

**MAUI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 9, 2012**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:04 a.m., Tuesday, October 9, 2012, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Hiranaga: Good morning. Today is October 9, 2012. I'd like to open the floor to public testimony. Anyone here wishes to provide testimony regarding any agenda item may come forward at this time. We have one person signed up at this time. Sandra Jean would you like to speak at this time or wait until the agenda item comes up? You have the option.

Ms. Jean: I'll wait till the agenda item comes up.

Chair Hiranaga: All right, thank you. Anyone else wishes to provide public testimony on any agenda item at this time, please come forward? Seeing none, public testimony is now closed. Moving onto Agenda Item B, Public Hearings. Deputy Director?

Ms. McLean: Thank you, Chair. The Commission has one public hearing item on its agenda today. That is a Change in Zoning request by Dr. Roger Kehler from R-3 Residential to B-2 Community Business for the existing Kihei Veterinary Clinic situated at 1476 South Kihei Road, TMK: 3-9-10: 076 in Kihei. Paul Fasi is the Staff Planner.

B. PUBLIC HEARINGS (Action to be taken after public hearing.)

- 1. DR. ROGER KEHLER requesting a Change in Zoning from R-3 Residential District to B-2 Community Business District for the existing Kihei Veterinary Clinic to establish the existing veterinary clinic as a outright permitted use for property situated at 1476 South Kihei Road, TMK: 3-9-010: 076, Kihei, Island of Maui. (CIZ 2012/0004) (P. Fasi)**

The project currently has a Conditional Permit to operate the veterinary clinic.

Mr. Paul Fasi: Good morning, Commissioners and thank you. As the Deputy Director described and introduced the matter, the property is approximately one acre. It's 43,386 square feet on the corner of Waiohuli Street and South Kihei Road. It's immediately surrounded by residential land uses and vacant lands. I did pass out a map and satellite photograph this morning so you get an idea of what's the surrounding land uses are like. The State Land Use District is Urban. The Kihei-Makena Community Plan is Commercial. And the Title 19, County Zoning is R-3 Residential. The applicant is requesting a change in zoning to Business Commercial and the two of three zoning designations are consistent. The State Urban and Community Plan which is Business Commercial. It's the third land use designation that is inconsistent which is currently R-3 Residential, R-3. It should correctly reflect its present use which is the B-2, Community Business District as designated

in the Kihei-Makena Community Plan. Should it be approved, it will make it consistent with the other two land use designations and eliminate the need for a Conditional Permit which the applicant currently has and which is valid until September 6, 2013.

The applicant has been in this current location for approximately 17 plus years, and in those 17 years the Planning Commission has never received any communication regarding this matter favorable or opposed to it. Recently since this matter did arise, the Planning Department did receive five letters in opposition. We have seven letters that are favorable. However, we do have a petition with nearly 900 signatures on it in favor of the change in zoning. So I think the will of the community is pretty obvious and it should be reflected in your actions today.

Chapter 19, in the B-2 Community Business District, Item No. 22 does allow for clinics, medical or dental. It does not say anything regarding veterinary uses. However, Item 66 of the Maui County Code does say any other retail business or commercial enterprise with a similar character or rendering sales or commodities or performance of services to the community and not detrimental to the welfare of surrounding area provided however that such uses shall be approved by the Commission as conforming to the intent of this article. Under this Item 66, the Planning Commission, I mean, the Planning Department does find this to be consistent with the applicant's intended--existing use and application.

The applicant, Dr. Kehler is in the audience with us. He's here to answer some questions as well as his consultant, Leilani Pulmano from Munekiyo & Hiraga. They do have a small, short presentation for you. As note, I would like to bring your attention that as part of this process should be it approved by the County Council, Dr. Kehler will be coming back to this body to request a use determination on the Kihei Vet Clinic, formerly known as an Accessory Use Permit. However, what that means is he just wants to get your blessing and formalize it as an existing approved use in this particular parcel. Directly south of this parcel and unrelated to this particular project you will be getting another application for another change in zoning similar to this, a small parcel directly south of this, that will be the Kihei Wellness Center.

Neither...there are no operational changes or any development or improvements to the property, structure, et cetera at this time being proposed. This is simply a change in zoning to make the zoning consistent on three levels so he may continue to operate his vet clinic and not have to renew his Conditional Permit on a periodic basis. That concludes my report. If you don't have any questions, I will turn it over to the applicant's consultant. They have a small presentation for you. Thank you.

Chair Hiranaga: Thank you.

Ms. Leilani Pulmano: Good morning, Commissioners. My name is Leilani Pulmano with Munekiyo & Hiraga and we're the planning consultants. We're here today requesting for your recommendations on the change in zoning for the existing Kihei Veterinary Clinic. As Paul was saying, Dr. Kehler is here today and he's the owner and operator of the Clinic and he also owns the property itself.

The veterinary clinic has been in operation since 1995. It's allowed by a County Conditional Permit

which is valid until September 2013. Since the Kihei Veterinary Clinic is a long-term established use, Dr. Kehler is seeking the appropriate zoning designations to outright permit the veterinary clinic. And as Paul has gone through, the State Land Use designation is Urban. The community plan designation is Commercial and the Zoning is R-3 Residential.

The change in zoning request is to change from R-3 Residential to B-2 Community Business. The change in zoning will bring consistency and conformity between the Kihei-Makena Community Plan designation and the County Zoning. Right now the land use designations are not consistent. And to bring the property to become consistent requires either a change in zoning or a community plan amendment. And Dr. Kehler decided to submit a change in zoning to become consistent. The B-2 zoning designation may permit this veterinary clinic. And as Paul has mentioned, please know that if the Council approves the change in zoning request, it will be back before you requesting for concurrency that the veterinary clinic is a similar use allowed in the B-2 Commercial Business Zoning District. As permitted through this definition and as Paul had read to you. Also to note, the permitted uses in the B-2 Community Business Districts include living and sleeping quarters for a single-family residence constructed above the ground floor of the business building, and Dr. Kehler does live above the clinic, but today we're requesting for your recommendation on the change in zoning request.

And to give you a little context on where this is located in Kihei, this is Piilani Highway, here's South Kihei Road, this is Lipoa Street and the clinic is located Waiohuli Street and South Kihei Road. Wanted to give you some photos of clinic. The clinic provides medical care for household pets including diagnostics, treatment, surgery, dentistry and exams. It's open from Monday to Friday, 8:00 a.m. to 5:00 p.m., Saturdays from nine to noon and closed on Sundays. It also offers 24 hours emergency care on an on-call basis. They have quarantine and boarding services and Dr. Kehler lives on property above the clinic. As you can see in the photo on the left, the clinic resembles a single-family residential home and fits in with the character of the neighborhood. The clinic employs six employees right now. The photo on the right shows the improved wetland that was constructed along with the clinic. This was approved by the Department of Army Corp of Engineers and to note an SMA for the existing improvements, the clinic, and the wetland was approved in 1995 with the Conditional Permit. The left photo is a closer view of the entrance to the clinic and the right photo is a view from the adjacent property makai...on the makai side looking mauka. The fenced area fences in the wetlands and here's the clinic itself. And just some photos of the surrounding area. This is on the corner and South Kihei Road and Waiohuli Street as if you're looking towards Maalaea you can see the apartments across the street and Kihei Plaza just a block down. And if you turn around as you're looking towards Makena, South Kihei Road here. You can see the vacant land across the street.

