

**LANAI PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 15, 2012**

APPROVED 03-21-2012

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Gerald Rabaino at approximately 5:30 p.m., Wednesday, February 15, 2012, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

Mr. Gerald Rabaino: Yeah, I said five-thirty yeah. We have a quorum. David Green is not here and Matthew Mano is not here, as well as Stanley Ruidas, okay, for the record. Commissioners are we all settled in? Okay, on the agenda for February 15th, Wednesday. Meeting called to order. And (B), item (B), introduction to our new member, Joelle Aoki. Any words Joelle?

B. INTRODUCTION OF NEW MEMBER - JOELLE AOKI

Ms. Joelle Aoki: Thank you.

Mr. Rabaino: You're welcome. Commissioners, anything for –? Okay, John, into the mic. John, thank you. Okay, with that said, approval of the August 17th 2011 minutes distributed in the December packet. If you didn't bring it, well, you can rely it on your memory, unless you want to move it back. Any suggestions? Approval or –? John, in the mic, John.

C. APPROVAL OF THE AUGUST 17, 2011 MEETING MINUTES (*Distributed in the December 21, 2011 packet. Please bring your copy to the meeting.*)

Mr. John Ornellas: I make a motion to accept the minutes of August 17th 2011.

Ms. Leticia Castillo: Letty Castillo, I second the motion. Yeah, I second that motion – John's –.

Mr. Rabaino: Okay, it has been moved, and we call for the vote. And before we call the vote, any discussions commissioners? Okay, any discussion commissioners? If none, calling for the vote. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? Okay so be it, the ayes have it.

It was moved by Commissioner John Ornellas, seconded by Commissioner Leticia Castillo, then unanimously

VOTED: to approve the August 17, 2011 Lanai Planning Commission meeting minutes as presented.

(Assenting: J. Aoki, S. Barfield, L. Castillo, A. de Jetley, J. Ornellas

Excused: D. Green, M. Mano, S. Ruidas)

D. DIRECTOR'S REPORT

1. Open Lana`i Applications Report

Mr. Rabaino: Item number (C), no, (D). Okay, open Lanai applications. I'll turn it over to Corporate Counsel.

Mr. Clayton Yoshida: Good afternoon Mr. Chair, members of the Lanai Planning Commission. Clayton Yoshida, Planning Program Administrator, Current Division of the Planning Department. And with me tonight from the County of Maui is your Deputy Corporation Counsel, James Giroux; your secretary to boards and commissions, Leilani Ramoran-Quemado; and our Administrative Planning Officer, Joseph Alueta.

We do have some time constraints tonight because, well, one, the public hearings can't start until six o'clock because that's what they were advertised as starting at. And two, we have to end the meeting by eight-thirty because we have the plane, our plane has to leave Lanai Airport by nine o'clock because the pilot has a charter flight tomorrow. So whatever we don't finish tonight, discussion can be carried over to the next meeting on the 21st March.

We did distribute our open Lanai applications. There's one application showing. Is there any questions from the members?

Mr. Rabaino: Commissioners, any other discussion on the Lanai Community Health, single-story clinic building? None? Alberta? Commissioner Alberta? Letty? Commissioner Letty? John, any? None. And Joelle? Okay, no questions for you.

2. Agenda items for March 21, 2012 meeting

a. Public hearing on the following:

MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution 11-137 referring to the Lanai Planning Commission the Lanai City Country Town Business District Design Guidelines and Standards 2011. (E. Wade)

Mr. Yoshida: Okay, our next meeting is scheduled for March 21st. We have a public hearing scheduled regarding Council Resolution #11-137 referring to the Lanai Planning Commission the Lanai City Country Town Business District Design Guidelines and Standards 2011. So we'll be having a public hearing on that and I guess whatever we don't finish tonight.

As far as the Planning Commission, we will be losing three commissioners at the end of next month, and the Mayor has nominated two. So we have one potential vacancy. So if you of someone who'd like to serve on the Lanai Planning Commission they can contact the Mayor's

Office. And I guess they're looking for members to serve on the Lanai Citizens Advisory Committee (CAC) before the Council makes its selection – makes its selections for members to serve on that committee. With that, are there any questions? If not, I guess we can recess until six o'clock.

Ms. Alberta de Jetley: I have a question. How many applications did they receive?

Mr. Yoshida: That is with the Mayor's Office. I'm not sure. For the Planning Commission?

Ms. de Jetley: For the committee.

Mr. Yoshida: The committee, I think, 14 was what our Long Range Division was told.

Ms. de Jetley: They received 14 applications for the committee?

Mr. Yoshida: For the Lanai Citizens Advisory Committee.

Ms. de Jetley: Okay.

Mr. Rabaino: Okay, commissioners, we're going to take a little break or you just want to go through it? I stand corrected.

Mr. Ornellas: Is there anything on the agenda that doesn't require?

Mr. Yoshida: I think that's it except for adjournment.

Ms. de Jetley: I have a question. If you knew that we couldn't start until six o'clock, why was this meeting called at five-thirty?

Mr. Yoshida: Well, one was because we have four public hearing items. And because we didn't have the meeting in December on the Home Based Business District Resolution which is on a fast track. And then we have three other bills. We advertised it at six o'clock, and then we have the time restraint with the charter flight back. So we decided to start the meeting at five-thirty, but the public hearing is at six o'clock.

Mr. Rabaino: Any other discussion commissioners? Alberta? None? Okay, we're going to call for recess for six o'clock. So we'll be back at six o'clock.

(The Lanai Planning Commission recessed at approximately 5:40 p.m., and reconvened at approximately 6:00 p.m.)

E. PUBLIC HEARING (Action to be taken after public hearing.) (To begin at 6:00 pm or soon thereafter because it was advertised as such in the Notice of Public Hearing.)

1. **MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 11-97 referring to the Lanai, Maui, and Molokai Planning Commissions A Draft Bill Amending Title 19, Chapters 19.08, 19.29, 19.67, 19.30A, and 19.36, Maui County Code, and Section 3.48.305 of the Maui County Code Relating to Home-Based Businesses. (J. Alueta) (Previously scheduled for the December 21, 2011 meeting. Meeting was not conducted due to lack of quorum.)**
 - a. **Public Hearing**
 - b. **Action**

Mr. Rabaino: Meeting come to order. Six o'clock. Back to the agenda for the Lanai Planning Commission meeting. Under the director's report, we're on item (D), number two, agenda for March 21st 2012 meeting, (a), public hearing on the following. Mr. William Spence, Planning Director, transmitting to Council Resolution 11-137, referring to the Lanai Planning Commission on the City Town Country Business District Design Guidelines for 2000, E. Wade. Open for discussion commissioners. Oh, okay. I'm just -. Oh, for the next month. We're on (E), okay.

Mr. Ornellas: Mr. Chair? Mr. Chair? Hello, Mr. Chair? Can we have Corp Counsel –

Mr. Rabaino: Go ahead.

Mr. Ornellas: Please? Please? Can we have Corp Counsel's –? Can we –? Can somebody make a, since it's on the agenda, can people make a comment? I mean, no, I understand what it says, but it's on the agenda for tonight, but it is -. If it was going to be –? Why it would be on the agenda tonight if it was going to be for next month's meeting?

Mr. Rabaino: I'm in agreement myself.

Mr. Yoshida: It is on the agenda for tonight because it has been – the notice of public hearing has been filed with the newspaper, and it is scheduled for your March 21st meeting. So should you decide to defer anything from tonight, you know that that will be in addition to discussion on this item.

