

**LANA`I PLANNING COMMISSION
REGULAR MEETING
JUNE 17, 2009**

APPROVED 07-15-09

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Sally Kaye at approximately 6:01 p.m., Wednesday, June 17, 2009, in the Lana`i High & Elementary School Home Economics Room, Room L-16, Lana`i City, Hawaii.

Ms. Sally Kaye: Good evening everyone. We'll call the June 17th Lana`i Planning Commission meeting to order. Let the record show we have quorum with Commissioners Endrina, Mano, Gamulo, Rabaino, Castillo, Zigmond and Kaye; and I believe Commissioner Ruidas will be joining us shortly. We don't have minutes to approve at this time, so we're going to move right into the agenda which is a Council Resolution No. 09-21 containing a draft Bill to amend Section 19.14.020 of the Maui County Code, relating to eliminating the stacking of residential and apartment uses in the hotel district. Mr. Hunt.

B. PUBLIC HEARING (Action to be taken after public hearing)

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-21 to the Lanai, Maui, and Molokai Planning Commissions containing a Draft Bill to Amend Section 19.14.020 of the Maui County Code relating to eliminating the stacking of Residential and Apartment uses in the Hotel District. (RFC 2009/0028) (J. Hunt for J. Alueta)**
 - a. Public Hearing**
 - b. Action**

Mr. Jeffrey Hunt: I thank you Chair. Again, the Bill that's being proposed is a Council initiated Bill. And by law we have to send it around to the Planning Commissions and give you an opportunity to comment on it. The Bill, as drafted, would eliminate what's commonly referred to as stacking of uses. And the term stacking means that there's a base zone, such in this case hotels, and then it also includes besides hotels as a permitted use, it allows for any use in a residential or apartment district. And so rather than list out all those uses, they just simply refer to residential or apartment districts. So the Bill would eliminate that phrase "in use in a residential or apartment district." Thereby leaving hotels more focused on actual hotels, and not these other uses. And the Department supports the concern or the concept that our hotel zone should be maintained for hotel uses. However, we've got some concerns with the Bill as it's worded. The concern of converting hotels to a single-family residential uses is a legitimate concern especially on Maui where we're having a lot of off-island second homeowners come in and have homes developed and

essentially our hotel zones are getting converted to single-family homes that are basically just used by individual residents and citizens not being opened to the tourists. And so the Department supports that concern, but we believe the way the Bill is worded it would also eliminate other uses that are listed in the residential district such as parks, and schools and government buildings. If you eliminate just that phrase “in use in a residential district,” there would be no allowance for parks in the hotel district. And quite often when a hotel developer comes in the County gets a big park out of them so there’s still access to the shoreline or something like for citizens. So that’s a concern that we have.

So rather than eliminate single-families all together, the Department is suggesting that they be allowed but only as an accessory use. And so, an accessory use would mean if you’re building a hotel, you can still have some single-family dwellings in that project, and it gives flexibility to the developers. But it would prevent somebody from coming in just putting in all single-families in a hotel district. So that’s one of our proposal is we’re – and I’ll sum it up.

We also believe that by converting our hotel districts to single-families, it will create more pressure to – in the future, doesn’t make further hotel districts with the idea being if we’re going to continue accommodate tourism to some extent and it’s arguable to what extent we do want to accommodate it. But if we’re going to continue to accommodate tourism – if we convert our hotels to single-families, we’ll just have to go and designate hotel somewhere else which I don’t look forward to doing that chore at all given the controversial nature of them on Maui at least.

If we eliminate single-family uses, we need to make sure that there are provisions for non-conforming uses to continue. On Maui, we have a data base that shows there’s 17 homes in our hotel districts. On Lana`i, and I’ll get to that in a little bit more detail in a minute, I don’t think there’s that concern. But just generally speaking, we believe that there should be some language for non-conformity.

Ms. Beverly Zigmond: Jeff, excuse me. You said 17 houses?

Mr. Hunt: Yes.

Ms. Zigmond: In the Department’s letter here, it says approximately 60.

Mr. Hunt: In the drafting of the report, that was our information, and then we got that further refined that some of that 60 was in other hotel districts such as other districts where hotels are allowed such as a project district. So technically those wouldn’t be affected. So this is more accurate now – 17.

Ms. Zigmond: Okay. So when you’re speaking of houses in a hotel district, like, let’s say Manele and Koele were hotel districts instead of project districts, which I guess that’s the

difference. So the luxury homes that are there, is that what we're referring to then?

Mr. Hunt: That's an example, but on Lana`i, at Koele and Manele, you have project district zoning. This Bill would only effect true hotel zoning, so those wouldn't be effected.

Ms. Zigmond: Right, I understand that. I was just using that as an analogy to something on Maui.

Mr. Hunt: Exactly.

Ms. Zigmond: Okay.

Mr. Hunt: That's the example.

Mr. Gerald Rabaino: The way I'm interpretating this, you're referring to Wailea, Kaanapali, Kapalua where they are building all those homes adjacent to the hotels. Lana`i is a different piece from that.

Mr. Hunt: I agree.

Mr. Rabaino: Because Lana`i is just starting. But if Maui residents there, and they're taxpayer, as well as the hotel tourism, is looking at Kaanapali, Grand Wailea, Kapalua and the north side, past Kapalua, if they're looking at this, is this going to be a so-called grand-fathered thing for those areas and then anything that is built future is going to be restricted?

Mr. Hunt: That's what we would propose. First of all, we don't support the Bill as it's worded, but if Council decides to go forward with it, we would recommend that they add some non-conformity language so that if there's a home there right now, they can continue that home, and if it burns down, they can re-build it. But going forward, any new hotel districts or vacant hotel lands would be subject to the Bill.

But let me continue on. There's a couple of other points I wanted to make. And actually, I've got some maps of Lana`i, and we can talk about Lana`i a little more specifically. The Bill would eliminate the provision for apartments. And in the Maui County Zoning Ordinance, the provision for apartments in a hotel district is the way that condominiums are provided for. Without that provision, we couldn't have condominiums. And most hotel developers that I've talked to recently say the only way you're going to build a hotel in this day and age or recently is if you have at least a portion of it be condominiums. And from my experience on Maui, in four years, we've had a couple of projects that were totally condominium and we've had several that were partial condominiums, but we haven't had a pure hotel. So that just seems to be industry market lately. So we have a concern with deleting the provision of apartment uses all together.

On Lana`i, and I'll pass these out. This is your zoning map for Lana`i. And there's really only one hotel district and that's the Hotel Lana`i. The two hotels, Koele and Manele, are actually project districts. And hold on to this because the next Bill, we've got some maps attached to that too. Do we have enough? We've got more. And for the public, there's handouts up at the table there by the door for the public. So this is downtown Lana`i City. You can tell I grew up in a big city. We refer to things as downtown. So this is the city center, the core, and you can see from the designations, the kind of the burnt orange is the Hotel Lana`i, and that's the only hotel district. So that's the only effect on Lana`i that this Bill would have.

So our recommendations for the – and again you have to realize our perspective is all three islands and we can help Lana`i form your recommendation based on Lana`i – but for the County as a whole, we don't support deleting apartments, and rather than deleting all residential uses, we suggest that they simply say single-family dwellings be allowed as an accessory use. And then we suggest that if they adopt this Bill, that they provide language making sure existing single-families and hotel districts are allowed to continue. But generally speaking that's the only way we can support the Bill. The Bill, as it's crafted, we wouldn't support. So with that, I'll try and answer questions.

Ms. Zigmond: Okay, I have a couple questions please. What did the Maui Planning Commission recommend and the Moloka`i Planning Commission recommend?

Mr. Hunt: The Maui Planning Commission listened to our arguments and deferred, and they asked for us to come back with more information, like maps and numbers. So they deferred on this one. The industrial Bill, and I don't want to get on the next agenda item, but I can talk about that one when we get to that one. The Moloka`i Planning Commission supported the provision, and their argument was on Moloka`i it's a little different. They don't have that many hotel districts and they don't have the concern about the single-families coming – I mean, the existing single-families. So they supported the idea that hotels should be hotels.

Ms. Zigmond: Okay, and sort of comment more than a question. I found it rather interesting that the County Council just sort of said we're giving it to the Planning Commission – I mean, without any comments – so that was kind of interesting to me. And the fact that none of the commenting agencies had any comments. Do you have any idea why that might have been?

Mr. Hunt: Most of the time the agencies will comment if there's an impact to them as an agency. So for instance Water would say, well, it's going to have a huge impact on water or something. I don't see any of the agencies being that concerned. It's more really of a planning issue. The Bill originated from the Council Chair at the time, last year, Mr. Hokama, and he's no longer with the Council. The current Council felt that while they didn't necessarily support, they said, well, let's push the boat out on the pond and see

which way the winds take it, and just listen to the input. So I don't think that it should be perceived that they're pushing this Bill necessarily.

Ms. Kaye: Commissioners, any other questions? I'm sorry Gerry you do.

Mr. Rabaino: The P and P1 is two different categories right? Because when I'm looking at this map, you've got Hotel Lana`i, in front of it is open space, right?

Mr. Hunt: Correct.

Mr. Rabaino: H1 is where Hotel Lana`i is located. Right next to it, above it, you have the P1. That's also the hospital area, correct?

Mr. Hunt: I believe so. P1 would mean public. Public-quasi/Public.

Mr. Rabaino: Okay, being that because –. Well my concern right now is that being that with the historical registry and that Hotel Lana`i is sitting up there; and then you have this Bill in front of us, and being that we have the original hotel on the island of Lana`i from 1920s or so, this will not really be affected by this – what do you call this – this Bill?

Mr. Hunt: That would be my analysis. I don't see it affecting Lana`i that much. In the future, perhaps it could during your community plan update. You might designate zoning. I mean, that's a large unknown. I'm just trying cover all of the bases.

Mr. Rabaino: Currently we're okay with this right now because that's the only hotel in the city, which is an 11 room hotel.

Ms. Kaye: I have a question or two. Is there any reason why condominium is not defined in the definition section of the Code? It's not there.

Mr. Hunt: I'll speculate and I'll have my more experienced staff correct me if I'm wrong. I believe the zoning ordinance when it was adopted, condominiums wasn't a common aspect of development. So through the years, they just relied on the apartment provision within a hotel to allow condominiums.

Ms. Kaye: But I'm trying to grasp why eliminating apartments would also impact condominiums because they're different uses. Apartments are rentals and condominiums generally are owned, and could be or could not be rented.

Mr. Hunt: The reason it would impact condominiums is because we don't have a specific provision for condominiums in our hotel district, or in our zoning code. We rely on the apartment provision.

Ms. Kaye: Well, I guess my question is if you add it in, if you took the language of the Bill, and simply under B added condos, condominiums, would that work without a definition?

Mr. Hunt: Well condominiums are actually a type of ownership. So you could have condominiums on a single-family – a duplex for instance could be two separate owners.

Ms. Kaye: Right.

Mr. Hunt: The issue of a hotel then becomes the term of the rental. So a hotel is defined in our zoning code as short term rental, less than 180-days. So the condominium could be a long-term condominium. It could be short-term condominium.

Ms. Kaye: Okay. The other question that I had is the accessory use, I didn't grasp at first, and then I went back and realized you meant that if someone would want to – say this Bill pass – someone wanted to come in, in this district and build a single-family structure, it would have to be accessory to the hotel.

Mr. Hunt: Correct.

Ms. Kaye: Correct. And that means they could only operate as a TVR.

Mr. Hunt: There's some argument that any single-family in a hotel district can only operate as a TVR.

