

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
NOVEMBER 9, 2010**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 9:05 a.m., Tuesday, November 9, 2010, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Chair Starr: Welcome, this is the November 9, 2010 meeting of the Maui Planning Commission. I'd like to welcome everyone. Thank you for joining us today. Introduce the Commissioners. Commissioner Kent Hiranaga, Commissioner Jack Freitas, Commissioner Orlando Tagorda, Commissioner Ward Mardfin. We have James Giroux, Deputy Corporation Counsel, our attorney for the Commission. I'm Jonathan Starr. I'm Chair. Ann Cua is the Deputy Director of Planning. She is in charge for all Current Division related stuff and ably keeps us on track and helps us out. Commissioner Warren Shibuya, Commissioner Lori Sablas, Commissioner Penny Wakida all the way from Lahaina. We have our secretary for the commission, Carolyn Takayama-Corden. We have Mike Miyamoto who is Deputy Director of Public Works and represents the Director of Public Works who's an ex-officio member of the commission. Clayton Yoshida, who's Administrator for the Current Division. Our Planning Director, Kathleen Aoki. Good to see you. Planner Gina Flammer. I saw Planner Paul Fasi, and we have – my glasses are off, Planner Livit Callentine and Planner Candace Thackerson. Anyway, thank you all for joining us today, and Kenny Hultquist who does an able job I believe working for Maui Tomorrow in filming these meetings to be aired on Akaku, thank you. Thank you, Kenny. We have Mr. Aaron Shinmoto from our Zoning Division and several others as well.

Anyway, we'll proceed as we always do with public testimony. Testimony can be given on any agenda item, and the public has a choice. There's two options in giving testimony. Either they can give testimony before we get into the agenda items which would be after this, or they can waive until the time is before us and we're ready to take action. We will also have an opportunity – I do wish to comment that one of the items before us, Item C-1, we did have a request for deferral and that will be up to the Commissioners how they deal with that.

We have a list of people who signed up for testimony and I'll call them in order and ask that testimony be kept as short as possible under three minutes is good.

The following individuals testified at the beginning of the meeting:

Mr. Bill McAllister - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Ms. Sheri Weichel - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. James Takayesu - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. Ron Sandate - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. Tom Richardson - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. Mike Spriggs - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. Gene Wasson - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. Don Guild - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. David Spee - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. Henry Spencer - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)  
Mr. Mark Stone - Item C-1, Justin Gordon, (SUP2 2010/0001) (BBWK T2010/0002)

Their testimony can be found under the item on which they testified on.

Chair Starr: Anyone else would like to offer testimony at this time? Last chance. Seeing none, initial public testimony portion of the meeting is now closed. Turn to Deputy Cua to introduce our first item and our Director's Report.

**B. DIRECTOR'S REPORT**

- 1. EA/EIS Report**
- 2. SMA Minor Permit Report**
- 3. SMA Exemptions Report**

Ms. Cua: Thank you, Mr. Chair. We have provided for you copies of the SMA Minor Permit Report and Exemption Report. We did get a request from Commissioner Wakida on one of the items listed on the report and we have distributed an email from Planner Joseph Prutch on this matter. Hopefully that's satisfactory, and at this point, we'll take any other comments or questions that you may need us to research and we do thank you, Commissioner Wakida for contacting us ahead of time.

Chair Starr: Okay, Members, anyone with any questions or concerns on any of the items? Commissioner Shibuya?

Mr. Shibuya: This is an item or these items were actually follow up items for about two meetings ago, so it's over a month and I haven't received any response. And these are for three, three-lot subdivisions. A single lot being expanded into three lots. I had four questions of which three are actually what I'm interested in and it's related with Show Me the Water Ordinance, wait list, the applicability of maximum six rooms supported by a single, 5/8 inch water meter and I would appreciate some kind of a feedback as it relates to Title 18 and 19 provisions.

Chair Starr: What I'd like to suggest, we actually at our last meeting we did accept all the reports up till the end of that meeting. However, your comments and I did read your memo which was quite, quite clear and was a very reasonable request one which I share.

Mr. Shibuya: Okay.

Chair Starr: I'd like to request that at an upcoming meeting we ask Water Department.

Mr. Shibuya: Okay.

Chair Starr: The Director of Department of Water Supply is actually an ex-officio member of this commission though I don't think we've ever seen the member here, but we will ask for them to come and along with Planning answer those questions directly. Is that okay?

Mr. Shibuya: That's perfect, good.

Chair Starr: Okay, Members any other questions or comments on any of the items on these SMA lists? Not seeing any, Chair would entertain a motion to accept, accept this list and everything that's come before us on that to date.

Mr. Shibuya: Move to accept.

Ms. Wakida: Second.

Chair Starr: Okay, Ms. Cua, the motion?

Ms. Cua: To accept the SMA Minor Permit and Exemption projects listed in your report dated 10/27/2010.

Chair Starr: Okay, any comments, concerns? Not seeing any, okay, we'll vote. All in favor, please raise a hand. All opposed.

**It was moved by Mr. Shibuya, seconded by Ms. Wakida, then**

**VOTED: To Accept the SMA Minor and SMA Exemption Reports.  
(Assenting - W. Shibuya, P. Wakida, K. Hiranaga, J. Freitas, O. Tagorda,  
W. Mardfin, L. Sablas)  
(Excused - D. Domingo)**

Ms. Cua: Motion passes unanimously.

Chair Starr: Okay, our first item.

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

- 1. MR. JUSTIN GORDON requesting a State Land Use Commission Special Use Permit and a Bed and Breakfast Permit to operate the Sugar Ranch Maui Bed and Breakfast to use up to six (6) bedrooms for bed and breakfast purposes in the State Agricultural District at 141 Makahiki Street, TMK: 3-8-002: 114, Spreckelsville, Island of Maui. (SUP2 2010/0001) (BBWK T2010/0002) (G. Flammer)**

**The public hearing on the bed and breakfast permit application is necessary because pursuant to Section 19.64.050.A.3a at least 30 percent of the owners and lessees of record within a 500-foot distance of the lot on which the B&B home is proposed have filed a written protest within the 45 days of the mailing of the application notice.**

Ms. Cua: Your first item is a public hearing by, request by Mr. Justin Gordon requesting a State Land Use Commission Special Use Permit and a Bed and Breakfast Permit to operate the Sugar

Ranch Maui Bed and Breakfast to use up to six bedrooms for bed and breakfast purposes in the State Agricultural District at 141 Makahiki Street at TMK: 3-9=8-002: 114 in Spreckelsville. Gina Flammer is the planner.

The public hearing on the bed and breakfast permit application as it's scheduled today was necessary pursuant the B&B Ordinance in that at least 30 percent of the owners and lessees of record within a 500-foot distance of the lot on which the B&B home is proposed have filed a written protest within the 45 days of the mailing of the application notice.

I do want to point out that we received a letter dated November 8 from Justin Gordon requesting that the Planning Commission defer his matter on today's agenda.

Chair Starr: Before we have Ms. Flammer give us background on this, I would like to ask a question which is that my understanding is that there was a change in the nature of the application from six bedrooms to four bedrooms and I would assume that that means that if there is a deferral and then we would have to have a new public hearing which includes new meeting notice requirements. Am I correct on that?

Ms. Cua: Yes, you are correct, and I did neglect to mention that that same November letter does indicate that he wishes to amend his Bed and Breakfast Permit Application from six bedrooms to the original four bedrooms that he had proposed.

Chair Starr: Okay, so Ms. Flammer, why don't you give us the background on this and then the Commission will decide how they want to deal with the matter?

Ms. Gina Flammer: Okay, good morning Chair Starr and Commissioners. Our first item is the Sugar Ranch Maui Bed and Breakfast. The property is located in the State Agricultural District which is why you're reviewing a State Special Use Permit. As our Deputy Director explained, you're also reviewing the B&B Permit because during the 45-day period when the Notice of Hearing or Notice of Application went out 44 percent of the neighbors filed written protests. The B&B Ordinance states, there's a clause, that if 30 percent of the neighbors protect then the application is reviewed by this body, the Maui Planning Commission. A few more letters of protest have come in in light of the applicant his amending the application from six down to four, I did hand those out this morning.

So I'm going to show you a power presentation that gives you some more information on the project. I also have our Zoning Inspector Supervisor, Jay Arakawa, who can also talk a little bit about enforcement when I'm done with that.

Chair Starr: About how long is the presentation?

Ms. Flammer: You know, I don't know, maybe 10 minutes.

Chair Starr: Okay, it doesn't matter. It's just something I like to ask.

Ms. Flammer: So here we have the back of the building. Give me a minute while I work out the

technical. So a brief history of the application. It was filed in February. It was assigned to Planner Livit Callentine, who's also here if there's any questions about that. The applicant requested a change in planners in June. I was then assigned the project. In July, the Department of Public Works authorized the use of the two basement bedrooms as basement rooms not cellars so then they could be habitable. The applicant then requested that they be added to the application, and the application was amended to six bedrooms. It was transmitted to agencies again, and another Notice of Filing did go out to the neighbors. And then yesterday, the application was amended back down to the original four bedrooms.

Here's the location map. So as you see where the airport is, the Maui Country Club. You can see the thin pink at the end and that's the easement that goes out to Paani Road and then to the public beach way. Here's a picture that shows the beach, this of course, is years old because you can't see, you know, the house hasn't been built yet, but it gives you an idea. We have a site plan which you also have included in your packet. This is the amended site plan that shows all the outdoor structures in there and this was transmitted to agencies. Here's the entrance as you come on in off of Makahiki Street, and then as you come into the property. This is the parking, a three-car garage. So I'm going to quickly go through just what the different units are. There were a total of six now. We're at four. The Honolulu, you know, you can see it's a second floor. Each of the units that I'm going to – the four that are in the current application have their own entrance. This one has two bedrooms. It also have a main family room, a wet bar, a bathroom, patio. Here's the bedroom, living room, the wet bar area, this what came in with the application. This is the site visit that was done in September. You can see there's been a microwave added. Then we have a Lahaina suite which is on the first floor. It's a one-bedroom. This shows the entrance, and we've got the wet bar. People have talked about the cutouts. If you look where the trash is you can see what they're talking about there. We've got another suite first floor with a separate entrance, that's a one-bedroom, living room. This is the hallway. This is during the site visit. That's what was submitted with the application. Here's when we came for the site visit. We've got the Lahaina suite also first floor, entrance. Again, when we came on the site visit. Okay here's one of the suites that was removed from the application. This is the, in downstairs basement area. Here's the other studio down the basement area that's been removed from the application.

So here's, I wanted to show you some pictures of the farming operation. Here's when it was first going in a number of years ago. You can see where it's at now. The outdoor structures, you'll see in the report there's been a lot of discussion about that. I wanted to just show you some photos so you're aware. This is the shipping container that's in the back. This was during the site visit by Planner Livit Callentine. This is when I came, he's converted it to ag storage. This is the outdoor kitchen area, wet bar area. One of the Notice of Warnings was for a bathroom that's attached to the container that's located in the setback. You can see the arrow. If you look inside that's what you have in there. A little better look. I believe the applicant is, he can update us on where he's at with meeting that. Here's the outdoor bathroom that's also in the setback where a Notice of Violation has been issued for that. You can see the bamboo structure. Here's the ag storage playhouse that you've heard some of the testifiers discuss. It's in the back of the property. Here's the wet bar area again. He's converted it back to ag storage. That's the loft area that's up there. The toilet's been removed at this point. Bath is still there. There's been some concern about outdoor showers being in the flood zone area. I know the applicant's working with the Department on that. Just wanted you to see what we're talking about.

Here's the easement to the beach. This is the private easement that, that cuts through so there's the gate. There is a gate on the applicant's property that goes before it so you can see his gate right there with the code to the gate that's the – with the private easement behind it.

So I'm just going to give a real quick update on where the Request for Services. There were six filed during the application process. Three of them are still open. The applicant is working on the floor area warnings and the structures in the setback. If you have questions, we do have staff here that can answer that. The kitchens, we'll talk about in a minute. So as of yesterday, we still had a incomplete flood application. We do have, I have some information on the drainage reserve. The applicant had altered his drainage reserve and is now working a civil engineer to have proper flood control on the property. We don't – we haven't received anything yet on or at least I haven't, on the structures in the setback. So for the kitchens, the wet bar areas it gets a little tricky. It's still open because our Zoning Division is looking at the definition of a kitchen. So our current definition, you know, you have – and this applies to all properties, long-term rentals, regular residential units, it's usually you have to have one or from each of the following, generally it's the heating, the cooking, you know, that they're looking for when they go out. Now we did have a memo for bed and breakfasts that did allow a microwave oven the bedroom unit. We do have some draft Administrative Rules that we are working on that where we're trying to address this and the draft language is up there that you can see and it's based on Title 18 which says a room or a portion designed or arranged or used for cooking and the applicant is aware of this and that this does not, his current wet bar does not meet this, so – but it hasn't been passed yet.

Now in terms of the B&B operating, we have had three RFSs dealing with it and I'm going to have Jay talk a little bit about, you know, what's required. You can't just call and say you're seeing cars. You can't even call and say you're seeing cars with license plate numbers which they really need a smoking gun, a web site, somebody that had stayed there, so I'll let him address that, and, and they're looking for more detailed information and that's kind of why that RFS is still open. He has submitted building permits to replace the container which would take care of the outdoor bathroom. We do have an SMA Assessment that's been submitted. I know there's been some after-the-fact permits that have been submitted. The applicant would like to replace the container with a new building. He'd like to put in a garage, I think it's a three-car garage and a gym above it and that would be in the same area in the corner of the property.

Testimony, so we've received 36 total emails, letters, and protests. Some of them are duplicates because we've had a couple amendments to the application. Twenty of the neighbors within 500 feet have written protest letters. I've also received some phone calls from people that, that didn't want to – they wanted to remain anonymous so left them off that. So we're 47 percent of neighbors right now. There were 21 emails and letters of support too, which you can see in the application, three of those did come from within the neighborhood.

So here's when we're looking at the testimony. The yellow is who have filed the protests. If you can see where Sugar Cove Condominiums are, they do have 18 units. And the purple is who's filed support letters.

So that's the end. If you'd like I can have Jay Arakawa come up for a minute and discuss a little bit about –

Chair Starr: Sure.

Ms. Flammer: And I've asked Jay to just give a general overview of how the enforcement works, not to speak specifically.

Chair Starr: Yeah, that's good. Welcome Jay, come introduce yourself.

Mr. Jay Arakawa: I'm Jay Arakawa, supervisor of the inspectors. Regarding B&B or vacation rentals, short-term rentals, we receive complaints. A lot of times we have to go substantiate these complaints. As far as evidence pointing to the accusations and claims what we look for is maybe ads, internet web sites, those kinds of stuff. And in those instances, we issue warnings, Notice of Warnings. They'll get two warnings, usually two warnings requiring them to come into compliance. As far as Notice of Violations, it's another, it's another, it's more difficult to issue the Notice of Violations. The violations require us to have more solid evidence, receipts, maybe a person who has been to the B&B or vacation rental and that that way it's more difficult, but overall, as long as we can substantiate we can issue the Notice of Warnings, but violations it's another issue.

Chair Starr: Okay. Members, any questions? Yeah, Commissioner Freitas?

