

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 30, 2010**

Approved: 6/8/10

A. CALL TO ORDER

The special meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:04 a.m., Tuesday, March 30, 2010, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Hedani: The March 30th special meeting for the Maui Planning Commission is called to order. We'd like to go ahead and open it up for public testimony at this time. We have six people that have signed up for testimony and your testimony should be limited to three minutes. First person that I'd like to call up is Steve Sutrov.

Mr. Steve Sutrov: Good morning Commissioners. My name is Steve Sutrov. I've been testifying on this project since it was in 1988 when it was first brought up for project district ordinance approval and at that time I believe even Chris Hart was the Planning Director.

At that last meeting I'd just like to – it was reported in the news that there was a number of neighboring property people there speaking in opposition to this design and project. They were all property owners and most of them border the property and it was not mentioned, they do border the property many of them are in opposition to this and also few, the rest were within 500 feet or just outside that boundary within sight and sound of the Lodge.

The KCA, the Kula Community Association sent recommendations. They did a site inspection as they said in their testimony to the Lodge, a presentation was done to them, they came over to the neighborhood on Aina Kula Road and met with neighbors. They did a site inspection, they talked to the neighbors, the Planning Department has not recommended you people do a site inspection. They didn't request that the Urban Design Review Board do a site inspection. It would have been very important I believe that that should have been done. The aerial photograph that the planner – the developer's planners showed was – it looked at least 10, 15 years old and showed wooded areas down below the Lodge. There is no real wooded areas below the Lodge. It's all residential and new subdivisions down there, lots have been cleared, homes have been built, ...(inaudible)... Site inspection would have cleared this up.

The Kula Community Association is a very important organization for us in Kula. They represent over I've been told 500 people plus maybe 700 with you combine an email list they have. They send out a flyer in our community every year to get feedback from our community. They're a very important organization respected by all the legislators on this island and their recommendation should be looked at honestly rather than ignored like they had been by the Planning staff. Hopefully you'll take those considerations, the conditions into account for today's hearing and – because I think all those conditions are very unbiased and are not only going to protect the environment for this neighboring community but also they're very good conditions for the guests themselves of the Lodge as far as supplying noise barriers and safety barriers as far as walls around the perimeter and those kinds of things and such.

Also, just very quickly, I'd also like to just mention that here I have my original notice for coming – the ordinance hearing in 1988 that was within 500 feet, it said right here, it says, "the purpose for this was the proposed development –

Ms. Takayama-Corden: Three minutes.

Mr. Sutrov: – will be a low density residential scaled project in keeping with the Upcountry Maui atmosphere and lifestyle.” I’m sorry, this doesn’t sound like the –

Mr. Hedani: Steve, can you conclude your remarks please.

Mr. Sutrov: This doesn’t sound like the condo club that was being designed and suggested to you at that last meeting. So thank you very much for your consideration on this.

Mr. Hedani: Thank you very much. Questions from the Commission? Commissioner Starr.

Mr. Starr: Yeah, Mr. Sutrov, could you describe what this looked like in the early permutations of the project and kind of how – it’s evolved in your eyes?

Mr. Sutrov: As far as the neighborhood situation with the project?

Mr. Starr: No, in terms of the project itself.

Mr. Sutrov: Describe what I believe the project is? What was that Mr. Starr, I’m sorry.

Mr. Starr: What do you see it looking like in the early stages and how it’s changed.

Mr. Sutrov: Okay, well the earlier stages back when the ordinance was first proposed it was individual bungalows spread out throughout the property and now it’s been changed to one large unit that is three stories looking directly at Aina Kula Road. Some of the units will be 35 feet, 40 feet about the properties looking down into those properties and the other was the very low, it’s very residential looking actually and that is not the design that is now. In 1993 actually a community plan amendment was enacted where he said he wanted to bring all these commercial uses into one structure in the interior of the body of the property because it becoming too built up around the perimeter and now he’s not asking for any kind of change in the language of the zoning but he is bringing all his commercial uses out to the boundaries again. He’s putting in commercial area – taking it out of the Lodge area and putting it on the roadway in his commercial building and he’s bringing his lodging unit even more obstructing and looking straight down into the properties along Aina Kula Road side and he’s bringing this pool and lawn area into the setback area actually. The retaining walls are going to be in the setback area on the lower portion of the property and that is much more encroaching of the properties that it has been ever before.

Mr. Hedani: Thank you very much Steve. Any other questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: The Kula Community Association and some issues raised last time were about the potential for condominiumizing it and in my mind at least going along with that is it be for long term residential use rather than transient vacation rental. Do you have any thoughts on which would be better for the community? Is it possible that if there were people living there long term the noise problems would be lessened?

Mr. Sutrov: I have a – I can visualize, you have the lodge building itself with 15 units in it with lanais with families living in there with their large screen t.v.s blaring through the windows looking down, a bank of this, it's like it's going to be an apartment house looking down into the neighbors on Aina Kula Road mainly and I can visualize that as being a very much of an impact. It's not what we be perceiving as a resort retreat.

Mr. Mardfin: But would you anticipate the impacts would be worse from residents rather than from transients?

Mr. Sutrov: As far as it just being short term with visitors? I think if you have controls on the actual property like a quiet time maybe between and 8:00 p.m. and 8:00 a.m. for your visitors that is very – it can be enforced. If you have individual people owning those units you're not going to get any kind of real enforcement in continuity in rules and regulations that people are going to want to adhere by unless we have some kind of organization that everybody belongs to and it's going to be impossible for the neighbors to try to enforce any kind of compliance with a set of conditions. It would be so much easier if it was just rules and regulations set up in the ordinance and where if there's an infraction we have somebody we can call if there's a problem and also he can base, the Lodge can base their actual management policy around those legal conditions and that's what we're hoping for, and I think that's what we need. The neighbors have a reason to believe that the Lodge is not complying – will comply with regulations by management policy. We need something that is going to be stronger than that. We have – there's a history in the neighborhood that we doubt the management is going to carry out his word on a project. His word is not good enough for us, I'm sorry.

Mr. Hedani: Thank you very much. Any other questions from the Commission? Commissioner Hiranaga.

Mr. Hiranaga: Just to clarify when you say we and us, I missed the first part, are you representing Kula Association or?

Mr. Sutrov: No, I'm not. I used to be on the board and I am still a member of the association as far as I say we I have to say that the neighbors, the owners in the area that border the lodge, a number of us have met together a few times and it seems like we have a consensus. Nothing that we've written down, we haven't for a organization or anything like that but I have to say I speak for a few neighbors especially the ones that couldn't make it here today that we have a consensus of concerns over the years and not all the people have been just moved in either. Many of us, there are probably -

Mr. Hedani: Thank you very much Steve. I think you've answer the question.

Mr. Sutrov: Thank you very much.

Mr. Hedani: Are there any other questions from the Commission? Thank you. Next person to testify is Sharon Mosley.

Ms. Sharon Mosley: Hello thank you for this opportunity. I am the property owner at 339 Aina Kula

Road otherwise known as Lot 2 and is one of those units that a three-story hotel would look directly down on my property, my yard, my deck and so I feel like I have a very direct interest here.

I moved to that house on Aina Kula Road about five years ago. I retired about seven years ago and moved to Maui. I am a retired attorney and did submit a letter with some legal points of view about the inconsistency between the proposed plan and the ordinance as it stands today and therefore what I believe is the inability of the commission to approve the plan as it's currently presented because of those inconsistencies. The inconsistencies that I'm pointing out have to do with how the property is identified in existing structures and in commercial uses in the main lodge that would no longer be in the main lodge as I understand it. Those references to existing structures relate to the square footage requirements and say that these purposes in the existing structures will be limited to these square footage levels. If the ordinance is not amended there's a number of problems that I see which is that how you apply those square footage requirements how you can determine the application of those if we're not talking about existing structures and use in the hotels in the main lodge.

Secondly, there's some square footage requirements related to the accessory uses and the special uses of the property which have a specific square footage designation that's separate. However, from looking at the plan I can't determine what are the accessory uses and how do you apply these square footage numbers. So I have suggested that the current plan really can't proceed under the current ordinance without these inconsistencies being there and being a problem.

Secondly, just to briefly address the condominium issue, I think that the position that this cannot be regulated under a –

Ms. Takayama-Corden: Three minutes.

Ms. Hedani: If you could wrap up your comments please.

Ms. Mosley: Okay. Under land use there's some special considerations here in that this is a special project district and that can be distinguished and that there are many circumstances that apply here that I think that this board could take into consideration when deciding if – if you do have some say in the use of a condominium nature.

Mr. Hedani: Thank you very much Sharon. Questions from the Commission? Commissioner Starr.

Mr. Starr: Yeah, could you explain your understanding of how the ability to not allow it to be condominiumized pertains or does not pertain this project?

Ms. Mosley: Well, the questions that I would raise have to do with the fact that this project and its uses and the nature of the hotel and the nature of the conditions this is a special district, this is a special district where all the usual hotel districts rules don't apply. There's nothing that I know of that allows apartments or condominiums in this area. I mean we don't live in an area where there are apartments which is essentially what this would become. I think that zoning usually doesn't control condominiums but it appears to me the fact that you have a special district creates perhaps another level of authority for looking at what you're really willing to approve.

Mr. Hedani: Thank you. Any other questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: I have two. I just want to be clear. This is your testimony that we had on our desks when we came in today?

Ms. Mosley: Yes.

Mr. Mardfin: Okay. I want to follow up on what your comment about – lets not talk about condominiums, lets talk about usage by transients versus by full-time occupants, year round full-time occupants. How do you think the difference in residents, by full-time occupants versus transients would impact on the surrounding neighborhood, the whole Kula community?

Ms. Mosley: Well, going back to the comment that this was all set up to be a retreat resort. I don't identify a retreat resort with what is essentially apartment buildings where people could live long term. It's been said that the pool would be limited to certain purposes such as spa guests and I find it unlikely that the hotel or condominium residents would be totally can't use the pool. That seems like an increased level of noise, possibility. You know, I can't say whether there's a significant difference between short term and long term overall. I just think it's something that we just never anticipated in our neighborhood on this small piece of land that is adjacent to our properties.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: With respect to the issue you brought up in your letter about the square footages if they're going to demolish the building then the square footages don't apply would you think that the building should have to last a hundred years, two-hundred years before they could build a replacement building?

Ms. Mosley: No, I don't have an opinion on whether they should or should not demolish the buildings. My opinion is that what they're proposing to do right now can't be done as the ordinance exists right now. It would need to be amended and my understanding is that that would be another process.

Mr. Mardfin: Thank you.

Mr. Hedani: Any additional questions for the testifier? Thank you very much. Next person to testify is Mele Stokesberry.

Ms. Mele Stokesberry: Good morning and thank you for this opportunity to get to speak again on this topic. My property is at 1576 Lower Kimo Drive that's about one – there's one house property in between mine and the Lodge. I'm a Kula resident and a KCA member although I don't live at the property and this property is one that I am buying and renting out until my son and family can retire on Maui. If I can't keep tenants in it due to noise problems and increased density of the neighborhood then I will stand to lose my investment in this property so it's very important to me and I have experienced some noise from the Lodge but so far it hasn't seemed to be a big concern. It seems like it's been a good neighbor up until now but it's just the size of this property does concern me quite a lot and traffic impacts which haven't been discussed yet this morning are also

– could potentially be a real problem up there on that narrow Lower Kimo Drive and the narrow highway. But it is especially of concern that the proposal asks for an expects, seemingly expects the right to condominimize the proposed new guest apartments. If there aren't legal conditions imposed on the project and it is sold and then resold to various owners we will then have way more problems than there are now and no way to return our neighborhood to its quiet residential character. I fully support the Kula Community Association's carefully considered and collaboratively developed recommended conditions which you all have for mitigation of this huge and potentially disruptive project. I and the other Lodge neighbors very adamantly urge the planning commission to recommend that these conditions be added to the actual zoning at the Council level. And I want to say I'm one of the we of Steve Sutrov's neighbors I have been to those meetings. So count me in as a we. And thank you very much for this chance to testify.

Mr. Hedani: Thank you very much. Question from Commissioner Mardfin.

Mr. Mardfin: I can understand your concern about the scale of the project going from five rooms to 15 rooms putting that aside temporarily what makes you think that short term residents would make less noise than full time residents?

Ms. Stokesberry: Well, I think that the issue is what Mr. Shibuya brought up at the March 17 thing when asked what about control and this has been already expressed by either Mr. Sutrov or Mrs. Mosley I can't remember which one said we really won't have any control unless there are controls built into the conditions on the project. Otherwise when you know, it's sold and resold, how can the neighbors have any input whatsoever to a multitude or different owners possibly even time share owners people coming in who, you know, at various times during the year or(inaudible)... time share to other people and they don't even know maybe what the neighborhood's character is.

Mr. Mardfin: So it's not that you think necessarily that full time residents per se make more noise but that the ability to enforce noise regulations would be weaker on full-time residents than they would on transients? Is that the basic argument?

Ms. Stokesberry: It seems to me as though that is certainly the case because if it's operated as a resort, as a retreat resort presumably the people who go there are looking for quiet too but aside from that also at least the management would have some guidelines that they would have to impose in terms of quiet times and use of the pool and outdoor noise after sunset, etc.

Mr. Mardfin: Thank you.

Mr. Hedani: Any additional questions for the testifier? Thank you very much Mele. Next person to testify is Chuck Hills.

Mr. Chuck Hills: Good morning. Thank you for letting me comment. My name's Chuck Hills. I'm a property owner. I live at 75 Aina Kula Road. I testified on this project on several times before. The last time I was before you I asked you to think very long and hard about what it would like 30 to 50 feet back from your property line to have a 35-foot hotel sitting there. You're going to hear from myself, from others about the KCA recommendations. I really believe that it is a terrible thing that the County has not taken the opportunity to include these new recommendations. Why they

didn't do this I can only wonder. But I believe that there are some very, very important things that would be at foot here. If this is supposed to be hotel and a resort why are we talking about a condominium? My concern for this project isn't simply the fact there would be more noise, more traffic, more people, more going on in a quiet neighborhood that has been that way for a long time. More concern about traffic in front of this thing, downhill traffic and traffic coming and going from the Lodge, more concern that there is going to be more noise outside from the pool, from barbeques, from parties that people live there want to put on. Mostly I'm concerned about the fact that you consider this in terms of the appropriateness of it. If all you're doing is sitting here to look at a way to pass a law, this is just nothing more than an ...(inaudible)... race, to make sure that everybody's skirts are clean if this thing gets approved then we have no protection for our communities at all. My concern is that whether this is an appropriate not just allowable development in a quiet community that where the law has specified in the regulation, in the use permit that this be a quiet resort development. Now we're talking about whether a condominium is a good idea or not. There's something fundamentally wrong with that. None of you here would like to have a condominium next to you. None of you would like to have a hotel next to you, but it's okay to consider this in some other part of the ...(inaudible)... what happens after this? The questions keep coming. What about this? What about that? What about after this? What about if somebody else that wants to put another condo up there, another hotel up there? Where does it stop? When do we say, look use it for what you bought it for. Use it within the parameters of the regulations but don't ...(inaudible)... this thing in a quiet neighborhood. Just don't do it it isn't the right thing to do. That's all I've got to say. You're going to hear about all the regs and all that, but this one is more than that.

Mr. Hedani: Thank you very much Chuck. Questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: Chuck, I'm trying to understand your basic – I hear you I think.

Mr. Hills: I hope so.

Mr. Mardfin: I want to distinguish between two things. I'm trying to understand if your biggest problem is the scale of thing going from five rooms to 15 rooms or whether your biggest concern is the change in tenancy from transients to full-time owners and let me get at that by asking this question, which would be the lesser of two evils five units with full-time as a condominiumized, five units with full-time residents versus 15 units with transients? Which? I know you don't want either one but which would be the better.

Mr. Hills: Something of a pirate question isn't it.

Mr. Mardfin: I'm trying to figure out whether your concern is –

Mr. Hills: My concern is the fact that I've there for 10 years, the noise has accelerated, the traffic has accelerated, the amount of activity up there has accelerated. Now we're talking about accelerating that more. Which is more – and furthermore I should add that everything below the Lodge has been cleared off. Okay, it has been clear cut to the greatest extent with exceptions some of the land around Fred's property. So all of that is going to be louder and bigger and more.

Now if my concern would I like to see five transients versus 15 full-time?

Mr. Mardfin: No, it was five full-time versus 15 transient.

Mr. Hills: I would rather see five versus 15 certainly.

Mr. Mardfin: So it's a scale.

Mr. Hills: Absolutely it's the scale.

Mr. Mardfin: More than the length of occupancy.

Mr. Hills: The scale is totally inappropriate for the neighborhood.

Mr. Mardfin: Thank you.

Mr. Hedani: Any additional questions from the commission? Thank you very much. Next person to testify is George Frey.

Mr. George Frey: Good morning ladies and gentlemen, my name is George Frey and I live at 1495 Lower Kimo Drive and that's just slightly outside of the 500-foot zone around the Kula Lodge. I have two points that I would like to make and the first one is and I think this would be a solution to everyone's problem or to everyone's agreement and that is an eight-foot cement block wall stucco if possible. It would be a tremendous benefit to all the people who have properties adjoining Mr. Romanchak's property and it would be the most effective noise abatement that's possible. It would lend itself to a very cozy feeling within the Lodge. It would have that hacienda feeling of privacy and it would be acceptable I think to all the neighboring properties but most importantly it would mitigate the noise. So my focus is on that, an eight-foot cement block wall stuccoed if possible.

