that we have, the Pearl City store, we actually -- the facade is like a sugar cane -- industrial sugar cane, it has a water tower and all that, but a building of that size or anything wouldn't even -- wouldn't be the right thing for the island.

I, just to give you a little bit about myself, I've been in Hawaii since '96. I've been with Wal-Mart over 19 years. I'm not from Bentonville. I'm from Pensacola, Florida, actually a little small town out of there. My wife is born and raised on Kauai. And I have no intentions of leaving and I wanna make sure that we make the right decisions to keep the island beautiful but I also wanna help deliver what I can to make people live better, stretch their dollars.

Mr. Vanderbilt: Thank you. Are there any other questions for -- thanks very much, Brian.

Mr. Halsey: Thank you.

Mr. Vanderbilt: Is there anybody else that would like to testify? Judy, please.

Ms. Judy Caparida: Aloha, Commissioners.

Mr. Vanderbilt: Aloha.

Ms. Caparida: I had talked to a lot of people on the island of Molokai about this superstore and they don't want it here. We rather go over there on Maui or Honolulu to go shop cause it's cheaper. If you was to come to Molokai, no way the prices going to be the same like when we go to the outside islands. And what's so beautiful is that we save a little money, catch the ferry, go over there, take the whole family, and do what we have to do there and come back home. We don't have to shelter -- I mean all our little stores, we're the only island on Molokai that does not have any kind of disruption outside that comes to take what we have and this why everybody wants to get their hands in it. No, I would rather -- even they want to petition this. We're going to be against all the stores coming in and only because it is going to be very sad for us on Molokai to know that they talk about jobs, let me tell you, nobody on the island can come here and say they get jobs, they don't need subsidies because they cannot keep us. The cost of living here is high and that's why we need to pono, keep everything that we have because that's all we can afford. Everybody talk cheap. Paper looks good, but the life is different. The life is different and it's going to ruin our life, and this is why I say that I would go for the ordinance that keeps them out.

Mr. Vanderbilt: Thank you, Judy. Is there any questions for Judy? Hearing none. Thank you very much again for your input. Is there anybody else that would like to testify on this issue? Okay, seeing nobody, I'd like to close public testimony on this item and we're not going to deliberate the bill at this time but I would like to ask, Joe, what is our time table on rendering a decision on this?

Mr. Alueta: January 16.

Mr. Vanderbilt: And what is that based on?

Mr. Alueta: January 16.

Mr. Vanderbilt: No, but what --

Mr. Alueta: A hundred and twenty days.

Mr. Vanderbilt: What's our time frame?

Mr. Alueta: A hundred and twenty days from the date the department received it. We received --

Mr. Vanderbilt: So you received it -- well, okay. Again, January 16?

Mr. Alueta: I believe that's what I calculated at one point for the Planning Commission on Maui.

Mr. Vanderbilt: Okay, thank you. Commissioner Kalipi.

Mr. Kalipi: I just wanted to know is Planning Department going to give a summary or input for the public and refresh our memory about the bill, the intentions of the bill, or why now, or --

Mr. Vanderbilt: You mean this bill?

Mr. Kalipi: Yeah.

Mr. Vanderbilt: Yeah. Joe, is there any staff report on this?

Mr. Alueta: No, there's not.

Mr. Vanderbilt: Okay. Was there any kind of committee report or did the Council do anything or they just send it down to you?

Mr. Alueta: The department will be making a presentation when the item comes up and so we'll do -- we'll give a presentation as to our concerns over the bill, changes that we would recommend --

Mr. Vanderbilt: But we have to make a decision by January 16?

Mr. Alueta: Yeah, I'm hoping you'll be able to get -- make a decision today at the --

Mr. Vanderbilt: But we won't have that presentation. Who are you giving it to?

Mr. Alueta: I'll be giving it to you today sometime but are we taking that item up or we're just taking public testimony and then we're going to go back to the transient vacation rental?

Mr. Vanderbilt: We're going to take public testimony and my thought was, if there's no objection from the Commission, to go back to the TVR's. Okay. Alright, thank you, Joe. And so with that, I'd like to go back on our agenda to the transient vacation rentals. Is there anybody here that would like to give public testimony on this item? We had heard that there were some people going to be here at about 12:30 to testify and provide a petition. Did we receive a petition from anybody? No? Okay. Oh, excuse me.

Continuation of:

**D. CONTINUED PUBLIC HEARING (Action to be taken after public hearing.)
(Initial public hearing conducted on October 10, 2007 and continued on
October 24, 2007 and November 14, 2007.)**

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting the following bills for ordinances addressing the issues of bed and breakfast (B&B) operations and transient vacation rentals (TVRs) operations, including the expansion of B&B operations into the rural and agricultural zoned lands and the expansion of TVRs into business district zoned areas such as Kaunakakai. (J. Alueta, Administrative Planning Officer) (Department Staff Report was distributed at the October 10, 2007 meeting. Commissioners: Please bring your copy.)**

Ms. Linda Place: Real quick. Aloha, Malama Pono O Ka Aina has a membership of 160. As a community organization concerned about --

Mr. Vanderbilt: Linda, could you identify yourself for the record?

Ms. Place: Sure. My name is Linda Place and I live on the East End, Manae, known as Manae. Malama Pono -- Aloha. Malama Pono O Ka Aina has a membership of 160. As

a community organization concerned about the protection our natural and cultural resources and our local lifestyle, we support the changes to the County's policies regarding vacation rental proposed by Jeff Hunt and the County Planning Director. We ask the Planning Commission also support and adopt the proposed changes to protect the lifestyle of its local community, a community of residents for who Molokai is home, not a second or third home or an investment property. Areas have been zoned rural and agriculture to protect them from the pressures of and the real estate speculations and so local residents do not have to compete with non-residential interests.

We are Molokai residents asking our Molokai Planning Commission to consider our community's desire to maintain its rural lifestyle before you support the luxuries of absentee landlords. We have included petitions supporting our position signed by 101 residents.

And I'd also like to add that as we have been going through this whole thing, we have -- we have presented a lot of testimony and we presented letters and we presented a lot of things in the last three months or so, and so this will be the last that we submit. Thank you.

Mr. Vanderbilt: Hold on a minute. Any questions for Linda? Yeah, I have one, Linda. Did you say that you supported the bills? These ordinances?

Ms. Place: Yes.

Mr. Vanderbilt: Okay.

Ms. Place: We support it as the Planning Commission -- as Jeff Hunt, the Planning Director --

Mr. Vanderbilt: Okay.

Ms. Place: On the vacation rentals where the vacation rentals would be illegal in residential areas and is only for in designated areas where it's supposed to be.

Mr. Vanderbilt: Okay. And the only reason I ask because you had then mentioned, and I don't know if you qualified it for TVR's, but you mentioned that you were concerned about the expansion of vacation rentals into ag and rural areas. Now, this -- these bills are seeking to make bed and breakfasts permitted uses in ag and rural, and now they're only in single family areas, and so, anyway, I was just trying to --

Ms. Place: Our -- our concern in Manae is to protect the East End. You know, as far as the ag, maybe we didn't read it real clearly, you know, on the bed and breakfast and stuff. But as far as the people out in Manae or the residents, what's going to happen is if you're going to open up TVR's to everybody on the East End, that whole place is going to turn into a resort area, from Kamalo, maybe not so much from Kamalo, but from maybe Pukoo all the way up to -- to Honouli Wai or something like that, or further up in the future.

Mr. Vanderbilt: Okay, thank you, Linda. Any other questions for Linda? Hearing none. Is there any -- thank you very much, Linda. Is there anybody else that would like to testify on this item? Yeah, Toochie?

Ms. Zaidarene Kalipi: Good afternoon. My name is Zaidarene Kalipi. I'm from Manae. The County's regulation and enforcement of these ordinances is necessary to ensure compliance with this ordinance. County enforcement is extremely critical to Molokai and especially to the East End of Molokai where I depend on the natural resources to carry out my cultural practices of fishing, raising limu ogo, and gathering food. In the natural habitat surrounding my home, there are deer and many varieties of native birds. This fragile ecosystem is being endangered by the illegal vacation rentals and the many guests that these vacation rentals bring to my residential neighborhood. The vacation rental guests are not familiar with traditional Hawaiian practices. The illegal vacation rentals affect the composition of my neighborhood. I no longer know my neighbors. The vacation rental guests come and go at all hours of the day and night and park their vehicles on my property looking up the mountain. The vacation rental guests have complained about the noise that my roosters and my dogs make. The dogs are my family's security. The roosters are my alarm clock. There are very few sandy beaches in East Molokai. Our beaches have become overcrowded from vacation rental guests and I have had to deal with their public displays of nudity at the beach. There are no County bathrooms, lifeguards, or facilities on our neighborhood beaches. It is very important that the County enforce compliance of these ordinances, which in turn protects my rights to traditional Hawaiian practices. Vacation rentals do not belong in East Molokai where there are limited number of long-term rentals in our residential neighborhoods. The vacation rentals belong in resort area on the West End side of Molokai. That's it.

Mr. Vanderbilt: Thank you, Toochie. Is there any questions for Toochie. Hearing none. Thank you. Is there anybody else that would like to testify on this issue?

Ms. Ruth Manu: Aloha. My name is Ruth Manu. We're talking about B&B and vacation rentals and all that. By right, residential areas, agricultural areas, we have a designated area where they're supposed to be. Hello! Plus, we're supposed to be taking care of the existing ones now. There have been promises a lot of time saying that the County would give help for Nancy cause Nancy's only one; that they was supposed to go and do something about this existing bed and breakfast and vacation rentals but they didn't do nothing yet. And yet they come back and telling us about this new ordinances that we gotta abide by. Hello! How the hell you can go with the new one, we never even finish with the old one. What is that? You never take care of the old one first. You never clear up the mess that the other director was on, Foley time, so how can you go on a new one when you never even clean up that mess. Check it out. We went volunteer to go help Nancy. Nobody wanted to hire us yet. And then what? They still sitting on their S-S-A or A-S -S not doing nothing and we getting all these meeting, coming over here and telling you guys. Nobody went do the work yet. They always say, oh, we no more the money. They no more the guys to helping her out but they come out with all these different ordinances and

checking up on her; yet they no give help. Hello! Smell the roses. You got to do your own thing that has been done before, clear up that damn mess before you go another one. That's how it's supposed to be. That is pono. How the hell you going backass way? I no think so. Let's get it straight. That's why we're here. We're all for the community, yes. We love the island of Molokai, yes. You live here. We born here. We do things right. Don't listen to somebody else. Eh, you know what? The word is "pono." Clear up the old mess and then go ahead. You cannot go ahead if you don't clean up what everything else is under the rug or exposing. They're running around bare ass already. What else? Hello! Clear it up. Eh, get it down straight. There's no time for fool around. Been in this meeting, done, and did it how long? Nobody went do anything yet for Molokai but they come over here give you all these different plans. Hello! Clear 'em up. That's my opinion. Get help for Nancy. Get it right. Any questions?

Mr. Vanderbilt: Thank you, Ruthy.

Ms. Manu: Thank you.

Mr. Vanderbilt: Any questions for Ruthy? Hearing none. Is there -- thank you, Ruthy. Is there anybody else that would like to testify on this item? Seeing none. I would like to, if there's no objection from the Commissioners, close the public hearing on this item. Okay, public hearing on this item has been closed. Okay, Joe, I'd like to move on and go through the ordinances in the order that we discussed, and, you know, I'd like -- I don't think there's any need to just read through the whole thing unless the Commissioners have some thought as to how they might wanna go. Do we wanna look at the ordinances and -- and just give our comments if anybody has any comments? Yeah, Joe, yeah I guess just start with the ordinances and just see if anybody has any questions. I don't know if you have any just preamble. Maybe you could give a little preamble of each one just --

- a. **A Bill for an Ordinance to Amend the Bed and Breakfast Ordinance, Chapter 19.64 of the Maui County Code regarding Bed and Breakfast Homes.**

The proposed amendments add that breakfast shall be made available to onsite guests and that bed and breakfast operations within the residential and rural zoning districts (currently B&Bs are permitted by B&B permit only in residential zoned districts) shall be limited to existing single-family structures; a 16 sq. ft. project notice sign shall be posted at the front of the property along the main access road; the application shall be subject to 19.510.20, the planning director shall approve or deny the bed and breakfast permit application; conditions under which the appropriate planning commission would approve or deny the permit; and provisions for renewal of bed and breakfast permits.

Mr. Alueta: Well starting with -- thank you, Mr. Chair.

Mr. Vanderbilt: Alright.

Mr. Alueta: Just going through the existing proposal that we have before you, again, it's -- we're trying to streamline the permit process for 19.64, this is the permit process for B&B's. It's on Exhibit 3 of our staff report, if you have it before you. We have outlined the changes that are being proposed relative to the existing ordinances. Those that are being added are being underlined. Those that are being removed are being stricken. And all the changes are in bold, okay. So the first change, on Page 2.

Mr. Dunbar: Okay wait, Joe, let me ask a question. You're on Chapter 19.64? You're going to follow the agenda?

Mr. Alueta: I'm going to follow the amended agenda, and the first item on the amended agenda we'll be taking up is Item a., which is the 19.64 bed and breakfast ordinance.

Mr. Dunbar: You're going to go down a., b., c., d., e.?

Mr. Alueta: I'm going down a., e., d., b., c. That was the proposed amendment by the Chair. So going on Item a., 19.64, bed and breakfast ordinances, the only changes, if you look on Page 2, Line 5, we continue to allow for a lessee to apply for a B&B permit. We changed the term to the term of the request, so instead of five years. So if someone has a -- a lease for two years for the house, they can come in and apply for a two-year permit for a bed and breakfast application so they no longer have to show a five-year lease for the house. It's a very minor change; just something to simplify the process.

We have also, on Line 8, Page 2, we want the permit and the permit holder will be a natural person. We do not want the permit to be held in a corporation or a limited liability corporation. It has to be in the name of the person. This will preclude the transfer of the B&B application or permit being sold on the open market. This will limit -- so if someone wants to take over an existing B&B permit operation, they would need to apply for their own B&B permit. Is there any objections to that change to -- I'm going to keep reading unless I see an objection to that change.

Mr. Kalipi: Well, I think I'm going to jump in I guess in Line 8 there. I think what was said earlier, I don't know if it was Lanai or Hana, I think it was Lanai, but under their criteria, they wanted the owner to be the applicant. Was that correct, Joe?

Mr. Alueta: The Maui Planning Commission wanted it to be an owner and not a lessee to be applied. So you can be an owner -- the existing law allows for owner or lessee. Maui moved and their recommendation is to eliminate "lessee" and just have "owner," and it can be a part owner, it can be a one percent owner or ten percent owner. It doesn't have to be -- it just has to be some type of owner on the deed rather than a lessee.

Ms. DeCoite: I like see the owner.

Mr. Alueta: Is there any objections to that? I'll go by consensus that way we can --

Mr. Vanderbilt: Joe, can I ask you a question? Speaking of lessee -- Suzie, what do you have a handout? Okay. Commissioners, I -- I handed out this floor plan of a vacation rental on the West End that has sort of the main area and various suites out off the corners. Joe, could this be a bed and breakfast if the owner rented out one of those rooms to somebody on Molokai who was there full-time and then all the other rooms were bed and breakfast?

Mr. Alueta: Provided that the operator lived within the structure so --

Mr. Vanderbilt: Yes. I mean I'm just saying say somebody on the Mainland built this structure and then he said to somebody on Molokai, "I'll let you live rent free in one of them and you manage it."

Mr. Alueta: No. The person living and managing it would have to be the permit holder of the -- the bed and breakfast operation.

Mr. Vanderbilt: So he would have to get that local Molokai person to apply for the permit and to get the permit, they'd have to give him a lease?

Mr. Alueta: That -- yes. Under the existing rules, the person who is the operator or lessee -- I mean, yeah, a person on Molokai would have to get a lease for the entire house, and live in the house, and apply for the bed and breakfast permit.

Mr. Vanderbilt: Okay.

Mr. Alueta: Okay.

Mr. Vanderbilt: And the permit could be no longer than the --

Mr. Alueta: Term of the lease.

Mr. Vanderbilt: Term of the lease. Thank you.

Mr. Alueta: Alright. So right now there's a -- was a discussion, Mr. Chair, about, by I believe Commissioner DeCoite, about following the Maui Planning Commission about having the owner -- having it at owner only. Is there -- like I said, we talked about this in the beginning but I'll remind that if there is no objections from the Commission, we'll go down through all the changes; if there's consensus, we'll take that as being a formal -- as being consensus for a proposed change. If there's any disagreement to a change, then there needs to be a formal vote on it.

Mr. Vanderbilt: I think -- Commissioner Chaikin?

Mr. Chaikin: Joe, I have quite a few changes to this bill and I think it's going to be awkward, some of them are things that you're going to bring up, some are things that you're not going to bring up, and it's just going to be real hodge-podgey. I mean I have recommendations but I don't -- I feel as though we should discuss the bill and then when we're finished discussing it, then I would like to move forward and offer my recommendations rather than just, you know, bits and pieces here and there and ...(inaudible)...

Mr. Alueta: Well -- well, I appreciate that, Commissioner Chaikin, but it wouldn't -- if you have proposals, because we're going line by line, it would make more sense that you interject your proposed amendments at -- when we get to that section of Title 19.64, that way all of the Commissioners hear what your thing is, and then we -- then if there's no objections to your proposed changes, then by consensus, those changes would be incorporated in your -- in the Commission's recommendations. It would be more hodge-podgey if we go through it and then you, all of a sudden, have five recommendations and we're all searching what line, what page. We're currently on Page 2 and we're on Line 8. So if -- and if you have changes that you wanna make that are coming up, then just say what line, what page as we go through.

Mr. Chaikin: Well, you see I have recommendations that aren't in here, and some of the recommendations that I have change some of things that are in here. So, at some point, you know, I would like to present my recommendations but first, I feel as though I wanna clarify some issues and ask questions about some of the things in here.

Mr. Vanderbilt: Thank you. Joe, I would like to, if there's no objection from the Commission, is to go through like we just did, ask some questions on each point, each Commissioner can just jot down if he has a concern, if he can put an "okay" or if he has a concern, and when we get to the end of that bill, if anybody has any recommendations or questions or new information, then they can do it and then we can sort of vote on the bill. Would that be okay? Commissioner Kalipi.

Mr. Kalipi: I somewhat agree with that, however, I do have another issue before we go line by line and whatnot. I think it is the -- probably the -- one of the most productive way to get through this, however, there is the matter of the big idea that we first need to address before we move on, and the big idea is even if we alter some of the language here, I guess there was some inputs and some suggestions from different inputs and where I'm getting at is that I've heard that there's some introductory to say "except for Molokai." And so I would hate to go through line by line and all that and at the end, when we do call for the vote, then something as "except for Molokai" would come up and dominate the time that we would put in line by line. And so I'm trying to attack the big idea so if we can get past through that, if we can get past that, then I would love to go line by line and dissect that.

Mr. Vanderbilt: Okay, Joe, let me -- in relation to Commissioner Kalipi, right now, there is a bed and breakfast ordinance on the books where somebody can go, whether they're on Molokai, Maui, or Lanai, and get a bed and breakfast permit. Is that correct?

Mr. Alueta: Correct.

Mr. Vanderbilt: And that law that's being changed is the 19.64 that we're looking at now, right?

Mr. Alueta: Correct.

Mr. Vanderbilt: Okay, so, Joe, here's a law that's already on the books and if we say "except for Molokai," you're saying take an existing law off the books.

Mr. Dunbar: No, I disagree with that. I think what Mr. Kalipi is trying to say is that we retain the law that we have, not that we get rid of it for Molokai. We retain the existing 19.64 and not have any of these changes.

Mr. Vanderbilt: So rather than at the end of the ordinance saying "except for Molokai," it you would -- it would be tied in with the recommended amendments to the various ordinances cause some of them are brand new ordinances?

Mr. Kalipi: Somewhat. What I am saying is that if we don't have the consensus at the end of the day with the big idea, then, therefore, we're going to go several hours into this line by line and come to the end of the results to say we don't have a consensus of the board. What I'm trying to do is establish consensus of the board that we do wanna agree with the big idea and the big idea is that Planning Department is coming with some changes and if there are some ways that we can alter it to put in our two cents, like Lanai did and some of the other Planning Commissions did to keep conditional permits, however, if the board is unanimous to say "except for Molokai," then when -- I don't see too much purpose to continue to go line by line so --

Mr. Alueta: If I may, Mr. Chair, let me give the quick *Reader's Digest* version of the big idea, okay. The big idea is this: Transient vacation rentals, what you call a TVR, what we call TVR, is not -- we have parsed that out and it is separate from the B&B. You can still approve 19.64 and it has nothing to do with the people doing transient vacation rentals on Papohaku Dunes. This has nothing to do with that. This has to do with a bed and breakfast, which is someone living in the same structure and renting out rooms. This is an existing law on the books. The conditional permit, the transient vacation rental bills, that all have to do with TVR's. The ones directly relating to B&B bills are in your rural district and in your agricultural district. Those are your big -- so that's the big idea. The big idea for 19.64, the big changes that are occurring in the existing bed and breakfast ordinance is streamlining and notification, okay. One is the signage is a big notification issue. The second issue is -- next to that is one permit. There's only -- there's no public hearing. It's

all done administratively up to six rooms. This eliminates the Planning Commission as well as the County Council. The Planning Commission will become the final authority on three occasions, okay, and that is if there's an existing B&B within 500 feet, this way you'll control the density; two, is if 30 or 40, under the existing law, 40 percent of the landowners within that 500 feet notification requirement object or have concerns, right, then it becomes a public hearing also; or, three, if -- the other time that you'll see it and be the final authority is if they object to the director's decision for their permit. So a person comes in and says I wanna six bedroom bed and breakfast, the director say, "No, your lot's too small. You can't accommodate the parking. We're going to grant you three bedrooms." The applicant says, "Well, I'm not happy with that. I think I can appeal and I'm willing to appeal it to the Commission." Those -- that's the big picture. The big picture is for B&B processing, this is about -- all about bed and breakfast processing. This does not say where you can have a B&B. This only says how we process that bed and breakfast application. The ideas of where you can have a B&B are in the individual zoning categories and currently under existing law, bed and breakfasts can be applied for in the residential district and as an outrightly permitted use in the business district. The other proposed bills of 19.29, the rural district, and 19.30A, the ag district, we are adding B&B as listed as a permitted use that they can apply for a B&B application. That's the -- so 19.64 is all about how you process those application. The residential district, the rural district, and the ag district says you can apply, it doesn't mean you're going to get it, it just means you can apply, but 19.64 tells you all about the process and the big idea with this process is making it a streamline process, increasing the notification, and that's pretty much it.

Mr. Vanderbilt: Thank you, Joe. Joe, so right now, bed and breakfasts are allowed in the business district and the single-family residential?

Mr. Alueta: That is correct.

Mr. Vanderbilt: And this 19.64 also wants to expand it into, as a permitted use, into the rural area?

Mr. Alueta: No, 19.29 wants -- will allow for bed and breakfasts to be allowed in the rural district and --

Mr. Vanderbilt: Well, I was just looking on Page 2, N., it said B&B operations within the residential and rural districts.

Mr. Alueta: Yes, just by -- that was amended because we are proposing to put it in the rural districts.

Mr. Vanderbilt: So if we don't go with the other ones, it would just read B&B operations within the residential?

Mr. Alueta: That is correct.

Mr. Vanderbilt: Okay. Thank you.

Mr. Kalipi: One point to make, and I somewhat agree with you, Joe.

Mr. Vanderbilt: Commissioner Kalipi.

Mr. Kalipi: Thank you. I'm following you and I like the part that you separate B&B's from transient vacation rentals, however, in the existing law or the existing proposal of language, taking Molokai specifically in mind, we have heard testimonies, and I believed that you concur with some of the testimonies that came forth, that interim land is the majority designated area on Molokai so, therefore, if we do continue to dissect and agree or disagree with some of the language, it has basically zero affect to the bed and breakfasts on Molokai because then nobody would qualify for it anyways.

Mr. Alueta: Yes, if they are zoned County Interim, and we are proposing to come back to you either late January, okay, or early February with a bill that would amend the interim district to include bed and breakfasts as a use that could be granted through 19.64. Just like we're amending 19.29 to include bed and breakfast operations subject to 19.64, we will have -- we will add bed and breakfasts to the interim district subject to this provisions of 19.64. So that is in the works. We are -- my director has authorized me to draft that law, I did draft that proposal, it is currently -- and it will be scheduled before this body and the other commissions in late January or early February.

Mr. Kalipi: Okay, thank you. So, Commissioners, again I don't mean to prolong the process but I'm trying to get the consensus if we do wanna go to the --

Mr. Vanderbilt: Let me throw something out. Maybe we could -- I think there's a consensus of like now we're talking about another bill coming in a little later, and there was a lot of talk about the community plan, and there's so many questions here that it really is a -- an issue that is -- affects a lot of other land uses and everything, and it really is probably best taken up by the community to determine where you want bed and breakfasts, the number you want, how they're determined and everything else, so I tend to agree that maybe the "except for Molokai" might be a good option but as far as 19.64, which is a law that's already on the books, we might see if there's anything in these amendments that make it better for Molokai and then the ones that aren't, we just don't recommend, but this is -- this is something that's already on the books but the other ones are just new stuff. So should we -- does the Commission wanna focus on 19.64? Or maybe we could take a hand count on how many people are leaning towards the "except for Molokai."

Mr. Kalipi: Yeah, that's my point.

Mr. Vanderbilt: Alright, well let me -- let me -- let me just take a head count of how many people would be sort of leaning for the "except for Molokai" on Molokai them, and I don't

know if that would include 19.64, but just generally and then maybe we could comment on it. How many people are leaning towards "except for Molokai?"

**Commissioners that raised their hands: K. Dunbar; S. Napoleon; B. Feeter;
J. Kalipi; L. DeCoite; D. Vanderbilt**

Mr. Vanderbilt: Alright, is there any comments on that as far as the 19.64, which is the law that's already on the books? Commissioner Dunbar.

Mr. Dunbar: Yeah, DeGray, you know part of the new -- part of the new ordinance wants to go one to six bedrooms and, you know, you get it up in the six bedrooms and, you know, I mean that's a hotel, in my way of thinking, so I think that number would need to be curtailed in some manner. Three, four, five, whatever, two, but anyway --

Mr. Vanderbilt: So -- so, are you looking at maybe --

Mr. Dunbar: Oh, I'm sorry.

Mr. Vanderbilt: You're looking at 19.64 and maybe coming up with some adjustments to those?

Mr. Dunbar: Well, yeah, that's what you just asked about, right?

Mr. Vanderbilt: Okay.

Mr. Dunbar: So I'm looking at 19.64.05, Line 5, to be Page 4, and it talks about having six bedrooms and -- and I think that maybe ought to be three bedrooms so --

Mr. Vanderbilt: What page was that, Kip?

Mr. Dunbar: That's Page 4 --

Mr. Alueta: Page 4, Line 5.

Mr. Dunbar: 19.60.050, Line 5. Oh, I know, but we're just asking for what ones we wanna do, right? We already have a consensus as to where we wanna go with "except for Molokai."

Mr. Vanderbilt: Okay.

Mr. Dunbar: I don't have -- you know, I mean this is just for what I'm saying. Someone else can come in and chime in.

Mr. Vanderbilt: Alright. No, no. But just -- does anybody have any real objections to that?

Ms. DeCoite: I like two.

Mr. Chaikin: No. Yeah, I don't have any problems with that number.

Ms. DeCoite: Maybe even one.

Mr. Vanderbilt: Well, and I think -- why don't we just go, Joe --

Mr. Dunbar: You wanna go page by page start from the beginning? I don't care.

Mr. Chaikin: I'd like to make a comment.

Mr. Dunbar: You just wanted input so I was giving input.

Mr. Vanderbilt: Okay, Commissioner Chaikin.

Mr. Chaikin: I mean, you know, when you look at these ordinances, what you wanna do is you wanna take a look at the ordinance, you wanna take the good stuff and keep it, and the bad stuff you wanna get rid of it. You don't wanna make some, you know, say "except for Molokai" and get rid of the good stuff too. So I think this is an opportunity, not only to take the good stuff, but to come up with more ideas and stick more good stuff in there and, hopefully, come up with something that's workable. That's where I'm coming from.

Mr. Vanderbilt: Alright. Why don't we go -- why don't we go through 19.64, page by page, and then just hit the other ordinances quickly and say if anybody sees anything good in them that they'd like to keep --

Mr. Dunbar: I agree with that.

Mr. Vanderbilt: Okay. Okay. Well, why don't we -- why don't we start with 19.64 and just, Joe, maybe we can just go page by page and --

Mr. Dunbar: Well, I'd like to hear Steve's, you know, I'd like him to bring forth everything he got that he's changing, that he thinks is good, and then we could jump 'em.

Mr. Vanderbilt: Yeah. Commissioner Chaikin.

Mr. Chaikin: Alright. Yeah. Yeah. Let me just -- just start by saying that if you back up and you take a look at the Mayor, what the Mayor is telling us, she says, and let me read what she says, "Each planning commission will have the opportunity to tailor the proposed bills to meet the needs of each of the three islands." That's what our Mayor is saying. So that's what we should do and, hopefully, the Council will follow that. So that's the way I looked at it because the recommendations that I'm coming up certainly, you know, are not

the best recommendations for all of the islands; I'm just saying them for as potential recommendations for the island of Molokai.

