

**HANA ADVISORY COMMITTEE TO THE  
MAUI PLANNING COMMISSION  
MEETING OF APRIL 26, 2012**

*\* All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, Hawai'i. \*\**

**A. CALL TO ORDER**

The meeting of the Hana Advisory Committee (Committee) was called to order by Vice-Chairperson, John Blumer-Buell, at 4:08 p.m., Thursday, April 26, 2012, at the Old Hana School Cafeteria, 5091 Uakea Road, Hana, Island of Maui.

A quorum of the Committee was present (see Record of Attendance).

Mr. John Blumer-Buell: Aloha, everybody. My name's John Blumer-Buell. I'd like to call this meeting of the Hana Advisory Committee to the Planning Commission to order. I'm the leftover vice-chair from last year and so I'll conduct the meeting until we elect a new chairperson and vice-chairperson.

The issue regarding the public hearing for Arabella Ark is down about one, two, three, four, five - it's the sixth one but it's not going to take us long to get there.

And I'd like to introduce who's here. To my right is Richelle Thomson, and she's from Corporation Counsel, the county attorneys, and we have Clayton Yoshida here, who's the program planning administrator for the Planning Department, and we have Gina Flammer here, who's the staff planner with the County of Maui. We have here today from the Hana Advisory Committee Ian Ballantyne, to my left; we have a new member, we're glad to welcome aboard Clayton Carvalho, Jr., aloha and glad you're here; we have, to my right, we have Ed Cashman; Scott Crawford is not yet here, he may show up; and we have Anjoleen Hoopai-Waikoloa to my left.

**B. INTRODUCTION OF NEW COMMITTEE MEMBER - CLAYTON CARVALHO, JR.**

So we've now called the meeting to order, and that's A, and B is Introduction of new Committee Member, Clayton Carvalho. I think we've done that. Probably a lot of people here knew Clayton's dad, I certainly did, so welcome again, Clayton.

**C. ELECTION OF OFFICERS FOR 2012-2013 YEAR**

- 1. Chairperson**
- 2. Vice-Chairperson**

And now we're at C., which is election of Officers for 2012-2013. The previous chairperson was Lehua Cosma, and her term of service on this board has expired, so I'm conducting this as the vice-chair person at this point; if we have a new chair, they will take over. So I am opening the floor to nominations for chairperson first.

Mr. Ed Cashman: I nominate John Blumer-Buell for chair.

Mr. Blumer-Buell: What we can do now is that can be seconded or there will be the opportunity for anyone to be nominated too, but --

Ms. Anjoleen Hoopai-Waikoloa: I second that nomination.

Mr. Blumer-Buell: Okay, we have a motion and a second, and it's at this point we would open the motion up to a discussion by the Committee. If anyone has any comments or -- they're welcome to make them, or if someone wants to nominate someone else for chair, they could say I'd like -- I think it's appropriate to say it at this point. But otherwise, we have a motion, second, and if there's no additional comments, I'll call for the vote, unless there's an objection.

There being no discussion, the motion was put to a vote.

***It has been nominated by Mr. Cashman, seconded by Ms. Hoopai-Waikoloa, then unanimously***

***VOTED: that Committee Member Blumer-Buell serve as Chairperson for the 2012 - 2013 board year.***

Chair Blumer-Buell: Okay, it looks like we're unanimous on that, and we have -- we have our additional member that just showed up, and this Scott Crawford, to the far right, so welcome, Scott. I'd like to open up nominations to vice-chairperson.

Mr. Ian Ballantyne: I nominate Scott.

Chair Blumer-Buell: We have Ian nominating Scott Crawford. We need a second for that for discussion. Okay, Ed Cashman has made a second to that. The floor is open for discussion on the nomination of Scott. This is just so we're clear on this, my understanding of *Robert's Rules* was that if you second a motion, you don't necessarily have to vote for it. The second is to allow conversation to take place.

There being no discussion, the nomination was put to a vote.

*It has been moved by Mr. Ballantyne, seconded by Mr. Cashman, then unanimously*

**VOTED: that Committee Member Crawford serve as Vice-Chairperson for the 2012 - 2013 year.**

Chair Blumer-Buell: Okay, that's unanimous. Thank you, Scott. Now we have the next thing is we have resolutions thanking outgoing members Lehua Cosma and David "Kawika" Kaina. Their terms expired. And I think I'll turn it over to Clayton for that.

**D. RESOLUTIONS THANKING OUTGOING MEMBERS - LEHUA COSMA and DAVID "KAWIKA" KAINA**

Mr. Clayton Yoshida: Thank you, Mr. Chair and Members of the Hana Advisory Committee. First of all, we have a letter -- letters from the Mayor Alan Arakawa, addressed to both Andrea Lehua Cosma and David "Kawika" Kaina, which states:

Congratulations on a job well done. On behalf of the people of the County of Maui, please accept my deepest appreciation and gratitude for your dedication and service on the Hana Advisory Committee. Your efforts and contributions have made a positive difference.

I truly believe that it is important for citizens to play an active role within both our community and government. The process of recruiting and selecting nominees to the various boards and commissions has given me a greater appreciation for volunteerism and community service. I would like to commend you for your willingness to devote your time, energy, resources, and insight to the betterment of Maui County.

Once again, thank you very much for doing your part to make our county the best that it can be. I hope that your experience has been rewarding and worthwhile.

Sincerely,  
Alan M. Arakawa, Mayor  
County of Maui

Mr. Yoshida: We also have resolutions from the Advisory Committee to the outgoing members thanking them for their service. First of all, for Andrea Lehua Cosma, who served on this board since July of 2007. She had served as chairperson from 2011 to 2012. And her terms expired on March 31, 2012. And thanking her for her service, and extending their -- your best wishes in her future endeavors, and that copies of the

resolution be transmitted to the Mayor, Alan M. Arakawa; the Honorable Danny A. Mateo, Chair of the Maui County Council; and Kent Hiranaga, Chair of the Maui Planning Commission. So we would ask if you could sign the resolution for Lehua Cosma.

As well as we have a similar resolution for David "Kawika" Kaina, who also served on this board since July 2007. He was the chairperson from 2010 to 2011, and vice-chair from 2008 to 2010, and whose term expired on March 31, 2012. Thanking him for his dedication and public service to the people of Hana, and that expressing your sincere appreciation for Mr. Kaina's services, and extending your best wishes in his future endeavors, and that copies of the resolution be transmitted to the Mayor, the Council Chair, and the Chair of the Maui Planning Commission.

And also from the Mayor is a certificate of appreciation suitable for framing. So we'll transmit that to both Lehua and Kawika.

Chair Blumer-Buell: Okay, I would like to get a motion from the Committee to endorse the -- or thanking the outgoing members; the Mayor's, we don't have anything to say about, but I'd like a motion from our Committee thanking Lehua and David.

Mr. Ballantyne: I'll propose that.

Chair Blumer-Buell: What's that?

Mr. Ballantyne: I'll propose that.

Chair Blumer-Buell: Very good. Do we have a second to that?

Ms. Hoopai-Waikoloa: I'll second that motion.

Chair Blumer-Buell: Okay. We have a second from Anjoleen.

There being no discussion, the motion was put to a vote.

***It has been moved by Mr. Ballantyne, seconded by Ms. Hoopai-Waikoloa, then unanimously***

***VOTED: to endorse the resolutions thanking the outgoing members: Andrea Lehua Cosma and David "Kawika" Kaina.***

Chair Blumer-Buell: Okay, that's endorsed unanimously. Clayton, does that finish this part of the agenda?

Mr. Yoshida: Yes, Mr. Chair.

**E. APPROVAL OF MINUTES OF THE NOVEMBER 14, 2011 MEETING**

Chair Blumer-Buell: Okay. The next thing is the approval of the minutes of November 14, 2011. We have draft minutes - 80 pages. I would -- I read all 80 pages and I would, unless the Committee would like to defer that, I would like to hear a motion accepting the minutes. I think it would be good, since both Ian and Scott were at the meeting, and I was, that it comes from -- from one of them, otherwise, we can accept them and amend them later if it's really necessary. I read all 80 pages and it was -- I think it was accurate.

Mr. Ballantyne: I propose that.

Chair Blumer-Buell: Okay, we have a motion by Ian Ballantyne to accept the minutes, the draft minutes, of November 14. Do I have a second for that? Okay, second by Scott Crawford. Any further discussion of that? Okay, seeing none.

There being no further discussion, the motion was put to a vote.

***It has been moved by Mr. Ballantyne, seconded by Mr. Crawford, then unanimously***

***VOTED: to accept the minutes of the November 14, 2011 meeting.***

Chair Blumer-Buell: Okay, so we've approved those minutes. The next action is the public hearing, and that action is to be -- action is to be taken after the public hearing. Now, I talked with the -- Gina Flammer and our Corporation Counsel and there's no -- we thought it would be constructive to let the Planning Department do their short -- their short presentation before the testimony so that everybody's up to speed, and that means that when you testify, if there's something that is -- that you -- that needs to be corrected, you'll have a chance to do so when you testify. So let's go ahead with the Planning Department presentation, which isn't going to be too long, and then we'll get into public testimony.

**F. PUBLIC HEARING (Action to be taken after public hearing.)**

- 1. MS. ARABELLA ARK requesting a State Land Use Commission Special Use Permit and a Conditional Permit to operate a ceramics studio in the State Agricultural District at 46-575 Hana Highway, TMK: 1-5-008: 010, Hana, Island of Maui. (SUP2 2011/0006) (CP 2011/0006) (G. Flammer)**

Ms. Gina Flammer: Okay, we're going to do things a little bit differently. Our projector -- I'm Gina Flammer, the Staff Planner for this projector. Our projector is endlessly searching for a signal that it's probably never going to find in Hana. So what we're going to do is I have color -- we have a staff report that went to the different Committee Members so I brought color photos on the computer. I'm going to let them go ahead and take a look and then I'm going to leave it up here for anybody that would like to come up and just take a look at those color photos. So I'm going to start with pulling that up for them. I apologize for our technical problems. Okay, well, two of the exhibits that are in the report, they're the color photos for that.

So I wanted to just real briefly talk about the project itself. The project is allow client visitations to a ceramic studio. It's because the product is not -- let me backup. The land is zoned agriculture. It's both state and county zoned ag, and that -- there are certain permissible uses within that. This is a permit that would allow an additional use with approval through this -- going through this process. The client has been operating the ceramic studio on her property. She operated it from 2002 to 2010. It was constructed in 2002 with an architect and building permit to put it up. She was informed by the county in 2010 that due to the ag zoning and the fact that clay did not come from her property that she was making the ceramics with, that she would need permits in order to do this. She spent quite some time putting the information together and then applied for the permit in 2011.

So the required permits that are needed are a state special land use permit, that is because of the state zoning of agriculture. Now, because we also have county zoning of agriculture, she needs a conditional permit. A conditional permit is for any use that's not specifically listed right in the code. The state special use permit will be decided by the planning commission, and the conditional permit will go all the way to the County Council.

So this shows the map of where it is. It's about eight-and-a-half miles south this way. In the staff report, you can see where the map is. I have pictures in both the report and in here showing that there's easy access in and out of the driveway. When the police come out and do checks on permits like this application, they take a look at the vehicular safety of the area, and the police did do that and found that there's no problem. I wanted to show you though just so you could all see how easy it is to have a car in and out. Lots of view both ways. And when I'm done, I'll pass the computer down too and you guys can all take a closer look. I wanted to show how you go up into the property. It's nice and wide. Sometimes in ag, you know, we have real narrow windy dirt roads; this is not one of those properties. Here's the studio here that was constructed. Some of the work that's inside it. It's what you call an "open-air studio" where there's not four walls for the entire place. Some of the walls are open. It still did require a permit, however, because it was over a certain square footage.

You'll see in the staff report that there is a floor plan that shows you the building contains both workshop and the studio. She only needs to have the studio area permitted. So we're looking at under 500 square feet for this structure. Now, when Public Works took a look at the buildings in the picture, they noticed that there was a roof trellis type structure that had been added and they requested that she come in for building permits for that. Now, I know that the applicant has hired an architect, I think many of you know her, and she's going through that process right now.

This is the property and the house. So when we're looking -- I gave you pictures of the inside. That's why we're looking at the conditional permit. So now for the state land use special permit, I'm going to show pictures of the property and all the ag that is going on. It's kind of an interesting permit because we're showing that the land is not usable for agriculture, however, there is a lot of agriculture already on the property and the studio does not appear to have impacted the gardens that are on the property. And in your staff report, you'll find a list of the plants that are in there, and then a site plan that shows them as well. Now, she is on ag but because she is under two acres, it's called a "nonconforming ag property," so she's not required to have an implemented farm plan or a farm plan because it's just too small of a parcel. However, she does -- she would need meet it. Lots of flowers, ornamentals. There's also a lot of edible plants and trees on the property. A lot of the flowers are for cutting, which I understand she uses for the studio or will use again for the studio.

Okay, so what's the process for the permits. I briefly mentioned that earlier. This Advisory Committee is to the planning commission. The County Council's also going to be reading your comments and very interested in what you have to say. You know your community the best, so it's really important for you to let us know what the character of your community is and if you see this fitting in, and as best as you can do to describe Hana would be what they're looking for. What we do next is once we get the minutes from this meeting, I'll transmit the same report, plus all the copies of the testimony, to the Maui Planning Commission, and they will review both permit. They'll act right away on the one permit, the state permit. They'll make a recommendation on the conditional permit to the County Council. We'll then wait a couple more months while we wait for minutes to come in, and then we'll transmit it to the County Council Land Use Committee. At that point, we wait for the Chair, who's Bob Carroll, to call it up and put it on the agenda. And then we go up for a hearing before the County Council. It's quite a lengthy process.

So that's the end of the show. I'd be happy to answer questions now. If you'd like to hear testimony first, I'll leave that up to the Chair.

Chair Blumer-Buell: I think it would be good to go ahead and take public testimony at this point, and I would say if people testify, if you have a question that you'd like answered, let that be known. I'll write it down, and we'll ask it. We'll ask it when we hear the staff report.

So that'll save some time. And I think it would be -- let's see, we have -- we have around seven people signed up. After these seven testify, we'll have the -- I will allow anybody that's decided they want to testify will still be able to come up, and then we'll close the -- close the public hearing part of it. And one of the things -- and I think we'll take the testimony first since some people have to leave. You know, usually when commissions take testimony, there's people that have to leave early, so we want to get your testimony. If you have specific questions you'd like us to ask of the planner or anybody else, I'll write them down, and we'll ask them those. What I'd like to suggest, and I'm open to our members making suggestions, we've had the last two meetings on the short-term rental bill and on the home business bill went on really a long time and part of that is because we put, particularly with these -- with the rental bill, we basically allowed people to talk as long as they wanted, I mean we wanted to get people's input, I would just ask you if you could try to keep your testimony to around three minutes and then maybe wrap it up in four minutes; that would be helpful. The purpose of that is not to limit people but to try to get to the -- to get to the issue itself. So if there's -- if you'd like to speak longer, then we'll let the Advisory Committee make that decision I think. I just, you know, I see how these things go and we end-up with everybody worn out and making a decision at the end of the night and everybody's worn out and wants to go home. So let's start the testimony. The first person is Martha Yacht. And I think we have a -- Gina has the microphone set up for you.

