

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

September 3, 2008

Council Chamber

CONVENE: 9:05 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember G. Riki Hokama, Member (Arrive 9:13 a.m.)
Councilmember Danny A. Mateo, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Michelle Anderson, Member
Councilmember Jo Anne Johnson, Member

STAFF: Tammy M. Frias, Committee Secretary
Carla M. Nakata, Legislative Attorney

ADMIN.: Jeffrey Hunt, Director, Department of Planning
Simone Bosco, Planner, Department of Planning (Item No. 32)
Joseph Prutch, Planner, Department of Planning (Item No. 41)
Michael Miyamoto, Deputy Director, Department of Public Works
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: **Item No. 32:** Tanna Swanson
Donald Ewing
Additional attendees (2)

Item No. 41: Jordan Canha, Sr.
Christopher L. Hart, Chris Hart & Partners, Inc.
Brett Davis, Land Use Planner, Chris Hart & Partners, Inc.
Additional attendees (5)

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

CHAIR MOLINA: ...*(gavel)*... Land Use Committee meeting for September 3, 2008 is now in session. For the record we have in attendance, we have Members Mateo, Baisa, Medeiros and Committee Vice-Chair Pontanilla and Committee Member Victorino.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

COUNCILMEMBER VICTORINO: Thank you.

CHAIR MOLINA: Excused are Members Anderson, Johnson and Hokama. And also present is Chairman Molina. Members, we have two items on our agenda today which is...the first being Land Use Item 32, a Type 3 Bed and Breakfast Home Permit for The Guesthouse B&B in Lahaina. And Land Use Item 41, which is a District Boundary Amendment and Change in Zoning for the Canha Family Subdivision out in Haiku.

Before we go any further, the Chair would also like to recognize Staff in attendance. We have our Legislative Analyst Carla Nakata and also our Committee Secretary Tammy Frias. And from the Corporation Counsel's office we have James Giroux, and from the Planning Department we have Director Jeff Hunt and Planner Simone Bosco. Good morning, everyone.

So we will first start with public testimony. We have one individual that has signed up to testify, but the Chair would like to first go over some ground rules before you testify. Please state your name and any organization that you may be representing. And everyone else, please turn off all cell phones and pagers so as not to disrupt our proceedings today. So with that said, we shall begin public testimony. And the individual that has signed up today is Don Ewing. Mr. Ewing, if you could please come up to the lectern.

...BEGIN PUBLIC TESTIMONY...

MR. EWING: Good morning.

CHAIR MOLINA: Good morning.

MR. EWING: I'm here today to support the bed and breakfast. I bought my house next door 12 years ago. And to date, I've had not one problem with it. Actually, it's protected my property value. No parking concerns, no noise concerns at all. And also, I've not heard any of my neighbors complain about it. I've heard nothing bad about it before. I mean, actually, I like it.

CHAIR MOLINA: Okay. All right. Thank you very much for your testimony. And Mr. Ewing, could you state your full name for the record again?

MR. EWING: Donald Ewing.

CHAIR MOLINA: Okay, thank you. Committee Members, questions for the testifier? Councilmember Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Ewing, thank you for being here and for your testimony. You're a neighbor to this applicant or this property, and you say that there's no problems with parking in the right-of-way of the County?

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

MR. EWING: No. Actually, I have not had any problems.

COUNCILMEMBER MEDEIROS: Okay.

MR. EWING: I have a full long-term rental ohana in my back. They probably cause more problems than anybody. They park anywhere they want, probably in front of their place too, so.

COUNCILMEMBER MEDEIROS: Okay. And this property, if I understand it correctly, it's on Ainakea Street?

MR. EWING: Yeah. 1612, next door.

COUNCILMEMBER MEDEIROS: Okay. And, you know, I worked in Lahaina for 20-some odd years. I know Ainakea to be a very crowded street with cars parked on both sides and so forth. So, you don't think there's a problem when guests come to visit that B&B that they'll be parking--even though, I believe, the conditions say they can't park in the County right-of-way--even as visitors, you don't see any problem with parking?

MR. EWING: Not in that area. Now, the south part of Ainakea towards Lahaina, it's very crowded in that area. There's four or five blocks there. But the north end, at least four or five blocks, there's plenty of open parking.

COUNCILMEMBER MEDEIROS: Okay, thank you, Mr. Ewing, for your testimony. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Councilmember Medeiros. Committee Members, any other questions for the testifier? Seeing none, thank you very much for your comments, Mr. Ewing.

MR. EWING: Thank you.

CHAIR MOLINA: Committee Secretary, did we have any additional signups for testimony?

MS. FRIAS: No, Mr. Chair.

CHAIR MOLINA: Okay. Members, no one else has signed up for public testimony. Anyone in the gallery? Is there a request to sign up for testimony on either Land Use Item 32 or Land Use Item 41? Seeing no one approaching, the Chair, if there are no objections, will close public testimony for our two items today.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So ordered. So public testimony is now closed.

...END OF PUBLIC TESTIMONY...

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

ITEM NO. 32: TYPE 3 BED AND BREAKFAST HOME PERMIT FOR THE GUESTHOUSE B&B (LAHAINA) (C.C. No. 08-42)

CHAIR MOLINA: Members, we'll now first address our item which is Land Use Item 32, which is the Type 3 Bed and Breakfast Home Permit for The Guesthouse B&B in Lahaina. The Committee is in receipt of County Communication No. 08-42, from the Planning Director, transmitting a proposed resolution entitled "APPROVING THE ACTION OF THE MAUI PLANNING COMMISSION GRANTING A TYPE 3 BED AND BREAKFAST HOME PERMIT FOR THE GUESTHOUSE BED AND BREAKFAST ON PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII". The purpose of the proposed resolution is to grant a request from Tanna Swanson for a Type 3 Bed and Breakfast home permit in order to operate five guest rooms, known as The Guesthouse B&B, on approximately 10,585 square feet in the R-3 Residential District, located at 1620 Ainakea Road in Lahaina, Maui, Hawaii.

Members, we have a presentation from the applicant--a PowerPoint presentation I should say. So what we will do, we will take a momentary recess in order to set up the PowerPoint and bring the screen down. And when we resume we shall have the PowerPoint presentation done for you by the applicant. So, Members, it is ten minutes after 9:00. This Land Use meeting is in recess subject to the call of the Chair. . . .(gavel). . .

RECESS: 9:10 a.m.

RECONVENE: 9:13 a.m.

CHAIR MOLINA: . . .(gavel). . . The September 3, 2008 Land Use Committee is now back in session. We have for us today a presentation from Tanna Swanson regarding the proposal for Land Use Item 32, which is a Type 3 Bed and Breakfast Home Permit for The Guesthouse B&B in Lahaina. At this point I will turn matters over to Ms. Swanson.

Note: Computer-generated presentation.

MS. SWANSON: Good morning, Committee. I've been sick all week so my voice is a little hoarse. But we'll try to get through this. The bed and breakfast, The Guesthouse, was established back in 1985 by Jim and Lena Patterson. And they went on to build The Plantation Inn in Lahaina. And I happened to open escrow on this business back in 1988 and prior to closing escrow, sought out a means to operate, because obviously this was a huge investment for me. And I wanted to make sure that I could operate. I went down to the Planning Department and they referred me to Land Use. Land Use sent me over to the Health Department. The Health Department sent me back to Planning. And, if I can remember correctly, I think it was David Blane who physically walked me over to the Tax Office where I obtained a GE and TA tax license. And we have to remember this was over 20 years ago before everything was online. And this was the route that

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

everyone was taking back then. I ended up purchasing that bed and breakfast at the end of September of 1988 as a five-room guesthouse and I ran it as such.