But before, you know, I get to the real specific recommendations, let me just give you a little background. First of all, the Maui County Planning Department has not demonstrated adequate oversight, supervision, and enforcement of the TVR's and B&B operations. As a result, it would not be prudent to give them administrative authority to issue B&B permits. So -- so we would need -- we need to keep that here and reason we need to keep that here is because of the historical lack of enforcement. Potential B&B holders could easily, covertly operate TVR operations under their B&B permits because there really is no enforcement. So that's why we need to go to the extra level, have a little bit extra vigilant before we issue these permits and that's why they should really come before the -- this Commission and we also need to have extra requirements in here to make sure that the permits that we do issue that the permit holders are compliant and that we also have extra requirements in here to facilitate enforcement.

So let me just go over specifically, you know, what it is that I'm recommending. First of all, I'm recommending that the Molokai Planning Commission approves or denies all B&B applications on Molokai through the special use permit process.

Mr. Vanderbilt: Okay, do you wanna go through all of them at one time?

Mr. Chaikin: I think I should cause this is going to be, you know -- let me just spit it out and then you guys can comment, see what you agree with, what you don't agree with, or what have you. The second thing is we need to have a short fuse on these permits. Because of the lack of enforcement, you can't give 'em five years because there is no enforcement - remember. So you have to have a short fuse. So all the permits will be valid for one year and the permit holder can renew by submitting a compliance report to the Planning Director on an annual basis and he can automatically get re-approved unless there happens to be a complaint. During the year if there's a complaint, then he needs to come before this Planning Commission to get that permit renewed. Let's see.

Mr. Alueta: Can I jump in here, Mr. Chair, at some point?

Mr. Vanderbilt: Well, let Commissioner DeCoite first.

Ms. DeCoite: What if we made them valid one year and can be renewed, instead of to the Planning Director, but to the Planning Commission?

Mr. Chaikin: Well, what we're trying to do is streamline the whole thing. Make it easier, faster. The people can just submit a report, boom, done deal. They can keep going forever as long as there's no complaints. As soon as there's complaints, boom, it comes right back to this Commission and we take a look at it.

Mr. Vanderbilt: Joe, did you have something to say?

Mr. Alueta: First of all, if they're not within the agricultural or rural district, there is no special use permit. Why would you wanna have them get a special use permit when they're getting a B&B permit? So that's -- that's a redundant permit you're making them do if they're not required to get -- so that doesn't exist. It's the B&B permit.

Mr. Chaikin: Okay, I concur. Yeah, I can tell you that I don't really understand the process good enough to understand the difference between a special use and a B&B permit.

Mr. Alueta: Secondly, we do require, if you look through the changes that we made, if a person is granted a longer than two years, they're required to do an annual report, so that's already -- so your first -- your first two suggestions are already in the ordinance.

Mr. Chaikin: Okay, thank you. Just moving right along. Any permit not renewed or revoked for noncompliance by the Planning Director can be appealed to the Molokai Planning Commission. So that's something that I think some of the other commissions were talking about.

Another one is if we're going to be successful, the problem -- the reason we're here today is because of enforcement. That's the problem. So when we come up with these ordinances, we have to put in things that it's going to assist or facilitate enforcement. And that's what, you know, this next thing is. It says, "Advertisements or promotions for B&B's are required to clearly state the permit number, the phone number, and the term bed and breakfast or B&B in all advertisements." And the reason we gotta have B&B in the advertisement so we can see if the guys are advertising for a TVR or not. That has to be clear.

Next, primary residency certification document. We talked about that the people have to certify their residency. That could mean a lot of different things to a lot of different people, so I think the Planning Department has to come up with a form and the requirements for that and so they would fill out a form and --

Mr. Alueta: Can you repeat that?

Mr. Chaikin: Yeah, basically, they have to -- one of the requirements is that they have to have a residency certification for -- that that is their primary residence, okay. The B&B operates your primary residence. Well you have to provide a certificate or something. You have to -- you know, we don't know you live there. You have to prove that you live there. And you don't let the people decide how they're going to prove that. You decide how they're going to prove that and you make them fill out the form accordingly.

Next, I think that all of the properly permitted B&B's have to have the sign in front saying that this is a -- you know, I don't have a lot of reference numbers. Some of these things are

in them and some of them aren't, but we can take notes and they can figure out what lines they apply to if any. But there's a two-by-two sign in front of each B&B clearly stating that it's a bed and breakfast and the permit number and the phone number so there's no question about what's going on at that particular place.

Next, that 16 square foot notice sign to be able to apply for a B&B is a bit obnoxious I think. This is a small community; we don't need a, you know, a 16 square foot billboard in front of the house. Let's just have a two-by-two sign that says that -- that they're applying for a B&B permit.

And I concur that the maximum of two adults in a room is really -- it's not happening. I mean if these kids got babies and stuff, they're going to be in the room too. So I think a maximum of two adults and two children ten years of age or younger are allowed per room.

Next, I think that the Fire Department came out with some very good recommendations and I think they also should be included in the ordinance, all of the recommendations by the Fire Department.

Bed and breakfast operations are subject to further limitations and restrictions as set forth in the community plan. It is the community that needs to decide what we can and cannot do further from this ordinance. And so during that process, we would decide if they can be here or they can't be here, or how many we're going to allow, or what's going on. So it's really the community plan that's going to put the brakes on this.

Also, you just had something about the application in here and you had their contact information. Email is something that we're moving to and that wasn't listed here and I think you should put that in there.

I put in -- those are my basic recommendations for changes to the bill. But now it still doesn't work because the enforcement is not adequate and if you read the enforcement section of Title 19, it's extremely weak. So I think that if we're going to have any success, we're going to have to really, you know, beef up that -- that whole part of that ordinance, and I've got some -- I'll just quickly go through my recommendations here and they're going to apply to TVR's as well.

What I'm saying is we should have an initial fine of \$5,000, not \$1,000. I mean some of these people are making a quarter of a million dollars a year and a thousand dollars is going to be a deterrent. I doubt it. So let's at least beef that up to \$5,000 and it will be imposed on owners of record for failing to adhere to the TVR and B&B ordinances and who operate without proper permits.

Now, additional fines of \$1,000 per day will be assessed on owners who continue to operate in spite of a cease and desist order. So like if you -- if you're going to do

enforcement on these people, you're going to give them a cease and desist order, and then, at that point, they have to stop. If they don't, it's a thousand dollars per day.

Let's see. Okay, and any cease and desist order issued to an owner will disqualify that owner from applying for a permit. So if you go in illegal, you get busted, that's it. You're out. You're done. You can't come back and try to get a permit.

Okay, and initial fine, this is going towards how do you people know that we have TVR's and B&B's. Well they advertise. So that's a real obvious way that you can catch the people and figure out what's going on is through the advertising. So we'll just say that an initial fine of \$100 will be imposed on owners or lessee proprietors for advertisements placed for unpermitted TVR's or B&B's. And then a hundred dollar per day fine will be imposed for not complying with the cease and desist order to remove the unlawful advertising. Also, a \$100 dollar per day fine will be imposed on all permitting of permitted -- or I should just say a one -- a \$100 per day fine will be imposed on all permitted B&B and TVR advertisements and promotions that are not adhering to the advertising provisions contained in this chapter after a good faith effort by the Planning Department to notify the offender and the need for corrective action.

And I just have -- and the other thing that I have here is fines and/or penalties can be attached to real property taxes to facilitate collection.

So that's all of the, you know, the changes that I have for this particular ordinance and I don't know, you guys can comment on it and see ...(inaudible)...

(Commissioner Kalipi was excused from the meeting at 2:00 p.m.)

Mr. Vanderbilt: Okay, thanks for doing your homework, Commissioner Chaikin. I think we can go back. Does anybody have any comments on what Steve said? Does anybody have any objection to trying to work the provisions that Steve brought up into the ordinance?

Mr. Dunbar: Yeah, I don't have much of a comment but we still haven't addressed, you know, how many rooms are going to be in there ...(inaudible)...

Mr. Vanderbilt: No, and that's where -- that's where we're going next. I was going to allow other Commissioners to come in. And I think it's good we can -- we'll just talk general and if you know where it is, we can put it in, and then we'll just go back and talk with Joe and say, okay, where can we slide this in. So, Commissioner Dunbar, you had a couple?

Mr. Dunbar: Well, yeah, I mean we still have to decide you know too they took out six, they put in, and we need to decide, and that's on Page 4 --

Mr. Vanderbilt: Okay.

Mr. Dunbar: 19.64.0505, and so I definitely think six is too much but then again it's an enforcement issue.

Mr. Vanderbilt: Alright.

Mr. Dunbar: You know, so, you know, how do you enforce that you're going to have two, you know, two adults and the children are under ten? You know --

Mr. Vanderbilt: Okay.

Mr. Dunbar: I don't know how one would enforce it so --

Mr. Vanderbilt: So you were suggesting three on that?

Mr. Dunbar: Yeah.

Mr. Vanderbilt: Okay, was there any other --

Ms. DeCoite: I like two.

Mr. Vanderbilt: Okay, well we can discuss that when we --

Mr. Chaikin: Well let me ask Joe. When we talk about numbers of bedrooms, does that include the number of bedrooms that the family is using? That's just how many you're going to rent out?

Mr. Vanderbilt: Rentable rooms.

Mr. Chaikin: Okay.

Mr. Vanderbilt: Okay, Kip, did you have any other thoughts?

Mr. Dunbar: Yeah, not that I totally agree with Steve because I also think it's an enforcement problem, but I think a one-year, if we do it at all, is, you know, a little tight. You know the wheels of progress on a lot of this moves pretty slowly cause if you look at how they want you to apply for it, I mean it is at least, you know, a six to seven month process, you know, having to notify neighbors and going to the tax office and getting all of that so -- okay, so, yeah, I just think that, you know, one year is a bit stringent, if in fact we're going to run into any B&B's on the island at all, I think there's only one maybe, but --

Mr. Vanderbilt: Alright, well, you said one, Commissioner Chaikin said two. Nobody has a problem with a compliance report. The bill already has a compliance report in there if it goes for two years so, Commissioner Chaikin, did you have a comment on that?

Mr. Chaikin: Yeah, the only reason I threw that in is that we've been having a major, major enforcement problem on this island. I mean it is just out of control. And so we have to keep a pretty tight reign on what's going on and, right now, these people have these ohana units, it's very tempting just to go TVR with them when they're supposed to be B&B. So that's the reason I said one year. And I don't think it's particular onerous cause all they have to do is fill out what could be a one-page or two-page compliance report, send it in, and that's all they have to do annually. So I don't think it's ...(inaudible)...

Mr. Dunbar: For the renewal you mean?

Mr. Chaikin: Right. Yeah.

Mr. Vanderbilt: And that would be automatic. If they meet the compliance, then the director just administratively approves that. Correct?

Mr. Chaikin: Right.

Mr. Dunbar: Okay, then there's one other thing, which is Page 2, Line 15, it talks about breakfast available to onsite guests. You know, if you're going to, you know, cook eggs or bacon or, you know, slice up their papaya or serve them orange or whatever you're going to do, you need a DOH permit. You need a Department of Health permit in order to do that. So I know that they've just gone, you know, lightly over this but that's -- I don't know if we should make a point or not.

Mr. Alueta: That's a given -- what we're saying is Department of Health guidelines allow you to do like prepackaged foods without doing a commercial kitchen so what we're saying is make available like either muffins or prepackaged danish or anything like that --

Mr. Vanderbilt: Unless they have DOH --

Mr. Alueta: Unless you get a DOH permit to do a full prep kitchen.

Mr. Vanderbilt: So when they do the compliance report for the renewal, would you ask them if -- would they have to show that --

Mr. Alueta: We're going to ask for it when they apply for it. When they apply for the permit, they're going to say how -- we're going to serve muffins or prepackaged Costco muffins or, you know, danish from whatever, but and then it's just -- that's how. The intent is just to say, hey, if you're a B&B, at least provide some type of food on site in the morning to eliminate the traffic of people getting up in the morning and say, well gee, I gotta drive out somewhere into town to go get breakfast, and that was the main issue back there.

Mr. Vanderbilt: Is there anywhere in the code where somebody reading this wonders, well, what does it mean? It doesn't say muffins and -- but is there anywhere if somebody

reading this would know that, well that -- you know, most people think I can serve eggs and bacon, there's nothing wrong with that, but that's not allowed, right, unless you have a DOH --

Mr. Alueta: This ordinance doesn't trump any other State laws so they're still required to do it. So if they want -- all we're saying is you need to provide breakfast. How you do it, it doesn't really matter. It could be you put out instant oatmeal, you know, the packages and the guy -- and a microwave.

Mr. Vanderbilt: Alright, but all we get back to is enforcement again. Say they're cooking eggs and bacon every morning, somebody next door doesn't like the smell of bacon or they don't have a -- you know, that's what I mean. It's not -- it doesn't have to be in here but in a -- there should be some reference, like in accordance with State law chapter so and so, so somebody reading this doesn't have to go hire Martin Luna, you know, so -- before he gets -- that's all I'm saying is when you have these ordinances --

Mr. Alueta: Is there a consensus by the Commission that all you want me to add is "pursuant to DOH guidelines" and then we'll just add a reference in there?

Mr. Vanderbilt: I think that would be helpful.

Mr. Dunbar: Mr. Chair, I know that when I went through the process and they, you know, they send out the letters to notification for the Fire Department and Transportation and what not, one of them goes to the Department of Health, and the Department of Health comes back with the fact that you cannot serve prepared food unless you get a permit from them. So I mean that's adequate notification I think.

Mr. Vanderbilt: Well, but, again --

Mr. Dunbar: But where's the enforcement?

Mr. Vanderbilt: A lot of people may wanna scope this thing out and the thing and I just think if you had "per DOH standards," then it's up to him to go check before he goes through all the expense of putting his application in and everything. Does anybody have any problem?

Mr. Alueta: I've never met anyone who applied who didn't come and talk to the Planning Department and that --

Ms. DeCoite: What if we just put "prepackaged foods?"

Mr. Alueta: And that's going to be the question they're going to ask.

Mr. Vanderbilt: Okay, well, let it go. It's not a big deal. Okay, so where are we now? Kip, you were down -- you were talking about the breakfast. Were there any other comments you had on this?

Mr. Dunbar: No ...(inaudible)...

Mr. Vanderbilt: Okay. Anybody else have any comments?

Mr. Chaikin: I have a question for Joe. Joe, I'm just curious, you know, like when you know there's developments over here that have CC&R's and I know we've just been dealing with developments that come up with strict CC&R's and -- and I'm just wondering why, you know, in this ordinance you specifically are telling us not to pay attention to any of the CC&R's. Why is that? You want me to read it to you? It says, "In permitting bed and breakfast homes, the planning director, the planning commissions, and the council shall not consider nor be bound by any private conditions, covenants, restrictions upon subject parcel."

Mr. Alueta: Where is that at?

Mr. Chaikin: That's Line 20 on Page 2.

Mr. Alueta: That's in the existing ordinance.

Mr. Chaikin: Do you know why they would want us not to pay attention to anybody's CC&R's?

Mr. Alueta: It means that we're not subject to them. Meaning if we issue a -- if we issue a permit for someone to do a bed and breakfast right?

Mr. Chaikin: Right.

Mr. Alueta: And someone has a CC&R that prohibits them from doing a commercial operation such as a B&B, just because we issue it, they've met the County Code. If they're breaking a private covenants, right, it's up to the civilian covenant enforcers, meaning the homeowners association, to enforce their laws. We're not bound to enforce that.

Mr. Chaikin: No, I understand that concept, but I'm just wondering if there is a hundred people out here saying, hey, our homeowners association doesn't allow that, don't give it to him, we shouldn't consider any of that?

Mr. Alueta: You can but we're saying we're not bound by it. At the same time, we have covenants that say you can't do cattle, pigs, or chickens in the agricultural district ...(inaudible)...

Mr. Chaikin: Okay, I'm just wondering if that needs to be changed in the ordinance. Yeah, I understand that we wouldn't be bound by it, but it says that we should not consider it, so that means we can't consider it. You know what I mean? And I don't see why we can't, you know, consider specific CC&R's of, you know, different things. But, anyway --

Mr. Vanderbilt: No, I agree with Commissioner Chaikin there because we just don't want to keep having -- creating havoc in the community, and if there are some CC&R's that don't allow it and then we go through all the trouble of giving them a permit, then it causes a lawsuit on the other side, and they win the lawsuit, we've just wasted our time. So I think that anybody coming before us should be at least in compliance with the CC&R's as long as those CC&R's are not conflicting with State or County law.

Mr. Alueta: I'm going to defer to my Corp. Counsel, but my understanding is that this is standard language that's stuck in most of the ordinance to protect the County from having to enforce private CC&R's one way or another. I'm not -- this section was in the existing ordinance. I'm not making any proposed changes. If this Commission wishes to have it removed, then that can be your recommendations to Council.

Mr. Hopper: I don't know as much background on that -- that wording as Joe does because I haven't been here as long, but I can tell you the same thing Joe said. County can't enforce CC&R's and can, if it wanted to, it doesn't have to, but can enact laws that are inconsistent with CC&R's. It doesn't wanna be party to a lawsuit, somebody saying, oh, you granted this permit that violated the CC&R's, the County's not liable for that. I think that's probably what the language is intending to do. I'm not necessarily comfortable saying you can't consider CC&R's at all in enacting the permit. I imagine if it's prohibited by the CC&R's, there'll probably be other things aside from that that may cause problems with the, you know, with the application. But I guess the main point is that the focus is on the application itself and any private agreements that you have separately, I mean they may come up and you may know of them and be able to consider them, but you also may not even have a clue that they exist and so you can't be charged with knowing every single private agreement that, you know, that may go on with that property.

Mr. Vanderbilt: Well, I just think that they at least should be compliant with the -- with the CC&R's.

Mr. Alueta: I think it's just protecting the County and the commissions from --

Mr. Vanderbilt: The Commission.

Mr. Alueta: And the commissions from lawsuits.

Mr. Chaikin: But, yeah, see the way I look at it is it should say that we should not be bound by, which means that we may consider it, we may not consider it, whatever, but in no way will we be bound by that private agreement, and then that would be okay. It'll allow us to

consider it, or not consider it, or -- but the way it's written right now we're not even allowed to consider it.

Mr. Alueta: That's fine if you wanna make those proposals.

Mr. Vanderbilt: Okay.

Mr. Alueta: Mr. Chair, was there any objections to that, just to amend that? Is there a consensus to change that the Commission not be bound by?

Mr. Vanderbilt: Is there -- do we have consensus to at least say that we'll just take out "not consider" and just put -- it'll read "shall" and then change the -- it'll be "shall not be bound by?" Any problem with that? Okay.

Mr. Alueta: Okay. Also, was there any objections to Commissioner Chaikin's proposal, the department doesn't -- Commissioner Chaikin's proposal? The only one I have is that first one with regards to special use permits because it doesn't really --

Mr. Vanderbilt: Wait a minute. We're still going through to see if anybody else has --

Mr. Alueta: Oh, I'm sorry.

Mr. Vanderbilt: Okay. Does anybody else have any concerns? How about -- I just had one on B&B operations within the residential and rural districts, at this point, unless we wanna make them permitted uses in the rural district. I would just say leave it like it is, shall be -- "bed and breakfasts within the residential district shall be limited to existing single-family structures." What's the current law? Joe, does it say "B&B operations within the residential district shall be limited to existing family structures?"

Mr. Alueta: No, that's what we added. Again, underline --

Mr. Vanderbilt: Well, alright, forget the rural.

Mr. Alueta: Underline is added.

Mr. Vanderbilt: I know. But forget the rural right now. It was allowed in residential. Was it limited to existing single-family structures in rural in the old bill?

Mr. Alueta: It's not allowed in --

Mr. Vanderbilt: Oh, there -- there -- there wasn't any --

Mr. Alueta: It not allowed in the rural district.

Mr. Vanderbilt: No.

Mr. Alueta: It was only allowed in the residential.

Mr. Vanderbilt: Okay, so the whole thing is new language?

Mr. Alueta: Again, those that are underlined are new.

Mr. Vanderbilt: Alright. I got that, Joe.

Mr. Alueta: Those that are --

Mr. Vanderbilt: I got that. I got that, Joe. So, anyway, the existing, what is existing single-family residence mean? At the time you get the permit, it has to exist?

Mr. Alueta: Yes.

Mr. Vanderbilt: It can be a new build?

Mr. Alueta: Yes.

Mr. Vanderbilt: It just has to be built before you --

Mr. Alueta: Correct.

Mr. Vanderbilt: Have a certificate of occupancy before you apply for the permit?

Mr. Alueta: Yes.

Mr. Vanderbilt: Thank you.

Mr. Dunbar: Mr. Chair, I think it's only housekeeping but, Joe, if you go to Page 4, Line 20, Number 4, you know it starts under the -- it's under Section 19.64.050 and it goes down A., 1, 2, 3, 4, and then it just goes -- is that the B, you're still under 19.64.050? So it's B&B permits that require public hearing shall be, and then you drop all the way down, submitted to, on Line 32, is that where that starts again?

Mr. Alueta: To the appropriate -- the appropriate planning commission.

Mr. Dunbar: Yeah, so you go from Line 22 down to Line 32?

Mr. Alueta: That is correct.

Mr. Dunbar: Okay.

Mr. Alueta: Shall be submitted to the appropriate planning commission.

Mr. Dunbar: And appropriate I'm assuming is where the B&B is going to be that's where the planning commission who will govern? Okay, thanks.

Mr. Vanderbilt: Does anybody else have any comments on -- on Page 5, it says, "Initial permit shall be valid for a period of one year. Subsequent renewals shall be granted by the director for up to five years," and you were talking about what? Two years or --

Mr. Chaikin: Well, I think B&B's should go as long as they wanna go as long as they're meeting their compliance and there's no complaints and if there are complaints --

Mr. Vanderbilt: So you're okay with up to five years?

Mr. Chaikin: They should just have to renew annually. Not up to five years. They get one year and then every year they can submit their compliance report and they get automatically renewed.

Mr. Vanderbilt: And the idea is that the compliance report is not going to be an onerous document?

Mr. Chaikin: Correct.

Mr. Alueta: That's pretty much what it says that it should --

Mr. Vanderbilt: Well, then --

Mr. Alueta: It shall be valid for a period one year --

Mr. Vanderbilt: Then it should be granted by the director for one year.

Mr. Alueta: We're granting -- even if the applicant is granted for up to five years after that one year initial review, they're still requiring an annual compliance report. So even if you got a five-year permit, you still need to do an annual compliance report that we will then use to determine whether or not you're still in compliance. The director, at any time, based on the evidence that you're not in compliance, can revoke your permit. So regardless of whether or not you got a five-year permit, if you submit an annual report, you know, and we find you're not in compliance with your conditions, we would revoke the permit regardless of how long.

Mr. Vanderbilt: Okay, Joe, just in that it says, "In reviewing the time extension request, the director shall require evidence of compliance with the conditions." So if you renew it for five years, at the time he get that five-year renewal, they look at the compliance report, but

does it say -- where does it say that he has to put one in annually? Is that in another section?

Mr. Alueta: If you look --

Mr. Dunbar: Line -- look at line ...(inaudible)...

Mr. Vanderbilt: Oh down further?

Mr. Alueta: Line 31 and Line 32.

Mr. Vanderbilt: Okay.

Mr. Alueta: "For permits renewed longer than two years, an annual compliance report shall be required."

Mr. Vanderbilt: Okay. Why would -- why would you have in there "for up to five years?" Why do you put that discretionary thing? Why don't you just make it five years or whatever? Why is there a --

Mr. Alueta: Traditionally, we give one -- traditionally, the commissions have given one, three, and five years, depending upon how well the applicant -- so the initial review is a one-year; the next time they come in they give you a three-year; the next time they come after that they maybe give you a five-year. After the one-year, if they feel that, you know, this guy is kinda shaky or whatever based on, you know, passed problems, they usually give him only a one more year so it's -- we feel that depending on the operator and the type of operation they're running, we would grant the variety of time periods.

Mr. Vanderbilt: Okay, thank you. Commissioner Chaikin, you had --

Mr. Chaikin: Yeah, you know, the reason I put that in there I guess is that, you know, this whole thing -- it's a psychological thing, okay. You have to -- if you only have one year, that's a lot different than five years. If you have five years, it's very difficult to revoke permits. I mean that -- I mean that takes a major act of congress that I don't see that this Planning Commission is gonna -- I mean the Planning Department is going to do. That's why we're erring on the side of caution since, you know, enforcement is such a problem. That's why I put the one-year thing; just go year to year to year to year and then, later on in five years when everything's going so well with the B&B's and the TVR's, then we can up that. But just to start, it seems like we have to be cautious.

Mr. Alueta: I think from the time you're going to get a permit, you're going to have a guy having to apply for it and the guy will be continuously in the process.

Mr. Chaikin: No, he doesn't apply. He automatically gets renewed by just submitting his compliance report and it gets accepted by the Planning Director. It's an automatic thing.

Mr. Vanderbilt: Which is going to be -- it's not going to be as hard as filing your taxes.

Mr. Hopper: Joe, can I ask you a quick question?

Mr. Alueta: Yep.

Mr. Hopper: So you're saying right now, under the current B&B ordinance, if someone gets a five-year permit, every year they submit a compliance report and that's reviewed? If they're not in compliance, they get their permit revoked? Now, it seems that Steve's proposal is the same thing?

Mr. Alueta: Yes, it is.

Mr. Hopper: Is it different? Now I understand -- cause the Commission doesn't review that compliance report under either one, right, cause it would be the Planning Department who reviewed it under both proposals, right? So -- so -- okay, revoking is tough but aren't you -- are you both proposing the same thing it seems? I mean --

Mr. Alueta: We are.

Mr. Hopper: You're both proposing the Planning Department review a compliance report every year and -- and revoke the permit if they're not in compliance, and renew the permit there is evidence that it is in compliance. But you're not talking about a one-year permit. You're just talking about -- Steve is really talking about an unlimited permit, and you're talking about a five-year permit where after five years, even if you've met your compliance report, you've gotta reapply to the Commission. Is that the situation?

Mr. Alueta: No. All renewals are done through the director unless the director sends it to the Commission, but it's all of them are all done administratively.

Mr. Hopper: So if you say it's a five-year permit, they still have to get annual compliance reports?

Mr. Alueta: Correct.

Mr. Hopper: So what happens in the fifth year that makes it different? They just get it extended for another period of time? It seems substantively to be very little difference. Just what -- to advise the Commission, that's just what I'm going to say.

Mr. Alueta: Yes.

Mr. Hopper: Okay.

Mr. Alueta: There is very -- there is very -- essentially no difference. The only difference is, theoretically as Mr. Chaikin says -- Chaikin says, that you -- the difficulty in revoking, you know, sending a letter of revoking the letter and so, basically, you're saying that, you know, if he doesn't get it, then -- if the director doesn't say you have a new permit for one more year, then your permit automatically expires. Is that what you're saying? That unless renewed by the director, unless a time -- I mean it's just that you're not setting out a criteria, we're setting out a criteria in the compliance report with regards to renewing and what we're saying -- you're just saying submit a compliance report, it doesn't necessarily mean we have to find that it's -- I mean what's going to be in that compliance report and as oppose to in the director's -- ours we're saying the information that needs to be in and when -- where it says, "No permit shall be renewed without written verification of tax payments." So as long as that's all you want --

Mr. Chaikin: No, I mean I guess maybe I didn't state it clearly. I guess what I was thinking is that the Planning Director would actually get this compliance report and read it, and if, in his own judgement, if he felt as though they were in compliance, he would go ahead and issue the permit. If for some reason he felt, in his own judgement, that they were not in compliance, he would not renew their permit.

Mr. Alueta: So if I hear you correctly, all you want to do is change --

Mr. Chaikin: Where are you?

Mr. Alueta: Change valid for a -- on Page 5, Line 20, going down, Number 21, "Initial permit shall be valid for a period of one year. Subsequent renewals shall be granted by the director for one year." And that's it. In reviewing time extensions, we'll leave everything else, and it will strike the last part, "Renewals longer than two years," you don't need that cause there is going to be an annual compliance report.

Mr. Vanderbilt: Alright.

Mr. Alueta: So all you're doing is taking out the five years and taking out the last line, end of Line 31, 32, and 33. You follow me? Cause that essentially will then say you're only going to get a period for one year, you're going to have to renew it after one year, and the criteria for renewing is established in this, in the chapter already, okay?

Mr. Vanderbilt: By filing -- you're going to still put in "by the filing of an annual compliance report," right?

Mr. Alueta: They don't need an annual compliance report if they gotta come in and get a new permit. If they gotta get a renewal every year, they're going to have to submit something and what -- what they're submit is no permit shall be renewed without, one,

written verification of tax permit; no permit shall be renewed in the event of any evidence that come to light -- all of that existing language.

Mr. Vanderbilt: Well, but that's -- but that's -- look, the compliance report should include that.

Mr. Chaikin: Yeah, the compliance report is something that the Planning Commission puts together, a form, that's required of all the permit holders, all the information that they're going to do, so that's something that's going to, you know, not be micro managed right here, it's just going to be called a compliance report, and the Planning Department's going to figure out what that compliance report should consist of.

Mr. Alueta: I liked your first statement where you said the Commission will come up with the compliance report, format for the compliance report.

Mr. Vanderbilt: Well, Joe, why not on Line 26 it said, "No permit shall be renewed without filing an annual compliance report which will include written verification," and whatever else you wanna say, something like that?

Mr. Alueta: That's basically -- that's why I'm saying is just take out the "five years" and put down "annual."

Mr. Vanderbilt: Well --

Mr. Alueta: Up to one year shall -- by the director for one year, and then everything else stays the same.