Ms. Kaye: Yeah because we've looked at this issue I think a year or so ago, and exempted Lana`i out if I recall. So if you took –. If the issue is going forward no single-family home – I just want to make sure I understand this – going forward no single family home that's constructed can be anything other than accessory but you're also concerned about those single-family homes that are already existing.

Mr. Hunt: Particularly on Maui.

Ms. Kaye: Right.

Mr. Hunt: I don't believe there's any here. I don't know for a fact, but I don't believe so.

Ms. Kaye: No, I'm just talking about Maui now. I assumed that if this passed, since Hotel Lana`i is the only hotel district we've got, if they wanted to build something on that property, it would fall under the provisions of this and be only able to operate as a TVR.

Mr. Hunt: I believe so, and they'd have to be accessory the hotel, if it passed, according to our proposed language. If it passed according the Council's proposed language, they wouldn't be allowed to build a single-family. If the Council Bill passed as proposed, then

a single-family wouldn't be allowed on the Hotel Lana`i grounds.

Ms. Kaye: But on Maui, where they already exists, would they become non-conforming uses?

Mr. Hunt: If there's not language that allows them to continue, and that's one of our proposals. It's if the Council passes the Bill, insert language that allows these existing single-families to continue.

Ms. Kaye: And this is your number two under your recommendations?

Mr. Hunt: Number three.

Ms. Kaye: What if you said under number two, any use permitted in residential and apartment districts except that single-family dwellings constructed after the effective date of this Bill shall only be allowed as an accessory use. Wouldn't that grand-father in this?

Mr. Hunt: I suppose that's another way to do it. In the language – our recommendation isn't necessarily the legal language that would go in the Bill. It's just a concept, and we would work the attorneys to codify it.

Ms. Kaye: Okay, and I do need to ask you right above your recommendation is an assertion that there's comments from the Maui Hotel and Lodging Association and an alternative draft Bill. We did not receive either of those.

Mr. Hunt: The alternative draft Bill was a mistake or an error.

Ms. Kaye: Okay. But we don't have their comments either. Do we need them to fully –?

Mr. Hunt: I can tell you what their comments are. It's they don't support the Bill at all. In my opinion, I think it's fair to say they oppose the Bill.

Ms. Zigmond: I have a question please. Normally in the Department's recommendations you will say something like our options which are to, you know, defer or approve. And I understand we're making comments only, but there's only one option. Is that all that we have at this point?

Mr. Hunt: No. I can help you with that. You are – you have the ability or this Board has the option to pass a recommendation to the Council regarding the Bill. And you could craft your recommendation towards the whole County, towards the whole Bill, or just Lana`i. You could craft it towards just specific language in the Bill or you could just take a global position – we oppose the Bill or don't support the Bill or we support the Bill as it's written. Essentially support, not support, or revise.

Mr. Rabaino: I have a question for you because I'm looking at Kihei side and Maalaea. Kihei side has a lot of condos. And when I'm looking at this word over here, apartment/hotels, if you take away apartments and say condo, doesn't condo really reflect timesharing because it's on a short-term?

Mr. Hunt: Not necessarily. Condominium is actually part ownership, so you split the owners. Each unit would have a separate owner. Timeshares is more of a – you have a contract to use a unit within that building for a certain amount of time of the year. But generally speaking the ownership of that building is all one entity.

Mr. Rabaino: Okay, so my next question is going to be referred to Kapalua and Makena side. When we had our convention there at Grand Wailea, across the street, is that considered luxury homes or condominiums?

Mr. Hunt: It could be both. I mean, a lot of the luxury homes are owned just by themselves, but sometimes they condominiumize the project to where the homes are owned as limited common use and the grounds are a common use, so it's a mixed bag. And I forgot to mention something on your previous question. A lot of the hotels or condominiums in Kihei are actually apartments and apartment zoned, and it's just that they were operating as short-term rentals before the County prohibited that use in the apartment districts. So those have been grand-fathered in and have been allowed to continue. So they still function as short-term rental.

Mr. Rabaino: Okay, under Kapalua. I'm swinging to Kapalua side now – past Kaanapali and all that. The A&B, Alexander and Baldwin, they have their resort there now, but if you've been there lately, which I have, I've noticed on the cliff side they have all those luxury. Is that also condominiums or that's apartments? Versus the older types up on the pineapple hill where Kapalua Hotel is being renovated or close to completion of being renovated.

Mr. Hunt: The old hotel which they renovated and they now call the Residences. That's a condominium project so there's ownership of individual units. Now there's some of them that can be rented out, but that's an example. Again that type of project couldn't be built if the apartment provision was deleted because that's the only provision in our Code that allows a condominium in a hotel district.

Mr. Rabaino: So in essence get rid of apartment that way condominium hotels can shake hands under construction.

Mr. Hunt: If you get rid of apartments you could not – you couldn't approve a condominium hotel in the County. They would have to be a pure hotel. So one owner and that owner rents out the rooms and no one owns individual rooms. They're all just rented out.

Mr. Rabaino: Well, see, in the back of my mind you have Ilikai Hotel in Waikiki that's facing a dilemma. It's been in the news off and on. Now if Maui is looking at that and trying to figure out by pushing out apartment and looking at the future ahead just for the island of Maui, what it reflects on Maui is because it's a tradeoff of what they have in Waikiki. And if that's going to affect Moloka`i and Lana`i down the future then I think, you know, whatever language we have I think body right here should look towards the future to make sure that we don't end up in that predicament as they have with the Ilikai Hotel in Waikiki, and if that's what Maui's looking down the road.

Mr. Hunt: And I don't know the specifics of the Waikiki hotel but as I understand the concern on Maui or for Maui County is the idea that our hotel districts are getting eroded by single-families and condominiums. And the Department understands the concern of single-families, but we can't support the deletion of apartments because in our mind most hotels have some condominium provision so we need that provision for apartments. But again on Moloka`i they felt different, and that's just our recommendation. You know, we're here. We're your staff. If you guys want to go down a different road, we're not going to get our feelings hurt, pout and take our ball and go home. You know, we're going sit here and work with you guys and come up with your recommendation.

Ms. Zigmond: These are two really manini questions. What is a truck garden?

Mr. Hunt: A truck garden is garden where they truck the vegetables off-site as I understand it.

Ms. Zigmond: Thank you. And on the map, like at Eighth and Fraser, there's a UR. What does UR stand for? I don't see it on our legend here.

Mr. Hunt: I believe it's urban reserve.

Ms. Zigmond: Urban what?

Mr. Hunt: Urban reserve.

Ms. Zigmond: Thank you.

Ms. Kaye: Having said that about Moloka`i, I have to ask, if we don't – I don't want to us just say well there's only one hotel. What if there were more going forward, then those restrictions might be beneficial for Lana`i in the same way Moloka`i is considering them, correct?

Mr. Hunt: Yes. I think it's a legitimate position for folks just to say, well, even though we don't have this issue right now, we're planners. We're suppose to be anticipating and planning for the future.

Ms. Kaye: And I think that's the point Gerry was making most recently. So to simplify this, if we say no, we're really in favor of this Bill, and we still think that apartments should not be eliminated at this point in time because the impact on condominiums is unclear. And that any existing single-family in the hotel district should be protected by language that doesn't throw them into being a non-conforming use. What have we done for ourselves in 50 years?

Mr. Hunt: In the future, if somebody came in and got hotel designation or the community plan designated hotel, then it would be more – you'd have more assurance that it would be more of a hotel and not just a pure single-family second home project. And essentially what you did – and I'm not trying to milk any recommendations – but essentially the position you just stated is very similar to the Department's position.

Mr. Rabaino: This just came to my mind. I don't want to ruin your image, but the Ko`olina – the west side of Oahu – okay, I was looking at one of their maps. They have that manmade beaches right? Okay, they're going to build, if I remember the number correctly, about 200-something affordable homes, and then of course, you're going to have the Disneyland thing hotel over there. My question is if they're going to be residential and you have that park there, and if I'm looking back at Lana`i and we only have one beautiful beach park here, and if we ever do move down to Federation, Keomoku and those areas, I cannot envision something looking like Ko`olina. But I don't see any apartments or condos over there that is designated yet.

Mr. Hunt: And I don't know that project so I can't respond.

Ms. Kaye: Commissioners any other questions? Okay, we'll open it up for public testimony. There's no public testimony offered at this time? Okay then we're going to close public testimony. And generally we get a recommendation, but I think you've already done that for us. I don't want to make you repeat it. So Commissioners any comments you would like to see formed into a motion that we can send over with Mr. Hunt on this issue? Would the comment that Mr. Hunt said was pretty close to the recommendation – would that fly with everyone? Okay then could I have a motion?

Ms. Zigmond: Okay, I make a motion that we recommend to the County Council that we support the intent of the draft Bill with the following comments that until the issue of whether a condominium falls under apartment, apartment should not be deleted, and language should be adopted to protect existing single-family lots from becoming non-conforming uses.

Ms. Kaye: Do I have a second?

Mr. Rabaino: I second. I second the motion.

Ms. Kaye: Okay. Discussion. Any refinement? Any additions? Okay then, all in favor?

Commission Members: "Aye."

Ms. Kaye: Motion carries. I'm sorry – any oppose? Okay, motion carries. Is that sufficient?

Mr. Hunt: Yes. Thank you.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Gerald Rabaino, then unanimously

VOTED: To recommend to the County Council support of the Bill with the following comments that until the issue of whether condominium falls under apartment, then the word "apartment" should not be deleted; and that language should be adopted to protect existing single family residences from being non-conforming uses.

- 2. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-22 containing a Draft Bill to Amend Section 19.24.020 and 19.26.060 relating eliminating the stacking of B-1, B-2, and B-3 uses in the M-1 Light Industrial District and the M-2 Heavy Industrial District as well as eliminating "apartment houses" from the list of uses in the M-1 Light Industrial District. (RFC 2009/0029) (J. Hunt for J. Alueta)**
 - a. Public Hearing**
 - b. Action**

Ms. Kaye: Okay, next on the agenda is Council Resolution No. 09-22 containing a draft Bill to amend Section 19.24.020 and 19.26.060 relating to eliminating the stacking of B-1, B-2 and B-3 uses in the M-1 Light Industrial District and M-2 Heavy Industrial District, as well as eliminating apartment houses from the list of uses in the M-1 Light Industrial District.
Mr. Hunt.

Mr. Hunt: And similar to the Bill we just discussed, this is Council initiated and it would eliminate stacking again. In this case the stacking is it would eliminate business uses within our industrial zones. And the concern is that our businesses are taking over industrial zoned lands. Generally speaking the cost of land and the cost of rents in the industrial districts are cheaper than in business districts. And because our industrial zones allow for businesses, businesses are drifting into our industrial zones and taking them over. The Department understands that concern. However on Maui there is many, many, many,

many existing businesses within our industrial district. The area from Home Depot and Lowes, all the way to Kaahumanu Avenue is basically industrial zone. So all those businesses in there would become non-conforming, and that's just one example.

So the Department believes that because of the huge number of non-conforming uses that would result, we can't support this Bill in this concept. It would just be – non-conforming uses are a headache and to have so many of them – there's probably 1,000's – it would just be too problematic. We do understand the idea that we need industrial zoned lands for industrial uses, so we are suggesting that instead, we are recommending to Council to file this Bill – you know the nice term for killing it – and then we would come back with a pure industrial district, an M-3. And in the M-3, the only businesses that would be allowed be ancillary to the industrial use. So if you have a dress making shop, if you manufacture dresses, that's an industrial use, you'd be allowed a little shop out front to sell those dresses. The more classic example is a winery where you grow the grapes on your land, you process it into wine, and then out front you have a little tasting room, and people can buy a bottle of wine. That's an agricultural district, but the example is the same.

