

(APPROVED: 11/26/07)

**HANA ADVISORY COMMITTEE  
TO THE MAUI PLANNING COMMISSION  
MEETING OF OCTOBER 18, 2007**

**A. CALL TO ORDER**

The meeting of the Hana Advisory Committee (Committee) was called to order by Clayton Yoshida, Planning Program Administrator of the Planning Department, at 4:15 p.m., Thursday, October 18, 2007, Old Hana School Cafeteria, Hana, Island of Maui.

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

Mr. Clayton Yoshida: Good afternoon, members of the Hana Advisory Committee, and members of the public. My name is Clayton Yoshida. I am a Planning Program Administrator of the Current Planning Division with the Planning Department, and I'd like to call this meeting of the Hana Advisory Committee to order.

The Chair of the Committee is Kauai Kanakaole, and the Vice-Chair is Mavis Oliveira-Medeiros neither of whom are here right --

Ms. Dawn Lono: Mavis is walking up right now.

Mr. Yoshida: Oh, right now?

Ms. Lono: Yeah. There she is.

Mr. Yoshida: Okay, Mavis can Chair. We would note that for the record, there is a quorum of the Committee here: Members Sinenci, Kaina, Cosma, Oliveira-Medeiros, and Lono. With that, I'll turn the mike over to the Vice-Chair Mavis Oliveira-Medeiros.

Ms. Mavis Oliveira-Medeiros: Aloha, everybody. I never did this before, so you gotta help me out a lot. Should we just open the meeting?

Mr. Yoshida: I guess, sorry, also with me from the County we have the Deputy Corporation Counsel, Michael Hopper. We have your Secretary to Boards and Commissions, Suzie Esmeralda. We have the department's Administrative Planning Officer, Joe Alueta, and also Staff Planner, Paul Fasi. The first item is the approval of the minutes.

Ms. Oliveira-Medeiros: So should we call to order the meeting?

## **B. APPROVAL OF MINUTES OF THE SEPTEMBER 17, 2007 MEETING**

Ms. Oliveira-Medeiros: Do we have a motion to approve the minutes from the last meeting: September 17<sup>th</sup>?

Ms. Lono: Mahalo. I had a couple of questions about the minutes. First of all, at the beginning of the meeting and perhaps before we called it to order, we had a discussion about the meeting being a public hearing, a public meeting. And Corporation Counsel educated us on the difference between the two, and the appropriate notice -- the difference between notice and -- for the two meetings, and I don't see that in here. And I just would like to clarify my understanding about the last meeting that it was not a public hearing. That it was a public meeting of the Hana Advisory Committee. Is that correct?

Mr. Michael Hopper: Well, the Hana Advisory Committee never has a public hearing in the sense that the Planning Commissions have it because a public hearing -- unless it was to adopt the rules. The Sunshine Law requires a public hearing if you're going to adopt rules of the Hana Advisory Committee. A public hearing is also required if there's change in zoning requirements. For the change in zoning, however, it's the Planning Commission that has the public hearing, not the Hana Advisory Committee. Now, while the Planning Department, if it chooses, can publish a notice of the meeting in the paper for Hana Advisory Committee meetings, which is a purely advisory board, it does have to abide by the Sunshine Law, but does not have any additional requirements under the law to post a notice in the paper, for example, 30 days in advance, which is the requirement for a public hearing under the Code. It just has to post an agenda six days in advance. "Post" is a bit erroneous of a term. It's actually to file with the County Clerk, and then to provide that to those who have -- who want to have copies of that agenda. I'm not sure why that wouldn't be in the minutes, though. I thought I did speak about that on the record at the last meeting.

Ms. Lono: I didn't see it. I could've missed it, I guess, but I didn't see it in here clarified. So I wanted to bring that up because during the meeting, one of the people who testified questioned it toward the end of the meeting was Bob Getzen who came in a little bit later.

Mr. Hopper: And then Joe Alueta just corrected me that if the Planning Commission delegates a public hearing to you, it will hold a public hearing in accordance with the Maui County Code where it would post it, post the agenda. That was not done in the last meeting, though, correct? That was not a delegated public hearing? That was just coming to you prior to going to the Planning Commission in order to get your comments. So it wasn't like a public hearing in the sense that the Planning Commissions are required to follow. And that's by Charter, by the way. The Planning Commissions have to follow it as clarified by the Code.

Ms. Lono: Okay. So I'm just trying to understand this being a member of this Committee, and trying to understand the responsibilities to the community that the Committee has, that the Planning Department has, and that the Planning Commission -- the codes the Planning Commission has to abide by. So that I understand it and hopefully, the members will understand it if they don't. The last meeting was then called by the Planning Department basically, of the Hana Advisory Committee. It was not assigned to us by the Planning Commission, which therefore made the difference in the requirement for the public notice, and so on and so forth.

Mr. Yoshida: Yes, the department wanted input from the Hana Advisory Committee as after 15 years of having a member from East Maui on the Commission, currently there is no member from East Maui on the Maui Planning Commission. So we thought if we went to the Hana Advisory Committee for their comments, we could bring that forward to the Maui Planning Commission. It will be part of the record, which will be transmitted to the Council eventually.

Ms. Lono: Okay, so that helps me clarify how that meeting came about, and why it was called the way it was, and why there wasn't really significant posting and notice of the meeting to the community, because following that meeting, there was a lot of discussion in the community, and a lot of calls made to me, personally, and I don't know if any other members were called, about it not being a properly noticed public hearing so that they could come in and have their input.

So I did go to the Maui Planning Commission meeting on October 9<sup>th</sup>, I believe it was, and requested that the Planning Commission refer those ordinances back to us for a public hearing in Hana, because that's what I hear the community requesting. So I just wanted to clarify because I believe Jeff Hunt in that meeting said that this -- the meeting that we had was a properly noticed public meeting, and still would like to make that request, if it's at all appropriate or possible that we ask the Maui Planning Commission to allow us to hold a properly noticed public hearing in Hana to address those ordinances that we addressed in the last meeting.

Mr. Yoshida: We believe it was a properly noticed public meeting. The request, you know, was stated at the October 9<sup>th</sup> meeting. The Maui Planning Commission will take up this item -- scheduled to take up this item -- that item again on October 23<sup>rd</sup>, and they can decide what they want to do.

Ms. Lono: So would it be appropriate for us as the Hana Advisory Committee to make a recommendation or a request of the Planning Commission to ask them to bring it back to Hana for a public hearing?

Mr. Hopper: At this point, this isn't on your agenda, which brings up another public notice issue, of course, but we're talking about the approval of the minutes of the meeting whether or not the meeting minutes were accurate. I mean, I'm not -- there doesn't seem to be anything on your agenda regarding vacation rentals today again. Certainly, if you're discussing vacation rentals, I'm sure the public would like to have that agenda item, but I would just bring that word of caution that taking any action on something to give a recommendation to the Planning Commission, you know, when they clearly -- if you said you've testified before them, they may know that that issue is already up there, but at least as far as today's meeting, I don't see that anywhere on your agenda for that type of action. So I would just warn ahead of time against that 'cause it's not on the agenda.

Ms. Lono: Okay, so just to be clear, so I couldn't make a motion to make that request because it's not on the agenda. Is that correct?

Mr. Hopper: As we'll get to later on in the meeting, in your orientation workshop hopefully, yeah, you have to abide by the Sunshine Law. You know, you can amend agendas in order to add items that are of a minor importance. And you have to meet certain voting requirements. I think it's a two-thirds vote potentially, of the whole body you're entitled to, but I'm not sure if it's just the members or the -- you know, at least you would have to have four. But to amend your agenda and place that on there, I typically recommend against that because an item like that may be considered an item of major importance to a lot of people. So that's the advice that I can give you based on the Sunshine Law and how it applies to you.

Ms. Lono: Well, because it is a major item, that is why I would like to maybe recommend that we amend the agenda. And since we are now currently discussing the minutes, we can move on to discussing the minutes, and then talk about amending the agenda after that?

Mr. Hopper: As I said, you can only amend your agenda if the item you're adding is an item of minor importance. If it's an item of major importance, you can't amend your agenda. That's kind of the point of the Sunshine Law is that if it's an important item that many people would be interested in, it should be placed on your agenda, and it's not there right now.

Ms. Lono: I guess we could look at that in a way that the issue of vacation rentals is of major importance, but of minor importance and possibly a short discussion to settle the issue just to put on the agenda that we would like to ask to have this item referred back to the Hana Advisory Committee. That would be considered more of a minor addition to the agenda. Is that correct?

Mr. Hopper: You're the best judge of what is an item of major versus minor importance in your community. I will look up what you need to do to amend your agenda to put that on there, and then I can advise you of what action you would need to take. We just need to be careful that it does fall within the guidelines prescribed to you by the Sunshine Law.

Ms. Lono: Okay. Mahalo. The other thing that I noticed was missing, and it took place in the same time, I think, that we talked about the notice for the meeting was I had asked and pointed out that in our last Hana Advisory Committee meeting that addressed the issue of vacation rentals, we had recommended to the Planning Commission that they refer it back to Hana so that Hana could write its own vacation rental ordinance. And of course, that didn't happen. It went to Council. The ordinance died in Council. And I asked at the beginning of the meeting if I could bring that up again if in addressing these five ordinances that were brought before us, if I could bring up again the possibility that we could defer working on these ordinances in order to make a recommendation that it get referred back to Hana to write its own ordinance. And Joe said he didn't think, you know, that was a good idea. I don't know exactly what words he used, but that these five ordinances were what was brought to us, and that we should address them, and so that's how we moved the meeting forward, and I don't see any of that discussion in here, but I think it's important to note that we did have a discussion about that option of having this referred back to Hana to have an ordinance written for the Hana District, for the Hana Community Plan District.

Mr. Joseph Alueta: You had that -- that discussion that you're referring to did occur during the Bob Carroll bill. I do not recall that discussion as far as having a specific ordinance at the time you reviewed the five bills that came before you at your last meeting. So I don't have that same -- I know that it happened during the Bob Carroll bill, but it didn't specifically happen at the last meeting. What I did mention was that Hana is unique in the sense that you have very specific language with regards to transient vacation rentals and bed and breakfasts similar to -- okay.

Mr. Hopper: You would really want to limit your discussion here to corrections in the minutes.

Ms. Lono: That's exactly what I'm doing.

Mr. Hopper: If -- well, I mean, Joe is discussing a bit more of substance here. I just warn again, if there's actually an error in the minutes, if there's something that wasn't taken down that was part of the public hearing then, yeah, then certainly you can discuss that and ask why it's not on there, and I'm not sure why it wouldn't be, but to discuss the substance of the last meeting at this meeting could create problems when the only item agendaed is approval of the minutes of the last meeting.

Ms. Lono: The discussion that I'm having is directly related to the minutes, and two things that were not in the minutes: one, our discussion about the differences in the meetings, the hearings, and so on and so forth; and the other was this discussion. And I just -- I know specifically that I asked the question at the beginning of the meeting, and I know that it was addressed, but it is not in here. So I guess I'll just make that point. And we can move on so as not to hang up this meeting and then it's reflected in these minutes, that point was made.

On page 55 of the minutes, it says that Ms. Lono says "Boy that opens up a whole can of rooms," and I think that should be "a whole can of 'worms.'" Minor issue, but other than that, I pretty much see everything else reflected except for the two items I previously brought up. So I would like to make a motion that we accept the minutes as provided with notation of those two items that I recall and that are not reflected in the minutes.

Ms. Oliveira-Medeiros: Do we have a second?

Mr. David Kaina: I second the motion.

Ms. Oliveira-Medeiros: Do we need to take it to a vote? Yeah? Okay. Everybody approve, say aye. Everybody approved.

It was moved by Ms. Lono, seconded by Mr. Kaina, then unanimously

**VOTED: to accept the minutes as provided with a correction to Page 55, and with notation of the two items as recalled by Committee Member Dawn Lono that are not reflected in the minutes.**

Ms. Oliveira-Medeiros: The next item on the agenda is the public hearing concerning Roger Williams and Ruth Williams. Do you open it up?

Mr. Yoshida: Yes. Staff Planner Paul Fasi will be summarizing the Planning Department's report.

**C. PUBLIC HEARING (Action to be taken after each public hearing item.)**

- 1. ROGER K. WILLIAMS, Trustee and RUTH W. WILLIAMS, Trustee et al. requesting a Change in Zoning from the Interim District to the Rural -0.5 District in order to build a 5<sup>th</sup> dwelling at the front portion of the lot at 6756 Hana Highway located 3 miles outside of Hana Town at TMK: 1-4-010: 022, Island of Maui. (CIZ 2007/0007) (P. Fasi)**

Mr. Paul Fasi: Good afternoon. This matter arises from an application for a change in zoning filed on March 19, 2007. The application was filed pursuant to Chapter 19.510, Change in Zoning, by Roger K. Williams and Ruth W. Williams, the applicant. It was filed on approximately 2.9 acres of land in the State Rural District. It is identified as TMK No. 1-4-010:022, which is the property.

The applicant is requesting a change in zoning to provide conformity with the Hana Community Plan designation and State designation as rural. Change from County interim zoning to rural RU-0.5 zoning will complete this request of conformity. The applicant also proposes to build a fifth dwelling on the property.

All procedural matters on this application have been met. The property is approximately 2.9 acres located mauka of the Hana Highway. The address is 6756 Hana Highway approximately, three miles distance from Hana Town.

The land use designations are: State Land Use District Rural, Hana Community Plan Rural, County zoning interim. It is not in the SMA. The surrounding uses to the north is residential, east is residential and conservation, south residential as well as west.

The property has four single-family residences on almost three acres. The property has been in the family for over 28 years. The applicant intends to build a fifth family dwelling for an additional family member. That part of the application is not part of this application tonight – part of this discussion tonight.

The applicant is requesting a change in zoning from interim to RU-0.5 to bring the property into compliance with the rural designation of the Hana Community Plan. The applicant has also voluntarily dedicated -- voluntarily dedicated a narrow strip of frontage property to the State for road-widening purposes. That will probably not be utilized in the foreseeable future. I've talked to the State people. They have no interest in doing that.

I would like to make one thing clear on this project, on this proposal here, and it is that it has nothing to do with subdivision. There's no subdivision involved. It's purely a change in zoning from interim to RU-0.5 to be consistent with the community plan.

Testimony as of October 8<sup>th</sup>, the department has received one communication regarding this matter. As of today, this afternoon, one additional letter of testimony has been hand-delivered to me at this hearing. The department has no concerns regarding this application. That concludes the department's report.

