

**LANA'I PLANNING COMMISSION
REGULAR MEETING
DECEMBER 12, 2018**

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Caron Green, Chair, at approximately 5:00 p.m., Wednesday, December 12, 2018, in the Lanai Senior Center, Lanai City, Hawaii.

A quorum of the Commission was present (see Record of Attendance).

Ms. Caron Green: Came tonight. And also I see that we have quorum so we can say that we have the meeting is adjourned -- not adjourned -- is commences.

Okay as I've said in the past and I think everybody that's here has been here before I would prefer that if you have public testimony that you wait until after the individual items come before the Committee and then give your testimony after you've heard the presentation and the question and answer session. However if you cannot stay -- boy this mic is really loud tonight -- I am happy to take any public testimony at this time. So is there anybody in the audience who would like to give public testimony at this time? Okay Ron, would you like to come forward? Or can that mic be extended to him? Thank you.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Mr. Ron McOmber: Thank you. My name is Ron McOmber. I've been on Lanai for over 40 years. Most people know me. I've been seeing lately ads out to have a huge family or a affordable housing project down in the hole, down by the old MECo power house. I'm concerned about that for this simple reason. The Community Plan as we went through it last year had no mention of that, and we should have addressed that with the Community Plan because it's a huge, huge endeavor. I think we should call a Community Plan Amendment task force and address that instead of letting the community or let your body vote on it. We should have a community have a say so in that. We went through several months of hard work for the community and we tried to address everything. Even the zip line up at Koele should be addressed because it's going to have terrible impact on this community. I know that the company must have known that some of this stuff was going to go on.

Now I'm going to address one more thing and then I'll get out of your hair and go home. There's two items in your communications. The Communication No. 2 allowing no building setbacks in residential district on Lanai. I'll tell you why I'm involved in this is somebody filed a complaint for my setback on one of my houses. I had a container that he didn't like close to his property so he filed a complaint with the County. The only time the County looks at

these is if somebody complains about it. And right now it's a \$199,000 fine I have that has been imposed on me because of that container. This is insane. First of all the container has been there for 30 years. How can somebody that moved in just next door then start to file a complaint about it? That has to be rectified and it has to be addressed. So that's why I'm in support of No. 2 of the setbacks. There's so many people on this island, if you drive around Lalakoa II, you drive around any of the home divisions look at all of the containers sitting right on their property line. They have to have them. They don't have any storage on their lot. So if that's the case every one of them is in violation. But the County is saying nobody looks at them until somebody complains. So if No. 2 is passed that and you folks agree to that which I think you should that everybody that has, owns property, and they want to put a container on it then they should be able to put a container on it and follow the rules that are stated here. So I'm asking you folks to look at that and respect to the people. Just walk around town and look. Just drive around town and look. Right now I'm waiting if this will kill this \$199,000 fine that I've got over my shoulder.

Ms. Sherry Menze: How much?

Mr. McOmber: \$199,000. It was a \$1,000, a \$1,000 a week...because I didn't answer to it, and I'm not going to answer to it because the container was there before I bought the house. So this is unjust and we need to change that.

Again I'm asking this body when it comes to the affordable housing project that's down here in the hole that should be a Community Plan Amendment. We need to address that to the community, not just your body, but the community plan amendment for the community plan people that was on that, that did our Community Plan. Thank you very much.

Ms. Green: Thank you Ron. Commissioners, does anybody have a question for Ron?

Mr. John Delacruz: Ron, that container does it sit on the property line facing the road?

Mr. McOmber: It's on the back. Well there's two roads. Ilima and then the back road is Jacaranda. My property runs through the whole both sides. The container is smack in the property. It's set in about 10 feet in off of the road and it's six feet, about four feet from the property line on the other side.

Mr. Delacruz: Jacaranda is a one-way street?

Mr. McOmber: Jacaranda is a one-way street.

Mr. Delacruz: Okay. Because that was a part of my discussion when we take this agenda item up about that setback. Thank you Ron.

Mr. McOmber: Well the setback, yeah the setback normally is you've got to be six feet from your property line for any building that you build on your property whether it's a single-story

house or it's a storage area. But when we did -- when we put that container there and I helped the owner put that container there we asked the County what is the setback? At that time 30 years ago there was no setback requirement. But we still kept it about four feet off of the property line when we set the container down.

Mr. Delacruz: Well since you're leaving when we're going to be discussing this I'll just say if you're not at the property line thing to me is not a real big issue. The required space now from the property line on a one-story building is six feet.

Mr. McOmber: Six feet.

Mr. Delacruz: But I do have a feeling about how far it should be on a property line that has traffic.

Mr. McOmber: Well yeah you want to keep it back. That's why we set the container in on the property line about eight feet so it wasn't right on the roadway. So if you come around Jacaranda, and you come down Jacaranda the second house on your right hand side is my house where there is a big silver container sitting there. That's been for 30 years. There's plenty of room to park between that and the road if you wanted to park a car right there instead of being out on the road.

The other thing is all of the garages on Jacaranda are right on the property line. Every house on Jacaranda's garages on the makai side of the road are all sitting right on the road, every one of them.

Mr. Delacruz: Can ask Clayton a question now if he's able to answer it? Are those old garages grandfathered?

Mr. Clayton Yoshida: I guess to answer, to answer the question Commissioner Delacruz on the agenda is Item D.2. and the Commission will be discussing whether front side and rear yards should be zero feet for carports, garages and storage buildings on properties in Lanai City that are zoned Residential. And then you may direct the Planning Department and the Corporation Counsel Office to draft such a bill for a public hearing at a future Planning Commission meeting. And after if the Commission has a public hearing and recommends as such your recommendation for a -- if you decide to have zero foot setback for carports, garages, and storage buildings on properties in Lanai City that are zoned Residential we pass on to the County Council to amend that section of the County Code specially for Lanai City regarding setbacks for these types of structures. So that's on your, if we get to it, Item D.2.

Ms. Green: Okay, but I think his question was grandfathering in garages that had been there previously. Is there going to be any grandfather clause?

Mr. Yoshida: As far as the grandfather clause I don't know I guess it's probably become an enforcement issue with our Zoning Administration and Enforcement Division regarding non-

compliance with the setback requirements in the residential district. So again in the context of your agenda I mean there is an opportunity for the Commission to recommend that the setback be modified for certain types of structures in a residential district in Lanai City if that's what you choose to do.

Ms. Green: Thank you Clayton. I think Jerry has a question. Is that for Clayton?

Mr. Gerald Rabaino: Since majority of the houses were built in 1920 moving forward and referring to his grandfather the lots are small. Was there anything in there under the Dole era with Maui County for Zoning? Because all the lots are small. And we're talking about Jacaranda which is still within the Lanai residential district. And being that it was a plantation, designed as a plantation, do you have anything recordation on record from 1920 moving forward?

Mr. Yoshida: I guess we have the real property tax records. Again --

Ms. Green: Can I interrupt here? I think we're going off topic this way. Can we hold this until we actually get to this section on our agenda today? Is that okay with you Clayton? Okay, just hold that question Jerry, okay? I'm sorry do you have another question for the Commission?

Mr. McOmber: Just one more statement. What Jerry is asking -- the thing is what I understand the building inspectors do not inspect unless somebody files a complaint. So this is not fair. So if somebody does not like somebody they can file a complaint. So there's so many of them that are not being spoken to or corrected and that's unfair. It's either got to be a rule to do it, then everybody has to do it or nobody has to do it like this island we're talking about. Thank you very much.

Ms. Green: Thank you Ron. Okay is there anybody else who would like to do public testimony at this time? Okay there being none I'd like to close public testimony right now and move on to our public hearings. I have also had a request that Eva, our Item No. 3, which is the Planning Director transmitting Council Resolution No. 18-149 to Lanai, Maui, Molokai Planning Commissions containing a proposed bill to establish zoning district to be known as a Wellhead Protection Overlay District. We are going to move that forward on our agenda because Eva is here to talk about that and she needs to catch a plane. So without further ado we'll move to Agenda Item C.3.

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

- 3. MS. MICHELE McLEAN, Planning Director, transmitting Council Resolution No. 18-149 to the Lanai, Maui, and Molokai Planning Commissions containing a proposed bill to establish a zoning district to**

be known as the Wellhead Protection Overlay District. (D. Raatz)
(MEMORANDUM)

Mr. David Raatz: Thank you Chair. And this is David Raatz representing the Planning Director. I'm Administrative Planning Officer with the Department of Planning. I'll turn it over to Ms. Blumenstein momentarily for the substantive presentation on this item. I just wanted to provide a procedural overview. As the Chair mentioned the Council did adopt a resolution referring a proposed land use bill to the three Planning Commissions for review and comments. So that's why we're here tonight. You're acting in your role as an advisor to the Council on land use issues. Under the Charter the Council needs to hear your comments before they can take action a land use bill such as this one.

And I refer you to a memo from the Planning Director dated December 12, 2018 for the background on this matter and the bill itself that we're asking you to comment on. In our memo as we usually do we listed the four basic options for the body. You could recommend that the Council approve the bill as drafted. You could recommend that the Council approve the bill with any amendments you'd like to specify. You could recommend that the Council not pass the bill or defeat the bill. Or you could defer action pending further consideration. I would want to note that technically there is another option and the Maui Planning Commission exercised that option on this bill and has been doing that with some other matters lately. You could simply provide comments to the Council without any specific direction on how they should ultimately act. So I just wanted to clarify that since you have a sister commission whose been doing that. And with that I'll be happy to answer any questions that may arise after the presentation and I'd be happy to turn it over to my colleague from the Department of Water Supply at this time.

Ms. Green: Thank you David.

Ms. Eva Blumenstein: Aloha. That is loud. I'm Eva Blumenstein. I'm Planning Program Manager for the Department of Water Supply on Maui. Thank you for having me. So my understanding is the reason that we're presenting this particular bill here, the resolution that was transmitted includes Lanai Planning Commission. Although the bill -- I'm not going into more detail to it -- actually applies as written just to the department's wells, and not to private purveyors.

So I'm going to give an overview about the bill, the intent behind it, and why we are proposing to do this through zoning.

The wellhead protection program was developed over a decade now through a collaborative process between the -- sorry it seems like it's missing something -- through a collaborative process with Department of Planning, Water Department, the State Department of Health, and University of Hawaii Water Resources and Research Center. The idea is to be proactive about protecting existing wells, existing infrastructure from contamination. And a wellhead protection area which is the focus of this bill is the surface and the subsurface area

surrounding a well, a potable or a drinking water well, through which contaminants could reach the well. So any kind of land use that could potentially leak, spills, anything that can seep through soil and reach the ground water. And the well, the picture you see on the right there, as you start pumping ground water through wells you're going to have water and any contaminants associated with that water move towards the well. So you can delineate the area where you think any contaminants that are associated with the land use could potentially reach that well. And that could be as simple as a fixed radius. Some municipalities do that. In our case we use the ground water model or the researchers at UH use the ground water model based on time of travel of water molecules and spatial air and things like that.

How is wellhead protection generally regulated? We of course we have the Department of Health that regulates drinking water in the State through the Safe Drinking Water Branch, and you have the Federal EPA that is responsible also for the Safe Drinking Water Act. Those apply to all public and privately owned systems as long as they're drinking water wells. So the US EPA through the Safe Drinking Water Act they mandate all states to do a source water assessment. The assessment is sort of just an inventory of land uses and any potential contaminating activities that you have around drinking water wells. It also mandates they should develop a wellhead protection program. That program which was developed over a decade ago for the State of Hawaii is guidelines for protection measures to be developed in a local level. And the State Department of Health provides financial and technical assistance for the private water purveyors and the municipal private purveyors to do that.

So that's what we did. We worked with the Department of Health. They provided us some grant funds to develop protection measure and the strategy on the local level that work for Maui County. So on the bottom here you see that between Maui County, Water Department, the Planning Department and we had an Advisory Committee a couple of years back. We reviewed what we thought were already adequate protection in place. There's areas where there's really no threat to the ground water. They are existing State or Federal laws in place that adequately protect ground water per se, but there's also gaps. So we wanted to address that.

So for Maui County, 70% of our drinking water supply is ground water. We also know that we have some contaminating events. Some of those are decades old because they may have been pesticides applied back in the 70's and 80's from pineapple and sugar cane. But they are still persistent, they still exists in ground water aquifers, so we still have to address that through treatment. Usually ground water activated carbon is the most common treatment that we have to put in some wells on Maui Island. We also know that there's usually years between you have the contaminating event and the time that you detect it because the hydro. . . (inaudible) . . . processes are usually quite slow. All the aquifers where we extract ground water from for Maui are ranked as vulnerable to contamination. And we also look towards Honolulu where you have more urban land uses as we face planned growth in areas. We know that there are more contaminants associated with urban land use that we have not seen yet on Maui. So the ordinance really is sort of like an insurance towards future contamination.

It doesn't address anything that's already there. You can only treat the water once it's contaminated.

That map is the Department of Health. They, they track monitoring year after year to see if whether it's persistent in aquifers, if it's still showing up. And they don't -- they look not at just potable water supply, they look at irrigation wells as well. So every one of those dots on Maui represent a well where you have some contamination events still detected in 2018.

There's also within the General Plan and the Community Plans on Maui there was support to develop the wellhead protection strategy ordinance both through the Maui Island Plan and through several of the Community Plans.

So this as I mentioned the bill and the protection strategy was not -- it was through the advisory committee and through the stakeholder public process. There were discussions about whether this bill should apply to private purveyors. There was not a lot of support for that. Several reasons. The Department doesn't have jurisdiction over them. It's very specific how you cite your existing wells. There are small purveyors that have limited land and you really don't have so much choice on where you're going to site new wells. So we were -- I was actually out here over 10 years ago and we had a couple of public meetings talking about this so maybe some of you may have actually heard about this even on Lanai. But so what I know for source protection on Lanai, 100% of drinking water here is supplied by ground water. This is the equivalent map from the Department of Health for 2018. There were no contaminant detected in the aquifers in potable wells on Lanai. So I know you get an annual water quality consumer confidence report mailed to you if you're a customer. There was as with all other privately owned public water systems there was a source water assessment conducted by Department of Health back in 2004. And there was also a source protection plan written by Hawaii Water Association that I have not seen. So again, the proposed protection measures, it has been discussed, but as the bill is written it would not apply to Pulama Lanai and the water system here.

Your Water Use and Development Plan developed in 2011 does have the language that the County should draft, review and as appropriate adopt a wellhead protection ordinance with input from the Lanai community. And your 2013 Community Plan has the language to support development, adoption, implementation of a wellhead protection strategy and ordinance for potable water distribution systems.

So because the sources -- the source water assessment that was done by the Department of Health, the same methodology was done for all public water systems. So the same model and the same ground water models that we used for the ordinance, that same model was applied for these wells. So just briefly the wellhead protection area is delineated based on ground water flow, model flow. It's a pretty advance numerical ground water model that US Geological Survey typically apply for these specific purposes. It's followed by a particle tracking model that tracks how long it takes a molecule of water to reach the well. So within a two year time -- that picture on the right there -- within a two year time that's the spatial area

where you have a contaminant. It would take two years to reach the well. So that would address mostly micro-bill contamination, bacteria viruses based on their survival time in soil and ground water.

