

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
FEBRUARY 12, 2013**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:00 a.m., Tuesday, February 12, 2013, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Hiranaga: Good morning, I'd like to call the Maui Planning Commission meeting to order. Today is February 12, 2013. At this time, I'd like to open the floor to public testimony. Is there anyone here that wishes to provide public testimony regarding any agenda item, please come forward? Seeing none, public testimony is now closed. Moving onto Agenda Item B-1. Deputy Director?

Ms. McLean: Thank you, Chair. Good morning. The first item is a public hearing item. A request from Stephanie Brill for a State Land Use Commission Special Use Permit to operate the Aloha Cottage Short-Term Rental Home in the State Agricultural District at 1875 Olinda Road, parcel 2-4-019: 014 in Makawao. Gina Flammer is the Staff Planner.

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

- 1. MS. STEPHANIE BRILL requesting a State Land Use Commission Special Use Permit in order to operate the Aloha Cottage Short-Term Rental Home on property situated in the State Agricultural District at 1875 Olinda Road, TMK: 2-4-019: 014, Makawao, Island of Maui. (SUP2 2012/0010) (G. Flammer)**

Ms. Gina Flammer: Good morning, Commission. You have the staff report in front of you that describes the project in detail, but I wanted to also just show you some color pictures of the project. So it is a little confusing. It's two studio dwellings that are on the property. Because the permit is for the property itself it is listed as a two-bedroom permit, but I just wanna clarify as I did in the report that it's actually two separate studio units located 1875 Olinda Road. So there's just a general map to show where that is. Here's a little closer. In this particular case, the applicant lives next door. So in the red you can see where the short-term rental parcel is and then where the applicant's property is. I gave you this in the packet. I don't know how well it copied, but I wanted to show you an overhead view of where the dwellings are.

And then while I had it up, I just wanted to show you a kind of real broad terms what's the purpose of a farm plan. So on the right you have something that's got a farm plan. On the left, you have something that does not and it does not qualify for a farm plan. Let the pictures speak for themselves.

Here's a picture of the first studio then we have the inside. We have the second studio here.

Okay, so what about the ag? The property itself has an implemented farm plan. I believe the farm plan goes back to 2004 from the previous owners when they built their second cottage they were

required to implement the farm plan. So the farm that's been accepted by the Department is 58 percent of the land is in bamboo, fruit trees and conservation. When I came...this was a previous permit for a bed and breakfast. The previous owner had also discussed how she sells the ferns, the Kupukupu Ferns on her property. I did ask the applicant are you doing that? She told me they are selling those as well as they're selling Agapanthus also. They also planted a Raspberry patch. It's not officially a part of the farm plan. If they wanted to refile they could, but there really is no need since they meet it with the existing farm plan.

And I just wanted to show you some pictures. As you can see from the report, the bamboo was planted originally as an experimental station for a nursery. They were trying to decide what types of bamboo work well for timber and for ornamental landscaping and then where could they grow it. So there's lot of different bamboo planted on the property. There's also many fruit trees that are planted. And then there's a conservation area, and that earlier picture just shows you the importance of keeping the conservation area and why we include that in the farm plan.

So I have the applicant's partner is here as well as the applicant if there's any questions.

**a) Public Hearing**

Chair Hiranaga: At this time, I'd like to open the public hearing. Is there anyone here that wishes to provide testimony regarding this agenda item, please come forward? Seeing none, the public hearing is now closed. I'll open the floor to questions from Commissioners. Seeing one, Commissioner Shibuya?

Mr. Shibuya: I was watching the other Commissioners and waiting for them to respond. My question relates to the ownership of the property. When was it obtained?

Ms. Flammer: I think I wrote in the report it was...let me take a look, I think 2010 it was. The current applicant purchased the property and the adjacent property in July 2010.

Mr. Shibuya: And you do know that there's a provision that says that you need to hold it for five or more years?

Ms. Flammer: No, the provision is that the dwelling itself be constructed for five years. Council didn't want new construction going to this use. Existing homes or renovations are not part of the five-year. So it's not an ownership, it's a when the building was constructed...is what the clause is for.

Mr. Shibuya: Thank you for the clarification.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I have some questions about the farm plan. The farm plan permit is signed by the previous owner and it says that it expires...is that an expiration date on the bottom of it...Exhibit 10. 2008 slash...

Ms. Flammer: Which date are you referring to?

Ms. Wakida: At the bottom of the page, it has farm plan permit number 2008...is that an expiration date?

Ms. Flammer: Oh no, that's the actual permit number itself.

Ms. Wakida: Oh, okay. My questions are and maybe you can give clarification, all of these farm permit plan documents are signed by the previous owner and the section that you gave us is about the farm plan from County Code says that the documents identifying the owner of the subject parcel and a notarized letter from the owner and so on must be included in the farm plan. Where do we see the owner's name, the current owner?

Ms. Flammer: It's a part of the application itself. I have in the application the warranty deed showing that the applicant does own the property.

Ms. Wakida: Because this—

Ms. Flammer: Are you asking if a new owner comes in do they have to file a brand-new farm plan with their own signature on the farm plan?

Ms. Wakida: Yes.

Ms. Flammer: Okay. I'm gonna let maybe our Deputy Director could address that?

Ms. McLean: I'd like confirmation from Corporation Counsel but because they're recorded against the property I believe that a new owner would still be bound by it. I'm flipping through it right now and wanna find the exact provision that clarifies that or maybe Corp. Counsel can—

Ms. Flammer: I'll just preface it with as part of the farm plan requirement we do require a unilateral agreement be placed on the deed. That stays on the deed regardless of the ownership. I'm glad I include all that in there. I was going to ask you later do you want me to continue to include all this? I think for a while we will so we can learn as much as we can. Turn it over to James.

Mr. Giroux: It would run with the land.

Chair Hiranaga: Thank you, Corporation Counsel.

Ms. Flammer: Now, I do wanna clarify though that when the planner goes out we are in charge of verifying that the plan is implemented. So there's two parts to a farm plan. There's the initial what's on paper. So when you come in for your first dwelling, we just require when you're building...this is part of the broader farm plan requirements, we require the piece of paper that shows the farm plan. When you go for your second dwelling or when you come in for a B&B or a short-term rental, we need to see implementation of that farm plan and that is done by a site visit. And as I mentioned the last time I brought one of these to you, we also require that at renewal, the implementation.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: So is that farm plan is there no time frame on that for the implementation...for the farm plan and then if you don't build the cottage then there's no time frame for implementation then, right except for the cottage if you wanted to build one?

Ms. Flammer: The implementation comes into play when the cottage is...the building permit comes in or when the application for the bed and breakfast or the short-term rental application comes in.

Mr. Ball: And only then. There's no like five-year, you know, time frame or thing?

Ms. McLean: I'll clarify.

Chair Hiranaga: Deputy Director?

Ms. McLean: Thank you, Chair. It's expected that the applicant will implement the farm plan. We don't have a trigger to go out and verify that unless another permit comes into us. Typically it's the second farm dwelling or it's some type of use permit. So that's when we would have the chance to go out and if the plan isn't implemented, we will not approve additional permits until it's implemented, but the expectation is that the applicant will implement it once it's approved. It's not oh, you just need to approve this on paper and you don't need to implement. The expectation is that it will be implemented. We don't do a follow up inspection and verify it until we have another reason to go to the property.

Ms. Flammer: I believe the reasoning behind that was is that it takes some time to get a farm going and some money. So the thought is we'll let the person build the farm dwelling first and then they can spend their time developing the agriculture on the property.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Okay so they're before us to obtain a State Land Use Commission Permit to operate the Aloha Cottages, right?

Ms. Flammer: Yes.

Mr. Lay: There's advertisement in here from January all ready for rental. Has it been rented out? Is it possible to rent it out without this permit?

Ms. Flammer: Yes, we have on our...when Council looked at the short-term rental bill they understood that there were a lot of people currently operating so there's a provision in the ordinance that states if you're currently operating you must turn in...it's called A6 Tax Clearance Form from the State, and you also have to show verification that you have not taken the Homeowner's...if you did not live there, different if you did live there, and you have to show you didn't take the Circuit Breaker. In this particular case because it was a...the previous owner held the permit, they also are taxed at that commercialized residential rate. They just left the tax. Somehow the tax, the commercialized residential tax rating stayed with the property instead of reverting back to residential.

Mr. Lay: So is there a time frame that they have to get everything in order?

Ms. Flammer: We're gonna start our proactive enforcement once we hire...Council required that we hire or mandated we hire two enforcement officers that will do proactive enforcement. They're required annually to go on the web and to notify people that they need a permit and to inform that they cannot operate without a permit. And then they'll have a certain amount of time to shut down and come in for the permit once that starts.

Chair Hiranaga: So Gina, in this situation where there was a farm plan that was implemented by a prior owner with this new application did the County go out there to take a look to make sure the plan is still being implemented?

Ms. Flammer: Yes, it's part of the planner's job when they go out is to make sure it's still implemented and we're also required to do that at renewal time as well.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Is the applicant here?

Ms. Flammer: Yeah, did you have a question for her?

Ms. Wakida: Yes.

Ms. Flammer: Okay. This is Stephanie Brill.

Ms. Stephanie Brill: Hi there.

Ms. Wakida: Good morning. I realize how challenging it is to do ag on small parcels, but I just wanted to hear from you what current ag activity you actually are doing there?

Ms. Brill: We're doing a number of things and we're actually developing more than the previous owners did because although... 'cause that was already established so there's a lot of different forms of bamboo that there are specialized species and we have a number of fruit trees, et cetera, et cetera, but it didn't actually feel...it felt sort of like that passive ag that happens around here a little bit and so we're trying to do much more. So we're in the...we do sell a number of plants and fruits and veg...no vegetables just fruits and plants on a regular basis and we have the whole gulch that we conserve and keep up there, but we're in the process of planting much more because we actually want to be more engaged with the agricultural essence of what it's supposed to be as we interpret it rather than just what can get by as ag. So I don't know if that answers your question, but we're in the process of developing it further.

Ms. Wakida: It does, thank you. Are you...is the bamboo that was planted is that still being monitored by an experimental station?

Ms. Brill: That was my understanding, Kristen?

Ms. Wakida: 'Cause previous what was it the yellow...yellow seed bamboo are those people still

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Ms. Brill: Exactly, Jericho. Sorry, Kristen manages most of this in our family world. So...

Ms. Kristen Cauley: Yeah, he's–

Chair Hiranaga: Please identify yourself?

Ms. Cauley: Okay, Kristen Cauley and I have been managing the property. Jericho as far as I know is still around. He came out when we first purchased the property and, you know, checked in on everything, but because it's bamboo that just continues to grow and grow, I don't...you know, it's there and it's part of his root stock that he can come and pull from at anytime.

Ms. Brill: And he put more in since we've been in there.

Ms. Cauley: Yeah, yeah, he put more in.

Ms. Wakida: Recently?

Ms. Cauley: Well, we've been there three years and so at least a year and a half ago was around that he came in. So when we first moved in and then again.

Ms. Wakida: Thank you very much.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: I'd just like to move more towards public safety. Can you tell me about the gulch? Is it a floodway? Does it flood during the stormy periods and how high has it come up to?

Ms. Brill: What we can tell you is during the time we've lived there which is only three years there's been absolutely no flooding and our neighbors have told us there has not been flooding. Other than that, I don't really know.

Ms. Cauley: I've never seen a drop of water down there except what lands on the leaves of trees.

Ms. Brill: I know that the big...there was a, you know, before we moved here, there was a big flood here. We were told it didn't flood during that time.

Mr. Shibuya: Okay, good. Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I noticed on your site plan the septic tank is behind the first cottage. What services the second cottage?

Ms. Cauley: Same tank I'm told.

Ms. Wakida: Same tank?

Ms. Cauley: Yeah.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Commercial use of the property. Have you used this property for weddings, wedding receptions?

Ms. Cauley: Definitely no wedding receptions of any kind. This is all about private, you know, couples retreat whether that's a honeymoon or an anniversary or whatever, that's a lot of our business and that is our business is the vacation rental. There have been...we were trying to remember maybe one or two small commitment ceremonies where people stood with the minister and now we understand that we're...you know, not only is it not a specialty of what we do at all, it's not allowed under the short-term rental permit. So when we get those once-a-year questions, the answer will be no.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: This question is for Gina.

Ms. Flammer: If I could just real quick answer Commissioner Shibuya's question also. As part of the application we get a zoning and flood confirmation form. So we take a look at that and one of the things it says on here is what flood hazard area zone is it. This particular one is an X. It will tell us if it's in a floodway or if there's a flood development permit required also. So we do take a look at that.

Mr. Shibuya: Thank you.

Ms. Wakida: Gina, the handouts that you gave us, the two letters attached here. It doesn't say who they're from, right?

Ms. Flammer: First one's from the applicant responding to the anonymous letter that came in. There's actually two anonymous letters. I'm assuming it's the same person. One is in your packet and then one came in more recently that's on your desk that you're looking at now.

Ms. Wakida: Okay. And how does the Department view anonymous letters?

Ms. Flammer: We include them for your information. So we did ask the applicant to respond to it so that you would have that response as well. And then I did...I did actually address one of the comments in there about the tax question because it does come up quite a bit. But, I'm not sure you all caught that, but in the exhibits are some testimony from the Real Property Tax Division

relating specifically to the person's concerns. And I wish the letter weren't anonymous so that I could help that person understand that their taxes won't be affected by this. So maybe they're monitoring this hearing and they can hear that.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Just following up on Gina's comment and because it's our viewers on Akaku I just wanted to explain that that Gina, can you explain a little bit more in terms of was this property sold as a commercial bed and breakfast property and that this had no impact on the neighboring property values?

Ms. Flammer: Okay, thank you very much for that opportunity. So as we heard in 2011 from the Real Property Tax Division while we were discussing the short-term rental bill, there's first of all, there's a clause in the bill that says that these permits are not transferrable so the value of that is not included in the value of the property itself. Also because it's given a special tax rate which is commercialized residential, actually the short-term rental they haven't set the tax rate for it, but it will be given its own exclusive tax rate or lumped into another one. The Real Property Tax Division looks at apples to apples and oranges to oranges. So when you looking at two different tax categories they do not affect each other. The Real Property Tax Division stated in the testimony that they recognize the permit makes the property unique and they therefore do not value that permit into the assessment of the property.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Any more questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: In line with public safety again. I'm just following up on water service, the meter size and the location of the nearest fire hydrant.

Ms. Flammer: Good question.

Mr. Shibuya: That's one of my standard question normally.

Ms. Flammer: Yeah, because...I don't include information in these reports because the building permit addresses all of that. I do happen to know this property though because I handled the previous permit. There is...there's a fire hydrant out by the road and the water meter is the standard size for a two-acre ag property. I don't think I have it in the report. Yeah, I'd have to get...I do have it for the property, I just don't know it off the top of my head.

Mr. Shibuya: It's more than 5/8".

Ms. Flammer: You know, I just don't have it off the top of my head. It was enough to...I mean, the houses need to go through the building permit process so they look at Fire Code for that. So if they can meet that that's what we're looking for.

Mr. Shibuya: Has met that.



Ms. Flammer: Well it has to in order to get the building permit and to be built.

Mr. Shibuya: Okay, thank you. And the fire hydrant would be approximately a 100 yards?

Ms. Flammer: Okay, it's out by the road. So it's the distance between the road and where the home is which I don't know off the top of my head but it met the Fire Code when they build the home plus it also meets the Code for the house behind it as well. I'm sure it services both.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Any more questions, Commissioners? Seeing one more from Commissioner Shibuya?

Mr. Shibuya: Same thing, public safety and smoke detectors. When is it installed, it's being used, it's been tested, when...what's the frequency?

Ms. Flammer: Okay, so the bill actually requires that smoke detectors be there when they come in for the application and they have to be working. Part of the home inspection form requires that they be working when that home inspector comes. It also requires that a monthly log be kept and submitted. We require that to come in with the home inspection form. I also, when I go out and do my site visit I confirm that it's working. If I don't see a light, I have the applicant get up on a chair and push it to make sure it's working. When we go out for renewal, we're also be doing that as well as we require at renewal a smoke detector log that shows that they're testing it monthly. So also look for fire extinguishers and to make sure they're clearly visible and that they're mounted and they're within 75 feet travel distance from all the bedrooms. We also require a fire exit plan in the bedroom and we look for that when we go out for our site visits as well. We also now requiring pictures with the application of the smoke detectors and the fire extinguishers so there's a record right in the application of it.

Mr. Shibuya: Okay, thank you very much for a very complete response there. Very good. Thank you.

Ms. Flammer: Yeah, we take that seriously.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: How is this property accessed? I notice it's quite a distance off of Olinda Road.

Ms. Flammer: There's an easement across the properties that runs on the deed.

Mr. Ball: And what type of driveway surface is it and...

Ms. Flammer: It's gravel.

Mr. Ball: Is it a two-lane type thing?

Ms. Flammer: It's about 10 feet wide.

Mr. Ball: Just because I know it's very dark up there at night, and you know, people that are gonna be renting the place will not necessarily know that area.

Ms. Flammer: Yeah, it's flat which is nice. It's 10 feet to 12 feet. I measured it the first time I went out. And which is your standard size for ag. We don't like to see a lot of concrete out with ag. It's also extremely expensive to put in. So we're fine with gravel. It helps with the drainage. And it's one of the things the planners look for when they go out, can you safely get to the property too?

Mr. Ball: Right.

Ms. Flammer: So we were trained to look for that.

Mr. Ball: Good.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: If there's no other questions, I'd like to go into this one part, and Gina maybe you can help clarify this one. It's on Page 3 of the green sheet.