So just to summarize, the existing clinic has been in existence since 1995, that's over 17 years. The clinic is allowed by a Conditional Permit until September 2013. Dr. Kehler is seeking to establish the appropriate zoning for the clinic for consistency and conformity to the community plan designation of Commercial. There are no new operations or improvements planned at this time, and since there'll be no changes there are no environmental or infrastructure impacts as part of this change in zoning request. This concludes my presentation and we'll be here to answer any of your questions that you may have. Thank you.

Chair Hiranaga: Thank you. At this time, I'll open the floor, I'll open the public hearing.

a) Public Hearing

Chair Hiranaga: First individual signed up to testify is Sandra Jean.

Ms. Sandra Jean: Hello everyone. My name is Sandra Jean and I am here to support Dr. Roger Kehler's request to rezone. I'm gonna be speaking from a more, more of a heart space and I just can't say enough about Dr. Roger. He has a gift with animals and he has been taking very good care of all of my animals for the past nine years. His clinic is beautiful. Those pictures are awesome, but it really doesn't do the clinic justice. It's like a botanical garden. It's just a fabulous place to bring your animals. A very family-oriented business, and Dr. Roger deserves to stay there and so I just kindly ask that you honor his request to rezone, and let him continue doing his business. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Is there anyone else here wishing to testify regarding this agenda item, please come forward? Please come forward. Please identify yourself and limit your testimony to three minutes.

Mr. Karen Williamson: My name is Karen Williamson. Can everybody hear me okay? I'm a real estate broker here in Maui. And we've had a family home on North Alaniu since 1970. I'm very familiar with this site, and I've had the opportunity to observe it for the last 42 years. I strongly oppose the rezoning of this property. If Dr. Kehler plans on continuing to run the veterinary clinic there is no reason to rezone. His current Conditional Use Permit allows him to run his business there. Sorry I'm not used to public speaking.

Chair Hiranaga: Could you pull the mic a little closer, please?

Ms. Williamson: Of course.

Chair Hiranaga: Thank you.

Ms. Williamson: If he abides by the management plan set forth it will likely be renewed as it has been before. I don't think that's what's in the plans for this parcel. Dr. Kehler's business has been for sale on the Maui MLS for the last...for four of the last eight years. It appears that he would like to sell and move on. I think that it's a well-known fact that if this property is up zoned from R-2, I'm sorry, from R-3 to B-2, it will likely double to quadruple in value. In reading Dr. Kehler's wetland management report, I'm not sure if you folks have it, it states he would like to fill the makai one-third of his property and fence it which leads me to believe plans for further development are forthcoming. Now if Dr. Kehler truly wants a property zoned B-2 to run his business out of, there are plenty available on Maui. I'm sure his real estate agent can find him one very easily. I feel that B-2 for this area would be extreme. B-2 allows for 80 different uses, has no setback requirements and the height requirement for the building is six stories if I understand correctly. I got this off the County site so I hope I'm correct. Why on earth would we want to rezone a wetlands area with such an excessive zoning. In the event that it was zoned B-2, in the future we could wind up with a gas station, a pool hall or a mortuary. These types of uses don't seem in line with the quite residential

neighborhood to me. I realize that these uses may not be applied for in the future, but why open up the door for that possibility? This parcel's located between the lovely neighborhood of Halama Street, Alanui Place and the residential condo complex of Maui Gardens. There are at least 150 Kihei families that will be affected negatively if this rezoning were to occur. I have a petition signed by 56...I have a copy for you folks here...

Ms. Takayama-Corden: Three minutes.

Ms. Williamson: Okay, 56 of the neighbors of the Kihei Vet Clinic opposing this rezoning. Most of these people could not be here today as they are working and some are elderly with handicaps. Please take note that the petition is not just signed by anybody but only the people that live near the proposed rezoning who will be affected most directly.

Chair Hiranaga: Okay, please conclude your comments.

Ms. Williamson: On a final note, the area is known for flooding when it rains and I know of three houses that ever since the wetlands have been filled take on water when it rains. So I'm asking you to please leave it as Residential 3 and thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: You make a reference to wetland report, and then you just said that the wetlands had been, some had been filled?

Ms. Williamson: Correct. In the '90s when Dr. Kehler built, he filled part of his lot to build. Then in early 2000 when there was a proposed Ace Hardware next door, after that didn't go through, they filled that parcel. The homes on Halama and Alanui I never knew to ever flood in the '70s, in the '80s, in the '90s they started taking on water when this fill was brought into the wetlands.

Ms. Wakida: Okay, thank you.

Ms. Williamson: And can I leave this petition and the report that I have?

Chair Hiranaga: Any other questions, Commissioners? Seeing none...oh, Commissioner Tsai? Ma'am.

Mr. Tsai: I would just like to ask you if you have any other comments that wasn't covered in your time?

Ms. Williamson: There was one last part that I probably should read, but it basically is, can I read one last part that I had written?

Mr. Tsai: You should answer the Commissioner's question?

Ms. Williamson: Yes, there is something else I'd like to bring up.

Mr. Tsai: Please state it.

Ms. Williamson: There's a document that was...there was a document that was written to the Planning Department on September 14th about the parcel next door that's a proposed development. It was written by the United States Department of Interior Fish and Wildlife Service. And so it's referencing the possible development of the parcel next door. Both of these parcels house the endangered Hawaiian Stilts and the Wildlife and Fish and...Fish and Wildlife Service says, "the service recommends that the Maui Department of Planning withhold action on the permit until there's adequate alternative analysis and demonstrated effort to locate the project in an area that will not result in ecosystem degradation." So they're recommending no more building in this area. So that's important to me.

Chair Hiranaga: Okay, thank you. Any other questions, Commissioners? Commissioner Hedani?

Mr. Hedani: Karen, it seems like I'm getting two different applications before me. The application that the applicant has submitted which is for no construction, the zoning of an existing facility, and comments that are coming on an adjacent parcel which I assume he may or may not own. But the adjacent parcel is not part of the agenda today. Are you saying that both parcels are connected somehow?

Ms. Williamson: Well they're...when they sort of started developing these two parcels they built a pond where these Hawaiian Stilts live. I believe the pond is connected between the two properties and so they are raising their young and they're nesting. It's beautiful. But the reason I bring up this second parcel is because there's a proposed development coming up on that also, but I believe that because of what Fish and Wildlife had to say about that parcel, it's the same, it's very similar to this parcel, it's right beside it. And it's housing the same birds. So that's why I bring it up.

Mr. Hedani: Thank you.

Ms. Williamson: You're welcome.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

Ms. Williamson: Thank you.

Chair Hiranaga: Anyone else wishes to testify, please come forward. Please come forward and identify yourself and please limit your testimony to three minutes.