And the 10 year time of travel would address things that would 10 years or longer. So that would be more like chemical contamination. And then the State also did a fixed 50 feet zone around each well that would just be completely protected against any kind of activities that is not directly maintenance of the well and the infrastructure there. So 50 foot setback. So on the maps you can see -- they might not be to scale here. I just tried to fit all three of them. But the blue is what's called Zone B, the two year time of travel; and the red would be Zone C, a 10 year time of travel around each drinking water well. The other blue dots for Lanai are not potable wells, those are irrigation wells.

So this bill proposes a Wellhead Protection Overlay Zoning and it's zoning because that's the only mechanism to restrict land uses. So even though we're the Department of Water Supply we want to protect our drinking water wells, and you can only restrict land uses through zoning. So that's why this is sort of the first time endeavor between Water and the Planning Departments. And it works so that you have an underlying zoning whatever that is. The picture on the right for example you have some residential zoned lands and some industrial zoned lands. And then you have land uses that may be allowed in that industrial zoned land. The wellhead protection overlay supersedes the underlying zoning. So if there's a land use that's restricted by the Wellhead Protection Bill it will supersede that industrial zoning that's underlying.

So the map on the left, that's the Pookela Well, upcountry on Maui. Most of the underlying zoning there is Ag. So the bill for example if you want to put in a new municipal landfill there that's something that can be allowed in the Agricultural Zoned land, but the bill would prohibit that, and it would supersede that.

Another example would be new agricultural supply storage, like fertilizer or pesticide storage that would be allowed but it would be permitted with best management practices such as your secondary containment.

So the bill restricts new high risk uses only. It doesn't apply to the general residential development. It's really focusing in on those land use activities that are ranked by the EPA and the State as high risk. On Lanai and all your underlying zoning none of it is industrial. And on Maui we do have a few cases of that. The list on the right are all the high risk uses that would be outright prohibited in this bill. The ones that are shown in red requires underlying zoning that's heavy industrial. So typically you wouldn't have wells cited over land but it's zoned heavy industrial, and then you have your well in your own place. But if that's the case you know that's where you have sort of a conflict. And those other uses that would be outright permitted or permitted with best management practices, it's just to allow uses that can be compatible with ground water protection as long as you have some BMP in place.

So this is just . . . (inaudible) . . . I don't know if it's completely up to date the zoning map for Lanai, but the most of your land is -- most of your wells are underlying the conservation, interim zoning or ag zone and some project district.

So Best Management Practice is really key to this. It's not just one mechanism to outright prohibit certain uses that are not compatible, but we have been working a lot with land owners on Maui to even retrofit those existing land uses that have potential contaminating issues such as above ground storage is the big one. That tank on the left there was just sitting on bare dirt, you know, fairly close to drinking water wells. So we got some DOH grant funds to go in and put in some cement slab with a raised berm so if you have a leak or spill event it doesn't just go straight through the soil. There's good incentives for business owners as well to do this. It can be pretty low tech, something on the bottom there, just having oil barrels within some kind of secondary containment.

And just lastly the bill itself is one tool in a portfolio of many to restrict those high risk users that are really not compatible with drinking water quality. And combining that with best management practices you can address both those uses already there and those that can be easily preventable through things like integrated best management, secondary containment. A lot of is just public education really. And the third part of it is citing of new wells. We have a policy for municipal well citing that we would not cite new wells in a location that have high risk uses for underlying heavy industrial zoning. So the bill kind of matches how we cite wells in the future.

That's it in a nutshell. So again I just want to emphasize that we have had a pretty long public process vetting both the bill and whether it should apply to private purveyors or not. And the way it is written now the way it can be supported by in house staff we really feel that it should just apply to municipal wells. Thank you.

Ms. Green: Thank you Eva. Commissioners does anybody have any questions for her? Okay, Jerry?

Mr. Rabaino: Eva, can you turn back to the map of Lanai with the two dots?

Ms. Blumenstein: This one?

Mr. Rabaino: Some more. That one. Okay that two dots are located in Palawai Basin, correct?

Ms. Blumenstein: You mean the white dots?

Mr. Rabaino: Yeah, what is area, that's in Palawai Basin? The crater of Palawai Basin.

Ms. Blumenstein: Yeah those does not indicate wells or contamination sites. That map just shows that you do not have any in those sites.

Mr. Rabaino: Okay, so, that's fine. So for you -- you have a 50 radius, yeah. You have 50-foot zone -- not radius -- but zone. Our water well in back of the city I want to know if they still functional. Is it operational or is it dead?

Ms. Green: Jerry, we're not talking about Lanai because Lanai is private water company. So this is applying to Maui.

Mr. Rabaino: Okay, sorry.

Ms. Blumenstein: I'm not familiar with the Lanai's water system. I've visited but it's been a decade, so I'm probably not the best person.

Mr. Rabaino: So this . . . (inaudible) . . . is just referring to Maui.

Ms. Blumenstein: The bill as proposed only applies to the Department of Water Supply wells on Maui and Molokai.

Mr. Rabaino: So Lanai is excluded. Okay, thank you.

Ms. Shelly Preza: Hi. My question is actually more for the Planning Department. Could you in a nutshell kind of talk to us about what the Maui Planning Commission and the Molokai Planning Commission said as it actually pertains to their land? Thank you. And secondly I'm just curious about why the Maui Planning Commission decided to just comment on it instead of vote on it?

Mr. Raatz: Thank you for the questions. So Maui under their current Chair when they're acting as an advisory committee they just seem to have a preference of not having a specific recommendation to Council. And what he does is he opens it up to the whole body to offer comments and we in the Planning Department jot down those comments and we'll send them off to the Council. But if you want to be more definitive then that's certainly your prerogative. And we would actually encourage that. I think it's personally I think it's more beneficial to the Council to have that definitive statement from the Commission. But we respect the Maui Planning Commission Chair's prerogative to not go in that direction. He doesn't use motions and votes. He, again, just opens it up to the body for comments.

And the comments we did receive on this bill from the Maui Planning Commission were in two different categories, and some members commented in both the categories. One is an endorsement for doing everything that the County reasonably can to protect the safety of fresh drinking water. One of the Commissioners said that's a no brainer. That's obviously something the County should be doing and promoting in whatever reasonable manner we can.

On the other side of the issue though this is a Zoning bill. As was mentioned in the presentation it's restricting land use. And it restricts it in different ways based on how close the particular use is to the drinking water source, and the nature of proposed activities in those areas. But some of the Maui Commissioners felt that we might be going too far in restricting land use and that was a concern that was raised.

Molokai actually had a meeting several weeks ago and they had three members of the public testify. And Commission decided that wasn't enough public input. They saw that this was an important proposal both for protecting water and ensuring that the land use regulations that would be imposed were reasonable. So they asked the Department to -- the Department Water Supply actually -- to generate more public awareness. So they met earlier today. We're kind of double booked today. And I don't know if Ms. Blumenstein wants to report. She received some information from her staff on what Molokai offered today.

Ms. Blumenstein: Thank you. Yeah just from what I gleaned from my text this afternoon. But my understanding is the Molokai Planning Commissioners want more input from specifically from the Department of Hawaiian Home Lands and impact on homesteads because some of their homesteads are within the capture zones. It's department wells, but the capture zones include DHHL lands. And they also wanted more. We've been to Molokai fewer times than what we did with the public trust on Maui. So even though there was a public trust they felt it wasn't adequate, so they wanted more public input. I don't know what final, if it was deferred or not at the end of the thing.

Ms. Preza: Thank you. And thank you Eva for coming to Lanai for this presentation. Okay, well, I don't know if anyone else has questions for them before we --.

Mr. Delacruz: My comment is the --. It's a good program and what the County is saying is Lanai should be exempted from it. But my comment is it's still a public water supply. Is what the Planning Department saying is that since the owners are self-monitoring that's good enough for the County? And before anything can happen that would contaminate the water that would require a zoning permit, for example, to store toxic materials within a 100 feet or within Zone A, Zone B, and Zone C, and because of that we don't have to worry about it?

Mr. Raatz: For technical questions I would probably refer to Ms. Blumenstein. On most of those subjects I can handle the procedural or logistical aspects.

Ms. Blumenstein: So under the proposed bill if there was a storage of some kind chemical that would be -- we call it regulated substances -- would not be outright prohibited, but it would come with BMP's. So if you would store regulated substances in regulated volume also so it's not just your household storage and in your garage, the primary best management practice would be secondary containment. So if you're storing a pesticide that's a regulated substance in a large enough volume and you are within a two-year or ten-year time of travel zone, so Zone A or Zone B, you would actually need an administrative permit, right. So it's not a Special Use Permit or anything that goes through Commission. Administrative Permit is

issued by the Department of Water Supply. This is a first one too. We have not done this process in the past. So that would be the process for making sure the BMP's are imposed.

Ms. Green: And his question is about Lanai. So you're saying that this would be enforced on Lanai as well?

Ms. Blumenstein: No, no, no. No, the bill as proposed is only applies to the capture zones delineated for the Department's wells.

Mr. Delacruz: Let me specify that.

Ms. Green: So that, that --. His question more like okay if we approve this for the County, what about Lanai? What kind of controls can we have? That's your question more isn't it John?

Mr. Delacruz: My question was a rationale for not monitoring. Not applying the Wellhead Protection Program to the island of Lanai, what is your rationale is? Because it's a private water company but it is still a public water supply, Lanai's only public water supply, okay. So I'm asking if the rationale being practiced by the Department of Planning for not asking Lanai to be covered by this program is because they feel the wells on Lanai are safe enough because before the owner can do anything dangerous to it, they would have to go to the Department to get a permit to store toxic materials in Zone A, Zone B, and Zone C of the well area?

Ms. Blumenstein: Sure. Thank you. Yes, so because I was part of drafting this bill from the beginning and we did inventory all them uses in capture zones of Lanai wells and Molokai wells, and we looked at private purveyors. We have input private purveyors including Lanai Water Company at the time. For Lanai specifically we do not feel that there was --. I looked at the source what assessment you know 10 years ago. It was very low risk ranked in terms of what kind of land use activities and what kind of underlying zoning is there. So that and in combination with how we would administer and enforce a bill like this there were many reasons for why the Department supported this bill to apply to just the County's municipal wells. Not that any other water supplies are less important, but just in terms of how manageable it would be and who has jurisdiction over the privately owned public water systems.

Mr. Raatz: If I may Chair I can provide one additional comment. This is from the Committee Report of the County Council issued earlier this year, and there's a statement, a brief statement, I'll read into the record:

"Your committee expressed the desire to protect private wells that serves as public water systems such as the wells run by the Lanai Water Company through similar legislation. Your committee noted the proposed bill is the first step to ensure County wellheads -- excuse me -- County Wellheads are

protected. The WPOD, the Wellhead Protection Ordinance District, may be expanded later -- excuse me -- Wellhead Protection Overlay District or WPOD may be expanded later to protect all public water systems."

And that's the end of the quote. So the Council recognized the concern and as I read this committee report they are envisioning trying this out for the municipal wells on Maui and on Molokai, and then expanding to the private wells including on Lanai.

Ms. Green: Thank you for that clarification. Does anybody else have a question? I have a couple of questions. I was just kind of curious on the first page it says that the resolution was adopted. So why are we going through this exercise?

Mr. Raatz: Thank you Chair. That's a good question. So the Council when it initiates a land use ordinance first adopts a resolution before it passes a bill. So resolution is adopted on a single reading by the Council typically after being vetted in committee as this bill was or the resolution which attached and proposed the bill was. So that's just the mechanism through which the Council sends out proposed land use ordinances to the Planning Commissions. It adopts a resolution. That's the formal transmittal to this body and the other Planning Commissions.

Ms. Green: Okay, thank you that helps. There was one place in here where it says the bill does not define wellhead. The Department of Planning notes that the dictionary says a wellhead is a source of a spring or stream, and yet I believe these wellheads are perhaps not falling under that definition is that correct? So is that something that people have proposed is adding a definition of exactly what you mean by a wellhead?

Mr. Raatz: Yes thank you. I think when we report back to the Council we'll make it a similar comment and perhaps come up with our own definition or --. Certainly if we did that we'll consult with the Department of Water Supply or at least if nothing else flags the issue for the Council, it's something that that body may want to consider before actually establishing the ordinance.

Ms. Green: Okay, thank you. And my last question really is for you Eva. Because at the back of this I said what about future wellheads, and you said that new sites are covered in this. I guess I didn't see where. So can you just tell me where in this it applies to new well sites?

Ms. Blumenstein: Thank you Chair. No, the bill itself applies to existing wells. So this, the bill and the proposed strategy goes hand in hand with the policy the Department has in citing of new wells. So as we cite new potable wells we would consider the sensitivity of the location in terms of the same potential contaminating activities that are regulated in the proposed bill. And once the well is developed constructed and online it becomes subject to the same bill. It would have overlay zones delineated for it and it would be part, subject to the same restrictions and zoning provisions as our existing wells.

Ms. Green: Is that really spelled out here?

Ms. Blumenstein: No, so new well citing is not part of the bill. It applies just as it applies to the Department's potable wells. So citing of new wells is a separate policy. It's not an ordinance. It's not part of the proposed bill. So the only mechanism really is once you have a new well online you're going to have delineate new capture zones for that well and then it will become subject to the same restrictions.

Ms. Green: Seems like that's like kind of backwards to me. It seems it should meet those priorities before it becomes a new well.

Ms. Blumenstein: And that is the case. In fact, those in, as part of the assessment of the well site, University of Hawaii, Department of Health provides the delineation and the modeling services so that we can assess the vulnerability of different sites before you pick one. So that's part of the policy.

Ms. Green: Okay, anybody else with any questions? All right Jerry.

Mr. Rabaino: Eva, on your page 2, you say Island of Maui at page 625, the sentence reads complete and implement DWS wellhead protection program protect the water of quality of public and private wells. But when you continue reading under your draft you have one over here that says...that says it's 19.61.03. Okay I wonder if that is also will be affecting the island of Lanai. The ordinance shall wellhead protect overlaying district as defined therein water supply wells and not to private wells and non-conforming use. Can you give me more clarity?

Ms. Preza: Sorry, I don't know if this answers the question, but I think what you're quoting from the second page of what we got, it's just from the Maui Island Plan. It's not anything. No, I think they're just providing information for what was in --.

Mr. Rabaino: . . . (Inaudible. Did not speak into a microphone.) . . .

Ms. Preza: No, I don't think so. I think they're just saying oh these are comments? Is that correct?

Mr. Rabaino: Okay, that's fine.

Ms. Green: Anybody else? Okay. Do we have any recommendations?

Ms. Preza: I'm not sure how everyone else feels but because this doesn't, isn't going to directly affect Lanai. I mean I can see how in the future it might if this is an experiment, if it goes well, then perhaps it could apply to our public water supply. Since for this, what's in front of us right now, is just for Molokai and Maui, I'm not really sure because -- I'm not really sure what we should do you know. Like I think protecting ground water is important, but I also understand you know the Molokai Planning Commission's concerns with trying to gather more

information because that will actually affect what's happening on their island with the Department of Hawaiian Home Lands and stuff. So I'm not sure we should if we should kind of do what the Maui Planning Commission did and provide our comments instead of actually --. I don't know. Do you have thoughts on that? This is kind of what I'm feeling. It's not --. I think it's a good idea to protect water, ground water, but it's really not going to directly affect Lanai. But they're having conversations on Molokai right now that you know it could affect, it's going affect their community so.