Mr. Freitas: Have there any, have there been any notices issued to them for violation?

Mr. Arakawa: To this particular project?

Mr. Freitas: Yes.

Mr. Arakawa: We issued Notice of Warnings.

Mr. Freitas: Could you tell me how many?

Mr. Arakawa: Offhand, I couldn't really, I'm not too sure.

Mr. Freitas: More than one?

Mr. Arakawa: Yeah.

Mr. Freitas: Okay, thank you.

Chair Starr: Okay, thank you very much Mr. Arakawa.

Mr. Arakawa: Okay.

Ms. Flammer: We also have the applicant that would like to give his presentation at this point if that's –

Chair Starr: Yeah, I was just about to ask the applicant to come up and give us your comments.

Is the applicant here?

Mr. Justin Gordon: Hi, Commissioner, Chairman Starr, may I have my Planning Consultant, Garrett Lisi, be up there with me in case, I'm a little bit nervous, just to fill in anything I'm miss in the presentation. I'll try to keep it going quick.

Chair Starr: Well, you're welcome to have him speak for you if you wish, but I, I'm not in favor of having both of you speaking at once because we're trying to keep a record, a recorded record of this meeting. So why don't you say what you have to say, and then he can say, introduce himself and say what he wants to say.

Mr. Gordon: We're having some technical difficulties actually starting, starting up so may I have –

Chair Starr: We're going to take a 5-minutes recess, take a recess until 10 minutes after 10.

A recess was called at 10:02 a.m., and the meeting was reconvened at 10:12 a.m.

Chair Starr: The meeting of November 9<sup>th</sup>, 2010 is back in order. When we had gone into recess, we were just about to hear from the applicant, Mr. Justin Gordon. Mr. Gordon, please you had a comment to make or a request?

Mr. Gordon: Yes. To your Planning Commission, to your board that's here at your Planning Department, I humbly request that we defer my presentation. I am not ready. I did not get full knowledge of some of the nature of these complaints until just this weekend practically and I simply have had not had time to prepare for this sufficiently because of, and I can go into more details, but thank you.

Chair Starr: Okay, thank you. Members, we are ready if anyone has a question, otherwise, if someone wishes to defer that would be a motion or if someone has some other desire, please tell us, me what you want to do? Commissioner Freitas?

Mr. Freitas: Yes, I'd like to proceed with it and get it over with. Because, you know –

Chair Starr: Okay, Chair has no problem with that, I just want to check with Ms. Cua that is there any reason why we could not proceed if there's a desire on the part of the members?

Ms. Cua: I believe you could still proceed, the facts are that we have a report prepared for you and an analysis based on a request for an application for six units. There is a request that has just come before us for four units, and so, I mean, those are the facts. I don't know if our attorney wants to, to chime in. I mean, if you're proceeding, I guess you're proceeding on the request for four units.

Chair Starr: Mr. Giroux, I mean, can we at this point proceed either on the basis of four units or six units?



Mr. James Giroux: Yes, thank you, Jonathan. Yeah, the Department asked me, this issue came up and they, but it was framed in a such a way that they said that if, if the applicant decided to downscale or go with four units instead six, would we have to go through the renoticing? At that time, there was no information that the applicant would be asking to defer. This is the joy of being a public attorney, you get one facts and then you give advice and then the facts change. If, and so you're going to get a maybe answer today, if you decide to proceed today, I would see no problem with proceeding with the notice as given. If the decision is to defer, I would see a very big problem with having an application defer without going through the public notice process all over again because people have come here to testify on what has been noticed. Now, if during discussion and during deliberation and during condition making the project is downsized, that's not a problem, but when the public knows those processes is circumvented because of a deferral, now that becomes a problem. So I hope that thoroughly answers your question and with all the facts that I have been presented.

Chair Starr: What I understand is that, yes, we can act, we could approve or deny as presented, we could approve with downsizing. If we defer, then we want to make it clear that that deferral would include a new public hearing with all the noticing that that entails. So Commissioner Hiranaga?

Mr. Hiranaga: Yeah, personally I feel we should respect the applicant's request to defer. It appears the application is incomplete because there are some Code violations still outstanding. Just want to remind the Commission that we had a State Land Use request out there for a religious entity in Haiku, he requested deferral, he said his application was incomplete, the Commission went ahead and denied his request and now, he's coming back to us because certain issues. So to me, if the applicant, application is incomplete and he's asking for a deferral I see really no harm in granting it. To proceed forward with an incomplete application I think is not the right process. And I'm not expressing support or opposition to this application, I'm talking about process. I feel the process needs to be complete.

Chair Star: Thank you. You know, my, my one concern is that if we do proceed with a motion to approve or deny, that before we accept that motion go to decision making, I want to be sure we reopen public testimony on this item. Because my concern is again, with the fact that this is a public hearing. Commissioner Mardfin?

Mr. Mardfin: My inclination is to, if the, if the applicant wants to defer, in the letter we received this morning he gave three reasons. He wanted to address neighborhood concerns which I think is an excellent thing to do. May or may not work but he ought to at least be given the opportunity to try. He needs, his second reason to, was to finish resolution of remaining RFSs, and the third is to, remove the shipping container, possibly remove the shipping container. These are reasons that it strikes me, it's reasonable to allow him to defer with two provisos. One is, I think as was pointed out as our counsel pointed out, we, it goes back to sort of to square one where he needs to do renoticing of everybody. But I'd also ask one other thing if we do this, and that is that we haven't had public testimony on this item. We've had public testimony in general. A lot of people deferred and if, even if we're going to defer, I would urge that we open it to public testimony so that the people that took the time to come here can get a sense of closure. And so, if this motion to proceed now is defeated I'll introduce a motion to defer but with the proviso that we allow for public

testimony.

Chair Starr: There's no motion to proceed, it's just a discussion point and if that, if that does seem to be the will of the body we'll go on that basis. Commissioner Shibuya?

Mr. Shibuya: Yes, I'd just like to discuss some items too. Has this operation been approved, and if not, then I would like to have a condition if we do defer it that all operations cease and desist. And that's with me in terms of if it's not legal then why is it continuing? And so therefore, we start from the basic premise we are applying at this point, and the deferral is to ask for a review of this in terms of its propriety in continuation of the operation.

Chair Starr: Okay, I'm going to ask for comment from, from the Department on that matter that I'll turn to the Director.

Ms. Kathleen Aoki: Thank you. From what I understand with the ongoing Request for Services with this property we have gone out there and there has been not viable evidence to show that he is continuing to operate. However, if we, if we do get requests, that the operation is continuing we do go out there. But right now, he has been informed that any transient vacation or B&B operation is illegal. That he has not been granted approval until this body gives it to him. So he is fully aware that he is not allowed to operate a transient vacation or B&B.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: I'd like to ask the Director a question because I don't know how your procedures operate. If you get a request for service to go out and check it, do you typically contact the person in advance so that they have a chance to shoo people away or do other things? Or do you just go out there and –

Ms. Aoki: Normally what we do is if we got a request for service an inspector will go out to the property without notification.

Mr. Mardfin: Okay.

Ms. Aoki: But we'll identify him or herself as, you know, a Planning Inspector, try to get in contact with the owner or violator, explain what, what has transpired, what the complaints are, get information from the violator, et cetera. So depending on what information is gathered will determine whether or not the complaint is invalid or whether there is sufficient evidence to issue a Notice of Warning.

Mr. Mardfin: But basically it's a surprise inspection. It isn't a, you know, –

Ms. Aoki: Yes.

Mr. Mardfin: Two days in advance, we're going to be out there on Wednesday sort of deal?

Ms. Aoki: No.

Mr. Mardfin: Thank you.

Chair Starr: I have a question to that. What happens if an inspector goes out there but there's a locked gate?

Ms. Aoki: Now you're getting technical so I'm going to call up Aaron Shinmoto who is the Administrator for the Zoning and Enforcement Division.

Chair Starr: Okay, Mr. Shinmoto, thank you. ....(inaudible)...

Mr. Aaron Shinmoto: My name is Aaron, my name is Aaron Shinmoto, I'm the head of the Zoning, Zoning Administration.

Chair Starr: Yeah, ...(inaudible)...the mike.

Mr. Shinmoto: Zoning Administration and Enforcement Division. Locked gates we do not enter. We leave, and of course, the inspector is there he'll try to gain somebody's attention, maybe somebody's at home, but otherwise no, to answer your question, no, we don't force our way in there.

Mr. Mardfin: Okay.

Chair Starr: Members, any other questions for Mr. Shinmoto? Commissioner Tagorda?

Mr. Tagorda: Let me try understand how this Request for Service is being handled by your department, sir. I read some of those comments on those RFS that sometimes your inspector or the department, whoever is assigned to that call the owner and talk on the phone, and that's more than enough to satisfy the complainant's complaint. Is the procedure how you guys do?

Mr. Shinmoto: Well, a lot of these things can be handled on the phone. For example, a complaint may come in and say, this person does or does not have a permit. And lets say we contact the owner, the owner tells us he has a permit, here's the permit number. We check in our computer he has one, and we're done.

Mr. Tagorda: So is the site inspection thing is just procedural but sometimes it's not being taken seriously and you don't spend an inspector right a way on those complaints sent in by neighbors and people who doesn't really like what's going on in that piece of property?

Mr. Shinmoto: It depends, again it depends on what the complaint is. Like I'm saying, if it can be handled on the phone, we'll handle it on the phone. We have access to the building permit records, we have access to other records, if it doesn't entail requiring a site inspection then we don't go. For example, again, for example, the typical thing is my neighbor is building a home looks like he doesn't have a permit, they don't see the permit tag out there. So they call our office, and we check and they do have a permit.

Mr. Tagorda: This subject property has been on the radar since early February of this year, and

I don't know how many RFS you have received and how many of those RFS has been checked to satisfy the complainant?

Mr. Shinmoto: Okay, there I believe six RFSs, two are from our own staff, one he has to go to check. Another one is a department, another department, Wastewater to check on the sewer thing. The other three is from the same person. So we're not looking at six different public people testifying – submitting those RFSs. It's just one.

Mr. Tagorda: So in your opinion, how is this RFS been handled by your department? Are they fairly biased or more than – in between?

Mr. Shinmoto: You know, again, like our Director said, any RFSs filed by whoever, we'll go out and check everyone. You know, we're out there to enforce the codes, we don't care who filed the RFSs. We don't know, we don't care who the owner is.

Mr. Tagorda: Do you again –

Mr. Shinmoto: We're not biased.

Mr. Tagorda: Do you again, because I read on my notes, there's a certain inspector that's a – that is a friend of Mr. – the applicant, and I don't know if this certain inspector has been advising the applicant about what's legal and what's not in his property.

Mr. Shinmoto: I don't know that either.

Mr. Tagorda: You don't?

Mr. Shinmoto: And it's not –

Mr. Tagorda: Yeah, it's in the comments.

Mr. Shinmoto: It's not of my concern.

Mr. Tagorda: Okay, thank you very much.

Chair Starr: I have a question, Mr. Shinmoto. If the desire of the body is to, is to defer, and we at that point feel that Mr. Shibuya's, Commissioner Shibuya's comments have merit, what mechanism could be employed and this would be I assume with the acceptance of the applicant here before us today to insure that there would not be any illegal operation until this matter comes back for a new public hearing?

Mr. Shinmoto: Well, we can do periodic checks and I can say that every time we've asked to go on the property we have not been denied access. We have had free access to that property whenever we've asked for it.

Chair Starr: Okay, Members, anything else? Commissioner Sablas?

Ms. Sablas: I have a question for the applicant.

Mr. Shinmoto: Am I excused?

Chair Starr: Yeah, we may have more questions for you. Thanks for being here.

Ms. Sablas: Aloha, Mr. Gordon. We heard earlier testimony from our Director that you know that you've been, you're operating illegally and that you have agreed to cease operation, correct?

Mr. Gordon: Correct.

Ms. Sablas: When people travel they normally have to plan months in advance, so do you have any pending reservations on the book for your facility?

Mr. Gordon: Absolutely not. We have not been operating per as we were operating at the beginning of the year. So absolutely not. I'd like to also address a comment on the gate. I'm perfectly happy to give the Zoning Department my gate code and give them complete access. I'm happy to let, to tell my neighbors, they submitted some license plate numbers in one of the RFSs, I brought one of those people here who actually his license plate, Garrett Lisi, who's a long-time Maui resident, his license plate was submitted.

Give you a nature how it's unfortunate, I feel horrible about what is going on here, absolutely horrible. And if we, if simple, simple web searches will reveal that the entire Spreckelsville area from the end of Stable Road all the way down by Kanaha with many, many, I ... pictures online of issues of, and I'm not going to name names all the way up to the other end at Baby Beach. The whole coastline is covered with vacation rentals that are freely available to pull up on the internet. Mr. Sandate's recently pointed that out to me and some other people.

I am here to be legal, to go through the process, to show the process can work, to show then neighbor, the neighbors can be addressed, their concerns can be addressed and to show the law and the ordinance can work and people are protected. And in fact, property values will not go down but they will go up because there is a beautiful place that people's families can stay nearby in the neighborhood without driving from Kihei, without being up in Haiku and causing more traffic to various areas. I am absolutely happy to even give people if they want – look I went to ... (inaudible) ... I went to Harvard many years ago, I went to Cal Berkeley, I got my MBA there many years ago. I've lived in the Bay area. I'm very much short of a networking sort of person. I've got 1,400 friends on Facebook and I have lots and lots of friends I talk to. They all know, which eventually I do plan to show you a very nice, concise presentation showing you the history of the lot to show you that unlike any other neighbor in this subdivision, I actually took ag seriously and actually did my farm before my house. The house planned once the farm was there. I believe Jonathan probably bikes by the neighborhood and probably saw the development over many years and there are legitimate concerns that the neighbors had that I do not fit into the character of the neighborhood such as camping on my property which has been pointed out and which also, somebody in the County also pointed out that is in the Code as a legitimate ag use, but I will agree that camping in Sprecklesville does not fit in the character of the neighborhood. I wish to be a good a neighbor. I wish to be 100 percent legal. I have a family to support. I have two young children.

One is three months old, and one is two years and four months old. They desperately wanted to be here for this hearing. They went to go visit their grandparents in Australia and my son has a horrible ear infection and cannot fly. So I, I'm, I really, really, really want to work this out with the neighbors and have absolutely zero impact on the neighborhood and to show that the process can work, to show that I'm in compliance with the ag laws and that is why I am asking for a deferral, that is why I'm reducing the number of bedrooms to four. In terms of, like I said, I'm happy to give Aaron the code to my gate, I'm happy to my neighbors the code to my gate and have them freely come in if they want and talk to my guests that are here legally, absolutely. In fact, if you can come up with any other ways I can prove that I'm not operating illegally I would be more than happy to accept those.

Chair Starr: Thank you Mr. Gordon. Members, I know that we've heard two suggestions from Commissioners, one is to proceed, one is to defer. I'm happy to do either one. We've also had a request from Commissioner Mardfin that whichever way we proceed he would like to allow more public testimony at this time. Can I just get a, yeah, yeah, get a feel? Is there, you know, who has a likelihood of offering a deferral, a motion to defer when the time comes for that? I'm seeing several.

The following testimony was received at the beginning of the meeting:

Chair Starr: I'd like to call up first Garrett Lisi will be followed by Bill McAllister. Is Garrett Lisi here?