Mr. Nikko Preovolos: Hi, my name is Nikko Preovolos. I live at 1463 Halama Street. Just right around the corner from Dr. Kehler, and I am also in opposition to this. I think Ms. Williamson actually hit most of the points, but I have to ask you to ask yourself what I've been asking myself is why is Dr. Kehler trying to do this after all these years? It absolutely doesn't fit with the conformity of the neighborhood. The closest commercial thing is a block away. Nothing on that block at all is commercial. Ms. Williamson noted that he's had the property for sale and that it hasn't sold so I'm asking myself there must be some other motivation than this because the up zoning would severely increase the value of that property. In addition, and the thing that I'm singly most concerned about is that it sets a precedent for the area. My particular parcel that live on is

zoned A-1 Apartment. Technically I should be able to put an apartment building there. I've been told no and the six adjacent parcels to me have also been told no over the past. So there's a reason for that. I don't want to have an apartment building on my parcel nor do I want my neighbors to because the neighborhood doesn't fit that. It is absolutely unequivocally residential. Dr. Kehler is operating a very nice business. This actually pains me to be up here a little bit in opposition to him because I'm also a client of his and I have no problem with him continuing his business there. But there to me, all I'm seeing is that there's a value in up sizing this zoning that is only value to him and to anyone who buys that parcel in the future and it sets a precedent for the lot next door and the one next door to that in fairly sensitive area. You know, the wetlands are fairly sensitive and they're going away and I just don't think there's a reason that this should happen because Dr. Kehler upon retiring or when he wants to sell will sell it and there's absolutely nothing saying there can't be a McDonalds there with 200 cars going through it. It just makes no sense so therefore, I'm in opposition to this because it's really only benefitting Dr. Kehler. It does not benefit the community. I'm all for him staying there. I'm all for him, and I would be in support of him being able to continue his use permit. I would be here right behind him standing up for that because I believe his business is good and it's fitting, but future uses that could happen there, no. Thank you.

Chair Hiranaga: Questions, Commissioners? Did you receive a notice in the mail, certified regarding this hearing?

Mr. Prevolos: I did.

Chair Hiranaga: Okay, so you reside within the 500-foot radius?

Mr. Prevolos: Yes.

Chair Hiranaga: All right, thank you. Anyone else wishes to provide testimony at this time regarding this agenda item, please come forward? Please identify yourself.

Ms. Irene Bowie: Good morning, Commissioners. Irene Bowie, Maui Tomorrow Foundation. I guess I have more of a question on this. I'm wondering because I've not been able to find it if a Wetland Management Plan for this parcel was ever filed. It was Condition 9 of the CUP from a number of years ago and the only thing that I could come across is this Wetlands Management Report. It's a two-page report. It doesn't have a date on it. It's not signed. It's sort of...I don't know if there's more paperwork I'd be curious to see that. And I think that's really relevant because we are talking about one of the few remaining wetland areas in South Maui and it is a particularly important area for the Hawaiian Stilt because the surrounding fragmented wetlands are actually too deep for the stilts. So this is really important that we're taking care of it and while we're not here to talk about the project that's looking to be proposed for the next property, it also is that wetland area so it's relevant. If I could just read briefly from a September 2012 letter from U.S. Fish and Wildlife. It says, "in recent decades efforts to avoid, minimize or compensate for the loss of aquatic habitat in Kihei have not been met with success. With few exceptions, mitigation sites are poorly maintained and have not resulted in adequate replacement of important environmental functions that were lost due to permitted fill activity because these remaining wetlands in Kihei are small and fragmented additional incremental loss of wetlands in Kihei could cumulatively contribute to significant degradation of the aquatic ecosystem in the region." So it's very important, and I would

ask as you consider that that you at least discuss a condition that would put in place a thorough Wetland Management Plan and also that there be some kind of compliance reports that are required because we see this happen so often with conditions that are placed on projects, but years pass and no one's keeping track of these things, no one's looking at reports so that's, that I think is the main point that Maui Tomorrow would like to stress today and ask you to really consider that. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing...Commissioner Hedani?

Mr. Hedani: Irene, are you familiar with this property?

Ms. Bowie: Yeah. Dr. Kehler was my vet also years ago. I moved away, but he's a great vet and I'm familiar with the property.

Mr. Hedani: When I take a look at, you know, when I take a look at the photographs that are provided, I'm impressed by the improvement of the wetland area that's surrounding the veterinary clinic itself. Wouldn't you say that that improves the habitat for the stilt?

Ms. Bowie: I absolutely would. I have also heard though that there's some holes in the fences and I don't know if that's true. I haven't been down there recently to look at it. So again, I would just say it would...maybe you have a Wetland Management Plan before you that I haven't been able to get my hands on, and if you do, that's great. But if you don't, then I would say, that we definitely need to be looking at more than this.

Mr. Hedani: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

Ms. Bowie: Thank you.

Chair Hiranaga: Anyone else wishes to provide testimony regarding this agenda item, please come forward? Please identify yourself?

Mr. Ron Agore (phonetic spelling): Aloha Commissioners, my name is Ron Agore and I do represent, I do represent the property next door that we've been discussing here and I wanted to let the --

Chair Hiranaga: Could you please pull the mic?

Mr. Agore: Yeah, I wanted to let you guys know that the retention basin that's on the adjacent property was built in accordance with the U.S. Corp of Engineers and it was specifically built to retain runoffs from any development on that particular property. It has nothing to do with the doctor's property. So the retention basin that's there is separate from the doctor's property. Okay. It's not connected. There's a wall, and it was built, and when it was built, in mind to provide for the stilts to frequent the site and have a place to go during the day. Okay, I just wanted to let you know that that particular retention basin is separate from the doctor's. Any questions?

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'm a little confused here. So the retention basin is not on the doctor's property, but it is on your client's property?

Mr. Agore: Well, the retention basin that they, that the young lady described is on the adjacent property.

Mr. Shibuya: Okay, it does not overflow or any part of it part of the doctor's property?

Mr. Agore: No.

Mr. Shibuya: Okay, thank you. But the runoff from the doctor's property would go into this retention basin?

Mr. Agore: I can't see how it would.

Mr. Shibuya: It would?

Mr. Agore: No. It wasn't designed to take runoff from other properties. He has his own areas that works for him.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: The person that or the property that you're talking about is that to the south or makai of the doctor's property?

Mr. Agore: South.

Mr. Hedani: To the south?

Mr. Agore: Yes.

Mr. Hedani: And that's the one with the proposed 25,000 square foot building?

Mr. Agore: Yes.

Mr. Hedani: Okay, thank you.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Another question for you, please. Just for clarification, so there are no wetlands on the doctor's area?

Mr. Agore: Yeah, there are.

Mr. Lay: There is?

Mr. Agore: Yeah, there's some retention areas that --

Mr. Lay: Just the basin is on the adjacent property

Mr. Agore: Yeah, that's designed to take care of runoff on his property.

Mr. Lay: Thank you.

Mr. Agore: Okay, thank you.

Chair Hiranaga: Anyone else that wishes to provide testimony regarding this agenda item, please come forward?

