

**LANA`I PLANNING COMMISSION
REGULAR MEETING
JULY 15, 2009**

APPROVED 08-19-09

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Sally Kaye at approximately 6:00 p.m., Wednesday, July 15, 2009, in the Old Lana`i Senior Center, Lana`i City, Hawaii.

Ms. Sally Kaye: Okay, I'm going to call the July 15th, 2009 Lana`i Planning Commission meeting to order. Let the record show that we have quorum with Commissioners Rabaino, Kaye, Mano, Endrina, Zigmond and de Jetley. And I believe Commissioners Castillo and Ruidas will be joining us shortly. First on the agenda is the approval of the May 20th meeting minutes. Bev and I both sent around corrections. I trust you all read them. So I'd entertain a motion at this time.

B. APPROVAL OF THE MAY 20, 2009 AND JUNE 17, 2009 MEETING MINUTES.

Ms. Beverly Zigmond: I move that we approve the minutes of May 20th with corrections as amended.

Mr. Gerald Rabaino: I second on the motion on minutes of the meeting.

Ms. Kaye: Any discussion, any further additions or corrections? Okay, all in favor?

Commission Members: "Aye."

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

**VOTED: to approve the May 20, 2009 Lana`i Planning Commission
meeting minutes with the corrections as submitted.**

Ms. Kaye: Now we're going to move to the approval of the June 17th meeting minutes. Also corrections were sent around to that. Do I have a motion?

Ms. Zigmond: Two for two, I move that we approve the June minutes.

Ms. Kaye: Okay.

Ms. Darlene Endrina: I second the motion.

Ms. Kaye: Thank you. Any additional corrections? Any discussions? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay, motion passes. The minutes are approved.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioners Darlene Endrina, then unanimously

VOTED: to approve the June 17, 2009 Lana`i Planning Commission meeting minutes with the corrections as submitted.

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

- 1. 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)**
 - a. Public Hearing**
 - b. Action**

Ms. Kaye: Next on the agenda we have Joe Alueta representing the Planning Department, 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. Joe.

Mr. Joseph Alueta: Good evening Commissioners. If you don't mind, Madame Chair, I'd like to make the presentation from here rather than have my back facing people. Again, this is amendments to Title 19, dealing primarily with the residential district, both the R-0 overlay – I'm sorry – R-0 lot line district, as well as, the normal residential, which is the R-1, R-2, and R-3 district standards. This is part of our continuing on-going update of the Title 19. We're attempting to, (1), simplify the code where needed, incorporating graphs and tables, as well as pictures because we feel pictures help explain what we're trying to do. You've all heard me say before I don't like word math problems where train A headed east, from Chicago at 45 miles an hour into a 10 mile head wind. And then another train leaving Boston headed west, so I don't like to figure that out. And I don't think most of the public would like to have to try to figure those out. And so we try to make it as simple as possible for people to understand what we mean by a lot of things. Also, because the code has been around since – around 1958 is when the interim zoning provision was adopted by the

– for Maui. There's been minor revisions throughout the way, as well as, chapters being inserted, permits has been added, as well as, nomenclatures or the format in which the code is set up. As part of this revision to all of the chapters, we're trying to standardize it so that they all have the same type of structure from our perspective. What we're attempted to do is we believe that we should have a purpose and intent of what that zoning provision is for. You should list out what is considered to be the principal and primary uses that are allowed within that district. You should have list your uses that are accessory to what are those principal uses. And then you should list what you consider – is considered to be a special use that requires additional review either through the Commission, and then you should clearly define how your standards are in the table format. So you've seen it before in other chapters that I've brought before you and this is just a continuation.

The R-0 overlay – excuse me – R-0 zoning district is a residential district and it allows for smaller lot sizes. It was added after the standard – your regular residential district. And for some reason it wasn't incorporated into Title 19.08, so they just made a new chapter. So what I'm attempting with this thing is we're basically eliminating R-0 and just folding in the standards into the Chapter 19.08, which is the residential district. So that's part of our primary – one of the things that we're doing. Some of the key changes that are different – and if you look through exhibit 1 of the memo report, that's basically the latest, greatest draft of this. And some of the things that we've added again, on page (1), line 25 through 30, we're just standardizing the sections so that they're all the same throughout the code, or throughout zoning chapters. We're trying to add just to provide clarity in some of the accessory uses, accessory dwellings – pools and hot tubs – you know, things that are normally considered functions within the residential district. Fences, walls, patio decks, other landscape features. One of the new things that was added by our director recently, and we'll go into more depth, is something called home occupation and he's created a definition. That's probably one of the things you probably have some discussion on.

The table format with regards to, you know, day care nurseries. Those are existing. All I did was put it into a table format. Those are existing uses that are allowed. Garage sales, we have – I don't know about you but we have garage sales going on and that's kind of a gray area. Is it a commercial use? Is it a normal function of home? And throughout the County, we just consider it a normal function of the home that's allowed however there tends to have – because it's not clearly defined or regulated at all. If you give an inch, some people will take a mile. So we have people who have garage sales either every weekend or we have some – they have their sign out, it says garage sales Mondays, Wednesdays, Friday, so that's not normal. To me, garage sales are something on an odd occasion, and what you're selling is your own personal items, trying to get rid of them. And from an enforcement stand point, it makes it difficult. So our zoning inspectors as well as the general public have asked us to come up with some standards, so we came up with a definition of what we considered to be a garage sale. That will help us with our enforcement as well as neighborhood complaints.

Again, on the bottom of page two, you see a lot of strike outs. That's all being consolidated, so where it talks about accessory uses, as well as the day care nurseries, that whole (h) section is basically that table format that you see up there. Energy system, small scale – that's an existing definition within the code. We're just adding it. This will make it clear that you can do a photo voltaic panel system or solar water heater or something that's consider an accessory to your single-family home. We wouldn't consider a nuclear power plant that's generated for the entire State to be an accessory use to a single-family home. It would have to be something that's clearly subordinate to your own single-family home.

Special uses have not changed. These are the existing ones that are there, that are in Title 19.08, on the residential district. We added on line #26, of page #3. We just changed some of the language for domestic type businesses, as well as education specialized. That primarily is like, say, karate classes, or sewing classes, or something that requires group instructions. And so that's where you have education, and that's already defined in Title 19.

Ms. Kaye: Could I ask a question at this point since we're on this page? On line 13, you have, you've quoted 19.08.030(h). Did you mean (i)?

Mr. Alueta: Yes. Thank you. Good catch.

Ms. Kaye: And on line 22 to 23, increase not more than 10%. How did you folks arrive at that?

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

Ms. Kaye: Okay, but how was it derived? What's the 10% based on?

Mr. Alueta: In the Planned Unit Developments, PUD's, that are allowed, they're allowed a 10% increase, and so I'm not sure if that carried over.

Ms. Kaye: Just carried over?

Ms. Alueta: Again, it's existing language. If I don't have basis or a reason to change it, I pretty much kept it the same because I figured somebody must have had a good reason to add it in that way.

Ms. Kaye: Okay, and then at line 26, traditional, as defined by whom and what point in time?

Mr. Alueta: I think that's going to – when I talk about some of the amendments that was drafted prior to the Director's proposal to have home based businesses. So I think that

would probably supercede that traditional. At the time when I first drafted this Bill, that language called certain domestic typed businesses and homes provided there's no detrimental nuisance effecting neighbors. Such business shall be normal functions of homes, such as baking, sewing and piano playing. That's already in the existing code, and that's through a County Special Use Permit. Because the previous code, or the existing code, lists baking, sewing and piano playing as certain, a lot of people felt that was a traditional, domestic type use, and so I just changed the word from certain to traditional. That was the recommended language. I don't know. It came out of –. When I reviewed it with the staff, they felt certain was kind of weird, and so they felt traditional was a better term. So that was a recommendation from our planners.

Ms. Kaye: You don't see that problematic? My definition of traditional might not be yours, or the next generations. I mean, going forward, how are you going to define tradition?

Mr. Alueta: Well I think that's part of the –. I think you want certain flexibility and that's why it's under Special Use Permit where a Special Use Permit is required. So that means they would have to go before the Commission and that argument would be made at the Commission level. It wouldn't be made at – unless there was a rule by the Director. But I think that regardless, I think, if you change it from traditional or certain, I think you still run into that same problem because it says such as, or such business shall be a normal function of the home. I mean, I'm here to get your comments. If you feel there needs to be some clarity, I'm open to suggestions at this point.

Ms. Kaye: Gerry?

Mr. Rabaino: Like Sally said traditional, yeah? Traditional in, if you look culturally, and the history and moving forward, we know that home occupancy is clear. Home base – if you look at Lana`i and I'm only referring to the island of Lana`i – in my cul-de-sac, when they first moved in, my neighbor wanted to start this camera business. In past meetings that we had this year, parking was taken into consideration for home business. So, if someone who lives in a cul-de-sac that wants to start a home business, and you with tradition, that is not a tradition. You need more clarity on what tradition is.

Mr. Alueta: Again, two points is that it says traditional domestic type businesses. Okay? And then secondly, again, because that area is existing language, and all I did was change that certain line. We also have the addition by our Director which is his proposal is to make home base businesses to be an accessory use. And if you look at the definition of what a home business is that he has added, that would basically, to me, that supercedes the need for this section (h) all together, if you adopt home base businesses as it is. Because how would you not meet that?

Ms. Kaye: But Gerry raises a good point that I hadn't really thought of, and that's traditional

in terms of who's culture. I just think it's going to be a problem going forward. I mean, you want to comment on it?

Mr. Alueta: No. If it's –. Do you want me to strike? Is your recommendation to strike it all together? Because at this point –. Like I said – or leave the language as it currently stand or are you forwarding it?

Mr. Rabaino: Can I make a suggestion? Okay, I know this probably encompasses the County of Maui. But because our lot size in the current Lana`i City, we have lot size ranging from 3,000 to 4,000. Okay that is the plantation housing. And reading this pass out about the BTC, and you trying to make this, there's no way that you're going to have a home business on a 4,000 square foot, and there's no parking lot, especially if everybody agrees with me on Palawai Lane, behind Lana`i City Service, there's no parking. Even the fire truck and emergency vehicles can't go through. Now if you're talking about future, existing subdivision, and when I'm looking at this town house complex that we got through the mail, the pictures that you have here, yeah, any artist can draw, but my question is where is the allowance when you have all these things so close? It kind of reminds of me of Kapolei, Hawaii Kai – and then when I ride around Wailuku side, especially by Safeway and you look at all those housings over there, and home business – I don't think so. I mean, Commissioners, you know if you agree with me, fine. If you don't, well, let's see your side, but this is mine, what I'm looking at. I'm looking at the island of Lana`i. We're looking at the concept of the BTC for Lana`i. We're also looking at the lot sizes of the plantation housing. If this is just for the island of Maui, fine, but I think we should have a clarity for the island of Lana`i City. And anything moving forward maybe applied. But just for the island of Lana`i City, as far as, home base is concerned – don't get me wrong – I'm not against home base business, but we have to look at the lot size and the way the County has structured and designed the roadways. Because you look at Lalakoa I, II and III, the roadways, is like, this is Japan. Land is becoming a precious commodity. If you look at the Olopuia Woods, when they hold baptismal party, graduation party, in the cul-de-sacs, the cops are there to make sure that you do not park. And if you're going to have a tradition of a home business in a cul-de-sac, it ain't going anywhere.

Ms. Kaye: Actually Gerry, I think at this point, Joe, you're asking us to comment on the changes in the language. You're not really dealing with lot sizes, correct, with this particular? Or are we going to get through parking?

Mr. Alueta: Again, the proposal by the – the traditional domestic type businesses in the home that did not meet the definition of home occupation – again that was added prior to – I mean, that's existing language. A lot of that is existing language. As to whether that's moot relative to home based businesses, and if you look at the definition of what the Director is proposing. And again, you need to decide whether or not your comments are that addition of home base businesses is appropriate as an accessory use – meaning

there's no permit or no public review – is appropriate for Lana`i, or if you want it at all. And then that's separate from the lot size issue. I'll go over the diagrams.

Ms. Kaye: Well, just to clarify, though, because Gerry's concern is a good one. This is special uses, and it would require the Planning Commission, if I'm reading that right, Gerry, approval; and the rest of the sentence after traditional, provided there would be no detrimental or nuisance effect. So what would be a nuisance in a small lot neighborhood as opposed to a 6,000 might be different. So if this would require Planning Commission approval, it would be handled on a local level. Is that correct?

Mr. Alueta: For that particular statement. But for home based businesses, that would be, it would not be handled on a local level. It would be handled as an accessory use as an allowed use. So if it did not meet the definition of a home base business, meaning it had higher impacts or higher amount of people visiting or square footage or whatever, then it would be considered under (h), potentially under (h).

And the again, let me just go through the rest of it and then we can jump back to the code itself just to give an overview. Again, education specialize, that's an existing definition. It made sense since you've already have one for school, and for these others – daycare, nurseries and –. Development standards, again, we basically took wording and tried to put it into a table format. The difference between the existing verbiage code, and what's in the table is – one of the things that we've added is lot coverage. And on exhibit 11, I give you an example of what how that relates. It should be your last exhibit on your memo report. And that gives you how that differentiates from if you just applied the standard set backs – what would be your lot coverage.

Ms. Zigmond: Joe, I have a question please. I'm not understanding what is a flag lot – the stem of the flag lot. What's a flag lot?

Mr. Alueta: What about the stem of a flag lot?

Ms. Zigmond: I don't know what it is. It's under notes.

Mr. Alueta: That is not counted or something. Except the stem of a flag lot shall be exempted meaning that if you have a flag lot, you don't count the width.

Ms. Zigmond: I don't know what a flag lot is.

Mr. Alueta: If you look on exhibit – or figure 1 – if you look on figure 1 on the exhibit of page 5 – on the next page – a page over from that table. If you look, and you'll see a lot where there's a flag, and it's labeled flag lot, okay, that's basically your driveway, so you may have 12 foot flagged lot where you have your easements to get to the main property,

and we would eliminate that. When we measure your lot width, we would only measure basically the rectangle part. Does that help? Okay. That's why my pictures help doesn't it? So, I don't know, it's subdivision. I just try to carry over. Again, everything is there. As far as setbacks, one of the interesting thing – so we have a lot coverage – one interesting, on the side and rear on the setbacks, once they're above 15 feet, we're moving away from stories and going to like you're above – any portion of the building that's above 15 feet, we have a setback. We're allowing for free standing antenna or windmill, turbine structures. They have to be set back one foot for every foot of height in the tower.

Mr. Stanley Ruidas: Joe, I was wondering about that. If your lot is 15 feet wide.

Mr. Alueta: You can only get like maybe a 22 foot tower.

Mr. Ruidas: If it's in the middle?