Ms. Lono: I have a question. On the agenda of the meeting of September 17<sup>th</sup>, it addressed this upcoming hearing, and it references that as a change in zoning from interim district to Rural-1 instead of 0.5.

Mr. Fasi: There has been a change. It's RU-0.5.

Ms. Lono: Okay, so when the departments reviewed this, did they review it in the context of 0.5 or 1?

Mr. Fasi: We reviewed it in the context of 0.5.

Ms. Lono: So all these departments were aware that 0.5 was the request and not 1, R-1?

Mr. Fasi: Yes.

Ms. Lono: Okay, mahalo.

Ms. Oliveira-Medeiros: Can I ask a question? Do you know if this will affect the taxes of the property owners next door?

Mr. Fasi: It should have no affect on the properties.

Ms. Oliveira-Medeiros: Will their value go up?

Mr. Fasi: It will have no affect on the properties.

Ms. Oliveira-Medeiros: Okay.

Ms. Lono: Is this the appropriate time for us to discuss this? Or should we go through public hearing first, and then have a discussion based on what hear in public hearing?

Mr. Yoshida: I believe the board can ask questions of the staff planner if they have questions regarding the Planning Department's report. Then may allow the applicant or their representative to make any presentation, if they have a presentation. And the board can ask questions of the applicant or their representatives. And then they could open up the matter for a public hearing.

Ms. Lono: Is there a presentation?

Mr. Yoshida: I'm not sure if the applicants or their consultant has any comments, or they have a formal presentation to make to the body.

Mr. Lawrence Ing: Yes, we do, speaking on behalf of the applicant.

Ms. Oliveira-Medeiros: Could we hear that first?



Mr. Ing: I'm Lawrence Ing representing the applicant. Excuse me. I'm Lawrence Ing representing the applicant. With me are Ruth and Roger Williams, and I'll ask them to introduce their family members.

Mr. Roger Williams: Well, we have present family members and in-laws: Chris, our daughter Chris; our son Steve; our son Randy; our daughter Beth; and our daughter Wendy. The only one who doesn't live on our property is Chris who's a former fire -- member of the Fire Department and moved over to the other side so she could perform that duty better so -- or more conveniently, I should say.

Unidentified Speaker: ...(inaudible)...

Mr. Williams: Yes, that's right, two. Dusty is the one whose house we want to build.

Mr. Ing: Thank you, Roger. Thank you for the opportunity to be before you today. I want to thank Planner Paul Fasi for getting us to this point, and it took a lot to bring us here, and we thank him for his patience. And my secretary keeps telling me, "Frank" -- calling him "Frank." I wonder why.

But anyway as I drove out to Hana today, this was the first time maybe in ten years. I think the last time when was my doctor son was doing a rotation out here, my son Matthew. And I was amazed by the fruit stands, the lunch places that went -- that's along the way. And I was thinking, wow, capitalism is alive and well in Hana, and the spirit of the Hana people is just wonderful.

Some of the details I'd like to add is that when the Williams purchased the property in about 1978, there already were two dwellings, and they were built in 1972. A third dwelling was built in 1986. A fourth dwelling was built in 1988. There was a lag. And then when they went in to apply for the building permit for the fifth dwelling, they were stopped. Comes out in the mid-1990s, a Deputy Corporation Counsel made an opinion that when you had interim, the zoning interim, it meant you had no zoning. We used to construe it that it was alright for residential uses. So now, they have no zoning. They cannot build a fifth dwelling that they want for the youngest son. So they've made the application for this thing that we have today.

And I'd like to say that there always are concerns about maybe increase in real property tax, and that's a valid concern. However, across the whole County, I think the tax valuations went up. And if you talk to the Real Property Tax Office people, they tell you that they look at comparable sales. So in this case, the Williams are not proposing to sell. They're gonna keep it in the family. And just the change in zoning does not change anybody else's value. This is an isolated situation. They may see their real property tax go up, but it should not affect anyone else.

And looking around at the area today, I noticed two of the parcels in front of their parcel is less than two-acre in size, so they could not be agricultural zoned. And three parcels further down are less than one acre in size, so they could not be agricultural zoned either. So they're in a similar position where rural zoning would probably fit them the best too.

So we're here before you. We're happy to answer any questions. We respectfully request your approval. Thank you.

Ms. Oliveira-Medeiros: Thank you. I would like to turn over the meeting to our Chairperson who is here now: Kauai Kanakaole.

Ms. Kauai Kanakaole: Are there any questions from the Advisory Committee for -- about the presentation that was just given?

Ms. Lono: I have a question. Interim zoning is, as I understand it, and I could be wrong so I need clarification, actually has a set of criteria that goes with it that allows you to build certain amount of structures within a certain amount of space. There is an ordinance that addresses that. Is that not correct?

Mr. Fasi: That is correct.

Ms. Lono: And so I guess what happened is that the build-out that they currently have on the property has maximized that -- the possibilities under the interim zoning?

Mr. Fasi: Well, the County prefers to look at it as having consistency with the community plan. There's many RU rural designated lots in Hana, and we need to bring it into conformity. So this is a good thing to bring it and make it consistent with the County Code. Interim zoning is going away. That was long before my time. It was probably -- it's kind of a patch, and it's not a permanent thing, and it has outgrown its usefulness.

Ms. Lono: As I understand it when the process for going through and changing some of these designations, and bringing the rural designated land into compliance, Hana was one of the only districts that did not have that happen. We preferred, as a community, to leave it in interim because of the potential build-out and capacity that rural zoning would allow having all of these lots just blanket zoned rural. And I may or may not be remembering that correctly, and I'm sure it's a matter of record somewhere along the line, but most of the island did go ahead and zone rural, but Hana District did not, and we left it in interim.

And one of the questions that came up for me as I was reading through the documentation and looking at it from the prior notice was R-1 and this notice is R-0.5. And that's two very different zonings which allow very different types of entitlements. So I think we need to understand the different types of rural zoning because, yes, it is rural in the community

plan, but it's not Rural 1, Rural 0.5, rural this, and so those are the kinds of choices that are made to bring it into compliance.

Mr. Fasi: Well, I'm gonna turn this interim question over to Joe. Joe knows a lot better than I do, but in order to address your rural concern, between - there's only two rural designations: RU-1 and RU-0.5. They are exactly the same with the exception that one is the half-acre and one is one acre. Other than that, all the other specifications and requirements are exactly the same.

Ms. Lono: Okay. And I don't have the County Code memorized or anything, but as I would understand it, if it were Rural-0.5, then you can have half-acre lots, which would allow for two structures on each half-acre lot. If you have an R-1 designation, you could have -- you would have -- you would be able, in this instance, to have two lots or possibly a third substandard lot if you did a variance. So that is a pretty big difference because the density that would be allowed to be built on that property would be different with R-1 and R-0.5. Is that correct?

Mr. Alueta: Yes. I'll just give you a real brief history. The comprehensive -- there was a comprehensive zoning of -- to the rural district for the entire island of -- or County of Maui. Hana, at the time was excluded at the -- I like to say at the request of Bill Furhmann because that's who testified to have Hana excluded. The rationale at the time was that they wanted to have a cultural overlay district to do a more cultural study until such time as to -- before a comprehensive zoning change was done. So as a result of that, none of the lands that were designated State Rural, Community Plan Rural, and County Interim were automatically rezoned during that process. So as you know, you have seen several of these come in before you to get -- seek the designation of the RU-0.5. If you remember, I processed one for Purdy for the Dollar -- near the Dollar Rent-a-Car when he was doing his one, as well as for Mark and Haunani Collins several years ago. They also did one along with the State special use permit to do a subdivision. But that is -- that's the history of why Hana was excluded. So now all the individual owners in Hana, sadly to say, have to spend the money and go through the process of doing the change in zoning.

As far as the 0.5 and the RU-1, on the -- it all depends on what -- I'm not familiar with the project, I'll leave it to the staff planner, but in areas some community plans designated RU-0.5 or RU-1 specifically, especially, if they wanted that RU-1. And you have that in areas such as Kula and Haiku where there were some areas that were specifically -- there are other areas. I'm not familiar with this property so I'm not sure if during the community plan process, it was given a special RU -- rural designation in the community plan process.

Ms. Lono: From what I could see in the community plan, it just says "rural." It didn't say 1 or 0.5.

Mr. Yoshida: There are some community plans where it specifically designates it as RU-1.0, such as in the Makawao-Pukalani-Kula Community Plan along Crater Road. Those lands that are in the rural district, they had designated those RU-1.0. And there were certain landowners who, you know, felt that -- would then petition -- and so it was zoned RU-1.0 blanket.

Ms. Lono: But in Hana, in this instance, it's not designated in the community plan as 1 or 0.5, it just says "rural." Is that correct or incorrect? Or is there a community plan designation that is 1 or 0.5 in our Hana Community Plan?

Mr. Fasi: It's designated as rural.

Ms. Lono: Right. Okay, that's just -- that's all I wanted to clarify.

Mr. Fasi: Okay. The RU-1.0 wouldn't work in this scenario. That was an error.

Ms. Lono: It wouldn't work because?

Mr. Fasi: No, it wouldn't work because there are three acres, and so if it's RU-1, it would be three acres, but there are four dwellings on the property. So it would not work. The next closest fit -- the first closest fit would be RU-0.5.

Ms. Lono: Okay, the only other option then would be if they did R-1 and had to do a variance for a substandard third lot?

Mr. Fasi: Well, no, that wouldn't be a very good option. RU-0.5 is the most logical fit.

Ms. Lono: Okay, I would like to, I guess, understand then what the total build-out potential is if it is designated as 0.5. My understanding would be that on a 2.9 whatever -- .99 three-acre lot that they could have five lots, and each lot could have two dwellings. Is that correct?

Mr. Fasi: Well, first of all, let me say that there is no intention by the applicant to do any more build-out. This is a purely change in zoning application. It has nothing with any proposed development. It's just purely change in zoning. They haven't even come in for a subdivision yet, which they would need to do.

Ms. Lono: Okay, but when we're looking at zoning, we have to look at those potential impacts down the road and what potentially we are allowing down the road when we do a rezoning. That's why we have these kinds of meetings is to understand that.

Mr. Fasi: Correct. And let me answer your question. In RU-0.5, they would be allowed to have one house and one accessory dwelling, one ohana.

Ms. Lono: On each lot?

Mr. Fasi: On each lot.

Ms. Lono: Okay, that's what I wanted to find out. Thank you so much.

Mr. Ing: If I may add that Mr. and Mrs. Williams and the family have no intention of subdividing just like how they have no intention of selling.

Ms. Lono: And I feel as a responsible member of the community and Hana Advisory Committee whether I'm asking these questions because it's something I wanna know or because it's just on behalf of the community and that we need to understand this, whether or not Mr. and Mrs. Williams have an intention, what it does is allow it for whatever happens in years and years to come. So we must consider those criteria. Mahalo.

Ms. Kanakaole: Are there any more questions? Thank you, Dawn. We can probably go to public testimony, if there is any right now. So I'd like to open it up for public testimony right now. And if you would like to testify, you may come up in the front, and state your name, and give your testimony.

**a. Public Hearing**

Mr. John Blumer-Buell: Aloha, council members -- I mean, Committee members, and aloha to everyone that's here.

Based upon my reading and analysis of the Planning Department report on this subject matter, I respectfully request the Hana Advisory to the Maui Planning Commission to adopt Alternative No. 1 as stated on Page 11. The alternative is deferral. "Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request."

I request the Planning Department, the Maui Advisory Committee to take the time necessary to carefully consider this proposal and request the following information and questions be considered. No. 1, Mr. Fasi answered most of that; however, in the report submitted by the Planning Department, there was a document stating "Change in zoning from interim to RU-1." And so that RU-1 is not just on the previous announcement, there is a document in your report that refers to it as RU-1. And I'll pull that out if you'd like.

No. 2, Exhibit No. 7 from Kai -- from the Kaikala, Kalani, and O'Hara ohana protest the change in zoning. In addition to their protest, they stated that "This proposal is concerning since it would lead to future development --" "It will lead to future development --" "It will lead to future development --" I'm sorry, that's mistyping. "And continue to raise the property tax to the native families in our Makaalae area." Their protest and concerns need to be fully addressed.

Now, I don't necessarily disagree with the Williams' planners, but I've served on this panel twice and, you know, there's been some very controversial issues. And I really look at this as we're a community here, and this is a ho'oponopono. So we really need to -- you know, if the Kalani -- if their ohana is asking for time to understand this and get the facts, I respect that.

Three, one of several additions concern raised by the Kaikala, Kalani, and O'Hara Ohana is the subdivision into two parcels to accommodate road-widening. I submit for your consideration, a map dated May 26, 1970, which shows an inset showing a road-widening in front of Lot 2B and 2A. Was this survey part of the previous subdivisions of Grant 2546, Apana 1 to Kamaka, 6.656 acres? Is this already a recorded easement? And I'm gonna give these maps to Kauai and you can pass them around. I'm happy to loan these to the Hana Advisory Committee if someone will take the responsibility for them.

Regardless of whether this is recorded or not, the Hana community has spoken loud and clear regarding expanding our rural roads and bridges. The Hana community is against changing our rural roads and bridges to urban standards and the taking of private property for the purpose of road-widening. This is a matter of public record. The practice of obtaining road-widening easements needs to be discontinued in the Hana District. Please imagine a 44-foot wide road going from Makaalae to Kipahulu. This would require removing miles of historic rock walls and other historic and cultural sites. I request the Planning Department to provide complete information on this subject. And don't believe that they wouldn't move all those rock walls. They would.

Four, the subject property has already been part of two subdivisions grading three lots. I offer two more maps dated 1947 and 1967 to prove the point. Has the subject parcel already been subdivided to the legal limits of lots?

Ms. Lono: Can you use the microphone, John, to explain that to everyone and put it on the record?

Mr. Blumer-Buell: I gave this map that I just gave to Kauai is a map dated March 13<sup>th</sup> 1967. It's a Land Court Map. And this shows -- and I also have given her the Land Court Map showing the Grant 2546 Apana 1 to Kamaka, 6.656 acres. So the point is, these three lots

were all one lot at one time. It's been cut into thirds already. And this proves it. My question is just simply whether it's already been maxed out.

No. 5, the consideration of - this is one of the important ones for me - the consideration of this proposal needs to be considered and understood in the important historic context of land use in the entire Hana District. Your decision on this matter will set an historic precedent for the future treatment of all interim zoned parcels and rural designated lands between Hana Town through Koali.

Ms. Kanakaole: John, your time is up. Can you wrap it up?