Ms. Kathy Schneider: Good morning. My name is Kathy Schneider. I've been a resident of Maui for 32 years. I'm a small business owner. Prior to moving here I was an environmentalist in the State of Minnesota. I have a Bachelor's Degree in Biology and Chemistry and had job offers with the Department of Land and Natural Resources in Minnesota as a Game Warden and Fish and Wildlife Manager. I'm very for the environment. My children were born and raised here. They work on the mainland. They're both environmentalists. One working in the Gulf of Mexico and the other working for Green Building Services in Portland trying to green corporate America. I had a whole different testimony that I wanted to say, but after hearing some of the opposing testimonies, I'm really confused as to what they seem to have a conflict in what they're trying to testify as being for and against. And I wanna ask all of you the question, have you seen this property? Face to face other than just seeing it on a blue print? Because if you drove down Kihei Road and you saw this property, you would see a beautification project in the works. The Hawaiian wetlands that he has there with the stilts is beautiful. It's kinda turning into a park. The botanical garden that his whole facility where his office is, is beautiful. Dr. Kehler isn't coming in here with big money, big developer trying to pull a fast one on anybody, all he wants to do is continue to serve the community and take care of sick animals which he does all the time and mostly for free. He's the only veterinarian on the island that takes night call. Most of these are unpaid services. And I'm surprised at the people, that the testimony that are in the neighborhoods are so concerned about the potential of a McDonalds or of something happening there. If Dr. Kehler doesn't get to pursue, he may have to leave there as I understand it, get another space, what's gonna happen to that space? Somebody is gonna come in buy it just like the people next door and fill it in and there will be something big there. In the interim, what I'm really shocked that the neighbors are concerned about with what's happening on this property is, if you drive by there right across the road, Kihei Road from his facility is probably the biggest homeless commune of meth, drug addict, ex-convicts that there is in the State of Hawaii and I'm not kidding, thank you for laughing. As you drive the street, even my 83-year-old mother who was here a few months ago --

Ms. Takayama-Corden: Three minutes.

Ms. Schneider: --driving to the store who has no idea what drugs comes...what kind of drugs are. She lives in a town of 200 in the middle of Minnesota. Drugs to her are anti-steroidal, anti-inflammatory for arthritis. It was obvious to her when she came home that there's drug activity as you drive the down the street, it's all over. She was afraid to come out at times.

Chair Hiranaga: Please conclude your comments.

Ms. Schneider: Well, in conclusion they're so worried about what he may do that they aren't even considering what's really going in that neighborhood if you look at the arrests and the beatings and the robberies with what's going on across the street. Perhaps their energy, attention and intelligence would be better put to use rather than put out a kind, generous, caring person in this community.

Chair Hiranaga: Thank you.

Ms. Schneider: Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you.

Ms. Schneider: You're welcome.

Chair Hiranaga: Anyone else wishes to provide public testimony at this time please come forward?

Mr. Gerard R. Steiner: Thank you, sir. I'm Gerard R. Steiner. I live at 1574 North Alaniu, a neighbor but not within the 500. I've been somewhat confused as I've heard things this morning too. But my bottom line is I see no benefit to the community for making the zoning change other than not having to do this, this use permit occasionally and I see the potential for danger. I'm not completely familiar with all the processes so I don't know if it's rezoned how much control you do or do not lose over that property. But certainly most of the uses on that list of possible uses for B-2 I do not find appropriate for that neighborhood. And I am very concerned also with the property across the street, but I don't think the number of meth users in the woods has any impact on this zoning. Thank you, sir.

Chair Hiranaga: Questions, Commissioners? Seeing none, anyone else wishes to provide testimony at this time, please come forward? Seeing none, public hearing is now closed. I'll open the floor to questions from the Commissioners. Commissioner Wakida?

Ms. Wakida: I guess this is for Leilani. There have been in some of these letters some statements about the business being for sale, about Mr. Kehler, Dr. Kehler preparing for retirement and sell his business. Can you give us any information along those lines?

Ms. Leilani Pulmano: Sure. Thank you, Commissioner Wakida. He did have his business for sale. I think it was from 2004 to 2009, is that correct? And he doesn't have his business for sale now. At that time, he was looking to relocate, but that did not happen. Frankly, honestly he just didn't see that there was much value in moving. So he's here for the long-term. He's been here for 17 years. He, hopefully will be there for the next 17 years.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Leilani, can you summarize some of the past history on this development and improvements of the property that Dr. Kehler has made or is being forced upon him? Is he doing it voluntarily or is it because of regulations?

Ms. Pulmano: Thank you for that question. I think the best picture to reference would be the picture that Paul had prepared. If you can see his property, his property is one acre and it extends from here to here on that corner. And the fill activities that actually happened was only for the parking lot area. His home is built on post and pier. So what happened consequently from that was that, he had to provide storm water retention which took the form of an improved wetland as you see in the pictures now. So previous to that, just so that you get a context of what was there before. If you look on the makai side of his property, that's what it was. And then he had to improve, improve it to as what you see in your pictures with that improved wetland. I can show you some pictures of that. So this is the improvements that he had to do on his property, I'm sorry, it's not ...

Mr. Shibuya: So that's photograph No. 1?

Ms. Pulmano: Yes, and so other photographs that I took but did not include in the application itself. The wetland area is fenced for dogs and cats, but the birds are somewhat protected in that area.

Mr. Shibuya: And where--

Ms. Pulmano: And just so that you know also, I'm sorry, it's not wet all the time. I just so happened to catch it at a time when there is water in that area.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Leilani, on your photograph No. 12 in your application.

Ms. Pulmano: uh hmm.

Mr. Hedani: Could you point that out in relation to this photograph?

Ms. Pulmano: Thank you. One second let me just get my photograph No. 12. I'm actually standing at the bottom of his property here and looking this way. Taking the picture of his neighbor's property so that's not his property.

Mr. Hedani: Where is the property line?

Ms. Pulmano: The property line is at the edge. You can somewhat see the definition. It's just north of that retention basin that the gentleman was speaking about. It's a narrow piece of strip.

Mr. Hedani: Okay, I'm sorry...the area that's in this photograph...

Ms. Pulmano: Yes.

Mr. Hedani: This is the building? That's his building?

Ms. Pulmano: No, no, it's not.

Mr. Hedani: Which way am I looking on this photograph? Towards his building?

Ms. Pulmano: Looking away towards Makena.

Mr. Hedani: Okay, you're looking towards the south?

Ms. Pulmano: Makena towards Haleakala, yes.

Mr. Hedani: So that's looking this way or this way?

Ms. Pulmano: Correct. That is exactly right, right.

Mr. Hedani: This way?

Ms. Pulmano: Correct.

Mr. Hedani: And it's not his property?

Ms. Pulmano: Correct. I wanted to show in that photograph what the surrounding neighborhoods are.

Mr. Hedani: So that's kinda like a condition that the property probably looked like before he improved it and what we see in those photographs are what the property looks like after improvement?

Ms. Pulmano: Yes.

Mr. Hedani: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Leilani, just for my question here in terms of the water source. The water source as I understand by the reports was from rainfall. Do they have a spring someplace? Or is it depending on just water rainfall?