The other point that I would like to make is these units 15 at 850 square feet is it possible that Mr. Romanchak at a later date could split these units and double the number to say 30 or some at 850 and some at 425? Is there any assurance for the people in the community that this would not turn into a hotel row or a condominium like you have down on Wailea or Kaanapali? That's not what anybody wants up here. So it is a concern that is there a possibility that these units could be split into say 425 double the number? That's all I have. Thank you.

Mr. Hedani: Thank you very much Mr. Frey. Question from Commissioner Hiranaga.

Mr. Hiranaga: A comment and a question. According to the Makawao-Pukalani-Kula Project District 1 Ordinance. It is set at 15 lodging units maximum. So they would have to amend the ordinance to take Council action.

Mr. Frey: So that's pretty much assurance that it won't in the future be split.

Mr. Hiranaga: If you have five votes from the Council they could change it. Unlikely. Okay. Your eight-foot wall I guess, I live in a fairly noisy area that has a 10-foot high sound wall. It really

doesn't do much. I mean, I'm not sure how sure are you that eight-foot wall would really mitigate any type of sound. Sound tends to travel upwards and up and over. So I'm not sure how much impact an eight-foot wall. Did you do a study or someone –

Mr. Frey: No, only that I see along the highways that apparently is the most effective noise abatement that it can be and just because of the train acoustics 500 feet really doesn't put me outside of the noise area. I can hear the noise much further than that.

Mr. Hiranaga: Sure.

Mr. Frey: And I was just thinking that the wall would be very aesthetically appealing to customers that are in the hotel, have that privacy feeling, that hacienda type of effect but it would also be in my opinion the most effective noise abatement that is available, trees and things I don't think will nearly do it.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Thank you very much Mr. Frey. Next person to testify is Phyllis Frey.

Ms. Phyllis Frey: Good morning. Hello again, my name is Phyllis Frey. I also live at 1495 Lower Kimo Drive. Thus far everyone expressed concerns. I'm in complete compliance and agreement with the KCA recommendations for the record and one of the things that hasn't been addressed I wanted to back up just briefly about the wall. I, too, think before anything has begun if a wall were built a special sound absorption wall maybe a study could be done on that might really help and then mitigate with tall plantings.

But I wanted to specifically address traffic. I do live on Lower Kimo Drive and we do have a fair amount of high speed traffic leaving Haleakala and coming down. We had no way to mitigate that and I feel that with the increased patronage to the new proposed lodge that we're going to have a great deal more traffic and with children and pets on that road it's just going to exacerbate the problem. If we could perhaps do some studies for speed tables, something to mitigate and make it safer and also the traffic along Haleakala Highway at the Kula Lodge I saw the entrances shown on the schematic plans. It would be nice if we could have a way to control the traffic entering and exiting, making it slower with signs, we could reduce the speed limits to the approaches and departures allowing also for pedestrian crosswalks, flashing crossing lights, warning signs visible from both directions and hopefully that would help with safety and help mitigate some of the noise. So traffic, the increase in traffic if we could do an impact study ahead of time it would be very helpful. We're going to have noise from delivery trucks, waste disposal trucks, recycling machinery, tour buses, extra cars, come and go traffic and with the commercial center, goodness only knows what that can of worms is going to be because that's an issue of controlling what's in there in compliance with a retreat resort environment and so we're very concerned about not having a hardware store or supermarket or something's going to increase traffic even more. So I guess I'm just wanting to say that traffic should be also a facet of your focus if you would. Thank you.

Mr. Hedani: Thank you very much Phyllis. Questions from the Commission? Thank you. Last person that signed up is Dick Mayer.

Mr. Dick Mayer: Thank you Commissioners and I want to thank the two members of your commission who are ending their long years of service Mr. U'u and Mr. Hedani for your long years of service. Thank you.

Several issues. You all received the KCA letter that was sent in January and that is the official position of the KCA Board. A reference was made by Mr. Crockett in his submittal to you that the KCA suggested this. The KCA did not suggest the control of condominiumizing. That was something that I mentioned at the March 17th meeting and it was only as a result of a letter which Mr. Hart sent in response to the KCA and it was something that was not discussed by the KCA Board and I want to make it clear that the KCA did not do that. And our response was that the first time ever we saw as a fact that this project may be condominiumized and that was the comments that were made at March 17th at your last meeting upcountry.

Our KCA Board meeting will be April 6th at which time if this has not been decided we modify our position in one way or another. There are several issues which I want to mention. One is that overall, this project is the result the Upcountry Community Plan as well as Ordinance 2494 which you should have gotten a copy of and unfortunately – so I know you did not get a copy and in that ordinance it says very specifically that this is a retreat resort and that it should be quiet and restful. Those are specific words both in the community plan as well as in the ordinance which govern Project District 1, Phase 1, Phase 2 and it will eventually become a Phase 3. Everything must be in compliance with that. According to the County Code Phase 2 approval which you're about to engage in must be in compliance with the ordinance and the ordinance says, a restful and quiet retreat resort and I have the citations if you want to see the actual documents here. That is the question that I think you will have to – do all the statements made by the applicant comply with a restful and quiet retreat resort. Whether it's a condominium or an apartment house or a hotel or a time share it must be a restful, quiet retreat resort. And that's what you must always measure against.

The question of whether it's going to be quieter or not quieter with transients or long-term rental, the problem is with condominiumizing it or selling it off as apartment units or as time shares you will not – the owner whoever it is, the original owner, the applicant will not have any control any more over these people and all the conditions that you label will – it will be very difficult to enforce it if you have 15 different owners not only of the units but he also mentioned condominiumizing possibly the spa and restaurant and other activities as well so you'll have these multiple owners and you will need to put conditions in there that will make sure that everything that is approved and is conditioned will apply to every single owner as part of their deed when they buy over those units if it were to be subdivided.

Ms. Takayama-Corden: Three minutes.

Mr. Mayer: I'm going to pass out –

Mr. Hedani: Complete your comments Dick.

Mr. Mayer: I will do that. Last time at the meeting I was asked to submit the Kula KCA conditions as well as the comments I made in a format that you could use as conditions. I'm going to pass that

out to you and I would urge you to take a look at these as you go through the conditioning process if in fact you decide to approve this project.

Mr. Starr: Mr. Chair.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes Mr. Mayer, I know you've been following this since its inception. I have two questions for you. The first is whether in scope and scale and in feeling this is – this corresponds to what was originally brought before this body and the association and the County Council when the ordinance was written or whether the scale has been drastically changed and the second is, as it stands now, as it's presented to us do you support it or do you think that it should be – their request for Phase 2 shall be turned down?

Mr. Mayer: Let me answer the second one first. I don't think what they've asked for is consistent with what the ordinance says. The ordinance says that these facilities should be put in an existing building, in the existing building. There's no question. It's very clear. It doesn't say or a subsequent building or tearing down the old. The ordinance says it has to be in an existing building. So I think Phase 2 approval at this stage is premature until that ordinance which governs this whole project is changed and I think that was a subject of Ms. Moseley's letter to you as well that she raises this issue. This is not the existing building, it's a totally different project. So I don't think on that basis it can be approved. Whether I want it or not, it can't be approved.

As far as the scale goes, I was the vice chair of the upcountry community plan advisory committee which drafted that original wording and we had lots, just like you have had, our citizens advisory got lots of testimony at that time for and against the project. Some people said it shouldn't be anything, some people said it should be allowed and we settled and said, okay, no it's sort of like a mom and pops store. This was an existing establishment that went back into the '50's and therefore it had a right to exist even though there were residences around it but what we want to do is try to make it compatible so that the retreat resort and that's why we use the word retreat resort and the idea was this would be a place where a group of bankers lets say, said we want to get together for a weekend and have a conference together or something like a yoga group or some group that wanted to come and have a restful place because lets say frankly on Maui all these big hotels that we have on Maui don't offer that kind of quiet solitude for a group to get together. So it is to me in my mind inconsistent if it gets into something much more than that and that's where the commercial part comes in. The commercial uses should have been compatible with a retreat resort and right now we have no idea what will go in those commercial things and that's why in the KCA letter it said, for example, a yoga classroom or conference rooms as part of that commercial would be compatible with a retreat resort. A bank or real estate office would not necessarily be compatible with the idea of a retreat resort. So what goes into that commercial space would be a necessary thing to define. So it's not just the scale, the scale was kept at 15 units and they have kept to that as their – in the ordinance and that's exactly the compromise the upcountry plan asks for. So the number units, the type of commercial uses that's something that I don't think is necessarily compatible with a retreat resort especially if it's condominiumized, etc.

Mr. Hedani: Additional questions from the Commission? Commissioner Shibuya.

Mr. Shibuya: Dick, thank you for your testimony. I just wanted to find out if you had some ideas in terms of how we can mitigate or we can measure annoyances such as noise, smell, traffic, things of this nature. Lets stay with the noise first because it's a big issue. How would you identify that because the owner or the proposed property owner is planning to contain the sound within the units. The problem is not so much the noise contained in the units but the noise that comes out of the units. And you have balconies that's proposed. How do you mitigate or what are some of the suggestions in terms of gauging when the neighbors are irritated? Where's this point when the light flashes or things of this nature?

Mr. Mayer: Good question. The KCA in its letter to you and we have on our board an engineer who dealt with designing buildings in San Francisco retired here to Maui graduate of UH Engineering School who was on our board and helped us write the wording that we made in our suggestion to you and he suggested that a licensed acoustical engineer be hired to monitor those types of things and to make then recommendations. And let me give it a type – and I'm not an engineer and I don't profess to say this is the answer, but let me give an example. There are going to be balconies out there with railings around it, one type of railing would have you know, hollow, I mean just posts every so often and all the noise from the balcony would go out. One way of doing it would be a balcony which is solid all the way around with plywood or some other sound absorbing material that would take any noise on that balcony and to some degree keep it on the balcony. Now as I said, I'm not an engineer I don't know if that's what they were doing but that's the type of thought that if a licensed acoustical engineer were hired to make the recommendations that would go a long way. For example, lets say a laundry that's going to be on the facility to take care of the laundry for 15 units what could be done to make sure that those things are sound proof in such a way that the dryers don't disturb the neighborhood especially and they don't run it certain hours. Maybe automatically there's a timer that would turn them off after 8:00 or 7:00 whatever is the designated. You know, those are types of things that could be done if you had a proper person giving the recommendations. I don't think you should be engaged necessarily in making those recommendations, but I think if you recommended a licensed engineer make the recommendations and somehow that the Planning Department checks it, yeah, those seem logical then it shouldn't be overly burdensome to the developer but they should be consistent with keeping it quiet.

Mr. Hedani: Additional questions from the Commission? Do you have a follow up Warren?

Mr. Shibuya: Yes, in terms of other pollutions, I call them pollutions because it's not only noise but there's sight because it's a privacy issue. How do you mitigate some of these things and these are some suggestions that you can possibly make. I think one was the barrier, visual barrier on the balconies but then if you have this visual barrier then it's no longer a balcony, right?

Mr. Mayer: Well, it would go up three feet to the edge around the balcony, that would be just one possible thing and again, as I said, now as far as visual, sure somebody could stand on the balcony and yodel all to the community and unless you have somebody controlling that one way or another you're not going to stop it but that could be done in any neighborhood so that's not something that you need to decide.

Trees, you know, some tall trees, now our association, excuse not association, I made some suggested things I'm going to pass out to you that will have conditions on here. I sent this to your

staff to look at as well and I don't know and because I have not seen your staff report have any of these been included, one or two of them been included or none, but these are the ones that I would like to make to you and includes things like this, as far as smells go we make no comment on that in here. As far as traffic goes, hours of the day are certainly one thing you certainly don't want the vans going up to the top of the mountain necessarily stopping there at 4:00 in the morning and having breakfast before they go up the hill. So you can limit the number of hours and that would also deal with some of the traffic issues. One traffic issue that I don't think is faced, I have not seen the answer to is the parking issue of buses. They're required to I think have 99 buses on the site. As far as I know that parking map does not have any place for buses and buses go up and down that mountain and I would expect tour groups would stop there. So that's a traffic issue that I don't think yet has been conditioned or have been discussed and where would they park? Would they take up four of those parking spots that have been designated then you don't have the 99 that are required.

Mr. Hedani: Additional questions from the Commission? Commissioner Starr.

Mr. Starr: Mr. Mayer, one thing I'm having trouble understanding from the comments of the community is that I mean the scale of this is being changed enormously. It's going from I think 11,000 square feet to over 40,000 and it's built up high and everything's been – the trees have been clear cut below it so it's going to have enormous, enormous impact. It's going to be by far the largest thing in all of Kula. You know, I mean, it's just going to completely change lifestyle but it seems that the recommendations that came from the association and even people are telling us including yourself are kind of you know, to just like put a couple little band aids on it that aren't going to change the fact that it's going to completely alter life in Kula and no one seems to saying you know, deny this or anything like that they're just saying well lets put some band aids on it. Why is it that kind of – in other communities perhaps people would be a little more persuasive in their feelings and not just saying you know, add a condition here or condition there if you can.

Mr. Mayer: I think probably because there is an ordinance that gives that project district within the community plan. Now one thing the association or I or any of the residents could have done is gone to the Council and say change the community plan and deny this project. But I think that the project with its 15 units was something that was a compromise. It was something that was given by the CAC in its recommendation and the planning commission at that time and the Council adopted these area allocations. What I am concerned a bit about is a, the existing units, this was supposed to be included within the existing thing and now we have this very large scale commercial building which is ...(inaudible).. catchall and unknown as to what it's going to be and that is a scale issue that I don't think is addressed properly in the ordinance and I think the ordinance itself will need to be changed. So I am saying to you deny it at this point on the basis of the fact that I don't think Phase 2 as it's been presented to you is in compliance with the ordinance which says these things should be in an existing building. Your attorney will give you an opinion are you allowed to do a Phase 2 and violate what really is the very explicit wording, three or four times the word existing is used. So it's not a question of us having to urge it, you have to look at is this in compliance with the law?

Mr. Hedani: Additional questions for testifier? Commissioner Shibuya.

Mr. Shibuya: I just had one more pollution item that I wanted to cover and that would be smells, odors and since it wasn't brought up I'll just let you know that I am a skier so the best air is actually on the slopes of the mountain and it's clean, fresh. That type of air was what I grew up in Kula and that's what I had. When we had more residences and now we have larger commercial type business operations you have open fires, you have fire places, you have this encroachment of this type of pollution into your neighbors who are not burning their fireplaces. You have now an open pit where you can have your campfire activities. Is this a concern or am I overly sensitive?

Mr. Mayer: I'm not sure you're overly sensitive I just maybe have been insensitive. This issue I had not even discussed, even thought about so you know, off the top of my head say something, yeah, we shouldn't have smells going across boundary lines but I have to stay away from it. It's an area that I really have no expertise in.

Mr. Hedani: Additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Mr. Mayer you referenced existing buildings is that in the Makawao-Pukalani-Kula Project District 1 Ordinance that you're referring to?

Mr. Mayer: It's in Project District 1 Phase 1 Approval, Ordinance No. 2495 and it's also 19.75, it's in your County Code 19.75.

Mr. Hiranaga: I read 19.75 several times and I didn't pick it up, sorry maybe I missed it, and I don't have a copy of the other ordinance you referenced.

Mr. Mayer: If you look 19.75.030, and then you'll look at 2A, it says, the restaurant approximately 8,405 within the existing structure and approximately 2,000 and then it talks about, on Item 3, produce co-op, farmers market of approximately 2,800 foot existing structure. So the word, existing is in there.

Mr. Hiranaga: Within the main lodge, existing structure? I saw to two –

Mr. Mayer: The restaurant is within the existing structure, that's where it is now and that's where it supposed to be.

Mr. Hiranaga: So you're just referring to the restaurant and not the hotel itself?

Mr. Mayer: The hotel is not referenced, no, but the whole project is predicated on tearing down the present building and making space – reallocating space, turning that into a – adding a swimming pool etc., and the restaurant is supposed to within that area.

Mr. Hiranaga: When you reference 2B, produce gift shop, it just says located within the main lodge, it doesn't say existing main lodge.

Mr. Mayer: I'm sorry.

Mr. Hiranaga: In 2-B produce/gift shop. 19.75.030 2-B.

Mr. Mayer: Produce gift shop located within the main lodge – within the main lodge and now they're moving that outside the main lodge and putting it into the other building.

Mr. Hiranaga: One more question.

Mr. Mayer: There will be no more main building.

Mr. Hiranaga: Mr. Mayer, you've lived in Kula along time.

Mr. Mayer: Yes.

Mr. Hiranaga: And you've seen a lot of changes. You live on Lower Kimo Drive.

Mr. Mayer: Correct.

Mr. Hiranaga: In a rural zoned area and you've seen urban zoning occur along Lower Kimo, you know, 10,000 square foot lot size minimum, 6,000 square foot lot size minimum.

Mr. Mayer: 6,000 I'm not sure, 10,000 there have been.

Mr. Hiranaga: 7,500 square foot.

Mr. Mayer: I'm not sure of that.

Mr. Hiranaga: I believe Aina Kula is not 10,000 square feet.

Mr. Mayer: Yeah, that's not Kimo Drive.