Chair Hiranaga: Are you going into the staff recommendation?

Mr. Shibuya: Yeah.

Chair Hiranaga: Let's wait till there's a motion on the floor.

Mr. Shibuya: Okay.

Chair Hiranaga: Thank you.

Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions for the Department or for the applicant? Seeing none, we're ready for the staff recommendation.

**b) Action**

Ms. Flammer: The Department recommends approval based upon our standard conditions. We have added a new condition to these...and it'll probably be with B&Bs as well as short-term rental homes and that's No. 7 which is on Page 4, and it says, "that the farm plan shall be remain implemented during the duration of the permit and evidence of implementation shall be submitted as part of the renewal application." Other than that it's the same six that you've seen for bed and breakfast and the other short-term rental home that came before you.

So in consideration of the foregoing the Planning Department recommends that the Maui Planning

Commission adopt the Planning Department's report and recommendation prepared for today's meeting as findings of fact, conclusions of law and decision and order and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chair Hiranaga: Thank you very much. I'll open the floor to a motion. Commissioner Shibuya?

Mr. Shibuya: Move to accept this Staff Planner's recommendation and with all of the recommendations.

Ms. Wakida: Second.

Chair Hiranaga: Moved by Commissioner Shibuya, seconded by Commissioner Wakida to approve the staff recommendation. Any discussion? Commissioner Shibuya?

Mr. Shibuya: I'd like to get a clarification on Page 3, No. 4, recommendation. Does that include the submission of the annual compliance report as prescribed in 19.65-040?

Ms. Flammer: Annual compliance report. We require a compliance report when they come in for renewal. For these permits, renewal is one year later. They're only one-year permits, but then it does go to two and three years.

Mr. Shibuya: Right, okay. So in this particular case it will be three years?

Ms. Flammer: It's one-year. It's the initial permit period is only a year.

Mr. Shibuya: Okay.

Ms. Flammer: Yeah, the SUP itself is for three years because it's matching the until full renewal comes up for the short-term rental home.

Mr. Shibuya: Okay. Even though on Item No. 1 it says, 2016. That's three years.

Ms. Flammer: Yeah, that's the three years. This is the SUP. The actual short-term rental home permit itself starts with one year.

Mr. Shibuya: Okay. So it's covered then. Thank you.

Ms. Flammer: So that provision you just mentioned that's when we look at Building Code, when we look at the other codes in health as well, septic, all that. They have to remain compliant with all of that. They have to be compliant to come in and be approved, but they have to remain in compliance with all of that.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: So that Page 4, No. 7, evidence of implementation. What is...is there a breakdown of what that is somewhere?

Ms. Flammer: In the report it would be photographs, but when the planner goes out they have to visually inspect as well. So when they come in for the renewal we wanna see the photographs, but then also before we can approve the renewal we have to go out and do...when we do a site visit, but then we verify again that everything's still in the ground.

Chair Hiranaga: Any more discussion? Seeing none, we'll have the Deputy Director restate the motion.

Ms. McLean: The motion is to approve the State Special Use Permit subject to the seven conditions recommended by the Department.

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

Ms. McLean: Six ayes.

Chair Hiranaga: Motion carries. Congratulations.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Planning Department.  
(Assenting - W. Shibuya, P. Wakida, D. Domingo, I. Lay, M. Tsai, K. Ball)  
(Excused - W. Hedani, J. Freitas)**

Chair Hiranaga: We'll take a five-minute recess and reconvene at 9:37.

A recess was called at 9:32 a.m., and the meeting was reconvened at 9:37 a.m.

Chair Hiranaga: Deputy Director, the next agenda item is?

Ms. McLean: Another public hearing item, a request from Mark and Paige Sloane for a Short-Term Rental Home Permit in order to operate the Sloane Residence Short-Term Rental Home, three-bedroom short-term rental home, in the State and County Rural Districts on approximately on .829 acres in Maui Meadows, 736 Mililani Place, TMK: 2-1-014: 116 in Kihei. Kurt Wollenhaupt is the Staff Planner.

- 2. MARK and PAIGE SLOANE requesting a Short-Term Rental Home (STRH) Permit in order to operate the Sloane Residence Short-Term Rental Home, a three (3)-bedroom STRH located in the State and County Rural Zoning Districts on approximately 0.829 acres of land located in Maui Meadows at 736 Mililani Place, Maui Meadows, TMK: 2-1-014: 116, Kihei, Island of Maui. (STKM T2012/0007 formerly CP 2012/0003) (K. Wollenhaupt)**

**The application is being brought to the Commission for review and decision making due to the sufficient number of protests of adjacent neighboring**

**landowners within the 45-day time period to file protests after the applicant sent out the notice of application to landowners within a 500 ft. radius of the subject property.**

Mr. Wollenhaupt: Good morning, Members of the Maui Planning Commission. Today we're going to move into new territory for this Commission and for the Department. This matter arises from the application filed for a short-term rental home filed on August 22, 2012 by the Consultant, John Rapacz on behalf of Mark Sloane and Paige Pennell Sloane, the applicants. Both Mr. Rapacz and Mr. Sloane are in the audience today to give you a presentation and also to answer questions after my introduction. The applicant, as also mentioned by the Assistant Director is wishing to operate a three-bedroom short-term rental home located at 736 Mililani Place in Maui Meadows, Kihei, Maui.

So the issue is why are we here today? We're here today, if you can direct your attention to the screen because of part of the Code requirements that were developed by the Council in order to have a further and higher level of review when according to .2A, and I'll quote it here as it's important for today's meeting, "the director receives two or more written protests from the owners or lessees of record of two more lots adjacent to or directly across the street from the proposed short-term rental home." Obviously, we've met that threshold today. Out of the approximately 60 owners and lessees of record within the 500-foot radius notified in two separate mailings. One was the first mailing of the notice of application and the second was the notice of public hearing. The Planning Department received objections from three property owners and one renter.

You also can find this map on Page 51 of your report. So if you wanna turn to Page 51, it might be easier to look at. The property under consideration today is in the purple at 736 Mililani Place. As indicated before, it was required to have two notices of protests for this application in order to move it up to this public hearing. If you look at No. 1, that is the home of Virginia Morgan and Alfred Wolf at 745 Mililani Place. They are a property owner. They're also in the audience today, and their property has been deemed that it was immediately across the street. If you go to No. 2, Eliot and Amy Fried, they're at 736 Mililani Place. They're also a current property owner directly to the north of the property under location and they are current property owners. No. 3 was Mr. Tom Davis at 737 Mililani Place. At the time of this application filing, Mr. Davis did own that property. However, it has come to our attention that he no longer owns that property. Nevertheless, the letter was included for your review. No. 4 was from Michele Manning at 3319 Kehala Drive. She is a long-term renter. However, the Code indicates that it's renters of record. As I'm sure you all know, most renters do not file a notice with the Bureau of Conveyances on a long-term lease, so her notice and her letter was included again for your review, but under the strict interpretation she would not be a long-term lessee of record. And No. 5 was a letter and documents from Susan Luten at 750 Mililani Place. The Lutens no longer own the property as they moved to Berkley, California in April 2012. That would have been before the application had been filed. However, the reason we are here today is that protests from property owner number one, Morgan/Wolf and property owner number two, the Frieds, do trigger the two adjacent protests.

That being the case today, and this being the first one of this type of a permit to be reviewed, what is the Planning Department's role in today's hearing? According to the Code, the Planning Department...or the Planning Commission today, needs to consider the number and the

distance from the subject parcel to other permitted short-term rental homes of any of kinds of protests. The number and substance of the protests for the short-term rental home application relative to the cumulative short-term rental home application relative to the cumulative short-term homes in the larger neighborhoods. Existing or past complaints about operations, existing or past noncompliance with government requirements and the degree of cooperation by the applicant, correspondence received by the Department pursuant to this Code, and in light of those factors, that is what today's public hearing will be under consideration.

Oftentimes it's been asked well, what's going on in Maui Meadows? It's important to note that Maui Meadows only has five short-term permits available to it, five out of the 88 in the Kihei-Makena Plan. As of today, we have one permit for short-term rental at 3878 Kaha Drive. This was a conditional permit that had already been approved and therefore was able to be moved over to the short-term rentals. Therefore, that leaves four permits. Since I'm covering Maui Meadows, one, the Maui Dolphin House at 3365 Akala Drive has filed all the requirements and their permit is in the process of being reviewed and signed by the Director. So that leaves three permits. There are two others, Mana Hale at 3101 Mapu and Sunny South Maui at 563 Kaleo Place that have fulfilled most of their requirements and they're waiting for the period of notification to end. However, they have fulfilled their requirements and the applications look clean. Therefore, that would leave only one permit left. That's just so that the Commission today knows the background of Maui Meadows.

This is an aerial map in order to acquaint the Commissioners. Also that map is located on Page 32 of the report. It's a little easier to see. The property under question is the Sloane residence. The residence under consideration today is the Sloane residence as can be seen in the map here. One of the considerations of today's review is going to be the topography of Maui Meadows. There have been issues about noise radiating out through some of the gulches which the applicant and I'm sure some of the testifiers will review today. The properties in which they've had protests would be the Frieds directly to the north, and this is the Lewis house which is now Mr. Lewis does not own it anymore, and then you have the Morgan/Wolf property that's right there. This is the Morgan/Wolf property which has had a protest and then the Lutens property is to the south, although the Lutens do not own that anymore.

There's no screen on this, by the way, so that's why it's being a little problematic to... Sometimes the Commissioners want to know what's going on also in Maui Meadows, if you turn to Page 35 of the report, that shows the currently approved seven bed and breakfasts in Maui Meadows. None of these are within 500 feet of the subject application, but it gives you a sense of the short-term rental activity in Maui Meadows with seven currently approved. On Page 36, that shows the one currently approved short-term rental of 3378 Kaha Drive. It's been my understanding that the applicant has also submitted additional paperwork as to how they believe that they have complied with the criteria under which the Commission today is going to be reviewing this application, and I can leave it to the applicant's presentation to have them review that with you. The report is self-explanatory regarding infrastructure, regarding impacts, compliance with land use, compliance with the short-term rental home permit regulations and I'm happy to answer any questions you may have, and the applicant wishes to give a power point presentation also.

Chair Hiranaga: Thank you very much. We'll reserve questions for later. We'll provide the applicant an opportunity to come forward.

Mr. Mark Sloane: I have some printouts of some maps.

Chair Hiranaga: Please identify yourself?

Mr. Sloane: I'm Mark Sloane, one of the owners of 736 Mililani Place. I'm one of the applicants. I have some printouts of some aerial maps that I think are probably a little more clear.

Chair Hiranaga: You could just hand over to Staff and he can distribute it.

Mr. Sloane: If you're ready I'll move forward. So Kurt gave us an outline by which he wanted us to follow for the presentation. So this is the Table of Contents, the outline, and we'll go through these items one by one. Several of the items such as the location map of approved B&B and STRs comes from the Planning Commission's report. So you'll see those included here as well as in the Planning Commission report that you have.

So as Kurt explained, this is a three-bedroom house. It's on a large lot. It's not a very large house. The interior size is less than 2,000 square feet per appraisal. It's three-bedrooms and limited to six persons. The yard has a lot of mature trees and foliage. I'll show you many pictures of that later. And the reason for the application is we'd like to be able to use the house more often and we just can't work that out when it's a six-month minimum lease out here.

So we're applying for a one-week minimum rental period and the reason for that is to give us the largest pool of applicants to choose from. And we do expect that throughout the winter and frankly it's whenever we can we'll rent it for a longer period of time. It's just never been easy to find people for six months. Canadian Visas are only good for six months. They can't stay for any more than six months and so those type of people usually just stay for a month or two so they can travel to the U.S. at other times and other locations throughout the year.

After discussion with the neighbors, actually Alfred and Ginny and I have had discussions about this property and about this permit. Several years ago we were talking about noise and we have an upper lanai which I'll show you in some pictures and we agreed as a condition of this permit, a condition of operation that we would close off this one side of the upper lanai with what's called, breezeway shutters. They're very tightly closing wood shutters and they're stormproof and weatherproof and all of that. So it's a...it was recommended by an architect to do that for sound mitigation reasons, and we will do that if we're allowed to proceed forward with the permit.

Now, the neighbor responses, I have gone around and talked with almost every neighbors. Some are out of town and I was never able to reach them, but in general, the net is that we have two properties at this point who are owner protests. One is the Wolf/Morgan property which is 745 Mililani Place, and the other 730 Mililani which is right next door to us. Now the owners at 730 Mililani are new. They purchased the place in 2001, and it has been a rental for as long as I can remember. I did communicate with the former owner and with the tenants who are the tenants are still there and they had no objection to a short-term rental next door. And we did include those two letters as part of a response to the Fried's objection letter. So if you count, if you count the letters really our property has very little in the way of protests against it, and we have been owners since the end of 2005. So some of the protestors such as the Lutens have made some pretty wild claims

about what's been going on at that property and if people really believed it or if there was some evidence given by the Lutens to show that their allegations were true then we would certainly have a lot more than 5 percent opposing.

So here's the site plan. We had previously submitted this, this application with parking down in the lower driveway. But because of some requests or some concerns from Wolf/Morgan, we can actually put two spaces up on top. Now this is not...my little blue box up there is what I added. It's not to scale, but I did go out and measure and we can put two regulation size spaces up there, and we can still have the spaces down below. So there you see the main house, the shed. The shed borders the 730 Mililani property of the Frieds and the Wolf/Morgan property is off this way about 250 feet away. This is the aerial view slide that I...that Kurt handed out to everyone. Now perhaps, I forgot to add the two owners names on here, but this is Fried if you'd like to note this on your slide. This is the Fried house, and then this...you can't really see it through the trees right here, is the Wolf/Morgan house, and it's behind, more or less behind the Luten's house. I can't see it from my house. I can only see this ag building, shed building of theirs.

So looking down the street, I'll go through these rather quickly. Let me know if you'd like me to stop. This is looking to the north from our driveway at 736 Mililani looking down the street. We have the hydrant which I don't think you can see it, but it's right over there and it's less than 300 feet away. In addition, the house actually has an alarm system with fire sensors, not just smoke alarms but fire sensors. And I verified with the alarm company that if any of those fire sensors are tripped, then the Fire Department is immediately dispatched.

So this is just looking from the front door to the northeast. This right over here to the right would be 737 Mililani which I'll give you a better look at. This is looking from the front parking area towards 730 Mililani, the Fried residence, and this is just another, another look at the Fried residence. I included many pictures because I wanted you to see the amount of foliage, the mature foliage that exists on this property. If you could see...look out the kitchen window and see through that giant Hau, you would see 737 Mililani across the street, and there is a new owner in there and they were notified with return receipt mail and they do not object to this application. That's the former Davis house which was sold during the process of this application.

This is a picture looking down from 745 or 750 Mililani towards our pool and I just wanted to show you how tall the hedge was there, and this is the other side of that hedge and what you can see is the roof right there is 730 Mililani, excuse me 737 Mililani, the former Davis House. This is from the deck, from the lanai on the west side this is looking towards the Fried house, 730 Mililani. This is just another picture of the same direction just to give you a little more idea of how much foliage there is there, and this is just looking to the northwest. This is looking south down the street and I guess if I had backed up a little, I would have found that fire hydrant in the picture right about here. View towards the front door and the upper parking area. This is a shared driveway between 745 and 750 Mililani. It's just a small strip of land with drainage easements on it. And this is looking towards the 750 Mililani Place, the former Luten ohana to the south.

Now this, this section right here I'm gonna show you in the next picture, this is the section of the lanai that will be closed off with the breezeway shutters per architect recommendation, and those shutters do have an option to include an actual lock, lock and key on it, so we'll keep it locked so



that no sound goes out that direction towards, towards 750 or up that way towards 745. This is yet another hedge that if you look from the ohana of 750 Mililani it blocks your view of the pool. This is looking across the pool towards 745 and 750 Mililani. Again, just to show you the foliage. There's a large shower tree right there and there's a hillside here, driveway, and right behind it is a wall with the very tall bougainvillea hedge that I showed you a few minutes ago. Now this is the view towards the Wolf/Morgan residence. That's their ag building. This two-story building here is the former Lutens house, and I think the top of that might be the Morgan/Wolf house, but all I can see is the top. I'm not sure if it's actually their house or the house behind on Waileia Street. And then just another view here towards 745 on the right and 737, again, there's just more hedge there. And I think we're about at the end of the pictures here. This is looking towards 737 Mililani directly across the street from our upper driveway so you can't even see the house across the street, and then this is a west view.

So Kurt had gone through the objections here, so these owners, No. 5, the Lutens they sold their place last year. I've spoken with the new owners. The new owners have been notified. They have no objection. I've spoken with their ohana tenant. They have no objection. I've never spoken with Michele Manning, but I know that she owns a house in Berkeley, and she's friends with the Lutens. I've seen...I found pictures on the internet of them attending the same parties. This house was 737 was just sold, and I've met those new owners the other day. They're from Canada. Very nice people. They have no objection and I do have the notice that was sent to them, the return receipt mail notice. And then we have...so remaining owner objections in writing are Wolf/Morgan and then the Frieds, although the Frieds don't live here, and their tenants have no problem with the short-term rental and neither does, neither did the former owner. This is the receipt that went to the new owners of 737 Mililani, and it was signed off. They live in New Brunswick, Canada. They'll be spending the winters here.

And then I'm just going back to the aerial view again to show you. So the two objections remaining right here, Wolf/Morgan and Fried right there. And that is the STR right there. This property is, the property is bounded by...it goes down here, over here, borders this gulch and then comes back up this way. So as Kurt mentioned, it's .829 acres. Here's the buffer map, the notification zone. Right in the middle, the two little blue triangles, that's 736 Mililani. Sixty-four parcels are in this map. Some of them are streets.