Mr. Blumer-Buell: I will. You have my testimony. I have other exhibits, but --

Ms. Lono: I would like to request that John be allowed to complete the reading of his testimony on the record.

Ms. Kanakaole: He can continue after testimony is done.

Mr. Blumer-Buell: That's fine. I didn't mean to go first or hog any time. So mahalo. I'll come back.

Ms. Kanakaole: Is there any other testimony?

Mr. Chris Harrington: I am Chris Harrington and I'm probably the most impacted neighbor of the Williams Family since they wrap around our property. And first of all, I just wanna address that I don't think that anything about this is asking for a subdivision. I think it's simply a change from zoning from interim, which is already designated rural to just be made rural. In fact, when I went into the Planning Commission to ask about that because I didn't understand what it meant - I mean, the Planning Department, sorry - they told me it was really an administrative thing and you just have to file for it and go through all the process. I had no idea which I'm learning now how intensive it is. And certainly that's a lesson for me. But the thing that I really wanna say is this is a family that's been in Hana for a long time. All they wanna do is have a lot for each one of their kids. I don't see any issue with it. I mean I think that's what they originally planned on and what I heard from Ruth that they were told when they bought the property to begin with. So I'm -- I just wanna say as the closest neighbor that I completely support them doing this. And if anybody would be impacted by anything that could happen, it would be me, I would say, most. So I think there's also been issue, and I'm not gonna speak for the letter, the other testimony, but they have some other things going on with some land behind them which they have not purchased, but they're leasing and using for something else that is totally unrelated to this. And I think it got convoluted with this. And so I think to make that really clear, I know that they're planning anything kooky or crazy, and I just wanna see them have what they wanna

have as a family, which I think is a wonderful thing, and isn't that what Hana's about? Having family together. So that's my testimony. Thanks for your time.

Ms. Kanakaole: Anyone else?

Mr. Larry Stark: Hello. I'm Larry Stark. I'm married to Beth Williams. Anyway, I –

Ms. Kanakaole: State your name.

Mr. Stark: Larry Stark. Chris brought up an issue about a rumor which I had heard which I would think would bring great concern to the community, you know. So I don't understand them, you know, having those concerns. The rumor was, and I just want to clarify it, so that it's not intermixed with this request for the zoning change to build one house, the rumor I heard was that we had bought this 20 acres behind us and we're gonna subdivide that and put a 14-foot easement between the Williams' property and the Easons, you know, so you know how stories go. They just come from somewhere and keep growing and growing way out of proportion. So I just want to make it really clear that I had the opportunity from the owners behind us to lease that 20 acres to put a horse and a couple of cows on. So that's what's going on out there. And I just wanted to make sure that people understood that. That it wasn't, you know, this rumor. So I just wanted -- I don't know if that pertains to the meeting, but there it is.

Ms. Kanakaole: Thank you. Any more testimony?

Ms. Geraldine Kaiwi: Hi. My name is Geraldine Kaiwi. I only have one question. If this goes through, can you tell me truthfully that the next people down the road are not to do the same thing? Or can they do that? 'Cause in Hana we have a saying, "If one can do'em, the others can do'em too." I mean, it's many miles, and I live down the road. So that's my question.

Ms. Lono: I have a question for Gelly regarding your question just to clarify. You're asking that if this is granted, if this zoning change is granted, then potentially all of the other interim zoned County designated rural properties would basically automatically be up for consideration and this would set a precedent for an R-5, R-0.5 zoning for all of those other lots? That's your concern?

Ms. Kaiwi: Yeah.

Ms. Lono: Okay. I just wanted to clarify. That's a question. Can somebody answer that?

Mr. Fasi: I'll answer that. This is a change in zoning. One change in zoning does not set a precedent for the entire County. It has to be consistent with the community plan. Not all



interim zoning is gonna be RU-0.5. And secondly, it will not be automatic zoning to RU-0.5. It could be something else. It could be apartment. It could be RU-1.0. It depends on where that particular interim piece of property resides and what is the most logical match based on the community plan and consistency in the community plan. The sky is not falling because this is a change in zoning from interim to RU-0.5. Mr. Kaikala, Sr., on this first Exhibit 7 letter where he hand-delivered it to me here, and I spoke to him, and he was misinformed. And this is actually an ohana. And I believe the members are from Oahu. And I would hate to see a hui from Oahu influence what happens here in Hana.

Mr. David Kaina: Just to correct that, there are remnants of the family that are present here in Hana.

Mr. Fasi: Okay. I stand corrected, but I believe Mr. Kaikala, he is from Oahu. And he thought the item No. 2 here that the proposed development to subdivide into two parcels, there is no subdivision involved in this proposal. Okay? We are not talking subdivision so that word should not even come up. This is a simple change in zoning. Our zoning department looked at it very carefully. This application came in March. We're into October. We've had plenty time to consider this. And it would be a shame to defer this on a technicality saying it's RU-1.0 or RU-0.5. This is the correct zoning for this piece of property. It has been studied by our Zoning Department very carefully. And if you were to defer it, we'd come back with the same recommendation: RU-0.5.

Ms. Oliveira-Medeiros: Wouldn't it have to be subdivided anyway before they can build it?

Mr. Fasi: They don't. They would have to come in for the subdivision, and come in for their building permits, and so on and so forth in order to do that last piece.

Ms. Oliveira-Medeiros: So there would still be one more hearing like this regarding subdivision?

Ms. Lono: I think that's an administrative process.

Mr. Fasi: No, it's not in the SMA.

Ms. Lono: So basically just to clarify what Mavis just asked, in order for them to build the fifth dwelling, they will have to do a subdivision?

Mr. Fasi: I'm gonna defer this to Joe Alueta.

Ms. Lono: I think we need to have that factual information.

Ms. Oliveira-Medeiros: Put it into half-acre lots before they can build a house and a cottage for every half-acre lot, or something like that?

Mr. Fasi: Well, if they did not subdivide, I believe they could still build that fifth dwelling, but if they build that fifth dwelling in an area that's right next to an existing dwelling, they have to have at least have a half acre, and there would be setbacks involved, so on and so forth. So it wouldn't make sense for them to do that.

Ms. Lono: Could you say that again?

Mr. Fasi: If they wanted to build that fifth dwelling, they could build that fifth dwelling without the subdivision, but their intent is to leave the -- I believe your intent is to leave the property to your children with subdivision?

Mr. Williams: No, no.

Mr. Fasi: Okay, no subdivision.

Mr. Williams: It's already been condominiumized. We've inquired about subdividing but it was so expensive that we -- it was cheaper to condominiumize. So we already split it up into lots for each kid. And this subdividing is -- here it's a moot point because subdividing is putting -- telling the County that in the future, if they are widening -- ever widened the road, we'll grant them the two feet they want or three feet without them having to take eminent domain over it. That's all. Thank you.

Ms. Kanakaole: Can we wait a second?

Mr. Fasi: Since the property is condominiumized, they could build that fifth dwelling without subdividing.

Ms. Oliveira-Medeiros: Thank you.

Ms. Chris -- : Hi, I'm Chris. I'm the oldest daughter. I brought them to Hana, and they bought the property. And when we went in at the time, they said we could build five houses and an accessory dwelling. So really all we're doing is asking that we do what they told us 30 years ago. You know, we're not asking to build a house and a cottage for each kid. We just want our last brother to get his house because it's not fair if he doesn't. You know, we've all got our little spaces but him. So that's basically the whole idea behind this.

Ms. Lono: Chris, I -- I really understand what you're saying. And having been through these processes in Hana for many, many years, what's intended -- and then sometimes we have things called unintended consequences to doing things, so we do have to look at it in the

very holistic view, and what I feel like I need to look at it on behalf of the community in a very holistic view, and what this potentially does allow on the property. And it's nice to know that it has been condominiumized and I -- there is a point of clarification I'd like to make about that. If it is condominiumized, can it subsequently be subdivided or has that been done? Or can they go out condominiumization and go into subdivision so that each child has their own lot? And I know that -- I'm sorry that it's coming down to like this personal specifics, but things happen in the future that are unforeseen and that we cannot see. And what we have to deal with is what this zoning allows when it's done no matter who's on the property. You may not intend for it to happen now, but 20 or 30 years from now, we don't know what the intention will be. So we're just trying to be really clear and broad and understand the full impact of what this says. Or that's what I'm trying to do, anyway. So mahalo for your patience.

Ms. Chris --: Okay. A few other comments. We could never subdivide because we don't have enough room along the side of the property. We would never get subdivision approval.

Ms. Lono: So you don't have enough standard lot width or length to --

Ms. Chris ---: Yeah, for my parent's house to the side, there's not enough room for a road that goes up to the kids' houses.

Ms. Lono: So there's not enough standard lot width, basically, to do the subdivision?

Ms. Chris --: That's really the reason we had to condominiumize. We just -- we did that so that the kids could borrow money and build their houses, basically.

Ms. Lono: That's great to clarify that. Thank you so much.

Ms. Chris --: So we're not going through subdivision and ...(inaudible)...

Mr. Fasi: The Planning Department would just like to clarify the road-widening issue. There is no road-widening issue. That's a State highway. That's not a County highway. The County has no interest in that. It cannot have any interest in it. It's a State highway. I did talk to representatives from the State. They have no interest in widening the road.

Ms. Lono: I just would like to clarify that cause it's my understanding that from -- what is the road that goes that way from Hana Bay? Yeah. From the road by the hotel, this way is County road. From the hotel that way, it's State road.

Mr. Fasi: There are sections that are County. There are sections that are State. Now, when I talked to the State, and I gave him the TMK, he told me that is -- when I talked to the

County guy and gave him the TMK, he told me -- well, there is a letter in here saying that from the Department of Public Works, it is a State portion of the highway right there.

Mr. Kaina: I'm aware of there being a corridor around what we call our kahawais or our rivers here. Would that be the reason why it's considered a State highway? Or are we not aware --

Mr. Fasi: No, I'm unfamiliar with -- I can't answer your question. I don't know the answer. But let me put it another way: if the State wants to widen the highway, they're gonna do it regardless. They'll condemn the property and they'll just do eminent domain and they'll pay you for it. They'll just do it.

Ms. Lono: I hate to say I disagree with you, but we -- you know, we've been really strong as a community in addressing this issue especially when they wanted to replace the bridges with the 40-foot wide bridges and we worked really hard to make sure that that didn't happen. So I kinda tend to disagree with you that if the State just wants to widen the road, they will. And I don't think that's a huge issue right now. I was confused about the State/County issue and whose road that really is cause that is of some importance. And it seems to be very unclear because I know the County takes care of all of that road out there and the State takes care of all that road out there. And I'm a little bit confused about how that becomes a State road. And I saw the letter that was in here. And I'm still confused. I think it might be inaccurate. And it would be great to be able to clarify that at some point, anyway. Even not with reference to this particular issue, but just for our community's understanding, is it a State or a County road? So that's pretty important. And if somebody could maybe find a way to address that and get that information to us regardless in the future, it would be really important to clarify that. Mahalo.

Ms. Kanakaole: Do we have any more testimony?

Mr. Yoshida: I guess, Madame Chair, I was wondering if I could circulate the maps that Mr. Blumer-Buell had provided to the applicant, and to the staff planner, and to the recording secretary since we only have one set of maps?

Ms. Kanakaole: Yes.

Mr. Yoshida: I believe on the road jurisdiction, in dealing with the Hana bridge issue, I believe that the road on the Kipahulu side of town is County. That's why the applicant, for the various bridges, Papahawahawa, for Po`opo`o Bridge was the -- Waiahonu Bridge, was the County, but the road on the Keanae side of town is State.

Ms. Lono: Correct. This particular property is on that side of town. So that's why I was confused because it's my understanding that that is County road and this side is State road.

And you just reaffirmed that that's the case. So it is a point of -- it lacks clarity whose road it is.

Mr. Fasi: Well, based on this May 31 letter as Exhibit 3 from the Department of Public Works, I would defer to this letter again. And they claim that this particular section of road is owned by the State. Now, the County may clean it out. I don't know what kind of trade-offs they have, but the Department of Public Works said that is their business, and I would have to defer to them again, but I will double check for you.

Mr. Ing: To make sure that it doesn't make a difference whether it's County or State, we have signed an agreement saying that should any government agency ask for it, we will dedicate it. And in so far as the future subdivision, listening to what Chris was saying, and looking at the maps that were just presented to us, I can see the narrowness of the lot prevents it from being subdivided because to serve, I think, was more than maybe three lots, you have to have like a 40-foot wide road, and pavement of 20 feet and all that. So that would leave the rest of the lot too narrow to be subdivided. So no subdivision is possible. Thank you.

Mr. Kaina: So just for some clarification, because every time I see the word "subdivide" in this application, it only seems to pertain to the road?

Mr. Ing: That is correct. The three-foot wide road-widening strip.

Mr. Kaina: And this road-widening strip is only the front frontage of the property? It has no proposed easement that'll effect any other lots or anything?

Mr. Ing: That is correct.

Mr. Kaina: Okay.

Ms. Kanakaole: Any other testimony? If there's not, then I will call back John Blumer-Buell.

Mr. Blumer-Buell: Thank you, Kauai. Thanks for asking the questions. I'm still -- did not hear the answer to whether condominiumizing means they can't subdivide in the future, if they give up their condominiumization.

No. 6, because of the need for complete information on a number of issues, I request an environmental assessment be completed before any decision. This application is a change of zoning request. Why is this being regulated by Title 19, Chapter 19.510, Section 19.510.040, which is on Page 2? Please explain. The proposed zoning change in Hana from agricultural use to PK-4 Golf Course triggered an EA, EIS process. Why wouldn't this zoning change trigger a similar requirement? Regardless, I request the following information: a) What is the build-out scenario from Hana Town to Koali if an R-0.5 zoning

standard is applied to all similar parcels? The County of Maui, Long Range Planning Department should be able to supply this information from its global information system, which they have. b) What is the build-out scenario from Hana Town to Koali if they are one acre? Zoning standards apply to all similar parcels. I'm adding a third one: What's the build-out scenario if every parcel is condominiumized?

Page 3, I'm not trying to be an obstructionist with these requests for information. The Hana community was extremely concerned about these issues and the potential impacts when the subject of rural zoning and cultural overlays was heard by the Hana community at Helene Hall a number of years ago. At least 200 residents, at least, a lot more attended that hearing. Based upon the concerns expressed, rural zoning was not pursued by the County Council. The properties remain zoned in interim. Interim is a zoning. That opinion by former Maui County attorney, John Rapacz, is a matter of public record and should be considered in this matter. He made that decision not only regarding rural, but regarding the status of ag lands. That was a famous decision at the time.