In the early 1990s we loosely formed our Bed and Breakfast organization to start...networking with the other bed and breakfasts. In the mid-1990s there were some concerns arising in our industry, even at that early age, and we started working with Councilmember Tom Morrow. And unfortunately, upon his tragic death, our momentum was lost at that time. But in 1996 the Maui Bed and Breakfast Association became a legal entity of which I was elected president and by default have been president ever since. In the late 1990s, the home occupation bill came before the Council. And our organization as well as others took it upon themselves to try again for regulation within our industry, and as many of you know, and have sat through those arduous years, that this resulted in a bed and breakfast ordinance being passed.

Due to parking restraints at the time, even though I had five guest rooms, we had to go down to four guest rooms because I didn't have adequate parking. So in 1999 I received my BB2 license for a four-guest room bed and breakfast. And, of course, then we started our parking renovations. If you would please note not only the soil composition--there was not much soil--but also I need you to note that the pool is located also in the front of the house. And that's up on the deck there. These are just more of the construction going on. That's my husband right there, Fred, who's six foot, four. That gives you some idea of some of the sizes of the boulders in my yard. And this is what parking looks like completed, these two pictures here.

And we then applied, this is in 2002, for a BB3 permit. And it was approved in 2004 by the Maui Planning Commission. And the recommendations from the reviewing agencies. I don't want to go down the whole list because mostly no one had a recommendation, except for the Water...Department where it states that the property utilizes more than twice the average water use for single-family residences in Lahaina. It was 1,630 gallons per day. That was actually a shock to me. I didn't realize that at the time. So we drastically decided to do something about that issue. And over the next year we ended up doing the following which is going through the entire house and looking for leaks. The low-flow toilets that had not been replaced were replaced. We went to all shower heads with the maximum 2.5 gallons per minute. We went as far as replacing our top-load washers to the front loads which are much more efficient. A big water loss for us was our swimming pool. It's an above-ground--what's called a Doughboy--swimming pool, and it just has a liner in it. And that was one of our biggest areas that we realized had a lot of leaks.

And then one of the biggest things that made a drastic change was when we re-landscaped by removing our lawn areas which we replaced with gravel. That really brought down the water usage because as we all know in Lahaina--I think Lahaina means town of the scorching sun--a lot of the water usage was just going for landscaping. So we went on drip line. The Water Department gave us their list of recommended plants and things which we converted our plants to native plants and things like that. And we were able to reduce that water usage to more than half. This is a representation of the last two years of my water bills. And you can see that we dropped down our water use from 1,630 gallons per day down to an average of 745 gallons per

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

day. And the other requirement that they wanted--and this is a picture of it--is the reduced-pressure backflow preventer which was recently installed.

In the meantime, even though the Maui Planning Department had me approved and I was waiting to come before this Committee, in the meantime in 2005 the EPA passed this cesspool bill or law. And if you read the first question, does it serve more than one dwelling? In my case, it does not. And if non-residential, does it serve more than 20 persons on any given day? In my case, no, it doesn't serve close to 20 people per day. So I really didn't pay too much attention to this, and I really did not think that it applied to me. But as the other bed and breakfasts in my area have gone through, apparently there is a trigger and it has to do with having more than five bedroom-like rooms in your home. And so because the law's been a little bit not clear, we've all been trying to move forward on this. But in my situation--since I like to be a little more proactive and because I believe it's the right thing to do--this last February we hired Pro Draft who has in the...works of planning a septic system for us. And we brought Linda Taylor Engineering on board to help us with the designing of that system. And, of course, we are taking bids on the construction, but we're just at the very early stages of this.

We also have been back--because obviously I had, when I was told my permit was coming up and in reviewing that realized, oh yeah, we had these conditions for the Water Department about the backflow and this one-inch water meter thing--we are back in contact with the Water Department. And we're currently working on the Water Department's recommendations. They're highlighted because I have the attachments on the back of your handout that you can go to look at for those communications. It's important to note that I have been operating for more than 20 years so it's not an easy thing for me since I have bookings years in advance to shut down the place that we made--we took a look at our calendars back in the beginning of the year and as soon as I could close down for any renovations would be May of 2009. So our calendar has been shut down since January of this year for those dates. Starting in May we've shut it down for a few months because we're anticipating on doing something. We're just not sure where that's gonna lead.

To note the pictures, even my pool could not be what I call a real pool. My pool is an above-ground pool. And, again, it's because of the...the soil composition. We're sitting on solid rock, basically. And even though it looks like an in-ground pool, it's not an in-ground pool. But on the left, you'll see that this is what my engineering is proposing that we go for. And these are just some of the scenarios. And...and we're just at this preliminary stage now. But we are working forward in getting something resolved as far as the septic system is concerned. I think that's it.

Oh, and last but not least--I know we'll probably come back to the cesspool issue but--this is my neighborhood. The middle house is my house on the bottom there. And right to the top left picture is my neighbor right to the left of me. Don, who testified earlier, his house is on the right to me. The picture in the middle is from my driveway looking directly across the street. That's my neighbor across the street. And these are the other neighbors immediately close to my house. So this is my typical Lahaina neighborhood because everyone asks, does your house conform to

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

the existing character of the neighborhood? And I think mine does. And I think that's a...a close. I'll be happy to answer any questions. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Swanson. Members, we're gonna take a brief recess to put the screen back up. Before that, the Chair would like to acknowledge the presence of Chairman Hokama to our proceedings this morning as well. So Members, we're gonna take a brief recess and after that we will delve into Land Use Item 32. This Land Use Committee meeting for September 3, 2008 is now in recess. . . .(gavel). . .

RECESS: 9:24 a.m.

RECONVENE: 9:25 a.m.

CHAIR MOLINA: . . .(gavel). . . Land Use Committee meeting for September 3, 2008 is now back in session. Members, we have just viewed a PowerPoint presentation from applicant Tanna Swanson for Land Use Item 32. At this point before I open the floor up for any questions, I'd like to ask for some initial comments from the Planning Department.

MS. BOSCO: Thank you, Chair. This application again, as the Chair mentioned, is a request for an additional bedroom in a...an existing bed and breakfast operation. The applicant has maintained a Type 2 Bed and Breakfast Permit and was approved unanimously by the Maui Planning Commission in 2004 to...to be granted the Type 3 B&B Permit by this body. The...the B&B is currently operating as a Type 2 four-bedroom. There'll be one bedroom added with this permit if it's granted. And I just want to thank you, Tanna, for such an excellent presentation. She really summarized the...the project very well. Is there any other--I'd just like to be available to answer any of your questions this body might have.

CHAIR MOLINA: Okay. Thank you, Ms. Bosco. Committee Members, also we have Ms. Swanson available to respond to any questions that you may have. So at this point, Members, the floor is now open for questions. And, by the way, we also have Deputy Director from the Public Works Department, Mr. Mike Miyamoto, in the gallery available as well if you have any questions related to Public Works. We'll start first with Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you very much, Chair. For the Planning Department, first of all, do you feel comfortable as far as the improvements and following the recommendations by the Planning Commission in the upgrade of this property so that when we...if we were to approve it to go to the BB3, that they would conform and be what I call a model B&B?

MS. BOSCO: Yes, yes, I do.

COUNCILMEMBER VICTORINO: Okay. And the other question I have is on these improvements that have been made, parking along the street has--as far as I can see--they don't use on-street parking.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

MS. BOSCO: That's correct.

COUNCILMEMBER VICTORINO: But yet, the picture shows the other neighbors seem to use on-street parking, the long-term residents and as well as the long-term renters in the area.

MS. BOSCO: It could be. I haven't inspected but it could be very...very easily that's the case. However, I know that there's...there's a shoulder there and partially a lot of the shoulder is private property. So it could also be that the neighboring properties are using their private property. But I haven't inspected that actually.

COUNCILMEMBER VICTORINO: Oh, okay. And that was...thank you for bringing that out. That was my--when was the last time that you actually went and inspected this property?

MS. BOSCO: That was in 2004.

COUNCILMEMBER VICTORINO: So you haven't been out there recently?

MS. BOSCO: No, I have not.