This is Kurt's report, from his report showing the seven bed and breakfast in Maui Meadows. I think he pointed it out to you already. Our property's right there. And then this is the one approved STRH is right, right there, and that was the former conditional permit.

So past complaints. I guess the first thing I'd like to say is I read the testimony at the STRH bill hearing and heard a lot of, a lot of testimony about Zoning isn't doing their job. Well, Zoning did their job immediately with us. And there are a couple of different inspectors that we worked with once the Lutens filed the RFS, and we stopped our short-term rental activity immediately. The property manager that we were working with refunded the money for the rentals that were planned for the future and that was the end of that. So we changed our advertising to long-term rental and it has been long-term, listed as long-term since. No other neighbors have filed complaints. I will say that the Lutens who filed this complaint also filed similar complaints about noise and a next door neighbor of theirs in Berkeley over a hot tub permit. It's a long story. I won't go into it unless

somebody's really interested, but all of the documentation about this is on the internet and can be found under the City of Berkeley's homepage.

So in the case of this permit if it's granted we will be screening the applicants. We don't want the property manager to do it. We want to use our own judgement and do a more thorough job if you will of doing the screening and not just taking a reservation that has six people, and saying, yes, the house sleeps six. There you go. You got it. We will not be having any weddings and frankly anybody who's coming for a wedding is usually suspect because they tend to gather at one place or other that the group may be renting whichever the one is that they like best. And so generally nobody associated with a wedding would be allowed here. Certainly no weddings on the property. The older the better. I've had retired folks contact me. I'd rather have a couple of retired folks in there than six other people. And the less people the better. The longer rental the better. People with kids are okay depending on how long, and how old the kids are. And cash deposits are required. And now actually we...with all of the...the ways to find things on the internet it's become quite easy to find negative things about people before you book them.

So these are just some examples of guest rules. The usual quiet hours that are a part of the County bill, no gatherings other than registered guests, no cell phone talking on the deck, no pets, that's pretty unlikely, no Harley rentals, and three strikes and you're out for noise.

So why is this going to work? Well, we think because we're gonna be doing the screening and we have quite an extensive set of house rules, much more than just the few that are listed in the permit application. We also have a manager who's on-call 24-hours, Jim Worley is here from Pali Kai Realty. I think he's the largest property management company in South Maui.

We complied with the old County enforcement system and now there's yet another system so we can comply with the new system as well. And in our permit application we have 24 conditions that must be met. The permit's only granted for a year, can be revoked at any time, and even if it's renewed after that, really any of these short-term rental permits are on probation forever in my view. You may get it renewed for two years after the first year, but you can't just have bad behavior after that because you won't get it renewed. And lastly, we only rent to one group, the entire STRH, the entire house. So that's it for me. And I need to sit down for second. I got some bad food last night. I'll stand up for questions.

Mr. John Rapacz: Good morning, Commissioners. My name is John Rapacz. I'm officially the consultant on this application and I'm also an attorney dealing mostly with land use and zoning and permitting matters. I did submit what's called written testimony. It's on my letterhead and you should have a copy of that. I'm not going to run through all of it. I know you've got other business to do today, but I did want to highlight just a couple of items on here. And again, I know you've heard it already, I'd just like to reiterate that although you will find protest letters in the...in Kurt's report, in terms of folks that qualify as protests that means they're owners and they're adjacent or across the street or more than 15 percent, there are two. There are two properties out of 16. So we're looking at about a 3 percent rate. So if you hear any claims that the neighborhood is against this application, it's just not true.

The other reason I wanna highlight that is that if...for the allegations that were made, I think that,

you know, just using some basic common sense and reasoning here, if problems were as bad as a couple of people had said, would those problems have stopped right at those property lines or would they have gone out into the neighborhood? Would the noise have carried further than that? Again, we think there would have been substantially more protests if that were the case. And again, another, you know, aspect of this the protests that were submitted were based on noise and as we know, noise is a very subjective thing. Some people can't hear any noise at all without being disturbed. Other people especially with families, et cetera, they're used to having noise. Long-term renters have noise, owner-occupants have noise, and it's all pretty subjective. But what is not subjective, what we have hard numbers on is we're looking at a 3 percent protest rate.

If you turn to the second page, this is the list of criteria or the factors in the law that you folks are supposed to apply and it's a new law, and I think as Kurt said, it sounds like this is your first time that you'll actually be looking at these particular factors. I'm sorry. You folks all have that...the handout, two-page? Some folks are flipping pages and I was afraid you weren't looking at the correct one. Looks like this. So we've got the criteria just restated here and we wanted to just have a quick opportunity to respond.

Criteria A, number and distance of other short-term rental homes. There are none within the 500-foot radius. There are others as appeared on the map but none of them are within the 500 feet of notification. Number and substance of protest. Again, we're looking at a 3 percent protest rate and the substance of the protests was the noise. The complaint about noise. Now bear in mind that that was from short-term rentals that did happen on the property three years ago until the Sloanes were notified that they couldn't do the short-term rentals and they stopped.

Item C, existing or past complaints. And again, as soon as there was a complaint and as soon as the County told the Sloanes they can't do this. They stopped, and there have been no short-term rentals since then.

Existing or past noncompliance with government requirements. We're assuming that means other requirements besides the short-term rental issues and as I say in the italics here, there were some minor Building Code issues on the property when they bought it. They weren't aware of it. And once again, as soon as it was brought to their attention, they complied. They did all the corrections and the property is fully code compliant.

And correspondence received by the Department, that's the Maui Meadows Neighborhood Association and they have taken the position in all of their short-term rental applications that they do not oppose them and that the CC&Rs allow them.

Just very quickly these last few points. I was involved a lot in the legislative process in establishing that short-term rental bill. I was in many of the hearings and listened to the Council Members throughout, and over and over again the issue came up about enforcement. How are we going to enforce this? Let's beef up the enforcement and that's exactly what they did. And in addition to our just regular zoning enforcement now there are provisions revocation for many, many possible reasons including any violation of any of the 24 conditions, the Director can have a revocation hearing on the permit. So clearly if there were issues in the future we feel that the enforcement process will work if you folks should give it a chance to work. We know that based on the couple

of the protest letters we know that this operation will be monitored. We know the neighbors are gonna be watching them very closely and we also know that the neighbors are not shy about making complaints. So we expect that if there are any problems, the property manager is gonna hear about it. He'll be on-call 24/7 and we expect the Planning Department will hear about it as well. That's all I wanted to cover on here and we just...we ask that you folks adopt the recommendation. We think the report is good and accurate and complete and ask that you approve the recommendation. Thank you.

Chair Hiranaga: Thank you very much.

Mr. Sloane: May I add one more thing?

Chair Hiranaga: Sure, you may.

Mr. Sloane: I forgot to mention this. Thank you. We bought this property in 2005, in the end of 2005, and we met the Lutens in 2006. We began to hear about noise complaints from them and we really tried to work with them and work with anybody who came to the house and stayed there. And it got to the point where after some time we realized that...we didn't think there was going to be any satisfying the Lutens. And approximately...just before the RFS was filed, I told the Lutens, I said, you know, I...the stories are growing larger and larger and I would really like to know what's happening here and so I installed an internet camera that has audio and video and it...you can't pick up the conversations but you can certainly pick up the level of noise from people talking and you can also see if the lights in the house are on or off. They had one day had sent me an email and said, your tenants were up all night long and they've been...the kids have been screaming at 7. They've making noise at 11 o'clock and I went back and looked at recorded, the record from the camera and I found the lights going off at 8 o'clock where the kids sleep downstairs and all the house lights going out at 9 o'clock. And I feel that once the Lutens knew that I had some of objective evidence they...they couldn't produce any objective evidence to refute that so they then filed the RFS. Thank you.

Chair Hiranaga: We'd like to recognize the attendance of our Director. Good morning.

Mr. Spence: Good morning. Good morning, Commissioners.

**a) Public Hearing**

Chair Hiranaga: At this time, I'll open the public hearing. We have a number of people signed up. First individual is Virginia Morgan. Please state your name and limit your testimony to three minutes.

Ms. Virginia Morgan: Thank you, and good morning to the Commission and Chairperson Hiranaga. Thank you for allowing me to testify this morning. My name is Virginia Morgan. I'm a retired math teacher at Maui Community College along with my husband, Alfred Wolf. I've asked him today to hold up a sheet for me because, here we go...I won't even take the time since I don't have the time to refute many of the inconsistencies that Mark Sloane has testified about but you have the file and you can look through the file, and I'm sure you've read all the information.

But the plain and simple fact is that this property is not suited for a short-term rental and I'm going to tell you why. The overhead pictures that you have don't show that. If you look on Exhibit 2, Page 32, which shows the property looking down, this is what I'd like you to refer to while I show you this because this is very important. Okay, most of you have the picture. All right. What you can't see in that topographical picture is that—let me orientate you here—this is the Sloane property. I'm going to make it like that...here is the cul de sac. Okay. A) There can be no parking up here because the County property is right at the top of the cul de sac. Where his property line is if they park at the top of the cul de sac, this is a downhill grade, if they park at the top of the cul de sac, that's in the County property and that's not legal. Okay, they need to park down here, down this driveway. Our driveway, he didn't state...he said that his driveway is shared with 750 which is here. Our driveway is shared with 750. We own this common driveway. All the yellow material that you see on this is cement that's hooked together all these driveways. You can't see that in your topographical map, but once you get down into the bowl of our little neighborhood down there, we're all connected with cement driveways. Pets play down there, kids play down there, grandkids are down there. Now the problem is when you come down the driveway...okay, I'm going to...I couldn't do a topographical map and a nice presentation, so I'm doing my teacher's presentation...but we have...okay, a bowl that we sit in, all right. The cul de sac is up at the top. To get down to this parking areas and our houses, you have to come down a very steep grade. There's a blind curve with bushes here going into his driveway and when you're at here at very top and you're coming down the driveway, you can't see anyone in the driveway--

Ms. Takayama-Corden: Three minutes.

Ms. Morgan: —whether it's dark at night. You also can't see anybody up at the top of the cul de sac because you're coming up so steeply and you don't see it until you get to the top.

Chair Hiranaga: Okay, please conclude your comments and you could have your husband also sign up to testify to complete your presentation if he wishes.

Ms. Morgan: Yeah, okay, well let me complete it. What I'm going to say is that please come out and do a site visit. Don't make a decision on this property until you've had a chance to see what the real issues are and why the neighbors are complaining about the noise being funneled up through the bowl in our little area. And also the safety of everybody who walks at the top of the gulch, I mean excuse me, at the top of the cul de sac and also down in our driveway. It's a safety issue and I'm not sure whether the County really wants the liability by granting a public permit and public use of this land where you're opening yourself up to a grand liability here. Please come out and look at the property.

Chair Hiranaga: Thank you very much. Questions, Commissioners? Seeing none, thank you. Next individual is Dennis Baker.

Mr. Dennis Baker: Good morning, Commissioners. My name is Dennis Baker. I'm a Canadian. My property adjoins, kind of adjoins Mark's property, but it also adjoins complaint no. 1 ...(inaudible)...

Chair Hiranaga: Let me interrupt for one second. Kurt, could you put the site map up so Mr. Baker

could at least point to his property?

Mr. Baker: It's very hard to find my property, but...my neighbors can help me more. Can you...somebody, John, if you can? Yeah, right there. Right below No. 5 is my property.

Chair Hiranaga: All right, thank you.

Mr. Baker: I live next door to the Lutens the entire time they're there, and I wasn't even gonna go into the Luten's situation but I feel it's important because they were original...filed the complaint originally. I have never had any issue with noise from the Sloane property. The only noise that I've ever had living in Maui Meadows and in this particular area is what I call noise of living, nothing more, nothing less. Odd time you'll have a celebration of a 60<sup>th</sup> birthday or something like that at somebody's home. But never, I have never had a situation where I could not sleep at night and go to bed and get a good rest. And I think that's important to state that we all live there and it's strictly what I've experienced is noise of living. As a matter of fact, the one complaint in here, I listen to Ginny's harp playing or her husband's harp playing many nights. No, I don't complain. It's very nice, but it's part of living and that's all I have to say. Thank you.

Chair Hiranaga: Thank you. Questions? Mr. Baker, there's couple questions.

Mr. Baker: I'm sorry.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: How do you access your property?

Mr. Baker: I come in from Kuaua Place which is the cul de sac on the other side. So we're on both sides of the gulch.

Mr. Ball: Okay.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: You said you're on both sides of the gulch? Your property is on both sides of the—

Mr. Baker: No, no, we're only on the south side of the gulch.

Ms. Wakida: So is the gulch...

Mr. Baker: This fellow could probably show you the...

Ms. Wakida: So the gulch line is that property border line?

Mr. Baker: Yes.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Tsai?

Mr. Tsai: Sir, you mentioned you're Canadian. So are you living here full-time?

Mr. Baker: No, I come here basically four months of the year.

Mr. Tsai: Okay, thank you.

Chair Hiranaga: Any other questions? Commissioner Wakida?

Ms. Wakida: Mr. Baker, who's in your house the other eight months?

Mr. Baker: Business associates or friends.

Chair Hiranaga: Any other questions? Seeing none, thank you. Next individual is Sandra Lee.

Ms. Sandra Lee: Good morning, Commissioners. My name's Sandra Lee and I'm an independent cleaning contractor. I've been doing this for the last 22 years here on Maui both private homes and vacation rentals. In 2009, I came to work for the Sloanes to take care of their house and I've had the chance to meet a lot of their guests and also observe the way that the house and property's been maintained by both the Sloanes and their guests and I've noticed a few things. For one, the house has never been trashed on. When I'm saying that, I'm saying a bunch of recyclables being left outside the house in the garbage, broken glass, trash left throughout, something that would indicate that there's been parties going on or more people than what are supposed to be in the property. I've spoken with a lot of the guests that are there and I get the same thing over and over again. It's so nice to come home after a day's outing. It's quiet. It's peaceful. It's not the hustle and bustle that they get in the resort areas. They don't have a bunch of kids running around the swimming pool. They get to sit there and relax. Sorry, I'm not a good public speaker. I know that the Sloanes have done everything that they can to comply and to make this a nice, safe place for people to come and visit. And I'd hope that they would get the permit. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you very much. Next individual is Paul Zander.

Mr. Paul Zander: Good morning, Commission. Paul Zander. I'm the owner of Pineapple Home Repair. I've worked for the Sloanes for more than three years now. They are extremely conscientious about safety and sound and doing everything right on the property. As you can see by his presentation, you can see how meticulous they are. And I believe that they would be a model short-term rental vacation owner. They have...even though they don't live here, they come here very often. Mark for any reason is on a plane, he's here, and if he can't be here, he has plenty of representation here with the management company and with me. I live right in Kihei, so I am only about 10 minutes away from the property if anything should occur, and I'm strongly in favor of...I would strongly recommend that you would allow this. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you very much. Next individual is Theresa Ernest.

Ms. Theresa Ernest: Hello, actually I wasn't sure I that I could be here today, so you have a letter from me and I attached the location map. So you want me to point where my property is on the board?

Chair Hiranaga: Yes. Theresa just for the record, Theresa, could you state your name please?

Ms. Ernest: Theresa Ernest.

Chair Hiranaga: Thank you.

Ms. Ernest: Anyway, I've lived here for . . . in that home for 28 years and I have a typical Frank Stiller pole house. So it's no air conditioning, lots of windows, lots of sliding glass doors and they're open all the time. Over the years, I've become familiar with where noises are coming from. It takes a while but I can hear parties on Kohala. I can hear parties on Kehala. I can hear the luau at the Grand. So I mean, noises come from all over and on quiet nights I can hear the ocean. That being said, I just...I find it difficult to believe that there has been any kind of substantial noise coming from the Sloane property that at one point I wouldn't have heard, taken a mental note of, it's just...I mean, I can throw a rock at his cottage and hit it. So I just...I actually don't understand what is going on here. But anyway, I'm here for the purpose that I have never ever, ever been bothered by any noise from this property. So, I think that there might be something else going on here and that possibly might be a zero tolerance situation with some people, I don't know. I would urge the Commission to give these people the benefit of the doubt and approve their permit. That's all I have to say.

Chair Hiranaga: Thank you. Questions, Commissioners? Commissioner Ball?

Mr. Ball: And how do you access your property?

Ms. Ernest: From Kuaua. Which is the same as Dennis is right next to me.

Unidentified Speaker: The circle at the end of the street...

Chair Hiranaga: Please do not speak from the audience. Thank you.

Ms. Ernest: Yeah, right there. I can visually see the Sloane property. I can see the roof and part of the house and the cottage is if I'm on my deck it's like, it's right there. It's just the way our properties are shaped really weird and where our houses are on the property.

Chair Hiranaga: Thank you. Questions, Commissioners? Seeing none, next individual is John...Har something, I can't read your penmanship.

Mr. John Hargovic: Good morning, Chair. My name is John Hargovic. I'm a long-term renter on the Baker property and at right probably the closest from the other side of the gulch to Mark's property and I'm here and rise to testify that I'm for Mark's permit. I've watched what he's done over the last few years to go forth this process and it has not been easy. I'm impressed with the County and how on the ball you guys are with this type of procedure. And I again, I rise in favor of



this permit being granted.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I'm sorry, you said you're a renter on whose property?

Mr. Hargovic: Dennis Baker property.

Ms. Wakida: Baker?

Mr. Hargovic: He was the first testifier.

Ms. Wakida: Thank you.