Seven, the application states on page two, "The applicant is requesting a change in zoning to provide conformity with the Hana Community Plan designation and State designation as rural. Change from County interim zoning to rural RU-0.5 zoning will complete this request for conformity." This is an incomplete and misleading statement. The request will simply lead to the ability to pursue the next step of development. That is, the ability to request subdivision into potentially, five or six lots with as many as ten to 12 structures. And in Wakiu, we have approved many substandard lots in the rural areas. So don't think it can't happen. The County Planning Department needs to fully disclose the potential impacts and process for subdivision of the subject parcel. Why do the applicants need to get the zoning to build the fifth dwelling? Have they reached the limits of development for interim? It appears they don't -- I don't know why we're here. They say they don't need anything with the condominiumization so why are we doing this?

Eight, existing number of structures. I count seven existing structures on the map labeled "Williams Subdivision" which is in your packet. I request an accurate accounting of the existing structures, the square footage and use. There's seven structures on that map and your map show it.

Nine, zoning use issue. At least one of the structures, perhaps two are being operated as vacation rentals. Without the proper permits, this is not a permissible use on this property. On July 3<sup>rd</sup> 2007, the County of Maui, Planning Department announced an enforcement policy for unpermitted vacation rentals. The department is enforcing the laws regarding unpermitted vacation rentals. Based upon enforcement, the Williams may already have a house available for their family in existing structures. The website for the cottage advertises to the whole world, "Also within walking distance or miles of untouched ranch land perfect for rugged coastline exploring as well as simple admiration." This is an invitation for tourists

to use the open space trust lands in Makaalae. This is an important impact upon the culture and environment resources of Hana, and works against the Maui General Plan, Page 7 of your report, which states, "Protect Maui County's shoreline and limit visitor industry growth." It also works against language and intent of the Hana Community Plan.

Ms. Kanakaole: John, your three minutes are up. Can you wrap it up?

Mr. Blumer-Buell. Okay. Yeah. I have had less than a day to read the Planning Department report and make these comments. I will offer additional comments to the Committee if you defer the matter to a future date. Final thing, I'm gonna give you an article from 1987. There's two articles. One is a picture of Larry Kaikala and Councilman Tom Morrow in Makaalae. And it is not right for the Kaikalas to be marginalized. They, and Richard Keahuhu, and the Hana Community Association, and others are responsible for that being an open space right now. So -- and I believe the Kaikalas still have an interest in there. So I want you to look at that article. The second article on there is rural zoning issues in Wakiu. We went through -- I was on the first Hana Advisory Committee. We went through rural zoning issues ain Wakiu. They're very different than the zoning issues on the Kipahulu side of Hana Town. So I'm gonna submit this for your consideration. And mahalo.

And just finally, I wanna say that I love and respect the Williams Family. And I suspected at some point this kind of issue would come up with the interim zoning. It is simply a coincidence that it is this ohana that brought it up. If it had been brought up any other lot, this would've been the same issue. And this is a precedent for Hana Town to Koali. And that's what the issue is, not the Williams. Aloha.

Ms. Kanakaole: Thank you, John.

Ms. Lono: I have a question. Based on what it says in John's letter, it says that there is a vacation rental on this property. Can someone address that? Is that, in fact --

Mr. Ing: My understanding -- excuse me, my understanding is that there have been advertisements for vacation rentals on a couple of the dwellings on the property. And when I asked the family -- I said, why was this so, and I think it was the same as you hear elsewhere where they were looking for a supplemental income to help pay their expenses. I asked them about applying, making the application. There was some confusion as to where the application would be filed, if the application would be accepted. I know I did one about three years ago where I wasn't certain myself where to file it. Was it with the State Land Use Commission or was it with the County? So I ended up filing it at both places. So there is that that is being worked at the present time.

Ms. Lono: So based on what you just said, you are preparing an application to the State Land Use Commission and to Maui County for a transient vacation rental?

Mr. Ing: No, that was an example I gave that -- what I did three years ago for a different property. That looking at the zoning where it was confusing what zoning area were we in? And would it fall upon the State Land Use Commission jurisdiction or would it fall on the County jurisdiction? And I'm not sure even it was the County jurisdiction whether the applications are being accepted.

Ms. Lono: Okay, well, that opens up a whole other can of worms, not can of rooms, but, you know, vacation rentals, it's very clear what the ordinances are, what the laws are about vacation rentals. And this, you know, is an issue with reference to rezoning. So it looks like Otto has something to say about that.

Mr. Robert Horn: My name is Robert Horn or Otto. We're the owners of the vacation rental. We started building this probably about six months ago before we knew of anything that was happening with all the vacation rentals. The reason we were doing it is to be able to help with our mortgage, and many other reasons besides sending our kids to school. I think that this shouldn't have anything -- this is my personal problem, not the Williams' problem. All they want to do is be able to have a place for their son. That was the first thing that they told us when they bought the property is that they were gonna give all the kids a half an acre. And their dream is to have their family living with them. Yeah, we have a vacation rental on the property. And we have -- I don't really think that it's pertinent to this situation, but we've tried to get permits for it. We found it probably smarter for us not to do anything at this time until we see where everything ends up. Unfortunately, some bad timing for us. Like I said, we started it before all of this proverbial cow poop hit the fan. And so I just have, actually, a couple of other things to say. But before I go into the other things, does anybody have any questions for me?

Ms. Andrea "Lehua" Cosma: Mahalo for coming and for sharing your mana'o. My question is, I'm kinda confusing because I guess in John's letter, it stated seven existing structures on the map. So I don't know. Can you clarify that?

Mr. Horn: I can speak for myself. We have two places: our house that we live in and what we have the vacation rental. There's -- well, I guess I could probably -- can I speak for you guys or not? Well, it's all permitted so it doesn't really matter. Everything is permitted. Larry's got a shop and a house, a barn and a house. Randy's got a house. The Williams' have a house: Ruth and Ken. And they have a guest house right behind their house which is their son's Burt's. That's his place. The -- originally when we moved here, there was the main house, the guest house behind, and Beth and Larry's place, and that was it. Then we built a house. Then Randy came in a few years after that, about ten years - or not quite ten years after that - and built his house. And now Dusty wants to build his house. Well, let's just finish with this, and then I have just a couple of other things to say.

Mr. Kaina: I just have a question, real quick, and then it'll just kind of help me separate --



Ms. Kanakaole: Sure.

Mr. Kaina: The vacation rental from the zoning issue --

Mr. Horn: Right.

Mr. Kaina: Is that does the rezoning from interim to Rural RU-0.5 have any kind of effect adverse or not on the transient vacation rental application?

Mr. Fasi: That's a good question and thank you for asking that. No, it doesn't. The transient vacation rental issue is totally separate from this change in zoning issue. That is a totally different issue which should be brought up at a separate meeting.

Ms. Lono: Just to clarify that, the transient vacation rental is illegal in the interim zone and it is also illegal in the Rural 0.5 zone.

Mr. Fasi: Illegal is illegal regardless of the zoning.

Ms. Lono: Thank you.

Mr. Horn: Anybody else have any questions for me?

Ms. Lono: Of these -- we just got this map. This is all we got and it doesn't really -- we can't even read what these buildings are and whose is what. Some of it I know a little bit about, personally, but if there are four houses and one is Ken and Ruth, and one is Larry and Beth, and one is you and Wendy, and one is -- yeah, then where is the vacation rental?

Mr. Horn: It's my old shop.

Ms. Lono: Okay, and that is a legal structure?

Mr. Horn: It is a permitted building.

Ms. Lono: It's a permitted structure as a shop?

Mr. Horn: As a shop.

Ms. Lono: And so it has been renovated to become a vacation rental with kitchen and it has -- it's a home, it's a small home?

Mr. Horn: Yes, it is.

Ms. Lono: Okay. So it is not legal? It is not really a legal structure then? It was legal as a --

Mr. Horn: It's a legal structure but not permitted as a house.

Ms. Lono: Okay, mahalo.

Mr. Horn: Okay, is there anything else? I just have a couple things. I just wanna, in speaking for these guys, I just wanna say that, as far as any zoning change, what we're doing here setting a precedent or further down the road, everybody's going to have to go through exactly what they're going through. There's -- it's no precedent; it's everybody has to do the same thing. They've had to do it since the beginning of time. As far as the subdivision goes, no, it's not really a subdivision. We couldn't afford to do that. That's why it is condominiumized. We would have had to put in a 40-foot wide paved road and we didn't even have the property to do that because of the way the house was built, the original house was built on the property. As far as the road widening goes, that's no road. Our road's a dirt road with a little bit of cement on it. The road widening is, again, out in front and it's not widening. What it is is the County requires that when you pull a permit that you have to donate three feet of your frontage, road frontage property on the highway and -- County or State, I'm not sure. As far as an environmental impact, I don't know anybody who's built a house, and I've built quite a few of them here, that ever had to do an environmental impact for any reason. We're not the Superferry. We're just a family that's trying to have everybody live on the property. And the last thing is it's just Ruth and Ken. Two parents who want to have their family just like everybody else wants to have their family living on the property with them. It's nothing more than that. And that's all I have to say.

Ms. Beth Stark: I'm a little confused because -- oh, I'm Beth Stark, Williams' daughter. I'm a little confused because I thought we were here to just rezone a half acre but it feels like we're trying to rezone the whole town, and can somebody help me out with that?

Mr. Fasi: We are doing a change in zoning from interim to RU-0.5, half-acre parcels on approximately three acres.

Ms. Stark: ...(inaudible)...

Ms. Fasi: Correct. Three.

Ms. Stark: Okay, but not anywhere else in town?

Ms. Fasi: Not anywhere else in town.

Ms. Stark: Great. Thank you.

Ms. Fasi: And the Planning Department would like to also add and emphasize again that this is not a precedent setting event. You know every -- I have probably five change in zoning projects. This is one. This is smallest one I'm working on. They're all different. The interim -- the other interim project that I'm working on are not going to be RU 0.5. This does not require an environmental assessment of anywhere near those proportions. And if you went down that road, that would be an abuse of the environmental assessment process. This is a simple change in zoning and there's nothing more or nothing less. Thank you.

Ms. Kanakaole: Mr. Fasi and the rest of the people who have come to testify, I agree with Dawn in what she said earlier in that we are community members who have been charged with this -- this duty and it would be remiss if we sat here and ignored certain things that people brought up, and all we're doing is following our responsibilities. So I'd like you to know that and I'd like other people to know that that, you know, we're not trying to be nit-picky, we're just trying to do our job, and we'd like to go home as fast you do, as everybody else, but we wanna, you know, we wanna do what's right for everybody, and so please bear with us.

Mr. Sinenci: Yeah, I'd just like to add to that. It's nothing personal. I think our decisions that we do today will affect, you know, well we wanna look at those decisions that we make today and see how it'll affect our community in the future. And I have one question, maybe Clayton can help me out with this, I just wanted to revisit one of the points that was brought up. Can we build the fifth house without rezoning?

Mr. Yoshida: Yes, I believe that the density would be, because it is in the State Rural District and under Chapter 205, Hawaii Revised Statutes, the minimum lot size would be half an acre, they would have enough lands to have five dwellings on the lot.

Ms. Lono: If they don't ...(inaudible)... that was the question.

Mr. Fasi: If they -- your question is if they didn't get the change in zoning, would they have the wherewithal to build the fifth dwelling without the change in zoning? Yes, I believe they would.

Mr. Ing: That's why we're here. When they made the building permit application, they were stopped and said, "You can't do it under the current zoning. Go get it zoned." That's why we're here.

Mr. Fasi: Okay, correction to that. I was thinking of the condominiumizing portion of the property. I'm not sure if they're maxed out on that or not. So to summarize your answer, I'd have to retract by answer and say, no, they would need the change in zoning to build the fifth dwelling.

Ms. Lono: John brought up a very good point in that I didn't remember clearly exactly why we didn't go directly to rural during that whole process about the cultural overlay that was being requested and, as I understand it, there's money in the budget currently or -- to do the cultural overlay and that that's something that is coming. Is that correct or incorrect?

Mr. Fasi: I am unfamiliar with that project and I can't answer your question.

Mr. Yoshida: I believe there is money in budget to do some mapping of cultural resources in the area. I believe when the rural zoning was established by the County in 1997, the Cultural Resources Commission was considering having like a cultural overlay district, however, that bill eventually got filed by the council.

Ms. Lono: So the funding is for what? A cultural study -- I mean a cultural resources study? The money you were just referring to is for doing a cultural overlay or doing some other kind of study in the region?

Mr. Yoshida: I believe for some mapping showing where the cultural resources are located. The East Molokai area, known as Manae, there is a group, Malama Pono, that had also requested from the council that they get monies for this kind of inventory of where the cultural resources are at. So I think Hana had requested a similar type study or mapping.

Ms. Lono: Yeah, the cultural overlay.

Ms. Kanakaole: Dawn, I'd like to close testimony so can we -- can I make sure that we got everybody. Oh.

Dr. Paul Kaiwi: Aloha. My name is Dr. Paul Kaiwi and, as you folks know me, I was born and raised over here, and I know that we had talked about this word "precedence" that keeps on coming up over and over. And I know that some people have made this turn out to be some type of precedence setting meeting and they have shown one ramification or one avenue that will lead to ramifications, consequences, you know, hotels may be growing in Koali, and I'd also like to look at the other side as well because many of our Hana people we no more money where we can just buy land. You know, we're not blessed with hui aina, we're not blessed with aina coming down from family. So sometimes we gotta buy what we can afford, and sometimes we gotta change the zoning. I just speaking real over here.

Now, the precedence that -- that I know the word was going around for this -- this Committee over here, awesome Committee, the precedence, you know, if it's going to lead to that, setting precedence over here, we also have to think about for our people coming up, our children. If we should decide to say no to zone changing, and from there we're going to set that precedence, no, no, no, no, no, we need to also think about those coming up. What we going say to your own son, your own daughter that you have who is applying? You

already set the precedence. It's no to them as well? Is it no to your nephew? No to your niece? And these are Hana born people trying to make a living in Hana working at the hotel. Okay, so this word "precedence," we cannot only show one side, you know, the big hotels that might show up down Koali side. We gotta also think about our kids coming up. And I speaking real because I was born and raised right over here, okay, went away and went to school, came back. So let's think about -- about others as well, okay, not just ourselves, you know, I'm here to set a precedence, it's not against this, it's not against that, if this is done it's going to lead to subdivision and all kinds of tricks coming up. Let's think about the community that we say we are here and we are -- we are representing the community, and I think that that is overstated many times. I think maybe two people come talk to us and we come inside and say, "I representing the community." We gotta be real. We gotta be honest. Okay. Now if 1500 people come up to you and say this, this, this, then you can come in and you can say, "I represent the community." Thank you so much.