Mr. Hiranaga: So you've seen the density increase in that area and what is your comment? Do you think that that's appropriate for urban zoning in those areas or should half-acre lots be the minimum lot size allowed up in Kula.

Mr. Mayer: Those aren't changes. As far as I know that urban designation on Aina Kula you're referring to the 10,000 all was part of the original land classification back in the '60's. So that area, that area was originally referred to as Kula Orchards in and around Kula Lodge so that's not a change. That was originally there. What has happened is of course, people have built on those lots but the lots themselves were already established at that time and nobody as far as I know has been able to subdivide into those small areas outside of that immediate area that was urban.

Mr. Hiranaga: No, my question is is urbanization of that type of zoning, is that okay with you not when it originated ...(inaudible)... is it okay with you?

Mr. Mayer: Well it was designated. I knew when I bought my house that those areas were already were urban areas. My lot happens to be a rural lot but I knew that the urban lots were there and it was fine with me and that's why I said that the Kula Lodge had its project district written up in a such a way because it was grandfathered in to be in a – it was on urban land, state land use urban

land and it was designated and so that's why it was allowed to increase from five to 15 and some commercial things were being allowed there. That was something that was compatible with me I voted for it and I think with neighbors in the end as a compromise.

Mr. Hiranaga: So it's okay with you?

Mr. Mayer: Hmmm?

Mr. Hiranaga: It's okay with you? My question is the urban zoning in those areas that's okay with you.

Mr. Mayer: It's okay with me yeah because it's there. I mean, –

Mr. Hiranaga: That's what I wanted to know thank you.

Mr. Hedani: Any additional questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: Dick, I'd like to ask you a couple of questions because you've taught economics in the past and I haven't asked the other people because I didn't know if they had the same kind of professional background. Looking at the issue, not regards to scale, but well, lets assume the 15 because that's in the ordinance. Lets assume 15 units were built and there were two options. One that they be occupied by transients, the other that they be occupied by full-time year-round occupants, do you see any differential impact on let me start off with the economics question, on the economics of the surround community, two on sound, and three on anything else you might think that there might be a differential impact.

Mr. Mayer: Yeah, I've not done any of the numbers. You know, haven't sat down A from the point of view of the applicant whether he'll make money on the project. I heard 15 million was the estimated cost of the whole project and I don't know whether he can sell these for enough money to recoup that etc., so that's I looked at. As far as its impact on the neighborhood my guess is that many of the residents who are here today talking about it have fear that their property values will be somehow decreased in value because of this large project right above their house. If you go to their houses, you would stand on their deck and whatever, and you would be looking up at a hill first and then on top of that hill, this 35-story building. So I suspect many of them are fearful that not only will their privacy be impacted but possibly the value of their properties would be impacted. But I'm surmising that because I didn't do any studies.

Mr. Mardfin: That kind of impact probably would be the same – in my mind would probably be the same whether it were transients or long term occupants. One of the things that was going through my mind when I was kind of – I haven't done any formal studies either but it would seem to me that transients would be more likely to eat in the restaurant more often, to buy supplies in the Kula area more whereas long term residents would do what people in Hana do we go to Costco and so the transients might at least have the potential for having more positive economic effect on the Kula community than might full time residents would you sort of think that's the same way? I mean we're hypothesizing obviously.

Mr. Mayer: Yeah. I'd go back to the original statement that this is supposed to be a retreat resort not an apartment complex and what you're talking about long term rentals living there that no longer is a resort, those are residents. I think we all would agree that a resort is not a place where people live permanently so it would be outside what the project district is defined as. Whether it be more or less is another issue. It's a question that it would not be consistent I think with what this was supposed to be was a quiet, restful, retreat resort. I mean, there's a need on Maui for this kind of retreat resort. Groups come to Maui and say we'd like to have a small get together, a family or whatever but we can get together and have a business meeting and I could very well imagine A&B in Honolulu says to their Board of Directors, hey we're going to go away for days and have a retreat on Maui. This would be a ideal place as opposed to some place where they're just distracted by the ocean and lots of other tourists. This would be a good place to have a retreat. That was what it was intended for what you're talking about, I mean, it may have more or less impact and I have no way of knowing what the long term people – one thing I know about long term is especially if they're separate owners, the question is what is the relationship between the owner of the whole property to those separate owners being able to control them with regard to the conditions.

Mr. Mardfin: Thank you.

Mr. Hedani: Additional questions for the testifier? Thank you very much Dick.

Mr. Mayer: I would like to submit as I said, this is _-

Mr. Hedani: You can just circulate it.

Mr. Mayer: I will circulate that.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Please step to the microphone and state your name for the record.

Mr. James True: Hello, I've never been to one of these meetings before so I don't have a whole lot of knowledge about –

Mr. Hedani: Can you state your name for the record?

Mr. True: I'm sorry, my name is James True. I just want to say that during this whole meeting I haven't heard or anybody even go about to mention any of the positives. We're talking about somebody putting in \$15 million into the community. We're talking about a lot more jobs. We're talking about a lot more tax revenue. People are very concerned about the noise levels but I think at the Lodge you have to realize the quieter it is, the prettier it is, the cleaner it is, the better it smells, the better for us. So we're all after the same things more money and a better place to do it. And people are very concerned about the land values and I can understand that an awful lot but is really all that bad to have a spa next door?

Mr. Hedani: Thank you very much. Questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: Yeah, would you think the spa would be open to surrounding residents?

Mr. True: That's something I think would be decided later. I'm not certain about that. I do know that right now we have kamaaina rates for the rooms. We also have frequent diner discounts. So we are doing things for the community too.

Mr. Hedani: Additional questions? Commissioner Shibuya.

Mr. Shibuya: I'd like to say that I find the Kula Lodge to be a very convenient service if you will. You wanted to hear something positive so I'm going to say it. I have some relatives and friends and they lodge there because they don't want to stay with me, but that's another story, but they enjoy it there. It's a good experience. However, in terms of controlling that's an issue with me. How do you control and mitigate some of these irritants to the community especially the bordering neighbors? Your thoughts?

Mr. True: Well, one of them is in the Liquor Commission. You already have a decibel noise level that you're allowed to go to and you cannot exceed and as a result of that one of the things that we're doing at Kula Lodge, we do not have live music, we do not have pool tables, we do not have video games. We don't have anything that's going to cause any kind of ruckus in there and that's in respect to the neighbors and also in keeping in the quiet peaceful resort ...(inaudible)...

Mr. Hedani: Thank you very much. Commissioner Mardfin.

Mr. Mardfin: You said we, are you an employee at the Kula Lodge.

Mr. True: Yes, I'm sorry. I should have mentioned that. Yes, I am an employee there, I'm a manager.

Mr. Mardfin: You're the manager did you say?

Mr. True: Yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Any additional questions? Thank you very much. Are there any other members of the public that would like to offer testimony? Please step to the microphone and state your name for the record?

Mr. Thomas Peters: Good morning panel. My name is Thomas Peters. I'm a 25-year resident of Hawaii, Maui specifically presently my home is in Kula and as well as the gentleman before me I am employed with Kula Lodge but I am actually the General Manager and buyer for the Kula Market Place. I am here to voice my support for the expansion of the property and to also remind the panel that I submitted a letter based on the last meeting with a few incidentals also in support but then to add my voice here this morning. So thank you for giving me the opportunity.

Being here for 25 years I worked mostly in the Lahaina and Kihei and Wailea area and seen a lot of changes in those times and coming up to Kula to live here I noticed that the development and the pace and the aloha spirit that I have sensed from those areas when I first moved here in '84

was changing according to my perceptions. When I came up to Kula I wasn't really looking for a position at the point but then I decided at the opening being available that I would talk to Mr. Romanchak and took the position and have been there for two years.

One of the things that I noticed right a way working the retail store predominately you're supporting the traffic flow between the supporting areas of tourism up to the Haleakala Crater was the element of the community involvement in the retail store separate from what I had been accustomed to and the fact that the store itself and employees that were existing there and presently are there really share a certain element of aloha spirit when I was leaving my involvement in the west and south area. This was a surprise but very welcomed because it reminded of the times that we were experiencing back when we first arrived here. My son was born here and raised here and it was refreshing.

Two years into my tenure there I haven't noticed any changes on the contrary. It's really contributed to my involvement into the community from experiencing the customers that come in and involve themselves in a business transaction but it goes way beyond that. We've become family in a sense of knowing persons names. This is unusual for the west side and south side and at the same time it is very comforting in knowing that my involvement in what I'm doing professionally is actually a direct result of the influence of both the employees who live in the surround areas and of course the people that visit the area which I consider to be community as well even though they're not residents here. How we conduct ourselves in that area is how we reflect the aloha spirit to the visitors and allow them and give them the feeling of being and returning which in my opinion is different than they may or may not experiencing in other parts of the developed side of Maui.

The idea of expansion to me after thinking about it and listening to Mr. Romanchak's plans I don't foresee any of the changes internally or the idea of how we project ourselves in our business.

Mr. Hedani: Can you wrap up your comments Mr. Peters.

Mr. Peters: Oh, I didn't realize how much time I had I apologize. One other thing is the idea is the letter that I submitted was actually mentioning the fact that we support 85, at least 85 local vendors across the board from agricultural products to hard goods crafts arts. There's three retail establishments on the property itself all locally owned and operated and we also –

Mr. Hedani: Thank you very much. Questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: Excuse me Sir, I have a specific question.

Mr. Peters: Yes sir.

Mr. Mardfin: You said this letter, was this letter distributed at the meeting we held up in Kula?

Mr. Peters: It was a part of the original letters yes.

Mr. Mardfin: So we got it up there?

Mr. Peters: Yes.

Mr. Mardfin: Thank you.

Mr. Peters: Any other questions?

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony, please step to the microphone and state your name for the record.

Mr. Steve Miller: Hi, I'm Steve Miller and I'm a Kula resident and I live about a mile from the Kula Lodge and I am supportive of the Kula Lodge expansion and I'm like most of the people here and so I was taking the opportunity to try to broaden the perspective a bit. I testified before and it's a very simple point that when you create, when you have any kind of a new visitor destination that you can market it's a benefit to Maui. It's a benefit to the whole economy on Maui which needs that.

But in terms of the specifics I understand the issues of the neighbors and the adjacency and the noise but the condominium thing, you know, I was the principal broker for Castle and Cooke like 30 years ago and I've been in real estate for that long my understanding is that the zoning requires the use of the property as hotel and that that's the intent and that condominiumizing or condominiumization requires the use of the property as hotel and that that's the intent and that condominiumizing or condominiumization is a form of ownership. It's not a form of operation. And from a practical point of view there are hotel operations all over this island which have condominiumized their form of ownership whether as a means of financing or as a means of development or it's just a transition in their life span so I don't see that as being something that is reason to rezone the property or that even rezoning should even be a requirement that if the project had a Phase 2 Approval once before with a larger building and now it's been redesigned to what in my looking at it as a more sensitive design there's more open space why would there be a requirement that the zoning would have to be revised and why would there be an issue like Dick Mayer raised that the buildings would have to be in an existing building if it had already been approved once before to be rebuilt.

So from an appropriateness to me the design is appropriate, the issue of neighbors and noise is certainly one if you're a neighbor if you have that concern, but by the same token most of the people who live adjacent to the Lodge bought their properties after the Lodge was there knowing that it was a commercial area, knowing the Aina Kula area was zoned urban in small lot area and a lot of those lots were condominiumized and density was increased and the noise from those neighbors certainly impacted people when they bought those lots. So I think those are things to consider. Thank you.

Mr. Hedani: Thank you very much Steve. Questions from the Commission? Are there any other members of the public that would like to offer testimony? Please step to the microphone and state your name for the record.

Mr. Edward Gilrey: My name is Edward Gilrey and I live pretty close to the Kula Lodge in Lower Kimo Drive 1528 and I'd like the Planning Commission to possibly defer decision today. I'd like to look into the possibility of getting the county to downsize the size of those hotel rooms to between

400 and 500 square feet and eliminate the amount of electricity getting into these units so that they can't be converted into time shares, condos or whatever.

Mr. Hedani: Thank you very much. Any questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: Let me ask the one I've been asking in different ways to different people. You seem to be opposed to condominiums can you tell me why you think that the impact of a full-time resident is different from the impact of a transient?

Mr. Gilrey: Well, I presently live in two locations and the location I have in Kihei which I'm trying to get ...(inaudible)... do some polishing up and get rid of it the neighbor on each side of me for the past 36 years have been rentals. The owner has never lived in this properties so that's what you call full-time residents. It's just changing and going. It's been – people have been shot in the house next door to me so I think the tourists they gonna come in, they gonna eat in the restaurant, the gonna go to the hotel room, they're going to be on the road sightseeing to me that's the ideal situation.

Mr. Mardfin: So you think there's less impact from a visitor than there would be from a full-time resident?

Mr. Gilrey: Absolutely. Absolutely.

Mr. Mardfin: Thank you very much.

Mr. Hedani: Any additional questions from the Commission? Thank you. Are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Staff you want to go over your recommendation? I'm sorry, Director.

B. UNFINISHED BUSINESS

- 1. MR. FRED ROMANCHAK, Owner of the KULA LODGE, requesting a Phase II Project District Approval for the redevelopment of the existing Kula Lodge and related improvements at 15200 Haleakala Highway, TMK: 2-3-022: 087, Kula, Island of Maui. (PH2 2008/0001) (P. Fasi) (public hearing opened and closed on March 17, 2010.)**

Mr. Hunt: Your first item is Unfinished Business, B-1, Mr. Fred Romanchak, owner of Kula Lodge requesting a Phase 2 District Approval for the redevelopment of the existing Kula Lodge and related improvements at 15200 Haleakala Highway, TMK 2-3-022: 087 in Kula. File number is PH2 2008/0001. Paul Fasi is the planner assigned to this. The public hearing was opened and closed on March 17th. Before Mr. Fasi gives his presentation I'd like to make a few comments.

At the previous meeting there was some discussion and request that staff look into issues regarding hotels and vacation rentals. There are a number of issues that you folks need to keep clear in your mind as you go through this and the first is condominium, condominiums. Condos are a form of ownership strictly. It doesn't affect long term use or short term use. A condo can be applied to a

single family unit or a multiple unit. Condos are not necessarily the boxes of apartment type buildings that we all commonly think of and refer to as condos. That's a misnomer. Condominiumization is merely a shared ownership. Many condos are then put into rental pools. So just because somebody owns a condo doesn't mean that they live there year round or that they don't rent it out.

The second item is length of use and Maui County we determine or distinguish short-term use from long-term use and many jurisdictions it's 30 days, sometimes 60, Maui County it's a 180 days, that's our law. So after a 180 days it becomes long term use.

The other item to keep in mind is then building structure. You can have a single family unit. You can have a multi-family unit, you can have kitchens, etc. So that's the structure. So you've got ownership, you've got length of use and you've got the structure of the building.

We also have a definition of time share in our code and time shares regard use and time so it's kind of a combination and they're subject to a time share plan. The Maui County Code has definitions on hotel, dwelling unit and lodging unit and those will affect this application and Paul will go into those further. There's also restrictions in the code against TVRs or short-term rentals or time shares and those are restricted by 19.37. There's further restrictions on this particular application by the project district, community plan designation and the project district zoning, Chapter 19.75 of your zoning ordinance.

And then finally we need to remember that the applicant has a Phase 2 Approval already. That was granted back in 2000. He's asking for a revision to that, but that 2000 approval is still valid. He could go to town on it right now. He could start work on it. So if there's a perception out in the audience that this is going to kill the Project District Phase 2 Approval that's a misperception he could merely start up his previous approval it's still valid. Apparently the applicant has requested a change because he thinks this new proposal is better. That's up to you to decide.

Finally, there's been some talk about would we want to live next a hotel. First I want to remind everyone that the hotel's been there a long, long time. In the professional planning community there's a cliché you don't move in next to the pig farm and complain about the smell. So keep that in mind. They are asking for an expansion we'll grant you that. We make our staff recommendations based on the law not on whether we want to live next to a hotel or not. The laws we believe support the proposed use conceptually. It's a hotel in a hotel district in a hotel zoning. We also believe the laws don't support some specific aspects of this proposal and we will explain those to you, but again, our recommendation is based on the law. Staff is here to explain these recommendations to you, help you understand these recommendations and help you make your decision.

And finally, while I think it's wonderful that propose revisions to staff recommendations I think we need to be very clear on who the author is and when we get a document that could be misconstrued as department document that bothers me. That's wrong. It's confusing right now, think what it will be like when we have to keep a record of a public meeting and this becomes part of it. So somebody makes recommendations to a staff document please make it clear that it's your recommendations and it's not the staff. And with that, again, we're here to help you get through this

process. Paul.

Mr. Hedani: Actually before we go to Paul's recommendation I'd like to take a 10-minute recess at this time and then reconvene at 10:30 a.m.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: When we come back, I'd like to request that the department lead us through what this looked like on the original Phase 2 because that's never been presented to us and what the changes are.

Mr. Hedani: Thank you. We're in recess for 10 minutes.

A recess was called at 10:20 a.m. and the meeting was reconvened at 10:35 a.m.

Mr. Hedani: The meeting of March 30th is reconvened. Paul if you can give us a refresher on your staff recommendation please.

Mr. Paul Fasi: Good morning Commissioners. Thank you to Chairman Hedani and Commissioner U'u for your time and volunteerism and courage and wisdom on this commission will be sorely missed. Thank you very much.