Mr. Delacruz: Maybe before we decide to do everything or make a recommendation, are we having public testimony on this item? Okay, I'll wait for that.

Ms. Green: So I think we have somebody who'd like to talk.

Ms. Lynn McCrory: Lynn McCrory, Pulama Lanai. When this bill came up at Council I sent in to the Council our wellhead protection plan. We already have it done. Which shows where the wells are, what contamination levels. It's been done for a number of years. So what I wanted to be sure was that if they were looking to do something for private wells, know that we already have them and in place. So you already have your plan in place here.

Ms. Green: Good to know. Has it --? Did you say Lynn that has been submitted to Maui County?

Ms. McCrory: I actually sent it in to Alika Atay because he's Chair of the Water Resource Committee. And when this bill was coming up I wanted to be sure that they understood that some of us who have private water systems have already done this wellhead protection.

Ms. Green: You know I wrote a little note to myself here when we had the Lanai Water Use and Development Plan and has that been made part of that at all or not or is that not appropriate? I don't know.

Ms. McCrory: In the Water Use and Development Plan it has a statement that that should be done, and it has been done.

Ms. Green: Good. Thank you. Is there anybody else who would like to do public testimony? Okay, Alberta.

Ms. Alberta de Jetley: Thank you Madame Chair. Last week when the University of Hawaii Law School students were here when they came over to do a presentation on water rights in Hawaii, it was very, very informative. And the presentation made by the Lanai Water Company was really exceptional. If, if you ever have a chance to have your Commission sit down with the Lanai Water Company to listen to the presentation that Joy Gannon made it was just absolutely amazing to hear about all of the improvements that have been made to our water system. And in the photographs that she showed all of the things that you were

recommending on on protecting the wellheads, it's already been done here. So we have the most exceptional water quality in the whole State. Thank you.

Ms. Green: Along that line Lynn that could be one of your monthly meetings. I'll come. I always come. Go ahead Butch.

Mr. Reynold "Butch" Gima: Good evening, my name is Butch Gima. A couple of things. As David mentioned earlier the -- Alike's committee did talk about including private wells. At some point, I don't know when and why they chose to remove private water systems from this ordinance. It was our understanding from his office that Pulama did want an exemption by removing on the private water systems from this, from this ordinance. It would be interesting to know, you know, what the Planning Department and the Department of Water Supply's position is on protection of our wells. It's not real clear either in the presentation or in the documentation. I don't think -- I don't know how detrimental it is to have this ordinance apply to our wells because as John said it's a public, public water that is managed by a private water purveyor.

I, I -- Lynn is correct is that they provided the Wellhead Protection Plan to the County. The thing that you need to know is that their plan does not include, does not have the full effect of law as an ordinance does. So you're basically trusting that the Lanai Water Company will fulfill that. And to date, they have. But as policy makers for our community I think please take that into consideration. That if something should happen, there's no full effect of law in their plan as opposed to if it's in an ordinance.

Now when the Water Use and Development Plan was developed the Water Department at that time had an ordinance proposed and for a number of reasons it never got submitted to the Council for approval. You know best case scenario this type of issue would have been discussed at the Lanai Water Advisory Committee before you know going to, going back to the County. However, Pulama and the Lanai Water Company has not participated in the Lanai Water Advisory Committee meetings since September of last year. Had they participated I think we would have had a recommendation to the Planning Commission about this proposed ordinance or an addendum that would cover protection of our water. Thank you.

Ms. Green: Thank you Butch. Commissioners, anybody have a question for Butch? I guess I have a question for either David or Eva. If this was to become an ordinance should it be included in this proposal or should it be a completely separate ordinance should that ever be done?

Mr. Raatz: You're asking about whether Lanai would be included? I think that would require an entirely separate bill just by the way this has been framed and presented to you. If that's a recommendation or request from this body, we can convey that to the Council. But I don't think this ordinance could be amended right now to include Lanai. Just the way it's been set up it's only applying only to the municipal wells.

Ms. Green: Okay, thank you. Anybody else have a question? Did you want to say something Winnie? Okay come up.

Ms. Winifred Basques: Good evening. Winnie Basques living on Lanai for 56 years. Okay what Alberta was saying we went up there. We when up to see the two wells and I going show you the picture okay. It's a good thing that we get camera we can take picture yeah. Okay thank you, thank you very much. The first one that we went to was this big one. It's a big. That's the well.

Mr. Rabaino: . . . (Inaudible. Did not speak into a microphone.) . . .

Ms. Basques: Yes this is over six million gallons of water coming out from the ground. And they pumping it and when something goes wrong there's an indicator go straight to Joy Gannon's phone or the computer. She showed us, we went up there took us almost about an hour for going up that side. It's in the back of the Koele; way up you got to go. Two vans was up there. We had about six to eight people went there. And the thing is that when we looked at it, it's huge.

The other one is the --. Where's my --. There. That's the other one down by the waste water plant. Okay way down you got to go in order to look at it and take picture and hear it is all about. It comes from the ground the water, pure water coming out. And the thing is that there's meters over there too as well. Thank you.

Ms. Green: Okay thank you Winnie.

Ms. Basques: You're welcome. Thank you very much.

Ms. Green: I'm going to close public testimony at this time okay. And Commissioners I guess it's time for us to make a decision.

Mr. Delacruz: I'll let somebody else go first.

Ms. Chelsea Trevino: I'm just curious if say we chose the defer option, it would still come back to us, correct? Right?

Ms. Green: Chelsea why would you want to defer it?

Ms. Trevino: No, I'm just asking because at this point we're going to start talking about our choices right? And I think that although I agree with, yes, Molokai and Maui both you know it's pertinent to them, I don't think we should be holding it back. And in my personal opinion the care of the water is very important. So I don't think that us deciding to pass it would be an issue with them because they would still have those two planning commissions to decide. So I just wanted to find out if we deferred would it still come back to us because we have

spent a good amount of time on it knowing that whether we pass it or not it's not relevant to Lanai. But it is relevant to the others and the care of the drinking water. So that's all I wanted.

Ms. Green: Okay. Anybody else have a comment?

Mr. Delacruz: I would say one of our options is send comments, not take these three options, but send comments. And my feeling -- not a motion yet Jerry -- my feeling is we should send a comment to whoever is going to review this that I feel or we feel that the island of Lanai water supply should be subject to the wellhead protection program.

Ms. Green: Okay, anybody else? I just had my one comment and that is as the County said I'd like a definition of exactly what a wellhead is in this final ordinance. So as it stands right now if I'm understanding you are recommending that we make a recommendation to the Council that either Lanai --. It sounds like it's not practical for Lanai to be considered in this one, but that the Council consider doing a similar wellhead protection overlay district ordinance for Lanai. Is that what I understand from you?

Mr. Delacruz: That's good. Yes.

Ms. Green: Okay. What do we feel about that Commissioners? We have a yes or a no on that? How many people would be favor of sending that comment on to the County raise your hand? Okay you want to think about a minute more?

Mr. Delacruz: I don't know if they all understood that. Okay so what I'll do is I'll make a motion. I make a motion that Lanai Planning Commission recommends to County Council that we feel the Island of Lanai should be included in the wellhead protection program.

Ms. Green: He just explained to us that we can't put it in this one because the way it's written. But they could do a separate ordinance for Lanai.

Mr. Delacruz: Are we sure about that David? They're going to reject us?

Ms. Green: So how about this, Lanai Planning Commission recommends that the County Council creates a separate wellhead private overlay district for all private wells, an ordinance for all private wells. How's that?

Mr. Delacruz: I second that motion.

Ms. Green: Okay. All right all in favor?

It was moved by Ms. Caron Green, seconded by Mr. John Delacruz, then unanimously

VOTED: to recommend that the County Council creates a separate wellhead overlay district ordinance for all private wells on Lanai.

*(Assenting: R. Catiel, J. Delacruz, S. Menze, S. Preza,
G. Rabaino, S. Samonte, C. Trevino)*

(Excused: M. Martin)

Ms. Green: Okay. So we are making a recommendation of that. Now concerning the actual one in front of us. What are we saying?

Ms. Menze: I recommend that the Maui County Council, to the Maui County Council that the bill be passed with our comments. Comments being what you talked about before and the other comment being the definition of wellhead.

Ms. Green: Okay, anybody wants to second that? Jerry seconds it. Okay. So we have a motion on the floor. Anybody have a discussion? No, we had two separate motions. Did we not vote on the first one? No, we voted on it. We voted on the one that we're recommending that they come up with a similar program for private water companies or private wells. And now the motion is concerning the current resolution, okay. And she's suggesting, it's been a motion moved and seconded that we recommend approval of this with the comments about the definition of wellhead and what was the other one?

Ms. Menze: . . . (Inaudible. Did not speak into the microphone.) . . .

Ms. Green: Okay and that they would do a separate ordinance. Okay all in favor? We had a second from Jerry so do you have any comment or can we vote? Okay, we're voting to --. Pardon?

Ms. Shirley Samonte: I guess I just have a comment. So right now we're voting to vote on this and so I guess earlier as Shelly had mentioned because it doesn't really affect Lanai so if I feel that that I would rather make a comment to it instead of voting yes or no then I guess I wouldn't agree to the motion correct?

Ms. Green: Okay so if we have a vote you will vote no and then we can have a separate discussion okay.

Ms. Samonte: All right very well.

Ms. Green: Anybody else? All right.

Ms. Preza: I kind of feel similarly or you know how Chelsea was talking about deferring it. I kind of feel like maybe --. I know --. I understand what you're saying like if we approve it then they'll still, the County Council will still get input from the Molokai Planning Commission and

the Maui Planning Commission anyway. But I'm kind of -- I guess it's just me, I'm a little curious about what the Maui Planning -- I mean not the Maui -- the Molokai Planning Commission kind of decides because I know that they wanted more input, and they wanted input from the Department of Hawaiian Homelands because it could affect some of their agricultural venture so I'm not sure if I would vote yes either but.

Ms. Green: Okay, so why don't we go ahead and have a vote and then if we vote it down then we can just make our comments.

Mr. Delacruz: Maybe it's not being understood what we're doing with this second motion, the current motion. I don't think we're voting it down or voting it up, we're recommending a comment. A comment. We're not voting it up or voting it down.

Ms. Green: Okay, so you're not voting to recommend approval of this. We're just voting to make a comment.

Ms. Menze: No, for me I was voting to approve this with comments. With comments. Not unvoting it.

Ms. Green: All right folks let's --

Ms. Menze: Because I think, I think this is a good ordinance and it should go through because it's protecting wellheads. And it's a good bill and we just wanted to put Lanai into it to protect Lanai too even though it's a private water and it's not in this bill, can't be in this bill. So I think we could approve this bill in my opinion and then have our comments be maybe move forward with having something put up with for Lanai Company or having them show us their, their plan that they have in motion for their wellheads, private wellheads.

Ms. Green: If I may just make a comment here. We can recommend --. I know you have a concern about what Molokai or Maui thinks and everything. The County is going to take that into consideration when they make their final decision so we can, we can say we recommend it and the other two can say they don't and they'll factor that all in and that will influence their decision. So I guess the question is do you think what you have seems to make sense? And I think we need to move this on so can we have a vote on the proposal that was made here by Shirley. Not Shirley, I'm sorry, Sherry. Sorry, there's too many S's in this board.

Okay so all in favor of recommending that the County Council approve this with our recommendations of defining wellhead and also we had a separate recommendation so that's fine. Okay all in favor raise your hand?

It was moved by Ms. Sherry Menze, seconded by Mr. Gerald Rabaino, then

VOTED: To recommend to the Maui County Council that the bill be approved with the comments as discussed.

(Assenting: J. Delacruz, C. Green, S. Menze, S. Preza, G. Rabaino,
C. Trevino)
(Dissenting: S. Samonte, R. Catiel)
(Excused: M. Martin)

Ms. Green: So we have one, two --. Okay, so opposed? Okay two. So the motion passes. So we have two, four, five, six. Six to two.

Mr. Raatz: Thank you very much.

Ms. Green: We're done?

Mr. Raatz: Yeah.

- 1. MS. MICHELE McLEAN, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code to increase the penalty for the operation of a transient accommodation without a necessary permit from the current \$1,000 to a civil fine of up to \$20,000 plus \$10,000 per day for each day the unlawful operation persists. (D. Raatz) [\(MEMORANDUM\)](#)**

Ms. Green: All right, thank you Eva and thank you David. So now we are going to move on, hopefully quickly now, to public hearing no. 1, the . . . *(Chair Caron Green read the above project description into the record.)* . . . Okay David.

Mr. Raatz: Thank you Chair. Again for the record David Raatz, Administrative Planning Officer, on behalf of the Planning Director. The Planning Department is again asking the Lanai Planning Commission to provide advice to the Maui County Council on a proposed land use ordinance. In contrast to the matter that we just discussed which was Council initiated proposal, this is a Planning Director initiated proposal, but it actually stems from Council action. I'll provide a little bit of background.

The Maui County Council proposed a Charter Amendment that made it onto the General Election last month and was approved by the electrets. And it contains the provisions that the Chair just summarized. For unpermitted transient accommodations, those that are operating without a permit, instead of the current maximum fine for a zoning violation of \$1,000 this Charter Amendment authorizes the Council to enact an ordinance to establish an initial fine of up to \$20,000 and daily fines of up to \$10,000. And the Council in putting this forward felt that this was one more tool for the Planning Department in trying to enforce against illegal vacation rentals. And there's a view that the current fine levels are too low at least in some cases to have an impact. And we've heard stories that for some operators especially at the high end properties, \$1,000 daily fine would be considered just the cost of doing business and that can be easily absorbed and it's not going to dissuade the operator from either ceasing the business or coming in to get permits.

So one thing I do want to clarify and inform the body, our proposal has changed a little bit since we submitted our memo to the Commission, and it's based on public input in testimony from members of the public and from Council Chair Mike White who clarified the Council's intent in putting the Charter Amendment forward.

So the increase level of fines would only apply to those operators who don't have a Short-Term Rental Home Permit, a Bed and Breakfast Home Permit, a Conditional Permit. They're basically operating entirely outside of the law and the legal framework under Maui County Zoning laws. As drafted in our proposal the increased level of fines would apply to any zoning violations by any vacation rental operator. That goes too far. So we're now recommending again it's only for those operators that don't have permits, have never tried to get permits, or operating completely illegally. We don't want to impose higher fines on those operators who have come in to get a permit and are operating legally but may have had some sort of misstep and they violated the Zoning Code. So it's different categories of violations. So again this is outlaw type of operator that would get this excess or additional fine beyond, in excess beyond the \$1,000 normal fine under the Zoning Code.

In addition our initial proposal said that the Director shall impose fines of \$20,000 initially and \$10,000 daily. We subsequently understood that the intention and we think better practice on further consideration is to give the Director discretion to go up to \$20,000 for initial, and up to \$10,000 for daily fine depending on the circumstances. There could be operators who have extenuating circumstances, they got bad advice from somebody, there was a lack of awareness somehow that they needed to get a permit, and this would give the Director the ability to pick a fine based on reasonable investigation of the circumstance somewhere along the scale.

So with those two amendments and tweaks to our proposal we strongly urge this Commission to recommend approval to the Council. The Charter Amendment takes effect on January 2nd. We've been through the other two Commissions and we're hopeful we get your approval tonight to send a revised bill up to the County Council right away, perhaps before the end of year so that the new Council if they so choose can quickly adopt this ordinance that they are now empowered to do based on the Charter Amendment. Thank you Chair.

