

MOLOKAI PLANNING COMMISSION

REGULAR MEETING

January 28, 2004

The regular meeting of the Molokai Planning Commission was called to order by Vice Chairperson Lori Buchanan on Wednesday, January 28, 2004 at 1:10 p.m. at the Mitchell Pauole Center, Kaunakakai, Molokai, Hawaii.

A. CALL TO ORDER

A quorum of the commission members was in attendance. (See record of attendance)

B. COMMUNICATIONS

1. MIA M. MERICKEL AND JAMES E. HENRY requesting a State Land Use Commission special Use Permit transfer from CASTANERA, INC. to MIA INC. for the Neighborhood Store 'N' Counter, a grocery and snack bar facility at Pukoo, Island of Molokai. (90/SUP-008) (R. Loudermilk)

Ms. Loudermilk presented the staff report.

Ms. Buchanan: Are there any questions?

Mr. Ribao: One question, if the permit is approved, transfer, good for 2011?

Ms. Loudermilk: That is correct.

Mr. Vanderbilt: Robin on the two permits, both have different start dates. What is this in terms of the special use permit and the conditional use permit and how does the commission go about effecting the dates?

Ms. Loudermilk: What has occurred in the past, as part of the condition for the special use permit, the department has recommended an end date as well as an appropriation indicating or to the time of the conditional permit being expired which ever is later. That was what was approved for this particular permit.

Mr. Vanderbilt: Where is that condition?

Ms. Loudermilk: I'd like you to look at exhibit two, page 16, condition number one. I'll read it to you, "that the land use commission special use permit shall be valid until April 30, 2011, or until the termination date established by the conditional permit whichever is later, subject to further extensions by the Molokai Planning Commission."

Mr. Vanderbilt: So if we propose a special use permit for a term of two years, en they go for a

conditional permit and we recommend to the Council two years and the Council says no, we're going to go 10 years....

Ms. Loudermilk: Council has that prerogative, because we are making a recommendation to the Council.

Mr. Vanderbilt: So that would extend our special use permit till 10 years.

Ms. Loudermilk: Yes.

Mr. Vanderbilt: Thank you.

Ms. Buchanan: Any more questions? If not I have a question. Backing up to the history of the project on item 8, 9 and 10. You lost me between 8 and 9, and 9 and 10. Because I know that these (inaudible) a one year conditional use permit, was that because the change in the county, you said something about the change...

Ms. Loudermilk: The reason for the conditional permit as I indicated, we had the county and council had adopted a new agriculture zoning district and the existing use did not meet any of the either identified permissible uses or the special uses. So they had, they were to continue the use, they were required to come in for the conditional permit and they came in for the conditional permit the same time they came in for the land use commission special use permit.

Ms. Buchanan: Because they already had a 10 year time extension for the land use permit, right?

Ms. Loudermilk: They came in at the same time. So this was the first conditional permit that had been issued for the project.

Ms. Buchanan: So if I get Degray right even if we approve a conditional use permit for one or two years and the Council over rides the land use permit, than what we decided on will just be the same for the land use permit.

Ms. Loudermilk: Correct because Council has the final decision on the time frame for the conditional permit.

Ms. Buchanan: Any more questions from the commission?

Mr. Dunbar: I'm just curious about, page four you list on the north surrounding uses agricultural

lands. On page 6 you say surrounding uses Moncado and His Mission. Moncado and His Mission owns...

Ms. Loudermilk: That was from the previous, if you'd like me to change it back to Moncado and His Mission I can do that because the use is agricultural. O.K. we can do that.

Ms. Buchanan: Any more questions? O.K. go ahead Degray.

Mr. Vanderbilt: On that condition one, if this commission desires on condition number one, page 16, special use, we could strike, "or until the termination date established by the conditional permit".

Ms. Loudermilk: Yes you can.

Mr. Vanderbilt: Thank you.

Ms. Buchanan: Anybody else have any more questions? I'll open it up to public testimony. Anyone in the public wishing to testify please come up, state your name.

Ms. Machado: Aloha everybody. Good to see a full commission. I've been hearing rumors that you folks had difficulties getting quorum on certain commission meetings so congratulations. The only one missing is the chairperson. I'm also aware that there'll be three new...

Ms. Buchanan: Please state your name.

Ms. Machado: My name is Colette Machado, three new positions to be filled. Nobuo is retiring and I don't know who the other one is...Oh, Malia and who's the other one? Feeter I think, yeah? He's going to get reappointed to carry out a full term. Anyway, congratulations to those that are leaving and to those who would be returning and hopefully two new ones. Do we know the names officially now? Not yet, o.k. Anyway Aloha. I wasn't aware, I knew that there was a transaction that had occurred with the Neighborhood Store, with the change over with the new ownership. It was a rumor that got effective in 2004. I guess in the report, Kaapahu Farms Inc. is me. I transferred the ownership of the Neighborhood Store 'N' Counter to the Castanera Inc., I forget what year it was. It seemed like a life time ago, yeah Pauline? I'm actually here to support the transfer and I live across the street, Pukoo Pond we have a home that I've been there for 17 years and we constructed a certified kitchen and our operations for our programs and projects. So next time you have a description of the property on the makai side, we do have a commercial building that was certified and reclassification of that land is rural. We took it out of urban about a decade and a half ago and put it into rural. So our intent was to maintain the rural integrity of Mana'e and the East End going

towards East. The only reservations I have is I supported the Castanera's from day one. When we looked for someone to replace Kaapahu Farms we looked at local entity's. At that time they were operating out of Wavecrest. We are very honored and privileged to have had the Castanera's maintain that place and servicing the immediate community and also those that visit that area. They're well known for their katsu and their burgers and everything else that goes on at that little store. But I have reservations and it's about the new owners. I don't know who they are, 10 years is a decade, that's a tremendous amount of time. I'm not sure, I'm worried that two years from now you might want to relocate and sell again and then we gotta put up with another person that may not be local. So that may be an issue of prejudicium as you say local flavor that if it was someone who was locally, a local business that had a track record I see 10 years as a huge commitment to allow that local person to succeed. The MIA entity Inc., is someone new. I don't want the permit to be utilized, speculative matter that could be sold to the highest and best use. I know food service is a hard business as you break even. You have personal cause and you have inventory equipment that you have to accommodate for. But like Castanera Inc. and the Neighborhood Store, their reputation in the years that they've been there has raised that credibility, the clientele and the service component. It's largely due because of the Aloha for the people from Wavecrest time and the fact that Pauline, born and raised there and her mother right up the road, that's the kind of Aloha we have from Skip and Pauline and her family. When ever you hear an outsider purchases, you need to raise some issues of cautions and that's what I'm actually trying to raise today. Again I have some reservations with the transfer. I had hoped that someone local would have been able to purchase it to continue that time honored tradition from Dora Quinones time and her parents time when they were trying to service the people on their way to Halawa with drinks and cookies and what ever else snacks they had. But I just want to throw caution in the wind that the new owners are not from our island, don't have that beloved association and perhaps with time. So, with that said, we call that the stink mouth of the day, I say Mahalo.

Ms. Buchanan: O.K. thank you. Anyone else wishing to testify? Please come up and state your name for the record.

Ms. Swenson: I'm Diane Swenson and I just wanted to say for the record that we did try, very hard to secure a local family to purchase it and we did in fact had a few families that were interested. We could not find anyone to swing it financially. It just, because I was there, I was in the neighborhood and we wanted a local family to get it, we just couldn't secure a local family that could secure financing and swing it. That was our first choice to collect but it didn't happen.

Ms. Buchanan: Anyone else wishing to testify? If no one is going to testify in the public we're going to close the public portion at this time and have staff recommendation.

Ms. Loudermilk: Would you like the current or proposed owners to make a statement?

Ms. Buchanan: If they want to. Commissioner's do you have a question for the new owners?
Commissioner Vanderbilt has a question.

Mr. Vanderbilt: I have a couple of questions for Pauline. As far as the lease is concerned, what is the remaining term of the lease?

Ms. Castanera: My name is Pauline Castanera and I'm the owner of the Neighborhood Store. Regarding Degray's question, there's 21 years left on the lease.

Mr. Vanderbilt: And the lease provides that you can transfer?

Ms. Castanera: Yes and Dora's aware of it, Moncado Mission, she represents Moncado Mission, Dora Quinones.

Mr. Vanderbilt: And how many employee's full time and part time do you have now?