Mr. Ornellas: I understand that, but I'm saying is some people in the community, including some members of the commission, would like to say a few things concerning this application that we're going to hear on March 21st. And that's why I'm asking Corp Counsel to make a decision if we can or cannot. Thank you.

Mr. Rabaino: Any other discussion commissioners? Corporate Counsel, you wish to answer his question? Thank you.

Mr. James Giroux: I just want to give some clarity here because it's under Director's Report, and it's basically just telling you what's going to be on your next agenda item. So it's not really for substantive discussion. It's just saying, you know, what's going to be on the next agenda. This

wouldn't be the appropriate time to open discussion regarding the substantive issues of that agenda item.

Mr. Rabaino: Any other discussion? Commissioner John?

Mr. Ornellas: Can we hear Mr. Reilly's comment before we –?

Mr. Fairfax "Pat" Reilly: . . . (Inaudible) . . .

Mr. Ornellas: He's already answered that, so –

Mr. Reilly: . . . (Inaudible) . . .

Mr. Ornellas: We waited until six before we –

Mr. Reilly: . . . (Inaudible) . . .

Mr. Ornellas: That's how it was taken cared of, yes.

Mr. Reilly: . . . (Inaudible) . . .

Mr. Ornellas: And Corp Counsel just said no. Okay?

Mr. Rabaino: Okay, wait. Hold on. The point of order, yeah, we going take a vote with all the commissioners, if you guys want to hear testimony or you guys want to just wait for March 15th? 21st, excuse me. Alberta?

Mr. Ornellas: Mr. Chair?

Mr. Rabaino: Go ahead.

Mr. Ornellas: Corp Counsel has made up his mind. Has given his –. I mean, we should be taking his advice to heart so I would rather just stick with his comments and move on.

Mr. Rabaino: Okay, well taken. We'll just leave it as is. This is sort of like a FYI. Let's move on to the next item. Item (E), public hearing, action to be taken after public hearing. To begin at 6:00 p.m. or soon thereafter because it was advertised as such notice to the public. Item number one, Mr. John Spencer, Planning Director, transmitting Council Resolution 11-97 referring to the Lanai, Maui and Molokai Planning Commissions a draft billing amendment Title 19, Chapter 19.08, 19.29, 19.67, 19.30 and 19.36, Maui County Code, Section 3.48.305, the Maui County Code relating to home based business. Commissioners, discussion. Sorry Joe.

Mr. Joseph Alueta: That's okay.

Mr. Rabaino: Your floor.

Mr. Alueta: Okay. Good evening commissioners. Again, my name is Joe Alueta. I'm your administrative planning officer. I pretty much handle all of your ordinances or amendments to Title 19. As I've indicated before to some of you and for some of you new people there's two ways in which we can amend Title 19 or the Maui County Zoning Code. And that is either through a resolution that's initiated by Council, or it's done by the Director, initiated by a Director. Those are internal. Tonight, you're going to have both. The first one you're going to see tonight is a resolution which is initiated by the County Council. So this was not drafted by the department. And then later on you'll see in some bills that were drafted by our department. So these ones when they come down, they kind of streamline or fast track the process in which, by County Charter, any amendments to Title 19 requires the Planning Commission's review. And they give a 120-day deadline for you to review it. If you don't review it within that time, Council has the option of taking it up without the commission's comments.

The bill before you today is basically, again, is resolution 11-97. It is essentially creating what they call a home based business. Maybe a couple of years ago we had what we call as a home occupation definition that came through. The definition for home occupation or the standards were established in the definition section in 19.04, and it was an allowed use within all of the residential or any where you could have a single-family dwelling. So in the rural district as well as the residential districts allowed for home occupation. These are narrowly defined primarily for offices, home offices, for people who either did, you know, internet sales, phone sales, attorneys who had their office there in which they had no employees or a very limited, and they had also no clients come to their house. So primarily, and that's why it was called a home occupation.

During what people have called as the great recession, people are – there's been a movement to try to have more mixed use or allow people the opportunity to run businesses from their home. This is a slightly different methodology than previous administrations have taken where we tried to introduce residential uses in to the business district. This is where you're trying to introduce a business use into the residential district, so it's a little different tack.

The department previously had proposed a definition of home based business which came before this body several – about a couple – a year and a half ago, two years ago. And it was done during the review of the 19.08 and 19.09 which is the residential districts for the Maui County. At that time we again had proposed it. We had some standards to it, which are very similar to what the Council had. But it did limit, you know, business and the amount of customers and what not. During that last review, departments, when we got comments from the Fire Department and Water Department, and another agency I believe, that they had concerns with the way it was as being an outright permitted use. Therefore, we recommended to the Council at that time to make it a special use permit which would require a planning commission review. When we went to the Council, again, the movement of allowing more businesses within the residential, or business type uses, and opening the opportunity for the residents who were struggling during the recession was quite evident. And Council wanted, one, to open it up more, but also not have it become a permit. They wanted to have something

that could be allowed as an outrightly – outright permitted use, so, in which you do not require a permit. This caused some consternation with the proposed amendment that the department had. So Council chose to strip that provision out of home based business out of those residential bills and elected to re-write the definition of home based business and they sent it down to us, to the commissions, via this resolution. So what you have here is the foundation was initially started severally years ago and you reviewed kind of a foundation of it. The Council's version expands it again, expands the uses, as you can see. And I'll go through the bill section by section to show you the concerns or comments that have come out from the department as well as agencies as well as some of the other commissions. I'm just trying to provide you a background that this wasn't something that –. You know, it did some . . . (inaudible) . . . You did see a very similar bill to it, but now it's a resolution. One of the key differences is there's no permit required. This would be where it's listed, and where they're listing it would be an outright permitted use.

Another issue that the Council has elected to do is to have a taxing provision. So if you did have a home based business and I don't know how you would find out if you had a home based business if there's no permit, your taxes would change. So I don't know. So that's one of things. But, again, the memo report that we handed out which is dated December 5th goes through some of the community plan, general plan languages as well as some supporting language from the Maui Island Plan, or, excuse me, from the Island Plan – yeah, the Maui County Island Plan – as well as some of the different community plans. They also talk about some of the community plans that may have some contradictory language so we try to give you a little balance there. We also provided you with agency comments which are on page three and four of the memo report. And then we also have the Hana Advisory Committee's (HAC) recommendations or comments that they made to the Maui Planning Commission. And those are on page four, and the top of page five. Also, as a resource, the department, we did go about and looked at some more of the other counties are doing. We looked at Honolulu County, Kauai County, and we provided you with a – as well as Hawaii County. So we've provided you a summary on page five and six of the memo report which kind of shows you difference between how those counties are treating it and how the Maui County Council's proposal is. And we also provided you how their . . . (inaudible) . . .

For the most part, for tonight, just so you can follow along, if you go to, turn to page – I'm sorry – exhibit 12 of the memo report. What I have there is a Ramseyer version of the ordinance, the resolution, which has the amendments to the code. Exhibit 12. And then you will see comments, you know, noted as well as – I'll go through some of the changes that are being proposed and whether or not some of the other commissions had comments as well as the department's comments. These are not recommendations per se. These are just what we had as comments. And so if you agree with those comments that you see, you can make a note of it and you can bring it up or you can stop me any time if you want further explanation.

