

**HANA ADVISORY COMMITTEE  
REGULAR MEETING  
JANUARY 10, 2002**

**A. CALL TO ORDER**

Chairman Claire Carroll called the meeting of the Hana Advisory Committee (Committee) to order at 4:30 p.m., Thursday, January 10, 2002, at the Old Hana School Cafeteria, Hana, Island of Maui.

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

**B. APPROVAL OF THE OCTOBER 30, 2001 MEETING MINUTES**

It was moved by Mr. John Romain, seconded by Mr. Daniel Omer, then unanimously

**VOTED: To approve the minutes of October 30, 2001 as presented.**

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

- 1. MR. DAVID GOODE, Director of the DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT requesting a Special Management Area Use Permit for the Kaholopo`o Bridge Replacement project in order to replace an existing substandard one-lane bridge structure with a new one-lane bridge structure at portions of TMK: 1-4-007, Hana, Island of Maui. (SM1 2001/0019) (W. Spence)**

Mr. Will Spence: Good evening, Members. The applicant has quite a presentation to give you tonight, so I'll just keep my comments to a minimum. And then if you have questions for staff afterwards. But I should clarify two things in the staff report. On page 2 right at the bottom it says the single lane is 14 feet wide with two feet on either side for pedestrians. That should be 12 feet wide with two feet on either side for pedestrians. And then on page 8 under no. 2, Proposed Bridge, about halfway down that paragraph where it says the existing bridge will be left in-situ and used for the former, that's not the case. They are going to completely remove the old bridge and construct a new bridge. So the existing bridge will be demolished completely and replaced, and there will be no center supporting structure. They ran the hydrological models and it said it's better that if they removed the center support. And with that, I know the applicant has their computer all warmed up. And they'll tell you everything I would and then some.

Mr. Earl Matsukawa, project consultant, then gave a power point presentation of the proposed project.

An unidentified member of the audience: (Inaudible)

Mr. Matsukawa: We'll try to match because you don't want something that will look off. It'll be pretty consistent.

An unidentified member of the audience: (Inaudible)

Mr. Matsukawa: Yeah.

Ms. Carroll: Excuse me. I believe the questions and answers are for the Board first, and then we'll have public hearing. Are there any questions?

Mr. Romain: Going back to the rock that you were just talking about earlier, the concrete, it seems to me that some years ago I saw a place on the Big Island that had a quarry, and they were cutting real flat, lava rock surfaces. Do you know anything about that?

Mr. Matsukawa: You mean like a split rock?

Mr. Romain: No, it was lava rock. It was lava surface. They cut it into panels where you could put it on the floors, but I mean, it was perfectly flat. I'm just saying there would be a natural alternative to the concrete if it's available.

Mr. Matsukawa: Yeah, I've seen those. I think there was some concern, and this was with the CRC. They wanted to match the lava rock because that was a real porous kind of a rock, as I recall. And it doesn't look like the natural rock that you see out there. So that was a concern. So we'll be working with CRC to try and match it is what we're trying to do. You see the natural rocks in Hana.

Mr. Omer: Is there any leeway on that signage?

Mr. Lloyd Lee: If you notice the State DOT on Hana Highway as you approach Ka'eleku sections, they have the standard signs: one-lane bridge sign, yield ahead. It's a standard national requirement. If we were to remove some of those signs and there's an accident, the government will be liable for that accident because we're not following appropriate standards. So we cannot remove those signs.

Mr. Spence: If I could also comment? The Department of Transportation and Public Works are going to be working on different standards for Hana Highway. And as a part of the – not the greenways program, it's the scenic byways program – they're going to be developing different standards, and signage will be a part of that. So

hopefully, again the CRC has expressed an interest in participating in that. So hopefully, we'll get some other signage other than just the national standards. Signs are a lot easier to replace than bridges, so we can work on that one later.

Ms. Carroll: Are there any further questions? If not, we'll move on to public testimony. Was there anyone on this sign-up sheet to testify on the issue that we're covering right now? I thought so. We'll now close the public testimony. May we have our recommendation, please?

Mr. Spence then presented the Planning Department's recommendation.

Ms. Carroll: Do we have a motion?

It was moved by Mr. Romain, seconded by Mr. Omer, then unanimously

**VOTED: To approve the Planning Department's recommendation for approval.**

- 2. SAMADHI BUTTERFLY requesting a State Land Use Commission Special Use Permit and a Conditional Permit for the `Ala `Aina Ocean Vista, a vacation rental operation in the State Agricultural District at TMK: 1-6-009: 018-4A2, Kipahulu, Hana, Island of Maui. (SUP2 2001/0016) (CP 2001/0019) (W. Spence)**

Mr. Spence presented an overview of the proposed project and Planning Department's report.

Ms. Carroll: May we hear from the applicant?

Ms. Samadhi Butterfly: Aloha, everybody. I'm Samadhi. And I opened up my bed and breakfast about three years ago because I found out that I couldn't support my land and maintain it in the way that I wanted to. I love Kipahulu. I've been there about 13 years. And it affords a home for myself and my daughter. And we're very reclusive and very quiet. And I had to think of a way to be able to stay in Kipahulu. So I thought of a bed and breakfast.

Originally, my mother was going to come live with me. She has Parkinson's. And we started this project for my mom. And she got much worse. And she had to stay in Michigan and couldn't leave because that's where her doctors were. And she was going to help me with the maintenance on the land, and that was no longer an option. So I decided to do the bed and breakfast. And it's worked out

really well. It's very low key. And people love it. We cater mostly to honeymooners. We only have two people at a time. And my daughter and myself are always on the property. And there's no smoking allowed inside. And it's been a wonderful experience for the people. It's been a wonderful experience for us. And besides the generation of cash from the bed and breakfast, the only other monies that I have is through social security.

I would like all my neighbors to be in favor of what I'm doing and to be happy with it because I want everyone in the community to feel harmonious, and I want to feel that way myself. And so far the people that I've talked to in the neighborhood and my neighbors are very happy with what I'm doing. They're grateful that they have a place for their guests to stay that's close by. And it's beautiful. And the people are happy. And I would like to take this opportunity to invite all of you to our site and see our bed and breakfast, and have any comments that you might have to help it. And if you have any questions, I'd be happy to answer any questions that you might have in mind.