Mr. Hedani: I'm sorry Paul before you start I neglected to recognize in our audience the former Chairman of the Maui Planning Commission Johanna Amorin and thank you very much for the beautiful leis that you presented to Bruce and Aloha. Go ahead Paul.

Mr. Fasi: Before I get into the department's recommendation I need to clear some misconceptions here. The document that was handed by Mr. Mayer just be aware that this is not, is not a department supported document. It's a little my fault because I gave the benefit of the doubt to Mr. Mayer of working on the workable Word document but I didn't expect the format come back looking like a department report. So this is not a department report. So just be aware of that.

Mr. Hedani: We always look for the green paper Paul.

Mr. Fasi: Good. Thank you very much. There was some testimony this morning that I take exception to. A statement was made this morning that the staff ignored some of the KCA recommendations. Director Hunt's Planning staff does not ignore any recommendations suggested by the public. We are very objective and careful in our analysis of these project because we know the scrutiny of which they're going to be under and to claim that the department has ignored certain things is a misrepresentation of Director Hunt's department and our professionalism.

The recommendations that were suggested however many of them are redundant and already covered in the department's recommendations. The department's recommendations that you have received earlier at the March 17th meeting, the green sheet, we feel very comfortable with

supporting and therefore, that is the department's recommendation.

Since the March 17th meeting there has been very intense discussion within the department regarding some of the uses of this project and the development. First of all, the state designation, land use designation is urban, is urban for this area and the commission needs to keep in mind that the project district ordinance was specifically written for the Kula Lodge to maintain its existence and maybe perpetuity is a too strong of a word but the focus of that ordinance is specifically for the Kula Lodge as is the Project District 2 is for the Silversword and so on with the other project districts.

There seems to be a little misinformation floating around up in this community and that prompted some discussion, internal discussions within the department regarding condominiumizing and condominiums. I think Director Hunt clearly explained the difference there and hopefully we can get back on the right track. Keep in mind the ordinance does not allow for long term usage of this facility. This is strictly for short term uses.

The other item I want to point out is that in Chapter 19 of the Zoning, Maui County Code Zoning, we have a chapter in there called Definitions. Now it's been repeated many times that this was a retreat resort. There is no definition of retreat resort in Chapter 19. What is a retreat resort, I don't know. It's not in definitions. The only time it's mentioned as retreat resort is in the community plan. It is not listed or mentioned in the ordinance or in the Maui County Code.

The issue of condominiumizing which is a form ownership as Director Hunt has mentioned the county does not regulate ownership. So the owner has the right to condominiumize. However, the difference between condominiumizing and condominiums which is an apartment like unit with temporary – I'm sorry with long term usage is clearly not allowed under this ordinance so just to be clear long term usage is not allowed.

Now what is long term usage? Long term usage is defined as anything more than a 180 days, six months. So what's to prevent a single occupant from granting a lease back to back for a 180-day terms? So we need to be mindful of that and we need to probably perhaps condition that. So a single occupant cannot have back to back to back 180-day leases. If the development turns into condominiumization.

Now however, the County cannot regulate. You cannot put a condition in there regulating condominiumization. You can regulate ownership. You can however, condition it to – condition the apartment's use. So you need to keep that in mind as well.

The uses for hotels we do have a definition of hotels. Time shares is clearly not allowed under the interpretation and discussions that we had internal. Time shares would have been mentioned in the ordinance had time shares been considered when the ordinance was written, clearly it is was not.

Now the issue of the existing the restaurant being in the existing building and I believe the testimony this morning refers to the structure as it stands today and not the newly proposed structure. This is something that will to be cleared up amongst this commission. I think the intent

when the ordinance was written you cannot have a redevelopment in the existing building as is proposed now. If there was no redevelopment you would have the restaurant according to the ordinance in a building that's 200 years old and on and on and on. So you need to think about what the intent was when the ordinance was written and in this planners mind the intent was that should it be redeveloped that it would be in the new structure. With that in mind, the ordinance also put some very clear restrictions on square footage which is allowed per use and I think that speaks for itself. I think that the proposal as proposed meets those requirements. You need to keep in mind that these are conceptual site plans. These are not the final plans. Things will be moved. There will be minor changes.

The Phase 3 will determine when they get their permits and at that time the final plan will be submitted for permitting and square footages and setbacks and so on will be scrutinized to make sure that the ordinance is complied with. I do not doubt Plans Review section, they're professionals in every way. They review very many, very many, many projects and they are good at what they do and I trust them to the job correctly. This project will be built according to the ordinance nothing more or nothing less.

With that I think that the – you know how the Planning Department stands. I think Director Hunt pretty much summed it up and I have no further information to offer at this time.

Mr. Hedani: Okay Paul at the last meeting you did present the green sheet and the recommendations, the staff recommendations, right?

Mr. Fasi: That is correct.

Mr. Hedani: Questions from the Commission? Commissioner Starr.

Mr. Starr: Yeah, can we see what was approved in the original Phase 2 ordinance?

Mr. Fasi: I'm going to bring up Chris Hart and Partners and their representatives. I believe what you see in black and white here is the approved site plan and please keep in mind that as Director Hunt mentioned he has the green light for this particular proposed development and I have to say that what's being proposed now is much better than what was approved earlier.

Mr. Hedani: Chris you want to walk us through the plan please?

Mr. Chris Hart: Yes. We weren't you know in the context of our presentation necessarily prepared to you know, walk through the existing project as it was approved. We did bring a site plan that gives you an idea of what was proposed. Now Ann Cua did help us and the staff, Planning Department staff has been helpful and they went and actually copied the section from the report for Project District Phase 2 that was approved. So that is available.

One of the really important parts of the project is the fact that first of all when we got approval in 2000, year 2000, Fred Romanchak then of course proceeded to basically get into the construction drawings and he really wasn't pleased with the design and the way that it looked on the site after more detail was made available to him. You can see in the site plan that the restaurant building

and the hotel building are actually joined together and the hotel building actually the units are still the same 850 square foot units but they're extended out and they're much larger and the intention was to try to create a separation between the restaurant building and the create a certain open space corridor and also to make a much more compact unit or building that wouldn't take up as much of the site.

And in the context of that, there was a second architect that was hired, his name was Chris Smith and we did some negotiations with the Planning Department on that and Mr. Romanchak was not pleased you know with basically where the project was going with that and we had been in contact with Ann Cua about it and with Paul Fasi and we did actually go to the Urban Design Review Board with that project and subsequently the architect that we're currently utilizing is Pip White and I explained to you that he is the architect for the Molokai Ranch Lodge at Maunaloa which some of you may have seen but you know, he is a very sensitive architect who is born and raised here in Hawaii, lives in Honolulu and we feel that you know, he is basically doing a project that fits on the site and is a much better project in terms of the character and the scale.

One other issue that I'd like to point out to you is the fact that the process you know has been going on for a long time and this is the 1987 Upcountry Community Plan and this is the 1996 Upcountry Community Plan, so that's a period of I think 27 years that the process has been going on. And after the 1996 description that was in the community plan, the ordinance, the project district zoning ordinance Phase 1 of the Project District process was adopted by the Maui County Council and all of the square footages were identified and subsequent to that we came in with our proposal for Project District Phase 2 and we got approval in the year 2000 on that. And then as Director Hunt indicated to you the project is still viable. It's through I think 2012 that it still exists. But again because Mr. Romanchak wanted to do something that was better, you know, he decided to hire a new architect and so that's where we are today. I think that perspective is important to you.

And the other aspect of it is retreat resort I mean as Mr., I think, Crockett indicated to you in his testimony when he moved to Lower Kula Road in 1959 that's 50 years ago Frank James had the Kula Lodge and of course there were no – the subdivision was in the process but there were no houses built below the Kula Lodge. You know so this, the fact is that because of the Kula Lodge and because of the Silversword Inn which is just farther up the road the term was created retreat resort in the context of these existing projects and that's the description that was given. Fifteen units is not a large number of units but that was based on the density in terms of the size of the lot 3.7 acres that was the number of units that was agreed upon in the context of the community plan, description and the ordinance.

So – and you know, I will say another thing too there was reference to, I wanted to do this because and we do this sometimes this is a Google Earth map and it was – it's from 2006, it's not from 15 years ago okay, and you know, the amount of open that exists below on the map you know exists there and the amount of open space that exists above, there's two gulches that come down on either side of the Kula Lodge. So we're not trying to deceive the commission in any way and it basically gives you an idea that this project with its 50-foot setbacks and its 30-foot setbacks actually in terms of the 3.7 acre site this particular project that's before you has 63% of open space. The ordinance only requires that we have 20% okay. So it's not like we're overbuilding the site and that was the whole purpose to try to make tighter buildings and create more open space.

And I – as far as being respectful of the neighbors, Mr. Fasi actually told us a little story about Mr. Romanchak and I hope you don't mind Paul if I said that if talk about it in terms of the hula halau is that okay. He said he was at a party and a person commented about oh I saw that the commission was proposing you know, had a hearing on the Kula Lodge the redevelopment of it and this lady went to say that they were having a party for their halau it was at the Kula Lodge and they were getting a little noisy and so you know, Fred Romanchak came in and said listen can you keep it down because we're – of the neighbors. You know that was a true fact and you know, I believe that Mr. Romanchak over the years has been a good custodian of the Lodge and he does abide by the requirements of the Department of Liquor Control, so in terms of being a good neighbor and that what is being proposed again is in accordance with the ordinance and it will be sensitive.

Now you've been passed out the – basically the drawings that were in the report and I think as you look at them especially if you look at Exhibit 3 I think you can get an idea of the massiveness of the structure and that was being proposed and some of the other sections I think you also get a sense of the massiveness of the structure. Now this is what is approved now again that exists as Project District Phase 2 and it was – it is approved through 2012.

Mr. Hedani: Any additional questions for Chris? Actually once we get through with the Chris what I'd like you to do is walk us through the landscape plan for the proposed project later.

Mr. Hart: Okay, all right.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Yeah, I'd like to follow up. Since you're talking about what has already been approved and I'm looking at I don't know Exhibit 8 or so to look at the floor plans for each of the lodging units.

Mr. Hart: Right.

Mr. Mardfin: I want to make sure my glasses are strong enough but I don't see any kitchens in any of them. Is that correct?

Mr. Hart: No there are kitchens.

Mr. Mardfin: There's a kitchen in the caretakers house.

Mr. Hart: If you look at – I don't have glasses on either – I have glasses on but I don't – in this portion the kitchen area, there's a counter –

Mr. Mardfin: Which diagram are you on?

Mr. Hart: I'm on Exhibit 9.

Mr. Mardfin: Exhibit 9. Okay. And where are you showing a kitchen? I don't see the word kitchen anywhere, but –

Mr. Hart: No, there's actually it's a counter and stove designation.

Mr. Mardfin: Caretakers unit has.

Mr. Hart: No, no, it's part of –

Mr. Mardfin: In the rental unit?

Mr. Hart: Yeah, in the unit itself.

Mr. Mardfin: I don't see anything labeled as a kitchen. On Exhibit 8 you're showing me Exhibit 8, yeah.

Mr. Hart: ...(inaudible)...

Mr. Mardfin: Okay, refrigerator but not a kitchen.

Mr. Hart: Well no it is —

Mr. Hedani: Chris you need to use the microphone.

Mr. Hunt: Chris if you could explain through the microphone. I know it's awkward but we have to do this for – it's recorded.

Mr. Hart: I know that. Ann, do you have something larger that shows? No. No, I know. I'm sorry. It's meant to be – it's a kitchen and refrigerator and a stove and so –

Mr. Mardfin: Where is the stove?

Mr. Hart: Well, it's right next to the – it says – there's a box and it says refr – you know, refrig and then right next to it is a stove.

Mr. Mardfin: Is it labeled stove?

Mr. Hart: It's symbolically it's shown as a stove.

Mr. Hiranaga: Mr. Chair?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: These drawings we're looking at for Phase 2 Approval are conceptual in nature?

Mr. Hart: Yeah.

Mr. Mardfin: Oh okay. Then that answers my question. If they're conceptual in nature fine thank you. We don't go further if they're conceptual in nature.

Mr. Hart: Can you look at this? I think Mr. Mardfin you can see the refr as the refrigerator and right next to it is the stove symbol.

Mr. Hedani: Ward, that's why the architect was fired.

Mr. Mardfin: Okay, thank you very much.

Mr. Hedani: Any additional questions for Chris. Chris if you could walk us through the landscape – I'm sorry, Commissioner Hiranaga.

Mr. Hiranaga: Chris on this Exhibit 4 of the approved design you show existing grade.

Mr. Hart: Yes.

Mr. Hiranaga: So in this proposal, this complies with the 35-foot height elevation limitation?

Mr. Hart: That's correct it does yes.

Mr. Hiranaga: So you're actually excavating below existing grade and measuring up from finished grade to 35 feet?

Mr. Hart: Yes.

Mr. Hiranaga: Is that – in your exhibits on the proposed change I don't see an exhibit showing existing grade. Are you still proposing to excavate?

Mr. Hart: I'm going to ask Mike Conway our civil engineer from Silversword Engineering to address that.

Mr. Michael Conway: Michael Conway. I thank you for the opportunity. The plans that were approved in 2000 were prior to the new ordinance direction that limited it to 35 feet. So the actual fact of the matter is when these plans were prepared and designed we didn't have that constraint where they said that the existing topography you cannot you know, exceed 35 feet at that point in time. So reality was we excavated down to make sure that we didn't go 35 feet over what was existing but lowering – you know, pulling out more material we were able to increase the height basically between floors. But with the new design because we – the ordinance had been passed we went back to the more restrictive design where it was the existing ground level and we couldn't exceed more than 35 feet so actually the new structures between, what's the word I'm looking for, shorter or not as high.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: The new ordinance as I understand it is lower of the existing or finished grade.

Mr. Conway: Right.

Mr. Hiranaga: So are you excavating or are you working off the existing grade?

Mr. Conway: We're working off the existing grade now.

Mr. Hiranaga: So it's 35 feet from the existing grade.

Mr. Conway: Correct.

Mr. Hiranaga: Which makes it the top of the – the peak of the roof is at a lower elevation than previously proposed.

Mr. Conway: That's correct.

Mr. Hedani: Any additional questions for Chris or Mike? Chris there was a lot of discussion about landscaping along the periphery of the area and I was wondering if you could walk us through the landscaping around the edge of the property. You can use the microphone. There's a portable mike I think that you can use. Paul can you make sure that's working for him please? And if you could address the visual screening as well as methodology to keep people from wandering off the property onto other people's property I'd appreciate it.

Mr. Hart: One thing I would like to point out was in the Phase 2 project that was approved was pointed out to me that actually we did have walkways that were proposed you know within the setback area so that would have directed guests and so on to you know perhaps walk around the site and be in closer proximity to existing residences. When this project was done the landscape architect at the time was Warren McCord and basically a lot of the plant material was installed at that time and if you've been to the site you'll see that there's a lot of existing vegetation along the gulch edges. Now the actual setback is 50 feet along this property line, it's 50 feet along the Haleakala Highway property line and it's 30 feet along this property line and if you look at that site plan that I showed you, you'll see that the gulch area you know, basically the gulches kind of come together. So this is pretty much an open space area. The kind of – basically the kind of plant material that we're talking about in these masses are agapanthus, and there's some bamboo that's in there. And the type of plant materials that's being proposed in the parking lot are basically jacaranda, koa and some of them are existing trees to remain. There's – this symbol is bronze euphorbia, there's going to be jatropa, there's some also some angel trumpet trees that are going to be used.

Mr. Hedani: Is the bamboo screening, is the bamboo a screening bamboo that you're talking about?

Mr. Hart: Yes. Those masses of planting are shown along the edge of the gulch.

Mr. Hedani: Okay, because one of the recommendations I was going to make is that some kind of screening bamboo or other type of thick foliage be used to reduce the sound attenuation.

Mr. Hart: I will say though that when this project in 2000 which is 10 years ago was approved Fred did initiate a planting of the plants that were actually identified.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Good morning Mr. Hart.

Mr. Hart: Good morning.

Mr. Tagorda: One of the testifiers this morning had a solution and I want you to address that solution if it's possible. He mentioned or suggested an eight-foot CMU with stucco fence around the property perimeter. So are those possible in that area?

Mr. Hart: It's possible but one of the things that I think is important to realize that you know the property falls away from the buildings. This is probably a good example. You can see that, you know, essentially the property is falling away from the building and so by the time you get to the property boundary, you know, eight feet is pretty minimal. So you know, the effectiveness of it, you know, is not going to be that substantial and so that was our premise on when it was suggested.

Mr. Tagorda: Thank you very much.

Mr. Hedani: Thank you very much. Any other questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: I notice the caretaker's house is within the setback area.

Mr. Hart: It is, yes.

Mr. Hiranaga: ...(inaudible)...

Mr. Hart: Excuse me?

Mr. Hiranaga: Why?

Mr. Hart: Well, we did get a letter from the Planning Department at the time when we were going through the Project District Phase 2 and the letter essentially limits the renovation to interior renovation of that building and the Planning Department did believe that it was okay to maintain the existing because it is – it does meet the requirement of normal business or hotel district zoning except in this particular case the setback along the highway is 50 feet. So they basically in response the Planning Director – the department said that the renovation of that building had to be limited to interior renovation with no expansion of the floor area.

