

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 10, 2013**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:02 a.m., Monday, June 10, 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.)

Chairperson Lay: Call to order. Today is June 10th, Monday. We got quorum today. Public testimony will be opened at this time for those of you who wish to testify and won't be here to testify when your agenda item comes before, you'll be given that chance now. You'll be given a maximum time of three minutes to testify. When you come up to the podium, please identify yourself. Does anyone wish to testify at this time? None.

Testifiers please be advised that applications for Community Plan Amendment, State District Boundary Reclassification, Change in Zoning, and Conditional Permit require the approval of the Maui County Council. In order to be notified of future agendas of the Maui County Council please notify the Office of Council Services at (808) 270-7838 or by mail. Our first agenda item?

Mr. Spence: Good morning, Commissioners.

Commission Members: Good morning.

Mr. Spence: Our first agenda item is Mr. Cary Lefton of Lono Street Properties amending...wishing to amend the Special Use...or excuse me, SMA Permit for Kahului Town Center Student Housing and our Staff Planner this morning is Ms. Candace Thackerson.

B. COMMUNICATIONS

- 1. MR. CARY LEFTON on behalf of LONO STREET PROPERTIES, LLC requesting an amendment to the Special Management Use Permit for the Kahului Town Center Student Housing Project (Kulanaao) to allow for the rental of apartment units to non-students on approximately 3.163 acres of land at TMK: 3-7-005: 003, 011, and 023, Kahului, Island of Maui. (SM1 2005/0003) (C. Thackerson)**

Ms. Thackerson: Good morning, Commissioners. So the item before is to amend the Special Management Area Use Permit for the Kahului Town Center Student Housing Project to allow rental of the apartment units to non-students. This is located in Kahului. This permit was approved back in 2005. It's currently built. You've probably all seen it and right now it's a student housing and the applicant is requesting permission to open that up and be able to rent it to non-students. They've been having some problems filling it with students. They've trying flyer the campuses. The lease terms for the building right now currently go with the semester program to encourage students to be there. They keep the rates fairly low and they are in contact with UH Maui College to talk about different programs for the students.

Unfortunately, there really hasn't been the demand that they need. In my staff report on Page 5, I draw some conclusions from just socio economic factors here on Maui that might speak towards why there's not a lot of students living there. Unfortunately, at UHMC they don't have a policy that says students have to live on campus the first year unlike other universities on the mainland including the one I went to. As well, many students on Maui that come here and not from here want to live in the beach towns not necessarily Kahului or where we would like students to be close to campus. They prefer to share a house somewhere, you know, maybe in Paia or Kihei and commute in, and the age is also very different at UHMC. It's not a bunch of 18 and 19-year-old kids straight out of high school going there. You get a lot of older returning students and things like that who they tend to stay at home with their families and not move into a dormitory type living.

The applicant has applied for an SMX, an SMA Permit as well to go with this. It would probably be a minor permit, but they're going to be doing interior renovations to bring it up so it's not so dorm style if we're going to open it to the general public, they'd like to add some more bathrooms, make it larger so actually the density is going to go down for the units and that's what I've included on those pullouts, Exhibit 4, which are several pages of just what the applicant means to do with the interior.

The letter I distributed to you this morning is a letter of intent from the applicant signed by the Chancellor of UHMC that they've met, they've talked about still keeping some rooms available for seasonal programs and short-term programs that UHMC has in case they still need beds for students and also that students will continue to always get first priority when they come in. So the applicant's just requesting to add Condition No., it will be 27 to their SMA Permit and it reads, "To the extent that the property owner cannot reach full rental capacity with students it shall have the ability to rent to non-students. Students will continue to receive first priority for available space at the subject property and space will also be accommodated as necessary for those enrolled in short-term/seasonal programs at the University of Hawaii, Maui Campus." Thank you.

Chairperson Lay: Commissioners, at this time we're gonna open up to public testimony in case anyone has anything that...any questions about this? Seeing none, public testimony is closed. Commissioners, any questions? Commissioner Shibuya?

Mr. Shibuya: I just have a question relating with the terms of condition for the loan. Was this project financed through some kind of grant and what are some of the restrictions here?

Ms. Thackerson: I can have the applicant answer that for you. I can't speak toward the terms of their loans. I can only speak towards UHMC, and they're not contracted through the university. That's why the letter of intent was so important, but the applicant is here and can answer those questions for you.

Mr. Shibuya: Thank you.

Mr. Paul Mancini: Good morning. My name is Paul Mancini. I represent the applicant, owner of those three properties. Cary Lefton who's the managing member of the company is here. Alvin Tagomori from University of Hawaii is here. To answer Warren's first question, if the SMA

Permit is currently is a prohibition and only leasing out to students that creates a problem to the lender in a loan because for you're limiting the market out there to get a loan. So that's the major problem and one of the major problems we're here today. The project when approved had great intentions and as often happens there's unintentional consequences that arrive and just the market wasn't there as Candace's report shows that the maximum has been about 75 beds out of 400 have been able to be rented out to students. There's obviously an intent to continue to serve that market at full capacity and that's why we're here this morning to ask you for the ability still to fill that capacity to the best of the company's ability, but to also open the property such that you can get capacity for these beds that won't be filled over time. We've worked out a letter of intent with the university. That letter of intent has been forecasting to the company their needs for a semester and there's a meeting with the university on that capacity that's needed and then there's an allocation of priority to those students and then we work through it and unfortunately this is probably what should have been at the beginning of the project but sometimes good foresight isn't there and there was a expectation of a stronger demand coming on here with good intentions by all parties. And Mr. Lefton, I think Alvin could answer questions on it, it's a simple request which I believe is good for the community, get the beds filled but still fill the student needs, the university's needs on it.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Follow up question. So then I take it that if we do this, body approves the SMA revision there to allow for non-students to reside there too, that the current financing conditions or contract is gonna be adjusted.