Ms. Carroll: Are there any questions for the applicant? Thank you.

Ms. Butterfly: Thank you.

Ms. Carroll: We'll now open for public hearing. First person is Jacob Farley. Please use the microphone and state your name. You have three minutes.

Mr. Farley Jacob: Farley Jacob. I'm probably Sam's closest neighbor. I live right next door. Probably the only place that actually sees her house is from my place, their roof. It's been an amazingly quiet operation, I will say. And it's very appreciated given the noise level since Woody Harrelson and other people have moved in. It's been really nice having a neighbor that I know is going to be consistently quiet. It's pretty much you forget that she's running a bed and breakfast until something like this comes up. When she first started, I think we all had a lot of concerns like another business out here especially, after Hueo Stables. But it's turned out to be a really, really good experience, in our mind.

I guess it seems like a lot of people here have questions. We probably should start out with this first about zoning changes. It seems like some people – that the whole neighborhood is going to get zoning changed just from this special – from her exemption thing. And I'm not sure about that, too, so it might be actually easier if you go over that first before the comment period in my feeling. But for me, I think it's fine. And I would certainly support her and you approving what she's applying for. Is there any question about that?

Ms. Carroll: Are there any questions?

Mr. Spence: Madame Chair, would you like me to address the zoning issue?

Ms. Carroll: Yeah, please do.

Mr. Spence: Okay. I understand there were some questions on what does this do to the zoning, or would it change the zoning out there, or would it even promote a change in zoning in that area? The answer to that is no. This is a request for a special use that's not outrightly allowed within the agricultural zoning both in the State law and in the County law. It does not change the zoning in the area. Nor would it promote – it would not promote changing the zoning sometime in the future. We look at this as an individual case. And it's not going to make the area rural. It's not going to make it – it's not going to do anything with regards to changing the zoning. It will remain agriculture. And even if somebody wanted to change the zoning out there, I don't think we would support it. We want the area as much as the residents do to remain pretty much like it is. We don't want a bunch of new houses or anything like that.

Ms. Carroll: Thank you. What I'm feeling is the most concerns that I hear from the people of Hana is about taxes.

Mr. Richard Minatoya: You're in public hearing.

Ms. Carroll: I apologize. Next speaker. Thank you very much. Mercury Bleu.

Ms. Bleu: I caretake the property, and take care of the bed and breakfast in exchange for my rent for living there. And we both love being out there. And having the bed and breakfast is a way for us to stay there. And the people we meet are wonderful and they love being there. We e-mail with them, and they're mostly honeymooners. And it's a lot of really nice people, and it's been a great experience for us. And we haven't had any negative experiences at all. That's about it.

Ms. Carroll: Are there any questions? Thank you. Next person is Arthur Goodin.

Mr. Goodin: Yeah, I'm mostly here to confirm what's already been said by others.

Ms. Carroll: Sorry. Could you state your name, please?

Mr. Goodin: My name is Arthur Goodin. Yeah, I mean, the bed and breakfast is a

very, very quiet operation. I'm another close neighbor. I've never heard any sound coming from it at all. The grounds are kept very beautifully. I know Sam and Mercury employ some of our other neighbors in keeping up the grounds, as well as provide a nice place for visitors to stay on occasion. I think they have been very good and courteous neighbors, and members of the Kipahulu community. So I'm very much in support of their request that they be able to continue this business.

Ms. Carroll: Any questions? Okay. Thank you. Next we have Caroline Smith.

Ms. Smith: My house is right across from Sam on the makai side of the road. And I didn't know she had this. This is the first time. But they're good neighbors and we always walk and communicate with each other. And I feel that this is a good opportunity for her to support herself and her daughter. So that's all I just want to say.

Ms. Carroll: Thank you. Are there any questions? Next we have Ma`ano Smith.

Ms. Smith: Aloha. My name is Miriam Ma`ano Tolentino Smith. And I'm Auntie Cary's niece. And I'm here to say that I do not approve of the proposal. And the reason for that is I really do feel that there will be a change in land tax – the payment in the land tax. And who knows? Further down the line, probably another neighbor would want to do a zoning change. And all actually we want to do – what my family wants to do is just live there. Because this land that we do have come to us from generations to generations. And we want to just be able to live there and be happy. And I feel for Sam. It's bringing an income for her, which is fine. And she's good with her neighbors, which is fine also. But I'm here to oppose the proposal. My own personal opinion. That's all I have to say. Aloha.

Ms. Carroll: Thank you, do we have any questions? Thank you. Next we have Angela Tavares.

Ms. Tavares: Aloha. I'm Angela Tavares. Ma`ano is my cousin. Auntie Cary. And we all have the same aina. And I love my neighbors, but I need to speak the truth for the future that will impact the future. The future is my children. Like the Planning Commissioner – I guess he's a Planning Commissioner – he's saying that it's not going to change. But what happens when you let one slide, two, three, ten down the road slide? What going happen to the future? What going happen to the zoning? That is my concern. I know we cannot see that, but going start with me. I have to do something for my kids. And this is why I'm here. I love my neighbor but I don't agree.

And I guess some other – everybody had talked about the tax zoning. And that is another concern. Like I say, down the road, ten going past, what going happen? It's a chain. And the business will be a chain from the horse, bed and breakfast, going down the row. And yes, we are from here. We not – we make money to survive. We no hire nobody clean our yard. We gotta work for other people for maintain what we have. And this is what I get for share. Any questions?

Ms. Carroll: Thank you. Any questions? Thank you. Next we have Mona Cardona.

Ms. Cardona: Okay, my name is Mona Cardona. And what I get to say when you say that the zoning will never change, that wouldn't effect anything because this is personal what she's trying for do, I don't believe in that. And I'll give you one example.

My boss lives right in the back of Azeka's. He's a residential. They built one condominium down the road from him. You know what? Their zoning changed. It's not a residential place anymore. And because he's in the middle of all these condominiums, and he wants to break down that house, and that house is over 50 years old, you know what they telling him? "You can't build another house there. You have to build a condominium because it's now it's a condominium zoning." So when you sit there and tell these people that it can never happen, it can happen. So don't try to say it can never happen. Because like this other lady just said, you going let one slide, then the next one going come in. "Oh, but that one sold their property for a million dollars and put up a condominium. So why can't I do it?" So that person's going to slide.