Ms. Pulmano: It is storm water and I believe, I'm not an engineer so from what I understand is that it--sometimes it percolates from the ground when the ground gets saturated and if there's heavy rainfall from Haleakala and the wetlands and surrounding areas gets saturated. The water comes up instead of from the ground.

Mr. Shibuya: Okay, so it's both ways then I guess. Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Leilani, I didn't, I'm not sure I heard the answer to Commissioner Shibuya's question about was the wetland, was Dr. Kehler's improvements on the property, were those mandated by a wetland plan or did they just do those on his own?

Ms. Pulmano: Oh, I'm sorry. Thank you. It was mandated by the Conditional Permit. It was a condition as part of the Conditional Permit to provide retention. And as part of the retention and the fill in that location, the Department of Army has jurisdiction in that area. So he had to submit a Department of Army permit to provide this wetland/retention basin. So they review it, and they approve it, and they also approve the management plan. And although it's not very savvy unfortunately, it is still a management plan.

Ms. Wakida: So just for clarification. So this wetland area is that something that's historically always been there or is this something that Dr. Kehler created?

Ms. Pulmano: I believe that Kihei was...all of Kihei was historically a wetland area. So everyone's homes around that area was probably wetland.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Leilani, to help me connect some of the dots here. One of the testifiers mentioned that there was a Condition No. 9 in the CUP, can you enlighten me a little bit more in terms of how this document relates to some of the improvements that Dr. Kehler is doing?

Ms. Pulmano: Sure. So just to give you context, he had...Dr. Kehler had come in for a time extension on his Conditional Permit, and during that time back in 2006, he's before this body and then went up to Council for approval, he received Condition No. 9, and that Condition No. 9 requires that a management plan for the restored wetland which was already improved be reviewed and approved by the Department of Army and the Planning Department. And I'm not sure, did you guys get a copy of that Wetland Management Plan? Well, let me just send that around so you can take a look at it. It is a two-page document. It's not dated and as I said, it's not very savvy, but it's still a plan. And so he had to submit that and as part of that plan, the Department of Army had reviewed the plan and did a site visit and included in your application on the project assessment report there is a Appendix A. It's a letter from the Department of Army dated October 2006 that basically says, what he's done on property is in accordance with the Department of Army Permit that he had submitted back in the 90's and that there is no further mitigation required.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: So from your perspective Leilani, the condition that was required under Condition No. 9 has been met?

Ms. Pulmano: Yes

Chair Hiranaga: Maybe you should pose that question to the Department?

Mr. Hedani: Right. Paul, do you agree?

Mr. Fasi: The Department would concur with that statement. And it may be helpful Leilani if you give them an idea how big the wetlands are, what the approximate dimensions of that particular area is? It's, it's...we're not talking a huge area. I think the Kihei Pool is bigger.

Ms. Pulmano: Yeah. It's small. The perspective on that picture is a little different. But if you look at the aerial that Paul had provided it's about a third of his property, but not all of that is within that enhanced wetland area. It looks like it's actually a green, the very dark green area in this photo that's the water part of his wetland, of the enhanced wetland. Yes, it is. It's very small. It's something like it can hold 8,000 cubic feet.

Chair Hiranaga: Commissioner Shibuya? ...look the same photo, I notice a blue dot. What's the significance of the blue dot?

Mr. Fasi: There is no significance. That's just how the ...(inaudible)... map locates the parcel.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Following up on this. You said the Army Corp of Engineers are I guess the accepting authority. They've set out standards and for the Management Plan. How does the county environmental specialist, he's actually in the audience as well as the State Department of Health relate to this because the Department of Health says in terms of maintaining wetlands they have a biannual type of inspection.

Ms. Pulmano: That's a good question. I'm not really familiar with that regulation. Our understanding is there's no Department of Health regulation that oversees this area.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: The Deputy Director would like to make a statement.

Ms. McLean: Thank you, Chair. Just a couple of things I wanted to point out. First that any changes or development on the property would have to undergo SMA review. So what we're discussing today is just the Change in Zoning. And the Change in Zoning actually this applicant is doing what we like to see obtaining the Conditional Permit first to see how that works out. To see if it's an appropriate use. And he has been operating under the Conditional Permit for quite some time. And to see, okay, well that is an appropriate use for that area so we'll come in for the permanent entitlement. That's actually what we like to see applicants do. Any changes to the use though, any of the uses in the B-2 District would have to undergo SMA review. And also the

wetlands is as you just brought up are under the jurisdiction of the Army Corp of Engineers. They have authority over these particular wetlands. They've identified that and in their correspondence. So any physical to the site would have to undergo SMA review and Army Corp review. That would be the same for the property next door, the makai property, any of those properties if they wish to develop not only would have zoning and community plan issues to address but also SMA and the Army Corp. And as has been mentioned, this site and the neighboring sites, were filled in the past as was most of Kihei as Leilani noted. And as part of this project, he actually restored some of those wetlands. So you know, by making those improvements, he mitigated the impacts of the development that's there now and future proposed developments would have to undergo that same kind of review. Thank you, Chair.

Chair Hiranaga: Any other questions? Commissioner Wakida?

Ms. Wakida: I think this question I also need from Michele. The Conditional Use Permit apparently had at least nine conditions and there are none on this recommendation. How do those conditions translate to this rezoning? Do they...is it appropriate to have conditions on rezoning?

Ms. McLean: Certainly zoning conditions are common. The Department didn't propose any conditions at the time. Going through agency review up to the staff report and recommendation. The Condition Permit conditions initially related to some of the changes at the site which now those improvements have been made. But certainly the Commission can recommend conditions. The Council would have final authority on approving conditions, but zoning conditions are appropriate.

Ms. Wakida: One, one more question. Can you make a condition about what can or cannot ...about future development on this property?

Ms. McLean: Certain...as they relate to the uses and standards in the zoning district. So if there was a use that you felt should be prohibited or something related to development standards then, yes, that would be an appropriate place to place a zoning condition.

Chair Hiranaga: Any other questions? Commissioner Hedani?

Mr. Hedani: Michele, what is the community plan designation for the property around this parcel?

Ms. McLean: I believe Paul made those notations on the cover. Across South Kihei Road is residential or community plan designations are multi-family and single-family. Across Waiohuli Street is multi-family and single family. On the makai side is single family and then on the south is business. Once parcel is business and then the one further south of that is also single family.

Mr. Hedani: Thank you.

Chair Hiranaga: Any other questions? I have a question. If the zoning was approved does the residence above his clinic allowed?

Ms. McLean: Yes.

Chair Hiranaga: When was the Kihei-Makena Community Plan adopted?

Mr. Fasi: 1998.

Chair Hiranaga: Is it possible to rezone a portion of a parcel?

Mr. Fasi: Yes, it is possible, however, the Department would frown upon that. We don't particularly care for spot zoning.

Chair Hiranaga: It's not really spot zoning, it's rezoning a portion of a parcel.

Ms. McLean: Chair, I think in this case it would...because the property is designated business in the community plan it is ideal for the zoning to be consistent with that designation. But it could that conditions are placed on a portion of the property--where the conditions apply to a portion of the property. In order to zone just a portion of the property...(inaudible)...metes and bounds description of that particular area.

Chair Hiranaga: Metes and bounds description.