Mr. Mancini: Yeah, that's the problem. There's a loan pending and this is the major problem in getting the load closed to go forward with the project and get it refinanced.

Mr. Shibuya: Right. I just didn't want us to put the cart before the horse.

Mr. Mancini: I'm not sure whether you're the cart or the horse. You're the triggering event to get it done. Without your approval we've got a serious problem.

Mr. Shibuya: Okay, thank you.

Mr. Mancini: Thank you for your time.

Chairperson Lay: Any more? Commissioner Tsai?

Mr. Tsai: Okay, I see your current rental rate is 335 per month. So what it will be new rate as you open up for the community, to the community?

Mr. Mancini: Well, one thing, rates are never fixed forever. Rates go on with time with regard to cost. Maybe Cary can respond to what the current rates are and what he expects?

Mr. Cary Lefton: Good morning, Commissioners. My name is Cary Lefton with Lono Street Properties. And one quick question, as far as our financing we have private financing. So we...there were no subsidies from the County or any special financial consideration. So we're just

subject to the market financing. As to the rates, our preference in this project from a financial standpoint of view is to have students on site because they rent the property per bed versus per apartment in the open market which means, you know, a higher amount of revenue. As far as the rental rates, we don't...we don't forecast changing our bed rates. We are still going to encourage the students and we're timing, we're gonna continue to time our leases so that we can create availability for the students as our units become vacant. So we were...at this time, we don't forecast a change in bed rates. That's not the motivation.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: You assign four students per unit, two-bedroom unit, correct?

Mr. Lefton: Correct.

Ms. Wakida: And do the students have any control over who they get to share a room with?

Mr. Lefton: You know, our staff does the best choice to be able to match students consistent with you know, programs in, with universities. They certainly could come in with their friends and rent an apartment if they wanted to, but we don't usually have students...our management could probably answer that question, but we usually don't have a group of students coming in. It's usually, you know, one student and then requesting to have a roommate.

Chairperson Lay: Is there is a resident on...resident manager?

Mr. Lefton: There are several, yes.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: What is the square footage of the average, two-bedroom units?

Mr. Lefton: Approximately 750 square feet.

Ms. Wakida: And I have a question about the ...(inaudible)... plans.

Mr. Lefton: Yes.

Ms. Wakida: It shows...if I'm reading this correctly that you're putting another door in the second bedroom?

Mr. Lefton: One of the strategies to attract more students is to be able to create smaller units. It's certainly been a challenge for students not being required by the university to share a bedroom like traditional dorm rooms. But we found that the student's preference these days is to have their own separate studio or one-bedroom. So the second door is being put in to create the flexibility. So we're leaving the pass-through door between the kitchen and the other one bedroom and then we're creating a flexible floor plan. So if our demand for the students are just studio apartments then that second front door will allow that flexibility. But we're hoping that someday the business

model goes back to the, you know, four students, you know, in an apartment, but it basically creates a flexible floor plan.

Ms. Wakida: So are you going to be installing a kitchenette in that other type of bedroom unit?

Mr. Lefton: Not right now. We, we really haven't had that demand other than a refrigerator and maybe a hot plate, but we're not planning for a kitchenette at this time.

Ms. Wakida: So, I'm just going to make one more.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So what you're perhaps looking at down the road is one-bedroom unit would come with the kitchen/living room and the other one would be a studio?

Mr. Lefton: What we're hoping is that the second room called the studio creates a flexibility of a private bathroom for the student. One of the biggest issues for the students have been four sharing one bathroom. So we're basically adding a second shower and then with the flexibility of being able to close the door to that bedroom then it becomes more of like a suite.

Chairperson Lay: Commissioner Ball?

Mr. Ball: I think I missed the part where you mention how many of these units you're gonna keep for the students?

Mr. Lefton: We're...our intention is if the demand is there, 100 percent of the project will be for students. We're always, every time there's a vacant unit, the priority is for students. The project historically has been occupied approximately 25 percent by students. So, you know, we hope that enrollment will increase and the demand will be stronger and we hope that our product type that we're creating in the configuration of the floor plans will be more attractive to students.

Chairperson Lay: Commissioner Ball?

Mr. Ball: How are you renting those out to the long-term? Are you on a year lease and then it goes to a month to month or...the reason why I say that is because if you get 100 percent capacity with long-term, right, you will not have that unit available for that student for 45 days let's say until you kick someone out or –

Mr. Lefton: All of our lease terms have been coterminous with the semesters. So all of our leases, if we do nonmarket rentals, we typically will have a lease expiration before the next semester start.

Chairperson Lay: Commissioner Ball?

Mr. Ball: One other thing to the staff it would be helpful if we had the minutes from when this was approved originally so we could see the dialogue that the Commission had in approving this in the first place just as a note to–

Chairperson Lay: Director?