Mr. Garrett Lisi: Yeah, I'm here. I'd like to keep my testimony for the end ...(inaudible - speaking from the audience.)...

Chair Starr: Okay, thank you very much Mr. Lisi. Mr. McAllister followed by Sheri Weichel. Is Bill McAllister here? Sure come on up Bill. Welcome. Introduce yourself please.

Mr. Bill McAllister: Bill McAllister.

Chair Starr: Yeah and try to talk into the mike and thank you for coming.

Mr. McAllister: I've come to Maui in 1985, and I have returned many times to go windsurfing and I came specifically to this time to windsurf and I'm happy that there's a place in that location and I think it's a really nice place. Pretty much – I was asked to read this letter since one of my issues was I was diagnosed with colon cancer last year so I'm trying to maximize my situation and do as much windsurfing as I can.

And there's a letter here from one of Justin's other friends, long-term tenant. This letter from, "my husband and I wanted the Department of Planning to know that we support Justin Gordon's bed and breakfast. My husband is a 100 percent service connected, disabled veteran. He wears legs, in a wheelchair. It's great difficulty finding a rental that was a flat area making it easier for him to maintain his balance. Also, important is the fact that the access parking was easy for my husband. We signed a six-month lease with Mr. Gordon on May of 2010 because my husband was having difficulty breathing we went to the Maui VA Clinic. After numerous tests he was diagnosed with stage 4 lung cancer. Being able to live at 141 Makahiki made it much easier for my husband to get

to the VA, the hospital and other doctors.”

Chair Starr: Excuse me. Bill, pull the mike a little closer to you. We're having a little trouble with hearing --

Mr. McAllister: Okay.

Chair Starr: Good. Thank you.

Mr. McAllister: “Places like this are rare on Maui and it's an important part of stimulating the local economy. We hope that you and the department of planning will approve the B&B application. In all truthfulness, we would not been able to deal with my husband's diagnosis without the existence of this B&B. Thank you so much for your consideration. We hope this letter will help support the application since we are unable to attend the meeting because my husband has an appointment with the oncologist the day of the hearing.”

And I'd also like to say that I appreciate the fact that Justin was able to provide me with a place to stay in the short notice that I had.

Chair Starr: Okay, thank you very much. Any questions members? Yeah.

Mr. McAllister: I have, I do, I'm familiar with the area because I actually rented one of the Sugar Cove condos like four or five years ago with my family and had stayed there and windsurfed off that beach and sort of understood that situation around there and really, really liked that location and like to windsurf.

Chair Starr: Okay, thank you very much Mr. McAllister. Next testifier is Sheri Weichel followed by Mr. James Takayesu. Welcome and please introduce yourself. Thank you for coming.

Ms. Sheri Weichel: Good morning. Can you hear me okay? My name is Sheri Weichel. I'm a new owner at Sugar Cove. I've purchased 5B in June 2009. Outside of the compelling reason of windsurfing we were most attracted to the residential character of Sugar Cove area. The local people, the quiet, low density neighborhood, I like that and I'd like it not to change. I'm not opposed to the traditional definition of a bed and breakfast where a family offers a traveler a room in their home and breakfast at their kitchen table. My understanding of this application, is that it will profoundly and negatively change the character of our neighborhood. Thank you.

Chair Starr: Okay, thank you very much Weichel. Next will be James Takayesu followed by Ron Sandate. Good morning.

Mr. James Takayesu: Good morning. I did submit written testimony. It's in response to a letter I received from the Planning Department that was included in the packet as Exhibit 67A. I believe the testimony is there.

Ms. Kathleen Aoki: We handed it out.

Mr. Takayesu: First of all, my position as stated in the letter was that on the SMA Rules this matter should have been, gone through the assessment process, the Director has no authority to waive the assessment unless somebody agrees to go for a permit. The fact that an assessment was done, at the initial time that the structure was being built would not alleviate that requirement especially since the structure I assume was submitted as a single family residence which is exempt from SMA. Here you have intensification of use of the property that would fall within the definition of development. Also because Sugar Beach is an unstable beach, people in the condo have spent tens of thousands of dollars to try to stabilize that beach, additional use by people using the Gordon Bed and Breakfast I believe will have adverse impact and should have been looked at and investigated as part of the assessment process.

Throughout my correspondence with the Department, I stress that in 2006, the legislature in agricultural tourism included a specific proviso that overnight accommodations would not be re-permitted and yet that was I believe ignored. When you process in SMA it has to be consistent with zoning. In our State we have a two-tier system basically where the State determines permitted use in Ag. The County can then go ahead and further define what's known as accessory uses, but those uses have to be as described in 205-2 or 205 -4.5 and if you look at those two HRS sections there is no mention of any type of transient vacation rental or B&Bs. The only thing that's there is agricultural tourism which again has a specific prohibition against overnight accommodations.

And then finally, I know that the County Council went ahead and passed an ordinance authorizing B&Bs in the Ag District. That prohibition that I mentioned under 205 does not apply to --

Ms. Takayama-Corden: Three minutes.

Mr. Takayesu: Either rural or urban so I have no problem with what the Council did. But during the Council process there were concerns about remaining consistent with 205, State Law and to ...(inaudible)... provision that the development, the B&B would have to be consistent with 205 and as I've indicated it does not – is not consistent with 205, it doesn't promote the objectives of 205 and violates the specific prohibition. So again, this would apply to pretty much any B&B or vacation rental. My recommendation was to have the Planning Commission request an opinion from the Attorney General's Office or apply for a Declaratory Ruling from the State Land Use Commission. I think that's the best way to try to be sure that we're complying with State law. Thank you.

Chair Starr: I have a question for you Mr. Takayesu. First of all, are you here as a citizen or are you here as a counsel to a body of people?

Mr. Takayesu: I'm I guess both. You know, I've been representing Gilbert Edo. We've been vacation rentals and B&Bs in his ag subdivision in Kula for years and we haven't been able to get anywhere and also represent Micah, who's president of the homeowners association in this particular subdivision and I actually represent him on another matter primarily but when I started to look at what was happening here, it really surprised me that the Council had gone ahead and based on recommendation of Corp. Counsel and the Planning Department. I don't know when – there was a zoning code in order to be amended went to the Planning Commission and I don't know if at that time Corp. Counsel advised you of Act 251 that was passed in 2006 that made it clear where the legislature stood on overnight accommodations.



Included in the ...(inaudible)... what I consider a very bad bill where the legislature was so upset as to the County's handling of the Ag District that they wanted to take away both the County's authority to grant special permits and to further define accessory uses. And if that had actually gone, become law that would have been very bad because I think the County should have that flexibility to do that. It's just that they were so concerned about abuses on the part of the County that they were going overboard, but fortunately it did pass the House but the Senate I think had cooler heads and so they targeted golf course related facilities and vacation rental type activities. But again, it's a point where you have to be concerned that what you do here could affect what the legislature might eventually do in the future. Again, the County should have that authority to make sound good decisions to meet local conditions, but when they feel that you're ignoring State law and not yourselves, but I mean, in terms of statewide, you could end up getting laws that really are detrimental to our County.

Chair Starr: I have one more question for you.

Mr. Takayesu: Okay.

Chair Starr: What you expressed about 205A. Are you saying, were your comments global, in other words, the 205A process should apply to all B&Bs applications in the Ag District or just this one?

Mr. Takayesu: Well, 205A is the Coastal Zone Management Law. Yeah, I believe it should apply to all. If somebody is renting their single family residence or farm dwelling to another family as defined in our Code then you really haven't changed the use. So I can see why the development wants to say, well, you know, that really, there's no change here, there's no proposed action. But when you start to look at these bed and breakfasts where all of a sudden like in Mr. Gordon's case generally you have family and his family is four and you can have two or a long-term borders that's six. Again, when you add to that six rooms that can have four occupants per room, guest room, now you're looking at, it's going from six to 30 and that's an intensification and of use of that property and the density of use. And again, in this situation because you know, the owners at Sugar Beach has spent so much money to try to stabilize that beach and then all of a sudden you're going to have a whole bunch of people on vacation using the right of way it can – it will have an impact on the stability of that beach.

Chair Starr: Commissioner Hiranaga has a question.

Mr. Hiranaga: Mr. Takayesu, I briefly read your letter but you did mention the beach replenishment in front of Sugar Cove and are you claiming some type of vested rights to this State beach and the County public right of way to that beach by the Sugar Cove owners?

Mr. Takayesu: No, it's just that it's part of the natural resource that you have to protect. Although in this case, you know, you have the owners spending their own money to try to preserve or protect this resource and you have proposed activities in the adjacent areas that could adversely impact it. Mr. Buzianis lives right next door to Mr. Gordon. You know, Gilbert is up in Kula. But if there's people who have some kind of a, not maybe necessarily vested interest but personal concern as to what's going to happen to that beach especially if you have people zipping in and out of there with their windsurfing equipment and kite boarders. I mean, it could get really dangerous too.

Mr. Hiranaga: So you do concede that the public right of way is County property and the beach is State land?

Mr. Takayesu: I believe there is County right of way and I think there's also some type of access easement that the owners of the adjacent subdivision also have. I don't think that portion is, is public – it would be more ...(inaudible)...

Mr. Hiranaga: Yeah, actually the access I think it's a part of the, it was part of the overall cane field that existed prior to creation of Kai Holu but it stops at Paani Road, it doesn't go makai. Makai of Paani is the County right of way to the beach.

Mr. Takayesu: Okay. And I thought there was some kind of a they had a private easement.

Mr. Hiranaga: It stops at Paani.

Mr. Takayesu: Okay.

Mr. Hiranaga: It doesn't go makai of Paani.

Mr. Takayesu: Okay.

Mr. Hiranaga: Thank you.

Mr. Takayesu: Are there any other questions?

Chair Starr: Commissioner Mardfin did you have one?

Mr. Mardfin: This whole line of questioning has me curious because I'm not familiar with the area very well. Is there a public right of way to the beach?

Mr. Takayesu: Well, I use it. At the end of the road there's a gate and usually park on the side of the road and go to the beach.

Mr. Mardfin: And the gate's not locked so anybody in the public can go down there?

Mr. Takayesu: That portion there's no gate. But the mauka side I think if you're coming from the subdivision lots you have to come, I usually park on the road because, you know, I don't go into the subdivision.

Mr. Mardfin: So the answer to the question is there a public right of way to the beach the answer is yes.

Mr. Takayesu: I believe there is.

Mr. Mardfin: Okay, thank you.

Mr. Takayesu: Yeah.

Chair Starr: Okay, thank you Mr. Takayesu. Next Ron Sandate followed by Tom Richardson. Good morning Ron, good to see you my old friend.

Mr. Ron Sandate: Good morning. I would respectfully request to withhold my testimony for a little bit later.

Chair Starr: Okay. We'll catch you another time.

Mr. Sandate: Thank you.

Chair Starr: Thank you. Next will be Tom Richardson followed by Mike Spriggs.

Mr. Tom Richardson: I would like to defer my testimony.

Chair Starr: Okay, thank you Mr. Richardson. Mr. Spriggs.

Mr. Mike Spriggs: I would also like to defer.

Chair Starr: Okay, Gene Wasson.

Mr. Gene Wasson: Yeah, I'll wait till the agenda item comes forward.

Chair Starr: Okay, Mr. Don Guild. Come on up, next will Mr. David Spee.

Mr. Don Guild: Well, for 26 years I've lived about a 150 feet from the subject property and got to know Justin when he bought the property eight years ago approximately and then, he's a nice, friendly, smart, very athletic fellow and so it's difficult. I've watched when he moved the 40-foot container onto the property then lived in it, you know, for permanently and then 50 feet away from that he built his ohana all illegally and ...(inaudible)... a nice fellow and no one else did. So he was renting the ohana. And one of the curious things to all of the neighbors and myself has been his, right across the street is a building inspector who is a very good friend of Justin. In fact, Justin had his reception for his wedding after they had up there and so we're all, you know, curious how can something like this continue going on. There's something like 17 violations listed in the letters that he's done. And the, I think myself, as I've observed in the past, the future dictates the past which it has in my observation in my 83 years of observing it, and that is that the future will probably repeat what goes on in the past and that is that it's unenforceable. Anything that comes up is unenforceable and the reason for it is very simple and I've observed it in spades and that is Justin Gordon is above the law, is above the law. If you look at the history, that's what's happened.

Our residential neighborhood is going to be affected greatly in my opinion and it's, anything that's going to come up if he ever gets granted is not going to be enforceable as it has in the past. That's all I have to say.

Chair Starr: Okay, Members any questions? Okay, thank you very much for your comments. Next

will be David Spee followed by Micah Buzianis.

Mr. David Spee: Hi, my name's David Spee. I've lived in the neighborhood about 15 years. About two years ago, I moved down and I am adjacent, right next to Justin. The private easement goes along my property line that then hits Paani then the public easement right of way to the beach. That beach has become very popular. Sugar Cove spent the money, they improved it, it's a beautiful beach. In front of my house, everyday there's probably 10 to 20 cars. On weekends, sometimes the cars go halfway down Paani. It's a very popular beach with locals, it fishermen, with you name it. It's crowded already. Mr. Gordon wants to basically bring a windsurfing camp up to 30 people at a time using this beach which is used by the public. It's already a zoo on the weekends. And I had this conversation with my neighbor Martin ...(inaudible)... about, man, this is crazy already and in the end, we're like how lucky are we to be at such a great spot. It is a great spot, but you add this extra mix to it and it is going to change.

Mr. Guild was right on point. There's other B&B applications in the neighborhood and no one in the neighborhood is opposing them. There are families that add an ohana. They're doing it what we all think of as a B&B. This project was built as a hotel. That's in my mind it's always been, "the hotel." It's the way it's set up. I mean, people refer, "oh, I went downstairs," and they call it the lobby. The extra, even Justin's track record is what makes us all so concerned. Living in the container, renting out out buildings. At every turn, he's always done the maximization for profit. I can listen to the people from his place, he's been renting this place since the day it was built. We had a Dutch couple show up at our house looking for the accommodations, the Sugar Ranch accommodations. They, oh, sorry, it's behind us. It was in operation a year ago. At every level, and every neighbor knows it because he's done something to all of us. So, you know, I hear the people at night who want to go for a walk down to the beach. They stand in the private easement. They'll have a cigarette. They'll do whatever. It changes the character. On top of that, tourists like to eat and drink and they'll sit outside, he's got outside seating seven nights a week. I think we all understand Friday and Saturday night if people want to have a party or sit outside there's a little extra noise on the weekends, that's a neighborhood. But tourists, every night is a vacation and he's talking about maximizing this thing out just beyond the scale of what I think anyone thinks of as a B&B.

That's about it. I mean, it's just I think everyone who lives next to him and I know all his neighbors that adjoin him are here today. People from Sugar Cove, me, the Wasson – Gene Wasson on one side, Micah Buzianis on the other side, we've all been impacted by him already under this operation.

Ms. Takayama-Corden: Three minutes.

Mr. Spee: That's all I have to say. Thank you.

Chair Starr: We have a question for you. Commissioner Mardfin.

Mr. Mardfin: Are you talking the past tense or have these still been operating recently?

Mr. Spee: I believe they're still operating. I see people coming and going down that easement and

it's not Justin and his family. The Dutch couple was probably six months ago.