Then the little man in the middle, what they're trying to say is most of them raise cattle for their living. Yeah, okay, she's on social security. But everybody have their sad stories, too. People out here most of them are agricultural people. They feed their family by raising cattle. So you're trying to tell me if she makes a bed and breakfast here, another one here, another one here, and my family have cattle out there, they're not going to complain about the smell? Everybody knows around here that the smell of cattle stinks. Now you're going to have this tourist coming on a honeymoon having breakfast out here, and say, "Man, I cannot eat my breakfast out here. The smell is horrible." Now you going have all these business people. What's going to happen to my family? She talking about her livelihood. My family have their livelihood, too. Their livelihood are raising cattle to feed their family, to pay their bills. Now you going have all these business people going around the small man. And you trying to tell me that will never happen? You know what? When that did that to my boss, I don't believe in that. My boss pays

almost five thousand dollars a year now in property taxes for a home that he inherited from his dad. And you know what they told him when he went to tax office? "Well, if you don't like it, sell'em." That was their stink attitude. So if my family cannot pay that property taxes, all these people are building these things around them, they're going to turn around and tell my family the same thing? "Oh, sell that land because you cannot afford it. Then sell it." You think that's fair? I don't think that's fair. And don't tell me that it ain't going to happen because it will happen. So you cannot sit here and try to tell all these people it'll never happen, because you know that's a lot of bull, because it can happen, and I've seen it happen in Kihei.

Ms. Carroll: Thank you. Any questions? Next we have Barbara Planesi. Please state your name and then three minutes.

Ms. Planesi: I'm Barbara Planesi. And I ditto everything she says because I feel it's true. And I'm against it. And it's a special— I have a question. If it's a special permit, and let's say the Commission go over all these people's heads and give it, how long does this special permit – how long is it for? Or does she have to reapply every year or what?

Mr. Spence: I'm sorry. I was talking to the attorney.

Ms. Planesi: I heard you say – correct me if I'm wrong – that it would be a special permit?

Mr. Spence: Yes.

Ms. Planesi: Okay. A special permit in any case, is that a permit that has to be renewed? Or do they have to come before the Commission again for renewal every year or something? Or does this special permit a lifetime special permit?

Mr. Spence: Madame Chair, can I respond?

Ms. Carroll: Yes.

Mr. Spence: That is correct. A special permit does have to be renewed.

Ms. Planesi: How often?

Mr. Spence: Normally the first time a permit is granted, it's good for a year. And then the applicant has to come back to the Planning Department and say I would



like to renew my permit. These are all the things that I've done to comply with the conditions of the permit. And then we would come back out here for that renewal, listen to the people again, whatever the concerns of the Committee are, and then go back to the Planning Commission. So that's the first time. The second time is usually for two or three years, and then every five years.

Ms. Planesi: Okay. As I said, I'm not for it. I'm not for it at all for the simple reasons that they all stated.

Ms. Carroll: Thank you. Next we have Julie Sinenci.

Ms. Sinenci: Aloha. I'm Julie Sinenci. Angela's my sister-in-law. Ma`ano is my cousin. Auntie Cary and I – I live across from Sam. This has been home for 30 years back and forth from the Mainland. I've seen the changes. I've seen how Hana's changed. Bed and breakfasts, little houses for rent dominoning down the road.

My father-in-law worked that land. He sold bananas. He loved that land. And I honestly believe that as everybody said, you're going to get one, two. I know Sam's daughter. There's other means without changing what Kipahulu is all about. My husband was born and raised. That's his love: the fishing, everything down there. And for him – for my husband, Peter Sinenci, and myself, I object this motion. Thank you.

Ms. Carroll: Thank you. Do we have any questions? Next we have Tweetie Lind.

Ms. Lind: Good evening, Commissioners, all of you folks. I'm kind of nervous about this.

Ms. Carroll: Can you state your name, please?

Ms. Lind: My name is Tweetie Lind. I'm the president of the Hana District Pohaku. We have a nine-acre piece of land that's not too far from where Samadhi has her bed and breakfast. I'm also a Kipahulu Community Association president. I come with three different hats. I'm also a native Hawaiian from that area. And I was surprised to have even heard that something like this was happening. And I'm sorry, Samadhi. It's just that like some of us we don't realize that these kinds of events are going around. And then all of a sudden we find out that it's happened for three years. I'd like to know what kind of where you sort of like penalize her because she did something illegal? I'm not saying, but I'm asking that question because a lot of people are running bed and breakfast style like that in Kipahulu

under small terms whether it be two people, whether it be three people, whether it be privately. And there are other people. But this is the first one, so I give her credit for coming forward and try to make herself legal.

I did have a question. One of the questions was, because it's a bed and breakfast, does that come under a commercial usage kitchen? Does she need a special license or something to prepare the food that she is going to do in her bed and breakfast?

Mr. Minatoya: Madame Chair, what I would recommend is this is for public testimony. If they have questions, I guess staff can note them down. And when the Commission comes back to order, the staff can address those questions.

Ms. Lind: That's fine. That's another thing. What I wanted to know was I guess she does have her own well. She does have her own water source which is very lucky, because the whole Kipahulu doesn't have water. We take surface water a lot. So that was why I wanted to know because I know in order to have a commercial kitchen, you have to have clean, filtered water. And I guess being a well, that might be permissible.

What I also wanted to know what hui does she belong to? The subdivision hui that she's in? What I'm wanting to know if – because there's two subdivision hui. Just clarification, that's all. And why I'm asking that is because the main thing is whatever hui that she's coming from in the subdivision is that they all agree and they all know what she's doing. That's the main thing. I wanted to ask those guys questions over there, but I can't.

Ms. Carroll: I think you have questions for the applicant.

Ms. Lind: I can ask the applicant? Okay.

Ms. Carroll: No. This is just whether you agree or disagree. This is public testimony. This is either you agree or disagree, and voice your opinion.

Ms. Lind: Okay.

Mr. Minatoya: Madame Chair, if I may? I guess you can ask the questions to him in front of the Commission, and the Commission can ask him to answer after you're done with your testimony.