Mr. Spence: Just perhaps a little comment on the...just to clarify for the Commissioners what was approved by the last SMA Permit was the construction of that building. That's normally where your SMA criteria comes in, is there runoff, is there blocking of public use, is there archaeological concerns or historic concerns. Those are the things that are associated with an SMA Permit. The functioning of what goes on in that building is not what normally what this Commission reviews as a part of the SMA Permit. The Department felt though because that last staff report, the original staff report said, I don't know how many times, student housing, student housing, student housing, and we felt it was not just a courtesy but it was necessary for this Commission to say, okay we can use it for something other than student housing because of the representations made to the Commission that this was for student housing. Now that there's a need to change something, we felt that it was proper to bring this back before you. But as far as increased runoff, archaeology, all those things that, you know, view sheds, architectural style, all those things that are normally as a part of an SMA Permit process that would normally come before this Commission, changing doors, lease rates, you know, the terms of the lease, those kinds of things, those are not really SMA related items. We're bringing this before you just so the Commission doesn't some day say, hey, Mr. Director we approved, you know, student housing, now they're doing something different. How come you didn't bring this before us? So we're bringing this before you. So you're aware and you can say, okay, this is good or it's not good or whatever, but all your environmental concerns and beach access, none of that's gonna change with the change of this condition on the permit.

Chairperson Lay: Thank you for that clarity. Any more questions, Commissioners?
Commissioner Shibuya?

Mr. Shibuya: I wanna thank Planning Director for allowing this Commission to review this material, and I think that's the transparency and I think the kind of relationship we do want and we are having it now. Thank you very much, Director.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'd like to hear a representative from the college address the Commission in terms of the need for student housing.

Mr. Alvin Tagomori: Morning, Commissioners. My name's Alvin Tagomori, I'm the Vice-Chancellor for Student Affairs at UH Maui College. I'm here in behalf of Chancellor Sakamoto who is out of state at the present time. You know, but I'm here to affirm the college's support of the request by Lono Properties. You know, we've over the years, we've had a very good working relationship with Lono Properties, with Cary, and with the management staff. They're right in the sense that they've always been prepared to put students as a priority in the housing. We've not be able to fully put...we've not been able to put enough students in there to fully occupy the entire facility. You know, but their continued support to open the property up to our student needs, you know, for us is very, very critical. You know, we are seeing...you know, we were part of the...we think part of the reason we weren't able to fill it is because of the economic downturn beginning in 2008. You know, that you saw a dramatic drop in that case especially of students from the mainland, in the international area as well as students from other islands. But with the economy beginning to

recovery, you know, we are beginning to see an increase in the number of students that are coming from off island. We're presently even seeing that in the enrollment for this upcoming semester and in essence what this housing, what this property does is allows us to further diversify the campus, you know, by bringing in students from away who actually then, you know, if you have students with different upbringing, different economics, social backgrounds, what in essence does, it actually strengthens the campus 'cause then you have local students being able to interact with other students from away. So in essence it makes us a much better and stronger campus, and as Cary indicated there's still a commitment, you know, the ultimate commitment is to fully, is to put 100 percent of the students in those 400 beds, you know, and that's why as Cary said, the leases are timed so that they're timed to the start of the academic year actually. You know, so and that's where we've been able to live and work with them. I think the way it is now is we'll work with...we'll work with the property to do a forecast of what we think we're gonna need, and we'll work off of that forecast every semester to see what the needs are.

Chairperson Lay: Commissioner Duvauchelle?

Ms. Duvauchelle: Is the housing currently offered to students that live on Maui?

Mr. Tagomori: Yes it is, and there are students from Maui who actually live there. You know, I mean some of the students from Maui are looking actually for college housing experience. So you do find a mix in there, and you know, even some of the modifications that are being proposed of a studio or one-bedroom kind of thing, if you actually take a look at the break down now of the present students that live there, you know, about half of the students...a few students come in and they want the whole apartment to themselves and they're willing to pay for it. You know, but the rest of the students, and that's a few students, yeah, but then the remaining students about half I think want to rent a bedroom, be part of the four-bedroom, you know, the four person to apartment, but then you've got the other half of students who, you know, they don't mind having roommates but they'd like to have their own bedroom. So you know, this kind of shift that creates more of an option I think will be even more attractive I think to students.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Alvin, the concern I have, you know, on the application is that once it's opened up to the public and we're short of housing, if you go to a 100 percent, the way the language is written right now, if a student applies after-the-fact, and there's no space available, there's no space available which means you essentially have no student housing to offer.

Mr. Tagomori: There are other options, you know, for students. There are, there are, you know, there are families that rent to students. You know, we'll keep a list there of students that...you know, there's people in the community that rent their ohanas, and there's other kinds of options that we have students. One of the things about the, about the Kulanaa`o staff, management staff is when we've called them about, about a need for housing even something that comes up at the very last minute, they'll very...they'll work very hard to try and find and accommodate that request. And if they can't then we'll turn to other kinds of options that we have to direct the students. Before this housing came up, we really didn't do any kind of marketing, you know, I mean, 'cause basically if you got somebody from off island contacting you, the first question the student or the parent will ask

is so where do we stay? And we really, before this we have a little, you know, if you know, we've had the Hale Haumana property but that only could house comfortably about 40 students or so. So we really didn't have, I mean, what a 400-bed facility allows us to do is to really go out and then try to really market the college, you know, and you've got this housing facility here. I mean, in the long run over the 15 years or so, you know, a 400-bed facility might be too small even. So you know, in the long range plans there are spots designated even on the campus for additional housing should that need arise, but that would be for the next generation of faculty and administrators.