COUNCILMEMBER VICTORINO: Okay. I have some other questions for Ms. Tanna later but, you know, we can--when she comes up, I'd like to ask her some questions, please? Thank you, Chair.

CHAIR MOLINA: Okay. All right, thank you, Member Victorino. Committee Members, any other questions for the Planning Department? Mr. Mateo, followed by Mr. Pontanilla.

COUNCILMEMBER MATEO: Chairman, thank you very much. I guess to the Planning Department. If your last visit was in 2004, how do you know that they complied to all of the requirements that was asked of them?

MS. BOSCO: The requirements that were imposed upon the...in order to--okay, how do I explain this? According to the ordinance, the B&B Type 2 requirements, they have complied. The new requirements were imposed if they were to be granted a Type 3. In other words, in order to comply with the new requirements, they would have...they would have to go forward and comply with them. I don't know if I'm making sense here. But as far as the requirements that the Planning Department expected them to comply with in order for them to be granted a Type 2, those...those were complied with. And they have been complied with since the Type 2 was renewed.

COUNCILMEMBER MATEO: Their...their actual permit for Type 3, I guess, was actually done...would've been valid until December 31, 2005. And according to the communication I'm looking at, that was not transmitted to the Council until 2008. So can you explain the number of years of delay?

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

MS. BOSCO: Uh-huh. Sure. And I just would like to clarify very briefly that the permit...the...the Type 2 B&B permit has been maintained. That's the permit that they...that they have now. In 2008, we transmitted to Council following, first of all, a period of time within in which to determine if the cesspool requirement could be met. Secondly, to determine whether or not the...the parking would create an issue, which it will not. Thirdly, there was...some concerns at the time about whether or not Council would be taking up many of the transient vacation rentals. And the applicant was willing to wait to see which direction legislation went in. However, when we decided it was...it was important to go forward with the project, we transmitted up for the ordinance to be drafted. And there was a pause to get the ordinance drafted so that it could be brought to this body. So there have been a number of reasons why there's been a delay.

However, I'm pretty confident now that the applicant is...is able to meet all the requirements. And so, therefore, now we're here. So that's mainly the reason. There are a lot of other reasons, too, which I won't go into now. But, yes, that's the reason.

COUNCILMEMBER MATEO: But one of your reasons is really not acceptable because this body has been going through the review and approvals of other similar type requests as well. So that is a poor judgment call on your part to assume that because this body has been reviewing for the last number of years anyhow, regardless if a B&B ordinance or a TVR ordinance is still being reviewed by Committee.

MS. BOSCO: That was probably one of the most minor reasons why it wasn't transmitted. So case in point, we have been trying to determine whether this application could go forward based upon the agency requirements. And so at this point, the Department has been discussing if the requirements could be complied with. And therefore, I feel con...I felt confident to transmit up to Council because I...I felt confident that the requirements could be met. That's...that's the stronger of the reasons of all the ones I just gave.

COUNCILMEMBER MATEO: Yeah. You know, we look...we're looking at a...an operation with almost...with 20 years--

MS. BOSCO: That's correct.

COUNCILMEMBER MATEO: --20 years...20-year record. So, you know, I'm...I'm just kinda dismayed that, you know, the delay in bringing something like this up because you apparently visited and inspected the property in 2004, and you indicate that they were in compliance with...with all of the, I guess, departmental requests of them. So the delay just seems inappropriate at this time. Thank you very much, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Mateo. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. And I guess Ms. Swanson was true in her words. Probably for me one of the biggest issues is the cesspool. And I...I...I note that it was recommended by the Planning Department to add another Condition 18 in regards to upgrading

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

the cesspool to a septic tank. Is that the recommendation that is being made by the Planning Department? I just wanna confirm that. And the completion of the septic tank should be done before December 31, 2009?

CHAIR MOLINA: Ms. Bosco?

MS. BOSCO: Yes, thank you for asking that question. I've been in discussion with the Department of Health since this letter was drafted to this Committee. It looks as if the...the preferred recommendation over the language that we...I trans...this Department...transmitted to this body would be that the applicant comply with the Department of Health's requirements. The reason the language should be broader is because since then in my conversations with Department of Health, I've discovered that there are more than one solution...there's more than one solution to the problem. And because the applicant is currently working with a Wastewater Engineer to...to broaden that language would...would be probably a better solution. Like the applicant had mentioned, the law is...is not as exactly as clear as we would like it to be.

The site does pose some difficulties. It's a very tight area. And if...if we can add a Condition Number 18 that simply states "the applicant shall comply with the Department of Health's requirements", I think that that would be a more manageable condition for the applicant to meet. And if I can...if you'd like me to answer more questions about that, I can because I've had a lot of conversation with...conversations with the Department of Health.

VICE-CHAIR PONTANILLA: Yeah. See, and the reason why I asked this question and...you know, happy to hear that the Department of Health has, you know, an appeal process where people like Ms. Swanson can go to and...and appeal her case. What takes precedence, though, the Federal law or the State law?

MS. BOSCO: What, which would take precedence?

VICE-CHAIR PONTANILLA: Yeah, 'cause the cesspool changing to septic tanks is from the United States Environmental Protection Agency, which is a Federal agency.

MS. BOSCO: Uh-huh. How I would view that is the State is tasked with--what shall we say?--administering the...the Federal requirements. And so the way I would view this is the State would...would ultimately be the...the agency to determine how the applicant complies with the Federal requirements. Once again, there were no requirements imposed by the Department of Health in 2004 for the upgrade, okay, for an upgrade from a cesspool to a septic. And so therefore, I would actually feel more comfortable that...from this point forward, the applicant work directly with the State to determine what...how to meet those requirements.

VICE-CHAIR PONTANILLA: Okay. Thank you. One...one last question, Chairman.

CHAIR MOLINA: Proceed.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

VICE-CHAIR PONTANILLA: In regards to inspections, who will be doing the inspections in regards to the cesspool or, you know, requirements?

MS. BOSCO: I would imagine it would be the State. The Planning Department will oversee the compliance to the...whatever conditions are imposed. However, we would be relying more heavily on the State Department of Health, the local Maui office, to determine if compliance has been met.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: Thank you, Member Pontanilla. Chairman Hokama, followed by Member Medeiros.

COUNCILMEMBER HOKAMA: So you...would you...would the Planning Department recommend to the Committee a deadline for compliance regarding Mr. Pontanilla's area of questioning regarding the waste system?

MS. BOSCO: We would recommend--may I answer?

CHAIR MOLINA: Proceed, Ms. Bosco.

MS. BOSCO: We would only be able to--well, unless this body would like to grant a very long compliance date, we're only able to grant one year because a Type 3 bed and breakfast essentially is only valid for one year at a time, which is an interesting dilemma because this...this permit will need to be renewed in one year by this body according to the bed and breakfast ordinance, unless the legislation changes during this time.

COUNCILMEMBER HOKAMA: Okay. Thank you for that. My...my other questions, Chairman, would be...with...with proposed Condition 16 from the Department, which is the backflow preventer, which we saw evidence of a project being constructed and a one-inch meter that has a June 14, 2005 deadline, are you folks recommending any revisions to the Committee or to our Chairman?

CHAIR MOLINA: Department?

MS. BOSCO: The letter dated August 21st proposes language to address that requirement, and I'll go ahead and read that. It states--we recommend that the condition state that the requirements of the Department of Water Supply to upgrade the meter size on the property to a one-inch meter size shall be rendered by December 31, 2009 or one year . . .*(end of tape 1A, change tape, start 1B)*. . . in the permit, whichever is later. The backflow preventers have already been installed.

COUNCILMEMBER HOKAMA: Right, right.

MS. BOSCO: So...

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

COUNCILMEMBER HOKAMA: Yeah, we...we understand that, Ms. Bosco. So you recommend to the Committee that the one-inch meter be installed at the end of one year of the permit which is the whole term of the permit and then the permit expires. So during the whole course of business, there is no incentive to get the meter squared away. Does...is that what the Department is recommending to the Committee?