So we're suggesting the Bill be filed and that we come back with an M-3 zone. Now, again, recognizing that our islands are a little different, your map here shows the one industrial area in town which is just north of the highway as you're coming into town. That's the M-1. And then you have some out in Miki Basin. And those are your only industrial uses. I don't know those lots as well as you folks do and if there are businesses within those areas or not. So if there's businesses in those areas, you probably want to be concerned with non-conformity. If there's not, then the non-conformity issues isn't as large.

On Moloka`i, they did support the Council Bill. They felt that there wasn't the non-conformity extent that we have on Maui. We actually drove their industrial areas, and there was only a handful of businesses in the industrial district. So they felt they could live with that, and they wanted a pure industrial zones. So I'm not sure where Lana`i wants to go. Do you feel that your industrial zone should be kept pure and you don't have the non-conformity issue that Maui has? And if that's the case, you could support the Bill. You could support it with adding non-conforming language. Or if you believe there's a lot, or too many, non-conforming uses that would result, you could oppose the Bill.

Ms. Zigmond: So Jeff, in your recommendation then to file this Bill and come up with an M-3, then all of these people who gave testimony that was included in our package that were concerned about if their business burned down they wouldn't be able to re-build it in such. All those fears would be by the wayside then.

Mr. Hunt: Yes. They wouldn't have those fears if they filed the Bill.

Ms. Zigmond: Okay. And one other question. The ZAED folks have this little memo with different M-1 and M-2 parcels by project area, and it says islands of Moloka`i and Lana`i

are excluded. And I was wondering if that's because there aren't any or they just didn't get around to doing this?

Mr. Hunt: We didn't ask them to do the analysis to be honest with you. We probably should have. You know time is not a luxury that we have a lot of in the Planning Department. We're trying to get by as best we can.

Mr. Rabaino: Okay. I understand the stacking as you mention all the way from Kahului to – well from Home Depot all the way to Kahului. How does this affect the area in Wailuku? Is that totally different from the Kahului side because in Wailuku, in the main heart of Wailuku, you have some businesses there that also have restaurants, et cetera. Not near the Courthouse or any of the hospital section – facing the ocean side – that has a mixture of usage in there as well as in Kahului. And if you look at Paia, you have way up where the cannery is, the mill, you have some mixture inside there. It's almost like the bed and breakfast et cetera. But referring to this, this resolution 09-22 is just reflecting just the Kahului area itself on Maui or basically the entire island of –? Because when you look at Lahaina side, by the cannery side, above, you also have some districts over there that – you know when I go Lahaina, I go riding, "niele" yeah, "mahaoe" up and down the street – so I noticed there's a mixture there too. Okay because you have the boating over there, and then right down the lane you get one wood shop, and you're going, okay boating, wood shop and then one paint shop in the middle of nowhere. I mean, you know. And then above, you have residential. And I'm looking at this ordinance – it's fine but what is encompassed in your M-3 as you mentioned earlier. What is your intent with M-3 besides what we have here? Just give me a generalization.

Mr. Hunt: Let me answer the first issue first. When I referred to Home Depot all the way – I should have said Kamehameha Avenue. I think I said Kaahumanu. So it's from Kamehameha all the way through Home Depot. That's just one area. I mean there's a list in there of all the others. I think there's business parks, and literally thousands of parcels that would be affected, so you're right. The one example I gave is not the only one. It would cover not just all of Maui, all the industrial, but all three of the islands and any industrial district. So it's a very pervasive Bill. And what was the second question? I forgot.

Mr. Rabaino: The Lahaina area – because when you look at Kahului versus Wailuku, then you jump over and you go to the Lahaina above the cannery – because Wailuku is already out of a little picture of Kahului's one as you mentioned earlier which I understand. But that's why I asked you is this the encompassed island of Maui – Wailuku, Kahului as well as Lahaina side which is also growing?

Mr. Hunt: Yes. It would include Lahaina. Yeah all the industrial lands. Any land zoned industrial over the entire island.

Mr. Rabaino: And the gateway to Kihei – if I remember correctly going above towards – a section of that place, up on that slope – you guys also have a light industrial area that's kicking over there too, right?

Mr. Hunt: Correct.

Mr. Rabaino: Okay, so that this would more or less encompass just the island of Maui in those different locations?

Mr. Hunt: It would encompass all the islands. Any industrial zoned lands on all of the islands.

Mr. Rabaino: As Commissioner Zigmond said that Lana`i and Moloka`i is excluded.

Mr. Hunt: Well they were excluded from the inventory.

Ms. Kaye: (inaudible)

Mr. Rabaino: Okay, thank you.

Mr. Hunt: We were rushed for time and we made a decision, let's just focus on Maui. And when Maui's came back and not to be Maui centric but there was so – an oh my gosh kind of reaction – it was kind of, well, do we need to do any further research? And once we got out to the islands, we realized, well things may be different. Moloka`i again they support the Bill.

Ms. Kaye: I have a question. As I was reading this I think there was one person that submitted Wili Loop and that was so helpful. And wondered whether it would be helpful to take a reverse position and say all of that area that you're talking about now it sort of grew up hodge-podge. It was zoned industrial, but, you know, uses came in. And to re-zone that in some sort of mix used designation and then let this Bill stand and then anything going forward would have to conform. I am concerned that we do have three light industrial parcels on Lana`i, and one heavy, and none of it has been developed yet. And I think from our perspective in any event keeping the uses separate is probably a good thing rather than what you have seen develop on Maui because it is a nightmare for you.

Mr. Hunt: That was one our comments, and I think it's actually in the staff report somewhere, that a better approach would be to take a look at this through the comprehensive planning, the updates of our community plan. And perhaps one idea would be to change the industrial zone to a mixed use. Another way, another thought, was okay we'll just leave it the way it is and then go to the M-3 zone. Create a new M-3 zone and that would be pure and then we'd designate that on the map perhaps out near a mill or the airport or behind Home Depot or whatever.

Ms. Kaye: But how does that –. I guess that's my question. How does that solve your problem because if this Bill dies and all that stacking is kept in there and then you have an M-3, all those uses would still be permitted as people went forward.

Mr. Hunt: Only in the M-1 and M-2, and the new M-3, it wouldn't have the stacking. And in the M-3, the only businesses – we would propose the only businesses would be accessory to the industrial use and maybe a 20% percentile or something like that. The example I gave was a winery can sell a bottle of wine, but you can't sell groceries. You can only sell that product that you're producing.

Ms. Kaye: Okay, let me ask this a different way then. If you took the language of the Bill as they're proposing it and took out the stacking, the provision that permits stacking, then would you be happy with the M-1 and M-2 uses?

Mr. Hunt: No, we wouldn't be happy because of the non-conformity that would result.

Ms. Kaye: That's why I'm saying this is a two part approach. If you took the non-conforming – the big area is gone already – it's those too mixed use and zone that and then put the Bill in as it is, took out the stacking, then you wouldn't need an M-3 right?

Mr. Hunt: We could as part of the re-zoning is look at some of those areas and re-zone them and then just keep the existing language in the M-1 and M-2. But then you're going to eventually run into the same problem because people are going to seek out cheaper land. So that's why we're advocating an M-3. And really that whole idea is more of a comprehensive approach and we think it would be premature to adopt this Bill right now. There may be some merit to this Bill or a version of it, at least on Maui island, in the future, but not right now. But, I try and be objective and listen to both sides of any argument and I can see an argument for Lana`i where –. Here's the argument they made on Moloka`i and I thought it was fairly persuasive is we have an industrial zone that's separate from the town, and that's where our industrial use should be. They're noisy, there's dust, whatever. And by adopting the Bill, businesses won't migrate out there. They'll be forced to locate down in the business core and you'll have more of a vital downtown, and that's what you want. And that's not a bad argument.

Ms. Kaye: And I would suggest that's essentially what we have here. You know right now it's mixed use, although you hear both sides of the coin – right Commissioners, people would like to see some of the things that are happening in town out of town. And I guess even if those areas at some point were subdivided and utilized, the Bill the way it stands would permit stacking. I think that's my concern for Lana`i.

Mr. Hunt: The Bill as it stands –

Ms. Kaye: I misspoke. I'm sorry, the zoning as it stands would permit stacking.

Mr. Hunt: Yes.

Ms. Kaye: The Bill, forget the Bill.

Mr. Hunt: Yeah, if the Bill dies, then your industrial zone businesses could locate in them outright.

Ms. Kaye: Okay Commissioners anymore questions?

Mr. Rabaino: Your M-1, M-2 – I'm looking at a different angle, like Wailuku, Kahului. If you grand-father them, 1 and 2 – because they exist, it's going to cost money to relocate, or to sell or buy; and you create the M-3 – 1 and 2 becomes a grand-father clause. Anything after that grand-father clause has to be located in M-3. Is that another option alternative? *(Changed tapes)*

Mr. Hunt: The scenario would be the Bill is adopted, so the stacking is eliminated. But we grand-father in – somehow put some non-conforming language in the Bill. That's one option. No matter how much non-conformity language you put in there, it gets a little trickier and it's a lot easier for business owner to simply say this use is permitted outright. The business owners that we heard from Maui – and again it could be different on Lana`i – but the business owners on Maui said this is a bad Bill. And again I'm not trying to slant your recommendation, but on Maui, I'm not sure there's been one person in support of it.

Ms. Kaye: Any other questions? We'll open it to public testimony. Any testimony from the public?

Mr. Hunt: So again you have options. You could –

Mr. Clay Rombaoa: Good evening Commissioners. My name is Clay Rombaoa and I represent Castle & Cooke. If Resolution No. 09-22 were to pass, the existing Castle & Cooke central headquarter building which is on M-1 zone parcel would be a non-conformance. In the event that the building were to be expanded or destroyed, intentional or unintentional, Castle & Cooke would need to – would not be able to conduct its current business on that parcel and would need to be relocated. Also, Castle & Cooke has a current M-2 zone parcel at the Miki Basin area. This resolution, again, if passed would adversely impact the ability for Castle & Cooke to sell 50% of those parcels and restrict usage of those parcels to potential buyers. Therefore, Castle & Cooke respectfully request the Lana`i Commission to vote against Resolution 09-22 and file it. Thank you.

Ms. Kaye: Hold on Clay. Commissioners any questions for Clay? Okay, Gerry did.

Mr. Rabaino: Clay, you're saying to reject the 09-22 just for the island of Lana`i or as in general for the whole County?

Mr. Rombaoa: In general.

Mr. Rabaino: Okay.

Ms. Kaye: Any other questions? Okay, thank you Clay. Okay, so we'll close public testimony at this time unless somebody else wants to speak.

Mr. Ron McOmbler: My name is Ron McOmbler. We questioned the first time when they build that right across the street from residential. All we heard from the people that lived across the street when they built that, they should have never been allowed in the first place because of the noise of them starting up the machinery and stuff. The residents that live across the street from that so I'm not sure that you want to do that. That has to be torn down or if that has to be addressed because that's right across the street from an R-1 district and it's really noisy. When they fire up that laundry over and that machinery, from what I understand, it is really noisy, so I'm not sure you want to block that off. If they were to tear that down or something was to happen, not to rebuild it there. My opinion from what I've heard from people who live there. Thank you.

Ms. Kaye: Any questions for Ron Commissioners? Ron, actually, I have a question for you. It's okay, sit down, and then you can –. Just so I understand your concern, this parcel is zoned light industrial, so if that purpose – the existing purpose was no longer able to – you know the building that's there now – there's nothing to prevent light industrial projects from going into that parcel the way it's currently zoned. So if you're trying to say that it should not be zoned industrial, this Bill won't address that, I don't think.