Ms. Castanera: A total of 14.

Mr. Vanderbilt: How are they broken down, full time and part time?

Ms. Castanera: 11 over 20 hours.

Mr. Vanderbilt: Do you have a benefit package for your employee's?

Ms. Castanera: As far as retirement or vacation? Yes. We have to have medical, vacation, yes.

Mr. Vanderbilt: Any other benefits?

Ms. Castanera: Video rights, not for anything real big, just vacation, meals when they're working.

Mr. Vanderbilt: Thank you, thanks very much. I have a question of Mia, if I could?

Ms. Buchanan: Is it MIA Inc. or M.I.A. Inc.?

Ms. Merickel: It's M.I.A. Inc.

Mr. Vanderbilt: You're not missing in action are you?

Ms. Buchanan: Go ahead Degray.

Mr. Vanderbilt: As far as the current employee's, is it your intention to continue with the current employee's?

Ms. Merickel: Yes it is. Right now there's 5 employee's that are considered full time with health benefits and the remainder is part time.

Mr. Vanderbilt: So you'll continue with basically the same benefit package?

Ms. Merickel: Yes. The health insurance, the vacation, the meals.

Mr. Vanderbilt: As far as the products in the store, is it your intention to keep it some what the same?

Ms. Merickel: Our intention is to possibly try to even bring in more products, we've been asking a lot of the East End people that live there and asked them what they want and what they would like for us to have. I've kept in the mind the fabulous job of the store and we want to keep everything the same except we want to maybe increase the volume by bringing in a little bit more products.

Mr. Vanderbilt: Thank you.

Ms. Buchanan: I have a question Mia. Maybe it's just me being niele. Have you always been in food service?

Ms. Merickel: I had a commercial cleaning company from 1986 to 1989 I owned (inaudible) cleaning service. I sold that and went to the twin cities and started a commercial cleaning company and I had that from 1989 till November of last year when I sold it. I know (inaudible) about the cleaning business but it's a lot of hours, a lot of long days, long nights, I had 40 something employee's. My customer's came first. We have no children and I am 100% dedicated to my business. I've learned to be positive and that's what I do to my customers. As far as coming here, my husband and I came here 5 years ago and we really fell in love with the island and we fell in love with the people. I don't know if any of you know about Minnesota but people walk in post offices nobody holds the door kind of thing like that, they try to run you off the freeway, that kind of thing. This island everybody is so wonderful, so nice, we were looking for an island that we can retire on and we traveled to a lot of places in the south pacific and this was our number one choice. Once the quarantine clearance for the animals, we have three dogs and a cat that we love, we didn't want to put them in quarantine

because our animals used to run free on like 6 acres. So once that cleared all of a sudden we were looking and we realized we had an opportunity and then we found the Neighborhood Store 'N' counter on the internet, my husband said I know exactly where that place is. He described it to me perfectly and we came here in August and met with Diane. We felt it was a done deal. We don't ever intend to go back. We've got a home in Kawela and I'm not leaving. I guess I feel very bad about what she said about....

Ms. Machado: My name is Colette Machado, I'm your neighbor.

Ms. Merickel: Ms. Machado, maybe not being a local but I love the people on the island and I think you guys are all wonderful and I hope someday you guys will feel the same way about my husband Jim and I you know, as we feel towards you. We want to improve the store and do as much as we can.

Ms. Buchanan: You said you live in Kawela? Did you purchase a home or are you currently renting?

Ms. Merickel: We purchased a home.

Ms. Buchanan: Oh, where you live?

Ms. Merickel: Kawela I.

Ms. Buchanan: You live up in Kawela Plantation? Who's house did you buy?

Ms. Merickel: Rodger Allens house.

Ms. Buchanan: O.K. thank you, any more questions? Thank you very much. Degray you have a question for staff?

Mr. Vanderbilt: I have a question for Diane, a quick questions. Diane you mentioned that you tried to get some local and financially pretty tough to get them qualified. Did you work with any of the on island agencies to see if they could provide some grant monies or this or that?

Ms. Swenson: We talked to USDA and to the banks with the FDA program.

Mr. Vanderbilt: O.K.

Ms. Swenson: We had one family that went to OHA, I had one couple that actually filled out a loan

application with OHA. So Degray I don't know where else to go, we went to OHA, USDA and the FCA program.

Mr. Vanderbilt: The only reason I mentioned that, I think the community in the whole might start looking at having funds available for local families to get businesses when the opportunity comes up because they come and go so fast and based on the original sale price, I don't know what the final sale price is, we're not talking about a whole lot of money.

Ms. Swenson: We had one family that went as far as filling out the paper work with OHA.

Mr. Vanderbilt: O.K., thank you.

Ms. Buchanan: O.K. if there's no more questions we're going to have staff recommendations.

Ms. Loudermilk: The staff concludes that the change in permit holder would not create or increase the impact associated with both.

Ms. Buchanan: You know we approved that construction outside. You guy's remember? Sorry, I don't know what else to do but go outside and tell them to stop.

Ms. Loudermilk: Basically with the representations made, the store and the operations will remain the same, the only change would maybe be the increase types, variety of products. We feel that there is no new impact associated of the use for both the state land use commission and the conditional permit. Our recommendation, first I would like to do the recommendation for the land use commission special use permit. The recommendation is to recommend the transfer from Castanera Inc. to MIA Inc. and transmit the findings of facts and conclusion of law and decision and order. That concludes the recommendation. So if there's any discussion.

Ms. Buchanan: Any discussion, Commissioner Vanderbilt.

Mr. Vanderbilt: Just for my clarification, Robin, the conditional use permit, are we just asking on the special use permit?

Ms. Loudermilk: As I indicated, we are only acting on the special use permit at this point and time.

Mr. Vanderbilt: So we're only acting on the conditional permit?

Ms. Loudermilk: Correct.

Mr. Vanderbilt: O.K. Thank you.

Ms. Buchanan: Don't they both go hand in hand?

Ms. Loudermilk: It's cleaner to have them separate. The opportunity to change, it's cleaner to have them separate. I know in the past, sometimes we combine but in this case it's cleaner to have them separate so the initial recommendation is for the transfer of the permit holder from Castanera Inc. to MIA.

Ms. Buchanan: Any more questions? If not the Chair will entertain a motion.

MOTION : I MAKE A MOTION THAT WE APPROVE THE TRANSFER OF THE SPECIAL USE PERMIT AS INDICATED BY THE STAFF REPORT WITH AN AMENDMENT TO CONDITION #1, THAT THE LEASE OR UNTIL THE TERMINATION DATE ESTABLISHED BY THE CONDITIONAL PERMIT, WHICH EVER IS LATER.

MOVED: COMMISSIONER DEGRAY VANDERBILT

Mr. Vanderbilt: The only reason I put that in is that we're keeping control and if the Council than wants to give them 10 years on a conditional permit, they won't be able to operate because we have control of the special use permit. You need both the special use permit and the conditional use permit to work.

Ms. Loudermilk: They would have to come in for a time extension for the land use commission special use permit should they be amended.

Mr. Vanderbilt: And if we left that language in, they could continue on the two years special use permit until such time the conditional permit ran out in 10 years, is that correct?

Ms. Loudermilk: Yes it could.

Mr. Vanderbilt: That was my reason for my amendment to condition #1. Thank you.

Ms. Loudermilk: Does everybody understand what Degray has proposed? Yes, no?

Ms. Seales: I think robin if you can kind of make it clear to us.

Ms. Loudermilk: I would like for the commission to please go to exhibit #2. I believe Degray the

motion was for condition #1 on page 16, is that correct? That condition reads as follows. That the land use commission special use permit shall be valid until April 30, 2011, or until the termination date established by the conditional permit, which ever is later, then we go to subject to the further extension. My understanding is that this April 30, 2011 date will be changed to, for two years from this month and the phrase, or until the termination date established by the conditional permit which ever is later, be deleted. So that in two years the applicant would need to come back for a renewal of the land use commission special use permit and that is predicated on the assumption that the council will, the council does have the final authority in determining the final length of the permit. As of right now the proposed amendment to the conditional permit does not have to do with the time frame established as one of the conditions, however, it can be open up for any changes because it is up at council. So does everybody understand that? So there'll be one time frame for the state land use commission special use permit and another time frame for the conditional permit.

Ms. Buchanan: Which ever one is later, that's the date we're going to go for?