Ms. Green: So I want to understand something. Is this the revised version or this is not the revised version?

Mr. Raatz: That's not the revised version. Thank you.

Ms. Green: That's what I thought.

Mr. Raatz: So what the other two Commissions did was recommend approval as revised to incorporate our updated proposal that we've verbally provided and we'll draft an actual ordinance subsequently.

Ms. Green: So we won't have a chance to see that before they actually vote on it, huh?

Mr. Raatz: That's correct.

Ms. Green: Okay. Does anybody have any questions for David?

Ms. Preza: Sorry, quick question while I'm looking at it, and thank you for the clarification on some of the updates because I think that answered probably some questions that a lot of us were having about this. You know in the section, let's see, (B), Item (c), where it's talking about you know except that the initial civil shall be fine shall be \$20,000. The first line says pay a civil fine not to exceed \$1,000 in the manner, at the place, and before the date specified in the order except that. I don't understand that. Like what does the \$1,000 have to -- not to exceed a \$1,000 but then up to \$20,000? I know you're saying right that you're giving or are going to update it to get the Director discretion to say up to \$20,000. So what is the -- if you could just clarify that to not to exceed.

Mr. Raatz: Sure. Thank you. And so we're looking at page 2 of the bill and this is usually the case when we're proposing amendment to the County Code this bill presented in Ramseyer format which is new text, proposed new text is unscored, proposed text for deletion is in brackets. And text that doesn't have underscoring or bracketing is already in the code and we're not recommending that it be changed.

So that initial statement that the Vice-Chair quoted is already in the County Code: Pay a civil fine not to exceed \$1,000. That's the basic standard fine for a zoning code violation. It does have the manner -- the subsequent language: in the manner, at the place, and before the date specified in the order. It's kind of legalize, but it's basically saying in accordance with the notice of violation that we issued. So that we don't just say you owe us \$1,000, we issue a Notice of Violation and that's subsequent to a Notice of Warning that lays out the specifics of why the fine is being imposed, how it should be paid, who the check should be made out to, those types of details. If that helps at all.

Ms. Preza: Sorry, so you're saying there's a warning of the violation sent out or if they're immediately fined?

Mr. Raatz: Okay, thank you. I'll briefly go through the enforcement process. Every enforcement action starts with a Request for Service, or RFS, is what we call them, the government acronym, which is filed and it's actually publically displayed on the County website. And that triggers an initial investigation. If the Department of Planning receives an RFS alleging a zoning code violation and we have determined that a good case has been made and in fact there is a zoning code violation we'll send out a Notice of Warning laying out our case, explaining what the alleged violator can do to come into compliance. And that process resolves a large amount of complaints. I don't know exactly how many, but a lot of

alleged violators pretty quickly come into compliance. We never go to the next stage which is a Notice of Violation. Yes Chair?

Ms. Green: I just want to specify, we're talking about permitted places only here though. We're not talking about -- or are you talking about unpermitted?

Mr. Raatz: This applies to every type of zoning code violation that the Department would be involved in. So we give everyone opportunities to come into compliance. Compliance is our preference. It saves us a lot of time and effort and we don't want to collect fines and impose other penalties unless it's absolutely necessary. So by the time we get to a Notice of Violation we have an alleged violator, or an actual violator in our minds by that point, who has been given ample opportunity to come into compliance and has for whatever reason refused to do so. And then at that point with a Notice of Violation we'll issue a notice that a fine is required because of this violation, and again detail what needs to be done to pay for that fine.

Mr. Delacruz: I think what you spoke about was violations and fines for unpermitted operators.

Mr. Raatz: That applies to everything. And the distinction for unpermitted operators, and by that I mean not just somebody who's operating with some sort of violation. They don't have a permit. Those are the only types of entities that would be subject to the increased fines that are being proposed in this bill consistent with the Charter Amendment.

Mr. Delacruz: The new amendment you're talking about.

Mr. Raatz: Yes.

Mr. Delacruz: Now this question for permitted renters. If they violate their permit is it simple, simple enough to terminate their permits?

Mr. Raatz: I don't know if it's simple, but that is one of our remedies and in certain cases we can not only extinguish their permit, but we can ban that operator for a period of up to five years depending on the circumstance from coming back into the permitting process. So they're put on the list that we maintain, and we won't accept new permit applications.

Mr. Delacruz: Thank you. You also said that the Lanai Planning Commission members will be notified of the amended bill before it's passed. Our next meeting is not until January 16th. You're trying to get this passed by January 2nd?

Mr. Raatz: Thank you and actually I intended to convey that we expect to receive the body's recommendation tonight and then we'll proceed to draft a bill, get Corporation Counsel to sign off, and send it off to the Council. So we wouldn't come back. And that's often the case with amendments to bills that are presented to the Commissions. We accept your, your verbal motion and we spring into action to get the revised bill drafted and submit it based on that.

Mr. Delacruz: The purpose of the amended bill is to exclude the penalties for the permitted owners, correct?

Mr. Raatz: That's correct.

Mr. Delacruz: Okay. We can fix this in two minutes. Comments?

Ms. Green: Yeah. Just a second and we'll do public testimony. I do have a question and that is when you say a fine of up to \$20,000 and up to \$10,000, up to the discretion of the Director, that's kind of a little loose for me. I kind of feel like there needs to be some guidelines or something because I think the Director could find themselves in a lot of problems with you know --. Tell me exactly why you decided to make it this amount of money. So that's the only thing in here that --. Yeah, I think what you have proposed addresses the concerns that we saw in all these letters that we got, and certainly what I expected when I voted for it, so that part is fine with me. I'm just this up to business I think need a little more.

Mr. Raatz: Well if I may Chair we don't believe in have unfettered discretion, you know, to allow the Chair to arbitrarily make a determination. In fact, you allow the Director to make an arbitrary determination. In fact that's beyond the scope of the Director's authority. And there is a provision in the Hawaii Revised Statutes that governs and limits the Director's discretion. I don't have it right in front of me. After you're done with public testimony I can give you that citation and read you the criteria. I think there's six or seven different criteria that would apply anytime the Director is exercising discretion like this.

Ms. Green: Does there come an amount with each one like you know because --?

Mr. Raatz: Thank you. No, it list factors that are to be weighed and considered, and it doesn't say you know this factor is worth \$1,000 and this one is worth \$2,000 or anything like that. So there still going to be discretion in terms of how you attach a dollar amount to the different factors. But I just wanted to point out there are factors. It's not arbitrary or capricious.

Ms. Green: So the Director's comfortable with that.

Mr. Raatz: Yes.

Ms. Green: Okay. All right anybody have any other questions or I'll go to public testimony. Okay, Andrea?

Dr. Andrea Ippen: Andrea Ippen. I have a question or a couple of concerns I suppose. This is --. Sorry. I was reading several of the letters that had come in regarding this and as a short-term rental home permitted owner myself I'm very concerned about the language in the version that's sitting in front of you. So the very first thing I would ask and I can't speak for anyone who wrote these letters that they may or may not agree, please don't vote or

recommend on anything until you have the new written version in front of you because that might bring new concerns, new issues that we would like to address as a community.

My other concern is that I think your --. I'm sorry I forgot your name sir. David, I think that you were trying to get at the point that most of the letters and myself are concerned with which is somebody who has made a genuine good faith effort has been permitted, thought that they were permitted, somehow that permit got denied or not denied but delayed without someone's knowledge. It's possible that the website that you're marketing through hides your permit number and you don't even know this so technically that's a violation of the law. I think you're trying to get to the point that those people would not be penalized. But if you could make that clear in the language. So something along the lines of people who have been never permitted as opposed to illegal rentals. Because technically if your permit number is not showing on the website you're an illegal rental. Technically if your permit has lapsed and you're waiting for the next permit to be issued and you're in that kind of gray area that's illegal. So as you refer it to it only as illegal short-term vacation rentals people who do have permits will fall into those categories on occasion. They're loopholes they can fall into. So I would appreciate much more clearer very specific language on who exactly this will apply to and who it will not apply to. Thank you.

Ms. Green: Thank you Andrea. Good points. Did you want to say something Alberta?

Ms. de Jetley: Thank you Commissioners. You know through the years we've struggled with this issue of rentals. And through all the years that when I was on the Planning Commission and since then we always wanted to protect the people who rent to hunters. This makes every person renting to a hunter who has been staying with them for 20, 30 years an illegal rental. If you look at this language every single person, whether they're putting people up in their garage, whether they're putting them up in a spare bedroom, whether or not they're letting them camp in their backyard, they're all illegal rentals. So how are you going to -- how are we as a community going to protect this segment of people who have done this for years? I just don't know what the answer is. But you look at it, they'd be lucky if they made \$2,000 during hunting season renting out their homes. So I wish you'd really think of a way that we can protect those people and try to do language that is specific to Lanai.

Ms. Green: So Alberta you're saying these people really are doing a short-term rental but only for a short-term every year for the hunting season.

Ms. de Jetley: They're doing it for the hunting season. You know I've dropped off people, hunters, who have come in. They're staying in someone's garage and they have five cots there. They're paying for the right to stay there. They're scattered all over this town. They're just everywhere. Jerry, you know where they are. I know where they are. Chelsea you've dropped people off there too. So can they, can we really do this? It's a whole market that this community has relied on through all of the hard times we've had.

Ms. Green: Well, this is an interesting dilemma. Would you say that these people do not violate the short-term rental agreements any other time?

Ms. de Jetley: They're not renting, they're not renting to tourists. But by the way this whole thing is listed, they're illegal.

Ms. Green: Okay thank you. David, do you have any comments about this?

Mr. Raatz: Well I think the circumstance that was just mentioned doesn't necessarily -- it's not something new based on this bill that's before you. I mean if, if there's a rental that should have been only . . . (inaudible) . . . pursuant to a Short-Term Rental Home permit or a B&B permit, or a Conditional Permit for a Transient Vacation Rentals, then you know there's not - - those are illegal and they're subject to the \$1,000 initial fine, a \$1,000 daily fine right now. And we don't have a provision in the law that says if you only do that type of transient accommodation for a certain period of time or just certain categories of visitors then it's lawful. You know that's something that could be considered but you know so that's an initial response that I have.

I do also have the State law provision and this might be relevant to the concerns that were just raised. On the parameter that the Director operates under determining the appropriateness of fines when there's discretion. And this is Section 46-1.5 of Hawaii Revised Statutes that, that's the revision the lays out the primary powers of County government. And in Subsection 24 there's language about civil fines. And in reviewing whether a particular fine was appropriate the following factors are considered: (1) the nature and egregiousness of the violation, (2) the duration of the violation, so that might have some relevance, (3) the number of reoccurring and other similar violations, (4) any effort taken by the violator to procure to correct the violation, (5) the degree of involvement in causing or continuing the violation, (6) reasons for the any delay in the completion of an appeal, and (7) which is kind of the catch all, other extenuating circumstances.

Ms. Green: Okay Commissioners do we have any other questions or comments for David here? David can we, can we have a little comment in there for Lanai? I'm sorry, thank you very much. We're closing public testimony now. Okay. Commissioners, any other questions? Okay so David my question is you know can we put something in there about an exception for Lanai hunters?

Mr. Raatz: Certainly if that's the body's recommendation we'd be happy to pass that along.

Ms. Green: Okay. Well what does everybody feel here?

Ms. Preza: I feel like if we're going --. I under --. Thank you for your comments also. I kind of agree if we're going to recommend something that is Lanai specific then I would prefer to see that in writing before we approve or disapprove it. I understand that you, the Planning Department would like to kind of pass this along as soon as possible and I want to respect

that, but I think if we are going to request you know a Lanai specific thing for hunters I would like to see that wording just because I feel like I really totally don't know what that means but.

Ms. Green: I would piggy back on some of Andrea's comments too to make sure that...people who are illegal maybe because their permit has lapsed don't fall into the same category as people who have never gotten a permit.

Also you said something about people who never who had a permit, but then are also people who have been denied a permit for a period of five years and so I don't know how to -- how you would to deal with that too.

Mr. Raatz: Thank you. I appreciate the testimony and the concerns. Part of the reason we don't have specific language before you is because we want to be very careful. We want to consult with the Corporation Counsel to make sure we are effectuating the Council's intent and being very precise on those types of operators that will be subject the increased level of fines. So you know again we would encourage a recommendation that allows us to move forward, but if you prefer for us to come back with redrafted language we'd be happily to do that. The only caveat I'd put out there is there might be further amendments or further discussion that leads us to make other amendments and I don't know how many times you want us to keep coming back. At some point we move forward with the best draft we can based on our understanding of the Commissions' recommendations, the Director's policy perspective, and the legal advice we get from the Department of Corporation Counsel.

Ms. Green: Okay. You have deadline of June 2nd. Is that just because it's a new year and you want to implement a new law or I mean what is significance in particular about if we were to defer it a month?

Mr. Raatz: Thank you for the opportunity to clarify. We actually don't have a deadline. The January 2nd is when the Charter Amendment actually takes effect. So that's when the Council can start working on an ordinance to implement the Charter Amendment. So the Charter Amendment is not self-effectuating. It requires a subsequent ordinance. If the Charter Amendment merely authorizes the Council to pass an ordinance like this. And we've been urged by the current Council and commended by the current Council for moving quickly to try to allow this to be enacted very quickly. But there is no deadline and if we have to wait a month or several months, you know, it would delay the Council's ability to implement the Charter Amendment, but you know is that a major concern? It's hard to say you know. We've been living with these \$1,000 fines for many years. I think we can live a few more months with that same situation if that's what the body recommends.

Ms. Green: Okay thank you for that clarification.

Ms. Menze: I find it very hard to vote on something that we can't even read and we don't even know what we're talking about and it's really difficult to make that. So I'm recommending that we defer this so that we can see in writing what we're actually, the amendment that you want

to make, is. And I can see how this is really directed at Maui because Maui has a lot of these problems with their short-term rentals. And here on Lanai you know we have to consider you know our last specs with the hunters. And you know some people really want to do you know tourists coming and staying in their place and having people you know vacation. And other people want to -- not that hunting is not a vacation also, but you know it's more of a sport thing. And so I can see that point also. But without any language in front of us, I'm, I'm really hard --. I don't want to vote on something that I can't see. So I'm recommending that we defer this until at least next month when language can be furnished from the Maui County Council or somewhere, from whoever. Whoever it is.

Ms. Green: Anybody else have a comment?

Ms. Menze: I'm making that motion to defer.

Ms. Green: You're making a motion.

Ms. Menze: Yes. That's what I've been saying.

Ms. Green: Okay. And John seconds. Okay. So any further discussion or can we vote? The motion is to defer until we can see the actual written proposal.

Ms. Preza: Sorry I kind of agree -- I agree, but are we -- I think we should just try to be as clear as possible for the Planning Department so that they can come back with something with language that we're asking for. So we do want language to be clarified about what constitute an illegal short-term rental...location, right? What do we want to ask them to revise about you know the concern that was brought up about hunters?

Mr. Delacruz: I think the main thing for right now is we defer the vote until we see the revised. The thing about hunters, I think we do want to make the people who want to have hunters with them have the option available. We also need to consider those people who don't want the friends of their second cousins coming over if you know what I mean. I don't how you're going to word that David.

Ms. Green: All right so are you kind of clear on where we're going on this so we can have a vote on the motion?