**a. Public Hearing**

Ms. Martha Yacht: ...(inaudible)... I've been the Arabella's about a dozen times, and in all of those times, and I stay up there for usually at least a couple hours, three hours, I have never seen anybody come up her driveway. Now that's too bad for her 'cause she's trying to be in business. But all the same, there is no traffic coming up and down her driveway that really impedes anything. And I've only once been up there when she used her studio but there's no noise coming from her studio. I am unable to see how she negatively impacts the neighborhood at all. I also work at the Hana Cultural Center where people ask us all the time: What else can we do or see while we're in Hana? And I usually send everybody to see the landfill because I'm very proud of the landfill, and I try to tell them about other places that they can visit, among them are the different artists and studios we have around here and down to the Seven Pools and so forth. I recommend that you give Arabella her approval. That's it.

Chair Blumer-Buell: Okay. Thank you, Martha. And just for the record, could you state your name? I should have asked you to beforehand.

Ms. Yacht: Martha Yacht.



Chair Blumer-Buell: Okay. Thank you. The next person to testify is Patty, and I cannot make out the last name. Yeah, would you please come forward and give us your name right off the bat.

Ms. Patty Yeknich: Sure. I have some paperwork that I wanted to give to you ...(inaudible)... and I wanted to read ...(inaudible)... is that alright?

Chair Blumer-Buell: Yes. Absolutely.

Ms. Yeknich: My name is Patty Yeknich and I currently live at 45-555 Hana Highway and we are the immediate neighbor of Arabella, and this is from Rush Moore, who is a lawyer in Honolulu that represents the Bank of Hawaii because the Bank of Hawaii actually is trust owner of this property and representing Marion Nelson Warren, so I'd like to read this to you.

The Bank of Hawaii, as Trustee of the Marion N. Warren Trust, hereafter "trustee," by and through its counsel, hereby respectfully submits written testimony in opposition to the application for conditional use permit and a special use permit submitted by Ms. Arabella Ark, hereafter the "applicant." The trustee is the owner of the neighboring property identified by TMK: 1-008-009, which is the trust property, ours.

The applicant seeks to operate a ceramic art studio workshop. The applicant previously operated illegally the same use and the department correctly prohibited such illegal use. The applicant now seeks to apply the conditional permit use rules and special use permit rules to legitimize what would -- what is otherwise clearly illegal activity. Trustee notes that conditional use permits are intended to allow established uses which are similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed. This is a two-part test and the applicant has failed to establish either of the two requirements. First, the applicant must show the proposed use is a similar, related or compatible to uses -- excuse me, to permitted uses under the current zoning designation. Trustee respectfully submits that a ceramic art studio workshop constitutes a retail operation which results in a volume and type of business invites dramatically different from the existing permit uses.

Second, conditional use permits are intended to apply only where the proposed use has uniqueness such that it was not possible to make a determination at the time of the existing zoning designation was adopted. The retail operation proposed by the applicant has no such uniqueness. The

existing zoning designation could easily have allowed such operations. Since it does not, the provisions for conditional use permits do not apply in this case.

The applicant also seeks a special use permit. Special use permits are only appropriate for unusual and reasonable uses within agricultural and rural districts which meet the following tests, which the applicant has failed to meeting:

1) The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, of HRS, and the rules of the commission.

Applicant seeks a retail operation which is contrary to the intent of agricultural and rural designations.

The desired use would not adversely affect surrounding property.

The applicant's property shares a road lot for access. The retail operation proposed by applicant will cause heavy vehicular traffic unintended for such roadway lot. The roadway lot is a one-lane road totally inappropriate for retail traffic. Such use raises liability concerns. When applicant previously operated illegally, damage was caused to landscaping on the trust property and access to neighboring driveways were occasionally blocked. Trustee notes that any adverse effect to its property should make a special use permit inappropriate.

The use would not unreasonably burden public agencies to provide roads and streets.

As indicated in Item 2 above, public roadways will be necessary if such illegal use is permitted.

Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.

Trustee submits to no unusual -- no unusual conditions, trends, and needs and have arisen which support the retail operations proposed by the applicant.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district

Trustee submits applicant cannot establish her land are unsuited for agricultural and rural district uses.

The trustee respectfully submits that both the conditional use permit and a special use permit should be denied.

Now that was from the, and I have to put my own personal note into it 'cause we're the ones that live there, and I'm going to give this to you ...(inaudible)... bear with me.

Okay, we, Walter and Patty Yeknich, are the current residents --

Chair Blumer-Buell: Patty?

Ms. Yeknich: Sorry. I have -- this is important too.

Chair Blumer-Buell: No. Look, I just wanted to tell you, if I had known you were going to read the attorney's letter, there wouldn't be any time limit on that. It's very important that everyone be heard, and everyone will be heard at this hearing. I didn't mean to put a rush on you so --

Ms. Yeknich: I was like oh -- 'cause I have two more people but I'll just submit those to you. This from also from my mother, who is the beneficiary of this trust, and also from Bob Wilstrand, who I think was also notified. So those will be submitted, but I wanna read mine, and this is my concern, and I had to actually get everything in writing before I could actually present it so --

Chair Blumer-Buell: Okay. Thank you.

Ms. Yeknich: Can I say this? We, Walter and Patty Yeknich, are the current residents of 45-555 Hana Highway, which is known by this hearing as the Marion N. Warren Trust and immediate neighbors to Arabella Ark. I, Patty Yeknich, object to the special zoning request that Arabella proposes for property located at 45-5555, with her tax key blah, blah, for three reasons: liability, privacy, and noise. I need to clarify the driveway, and you can look at the maps there, and the easement so I can address our objections. The easement is for ingress and egress and utilities. It exist on the tax record for which I have no objections. It is for use by Bob Liljestrang, ourselves, Arabella Ark, and for utilities, as mentioned above. Landownership to the east of the easement driveway if owned by Farensteins. The ownership west is the Marion N. Warren Trust. If there is no ingress and egress issues or utilities present, the ownership of that easement would belong to the Farensteins. Either way, Arabella has no ownership. Now why, when my grandfather, Eugene Warren, and the first owner of Arabella's property, which were the Wagners, decided to put in a driveway to gain access, they took the easiest and cheapest approach, which does not

follow the easement, Exhibit A. The driveway is what it is. It starts with a split of the easement and the Warren Trust property goes over the true easement, back across our property, and then over the easement again before entrance is made to either residence, and that's Exhibit B. The driveway measures 110 yards from the main Hana Highway to the residence split, it is steep, narrow and curvy with many large mangoes hanging over the drive, it is blacktop, which was done prior to Arabella's ownership, and the width is at most nine feet, and at the least seven feet. One is not able to see either entrance to Arabella's or our property, and the last third of the driveway comes precariously close to dropping into our banana patch. Now, when the public sees her signage down at the bottom of the driveway, they assume a public road and access to her studio. If her gate is shut, there are only two options: either pull into our driveway and manipulate around, and there's an exhibit, or back down the hundred-yard driveway to the main yard -- main road. Some even get halfway down, see a flattened apron approach to our pasture gate, and back in there to turn around. They're on our property now and we have to get -- sometimes see them get stuck, so Walt has to take his tractor and pulled them out. This has left a rutted mess and an invasion into his private time.

Let's see, as I've said before, Arabella does not own any of the driveway. Who is liable for her visitors and guests seeking the ceramic studio should they slip off in her banana patch.? Who's liable for a mango branch that falls and damages their car or, worse, themselves? What about damage to our property? Who's liable for maintaining the driveway? Why should we have to pay for a driveway when it's being used commercially?

From the time we moved here in 2005, she had and still has signage at the bottom of her driveway, I believe on county property, displaying her gallery and artwork. This is a huge issue with privacy. The sign used to have open and close and hours of operation before I voiced our complaint to the county who had her remove that wording. To me, this gave the public and curiosity seekers an invitation to come up and see what was there. When she was operating illegally, there were, at times, 10 to 15 cars per day up this precarious drive, sometimes parked 3-deep in our driveway, and her customers aren't allowed to park on her grass, there is an exhibit there. Really, at times, we weren't able to leave. Even if she wasn't open, there would be those who would still come up and ask questions, and they would come down to our place and ask about her stuff. When she was open, people would still back into our driveway to turnaround because her sign doesn't allow people to park on her grass, so their only alternative is to turn on our driveway or back down. If granted that special nonconforming ag request, all this would increase again. The elimination of the wording on her sign eliminates some, but not all. There are those that think that sign gives them permission to come up on anyway. This is an invasion of our privacy.

The public seeking her gallery have at times been rude, pompous, and downright stupid. We had a situation coming down the driveway and needed to adjust something in the car,

so we stopped to fix the problem, we didn't see the red convertible down at the bottom of the main road waiting to visit the gallery; apparently, he wasn't happy with our decision to stop on the driveway because as we entered the main highway, we were barraged with obscenities and the finger, really.

Most of us who live around here are familiar with yard maintenance and such can be a daily ritual. We use our tractor and driveway to cut trees and move debris. We try to go this when she is not there as it does inhibit her ingress and egress, but we still have had several occasions when a tourist seeking the gallery has snuck up behind the tractor loaded with debris and literally put themselves in harm's way. Eek, there have been many close calls. Liability. Also, he has to stop work and answer questions about getting up there, even if she's not there: No one is home. No, she's not open. But I need to get up there. No. Can't you see we are working and the driveway is temporarily blocked. And the noise, really, and the cars running up and down the driveway, many going way too fast. She has a sign upon entering "Honk." Along with the helicopters above, the honking by the tourists around the corner, and now to add to this noise - no thanks.

I am curious as to why she's attempting to seek this special nonconforming ag for her property when she has the place on the market. Because of the noise, the privacy, and most importantly, the liability issues that we have addressed, the nonconforming ag request should be given to Arabella for her ceramic studio and workshop.

And I will give you Bob's and my mother's testimony as well as this one here, and I am done.

Chair Blumer-Buell: If you can give that to him. Okay, I wanna say for the record here that we got your letter, Exhibits A through F, so we're accepting we have -- we did receive the letter from Rush Moore

Ms. Yeknich: Okay. This is my mother's.

Chair Blumer-Buell: And we're getting one from Nalani Morris --

Ms. Yeknich: And this is from Bob Liljestrand.

Chair Blumer-Buell: Okay, and from Bob Liljestrand. I would like to -- we will be asking the Corporation Counsel some questions, at some point. I think it would be most constructive just to go through the testimony, but I'd like to let you know, when I read the staff report, that was a question I had: Who owns the road? Where is it? And that sort of thing. So that issue will be asked, and we did have, just so people know why, in this recent short-term vacation rental bill, or whatever it's called, SBR, Bully Chang came from Hana and he has a lot -- the old ...(inaudible)... way up on the hill, and so apparently that particular

subdivision has a TMK in common; in other words, everybody shares the liability, and he asked: Don't I have something to say about this? You know, this could be my liability. So that came up for me and we will ask that question. After the public testimony, we'll be involving Corporation Counsel and the staff in that. So thank you for your testimony. The next testifier is Joel Richman, and if you can please state your name for the record before you testify.

Mr. Joel Richman: Good afternoon, Members of the Commission, my name is Joel Richman. I'm the manager -- one of the managers of Hana Koali Mesa LLC, which owns a 159.5-acre adjacent parcel, bearing TMK: (2)-1-5-008-006. First of all, I would like to thank you for giving me the opportunity to speak today. I appreciate that this process allows for community input. The LLC that I'm a manager of that owns this particular property is more than just community, we also own what's been called "a road." It's interesting that it provides access from the Hana Highway to this subject parcel, which is a 110 yards. It's interest, when I read the report from the planning commission, it doesn't mention the fact that the access is a private easement over my company's land. The Hana Koali Mesa bought this in 2006. At the time we bought it, we were well aware of the title report, which said that this easement has existed for a long time, and it is in favor of Lot 1 of the Land Court Application No. 1893. Lot 1 had been a very big lot. Arabella is not the only property that uses this easement. But this is on property -- this easement is on property owned by Hana Koali Mesa. We are the ones responsible for liability. When we bought the property, we were aware that there was an easement; we were aware that it serviced two dwellings at the moment; we were aware that the driveway is seven and nine feet wide. It is not in compliance with county requirements for roadways. It is definitely not a road. We have had problems with Arabella Ark in the past. She has not asked for permission to place her signs on our property. She has damaged our vegetation. And, basically, we feel that this would be worse if she were allowed to run a commercial operation. This is definitely not suitable for public coming in and out of this property. It's a small driveway. I'm surprised to hear the planning commission report saying that the access is reasonable because it's certainly not in compliance with any county standards.

So representing the landowner, which provides the access to this property, we ask that these two applications be denied because it is a safety issue and it is a liability issues as well as inconvenience in noise and traffic. Thank you.

Chair Blumer-Buell: I'd like to give the Committee Members an opportunity to ask any questions. Does anybody have a question? Okay, Ed Cashman.

Mr. Ed Cashman: Thank you for coming, Joel. Did you folks approach the city and express your concerns?

Mr. Richman: Pardon me?

Mr. Cashman: Did somebody from your folks' LLC approach the city and express --

Mr. Richman: No. This is the first opportunity we've had to object -- to address this issue, so this is the first testimony we're providing.

Mr. Cashman: Okay. Thanks.

Chair Blumer-Buell: Ian Ballantyne, please.

Mr. Ballantyne: Yeah, I noticed on the original drawings we received and on this one, there appears to be the easement running between the two properties, the total ownership, as it leaves the Hana Highway, and then at Arabella's gateway it turns left and seems to be between the two properties, is that owned ...(inaudible)...

Mr. Richman: That is correct. That is easement no. 2, and that is the easement that is owned -- that is the easement a portion of which is on my client's property and which is used by Arabella. So the portion of the access to Arabella's property, from Hana Highway to her property, is specifically over our easement as well as encroaching upon Walt -- the Yeknich's property as well because the driveway, it meanders, it's not really where it's supposed to be.

Mr. Ballantyne: Thank you.

Chair Blumer-Buell: Any other questions for Joel? Okay, I have a -- just a clarification. We have Suzie with us, and I'm sorry I didn't mention you, she's the -- works for our Committee and does the transcribing and so forth, just so that it makes it part of what we're here for is to establish a record, so this is going to be transcribed and I wanna make sure that what Ian just asked you is properly identified, Joel and Ian were talking about Exhibit A that they've submitted, so the planning commission, who looks at this, which they will probably, then we're talking about Exhibit A.

Ms. Yeknich: Is that mine?

Chair Blumer-Buell: Yes. So you're -- I just wanna clarify that.

Ms. Yeknich: ...(inaudible)...

Chair Blumer-Buell: Thank you for that clarification. I will -- we will get to the bottom of this issue. It's very important. And why we're -- you know, what this body is here for is to allow people in Hana to come and give your input. I was one of the people that complained the loudest when we had issues, the community was not being heard, and so that's what we're here to do is to establish a record and we're going -- we will get to the bottom of the

roadway easement. I think we'll hold our questions until we get to the Planning Department report. Go ahead, Joel.

Mr. Richman: Because this issue came up, I'd like to offer a piece of documentary evidence to the commission. This is a title report, which shows my client's ownership of the property as well as identifying the easement, which is on the map, so if the -- your legal department, this will connect the drawings showing easement no. 2 with a title report from T.G. showing here -- it's here.

Chair Blumer-Buell: Okay, we'll accept that into the record. This is the title report? Okay. Thank you.

Mr. Richman: ...(inaudible)... one other thought --

Chair Blumer-Buell: Sure.