Mr. Lefton: A further question, you know, I'm sorry to interrupt, but we have entered into a letter of intent with the college to reaffirm the dialogue between us and the college. So when they give us the forecast of how many student beds they think they'll need at the beginning of semester, we'll have the flexibility with our nonmarket rentals because we will not be committing to long-term leases. We'll, you know, again, I mentioned we're going coterminous with the semester. So in the beginning of the fall semester, if the college tells us that we can expect 200 students, then we're certainly then gonna open up the beds to be able to accommodate those students. The other point I'd like to make is that we're actually incentivized from a financial standpoint of view to rent to students versus market rentals because the students are paying by the bed. So in addition to certainly our agreement with the college, we're also see, you know, high revenues and stronger sustainability within the project if we're renting by the bed and this is how we have been operating informally over the past several years since we've opened is that we will talk to Alvin and the college representatives, they'll tell us for example, right now I think we have approximately 20 apartments plus or minus filled with student from Upward Bound which is the summer program with high school students. So we've had a very good working relationship but because of this request we formalized it and put it in writing.

Chairperson Lay: Thank you. If we can, please be recognized before you go up to the podium too, that way we can keep order here.

Mr. Lefton: Sure, thank you.

Chairperson Lay: Any more questions, Commissioners? Commissioner Medeiros?

Mr. Medeiros: Howzit, Alvin, long time. With the students there, you know, and the general public renting what's the atmosphere gonna be like? You know, is renting to the general public gonna be conducive to studying? I look at that part. The rental I don't understand fully. You say that the students pay more than the general public would because they pay individually and personally I go what's up with that? We're supposed to be giving the students a break. You know, shouldn't the students be paying the same as the general public if it is truly student housing? When the project first came up, you know, I was 110 percent behind it, you know, 'cause it was for the kids. Right now it's being changed and I'm questioning it because the students seem to be being left behind. Now simple things like you're gonna rent to the general public cheaper than you would the students, but it was supposed to be student housing. Give the kids a break, you know. If you're gonna rent, rent it out to the general public then give the kids the same rent.

Mr. Lefton: Cary Lefton, Lono Street Properties, the bed rates that we're charging are the lowest

of all the entire Hawaiian islands. It's the lowest bed rate within all of the dorms that are being offered. The students cannot afford to rent an entire apartment for themselves. So what we offer is a by the bed rate which is substantially less than renting a full apartment for \$1,300 or \$1,400 a month. The bed rate depending I think on an average comes out to somewhere around \$400 a month. So it is substantially lower for a student just to rent a bed then to rent an entire apartment.

Mr. Medeiros: Okay, at \$400 a month, times four to a bedroom, that's \$1,600 and you're saying you want to rent it for 1,400? My math says the kids are paying more.

Mr. Lefton: We're also including utilities, you know, at those rates. Where if somebody is coming in and renting an apartment, they're paying their utilities on top of that.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: In your, in our packet it says that there are a study meeting room on the second floor, open air lounge and laundry room. Will the, particularly study meeting room, will those facilities still be left available?

Mr. Lefton: Yes, yes they will.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I have a question about the original project. Were any concessions made on the original project? For example, if a project has affordable housing there are some restrictions that are lifted because it's an affordable housing project. Did anything like that apply to this original project?

Mr. Lefton: No concessions were made.

Chairperson Lay: Commissioners, any more questions? Commissioner Medeiros?

Mr. Medeiros: Every year student housing, Alvin this one is for you, every student housing that I've been to, you know, they always had house rules and you know, supervisory staff there, will the general public be subject to the rules like quiet hours and things like that? You know, just so that it would be more conducive to study?

Mr. Tagomori: Thank you, Jason. Alvin Tagomori. The...at this point, there aren't any kinds of comment overall kinds of formal kinds of rules about quiet hours or anything like that. The students...the way the students are assigned, they're all assigned to a certain part of the facility. You know, so if you look at where, if you look at the facility itself, there's four major buildings or room areas, yeah. So if you look at it, the students are primarily assigned to what would be called Building A, you know, and then if the need, if the need arises, moving them into Building B. So we're trying to keep all of the students together. You know, part of the thing that Cary and myself, and Danielle, the property manager, we've talked about is creating, you know, creating activities, things that you would find typically in student housing including a, kind of a student...a housing management and a student association to help even create activities as well as govern it so that

you have certain rules and policies in there in its place and the students themselves could help manage themselves. You know, but as far as it is a little tricky matching the public with the students, but I think depending on the, you know, with the students, with the students and the public, sometimes you'll find, you know, some conflict maybe if a student...if a family is in there and they have an infant or something. But generally speaking, the students and the public in there is I think will be something that will be workable and something that we can work through. Part of the whole thing I think is to keep all the students together as opposed to having them shotgunned all over the, scattered all over the facility.

Mr. Lefton: Cary Lefton. Our rental agreements have house rules. The same house rules will apply to the non-students as well as the students. We're also involved with the ownership of Piilani Gardens which is the 200-unit over in Kihei and all those rental agreements also have house rules themselves. So it's standard in the industry to have house rules and to keep, you know, a nice, quiet environment.