Mr. Raatz: I think so. I mean we're definitely already considering what the language as revised will look like based on the recommendations from Maui and Molokai. So we could probably turn that around pretty quickly and that will be consistent with what we want to move forward to the Council. I haven't talk to the Director about any Lanai specific language and I'm not sure if that's something she's going to feel comfortable proposing at this point. So if you want us to come back to you with the redraft language based on the recommendations we've already received from Maui and Molokai, and what the Planning Director's new policy objective is, we'd be happy to do that. And we'll get Corp Counsel to sign off on it and basically

have it totally ready to go off to the Council with the understanding you might want to tweet the new language, and you also might want to add something about Lanai.

Ms. Green: I think before you bring it back and then we come back to Lanai let's sound that out too all right? So that we have everything in front of us rather than having to go through a second or third deferral, okay.

Mr. Raatz: So sorry, just to clarify. So would you prefer what we submit to you for your next meeting include a Lanai specific provision?

Ms. Green: That was my understanding of her motion and does everybody agree with that?

Ms. Preza: Or would it be possible to if you go back and talk with the Planning Department and Corp Counsel what our options would be for doing something Lanai specific? Because I feel like this is maybe a discussion we'd want to talk more about and not just have you guys just write something just for the sake of putting it in. I'm not sure anyone else agrees with that.

Ms. Trevino: I think my only concern here is that I don't know about the, the -- if it's just to say and only regards to people who house hunters. I feel like that's not fair. So I feel like there needs to be more discussion on that. I understand what we're talking about. We're talking about people who house hunters and maybe they charge \$20 a person or whatever. You know what I mean. They're not, they're not for the long run doing short-term rentals. I think we're all kind of agreeing that's a value for us we want these people to be able to come here. It could even be, you have friends or whatever, but I think you know are we making gray lines between what the law is about a short-term rental and what we want here. And it's maybe more something about in the wording about like x-amount of days, under x-amount of dollars. I mean, I think we need to be a little bit more clear on that because I don't think it's fair to say, oh, if you rent to hunters, it's okay, you know. And that's not what we're saying, but, but I'm just saying I think we need to be sure that we're being fair about what we're asking, if we're asking for some sort of stipulation for Lanai. And that's my only concern as far as us making a recommendation or a decision tonight. So I would, I would agree to the deferral, but I don't think we're to the point where we're talking about specifics for Lanai at this point. And unfortunately that will delay the process. However I think there needs -- I don't think we can make a decision.

Ms. Preza: Yeah, I just wanted to say I completely agree with you and I think that's why we need more discussion because you know if there's a way that we can word it where it's fair and it's not just some kind of vague like oh if you rented to hunters it's fine. That's why I don't feel comfortable saying -- that's why I asked if maybe they could come back with some options like kind of what you're saying, more like oh if it's under x-number of days or if that's even an option for us and we can discuss more about that then.

Ms. Green: So David if you come back with all the language but nothing about Lanai, maybe some recommended language. Can we approve everything and then come back later and amend it for Lanai?

Mr. Raatz: Yes, that would be an option.

Ms. Green: That way we would help you out in getting this out there as quickly as possible, and then we can address our particular needs.

Mr. Raatz: Yes, thank you.

Ms. Green: What do you all think about that?

Ms. Preza: I agree. So I think right now the motion is to defer this item until we can get more clear language about what we had just previously discussed. I think that's the motion.

Ms. Green: I think your motion also had something about the hunters and maybe we could -- . You didn't say anything about that? Okay so --. Let's do the motion as --

Ms. Preza: I move to --

Ms. Menze: I made a motion.

Ms. Green: . . . (Inaudible. Did not speak into a microphone.) . . . We've been discussing the motion Shelly.

Ms. Menze: I could do it again and I recommend that we defer until we get on this item. And I recommend that we defer until we get the actual language that we're voting on for this particular bill. And then at a later time we could come back and address our issues that we have with community people coming to house -- and for more discussion during that time.

Ms. Green: Do we have a second? John seconded. Okay how about all in favor? Okay, it passes unanimously.

It was moved by Ms. Sherry Menze, seconded by Mr. John Delacruz, then unanimously

VOTED: to defer until the commission is provided with the language, as amended/revised, of the proposed bill.

(Assenting: R. Catiel, J. Delacruz, S. Menze, S. Preza, G. Rabaino, S. Samonte, C. Trevino)

(Excused: M. Martin)

Mr. Raatz: Thank you very much.

Ms. Green: Can you do me a favor though and that is maybe since you know we're going to be talking about doing an amendment do a little homework for us maybe and give us an idea of what kind of parameters we can put on this or how we might handle an amendment.

Mr. Raatz: Yes, we'll be happy to do that. Thanks.

Ms. Green: Okay, great, thank you. And Andrea, I would love to have your, maybe have you pass on your comments to David about your examples of --. Okay thank you. All right we have to move on here. Okay we are now --. Yeah I guess --. Do you all need a break? Why don't we take a five minute break?

(The Lanai Planning Commission recessed at 6:47 p.m. and reconvened at 6:53 p.m.)

- 2. MS. MICHELE McLEAN, Planning Director, transmitting proposed amendments to the Planning Commission's Rules of Practice and Procedure to authorize the submittal of electronic documents as official documents, in anticipation of Maui County's implementation of the Maui Automated Planning and Permitting System. (D. Raatz) [\(MEMORANDUM\)](#)**

Ms. Green: Reconvene our meeting now. Okay, David we have one more here . . . *(Chair Caron Green read the above project description into the record.)* . . .

Mr. Raatz: Thank you Chair. Again David Raatz, Administrative Planning Officer. This is our final public hearing item of the night. It's Item C.2. on your agenda. We refer the body to the memorandum that was transmitted with the agenda dated November 1st, 2018 from the Planning Director. In contrast to the other two items where you're merely acting as an advisory body, this is an item where we're asking you to take action on your own behalf and amend, amend your own Rules of Practice and Procedure. We do have language before you that's attached to the memorandum and it's a very simple proposal but we think important especially because the County will soon be implementing Maui's Automated Planning and Permitting System which is an electronic communication system for the County. And we just want to make sure that consistent with that system and frankly consistent with overall efficiency in communication that this body is okay with accepting electronic documents. And to accomplish this there's just two rules that need to be changed, Section 12-401-12 and Section 12-401-20. And we've presented the language again in Ramseyer format with the underscore content is the new content, and bracketed content is to be deleted, and the text that doesn't have bracketing or underscoring already exist and we're not proposing it to be changed.

And this is the language we are proposing. We're not suggesting any tweaks on this one. I would disclose under our procedures it's possible after we get your recommendation that we would tweak the language a little bit. What we do is put proposals out in essentially draft form

to the Commissions, get your recommendations, and then go to the Corporation Counsel to get the legal sign off which sometimes involves some word-smiting, some tweaking of provisions, but we never go beyond the intent that's been provided us. If, if the body would want a different format moving forward or we get the legal review first and then submit it to you, I can suggest it to the Planning Director. It may slow down the process. In some cases it sometimes takes a number of days, weeks, even months to get Corporation Counsel to sign off on documents. And the reason we don't go to them first, we could invest that time and effort in getting them to sign off something than we present it to you and we find out that you have a totally different policy objective and you want to incorporate a lot of different amendments then we would have to go back to them. So again it can be done, but there's a reason that we do it this way where we have essentially draft language and we want your policy objective before we go to the Corporation Counsel and get the sign off.

So with that said, we're not proposing any amendments to what we submitted to you in this case. We think it's fairly simple but again significant and we would suggest the body adopt these proposed rule amendments. Thank you.

Ms. Green: Okay thank you David. Commissioners, do we have any questions? I have two. Under no. 2 over here on 12-401-20, the paragraph ends with "unless otherwise ordered, the date on which the documents are received shall be regarded as the date of filing." I can understand that for an electronic thing. Sometimes when you mail something in sometimes your post mark date is the date, sometimes it's the date that you receive it. So what are we talking about here?

Mr. Raatz: Thank you for that question. Again that's language that's currently in your rules and I don't know much about the background beyond this, the language we have here. And again "unless otherwise ordered, the date on which the documents are received shall be regarded as the date of filing." So there are some entities that establish a different standard. They will say the date of post marking, or they'll establish some other standard. This body has thus far adopted a standard that it has to be received regardless of filing. If you want to change that we can consider that. I think that would probably be a separate rule amendment because that issue hasn't been a part of the public hearing notice we put out. Our public hearing notice said it's just basically rule amendments to allow for the submittal of electronic documents.

Ms. Green: Okay. And then my other question is just okay you get all these electronic things. Will the County continue to give us hard copies? You know give us a mailing with the hard copies or how would we be handling that?

Mr. Raatz: Thank you Chair. We've proposed similar rule amendments to the Maui Planning Commission and Molokai Planning Commission and in each case that similar question arose, and the Department responded by saying we will serve the body as the body chooses. So if the body wants paper documents even though you're telling the public that you're going to

receive electronic documents, we'll provide them in paper form. We'll print them out, do whatever the body prefers.

Ms. Green: Perhaps that can even be on an individual basis.

Ms. Menze: I have a question. Is Corporation -- I know it's maybe kind of silly because I'm just getting up to speed -- is Corporation Counsel for the County, is that like the State's AG office where you go and you go to the AG's office with your state to get something signed off? Is Corporation Counsel the same thing for the County?

Mr. Raatz: Thank you. They're very similar. Yeah, in both cases they're the chief legal advisor and representative to the entire government so that's a good analogy.

Ms. Green: All right, any more questions? Do we have any public testimony? There being none, we'll close public testimony. Do we want to have a motion?

Ms. Preza: Oh wait I have a question. Sorry. So could you just --? I know we want to get to other things so I'll try to keep this quick. But could you clarify what this will --? I understand it's, okay, things will be able to be submitted to us electronically. But what does this really change because when we receive the agenda items there are always electronic links for the documents that we receive and I feel like that's the only thing that we really get from the Department of Planning anyway so what would the difference be?

Mr. Raatz: Thank you for the question. Yeah, the County has been moving to a less paper oriented communication process for several years now and we are emphasizing the use of online materials whenever possible just for greater efficiency. This is really geared more towards applicants and people who are presenting information or documents to the Commission. If you adopt these rules we're now saying that there will be a process put in place that you're okay that allows for them to submit through this MAPPs system, the Maui Automated Permitting Processing System. I might have gotten the acronym a little bit wrong, but you've been hearing about it for a while now. And it will allow for again use of this new system as opposed to printing out and mailing documents that would be submitted to the Commission.

Ms. Preza: Thank you for clarification. So it would allow applicants to also send in things.

Mr. Raatz: That's correct.

Ms. Preza: Okay, thank you. Does anyone else have any comments?

Mr. Delacruz: My comment is for me anything that I would be considering at a meeting that we have to look at and consider I would like to have a paper thing a week before the meeting. I don't have the most friendly monitor. Sometimes I can't even get the whole page on it and sometimes the monitor goes like this. So I'd prefer paper a week before the meeting.

Ms. Green: Yeah, that was my question earlier and he said they would still comply with that.

Ms. Menze: So I had one more question. So a lot of this ruling is not just for like the Planning Commission getting things mailed to us or having a meeting and having it. But it's mostly for people who are turning in their planning plans, they can put them online instead of mailing them or instead of walking into the office and handing them to the clerk. This is an opportunity for them to sit in their house and be able to send that to the Planning Department online, right? It's not about really us sitting here having the right paper in front of us. Am I getting to the right thing?

Mr. Raatz: That's correct. Yeah, and you know it could pay dividends in situations like contested case hearing where there's really voluminous materials that for the benefit of both the parties and the Commission it may be much more beneficial to have those documents submitted electronically.

Ms. Menze: Thank you.

Ms. Green: Could I have a motion please?

Ms. Preza: Could I --? Is it possible to recommend to adopt the proposed amendments as recommended but then also kind of request that even though I know this is just a small portion of the motion but kind of what John was saying about continuing to receive paper documentation for the time I mean until everything gets rolled out? Is that possible to just request that? Or does that even need to be a part of the motion?

Mr. Raatz: Thank you. Technically it wouldn't be a part of the motion because you're acting to adopt rules which is a very discrete action but if you kind of wanted to make that other recommendation just a side motion or something or --. You know we have it in the minutes and I can report back to the Director as well, but it's up to the Chair and the body. Thank you.

Ms. Preza: Thank you. I think it seems like people would like to continue receiving, or I mean at least the Commission would like to continue receiving paper documentation just to have in front of us. And you know we don't have to bring lap tops just to see everything. But that's just for the record. But I would like to move to adopt the proposed amendments as presented.

Ms. Menze: I second that.

Ms. Green: Okay, it's been moved and second to adopt the recommendations. Do we have any further discussion?

Mr. Raatz: Chair, I'm not sure we called for testimony on this yet. I think you probably did, but just for the record. Okay, thanks.

Ms. Menze: And I wanted to thank Leilani for sending us these papers all the time in the mail.

Ms. Green: Okay but just to make sure do we want any public testimony? No. Okay, close public testimony. No, she does not want to. She does not want to testify. Could we vote on the amendment? I mean, on the -- what do I want to call it? -- the motion? Thank you. I'm getting a little slap happy. Okay all in favor of the motion? Aye.

It was moved by Ms. Shelly Preza, seconded by Ms. Sherry Menze, then unanimously

**VOTED: to adopt the proposed amendments as presented.
(Commission would like to continue to receive printed materials)**

*(Assenting: R. Catiel, J. Delacruz, S. Menze, S. Preza,
G. Rabaino, S. Samonte, C. Trevino)*

(Excused: M. Martin)

Ms. Green: Okay, it passes unanimously.

Mr. Raatz: Thank you very much. And just for the record, procedurally we'll send this to the Chair to sign off on after we get the Corporation Counsel to sign off. So you'll be -- maybe you can keep an eye out for that please?

Ms. Green: Will it be coming electronically?

Mr. Raatz: I'm not sure.

Ms. Green: If it does just make sure you'll alert me Leilani okay? And you have noted that I think we want to continue to receive --. Okay, great.

D. COMMUNICATIONS

1. **Discussion of establishing caps for [Short-Term Rental Homes and Bed and Breakfast Homes on Lanai](#). (Previously scheduled for the November 28, 2018 meeting.) *(Commissioners: A copy of the [September 28, 2016 Lanai Planning Commission meeting minutes](#) was included in the November 28, 2018 meeting packet. Please bring your copy to the meeting.)***

The Commission may determine whether a cap(s) should be established and if so what the suggested cap(s) should be proposed in future legislation. The Commission may then direct the Planning Department and the Department of the Corporation Counsel to draft such a bill for public hearing at a future Commission meeting.

Ms. Green: Okay we are moving right along, and you know I'm really rather disappointed here because we tabled last month because it was getting so late, but this is the discussion of establishing caps for short-term rental homes and bed and breakfast homes on Lanai. The Commission may determine whether a cap should be established and if so what the suggested cap should be proposed in future legislation. The Commission may then direct the Planning Department and the Department of Corporation Counsel to draft such a bill for public hearing at a future Commission meeting.