Mr. Richman: Which is that I'm also a lawyer, but I'm not here in that capacity, but I'm well aware of spot zoning and the idea of planning. And just as we have the problem in the county the vacation rentals and the bed and breakfast, zoning should -- zoning is designed to be done on a planned basis and not ad hoc, one person by another. If there are to be private businesses allowed on this stretch of the island, it should not be by happenstance, who happens to come to the Committee first, whether they've been illegal or legal and come up here, it should be somewhat planned. It should be the county saying how many of these private businesses would be permissible in this area of Hana. How many -- what type of traffic is allowed. The situation right now with special use permits and conditional permits is not -- is not proper zoning. It's not the way things should be done. It's first come first serve. So today it may be that there's not many driveways in the area and you say okay, Arabella, we'll give you this, and there may be someone three, four, five years from now that hasn't been illegal that wants to develop a property and find out, no, there's already too much in the area. I think, just like the bed and breakfast and the vacation, the planning commission should come up with a plan for how many private businesses might be allowed in this stretch, if any, because on an ad hoc basis, just to allow this person and that person to have a business here and business here, it's going to change the character of the community. Thank you.

Chair Blumer-Buell: Thank you, Joel. I'd like to just add something here so that people that are here are clear, again, on our role. This -- and I would -- if the Corporation Counsel wants to correct me or call me out of order, that's fine, but our county has what is called "Euclidean zoning," and that Euclid, I think that was Missouri, now they took that -- that case went to the supreme court, and I call -- okay. Point of order. We will finish testimony first, but I will -- I think it's important with what Joel put forward that people understand what



our zoning system is. We have a certain type of zoning system and we'll get to that later. Next testifier is Chuck Thorne.

Mr. Chuck Thorne: Hi. My name is Chuck Thorne, and I've lived in Hana for 22 years, and I guess I'll do this. I didn't know we'd be, you know, talking about legalities here today. I thought we were going to, you know, express how we feel; how Arabella's plan fits into the Hana plan, and Hana is a really unique place, as we all know. It's probably the most unique place on the planet. And Arabella has a really unique product, which is probably pretty unique to the world. And when people come here to Hana, we -- a lot of us are in the tourist business and we want to give them a memory that they can take home and they want to go home with a happy feeling about being here, and that they'll remember and tell friends and other will come back and hope they'll come back again and again. At Arabella's place, they can take something tangible that they can set in their house and treasure and remind them of Hana for the rest of their life. I don't think she sells the kind of gifts that people give away. The -- let me look at my notes here. I stop up at Arabella's now and then when I come back from diving in Kaupo, and we often visit, and I really don't see -- I've never seen a car come ...(inaudible)... there either, not that that's a criteria, and I don't know anything about -- if I owned the driveway, maybe I'd be upset too, but it's too bad that something couldn't be worked out, and if she has access to her property, I think other people should be allowed access to her property on some level. I don't see -- hear the noise. I don't see whether it'd be too noisy. And it is in ag and in ag land, you're allowed a lot of noise with farm implements and things. If you're making a lot less noise than that, it should be okay. So we all -- and, finally, we all grow up with this American dream, you know, that we could take our dream and make it into a business and somehow have a great happy life, and when you come to Maui and Hana we find out that, well, piano teachers can't teach piano in their house, and writers can't store books in their house, and hair cutters have a hard time cutting hair at their house, and all the things that we do, you know, if you repair toasters, well, you're supposed to go get a commercial space and repair your toaster, and these things don't work very well in Hana. We all have our unique ways of making a living, and they have to be unique because it's a small town, and we can't all be artists, and we can't all be, well, massage therapists, and, well, however many are, and we can't all be plumbers, can't all be electricians. We need the uniqueness and that's how I think she fits in very well in the Hana Community Plan. So if there's any way it could be worked out, the driveway issues, I sure hope that can be. Thank you.

Chair Blumer-Buell: Thank you, Chuck. Any questions for Chuck from anybody? Okay, see no questions. The next person that signed and in parenthesis says, "Perhaps," and that's Dot Pua.

Ms. Dot Pua: ...(inaudible)...

Chair Blumer-Buell: I know Corporation Counsel is saying have Dot go to the microphone since you are speaking.

Ms. Pua: No, no. I'm not going to speak ...(inaudible)...

Chair Blumer-Buell: Okay.

Ms. Pua: ...(inaudible)...

Chair Blumer-Buell: And would you state your name so that Suzie knows who it is.

Ms. Pua: My name is Dot Pua.

Chair Blumer-Buell: Thanks, Dot.

Ms. Pua: It's Dorothea, but everyone calls me "Dot." And I've been here for 42 years now, and when I came, I was the only outsider working at the hotel, so it was very humbling. And in those years, people so embraced each other and, particularly, those who came in, and it's just -- it breaks my heart when I see anyone having any difficulty with each other over things that could be resolved, and I'm sorry it came to this for all you folks, but I know that through all this, something will be worked out that will be equitable for all. But I just want you to be kind and loving to each other - and stop laughing at me, Judy. Anyway, please take everything into consideration and just be kind to each other.

Chair Blumer-Buell: Thank you, Dot. Does anyone have any questions for Dot? Okay, seeing none. The next person signed up to testify is Hilary Harts.

Ms. Hilary Harts: Good afternoon. My name is Hilary Harts. And I came to get educated, more than anything, which I gotten a lot more educated this afternoon, and I think I follow with Joel and with Chuck in the sense of I also am an artisan and I also have interest in terms of possible special use in the future. I thought that was more of the issue of what was going on today rather than the legalities. And I urge you to realize, I'll take myself as representing one of people who are part of the open studios. There are many artisans in town that would love to be able to have special use, have access through their homes legally, rightfully, to present their work out to the public domain and so I came forth, and I know Arabella does a beautiful job that way in terms of her products. And I, again, am also very sorry that there's road issues and things that are in your particular circumstances, but I see this as an incident but it's a beginning of Hana as we're moving forth of people who are wanting to sell their things that they're making within their homes. So I just urge the Committee to look at that as this is kind of tip of the iceberg, and I know you have to identify i with the legal aspects of the road, but there are more of us who are coming forth

who would love to be able to have our arts and our things move out into the public place. Thank you for that consideration.

Chair Blumer-Buell: Thank you, Hilary. Any questions from the Committee Members for Hilary? Thanks, Hilary. Next person signed up is Roger Lane, and Roger is the last person to have signed up. Anyone is welcome to come forward after Roger, just raise your hand. Could you state your name for the --

Mr. Roger Lane: I'm Roger Lane.

Chair Blumer-Buell: Thank you.

Mr. Lane: I have been -- moved here five years ago. I've been coming to Hana since I was 13 when the biggest commercial outside was fruits stands that you had an honor system on, which was incredibly unique to anybody around the world - the way it works. I am a third generation, I've done, my family, third generation of ceramics. I've been around the world to 50 countries and I've studied ceramics, and when I came here about five years ago, my first venture was out to Kipahulu and saw this little tiki ...(inaudible)... wow, so I went up the hill, drove up the hill, pulled in, and this woman with a hat came out and smiled out of the garden and greeted me, and I said, "What are you doing?" She just -- well, I said, "Do you do ceramics?" She said, "Yes." I saw her work. And I can tell you from seeing ceramics all over, it is world class work. It is world class art. This is not amateur. This could be anyplace in the world. This could be -- these would be museum pieces. A dream that I see or potential for Hana that isn't like -- is like other places, I also have friends that I did call in Martha's Vineyard, I called them in Mendocino County, and I called them in Carmel, they have had similar problems in their progression over the last 30 to 40 years with this same situation. The difference is they saw the value in the artists coming into the community and contributing, not only to the community, but to the overall culture and be an attraction, not an obstacle. They worked it out. They worked out their problems to allow these fine artists to come in. Those three locations are some of the three greatest locations in America who are famous for their artists. So coming into residential communities, they found a way to work it out and through it so that we have the culture that made us more memorable rather than just one location, which is the Seven Sacred Pools; there's more here than just that. So I know -- I know Arabella. I have hired Walt, and he worked on my property, they're both very, very good people. I know that it's capable for them to work this out along with the help of the county or anybody else. Thank you.

Chair Blumer-Buell: Hold on for a second, Roger. Does anyone have any questions for Roger at this point? I have one, and that is, in these other communities that you talked about working out the problems, do you know anything -- I'd like to get you to say those cities again 'cause I'd --

Mr. Lane: Mendocino County, who is agriculture, wine or grape, it's highly agriculture.

Chair Blumer-Buell: I know Mendocino.

Mr. Lane: Yeah. Carmel another one.

Chair Blumer-Buell: Okay.

Mr. Lane: And the most famous is Martha's Vineyard --

Chair Blumer-Buell: Okay.

Mr. Lane: Who is, literally, only residential. Only residential. And they worked out where the artists came in, and that's where presidents hang out now and then.

Chair Blumer-Buell: Okay. Well, I'm curious, and we'll maybe discuss this, about, you know, how other communities have worked it out, but there is a -- you know, some of the things we really have to consider is property owner's rights --

Mr. Lane: Yes.

Chair Blumer-Buell: And we have to consider the difference between people working at home and doing art versus opening the property up to commercial traffic, and the hours, and those sort of things. So I appreciate your ...(inaudible)...

Mr. Lane: Yeah, that's actually how they did it. It was residential completely. There was no commercial. It was residential. And Mendocino had the agriculture. Carmel has agriculture. And they worked through it with the -- all the people involved realizing the long-term benefit was for everybody. That's what they're looking for, the long-term, not the short-term, the long-term was beneficially for the -- I don't believe Martha's Vineyard was -- it was -- it had a unique thing 'cause it was more of an environmental issue they said, not an agricultural issue, but they worked even through that to bring all these people because it's not the -- it was the businesses, actually the artists, that attracted all the visitors. Nothing else. It wasn't -- so anyway.

Chair Blumer-Buell: Thanks for the clarification. Roger was the last person to sign up to testify. I'd like to open it up to others. I see Arabella Ark putting her hand up. Please come forward and please state your name so that Suzie can identify you.

Ms. Arabella Ark: Hi. I'm Arabella Ark. And I thank you all for being here. And I'd like to apologize to the Yeknicks. I had no idea you were suffering. And I wouldn't ever want anyone who came to my property to cause you harm in any way. I was unaware of anyone

causing you harm. The driveway, the easement, is part of my deed even though it's owned by another owner, I have exclusive rights to it. So it's Exhibit A. And it is for my use because I have a landlocked property. So when I bought the property in the year 2000, that's Exhibit A, it's part of it. I have resurfaced that road three times. I stopped doing it when my neighbors moved onto the property in 2006 because they have heavy-duty backhoes and tractors and so on that tear it up. I have landscaped the property and I've also fenced the easement to keep the wild cattle off the road. So Joel knows that I put in a \$1300 fence to keep the cattle off the road because the former owner, Hana Huli, did not want to do that. And I've also landscaped it. I've put in sago palms, and heliconias, and palm trees. So I'm very disappointed to hear the level of negativity here. It's very shocking and hurtful to me, personally.

I wanted to show you that -- first of all, I never knew that what I was doing as an artist was illegal in any way. I've been an artist in Hawaii for 40 years. I was president of Hawaii Craftsmen for many years, and that's an organization of 400 artists, and most artists in this state work in their homes; maybe one or twice a year they'll have a studio sale; some people sell all the time, but I never heard of it being illegal. So it's my fault. I was ignorant. I didn't know I wasn't supposed to do that where I am. As soon as I was aware of that, I applied for these permits. I was also told by the county that I would be a legal ag person if I made my ceramics from local clay. So I'd just like to show you my experiment. This is clay from Drummonds Hill. It was mined by one of my friends and neighbors, Erin Walick. It is 10 percent porcelain and 90 percent Hana clay. So I made a piece and fired it to see how it would be. It's nice and chocolate, but it's too short so you can see many cracks here. Now, with a little experimentation, I could, legally, be digging up my garden and making garden pots, and firing them, and I think I would have an ag product. But I'm a serious artist, I'm not a goof around artist, so I wouldn't like to do this. My real work is made from porcelain. My work is in the Smithsonian. It's in museums in China, Japan, Australia, England, France, and so on, and in many collections throughout the world. So I will never stop being an artist. The only real question is: Where can people see my work? And I have the most beautiful setting. I'm just so blessed to have this beautiful property in Hana. And I would like to continue doing what I'm doing. Just to give you an example of how and why I came to Hana in the first place was when Rosewood bought the Hotel Hana Maui, they asked me to do almost all the artwork for their new renovated hotel, and I came many times with my children, and we did pit firings at Hamoa Beach for all the guests, and I gave the guests all sorts of pottery, and I came for two weeks every year for that period of time Rosewood owned the hotel. And then I was lucky enough to buy my home where I did in Koali, it's Doctor Howell's old house, and I built my studio. And, for me, it's a real opportunity to let people see what, not only a resident of Hana's home might look like, but the gardens. I have extensive gardens with -- I think I've got 20-some odd varieties of heliconias, 15 varieties of ginger. I always have at least 9, if not more, huge cut arrangements. I give people my flowers. It's just an opportunity. And they get to see the Seven Pools from my front yard and it's nice. And I must say, I'm lucky to get three

people a week to my house. Now, I haven't been operating for 16 months, since this complaint came down, so there aren't people on the driveway that I know of. It's just me, my friends, visitors, and family. And so I'm doing everything I know to do to be compliant. I also would like you to know I have a million dollar liability insurance policy with Dongbu Insurance on my business. So thank you so much.

Chair Blumer-Buell: Thank you, Arabella. Any questions for Arabella from the Committee? Clayton has a question.

Mr. Clayton Carvalho: Signage for your operation was still posted despite being --

Ms. Ark: No. The county gave me permission to leave my sign up. They said it's fine to leave your pedestal. It's fine to leave your teapot. Only put your name. We don't want anything that would indicate that you're a gallery or a studio, or hours of operation. So I did that, and then some vandals came, and it's a big concrete pedestal with stones and rebar inside, and I came down the driveway at 6 o'clock one morning and someone had completely pulled it and broken it and it was in the highway where it could have caused a terrible accident, and it was just something malicious that happened. I immediately got it cleaned up. But that's the only signage that's there is that sign with my name. Thank you.

Chair Blumer-Buell: Any other questions from the Committee? Okay, thanks, Arabella. I saw some other hands in the audience. Is there anyone else that wants to come forward? Please come up, and please state your name for our recording secretary. Thank you.

Mr. Ed Lincoln: Aloha kua. My name is Ed Lincoln. And thank you to the Advisory Committee and members of the community. I also have something to learn by attending these functions, and I have a similar situation. I live along the roadway that traverses part of my property and part of the property owned by the Frelinghuysens, who have jointly entered into a agreement with the county to offer and easement that allows a tremendous amount of traffic to traverse down the road to access the Palapala Ho`omau Church. And the only ancient access to that road was the original alignment of the old government road before it moved mauka. So just as an example, we have to say that these issues can be worked out. There seems to be enough leverage between the landowners around that can allow for some type of give and take so that that easement issue can be absolved. Now, personally, as I came forward here, I wanted to speak on behalf of Arabella, who has been a family friend and a local island fixture, whose family has deep connection and roots in the history of the islands, and what she brings to this community in her art visions is something that kind of endures myself to the way a small community should behave in our ability to display those traits that can contribute both financially and artistically to the community that we live in. Hana is very unique in that sense that we probably experience 50 to 60 percent of the visitor traffic that arrives on Maui, and receive probably 1 percent

of the revenue that is generated by that traffic. That seems to be a little out of balance. And by encouraging small business entrepreneurs to establish themselves in their realm in a very un-intimidating and un-, you know, overpowering way, and Arabella's signage, if I had to hold that up to comparison to some of the roadside vendors that are vying for the visitor traffic as they drive through town, is very commendable. That was -- you can drive by there and the baby pig crossing sign catches more attention than hers does, which, ultimately, everybody sees as they're going by that place. But as an advocate for small business rights, small business needs to have the support of the community. We generate revenue that stays in the community, and not only does it generate the revenue that stays in the community, but it allows the business owners to participate in the community in a lot of other ways that brings the resources full circle to the community. So, you know, with all of that being said, I'd just like us to encourage us to try to work together and find solutions to keep the individual entrepreneurs that live in these very remote areas viable so that we can keep from having to depend on large institutions finding root here, and I think the last time that we had the potential threat of that was when David Rockefeller had acquired considerable property out at Puhilele and Kapahu and was very conveniently discouraged from building his hotel and, consequently, had the resources turned over to the Nature Conservancy, which exist today as the Haleakala section of the -- Kipahulu section of the Haleakala National Park. So it comes down to the smallness of this community and the vibrance of the small entrepreneurs that can keep this community viable. Thank you.

