

MINUTES

BUDGET & FINANCE COMMITTEE

July 15, 2009

A meeting of the Budget & Finance Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Daryl W. Kaneshiro, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, July 15, 2009, at 9:37 a.m., after which the following members answered the call of the roll:

Honorable Bill "Kaipo" Asing
Honorable Tim Bynum
Honorable Dickie Chang
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro
Honorable Lani T. Kawahara
Honorable Derek S. K. Kawakami

Minutes of the June 10, 2009 Budget & Finance Committee Meeting.

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Chang, and unanimously carried, the Minutes of the June 10, 2009 Budget & Finance Committee Meeting was approved.

There being no further business, the meeting was adjourned at 9:38 a.m.

Respectfully submitted,

Wilma Akiona

Wilma Akiona
Secretary

MINUTES

ECONOMIC DEVELOPMENT/HOUSING COMMITTEE

July 15, 2009

A meeting of the Economic Development/Housing Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Dickie Chang, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, July 15, 2009, at 9:38 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro
Honorable Derek S. K. Kawakami
Honorable Bill "Kaipo" Asing, Ex-Officio Member
Honorable Lani T. Kawahara, Ex-Officio Member

Minutes of the June 24, 2009 Economic Development/Housing Committee Meeting.

Upon motion duly made by Councilmember Kaneshiro, seconded by Councilmember Bynum, and unanimously carried, the Minutes of the June 24, 2009 Economic Development/Housing Committee Meeting was approved.

There being no further business, the meeting was adjourned at 9:38 a.m.

Respectfully submitted,

Wilma Akiona
Wilma Akiona
Secretary

MINUTES

PARKS/TRANSPORTATION COMMITTEE

July 15, 2009

A meeting of the Parks/Transportation Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Lani T. Kawahara, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, July 15, 2009, at 9:38 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Daryl W. Kaneshiro
Honorable Lani T. Kawahara
Honorable Derek S. K. Kawakami
Honorable Bill "Kaipo" Asing, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

Minutes of the June 10, 2009 Parks/Transportation Committee Meeting.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Kaneshiro, and unanimously carried, the Minutes of the June 10, 2009 Parks/Transportation Committee Meeting was approved.

There being no further business, the meeting was adjourned at 9:39 a.m.

Respectfully submitted,

Wilma Akiona

Wilma Akiona
Secretary

MINUTES

PLANNING COMMITTEE

July 15, 2009

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Jay Furfaro, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, July 15, 2009, at 9:39 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro
Honorable Lani T. Kawahara
Honorable Derek S. K. Kawakami
Honorable Bill "Kaipo" Asing, Ex-Officio Member
Honorable Dickie Chang, Ex-Officio Member

Minutes of the June 10, 2009 Planning Committee Meetings

Upon motion duly made by Councilmember Kaneshiro, seconded by Councilmember Bynum, and unanimously carried, the Minutes of June 10, 2009 Planning Committee Meeting was approved.

Minutes of the June 24, 2009 Planning Committee Meeting

Upon motion duly made by Councilmember Kaneshiro, seconded by Councilmember Bynum, and unanimously carried, the Minutes of the June 24, 2009 Planning Committee Meeting was approved.

The Committee proceeded on its agenda items out of order as follows and as shown in the following Committee report which is incorporated herein by reference:

Bill No. 2318 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUA'I COUNTY CODE 1987, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (Farm Worker Housing)
[This item was deferred.]

JAY FURFARO, Planning Committee Chair: Now I want to acknowledge a sequence in the Planning Committee today. We will be hearing Bill 2318 first, then we will be going to Bill 2317, and then we will be going to Bill 2291. I would like to make a few statements as the Committee Chairman on the intention...did we have a phone just go off...on the process here. First and foremost I'm going to have a member of the planning committee who was assigned to this...planning department who was assigned this particular bill to give us an overview of the revised bill that was sent back. Do we, in fact, have a member of the Planning? He...I saw him earlier. Mr. Clerk...okay. Secondly, I'm going to ask members who have assembled amendments for the bill from last week's public testimony—we had three hours of public testimony—I'm going to ask members to circulate their amendments. And for the audience, I want to make...note that I'm asking to have it circulated so that everyone will have an opportunity to grasp what particular recommended changes came from various members of the council. The plan is then to probably take a caption break so that we can, in fact, have those amendments looked at by the audience. When we get back from the break, I will then allow public testimony, which includes the amendments that were circulated. Make sure to point out that I am not asking for these amendments to be introduced for a vote from the council.

I'm asking them to be circulated so that everybody has an opportunity to look at some of the opportunities. I will then ask, after public testimony, to defer the bill for the next committee meeting so we can actually vote on the testimony and the amendments that had been submitted. Hopefully, following that the bill will go to the full council. I hope you all can follow what I plan to do as far as an overview of the bill starting with the planning department. And I will now suspend the rules for the planning department to give us a brief overview on the bill changes and recommendations that came back in 2318.

There being no objections, the rules were suspended.

BILL "KAIPO" ASING: Mr. Chairman?

Mr. Furfaro: Yes, sir.

Mr. Asing: Can I make a short comment?

Mr. Furfaro: Yes, you may.

Mr. Asing: I just want to take this opportunity, I'm sure both Councilmember Chang and myself, I'd like to thank both, not both, Louisa Wooton, Scott Pomeroy, and Bill Robertson for the tour that we took yesterday of the Moloa'a Farm area and also Louisa for the visiting the farm. I just want to thank you for showing us the area. Dickie.

DICKIE CHANG: Thank you, Chair. I want to echo that also. It was extremely enlightening and thank you for introducing us to your friends and fellow farmers out there as well as some of the workers that we had an opportunity to chat with. Thank you very much. Thank you.

Mr. Asing: Thank you, Mr. Chair.

Mr. Furfaro: Thank you, Chairman Asing, Member Chang. On that note, Pua, will you please read item 2318.

Wilma Akiona, Council Services Secretary: Yes, Bill No. 2318, a bill for an ordinance to amend Chapter 8, Kaua'i County Code 1987, relating to the comprehensive zoning ordinance - farm worker housing bill.

Mr. Furfaro: Thank you. The rules are suspended. Gentlemen, would you like to give us a short overview?

IAN COSTA, Planning Director: Aloha kakahiaka, Councilmembers. Ian Costa, Planning Director, for the record. And I have with me Ka'aina Hull who worked very hard to analyze the original bill and provide recommendations that the Planning Commission endorsed and approved and is before you. So any detailed questions, I would ask Ka'aina to help answer those for you.

Mr. Furfaro: You...are you going to let mister...(inaudible)

Mr. Costa: I guess pursuant to what you asked, as far as an overview, maybe we'll just kind of briefly touch upon some of the issues that we encountered.

KA'AINA HULL, Planner: Good morning, Council.

Mr. Furfaro: The floor is yours. Again, to the planning director, I want to share with you my expectations of the Planning Chair is to give every time we have a planning item, to give you an opportunity to express planning's concerns.

Mr. Costa: Sure, thank you.

Mr. Hull: To start off I guess I'll just...one thing that came up on the last day of the hearing was the conclusion of the director's report. The commission asked that special notice be given to it when it was sent up to the council. So I'll just begin by reading that conclusion specifically. "While the department concludes that the draft bill should be approved subject to the recommended amendments, the department has reservations with the bill, specifically with the execution of said bill's enforcement. To allow landowners to build housing over and above the maximum allowable residential density allotted under the County Code is an advantageous provision for landowners that could very well open the door to misuse or abuse. Thorough scrutiny of all applications and operations will require a level of scrutiny for which the department may not have the necessary resources or staffing. In the event that misuse, abuse or noncompliance is discovered, bringing landowners and their respective uses into compliance, particularly concerning housing, is historically a contentious and at times calamitous process that demands vast amounts of time and resources...

Mr. Asing: Excuse me.

Mr. Hull: ...and in many cases remains...

Mr. Asing: Excuse me.

Mr. Furfaro: One moment.

Mr. Asing: You have that in...in the report?

Mr. Hull: Yeah.

Mr. Asing: What you're reading from?

Mr. Hull: Yeah.

Mr. Asing: Yeah. What...what item is that?

Mr. Hull: It's going to be page 17 of the Additional Findings Packet submitted to the commission.

Mr. Asing: Page 17?

Mr. Hull: Correct.

Mr. Furfaro: Page 17, Additional Findings.

Mr. Hull: Correct.

Mr. Furfaro: That's where you're at. Thank you.

Mr. Asing: Thank you.

Mr. Hull: Bring landowners and their respective uses into compliance, particularly concerning houses, is historically contentious and at times a calamitous process that demands vast amounts of time and resources and in many cases remain unresolved for several years. Enforcement of land issues is not restricted exclusively to zoning laws. It is and can be further reinforced through penalties and through the county's real property tax structures. Furthermore, adequate provisions to authorize the county to demolish and remove vacant or unocc...and/or occupied dwellings that were permitted but ceased from operating as a permitted use should accompany the proposed bill. These concerns are not to be construed as reasons for denial, but they should be examined and considered when reviewing and taking action upon the proposed draft bill. As commission members stated why they wanted it drawn out specifically was because they were cognizant, as I'm sure you all are, of the many abuses that occur on ag lands and the potential for abuse that's...could occur within this...within the bill. And to touch on that, there are two...I'd say two key parts of the bill that the department focused on, the first part being the use permit review. As originally proposed, it was somewhat of a hybrid use permit in which if they met the standards of the bill, the use permit standards would not be required to be met. And these permit standards have generally to do with the safety, health and welfare of the community as well as the neighbors. It was...it was important that that use permit review and its full authority be returned when reviewing this app...in reviewing applications for farm worker housing. And the second is the gross sales standard. And the gross sales standard is...is really the lynch pin of the bill. The original standards that were proposed: the 50% income for, I think, it was three years and the 75% of the property being used for agricultural activities. While theoretical...theoretically sound, in reality trying to actually enforce those policies, really the department would be unable to really, with those tools, differentiate between say a genuine farmer and a gentleman farmer. There's so many ifs ands or buts that could occur within what I guess you'd refer to as a floating standard really, yeah? I mean, when you have 75% of a property depends how much of that property is going to be used is if it has...if it's a 5-acre property, is he farming 3 acres; if it's a 13,000-acre property or a 10,000-acre property, it's going to require that the property owner be actively farming 7500 acres, and it...co...and..and that 7500 acres would constitute the same amount or warrant the same amount of housing as a 5-acre property with three acres in cultivation would warrant. So having those floating standards really don't help us enforce and protect against abuse. And...and on top of which to go to the 50% income...in the report it...it drew out about how that could potentially hurt small farmers. The 50% income, say a farmer who has a spouse who is working outside of the house, I mean, the farmer could be earning say \$50,000 on the farm which could very well warrant farm worker housing and to have an employee on staff living on the property. However, their spouse could be earning \$100,000 - \$150,000 and this would disallow that small farmer to access employee housing. So having those floating rates or floating standards which are by design to be inconsistently applied, really hinder the process and...and like I stated can further allow abuses to occur. And so just to return, I mean basically the use permit which doesn't seem to be too controversial, returning it to the use permit standards. But as I understand it and I've been watching the proceedings, the salary amount or, excuse me, the gross sales requirement has been somewhat controversial. But having that dollar figure allows us to differentiate between the legitimate farmer and the gentleman farmer and...and...that...that is a main point we'd like to drive home.

Mr. Furfaro: Thank you very much. I would like to take some time to share some information with my colleagues and yourself as well. Those are all excellent points about controls and quality measurements. I had requested through our office of economic development the most current statistics we could

have on farming on Kaua'i and I believe some may have seen this material, but I'll circulate it again. That...and these are 2007 farm statistics on Kaua'i that make up 748 farms on the island. The fact of the matter is...and this includes ranching...it totals about 151,000 acres. It also includes the fact that there are large cane and other cultivated in...institutional crops. But the median size of the farm, in other words half of the farms are larger, half of the farms are smaller, is five acres on Kaua'i. We also know that 65% or 64.6% of the farms on Kaua'i are nine acres or less. The fact of the matter is they are broken down up to the larger ranching and sugar operations, but the net cash income from these operations on the average farm represent approximately the \$10,475. These are from the KEDB as well as confirmed by our office of economic development. May I have a... may I have copies of these passed out to the individual councilmembers as well as a copy for the planning department and leave some copies here for the public. So there...there is some statistical information here. Now, I'm going to open up some questions from the members here, if I may? Mr. Kaneshiro.

DARYL W. KANESHIRO: Thank you, Chair. You know, as I was going over the bill and I know you touched on that when you first talked, Ka'aina, was about the part where we talked about the subject property in order to have farm worker housing has to use up their density first, their housing density or whatever residential density that is allowed on the parcel. If...if...I'm taking it from a farmer's perspective. You know, what we're trying to do is really encourage these people to start building residential densities first rather than to continue farming...continue farming where they're farming. But what we see here with a bill like this is saying that we are now encouraging the farmer to get his son or to get someone to start building all the densities first before...before because it says here...the way it says that you need to maximum permitted residential densities first. You have to build all of those first before you even qualify for a farm worker housing. So, I'm not certain how this is really helping the farmers when you're encouraging them to go ahead and build a house on the lot first when the farmer really wants to try to farm first and make a living or have his kids make a living first and then build. So, I'm not certain, you know, if Ian or you could answer that as to the reason why it specifically states that after your maximum permitted residential densities are built then you would now qualify for a farm worker housing. It's not saying that you can use that density to qualify for farm worker housing. You're saying that after your residential, you know...

Mr. Costa: Yeah.

Mr. Kaneshiro: ...permitted densities are used, now you can come in and get a farm worker housing.

Mr. Costa: You know one thing I would add on that is we have a number of cases where...on ag land where...structures are applied for, a barn, storage structures that actually are used as houses until either the main house can be built or...and in many cases...don't...aren't converted or...there's a long process to get them to actually use the structure as was permitted. And I think that's just one of the concerns we have because the farm worker housing would be additional housing density that would be allowed. And to then allow ones to capitalize on that prior to the right they currently would have to produce a house, whatever form it is, would just be...would just be against some...

Mr. Hull: Just...just to add to that too, I think some of the...I understand your concerns, Councilman Kaneshiro, but...and then that could very well happen. Could it stimulate people to build out their densities before applying for farm worker housing? It could stimulate that, indeed. But our concern was

mainly for...the intent of the bill seemed to go for the farmers who are in dire need of housing but don't have it. And so what our aim was with...with that particular provision is to say if you do have it, you will first use your farm dwelling density to put your farm workers in. You can't land bank or density bank these things for later use or for sale as residential multi-million dollar estates or whatnot. You're going to use the actual densities you have to house your employees as they're intended to do under...under HRS law. And...and that was the main principle or foundation for that provision.

Mr. Kaneshiro: The...the...the problem about this bill is that when you read it and you're looking at the bill itself, you know, my interpretation of this bill is that you can't even build a farm worker housing yet until you build a residential density first. Then now you can do farm worker housing. First...the way the bill reads right here it says to be eligible for farm worker housing only when all of the subject property's respective maximum permitted residential densities are built, then you can come in for farm worker housing. So this...this...the way it's written does not give the farmer the opportunity to do exactly what you're saying.

Mr. Costa: No, I think you need to remember that the whole reason the ag zoning has density is for farm dwellings; it's for farm workers.

Mr. Kaneshiro: Yeah, but...

Mr. Costa: So use that first.

Mr. Kaneshiro: Ian...

Mr. Costa: That's all we're saying.

Mr. Kaneshiro: I understand what you're saying. I got three kids, okay. Eventually one of those densities when one of my sons or my daughters or whoever can afford to build a home will then put a residential housing on it. At the same time, I'm intensively farming to try to make a living to send these kids to college to get them an education and I need worker housing. So you tell me that now I'm going to have to design a house, put a house there, design a house for the future density for one of my kids in order to provide a worker housing?

Mr. Costa: It can be the same house we're talking about as temporary. It doesn't have to be...

Mr. Kaneshiro: But...but you know when you come in...

Mr. Costa: ...the 5,000 square foot...

Mr. Kaneshiro: Okay, I understand that. But you know when you come in for residential density, the code applies differently as comparable to a regular farm dwelling housing now...because basically what you're saying in this bill is that you just meet health requirements for a farm worker dwelling housing...and you only can go 600 square feet or 1200 square feet, that's the max.

Mr. Costa: Well I mean I...I know and you...the example you painted is...has to do with your family, but I would say it's not out of the realm...

Mr. Kaneshiro: Well...it's just an example. I just...

Mr. Costa: ...for someone to say, okay, well, I want to sell...I want to...my big plan is to sell off five...four CPRs. So I need five extra worker housing so that I don't give up that potential asset.

Mr. Kaneshiro: Okay. I have another typical example. You have a 5-acre parcel. You're doing extensive, extensive taro growing on a 5-acre parcel or a 10-acre parcel. On a 5-acre parcel currently densities you're allowed three, right, under the comprehensive zoning ordinance?

Mr. Hull: Sure.

Mr. Kaneshiro: So you got a farmer there who has a house who's doing extensive, extensive work trying to farm his land in taro 10 acres or whatever it is, but in order for him to get a farm dwelling housing, he first has to build out his residential densities on...the three houses on that 5-acre parcel and you're taking away ag land for him to do that while we're trying to encourage farmers to stay in farming.

Mr. Costa: Well, I...I think it's still a perception. All we're saying is that you have, by right, three available to you. Why would you need to ask for more if you're not even using the three?