Mr. Hargovic: And again, I just feel like, you know, under normal...like Dennis said, there is a certain amount of audible noise that living that takes place, and I feel like, we as the neighbors we all know each other. We all have each other's phone numbers or at least most of us and if we have a problem, we tend to call our neighbor and let them know and usually it's handled instantaneously. So I think that's community. I think you should know your neighbors. I'm impressed with the way Mark's come to all of us and told us what he's trying to do and ask for our opinions on how we feel about it. And again, I rise in favor of it.

Chair Hiranaga: Thank you. Any other questions, Commissioners? Commissioner Ball?

Mr. Ball: And I'm assuming that you enter from the other—

Mr. Hargovic: I enter as well from the Kuaua side. And actually, I have Birthmark Development. I manage about a half a dozen properties in the Maui Meadows area, all privately owned and all residential. I understand people's concerns up there about noise. It is a quiet neighborhood. But also, you know, topography, wind, they all affect audibility up in that area. So again, I have never had anything coming from that property that was disturbing or could not be handled in any way, shape or form by neighbors.

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

Mr. Hargovic: Thank you.

Chair Hiranaga: Next individual is Madge Schaefer.

Ms. Madge Schaefer: Hi, I'm Madge Schaefer. I'm a resident of Maui Meadows. I'm also one of the four members that the Council asked to work on the draft of this ordinance, and I could speak way more than three minutes. Hopefully one of you will ask a question that will give me an opportunity to fill in some of the reasoning behind this.

Briefly I am going to address one issue which is important and that is that we decided that it should be weighted as to the protests. Someone who lives right next door to a property should be given

the greater weight in a protest than someone who lives, you know, two blocks away. And that was very important. The Council felt that was very important too. So whether it was a 5 percent protest or a 10 percent protest or a 40 percent protest really doesn't matter as much as where the protesting property is located. Maui Meadows is a bowl. The neighbors are right. Some neighbors may not hear the noise, other neighbors will really get it. It's depends on wind conditions, it depends on a lot of things, but it is very live in Maui Meadows.

The other things that I wanted to point out was that I served on the board and also as president of the board and I had a conversation with a police officer that was very troubling to me about this property. We were discussing a crime situation in Maui Meadows. Thank you. We were discussing a crime situation in Maui Meadows and he asked me about the Sloane property. Actually he said there's a vacation rental on Mililani. I did not know...that it was owned by the Sloans. He said that, and I wanna be very careful here because, I'm not gonna use gender, the neighbor...one of the neighbors is part of his, this police officer's hanai family and he said that this neighbor had a signature forged on a letter that was not signed by the neighbor that someone, I can't say who because I didn't...I can't say that...it was represented to me by the police officer that it was the owner. But I understand that there was a Mr. Zimmerman and...who was a part owner for a while and may still be.

Ms. Takayama-Corden: Three minutes.

Ms. Schaefer: But that this neighbor felt very intimidated and complained to the police officer, the hanai son. I told him that he should contact the County and I gave him Gina Flammer's phone number, and he did contact Gina.

Chair Hiranaga: Okay, thank you very much. Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Just in a nutshell. I'm not kind of following this. So there was some kind of forged letter is that a protest against the property or for the property?

Ms. Schaefer: For the property.

Ms. Wakida: And signature on it was allegedly forged.

Ms. Schaefer: Yes.

Ms. Wakida: ...(inaudible)...

Ms. Schaefer: Yes, that was what the police officer told me.

Ms. Wakida: All right.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Freitas?

Mr. Freitas: Yeah, what relevance does this have? You know, this forged letter? You know, it's all hearsay. Do you, can you, what do you call, back these things up? This is the kind of thing that

I don't appreciate is hearsay information.

Ms. Schaefer: Well it was hearsay enough where I'm just telling you what I did in response. I suggested that he contact the County because the neighbor was afraid and he did contact the County and did talk to Gina Flammer. So you can say, yes that's still hearsay, but—

Mr. Freitas: Who was the neighbor if I may ask? Can you identify the neighbor?

Ms. Schaefer: He did to Gina.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Madge, thank you for your testimony. I just wanted to find out a little bit more...and your service to the community in terms of coming up with this ordinance. Does this community have an association and what's the association's involvement in terms of taking care of owner complaints?

Ms. Schaefer: Well, yes, first of all there is an association and it's the Maui Meadows Neighborhood Association. It's been...there has been an association, at one point, two associations up in Maui Meadows since 1968, since the development was started. There have been a lot of protests because I think there were over 40—I gotta ask Tom was it 40 illegal vacation rentals? Yeah, 40 in Maui Meadows and it was causing a lot of problems and yes, the neighbors were complaining to us and we were, us, the homeowner's association and we were suggesting that they go to the County. The County tried, the Council tried for as you know for many years to try and come up with an ordinance that was acceptable to...and reasonable and I think that's what they've done is a very reasoned ordinance. The association does have CC&Rs and I think if I understood Mr. Rapacz correctly, he said the CC&Rs allow this. That is not what the letter says. It refers to the CC&RS, that's his determination. That the CC&Rs say it is for residential use only. And the question is a non owner-occupied house residential use only when it's a temporary situation?

The point through this, all the way through this was, how does a neighbor have a voice in this? And that was the Council's concern too, and they made it very clear that the Planning Commission is enabled to determine how this...how these protests should be viewed and I think that's very important. You all have an important role here. And that was the guiding force.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'm concerned that the homeowners association may or may not have had a chance to mitigate or hear or minimize some of this problems or has the association taken some action on this type of situation?

Ms. Schaefer: Well, what they've done is they've gone to the County again, and because there's no noise ordinance, they calling the police, the neighbors calling the police to complain. The police can only go and ask people to quiet down. They can't enforce. They have no enforcement tool and that was pointed out to the Council too. Did the homeowners association...yes, they were very active in this, in the hearings, they had representation at every hearing in the development of this

ordinance, and in fact, two of the members of the committee out of...there were four on the committee two were from the Maui Bed and Breakfast Association or the Maui...tell me the official...Vacation Rental Association which takes in the B&Bs and the short-term vacation rentals, and two of us were from Maui Meadows. Kerry Ramm, who's the current president and myself.

So we worked on the ordinance in one session and there were very few sticking points. We pretty much agreed on everything. We both...both sides wanted enforcement and protests to be taken seriously. I'm not gonna tell you...make any suggestion as to what you should do about this, but I wanted you...wanted to be here to explain what was behind this and how the Council came to this and the...this has been very muddled because of the things that have gone on including what...I'm sorry Commissioner if you were offended by my hearsay, but it was important that I put that in perspective. So...

Chair Hiranaga: Thank you. Understood.

Ms. Schaefer: Thank you.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: With the County appointing in this position of those four people, right, don't you come in as a neutral where you hear both sides of the story and then come up on what you think is I guess the more reasonable or are you for or against this?

Ms. Schaefer: For or against vacation rentals?

Mr. Lay: Well, for this project here?

Ms. Schaefer: Well, I don't have a position. I just know...I just am here to tell you what our role was and how we...and this was agreed upon by all parties on the side that was representing the business side and the side that was representing the neighbors across the county, not just in Maui Meadows, but across the county.

Chair Hiranaga: Thank you. The Director would like to ask a question.

Mr. Spence: Yes, good morning, Madge.

Ms. Schaefer: Hi.

Mr. Spence: Could you clarify for the Commission the nature of the homeowner's association and what I mean by that is normally say with a condominium project you have a board that's elected by all the members or at least all the members, you know, the people have ...(inaudible)... the bylaws are passed by members, et cetera, et cetera? Is this the same thing or is it different? Does some people participate or is it a few or...

Ms. Schaefer: Well, if you think about the time 1968, and I think –

Chair Hiranaga: Could you just answer the Director's—

Ms. Schaefer: I am answering the—

Chair Hiranaga: In a very concise manner because we have a heavy agenda, so just try to say yes or no instead of giving us the history back 35 years, okay.

Ms. Schaefer: In 1968 when these were passed there were no lawyers. These are written in English. There may have been a lawyer that drew up these CC&Rs, but are written in English. They're very short. No, they are not like a condominium. No, they are not like...they are recorded CC&Rs, but they are not like CC&Rs now.

Chair Hiranaga: They're vague. They're vague.

Ms. Schaefer: No, they're clear. It's just what's vague is is the definition of residential. How do you define that? It used some very common, very basic terms. It's not highfalutin.

Chair Hiranaga: Okay, for clarity, is membership mandatory?

Ms. Schaefer: No.

Chair Hiranaga: For clarity, does each member require to vote for the officers to install them?

Ms. Schaefer: No. It's a volunteer association.

Chair Hiranaga: Okay, thank you very much. Thank you. Thank you. Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Are there association dues?

Ms. Schaefer: Yes, they're outrageous. They are \$20 a year, some years.

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

Ms. Schaefer: Thank you very much.

Chair Hiranaga: Is there anyone else signed up at this time, Jim?

Mr. Buika: Yes. Alfred Wolf.

Chair Hiranaga: Alfred Wolf?

Mr. Alfred Wolf: Yes, sir. Alfred Wolf. 745 Mililani Place. Noise is the primary concern that I have with this vacation rental because it's going to bring tourism, vacations, instead of a single family into this residence it's going to bring six people potentially. They're here on vacation. They like to enjoy their lives so they go out onto that nice deck that he has there which overlooks the place and they

chat, and they have fun, and occasionally they give a good laugh. It's that good laugh, ho, ho occurs at midnight, it wakes us up. For a resident who lives there happenings like that are like three or four times year. When you have a vacation rental there, it's three or four times a week. That's a factor of 50, 50 more of those noises coming and going. It also increases the traffic through the street. We have a wonderful dead end street there. It's quiet. In fact, it's extremely quiet, by the fact that there's one, two, three, four dead end streets that come together there. So don't really have the traffic noise. You don't have the tradewind noise, and so conversations that sit out on the deck there are not really private conversations, they're heard throughout the community. It's that peace and that quiet that we're gonna be losing when this becomes a vacation rental. And so it be nice to see some action taken to abet that noise.

Now Mr. Sloane has talked about one thing, putting louvers up on one side. My neighbor on the north side there, Mr. Fried would like those on his side too. Pool noise is also a concern and we'd like to abet that. Put a fence or some sort of way of controlling the noise on the north side, the Fried property. Put one on the southeast to keep it from going up this nice gulch. Gulches are nice because they funnel little sounds up and down. Like Theresa I can go out on my porch in the morning when it's quiet and hear the surf break a mile and a half away. And so we want to keep this quiet. There are better places to have this bed and breakfast and one that sits up on a hill there where the sound goes out. And the other part of the noise factor is the fact that we're gonna have more cars going up and down this driveway. You perhaps saw in these pictures that he had that this driveway is a steep driveway. It's a 27 percent grade compared to mine which is right next to it. And the car goes up (made a car revving sound) and you hear it, and vacationers tend to go in and out. They also go in and out late at night. We have had our sleep interrupted. It's not good for your health. It's not good for your job. Find a better place to put one of those five atrocious things in Maui Meadow. Questions?

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Thank you, Mr. Wolf. Has Sloane...how long have you lived on your property?

Mr. Wolf: We've been on that Maui Meadows there since 1997.

Ms. Wakida: And to your knowledge have the Sloanes ever occupied their own property?

Mr. Wolf: The Sloanes have only lived there occasionally and it's been illegal or short-term rentals for a while which is kind of where we've had experience. Then it's a long-term. Long-term people are fine. They're quiet.

Ms. Wakida: And in the time that the Sloanes have been your neighbors more or less has Mr. Sloane come over to make...I mean, you know, there's such a donnybrook going on here. Has he made an effort to try to extend a little aloha?

Mr. Wolf: Yes, he has. He's been onto the property to say that he's going to do it. And as he leaves he says there's also the nonconformity in your property should you choose to protest...(inaudible)...

Ms. Wakida: Hmm. So he...

Mr. Wolf: So it's friendly and threatening at the same time.

Ms. Wakida: I see.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Tsai?

Mr. Tsai: Yeah, can you kinda elaborate a little more about the driveway situation. We kinda got interrupted there when you were doing that road.

Mr. Wolf: It's a very steep driveway and it comes up and it goes right straight over so you cannot see over the hill in terms of what's down below. And then his driveway has an extra curve to it which curves around and it's blinded by the bushes there. So if there were a kid or a dog or something down there, it would be potentially a dangerous place. The County's report also mentions the fact that this driveway is a precarious situation. And again, with tourists coming and going all the time, they need to kinda learn that this driveway is a dangerous spot. Every week there's another batch. You gotta relearn them again. That sort of thing. Coming up the driveway is the same sort of problem. And coming up, you can't really see what's up there and so if you come up too fast, you could run into somebody walking their down. It's a nice dead end street. It's a great place to walk a dog. There's kids that play on the street. It is a hazard. It's not the best placement in terms of that.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Freitas?

Mr. Freitas: You're reiterated on the, what you call, the noise complaint. What if Mr. Sloane would sell that house to a family that has eight kids and then you'd have all of that noise, what would you do about...what would you do then?

Mr. Wolf: Well, when a family is there for long-term, you have chance to go and establish a relationship. You can go talk to them. Tell them, you know, the noise carries. You're experiencing their deck noise from their conversations, won't be long until one of the other families has a deck party and they'll experience it and then it's a aha moment. Yes, I understand what you mean about the fact that the sound really carries. And with the pools which kids delight in and they get all excited and they have, you know, wonderful noises that go along with it, it usually takes oh, three, four, maybe a month before the pool isn't quite so exciting and the noise level drops off. So usually that has a nice chance of maturing and calming out whereas short-term rental every week it's another situation, new people that need to learn about the driveway, that need about the noise that goes around all over the place. It's becomes kind of an endless chore.

Chair Hiranaga: Any other questions, Commissioners?

Mr. Wolf: Ah, one more little thought? Maybe you can put a speed bump at the top of the hill.

Chair Hiranaga: No. Actually I have...I was going to ask you that question.

Mr. Wolf: Oh, great.

Chair Hiranaga: How about, what would your opinion be if a condition to the permit that a speed hump be placed on the applicant's driveway at the appropriate location in order to slow down traffic on his driveway?

Mr. Wolf: I agree with you. I think that would be an improvement. I would also like to see a few more noise barriers go up.

Chair Hiranaga: My other question is according to the staff report, there is a concrete drainage swale that divides the two driveways and it's been stated that people cross over that—

Mr. Wolf: Yes.

Chair Hiranaga: —that section. What if as a condition of the permit, stanchions were placed there to prevent cars from crossing over that drainage swale? They could put reflective stanchions up. That you see like State highways has on certain...It doesn't have to be, you know, really high. It could just be a foot high?

Mr. Wolf: I would prefer that they put a hollow tile or a concrete wall there so that the noise...the cars going up and down the driveway would not be rolling up the gulch.

Chair Hiranaga: I guess the concern with that is the drainage swale probably was designed by an engineer and you'd have to look at the impact of putting a wall inside of that drainage swale. I guess you could put it outside of the drainage swale, but then...

Mr. Wolf: Well, this opens up another interesting question. In looking on that one map that you have there, Page 33, I think it is, it actually says that the drainage easement is on the driveway of the Sloane property and in fact it's been moved off onto the adjoining property because of I don't know what, something long before I came there where the thing eroded out and this is sort of the recommendation that they had. But to correct the drainage situation you'd have to kinda correct the driveway situation. There's a 15-foot drainage easement along that one side...the east side of the property which should be where the drain is and it's not really there.

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

Mr. Wolf: Thank you.

Chair Hiranaga: Next individual is George Read.

Mr. George Read: Good morning, Commissioners. My name is George Read. I'm a licensed contractor. Owner of Maui Pool Supplies and I've been coming to this property every week for last five years. Never seen to exit the bottom of the hill I've never seen children at the bottom of the hill. I drive up and down the driveway every week. Mr. Sloane, whom I've known for five years is an honorable, honest...he'd be a wonderful person...he's wonderful to work for, but he's also conscientious. If there were problems I guarantee you he would be first one to address them. I



don't know what else to say other than that I highly recommend that he get the permit. If there are issues I guarantee you personally that he will address them. That's all I have to say.

Chair Hiranaga: Questions, Commissioners? Thank you.

Mr. Read: You're welcome.

Chair Hiranaga: James Worley?

Mr. James Worley: Good morning, Commissioners. My name is James Worley. I'm principal broker and co-owner of Pali Kai Inc., Realtors. I've lived on this island 34 years. We do sales and long-term rental property management. I have a staff of three licensed realtors that do that work. I've known Mr. Sloane since August of 2011. I concur with what Mr. Read said about his approach to his business. I would tell you that I am to be the resident or the local property manager for this application. I am very used to dealing with tenants, long-term tenants and with owners relative to issues like you had brought up today and had been brought up. Big thing is quiet hours. That's what's everybody talking about. And I assure you that I am available. I live within a mile of the property and I have experience relative to all kinds of issues in dealing with neighbors and with properties. That's about it.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Mr. Worley, can you tell me one or two of your properties that you are currently managing and whether there's complaints on them?

Mr. Worley: Well I've managed 586 Kumulani in Maui Meadows. I have managed that for about 15 or 18 years. I have had no complaints and I have had many, many, many types of tenants in there. Never had a complaint on it. I've managed 20 plus...I've managed as many as 36 units at a residential condominium called Kai Malu in Wailea. We handle a lot of tenants there and it's a 150-unit complex with mixed owners and investor owners and resident owners, but it is long-term only there. I manage about five units in Wailea Ekolu Condominiums which is vacation rental long-term and owner/occupant. I've also lived in Ekolu for 20...in Wailea Ekolu I lived there for 28 years. I live in Kai Malu now. I've lived there for almost five years. I've lived in Kihei and worked in Kihei for 34 years all in real estate.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: Mr. Worley, could you make your phone number available...your personal phone number available to these neighbors so that they could contact you if there was a noise issue and I think that would solve our noise issue?