Ms. Lind: Because of those three things that I mentioned, if they can be clarified to

us. I guess we can't stop her from doing what she wants to do. But I get kind of sad, too, being that something like this does go on in our community. And I was surprised because she said there are some advertisements where she advertises the hiking tour which is in the national park, the horseback that you ride down the trail. Well, maybe you should advertise also some of the local businesses that are going on. You don't? No, I just heard that somebody said.

Ms. Butterfly: No, I don't advertise.

Ms. Lind: Oh, he said that?

Ms. Carroll: Let's keep this public testimony.

Ms. Lind: Okay. But I know he said that there were horseback, so it's kind of like advertisement, too. You know what I'm saying? To the property. You mentioned about horseback. You mentioned the trail hikes. So if Samadhi doesn't really go into that advertisement and just say, hey, they're coming here for more like a getaway or something like that, then I guess in some way it's okay. But just remember when the girl also said that there are cattle, that is true. So I hope that she's aware of that. There are cattle around the area. So if the cattle jump over her fence, then we can all work within things like that.

I'm not too sure if I'm for it, and I'm not too sure I'm against it because I have two sides to this. My one concern is that it's interesting to see how they subdivided the land, and how they do things like this. And people like us who live in this area don't even know what's happening. And I just found this out about a couple days ago so I'm not really too clear about what everything – you know, the right way to go with that. I'm for it and I'm against it. Okay? And you can understand that. A lot of you can understand where we're coming from. Because like we say, once we let one, then we let the next, and then we let the next because a lot of them are having bed and breakfast that are not legal. So where does the line draw from this? And maybe Samadhi could be the example to the community, then that would be fine. If not, I think if there are any other questions, I think they should be addressed.

Ms. Carroll: Thank you. Do we have other questions?

Mr. Omer: Claire, could we have clarification on the issues that were just raised? And I also wonder if we could have an explanation on whether a decision to approve this sets legal precedent?

Mr. Minatoya: Madame Chair, at this point, you are convened in a public hearing, and you haven't closed public testimony at this point. So I would rather you conduct your public hearing first, and then we can address those questions for the Committee Members.

Ms. Lind: I think I had one more question, too. Could I just say it? I'm sorry. I'll hurry on this one.

Ms. Carroll: Okay.

Ms. Lind: When she sells her property, if any, at any time she should sell her property, will this special permission use drop so that it does not carry on to the next, but that it will come again before the public hearing? I would like to see that be recommended. I like the every year. And then the five years— But I like the every year coming in so that you'll be making it more noticeable to the community so that at least we have something to come back and say whether we like it or not. Thank you.

Ms. Carroll: Thank you. Any questions? Okay, next we have Bill Fuhrmann.

Mr. Fuhrmann: I'm Bill Fuhrmann. I chaired the CAC which developed this document and got it passed by the Council. As mentioned in the staff report, there is one critical threshold that needs to be met and this application does not meet it. And that is to discourage transient rental accommodation uses outside of Hana Town. During our CAC deliberation, comments from people from Kipahulu was they didn't want to see Kipahulu change. They didn't want to have anything that was occurring in Hana like vacation rentals occurring in Kipahulu. We put that language in to address those as well as the other vacation rentals that were occurring around Hana. We said discourage any kind of special use permits outside of the Hana urban area except for certain domestic kind of uses that may be needed in areas like Kipahulu or Ke`anae, but not to allow for transient accommodations. As also pointed out by your staff person, there was supposed to be an inventory. And this plan was passed in 1994 so it's almost eight years old. To address this issue of transient accommodations and it's effect upon real estate, housing, and it's effect upon the neighbors.

I am a person who lives next to people that have been buying and selling, and buying and selling property on our street primarily to use those properties as vacation rentals. In doing so, my taxes go up every year because the land value of my property which is totally residential keeps increasing. So properties within residential, within rural, within agricultural if they're sold under the pretense that

you can go out and get a permit to run a vacation rental, or you can do a vacation rental without a permit, it enhances the value of that property but also effects all neighboring properties.

As the Hana Advisory Committee, I think it's your role, in fact we always look to you as the guiding force that will help to protect the integrity of this plan. So I ask you to really consider that. Vacation rentals outside of the Hana urban area should not be allowed. The plan is very specific to that. Thank you.

Mr. Omer: Bill, the recommendations here also state that the proposed one-room rental is well within the scale and scope of what could normally be expected of a residential use. Would you not agree with that?

Mr. Fuhrmann: I don't even understand what that comment is supposed to mean. I mean, if you're selling a bed for money, then you're in the transient rental business regardless of the size.

Mr. Omer: I don't know if this came from when you were working on the community plan, it says "economic activity" – this is from the Hana Community Plan – Objectives and Policies, page 18, no. 7:

Maintain the visitor industry as a major economic activity encouraging commercial activities which focus on the day visitor market and/or compliment the overnight visitor market.

Mr. Fuhrmann: That is our language. And I helped to craft that with the staff person that was assigned to us. But again, where do these kinds of activities occur? And based on the land use language, we say within the Hana Town area and not outside of it.

Mr. Omer: So that reference in your mind is specific to the Hana area that was designated?

Mr. Fuhrmann: Right. Yes.

Mr. Omer: Okay.

Ms. Carroll: Any further questions? Is there anyone that is here that did not sign up that would like to testify? I now close the public hearing.

Mr. Spence: Madame Chair, I would address a lot of the questions that came up.

And I'm sure I'll be reminded if I don't address all of them.

With regards to the taxes, this was a topic of discussion. We had a vacation rental come up in Moloka`i on the east end. If you're familiar with the east end of Moloka`i, they're very concerned with – as concerned or more concerned with the nature of their community. And this was a large issue: what is it going to do with my property taxes? We wrote a letter to the head of our Real Property Tax Division, Dennis Ichikawa, and asked this specific question: what is it going to do to the surrounding property taxes? He said, nothing. The reason it would do nothing to the surrounding property taxes is because they look at this as permission to do something on a particular property. Now she's going to pay more in property taxes. She's going to lose her homeowner's exemption if it was passed. But because there's no zoning established, because it's not enlarging the house or the houses on the property, there's nothing – there's no improvements that would effect the surrounding properties. Basically, it's a temporary permit. It's with this one particular person. It is not transferred to the next person, to the next property owner. So it's – they view it as something temporary; therefore, it's not going to effect the surrounding properties.