Mr. Kaneshiro: Okay...okay, I got it. This...I think I'm working on an amendment that can address that. I just needed to see what was your thoughts as to why, you know, first fulfill the densities and so forth and do that. But I may have an amendment that can possibly address that concern. So we...so, you know, we'll...we'll work on it. I...I just...was trying to give you some of the reasons that some of the farmers would face with the way this bill is written just the way it's written.

Mr. Costa: Sure.

Mr. Kaneshiro: So I think with that and what you have said, I...my amendment may be able to address some of that. Thank you.

Mr. Furfaro: Okay, thank you, Mr. Kaneshiro. And just before I recognize Mr. Bynum, just to again some comments that I made earlier, should we circulate some amend...amendments, I want to make clear that these are not amendments that are introduced and later when we have actual dialogue, it will be at the following meeting if that amendment actually gets introduced. The rules do not let us...allow us to testify on the amendments until they're actually introduced. My hope is to circulate the amendments so everybody has an opportunity to digest them. Mr. Bynum, the floor is yours.

TIM BYNUM: Yeah, I just wanted to stick with the density (inaudible).

Mr. Furfaro: Go right ahead.

Mr. Bynum: I wanted to stick with the density to begin with and so I have a couple of questions. One is when there's a CPR that has different owners and one of them is farming, has used their density, would this rule apply for the lot where the density hadn't been used because it's one parcel, right? I didn't ask that clearly. Say you have three CPRs on one parcel, but three different

owners. This one is farming and they've built their farm dwelling and they're farming and they want worker housing. Do they...would this require the other two owners to build out their density prior to this lot?

Mr. Furfaro: Excuse me, Mr. Bynum, would you yield the floor to me just so I can get some clarity on your question?

Mr. Bynum: Sure.

Mr. Furfaro: So I think what Mr. Bynum is saying, you have a CPR parcel that has five units. The five units have been sold. One of those units is, in fact, actively farming but a particular individual that bought one of the CPRs has not developed his CPR unit yet. Your question is will all the density on the whole parcel, the tax key parcel, have to be developed first. And Mr. Bynum, thank you for, in my mind, getting clarity to your narrative.

Mr. Costa: Let...let me just say that in our review that is typical for a CPR to get approval from the real estate commission, a review and comment. That's one of the things that we are persistent on that no more units be created than available density. So, but...but by doing that and...and subsequently endorsing or concurring with the proposed CPR, we are, in fact, committing that density. It is a problem that led into that proposed amendment and is clearly one of the abuses that we see. I mean, you have a large parcel that is CPR'd into five units. Four of them are up for sale and one of them needs additional housing.

Mr. Bynum: Yeah. I'm...I didn't...I'm still confused.

Mr. Costa: Although I'd be...and I'm...and when we talk about parcel and...and 50 or 75% of the parcel being used, that might be a difficult example. Obviously if you have five units, there's going to have to be some coordination amongst five units to be able to farm 75% of that property.

Mr. Bynum: Keep it simple for me.

Mr. Costa: Because it cannot be 75% of that unit.

Mr. Bynum: Okay, to keep it simple for me, let's say there's three C...three units, CPR units on one lot, right. I own Lot A and somebody else owns lot B and C. There's a total of three pieces of density on the entire parcel, right. But I'm on Lot A, I've built my house and I'm farming, right, and I'm farming that intensely and I want farm worker housing. I gotta wait for the other owners to build their properties and use that density before I can get farm worker housing? Is that what I'm hearing?

Mr. Costa: Well, to some degree by the...what I tried to say is the creation and our endorsement of that creation of the CPR has already committed that density to the other units.

Mr. Bynum: Right, but I'm farming this unit and I need farm worker housing.

Mr. Costa: So obviously you would need...

Mr. Bynum: Now my fate is subject to the other owner, right?

Mr. Costa: Well, that needs to be resolved. That's one of the inherent problems with CPR.

Mr. Bynum: And is there a mechanism to resolve that?

Mr. Costa: I would think...that needs to be something that needs to be addressed in the bill, whether you recognize individual units and how you...those standards apply to individual units or the overall parcel.

Mr. Furfaro: I'm going to go back to Mr. Kaneshiro and then Councilwoman, did you have a question, you'll be after Mr. Kaneshiro.

Mr. Kaneshiro: Basically, it's more of a clarification rather than a question. Under the real property tax keys, each CPR has a separate unit addressed to it. Each CPR can also be ag dedicated separately and each CPR is easily identified as even having just one density or two densities. So, I don't see it as a big issue in this process. I think if we reflect back and look at the tax map or go back and get the real property tax identification number of the property, you will find that it will be CPR Unit 1, CPR Unit 2, CPR Unit 3, and at the same time through the ag dedication bill, if you're the one CPR Unit 3, be an intensive farmer and you...even though it's all part of a lot of record of a large parcel, you can simply go in there and apply and say that, you know, we want to take this parcel out of ag dedication. But it is identified as separate units. So I don't...I don't really see this as a problem. I...I see the question he's trying to ask is that yeah, now that I've built my density on CPR Unit 1 and Unit 2 hasn't, can I really get...you know, worker housing? And if you go back to the tax map keys, the question probably can be easily be answered yes, yes...

Mr. Costa: Just bear in mind...

Mr. Kaneshiro: ...because you are identified as a separate lot with a density.

Mr. Costa: Okay, although that is done with respect to real property, bear in mind that the CZO's provisions and standards are applied for parcels of record.

Mr. Kaneshiro: Correct, you're correct.

Mr. Bynum: That's my concern.

Mr. Kaneshiro: You're correct. But at the same time, the CZO parcels, you know, allows you certain densities for each unit, whether it's...

Mr. Costa: Oh, all the setbacks and...

Mr. Kaneshiro: Correct, all of those playing in.

Mr. Costa: ...those are all (inaudible) parcels to property lines.

Mr. Kaneshiro: So, I...I...I don't really see that as a big factor what I say as we move trying to establish this bill to address that I think. It's just my comments that I wanted to add to Mr. Bynum's question, so.

Mr. Furfaro: So, Kawahara the floor is yours, then, we'll go to Mr. Asing.

Mr. Asing: Has...has...has that been cleared? I...I don...I don't think there's a...you gave an answer, Ian. Am...am I correct? You...you said that it needs to be addressed in the bill and right now the bill as it stands does not address the question that was raised by Councilmember Bynum. Am I correct?

Mr. Costa: As the bill, it...we, I believe, have not recognized individual units. So as it stands right now, yes, that could be a problem.

Mr. Asing: Any reason why you didn't address that on a commission level since it is a problem? I think Councilmember Bynum brings up a ...a good valid point and an additional question to that is...is are those parcels tied to the association because I believe that those parcels that come under the CPR would be I guess tied to an association. Am I correct?

Mr. Costa: That would be based in the CPR documents for the overall parcel, right.

Mr. Asing: Yes, so that's another layer that needs to be considered and have you considered that and is that...does that need to be cleared also through the association?

Mr. Costa: I believe that it would need...also need to be addressed in the bylaws as CPRs are created to define...typically they define what the rights are of individual unit owners and would certainly need to be, I would imagine, addressed. Otherwise, it'd be difficult to do if not addressed in the bylaws because you would ultimately need the consent of the other owners unless provided for up front.

Mr. Asing: So, is the bill designed to...to override the...the association?

Mr. Costa: I'm not certain that it is.

Mr. Asing: Thank you.

Mr. Costa: I think you would need a legal opinion.

Mr. Furfaro: I...okay, I'm going to follow up on that and I'm going to make it very clear. Years ago when I was on the council, we had this challenge where associations of apartment owners on ag land could not, through their bylaws, prevent agricultural activities.

Mr. Costa: Right.

Mr. Furfaro: Right? That...that went all the way up to the State. That if they had a CPR unit that was zoned agricultural, they had an entitlement to do agricultural activities. I think the question that we're dealing with here from Mr. Bynum and continue nurturing here is first of all those protective covenants and the bylaws within those associations are first subject to county zoning laws. Are they not?

Mr. Costa: Yes.

Mr. Furfaro: So therefore, if we zone something ag or open that could allow agriculture, we need to reference the legal challenge that we had a few years ago back because we...we don't want to be inconsistent with that

determination. And I think this was very specific about the condominiumization of the ag parcel in 'Aliomanu. I also need to point out that it is my understanding that although loosely interpreted by the water department, when you CPR a parcel you are supposed to have a source for water for farming. Right? I...I believe that's a condition?

(Inaudible.)

Mr. Furfaro: What?

Mr. Bynum: I don't know that.

Mr. Furfaro: But like I said earlier, it's very loosely interpreted.

Mr. Bynum: Yes, yes.

Mr. Furfaro: So you know, maybe those are some of the areas that we need to tighten up on...

Mr. Costa: I'm not certain that the water department is involved or cleared before the real...real estate commission makes a decision.

Mr. Furfaro: I...but I do understand that agricultural land, the intent. Because this is...you know this is a bigger part of, you know, making farming successful on Kaua'i. In fact, we...we're talking about one component here: workforce and being able to house them. But we have issues for successful agriculture here about marketing. We have issues here about successful agriculture that deals with before we get to the important ag lands, we should be identifying where water sources are. So, you know, there's many things that should have been, in my opinion, I think the Chairman alluded to that, that should have been reviewed when the bill was at the commission level. But, you know, perhaps I need to follow up with some legal interpretations.

Mr. Asing: Yeah, Mr. Chair, can...can I follow up because...

Mr. Furfaro: Oh, go ahead, sir.

Mr. Asing: And the follow-up is that I guess you're making reference to the Wooton case...

Mr. Furfaro: I am, sir.

Mr. Asing: ...in 'Aliomanu.

Mr. Furfaro: I am.

Mr. Asing: Now, I did not follow the case to its final resting place so to speak, but...so I do not have the information. Was that case settled?

Mr. Furfaro: I...I have a belief that the Wootons continue to farm and have overrode the association bylaws that said in this covenant these activities were not allowed. I believe they were successful.

Mr. Asing: Yeah, I...I'd like to have a copy of that because I think that's...that's...that's an important...important case because what you're talking about is an individual who has ownership of a...one unit of the CPR doing,

you know, his trees and was told that he could not do it by the association and therefore the challenge now. I got my trees; the association is saying no, you cannot, cut it down. So what was the final ruling from the courts is the question that I have. I did not follow up through...

Mr. Furfaro: And I'll pursue...I'll pursue that with the county attorney, yeah. The...the rationale was the trees were an important compone...component of a farming enterprise because it provided a windbreak. So...

Mr. Asing: And at...

Mr. Furfaro: I...I'll follow up with this question.

Mr. Asing: Yeah and at the same time you have the association that controls all of those units that their bylaws does not allow for those trees because it blocks view plane. So there's the association on one hand and there's the farmer on the other hand. Who has the control? So with that, thank you.

Mr. Furfaro: And...and I only mentioned 'Aliomanu because I think it's a case study that should be very close to the planning department as to the outcome, but I will pursue the question with the county attorney.

Mr. Costa: And...and CPRs have that inherent problem because it's a marriage of multiple owners, and unless the bylaws specifically spell out what those rights are and aren't, then they depend on each other.

Mr. Furfaro: I...I understand, but for a developer to override the county zoning code is really the question we want to get clarified here and I will pursue that. I made certain assumptions that it was resolved, but do protective covenants and CPR bylaws supersede county zoning ordinances and I'm going to go to...I'm going to go to Kawahara and then to Mr. Kawakami.

LANI T. KAWAHARA: It's going to be about density also, this question.

Mr. Furfaro: Go ahead.

Ms. Kawahara: Thank you. I just wanted to say I do appreciate and it is warranted that we do want to protect against fake farms and mansions and stuff like that. So the detail that we're going into is important and...and the stances of the planning com...planning department is very important. What I'm wondering about about this density, when you say density has to be right...the residential density has to be reached before farm worker housing can be established, is that a policy, a written policy or is that a practice?

Mr. Costa: By zoning, you have an inherent number of dwellings that you are permitted to build.

Ms. Kawahara: Yes, does it ha...

Mr. Costa: This is a supplement to that.

Ms. Kawahara: Does it tell you in what order to build and when they need to be built? So, do you...do you know what I'm saying? So you have...you're saying it's committed to have five...five...five whatever, ho...density, right?

Mr. Costa: First one first.

Ms. Kawahara: Five density, first one first. So, I'm asking do you have to go...are you going to have to go tell them that you have to do it in this order or can you...you're...is it a policy?

Mr. Costa: No.

Ms. Kawahara: So, wouldn't...isn't that what you're doing here?

Mr. Hull: The...there is right now under county code, there is no specific provision for farm worker housing, although there's temporary worker housing and it can be interpreted by the director or called similar in nature and therefore applied for currently under the county code. But there's no specific provision for farm worker housing in the code and under the bill, which the department recommended amending and the commission adopted, that provision of building out the farm dwelling densities was recommended before building out the farm worker housing. Correct. It's not...it's not a policy we have right now because right now we don't have farm worker housing.

Ms. Kawahara: Oh, okay, but...

Mr. Hull: But in the event that the bill is...or in the event that is allowed the bill proposes as it was amended by commission that indeed the farm dwelling densities be built out previous...

Ms. Kawahara: The residential.

Mr. Hull: ...prior to the farm worker housing units.

Ms. Kawahara: Okay. And so to make it clear, there's not an actual ordinance right now saying that you have to do it in that order. So, basically when you're saying it has to be done here, we can...we can say, oh, the farm worker housing can go first...before the house?

Mr. Costa: That you...you...you could.

Ms. Kawahara: Could, so that wording could be different and changed? Okay.

Mr. Costa: I believe so.

Mr. Furfaro: Thank you. I'm going to go to Mr. Kawakami then.

DEREK S. K. KAWAKAMI: Thank you, Mr. Chair. Good morning, guys. You know, my question kind of teeters on an issue that's more State related but hopefully you guys can help me out but. Under Act 233, it provides incentives for the voluntary designation of lands as Important Ag Lands. So if a landowner voluntarily designates his land as Important Ag Land, there are some incentives that come along with it. So, let me go through the incentives. One is farm dwellings and employee housing. It allows landowners to develop farm dwellings

and employee housing with the limit of 5% of the total IAL or 50 acres, whichever is less. Two, there's a refundable qualified agricultural cost tax credit. So if you're designating your land as Important, you get these tax credits up to what, \$7,500,000 is what the Hawai'i Department of Agriculture has allocated until May 2010 and that's to cover cost for your roads, pipelines, dams, agricultural housing, okay, so also for agricultural housing. Third incentive is a loan guarantee. Basically what it's saying is that if you designate your lands, you can qualify for loans that will be at least 1% below the lender's prime rate. Incentive four is State Agricultural Water Use and Development Plan. Number five, agricultural processing facilities and permits priority meaning you designate your land as Important Ag Land, they'll expedite your...your permits to do things like a processing plant and so on and so forth. But I really want to get to incentive seven and it's the land reclassification which says that if you classify your land as Important Ag Land, you can submit a petition to the Land Use Commission to reclassify up to 15% of your Important Ag Land area to be rezoned under urban, rural or conservation. So just my question is, does this Act 233 fulfill what we're trying to fulfill with this bill that's in front of us today? And like I said, this is a State thing and I mean if...if can can, if no can, no can.

ALFRED B. CASTILLO, JR., County Attorney: Excuse me.

Mr. Furfaro: Go ahead, I'll recognize the County Attorney.

Mr. Castillo: I...I...I think you're...you're catching the planning department off guard here because actually...

Mr. Kawakami: Okay, I apologize.

Mr. Castillo: No, no, I...don't need to apologize because it's a question that regards legal interpretation and legal analysis...

Mr. Kawakami: Okay.

Mr. Castillo: ...regarding how you reconcile what is the intent of this bill here and how you reconcile that with the IAL. So, I mean it is a legal question and that's one if we, at the county attorney's office, could research for you and...and get back to you. But you know to...to ask these gentlemen a legal question, it's hard to answer.

Mr. Kawakami: You...can I ask another question to you and do you want me to submit it in writing or...

Mr. Castillo: No, no, it doesn't have to...it doesn't have to be in writing.

Mr. Kawakami: Okay, these guys...I don't know if you know...

Mr. Castillo: No, no, they...they know a lot.

Mr. Kawakami: Sorry.

Mr. Castillo: But...

Mr. Kawakami: Okay.

Mr. Castillo: But when you ask them how...how does it reconcile and...and...and...

Mr. Kawakami: Okay, okay, fair enough.

Mr. Castillo: Anyway, it's...it's a hard question.

Mr. Kawakami: Let me ask one more then because this is going to be my main concern with this issue. Under Act 233 if somebody were to designate their land as Important Ag Land and go in for the designation for the 50% rezoning and...and qualify for incentive No. 1, how is it going to tie in to the process and procedure of our planning department and how are they going to handle those kind of cases.

Mr. Castillo: And again, I...I...I...right now the...and...and the question also presupposes or assumes that your request to change your land to IAL will be granted.

Mr. Kawakami: Yeah.

Mr. Castillo: So I would like to answer you at a later date.

Mr. Kawakami: Sure.

Mr. Castillo: Because this is an important area because the ordinances that we try to promulgate here, the question becomes how do we reconcile that with the state laws and whether or not we're trying to do something that conflicts with the state laws. So those...we will do the research for you, sir, and...and hopefully we can have answers for you.

Mr. Kawakami: Thank you so much. Thank you, gentlemen.

Mr. Costa: Thank you.

Mr. Furfaro: Mr. Kawakami, I would suggest that under your signature we send that question over to the county attorney.