Ms. Lono: Paul, I -- I don't understand what you just said about representing the community. I guess I feel like I've been appointed this body as a longtime Hana resident connected with my own ohana here, which is very large and a very large part of this community in many ways, and I tried my best to ask all of the questions on behalf of this community that I could possibly think of no matter what I, personally, feel about any issue. I feel like it's my responsibility to look at the largest possible picture and the broadest possible impacts on behalf of the community. Things that you or you or you might not even think of could possibly happen. We have to look that far down the road and it's been a very difficult road to protect this community over the last 30 years from all kinds of intrusions and requests and possibilities, and I find myself being a little cautious and wanting to ask the appropriate questions so we really know what we're doing. And when it comes to representing this community, I guess I take a little bit of offense to you saying that I have to talk to 1500 people before I can say I represent this community. I think I represent this community the best way that I can with the experience and the intelligence that I have from past -- being -- participating in these kinds of things and doing the best that I can on behalf of my ohana here, which I feel Ken and Ruth are part of my ohana and, you know, they are family but still I can't take that emotional side of the road, I have to take this other side and ask the questions. So please forgive me for doing that and I volunteer my time to be here and to do this on behalf of the Hana community and do it with all seriousness. I read my paperwork before I come in, I spend time, and I don't play around. So I just wanted to explain that to you and that I feel that, you know, if you're saying I don't represent the community because I didn't talk to enough people, that that -- that's not okay to say. Mahalo.

Dr. Kaiwi: Forgive me, I was not trying to offend anyone. What I do know is that sometimes 20 percent of people can say that they represent hundred percent and this is true. I mean I know some people going tell me you lie, but I do know it happens, and I didn't mean to point fingers at anyone, but this can happen. Could be because of the people that we surround ourselves with; could be because we don't, you know, we never got to get a good

populational study with everybody. What I'm saying is that if we say that we represent the community, we really need to represent the community. We really need to, okay.

Ms. Oliveira-Medeiros: I think I heard somebody say --

Ms. Kanakaole: Are you -- are you addressing the -- us?

Ms. Oliveira-Medeiros: Being responsible for the community, but not representing the community.

Ms. Kanakaole: Or everybody?

Dr. Kaiwi: Yeah, no, I guess the word "representing" the community and this is not for anybody, actually, this was -- this is just for everybody, not for anybody. I'm just speaking in general for myself as well, you know, I --

Ms. Oliveira-Medeiros: Because I think the Sunshine Laws -- doesn't the Sunshine Laws prevent us from going out and talking in the community about these items and if we're supposed to tell them, is what I learned, that they're supposed to come over here and express their -- their problems or concerns in front of everybody so that there's no talking behind before they come in front of everybody. Is that true or not true?

Mr. Yoshida: Yeah, I believe the Corp. Counsel is prepared to address that if we get to the orientation section, but you know the discussion should be here at the meeting. I don't know if he wants to add anything.

Ms. Oliveira-Medeiros: So the community we represent would be the community who comes and testifies more or less?

Mr. Hopper: You're appointed obviously based on the, you know, knowledge of the community but if you're dealing with a quasi-judicial action where you have to make a decision on an application, then ex-parte communications they call them, which is talking to people about the application is generally discourage so you don't develop a preconceived notion of that -- of that application. In general, the Sunshine Law isn't what prevents you from doing that, the Sunshine Law allows you to talk to people individually as much as you want, you just can't talk to each other about board business, and two of you can talk to each other; more than two of you can't, I'll get into that later. But the other consideration is due process under the law, which is if someone comes before you with an application, you should look at the information that's presented to you through public testimony, through your planners, and other sources that's presented to you as a group where you can analyze those collectively and look at that as a group and so everybody, including the public, can hear the testimony and the things that are brought before you. So that's the basic idea.

Dr. Kaiwi: Forgive me again. My primary intention was to talk about the precedence that -- that some people have said we are setting today that there are two sides, maybe even more than two sides when we're talking about setting precedence and not just one side, okay. The other stuff that came out, I never mean to offend anyone. Thank you.

Ms. Kanakaole: Thank you.

Ms. Lono: What I choose to do is deal with factual information and the actual ramifications of this request upon the Hana community and asking questions like R-1 versus 0.5 zoning and what that would potentially create down the road I feel is my responsibility to do because it does have a different impact. And I have -- and I would like to call for a recess so I can bring this if possible, I have a community map in the office over here that shows the entire Hana District, what lands are zoned interim, designated rural, and if you look at that map and the context of what we're talking about here, if every piece of that property became rural R-0.5, the potential build out would be enormous and quite scary. So if there's a concern about a potential precedence setting, I think it has some validity because if you look at that map, and you look at those properties, and you look at the possibility of hundreds and hundreds of homes being able to be built along there, it's something that really has to be considered because what your intension is, like I said, may not have anything to do with that at this point but anything can change in a New York second down the line. So if, Madam Chair, if you'd allow me, I would love to bring that map in and take a look at that so people can really see what we're talking about and the potential impact that it could be, and it would just take a few moments.

Ms. Kanakaole: Does anybody object to that?

Mr. Fasi: I don't -- the Planning Department's not objecting to her bringing in the plan, but let me just make a point. The scenario of interim all around Hana turning into RU-0.5 is not even closely remotely going to be a reality in the Planning Department. The Planning Department will simply not let that happen. If that happened, what we'd end up with is urban low density and that is not the intension of the Planning Department to turn Hana into urban low density. RU-0.5 will simple not be the standard here in Hana. It is not a precedent. Okay, let me say that again. It is not a precedent. This is a unique situation we're dealing with and we're not going to put back to back RU-0.5 zoning designations throughout Hana; first of all, this body wouldn't allow it, the community would not allow it, the Planning Department wouldn't even consider it cause we'd look silly. Thank you.

Mr. Sinenci: I just wanted to -- this might not be a -- but when you were saying that I agree but there were some other things that the Planning Department may have kept from the community and some of those things were the Kalaiki issue, the sale of lands down in Kalaiki, I know it's a moot point, but as far as Planning -- the Planning Department, there was a lot of things in that one and I think totally different that the community wasn't aware of when some of these permits were issued two years prior, so I think the history -- we need

to ho`oponopono with the Planning Department on certain things with the community because there was just some issues that had come up in the past.

Mr. Fasi: I'm not sure if that was a change in zoning issue, but the change in zoning process, that's exactly why we're here today to bring it to the public's view and let them know what's happening. This has to go not only this recommending body but it now has to go before the Planning Commission, from the Planning Commission it has to go before the County Council before it gets approved.

Ms. Kanakaole: If nobody objects to Dawn getting the map and doing that, we'll take like a three minute break. I'll close testimony right now, we'll take a three-minute break, and come back and review the map and make our decision.

*(A recess was called at 6:00 p.m., and the meeting was reconvened at 6:05 p.m.)*

**b. Action**

Ms. Kanakaole: So we'll reconvene. Mavis has to leave so we'll excuse her.

Mr. Ing: Can you stay for another five minutes?

Ms. Oliveira-Medeiros: Are we voting?

Mr. Ing: Yeah, well --

Ms. Kanakaole: We have enough, yeah, without her.

Mr. Ing: But this is good for her to hear too. I think, you know, the Williams family, when I met them, I looked at Mr. Williams, I said, "You look familiar." He said, "Yeah, I used to be a court reporter." That's where I met him. But in getting to know them, you know, what they tell me they say with all understanding and integrity, so if we are willing to put in writing as conditions to the zoning that only one more dwelling will be built and no subdivision except for that three-foot widening, road widening, which may never happen, we're happy to do so.

Ms. Kanakaole: Thank you.

Ms. Lono: So I just wanted you to see, and especially the ohana over here, because I want you to know I'm asking this on behalf of a larger community issue that has nothing to do with you but has to do with rezoning and the possibility of precedent setting and that we need to look at all of those areas. If you look at all of the ones that are INT and the light blue area, those are all interim designated rural. So if all of those became R-0.5, there's the potential for hundreds and hundreds of houses along that -- that area. So I'm just trying to ask the questions so we're making sure that each -- I guess each application is individually reviewed



and that because something is given to one property doesn't mean that they can say, "Oh, then you have to give it to me." And it's really important for us to understand that as a community because I don't know how all of you feel but if you thought that you were setting a precedent for all of those pieces of land, would you want to do that? You know, I mean it's something that needs to be asked so please forgive me for asking the hard questions and it's hard to do because I look at all of your faces and, you know, I mean Beth was in my wedding and I got dressed for my wedding at your house and, you know, I mean you guys are part of my ohana and I love you all but I have to do this. So that's why I brought out the map so that you could see what our concern was and what we're talking about. So if we can be on record, and I don't know if anybody can actually make this claim that if we were to go ahead and approve this zoning, that we are not setting a precedent for R-0.5 zoning on all of these interim properties and that needs to be a matter of record if possible, so maybe our Corporation Counsel could address that.

Mr. Hopper: What's your question? Could you clarify? I didn't mean that to be facetious.

Ms. Lono: Okay, the question is is that in the giving of an R-0.5 zoning today, would it in any way set a precedent for any other applicant that came in on these interim rural designated properties to say, "They got R-0.5, that means I have to get it to?"

Mr. Hopper: The basis that you would decide on your recommendations to the Planning Commission, which would then make recommendations to the County Council, I would say that you're inclined to follow the same rules that the council does for determining whether or not a change in zoning should be granted. I would say of change in zonings in general that they are legislative actions, they are -- the council generally has broad authority to grant or deny a change in zoning considering things such as the community plan designation and other things. Chapter 19.510.040 of the Maui County Code outlines the criteria for a change in zoning. It states that the Director of Planning shall submit the report of the Commission to the County Council and then that the County Council may grant a change of zoning if all of the following criteria are met: A) The proposed request meets the intent of the General Plan and the objectives and policies of the community plans of the County; B) The proposed request is consistent with the applicable community plan land use map of the County; C) The proposed request meets the intent and purpose of the district being requested; D) The application, if granted, would not adversely effect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway, and transportation systems or other public requirements, conveniences, and improvements; E) The application, if granted, would not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the surrounding area, and F) That the application change in zoning involves the establishment of an agricultural district -- okay, that doesn't apply cause you're not going to ag. So, basically, you're to assess every change in zoning application on that criteria. Whether or not you've granted things in past may affect that area, you can look at the cumulative impact of development to that date, for example if you're looking for other development, a change in zoning in the heart of Kihei

versus a more rural type area, you can consider things like that, but in general, no two applications are alike. You don't have to consider what was done in a past application necessarily, not to say that you couldn't but you wouldn't be legally in anyway bound by that based on what I could see particularly considering that the change in zoning is a legislative action and the council really has no obligation to grant that change in zoning.

And as far as precedent setting application, it's -- it's typically with the change in zoning. You may be in a different situation if you're looking for a different type of permit, but for something like a change in zoning, I wouldn't see much of any precedent setting affect that a decision would have because let's say for example it's the exact same application but if you granted one before in that same area that somehow increased the density in that area or whatever, that could then, though the original application did not have any adverse affect on public or private schools, parks, playgrounds, water systems, sewage, etcetera, or impact the social, cultural, economic, environmental, and ecological character, if you look at the application after the other application was granted, you could potentially consider that the area changed by the first application would actually be more sensitive or have a higher -- or have greater concerns in that area for the second application. So, you know, you would not only not be bound, but you could actually go and deny an application under certain circumstances even if it was the exact same type of application. So the short answer is essentially no, there wouldn't be a precedent. But I wanted to go over all of that criteria for you cause that's what the council's going to look at to make their decision.

Ms. Lono: Yes, and we -- I believe I understand that and I know that the council has the ultimate decision making power on this but there's a reason that we are here and we are here to ask these questions. And the key point that you, in all of that scenario, was cumulative impact, so it's going to be really important to look at that, what that would be I guess, when the next applicant comes in and you've already done this and you say, "Hey, well we did this already so there will be a cumulative impact if we add you on top of you on top of you on top of you." So, therefore, each one could be addressed separately and perhaps not be precedent setting and that's the goal I was trying to get to. Mahalo.

Mr. Hopper: And I was still trying to emphasize though, even those types of cases, you would look at each application individually as it comes in, which I believe you understand but I just wanted to clarify that.

Ms. Lono: Mahalo.

Mr. Ing: I'm thinking out loud that the precedent would be having any applicant agree to one more dwelling and no subdivision that --

Ms. Lono: Right. Yes. And that is a very good point and I'm so glad you brought that up because with that being that offered, I am ready to make a motion or a recommendation, so unless other members have questions.

Ms. Kanakaole: Go ahead.

Ms. Cosma: I'd just like to express that with that, those conditions, it gives a little bit balance to the neighboring -- the neighbors around there that did have concern about subdivisions, so as a condition, I think it answers their concern that there won't be any subdivision, as stated, and mahalo for saying that.

Ms. Kanakaole: Any other discussion?

Ms. Oliveira-Medeiros: I don't have a question but I just wanna make a comment before I go to my class that started at 6:00. I really don't think the Williams are trying to develop anything big, condominium, or anything. I really think they just wanna rezone so they can build one more house and there are other people, like Paul said, in Hana who are faced with this situation and one of them is my mom's family. They have 14 acres in Honokalani which they cannot do nothing because they don't have money to subdivide it and it's zoned ag right now and if they divided it into two-acre lots, only 7 of them could build and there's 12 of them, so I mean we thought about changing the zoning to rural too but it was just too much to try to subdivide the property, just like the Williams have experienced, and so it's just sitting there, and these are pure Hawaiian families who can't even build on their 14 acre lot. So I understand where you guys are coming from. At the same time, I just wanna say that we do have a duty to the community too and so I think the questions are legitimate or whatever the word is. Just try to understand that. Mahalo and good luck.

*(Committee member Oliveira-Medeiros was excused from the meeting.)*

Ms. Cosma: I just wanna add another thing. Sorry for all these questions, for the delay in this cause I know you need to get home, you must be tired, but too many times Hana have been robbed in the past. You know, we have too big of a heart. We give into anything, anyone, so that's why we needed to be really careful on how our decisions are made and stuff, but aloha to all of you for coming.

Ms. Lono: So, with that, I would like --

Mr. Williams: And I wanna thank you for protecting all the people of Hana who make applications. Thank you. And I understand why you ask all those questions.

Ms. Kanakaole: Thanks.