Mr. Vanderbilt: Now what is the verification of tax payments? Just a letter from the -- a certification of -- how do you -- how do you get that from the -- cause right now, you can't get the actual taxes they've paid. How do you determine --

Mr. Alueta: Have you ever paid your GE taxes?

Mr. Vanderbilt: No, well, the TAT taxes. How do you --

Mr. Alueta: Have you ever paid your GE taxes?

Mr. Vanderbilt: Well, what about it? Yeah, you gotta file.

Mr. Alueta: Right. And what do you get when you file?

Mr. Vanderbilt: That you filed.

Mr. Alueta: Right.

Mr. Vanderbilt: You're in compliance.

Mr. Alueta: Right.

Mr. Vanderbilt: Right. So --

Mr. Alueta: And what do you get? You get the thing back, it's stamped, it says received, and they staple the receipt that you paid your GET tax.

Mr. Vanderbilt: And the same happens on the TAT?

Mr. Alueta: If you go down, your GET for retail is what Line 16, TAT is Line 19.

Mr. Vanderbilt: Okay.

Mr. Alueta: If you look at -- if you look at your -- when you get a General Excise Tax License, the TAT is the same thing.

Mr. Vanderbilt: Okay. So that's -- that's the verification. That's all that I'm saying. You're not looking for them to put what amount of TAT or GET they paid?

Mr. Alueta: They do. That's all there. When they --

Mr. Vanderbilt: Well, that's good cause at least then you'll know how much is coming in for Molokai, Lanai, Maui, and --

Mr. Alueta: Again, let me -- let me clarify another big myth, okay. We don't even get a fraction -- oh, wait. Okay, we get a fraction of the TAT tax back to the counties. The State keeps it. All that TAT money goes to the State of Hawaii. The counties then go and beg for their share back.

Mr. Vanderbilt: Alright.

Mr. Alueta: Maui County has never gotten their share back.

Mr. Vanderbilt: Okay, well let's get through this bill and we'll do -- if we get through this bill, we'll do you a favor. We'll lend you Aunty Ruthy and she can go over and get the County more TAT tax.

Mr. Chaikin: Joe, I think we gotta keep in "an annual compliance report shall be required."

Mr. Alueta: That's fine. I know your intent. I know your intent. If the consensus is that you want one-year permits, one-year renewal, and one-year compliance reports before anything gets renewed, and you want the initial approval of the bed and breakfast to be done by this

Commission for Molokai only and that the annual -- but then the annual renewals can be done by the director. If that's your intent, that's -- I can put --

Mr. Chaikin: Correct.

Mr. Alueta: Okay. That's easy enough.

Mr. Vanderbilt: Are there any other --

Mr. Dunbar: Well, I don't know, maybe this is just --

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Alueta: Is there -- wait. Is there a consensus on that?

Mr. Dunbar: That's good.

Mr. Vanderbilt: Yeah.

Mr. Alueta: Okay.

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: Yeah, on Page 3, Line 19, they're talking notification of owners and lessees of record located within a 500-foot distance from the lot on which the proposed bed and breakfast home is located. I'd kinda like to propose that it's from the site of the home, not from the lot edges. You see it says from the -- and the reason for that is that, you know, you could have five-acre lot that within -- if you put it in the middle of the lot, I mean you don't have anybody in the peripheral of it all.

Mr. Chaikin: Where are you? Kip, what page?

Mr. Dunbar: Page 3.

Mr. Chaikin: Okay.

Mr. Vanderbilt: Line?

Mr. Dunbar: Line No. 19 and 20 -- 18, 19, 20. It's basically all of No. 1, beginning on Line 17.

Mr. Alueta: Yeah, it says from the lot, not from where the house is. So if that's -- and you catch a wider net with that. There's more notification requirements. That's -- and that's the intent is to get more people notified.

Mr. Vanderbilt: Joe, there's been a talk about TVR's and B&B's and their impacts on neighborhoods. Does this bill, 19.64, have it in anywhere that the number of units within a neighborhood or a requirement that at least a certain percentage of people approve the B&B being their residential neighborhood?

Mr. Alueta: There was talk of it but right now, the only thing is if you get -- right now it's 40 percent of the people object or state concerns, then it becomes a public hearing. Under the old bill, if you get 40 percent of the people objecting, then the permit gets bumped up.

Mr. Hopper: But now, Joe, under the recommendations, everything has a public hearing now, right? ...(inaudible)...

Mr. Alueta: Under Molokai -- under Molokai's proposal, yes. That is --

Mr. Hopper: Yeah. Okay.

Mr. Alueta: And that's why -- I mean, again, with regards to the annual renewal and, you know, having the initial permit being reviewed by the Commission, is that for all the commissions or Molokai only?

Mr. Vanderbilt: We're not going to speak for all the commissions, you know.

Mr. Alueta: Okay, so your comments are just going to -- as if it was Molokai only.

Mr. Vanderbilt: ...(inaudible)...

Mr. Alueta: Okay. Thank you.

Mr. Vanderbilt: And the other thing, Joe, I really think that some people, even though they may not have any problems with B&B's, they don't want one right next door, and I think if somebody, one of the contiguous neighbors doesn't want it, that should be a standard. I mean I don't know and I don't know where that would go if it was in there if there was a standard.

Mr. Alueta: It -- I'll throw this out for food for thought. It was discussed -- it was discussed at the Maui Planning Commission but it was -- by one commissioner but it was never voted on and that was rather than turning the onus upon the 30 or 40 -- 33 percent or 40 percent of the neighbors saying they object or complained was to require that the -- that the applicant get a signed letter from the surrounding property owners that they support it. So turning the onus upon the applicant to say for you to apply, you need to get approval or sign off by x-amount percentage of your surrounding property owners.

Mr. Vanderbilt: What does the Commission feel about that as oppose to --

Mr. Chaikin: But you said that didn't get -- they didn't move forward with that? It was just mentioned?

Mr. Alueta: It was brought up in a passing but it -- and it never -- no one ever picked up on it.

Mr. Vanderbilt: Well, I know Kip made that effort, I believe, didn't you when you went for yours you went around and got support from your neighbors? You didn't wait for them to get a letter and write in?

Mr. Dunbar: Yeah, I mean -- no, I went around and spoke to the neighbors and got them to support the fact that, you know, that the vacation rental was not going to be changing their lifestyle. You know, now whether or not that should be -- I'm not all so sure I believe in the one individual saying that that, you know, that should -- that should preclude you from doing what you wanted to do with your property. I think it's kind of a taking. I think if there's taking a look at some sort of a percentage maybe -- maybe that would make more sense but, yeah, I got over 90 signatures by people that lived in Maneae saying it was alright.

Mr. Vanderbilt: Well, the only reason I say that is that the General Plan, I think our community plan says that the visitor industry will not impact the social welfare of residents and everything and if you're living right next to one and your house is your castle and you're in a tight situation, like in Ranch Camp, you may not want strangers coming in --

Mr. Dunbar: Well but then a complaint is made and then it's up to the -- it's up to the owner to handle the complaint. If he can't handle the complaint, then he cease and desist. I mean that's -- you know, I mean it's the same thing I --

Mr. Vanderbilt: Well, again, it's -- yeah, I guess -- I guess it's just creating -- it's just sitting there and creating something that may not have to be created if the guy goes and works something out with his neighbors.

Mr. Dunbar: I think --

Mr. Vanderbilt: But I guess the other alternative --

Mr. Dunbar: Sometimes it's impossible to work it out with your neighbors.

Mr. Vanderibl: Commissioner DeCoite.

Ms. DeCoite: You know, I just wanted to say that, you know, I think that's a good idea that, you know, that -- if that landowner that wants to do the vacation rentals or the B&B's does go around and ask his neighbors and neighbors sure that is an infringement on their lifestyle and so forth that we should put it in and why wait to that point when later on let's

file the complaint. And I think there is a what is it 500 feet or whatever within that neighbor zoned or your adjacent neighbors because, like we heard, what several weeks ago I think it was when Mrs. Parrish that came forward and said that all her neighbors agreed with what she was doing and then we find out when what's her -- was it Sis that came forward or somebody said she didn't even come to us and ask us, you know, and if we got the stuff in writing and these guys agree with it, there's -- you know, we're playing fair on both sides. But to go ahead and then have your lifestyle adjusted based on guests moving in and complaints and so forth, but if your neighbors is good and well with it, it's alright with me. I mean cause if I was living next to it, I would have to think twice also about people coming in and complaining about my animals, so forth and so forth, knowing your land designation is an ag designation as well as dust and everything else that will infringe on that B&B or TVR. So I would like to see something like that in there.

Mr. Dunbar: Yeah, Lynn, I hear what you're saying. One of the individuals that -- that spoke against having my vacation rental, you know, where it was really was an individual who wanted me to give him some property so he could make his land more valuable. And when I didn't do that, oh, then he decided all of sudden what I was doing was no good so he came and complained. So I'm saying that there are a lot of -- I think -- I think, you know, your -- you know what you portray as having, you know, a B&B right next door and, you know, you're right in a farming operation and the dust is getting in their window and they -- you know, I think that's legit. You know, I can say that I came from -- from far less legitimate complaints so --

Mr. Vanderbilt: Okay.

Mr. Dunbar: Does one really have as much clout as the other? Is the question.

Mr. Vanderbilt: Well, you know, and when you're talking about, Commissioner DeCoite, that's in a larger area. I'm talking about small areas where you have neighbors that are 15 feet apart. That's a lot different than --

Mr. Dunbar: I agree with you and so maybe you could state that in there. Say that, you now, if your rental is going to be within whatever, 50 feet, then you have to have the compliance of your neighbors. I don't know.

Mr. Vanderbilt: Well, that's all I was saying that you have compliance of your contiguous neighbors within -- that are within -- and I'm talking about the close in areas, not the bigger residential lots.

Mr. Chaikin: Well, you know, I --

Ms. DeCoite: I can agree with -- oh, I'm sorry. I could agree with that.

Mr. Chaikin: I was just going to say that, you know, in the community plan process, I think that's where we gotta really exclude a lot of these neighborhoods that are, you know, really not meant for bed and breakfast and I hope we can do it there. I can say that, you know, as far this specific thing of having all your neighbors agree or whatnot, I'm totally in favor of that for the TVR thing because that's at a much higher level. But as far as the B&B, you know, people are going to have an opportunity to come here and hang all their laundry out to dry right in front of this Commission and we're going to be able to hear everything, you know, people are for it, people against it, and then make up our mind, you know, at that point so --

Mr. Vanderbilt: Okay, so right now, we're going to leave it with just -- well there's nothing and the 40 percent doesn't even apply, or do you wanna leave some reference in there? You would take out for Molokai, it would just -- there wouldn't be any.

Mr. Alueta: Well the subject would be moot because you're making everything go to --

Mr. Vanderbilt: The Planning Commission --

Mr. Alueta: For Molokai -- for Molokai everything --

Mr. Vanderbilt: But it would still be good -- it would still be -- you're still going to have notice, right? And I would say that you'd wanna have something in there that just says that the Commission is going to look at whether you have a reasonable amount of the neighbors that are for it, you know, or something.

Mr. Alueta: Right. Well, we'll -- that ...(inaudible)...

Mr. Vanderbilt: That is if a guy -- if there's no reference, then he's going to say, look it, I can do what I want with my property and I'm just going to go in and do it, and you get some people that are like that, you know, and --

Mr. Alueta: Because you're going to be doing the public hearing anyway, the 40 percent doesn't really matter, but we would provide that information to the Commission when they come in.

Mr. Dunbar: Yeah, DeGray, I'm just -- the reason for me looking at where the site was versus where the boundaries, you know, of the location is that in both of my TVR's, the actual boundary is within 500 feet of somebody else. The actual house is probably 800 feet from anybody. And so it's really kind of where it is situated, not versus where your lot is. You know, in both of them, they're not within any permanent resident within 500 feet.

Mr. Vanderbilt: I mean I got no problem with what you say because 500 feet from the middle of the lot or the edge of the lot in a dense area is where you're really worried about, it's not going to make that much difference, but in the big lots it --

Mr. Dunbar: Yeah, well I mean that's why I'm saying that I don't believe that what we're talking about here giving, you know, a large lot the credence that it deserves. You're still looking at it as if you had a neighbor ten feet away from you.

Mr. Vanderbilt: Okay. So, Joe, if we wanted to put in something that the contiguous neighbors within 50 feet, would that be a good -- you need approval of, written approval of the contiguous neighbors within -- and I don't mean contiguous like the next lot over, but I guess the -- the immediate guys that are right next to it you need some kind of approval for them to apply.

Mr. Alueta: Adjacent or contiguous so --

Mr. Vanderbilt: Adjacent.

Mr. Alueta: Yeah. Contiguous is not...(inaudible)...

Mr. Vanderbilt: But there, again, I don't want it to be the big lots. I'm talking about -- so in the -- so could we say within what? Fifty feet?

Mr. Dunbar: Twenty-five feet...(inaudible)...

Mr. Vanderbilt: Alright, twenty-five -- yeah. Well the adjacent neighbors. How do you do that, Joe? If we're really trying to get it for the smaller areas --

Ms. DeCoite: Shouldn't that be dwelling, you know, from one housing dwelling to the other? Or how about --

Mr. Vanderbilt: Alright. How about within 50 feet of any adjacent dwellings?

Ms. DeCoite: I would go for the 500 feet of any dwelling, not 50 feet of any dwelling.

Mr. Vanderbilt: No, this is just -- this is just if one of the two or three neighbors that are adjacent to you don't want it. We're not -- then you wouldn't even apply. But you're saying like if anybody -- if you did Ranch Camp, anybody in Ranch Camp, you know, there might be three --

Ms. DeCoite: Oh, okay. Okay. I thought was --

Mr. Vanderbilt: Yeah. No, we're not -- yeah.

Ms. DeCoite: You needed the --

Mr. Vanderbilt: So, Joe, we could say within 50 feet of the adjacent neighbors you have to get written approval before applying? Fifty feet of the adjacent -- dwelling units on adjacent lots or something. House to house.

Mr. Alueta: So you're setting up another criteria in which someone could apply? So I'll stick --

Mr. Vanderbilt: Yeah.

Mr. Alueta: For B&B, there will be another criteria --

Mr. Vanderbilt: Yeah.

Mr. Alueta: For applying and that is that the applicant must have --

Mr. Vanderbilt: Written approval.

Mr. Alueta: Written approval of adjacent neighbors within 50 feet of the dwelling unit.

Mr. Vanderbilt: Of the dwelling unit. Okay.

Mr. Alueta: Does that make sense?

Mr. Vanderbilt: Is there any objection to that? No.

Ms. DeCoite: Wait. Wait, DeGray. So but we're looking in just the residential area?

Mr. Alueta: It would be all areas.

Ms. DeCoite: All areas?

Mr. Alueta: Regardless. Because if you're with -- if you have an adjacent property with another structure within 50 feet, right, you could -- it would be -- you would have to get their approval.

Mr. Vanderbilt: Well this bill -- but this bill isn't on ag land.

Ms. DeCoite: I would like --

Mr. Vanderbilt: This isn't talking about ag land is it?

Ms. DeCoite: Well, he said --

Mr. Alueta: Yes it does.

Ms. DeCoite: All of it. That's what we're talking about. So I'm looking at anybody within a 500 radius that it impacts should be subjected.

Mr. Vanderbilt: I guess we gotta look at whether we want -- right now bed and breakfast is allowed in residential areas, right? They're not allowed in rural and ag. So we're looking at this bill to adjust the existing and then we're going to get to the others later. So in -- could we say in the single-family district? Yeah.

Mr. Alueta: If your concern is people who are within 50 feet, they're adjacent and within 50 feet, right, it doesn't matter whether they're in the ag, rural, conservation, or I mean --

Mr. Vanderbilt: Okay. Yeah. Yeah. That's fine.

Mr. Alueta: All you're trying to say is that if they're next -- if they're within 50 feet and they're -- of that structure, and you're not going to be able to write a bill -- if I tried to write a bill that's going to take care of every single scenario --

Mr. Vanderbilt: That's -- but that's an important scenario and I think we've heard testimony to that --

Mr. Alueta: Well, that's why --

Mr. Vanderbilt: That people worry about. They say right now we have no worry about our kids, they can go anywhere they want, you never worry, but always in the back of your mind, you're never going to know when they get that one ...(inaudible)... coming in.

Mr. Alueta: Well, I'm not going to address that. But, anyway, if you want the 50 -- if you want the 50 feet of adjacent neighbors, right, from dwelling to dwelling, then just leave it at that.

Mr. Vanderbilt: Okay. Alright.

Mr. Alueta: Okay, because the side yard setback in the ag and rural district is like 25 feet. I mean it's 15 feet so you could have a dwelling built 15 feet from your property line, 15 feet on the other side of your property line would be another farm dwelling and that would be only 30 feet away from each other.

Mr. Vanderbilt: So it wouldn't allow it.

Mr. Alueta: Yeah, so you would still catch someone in the ag district.

Mr. Vanderbilt: Okay. Alright.

Mr. Alueta: So, as a -- so this is a submittal requirement that you get authorization or approval to apply for a bed and breakfast within -- from your adjacent property owner -- from adjacent neighbors within 50 feet of your structure.

Ms. DeCoite: I still no agree with that because I would still rather see the five -- anybody within a 500 feet parameter should be subjected to that. One being if -- if you have these extra bed and breakfasts within these lots, and now we're talking all lots, right? Ag, whatever. You not only dealing with more people in that neighborhood, now you're dealing with the impact of that water. And if I must remind you, on the development, there was a law just passed through County Council, if you cannot prove the adequacy of the water, not development is to take place, I not saying there's going to be a huge development, but it'll impact us drastically when we already are in a water problem. I still would like to go with the 500 feet - anybody within that area, adjacent to -- from within the dwelling of 500 feet.

Mr. Alueta: That if somebody objects within 500 feet of your subject I guess B&B. If they object, that you have to get everyone's approval within 500 feet. Is that what you're saying?

Ms. DeCoite: Yeah.

Mr. Alueta: Okay, then you might as well -- like again, then you might as well change that whole provision about comprising of 40 percent, you know, rather than make -- put the onus upon the adjacent owners to complain, you send it out saying that you must get everyone's approval for you to apply but I -- if that's your intent, that's what you would do.

Mr. Chaikin: You know, I -- I just think, you know I agree that, you know, there's only so much stuff that we can put in these bills, you know, before we start micro managing every potential possibility, but, you know, I can understand that if you're the neighbor on either side and you don't want it there, you know, maybe it shouldn't be there, you know, so, you know, that's what I'm kinda thinking is, hey, you gotta have neighbors on both sides maybe agree but then, you know, the guy that's way down the block -- I don't know.

Ms. DeCoite: Yeah, but then you're looking at, okay, even if you're the neighbor on each side, okay, you get the bed and breakfast what, two bedroom, three bedrooms, you get three different families coming into your neighborhood, three different cars, okay, you know what? park your car in the next neighbor, you park yours in the other guy's neighbor. Before you know it, it's a rippling affect and you get cars all the way down the block. You know, and again here we go back to enforcement of that.

Mr. Alueta: Before you apply, you would have to show that you can provide the parking on your property, so you couldn't do offsite parking, so it would have to be on the property.

Ms. DeCoite: So you mean tandem parking again?

Mr. Vanderbilt: Whatever.

Mr. Alueta: But it has to be provided --

Ms. DeCoite: But that's what I mean, you know --

Mr. Alueta: All the parking has to be onsite.

Ms. DeCoite: Well, okay, take it up to the neighbors and let them decide, but I think the testimony has --

Mr. Vanderbilt: So, well I'd like to see the -- in the single-family residential area 50 feet and if you wanna go larger -- see we haven't even gotten to ag and rural whether -- right now they're not permitted in ag and rural.

Mr. Alueta: Mr. Chair, I would suggest put that -- that proposal to a vote, get a motion, that way it would be clearer since you can't -- since you -- there isn't a consensus at this point. If you wanna pursue it, I'd say get a motion.

Mr. Vanderbilt: Commissioner DeCoite mentioned that we're talking in this bill about ag and rural. Are we?

Mr. Alueta: Yes.

Mr. Vanderbilt: Alright. Let me go back to that point that I made about on Page 2, it says on Line 32 on -- it says, "and B&B operations within the residential and rural districts." Shouldn't it say agricultural districts there too?

Mr. Alueta: It can or --

Mr. Vanderbilt: No, but you -- you said that this bill speaks to agricultural too. Why was it left out there?

Mr. Alueta: Because sometimes we consider the agricultural areas of rural character, not as in --

Ms. DeCoite: That's why I no agree with this.

Mr. Alueta: Okay, so but all I'm saying is 19.64 -- 19.64 is the permit process. Where you allow them to be listed as being subject to this permit process is where you're -- we're listing them, so they're listed in the residential district, we're listing them in the rural district, and we're also listing them in the agricultural district. In the agricultural district, we're setting up additional criteria so -- but, like I say, that's -- if you wanna just say ag and rural districts, ag -- that's fine, residential, ag, and rural districts.

Mr. Vanderbilt: Well I, at this point, I wanted to take rural out of there cause we haven't even gotten to rural. Okay, do we -- do we have -- alright, we got two things. Let's take -- let's take a vote on -- I'd entertain a motion I had just suggested that the -- on Page 2, Line 32, that Item N, "B&B operations within," take out "and rural districts." "B&B operations within the residential district shall be limited to existing family structures." And then we can address the side. And then if we get to the rural and ag bills and we put it in, we can go back, but right now trying to -- right now, B&B's are allowed only in the residential area, right?

Mr. Alueta: And business.

Ms. DeCoite: Joe, business mean ag business?

Mr. Alueta: No, business as --

Ms. DeCoite: Okay, I just checking.

Mr. Vanderbilt: So, Joe, in the business district, what would the -- what would the residency requirements be? Would it be a -- it's not an existing single-family house; it would just be -- what would it be? Just --

Mr. Alueta: It would be a single-family house. Within the business district, existing single-family houses are permitted.

Mr. Vanderbilt: Okay, so why wouldn't business district be --

Mr. Alueta: Because in the business district it's a business, you're not subject to -- you're not subject to these provisions because you don't need a permit in the business district cause it's a commercial entity.

Mr. Vanderbilt: But it still has to be a single-family house in the business district to be a B&B?

Mr. Alueta: Within the business district, it lists bed and breakfasts within existing single-family residences as an outrightly permitted use.

Mr. Vanderbilt: Okay.

Mr. Alueta: And the definition of a bed and breakfast within 19.04 states it's an owner-occupied or, you know, operation.

Mr. Chaikin: So did you wanna get a motion on the last 50 feet thing or how do you wanna handle that?

Mr. Vanderbilt: Well, I'd like to first get a motion because we -- we're expanding this already into the rural districts and we haven't even got to that bill yet that for this bill, I would like to just, at this point, ask for a motion to take out "and rural" and just say, "B&B operations within the residential districts shall be limited to existing single-family structures."

Mr. Chaikin: Okay, I'll make a motion that, at this point, we remove rural or "and rural," excuse me, from Page 2, Line 32, of the B&B ordinance.

Mr. Alueta: Is there a consensus on that? We don't need a motion if there's a consensus. Is there consensus to remove the "rural" --

Mr. Vanderbilt: We got the motion going.

Mr. Alueta: Okay.

Mr. Vanderbilt: Is there a second?

Ms. DeCoite: I'll second.

Mr. Vanderbilt: Moved by Commissioner Chaikin, second by Commissioner DeCoite. Is there any discussion? Yeah, Commissioner Feeter?

Mr. Feeter: I wish to be recused from this vote.

Mr. Vanderbilt: Wait a minute. Why are you recusing yourself, Bill? I mean if you don't -- he doesn't have to tell us, huh? I mean -- well you don't believe he does or he doesn't?

Mr. Hopper: If there's a reason why Commissioner Feeter feels that he needs to recuse himself from this, then he -- he can recuse himself. I do not believe he needs to state the reason currently but if he so feels, then that's -- I think that's adequate.

Mr. Vanderbilt: Thank you.

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Chaikin, seconded by Ms. DeCoite, then

VOTED: that, at this point, we remove "and rural" from Page 2, Line 32 of the B&B ordinance.
(Assenting: L. DeCoite; S. Chaikin; D. Vanderbilt)
(Dissenting: K. Dunbar; S. Napoleon)
(Excused: L. Kauhane; J. Kalipi; M. Pescaia)
(Recused: B. Feeter)

Motion failed.

Mr. Vanderbilt: Okay, motion fails. Okay, so if that's in there, it's going to be -- now, as far as the -- I'd entertain a motion that prior to submitting to a permit, a applicant must get approval of the owners that have a dwelling within -- the adjacent property owners that have a dwelling within 50 feet of the proposed bed and breakfast. Is there anybody that would make a motion on that? Okay, no motion. Motion doesn't even get off the starting blocks. Okay, moving right along.

Mr. Alueta: Moving right along. So you -- what did you want to do with Mr. Chaikin's proposal because as far as --

Mr. Vanderbilt: Well we had no problem with all his proposals. Did you get 'em down?

Mr. Alueta: Yeah, I have a written copy here. I do not have objections. The only one, I just think the first one with regards to the special use permit is redundant cause this permit is the permit. There is no special use permit.

Mr. Chaikin: So what? Are we going to call that a B&B permit?

Mr. Alueta: That's what they're called.

Mr. Chaikin: Okay.

Mr. Vanderbilt: Okay, but now what if the B&B permit is in rural?

Mr. Alueta: They have to get both a B&B permit and a State Special Use Permit at the same time. I mean I'm sorry. In the rural district, they don't need -- they would just need the bed and breakfast permit. If it's in the agricultural district, they would need both the State Special Use Permit and the County Bed and Breakfast Permit.

Mr. Vanderbilt: So bed and breakfasts are allowed in the State Rural?

Mr. Alueta: Yes, if they get a bed and breakfast permit.

Mr. Vanderbilt: Okay. Well, so that was -- that was a little different than what we were told today. We said that a special use permit was --

Mr. Alueta: Under the existing law, which does not have bed and breakfast listed in the County Rural Districts, right?

Mr. Vanderbilt: Alright.

Mr. Alueta: Currently, if you wanted to do a B&B within the ag --

Mr. Vanderbilt: Okay, I got what you're saying, but when we ask a question, you know, the response, unless we know everything that you know, we just gotta take. I mean you could have said, "But, under the existing law --"

Mr. Alueta: That's what I explained today was that was the reason that we're adding it to the rural district is that by adding B&B's to the rural district, it simplifies the permit process so that the only permit that the people would need in the rural district is the B&B permit that's outlined in the 19.64 process. Under the existing law where B&B's aren't listed in the County Rural District, applicants now have to obtain a County Conditional Permit that goes to the County Council and a State Special Use Permit that comes before this Commission.

Mr. Vanderbilt: And they have to get them both in order to operate.

Mr. Alueta: And they have to get them both.

Mr. Vanderbilt: Go ahead.

Mr. Hopper: Yeah, just for Commissioner Chaikin's comments, just a couple things. The -- there will be changes to 19.05.30, it's a different ordinance for the enforcement purposes and I believe that you said that you wanted a \$5,000 initial fine, which would be in addition to the -- would be a new cap, it's currently a \$1,000 maximum fine, it was going to be a \$5,000 maximum fine for -- for violation of the B&B ordinance, does that include the violation of any -- running a TVR or only of the B&B ordinance were you proposing?

Mr. Chaikin: Yeah, I mean as stated, TVR and B&B or whatever.

Mr. Alueta: Yeah, cause he states both.

Mr. Hopper: Okay. And currently it is already a thousand dollar per day fine, if there's an issue, so that actually wouldn't change anything that's in the current law. But, yeah, the \$5,000 would be a new cap. The issue of the Planning Commission being the authority to appeal the director's decision too, we would have to look at because the charter says that the Board of Variances and Appeals is the appointed board to hear appeal from the director's decision, however, Council has, in the past, appointed itself as someone who hears appeals from the BVA, but we wanted -- we would wanna make sure that having the Commission hear an appeal from the decision of a Planning Director wouldn't violate the charter in anyway. I'm not sure offhand if that's the case, but we would at least have to look at that because that's what the charter says.

Mr. Vanderbilt: Thank you. Joe, you're okay with that?

Mr. Alueta: Yeah, I'm just going to -- as far as advertisement, promotions, that's -- that's pretty typical, that's what we say, so on his third item regarding advertisement --

Mr. Chaikin: Joe, can I just interrupt you? And make sure that you put in that they have to actually state whether it's a B&B or a TVR or what it is that they're advertising so that when your staff that does the enforcement looks through this stuff, they can figure out what's going on.

Mr. Alueta: We do that now.

Mr. Chaikin: Okay.

Mr. Alueta: Yeah. It's already required so that's -- so when you go to the State of Hawaii or Maui Visitors Bureau, and they list accommodations, you can tell which is a B&B because they list the B&B number. A primary residency certificate. That's -- that's very good. That'll work. We can do that. The two-by-two sign. So you want it larger than the one-by-one? We currently -- then the proposal is for one-by-one but if you wanna go two-by-two, that's fine.

Mr. Chaikin: Well, one-by-one is just a little bit bigger than this piece of paper. It seems kind of small.

Mr. Alueta: That's --

Mr. Vanderbilt: No, you were --

Mr. Alueta: I've traveled --

Mr. Vanderbilt: You were talking about the --

Mr. Dunbar: ...(inaudible)...

Mr. Vanderbilt: ...(inaudible)... no, he was talking about the four-by-four. He was talking about the --

Mr. Alueta: No, he's saying the sign in front of the short-term rental in view of stating properly at least B&B with the number and phone number. That's the two-by-two. We are -- the department is currently proposing a one-by-one sign. So you're proposing a two-by-two sign.