Mr. Clayton Yoshida: Thank you Madame Chair, members of the Commission. We have circulated some information regarding permitted short-term rental home operations and bed and breakfast on Lanai, as well as the minutes from the minutes from the September 2016 Lanai Planning Commission meeting when your predecessors suggested a cap for bed and breakfast and short-term rental homes. Currently we do have 17 permitted short-term rental home permit operations and no permitted bed and breakfast homes permit operations. There were --. And we have five pending short-term rental home permit applications plus Alicia Brandt's short-term rental home permit application which I guess the final disposition has yet to be determined. We have circulated a map and we don't have any pending bed and breakfast home permit applications. So we did circulate a map at the last meeting showing where the permitted and pending short-term rental home permit applications are located and we just need an indication from the Commission if they would like to proceed with establishing a cap for these types of operations, and what the suggested number would be. So then the Department and the Office of the Corporation Counsel could draft the bill which there will be a public hearing before the Lanai Planning Commission and then forwarding to the Council for the enactment of the legislation.

Ms. Green: So what I understand from you is you'll take what we say today, a bill will be drafted, it will come back to us, we can have public testimony, and that bill could at that time be amended slightly before it went for final approval. Is this correct?

Mr. Yoshida: Yes.

Ms. Green: Okay, so what we're deciding today is really just getting the ball rolling.

Mr. Yoshida: Yes. Give some instruction to the Department and Corporation Counsel as to -
- you want to establish a cap --

Ms. Green: Yes.

Mr. Yoshida: For both short-term rentals and bed and breakfast permits. What is the suggested cap?

Ms. Menze: Excuse me a second. Can I ask a question? Can I ask a question?

Mr. Yoshida: Yes?

Ms. Menze: When does the five year rule take into effect for the bed and breakfast? That you have to own the home for five years?

Mr. Yoshida: Okay. There was --. There's not a five year rule for bed and breakfast.

Ms. Menze: I meant for short-term rental.

Mr. Yoshida: The Council approved --. I mean the Commissions dealt with that last Fall and it was --. No sorry, in --. No I think it was in 2016 -- September 2016 the Commission dealt with that. And I believe that they, the Council passed the ordinance in March, late March of 2018, but the effective date was not until six months afterwards, so September 26, 2018. So anybody who submitted a short-term rental home application after September 26, 2018 as an application requirement has to show that they had own the property for at least five years.

Ms. Menze: Thank you very much.

Ms. Green: Okay. Just one little technicality that has come up here and that is we count 18 pending. I'm sorry, eight pending, 17 legitimate and eight pending, according to your map. I don't know, it doesn't jive with your numbers exactly. But what concerns me is we're already at 25 and if those eight get approved then, you know, we have quite a few. I read through the prior Lanai Planning Commission meeting, they were recommending 30 so we're bumping up there.

Ms. Preza: Are we at 17? 17 approved and then eight pending. Okay. Okay, that's what you're saying. I thought you said 25 and then an additional eight, but 17. Sorry, just to clarify. So on this map --

Ms. Menze: On what page did you see the 30 recommended cap?

Ms. Preza: Sorry Clayton. So just to clarify, 17 approved, and eight pending?

Mr. Yoshida: 17 approved. Alicia's application which is the disposition is still being decided and five pending according to the last Lanai open applications report.

Ms. Preza: Okay. Sorry, I'm confused because the map that was sent to us -- so the pink triangle indicates pending STRH permits. And I'm counting one, two, three, four, five, six, seven, eight including Alicia's. But you just said there's five including Alicia's so where's the other two?

Mr. Yoshida: Yes, according to the December Lanai open application's report there's only -- well besides Alicia's one, five other pending applications.

Ms. Preza: Sorry I'm still confused.

Ms. Green: The map apparently the map is not accurate. Okay Commissioners I hope everybody's had a chance to go over the minutes of that prior meeting, the September 2016 in which they recommended 30 to be the cap. Clayton did the Planning Department have any time to look into a recommendation that they had based on the population and number of homes in Lanai, etcetera, etcetera on what would be a reasonable number and the rationale behind it?

Mr. Yoshida: Well based on our counts there are 1,174 homes in Lanai City. 929 are not owned by Pulama Lanai, 245 are owned by Pulama Lanai, and an additional 49 units are located in the outline areas of Lanai City.

Ms. Green: They'd just like to know how many are owned by Pulama Lanai. You have 929 not owned by Pulama.

Mr. Yoshida: 929, yes. 245 homes.

Ms. Green: 245, yes, that adds up. Yeah. And when you say outline, do any of those outline homes have short-term rental?

Mr. Yoshida: No. They're just on the outline areas of Lanai City.

Ms. Green: Would you be including down your Kaumalapau? No? Are you just talking about outside --?

Mr. Yoshida: Yeah.

Ms. Green: Okay.

Ms. Menze: And how many did you say were outside Lanai City?

Mr. Yoshida: That's the same. 49 units are located on the outlying areas of Lanai City.

Ms. Preza: Sorry, what does outlying areas mean?

Mr. Yoshida: That is --

Ms. Preza: Like the, the homes down at the beach or is it you know up on the hill? Like I'm just kind of confused about what outlying.

Mr. Yoshida: Yeah, well, I would just say there are 929 homes in Lanai City not owned by Pulama Lanai. And yeah 1,174 total homes.

Ms. Green: Okay, compare this with Hana. 245, Jerry. Hana has about how many homes and what is their cap on the short-term rentals?

Mr. Yoshida: I'm not sure how many homes. Originally their cap was 48 because they have --. 48 because I guess they -- when the short-term rental home ordinance was originally formulated there were limited say hotel accommodations in the Hana area. But then later when the Hana Advisory Committee commented on the two year review of the short-term rental home ordinance in 2014 they recommended 30. That the cap be reduced from 48 to 30. So when the Council adopted the amendments in 2016, the Hana cap was reduced from 48 to 30. So basically the Lanai Planning Commission at that time felt that Lanai City -- I mean Lanai was closest to Hana so I think that's where they kind of threw out the number 30.

Ms. Preza: Thank you. And I'm looking at the, the minutes, and so it says that Hana was at 48, now they have 30, and then 48 for bed and breakfast. So there's separate caps for short-term rental home permits versus bed and breakfast?

Mr. Yoshida: Yes, the bed and breakfast home ordinance was adopted in 2009. So that was the one where they established caps for the island of Maui, community plan regions on the island of Maui, and established that all bed and breakfast homes applications would have to go, on Lanai and Molokai, would have to go before the respective planning commission. So that's why when the Maly's came in for their bed and breakfast home application, although they were the first one, they had to come before the Lanai Planning Commission. And the same for Molokai, I think we only have maybe three permitted bed and breakfast homes on the island of Molokai.

Ms. Green: Just out of curiosity, does bed and breakfast fall under the same stipulation like if there is a short-term rental within 500 feet it has to come to the commission, or two within 500 feet? Or is a bed and breakfast . . . (inaudible) . . .?

Mr. Yoshida: The bed and breakfast home, if, if their ordinance is if there is one permitted bed and breakfast home within 500 feet it has to come before the Planning Commission. But that was the case with the short-term rental home ordinance which was adopted after the bed and breakfast home ordinance in 2012. But then when they did the amendment in 2016 it was, the threshold was increased from one permitted short-term rental home operation to two permitted short-term rental home operations within 500 feet.

Ms. Preza: Sorry just to tack on to this question. So that's only --. So for short-term rental homes that is only, you know, comes before the Commission if there's two within a 500 foot radius. So that's completely separate from bed and breakfast which you say if there's one within 500 feet then it needs to come. But do they --? Do --? Is there any kind of overlap like if there's --? Sorry, I guess what I'm trying to ask is say within a 500 foot radius there's two short-term rental homes -- two short-term rental homes and then someone applies for a B&B Permit, that wouldn't have to come before the Commission because it's not related to that?

Mr. Yoshida: That's correct. That's not necessarily a trigger to have it come before the Commission. Now another trigger to have it before the Commission if a certain percentage of the neighboring property owners within a 500 foot radius are in protest of the short-term rental or bed and breakfast home operation. Then that would have to come --. Well, all B&B applications have to come before the Planning Commission on Lanai and Molokai.

Ms. Preza: But that's --. So he just said all B&B permit applications need to come to us?

Mr. Yoshida: That's correct.

Ms. Preza: Oh regardless if there's one already in the --. So it's everything.

Mr. Yoshida: As the ordinance currently stands that's correct.

Ms. Preza: Okay. But that's not the case with short-term rental home permits.

Mr. Yoshida: That's correct.

Ms. Preza: Okay. Sorry, I'm just trying to clarify. Oh, I do have a question. So I know the Council in 2016 was you know kind of comparing Lanai to Hana, and I understand like population wise we're similar. I think community wise we're you know different. But has there been any updates about how their community has been, since they changed the cap to 30, has there been any, you know, criticism of it or oh this is great, just in the last two years that you guys have heard of?

Mr. Yoshida: Well I guess the Commissions had an opportunity in 2014 to, after the two year experience with the short-term rental home ordinance to sort of comment on how things were going. Because as some of the Council members at the time that they considered ordinance in 2012 wanted review of the legislation two years later. So each planning commission and the Hana Advisory Committee got to provide their input on proposed revisions how the ordinance was working over the two year period.

Ms. Preza: So what did they say in a nutshell? I'm sorry I didn't, I didn't look at their input. So did they say anything of that might be of an interest to us when we're making our decision?

Mr. Yoshida: Well, I guess as evidence from the -- even after that from the September 2016 meeting there was a lot of input from the Lanai Planning Commission regarding some amendments should be made to the short-term rental home ordinance including the establishment of a cap for B&B and Short-Term Rental Home operations.

Ms. Preza: Right. Sorry I don't know if I made my question clear but so since -- I guess I'm asking since 2016 since Hana changed their short-term rental cap to 30 has there -- has the

Planning Department heard anything from them about their decision if it's been good for the community? If not, it's fine. I was just curious.

Mr. Yoshida: For Hana, I guess we haven't had any input because we're still below the cap. When we reach 90% of the cap then we have to notify the Council that we reach 90% of the cap and they can choose to do whatever. If they want to raise the cap or keep it the same they can act to do that.

Ms. Preza: Thank you. I'm sorry I don't mean to totally dominate the conversation. So if we put forward the recommendation for a cap, there is potential in the future to make amendments to that.

Mr. Yoshida: That's correct.

Ms. Preza: Thank you.

Ms. Green: Okay anybody else have a question? Okay, please.

Ms. Trevino: I'm just curious if anyone knows or whoever else, let's just say in the last five to 10 years, how many applications for short-term rentals have we received? I'm just curious. I want to kind of gage like okay are we on a, are we on an upscale? Like right now is it like all of sudden we have a bunch of people who are buying houses and want to do short-term rentals versus you know in the last 10 years every year we get like three or so you know. I'm just curious. Because I think that kind of helps us look at too the scope of how quickly, or you know longevity wise. I don't know if that question makes sense, but I just want to know are we on an upscale at this point where it's critical that we're like making a thing or --. Because I mean, yeah. Because you know we do as far as Lanai's concerned with, with the increase in hotel rates we know that the, the availability for maybe lower income people for a place to stay on Lanai has decreased, right? So less people can come under a certain bracket. So I'm just curious if we have this like all of sudden people are going to start buying homes and turning them into short-term rentals or whatever. Well they can't at this -- cannot at this point because we just had the five year, that five year thing. But I'm just curious if in the last five years, because five years is how long Koele has been closed, and five years is how long new ownership has come. So that's why I'm asking five to 10 years, have we had an increase or --?

Mr. Yoshida: well, I guess the ordinance is six years old, or 6 ½ years old, the short-term rental home ordinance. Prior to that they would have to get a Conditional Permit to do the transient rental which would require the public hearing before the Commission and action by the Council. So that's kind of a long process, can be a long process.

I would say since the ordinance was enacted back in 2012 more recently you know we've had about these 17 plus maybe six, so 23 applications for short-term rental.

Ms. Trevino: And the five year, the ordinance thing and all that, that's only in regards to short-term rentals not bed and breakfast, correct?

Mr. Yoshida: That's correct.

Ms. Trevino: So somebody could purchase a home and turn it into a bed and breakfast without having that five year hold period.

Mr. Yoshida: That's correct. But they have to be, it has to be run by an owner proprietor.

Ms. Trevino: So somebody has to be living there.

Mr. Yoshida: So they have to live on the property.

Ms. Trevino: Live in the house. Okay. Okay, so these are protective factors, yeah?

Mr. Yoshida: Yes.

Ms. Green: Do we have any other questions?

Ms. Menze: I don't have really a question direct but because I think that that five year rule, owning a home for five years is one of the best things that the County could have done to help with not having a cap. I'm for not having a cap and I'm going to tell you why. It's because what I personally I really don't like it. But being on the Commission and being a fair and impartial and taking everybody's opinion into play here, and when we were here at the other meeting people wanted you know for traditional use for the homes here. Like our normal that the hunting, like we talked about, and people that have been coming for years and staying with their friends, and for our traditional use here as a pro. We had returning families is pro also Lanai where people like Alicia wants to come back and she wants to get a home but she can't really afford yet to move, but they're thinking about it. Housing prices are rising because we haven't had the affordable housing yet which would really take probably be a huge solution to a lot of our problems here would be more housing.

Also you know special occasions. People want to come for special occasions such as you know weddings, and graduations, and they want to rent somewhere other than just sleeping on the floor at their families. Again the returning kids returning. And then the hotels are very expensive. This is all pro for the short-term rentals.

Some of the negatives would be you know the neighborhood, the parking which allows the ordinance of taking of. My personal opinion again you know that we've had a few people come who have bought multiple homes so that they could rent them out, make money which I find hard to believe. But this five year rule again takes care of the speculation from happening and we can't go back.

I'm personally in favor of not having a cap because of our traditional use here on Lanai with our families returning. So if you put a cap, let's say 30, we've got 17 now, seven more or so many more by the time, okay we'll have 20 probably by the end of the year. Well then if you make a cap of 30 what about the people that we trying to provide by that we were talking about earlier? About the people renting to the hunters? About returning families coming back to Lanai which is what we're always trying to encourage kids coming back? So I think that five --. What about you know if your parents die, and you live here and your parents pass away and you live in Washington? You want to keep their house, you have family, you have five sibling they all hui together. Well who can pay for the property taxes and different things like that? So again that would be within the five year rule they want to be able to rent. If we cap none of our Lanai people can come back and do this, and this is what I'm thinking about. So if you cap this bed and breakfast and you have a family and they want to rent their place to people so that they can come back in four or five years, or 10 years and live here.

But anyway and I read through these minutes. Maybe I read it so totally different. I didn't see the cap in the September 28th, 2016 was super pro cap. But I did see that they were pro not having the 500 foot radius. You can look on page 9 and 17 both the Chairman of the Planning Commission clearly stated why do we have to have the 500 foot radius. They didn't even want Lanai to have that in the ruling. They wanted to only ask the neighbors, back and forth. It's clearly on page, you can see it on 9 and 17 here that they said it two or three times. At the very end of the meeting, they confirmed that that's what they wanted. They didn't want to have a cap and they didn't want to have the 500 foot radius. They didn't see it as a problem. And I'm thinking that if we try to stay consistent of what we did two years ago now that we have that five year rule for the person owning the home, I don't see why we need a cap.

Ms. Green: Sherry, can we maybe differentiate the cap from the 500 foot rule and make them two separate issues? Discuss one at a time?

Ms. Menze: Well both of them --. Well, the 500 foot they didn't want it to begin with, the Planning Commission. And now they are, the same people pretty much are saying we want that and so --. But it is an ordinance now, the 500 rule, so we have to go by that ordinance. So I'm just pointing out that in September of 2016 it didn't seem to be a problem at all.