The first, starting with, again, on the first page, or the first sheet since – yeah, page one, of exhibit one, I mean, exhibit 12, excuse me. You have the new definition of home based business, which means basically an enterprise or activity conducted by an occupant of a dwelling unit that includes growing, processing or manufacturing of a product or the provision

– for the provision of services for the consideration of profit. Some of the comments that came about from some of the commission – one was that it should be clearly defined that it's the primary residence of the person occupying the dwelling unit. Also, that it should say manufacturing for sales because clearly if you run a home – I mean, it doesn't say it outrightly, but if you're allowing customers to come which I'll get further in, obviously you're trying to sell them something. So, not just providing them with service.

The next section, two, which is dealing with Title 19.08, again, which is the residential district, deals with the – adding in home occupation. I mean, excuse me, adding a home based business. What's interesting is that they're removing home occupation. So you may have been doing a business where you sell stuff on ebay. You go to garage sales and you find collectibles and you mail off. Nobody comes to your house. You qualify as home based, as home occupation. But now you would fall under home based business, okay. Now a rationale – I can only summarize – the rationale for this is that if you qualify as a home based business, then you get taxed at a home based business rate even if you would qualify under home occupation. If you're a home occupation, your taxes do not change. But because they're eliminating home occupation, everybody who is a home occupation is now considered a home based business and you get taxed for that rate. Comments from Hana Advisory Committee and some of . . . (inaudible) . . . is to keep both definitions in there – home occupation and home based business. And again, it's listed as an outright permitted use. So again, no commission review or any permits required. Our comments and concerns is it should be you're defining it, but you're not setting any provisions. If you want it to be subject to something, which is the new section of 19.67, you need to say that it's subject to 19.67. Otherwise the only caveat for home based business is what's in the definition and there is nothing regulating it per se. And I think Council's intent was they created this whole new section called home based business, but it doesn't do anything unless you're referring to that section.

Other things that they added in their proposal, they're amending under special uses, they changed certain domestic to just domestic types businesses that do not meet the definition of a home based business or home occupation, which is interesting because they're deleting home occupation. So we didn't quite understand why that –. And then also it says they're also eliminating such business shall be the normal function of home such as baking, sewing or piano playing. So they're kind of playing around with that definition. We don't have that much of a concern. It's just that, regarding home occupation, if you want it, then leave it in.

The Maui Planning Commission – I'll just throw in Maui's thing – was that they wanted to add in auto repair to make it clear that if you wanted to do auto repair you had to get a special use permit. Because as you'll see under 19.67 the way the Council's got home occupation defined it's kind of strange, and I'll go over that shortly. Under (J), for special uses in the residential district, they talk about group instruction of traditional Hawaiian practices such as lei making, ukelele classes, hula classes, lomi lomi and such instructions – and shall be limited to no more than 10 students who do not reside on the property and shall be conducted only between 9:00 to 8:00 p.m. So the only comments that we had from Maui Planning Commission with regards to that is they just felt that it should not be overly burden to traditional Hawaiian practices if they came in. And again you must understand that this is a special use permit and when you define

it and you set those limitations, the commissions can only narrow the scope of what's listed here, but they could not expand it. And what the commission felt was that just list it as a special use permit, don't set the parameters, we'll set it at each commission. Because if somebody's got a 5,000 square foot lot and they're trying to do hula practices which could make a lot of noise, three students is going to be a lot. Or five students and it probably should be limited to that. But if you've got a five acre agricultural – I mean, a five acre parcel or 20,000 square foot lot in Pukalani, you could probably handle 20 people with no problem because you have the space. And so they felt that should be determined at the commission level, not limited by this, by defining it in this special use permit section.

Section four, on page three of the exhibit 12, this is the meat and potatoes of the resolution. This is the home based business ordinance that they're attempting to create. They, and I mean the Council, again, was trying to narrowly define what would be acceptable as a special use permit and establish it that way. That way you don't have to get a special use permit. You would just be an outright permitted use provided you met these standards. And so, again, you can see a lot of the – what their purpose and intent they're talking about in the districts, as well as the restrictions on how many people can do it. The limitation on the floor area. Again, you can see from our comments on the sides, from both the administrative planning officer as well as zoning and administration that reviewed this, from in house, there's some conflicts in the language. One, on the 40% area of a dwelling unit. But then when you go down further, it talks about all goods. On number seven it talks about all goods, samples, materials, or objects used in a home based business shall be stored in the dwelling unit, garage, and/or accessory structure hidden from public view. So which is it? Is it –? So, is the 40% based on the dwelling unit, and then use – is the accessory structure and the garage not counted? So it just needs to be clarified what do you want.

The way the Planning Commission dealt with it was they should just strike two, four and six. And the rationale behind that is that they didn't –. The felt that the catch all language, which is that the home based business shall not negatively impact the residential character of the property or neighborhood. Okay? So, they didn't –. If the person is using 80% of their house, provided that they still didn't change the character neighborhood, they were okay with it. That's the way they –. How you enforce this, I have no idea, but that's what the commission said that they wanted to have that catch all language.

They did on quiet hours because they were limiting quiet hours or maintaining quiet hours, they wanted quiet hours from 6:00 p.m. to 9:00 a.m. So they felt that quiet hours should be for a longer period than what Council was proposing. That's what Maui Planning Commission said.

This is where it gets really interesting on how Council wrote this which is on section (B.) It says, on page four, okay? So, you know, on page three, on section (A) basically, you had your standards that they wanted to establish for the home based business. Now they're saying the following activity shall be prohibited – harboring, caring, training or raising dogs, cats, birds or other animals. Okay? The repair of automobiles or other vehicles with internal combustion engines, and then it says shall be restricted to no more than two at any time. They're putting an allowed use in a prohibited section which, for us, is kind of strange. But they're saying that

you can't do it, but you can do up to two. So either you can or you can't. It's kind of like kind of pregnant. And so you want to –. So I guess the concern from our department was –

Mr. Ornellas: Who's counting.

Mr. Alueta: Yeah, how do you count this? Because is it –. Someone can –. They cannot work on – restrict it to no more than two at a time. And they're restricting it to internal combustion so that means, I guess, lawn mowers, weed whackers. But what about electric golf carts? My example is, you know, my wife tolerates me to have up to two golf carts to be working on, you know, normally, but that doesn't have an internal combustion engine. Can I have 50 golf carts because they're all electric and repair them? So it's just things that needs to be worked out and say what do you want. From the planning, Maui Planning Commission says, they struck everything out, except for, they struck shall be restricted to two or more, and basically said we don't want any repair of automobile. It's a restriction. Make it restriction. If you want to do that type of stuff, you go to get a special use permit, and let the Planning Commission decide. Because they felt it – it was a lot of hemming and hawing on the commission's side. But at the same time if you've ever lived next to a small engine repair, someone trying to start a chain saw or a weed whacker that doesn't quite run right. It can get annoying if you live at home, and depending on the hours. They just eliminated the conflict altogether.

Mr. Ornellas: Joe?

Mr. Alueta: Yes?

Mr. Ornellas: Can we ask questions?

Mr. Alueta: Yes. Unless you want to hold them all at once. It's up to you Chair.

Mr. Ornellas: I can wait.

Mr. Alueta: Okay. One of the things they wanted –. If you look at 11, under the standards, and under four, under the prohibitions, it talks about the repair, manufacturing, processing and altering of goods, materials or objects that result in a detrimental effect or nuisance upon – or nuisance upon the neighbors. The – they wanted that last half of that section, on number four, copied and moved up to 11 so that you – so it would read that, under 11, home based business shall not negatively impacted the residential character or the property or the neighborhood or have a detrimental effect or nuisance upon the neighbors. Okay, so they wanted to have – they wanted – because they felt that was more stronger language.