Ms. Loudermilk: The way that I understand it, at least for the land use commission, it would be just for the two years, strictly two years. Subject to further extensions by the Molokai Planning Commission.

Mr. Vanderbilt: The motion is for two years and to amend condition #1 so that the two years isn't extended to maybe 8 years should the council for some reason give them a longer conditional permit.

Ms. Loudermilk: I need to ask Cindy a question. The conditions of the special use permit are incorporated into the conditional permit. Instead of separating such as the insurance required and so forth, I would need some advice as to how that would work if the permit, the council gives them 8 years, or 10 years, what ever years and that there's an expiration, an earlier expiration date so technically the land use commission permit is expired, how would that affect the conditional permit.

Mr. Vanderbilt: Excuse me it's my understanding for an operation like this or anything, it's not permitted, would need a special use and a conditional use to operate.

Ms. Loudermilk: That is correct.

Mr. Vanderbilt: Now we, this planning commission can only control, only have control, we're the final authority on the special use permit. So say we want a two year term and they want to come in for an extension, they come in at the end of two years we can control that. But if we leave that language in, in two years or until the termination made established by the conditional permit which is approved by the Council, if they approve a longer conditional permit that extends our special use

permit for how ever long others is and we lose control.

Ms. Loudermilk: That is correct. The way that this commission has previously recommended the conditional permit to the commission is that what ever conditions that are in the special use permit also be incorporated into the conditional permit. Instead of listing them separately. That's the one issue that I need to provide clearance to unless this commission wants to totally change the proposed conditional permit that gets sent to council.

Mr. Vanderbilt: Our commission wants to know when they approve this for two years, we don't have control over the conditional permit, but we want to know that for this operation to continue after two years they have to come back. What I have proposed, what I believe allows that. But go ahead if there needs to be further explanation.

Ms. Loudermilk: Though we are discussing right now just the land use commission special use permit, the way that the commission had previously recommended the approval for the conditional permit, which is on condition #1 of ordinance 3000 is that the conditional permit is subject to the following conditions. Condition #1, that full compliance with all applicable, governmental requirements shall be rendered including the conditions of the special use permit.

Mr. Vanderbilt: Well I don't see anything wrong with that as a conditional permit. If we amend the special use permit and than the council conditional permit is required to be in compliance with that, do we need legal advice on this or what?

Ms. Buchanan: I would want corp. counsel to give us her point of view.

Mr. Vanderbilt: Excuse me Madam Chair can I ask corp. counsel if she see's anything wrong with my motion?

Ms. Loudermilk: I don't, that's a question that's out there. I think I got another issue, that will be my question, how does it go back and forth? I don't want this commission or the council or the applicant to be in legal limbo. Because what has, you're making assumptions which can be correct that this commission could recommend to the council the conditional permit also for only two years, which ever time is later. The council can make the decision whether they will accept the recommendation or not. If that is...

Mr. Vanderbilt: They can agree to accept it or they can put their own terms and conditions on the conditional permit, is that correct?

Ms. Loudermilk: Other than those recommended by this commission, that is correct.

Mr. Vanderbilt: So my point is, if they put other terms, I want the fact that this special use permit will expire in two years and not get some other term that they might re-do on the conditional permit. I don't care about the conditional permit, we have control over the special use permit and we'd like to see the new owners back here in two years without worrying about what council might do.

Ms. Young: Good morning, the proposed language is, we think legally sufficient as proposed by Commissioner Vanderbilt.

Ms. Loudermilk: Is there a second on Degray's motion?

Mr. Ribao: Just one question, if they wanted to extend the two years to five can that be done also?

Ms. Loudermilk: That would take a new motion.

Ms. Buchanan: Right now we have a motion on the floor do we have a second so we can have discussion on it?

SECOND: COMMISSIONER NOBUO SHIMIZU

Ms. Buchanan: Now we have discussion on the motion.

Mr. Vanderbilt: The reason that I recommended the two years was that when Skip and Pauline came in I believe we gave them a two year term and a one year extension but they started off with a two year term and they didn't start off with a 10 year term.

Ms. Buchanan: I believe it was a one year and a one year.

Mr. Vanderbilt: And they proved themselves and they made a wonderful business out there and we were more than happy after they had shown their true intentions to extend it for 10 years. I'm only saying that that same process should apply to the new owner and just in fairness in making sure that the new owner does what they say they're going to do. The amendment was just to make sure that the two years we have control of that, despite what the council may do on the conditional permit. Thank you.

Mr. Dunbar: I have a question. I see a brief history of the project. Am I missing some place where it was for one year and one year?

Ms. Buchanan: That is why I asked Robin to, between the items, 8, 9, and 10, that I got lost because I sat on the commission and I remember the Castanera's coming in for an extension on their one year permit and that was due to the change as Robin described. Even though they were 5 year term, stop me at anytime that I'm wrong, because of that new ruling they had to come in, that thing was null and void, the 5 years extension so they did come in for a use permit at that time. At that point we gave them for a year and then they came, they applied again and this was all from memory and I'm pretty sure it's in the minutes and we gave them the extension again.

Mr. Dunbar: I see at 2001 where it's voted to give them a 10 year time extension. It was transferred in 1995 from Kaapahu Farms to Castanera Inc. At that time they were approved a 5 year time extension so that'll take it to, so I don't see where it was a one and one year.

Ms. Buchanan: Between items 8 and 9 there's information missing.

Ms. Loudermilk: It's not reflected in any of our files. I'd have to double check on that. In terms of, prior to...

Ms. Buchanan: What date did that new law come into effect where they had to come in for the special use permit?

Ms. Loudermilk: It was December 31, 1999 so but they came in when the time extension came up for the land use commission special use permit. The change in the ag zoning occurred December 31, 1998 or 1999. At that time, previous permits were coming up we notified the applicants that because of this change in law, not only do you need a time extension but you'd also need this conditional permit. So that was done at the same time. They may have been something earlier but I'm not aware of that and I would have to check the files.

Ms. Buchanan: Because their 5 years was up in 2000 anyway.

Mr. Dunbar: So when the Castanera's purchased Neighborhood Store from Kaapahu Farms, they only needed to get them a special use permit and they rode that extension for 5 years or until 12-31-99 when they then added the conditional use permit?

Ms. Loudermilk: The land use commission permit has always been in existence. That's the permit that had been transferred initially. In 1995 Kaapahu Farms, they requested two things. One was a transfer of the permit to Castanera Inc. Secondly was a time year extension of 5 years. When I got the project it was items 9 and 10 and that's the area that Lori feels that we may be missing something in file. But as far as the land use commission special use permit is concerned the time extension

granted in 1995, was for five years.

Mr. Dunbar: Maybe Pauline can shed light on this.

Ms. Castanera: I only appeared before the planning commission twice. First was transferred from Colette to Castanera Inc. and then in 2001 was the second time, 5 and then 10 years.

Ms. Buchanan: O.K. so the in-between time of that year must have been the last time between the 2000, long period and getting her permit in 2000 because it was already finished in 2000. That was the end of her land use special permit. So it must have been an extension and Diane do you know anything about that?

Ms. Swenson: No I don't.

Ms. Buchanan: Robin I want to ask Diane a question.

Ms. Swenson: Before we started all of this we talked to Clayton in planning about if it could be transferred and what we were doing and this was way back last summer. Every time we called Clayton and I believe Ms. Castanera called Clayton, we were told it was no problem to transfer it's just a formality and don't worry about it. We were told this on more than one occasion. Part of the value because this business was predicated on the use permit running till 2011 and so if it's, I don't know, we may need to go back to the drawing board because if it's only two years the Castanera's may not have a sale because a good portion of the value was predicated for 10 years. So things kind of backed up. I have one other question. Don't you have control over what they're doing by the special conditions, what they can do there?

Ms. Loudermilk: Yes the applicant is required to meet all the conditions of the special use permit.

Mr. Vanderbilt: Robin let me ask you something. I believe Mia has good intentions here, I wonder if something happens, she sold her house or she has some friends move over here and change, I'm not saying that you're going to do that but we don't have any conditions of who you can employ or who else...

Ms. Loudermilk: Degray I understand your point, that's a decision that each commissioner needs to make for themselves in regards to these particular permits and businesses. But when somebody comes in for a permit, the criteria, for this permit the criteria is not did you purchase something here versus there. We have certain things that we have to refer to and I understand your need to feel that the commission is in control of one of the permits, I'll just leave it as that. As Diane did indicate the

sale is predicated on the 2011 date and that's something that the commission needs to consider.