Ms. Preza: Sorry Sherry, could I just clarify something? So when you were saying that they don't care about, they didn't care about the 500 foot radius and I'm looking at the pages that you're referencing, my understanding was that they were talking about that for notification, not necessarily density of short-term rental homes within 500 foot radius. So what were you --? I don't know what you were referring to.

Ms. Menze: Oh, I can see that notification and so --. And what --.

Ms. Preza: Sorry because my understanding after reading this and I don't know if it was different but I do feel like they did want to put a cap. They did want a 30 -- 30 short-term rental home cap. But they were kind of saying or talking about oh but should you have to

notify everyone within the 500 foot radius and they weren't sure about that. So I think maybe that's what you were referencing?

Ms. Menze: Oh, maybe the noticing of the 500, yeah.

Ms. Green: Well, I might go a little further that there were two recommendations. One was 30 and the other was a percentage of the number of homes. Now Pulama Lanai is suggesting that they would build 200 homes, and then all of sudden the number of homes would go way up.

Ms. Menze: I think they're . . . (inaudible.) . . .

Ms. Green: Could you wait a sec?

Ms. Menze: Well, I think they're doing 112.

Ms. Green: But anyhow the other part of it is even if we put a cap on, Sherry, if we got to certain point where we hit that cap we could amend it and if we all decided that a cap is no longer appropriate it could be then at that time we could increase it. So it's not set in stone, it's just kind of -- it's a flag that okay we've hit this number and you know do we want to reevaluate it? So I think putting a cap or whether you put a percentage or you pick a number and set in stone for eternity. And secondarily what we are recommending today is a recommendation and they come back to us with some wording, we have then a public meeting about it. So at that time people will give us more feedback and it can be changed before we plan to do it. So I feel like tonight kind of in the interest of time here is do we want to get the ball rolling for Lanai to put caps of some kind on short-term rentals?

Ms. Preza: Sorry I don't mean to talk so much but I think --. I appreciate Sherry what you're saying. I think personally and kind of what you're saying about getting the ball rolling, getting something in front of us and then back to the community for them to get input on will be good. I think it's easier to put a cap on something and then later reevaluate then it is to have no cap. Maybe short-term rental homes permits will just explode and then how do you regulate removing those if we decided it becomes a problem later. I feel like it's easier to put a cap on and then continue to discuss.

Ms. Trevino: I just want to remind everyone that at this point for short-term home rentals the only time they need to come to the Council is if there's another short-term home rental within a x-amount of distance from them. My concern is without having a cap and without a requirement --. See he's saying the bed and breakfast people, they're required. So no matter what they got to come to the Council so we're going to know who's -- or the Commission, excuse me -- so we're going to know who's applying and where they're applying and ask them questions and gage it, right? Versus not having a cap and having people buying house here, buying house there, but they can look at the map and see where there's no short-term rentals, buy that home. I mean, yes, we have the five year thing, I understand. But buy that home

and turn that into a short-term rental without any kind of check or balance. So for us the check and balance with the cap is that at least we know at a certain point we're going to be notified. Okay you're cap is here and it's 10% away or whatever percentage he said it gets to that you're almost reaching your cap. Then we're going to start looking at the map again, and then you're going to kind of see. I mean I want to remind everyone that you know we don't know unless you're reading this thing that says ever week it doesn't even tell you an address, you don't know where any of these short-term rentals are unless they're having to come to the Commission for approval. So I just want to make that clear too that when we're looking at why would create a cap and what steps we're taking.

Ms. Preza: I have two questions in relation to that. You know how bed and breakfast applications come to us. Would it be possible in the new bill that gets drafted that we request short-term rental home permits to come to us regardless?

Mr. Rabaino: Yes.

Ms. Preza: Is that possible?

Mr. Yoshida: You can float that. It still has to come to the Commission for a public hearing, and your recommendation would be transmitted to the Council. They would have to make the final decision on amending the ordinance, the short-term rental home rental ordinance.

Ms. Preza: So it would have to amend the boarder ordinance to fit with Lanai?

Mr. Yoshida: Yes.

Ms. Preza: Okay. So it couldn't just get tacked onto the bill that we're going to be discussing about caps?

Mr. Yoshida: Yeah, the same as if you had -- were establishing a cap.

Ms. Preza: Wait sorry you're saying that we would have to change a different to for everything to come to us, the short-term rental home ordinance?

Mr. Yoshida: Yes, because the caps are --. Well the caps are established by the Council ultimately in the ordinance. There is no cap right now for Molokai and Lanai. If you were to establish a cap the Council would ultimately have to amend the ordinance to include that.

Ms. Preza: Okay so that's just what we're discussing now.

Mr. Yoshida: Yeah if you were to change the requirement that the only triggers -- the triggers for the application to come before to the Planning Commission are two or more permitted operations within the 500 foot radius or certain percentage of neighboring property owners in

protest. If you were to say all, henceforth, all short-term rental home permit applications shall come before the Commission even if they didn't meet those two triggers.

Ms. Preza: I feel like that's something we might want to discuss.

Ms. Green: It wasn't clear to me what the final answer is. That is part of an ordinance. We cannot request that, or they would have to go back and change the ordinance, or we can request that. Just simple.

Mr. Yoshida: Well, I guess you would propose have a bill drafted up.

Ms. Green: Yeah, but I mean would it apply to everybody or would it be specific to Lanai?

Mr. Yoshida: Yeah, if that's what they were to choose. The bill before the Council would be to state that all new short-term rental home permit applications would come before the Lanai Planning Commission. They would have to amend the ordinance.

Ms. Green: They would amend ordinance, okay. All right what I think here I think we've got now three things going. So I would like to concentrate on one at a time. One being we're going to limit the number and how we're going to do that. Two would be are going to -- what are we going to do about the 500 foot radius for notifications. And then three what we were just talking about was all short-term rentals come before the Commission. So let's do one at a time.

Ms. Preza: Regarding the cap, I have a question about if we were to request a cap, would that affect current permits? Like would, would those just already be permitted and fine or would they need to be reevaluated?

Mr. Yoshida: Well, if they have a valid short-term rental home permit then they would, they would count towards the cap.

Ms. Preza: They would count towards the total, but they wouldn't need to do any kind reapplication or anything? Not until it expires.

Mr. Yoshida: No, as long as they are in conformance, conformance with the terms of their permit.

Ms. Preza: Okay.

Mr. Rabaino: Clayton I'm looking at this map yeah. You get Kaumalapau Highway, you get Kahahe Place where Taka live, okay, that's Lalakoa I. And then you go down to where the Buddhist Church is, okay then you get one, two, three, four, five, five. Of that five, pending one. And if you put a 500 radius that's crowded already. Look at your guys map. You have five on that vicinity and then if you move that 500 circle down to Nani Street going in to Third

Street yeah and what is that? -- Jacaranda, you get one, two, three, four, five, and that's within the 500 radius. And then you get one, two, three, four, pending. That's a little bit too much already within that 500 radius. Follow?

Ms. Preza: Could we --? Sorry, I forgot I had something here. I know we have people who would like to provide public testimony and we do have someone here who left a note. I'm sorry I don't mean to infringe, but someone --. Because we do someone, something in front of us you know about recommending that -- this is public testimony -- recommending that the Planning Department pass a motion that no more applications would be considered until we decide on the cap. Is that possible to do that? To just --. So kind of what you're saying is you know you're concerned about all of these pending applications and radius, but if we request --. I mean is it possible for us to request that all of these pending applications kind of be put on hold until we decide -- we make a decision about a cap?

Mr. Rabaino: I agree with that. Put everything on hold until we develop a policy.

Ms. Preza: Yeah, I'm just asking if it's a possibility.

Mr. Yoshida: Well, I think that could be the sentiment of the Commission you know on how they want to handle things. But ultimately it would be the Council that would make the decision to amend the ordinance to say that we wouldn't process any more short-term rental home applications until a cap was established.

Ms. Green: How long do you think it's going to take if we --? Because we're going to recommend a cap, maybe, and then you come back to us, we have public testimony, and we're talking months. Yeah, what kind of time frame are you thinking that we're dealing with here?

Mr. Yoshida: Once we get direction as to if you want to establish a cap, and how many, what the cap should be, I think Corp Counsel can develop a proposed bill fairly quickly. And we would have to provide a 30-day notice like we do in all of our public hearing requests regarding legislation. So maybe we might be talking about the February, February meeting, of the Commission.

Ms. Green: After the public hearing, it goes to the, it goes to a Committee at the Council?

Mr. Yoshida: The Commission conducts --. Just like you did today, the Commission would conduct a public hearing, makes its recommendations, and we would transmit the package, the legislative package with the minutes and so forth to the Council. And they would defer to a Committee and they would deal with it.

Ms. Green: Okay, and so how long do you think that will take?

Mr. Yoshida: Yeah --

Ms. Green: Yeah, okay.

Ms. Preza: Sorry, I know, I know you had a question and I just have a quick comment. I think my concern or maybe I don't know if I'm voicing other peoples' concerns is that --. Or the reason why we're asking about if we can pause pending applications because if while we're discussing a cap we're still thinking about what we want. And so what if a bunch of people just put in applications all of sudden and then go through if there's not within a 500 foot radius while we haven't even decided what we feel about it. I think that's what my concern is is that all of sudden you know people put in applications and they go through without us discussing what we would like or what the community would like.

Mr. Rabaino: Clayton, two things, two things. Is the 500 radius according this minutes over here that we read that you have supplied, is that a done deal? Or we can change the radius because there's so much --?

Ms. Green: Jerry? Jerry? Jerry, we are not going to talk about that right now. We're going to address one issue at the time, and right now we're discussing caps okay?

Mr. Rabaino: So the caps --

Mr. Delacruz: We're talking caps Jerry.

Mr. Rabaino: Yeah, I'm talking about the caps.

Mr. Delacruz: I want to have a comment on this. We're not making any headway. We're just kind of like...nothing now, okay. One step at a time. I think since the cap is floating, okay. The cap is amendable, okay, and we're not going to get any place else until we recommend a cap, okay. I would say we recommend a cap of -- that has a comfort zone. We have 17 permitted short-term rental homes now. Eight are pending. Anybody has a calculator? Okay, so that's 25 that will be totaled if all eight were approved. Five gives a comfort zone. Since the five year deal was in effect September of 2018 that gives us time to work with the other stuff. So I recommend that we, for now since it's amendable, have a cap of 30 short-term rental homes so we can get the short-term rental homes discussion working. Again B&B is a different subject. We'll handle that separately. But I, I would move --

Ms. Green: John, can we hold it because we haven't had public testimony yet? So what I would like to do if it's okay with everybody -- I know Butch did you want to do a public testimony at this time? So let's do it quickly the public testimony then you can make a motion and we can move on okay? Butch?

Mr. Gima: Okay. Good evening. I'm Butch Gima. I'm going to cover the whole thing, not just caps because I don't want to wait here till 9:30. But two major points. One, I brought up the last time is it's important for you guys to come up with criteria by which you guys can make

decisions on approving or disapproving short-term rental applications. Right now you have very vague or minimal criteria and that's why I put down in here follow Robin Kaye's recommendation about putting a moratorium on considering any short-term rental applications.

My suggestion to you as a Planning Commission is just don't ask them can we do this, can we do this? You can instruct the Planning Department, the Planning Director to do this, do this, and they can in turn respond to you whether or not it is lawful to do that or not. But unless you make an affirmative statement that you want them to suspend all applications until you guys come up with a criteria I think, I think you're going to hear what Clayton just said.

Secondly and most important looking why do we live here? Why do some of us come back to live here? Why do a lot of people want to buy here or live here? It's because of this community and the uniqueness. For those of us who are born and raised here, there was a special culture when you lived with neighbors who have been there 20, 30, 40, 50 years. The danger of having too many short-term rentals around is you lose that cohesiveness of a neighborhood. And you as Commissioners have a responsibility to the community to help preserve that. And we have data showing that this is what the community wants to preserve. There were studies done on this.

That being said that's why this proposal was put together. And I'm not so marry to the number on the cap that's why I put down 30 to 45. I mean you could use percentage. I mean that's something you guys can flush out. But in terms of density, I mean that's why I made the recommendation about one per block. I mean and then you can see in my written testimony, I live within the 500 foot radius of three approved and two pending. Okay as I did a quick research I mean there's some, there's some fire access issues if the, if the street is cork crowded. And you know the one-way -- you know how crowded the one-way streets are so that's a consideration.

Enforcement. I mean we don't have a regulatory agencies here, and for many of the State and the County departments to enforce and monitor and to ensure compliance with laws and ordinances.

And then I went online and got the addresses of all the applications, and the approved and the pending ones. And two, only two of the 21 live on island. And to date we don't know who the property managers are for the other 19.

And regarding, regarding the unpermitted homes operating as short-term rentals, I would suggest you guys consider putting in some language that gives them x-amount of months to come into compliance. Now operating as a short-term rental means you're advertising, and you have a set price. Historically when we were growing up when people housed guests and hunters, I mean it was the kind kokua, kokua rent, right? You don't have a contract that you going hunt this weekend, you're going pay me x-amount. No, it's kokua. And I think that's one possible way to get around that issue that if you're going to advertise then it's no longer

the historical manner in which people share their homes with hunters and other guests. Because the ones, the ones that are advertised now are with VRBO and B&B. And they're charging upward of \$250, \$300, \$425. So I mean it's not, it's not cheap you know.

So please take all of those into consideration. And I agree having some language in there about reassessing in three years, five years, and adjust accordingly. Obviously if there's a glut of housing that are built then you may want to increase, increase the cap. But I think it's important again to, to be aware of the historical context and then you guys having rules so you can make a decision on whether you should approve or not approve. Thank you.

Ms. Green: Thanks Butch. Anybody have any questions for Butch?

Ms. Menze: I'd like to make a comment. I think that's a great idea, the historical context. And I think that's a great idea too that three and five year can come back three to five years and reevaluate the cap. Thank you Butch.

Ms. Green: Did you want to speak Lynn?

Ms. McCrory: Lynn McCrory, Pulama Lanai. I just want to caution you on how long you think it's going to take for Council to act on something. It is not quick. When I'm looking at something that the Council has to approve on the end, I use the time frame of two to three years. Seriously. Because they have other things that come up on the agenda. They have to be scheduled by the Committee Chair. They then have to work their way through. When we did the last three permits that had to have Council approval, it took almost eight months to even get it on the committee agenda. So while it may seem we can amend it later, it's going to take time to amend it. And that's all I really want to say, it's not quick. So when you're looking --

Ms. Green: You're talking about the amendment if we hit our limit and we want to amend it at that time, yeah?

Ms. McCrory: Even for you to go forward now will take . . . (inaudible) . . . So it isn't just a matter of I can make a statement here and then they'll draft a bill and then it will get there. I could take you two years. I would love to be different but it is not.

Ms. Green: Thank you for that perspective. Anybody have questions?

Ms. Menze: I have a comment too and that's the thing about rules is you think amend it, yeah right. Like Lynn was saying you know I worked for the State of Hawaii myself and I just retired, and worked for boating and we were always adopting new rules. And the problem with rules are they're great as a knee jerk reaction to everything. But then once you've create it you're stuck with it. And so you really have to have lots of conversation and think really hard about who you're benefiting with the rule and why do you wanted the rule and why it's going to be a stop gap for you. Because it's not an easy thing to make a rule, and it's not an easy thing to

live with the rule, and it's not an easy thing to change the rule when you don't like it anymore two years from now. So we really have to really have lots of discussion and think really hard on how we want to do that. Thank you very much.