Mr. Medeiros: Yeah, but isn't the house rules for dorm situations more intensive than general apartment rules?

Mr. Lefton: They may be. The agreement that we're using was originally drafted by Campus Apartments which was our property manager, the largest property management company for student apartments in the country, and we haven't changed those house rules. We've added to them, and those same house rules that were used for that company, we're using and will apply to the non-students as well.

Mr. Medeiros: So the rules would be like say, I don't know if you're familiar with ASH housing in Hilo, something to that effect, Alvin? Because UH Hilo has the dorms and they have ASH housing and the rules are different.

Mr. Tagomori: Right.

Mr. Medeiros: You know, but it's still ASH housing is conducive to studying.

Mr. Tagomori: Right. You know, I'm not sure if at Hilo there's a mix of the public and students.

Mr. Medeiros: There's no mix.

Mr. Tagomori: There's no mix, yeah, so generally you can set up the rules, but as Cary said, you know, there are, there are general overall rules about behavior and hours and things like that, and then there are folks who live there that operate like, who are like security, you know, that can look into disturbances and things like that. Some of the...and then when we have some short-term housing like the Upward Bound project that's going in there today, we build in, for example, in that budget, we bring in our own security because these are high school students. Yeah, so we wanna keep them all together and we have security throughout the evening for example when the students are there.

Chairperson Lay: Commissioners, let's try and limit our questions to two each so everybody gets

a chance. Commissioner Tsai?

Mr. Tsai: Vice-Chancellor, what other student housing do you have available?

Mr. Tagomori: The only other housing that's...as I said, the only other housing is what's available in the community right now, you know. Whatever the community is allowed to, you know, wants to rent out. You know, the old student housing right now that used to house students right now, we're working to kind of renovate that facility so that that can become more like a lab for our Hotel Operations Program, but there's nobody living there now. It's going through, you know, we're going through getting funding to get that place renovated. You know, in the meantime, you know, because there's nobody living there now, there's certain kinds of groups like especially the Fire Department, Police Department that come in and use it for practices. You know, but our long-term, our long-term goal for that one is to renovate it, renovate it for our Hotel Operations and Culinary Program. But other than that, if this one isn't available, it's primarily what's available in the community and that's why I said earlier that we weren't prior to this facility coming up, we weren't that active in the...going out and marketing the college to non-Maui County students. You know, we only...the intent for the original Hale Haumana really was because we felt had a responsibility to students from Molokai, Lanai and Hana. If they wanted to come, we needed to provide something for them. But with a 400-bed facility then I think we can go out and, you know, that allows us to go out and promote the college to folks from off-outside of Maui County.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Oh, okay. I just wanted to echo some of the needs of the students here. I'm trying to relate a few years earlier, my college years.

Chairperson Lay: Not too long ago, yeah?

Mr. Shibuya: Yeah, just a few years, but I did live in Johnson Hall dormitory, I shared it with another person. I did live in Atherton YMCA. I shared it with two others, as a triple. I did share a home unit and I had dinner with the family that I shared. All of these experiences make up what I am today, and I think the students today are probably even more adventurous than me. And so I'd like to support this activity because it allows for them to even have their own studio as well as to share it with four others or three others. I think this is a great opportunity. Also, the fact that you have apartments. The apartments has this ability to have married students taking care of this area and in the dormitories we didn't have that opportunity for married couples to stay there as they had to live off-campus. But here is off-campus but it's very close to campus, so you have the apartments providing this opportunity for these folks. Of course, like you mentioned, a child could be disrupting the quiet and the karma of that area. I do have a question in terms of shared costs. The shared costs are built in such as the common area as well as the parking as well as the security, these costs are shared by the dormitory students, correct?

Mr. Lefton: Well, I guess ...those costs are operating costs.

Mr. Shibuya: Right.

Mr. Lefton: So yeah, I guess they would be built into the rental rate like any other, you know, apartment type...(inaudible)..., yes.

Mr. Shibuya: Now when you have apartments, you have this type of leasing agreement would they be sharing the cost too or how are they going to do this?

Mr. Lefton: The structure wouldn't be any different than the way we're currently charging, you know, the students, it would be the same.

Mr. Shibuya: And in terms of the utilities, each unit when you have an apartment, you now become responsible for paying the electric and the water bill. I don't believe this thing is designed for that or are you gonna make special connections to ensure that these apartments pay their own bill?

Mr. Lefton: Yeah, we have installed sub-metering for the electricity. The water is one meter.

Mr. Shibuya: Oh, okay. Thank you.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Alvin, in order to attract students into the project, the existing customer base, the students that are there right now, have any satisfaction surveys been run with them to find out if they've encountered problems or difficulties with the existing situation?

Mr. Tagomori: Yes, surveys have been done. They are done. We've even on occasion we've had—we've invited students to lunch and we've sat down over lunch and just had focus group discussions with students so both surveys as well as having focus group discussions and that kind of feedback is then when we have our regular meetings we share those and we get back...you know, when we're looking for surveys we're looking not only for, we're looking not only for satisfaction with the facility itself, but we're also trying to gauge what kinds of interest the students have, what kinds of activities would they like to have, what kinds of, you know, what their interests are so we can maybe develop programing and target those students.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation?