MS. BOSCO: The...well, the permit will--I...I'm...I trust the permit...the applicant will ask for a renewal within the year. And during that time, this requirement will be worked on quite vigorously by the applicant. So in one year's time, we would expect to see that there will be...progress towards full compliance. And the applicant has indicated to me that she feels fairly confident that she can meet this requirement one way or another.

COUNCILMEMBER HOKAMA: Okay. I thank you for that response, Ms. Bosco. One other question that I had that seems either duplicative or...you're putting somebody in a difficult position of making opinions in...in a subjective decision is Condition 11 and then you have Condition 17, which is basically the same things. One, you say one needs to just be in substantial compliance that Ms. Swanson is making regarding the project, and then the other states that there shall be full compliance. So, can you tell us why you have this two different-worded conditions?

CHAIR MOLINA: Department?

MS. BOSCO: Yes. First of all, Condition...proposed Condition No. 17 is a standard condition. Condition No. 11 is also a standard condition. It's a typical condition that we impose, or we propose rather, and it has to do with what commitments the applicant makes during a public hearing or during a public process. So if there's a statement made on the record, we consider that a representation by the applicant. And so we hold them to those statements. And that's the purpose of Condition...proposed Condition No. 11. The purpose of Condition No. 17 is kind of a catch-all standard condition, and it's essentially saying there are agency requirements out there and other requirements that need to be met. And it's in--we're not gonna be all inclusive in our conditions here, but this is intended to address all the other requirements that agencies or other bodies might impose. Does that help?

COUNCILMEMBER HOKAMA: Well, as...as government we...we are more concerned of either you are in compliance or you are not in compliance. So what does substantial compliance mean?

MS. BOSCO: Substantial compliance...okay. (*chuckles*)

COUNCILMEMBER HOKAMA: Somebody's gonna have to make a decision on an interpretation.

MS. BOSCO: Sure.

COUNCILMEMBER HOKAMA: And that's not good enough for us.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

MS. BOSCO: Okay.

COUNCILMEMBER HOKAMA: We want it very clear for the applicant and this County to know --

MS. BOSCO: Yes.

COUNCILMEMBER HOKAMA: --exactly what is expected. What makes compliance and what doesn't fulfill the conditions. That way both the government entity that's doing the oversight and the applicant is fully clear on what is expected of each other.

CHAIR MOLINA: Chairman Hokama, would you like a legal interpretation of that from Corp. Counsel?

COUNCILMEMBER HOKAMA: Chair...you know, Chairman, I think this is something the Committee needs to decide on. And...and for me, I just don't like the word "substantial" because it leaves a sense that something wasn't done. And I think we want...when we place conditions, it's about fulfilling those conditions which relate to why you receive a potential approval. Thank you, Chair.

CHAIR MOLINA: Thank you. Mr. Director?

MR. HUNT: Chair Hokama, I can understand your concern. We deal with language all the time. We don't want to create a loophole. At the same time, we don't want to hold someone to the exact, very, very specific application that they presented, and oftentimes there is something that comes in that's...that's a very subtle change, something's that not substantial. And so I think that's the intent of that word, that it has to be in substantial compliance. It leaves a little bit of room so that if there is a very, very slight change, then we don't have to go back through the whole process. I...I share your concern. How do you allow some flexibility and not open up a floodgate?

COUNCILMEMBER HOKAMA: You know, that's a good comment, Mr. Director. And I sympathize with you. But, again, that representation that is made by the applicant or the applicant's representative is what makes part of the convincing discussion or response why a committee will make a decision, and then the decision is based on that representation. When we get the calls of complaints of good or bad or something that's going on, it's about a specific thing that they're not...fulfilling that was told to the Committee or told to the Council. That's the calls we get. And then we come and call you, why is there not compliance to the conditions of the approval?

I think we just--for me, I just rather just make it clear so that the applicants, they know this is what was required. I've done it, I'm in compliance. There's no question whether it's substantially done or not. So I would say, Mr. Director, you know, part of the representation--people who make the representations need to state it in a way that is still accurate. But it's not for us to give their representation the flexibility. It's for them to present the representation that provides them that flexibility. Thank you, Chairman.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

CHAIR MOLINA: Thank you, Chairman Hokama. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. For the Department, I just need some clarification even though some of these questions have been asked. Currently, the operation is for a four-bedroom B&B? Is that correct?

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: Okay. And what are the parking requirements for a four-bedroom B&B?

MS. BOSCO: One stall per guestroom is required.

COUNCILMEMBER MEDEIROS: Okay. So four stalls.

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: Okay. And they wanna expand it to five-bedrooms, B&Bs, so five stalls?

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: And looking at the tax map that was put in our binders as well as some other location documents, The Guesthouse is the only structure on this property? Is that correct?

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: Okay. And when this applicant and property got their permit for a B&B, did it require the owner to live on the property?

MS. BOSCO: Yes.

COUNCILMEMBER MEDEIROS: And so the owner does live in one of the bedrooms?

MS. BOSCO: Yes.

COUNCILMEMBER MEDEIROS: So, what's the total number of bedrooms at this structure?

MS. BOSCO: The applicant has indicated that the number of bedrooms is six, or bedroom-like bedrooms. There's five bedrooms and there's one work office that the applicant uses as well. So that's six.

COUNCILMEMBER MEDEIROS: So six bedrooms and the property owner occupies one of them?

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

MS. BOSCO: That's correct, yes.

COUNCILMEMBER MEDEIROS: Okay. And trying to count the bathrooms according to their drawings. Is there seven bathrooms?

MS. BOSCO: That was my understanding in 2004. Then, she's nodding her head. That's the number.

COUNCILMEMBER MEDEIROS: That's the number. Okay. And then the--it was said that the Water Department is requiring a one-inch meter.

MS. BOSCO: Yes.

COUNCILMEMBER MEDEIROS: But that hasn't been installed yet? Is that correct?

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: And why wouldn't that be--when would that be installed?

MS. BOSCO: That would be...

COUNCILMEMBER MEDEIROS: I think you said the end of 2009?

MS. BOSCO: That is the...the applicant has indicated that she can meet the Department of Water Supply's requirements within a year, yes.

COUNCILMEMBER MEDEIROS: And so the Water Department didn't have a schedule requirement of when that would have to be installed?

MS. BOSCO: No.

COUNCILMEMBER MEDEIROS: They're leaving that to the applicant?

MS. BOSCO: That's correct.

COUNCILMEMBER MEDEIROS: And what would be the reason for the one-inch water meter?

MS. BOSCO: The reason is because...my understanding is the Department of Water Supply views a bed and breakfast as a commercial operation. Therefore, under that classification the...the water...the water supply needs to increase according to the commercial use. So it's a difficult one because the applicant has gone through great efforts and success...succeeded in reducing water use. However, the Water Department doesn't recognize that as a solution because they view it as it's...the trigger is the use, not the water use.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

COUNCILMEMBER MEDEIROS: I see. I...I...I think it's commendable for the property owner to have reduced their consumption of water by that significant amount, especially when you have seven bathrooms and a swimming pool. That...that...that's absolutely amazing. Now, the septic tank, is that being required by the Department of Health?

MS. BOSCO: Not according to the letters transmitted to us for this application, no. No, no, it is not.

COUNCILMEMBER MEDEIROS: Okay. So is the applicant wanting to do that on their own?

MS. BOSCO: Yes.

COUNCILMEMBER MEDEIROS: Okay. In the new laws requiring septic tanks, isn't there a threshold of when you remodel or do a certain amount of construction--whether it's value of the property that you're extending or the amount...the size of the property--isn't there a threshold that requires a septic tank if you're on a cesspool? What's the threshold?