Ms. Lono: Thank you, Ken, it makes me feel so much better. So I would like to make a recommendation, and I lost the paper where it tells me what my options are and how to word it but --

Ms. Kanakaole: You can approve with no conditions or you can approve with conditions.

Ms. Lono: That we approve with conditions and the condition would be that no subdivision, no further subdivision, and one additional house be built, and I would like to address that vacation rental issue, but I would like to discuss it with the Committee before we do that, so my recommendation would be that that vacation rental be not a vacation rental because it is not legal on that property. So those would be the three conditions and I would recommend that we approve it with those conditions. Mahalo.

Ms. Kanakaole: Can we have discussion on the vacation rental thing that -- that Dawn brought up? Does anybody second Dawn's --

Ms. Cosma: Second.

Ms. Kanakaole: Okay, now we can discuss.

Mr. Fasi: The Planning Department would just like to say that I don't believe they would get their building permits until that vacation rental situation is taken care of.

Ms. Kanakaole Okay. No, sorry. Sorry.

Mr. Hopper: Excuse me, Madam Chair. I just wanted to clarify. No subdivision. Is there a legal requirement that they subdivide out the road widening lot for the State? I just don't want a condition that would preclude them from doing that.

Mr. Fasi: No, there's no -- there's no requirement.

Mr. Hopper: Oh, okay.

Mr. Ing: But I think we had ask that that be the only subdivision that would be permitted, that road widening strip.

Ms. Lono: Okay, so I can amend my -- my emotions. I would like to amend my motion so no further subdivision except if required for the road widening as requested by the State or the County.

Ms. Kanakaole: Are you still keeping on the vacation rental thing?

Ms. Lono: Yeah.

Ms. Kanakaole: Do we have a second to the amended?

Ms. Cosma: Second to the amended motion.

Mr. Hopper: Just a point. Since you didn't actually have the motion seconded in the first point, it's not an amended motion. It's just the motion right now.

Ms. Kanakaole: Is there anymore -- any discussion on that motion? Can we vote?

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

**It has been moved by Ms. Lono, seconded by Ms. Cosma, then**

**VOTED: to approve with conditions and the conditions would be that no further subdivision except if required for the road widening as requested by the State or the County, and one additional house be built, and that the vacation rental be not a vacation rental because it is not legal on that property.**  
**(Assenting: D. Lono; S. Sinenci; D. Kaina; L. Cosma)**  
**(Excused: M. Mauliola; M. Oliveira-Medeiros)**

Ms. Kanakaole: Your motion is carried. Thank you Williams family.

Ms. Lono: Madam Chair, before we proceed with the meeting, I would like to go back to my request to amend the agenda.

Ms. Kanakaole: Go ahead.

Ms. Lono: So I would like to request that we amend the agenda to address the -- anyway, I was addressing the possibility of amending the agenda and counsel has requested that he read the appropriate --

Mr. Hopper: First I'd want to get a consent of your chairperson to have this put before you and then, second, if you do decide -- if she does decide she wants to put this up as an issue based on your request, I would definitely wanna read the portion of the Sunshine Law that would allow you, in certain limited circumstances, to amend your agenda to allow you to judge if you believe this is such a circumstance.

Ms. Lono: And just to clarify, this came up I think before you came in and what I asked was if we could amend the agenda to address the possibility of making a recommendation from the Hana Advisory Committee to the Maui Planning Commission that they return to Hana to have a public hearing regarding the vacation rental/B&B ordinances that were brought before us last time so that we can have a properly noticed public hearing that the community has basically requested. So I wanted to amend the agenda just to address that small issue, not to discuss the whole vacation rental issue, but just to discuss taking it back to the Planning Commission and asking them to return it to us.

Ms. Kanakaole: Do I make that decision or we discuss?

Mr. Hopper: As I was saying if --

Ms. Lono: Whether you wanna allow ...(inaudible)...

Ms. Kanakaole: Oh.

Mr. Hopper: A member normally alone wouldn't have the authority to say --

Ms. Kanakaole: Right.

Mr. Hopper: Let's take a vote on this.

Ms. Kanakaole: Okay, so --

Ms. Cosma: I think that should be because we had more people who did wanna come and testify but they weren't aware of this meeting so I feel they should be afforded that opportunity.

Ms. Kanakaole: Okay.

Ms. Cosma: So bring it back to Hana.

Ms. Kanakaole: Does anybody else -- yes. Request another public hearing for the vacation rentals.

Mr. Hopper: And then just for the background, the problem I had raised was that that's not on your agenda to make --

Ms. Kanakaole: I see.

Mr. Hopper: Make a communication with Maui Planning Commission to say, "Could you send another meeting here or have a public hearing here," which would be in their discretion to delegate that to you, and then I explained your agenda can be amended in certain circumstances and I would explain the circumstances here if you would want -- if you would consider going forward. Would you like me to?

Ms. Kanakaole: Okay, you'd give us a short synopsis of what it is?

Mr. Hopper: I'll read the rule. I'll read you the State law. I just don't want --

Ms. Kanakaole: It's a paragraph. Okay. Yes.

Mr. Hopper: Yeah, cause this would determine when you could or could not be liable for a violation of the Sunshine Law for doing this.

Ms. Kanakaole: Okay.

Mr. Hopper: It states that no board shall change the agenda once filed by adding items thereto without a third -- two-thirds recorded vote of all members to which the board is entitled provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

Ms. Lono: Based on what I just heard, I think that this is not a major issue in the fact that we are not discussing the vacation rental issue and all of that, we are just discussing the possibility -- or we are discussing making a recommendation to request the Planning Commission bring it back to Hana for a public hearing. So based on that, I would like to make the motion that we amend the agenda to address a request to the Maui Planning Commission to have a public hearing in Hana to address the five ordinances that were brought before us in our last meeting.

Ms. Kanakaole: Is there a second?

Mr. Kaina: I second the motion.

Mr. Hopper: Yeah, you in fact need it to be unanimous. You have to have two-thirds of the seven that you're entitled to. So I believe five out of seven is two-thirds, correct? Okay, so you need unanimous at this -- in this.

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

**It has been moved by Ms. Lono, seconded by Mr. Kaina, then**

**VOTED: to amend the agenda to address a request to the Maui Planning Commission to have a public hearing in Hana to address the five ordinances that were brought before us in our last meeting.  
(Assenting: K. Kanakaole; S. Sinenci; D. Kaina; L. Cosma;  
D. Lono)  
(Excused: M. Mauiola; M. Oliveira-Medeiros)**

Mr. Yoshida: I believe the department has some comments.

Mr. Alueta: I just wanted to warn you that you can make the request, it doesn't mean that it'll be granted. Secondly, as Mr. Yoshida pointedly illustrated his great memory about how long Maui Planning Commission has had a standing member on the -- on the Planning Commission for Hana, which is very unique, and then we have this Committee and that's why it was being brought to you. It was an item that was brought to you at the -- by the request of the director and not the Planning Commission. So I'm not sure exactly how this will -- I'm not familiar exactly with my rules as to whether or not -- he had no requirement to bring it to you, it was out of courtesy because you had previously commented on the Carroll bill. As to whether -- that's all I will say. I think that, you know, we got your comments, I thought they were great comments on them, we will be coming back to you with some other stuff related to it but not -- I don't want to go further into it but, like I said, you can ask; you're not necessarily going to be granted. I'm just warning you now.

Ms. Kanakaole: Okay, thank you.

Ms. Lono: Well, we hear the warning, we are asking, we do understand that as a courtesy, the director did bring it to Hana, that's been clarified and I'm very clear on that, but as a matter of great importance to the Hana community, I think that because we do not currently have a Hana member on the Maui Planning Commission that it makes it even more important that we have a properly noticed public hearing to address these in Hana so that's what we are requesting. And if they deny it, that's up to them, but at least we've requested it and we can go from there. Mahalo.

Ms. Kanakaole: Okay, can we move on to the next item on the agenda, which is Communications.

Chairperson Kanakaole read Item D.1. into the record.

#### **D. COMMUNICATIONS**

- 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. (J. Alueta) (RFC 2007/0099)**

**The Hana Advisory Committee may provide comments on this bill to the Maui Planning Commission and the Maui County Council.**



Mr. Alueta: Good evening, Committee members. I'm Joe Alueta, your Administrative Planning Officer. As you know, I bring ordinances before you, like I did last week, that were generated by the department or I'll bring ordinances that were developed by the County Council in which we go through kind of a damage control situation and see what they have and get their comments. This matter was -- was actually specifically referred to your board by the council, okay.

Ms. Lono: Council or Planning Commission?

Mr. Alueta: By the council, okay, so it was a little different. So I think because I was present at the discussions of the County Council and, as you know, many of you make your weekly pilgrimage to the other side to Costco, Walmart, and so forth to stock up, so that's why it was felt needed to come at least to discuss the proposed bill. The proposed bill is, as you have been -- or resolution is to prohibit superstores as defined by the County Council. The only comments that we have is from the Planning Department is that the methodology in which they're defining superstore with the use of 25,000 stock keeping units, or SKU's, we feel is a little difficult for the enforcement side and so, from our standpoint, if they want to create a ban on superstores, they should keep strictly to either some type of easily quantifiable item such as square footage, okay, so you know if they have a -- that way our inspectors are not trying to figure out how many items they have counting, you know, 25,000 items on the shelves to see whether or not they qualify as a superstore. So that's our -- that's pretty much our comments. It's kind of an unusual bill but it is -- I guess it came out of a Mayor's or some kind of Mayor or County Council --

Ms. Lono: I thought Riki Hokama ...(inaudible)...

Mr. Alueta: Riki did but I believe that the genesis was that there was a -- I'll leave it at that.

Mr. Hopper: Sorry, Madam Chair, I gave some advice to the Council regarding this bill along with Joe at the meeting. I could comment, if you'd like, on the history of the bill. I believe when the various counties got together, they collectively wrote this, but I'm not sure if Riki Hokama specifically wrote this bill but he was there -- he was there at that meeting and brought it back, and so what you actually have in your packet are a couple of different versions. You've got the version that was sort of agreed upon by everybody at that meeting and then there's a version that was -- that the Kauai County or, yeah, Kauai had passed and, from our office's perspective, we take no position whatsoever on whether or not it's a good idea to ban or not ban superstores but just as far as an ordinance that would do such a thing, how it would be worded is important as far as its legal effect and so what you'd want to look at, from our perspective, important things in such an ordinance would be to define what the use is, the superstore, and second to say that it is prohibited and where it's prohibited. And the version that the council had originally proposed in our opinion, the only place where it actually says that a superstore's prohibited is in the definition of food and

beverage retail, which is a separately defined term in -- in the County Code and that's a bit odd to do it there. It's adding at the tail end of food and beverage retail so if you looked in the County Code, you would only see that in the -- in the definition section. What Kauai has done is they went over all of the -- all of the possible zoning districts where such a use would be permitted and states that no, I believe, no structure over 90,000 square feet or no store over 90,000 square feet, I forget exactly how they defined it, but they basically said that use is prohibited in those specific zoning districts. So just -- it's purely a format thing, not a policy issue, but we would say if you wanted to format an ordinance to prohibit superstores, we would recommend the method that Kauai has taken as far as you go into the different zoning districts and say in that district this is prohibited, this is prohibited, so that someone when they open the code doesn't have to look at the definition of food and beverage retail to find out that superstores aren't prohibited -- aren't permitted. So those were our comments.

Mr. Alueta: In addition to the department's comments to council at the time, besides either making some type of reference within each of the zoning category, is to decide whether or not you have a zoning category that maybe you do want a superstore in. And so, as I said, in our -- in our code, if it's not listed as a permitted use, it's prohibited, and so the methodology most likely, to follow that same format, would be to have retail stores of less than the square footage that's outlined and then, therefore, anything greater than that would be defined as a superstore and that way it would be prohibited so currently it'll allow like retail shops and such, you could say retail shops consisting of less -- a combined floor of less than, you know, 90,000 and have less than 20,000 square feet of dedicated grocery cause that's how they're defining it right now is by 90,000 square feet with 20,000 dedicated to groceries as well as the SKU of 25,000 items so -- but those are our comments. I mean it's -- we just -- I think council's intent in sending it to you was to, if they did ban such a store from being developed in Maui County, what would be -- would there be an impact and what would be the impact to Hana.

Ms. Kanakaole: Anybody have comments? I mean, personally, I don't think there would be an impact. If that would happen, the existing superstores would stay, right? I mean wouldn't be affected?

Mr. Alueta: From our reading of the current bill, none of the existing stores would qualify --

Ms. Kanakaole: Really?

Mr. Alueta: Because none of them have --

Ms. Kanakaole: Ninety thousand square feet.

Mr. Alueta: Twenty thousand square feet of grocery. It could be that Walmart, if they have 90,000, if they converted Walmart -- part of Walmart or even Kmart to dedicate 20,000 square feet of groceries, then that would prevent them from expanding to that category. Or it could be, you know, that's all I mean. So, yeah, and it would prohibit potentially other big box retailers, you know. The most common that has superstores is Fred Meyers, at least the ones I'm familiar with where they're big Fred Meyers where it is all in one encompassing like that with a big grocery store, meat market, everything under one roof. I'm not sure if Target has the same situation, if they do groceries now, at least the Targets I've been in didn't have groceries, but, like I say, there's two components or at least in the council's bill has three components to -- of what a superstore could be.

Mr. Sinenci: I just wanted to add another factor is the -- the parking for these mega stores. I mean how much square foot do they take up just for the parking, the paving, the cars outside of these superstores?

Mr. Alueta: Which isn't up for discussion, but was at a recent council meeting, there was a parking -- a revision to a parking ordinance that went to the County Council. The department made revisions to that and we -- our proposed ordinance did address large shopping centers and supermarkets and the parking issue with that, so we did try to address the concern over the amount of asphalt being paved.

Ms. Lono: Personally, I love Costco, I shop there, and it's saved me a lot of money over the years, but whether or not we need more Costcos in Maui County and more Walmarts and more Kmart's and more superstores is I think the larger question. I'd like to know what -- how -- does anybody know how many thousand square feet Costco is? There is -- I would assume it would be a superstore.

Ms. Kanakaole: Not under the definition that --

Ms. Lono: No, not under the definition in here.

Ms. Kanakaole: The County had.

Ms. Lono: But it would be -- I mean I have no earthly idea how many thousands of square feet that is so in order to discuss or consider some thousands of square feet to be considered a superstore, I'd kinda like to get a perspective on what that means cause I don't know what 90,000 square feet is. It seems like a lot.

Mr. Alueta: Ninety thousand square feet is approximately 2.1 acres.