Mr. Mardfin: Okay, but how about within the last month?

Mr. Spee: I couldn't tell you in the last month.

Mr. Mardfin: You haven't noticed anything going on there?

Mr. Spee: Well, I've been on the mainland. I haven't noticed anything in the last month. I couldn't say any definitive in the last month.

Mr. Mardfin: How about the – you were on the mainland, when were you last living in Hawaii, in --

Mr. Spee: Oh, this is my, I live here, I live in the house next door to him. In the last month, I couldn't tell you. I try, you know, I don't like coming to these things. I have never opposed a B&B. I believe in B&Bs on the northshore and I hate, you know, not the oh, it's in my neighborhood. If this was a couple of bedrooms in a normal house, from day one, this thing was built with the intent to maximizing, it is multiple bedrooms, it can be plumbed for apartment use. It has always been about maximizing profit in a residential neighborhood. It's not about, look we need a little income to supplement our mortgage.

Mr. Mardfin: Thank you very much.

Mr. Spee: Thank you.

Chair Starr: Okay, thank you very much. Mr. Micah Buzianis followed by Henry Spencer.

Mr. Micah Buzianis: ...(inaudible - speaking from audience)...

Chair Starr: Okay, Mr. Spencer, your pleasure. Come on up, introduce yourself. Jay Buzianis will be followed.

Mr. Henry Spencer: Good morning everybody, my name is Henry Spencer. I live in Spreckelsville. Based on some of the earlier testimony I didn't know whether I was at a medical, personal history conference or a B&B hearing but I'm going to go with the later and assume it's a B&B hearing. I'm here to point out the hypocrisy of what you guys are contemplating today. I don't necessarily agree with or disagree with what Justin's trying to do but you've got some other business that you gotta take care of before you're granting a six-bedroom, six-unit B&B in the Spreckelsville neighborhood. And that speaks to, I came before you guys and for permits for a 16-lot subdivision and I was required not to allow any ohanas in the neighborhood and it just really irks me that relatives, working people, don't have the opportunity to stay in a unit there.

In this subdivision, the agricultural subdivision that is the subject of this B&B hearing, you had a hearing, I don't know last, early this year, last year which the neighborhood came before you trying to get approval for ohanas. It was denied. Again, if you can't even grant the people that live there ohanas to be able to have their relatives and of which I know a couple of them that live there one

of their mothers is in, this is the personal history part, one of their mothers is in a nursing home in New Jersey, they want to bring her out here, they can't and they refuse to do it illegally so they're going to connect their garage and barn to their house and make it all one unit and so that they can have a bedroom that she can stay in legally. And all the other people there, they wanted to have ohanas and working people, whatever, even if they rented the unit on a six-month basis to somebody who wants to come and spend six months here, it's far better, and a far better situation for the neighborhood than having six units with four people per unit and maxing out the neighborhood.

I see cars going up and down the street all the time, pulling in and out of their driveway as recently as yesterday and I know they're renting units in there and it's just hypocritical for you guys to even consider this without addressing those other issues prior to and that's pretty much all I got to say.

Chair Starr: Okay, any questions? First Commissioner Hiranaga, then Commissioner Mardfin.

Mr. Hiranaga: Hi Henry.

Mr. Spencer: Good morning Kent.

Mr. Hiranaga: Yeah, I remember when that application came before the commission regarding removing the SMA condition prohibiting your second farm dwelling. Unfortunately, I was absent at that meeting. I was disappointed with the outcome. I think it's very, very peculiar to have this ag subdivision in the middle of Spreckelsville. In fact, if you look at the proposed Maui Island Plan, I believe the Planning Commission at least is recommending that the designation be changed to Rural from Ag to Rural.

Mr. Spencer: They are.

Mr. Hiranaga: And so it may be time to try again with that association to see if they can have that SMA condition removed. I've been a resident of Spreckelsville for 15 years and I would not oppose, you know, ohanas in that subdivision. And also, I was not on the Planning Commission when your project came before commission and maybe you should also see if that condition removed on your subdivision. With 30,000 square foot lots I really don't see why they did that and, you know, like you said, we need more rental housing, we need more affordable housing. It's not really a question.

Mr. Spencer: If that was a question I'd like to respond by saying, perhaps they didn't go about it the best way when they tried to get the ohanas for the agricultural subdivision. Nonetheless, it is far more appropriate than granting B&B licenses, permits, whatever you're contemplating here and it certainly speaks to our needs on the Island of Maui in a much better way. Thanks for the question Kent.

Chair Starr: Commissioner Mardfin has a question.

Mr. Mardfin: You said, just last week you've seen some activity. Over the last two or three weeks can you describe what activity you've seen, besides cars is there anything beyond cars going up

and down?

Mr. Spencer: You know, I'm not a big fan anecdotal evidence and so I'm going to refrain but the evidence is out there if you want to seek it out and it's not my place to say anything but the evidence is out there and from me it would be anecdotal and that's not a, I don't think that's appropriate.

Mr. Mardfin: Do you hear a lot of noise coming from the property?

Mr. Spencer: I better not. I live several hundred yards away.

Mr. Mardfin: Okay, thank you.

Mr. Spencer: But I know other people have. Thanks.

Chair Starr: Okay, thank you Mr. Spencer. Good to see you.

Mr. Spencer: Thanks Jonathan.

Chair Starr: Okay, Jay Buzianis, interested in testifying now?

Mr. Jay Buzianis: ...(inaudible - speaking from audience)...

Chair Starr: Okay, thanks. So that's all the folks who signed up. I'd like to put out a general request for anyone who would like to offer testimony now on this or any other agenda item, please come forward. Oh, okay, anyone wishing to offer some testimony, last – please come to the mike, introduce yourself.

Mr. Garrett Lisi: Yeah, I do have testimony I'd like to give but as a brief comment, I'd like to say, my name is Garrett Lisi --

Chair Starr: No, either you're going to testify or you're not going to testify.

Mr. Lisi: Will have to save it till later?

Chair Starr: You got one shot.

Mr. Lisi: I'll do it later.

Chair Starr: Okay, anyone wishing to give testimony, please come forward, introduce yourself and welcome. Thanks for being here. Use the mike.

Mr. Mark Stone: Morning, I am Mark Stone. I'm Secretary of the Kai Holu Board of Directors. I live across the street from Justin Gordon and in turn I'd like to speak to the fact, my mother cannot live in my ohana just because it's detached. She's in Kalama Heights, 85 years old. I write out a check every month, \$3,600 for her stay. That is hypocrisy. That irks me. And the fact that a six-bedroom

hotel can go in just across the street from me and my mother has to stay at Kalama Heights, something's wrong with this picture.

Another thing, this is a minor point and Mr. Starr, I notice you riding up and down on your bike with your wife in the evening. They property is adjacent to a bike path and more cars barreling out of this proposed hotel it's not safe. We don't need more people on that street, we don't need more traffic, we don't need cars barreling out right onto the bike path. Mark Stone. Thank you.

Chair Starr: Okay, any questions? Okay, thank you very much.

This concludes the testimony received at the beginning of the meeting.

Chair Starr: Going on the basis that there's a likelihood of a motion to defer I would like to reopen public testimony and if anyone wishes to come and share their mana'o that has not already spoken they're welcome to do so. Mr. Takayesu you're first. Oh wait, you already testified.

Mr. Takayesu: I'm talking about deferral.

Chair Starr: What?

Mr. Takayesu: Because of the deferral, you know, in my memorandum or testimony in terms of --

Chair Starr: Mr. Takayesu, you know, I will permit a one-minute additional testimony assuming that you have new information if you want it. You want one minute?

Mr. Takayesu: Sure.

Chair Starr: Okay, right now, introduce yourself, you have one minute.

Mr. Takayesu: Okay, James Takayesu. What I submitted was pointing out procedural problems in terms of the assessment. Now if you're going to go back to square one, take a look at your rules you get a definition of development. If it is a development it should go through the assessment process. And if it is a development, in order to be approved under the 205A, it has to be consistent with zoning and I said, State law controls that. You can have a concurrent application if you also have a change in zoning and that's a lot different. You know, it doesn't say if you get a special permit. It says the zoning change. So if he wants to defer, he should go through all the required processes and not just short cut even though the department I believe came to the right result, I think the process has to be honored.

Chair Starr: Okay, thank you and I believe the Department has heard your comments. Any other members of the public wishing to offer testimony that haven't? Please come up, I forget your name sir, but you're welcome to join us. Yeah, introduce yourself.

Mr. Tom Richardson: My name is Tom Richardson. I live at Sugar Cove. I'm disappointed. Back when I went to school when somebody came to the class when they had 45 days notice to get their homework done, they came to the class and they said I didn't do my homework they got an F.



You've asked us to come, you've asked us to do our homework, we've done everything we're supposed to do, we wrote letters and we also took the time out. Some of us don't live full-time here and we took the time and here we are and the applicant says he's not ready and then when you asked him a question he practically gave his full presentation. And I'm thinking, wait a minute, he was ready, this is a ploy. It's meant to give us a hard time. And I would respectfully request that you consider the neighbors who have done everything right and proceed with this hearing.

Now, I don't have much time so I'm going to tell you what it's been like for us to deal with Mr. Gordon. He can stand up here and say all he wants but my dad taught me to watch what people do not what they say. It's almost a joke looking at those kitchens. I've lived in a lot of houses in my life and I have yet to live in a house with a kitchen as nice as his wet bar. These are TVRs. I don't know how we're going to deal with this. I mean, basically this feels like a hostile take over of the neighborhood and here's what I mean by that. Sugar Cove had a lot to do with the restricted development of Kai Holu Subdivision years ago. We had our right of way across that property. A&B asked us to give it up. We were assured that there would be absolutely no more residential density use on this development and we gave up our right of way but we kept one thing for just in case. We put, we were allowed to put a gate across their private access to the beach. We put keys in the – it's a double lock on both sides and each family in that subdivision gets two keys. That's a very restrictive covenant. And needless to say, it's meant to discourage development, any further development. Well, Mr. Gordon didn't like that.

And another thing I was taught was watch what somebody does --

Ms. Takayama-Corden: Three minutes.

Mr. Richardson: When they think no one's looking. He ripped out our gate. That's our property. He took it out and replaced it with his own and then set it up so that he gave everybody the impression that he owns the gate and that he controls the code, notice I said, code and not keys. Now that's because he didn't want to be restricted. I'm telling you when this guy doesn't want to be restricted nobody in this room is going to be able to restrict him. He's given us plenty of evidence. We now have to replace the gate. It's going to cost a couple of thousand dollars. Is he going to pay for it? No.

Secondly, one of our, happens to be mine, by the way I abut his property. I'm the one that complained about the camping. You know, this is not camping like Boy Scout camping. These are people renting his property and camping. We know that because my wife and I were at Paia Fish House and met a whole group of people who were camping. Now that's our backyard. And by the way, you ought to hear dishes being washed in the middle of the night when you're trying to sleep. But, he cut a great big branch off our monkeypod tree because it was inhibiting his view from his house. He doesn't have the right to do that. His excuse was that the electric company can do it, so he can too.

So we're in the situation where this guy is doing whatever he wants and trying to get you to think that he's Mr. Nice Guy and he promises to be a good boy. In the meantime, we're having to replace damaged property that he took it upon himself with no permission to remove. That's the kind of guy we're dealing with and we have also had a bunch of our owners because we heard

about this potential of going from six to four, email new letters and saying it doesn't matter.

Chair Starr: I'll have to ask you to wrap up.

Mr. Richardson: I'm done. I'm done. Thanks.

Chair Starr: Okay, hold on a second, I think there may be a question or two for you. Commissioner Mardfin.

Mr. Mardfin: This is more a comment than a question Mr. Richardson.

Mr. Richardson: Yes.

Mr. Mardfin: Thank you for your testimony today. Thank you for patience in dealing with this. I did. You have a letter as Exhibit 61 in our packet which I read with great interest the other day ...

Mr. Richardson: Yes.

Mr. Mardfin: ... when I was preparing for this and I want to thank you for being a good citizen and engaging in the process. If we defer, I used to be a college professor so I know what you mean about getting an F for late projects. On the other hand, I believe in justice and a deferral might be appropriate. Did you say you're out of town frequently or for long periods of time?

Mr. Richardson: It depends. I'm a retired.

Mr. Mardfin: Okay.

Mr. Richardson: I'm 70 years old and I'm retired and Sugar Cove is a second home. And so we can be here for three or four months at a time. We've had elderly parents so that we've had a lot of time on the mainland taking care of them.

Mr. Mardfin: I hope when this next comes before us you'll be able to be here because I appreciate what you have to say.

Mr. Richardson: Well, that's one of the great frustrations that I and others have is that we can come to these meetings and this kind of thing can be pulled and he knows what he's doing.

Mr. Mardfin: I understand, but we do have your written testimony and if you care to make further written testimony we'll see that too. Thank you so much.

Mr. Richardson: Thanks.

Chair Starr: Commissioner Shibuya. Please stay ...(inaudible)...

Mr. Richardson: Sorry.

Mr. Shibuya: Hi, I just wanted to know if you have Sugar Cove community association and if you do, are you a member?

Mr. Richardson: Not presently.

Mr. Shibuya: And why not?

Mr. Richardson: You mean our Board of Directors?

Mr. Shibuya: Yes.

Mr. Richardson: I've been president and I've been on the board several times. I've been there 22 years. I'm taking a break.

Mr. Shibuya: Oh no, I mean, a member of the association.

Mr. Richardson: Yes.

Mr. Shibuya: Somebody who pays the dues --

Mr. Richardson: Yes.

Mr. Shibuya: And follows the rules and things of this nature.

Mr. Richardson: Exactly.

Mr. Shibuya: So you are a member at least?

Mr. Richardson: I am.

Mr. Shibuya: Okay. And all of the homeowners there are required to be members?

Mr. Richardson: Yes.

Mr. Shibuya: Okay. Thank you.

Chair Starr: Okay, thank you very much. Anyone else who would like to, please come up sir, introduce yourself and welcome.

Mr. Mike Spriggs: Members of the Commission, my name is Mike Spriggs. I reside about half the year at Sugar Cove in Unit 6B. I'm going to keep my comments short because they've been covered pretty well by Tom. I am a member of the association, I also happen to be on the Board of Directors for Sugar Cove. And I can tell you that the Board of Directors is overwhelmingly, 100 percent against this B&B application. I think it's evident from the letters from Sugar Cove, 11 against and one for that the association is overwhelmingly against the, against the B&B application.

I wanted to make a comment because it came up about the, about the public beach. The beach in front of Sugar Cove is most definitely a public beach and the interest that – Sugar Cove does not have a vested interest in the beach. It's a public beach. We do sand replenishment and so we have it, we have a love for the beach and interest to the beach. The beach is used by every possible beach use that you can think of. There's fishermen, there's boogie boarders, there's the keiki in the wades, there's surfers, there's windsurfers, there's kites, there's picnickers, it's just a great public resource for the locals in the Spreckelsville and the rest of the island.

I would like to say that a lot of the opposition to this aside from the fact that it, the use itself is out of character. The neighborhood has to do with Justin Gordon's demonstrated actions and has demonstrated lack of respect for the rules and the law. We, – on his website he advertised rentals, he advertised showers, he's advertised shuttling for stand up, he's advertised that if you were above the limit for the occupancy of the rooms, you had extra people, he just simply charged \$25 a day extra. This is a person that doesn't really deserve the privilege of operating a B&B in the neighborhood and it would be a disservice to grant him that privilege, it would be a disservice to the people in the neighborhood. Thank you.