Mr. Costa: I would have to believe they have the same goal.

Mr. Kawakami: Same goal? Okay. But I'm not looking for an answer because I just...I...I

Mr. Furfaro: On the note that we will be sending over the question about reconciliation and any potential conflicts, I will move on to Lani Kawahara. Oh, I'm sorry.

Ms. Kawahara: Okay, I have some more questions. Not about density because we moved on.

Mr. Furfaro: Okay, are there any more questions about density?
Mr. Bynum.

Mr. Bynum: Just as an aside, I...I...the...I believe the issue we were talking about earlier about associations, I think there was state legislation that addressed that as well. So whatever inquiry we do that will include that hopefully.

Mr. Furfaro: That is my intent. I will send it over and I believe it got to the state level, so.

Mr. Bynum: And I also heard the answer, back to density, that although I agree with Councilmember Kaneshiro's statement that...I agree with his statement that it should apply to the unit. What I heard from you is we may need to address that if that's our intent and apply it to the unit, not the entire thing, so. My other question about density has to do with a...a different scenario that one that Councilmember Kaneshiro outlined. So let's just say my unit I have two pieces of density. I built one house. I'm intensively farming and I want to do additional...I want to do farm worker housing. Now someday I want to use that density for my child or my son in the scenario and maybe build a...a home under that density that would exceed 1200 square feet. But under farm worker housing in this bill it assumes it'll be below that. So could I use that density now to build that 1,000 square foot farm worker housing unit and then at some future date say, you know what, I want to use that density for my son's home and I'm now going to apply for farm worker housing to cover the 1,000 square foot unit because I...I think your intent was to say, you know that somebody didn't sell off these units, which as you said and we'll get to that later, were intended to be farm dwellings. I mean that's what it's supposed to be. So, but can you make that transfer? Can I use that density now...

Mr. Costa: Yes, yes.

Mr. Bynum: And then subsequently when I need that density for...for a...a...a larger home, then apply for farm worker housing and get the...

Mr. Costa: Yes.

Mr. Bynum: ...1,000 square feet covered.

Mr. Costa: Yes, you could. And it's when you apply for that house that is over the density, then...then we need a vehicle to permit that and the vehicle would be the farm worker housing, and you could then...

Mr. Bynum: Which was the density I already had, right, in that scenario?

Mr. Costa: Right.

Mr. Bynum: Okay. So I...you know, I don't know if that addresses Councilmember Kaneshiro's concern, but it answers my question regarding how you could do one for now and change it later if your circumstances change.

Mr. Costa: That's correct.

Mr. Bynum: Okay, thank you.

Mr. Furfaro: Mr. Bynum just a (inaudible). Sometimes when you lean back from the mike, people can't hear you and since we're still on density, I'll go ahead with Mr. Kaneshiro.

Mr. Kaneshiro: Yeah, I...I'm addressing that in, you know...I...I...I don't want to discuss it right now because it's not on the floor, but I...I am proposing

something to that effect. So just to let you know, yes, I...but because it's not on the floor, I don't want to get deeper into the discussion of what I'm trying to propose, so.

Mr. Furfaro: Okay.

Mr. Kaneshiro: Just to let you know.

Mr. Furfaro: So we'll move on to other questions of the planning department. Lani Kawahara.

Ms. Kawahara: Thank you. The \$35,000 that you have here listed as the gross sales, are you aware that almost 400 of the farms on Kaua'i make less than \$9,999, which is the majority? I'm reading from a 2007 Census of Agriculture. And that if you...

Mr. Furfaro: May I just add onto that? That was the rationale in circulating this piece and this is the 2007 Census.

Ms. Kawahara: Yeah and that one was about the size of the farm. Yeah. But I'm...I'm specifically wondering about the \$35,000 and how many people would be knocked out of that for the \$35,000 if the majority of our farmers make \$9,999 or less. That's about four hundred something...four hundred something and the majority falls within those ranges.

Mr. Costa: Well I would just say that the main reason we came up with the figure we did is it's a...adopted by the County of Maui...

Ms. Kawahara: So it just came from...

Mr. Costa: ...and rather than make a judgment call based on statistics.

Ms. Kawahara: Oh, you...oh, you didn't want to make a judgment call based on statistics. Okay. I just want it on the record then that most of the farming that is done here, according to the census, is below...the sales are below \$10,000.

Mr. Hull: (Inaudible.)

Mr. Furfaro: Let me expand on that...the fact that the Maui bill was the \$35,000 and a selection of other criteria, okay. So, I...I'm not posing a question to you, I'm stating what I know of the bill and this is not intended to purely be statistical information but certainly somewhat of a guideline because there is the possibility of...and I will have an amendment that addresses a multi-facet choice, but it is going to be more reflective of what the actual financial outcome of data from Kaua'i is. So, we're back to you.

Ms. Kawahara: Okay. I...I just wanted to let you know that the federal government also is struggling with this, so it's not...

Mr. Costa: Yeah.

Ms. Kawahara: It's...it's really hard.

Mr. Costa: Right.

Ms. Kawahara: So I understand the difficulty...

Mr. Costa: We recognize that.

Ms. Kawahara: ...you're in and how important it is. Because they also...they give funding to farmers and they have to decide who's a farmer and who's not.

Mr. Costa: Right.

Ms. Kawahara: Okay. So, but plus that my other question was you have in your...you have a special note under your conditions of while the department concludes, it says here that there are adequate provisions to authorize the county to demolish and remove vacant and/or occupied dwellings that were permitted but ceased operating as a permitted use. Has there ever been somebody that has taken down, demolished a house because they're not farming and it can be shown that they're not farming and they've already built a house?

Mr. Costa: Not that I know of, but there are instances of structures that through efforts by our legal, both county attorneys and prosecutors, it's just not simple to go in on private property and have something removed even...even after years and years of legal noticing and...

(Gallery: Can't hear back here.)

Mr. Furfaro: We've made a small adjustment on the mike, so we'll see if it's better. You want to repeat your comment just for those in the back.

Mr. Costa: The county has a history of being challenged to go in on private property and remove structures legally.

Ms. Kawahara: Mm-hm, so...so that provision kind of is there, but it's difficult to enforce.

Mr. Costa: Yes.

Ms. Kawahara: And the...

Mr. Costa: And...and just involves multi-agency cooperation and I think that's what we tried to stress in the enforcement, yeah.

Ms. Kawahara: Okay, because my main concern about...about going on properties and deciding which ones to use this provision with, I'm worried that we are in an uneven manner dealing with actual farmers that have maybe unpermitted small structures versus a big mansion that we all know are there that aren't farming. So, my question is, is this bill going to be able to help you enforce that better so that you can recognize real farmers versus gentleman farmers?

Mr. Costa: I'm not certain that it does at face value instantly highlight who's a genuine farmer and who isn't. I...I...I can't. Maybe through years of application, but I don't see that the bill in and of itself clarifies who's a real farmer and who isn't.

Mr. Furfaro: May...may I...may I expand on something regarding tho...that...that question because the enforcement issue is both going to be on the county, but I want to make sure that the farming community also realizes

that they're going to be subject to tenant rental codes and so if they have a poor performing employee, they're also going to be subject to the fact that they're going to have to give proper notice for eviction and termination of employment and all of those particular things as well. And so clearly, it is, you know, an issue that the farming community should realize that if they have a non-performing employee and they are a tenant documented as an employee, they are going to be subject to proper notice for eviction. I...I just wanted to share that. The floor is still yours.

Ms. Kawahara: Okay. Because this is...because this is about farming and...and all of the benefits that we get from farming that's why I'm asking about how you're going to be able...when you're differentiating between a real farm and a...and a fake farm. Have you ever cited somebody with a physical home that doesn't have ag going on...as required?

Mr. Costa: I believe we did.

Ms. Kawahara: What was that?

Mr. Costa: I believe we have in the past.

Ms. Kawahara: In the past. Okay. I...I was going to ask if I could send a communication to find out just the numbers, the difference between...

Mr. Furfaro: Yeah and I want to make sure...

Ms. Kawahara: ...between permitted...between, you know, homes versus accessories...

Mr. Costa: Yeah.

Ms. Kawahara: ...on property of ag.

Mr. Furfaro: And again, I do want to make sure we understand under the current CZO if somebody has a ho...home that's within the density and they choose not to farm on ag land, that's not a violation. They have the density for that dwelling.

Ms. Kawahara: They don't have...

Mr. Furfaro: Is that a violation?

Mr. Costa: We would have to go back to what the definition of a farm dwelling is.

Mr. Kaneshiro: Correct.

Mr. Furfaro: He said that we would have to go back to clarify the definition of a farm dwelling. So, we should piggyback that question with yours.

Mr. Costa: Which does imply that there's farming activity and farming income.

Mr. Furfaro: Sure, but it could be an orchard. It could be, you know...

Mr. Costa: Yes.

Mr. Furfaro: It could be a crop that's only harvested, you know, every three years. I mean, you know, it is a real question of definition. Do not assume that, you know, we don't need clarity on what a farm dwelling is.

Ms. Kawahara: Thank you.

Mr. Furfaro: Well, we'll piggyback that question with yours.

Ms. Kawahara: I...yeah, I'm thinking most of the...

Mr. Furfaro: So make...make a note for the staff. Mr. Bynum

Mr. Bynum: Yeah, I'd...this is a fascinating discussion and we'll talk about it more, but my notes here say, definition of a farm, but I wanted to... In your work here it says, enforcement of land use is not restricted exclusively to zoning laws but can be further reinforced through penalties and through the county's real property tax structure. I think I understand what that means. Can you say more about that and what...how you would see that functioning and maybe you can't, but?

(Inaudible.)

Mr. Costa: I guess in summary, if we want to promote true farms, then through our tax structure we give incentives or tax breaks on what...and if...and we would need to establish thresholds for that. But if we don't feel they're meeting that criteria, then they pay higher taxes.

Mr. Bynum: Right, so the real property tax system currently has some kind of criteria to determine legitimate farming, right? And so what you're suggesting is that we may be able to use their work, their history and their criteria in this bill, but it's not currently in here. Is that correct?

Mr. Costa: Yes, I mean that...whatever bill we do approve, that that takes into account...

Mr. Bynum: So that would require...

Mr. Costa: ...the policies of...

Mr. Bynum: ...some changes to this bill, correct?

Mr. Furfaro: That's right.

Mr. Costa: It could be.

Mr. Furfaro: Do a Schedule F. To do a Schedule F...

Mr. Costa: Or could imply changes to the...

Mr. Furfaro: Mr. Director...

Mr. Costa: ...structure.

Mr. Furfaro: ...to get a Schedule F in a farm dedication, you do need to submit a plan to the tax office.

Mr. Bynum: Okay, so...and I don't think I have any other questions. I'd just like to say that I really appreciate that this dialogue is occurring and it does have im...pl...implications for many other circumstances...

Mr. Costa: Sure, sure.

Mr. Bynum: So it's about time we began the dialogue and it...and I expected this to be a complex and difficult endeavor and I appreciate the work and your report that you did and...and getting that process started and identifying some of these issues. And I'm not being at all...

Mr. Costa: Thank you.

Mr. Bynum: ...critical when I say that there may be other things we still need to address here. You know I think that the public process that's been engaged in thus far and the work of the planning department has been very beneficial and even though we may make some changes here, so thank you very much.

Mr. Costa: Thank you.

Mr. Furfaro: On a...on that note, I'd like to so note that we started our meeting today at 8:45 a.m. and we have had camera time, so we are probably coming close to a caption break and we also would like to check on some ame...amendments, but again I want to reiterate may be circulated, not introduced. And so if they're only circulated, they're to view. There's not testimony on them until they're actually introduced. So I'm going to ask if we can take 15 minutes for the caption break and start up again at 11 o'clock. Gentlemen, thank you very much.

There being no objections, the Committee recessed at 10:42 a.m.

The Committee reconvened at 11:04 a.m., and proceeded as follows:

Mr. Furfaro: I call the Planning Committee back to order. I would like to revisit the committee's plans at this point. We will be going to individual members who will have an opportunity to express some proposed amendments for the purpose of circulation. Notice that they will all be stamped "draft" because they are still subject to be cleaned up from housekeeping items as well as could still be changed. It is extremely important that you know that this format is so that you can have some idea of what is being proposed. But again, because they are not introduced, you cannot specifically address those amendments. And hopefully when we defer this piece, we will be able to actually have an opportunity to formally introduce them at the next committee meeting. Now, I believe I have two amendments that I would like to circulate. I believe, Lani, you have...

Ms. Kawahara: One.

Mr. Furfaro: You have one, yeah, okay. Mr. Kaneshiro, you...will have one. And any other councilmembers that would like to speak on a future amendment in the next committee meeting may have that opportunity. So, shall we...may I start as the committee chair? Okay, very good. Could we pass out to the members a draft? The first draft I have and there will be available to the public...a draft for the purpose of a...a use permit for farm working housing. This draft first requires that based on some financial statistics that we have that you

need to identify and at least generate annually \$12,000 of gross agricultural products for the preceding two consecutive years. That is an absolute. Then you may have an opportunity to choose two of three other options to support your use permit application. Those options are (1) to actually provide a farm plan to the planning department that demonstrates feasibility; (2) to demonstrate agricultural rates for the use of water by the department of water; and (3) identify 75% of the particular lot of which the farm working housing is being proposed to be in crop cultivation including crop rotation. So, you may show that along with a dedicated...dedicating the land to agricultural use. Under the use permit side, this is post-permit and is part of the enforcement question that came up, and I want to remind people that, you know, the current enforcement is really defined in the State...in the State with 205, although it is really loosely, with some very loose definitions, that is how you currently get that density on ag property. And you have to have a clearer definition which I put in my amendment for farm worker housing. Is that amendment available at the stand here so we can begin circulating the first one? It also allows the two unexpected inspections by the planning department a year and it also talks in terms of single farm worker unit may not exceed 650 feet; a family farm worker unit will not exceed 1200 feet, and it should be used exclusively for the housing of farm workers and their immediate family. It goes on to talk about those units needing to be located on the subject parcel that you are applying for and they need to meet state health and OSHA requirements. It also talks, in fact, that your plan must be recorded in the Bureau of Conveyances. These are all control items and the land from which the farm worker housing located shall not be created in a separate subdivision. The planning department will also have an agreement for an annual announced inspection. So that draft is being circulated.

The second draft that I have deals with the definitions. There are two parts there. It...I'll bring your attention...I'm sorry the page is not...it's six pages back, but it changes the farm worker employee definition from 19 hours to 14 hours and that is along the parallels of HUD definition of housing, no more than 30% of one's income can be used to qualify for regular housing. So therefore, when we add an assumption that utilities are included, we arrive at 14 hours work of a 40-hour week, although I know farmers do not work 40 hours.

Mr. Asing: What page is that on?

Mr. Furfaro: It's about seven pages back, Mr. Chair.

DICKIE CHANG: It's alphabetized. They go from "a" to...letter "f."

Mr. Furfaro: One, two, three, four, five, it's page six, I'm sorry, under "f," Farm Worker underlined.

Mr. Asing: Second paragraph from the top?

Mr. Furfaro: No, I got second paragraph from the bottom. Farm Worker is a farm owner, employee or intern who works no less than from 19 hours to 14 hours. Okay and then going two pages back, it's still alphabetized, under definitions in F, second paragraph, "Farm worker housing" means housing that is an accessory to a farm, over and above the residential density allowed in the Agricultural District, as established in section 8-7.5 for which a Use Permit is obtained pursuant to Section 8-7.1. I wanted to put in this brief definition of farm worker housing. This again is for the purpose of only circulation on the proposals and we will not take specific testimony on the drafts. Mr. Kaneshiro, do you want to speak next on your amendments?

Mr. Kaneshiro: Can we have my amendments passed out?

Mr. Furfaro: Circulated?

Mr. Kaneshiro: Circulated, Peter. I don't have a copy with me either. So that would help me if you do circulate it. I guess my amendment will address the part that we talked about residential density first and it's in subsection (c). If you turn it to the backside of the piece of paper that I'm floating around, you would find it in subsection (c). So I believe that this would allow you to go ahead and, you know, move ahead towards using this premise so whatever you build as part of a worker housing first if need be rather than the way the bill is currently written where, you know, you have to build a residential density first. So this would allow you to do that. So later on we...we can have some discussions if and when it's introduced on the floor, but I thought that this may address some of the items that were brought up today by even Mr. Bynum in regards to CPR units.

Mr. Furfaro: Okay, thank you. Then, I believe, we have an amendment that may be circulated by...

Ms. Kawahara: Yes.

Mr. Furfaro: Lani Kawahara.

Ms. Kawahara: And Peter has them also.

Mr. Furfaro: Okay.

Ms. Kawahara: (Inaudible.) He...he's passing them out now, thanks.

Mr. Asing: Mr. Chairman, perhaps it would be good if we attached some kind of number on each one so when we make reference to that number we will be able to better facilitate the discussion.

Mr. Furfaro: So I would ask that the staff, going forward when we meet again in two weeks, identify amendment A and B as the two amendments that were circulated drafted by myself. Mr. Kaneshiro would be draft amendment C and Madam Lani Kawahara would be draft amendment D.

Mr. Asing: In your amendment A and B, I think you need to identify which one is A and which one is B because you have two.

Mr. Furfaro: Okay, for the purpose of clarification, A is the piece that deals with the use permit; B is the portion that deals with clarifying the definition of a farm dwelling. You have the floor.