Mr. McOmbler: I just believe that we need to address that problem. I mean that should have never –. First of all, I don't know how that ever got passed in the first place by this community. For some reason we must have fell asleep at the switch because that should have never been allowed in the first place. Because it's right across the street. I mean, there is no barrier. Fraser Avenue is the only barrier. And you talk to people that live over there, when they fire up that thing at four o'clock in the morning and whatever time, the laundry, the people say that it's noisier than hell. So I don't know how we got by it. Maybe we can't do anything about it. It's already in.

Ms. Kaye: Actually it was zoned in 1988.

Mr. McOmbler: I know, and I don't understand. It's one of those things that we weren't "akamai" enough, I guess, to stand up and challenge it at the time.

Ms. Kaye: Okay.

Mr. McOmbler: Thank you.

Ms. Kaye: Thank you. Any other question Commissioners? Any other public testimony? Okay, whatever you would like us to do now.

Mr. Hunt: Well we're asking for some form of recommendation and your opinions are to support the Bill; you could recommend to the Council to file the Bill, which means kill the Bill; or you can recommend modifications to the Bill.

Mr. Rabaino: Well for me, for myself, I say we kill the Bill; and you're going to draft up something like you said right later on, down the line.

Mr. Hunt: Regarding the M-3 zone?

Mr. Rabaino: Yeah.

Mr. Hunt: That's the Department's recommendation.

Mr. Rabaino: Okay. So kill the Bill.

Ms. Kaye: Okay, at this point I think we could use a motion. Someone would like to make a motion.

Mr. Rabaino: You've got to help me along now. I would like to make the motion –

Ms. Kaye: Recommend.

Mr. Rabaino: I would like to recommend the motion for 09-22 to be as he would say fire it up, kill it.

Ms. Kaye: I think what Mr. Hunt is asking us to do is to recommend to County Council that the Bill at this time be filed, and we might want to –. I actually thought that your recommendation to explore other zoning options such as a new zoning criteria as well as some way to do mix use – it's premature, I think, probably to say anything other than those avenues – we would be in favor of exploring those avenues.

Mr. Rabaino: So that's the motion.

Ms. Kaye: Do we have a second? No, on the mic.

Ms. Leticia Castillo: I second to Gerry's motion.

Ms. Kaye: So the motion on the table is that the Planning Commission is recommending to County Council that the Bill be filed at this point in time, but agrees with the Planning Department that additional research should be conducted regarding the feasibility of doing

a new zoning level more appropriate for heavy uses. Okay, do we have any discussion? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Any oppose? Okay, motion carries.

It was moved by Commissioner Gerald Rabaino, seconded by Commissioner Leticia Castillo, then unanimously

VOTED: To recommend to County Council that Resolution 09-22 be filed, or killed; and the Commission supports the Department's suggestion that other zoning options be explored for heavy uses.

- 3. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance to Amend Chapter 19.62 of the Maui County Code to adopt Special Flood Hazard Area regulations in accordance with the National Flood Insurance Program. (F. Cerizo)**
 - a. Public Hearing**
 - b. Action**

Ms. Kaye: Okay, next we have a Bill for an ordinance to amend Chapter 19.62 of the Maui County Code to adopt special flood hazard area regulations in accordance with the National Flood Insurance Programs, and Francis Cerizo is going to walk us through this.

Mr. Francis Cerizo: We didn't have all the maps in order as far as the Lana`i maps, so I just want to give you a little overview. This is the year that Lana`i will be having their first flood maps, and basically we have – I'll show you the areas that we have maps. So the study was just completed within the last six months, and we have maps along the entire shoreline. And most of the shoreline is zoned V for high velocity tsunami type flooding. We have some other areas around, on the other side of the island that are zoned A which reflects a riverine type of flooding, or river flooding.

Between Kaumalapau and Manele we have an area that had a detailed study and this area study involved the tsunami generated flooding. As you can see here, there's some areas where we have 48-feet high, as far as the flood depth, above mean sea level. As we go near Manele, we have some areas that they run up to 42-feet, so that's pretty substantial along the coast. Here's another area that is 48-feet above mean sea level. The other areas besides the V-zones, we have some areas that's zoned-A and we will be discussing that as part of the ordinance. This is one area that it affects the people that, or the houses

or the structures, that are in within the A-zones. This the harbor, and as we get closer –. This is actually a map that comes up online, so you're available to look at it at anytime. It provides topography and here's the elevations that we have. There's a 48 and so forth. So we have the elevations of the existing ground level. And these are the elevations of the flooding, so we have in this area it's 10-feet, on the other side we had 42-feet. And you can see how high is the flooding or how deep the flooding is going to be.

There's also imagery that's provided online. And if you take off the layers, you actually can see the cars down at the harbor. On the other side of the island near Keomoku side, Shipwreck Beach, we have flooding that involves riverine flooding. And as we get closer to that area, we can see that there's some houses or some properties that may be affected by that flooding. So this is just a clean shot of the aerial and flood zone-A. So we will be going through this flood zone-A momentarily.

Mr. Rabaino: . . . (inaudible) . . .

Mr. Cerizo: This is Keomoku Beach road side, the trail, the back side.

Mr. Rabaino: Is that where Keomoku trail is, that area?

Mr. Cerizo: I'm not sure exactly.

Mr. Rabaino: By Shipwreck side?

Mr. Cerizo: Yeah, that side.

Ms. Kaye: Francis, I'm sorry, this is available online at the Maui County website?

Mr. Cerizo: No, this is a State website. You can see up here on the top.

Ms. Kaye: I can't read it. I'm sorry.

Mr. Cerizo: Okay. If you go to the State –. It's available online from our website. If you go to the Planning Department, there's an area that has a development for flood development and there's some resource links, and this is one of the links. It's called Flood Hazard Assessment Tool.

Ms. Kaye: Okay, thank you.

Mr. Cerizo: There's a few things that's driving the revisions to the Code, and one of them is the Fed's are requiring that as part of the new maps that's going to be adopted. These maps will be adopted in September 25th, 2009. That there's some deficiencies in our ordinance. So in the table, or the matrix, that's included in our report, there's a line by line

changes. Some of them are actually FEMA required. They have a regulation that they call the Federal Register that requires certain standards be adopted. So I'll be going through –. If there's anyone of them – we can go through them. At your pleasure, if you want to go through each one, I can explain each one to you, or what I can do is give you an overview of the changes and maybe the ones that might affect you more.

Ms. Kaye: I would defer to my fellow Commissioners, but I trust we all read through everything and don't need to go through it one by one.

Mr. Cerizo: So what I'll do then is let me just give you the highlights of the changes. Besides the Federally mandated regulations, there are – we have several that we are updating ourselves through the community rating system. And the community rating system is a National Flood Insurance Program where if a community is enrolled in the CRS we benefit by reduced flood premiums. So far we've had a savings of \$300,000 on an annual basis for those that are paying flood insurance. And this is obtained by adopting higher regulations. And in our program changes of the ordinance, we have several high points that we are changing in our Code. One them deals with substantial improvements. Whenever a development or an existing building is damaged or if someone wants to add on to an existing building – like this building it's pretty much damaged – if you're going to improve a building and it exceeds 50% of the value of the structure before it started, then you would have to improve the building or the structure up to the current standards.

We have structures, like for example on the left side here, that had a minimal damage. And if improvements are less than 50% they can leave the structure as is. The change in our ordinance will that we're looking at instead of allowing you doing 50% of value of the structure at any one time, people will – it's kind of a loop hole – someone will come in, put in 50% of the improvements. And then after that's done, they'll come in with another permit. So over a period of one or two years, you'll have like a brand new house. So, the Federal government has made provisions that if we limit the improvements over a longer period – like what we're recommending is a 10-year period – that you would start the clock, or you'd start the counting from, like say, at the time this Bill is adopted, which started from there. Any improvements over the next 10-years, if they reach their 50% threshold, then you would be required to improve the building up to the flood standards.

Another higher regulation is in riverine floodings and in different flood zones A's, we're adding freeboard to all new structures. And a freeboard is an additional height above the regular base flood elevation of the flood height. And our recommendation is to go one foot above the BFE. One of the reasons why we are recommending the one foot is that over time areas above the city or the towns they become developed and more runoff is generated and it increases the flooding. So this is somewhat like an insurance that we can go and change the maps, you know, update the maps all the time, raising up the base flood elevation, so this is like a little buffer. So for the next 10, 20 years, you know, the base flood elevation would be good because we have added an extra foot.

One of the other regulation is preserving the flood storage. What this does – it's going to require is when someone builds in a flood plain, a lot of times people, in order to raise their building up to the base flood elevations so they're protected, they bring in fill. So it's just like everyone, they live in a pool, and everyone has a little island and if you keep more islands into the pool the water starts getting higher and higher, so eventually you loose the capacity. The flooding starts to expand out of the pool and going into other areas. So what we're proposing is that there will be –. If you're going to fill, you have to do something that would compensate that fill like create a detention basin on the side of the property or the side of the house that would compensate for the fill. And this is a visual on that. Here is – this line here is the actual elevation of the flood height. As people encroach on the sides, the actual water level would rise. So to prevent this rise, and to keep the flooding at a status quo, we're recommending that there will be no additional rise in the base flood elevation whenever another builds in a riverine flooding situation.

Coastal flooding is a little different. One of the things that affects coastal flooding in the future maybe sea level rise, erosion of the shoreline. So in response to that, we're increasing the base flood elevation an additional one foot freeboard in that area also. And one of the other items that we're providing in the ordinance is that the storage area below the base flood elevation, that would be restricted. Right now our – we allow – as long as you have storage access and parking below the building, there's no limit as to the area, the square footage, that can be enclosed or developed. Our proposal is that they limit the area to 300 square feet. And what happens there is that it gets tied to the insurance rate. If you have more than 300 square feet, there's a substantially higher insurance rate. So we'll be informing the owners that if you're in the flood zone, in the v-zone, if you're going to go over 300, you might have a double amount of flood insurance in that area. So this is a cross section of the v-zone. This area is basically the flood elevation currently. And what we propose is that the dwelling – instead of meeting the base flood elevation, they would go an additional foot above the base flood elevation.

So the yellow items are the CRS activities, and we have about six of them, and we can just go briefly over them again. We have what we call a repetitive loss structure – definition added – and repetitive loss structures are structures that are repeatedly damaged. They are in a low area. They can be in the flood zone or outside the flood zone. And there's more problems when they're outside of the flood zone because there's no regulation. So the Federal government keeps tabs on these repetitive loss properties, and we're now including those properties inside of our regulations. So if someone gets repeatedly damaged, we want them to comply to the flood standards so that we can stop that cycle.

The next one here is the substantial improvement clause. It's noted here as the CRS activity. We've talked about, you know, houses being built in excess of 50% of the value. The other Code requirements are basically the low rise where development have low rise in the flood zone, so that's on this page six if you want to follow through on your sheets. Okay, there's one last one here. We have a – this wasn't on your list but one of the change

we have on page 12 is a – we added standards to development on streams that are outside the flood zones. Let's say it's up here in Lana`i City, and towards the end of town there's a little stream there, and there's a house there that always get flooded, and now they want to develop a ohana right next to it. They want to build. It's not in the flood zone, but they want to build in the water. So if we have reason that that house can get flooded, we can require, based on this section here, that they come up with a study that shows that will develop a flood elevation and they would have to build their structure so that it's high enough, it won't get washed away, if they put the septic tank in, it won't float away, and they'll have the same protection as if they were building in a flood zone.

So those are the major items in the Code. And if there's any specific questions you have on any part of it, I could help you with any one of the Code changes. If there's no questions, I can –. That's the end of my presentation.