Mr. Worley: I will, and it will be on the sheets that they get. And as realtor, your name is always everywhere.

Mr. Freitas: Have you had any calls from the complainants that there was a noise issue when you managed this property?

Mr. Worley: No, I have not.

Mr. Freitas: Thank you.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Just to get an understanding on what would happen when the complaint is placed, police officers come to the house. Do they notify you or does it get back to you?

Mr. Worley: Generally, I'll get the call first in a situation like that and I will suggest that they call the...that whoever's calling call the police if it is something of that kind of a situation. And if it's, for instance, one time at Keonekai Village, we had a tenant that was off her medication. She had been a principal of a school at one time, and she was off her medication. She got in the bathtub and turned on Mr. Tyler's music and let the water overflow for about two or three hours. I had several calls from neighbors on that one and so I was there at 2 o'clock in the morning that day.

Mr. Lay: So you do go to the residence when—

Mr. Worley: If it warrants that, yes.

Mr. Lay: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Jim, I have a question. Since you have some experience with property management, the concern I have with quiet hours on a short-term rental is if there's a complaint from one of the neighbors, they call you up, you go over there, and obviously there's some noise issues occurring, the short-term rental, you're in a contractual situation with the owner so they don't have to comply. They could just tell you take a hike, I don't care. I'm not gonna be here a week from now. So what is the remedy?

Mr. Worley: Well, the remedy generally is that the police are called and they will suggest that they keep the quiet.

Chair Hiranaga: The police again will make an appearance but that doesn't...I mean, noise is subjective and the police will not go on the property unless they're permitted to and they will not take action. They'll just say there's been a complaint, can you tone it down? That's basically what they'll say.

Mr. Worley: I find it difficult to know how to answer that question other than on a noise situation especially in condominiums you would call the police and the police will come. In my experience of almost 30 years of property management, that is usually and predominantly suffices. The next day there'll be a calm discussion with these people.

Chair Hiranaga: Okay, thank you. Oh, one more question from Commissioner Tsai?

Mr. Tsai: Jim, my comment's regarding the contact number here we're talking about here. Obviously if you do any kind of rental the renters will have your contact information. But if a

complaint normally be from a neighbor. Now are you gonna make your numbers available to neighbors to ...(inaudible)...

Mr. Worley: It would be on all the records that this office requires. It will be available to the tenants, but I'm not sure how the neighbors will know, but I'm sure they will.

Chair Hiranaga: Actually, Commissioner Tsai, the ordinance addresses that and the Director could probably answer that question for you.

Mr. Spence: Thank you, Mr. Chairman. The short-term rental ordinance requires that there be a two-square foot sign at...prominently displayed at the main access road of the building, of the property. So...and then we'll have...assuming Mr. Worley is the manager and assuming the Commission passes this permit, they would be required to have that two-square foot sign with Mr. Worley's phone number on there. So when the Council took up this ordinance they were very clear they wanted 24/7 availability of someone who could take care of all noise complaints.

Chair Hiranaga: Thank you. Any other questions, Commissioners? Continue.

Mr. Spence: And so then there's also once, and I'm sorry I missed this, there's not just only a sign but if this permit were approved there would also be a second mail out not just notification of an application but a notification to all the neighbors within 500 feet that a permit has been approved and in that notification would include Mr. Worley's phone number. So you get permanent display at the beginning of the property, plus additional mail notification.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you very much. Anyone else wishes to provide public testimony regarding this agenda item, please come forward? Before close the public hearing, I wanted to ask Kurt a question. So there were two testifiers, Mr. Baker and Ms. Ernest, are those considered adjoining property owners?

Mr. Wollenhaupt: Yes. Yes, they are.

Chair Hiranaga: And the letter from the Frieds, just for clarity, they still own that property?

Mr. Wollenhaupt: According to the last record, they did.

Chair Hiranaga: Thank you. At this time, I'll close the public hearing and open the floor to questions from Commissioners. Commissioner Wakida?

Ms. Wakida: Request for Kurt. In your application, you asked us to pay particular attention to Point N.

Mr. Wollenhaupt: Which page are we on?

Ms. Wakida: Well, 4. It says, the Commission should pay particular attention to Point N.

Chair Hiranaga: Could you pull the microphone up, please?

Ms. Wakida: Oh. The Commission should pay particular attention to Point N. It's the first paragraph under Short-Term Rentals. I mean, are you with me?

Mr. Wollenhaupt: Oh, on Page 6?

Ms. Wakida: Page 4.

Mr. Wollenhaupt: Page 4, Point N, N as in Nancy.

Ms. Wakida: No.

Mr. Wollenhaupt: Oh, Point N. That being the, right...the community impacts.

Ms. Wakida: I'm just pointing out that that in the introduction it says the Commission should pay particular attention to Point N. So, moving over to Point N which is...deals among other things with...my question is, first of all, are those your words, "the Commission should pay particular attention to Point N?" Or is that standard wording? Because I was wondering if there was something in here--

Mr. Wollenhaupt: Oh, I imagine, I think that was probably my wording because this is first time you've ever looked at these. This is the first time we've ever had a permit so, when we have A through T what are some of the more critical guidance points of today's hearing, so--

Ms. Wakida: Correct, and so I'm looking at what "N" says and it says the short-term rental should conform to the existing character of the neighborhood and it should be...if there's any covenants or restrictions those are looked at. Was there anything in particular in this Point N that you were flagging or was it general?

Mr. Wollenhaupt: Oh, it was just general as a guidance so that there was some direction where we're going with this debate today. Talking about, you know, the community input, the community land use titlements, noise, traffic, it wasn't...it was just since we A through T what are some of the points at least we're going to debate on. So I think we've covered a lot of the discussion on those.

Ms. Wakida: Okay, 'cause I notice in their restrictive covenants they limit the dwellings on the lot to one single family residence and obviously that has...many owners have chosen to do ohanas and so there has been I guess a quiet acceptance of that by the Maui Meadows people?

Mr. Wollenhaupt: I think the discussion on the voluntary community association alludes to...the covenants that were made quite a while ago...maybe Mr. Rapacz can talk more if you have questions on the details of that, but there is many situations that we've seen the covenants are so old that...

Ms. Wakida: Well, the homeowners association doesn't have any control over that anyway.

Mr. Wollenhaupt: The community association.

Ms. Wakida: The community association.

Mr. Wollenhaupt: Which is voluntary.

Ms. Wakida: Yeah. Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Lay?

Mr. Lay: This is a question about the pool. I'm not sure about the laws, but does the pool have to be enclosed by fence, by a fenced in area, public safety, no?

Mr. Wollenhaupt: Not that I'm aware of. I'm not sure if Public Works has any thoughts on that? But it was sent out for Miscellaneous Inspection and they do have a letter from the Department of Public Works that they've met their permitting. Also, there's a short-term rental inspection form that we're now sending out to these properties. However, they've met it through the Miscellaneous Inspection process. So that's how we regulate the safety processes.

Mr. Lay: Do we know?

Mr. Wollenhaupt: I don't know. See, I've been to many properties that have these short-term rentals and I've not seen any fencing around it. And they have passed their short-term rental inspection form which is the safety form that was approved as to form and language by the Council. So that's what we're relying upon. I've been to quite a few places. Mr. Sloan may have more to that.

Mr. Sloane: I was there with the inspector—

Chair Hiranaga: One second. I wanna ask Public Works, Deputy Director a question. So construction of a pool requires a building permit?

Ms. Dagdag-Andaya: Yes, it does.

Chair Hiranaga: And upon completion of a pool there's a compliance inspection?

Ms. Dagdag-Andaya: Yeah, building inspections goes out and does the inspection of the pool once it's been completed.

Chair Hiranaga: And they ensure that all Building Code requirements are fulfilled?

Ms. Dagdag-Andaya: Right, they are.

Chair Hiranaga: Satisfied.

Ms. Dagdag-Andaya: Yes. I believe this one also had a Miscellaneous Inspection on it. I haven't read the report. I can find out about whether or not the pool was also included in the Miscellaneous Inspection Report, but that should be also included in their review as well.

Chair Hiranaga: Okay, thank you. You don't need to comment. Thank you. Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Just clarification on the parking. One of the testifiers mentioned that the parking was illegal. That there was a possible encroachment in the common area or the community area. Can you clarify that?

Mr. Wollenhaupt: No, actually the parking is completely legal. Their comment was that there is possible parking at the top of the cul de sac in addition to all the other parking that's completely legal. So the...one of the testifiers was indicating at the top of cul de sac there is a concrete slab and could that be used for additional parking in addition to all of the legal parking. And their concern was was that additional parking did it encroach possibly into a County setback? I don't have a survey for that. I have been out there and I have seen two large vehicles that appeared to be parked correctly without obstruction, but without a survey...however, they have plenty of parking at the garage level which is down the hill for the required two spaces for this property. So there's...this just would be completely additional parking at an alternative location.

Mr. Shibuya: Okay, because once you designate an area of an alternate parking area then you're sort of saying that yes, we are complying with the intent of the ordinance that says that you have parking only on your property not on the County's property or your neighbor's property. It's on your property.

Mr. Wollenhaupt: And their designated parking is in front of the garage at the bottom of the hill. That was the parking plan that we received, the parking plan that's been approved. This alternative of parking at the top is not part of the approved application. That was just a comment that was made by one of the testifiers. So the approved the parking plan is down of the hill on the garage slab and that complies with the requirement for two parking spaces.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Tsai?

Mr. Tsai: Yeah, Kurt same question kind of because I'm looking at the handouts, site plan and parking plan and obviously it's not indicated in any of the pictures and I'm trying to ...(inaudible)... you have on a parking plan three parking spaces by the main house. You have two more parking spaces I guess by the cottage and septic tank. Now you're saying the two is next to the cottage but what about the three, and are they paved?

Mr. Wollenhaupt: They are paved. The requirements for this house according to the Parking Code the house has to have two parking stalls and the cottage would have one. So in order for this to function as an official short-term rental with the required parking they'd had to have three designated parking stalls which they would have here. In fact, they have an abundance of three parking stalls by the garage down the hill, and then the cottage has a couple, and what was located in the purple that was a comment that was made to try to address some issues about driving down. The purple parking is not part of the official parking required or approved. It was only an alternative meant to address perhaps a question about people going up and down the hill. So they do have

the two required.

Mr. Tsai: Since I have you on the mic. I would also like to hear your perspective on the driveway that when the testifier brought up regarding, you know, the decline, incline and lack of visibility. I mean, you obviously been there. So what's your thoughts on this?

Mr. Wollenhaupt: Well, Mr. Rapacz and I did walk the property. It obviously does. It does take a steep decline down around the corner to the parking space. I have to rely that the house is built according to Code which we had the miscellaneous Inspections. It is a private driveway that serves this property while the adjacent neighbors do have a driveway that is connected with that drainage swale. This driveway does serve this property only which I think is an important fact. I think the possibility of having a speed table subject to how Public Works might provide some input. That would provide at least a notification to new people, hey we need to slow down here. We're not gonna be flying up and down. So I think that could be a solution to trying to control speed although I can't imagine why people would speed up or down there. So that's how I...that's how I would see kind of a mitigating factor if we put a speed table in there for this private driveway that was presumably approved when the house was built. So I don't see that it's an impossible issue to address those mitigating factors.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Kurt, this is another issue that the Chairperson mentioned. Take a look at the picture on Page 59, and it shows on the left-hand side of this picture is a driveway for the subject's property. And then there's on the right side, there is a driveway going up and that's shared by the other tenants or I guess property owners. If you are a brand-new person living in the Sloane residence, you probably want to switch over to the right side rather than go up the hill on the left side would you not?

Mr. Wollenhaupt: Well, I wouldn't want to in terms of what it would do to the bottom of my car because there is a depression in there.

Mr. Shibuya: Understand.

Mr. Wollenhaupt: I think that was what the Chairman had indicated about some kind of reflective—

Mr. Shibuya: Right.

Mr. Wollenhaupt: Whether they would be stanchions, whether they would be those reflectorized things that they have on the roadway that are just raised in order for people to stay in their own lane. I'm not...I can see what you're talking about. It wouldn't occur to me to pop over that to go on the other side.

Mr. Shibuya: Right, if I was a British or a Japanese guy, you know, coming up on the left side, no problem.

Chair Hiranaga: Moving on. Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Having heard the...Kurt, the extensive concerns by the Wolf/Morgan couple, have there been any solutions addressed? Have we come up as a Commission or...any solutions to their concerns besides the speed bump? Because I'm concerned about...I mean, they've made a concerted effort here to express their concerns. And I'd like to see if this moves forward some real mitigation for them. So what have you seen here that can address the Wolf's and Morgan's concerns?

Mr. Wollenhaupt: Well, I think the concerns have been twofold. Number one is the noise, and number two is the safety factors. The noise situation apparently there were discussions between to the two parties, the Wolf/Morgans and the applicant about the louvered doors in the past. That actually is one of the conditions that have been put in there that they were to put these louverized doors into the balcony area which would be a noise mitigation factor. At least that would assist partially.

I think the speed tables certainly going to try to mitigate some of the safety issues. I can't speak right now without a survey to know if at the top of this hill if that parking is going to be adequate. I was out there with two big SUVs and it appeared that the two cars would fit properly within the the...not going into the apron of the cul de sac. So with my opinion that doesn't have an engineering background because I don't have a survey, it looked like the two cars could park at the top of the hill. That would seemingly address many issues regarding safety because now people wouldn't be traveling down via driveway, would address issues that Mr. Wolf expressed about the cars vrooming up the hill. So that's a mitigating factor and I believe the applicant can comment on that. Regarding some kind of reflectorization on the drainage swale, that again, that's a safety issue and a noise issue. However, if the cars were parked at the top of the hill then there would be little reason that they would have to be traveling down the hill.

We've heard different things about noise. We've heard from adjacent neighbors who have said that it's noise that's common and general. We've heard neighbors who say that they're quite disturbed in the evening. I think that the louverized doors that's certainly one issue. Also it's important to note that this Commission is the appeal body. You have a lot of power on this one. That if within the next year there are three complaints from two adjacent neighbors, the Director, the Director in his opinion cannot manage to resolve it, now it's gonna come back in front of you again. That's something that's new to this permit. That you are gonna be the body that's gonna be the hearing body. So those are...staff went back and forth about where we should go and we were hoping that we could see the Council made a provision in the ordinance with pretty rigorous follow up activity and we're hoping that it can be ...(inaudible)...to work. So we have mitigating factors of speed tables, perhaps reflectorized, perhaps a change in the parking plan at the top of the hill, the louverized doors either in part, at least on that one part that was shown on the Wolf's side, whether or not on the Fried's side that will be...(inaudible)...abated. So that's how the Department came up with the staff report. Mr. Rapacz may have some additional comments on the parking at the top of the cul de sac if you'd like to hear from him.

Chair Hiranaga: For clarity, the official designated parking areas is?

Mr. Wollenhaupt: Is down where it says, "3, 8 ½ x 18 parking spaces" which is in front of th garage area. That's the official parking area.



Chair Hiranaga: Next to the pool?

Mr. Wollenhaupt: Next to the pool.

Chair Hiranaga: Right. And without having to go back to the staff report, who's gonna occupy the cottage? Is that gonna be part of the STR or?

Mr. Wollenhaupt: No, that's a long-term renter they have.

Chair Hiranaga: But won't be involved in management or?

Mr. Wollenhaupt: No, not to my understanding.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Just for clarity, the blue up at the top. Should somebody park up there what's the access down to the house?

Mr. Wollenhaupt: Well, actually the access is...the access actually to the house is direct. It's you walk down a flight probably of 10 steps from where the purple square is to the front door of the house.

Ms. Wakida: Oh, there are steps in place?

Mr. Wollenhaupt: That's the front door of the house. So it's actually even more direct for any guests or residents to park at the top and walk probably 15 feet and you're right in the living room of the house.

Ms. Wakida: And has that commonly been the practice in the past? That's where people generally park?

Mr. Wollenhaupt: I don't know what...I don't know where people have parked in the past. You'd have to ask the applicant or Mr. Rapacz about that.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you very much. We're ready for the staff recommendation. Kurt, as you go down your...well, actually I have two questions, sorry. They're actually both for the applicant. There was a representation made that you are going to personally interview each potential occupant, and exactly how are you gonna do that? You say, personally, so in person?

Mr. Sloane: No, personally meaning first by email then by phone. And I will say that if had we known about the large pool of renters from vacationrentalbyowner.com who can inquire a property. If we known that years ago, we probably wouldn't be here today because we would have been screening people more closely than the property managers that we had who were in charge of our short-term rentals. And I will add that Jim Worley was not one of those managers.

Chair Hiranaga: Second question. If a condition was placed that you construct a speed hump on your driveway, would you object to that?

Mr. Sloane: Well, I would like to show you a couple of pictures of the driveways of Morgan/Wolf...of the 745 and 750 right next to ours. May I show you it?

Chair Hiranaga: No, I'd prefer you just to say yes or no.

Mr. Sloane: Well, I would prefer not to because I really don't see a reason for it. As one of the—

Chair Hiranaga: So is that a no?

Mr. Sloane: If you absolutely require it, I would do it, but I...this house is...we've never had an accident. Nothing's been going for years.

Chair Hiranaga: I mean if the motion is on the floor that it's required in order for you to get approval?

Mr. Sloane: Then yes.

Chair Hiranaga: Thank you very much.