Mr. Vanderbilt: O.K. Robin let me get this straight now. This commission in the future is going to have, we've been made to look the bad guy's. Some realtor made some kind of a sale on a deal based on an assumption that they got from the Planning Department. I just don't see that. I think that everybody has good intentions on this planning commission and it's, Mia has mentioned certain things on record that she plans to do. I feel confident that she'll do those things. But things are changing fast all over the county and this commission doesn't have time to enforce or anything else we just take people's word. When they come back in two years and they've done what they said you can't, I can guarantee you nobody on this commission is going to extend it probably five years or 10 years.

Ms. Loudermilk: That's a decision for the commission to make and in terms of, I cannot speak for Clayton but generally in terms of the land use commission special use permit there are provisions for transfer in the conditional permit, it was unclear whether there were provisions to transfer or amend. There are provisions, we put together the information for you, the commissioner's and that's for you folks to decide at this point and time.

Mr. Vanderbilt: On other occasions I've asked things about the financial thing of a deal and it's none of our business.

Ms. Loudermilk: Correct.

Mr. Vanderbilt: I think that it should be the planning department's business to ask the applicant are there anything in the sales that would kill the sale if the planning commission doesn't do this, this or this. Did you know about this situation before you wrote the staff report or did you just hear it today?

Ms. Loudermilk: Which situation?

Mr. Vanderbilt: Whether this deal may not go through if we don't...

Ms. Loudermilk: We always advise anybody that comes in for due diligence if there are already permits on the proper that are discretionary that there is always a chance that those permits will not be transferred.

Mr. Vanderbilt: Did they tell you that Diane? Diane said that wasn't told to her. Look if we're just trying to do our job and we get conflicting reports all the time from the planning department but I'm

getting tired of it, I don't know about the rest of the commission.

Ms. Buchanan: O.K. the Chair recognizes Commissioner Dunbar.

Mr. Dunbar: The point is not whether or not the two year. I don't support the two years, I support a longer term for any business who wants to survive especially on the island of Molokai. (Inaudible)

Ms. Buchanan: My feelings because I'm not voting as a chair but my feelings, Degray's motion is a good motion. Maybe from the business point of view, maybe it's not. But if the business owner complies with everything that's in the recommendation, I don't see any problem in the future of extending their time to 10 years or whatever it be. I remember the time extension for the Castanera's was a year and there was a lapse between 2000 and 2001 and at that time they had come in and asked for a 10 year extension which they got. They have a very good track record as stated earlier and not only that being the reason but throwing caution to the commission. I think it's there, the motion is a fair motion in the fact that we've done that for every other business on the island. We've given everybody a year or two to use their special use permit which is a fair amount of time for any business, two years, five years, what ever to prove that the use that is not permitted at that area in which they're asking for, now I remember the county came up with a group and they using that stipulation in order to come up with a special use permit. So obviously it was not designated for that area. So I feel it's fair. Because they have a use in an area that is not zoned for that and they've been operating since 1969. I don't see it ever closing down as long as it continues to run on a good bases and we all know that. That's all I have to say. Anybody else have anything to say, we're going to vote the motion.

IN FAVOR: COMMISSIONER DEGRAY VANDERBILT AND COMMISSIONER LORI BUCHANAN

OPPOSE: COMMISSIONER'S ROBERT RIBAO, KIP DUNBAR, JANICE KALANIHUIA, CHARLOTTE SEALES, NOBUO SHIMIZU AND JAMES FEETER.

MOTION DENIED

Mr. Ribao: I have a question for Diane and Mia. If we extend it for five years, would that work?

(Inaudible)

Mr. Ribao: We're trying to keep a happy meeting between the community and the business.

Ms. Buchanan: I don't think that's our business as a commission.

Mr. Ribao: I know I'm just making an opinion here. I'm going to leave it as that. I'm going to make a motion and if it's denied, it's denied.

MOTION: I MAKE A MOTION THAT THE LAND USE COMMISSION SPECIAL USE PERMIT SHALL BE VALID UNTIL JANUARY 31, 2009 SUBJECT TO FURTHER EXTENSIONS BY THE MOLOKAI PLANNING COMMISSION UPON A TIMELY REQUEST.

MOVED: COMMISSIONER ROBERT RIBAO

SECOND: COMMISSIONER DEGRAY VANDERBILT

Mr. Dunbar: I guess my major discussion is that we have a land use commission permit and it goes to January 31, 2009. I'm certain that in between today and 2009 if there are special use permit violation we're going to hear about it a lot sooner than 2009. As a commissioner I'm still hoping for 2011, you know it's approved by the board, there's a lot of special use permits in there that you're going to have to abide by and if you don't abide by them they take the special use permit away. It's something that you should remember. Whether it's 2009, 2011, 2015, if you don't abide by the special use permit you're gone. I don't care how much money you put into it.

Ms. Seales: Well first of all as a comment I want to commend Skip and Pauline for doing a maikai all these years. I live out in the East End and I guess it doesn't matter but this particular place has served the needs of Mana'e, the whole island and every where. I think throughout the world who has come to visit so I commend both of you and their daughter too who has exemplified the Aloha and I know that Mia knows that. Anyone that was in this position who comes in they know they have a tough act to keep up because like Kip said, people are going to start voicing their opinion and this is going to be really not pono. So I think you know that and we sit here today and we see the expression on faces that we never know, and we don't know all those things as far as the sales conditions. It's already in place, everyone has their agenda, Pauline and Skip has made it pa'a and all this person has to do is continue and add their things to it. Pauline and Skip have done it, they've created a foundation. If this was still in lala land then I would probably be concerned. Maybe I would agree for a sooner to come in but Kip makes a good point because 2009 and 2011, maybe you guys don't keep the guidelines. So I, that's my mana'o and it's already in gear and it's a disappointment if everything gets pushed out of shape. Hopefully it becomes a learning and teaching moment for everybody involved about giving good information because we give this and things are spinning, the cars are going the four tires are on and we don't want to create a flat tire at this point for everyone involved. So thank you Pauline and Skip for all those years and I know I'll see you in

the community and I'm sure you'll be maka'ala and making sure that it was right. I have to say what Colette had said, it's a good point as well, we need to maka'ala but someone has come afar to travel across, even though we see a lot of this on Molokai we get nervous, I know even me too. But for you Mia to understand and I'm sure you do and I'm sure everyone has told you and I see a portion in the store of used items for sale. I like to see those kinds of things, new things that you're incorporating. So, hopefully you'll all work together as a family and those employee's have stayed many years, that tells you something about the business and for you folks to keep them on is maikai so I say that and I wish that this is all going to be pono, Mahalo.

Mr. Vanderbilt: I support the motion for five years and I'd just like to say that there are no conditions whether it was two or five years. These are standard conditions that any permit, we didn't put a condition that you had to have so many employee's or you had to keep a certain inventory. Those are just things that you said that you were going to do. There are no conditions like this, these are just standard for everybody coming in and if you look and maybe I'm off base but most people coming into a situation with a conditional permit on the island of Maui, or I think even Molokai, two years is generally what is given in a lot of situations. So anyway I will be supporting the project, thank you.

Ms. Buchanan: Anyone have anything else to say?

Mr. Shimizu: I'm in support of the motion. I feel that the government should help a person in business as much as they can because here on Molokai to start a business you would have been penalized for many, many things. We don't have the luxury of Honolulu. We don't have the luxury of Maui. So the only thing that we can really bank on is the help from the government. Thank you.

Ms. Buchanan: O.K. if anyone doesn't have anything to say I'll call for the vote at this time.

MOTION UNANIMOUSLY APPROVED.

2. MS. PAULINE CASTANERA, President of CASTANERA, INC dba THE NEIGHBORHOOD STORE 'N' COUNTER requesting a transfer of the Conditional Permit for The Neighborhood Store from Castanera, Inc. dba The Neighborhood Store 'N' Counter to MIA, Inc. dba The Neighborhood Store 'N' Counter at TMK: 5-7-005: por. of 004. Pukoo Island of Molokai. (CP 2000/0018) (R. Loudermilk)

Ms. Buchanan: O.K. on to the next item.