Mr. Rabaino: Can you show the area of Kaumalapau Harbor?

Mr. Cerizo: Okay, it's in this section here. Yeah, I cannot blow it up.

Mr. Rabaino: You don't have another chart or something that you can refer to?

Mr. Cerizo: No, if I had a live feed, I could've done it, you know blow it up, but right now I don't have the capability. But it could blow up as easily as the – down at Manele where we had done the boat harbor on that side. But Kaumalapau, the base flood elevation as you can see it's a little less. The elevation is at nine, but around the corner, it starts to increase as we get – as we go away from the harbor. Here's a 38. Here's an 18. So we don't have any detail.

Mr. Rabaino: Okay. I'll make it easier for you. If Kaumalapau Harbor is zoned A and if you go to Manele Small Boat Harbor, you had a section above there where the existing parking lot is, the dark purple, that's a zone-A too. What is the flood rating for that colored area?

Mr. Cerizo: Okay, the flood zone – a flood zone-A is an area that has a flood zone delineation by approximate methods. So all they have here is that they have the width of the flooding. And if someone wants to develop in this area here, they would have to get an engineer to reevaluate the amount of water that's coming through here and do some hydraulics and calculations to develop a type of flooding. But as of now, we have no detail study for zone-A. But one thing about zone-A is that –. See right now, since there's no flood zones on the island, if there's anyone that has a building here – they own a building – if someone comes in and wants to sell it or buy it, they'll have to get flood insurance. There is a method of locking in on a lower rate if you buy the insurance before the insurance, before the flood maps become effective which is September 25th. So if a person here comes in and says I'm going to sell, so I better get some flood insurance. You can get the flood insurance and have a reduced rate that's locked in, and it's also transferable.

So that is something that –. You know, as far as the other areas, we could individually, if someone has any –. They can go online and see if there are properties nearby, and if their property is – they can give us a call and we can give you an estimate of what the insurance rate is now and what the insurance rate can be afterwards. So this is, for example, these areas here – I’m not sure if there’s anyone that’s living in these areas here. This is a big gulch down by the – you know the road that goes down to Shipwreck. But, yeah, I’m not sure who’s property is this, but I can all these little properties here. Some of them can be –

Mr. Rabaino: You have anything close to Lopa side going more east?

Mr. Cerizo: Yeah, I’m not sure exactly, but I can show you on the big map. Let me just go back a little. We are looking at right here.

Mr. Rabaino: Yeah, that area.

Mr. Cerizo: That’s the blow up of this. Here’s the big one that we were – that last shot. So you can get pretty close. You might be even able to take away the – you might be able see any houses there but I couldn’t – I didn’t see any parcels there, so I didn’t expect to see any houses. But, you know, like this one here, this one might be a house. It looks like something is appearing there.

Mr. Rabaino: There’s something there. You used the term earlier in your explanation to us that anything rises above one. Is it one feet from the shoreline coming in, or is it the flood water raising one feet from the shoreline?

Mr. Cerizo: Our new regulations are to provide freeboard above the flood elevations that are provided. For example if you’re like on the Manele side where we saw all the elevations on the v-zones, those are like elevation 48. You have to build at elevation 48 plus one. Right now the Code is just 48. Well with the new code, we would say 48 plus one. And in V-zones, you go to the bottom of the lowest cross member. And A-zones you go on top of the floor.

Mr. Rabaino: Thank you.

Ms. Kaye: Any other questions Commissioners? I think we have to do public hearing to see if anyone wants to comment from the public on the proposed change to the regulations. Okay then, public hearing is closed. Sorry.

Mr. Rombaoa: Good evening again. Clay Rombaoa, Castle & Cooke. We would like to request a continuance or deferment of this because we didn’t have any access to the maps for us to analyze our coast line properties, and there weren’t any comments from the Public Works Department in the packet that said it was included. So we would like an opportunity to review these, these maps, for the next meeting. Thank you.

Ms. Kaye: Francis, this goes into effect if I understood you correctly in September?

Mr. Cerizo: Yes.

Ms. Kaye: And so the type of review that was just requested could result in communications directly to you correct?

Mr. Cerizo: Yes.

Ms. Kaye: So it doesn't necessarily have to be something that the Commission has to hold up?

Mr. Cerizo: That's correct.

Ms. Kaye: Okay. With that said, anybody have any other questions for Francis? I actually have two comments, one question. This only is shoreline.

Mr. Cerizo: Yes. I'm sorry. The maps are only shoreline and those areas that we have the zone-A that goes up stream. But the regulation actually can go all the way up to the top of Koele. It can be in any area that's outside of the flood zone also. Like I was indicating in our last provision, if you're in an existing stream and that area is known to get flooded and there's houses there and someone wants to build in the stream, we can actually require you to do a study and build according to the flood zone.

Ms. Kaye: Because I think in a prior meeting when you were here – not the last one – but a couple of months ago, Letty brought up and I think it was you who was here, the flooding problem we have is in town. I mean, for the 30 years I've owned my house I've watched those places flood. But that's not something that would be covered under these regulations?

Mr. Cerizo: Sometimes flooding is caused by streets or your neighbor building a wall and there a little area where the water just gushes out. A lot of it could be a civil matter. We deal with more of when there's a stream flooding or riverine flooding. There's not too many streams on the island. But sometimes we have flash floods that goes across the road. But I'd like to make a point also that, you know, flood insurance can be gotten by anyone. If you feel that your area is subject to constant flooding where you get flood damage, flood insurance is available. But keep in mind, if you become a repetitive loss property, you know, we can –

Ms. Kaye: That was my concern because I read that in here.

Mr. Cerizo: Yeah, we were talking about repetitive loss properties will be required – if you're going to go and build – I want to fix my house again for the third time. And a lot of times,

some of these houses, they cost \$80,000 to fix, but the flood insurance pays it. But you're somewhat kept on – you know you're a big flag now, so the committee in response is trying to take hold of that repetitive loss situation and bring them inline with the flood insurance program.

Ms. Kaye: Okay, and the only other comment I had is I noticed on page 11, line 26, it appears that – actually the person who's correspondence you had attached to this part of the packet – at number seven, areas below the BFE shall be used solely for parking vehicles, storage, limited storage; and I thought that was probably just a typo.

Mr. Cerizo: No, there's two types of storage.

Ms. Kaye: Okay, so that's what I wanted to know.

Mr. Cerizo: Yeah. On item eight – see at one time, we even asked the Feds, what is limited storage. And there's no definition.

Ms. Kaye: That's the 300 feet?

Mr. Cerizo: That's the 300 square feet.

Ms. Kaye: Got it. Okay, thank you. Okay Commissioners – anybody see anything in here that – Bev?

Ms. Zigmond: No, this is procedural question. Are we just giving recommendations or are we actually approving or disapproving?

Ms. Kaye: My understanding was that we were just raising any issues or concerns that we had with this. We didn't get anything in the packet indicating what action we were specifically to take, but my understanding was that this is required under Federal Law, and I didn't see any downside to it, and there were no comments attached. So what is it you would like to have from us tonight Francis?

Mr. Cerizo: Well we'd like to have a recommendation, if you have any comments that you would like to add. It's like any other Code change. This goes through – any Code change to Title 19 requires it goes through the Planning Commissions, and if there's any issues that you'd like to bring up, it would be conveyed – it will be summarized and conveyed to the Council. If you have any recommendations or strong feelings on any part of the ordinance that we will include that in our packet to the County Council.

Mr. Rabaino: My question to you is the two areas I would be concern with your flooding thing is the Kaumalapau area, and what you have designated and recommendation for that area. The other one would be the peninsula of Hulopoe, white sand, as well as the small

boat harbor because that is the only paved access to that area, and being that we have the ferry terminal there, as well as the Hulopoe Beach Park. Having indicated or even showed us on your video thing here is just looking at the rating of the insurance. What I'm thinking is, in the plain term is when the water drains and the water goes out and if any mud spills off the road or the embankment gets tied up with kiawe trees, and branches and et cetera, how fast, under your flooding thing over here, is going to recover that two areas? Because these two areas are vital to Lana`i City. Sure you're going to be doing what you need to do with the Feds, but this Committee should be able to have and view in order to make a suggestion, sort of speak, on those two areas. Because those are the two areas that will be effecting the entire population on the island of Lana`i as well as the landowner, and especially at Manele Bay which is State, and Kaumalapau, all of sudden became State. You know what I mean? I mean we just going look at maps and you giving us all these V, V, V, V, you know what I mean, la-dee-da. I mean, I want more in-depth or details, you know what I mean? Okay. So if you can –

Ms. Kaye: Gerry? Did you read through the –

Mr. Rabaino: . . . (Inaudible) . . .

Ms. Kaye: Any damage, I believe, that is a result of a natural event is up to the landowner. This sets a floor and a ceiling, if you will, on how you can build and how low you can go. It's the simplest way I could put it. I'm not sure what kind of additional maps you're looking for.

Mr. Rabaino: No, I'm not basically looking for the building aspects of it. I'm looking, you know, when the water comes down and how you guys determine all the ratings for that. That's what I'm more interested in.

Mr. Cerizo: The information that we have here – and this is something that's brand new – the State when they were doing their design, this information was never available until now. This is after a new study that was made by the Corp of Engineers and FEMA. And so this information, now, whenever there's any development as far as the harbors, they can use this as a tool to – if there's any new designs, they can take this into consideration. You know, the County also reviews it, and yourself also will be reviewing. If there's any development along the shoreline, with the Special Management Area, and the shoreline rules, you will have the opportunity to review this information.

Ms. Kaye: This provides an additional set of guidelines that's used as a tool, Gerry. Okay, and I would just like to say, as background, I've sat through five orientations now, and I'm thrilled that there are maps because we've been asking for them every year. It's been a long time coming to have these maps. *(Changed cassette tapes)* Commissioners, any other questions? I don't think I closed public hearing technically, so if you want to add something Ron.

Mr. McOmbler: Ron McOmbler. How recent is this drawing that you've got of Manele area right now since we've had all the construction down there? I mean, there's been a lot of changes down there that will change the height of what would impact that drainage basin behind there. That purple is a drainage basin. And that's actually a place that holds water. It retains it. Since they put that parking lot in and raised that front edge on there, it's that whole configuration has changed. You might look at that again.

Mr. Cerizo: Is this the basin you're talking about?

Mr. McOmbler: Yeah.

Mr. Cerizo: Yeah, so that –

Mr. McOmbler: Because that no longer looks like the original situation. They've got a wall down there now that would stop most floods. And the only thing it would do is wrap around it if anything. The only thing it would have an impact on would be where the customers sit under that covered cabana and that's already been built. I'm glad we had that built already. They may not have been able to build that cabana under these new rules. So you ought to go down there and reassess that area and look at that again because that whole area down there has changed since they did that construction.

Ms. Kaye: Thank you Ron.

Mr. McOmbler: That's just from my side. I go down there everyday. Matter of fact, I was there today.

Ms. Kaye: Any other comments or questions? Okay, at this point, I'd entertain a motion. And I think what the County is looking for is, again, with assurance that any personal comment from the public who hasn't looked at this, can feel free to contact you with any concerns they might have. Entertain a motion that we have no comment on this Bill, and no recommendations.

Ms. Zigmond: I move that we have no – sorry –

Ms. Kaye: That we send the Bill back with the Planning Department with no comments. Is that satisfactory Francis?

Mr. Cerizo: That would be fine.

Ms. Kaye: Okay, thank you. So do we have a second?

Mr. Rabaino: Second.

Ms. Kaye: Any discussion? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Any oppose? Motion carries.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Gerald Rabaino, then unanimously

VOTED: To forward said Bill to the County Council with no comments or recommendations.