Chair Starr: I want to ask you to do me a favor, could you, Gina could you give the wireless mike. I want you to go over to the picture there. There are some of the commissioners that don't get to frequent that part of the county very often. Could you show where the beaches, which is Sugar Cove and where, you know ...

Mr. Spriggs: Can you hear me now? This is the Sugar Cove Beach right here is the public access that the public uses to go from Paani to the beach. Justin Gordon's building is right here and the private easement that was granted to the neighborhood back here runs right along here back to and actually runs this way also but comes and abuts Justin's property right here.

Chair Starr: Okay, thank you for doing that. Commissioner Wakida has a question for you.

Ms. Wakida: And while you're up at the map --

Chair Starr: Thanks for taking this role for us. I know you just came to testify, but --

Mr. Spriggs: I didn't bring my pointer.

Ms. Wakida: And please point out where the gate is.

Mr. Spriggs: All right, there's actually two, there's a gate that is right – do we have a bigger picture of this, a close up or a site plan? Excuse me? The gate, so if you walk up here the gate is right about here, there's probably a better picture of this. It's right here and there's also a gate that is down here. So this easement runs like this, an "L" shape and then down to Paani Place. So there's a gate here and a gate which should be just about there off Cane Street.

Ms. Wakida: So to get down to the beach you have to go through two gates?

Mr. Spriggs: Well, it depends. If from Sugar Ranch, you'd have to go through one gate.

Ms. Wakida: But the rest of the subdivision goes through two?

Mr. Spriggs: So of the subdivision goes through two.

Ms. Wakida: And which is the one with the code?

Mr. Spriggs: They both have codes. Am I correct? They both have codes now. Both of them have been changed to, both of them have been changed to codes and the last time I looked at this gate here, it said, for, for code call Justin Gordon at and with his phone number. So in other words, this is not been as originally it was set up that it was restricted for the use and for the protection and security of the neighborhood. It's anybody that dials this number Justin has taken over the gate and is now, and now provides the code to these people. Before it would be that the families in the neighborhood each had two keys to access the easement. The easement itself doesn't keep the public from using the beach, the public uses the beach by coming down Paani Place and using the public access.

Ms. Wakida: Thank you.

Chair Starr: Okay, thank you very much. Is there anyone else who would like to offer testimony, please come up.

Mr. Gene Wasson: Good morning I'm Gene Wasson. I'm the adjacent neighbor on the east of the subject property and I'm representing my wife who is working today. I took the day off to be here for this testimony. I'm absolutely opposed to this application. I hope that if you have not had time if there is a deferral that you'll have an opportunity to go through this. There's a lot of important material in that that's intimidating, I agree, but I've gone through it and it's worth your while and represents a lot of effort and time by the Planning Commission.

We first met the applicant about eight years ago when he bought the property and moved into a container and I can tell you from the very beginning his intent has been to build a large rental structure. And now what we have is an 11-bedroom, eight and a half bath building and on inspection there were six kitchens which I think he may have partially removed at this time. He's regularly had guests. I mean, we're –

Chair Starr: If you're going to speak up there, you need to use the mike.

Mr. Wasson: Here's the, let me see if I can get this, here's the subject property and here's our property. So we share a very long property line, and it's very easy to tell much of what's going on on that property and so he's been having guests there continually since he finished the structure and I think included in this packet is a website that he was using at that time blatantly advertising his B&B with rates with efforts to assist with air transportation, windsurf gear rentals, etc. We're not really opposed per se to B&Bs but I do not believe that this was the County's intent when they allowed B&Bs to be put on agricultural land. Of course, in relation to these rentals he wants us to believe that these are all his friends and that there are no paying rentals which of course I suspect means that there's been no payment of the TAT the GET or other taxes involved in the revenue that's been generated from this operation. It clearly does not conform to the character of our

neighborhood and it's definitely had a huge negative impact on us for the last couple of years.

One of the big problems is that I have two these RFSs that have been submitted one July 26<sup>th</sup> that's still open and one is from October 17<sup>th</sup> that's still open and these were my observation of --

Ms. Takayama-Corden: Three minutes.

Mr. Wasson: Multiple windsurf rental vans in the property, three at one time that I've observed along with rental automobiles. I understand that it's difficult for the County to enforce this but that's a big problem for all of us because it puts us in a position of having to police the neighborhood which is not something that we would normally want to have to do and I'm adverse to that but I'm going to have to do it because I must admit as you've heard in other testimony, I'm not sure his word is what I would like it to be. Anyway, I would certainly encourage you to unequivocally and unconditionally deny this application. Thank you. Questions.

Chair Starr: Thank you very much. Thank you very much for your testimony. Any other members of the public wishing to, please come forward. Well, actually, okay.

Mr. Glen Tremble: Good morning. My name is Glen Tremble. I live on Makahiki Street right across the street from Justin's house.

Chair Starr: Raise the mike up so you don't have to -- comfortable.

Mr. Tremble: I am here, I took time out of work today to come and put my two cents in. I do not believe Justin Gordon's B&B should be allowed. I have two small children and my wife and I live on the property across the street and we think it definitely changes the character of the neighborhood. I consider myself a friend of Justin's and this is awkward thing that he is putting the neighborhood through. He didn't come discuss it with the neighborhood. I'm on the board with several of the other members of the community that are here today. Of our association, I believe he should have gone through the process correctly in getting neighborhood support and then coming to you and then asking. So I agree with the last testimony and I'll keep it short. Thank you.

Chair Starr: Thank you very much. Someone else wishing to testify. I don't know your name sir, but you're welcome to --

Mr. Micah Buzianis: Hi, I'm Micah Buzianis.

Chair Starr: Hi, Micah.

Mr. Buzianis: I live directly next door to Justin at 111 Makahiki Street which is on the west side of his property. I live there with my wife and two kids. And I travel a lot during the year so, you know, when I come home I like to have a nice quiet place and Justin's house is very close to my house on the property line. And, you know, as some of the people said earlier, you know, I understand that Fridays and Saturdays can be a little bit noisy, people like to have parties on the weekends and I can totally understand and go along with that, we like to do that as well. But, you know, during the week, you know, my two kids are very young, they go to school, we put them to bed early. We

like to have nice quiet nights and, you know, with his scope of a project, with six bedrooms, potentially ten rental units it make it for a very noisy place. I mean, as most of you know the trade winds here blow directly from his house onto my house so that just amplifies the noise as well. You know, so I'm definitely against his bed and breakfast. I think it dramatically changes the character of a nice, quiet neighborhood.

I also think on the discussion of a deference we've been noticed I think two to three times first of six bedrooms or first of four bedrooms then he changed it back to six bedrooms and now he wants to go to four bedrooms again. So I think we all know what the situation is whether it be six units, four units, whatever, and I also think that, you know, a great a majority of the people that live within 500 feet of this proposed bed and breakfast are here today and expressing their concerns. So I don't see any reason to defer this, you know, and you know, he wants to talk to the neighbors and try to get right with the neighborhood but I think most of the neighborhood is here today and has expressed their concern whether it be six units or four units. So that's all I have to say.

Chair Starr: Okay, thank you. Wait a second Mr. Buzianis, Commissioner Shibuya has a question.

Mr. Shibuya: Mr. Buzianis, you are actually on the Kahului side of his property?

Mr. Buzianis: I'm directly abutting his property on the Kahului side.

Mr. Shibuya: Okay, and you are a member of the community association?

Mr. Buzianis: I am a member of the Kai Holu Association. I am actually the President of the Board of Directors.

Mr. Shibuya: Okay, thank you.

Chair Starr: Commissioner Mardfin.

Mr. Mardfin: Just real quick. Within the last month have you seen active use of this as a B&B from your perception?

Mr. Buzianis: I don't have any concrete evidence that I could provide you but I personally know probably 15 to 20 people that have stayed there. I work in the windsurfing industry, a lot of his clients are windsurfers, you know, I could provide a number of names to you if wanted to subpoena these people to come in.

Mr. Mardfin: And they've stayed there within the last month?

Mr. Buzianis: Yeah, there was actually a windsurfing camp conducted there by a windsurfing magazine very recently and a number of the people that were here either was running, directing the camp or participating in the camp were staying there.

Mr. Mardfin: Thank you very much.

Chair Starr: Okay, thank you Mr. Buzianis. We have a sign up from Nelson Armitage. Please come forward, introduce yourself and welcome.

Mr. Nelson Armitage: Aloha. I'm here today to kind of understand you guys rules because it's important to apply. You know, for those who oppose and those pose, your regulations I believe it's your guys responsibility to make sure that the rules that was set before you guys even receive this ordinance it had to meet the criteria of the discussions that's going on today. And during the making of your resolutions or County rules, this is what, this is what the problem is today. I believe during the process when they were creating these rules, I believe that the applicant if as long as they're following the precise rules and be honorable it doesn't matter if they're talking to their neighbors or not, I believe the truth is that at least they're following the rules and they should be given a proper venue to follow.

Now for those who are not doing the illegal process that's who you guys should be challenging. When you have people coming for it and trying to be honorable and following the rules, it's not the matter of discrediting these people. You guys responsibility is to protect the rules that was made upstairs and not to discredit other people who's trying to follow the rules because of their neighborhood. I believe the impact that he has is zero. You know, it is. I don't know how many of you born and raised here, but we're all born and raised here that know a lot about impact and rules. Sorry to come off this way, but it's hard to for me to understand it geez you guys make rules and you guys going like try discredit other people or use them as examples and what about the other people that you gave rules to already that you guys gave applications already to. Is it fair to discredit one person who's trying to fulfill the rules and yet those around in the vicinity are absolutely running illegal and your enforcement is so weak it's not funny. And for those who continue to say, oh I'm going to have the – if the County wants to come in my property gotta go get one subpoena. That's ridiculous, it's absurd, you know, I believe, I believe in truth and justice and I believe in those who following the rules should be granted as long as they're following the rules, you know, you guys believe in the rules or not? I believe that's what it's all about and that's what aloha is about. It's not a matter of how much money you got or whatever it is. The bottom line is you guys, your responsibilities it to protect the integrity of the rules. Okay. Thank you very much.

Chair Starr: Okay, thank you. Anyone else wishing to offer some testimony on this? Please come forward ma'am. Introduce yourself and welcome.

Ms. Dawn Bosque: Hi, my name is Bosque and I'm a personal friend of Justin's. I actually live in Haiku and I came here today to support him in his application. I've known Justin since 2006, so not from the very beginning of his project, ...(inaudible)... from part of it. And that area is supposed to be agricultural land not residential. It is zoned agricultural and really everybody in there should be doing active farming according to the rules. And recently the Bed and Breakfast Rules were changed to allow a bed and breakfast on agricultural land and I think Justin's Sugar Ranch is a perfect example of the blend between agricultural activity, he has an active farm area on about a third of his property. He's got an extensive fruit grove, he's built a beautiful house which people can come and stay in and enjoy. And I'm listening to the testimony and people are saying, oh we can't have an ohana so we don't want Justin to have a B&B. We don't want more people at our public beach. I thought that the B&B provisions were to allow just this type of project to move forward, not for somebody to necessarily rent their ohana unit but to have a place for visitors to come and stay



and truly enjoy the north shore and the beach there. So I think that in light of the change in the rules that that you'd be doing a disservice to the community to deny this request. Thank you.

Chair Starr: Thank you. Anyone else wishing to give testimony please. Last call for public testimony on this item. Public testimony is now closed.

**b. Action**

Chair Starr: Members, okay members time for decision making and action. If anyone has a motion now would be a suitable time. Commissioner Mardfin.

Mr. Mardfin: I move we defer this to a date uncertain and that the entire project be renoticed to the public.

Chair Starr: And a new public hearing be held.

Mr. Mardfin: Correct.

Chair Starr: Is there a second? Commissioner Shibuya is that a second?

Mr. Shibuya: No.

Chair Starr: Oh, okay.

Mr. Shibuya: I'd like to make an –

Mr. Hiranaga: Point of order –

Chair Starr: Yeah.

Mr. Hiranaga: I'll second for discussion.

Chair Starr: Okay, thank you, Commissioner Hiranaga. We have a motion by Commissioner Mardfin, seconded by Commissioner Hiranaga. The motion is?

Ms. Cua: To defer action until a date certain – uncertain.

Chair Starr: Okay. Now discussion, Commissioner Shibuya.

Mr. Shibuya: Okay, I would like to ensure that there is a amendment including that the individual cease and desist these annoyances to the community and if any more complaints come in, we want to know about it.

Chair Starr: If you're making an amendment I'd actually request that it be shorter. Restated so that it's things that are within our purview. Perhaps, Ms. Cua, you want to help with this?

Ms. Cua: I think initially your comment was that you wanted assurance that he cease and desist all operations if they were ongoing. That's something that's, you know, the Planning Department can do periodic checks on. If obviously there's a noise complaint or as with any neighbor, you know, that's something that anybody could call the police on, but in terms of enforcement of zoning regulations, we would handle that and I think maybe the initial comment that you maybe it was a little bit more enforceable by the Planning Department.

Mr. Shibuya: Sure.

Chair Starr: So could you restate the –

Mr. Shibuya: That he would cease and desist for short-term types of accommodations.

Chair Starr: Okay, so we have an amendment that do we have a second to the amendment? Okay, we have an amendment that's made Commissioner Shibuya, seconded by Commissioner Freitas, that amendment is?

Ms. Cua: That the applicant also cease and desist all short term rental operations.

Chair Starr: And would that include that voluntary access to be given to, to, to the Department as stated for compliance?

Mr. Shibuya: Yes, that would be fine.

Chair Starr: Okay, so lets have a restatement of the amendment.

Ms. Cua: That the applicant cease and desist all short-term rental operations and provide open access, which we've indicated has been occurring, open access to the Planning Department for enforcement purposes.

Chair Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, I'm going to vote against this because I don't think it's appropriate to put an amendment on a motion to defer. I totally agree with what Commissioner Shibuya is suggesting and would take, I would hope that the Department would take that as a suggestion to them to ensure it doesn't happen. I do think that when this comes back before us we should get a report as to whether or not there has been any evidence of violating the condition, but I'm going to vote against just 'cause I think a motion to defer shouldn't have such an amendment.

Chair Starr: Okay, while it's unusual, I will rule that it is in order. Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I have to agree with Commissioner Mardfin that it's very unusual to add conditions to a motion to defer and I think the applicant has been placed on notice that any short-term rental activity is illegal. He has assured us he will cease and if he fails to, it's really up to the Planning Department and the community to inform the Planning Department of possible violations. So I will be voting against this amendment.

Chair Starr: Okay, Commissioner Shibuya.

Mr. Shibuya: In support of the amendment, the individual in this particular case has been alleged to have continued this misbehavior and continued to have nuisances to the community especially his neighbors surrounding him and it does not appear that this individual has been an active, collaborative type of neighbor and this kind of behavior is not acceptable. And these individuals who are his neighbors have vested rights too, and they need to have their rights protected and during this time of deferral are either going to say, either you accept this deferral with these conditions or I will ask that we actually deny this entire request.