The final thing under administrative rules, they wanted some provision of registration. Maybe not a permit but a registration form that people would have to do as a home based business. And I guess they took the sample from, I believe, Kauai County had a small sheet, a small registration sheet that basically said, I understand what the provisions are, I certify and where my address is and saying that I –. And they didn't want a permit, they just wanted to have some type of registration process.

Section four, of 19.29, basically, it's allowing the use in the rural district which is pretty typical. Rural districts is large lot, mostly residential. It has a mixture of residential. So they added home based business to the allowed uses. I'm sorry, they added it to accessory uses, as an accessory use. But they kept home occupation as a permitted use in the rural district. James, did you write this? Okay. Never mind.

Under the agricultural district which is section six, they talk about – in 19.30A, they're adding it again as a – adding home –. I'm sorry. They're adding home based business under accessory uses. And another thing that they're doing which really pissed off the Maui Planning Commission was they were removing the okina from all the Hawaiian words. And so they said, no, just leave the okina alone. I do not know why they – what their impetus for that one either.

Under section seven of the resolution deals with 19.36A which is your parking district. So they created under for minimum parking ratio, they created a new home based business, okay, saying that a maximum of two parking stalls provided that the parking spaces are utilized only between 9:00 a.m. and 6:00 p.m. We have no idea how we're going to enforce that. That makes –. Why, if I build a parking space on my property – are you saying if I have a party, someone can't use that? So we're like going –. From the department's standpoint that doesn't make any sense, but –.

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

Mr. Alueta: Yeah, so anyway we're –. Secondly, it's like –. But anyway, because this is in the parking district, the only time this parking ordinance comes into play is when you come in for a permit and you're being assessed for a –. So, it's very difficult. How would we even enforce this if you're not requiring a permit? So, I think they just want to say that you should provide two parking spaces on the site if you're doing a home, in addition to your two that is required for the single-family residence. The commission's response was to just strike that provision, not have a requirement at all. If they're parking all over the place, then they're causing a nuisance to the neighborhood. Therefore either you create the parking space, you're going to have to create the parking on your own, or you shouldn't be doing the home at all. It doesn't qualify as a home based business. It should be located in the business district. So their answer to it was if it's a nuisance then we'll catch it then and they'll have to provide something to eliminate the nuisance.

And that pretty much summarizes the ordinance. Again, going back to 19.67 really quickly. I just want to make it clear that, you know, they are allowing for customer's limited to two at any given time, with a total of 16 per day. So that's one of the key differences, as well as allowing for offsite, having employees . . . (inaudible) . . . From home. When I'm talking about when I'm doing a comparative compared to home occupation. So one of the main differences between that and home based businesses. Do you have any questions, or do you want to again, go back through it and add your comments? I'm here to take your comments on it. So Mr. Chair, you can do it either two ways. You can either handle each recommendation, or recommended comment or change, individually, or you can handle it by consensus. Meaning if no one objects to someone's comments, I can assume that everyone agrees and I'll just write it down by

consensus. And then you just do one motion at the end to have all of the proposed changes done at the end. Oh, yeah, you still got to do public testimony.

Mr. Rabaino: Okay, do we have a sheet for public –? We're now going to open this to public testimony. Pat Reilly is the only one that's going to testify regarding what is this? Home based.

Mr. Reilly: Aloha. Thank you for taking public testimony on this item. Pat Reilly. 468 Ahakea Street. I appreciate Joe's presentation because I was taking notes on this thing all afternoon. And by the time I'm done listening to him, my recommendation is send it back, the whole thing. I mean, whoever wrote it – I think he raised that issue – whoever wrote it wrote it inconsistently. It's impossible to enforce. It does not fit Lanai's needs. And thank you on the language. I was going to make a comment on the okina. Keep the Hawaiian place names the way it should be please.

Secondly, you have no enforcement and it's going to cost the County. There's never any suggestion that this is going to cost anything to operate this bill. And it will cost taxpayers to even begin to enforce it. And it's crazy. Absolutely crazy. I noticed one thing in here it does allow renewable energy. And when you look at some of those on Lanai, how it fits with Lanai on a 5,000 square foot plot, how's that going to work? And home occupation, I would agree with that. Keep home occupation in. At least send that back. I'd throw the whole thing out and make them write it again. But at least keep the home occupation. You're telling me somebody sitting in their house, working on a computer, is now going to have to pay property taxes as a business? Which also includes short-term rentals and bed and breakfast properties. So to me there were just numerous implications for this bill as it applies to Lanai. And I think we're all concerned about the economic future of this island. To me, this does not enhance it. And Lanai always – I don't know how we can conform to the way Maui see's things. I mean, every time these come up, it drives me nuts. I think we ought to write just the ordinance for Lanai. You know, why do we have to fit into the urban centers on Maui and the rural areas on Maui when we're unique? Thank you very much.

Mr. Rabaino: Commissioners, any questions for Mr. Reilly? Okay. Anybody else want to give comments, testify before we close? None. So be it. Testimony is now closed. Anything else Joe? You want to make a comment? Okay, commissioners? John?

Mr. Ornellas: Joe, I know you've been on Lanai many years, coming off and on, but two cars? We have people on this island that has 20 cars in their yard, so that doesn't work. We've showed four mayors, four different mayors, in the last 20 years this location that they couldn't even do anything about it. So, I'm not too happy with enforcement per se. Pat Reilly is correct. You know, this is not something that fits Lanai. And, I mean, there are some things on here that I could agree with but most of it is not. So I would – I'm going to vote that we do not accept this and we send it back to whomever. Whoever wrote it, tell them nice try, do it again.

Mr. Alueta: I will tell you that Molokai basically said, "thanks but no thanks," and they wanted an exemption from this. So they said, everything, except for Molokai, and their rationale was at this time because, one, they felt enforcement was not adequate enough based on what's

going on on their island. They also felt that because the community plan was coming up, and maybe – somebody's community plan was coming up and they felt that because it was a policy shift they wanted to address it more thoroughly – address it during the community plan process.

Mr. Ornellas: I think that would be an excellent idea to bring it before the community plan process which hopefully will start this decade.

Mr. Rabaino: Other commissioners, any comments? Discussion? Joelle?

Ms. Aoki: I agree with John.

Mr. Rabaino: Into the microphone Joelle for recording.

Ms. Aoki: I agree with John because with the current economic climate it would be very difficult to see small businesses be so restricted particularly on Lanai. This is not coherent to our community. You know, if you even look at the note here about daycare, nurseries, kindergarten and it says on lot sizes of less than 7,500 square feet. I don't know the average size of a lot here on Lanai, but that's a really – 3,000? That wouldn't – they wouldn't even have half a child, you know, with that current –.

Mr. Alueta: But you also have to understand this is again for residential district, not for the businesses. So the business core around BCT and the B-1 zoning is – would – is different. They could do child care. They could do whatever. This is for only the residential areas outside.

Ms. Aoki: Yes.

Mr. Alueta: So as long as –

Ms. Aoki: And our residential district, the average size of a lot is 3,000 square feet.

Mr. Alueta: Right. Correct.

Ms. Aoki: So, I think, I would like to see it worked into the community plan as well.

Mr. Alueta: Okay.

Mr. Rabaino: Thank you Joelle. Any other commissioners? Letty?

Ms. Castillo: I agree with John and Joelle that we will, you know, get this into the community plan. Thank you.

Mr. Alueta: So is there a consensus to keep home occupation as it currently is which is it's an allowed use in the residential district, and to, I guess, exempt – if something like this is passed, to exempt Lanai until such time as the community plan comes about?

Mr. Ornellas: I would agree with that, but I would think we would put both of them on for the community plan. And so that way the community has a chance to review it. Because it was done in, what, 1997? 67?