The thing that they did say that does effect other properties, if somebody built a big mansion next door, then that starts – as you heard the testimony about the buying and selling, and everything, those kinds of things are what effects the surrounding property values. As the sales keep going up, as people start building larger homes and improving those properties so that they are more valuable, when the assessors come out and look, they look at the surrounding sales and say, well, this property is worth so much, that means this property is worth so much. So those are the more permanent kinds of things. The sales prices, and whatever improvements they do to those properties, it has nothing to do with the granting of a temporary permit. Does that make sense? Okay.

I can't comment on zoning in Kihei or the particular case that was specified because I don't know. But Kihei is in the urban district, and within the urban district, commercial uses are allowed. Residential, apartment, hotel, industrial, light industrial, heavy industrial, those are the uses that are allowed in that particular zone, and within the urban district. So things change a lot more. And all those uses are grouped together. So zonings change. Community plans change a lot more.

Out in the Kipahulu area, it's all agriculture or it's all conservation. The zoning is not going to change. You're not going to get one spot of any other kind of zoning. That's just illegal under the law. You have to group zonings together. So when

you have residential and you have business together, or business and you have all those kinds of more intensive uses together, when you have a broad spread of agricultural or conservation, that's the kind of use that's surrounding a property, that's a kind of use that's – the kind of zoning that's going to stay in that area. I can't talk about whatever happens a hundred years in the future, but in within our lifetimes, that area is going to stay agriculture. Like I said to do so, to change the zoning in one little spot is called spot zoning, and that's illegal under the law. So it's going to remain agriculture.

Regarding the smell, only the applicant can comment on whether she notices the cattle or whatever. I grew up in an agricultural area. Smelling cattle doesn't bother me. She would have to address that.

Commercial kitchen, the applicant is not proposing to be doing any cooking for her guests. And that is one of the things that we specifically look at. We transmit the application to the Department of Health. And if they note that there is going to be any kind of cooking, they do require that they get a permit for a commercial kitchen. But this applicant is not. Most bed and breakfasts do not. The Department of Health does not mind if somebody places out pastries, fruits, coffee, tea, cold cereal, that kind of thing. But when it comes to actually cooking meals for people, then they draw the line at that. And they say, no, you have to come in and get a commercial – a permit for a commercial kitchen. But the applicant is not going to be doing that, so she has no need for a commercial kitchen.

As far as the subdivision hui, only the applicant can answer that. I will say that I checked the TMKs on the letters of support that we got. And her immediate neighbors which I can only suppose are within the same subdivision are in support. There was a couple of properties that we did not get letters from either way. But by in large, the surrounding neighbors mauka, Hana side and Kaupo side, were in support.

Advertising, I'm sorry if I left the impression that the applicant was doing any advertising of any other activities. That was not my intent. I was noting uses that are outrightly permitted in the agricultural district. Like Hueo Stables is outrightly permitted within the agricultural district. Anybody in this room with agricultural property can go ahead and open a business like that. Or commercial hiking, you can go ahead and open up a hiking business, or an arboretum, or a garden tour. Those are things that anybody with agricultural land can do. There was no intent on my part that said she was doing any advertising or promoting of other businesses.

I think I covered what if the applicant sells the property. The permit is granted to this one applicant only. If somebody was to buy a property and start a vacation rental, or buy this property assuming they can continue to do this, that's incorrect. They would have to come back before this body and before the public, and request that they be able to continue that.

Does it set a precedent? I'm sure the Deputy Corporation Counsel will comment on that. But this is also a question that came up on Moloka'i. What is this going to do? If one is approved, will it set a precedent for all? No, it does not. The discussion on Moloka'i was that this body, and the Planning Department, and any other decision-making bodies, they look at them one-by-one. Are there impacts? How does this particular one conform with the community plans? Because every situation is different. So we look at them pretty much one-by-one.

I hope that covers all the questions. Do the Members note any that I missed?

I should also point that within my staff report, there is a comment within the scope of the single family residence. Activities that take place in a single family residence vary. Family sizes vary. Some people have no kids. Some people, there's only one person living in the house, one adult. Some people have ten kids. So the comment in the staff report that it's within the scope of what would be expected in a single family residence, in this case there's the applicant, her daughter, and perhaps a couple that stay within the one rental unit. So that would be four people maximum. And that's well within the scope of what would be expected within a single family residence.

Ms. Carroll: Can you address the kitchen issue? The applicant, could you come?

Ms. Butterfly: Did you ask me about the kitchen issue? Is that what I heard? I'm sorry.

Mr. Minatoya: Madame Chair, if I may? There are two questions that staff couldn't answer because the answers need to come from you. And I guess one would be the issue of the agricultural smell from the cattle.

Ms. Butterfly: I love the cattle. They're my friends. I love the smell. I've lived there for so many years. When they're not there, I really miss them. And the people that come there love them, too. They're not always used to seeing cattle, but they feel like it's a blessed experience. They love it. And I love the cattle. I'm happy when they're there. I feel protected.



Ms. Cardona: Can anybody else ask her a question? Anybody who would rent a place from her would love the smell of the cattle? She's speaking for herself. I'm not saying about she loving the smell, but other people. Not every person she's going to rent to will love the smell of cattle and love cattle.

Ms. Carroll: One moment. This is out of order already.

Mr. Minatoya: The second question is I guess if you had any intention of utilizing a commercial kitchen.

Ms. Butterfly: I do not cook at all for my guests. And I just put coffee and tea in their premises with fruit from the land, and bottled fruit juice, and bagels, or croissants, or that type of thing. That's it. I don't cook anything for them. And they prepare it for themselves however they want.

Ms. Carroll: Does the Committee have any questions?

Mr. Romain: I think someone testified that you do employ some of the local people and they're working on the land?

Ms. Butterfly: Yes, I do.

Mr. Romain: Is that a direct result of the – since you've been doing the B&B? Has that enabled the employment of these people?

Ms. Butterfly: Yes. I employ these people so I can keep the grounds immaculate and beautifully maintained. If I did not have a B&B, I would not maintain it the same way. I would let it grow wild because I couldn't afford to keep it.