MS. BOSCO: Yes, there is. The threshold is five bedrooms, anything beyond five bedrooms--if there's a building permit, okay--would...would...how do I say it? Let me explain this a little better. If a building permit is transmitted through the Department of Health that calls for one additional room, if the site doesn't have sufficient...wastewater servicing, which would mean in this case, let's say, for anything beyond five bedrooms either a second individual wastewater system or to be hooked up to the County sewer system, okay, the Department of Health would recom...would not recommend approval. Okay, they would recommend that...that an...the...servicing of the wastewater on...for that site be...be improved or increased so that it could handle, I guess you would say theoretically, the sixth bedroom. Okay, so the threshold is five bedrooms for either a cesspool or a septic tank. But it's not an automatic that you would have to upgrade to a septic if you only maintain five bedrooms.

COUNCILMEMBER MEDEIROS: Okay. I...I'm assuming there's no County sewer system there and that's why they're on cesspool.

MS. BOSCO: My...in my processing of this application, there is a County sewer. However, the County cannot extend the sewer lines because the bedrock in the area is so thick.

COUNCILMEMBER MEDEIROS: So there's no County sewer line going by the property?

MS. BOSCO: Not through it. That's correct, yes.

COUNCILMEMBER MEDEIROS: Okay. So if they're going to a sixth bedroom, then why isn't a septic tank triggering that threshold of having the septic tank?

MS. BOSCO: The...the...the trigger for the--see, this is...okay. The trigger for these--there isn't...that's why I'm recommending that that condition be modified to say the Department of Health, the applicant shall comply with the Department of Health's requirements because it's not

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

automatic that you have to upgrade a cesspool to septic unless the cesspool is not operating well. Okay? Now in this case, we don't know. We only know that in 2004 it was operating correctly. It gets very...it gets a little bit complicated. I realize that. But basically to broaden that language would...would really help because there's a number of solutions we need the Department of Health to go out there and inspect the cesspool. We also need to determine if the...if a second individual wastewater system is required. We have to--there's a number of solutions. And...and I know it gets complicated. So...

COUNCILMEMBER MEDEIROS: Yeah. I have a different understanding as far as septic tanks. There seems to be requirements that require it. It's not a matter of discretion where you wanna put one or not after you hit a certain threshold. Because the land area of that property is 10,585 square feet. My understanding, a septic tank requires a minimum of 10,000 square feet because of the leachate field that you have to construct. Now with a...building taking up that much room of the property and a swimming pool, I have a hard time understanding where you're gonna put a septic tank system, and that's my concern. Has the property owner indicated the frequency of pumping of the cesspool?

MS. BOSCO: The property owner has indicated that there has been no problems with the cesspool that would trigger a pumping at all.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. BOSCO: And...okay. Does that answer your question?

COUNCILMEMBER MEDEIROS: Yeah.

MS. BOSCO: All right.

COUNCILMEMBER MEDEIROS: Okay. So, Mr. Chairman, yeah, I have a question. I don't think there's a discretionary threshold of when you need a septic tank. I think that's set...set by law. So I think we need to verify that, when it requires a septic tank or system or when it does not. And I'm not sure the Planning Department understands that part of it. But I...I think we as a Committee should verify that information with the Department of Health and the EPA. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Your request is noted by the Committee Staff. Members, any other questions for the Department? Member Baisa?

COUNCILMEMBER BAISA: Yeah. In reviewing the report from the Taylor Engineering, I think it's noteworthy that it says that cesspool has never been pumped. And, you know, I live in the Upcountry area where a cesspool that is giving problems, you know right away. My mother has a cesspool that was built in 1946 and it has never been pumped. Obviously, it...it works very well. I have neighbors or had neighbors in Makawao Ranch Acres who within couple of years of

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

moving into their home, the pumper was there every month. So it's not a mystery about whether a cesspool is working or not working. You know.

I do not know the answer to the question that Member Medeiros is asking and there may be. But there's a few things that I wanna point out that I think are...are noteworthy also. One is that this applicant apparently from the very beginning has complied with our tax laws and has a TAT and a GET license from the very beginning. And this is a 20-year saga.

The other thing that impresses me a lot is the attempts that have been made at conserving water. You know, right now the Water Resources Committee is struggling with this issue of water conservation. And I think that what has been done on this property might be a model for others to follow as to all the measures that they've taken, particularly in the area of landscaping, which we all know most of the water goes to landscaping. And it shows in the 50 percent cut in the use. So I think that is a...a real plus.

The other thing that is going on in the Water Resources Committee is something that, Ms. Bosco, you mentioned about how the Water Department perceives the needs for water or the one-inch meter. A determination is being done right now and worked on between the Water Department and the Fire Department to try and come up with an...agreement as to what standards apply. Fire sees these B&Bs as residential. Water sees them as commercial. And right now they are working on some agreement. And the Committee is waiting for that to be done. And this is the kind of dissonance that, you know, we're stuck here trying to deal with.

So I think that, you know, if we can answer Member Medeiros' question, that, you know, this applicant obviously is trying very hard to comply with the requests that have been made. One is for the upgrade in the water meter, and whether that's commercial or residential, they're going to do it and they're working on it. The other is they've had an engineering firm and they're trying to figure out what to do with the septic...septic system, even though we don't know if that is required or not.

So I'm kind of leaning towards maybe allowing them to have this year to pursue this because we all know how difficult it is to work on any kind of renovation or permits or whatever. I mean, time disappears and a year is just a very short period of time when one is dealing with the complications of trying to comply with permits. So if--and I understand Member Hokama's concern about how you define substantial compliance. Maybe we could take it a bit farther and say that if the applicant complies with the requirements of the Water Department and can go ahead with the septic system or prove that one is not needed, that this would be deemed to be substantial compliance. I mean, that would spell it out for everybody. So that's where I'm at, Chair.

CHAIR MOLINA: Thank you, Member Baisa. Okay, Committee Members, are there any questions for the Deputy Director of Public Works, Mr. Miyamoto, who's been waiting? I know we've been talking about cesspools and septic systems. I know it might be somewhat related to Public Works. Okay. Seeing no request for Mr. Miyamoto, any requests for Ms. Swanson, the

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

applicant? Questions from the body? Okay. Any further questions for the Department, before the Chair offers a recommendation? Member Pontanilla, followed by Member Medeiros.

VICE-CHAIR PONTANILLA: Thank you. On Condition No. 6, the only thing that needs to be done is complying to the Department of Water Supply to upgrade the water meter?

CHAIR MOLINA: Member Pontanilla, that was 16, or 6?

VICE-CHAIR PONTANILLA: Number 16.

CHAIR MOLINA: Oh, okay, 6...16. And, Members, by the way, that...those conditions are part of Exhibit A which is attached to a July 30, 2008 correspondence. Department?

MS. BOSCO: I...can you please repeat, Council...

VICE-CHAIR PONTANILLA: Yeah. You know, during the presentation, you know, Ms. Swanson already indicated that the pressure backflow preventer was installed. And I'm looking at Condition No. 16 which says that the Department of Water Supply is requesting that the applicant, you know, put in a one-inch water meter. And when you look at the last two sentences, you know, I was looking at an amendment to remove the installation of the backflow preventer.

MS. BOSCO: I see that. Yes, that's correct. We could remove that because it's already been done.

VICE-CHAIR PONTANILLA: Okay. Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: I think my...my question has been answered already. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you very much, Mr. Medeiros. Any other questions before the Chair offers a recommendation?

VICE-CHAIR PONTANILLA: Recommendation.

CHAIR MOLINA: Okay. All right. Seeing no other questions from the body, the Chair's gonna offer you a recommendation, Members, to approve the action of the Maui Planning Commission granting a Type 3 Bed and Breakfast Home Permit for The Guesthouse Bed and Breakfast on property situated at Lahaina, Maui, Hawaii.

VICE-CHAIR PONTANILLA: So moved.