Mr. Alueta: No, no, no.

Mr. Ornellas: When was it done? 97, right?

Mr. Alueta: Yeah. But, remember, what I'm trying to explain is that, remember, there's home occupation.

Mr. Ornellas: Yes.

Mr. Alueta: Home based business.

Mr. Ornellas: Yes.

Mr. Alueta: This is a home based business bill. Home occupation is currently an allowed use. So you're still comfortable with being continued to be an allowed use. Okay.

Mr. Ornellas: I'd rather see both of those come before the community plan process.

Mr. Rabaino: Alberta?

Ms. de Jetley: I'm in agreement with everybody else except is there any way we can get that one business doing auto repair out of town? It's like four mayors, more than 20-years. Every two years, we have to haul off all these dead vehicles that have accumulated on that street. So this – the whole thing is unenforceable.

Mr. Rabaino: Okay. Shelly? Any comments Shelly? None? Okay. So I agree with the other commissioners, yeah, that we should do it what as John and Joelle is saying because they're –. I'm looking at – because when you look at Lanai, for one yeah, there's several corner lots within our city that has home based business. And you have two cars, when they have more than that. Even if you suggesting they put their regular lots and an additional two lots. You can drive around town and you can see what's going on, so, you know, we're not connected with Maui – what concerns Maui. So we'll be just like Molokai, we going wait until our community plan comes along. So, I think we should go in that route as John proposed.

Mr. Ornellas: Mr. Chair, I'd like to make a motion.

Mr. Rabaino: Go right ahead. All yours.

Mr. Ornellas: I'd like to make a motion that we disapprove and send this back to the Planning Department or who is –?

Mr. Alueta: No, Council.

Mr. Ornellas: Council, and to be re-written. Or better yet, be an agenda item on the Lanai Community Plan process so it can be completely vetted and we would have our own – we'll have our own occupation standards for the island of Lanai. Is that too long?

Mr. Alueta: No, no, no. I mean, that's fine. I'll just say that you recommend no, or not at this time until the community plan comes up. Again –

Mr. Ornellas: Yeah. Okay, that would be from the Lanai Planning Commission.

Mr. Alueta: Yeah, that you recommend no. I mean, like I say you can either go like you recommend that – for Molokai, they just wanted to have it –. If you defined home occupy – home based business, you put, we're going to put except on Molokai. So it's not an allowed use. Okay. And then during the – it can always be amended where you can change it around if your community plan does it. And so that's the route that they were going. And they just gave a reason why they didn't want to have it on Molokai rather than just be no, we don't want them. They wanted to explain why, and it opened the door for them to change their minds later.

Mr. Ornellas: Let me ask you a question then. If we say, no, and it goes back to the Council, can the Council override us?

Mr. Alueta: Of course. This is their bill, and so they can – so if they say we're going to adopt the home based business definition and provision and add it to the residential district, chances are they're probably going to put except on Molokai. And if you want that, then I can say, except on Lanai. And that's your recommendation that –. That way you say hey if you want to adopt this great, but we're not comfortable with it now until it comes to the community plan and we want to be exempted from it.

Mr. Ornellas: Okay. So can we –

Mr. Rabaino: Yeah, Joe, let's use that phrase. The last phrase that you just ended. I think that's a more structured phrase.

Mr. Alueta: Okay.

Mr. Rabaino: Commissioners, in agreement?

Ms. Shelly Barfield: Can you just –

Mr. Rabaino: Shall we take a vote?

Ms. Barfield: Can you please say it again? So basically we're saying Lanai is exempted from this?

Mr. Alueta: Yeah, except –. That you –. That your comments are that, for home based business, that you want to be exempted from the home based business until you guys get your community plan. So it's addressed in the community plan.

Mr. Rabaino: Okay. That's an exact phrase that you stated right? Okay. Do we have a second on the motion or did we make him wait?

Mr. Ornellas: I made the motion.

Mr. Rabaino: Yeah John made a motion. You did a second? No.

Ms. de Jetley: I'll do the second. I'll second the motion.

Mr. Rabaino: Okay, Alberta second the motion. Okay, discussion or call for the vote? Call for the vote. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? Motion carried. The ayes have it. No objections on the nos.

Mr. Alueta: Okay. Thank you.

Mr. Rabaino: Thank you Joe. Next item.

It was moved by Commissioner John Ornellas, seconded by Commissioner Alberta de Jetley, then unanimously

VOTED: to be exempted from the home based business, and address the matter during the community plan process.

(Assenting: J. Aoki, A. de Jetley, S. Barfield, L. Castillo, and J. Ornellas

Dissenting: D. Green, M. Mano and S. Ruidas)

2. MR. WILLIAM SPENCE, Planning Director proposing amendments to Chapter 19.10 of the Maui County Code regarding the Two-Family Duplex District. (J. Alueta)

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

Mr. Alueta: The next is three bills. They're initiated by the department. These are dealing with amendments or clean up of 19.10, which is the two-family duplex district, 19.12, the apartment district, and 19.14, the hotel district. If you want, Mr. Chair, I can go through all three of them at once or do you want to take them one at a time? We can do one at a time, and do public hearing one at a time. That probably would be cleaner.

Mr. Rabaino: I think one at a time would be best.

Mr. Alueta: Okay. So again, this one is initiated internally. As you know the department has been going through reformatting the Title 19. We've gone through each – we're going through each section and creating a standard outline. And that outline basically is what's the purpose and intent of that district, what are your allowed uses, what are your accessory uses for that zoning category, what uses are considered special uses, and what are your development standards. And then we create what it's going to be. So, with two-family duplex district is an original code. It goes back to the 1967 Maui County Code, and pretty much has never been amended, and that's probably why it's in the format that it is. You can see from my memo report the changes that we proposed and why on the table. But pretty much I'll go through it from working from exhibit-1 which is the – basically a Ramseyer version.

Again, you can see on page one, line 17 thru 22, that's the standard outline that we're going or standard header sections that we're having. So again, purpose and intent, permitted uses, accessory uses and structures, special uses, development standards, and then a rule making authority. Under – then you have on line, page one, line 30 we're just changing that to permitted uses. But the big change you can see is under line 31 it says, where it says, within the A2 district no building. Now, that's where it gets confusing because it's a duplex district, but it talks about A2 which is confusion with the A2 Apartment District, and it has always created that problem. So on our zoning maps, you have to look very carefully. Okay, and in some of the zoning changes that I have occurred during the 70s and 80s, they say A2 and most of the time you associate A2 with apartment. And you have to look carefully, it will say A2 duplex or A2 two-family district. And so we had to be very careful and we can get into trouble because the development standards are different, and the allowed uses are different.

So again, we want to make that clear and just say duplex districts. And then also we created a standard accessory uses and structures, and you've seen this before. This is the same one we've added to all of the other sections. We're also adding energy system small scale. That's to make sure that you can do your solar, PV panels on your roof, and water, just to make it clear.

Accessory use (B), I'm just doing a typo correction. It should say, fences, walls and mailboxes, not box. There should be s not a v.

Mr. Rabaino: Joe? Can I –? Under –. On page two, item number three in the accessory box, it says, energy system small scale.

Mr. Alueta: Yeah.

Mr. Rabaino: Okay, is that included storage?

Mr. Alueta: Never mind, we heard him.

Mr. Rabaino: You heard me? Okay. Under energy system small scale, is battery storage

included for the backyard light? You want to be off the grid from Maui Electric.