Ms. McLean: But if the thinking is that some uses are allowed on a portion of the site and other uses allowed on a different portion then perhaps conditions relating to that one area could be created instead.

Chair Hiranaga: Leilani, could you just provide more comment on the challenges the applicant faces with the inconsistency between the County zoning and the community plan designation? Is there issues regarding financing, insurance?

Ms. Pulmano: I don't necessarily think that that's really the issue. I think the main issue is the fact that it is inconsistent. If he had to come in for a major SMA on improvements to his building, he'll have to be actually...well, one, he'll be deemed inconsistent so he wouldn't be able to go through that process. And I think if he doesn't go through this change in zoning, he'll have to come in every five or how many other years every time to go through this Conditional Use Permit requirement. Not that I don't like to come before you, but it might be something we can avoid.

Chair Hiranaga: Well, I can't guarantee you I won't be here. Commissioner Lay?

Mr. Lay: Okay, Leilani, there's been a lot of concern with the wetlands and the preserving of the wetlands in this area and with the last condition, with the owner now, what is--how do we maintain this preservation and what conditions can we...because rising, you know, the water level rises and it lowers, right? Size wise, how do we keep it how big it is and what conditions can there be put to keep this wetlands what it is?

Ms. Pulmano: I'm not really familiar with the DA permit that he submitted honestly, but I believe that the DA permit actually outlines the size of it, what the extent of the wetlands would be. I think it's already regulated.

Mr. Lay: So in essence somebody can't come in and backfill it and get rid of this wetland?

Ms. Pulmano: If it been the case that he'd like to actually do that, he would have to go through the Department of Army to go through that DA permit again. And to have to go through that process after he's already created a wetland would be...I would think that it would be pretty difficult.

Mr. Lay: Thank you.

Chair Hiranaga: Paul?

Mr. Fasi: And to further elaborate on the answer. Any development in the Special Management Area would have to come before the Planning Department anyway, so there's another layer of approvals that he would be required to go through.

Ms. Pulmano: And at that time, you can put conditions on that permit if there is a need for that.

Chair Hiranaga: Question for the Department. Why if the applicant comes before us with his major SMA application, the inconsistency in land designations impacts that? Corporation Counsel?

Mr. Hopper: Thank you, Mr. Chair. For any development or SMA permit minor or major, State law, HRS 205A requires that the development be consistent with zoning and the community plan designation and so that would be the requirement for the project. Now I don't think the inconsistency in and of itself would necessarily prohibit that from happening, but I think the issue is that the proposed development whatever it may be needs to be consistent with both the zoning of the property and the community plan designation. And if one is Commercial and one is Residential that could be problematic if the zoning continues to be Residential and there's improvements that deal with the commercial structure. So if someone would need an SMA permit in that case it would be problematic because of the State law requirement for consistency with the community plan and zoning designations.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Mr. Chairman, I'm ready for the staff recommendation.

Chair Hiranaga: Thank you for that. Any other questions, Commissioners? Seeing none, I guess we're ready for the staff recommendation.

b) Action

Mr. Fasi: Thank you. The Maui Planning Department recommends that the Maui Planning Commission recommend to the Maui County Council approval of the change in zoning from R-3 Residential to B-2 Community Business District. In consideration of the foregoing, the Maui Planning Department recommends that the Maui Planning Commission adopt the Maui Planning Department's report and recommendation prepared for the October 9, 2012 meeting as its finding of fact, conclusion of law, decision and order and further to authorize the Planning Director to transmit the said recommendations to the Maui County Council. Thank you.

Chair Hiranaga: Open the floor to a motion? Commissioner Hedani?

Mr. Hedani: Mr. Chairman, I move to recommend that the Maui Planning Commission recommend to the Maui County Council approval of the change in zoning from R-3 to B-2 Community Business District as recommended by staff.

Chair Hiranaga: Is there a second?

Mr. Shibuya: Second.

Chair Hiranaga: Commissioner Shibuya seconds. Discussion? Commissioner Hedani?

Mr. Hedani: I believe that the applicant has met the test for a change in zoning. His property is in compliance with the community plan. Has been in compliance with the community plan for several years. He's been in operation in the existing facility for 17 years with no complaints. The surrounding properties that are opposed to this application are probably people that are occupying wetlands themselves and had their developments completed prior to the time when enforcement of wetland regulations would probably have mandated the same kind of improvements to their property as the applicant has made to his. I'm impressed with the amount of improvement that has been done to the property and feel that the applicant has done everything in his power to comply with both the Department as well as the law's requirements for compliance. Thank you.

Chair Hiranaga: Any other discussion? Commissioner Shibuya?

Mr. Shibuya: I'm supporting this recommendation because it's not detrimental to the community welfare and the life qualities. In fact, it does provide opportunity to improve the qualities of the community's lifestyle. It maintains the natural wetlands. It provides at least a start, an example of how we can improve, and Dr. Kehler has done that. But of course, he, himself does not own the entire wetlands unfortunately and therefore, I support this great movement towards that improving the wetlands and demonstrating it and showing it and complying with the Army Corp. of Engineer type of conditions.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I applaud Dr. Kehler as both a vet and what he's done with his property. However, I'm concerned, I'm concerned about if we change the zoning on this what the domino effect that this will have and I have listened to the people in the surrounding properties and they have expressed I think validly concerns not about Dr. Kehler who seems to be a sterling tenant or owner I should say, but about what can happen down the road with this property and by extension surrounding property. So reluctantly I'm going to vote against the recommendation.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I'm supporting this change in zoning. He's made great improvements to this area where he's at. With his background and his concern with animals and everything around I don't see him doing a hit and run. I see him making sure that if anything does happen that this is preserved and

he's done good work so far. I applaud him.

Chair Hiranaga: Any other discussion? Seeing none, I call for the vote...we'll have the Deputy Director restate the motion for clarity.

Ms. McLean: The motion is to recommend to the Council the approval of the change in zoning from R-3 Residential to B-2 Community Business District.

Chair Hiranaga: All in favor please so indicate by raising your hand.

Ms. McLean: Three ayes.

Chair Hiranaga: Opposed?

Ms. McLean: Two noes.

Chair Hiranaga: The motion fails.

It was moved by Mr. Hedani, seconded by Mr. Shibuya, and

**The Motion to Recommend Approval of the Change in Zoning From R-3 Residential to B-2 Community Business District, FAILED.
(Assenting - W. Hedani, W. Shibuya, I. Lay)
(Dissenting - M. Tsai, P. Wakida)
(Excused - D. Domingo, J. Freitas, K. Ball)**

Chair Hiranaga: The floor is open to other motions. Commissioner Hedani?

Mr. Hedani: Okay, let's give this another try. I move that we recommend approval of the change in zoning to the County Council from R-3 to B-2 Community Business District with the condition that the existing wetland improvements be maintained.

Mr. Shibuya: Second.

Chair Hiranaga: All right, so moved by Commissioner Hedani, and seconded by Commissioner Shibuya. Discussion? Paul, you wanted to say something?