Mr. Romain: Have there been any other ways that you have found that you can give back to the community? I mean, employing is certainly one important contribution.

Ms. Butterfly: Well, I sometimes do service if I can to anybody who needs it in particular instances. I sometimes donate the room to anybody that asks for any charitable causes. Besides employing people or whatever, I give people food if I have excess food. If anybody asks me, I'm more than happy to oblige them. It makes me feel happy to share. And I feel very blessed to have what I have. And I want to share. And I don't know how else I could give back to the community. It would be my pleasure.

Mr. Romain: Thank you.

Ms. Butterfly: Thank you.

Ms. Carroll: Do we have any other questions?

Mr. Omer: Could you speak on the setting of precedence a little bit further?

Mr. Minatoya: I think before I get to that, I think there's a little mixup of terms. There's been some reference that this is a bed and breakfast. This is not a bed and breakfast under the law. A bed and breakfast is when the owner and operator resides in the same dwelling unit that's being used as the vacation rental, the rental premises. This is not. This is a vacation rental which means that the owner or operator does not live in the same dwelling unit that's being rented out. Okay, so just to make that distinction.

Regarding setting a precedent, I always advise the various commissions that I advise that you should not think in terms of setting a precedent. You should look at the impacts of that project upon the community. And if other projects come up later, you have to assess the impact of that project upon what's there in the community. So in essence, you would be considering what you had done previously, and the total impact of those two, or those previous three, or whatever, as you go down the line. Okay, so each subsequent project has to account for what's there in the community and how that project would impact what's there. So this project being the first one may not have that great an impact although you should look at – I mean, you must look at any potential impacts that come out of this project. Now as you have subsequent projects, you look at the impacts of that project upon what's already there in the community. So, no, you're not bound to have to approve somebody else because you've approved somebody before them. But you need to look at your reason why you're not approving them. So, in that instance, more than likely it'll be because they haven't addressed how they're going to take care of the impacts that they create.

Ms. Carroll: I have a question. What happens if the Board here today does not approve of this rental, this premises? What happens? Because we all know that there's vacation rentals in Hana. We have one coming forward, but if this is not approved, what happens then? I don't understand. Because she's coming to the Board and saying she's been running for three years. And it's been three years, and she's coming to the Board. I mean, what happens next? I do not see – I cannot see why we're here.

Mr. Minatoya: I think that's a compound question. First is, what happens if there is a denial or recommendation for denial? You need to recognize or remember what your job is. And in this case because it's a State Land Use Special Use Permit, that means that you're being the advisor to the Maui Planning Commission for that one permit. And you make a recommendation. If your recommendation is to deny, that recommendation goes to the Planning Commission. And they will either decide to agree with you, or to say it's approved, or to say it's approved with other modifications. Now there's also a conditional permit involved. Now because of that, she needs these two permits. If she has one, but not the other, she cannot operate.

In the situation of the conditional permit, you are the advisor to the Maui Planning Commission who is the advisor to the County Council. So you can make a recommendation to approve, or deny, or approve with certain additional conditions. The Maui Planning Commission will say okay. They can take your recommendation and say, okay, we agree that in the case of a denial that we will recommend denial. Or they could say, we recommend approval, or approval with additional conditions, more than what the Planning Department has proposed. And that goes to the County Council who then has the same job. They can either agree, or disagree, or approve with additional conditions.

The second issue I guess is the issue of these other people that are operating. My job in addition to advising the Planning Department and the various Planning Commissions is I'm also the attorney that's responsible for enforcing code violations. So I'm like the prosecutor. They get caught. They get cited by – in the case of rentals without permits, short term rentals without permits, they get cited by the Planning zoning inspectors.

The process is usually an inspector goes to a location. If something's going on that's not supposed to happen, they get two warnings. The third one, they get what's called a notice of violation. And that's the equivalent of a citation. At that point, that person has the opportunity to appeal that to the Board of Variances and Appeals. If the person doesn't appeal it within 30 days, or if the Board of Variances and Appeals agrees with the department that the person violated that section of the code, or sections of the code, then it gets referred to me. And basically, what I do is I end up saying, pay us the fine and stop operating. And if they don't, then I go to Circuit Court, and I collect the money. I get an injunction to get a court order saying that they cannot operate.

At this point, my understanding is that the Planning Department has an amnesty period where if somebody is operating, they can come in and apply for the

necessary permit or permits. And they can continue to operate in the interim while their permit is being processed. However, there is a different case where there's a complaint. And whether it's excess noise, too many cars, or whatever, and somebody turns them in, if they get caught doing that, they'll be told that either you get the permit, apply for the permit, or cease operations. And they may not get that opportunity to continue their operation while their application is being processed. So basically, that's the situation now.

In this case, you have somebody who wasn't caught and came in on their own. So I think the question of operating – the Moloka`i Planning Commission had a big confusion about, well, this person was illegal. But then on the other hand, this person did come in on their own to apply for a permit. So the question about operation is not something that you should hold against the applicant. And you could also use that as a tool because like on Moloka`i, nobody complained. And nobody even knew that that was happening. So in terms of impacts, that's something you can use to judge what kind of impacts are created.

Ms. Carroll: Any further questions? Recommendation?

Mr. Spence: Thank you, Madame Chair. Now the – I would say – okay, we have two recommendations: one, the special use permit; and one for the conditional permit. They're going to overlap a little bit. And so let me summarize first with– Now, the special use permit is according to State law. So we look at the guidelines set out in State law and set out by the State Land Use Commission. And the application to operate the vacation rental with one bedroom meets all the State guidelines. It meets the way that we have looked at permits. And therefore, under the special use permit, we're recommending approval with some special conditions. Now when we get to the conditional permit, it will be a little bit different story. So maybe I should go through the special use mostly first, and then we'll get to the conditional before we make any decisions.

So like I said for the special use permit, according to State law and State guidelines, we're recommending approval with special conditions. That parking shall be provided onsite. That's in accordance with a comment from the Department of Public Works and Waste Management. She has a lot of parking onsite on four acres.