Ms. Thackerson: The Department recommends the addition of the following condition as stated earlier, to the extent that the property owner cannot reach full rental capacity with students, it shall have the ability to rent to non-students. Students will continue to receive first priority for available space at the subject property and space will also be accommodated as necessary for those enrolled in short-term/seasonable programs at the University of Hawaii, Maui Campus. In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the June 10, 2013 meeting as its findings of fact, conclusions of law, decision and order and authorize the Director of Planning to transmit said decision and order on behalf of the Maui Planning Commission.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I'd like to make a motion to accept the recommendations and conclusions of law of the Department.

Mr. Freitas: Second.

Chairperson Lay: Motion by Commissioner Shibuya, seconded by Commissioner Freitas. Any comments? Commissioner Shibuya?

Mr. Shibuya: As I had mentioned before, I think this project is and the way they're dividing the units allowing for greater variety, I think it not only accommodates for the community need for housing but it also provides a greater opportunity for students to, types of students to avail themselves to this type of services.

Chairperson Lay: Can we restate the motion?

Mr. Spence: The motion is to approve as recommended by Staff.

Chairperson Lay: All those in favor? Show of hands. Can we see the hands again, please?

Mr. Spence: I see six ayes.

Chairperson Lay: Those opposed?

Mr. Spence: Two nays.

Chairperson Lay: Motions passed.

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

**VOTED: To Approve the Amendment to the Special Management Area Use Permit, as Recommended by the Department.
(Assenting - W. Shibuya, J. Freitas, K. Ball, M. Tsai, S. Duvauchelle, P. Wakida)
(Dissenting - J. Medeiros, W. Hedani)**

Ms. Thackerson: Thank you.

Chairperson Lay: We're gonna take a 10-minute break and reconvene at 9:50 a.m.

A recess was called at 9:45 a.m., and the meeting was reconvened at 9:56 a.m.

Chairperson Lay: Our next agenda item?

Mr. Spence: Commissioners, No. 2, B-2 on your agenda is the Unity Church of Maui requesting a time extension and amendment to one of their conditions on their County Special Use Permit and the Staff Planner this morning is Ms. Gina Flammer, and I should note when this church first came in for their Special Use Permit eons ago, I was the Staff Planner for it, so a little bit history.

2. THE UNITY CHURCH OF MAUI requesting amendments to their County Special Use Permit to amend Condition No. 1 to allow for a two (2)-year time extension to continue the church use of the property and to amend Condition No. 14 to allow Sunday services to begin at 9:00 a.m. instead of 10:00 a.m. for property located in the R-3 Residential District on approximately 25,000 square feet of land at 483 High Street, TMK: 3-5-009: 007, Wailuku, Island of Maui. (CUP 2005/0009) (G. Flammer)

Ms. Gina Flammer: Okay, so we can ask Will questions. Good morning, Commission. Can you see the screen okay? Oh, that's better. Do you mind being in the dark while I? Okay, so no one falls asleep. Good morning, again. We're here for a time extension on a County Special Use Permit, but I wanted to just remind you again what is a County Special Use Permit. You see so many of these different types of permits. So basically, this property is located in the County Residential District. So when you go into our Code it tells you, you know, what the general outline and goals are of the Residential District. They're looking for a harmonious residential neighborhood. It doesn't mean just houses. They actually do list out right in the Code all the different uses that you can have in the Residential District. So any of these uses you wouldn't need to come in for any kind of permit unless maybe you're in the Special Management Area.

And then they have a special section called, Special Uses, and in this section they state that with the approval of this Commission, they actually list out which uses are okay, and there they are. So the churches are the first one that are actually listed and then they go into some other uses. It's a little different than an accessory use where it's just any use that's similar. In the special uses they actually list it out. So if you're listed there can't come before you. You have to come with a different type of permit, usually a Conditional Permit. But if you are, you come in under a County Special Use Permit.

So the church bought the property, I think it was 1997. They came in for a Conditional Use Permit. It was granted in 1998. As happens sometimes, the permit lapsed. You have church turnover, they didn't realize it. They realized almost immediately, but once a permit expires, it's expired. So they came in, they reapplied again in 2005. At this time, they were having services somewhere else. They didn't apply for Sunday services they didn't need it. So in 2007, when they did make it to Commission, they received a new County Special Use Permit, but it didn't have Sunday worship services. So as they decided to go back into their building in 2010, they came back into this body to amend that Special Use Permit to allow the Sunday services. Some of you were on the Commission at that time. So what happened in 2012, is that original 2007 permit was up for an extension. They also have requested that they be allowed to do Sunday services starting at 9:00 a.m. instead of 10:00 a.m., and I'll talk a little bit more about that.

Let me go through. I just wanted to orient you about where we're talking about where we're talking

about. It's 483 High Street. Many of you probably drove right by it today. If you look to the right, you can see where I marked County buildings, so that's where we are. So if you go down this direction about one block, you have...you have the elementary school, then you have a street, and then you have the Baptist Church which I think takes up two lots, and I think you have a residential house and then you have the church.

So maybe that will help remind you what it looks like. And I just wanted to show you some pictures. They're in your staff report, but just so you can orient yourself. They've done a lot of work on the property. There's some office space in the main building. They have a little out structure that was a former garage that's been turned into an area for children.