Chair Blumer-Buell: Thanks, Ed. Any questions from Committee Members? Okay, I have a quick question that is when you -- you own the property on the Kaupo side of the road going to the church, yeah? Okay. And so -- and you still have the stable out there?

Mr. Lincoln: Yes. That's correct.

Chair Blumer-Buell: Okay. So my question is really what process did you go through with the Frelinghuysens and the county?

Mr. Lincoln: I did not go through any process. When I purchased that property, that was the layout. That property is still owned by the tax key that encompasses my property as well as the upper section of the road is owned by the Frelinghuysens; the property that is on the Hana side of the road or actually the upper portion of the road, but those two segments of the road were negotiated as an easement with the county. So my property pin is actually on the opposite side of the road.

Chair Blumer-Buell: I mean I'm curious because -- so the actual easement to the church is really in the pasture, the Frelinghuysen's pasture?

Mr. Lincoln: Right down to the bottom where it actually crosses over a piece of my property.

Chair Blumer-Buell: Right.

Mr. Lincoln: So the two landowners at the time, which I would assume was Frelinghuysens at one point and the predecessor to me, negotiated an easement with the county to allow the traffic to go down the road, but the roadway is still owned by myself and Mr. Frelinghuysen.

Chair Blumer-Buell: Okay. Last question for me. That is the road to the old Kipahulu School.

Mr. Lincoln: That's correct.

Chair Blumer-Buell: How did that figure into the situation?

Mr. Lincoln: The road -- the Kipahulu School, the jailhouse, and the church were all accessed by the old government road, which turns off just as you come over the Kokoai Bridge from Kaupo side, the road then went below what is currently called "the Kipahulu Triangle," where the Kalena Center is, crossed over the Kalena Stream, continued on to the church, and then went upwards and joined onto the current upper road. The original intent to get to the church when that lower section of the road was bypassed by the current government road, the first option by the Frelinghuysens was to offer the church an easement directly to the church on the Hana side of the open pasture there, but that didn't line up with their driveway. So, in other words, they would have had to go down to the church, turn toward Kaupo, travel a couple hundred yards, and then travel down to their property, which is below the old schoolhouse.

Chair Blumer-Buell: Right. Okay, well I appreciate your input. I'm asking those questions just to kind of look for a possible -- one of the things that we will get to is we need to discuss in detail, looks at the deeds, and everything else for the properties for this project. This is a matter of fact that has to be established beyond dispute before it can move out of here. We have to have this information.

Mr. Lincoln: That's why I'm offering that because that might offer you some type of a basis that you can inquire into the county what proposition it is exactly that allows them to take the current easement and accept the liability for it that allows us to transfer that use of that property to the county.

Chair Blumer-Buell: Okay. Thanks very much, Ed. Is there anyone else that would like to testify? Please come forward.

Ms. Lynn Lincoln: Aloha. My name is Lynn Lincoln. And I am speaking for Arabella as a property owner out here and as a business owner. I feel she is an asset to the community.



I think when people come out here, they're looking for things to do. I think living out here takes some creativity. There's not a lot of jobs being offered to the community, so you have a lot of people that run businesses out of their home. I feel she has little impact on the environment. As a cyclist, I ride by her property everyday and I can't say I've ever seen a lot of traffic going up that road. As a friend going up to her house, I've hardly ever seen cars up there and actually wondered how she survived making a living off of her studio. I have never seen 15 cars up there at any given time. I never seen one. And I would like to see this go through. And as far as her signage goes, I felt her signage was so attractive, I've used it in advertising for my business to show the quaintness and the feeling of the community that Hana has to offer. Thank you.

Chair Blumer-Buell: Thank you, Lynn. For the record, could you spell your first name? I'm not sure.

Ms. Lincoln: L-Y-N-N

Chair Blumer-Buell: L-Y-N-N. Okay, mahalo. Anyone else?

Ms. Yeknich: I just wanna say I don't understand. This is a property issue ...(inaudible)...

Mr. Yoshida: You have to use the mike, Mr. Chair.

Ms. Yeknich: This is a property issue. What does the artist have to do -- I think her work is fine. What she does up there is great. It's just from point A to point B is not right, and we have people -- you guys don't live there 24 hours a day. You go by on a bicycle, two seconds -- you never seen a car. No. I've seen it. I have pictures. It's documented. So I mean I'm just a little upset with why everybody else has input on something that is really particular and dear to us. I wouldn't dare go to them and say I think you should do this over your property. You're ...(inaudible)...

Chair Blumer-Buell: Okay, for the record, that was Patty speaking again, and the -- you know, here's -- before -- I'm going to offer more people an opportunity to testify, we have a couple, but part of what we're doing in setting the record here is we have a process setup by the county, we have zoning, we have -- and we have property rights, and, believe me, your property rights are important and we will -- we will discuss those. So, you know, what we really can't have is a debate every time somebody says something. We will get to the bottom of it, we will discuss property rights, which are very important, and so thanks. Anyone else to testify? Go ahead. Please state your name for the record please.

Mr. Walt Yeknich: My name's Walt Yeknich. I have one question is if this stuff all goes through and everything's granted, the property is for sale. The art is for sale. So is she doing this for a benefit to make it commercial to make it more saleable. And when she

moves out or whether it sells, does this permit go on to the next person and we got a machine factory in my backyard then? I'm from Ohio. The sweet little Amish used to do the same thing. They buy 500 acres. They put up a barn. Six weeks later, they're sandblasting engine blocks from Cleveland. I guess we're stuck with it. And it's gotta -- we have our privacy, and that's what this is all about - liability, privacy. And the people who say there are no cars that go down the driveway, there were two there just the other day. The other day I backed the tractor down, almost ran over a woman. She blamed me for it. That's about all I got to say.

Chair Blumer-Buell: Does anyone have any questions for Walt? Okay, I think Eric Liljestrand raised his hand. Eric, could you state your name into the microphone.

Mr. Eric Liljestrand: My name is Eric Liljestrand. I've lived on the -- I own the property across the street from Walt and Patty. I've lived on that property this year makes 21 years; starting off in a tent, trailer, now I've got a home on it. I'm retired. A retired pilot. Spent a lot of time in the easy chair reading the paper, watching television, news, and I have a direct shot, a clear shot view of Walt and Patty's driveway, and I'll tell you, I forget which gal said, you know, she's been up there for 4 or 5 years and saw 12 cars; that is definitely not the case. Now, I believe that another gentleman mentioned spot zoning, and I think that's a big issue that should be seriously discussed. I also believe, personally, in the letter of the law, or whatever you wanna say, as far as what's allowable in ag, and we should stick to that; otherwise, we're on, I believe, kind of a slippery slope. Why couldn't I say I could fly a helicopter off my property? I know it'd never go through. But, you know, where does it end? Thank you.

Chair Blumer-Buell: Hold on a second, Eric. Does anyone have any questions for Eric? And would you mind spelling your last name. I apologize for getting it wrong.

Mr. Liljestrand: Smith. No, I'm kidding. L-I-L-J-E-S-T-R-A-N-D

Chair Blumer-Buell: Okay. I did want to just make a brief comment that the issue that Walt raised about transferring rights if she were to sell her property, that is an issue which is part of the permit. They do discuss that, the county does, so we will discuss that issue very specifically. I'm not -- I'm trying to stay on our agenda, but we will discuss the issue of transfer of any permit, promise that, and the same thing with Eric, he wants to -- clarification on the spot zoning issue and zoning, that will be addressed. That's part of why we're here, and we will be asking -- we will be putting on our attorney on the spot very shortly. I guess, unless somebody objects, I'm going to let Arabella say another -- say something else, but we really don't want to have a debate, you know. It's very clear what the issue are, and we're here to sort those out and establish a clear and honest and legal record on which to make a decision. So you can go ahead and make another comment.

Ms. Ark: Thank you. I'd just like to clarify something. To my great, great sadness, I have listed my property for sale, and there's a real reason. I haven't been able to earn a living for 16 months. Without earning a living, I've had to take out a mortgage. I couldn't see an end in sight to this whole process. So, for me, it's simply a reality check. I'm being driven out if I can't earn a living. I don't want to sell. I would love to stay in Hana and I hope Hana sees me as an asset. Thank you very much.

Chair Blumer-Buell: Thank you. Is there anyone else who would like to testify? Okay, seeing nobody coming forward, without objection, I'd like to close the public hearing part of the -- of what we're doing. Any objections to that? Okay, so the public hearing part of this is closed.

**b. Action**

And I'm going to ask -- I'm going to ask our attorney and our planner, I think it's very important to address the easement issue, and what zoning is, and what the property rights are, and what an SUP is. Those are my priorities. Arabella has a legal right to apply for an SUP. The next door neighbors have legal rights as owners of that property. Zoning means something. And these are issue we will get established. I'd like to ask Corporation Counsel how she would like to proceed. It seems to me we could cut right to some of the important issues by going over the easement. And if you can't make a legal determination with all the exhibits we have and the deeds we have, it may make sense to take it as far as we can and defer it till we have a definitive legal opinion. I think it's a bad idea to move anything out of here and make any decision without having -- without having the facts.

Ms. Hoopai-Waikoloa: Can I make a comment?

Chair Blumer-Buell: Please.

Ms. Hoopai-Waikoloa: I thank everyone for their testimonies. I'm hearing a lot of the word "unique" or "uniqueness," so I'm born and raised in Hana, and I actually grew up in Koali, so where Arabella Ark is, that was part of a playground when Doctor Howell used to live there. But with everyone using the word "uniqueness," what comes to my mind is what is unique of Hana is the natural beauty that is here. That is what people come here for. It's not about the small home businesses, all the creative and different entrepreneurs out there. It's about what Hana has to offer and what Hana has to offer is it's natural beauty - the beaches, the waterfalls. And being a resident here, and I will live here for the rest of my life, you have to look at the long-term, and for long-term it's what we do now will affect the future, and the future are the children of Hana, and the children of Hana deserve to have the Hana that has been here for past generations, which is its natural beauty. So I just -- I'm going to listen to everyone but I just want everyone to understand, coming from me, that the uniqueness is Hana itself. That's the beauty here. That's it.

Chair Blumer-Buell: Okay mahalo, Anjo. I'm going to turn the microphone over to our attorney and let her advise on how we should proceed.

Ms. Richelle Thomson: I'd like to check a couple of things with Clayton if you wouldn't mind just a very brief recess, maybe two, three minutes?

Chair Blumer-Buell: Let's take a ten-minute recess and we'll be back in ten.

*(A recess was called at 5:35 p.m., and the meeting was reconvened at 5:45 p.m.)*

Chair Blumer-Buell: Okay, I wanna call the meeting back to order, and it has been suggested by Richelle Thomson, our Corporation Counsel, and Clayton Yoshida, our Program Plan Administrator, that probably the best way to proceed is to have the staff give an overview of what they've put together, and the reason for that is that some of the questions that came up from different testifiers are in the staff plan, so I mean issues like transferability of a permit, that kinda thing is dealt with, so we're going to have -- we're going to get the staff plan into the record and then, after that, we'll get into more specific details. Thank you. Gina, fire away, please.

Ms. Flammer: Okay, you'd like me to walk you through the staff report? Okay. The first thing that we do with our staff reports is that we lay out all the applicable regulations. I took the state land use commission special use permit first, and if you look on page 3, it walks you through the criteria of what those are. These were developed I think in the late '60s, which is why 5 -- no, which is why 4, unusual conditions and trends have arisen since then, often we do some analysis on that. And then when we move on to the conditional permit, we look at our Title 19 and our zoning, and I wanna talk about the difference between a conditional permit and an actual change in zoning. A change in zoning is a permanent change where you would change it from one category to another, so you would change it from agriculture to let's say commercial, let's say residential. It's done. There are no reviews of it in the future. A conditional permit is when you're not sure that a change in zoning may be appropriate, you wanna try it out for a while, and you also want to review how it's going in the future. So you'll notice that we have a recommendation of three years, and then it comes back to be renewed again. A change in zoning would have been permanent. So a conditional permit is something that allows you to review it on a continued basis.

I won't go through procedural matters or the general description. We always take a look at the existing services because we're looking to make sure that the government's not going to be burdened or there's not going to be other issues that we have by a new use - we put a subdivision in; it creates a lot of children; that impacts our schools; we need to address that when we're doing reports.

Drainage. We have a property that's located in a flood zone. We need to take a look and make sure those things are mitigated against --

Chair Blumer-Buell: Gina, can you -- excuse me, can you, when you go to change pages, can you tell us which page you're on, otherwise, I get lost real quick.

Ms. Flammer: Sure. I'm on -- I know these so well. I'm on page 5 now.

Chair Blumer-Buell: Thank you.

Ms. Flammer: So what we do is we go through and look at the existing services servicing the property and we lay that out for you so that if there are problems that you can look at conditions that would mitigate those problems.

Background. It tells you a little bit about what's been happening in the past that led up to where we are now. In here we talk about the fact that she did operate the studio for eight years, and then there was a request for service that was filed, and that did then result in two permit applications being submitted to the department.

The description of the project. These are the applicant's representation of how the business will be run. These are legally binding.

We then look at the different agency reviews. So now we're on page 6. It's very important when we send out to agencies because they are experts. So we looked at Department of Fire. They did provide some very specific conditions. Zoning did look at the parking, and we did go out and verify that there is enough parking on there. When it went to the police, they also did take a look at that to make sure there was adequate parking. There also has to be maneuverability on that, and we take a look at that too. Department of Water Supply. Again, they're just looking at the property in general to see that everything's up to compliance. And then the Police Department. And again, they're really looking at safety, and they're looking at to make sure that pedestrians and cars are going to be safe going in and out and not pose any kind of safety risk. And the Police Department letter is included in one of your exhibits. They did not see any safety issues. I also want to let you know that I have pictures on the computer of what it looks like so you can actually see it. And if anybody's curious, they're right over here. Department of Health also took a look at it. They took a look at the entire property. Those were pretty much the most relevant ones.

When we go to page 8, that's when we do our analysis, and that's when we give you the information that you need to decide does it meet the criteria. So if we go on to page 9, and we take a look at what's needed for the land use special use permit, it gives you the five criteria that we do, so it takes you through what the department -- what their analysis is.