Ms. Lono: Does the 90,000 square feet include the parking or that's just the store portion?

Mr. Alueta: That's just the store.

Ms. Kanakaole: We should make it smaller. They should say 50,000 square feet.

Ms. Lono: Yeah, I -- you know, this is big and 90,000 square feet is just enormous too.

Ms. Kanakaole: Yeah, especially on an island.

Ms. Lono: Yeah, 2.4 acres and --

Mr. Sinenci: Right, the island issue is if 30,000 more people move to Maui in the next two or three years, that one Costco is not going to be enough. The supply and demand would have to -- I mean to do we really want to set that precedence too. If we're -- if more mega stores are coming here it means our population going up in the next couple years.

Ms. Lono: I guess the question then would be superstore -- the definition of superstore and as long as it were below that square footage and met the other criteria, you're not necessarily eliminating more Costcos coming in, you're just kind of saying, I guess, how large they could be or how large a Target or Walmart or any of these other superstore type entities might be. And whether or not it needs to be regulated, I think that's what -- what the question is whether we need to make an ordinance about this. As I drive out of the airport, whenever I go in that direction and head toward Lahaina or wherever I'm going, I mean now we have like a chain of these big box stores and it seems like it would be kind to our environment and kind to the -- just the ambiance of Maui County to consider putting some sort of limitation on big box stores. So that's my comment at this point.

Ms. Cosma: So, actually, we're just discussing how -- if we support the ordinance that's in place?

Ms. Kanakaole: If we have comments about it. How we feel.

Ms. Cosma: We're commenting on the ordinance?

Mr. Alueta: Yeah, this is an ordinance that is being proposed, it is not in place right now, it is being proposed.

Ms. Cosma: Okay. And this ordinance will -- is to preserve and protect what we have now and put a limit to more retail stores becoming superstores. Correct?

Mr. Alueta: Potentially. Potentially eliminating those existing stores from expanding into the "superstore" as well as from potentially new stores coming in that would qualify as a superstore. Again, our recommendation to the Council and to you is that they eliminate the

SKU or that type of tracking that either through a listing as a -- being prohibited or defining what is allowed as far as within each of the zoning code, such as in the business district and industrial areas listing that, you know, what size or what size is the maximum size you can have as far as a store within the zoning codes to make it easier. As Corporation Counsel point out, it's very convoluted where they're sticking it. They just added it to 19.04, which is our definition section. So it could catch someone off guard if they came in because that's the only place it's being referenced. We feel it needs to be clear and complete disclosure, I guess you could say, to all parties so they know what is our requirements and I think that would be the best to have it listed either as a prohibition or as what is going to be allowed as far as the size and maximum sizes. So those are our -- that's our comments on it. Like I say, we don't have any comments whether or not it's a good bill or bad bill other than the functionality of the bill.

Ms. Lono: Well, I guess my first comment would be related to those criteria and I would say that perhaps we should limit or eliminate the requirement for the SKU, 25,000 SKU items or however -- whatever it reads here and just eliminate that altogether because it would just be too cumbersome to even try to count and figure out how many of those items there are and how would you ever enforce that. So that would be my first comment and maybe we could take it one -- one thing at a time and so I guess I could formulate that into a motion. I'm losing my voice. Aren't you guys happy?

Mr. Alueta: Clayton, how -- oh, you do need to take public testimony, correct, on this?

Ms. Lono: Oh. E kala mai.

Mr. Alueta: Okay.

Ms. Kanakaole: Let's open up public testimony. Does anyone wanna testify?

Mr. Alueta: I would note that you do have a testimony that was circulated by Walmart to you. Okay.

Ms. Kanakaole: Please state your name.

Mr. Ward Mardfin: I just wanna help out with the size thing. Ninety thousand square feet is three hundred feet by three hundred feet. A football field, from goal line to goal line, is three hundred feet, hundred yards, three hundred feet, so think of a football field square. And my hunch is that the existing Costco is about that size, but I could be wrong on that.

Ms. Kanakaole: Thank you. Anymore testimony?

Ms. Lono: We close the public hearing portion then?

Ms. Kanakaole: Okay, public testimony is closed. Anymore comments for this ordinance?

Ms. Lono: I would like to make a recommendation ...(inaudible)... into a motion?

Mr. Hopper: Yes, that would be appropriate.

Ms. Lono: Okay. So I'd like to make a motion that the criteria for having a specific number of SKU items, they've got it as SKU or UPC, these are all the -- all the same kind of thing, yeah, EAN's and GITN's, that that be eliminated completely from the criteria or the definition of superstore.

Ms. Kanakaole: Is there a second?

Ms. Cosma: Second.

Ms. Kanakaole: All in favor say aye.

Ms. Lono: Unless there's more discussion.

Mr. Alueta: Unless you have other items you wanted to add.

Ms. Kanakaole: Okay, we have -- we want clarification.

Mr. Sinenci: You mean you're just eliminating all the scanned items or --

Ms. Lono: No, just eliminating the -- in the definition of what a superstore is, they've got it in here that, you know, anything that's 25,000 items or more, I mean how are you going to enforce something -- how are you going to count -- go in there and count and figure out and track and enforce that kind of a requirement?

Mr. Sinenci: I'm thinking that they're selling 25,000 items in the store.

Ms. Lono: Twenty-five thousand different items.

Mr. Sinenci: So you wanna bring it down?

Ms. Lono: No, I just wanna eliminate that as part of the definition of a superstore.

Mr. Sinenci: Okay, and maybe just use a square footage?

Mr. Alueta: Yes.

Ms. Lono: Yes.

Ms. Kanakaole: Anymore --

Mr. Hopper: So you would also have 20,000 square feet of grocery space as well. That would still be in there though.

Ms. Lono: Well all I'm -- I'm just taking them one at a time instead of trying to define the whole thing. The way I was approaching it was just to address the SKU item and then we could go to the square footage requirement and then we could talk about the grocery square footage if we want to, but it just seems easier to break it down into smaller chunks to me, so that's my motion and we have a second.

Ms. Kanakaole: Anymore discussion?

Mr. Kaina: Can I just say something to be on the record about SKU's. Just from actually having retail experience, each store that operates has a register which is meant to ring up that SKU and actually tracks each product that's in that store. So there actually is a way of accounting for the SKU's and I'm just afraid that if we set the limitation to just the 90,000 or the 9,000 square feet, that they might just build smaller stores and cram in 25,000 articles in there.

Mr. Sinenci: ...(inaudible)... racks.

Mr. Kaina: Yeah, that's just -- I'm afraid we might be moving beyond that.

Ms. Lono: That's a very good point. I didn't think of it in that way at all.

Mr. Sinenci: Yeah, I'm just saying that maybe for people might consider the SKU's, the number of items versus the square footage. It's just another way of assessing the size of a store.

Mr. Hopper: You're actually narrowing, with SKU, you're narrowing what a superstore is. If you take that out of there, then you're broadening what a superstore is. So that's --

Mr. Sinenci: Right, so like maybe -- maybe we could go down to 10,000 or 5,000 items maybe and, you know, and then the square footage.

Ms. Lono: Okay, I'll withdraw my motion.

Ms. Kanakaole: Do we have a motion on the square footage? Anybody wanna make a motion on that?

Ms. Lono: What does it say in the Kauai ordinance? What did they come up with? They use 90,000. And Hawaii?

Mr. Alueta: Honolulu used the same one that's being proposed, at least their proposal.

Ms. Lono: Ninety thousand.

Mr. Alueta: And then --

Ms. Lono: I thought I saw one that had much less square footage in their definition. Was it Kauai?

Mr. Alueta: Hawaii County uses the same number, 90,000, 25, and 20,000 for grocery.

Ms. Lono: Okay, and they have 90,000. Maybe it could be 90,000 including the parking area. Sorry.

Mr. Alueta: Oh, and then

Ms. Kanakaole: Seventy-five thousand --

Mr. Alueta: Seventy-five thousand for Kauai.

Ms. Kanakaole: Can we just, you know, make a motion or recommendation that, you know, instead of us sitting here and trying to figure out the square footage, can we just say that, you know, we feel, Hana feels that 90,000 is way too big and that we'd like it reduced?

Mr. Alueta: You can make your comments in any form. You can say that, you know, that you like the concept of eliminating or controlling the proliferation of superstores and that -- but you feel that the size is -- should be limited, smaller, the threshold should be reduced to a different size than 90.

Ms. Lono: You're supposed to be discussing it on the record for the record so if you -- if you pass down the microphone. I do, personally, and just in general feel that the SKU requirement is too many items, maybe that needs to be looked at, I do feel that 90,000 square feet is enormous, and for an island community, is --

Ms. Kanakaole: Especially for what we have already.

Ms. Lono: Yes, and what we have already that -- that there should be some sort of limitation on it.



Mr. Sinenci: Do we wanna go up on structures?

Ms. Kanakaole: You mean talk about that not --

Mr. Sinenci: Yeah, I mean like if we're limiting the size, you know, like suburban sprawl, we don't want suburban sprawl, we wanna keep as much land since we're on an island so but maybe they can go up two or three stories but keep the land use smaller.

Ms. Kanakaole: No. No.

Mr. Sinenci: But it'll block off the views. Also, we wanna encourage ag. I would think we'd wanna encourage agriculture use --

Ms. Kanakaole: Yeah, local farmers.

Mr. Sinenci: More on our island than --

Ms. Lono: I have a question for Planning or whomever might be able to answer it. Where within Maui County would these big box stores currently be allowed? There's the business zoning, the industrial zoning, and I would assume not light industrial that it would have to be heavy industrial?

Mr. Alueta: Two things: Yes, it would have to be in the commercial -- it would have to be in a commercial district.

Ms. Lono: Commercial district.

Mr. Alueta: Just business district. Just for your information, Costco is a 136,000 square feet, Walmart is 141,892 square feet, and Home Depot is -- sorry, I found it on my iPhone. I Googled it so -- but, yeah.

Ms. Lono: Okay, so that really gives us some perspective.

Mr. Alueta: Maui -- this is the Maui one from a *Maui News* article.

Mr. Kaina: That leads me to another question is how does this ordinance affect those businesses that are already in play?

Mr. Alueta: It would be an -- if they qualify, remember there's two criteria or criteria under the current bill, which is total size, 90,000; grocery size, 20,000; SKU or item number size. So -- so like Home Depot and Walmart, well Walmart I'm not sure has 20,000 square feet of grocery, they don't sell groceries; Costco --

Ms. Lono: Walmart does sell groceries.

Mr. Alueta: But do they have a 20,000 square-foot of groceries so -- and Kmart sells groceries but do they have 20,000 square feet. I don't -- I've been in there and most of the time I don't think they sell that many square feet. So I think that's where your criteria comes in. And Home Depot doesn't sell groceries right? So -- so I think that's the -- the key is that there's two items to qualify for it so --

Ms. Lono: So, in other words, in order for it to be defined as a superstore, they have to sell groceries, according to the current ordinance? So some place like Home Depot, that doesn't sell groceries, they could have a hundred and 250,000 square-foot store because they're not considered a superstore because they don't sell groceries. Is that correct?

Mr. Alueta: Yes.

Ms. Kanakaole: Does anybody feel --

Ms. Lono: I kinda feel like size is like really important --

Ms. Kanakaole: Size is important.

Ms. Lono: Whether they're selling one item or 25,000 items, if the place is over 90,000 square feet, I mean that's -- that's enormous and perhaps, you know, limiting the square footage size is really a main thing to look at.

Ms. Kanakaole: Right.

Ms. Lono: You know, because like I said, if somebody is just selling lumber, that's one item and they don't have any groceries, then they could build a store that's as big as they wanted it to be, so it's hard to imagine that this would really affect anything cause there are too many loopholes in the way it's right now. I mean they could make 19,000, you know, 999 square feet of grocery and get underneath the wire and build as big a store as they want, so it makes it very difficult to --

Mr. Alueta: Correct. Yeah, and --

Ms. Lono: Control it with this ordinance.

Mr. Alueta: Yeah, and Home Depot is a 150,000 square feet.

Ms. Kanakaole: Yeah, it's huge.

Mr. Alueta: So but I think that whatever bar you set, it doesn't matter. Whatever bar. I mean it's kinda like -- whatever bar you set, the people are going to adjust to that bar or, as a lot of people refer to it as goal post that we set. So I think -- but I think that whatever your discussion I think is good that, you know, that you feel that, one, there's some -- whatever bill you come up with there's going to be people trying to figure out a way around it. I think that's good discussion for the council to hear as well, you know, and whatever other comments you have. And then, again, those kind of general comments are great but we also like how does it impact Hana. I mean if you feel that, no, it doesn't impact Hana, or, yes, it does because we like to be able to go in and, you know, the affordability of driving into the other side every now and then. I think that was the main issues that was being brought up by Councilmember Medeiros was that, you know, that he knows a lot of people coming in, going in on a weekly basis, they do their little circuit of Maui Medical and --

Mr. Sinenci: Not anymore with the traffic. But just thinking about the environmental impact, I mean this, you know, we've got all these containers coming into -- on -- into the island and then not to mention all the trash that it's producing and we've just got a small refuse site over here. So just thinking globally.

Ms. Lono: Well, it sounds to me like the main criteria, if the issue is the size of the stores, that nothing else really matters except the size of the stores, like I said, whether it's one item or 25,000 items or 50,000 items, the size is what really makes the difference.

Ms. Kanakaole: I agree.

Ms. Lono: Am I thinking that correctly?

Mr. Fasi: I would say that that is right on and what they're selling is probably immaterial to what a superstore is, it should be based on square footage because, you know, if try and narrow it down what they're selling, there's thousands and thousands of items, you know, you could talk about Circuit City, you could talk about a warehouse outlet, mattress outlet, you could talk about Home Depot, the Costcos, the Walmarts, the obvious ones, Target wants to come in. So the variables, when you start talking about products, it's just way too varied, and even to include and narrow it down to groceries I think is going down the wrong road. If you leave it just to square footage, I think the problem will take care of itself.

Ms. Kanakaole: Let's make a motion to recommend that they leave it at square footage and take out the SKU and the grocery square feet.

Mr. Sinenci: I'll second that motion.

Ms. Lono: I didn't make -- she can't make the motion.

Mr. Sinenci: Oh, you can't make --

Ms. Lono: Yeah, so you can make the motion.

Mr. Sinenci: Okay, I make the motion that we're deleting the SKU in this ordinance and the grocery square footage and just keep it at overall square footage - I would say 75,000.

Ms. Lono: I'll second that motion.

Ms. Kanakaole: Any discussion?