Mr. Alueta: Yeah. Just whatever is considered part of the energy system. So batteries . . . (inaudible) . . .

Mr. Rabaino: That looks – because it's invisible over here. It's not in writing.

Mr. Alueta: No, no, it's part of it. It's whatever energy. And then we have that standard, provided there's no detrimental or nuisance effect upon the neighbors. Because again bio mass classification is considered a small scale energy system and that may create problems for your neighbors if you do a lot of bio mass which is barbequing.

Mr. Rabaino: Okay. Thank you.

Mr. Alueta: Anyway, the main thing – and then you can see where we cleaned up under special uses. There's no special uses at this time. Under development standards that's where we consolidated all these things that they had all over the place, area and yards, and we created one table. Interestingly, again, we're creating that D2 district, but for some reason on some zoning maps, there's actually D1 but there's no zoning standard. So I had to create one based on what was out there existing. So somebody zoned stuff D1 duplex, but there is no such thing as D1 duplex, so I had to create something for that. And that will allow these areas that are zoned that to have a development standards to go with.

On the column where it says notes and exceptions. Under it says maximum building heights. It talks about 35-feet for both of them, and then it has this exception of going up to 50 feet, which is 15 feet above. The Maui Planning Commission put in 10 feet above the maximum building height which is pretty standard bringing it back down. So they just felt to bring it back down to only 10 feet above which is what we were granting for in the residential district.

The duplex district is kind of a transition zone between – because it's kind of residential, but it's kind of apartment at the same time. It's in between two districts. And so you'll see in the apartment district we allow certain height restrictions also, so we didn't know which way to go.

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

Mr. Alueta: Depending on the lot, they're called R0 lot lines. We have R0 zoning, and R0 overlay district.

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

Mr. Alueta: Right. That's when you have two single-family dwellings that either are attached.

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

Mr. Alueta: Yeah, if they're separate lots they're not. If they're on one lot – if they're on one lot,

then that's a duplex. Okay. Let's see, the only other error that we have is on page four. We forgot to add the rule making authority. It's in the table on the front, but I forgot to add it on the back, and so that's just allowing the director. The language is pretty standard, and you'll see that in the apartment district. Do you have any –? I have a map here if you want of the –. It shows all your apartment, hotel and duplex which you don't have. I forget what you have here. You have A1 and H1. Most of your hotels are down in the project districts so they don't qualify under that individual zoning.

Mr. Ornellas: Yes I do. Joe, who enforces, will enforce this?

Mr. Alueta: Zoning.

Mr. Ornellas: Zoning.

Mr. Alueta: Or the Planning Department. Our Zoning Administration Division.

Mr. Ornellas: Okay.

Mr. Alueta: Again, this is an existing district. We're just sort of putting everything into table format.

Mr. Ornellas: Yeah, because I don't think we have –. I don't think we have duplexes on Lanai.

Mr. Alueta: No. No.

Mr. Ornellas: But, you know, there might be a day when we do, so I would like to know who would be enforcing these rules.

Mr. Alueta: Believe it or not Molokai just approved it as is, so they had no problem with it. They have some duplex, but not much. They didn't have a problem with it. And again, Maui had their comments as I indicated with regards to the height and the basic corrections that the department presented.

Mr. Ornellas: Mr. Chair? I would like to make a motion to accept the revision.

Mr. Alueta: You've got to do public hearing.

Mr. Ornellas: Public hearing? I'm sorry. Pat, what was I thinking? Can we get on with the public hearing please? I'm sorry Joe, are you done?

Mr. Alueta: Yes I am.

Mr. Ornellas: Okay, Pat, please.

Mr. Reilly: Thank you. Pat Reilly. One, you'll see throughout all three of these items is the

energy, and I think Jerry brought that up. There is a definition on the front page about what small scale means. As you know we've had several energy systems and it's up to the neighbors, I guess, to complain to decide if it's a nuisance or not. For example if you have a wind turbine or a wind mill, and the things clacking all night. What's going to happen? Somebody is going to call up and say, oh, that's a nuisance. Then they got to have the Planning – you know, I don't know. There's got to be a better way, you know what I mean. I mean, it just creates a problem to me is that it's up to each individual neighbor to decide if they want to complain about their neighbor, which we don't want to do that. But, sometimes it is a nuisance, you know? So I kind of was listening to what the Chair was saying and I don't know if you can better define it, but that's in all three of these bills. And you know, we're going to see it a lot on energy system, small energy systems. And I've been trying to rack my brains to think of language that's going to relieve the Planning Department and make it clearer as to what the heck a nuisance is because in that case, I think you will run into some nuisance issues. Thank you.

Mr. Ornellas: Jerry, go ahead, because I want to get this thing moving please.

Mr. Rabaino: Okay, any other questions for Pat, John? Commissioners?

Mr. Ornellas: Can we close public testimony please?

Mr. Rabaino: We didn't even open it John. That's why you jumped the gun. Hello? Okay, so we're now going to close the public testimony. Sorry. See, you getting me confused.

Mr. Ornellas: Everybody's helping you.

Mr. Rabaino: Okay, anybody else wish to testify regarding this matter? If none, we're going to close it. So close for the record. Commissioners, any discussion?

Mr. Ornellas: Mr. Chair, Joe didn't we have that conversation when the power –. We did an agreement, we voted on something last summer or the summer before that about power systems, small power systems, and what can and cannot do.

Mr. Alueta: Yeah, this is a standard accessory use thing that we've added to the residential district, to the business district, to all the business bills that you saw last summer. So, it's –. And the nuisance – nuisance was added by the Department of Corp Counsel because I guess that's a pretty much a well defined, or sort of well defined thing from their aspects to be able to enforce on it. So we can enforce a nuisance and that's happened before. But, yeah, we just want to clarify that, you know, in the residential and all of the other and in the duplex district you can do PV panels. It's not a problem. When we say – and it's defined. I gave you the definition for energy system small scales, and the main thing was that provided that, you know, the majority of the power generated onsite is being used and consumed by the property which it's located.

Mr. Ornellas: Right. So Pat's concerns have already been covered, and it is in the –

Mr. Alueta: I believe so.

Mr. Ornellas: Okay. Corp Counsel gave a definition for nuisance?

Mr. Alueta: Well, they changed the language that was previously used. The language actually came out – was recommended several years ago by the Molokai Planning Commission, and during the final drafting for legality they changed whatever term that was being used at the time to be nuisance.

Mr. Ornellas: Okay. So this is just pertaining to power energy?

Mr. Alueta: Yes.

Mr. Ornellas: Okay. Because sometimes I'm a nuisance, so I'd like to see a definition about me.

Mr. Alueta: Okay. No.

Mr. Ornellas: Okay. Alright.

Mr. Rabaino: Okay, any other discussion commissioners? We going move to the next item.

Mr. Alueta: Well, you need a motion.

Mr. Rabaino: I'm sorry. Somebody make a motion please.

Mr. Ornellas: I did, didn't I?

Mr. Rabaino: No you didn't.

Mr. Ornellas: Okay, I make a motion that we accept the changes as presented.

Mr. Rabaino: Anybody second the motion?

Ms. Barfield: I second. Shelly.

Mr. Rabaino: So the motion has been entertained and Shelly has second the motion. All those in –? Any other discussion or all those in favor to vote? Okay, let's vote. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? The ayes have it. You got it Leilani? Okay. So it has passed. Next agenda item, number three.

It was moved by Commissioner John Ornellas, seconded by Commissioner

Shelly Barfield, then unanimously

VOTED: to approve as presented.