Mr. Alueta: If it's in the middle. That's right. So it doesn't necessary mean that, you know, somebody, with at 3,000 square foot lot and he's got 40 foot up frontage, is going to put up a tower. It's more for somebody who's got like a larger lot. And it's standard that we're adding throughout the code to help, (1), for alternative energies, but (2), for –. We recently had a case here which the Federal government told us that he couldn't limit antenna height for these hand radios. We couldn't have restrictive language because the FCC had the control over it.

Mr. Ruidas: Was it part of the one we discussed back in January, about the height limits?

Mr. Alueta: We did talk about that for another Bill, and so it's something that we're adding in throughout the code. Again, with the small energy systems, because alternative energy seems to be big right now and I think it will continue to be important for a lot of areas, and so people want to have the alternative to do – and we're seeing a lot of small scale wind turbines being put up. Some of them are actually being connected to the structure and so we have a provision in which you could do that and you would not exceed 40 feet. So if you had one attached to your building, it would have to be 40 feet because that would be your maximum height. That would take into account, like, you know fans, vent pipes, chimneys, antenna, equipment used for small scale energy systems on roofs – not to exceed – so you could do PV panels tilted. Some people have some tilt up either photo voltaic panels or solar water heaters. But we wanted to have a free standing, and again, 50 feet is a maximum. But again, one foot for the boundary. So you're going to have a property lot that has a minimum lot width of at least 100 feet in width. So it would have to be like a minimum – if it was in the middle of the property – it would have to be a 10,000 square foot lot, or 100 by 100 lot. And it would have to be right in the middle.

So accessory structures within the set back. Again, it's kind of a gray area. We've always,

you know, what's considered – it can be a mail box, trash enclosures, boundary walls – with the exception that retaining walls, accessory structure and set back shall not exceed eight feet in height. Currently someone could come in and put up a fence or a boundary wall, 30 feet in height. If you go to the building permits, and you wanted a wall that tall, they'd let you do it. So you could theoretically enclose the entire – build a fortress around your property, and that's kind of a loop hole that we're trying to close right now. So the maximum height that anybody could build a boundary wall would be eight feet.

Again, in covering on page five, figures one and two, basically it's just showing an example of trying to explain the definitions. What would be a buildable area, what's your rear lot line? I'm just trying to show a sample of what we mean by the standards and diagrams. And that goes on to page six, and then on top of page seven. And then non-conforming, we're just providing the –. The County Code has a standard non-conforming provisional section 19.500. And then all of the bottom of seven and the top of eight, that's basically just striking all of those verbiage that's reflected in the standards. On page eight, on line 14, is your standard rule making authority. And then you have the new definition that's being proposed by the Director and that is the home base businesses. And then we also have our new definitions for garage sale, as well as, access yard or yard – meaning because we have a new set back for that. So if you're a corner lot, you're going to have 15 feet on the sides that you have a roadway.

Ms. Kaye: Gerry?

Mr. Rabaino: Joe, page eight – as I was saying earlier on for item 26, and as Sally indicated on page three, line item 34 – okay, I know of several homes that have retail sales that shall be limited to produce products by home based business – like making guava jelly or bake sales and what not – to help out. But what I was referring to earlier is that when somebody wants to make a home business in their little subdivision, and particularly if it's on the cul-de-sac – and a good one Beverly pointed out, the flag lot – you know what I mean? Where are all these customers going to park? They're going to be obstructing because of the street size length or width. So the language that I'm – the intent for you to clarify for the island of Lana`i City – if there's a language that we could interject in here, where it says Lana`i will have – what's the proper word – to be exempted with certain things because of the way it's designed? Because I understand this is probably for future and any subdivision coming into play because you're updating. Or you're not even update?

Mr. Alueta: This would apply to existing subdivisions. And again, if you have a concern over the language proposed by the Director, we're more than willing to listen to alternatives. Again, Molokai had the same situation with this idea of commercializing or having that type liberties with home based businesses. And I believe they recommended to have it listed as a special use permit. That way it comes to the Commissions to determine on a case by case basis, rather than having it as an outrightly accessory use. Meaning there's no

permit, the Director would not make any call. It would just be, you meet these qualifications, you meet these definitions, you can run a business. And so, they felt enforcement would be a key issue without having a permit, having it reviewed and coming before a public hearing.

Ms. Zigmond: So what I wanted to ask about enforcement, on page nine, starting on line one it says, the customer of the home base business shall be limited to two at any time and a total of eight per day, so like, who's keeping track?

Mr. Alueta: Well, they'll be subject to complaint by the neighbors and/or inspection by the County. But most likely if there's an excess amount of people coming to the property, then they would probably have complaints by the neighbors, especially if they're not able to accommodate. That's why I think the Director felt it was important to limit the number because if you had two, you could accommodate those people on your property because normally there's enough parking onsite.

Ms. Kaye: I have a question similar to that, and then I want go back to Gerry's question which is still out there. On page eight, line 28, same question – no more than 25% of the floor area of the dwelling shall be used by the home occupation. How are you going to enforce that?

Mr. Alueta: Again, those are concerns raised by the Moloka`i Planning Commission also. I didn't write it – that's all I can say – and there was some discussion, but I understand your concerns. But I guess from an enforcement stand point, if there's a complaint with regards to how much square footage is being used on the property, then we would have to send out inspectors. How we know about how much square footage is actually being used, it would have to either come through a complaint.

Ms. Kaye: Okay then, let's go back to Gerry's. If I understood your response to him, Lana`i would have the option that Moloka`i suggested of having this be considered a special use which would then require a permit and it would come to the Commission for a permitting.

Mr. Alueta: Correct. If you want to make it for Lana`i only or you want to make comments as far as generally for the County is up to you. However you vote on it, you can make those comments known.

Ms. Kaye: Do you want to hold that and then we'll go through the rest of it, and when we make our recommendations, we'll consider it? Okay. Thank you.

Mr. Alueta: That's pretty much it. That does cover –. I mean that pretty much covers the amendments. Again, I'm just trying to highlight what was, I guess, issues or major changes to the Code. Also, some of the comments from Moloka`i – Molokai, as far as on accessory

uses for energy system small scale, they wanted to add language which the Department doesn't have too much of a problem with that. Their comments were provided that it does not produce noise, dust, smoke, glare or odor that negatively impacts the neighbors. So they were okay with small scale energies – you know, energy system small scales. The definition includes bio-mass, so that's – if you have a barbeque that's considered bio-mass classification also. But, even a small scale bio-mass may produce or –. So they just wanted to have that provision to say, yeah, it's okay to do small scale, but, you know, if you impact the neighbors in a negative fashion, you know, create excessive smoke or noise. And I think the issue came up with, say, someone does a noisy wind turbine or like I said – I think they were thinking more on the bio-mass classification that someone does one and it creates a lot of smoke or smell that could impact the neighbors. Again, some of the other changes –

Ms. Kaye: Wait, hold on. You're talking about (g) under special uses?

Mr. Alueta: No (k). On page two, line 29, energy systems small scale. That was the comments from Moloka`i. As far as the standards, access yard, setback, that's something new. That means like if you're on a corner lot, you're going to have –. It's not just 15 front yard – that's normally where your access is. But if you're on a corner lot, rather than have a six foot set back, you'd have a 15 foot setback on that roadway side. Lot coverage – I wasn't at the Maui Planning Commission – but there was a lot of discussion at the Maui Planning Commission from some discussion on it and they wanted a ratio, so that's why you have that exhibit 11. And that shows you like –. Again on a 6,000 square foot lot, under the existing setbacks, you'd be able to build a 2,400 square foot one-story house, or potentially a 4,800 square foot house, with the lot coverage. I'm sorry. With the lot coverage of 40% on a 6,000 square foot lot, you'd have a potential of a 2,400 square foot house, and a potential for 4,800 square foot total floor area house on a 6,000 square foot lot. Under the existing law, it would just apply in the six-foot setback and everything, you would have a potential of 3,792 square foot single-story house; and a two-story house, you could do a total of 6,792 square feet. So what we're trying to illustrate is that even with requiring a lot coverage of 40%, we feel that 2,400 square foot house is pretty big for a 6,000 square foot lot; and a 4,800 square foot house is pretty big for a 6,000 square foot lot. And then again moving up to say – again the examples are shown there – for a 7,500 for the R-2 district as well as the R-3 district on a 10,000 square foot lot. So you could get a pretty good size house even with your lot coverage of 40%. Now how that works out with, again, you can do additional math if you were concerned with the smaller lots here on Lana`i. And that is something you should probably consider given some of the comments I heard tonight.

Again, the loop hole of fences, potential of having 30 foot fences or boundary walls. We felt we needed to close that loop hole, to limit that to eight feet. We didn't think that would be unreasonable. And again, we're just trying to clarify on some of the gray areas, which

are allowed uses such as pools, fences, you know, hot tubs – obviously storage sheds would be allowed. They're not listed but they are –. Other subordinate uses and structures which are determined by the Director of Planning is clearly incidental and customary. And that's all.

Ms. Kaye: Okay Commissioners, any questions for right now, and then we'll take some public testimony and then go back to our concerns to make recommendations? Leilani, do we have a sign up sheet tonight, or do we just want to have a show of hands? Testimony tonight for all items will be limited to three minutes per testifier. Okay, we have four names, but no indication of which agenda item. Ron, you're first on the list. Did you want to speak to this agenda item? Mr. McOmber is saying no. Archie Nahigian? No. Pat Reilly?

Mr. Fairfax "Pat" Reilly: Hello. Pat Reilly. I respect the County and I respect what you guys have to do. I can imagine that the Planning Department spent hundreds of hours going through these and figuring out a standardization for all of Maui County. You, as the Planning Commission, have 15 or 20 minutes to review all of that, and somehow apply it to Lana`i and have it make sense. It's a very difficult job. If I were going to offer a comment, and I agree with Commissioner Rabaino, that much of this does not conform to my understanding of how Lana`i works as a community in terms of its household, and even as businesses. And that would be a fundamental question because once you try to standardize everything – and you can hear it from Moloka`i – it's very difficult to take a standard and apply it specifically to our community. And frankly, I don't know if you'd want all of these permits coming in and have to hear every little permit that was coming up, you'd be in meetings forever hearing permits. So I respect what the Planning Department is trying to do in terms of standardizing things, make it easier for enforcement and clarity. On the other hand, some of the definitions and procedures, I was particularly struck by the rule making procedure that the Planning Director – I think it was 080 – was unilaterally going to be able to make the rules and redefine the functional definitions of all those things. Ultimately it changes the community plan and when I look at the community plan I think how Lana`i functions, some of these – again, I agree with Commissioner Rabaino – don't conform and I don't know how you address that. You guys have 20 minutes to do 100's of hours of work, and I don't know how that works.

The two questions I had – what happens to 201G lots? Does this apply to those? And what happens if this is designed as a historic district? Thank you.

Ms. Kaye: Commissioners, any questions for Pat before he runs away? Okay, John Ornellas. I'm sorry John. I'm sorry. Wait one second. Gerry had a question for Pat.

Mr. Rabaino: Pat, the G-lot, what were your concerns for the G-lot again?

Mr. Reilly: My understanding is that there are 217 201G lots designated in Lana`i City.

Those 201G's are affordable housing that was passed through the State Legislation. So my question is how does this code impact 201G lots? Thank you.

Mr. Rabaino: We'll just ask Joe later, then, regarding the G-lots.

Ms. Kaye: John?

Mr. John Omellas: . . .(Inaudible) . . .

Ms. Kaye: I'm sorry, John, only this agenda item at the moment. If you wanted to testify on another item, then we'll take that a little later. Thank you. Is there anyone else that would like to speak to this agenda item? Okay Joe, do you –? Now closing public hearing. Do you want to address Pat and Gerry's question about the –?

Mr. Alueta: If it's not zoned R-1, R-2, R-3, or R-0, then it's not subject to this provision. So if the 201G is in the State Urban and County Ag, or State Ag and County Ag, that's not subject.

Mr. Michael Hopper: 201G lots could be zoned. There's classifications. But if it is, then it would still have the minimum lot size allowed by the 201G approval the Council would have. A lot of times they make the lot size smaller. So the 201G size voted on by Council would apply even if you amended this ordinance and the zoning. The zoning technically stays but it's essentially given – most 201G projects are given an exemption from that zoning for the purposes of constructing the development. So those minimum lot sizes of the 201G ordinance would apply rather than the zoning in that situation.

Ms. Kaye: Okay, so let's clarify this. The Code the way it's written right now, without these changes, would permit a home occupation for traditional, certain domestic activities, as permitted use. And the changes you're suggesting are not going to alter that. So the concern that is expressed about Lana`i's density in some areas as a result of some of the zoning permitting makes the problem much more difficult in terms of parking. And I think Commissioner Reilly is right, this Commission might not want to be hearing permits. But what do we do? Have you any thoughts on how to suggest how to . . . (inaudible).
..(changed cassette tapes)

Mr. Alueta: First of all, the home occupation, or the home based business, is a new definition. That is not in the existing code. Certain types, domestic business such as baking, sewing and stuff is considered to be a County Special Use Permit, under the existing Code.

Ms. Kaye: So the occupation that Gerry is referring to in his neighborhood, are they not permitted? Right now they're not permitted and they could be subject to fine?

Mr. Alueta: What was the occupation? I'm sorry, I'm missed that.

Ms. Kaye: Making jelly and selling it out of your house.

Mr. Alueta: Yeah, that would be considered that you would need to get a County Special Use Permit or under the – if you don't sell it out of your home, it could be considered a normal function and it could be considered an allowed home occupation provided you don't have any customers coming to your property. So if you were to, you know, provided you had a DOH certified kitchen, of course, you making your jelly or whatever, and then you took the jelly, and then you took the jelly to the local supermarket, that's an allowed use. That's fine. If you have a sign out that say eight to five, homemade crafts or whatever, then that's not – that would be considered a – you'd require a Special Use Permit – if not a County Conditional Permit because you're basically doing a retail store in the residential district.

In the case of your 201G, if the underlining zoning of that 201G project is one of the residential categories, and depending on what your exemptions were granted at the time of approval –. Because a lot of times, these 201G are exempted from the provisions of –. They may be broad based, meaning you're exempted from all the provisions of a residential district. That means you're exempted from everything, or you're exempted from the development standards of that residential district, meaning you can do a smaller lot size. However, the uses and permitted uses and restrictions of that residential district still apply unless it's specifically waived. So there is a concern that if you have 201G project in which you have 3,000 square foot lots or 2,500 square foot lots and they exempted you only from the lot size and set backs, but your uses are restricted by the residential district, then, yeah, you could potentially have a concern. And again that's where you may want to say either recommend amendments to the home occupation. Either have it moved to a Special Use Permit requirement or say home occupation is allowed on lots greater than x to avoid some of your concerns such as, you know, saying that the definition for home occupation shall apply only to lots greater than 10,000 square feet or greater than 8,000 or whatever you want. I'm just trying to give you some – to address some of your issues with smaller lots.