Ms. Kaye: We'll take a 10 minute break now. Thank you.

(The Lana`i Planning Commission recessed at approximately 7:40 p.m., and reconvened at approximately 7:46 p.m.)

C. COMMUNICATIONS

- 1. JAMES GIROUX, Deputy Corporation Counsel submitting a draft of proposed amendments to Chapter 402, Special Management Area Rules for the Lanai Planning Commission based on prior discussions at the Lanai Planning Commission meetings. The intent of the proposed amendments is to solidify enforcement procedures and add an order to show cause procedure.**

These proposed amendments are for discussion purposes only at this meeting.

Ms. Kaye: We're back in order now. Gerry is going to be joining us again. The next item on our agenda is communications, and James could not be here tonight so Michael is ready to field our questions. Let me just point out that this really was supposed to be for discussion purposes next month, for July 15th, not for tonight. And so I don't know if everybody reviewed. Michael has offered to just take any questions or comments that we had back to James, who I assume would be here next month, and this item would just appear again.

Mr. Michael Hopper: Even if he's not, I mean, we'll be more prepared. One of the reason it was going to be next month because we wanted the Planning Department to have comments since they'll be administering it, so they haven't made comments yet. So either they wouldn't have any or –. I mean, it's only been about nine days or so since the rules were transmitted to them, so we're not sure what their comments would be.

Ms. Kaye: Okay. Just for a little background. It came to the attention of all us and the Planning Department's staff that we had no enforcement provisions in our rules. This is just for Chapter 402, Special Management Area. So James took the opportunity to draft this language which I think his intent is that this would not just be for us, but would be available for other Planning Commissions as well. And I had statutory language questions. I don't know, Commissioners, did you have anything leap out at you that you would want either Michael answer tonight or someone answer next month?

I had two questions while you're mulling this over. On, Michael, section – well, page 402-2 –. Well, first of all, I went back and I looked at our provisions, our SMA rules. This is brand new stuff. Everything in it is an addition. And it's a, I think, yoeman's job of covering not only procedure but how enforcement could be a tool for us to use. Under section 24-(4)-(b), it states "nothing in this section shall prevent the land owner or violator from seeking to negotiate a settlement or resolve a dispute." I am going to assume that's with the Planning Department?

Mr. Hopper: Well, as you can see the next section under it, the final decision comes to you. A negotiation – and I've been a part of these on Maui – a negotiation happens with the Planning Department. A notice of violation is issued. It's usually appealed. And then pending the actual hearing, maybe the parties have a settlement agreement they can mutually agree to, but that's not a final agreement since you're the authority. You could delegate that authority to the Director, but on Maui, basically the agreement is reached, it's forwarded to the Commission for final action. And even though the Planning Department and the violator both agreed to it, it's only final if the Commission agrees to that settlement, so that's what happens there.

Ms. Kaye: Okay, if you go down the next section then, 25, the last sentence reads "the proposed settlement shall be forwarded to the Commission for approval or disapproval." Assuming as I did, that the Planning Department would be the party conducting the negotiation and a negotiated settlement was put before the Commission and it was disapproved, then what happens?

Mr. Hopper: I don't think we've had that happen before, but what would happen is that would go, be scheduled for hearing in the future. They would have to have a contested case hearing in front of the Commission or you could delegate to a hearings officer I believe. I'm not sure actually if these rules allow delegation of a hearings officer. That's been done before. In any case, you have a contested case hearing and need to make a decision on the merits whether or not you believe there's evidence of a violation. And your decision would then be subject to appeal to the Circuit Court.

Ms. Kaye: Okay, and then if you go to the next page, page #3, section 28, it sort of details the director or any party or interested person could file a petition with the Commission. But what's left out of there is if the Commission initiates it. Is that something that is just

presumed? I mean, if a permit application is before the Commission and conditions are appended to that permit application, and then those conditions are not met, then would not the Commission would be able to initiate this proceeding?

Mr. Hopper: I would argue that an interested person could be the Commission, but for clarity sake, you could add, or the Commission, on its own motion or something like that – that's the – or on it's own petition. I think there's language like that for the State Land Use Commission which is where this is modeled. So if that's one of your comments, I can bring that back.

Ms. Kaye: Yes.

Mr. Hopper: And James and I can work on that. So basically you would like the Commission to have the ability to have its petition for order to show cause.

Ms. Kaye: Okay.

Mr. Hopper: Okay.

Ms. Kaye: Okay, that would be good. That eliminates another question. Then on the next page, at the very top, section (b), "the Commission may reject any petition that is incomplete, inaccurate or fails to comply with the rules of the Commission." Which specific rules are you talking about? Any procedural rules that might apply to our practice and procedure? I'm on page four.

Mr. Hopper: It appears to deal with procedural rules like you said. There's general rules for filing documents with the Commission in a separate section of the SMA rules, and I think this is primarily what that refers to. Perhaps the number of copies, the size of the paper, maybe someone just sends an email to you, I mean, that would be considered rejected until you provide them the proper format. And I can ask if there's any other instances in which there would be a rejection. But it say incomplete, inaccurate or fails to comply to the rules, so that's what they're going for.

Ms. Kaye: Okay. And then next page, the sub-chapter 4, this is just my ignorance. What does IMP mean? It's in parenthesis after some of the provisions.

Mr. Hopper: I believes that means implied authority, but I'm not sure. You have the authority, and perhaps implied, but I would need to look at that again. Those are source notes there which is where all of these –

Ms. Kaye: Where's it's derived from.

Mr. Hopper: Right.

Ms. Kaye: I just never seem IMP before. Sorry. Okay, I think the last question I had was on the next page, 402-6, the provision 34 dealing with the record – for the purpose of Commission decisions, the record shall include, (1), (2), (3), (4). I then went back and looked up 91-9 to see what else was in there and one thing that is not included that I just questioned why it wouldn't have been is that under 91.1, sub-section G, I think, no matters outside the record shall be considered. And I'm just wondering if there was a reason for leaving that section out.

Mr. Hopper: I can't tell you why. I didn't draft this, but we can bring that issue back.

Ms. Kaye: Okay. Thank you. Beverly?

Ms. Zigmond: I have a question Michael please on 402-8, I'm looking at Section 12-402-38, Evidence. My legally side of my brain just isn't kicking in. Could you explain (a) please?

Mr. Hopper: Well, this is an interesting provision that is common for administrative hearings. There are rules of evidence under State law and Federal law that govern what State and Federal Courts can view as evidence. For example, hear say, is excluded typically. The administrative body such as this one and other State Commissions, Federal Commissions and County Commissions aren't subject to those rules. This is making that clear. Meaning that you're not subject to those rules, so if someone could accept – you could, for example, if you found the testimony credible, accept hear say testimony if you wanted to. That wouldn't be allowed under Hawaii's Court rules, but it's very well established and there's case law on this that administrative bodies can consider that evidence. So this gives you a bit broader of a world of evidence that you can consider. It does say irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence, so you would certainly have the ability to say that you don't believe, as a Commission, that this evidence is relevant. This also would give guidance, I believe, to a hearing officer if you were to delegate the contested case hearing to a hearing officer. But, I believe some of this is –. Oh, and then the Commission shall have give effect to the rules of privilege recognized by law. This would include, for example, attorney-client privilege. You know if there was questioning of a witness and was asked, you know, something about they spoke with their attorney about, they would not be compelled to give that testimony unless –. Basically, if you asked the attorney, for example, the attorney would say I was told that in confidence by my client, you couldn't force that attorney to reveal any information unless the client consented. There's other privileges as well that are generally recognized. There's spousal privilege. There's a variety of other privileges, and that's what that's about.

This is, I think, pretty much the common evidence rule that we have. For example, the Board that handles most of these contested case hearings is the Board of Variances and Appeals on Maui. They hear all appeals and decisions of the Planning Director, the Public Works Director, and all of them, and I believe this is pretty much what they have to deal

with as their rule of evidence. You've got some discretion in deciding what evidence you want to allow. This gives you broader discretion – you're not bound. So if you believe there's relevant hear say testimony or testimony that could be excused under hear say, but you believe that should be given weight and accepted as evidence, you have the ability to accept that.

Ms. Kaye: And one final question from me Michael is what happens next? You have the period of comments for the Planning Department and then it comes back and both bodies would then approve these rules, and then there would be a public hearing.

Mr. Hopper: The first thing that has to happen is there's State law about how anybody adopts rules. And so you have to post the notice in the newspaper basically describing the rules, the date when that will be considered by you for adoption, and then have a public hearing that day. And there needs to be 30-days from the time that notice is published in the paper from and the time you hear it, so you have that time period. Once that's published, and it's before you, you'll have your public hearing, and after that hearing, you'll be free to act on the rules. You can adopt them or defer to a future date if you needed more time, if you have questions answered or something like that.

Ms. Kaye: And then what?

Mr. Hopper: If you vote to adopt them by majority vote, then they get signed into law – I believe the Mayor does sign these.

Ms. Kaye: Because we went through this with the exemptions. We had a rule change. I just wanted to make sure it was the same process.

Mr. Hopper: It should be the same exact process, yes.

Ms. Kaye: Thank you. Commissioners, any comments or questions for Michael? Thank you very much.

Mr. Hopper: I'll inform James of your comments.

2. **May 7, 2008 Semi-Annual Report submitted by Castle & Cooke Resorts, LLC regarding the project irrigation demand associated with the Residential and Multi-Family Development at Manele, TMK: 4-9-017:001, 002, 003, 004, 005, and 4-9-002:049, Manele, Island of Lanai. (95/SM1-015) (95/PH2-001) (D. Dias) (Report previously distributed for the May 20, 2009 meeting.)**

The Commission may provide comments on the report.

Ms. Kaye: Okay, next on the agenda is communication item #2 regarding the semi-annual report submitted by Castle & Cooke regarding the project irrigation demands. Danny is here with us tonight, and I don't have my minutes unfortunately so I'm just going to do this from memory. But, I'm going to give you a little bit of background to this for the newer people. There was a condition appended to – a permit extension period – one of the request agreed to by the applicant was to submit a semi-annual report on non-potable water usage in the project district. That first report was provided May 7th of 08 and we had questions, and the Planning Department sent back a letter in July of 08 detailing what was missing or not understandable. And the second report was then sent to the Planning Department on November 7th of 08. A second letter went out from the Planning Department to the applicant, again, with questions and things that we couldn't understand. There was a response on 03-11-09 to that letter, and now our third report is in. It was submitted in May and we deferred because we got it right before the meeting. And at the end of the meeting last month, I agreed to, with your permission to work with the new Water Director, John Stubbart, on trying to figure out how to make some of this work. We did in fact meet on June 2nd, and came up with, what we agreed to what we thought were some reasonable solutions, and then I never heard from him. So I e-mailed him at the beginning of the week, and it turns out he's out of town. So he's not available to help us tonight, but because this is on the agenda I would hope that – I have some things we could share with Danny which would then go out in a letter. And John and I did talk about that we're not going to wait – we hope not to wait for a fourth one which isn't going to be till November – but to have this one resubmitted with the information that's a little clearer. So at this point, I'd like to just ask the Commissioners if they have any comments or observations on this report?

Ms. Zigmond: Madame Chair, I actually have a number of question marks in mind still about this and I don't know if you want me to go through them or not, but I'm not real clear on some things. So should I just go through them?

Ms. Kaye: At this point yes. I mean, I think what we're doing tonight is again providing the Planning Department with data that we think should have been included which they will then pass on to the applicant. So, if that's where you're going with this– . Danny will not be able to answer that. And this is not a public hearing issue, so we're just making our comments at this point. So, if we can aid Danny, then go for it.