Mr. Chaikin: I mean what do you guys think?

Mr. Dunbar: Yeah, I think one-by-one is fine. I think what you're confusing is you're confusing, at least in what you said here, is that your two-by-two sign replaces the 16 square foot sign.

Mr. Chaikin: Right, and that's a different issue.

Mr. Dunbar: And that's a whole different issue.

Mr. Chaikin: Yeah, and then there's the, you know, each TVR -- see what I'm trying to get is when people go down the road, especially tourist, tourist are eventually going to find out that it's illegal to stay in a unpermitted TVR or a B&B. So when they drive down the road, they should see these TVR signs and the B&B signs, and then they pull in their driveway and they don't have a sign, it's pretty obvious that, you know, something's up there. So that's what I was trying to do --

Mr. Dunbar: ...(inaudible)...

Mr. Chaikin: You know, clearly label what everything is.

Mr. Vanderbilt: Thank you.

Mr. Alueta: Yeah.

Mr. Vanderbilt: Okay, any -- are there -- Joe, you have any other comment?

Mr. Alueta: So are you proposing -- the way you have it worded right now is I understand the 2-by-2 -- another 2-by-2 sign replaces your 16-by-16 sign for the public notice sign. But as far the permanent sign, the department or at least the Maui Planning Commission, the Hana Advisory Committee, and the department is recommending a 1-by-1 sign that is affixed to an existing structure, either a wall or a mailbox. So are you proposing -- you're proposing a 2-by-2?

Mr. Chaikin: Yeah, that's what I was proposing but I'm open to suggestions. If you guys think that's obnoxious to have something that big saying, you know, TVR, but usually people wanna promote their business. They put a sign out there. They want people to drive by. They want them, you know, to know that they have something here, take the phone number down and -- but, you know, if we wanna make it small and hide it behind a bush, a little bit bigger than this, than, you know, it's not going to be recognizable.

Mr. Alueta: You must understand, Commissioners, is that, one, is that the sign -- the operation is supposed to be in harmony and in character within the residential or rural character of the area and so that's why the size of the sign. The size of the sign was just more to identify it so that when people drive up to it, they know that's the one.

Mr. Vanderbilt: So are we okay with one-by-one?

Mr. Chaikin: I'm fine with that.

Mr. Alueta: Okay. Consensus - one-by-one.

Mr. Dunbar: Yeah, one other point about that, and Steve brought up a good point, is that if it is a one-by-one sign, that's fine, but there are a lot of guys that'll operate a vacation rental off the road, so I think we can either have to affix it in some area that can be seen from the road. So if the house is right on the road, then you'll have the sign right on the road. If the house is tucked back in the bushes, like Fosters or Haskins --

Mr. Chaikin: Yeah, we got that over there.

Mr. Dunbar: You gotta put it out on the road where you can see it.

Mr. Chaikin: Yeah, it says in -- in view from the road or highway.

Mr. Alueta: Right, and we have that and -- but -- and most people don't put their fence next to their house, they put it out by the road on their property line, and most people don't put their mailboxes by their house if it's far away from -- they put it on the road and that's why we're suggesting that it be attached to an existing structure, such as a fence or a mailbox.

Mr. Vanderbilt: Okay. Are there any other comments? Alright --

Mr. Alueta: And then page -- two adults, two children. You're setting adolescence at 10 years instead of 12 years. Is that the consensus of the Commission? Ten years?

Ms. DeCoite: Yeah, cause our kids is big kids and I don't think they all can fit on the bed.

Mr. Alueta: Okay, I -- Fire Department Bureau, that's fine, we can incorporate it. Further limit, that's fine. Yeah, so if there's consensus, the department is not -- there's no big flags here.

Mr. Vanderbilt: Alright, does anybody else have any other comments on this at this time?

Mr. Chaikin: Yeah, we never had consensus on how many rooms, the maximum number of rooms.

Mr. Vanderbilt: Three.

Mr. Chaikin: Is that what we decided on or --

Mr. Alueta: I didn't hear a consensus yet.

Mr. Vanderbilt: Okay.

Mr. Chaikin: I didn't hear one either.

Mr. Vanderbilt: Does anybody have any problem with three? Commissioner Feeter?

Mr. Feeter: Comment. It's not so much the bedroom size, it's the bathroom numbers, and in a rural district where they're all on septic, cesspools, that's an issue, and those are supposed to be chlorinated and it's supposed to aerobic systems, and so I would suggest that the minimum of three bedrooms and -- or, well, maximum, excuse me, of three bedrooms and actually and/or one bathroom per two bedrooms.

Mr. Vanderbilt: What are you going to do with the third bedroom? Oh, he would have to share it with the owner?

Mr. Feeter: Well, typically, you have a master bedroom and bath, and --

Mr. Vanderbilt: We're saying somebody can have a four bedroom house, he can have the master bedroom that he stays in, and then rent out three of them.

Mr. Feeter: Yeah, I realize it's rocket science but it's -- it's really, from an environmental standpoint, it -- it's sustainability and, in other words, the number of bathrooms, luas, are the limiting factor, not the bedrooms because you're going to get somebody sleeping on the couch anyway.

Mr. Alueta: If I may, Mr. Chair. Commissioner Feeter, we don't necessarily get into that because that's a Department of Health requirement and a building permit issue, so if you get a building permit for your five bath, four bedroom, or five bedroom/five bath house, you've met the requirements of the Department of Health and the building code. So I'm not -- especially in the rural areas, so I don't think that's an issue that you have to deal with with regards to the bed and breakfast. This is -- I think it's more of a, from a B&B standpoint, you just need to know what -- is that an appropriate number of guests out there cause that's how it's regulated is when you come in for your building permit they're going to determine it.

(Commissioner Kalipi returned to the meeting at 3:13 p.m.)

Mr. Chaikin: I'll go ahead and give you my vote. You know, I think that with the B&B -- well, first of all, let me just say that what the Planning Department is trying to do is eliminate all TVR's on the island, pretty much, and we don't know what's going to happen, but I think that, you know, we have to allow some flexibility here, and I agree that six is too many bedrooms, but then if we go two or three, I mean that's too limited for any decent group to come over, I mean some of those houses on the West End are pretty big, you can only rent out two or three bedrooms. I would go with four bedrooms. It seems like a compromise down from their six where we don't get too restrictive.

Mr. Vanderbilt: Okay. So then you could -- you'd have a five-bedroom house? Okay. And, again, I just worry about a situation in some of our smaller areas, like Ranch Camp, where we have people from Maui and the Mainland even buying up in Ranch Camp, and then they start putting up these bigger houses and that's going to push the property taxes up on the little two or three bedroom house next door to it. I mean I can see the West End

situation. I mean just look at this one that I passed out. But it could really -- it could alter the character of the neighborhood and -- and these close-knit neighborhoods.

Mr. Chaikin: And there's some questions whether or not they should even be allowed in that area and I think that's what the community plan process is going to be for is to kinda sit down and put further limitations on this ordinance.

Mr. Vanderbilt: Okay, so do we have a motion as to the number of bedrooms? I'll -- Commissioner DeCoite?

Ms. DeCoite: I still sticking with my two bedrooms.

Mr. Vanderbilt: Well make a motion then.

Ms. DeCoite: Well, we no more consensus. I know we no more consensus. Why make the motion? We like get off the starting line here, Mr. Chair.

Mr. Vanderbilt: I just need some company. I'm O for 2. Go ahead. Do we have a motion for three or a motion for four? The Chair can't make a motion.

Mr. Alueta: Or leave it as is.

Mr. Vanderbilt: No, I don't think we wanna leave it as is.

Mr. Dunbar: Well, now four bedrooms would be what they rent out or four bedrooms total in the house?

Mr. Vanderbilt: So that would be five now.

Mr. Dunbar: So they'd have five bedrooms in the house?

Mr. Vanderbilt: And five baths.

Mr. Dunbar: Then I stick with -- then I still stick with three.

Mr. Vanderbilt: Okay, do we have a motion for three bedrooms?

Mr. Dunbar: I'll make a motion for three bedrooms.

Mr. Vanderbilt: Is there a second? Second Commissioner Napoleon. Is there any discussion.

Ms. DeCoite: Is it three bedrooms and one bathroom?

Mr. Vanderbilt: No. We have no control. It'll probably be three bedrooms, three baths, or three bedroom, two baths, or whatever. So is there anymore discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Dunbar, seconded by Mr. Napoleon, then

VOTED: that three bedrooms be the maximum number allowed in a bed and breakfast.
(Assenting: K. Dunbar; S. Napoleon; J. Kalipi; S. Chaikin; D. Vanderbilt)
(Dissenting: L. DeCoite)
(Excused: L. Kauhane; M. Pescaia)
(Recused: B. Feeter)

Mr. Vanderbilt: Okay.

Mr. Alueta: Okay.

Mr. Vanderbilt: Now, are there anymore --

Mr. Alueta: Wait. Wait. Three bedrooms?

Mr. Vanderbilt: Three bedrooms.

Mr. Alueta: Three bedrooms. Thank you.

Mr. Vanderbilt: Is there any -- is there any other discussion at this point? Okay, I would -- I would like us to have a consensus that Joe -- that we agree to all we've discussed today and that Joe will go back and put those down and bring them back to this Commission, or send them back for our review along with the minutes just to make sure that everything was captured.

Mr. Alueta: I'll read them back to you before I leave tonight. I'm going to read them all back to you. I mean so far you haven't made that many changes. Steve was gracious enough to put it in writing so do you guys all have them in writing? Commissioner Chaikin's thing? So the only thing we changed on his was the one-by-one sign for notification, and then you also have you're all going to do a one-year permit with an annual renewal with a compliance report, and the permits shall be approved by the Commission and renewals will be done by the director. And then you've also -- the other motion you made was to cap it at three bedrooms.

Mr. Vanderbilt: Alright, and then the compliance report will have in there that stuff that was above the line?

Mr. Alueta: Correct. I'm only putting in -- I'm only giving you what changes you're making to the existing -- to the ordinance that department has made before you. So if you haven't made any changes, we'll make -- those are going to stay.

Mr. Vanderbilt: But you know what we were thinking of having in the compliance report, at a minimum?

Mr. Alueta: Correct. They minimum, they're going to have to address the conditions, how they've complied with all the conditions, they're going to have to show their transient vacation --

Mr. Vanderbilt: Alright.

Mr. Alueta: Tax and all that.

Mr. Vanderbilt: Okay.

Mr. Chaikin: Also there was the -- the permit, the B&B permit and/or the special use permit.

Mr. Alueta: Correct. They're going to get, this is for -- for the agricultural district is the only district that they're going to be required a State Special Use Permit. There is no special use permit outside.

Mr. Vanderbilt: And then all permits come back to the Commission, right?

Mr. Alueta: All permits, the initial review of the permit, the initial granting of the permit comes before this Commission.

Mr. Vanderbilt: Okay. Was that it? Does that seem okay? Alright, so --

Mr. Alueta: Was there anything else with regards to the 19.64? Again, like I said for Maui, changes to the -- that they had was they wanted to have no lessee and owner only, so you had no comment. You want to -- you're okay with leaving it as lessee?

Mr. Vanderbilt: I thought we had the owner. We wanted the owners to be on cause that's the problem we have now.

Mr. Alueta: Okay, you're --

Mr. Vanderbilt: I don't know. I don't know.

Mr. Alueta: Is there a consensus?

Mr. Vanderbilt: But I think that's the problem we have now is there's a lot of off-island --

Mr. Alueta: Okay, owner -- owner only. Okay, I will put that down.

Mr. Vanderbilt: Wait a minute. Wait a minute. Okay. That's okay.

Mr. Alueta: Was there a consensus? Okay. On the Maui Commission, they changed the notification, like they had a problem with -- even if you had a problem with 33 percent but I guess that doesn't matter cause you're going to be hearing all of it, so that subject is moot, but we will report how many people complained. Did you allow tandem parking? The Commission would like to allow grasscrete as well as tandem parking for Maui. You guys were silent on that. You addressed the minor children issue, the sign, and the appeal of the director.

Ms. DeCoite: Single parking.

Mr. Alueta: Okay. So, right now, under the --

Ms. DeCoite: Yeah. Yeah. Yeah, not tandem.

Mr. Alueta: Under the existing code, you have to provide one stall for every additional -- for every room that provide. So if you have a three bedroom bed and breakfast, you have to provide two stalls for your single-family house and an additional three stalls, so there will be five parking stalls that need to be provide on the property, okay, and you're not -- and they have to be, under the existing law, they have to be paved parking so you're not -- and you're not allowing tandem. Okay, so did you have a problem with having them do grasscrete or grass parking?

Mr. Vanderbilt: Well, I, personally, have no problem with grasscrete. I mean --

Mr. Alueta: Okay. Yeah, grasscrete.

Mr. DeCoite: Unless it was on the hillside, then you might get erosion so I don't know.

Mr. Alueta: Grasscrete has pavers so grass -- some kind of grasscrete. Is that a consensus?

Mr. Vanderbilt: Isn't that basically just hallowed out cinder blocks?

Mr. Alueta: Yes it is.

Ms. DeCoite: Yeah, that's fine.

Mr. Alueta: Okay. I'll say grasscrete is okay, but no tandem. Okay.

Mr. Vanderbilt: That's it?

Mr. Alueta: That's it for 19.64 unless you --

Mr. Chaikin: One more item on that Page 2, Line 21, should read: "Commission and the Council shall not be bound by --" cause that's when it was saying that we shouldn't be considering CC&R's.

Mr. Alueta: Okay, so you're going to change Page 2 --

Mr. Chaikin: Yeah, Line 21.

Mr. Alueta: So the only -- what we'll do is we'll strike the --

Mr. Chaikin: Three words: consider --

Mr. Alueta: "Nor be bound by" and then everything else can stay the same.

Mr. Chaikin: No, no, we wanna leave that. We wanna get rid of -- it should say, "Council shall not be bound by --"

Mr. Vanderbilt: Take out the "consider."

Mr. Alueta: Oh, take out the "consider" one?

Mr. Chaikin: Yeah.

Mr. Alueta: Just take out "not consider?"

Mr. Chaikin: Right.

Mr. Alueta: "Shall not be bound by --" okay.

Mr. Chaikin: No, no. Take out "consider nor." "Shall not be bound by" --

Mr. Alueta: Okay.

Ms. DeCoite: And then Line 32, are we still leaving rural in there because the rural was defined by you as ag also?

Mr. Alueta: I think that --

Ms. DeCoite: What's the deal on that?

Mr. Alueta: I'll take that back. The rural is rural and because the rural dwelling, right, I just had to rethink this in our word-smithing of this whole thing is that in the agricultural district,

the structures within the ag district is not defined as a single-family residence. They're defined as a farm dwelling so --

Mr. Vanderbilt: Well, you know, we -- there was an unsuccessful motion to take it out but I think we're opening up a permitted use at a time when we're heading into our community plan and I think -- whatever, but it's out -- it's in. Rural's in there.

Mr. Hopper: You're kinda arguing semantics, I mean at this point. Rural will be in there depending on what you decide on rural and ag in your next two bills. So if you're going to allow rural, it's going to be -- it should be in there. If you're not going to allow rural, it should be taken out. So it should be consistent with whatever you do upcoming.

Mr. Alueta: Correct. We'll make the legal corrections later on once we're done. Okay, so if we're done with the 19.64, we'll move on --

Mr. Kalipi: Just one comment.

Mr. Vanderbilt: Oh, Commissioner Kalipi.

Mr. Kalipi: Trying to jump back in. I lost a lot of stuff but, hey, I did wanna make reference, prior of leaving and part of the discussion, we did talk about how the Planning Department will be coming out with some kind of proposed language of interim for Molokai's sake. Joe, where does it fit? How can we reference that that is something that, you know, we either would like to see or entertain? I don't know if it fall under 19.64 but it does address bed and breakfast so --

Mr. Alueta: You don't need to do anything. We've already initiated it. When the interim district bill comes before you with relationship to B&B's, all it's going to say is permitted uses, it's going to say bed and breakfast permit -- bed and breakfast operations subject to 19.64, and that's all, that's the only line it's going to have with relationship to 19 -- to the bed and breakfast bill cause all that we're going to do is list it as a permitted use. Cause right -- like I said, 19.64 is your permit process and the regulations as far as regulating the operation. Whether or not it's a permitted use or allowed use is you hit -- is it's listed in every zoning category. And again, if it's not listed in the zoning category, you're not allowed to even apply for the permit, okay.

Mr. Kalipi: So you're saying we -- so we address it or we comment in some fashion in the zoning category that we're going to come up with?

Mr. Alueta: No. I don't think you need to do anything. I think we already understand that it's going to be. You're going to comment on whether or not you want B&B's in the interim district when I bring you that bill.

Mr. Kalipi: Okay. You guys understand what I'm saying? When is that bill going to come and then how it's going to ...(inaudible)...

Mr. Vanderbilt: And I think, Joe, as a follow up to Commissioner Kalipi, when that bill comes to us, I'd like to have a map that shows the interim zoning on Molokai. Is that available?

Mr. Alueta: Yeah. We'll do that.

Mr. Vanderbilt: Okay. Thank you.

Mr. Alueta: Okay, moving to --

Mr. Vanderbilt: Joe, is that okay? And then we can at least see what we're talking about.

Mr. Kalipi: Yeah, if everybody is comfortable with that. I mean, you know, I'm just saying that the reason why I said interim because then it's applicable to Molokai. I'm not saying that we should approve that B&B's on interim and stuff like that, but I do want to see it addressed in this process that it not get lost in the process of, and then I like some of the, you know, some of the comments earlier that was said that Lanai and I think Hana referred that, you know, and I'd like to put that in as ours, somewhere, I don't know where our comment would be that we wanna reflect on trying to make it in compliance or synonymous with our Molokai Community Plan.

Mr. Vanderbilt: Joe, what was that Lanai language on they wanna -- oh, that was on the conditional permits, yeah?

Mr. Alueta: Correct. And related to transient vacation rentals.

Mr. Vanderbilt: But I think, on the record, Joe, I think it's pretty clear that when it gets to our community plan, we're going to refine this more and see where we want and how many you want in certain areas and all of this so --

Mr. Alueta: And that doesn't -- nothing you've done today precludes you from doing that at the community plan level because at the community plan level, you may say we wanna allow x-number of bed and breakfasts on Molokai total. We wanna allow x-number of TVR's at all. Or you wanna say we don't wanna allow any TVR's. It's up to you. You're going to make that decision at the community plan level, I think.

Mr. Vanderbilt: Okay, thank you.

Mr. Alueta: Alright.

Mr. Vanderbilt: Okay, let's take a five --

Mr. Alueta: No, no, you already by consensus. You don't need to vote. Unless you wanna vote.

Mr. Vanderbilt: Should we vote? Okay, all those in favor of the amendments proposed by this Commission for Bill 19.64 as read by Joe Alueta -- oh I can't make a motion. I'll entertain a motion. Say so moved.

Mr. Dunbar: So moved.

Mr. Vanderbilt: So moved. Okay. Is there a second? Second. All those -- any discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Dunbar, seconded by Mr. Napoleon, then

**VOTED: in favor of the amendments proposed by the Commission for Bill 19.64 as read by Joe Alueta of the Planning Department.
(Assenting: K. Dunbar; S. Napoleon; J. Kalipi; S. Chaikin;
L. DeCoite)
(Excused: L. Kauhane; M. Pescaia)
(Recused: B. Feeter)**

Mr. Vanderbilt: Okay, it's approved and we'll take a five-minute break. Thank you.

(A recess was called at 3:30 p.m., and the meeting reconvened at 3:38 p.m.)

Mr. Vanderbilt: Okay, we're back on the record.

- e. **A Bill for an Ordinance to Amend Chapter 19.29.030, relating to the Rural District.**

The bill would expand bed and breakfast operations into rural zoned districts on Molokai subject to the provisions and restrictions of Chapter 19.64 of the Maui County Code as a permitted use. Currently, B&B operations on Molokai are allowed by B&B permit in residential zoned districts.

Mr. Alueta: For 19.29 --

Mr. Vanderbilt: Nineteen what?

Mr. Alueta: 19.29

Mr. Vanderbilt: Alright.

Mr. Alueta: The County Rural District. All we did was add bed and breakfasts as a -- an allowed use subject to the restrictions of 19.64, which is the section you just went through. So both Lanai and Maui approved it with no changes.

Mr. Vanderbilt: Maui approved 19.29 with no changes.

Mr. Alueta: So did Lanai and so did Hana. Again, by listing -- all we're doing is listing it as a permitted use. Within the rural districts, single-family residences are listed as a -- an outright permitted use both in the State and in the County Rural Districts. We consider bed and breakfast operations to be accessory to and subordinate to that single-family residential use, therefore, we have -- that's why we're listing as a permitted use subject to the restrictions of 19.64. By listing it in the County Rural District as a permitted use subject to 19.64, people who are located both within the County and Rural District -- State Rural District will only need to apply for a County Bed and Breakfast Permit. We have already conferred with the State Land Use Commission and they agree with our interpretation and, therefore, a State Special Use Permit will not be required in the rural district for a bed and breakfast.

Mr. Vanderbilt: So unlike 19.64, will they have to come to our Commission for approval?

Mr. Alueta: Yes.

Mr. Vanderbilt: Okay.

Mr. Alueta: The permit that they will come before you is the one that you -- 19.64.

Mr. Vanderbilt: Alright, does anybody have any comments on this?

Mr. Chaikin: I don't have any big giant problem with bed and breakfast. I think that if you look at what's happening, they're not real popular. People on the island of Molokai just don't see bed and breakfasts all over the place. People don't generally wanna open up their house and share it with a bunch of strangers. So I don't -- I don't have a problem with it. I think that it could get out of hand but I think it's something that we could regulate, further regulate in our community plan process. So I mean I would just recommend moving forward with it.

Mr. Dunbar: So moved.

Mr. Vanderbilt: Okay, is there any other comments on the bill? We're missing one commissioner but all her stuff is here. Well, let's I think -- let's make sure -- she's into the ag part and rural doesn't mean ag, right? We've figured that out. Alright. Okay, Commissioner DeCoite, we were given a little overview of the rural bill, 19.29, and we're told that Maui accepted it as is, Lanai too?

Mr. Alueta: Yeah, and Hana.

Mr. Vanderbilt: And -- and Hana, and nobody seemed to have any objections to having bed and breakfasts in the rural area at this point, and it would all be subject to the standards that we put in 19.64, the owner had to be there and all -- okay, everybody? Is there a consensus on that to -- alright. Alright.

Mr. Alueta: Well, I believe you did have a motion and a second so, at this point, you do have to vote.

Mr. Vanderbilt: No, no, no, it wasn't any motion. It was just somebody said -- what was the motion? The Chair says that you go so moved, not the --

Mr. Alueta: Okay, so by consensus, 19.29 for B&B's is approved? Okay. Thank you.

Mr. Vanderbilt: Alright, let's take a five-minute break.

Mr. Dunbar: Mr. Chair?

Mr. Vanderbilt: Yes?

Mr. Dunbar: I'd like one question to Mr. Alueta, please. And that is, Joe, when this 19.29 was brought before the Hana, Lanai, and Maui Planning Commissions, what -- what was the discussions? I don't -- I don't see much in here to discuss that I couldn't agree with was right so I -- it's purpose is to do what? Just allow B&B's in rural zone?

Mr. Alueta: Correct.

Mr. Dunbar: Okay.

Mr. Alueta: We, as I indicated, single-family residences are listed as a permitted use both in the State Rural District and State -- sorry, State Rural District and the County Rural Districts. We consider bed and breakfast, owner-occupied bed and breakfasts, to be accessory to and subordinate to that permitted single-family residence and, therefore, we didn't have objections to expanding the bed and breakfast subject to the provisions of 19.64 to the rural district.

Mr. Dunbar: Okay, then, if possible, Mr. Chair, I have one -- one question and it just probably is my own personal that I want to get corrected here. On No. E, Page 2, Wall Height, and they're talking about -- they're talking walls. For some reason in the back of my mind, I think that both sides of a wall have to be -- have to look alike. I mean, in other words, you can't have all your posts on one side and then a fence on one side, so is that -- is that --

Mr. Alueta: It's not part of -- it's not part of our amendments. It's not --

Mr. Dunbar: Oh, I know but I mean is -- that doesn't exist? You don't know?

Mr. Alueta: I don't know the answer.

Mr. Dunbar: Okay, thanks. That's all I have.

Mr. Vanderbilt: Okay, and -- alright.

d. A Bill for an Ordinance to Amend Section 19.30A.060, Special uses of the Maui County Code, relating to the Agricultural District.

The bill would include bed and breakfast operations that are operated in conjunction with: 1. A bonafide agricultural operation with an annual gross income from agricultural products of \$35,000 as a accessory use. 2. Located in a structure that is listed on a State or National Register of Historic Sites. Bed and Breakfast operations shall be subject to the provisions found in Chapter 19.64 and shall be subject to Chapter 205, Hawaii Revised Statutes. Currently B&B operations on Molokai are allowed in residential zoned districts by B&B permit.

Mr. Alueta: So 19 -- moving on to 19.30A, which is Agenda Item d., as in dog, this deals with the agricultural district, County Agricultural District. Again, we're proposing that bed and breakfasts be allowed within the County Agricultural Districts, however as you know, single-family residences are not listed as a permitted use within the agricultural district. Farm dwellings are or only structures that are supportive and in conjunction with a farm activity. Other listed structures that are permitted within the agricultural districts include restoration of historic sites and whatnot within the State. Therefore, we believe that bed and breakfasts could be allowed within the agricultural district subject to additional restrictions and our proposal, at this point, is that it be limited to bonafide agricultural operations with an annual gross income from agricultural products of \$35,000 as well as or bed and breakfast operations which are located within structures that are listed on the State and National Register of Historic Sites.

So we wanna encourage, one, farming in the agricultural district. What a concept. And we also wanna encourage the restoration of our historic sites that are -- and so if someone has an old, you know, plantation house or an old significant structure that has been restored and they wanna share that and, you know, supplement the cost of that restoration and maintenance of that historic structure, a bed and breakfast operation would be an appropriate type of use, we feel. That's our interpretation of the law.

Mr. Vanderbilt: Are there any comments on this bill?

Mr. Dunbar: Yeah, you know, I --

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: I, personally, yeah, I went to Tuscany, of course that's a long cry from -- from Manae but -- and when we stayed in a historic refurbished and I think they're listed as a vacation rental, I don't even think they were listed as a B&B, but it was fabulous. I'm just wondering whether or not we have such locations here that, you know, can be or should be a hallmark of passing this in an ag zone cause you need this in order to be in the ag zone, right? I mean you can't have a B&B in any other --

Mr. Alueta: That is correct. I mean you need this so that that would be one of the qualifications for a historic site to qualify as a B&B, otherwise, anyone who came in for a bed breakfast, even though if it was State or National Register of Historic Site, they would have to go through the conditional permit process as well as the State Land Use Commission process. They still will have to go through the State Land Use Commission permit process, however, they would be able to do it concurrently with the bed and breakfast permit and that would all be heard by this Commission, okay, as opposed to if it was a conditional permit, you would only be a recommending body for that conditional permit to the County Council. So again, we're trying to streamline the process, bring things back down; in this case, we're taking a review process of the conditional permit process away from the Council and bringing it to this Commission through via the bed and breakfast permit as well as the State Land Use Special Use Permit process.

Mr. Dunbar: Okay, what is a Registered Historic Site? Who registers it and who says it is?

Mr. Alueta: The landowner and it's registered with the State as well as the national --

Mr. Dunbar: Okay, so the landowner can go and register it?

Mr. Alueta: That is correct.

Mr. Dunbar: Okay. So my only other comment would be the 35,000 and I think there's been some discussion, I know that the Hana discussed, we heard your, you know, what you was saying about \$1,500 being the 1958 qualification, I -- you know, 35,000 to me is just -- I mean I wish every farmer on this island made \$35,000 gross, but I don't think it's close so, you know, I mean I'd certainly look at 2500 as being where it should be, and I think that was also approved by the Hana advisory board.

Mr. Alueta: Yeah, I didn't read the minutes of the Hana Advisory, but I believe that the Maui Planning Commission approved \$2,000 if the lot is greater than two acres, and a thousand dollars is less than two acres, okay, and a farm plan and implementation on five acres or greater.

Mr. Dunbar: Okay, I certainly can agree with that. I am a little distressed over -- with the five acre parcel that they have deemed to take out conservation and it has to be something that is grown and sold. To me, the raising of native plants on someone's, you know, private, you know, endangered species on a private parcel is as important as collecting money if not more important, and so I -- I would hope that, in some way, we can modify this to include a conservation aspect because I believe it's good for keeping our reefs clean, I think it's good for building of our adversity back, I think it's good for getting different pockets of endangered species off of one spot so that when the feral animals go after that one spot, it -- and finally decimate it, we have -- we have pockets of endangered species elsewhere that can be re-propagated. Thank you.

Ms. DeCoite: I just wanted to comment. For one, I like the 35,000 there. It holds ag to it's true meaning of agriculture and farming. Two, I believe it should stay -- state grown and sold. And three, I don't believe there's any place for B&B on ag lands. It should be considered a farm dwelling if there is another dwelling to accompany that.

Mr. Vanderbilt: Commissioner Chaikin.