Chair Starr: Thank you. Lets vote on the amendment. Ms. Cua, please restate the amendment.

Ms. Cua: You want the whole motion or just the amendment?

Chair Starr: No, just the amendment.

Ms. Cua: Oh, that he cease and desist all short-term rental operations and allow unlimited access to the Planning Department for enforcement purposes.

Chair Starr: Okay, all in favor of that amendment, and that amendment only please raise a hand. All opposed.

**It was moved by Mr. Shibuya, seconded by Mr. Freitas, then**

**VOTED:           The Amendment of the Applicant Cease and Desist All Short-Term Rental Operations and Allow Unlimited Access to the Planning Department for Enforcement Purposes.  
(Assenting - W. Shibuya, J. Freitas, L. Sablas, P. Wakida, J. Starr)  
(Dissenting - K. Hiranaga, O. Tagorda, W. Mardfin)  
(Excused - D. Domingo)**

Ms. Cua: Five ayes, three noes, motion passes.

Chair Starr: Amendment passes. Now we're going to vote on the main motion. The main motion is?

Ms. Cua: To defer action on the amendment.

Chair Starr: Okay. Commissioner Hiranaga.

Mr. Hiranaga: My understanding is that there are some Code violations, various issues with various agencies that have been – are still open. And my understanding is a B&B Permit cannot be approved until the property meets all Code requirements is that correct?

Ms. Cua: For the most part, that's correct. We have in situations approved B&Bs with a condition

that they have to meet a certain requirement. So it really depends on the issue.

Mr. Hiranaga: My feeling is that with this motion to defer it provides an opportunity for the applicant to address all issues be it with the neighbors, with the County, whatever. And if he's unable to address these issues especially with the County Code to the Department's satisfaction, his application should not come before us. It's a waste of the Commission's time. So until this application is complete and ready for decision making, it should just be deferred till it's all resolved in a complete package. I mean, I don't even know why it was brought to us in the first place because it's not complete.

Chair Starr: Commissioner Wakida.

Ms. Wakida: Yes, I share the same concern. I am surprised to see so many outstanding violations and all of these concerns that have been brought up in RFS and so on that I think the, if Mr. Gordon is – I can only assume he's, he's wants this to go forward and I'm surprised that he hasn't cleared these up prior to us getting it at this meeting. He had ample opportunity to do that before he submitted his application, and now we have it, and yet he has all of these things outstanding. The burden of this is, is clearly on Mr. Gordon to have this complete and he chose not to do that.

Chair Starr: Commissioner Freitas.

Mr. Freitas: I'd like to make an amendment. We defer this, change the wording to defer indefinitely.

Chair Starr: Indefinitely. I'm not – Mr. Giroux, you want to define indefinitely for us?

Mr. Giroux: I was just looking for the door.

Chair Starr: We don't have a second, yeah we don't have a second. Lets get a second first. Do we have a second, for at least for discussion? Amendment dies for lack of a second. I think we get, get your drift though Commissioner Freitas. Commissioner Shibuya?

Mr. Shibuya: This is a kind of pattern that I did not want to continue with. And I think at this point, the owner/applicant has an incentive to work many of these deficiencies out, and to remove and avoid having more nuisances to his neighbors and that's why I have this conditions set on this deferral. And these conditions will provide him with some incentive to ensure that he quickly resolves these issues.

Chair Starr: Okay, I think everyone involved has a clear understanding of where we're heading. You know, I, for one, feel like, you know, I feel for the people who wasted a lot of time today and kind of been spun around, but you know, I understand that the Department is trying their best to be, be fair and give everyone their opportunity as best they can. So without wasting anymore time we're going to, we're going to vote on the main motion to defer as amended. All in favor, please raise a hand. All opposed.

**It was moved by Mr. Mardfin, seconded by Mr. Hiranaga, then**

**VOTED: To Defer the Action on the Application and That the Applicant Shall Cease and Desist All Short-Term Rental Operations and Allow Unlimited Access to the Planning Department for Enforcement Purposes.**  
**(Assenting - W. Mardfin, K. Hiranaga, O. Tagorda, W. Shibuya, L. Sablas)**  
**(Dissenting - J. Freitas, P. Wakida)**  
**(Excused - D. Domingo)**

Ms. Cua: Five ayes, two noes, motion passes.

Chair Starr: Okay, so the item is deferred and we expect it to be a little bit neater package when it comes back before us for a new public hearing. Thank you. We're going to take – should we – take a break. Okay, we're going to take recess until 25 after 11:00.

A recess was called at 11:16 a.m., and the meeting was reconvened at 11:29 a.m.

Chair Starr: Okay, the Maui Planning Commission meeting of November 9, 2010 is back in session. Our next item, Item D-1, Mr. Dennis Boehlje of Betsill Brothers Construction, Inc., requesting a five year time extension on Kalama Heights, Phase II. The planner is Mr. Paul Fasi. Mr. Fasi, please proceed, bring us up to day on where we are with this.

#### **D. UNFINISHED BUSINESS**

- 1. MR. DENNIS BOEHLJE for BETSILL BROTHERS CONSTRUCTION, INC. requesting a 5-year time extension on the Special Management Area Use Permit condition to complete construction of the Kalama Heights Phase II project, a 36-unit senior multi-family project with related on and off-site infrastructure improvements located at 101 Kanani Road, TMK: 3-9-017:002, Kihei, Island of Maui. (SM1 970012) (P. Fasi) (Deferred at the October 12, 2010 and October 26, 2010 meetings.)**

Mr. Fasi: Thank you. I'm going to keep it very brief. This is our fourth meeting on this matter today, and I think we all know what the issues are. We have gone through them and the applicant is requesting an extension for five years as opposed to two. The matter was deferred on October 26<sup>th</sup> due to the lack of a majority of several motions that were made. You couldn't come to a consensus. So hopefully we can come to a consensus today. The Department has nothing further to add. I believe Mr. Boehlje has a letter that he wants to read into there record. So if there's no further questions from the Department, I'm going to bring Mr. Boehlje up here so he can read –

Chair Starr: Yeah, I will ask Mr. Boehlje to take the mike. I, for one, have a couple questions regarding affordable housing and the traffic study and so on. Mr. Boehlje, please come, introduce yourself and welcome.

Mr. Dennis Boehlje: Thank you, Mr. Chairman. Dennis Boehlje for Betsill Brothers. I handed out at the start of the meeting my statement that I'd like to read into the record and if any of you didn't get that, I'd be glad, I have more copies.

Chair Starr: Please go ahead and read it into the record.

Mr. Boehlje: Okay. Over the past few weeks you have discussed and debated merits of granting a time extension for the Kalama Heights Senior Residential Project. Betsill Brothers appreciate your extensive efforts and hope that your deliberations on this matter can be completed today.

A decision to grant the Conditional Use Permit for a senior residential care facility with a limited number of assisted living units was made by the Planning Commission in 1997. In 2006, the Planning Commission granted a new CUP for the existing Phase I and reducing Phase II from 80 units to 40 units for sale not residential care. This was because the owners of Phase I saw no demand for expanding the care facility they simply could not make it pay and the Commission concurred. I would note that additional conditions were imposed at that time, many of which have already been satisfied.

The SMA Permit was processed simultaneously with the CUP at first but was given different expiration dates resulting in a series of two-year time extension. Please recognize the distinction between these permits. The use has been established through the CUP, which is not the subject of this time extension request.

The purpose of an SMA Permit is to give the opportunity to review the impacts on the natural resources of the project area. According to the County Code, a request for a time extension for SMA Permits requires only two things. One, an analysis of whether there have been changes in the area that would cause this development to have an adverse environmental or ecological impact; and two, an analysis of whether there have been changes in the area that would cause the development to adverse the infrastructure.

These questions were thoroughly addressed in our request. In the discussions with the Commission in the last few weeks these concerns were further addressed. Street improvement of including a bike lane on Auhana Road have been completed and Betsills has agreed to additional 100 percent drainage retention beyond County standards.

After these concerns were satisfied, the Commission discussion departed to matters related to the CUP which is valid until 2015, and to matters concerning the operation of Phase I and whether Phase II will offer the same services, et cetera. I submit to you that these answers to these questions provide background and information, but are not a part of the SMA analysis.

Incidentally, this project was never designed as luxury units, it was designed as market rate units for the over 55 age group currently living on Maui. Anyone with awareness of construction on Maui knows that luxury units are not Betsills target market. In fact, the economy dictates that these probably will be marketed with a large number of units in the affordable price range.

Much has been made of the fact that the project has not been completed in the four plus years

since it was approved and transferred to Betsills. Look around you, how many housing projects are currently under construction on the island? Many under construction are partially completed and construction has stopped because of lack of sales and financing. The construction industry is at a virtual standstill and jobs have disappeared. This is just one of numerous projects on Maui that are currently in a holding pattern.

Based on entitlements granted, developers go to work and incur expenses on projects prior to the construction of the actual units. Be aware that \$950,000 of improvements have been completed on Auhana Road by Betsills in satisfaction of this SMA Permit, \$480,000 has been spent on planning, architectural, engineering and other project fees. Building permits have been approved but were not issued because the financing for those permits they require park fees, water meter fees, et cetera was not available, but surely the expenditure of over \$1.4 million indicates intent to build. I'm sure this Commission will be faced with many more time extensions in the near future, the harsh realities of this economy coupled with lengthy permit processes make some time constraints on permits unrealistic. Commissioner Hiranaga very succinctly described the difficulties of getting financing for projects today. All developers on the island are doing their best to keep projects alive and Betsills is no different. It does a disservice not only to the developers but to former planning commissions who put in a lot of work reviewing projects as well as the people of Maui who need the jobs to deny time extensions.

Finally, the economic environment dictates that this property along with several others owned by Betsills is for sale. It has been suggested that they just allow the SMA to lapse and let a subsequent owner deal with it. The fact is that Betsills wants to build the project. They want to provide the jobs and purchase the materials that will boost the Maui economy. If they cannot do it themselves, they want to be able to transfer it to someone who can provide this service to Maui without starting over at square one.

For all of these reasons, we respectfully request a five-year time extension. Thank you.

Chair Starr: Okay, thank you, Mr.Boehlje. I have a couple of questions for Mr. Fasi. Based on comments and I believe I heard some of this from a previous planner on this project at a previous meeting, there was, this project was exempted from affordable housing. It was exempted from school educational improvements and I believe there were a few other things that were – that other project have had to meet but because of the nature of assisted living this was excluded. Can you give us an update on that and also, what were the original conditions because we don't have those original conditions as part of our package?

Mr. Fasi: I can't answer that question fully. I was not the planner back in '97. I can provide to you the original conditions back in '97 but I will not be able to provide to you those conditions at this meeting until maybe perhaps after lunch or or at a later time. But I was not aware of the – some of the conditions that were set or back in '97.

Chair Starr: How about the affordable housing and the educational contributions?

Mr. Fasi: The affordable housing and educational contributions I don't recall those being part of the Conditional Use Permit application when it was in, when it was first originally back on '04, I would

have to go back and look at the minutes to perhaps review those sections of the minutes to bring myself up to speed on those. I don't know if Dennis can answer those questions, but he can probably give you a better answer.

Chair Starr: Yeah, I'd like to hear because my understanding is that they were waived. Mr. Boehlje?

Mr. Boehlje: First of all, there was no waiver of anything. It was simply because it was a project that was approved prior to those regulations going into effect and then it was a subsequent reduction in the number of those units. So the affordable housing and the education did not apply to it.

Chair Starr: Okay, Members, any other questions on this? Commissioner Shibuya?

Mr. Shibuya: I just wanna get some kind of a summary here, maybe I missed it and I apologize for coming a little later, I do want to understand what is remaining to be completed for the Certificate of Occupancy?

Mr. Boehlje: No construction of the units has taken place yet. So a lot of off site improvements and planning but, and you may have missed it, but as I indicated, Betsills received the building permit where they had their plans approved for a building permit but didn't take it out because they didn't have the financing and several hundred thousand dollars for park fees and things like that were not available at the time so that lapsed.

Chair Starr: Commissioner Shibuya, we were informed at the last meeting that they, that this is for sale by Betsill right now.

Mr. Shibuya: Oh, okay. And I was trying to read through and it says something about the traffic developments, the curb, gutters, pedestrian walkways and bikeways to connect from South Kihei Road all the way to Piilani Highway. Is that still done or is that –

Mr. Fasi: No, I think those improvements have already been installed.

Mr. Shibuya: Okay. Even the landscaping the surrounds the property?

Mr. Fasi: I believe the landscaping that surrounds Phase 1 is complete. Phase 2 is basically just a barren lot. There has been no development on there whatsoever. It's just a bare lot.

Mr. Shibuya: And this extension would allow for Phase 2 to be completed?

Mr. Fasi: That is correct.

Mr. Shibuya: Okay, thank you.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Just to clarify, no vertical construction improvements have been built on the property



but the infrastructure is all complete?

Mr. Fasi: Correct.

Mr. Hiranaga: So my understanding without having to read the entire previous analysis is the reason for the Conditional Use Permit was because senior residential housing is not permitted in Apartment zone?

Mr. Fasi: Correct.

Mr. Hiranaga: So they were not to do senior residential development, this CUP was not – it's not necessary?

Mr. Fasi: Correct.

Mr. Hiranaga: And currently they have agreed that only people 55 years and older would be eligible to purchase this condos in fee?

Mr. Fasi: That is correct.

Chair Starr: Commissioner Wakida. This is a question for the, I guess for Ann. Is it usual in applications to have an architectural rendering of the building?

Ms. Cua: In what kind of applications, an extension request or just a regular?

Ms. Wakida: Well, specifically the one we have here, but there isn't an architectural rendering of this 36-unit building. So –

Ms. Cua: Yeah, no, I thought at the last meeting Paul submitted an addendum report.

Ms. Wakida: Am I mistaken?

Ms. Cua: An addendum report that did have something because it didn't originally.

Mr. Fasi: It does have. I believe it has some elevations in there that would show you artistic rendering. And what you see in the original packet that I handed out at the very beginning I believe on 10/12. There are some color photos in there of Phase 1 and Phase 2 will look identical. It's the same architectural style as Phase 1.

Ms. Wakida: Okay, it's two to three stories, correct?

Mr. Fasi: Two to three stories, correct.

Ms. Wakida: Are there elevators in this?

Mr. Fasi: I believe there are.

Ms. Wakida: Because on this I, I couldn't read –

Mr. Fasi: Well, everything that they have for Phase 2 right now is pretty much conceptual except – is that correct Dennis? No, I take that back, it's not because the building permits have, have – are waiting to be issued. Yeah. The architectural style was the same. It was approved by the UDRB back in '06.

Ms. Wakida: So the exterior of the building looks the same as the original plan?

Mr. Fasi: That is correct. Yeah, that is correct.

Ms. Wakida: It's just the configuration of the interior that's different?

Mr. Fasi: Correct. That is correct.

Ms. Wakida: Thank you.

Chair Starr: Commissioner Freitas?

Mr. Freitas: Yes, question for Corp. Counsel. Can they impose an age limit on purchasing building like such as 55 years old? Can be that done or is it legal?