Ms. Preza: Myles? Myles and then --

Mr. Saruwatari: Okay, Myles Saruwatari. I just want to make a couple of really quick comments. Setting a cap is you know a good idea in itself. But I think the Commission should be very careful of how they do it. Because no.1 you don't want to do it -- like she said you don't want it to be a knee jerk reaction to something. You want it to be long term to be effective okay. No. 1 you guys already have a cap, an artificial cap in place with the five year rule. And with the fact that you have to approve somebody if there's already two you have to, they have to come before you for approval, okay. Because a cap in itself in a way it doesn't solve the problem unless you really expand it. Okay suppose you set it at 35. Five years from now 10 people apply and they're all in the same block. Where does that leave you? You know that's a problem. Okay but so like I said right now you do have some artificial limits in place. Use that, take time, and work this though because you guys were talking about the hunters also. Where does that leave the renters to the hunters? Are they in limbo? Are they renters? What are they? You know so you got to consider all this before you set a cap. Because if you set a cap and you make it a harden fast cap, also you guys want the hunters to be able to rent, they can't because you've got the cap. So consider all this before you set a number. Take your time. You know this does not have to be an overnight thing. You have time. Like I said you have an artificial cap in place, use it. You know, you know because like even if you like right now if they have the 500 foot radius thing okay to short-term rentals. Well what happened? Well you guys allowed Alicia Alcantara to get a permit within that 500 foot radius. So what does that all mean? Does it mean the 500 foot radius thing is moot? So you got to consider if you want to pass something and you want to have the law, stick by it. You got to stick by it. I'm sorry I don't want to put down Alicia's application or anything like that, but the law is the law. And if you guys are going to create the law stick by it. We cannot just add exception, exception, exception. It creates too many problems in the long run. Okay, thank you.

Ms. Green: So Myles I'll just say that it's not a law about the Alicia. It's a recommendation that we have to approve it if there are two within the 500 foot.

Mr. Saruwatari: . . . (Inaudible. Did not speak into the microphone.) . . .

Ms. Preza: Thank you. Sorry before we close public testimony, I'm just going to read Andrea Ippen. She left a letter and some questions so I'll just get . . . (inaudible) . . . so it's on record.

So Aloha. So Andrea Ippen. I currently own a permitted short-term rental accommodation here in Lanai City. Business sense would dictate I ask the Committee to close all further applications. However my concern to make a dollar for myself is significantly outweighed by my concern of the vitality and economic prosperity of our community at large. Since the

closure of the Lodge at Koele and the intervening closure of Hotel Lanai our local businesses has suffered considerably. Tourism brings the necessary influx of economic and cultural interplay of the available hotel accommodations. The least expensive room for only two people runs about \$450 per night whereas short-term rental accommodations create a market for a variety of income levels to be able to visit our community. Which in turn it genders a diversity that makes Lanai special. Many potential tourists, be they're weekender, hunters visiting family members or the like, either cannot or will not choose to pay the going hotel rates. In order to attract those guests we need to be able to offer more affordable accommodations -- short-term rental is the answer. The Maui County standards consists of two permitted rentals within 500 feet. However it is important consider the following: Maui Molokai, the other two islands in our County, consists of neighborhoods that are quite spread out. Lanai housing developments conversely are quite concentrated. Maui County regulations allow for a fair number of rentals on the other islands. But due to Lanai's unique town plans those same regulations greatly restrict the total number of possible rentals here. It is clear to me that Maui County regulations do not permit a feasible quantity of short-term rentals that will attract the numbers and diversity of tourists necessary for our island's economic health and success. I hereby request this committee to consider giving variances in implementing Maui County policies as they were not written for nor do they truly apply to our unique town structure nor the needs of our community. Thank you for your time and then she added in something in writing.

If caps are considered necessary by this committee I ask that said caps be generous in their quantity and variances are granted due to proximity to each other while still creating and maintaining the spirit of neighborliness I have come to love about Lanai.

And then she asked a few questions including no. 1, is a cap necessary? We are past the influx of applications as the new ordinance has taken effect. In parenthesis five year ownership minimum. At this point how frequently will new applications come in?

And two, Lanai cannot be compared to Hana as Hana has affordable accommodations options while Lanai does not, like for example \$450 a night for a two person minimum. Is it right to cap Lanai according to an inequitable comparison?

So that's her testimony.

Ms. Green: Okay, at this point we will close testimony. Okay, are we all brain dead? Yes? Did we want to defer this and let everybody think about until the January meeting? I think we have a lot to digest. The other thing I would say is that you know at a certain point in time again if, if we make a decision, a recommendation, it will then open this up for, for public testimony, and we will have a hearing, and we will get a lot more feedback from the community as a whole. I think right now we're kind of operating in a bit of void because it's just us and a very few people who showed up today. So what do you all think? Do you want to just table this and think about until next --?

Mr. Delacruz: Just another comment of my opinion. I think Shelly already said it or maybe Jerry said it but I think every application for bed and breakfast and short-term rental homes for the island of Lanai should come to the Lanai Planning Commission.

Mr. Rabaino: Agreed. Is that a motion?

Mr. Delacruz: It's just a comment Jerry. We don't have to vote on it.

Mr. Rabaino: Make it.

Ms. Trevino: I think what Butch said was valid; having specific criteria. And I think that's kind of what Myles was kind of talking about too is we cannot just be wishy washy well because of this we're going to say yes, and because of that we're going to say no. I think that if we want every application to come to us we do need to have some, not set in stone rules per say, but there needs to be criteria. Because we just can't be like oh yeah we know you so yeah can. And, oh, no, you know, yeah I don't know, I know something about --. So I could conceivably agree with that. But I would not feel comfortable with that if we didn't have some sort of criteria that is fair. And fairness, fairness does not mean equal. I'm not saying that. Fairness could be that a Lanai resident maybe has some you know just like when you to the postal service, if you're a veteran you get extra points. But I'm just saying that some sort of criteria that will, that will take into some of these considerations that we're concerned about as far as our community and keeping, keeping this type of community that we want to have, yet still allowing ourselves to expand to be able to accommodate some of these other needs that we have as well. So that's all, that's what I wanted to comment on, on the idea of all --. Because bed and breakfasts already come to us, but as far as all short-term rentals coming.

Mr. Delacruz: Bed and breakfast don't come to us.

Ms. Trevino: They do. He said they do.

Mr. Delacruz: Okay. But anyway a criteria for approval is already set by the County okay. So theoretically they can approve a short-term rental home without us knowing about it. Yeah, that's why I want all applications for short-term rental home to come to the Lanai Planning Commission. We can work on the criteria later. But we don't want the County or the Planning Department approving short-term rental homes without us knowing about it. And then when the trigger is set and then somebody is forced to come to us, sorry, we reached the limit for you know --. Yeah you're too close to this other short-term rental home which we did not know about until you applied.

Ms. Preza: I, I agree with that. I'm also wondering if we want to have any comment on -- I know we were trying to finish up -- but any comment on what we were talking about pending, pending applications, if we would like to request that --? Or is that just --? We feel like we

haven't really made a clear decision on what we want we do with capping and such and what --. Can we pause that?

Mr. Rabaino: I want to make a motion that we, the Commissioners, have all applicants for short-term rental come before the Lanai Planning Commission, no. 1. No. 2, the second one is any other discussion to approve or disapprove will be on a later agenda. But number one priority would be the Lanai Planning Commissioner is requesting that all short-term rental will come towards the Lanai Planning Commission and make a determination from there. That's my motion to start this thing going.

Ms. Green: Does anyone want to second the motion?

Mr. Rabaino: Okay the motion is that all applicants come to the Lanai Planning Commission for short-term rental.

Ms. Menze: May I have a comment? I don't think we're ready to make a motion on that until we have further discussion. And as far --. I'm serious because we can't really make a motion on something that we're -- we don't really. I mean as much as we all really want to do that, yeah, but we as Commissioners need to still have a lot of discussion about our so called cap. But as far as what Chelsea was saying about weighing it out and being fair, we have to go by the law. If you decide that you want to make own criteria as a committee here, and we're going to do that, then they're not rules and then you open yourself up for a huge lawsuit because you've allowed a Lanai resident in but you didn't let someone else in when we're in America and we're all the same.

Mr. Rabaino: Sherry, we going over and over that. She's been mentioning that. That been mentioning that. All I'm saying is for them as Planning Commissioners, yeah, no. 1 all applicants come to Lanai Commissioners. End of sentence.

Ms. Green: Okay do we have a second on the motion?

Mr. Delacruz: I second it with a comment. Yeah, the comment is when an application is submitted to the Lanai Planning Commission that way we know about, okay. The criteria that we would be applying is the Maui County criteria that they would apply in our absence if we don't know about it. So if there's no trigger set, if there's no 500 foot trigger set, if there's no other trigger set we won't know about it. So theoretically there could be a splatter of short-term rental homes before the next application comes to us.

Ms. Green: That's not what he's saying, John. He's saying all, you know, all applications comes to us. That's his motion. Not all short-term rental homes, not --. In other words the County cannot approve them on their own, they would all have to come here. That's his motion, okay? Okay, does anybody want to second that?

Mr. Delacruz: I did.

Mr. Green: Okay, John seconded it. All right, do we need further discussion? Okay, all those in favor of the motion raise your hand. We have three. Those opposed? Two, and we have two undecided that means you approve so then the motion passes.

Mr. Delacruz: . . . (Inaudible. Did not speak into the microphone.) . . .

Ms. Green: Okay if you abstain it's a vote for the motion if you realize that. Okay so do we need to do this vote again? All right, those in favor of the motion which would require that all short-term rental applications come to the Lanai Planning Commission...period. Okay, those in favor of motion raise your hand please. Four. Five. And those opposed? Three. Okay.

Mr. Rabaino: Five wins.

It was moved by Mr. Gerald Rabaino, seconded by Mr. John Delacruz, then

VOTED: for all Lanai STRH applications to come before the Lanai Planning Commission.

(Assenting: R. Catiel, J. Delacruz, S. Preza, G. Rabaino, S. Samonte)

(Dissenting: C. Green, S. Menze, C. Trevino)

(Excused: M. Martin)

Ms. Green: Yes Jerry. Okay, so the motion passes five to three.

Ms. Preza: So can I make a motion now to defer this agenda item for further discussion until our next meeting?

Mr. Rabaino: I second.

Ms. Green: All those in favor? Aye. Okay.

It was moved by Ms. Shelly Preza, seconded by Mr. Gerald Rabaino, then unanimously

VOTED: to defer Agenda Item D.1.

*(Assenting: R. Catiel, J. Delacruz, S. Menze, S. Preza,
G. Rabaino, S. Samonte, C. Trevino)*

(Excused: M. Martin)

Ms. Green: No you can't, you've got one more here, but we can defer that too. I do want to say one thing. Since we have deferred this folks there were remember now it's in three parts all right? So I want you to be thinking about all three parts for next time.

Mr. Rabaino: Okay what's the third part?

Ms. Green: All right, the three parts are a cap with 500 foot radius rule for notifications and

well we already did the one all apps come to Lanai Planning Commission. The other thing that we discussed was suspending all, all future applications until we have this which you know we discussed. And then criteria. What criteria would you have . . . (inaudible) . . . ?

Mr. Rabaino: Suspend all applications.

Ms. Green: Yeah, not legal? Okay.

Ms. Menze: . . . (Inaudible. Did not speak into the microphone.) . . . I don't think we can ask legally for those applications to be suspended. I don't think we have the power for that.

Ms. Preza: Right, I think Caron was just --. I think Caron was just reiterating that these are things that we talked about, that we can think about, and then next time we'll talk more about because I think everyone's trying to go home.

Mr. Rabaino: Agreed.

2. Discussion of allowing no building setback in the Residential District in Lanai City for carports, garages and storage buildings. (Previously scheduled for the November 28, 2018 meeting.)

The Commission may determine whether the front, side and rear yards should be zero feet for carports, garages and storage buildings on properties in Lanai City that are zoned Residential. The Commission may then direct the Planning Department and the Department of Corporation Counsel to draft such a bill for public hearing at a future Planning Commission meeting.

Ms. Preza: So is it possible for me to just I say you know can we defer the next agenda item, D.2., until the next meeting? Everyone, yes? Everyone? I make a motion to defer agenda Item D.2. until the next meeting.

Mr. Rabaino: I second the motion.

Ms. Green: All favor? Okay, it passes unanimously. And I believe that does it. It is now 8:18.

It was moved by Ms. Shelly Preza, seconded by Mr. Gerald Rabaino, then unanimously

VOTED: to defer Agenda Item D.2.

*(Assenting: R. Catiel, J. Delacruz, S. Menze, S. Preza,
G. Rabaino, S. Samonte, C. Trevino)*

(Excused: M. Martin)

E. DIRECTOR'S REPORT

- 1. Reports from members who attended the Native Hawaiian Law Training on December 7, 2018.**

Mr. Yoshida: Well, I guess under the Director's Report there is a report from members who attended the Native Hawaiian Law Training on Friday. You know I don't know if you want to defer that to the next meeting also.

Ms. Green: Please.

Mr. Yoshida: So the three people on this side attended.

Ms. Menze: It was a terrific conference. I learned a lot.

Ms. Green: We'll hear about it next month.

Without any objections from the Commission, Agenda Item E.1. was deferred.

- 2. [Open Lanai Applications Report](#) as distributed by the Planning Department with the October 17, 2018 agenda.**
- 3. [Open Lanai Applications Report](#) as distributed by the Planning Department with the November 28, 2018 agenda.**
- 4. [Open Lanai Applications Report](#) as distributed by the Planning Department with the December 12, 2018 agenda.**

Mr. Yoshida: Okay we do have -- we have submitted our list of Open Applications. It does show that we several short-term rental home permit applications that are pending.

And I guess we come to the end of the calendar year so we would like to wish all of you a happy holiday season, and we'll see you after the first of the year. We have some loose ends to tie up during the year.

The Commission did not have any questions/comments regarding the open Lanai Applications Reports.

- 5. Agenda Items for the January 16, 2019 meeting.**

F. NEXT REGULAR MEETING DATE: JANUARY 16, 2019

G. ADJOURNMENT

Mr. Rabaino: Clayton, I get one. Is it legal to have a short-term rental sign behind the hedges when it's supposed to be in the front? Because I have over here the address of 9 --?

Ms. Green: Jerry?

Mr. Rabaino: Yeah.

Ms. Green: Do you want to take this up personally?

Mr. Yoshida: Yeah, after the meeting, after the adjournment, then you can tell me about it.

Ms. Green: And thank you for the holiday wishes, and we wish you all a very wonderful holiday time as well. And thank you for your patience and coming and spending the time with us.

There being no further discussion brought forward to the Commission, the meeting was adjourned at 8:20 p.m.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

PRESENT:

Roxanne Catiel
John Delacruz
Caron Green, Chair
Sherry Menze
Shelly Preza, Vice-Chair
Gerald Rabaino
Shirley Samonte
Chelsea Trevino

EXCUSED:

Mililani Martin

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
David Raatz, Staff Planner

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Eva Blumenstein, Department of Water Supply
Richelle Thomson, Deputy Corporation Counsel (on-call)