Mr. Hedani: Any additional questions? Commissioner Tagorda.

Mr. Hart: Oh you did, okay. Another point if some of you are interested I think it really gives you a sense of the mass of the building that Project District Phase 2 – Ann did find a drawing of the elevation which is behind you on the bulletin board.

Mr. Hedani: That's the existing approved?

Mr. Hart: That's correct.

Mr. Hedani: Thank you. Commissioner Tagorda.

Mr. Tagorda: Mr. Hart can you help me out understand your parking stalls right on the Haleakala Highway. I heard before that it was one-way in and one-way out.

Mr. Hart: No, actually the Department of Transportation, the existing entrance, a double entrance is on this north side of the site. The Department of Transportation asked us to relocate it and so this is a two-way entrance and exit and then this is a one-way right turn only. So it would be right turn going up Haleakala Highway. There are 99 parking stalls required, 99 are proposed. There are three loading spaces that will be available that's in addition to the 99, three loading spaces that would be available if there was a need for bus parking, okay, on site.

Mr. Tagorda: Yeah, I'm coming to that bus parking. Inside that property where do you plan to put those big tour buses that pulls into your property?

Mr. Hart: Well, they would be placed in locations that would be the most convenient like for instance, the bus could come over here and this is a loading space here could park there. Could come here and park here and then go out, but we're not talking about a huge number of buses. You know, occasionally there'll be a bus perhaps.

Mr. Tagorda: Yeah okay.

Mr. Hart: But we do have accommodation you know, for a bus, four buses.

Mr. Tagorda: Okay, thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Chris can you tell me if there's any landscaping like tall trees or plantings very close to the structure because the structure is large as proposed. In your sketches you don't show any large vegetation there and that's purposely done so that we have at least a visual sight of your proposal. But what type of tall trees like Bamboo or...(inaudible)... or I don't know what you have.

Mr. Hart: Obviously the largest tree is going to be the jacaranda which are shown in the mauka area together with there's koa that are being proposed. But you're right, there's very, there's very little – these are basically the angel trumpet and bronze euphorbia but they're not large trees like – the same size as something like the jacaranda.

Mr. Shibuya: Well, I just wanted to mitigate the visual effects and also lighting as well as the noise. So if you have them close by then that would a suggestion of planting them so that at least the neighbors feel that they have privacy too.

Mr. Hart: This is an example of using the jacaranda in that setback which is a 30-foot setback.

Mr. Shibuya: I understand but that is in the gulch going down. But not close to where the makai side of the structure which is the tallest part of the structure that faces all of the complainants today.

Mr. Hart: So your proposal is that we add some more large trees in that elevation?

Mr. Shibuya: Somewhat yes.

Mr. Hart: Okay.

Mr. Hedani: Commissioner U'u.

Mr. U'u: My question will be pertaining to the noise mitigation measures of the new proposed existing building – proposed new building and to the existing buildings. I'm sure of Kula Lodge is it a single wall structure currently?

Mr. Hart: It is single wall yes.

Mr. U'u: Are you guys taking mitigations as in double insulation windows, insulation?

Mr. Hart: We do. We are doing that. Maybe Michael could explain a little bit about that.

Mr. Conway: Michael Conway again. Since the architect isn't here I am the engineer, one of the engineers that are involved in this project. Since December 20, 2009 Maui County has adopted the 2006 IECC, the International Energy Conservation Code, that energy conservation code requires all new construction to meet certain parameters among those parameters are such things as solar heat gain factors in windows, infiltration rates in windows and all these things basically add up to a means that we're going to end up having double-paned windows. Part of the new construction of course with the existing, putting in a new restaurant is actually it's going to be quieter. Part of the energy conservation code too requires that the walls now be insulated, the exterior walls. Well previously exterior walls really didn't have to be insulated but now we have to have R-13 in the walls and R-19 in the roofline so basically the building becomes encapsulated along with modern windows or modern construction techniques so the sound can be interred within the space itself.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Question. You know, I don't know how you measure sound. What would be the difference if you could one noise level between the existing and the new proposed?

Mr. Conway: Basically what's going to end up being constructed is the Department of Health has certain rules and basically what the rules kind of dictate is that you cannot exceed 55 decibels and if you exceed 55 decibels somebody can make a complaint. The Department of Health will then come in and bring in simply a decibel meter, record the decibel meters sound and if there is a problem they can be cited. So the sound question is something that is already inherent, will inherently be answered or taken care of within present rules and regulations.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Clarification on that audio aspects there. You not only have intensity but you have the duration in which that loudness exists and also the frequency in which this occurs. So I just wanted to help the other members that there are three conditions on that, loudness, the duration in which that loudness persists and the frequency in which this loudness happens.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Where is this 55 db measured from? Is it from the property line because –

Mr. Conway: No, the Department of Health ordinance basically has rules and regulations of how many feet away from the source that you're supposed to be to measure this particular use of decibel meter in a particular situation. As an example, many hotels for instance or apartment units or condos are located near mechanical rooms, and obviously to mitigate the enjoyment of your particular condo they make sure that that mechanical room, the constraints of the noise coming out of those things, waste water treatment plants or whatever cannot be extend so many feet beyond that space. But the reality of sound is simply this, if you have a direct path and open air, air borne sound can go any place, right. I'm talking to Wayne the people behind me hear me even though I'm talking toward him air borne sound goes any place.

Mr. Mardfin: Right.

Mr. Conway: The construction techniques now that are available to modern construction techniques that is incorporated in the IECC and so forth are such that by sealing the building which is going to be done with the insulation those air borne sounds are cut off. The only time of course noise will exceed the apartment if they open windows or open doors and it can go through those spaces. But if someone's having a party and say a birthday party or whatever party that they're having and they're generating a lot of noise simply the hotel management or the management association can simply tell them close your windows, close your doors and it will cut off the air borne sound.

Mr. Mardfin: And with the db I mean distance is a factor. I mean distance is a factor. I mean, the farther you are from it the lower the db level. If you measure the db inside the room with the boom box you're going to well exceed 55.

Mr. Conway: It could be.

Mr. Mardfin: You know you're going to threaten your hearing. But if you're 200 feet away, it's going to be much attenuated so that's why I asked where it was measured from.

Mr. Conway: Well, there are – like I said, the Department of Health has their own rules and regulations but anything above 80 – I think it's 80 decibels, you're supposed to have hearing protection level on. Anything below 80 decibels it's acceptable but Hawaii's Department of Health has a standard of 55 db.

Mr. Hedani: Additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Taking into consideration the concerns regarding privacy, noise, massing. Has the

applicant considered removing the three units on the third floor possibly expanding the footprint of the building so that you still could have the 15 units but not have those three units on the third floor?

Mr. Conway: Just to address that. You know, there's a practicality problem with that again, because of the 35-foot height limitation from the existing ground to the top of the building. If we panned it out or spread it out more if you take a look at the site plan you're going to see that we're going to extend yet a little more into the gulch which is something obviously that's probably not desirable. So you know while you can lower that top section you end up having to construct into the gulch and there's obviously inherent problems that go along with that.

Mr. Hiranaga: Well not necessarily lowering the top section. You can still have the existing roof design just take out –

Mr. Conway: One floor.

Mr. Hiranaga: The three units up there that's – I mean that would, that would reduce the noise emissions, increase privacy.

Mr. Conway: Well, it wouldn't reduce the noise so much because they're still there. What it will do though is obviously move some units as you pointed out, increase the footprint and that increased footprint means construction within the gulch which is something that creates you know, different problems drainage and so forth because that is a well-defined drainage way.

Mr. Hiranaga: The gulch is to the south?

Mr. Conway: It's both to the south and to the north. There's two gulches that come together and obviously when they come together if you had an eight-foot wall you have a dam.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Last question for you. Currently as Kula Lodge stands does it exceed the 55 dbs, that level?

Mr. Conway: That I cannot tell you. I have not taken measurements but I would – my assumption would be no because the reason why I say that is I'm sure Fred has had a lot of complaints. People just hear any kind of noise are going to complain. They will complain to the Department of Health, the Department of Health will come out, register and if there is a problem he will be cited. So you can ask Fred if he's been cited or not. I don't think he has.

Mr. Hedani: Is Mr. Romanchak here, Chris?

Mr. Hart: Yes he is. I think it would be good for him to you know, discuss his record with the Liquor, Department of Liquor Control as well.

Mr. Fred Romanchak: Fred Romanchak addressing the concern of noise. Noise is not an issue. The issue was dealt with in 1984 when I applied to the Department of Liquor Control for a general

dispensers license. At that point in time I was taken back by the kind of animosity that was expressed by the neighborhood. It was standing room only, front page Maui News once again and it was all about the noise issue and I said, the Department of Liquor Control has very stringent and very regulatory agency and noise is a real issue if you violate it. I have never violated the code, never been fined or penalized or had any formal reprimand by the Department of Liquor Control since I've owned in 1984. And that's not just me, anybody who owns a full-service restaurant independent like my own depends upon the revenue generated from liquor sales. If they were to take away my liquor license I'd watch my business go down the drain, 25, 30% of my income would be gone. So that's why I'm saying noise is not an issue. It's a real concern to me because to me it's monetary loss. I lose business and the people who are staying there and it's happened, nothing I could do about it because a rooster ends up under the chalet unit and wants to go off at 3:00 in the morning and these people demand a refund. You know it's – yes, we want to keep it ...(inaudible)... but these are real problems that I deal with when I talk about neighborhood noise. And also the noise that's generated from the highway, highway leading to the number one tourist attraction and the parking lot noise. So these are real concerns and if I don't pay attention to these I lose business and I could lose my business.

Mr. Hedani: Any additional questions for the applicant? Commissioner Shibuya.

Mr. Shibuya: I was looking in terms of the safety of the upper residents above the restaurant especially the kitchen area. How do you have it constructed there so that they would be protected in case the kitchen catches fire? Will they be all wood or is it enclosed in some kind of concrete or nonflammable type of material.

Mr. Romanchak: Yes, and as well it will be sprinklered.

Mr. Shibuya: Okay, thank you. And I did have a follow up question on the septic tank. I read that the approval was a three stage septic. Do you have that now and has it – the capacity any changes to the total amount of usage? Because you're going to now do laundry too, right?

Mr. Romanchak: That's correct. And it will all be designed to handle all the wastewater flow as I say currently it's approved by the Department of Health this system that is in place currently, the septic system that was upgraded from cesspool and the long range plans calls for an individual wastewater treatment plant so in other words the septic system that was recently upgraded will be upgraded once again to handle the additional flow to an individual wastewater treatment plant which is something I've wanted to do from the very beginning because it will allow us to reuse the gray water for subsurface irrigation which is the right thing to do in the Kula area I feel.

Mr. Shibuya: Right and so that system, are you separating the laundry water from the regular human waste water.

Mr. Romanchak: Currently yes.

Mr. Shibuya: Okay, and that's where you're getting your gray water then?

Mr. Romanchak: No, actually the gray water goes right into the ground because this is a septic

system. We'd only be able to reutilize the gray water through a individual wastewater treatment plant.

Mr. Shibuya: Okay, thank you.

Mr. Romanchak: Sure.

Mr. Hedani: Additional questions? Commissioner Tagorda.

Mr. Tagorda: This is in line with the septic tank or wastewater –

Mr. Hedani: Orlando if you could use the microphone.

Mr. Tagorda: Wastewater treatment plant that Mr. Shibuya was alluding to. Department of Health did some – transmit a letter way back in 90 – what, 1999 almost 2000 about your deficiencies in your septic tank, wastewater treatment plant operation, did you receive that letter Mr. Romanchak?

Mr. Romanchak: I'm sure exactly what you're referring to.

Mr. Tagorda: It says right here on page 15, "on December 14, 1992 a field inspection was conducted and deficiencies were noted and transmitted to the applicant." And there was this letter that says, "no system approved for use." So is that reason why you had changed to aerobic ...(inaudible)... water system to address this concern of the Department of Health?

Mr. Romanchak: No, actually what was done in compliance with the Department of Health is that a septic system was installed and currently approved by the Department of Health.

Mr. Tagorda: Can you explain to me more what is an aerobic individual water system, waste water system?

Mr. Romanchak: Let me refer to Mr. Conway here.

Mr. Conway: Michael Conway again. To answer your question it's really a simple answer. Department of Health in the rules and regulations for the Wastewater Department for the state has initiated Kula as a noncritical area but in spite of that previously during the period that you were talking about Kula Lodge was utilizing a cesspool, simply a hole in the ground that everything went into. Since that time of that letter it has been upgraded in which they installed a septic tank so that all solid matter and so forth is captured in this holding tank and basically again, not to gross anyone out but basically bugs sit there and eat this thing and that's basically an anaerobic system. What is being – going to be required when this project is developed is an aerobic system which means that we're going to pump air into this basically this holding tank to facilitate the growth of a different type of organism that will give off less odor, that will be more efficient because basically these bugs all they do is eat, breath, make love so that they create more bugs so that they can eat and breath more. So when you pump air into it you give them the oxygen so that they can expand, you can get a greater concentration of these organisms and again, it handles and gives you a cleaner effluent that comes out of it and at that point in time we will be utilizing that water for possibly reuse

within the irrigation system. Does that answer your question?

Mr. Hedani: In a future life I want to reincarnated as an aerobic bacteria then Mike.

Mr. Conway: Just make love and breath. Commissioner Shibuya.

Mr. Shibuya: On that note there how are you handling the methane and the odors.

Mr. Conway: Again, the septic system has a great deal of methane because of that different type of bugs.

Mr. Shibuya: I know.

Mr. Conway: But in the new project we're not going to have an anaerobic system. We're going to have an aerobic system. So the methane is very small, very little. It will just be handled naturally. Again, if you go drive down to Maalaea, go down that street every one of the condominiums there have their own aerobic treatment plant and you will notice that you've never probably have never heard of anyone complaining. You can walk through the parking lots and so forth and there's just not a problem with an aerobic system but it is more – creates – it's more maintenance required. It's just a more sophisticated system.

Mr. Hedani: Any additional questions for the applicant? Thank you very much. Any additional questions for staff at this point? Seeing none, what's your pleasure? Commissioner Starr.

Mr. Starr: I move for denial of the revision to the Phase 2 Project District.

Mr. Hedani: Is there a second? Motion dies for lack of a second. Any additional discussion? Commissioner Mardfin.

Mr. Mardfin: You don't have a motion for approval on the floor and I'm not going to make one right now but what I want to say, I want some clarification from the department and my clarification is this, my reading of the Makawao-Pukalani-Kula Project District 1, Chapter 19.75, has a section 19.75.020, titled Lodge PD-MPK/1 it has section D, development requirements for the Lodge District shall be and then they give minimum lot area and minimum width, minimum building setback and then Item 4 says, "maximum hotel units 15 lodging units plus one caretaker's unit." And looking up the definitions in 19.04.040, it says "a lodging unit means a room or group of rooms connected together constituting an independent living room which does not contain any kitchen." And the submission we got from Mr. Crockett, you had the same definition. Now a dwelling unit does have a kitchen but a lodging unit does not. I looked up the definition of kitchen. Kitchen said, "means a room or portion thereof," or a portion thereof, "designed, arranged, intended or used for cooking or otherwise making food ready for consumption and within which there may be appliances for the heating or cooking of food." So if the development has floor plans that include a kitchen that seems to a violation of the Makawao-Pukalani-Kula Project District 1 Plan. It was just pointed out earlier today that these are conceptual plans but I don't know whether this is handled at the Phase 3 or at the Phase 2 but it seems to me that the ordinance that established this limited to lodging units which means no kitchen. Now that does not alter the ability of the developer to sell off ownership

as condominiums. It seems to me it would still be a wonderful investment, but without kitchens it seems to me that there would be less likely for full-time, year-round occupancy by a single individual. And the problem Paul pointed out is you could back to back 180 degree leases. This seems to, by not having a kitchen would seem to reduce the problem, not eliminate, but reduce the probability of that happening and increase the probability that these would be for transient vacation units the concept of a retreat resort, it should also improve business at the restaurant because people won't have facilities in their rooms so they can actually cook food. And while it doesn't specify it I would also think that the half refrigerators that are typically found in hotel rooms is much better than a full standing refrigerator/freezer but that's not part of the definition. The definition refers to kitchen and so, I think that a lot of the concerns about it not being a resort or retreat resort would be ameliorated by a focus on the idea to just comply with the law that these are lodging units, lodging units don't have kitchens and kitchens have to be taken out and perhaps the director would want to respond to this.

Mr. Hedani: Jeff.

Mr. Hunt: The department agrees with the analysis that kitchens would not be allowed based on the definition of a lodging unit. We believe rather than leaving it to the Phase 2 or pardon me, the Phase 3 implementation we think it'd be better to get it out in the open today. You can listen to our interpretation of the code, give the applicant their opportunity to respond and lets just make it clear for everyone, the applicant, the department and the citizens in the community.

Mr. Hedani: Is the staff recommendation going to be remove the kitchens?

Mr. Hunt: Our interpretation of the law is that they would not be allowed so during the Phase 3 we would not approve Phase 3 construction plans but given the ambiguity and the sensitive nature of this and the concerns from the citizens my request would be that we debate this and make it clear and we could even put in a condition explicitly stating that kitchens are not allowed if that's the will of this body.

Mr. Hedani: What is the staff recommendation at this point?