Again, we're giving a recommendation, we're not the approving body, the department is not. So if we go through 9, this is probably where some of your questions might be. And then if we go on to page 10, we take a look at the general plan. So we take a look at our new Countywide Policy Plan and what are the community plan policies that support the action, and those are listed in there on page 10, 11, 12. At the bottom of 12, we go into the agriculture, and it's interesting that these special use permits, they're from when we had sugar and pineapple that took up large tracts of land, and if you were going to do something different, like put a subdivision in, you needed to really look at the ag use, or you're going to do something else, you needed to take a look. So when you look at the agriculture, we have reports that were done in the '60s on soil, that were done on land classification, so at the bottom of page 12 and the top of page 13 goes over that. The property, the soil is actually rated D-25; E is the lowest rating. It's classified "other" in terms of the agricultural lands. It's not prime. It's -- "other" is -- there's four. You can either be unique, prime, unclassified, or other. This one is other. Then we take a look at what kind of soil we have. We have books that we use from Soil Conservation, and take a look at that, that gives you a little more information about that. We also take a look at archaeological and historical cultural resources. That's on page 13. This is isn't a project that because there's no ground altering, it's not something that we're real concern about. We do have SHPD, the State Historic Preservation Division, that does review these projects for us. And then again, we take a look at the impacts on our infrastructure one-by-one to make sure there's nothing that we need to mitigate or nothing that would cause us to not recommend approval. And then we go ahead and look at the social economic impacts and the environmental impacts. We give you your alternatives that the Maui Planning -- that you have for both permits. And then I have a recommendation, which I can make after you guys have discussion, and then -- or if that's the order you'd like to do it in.

One other thing I'd like to point out that's interesting with the agricultural zoning is it is permissible to sell products from your property. So it's not that commercial uses are not allowed on ag, it's that they are restricted to items that are from your own property. So when our zoning inspector went out, the first question he asked her was: Do you make this from the dirt on your property? Had the answer been "yes," that would have been the end of it there. We would not, as a county, have had the ability to restrict her use. She spoke up and said, "I use porcelain." And that right there started the permit process, so we went from there. So that's why we're here. It's not because she's not allowed to have people on her property and she's not allowed to sell things, it's just what she is selling has to come from the property.

Chair Blumer-Buell: Thank you, Gina. Does anyone on the Committee have questions for Gina regarding the report? Go ahead, Ian.

Mr. Ballantyne: Yeah. I mean the Planning and the various departments have come back and there's no -- nothing that they have brought up as being against the intended use, so

what about this access problem? I mean did that not come up in the planning or why does it suddenly appear now?

Ms. Flammer: Well, I'm going to give you the Planning Department's response, and our attorney can go into it more. First of all, in our report, we have an easement that is attached to the applicant's warranty deed. She is -- she has a right to use that access for her own use. That satisfied us that she is the legal owner and she does have legal access to her property. We stop at that. The county does not consider private agreements. We do not enforce private agreements. We do not have the authority to do that. That is something that the individual property owners must negotiate amongst themselves. Now we require an insurance policy, a liability insurance policy, and I can see how that is a remedy for this. We can consider other things, and it was so nice when neighbors reach out to us ahead of time to let us know, the only way we would ever know there were issues is if the neighbor lets us know that it's hard to get in and out. I drive up. I see everything. It looks wide; very easy for me to get in and maneuver, but I don't know that somebody else may be wasn't able to do it unless somebody tells me that. I see a police report that says everything looks fine. That's what I have to go on. It's really important, when people get notices, to go ahead and let the department, the county know what their own personal experience is. So I'm not allowed to consider a private agreement as long as she had legal access, unrestricted access to it.

Mr. Crawford: Can I ask a followup question on that?

Chair Blumer-Buell: Absolutely.

Mr. Crawford: So at the time when you made the report, you hadn't received the testimony that we have before us now in terms of --

Ms. Flammer: I haven't even seen it.

Mr. Crawford: Okay. So the question of the impacts on the neighboring property and the easement, we're the first ones really that are hearing this, just to clarify. Okay.

Ms. Flammer: And that's why we bring it out to the community because we need to hear it.

Mr. Crawford: But you weren't able to consider that as part of your report?

Ms. Flammer: The letters today?

Mr. Crawford: The testimony as far as --

Ms. Flammer: There would be no way.

Mr. Crawford: Okay.

Ms. Thomson: I just wanted to clarify too though that even had the easement issue been brought to attention, the Planning Department would have looked at access and whether or not there's legal access to the property, but Gina was correct that the Planning Department is not required to look into the private rights between the parties, between the easement holders.

Mr. Cashman: You know, you folks don't have to look into it. Do we consider it or we just take the advice from you? We ignore that and we just --

Ms. Flammer: You're an arm of the government right now. You're an Advisory Committee to the Maui Planning Commission, which is a board of the county government, so you would -- you could talk about it, but in terms of conditions, it wouldn't be something that would be -- I think your attorney would advise you it's an area that you can't really venture into.

Chair Blumer-Buell: Any other questions regarding the easement? Okay. I wondered, it seems to me, as a Committee, we need to take the exhibits that have been offered to us today by the adjoining neighbors, that includes a map, quite a number of issues, we have Exhibits A through F, which includes the easement map, we have a status report from Title Guaranty regarding their easement, and we have the representation from the Planning Department that Arabella Ark has a warranty deed. Now, for me, I need to have that sorted out. I mean it's -- you know, we are not the attorneys. If the road is on the neighbor's property, we should know it. You know, if it's not, we should know it. I'd like to know which scenario is true. I don't see how we can -- you know, that's an important baseline fact to establish, so I would -- you know, I think we can consider that as a motion later on in the hearing, but we certainly need that to be cleared up beyond any doubt. I found a contradiction from our esteemed Chief of Police, and I don't think he would have intentionally mislead us, but it really stood out to me, and that is that he said, "Ark Ceramics will not be opened to the public. It will be by invitation only." Now that's a pretty strong statement by the Chief of Police. He's saying, "Ark Ceramics will not be opened to the public. It will be by invitation only." Now, this is in his transmittal back to the county. And in the record that we received from Arabella, the time is given as 11 a.m. to 4 p.m. daily. So that is another -- you know, my feeling is that the, somehow, the Chief of Police has the wrong information, but let's clarify that. Is -- I'll let you decide how you wanna handle that, but it says in the police report, "Ark Ceramics will not be opened to the public. It will be by invitation only." So can you clarify that for us?



Ms. Flammer: Well, I'm not the officer that went out. I can also tell you that they stated it was a county easement, which it's not a county easement. Perhaps he misread the information. I sent him the application packet to review, so it's his job to go through that application packet and make a summary.

Chair Blumer-Buell: Okay.

Ms. Flammer: And you'll see the letter that she wrote that was included in the back in the application packet.

Chair Blumer-Buell: I mean I see it as a misunderstanding, but it's something, when you have the Chief of Police mis-characterizing the situation, then I think it's worth noting.

Ms. Flammer: You know that's not the Chief of Police that writes this.

Chair Blumer-Buell: Gary Yabuta is not the Chief --

Ms. Flammer: He's not the one that went out. If you look at who signs, it was Officer Wallwork who went out.

Chair Blumer-Buell: Please, Corporation Counsel, please.

Ms. Thomson: Thank you. I just wanted to request that the Planning Department confirm that they were aware and did analyze that there was an access easement to the property upon which the studio is located.

Ms. Flammer: Okay. I did ask the applicant to provide information to me showing that it was an easement that she had. She provided the warranty deed. The warranty deed states it's for her use as well as for utilities. In terms of research, that's really about all I can do unless somebody else steps forward and shows us there's something different, but she does have a warranty deed that does allow her access to her property. When properties are subdivided, if they're landlocked, they are required by law to have an access, an easement, so my feeling is that when this property was subdivided from the larger lot, they had to provide an easement and that's what the easement is that's in the warranty deed.

Chair Blumer-Buell: Well, then, you know, that is helpful but we need further clarification. Is the existing road - where is it? We have been -- we've heard testimony that the existing road is not, you know, it kind of goes into the adjoining property and so forth, and I think the -- you know, perhaps the only way to determine what the situation is is to have a metes and bounds description, meaning a survey, and then we would be talking about, you know, apples would be apples, and oranges would be oranges. I don't really know -- I mean I

don't know whose property is that easement on. I mean Arabella may have a warranty deed, and the neighbors have a -- probably have a similar warranty deed since it's part of the old ...(inaudible)... and so I think we need to know where everything is and that would be -- I mean this is -- I'm not saying we're going to prove anything, but if we were, and the road is not on Arabella's property, it's on the neighbor's property, certainly, you couldn't give a permit based upon it being over somebody else's property so --

Ms. Thomson: Maybe I can offer a little bit of clarification. The county can't consider, you know, whether or not the easement, as it's physically located right now, whether or not the driveway is located within the easement area, the county's not commenting on that one way or another. What the county can comment on is whether or not there's access to the property and whether or not that was provided in the application, which it was, and it was considered in the Planning Department's consideration. So you could ask the applicant could provide a metes and bound description, but the information that that would provide would be more relevant to the private parties to that easement, not the county's determination at this point.

Chair Blumer-Buell: Any questions from other people?

Mr. Ballantyne: Yeah. I mean I'd like to propose that we move on and if we approve or disapprove, it's maybe with a condition that there's legal access to the premise.

Chair Blumer-Buell: Okay. Well, we'll keep -- this is a subject that we'll come back to and decide.

Mr. Crawford: John, let me -- can I ask just one more question on this point?

Chair Blumer-Buell: Oh sure. I didn't see you, Scott. I'm sorry.

Mr. Crawford: When -- in an agricultural lot selling agricultural products, I know that there's the farm stand provision, is there a provision for allowing public access into an agricultural property into, you know, a store, other than a farm stand that's located on the road that's parallel to this? Somebody operating a retail farm operation other than the farm stand on the roadside, which is a certain dimensions and a certain location.

Ms. Flammer: It's private property. It would be up to that owner to decide who could come on their property.

Mr. Crawford: But could they put out a sign and, basically, have a public access for people to come into their property to sell agricultural products?

Ms. Flammer: It doesn't become a public access because it's their own property, their access. It's people going to see them to purchase their ag products so -- maybe you wanna ask your question in a different way?

Mr. Crawford: Well, it's public in the sense that if it's signed as a commercial business, there's a difference between an agricultural operation that's doing wholesale marketing of their products not on the premises, and I know that farm stands are permitted for retail sale of products direct to consumers but that's within certain provisions in terms of the size of the farm stand and the location of it, so can someone operate a farm store, in a sense, on agricultural property, a commercial business on agricultural property that's not just retailing, but that's beyond what's allowed in a farm stand? Does that make sense?

Ms. Flammer: Yeah. I need to pull up the county ad code to see -- I think we have a copy over there. Maybe you can pass that down and I'll come back to that in a little bit. There are restrictions on, like you said, on the size and what you can do and what is a permissible use. You can sell products from your own property. You're not supposed to bring in products from other properties. And then your farm stands, there are size limitations on what you can -- on that. I think Clayton's looking it up now to see exactly what those restrictions are.

Mr. Crawford: What I'm getting at is the parallel in terms of the commercial use. So if we're saying there's -- we're allowing something that is a use other than products that are made from the land, particularly, but there's a parallel in terms of the commercial usage and impact that that has on neighbors, if this was, as you said, clay made from her own land, would the activity be completely permitted in the way that it's structured now or would that -- would it need to be similar to a farm stand, in the sense, and follow those provisions?

Ms. Flammer: That's an interesting question. According to our zoning division, when I talked to the inspector, she would have been allowed to continue to operate. Now, if we ran that through the legal system, I'm not sure if there would be other requirements, but that is what she was told by our zoning division.

Mr. Crawford: So if somebody wanted to just -- somebody has an agricultural lot and they want to put out a sign, other than their farm stand, and run a store and, you know, even if they're just selling their own products, that is permitted?

Ms. Flammer: If they're growing the products, or it's coming from their land, it is. If they're bringing conch shells from the Phillipines --

Mr. Crawford: No. Assuming that they're growing the product.

Ms. Flammer: Did you wanna read that or pass it down?

Mr. Yoshida: Just looking at the county ag district ordinance, Section 19.30A.050, under accessory uses, B.3., you can have one agricultural product stand per lot for the purpose of displaying and selling ag products grown and processed on the premises or grown in the county provided that such stand shall not exceed 300 square feet, shall be set back at 15 feet from roadway, shall have a wall area that is at least 50 percent open, and shall meet the off-street parking requirements for roadside stands, except that paved parking stalls shall not be required. Stands that display or sell ag products that are not grown on the premises shall be required to obtain a special permit pursuant to Chapter 205, HRS. It also allows for farmers markets for the growers and producers of ag products to display and sell ag products grown and processed in the county. So that's another accessory use besides agricultural product stands.

Chair Blumer-Buell: Clayton, could you recite that part of Chapter 19, give me the numbers again?

Mr. Yoshida: Yeah. It's the county agricultural district, Section 19.30A.050, that's permitted uses, under B, accessory uses, which are uses that are incidental or subordinate to or customarily used in conjunction with a permitted principle use. And under number 3 is the agricultural product stand. Under number 4 is the farmers market.

Chair Blumer-Buell: Scott, do you have any followup questions?

Mr. Crawford: Not at this time. No.

Chair Blumer-Buell: Okay. Please, you know, yell at me if you're trying ...(inaudible)... I have a simple question, yes and no question, for I believe Gina, our planner. If someone were to do ceramics and mine the soil from their property to do it, would not they need to get a mining permit? I mean that's a mining operation?

Ms. Flammer: I think it would -- we'd have to look at what law governs mining. I'm wondering if it's state. I'm thinking there's probably a depth requirement.

Chair Blumer-Buell: A what?

Ms. Flammer: A depth requirement that defines mining.

Chair Blumer-Buell: Yeah. I mean I'm not raising that to further complicate things.

Ms. Flammer: It's an interesting question.

Chair Blumer-Buell: But we know the State of Hawaii has mineral rights, and they require mining permits and grading permits, and the county grading permits, and so forth, so that's -- you know, I just was curious.

Ms. Flammer: I have had cases where people were cited for grading. They weren't asked to get a mining permit. I would think you need to hit a certain depth before it becomes actual mining.

Mr. Crawford: That's not what she's applying for anyway though so --

Chair Blumer-Buell: What's that?

Mr. Crawford: I said that's not what she's applying for anyway though so --

Chair Blumer-Buell: No. I know. But I'm just curious. Any other questions from Committee Members on any part of the report? Okay, I have just some, you know, general questions. I would like Corporation Counsel to describe, you know, I'm concerned about the property rights of everybody. There's no question Arabella has the right to apply for a special use permit and a conditional permit. But the neighbors have rights. And it is a special use permit because it's not -- it's not part of the zoning. So my question is we've had cases like this in Hana before, what are the neighbor's rights in terms of asking for a contested case hearing at this point?

Ms. Flammer: John, are you talking about an intervention?

Chair Blumer-Buell: I'm asking for clarification. We've had, you know, we've had cases in the past that where people have said they wanted to have a contested case hearing, and these were people that were opposed projects, and the point of a contested case hearing is to clarify the facts beyond any doubt, and then, normally, the hearings officer assigned makes his conclusions, which are not necessarily binding, but it certainly helped to clarify -- I don't think there's any harm in mentioning this at this point, there was at one time a camp ground proposed in Kaeleku, and it involved similar issues regarding ag use and all kinds of things, and there was a contested case hearing, and the kind of thing that comes out of that is one of the things I really remember is that they were saying it wasn't suitable for agriculture, it was grade D, stoney malama muck, according to the ALISH standards. Well, by the time the hearings officer heard all the agricultural used in the property, they described it as one of the best ag pieces in Hana, even though it had that classification. So, all of a sudden, the fact was clear, agriculture was possible on the property. So this is just an example of the kinds of facts that can be, you know, clarified when somebody's saying I can't do this that they should be. So I'm asking, the neighbors asked very specifically about zoning, and I think their rights, and I would just like Corporation Counsel to let them know what their rights are at this point. We have -- we didn't have it until this

meeting started. We have a letter, at this point, from an attorney representing the Marion Warren Trust. I mean we can't ignore that. You know, they're objecting to it. The trust is objecting to this and we need to deal with that. Thank you.