Ms. Loudermilk: The second item has to do with the conditional permit. As indicated earlier the

department is recommending that there be an amendment to allow the replacement of Castanera Inc. with MIA Inc. I'd like to go to exhibit #3 which is the ordinance that we are currently proposing to amend. As stated in the department report, we would recommend that this commission recommend to the council the deletion of condition #3, that is that the conditional permit shall be non-transferrable. We would request and should that be approved, we would request a second motion to accept the department's report to replace Castanera Inc. with MIA Inc. in the ordinance. Does everybody understand? Do I need to go through that again?

Mr. Vanderbilt: I would like an explanation of why you would want to delete #3 condition.

Ms. Loudermilk: Because basically title 19, the zoning code for conditional permits does allow for amendments to terms, conditions and so forth. What we are doing is amending the terms to allow a new entity to have this permit.

Mr. Vanderbilt: Why can't we keep it non-transferrable so...

Ms. Loudermilk: Any change to the conditional permit will have to come before this commission prior to any other action. We feel that it's covered under the sections that I had identified for you, 19.040B that any changes, any amendments to terms, conditions and so forth can occur but any of those proposed actions would have to come to this commission before any recommendation goes to council.

Mr. Vanderbilt: Any changes that come to this commission, but our power is recommendation to the council. If we don't like it, we can recommend that we don't like it to the council and the can override.

Ms. Loudermilk: That is correct. So I would start off first with a recommendation for a motion to recommend to the council the deletion of condition #3 to the ordinance.

Mr. Vanderbilt: Robin is this condition not in other conditional use permits in the county of Maui?

Ms. Loudermilk: I don't know if it is but we would consider a standard condition. I do not know.

Mr. Vanderbilt: Whoever our planning commission was the time it was done, I would think if you go back on the record, but this would have been something that our planning commission would have recommended, wouldn't it? Must have been a standard condition. I swear I've seen this in other conditional permits. I don't understand what's wrong with it.

Ms. Loudermilk: I'd like to defer to corporation counsel.

Ms. Young: Thank you Madam Chair. The reason that I believe that the department is requesting the deletion of that language is because in order for the transfer to, the requested transfer to occur there would first need to be that deletion of that language. Because by its term the current permit does not allow for transfers. So it would need to be a new permit with a new application and you would have to go with the application date.

Mr. Vanderbilt: O.K. so this is a condition that was put in specifically to try to figure out how to transfer this without going into an old conditional use permit?

Ms. Young: There's no transfer under the current language. If you amended the language this commission could then act upon the issue of whether or not to transfer without first amending the language.

Mr. Vanderbilt: But does our state land use commission permit have a non-transferrable clause in it?

Ms. Loudermilk: That does. I take that back. It has the condition that any proposed transferring permit must come before this commission first. It can be transferred but it must come before this commission first as it has done for today.

Mr. Vanderbilt: O.K., thank you.

Ms. Buchanan: On that recommendation, everybody follow? If not Robin can explain it again.

MOTION: I MAKE A MOTION ON EXHIBIT THREE, BILL NO. 82 THAT WE DELETE NUMBER THREE, THAT THE CONDITIONAL PERMIT SHALL BE NON-TRANSFERRABLE.

MOVED: COMMISSIONER ROBERT RIBAO

SECOND: COMMISSIONER KIP DUNBAR

Ms. Loudermilk: That's only for this particular case.

Ms. Buchanan: Let's take a vote.

MOTION UNANIMOUSLY APPROVED.

Ms. Loudermilk: The second motion would be to amend the ordinance to replace Castanera Inc. with MIA Inc., similar to the state land use commission permit, we are not proposing any additional changes to the conditions.

Mr. Vanderbilt: Madam Chair, for discussion purposes...

MOTION: I MOVE THAT WE APPROVE THE MOTION AS DESCRIBED BY STAFF TO CHANGE THE NAME AND ALTHOUGH IN CONDITION #1, INCLUDING THE CONDITIONS OF THE SPECIAL USE PERMIT, 90/SUP008 AS AMENDED BY THE MOLOKAI PLANNING COMMISSION ON JANUARY 28, 2004.

MOVED: COMMISSIONER DEGRAY VANDERBILT

SECOND: COMMISSIONER NOBUO SHIMIZU

Ms. Buchanan: Any discussion? If not let's vote.

MOTION UNANIMOUSLY APPROVED.

Ms. Loudermilk: Thank you, that concludes this application.

After a short recess the meeting was reconvened at 2:40 p.m.

C. UNFINISHED BUSINESS

1. Workshop on amending the Special Management Area Rules of the Molokai Planning Commission to include ohana dwellings in the definition of "a single family dwelling". (R. Loudermilk) (Continuation of discussion from January 14, 2004 meeting)

Ms. Loudermilk: Other definition, the single family, what is a single family dwelling as defined at Title 19 of the Maui County Code. Just for your reference Title 19 is the zoning code that we operate under and further if we look under the Title 19, it's just basically one dwelling unit. The proposal that was put forth before the Maui Planning Commission was to change or modify that definition so that single family residence means a single family dwelling and any accessory dwelling there to as defined in and provided by Title 19. As Title 19 defines a single family dwelling as basically a dwelling for one residence or one person or one family, generally, without having it in front of you. While the accessory dwelling is what we have come to known as a cottage or ohana. So that in terms

of the special management area, what we have identified at one time, what is a development, pretty much practically anything. We also have defined as not a development. So that's where this comes in. Under the state law a single family residence can be exempted from having to acquire a special management area permit. That does not mean they do not get assessed. We still would require that the information of the proposed project be submitted to our department. We will check in terms of natural resources and impacts to the coastline. Prior to making a determination that yes there will be minimal or no impacts that meets the criteria as the department has been authorized to sign off of that.

Ms. Buchanan: So the state's definition supercede's the county's definition?

Ms. Loudermilk: Not necessarily. In this particular case if the state has set forth, it just says single family resident. What that, it does not preclude the various counties from further defining what that single family residence mean.

Ms. Buchanan: So what would the ohana dwelling constitute as a single family dwelling?

Ms. Loudermilk: In relation to the zoning code or...

Ms. Buchanan: Well at the last meeting when you passed that thing you said that ohana dwelling could be used as a long term rental under the Title 19 code. You telling me it's a single family unit so I'm confused as to the definition.

Ms. Loudermilk: That's a good point because the definitions in Title 19 really suck. There is a definition in the zoning code for what is a single family residence and the liability of the accessory dwelling is actually a different part of the code, of Title 19.

Ms. Buchanan: So it's not a single family dwelling it's an accessory dwelling.

Ms. Loudermilk: Technically by definition yes. However the use is supposed to be the same as the single family.

Ms. Buchanan: But it isn't stated as such.

Ms. Loudermilk: I would have to double check on that. But that's why we're having, that's the kind of questions...

Ms. Buchanan: Does it have its own definition, accessory dwelling is what ever?

Ms. Young: Thank you Vice-Chair. The definition as provided in Section 19.04.040 of the Maui County Code....

Ms. Loudermilk: which is the comprehensive zoning portion which is the B-2, which we have interim zoning right which is one section and than what comes before us has to do with the comprehensive zoning the B-2, the Ag and so forth.

Ms. Young: That section defines accessory dwelling as an attached or detached dwelling unit which is incidental or subordinate to the main or principal dwelling on a lot. That particular section does not define single family residence.

Ms. Buchanan: That's unbelievable, I cannot believe that. Incidental huh? So we granted an incidental permit on a supposedly accessory/ohana dwelling at the last meeting. See, that's the problem I had at the last meeting because the definition, permitted uses...

Ms. Loudermilk: That is, that is, I agree.

Ms. Buchanan: So what we supposed to do?

Ms. Loudermilk: Well we don't necessarily have to do anything. But we wanted to throw this out to you to see if you would want us to explore further, if this is something that, if these situations come up again, if that's something that you would allow us to do at the department verses having the gentleman come in for the minor. That's the big picture. Should a person come in and want to build their single, their main dwelling and their ohana/cottage at the same time the proposed revision to the definitions in the special management area rules for the Molokai Planning Commission would allow the planning department, after its assessment on both structures, to make a determination that there's no impact to the coastline as a criteria, that we would be allowed to exempt both structures.

Ms. Buchanan: So the blanket permit would go to the single family dwelling as accessory or ohana dwelling.

Ms. Loudermilk: Should it come in at the same time. Yes. Unless we feel that there are some outstanding concerns or issues that need to be addressed, that is correct.