Mr. Fasi: The staff recommendation currently is to disallow kitchens.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess I have a concern about creating a condition prohibiting kitchens. I prefer that if that's going to be an arguable point that that be something the applicant argues with the department or Corporation counsel. I'm not comfortable making that type of a decision and placing it as a condition into this application. They can argue that at Phase 3 whether it's allowable.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I just want a point of clarification here. If you're not allowing for the kitchen, are you going to allow for appliances which provide for the clients conveniences such as microwave, such as coffee maker appliances, such as toaster oven, such as half size refrigerator?

Mr. Hedani: Director.

Mr. Hunt: Welcome to the world of planning. The Planning Department interprets kitchens to not include a microwave, many offices have microwaves in their offices, hot plates, coffee pots, mini refrigerators, so where do you draw line? When does something becomes a kitchen is debatable and results in conversations shall we say. Generally speaking most jurisdictions that I know of draw the line at 220 in terms of electricity.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: And not being an electrician 220 meaning hard-wired?

Mr. Hunt: Wiring for a stove.

Mr. Hiranaga: Hard-wire versus plug in.

Mr. Hunt: I'm not an electrician either.

Mr. Hedani: Chris does the applicant have any comments on this discussion?

Mr. Hart: First of all, Chris Hart. First of all, the plans that have been approved in the year 2000 did identify kitchens. The Kula Lodge Project District zoning ordinance identifies certain permitted or principal uses. Item A is hotel. And basically the definition of hotel or motel means a transient vacation rental other than a bed and breakfast home containing lodging or dwelling units. So there's an option and the option in this particular case was to identify them as dwelling units and the definition of dwelling unit does allow kitchens.

Another issue I think that's important at least from perspective as a planner is these are 850 square foot units and that was established in the context of project district zoning ordinance. A normal hotel room you know would be somewhere in the neighborhood of 400 to 500 square feet. So there was something more intended believe and the context of you know what has been improved in the past you know I think the choice of containing lodging or dwelling units and the dwelling units was the choice you know is pretty evident.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Chris, you say that the Project District 1 had principal use hotel and you're correct. That's under A, Permitted Uses.

Mr. Hart: That's correct.

Mr. Mardfin: B is Special Uses, C is Other Uses Permitted, D is Development Requirements and under the Development Requirements, Item 4 they say, maximum hotel units, 15 lodging units. They don't say 15 dwelling units, they don't say 15 hotel homes, they say 15 lodging units and a definition of a lodging unit is very clear in the ordinance and it says no kitchen. And despite the fact that you, earlier you didn't, well we were in dispute as to whether there was a kitchen included in

the level 2, the previously approved Phase 2 when – you said that was a conceptual plan. When it comes to the Planning Department for Phase 3 I would expect they would adhere to the law and require that there be no kitchens as the definition states even if we do nothing today.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Did you want to respond to that Chris?

Mr. Hart: Well, I'm not denying the fact that the term "lodging units" is used.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm not an attorney and that's why we have attorneys to argue intent, interpretation, that's why you have a judge. I'm not going to try and interpret what exactly the intent is between these inconsistencies so I again would not be in favor of putting a condition that prohibits units because prohibits kitchens because if the applicant feels strongly enough he'll go to ...(inaudible)... so let them decide that between the department and the applicant. I don't think the commission is here to interpret ordinances. We have someone that may want to express an opinion, Corporation Counsel.

Mr. Hedani: Jim.

Mr. Giroux: I think the commission in the past, you know from experience in working with this commission and working with the department is that there is a lot of overlap over responsibility. You know, we rely heavily on the expertise of our professional planners. They're under restraints and pressures and things and you know, part of having a lay body having certain planning powers is so that there is an ability to kind of spread the load to have different eyes on the same issues whether they be legal, political, socio economic and you know, sometimes it does come to legalese so the lawyers end up being planners. So you have to realize that it is in your purview as in a project district because of the uniqueness of that and the flexibility of that and you know, you're looking at multiple levels of planning within one permit. You're looking at project district ordinance, you're looking at project district ordinance processing process, you're looking at a community plan project district, you're looking at definitions of hotel, you're looking at definitions of lodging unit and you gotta look at this all in this global picture and that's where what the department is telling you is that they've seen something within the project district that gives them an indication that there is a leaning towards the definition of a lodging unit that excludes kitchen. What you've been proposed today is a project within the project district which in their proposal there is a clear delineation of the use of a kitchen. How does this board feel about that? Do you want to address the issue now or do you want to punt? Do you want to leave that to the next group of planners to come in, do you want to leave it to the next Planning Director, do you want to leave it to the next mayor or do you want to address it? You got that opportunity. You can deal with it now or you can deal with it later or you can let the lawyers be planners and we can deal with it in front Judge Cardoza and we can argue it out and we can convince him and he can turn into a planner. So we can take the opportunity or we can leave the opportunity. So we all want to be planners and then maybe I'll just be a normal citizen and I'll get my three minutes and I get to give my opinion. But today, I really want to leave that in the hands of nine competent lay people who have a lot of experience in the

world of planning.

Mr. Hedani: Thanks for the legal opinion Jim. Chris.

Mr. Hart: When you asked me my view of it you know, I believe personally that it was called the Kula Lodge, I don't believe necessarily that in the writing of the ordinance that when they said, they could have just as easily said dwelling units. I just think they called them lodging units and I go back to the fact that you know, one of – the principal use is hotel and that the definition of a hotel gives the choice of a lodging or a dwelling unit. So that's how I would read it and I don't know what was on the minds of the individuals at the time when the ordinance was drafted. I'm not sure that they actually went to the definition section of the zoning ordinance and specifically focused in on the definition of lodging unit. I think they looked at it from the point of view that it's a Kula Lodge and that it would be lodging units.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Since the Corporation Counsel said that even though it's fourth down and 20 to go we're not going to punt, we're going to go for it. I would like to suggest that we recess for lunch, allow the applicant an opportunity to circle their wagons, huddle up and you know, Commissioner Mardfin brought up a very good point, caught them by surprise, give them a lunch hour to see if they can come up with something and then we can deliberate.

Mr. Hedani: Okay, my personal perspective on this is that well, I'd like to offer a couple of comments on the project in general. I really like the architectural design of the project. I think Pip White has done a fantastic job with designing something that the entire island can be proud of. I'm not very impressed with the project that was previously approved and has a green light to proceed. I think the investment of \$15 million into the project in this particular case is a good shot in the arm. I don't think existing structures were intended to be there for 200 years and that at some point you need to contemplate demolition, reconstruction of the project within the project district boundaries. It is approved, it is urban and I have my questions as to whether or not a lodge with only 15 units is viable upcountry only because it doesn't have the economies of scale of a regular hotel. Given that I think upcountry has a unique atmosphere that you can capture but you need to have everything going for you in order to make the project viable. 850 square feet without a kitchen in my perspective is – it may be technically correct, but it's not logically sound from the standpoint of addressing the modern needs of accommodations in the current time. The ordinance was probably drafted before microwaves were invented and I think the resort industry is changing and it's always improving in order to be competitive you need to do what you need to do in order to make it viable. And from my perspective, I don't think a kitchen you know in the unit is necessarily something that would be obtrusive to anyone. Commissioner Starr.

Mr. Starr: I like the idea of the retreat resort and I've always loved Kula Lodge and I was really looking forward to seeing the spirit of Kula Lodge but increased and felt that the concept of the project district as a retreat resort was trying to do that. And so, you know, looking at the old project district you know it was kind of keeping the original restaurant, it had a farmers market which is good that's a kind of about empowering ag and so on. What I see happening though is a change and I don't think those original drawings, I'm not in love with that original plan. It was you know kind

of massive and the big smoke stacks are kind of weird and stuff. The spirit of what is now being presented to me is something different and I really think it's something that would change the way the neighborhood and the community is and probably for the people who live there now that change would not be for the better. I do feel that the intention is not to have a hotel, that if it were approved as it is there not be a hotel use here, there would be uses lets say midterm lodging, you know, since I guess they couldn't do legally over a 180 days but whether it's you know, by the month or whatever or actually people do stay longer. I also, but mostly what I see is instead of retreat resort in a quiet place I see a very busy tourist attraction. You know, I see a place with many tour buses pulling in and out and I see a shopping mall which is catering to the tourists. I see a restaurant that you know, it's probably not going to be the quaint restaurant we know but probably more like you know fast food court catering to the tour buses, you know, McDonalds and two or three other marks and you know, people running in and out to the tour buses. I just don't think that the scents wafting out from the grease traps and the ventilators from that will be conducive. I just think it's going to create a very different feeling to the people who live around there and I wish you know I were feeling that the thing were going to move back more toward being a retreat resort and a quiet lodge where people can come and stay for a night or two and explore upcountry Maui.

Mr. Hedani: Any additional comments before we go ahead and take a break for lunch?
Commissioner Mardfin.

Mr. Mardfin: Yeah, Jonathan, Commissioner Starr started out by saying that you know, he didn't like the old version, I concur. I think this scale and I concur with the Planning Department the scaled back version which pushes every limit in the law to its maximum with the exception of open space but the covered floor space is everything to the maximum in the ordinance. But it seems like better design to me. I think we've heard testimony that the noise should be at least not proportionately increased and perhaps decreased by the use of new design standards on windows and walls. The concern to me is, and again, I don't – as the director pointed out at the beginning at the meeting we cannot be concerned with ownership so the issue of condominiumizing it or not is not one for us to determine. But I think the spirit of resort is one for us to determine to hold to. They – people that wrote the ordinance were very careful, well, maybe careful or maybe hasty but whatever they did, they wrote in lodging units not dwelling units, not hotel units but lodging units. I'm not sure that the Kula community will be better off with transients rather than full-time owners. I'm not sure noise will be any less, it might well be more. Traffic may be more or less. But it seems to be expressed concern of the Kula community and I tend to like to empower community concerns. I think there is the overshadowing concern that if we get to onerous that the developer will go back, the owner will go back to the earlier Phase 2 design that was approved. But even if he does that I believe the ordinance restricting it to the lodging units, i.e., no kitchens will apply there as well. So I think that the no kitchen thing will apply. I think that having and if not at Phase 2 maybe at Phase 3, I think having shared ownership or condominiumized ownership is not an issue if the use of the rooms is for transients. I think without a kitchen there is a much more likely possibility that it will be used for transients rather than year round apartments. So I think that with the appropriate additions to the conditions that this is a project that I can support.

Mr. Hedani: Any additional discussion? Okay, with that, why don't we go ahead and take a break for lunch and we'll reconvene at 1:00 p.m.

A recess was called at 11:55 a.m., and the meeting was reconvened at 1:00 p.m.

Mr. Hedani: Someone fill this room with your intelligence please. Ladies and gentlemen what's your pleasure? Commissioner Mardfin.

Mr. Mardfin: I believe we received near the end of our meeting a draft of – it says draft on it, it's March 30, 2010 and in it there are some yellow, it's the conclusions basically that the department had as introduced by Mr. Fasi, with some additions in yellow highlight. I move the adoption of this draft as our – what's the line – Findings of Fact, Conclusions of Law and Recommendations.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner U'u to approve the revised draft. Paul you want to walk us through the revisions?

Mr. Fasi: Thank you Chairman. Before we get to there I'd like to suggest a small revision to Condition No. 13, if you'd all turn it out and we're going to kind of piggy back off the bed and breakfast ordinance and basically use the same language as the bed and breakfast ordinance regarding this particular subject matter and I'm going to quote, "quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m. during which noise in the bed and breakfast" which shall be replaced with, "lodge," "shall not disturb anyone on a neighboring property."

Mr. Mardfin: Mr. Chairman?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I move that the revision of Condition 13 as read by Mr. Fasi.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner U'u, discussion? Commissioner Hiranaga.

Mr. Hiranaga: Is the exact language, and/or other commercial activity. Outdoor commercial activities, outdoor assemblies or other commercial activity.

Mr. Fasi: We could add that to this provision if you feel more comfortable.

Mr. Hiranaga: No, I'm wondering how that impacts the restaurant use.

Mr. Hedani: You're saying it should be other outdoor commercial activities?

Mr. Hiranaga: No, I want clarification because the restaurant is a commercial activity. By that language you're saying —

Mr. Fasi: The revision, the suggested revision that I'm giving just says quiet hours shall be

maintained from 9:00 p.m. to 8:00 a.m. which noise shall not disturb anyone on a neighboring property. I would think that would be not in conflict with the restaurant and that as heard earlier by Mr. Romanchak that he does monitor the noise very carefully within the restaurant and dining area. If they feel that this is too restrictive I would ask them to make a comment on it if that's appropriate.

Mr. Hedani: Do you want to repeat the amendment again Paul?

Mr. Fasi: Yes. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m. during which noise in the lodge shall not disturb anyone on a neighboring property.

Mr. Mardfin: And that's to replace the wording in 13?

Mr. Hedani: So all of the wording in 13 is struck?

Mr. Fasi: Correct.

Mr. Hedani: Does the applicant have any comments on that?

Mr. Fred Romanchak: Fred Romanchak, I can see we're revisiting the noise issue once again and as I say it's a major concern, but the practicality is another concern as well too and what I mean by practicality is that you're imposing something which sounds good but is it practical and is it really enforceable? In the sense that yes the neighbors can say the Kula Lodge is noisy but what about the neighbors being noisy as they are. It's an urban zoned neighborhood. These people build within 10 feet of the Kula Lodge, we setback 50. Unfortunately they're feeling the pressures of an urban zoned neighborhood that's built up and unfortunately, the neighbors are still stuck in the stigma of not in my backyard and I can understand that and that's why I monitor it and it is a real concern but to think that you can actually come up with a quiet time that can really be workable in a commercial zoned property in the middle of an urban zoned neighborhood I don't feel is practical in any sense of the word.

Mr. Hedani: We actually have quiet hours in Kaanapali Beach Resort from the hours of 10:00 p.m. until 8:00 a.m. but the question that I had here for you was whether or not 8:00 a.m. works for you if you want to serve breakfast?

Mr. Romanchak: No it does not. Our breakfast hours start actually at 6:30 in the morning.

Mr. Hedani: Thank you. Discussion? Commissioner Starr.

Mr. Starr: Yes, this is more a general question I guess it's for our legal eagle and that is that you know I'm reading the general standard conditions such as you know, the Project District Phase 2 Approval shall not be transferred and you know, all the other conditions that go with it. Now say part of the project is sold or you know, to whether it's a condominium regime or you know, other mechanism. Say all of the portions are sold, then who do the conditions go with the sale and do they become bearing or at that point since the original person Mr. Romanchak in this case has not transferred it but he doesn't own anything any more have they become extinct?

Mr. Giroux: I think you're talking about Condition No. 6?

Mr. Starr: I'm talking about all of the conditions.

Mr. Giroux: I think we gotta look at Condition No. 6 because it determines our discussion it says, "that the subject Project District Phase 2 Approval shall not be transferred without prior written approval of the Maui Planning Commission." And so basically that's a monitoring issue. So obviously if there is condominiumization that could create you know an issue that the planning commission would have to address at the time that it looks to agree whether or not they're going to actually you know, be okay with that, that transmission of ownership but I think your question is does it run with the land, does it –

Mr. Starr: Say the restaurant gets sold, I go buy the restaurant now do I have to abide by these conditions? When I buy the restaurant does that transfer have to be approved by a governmental agency?

Mr. Giroux: Yeah, that raises some serious contractual and due diligence issues on the part of the buyer. Yeah, we have here \$1 million insurance, now will the, you know, will the restaurant owner now have to come up with a million dollars insurance. I think that's what you're asking.

Mr. Starr: But I mean this has to be something that we deal with everyday maybe the director has some wisdom on this. I mean, we always do, you know, project districts, what happens when a piece gets sold, what happens – do the conditions, are they bearing and?

Mr. Hunt: The conditions are applicable to the permit and the permit is applicable to the applicant but we commonly issue somebody a permit and they sell off pieces of the development, a subdivision is a classic example. And so, your question is a legitimate question but I guess my response is we do this routinely.

Mr. Starr: And the transfer doesn't have to be approved?

Mr. Hunt: We don't bring back every lot in a subdivision that's subject to one of these approvals for your okay.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Director, I'm a little confused about your answer. If this goes with the project district then I would have thought perhaps erroneously that every subsequent buyer of a piece of it would be subject to the same conditions that were attached to begin with is that correct?

Mr. Hunt: I think they're subject to the conditions but this is talking about transfers of the approval. If you read, not the first words, but if you read Condition 6, it says, "the approval shall not be transferred." But it doesn't say anything about ownership or selling off a piece of the land. We've got project districts that commonly have subdivisions within them and we don't bring back every lot in that subdivision for your approval.

Mr. Mardfin: But all the conditions that we approve today would run with the subdivision is that correct?

Mr. Hunt: Correct.

Mr. Mardfin: Okay.

Mr. Hedani: Paul you want to take us through the rest of the changes?

Mr. Fasi: I just conferred with the applicant –

Mr. Hedani: Oh, I'm sorry, any further discussion on the amendment to paragraph 13 quiet hours? Is it your intent to prohibit breakfast Paul?

Mr. Fasi: No, we're going to make an amendment to the hours and I'm going to suggest it be from 12:00 p.m. to 6:00 a.m.