Ms. Zigmond: Okay, the numbers on the report for the multi-family, I'm curious if they include landscaping. I'd like to know what excess uses in charging for brackish water. I'd like to know how many lots actually use irrigation. I would like to know if the condition says shall continue to develop if the well #15 satisfies that or if this is truly, which it was in my mind, an ongoing situation. I'm curious on the spreadsheet from – I think it's for non-potable multi-family use, why is the first quarter of 09 – I'm sorry – for single-family is substantially larger than for 08? That's really jumped out at me. For 08 single-family, we

have 4,786,420, and for the previous page it's like half that. I'm just curious about some of these things.

Ms. Kaye: Okay, because I did meet with John, I can address some of those. It doesn't include landscaping, and that was one of the issues. The letter that went out to Jon Shimizu on July 16, 2008 from the Planning Department specifically asked for common area irrigation. And John and I talked about that and I believe that is something he's going to be able to deal with. This condition requires a report so that we can track it. We're not in a position to ask some of those questions. That's not what this is about. I think that the status of the well development during this extension period something we can inquire about. Whether it becomes an issue again before the extension period expires, I think, it's probably doubtful. I think that when this started there was a cap number that was given to Planning Department that was projected water usage for non-potable in the project district going back in to 1995. And that's sort of what this information that will help everybody track the usage. For example, this is one of the reasons why the information should be a little bit clear. The letter that came out in May said the period that it covered was October through March which is 182 days. The chart however is quarterly. And Clayton had sent a letter, and, I think his letter in February saying please don't provide quarterly numbers if this is a semi-annual report. So if you read the numbers that are in the text, and then turn to the chart, the numbers, the days don't match, so that's problematic.

And then for example, if you – there are 17 lots. They say this in the letter. I think that answers your question. There's 17 single-family lots. And according to the letter that was submitted they're using an average of 2,270 gallons per day, and this substantially over the 1,000 gallons per day in the covenant and restrictions. And I think this is why we want to speak to Castle & Cooke. This is why they went through a rate change with the PUC is to try and institute some conservation measures. Having said that, the entitlement should had said it was 156 single-family, so if you extrapolate that out, that would be using 392,000 gallons per day. Couple that with the multi-family and what's in the Palms which they're not required to report on but they did in the first report, they're over the allotment by a substantial amount. And this is just useful information to track going forward. So because the numbers and the periods didn't match because it was October through March, that the quarterly report had periods that didn't exactly match that, I then went to the periodic water report – and all of this is just for your information – and I tracked the same number of periods – 11, 12, 13 and one, two, three – and then just added up the amount of water that came out of wells 1, 9, and 14, which is where all the non-potable water comes from. It doesn't come from anywhere else. And then I factor out the golf course because that's permitted by statute, and what's left over should go to multi-family, single-family and common irrigation, and it doesn't match. Simply, in part because we don't have any common area irrigation numbers. Is that clear enough for you Danny?

Mr. Danny Dias: Okay let me kind of go through this to see if I got it right. Commissioner Zigmund had basically five comments, and I think you addressed three of

them. The two that are left, I believe, is why is the single-family portable use for 2009 substantially more than 2008?

Ms. Zigmond: The non-potable, for single family.

Mr. Dias: And your second comment you had I didn't really understand fully what you meant, but you discussed the over use of brackish water.

Ms. Zigmond: It was just a question. It says, excessive use of brackish water, and at this point, I was wondering what entails excessive use?

Mr. Dias: Okay. Thank you.

Ms. Kaye: And again I have to say I don't think we can go there Danny. I don't think those are appropriate questions.

Mr. Dias: Okay, I'll leave those two out then. Which leaves your comment, Chair Kaye, as I've indicated in the letter by Clayton, we're going to ask that they provide semi-annual numbers rather than quarterly from here on out.

Ms. Kaye: Well, I mean, if they were asked to add a quarterly chart, that tracked (inaudible) is confusing. And it speaks to that they're having a periodic water report which really doesn't track it either. So anything that would clarify the periods, the days, would be most helpful. And of all the requests to resubmit this report, this current report, would be best.

Mr. Dias: Okay, numbers for irrigation use in the common areas.

Ms. Kaye: Actually, that's required under ordinance 3137 for Maui County. Commissioners, anything else?

3. **May 29, 2009 memo from LORI TSUHAKO, Director, DEPARTMENT OF HOUSING AND HUMAN CONCERNS regarding the current status of the new Lanai Senior Center project. (J. Hunt)**

The Commission may provide comments on the memo.

Ms. Kaye: Next on the agenda is a memo from the Housing and Human Concerns. And I actually got an email about that that I'm – we're going to have to –.

Mr. Hunt: I believe it was at the last Lana`i Planning Commission there was a request – it wasn't the last meeting – a recent one anyway – where there was a request on an update on the Lana`i Senior Center project. So what we did is we sent in a request to the

Department head of the Housing and Human Concerns, and this is their response. It's in your packet. And I don't have a lot additional information beyond that other than it sounds like there's ongoing discussions between the County and Castle & Cooke over the status of that site.

Ms. Kaye: Thank you Jeff. I'll just share with you that a resident of Lana`i sent an email me this afternoon. I didn't have time, so I'm going to read it into the record:

"Aloha Sally, I noticed on tonight's Lana`i Planning Commission agenda there's an item in communication concerning the Lana`i Senior Center. We have been receiving a lot of information, mostly rumors. We have heard that the CC& R is not allowing the County of Maui to proceed with the new rebuilding. Is this true? Would you please add this issue to a future Lana`i Planning Commission agenda so the people of Lana`i will understand what is happening."

Ms. Castillo: Lana`i has been considered as part of the historic . . . (inaudible) . . . trying to demolish all of the old buildings like that. And the senior citizen building is an old public library. I can see why Castle & Cooke is trying to prevent the demolition of that building, so I don't if the other people feel that should be done – that building – because the County can renovate –

Ms. Kaye: That's not the issue Letty. Tonight, the issue is someone asked for us to put this on the agenda. This is not for discussion tonight, so I really just need to know the pleasure of the Commissioners if they would like to see this added at a future agenda – as a future agenda item.

Mr. Rabaino: Yeah, I would agree that you put it on an upcoming agenda – July or August – open for discussion, direction they need to be heading, whether it's financial –

Ms. Kaye: Well, how would you recommend we proceed then, Jeff?

Mr. Hunt: You could just pass a motion giving direction to the Department to put it on a future agenda, and I can't commit to which one other than it will be in the near future. Then we could try and get the involved parties to give some kind of update, and they would have to show up to answer questions.

Ms. Kaye: Thank you. Could I have a motion to that effect please?

Mr. Rabaino: Jeff, I didn't get that thing from the cultural historical guy that's out of Maui, but –

Ms. Kaye: Gerry, is this relative to this –

Mr. Rabaino: Yeah, the one you was saying about the historical – would that make a difference within the CTB?

Mr. Hunt: Make a difference –? I don't understand your question.

Mr. Rabaino: The town guidelines.

Mr. Hunt: The Country Town Guidelines? The Country Town Guidelines are generally more designed oriented. I think in this case the issue is more of a historic building issue, and maybe there's some overlap. I don't know. That's part of the analysis that staff could do. I'm really finding I'm not very helpful to you folks tonight. I'm more of a messenger at this point, and whatever information you want, I can relay that to the appropriate staff and have people come back.

Mr. Rabaino: Well, I think that would be one concern, if you could look into that thing. You know, whether to keep the building as is or if there's going to be a new –

Ms. Kaye: Gerry, what was asked was to see what the status and why it's held up. I mean, that should come out I would think.

Ms. Zigmond: Madame Chair, I would like to a motion that Planning Department to place on the near future agenda the –

Ms. Kaye: Would we want to say a discussion, a workshop or just put it on as an agenda item and let you go with it?

Mr. Hunt: Well, I think you need to determine what you want out of that agenda item. Do you want merely a discussion and it would be a communication, and the action would be discussion and input, or are you trying to make some decisions? I don't see where you would at this point. So it sounds like it would be an informational discussion communication.

Ms. Kaye: Do I have a second to Bev's motion?

Ms. Castillo: I second to that motion.

Ms. Kaye: Okay, any discussion? All in favor?

Commission Members: "Aye."

Ms. Kaye: Any oppose? Okay, motion carries.

It was moved by Commissioner Beverly Zigmond, seconded by

Commissioner Leticia Castillo, then unanimously

VOTED: to place the Lana`i Senior Center project on a future Lana`i Planning Commission agenda to obtain additional information and for further discussion.

Ms. Kaye: The last thing I'm going to bring up is the email that was sent from Commissioner de Jetley that I forwarded to all. Clayton's response to the email was we needed to discuss whether to put this on a future agenda or deal with it now. The issue of course is attendance at Planning Commission meetings. Because if we do put it on an agenda, we don't want to get into too much of it, you know because the sunshine law issue. But I will say that – and Michael you can track me on this – I found only two provisions that deal with attendance in the rules. And one only requires, only for the State agencies, it does mention missing three consecutive meetings which results in no quorum. And the other is our own rule, under Chapter 12, no member shall be absent unless sick or otherwise unable to attend. There isn't any kind of numerical overlay that I'm aware of. But because it was sent to the Planning Department, and Clayton responded that we needed to decide whether we wanted to have further discussion, I leave that up to you folks at this point.

Ms. Zigmond: Madame Chair, I personally don't think we need to put as an agenda item. We've been through this before and although we always want to have as much full participation from every Commissioner as possible. I don't think we've ever been stuck without a quorum. There's been a couple of times when – I can think of maybe once or twice on where it was iffy, but it doesn't merit being on the agenda.

Ms. Kaye: I don't think we have to make a motion. I think we just have to discuss whether we want to put it on the agenda. If you want to make a motion that's fine. That would make it clean.

Mr. Rabaino: I agree with Bev. We shouldn't have it on the agenda.

Ms. Kaye: Okay, I've got a motion and a second. Any discussion? All in favor?

Commission Members: "Aye."

Ms. Kaye: Any oppose? Okay, motion carries.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Gerald Rabaino, then unanimously

VOTED: not to place the discussion of commissioner's attendance

on a future planning commission agenda.

D. DIRECTOR'S REPORT

- 1. Determination of the meeting time and initial assembly for the July 15 site inspection of the following applications:**

CASTLE & COOKE RESORTS, LLC requesting a State Land Use District Boundary Amendment from State Agricultural District to State Urban District and a Change in Zoning from County Agricultural District to M-2 Heavy Industrial District for the Miki Basin Heavy Industrial area encompassing about 6 acres off of Miki Road, adjacent to the Maui Electric power site at TMK: 4-9-002: portion of 001, Miki Basin, Island of Lanai. (DBA 2008/0002) (CIZ 2008/0003) (J. Prutch)

The Commission may act to determine a meeting time and place for the July 15 site inspection.

Ms. Kaye: And now, Mr. Hunt, we're back to you. Director's Report.

Mr. Hunt: Your first item involves a July 15th site inspection of applications regarding Castle & Cooke. They are requesting State Land Use District Boundary Amendment on agriculture to urban, and a Change in Zoning from agriculture to heavy industrial for the Miki Basin Heavy Industrial area. The action for you tonight is the Commission may act to determine a meeting time and place for the July 15th site inspection. So site inspection – just to give you a little back ground – site inspections are subject to the sunshine law. We would have to notice them. You would have to stick to the agenda. We can't deviate from the agenda. And frankly, they're kind of a nightmare for staff in terms of compliance of the sunshine law because they're so disorganized. People are walking around and whatever. But we do have merit in terms of giving you information that you can't get on paper, or through documents, or power point. So we'll accommodate you the best we can.