That certain fire protection measures be provided with the letter from the Department of Fire Control that she provide them with a site plan so if there's any need to go out on the property, they know where the access roads are, and the water supply, etc. That she provide fire extinguishers in all buildings. That she

post an escape plan inside the guests' bedroom. And that she install a hardwired smoke detector inside and outside of each sleeping room.

And then no. 11, that the applicant enter into a hold harmless agreement with the County.

Now the last one is there. Corporation Counsel may have some comments on that. Normally we require that an applicant indemnify the County carrying at least a million dollars of insurance, and naming the County as an additional insured. So if somebody slips and falls, or whatever, and sues, we have the indemnification at least for a million dollars. Are there any questions on that portion?

Okay, then with regards to the conditional permit, the recommendation for the conditional permit is based on the one policy in the Hana Community Plan which says to discourage transient rental accommodation uses outside of the Hana urban area. Therefore, the department's recommendation is for denial of the permit. However, I should explain this.

Especially after going on the site visit and seeing the low key nature of the operation, I went back to the Planning Director and asked him if he would like to change his recommendation being that it was far away from the neighbors as it is, being as low key, as non impacting. You've heard testimony. They didn't even know that it's been there for three years. So therefore, you can assume that it is really that quiet. I asked the Planning Director if he would like to change his recommendation. He said no only because we've already made the recommendation and because of that one policy in the community plan. He instructed me, however, to advise you that policy determinations are within the scope of your decision-making, as it relates to compliance with the policies of the Hana Community Plan, as we have provided them with an option, and they should determine that the proposal is consistent with the community plan policies. So you can look at the other policies in the plan and determine, say, this outweighs the other. You can say this is furthest distance from the Hana urban area. It's going to appeal to another kind of clientele than what would be gathered around the urban area of Hana. There's a lot of different ways you can look at it. So it is up to you. And I should also note that the policy says to discourage. It does not say forbid. So there is room for decision-making bodies to interpret the plan for themselves. You've heard testimony this evening on both ways.

So what we did was we prepared a set of proposed conditions that if – I would say normally if this was another application, say, in Paia, Haiku, we would recommend approval. If this was in Kihei or in Moloka`i, we would recommend approval, or

even Lana`i. But based solely on that single policy in the Hana Community Plan, I believe the department has to recommend denial. If this body finds other interpretations of the community plan, then we prepared a set of conditions that coincide with the recommendation on the special use permit for your consideration. So if you choose to decide for approval, these conditions – we've prepared that recommendation for you.

I know this is a really different situation. And if you have questions of staff, or Corporation Counsel, or the Deputy Director who's here, I'm sure we'd be happy to answer those.

Ms. Carroll: Do we have any questions? I'd like to take a ten-minute recess, then. Thank you.

A recess was then taken at 6:20 p.m., and reconvened at 6:30 p.m.

Mr. Minatoya: Madame Chair, I guess I've been asked by you to explain what can happen now. On the special use permit, the Planning Commission, the Maui Planning Commission is the final authority. And they're bound by their rules, and by the red tape action that the State took that they have 120 days to approve, or deny, or the permit will be automatically approved. Now the 120 days also count them assigning you folks to hear this. Likewise with the conditional permit application, there's a 90-day requirement for the Planning Commission to report to the County Council. If they don't take action within the 90 days, it goes up to the Council without a recommendation. And that 90 days also include the assignment to you folks to hear, to conduct the public hearing, and make a recommendation.

Now you have various options. One, you could recommend approval. Two, you could recommend approval with additional conditions. Of course, depending upon the conditions, you would need the agreement of the applicant. Three, you could recommend denial. Or four, you could send it back to the Planning Commission without recommendations. And they will get a copy of the minutes so that they know what testimony took place here.

The other problem we have is that the Committee is authorized to have seven members. And under the Hawai`i Administrative Procedures Act, you need an affirmative vote of a majority of the members to which the board or the committee is entitled to pass something. So if you want approval, you need – the majority of the Members would be four. So for an official action to take place, you need four of you to recommend approval. If you don't get the four, that means it equates to being nothing. Likewise, if you want to recommend denial, all four of you need to

vote for denial. Or any three-one, or two-two would mean that it will equate to a no-action.

Mr. Omer: So that means if we are split on this, that would mean that it would go to the Planning Commission as no recommendation? Is that what you're saying? Or do you vote on that as a specific choice?

Mr. Minatoya: That may not be the result. I'm sorry. The other recommendation would be for you folks – or the other action that you folks could take would be to defer the matter for another meeting. But again, you need to keep in mind those time deadlines that have been assigned to you by the Planning Commission.

Mr. Spence: However this body decides, with all the options that Corporation Counsel has given you, the discussion, the gist of your discussion – well, the minutes go with it, but also I'll prepare a transmittal letter and explain the reasons why, summarize the reasons why. The reasons you chose to do a certain thing will be explained in that letter. So it's not just going with nothing.

Mr. Minatoya: The other thing is usually they can take both at the same time, both the special use permit and the conditional permit, but I'm getting a feeling by looking at you folks that there may be some discussion. And so, I would recommend that you take them separately so that your specific comments and discussion can be noted for each permit because this is in an advisory capacity.

Ms. Carroll: Is there a motion for the special use permit?

Mr. Omer: I so move. I move to accept the recommendation.

Ms. Carroll: Is there a second?

Mr. Romain: Second.

Ms. Carroll: Is there any discussion? No discussion. All those in favor, say aye.

It was moved by Mr. Omer, seconded by Mr. Romain, then unanimously

**VOTED: To approve the Planning Department's recommendation for approval of the Land Use Commission Special Use Permit.**

**Motion carried.**

Ms. Carroll: The motion has been carried.

Mr. Minatoya: I think in the case of the special permit, the recommendation is denial in the staff – the staff recommendation is denial. So if you have any–

Mr. Romain: The special use, we just approved. That recommendation is for approval.

Mr. Minatoya: That's right. The next one, the recommendation is denial just to make that clear.

Ms. Carroll: Is there a motion for the recommendation for the conditional permit?

Mr. Romain: Can I ask you a question? If we wanted to attach any further conditions, are we to discuss that before the vote?

Mr. Minatoya: You can either include that in your motion, or you can make a motion, and then move to make an amendment to that motion.