Ms. Kawahara: Oh, thank you. The amendments that I have proposed are on one, two, page three where we're disc...discussing sales of agricultural products. I have proposed \$10,000, more in line with what some of the statistics are that I've read and due to the testimony we've received. And there was one more, farm worker included farm owner and contract work.

Mr. Furfaro: Okay, so the difference in-between the circulated B and your circulation is I reference as the owner and the worker, you identify it as the owner and the contracted employee.

Ms. Kawahara: Yeah, those were included...

Mr. Furfaro: Okay.

Ms. Kawahara: ...added. And...(inaudible). Those were just those two.

Mr. Furfaro: Those two. Okay, we may have other potential items to be introduced in two weeks as draft amendments or at least some commentary if there are other members that might be introducing something and I will start with Councilman Kawakami.

Mr. Kawakami: Thank you, Mr. Chair, and I just want to first off apologize for not having something drafted. I figure...kind of knew that there were going to be amendments tossed out instead of muddying the waters even more, I figure I'd see what shakes out and add my two cents in. Basically the amendment that I'm going to be working on deals a lot with food safety. It is one of the priorities right now nationally and worldwide. Whether it be Salmonella or E. coli recalls on our produce or the rat lungworm here in Hawai'i, it is a growing concern and so the gist of this amendment is going to be exploring third party audits on farms to ensure that these farms that we're allowing, you know, in essence what we're going to be doing is allowing more people to live on the same land that we're growing our fruits, vegetables and cut flowers and foliage and whenever you do that you increase the chances of cross-contamination. So then this amendment would attempt to address some of the food safety issues. I know from a grocer's standpoint it is an increasing concern to keep our public safe and healthy. So, that...that is the gist of the amendment is to add a requirement to have some sort of third party audit included to ensure that these farms that we're essentially allowing to have farm worker housing are keeping their farms clean so that they provide people with safe and healthy, nutritious vegetables, produce or cut flowers, foliage and livestock. Okay.

Mr. Furfaro: Thank you.

Ms. Kawahara: I apologize, there were more amendments on here than I said.

Mr. Furfaro: Oh, in your circulation...

Ms. Kawahara: Yeah.

Mr. Furfaro: ...you had more items?

Ms. Kawahara: Uh-huh.

Mr. Furfaro: Okay. Thank you, Mr. Kawakami. I'll give the floor back to you. Lani, the floor is yours and this is referencing circulated draft D.

Ms. Kawahara: D, okay. This one is in regards to if the farm ceases operation or fails to meet definition of a farm...

Mr. Chang: Lani, I'm sorry, what page?

Ms. Kawahara: Three, page three. That the sub...the...remove all farm worker housing from the subject parcel within six months versus the four months in the original and I'm not sure... Oh and then the addition of something to

deal with the trailer homes and there's an ex...for except in the case of farm worker housing as defined in 8-1.5 Kaua'i County Code 1987, as amended, have their wheels...have had their wheels and axles removed and this exempts that. And I wasn't sure...this one als...I also have a...a ch...four things and three options that they can use. Is that in the original or is that not?

Mr. Furfaro: We need to be very cautious not to express interaction in any detail, but to summarize mine showed a mandated one item for revenues of \$12,000 per year and a choice of two or three. Yours is a one-time \$10,000 and a choice of three or four.

Ms. Kawahara: Right, right.

Mr. Furfaro: Am I correct?

Ms. Kawahara: Yeah.

Mr. Furfaro: Okay, very good. Okay, now I just want to say again, you know, I guess the term was used to muddy the water, but the reality is, you know, we need to have time to let people read through these items. They are not formally introduced, but hopefully as they are circulated to you, we get time to get clarity in the water and so on that note, I will suspend the rules and ask for public testimony. Now, again I want to caution you, these are not formally introduced amendments, so be very cautious. You can come up and testify on any particular item you would like to add from the follow-up, okay, and they just handed me four individuals that have signed up: Robert Grinpas, Scott Pomeroy, Bill Robertson, and Louisa Wooton. Is there anyone else that would like to give public testimony while the rules are suspended? Okay. JoAnn Yukimura, we'll put you down. Do you have another one? Oh and John is here, thank you. Okay, let's...

There being no objections, the rules were suspended.

Mr. Castillo: Mr. Chair?

Mr. Furfaro: Yes.

Mr. Castillo: I'm sorry, County Attorney Al Castillo. I just want it to be very clear and I know you've...you've been very careful, but for the people out there, we are...the exercise that we're going through right now is to enable us to sunshine this item properly. So today before you is Bill No. 2318 and the discussion right now is 2318. The...what has been circulated are amendments to 2318 and however, the discussion for the day is really not the amendments, okay? To properly sunshine these amendments, we have to notice the public properly and then have public testimony properly and so I just wanted to make sure that everybody...everyone understands that. I...I just don't want to assume that everyone does. Thank you.

Mr. Furfaro: Thank you from the County Attorney, again, for reinforcing what I have said earlier. You know, this is an attempt not to try and do all the work in one day and let us have some time to digest things, so with that thank you again, Mr. Castillo. Robert Grinpas and followed by Scott Pomeroy.

ROBERT GRINPAS: Good morning, Robert Grinpas. And I...I hope I've...I've got a correct understanding of...of what Al is telling us we can talk about and can't talk about. What I...what I just want to briefly address is...is what

Councilman Kaneshiro raised. This issue about the condominium property regime unit and the density to...as compared to the entire project because number one, I think if we get a show of hands in here of farmers, just about everybody is farming on a condominium property regime unit, so it...it is an important distinction. I am speaking in favor of what Mr. Kaneshiro mentioned, that the density requirement only be applied to the individual condominium unit because the farmer is really only capable of dealing with what's going on on his unit. He can't force the other owners in the project to develop their properties. So if he has...if an individual has developed his unit, has developed the density of his unit, irrespective of whether the density requirements of the other units have been fulfilled, he should be able to apply for farm worker housing, and that's what I want to speak to. I...I hope that that will get included in this bill. Thank you.

Mr. Furfaro: Thank you. Are there any que...questions of Robert? Thank you very much.

Mr. Grinpas: Thank you very much.

Mr. Furfaro: We'll go to Scott Pomeroy followed by Bill Robertson.

SCOTT POMEROY: Hello, I'm Scott Pomeroy and I'd like to speak to the 75% issue. I personally qualify for almost all of these things, but I...I'm just...I'd like to just paint a little picture is like if you are a young couple and you want to start farming and you lease 10 acres, then you automatically have to have 7.5 acres in farming to even apply for farm worker housing. Generally the first few acres, you know, in getting it is the hardest and requires the most labor. I think if you could think about this when we're formulating this bill I think it will be very important. I...I have this...it's just off the wall suggestion that, you know, if you required something like 15%...say you...you had an empty piece of 10 acres. If you require 15% a year, in five years you would have 75% of the land in, you know, in cultivation. And I think that would be more farmer friendly to encourage new farming and that's kind of what the main issue that I'm trying to address here, so.

Mr. Kaneshiro: Okay.

Mr. Pomeroy: So, since it's (inaudible).

Mr. Furfaro: Well, as the Maui bill, you know the percentage of acreage is a...it's a multiple choice choice and if you are going in with a plan for farming, perhaps how you just described it is a description you would put in front of the planning department.

Mr. Pomeroy: Could be included in the plan.

Mr. Furfaro: In the planning department included in your plan.

Mr. Pomeroy: Right, right.

Mr. Furfaro: Are there any questions of Scott?

Mr. Kaneshiro: I have a question.

Mr. Furfaro: Go right ahead, Mr. Kaneshiro.

Mr. Kaneshiro: So, Scott, based on that, to me one of the reasonable items to put in here as a qualification is that...the ag dedication bill, that you have your property ag dedicated for 10 or 20 years.

Mr. Pomeroy: Right.

Mr. Kaneshiro: Because under that bill, it doesn't specifically state that you need to do 75% to show that you are in active farming.

Mr. Pomeroy: Yeah.

Mr. Kaneshiro: In that bill it states that you have evidence that's showing that you are attempting to meet the requirements. So, I mean...and I ask that question because I don't see where we have that specifically in this bill right now that as one of the qualifications is that if your land is dedicated for 10 or 20 years, boom you meet the requirement for a use permit.

Mr. Pomeroy: That work...that works for me, but...

Mr. Kaneshiro: Okay, so.

Mr. Pomeroy: I just didn't want this to be an all or nothing kind of thing...

Mr. Kaneshiro: Right.

Mr. Pomeroy: ...that even if you're 75% and...

Mr. Kaneshiro: So, so perhaps for some we could leave the 75% that do not have the ag dedication or for others. You know, there's ways we can try to work on it. And for others, if your land is really ag dedicated and part of it, the 75% requirement is not needed. There are other factors that...that are in there under the rules and promulgation of this whole bill that, you know, can...can address it.

Mr. Pomeroy: Good...

Mr. Kaneshiro: Okay.

Mr. Pomeroy: I just wanted to make sure that we understood...

Mr. Kaneshiro: All right.

Mr. Furfaro: And I'll say it again that portion are optional and it could be one of your multiple choices, but...

Mr. Pomeroy: Thank you.

Mr. Furfaro: ...a farm plan, as you spoke...

Mr. Kaneshiro: And it's covered in this.

Mr. Furfaro: Is covered.

Mr. Pomeroy: Okay, thank you.

Mr. Furfaro: Thank you. Bill? Followed by Louisa.

BILL ROBERTSON: Thank you. Bill Robertson. I'd just like to make a comment regarding the minimum income requirement, I think, that is mandatory a...ab...absolute. I...I have 10 acres of an organic farm and we've been working that farm, myself and the prior owner, probably for six or seven years. I still have a few more acres to develop out and I...I need my workers at this point now, but I'm not generating \$10,000 or \$12,000 a month income. It still might be several more years before I get to that point. So, I would be ineligible to build farm worker housing the way this is being proposed. And then...

Mr. Furfaro: Excuse me, I just want to get some clarification.

Mr. Robertson: Yeah.

Mr. Furfaro: You said \$10,000 a month.

Mr. Robertson: Or \$10,000 a year.

Mr. Furfaro: A year.

Mr. Robertson: So in my particular instance and I know other people who are doing orchards, you know, it might take five, seven, eight years before any...any type of income stream is taking place and then I just wanted to read something that one of our members, who's not here today, just wanted to bring out as a reminder to everyone. We must remember that this is a farm worker housing bill, not a close the loop hole on abuse bill, meaning we have to consider what is realistically helping real farmers provide affordable housing for their labor force and create a bill to do just that first, then we consider ways to limit or eliminate abuse, not the other way around. Thank you.

Mr. Furfaro: Thank you. Hold on mo...one moment, you have...we have a question for you.

Mr. Bynum: I wanted to make sure people understand and these amendments...well, that when we discuss the issue of...it's gross sales per year, not income, which are very different, right. So, I just wanted to point that out. So if it's ten or twelve or thirty-five, I don't...I'm assuming in a lot of businesses with \$12,000 of gross sales, you're not going to have \$12,000 of income, right. Is that...were you aware that...

Mr. Robertson: Yes, I...I am aware of that. I've been putting, since the three and a half years that I've owned this farm, I've been putting between \$30,000 to \$50,000, you know, developing it, back into it, water systems, labor, planting more trees, and still my income is probably less than \$1,000 per year for this particular farm.

Mr. Bynum: \$1,000 of gross sales.

Mr. Robertson: Of gross sales per year.

Mr. Bynum: So the issue would be how do you deal with that start-up period.

Mr. Robertson: Yes.

Mr. Bynum: When...which...
Mr. Robertson: Which I think is very real...
Mr. Bynum: Which may be labor intensive.
Mr. Robertson: Very labor intensive.
Mr. Bynum: I understand that, thank you.
Mr. Robertson: Thank you.
Mr. Furfaro: Thank you. Louisa Wooton?

LOUISA WOOTON: I just want to really thank everyone of you guys for the thoughtful consideration. I am absolutely humbled and overwhelmed at your comments. It just means really a lot to my family which also includes two farm workers besides my son, daughter-in-law, and my husband and myself. We're all living on the same property virtually under the same roof now. I also want to add that you do look at the mobile home provision there because that has been one of our means of providing clean, comfortable housing for our workers. We all went...some of us went to the ag summit the other day and I understand, you know, Derek's comments about cleanliness, etc. It's not suitable for me to have farm workers on my property living in a tent. It never has been, but sometimes we have had to resort to that and I just, you know, I just really hope that you'll consider these...these things that we're talking about that ag tax dedication is...should be one criteria in this. The ag water rates, every year we have to send in a Schedule F to the department of water to ascertain that we can get those rates and the Schedule F within itself. Those are really, really important criteria and speaking as to what Bill Robertson just said, we all got the handout from you, Jay. There was... I printed off some of the complete 2007 ag census and one of the things that you might want to take into consideration that wasn't on what you handed out, more in line with what Bill spoke about, is the average production expenses per farm \$77,140. That's average and we know that we're averaging in little bitty farms, big sugar plantations, etc. and then we get again to the average actual net income which is minus \$10,475. So there's a lot of things to be figured in and I did print the 2007 complete census county profile here and I can give that.

Mr. Furfaro: Yes, I would...
Ms. Wooton: If you want more statistics, I mean...
Mr. Furfaro: It would...

Ms. Wooton: I am not a lover of statistics after Monday but I also have the 1997 county profile and statistics that shows actually the number of farms has grown slightly, but the size of the farms has gone down quite a bit. So I think it's all interesting. I'm not a real statistician and I've never been into it, but when you start...I fill out that little ag census every 10 years and I go, whoa, what's this all for and they tell me it's going to help with somebody. So in time it may be able to help with this in seeing the figures.

Mr. Furfaro: We...we would actually like to have the staff get copies so we can distribute it to all the members. There were some statistics that I did not put in my piece and I think one of the ones I was concerned also with was the average farm worker age was 59, I think.

Ms. Wooton: Average farm worker age 59, 59.4.

Mr. Furfaro: That...that although I didn't put that on my sheet, so if...I would appreciate us having copies...

Ms. Wooton: Okay, I'll definitely...I made extra copies, I've been taking notes on some, but I kept some clean.

Mr. Furfaro: Okay. Mr. Bynum.

Mr. Bynum: Just so I understand, you said about the mobile home, is that the provision that allows the wheels and axles to remain intact and...

Ms. Wooton: Right, right.

Mr. Bynum: And why is that important?

Ms. Wooton: Well, my husband, who is a mechanical genius, and our RV that's in question, which is a 32-foot deluxe accommodation which he spent his retirement fund on to get so that we can have, we had hoped, quasi-legal farmer worker housing, he said, you know what a blah, blah, blah job that would be? He said it's not even practical. It's not like if...it...it...ours is a motor home. It's actually...

Mr. Bynum: Right.

Mr. Furfaro: I'm going to have to interrupt here because I think we're drifting...

Ms. Wooton: We're drifting. We are yes, yes.

Mr. Furfaro: ...a little bit into non-agenda items, so. That, you know, that is something that's in the amendment, so.

Ms. Wooton: In the amendment, but it's...it was also, I think, in the provision of the first bill and kind of left out of the second.

Mr. Furfaro: Yeah, but I'd rather be cautious than...

Ms. Wooton: Yes.

Mr. Furfaro: Because we can have...we can pose your first question when we actually find out what those amenities are. Mr. Bynum, you'll get that question first.

Mr. Bynum: May I ask a different question?

Mr. Furfaro: Sure, you still have the floor.

Mr. Bynum: Just a caution regarding statistics because I have had a lot of experience with statistics and that minus income...when...a caution about statistics. The mean is often a more meaningful measure because it tells you where there's an equal number of people above and below. In terms of the farm income, if one large farm, and we know that this has occurred in Hawai'i, has a multi-million dollar loss, they can really skew that in terms of using that as a reference for small farmers and stuff.

Ms. Wooton: Absolutely.

Mr. Bynum: So, you gotta be a little cautious about statistics.

Ms. Wooton: And I think that, you know, that's true and there's some economic characteristics in this complete profile that I think bear looking at, you know, the number of farms, what their gross is, and how many farms in Kaua'i make that, etc. I...yeah.

Mr. Bynum: Okay.

Ms. Wooton: It...it's fascinating. I'm learning a lot.

Mr. Bynum: Thank you for your testimony.

Mr. Furfaro: Thank you for revisiting that. As I said in the beginning, these were needing...need numbers and so, you know, half the farms above and half the farms below, and you know, one large multi-million dollar loss could skew the whole number, so. Thank you very much. Are there any more questions of Louisa? Thank you for your comments to the council about our work.

Ms. Wooton: Thank you so much.

Mr. Furfaro: Now we'll go to JoAnn Yukimura. JoAnn.