COUNCILMEMBER VICTORINO: Second.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

CHAIR MOLINA: Okay. It's been moved by Member Pontanilla, seconded by Member Victorino. Members, are there any considerations with regards to the conditions? The Chair would like to first throw out a...recommendation to amend Condition No. 1 of the proposal as recommended by the Planning Department. If you look at the August 21, 2008 response to Question 1 with recommended language to read as follows, "That the Type 3 Bed and Breakfast Home Permit shall be valid until December 31, 2009, or one year from the date of the adoption of the Type 3 Bed and Breakfast Permit, whichever is later, subject to further extensions by the County Council pursuant to the provisions of Section 19.64.060, Maui County Code."

COUNCILMEMBER VICTORINO: So moved.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. It's been moved to amend by Member Victorino, seconded by Member Pontanilla. Discussion, Members, on the proposed amendment? Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Staff?

MS. NAKATA: Staff would just note the wording... "or one year from the date of the adoption of the Type 3 B&B permit" is a little awkward when it's contained within the reso. granting the permit. Staff might suggest that that phrase be substituted with "or one year from the effective date of the resolution".

CHAIR MOLINA: Okay. So, in other words, delete the "or one year from the date of the adoption of Type 3 Bed and Breakfast Permit" and take that out and substitute "or one year from the effective date of the resolution". Is that what you're suggesting?

MS. NAKATA: Yes, Mr. Chair.

CHAIR MOLINA: Okay. Members, the Chair will re...re-word that proposed amendment and substitute those words, "or one year from the effective date of the resolution" and take out the words "or one year from the date of the adoption of the Type 3 Bed and Breakfast Permit." Any objections to that modification to the proposed amendment?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MA, JJ).

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

CHAIR MOLINA: All right, Members--

COUNCILMEMBER HOKAMA: Chairman, I would ask if you would consider taking care of all those nonsubstantive adjustments to the document on the Committee's behalf with Staff and the appropriate Department, personnel from Corp. Counsel and Planning.

CHAIR MOLINA: Okay, after we take action on the motion?

COUNCILMEMBER HOKAMA: Yeah. I prefer that...yeah--

CHAIR MOLINA: We do it then.

COUNCILMEMBER HOKAMA: --to take care of those nonsubstantive adjustments for us.

CHAIR MOLINA: Okay. Thank you. Chair will go ahead and take that consideration and go forward in that manner. So, Members, any discussion on the proposed amendment as re-worded? Okay, seeing none, all those in favor of the proposed amendment to Condition No. 1, signify by saying "aye."

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you.

VOTE:	AYES:	Councilmembers Baisa, Hokama, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.
	NOES:	None.
	EXC.:	Councilmembers Anderson and Johnson.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: We're now back to the main motion, as amended.

VICE-CHAIR PONTANILLA: Chairman?

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

CHAIR MOLINA: Any other considerations? Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Coming back to Condition No. 16, I'd like to remove...(pause)...looking at the last two sentences. After the word, "size"...period...place a period, and removing "and to install a required reduced pressure backflow preventers shall be rendered by June 14, 2005".

CHAIR MOLINA: Okay. The motion has been made to amend Condition 16 by Member Pontanilla. Is there a second?

COUNCILMEMBER VICTORINO: Second for discussion.

CHAIR MOLINA: Seconded by Member Victorino for discussion. Member Pontanilla, you have the floor.

VICE-CHAIR PONTANILLA: Thank you. As...as indicated earlier through the presentation, Ms. Swanson already noted that the--noted to us--that the backflow preventer is already installed. And that's the reason why for the amendment, to remove that portion of that particular sentence.

CHAIR MOLINA: Okay.

VICE-CHAIR PONTANILLA: It's no longer required.

CHAIR MOLINA: All right. Thank you, Member Pontanilla. Any other discussion to the proposed...amendment to Condition No. 16 from the Members?

MS. NAKATA: Excuse me--

CHAIR MOLINA: Member Medeiros, followed by Member Baisa.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I...I just have a question. By removing the part of that condition indicated by Member Pontanilla, so that would leave no date for the one-inch meter to be installed. Is that correct?

CHAIR MOLINA: Would you like to ask Mr. Pontanilla that question or the Department, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Whoever can answer that question.

CHAIR MOLINA: Okay. Planning Department?

MS. BOSCO: The...Planning Department had recommended a one-year period of time. Actually, in my...in our letter to this body it states that the one-inch meter size requirement shall be rendered

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

by December 31, 2009, or one year from the effective date of the resolution as Committee Staff indicated.

COUNCILMEMBER MEDEIROS: So is that within any of the conditions?

MS. BOSCO: That is not in the draft resolution, but that is in my...my recent August 21, 2008 letter to this body.

COUNCILMEMBER MEDEIROS: So my question, Mr. Chairman, is how that's...how does that become a part of the requirements if it's not in the condition or in the resolution?

VICE-CHAIR PONTANILLA: Chairman?

CHAIR MOLINA: Mr. Pontanilla, as the maker of the amendment.

VICE-CHAIR PONTANILLA: Thank you. We can place that particular date as recommended by Planning Department, but remove the pressure backflow preventer installation.

CHAIR MOLINA: Okay. Mr. Medeiros, does that answer...

COUNCILMEMBER MEDEIROS: That'd be fine if we do that.

CHAIR MOLINA: Okay. Staff, you had a comment to make?

MS. NAKATA: So is Member Pontanilla's amendment to conform with the language in Planning's August 21st letter or--I'm sorry, Staff isn't clear what...what the current motion...how the current motion reads.

CHAIR MOLINA: Okay, Mr. Pont...Mr. Pontanilla, could you re-state the motion for Staff and the body?

VICE-CHAIR PONTANILLA: Sure. I'm gonna need some help from the Planning Department in regards to the particular date. Let me read, "That the requirements of the Department of Water Supply to upgrade the meter size on the property to a one-inch meter size", and if Planning Department can add on what was indicated...or what you had said earlier.

MS. BOSCO: Yeah. And it should continue to say "shall be rendered by December 31, 2009, or one year from the effective date of the resolution for the Type 3 B&B Permit, whichever is later".

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MOLINA: All right. Thank you, Mr. Pontanilla. And, again, Members, this is related to the August 21, 2008 letter, which is tied to Question No. 2 that was asked. If you look on the second

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

page, I believe Ms. Bosco gave a revision...slight revision to the...language because of what Staff brought up with regards to making it more clear, having it tie in to the resolution.

MS. BOSCO: That's correct.

CHAIR MOLINA: Is that clear to all the Members? Okay, any further discussion on Mr. Pontanilla's proposal to amend Condition No. 16 before we call for the vote? Seeing none, all those in favor, signify by saying "aye."

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The amendment passes.

**VOTE: AYES: Councilmembers Baisa, Hokama, Mateo, Medeiros, Victorino,
Vice-Chair Pontanilla, and Chair Molina.**

NOES: None.

EXC.: Councilmembers Anderson and Johnson.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: We're now back to the main motion, as amended. Are there any other considerations? Okay. Members, the Chair would like to again offer a possible revision. This is...relates to the body of the resolution on the fourth WHEREAS clause, just for the Members consideration, the fourth WHEREAS clause, to strike the phrase "subject to the conditions set forth in Exhibit "A", attached hereto and by this reference made a part hereof" and insert in its place the phrase "subject to certain conditions". So everybody see the fourth WHEREAS? We're gonna strike out the words that I mentioned to you earlier and substitute that with the phrase "subject to certain conditions". Staff, do we need to do a proposed formal amendment on that as well?

MS. NAKATA: Yes, it would be advisable for the Chair to entertain a motion on that.

COUNCILMEMBER VICTORINO: So moved, Chair.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

COUNCILMEMBER BAISA: Second. . . *(end of tape 1B, change tape, start 2A)*. . .