Mr. Sloane: I'm sorry. Sorry to complicate that question.

Chair Hiranaga: Deputy Director?

Ms. Dagdag-Andaya: Chair, I just had something to add about installing a speed table. So if the applicant does decide to...well, is going to decide to do that then they would have to come in for a permit, we'd need to do the review and then issue the permit after, you know, doing that review I would suggest instead that the applicant look into maybe traffic calming measures because sometimes the speed table may not be the appropriate traffic calming measure for that area. And depending on the location of the speed table or speed hump, if it's on...if it's adjacent to our County right of way that might cause an issue as well. So I would suggest maybe looking into a traffic calming device that's appropriate and something that we could even take a look at. We don't, we don't mind doing that.

Chair Hiranaga: Okay thank you for that. Any other questions, Commissioners? Commissioner Freitas?

Mr. Freitas: How long is the driveway, sir?

Mr. Sloane: How long is the driveway? Well, if you want to go all the way from the ohana to the top?

Mr. Freitas: Yes.

Mr. Sloane: Two hundred feet.

Mr. Freitas: Two hundred feet.

Mr. Sloane: And the rise of the lot from all the way on one end to the other across the .289 acres to the top is only 20 feet. I really don't know how the 28 percent grade calculation comes in.

Mr. Freitas: Thank you.

Chair Hiranaga: Any other questions? Commissioner Shibuya?

Mr. Freitas: I got a comment on the speed bump.

Chair Hiranaga: Could you reserve that to when we have a motion on the floor?

Mr. Freitas: Sure.

Chair Hiranaga: Thank you. Commissioner Shibuya?

Mr. Shibuya: Just clarification. I believe this driveway is a private driveway and how they actually imply and put or implement such a measure is really the owner's thing and has nothing to do with the County's ordinances for speed bump or speed tables is it not? I just need Staff clarification on that.

Chair Hiranaga: Well, I believe the Deputy Director stated that a building permit would be required. Deputy Director?

Ms. Dagdag-Andaya: No, it wouldn't be a building permit. It would be a driveway permit for any alterations to the driveway. And the road adjacent to the driveway is a, I believe it's a County road. So in that case that's when we would require a permit. But again, I wanted to emphasize that sometimes the speed table may not be the appropriate measure here. That the applicant might wanna look at other, other traffic calming measures.

Chair Hiranaga: Just for clarity Deputy Director, when you said that the roadway adjacent to the driveway is a County roadway are you speaking of the driveway that runs parallel to their private driveway or the cul de sac?

Ms. Dagdag-Andaya: The cul de sac, yeah.

Chair Hiranaga: Thank you. Any other questions, Commissioners? Seeing none, thank you. At this time, we'll have the staff recommendation. And Kurt, as you present your recommendation, on Page 11 of the staff report there are five factors that are specified as far as determining whether a permit should be granted or not. And looking ahead I know that the Department is currently recommending approval of this permit, but based upon public testimony and the questions from Commissioners can you go down item by item and explain why the Department believes why the permit should be approved?

Mr. Wollenhaupt: Item No. A, the number and distance from the subject parcel to other permitted short-term rental homes. As indicated there at this moment is only director signed short-term permitted home. That being the case, the limit of five has not been reached. There does not appear to be an over abundance of short-term rental homes then in this particular location. Also, adding to...adding evidence to point A is that none of the approved B&B homes are within 500 feet. Maui Meadows or the Council in its wisdom did declare five permits for Maui Meadows. This one, if approved today, would be the essentially the first one approved under the new law because the one that's already approved was approved under an codicil of the ordinance that allowed past, any past conditional permitted approved transient vacation rentals could step up and become a short-term rental. So this would be number one which would be a director signed approval under the new law.

Point B, the number and substance of protests for the short-term rental home application and protests relative...related to the cumulative short-term homes in the larger neighborhood or area. As it has been explained today, when we look at the current property owners, we had two property owners that have written objections. Today's hearing, we actually had to adjacent property owners who did not express an objection. I think that in today's hearing with, I think it was Ms. Lewis...it was Theresa Ernest and then also, Mr. Dennis Baker, as they apparently according to the map are adjacent property owners shared their experiences on noise. I think that helps to mitigate and balance Point B.

C, existing or past complaints about rental operations on the property. The applicant was straightforward that there have been issues in the past. They had short-term rented it out. There was a request for service. That request for service according to our records was addressed and closed. ...(inaudible)...importantly the Police Department, we did get a written notice in here, it was in your report, and Police Department we do take their review seriously, they did not have a problem with moving forward for a recommendation.

D, existing or past noncompliance government requirements and degree of cooperation by the applicant to come into compliance. I think that, what I just stated before, they did have an RFS, it was solved. The Department is very concerned though about this application and moving forward over the next year that we will be and the neighbors I'm sure will be keeping a close look for compliance.

Correspondence received by the Department pursuant to 19.65.030(N). Correspondence required for this project was included. Point N has to do with all of the attachments that were allowed and onto the balance. We see that the house actually does have the proper building permits that was an issue in the past. We've had the Police Department reports. We did relate this to the Real Property Tax. They did not have any comments. So it's gone through a process, a diligent one to many different departments.

So in the balance because of the very strong possibility of any kind of revocation actions, we were able to agree with Point 5 here that we could move forward and I can give you the recommendation.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I have a question on the previous rental and how long was that going on and did the applicant not know that he couldn't do that?

Mr. Wollenhaupt: I think the applicant probably could address the timeline or their attorney, Mr. Rapacz.

Mr. Sloane: To address the question about did we not know. We purchased this property in 2005. At that time, we were not advised of any issues with renting this short-term. In fact, I didn't even know there was a six-month minimum lease until later. So there was no process by which to obtain a permit at the time and now there is, and that's why we're here.

Mr. Ball: So how long was that illegal rental going on for?

Mr. Sloane: 2006 to 2010, and I will say it was not highly occupied. It was not booked up year round by any means.

Mr. Ball: That's all for now.

Chair Hiranaga: Any other questions, Commissioners? Thank you very much. I guess we're ready for your recommendation.

**b) Action**

Mr. Wollenhaupt: The recommendation is on the green forms of your report today. In looking at this application it does comply with the applicable standards for a short-term rental home in accordance with Chapter 19.65.030 of the Maui County Code, Points A through T.

The recommendation of the Maui Planning Department is to recommend approval subject to the following conditions: There are 24 conditions. I'll just highlight some of them. Most of these are standard conditions...most of these are typical conditions which have been placed upon the short-term rental homes permitted.

Point No. 1, the short-term rental home permit shall be valid until February 28, 2014. That's one year. Subject to further time extensions by the Director pursuant to the provisions of Section 19.65.070.

Point 2, the short-term permit may be extended by the Department for up to two years provided there are no recorded complaints against this operation and subject to the time extension fees. Shorter extension periods may be granted to mitigate adverse impacts based upon the Department's investigation of the recorded complaints.

I won't go through all of them. To address some of the issues, again, the permit holder has to notify the Department and owners lessees abutting and their adjacent properties and properties directly across the street of any changes in the manager's address or telephone numbers. There is a liability policy of a million dollars. There were some liability questions that were brought up. Two square foot sign shall be posted on the main access road identifying the name of the manager, 24-

hour telephone number, Department of Planning 24-hour number, that will be direct to our Director.

Mr. Spence: ...(inaudible)...

Mr. Wollenhaupt: The house rules shall be prominently displayed. These would include such things as quiet hours. Another important, very important point, the maximum occupancy of this house would be six people, six people and that does include children over two years of age. Another important point, each permitted dwelling unit on the property is to be rented only to one group. This is not a B&B in which every single room could be rented to every single group. That in and of itself should help to mitigate the number of cars that will be there. The permit's only limited to three guest rooms within this one dwelling, and the total number of guests is only two guests per bedroom. No parties or groups other than registered...no parties or group gatherings shall occur on the property. The STRH shall not operate when the manager is not accessible and accessible means physically present within one-hour following a request by a guest and having an office or home within 30 driving miles. I believe Mr. Worley satisfies all these conditions. Most of the other conditions have to do with fire extinguishers and safety. There was one additional condition, No. 24, the owner/proprietor shall install louvers in the existing opening of the southeast end of the second floor lanai of the dwelling located at 745 Mililani Place, Maui Meadows prior to commencing short-term rental operations. The design of the louvers shall be subject to agreement between the property owners and photographs of the completed project shall be sent to the Planning Department as evidence of compliance.

In consideration of the foregoing, Planning Department recommends that the Commission adopt the report and recommendations prepared for the February 12<sup>th</sup> meeting as its findings of fact, conclusions of law, decision and order and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chair Hiranaga: Any questions regarding the recommendation? Commissioner Wakida?

Ms. Wakida: Let's start with the last one about the louvers. It says, the design of the louvers shall be subject to agreement between the property owners. Which property owners?

Mr. Wollenhaupt: I was thinking that probably the people who originally had discussions that would be the Wolf/Morgan and also then with the Sloanes. They were the people who had the discussion previously and there was a photograph in your report of potential louvers. That's on Page 68. So it was thought that there could be an agreement between the Wolf/Morgan resident property owners and the Sloanes as to the type of louvers that would best effectively screen. The idea that was brought up today with this breezeway louvers seemed like a good one that they're locking. I had not heard about that. Locking louvers that presumably would...they're solid. That sounds like a good design that I have never seen before.

Ms. Wakida: Well, no but the point is, is this agreement is between largely the Sloanes and the Wolf/Morgans?

Mr. Wollenhaupt: That's right. That was the intent. Maybe it should be clarified more.

Chair Hiranaga: Any more questions regarding the recommendation? I have a question, but Commissioner Wakida can ask hers first.

Ms. Wakida: My question is on No. 2 of the recommendations. It says, "the permit could be extended provided there are no recorded complaints." How many does that mean? One? Or more?

Mr. Wollenhaupt: We've actually not gone there. I know that the Code indicates that when you have three written complaints from two adjacent property owners that the Director cannot solve then the Director can schedule it for a hearing. This language has been the standard language we've been using that maybe Will could help on No. 2 about when it says there are no recorded complaints. I think that then it becomes a matter of Department...it doesn't take it up to the level of public hearing, but it takes it to the level of discussion in the Department about extending. It doesn't just automatically get the two-year because the way it works now is that you operate with no complaints. Our KIVA generated system will automatically pop this up, Mrs. Smith's short-term rental in Kihei is now available for a two-year extension. There was no complaints. We then get a letter that's generated out of the computer. They send us the money, they're automatically two years. That's the way that it works when there's no complaints. But the Director may have an idea when there is a complaint then how the process is going to work.

Mr. Spence: I think what we would look at, Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: Thank you. What we would look at when we receive a complaint, I mean, all complaints are investigated. You know, we look into what exactly the nature is of it. We receive complaints of all different kinds. Sometimes they are...I should say, most of the time, you know, there's substance to it. A lot of times there is not. It's, you know, neighbor pitting itself against another neighbor that kind of thing and there's no way to validate the nature of the complaint. But we would look into it and verify, you know, that there's an issue. I know in this particular case there are...you know, there have been complaints about noise in the past and what we're trying to do here is give it a try and see if it's going to work. See if we can mitigate some of the noise concerns and see how it's gonna operate. But, no if complaints come in, we will look into those. Did I answer it or no?

Ms. Wakida: No, it doesn't.

Mr. Spence: Okay.

Ms. Wakida: All I needed is a number. You know, if you get one complaint does that...do you take that seriously or does it have to be two or three?

Mr. Spence: We would rather look at two or three, but we take any complaint seriously.

Ms. Wakida: Okay.

Mr. Wollenhaupt: Oh, Commissioner Wakida, I can read what the Council said on this issue. "If the Department receives at least three complaints about short-term rental home within a 12-month period and the Director's investigation of the complaints is inconclusive, the Director shall refer the complaints to the applicable Planning Commission for a determination of revocation. Complaints must be from the property owners or lessees of record located on two or more different lots within a 500-foot radius of the proposed short-term rental home." So that would trigger them coming back to this body.

Chair Hiranaga: Any other questions, Commissioners? If not, I'll open the floor to a motion. Commissioner Freitas?

Mr. Freitas: I move that we approve the short-term rental permit.

Mr. Lay: Second.

Chair Hiranaga: Moved by Commissioner Freitas, seconded by Commissioner Lay to approve the staff recommendation. Any discussion? Commissioner Ball?

Mr. Ball: I'll vote no on this because I don't feel that we've addressed the concerns of the people that have complained. We have written testimony. We had some oral testimony presented that there were threats made and that these all these police report about some other forgery nonsense. But we haven't, we haven't solved those. We haven't solved those issues. You know, somebody to come as Mr. Wolf did and testify in front of everybody, I mean, about the threats coming from the applicant, nobody's addressing that. We're just pushing it right off to the side and continuing on. I have concerns about the stewardship of the applicant on this island and the people that he brings...he's screening to bring over. Is he teaching the Maui way or is he teaching get out of my way? I don't know. I have concerns about all that. So, that's my two cents.

Chair Hiranaga: The maker of the motion and the seconder, any consideration regarding traffic calming devices on the driveway? Commissioner Freitas?

Mr. Freitas: I have a driveway that is a little over 300 feet at the same slope, and I don't see no problem in speeding, people coming up and down my driveway. You know, 200 feet is relatively a short distance to get up to speed that would, what do you call, cause a problem especially when you're coming to a stop.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: My driveway is about, it's over 300. The concern I see of putting a speed bump in, I don't know if you guys notice this, that makes a lot of noise. It creates a lot of noise. Everybody tries to go full blast over it. If you've got new person who's renting the place, they come down, their car scrapes across the bottom. I think it will be the biggest headache in the world is putting a speed bump in there. That's my opinion on it.

Chair Hiranaga: Commissioner Wakida?



Ms. Wakida: At the moment, I'm gonna vote no on this. I have real concerns. I think the applicant has the onus to try to ameliorate situations with his neighbor and I don't see that there's been a real good faith effort to do this.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Did we address the pool situation with the fence or did we...did it not...(inaudible)...or do we wanna put a condition on that?

Chair Hiranaga: Well, I think the comment from the Deputy Director is they've met all Building Code requirements and that's the governing entity. Any more discussion on the motion? Director?

Mr. Spence: Thank you, Mr. Chairman. Commissioners, I think it's just important to put on the record that I'm...I can't tell Commissioners how you should weigh certain testimony. But if you have hearsay testimony where, you know, my aunty who heard from her cousin, who you know, that who heard that there was a problem with something like this, there's no way to verify those things. You know, there's...I've followed this particular application for any number of years and the issues that have come up around this and there's issues that come both ways with this one. I would encourage you not to consider hearsay testimony about problems third or fourth hand. I don't know how far it goes, but I would just like to reiterate the Planning Department's position is we're gonna give this a try, at least the Department's recommendation is give it a try and then we can go on from there. I could go into a lot of details, but I think we're at the point just to make a decision.

Chair Hiranaga: Just for clarity, Kurt, on Condition No. 2, it says, second line, provided there are no recorded complaints. When does a complaint become recorded?

Mr. Wollenhaupt: It's my understanding that's when it's written and it's in our...a written complaint or an email complaint that's verified and signed by a legitimate property owner then it would be ...that would be recorded. It would be recorded into the file. It would be scanned into KIVA. So a phone call wouldn't do it, but a written complaint or an email that's signed, verified, time dated and stamped and put into the file, that would be recorded.

Chair Hiranaga: And if three of those occur within a year the permit extension gets kicked to the Planning Commission?

Mr. Wollenhaupt: Three written complaints from two different property owners or lessees of record which are verified within 500 feet of the subject parcel then that will kick it up to a...to your body reviewing it. If the Director cannot find...if it's I don't like this tenant, then the Director most likely would find that's not...that's not a complaint that would rise to the level, but it has to be...if says if the Director cannot make a decision as of the merits of these three complaints, then the Director will move it to this body for a public hearing. So there's a lot of...there's a difference between I don't want this in my back yard versus I object to this, on December 3<sup>rd</sup> at three in morning there was, on December 4<sup>th</sup> at four in the morning there was this. There's a level of complaints that the Director will have discretion in. But once we've gotten three written complaints from two property owners, it's on the Director's decision then whether or not these can be revoked. If they can't be, then we move to your body.

Chair Hiranaga: I know that the Planning Department is here to administer ordinances passed by the Council but looks like the other Commissioners may have a full agenda in about a year or so. I would have preferred that the Director make the decision and if the applicant is dissatisfied then they file an appeal, but so be it. Commissioner Ball?

Mr. Ball: Just to respond to the Director. Mr. Wolf's testimony was not hearsay. He's a property owner.

Chair Hiranaga: You may respond, Director.

Mr. Spence: The discussion wasn't about Mr. Wolf's testimony. I recognize Mr. Wolf is a next door neighbor. It was the other testimony that, you know, if about somebody complained that, you know, somebody else and we understand there was a threat and all this. If the Commission takes that kind of thing seriously, I mean, anybody could stand up in front of this Commission and make an argument against anything whether they're affected by a project or a permit or not. And that's just...you know, we do take adjacent neighbors very seriously. And that's the way that the Council crafted this. You know, a lot of times we'd get complaints from somebody who's corner of their property is 500 feet away. There's no way they could hear anything, but yet they would complain, you know. You know, they're not affected. Next door neighbors can be however. So we've, you know...

Mr. Ball: That other testimony wasn't taken into consideration by me.

Mr. Spence: Okay.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I'd like to make a condition of maybe signage on the roadway for slowing down.

Chair Hiranaga: The maker of the motion is absent. Why don't you hold thought. I think Commissioner Shibuya raised his hand.