Mr. Rabaino: I want this for the record though, okay. In the three years –. See, I live in Lalakoa III. There's this cul-de-sac. We have a t-formation. For those Commissioners know where I'm located. In the three years, the first year we had baby sitting. Come drop off in the morning, traffic. Okay, and school never start yet. Then you get the school movement. They're still dropping off child care. That lasted a year and a half. The following, we have a barber shop in the cul-de-sac. So I'm pointing out things that I see in my little area. In that three years, there were four different businesses in that cul-de-sac. My concern because we get kids running around in there, there were homes in that cul-de-sac that sold at least three times from the time it opened in 1988. Folks move out. Move in families. Business starts. We've got barber shop. The camera shop couldn't go through

because there was no way they could deposit the chemicals, so he lost out. The hair barber shop one was accepted but I don't know what kind of permits they went through, but she started her business. Now there's another talk of another business that suppose to be in another cul-de-sac, but I'm just concerned about the traffic. Now with that little space that I'm witnessing as a resident in that area of Lalakoa III. Now, if you step out of the box and you take a company corner lot which is a plantation home – if you know where the fleet maintenance is located – you go across the street from Lana`i City Service there's two several corner lots that's less than 4,000. If he's mentioning home based business and somebody decides to start a home base business in this little square footage, there's no parking, number one.

Ms. Kaye: Okay, I think Gerry's concern is a really valid one and it shows the clash between smart growth principals where you're trying to keep people near their home, and there are very, very few commercial opportunities for people to set up businesses which almost drives them to operate out of their homes. I would question the one example that Gerry gave that someone had a permit or couldn't get a permit. Right now, if I wanted to run an occupation out of my home, the code would permit me to do it, and would I have to get a permit, and from whom?

Mr. Alueta: The Commission or the County Council.

Ms. Kaye: Well, obviously, these particular people have not come to get a permit, so you're saying they're all illegal?

Mr. Alueta: Well the only one that I heard was legal was the day care. Childcare facility is probably the only legal one that I heard so far unless they were doing –. And if they've got customers coming, then they're not a legal business. I mean, they're not legal.

Ms. Kaye: Okay, but this change to the code you're suggesting would make them legal.

Mr. Alueta: Would potentially make them legal. Yes.

Ms. Kaye: Okay. So I think that's the consideration that this Commission has to think about.

Mr. Alueta: I understand in the sense that, you know, I lived on a very narrow street, and I had the top selling "batu" dealer behind me. And down the road was Aunty with her Saturday morning, 50 ukulele class kids or whatever. So I had the gamut around me of commercial activity. And so I understand the concern when you're on a small narrow street. And so I'll say the "batu" dealer was less intrusive probably than the ukulele classes, but it only happened on Saturday. But, you know, it all depends on that you –. So again, if there's an issue with the small size lots – if that's the only concern. Again,

you've got to look at the definition that's being proposed by the Director as far as what he's defining as to be a home base business. He's established standards. If you feel those standards are too lenient or you need something to tweak it, fine. That's why we want your comments.

Mr. Rabaino: Joe, I'm not going against you, but who is the Director? Has he been to Lana`i?

Mr. Alueta: Jeff. He was just here.

Mr. Rabaino: Yeah, but has he really –? I mean, putting something on paper and looking at the physical character of it –

Mr. Alueta: It's like spaghetti. You know, sometimes, some of these things, we have a lot of concerns by people who, given the economic times, and there's a panic during economic times, and people want to try to stimulate the economy and you have local people who want to loosen up, loosen up, we want to be able to – this needs some help. And so you kind of draft something. And it's like spaghetti. You throw it against the wall and see if it sticks. And that's kind of what this proposal is. It's like you're the community representatives and also a body that's going to be approving these, you know, so we want to know what do you think. This has gone through our department, through our staff, and so now it's your turn. That's why we drafted it.

Ms. Zigmond: Joe I have a question on the day care. I didn't see the word licensed, so could this be like any nana or tata that wanted to watch a few kids as long as it was the ratio of children per total square footage? It would be okay?

Mr. Alueta: Correct.

Ms. Kaye: Just as a housekeeping matter. I'm going to assume the letter that came in from the Fire Department that repairing your own car in your yard is exempted from car repair? Repair of automobile and other vehicles?

Mr. Alueta: I believe, yeah, that's the concern. If you're working on your own car, it would be exempted. They also had –. Did you get the July 13th letter? I believe that was –. That was when they were specifically commenting on the concept on home based businesses. So again, what happened was just so you know, the staff report was – the draft that you saw or the main draft went out to agency comments. It did not include the home base business provision. That was added after it went out for agency comments. And so I asked the Director to transmit. To me, it was a significant change, it needed to go back out to certain agencies to comment on. And so now you're seeing some of those comments. That's why you're getting that particular comment late.

Ms. Kaye: So we don't have comments from agencies. Is there any to wait and see what these agency comments are?

Mr. Alueta: You should have gotten –

Ms. Kaye: I thought you said the home occupation part.

Mr. Alueta: Yes, the home occupation part did not – was transmitted out to agencies on June 17th. And so some of them are coming back a little late, and that's why we had to hand them to you tonight. So that's why you have like the DLNR's comments and you've got the Fire Department's one.

Ms. Alberta de Jetley: May I make a comment please? Joe I really like the definitions that you have in this because basically what you're saying is you can have a home base business if you do not interfere with the quiet enjoyment of your neighborhood, your neighbor's property right to peace and quiet within the neighborhood. So if you're going to have ukulele classes with 20 kids there, on Saturday morning or any other day of the week, then you're infringing on my rights to peace and quiet. If you're going to be repairing four or five automobiles in your yard, commercially, then that's not in keeping with the residential character of the neighborhood. If you're a massage therapist and you have one person coming to your house, twice a day, or two people, twice a day, you're not really infringing. It's a quiet activity. You're not infringing on your neighborhood. Parking is an issue on Lana`i. So if you have people coming and going out of your property, out of yard, parking in your neighbors driveways, yes, you are infringing on your neighbor's rights to have peace and quiet. So I think it's pretty basic. What you're saying is you can have a home business as long as you respect the right of your neighbor to enjoy their property with peace and quiet.

Mr. McOmber: . . .(inaudible) . . .

Ms. Kaye: Yes, public hearing is closed.

Mr. McOmber:. . . (inaudible) . . .

Ms. Kaye: Yes I did. Yeah. Yes Commissioner Rabaino?

Mr. Rabaino: I just want to add for the record and for the Commissioners, on Third Street – you guys know where that is – as Alberta said earlier, we have on Fraser, the back on Gay Street, there's some activity going on there. And if you cruise around Lana`i City, there are other activities that's regard to home base. As Zigmond states enforcement, it seems like the enforcement when they come to Lana`i – as on my street for the Fire Department – they give so much warning and nothing has been applied by enforcement.

It's noticed, noticed, noticed. You've got rats coming across. You've got cars, as you indicated in here. If we're going to approve something like this and the enforcement not even being applied, it's useless. And you know, there's only 3,000 people on this island, and this is a plantation island. The enforcement – fixing cars, there's about four if you cruise around Lana`i City. You have several homes that is so dilapidated that it's encompassed by hoarding and supplying things in their yard where you see the Fire Department go there, walk around, it's still the same.

Ms. Kaye: Gerry, I don't think that's the issue tonight. Okay, the point is that some of those uses you're referring to right now are already not permitted. It's just that no one is turning them in. And if they are turning them in and they're not being enforced, then that's an issue to take up with the Planning Department. But you can't just make a blanket statement because they're already not permitted. This won't make them permitted. Your concern, I think Joe tried to address with, do we want to consider limiting home occupations to a certain lot size? Because regardless of whether you put all these requirements on it, if somebody doesn't listen and obey the requirements, it's going to cause a situation where someone has to turn them in and it would be enforced. I think what Joe was suggesting is there's less likelihood of the kind of congestion. You're talking about if the occupation is limited to a certain lot size where there is more space between the houses and more parking space out front. That's, I think, what you were suggesting. I'm not necessarily agreeing.

Mr. Alueta: I'm just trying to get an understanding of what your main concern with. On Moloka`i it was a different concern. Moloka`i felt that enforcement would be difficult and arbitrary. It would require that the enforcement be primarily through the neighbors complaining. Then therefore, then we would have to go out and there would be an argument because it's an allowed use. As oppose to, if everybody had –. From an enforcement standpoint, it's difficult. Is it a violation or not a violation? If you make it a permit through the Special Use Permit process, they would have to come before the Commission, and get approval, establish their conditions, and the Commission can, at that point, establish limitations and conditions. And they feel it's easier to have a permit that has conditions and revocation, as well as, the public coming in and having their two cents said on whether or not this a good idea for their particular neighborhood in their particular location. Now that was their issue with regards. On the flip side, you sometimes what to make – if you make easy and make it an allowed use – I'm sorry, if you make it a permit, everybody has to get to get a permit, then it discourages certain people. And you sometimes have people who have really benign uses such as maybe a massage place, or chiropractor, or whatever or someone who has got an architect, who have a very limited clientele coming. They have to go through the same permitting process, and I think that's the balance. And from the Moloka`i standpoint, they didn't care. If you have no problem, then you shouldn't have a problem getting a permit, and there shouldn't be any problem enforcing that permit. And so that's what they felt. That way it would make it –. If a permit

is required, then if you don't have a permit, it's easy. You don't have a permit, therefore you're breaking the rule. Again, I think, the Department, or our Director, was taking the other direction which was we don't want to punish everybody. We want to assume everybody is innocent and is going to comply with the law, and we'd rather chase, I guess, the ones that are really obnoxious. But from your aspect, from what I'm hearing, is you don't have a problem with the home occupation being allowed. It's just that because of the small lots, you have a concern with parking and addressing that issue, so that's the reason I felt that you know –.

Ms. Kaye: Okay Commissioners, we're at the point where I think we want to either make some concrete recommendations. Quite frankly the only one that I had were the questions I asked in changing (h) to (i) in the subsection. And Commissioners, any other suggestions?

Ms. de Jetley: Madame Chair? Since Gerry has such a concern about parking, maybe we could add that on Lana`i, home base businesses with customers coming to their premises, must provide off-street parking on their own property. That will take care of it. Then they can't park in the street in front of your house. They must park inside their property. That would take care of it.

Ms. Kaye: What about somebody who's on a small lot and has a fence, and the car can't get through?

Ms. de Jetley: Well, you're limited to two people at a time, and many of the smaller lots – if you had a small lot in town – many of your customers may potentially be walking to your place of business. Like if you were a seamstress and you were on a small lot, your customers could park else where, on the next street over, or on the main street, rather than blocking a neighbor's property.

Ms. Zigmond: Madame Chair? That wouldn't work on Palawai Street. I mean, and I'm sure there are other streets like that. There's just nothing. We couldn't provide it.

Ms. de Jetley: Then it would mean that they would not be able to operate a home business on Palawai or any other substandard street.

Ms. Kaye: But that's discriminating against someone who doesn't have the financial ability to own a bigger property, but still needs to run a home occupation.

Ms. de Jetley: They could still have a home base business. They could meet their customers elsewhere. They don't need to meet them at their home. They could meet elsewhere.

Ms. Kaye: Gerry, did you want to add something?

Mr. Rabaino: I agree with Alberta. I was just reviewing what he was reading here, yeah, Joe. It's fine, but I think we should insert that parking limitation.

Ms. Kaye: And how would you word it?

Mr. Rabaino: Alberta, you want to state what you said about the parking? That restriction one?

Ms. de Jetley: Well I'm looking at this. It says your home base business, you can only have only one other person besides the member of the family can be employed at your business. So if that one person is coming to work at your property, at your business on a daily basis, that person will have to have off-street parking. So you need a minimum of two parking spaces available.

Mr. Alueta: If I may, you may want to just add, make a recommendation that 19.36, parking ordinance, create a parking standard for home based businesses of either providing one or two additional parking stalls onsite. You're currently are required to provide two parking spaces on your property for the single-family home. One for accessory structure. So if you're going to have a home base business, right now, there's no parking standards potentially, so I would suggest just adding it.

Ms. Kaye: The only thing I'd point out is that existing businesses around the square aren't now required, and have been successful in getting variances to provide onsite parking because there is so much around the square parking, and there isn't any other commercial space available. I'm just playing devil's advocate. The notion that home occupation should be permitted is a good one. How to control it, I'm not sure it's going to be done strictly through parking.

Mr. Alueta: Well, I've only heard your concern over parking, and that's the only reason I could suggest at this point. I'm trying to address some of the issues.

Ms. Kaye: Gerry – I thought Gerry's earlier concern was density of action too, and noise level, which as Alberta points out is covered by these.

Ms. de Jetley: Madame Chair, I almost think that we should send this back to send it back with no comments.

Ms. Kaye: Commissioners? Anyone disagree with that? Okay, thank you Joe. Can I ask – there was an indication from the public that maybe they would've wanted to testify to this. Can they still respond in writing to the County? Okay.

Ms. Zigmond: Do we need a motion?

Mr. Alueta: Yeah, I was waiting for the motion.

Ms. Kaye: He's waiting for someone to make one. I'll entertain a motion that we send this back to the Planning Department.

Mr. Alueta: No, recommend this to the Council.

Ms. Kaye: With no comments and no changes. I'm sorry, to the Council.

Mr. Alueta: With the changes with just the typo of (i).

Ms. Kaye: Yeah.

Ms. de Jetley: I so move.

Ms. Kaye: Making a motion that it goes back to County Council without comment.

Ms. de Jetley: I move that we send this back to the County Council with no correction other than for the typo.

Ms. Kaye: Do I have a second?

Ms. Leticia Castillo: I second it.

Ms. Kaye: All in favor? Any oppose? Okay, motion carries.

**It was moved by Commissioner Alberta de Jetley, seconded by
Commissioner Leticia Castillo, then unanimously**

**VOTED: recommend the Bill back to County Council with no
comments.**

Ms. Kaye: I've been asked for a five minute break for everyone and we'll be back.

*(The Lana`i Planning Commission recessed at approximately 7:15 p.m., and
reconvened at approximate 7:20 p.m.)*

D. UNFINISHED BUSINESS

1. **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 was conducted on January 21, 2009. Matter was last reviewed at the March 18, 2009 meeting.)**

The Commission may take action on these requests.

There may be a possible continuance if the information requested at the March 18, 2009 meeting has not been obtained. (Refer to the April 6, 2009 letter to Mr. Mich Hirano from the Planning Department listing the information requested by the Lana`i Planning Commission.)

Ms. Kaye: We're back in order. The next item on the agenda is State Land Use District Boundary Amendment from State Ag District to State Urban, and a Change in Zoning from County Ag to M-2, Heavy Industrial District for the Miki Basin heavy industrial area encompassing about six-acres off Miki Road.

We're going to make a record at this point. This matter first appeared on our agenda in January of '09, and it was deferred until March due to under representation by the applicant and a multitude of questions left unanswered as a result. It was deferred again in March after lengthy discussion and after several informational items, some to be supplied by the applicant, and some by the Planning Department, were requested by the Commissioners. It was made clear at that time, and in subsequent meetings and communications with the Planning Department's personnel, that this agenda item should not have been set again until the Department had gathered all information requested.