JOANN YUKIMURA: Chair Furfaro, Members of the Council, Chair Asing, good morning, still morning. Thank you for this opportunity to testify. I...and thank you for all your efforts and thinking and tours so that you can really understand farming on Kaua'i. I believe we all understand that farm worker housing is essential for farming on...for successful farming on Kaua'i and as you pointed out, Chair Furfaro, it's one of the components, but it's an essential component. And I think there's a strong consensus that we need more farming and we want to encourage farming on Kaua'i and I was just reading the other day the latest National Geographic which talks about the end of plenty and the global food crisis that is in the works. And basically it says that we've been consuming more food as a earth, as a globe...global community...more food than farmers have been producing for most of the past decade. So we're already in a deficit position and our population is continuing to grow. So we can expect more...and...and as energy becomes more of an issue, farm production is also being diverted off into energy. So we can expect a food crisis in the next few years. And that's why it's so important that we be growing our own food on Kaua'i. The reason for this bill is because the existing zoning is not allowing what is needed on agricultural lands where farming is occurring. It's not allowing the kind of housing we need. So the question is how to allow genuine farmers the housing they need but not allow the abuse by the so-called fake farms. That's the key issue here and it's a tightrope; it's not an easy one. The problem with the \$35,000 requirement is that it focuses on closing the abuse, but it also excludes 90% of the genuine farmers if you look at the 2007 consen...census. The 2007 census most...and they have economic characteristics: farms by value of sales, so that's gross proceeds, 600 out of the 700 farms are less than \$39,000, and...in...and so you're excluding most of the farmers on the farm...on Kaua'i and a lot of the small farms. And that's why that provision does not work. And people have said it worked on Maui, but in Maui it was an either/or. It was only...you could either qualify by the \$35,000 or you could qualify by having a water pl...water rates and a farm plan. When you make it an essential, you knock out a lot of the farms. Last, my last point is...

Mr. Furfaro: Excuse me, JoAnn, that is the three minutes and I will, at the discretion of the chair, give you an additional three minutes.

Ms. Yukimura: Oh, thank you.

Mr. Furfaro: It's your time too, go ahead.

Ms. Yukimura: Thank you, appreciate that. My last point is on the issue of provision (i) in Bill 2318...excuse me, provision (i) under farm worker housing, which says that a property shall be eligible for farm worker housing only when all of the farm's respective...all of the, sorry, subject property's respective maximum permitted residential densities as established have been permitted and constructed. When the farmers and myself heard this at the Planning Commission meeting, it sounded reasonable especially in terms of even if a farm has additional density as Councilmember Kaneshiro said, if you can use that density presently for farm worker housing and then convert it when you need to for your other uses, that seemed reasonable. The main issue here and I think the amendment that would be appropriate is to say only when all of the farm's respective maximum permitted de...residential density has been used up. Then you won't be bothered by other condominiums not under your control. The farm may be on one or two units, condo units, who knows or three or four, but at least it would be limiting them to the density that's under the control of the farm and not on another condo. And so that's one suggestion I have for solving that problem. Any other questions?

Mr. Furfaro: Let me see if there's any questions.

Ms. Yukimura: Yes, thank you.

Mr. Kaneshiro: I have a question.

Mr. Furfaro: Go ahead, Mr. Kaneshiro.

Mr. Kaneshiro: Good morning, JoAnn.

Ms. Yukimura: Good morning.

Mr. Kaneshiro: We're still there, right? The...I think the fact remains that the \$35,000—to me, this is how I see it—was placed in there for the reasons of controlling the amount of units. In other words, if you up or \$35,000, you get one unit; another \$35,000, maybe you got another unit. So I'm not certain, but I need to question...I haven't had the chance to question the planning department. But if that's the case...if that's the case, what I'm asking that if it's the method of trying to control just how much units on per farm, would that be acceptable, but we would drop, you know, that requirement...

Ms. Yukimura: Oh, it...

Mr. Kaneshiro: What I'm saying is drop the requirement.

Ms. Yukimura: If you make it per worker housing that'll be even more prohib...prohibitive.

Mr. Kaneshiro: No, no, no, what I'm saying is.

Ms. Yukimura: Because someone like...

Mr. Kaneshiro: ...up to. I'm not saying you gotta have \$35,000, I'm saying up to.

Ms. Yukimura: No, but I mean someone like I hope Louisa won't mind, but the Wootons, in order to put two housing, they'll have to gross \$70,000.

Mr. Kaneshiro: Well, I mean there's gotta be some...

Ms. Yukimura: That's...that's even more onerous.

Mr. Kaneshiro: Okay.

Ms. Yukimura: And if \$35,000 alone per farm per year excludes 90% of the farms, this per unit worker housing is even crazier.

Mr. Kaneshiro: Then...then how do we control how many units...

Ms. Yukimura: And I...the original bill had that.

Mr. Kaneshiro: Okay.

Ms. Yukimura: The original bill said that the Planning Commission would be de...would determine that and if...

Mr. Kaneshiro: I got your answer; you said the original bill.

Ms. Yukimura: Well, well let me just say that it will be...

Mr. Furfaro: And JoAnn, I want to...I want to caution us that...that is (inaudible) in some of the proposed amendments.

Mr. Kaneshiro: That is not...right, that is not in there.

Ms. Yukimura: Okay, so that's good, but...

Mr. Furfaro: I want to caution us.

Ms. Yukimura: Let's just talk about the concept as a workable concept. It's...it's...the applicant will say how many houses they need and can build. I mean these are going to be capital requirements...

Mr. Kaneshiro: Special use permit (inaudible).

Ms. Yukimura: ...for the farm.

Mr. Kaneshiro: Okay.

Ms. Yukimura: So you're not...they're not going to ask to for a hundred units when they don't need it or they can't afford to build.

Mr. Furfaro: They can justify the business plan for the enterprise.

Ms. Yukimura: Right, so...so the numbers would be determined by the applicant and then the planning department and commission would scrutinize it

to see if it was reasonable to look at...they would look at the justification and...and look at what kind of farming happens, you know, pasture versus organic farming or have different labor requirements.

Mr. Kaneshiro: Thank you, JoAnn, I got your answer.

Ms. Yukimura: All right, any other questions?

Mr. Furfaro: Any other questions? Thank you, JoAnn.

Ms. Yukimura: Thank you.

Mr. Furfaro: And JoAnn, thank you for your original work on this bill.

Ms. Yukimura: You're welcome. That was a joint effort between you...yourself and me. Thank you. And the farmers.

Mr. Furfaro: It got us to where we're at right now. Thank you. Okay, John, I'm sorry I can't remember your last name. Yeah, if you can repeat it in the microphone.

JOHN PARZIALE: John Parziale and actually it was brought to my attention that I didn't do a very good job of introducing myself when I spoke to you last, so just really briefly, I've been farming on the island for about 12 years. I've managed several farms on the North Shore. I'm currently the operations manager for Common Ground, which is the old Guava Kai plantation...area. I own my own farm in Moloa'a and I'd like to just touch on a few things today, one of which is the...the idea of density. It's...it's a very common word; I'm hearing it so many times every few minutes. I would just like to submit that in terms of density like the value of density, if you were to attribute value to...to density, so much of that is...or actually just a fraction of that value is the i...is the ability to live in a structure. But really the value of...of density is being able to mortgage it, being able to spec a house and sell it or divide it, being able to build a house and rent and obtain an income off of this density. And it's like none of those things are really appropriate or what we're talking about for the farm worker housing. So, you know, to really just call it an increase in density, it's not a very accurate way to look at the situation. Just...just to offer that as a comment.

Secondly, in terms of the...the bill and the density fulfillment provision, it talks about meeting the density of the...of...of the farm or the parcel before farm worker housing, I just would like to say that what Mr. Costa mentioned about there being an avenue to which you can apply, say if there's like one home site to be able to apply that to your farm worker housing initially and then being able to sort of switch that, that seems like...it's a really essential thing just speaking from my own experience. I mean to be able to build a 600-foot structure just to house yourself when you're, you know, putting your irrigation in and your fences and these things that are an enormous amount of labor at the outset, to try to build a, you know, even a one-family home prior to doing that is...is...is really cost prohibitive. I mean for a...for a start up of a small farm.

The second thing I'd like to just mention briefly is the open zoning issue is that my farm in Moloa'a is actually my state land use is agriculture, but my farm lies within the open zone. I was on your list of places to visit yesterday. Unfortunately, you guys ran out of time and I...and I wasn't able to be there in the afternoon and I really wish I could have shown you my farm and you could see for

yourselves that there's legitimate agriculture, diversified agriculture that exists on open zoned land and I'm sure that there's some, you know, reason to be concerned about important...

Mr. Furfaro: Okay, excuse me, John. Since you are the last speaker, I'm going to go ahead and give you your other three minutes. Go right ahead.

Mr. Parziale: Thank you. So as I was...to continue that, I'm sure that there's some sensitive open zone lands that would be probably very inappropriate to...to put farm worker housing on, but then maybe there should be some exception or some way that if there's an existing farm in the open zone and some of the...any of the concerns would be mitigated or nullified that that might still be a possibility. And then I just wanted to thank you for your...for your thoughtful consideration of all these issues. It's really encouraging to see our officials working this way.

Mr. Furfaro: Thank you. Does anybody have any questions of John? Go ahead, Mr. Kaneshiro.

Mr. Kaneshiro: Tha...thank you, Mr. Chair. Thank you, John, for the testimony. I...I in fact didn't realize that, but I can see what you're saying because the comprehensive zoning ordinance does allow one dwelling unit on five acres of open land. So, you know, I can see your point. I'm not going to question you whether you meet the qualifications or not, but I think some of what the testimony you made today needs to be addressed in this bill also because we need to...if we're talking about the comprehensive zoning ordinance that allows this, then, you know, there should be some discussions about that open with one probably farm dwelling housing if you already qualify for density under the comprehensive zoning ordinance. So, thank you for bringing that.

Mr. Furfaro: Any more questions of John? And just as a follow up, you know, that is one of the dilemmas we have because quite frankly you have a...a unit on five acres of open land. The reality is after you get to a certain part, open land density actually exceeds our agricultural density. So, you know, we need to...we need to make those comparisons as Councilman Kaneshiro pointed out. But thank you very much for your testimony.

Mr. Parziale: And I thank you guys again and you're certainly welcome to come out for another visit if you...if you can work that out.

Mr. Furfaro: I am going to ask if there is anyone who has not already testified that wishes to testify. If...if not, I'm going to call this meeting back to order.

There being no one else wishing to testify, the meeting was called back to order, and proceeded as follows:

Mr. Furfaro: As I said in the very beginning to my colleagues, I would hope that we would be to have some dialogue today following up on the public hearing and I would like to de...defer this for two weeks, but before I ask for that, can I...can I ask for any commentary because once we defer this, there's no...there's no dialogue. I mean...yeah. Go ahead.

Mr. Kaneshiro: Yeah, thank you for that, Chair. And I...I think it was a real good meeting today. We've had some very good discussions and for me,

you know, listening to some of the testimonies that were brought forth today will probably compel me to start working on some other amendments too. And I think deferring this bill will allow us the time to do so and hopefully what we could do is if the other amendments...I'm willing to throw it on the floor and if I do have some other amendments that come up for the next meeting because it's going to be two weeks from now, I don't mind moving on the amendments. In other words, you know, as we start to move the process through as we get new amendments come in, not wait another two weeks to give the...the people, the public, the opportunity to speak on it. But I think at this point we gotta throw amendments on the floor and at that time any new amendments come in, also give the public the opportunity to speak on it so we can really work and come out with a real good bill for the farmers. Thank you.

Mr. Furfaro: Thank you for that. Mr. Bynum, did you want to share something?

Mr. Bynum: Yeah, thank you. First of all I want to show appreciation to Chair Furfaro for the way he's managing this bill thus far and...

Mr. Furfaro: Thank you, Mr. Bynum.

Mr. Bynum: ...the professional manner. In relating to process before I get to some farm issues, I...I also concur with... You know in the past we've allowed the public to come testify, then we discuss all the amendments and...and the public doesn't get to address it, and so I really applaud Mr. Furfaro's efforts to...to try to give more open kind of discussion knowing what's going on in other councilmembers' minds. I didn't see these amendments until today either, so it makes sense to defer. I didn't prepare any amendments because I had a sense that there were people who would address some of the concerns I had. But in terms of process, I think we can put an amendment on the floor and then not have the sunshine issue because an amendment can be withdrawn if somebody says, aw, you know what, yours is better or someth...but, you know, I really applaud the effort of trying to structure this as a way that par...that the public participates and to a greater extent. Thank you very much.

Regarding farm issues, I know that this discussion is complex, but I think we all come from the same intent, which is to facilitate farming and growing food and fuel and fiber and things that, you know, I think probably every single person on Kaua'i wants to keep the rural character of Kaua'i and have a course that's different. But we also know that historically there has been abuse of farm land and this is the first of what I hope to be many bills to come forward to try to address ag issues and agricultural zoning issues because, you know, I've said this before and I believe it's true in this State of Hawai'i and here on Kaua'i the rules and regulations about ag land are very convoluted, confusing, interpreted differently depending on who you speak to or what county you reside in or what state legislator you speak to. There is a very large lack of clarity and I hope that the county of Kaua'i addresses that lack of clarity for our purposes because we have a vision for the island that may be different than Maui's or O'ahu's or...and others. And so, anywhere we enter this discussion is useful and I'm glad that we've entered it, but we've seen today that there are areas where we have to be very cautious and very careful. And it won't be a simple process. But, you know, last week at the testimony, I heard people say and I...it really struck me that we may need to risk some potential abuse if we want to get to the appropriate use of farm land for farming. I think we also skirted...you know, danced around some other issues today where we know the intent of the agriculture zone is not being realized in other planning choices that we've made historically and...and that's going to be

really difficult. And I want to caution that we don't play that issue too much about well, this...us versus them. We're all Kaua'i; we're all people; we, I think to a large extent, have the same vision for where we want to be. So...and I applaud everyone that's testified that has avoided doing that because it's easy to go into that position as we've seen with other issues and so... Anyway, I'm kind of rambling a little bit, but I really appreciate that we're starting this process and...and everyone that's here today and the input you've provided and also my colleagues here at the table. Thank you very much.

Mr. Furfaro: Thank you. Is there anyone else who would like to say anything? Yes, go right ahead.

Ms. Kawahara: Thank you, Chair Furfaro. I...I want to acknowledge all the people that have been able to come to the meetings and also email their concerns about this bill. I am also very happy with the way that we're going about discussing and figuring out ways that we can support farming and small farmers with...with an ordinance. In it...they're...supporting farmers is directly related to sustainability. In this day and age we're worried about food security and it's a way of diversifying our agriculture instead of having a mono-agriculture. So, being able to support farmers and watching this council diligently working to do that is something I really appreciate and want to recognize. And I...and it is going to be difficult and I...and I agree there's going to...we have...we would probably have to have some kind of...there's going to be some kind of abuse, but we do want to keep an eye out for the big picture and that is supporting the proper use of the land and...and using it for farming. So, thank you.

Mr. Furfaro: Thank you. Others members, any comments? Go ahead, Mr. Chang.

Mr. Chang: Yes, again, thank you everyone for coming on over and testifying. I want to thank Chair Furfaro for putting this on the agenda and for all the input. It was very interesting listening to all the comments and, of course, having that tour yesterday was extremely enlightening. I think what I would like to say at this time, going out and...and visiting with many of you folks, obviously, I know that a lot of you folks don't have cable, maybe no access to the papers or what have you. But I think it's very important that you let the fellow farmers out there know that this council and along with your input is trying extremely hard. We all know that this is not going to be foolproof. We all know that we may or may not make mistakes. We'll do good, we'll do some bad. But I think what's important is that if you can communicate to your community and to your fellow farmers that we are actively working here in Līhu'e, if you will in...in the big city, that if you let your people know out there that we're putting our best foot forward. I mean you see how much people have planned, people have discussed. You know there are...there are...there are changes, there are additions that we want to all add, but please let your people know that one of the words that we hear also is abuse. And we just want to let everybody know in order for us to all get into the same page, I think we all gotta play by the rules and let everyone know out there that hey, we're all trying and, you know, one or two bad apples, like everything else, can...can spoil the whole pot. So, if you can just, you know, get out into your community and let everyone know that there's major attempts and there's a lot of discussion for the benefit of this...this bill that we...we all want to help and...and you can help us by letting your community know that these are the things that's going to be coming on down, so give everybody a heads up that we want to do our best and...and...and try to keep everybody i...i...in a lawful way. And again thank you all very much, mahalo.

Mr. Furfaro: Thank you, Mr. Chang. Mr. Chair, did you have anything to add before I...

Mr. Asing: No, I just wanted to thank everybody for, you know, their participation and we'll go forward from here. I think the chair of the committee has been handling this situation excellent...in an excellent manner and we will continue to try to come up with the best bill possible.

Mr. Furfaro: Thank you, Mr. Chair. You know, I...I'll just make a few comments. We will be back in committee if I get a motion to defer in two weeks. You have an opportunity to digest, you know, some of the direction right now and you know on that note I think we have a commitment. I think Mr. Chang summarized it that we on the council are trying to assist. But as I said earlier and reiterated by JoAnn Yukimura, I think we need to realize that the housing and work force component is only part of, you know, our commitment to make agricultural activity successful on Kaua'i. Now with that being said, then can I have a motion to defer.

Upon motion duly made by Councilmember Kawakami, seconded by Councilmember Kaneshiro, and unanimously carried, Bill No. 2318 was deferred.

Bill No. 2317 A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE 28, CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO SMALL WIND ENERGY CONVERSION SYSTEMS
[This item was deferred.]

Mr. Furfaro: Thank you very much. We're going to be moving into a new bill. That bill, as I pointed out earlier, I would like to go to 2317 and that is the small wind energy conversion system. May I have the bill read please.

Ms. Akiona: Yes, Bill No. 2317, a bill for an ordinance to establish a new Article 28, Chapter 8, Kaua'i County Code 1987, relating to Small Wind Energy Conversion Systems.