Mr. Chaikin: Yeah, I think, you know, there's only a few questions that we gotta answer here. I think one is: Should B&B's be allowed on ag land? If so, how are we going to define this bonafide ag operation? I, personally, think that we need to promote ag any possible way that we can. I think we need to get the word out. I think we need to get people involved in it and whatever carrot we need to put out there to get people involved in ag, I think that's moving us in the right direction. Right now, ag is not super popular so I think that we need to, you know, move to make it more popular. I think that -- that there's a couple of things. I agree with Kip that, you know, this bonafide agriculture operation should be defined by the Planning Commission. I don't think that we can sit here and say, well, this operation because they didn't make \$20,000 is not an ag operation. I think that, you know, some guy can be growing a whole -- whole lot of native Hawaiian trees and plants and stuff, and he hasn't been selling yet cause he's still developing markets and he's not qualified. There's, you know, some guy might be growing a lot of corn trying to do energy and he hasn't made the threshold yet. I think that we, as a Commission, can make that determination of whether or not it's a bonafide agricultural operation when it comes before us. So I wouldn't necessarily put any particular limit on it. I would just keep it open. We can decide. We can have a site visit. We can do whatever we want before issuing that permit. So I think that, one, we should allow B&B's on ag land cause we need to promote ag, okay, and not only does it promote ag by giving the people some extra income, but it gets the people on the ag land. And another component that needs to be in here is the educational component, which means that they need to either -- they need to have some kind of an educational component to the stay, which means they either have a tour of the operation or the explanation of the process to get people more involved and knowledgeable about the whole ag thing.

So just to sum up, I think that we should allow the opportunity for B&B's on ag land. I think that we should allow this Commission at its sole discretion to decide on an individual basis what bonafide ag operation is. And then we need to inject an educational component into the permit. That's it.

Mr. Alueta: If I may, Mr. Chair. I understand your -- all of the Commissioners points. Again, this is something that's somewhat a contentious issue and you gotta understand that a bed and breakfast is not -- is not a right. It's an entitlement that you earn, okay. This is not something you're giving away and listed as a -- as a freebie. This is something they have to earn as an entitlement. The rights that they have within the agricultural district is, as Mr. Dunbar pointed out, growing of native plants, ag conservation, that's fine. That's a permitted use. It doesn't say if you do that, you get rewarded, okay. What we're trying to do is reward those who actually farm and are making money at agricultural operations and we're trying to encourage those. And so if you set the threshold so low, okay, for allowing a bed and breakfast as if it's a right, are you then making agricultural land more attractive to people who wanna just do a bed and breakfast as the main income and do what we call show farms, you know, they're just going to have enough plants in ag farm to qualify because the main thing they're trying to do is make the money from is the bed and breakfast operation, and I think you gotta make that -- it's a fine line. You're trying not to preclude the real farmers who are out there and is working very hard to make their money from this operation but, at the same time, you're trying to avoid making it where the attractiveness of ag land is, oh wow, I can go buy a piece of ag land and do a B&B and all I gotta show is a thousand dollars or, you know, or some kind of farm plan and convince you that that's a viable plan. If you think you have -- you will have the courage to call bullshit when someone brings you a plan and then fine. Then I have no problem with you guys making the determination. I just -- I'm wondering how our Corp. Counsel's going to defend that, you know, if you don't have any criteria and it becomes even more arbitrary as to whether someone's a really bonafide farmer.

Mr. Vanderbilt: Commissioner Chaikin.

Mr. Chaikin: Well, there was one more condition that I didn't include that we need to include and that is that at least 50 percent or more of the income needs to come from the ag farming. So, you know, I understand what you're saying and what you're saying is very valid; I just think we need to -- this is Molokai, everything's a little bit smaller scale, we don't have to have big giant farms, even smaller farms should count, you know, because I think that -- that we really need to be moving in that direction, so I just don't want to put the bar so high that, you know, the only one that can really, you know, come forward with this is some, you know, fairly large operator.

Mr. Alueta: Lanai, as I said, Lanai as well as the Maui Planning staff, in their recommendations, echoed that concern about setting the bar too high and that's why they put in the 35,000 or 51 percent of the household income on the property. So that if you have a small farm, you know, the household income is, you know, 40,000, you know, and

21,000 of it is being from farming, that's fine. As -- but it doesn't address the issue of Mr. Dunbar's issue of where there is no income and, for me, I mean I guess I take a more harsher view. If they have no income, then they have no right to apply for a bed and breakfast permit, okay, and that's where you have to draw the line between someone who's doing something that's allowed and do you grant him additional entitlements, or do you only grant this additional entitlement to those who are what you would consider bonafide farmers.

Mr. Chaikin: I think that's a, you know, a good way to put it, you know, you gotta have either 35,000 or 51 percent of your income coming from ag. I mean I think that leaves the door open and it also puts a figure there so, you know these -- these operators that are a little bit shady will get, you know, they may shy away from it when they see that 35 figure.

Mr. Vanderbilt: Well, and I -- I guess my concern is we're messing with the ag bill. There's some serious things that have to be looked at in this ag bill down the line and we keep chipping away and calling a farm dwelling a farm dwelling when it's not a farm dwelling. And as far as the ag, the show farms, I think that's the real problem because somebody, for instance, on a dry area -- drier area, they're going to buy that and have a nice view but they're going to want it to look like Hilo too, like in Wailea, they have all these dry areas and they got more trees than you'd see in Hana, and their water bills are very high but they can afford it and that's just a quality of life that they wanna enjoy, which is their right, and I think that's what you're going to see down on the West End especially. There's no prohibition against subdividing all those existing ag lots now and if somebody can say, well, you can subdivide it, you can have a B&B so, you know, it's just going to make more and more potential B&B's that have nothing to do with actual farming so I would like to see the threshold stay up there because I think somebody that's really into farming they may need that extra income from the B&B.

Mr. Dunbar: Well, yeah, and I think farming takes on a, not just a tillage aspect, you know, I mean those trees that we planted, I mean there's not going to be any revenues out of that maybe ever, you know, but does it supply the water, does it supply the, you know, does it supply the carbon ...(inaudible)... does it, you know, does it help the land and I'm not so sure tillage totally helps the land ever. You know, I mean you can run cattle on it, you can -- you can have animals on the hillside and you can say that you're, you know, you're farming but that's not necessarily good for the land because, as we all know, it all runs downhill. And so, you know, many places, well not so much in Hoolehua, but, you know, out on the East End all you have is slope. You know, and some of the better things to do on those slopes is to have trees or have native shrubs and, to me, that's equally as important as -- as being able to sell a cucumber.

Mr. Vanderbilt: Any other comments? Commissioner DeCoite.

Ms. DeCoite: Yeah, so I still stand by what I say. There's no place for a B&B on ag lands, okay. One, it's ag. It's farming. The bar should be set as set as high as it should be. If

you're farming, you need to show production, you need to show that you got product there. Once you set the precedence for a B&B, you're adding more water need on these lands, it's a tourist attraction that becomes there almost as if development will start taking place. This is going to be a feeding frenzy. I'm telling you right now. We go into water conservation measures every year for ag. This is, I talking, irrigation water and soon to be potable water. You guys know the risk involved in this. So in my mind, I would stay away from B&B's on ag land. There's no justification for it. I think we should stick with -- with Maui, what Maui has to say, and that we should leave it as is that ag should be the production, not B&B's.

Mr. Alueta: So is you -- are you suggesting that B&B's be stricken from the ag district as being an allowed use then?

Ms. DeCoite: Yeah.

Mr. Alueta: Okay, your proposal is to basically amend -- deny the department's recommendation just to go back to where B&B's are not listed.

Mr. Vanderbilt: The currently law, yeah.

Mr. Alueta: The current law, which does not list B&B's as a permitted use. Okay.

Mr. Vanderbilt: Let me -- let me throw out something. Where does it talk about the farm -- the bonafide farm? What is that on?

Ms. DeCoite: Page 7.

Mr. Vanderbilt: Seven.

Ms. DeCoite: Page 7.

Mr. Vanderbilt: A bonafide agricultural operation. Now, Commissioner Chaikin felt that that should be left up to this Commission's discretion and -- and -- but that might cause some problems maybe in who you approve and who deny, it might be arbitrary I guess we've heard, but could we put in a bonafide agricultural that does not include ag land conservation? I mean that's the one that's being abused by everybody.

Mr. Alueta: You can make any recommendation. Obviously, our proposal doesn't have ag conservation as a permitted -- as an appropriate use for defining bonafide ag farm. We're setting -- we're saying that you need to be farming and you need to show a gross income of \$35,000, so that's the only -- so ag conservation wouldn't get you to the \$35,000.

Mr. Vanderbilt: Okay, but did you guys kick around what a bonafide ag operation would be? I mean like --

Mr. Alueta: We tried to.

Mr. Vanderbilt: Like having a high-end Quarter Horses or something or --

Mr. Alueta: If you can generate \$35,000 --

Mr. Vanderbilt: You can do that with one horse.

Mr. Alueta: Yeah. You could.

Mr. Vanderbilt: I don't know. I just, at this point, I don't know if we have any B&B's on ag, we're coming up on our community plan, we have so much controversy on this island about ag and ag water and everything else that, at this point, I mean I would just tend to not want it on ag and maybe when we get on -- in the community plan, we can talk about either changing some ag to rural or something but, at this point, I wouldn't be in favor of it and so, anyway --

Mr. Alueta: Is there a consensus or a motion --

Ms. DeCoite: Mr. Chair?

Mr. Vanderbilt: I don't think there's consensus.

Ms. DeCoite: I just think that, you know, as the rules was set, that should have been left there. Here we again compromising laws. We're changing -- you're opening the door to set precedent on these other easy ways to make money. People going compromise agriculture and they going say, you know what, it's easier to do a bed and breakfast. I mean let's cut to the chase. You cannot eat that building. You know, we talk about all these natural disasters and stuff. Eh, the laws has got to start being changed on how we going start subsidizing more agriculture, and this is not the way to go, not with B&B's and not on ag lands. So I mean, I not going agree with this. I'm sorry. I not going agree with this.

Mr. Vanderbilt: Joe, the General Plan says that any new laws that are passed, and this is a new law, have to be consistent with the intent of the General Plan, which includes our community plan. Now, if somebody has a B&B in a ag area, they're going to have to come us for a special use permit and our community plan right now says, under Land Use, "Support special permits in the State ag district only to accommodate limited commercial public/quasi-public uses serving the immediate community in areas such Pukoo, Ualapue, and Kamalo, which are relatively remote from urban areas; two, permit a public facility use, such as a sanitary landfill, sewage treatment plant, or utility installation whose location is determined by technical consideration; or allow the use which is clearly accessory and subordinate to the principle agricultural use of the property; and, four, permit extractive industries, such as quarries that do not adversely affect the environment." So under that,

you would say that if this was passed, this bill, it would fit into allow a use which is clearly accessory and subordinate to the principle agricultural use of the property?

Mr. Alueta: Two things. Yes, because we're setting a threshold of \$35,000, okay, and we feel that that is a good threshold for a bonafide agricultural activity, it may not catch everyone, but it's a pretty good threshold. The other part of that is the historic restoration of historic structures and we -- that's again listed as a permitted use both -- in the State Agricultural District and, therefore, we feel that's -- it's supportive and subordinate to permitted agricultural activities by the State and the County's Agricultural District; that's why we're able to support it in the County Agricultural District as it stands. The State Special Use Permit, in discussions with the State Land Use Commission, a State Special Use Permit is still required. By listing it as a B&B and having the thresholds that we establish, avoids a potential applicant from going to the Council for a conditional permit. As you know, the conditional permit, there is no criteria established for ag. This would actually, I think, would be more restrictive than under the conditional permit process cause the conditional permit is very vague and doesn't really have anything to do with agriculture. It just says do you have an adverse impact to the surrounding communities, and that's it. There's very little criteria needed and it's -- and it's at the whim of the Council, okay. But again, the State Special Use Permit would still have to come before you and you would have to grant that.

Mr. Vanderbilt: And then before we would grant that, we'd have to make sure that they had a bonafide ag use, that this bed and breakfast was clearly accessory and subordinate to, huh?

Mr. Alueta: That is correct so, again -- but again, by having it within the agricultural district, we avoid the conditional permit. We bring it all back down to -- from the Council to this Commission, so this Commission would decide on the County level whether or not to grant a bed and breakfast permit and make them subject to 19.64, and on the State side, they would be subject to the State Special Use Permit criteria of the State as well as the additional criteria that this Commission has outlined in their own rules. So there's two things going on. And again, if they went through the conditional permit process rather than the B&B process, that conditional permit process doesn't have the restrictions of owner-occupancy, it doesn't establish the limit on the room, so somebody could theoretically come in with a conditional permit for nine bedrooms, okay, and then come in to you for a State Special Use, whether you would grant that, I don't know, but the only person that would be subject to review of it would be the County Council on the conditional permit side.

Mr. Vanderbilt: Okay. Well I just think there's so much coming down at the State level. They're looking at identifying important ag lands, they're doing all this, there's a push to change anything that's not a certain rating from ag to rural, and I don't know. There's just, in this community, there seems to be so much controversy and to -- to increase the permitted uses, I don't know.

Mr. Kalipi: I've got some questions, Joe, for the -- under B, "Bed and breakfast operation shall be subject to the provisions found in 19.64."

Mr. Alueta: Yes.

Mr. Kalipi: When you say that they shall be subject to the provisions of 19.64, can you kinda clarify that? Does that mean that the owner is not -- don't need to be the applicant? They can have a lessee be the applicant for the B&B's? Or I mean what specifically is the big deal about the 19.64 provisions?

Mr. Alueta: Nineteen -- that's the one you just -- you voted on the first -- the first thing you acted on and in your comments, you wanted them to it on an annual renewal, you also limited it to three bedrooms, and you wanted it to be the owner only, and you incorporated Steve's comments, and you allowed for, you know, a one-by-one sign and whatnot. So those are the criteria that -- so whatever person that came in for a B&B within the agricultural district, not only do they have to meet the criteria of being a bonafide farm with an annual income of 35,000 as the department is proposing or be a registered historic site, they would then also be subject to what's in 19.64 and the limitations established there, which are, in your case, three bedrooms, you're proposing three bedrooms, and as well as being owner only. So again, whereas if you left it up to the -- if you state that -- if you don't want B&B's and you strike it all together from 19.30, then the only methodology for establishing some type of B&B or TVR would be through the conditional permit process as well as the State Special Use Permit process and in that case, the only limiting factor would be what you establish as a condition during the State Special Use Permit.

Mr. Kalipi: Okay, I don't have a problem with B. I do have some concerns with A, and then I'm just commenting so if somebody else would consider that. I do somewhat agree with Lynn because there's a major abuse on agriculture and we don't want B&B to be the dominant income on agriculture, they should be, if anything, farming the land in ag. I don't know the criteria of 35,000, you know, you mentioned that the threshold, it's a pretty high threshold. I'm not a farmer, therefore, I can't tell you if it's a high threshold or a lower threshold and whatnot, so I don't have that expertise as Lynn has. I did kind of like the criteria that Lanai put about 51 percent. Although there would be a compromise going that area, I would like to see maybe even considering 70 percent, or even like 60-40 or 70-30, and the reason being is that I do wanna promote agriculture and people do farming but if it is somewhat difficult and they need to be subsidized by some kind of income to promote them to farming and have some kind of income so they can farm, I don't think it should be so close that 50 percent of your income rather than maybe doing the 70 percent or 60 percent. The reason I do wanna see maybe B&B's in agricultural areas is what Steve Chaikin said, Commissioner Chaikin, was that you wanna educate the farming part or have people to -- even students there to help farm or whatever the case may be so we can promote agriculture. So I'm kinda stuck in between those thoughts and I don't know. I wanted to mention if that would be something that we would consider as a compromise.

Mr. Vanderbilt: How do we look at this 35,000 or the 51 percent that Commission Kalipi talked about Lanai? Is it the greater of -- so if I'm making \$250,000 a year from my business and I have a bed and breakfast out there, I only have to show \$35,000 of income from something and say it's farming, right?

Mr. Alueta: Correct. You would have to say -- the example I -- it could go either way. Say you had a -- you had a couple, husband works outside and makes a hundred thousand dollars, and the wife works the farm and -- and the farm makes, you know, \$35,000, that couple would qualify for a bed and breakfast. If the -- say the husband made 20,000 outside the home and they made 21,000 farming, they would also qualify for a bed and breakfast because 51 percent or, in this case, \$21,000 represented 51 percent of the household income because the total household income is 41,000 so --

Mr. Vanderbilt: Well, how about the -- we're trying to help the small guy out and there's not much money in farming, how about the couple that's eking out 20,000 a year income on the farm, they wouldn't qualify?

Mr. Alueta: They would because if the whole household income is only 21,000, then that's 100 percent. That's more than 51 --

Mr. Vanderbilt: It's what?

Mr. Alueta: It's more than 51 percent.

Mr. Vanderbilt: Okay.

Mr. Chaikin: My proposal was a little bit different. Basically, I was taking the position that the farm operation had to be dominant. So I don't care how much money you're taking in from your B&B, the number -- the amount of money you're taking in from your farm operation has to be more than the B&B so --

Mr. Alueta: Oh.

Mr. Chaikin: You know that -- that's what I was trying to do so, you know, you -- so because these guys on the West End, I mean this 35,000 they can easily get 35,000 in income somehow and then rent their thing out for a quarter of a million and that doesn't quite fly.

Mr. Alueta: Okay, so you're saying that your total --

Mr. Chaikin: Your farm operation income has to exceed your B&B income.

Mr. Kalipi: Yeah, I somewhat agree and that's why I mentioned 70-30 or maybe even 60-30 of income because then if it's 21,000 and 20,000, it's really close in a sense of showing

actual farming, it's really close, so I agree with Commissioner Chaikin that I wanna see a dominant agricultural. If they say that we're going farm and this is ag land and we're going to get ag benefits and whatever, then, by all means, they should be farming.

Mr. Vanderbilt: Okay, we have a comment by Corp. Counsel.

Mr. Hopper: I just wanted to check. How would you know how much income you would have from your B&B if you haven't started it yet, and would you then I guess have to cutoff the number of visitors you would have once you started to approach your farm income? I'm not sure because you wouldn't know how much you'd make from your B&B until you actually got your permit and you can't get your permit until you show 51 percent. I could see that as something addressed in the compliance report, but I'm not sure what -- what would the person do? They would I guess stop taking reservations once it got to the point where they might be exceeding or --

Mr. Chaikin: Yeah, I think that's a good point. And I think that that would be addressed when you -- and that's why I wanted the short fuse on the renewal just to make it one year so, you know, every year you could revisit this thing and see if, you know, if you're in compliance or not.

Mr. Kalipi: And my thoughts are that you have to have a farm first, you're not going to have a B&B before the farm, so you're going to have to be in existence first. You're going to have to be farming already and you're going to have a farm that you're working the farm and, you know, maybe you're not making ends meet or you're struggling, as DeGray said, and you wanna subsidize the farm, it can't be a dominant B&B or a commercial entity, you want the agricultural promotion to be there but you subsidize it with, I don't know, 30 percent or whatever percentage, but you still keep the dominant income as farming.

Mr. Vanderbilt: Okay, Joe, so you need to have, as Commissioner Kalipi said, you need to have the farm operation generating 35,000 before you get your permit to build the B&B.

Mr. Alueta: Well the B&B has to be within an existing farm structure or your existing home because you have to be living in the same structure, okay, so you could modify the Lanai's way. Two comments. You get Lanai to say 35,000 or 51 percent of the household income on the property including future income generated from the bed and breakfast operation. Okay, so it would be 51 percent of the farming -- of the household income including the bed and breakfast operation and, at the same time, it seems as if by establishing it as making sure it's dominant, I agree with you, but not to be racist but being Filipino, I deal a lot in cash so -- I think a lot of people would just deal with cash.

Mr. Vanderbilt: So to answer my question, then you do need to be showing that you -- you're making 35 or 51 when you come in for your permit?

Mr. Alueta: Correct. You would have to show 35 or 51 percent of the household income is from farm activity, right?

Mr. Vanderbilt: Before -- before you --

Mr. Alueta: Before you apply and then you could say that to maintain that permit, the total income, which includes your bed and breakfast operation, right, still cannot exceed that 51 percent.

Mr. Chaikin: I'm just not sure what household income has to do with this. I mean I don't think we would care what people are making outside of the ag thing. I mean maybe the guy got some great job. I mean I think it's irrelevant. It's only -- what's really relevant is how much money their ag operation is making.

Mr. Alueta: So, okay. So you want to say that it's -- set a percentage that the farm income must exceed the total gross sales of bed and breakfast reservations?

Mr. Chaikin: Yeah, I would say -- I mean it's you gotta have some faith when you're first starting out in the thing cause there's no -- you don't have any, you know, you don't have historical data on the B&B but when they come up for their annual renewal, then that's the time that, you know, that's where they gotta show that, you know, they're in compliance so they gotta step down.

Mr. Vanderbilt: Well, are we talking -- are we talking on the 35,000 gross proceeds?

Mr. Alueta: Yes.

Mr. Vanderbilt: And maybe, I know Bill has mentioned this, that on TVR's or B&B's even though you charge \$200 a night, that's not what you net out of the thing so you, you know, so that's another thing. I mean I'm thinking of the small guy that we're trying to help in farming and he uses the B&B, and as you said earlier, when you get these laws, there's always going to be people that take advantage and find loopholes and I guess that's what our real concern is on this because --

Mr. Alueta: I mean I like where you're headed as far as the percentage of being the dominant, not -- and not caring about the outside household income but just that the farm income must be greater than the income generated from the bed and breakfast. I mean I think that's -- that's language that we can work with that, you know, the criteria that -- but I think you need to start with -- they need to show some kind of base income from the farm activity and maybe you wanna set the base income for the farm activity before they even apply, and then say that, you know, subsequent renewals needs to be -- so you set the base at say you need to show \$20,000 worth of farm income and that the farm income shall be greater than the total income generated from the bed and breakfast gross sales generated from the bed and breakfast operation and that's --

Mr. Vanderbilt: Joe, tell me how these coffee plantations that are -- these mini plantations above Lahaina now that are being sold for several million dollars, they're bonafide ag? No but how does that work? Would somebody that owned one of those qualify for a bed and breakfast cause they had a farm operation? Is it structured so the actual person that owns the lot even though he's leasing it out to the coffee company to do his farming -- how does that --

Mr. Alueta: I think he might. I mean you can try to address that in your deliberations but my understanding of how the Kaanapali farm lots are operated is that these are five -- five-acre agricultural lots, okay, I believe they're five-acre agricultural lots, the building footprint or building area of that -- not footprint, but the area that is directly controlled by the person building the house is limited to 10,000 square feet, okay. The remainder of -- and they're all set up in a -- in a pie shape on a circle cul-de-sac so all the houses are pretty much clustered around a pie shape, the remainder -- and the remainder of the land is all existing coffee bean plantations and they have a contract with Kimo Faulkner to harvest and process the coffee beans. And so what happens is the land owner pays for the water of the coffee and Kimo has like a ten-year contract or lease with the owners to -- to maintain and harvest the coffee beans on the property. So it's, yeah, it's basically like he's a share cropper or he's a cropper that's leasing land and farming the beans and so what it does is it has a -- Kimo's the farmer, he doesn't have the resources to own the land outright, so he has this kind of a pretty good operation where he gets to -- he gets to use the land for farming of coffee and the owner lives on the property with -- in an ag dwelling.

Mr. Vanderbilt: So it's like the third party lease here on homestead land, yeah?

Mr. Alueta: I don't know anything about that so I don't know. I couldn't comment.

Mr. Chaikin: So it sounds like, to protect us from that situation, we would have to have some kind of a phrase in there that said that the -- you had to be an owner-operator. You can't just be the owner and somebody else operates it and you hand out in the house. I mean you have to be the owner-operator. You can't contract to somebody else here. Use my land and grow coffee. I'm going to hang out here and do B&B.

Mr. Alueta: I think if you want it to be clear, you could just say that leasing income is not -- is not counted toward farm income. You know, you have to actually be selling a crop to get the income. The income that -- the potential income that the -- that the -- Kimo or the owner is getting is either leasing or he gets a percentage based on how much Kimo harvest. I don't know the fine details but you could say that leasing income from farm land is not counted toward farm income and I don't think it would be. But if the guy is actually -- has someone come in and harvests the crop, right, and then pays him to harvest that crop, he's still a farmer because someone came, harvested the crop that's growing on his land, and paying him for that crop. So I don't think that's -- that's illegal and I'm assuming that's one of the options that is going on there is that there's a -- there's coffee beans being grown, someone is coming in harvesting the coffee beans from that owner, paying him for

that crop. So I don't see any -- I don't see that as being a problem. If it was a straight lease where the -- there's no tie between what's grown on the land and the income generated to that farmer or to that landowner, then I could see a problem. So I mean like I say, I think you guys are on the right track if that's your concern is that to allow -- to somehow tie the two together where, you know, the income from the B&B operation doesn't exceed the farm income.

Mr. Chaikin: And that the income doesn't come from lease.

Mr. Vanderbilt: Okay, are there any other comments on this?

Ms. DeCoite: You know, Joe, I look at that and I tell myself, "Okay, here we go with trying to define bonafide agriculture, changes, and all that." When, in fact, we know even with the bed and breakfast that does exist on Molokai, they no live there anyway on top the land. You know, these owners, which in my eyes tell me they already operating illegally as a bed and breakfast, so I mean you know the thing kinda pisses me off really because you get those that willing to comply and then those that aren't. You know, so I kinda uneasy about the whole situation but --

Mr. Alueta: I understand Commissioner DeCoite's concern. Again, as the frustration that you guys have and the citizens here on Molokai have, it's the same on Maui. Enforcement. Enforcement. Enforcement. That's the thing. I think one of the -- the biggest issues is if you create a permit process that's -- that's fair and that people that you wanna have come in get that permit, those are going to be the people who once they get their permit, are going to be the first people to help you enforce the law against those who don't have a permit, and that's what we find is that if I had to go through the permit process and I got my permit, I'm going to -- and there's somebody who's -- who doesn't have a permit and they're my competition, I'm going to be the first to turn them in. And so --

Mr. Dunbar: Let's not go there. But, you know, still with all this debate, I guess where I'm coming is that, you know, I still feel that there are a lot of long-term crops, you know, there are on-land aquaculture, you know, crops that you can do that don't pay off in the year within, you know, which you do it. There are trees -- I mean I'm looking at the, you know, four or five acres of, you know, 300 trees, 400 trees that I planted, you know, there's going to be nothing there for, you know, 20-25 years. You know, it's -- and with that, it's likely that I won't even see that. That doesn't make me any less of a bonafide farmer, you know, you using bonafide, you know, agricultural land. You know, and if you really wanted to, you know, to push -- push a ranching issue where you are trying to get out the most amount of cattle and the most, you know, on the least amount of land at the fastest time possible, trust me, folks, it ain't good for the land. You know, it'd be like you wanting to plant potatoes over and over and over and over on the same spot without leaving anything fallow. You know, it's the same thing. So, you know, when I keep the hearing the number 35,000 or 51 percent of what you're doing or, you know, how much -- I think it's more -- more the honesty of the individual with a plan versus how much they're going to make. You know,

if they can support whatever they're doing with a -- you know, with a B&B, and I don't see very many places with, you know, historic registered places that are on ag land, I mean they just, on Molokai, they just don't exist. So the point is is that I'd like to see some sort of conservation put in there, you know, and something for the long term, and 35,000 a year doesn't answer it.

Mr. Vanderbilt: Okay, are there anymore comments. Alright. Do --

Mr. Kalipi: I guess I'll comment.

Mr. Vanderbilt: Yeah, Commissioner Kalipi.

Mr. Kalipi: I hear what Kip's saying, Commissioner Dunbar, however, the challenge in my mind is that when we think about long-term crop or conservation, the window of abuse that can open up, and I just taking into account ag lands on the West End, if certain amount of their property is not touched or they have natural growth of natural species to grow out there, they're considered ag qualified or beneficial if one-third or whatever the restriction is, and so they can benefit off agricultural benefits but they're not necessarily farming or doing anything that really is promoting agriculture, they're just leaving things in its natural state. And so, I'm not saying it's good or bad, but I'm just saying that the intentions are, my understanding in my mind, is to promote agricultural farming and to help those who are wanna put their hands to the plow in planting the trees or making a living or some sort of income in agriculture. So I'm just saying that I struggle in my mind of what language we can put in there only because the abuse or the challenges or the loophole that would put in the language of such but I do understand the heart or the intentions of conservation. And so I just wanted to comment that.

Mr. Vanderbilt: Yeah, and thank you, Commissioner Kalipi. I think, you know, that we're wrestling with a lot of things in what we're saying, Commissioner Dunbar mentioned, it's the individual, you know, Joe mention there's guys that'll take advantage. If we don't make this a permitted use in ag and we leave the conditional use permit open, somebody can go for a conditional use permit, and they're generally approved by the Council, but they still have to come back to us for a special use permit, and they need both of them in order to move forward. So if somebody comes back to us, we can see that it's the kind of person that we're trying to help with this ag bill and instead of trying to wrestle with all of this, there is a process there where if somebody really means well and has good intentions for ag, he can come in for a conditional use permit and -- and we have final say on a special use permit here, and I think that's where I would tend to go at this point because there's just too many unknowns with this amount of farm income and everything else and, as Kip said, there might be some real legitimate land conservation or something else that we would want to consider and I think if it was a legitimate situation and somebody that was honest, that this Commission may consider a special use permit on a case by case basis.