Now, for tonight, I had intended without going into the substance of the response as to the items requested to ask the Planning Department to simply address whether all data requested had been secured with the view to continuing this agenda item. As you note, on the amended agenda, this was subject to continuance. Now I understand there's a new wrinkle. Having made inquiry to Corporation Counsel on why for the very first time, there was a notation on the Planning Department's communication to us dated July 6th regarding time limitations for review of Changes in Zoning and District Boundary Amendments. I note that neither the Planning Department, Corporation Counsel, nor the applicant or its consultants have raised any objections to past deferrals requested due to a lack of

information, nor brought this limitation to our attention. By my calculations the clock would have run on a ClZ, Change in Zoning, on February 19th, and for a District Boundary Amendment on March 11th, or seven days before the March Planning Commission meeting where this item was taken up, yet we heard nothing until now. For the record, the Maui County Charter tasks us with reviewing land use ordinances and amendments prepared by the Director and we are to transmit findings and recommendations to County Council no later than 120 days after the final public hearing. If that provision applied, and the final hearing was in March, then today would be the 119th day. But after consultation with Corporation Counsel, I've been advised that to be safe, we should act tonight.

So I am proposing to the Commission the following steps. After briefly hearing from the Planning Department regarding whether anything new is to be offered, we then will make a record specifically of what we asked for and what has not been received. We would then take public testimony which is required because since this is an agenda item. I would then entertain a motion that we would forward this application to County Council with a message that we cannot take action on the application at this time because we have not received all the information we requested from the Planning Department and the applicant, and suggest that County Council may decide not to act until they receive the information for which we have been asking. That way County Council may decide to seek the missing information without laboring under the time constraints imposed on us. Following that, we may as a Commission offer conditions for County Council's consideration as we have done on past applications with the understanding that all or none of our suggestions may be considered by Council when and if they set conditions to protect the community's interest. This way we would have fulfilled our duty and responsibility under the County Charter to "advise the Mayor, Council and Planning Director in matters concerning planning programs," and we can make sure our voices and the work we have done are heard and offered to the County Council for consideration. So at this time, if we could hear briefly from the Planning Department whether there is anything new to add after which we will make a record of what we've asked for that hasn't been received.

Mr. Joseph Prutch: Let's see, there's nothing new to add other than what's in your staff report, of course, and that letter from Castle & Cooke dated July 10th that you also received in an e-mail from Leilani. Those are the only items that I know that are part of this that we have to give to you today. Nothing new since that July 10th letter.

Ms. Kaye: Okay. So, then, what I would like to do is just as you've all read our minutes, we've all taken part in the discussion in January and then in March, and I'd like to just get on the record for County Council's consideration what we've asked for and I'm going to go down the list in the order presented in the Planning Department's letter of April 6th beginning with the response to our question regarding how the applicant plans to offer fee simple lots for sale. The response was "it's too early to tell." With respect to the request that the applicant contact the Lana`i Water Advisory Committee (LWAC) and the

Department of Water Supply (DWS) to come to an agreement on whether the current infrastructure will accommodate the additional usage. This was in fact agreed to by the applicant's consultant at the January meeting at page 13. The applicant now says, "we don't have to." To perfect the record for County Council, I would like to point out that LWAC, the Lana`i Water Advisory Committee, was established by the Board of Water Supply resolution #5 in 1999 in part because, "(1), water use issues on the island of Lana`i have arisen because the island has limited resources, and (2), the Board is committed to public involvement and planning and decision making as it relates to the Lana`i Water Use and Development Plan. The purpose and intent of LWAC is to provide public input and involvement during the development of the Lana`i Water Use and Development Plan and to monitor the Lana`i Water Use and Development Plan implementation."

Now, in order to comply with condition #2 on the previously zoned 13.9 acres as well as condition #1 proposed by the Planning Department for the six acres subject to the current application, the "water use for this project shall be consistent with the Water Use and Development Plan." The current Water Use and Development Plan has no allocation for heavy industrial water usage as we've referenced before. Therefore the proposed water usage is inconsistent with the current Water Use and Development Plan.

A further concern is the condition included in the Planning Department's recommendation to us that "the 10-inch water line serving the Palawai Basin water system shall be replaced to the satisfaction of the Department of Water Supply." The applicant has responded with an assertion that they intend to do pressure relief valves for now and see about the lines later. Despite the record from both meetings held on this application which references that this line is poor repair. I will concur with so much of Castle & Cooke's letter of July 10th that the intent of this request was never to achieve written agreement on potential users of the site, so I'm not sure where that came from. So, it seems clear that County Council might decide to take this application up once the Water Use and Development Plan is revised and approved, but that's for them to decide.

Moving down the line, a request for a written assessment from the Fire Department "as it pertains to fire flows and fire safety at the project site" was met, to me, an indecipherable e-mail exchange that was included in our packet that had very little to do with the current status of the system to handle fire safety.

Next, a request that the Planning Department make a formal inquiry to the Land Use Commission and DLNR on the status of a 10-acres commercial and 15-acres light industrial parcels subject to a 1994 agreement to convey, which was submitted to the Planning Commission in January by former Commissioner Pat Reilly, was met with, and I quote from what was in our packet, "the notes concern a separate issue we have been trying to resolve with Castle & Cooke." This is in respect to the 15 acre light industrial. This in no way speaks to the status of the parcel which was what we requested, and not a single mention

has or is being made of the status of the 10-acre commercial parcel.

A request to the Planning Department for a formal report on the status of the 13.9 acres subject to conditional zoning pursuant to ordinance number 2894 and 2895, in 2000, caused by the potential that this acreage was subject to reversion pursuant to 19.510.050(c) and (f) for failure to comply with conditions imposed in 2000 has received no response. What we do know is that at condition #1, 50% of the 13.9 acres that was to have been offered in fee has not happened. We know that Chapter 19.510, application and procedures, section 050(c) states, “the conditions to be imposed must have been performed prior to Council action on the re-zoning amendment or be enforceable by the County so is to ensure performance after Council action. The condition shall be fulfilled within the time limitation set by the Council or if no time limitation is set, within a maximum of five years from the date the ordinance is in effect.” We also know that pursuant to section (f), “failure to fulfill any condition on a zone change within the specified time limitation may be grounds for the enactment of ordinances to restore the zoning to the previous zoning.” What we do know is, also, is that on July 21st ‘08, the Office of Hawaiian Affairs questioned the necessity for this proposed project in the absence of the current need for the formerly zoned 14 acre project. And on July 7th, the Land Use Commission told us that the record in the County of Maui docket, #DBA 9903, “the 13.9 acres re-zoned in 2000 indicated that there were no potential users of the lot except for 2.4 acre portion. Moreover, the application appears to indicate that the demand originally anticipated for industrial lands has not materialized to warrant subdivision of the 13.918 acre lot since it’s urbanization. Given this apparent lack of demand, we request the applicant to specifically address the need to urbanize this six acre parcel at this time.” The applicant’s response was that it was needed for its own operations and the most recent project assessment report dated 06-09 continues to acknowledge, “there are no potential users for the required six acres.”

Now the current Lana`i Community Plan, under government, acknowledges and supports the role and responsibility of the Lana`i Planning Commission in monitoring and enforcing the Lana`i Community Plan. The current community plan adopted in 1998 by ordinance 2738 calls for 50% of the 20 acre heavy industrial area at Miki Basin to be sold in fee. The 13.9 acres re-zoned to accomplish this nine years ago has neither been developed nor sold. Therefore, I think, County Council might consider this application after the new Lana`i Community Plan is approved. That is up to them. Given the time constraints that a potentially applied to this zoning request and in the absence of the full information we’ve requested, it is impossible for the Planning Commission to determine if this is the appropriate time to grant a request for additional zoning. So, I would like to do some public testimony at this point, see if the Commissioners would like to add anything else to the list of what we have asked for and not received, and then we’ll move on to forming a motion. Commissioners?

Ms. Zigmond: I think you've covered it.

Ms. Kaye: Okay, for public testimony, I'm going to assume the four people that are on here plus others, you each have three minutes. We'll start with Ron.

Mr. Ron McOmbler: Good evening. Ron McOmbler. Lana`i resident and a member of LWAC. After reading this letter this evening which I just received.

Ms. Kaye: Could you identify the letter Ron, please?

Mr. McOmbler: Huh?

Ms. Kaye: Could you identify which letter your referring to?

Mr. McOmbler: The letter that I've got is the letter from Castle & Cooke dated July 10th in reference to what LWAC's position is or is not, and what the water working group can do or can not do. My understanding, when we started LWAC, it was water use and development for the whole island. Part of the project was and still is looking at water use coming up. And we've asked Castle & Cooke, and they've been at the table. This is not an ad hoc committee folks. Castle & Cooke sits at the table with us. So it isn't like we're out with an ad hoc committee somewhere, hiding in the bushes. They're at the table. But we have a hard time getting these people to come to the table. Point of interest that we have to have a point, they don't show up. They make excuses that they missed the date, they don't have time, they're off island. This is ridiculous, but to read it, this is a slap in the face. This letter that you have in front of you, it says we don't have the authority. We didn't say we had an authority, but we have the right, on this island, to look at water use and development plan. We're not here making the rules. We just want to be informed. If we were not informed, they can run this under, right through all of us, and we would never know what was going on. We're an avenue. And this is true. We're waiting for the Water Use and Development Plan to get done, and then we will have a force even tighter than what we already have, so it's going to happen. We're working on it. I think we have a meeting at the end of the month, and we're going to start finalizing this thing because it's getting really hot right now. But my concern, like your Chair said, we've been chasing this for a long time. This particular item at Miki Basin should have already been subdivided. Some of them should have been sold in fee because they're using 13 acres of it. They only should be using 10 acres of it, and the others should be in fee. You saw it today down there, they ain't close to that yet. And the part that they want the other six acres, it looks like it's going to be hell for somebody to develop it. And they're not going to tell us what kind of water, and how the water is supplied until that is permitted and moves forward. That's insane. We need to know this in the Water Use and Development Plan. That's why it's called Water Use and Development Plan. So, I'm insulted by this. I really am. This is just a slap in the face to the people that have been working on this, what, 15 -18 years on

some of this stuff. And every time we have new water directors and we have new people coming in. This is insane. There's only one person in this room that knows everything other than what we know and that's Ralph (Masuda.) All the rest of them are new people here. And poor Ralph is going to have to answer for all this. But anyway, I hope I didn't get Ralph into trouble. He's a friend of Ron's. But we've known each other for a long time. We've been on a lot of bumpy roads. But this is insane folks – sorry – but thank you for your indulgence and that your Chair for doing a very sharp work. Listen to what she's saying. Thank you.

Ms. Kaye: Ron, hold it a second. Commissioners, any questions for Ron? Okay, next on the list is Archie Nahigian.

Mr. Archie Nahigian: Thank you Madame Chair. Basically you all have an impossible task. You're being asked to make a decision without being given the information upon which that decision should be based. The Chair actually has shortened my presentation substantially because I would concur with all the requests that you've made. There are two others that I would – Well before getting to that, let me just say that I think the result – and I'm not for or against – I'm for the process. I think if you have integrity in your process, you will get the proper result. I haven't been at either of the prior meetings. I have reviewed minutes of the January and March meetings, and I was able to participate on the site visit today, and I would have two additions to the Chair's comments. One, I think, in the January meeting, there was a mention about urgency to approve the application. I think that's a false urgency. Since 2000, Castle & Cooke, or the applicant, has had 13.9 acres to proceed on in terms of developing and selling. That has not happened. And my feelings should be those plans should be clarified before an additional six acres are provided.

At the site visit today, it was clear to me that it appears as though more room is needed, which suggests also that more than half of the 13.9 acres are being used now. Also, from the site visit, the 6.1 acres that are in the community plan are not the best 6.1 acres. It's not level. It's going to require a substantial expenditure to grade or that land is going to be given as part of the 10 acres that's going to be used for the public. Also, it was said that if they didn't use that land, it would be about an acre to acre-and-a-half, if I understood correctly – if that is true – then the applicant would not have the 10 acres that they say they need to develop the project. It's hard for me to understand. Zoning gives a benefit. It confers an economic benefit to an applicant beyond which they expected when they purchased the land. To give an economic benefit normally the County or the zoning entity gets something back in return. In 2000, the applicant was given this benefit, has had the benefit, and has not given back in return what they expected and agreed to do. So my suggestion would be that before any additional zoning are provided, that the 13.9 that's already been promised, the commitments are done on that, the conditional zoning of 2000 is honored and that the community plan be put in place in 2010. Thank you. (*Changed cassette tapes*)

Ms. Kaye: Thank you. Commissioners any questions for Mr. Nahigian?

Mr. Reilly: Thank you Commissioners, Madame Chair. Pat Reilly. 468 Ahakea Street. I would concur with the general sentiments, specific sentiments, of the Chair. The Planning Commission actually is required to do due diligence to ensure that the Community Plan is enforced and implemented. And if you don't get the information you need to feel like due diligence has been satisfactorily met, you don't approve it. Now who's to say who gets what, and when they can give you things and when they can't give you things. But I would say unless the Planning Commission feels that its received the information, where it can make a solid decision, then it cannot approve the permit. If you think you've gotten it, through letters or some other way, then you have to make a judgement. But I would concur with the Chair. I'm not sure the exact language when the public hearing is – I guess perhaps you have to say public hearing is recessed and you continue that because as far it's on – my understand was as long as something is on an agenda, the public hearing continues, so I'm not too sure.

My greatest concern had to do with water. And although it's not related, I always see the community plan as a functional plan. In other words, you move something here, it changes something up here. You just don't pick out single elements and say well if we do something here and it doesn't affect everything else. Obviously this will affect as a result of this change in land classification. Things moved to that area, that opens up other areas in the City which will functionally affect the community plan. So the community plan is a living thing. You do one thing, it affects other things. One example that they have placed is, well, okay, they're going to move the laundry shop down to that area. That opens up an area there. My greatest concern and I see your part, there's a letter about the Senior Center. Now what would that have to do with an approval of land classification there? Because it's functional. If you approve that, something moves down there, that opens up an area where the Senior Center is going to be moved or whether that building can be demolished and rebuilt. Because as we know that \$1.5 from the County will lapse December 31st. So I support the Chair's statement, and if you think you've got what you've got, fine. If you don't, and you have to move it on, then I would concur with the Chair. Thank you very much.

Ms. Kaye: Commissioners, questions for Pat? Okay, John Ornellas is next.

Mr. Ornellas: Thank you. Madame Chair, you're right on. John Ornellas. 405 Lama Street. Yeah, you hit it right on the button there. You know, personally, I don't care if they get their six acres. But I would definitely hold that over their head when it comes to our new Senior Center. You want your six acres, give us our new Senior Center. It may be talking apples and oranges, but, you know, when it comes down to planning, give us our Senior Center. They know we need it. They know we want it. And the only people we're actually hurting

is our kupunas, so that would be the only thing. The only question I would have about giving them the six acres is definitely the water issue. They have to do that first before they get the six. Thank you.