Ms. Thomson: It's my understanding that no petition to intervene has been filed in this matter, and there are certain time limitations on filing requirements, and that would be filed with the planning commission. It wouldn't be filed with this body. Depending on what this body decides, if someone wants to file a petition to intervene, they can do so and the planning commission is going to have to decide whether or not it meets the criteria to intervene at that time.

Chair Blumer-Buell: So, could someone have -- could the Marion Warren Trust have petitioned this body for a contested case hearing before today?

Mr. Yoshida: They could have filed a petition to intervene. This body could not decide on a petition to intervene. That would have to be the planning commission because they are the authority on the state special permit, since it's less than 15 acres. It could be noted that there was a timely petition to intervene filed at -- prior to the public hearing, in accordance with the rules of the planning commission, but this body could not decide on a petition to intervene.

Chair Blumer-Buell: I'm trying to just be -- I'm not taking sides here but we have a legitimate land use and zoning issue, and that's one of the ways, a contested case hearing is one way you resolve those. Having - this is a personal opinion - having been involved in several contested case hearings on behalf of the community, they're terrible. It runs up big lawyer's bills for private property owners, you know. It becomes more polarized, you know, people get examined, cross-examined. So my point in saying that is that -- is that I think our body should decide what is the best way to be -- move forward reasonably, and I don't want to encourage anybody to have to go spend 10 or 50 or \$100,000 to defend their property rights. There's something that's not -- that's just not -- that doesn't work about the system. Now, the one thing, and I would ask Gina to comment on this, this is from the report, and you can -- I can't find it right off the bat, but there's part of the criteria for getting the permit is there's five tests, and one of those was that there's no impact on surrounding neighbors, okay.

Ms. Flammer: As to the ag use.

Chair Blumer-Buell: Yeah. And let me finish. So from the testimony we received today, and the letter that we got from the attorney for the Marion Warren Trust, there's no way I think, at this point, we could conclude that there's no adverse impact on the neighbors. So, you know, that's -- and, you know, my understanding is if you fail one of the tests, then that's, you know, that's a reason for denial, you potentially could. So I'm saying all of this

because we have all these exhibits and testimony from the attorney, including the easements, we have additional testimony that's been submitted from Bob Liljestrand, and sorry if I'm saying it incorrectly, and we also have new testimony from Nalani Warren Morris, which people have not seen. I have the only two copies right here. So my point is, you know, I'm just -- maybe I shouldn't be -- it seems to me we're reaching this point, we're trying to see how do we want to proceed.

Mr. Crawford: John, can I ask a question ...(inaudible)... point?

Chair Blumer-Buell: Please

Ms. Flammer: Can I provide some background --

Chair Blumer-Buell: Yeah.

Ms. Flammer: For just a second. First of all, I need to get all that from you before we go. All the -- yeah, they need to come to the Planning Department. Okay. It's the only way I know about any kind of adverse effects.

Chair Blumer-Buell: ...(inaudible)...

Ms. Flammer: No. I have nothing. Before we go, just put everything together. I want to give a little bit of background on the state land use commission special use permit. This is an ag law that goes back to the '60s. They're talking about adversely effect ag land. They don't want to see agricultural use declined because of another use. That's why we have right to farm provisions and things like that. We have other permits, like accessory use permits, that do actually look at the affects on the surrounding property. But this one is looking at the ag. Does this -- will this affect the agriculture of neighboring properties? Will there be -- we had a case of a church where there was concern that they were growing, next door, a very delicate flower plant, they were worried about some of the gas exhaust coming over, some of the construction materials affecting the ag. So when I do my analysis of this, that's what I'm looking at. That's not to say that what I've heard today wouldn't -- doesn't affect how we look at the project. But in terms of the review and this criteria, it's looking at does it affect the ag. That's why when I talk about the agricultural practices of the other surrounding properties, that's why that response is that. But that doesn't mean that you can't talk about it and you can't mention in your comments your concern for the neighbor having cars going up and down. The other things I want to let you know is we've very interested in your comments, not just your up or down vote, so we can go through and at the end, and you guys all decide what comments you want to transmit to the planning commission. And then if this does go to council, what you want them to know. So don't feel like you have to just yes or no; we wanna know all your various different comments and what your concerns are, and then they can be vetted as we go

further through the process. You can also encourage the applicant to work with her neighbors on creating some kind of agreement; that can also be part of your comments.

Chair Blumer-Buell: Thank you, Gina. Scott, did you have a question?

Mr. Crawford: Well, it was along those lines, and you clarified some of what I was going to ask, but I guess one additional point, you know, I was looking at that same section in terms of adversely affecting the surrounding properties, and based on the information that was submitted today, would it affect your report? Would your report be any different and your recommendations be any different based on what you heard today?

Ms. Flammer: I would have included much more information for you so that you could make a decision, and that you would have had more time to read it and think about it than come to a meeting and hear it right then and there. So there would have been much more information in your report.

Mr. Crawford: Would it affect your actual recommendations?

Ms. Flammer: It's hard to say at this point. If I had pictures of tourists being stuck and put in unsafe conditions, it might. If I had pictures or evidence of 40 cars going up and down or something like that that could seem to be --

Mr. Crawford: So is it fair to say that you feel like, at this time, you don't have enough information to be certain about your recommendations now that new information has been provided?

Ms. Flammer: No. I think -- I think what we would do is we would transmit the report and your comments to the Maui Planning Commission and they would make the decision on the state special use permit, and then the council would, with all the full information, would make their decision on the conditional use permit or the conditional permit.

Chair Blumer-Buell: I think Anjo wanted to make a comment.

Ms. Hoopai-Waikoloa: As we were talking about the traffic issue on this roadway, if you look at the today, there might be minimal cars, but if the special use permit is granted, and then advertisements are going out, the number of vehicles that access that road will increase, therefore, making it more of a problem.

Ms. Flammer: I think we would add conditions, honestly, that would limit -- now, she represents in her application that there are limited people that come. I think a smart way would be, to mitigate that, would be to actually put a condition on the permit that would limit



the number -- the amount of traffic that would be going up and down onto the property. You could also look at hours of operation, days of operation. That's pretty common.

Ms. Hoopai-Waikoloa: But if you limit, on paper, the amount of vehicles having access to that, there's no one there that actually is at the bottom of road saying you can go, you can't go, that's too much cars. You know what I mean? There's no physical control of how many cars will be accessing that roadway to get to the studio, and the only people who, besides Arabella, who sees that are her neighbors. So even if there are conditions, there's really no type of physical way of stopping the amount of vehicles because if seeing her art -- I've never seen her artwork, but as I hear of it, it is an interest, so the amount of cars and people there may wanna go up, so how will that be controlled?

Ms. Flammer: I think if I were to have heard this, I would have added -- I would add some different conditions and that would be -- that could be part of your recommendations today. Having signage down all the time showing that it's open could be a concern. Having limited time that you could put out your sign that you are open would restrict traffic. We'd be open to other ideas that you would have that could address that. I think to deny something on something that could happen, that would be something that you would have to consider and think about.

Chair Blumer-Buell: Clayton, please?

Mr. Carvalho: We also having got into the issue of some of these like -- some of these points on the road are narrow and like Mrs. Yeknich stated, precarious positions, and could cause damage to vegetation, the ag just right alongside the road, especially if you have, I mean just looking at the logistics of it, you have two cars going up and then one of them coming down, traffic coming up, you're going to create a logjam, which is a nuisance, a general nuisance.

Ms. Flammer: And if that's a basis for you to recommend that you don't approve this to the planning commission, I think that would be legitimate.

Chair Blumer-Buell: Other questions? Ed?

Mr. Cashman: I think we should just look at whether we wanna give them the permit or not. Don't deal with the access. I mean that's -- that's their problem. I have another comment. I kinda -- I live in Hamoa. When we have, like one of the gentleman called it, this spot zoning, it really infringes on our security, our privacy. I don't think that's the way it's supposed to be done. I appreciate the art. My son is a graduate of fine arts. But I don't think, in our community, that's how it should be done. I was shocked when I seen this one. I didn't realize, within Hana, we have 20 artists. We don't want 20 people coming here. I don't want. I not saying "we." I don't think it's fair to us. I don't -- this is where we

live. In fact, I had to put up a chain in front of my yard because so many people wanna turnaround. I getting tired of fixing my walls - they knocking my walls down. I mean it's -- it might not seem like an issue, but it is a big issue. We get people down Hamoa that don't even live there. They're starting to setup a -- just like a homeless, and nobody want to enforce the law. It's easy to say, yeah, go ahead and do it. But there's no enforcement. I know that for a fact because that's why I volunteered for this Committee because nobody enforces it. You call and complain, it's -- you might as well talk to the wall. So my point is, we take the vote. If they wanna sue each other, they wanna bring in the lawyers, eh, let it be. Let the Maui Planning Commission worry about it. We just vote on if we want this to go -- if we want this kind of places to be in our community.

Ms. Hoopai-Waikoloa: I, too, was very shocked that the amount of artists we have in Hana, and I mean are they legal? I don't even know -- I don't even think I know any of them, and I've lived here all of my life. And private property is an issue. Like Ed living in Hamoa, I used to live in an area where it is private property and we dealt with tons of traffic. We had no business down -- there was no running business where we lived, there was just a beautiful waterfall, and we had to deal with - sometimes when I was volunteering for the makai watch, we can have 75 cars a day, and it's on private property. But because it's advertised out there, the visitors who do come here want to see this, so regardless of the people who live there and the respect as to, you know, stay out, it's private property, they disregard that. So with it, I feel we need to just continue and, like him, volunteered to be on here to enforce things and to keep Hana Hana.

Chair Blumer-Buell: Any questions or comments from any of the Members? Corporation Counsel was commenting to me just about on things that could be added. I'd like to let her explain that.

Ms. Thomson: Actually, I was just reiterating what Gina had covered that this Commission, if you decide to, you know, whichever way you decided, if you decide that you would like to recommend approval or recommend denial, you can recommend conditions as well and also pass along your thoughts and concerns so that either the council or the planning commission has those available to them when they're making their decisions.

Ms. Flammer: And I'll read back to you, at the end, the ones I've written down just to make sure I have it accurate. I'd like to write a nice letter to the planning commission, not just an up or down, just to give them a general sense of your discussion. I think a lot of what you're saying, that they don't live in the community, they need to hear where you're coming from. So at the end, I'll try to go through what I hear the concerns and you can let me know whether or not you want that to be conveyed.

Chair Blumer-Buell: Ian Ballantyne, please.

Mr. Ballantyne: Yeah. I mean I'm interested in the concept of keeping Hana Hana, which I've known about since I arrived, but we do have 30-plus artists in the community now, and Hana is Hana. We do have a lot of people with roadside stands who are -- could be construed as creating nuisances or whatever, but they're all there, nobody's done anything about them, and that is Hana is Hana. And again, we have something like 80-plus illegal accommodations, and all the local people use them. If there's a party, if there's a graduation party, people use all this. This is what Hana is to me. And I'm not -- of course, I don't have the Hawaiian national background and -- but that, to me, just making people legal doing what they're doing at the moment is a good thing, rather than a bad thing.

Chair Blumer-Buell: Any other comments or questions? I'd like to state, we're trying to keep track of the record, and these were just put in front of me, we have the two previously referenced letters that none of us have seen from Nalani Warren Morris, and Bob Liljestrand. We also have a letter here from Sandy Simone, a letter from Andrew Rainer, a letter from Meredith Einaudi, and a letter from Jan Elliott. So we have a total now of, just for the record, we have a total of six letters, I don't know if they're for or against, but we have a total of six letters that this Committee hasn't even looked at, at this point. We did receive a copy of the letter from the attorney Rush Moore, LLP, at the meeting today, and we did give the -- the neighbor read the entire letter from the attorney into the record, so we have that -- that much we have heard, but we haven't had time to go over all these exhibits they created that they submitted. We haven't been able to go over the six letters. We have public testimony. So I think it would be worthwhile if -- it seems like, you know, we've heard definite, you know, from Anjo and Ed, kind of a opinion on things. If I -- I think it would be good, at this point, if maybe each of the Committee Members, if they want to, to kind of summarize their feelings right now about maybe where they think this should go. And I'm gonna, if you don't mind, I'm gonna go first, and that is that we could approve this, and then I would like -- with conditions, but that's one of the options that's in the report. When I first got this application, there was no opposition, no letters from the Marion Warren Trust, there was a couple letters of support, and, you know, I thought, well, and this is not how I was -- I thought, you know, if there's objections from the Marion Warren Trust, and we're going to -- and we could consider a three-year non-transferable and revocable permit, so that was with no objections. You know, if the neighbors loved it, then that would be -- that might be appropriate to have a short three-year revocable permit, and I would say non-transferable too. But now we a lot of reason and informed opposition, and we have a letter from -- I think really kinda putting the County of Maui on notice as to the Marion Warren Trust concerns; in my mind, we have a completely unresolved issue regarding the access, and part of me would want to have all the facts before we voted it up and down. I mean to go through the -- you know, if we just say no with no real very good reasons, then, you know, one of the things we want to do is make our decision mean something. So there's a possibility that deferring this, requiring the applicant to show a metes and bounds description, and to show it with an overlay if the road is on the neighbor's property, and to get a clear description from Corporation Counsel exactly where the roads are, who

owns what, and what the rights are. That's important. We're not in a position to -- well, we are in the position, but I don't think it's right for us to violate people's land use rights that object. Now, you know, these are all just considerations. And this has been a problem over and over and over in the community, and we have people buy property and, I'll say in some cases, I won't say across the board, but people are not getting a full disclosure from the realtors about what is a legal use. I mean the realtors are required to make a full disclosure regarding zoning and all that sort of thing. So, you know, I'm -- you know, Arabella has told us that, you know, she wasn't really aware of the implications of the zoning when she bought it, and I'm just paraphrasing that.

So, you know, we're -- the neighbors have -- you know, I knew Marion and Gene Warren were friends of ours when we were in Hana, and Marion's one of the nicest people that you'd ever wanna meet, your grandmother. We had -- you know, we used to have meals with her, with them, and that sort of thing. So they -- you know, it was -- so this has been put into a trust and, you know, I think that what the family thinks at this point, and the zoning at this point, it means something. You know, they have a reasonable -- you know, if somebody buys a piece of rural land or ag land, they should have a reasonable expectation that they're going to be able -- that those rights should be defended by our zoning because that's the system we have.