(Assenting: J. Aoki, S. Barfield, L. Castillo, A. de Jetley, and J. Ornellas

Excused: D. Green, M. Mano and S. Ruidas)

3. MR. WILLIAM SPENCE, Planning Director proposing amendments to Chapter 19.12 of the Maui County Code regarding the Apartment District. (J. Alueta)

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

Mr. Alueta: The department again is bringing before you the apartment district which is Title 19.12, relating to apartment district. Again, it's very similar to the bill you saw earlier, primarily formatting changes to have it be consistent throughout the code. You have –. The only changes that, I guess, under (C), for purpose and intent was that they wanted to have apartment building. This should be occupied as long term residential basis. That was the only thing that came out of the Maui Planning Commission. They did want to recommend that the maximum building height be raised to 35 feet from the 30 feet. And that's pretty much it.

Mr. Rabaino: Joe, on exhibition-1, line item 34, definition of long term residence.

Mr. Alueta: We don't have a definition of long term. We have a definition of short term which is less than 180-days. So anything – anyone – anything more than 180 days is considered long term residential.

Mr. Rabaino: Commissioners, discussion?

Mr. Ornellas: Open.

Mr. Rabaino: Okay, open for public testimony is now open. Anyone in the room wish to speak on this item? If not, public testimony is closed. Commissioners?

Mr. Ornellas: Joe, we have a –. Okay, first of all enforcement, how do you enforce the apartment versus hotel versus – who enforces that? Because we may have a problem now here in Lanai City where somebody has purchased an apartment complex and they maybe selling, they may be renting it out on a daily basis. Isn't that – that's not an apartment, okay, so it falls under hotel?

Mr. Alueta: Yes.

Mr. Ornellas: Okay, who enforces? Who would enforce that?

Mr. Alueta: If the department is made aware of it and someone files a complaint, we would enforce it. Zoning Administration would come over. And we take evidence. We take evidence by doing research either by advertising this in the paper, notices, or on the web, and also, they come out, and sometimes if they can they'll try to find someone who is renting out on a short term basis to have them provide the receipts. That helps a lot. But, you know, we take witnesses. But for the most part, they try to build a case and show that the units are being used on a short term basis.

Mr. Ornellas: Well, I hate going on a rumor, but, you know, let me talk to the guy who owns the place and find out exactly if he's renting it on a daily basis, and inform him that he is violating the apartment.

Mr. Alueta: Right.

Mr. Rabaino: Okay, Commissioner Ornellas, I can vouch for that because I came across three tourists that were renting, and they, one of them drastically gave the opinion that they got ripped off. That was two weeks ago. They also found it on the website, okay, so I can back you up on that. But as far as evidence they need to go an investigate.

Mr. Alueta: Again, someone – someone from the public would have to file a complaint to the Zoning Administration Division or to the Planning Department, and it would be the –. I'll just say that we're not allowed to file complaints, the department in itself. Also, you know, you need to understand that what a lot of people don't realize is that the definition for short term rental does not apply to military people, government workers that are coming in, or students. So they're exempted from that provision for short term rentals.

Mr. Rabaino: This wasn't students. These were people visiting our little aina.

Mr. Alueta: Okay. Someone again – that's all I can tell you.

Mr. Ornellas: Okay, thank you.

Mr. Rabaino: Okay, other discussions commissioners? Everybody is quiet, everybody like go home, yeah? Joelle? Anything? No comments. Alberta? Okay, shall we –? Where are we now?

Mr. Ornellas: Mr. Chair, I'd like to make a motion.

Mr. Rabaino: Go right ahead.

Mr. Ornellas: I'd like to make a motion that I accept this as written for the apartment district, 19.12, as presented.

Ms. de Jetley: I second. I second the motion.

Mr. Rabaino: It has been motioned by John Ornellas and second by Alberta de Jetley. Calling for the vote. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? Okay, I have one to add to that thing that make sure that enforcement is – an investigation is applied as well for our little island. Investigate this, yeah?

It was moved by Commissioner John Ornellas, seconded by Commissioner Alberta de Jetley, then unanimously

VOTED: to approve as presented.
(Assenting: J. Aoki, S. Barfield, L. Castillo, A. de Jetley, J. Ornellas
Excused: D. Green, M. Mano, S. Ruidas)

Ms. de Jetley: No. We can't do that.

Mr. Ornellas: No, Gerry, no.

Ms. de Jetley: They have to receive a complaint from a member of the public. We can't do that.

Mr. Ornellas: Yeah. We'll talk about this after the meeting.

Mr. Rabaino: Okay, yeah. So we'll accept the motion. So be it. Got it?

Mr. Alueta: Thank you very much.

4. MR. WILLIAM SPENCE, Planning Director proposing amendments to Chapter 19.14 of the Maui County Code regarding the Hotel District. (J. Alueta)

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

Mr. Rabaino: Okay, we can move on to item number four.

Mr. Alueta: Okay, the last public hearing item is 19.14 which deals with the hotel district. Very similar to the other bills that you had. The biggest change – or not biggest change – besides the formatting, and again working from exhibit-1 of the memo report, we're adding cell and radio antennas attached to an existing building. This covers an existing policy memo that the department has been doing where we allow for these cell towers. It makes sense for us that in the district where you have the tallest buildings to put the cell towers attached to those. And we're making it an allowed use. It doesn't change the height requirement or doesn't increase the height. It just allows it to be an allowed use, and they don't have to come in and process an special accessory use permit through the commissions.

We cleaned up some of the language or at least the department believes we cleaned up some of the language with regards to, under accessory uses and buildings, for services and guest and apartments of the apartment hotel buildings. Just to clarify what buildings or what uses qualify as an accessory use and how big of a hotel. You have to be at least a minimum of 20 rooms and that's always been there. We haven't changed any of that language. We added again, as always, energy systems small scale to that. And we clarified again, the standards, fences and garages can be allowed. Under development standards, again, we consolidated all the different development standards. Again, I'm liking it to a word math problem. You know, train A heads west from Philadelphia in a head wind of 20 miles an hour, and a train B leaves east from Chicago, going 35 miles an hour in a tail wind of five miles an hour. Where do they intersect?

Mr. Reilly: Pittsburgh.

Mr. Alueta: Pittsburgh. Are you sure? I thought it was Philadelphia, but anyway – anyway, the whole purpose is try to get that down so someone can understand it in a table format and that's what we've done again. The biggest change that we've done here is we have zoning or hotel zoning. Back in the 67, the 67-68 Code of the Maui County, and up to 71, is a very simple code. You just had apartments and you had hotel. There wasn't any subcategory or lot size or anything else. When the County Council adopted the new hotel districts, they created H1, HM and H2, and they created all these little subdistricts. What they failed to realize was that our zoning maps, going back to 67 have hotel zoning. And they made no provision that says, all the lands that are designated hotel on zoning maps are now, H-whatever. They didn't do that. And so you have all this – you have some land out there that's zoned just hotel.

This is very similar to what happened to the rural district. When they adopted the rural bills, they created RU.5 which is half acre, and RU1, which is one acre. What they failed to realize is that on old zoning maps such as Kihei and Pukalani, we had land already zoned as County rural. And so, just like I did, when I came in with 19.29, I added County rural to the development standards and it had the exact development standards as RU.5. What I'm doing here is I'm adding hotel to the H2 because much of the land, or almost all of the land, the old zoning map that has hotel on it, right, they've been developed as if they're were H2, for the most part, or they are of lot of 20,000. Most of these lots are of several acres so it makes sense that they would be most likely H2 or they have a development. Again, most of these lots, some of them are in Kaanapali, one of them is actually in Kahului, and, yeah, it's all within the SMA. So regardless of, you know, they would be allowed to build a big building per se under H2, the SMA would be a design – would be a review factor that could potentially limit it. But most of these properties again are already developed with a hotel of four stories or more at this rate. Some of them are nine stories so they're already developed. So what we've trying to do is I'm trying to clean it up so that if somebody comes and says, hey I'm zoning hotel on your zoning map, what's my development standards? I can now point to a development standard. Right now we couldn't do that and it could open it up to the County to a liability. So this is just trying to clean it up.