Mr. Mardfin: That takes an amendment to the amendment. The amendment has –

Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I'm just curious because some of the noise is not actually made by the tenants or the restaurant itself. You have delivery trucks and they backing in there's always that beep, beep, beep, also the reefer trucks, refrigerated trucks have the reefers and some of them have mufflers but yet it's still noisy. So that's another issue. I'm getting to specifics now. So are you prohibiting delivery of these items?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm getting a little confused. You said quiet hours between 12:00 a.m. and 6:00 a.m. Most deliveries are done in the morning. They can come in at 6:00 a.m. So are you saying that it should be 5:00 a.m. or 7:00 a.m. or 8:00 a.m. I'm not sure what your objection is.

Mr. Shibuya: No, I just wanted a clarification because it's now, I thought it was 8:00 a.m. – well, 9:00 p.m. to 8:00 a.m., that's the motion, right?

Mr. Hiranaga: No breakfast.

Mr. Hedani: Paul, in regards to that motion, the Planning Department would like to amend the motion with some new hours. Can I do that?

Mr. Starr: No.

Mr. Hiranaga: No.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: It's always open to somebody amending the hours before we vote on it but my response if and when somebody makes that amendment to the amendment is that we're talking about quiet hours. They can be quiet and do stuff, they can hold breakfast they just have to be quiet.

Mr. Hedani: Commissioner U'u.

Mr. U'u: And brings up my question, what is quiet? I no like close down the restaurant. I love eating there in the morning and it's usually pretty quiet and if it's new, the building's new they going mitigate that sound that travels. So what is quiet? What we saying is quiet? Is it delivery trucks? I think we need to be specific because the intention is not to close down breakfast because I'll be there at 5:55.

Mr. Fasi: I agree with Commissioner U'u and these are basically guidelines. I don't think these are really enforceable but this is a framework of some – that the lodge can work within and try to achieve. I don't think we can go any further than making these guidelines because it's going to be very difficult to enforce.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I move for a second to your amendment as an amendment to the amendment that the hours shall be 10:00 p.m. to 6:30 a.m.

Mr. Hedani: Is there a second?

Mr. Mardfin: Second.

Mr. Hedani: Seconded by Commissioner Mardfin. Any discussion? Commissioner Hiranaga.

Mr. Hiranaga: So this 10:00 p.m. quiet restaurant applies to the restaurant also? You know typically after people are done eating, there's clean up so are you going to make final seating at 6:00 p.m., close the doors at 8:00 p.m. so they have a two-hour period to clean up and be out by 10:00 p.m. How practical are we being?

Mr. Hedani: Director Hunt.

Mr. Hunt: First we need to look at the whole language and it says, "quiet hours shall be maintained during this period in which noise," and as worded noise in the lodge, you really should think about that because that doesn't include the restaurant at this point. I would suggest you make that more inclusive but the language goes on to say, "shall not disturb anyone on a neighboring property." So that's not to say that there can't be any noise at all. Somebody from a neighboring property would have to explain how it's disturbing them and if they're cleaning up the restaurant at, you know, 10:05 at night how is that disturbing them? Is it a couple dishes clanking or are they making such a noise that it is disturbing them? So I would like to clarify Paul's comments earlier that it's not enforceable. I think it is enforceable but it is –there is room for interpretation and we would go out and investigate. If someone's saying well, they're making noise, it's disturbing us we would ask

them well, what kind of noise is it, how is it disturbing you and then we would go and talk to the owner of the restaurant and trying to work something out. So it's not an ironclad exact science but it gives us some leverage in which to protect the neighborhood from the noise.

Mr. Hedani: Any further discussion? The motion on the floor is to amend to 10:00 p.m. to 6:30 a.m. There's a second. Moved by Commissioner Starr, seconded by Commissioner Mardfin. Commissioner U'u.

Mr. U'u: Just a comment. I know at the community centers they shut down at 10:00, so is that what we're looking? That they shut down because they clean up till 12:00. My house abuts the Paia Community Center.

Mr. Hedani: I think you're probably talking about 10:00 p.m., no outdoor dining and everything, they can still have dinner inside, right Commissioner Starr.

Mr. Starr: And my own feeling is that they could keep doing what they want to all night as long as they're not making noise it's going to be – disturb anyone outside, it's, you know, that's the issue.

Mr. Hedani: Any further discussion? Director Hunt.

Mr. Hunt: Again, I would suggest and we can't make recommendation but we suggest them that you include language other than just the lodge.

Mr. Hedani: So quiet hours for the lodge and the restaurant. You want to amendment to include restaurant?

Mr. Starr: Why don't we vote on it and then we can make another amendment after.

Mr. Hedani: Okay, it's going to be a long day. Commissioner Hiranaga.

Mr. Hiranaga: What was the exact language again because I'm having difficulty with the words, disturbing neighbors. I mean, you've got your stereo on a little loud, is that disturbing my neighbor, my T.V. I've got a theater sound system and I'm watching Avatar on high is that disturbing my neighbor? When you say disturbing?

Mr. Hedani: You want to repeat the language Jeff?

Mr. Hunt: Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m. during which noise in the lodge shall not disturb anyone on neighboring property. Again, we won't be able to list every type of noise that could conceivably disturb somebody but this does give us some language in which we can try and address concerns if neighbors are complaining about noise we can go and talk to the owner or the applicant and work something out.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Clarification, when you say neighboring is that abutting property owners, people

across the street count as neighboring?

Mr. Hunt: I would interpret neighboring beyond just adjacent otherwise it would say adjacent property.

Mr. Hiranaga: I'll be voting against the motion. I would prefer it to just say quiet hours shall be maintained blah, blah, blah, and delete that disturbing neighbors because that can be argued in front the Liquor Commission or whatever entity. If you put the words disturbing there's no way to define what is disturbing.

Mr. Hedani: Okay, the amendment on the floor right now is just related to the hours from 10:00 p.m. to 6:30 a.m. Any further discussion? All those in favor signify by saying aye. Opposed nay. All those in favor please raise your hand. One, two, three, four, five. Opposed same sign, one, two, three.

It was moved by Mr. Starr, seconded by Mr. Mardfin, then

**VOTED: To Amend the Quiet Hours to 10:00 p.m. to 6:30 a.m. for Condition 13
(Assenting - J. Starr, W. Mardfin, O. Tagorda, W. Shibuya, L. Sablas)
(Dissenting - K. Hiranaga, B. U'u, D. Domingo)**

Mr. Hedani: Motion is carried. Commissioner Starr.

Mr. Starr: I would like to make another secondary amendment which would be to add the words, "restaurant and commercial areas" after the word lodge.

Mr. Hedani: So lodge, restaurant and commercial areas.

Mr. Mardfin: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Mardfin. Discussion? Commissioner Mardfin.

Mr. Mardfin: Can I ask you to include the pool/spa area as well?

Mr. Starr: Okay, I thought they were commercial but sure.

Mr. Hedani: That's part of the lodge, that's part of the restaurant.

Mr. Starr: Lets add the wording.

Mr. Hedani: Why don't you just say project district. Okay, so you're going to – including the pool and spa. Further discussion? All those in favor please raise your hand. Opposed same sign.

It was moved by Mr. Starr, seconded by Mr. Mardfin, then

**VOTED: To Include, "Restaurant, Commercial Areas and Pool and Spa Area" in Condition 13.
(Assenting - J. Starr, W. Mardfin, O. Tagorda, W. Shibuya, L. Sablas)
(Dissenting - K. Hiranaga, B. U'u, D. Domingo)**

Mr. Hedani: Motion is carried. Main motion on the floor is to establish quiet hours for –

Mr. Fasi: Quiet hours shall be maintained from 10:00 p.m. to 6:30 a.m. during which noise from the lodge, restaurant, pool and spa shall not disturb anyone on a neighboring property.

Mr. Hedani: And commercial area.

Mr. Fasi: And commercial area.

Mr. Hedani: Any discussion? All those in favor please signify by raising your hand. Opposed same sign.

It was moved by Mr. Mardfin, seconded by Mr. U'u, then

**VOTED: To Amend Condition 13 to "Quiet Hours Shall Be Maintained From 10:00 p.m. to 6:30 a.m. During Which Noise From the Lodge, Restaurant, Commercial Areas and Pool and Spa Area Shall not Disturb Anyone on a Neighboring Property."
(Assenting - W. Mardfin, B. U'u, O. Tagorda, W. Shibuya, L. Sablas, J. Starr)
(Dissenting - K. Hiranaga, D. Domingo)**

Mr. Hedani: Motion is carried. Commissioner Starr.

Mr. Starr: Yeah, I'd like to add another amendment. The amendment is that a licensed acoustic engineer shall be utilized in the design of the project to ascertain that all point sources of sound and noise be diminished to the maximum extent practicable.

Mr. Hedani: You got that Paul?

Mr. Mardfin: If that's Condition 27 I'll second it.

Mr. Hedani: Discussion? Commissioner U'u.

Mr. U'u: I'll be voting against that motion. I think they're taking into account the decibel levels that Department of Health potentially could enforce and there's a avenue for that. I think the way they mitigated the sound from existing to the future, the new, it's good enough reasons for me that the sound will be mitigated and my concern would be amplified noise more so than anything else.

Mr. Hedani: Commissioner Starr.

Mr. Starr: The 35 decibel Department of Health that's loud, that's quite loud if you know, if one had to live with that on a regular basis on a neighboring property from say a swimming pool pump they would be wearing ear plugs.

Mr. Hedani: Paul do you have a comment?

Mr. Fasi: I was just been informed by the civil engineer that there is no such thing as a licensed acoustical engineer in Hawaii.

Mr. Starr: I beg to differ. I work in that field and I don't know if there's one in Hawaii but there's certainly a lot of licensed acoustical engineers who are designing audio systems.

Mr. Hedani: Any further discussion? Ready for the question? All those in favor of the motion to add a condition 27 requiring licensed acoustical engineer basically maximize sound attenuation within the project signify by raising your hand. One, two, three, four. Opposed same sign. One, two, three, four, five.

It was moved by Mr. Starr, seconded by Mr. Mardfin, and

The Motion to Add a Condition No. 27, "that a licensed acoustic engineer shall be utilized in the design of the project to ascertain that all point sources of sound and noise be diminished to the maximum extent practicable," Failed.

(Assenting - J. Starr, W. Mardfin, O. Tagorda, W. Shibuya)

(Dissenting - K. Hiranaga, B. U'u, D. Domingo, L. Sablas, W. Hedani)

Mr. Hedani: Motion is lost. Any further discussion? Paul can you just get us through the yellow pieces of paper please before we continue voting on the motion?

Mr. Fasi: Condition 15, that all construction vehicles shall use the Haleakala Highway exclusively to access to the site. And the reason for this is just so they don't go through the residential areas.

Item 17 is basically redundant and that will be covered during the Phase 3 permitting process. They need to show square footages when they file for their permits.

Conditions 23, 24, 25 and 26 came about as a result of our internal discussions and No. 23, that long term use, 180 days or greater of the units is prohibited. 24, lease agreements of two or more consecutive time periods of the same or related occupants shall be prohibited. 25, time shares and comparable programs are prohibits. Time shares are defined in the Maui County Code. And 26, that kitchens in the units are prohibited. Kitchens are defined in the Maui County Code again under Definitions.

In consideration of the foregoing the department recommends that the Maui Planning Commission adopt the Department of Planning's Report and Recommendation prepared for this meeting today as its Findings of Fact, Conclusions of Law, Decision and Order and authorize the Director of

Planning to transmit this decision and order.

Mr. Hedani: Have you had a chance to review the changes with the applicant Paul?

Mr. Fasi: Yes, I think they may want to have a few words to day perhaps in relation to Item 26 regarding the kitchens.

Mr. Hedani: Does the applicant have a comment that they'd like to offer?

Mr. Hart: Chris Hart, Chris Hart and Partners. We would like to comment on Item 26. And it will probably be myself and Fred Romanchak who is the owner of Kula Lodge. First of all, the reason that Fred you know, basically has undertaken the project is in the context of what the Chairman was talking about initially in terms of trying to you know, essentially expand the viability and success of the Kula Lodge and obviously kitchens in the lodge units have been discussed and have been proposed from the time that the Project District Phase 2 was reviewed and approved back in the year 2000.

Now just in terms of again looking at the ordinance, I know that the units are referred to as lodging units but I really want to reiterate the fact that principal uses, the number one principal use Item A is hotel and under the development requirements it refers to basically the project district as a lodge district. I firmly believe that in the context of that you know reference to the Kula Lodge that that's how we came to identify the units as lodging units. And then also under the basically land use allocation portion of the lodge it talks about hotel living area per unit 850 square feet and it talks about the caretaker's unit. And again, the definition of hotel or motel is essentially a transient vacation rental unit containing lodging or dwelling units and the ordinance definitions identify lodging units as not having kitchens and dwelling units as having kitchens. So we're of the opinion that in the context of this project that the hotel is the principal, primary principal use and that in this case we're looking to have kitchens and therefore the units would be dwelling units. Now that's our position and again it has to do with the issue of viability of the project. So from that point of view we would disagree with Condition 26.

Mr. Hedani: Thank you. Discussion? Commissioner Mardfin.

Mr. Mardfin: Chris, under Permitted Uses that are typically written do they have a thing such as lodging units as opposed to hotel?

Mr. Hart: Well, not usually no.

Mr. Mardfin: And that's why I believe they used hotel because that's the -- for a resort, that's the typical term used. The fact that they use hotel should not be, I don't believe should be interpreted to mean it's all possible hotels. I think when they added condition, section D-4, they specified the development requirements for the lodge district.

Mr. Hart: Right.

Mr. Mardfin: And they said 15 lodging units and I don't think that was a mistake, I think that was

intentional. Now none of us can go into the minds of the drafters but I think my interpretation of this has equal standing with your interpretation that they said hotel first and they meant it to be all possible hotels. I think this is a special project district and they called it a lodge project development and they talked about lodging units and I think that was intentional and when they talked about retreat resort that was intentional and the definition of lodging unit precludes a kitchen.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I have to admit I did not bring my County Code with me so could we have a copy of 19.04.040?

Mr. Hedani: It's passed out.

Mr. Hart: I have some of it but I don't know if it's the definitions you want.

Mr. Hiranaga: Just definition of kitchen.

Mr. Hart: Oh, I have that.

Mr. Hedani: Jim, can you read that section please? Jim will read the section for you.

Mr. Giroux: Kitchen means a room or portion thereof designed, arranged, intended or used for cooking or otherwise making food ready for consumption and within which there may be appliances for the heating or cooking of food.

Mr. Hedani: That's pretty all encompassing. Commissioner Hiranaga.

Mr. Hiranaga: So that would prohibit microwaves, convection toaster ovens, coffee makers, mini fridges is that what?

Mr. Hedani: Anything used to prepare food.

Mr. Hiranaga: Knives, forks.

Mr. Hedani: Plates. Commissioner Starr.

Mr. Starr: Yeah, I support the wording as it is, I support the department recommendation which I understand came after a lot of research and discussion. I actually will be voting for the project with it included. If it remains included I feel that there was - this was specifically approved for lodging which means hotel type use and precluding kitchens and if there's a desire to change that then the ordinance should go back to Council.

Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: It's on a different item, on Item 2. On the last sentence on Item No. 2, it's not highlighted but it says, "the Planning Director shall review and approve the time extension request

but may forward the request to the Maui Planning Commission for review and approval." It does not make any determination or at least the mentioning of approve or denial. I think it needs that because if you just have shall review and approve then why even have that in because it's already foregone a conclusion that it's going to be approved. So it should have a condition of denial.

Mr. Hedani: I think it's part of the staff recommendation which was the staff recommendation was - the staff recommendation was for approval and that's why it's worded that way.

Mr. Shibuya: But it should have a condition for us to have or somebody to have a choice of either approving or denying and that's my point.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Shibuya, if you're prepared to make a motion to add the words "or denial" I'm prepared to second it.

Mr. Shibuya: Okay, I'll make the motion that the Planning Director shall, I would like to have the last sentence to include the word, "or approve," no I mean, "approval or deny the time extension." And at the end here, "for the commission for review and approval or denial."

Mr. Mardfin: Second.

Mr. Hedani: Paul.

Mr. Fasi: I have to interject here we're starting to get into the area of the Rules of the Maui Planning Commission and this particular Condition No. 2 was taken directly out of the approved Phase 2 back in 2000. Since then the Rules of Practice and Procedures of the Maui Planning Commission regarding time extensions has been modified. So I would prefer that we not make a change on the floor. I will amend that last sentence to reflect the new and updated rules and as it is stated in the Rules of Practice and Procedures of the Maui Planning Commission which basically say this, any time extensions will be brought before the planning commission and the planning commission then makes the decision on whether to waive the review or to review it at another meeting.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: With the understanding that our newest language is what will be inserted instead and if the maker of the motion will withdraw, I'll withdraw the second.

Mr. Shibuya: I will withdraw with that understanding that at least the condition of approval or denial be clearly stated. It's not a presumed approval.

Mr. Fasi: Commissioner your concern is addressed by the stated rules as they are stated in the revised edition of the Rules of the Planning Commission. Your concern is addressed. It doesn't need to be that specific.

Mr. Shibuya: Okay, then I withdraw.

Mr. Mardfin: Withdraw the second.

Mr. Hedani: Okay, any further discussion on the main motion? Chris, I had a question. The applicant doesn't have a problem with the restriction on time shares, right?

Mr. Hart: That's correct Mr. Chairman.

Mr. Hedani: Okay, thank you. Commissioner Shibuya.