Mr. Shibuya: Yeah, I just wanna state that I'm very disappointed that the homeowners association is not as strong in terms of addressing some of these complaints as homeowner complaints. I think this issue could have been resolved at that level prior to this coming to this Commission more so even to the Council. It should not be an ordinance type of situation. It's a within my neighborhood type of adjustment because the conditions of neighborhoods is where your association establishes these qualities of life and these conditions of living that are acceptable to all. Here we're talking about density. Density versus Upcountry density are two different things. Here you're within eyesight of the person that's your neighbor and you don't have one neighbor, you have three or four maybe five different neighbors. So you're talking about density in terms of how close we are and that we should be more considerate and respectful of the qualities of life that we extend to our neighbors. And this is the essence in which our associations should be taking a stronger stand and to enforce this and not have the issue where you have the community so divided that we have to send it up to the Council much less to this Commission. I'm gonna go vote towards supporting this for one situation here. It is for one year that I know that it's a conditional use and if there's any

complaints, I definitely would be denying it after that.

Chair Hiranaga: Okay, unless there's a strong objection, I'm gonna recess for lunch.

Mr. Freitas: Can't we take a vote?

Chair Hiranaga: You can voice a strong objection. I said, unless there's a strong objection I'm going to recess.

Mr. Freitas: I voicing a strong objection.

Chair Hiranaga: Okay, we have one strong objection. Two strong objections. Any other strong objection? I think, you know, give us time to mull over...I mean this is a tough call, and I get...you know, when I have an empty stomach my decision making can become clouded.

Mr. Freitas: Kent, we've discussed it and we've beat this thing to death. I think we should vote on it.

Chair Hiranaga: Any opinion on the others? Commissioner Shibuya?

Mr. Shibuya: I'd like to reconsider and have this break so we can think about it.

Chair Hiranaga: Okay, at the Chair's call, we'll reconvene at 1 o'clock.

A recess was called at 12:01 p.m., and the meeting was reconvened at 1:09 p.m.

Chair Hiranaga: So I think our Deputy Director of Public Works has answer to a previous question regarding the swimming pool.

Ms. Dagdag-Andaya: So the question was whether or not fences were required as part of the construction of the swimming pool, and according to our current Building Codes, they're not required. That was one item that we didn't include in our revisions to the Building Codes back in April of last year.

Chair Hiranaga: Thank you for that. And so we were, I guess we had a motion on the floor, any further discussion? No further discussion. Director, could you...Okay, I'll restate the motion. The motion is to approve the application per the staff recommendation. You were going to do a friendly amendment, did you wanna readdress that?

Mr. Lay: Yeah, I'd like to do a friendly amendment, signage, just to keep traffic slow going on that driveway.

Chair Hiranaga: Well, actually the maker of the motion needs to agree not the applicant.

Mr. Freitas: I agree.

Chair Hiranaga: Okay. Now is there any objection from the applicant? Can you come forward to the mic and identify yourself?

Mr. Rapacz: Hi, John Rapacz again for the applicant. No, there would be no objection to that. I just would like to clarify though that that would we also be meeting with Public Works on other traffic calming measures or would the slow signs satisfy the concern about the safety in the driveway?

Chair Hiranaga: That condition was not added regarding traffic calming unless a commissioner wishes to add that at this time. So I guess for clarity we could just state that the applicant would work with Public Works on the signage?

Ms. Dagdag-Andaya: Yeah, it depends where the sign would be posted. So if it's within our right of way, of course, we gonna need to review that request. But if it's on the property, completely on the property, then I think you're okay. But again, our staff is willing to work with you.

Chair Hiranaga: So the motion is to approve the staff recommendation with the additional condition of the applicant placing some type of signage to calm the traffic. All in favor of the motion to approve so indicate by raising your hand. One, two, three, four ayes. Opposed? Three nayses. I'd like to just say that the reason that I'm gonna vote the way I'm gonna vote is there appears to be two neighbors opposed and two neighbors who are in favor of this application. It is a one-year permit. There are strict conditions placed by the ordinance regarding monitoring and administering it so basically this applicant as one year to prove that he can control his, his endeavor. So the Chair will vote in favor of the motion. So the count is five to four in favor. Motion carries.

Unidentified Speaker: It's only three.

Mr. Shibuya: Five to three.

Chair Hiranaga: Five to three. I normally don't do the count. So pardon. Five to three. Motion carries.

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

**VOTED: To Approve the Short-Term Rental Home Permit as Recommended by the Department.  
(Assenting - J. Freitas, I. Lay, D. Domingo, W. Shibuya, K. Hiranaga)  
(Dissenting - M. Tsai, K. Ball, P. Wakida)  
(Excused - W. Hedani)**

Chair Hiranaga: We're gonna—

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: Just one thing. I spoke with Ms. Schaefer at the break and I didn't wanna leave the Commissioners with the impression that I had anything bad to say about their community association. They were very, very instrumental in approaching the Planning Commission or excuse me, the County Council and working with the Council towards creating the very ordinance that this Commission was working with right now. But I did...my comments were geared towards Commission so that you weren't left with the impression that they were the voice of Maui Meadows. They're a volunteer organization, very active, and they're very good at what they do. But it's not like...the same this is like with a condominium project or it's not an association exactly the same way. So thank you.

Chair Hiranaga: Okay, we're gonna skip ahead I guess to Item D, Adoption of Decision and Orders. Oh, okay, I guess the County attorney left the room, will be back momentarily so we'll just continue with C, New Business. Director?

Mr. Spence: Thank you, Mr. Chairman. Number 1 in New Business is Mr. Walter F. Hester, III requesting an Environmental Assessment Determination on an Environmental Assessment for the support of a Shoreline Variance application for a retaining wall located at Keonenui Bay in Napili, and Mr. James Buika will give the Commission the overview of this project.

#### **C. NEW BUSINESS**

- 1. MR. WALTER F. HESTER, III requesting an Environmental Assessment determination on the Final Environmental Assessment prepared in support of the Shoreline Setback Variance application for the construction of retaining wall located at Keonenui Bay, TMK: 4-3-015: 003. Napili, Island of Maui. (EA 2009/0007) (J. Buika)**

**The entity deciding on the acceptance of the Final Environmental Assessment is the Maui Planning Commission.**

**The EA trigger is the Shoreline Setback Variance.**

**The project needs a Shoreline Setback Variance and a Special Management Area Use Permit. The public hearing on the SSV and SM1 applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Jim Buika: Thank you, Director. Jim Buika with the Planning Department. I'm not sure whether the Director knows. The Deputy Director, I briefed her this morning. But anyway at the request of the Department and with concurrence from the Chair, the Maui Planning Commission for the Hester Residence Retaining Wall Final Environmental Assessment will be deferred until the next agenda. There is a cover letter there explaining what happened is that you had been distributed the Draft Environmental Assessment instead of the Final Environmental Assessment. And now you have in front of you, you have the CD with the full Environmental Assessment and the Department had directed the Chris Hart and Partners to print for you the Final Environmental Assessment, all of the

changes, the entire report, any of the figures that do have changes, all of the comment letters and the response letters. So you have the bulk of everything in front of you there. It's a thinned down version. The only thing you don't have and that is referred to in that transmittal letter are the...some of the standing background reports such as the Cultural Impact Assessment, the Archaeological Monitoring Plan and Assessment that did not change. So there a list of what is contained in front of you. It's the SMA and Variance application forms, the Final EA document, revised and new figures, agency comment letters and responses, retaining wall engineering plans, grading and erosion control plan, and the final coastal engineering assessment. Those all changed in some manner. So that's what you have before you.

Just as a general comment for your review for next time, the applicant did take your comments to heart. If you do recall, we had a three-hour discussion on converting the seawall to a retaining wall and you'll see in the diagrams there that it is very much now a retaining wall with some anchors in there. So it is a totally new design that was strongly suggested by the Commission. So all of your comments are in there. Your comment letter that was sent from the Department, the responses and then all these new diagrams. So with the Chair's permission we will defer that because you haven't actually had a chance to review the Final Environmental Assessment.

Chair Hiranaga: Actually, I'm gonna ask Corporation Counsel to comment whether this item is being deferred or it's being rescheduled?

Mr. Giroux: Jim, what kind of notice? Did we get a 30-day notice for this hearing or was this just a six-day Sunshine Law notice?

Mr. Buika: This is just a six-day Sunshine. There's no, no notice for the final.

Mr. Giroux: No, public hearing.

Mr. Buika: I mean, it has been in the OEQC. It has been published in the Environmental Notices...not yet, not the final, but still there's no public notice with this. Or rescheduled, was I using the wrong word?

Mr. Giroux: No, no, we're just making sure that we weren't interfering with the public testimony from the public notice.

Chair Hiranaga: Okay, since this is a agenda item. I will open it up to public testimony. Is there anyone here that wishes to testify regarding this agenda item? Seeing none, public testimony is now closed. If there's no objection from Commissioners we're gonna defer this to the date specified by Jim.

Commission Members: No objection.

Chair Hiranaga: No objection. So this item is deferred.

Mr. Buika: Thank you, Chair.

Chair Hiranaga: Thank you. Moving onto Item D, Adoption of Decision and Orders. Director?

Mr. Spence: Thank you, Mr. Chairman. Number 1, okay this is for the adoption of a D&O for the findings...for the denial of Schnitzer Steel's Petition to Intervene on Big Island Scrap Metal for a County Special Accessory Use Permit; and Number 2, decision and order, findings of fact, decision and order for the denial of Big Island Scrap Metal Special Accessory Use permit. So, and our Staff Planner is Mr. Kurt Wollenhaupt and we also have Deputy Corporation Counsel, Mimi Johnston with us.

**D. ADOPTION OF DECISION AND ORDERS** (To take place at 1:00 p.m. or soon thereafter)

**The Commission may take action to approve the draft written orders denying the following intervention request per vote taken at the February 28, 2012 meeting:**

- 1. Findings of Fact, Conclusions of Law, Decision and Order relating to the denial of Schnitzer Steel Hawaii Corporation's Petition to Intervene regarding Big Island Scrap Metal, LLC's request for a County Special Accessory Use Permit for an existing recycling and redemption center to add ferrous metals, "white goods," and batteries for redemption in the State Urban District at 883 Lower Main Street, TMK: 3-8-036: 092, Wailuku, Island of Maui. (ACC 2006/0003) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good afternoon, Commissioners. By way of background, on January 24, 2012 and February 28, 2012, yes, that would be almost one year ago, the Maui Planning Commission held public hearings regarding, public meetings regarding County Special Accessory Use Permit, Docket No. ACC 2006/0003 submitted by Big Island Scrap Metal requesting an expansion of recycling and redemption operations to add ferrous metals, white goods and lead acid batteries. Now some of the Commissioners weren't here. However this process is that there was a petition to intervene filed by the Schnitzer Steel Hawaii Corporation on January 19<sup>th</sup>. On February 28<sup>th</sup>, the Commission held the public meeting on the petition to intervene taking testimony and they voted to deny the petition to intervene. Consequently, the counsel for Big Island Scrap Metal was requested to produce a decision and order for the petition to intervene, serve it to parties and forward it to the Planning Commission. Mr. Kugisaki did indeed draft the required findings of fact, conclusions of law, and decision and order that's noted in Exhibit No. 1. On March 23<sup>rd</sup>, 2012, Mr. Craig Nakamura and Ian Sandison, attorneys for Carlsmith Ball representing Schnitzer Steel sent to Mr. Kugisaki and Ms. Jane Lovell, Deputy Corporation Counsel, a memorandum enclosing Schnitzer's findings of fact, conclusions of law, decision and order. Consequently we have two different versions of the findings of fact, conclusions of law and decision and order presented to this Commission for their review. Mr. Kugisaki that he will not approve the Schnitzer finding of fact prepared by Carlsmith Ball, and Schnitzer through their attorneys. Carlsmith Ball has indicated that they will not approve the Kugisaki version. Ms. Lovell of Maui's Corporation Counsel has put her signature and signed Schnitzer's findings of fact. This is noted in Exhibit 2. Consequently, the Commission is requested to review both Exhibit 1 and Exhibit 2, deliberate on the merits of each, revise if necessary, and approve a D&O memorializing the denial of Schnitzer Steel Hawaii Corporation's petition to intervene on

Docket No. ACC 2006/0003. That's the first part of today. I don't know if you want me to explain in part.

Mr. Giroux: One at time.

Mr. Wollenhaupt: One at a time.

Chair Hiranaga: One at a time.

Mr. Wollenhaupt: So Exhibit No. 1 is the draft proposed by Big Island Scrap. Exhibit No. 2 is the decision and order prepared by Mr. Nakamura and Sandison of Carlsmith Ball and signed by our attorney for County, Jane Lovell.

Ms. Mary Blaine Johnston: Good afternoon, Mary Blaine Johnston, Deputy Corporation Counsel appearing on behalf of Ms. Lovell who could not be here today. Ms. Lovell did sign off on the findings of fact and conclusions of law which is Exhibit 2 prepared by Carlsmith Ball as did, of course, the attorney preparing these findings of fact. The reason for this is the one that was prepared, Exhibit 1, is inadequate. It's very brief. It says nothing. And one of the things that happen with findings of fact, conclusions and law and why it's important that they be detailed is in the event that anybody wants to appeal this decision to the Circuit Court, the first order, the two-page order doesn't give any details, gives the Circuit Court basically nothing to go on. So we would ask that the Commission for those reasons go ahead approve the one that was prepared by Carlsmith Ball which Ms. Lovell had signed off on. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Please forgive me, what was your name?

Ms. Johnston: Mary Blaine Johnston.

Ms. Wakida: Ms. Johnston, you know, I read through all of this, I got a little lost in the documents where one began and one...I mean I understand that the one finding of fact, Exhibit 2, and then as we go on there's findings of fact. There's some more further on. So I'm a little confused on the beginning and endings of the different documents.

Ms. Johnston: Okay.

Mr. Giroux: Yeah, I can help.

Chair Hiranaga: Corporation Counsel?

Mr. Giroux: For Exhibit 2, you have the cover page, okay, and that's going to be the first page of Exhibit 2 and where that ends is when you go to the signature page and there's like a Page 8 on the bottom, and you'll see two signatures and then there's an empty space. That's the document that the County attorney is referring to as being the one that they prefer to have entered into the record.



Ms. Johnston: Yeah, Exhibit 3 is a letter on the Carlsmith Ball letterhead and that's not part of the findings of fact, conclusions of law. So if you look at the left-hand corner, the document starts with 0001...anyway, it starts with this page and ends with the page that has the two signatures on it.

Mr. Wollenhaupt: I know what you're speaking of. The reason that you're...the documents repeated twice because I wanted to get a complete document of the Carlsmith Ball memorandum. Part of the memorandum was their submission of the their findings of fact. So we have...in Exhibit 2 we have the actual findings of fact for you to consider and Exhibit 3, that findings of fact is repeated as part of a large testimony and history about yes we did, no we didn't, who did this, who did that, so that type of ...(inaudible)...

Ms. Wakida: That's it exactly. Thank you, Kurt.

Chair Hiranaga: Any other questions, Commissioners? I have a question for Corporation Counsel. This Corporation Counsel, sorry.

Ms. Johnston: Oh, that Corporation Counsel.

Chair Hiranaga: So basically the attorney was requested to prepare a conclusions of law as a courtesy for the Commission but since the opposing party deemed to be inadequate, they prepared a substitute document and it's really the call of the Commission to see which one they wanna approve?

Mr. Giroux: Right. Both would be considered proposed findings of fact and you can look at both of them, see which one most accurately reflects the proceedings and if the one that more accurately reflects your proceedings, if there's any additions or changes or clarifications that you want added, at this time, you can have that added and the document would just be reexecuted.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I find it the signed copy petition is more reflective of our actual operations and our decisions and I find that this is probably the best representation and so therefore, I'll support this.

Chair Hiranaga: Well, we need to take a motion so if you're proposing a motion?

Mr. Shibuya: I will so move that we accept the version that is signed. I guess it will be Exhibit 2.

Chair Hiranaga: Prepared by Carlsmith.

Mr. Shibuya: Prepared by counsel member, I mean counsel attorney, Jane Lovell.

Ms. Domingo: Second.

Chair Hiranaga: No, Jane Lovell didn't prepare the document.

Mr. Giroux: She signed it.

Chair Hiranaga: Carlsmith prepared it.

Mr. Shibuya: Oh, Carlsmith, yes. Okay, stand corrected. Prepared by Carlsmith.

Chair Hiranaga: Seconded by Commissioner Domingo. Any discussion? Commissioner Wakida?

Ms. Wakida: Ms. Johnston, you can tell me this. On Page 6, I assume it's a typo, on No. 4 of the conclusions of law. "Commission provides that leave to intervene shall be freely granted, provided that the Commission may deny an application for intervention when in the Commission's sound discretion it appears that" I was just trying to make sense of the sentence and I finally decided it was a typographical error?

Ms. Johnston: No. Well, if you go on and read the parts a, b, and c, it appears that one, (a) the position or interest of the applicant for intervention is substantially the same as the party already admitted.

Ms. Wakida: No, but my question is, it says, "is." You mean, "it?"

Ms. Johnston: It should be "it." Yeah, you're right.

Ms. Wakida: That's all thank you.

Chair Hiranaga: Any other discussion?

Ms. Johnston: Excuse me, let me correct it. It should be, "if it appears" I would think to be correct. 'Cause you just take out "is" and put, "if." It should be, "if it appears."

Mr. Shibuya: If it appears.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other discussion? Seeing none, I'll call for the vote. All in favor...well, I'll have the Director restate the motion.

Mr. Spence: The motion is to approve Carlsmith Ball's version of the decision and order.