Mr. Fasi: Yes, thank you. Commissioner Wakida, the applicant has been in this particular location for 17 years. We have never received any communication whatsoever in opposition to his present use. As far as this setting a precedent or having a domino effect that has never happened in my planning career when you change in zoning of a particular parcel to the next parcel, to the next parcel. It does not set a precedent, period. Thirdly, if he proposes any kind of development, if he wants to expand it a little bit, put another parking space in, he must come before the Planning Department. If it is of a significant change it will come before this body to be reviewed. This Department and any planning department applauds and encourages any applicant that makes an

effort to have zoning that is consistent on all three levels in Maui County. That's what we want. That's what the Planning Department desires. That is why we have the process in place so that can happen. This is an ideal opportunity in the Planning Department's opinion to get the zoning in conformance on all three levels.

Chair Hiranaga: Thank you. Any more discussion? Commissioner Hedani?

Mr. Hedani: You know, over the next 100 years, sea levels are gonna rise, the wetlands in Kihei are gonna become more pronounced if anything. The water level, the water table beneath South Kihei is gonna probably rise to the point where in order to maintain a proper wetland for Hawaiian Stilts in particular, you're probably gonna have to fill the site a little bit in order to keep their legs above water level. I think the estimate over the next 100 years was a three-foot rise in sea level which puts most of Kihei in the flood zone. So from the perspective of preserving wetlands, there's gonna be a heck of a lot more wetlands in Kihei in the future than there is today.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Okay, since nobody else wants to speak...

Chair Hiranaga: Well, looks like someone else wants to speak.

Mr. Hedani: I would defer to whoever else wants to speak at this point. Okay, here we go.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: The Planning Department develops a General Plan. We develop nine community plans along with the General Plan in order to tell the future or the people that come before the Commission in the future what the communities preferred course is for a particular parcel of land. This particular parcel of land has been community planned Business which is what the community designated during that process was the appropriate use for this land as well as the lands that are surrounding. To keep it in R-3 Residential would be inconsistent with that plan as well as with the 900 people that submitted their signatures to this body for consideration. And I just...I cannot see a logical way of keeping this particular property in limbo with Conditional zoning when there's no opposition to his operation as well as not in compliance with the community plan. If I had my druthers, once the community plans were approved, the zoning should be automatic for all properties that are within the community plan districts which would preclude having individuals have to come before this Commission piece by piece in order to get compliance.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Michele, there is concern by the property owners that they...they're in favor of the activity that goes on right now on the property, but there's concern by the property owners surrounding this that there can be some other obnoxious development. Is there a condition that can go in this to reassure those property owners?

Ms. McLean: The condition would have to be a little bit more specific as to what types of uses or

what types of impacts would be prohibited. There's a long list of, a very long list of uses in the district. So we don't want to go through one by one and say this one's okay, that one's not. So, I suppose if, see...yeah, I don't really know how to, how to narrow it down because it would need to be specific in order for it to be enforced. So that if, you know, at some point in the future the property is sold and someone comes in to conduct one of these uses, how would we be able to say definitively whether or not that use is allowed? So the condition would have to be specific enough that we could, that we could enforce it. If there are particular impacts, we can also look at those, but again, those would really need to be defined.

Ms. Pulmano: Do you mind if I offer something? I'm sorry, I'm speaking out of turn, but...

Chair Hiranaga: Go ahead.

Ms. Pulmano: Commissioner Wakida, we understand your concerns and we'd be willing to have a condition as part of this change in zoning process that restricts some of these permitted uses and I can go through some of the list. We've just kind of quickly gone through this. Amusement enterprise including billiards or pool halls, auditoriums or theaters, automobile service stations, baseball or football stadiums, bathhouse, bath Turkish, bowling alleys, dance halls, gymnasium, marinas, miniature golf courses, there are a lot of these things that because of its size purely doesn't make sense here. But we can provide a condition. We'll be willing to do that if that helps you?

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Thank you, Leilani. And yes, 900...I just want to say that 900 people signed a petition and respect that, but I do respect the people that took the time to come in here and really voice their concerns. But getting back to these conditions. I think this might help. How about also a height restriction?

Ms. Pulmano: Sure. We'll be willing to look at that.

Ms. Wakida: Because I think creating some restrictions on this property may...I don't know if I want to get into this discussion but may help with future things that come before the Planning Commission on other areas.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Okay, for me this doctor has been here for 17 years. He's had to file Conditional Permits to keep what he's been doing, you know, being able to do it there. Now we're finally putting it...he's trying to get this in compliance in what he's doing with the zoning after 17 years, I mean, I'm for his...he's gone the whole long run, he's shown what he's done, what he can do, he's made improvements, and he's helped out the community.

Chair Hiranaga: Is the current use allowed under B-1 zoning?

Ms. Pulmano: It's actually only allowed in Agriculture. It's called animal husbandry. Some of the

zoning codes are very old and obviously they weren't thinking about household pets. They were probably thinking about cows and horses.

Chair Hiranaga: So it's not allowed under B-2 zoning?

Ms. Pulmano: Well, not outright. So as you go through the B-2 zoning what we had explained before there's a...No. 66 there's a permitted use, and I'll...I can go back to that definition. So we'll... it's actually that second bullet. We'll have to come back before you to get concurrence that a veterinarian clinic is allowed in the B-2 Commercial Business District.

Chair Hiranaga: And that particular item is not provided in B-1 zoning?

Ms. Pulmano: Correct.

Chair Hiranaga: It's not in B-1?

Ms. Pulmano: It's not in B-1. But I do want to note that the Planning, the Council Planning Committee has before them a bill to revise the B-2 Commercial District and in that bill it will outright allow veterinarian clinics. So if during the time that the bill gets passed before this comes back to you, it could be outright permitted.

Chair Hiranaga: Okay, I guess I'll make a comment. Personally, whether I agree or not with the Kihei-Makena Community Plan designation which was adopted in 1998, this area is designated at a business. And without a plan, how do people know what the intent of the community is for subject areas. And you know, we have State Land Use designations, we have community plan designations, we have County zoning. Concerns about a domino effect. The property next door is also designated Business, but other than it's surrounded by what is not developed either it's Single-Family or Apartment or Residential. So unless when, and I'm not going to say if, but when the Kihei Community Plan is revised, perhaps other areas might also receive Business designation. But right now this is the plan that was adopted by the Kihei and Makena community, by the Council. And so, you know, my personal feeling is we need to provide some sense of certainty to people who want to have a personal business and personal enterprise. So this property is still within the Special Management Area. So any future development needs to come before the Planning Commission and be approved by Planning Commission. So be it a three-story McDonalds, it would still need to come before the Planning Commission. So, that being said, you know, I not necessary agree with the proposed change but this was the will of the community in 1998. So, I would have to agree with the motion on the floor. If there's any other more discussion? Commissioner Wakida?

Ms. Wakida: So where do we stand on a condition? I guess my goal is to protect...is to allow the existing use and protect that whole area that's zoned business from over development.

Chair Hiranaga: You can propose an amendment.

Ms. Wakida: Yeah, I'm not quite sure how to propose that. I'm not sure what the language is or what ...

Chair Hiranaga: Why don't we take a ten-minute recess and you can work with Staff to come up with some language? So we'll reconvene at 10:35.