Mr. Chaikin: Well, you know, I had -- I had originally recommend that we move forward and, basically, approve it with the conditions that I stated earlier but now that I think about it, there are people on here on both sides of the fence, on this Commission, you know, pertaining to this issue, and if we do nothing, people can still come forward and get a permit. You know, they have to get a conditional permit and a special use permit. And as Joe alluded to earlier, the Council has never turned down a conditional use permit. So that's a given. So it's still back in our court. If we do nothing, the community is pretty much in the same position. The only difference is they're not going to be subject to all of those conditions that we just forth. We spent two, three hours here putting together a bunch of conditions. But when they come before us for, I guess, a B&B permit, can we make them -- can we make that a condition of the B&B permit that they're -- they have to adhere to all the conditions in 19.64?

Mr. Alueta: What do you mean? When they come before you --

Mr. Chaikin: For a special use --

Mr. Alueta: During the special use permit?

Mr. Chaikin: Yeah.

Mr. Alueta: Yeah, I mean you can -- as long as you have some rational nexus to establish that condition. I mean you could establish conditions for that special use permit very similar to what is the criteria for a bed and breakfast meaning having the owner live in the -- have the owner live in the building or whatnot. I just think that you need to have some rational nexus in establishing your conditions.

Mr. Hopper: Just a comment. Yeah, a special use permit, when they come before you, you've got a criteria set out for special use permits and you should follow that criteria in deciding what conditions you wanna put on it and how you -- whether or not you want to grant it. What you can do and what is proposed by the Planning Department is eliminate conditional use permits for TVR's and then no one will get a TVR or a B&B on ag land. That's one option. Or you could just allow B&B's. But I would recommend that if you're going to go, you know, the special use permit's required by State law, that's not County law, that's State law that requires them to do that and the criteria is set forth by State law and also by your own rules. And while it's true that you could put conditions on it that turn out to be similar to the B&B conditions, don't count on it necessarily cause they might not be appropriate for every single case. So I would just wanna get that out there that they are two different process.

Mr. Chaikin: Okay, well, it sounds like we've got two choices. Either we leave it the way that it is and it's a little bit more onerous process for the applicant cause he's got a few different permits that he's gotta go through, or we streamline the process and get rid of that

conditional use but if we get rid of the conditional use, we're making it an outright permitted use, or are we?

Mr. Hopper: If you get rid of a conditional use permit, there would be no way for someone on ag land to do a TVR.

Mr. Chaikin: We're talking about B&B's right now.

Mr. Hopper: A B&B? It would be permitted if you got your B&B permit. You would still have to -- to get your B&B permit.

Mr. Chaikin: But would it be considered a permitted use? I mean a --

Mr. Hopper: Yeah, a B&B would be. It would be a permitted use but, again, you'd still have to get the permit. It would not be, I would say, an outright permitted use. That would mean you can do the use without getting any permit. That's like putting up your house in a residential zone, yeah, you don't have to. You've complied with the zoning. Well, you gotta get a building permit, but you don't have to get any kind of a use type permit to allow you to do the use. So the use is not outright permitted unless you get that permit. You have to get the permit so --

Mr. Chaikin: Is it the same? Like -- the old way or the new way if we pass this? Is it the same? I mean they're both not --

Mr. Alueta: No, the old way, the existing way is that you get a State Special Use Permit and a County Conditional Permit. The department's proposal is that you would get a State Special Use Permit from the Molokai Planning Commission as well as a bed and breakfast permit from the Commission. We have set a threshold of \$35,000 for farm income to establish the right to obtain a bed and breakfast permit, okay.

Mr. Chaikin: Right. I understand all that.

Mr. Alueta: So that's where -- that's where you're arguing is to whether or not that should be the methodology. Now, if you choose to eliminate the bed and breakfast from the agricultural district, right, and you reject the department's amendments, then the existing process, which is conditional permit and SUP, would stand. However, if the -- if you reject the SUP -- I mean the bed and breakfast process, right, for the agricultural district, and by some miracle the Council eliminates the conditional permit process for transient vacation rentals and B&B's during the CP process for 19.40, then there would be no way in which to establish bed and breakfast or a TVR within the agricultural district.

Mr. Chaikin: Yeah, good point.

Mr. Kalipi: Or, Joe, say the Council come back and, you know, the commissions are saying that to extend conditional permit, and so if we take this language out but then we do have conditional permits, we don't really have a criteria, as this states, in approving that process.

Mr. Alueta: Correct. And the only process that the Commission -- the only real criteria that the Commission would have would be through the State Special Use Permit. And the conditional permit, again, you'd be making recommendations but the criteria for a conditional permit was written in 1961 or whatever and it's very vague in it's thinking, as long as you're -- it's very weak, I should say.

Mr. Chaikin: Well let me just ask. We currently have a procedure in place. If somebody wants to get a B&B permit, they can go through it. Have we gotten any applications to the Planning Department for somebody requesting to get the conditional use and the special use permit for a B&B?

Mr. Alueta: For a B&B? For a B&B? No. I believe all you've had is conditional permits for TVR's, for transient vacation rentals.

Mr. Chaikin: Okay, so it sounds like we're spending a whole lot of time on something that's not real popular where we've never even gotten an application, to date. There is some? Basically, it's not real popular.

Mr. Vanderbilt: Commissioner Chaikin, and I think that with so much problems, controversy around ag lands and water and everything else and our community plan coming up, I would hate to see us just open up a permitted use, in a sense, on ag land at this point especially if there's not anybody beating down the door to do it and then we can hash this out in our community plan when it comes out.

Mr. Hopper: It should be noted that there are several applications on Maui for TVR's on ag land, some have been granted, so that should be noted. TVR conditional permits, not B&B permits, but TVR permits.

Mr. Vanderbilt: Thank you. Okay, so we can go one of two ways: We can stick with what we have and if we get to the -- stick with what we got, or we can adopt what is recommended by the Planning Commission to allow bed and breakfasts on ag.

Mr. Dunbar: Well, you know, just for further discussion here that we've already discussed for a millennium. I think we have to resolve, you know, short-term farming and long-term farming, and conservation, and the dollar amount. I don't see where we're going to come to any agreement on that. You know, I -- I know that -- I know that I can't vote for 35 because it doesn't make any sense to me, you know, and so -- but I having said that, I agree that if you're going to do something on ag land, then you gotta have a bonafide, you know, ag project, you know, which, you know, sometimes I remember when Walter and I were doing fishponds. It turned into bartering. It didn't turn into, you know, you had to sell

something. You could barter the fish. You know, so I just -- I'm speechless ...(inaudible)... some way to resolve this.

Mr. Vanderbilt: Well, and I think, Commissioner Dunbar, that's where we could -- if they come to us, if we leave things like they are and they come to us for a special use permit, we can flush all that stuff out. And if it's something that works, it works. But just to outright permit it --

Mr. Dunbar: Okay, then the motion is to leave 19.30A as is.

Mr. Chaikin: I think what my -- my original recommendation was that this Planning Commission, in its sole discretion, would decide whether or not it's a bonafide agricultural -- I mean, yeah, ag operation when they came before use for the hearing. You know, we could do a site visit, we could do whatever we want, you know, to determine -- make that determination, but then, it was brought up by Joe, that that kinda leaves the door open, you don't know who's going to be sitting in these nine seats, and, you know, that makes it, you know, pretty open if you get the wrong nine people up here for deciding what bonafide ag operation is.

Mr. Vanderbilt: Well, you know, I -- I agree with Kip and there's this indecision, there doesn't seem to be a lot of consensus on the board for the dollar amount or bonafide farming, and I think, you know, I'd like to entertain a motion that we make this one of the bills that Commissioner Kalipi suggested to have the wording "except on Molokai" and that we stay with the current process that if somebody wants a B&B on ag -- anyway.

Mr. Dunbar: Do moved.

Mr. Vanderbilt: Okay, so is there a second?

Mr. Kalipi: Second.

Mr. Vanderbilt: Second Commissioner Kalipi. Is there any discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Dunbar, seconded by Mr. Kalipi, then unanimously

VOTED: to have the wording "except on Molokai" and that we stay with the current process.

Mr. Vanderbilt: Okay, unanimous.

Mr. Alueta: Okay, so it would be "except on Molokai" and so you'll need a conditional permit for a B&B in the ag district? Okay. But we're going to keep -- so the director's proposal for the rest of the County would stay? Okay.

Mr. Vanderbilt: The director's proposal on what?

Mr. Alueta: I mean our proposal is for 35,000 and -- but it would be -- at the end it would just say "except for Molokai" where that means --

Mr. Vanderbilt: Or at the beginning, yeah.

Mr. Alueta: Yeah. Okay.

- b. A Bill for an Ordinance to Amend Chapter 19.40, Conditional Permits prohibiting transient vacation rental operations from being established via the conditional permit process.**

Mr. Vanderbilt: Alright. Now we're on to which one, Joe?

Mr. Alueta: You are on number four, Item b., which is the conditional permit process.

Mr. Vanderbilt: Okay, so what do we have here?

Mr. Alueta: What we're proposing is to exclude transient vacation rentals from the conditional permit process. This would also include B&B's, I should say. In your case, it would include B&B's but --

Mr. Chaikin: Does the verbiage include B&B?

Mr. Alueta: No, but in discussion -- because a B&B is, technically, a transient vacation rental, a B&B, but so you would need to put, in your case for Molokai, you would have to -- you could put, for the conditional permit, you could put "except for bed and breakfasts" because we do have a definition for a bed and breakfast, which is that it's an owner-occupied unit as defined in 19.04 so --

Mr. Vanderbilt: We have a comment from Corp. Counsel.

Mr. Hopper: Yeah, I think what Joe is saying is there is -- a conditional use permit could not get you a B&B, technically, under the code. Under the code, a B&B has a certain definition and the way it is now, if you're on ag or rural, you can't do a B&B or at least if you're on ag, you can't do a B&B. So you would be a doing TVR even if you were living in that structure because a B&B, you wouldn't get the B&B permit for that structure so the permit you'd have to be getting is for a TVR. It wouldn't be a B&B because the B&B is not a permitted use in that area. So that would be the issue to be considered a TVR.

Mr. Vanderbilt: Well, and did I understand that Maui -- Lanai did not wanna continue the conditional permit or they just did for a year?

Mr. Alueta: On Maui and on Maui's recommendation was that they keep the conditional permit process open for transient vacation rentals. For Lanai, they voted to keep the conditional permit process viable or open for transient vacation rentals up until one year after their community plan was adopted because they're hoping to establish the criteria within their community plan. For Molokai, based on your -- what you did with the -- at least if you want to leave the door open for bed and breakfasts within the agricultural district, right, that you're going to review through a conditional permit process, I would suggest that you -- that no transient vacation rental operations shall be established via the conditional permit process except for bed and breakfast. And that way it would make it clear that because we do have a definition for a B&B, it would exclude TVR's, which are just a house that's rented out but it would -- it would exclude true B&B's.

Mr. Hopper: Yeah, I might not have been one hundred percent correct in what I actually said. Let me correct myself. The TVR permits that we had on ag land were actually people living I think in their ohana for most of the cases so they actually were technically TVR's, and what you're talking, yeah, you can't do B&B's or TVR. You can't do TVR's anywhere except in hotel. You can't do B&B's except in residential neighborhoods right now. Technically, you would be getting a conditional use permit to run a B&B. You know, if someone wanted to live in their -- in the house, they could. But up to date, you had to go through the same process for -- for both TVR's and B&B's so people have just done TVR's because I guess they figured if we have to go through the same process, we'd rather do a TVR than have to live in the house and do a B&B. But if Joe's -- if you're considering a restriction on TVR's on the conditional use permit, you could maybe perhaps not make that a restriction applicable to B&B's if you thought B&B's was something you would like people to obtain through a conditional use permit process. That's a little screwy though, and I'll tell you why because a conditional use permit is supposed to be for a use that you did not anticipate in that particular area. You've got something called a special use permit, okay. That is a listed use that you can apply for a permit for. It's listed in the zoning as a special use. You should probably list B&B as a special use in that area if you anticipate it might be appropriate for those area. It just doesn't make much sense to have a conditional use permit for a use can't anticipate in that area when you have the opportunity to allow that use under certain circumstances in the area so --

Mr. Vanderbilt: Is that clear?

Mr. Dunbar: Well, you know, I went through the conditional use permit for my vacation rental and it was not an easy process. You know, we had eight public hearings. People voiced the plus and the minus. It went through the Planning Commission. They issued the special use permit. I then went to Maui -- and it was a two-year permit. I then went to Maui, pled the case, got the conditional use permit, and I've had no complaint. It hasn't brought on the onslaught of the hundreds of permits that people all think are out there

because there aren't, and it's provided, as I said before, the guys that work for me a living wage without having to come to Kaunakakai and Lord knows do what, you know, without having them go down the reefs and catching the manini and akole for sale and --

Mr. Vanderbilt: So, Kip --

Mr. Dunbar: So the point is is that the process that we have is good and I would leave the conditional use process alone, and that was decided by the Hana planning advisory group, you know, I think it was also by the Lanai group, and I don't know where Maui Planning Commission is.

Mr. Vanderbilt: Well, and again, we're going to come up on our community plan here soon where we're really going to hash all this stuff out and in the meantime, if somebody wants to try to get a conditional permit or a special use permit, they can go ahead and try for a short while. But I mean I would tend to leave the conditional permit in at this -- at this stage but -- anyhow, go ahead, Steve.

Mr. Chaikin: Yeah, I concur. I mean I would reject this bill in its entirety. I mean I think that we should -- you know, I'd like to remain optimistic that we can self-govern and we can decide for ourselves what we should or should not be doing with TVR's and not take some particular mandate coming from Wailuku. So I agree that the process is okay. What's really been missing are two things. One, a policy. We have no policy on this island under what conditions we'll move permits forward through the application process and that's what we really need is a policy so the Planning Department knows, you know, whether or not we should even process this application. And in order to process the application, they would have to meet a number of criteria, just like we were talking with the B&B's, you know, they have to -- you know, and I wrote down, I have a whole vacation rental policy that I wrote here, and I think that if we can get that policy working and if we can get the enforcement thing working, then I think we'll be in good shape. I don't think we need to, you know, accept this ordinance that's put before us.

Mr. Dunbar: And the policies are them telling us what the policy is or we telling them what the policy is?

Mr. Chaikin: Well, let me just tell you what I wrote here as far as a -- okay, this is what I wrote -- you know, here's the thing. You know, we're going to -- I would like to set forward this policy, okay. Now, the Planning Department is not going to take our policy. I just haven't seen that lately. I think what we need to do is send this up to the County Council and have them take a look at this policy. If they approve it, give it to the administration. And if the administration approves it, then they can put it back down to the Planning Department for them to implement. But this is the kinds of things that, you know, I had -- that I had put forward. Let me just say the reason we need the policy is so that the community and the Planning Department both have mutual understandings of when we'll move forward with the permit. When we'll even allow the application to move through the

process. And the very first thing that has to happen is the community plan has to allow for the TVR's. Now, in the community process, everybody will get together, they'll decide, one, whether or not they'll be allowed or not allowed; two, if they'll be allowed in what areas and what areas they won't be allowed; three, how many will be allowed in the different areas. So if it's allowed, then it can move through the process. But then since the TVR is a very high level because it's specifically not allowed. It's a specifically stated use that's not allowed. So you have to meet a really high threshold, which means that, you know, what I wrote down here is that you need to have a super majority of your neighbors agreeing to have it and you need to get that in writing. You need to get these guys to write you saying I approve of you having this and you need that to even move forward with your application. If you don't have that, you can't even move forward. So those are a couple of the things.

Mr. Dunbar: Okay, Steve, one point. TVR's are not not allowed. They just are not stated as one of the rights that you have with the land.

Mr. Chaikin: They're specifically not allowed. Am I correct?

Mr. Alueta: Yep.

Mr. Dunbar: In rural?

Mr. Alueta: In -- they are specifically not permitted anywhere outside of the hotel district. There is an ordinance, it's titled "*Timeshares*." But if you read that ordinance, it specifically prohibits transient vacation rentals outside of the hotel district period, and the Council and other people have used the conditional permit as the loophole to get around a use that is specifically prohibited.

Mr. Dunbar: You know, I'm not saying that there's an entitlement to the property but I believe there is an entitlement to the right to try to apply something to your property that -- and it's that right. It's that process that you should have. Not necessarily it's entitled. You can turn down 20 people. But there might be 20 people that you'll approve. So it's that right to be able to do it, not the right that it's -- it's outright entitled you on your piece of property.

Mr. Alueta: So my -- and that's my argument is like so then I should have the right to apply for a batoo house --

Mr. Dunbar: The special use permit.

Mr. Alueta: Or a house of prostitution.

Mr. Dunbar: That's why.

Mr. Alueta: I should be able to have --

Mr. Dunbar: You can go ahead and then it's up to the Planning Commission to tell you no.

Mr. Alueta: I have the right through a conditional permit process? Okay.

Mr. Vanderbilt: Alright, let's --

Mr. Dunbar: You can apply for anything you want.

Mr. Chaikin: The point I was trying to make is that in order to have a TVR, you have to -- you reach a very high threshold. You have to meet a lot of requirements to even go through the process. That doesn't mean you're going to get approved. Just to even go through the process you have to meet a lot of requirements. You know, and I think that, you know, during the community plan process is when the community should decide what they want and what they don't want with respect to these TVR's. You know, I don't wanna just say that there should not be any TVR's on the island of Molokai. I just think that's -- that's too strict. I mean we gotta have some opportunity for some economic activity on this island and so, you know, all's we need to do is we need to protect the neighbors and we need to protect the communities and if -- if everybody around there agrees and they want to have that, they should be allowed to have that.

Mr. Vanderbilt: Okay, are there any other comments? Now we -- we were looking at the conditional permits, 19.40.

Mr. Alueta: Yep. And if I may, Mr. Chair, that's fine. If you wanna just delete that provision or proposed amendment, as Mr. Chaikin said, reject the department's proposal, that's fine. If there's a consensus to do that, that's fine.

Mr. Vanderbilt: You're saying Commission Chaikin said reject what proposal?

Mr. Alueta: The department's proposal to prohibit transient vacation rentals from obtaining a conditional permit. And again, as the Administrative Planning Officer, my job is to write ordinances that are consistent with the community plans. I think I've written it -- I think that this section is consistent with the Molokai Community Plan with regards to how you have in itself restrict transient vacation rentals or where you wanted to see the growth of vacation rentals. If you look through my staff report, I cite section after section of the Molokai Community Plan which talk about that. I cannot write an ordinance that has a crystal ball of what this community is going to decide in its next round of the Molokai Island Plan and Community Plan. So I've only written this ordinance to prohibit TVR's because you have very strong language in your community plan that prohibits TVR's and the growth of where you want transient vacation rentals, and I think that that's -- so that's my --

Mr. Dunbar: It doesn't TVR's. It says visitor accommodations.

Mr. Alueta: Accommodations.

Mr. Dunbar: Okay, and when they wrote that plan, they were talking about the development that was happening Puohala, they were talking about the development that was happening at Pukoo, and I think there was actually one other hotel site they were looking at, and when Wren and those guys put that plan together, and I think Walter was on it too, they was strictly looking at keeping resort hotels, because of the narrowness of the land, out of the East End of Molokai. They -- no one even envisioned a B&B or a transient vacation rental, which is low key, very low key, and provide income base for people that live out there.

Mr. Alueta: And that's -- and that's fine. If that's your guys interpretation of the community plan, then I would -- then I would say then you're on the right path to reject the department's recommendation and to keep your -- your review of the conditional permit process, or you can go the route of Lanai and that is to establish your own -- to keep the conditional permit process until you establish a process for transient vacation rentals because --

Mr. Vanderbilt: Well, you know, I would agree that if -- if for some reason we do leave the door on the conditional permits knowing that we have final say on the special use permit, that we should only allow that until we've completed our community plan, which may say here's what we want as far as vacation rentals, or here's what we don't want, and then they'll -- the conditional permit will expire and everything will be based on our community plan. So if the conditional permit avenue remains, I think there ought to be a time limit on that that's contention with our completing the Molokai Community Plan.

Mr. Hopper: I just wanted to comment that regardless of the community plan whether it's vague or it could go either way, Joe was correct that the code says timeshare units, timeshare plans, and transient vacation rentals are prohibited except in this section, which allows them in the hotel district. That's pretty unambiguous and if there's push to allow transient vacation rentals in certain areas, I would probably advise Council, and to be consistent with Lanai recommendations, that you can't necessarily count on the community plan because you don't know what it's going to do. Let's say on the next community plan people decide they don't want to come up with specific restrictions or anything like that. You would have to look at changing this law I think. If you're going to say transient vacation rentals are prohibited everywhere, and if that's not the will of the community, if the will is to allow them in certain places subject to permits, it shouldn't be through the conditional use permit process because the conditional use permit process is for uses you can't anticipate. And if you don't anticipate them, you shouldn't have an outright restriction in the code saying they're restricted. So that section should probably be amended at some point if the intent is to allow transient vacation rentals through whatever means, whether it's a conditional use or a special use permit. So I just wanted to make that comment. I don't know if you would consider that but I wanted to put that out there.

Mr. Dunbar: Well, I'm curious because --

Mr. Vanderbilt: Thank you.

Mr. Dunbar: I just heard at the start of all this conversation that a TVR is exactly the same as a B&B and no one ever said that we needed to do something for a B&B by altering that rule.

Mr. Hopper: Yeah, they're clearly different things. They're defined for --

Mr. Dunbar: Well, that's what -- I agree with you. I think they are clearly different things so why would -- why right at the start of this conversation where we were told that they're exact same thing, a B&B is the exact same thing as a TVR.

Mr. Hopper: No, I said for the conditional use --

Mr. Dunbar: That's exactly what they said.

Mr. Hopper: I said for -- no, I said for the conditional use permit, I said it's treated the same way because you can't do a B&B in the ag land because there's no such thing as a B&B in ag land so whether you get a B&B or a TVR in the ag land, you need to get a conditional use permit. If it's in ag land.

Mr. Dunbar: But what we were saying is we were saying that a TVR is a short-term rental just like the B&B is a short-term rental. So if they're both short-term rentals and they're prohibited in every place but the hotel zone --

Mr. Hopper: No, it doesn't say --

Mr. Dunbar: No one ever brought up the fact that we had to go to the -- change this law in the hotel zone to do a B&B in the ag land.

Mr. Hopper: No, this doesn't prohibit -- no, this does not prohibit B&B's. It prohibits transient vacation rentals. It does not --

Mr. Dunbar: But you explained to me that a transient vacation rental only meant that it was a short-term rental.

Mr. Hopper: No, I didn't. Transient vacation rental is defined in the code. I can read the definition for you. It's very different. It's defined, in fact, as a hotel. It's the same definition and --

Mr. Dunbar: Well, I've always thought that a B&B and transient vacation rental were very different. That's why I was surprised to hear you folks tell me it wasn't.

Mr. Hopper: They are. They have different definitions in the code and I don't believe I ever said they're the same thing. I mean so --

Mr. Vanderbilt: Okay, Joe may have. Alright. So are there anymore comments at this point? Does anybody have a motion to -- to either support the ordinance as proposed by the Planning Commission or not to support it, or not to support it?

Mr. Dunbar: I move that we don't support it and that we leave the conditional use process as is and that we sunshine it with the approval of our community plan.

Mr. Vanderbilt: So, excuse me, you're saying, Commissioner Dunbar, that you support it? That's what you said. You said you --

Mr. Dunbar: I support taking out this, on Page No. 2, 1 and 2, "No transient vacation rental operation shall be established via the conditional use permit process."

Mr. Vanderbilt: Okay.

Mr. Dunbar: I want that out.

Mr. Vanderbilt: Okay.

Mr. Dunbar: Which then leaves everything else in 19.40 the same.

Mr. Vanderbilt: Okay.

Mr. Alueta: So you wanna keep --

Mr. Dunbar: And so the -- what?

Mr. Alueta: Keep 19.40 as is.

Mr. Dunbar: Except I wanna rid it of, on Page 2, Line 1 and 2, that was added by you guys.

Mr. Alueta: No, but keep as it is in the existing ordinance --

Mr. Dunbar: Correct.

Mr. Alueta: Not as the department has proposed?

Mr. Vanderbilt: So you're saying allow the conditional permit for transient vacation rentals?

Mr. Dunbar: Correct.

Mr. Vanderbilt: Okay. Is there a second to that motion?

Mr. Chaikin: Second.

Mr. Vanderbilt: Second by Commissioner Chaikin. Is there any discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Dunbar, seconded by Mr. Chaikin, then

**VOTED: to keep the existing ordinance, not as the department has proposed.
(Assenting: K. Dunbar; S. Napoleon; B. Feeter; S. Chaikin)
(Dissenting: J. Kalipi; L. DeCoite; D. Vanderbilt)
(Excused: L. Kauhane; M. Pescaia)**

Motion failed.

Mr. Vanderbilt: So the motion dies - four to three. Do we have another motion?

Mr. Alueta: So which way did the Chair vote? I believe the Chair has to vote in this case.

Mr. Vanderbilt: Well, I did vote. I didn't raise my hand in favor of it.

Mr. Alueta: Oh, okay, so it's -- okay. Okay.

Mr. Vanderbilt: Well, I didn't even call for the no votes. Four to three, okay. So all those in favor -- all those oppose raise your right hand. Okay, four to three.

Mr. Alueta: Thank you.

Mr. Vanderbilt: Thank you. Is there another motion?

Mr. Kalipi: I got a comment.

Mr. Vanderbilt: Okay.

Mr. Kalipi: So maybe we can build the bridge to getting a -- some kind of a consensus in the vote. In my mind, I have a problem with extended conditional permit and I kinda like when Kip was talking about how we align it with the community plan, and I kind of like somewhat Lanai's proposal, but I wasn't really set on -- on an open-ended conditional permit. So I'm just sharing those thoughts. I liked his original input. He did say, to follow up, that it is in compliance or line up with the community plan but then Corp. Counsel did mention that it might be too vague and they might not put in the restrictions and so forth.

He didn't align it. So I'm just sharing why I didn't vote in approval but I do -- I do agree with most of it and the conditional permit but I just can't get over that hump.

Mr. Dunbar: You see, where I'm coming from is that I believe there needs to be a cap. I believe that there needs to be, you know, restrictions on how close they can be to one another, you know, the densities of them. And if we're empowered to write something like that, I'd be -- I'd be happy to do that, but I'm not so sure that this is the avenue to do that.

Mr. Hopper: Joe, did Lanai say that they would have -- they would allow the conditional use permits until one year after the date that the Lanai Community Plan was enacted?

Mr. Alueta: That is correct.

Mr. Hopper: Okay, so say Lanai enacts the community plan and doesn't do anything with TVR's, under the Lanai bill the conditional use permits you couldn't get them anymore after a year after the Lanai Community Plan even if Lanai decided they weren't going to do anything involving TVR's theoretically, right?

Mr. Alueta: Theoretically, that is -- and they are aware of that and then so that's why they wanted to put the gun to their heads or they -- because the Commission knew that they were going to be the ones to address it when the community plan came around. So it's at the top of their minds so if it's at the top of your mind when you read, when you receive or if you sit on the community plan or islandwide plan, if you bring it -- if you know that that's going to be an issue, then you can discuss it at your community plan level when you make your recommendations to the Council.

Mr. Hopper: Okay, yeah, I just wanted to clarify what their recommendations were. I thought that's what you said.

Mr. Vanderbilt: Okay, Commissioner Dunbar, yours was to take out the -- to leave the conditional permit as is and then you said sunset it at when our community plan is adopted, which is --

Mr. Dunbar: Well, we talked about the Lanai wording and --

Mr. Vanderbilt: Which is sunset a year after it's adopted, yeah?

Mr. Dunbar: Yeah, and I think I'd -- I'd like Mike to explain what you just said to Joe again one more time. I'm a little kuli so I didn't hear it all.

Mr. Hopper: I think maybe Joe could probably explain it better, but as it sounds like to me, it would say that the conditional use permit would be -- would stay in effect, it sounded like the conditional use permits, you couldn't get them anymore for TVR's until once -- a year after the community plan was adopted, you couldn't get conditional use permits for TVR

anymore, meaning that this restriction the Planning Department was recommending would come into affect once the community plan was adopted. Is that the idea?

Mr. Alueta: Yeah, and basically all they did was they added, at the end our restriction, they kept our language and they said, "except for Lanai Community Plan area."

Mr. Hopper: Okay, yeah, to do that --

Mr. Alueta: Yeah.

Mr. Hopper: And they were assuming that in the community plan area they may adopt certain designations where they say this area we'd like to use -- we have TVR's, right?

Mr. Alueta: No, no -- well, they're going to do that also within -- they made those amendments to 19.38. But for 19.40, which is the conditional permit process, they said where we say you can't get a conditional permit except for a transient -- for transient vacation rentals, they said, "except for Lanai," right, "up until one year after the community plan has been adopted." So what they're saying is this restrictions on CP is except for Lanai, however, this exception expires one year after the adoption of the -- their community plan.

Mr. Dunbar: ...(inaudible)... to the adoption of the community, you can use the process to come in and get a TVR?

Mr. Alueta: That is correct. But then once one year after their community plan is adopted, that option, the language of restricting, would come into play and so -- and they've done that because they're anticipating that they will be able to come up with, in their community plan, some type of recommendation or some kind of policy of how they wanna manage their transient vacation rentals and that the Planning Department will make the appropriate amendments to the code to do that.

Mr. Vanderbilt: And, Joe, if they don't -- if they don't come up with a recommendation, then you're not going to have TVR's on Lanai, right?