Mr. Furfaro: Thank you, thank you on that. You know, there has been a...a number of commentary come in on this bill. I have some pieces to distribute as committee chair. I have some first blush draft of the Kaua'i County Energy Sustainability Plan. I also have from our public meeting, the recommendations that came in from Barbara Robeson and Carl Imperato. For the purpose of discussion also, I have some testimony, wind charts and graphs that have come in by Mr. John Gordon, who was with the FAA, indicating in all of this testimony, the desire for us to be patient until we get the first draft, full draft, of the Kaua'i Energy Plan. So, if I can ask the staff to pass out the information and while that is being passed out, I will suspend the rules and ask if there's anyone in the audience that would like to testify on Bill 2317, Small Wind Energy. Is there anybody that signed up for that? No? We have no one wanting to speak on that. Okay, may I ask the planning committee to come up...the planning department. Gentlemen, again, as I move forward on being the Chair of the Planning Committee, I would like to give you an opportunity to give us a general overview of Bill 2317 that came back from planning and the floor is yours. The rules are suspended.

There being no objections, the rules were suspended.

Mr. Aiu: Thank you, Chair Furfaro. It's Imai Aiu, Deputy Director of the Planning Department. With me is Ka'aina Hull, who was the principal planner on the bill, and I will let him speak on it.

Mr. Furfaro: Thank you. Thank you both for being here.

Mr. Hull: The Planning...the Planning Commission basically approved in whole the department's recommendations for the amendments to the bill. For the most part the intent was kept intact. There are a few, let's say grammatical amendments made and a few substantial amendments, which I'll go over those. Primarily when dealing with wind energy, the applicants for wind energy that have been coming into the planning department for permits aren't able to access the necessary winds to power wind facilities and that's generally because they have the same existing building envelope for a wind turbine that they have for a house or a structure that's permitted on the...on the respective lot. And they need to basically get above the existing structures in order to access the needed winds. So when the bill came down, I can't remember the exact numbers, but I think they were allowed...it was to allow 90 feet in the agricultural, 70 feet in the residential and so on and so forth. Many concerns were voiced in the public hearing about the effect of wind turbines on the view plane and the potential effect of a proliferation of wind turbines on the view plane. And in addressing those, the department recommended and the commission adopted, was essentially a 20-foot height limit above the existing building heights for their respective zoning districts. And that was basically taken from the CZO or the Chapter 8 of the Kaua'i County Code as is, in that an additional 20 feet is allowed for utility lines, so there's somewhat of an existing building envelope that the wind turbines could be permitted under which would also allow them to go above the wind breaks or the building structures currently permitted. So that was a way to allow for them to access the necessary winds without potentially fully intruding on the view plane. And then secondly, the size...and the...the size of the lots was generally kept intact. And...and the main concern was how many of these things would be put up in the residential zone. And it was proposed in the original bill one per acre or...I should...I should say one wind turbine permitted per each respective acre lot and that's pretty much accepted across the board in our research of other wind turbine ordinances that have been adopted in other counties throughout the nation and we pretty much kept that intact. And in looking at the residential zoning maps, there aren't many one-acre lots in the residential zone that would be eligible for a wind turbine under the bill. And that is our...those are our main issues of concern and that we addressed. There are other changes if you have questions and I would be more than willing to answer.

Mr. Furfaro: I...I do want to revisit some of the process and thank you, gentlemen, for doing the work that you did on this bill. But during the public hearing, may I ask did you invite anyone from the office of county economic development to give you an update on the overall wind, solar, hydro and alternative energy plans that the County of Kaua'i is currently contracted to the tune of \$400,000 to do? Did anyone from the firm contracted, were they invited to give testimony on the overall plan?

Mr. Aiu: I don't believe they were.

Mr. Furfaro: Did anyone from KIUC, were they invited to address issues that potentially while they're going through their rate case deal with the impact of people at peak demand utilizing their own in-house energy and how

yet a two...two-tiered rate solution might be required for those that in low demand areas actually use transmission from KIUC and yet at the time when they are able to generate would not use the common infrastructure by the utility company.

Mr. Aiu: Correct me if I'm wrong, Ka'aina, but we did discuss with KIUC and their, I forget his title, it's their renewable energy coordinator. We did have multiple discussions with him regarding small wind energy. However, I do not believe we invited them to the hearing, nor did we discuss, as I recall, the two-tiered rate structure or how they plan to do it, unless you just...

Mr. Furfaro: I guess the two-tier rate structure potential as it goes to their rate application as well as, you know, just, you know, stabilizing when we have peak demands. Did...did they have any testimony to that effect?

Mr. Hull: No testimony was received from KIUC. However, just to add to Imai's comment, while no official invitation was extended, comments were solicited from KIUC or...or a notice was sent to them informing them of the hearing as well as the application of (inaudible) or I should say the proposed draft bill. But no comments were submitted.

Mr. Furfaro: Okay. It...it...it seems that, you know, many...much of what we're getting right now as well as the feeling of this general council is, you know, many, many people support the alternative energy options that we have, but hoped that it would be a very comprehensive overall plan of which we've paid substantial money to...you know, to get that overview. And I believe the planning department has been asked to participate. Do you have a representative at that?

Mr. Aiu: If we do, the invitation hasn't come to me directly.

Mr. Furfaro: Okay. I...I know...

Mr. Aiu: But I'm sure as a county project, we will be.

Mr. Furfaro: Okay. I know Glenn is very, very much involved. I did want to share with all the members here, at the same time, packets of testimony that have come in from both Carl Imperato, who I believe is an electrical engineer; Barbara Robeson, as it relates to covenant issues on the North Shore; Mr. John Gordon, who is with the...was retired from the Federal Aviations Administration and a meteorologist. I believe of the general concern is that we're getting a little bit ahead of ourselves. In those packets also they have shown the wind density charts for the Hawaiian Islands as well as not just the State of Hawai'i, but also the County of Kaua'i. Wa...was anything of that nature provided during the public testimony?

Mr. Hull: Some of it was.

Mr. Furfaro: Some of it was.

Mr. Hull: I haven't had a chance to review all of this right now, but somewhere... And...and a fair amount of time was dedicated to discussing the wind charts. Primarily the wind charts that are available now to the public, unless private studies have been conducted, are done...have been done by the federal government and they're primarily for large-scale wind. I believe they're looking at 100 meters where those wind charts were taken and so they don't really

apply to the bill at hand, which is specifically for small wind generating systems of a nature that are, under the amended draft bill, looking at I think the highest would be 70 feet.

Mr. Furfaro: But they...they do apply to an overall energy strategy for the county. You do agree with that?

Mr. Hull: Correct, they would apply specifically for large-scale wind farms.

Mr. Furfaro: Did...did...did you hear anything at all from KIUC on...on their position other than they support alternative energy? I mean, did...did they respond to anything about the impact on...on infrastructure, their upcoming application, maybe having to have two rate structures: one for households that use alternative energy. They may have a higher rate when they do go onto the grid because they're not typically always on the grid versus what a residential household would. Was there any discussion about that.

Mr. Aiu: No, not...I did not have any discussion with KIUC about that. We mostly...our discussions with KIUC focused on the...a lot of...we were using them as a reference for the technical nature of the small wind system, the efficacy of it on residential and basically any other existing ordinance they were aware of, so. And you would...I would be correct to say that yes, their general nature of this is, yeah, they are supportive of small wind energy systems.

Mr. Furfaro: Yeah, again, I just want to point out this entire council supported an energy strategy and, you know, we earmarked \$400,000 for this and I applaud Councilmember Bynum on his energy and effort here to get small wind energy conservation system going. But I'm just trying to figure out how it fits with the overall plan, especially with...when we're within 90...90 days of getting the first complete draft. Okay, let me go around to other councilmembers and see if they have questions. (Inaudible) any councilmember? Mr. Bynum, I have a cramp in my calf.

Mr. Bynum: Bummer. Hi there. First of all, let me say like I said earlier I appreciate very much the work that the planning department did on this bill and also the planning commission. I know you had a number of hearings and a lot of testimony and, you know...and you've made, as you said, some substantial changes to the first draft, the bulk of which I think are well thought out and make sense. I want to highlight...I want to read just one paragraph from your thing and it kind of...it's somewhat redundant to what you said, but I know...I mean the...the issues...the issues of concern tend to be around height, visual impact and noise, right. And so...in the balance there is that we're all concerned about visual impact and noise and...but there's the pragmatic and practical level at which if the small wind energy systems are only allowed at existing building height limits, they're not practically clearing the roofline which are obstructions to the wind. To be practical and purposeful, they need to be able to catch the wind. The standard in the industry is kind of like the higher the better. But it's unreasonable to go, you know, as...to extreme heights. And so the paragraph I wanted to read says, secondly, many of the heights allowed under the respective zoning districts may be excessive. Individually from the wind—I'm referring to the initial bill, right—individually from the wind turbine industry pointed out that additional heights are needed because under current zoning regulations a wind turbine is allowed to go no higher than any other allowable structure unless there's a variance permit. Yet to operate efficiently and access vital winds requiring...required to power the turbines, the turbines need to be erected above the existing roofline. However, as presented

by concerned members of the public and the commission, if a height envelope is established that is overly permissive, the view plane and the aesthetic quality of the island would be compromised. So I...I thought that was really well put. That's the balance. How do we come up with a reasonable height and if I heard you say that there are other utility needs that require to be above the existing building height as like utility lines that need to exceed the height of the building. And so you used, if I understand you correctly, the kind of variance that's allowed for utility lines to go a certain height limit above. Is that correct?

Mr. Hull: For the most part. It's not tech...technically it's not a variance. It's just an outright permitted height limit.

Mr. Bynum: Right, so in the residential zone or in any zoning district at this current time, there are provisions for utilities to be a certain amount higher and that's basically the standard you were suggesting you apply to this bill.

Mr. Hull: Correct.

Mr. Bynum: And did you have testimony from the industry about whether those heights were sufficient for them to catch the wind and have these work productively?

Mr. Hull: We did and they agreed with the 20-foot height limit. I also want to point out too then, while we're on the topic, there's two types of wind devices in...proposed to be allowed under the bill and one is a tower-mounted and one is a roof-mounted. The tower-mounted, the commission adopted amended bill allows an additional 20 feet for the tower-mounted and the roof-mounted allows an additional 10 feet. And individuals from the wind industry commented that those heights were sufficient to...to access the necessary winds.

Mr. Bynum: So...so the bill and the other concern is about the proliferation. How many...what's the number of...you know, am I going to drive through my neighborhood and see 500 windmills, right, and which would tend to...and if I hear you correctly that what you're recommending is that no lot smaller than an acre would be allowed a tower-mounted wind device, right.

Mr. Hull: No residential lot or neighborhood commercial lot under an acre would be allowed tower-mounted wind or (inaudible) SWECS (small wind energy conversion systems). No neighborhood commercial or residential lot under an acre would be allowed a SWEC over-the-counter. There are also provisions in which they could apply via a use permit for a lot smaller than an acre. But for lots over an acre, excuse me, under an acre, to get a...they...they would not be outright permitted for the neighborhood commercial and residential lots. For industrial and general commercial as well as agriculture, there's different respective ratios.

Mr. Bynum: Right, so for the vast majority of residential neighborhoods on the island of Kaua'i, you would not have an outright permit to build...to erect a tower-mounted SWEC or small wind energy system.

Mr. Hull: Correct.

Mr. Bynum: And...in...in gen...and the use purposes of this bill require a lot of an acre in those residential and residential commercial zones, and then no more than one per acre. Is that correct?

Mr. Hull: Correct.

Mr. Bynum: So, it was the opinion of the commission and of the department that that balance...struck that balance that that between concerns about visual impact and proliferation in the neighborhoods that those were mechanisms you felt...or and the council felt addressed that. Regarding noise, another concern is noise and the draft doesn't really address that. So, could you comment on that?

Mr. Hull: Primarily noise is handled under the Department of Health and we felt that in treating it as a structure permitted in the code, it would still be applic...I mean, they'll still have to apply for a building permit, at which time it would be routed to the Department of Health to sign off on and they'd have to meet the Department of Health's required noise standards for their respective land use.

Mr. Bynum: So anyone who did a small wind system would require a building permit and there are current laws related to noise standards and there would be a...a sign off by the Department of Health that the proposed installation met those noise standards. Is that correct?

Mr. Hull: Correct.

Mr. Furfaro: Would you yield the...the floor for a question along those lines?

Mr. Bynum: Sure.

Mr. Furfaro: Do you know what the decibel reading is set by the State of Hawai'i?

Mr. Aiu: Is it 55? For some reason I...

Mr. Hull: I...I had the chart and I...I was looking through my files right now and I didn't bring it with me. But I believe it's 55 for residential, I believe. But I'm not totally sure about that.

Mr. Furfaro: You know what that relates to? What could I compare that to...55 decibels?

Mr. Aiu: Yeah, yeah, you know, we always ask that question ourselves whenever we...somebody comes in and says 55, 70 because they're not meaningful numbers we use in everyday life. However, the...the industry usually comes out and says, at least for a lot of the reps we talk to, they say that they're...it is comparable to the hum you hear from that air conditioning unit right now. However, you know, that's not the only measure that's meaningful in noise. You know, a lot of it is the consistency of the noise, the nature of it that, you know, is it a constant hum like that which is easy to get used to or does it have like a percussion kind of sound to it. So that's...it's not always so easy to quantify noise just by decibel alone.

Mr. Furfaro: Okay. I'm quite familiar with this based on my hotel experience with cooling towers in resort areas and you'll be surprised

55 decibels can surprise a lot of people on the noise especially in the evenings. So, but you don't have a comparison chart? No. Thank you. Mr. Bynum the floor is yours again.

Mr. Asing: Can I...can I follow up on that?

Mr. Furfaro: Yes, the same question.

Mr. Asing: In...in terms of noise, I know this was a major concern about 15 years ago and it happened to be the windmill at the old Dairy Queen in Hanapēpē. And in that particular instances...instant and case, the noise was so bad that one of the people living in the adjacent subdivision at 'Ele'ele ended up with some kind of lawsuit and the end result is they sold the house and moved. But it was...it was that bad. And what concerns me is the noise level, how would you make that determination prior to actually having it on the premises?

Mr. Aiu: That is something that we left to the Department of Health specifically because in the planning and zoning realm we do not feel ourselves experts on what is an acceptable or unacceptable level of noise, nor should we override what the Department of Health tells us and the standards that they've set as to what is an acceptable level of noise. So that's why we leave it to their sign off.

Mr. Asing: Yeah, wh...what I'm...what I'm saying is that, you know, to allow the permit and if the individual builds it and then the noise level is discovered after that, then the unit is already up and it's permitted, so it's...becomes difficult to take it down so to speak.

Mr. Aiu: That...that is true and that's...it's a good point and it's an inherent risk of almost any type of permitting you know of...can you reasonably foresee the effects of any operation we...put there.

Mr. Asing: Okay, thank you.

Mr. Furfaro: Mr. Bynum, Mr. Bynum still has the floor unless your question is along the lines of decibels. I can come back to you next.

Mr. Bynum: I...

Mr. Hull: Just...just to add to another amendment that was placed in the draft bill had to do with the setback and the setback...for...a common rule...rule of thumb you can say for the setback is generally half the height of the structure. It's not quite accurate, but a common rule of thumb for the code right now is half the height of the structure. For wind turbines, the...the bill was amended so that it'd be 1.1 times the height of the structure. And that's mainly safety concerns and was in other codes, ordinances throughout the nation. That's the standard, as well as recommended by the EPA. But that will have some effect as well as the noise and its effect on the adjacent properties.

Mr. Bynum: So to say that a different way, if you erected a tower and it fell down, it could not reach the property line.

Mr. Hull: Correct. It...it...correct.

Mr. Bynum: Right, so unlike other structures that may fall down and reach the property line, but...so that will also impact the noise is what

you're saying because it will have to be at least, say if it's a 40-foot total height, it'll have to be at least 40, what is that, 44 feet from the property line. So...

Mr. Furfaro: Mis...Mr. Bynum, may...I will continue to give you the floor, but I was just reminded about our lunch hour and the staff. And what I'd like to do is I'd like to, at this time, just excuse the two gentlemen from planning but plan to be back at lunch time. To ask, because people might want to travel, is there anyone in the audience that would like to give public testimony before we break for lunch. Okay, gentlemen, may I ask you to yield. Carl, I'm going to give you your six minutes and then we're going to break for lunch.

CARL IMPARATO: Great. Thank you. Aloha, Councilmembers. My name is Carl Imparato. I live in Hanalei. And I spoke last week and subsequently I and Barbara Robeson submitted draft proposed changes to the language of the bill. I wanted to just comment on a few issues that were there. We do need to seek a balance and...between visual impact and the need for alternative energy. I would urge people to think about the fact, though, that one...that allowing wind turbines to be put on the lot next door to you 10-foot over the height limit on the roof or 20-foot over the height limit on a tower is going to impact individuals. So, it's not question of whether there's 50 of them only on the island or 5,000 of them only on the island. Think about the 50 peop...50 of these units that have neighbors who are impacted by these. So, I...I think that we need to be very concerned about where these are located and that's why in our comments we recommended that if one wants to build a wind turbine and stay within the existing height limits, they wouldn't need a special hearing. If they want to exceed the height limits, then there should be a use permit and a Class IV zoning permit required. And the reason for adding the Class IV zoning permit is because use permit hearings, excuse me, use permits do not require public hearing outside the residential area. So, if someone owns a house let's take on open or on ag lands say in 'Anini, they're not in a residential area and so one could basically get a use permit for something like this without having any public hearings. That's the reason for requiring a Class IV zoning permit to ensure that if someone wants to build a wind turbine next door to you and exceed the height limits, that they would have then had to go through a public hearing where people could raise these issues. I'd also like to point out then, with respect to the height issues, that especially on lots of greater than one acre, typically if you're worried about the houses blocking the wind, build upwind rather than downwind of the house.