A recess was called at 10:25 a.m., and the meeting was reconvened at 10:37 a.m.

Chair Hiranaga: Where were we? Oh, Commissioner Wakida?

Ms. Wakida: I would like to propose an amendment to the motion that's on the floor which I hope will in a sense ameliorate some of our...some of the residents concerns. It isn't perfect, but it's...I think it's a good compromise and that is...my amendment is that there be a height restriction of 45 feet on this property.

Chair Hiranaga: Is there a second?

Mr. Hedani: Second.

Chair Hiranaga: Seconded by Commissioner Hedani. Discussion? Commissioner Tsai?

Mr. Tsai: I would like to ask the applicant to come up and Dr. Kehler?

Dr. Roger Kehler: Yes sir.

Mr. Tsai: I'd just like to hear from you your plans going forward.

Dr. Kehler: My plans going forward?

Mr. Tsai: Yeah, for your business?

Dr. Kehler: I wanna keep Kihei Veterinary Clinic there and I wanna keep it there for many, many more years. I don't think I'm that old to retire. I have no immediate plans. I just want consistency and I wanna be on that property and I wanna be able to practice veterinary medicine as it is. I have no other plans.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Dr. Kehler, would this amendment for a proposed compromise, a 45-foot height limitation impact you in any way?

Dr. Kehler: Absolutely not. I think that that's very fair and it's something that I would, I would certainly, I always thought I was pleasing my neighbors. I wanted to be a good neighbor and if that is something that would help them understand that I'm...I just want to practice medicine, and 45 feet is not going to bother me.

Mr. Shibuya: Yeah, I wanna thank you for taking the effort and to maintaining that Condition No. 9, and complying with the Army Corp of Engineers type of standards of the wetland. It's a remarkable improvement of what I see around there.

Dr. Kehler: Thank you, and I will continue.

Mr. Shibuya: Thank you very much.

Chair Hiranaga: We have a proposed amendment on the floor, a 45-foot building height restriction that we're under discussion.

Ms. Wakida: And can I add to which the applicant is agreeable.

Chair Hiranaga: My personal feeling is I oppose these types of special conditions. If you're gonna grant zoning, you grant it fully. You know, we don't know what Kihei will look like 200 years from now and someone will go back and say what? In 2012, they put this 45-foot height restriction on this parcel, why did they do that? I mean, what did Kihei look like 60 years ago? Well, 50 years ago 'cause I wasn't here 60 years ago, 50 years ago. You know, there was Azeka Store with the monkey and Suda Store. That was what there was at Kihei 50 years ago. So personally I oppose those types of restrictions and that's just a personal statement. If there's no other discussion, I'll call for the vote on the amendment. We'll have the Deputy Director restate that.

Ms. McLean: The amendment is to limit building heights to 45 feet.

Chair Hiranaga: All in favor, so indicate by raising your hand.

Ms. McLean: Five ayes.

Chair Hiranaga: The amendment carries. Any further discussion on the main motion? We'll have the Deputy Director restate the main motion since it was changed slightly.

Ms. McLean: The main motion as amended would be to recommend approval to the Council of the change in zoning from R-3 Residential to B-2 Community Business District with two conditions. One is that the existing wetlands be maintained. And two is that building heights be limited to a maximum of 45 feet.

Chair Hiranaga: All in favor, so indicate by raising your hand.

Ms. McLean: Five ayes.

Chair Hiranaga: Motion carries.

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

VOTED: To Recommend Approval of the Change in Zoning to the County Council as Recommended by the Department with Two Conditions:
1. That the existing wetlands be maintained; and
2. That building heights be limited to a maximum of 45 feet.
(Assenting - W. Hedani, W. Shibuya, I. Lay, M. Tsai, P. Wakida)
(Excused - K. Ball, D. Domingo, J. Freitas)

Mr. Fasi: Thank you.

Chair Hiranaga: Moving on. Agenda Item C, acceptance of minutes of September 25, 2012.

Dr. Kehler: May I just take a second to say thank you very, very, very much?

Chair Hiranaga: You're welcome. Commissioner Shibuya?

C. ACCEPTANCE OF THE ACTION MINUTES OF THE SEPTEMBER 25, 2012 MEETING

Mr. Shibuya: Move to accept the Action Minutes.

Mr. Hedani: Second.

Chair Hiranaga: Any discussion? Seeing none, all in favor say, "aye." Opposed? Motion carries.

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

**VOTED: To Accept the Action Minutes of September 25, 2012.
(Assenting - W. Shibuya, W. Hedani, I. Lay, M. Tsai, P. Wakida)
(Excused - K. Ball, D. Domingo, J. Freitas)**

Chair Hiranaga: Agenda Item D, Director's Report.

D. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

a. Amending the SMA Boundaries

Ms. McLean: Thank you, Chair. Under Item 1a, the Department has nothing to report relating to amending the SMA Boundaries.

2. EA/EIS Report

3. SMA Minor Permit Report

4. SMA Exemptions Report

Ms. McLean: And Items 2, 3, and 4, you had one report that was sent to you in your packets and then another updated report that was emailed to you. If you need a hard copy of that updated report, I think Carolyn might have copies. So are there any questions on the SMA Reports or EA/EIS Report?

Chair Hiranaga: No. Moving onto Item 5.

5. Discussion of Future Maui Planning Commission Agendas

a. October 23, 2012 meeting agenda items

Ms. McLean: Item 5 is discussion of the October 23rd agenda. You have a mountain of paper in front of you with a memo from Clayton Yoshida listing the items for October 23rd. There are two Environmental Assessments which are provided...which were provided to you this morning, two Communication items, and two items of Unfinished Business. I believe that listed under Item D, Adoption of Written Decision and Orders that may be stricken at the request of Corp. Counsel. So I'm not certain that item, that those items under Item D will be included.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I have question about last month under the Director's Report I had requested an update on the Hyatt on the timeshare in Lahaina. The issue is regarding Condition No. 45. It's on the minutes from the last meeting, D-1.

Ms. McLean: I'm sorry, I don't have any follow-up information for you, but we'll follow up on that for next time.

Mr. Lay: Thank you.

Ms. McLean: The Hyatt timeshare, Condition 45 is that what you're asking?

Mr. Lay: Yes.

Ms. McLean: Okay.

Chair Hiranaga: Commissioner Wakida, you had a concern about the amount of homework we've been assigned for your next meeting?

Ms. Wakida: My only concern was I'm not going to be here to reap the benefits of it.

Mr. Tsai: I probably won't be here ...(inaudible)...

Chair Hiranaga: Please confirm with the secretary because we need to make sure we have quorum. Okay, if there's no other items, the next item is October 23, 2012. And if there's no objection, this meeting is adjourned.

E. NEXT REGULAR MEETING DATE: OCTOBER 23, 2012

F. ADJOURNMENT

The meeting was adjourned at 10:45 a.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani
Kent Hiranaga, Chairperson
Ivan Lay, Vice-Chair
Warren Shibuya
Max Tsai
Penny Wakida

Excused

Keone Ball
Donna Domingo
Jack Freitas

Others

Michele McLean, Deputy Director, Planning Department
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works