Mr. Romain: Okay. I would make a motion to approve the permit with the condition that the Committee makes clear that this not intended to be a precedent, and that this is a single incident only, a single case.

Ms. Carroll: Is there a second?

Mr. Omer: I second.

Ms. Carroll: I have a second. Is there any discussion?

Mr. Omer: If this is approved, would you emphasize the importance of the fact that this is not precedent setting? That we will be looking at each – that each application that would be coming before us would be considered on its own?

Mr. Spence: Yes, I would make that very clear in my transmittal to the Maui Planning Commission and also in the transmittal to the County Council.

Mr. Omer: And also I think that it is our understanding that this will not impact taxes or zoning. That was part of the deliberation.

Mr. Spence: That is correct. This is with the understanding that no impact on taxes, that this is not intended to set a precedent, and this is not intended to have



any impact or change any of the zoning in the area.

Ms. Carroll: Do we have any other discussion? Okay, I just have one comment. And that is that I support the Hana Community Plan in the vacation rentals. It's not what I think our people were looking forward to. And I commend the applicant for coming forward knowing that we have a lot of vacation rentals in Hana, and this is outside of Hana. And that's it. All those in favor, say aye.

It was moved by Mr. Omer, seconded by Mr. Romain, then

**VOTED: to approve the Conditional Permit as discussed.**

**(Assenting: D. Omer, J. Romain and A. Steele.  
Dissenting: C. Carroll.)**

**Motion failed.**

Mr. Minatoya: Madame Chair, at this point, you have a three-one vote. You could ask the Committee if they have another motion at this time that they would want to make.

Mr. Omer: If not, what occurs at this time?

Mr. Minatoya: Okay, your alternatives again, one is you have – the Planning Commission has 90 days to act upon this. One is wait for your next meeting. Two is you could move to defer to your next meeting, which has the same result except that one is you're saying that you wanted to defer it to the next meeting.

Mr. Omer: But the decision has been made by this vote, right?

Mr. Minatoya: No, because only four Members are here. The majority of the number that you're entitled to is four.

Mr. Omer: So it's not approved.

Mr. Minatoya: It's not, not approved. There is no decision at this point. Just because you didn't get the four doesn't mean it's denied. Because remember I told you, you needed an affirmative vote. So if you want denial, that means you need four to say deny. Or the other alternative you have is if you have four votes, to send it to the Planning Commission without a recommendation, and let them deal with it. So at this point, I guess the Chair can ask if there's another motion. If

not, this matter will stay on your agenda until your next meeting.

Ms. Carroll: Is there another motion?

Mr. Romain: I make a motion that we send it to the Planning Commission without a recommendation, but with all of our comments.

Ms. Carroll: Do I have a second?

Ms. Steele: I'll second.

Ms. Carroll: Is there any discussion? If not, we'll vote. All those in favor, say aye.

It was moved by Mr. Romain, seconded by Ms. Steele, then unanimously

**VOTED: To send it to the Maui Planning Commission without a recommendation, but with all the Hana Advisory Committee's comments as discussed.**

**Motion carried.**

Ms. Carroll: The motion has been carried out. Thank you very much. May we have the Director's Report, please?

**D. COMMUNICATIONS - None**

**E. DIRECTOR'S REPORT**

- 1. Future scheduling of MR. JOHN E. MIN, Planning Director transmitting Council Resolution No. 01-217 referring a proposed bill deleting reference to Cultural Overlay Districts in Ordinance No. 2583 relating to Comprehensive Rural Zoning in Hana to the Maui Planning Commission**
- 2. Scheduling of Next Meeting**

Mr. Clayton Yoshida: First of all, we have distributed a copy of the Council Resolution No. 01-217 that was addressed to the Maui Planning Commission. This contains a bill amending the rural zoning district to delete the portion of the Ordinance No. 2583 that contains a reference to cultural overlay districts. In looking at the Land Use Committee Report, Committee Report 01-250, the

Committee had received a communication from Councilmember Robert Carroll on this matter. The purpose containing a bill to delete a portion of Ordinance No. 2583 that contains a reference to cultural overlay districts. Basically, when the Ordinance No. 2583 was adopted enacting comprehensive rural zoning for qualified parcels in Maui County, parcels in the Hana Community Plan region were deleted. And until a cultural overlay district ordinance or something similar was adopted, no such ordinance has been enacted. At Tuesday's Maui Planning Commission meeting, they authorized this Committee to conduct a public hearing on this matter. We have 120 days from the time that the matter was transmitted to the Planning Department which was received on December 20<sup>th</sup>. We would like to have a public hearing here in Hana. We're looking at possibly, Thursday, February 21<sup>st</sup>. That would give us adequate time to submit the notice to the newspaper and have 30 days. We have a majority of the Hana Advisory Committee here, but we would like to proceed, if possible.

Another public hearing item that we have is also the conditional permit for the Waianu Stand in Ke`anae. I believe the Commission has in the last several years reviewed the special use and conditional permits for Sandra Hueu for the Ke`anae Landing Stand, and for Joanne Gabin for the Uncle Harry's Stand in Wailua. And this is Juanita Chong, Halfway to Hana, for the Waianu Stand. So we would like to combine those two public hearing items, deal with those two public hearing items at that one meeting.

Ms. Carroll: When is this date for or are we still deciding that?

Mr. Yoshida: I guess we're looking at – well, how does the date of February 21<sup>st</sup> sound?

Ms. Carroll: I'm open.

Mr. Yoshida: So can we deal with those two items? You want the meeting here in Hana, or do you want the meeting in Ke`anae? It's in the Hana region.

Ms. Carroll: I prefer Hana. Yeah.

Mr. Yoshida: Okay. Thank you. That's all we would have to report, Madame Chair.

There being no further business to come before the Committee, the meeting adjourned at 6:50 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Commission Support Clerk

**RECORD OF ATTENDANCE**

**Members Present:**

Claire Carroll, Chairman  
John Romain  
Daniel Omer  
Alice "Lani" Steele

**Members Absent:**

Ruth Ann Tolentino, Vice-Chairman  
B. Nalani Shamblin  
Barbara Apo

**Others:**

Clayton Yoshida, Planning Deputy Director  
Will Spence, Planning Department  
Richard Minatoya, Deputy Corporation Counsel