Mr. Ribao: Question, has this been approved on Maui?

Ms. Loudermilk: The Maui Planning Commission has approved this, it has been approved. But we

know that each island is different. So we just wanted to throw it out to you folks and than should you want to go forward with this it may be a good opportunity to do a lot of the housekeeping measures within the rules such as public works and waste management is now public works and environmental management, those types of things. Again it did initiate on the Maui island, we review close to a 1,000 + permits some of, the majority of those being a variety of maybe a single family coming in alone, ohana or a combination of both.

Mr. Ribao: Question. I can see on Maui but my next question, how much applicants of that nature do we have on Molokai, during the year, the average?

Ms. Loudermilk: I don't have that number. I don't have that number. That may sway.

Ms. Buchanan: At best guess Commissioner Ribao, less than five I would say.

Ms. Loudermilk: Commissioner Buchanan could be correct but we can get that number for you. We can try and get the past two to three years.

Mr. Vanderbilt: Did you notice, if you read the minutes of the Maui Planning Commission they didn't ask any questions or really have any discussion on it. I talked to some people on Maui and they mentioned that this was really drafted to help out the planning department also which is short staff and they had a tremendous amount of access work load on this ohana. The other thing I wanted to mention is that I talked to Timmy Leong and we were talking about affordable housing and he mentioned that he and several of his neighbors who are along the ocean is getting solicitation letters from Realtors on Maui saying that if you ever want to sell your ocean front property they've got buyer's. Last meeting we had Mr. Pepper come in for a permit on their ohana dwelling and we gave it to him but we were able to put on conditions if they were going to use it for a vacation rental or anything else that they had to come in to this body. I think if we go with this we're going to lose that discretion and Robin, when somebody goes in for a building permit for an ohana dwelling does the building permit people ask them if it's going to be for a vacation rental?

Ms. Loudermilk: I'll defer that to Ralph Nagamine who's with DSA and he can answer that.

Mr. Nagamine: No. Only they would list a residential use.

Mr. Vanderbilt: so if we went with this it would take us out of the loop for approving any condition to ohana unit because we have a lot of off island buyers that are coming in.

Ms. Loudermilk: It could preclude that should the commission...

Mr. Vanderbilt: It could or it would?

Ms. Loudermilk: It could.

Mr. Vanderbilt: Assuming that it was a minor permit, anyway I just am not in favor of this whole thing.

Ms. Loudermilk: In regard to your comments and the discussions regarding the Pepper's, as far as the planning department was concerned, the original condition that we had proposed covered that. If you're going to change it for any use. This planning commission wanted that statement further clarified. So that's what we did, we added basically the change from the existing single family use to another use would require special management assessment. So we did that. Because that's what the commission requested.

Mr. Vanderbilt: For vacation rentals they go in to the building department and they say we're going to build an ohana unit and they put single family on there. Than they turn it into a vacation rental. You guys don't have the staff to enforce over in Maui or on Molokai. So anyway it would seem that where we are now with the zero lot line, zoning ordinance, the law says except on Molokai this applies. It seems kind of early in the game to get involved with just allowing the planning department.

Ms. Loudermilk: Yes it did originate on Maui and part of it had to do with the work load but also a majority of the properties, the development it was directed to go to, it would be a benign location. Well that covered most of it. But there will always be other locations where you have other factors involved that we would not necessarily issue the exemption. We wanted to have this commission and eventually the Lanai commission the opportunity.

Ms. Buchanan: You know on Molokai all the properties would be denied in your property assessment except for the main town. The problems I had with the Pepper's the last time without trying to come out as being prejudice, I always thought that there had to be a reason for it. For the conditional use, the accessory use permit to build the second house and we all tried to avoid the same problem with the vacation rentals and you cannot and they're going to say it's going to be for single family and turn it into something else anyway and get away with it. But I'm inclined to go along with Maui's doing. Because I get frustrated that, you already gave the permit on Maui saying that accessory is legal as in why are you still coming to us to get the permit? That's like a slap in the face.

Ms. Loudermilk: One, the special management area permit is a use permit so we reviewed the uses.

The accessory use is part of the land use, the underlined zoning. If you are zoned a certain type of property and you meet a certain square footage, according to the zoning code you're allowed to do it. So than from the land use side, the special use permit, the intent is to review the impacts basically to the coastline. So yes it does make it hard.

Ms. Buchanan: Couldn't that impact be without coming off as being prejudice which people wanted to do, they said that's why I went to the same definition as to is it going to be long term rental? It's an allowable use. It's the uses of that.

Ms. Loudermilk: Well had some purposes for example the Pepper property, fresh, correct from the land use it was allowed. If it wasn't in the special management area it wouldn't have come before you in the first place. So that's how it is.

Ms. Buchanan: If we didn't approve it than you would have come off as plain, strictly being prejudice, strictly being that in the future it would become a transient rental which is a non permitted use but does not state it, it's not stated.

Mr. Vanderbilt; Taking the Pepper's for instance, if this was in place, with the change that you're recommending they would not have come and get a special use permit?

Ms. Loudermilk: They only came in for a special management area use permit. The use was allowed, the use was already allowed including the zoning.

Mr. Vanderbilt: But if this was in place all they would have to do is get a building permit.

Ms. Loudermilk: No we would have assessed the project and we made the determination that based upon the definitions in Title 19 as well as the code that we could exempt the main house.

Mr. Vanderbilt: If this language was changed and the Pepper's came in with that ohana dwelling you could exempt them from having to get a special management area minor permit.

Ms. Loudermilk: Correct based upon the representations made to us saying that it's an ohana, again it gets back to the use issue.

Mr. Vanderbilt: So it's an ohana.

Ms. Loudermilk: Yes.

Mr. Vanderbilt: Now these things like they are if somebody buys a shoreline property and than they come in for the main house which can be exempt and than they want to do an ohana, if we don't change things they have to come to this commission in all possibility for a special management, let's say a minor permit and this commission could say as a condition to granting that that there be no vacation rental, is that right?

Ms. Loudermilk: We indicated that you could not use that phrase, you shall not have a vacation rental. But the condition that initially the department proposed and which was further clarified was that any change in the proposed use would require another special management area assessment.

Mr. Vanderbilt: The way things are written now, a vacation rental would be a change in the proposed use.

Ms. Loudermilk: Correct.

Mr. Vanderbilt: Thank you. So we have some discretion if we leave things alone, if we don't it's ... they're allowed to do whatever they want.

Ms. Loudermilk: Yes.

Mr. Dunbar: No matter if it's a rich Hawaiian that comes in here and buys the shoreline and putting on a vacation rental?

Ms. Loudermilk: You would have to go through the same process.

Ms. Akutagawa: Do you want the discretion?

Ms. Loudermilk: So that's where we're at. A lot of times we're getting the different definitions so if the commission wants further clarification we could identify all these different definitions and come back to this again. Again as I indicated we wanted to give you guys a shot, we think additional information on the question that Commissioner Ribao asked. This commission would than have the information to make the decision on where you want to go from here.

Mr. Vanderbilt: I'd like to just share with this commission the impact that these Maui Realtors are pushing on Molokai right now, just one quick example. At Wavecrest where I live some realtors bought two units at Wavecrest and put \$63,000 into each and Ray Miller has them listed as \$325,000 each right now for a shore front. In Wailua on the internet a judge, right next to the pavilion, two houses to the east, bought a lot for \$150,000 and it's on the market, on the web for \$625,000. So

you're going to try and maximize the use and the income from these investment properties and I think at this point that it would be unwise for the commission to give up some of its authority to try and keep the community planning process intact.

Ms. Loudermilk: It is also in the commission's purview or the commissioner's as individuals to write to the Real Estate Commission informing them of these things and see if they're in violation if anything.

Mr. Vanderbilt: I'm not saying they're in violation, that's the way things are. All I'm saying is right now in Maui it's just a free for all and people are saying do whatever you want and don't worry about it because there's no enforcement in the County of Maui. That's not a true statement.

Ms. Loudermilk: Any other comments or discussion on this issue? So should we come back at a future date with the information, anything else you would like to have?

Ms. Buchanan: Yeah, something needs to be done. The last time I felt it was like a slap in the face. It's like it's a permitted, it's legal, they can have it, it's permitted. So why are you even asking me for it. I came up and I said are you guys married, you know, how much kids do you have? They had no kids, I don't see no use for it. Why am I going to give a permit if I cannot justify the use of the accessory dwelling besides economics. But everybody does that. That's what I mean, it's like what you going do?