And that pretty much – stays the same. All the lot coverage, floor area ratios stays the same. We haven't changed it. We just pasted them into a table format, and then we're adding rule

making authority so that's just to clarify it. Is there any, any questions on the bill at this time? No questions from you guys for me?

Ms. Aoki: I just have a question on 19.14.030. You know, I noticed you took out the specifics on the accessories – and just a question because I'm curious – accessory uses in a hotel. And you removed the specifics such as bar, barbershops and what not. Does this mean that by making it generalized as it is it could be possible for them to allow exotic dance clubs to even occupy spaces in hotels because now we've taking out the specifics from the accessories?

Mr. Alueta: There's a provision. I believe there's another provision in the County Code that prohibits it.

Ms. Aoki: I see.

Mr. Alueta: Before –. Yeah, it's regulated under a different provision. Before it was regulated under the Liquor Department. And so you had a club in Kahului where it was a dance club, but I mean, whatever, your kind of club, but they didn't serve any alcohol. It didn't go over pretty well. Then they amended the bill. I believe there's a provision that eliminates it all together. But as far as moving towards generalities and getting away from specifics, yes, the department is trying to do that. And that's why you have eating and drinking establishments. That's basically a bar or restaurants with or without –. I mean, we're just trying – we're trying to add some general, person and business services which cover a gambit under accessory uses. And you saw that, those definitions, or the Commission did, when we came before you with the business district. When we showed you the BCT B1, B2, B3, we revamped a lot of those definitions of uses. And that's where a lot of this is being generated from. We're trying to consolidate 20 uses down to one definition, which is what we did with the business district.

Ms. Aoki: Thank you Joe. I was just asking that question because if you may know Keamoku, Piikoi area in Oahu, they've generalized those areas and now you see these exotic dance clubs popping all over the place, increase crime, and you know, it's not as safe as it use to be.

Mr. Alueta: James knows that area really well. I don't, but James does.

Ms. Aoki: Thanks Joe.

Mr. Rabaino: Alberta? Commissioner Alberta you have anything to say? Letty? Okay, Shelly? Go ahead John.

Mr. Ornellas: Joe, you know, we've just gone through apartments and now we're going through hotel. You know, there's a lot of different other terms, like condos, townhouse. You know, there's no definitions. It's not part of this, but don't they also treat townhouses, and condos, and those as basically the same thing as hotels?

Mr. Alueta: No, this –. Well this is dealing with the hotel district. So the zoning category is hotel. Okay? Then you have a definition of what a hotel is, okay, which is a building that has

short term rentals and stuff like that. You can have –. You can, as indicated under allowed uses, if you look under page-1 of the exhibit-1, under permitted uses in the hotel district you have hotels. Or any use permitted in the residential and apartment districts. So it could be – your land could be zoned hotel, or H1 or HM, you could build a single-family house if you so inclined. And on Maui we have a section of a subdivision, eight-lot subdivision that was zoned H1, and they built single-family residential units on it. Basically single family residential units. Or you could build an apartment building. The Harbor Lights Condominium Complex that I talked about is zoned hotel, but it has a 200 unit apartment complex on it. That's a condominium basically. All the units are sold off. So, again, we do – we can define, you know, under building code what a town house is or duplex, but it just so happens it's also, in some cases it can also be a zoning category.

Mr. Ornellas: Okay. We have two project districts on Lanai. Do these are exempted or do they have to follow?

Mr. Alueta: No.

Mr. Ornellas: They don't have to follow so they're exempted?

Mr. Alueta: They're not exempted. They have their own. Project districts are their own animal. It's like they have their own Title 19. So rather than going to, when they come in for development, their section of Title 19, right, tells them exactly what they can do, what their densities are, how big, and all of that. And so they have their own little section altogether. So it may be a hotel by use per se, but their development standards are strictly restricted to what it says for their specific project district. That's why it's so hard to get. And that's why you have project districts where they have single-family residential, but their lots are only 3,000 square feet, where the minimum lot size in the County residential, 19.08 is 6,000 square feet. So the only way they could possibly get those residential lots that way is because they created their own separate project district, and the Council approved it for whatever reason saying, yeah, we're going to allow you that density because most of the time it's an affordable housing issue.

Mr. Ornellas: Okay, thank you.

Mr. Rabaino: Commissioners, any other question? I'm going to open up to public hearing. Okay, Joe? Okay, public hearing is now open. Anybody wish to testify regarding the subject matter? None? So public hearing is closed. Anyone want to make the motion for the action?

Mr. Ornellas: I'll make a motion.

Mr. Rabaino: Joe. I mean, John.

Mr. Ornellas: You have anything else Joe?

Mr. Alueta: No. We recommend approval.

Mr. Ornellas: Yeah, I would make a motion to recommend approval as stated, this ordinance.

Mr. Rabaino: Anyone want to make a second?

Ms. Castillo: I second that motion.

Mr. Rabaino: Letty makes a second. John Ornellas makes the motion, Letty is second. Calling for the question. No questions, calling for the vote. All those in favor ayes.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? The ayes have it. Thank you very much Joe. Next scheduled meeting, number item (F), is March 21st. Is it the same time or you guys moving up the time Clayton? Clayton, you're going to keep it 5:30 or 6:00? And the place of meeting is going to be at the Senior Center from now on?

It was moved by Commissioner John Ornellas, seconded by Commissioner Leticia Castillo, then unanimously

VOTED: to approve as stated.

(Assenting: J. Aoki, S. Barfield, L. Castillo, A. de Jetley, and J. Ornellas

Excused: D. Green, M. Mano and Stanley Ruidas.)

F. NEXT REGULAR MEETING DATE: March 21, 2012

Mr. Yoshida: Yes, I believe we had arrangements with Department of Housing and Human Concerns to use this facility. I think it's a little more conducive than the cafeteria at the school unless we have a very controversial item where we anticipate a large crowd. So we will be using this facility for meetings.

Mr. Rabaino: Okay, and when you use the terminology large crowd, what building would you be thinking of when the public comes out at full force? The bowling alley or other areas?

Mr. Yoshida: Well, I guess we would maybe go into the school cafeteria if it's available if we anticipate a very large crowd which this facility cannot accommodate.

G. ADJOURNMENT

Mr. Rabaino: Okay, thank you very much. One last question for Lei. Has everybody submitted their –

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

Mr. Rabaino: They have till April 15th. Okay, but you go mines yeah? Okay, mahalo. Okay meeting adjourned, is everybody in agreement? Okay, meeting has adjourned at 7:22 p.m. Wednesday night. Aloha.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 7:22 p.m.

Respectively submitted by,

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

RECORD OF ATTENDANCE

PRESENT:

Gerald Rabaino, Chair
Joelle Aoki
Shelly Barfield
Leticia Castillo
Alberta de Jetley
John Ornellas

EXCUSED:

Stanley Ruidas, Vice-Chair
David Green
Matthew Mano

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
Joseph Alueta, Administrative Planning Officer
James Giroux, Deputy Corporation Counsel, Department of Corporation Counsel