The other issue I just wanted to raise is the issue of the noise standards. And the DOH noise standards are not really geared to answer the question, how do I ensure that what I build on my lot doesn't impact my neighbor next door. Ka'aina mentioned, I believe, 55 decibels and I think that is where the DOH noise standards are or in that area. A dishwasher in the next room is typically 50 decibels, an ordinary conversation is about 60 decibels. So the DOH standards of 55 decibels are somewhere in that range. Now, you can argue that that's a reasonable amount of noise to make, but it's not reasonable 7 by 24. It's not reasonable 3 a.m. in the morning, and so the DOH standards really are not appropriate for putting an industrial facility on a lot next door to someone who's used to the quiet enjoyment of...and peace of the evening and the night. So that's why in the recommended changes, we recommended changes that would say that the party who wants to build one has to demonstrate that they would create no perceptible noise on...at the neighbor's lot lines. And typically, no perceptible noise...the level of imperceptible change is 1 decibel, barely audible is 3 decibels, and clearly noticeable is 5 decibels. So there's a really big gap between DOH standards for noise and the noise issue here where what we're talking about is letting someone build something right next door and basically change the peace and quiet that neighbors are used to.

The last issue and the reason we put a suggested change in the bill regarding safety issues is that these are not just like putting telephone poles up. Indeed, if this is a...the proposed draft says that you have to build 110% back from the lot line. So, indeed, if the...if the telephone pole fell over, it wouldn't land on the neighbor's property next door. But what these are effectively are telephone poles with rotating blades on them and when something like that has a catastrophic event you don't expect a rotating blade just to fall straight to the ground. So, I think that while we didn't recommend safety standards, we did say that if there are other safety standard...safety issues that need to be considered, those should be taken into account during the Class IV zoning permit and use permit hearings. So I just wanted to explain those...those issues that and...and the rationale for why we put those in our recommended changes to the bill. Thank you.

Mr. Furfaro: I am going to ask that we break for lunch. Our rules require us to break for lunch for the staff. Carl, if you're back, I understand. If you're not back, we understand. We have circulated your testimony, but on that note I would like to ask the planning department to be back on or around 1:35 p.m. today so we can continue this discussion and...

Ms. Kawahara: When will we be able to ask a question of him? If he comes back here?

Mr. Furfaro: Of...of...of him? If he's coming back.

Ms. Kawahara: Are you going to come back so I can ask you a question.

Mr. Furfaro: Yes.

Ms. Kawahara: Okay, thank you.

Mr. Furfaro: I...I think that was the indication, but I do want the planning people back and we will return approximately 1:35 p.m. We're in recess. Thank you.

There being no objections, the Committee recessed at 12:36 p.m.

The Committee reconvened at 1:40 p.m., and proceeded as follows:

Mr. Furfaro: Okay, we're calling the Planning Committee back from recess. We finished lunch and I want to make note that Mr. Bynum, you had the floor before we went to lunch. We had Mr. Imperato's testimony and I don't know if you want to direct anything at him, but I know Lani did. But I want to ask if...if you want to extend the courtesy to give her the floor.

Mr. Bynum: Absolutely.

Mr. Furfaro: Okay, fine. You are recognized, Councilwoman.

Ms. Kawahara: Thank you, Committee Chair Furfaro. Regarding...you were talking about the blades and the setback, right?

Mr. Imperato: Right, right, correct.

Ms. Kawahara: Yeah, you...did...were you able to learn that the planning department found it's common practice to do that 1.1?

Mr. Imparato: I don't know where the planning department came up with the 1.1 and I'm not advising that it needs to be greater. I'm saying, though, if one considers just that it's a structure, a static structure, then 1.1 times the height will certainly keep it on the owner's property, but it's really not a static structure. It's a structure with a rotating blade, rapidly rotating blade, something like 5 times per second. So, I'm not sure that those kinds of standards are necessarily applicable there.

Ms. Kawahara: Okay.

Mr. Imparato: In our comments, we did not try to venture a guess as to what the appropriate setback should be and I think it would depend on the nature of the specific type of wind turbine that was there. So I think that what the county needs to do is basically say, we're going to look at each of these on a case by case basis to...and we have the right as the county to impose additional standards if we believe this type of structure...this type of wind turbine may pose more of a danger.

Ms. Kawahara: Okay. I forgot to thank you for coming back after lunch because you didn't have to.

Mr. Imparato: A pleasure to be here.

Ms. Kawahara: Okay, is...as I go about deciding it...what we're going to do, there's...there's information here that says that that number is published and recommended by the American Planning Association and that it's common practice to mandate the towers be at least equal to the total height respective. So...

Mr. Imparato: Towers in general or wind towers?

Ms. Kawahara: I think they're talking about the wind towers.

Mr. Imparato: And again, you know, I don't necessarily say that it should be greater than that and in our...in our proposed comments we didn't advise increasing the setback but rather letting the county put another clause in it that says that if necessary the county can require a greater setback for safety purposes.

Ms. Kawahara: Okay and then the noise.

Mr. Imparato: Mm-hm.

Ms. Kawahara: Is it reasonable to ask for imperceptible noise in the neighborhood?

Mr. Imparato: I think it's reasonable to ask that when the county is giving a new right to someone that that...in creating that new right, it doesn't create a new burden on other folks. And it's one thing to talk about noise that occurs sporadically, but on the other hand, these are basically industrial equipment that can be operating 7 by 24, 3 a.m. in the morning, 4 a.m. in the morning, and so that's a different type of noise than, you know, asking the people to be quiet at 8 in the evening. So, let...let me say this, the vendor, Kaua'i Electric, said, I believe before you and before the Planning Commission, that the units that they sell have a decibel rating of 0.45, less than 1/2 decibel. So, I guess, my question...my point would be, well if indeed they are as quiet as their claims to be, then there should be no problem in mandating that they be that quiet. You know, the thing...and the

concern isn't always...isn't just the industrial equipment that Kaua'i Electric might sell, than one vendor, but I'm sure we'll have a whole bunch of home-grown devices that people build and the question is how do we protect neighbors from that and if there's nothing in the standard...no noise standards in the bill, then there's nothing for the county to hang its hat on other than the DOH standard, which are really not designed for maintaining rural quiet.

Ms. Kawahara: Okay. I just...I just...that caught my eye because every house or place I've ever rented is not...doesn't have...it has noise at some point and it's not...there is no imperceptible noise.

Mr. Imparato: Sure, but not with equipment that's operating 24 hour...could operate 24 hours.

Ms. Kawahara: Okay and then the other question was it's a full acre that these are going to be on, an acre or more, right?

Mr. Imparato: Mm-hm.

Ms. Kawahara: So, like you said, it's conceivable that it's in the middle or wherever of that acreage and from both sides they won't be able to hear it or wherever they are.

Mr. Imparato: Right.

Ms. Kawahara: Because it's...because it's on a whole one acre.

Mr. Imparato: Right and the issue is no noise at the ba...at the neighbor's property line, not that it generates no noise at all.

Ms. Kawahara: Okay.

Mr. Imparato: The concern, of course, beyond the one acre, though, is that the bill would allow these to be on lots...virtually any lots that are smaller than one acre subject to basically a use permit and again, a use permit doesn't even require a...necessarily require any sort of public hearing. A use permit in a residential zone requires a public hearing. A use permit in an ag zone or open...in other areas, it does not require public hearings and there are small lots where people live in those other zones. So, again that's why I don't think it's sufficient protection. And again, I...I...I'm not opposed to what's the...what people are trying to achieve here with this bill. I think it's just a question of putting in a few more protections to make sure that what's being done doesn't harm people in the process.

Ms. Kawahara: Okay, thank you. Thank you, Chair Furfaro.

Mr. Furfaro: Any other questions?

Mr. Kaneshiro: I have one. Hi, Carl. You know, I think you also mentioned a proposal that it shouldn't be more than 100, no 10 kW.

Mr. Imparato: Correct.

Mr. Kaneshiro: Okay, my question is, you know, in an ag district where you have probably 100 kW, instead of getting 5, 10 kW per...10 kW,

one...one of those units would be able to probably accommodate a bunch of homes. So, I mean if we put a...prohibition like this in this bill, we're not really allowing that to happen on ag lands.

Mr. Imparato: I understand what you're saying and...the...we, we had in our comments recommended that this bill apply to units of 10 kilowatts or less. Ten kilowatts would probably power probably 6 or 7 homes; a hundred kilowatts would power typically 60-70 homes if it was operating fulltime. The issue here is that this bill, though, gives rights to build these units on...units on lots of one acre or less than an acre. So, I think that if you're going to create all these rights, that anyone by right can put something on a lot of one acre without any other permits, then you have to say, well, how big and...and that's where I'd say that this bill should cover 10 kilowatts or less.

Mr. Kaneshiro: I see.

Mr. Imparato: If someone wants a larger one, that's fine, come in and ask for a variance.

Mr. Kaneshiro: Okay, I mean...because basically the bill covers all wind, you know, not only like what you're referring to. But the bill itself covers, if I'm not mistaken, Mr. Bynum, any kind of wind energy up to 100.

Mr. Bynum: Up to 100.

Mr. Kaneshiro: Right, so...

Mr. Bynum: Which is kind of a generally accepted definition of what a SWEC is.

Mr. Kaneshiro: Yeah, okay. But his...his perception is have this bill centered more to smaller type of operation rather than a large operation.

Mr. Imparato: Right and that's not opposed to the larger ones.

Mr. Kaneshiro: Okay.

Mr. Imparato: Just saying this bill is tailored towards how you go in and get something done very, very quickly and easily.

Mr. Kaneshiro: All right.

Mr. Imparato: And that's fine for the small ones.

Mr. Furfaro: Okay, did you have a question, Mr. Bynum?

Mr. Bynum: Yeah, sure.

Mr. Furfaro: The floor is yours.

Mr. Bynum: Thanks for coming, Carl. And I appreciate your input. Yeah, I...I...I am also concerned about the noise standards and because I think as the planning department said, kind of it's the air-conditioning units that people tend to look at. It's like, hey, my neighbor might put in central air. That central air might make noise and it...it, you know the unit may be close to my property line and I may hear it. What's a reasonable amount? Or my neighbor did

put in a window air conditioning that was right off of my living room, right. And...and so the Health Department set standards for noise. And 55 may very well be accessible. I mean that's something that I personally want to look into. On the other hand, imperceptible is very conservative, you know. And so, I appreciate the input and, you know, I...I want to look at the issue as well. But there may be a position somewhere between 55 and imperceptible that you might find acceptable or others might find acceptable.

Mr. Imparato: And...and I have tried to...to find some and that...even searched on the Internet and it's not my field of specialization, acoustics and all, but I haven't really found much out there and I acknowledge that, you know, there's...reasonable people can agree that...can disagree as to what's the right solution there. I would just say that we need to balance the perceived benefits of these units with the burdens that they create and I would prefer that we don't create a whole new set of burdens for property owners or residents, excuse me, that they have to hear some new noise, if possible.

Mr. Bynum: And I...I certainly agree that a certain level of noise above and beyond a certain level is unacceptable, and so that's something I want to look into more. And...and I do appreciate your input. I felt, from my own view, that the planning department with the public input they perceived...with what they received and had done a pretty good job of balancing that...that pragmatic reality that, you know, some utilities are above residential heights now and because of the pragmatic need to be and that wind fits in that. That we're not allowing a structure to be built as a very large footprint either that if I looked at a typical, say ag lot, I would see a home and I would see one, perhaps two windows, in a 3- or 4-acre parcel, but it's just that one portion that's going to go above the visual plane of the house, right. So, you know, so I don't know how you address the pragmatic reality that for them to be efficient and to meet the energy needs that the individual has, they need to get above the, you know, the obstacles, right, and so. And that's something, I guess, we'll decide on what's a reasonable balance.

Mr. Imparato: I think that's why for example, the example you used of a 3- or 4-acre ag lot, you know when we're talking about those larger lots, then indeed it may be appropriate to allow something to be 20, 30, 40 feet above the height limit. You know, it's a...a...to even a larger lot, you know the visual impact, the further away you get, you hardly notice because of the perspective. But that I...I don't know that there's an easy way to draft a rule about that other than to say that if you want to exceed the existing height limits, then we'll have a Class IV permit required and a use permit hearing and at that point one could make the argument that it's so far into the lot that for to a visitor or a resident looking at the lot from the lot line, it looks like it's no more than a 20-foot structure. So, I...I...that's why I think that the use permit and Class IV permit hearing is...is the way to go.

Mr. Bynum: Can we just close with this thought, the original draft...the...the bill went through several drafts before it got sent to planning, right. The original draft was pretty conservative. Other, especially industry people looked at it and said, oh no, the higher the better. The height limit should be 120 feet, the height limit should be...right. So there was this range of opinions: no, the height limits should be very high; no, the height limit should be low. The draft that I sent to planning kind of...tried to get a...a compromise and said no, you know, 120 is ridiculous. Let's look at certain lot limits, but I'm not the planning department. I don't live with these realities every day. They do. And so, from the bill that I sent over there, most of the revisions they made were making it more conservative, fewer units per acre, lower height limits and they had really good rationales because the

planning staff did a lot of homework which I really appreciate. They went out and looked at other bills in other communities. They looked at what kind of is the standard norm around the county for these kind of bills, you know, and came up with what I thought were pretty modest proposals. And, you know, and then I...I value your testimony as well, although I see your proposal is very conservative. It's like no height increase, no perceptible noise, and so it'll be interesting to see what, if anything, we arrive at in terms of that whole field of balance, so...

Mr. Furfaro: Yeah, on that note, I just want to correct in the committee, if we have commentary from the councilmembers or narrative, but if we have questions for Carl. This is to extend his time based on questions, so. Let's keep the commentary towards when we call the meeting back to order. Does anyone have any more questions of Carl? No? Thank you very much. Thank you for your testimony, you and Barbara, and thank you for coming down.

Mr. Imperato: Thank you all very much for your attention.

Ms. Kawahara: Thank you.

Mr. Chang: Thanks for sticking around.

Mr. Furfaro: The rules are still suspended. May I ask the planning department if they could come back up.

Mr. Aiu: Good afternoon, Chair. Again, Deputy Director Imai Aiu and Ka'aina Hull, planner on the project.

Mr. Furfaro: Thank you for coming back after lunch. I am just going to summarize here a little bit and see if there's any more questions for you folks, but I do believe that we will ask for a deferral on this bill based on several things that have surfaced today. Number one, I would like to send a communication over to the Office of Economic Development, including Mr. Costa and Glenn. I'm quite concerned that the county would launch a strategic think tank dealing with energy and an energy plan for our island and yet somehow we didn't merge the two departments together, so. I'm going to ask that that communication ask the Economic Development to take a look at your bill recommendation and how it fits. You know, some people may believe this to be a, you know, a cautionary piece, but for me, you know, the county functions as a business unit and this is a significant piece that we're trying to understand what our net results will be and what are the best policies. So secondly, we've had testimony today about setback issues and decibel readings dealing with the Department of Health. We have some offers of what might be considered conservative alternatives or potential amendment. The question also deals with permitting levels. Perhaps there's some recommendations of making certain that it triggers a public hearing at permit level IV. I have circulated a first draft of the energy bill to this point. Were you gentlemen privy to that by chance? Did you get it in a handout that I circulated today?

Mr. Aiu: Yes, we did.

Mr. Furfaro: Good, very good. And I'm also very concerned about the infrastructure issues as we see people wean themselves off of the infrastructure requirements for power on the island. You know, is KIUC looking at a rate application that might give some consideration for that in a two-tier plan. So, you know, based on...on those kinds of comments that have been submitted to us in writing and I think our need to have a better understanding on how these two

bills and our strategic plan merges together, I'm going to ask for a deferral from the members. But before I do, let me ask the members if they have any more questions of you. Mr. Bynum.

Mr. Bynum: I believe before we took the break I was talking with...asking questions and then we went to public testimony, so I just wanted to finish up with...

Mr. Furfaro: Yes, go right ahead. You...you have the floor. That's why I asked them to come back.

Mr. Bynum: And I just gotta get my train of thought back here.

Mr. Furfaro: Let me let you get your train of thought and see if anybody else has something to ask.

Mr. Chang: I think I got...

Mr. Furfaro: Mr. Chang, go ahead.

Mr. Chang: I think I have my train of thought.

Mr. Furfaro: Okay, good.

Mr. Chang: I hope. You know I was wondering when we talked a little bit about noise and having a rapidly rotating blade, do we know anything about perhaps vibration? You know, whe...whether the...the windmill is mounted on a house or the unit itself...do we know what vibration affects the neighboring property?

Mr. Aiu: I would imagine that the...subassembly must vibrate just by physical reality; however, I'm not aware of any statistics, you know, documenting the...how much or the effects of.

Mr. Chang: Yeah and I guess the last thing I wanted to comment on is, you know, when we talk about the wind, I guess we always make refer...reference to the trades in...in most cases, but I would imagine in the times that we do have Kona winds, the noise can affect something that we normally wouldn't think of coming from one way, now it's happening the other way and...and of course rain might make that much more noise in that area. So I just thought about that as a consideration.

Mr. Hull: Just in reference to differentiating winds and winds changing direction, not all but some and the primary SWEC that has been permitted and constructed on the island of Kaua'i right now is a...is...it's basically on a swivel head so it...it's able to maneuver itself to the change of the winds...of the wind direction.

Mr. Chang: Thank you.