So in 2010, when we routed out the request to allow Sunday services, the Department of Transportation took a real close look at the drainage. It's an area that has a lot of water that comes down. Iao Valley comes right down through there. And because it's residential, if you build a house you're not required to pick up all the drainage like you might be if you're coming in for a commercial use or an SMA. So they took a look at their drainage requirements. DOT actually required at first for the church to capture all drainage coming off the property, very unusual. It's the first time we'd seen that. There was some discussion that went on at the time, the church, they're really good people they decided yes, that's the right thing. That's what we wanna do. They went ahead and hired an engineering firm. They produced a report. We came to Commission. Everybody felt good. We went ahead and approved it. Discussions continued with the State Department of Transportation who then realized their mistake that they can't ask for all the drainage to come so they amended it to just project generated but at that time, the church had already committed to doing full improvements. They didn't find out till they went out for a bid that those improvements cost \$46,000. That caused them to kinda relook at their property and think do we wanna stay here, what do we wanna do? From what I understand from talking with the church members, it's not the only the factor for selling the property, but it definitely was one of them. So at this point, they have the property on the market. I feel like I was there good luck charm at first. Both times we scheduled it, they went into escrow so we pulled it off the agenda. We waited and then it didn't go through. You know it's been a really tough market. As we got closer to scheduling it, they were almost in escrow again and talking with a buyer. We decided let's just put it on. So at this point, they're not in escrow, but they've...they are very close. We can talk about the time extension date request. I wasn't quite sure when we came today where they would be with the sale.

So there's two requests on the floor today. One is for a two-year time extension request to allow for the sale of the property. I understand the applicant may ask for an additional year. When we went back and looked at our rules, we realized that the two-year time extension is from the date of the expiration date of the permit which would have been 2012, August 13, 2012. So that would...two years would put them at next August. So I asked them is that enough time to complete your sale? I've had a buyer ask me, a potential buyer, could they rent back to the church maybe for a year? So looking again, there may be a request for a little bit longer, maybe make it three years and then it could go to August 31, 2015. If not, they would just come back to you again. And then the second request is to allow for worship services to begin at 9:00 a.m. instead of 10:00 a.m. The church did talk to the neighbor that was right next door. The neighbor's comfortable with the 9:00 a.m. start time. We feels good about that.

I do have a couple of people from the church, if you have any questions. I think somebody will be giving some testimony. We have Reverend Blaine Tinsley, and we have Virginia Cantorna, who is a member of the board, the president of the board. We have the realtor, Elizabeth Wood here if you have any questions about the sale of the property and then Bob Offerman, is the church member who has tirelessly worked on the permit over the years, so he probably has the most history with that.

Chairperson Lay: Commissioners, at this time I'm gonna go to public testimony. If anyone wishes to testify at this time, please come up to the podium, identify yourself and you have three minutes for your testimony.

Dr. Virginia Cantorna: Good morning, Commissioners and Staff. My name is Dr. Virginia Cantorna and I'm currently the president of the board of trustees for Unity Church of Maui. I'd like to introduce our team present. Reverend Blaine Tinsley in the middle there is our minister, Bob Offerman is our president of our Special Use Permit project, and Elizabeth Wood is our realtor. She works with Coldwell Bankers.

Unity Church of Maui is a small congregation that has been holding worship services on Maui since the mid-1970's. Our existing facility is quite small about a half acre and just adequate for our faith community of about 80 people. We have listed our property for sale for over a year and we are present to request an extension of our Special Use Permit for at least two years or until such time as we have sold the property and settled into a new location. We were granted a permit, I think about two years ago with a change in restrictions and for that we're very, very grateful. However, the restriction was that our worship on Sundays can only occur between the hours and 10:00 a.m. and 1:00 p.m. and this precluded us from adding a second worship service with the hopes of growing our congregation. In addition to complying with those requirements, we have tried very hard to be good neighbors, and in fact, we have a very polite and cordial relationship with the folks next door. We are praying for the perfect buyer for our property and to move to a location where we can thrive without worry about the neighbors or the expense of a drainage system or whether or not we can freely worship on Sundays, and where we can grow in numbers. And I respectfully ask that you grant an extension of our Special Use Permit with the ability to start worship services at no later than 9:00 a.m. Thank you very much.

Chairperson Lay: Commissioners, any questions for the testifier? Commissioner Wakida?

Ms. Wakida: Good morning.

Dr. Cantorna: Hi.

Ms. Wakida: With this revised drainage plan, apparently and your original bid was 46,000 that was to capture 100 percent. With your new restriction that has not altered your intent to sell? Can you get a bid that costs less to do less work?

Dr. Cantorna: We have searched for other bids and received other bids. The minimum amount is 15,000 I believe. The average being 25,000. It's still an amount that our congregation cannot afford at this time, and that is one of the major reasons we are seeking to relocate.

Chairperson Lay: Thank you very much. Does anyone else wish to testify at this time? Seeing none, public testimony is now closed. Commissioners, do we have any questions to the applicant? Commissioner Wakida?

Ms. Wakida: Probably for Gina. Their extension was originally filed a year ago, over a year ago.

Ms. Flammer: Yes.

Ms. Wakida: I mean, it would seem that it should have been, you know, come before us, but is that because of the various escrow, you said, you took it out of...