Mr. Vanderbilt: Robin for the next meeting would it be possible, if the commission agrees to, get a list of the applications and or how many of these permits have been processed and where they are?

Ms. Loudermilk: For Molokai?

Mr. Vanderbilt: Well I think one of the commissioner's asked how many do we have.

Ms. Loudermilk: For my understanding for Molokai, we'll do the best we can, we'll do the best that we can.

D. CHAIRPERSON'S REPORT

Ms. Buchanan: So real fast under Chairperson's report since Malia is not here I have a letter generated, you have all a copy in front of you. I did try to give Wayne some heads up yesterday and faxed it to him. It was a letter to Councilman Mateo basically pointing out problems in the permitting process and this was generated by Kathleen Tachibana who is the administrative outreach coordinator for the Nature Conservancy and her concern was all the hoops and circles and bounds

and all the red tape that she had to go through for the permitting process and it's up again for this year because these have been the Makahiki, Aloha Week, it's a annual event so I just wanted to share that with Wayne, this concern.

Mr. Boteilho: Madam Chair we will be contacting the applicant. First of all she does not need an SMA minor permit. She needs an SMA assessment. In all likelihood, no guarantee's, in all likelihood she would be exempted. We can exempt up to 14 days. So that's what we intend to do. That 12 page document, what we tell applicants is that fill it out the best you can. I think it can be intimidating, they ask things like what ecological impacts or what's your traffic impacts and what we say is well if there's none then put down none, especially for the smaller projects. We're working on a simpler application form, basically a check list kind of thing so it would be less intimidating. Regarding the day and night building permit my understanding is yeah, that is true. If you leave the tent up over night you need a building permit. So that would be under Mr. Nagamine not under me.

Ms. Buchanan: That's another permit they need besides the plumbing permit and a fire permit, so there's a whole series of stuff that you gotta do for an 8 hour event.

Mr. Boteilho: Yes but from the planning perspective we don't think it's that hard. If she submits the SMA assessment application we'll expedite it.

Ms. Buchanan: Where does she get that SMA assessment application from?

Mr. Boteilho: From the planning department, Nina has it here.

Ms. Buchanan: How long would that take?

Mr. Boteilho: Two weeks if not earlier.

Ms. Buchanan: So all the rest of the stuff they gotta get, the fire, the department of health, the building permit, all that cannot be expedited through our office, through a simple process right?

Mr. Boteilho: Not at the current time.

Ms. Buchanan: Does planning have to do with any of that because it seems kind of silly. We all support these community events every year and I don't think none of us want them going through this.

Mr. Boteilho: Let me speak for the planning department and basically in general, and for the Mayor,

the Mayor is in favor of getting rid of this kind of erroneous procedures especially for small projects. The planning department itself, this year, this is the year that we look at the process. Last year our goal, our priority was to get more people. That's part of the problem too, we just have so much back log it's hard to change the system if you're always busy with other things. So, this year that's part of our plan. Last year we get more people and this year we look at the process. So we'll be looking at that. Hopefully what planning comes up with that will be a model for the rest of the county.

Ms. Buchanan: Anybody have more questions?

Mr. Vanderbilt: Wayne as far as this letter from Kathleen Tachibana, this is an example where they cannot leave it up over night. Would it be possible in order to try and simplify the process to do a summary of what they have to get and who they have to get it from, the estimated time frame? Say let's get this down to a one day turn around or something. I don't know how long all these permits take but it's a community event or if it's an ADA ramp that has to be put on a building for handicapped, those are the things that you gotta have a process for.

Mr. Boteilho: We would agree but that goes on to what Lori was saying. We would agree that that would be the best scenario. However, at this point and time that's not the process so we're going to have to work with other departments and do the best we can. It takes time, it's like when you're dealing with other departments, multiple departments it gets complicated. But the thing is we have the right policy. We believe in it, the main thing is to get started.

Ms. Buchanan: Just one clarification about that needing a building permit for night, it's only if you leave the easy up over night and it's 9, 10 at night and than you take it down. That's their understanding that they needed a building permit after dark.

Mr. Boteilho: 6am to 6pm.

Ms. Buchanan: So if their function is over at 10pm and they take it down they still need a building permit?

Mr. Nagamine: The exemption is only from 6am to 6pm.

Ms. Buchanan: That's stupid yeah, stupid yeah?

Mr. Dunbar: (Inaudible) If it's a first time permit than you have to do your homework. But if it's an event that's annual, you can look at speeding up the process.

Mr. Boteilho: That is something that we're looking at. Possibly like a five year permit or a global permit, like every year as long as you don't change the size and scope. Another way would be that they would just submit their plans from last year and as long as they say they're not changing anything we could just sign off at the same thing. We have to do due diligence.

Mr. Dunbar: I know what you're saying. If 90 to 95% is annualized is the same, you might have a short list to say well please tell us you're different than what occurred the year before. If it's a brand new application than you have to do a little bit more.

Mr. Boteilho: We'd be in favor of that.

Ms. Young: Just on the issue of building permit Councilman Mateo has drafted a bill that would exempt certain temporary tents from requiring a building permit and that's going to be reviewed by our office. Just so that the commission knows that is being proposed.

Mr. Vanderbilt: Wayne those were good points brought up by Commissioner Dunbar but I thought we had that process in place? I thought for like Radioshack or Gaspro or any of those came in there was something a few years ago set up to allow them to come in? Ralph do you remember any of that? Wasn't there something?

Ms. Buchanan: Aren't they done by 6? Don't you notice that they close by 6?

Mr. Vanderbilt: Ralph do you remember anything like that where?

Mr. Nagamine: I believed you passed a rule amendment that said that for annual events it would come before the Molokai Planning Commission, the initial time but there after it could be approved administratively.

Mr. Vanderbilt: But the administratively didn't really get any easier.

Mr. Nagamine: I think it was made easier in that yes it would come before this body but it would be handled by the administration.

Mr. Vanderbilt: That was already passed by this commission?

Mr. Nagamine: Yes.

Mr. Vanderbilt: But when they go through to you they still have to go through the hoops?

Mr. Nagamine: They still need to apply for a building permit but as previously mentioned they could submit last years plans.

Mr. Dunbar: Ralph they same thing happened with the Ka Hula Piko after we did it for a couple of years we just submitted the plans.

Mr. Nagamine: The deal with the building permit is that it's not just my office to recuse it but it gets circulated to the Fire Department, the Health Department and the Planning Department and their rules may vary from year to year as to what is safe. It gives them the opportunity to enforce their laws at the time the application is made. In terms of the speed of the application, although they submit to us, basically the timing that the approval is based on, the slowest agency to review the application.

Ms. Buchanan: So if they apply they gotta be months in advance of their program maybe even to apply.

Mr. Boteilho: Well preferably, but in this case we'll expedite.

Ms. Buchanan: Any more questions if not we can move on.

E. DIRECTOR'S REPORT

1. Public Hearing on Council Transfer of Development Rights Bill - February 25, 2004
2. Updates on:
 - a. Patnoe letter
 - b. Dave Curtis letter
 - c. Halawa Valley
3. Announcements

Mr. Boteilho: O.K. Madam Chair thank you very much. First of all I want to say don't feel bad about calling Robin Kivette because Mike Foley always calls me Brian. I must look like Brian Miskae. First of all I'd like to announce that the public hearing on the council's proposed bill for the transfer of development rights have been scheduled for February 25, 2004. There will be a workshop on that day, I'll get some information to you.

Secondly, updates, the Patnoe letter, that was the gentleman that wanted to restore the fish ponds and he wanted to clean out some of the tree's in the area. That has bee referred to our Zoning Administration and Enforcement division. We're going to help him, we're going to provide

assistance on where he should go. I was talking to the Division Head there he said that a month to month revocable permit, that sounds like something that DLNR does. We've called him several times, he lives on the mainland, we called him several times and he hasn't called back yet so he might be out of town or something. There's like 20 something permits he has to get.

Mr. Dunbar: (inaudible)

Mr. Boteilho: What we're trying to do is send him to the first agency that he has to go to.

Ms. Buchanan: I was just concerned about him when he wanted to clear out mangrove, I'd like to know how he's going to do it. Sorry Wayne.