CHAIR MOLINA: Okay. Moved by Member Victorino and seconded by Member Baisa to amend the fourth WHEREAS clause, which is part of the resolution, "APPROVING THE ACTION OF THE MAUI PLANNING COMMISSION GRANTING A TYPE 3 BED AND BREAKFAST HOME PERMIT FOR THE GUESTHOUSE BED AND BREAKFAST ON PROPERTY SITUATED AT LAHAINA, MAUI, HAWAII". Any further discussion, Members, on this proposed amendment? Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair will mark it 7-0, with two excusals.

VOTE:	AYES:	Councilmembers Baisa, Hokama, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.
	NOES:	None.
	EXC.:	Councilmembers Anderson and Johnson.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: And let's look at the other consideration on the BE IT RESOLVED paragraph, Members. If you'll note, it's been...being recommended that we strike the phrase "recommended by the Maui Planning Commission, which conditions are set forth in Exhibit "A", and substitute that with the phrase, "set forth in Exhibit "A", attached hereto and by this reference made a part hereof". Everybody...know where we're at under the...the BE IT RESOLVED paragraph?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Okay. The Chair would--

COUNCILMEMBER VICTORINO: So moved.

CHAIR MOLINA: --ask for a motion to amend.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Is there a second?

COUNCILMEMBER BAISA: Second.

CHAIR MOLINA: Second from Member Baisa. Any additional comments? Seeing none, all those in favor, signify by saying "aye."

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair will mark it 7-0.

VOTE:	AYES:	Councilmembers Baisa, Hokama, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.
	NOES:	None.
	EXC.:	Councilmembers Anderson and Johnson.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: We're now back to the main motion, as amended. Any other considerations? Member Pontanilla?

VICE-CHAIR PONTANILLA: Yeah. Can...can we have a, like two minutes recess?

CHAIR MOLINA: Recess? Okay, as a matter of fact, why don't we go ahead and take our morning recess. Let's recess until 10:25, Members. The Land Use Committee meeting for September 3, 2008 will stand in recess. . . .(gavel). . .

RECESS: 10:13 a.m.

RECONVENE: 10:28 a.m.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

CHAIR MOLINA: . . .(*gavel*). . . The September 3, 2008 Land Use Committee meeting is now back in session. When we last left off, we had a consideration from Committee Vice-Chair Pontanilla regarding a possible condition. Mr. Pontanilla, you have the floor.

VICE-CHAIR PONTANILLA: Thank you, Chair. I'd like to add a Condition No. 18, since we had a lot of discussion in regards to the cesspool. And the...I'd like to read the condition.

CHAIR MOLINA: Proceed.

VICE-CHAIR PONTANILLA: "That full compliance with the requirements of the State Department of Health shall be rendered by December 31, 2009, or one year from the effective date of the resolution, whichever is later."

CHAIR MOLINA: Okay. Is there a second?

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. Motion has been made by Member Pontanilla to add a Condition 18 and it's been seconded by Member Victorino. Member Pontanilla, you have the floor.

VICE-CHAIR PONTANILLA: Thank you. You know, as indicated by the Planning Department, the applicant is...will be working with the Department of Health as well as the Planning Department in regards to the issue of cesspool to convert to septic tank. And because of the condition of the land, it seems like the...to do excavation, you know, noting what was presented to us, you know, I understand that the...the ground is rocky, you know, digging for a septic tank may be a big issue. And, you know, after hearing from the Planning Department in regards to, you know, there's other ways that could be done in regards to...not having the cesspool be replaced with a septic tank. That's the reason why for this amendment so that, you know, at least give the applicant a chance to work with the Department of Health in trying to resolve this issue.

CHAIR MOLINA: Okay. Thank you, Member Pontanilla. Any other comments to the proposed Condition 18? Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I...I would ask Member Pontanilla if he would consider a friendly amendment or a slight change in his wording to include both the EPA and the State Department of Health regulations and rules.

CHAIR MOLINA: Member Pontanilla, you have heard the consideration from Member Medeiros.

VICE-CHAIR PONTANILLA: Yeah.

CHAIR MOLINA: Your comments?

VICE-CHAIR PONTANILLA: No objections to that.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

CHAIR MOLINA: Okay. So we will incorporate the language as stated by Member Medeiros into Mr. Pontanilla's proposed Condition 18.

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR MOLINA: Staff, Staff, do you need a re-wording? Or is that clear enough for you to add those recommendations? Okay, so noted. Any other comments to the proposed Condition 18 as being added by Member Pontanilla?

COUNCILMEMBER MEDEIROS: Yeah, Mr. Chairman.

CHAIR MOLINA: Member Medeiros?

COUNCILMEMBER MEDEIROS: I just wanted to follow up...that instead of, you know, saying EPA, which is an acronym, that we spell it out, what it means. And also the requirements to convert to a septic tank from a cesspool comes from the EPA and the State Department of Health administers it. And I still have concerns about this because it's my understanding under the State Department of Health Hawaii Administrative Rules 11.62, maximum is five bedrooms for a cesspool. And I haven't been convinced by the Planning Department that they're very sure about that rule and law. So I have a hard time supporting this until we hear for sure from the Department of Health. Is it five bedrooms or can you have a cesspool beyond five bedrooms? And that's the concern I raise. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Member Medeiros. Any other comments or questions related to the proposed Condition 18? Seeing none, all those in favor of adding Condition No. 18, signify by saying "aye."

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay, the Chair will mark it seven ayes, with two excusals, Members Johnson and Anderson.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

**VOTE: AYES: Councilmembers Baisa, Hokama, Mateo, Medeiros, Victorino,
Vice-Chair Pontanilla, and Chair Molina.**

NOES: None.

EXC.: Councilmembers Anderson and Johnson.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Members, any other consideration? We are back to the main motion, as amended, before the Chair calls for the final vote. Okay. Seeing none, Members, I would like to ask for your consideration to add that the filing of County Communication No. 08-42 be added into this motion as well. Any objections?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MA, JJ).

CHAIR MOLINA: Okay, seeing none, all those in favor, signify by saying “aye.”

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER MEDEIROS: No.

CHAIR MOLINA: Okay. We have a final vote count of six “ayes” and one “no”, Member Medeiros; and two excusals, Members Johnson and Anderson. The motion passes and will go on to the full Council.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

**VOTE: AYES: Councilmembers Baisa, Hokama, Mateo, Victorino,
Vice-Chair Pontanilla, and Chair Molina.**

NOES: Councilmember Medeiros.

EXC.: Councilmembers Anderson and Johnson.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending ADOPTION of revised proposed resolution, and FILING of communication.

CHAIR MOLINA: I'd like thank the applicant, Ms. Swanson. And thank you also for your efforts to conserve water as well. So it's much appreciated in this day and age.

ITEM NO. 41: DISTRICT BOUNDARY AMENDMENT AND CHANGE IN ZONING FOR CANHA FAMILY SUBDIVISION (HAIKU) (C.C. No. 08-126)

CHAIR MOLINA: So with that being said, we'll now go on to our next item, the last item for today, which is Land Use Item No. 41, and this has to do with the District Boundary Amendment and Change in Zoning for the Canha Family Subdivision in Haiku.

The Committee is in receipt of County Communication No. 08-126, from the Planning Director, transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII". This is a District Boundary Amendment bill. And the intent of the proposed District Boundary Amendment bill is to grant a request from Jordan Canha, Sr. for a District Boundary Amendment from Agricultural District to Rural District for approximately 1.591 acres located at 2810 Kokomo Road in Haiku, Maui, Hawaii, in order to allow for the consolidation and re-subdivision of four lots totaling 4.03 acres into four rectangular lots among the Canha family.

The Committee also received a correspondence dated June 6, 2008, again from the Planning Director, transmitting a proposed bill to grant a request from Jordan Canha, Sr. for a Change in Zoning from Interim District to RU-0.5 Rural District for the subject property, in order to allow for the consolidation and re-subdivision of four lots which total 4.03 acres into four rectangular lots among the Canha family.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

And one more correspondence dated August 27, 2008 was received from the Corporation Counsel's office, transmitting a revised proposed bill entitled, "A BILL FOR AN ORDINANCE TO ESTABLISH RU-0.5 RURAL DISTRICT ZONING FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII". This is a Change in Zoning bill and the purpose of the revised proposed Change in Zoning bill is to grant the requested Change in Zoning.