Ms. Kaye: John, hold on just a second. Commissioners, questions for John? I have a question for you. Are you suggesting that we add, as a condition – typically when something is forwarded to the County Council for consideration, we attach conditions, the Planning Department suggested some, and I'm sure Commissioners, and I know I have some – are you suggesting we add a condition that the Senior Center –?

Mr. Ornellas: Definitely. Yeah. We've got to get something. I mean, I just read some minutes that Castle & Cooke had a meeting and one of the items on that was trust. You want us to trust you, then start helping out this community more. Thank you.

Ms. Kaye: Thank you John. If I could just clarify, and Mr. Hopper, Corporation Counsel, will check me on this. My understanding the difference between public hearing is you open it, you close it. Public hearing was closed. We had two public hearings on this – January and March – and tonight is testimony because it's an agenda item.

Mr. Michael Hopper: Provided that public hearings in those cases were both closed, then you're fine. I mean, you wouldn't have to say it's closed. It is public testimony only because it's on your agenda. You know, every agenda item you have to give testimony. Public hearing just means it's in the newspaper. It's really the only difference. And there are things you have to do to continue a public hearing versus a regular public testimony. But if you closed the public hearings in this case, then you have no other obligation other than to take this testimony today.

Ms. Kaye: Okay, well, thank you for clarifying that. I guess in this case it really doesn't make any difference because we have to do something tonight anyways or we run the risk of not being able to send over our comments. So, is there any other public testimony? I see Butch's hand up.

Mr. Reynold "Butch" Gima: Good evening. My name is Butch Gima. I'm a member of the Lana`i Water Advisory Committee. I have two points. One in response to the comments made in the letter about LWAC. Just some history and you can have both Clay and Ralph verify this. On our agenda, we have a standing agenda item, one of them is any pending applications or projects by the company that involves water. Typically the company would come to the committee and inform us so we can start talking about it in preparation for a Planning Commission meeting. In terms of whether we have the expertise and experience, I don't know who authored the letter, but my feeling is they are both – there's no foundation for that position and the author of the letter seems very uninformed about the Lana`i Water Advisory Committee and what we've been doing for the last ump-teen years. I would agree

that there is no statutory mandate for the Lana`i Water Advisory Committee to review any application or projects that will be coming before the Planning Commission. However, since we've been meeting for years, on a monthly basis, there is this working relationship amongst the committee members, and we've all agreed that it's in the best interest for the community to have the discussions ahead of time. So not only can we be informed about it, but we may bring up some issues that the company may have overlooked. And that has happened on a number of occasions. Now this process has worked. I'll give you an example. When the company wanted to put in the second swimming pool down in Manele, they did bring it to the Water Advisory Committee. We talked it over, and we worked things out, and it went sailing through, I believe, before the Planning Commission. So the process works. I mean, the idea is not to add another layer of bureaucracy, but because we have a cross representation on the committee, I think it's beneficial to discuss this. So that was my first point.

My second point is there's no ambiguity in terms of what was decided back in March. They agreed to something and they didn't follow through. I mean, it's real clear. You, as Commissioners, have a responsibility to the community that if they don't follow through, too bad. For you to agree when they change the rules mid stream is unfair to you, and it's unfair to the community. You in your own personal dealings, when someone agrees to something, somewhat like a contract, you expect them to follow through. There's that expectation. They're on the record saying that they're going to do it, and now they're not. It seems pretty clear what your decision has to be. Thank you.

Ms. Kaye: Thank you Butch. Commissioners, any questions for Butch? Okay, that's all on our list. Is there anyone else that would like to speak to this agenda item?

Mr. Gary Yokoyama: Gary Yokoyama. Vice-President, Castle & Cooke Resorts. I've been attending all of the meetings relative to this application and I think that the testimony and the nice speech that you heard from your Chair is – I have to question whether those voices are really looking at the merits of our application or is simply here to stop Castle & Cooke from development. I tend to think it's the latter. I tend to think that a lot of the questions that are raised are simply raised to confuse, muddle what these actual issues are. If our application was not complete, then you would have heard that from the County agencies, the County authorities, the Director. You would've heard that from them. But they've indicated that our application is complete. We have followed the process. This particular zoning application is merely to implement what's already in the Lana`i Community Plan. It's not something new. We're not trying to change the rules in the middle of the game. It's simply implementing what this community has already decided it wants to have. – a 20-acres heavy industrial area outside of the City. Do you think the community – does this community want to have heavy industrial, a fleet maintenance yard in the heart of Lana`i City next to residences forever? If that's what you want, then, well, so be it. I mean, maybe that should be what you decide.

But I think that we've followed the rules, the 120-day limitation is in the Lana`i Planning Commissions rules, themselves, and not only in the ordinance. So for all of a sudden, for the Commission to say, hey, we didn't know, you guys didn't tell us. It's in your rules. You should know. We're not trying to pull a fast one on you. So, I speak to you as Commissioners – I mean you've been appointed to be fair and impartial, look at things and assess things based on their merits, not necessarily on rhetoric or hearsay or accusations or back stabbing or character assassination. I mean, we've done everything in our power to make sure that you have all the information you need to make this decision. It's not a big decision. It's not going to impact – it's not going to change the way of life. It's going to allow the company – maybe not tomorrow, maybe not next year – to provide and move the heavy industrial area outside of Lana`i City, but it will provide that opportunity to do so in the future as the need and as the economy justifies. So I would urge the Commission to kind of vote your conscience. I mean, you want the community to move forward, or do you want to have – we've heard there's commercial activities going on in residential areas. Why? Because there's no commercially zoned properties. And you'll continue to have that problem because people have to make a living. And this small zoning issue, I think, helps in that regard. It provides more heavy industrial area. I think, it's for the advancement of the community. I really do.

Ms. Kaye: Gary, I'm sorry, there might be a question or two for you so don't run away. Commissioners, questions?

Ms. Zigmond: I do. Muddling the issue and rhetoric and hearsay – sounding like we don't want this project to go through. I think it's been said over and over again that we all agree with the concept. Not only is it in the community plan, but we all know that we need this. However, it has been said over and over again that none of these businesses that are in town have been approached or have expressed an interest. And so I don't see how that's hearsay because it has been said over and over by the applicant and the consultant. And also –

Mr. Yokoyama: Is that a question?

Ms. Zigmond: Yeah. How can you say that then?

Mr. Yokoyama: How can I say that's hearsay and there's rhetoric and that's there's muddling the issues?

Ms. Zigmond: Specifically to that.

Ms. Kaye: Let's tone this down. If you have a specific question for Mr. Yokoyama, then – but we're not going to get into beefing about definitions of hearsay. You've made your point, so go ahead.

Ms. Zigmond: Okay. I just wanted to know how we were muddling the issue when we were asking for information specifically regarding water, and specifically regarding the fact that nobody has – there has been no interest and that the original 2000 agreement, nothing has been done with that. That's my question.

Mr. Yokoyama: What 2000 agreement?

Ms. Zigmond: It was the first condition on the changes – the conditional zoning in 2000 – it was 50% of that was suppose to be offered in fee simple.

Mr. Yokoyama: Okay. Let me address your question about muddling the issues. An example, the issue of the 15 acres industrial parcel that Castle & Cooke was to have dedicated to the State has come up. It came up at this meeting tonight. That has nothing to do. May I answer the question?

Ms. Kaye: No. I'm sorry. You may not because –. You may not because this is about information we have not received and that information was requested of the Planning Department. It is not your responsibility to answer that question. We're drawing the line because the information – my big beef quite honestly is with the Planning Department and the information that we didn't get. So, no, we're not going to entertain. You can take that up with County Council.

Mr. Yokoyama: So you're preventing me from answering a question that was asked?

Ms. Kaye: Did you asked a specific question about the –

Mr. Yokoyama: She wants an example where the issues are being muddled.

Ms. Kaye: Then you've answered the question.

Mr. Yokoyama: You didn't allow me to answer the question Madame Chair.

Ms. Zigmond: My question was specifically regarding how was asking for – we asked for the water information – how was that muddling the issue?

Mr. Yokoyama: Because LWAC, contrary to what Mr. McOmber has testified, is an ad hoc agency. I mean, it is an ad hoc committee. It's not even an agency or the board. It has no legal authority to render a recommendation to this board. It can. It can do so. Nothing prevents Mr. McOmber or Butch from coming forward and reporting to you what their thoughts are as LWAC committee. But it is not LWAC's jurisdiction. LWAC does not have jurisdiction to be rendering opinions and recommendations to this Commission. It does not. And I'll challenge anybody to show me the ordinance or the law that disputes that because

I don't think it exists.

Ms. Zigmond: I think the community plan talks about that, but I would just say that I think we would be errant if we did not, as a Planning Commission, if we did not consider water issues in every application.

Mr. Yokoyama: Sure. And I'm not saying not to.

Ms. Kaye: Okay. Any further questions for Mr. Yokoyama?

Mr. Rabaino: So Gary on the water issue, has anything been brought to the Planning Commission from the Castle & Cooke's stand point?

Mr. Yokoyama: I think and we've got a lot of water people here, John Stubbart and Clay, who are more familiar with the application. But I think that the estimated water consumption for this re-zoning has been provided to the County, the County Planning Department and to this Commission, and the information before you.

Mr. Rabaino: Then I guess my question would be being that the County Planning Commission board is here, with all these paper trail and whatever is typed on it, has it been communicated to us in our packet? Are you aware or has it been summarized in this fashion where this could be where it's fair and reasonable to say that whatever is printed here is what we're going to read and make our own determination based on what we received sort of speak?

Mr. Prutch: I think what you're asking is the information you got, Planning Commission's staff reports – today, last time – whatever we've got that's concerning water has been forward on to you. So you have what we were getting in writing.

Mr. Rabaino: Okay. So now because of the Lana`i Water Advisory Committee, the LWAC, is trying to get information, so that way we, the Commissioners here, the nine members can make a determination on the water usage. Just reading this paragraph four from the 1997 draft, you're telling me that the – because I'm not familiar with the Water Board because I only attended one time – that the 6,000 g.p.d./acre water allocation of heavy industrial use is 120,000 g.p.d. for the 20 acre site sufficient? Is that what you're saying that you received from Castle & Cooke?

Mr. Yokoyama: That information was provided.

Mr. Rabaino: So what else information are we searching for?

Mr. Yokoyama: Does that estimated consumption jeopardize the water supply on Lana`i?

Answer, no.

Ms. Kaye: Did you have your question answered Gerry? I think if we read into the record the other things that were missing. Do you have any other questions for Mr. Yokoyama?

Mr. Rabaino: No.

Ms. de Jetley: I have a question. Gary, we've been hearing a lot about water usage and about improving the Miki Basin system, but as one of the few users in that area, do you have a ball park figure of how much it will cost you to develop the water system there because I show the airport, MECo, my farm, Manny down at Lana`i Waste, the landfill, the harbor and the ranch as the primary users of water in that area. And everybody is jumping up and down and saying you have to improve the water system. We all know that the water system needs to be improved, but there's no way that you're going to be able to split the cost of that water between this limited amount of people who are actually using it. So could you just give a ball park of what is estimated? What is the estimated cost to improve the Miki Basin system is going to be?

Mr. Yokoyama: I can't, but John Stubbart, who is here, can.

Ms. de Jetley: Madame Chair, may I ask John to reply to that question?

Ms. Kaye: John can testify. He has three minutes if he'd like to.

Ms. de Jetley: John?

Ms. Kaye: And the specific question is the cost.

Mr. John Stubbart: John Stubbart. Director of Utilities, Castle & Cooke. . . .(inaudible) . . . got to get close. The cost for improvements for this project, depending on what the engineering review will reveal at the time of zoning, I mean, subdivision, where they have to then do all the engineering and determine what the requirements would be. There are options for that. One is to replace the line from the bottom of the Hi`i tank where the line comes down the hill. From that point out across the Palawai Basin to the Miki Basin area would cost anywhere between \$800 (thousand) to a \$1 million. An option, and it just depends on the line sizing requirements, an option would be to build a fire flow tank similar to what's at the airport to handle the fire flow requirements because the current line can handle the other domestic uses in the area. To go beyond that to the cost to improve the rest of the lines to the Palawai Basin area including the farms and the ranchers, in those areas, I don't have a number for that, but it would be several million dollars.

Ms. Kaye: Does that answer your question Alberta?

Ms. de Jetley: I have another question. So is it even reasonable to expect you to do this with no expectation of being able to get your projects through? As a user there I'm looking at it and saying if we don't push for the Miki Basin project, I can kiss the water systems good bye because there's no way that this company will be able to afford to do improvements to this water line to the limited amount of users that are presently on it.

Mr. Stubbart: I can't answer that question. For me, I can't tell you what tell you that answer. Sorry.

Ms. Kaye: Thank you John. Gerry?

Mr. Rabaino: I have a question for Clay.

Ms. Kaye: I'm sorry Gerry. Okay, we made a record based on what we did not receive in order to make a decision. We made that record. The option is we're out of time. The option before us is to send it to County Council. I want to assure everyone in the room that I intend to put this entire process, what was asked for and when, in writing to the Mayor, County Council, the Planning Department because I think the information that has been given to us has come in untimely. I think we were informed ill-informed of the deadlines we were facing. I think the parties sat of their rights until all of the sudden it's come up that, oh, you're out of time. And I think that we need to figure out a way to improve information so we don't have this situation again. We made it very clear this item should not have been on the agenda unless we got everything we asked for. We did not get everything we asked for. I fault the Planning Department for even having it on the agenda this evening. Having been told we're out of time, then I think our best option is to send the record to County Council and let them sort it out. We can still, after we make a motion or discuss a motion, or we can wait, but we still have the option of implying conditions to this that would answer some of the concerns that came up tonight.

Ms. de Jetley: Madame Chair, may I have the floor? I really feel that the Lana`i Planning Commission has presented itself as anti-business commission. This project is badly needed by this community. All you need to do is drive around town and see the amount of illegal materials being stored within our community because there is no heavy industrial section. We've already been told that this project –. If we sent it on tonight, it's still going to be five years before it can become a reality. What we're doing is we're looking at our community and saying where are we going to be in five years? Are we going to be economically viable or are we going to be deader than dead? Where is our industry going? Where are we going to go? What kind of jobs will we able to provide? Just throw this out and just leave it the way it is and we will continue to have illegal businesses being operated within our community. We need to move forward on this project. We need to get ourselves going, send it to the Council. We are all volunteers. We're not elected officials. Send it on to the Council and let them deal with it. It will come back to the community anyway for

public hearings. But we're not elected officials and I think we should move on.

Ms. Leticia Castillo: Madame Chair?

Ms. Kaye: Yes, Letty? Excuse me. Mr. Hopper would like to have a word.