Mr. Giroux: I think the issue with the age limit is between private and public. If the private sector does it then it's, you know, we haven't had any lawsuits coming out of that, but if the public sector does it there has to be some kind of a rational basis almost like affordable housing. There has to be a show of need for that and it has to kind of like – I don't think it reaches the standard of least restrictive but there has to be a reasonable purpose for that.

Chair Starr: First, Commissioner Mardfin, then Commissioner Shibuya.

Mr. Mardfin: A large part of the reason for asking for the extension was due to financing. Is financing in-hand now?

Mr. Fasi: I don't believe it is in-hand. I believe they have not secured financing and that's probably a large reason why the lot is still up for sale.

Mr. Mardfin: Thank you.

Chair Starr: Commissioner Shibuya?

Mr. Shibuya: Just to answer, I think – Counsel Giroux mentioned something about if there's a need. Federal law on the Fair Housing Act allows for this accommodation of seniors and disabled living within a care facility type of arrangement. And in this case, it would fall within that. No, you don't think so?

Chair Starr: Just a comment. This was originally to be assisted living like Phase I.

Mr. Shibuya: Okay.

Chair Starr: It was changed into a condominium situation without any of the assisted care facilities and without the density that makes for assisted care. This is just regular condominiums to be marketed to people over 55. Commissioner Hiranaga?

Mr. Hiranaga: Has the applicant put any thought to possibly raising the minimum age requirement to 60? Because I'm going to be 55 next year, I don't really consider myself senior citizen.

Chair Starr: Commissioner Hiranaga, I'm afraid we all have to live with that. Mr. Boehlje?

Mr. Boehlje: Commissioner did raise that issue at the last meeting, and I would just say, our Sales Division feels it's going to be hard enough to get sales exclusively to 55 and older.

Mr. Hiranaga: I think I mentioned 65, but this time, I'm mentioning 60. Just to, you know, make it more available to seniors who are really seniors. And by raising the age limit, you reduce the market segment which then reduces what you can ask for those units makes it more affordable because less people can afford it. So I know your sales people want it to be lower so there's more people that can afford it, that can purchase it thereby increasing the market value. But if you reduce the market segment that can be eligible, it reduces the market value ...(inaudible)... That's why I'm talking about they possibly raising it to 60 and therefore, giving a comfort level to other Commissioners that it will in fact go to senior people, and not almost senior.

Chair Starr: Commissioner Wakida?

Ms. Wakida: On this issue, how, I don't know who to address this question to exactly but how enforceable is this? In other words, if somebody comes along who's 40, wants to buy in, who's going to say they can't?

Chair Starr: Mr. Fasi?

Mr. Fasi: I believe that probably written into the CC&Rs and have to be enforceable by I'm assuming the condominium association.

Ms. Wakida: And that would apply to resales as well?

Mr. Fasi: Depending on how they write that rule.

Ms. Wakida: And how does that apply to rentals? People rent out their condos?

Mr. Fasi: Again, depending on how they write the rules, I don't know how it would apply. But it – it would basically be the rules in their CC&Rs for the apartment.

Chair Starr: Okay, Commissioner Hiranaga?

Mr. Hiranaga: Yeah, a suggestion to Commissioners is you could place that as a condition that it

be written in the deed that only those 60 and over can purchase property in this project, can purchase condos in this project, and you can also place a deed restriction that rentals, a renter must be 60 and older in order to rent there. So if there's ways of placing conditions in the SMA permit extension to meet concerns of various Commissioners.

Chair Starr: Who's next? Okay, Members, any other questions? I know, I would love to see the condition, you know, I would love to see the conditions and the – before we would potentially approve it, but we have any other? I don't see any. I guess I should open it for public testimony. Any members of the public wishing to give testimony on this? Please come forward. Not seeing too many, public testimony is now closed. Commissioner Hiranaga.

Mr. Hiranaga: I have a question. On the assisted living Phase I is there a minimum age requirement in order to be eligible for that facility? So someone who is 50 years old and needs constant daily care is there something that prevents that person from renting in Phase I?

Mr. Fasi: I'm sorry, I missed the question.

Mr. Hiranaga: Is there a minimum age requirement for Phase I in order to be able to rent a unit there?

Mr. Fasi: I don't believe we can provide you with an answer to that right now.

Mr. Hiranaga: So in this Conditional Use Permit, there's no age specification to qualify for senior housing?

Mr. Fasi: Not in the conditions. And I don't mean to, to not be able to answer your questions, but operational wise for the particular development, the Planning Department's not really involved in the rules and regulations and the daily operations of the facility so that's why I can't provide too many answers to you.

Chair Starr: Commissioner Hiranaga, please.

Mr. Hiranaga: I'll go ahead and make a motion to extend for the five years and then we can, if there's a second, we can have discussion on additional amendments if other Commissioners wish to tack on amendments. So I'll make a motion to extend for the full five years since it's consistent with the Conditional Use Permit.

Chair Starr: Is there a second?

Mr. Shibuya: I'll second.

Chair Starr: Moved by Commissioner Hiranaga, seconded by Commissioner Shibuya. The motion is to?

Ms. Cua: To recommend extension of the permit.

Mr. Hiranaga: For five years.

Ms. Cua: For five years.

Mr. Fasi: And that will coincide with the expiration date of the Conditional Use Permit, March 31, 2015.

Chair Starr: Mr. Fasi? Mr. Fasi?

Mr. Fasi: Yes, sir?

Chair Starr: Did you have any recommendations to add to that or in relation to it?

Mr. Fasi: Well, I don't want to second guess the Planning Commission making their decision back in '06, and being that this is just a time extension, unless you feel very strongly about certain things, it's the Department's standard recommendation just to recommend what was granted previously since this is just a time extension. So the Department doesn't have any specific new recommendations to make.

Chair Starr: First, Commissioner Mardfin, then Commissioner Hiranaga.

Mr. Mardfin: I'd like to move to amend the motion to add the condition that this be the final time extension. If it's five years, it a final time extension. No way to extend it. If they fail to meet the deadline, they're back to square one with nothing.

Chair Starr: Is there a second? So we have an amendment by Commissioner Mardfin, seconded by Commissioner Sablas.

Ms. Cua: That the – that this will be the final time extension for this particular application.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Is it appropriate to ask the applicant to comment on that?

Chair Starr: Yeah.

Mr. Boehlje: Dennis Boehlje. We agree.

Chair Starr: Commissioner Hiranaga.

Mr. Hiranaga: And then just for the record, the applicant agrees to increase their drainage as previously discussed? Drainage retention, as previously discussed?

Mr. Boehlje: Yes we do.

Chair Starr: I would suggest that that be a – that maybe that be made as a additional and second

to your amendment, if you're interested in that being part of it.

Mr. Mardfin: Mr. Chairman?

Mr. Hiranaga: I thought sometimes if it's represented by the applicant to comply that it's not really necessary to be made a condition of the SMA?

Chair Starr: Since it's for sale, my feeling is should be in writing.

Mr. Hiranaga: I have no objection.

Ms. Cua: It's the Commission's decision. If the applicant is making a representation at this meeting that they're going to do something, you know, technically it's, it's part of the condition that says you shall develop the property in substantial compliance with. But if the Commission feels that they would like to add that as a condition, that's your prerogative.

Mr. Mardfin: Mr. Chairman? There's an amendment on the floor. The current discussion does not deal with the amendment being the final time extension. We need to vote on that amendment.

Chair Starr: Okay, you'd rather keep that amendment separate?

Mr. Mardfin: Certainly.

Chair Starr: Okay, that's fine, that's fine with me.

Mr. Mardfin: I suspect there's going to be a series of amendments.

Chair Starr: Okay, any more discussion on the amendment? I would just like to reiterate comments that I made when this was originally changed from the senior assisted living to this condominium type of project. I disagreed with that then. I feel that our need for senior assisted living which by nature is a dense and compact type of facility with food service and a design allowing for nursing and other care is really essential and that both Phase I and Phase II were designed that way. Phase I is providing, serving a really essential purpose to our community, there's no more land that's entitled for it in South Maui. And you know, it may not be all that long before some of us may need that even. You know, if not, our family, and the families of friends, and so, at that time could not support this change in entitlement to fairly high end condos from, from the assisted living. But since they didn't build it and now the thing is just for sale to anyone from anywhere I really becomes something that's very difficult for me to stomach in any way, shape or form. Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, I concur with your concerns, was feeling about the time extension but the reason, but the reason for my condition that it be the final one, is I do think that back in 2006, the Commission may have erred, but I'm not ready to undo all their work since we're sort of in progress. The reason for the final, it being a five-year final is so that if they fail to meet the conditions then we can go back to what it was. If it were only a two-year time extension I wouldn't feel quite that we should do that. But with a five-year, it's put up or shut up. And so I'm going to

vote for the amendment to make it the final time extension.

Chair Starr: Okay, Commissioner Mardfin, my feeling the last time around was that it was put up or shut up and they didn't put up, but anyway, lets vote on the amendment. All in favor – oh, let's read the amendment before we vote on it.

Ms. Cua: The amendment is that there be either a condition or –

Mr. Mardfin: The amendment is that this – the condition be added to the extension that this is final time amendment. There's no opportunity for a future time extension.

Chair Starr: So all in favor of this amendment please raise your hand. All opposed.

**It was moved by Mr. Mardfin, seconded by Ms. Sablas, then**

**VOTED: To Add the Condition that This Be the Final Time Extension.  
(Assenting - W. Mardfin, S. Sablas, K. Hiranaga, O. Tagorda, W. Shibuya)  
(Dissenting - J. Freitas, P. Wakida)  
(Excused - D. Domingo)**

Ms. Cua: Five ayes it passes.

Chair Starr: Okay, so if anyone would like to – an additional amendment? Commissioner Hiranaga?

Mr. Hiranaga: Can the maker of a motion amend his motion?

Chair Starr: Yeah, I'll accept it.

Mr. Hiranaga: So I'll put a motion to amend that the applicant shall increase their drainage retention to 100 percent post development as previously agreed by the applicant.

Mr. Shibuya: I second.

Chair Starr: Moved by Commissioner Hiranaga, seconded by Commissioner Shibuya. The amendment is?

Ms. Cua: That the applicant increase its drainage capacity to 100 percent post development runoff.

Chair Starr: Is that okay? Any comments on it?

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

Ms. Cua: Yeah.

Chair Starr: All in favor please raise a hand. All opposed.

**It was moved by Mr. Hiranaga, seconded by Mr. Shibuya, then**

**VOTED: That the Applicant Increase Its Drainage Capacity to 100 Percent Post Development Runoff.**

**(Assenting - K. Hiranaga, W. Shibuya, J. Freitas, O. Tagorda, W. Mardfin,  
L. Sablas, P. Wakida)**

**(Excused - D. Domingo)**

Ms. Cua: The motion passes.

Chair Starr: Commissioner Shibuya.

Mr. Shibuya: I'd like to make another amendment and that's it's not a strong requirement but a recommendation that a renewable energy type of generator system be included where possible to reduce the cost of energy for the occupants.

Chair Starr: Is there a second?

Mr. Mardfin: Second that.

Chair Starr: Okay, could you read the amendment?

Ms. Cua: I'm sorry. I need it restated. I'm sorry.

Mr. Shibuya: It is to recommend that the developer include renewable energy generating system to reduce the cost of energy to the occupants.

Chair Starr: Read it back to us one time.

Ms. Cua: That the proposed development include renewable energy generation – a renewable energy generation system to reduce the cost of energy to applicants. I'm just wondering if I could Mr. Chair? Paul, do you we have a standard condition that provides for that type of option?

Mr. Shibuya: The standard condition talks about conservation of energy. This one is more than conservation. It's a generating, creating renewable power.

Mr. Fasi: I don't believe back in 2006, that this was part of the standard conditions at the time. I just was notified by Mr. Boehlje that he's got to leave. His wife is terribly ill, and just left all his things here and took off. So I guess he won't be here for the remainder of this discussion.

Mr. Shibuya: I was looking at that if I can find it.

Chair Starr: By the way, it's the Chair's intention to try to power through and finish up, is that okay with everyone?



Ms. Wakida: To what?

Chair Starr: To just try to finish up.

Mr. Shibuya: Yeah, on Item No. 12, that's a Condition No. 12 and I'll read it for you. That appropriate energy conservation measures shall be incorporated into the project which may include but not be limited to energy conservation – conserving building materials, solar water heaters and so forth. Now this is conserving energy. What I've made the – recommended condition would be for the developer to add in where possible renewable energy generating systems. That is such as photo voltaic, such as wind turbines or even methane conversions or thermal conversion type systems.

Mr. Fasi: The Department understands your concern. And I guess Item 12, I was aware of Item 12 being energy conservation measures but your recommendation was power generation systems which –

Mr. Shibuya: Right.

Mr. Fasi: Which was not part of the entire discussion. So there's a huge difference there. I would just keep in mind, although, you know, the Department has no objection to that that when you do incorporate these type of systems, it does add cost to the overall development.

Mr. Shibuya: Understand. And it's just a recommendation.

Chair Starr: Okay, so please read the amendment?

Ms. Cua: That the development include renewable, a renewable energy generation system to reduce the cost of energy to the applicant, to the residents , I guess.

Mr. Shibuya: Yeah.

Mr. Mardfin: Mr. Chairman?

Chair Starr: Yeah.

Mr. Mardfin: That was not the motion, the motion to amend. The motion to amend was to, to recommend that the developer do this, not that the developer do this.

Ms. Cua: Okay.

Mr. Shibuya: Yeah, that's correct.

Chair Starr: Could you restate the motion, the amendment?

Ms. Cua: That –

Chair Starr: Hey, Mike, please ...

Ms. Cua: There's a recommendation for development, that the development include renewable, a renewable energy generation system to reduce the cost of energy. It should say to the residents.

Mr. Fasi: Could I help out with that?

Mr. Shibuya: Sure.

Mr. Fasi: I believe it should say that the developer recommend renewable power generation systems.

Mr. Shibuya: No, no, no, no, no.

Chair Starr: No, Ann got it right.

Mr. Fasi: I think as, as it's written –

Chair Starr: Paul, thank you.

Mr. Mardfin: Mr. Chair?

Chair Starr: Commissioner Mardfin.

Mr. Mardfin: I think she didn't quite get it right. She was close.

Ms. Cua: Okay, help me out there.

Mr. Mardfin: I think it should be, the condition be, that it be recommended that the developer consider the installation of power generating, now I'll turn it over to my colleague.

Chair Starr: Recommended that they consider? Why on earth are we doing such a thing as that? It's not worth the paper or the ink guys. I mean, okay, is that what you want, the Commission?

Mr. Shibuya: Yes, yes. It's just a recommendation and it's not a requirement.

Chair Starr: Okay, thank you.

Mr. Shibuya: I'm aware of cost.

Ms. Cua: So you want me to read that?

Chair Starr: So read it back one more time.

Ms. Cua: That it be recommended that the developer consider renewable energy – a renewable energy generation system to reduce the cost of energy to residents.

Chair Starr: Okay, so all in favor of this amendment please raise your hand. All opposed.

**It was moved by Mr. Shibuya, seconded by Mr. Mardfin, then**

**VOTED: That It Be Recommended that the Developer Consider a Renewable Energy Generation System to Reduce the Cost of Energy to the Residents.**  
**(Assenting -W. Shibuya, W. Mardfin, O. Tagorda, L. Sablas, P. Wakida)**  
**(Dissenting - K. Hiranaga, J. Freitas)**  
**(Excused - D. Domingo)**

Ms. Cua: Five ayes. Motion passes.