And I asked Clayton, and I would ask you to disagree with me or to clarify this, or Corporation Counsel, from my looking into this, and I looked into this during the bed and breakfast bill and during the short-term rental bill, and we have, in this county, we have what is called a "Euclidean zoning regiment," and I think it's -- I'll find out if anybody's interested, but this Euclid I think was in Missouri. Anybody -- but there was a case there that went to the U.S. Supreme Court and the Supreme Court ruled that, you know, when you have zoning in place, those zoning -- that zoning means something, and as opposed to -- and I can only -- I'll just characterize this, I've been told if you wanna do anything you want anywhere you want to do it, move to Houston. Houston, Texas. They have a laissez-faire zoning system, mean you can build a McDonald's next to, you know, a mansion, or, you know, there's really no controlled zoning. It's wide open. So my feeling is we have this kind of a system for a reason and we're having -- you know, the whole county is going through growing pains regarding the bed and breakfast, the illegal bed and breakfast, short-term rentals, illegal short-term rentals, and this -- and the bill that we looked at the last time is a bill, and this the reason, the only reason that I opposed it, that this is a bill that would allow, with a simple permit, would allow commercial use on ag, rural -- ag and rural properties, and that is the reason, this is in the minutes, I voted against that because when I asked Joe Alueta, the planner, when we went through that bill, and we came to the part, and I said, well, Joe, you know, we had kind of a consensus on things when we got to that point, and I said, well, where is the -- where do the neighbors come into this? Where are they allowed to intervene on a permit like this? And he went, "This is it." You know, we're intending to allow people to get permits on properties and with -- in that particular version

of the bill was no recourse to the neighbors, and that's why I voted against it, and that's why it didn't get the approval of the Committee. But that bill is alive and it's in front of the planning committee, is my understanding, so it's -- so people need to pay attention to that. Special use permits are not the only way these things are being pursued.

So does anyone else want to -- I've tried to cover everything I'm concerned with. Does anybody else wanna make comments or if not, then I would like to open the floor to motions. We have the option of deferring this. Gina, you wanna tell us our options?

Ms. Flammer: I thought you were going to go around and get comments from the members.

Chair Blumer-Buell: Well, I asked and nobody's -- I think we're --

Mr. Crawford: Maybe we should hear the options.

Ms. Flammer: Okay. Well, basically, you can approve it with no conditions; you can recommend approval with additional conditions, that's usually what happens; or you can recommend denial to the planning commission. Let me turn to the page and tell you exactly what else we have. So you find your options on page, yeah, page 15 -- well, page 14 and 15 'cause there's two different permits. So, basically, with the state land use -- well, you're going to be -- the state land use you can defer asking for addition information; you can recommend approval with no conditions; recommend approval with conditions; or recommend denial. And you have the same things with the conditional permit.

Chair Blumer-Buell: Clayton, go ahead.

Mr. Carvalho: I think -- well, I thank everyone for your testimonies today, but we spoke too much in respect to Arabella's side of the argument, and we haven't spoken enough on the, you know, opposing argument. We understand that the trust, they respect the land, they respect the property, and so does Arabella, but if we're going to open this up for, basically, you know, if we approve this permit, it goes through, and we have one car or ten cars or a hundred cars a day, whatever it may be, are we -- are we guaranteeing that those customers, those visitors are going to have the same respect for the property that both sides have for this property, you know? I'm going to use the analogy that we already have a few issues like that in town with the Pua's at Uleno where we only have one party who opposes it and you have hundreds upon hundreds of cars there every day who abuse and, basically, take advantage of what makes Hana Hana. And I'm not going to say we're going to use that as a scale or that as a measure and say no. We don't want this to go forward. But we have to consider, as Mr. Liljestrand mentioned, the slippery slope we're going to go down if we say yes today. And I understand there's an option for approval with no conditions -- I'm sorry. Recommend approval with conditions, but, you know, as Anjoleen

said, who's going to be there to make sure these conditions are met in respect to both parties? And I'm not sure if my opinion is going to change on that -- in that regard. If we can get more information about, as you said, John, the actual easements to get it, you know, right in front of us concrete info, but until then, it's something that really won't change my opinion of the matter. Thank you.

Mr. Crawford: I think one of the issues that this really highlights is the larger question of the role of home businesses, artists, different kinds of uses in communities that are agriculturally zoned and rural zoned, and it's part of the long-term planning process I think, and maybe that's a question I have is how is that being considered as part of the long-term planning process, but the way that it's arranged right now, the way that these can be permitted is through this process, and it has to be considered on a case-by-case basis looking at the impacts, and the process is there to provide the community to come forward and present all these things, so on one hand, we can look at what is the cumulative impact of these things if there's more and more, or what is, if one is approved, what does it mean towards the future being approved, which is both positive and negative, in the sense that you want to encourage economic activity balanced with the impacts to the neighbors. And so right now, the way the process is setup, this is, you know, this is what we have to look at is this one case and what we feel whether it's an appropriate use of the property. And just going back to the questions I was raising earlier about if this was strictly an agricultural use, would it trigger some of these same requirements. Is it really the question -- is the main question that you're using materials outside or is it something about the nature of the establishment beyond that? And my interpretation of listening to the reading of part of the ag bill is that there really is, you know, there's a 300 square-foot limitation for a farm stand, and we're talking about a 500 square-foot structure, so it's allowed within this process to be able to permit that, and allow her to do that, but I think it's just -- I just wanna raise the point that if that was recommended or permitted in the end, it would be allowing something, in my interpretation, is beyond what is -- what would normally be an allowed agricultural use of the land. That's my understanding of it. So I just wanna clarify that that if that's the case, then that is what we're doing is allowing something beyond what somebody would just be allowed if it was strictly agricultural in terms of the commercial, the type of commercial operation, not just the materials being used. So, overall, my feeling right now is that it's difficult when there's a contentious issue and you're obviously have neighbors who feel that they're going to be impacted or are stating opposition to the project, but this was only brought forward right now; that's part of what this process is for. This is the opportunity for people to bring forward objections. But it's also difficult for me to feel like I can make a really good decision about it based on information that's just coming to light now and which hasn't -- the county hasn't had the opportunity to analyze all of this information, and the two parties, apparently, haven't even been made aware of this conflict, so, you know, in principle, I support the idea of encouraging entrepreneurial activity and allowing people to make their livelihoods as much as possible as long as it doesn't impact the neighbors and it doesn't impact the community in a too much of a

detrimental way, but based on -- you know, so I certainly don't wanna say I wanna recommend denial, but based on the opposition, you know, direct opposition stated by the neighbors that are directly impacted by this, I also don't feel like I can recommend approval at this time, certainly not without conditions. The other option is to recommend approval with conditions, but I think the question of how -- what kind of conditions could be placed on it reasonably that are enforceable that would actually -- would actually address the concerns raised by the neighbors is something that I don't think we can -- we can reasonably come up with right now. So it's always possible to say we wanna recommend it with conditions under the condition that this somehow gets resolved or that the neighbors come to some kind of agreement, but I think that's just putting it a little too far out there of saying, you know, we hope it'll be worked out in the future or whatever. To me, I'm feeling right now like there's -- just I don't have enough information to be able to or, you know, I don't have -- with the direct statement of opposition from the neighbors who are impacted by it, I can't recommend approval at this time either, so my feeling right now is that really the only option I see is to defer it; that's the only thing that I feel like I'd really be able to support.

Chair Blumer-Buell: Did you say -- I didn't hear that. Did you say deferral?

Mr. Crawford: Yeah.

Chair Blumer-Buell: Okay. Thank you.

Mr. Crawford: Which, you know, I also appreciate, you know, what Arabella is going through and that desire to try to minimize the burden that the government places on the process, so I appreciate that, but I don't think that we can -- that we can just try to accelerate the process and avoid deferring it when this direct opposition has been brought up, which nobody has had the opportunity to discuss or consider prior to this.

Ms. Hoopai-Waikoloa: I think that, with a deferral, it might give time for the neighbors to communicate in their own ways and come back again at another time with maybe they have some kind of an agreement, I don't know, but because there's a lot of things that were brought up tonight, I know I can't give no recommendation for approval, so I would be more comfortable with a deferral, which says here, "The Committee may defer action to another meeting day in order to obtain additional information that will assist in their deliberations on the application." So if we put it into a deferral, we can -- or Arabella and her neighbors can come to a later meeting with additional information that could help us with the -- some kind of a decision to go forward.

Mr. Crawford: To followup too, I heard -- I know reading this letter, there is a statement in here about something about the opposition to the actual use, but the main thing that I heard Patty and Walt talking about was questions about the access. So, you know, as part

of my, you know, recommendation at this point or my feelings is to just encourage the parties to talk to each other and try to come to some conclusion. I see Patty shaking her head, for the record. So I see that maybe that's not likely to happen. And, you know, so deferring it we may just end-up back here in the same situation down the road but at least maybe we'll have some more factual information that we can look at.

Chair Blumer-Buell: Any other comments? Oh, Ed, please.

Mr. Cashman: I would make the motion and then we can discuss it. I recommend denial of the state land use special use permit and the conditional permit.

Chair Blumer-Buell: Okay, I think it's -- we've all had the chance to talk, I think that's good. We could use a -- Corp. Counsel, please correct me, my understanding is if the maker of the motion obviously will vote for the motion, but somebody seconding the motion does not necessarily have to vote for the motion. It's a second for the purposes of discussion only. That's correct? Okay. So, at this point, if someone would make a -- is wanting to give a second, then we can discuss Ed's motion and it doesn't mean that the person seconding the motion will have to vote for it. It's for discussion. If there's no second, then I believe the motion dies, correct? Okay. So is there a second to the motion for discussion?

Ms. Hoopai-Waikoloa: I will have to second that motion.

Chair Blumer-Buell: Okay. We're now open to discussion on the motion to deny both of the permits.

Mr. Ballantyne: I think this is a very dangerous thing to do. It's putting -- I mean we talked earlier about the 30 known artists, but again, I know at least a hundred, maybe 200 people in Hana who are doing art. A good example, a Hawaiian friend of mine, I wanted a didgeridoo, he makes musical instruments, I went to his premise, he went up the mountain, got some cuts of bamboo, it wasn't off his property, he made me a didgeridoo, and I paid him money for it. Now, he's an artist, and he's in Hana, and he's doing that business. And now another one was we had my wife's aunty's 80<sup>th</sup> birthday party in Norway, we wanted a lei, and we wanted specific flowers in the lei. We went to one of the local Hawaiian ladies and she made us a beautiful lei, but it wasn't all from flowers on her property, it was from other places. These are all artists making a living in Hana. Why should we deny one just because she happens to have come in the cross-herds of the county regulations? Now, that doesn't mean to say that we ignore the complaints, but we should look further into it. You know, it's a very dangerous precedent to start saying to artists they can't practice in Hana. Goodness me, everybody's -- almost everybody's an artist.

Mr. Crawford: Ian, can I clarify something on that? I don't think that this is in any way saying that artists can't practice in Hana. There is a difference -- if we were to deny it,



there's a difference between artists practicing their art in their home and having a studio and doing the work, and that studio being open to the public with signage and traffic and people coming in and it being a retail operation. So we're not -- I don't want us to mis-characterize this as somehow anti-artists or Hana not being hospitable to artists. But we have to look at the specific impacts of this specific case on the neighbors when the artist wants to open up her home as a commercial business, and I think that's, to me, where it's different, and it doesn't necessarily apply to any other artist in Hana, it's not a slippery slope either direction as a bad or good precedent, it's this particular situation and that's what we need to look at.

Mr. Ballantyne: Well, yeah, but we're discussing the motion to deny it, and I'm against that.

Mr. Crawford: Right. I understand that.

Mr. Ballantyne: I agree with exactly what you're saying.

Chair Blumer-Buell: Anjo?

Ms. Hoopai-Waikoloa: I was just going to clarify that we're discussing the motion of denying the permit, but we're not denying her artistic talents.

Chair Blumer-Buell: Can you repeat that, please?

Ms. Hoopai-Waikoloa: That I was just clarifying that it's a recommendation to deny the special use permit, but it doesn't mean that we're denying Arabella doing her -- being an artist. Does that help? Like just because we say no to this, doesn't mean she's no longer going to be an artist. She's been doing it so long, she's going to be an artist for the rest of her life. As far as it being a career artist to pay a mortgage, that is out of my hands besides what is here today. But I am not saying that if I say no tonight means she can't be an artist, that's all I'm clarifying is she can continue being an artist.

Mr. Crawford: As she said herself in her testimony, what this is really an issue of is where people are able to see her art, not whether she is an artist or can produce her art at her home studio.

Chair Blumer-Buell: Ed, please.

Mr. Cashman: Yeah. I -- to me, you still can practice. My wife is an artist. My son is an artist. My son, one year, he was one of the artist of Hawaii where his pictures went into the Academy of Arts. He had a one-man show at Leeward College, University of Hawaii East-West Center, he had one that toured the nation. So yesterday I went, my boy - he got his doctorate. So I'm real familiar about artists. My son doesn't do it -- doesn't have a studio

at home. My house in Ewa Beach, we have where he used to develop. We made where he develops and he still practices, my wife still paints, but we don't sell it out of our house. There's a lot of avenues that you can go in. My issue is not I don't want you be an artist; it's that I don't think it's fair to this community that the way we zoning, like, you know, one here, one there. The same issue with the vacation rentals. It's unenforceable. Just like if we give you the permit and you continue doing it, your neighbor can't do anything. They'll call the police. It's the same thing I'm doing. Oh, that's not our issue. They close the vacation rental down; the next week, they back up again. Out of 20 homes in Hana, where we live, maybe four or five is vacation rentals - 450 a night, 350 - and it's unenforceable. If you're an artist, we have an art gallery in the hotel. We're not stopping you from practicing. You can still be an artist. I'm familiar with that. My son and my wife - they're artists. And another thing is, we're just an advisory board. We're not going to make the final decision. If you don't agree, the Maui Planning Commission is going to make the decision and then it's going to the council. The main purpose here is so we give you guys a chance to express yourself. I put the motion down for the discussion. My vote is not based on this easement, it's what's good for Hana, and I don't -- I could care less about the easement and fight that's going on. That's not my issue. Thank you.

Chair Blumer-Buell: Any other comments or discussion of the motion? Clayton. Thank you.

Mr. Carvalho: I just wanted to follow that up and say that if we defer to our next meeting and have concrete information about easements, does that solve anything in regards to the issues that Patty brought up, the safety issues, the traffic issues, the liability issue, I mean ...(inaudible)... the liability issues, but you still have safety issues and traffic issues to deal with, and it just seems that deferring it, we're just going to sit on this issue and not really -- we're not really, I would say, we're not going to make progress beyond what we've made tonight.

Chair Blumer-Buell: This is procedural issue. If we're -- if we were to vote to deny this, I mean I think about what is good for -- what's going to make the government work better for this community, and, you know, to me, if we vote denial, I think we should make a list of concrete -- she just can't -- I think we're doing a disservice to vote, you know, for deferral or denial or approval without giving a real solid list of why we're doing it. So this isn't -- it's not a criticism, this is where I was going to, if we, this is for Corp. Counsel, if we have a motion on the floor and seconded for denial, at what point would we discuss conditions for denial? In other words, you know, should we -- would it be appropriate to reasons to the denial, I mean at this point, or should we -- should we call for the vote and then ask -- add the conditions after the vote?

Ms. Thomson: It may be cleaner to do it that way - call for the vote on the motion to deny, and then you can have a, you know, a subsequent motion to flush out your comments to the planning commission.

Ms. Flammer: I've been taking notes. I can help you with that part when you get there.

Chair Blumer-Buell: Okay. I just wanted that to be clear because, you know, for people that have been in this position, you see there's our former Hana Planning Commissioner, Ward Mardfin, when, you know, when the votes come, and you have to come up with the conditions, you know, you're in the hot seat so you wanna be ready to -- you have to be prepared to, you know, stick it through and I think come up with good conditions and not just pass something through where it's not fully justified. So is there any other comments before I call for the question? We have a motion on the floor, and seconded, for denial of both of these permits, and any further discussion? Okay, I think, normally, the Chair doesn't vote unless there's a tie, is that correct?

Ms. Thomson: Right.