Mr. Alueta: Correct. They would all have to be a bed and breakfast because for Lanai, one of the biggest stumbling blocks for them to be established -- to establish bed and breakfast operations has been the lot size. If you look at the existing code, it talks about Type 1, Type 2, Type 3, but it restricts -- it creates a minimum lot size in which a bed and breakfast could be established, okay. If you know Lanai, it's sort of like old Wailuku or some older towns or Maunaloa where the lots are like 3,000 and 4,000 square feet. Well, they never the met the 6500 square-foot minimum lot size that's in 19.64. Our proposal, the proposal that you approved, eliminates the lot size all together and it becomes a purely discretionary permit based on how the house sits, how many rooms you're doing, and whether or not you

can meet -- you fit in within the character of the community. So will open up B&B's, if this is adopted, will open up B&B's to Lanai for the first time for those who have small lots.

Mr. Dunbar: You know, but you'd still need to park your cars on that lot and so you probably got a 1500 square foot home and a thousand square-foot chicken coop and no place to put your car.

Mr. Alueta: We're not saying they're going to be six bedrooms. Some of them may be a one-bedroom bed and breakfast.

Mr. Dunbar: So if you had a two-bedroom house?

Mr. Alueta: Or a three-bedroom, two-bath plantation house, which is about 1200 square feet on a 4,000 square-foot lot, you could do a one-bedroom bed and breakfast. I've seen that many a times. And if you're getting 75 bucks a night, 20 nights a week -- I mean 20 nights a month, that's a good chunk of change.

Mr. Vanderbilt: Okay, I would like -- I think Joe has brought in some -- some concerns he's had and he liked some of the language he heard. I don't think -- I don't -- the main motion that we voted on really didn't clarify the sunset provision and so, you know, I would be open to a motion to reconsider a motion -- well, then we could have a new motion if somebody wanted to make but we'd have to make it clear what the sunset provision was. The motion that we passed was it would sunset with the community plan so if we wanted to sunset when our community plan was adopted or one year after, you can make a motion like that, but maybe we could -- to -- maybe we could have a new motion.

Mr. Chaikin: Well look, you know, I don't think the current situation is broken. We've only approved two. We approved two TVR's on the island. The two that are approved have been fine. There's no problem. This particular method is not broken and I don't know why we're trying to fix it. You know, so my motion would be to reject this ordinance in its entirety.

Ms. DeCoite: I second that.

Mr. Vanderbilt: So you're saying reject this ordinance in its entirety?

Mr. Chaikin: That means keep it the way it is now; this Commission has the power and authority to issue special use permits if somebody comes before us. We can accept it or reject it. What I had said earlier is we need more than that. We need to establish a policy and that's what I wanted on top of this ordinance. I wanted to have a policy so the Planning Department knows when they should move forward with applications because, right now, they don't know.

Mr. Vanderbilt: Would the Commission be amenable to have -- have a sunset provision on there that if it sunsets with the adoption of our community plan?

Mr. Alueta: That's not your motion as far as -- I mean if you wanted to have something like Lanai's, you just say we want the same as Lanai, and I can do that. But it sounds like you wanna reject the conditional permit -- the restriction on TVR's in the conditional permit process. Again, to reiterate what our Corporation Counsel says, the conditional permit process was a process to come up with uses that you -- you have some kind of idea that you would never have thought of before or would seem to be compatible. It's not something that if you have an idea that this is something you want to have and you want to set restrictions, the conditional permit is not the methodology in which to establish that criteria.

Mr. Vanderbilt: Okay, do we -- do we have another motion? What was your motion, Commissioner Chaikin?

Mr. Chaikin: Yeah, I made a motion to reject this ordinance in its entirety. It was seconded by Commissioner DeCoite.

Mr. Vanderbilt: Correct. Okay, is there any further discussion?

Mr. Kalipi: Discussion. I don't have a problem with that. I think my problem originate, in looking at it a little closer, is with enforcement rather than the process.

Mr. Vanderbilt: Okay. Any other discussion? Any other discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Chaikin, seconded by Ms. DeCoite, then unanimously

VOTED: to reject the ordinance in its entirety.

Mr. Vanderbilt: Motion passes.

- c. **A Bill for an Ordinance Relating to the Permitting of Transient Vacation Rentals.**

The purpose of the ordinance is to allow transient vacation rentals only in the following instances: (a) in zoning districts where they are a permitted use (currently in the airport and hotel districts), (b) in business zoning districts, and (c) in the destination resort areas of Wailea, Makena, Kaanapali, and Kapalua. The Planning Department is also recommending that the operation of TVRs be expanded within the resort destination area of Kaluakoi.

Mr. Alueta: Okay, moving on. Item c.

Mr. Vanderbilt: Give a quick explanation on this one, Joe.

Mr. Alueta: Item c. is your -- wait, which am I -- yeah, number -- letter c., which is pertaining to transient vacation rentals.

Mr. Vanderbilt: 19.38.

Mr. Alueta: 19.38, and this would allow for transient vacation rentals as a outright use within the destination resort areas. We have identified only the four on Maui. We did discuss and I did present a map earlier of the Kaluakoi Resort areas and that was your main thing. The area that would be limited to would be to the original Kaluakoi Resort area, which was -- got zoning. I believe I presented a map ...(inaudible)...

Mr. Vanderbilt: Alright, the original Kaluakoi zoning runs from Kaiaka Rock north. It doesn't include the two major residential subdivisions. So it's, behind Commissioner Dunbar, it's the colored area starting with Kaiaka Rock and moving up. Joe, how did it get proposed? It wasn't in the original draft that Kaluakoi Destination Resort be in there. How did it come to get in there as a consideration for us?

Mr. Dunbar: Okay, wait. Nancy, I need you to point that out for me again.

Mr. Alueta: It was brought up for discussion purposes. I don't believe our bill right now incorporates Kaluakoi. Is that correct? Our proposed draft right now?

Mr. Vanderbilt: Well --

Mr. Alueta: If you look at our original -- our current draft does not include Kaluakoi. If you wanted to include it, we brought it up for discussion purposes, and we think that area potentially could be appropriate. It's consistent with your community plan. It's consistent -- and it's -- you have a zoned resort area out there so -- it does not include the dunes, the ag lots, and all that.

Mr. Vanderbilt: Well, at this point, I think a little history. That land was, I think over 25 years ago, the State Land Use Commission provided State Urban and Rural Zoning up in all of that area and the owners from Louisiana Land up to now Molokai Ranch have done nothing with that zoning, and right now there's so much in flux out there, I don't know that we -- we would want to provide some more entitlements until we see what's happening, but that's just my thoughts.

Mr. Alueta: Okay, and again, the other sections of the 19.38 or actually of that bill is for amendments to 19 -- amendments to 19.16, 19.18, 19.20, and 19.22, and 19.15 -- 19.16

is your B-1 district; 19.18 is your B-2 district; 19.20 is your B-3 district. Our proposal is to allow for up to a 20-unit transient vacation rental or a 20-room inn.

Prior to 1980 -- prior to 1991, motels or hotels were allowed as a permitted use within the business district. Because of some large hotel developments on Maui, they were -- it was taken out because they felt it was circumventing the destination resort areas. The department, and based on our research, believes it had to do more with the size and scale of these "inns or hotels." Since that time, during the Wailuku-Kahului Community Plan process, they had encouraged that small inns be established or encouraged within the business core of Wailuku-Kahului and that facilitated a 2002 zoning and development code creation for the Wailuku Redevelopment Area in which 20-room inns or 20-unit transient hotels are allowed as a permitted use within the business district of Wailuku. Since that time, we've had the establishment of about three -- three small inns, mostly in the form of hostels or inns. One is the Northshore Inn. One is the Happy Valley Hostel. As well as the Banana Bungalow in Wailuku. If you're familiar with that area. Those are the types that have come in. Those are all less than 20 rooms. We think that would be an appropriate use.

The commission, the Maui Planning Commission, when they reviewed it, they had no problem with it, although 20 rooms is quite -- a lot of people just see, oh 20 rooms is 20 rooms, kinda like when you saw 6 rooms for bed and breakfasts, so they felt that the applicable community plans should also be -- should also be used to establish limits, so they've left it open to be that they could have the 20 rooms in the B-1, B-2, B-3 district or as further limited by the applicable community plans, and that's what they did, that's what Maui Planning Commission did.

With regards to the 19.22 and 19.15, those are your B-R district, business resort, those are within the SMA so the Commission didn't also set that parameter of the community plan but they didn't feel that it needed to have Urban Design Review Board, the others would also have to have Urban Design Review Board review.

So for the five business categories or business districts, that's our proposal is to allow for up to a 20-unit inn and the Maui Planning Commission voted to incorporate the Urban Design Review Board as well as to allow further limitations by the applicable community plan. So if the community plan says limit inns in the business core to 12 rooms or to 10 rooms, that community plan language would take precedent over the restriction.

Mr. Vanderbilt: Yeah, are there any comments on this? Commissioner Chaikin.

Mr. Chaikin: Yeah, I'd like to call up Molokai Staff Planner, Nancy McPherson. Nancy, I just wanted you to try to translate this. What does all this mean for Molokai? I mean where are these hotel districts? Where are -- where's the business district so we can kinda visualize what could happen in the future?

Mr. Kalipi: As she's making her way to mike, I just wanted to comment that sounds like a "except for Molokai" to me.

Mr. Vanderbilt: And along with what Commissioner Kalipi -- I think the visitor industry and how that's maintained, I think this community has worked extremely hard to have a visitor experience that's getting well renowned around the world as something different from the other islands and I think we wanna be careful of how we move forward and protect that image that allows us to offer something that you can't find on the other islands. So this is something that is obviously going to be taken up in all seriousness in our community plan and, at this point, to open up a lot of additional areas permitting motels or inns or whatever they're called, seems a little premature, to me at least.

Mr. Chaikin: Yeah, I agree. I mean they're already permitted in the hotel district. Is that correct? So what this thing is saying is, hey, let's allow them in the business district as well. I think that's what it's saying. And I'm just trying to figure out where is that? Is that Kaunakakai? I mean what areas are we talking about?

Ms. McPherson: Yes, Kaunakakai.

Mr. Chaikin: And where else?

Ms. McPherson: Well that's pretty much it. And in our community plan, in the Molokai Community Plan, it talks a lot about guiding resort and tourism development to the west end of the island, keeping urban type services concentrated around the Kaunakakai area, and so -- but there was some testimony that was received during the review of these bills and the transient vacation rental issue in general about designating the West End, Kaluakoi area as one of these destination resort areas, which has not been done up until now. So I think the idea was that they've identified these areas on Maui, and that's part of the ordinance, but in a way, we also have one here on Molokai, as explained in the Molokai Community Plan, and that's in the Kaluakoi area but that -- that boundary has never been drawn to say this is the -- designated a destination resort area. It doesn't include the land in ag, you know, which is Papohaku Ranch Lands and Moana Makani, etcetera. It would include the Kaunakakai area. We've got more restrictions also because we've got country town business zoning also. But I think the idea was to keep it either in a business or a hotel resort destination area. And so the idea was put forth. I actually recommended that the department consider doing that, adding Kaluakoi as a destination resort or that we should at least explore the idea and that may be something that you wanna take up, you know, that the community wants to take up during the community plan update process.

Mr. Vanderbilt: Okay, Commissioner Chaikin.

Mr. Chaikin: Yeah, I was just wondering if that's necessary. Do you concur with what they were saying earlier on when I asked them if like those condo complexes that do the TVR's

on the West End, like Ke Nani Kai, Paniolo Hale, all those that are somehow grandfathered in? Do you concur with that?

Ms. McPherson: Well, it's the way the law reads, from what I've read, those units have to be -- have been kept in the continuous vacation rental use, I'm not sure how that's defined exactly, but I guess year to year, you know, that the people rent it out most of the year and then they come and stay for few months a year or whatever, or half-half, or whatever, but that they've consistently rented out as a short-term rental the whole time since prior to 1991, was that the year for the condos? Yeah. So that would include Wavecrest, Molokai Shores, and all the condos out on the West End. So, yeah, they are grandfathered in but it could -- a case could be made to challenge an individual owner if they cannot demonstrate that they have continuously kept it in that use.

Mr. Chaikin: Okay, Nancy, so would there be any benefit to, you're talking about this Molokai resort destination area that we should take a look at, what would be the benefit of doing that if they're already approved?

Ms. McPherson: Well, I think if there was additional development done out there with the designations, the rezonings that they've gotten so the entitlements they already have, that those people would then be able to also do short-term rentals if they built townhouses or whatever they ended up building out there.

Mr. Vanderbilt: Well, excuse me, and I think that's it. We haven't set the standards for the resort. Right now, they're talking about reopening the Kaluakoi Hotel, and they've got six other hotel zoned sites with State and County zoning ready to go that allow transient vacation rentals, and I just think this is something -- I mean a 20-room's a pretty big thing. What is The Lodge? Twenty-two rooms? So I -- I think this is something that's -- it's really premature and it's a big issue and something that's going to get -- it's going to be right on the front burner at our community plan and I would tend to agree with Commissioner Kalipi that this one that we put "except on Molokai."

Mr. Dunbar: You know, I just -- it is beyond me how someone looks at the definition of vacation rental as 20 units. I mean it is a single-family residence that is -- that has two to three, possibly, four bedrooms that is rented out on a short-term -- I mean it is a single-family home. It's not 20 units. That's a hotel. So put 'em up in Hoolehua with Walter over there.

Mr. Vanderbilt: I'd like to -- I'd like to -- is there anymore discussion at this point?

Mr. Kalipi: No, but I was going to make a motion.

Mr. Vanderbilt: Oh, okay. Go, Joe.

Mr. Kalipi: I don't feel that -- I think we are in agreement so I'm going to make a motion that, well, that we put "except for Molokai" on this one.

Mr. Vanderbilt: So basically, Joe, that would involve that we're just leaving the -- for Molokai, we leave the law as it is on the books?

Mr. Kalipi: Correct.

Mr. Vanderbilt: Okay, is there a second to that motion?

Mr. Alueta: Can I get a clarification? Is that for 19.38 or is that for 19.38, 19.16 -- so 19.38 wouldn't impact you if you -- are you excluding or incorporating Kaluakoi?

Mr. Vanderbilt: No, we're excluding it.

Mr. Alueta: Okay, so it doesn't -- it doesn't matter for you. You can just say that that's fine, 19.38's fine because it doesn't impact you. For 19.16, 18, 20, 22, and 15 --

Mr. Vanderbilt: Where are they?

Mr. Alueta: They're attached also to that bill for transient vacation rental.

Mr. Kalipi: They're attached to the 20-room thing.

Mr. Alueta: Yeah, that's the 20-room one. So if you wanna say "except for Molokai," that -- is that your intent?

Mr. Vanderbilt: Yes. Right.

Mr. Alueta: Okay. I just wanted to be clear it was on those bills.

Mr. Vanderbilt: Is there a second to that motion?

Mr. Feeter: Yeah, I'll second.

Mr. Vanderbilt: Seconded by Commissioner Feeter. Is there any discussion?

Mr. Dunbar: Yeah, couple more discussions.

Mr. Vanderbilt: Okay, Commissioner Dunbar.

Mr. Dunbar: Just so I'm sure ...(inaudible)... because my draft here, I mean it starts off at 19.38.010 and then it goes to 19.16.20 and it seems to be going in the reverse; then it goes 19.64, then it gets back to 19.18. So I just wanna make sure what we're doing is under all

of these, we're -- even 19 -- the whole -- the ordinances that you have compiled under here, not necessarily the entire ordinance, but what you've put in this is going to be "except for Molokai." Is that correct?

Mr. Alueta: And that's why I'm trying to get clarity for -- for 19 -- for Section 19.38, since you're not including Kaluakoi, it doesn't impact you, okay. So I just needed clarity that you don't want -- you do not want -- oh, I guess you could say "except for Molokai."

Mr. Dunbar: But see what I think I hear the rest of the Commission is saying is that it is not necessarily that they -- that they don't want the Kaluakoi Resort area put in it. It's just that the Kaluakoi Resort area needs to be defined and shouldn't include something that is not even built yet and in all likelihood, won't be so --

Mr. Vanderbilt: Well, you know, and --

Mr. Dunbar: I mean that's what I -- that's what I meant.

Mr. Vanderbilt: And along with that, Kip, I mean they've got three big condo sites that they could develop and have transient -- if we don't do anything. They got six hotel sites that they can build and have transient. So we're not -- we're not taking away anything. We're just -- we're just --

Mr. Dunbar: Okay, I -- you know, I don't --

Mr. Vanderbilt: So anyway --

Mr. Dunbar: I don't see how that possibly would ever be built.

Mr. Vanderbilt: Okay.

Mr. Dunbar: I mean it's just, in my wildest dreams, I don't see ...(inaudible)...

Mr. Vanderbilt: Well, anyway, so we have a motion and a second on the floor. Is there any further discussion?

Mr. Dunbar: Did you just cut off my other discussion?

Mr. Vanderbilt: Oh, no. I'm sorry, Commissioner Dunbar.

Mr. Dunbar: I was just checking.

Mr. Vanderbilt: I've never known you to --

Mr. Dunbar: Okay, so again, I just want to be clear that you talked about 19.38, so what about 19.64?

Mr. Alueta: Not 19.64. We're talking about 19.38 --

Mr. Dunbar: Yeah.

Mr. Alueta: 19.16 --

Mr. Dunbar: Okay.

Mr. Alueta: 19.20, 19.22 --

Mr. Dunbar: But you added under line -- Page 3, Line 22, you have "19.64.030 of this title," and then to that, you've added "and are transient vacation rentals." So is there a -- is that typo or what are we --

Mr. Alueta: No, that's --

Mr. Dunbar: Are we talking 19.16.020 or we're talking --

Mr. Alueta: No, it says -- that's "Q."

Mr. Dunbar: Huh?

Mr. Alueta: That's "Q." If you look at "Q," that's existing in the business district --

Mr. Dunbar: Okay, well, that's under "I" --

Mr. Alueta: And it says that that's a bed and breakfast home subject 19.64.

Mr. Dunbar: Okay, okay, okay.

Mr. Alueta: Now as I indicated at the beginning of the meeting --

Mr. Dunbar: I only went graduate college.

Mr. Alueta: Under 19.64 --

Mr. Dunbar: Okay four.

Mr. Alueta: Bed and breakfasts are permitted in the residential district and in the business district. This is one of the business districts in which bed and breakfasts are allowed.

Mr. Dunbar: Oh, okay, okay, okay.

Mr. Alueta: Only the bold and underlined are the new changes, Kip.

Mr. Vanderbilt: That's alright, Kip. I had it explained to me too.

Mr. Dunbar: Alright. It threw me off.

Mr. Vanderbilt: Okay, do we -- is there anymore discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Kalipi, seconded by Mr. Feeter, then unanimously

VOTED: to put "except for Molokai" for this ordinance.

(Commissioner Dunbar stepped out of the meeting.)

F. UNFINISHED BUSINESS

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director, transmitting the 2030 Countywide Policy Plan (Plan) to the Molokai Planning Commission pursuant to the provisions of Chapter 2.80B of the Maui County Code. The Molokai Planning Commission may review and provide recommendations on Sections I - V of the Plan, which was revised to reflect the recommendations of the Maui, Molokai and Lana`i General Plan Advisory Committees. Emphasis will be placed on the revised Vision Statement, and Core Values and Principles Sections, and on the Implementation Chapter. (Chapter V). The Commission may also discuss convening a special meeting at a later date to complete any unfinished business under this item.**

First public hearing was conducted on August 22, 2007.

To view Section IV, (Goals, Objectives, & Policies) and revisions proposed by the three General Plan Advisory Committees see Maui County website at:

http://www.co.maui.hi.us/departments/Planning/pdf/Full_Directors_Report.pdf

A copy of the draft Policy Plan may also be reviewed on Molokai at the Molokai Library, and at the Department of Planning Office at the Mitchell Pauole Center (553-3221). The draft Policy Plan is divided into 11 sections: Education, Social and Health Care Services, Natural Environment, Local Culture and Traditions, Land Use and Population, Infrastructure, Housing, Parks and Public Facilities, Good Governance, and Transportation. The public

is permitted to testify on any section of the draft Policy Plan at any of the Commission's meetings when the Policy Plan is reviewed.

- a. **Public Testimony**
- b. **Action**

Mr. Vanderbilt: Motion carries. Alright now, I wanna ask everybody a question here. We need -- we're at our deadline on our policy plan, right? Well, I mean assuming -- is there anyway we can get -- how long do you think it would take us to do this policy plan? Can we crank it out tonight?

Ms. Simone Bosco: Okay, are you asking me? You're asking me? Okay.

Mr. Vanderbilt: Yeah.

Ms. DeCoite: You know what? They going be using this place at 6:30.

Mr. Vanderbilt: Alright. Now wait a minute. You can stay over if we can get one more person to come here?

Ms. Bosco: When?

Mr. Vanderbilt: Tonight.

Ms. Bosco: Tomorrow? I have a flight today at 8:00. I'm supposed to be on that flight and I don't know how to change it so --

Mr. Vanderbilt: Wait a minute. I thought you were gonna -- if we didn't finish, you were going to stay over but --

Mr. Alueta: If you gave us a quorum ...(inaudible)...

Ms. Bosco: That's why I asked the question this morning.

Mr. Vanderbilt: Well, but we thought we could --

Ms. Bosco: Okay, let me ask the first question.

Mr. Vanderbilt: Well, we didn't have a quorum there and I'm trying to see if we can get a volunteer to come in for --

Ms. Bosco: Okay, you can ask that question again and then at least we know.

Mr. Kalipi: I'll come from 12:30 to 2:30 if need be tomorrow.

Mr. Vanderbilt: Can we -- and we could get done in two hours couldn't we?

Ms. Bosco: I think so. I'm just -- I'm just needing to make another flight then tomorrow over here. I mean I think that's the deal.

Mr. Vanderbilt: Okay, and we'll chip in for the extra \$20 late fee cause I know that Planning --

Ms. Bosco: But let me -- let me -- let me answer the first question cause that's more important.

Mr. Vanderbilt: Okay.

Ms. Bosco: I think we can -- we can cover the Vision and the Core Values with the remaining time. That would be my request because then we meet the requirements of Bill 84 and that's important. The second thing is your deadline, your 120-day deadline, because you closed the public hearing on September 12, okay, is actually January 10. Now, I would --

Mr. Vanderbilt: But so we have the January 9 meeting?

Ms. Bosco: Yes, but we have other items on that agenda so I would encourage the Commission, if we can return tomorrow, to handle the implementation piece.

Mr. Vanderbilt: Alright.

Ms. Bosco: Tomorrow. Okay?

Mr. Vanderbilt: And the implementation piece is not going to take very long because there is no implementation report and --

Ms. Bosco: Right. It's about a two-hour thing. We're going to just discuss. It could be one hour.

Mr. Vanderbilt: Alright. Can we get five people here tomorrow from what time, Joe? 12:30 to 2:30?

Mr. Kalipi: I can be here 12:30 to 2:30.

Mr. Vanderbilt: Can we get five people here from 12:30 to 2:30? I can come.

Mr. Kalipi: I think four people committed earlier when we took the show of hands and then I wasn't one of the four so I think --

Mr. Vanderbilt: Who else? Bill, did you commit for tomorrow at 12? Sherm? Come on buddy. Awe, bruddah, please? Oh where's Kip? Steve? One, two, three, four. Who else could be here? Oh Mikiala said she could be here. Wait a minute. You've gotta go? You gotta go? Alright, one, two, three. Who do we have? You're coming back? Okay. Wait a minute. Where's Kip? His stuff's still here.

Mr. Kalipi: He just stepped out to use the bathroom or something, drink water.

Mr. Vanderbilt: So, Bill, you gotta go, and so we got one, two, three, four, five. Okay. Alright, we still got five, okay. Simone, are you ready to -- did you give out -- oh, you gave the Vision statement.

Ms. Bosco: Yeah, we can do the Vision, okay, and the Core Values if we have five here now. Are we going to have five?

Mr. Kalipi: Kip coming back so that'll be five, yeah? You have to wait till Kip come back.

Mr. Vanderbilt: Wait for Kip to come back.

Ms. Bosco: Bill is leaving.

Mr. Vanderbilt: Simone, did you give us the implementation printout?

Ms. Bosco: Yes.

Mr. Vanderbilt: You gave it -- you handed it out to us?

Ms. Bosco: Yeah, but I -- I wanna make sure we have quorum here before we discuss anything.

Mr. Vanderbilt: We have quorum right now and --

Ms. Bosco: Okay.

Mr. Vanderbilt: So we're -- we're still on the record.

Ms. Bosco: Okay.

(Commissioner Feeter was excused from the meeting at 5:50 p.m.)

Mr. Vanderbilt: Hold on Joe until Kip comes back or we'll have to -- alright, we got -- oh we got the -- but you sent us that email on the implementation, huh?

Ms. Bosco: Yeah, let me go ahead and --

Mr. Vanderbilt: Cause see Joe --

Ms. Bosco: Hand that out to anybody --

Mr. Vanderbilt: Yeah, cause Joe doesn't have email.

Ms. Bosco: Yeah, I handed it to Joe earlier today.

Mr. Vanderbilt: Okay.

Ms. Bosco: Okay.

Mr. Vanderbilt: Alright.

Ms. Bosco: So if anybody else needs the memo dated December --

Mr. Vanderbilt: I do. I think we all do.

Ms. Bosco: December 11.

Mr. Vanderbilt: Okay. We'll just pass it down and --

Ms. Bosco: Okay, I wanted to start with the Vision and Core Values. Is that okay? Alright, so go ahead and take a look at your handout. It looks like this. It has a black box on the bottom with the islands. You need it? Here, I've an -- there you go. Everybody have that? We're just -- we're not going to project unless you want me to.

Mr. Vanderbilt: Yeah, it was on -- it was --

Ms. Bosco: Okay, we're going to start with the Vision Statement and, basically, we're going to ask the Commission here if there are any changes they would like to propose.

Mr. Vanderbilt: So all three GPAC's have agreed to this Vision Statement?

Ms. Bosco: Yes. These are -- this is the compilation of the three GPAC's recommendations and the director's recommendation.

Mr. Vanderbilt: And were they accepted by the Maui and Lanai Planning Commissions?

Ms. Bosco: From Maui. The Maui Planning Commission has done this. The Lanai still needs to.

Mr. Vanderbilt: Okay, so it's been accepted by the Maui and --

Ms. Bosco: Yes.

Mr. Vanderbilt: So I would suggest we look at this. Unless there's any -- any what you call it? Compelling reason to make a change, hopefully, we can -- Commissioner Chaikin.

Mr. Chaikin: Mr. Chair, I did have an opportunity to look at the Vision and the Core Values and Principles, and I have no changes.

Mr. Vanderbilt: I too have no changes. Does anybody here see -- Joe, do you see -- I know the Molokai Planning Commission, they had -- they made several adjustments to it -- I mean the GPAC, right?

Ms. Bosco: They did.

Mr. Vanderbilt: Yeah.

Ms. Bosco: And you guys have that in your binders. If you'd like me to project that, I can.

Mr. Vanderbilt: I don't think -- I just think that it was looked at pretty closely. So does any -- do I have a -- I'll entertain a motion to accept the Vision Statement if there's no problem with it.

Ms. DeCoite: So moved.

Mr. Vanderbilt: Second?

Mr. Chaikin: Second.

Mr. Vanderbilt: Any discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Ms. DeCoite, seconded by Mr. Chaikin, then unanimously

VOTED: to accept the Vision Statement.

Mr. Vanderbilt: Okay, let's take a quick look at the --

Ms. Bosco: Core Values?

Mr. Vanderbilt: Core Values.

Ms. Bosco: On the flip side. Again, this is a compilation of all the GPAC's work, and also the underlined parts are the parts that the director recommended so you can see what the director, the very last bullet point, the director added, okay. Everything else --

Mr. Vanderbilt: Well, it's nice they put in "County."

Ms. Bosco: Yeah, it used to say "Maui Nui."

Mr. Vanderbilt: Oh, yeah. Get that out of there, geez. Well Commissioner Chaikin had mentioned he'd read it and saw no problems. I didn't have any problems with it. Do we have a motion.

Ms. DeCoite: Motion to accept.

Mr. Vanderbilt: Is there a second?

Mr. Napoelon: Second.

Mr. Vanderbilt: Second. Any discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Ms. DeCoite, seconded by Mr. Napoleon, then unanimously

VOTED: to accept the Core Values.

Ms. Bosco: Yay, thank you. That completes our requirements for Bill 84. Thanks. Okay.

Mr. Vanderbilt: So what do we --

Ms. Bosco: Alright, so now let me -- let me go ahead and talk a little bit about the implementation chapter, okay, cause what we've been doing all along for the last 120 days is recommending certain implementing action statements. In your mailout, what we did is sent you the updated Section IV. Okay, yeah, it was mailed out to you and what it includes is all of Molokai Planning Commission's amendments to the policies in Section IV, and also the changes to all the implement actions, okay. So everything underlined in this section is the work of the Molokai Planning Commission. Okay, and the way this is formatted right now, in Section IV, is the implementing action statements are in italics and you can see that under each objective section, for example if you turn to Page 53, you'll see under the Natural Environment section, there are two implementing actions under Objective 1, a and b, "Identify critical habitat areas." And the second one is: "Develop islandwide networks of greenways, water courses, and habitat quarters." Okay, those aren't underlined cause you guys didn't change them. But then if you turn to -- let's say if you turn to the next section under Culture, under Objective 1, there's an implementing action and that's

underlined and that's an addition by the Molokai Planning Commission. Okay, so what this means is this is one format for retaining all of the implementing action statements and how this would be used is we -- in the Maui Island Plan and in the community plans, including the Molokai Community Plan, we would develop policies and programs in each of those documents to implement these statements. Okay, that's how this format would be used.