Mr. Mardfin: Mr. Chairman?

Chair Starr: Commissioner Mardfin.

Mr. Mardfin: I'd like to make another amendment. The amendment that, and I'll hope that my fellow Commissioner Hiranaga get, help me with the exact wording, that the CC&RS and the deed documents specify that they have to be sold to somebody 55 years or old. Any resales have to be to someone 55 years or older and any rentals have to be to somebody 55 years and older. Is that okay?

Chair Starr: Is there a second?

Mr. Hiranaga: Second.

Mr. Shibuya: Second.

Chair Starr: Okay, I'm going to take Commissioner Hiranaga's second since he was so enthusiastic.

Mr. Shibuya: Okay.

Chair Starr: Any discussion? All in favor, oh, please read back the amendment?

Ms. Cua: That the project CC&Rs and deed documents include provisions for sale, lease and rent to individuals 55 –

Mr. Mardfin: And future sales, resales.

Ms. Cua: – rent, and resales to individuals 55 years and older.

Chair Starr: I have a question. Does this preclude corporations from purchasing these?

Ms. Cua: It says individuals.

Chair Starr: Or renting or whatever? Mr. Giroux? Come on, earn your big salary.

Mr. Giroux: Well, it depends how old the corporation is. No, I'm not sure how that's going to affect. The condition may read individuals but if somebody comes in as a, you know, solo owner of a corporation, CEO or something, I don't know how they're going to stop that type of ownership. Because you do have, you know, trusts, you have, you know, one person corporations. So I don't, I don't, I guess it's gonna be a battle between, you know, how tightly the association wants to, to fight that if somebody does come in and buy it as a trust asset.

Chair Starr: I believe the applicant had a comment, please, Mr. Boehlje?

Mr. Boehlje: Dennis Boehlje. Typically in projects like this, we, we this project was presented to you with that kind of restriction in the first place. It could be owned by a corporation, a trust, whatever, but you typically put limits on the occupancy. Grandchildren can visit but they gotta be gone in 14 days, something like that. Trophy wife becomes accepted because her spouse is older. This was raised. Had a serious discussion at the prior hearing.

Mr. Shibuya: Yes.

Mr. Boehlje: So all of these things are generally addressed, and when you have senior communities and these are very common. So that was the model we were, we were focused on.

Chair Starr: Commissioner Wakida?

Ms. Wakida; Do we have a – well, I – I wanted to make a – I had a question about something else. Do we still have a motion on the floor?

Chair Starr: Yeah, we have an amendment regarding 55 for owners, subsequent owners and renters. So lets vote on that amendment. All in favor please raise a hand. All opposed.

**It was moved by Mr. Mardfin, seconded by Mr. Hiranaga, then**

**VOTED: That the Project CC&Rs and Deed Documents Include Provisions For Sale, Lease, Rent and Resales to Individuals 55 Years and Older.  
(Assenting - W. Mardfin, K. Hiranaga, O. Tagorda, W. Shibuya, L. Sablas,  
P. Wakida)  
(Dissenting - J. Freitas)  
(Excused - D. Domingo)**

Mr. Freitas: I voted against because my wife ...(inaudible)...

Commissioners: ...(Laughing)...

Chair Starr: Better call the State and ask to see his birth certificate.

Mr. Shibuya: Yeah, I ...

Ms. Cua: Six ayes, one no, motion passes or amendment passes.

Chair Starr: Okay, any additional amendments to be offered? Commissioner Wakida?

Ms. Wakida: I have a question that you raised earlier about, and I'll ask this of Ms. Cua about, do projects of this nature normally have an assessment for educational contributions and I don't know, I think something else was mentioned.

Chair Starr: Affordable housing.

Ms. Wakida: Yeah.

Ms. Cua: Yeah, today, it would.

Ms. Wakida: Yeah. Okay. And this project doesn't have that particular?

Ms. Cua: Well, actually at, at 36 units, no. It was much larger originally, but at 36 units, for education I would say no, but for affordable, for affordable housing, then yes it would.

Ms. Wakida: Okay.

Chair Starr: Commissioner Shibuya?

Mr. Shibuya: Just for our information, the State DOE is coming up with a schedule for impact fees and it goes by the number of units. For each unit then that schedule is, the developers are assessed per unit, and so it will accommodate a 36-unit, but it is not law yet.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: I have a quick question. Are we talking about 36 units or a 40-unit?

Mr. Fasi: Talking about 36 units.

Mr. Mardfin: Thirty-six units, thank you.

Chair Starr: Okay, Commissioner Wakida.

Ms. Wakida: I would like to reiterate a concern that I had last time and that is, the traffic study in here was done in 2005 which was prior to the conversion to a 40-unit or 36-unit as it is now. It was for the 80 unit. And that traffic study was projected through 2010 which is almost up. So I feel the traffic is outdated. And there also hasn't been an update from the Police. They gave their remarks based on a original senior residential housing. So I would just like to point out that these, I think

these are lapses in this application.

Chair Starr: You know, that just reminded me of something else that Mr. Aluete [sic] said at our previous meeting which is that they, the original project had a parking exemption. Mr. Fasi, do you have any information about this?

Mr. Fasi: I'm going to address that to Mr. Boehlje. I was not here in '97.

Chair Starr: Yeah.

Mr. Boehlje: Dennis Boehlje. The parking with the reduced number of units exceeds parking requirements for that zone. It did have a parking exemption but it's no longer needed

Chair Starr: How many parking?

Mr. Boehlje: I think there are 76. It's in the 70's. I believe there are 76 spaces for the 36 units. But it does, it did have an exemption that only one per unit was required. It was for marketability it was felt that we needed two per unit.

Chair Starr: Yeah, yeah, Mr. Aluete [sic] said the commitment that we're getting, there was going to be one parking space per unit and they were going to have a handicap van that was available to drive people around and I believe that was part of the traffic assessment also was based on that. Okay, anyway, Members, any other possible amendments or comments? Okay, we're ready to vote on the main motion as amended. All in favor of the main – Commissioner Shibuya?

Mr. Shibuya: No, I'm just voting.

Ms. Wakida: Can you read the main menu, the main –

Mr. Hiranaga: I'm hungry too.

Commissioners: ...(Laughing)...

Chair Starr: Please read the main motion and remind us what the amendments are. You don't have to read all the amendments but just tell us what they really –

Ms. Cua: The main, the main motion is for a five-year time extension of the Special Management Area Permit to complete construction of the project. You have four amendments. The first one, dealing with the fact that this will be the final time extension, and that no opportunity – there will be no opportunity for future time extensions in the future. Second amendment deals with the increase of drainage retention to deal with 100 percent of the post development runoff. The third amendment is that it be considered or that it, yeah, the applicant consider or the developer consider a renewable energy generation system to reduce the cost of energy to residents. And your final amendment was that the project CC&Rs and deed documents include provisions for sale, lease, rent and resales to individual, 55 years and older.

Chair Starr: Okay, is everyone clear? All in favor please raise a hand. All opposed.

**It was moved by Mr. Hiranaga, seconded by Mr. Shibuya, then**

**VOTED: To Approve the Five-Year Time Extension on the Special Management Area Use Permit with Conditions, as Amended.**  
**(Assenting - K. Hiranaga, W. Shibuya, J. Freitas, O. Tagorda, W. Mardfin, L. Sablas)**  
**(Dissenting - P. Wakida)**  
**(Excused - D. Domingo)**

Ms. Cua: Six ayes. One no. Motion passes.

Chair Starr: Okay.

Mr. Hiranaga: Mr. Chair?

Chair Starr: Yeah, Mr. Hiranaga?

Mr. Hiranaga: I needed to be somewhere at noon, so I'm gonna have to excuse myself.

Chair Starr: Okay, and I've lost my agenda. So –

Ms. Cua: I got it. I got it. The next matter on the agenda is Acceptance of the Action Minutes of the October 26, 2010 meeting.

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE OCTOBER 26, 2010 MEETING**

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: I move we accept the Action Minutes of the October 26, 2010 meeting.

Chair Starr: Is that the only one?

Ms. Cua: Yes.

Chair Starr: Is there a second?

Ms. Wakida: Second.

Mr. Tagorda: Second.

Chair Starr: Commissioner Mardfin, seconded by, I saw the hand first, Penny, Commissioner Sablas. The motion is Ann?

Ms. Cua: To accept the Action Minutes of the October 26, 2010 meeting.

Chair Starr: All in favor, please raise a hand. All opposed?

**It was moved by Mr. Mardfin, seconded by Ms. Sablas, then**

**VOTED: To Accept the Action Minutes of the October 26, 2010 Meeting.**  
**- (Assenting - W. Mardfin, L. Sablas, J. Freitas, O. Tagorda, W. Shibuya,**  
**P. Wakida)**  
**(Excused - D. Domingo, K. Hiranaga)**

Ms. Cua: Motion passes unanimously.

Chair Starr: Okay, Director's Report.

#### **F. DIRECTOR'S REPORT**

- 1. Designation of the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing on the following application:**

**JOHN S. ROMAIN requesting a Change in Zoning from the Urban Reserve District to the Service Business Residential (SBR) District for property situated at 4869 Uakea Road, TMK: 1-4-005: 026, Kawaipapa, Hana, Island of Maui. (CIZ 2010/0001) (D. Dias)**

Ms. Cua: Yes, we have an item regarding the designation of the Hana Advisory Committee to the Maui Planning Commission to conduct a public hearing on the following application. John S. Romain requesting a change in zoning from the Urban Reserve District to the Service Business Residential District for property situated at 4869 Uakea Road at tax map key 1-4-005: 026 in Hana. The Commission is being asked to take action for the Hana Advisory Committee to conduct the public hearing on this application.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: I move we designate –

Chair Starr: Wait, wait, wait, any member of the public wishing to give testimony on this? Not seeing any, testimony is closed. Commissioner Mardfin.

Mr. Mardfin: I move we designate the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing on the John Romain application.

Chair Starr: Is there a second? Commissioner Sablas second. The motion is?

Ms. Cua: The designate the Hana Advisory Committee to the Maui Planning Commission to



conduct the public hearing on the application as noted.

Chair Starr: Okay, all in favor please raise a hand. Opposed?

**It was moved by Mr. Mardfin, seconded by Ms. Sablas, then**

**VOTED: To Designate the Hana Advisory Committee to Conduct the Public Hearing.**  
**(Assenting - W. Mardfin, L. Sablas, J. Freitas, O. Tagorda, W. Shibuya, P. Wakida)**  
**(Excused - D. Domingo, K. Hiranaga)**

Ms. Cua: Motion passes unanimously.

Chair Starr: Okay.

- 2. Planning Commission Projects/Issues**
- 3. Discussion of Future Maui Planning Commission Agendas**
  - a. November 23, 2010 meeting agenda items**

Ms. Cua: And the final matter on your agenda, discussion of the future Maui Planning Commission agendas. We distributed a memo dated November 8, 2010. We do have a pretty heavy agenda on November 23<sup>rd</sup> with, I don't know, do you want me to go through it or?

Chair Starr: We all got it.

Ms. Cua: Don't have to? Yeah, okay. So it is going to be a pretty heavy agenda on the 23<sup>rd</sup>.

Ms. Wakida: I'm looking. Is the, yes, the Poseley project, we were talking about having a site visit, should that be prior to this?

Chair Starr: To which project?

Ms. Wakida: The Doug Poseley project in Olowalu.

Chair Starr: Oh, Olowalu.

Ms. Cua: I think we are planning, you know, we're working towards planning a site visit for the whole West Maui area. This is the final Environmental Assessment. We note that the final Environmental Assessment is in support of a Community Plan Amendment application. And so, we definitely can make sure that that occurs before the Community Plan Amendment application comes before this body.

Chair Starr: So in other words, it will be back before us at least once, probably twice. And, unless we want to hold off. Is this the – this is for the Environmental Assessment? Do we want to put that off until we do a site visit or do we want to proceed with the Environmental Assessment and then do a site visit before the actual entitlements come before us?

Ms. Wakida: Well, it seems to me that, I mean, we want to see the environment if we're going to do an Environmental Assessment.

Chair Starr: Okay.

Ms. Wakida: But I don't know if there's maybe other –

Ms. Cua: I mean, you have the document right here. It's been distributed.

Ms. Wakida: Correct.

Chair Starr: Is there a reason not to hold that item especially since we have a very full agenda that day until we, we have an opportunity to go see the place?

Ms. Cua: If it's the will of the Commission. We will do, you know, whatever. There's no legal notice requirements that would prohibit us from removing it from the agenda that day.

Chair Starr: Yeah. I mean, I'd like to see it too. I'm not familiar with that particular spot, and I know that was a battle ground. Is that okay? Okay.

Mr. Mardfin: Mr. Chairman?

Chair Starr: Yes?

Mr. Mardfin: I'm perfectly willing to see it, postpone it until we can do a site visit assuming this doesn't take forever. I mean, we shouldn't hold it for six months for instance.

Chair Starr: We were talking about either December or at latest January to get out there.

Ms. Cua: Yeah, I don't know. I wish Clayton were here, but I'm not sure, you know, what he's thinking of in terms of, you know, a date. Obviously December would be difficult because I think you only have one meeting in December?

Chair Starr: Yeah.

Ms. Cua: So I think, December is a really hard month and then you get into January and I know the agenda is going to be – start to be busy in January. I don't know, it's up to the Commission.

Mr. Mardfin: It seems to me we get a lot out of this site visit particularly somebody like me who is not familiar with it, but on the other hand, I don't want to be this big log jam for things coming through us.

Chair Starr: If it's okay with the Commission, let me, let me try to work with Clayton to make sure that it doesn't drag on too long, but that we do get a site visit of this, of this before we start in the process.

Ms. Wakida: Thank you.

Mr. Freitas: Excuse me, it's not fair to the applicant to put it off couple months. ...(inaudible)... if it's going to drag on let's hear it.

Chair Starr: Yeah, but we did just get this today, so it's not like we've had it since –

Mr. Freitas: Yeah, no, I understand but you don't want to put them off four, five months, ...(inaudible)...

Chair Starr: I won't let it, I won't let it go long, but I mean, right now, . . . you know, we haven't read it yet.

Ms. Cua: So again, if I could get clarification that what I'm hearing is that you would like us to remove this from the November 23<sup>rd</sup> agenda and work on getting the West Maui site visit scheduled.

Chair Starr: January if possible.

Ms. Cua: Okay.

Chair Starr: Okay, and we actually tried to get a few presentations on today's agenda because we knew it would be short, but just because of other meetings we weren't able to. Anyway, that's it, right?

Ms. Cua: That's it. Our next meeting is November 23<sup>rd</sup>.

Chair Starr: Okay, happy, happy.

**G. NEXT MEETING DATE: November 23, 2010**

**H. ADJOURNMENT**

The meeting was adjourned at 12:25 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairperson  
Jack Freitas  
Kent Hiranaga  
Ward Mardfin, Vice-Chair  
Orlando Tagorda  
Lori Sablas  
Warren Shibuya  
Penny Wakida

Excused

Donna Domingo

Others

Ann Cua, Planning Department  
Kathleen Aoki, Planning Department (9:00 a.m. - 11:16 a.m.)  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works