Mr. Hopper: I was just unclear Madame Chair, is the public testimony portion of the meeting closed for this item or are there others?

Ms. Kaye: Everybody on the list is exhausted. If there's anyone else that would like to speak? Otherwise, we will close it at this point.

Mr. Hopper: I would like to make a brief statement before deliberations begin just to clarify the standards that you're looking under. Just to read from the County Code, 19.510.040, for change in zoning. It says that upon closing the public hearing and upon reviewing the report and recommendations of the Planning Director and all of the applicable information on the application, the Commission shall prepare a report which includes, but which is not limited to, the Commission's findings of fact, conclusions of law, recommendations and any recommended condition which the Commission determines to be necessary pursuant to the conditional zoning provisions of this chapter. To give you an idea of what the Council will be looking at – again, you are making recommendations to the Council – the Council has a set of criteria in the same section that it needs to look at for a zoning change. It states the County Council may grant a change in zoning if all of the following criteria are met. And they are listed.

Now in this situation, zoning throughout Hawaii has been considered by the Courts to be a legislative act, which means that the Council has a very broad discretion in granting or denying a change in zoning, or for placing conditions on a change in zoning. An applicant – and we've advised Council before – does have the burden of proving that they meet this criteria, which for example states, the proposed request meets the intent of the General Plan, and the objectives and policies of the Community Plans of the County. The proposed request is consistent with the applicable community plan, land use map of the County and several other things. It's the applicant's responsibility, through the application, to provide that information to you, and then you would forward your recommendation onto Council. The Council and you, as the Commission, can ask for more information if you so desire. And if you've provided enough information to make a decision, you can make a decision to either approve, deny or to approve with conditions. If you do not believe you've been given enough information to make a decision, and that is within your discretion after your review of the criteria here, you have the ability to deny based on lack of information, or to, if you do believe in this situation, you haven't had enough information, you could explain that to the Council in your report to them. But, that is something that you, as a body, have to vote on. So it's not something the chairperson can unilaterally have done. You have to

vote on it as a body and support that as your report and recommendations to the Council, which again, has broad discretion in enacting a zoning change. Basically there is a comprehensive zoning ordinance that sets forth zoning. In order to change that, the Council can decide whether they want to or not to change that zoning depending on the application. It has no obligation to make that change. That's within the discretion of the Council. And it's like legislation, it's like passing a law basically and they have that discretion.

So to make that clear to you, that's the section that we are operating under and it is within your purview to advise the Council on how to proceed with this application. And it's, I believe, important to create a clear record. Once you have your motion, and a second, of what that motion is going to state. You'll be giving guidance to Joe as your staff to transmit that to the full Council. He will be responsible for making that report to the full Council who will then decide when to act on the – what to do, finally, based on your recommendations. And just so you know, the Council can decide to basically go along with your recommendation or throw out your recommendation. They don't have to listen to you. You're only an advisory in this case. The Council does have the final decision.

Ms. Endrina: I just want to say for the record that, in what Alberta said, I am not anti-business, and I just want to make sure that's perfectly clear. My only concern has been water numbers that we've been going over and over and backwards and in and out. That is the only thing that I'm concerned with, but I am not anti-business, and I do not believe this Planning Commission is anti-business.

Ms. Castillo: Madame Chair, you know we have been going through this for several months and it seems that we have been battling over this request with information that we, as Planning Commissioners, requesting from the company. You know, we just have to ask the Planning Commission Director if he has received anything or even the Council, and if those information that we needed as a body to act on this, we would like to have that. And, you know, maybe what we can do is wait maybe for next month. Thank you.

Ms. Kaye: No Letty, unfortunately, because the issue of time limitation has been raised, we can no longer – we have been advised not to defer or continue this item, which was originally what we requested. If we didn't get the various things that I've listed – the two reports from the Planning Department – and now, in fact, the applicant has refused to honor the condition to just talk to LWAC and DWS, and make sure there was an accommodation for heavy industrial use. We didn't want this on the agenda, so we wouldn't inconvenience everybody to come. It's on. Now, we're out of time, so we can't put it off anymore. And Alberta even suggested this in March that we send it to County Council. That's all I'm suggesting tonight, that we send it to County Council. Bev? Gerry?

Mr. Rabaino: Well, let's send it to County Council because I'm not anti-business. I want to

see this thing go forward. But let's send it to County Council and let them deal with the necessary things that they need to. But we also can give some recommendation and I think we should add those recommendations in in order to move things forward. And those were said by Sally and we attach that and we let them, the County Council, to take it from there. I think that's a better deal. Okay, we move it to the County Council, attached what has been read earlier.

Ms. Zigmond: Madame Chair? Sorry? I was just going to say that I think our track record shows that we have supported business. But having said that, I see our options as one of two. That is to recommend denial to the County Council because of lack of information that we felt we needed and then the County Council can try to get that information. Or we could recommend to County Council to approve with certain conditions.

Ms. Castillo: I believe that is what Gerry is saying, so I don't know if we need to entertain, as a motion, what Gerry has said. What Gerry had said – are you making that as a motion Gerry?

Ms. Kaye: Okay. I'm confused. Gerry, your suggestion was we send it to County Council with the original recommendation that we can't approve at this point because we don't have enough information. Is that what you were suggesting? Would you like to try a motion to that effect and see where –?

Mr. Rabaino: I'm not making a motion. I'm just saying, as a suggestion, let's move on and have the Council do with these conditions that we can attach to.

Ms. Zigmond: But we need a motion to do that, and we can either do it one of two ways – is to recommend to deny or to recommend to approve with conditions.

Mr. Rabaino: Recommend to approve with conditions attached to it.

Ms. Kaye: Okay. Can I just clarify? Recommending to approve with conditions ignores the fact that we haven't gotten the information that we requested. It goes against the last two meetings and all the information we've asked the Planning Department for. So that's just – I just wanted to bring that to your attention. We went there. Mr. Hopper?

Mr. Hopper: Just quickly. I think you have several options. The first was what your Chairperson said if you believe you do not have enough information, you could forward that on to the Council and say you don't have enough information to make a recommendation and you could recommend conditions along with that if they do get that information and see fit to approve. You could recommend approval with conditions. If you believe that these standards have been met, you can certainly recommend approval with conditions – if you believe these standards have been met. And you can recommend denial either because

based on the information you provided you see that these standards are not met or that you have not been provided enough information in order to determine that these standards have been met which requires that the applicant show, for example, there will not be an adverse impact on a variety of issues. That's the burden that the applicant would have. So those are the options that you would have, and almost anything else, to tell you the truth, you do have a broad discretion in making a recommendation to Council in this situation. As far as conditions, you can recommend approval with conditions, no conditions and you can recommend specific conditions. Whatever you do in motion, I'd recommend that you be very clear on your reasons for doing so, as well as, if there are any conditions, to be very clear on which conditions you're talking about. You just can't say with conditions. You need to specify are they the Planning Department's conditions proposed? Are they separate conditions that you have? I mean, you need to make that clear.

Ms. Kaye: Okay, any further comments on the Commissioner's part?

Ms. de Jetley: I'd like to make a motion. I move that we forward this application to the Maui County Council with no conditions attached.

Ms. Kaye: Okay. To clarify, you're forwarding it with no action on our part, no recommendation on our part and no conditions?

Ms. de Jetley: Yes because the way I feel personally about this is we need to get it out from us, back to the Council where the Planning Department staff can work directly with the Council on getting the answers that they need. They have all of the notes. They have all of the records of all our meetings to go through. For us to pull out one recommendation from everything that we have will be next to impossible. It will take us the rest of this evening. So I'm putting it back to the Planning Department that they will work with the Council to sort through all of the meetings that have transpired, and all of the recommendations and letters that have been flowing back and forth between Castle & Cooke and our Commission.

Ms. Kaye: Okay, a motion is on the floor to –. Michael, do you want to add?

Mr. Hopper: I would just recommend that if there's a reason you can't make a decision, that should be stated on the record as to why. The Council is going to want to know why. They typically get a recommendation for approval or denial. It's happened before, that there been no recommendation. But, it probably be stated on the record so Council knows why they did not get a recommendation to either approve, deny or approve with conditions.

Ms. Kaye: Alberta, would you like to amend your motion?

Ms. de Jetley: I move to forward – so restate it? – I move to forward this application with

no conditions because of the sheer volume of paper work that we have had to go through. There's so many –. Would that be adequate? Because of the sheer volume of information that has passed between us? So retract – revamp.

Ms. Kaye: Are you withdrawing your motion?

Mr. Hopper: Just to state to the Council why you think you can't make a recommendation. I would say volume of paper alone is probably is not a sufficient basis. If there are unanswered questions, if you cannot, for whatever reason evaluate the criteria for a change in zoning, explain to Council what additional information they might need or why. The fact that there is a lot of paper to go through, I mean, that's what Commissioners are there for. You have to go through the paper and make a conclusion based on that. So I would not advise that would be a sufficient comment to Council. They might remand it back to you and ask you for more specific reasons. I would advise to – if you do say you can't make a recommendation to explain in a bit more detail why you could not.

Ms. de Jetley: So, I just amend it to say I cannot make a recommendation because there was no way at this point in time that we could get an answer from the applicant as to what the fee structure is going to be. You cannot project five years out.

Mr. Rabaino: Okay, I'm going to throw this also. Help me along.

Ms. de Jetley: Okay, I'll withdraw my motion completely until we hear from the others.

Mr. Rabaino: Okay, I'm going to give it my best shot, so I'm not that good at this.

Mr. Hopper: And I'm only giving legal advice on what I feel.

Mr. Rabaino: Well for me, my manao, my feeling is send it back to the Council and the Planning with the attached recommendations. That's the bottom line. Send it back over there, and spell out the – am I saying this right – spell out what we need more of for a recommendation.

Ms. Kaye: Okay. If I could try to clear this up. We asked for information from a variety of sources. We haven't gotten it. So we've done that. That's now in the minutes. That's a record. So County Council is going to know what we're missing. It will then be up to them, at their time pace, to find it. So I think what Michael is recommending to us is that we make a motion to send it to Council with either – with a reason why we're sending it back. And I had started the mission of not trying to make it unilateral decision here. I don't even vote. That for months we've been asking for stuff. We didn't get it. The one way to deal with this now is to send it back to County Council simply telling them we can't make a decision because we didn't get the information, and we're not comfortable moving forward at this

time (*Changed cassette tapes*) and we can't keep continuing.

Mr. Hopper: And what I'm saying is that your Chair spoke about a lot of things and about a record, but unless you adopt that as a body, that's not your group's recommendation. So if you want to reference back to that in your motion, that's an option. If you want to state your own reasons why you believe, on the record, that's an option. Either one has to be adopted by a majority of your body. Meaning if that the Chairperson says something, that doesn't get adopted by you, unless in your motion you say for the reasons stated by the Chairperson, or for the reason stated where ever in the record, or you can basically say because we did not get the following information, (a), (b), (c), (d), if that's your reason. Those can be options, but just be clear to the Council what you as a body are recommending. And if it's the same thing your chairperson said, that's your option. If it's something different, that's your option as well.

Ms. Zigmond: Madame Chair? Gerry can we – did you make a formal motion? Because I'd like to if you don't have one on the floor. Okay, I move that we send this to the County Council without any recommendations due to the lack information that we had requested as described by our Chair earlier, and let the Council get the information and do with what they want.

Ms. Kaye: Is that an adequate motion? Would anyone like a second?

Mr. Rabaino: Is that a motion?

Mr. Kaye: Yeah. Michael, you're raising –

Mr. Hopper: I have no ability to veto, or anything, your motions. And I'm sorry, I didn't want to intend that, but that would be – the effect of that motion would be to recommend that Council do nothing because – or you were not able to advise them because you did not get sufficient information because of the reason stated. It does not state any recommended conditions. It does not state any recommended action. It simply states you didn't have the information that you had requested. And if you believe your chairperson adequately stated the information you were missing, it is the body's option to vote on that motion.

Ms. Zigmond: That was my intent. Thank you.

Ms. Kaye: So Bev's motion is on the floor, is there a second? Let's restate the motion.

Ms. Zigmond: Okay. I move that we make no recommendations to the County Council because we don't have all the information that we had requested from both the Planning Department and the applicant, period. Sorry, and with the omitted information as summarized by the chair at the beginning of this part of the hearing. Our other option is

to reiterate all the –

Ms. Kaye: Let's try and restate it again. Okay, am I understanding that the intent of your motion is to – okay, that's not what I understood Michael to say to us. We have the option to continue more discussion and impose conditions – not impose – suggest conditions that would be considered by County Council. Our job right now is to state for the record for County Council's understanding why we're sending it back to them. So it's not that we're sending it back with no recommendations, we're saying we are unable. This is where we started this an hour and a half ago, and I asked you guys if there was anything else you wanted to add to the list of what was omitted and I got nothing back from you. So really, it's the reason why we're sending it back is I think what Michael is asking us to supply.

Ms. Zigmond: Okay, and as iterated/enumerated by you at the beginning. No. Okay, we have to say them specifically then? Okay.

Mr. Hopper: And if you do want conditions, then you would need to specify them in your motion as well as part of your recommendation to Council, so that they're clear on that. Or no conditions is fine as well.

Ms. Kaye: Well, could you – the Planning Department suggested conditions and I actually thought we had the option to discuss additional conditions per the conversation I had with you Michael. So, if you're saying we shouldn't make a motion until we discuss whether there would be any conditions, then that's another situation. That's another conversation that has to happen.

Mr. Hopper: I recommend that if you want conditions, and I'm not sure what exactly we talked about before, but if you want condition, I think your recommendation should be made in one motion. I mean, you can discuss the possible conditions before making the motion, or after making the motion, but I think they should be all together. If you want to have conditions, typically that's with a motion to approve. If there's some other reason why you believe you couldn't make your recommendation, but you still want them to consider conditions, I suppose in the event they decide to approve, you could have that as part of your recommendation as well. I would have that all in one motion. I'd probably advise you to do that. And be clear to Joe because he's going to be writing them down and getting a sense of what they would they would be.

Ms. de Jetley: Madame Chair, we still have a motion on the floor? Do we still have one on the floor? We do?

Ms. Kaye: I believe we do.

Ms. de Jetley: Because I've got – if that motion is withdrawn, I have another that might

possibly get us through this evening, but it has to be withdrawn first.

Ms. Kaye: Well, Bev, do you want to restate your motion in a way? We haven't gotten a second or failed to get a second on the original motion, so it's still pending.

Mr. Prutch: Okay the motion I heard, simply put, simply stated, was forward this application to the County Council with no recommendation due to the lack of information as described by the Chair in her record at the beginning of the public hearing. And that includes, of course, no conditions of approval.

Mr. Rabaino: Try read that one more time, slower.

Mr. Prutch: Forward to County Council with no recommendations from the Lana`i Planning Commission due to the fact that there is a lack of information from both staff and the applicant as described in the Chair's reading into the record at the beginning of the public hearing.

Mr. Rabaino: Sounds good.