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

Mr. Spence: That's seven ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: To Adopt the Proposed Written Decision and Order prepared by Carlsmith Ball.  
(Assenting - W. Shibuya, D. Domingo, J. Freitas, I. Lay, M. Tsai, K. Ball, P. Wakida)  
(Excused - W. Hedani)**

Chair Hiranaga: Moving onto...guess we have to go to B-2 now.

- 2. Findings of Fact, Conclusions of Law, Decision and Order relating to the denial of Big Island Scrap Metal, LLC's County Special Accessory Use Permit for an existing recycling and redemption center to add ferrous metals, "white goods," and batteries for redemption in the State Urban District at 883 Lower Main Street, TMK: 3-8-036: 092, Wailuku, Island of Maui. (ACC 2006/0003) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: The discussion then further on February 28, 2012. The Commission then needed to hold the public hearing on the actual Accessory Use Permit taking testimony and considering the Planning Staff's staff report. After due deliberation on the actual Accessory Use Permit and received testimony, the Commission voted to deny the ACC request by a majority vote of six to one with one Commissioner abstaining from the vote. Corporation Counsel has prepared the findings of fact, conclusions of law, decision and order denying Docket No. ACC 2006/0003 and this is noted as Exhibit No. 4. Therefore the Commission's requested to review the findings of fact, conclusions of law, decision and order to deliberate on the merits of such, revise if necessary and approve a decision and order memorializing the denial of the ACC permit.

Ms. Mary Blaine Johnston: And we would ask the Commission to adopt Exhibit 4 as the findings of fact, conclusions of law.

Chair Hiranaga: Any questions? Commissioner Wakida?

Ms. Wakida: No, questions. I was just going to say that I...my understanding of the findings of fact, conclusions of law is that it reflects what happened in our session.

Mr. Shibuya: I'll second it.

Chair Hiranaga: That was a motion?

Ms. Wakida: I so move that we accept the findings of fact, conclusions of law.

Chair Hiranaga: It was moved by Commissioner Wakida, seconded by Commissioner Shibuya. Any discussions?

Mr. Giroux: Chair?

Chair Hiranaga: Corporation Counsel?

Mr. Giroux: This is an execution issue. As far as the decision goes for the Members who voted in favor of the decision but who are no longer on the board, the Planning Director will just certify with an affidavit as to that that Member did vote in a certain way. I think Ward Mardfin is no longer on the board and Lori Sablas. So we'll just confirm that with the Director with looking at the record and then have him certify that that's the vote as far as that they voted for or against it.

Chair Hiranaga: Okay. I just happen to take a close look at the signature page. I notice that there's that comment above my name, not in agreement/decent. I didn't check the minutes or reassure that that's what I did.

Mr. Giroux: Did you abstain? Would that be more of an abstain?

Chair Hiranaga: Shibuya did not vote.

Mr. Shibuya: I did not vote.

Chair Hiranaga: What did I do? Well, I didn't have to vote, huh?

Unidentified Speaker: I don't think you did.

Chair Hiranaga: I didn't have to vote.

Mr. Wollenhaupt: Third page from the end, go to the very end, then back three.

Chair Hiranaga: I guess my question is why did I vote? Did I vote?

Mr. Shibuya: No, no, no, I was the Chair.

Ms. Domingo: Oh, you were the Chair.

Mr. Shibuya: I was the Chair. He sat on the side.

Mr. Freitas: I didn't vote. I recused myself.

Chair Hiranaga: What did I do?

Mr. Shibuya: I don't know whether you took the vote. I'm not sure.

Chair Hiranaga: Yeah, okay. So be it. All in favor, raise your hand. Motion carries.

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

**VOTED: To Adopt the Proposed Decision and Order.  
(Assenting - P. Wakida, W. Shibuya, D. Domingo, J. Freitas, I. Lay,  
M. Tsai, K. Ball)  
(Excused - W. Hedani)**

Chair Hiranaga: Moving onto E, Communications. Director?

Mr. Spence: Thank you, Mr. Chairman. The single item under Communications is Mr. Fred Romanchak of Kula Lodge requesting a five-year time extension on Condition 1 of his Phase II Project District Approval to initiate construction on the proposed improvements. And with us this afternoon is Mr. Paul Fasi.

## **E. COMMUNICATIONS**

- 1. MR. FRED ROMANCHAK of the KULA LODGE requesting a five (5)-year time extension to Condition No.1 of his Phase II Project District Approval to initiate construction of the Kula Lodge renovations and improvements on approximately 3.7 acres in the State Urban District at TMK: 2-3-022: 087, Kula, Island of Maui. (PH2 2008/0002) (P. Fasi)**

Mr. Paul Fasi: Thank you, Director. Before you is the request for a five-year time extension to initiate construction. Fred Romanchak is here and he can further elaborate on that. This item was before the Planning Commission three years ago. You extended a three-year time extension to him. He's coming back and requesting a minimum of five. The Department has no problem with issuing, if you wanna issue beyond the five perhaps ten. This project has been around for a while on the books and it has been before the Planning Commission many times previously. So the Department finds that the applicant request for the five-year time extension is reasonable and acceptable. All the conditions attached to the 2000 Phase II approval remain in effect. The only thing that's gonna change on this request is the date to initiate construction. Thank you.

Chair Hiranaga: Since this is an agenda item, I'll open the floor to testimony. We do have one individual signed up, Steven Sutrov. Please identify yourself and limit your testimony to three minutes.

Mr. Steven Sutrov: Good afternoon, my name is Steven Sutrov. I live within 500 feet of the Lodge property. I've been active along side the neighbors and the Kula Community Association it looks like it's been about 23 years now since it was project district conditions were ...(inaudible)...for the Lodge. We've been doing what we can to ensure the project it's going to be acceptable to the community and the neighborhood, and yeah, it's been a long time and it's gone through four major designs. A lot of meetings with the community and with the Planning Commission, Urban Design Review Board. It's gone on, and on, and on, and there's been other extensions during that time also of time frames. And it's kinda keeping the neighborhood in limbo. You know, the Director knows, everybody else I hope knows here why you put these time frames on projects to begin

construction and how long construction can last once it begins. Personally I don't know that all that reasoning that it seemed to be possibly one reason is to ensure all the approvals from all the different agencies are up to date and not become outdated after a period of time. Traffic up there in the last 10 year has gotten much worse. Unsafe for kids to walk on the roadways, people walk dogs, bike tours, and large buses parking on the highway right now with cars when he's busy, people walking in between that. It's changed up there in the last 10 years. Hopefully you will look at that as far as any extensions make sure, to assure that any of the approvals for the agencies are gonna be updated. We're concerned about that. I'm concerned that, you know, the neighborhood has changed to and many more people have moved in. There's another neighborhood right within 500 feet of the Lodge that has been developed in the last 10 years. The projects have always gotten bigger once, every time he designed again. And the neighborhood is growing up also. The impacts are more and more not less and less. And more time goes on, personally I don't see him being able to start construction within the next five years. You know, a lot of people hoped that he would sell the property and somebody else would manage it and manage the construction and maybe the neighborhood could actually work with somebody on the project rather than right now just living in limbo with Fred for the last 20 plus years. That's what I have. Thank you very much.

Chair Hiranaga: Questions, Commissioners? Commissioner Tsai?

Mr. Tsai: I'm sorry, I didn't get your name.

Mr. Sutrov: Steven Sutrov.

Mr. Tsai: Yeah, Steven, I'm trying to grasp your stance on the subject matter. Do you...are you saying you're for or not for the time extension?

Mr. Sutrov: For the time extension, probably I'm not, I'm not for. I think, I think there's been plenty of time to get this project off the ground and together and it should have been moved forward with the first design which I believe looking back in hindsight that would have been the most appropriate design which was separate units along more like houses along the borderline of the neighborhood. Now it's a three-story condominium project looking down with lanais on the neighbors. And it's not acceptable to the neighborhood right now. So I would say, no, I'm not for the extension.

Chair Hiranaga: Your last comment you said it's not acceptable to the neighborhood at this time is that correct?

Mr. Sutrov: Yeah, I'm not really speaking for the neighborhood. You know, I get along with my neighbors, a lot of them and all the neighbors, Kimo Drive, the new subdivision right below the Lodge and Aina Kula Road, Kualani and on the other side, Upper Kimo. I know a number of people and I've been up there 26 years now. And it's a real tight, close neighborhood. We barbeque, we talk story, we walk dogs together, our kids play together. You know, a lot of people have been living there a long time. And so, yeah, we're always talking about it what's going on with the Lodge now? 'Cause it's been the story for over 20 years.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: How long have you lived there?

Mr. Sutrov: How long have I lived up there? In the neighborhood for 27 years.

Mr. Freitas: In the neighborhood.

Mr. Sutrov: I've lived on Maui for over 45.

Mr. Freitas: Okay.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Questions for the Department or for the applicant? Commissioner Wakida?

Ms. Wakida: I think, Mr. Fasi. ...(inaudible)...Page –

Chair Hiranaga: Could you pull the microphone closer, please?

Ms. Wakida: Looking on Page 11, the...on the second paragraph, "since the Maui Planning Commission approval in 2010, the applicant is revising the final floor plan drawings." Is that something that we should be taking a look at?

Ms. Fasi: Well, the Department feels it's not a substantial change and it's just interior moving around thing and such. We need to you to look at whether or not you want to grant a five-year time extension. That's the item that was agenda'd. That was the item that is before you today.

Ms. Wakida: I understand that. I just want some clarification since I haven't been in on the background of this. I came in right after this, right after this came to the Commission.

Chair Hiranaga: Any other questions, Commissioner Lay?

Mr. Lay: With this time extension what's the deadline we're looking with the five-year time extension?

Ms. Fasi: With the five years it push it up to 2018.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Does it have to be a five-year or can it be a three-year?

Ms. Fasi: The Department would prefer a...the longer the better for the Department. It takes time to finance these big projects. You never know what the economy is gonna do and it's a big, difficult project to get your hands around and five years goes by pretty quick. Three years have gone by pretty quick and we're already before you know.

Mr. Ball: And that's the main reason is the financing for the project?

Ms. Fasi: I can let the owner elaborate more on that.

Chair Hiranaga: Director?

Mr. Spence: I can see Mr. Romanchak in the audience if Mr. Ball wants to ask or other Commissioners ask questions of the applicant.

Chair Hiranaga: Well, let me just for clarity is there some type of a procedural constraint that it cannot be more than five years but could be less?

Ms. Fasi: I don't believe so.

Mr. Spence: No, I don't believe so. Not in...(inaudible)...The question was maybe not quite on the microphone by the Chairman, is there any procedural thing for five years or less on Phase II Project District approvals, and no, there's no specifications in the law unlike your SMA Rules.

Mr. Giroux: The only...from Corp. Counsel, the only issue is that if the change is substantially more than five years, I would have a issue of the Sunshine Law as far as notice.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: It's just a comment. We went through this Kula Lodge project, a lot of fellow Commissioners wasn't here and it was an extensive changes that we were making on kitchens and stuff and I think that's one of the reasons why it's not broken ground for finances. That's a personal comment. Am I right?

Chair Hiranaga: I guess I would like to hear from the applicant what progress he has made since the last extension was granted?

Mr. Fred Romanchak: Name is Fred Romanchak. You know this goes back and Will can testify too, I started this project over 25-

Chair Hiranaga: My question is, what progress have you made since the last extension was granted?

Mr. Romanchak: What progress I've made is that I've had to deal with a suit. It's gone on for over two years. It's still not settled. It's an ADA suit against Kula Lodge. So consequently I have not been able to appropriate financing or move forward on the project until this suit is settled. As of today, it is still not settled. This was a suit that was dropped on the Kula Lodge because they were not willing to...when I say they, the Federal Court was not willing to recognize that I had already started Phase III and have already made the Kula Market Place ADA accessible. I had a master plan that I provided to them, the Federal Court and they refused to acknowledge it or accept it which would then, of course, make the entire property ADA accessible. Right now, I've had to spend over \$300 thousand to bring in compliance. The majority of that expense was on attorney's fees not remediation work. It's an ADA shakedown that's going down. The same people who sued me, sued the County of Maui for wheelchair access. Casanova's and on and on. That's why I have



not been able to move forward on this project.

Chair Hiranaga: Thank you. Commissioner Ball?

Mr. Ball: Is there any end in sight to that? I know court cases can go on for years, and years, and years, and now the five-year thing almost seems like it maybe not enough, but maybe you can give us some background if you're near the end you think? I mean, your best crystal ball guess for that?

Mr. Romanchak: Yes, I feel this suit should settle this year. As to exactly when, you know this has been a real learning experience for me. And I would have to thought to begin with the Federal Court would have recognized all the work that has gone into this project which would have made the entire property wheelchair accessible. Now they've forced me to have spent all this money for waste. Because the improvements that are being put in there now will be demolished when this project is expanded.

Mr. Ball: Follow up.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Follow up to that then. Once that's resolved then are, are you actively looking for financiers or are you going to start that process once this case is over.

Mr. Romanchak: Once this case is settled, yes. I will actively look for financing partners in some way to move this project forward. And while we're speaking on this level, I would very much like to request a 10-year extension so I do not need to come back ever again to ask for another extension. It's as you can appreciate, I know back in the days when Chris Hart was the Planning Director when I first started this project over 25, 26 years ago, and taking it through zoning, I had asked Chris then, I said, how long do you think this will take me to get through this process? And at that time, this is 1986, he said, well maybe three, maybe five years at the most. Well, it's been over 25 years and if I would have known what I know today, of course, I would never have attempted doing what I'm trying to do here to really bring the Kula Lodge around.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Tsai?

Mr. Tsai: Sorry I wasn't part of this discussion before. So what's the total estimated cost for this renovation?

Mr. Romanchak: The remodel project is estimated to be somewhere close to \$15 million.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, I'll open the floor to a motion? Commissioner Ball?

Mr. Ball: Motion to approve the time extension request for the beginning of construction of the Kula Lodge renovations and related improvements.

Chair Hiranaga: Seconded by Commissioner Shibuya, any discussion? No discussion? We'll have

the Director restate the motion?

Mr. Spence: The motion as I understand is to approve the time extension. And Commissioner Ball are you saying for that five-year period?

Mr. Ball: Correct.

Mr. Spence: Okay, so for clarity the motion is to approve a five-year time extension.

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

Mr. Spence: Okay, that's seven ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: To Approve the Five-Year Time Extension of the Phase II Project District Approval in Initiate Construction.**  
**(Assenting - K. Ball, W. Shibuya, D. Domingo, J. Freitas, I. Lay, M. Tsai, P. Wakida)**  
**(Excused - W. Hedani)**

Chair Hiranaga: Moving onto F, Acceptance of Action Minutes of January 22<sup>nd</sup>, 2013 and Regular Minutes of December 11<sup>th</sup>, 2012.

**F. ACCEPTANCE OF THE ACTION MINUTES OF THE JANUARY 22, 2013 MEETING AND THE REGULAR MINUTES OF THE DECEMBER 11, 2012 MEETING**

Chair Hiranaga: We have a motion to accept?

Mr. Ball: So move.

Ms. Domingo: Second.

Chair Hiranaga: Moved by Commissioner Ball, seconded by Commissioner Domingo, any discussion? Seeing none, all in favor say, aye.

Commission Members: Aye.

Chair Hiranaga: Motion carries.

**It was moved by Mr. Ball, seconded by Ms. Domingo, then**

**VOTED: To Accept the Action Minutes of the January 22, 2013 Meeting and the Regular Minutes of the December 11, 2012 Meeting.  
(Assenting - K. Ball, D. Domingo, J. Freitas, I. Lay, M. Tsai, P. Wakida, W. Shibuya)  
(Excused - W. Hedani)**

Chair Hiranaga: Director's Report?

**G. DIRECTOR'S REPORT**

- 1. Planning Commission Projects/Issues**
  - a. Amending the SMA Boundaries**
- 2. EA/EIS Report**
- 3. SMA Minor Permit Report**
- 4. SMA Exemptions Report**

Mr. Spence: Commissioners, you have in front of you the Projects/Issues, in front of you SMA Minor Permit Projects and the Assessments before Planning Commission Projects/Issues we have nothing to report on revising the SMA Boundaries.

Ms. Wakida: Director, I did make one question for information but I haven't heard back yet.

Mr. Spence: Which one was that?

Ms. Wakida: I had emailed it to Carolyn and perhaps...I can wait. She can get back to me by email.

Mr. Spence: Okay.

Chair Hiranaga: Okay, moving on, Discussion of Future Maui Planning Commission Agenda?

**5 Discussion of Future Maui Planning Commission Agendas**

- a. February 26, 2013 meeting agenda items**

Mr. Spence: Commissioners, you have in front of you a memo dated February 11, 2013 from Mr. Clayton Yoshida, the Planning Program Administrator on upcoming items. Are there any questions regarding that?

Chair Hiranaga: Seeing none, our next regular meeting is February 26, 2013. If there's no

objection, this meeting is adjourned.

**H. NEXT REGULAR MEETING DATE: FEBRUARY 26, 2013**

**I. ADJOURNMENT**

The meeting was adjourned at 1:55 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

Keone Ball  
Donna Domingo  
Jack Freitas (in attendance at 9:35 a.m.)  
Kent Hiranaga, Chairperson  
Ivan Lay, Vice-Chair  
Warren Shibuya  
Max Tsai  
Penny Wakida

**Excused**

Wayne Hedani

**Others**

Michele McLean, Deputy Director, Planning Department (9:00 a.m. - 10:15 a.m.)  
Will Spence, Director, Planning Department (in attendance at 10:15 a.m.)  
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works