Mr. Furfaro: And on the North Shore we have Kalalau wind and Kona winds, so. Mr. Bynum, are you ready?

Mr. Bynum: Yeah.

Mr. Furfaro: The floor is yours.

Mr. Bynum: So we talked about noise and visual impact and I also want to...that...and you mentioned it briefly but there are tower-mounted facilities that your proposal would allow a 20-foot height above the existing height limit in different, so that would be different on the North Shore than it would be in Kapa'a, for instance, right?

Mr. Hull: In the draft bill, I...I think what you're referring to is the North Shore Development Plan? Okay, well, there's different type standards for different zoning districts. So the Ag has a 54-foot height standard, the residential has a 30-foot height standard. So, under the bill, the tower-mounted would go...would be allowed to go up to 50 feet in the residential and 70 feet in the agriculture. For the North Shore Development Plans...under the North Shore Development Plan, all structures are limited to 25 feet in the North Shore District, basically from approximately Moloa'a Valley on. In the draft bill, that development plan is addressed and it essentially allows that 50 and then 20 for the agri...it essentially allows the same heights in Kapa'a as it would in the North Shore.

Mr. Bynum: So it doesn't provide for a different height limit in the development plan that has a lower height.

Mr. Hull: No it doesn't.

Mr. Bynum: But it could say if it's 25 now, we could amend the bill to have that be 20 feet above the development plan limits.

Mr. Hull: Correct.

Mr. Bynum: So then...okay.

Mr. Furfaro: Excuse me, along those lines, how do you override the development plan, the citizens' development plan?

Mr. Hull: Well, the citizens'...the development plan is...is part of the Kaua'i County Code and specific language was crafted, was worked with the county attorneys. I have to find the specific (inaudible) here.

Mr. Furfaro: Let me...let me ask if we can pose a question since it's on Mr. Bynum's floor time, but it's on the same item. So what about other utilities like radar towers and cell phone towers and microwave relays and...

Mr. Hull: Well, a lot of those...

Mr. Furfaro: And how does that go over? Is it...doesn't it trigger a...a public hearing?

Mr. Hull: They do as communication facilities and whatnot they do.

Mr. Furfaro: You can direct me to the section of the bill that covers that at a later time.

Mr. Hull: Okay, okay.

Mr. Furfaro: I'll give the floor back to Mr. Bynum.

Mr. Bynum: So but in the North Shore Development Plan, utilities would have that 20-foot height increase? Is that correct?

Mr. Aiu: Yeah, there's...there is basically language within the CZO that allows...that gives a broader blanket to utilities on their height and placement.

Mr. Bynum: Then in the North Shore Development Plan, have there been structures built there that exceed the height limit?

Mr. Hull: There have.

Mr. Aiu: Probably.

Mr. Hull: And...and there's a...

Mr. Aiu: You know.

Mr. Hull: There is a process.

Mr. Aiu: For everyone who...

Mr. Hull: The process in place is basically you have to apply for a use or generally it's a variance that you apply for in order to exceed the height, but specifically outlined in the North Shore Development Plan, you can exceed the height by getting...by ascertaining a use permit from the planning commission.

Mr. Bynum: And those for...for resort development, the North Shore Development Plan envisioned two stories in essence and a number of resort developments have been allowed three stories. Is that correct?

Mr. Hull: Correct.

Mr. Bynum: So...

Mr. Furfaro: But the procedure...my point is the procedure is you have to apply and it triggers a public hearing.

Mr. Hull: Right.

Mr. Furfaro: Okay, that's...that's...that's all my point is.

Mr. Bynum: I understand that. Okay, that's all for now. Thank you very much.

Ms. Kawahara: Thank you.

Mr. Furfaro: Any other questions of the planning department before I call our meeting back to order. And I would also like to confirm that that application is based on its 25 feet from the highest point of your property, right?

Mr. Hull: From the existing grade...

Mr. Furfaro: From the existing grade.

Mr. Hull: ...from where the structure is situated.

Mr. Furfaro: So with...I just point that out because of the terrain and the many valleys and so forth on the North Shore, it is from the highest grade. Am I correct?

Mr. Aiu: I don't believe it's from the highest grade on your property. I believe it's from grade at building.

Mr. Furfaro: From building grade.

Mr. Aiu: Yeah.

Mr. Furfaro: Okay, that answers my question. Okay.

Mr. Hull: And just to...to reiterate when you were asking about the basically the section of the code...the...the...the bill...

Mr. Furfaro: Oh, you found it? Yes, please share that with us.

Mr. Hull: Yeah, Section 8-28.1.

Mr. Furfaro: Go ahead. Is there anything you want to add to that other than to just direct us to that section?

Mr. Hull: I can read it if you like or...

Mr. Furfaro: No, we'll...we will take it. Thank you and we appreciate your time today. So I'm going to go ahead and call the meeting back to order.

There being no further questions, the meeting was called back to order, and proceeded as follows:

Mr. Furfaro: I earlier stated my position asking for a deferral, but before I go any further on that comment because once we have a deferral there's no discussion, may I ask if there's any further discussion. Go ahead.

Ms. Kawahara: Yeah, this is regarding the...the reason that you gave for the deferral and I...I'm fine with the deferral, but I was just concerned about one of them when you were talking about the infrastructure and the rate consideration for KIUC, so actually there's two things. I just want to be sure that our...we're not...that...that our legislation is not being driven by whether or not a company has a rate structure yet.

Mr. Furfaro: Oh, maybe I should explain that to you, Lani.

Ms. Kawahara: Yes.

Mr. Furfaro: My concern is the seven of us who are sitting at the table, you and Mr. Bynum have wind turbines and during certain peak demand periods like when we come home, we all going 'au'au, we going cook our dinner, the demand rate goes up and there's no wind that day. But to handle the consistent transmission of power, there's another cost with the utility company of which you may not experience during the low time of demand because you're creating your own time and therefore, if there is a two-rate tier planned, that's my question. It's for all of us that don't put in necessarily a solution to energy in the form of wind but yet at the same time we still have escalating cost association with...associated with

distribution. But since you have less demand, your rate is lower, but you're using the common features of distribution. So it ends up with the other rate payers maybe paying more.

Ms. Kawahara: Okay, okay, so you're talking about the impact to all the rate payers.

Mr. Furfaro: I'm talking to all the rate payers.

Ms. Kawahara: And not...not the operations of KIUC and whether or not they establish...okay.

Mr. Furfaro: No, no, and so, thank you for giving me that time, but...

Ms. Kawahara: Okay, great.

Mr. Furfaro: That is a consideration and I think it was surfaced also in Mr. Imparato's narrative as well as Mr. John Gordon's. That...that is a question for the utility company.

Ms. Kawahara: Thank you for the clarification. And the other thing was the delaying for the midway point of the sustainability plan that we have right now. I just wanted to point out that I did...I emailed Jill Sims. I guess she's the project manager and...and asked her if she thought anything in that bill would...would, you know, preclude us from continuing on or waiting for the...waiting for this half...halfway mark. And she hasn't replied to me, but I thought it was an interesting point...

Mr. Furfaro: I...I...I appreciate that and I said I will be sending a communication, but my surprise is we're spending \$400,000 on a strategic plan that will answer five items that I just surfaced and I find it a little boggling that there's no dialogue going on between departments.

Ms. Kawahara: Okay, thank you.

Mr. Furfaro: And that's what I'm going to be communicating.

Ms. Kawahara: Yes, okay, thank you.

Mr. Furfaro: Thank you. Any other dialogue before... Yes, Mr. Bynum.

Mr. Bynum: Yeah, I just want to say I'm glad that we're having this discussion regarding small wind energy and because if you have been, and many of you have, to energy forums on the island, the experts come from the mainland or from elsewhere and they say, hey, we are the most dependent on fossil fuel as anywhere on the planet and we have the highest utility rates...one of the highest utility rates in the country and so the bad news is we have very little alternative energy happening. The good news is the experts always tell us is that we have tremendous potential. Because of those high rates, there's often a very quick return on investment when alternative energy is placed in the docket. But for all of that talk, we have very few alternative energy programs coming on-line, whether they're at utility scale or at private scale. The last few years we've all been to dedications of solar projects at the Hyatt, solar projects at Pioneer Seed, solar projects at Wilcox Hospital, co-generation at the Marriott. The big players here are,

you know, they have the investment, they have the time, they see the return on the investment and they are jumping in and generating their own energy. And...but it's been an obstacle for the little guy, for the guy who has a small farm or is on ag land or maybe wants to put a—what's it called—vertical axis wind...small wind system on the top of their home so they can have some destiny over their energy future. The purpose of this bill was to try to address those obstacles. We know that the first individual that put up a small wind system had to drop...jump through a lot of hoops including demonstrating that it was part of an agricultural plan. Wind systems and agriculture have been traditional for many years and that's great, but I think we've entered an era where wind systems or photovoltaic or whatever alternative energies don't need to just be tied to agriculture. They need to be about avoiding the use of fossil fuels, about reducing our carbon footprint, and I would like to see residential people be able to get in on the deal, not have to be and have the capital scale of a hospital or a Hyatt, and this wind energy is the potential way to do that because the experts also tell us that wind energy should...needs to be part of our alternative mix in the future. I think Councilmember Furfaro brings up some interesting issues because I'm hearing for some of those big players that there is going to be...that KIUC is proposing a differential or a fee to be hooked up to the system, which...because as KIUC deals with the debt service that they have as a coop, as the big players generate their own energy, one of my concerns is who carries the burden of that debt service and so that's an issue that we need to address and that's important to our community. But I would like to see smaller players empowered to contribute to alternative energy and this is one potential way to do it. As I said earlier, I believe that the planning department and the hearings that happened at the planning commission came up with a fairly balanced thing that we may look at making some changes to, but there is definitely a trade-off, you know. In the best of all worlds there's no visual impact and we put up alternative energy and there's no visual impact. But in that world that we live in now where we're dependent upon foreign oil, where we're beholden to Arab Emirates, where the whole planet is coming around and saying that we need to get serious. One of the best books I read this year was called "Hot, Flat, and Crowded," and I'd encourage everyone to read it, which basically says we need to be leaders in a new, green and clean energy future. And there will be some trade-offs for that. I personally am prepared to see wind systems on larger lots that exceed the height limit as a part of the trade-off that we need to make in order to do our part as individuals and as a community and to wean ourselves off of foreign oil and make us less dependent upon the whims...the political whims for our future and our sustainability. And so, I'm thrilled that this is happening. I certainly would support a...a deferral. I would request that that be def...deferral be like most of our deferrals for two weeks and that the people we're seeking information for we make every effort to get that and that we continue the dialogue and if necessary defer again. But I'm concerned about a deferral that hasn't a...that goes beyond that because in this binder right here are several bills that have been in deferral for one year, two years, three years and I think there is a sense of urgency about trying to address these energy issues that is felt by a big portion of our community, so. Thank you very much.

Mr. Furfaro: Anybody else have any comments before I close the comments?

Mr. Asing: Yes.

Mr. Furfaro: Mr. Chair.

Mr. Asing: I think Councilmember Bynum brings up some very valid, good points. I guess, you know, my...my concern is that, you know, the

visual, environmental and noise problems are problems that are real problems. Now you know the term beauty in the eyes of the beholder, I will tell you that my feel when I go to Maui and I get to Kahului and I look to the left and I see all of those windmills on the hillside, for me as an individual, yeah, it's not acceptable. Now, it's acceptable, I guess, to most people and Maui County and everybody else maybe, but to me it's not. It's a blight. While I think it's good, I think it serves a good purpose, the trade-off for me is too much; it's too high, yeah. And so I understand and I think there's got to be some trade-offs, but I'd like to try to keep the trade-off as minimal as possible. The noise problem that I mentioned earlier, you weren't here at that particular time, it was horrors. It was horrors to the point where the individual actually sold his house and left. It got that bad and it was this woo-woo-woo sound, you know from the wind and the windmill going. And it was like, as mentioned by...by Carl, it's 24/7. So, you know the individual had just sleepless nights and couldn't take it anymore. So, you know, I just have some concerns and that was a long time ago, technology has changed and maybe it's better and it's acceptable, and I can understand that. But I...I just want to be sure and then the second part to my concern is, you know, we have an energy sustainability plan that, you know, we paid \$400,000 for that...that's coming out and I believe that we should tie that together. So, that's, you know, my feel and no doubt Councilmember Bynum brings up some good issues, good points. But those are my concerns and I believe my...my concerns are valid and real also. So, I just have those concerns and thank you very much.

Mr. Furfaro:

Thank you, Mr. Chair. Mr. Kawakami.

Mr. Kawakami:

Thank you, Mr. Chair. I think this bill is a good step in the right direction. Do I think it's going to substantially reduce our dependency on fossil fuel? No, I think it's part of the puzzle. Do I think it's going to benefit the people that we say it's going to benefit, the little guy? I question that. The only reason why I question it is because you're only allowed one if you're in a residential area on a lot that's what, an acre or larger in size, so, I mean, how many guys do we know that have lots that are more than an acre? I think it'll help the commercial guys. When you think about who's in the commercial district, it's businesses, so yeah. There it's 20,000 square feet, so I think it'll help the commercial. Do I think it's the appropriate first step? No, I think conservation is the first step. You want to reduce your dependency on fossil fuel, use less energy, you become efficient. Do I think that this is an important piece of the puzzle? I...I could say that it's a step in the right direction, but I...I don't see it substantially reducing our dependency on fossil fuel. I see it helping out people that have big lots in residential areas. I see it helping out businesses and...and of course, providing some aid to the farmers that need to depend on this. So, I look forward to working on it again and I can support the deferral. There's a lot more questions I have, then it will give me some time to get some answers, so thank you, Mr. Chair.

Mr. Furfaro:

Thank you, Mr. Kawakami. Anyone else before I close? Okay, I...I do want to make a...a statement here that, you know, I strongly support alternative energy sources. In fact I was the general manager of the Sheraton Coconut Beach when we put in the first co-generation plant on a shared revenue plan. I'm also a recipient of the Green Star Award for reduction and conservation. I do want to say the point that I am concerned with here, whether we call it as I refer to it as a two-tiered rate structure, a differential rate, what we need to be aware of and why I co-introduced the \$400,000 that supports the Energy Strategic Plan is we have a utility company that's using...losing base customers. All the items that Mr. Bynum talked about, they're all great. They reduce our fossil fuel. But from a business standpoint, we need a strategic plan because as you reduce your base, you still have fixed operating cost, repair and maintenance items

and items that also reflect investments in future generation...future generations not of people but generation of power. Those assessments are...actually become part of the rate base. If you have a group that wants to demand energy only at peak times or the deflation of certain natural resources, but they still participate in the need to get transmission to their place, they should be charged in a tiered structured rate or charged for that differential based on the fact that when they need power, they're going to come on-line. So, I want to...I want to make sure that we understand the reason behind the energy conservation and strategic plan that we funded and (inaudible). And all departments in the county need to be behind it because ultimately that plan is going to tell us what kind of ordinances we need to talk about in putting in place. And yes I do believe a wind ordinance will be one of those many ordinances. But, you know, from a business standpoint I'm only bringing this to your attention because, you know, we paid X amount of dollars for the utility company, the people of Kaua'i. As you lose customer base, it doesn't change the cost of reinvestment, repair and maintenance, and those go through an application process. So, as the hospital comes off-line, off certain hotels, co-generation in 1977 did not solve all the problems. That was a total disaster in 1977, but I have to tell you we have to be thinking in those terms that the ongoing operation and additional generation or subsidized generation from solar, wind, ocean, hydro, you know, are all going to be in that plan and it wasn't more evident than the comments made from the Cost Control Commission in the Garden Island about controlling our own energy, which is Mr. Kawakami's point about conservation. But the whole idea is to have a total plan as we know in a key result area. We are losing customer base because of the need to find alternatives to our fossil fuel generation which represents 94% of our power source today. And...and that's what I'm...I'm concerned with as it relates to where we're going with the tiered or the differential rates and what will the plan tell us about what we might lose as a customer base for KIUC. So, on that note, can I have a motion about deferral?

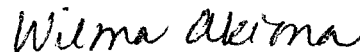
Upon motion duly made by Councilmember Bynum, seconded by Councilmember Kawahara, and unanimously carried, Bill No. 2317 was deferred.

CR-PL 2009-06: on Bill No. 2291

A BILL FOR AN ORDINANCE AMENDING SECTION 8-24.1, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE
[Approved.]

There being no further business, the meeting was adjourned at 2:26 p.m.

Respectfully submitted,



Wilma Akiona
Secretary

APPROVED at the Committee Meeting held on August 12, 2009:

JAY FURFARO
Chair, Planning Committee

MINUTES

**PUBLIC WORKS/ELDERLY AFFAIRS COMMITTEE
July 15, 2009**

A meeting of the Public Works/Elderly Affairs Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Tim Bynum, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, July 15, 2009, at 2:26 p.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro
Honorable Derek S. K. Kawakami
Honorable Bill "Kaipo" Asing, Ex-Officio Member
Honorable Lani T. Kawahara, Ex-Officio Member

Minutes of the June 24, 2009 Public Works/Elderly Affairs Committee Meeting.

Upon motion duly made by Councilmember Chang, seconded by Councilmember Kaneshiro, and unanimously carried, the Minutes of the June 24, 2009 Public Works/Elderly Affairs Committee Meeting was approved.

There being no further business, the meeting was adjourned at 2:27 p.m.

Respectfully submitted,

Wilma Akiona

Wilma Akiona
Secretary