Mr. Shibuya: On Item No. 5, we using the best management practices but we're not mentioning here lets see, we're not using, we're presuming to use the best management practices but we don't say that.

Mr. Hedani: Warren what paragraph are you on?

Mr. Shibuya: No. 5, "the appropriate measures shall be taken during construction." I would say, "that the appropriate measures using best management practices shall be taken during the construction to mitigate impacts of the project relative to," and then I'm adding, "pre and post construction runoffs, soil erosion from wind and water, ambient noise levels and traffic disruptions."

Mr. Starr: Yeah, I'll second that.

Mr. Hedani: Did you get that Paul? You want to repeat that Warren.

Mr. Fasi: I'll wait until the motion passes.

Mr. Hedani: You better record it now. This is an amendment to a standard condition. So you're suggesting this language should be included in all future standard conditions?

Mr. Shibuya: "That appropriate measures using best management practices shall be taken during construction to mitigate impacts of the project relative to pre and post construction runoffs, soil erosion from wind and water, ambient noise levels and traffic disruptions."

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Paul, while I totally agree with the spirit of Commissioner Shibuya's motion, I'm a little - it's a standard condition also and I'm a little reluctant to make changes to standard conditions on the fly. Is 5 the same as 2 that is you took it from the old document and we have newer language that's normally used?

Mr. Fasi: That is correct. And I would agree with a 100% that we should not be making changes to standard conditions on the fly.

Mr. Mardfin: And you're saying that the standard condition on construction includes best practices?

Mr. Fasi: I believe that the last as I can recall that it's even more simplistic than as stated in this

condition and I believe the new wording is basically that best management practices shall be used throughout the construction period.

Mr. Mardfin: Can the motion be that we will use the current standard language for this as opposed to the old language?

Mr. Shibuya: Well, I'm more concerned in terms of having stated not implied best management practices. There's a difference between implying and actually stating it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, we changed the standard condition about two years ago and it does state best management practices and I was kind of surprised that it wasn't here so. So I think that by utilizing the current wording we're doing that. It will be taken care of.

Mr. Shibuya: Okay. What about pre and post construction runoffs?

Mr. Starr: Yeah, the wording covers it.

Mr. Shibuya: Okay.

Mr. Hedani: So the motion is withdrawn.

Mr. Shibuya: Withdrawn.

Mr. Mardfin: No.

Mr. Shibuya: No?

Mr. Mardfin: Mr. Chairman?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I think he needs to have the motion that we will substitute the current language for the old language.

Mr. Starr: Second.

Mr. Hedani: Paul, can we make sure that the current conditions or the standard conditions that the commission gets are the most latest version of the standard conditions so we don't have to go through this gyration all the time?

Mr. Fasi: So noted.

Mr. Hedani: Okay, any further discussion? Motion on the floor is to include the current language on best management practices.

Mr. Mardfin: And on other standard conditions?

Mr. Hedani: No. The motion was on best management practices relative to Item 5. Any further discussion? All those in favor signify by saying aye. Opposed nay.

It was moved by Mr. Shibuya, seconded by Mr. Starr, then

**VOTED: To Include the Current Language on Best Management Practices for Condition 5.
(Assenting - W. Shibuya, J. Starr, K. Hiranaga, B. U'u, W. Mardfin, D. Domingo, L. Sablas)**

Mr. Hedani: Carried. Commissioner Mardfin.

Mr. Mardfin: Can I ask Paul if there are other standard conditions that were one way in the past and have since been updated?

Mr. Fasi: We can make that change on these standard conditions to reflect the new standard conditions to be brought up to date, we can certainly do that. It's not going to significantly alter or impact the development either way.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I move to amend such that if there is a updated language for any of the standard conditions that the current language be substituted for the I won't say antiquated but the old language.

Mr. Hedani: Jim can we do that?

Mr. Starr: I'll second it.

Mr. Mardfin: The motion is where there - I'm not taking out all the standard conditions but if there's a standard condition that deals with an issue that has since been updated in its wording that we apply the new language standard condition as opposed to the old language condition.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner Starr. The only concern I would I have with this is we're not reviewing before us what we're talking about so we don't really know what we're approving. Jim do you have a comment?

Mr. Giroux: Yeah, that was going to be my comment is that if we're not exactly sure what we're approving it's not going to be a very valid motion because it's going to raise more problems.

Mr. Mardfin: I'll withdraw it.

Mr. Hedani: Any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: Is there a motion on the floor?

Mr. Hedani: The main motion on the floor is to adopt the draft. That's the current motion on the floor. Commissioner Hiranaga.

Mr. Hiranaga: I'm just questioning the need for Conditions 23 and 24. You know enforcement is such a big issue and a six-month lease is not typically recorded in the Bureau of Conveyances. So how will anyone know that someone is occupying a unit with a six-month lease and then decides to extend that beyond the six months unless you are validating their presence daily because they could skip out for two days and then start up again for another 180 days? I just don't really see the need for these two conditions.

Mr. Hedani: The same argument would go for lease agreements. You know, if you have a 30-day lease agreement and you want to renew it for another 30 days you would be in violation of this condition.

Mr. Hiranaga: Well, yeah right. So you skip a day, you go out and camp out and come back the next day. I think we're just getting so nit picky on these conditions. It's just - I hate to be part of the record of approving a recommendation with these types of conditions. How are you going to enforce it?

Mr. Hedani: Paul.

Mr. Fasi: The intent of 23 and 24 is to prevent long-term usage. So -

Mr. Hedani: ... (inaudible)...

Mr. Fasi: It does not turn into a dwelling unit. I don't know how it would be enforced but these basically are definitions coming out of Chapter 19 regarding what long term use is and it's a 180 days or greater. The lease agreement language 24 I put in there so a person cannot have that back to back to back leases and stay there for five years. I think if you left for two days and came back that would still be considered consecutive. If you left and somebody stayed for two days and then you came back would that be considered consecutive, I don't know.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I think this proposal I think is consistent with the definition of lodging. Also it's consistent with the title of the property, it's called Kula Lodge. So we have this short term defined as a lodging and it's also a retreat. So this is consistent. I think all of the material here so far that were discussed and proposed to have approved is very consistent.

Mr. Starr: Call for the question.

Mr. Hedani: Any further discussion? We have no motion on the floor other than the main motion right now. Okay. Chris you don't have any problems with 23, 24, 25? The only reason I'm asking is because if we go through all the gyrations of passing this thing and then you withdraw the entire

application and go with your original approval it kind of defeats the purpose of the thing.

Mr. Hart: Thank you Mr. Chair, Chris Hart. Actually you know, we don't have a problem with 23, 24 or 25, but with 26 we do.

Mr. Hedani: Thank you. Any further discussion? Paul.

Mr. Fasi: In regards to Condition No. 26 I requested Francis Cerizo attend and when we don't know what the definition is we rely on Zoning and Enforcement Division to give us a definition. So I asked Francis well what constitutes a kitchen because we had to go through this with the whole B&B exercise and we'll probably go through it with the TVR exercise. So rather than second guessing me, I would request then ask Francis to come up here and give you a definition of what Zoning considers a kitchen.

Mr. Francis Cerizo: As I read it out of the Code, I'm just verbatim, "Kitchen means a room or portions thereof designed, arranged, intended and used for cooking or otherwise making food ready for consumption and within which there may be appliances for the heating or cooking of food." Our past experience or our past practice on this is that a kitchen typically has three components to it and that would be a sink, a refrigerator and a cooking appliance usually a stove. And so that's what we consider as a kitchen and that's for the use as it indicates here for design, arranged, intended and used for cooking or making food ready. Those three components are required.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Question Francis. So if any one of those three components are missing it's not considered a kitchen.

Mr. Cerizo: That's correct.

Mr. Hiranaga: And when you say a sink, you're not counting the bathroom sink?

Mr. Cerizo: No.

Mr. Hiranaga: Just checking.

Mr. Hedani: I know where you're going. Commissioner Mardfin.

Mr. Mardfin: Are you telling me that if it has a stove and refrigerator that you'd consider it in compliance with the law stated that it can't be used for heating food?

Mr. Cerizo: I'm saying that it's very unlikely that you have a stove and refrigerator in a room but you know, lets say you had a cooking appliance, usually you have, you know, you can have a toaster, sometimes they have microwaves and you know, a lot of hotels have a little refrigerator, if you put those two components, would not consider that as a kitchen.

Mr. Mardfin: But if it had a stove and a refrigerator you would?

Mr. Cerizo: Like I said, a cooking appliance. I have never seen a stove, you know, a regular stove burner and a refrigerator in a room by itself. But to say that, you know, and we're just saying that if you have a cooking appliance and a refrigerator we would not consider that as a kitchen.

Mr. Hedani: Okay, any further discussion?

Mr. Shibuya: Yes sir.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I'm going to go back to Chapter 19.58 and what I'm specifically aiming towards is 19.58.050, height regulations. It says here, "no building shall exceed two stories and 25 feet in height." Can you clarify for me from this black and white versus what has been portrayed as 35 feet and three stories?

Mr. Fasi: What you read, I'm sorry what was the code number?

Mr. Shibuya: 19.58.050.

Mr. Fasi: And the title to that is?

Mr. Shibuya: Height regulations.

Mr. Fasi: The project has its own height regulations and the Project District Ordinance would supercede that. Now, -- go ahead.

Mr. Shibuya: No.

Mr. Fasi: Because I'm going to get into kitchens. Please understand that as my job as a planner is to interpret the code and the ordinance in a literal sense and it simply says kitchens are not allowed in lodging units and in my view we're dealing with lodging units. Now however, that being said, they do have project district approval for a previous design that included kitchens. How that happened I do not know. But here's some reason behind it. Now with that being said, this does not preclude the applicant from applying for county special use permit to include kitchens.

Mr. Hedani: I think that would either cut the baby in half or dispenses it one way or another today.

Mr. Fasi: So I just want to be upfront and you want to look at everything in context here that basically the department's hands are tied if you want to interpret it a different way that's the planning commission's prerogative.

Mr. Hedani: Would the applicant withdraw the application if this provision were included and proceed with the original approval?

Mr. Fasi: I would defer to the applicant.

Mr. Romanchak: In responding to that question, I think it's important to realize where this is all going.

Mr. Hedani: If you could use the microphone?

Mr. Romanchak: Can you hear me now? The only reason I went back to a redesign here was in the sensitivity to the Kula Lodge property. Plans that are approved now have kitchens in them. I would have never have gone back to a redesign, spent three and a half years and over a half a million dollars to come up with this design which I truly feel is better. And why are kitchens important I think that's a question at hand that we should all answer. It's important to whoever is staying there. And it's been made real clear to me over the 25 years, 26 years now that I've had the lodge that we're disappointing a lot of people by not offering those kinds of amenities. We lose business because of it. Give you an example. We have people working at science city that need lodging, a place to stay. They have a choice stay at the Kula Lodge or find a bed and breakfast. Difference is bed and breakfasts have kitchens, Kula Lodge does not. It's awkward for anyone to stay at the Kula Lodge for a long period of time, I mean, when I say long, longer than a week, maybe three, four days knowing that you have to eat in the restaurant, doesn't necessary be the Kula Lodge they can go down the road and go to wherever but they're going to have eat out. It's a real drawback for a small operation like this. 15 rooms to make this project viable, they need kitchens.

Mr. Hedani: Okay, the question basically was whether or not if we included this condition whether or not you would use the original approval that you had.

Mr. Romanchak: I would have no choice.

Mr. Hedani: Okay. Thank you. Commissioner Mardfin.

Mr. Mardfin: I'm going to vote for the motion the way it is. If the condition of kitchens is taken out I will vote against it. I'll let them go back. I believe at Phase 3 the Planning Department would prohibit kitchens. We were told that - I actually don't see it in the plans but maybe it's there but I think the department would not be able to process a Phase 3 development if it had kitchens in direct conflict with Chapter 19.75 on the Kula Project District. I think that's the overriding legal situation. To delete that - and I think the condition it only clarifies what is already in Chapter 19.75 on the project district. Taking that out I think shows, from my point of view shows bad faith and I would be prepared to vote against the entire project, revised project district.

Mr. Hedani: Additional discussion?

Mr. Starr: Lets vote.

Mr. Hedani: Ready for the question? Commissioner Hiranaga.

Mr. Hiranaga: We've been going around and around and around and I'm just trying to understand. There's objection to long-term occupancy because people are afraid of condos. There's opposition to kitchens because that makes it more likely that the property will be condominiumized. I'm trying

to figure out why, what's the objection to kitchen I don't understand.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I bring up the same point. I mean, if we're going to choose beside a kitchen that's hidden or we going choose that drawing on the wall, I would take the kitchen personally. It's just me. Granted we're not interpreting the law, there's a lot of interpretations to the law from the neighbor's perspective as noise, sight, I think the main thing was sight and sound, that's an ugly sight. That's a very ugly sight. In fact, it is awful. I don't know how much you paid the guy but you got robbed and I would rather see this sight that's appealing. I lived next to the Kula Lodge by the way, Upper Kimo Drive. You know you get that old look. I don't think putting a old dungeon castle like that will be any justice for Kula Lodge. So I'll be voting against the motion. And you know everybody interprets it or gives it their own perspective but I would rather see a kitchen or not see a kitchen and see that than to see this that's visible.

Mr. Hedani: Any further discussion? Jeff.

Mr. Hunt: I just want to clarify the department's position. With that direction from this body we would interpret the provision of 15 lodging units as being restricted. Lodging units don't allow a kitchen. It is ambiguous. There are references to hotels and you've heard the applicant's argument and hotel, I'll read you the definition of hotel means a transient vacation rental other than a B&B containing lodging or dwelling units and a dwelling unit does allow a kitchen. I wouldn't argue firmly that this body does not have the ability to allow kitchens. We wanted to get some direction from this body because it is ambiguous and it's open to interpretation and we don't want to be further down the road at Phase 3 and having to wrestle with the same discussion. In terms of public process we think it's best to take advantage of a body with seven or eight, nine good minds and say okay, lets analyze this and come up with direction. So that's why we're here. Again, to sum it up, without direction we would take a stricter interpretation but I have no problem with this body saying our interpretation of 19.75 allows kitchens based on the language of a hotel.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: One point the applicant brought up and I believe we should all take strong note of is financial viability and in these economic times if you build something that is not in demand and you cannot sustain financial viability you end up with a new owner and a new operator and it appears that Mr. Romanchak has established himself as a worthy operator and owner and if he should decide to move forward and build something without kitchens and it proves financially unsuccessful and he is no longer able to retain ownership there will be a new owner and a new operator and you may not have a kinder and gentler owner.

Mr. Hedani: Any further discussion? Commissioner U'u.

Mr. U'u: And the visual effect on the owner's side of the neighbors would have something like this that's worse than your 35 feet. I mean so you got the visual. Personally I would live with the kitchen than you know something that cuts into the ground, goes down two stories comes up 35 feet from this point. You know, we got a choice I guess.

Mr. Hedani: Any further discussion? Ready for the question?

Mr. Starr: Yes.

Mr. Hedani: Okay, the motion on the floor is to approve the draft as it's circulated including the provision of -

Mr. Mardfin: And amended.

Mr. Hedani: As amended, including the provision of the prohibition on kitchens just so that we know. Is there any further discussion? All those in favor of the motion signify by raising your hand. One, two, three, four, five. Opposed same sign. One, two, three, four opposed.

It was moved by Mr. Mardfin, seconded by Mr. U'u, then

**VOTED: To Approve the Phase II Project District Approval with Amended Conditions Including the Provision of the Prohibition of Kitchens.
(Assenting - W. Mardfin, O. Tagorda, W. Shibuya, L. Sablas, J. Starr)
(Dissenting - K. Hiranaga, B. U'u, D. Domingo, W. Hedani)**

Mr. Hedani: Motion is carried. We're done. Thank you. Commissioner Shibuya.

Mr. Shibuya: Just for my clarification, Chapter 19.58 describes what a project district development is and in that they have the height limitations of 25 feet. It also says that it applies to Project District 1, which is Kula Lodge and Project District 2. So it does allow for, it does apply to both, yet in another sense, in another location we talk about 35 feet. I'm still not convinced which one is correct 25 feet or 35 feet as a maximum height. Can somebody help me with this?

Mr. Hedani: We've already voted on the motion.

Mr. Shibuya: No, no, I know, but it's just --

Mr. Hedani: Maybe staff can help you after the meeting.

Mr. Shibuya: Maybe staff after they can help me.

Mr. Hedani: Director, do you have any other business before the commission?

C. DIRECTOR'S REPORT

None.

D. NEXT REGULAR MEETING DATE: April 13, 2010

Mr. Hunt: Your next regular meeting is April 13th. We would like to say thanks to the outgoing Chair and Vice Chair for all their hard work over the years.

Mr. Hedani: Thank you very much. It's been a pleasure and I'll see you folks later. Thank you.
Meeting is adjourned.

E. ADJOURNMENT

The meeting was adjourned at 2:07 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Bruce U'u, Vice Chairperson
Donna Domingo
Kent Hiranaga
Ward Mardfin
Lori Sablas
Warren Shibuya
Jonathan Starr
Orlando Tagorda

Others

Jeff Hunt, Planning Department
Clayton Yoshida, Planning Department
Paul Fasi, Planning Department
Ann Cua, Planning Department
James Giroux, Department of the Corporation Counsel