Ms. Kaye: It's your motion Bev because yours is the one on the floor now, and he's trying –

Mr. Hopper: If you want conditions, you could add them to that. You can add to that initial motion if you'd like.

Ms. Zigmond: Well I think there are some conditions that – yeah – in addition to the ones that are in the Planning Department's.

Ms. Kaye: If you're happy with your motion, we can see if we get a second and then we can discuss where to go from there.

Ms. Zigmond: Okay, let's do that.

Ms. Kaye: There's a motion on the floor. Joe has summed it up for us. Do I have a second?

Mr. Rabaino: If we make the motion, then we can discuss it right?

Ms. Kaye: We need a second because we can discuss it.

Mr. Rabaino: Okay, I'll second it and we'll discuss it.

Ms. Kaye: Okay. Now we're into discussion. So I think, if I can just try to summarize the

options. There's a motion on the floor stating that we send this over to County Council without a recommendation to approve or deny because we have not received the information that we asked for. There's a second. Now the discussion would be I think what Michael was suggesting is if there's a concern that conditions should be addressed as well, then we need to decide whether we're going to go through conditions now or not – send it over without any conditions for County Council to consider.

Mr. Hopper: You can amend your motion to add conditions as part of it. That's one thing you could do at this point should you want conditions.

Mr. Ruidas: Sally, can you go over what you stated after recess and reiterate what – when we got back from recess?

Ms. Kaye: You want me to restate what was missing?

Mr. Ruidas: Yes.

Ms. Kaye: Okay, this is following the list that was in the Planning Department's letter of April 6th that sort of divvied up who was going to supply what information to us. And all of these go back to many places in the record. Some from January, some from March. This Commission asked for how the applicant plan to offer fee-simple lots for sale, and the response was it was too early to tell. The applicant was requested to contact –. A request was made that the applicant contact LWAC and DWS to come to an agreement on whether the current infrastructure will accommodate the additional usage. This was agreed to by the applicant's consultant at the January meeting, but the applicant is now saying that they don't feel they have to do that. Do you want me to read through all the support for that, or just what's missing?

Mr. Ruidas: Just highlight on what was missing.

Ms. Kaye: Okay. Then there was a request for a written assessment from the Fire Department as it pertains to fire flows and fire safety at the project's site. This was a concern of yours, Stan, that you voiced several times. And what was in our packet, what we've received thus far is an e-mail exchange that really didn't address the status of the system that handles fire safety at this particular point in time. A request was made to Planning Department to make a formal inquiry to the Land Use Commission and the DLNR on the status of the 10 acre commercial and 15 acre light industrial parcels subject to a 1994 agreement to convey. The response to that, in our packet, from the Planning Department was a note from a gentleman at DLNR that says these notes concern a separate issue we had been trying to resolve with CCR. We recall in our early packet there was a hand written note we still need to acquire lands. So we asked the Planning Department because we wanted an objective opinion, a formal opinion, on the status of

these parcels. We also asked for the Planning Department to confirm the status of the 10 acre commercial parcel that was subject to a 1994 agreement to convey. We've had no mention. Nothing has come back at all except for what I've just read and nothing on the commercial. A request was made to the Planning Department for a formal report on the status of the 13.9 acres that was subject to conditional zoning back in 2000 and we have heard nothing on that. So we really – really I was thinking we're in a position of being asked to approve six acres when the original 13 might be subject to reversion for failure to comply with conditions. We wanted a formal report on that status and it has not been received so we can't know any more about that. And that's it.

Mr. Rabaino: Anybody else? Discussion? We're going to attach that to what was – to the motion – forward it with this attached as a condition. Correct? Yes? No? Hello?

Ms. Zigmond: It's not a condition per se, right? It's telling them what –.

Mr. Rabaino: I'm just asking are we going to attach that to the motion that is already presented?

Ms. Kaye: Well what we should do is attach the minutes because they did it detail. What I've done now is just reviewed it for Stan's sake. I'm not sure why Stan wanted that review, but the whole minutes would –.

Mr. Rabaino: Well I would accept the motion – to attach.

Mr. Prutch: The minutes always get forwarded to the Council as part of our Council packet. That guarantee goes.

Mr. Hopper: The important part though is the minutes are not necessarily the justification for everything. One person could say something and the rest can agree. So that's why in your motion, you specifically stated that what the Chairperson's had stated previously. And she has gone over it now, so you're clear on what that basis is going to be in the staff report. The entire minutes might create a record, but it's not necessarily specifically what everybody agrees to. So that's why that was put in your motion as far as what the basis was. What you have to forward to the Council are what your recommendations are in a form of a report. They need to be able to decipher that so they know why you're not making a recommendation which has happened before, but it's pretty rare, so that's why you're stating a basis for doing that. You want to add conditions to that motion in the event that Council does get that information and decides to pass, or decides to pass it anyway and they disagree with you on how much information they need, then you can do that as well as part of your motion. It's not there yet. You can amend it, or you could vote for or vote against the motion are your options.

Mr. Rabaino: Amend it. We're going to amend to the motion. We're going to amend it to the motion.

Mr. Hopper: The basis are already stated, I believe, in the original motion. If you want conditions, though, conditions are not part of the motions. So if you want to discuss conditions now, and add that to your motion, you would need to amend that motion because conditions are not there yet.

Mr. Rabaino: So I'm going to amend the thing with conditions to it. Discussion.

Ms. Kaye: Wait. Wait. Gerry, are you suggesting that you want to amend the motion to add conditions? Well, then we have to discuss them. You can't just say conditions. We have to go down them one by one by one. And I'm sorry, is that--? Wait, it's Bev's motion. There's been a second. You're offering an amendment, but the amendment, I think, is probably not going to fly unless you mean to actually discuss conditions. Yeah? Okay. But then we have to discuss those conditions and the motion stays open until we get there. Michael, track me on that.

Mr. Hopper: Well, you would need to know what the conditions are. So in your motion, you would need to state with conditions as follows, that – whatever – whatever conditions you would want. And the conditions, by the way, on conditional zoning, it states conditions shall be imposed if the Council finds them necessary to prevent circumstances which may be adverse to the public health, safety, convenience and welfare. The condition shall be reasonably conceived to mitigate the impacts emanating from the proposed land use and shall meet the following criteria, and there's a criteria in your law here. It states, the public shall be protected from the potentially deleterious effects of the proposed use and that the need for public service is created by the proposed use shall be fulfilled. And I can advise you more on that as you go through your conditions.

Ms. de Jetley: We're in discussion now. You know what I see is this motion with all of the amendment is going to get terribly bogged down, and we should try to keep it short and simple. So what I would like to see is a very simply worded motion, and I will have to ask you this. What if we put forth and this is just discussion – forward the application to County Council with no recommendation due to missing information from the Planning Department and applicant – end. Well then it will be on them to find, go through all of our notes, because we're going to be here the rest of the night looking for all of these conditions. We're never going to be able to settle it. And the other question I have is, what happens, since this is the last night available, what happens if we do nothing?

Ms. Zigmond: Alberta, I just want to point out that what Sally had read into the record, the missing information, was not conditions. It was to make the job easier for the County Council. We didn't even get to conditions yet. So I think it would be more prudent to list

them as we already have instead of not listing them. It would help everybody out.

Ms. Kaye: Okay, we've been here before. We've had long nights where we've gone through condition, one by one, to agree with them. I think what the Commission has to decide now is if it wants to go there. Can we take a five minute break and then come back with this motion?

Mr. Hopper: Yes you can take a break. No discussion on this issue in the break. You can go down and look on your own. For example, the Planning Department's conditions, review them prior to coming back, on your own, not discussing and be prepared to discuss them. Usually conditions start with the Planning Department's recommendations. Then you can delete or add as you see fit.

Ms. Kaye: And with the understanding that these conditions are not binding. Anything we suggest would be arbitrarily considered – well, they have their guidelines – but the Council is not required to accept them.

Mr. Hopper: They are not. But I'd still advise you to try to have conditions that fit the ones that Council can adopt though. They're not final, though, you're correct.

Ms. Kaye: So, we're not there yet. We don't know if we want to do conditions, but we're going to take a break and wake up a little bit.

(The Lana`i Planning Commission recessed at approximately 8:50 p.m. and reconvened at approximately 8:58 p.m.)

Ms. Kaye: Okay, so we have a motion on the floor, and we have a second, and we're in discussion. Would we like the motion restated?

Mr. Rabaino: Definitely.

Ms. Kaye: Go for it Joe.

Mr. Prutch: Okay, the motion on the floor, and seconded, is simply to forward this project to the County Council with no recommendations and therefore no conditions of approval due to the lack of information as described by the Chair at the beginning of the meeting.

Mr. Rabaino: So move.

Ms. Kaye: Gerry, it's been moved and seconded. Now we're discussing whether –. Think of it as a two part question. Okay, there's a motion on the floor to send over without a recommendation, and I'm sorry Joe, did you say – Michael suggested the reason – what

did you say?

Mr. Prutch: The reason was the lack of information as described by the Chair.

Ms. Kaye: Thank you. And then the second part of that is do you want to consider conditions, and in which case, we would just simply go down the list, start with Planning Department's, make corrections or additions to them, accept them as they are, add our own if we want to and then in the end we would have a set of conditions we've agreed to and then we would vote on them as a total package.

Mr. Hopper: And I recommend you tell the Council also why you're recommending condition even though you had no recommendations. It would be something to the effect that if this information is received and they decide to approve, these could be conditions. Or if they go for approval and disagree with your findings that you did not have enough information which they could do and say they did have enough information, that those would be conditions to mitigate the impacts of the development. It would be two possible options. Or you can certainly have no conditions to them.

Ms. de Jetley: Madame Chair, I really would like to do away with this right now. I think that if we can possibly call for a vote and see where we're at rather than trying to attach conditions to it, then we would be able to move forward.

Ms. Kaye: Okay, let's see where everyone is on that. Do any of the other Commissioners have opinions about conditions they would like to consider that the Planning Department has recommended? And I think the way Michael put it is actually the best way to think about it. We can't act right now, essentially, according to our motion because we don't have the information we asked for. We're giving County Council the option to get that information. Once they do, we either can then have conditions once that information is provided that we think would help to mitigate, as Joe said, the impact of the development or we lose the chance to do it.

Ms. Zigmond: Having said it that way, putting it into perspective that way, there are some changes to some of the conditions that was offered by the Planning Department that I could think of.

Mr. Rabaino: And what are those changes?

Ms. Zigmond: I am thinking that, on number one, 50% of the land zoned M-2 Heavy Industrial shall be offered in fee. I'm saying that it should be sold instead offered because in my mind there's a big difference there.

Mr. Rabaino: Is that one of the one that's you're going to add? Is that acceptable?

Ms. Kaye: It's up to us. She's suggesting, I think – Bev – I don't let me put words in your mouth – that you would change number one to read how?

Ms. Zigmond: That the applicant shall sell 50% of the acreage zoned M-2 Heavy Industrial which is 20 acres total in fee simple.

Ms. Kaye: You're writing that down?

Mr. Prutch: I was just referring to the Community Plan just to make sure, and the Community Plan does say that those 20 acres shall be sold in fee simple upon development.

Ms. Zigmond: Yes, I know, but the Planning Department's condition said offered, so I'm asking it to be sold.

Mr. Prutch: I just wanted to make sure the condition, as you were stating it matched what was in the Community Plan.

Ms. Zigmond: Okay. Is that okay?

Ms. Kaye: Okay. So I guess the procedure would be to vote on each of the suggested conditions?

Mr. Rabaino: Yeah.

Ms. Kaye: So, there's a condition on the table. Would anyone would like to move to accept that and if we get a second, we'll have discussion.

Mr. Rabaino: I move to accept.

Ms. Kaye: Okay. Do we have a second?

Ms. Endrina: I second.

Ms. Kaye: Okay, discussion.

Mr. Rabaino: As we stated earlier in this meeting that we do have people that need various access to preform their business.

Ms. Kaye: Okay.

Mr. Hopper: Madame Chair, just to clarify. Would we be treating the motion to accept as

a motion to amend the motion on the floor to add this as a condition? I just wanted to be absolutely clear.

Ms. Kaye: Actually at this point, I'm following your guideline where you said we make a motion and then we should consider conditions that we want to append and then treat it as a whole package. We're going to vote to send over with no recommendation because we don't have enough information. But if sufficient information is gained by County Council, then these are the conditions we would suggest. That's what I understood you to say.

Mr. Hopper: Yeah, as long as you eventually vote to amend your original motion to add these conditions as a whole. You can deliberate on these conditions now and come to consensus on them as long as you make a motion to amend your original motion, vote on that, have that added and then vote on the whole proposal then that's okay. I just want to make sure we're following Robert's Rules because this is under close scrutiny obviously.

Mr. Rabaino: We're going to amend. We're going to amend the –

Ms. Kaye: Well, I think what he's suggesting is we get all the conditions that we want to consider in first and then amend to accept those conditions. No, we have to have a vote. We had a first, we had a second, now we're in discussion. If there's no discussion, we can call for a vote. Alberta?

Ms. de Jetley: No, I have a question. On the wording, Bev, you're changing it instead of offered in fee, you're saying sold in fee? To me, it means the same thing. Okay, explain what is the difference. Because when I say I'm offering this in fee simple, okay, that means that I'm putting it on the market, it's an offering for you or anybody else to buy it. What's the difference between shall be sold in fee?

Ms. Zigmond: Number one, it makes it consistent with our Community Plan. Our Community Plan says shall be sold. But, also, I'm saying that offering is offering it, putting it on the market, but it's not necessarily sold.

Ms. de Jetley: Well any property owner doesn't have to accept any offer that comes in. It may be offered in fee simple, but the terms have to be agreeable to both the buyer and the seller. So you can say, yeah, it has to be sold, but there's nothing in here that says you cannot force a landowner to sell a piece of property for below what they think is its true market value.

Ms. Kaye: I don't think that condition recommends selling it below value. I don't know where you're getting that.

Ms. de Jetley: No, if she saying shall be sold in fee – so her description of it is different from

what I'm reading here.

Ms. Zigmond: But it's in the Community Plan as sold. I'm trying to make it consistent.

Mr. Rabaino: Can you clarify that?

Ms. de Jetley: Well that's what I'm asking.

Mr. Hopper: The condition would not state a price of which they would have to be sold.

Ms. de Jetley: It shall be sold in fee. So what's the difference between offered in fee and sold in fee? I say there's no difference.

Mr. Alueta: It's a condition that we've had before. Offered means you just offer for sale. It doesn't mean that you actually sell it. Sold in fee means you're actually going to sell it. It means sold – sold in past tense – you sold it in fee to someone of a Lana`i resident. Offering it means you're just offering it. We have conditions with affordable housing which you offer for sale first to residents. It just means you're offering it. It doesn't mean you sell it to them. And then after a certain time period, you can then sell it to some else and we've had that with elderly housing in Kula where they offered. It's a condition that they offer it for sale. So they offer it to sell only to people of certain age. After that time period, then they can offer it and primarily sell it to other people at market rate. They're not offering any special. They're just restricting this to be sold to Lana`i residents. So that means, it's restricted to Lana`i residents.