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

**It has been moved by Mr. Sinenci, seconded by Ms. Lono, then unanimously**

**VOTED: to delete the SKU in this ordinance and the grocery square footage and just keep it at overall square footage, 75,000 square feet.**

Ms. Lono: I'm glad that the Planning Department clarified that size does matter.

Ms. Kanakaole: Okay, it's 7:00, and we have the Orientation Workshop left on the agenda.

Ms. Lono: Was there anything else about superstores that we wanted to discuss? I just would like to say, for the record and I said at the beginning, but since Councilman Medeiros did bring it up relative to Hana and our needs, that we have sufficient amount of these kinds of stores and shopping available to us and even for potential growth and that at this size, for future growth, of 75,000 square feet for stores, there's still adequate, you know, ability to have other services here. So I think as far as it affects Hana, we love what we have, but we really don't want anymore.

Ms. Kanakaole: Okay.

Mr. Alueta: Thank you very much.

Ms. Kanakaole: Thank you.

## **E. ORIENTATION WORKSHOP**

- 1. Role and Responsibilities**
- 2. Meeting Schedule**

- 3. Office of the Corporation Counsel Handbook for Members of Boards and Commissions**
- 4. The Sunshine Law**
- 5. Ethics**
- 6. Takings**
- 7. Hana Community Design Guidelines**

Mr. Yoshida: Madam Chair, members of the board, very quickly, for purposes of orientation, the Hana Advisory Committee does consist of seven members, all of you are residents of the Hana District. The Hana District, again, extending from Kailua to Kanaio. You're appointed for five-year terms. And your duties -- oh, you're all Hana residents, and your duties are as delegated by the Planning Commission. We do meet on an ad hoc basis. We normally take applications from the Hana District to the Planning Commission and say, "Do you want the Hana Advisory Committee to conduct the public hearing on it?" So for the Williams change in zoning, we went to the Planning Commission earlier and said, "Do you want the Hana Advisory Committee to conduct the public hearing on the Williams change in zoning?" And they said, "Yes." So instead of the Planning Commission coming out and doing the public hearing, the Hana Advisory Committee does the public hearing. In the case of the Hana golf course, it was "no." So the Planning Commission conducted the public hearing on the Hana golf course.

We do meet on an ad hoc basis as applications come in. Sometimes we don't meet for months. I think the last meeting before your September meeting was in November of 2006. So, typically, I guess we -- the composition of the commission -- Committee changes from time to time so we try to pick a time and a day of the week to have the meetings. For us, because we staff various Planning Commissions and the council, Tuesdays and Wednesdays are bad days because we either have Council Planning Committee on Tuesdays or Maui Planning Commission on Tuesdays, or sometimes both, and then we have Lanai Planning Commission on first and third Wednesdays, and then we have Molokai Planning Commission on the second and fourth Wednesdays so Wednesdays are bad days. And then we also have Council Land Use Committee on Wednesdays. So sometimes the attorneys, you know, one has to go to Lanai Planning Commission and then one has to go Council Land Use Committee, so they only have a limited number of attorneys in the Corporation Counsel's office. And Friday afternoons are very difficult, I guess, for everybody because, you know, they just wanna enjoy the weekend. So that leaves us with Mondays and Thursdays and we have kind of gravitated toward Thursdays, the third Thursday of the month because James Giroux, who normally is assigned this Committee, but he's at the Land Use Committee today because they're dealing with Wailea 670, he also staffs the Cultural Resources Commission, which meets on the first Thursday of the Month, and the Board of Variances and Appeals which meets on the second and fourth Thursday of the month, so that leaves the third Thursday, or we could possibly meet on Mondays, and

we choose 4:00 because -- or we've had meetings at 4:00 because we know that most of you work and this has been the time that has been the most convenient. The meeting place varies. It's either -- it's been either here or Helene Hall, depending on the topic that we have to discuss. You know if we had to discuss the Hana golf course, this place would be too small. You know the Hana Medical Center or the Hana Wellness Village, this place was too small.

Okay, so, with that, if there aren't any -- so is the third Thursday of the month, if we have a meeting cause we may not have a meeting, at 4:00, is that okay with the members?

Ms. Lono: ...(inaudible)...

Mr. Yoshida: Okay, with that, I'll turn it over to -- if there aren't any other questions, I'll turn it over to the --

Ms. Cosma: Just one thing I like say.

Mr. Yoshida: Okay.

Ms. Cosma: You need to update your website on your Hana Advisory Committee because you have different --

Mr. Yoshida: Oh, the members?

Ms. Cosma: Yeah, the members, that's what I meant.

Mr. Yoshida: Yes, we will do that.

Ms. Cosma: Mahalo.

Mr. Yoshida: Yes, we will do that. Okay, if there aren't any other questions, I'll turn it over to the Deputy Corp. Counsel. He can talk about the Sunshine Law and other matters.

Mr. Hopper: I wanted to talk about a couple quick things. We give this same introduction to other boards and commissions, including planning commissions. I want to talk about the Code of Ethics first, which you are subject to, that's under -- there's an asterisk and the title of the document is *Orientation for Board and Commission Members*, and this deals with the Code of Ethics. You are subject to the Code of Ethics. You're considered an officer of the County, so you're subject to the Code of Ethics. Conflicts of Interest. It states that you shall not engage in any business transaction or activity or have a financial interest direct or indirect which incompatible with the proper discharge of your official duties or which may tend to impair your independence of judgement. Financial interest is a financial interest of

you, your spouse, or your dependent child. An example would be if you sit on a planning commission and your spouse works for a developer seeking a special management area permit, you act as a -- as a recommending body to the Maui Planning Commission so you'll see a lot of similar applications that they do, including special management area permit applications, be sure you don't have any kind of conflict of interest. If you have doubts, you can ask me, as your attorney, or James Giroux, and if we need to go further with that, we can ask the County Board of Ethics. They have to respond in 45 days. But just be aware that you should disclose any of those conflicts if you've got a spouse or a dependent child working for a developer who's coming before you for a permit. If it's an independent child or a brother or sister, that doesn't necessarily disqualify you unless you feel there's a reason why you couldn't be objective in making your recommendations.

In addition, you're not allowed to accept any gift from anyone if it is under circumstances in which it can be reasonably inferred that the gift is intended to influence you in the performance of your official duties. Basically use common sense. And value does not matter. But if you believe the gift was given to you as an intension -- with the intension of influencing your vote on something here, don't accept the gift, and if you -- you know, there's a tradition of giving gifts of aloha, which have been given, you know, traditionally and just basically make sure that the gift was not intended to influence your vote and, again, monetary value is not the sole factor involved in making that determination.

You also cannot disclose any information, confidential information you get in your capacity as commission member for the benefit of you or anyone else. Such confidential information may include if we go into executive session, which is a consultation with me as your attorney, that's information that's not generally available to the public. You can't disclose that information for the benefit of yourself or anybody else. And I don't know if this board has financial disclosure requirements, if you've gotten a form, make sure you fill that out and give that to the County so the everyone knows your, you know, who you're employed with, who your spouse is employed with, and things like that. So that covers my ethics lecture.

The next issue I wanna get to is the Sunshine Law, which we've dealt with. The Sunshine Law is a State law that applies to County boards and commissions, this includes advisory commissions, such as yourself, who is actually not the final authority on anything, but you're still subject to that State law. And you can look in pamphlet, it's called *Open Meetings and Guide to the Sunshine Law*. I would urge you to read through that. You know don't just rely on what I say at this meeting. You're going to want to read through the Sunshine Law pamphlet so you see what all your obligations are and what your, you know, the limitations are. I'm not going to catch everything tonight but just a few key points.

One is that all deliberations on the things that come before you, even though you're in an advisory capacity, has to happen on the record. So the rule is that two of you can't discuss board business if a commitment to vote is made or sought. So two of you can't get together

and agree to vote on something. The two of you can get together and discuss something that's board business but you can't commit to vote on it. More than two of you cannot discuss any board business whether it's to vote on or anything else. So three of you can't get together and start discussing things. The theory behind that is they all these deliberations to happen on the record in an open session and so sometimes it seems to be a bit paternalistic to do that, but that's what the law states and the intent is so that the public sees what goes on here.

You're required to have all of your businesses conducted at meetings that have agendas posted. The agenda has to be posted six days prior to the meeting and has to clearly state what the topics to be discussed at the meeting will be. It's filed with the County Clerks office and has to be provided with anyone who request that they receive copies of your -- of the agenda so, you know, make that point to anybody who says, "Oh, I didn't get notice of this meeting." They can ask the Planning Department to send them each time an agenda comes out that agenda so they know what's coming on and say, "If they don't wanna see something, they don't have to come," but that's information for them.

In addition, you have to allow public testimony on each agenda item that's on -- that's there, so you have to allow public testimony and you have to give each person at least three minutes to testify on each agenda item. So if you have five agenda items, a person's entitled to three minutes on each of those items and -- so that's a rule and a very important part of the Sunshine Law.

In addition, other parts of the Sunshine Law, you need to have an affirmative vote of a majority of the members to which you are entitled. You're entitled to seven members, so regardless of how many people show up, you need to have at least four votes on anything in order to take action on anything, this includes providing comments to someone or to a board or a commission, that's considered an action that you take. In addition, in order to even have a meeting, you have to have what's called a quorum, which is at least, again, the same as the number of votes required, you need to have at least four people show up or else you can't do anything, you can't even take public testimony at a meeting. So that's a requirement.

Your rules, you don't have your own set of Hana Advisory Committee rules, you actually follow the rules that the Maui Planning Commission has because you're an advisory board to them, and under your rules you follow *Robert's Rules of Order*, which is a way of, you know, of taking votes and dealing with situations in a deliberative body, so you have to have that majority vote and the meeting's conducted along with those rules. The chairperson is the authority on the rules. The chairperson will address all questions as to rules, can defer those questions to counsel, if necessary, but it's the chair's decision is final on the rules, and that decision can be appealed and put before the body, but typically it's the chairperson that decides those issues.



And so that's about it for the Sunshine Law. There's a lot more in there about the Sunshine Law. Read the pamphlet. I would urge you to read the pamphlet and know the requirements. And if you have any additional questions about that, that's fine, you can ask me.

And one last thing, on your agenda I was asked to talk about takings. There's the Sixth Amendment to the U.S. Constitution that says, it might not be the sixth. The Constitution basically states that you can't have -- government cannot take private property without just compensation. So where this comes in for you is that you'll be sometimes recommending conditions of approval, whether it's approval of a change in zoning, approval of an SMA permit, whatever, you'll be recommending conditions, and the U.S. Supreme Court has found that conditions are allowable, you can have exactions for the development, but there's a couple things that are not allowed with conditions. First, the condition has to have a rational nexus to the impact of the development, meaning that if the development has some sort of impact that's a detriment to the environment or the surrounding area, the condition needs to be put in place to mitigate that type of impact. For example, if you're dealing with, you know, something that you believe has an adverse impact on traffic, requiring a condition that deals with something other than traffic isn't -- there's no rational nexus between that condition and the impact of that development unless you show the development has some other type of impact. And in addition to that, the condition must also be proportional to the impact, meaning that it has to mitigate that particular impact, so you know the traffic -- the traffic impact of a single-family home, in most cases, will not be as much as a large hotel so imposing the same type of condition on both of those may not be appropriate. So you need to use your judgement in imposing those conditions to make sure it doesn't result in a taking of that person's property and the Supreme Court has decided that those are -- we'll look for in determining if there's been a taking in cases where you're imposing conditions. And in the SMA context, you actually are a bit narrow as far as what conditions you can consider versus a change in zoning application because an SMA permit that you're looking at deals strictly with the impacts on the SMA, on the special management area, which generally relate to shoreline preservation and things like that. Change in zoning can have a much greater impact . . . again, you won't actually be imposing conditions on any project, you'll be recommending other bodies, the Planning Commission and the council, to impose those conditions but it's good to just keep that in mind that when you're, you know, recommending conditions that that's something you should be looking at, making sure that the condition is there to mitigate an impact that the development has that you believe is causing a problem in the community. So that's all I have to say.

Ms. Kanakaole: Thank you. Do we have a Director's Report?

## **F. DIRECTOR'S REPORT**

Mr. Yoshida: Yes, unless the TVR bill comes back, I don't foresee having another meeting for this body for a while. We have some Hana applications that we are processing. But it may be a few months from now but we may not have a meeting, unless the TVR bill comes back, until next year.

Ms. Lono: So the Mark Collins request, that is still pretty far down the road?

Mr. Yoshida: I believe it's out for agency comments right now but, again, we are booking into the month of December and that would put us pretty close to Christmas.

Ms. Lono: Yeah, skip it.

Mr. Yoshida: It's kind of hard. Our experience is it's hard to get members, especially in small communities, to come out just before Christmas.

Ms. Lono: There are just two things I'd like to ask: make sure that all of the new members got a complete book. Did you all get? Okay. And that I don't know why some members haven't gotten their packets last time. Kauai didn't get hers. This time Mavis didn't get hers. So I don't know what's going on with that but I would be glad to, if somebody doesn't get their packet and we need to get it to them right away, I'm glad to make a copy of mine if I have it, so I'm offering that if we find that, anyone can call me and say, "Hey, Dawn, can you make her a copy?" I'd be glad to do that but I don't know what's going on with packets.

Ms. Kanakaole: What's going on is that I don't check my mail for a week and she called me this morning, thank goodness, because I wouldn't have come. No, actually, Mavis told me at work and then she called and I was like --

Ms. Lono: But Mavis did not get her packet this time so I don't know why so I just wanted to bring that up. But thank you so much.

Ms. Kanakaole: It's good if you call me cause I'm like that, I don't check the mail, so if you know a meeting's coming up and can you give me a call? Thank you. Okay, so can we move to adjourn?

Ms. Cosma: I'd like to make a motion that we adjourn this October 18, 2007 Hana Advisory meeting.

Mr. Kaina: I second that motion.

Ms. Kanakaole: Thank you everybody.

**G. ADJOURNMENT**

There being no further business brought before the Committee, the meeting was adjourned at 7:21 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Kau`i Kanakaole, Chairperson (Arrived at 4:33 p.m.)  
Mavis Oliveira-Medeiros, Vice-Chairperson  
Lehua Cosma  
David Kaina  
Dawn Lono  
Sane Sinenci

**Excused**

Melissa Mauliola

**Others**

Clayton Yoshida, Planning Program Administrator, Current Division  
Joseph Alueta, Administrative Planning Officer  
Paul Fasi, Staff Planner  
Michael Hopper, Deputy Corporation Counsel