Ms. Kaye: I have a procedural question because when this came up in March, we actually deferred this item to July with the understanding that three things would happen first and this goes into –. I suppose the site visit should be separate from the actual agenda item that's going to be on for meeting purposes, but a letter was suppose to be requested from the Fire Department. And the Planning Department was asked to produce two reports – one was the status of a 10-acre light industrial and a 15-acre light industrial by the airport, and a 10-acre commercial property right outside of town, and, I guess a report and opinion on the fact that this Miki Basin parcel, was rezoned in 2000, and the conditions were not complied with at this point. And we wanted the Planning Department to provide us with a legal opinion on what's the status – where does that leave us? We have acreage, though

in 2000, conditions weren't complied with and now there's a second request for additional six acres, and we didn't have the will to go there so we asked the Planning Department to provide that, and we had much discussion about whether to set a date certain or wait to see if they came in and then set a date certain. James advised us set the date certain, but if they're not there, then there would be enough notice so the applicant doesn't spend a lot of time. A notice to appear at a meeting, they were not going to consider it. Were you aware of this?

Mr. Hunt: Not really. I mean, I may have caught wind of this but frankly I'm spread pretty thin and sometimes I get so thin it's transparent.

Ms. Kaye: So that's my question to you then. We had agreed three months ago that those things would happen before we would move forward with this item and so I don't –. I suppose the site visit could be set, but I don't know if whether you'd want to have that as close to the meeting – if possible – and we don't know if we're going to have that one on the agenda. I asked Clayton and he said that one person is on vacation, the other just had a baby, and he just couldn't get the information in time for tonight.

Mr. Hunt: It seems that given the uncertainty of the application, you could defer this till a later time. I'm not sure. When you talked to Clayton, is the item scheduled for your –?

Ms. Kaye: Yes.

Mr. Hunt: It is on your July 15th agenda so regardless of the status of the conditions not complied with it looks like you have a public hearing scheduled for this item. And if the Commission wants to do a site visit, this is your opportunity to coordinate that, and determine a meeting time and place.

Ms. Kaye: Okay, this is just the situation we wanted to avoid. There was not supposed to be a public hearing scheduled until the planner could provide those reports. And I actually wrote to Clayton, and said Clayton is this on the agenda? He said, no, don't worry about it. You can just take it off of the agenda. That's what we were told.

Mr. Hunt: Well you certainly can defer anything on an agenda. I believe your agenda have to be published 30-days in advance noticed and it takes a week before that to get it in the paper, so I would anticipate your agenda has already been noticed for July 15th. But at the July 15th meeting, you have the option to defer.

Ms. Kaye: I'm sorry, but that's very upsetting. That was not what we were told before. I mean, we all sat here, and were told, don't worry about it, you have to pick a date – I'm seeing heads nodding – we were told by the Planning Department that that would not happen. So –

Mr. Hunt: So what do you want to do?

Ms. Kaye: Well, I don't know. We can't defer it tonight. And you're saying it's too late? It's been out already.

Mr. Hunt: I'm not sure. I'm not positive, but given my knowledge of notice procedures and Leilani maybe can help me –.

Ms. Leilani Ramoran-Quemado: . . .(inaudible) . . .

Mr. Hunt: It wasn't noticed?

Ms. Ramoran-Quemado: . . .(inaudible) . . .

Mr. Hunt: Okay, the change in zoning is not noticed at this point.

Ms. Kaye: Jeff, Clayton and I had an extensive email conversation that we were really clear on understanding, and so I would assume he advised me correctly that it isn't too late.

Mr. Hunt: Okay, I'm just going off the fact that it's listed here as an agenda item for July 15th. But given Leilani's information, it sounds like it hasn't been noticed, so you can merely defer the whole item all together – I mean tonight. You don't have schedule a site visit if you don't want. It sounds like Mr. Hopper would like to speak.

Mr. Hopper: I unfortunately have no background on this, but under your rules – I don't know, you heard this first as a public hearing item before you decided to have a site visit. Is that the situation?

Ms. Kaye: We've had two hearings. Actually, it was deferred – it was heard and deferred in January, and then heard and deferred in March.

Mr. Hopper: And both times to a date certain?

Ms. Kaye: Yes, to March. But then in March we had a conversation around not making it a date certain because we asked for additional information from the Planning Department, and were advised we needed to pick one, but it wasn't set in stone, and the Planning Department would let us know if they could get the information so we would not impose on the applicant to come when it was unnecessary.

Mr. Hopper: Okay, one possible issue is – I'm not certain if you had closed the public hearing at that point because if there is an open public hearing, deferral has to be made to a date certain. Otherwise, you have to re-post the notice. That's under your rules. If you made a deferral to July 15th, that being a date certain, then you would not have to post

a new notice which would be the reason why you wouldn't have to do that. If you defer again at this point, I mean, you would want to do that at another date certain. At this point, you didn't have to re-notice in the paper because at that meeting, everyone who was interested in that item were told when the next item is going to be so you didn't have to post notice. If you now chose a different day, if the public hearing hasn't been closed, you may have to re-post notice in the newspaper. There might be additional requirements, so I just want to advise the Commission of that. If you already closed the public hearing on this item, which is common. A lot of times, you'll have the public hearing, close the public hearing – that doesn't close testimony – that just lets – that basically satisfies the notice requirements for that item and public testimony has to be taken at the future meetings anyway, then you have no more notice requirements. So I just would want to make sure whatever action you take – if you end up deferring today to a future date certain besides the July 15th, I think potentially depending on what you've done with the public hearing, you would have to re-post notice in the newspaper for another meeting, and the Planning Department can comment on that. But I just wanted to make sure everyone was clear on the notice requirements and things like that. I'm not saying you can't change that date. It's just that that might trigger another public hearing requirement if the current public hearing wasn't closed or finished.

Ms. Kaye: Commissioners? Anybody want to weight in here?

Ms. Zigmond: I can't really recall. It's my understanding, but I can't guarantee it that we closed the public hearing. And what you said was exactly what happened that if we didn't have this information, we did not want to proceed because that information was necessary for us to proceed.

Ms. Kaye: So, if it's possible to leave it – not defer tonight – but find out in time, from Clayton, whether those –. I mean, I just haven't heard from him. I don't know. And if he says sorry, they're not available, then we can just understand that we come in July it will be deferred. And if that's not the way to proceed, then we should defer it tonight.

Mr. Hunt: It sounds to me like you should just defer it to another night, and then once we get the memo to you – I mean, I don't know how long it would take to make the response that you're looking for and whether that response is going to be satisfactory. You know, there's a lot of assumptions going on July 15th that would have to be met. So the safer approach would be simply to defer this to another meeting.

Ms. Zigmond: Jeff, when do you think the Department could get those reports?

Mr. Hunt: I can't really say for sure, I mean, other than we'll try and get them to you as soon as we can. I don't know the issues involved, the depth of the issues, the work load, and what's the hold up. I mean, if it was Joe Prutch, he recently had a baby, and there's those kind of personal issues, but it seems reasonable. I don't know the depth of the research

that's involved, and the non-compliance. When we start to get into non-compliance of conditions – I mean, there's a non-compliance of a Manele Bay irrigation issue that's been going on for, I don't know, 15 years or something. So, sometimes these things get very complex, and sometimes they're not. I don't know.

Ms. Kaye: So two months would be reasonable.

Mr. Hunt: I think what you should do is schedule it again for discussion on another agenda, and then from there, if you got your information you can schedule a site visit. But if not, you can go through the same routine again, and just say, well, we're still not ready.

Ms. Kaye: So we need a motion to that effect?

Mr. Hunt: Not technically. I mean, the agenda item says the Commission may act to determine a meeting time and place for the July 15th site inspection. You don't have to. I can take your direction back as consensus that you'd like to reschedule that agenda item for the next agenda. I'll direct staff to respond to the conditions that haven't been complied with.

Ms. Kaye: Sounds reasonable to me. Everyone comfortable with that? Okay.

2. Open Lana`i Applications Report.

Mr. Hunt: Your next item involves the open Lana`i applications report, and this is just the monthly report indicating which applications are open, et cetera. As part of our rules, I believe, we're suppose to report these to you. Most of the time if there's question, we don't necessarily have the details, but we can come back to that at the next meeting with answers.

Ms. Kaye: I have no questions. Commissioners, any questions on the open projects report?

3. Agenda items for the July 15, 2009 meeting:

- a. **CASTLE & COOKE RESORTS, LLC requesting a State Land Use District Boundary Amendment from State Agricultural District to State Urban District and a Change in Zoning from County Agricultural District to M-2 Heavy Industrial District for the Miki Basin Heavy Industrial area encompassing about 6 acres off of Miki Road, adjacent to the Maui Electric power site at TMK: 4-9-002: portion of 001, Miki Basin, Island of Lanai. (DBA 2008/0002) (CIZ 2008/0003) (J. Prutch) (*Public Hearing conducted in January*)**

2009. Last reviewed in March 2009.)

- b. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions. (J. Alueta) (Public Hearing)**

Mr. Hunt: Your next agenda item then lists potential items for your July 15th. The first one is the district boundary amendment we just talked about. The next one is a Bill that would amend the County's residential district. It's, essentially, a formatting Bill that re-formats the residential district. It also would add lot coverage provisions, so that a house couldn't be very large. It would be restricted by lot coverage ratios. We're proposing a home business provision where someone could operate a home business out of their house. It's a little bit more liberal than a home occupation. As proposed, it's just a draft, as proposed, it would allow one non-resident employee. It will allow guests to attend – limited. It would also allow retail sales of the home occupation product. So that Bill will be coming to you on July 15th. It's not listed here, but would like to mention that on July 9th, we have a public hearing scheduled for Administrative Rules and Procedures for civil fines for violations. Essentially right now the Planning Department uses administrative rules for the Public Works Department, so we have copied those, changed all the names in there to the Planning Department, and we have added a few provisions. One of the key provision is that the minimum daily fine for a use violation such as an illegal business or an illegal vacation rental would be \$1,000 a day, as oppose to a \$100 a day. There's been a lot of talk from our zoning inspectors that a \$100 a day is not a deterrent given the rental rates that some of these vacation rentals get. It's just a cost of doing business to them. So they felt that they needed a little extra enforcement power. But that's not the key provision. Again, the key provision is that these would be Department's administrative rules instead of us using Public Works'. So there's a public hearing on July 9th. It won't come before the Planning Commission. These are administrative rules. It is on our website if anyone is interested. But we just wanted to get the word out to the Commission and the public that there is a public hearing on July 9th, 9:00 a.m., in Wailuku. The process is we hold a public hearing and people can speak, and we can listen and amend the rules or leave them the way they are, and it's up to the Mayor to sign. If she signs them, they become law.

Ms. Kaye: Do you anticipate much push back?

Mr. Hunt: I'm not sure. Some of the – you know the whole controversy about vacation rentals might generate some controversy, so we'll see.

E. NEXT REGULAR MEETING DATE: July 15, 2009

F. ADJOURNMENT

Ms. Kaye: Okay, Commissioners, anything else? Any other items? Okay, I thank everybody. Good job! And we'll see you in July.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:56 p.m.

Respectfully transmitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE

PRESENT:

Sally Kaye, Chair
Stanley Ruidas, Vice-Chair
Dwight Gamulo
Beverly Zigmond
Matthew Mano
Gerry Rabaino
Darlene Endrina
Leticia Castillo

EXCUSED:

Alberta de Jetley

OTHERS:

Jeffrey Hunt, Director, Department of Planning
Francis Cerizo, Staff Planner
Danny Dias, Staff Planner
Michael Hopper, Deputy, Corporation Counsel