Ms. de Jetley: Where does it say that it's restricted to Lana`i resident? It doesn't.

Mr. Alueta: I'm sorry. It's being sold. I'm sorry. It's an example.

Ms. de Jetley: Sold is sold. Whoever comes up with their money can buy it.

Mr. Alueta: Correct.

Mr. Rabaino: So the phrase we're looking for is to be sold, not offered. So which one we're going to take – sold or offered?

Ms. Zigmond: If nothing else, sold will make it consistent with the Community Plan.

Ms. Castillo: Offering has a different meaning. Offering is just you just offer somebody, and selling is you sell it with a fee. Because you're just offering – you know, when you offer something, it's not necessarily that the recipient would like to accept that. And if you sell it, the recipient will be giving his money in return.

Ms. de Jetley: I'm taking the word fee in this to mean in fee simple rather than in leasehold. Is that correct?

Mr. Rabaino: So fee simple it is. Are we going to vote on the fee simple?

Ms. Kaye: No. I think the discussion is the use of the word sale as oppose to sold. Shall be sold or shall be offered in fee. They're both fee simple. Both ideas. Okay, so –

Mr. Rabaino: I'll take sold.

Ms. Kaye: So hold it. That was Bev's condition and Alberta you objected to that, so does anybody have anything else to add or shall we vote on it?

Mr. Rabaino: If it's sold, I'll vote on it.

Ms. Kaye: Bev's condition is that 50 – Bev, you want to state it again – 50% –?

Ms. Zigmond: That 50% of the land zoned M-2 heavy industrial area shall be sold in fee simple.

Ms. Kaye: Okay. That's on the floor.

Mr. Rabaino: Yes – individually.

Ms. Kaye: Now, could we vote on this please? All in favor of that condition as worded say aye.

Commission Member: "Aye."

Ms. Kaye: All opposed? Okay. Commissioner de Jetley votes against.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Darlene Endrina, then

VOTED: to amend condition #1, as discussed.

(Assenting: Commissioners S. Ruidas, B. Zigmond, D. Endrina, L. Castillo, M. Mano and G. Rabaino

Dissenting: Commissioner A. de Jetley

Excused: Commissioner D. Gamulo)

Ms. Kaye: Okay. Now, Commissioners, well, let's go down the Planning Department's. The applicant shall ensure that water use for this project will not adversely affect water resources. Water use for this project shall be consistent with the Water Use and Development Plan for Lana`i, as approved by law. I actually had a change to that, but I'll wait to see what some of the other Commissioners think about that condition.

Mr. Rabaino: By law, that sounds good.

Ms. Zigmond: Is the Water Plan actually a draft? Do we need to mention that? That the Water Use and Development Plan is a draft.

Ms. Kaye: No. Well, actually that's not correct. There is an active Water Use and Development Plan that's in effect, and what's being drafted now has not been approved. So what's enforced is the current Water Use and Development Plan.

Mr. Rabaino: I vote yes.

Ms. Kaye: Okay wait. That's what's existing. I'm going to propose a change to it because this is one that I'd thought about. The applicant shall ensure that water use for this project will not adversely affect water resources by, (a), consulting with the Department of Water Supply and the Lana`i Water Advisory Committee on projected demand and allocation, and securing agreement from both that such projections are consistent with the Water Use and Development Plan for Lana`i prior to location or relocation of any user or subdivision processing. And by (b), detailing aggregate water usage by meter readings for the 20 acres of heavy industrial land on the monthly periodic water report. Now if I can just explain my thinking on this. Again, County Council can consider this or not. But for all of the reasons I've stated on the record and from the testimony you've heard from the people who have worked on this advisory committee for years and years, and the fact that right now the water usage projected is not consistent with the existing plan, this seem to me, a sensible way to go forward so that all parties are at the table. And as Butch pointed out when the LWAC was consulted before, it made coming to the Planning Commission much easier, and so that's my recommendation. And I think the second part of that is simply detailing the aggregate water usage at Miki Basin once and if this project is approved. It means that information is there in the periodic monthly water report and then you don't have to chase the numbers going forward.

Ms. Zigmond: I move that we approve that condition.

Ms. Endrina: I second that.

Ms. Kaye: Okay, any discussion? Okay, it's been moved and seconded. There being no further discussion, could we have a vote? All those in favor of adding that as a condition

say aye.

Commission Members: “Aye.”

Ms. Kaye: Oppose? Okay so that motion carries unanimously.

Ms. de Jetley: Can I abstain?

Ms. Kaye: That’s a yes vote. So you’re going to leave your vote as a yes vote?

Ms. de Jetley: . . . (Inaudible) . . .

**It was moved by Commissioner Bev Zigmond, seconded by
Commissioner Darlene Endrina, then unanimously**

VOTED: to amend condition #2, as discussed.

Ms. Kathleen Aoki: Excuse me Chair. Can I say something? I just talked to our pilot, and this meeting needs to be adjourned by 9:30 p.m., in order for him to make his flight hours because we need to be off the ground no later than 10 p.m., so I just wanted to give you a heads up.

Ms. Kaye: Well okay. Please tell me that you’re not going to curtail this discussion based on your travel. I mean, we’ve got to accommodate – I think probably everybody is tired enough that they’d like to postpone this discussion, but I think it’s unconscionable to tell us that we’ve got to stop now. I know that Erin’s got a presentation to make.

Ms. Aoki: Well, just to address that. It’s not me. It’s FAA regulations. I have absolutely no control over FAA regulations.

Ms. Kaye: Okay. So we’re not even close to being finished I wouldn’t think. Is there a way to put just this part of it on the agenda for next month?

Mr. Hopper: All right, one thing you can do is approve this as a group of conditions. You don’t have to take each one, but that’s up to you. Secondly, you’re still past the deadline if you do that. So the Planning Department can send up recommendations. They can send up something without your recommendations. That’s the situation. You don’t have to. And Council, if it wants to, can consider stuff that you send to them later, if you want to make a later recommendation. But right now, you are past the ordinance deadline, and the Commission can send that up to the Council saying they were not comments made within the time.

Ms. Kaye: Okay, then let's do this. We have a motion on the floor. We have a second. We have two conditions we've agreed to. We are under protest. I'm going to call a vote on this, and think about scheduling it to a later agenda item if we want to if we want to communicate further to County Council on potential conditions. Is that okay?

Mr. Hopper: I've never had that happen. I can't advise you on that right now.

Ms. Kaye: Okay, let's have a vote and get this one done at least. We have two conditions and a motion on the floor. I suppose, to make it very easy, we could also accept the remaining Planning Department conditions as part of our recommendation. How about that? In totality. Yeah? Okay. Yeah, could somebody amend it.

Ms. Endrina: I would like to make a motion that we amend this to include all of the Department of Planning's recommendations.

Ms. Kaye: Plus the two we just voted on.

Ms. Endrina: Plus the two that we just voted for. Yes.

Mr. Rabaino: So move. I second.

Ms. Kaye: Okay, all in favor?

Mr. Hopper: Just to recommend also that you explain to the Council why you are recommending conditions along with a recommendation – that you can't make a recommendation as we've discussed before.

Ms. Kaye: Okay, I thought we did that. We are – catch me guys –

Mr. Hopper: I think I mentioned a couple of reasons that you could, but I do not believe you ever took a vote on that. I could be wrong on that. I mentioned a couple of thoughts.

Ms. Kaye: The motion on the floor, as I remember it, is that we're sending this back to County Council with no recommendation because the information we received – the information we requested was not received. Should County Council get that information and consider this, then these were the conditions that we were going to ask them to consider. The two that we just voted for and the Planning Department's conditions.

Mr. Hopper: Provided that's clear, then yes, that's fine.

Ms. Kaye: What is unclear?

Mr. Hopper: I didn't suggest it was. I'm providing that is your basis for voting, and everyone understands that on the Commission.

Ms. Kaye: Yes. And you know we're cutting this short, and I would like that to be in the report that we did not finish discussing conditions. Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Opposed? Okay, motion carries. (*Changed cassette tapes*)

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Gerald Rabaino to forward the application to County Council with the comments as discussed.

It was moved by Commissioner Darlene Endrina, seconded by Commissioner Gerald Rabaino, then

VOTED: to amend the motion as discussed.

E. COMMUNICATIONS

- 1. 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. (Previously distributed with the June 17, 2009 agenda and discussed briefly at the June 17, 2009 meeting.)**

Commission may authorize the Department of Planning to accept the rules to publish notice of the public hearing for the adoption of the rules in accordance to HRS 91-3.

Mr. Hopper: Quickly Madame Chair, the rules on the next item – this is only to forward this on for public hearing – you could take action. Copies of our rule revisions from – we basically incorporated your rule revisions that you suggested when we brought those rules before you last month. Copies are available at the front here for anyone who wants them. Your action could be to basically vote to set these rules for public hearing in the future. Do that quickly.

Ms. Kaye: Okay. I had a conversation with James. This is really just so we give permission to publish these rules so we can have public hearing on them.

Mr. Hopper: You're not adopting the rules now. You're setting them for a future date.

Ms. Kaye: Right. So can I have a motion?

Ms. Zigmond: I so move.

Ms. Kaye: Can I have a second?

Mr. Rabaino: Second.

Ms. Kaye: Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay. Now, Erin?

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

VOTED: to allow the Planning Department to publish a public hearing notice on the SMA rules.

2. Information Discussion on the Status on the Demolition of the Old Lanai Senior Center and the Construction of the New Lanai Senior Center. (E. Wade)

The purpose is to obtain more information and for further discussion.

Ms. Erin Wade: Good evening. My name is Erin Wade. I'm the small town planner. The Lana`i Senior demolition and reconstruction is my project. I was asked to come and give you a report on the status of the project. There has been no change since April. At which time, the Mayor sent a letter to Castle & Cooke addressing a few issues that the company raised regarding the construction of the new Senior Center. I sent to you, or I provided to you today copies of the formal communications that I have related to the issue. I hope that this clears up some of the questions that you had on this. I do understand that the Mayor's Office and the company are in discussions about some of the terms of the lease agreement as well. We are not party to that discussion, and I do not know what the status is of that. So, really, they don't need to share any of that with us until they're ready to move forward with a formal project. And it's that way with any developer or any project. That's the status from the Planning Department's perspective, and I guess I would suggest that if you would like more in-depth information about the Senior Center to have Housing and Human Concerns –. We've actually asked them for an update, and they provided you one at the

last meeting which is there's really no change. And I think the Mayor's Office is very busy right with labor negotiations and discussions on Oahu so this hasn't been a top priority at this point.

F. DIRECTOR'S REPORT

1. **Open Lana`i Applications Report.**
2. **2009 Hawaii Congress of Planning Officials (HCPO) Conference - September 23-25, 2009, Sheraton Waikiki**
3. **Agenda items for the August 19, 2009 meeting (Lanai School Cafeteria):**
 - a. **MR. MILTON ARAKAWA, AICP, Director of the DEPARTMENT OF PUBLIC WORKS requesting review and comments on the proposed Bill for an Ordinance Amending Chapter 18.04 of the Maui County Code, pertaining to Subdivision General Provisions. The proposed bill addresses the issue of consistency. (RFC 2009/0199) (J. Alueta) (Public Hearing)**

Ms. Kaye: Okay. So at this point I suppose we can –. Okay, we've done that, we've done that, okay we can save the open Lana`i applications report. The letter on the conference was self explanatory. And we can read the agenda items for August 19th. I will just tell the Commissioners that all of the thank letters to the water workshop presenters has gone out except for Kepa, and I was waiting to read the minutes of his presentation to do that. If anybody would like to see that, any of those letters, just let me know. And again, I am going to be following through on this procedural nightmare that got us here tonight on an issue that shouldn't have been on the agenda. I intend to put it in writing, and ask the Planning Department to schedule at a future date a discussion on how we can better communicate so that we don't have these scheduling errors in the future. So that said, anybody like to add anything else? Otherwise, we will –

G. NEXT REGULAR MEETING DATE: August 19, 2009

H. ADJOURNMENT

Mr. Hopper: Just quickly – you do have eight minutes – since these last two items were agenda items, you should probably, even if it's a formality, check for public testimony on those items.

Ms. Kaye: On the Lana`i applications report? On the conference?

Mr. Hopper: No, on the rules and on the Lana`i Senior Center.

Ms. Kaye: Oh, that's right. Sorry. Sorry. Okay, any public testimony on either the rules that were submitted that we have now approved for publication or the status of the demolition of the Old Lana`i Senior Center? I know the one gentleman that wanted to speak left. Gary, sorry.

Mr. Yokoyama: I just wanted to mention that I had submitted some concerns I had concerning the SMA enforcement rules to James Giroux who was the Deputy Corporation Counsel who offered that. I understand that those comments were referred by him onto you Madame Chair, and I don't know if it was shared with the rest of the Commissioners, but I did have some concerns. It's not that the Company opposes the notion of having enforcement because it should have enforcement. All of the other islands have SMA rules that have enforcement provisions. It's just that my main concern is one of fairness and constitutionality. The rules that are proposed by Mr. Giroux calls for penalty which are 10 times the amount that the islands of Moloka`i, or on Maui, provides, so I think that raises equal protection issues. Everybody in the same County should be treated the same. There shouldn't be any reason for having penalties that's 10 times higher on Lana`i than they are anywhere else. And I think because of that, that if these rules are adopted and ultimately you try to enforce them, there's a question of whether they're going to be enforceable because of the violation of the constitution both Hawaii and United States.

Ms. Kaye: Okay, and I'm just going to respond to that really quickly if you're finished Gary?

Mr. Yokoyama: Well, and there are other issues that I raised in my letter, so if you could read my letter, I basically provided the rationale for it. These suggestions that I made.

Ms. Kaye: Okay, the SMA rules are particular to every island, each island. They're not Statewide. So if I break an SMA rule and the Company breaks an SMA rules, we would pay the same penalty. And the penalties, the fee structure, the fine structure, as I understood in our rules and this can be fleshed out at a later time is what the County is going for Countywide. So it's not something that's just going to apply for Lana`i. That's what I've been told, so we'll see as we go forward.

Okay, any other public testimony on those two items? Okay, Planning Department, anything further?

Ms. Castillo: I move that we adjourn.

Ms. Kaye: Second?

Mr. Rabaino: Second.

Ms. Kaye: Thank you. I'll see everybody next month on August 19th at the cafeteria.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:28 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
Beverly Zigmond
Matthew Mano
Alberta de Jetley
Leticia Castillo
Gerry Rabaino
Darlene Endrina

EXCUSED:

Dwight Gamulo

OTHERS:

Kathleen Aoki, Deputy Director, Department of Planning
Joseph Alueta, Administrative Planning Officer
Joseph Prutch, Staff Planner
Michael Hopper, Deputy, Corporation Counsel