Chair Blumer-Buell: Okay. That is correct. So should we just call for a vote by raise of hands, or do we wanna have a roll call vote? How would the Members prefer to do it? Okay, we'll just show a raise -- a show of hands. So all in favor of denying the proposed permits, please raise your hand. So we have three votes against. It seems, next questions, it's not normal for the Chair to vote, would we need to have -- can the Chair vote in this instance where we have -- I mean we have three against. It seems to me we need four votes to pass something tonight. Is that true?

Ms. Thomson: You don't probably have enough votes to pass that motion.

Chair Blumer-Buell: So, I mean normally, we have a quorum, I just wanna be clear for everybody, normally we have a quorum of four people, but I understand that, for this committee, that we have -- it takes four votes to move it regardless of how many members are present.

Ms. Thomson: That's correct.

Chair Blumer-Buell: Okay, so we have -- we need four votes to move it one way or another. So, in this case, can the Chair vote?

Ms. Thomson: Well, if you don't have sufficient votes, then the motion dies.

Chair Blumer-Buell: Okay, but should I -- would I normally vote on this? I want to make sure we're by the books here.

Mr. Yoshida: Well, I believe the Chair could vote if -- well, to break a tie or if it may result in a decision - if it will make it so that the motion is passed or not passed.

Ms. Thomson: Let me just read this, and this is *Robert's Rules Frequently Asked Questions*: It is not true that the president can only vote, in your case the chair, can vote only to break a tie. If the president is a member of the assembly, he or she has exactly the same rights and privileges as all other members have including the right to make motions, speak and debate, and vote on all questions. However, the impartiality required of the presiding officer of an assembly precludes exercising the right to make motions or debate while presiding, and also requires refraining from voting except either, one, when the vote is by ballot, which we don't do, or, two, and when his or her vote will affect the result. When will a chair's vote affect the result? On a vote which is -- let me skip to this -- if a majority vote is required and there is a tie, he or she may vote in the affirmative to cause the motion to prevail. If there is one or more in the affirmative than the negative, he or she can create a tie by voting in the negative to cause the motion to fail.

Chair Blumer-Buell: So, if I'm understanding this, the Chair is allowed to vote in this case? So -- that's true? Okay.

There being no further discussion, the motion was put to a vote.

***It has been moved by Mr. Cashman, seconded by Ms. Hoopai-Waikoloa, then***

***VOTED: to recommend denial of the state land use special use permit and the conditional permit.***

***(Assenting: J. Blumer-Buell; C. Carvalho; E. Cashman; A. Hoopai-Waikoloa)***

***(Dissenting: I. Ballantyne; S. Crawford)***

Chair Blumer-Buell: And the Chair's going to vote in support of Ed's motion, and I'll tell you why. We have -- and I think we should start listing this 'cause I'm going to start out, we have in sufficient information on which to make a decision and we -- I don't think we have -- a deferral will necessarily change anything. I agree with the people that said that. In my thinking, the -- we have had substantial amount of opposition from the Marion Warren Trust, from her -- from a number of people; we have six letters plus the letter from the attorneys, plus Exhibits A through F, that we -- we haven't been able to resolve. I mean the issue of the actual access route, who owns what, is -- we don't have that, and I think it's -- I don't think we can make a decision. I would vote to defer if I thought it would -- that would help. For me, the biggest factor is in this if we have immediate neighbors and they're attorney is raising strong objections, now, I understand having the neighbors read the entire letter, I've had plenty of dealings with attorneys, I don't necessarily agree with

all the arguments, but I think when you have -- the immediate neighbors should have the biggest voice in this, I really do, and that if we had, like I said, if we had a neighbor that supported a short-term permit, revocable permit, I would then be willing to try it out. But in this case, we have very strong opposition, not only from the legal trust to the organization and Mr. Liljestrand across on the makai side of the road, who's one of the closest neighbors, raised some strong objections too, and we have other letters, I think some were -- you know, we have these six other letters that, you know, some are from the immediate family that do not support it. I think that we have to uphold the zoning laws. And in my opinion, this -- the weight of the circumstance is really on the -- is really should be heavily weighed by the owners of the property. And, you know, we can only take this one case at a time and I would like to give other people -- I think it's very important for people to each -- everyone here spoke up, I think it's important to list, not just what I just said, but everybody to -- that voted in favor of the denial to give the reasons that they did.

Ms. Flammer: Would you like me to read back the comments I've heard and then we can add or take away?

Chair Blumer-Buell: Sure.

Ms. Flammer: Would that be -- I'm going in order of how they were said, not importance. If you find something more important, feel free to let me know. Okay. First concern, concern about keeping Hana Hana; and the current commercialization of the area viewed as a slippery slope; unresolved issues regarding the access; feel the Euclidean zoning should not allow other uses - zoning is zoning; concern that visitors may not have respect for the --

Chair Blumer-Buell: I would like -- I think it's appropriate to -- I'll stop you because our Euclidean zoning system does not stop Arabella Ark or anybody else for applying for permits. So the zoning system we have does not prohibit the very thing she's applied for. She has every right to apply for that. So I think it's, you know, that it's not just on that, that's only the -- you know, that's -- we have that zoning system but that system does allow for the application. I mean I think that needs to be very clear to be accurate.

Ms. Flammer: You want me to strike it?

Chair Blumer-Buell: What's that?

Ms. Flammer: You want me just to strike it?

Chair Blumer-Buell: No. Read what you had, please.

Ms. Flammer: I said there's a feeling that the Euclidean zoning should not allow other uses. There's a desire to uphold --

Chair Blumer-Buell: No. I would say what I expressed was that the Euclidean zoning system gives heavy weight to existing zoning and to the input of the immediate neighbors. And I think we should say that we do recognize that applying for these permits is totally legitimate, you know, there's no question about that.

Ms. Flammer: Okay. So that's not a concern then?

Chair Blumer-Buell: What's that?

Ms. Flammer: It's not a concern then that she's somehow going outside her current zoning process?

Chair Blumer-Buell: Well, it's a concern, but I'm just trying to say that we're working within the system, you know. We're working within -- I don't wanna make it sound like, you know, that zoning is -- zoning, the Euclidean zoning system doesn't have any flexibility. It has a lot of flexibility. And as -- I've expressed concern in other forums regarding the B&Bs and vacation rentals that that should be -- weigh heaviest in these decisions. What do the immediate neighbors think?

Ms. Flammer: Okay.

Chair Blumer-Buell: Okay, next.

Ms. Flammer: Okay. A concern that there's a lack of ability for the county to enforce any conditions that would be placed upon a permit. A concern about having the business opened to the public with signage welcoming the public. You'd like to make the point that the Committee is not against artists doing art, but the concern is about the commercialization of the art in residential areas. Safety issues with the access road. Concern that two cars could not pass each other. Insufficient information to make a decision, and the feeling that a deferral would not provide the information that is needed. There's a concern that a lot of information and opposition was brought to the meeting and there was no time to digest it. There's a concern that there's a substantial amount of opposition from the trust and the immediate neighbors. And that's what I have.

Chair Blumer-Buell: Any other comments? I would -- you know, I know this -- I have a feeling that just from what I've heard tonight that this isn't going to happen, but I have a lot of respect for Dot Pua, and Dot gave passionate testimony about people trying to work out the issues. So I would hope that our -- that this board would certainly endorse, as part of this, possible mediation. You know, I would, you know, possible mediation or

intermediaries to, you know, be -- to be better neighbors, you know. And that's not a requirement, but I think, you know, I'm trying to make -- a lot of the testifiers gave that sentiment so the fact that we're denying it doesn't mean we don't want there to be these issues and people to get along. That's -- I don't know if I'm expressing that very well.

Ms. Flammer: I'm going to include that in the letter as well that you're encouraging mediation between the neighbors.

Chair Blumer-Buell: Absolutely. You know, or a discussion with perhaps a third party that's a friend of both parties. Did you have something to say?

Mr. Carvalho: I understand, I would agree with that sentiment, but it seems that both parties may be past that point of no return in regards to that, and, you know, just as an Advisory Committee, we have -- you know, we brought out concerns so I think we've done our -- done our job and we've left it up to the planning commission, who has done their due diligence and they're going to make the ultimate decision, and I believe we've done our job, testify -- testimonials from people, they don't their job, and it's just up to the planning commission to do what's best for everyone.

Chair Blumer-Buell: Okay. And then I know that county intends to do this, but I want to be sure that all of the exhibits make it into the record and I would like to ask if I should hand these in, and I will make a record of it. Who gets -- who should I give these to? The planner. Okay. But we have the letter from the attorney representing the -- have I got that right? The Marion Warren Trust. That is the Marion N. Warren Trust. And all their exhibits, so let's give those to Gina. We have one, two, three, four, five, six additional letters from Jan Elliott, Meredith Enaudi, Andrew Rayner, Sandi Simoni, and Bob Liljestrand, and Nalani Warren Morris, and the Committee did not have a chance to review these so that should go to the planning commission as well, plus we have --

Mr. Ballantyne: ...(inaudible)... we did have it ...(inaudible)...

Mr. Carvalho: We did receive the four in support, but we did not receive the two in opposition, I believe.

Mr. Ballantyne: Yeah.

Mr. Carvalho: Yeah.

Mr. Ballantyne: So we have reviewed it..

Mr. Carvalho: Yeah. We reviewed the four in support, which was presented to all of us, but the two in opposition wasn't.

Chair Blumer-Buell: Well, then that's -- okay.

Mr. Ballantyne: The written testimonies ...(inaudible)...

Mr. Carvalho: Yeah, the written testimonies.

Chair Blumer-Buell: Okay. I missed that. I apologize. Let's correct that. Let's make that accurate. I'm sorry I missed that testimony. And then the other thing -- so the one thing that we did hear was the -- so are you clear on that, Gina? I'm sorry I missed that. So we have six letters. And then also we have a status on report from Title Guaranty of Hawaii, this is five pages, regarding the -- I believe this is regarding the easement. This was submitted by the immediate neighbors. Is there anything else that people want to put into the record at this point? Okay. I'm looking for my agenda. Corp. Counsel ...(inaudible)...

Ms. Thomson: I was going to recommend that you call for a motion and to adopt those as your recommendation.

Chair Blumer-Buell: Very good. I'd like to get a motion that of all the --

Ms. Flammer: ...(inaudible)...

Chair Blumer-Buell: It should be attached to the bottom page of that. There it is. That we would -- we endorse the statements we made clarifying our denial plus all of the additional exhibits.

Mr. Ballantyne: That's the one.

Ms. Flammer: No. In this one that came from the neighbor with the large parcel, it cites an exhibit map. Did that come with this, or maybe it just didn't --

Ms. Hoopai-Waikoloa: He went off of this one.

Mr. Ballantyne: No. That one belongs to the attorney, to the Rush Moore. The map you've got is attached to the Rush Moore.

Ms. Flammer: Oh, okay. Okay. So there was no map attached with the other one, the other -- oh, that's what --

Chair Blumer-Buell: No. And just to be clear, I'd like to ask, Patty, is that title report, was that submitted regarding the Warren Trust property, or is that submitted from the ag piece, the big piece mauka?



Ms. Yeknich: Joel did that one.

Chair Blumer-Buell: Okay. That is from Joel Richman. So that was -- the title report's from Joel Richman. So could we have a motion regarding accepting the statements regarding clarifying our reasons for denial and submitting all of these exhibits into the record for the planning commission.

Mr. Cashman: So moved.

Chair Blumer-Buell: Okay, we have a motion from Ed.

Mr. Carvalho: I will second.

Chair Blumer-Buell: We have a second from Clayton. All in favor, please say aye. Okay, we have agreeing.

Mr. Ballantyne: I'm abstaining.

Chair Blumer-Buell: Okay, Ian is abstaining and --

Ms. Thomson: Ian, you need to -- you can't abstain but you can vote yes or no.

Mr. Ballantyne: I'll vote yes.

There being no further discussion, the motion was put to a vote.

***It has been moved by Mr. Cashman, seconded by Mr. Carvalho, then unanimously***

***VOTED: to accept the statements regarding clarifying the Committee's reasons for denial and submitting all of these exhibits into the record for the planning commission.***

Chair Blumer-Buell: Okay. That's unanimous in favor of submitting that into the record. So thank you everyone for I think a very, very tough issue.

## **G. ORIENTATION WORKSHOP**

- 1. Role and Responsibilities**
- 2. Meeting Schedule**
- 3. Office of the Corporation Counsel Handbook for Members of Boards and Commissions**

4. **The Sunshine Law**
5. **Ethics**
6. **Takings**
7. **Hana Community Design Guidelines**

#### **H. DIRECTOR'S REPORT**

1. **Matters Raised by Board Member Blumer-Buell at the November 14, 2011 Hana Advisory Committee Meeting for Discussion at the Next Hana Advisory Committee Meeting:**

- a. **Hana Advisory Committee recommendation regarding the preparation of a cultural impact statement for the county mining operation on Olopawa Mountain as it related to the Hana Landfill Expansion permits (State Land Use Commission Special Use Permit, County Special Use Permit, and Special Management Area Use Permit)**

**The Committee may take an action regarding this matter.**

- b. **Update on the Park PK-4 zoning for the Hana Golf Course project.**

**The Committee may take an action regarding this matter.**

- c. **2011 Amendment to Chapter 205A, Hawaii Revised Statutes regarding increasing the threshold for the issuance of a Special Management Area (SMA) minor permit from \$125,000 to \$500,000.**

**This is for information purposes only.**

2. **Scheduling of other Hana Region Applications**
3. **Discussion of Future Hana Advisory Committee Agendas**

Chair Blumer-Buell: I, personally, would like to, and I don't have the right to do so, I was on the other side this morning, and came back, and if that clock is correct, it's 7:30. Is that correct?

Mr. Ballantyne: Yes.

Chair Blumer-Buell: My inclination, and this is -- would be to defer the rest of the meeting till our next hearing, and then -- and the reason for this is that -- the reason for this is because it's late, the rest of this agenda is going to take an hour-and-a-half, probably, and people need to get home to their families or have something to eat, and I bet the planning staff could hardly wait to hit the road and get back. I mean you're going to get back very late unless you leave. And so it's up to anybody on the Committee to make a motion on my suggestion, which is defer the rest of the agenda or -- to the next meeting, or to say we should take up a certain part of it.

Mr. Ballantyne: I propose that we defer the rest of the agenda until the next meeting.

Ms. Hoopai-Waikoloa: And I second that motion.

There being no further discussion, the motion was put to a vote.

***It has been moved by Mr. Ballantyne, seconded by Ms. Hoopai-Waikoloa, then unanimously***

***VOTED: to defer the rest of the agenda until the next meeting.***

Chair Blumer-Buell: Okay, that's unanimous. Okay, just to make it official --

## **I. ADJOURNMENT**

Mr. Crawford: I'll move for adjournment.

Chair Blumer-Buell: Yes. That's exactly -- we have a motion from Scott, just to be official, is there a second for adjournment?

Mr. Carvalho: I will second.

Chair Blumer-Buell: Clayton second.

There being no further business brought before the Committee, the motion was put to a vote.

***It has been moved by Mr. Crawford, seconded by Mr. Carvalho, then unanimously***

***VOTED: to adjourn the meeting at 7:35 p.m.***

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards & Commissions

**RECORD OF ATTENDANCE**

**Present**

John Blumer-Buell, Chairperson  
Scott Crawford, Vice-Chairperson  
Clayton Carvalho, Jr.  
Ed Cashman  
Anjoleen Hoopai-Waikoloa

**Others**

Clayton Yoshida, Planning Program Administrator  
Gina Flammer, Staff Planner  
Richelle Thomson, Deputy Corporation Counsel