Joining us from the Planning Department for our discussions today, we have Mr. Joseph Prutch. Welcome to our session this morning.

MR. PRUTCH: Thank you.

CHAIR MOLINA: And the applicant's representative who's in the gallery is Christopher Hart from Chris Hart & Partners. And, of course, we have Mr. Canha and his family joining us here for our proceedings here today. We did...I believe we're supposed to have a...hard copy of the information that the Canha family I believe--Staff, was that hard copy distributed?

MS. FRIAS: In the binder.

CHAIR MOLINA: Okay, it should be in your binders, Members. And at this point, while you look at your presentation, hard copies of the application, I'd like to ask the Planning Department if they have any opening comments on this particular matter? Mr. Prutch?

MR. PRUTCH: Yes, thank you. I have a very brief presentation, I'll go ahead and give right now. The application before you today is a District Boundary Amendment and a Change in Zoning as you mentioned. It includes a District Boundary Amendment for 1.591 acres to change the designation from State Agricultural to State Rural District; also includes a Change in Zoning for the same 1.591 acres to rezone the property from Interim to Rural RU-0.5. This will provide for consistency with the State Land Use Community Plan and the zoning documents, and it'll allow for the consolidation and re-subdivision of the four-lot rule subdivision which totals about four...approximately four acres. The site's located at 2810 Kokomo Road, and this application is for the Canha family distribution.

The project was heard by the Maui Planning Commission back on January 22, 2008. In the staff report to the...to the Commission, there were no letters either in support or in opposition at that time. At the hearing, public testimony was received by two people. There was two people that spoke in favor of the project. No one spoke in opposition. And since that date, the Planning Department has not received any letters in support or in opposition of the project. And the Maui Planning Commission at that time recommended...unanimously for the Council to approve the project with no conditions of approval. As you mentioned, the applicant and the applicant's consultant are both in the audience to answer questions. You did receive, I believe, the packet that they delivered a couple of days ago. And then go ahead, that will end my staff report and, of course, be happy to answer any questions you have.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

CHAIR MOLINA: Okay. Thank you, Mr. Prutch. And Members, as mentioned earlier, Mr. Hart is available for questioning. You do have a copy of the...hard copy presentation, roughly about 12 pages. Members, the Chair will open up the floor...the floor for questions to the Department and at a later point at your behest, if you want, Mr. Hart to also respond to some matters as well. Members, questions for the departments at this point? Seeing none, I'd like--if there are no objections, Members, I'd like to call upon Mr. Hart. If you'd like to give us a...your brief overview and then respond to questions from the Committee with regards to the Canha family subdivision.

MR. HART: Thank you, Mr. Chairman, Members of the Land Use Committee. We appreciate this a lot, to be able to come and to...discuss with you the Jordan Canha family's subdivision. Mr. Prutch gave a...a good overview of the proposal. I'd just like to call your attention, if you have the PowerPoint, to the proposed subdivision which is Slide No. 5. I don't know if it's readily available for you to look at. But it does give you a clear view of what is actually being proposed. Again, the parcel is a family-owned parcel. And Mr. Canha can indicate to you that it's been in the family since the 1930s. It fronts Kokomo Road and the makai portion actually fronts Kaluanui Ditch, which was owned by A&B, and the portion that abuts this particular parcel was transferred to the Canha family, but it's not part of the proposed application or the future subdivision.

Essentially, it identifies how the parcel will ultimately be consolidated and re-subdivided into four lots for distribution among the heirs of the Canha family. And really, that's all I have other than to indicate to you that the parcel has actually been identified for Rural. Actually the portion that we're proposing to essentially change from Agricultural to Rural and then from Interim to Rural-.05 since 1995, May 1995 when it was included in the Paia-Haiku Community Plan.

CHAIR MOLINA: Okay. Thank you, Mr. Hart. Members, again, we are considering two bills just for the record. One is a District Amend...District Boundary Amendment bill as well as the Change in Zoning bill. Any questions for Mr. Hart or the hard copy of the presentation, Members? Okay. I think...it seems rather straightforward--

MR. HART: Thank you very much.

CHAIR MOLINA: --at this point. Is the body ready for a recommendation?

COUNCILMEMBER BAISA: Yes.

COUNCILMEMBER VICTORINO: Recommendation.

CHAIR MOLINA: Okay. So...so ordered. All right, first of all, Members, the Chair will entertain a motion to recommend passage on first reading of a proposed bill entitled, "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII".

LAND USE COMMITTEE MINUTES
Council of the County of Maui

September 3, 2008

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER BAISA: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay. It's been moved by Member Victorino, seconded by Member Medeiros. Any discussion? Seeing none, all those in favor, signify by saying "aye."

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Thank you. The Chair will mark it 7-0, with two excusals, Members Anderson and Johnson.

VOTE:	AYES:	Councilmembers Baisa, Hokama, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.
	NOES:	None.
	EXC.:	Councilmembers Anderson and Johnson.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED

ACTION: Recommending FIRST READING of proposed District Boundary Amendment bill.

CHAIR MOLINA: Now for our next bill, the Chair will entertain a motion to recommend passage on first reading of a *revised* proposed bill entitled, "A BILL FOR AN ORDINANCE TO ESTABLISH RU-0.5 RURAL DISTRICT ZONING FOR PROPERTY SITUATED AT MAKAWAO, MAUI, HAWAII", and the filing of County Communication No. 08-126.

COUNCILMEMBER BAISA: So moved.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. All right, it's been moved by Member Baisa and seconded by Member Pontanilla. All right, any discussion? Member Baisa?

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

COUNCILMEMBER BAISA: Just a very brief comment, Chair. I would like to say that this gives me great pleasure to participate in this today. You know, as an Upcountry resident and a generational owner of property which I have inherited and tried to deal with passing on to my heirs, I would...I'm just very happy to see this happening for the Canha family. This is the only way they will preserve family land and someday hopefully affordable housing for their heirs. So, again, I am very excited to support this today.

CHAIR MOLINA: Thank you, Member Baisa. Any other discussion as it relates to the proposed bill for the Change in Zoning? Seeing none, all those in favor, signify by saying, "aye."

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Chair will mark it 7-0, with two excusals, Members Anderson and Johnson.

VOTE:	AYES:	Councilmembers Baisa, Hokama, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.
	NOES:	None.
	EXC.:	Councilmembers Anderson and Johnson.
	ABSENT:	None.
	ABSTAIN:	None.

MOTION CARRIED

ACTION: Recommending FIRST READING of revised proposed Change in Zoning bill, and FILING of communication.


CHAIR MOLINA: This matter will now go on to the full Council. Congratulations to the Canha family. You hurdled one major step today. Members, I believe this concludes our agenda for this morning. Are there any announcements? Seeing none, the Chair would like to thank you all for your professionalism and dedication to the work of the County for our people of the Maui...County of Maui. And also to our Staff and to the Administration, thank you for doing your part as well. It is 10:42 on Wednesday morning, September 3, 2008. This Land Use Committee meeting is now adjourned. ...*(gavel)*...

ADJOURN: 10:42 a.m.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

lu:min:080903

Transcribed by: Reinette Kutz

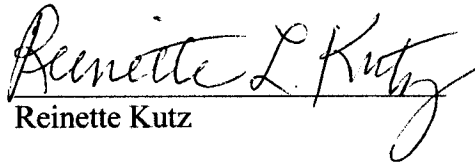
**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

September 3, 2008

CERTIFICATE

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

DATED this 29th day of September 2008, in Wailuku, Hawaii.


Reinette Kutz