Mr. Boteilho: O.K. update on Dave Curtis letter. This one, you know I called Mr. Curtis and I spoke to him and I guess to start off is that he's fighting it on principle. I can understand that. I told him like there were two issues, he didn't want to pay the fee and he didn't want to put in the SMA application. SMA assessment application. I talked about the application and I said yeah we're going to be looking at that but right now I'm just not prepared to say that you cannot put in the application. There are precedence. We have been asking everybody else including other non-profits and churches to fill out the application. Also, I said you know just fill it out the best you can and if there's no impacts or traffic then just put down none. He said no...he guess he can do that. Than I had to tell him that he has to pay the \$50 fee. That he was adamant. He just didn't want to pay the fee he didn't feel that it was warranted, this is such a manini project, but I told him that I absolutely cannot do anything. That is by ordinance, I am sworn to uphold the law, I cannot do anything you have to pay the fee. So, he said well he's going to talk to his attorney and I said o.k. why don't you and I talk more about this and we'll see what happens from there. I would like to see him just go through the process, get his ramp and than he can help us later on change the system. In fact, if there's no objections can we have Councilman Mateo speak on this because we've been talking story about this.

Ms. Buchanan: No objections?

Mr. Dunbar: No objections I'm just curious of whether Dave Curtis waived his fee for the architectural draft.

Mr. Mateo: Good afternoon and thank you. Just to add the confusion that Mr. Curtis was going through, one, personally I think the process is absolutely ridiculous. Two I think that's an exact quote from the Director of Planning who also said it's a ridiculous process. And three, I think the objective that Mr. Curtis needs to do is to comply with the American Disability Act. You know what

that's a mandate and we are providing an obstacle for this particular individual in a mean that's actually required. In our discussion with Wayne prior I will be working on amending the existing ordinance to include specific language that will exempt required needs such as meeting ADA requirements, to be specific enough that this particular item that Mr. Curtis is dealing with will be exempted. At this particular time we have been in communication with Mr. Curtis as well, he gotta do the process, you gotta do through it even though it's one of the most dumbest things I've ever seen. When you look at the criteria for exemption and he meets the criteria for exemption, but he still gotta go through the hoops. This is not something that he wants to do to make the buildings value more valuable, it's a requirement, to take care of the handicapped needs. The process is too cumbersome and it can be stream lined and hopefully my attempts to amend the existing ordinance we will come up or resolve issues like Mr. Curtis'. Thank you.

Mr. Dunbar: One comment Danny. I know you want to make it exempt. I have a feeling after sitting on the Board of Variance and Appeals for a while every time we exempt something we have to have the insurance of the guy in the event the county got sued, protecting the county. So maybe instead of exempt maybe look for some disability, you know you build it but if the thing falls down that's not our kuleana. Had it not been exempted it might have been built properly so it's your liability, that's just a comment.

Mr. Mateo: Well between Corp Counsel and planning we'll be able to come up with appropriate language.

Mr. Vanderbilt: So Danny if there was an exemption, Ralph they would still have to get a building permit for the ramp right? Is that the time when the county will see if it's safe or?

Mr. Nagamine: Yes.

Mr. Vanderbilt: Wayne I just had one question, you mentioned earlier that when somebody gets one of these 10 or 12 page assessment forms it's just the county's attitude to fill it out the best you can and I think that if you look, Mr. Curtis was sent the form after he wrote some letters and it said please complete application form and return the two sets and filing fee, that's all it said from Clayton, it didn't say do the best you can or if you have some questions give me a call. So maybe when you're dealing with small projects like this in rural areas they can be a little more helpful than just hitting them with this form.

Mr. Boteilho: You know that's a function, we came into office and staff was really over loaded. Sometimes they missed things or they missed a personal service. Like I said last year was to get more staff so we can provide better service to the public and the commission's and long range

planning in general. We were fortunate this year that council gave us 5 positions last April. Just yesterday the budget committee agreed to provide three more staff so we got 8 staff in one year and I really think that's the jump start that this planning department needs. In my estimation, when we came into office we had 38 people. Now we have 46. In my estimations we need about 60 something. We're not at 60 but we're going up there. Sometimes personal service lacks when you're just overloaded.

Halawa Valley, they have reviewed the minutes and they have identified names and they will be following up on that. I think that part of the difficulty is some of the tours are not like all the time. They're just intermitted. So that's part of the difficulty. Just to say again that they have looked at the minutes. Again sometimes even myself is over loaded, we over look things like that. Everybody helps each other out.

Ms. Buchanan: Any other announcements?

Mr. Vanderbilt: Madam Chair could I just ask two questions? One can you provide us a copy of the people that you identified?

Mr. Boteilho: I can provide you the minutes because that's public records.

Mr. Vanderbilt: I thought you had identified it and sent something on for somebody to do something with and I'm just saying if we could get a copy of that.

Mr. Boteilho: Well since it's under investigation I don't want to provide our list.

Mr. Vanderbilt: O.K. but when you go to the airport today just look up on the activities thing by the baggage and there's one that says Halawa Tours. You might want to take that back because I'm not sure that was in the minutes or not.

Mr. Boteilho: Announcements, the microphones. Let me correct this. We really have a sole source on Maui that deals with this type of microphones. He's a busy guy, he's basically a one guy operation. Recently he's been working like everyday for the, he's doing something in the Council Chambers. However he did give us an estimate, it took him a month to get us the estimate but we got the estimate but it's only for four microphones. I told him actually we wanted 8 so now we're waiting for that second estimate. Part of the reason why we really have to go through him is that he's really the expert. In fact I brought microphones from Maui, extra microphones on Maui and for some reason it didn't work on this system. So there must be something that's configured or what ever but we'd like him to do it if something goes wrong we'll have service. I would like to propose

that until we get the new microphones if we could meet here and than we could use the PA system for Mitchell Pauole and we'd have more mikes.

Mr. Vanderbilt: Why don't we just continue meeting here forever? Why are we out in a hole in the wall?

Mr. Boteilho: Along that line if we could meet here and use the mikes here and than members can start thinking about where they'd rather meet and we'll put it up for a vote.

Ms. Buchanan: O.K. the reason why we switched is nobody remembers, it's because it was way too hot during the summer time and we were dying and sweating like rats in here and it's very hard to concentrate, again a lot of work to be done when you're dying in the heat and it was kind of the reason as I remembered to moving to Kulana Oihi. But it seems there's problems with communications, I have no objection to meeting here until that problem is resolved.

Mr. Boteilho: Plus now it's January it's not that hot.

Mr. Vanderbilt: Wayne what was the estimate on four mikes?

Mr. Boteilho: \$3,000. It's not just the mikes there's this transmitter and this consultant is known for giving good prices. But anyway...

Mr. Vanderbilt: So you're working hard at doubling it.

Mr. Boteilho: Yes. Maybe buying 8 is cheaper.

Mr. Vanderbilt: Is there any thought of a whole new system?

Mr. Boteilho: Well this is a cordless mike system, we'd just add mikes to it so you would have 8 mikes. With this wired mike you get 9.

Mr. Ribao: Can I make one request, can we have a special mike for Mr. Vanderbilt please, make it in gold.

Mr. Boteilho: I will look into that.

Mr. Vanderbilt: One that any commissioner can turn off at any time. I would like to make one announcement if I could. Yesterday they had a hearing at the legislature on the audit of Kalaupapa

and all the mis management down there and about 16 residents from Molokai that live in Kalaupapa went and testified and it'll be on AKAKU rebroadcast tomorrow at 5:30. But it's worth listening to the speeches that these residents gave they were really powerful and it was just a nice hearing to listen to.

F. NEXT REGULAR MEETING DATE : February 11, 2004.

G. ADJOURNMENT

There being no further business before the Molokai Planning Commission the meeting was adjourned at 3:45pm

RECORD OF ATTENDANCE

COMMISSIONER'S PRESENT:

1. L. BUCHANAN, VICE CHAIR
2. J. FEETER
3. N. SHIMIZU
4. J. KALANIHUIA
5. K. DUNBAR
6. R. RIBAO
7. D. VANDERBILT
8. C. SEALES

ABSENT: 1. M. AKUTAGAWA, CHAIR

STAFF:

1. W. BOTEILHO, DEPUTY DIREC. OF PLANNING
2. R. LOUDERMILK, PLANNER
3. R. NAGAMINE, DSA
4. C. YOUNG, CORP. COUNSEL