Okay, so what I wanna discuss with the Commission here is if they would like to -- to support this format, okay, retain implementing actions as they're presented here, okay, it's very clean, it's very straightforward, but it's obviously not a comprehensive implementation program, okay. So there's a lot of other actions and programs that we can develop. So this isn't the end all-cure all, but this is at least what we know so far that the GPAC's and the Planning Commissions have -- have supported, okay?

The second format that I've been talking about is to develop a Chapter V, okay, which would be called "Implementation," and in that -- in that chapter, we would go into far greater depth about the different implementation programs and strategies that the County, as a whole, wants to implement on a Countywide level, and that's what this memo here, dated December 11, explains, okay. So if you wanna take a look right now at that memo, okay, I wanna just -- you can read the first and second page on your own. Turn to the exhibit, it's the second page, and that -- this page provides an example of how we would structure Chapter V. And so I wanna explain the concept to you and I'd like to see if you guys -- you got it, Lynn? Support the concept at this point because if you support the concept, what we're going to be doing is developing a complete chapter using your implementing action statements and coordinate it with the agencies and really build consensus within the County and provide a much more thoughtful Chapter V at the Council level. If we can discuss this at the Planning Commission level and obtain your recommendations and support now, at least we can say, in concept, the Planning Commissions supported this approach, however, we really need to develop it further and identify, you know, budgetary consequences, implications, etcetera. Go ahead, Commissioner.

(Commissioner Dunbar returned to the meeting, and Commissioner Kalipi was excused from the meeting at 5:53 p.m.)

Mr. Vanderbilt: Simone, and it just worries me that we're losing a little bit of control here. You talk about budgetary items and everything else. That's the same thing that's talked about when we have to do our community plan. We have to set priorities and financial and implementing strategies. We were told at the start of this process that if there is a -- if there is a conflict between our community plan and the, well, policy plan, the policy plan will prevail. Now, we pretty much know the policies. We've reviewed them and we're comfortable there's nothing in there that's going to keep us from doing anything. But now you're talking about implementing strategies, and then in our community plan we're going to talk about implementing strategies, so we're going to be -- we're going to be subject to your implementing strategies so I would feel real uncomfortable about -- I don't know how we could really --

Ms. Bosco: Let me explain how that's working.

Mr. Vanderbilt: Okay, go ahead.

Ms. Bosco: I'll explain a little bit about what's going on with the Maui Island Plan to give you a better example. Okay, these implementing action statements and the ones that we would develop further in Chapter V would apply at a Countywide level, so you're right, they would be overarching strategies that the entire County generally needs, okay. Now, let's say there's an implementing action here, let's take one, let's take one here --

Mr. Vanderbilt: Why don't we take "Complete a Countywide inventory of scenic viewsheds."

Ms. Bosco: Exactly. It's the one I was just looking at. That's an example of something that we can -- we can support at a Countywide level, and each island would or each community would identify for themselves how that implementing action statement actually plays out in their community plan. It's not specifically written here because it's for the community to decide, at the community plan level, how they implement it.

Mr. Vanderbilt: Let me just interrupt you there because when you have a Countywide situation like this, it's like the shoreline setbacks, everybody wanted shoreline setbacks so it's sort of in there as something they're going to do, but they did it for Maui first. Now when they come for the complete a Countywide inventory of scenic viewsheds and it's up to a budgeting thing. How do we fit in versus Maui? And I think it just seems -- you know what I'm trying to say?

Ms. Bosco: I do. See, but that's why this can't be -- that's why we really need to think this out further and it's not -- it's not ready right now in its entirety because that's the kind of thought we need to put towards implementation, okay.

Mr. Vanderbilt: Okay, well, you're asking for our endorsement of this --

Ms. Bosco: Yeah.

Mr. Vanderbilt: But how are we going to have input into this other than going to the Council as individuals or something? How is the Commission, when this thing is done, can we say we agree with you, we half agree with you, or we don't agree with you?

Ms. Bosco: Well, you've already voted on every single implementing action and we're not proposing more than that. You've already supported every implementing action that will be listed in Chapter V. If you take a look at -- take a look at the example I'm providing. The very first set of bullet points is every implementing action this Commission has supported and approved. All we're doing is taking a look at which strategy each implementing action falls under and re-categorizing it under a broad strategy.

Mr. Vanderbilt: Okay. Alright, well how about things -- now these implementing action just sort of turned up by default because we looked at the policy plans and some of them had "how-to's," "where for's" where the director felt those would be better as implementing actions but we never started off taking each policy statement and coming up with a corresponding implementing action. We just sort of threw into the implementing section those things that didn't really work as policy statements. So there's a lot of things that aren't in there, we're going to have our community plan, and we're going to have implementing actions that are not even tied to these and we don't wanna have to be -- what happens if we have an implementing action that -- that is not listed in the overarching implementing actions --

Ms. Bosco: That's okay.

Mr. Vanderbilt: Yeah, but as far as getting budgeting money for that, if we're not -- the Council say, well, these -- these are the priority items.

Ms. Bosco: No, see, okay, good question. In Bill 84 and Bill 53, each community plan is -- that process requires a separate implementation piece so there -- and it's tied to budgets, capital improvement programs, each community plan process is required to do their own -- implement implementation programs separate from this one so --

Mr. Vanderbilt: Okay. So you're saying that these are not part of the budgetary process?

Ms. Bosco: Not for the community plan.

Mr. Vanderbilt: The first priority on budgetary process is the community plan implementing actions?

Ms. Bosco: The Maui Island Plan and the community plan processes have their own implementation programs and budgets associated with those.

Mr. Vanderbilt: So these are sort of wish list stuff.

Ms. Bosco: These are sort of -- yeah.

Mr. Vanderbilt: These will not augment or --

Ms. Bosco: No.

Mr. Vanderbilt: Deter from what you're trying to do in the community plan.

Ms. Bosco: That's correct. That's right.

Mr. Vanderbilt: These will have no weight really unless you're totally in conflict with something.

Ms. Bosco: These will -- well -- well all plans are required to be consistent and compatible with each other so we can't -- so, basically, we need to really think through these statements and make sure that, you know, everything we're saying here will be supported by the community; that's why we asked you to vote on these. That's why we asked for a vote.

Mr. Vanderbilt: And what is our advantage -- what do you see is the advantage of coming up with this expanded Chapter V on implementing?

Ms. Bosco: The advantage is that the County, as a whole, is identifying strategies that the entire County supports. It's not just something that Molokai wants to do. It's something that the entire County needs to do, okay, for example "Provide continuous lateral access parallel with the shoreline and maintain continued access to the shoreline." This is something that all the islands really needs to implement.

Mr. Vanderbilt: But we didn't vote -- there's certain implementing actions that Maui approved in the policy plan that we didn't. Is that correct?

Ms. Bosco: That's true.

Mr. Vanderbilt: So what is going to be the final product? Is it going to be everybody?

Ms. Bosco: Well, we're going to present all three Planning Commission's votes. I mean their approved -- their approved policies and their approved work to the Council. That's not going unnoticed --

Mr. Vanderbilt: Okay.

Ms. Bosco: And then we'll have the director's recommendations.

Mr. Vanderbilt: Can I ask, Mike, at some point down the road when this is all compiled, can this come back to the Planning Commission just for us to look at and then adopt maybe a position statement to the Council?

Mr. Hopper: Well, I mean that could potentially be in conflict with the 120-day review period. For information purposes, you know, perhaps and then someone can go and testify, but we'd have to look at that because Bill 84 had its -- had its review requirements and so did Bill 53. We have to try to find a way that you wouldn't be in conflict with that. That would be a concern. Now what they have to do, what the department has to do is, as Simone said, you've taken a vote on a variety of policies and everything, that's your vote. If that differs from Maui, that doesn't matter. They have to give you your -- give the Council

your recommendations, the Molokai GPAC's recommendations, and the director's recommendations. So Council will see everything. Now they might look at the director's recommendations maybe the largest thing incorporating everybody, but to the extent you differed from Maui and Lanai, your recommendations will be preserved, they have to be -- will be presented to the Council separately, including the implementing action recommendations that you made, so you have to have separate implementing action, you know, this is the Molokai recommendations, Lanai, Maui, and that's clear from the bills that that has to done that way.

Mr. Vanderbilt: Alright, as I understand the bill, they kept the GPAC's in tact so they could sort of continue on and testify or help the Council out.

Ms. Bosco: As resources, yeah.

Mr. Vanderbilt: Yeah, as a resource, but the Planning Commission wasn't the same --

Mr. Hopper: I mean the Planning Commission's obviously not dissolved so I mean something like that, I see your argument, you could probably do that. The thing would be not necessarily to adopt something again or to have another recommendation, so we just have to look at that.

Mr. Vanderbilt: But we could -- we could go to the Council and say this is why we feel -- if we see some obvious conflicts, we could go to the Council and say this is why we think this should be in there or whatever.

Mr. Hopper: Well again, we'd wanna watch the Sunshine Law issues again but, yeah, I think, in general, you probably could, you know, more than two of your couldn't, and there's other --

Mr. Vanderbilt: Well, I'm just trying to get a general feel so we can -- if we know that we can get some say on this coming back and it's not going to impact our community plan --

Mr. Dunbar: Well, you know, DeGray, I'm looking at the bottom sentence here and it says, "Each island community or community plan area is not limited only to those identified statements. As such, additional implementation action statements can be developed in these respective Maui Island and community plan documents." So I mean clearly -- clearly we're not beholding just -- just to what is developed by this action; it just allows them to do it.

Mr. Vanderbilt: Yeah, and I agree, but the only thing I worry about, and it may -- cause these are fairly general implementing actions but we still have that situation if we come up with an implementing action, how does it interact with the policy plan implementing action cause our community plan has to be consistent with that?

Ms. Bosco: At the island level, you have the freedom to identify additional implementing actions and programs. This does not --

Mr. Vanderbilt: And those will take --

Ms. Bosco: Restrict you.

Mr. Vanderbilt: Those will take priority over these in a sense if they're not --

Ms. Bosco: They have to be consistent with these, okay, we can't --

Mr. Vanderbilt: But ours will be more --

Ms. Bosco: Yes, they'll be --

Mr. Vanderbilt: Specific and they'll be tied to budget items --

Ms. Bosco: That's right.

Mr. Vanderbilt: Whereas these aren't really going to be tied to budget.

Ms. Bosco: They're not required to be tied to budget items at this point.

Mr. Vanderbilt: Okay.

Ms. Bosco: But it'd be stupid not to consider that, right? We have to consider that. We're not going to put something out there to Council that can't be supported by any kind of funding or future funding. I mean that -- that's clear, right?

Mr. Vanderbilt: No, it's not.

Ms. Bosco: Why would we do that...(inaudible)... is the answer. You're right about what --

Mr. Vanderbilt: Okay. Commissioner Chaikin.

Mr. Chaikin: Yeah, I'm just trying to figure out where we're at right now but, first, let me just make a comment that, you know, this whole concept of implementing actions has been a problem from the very beginning, all the way through, and now it continues to be a problem, and I think, you know, what we have here is we have some implementing actions and my problem is that they're not even necessarily important. They're just there by default, like something was written up and, oh, that looks like an -- and so now we have all these implementing actions and I don't want it to go out to look like these are the important implementing actions cause they're not. A lot of these are very unimportant and a lot of the important things didn't get implementing actions because you weren't seeking implementing

actions from us or from the GPAC. So however we proceed, we've gotta minimize the importance of these implementing actions cause they're really not comprehensive and I don't want the wrong idea to get out. So the question is: Where are we right now? We got two formats and we gotta choose, let's choose A or let's choose B. Is that what we're looking at?

Ms. Bosco: Or there could be a C. Yes.

Mr. Chaikin: Or there could be a C.

Ms. Bosco: The first question is: Do you support the format in Section IV that I've presented here or would you prefer to remove the implementing action statements all together? That's the first question.

Mr. Chaikin: Well, let me ask you, you understand this a little bit better than I do, which format downplays the importance of -- of these implementing --

Ms. Bosco: The second format in the memo that I handed out. The second format. Absolutely. Because we're going to be making it really clear, in Chapter V, that this isn't the end-all of all the programs that need to be implemented. We're going to make it very clear that they're --

Mr. Vanderbilt: The community plan --

Ms. Bosco: That these are just -- yes, that there are other strategies, including the community plans, including ordinance work, etcetera, that this isn't the only list. This is just a snapshot, a tiny picture of what we could do on a broad level. The strategies though that we identify in this memo here, if you look at the very last page, are very broad and they could include a lot more implementing tools. If you take a look at the very last cluster of bullet points, you'll see those are very broad strategies, okay, regulatory actions, sustainable practices, community design guidelines, so all of these strategies imply that there could be many, many more implementing programs under them. So this is the format that's much more flexible, more inclusive, and under -- under emphasizes the implementing actions you guys voted on. Do you understand what I mean by that?

Mr. Vanderbilt: Go ahead, Commissioner Chaikin.

Mr. Chaikin: Yeah, I was just going to say that, you know, you know from just what I see, I mean I don't know, I would like to rely on your expertise, you know, to figure out what the best way forward is just stating that, you know, we came up with implementing actions and I don't want that to go out to the public with some kind of concept that these are the important implementing actions cause they're certainly not.

Ms. Bosco: That's absolutely well put and that's a very -- we could -- and that comment, I will definitely take back and that's something we'll consider.

Mr. Vanderbilt: And I think it's kinda premature for us to give any kind of endorsement. I think that might be taken wrong by the media and everything else. I mean we're leaving it in your hands to come up with a document that you feel expresses some general policy plans with the idea that these will not, you know, sort of trump our implementing actions of our community plans or the others but, at this point, just to say that other than to support you guys moving forward in the most professional way that you can to come up with something and then we know that we can say yay or nay to it to the Council later on.

Ms. Bosco: Okay, and so at this point, it's premature to endorse either format? Is that what I'm hearing?

Mr. Dunbar: I don't know. I'm, you know, I'm sort of partial to that number two that you came out with. It doesn't seem like I'm beholdng to anything. It just allows the process to go forward and -- and quite frankly, I think all that you folks have heard is going to be what comes down to, you know, really the, you know, what's decided and how we plan to regulate the community plan so --

Ms. Bosco: That's true too.

Mr. Dunbar: You know, I mean I think this allows her to go forward and if we have to make a vote to allow her to go forward, let's do it. Move on down the line or we'll be talking about this for the next five meetings and then by that time we'll retire and we won't get to talk anymore.

Mr. Vanderbilt: Okay, so -- so can we entertain maybe a motion that this Commission approves the Planning Department to move forward in developing an implementing plan under the Countywide Policy Plan in line with the Chapter V of the Countywide Policy Plan in line with Method 2?

Mr. Dunbar: So moved.

Mr. Vanderbilt: Is there a second.

Ms. Napoleon: Second.

Mr. Vanderbilt: All those -- any discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Dunbar, seconded by Mr. Napoleon, then unanimously

VOTED: that this Commission approves the Planning Department to move forward in developing an implementing plan under the Countywide Policy Plan in line with the Chapter V of the Countywide Policy Plan in line with Method 2.

Mr. Vanderbilt: Motion passes.

Ms. Bosco: Thank you.

Mr. Vanderbilt: Alright, now --

Ms. Bosco: That means I don't have to come back tomorrow, right?

Mr. Vanderbilt: Well, or you can party-hardy tonight. I don't know. Anyway, alright we got one more item here.

Ms. Bosco: Alright. Thanks. Good work you guys. Really appreciate it.

Continuation of:

E. PUBLIC HEARING (Action to be taken after public hearing. Public hearing to begin no earlier than 1230 pm)

1. MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 07-108 referring A Bill for an Ordinance to Prohibit Superstores in Maui County to the Lanai, Maui, and Molokai Planning Commissions. (RFC 2007/0099) (J. Alueta)

- a. Public Hearing**
- b. Action**

Mr. Vanderbilt: Now we got -- I just wanted to -- as far as the superstore -- superstore bill, if nobody objects, I'd like to defer that to the January 9 meeting. Is there any objection? Okay, so that -- excuse me?

Mr. Alueta: Can I give you a food for thought before you guys adjourn -- before you recess it that way at least, as far as the department's comments, so you have those in your mind? Again, the department is not -- doesn't have really a recommendation as far as being for or against the superstore bill. The only concerns that we have with the proposal is that we

feel the definition of it is -- can be broad and hard to enforce and we would recommend simplifying it so that it deals with only the square footage of the building rather than having us to try to figure out how many items are being sold as well as how much square foot is dedicated to groceries, as well as the current set up of the ordinance, we currently list what is permitted and then if it's not listed as a permitted use, it's excluded from the ordinance. The only place that it says superstores are prohibited is in the definition section. We feel that through the course of the code in all of the business districts or any of the districts were retail and grocery stores and all that are listed as permitted uses, you should put, if you're going to prohibit superstores, you should list "except for superstores" and then set out the definition for a superstore within the code.

Mr. Vanderbilt: Commissioner Chaikin.

Mr. Alueta: This would simplify enforcement should it -- should it be adopted.

Mr. Vanderbilt: Okay, Commissioner Chaikin.

Mr. Chaikin: You know, you were there. I was asking Brian or whoever that was that came up and testified on behalf of Wal-Mart and I was asking him all those questions and it was seeming to me that if we pass this ordinance, that would put out of business all of those big stores or are they going to be able to be grandfathered in?

Mr. Alueta: They would all -- they would all be grandfathered in. The only --

Mr. Dunbar: Grandfathered in. They're cutting out the competition.

Mr. Alueta: Well, the only -- they would be grandfathered in if they -- if you adopt the way -- the definition the Council has and the only thing that they would be is be precluded from expanding into other areas or expanding their operations, okay, from going into groceries. The department's proposal is to -- is to move into limit it to square footage only with no grocery ideas or SKU items.

Mr. Vanderbilt: What square footage you're looking?

Mr. Alueta: We don't care. Right now, the current code list it at 90,000.

Mr. Vanderbilt: How much?

Mr. Alueta: Ninety, I believe, 90,000. Hana went with 75,000. However, if you went with strictly square footage, those -- the businesses that would be included as an existing nonconforming size superstore would be the Home Depot, K-Mart, Wal-Mart, Costco, based on those because those are larger stores.

Mr. Vanderbilt: Alright, let's say Hana went for 75,000, so if that was adopted by us, then somebody could come in with a 65,000 square-foot store and that would be permitted cause it wasn't 75?

Mr. Alueta: Correct.

Mr. Vanderbilt: So that's the thing I worry about. We're saying no to 75,000 but you could -- it'd be okay at 70,000, which probably would do as much damage as a 100,000 square-foot thing on Maui.

Mr. Chaikin: Well, these stores are way above that. I mean, you know, you heard him, I think 140,000 square-foot was the Wal-Mart, the Costcos, all those are well above this 90 and the 75, which are being thrown out there.

Mr. Vanderbilt: So, Joe, what you're saying though, if they agree on 75,000, under the current law, if there's no changes, somebody could come in tomorrow and do a 65,000 square-foot building here on Molokai if they wanted, right, store?

Mr. Alueta: Correct.

Mr. Vanderbilt: Okay.

Mr. Alueta: It's just that, remember, economics is a key factor. Economics is a primary factor.

Mr. Vanderbilt: Well, that's why I was talking to the guys about a satellite store even.

Mr. Alueta: Yeah, and what I tried to explain is the difference between our simplification of the process so if you choose -- if they -- if you choose or if the Commissions or the Council choose to go with a more simplified version, which does not include stock items or square footage of a grocery store, Wal-Mart or Costco or whatever could make interior modifications without changing their square footage to include groceries, okay. So it wouldn't preclude them from changing their product mix. It would just prohibit them from expanding their overall square footage as well as it would prohibit someone else of large stores of that size coming in period.

Mr. Vanderbilt: Okay. Is there any -- any -- oh, Commission DeCoite.

Ms. DeCoite: Okay, so you said those existing now would be grandfathered in?

Mr. Alueta: Correct. They would be existing nonconforming.

Mr. Chaikin: Yeah, I was just wondering if we just limit it to square footage, how does that work? I mean there's car dealerships, there's lumber yards, there's all kinds of stuff selling whole bunch of stuff that are way bigger than that. Are they going to be not allowed?

Mr. Alueta: Existing -- yeah, it'd be existing nonconforming as far as the size.

Mr. Chaikin: No, but if some new company wants to come in and put in a big car lot to sell new cars.

Mr. Alueta: It would be covered square footage. Right now it's by buildings. Right now it's buildings so not open car lots.

Mr. Chaikin: Yeah.

Mr. Alueta: Right now the -- right now the only big buildings that meet the criteria that I know of on Maui are the Costco, K-Mart, Wal-Mart, and Home Depot.

Mr. Chaikin: Okay, and what about Lowe's?

Mr. Alueta: Probably, yeah, maybe Lowe's.

Mr. Chaikin: Alright.

Mr. Alueta: And the other ones, such as like people talk about like Safeway, how big is Safeway? They don't -- they wouldn't meet that. They don't have the square footage.

Mr. Vanderbilt: Okay, do we have anymore discussion on this at this point? We're just --

Mr. Alueta: So all I wanna leave you with is that, you know, your two question is: Do you wanna have a limit on superstores or what the -- and what should be the definition of a superstore? Council's proposal discusses stock items as well as the mixture of groceries. We feel, from the department, if there is going to be a ban, it needs to be simplified because we don't wanna be out there counting items as well as we don't wanna be measuring out --

Mr. Vanderbilt: Enforcement. Enforcement.

Mr. Alueta: On the enforcement side, it's going to be difficult --

Mr. Vanderbilt: Okay.

Mr. Alueta: As well as we do feel there needs to be some structural changes with the bill to meet the existing code in Title 19 and have it listed other than --

Mr. Vanderbilt: Alright.

Mr. Alueta: Not just in the definition, but throughout the code so someone reading the Maui County Code can say, hey, superstores are prohibited when they go to the different business sections or the industrial zone section. Okay, that's all I have.

Mr. Vanderbilt: Okay, thanks, Joe. Alright, we got just one more item and that's under the Chair's report. Last meeting --

Mr. Dunbar: ...(inaudible)... vote on this?

Mr. Vanderbilt: I thought -- oh, are you ready to vote? I thought we were deferring to the next meeting.

Mr. Chaikin: Well, how much time do we have to -- before we have to act on this?

Mr. Vanderbilt: Well, wait, we have till our next meeting.

Mr. Dunbar: ...(inaudible)...

Mr. Vanderbilt: Alright. Well, I don't understand what we're -- we're approving.

Mr. Dunbar: Well, help us with a motion, Joe, that we will not allow stores greater than 90,000 covered square feet in Maui County?

Mr. Chaikin: Kip, my only concern is that, you know, what we're doing is we're sitting here trying to figure out what's best for Maui. We should be sitting here trying to figure out what's best for Molokai, okay, and all of the reasons why they wanna not have a big giant store in Maui also could pertain here to Molokai but this ordinance that we're voting on doesn't -- is too big to even have any affect over here. So, you know, I think it's important that at least we discuss Molokai and if we need to protect, you know, the establishments here and if we do need to protect them, then how are we going to protect them. I just --

Mr. Dunbar: I, yeah, I certainly understand that and, you know, we would never get a 90,000 square-foot store on Molokai for 7,000 people. I mean it just -- it is economically insane.

Mr. Chaikin: Right, that is --

Mr. Vanderbilt: So --

Mr. Dunbar: So if what you're saying is that we should reduce it in order to protect -- to protect Molokai where we'll say on Molokai we will not have a store greater than 5,000 square feet, I mean you can say that but that's not -- that's not what the ordinance is looking at.

Mr. Chaikin: Right, but we can say except whatever we want. I mean we're making recommendations and --

Mr. Dunbar: Well, we can make -- we can make the motion that it's -- that it suits -- and then we can put in "except for Molokai where we will not have stores greater than 10,000 square feet." If that's what you want.

Mr. Chaikin: Right, but that -- that needs to be discussed and thought through a little bit how big that number is, 10,000, and then the question is: Do we even wanna protect them? Or do we want competition to come in? That's what we need to -- you know, I think that takes a little bit more than we can do here in two minutes. I'm thinking we should think this through a little bit before than rush to some judgement on it.

Mr. Vanderbilt: Well, it doesn't look like we're -- we only got five people here so can we defer it, Kip, till the next meeting?

Mr. Dunbar: Well, I don't know. If I don't vote for deferral, then you're stuck.

Mr. Alueta: Then if you get stuck and no action is taken, it gets deferred automatically until your next agenda.

Mr. Vanderbilt: Okay.

Mr. Alueta: One more food for the thought is that with -- when it did go to, like I said, it did go to Hana Advisory Committee, they voted for 75,000, and for -- for the Cultural Resources Commission, they weren't concerned so much with the size and, you know, the whole concept, they were a little lost as to why they were even reviewing it, so they -- ultimately, they were more concerned with the architectural style and they felt that whatever business comes in, if they do -- if does pass, it should have some form of Hawaiian architecture to it. That's their only comment. And that's the CRC, remember, so --

Mr. Vanderbilt: Alright.

Mr. Dunbar: ...(inaudible)...

Mr. Vanderbilt: Yes. No, that Hawaiian architecture. Okay, so can we defer this to the next meeting or --

Mr. Dunbar: ...(inaudible)...

Mr. Vanderbilt: Well but, Corp. Counsel, if we don't take any action, is it deferred to the next meeting or is it just --

Mr. Hopper: Yeah. I mean there's no action so you could put it on your next agenda.

Mr. Vanderbilt: Oh, put it on our next agenda and try to get to it.

G. CHAIRPERSON'S REPORT

1. Discussion of process for Commission to wrap up its work on Molokai Properties Limited's Laau Point/ Master Plan Environmental Review Process.

Mr. Vanderbilt: And we got just one last thing. This Commission, at the last meeting, Commissioner DeCoite asked about wrapping up things on the Laau Point thing so at least we have a file somewhere that has everything in it and -- and she was told that we had to put it on the agenda this time, so if this Commission has no objection, I would -- I would ask that we allow Nancy to -- to pull together all the documents, the Land Use Commission minutes and the video --

Mr. Dunbar: We need a 100,000 square-foot building to do it.

Mr. Vanderbilt: No, and all of that, and they're all available. The Land Use Commission has said they would send the minutes and all the testimonies, AKAKU has given us a free dub of the -- the hearings, and so it'll be just a nice file for the community to research, if they need to, and also when this thing comes back again at least we'll have something. So does anybody have any problem with authorizing Nancy? Okay, thank you very much. And --

Ms. DeCoite: I have, yeah, I have something to say.

Mr. Vanderbilt: Oh, no, we got some announcements, yeah.

I. ANNOUNCEMENTS

Ms. DeCoite: Well, I wanted to know if we could still put on the agenda we're still looking for help for Nancy. We still never address that issue. Can that be addressed or -- remember, we said we were going to talk about that several months ago?

Mr. Vanderbilt: Well, I got a -- I got an email from Planning Deputy Director saying stay out of our business as far as staff's concern. It's none of your business. So I think that the efficiencies of this operation, how it affects our image in the community, is our business and so if you wouldn't mind if Commissioner Chaikin and I could go over and talk to them about how we can correct it, and then if it -- and --

Ms. DeCoite: So moved.

Mr. Vanderbilt: Thank you.

Mr. Dunbar: Speak for yourself now.

Mr. Vanderbilt: Commissioner, huh? Commissioner Chaikin, you had something to say, announcement?

Mr. Chaikin: Yeah, Chair, I just wanted to -- to ask if, on our next agenda, that we can finish up this TVR thing. I realize that we had taken action on all the ordinances, but I don't think we actually solved the problem. We have a major problem on this island with TVR's and we didn't solve the problem, we just addressed these issues. So I would like to at least have an opportunity to present the solutions to solve the problems that we have over here. So if we could just put it on our agenda, you know, I don't think it'll take too long, I'm just asking if that's --

Mr. Vanderbilt: Alright. And, Commissioner DeCoite, do you have an announcement about Saturday or no? Yes, of course you can. That's what the Council does.

Ms. DeCoite: Okay, yeah, just an announcement that, for those of you who have grandchildren, Mr. Dunbar, your grandchild, we are having an event here for the kids, a keiki Christmas fest, with games and Santa Claus to take picture, and our Santa Claus will be yours truly, and free event, food, and --

Mr. Dunbar: ...(inaudible)...

Ms. DeCoite: No, you want the bill? I'll give you the bill though. But it's a free event so I want the kids out and about and getting some Christmas fun there, from ten to two on Saturday.

Mr. Vanderbilt: Thank you, Commissioner DeCoite. Yeah, Commissioner Chaikin?

Mr. Chaikin: Just before we close, I wanted to wish everybody happy holidays and see you all next year.

Mr. Vanderbilt: Okay --

Mr. Dunbar: And I'd just like to point out that there is no major problem with TVR's. Thank you.

Mr. Vanderbilt: And I'd like to thank Joe for hanging in there and Simone for being the last one standing in Long Range Planning as far as the Countywide Plan, and to Nancy and Suzie and Michael, have a good holiday. Thank you. Meeting's adjourned.

J. NEXT MEETING DATE: JANUARY 9, 2008

K. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 6:34 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

DeGray Vanderbilt, Chairperson
Steve Chaikin, Vice-Chairperson
Lynn DeCoite
Kip Dunbar
Bill Feeter
Joseph Kalipi
Sherman Napoleon, Jr.
Mikiala Pescaia

Absent

Linda Kauhane

Others

Joseph Alueta, Administrative Planning Officer

Simone Bosco, Staff Planner

Nancy McPherson, Staff Planner, Molokai

Michael Hopper, Deputy Corporation Counsel