Ms. Flammer: Twice. Twice we had it scheduled. Both times it went into escrow. We assumed it was gonna close so we pulled it off the agenda and then it, both times it didn't...fell through. So this time we just kept it on even though that we heard rumblings that it might go back in.

Ms. Wakida: Yes. Follow up?

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Therefore, the one-year from May 2012, I mean, the two years, you know, is half used up.

Ms. Flammer: I know.

Ms. Wakida: I would certain entertain the suggestion to have a longer extension.

Ms. Flammer: Would you like the applicant to address that, if there's that need for that?

Ms. Wakida: Yes.

Ms. Flammer: Okay.

Dr. Cantorna: Thank you for that consideration. We are requesting, we are hoping to receive at least two years starting from this date and the reason for that is our property has been in, on the market for a year already and the...just the...the time it will take us to find a new location and to pack up and move and get settled into our new area we would like not to have to worry about coming back for another Special Use Permit. We'd just like some breathing room.

Ms. Wakida: So you would like instead of a two-year extension, a three-year extension from the 2012?

Dr. Cantorna: Yes, that would be wonderful. Thank you.

Chairperson Lay: Commissioners? Commissioner Shibuya?

Mr. Shibuya: I just have a question maybe Planner Flammer can help me. If we deny this, what happens?

Ms. Flammer: The permit would be expired so the church wouldn't be allowed to conduct any religious services on the property.

Mr. Shibuya: That's the worst case scenario, they won't be able to perform their services?

Ms. Flammer: Any of the activities that they do as part of their congregation.

Mr. Shibuya: Okay. See what's the problem here is that they have a Special Use Permit and it has a condition of placing and capturing water, storm water and they're not completing the condition, but they wanna continue operating. So you wanna continue operating without complying with any of the conditions in that Special Use. So that's a dilemma that I'm facing right now. Okay.

Ms. Flammer: It's one of the reasons when the Department looked at the length of time and the fact that they are on the market. I think had they not been on the market it would have been a little different to come before you. I will tell you normally when we've had a permit this long we'll look at five years, sometimes even 10 years. Some Conditional Permits that have been around for awhile like this one, since 1998, the Council gives up to 20 years. So to mitigate your concern we looked at that the fact that it's no longer full drainage that's required anymore, and we looked at the fact that we're just gonna give them a limited time and then they have to come back to you if they're gonna continue past that limited time.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Question for the Planning Director. The last time we dealt with an extension it was from the date of the extension not the previous extension date. Would that apply in this case too?

Mr. Spence: Yeah you would be, if I understand your question correctly, you would be extending from the expiration date, the previous expiration date to how many, you know, whatever amount of time you give them.

Mr. Medeiros: So it wouldn't...what happened the last time wouldn't apply in this case where it was extended from the date we approved the extension?

Ms. Flammer: Can I step in if I may? During the last case we went back and talked to our legal department and looked a little closer and we did have to issue that permit from the expiration date. We weren't able to do it from the date of the hearing. It was the A&B case. So A&B, they really only ended up with one year instead of the two years that we have intended because it took so long to come back to you. So in that case, it did go back to the expiration date. Yeah, we needed to look procedurally how that worked, so we did spend some time researching it.

Mr. Spence: And the reality is, is oftentimes applicants file for an extension in a timely basis. We give 'em an expiration date and say, file this 90 before or whatever, just before the expiration and then they take longer than that to get it to you. So you know, to say that it...you know, something

expires and it's because of, you know, circumstances within the Department and not because any action on the part of the applicant, you know that's, you know, it's only fair to the applicant, they did their part. You understand what I'm saying?

Mr. Medeiros: Yeah, I understand. Thank you for clarifying that, you know, like Penny I would entertain a longer extension too.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation?

Ms. Flammer: I guess procedurally if an amendment comes in it will come in after I give my recommendation, that's what you guys would vote on. So today, the Planning Department recommends approval of the County Special Use time extension subject to the conditions listed in our recommendation. They're the original conditions with the exception of No. 1 that would move it at this point it has 2014 on it, and then there would be a change in Condition No. 14. As listed here, we would take out the 9:00 a.m. and insert...we would take out the 10:00 a.m. and insert 9:00 a.m. 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, June 10, 2013, and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on the behalf of the Commission.

Chairperson Lay: Questions? Commissioner Ball?

Mr. Ball: Let's see, motion to approve Condition No. 1 of the Special Use Permit for a two-year time extension and to have services changed to be allowed to start at 9:00 a.m.

Mr. Freitas: Second.

Chairperson Lay: Seconded by Commissioner Freitas? Any comments? Commissioner Wakida?

Ms. Wakida: Let's see, I'm not sure of the protocol. I'd like to offer an amendment to offer an extension to June 31st, 2015.

Mr. Freitas: Second.

Chairperson Lay: A three-year instead of a two, is that what you're saying?

Ms. Wakida: Well, it would be two years from this month, so make it June 2015.

Mr. Ball: I'll accept.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Is the motion to accept the staff recommendation with the amendments as proposed?

Mr. Ball: No, it's just to accept the amendments right now.

Mr. Hedani: Okay, well there's 14 items on the recommendation, you know.

Mr. Ball: We're adding then.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: So if I hear it correctly, the amendment to the motion would be to extend it to 2015, is that what I heard?

Mr. Spence: Yes.

Mr. Shibuya: Okay, I'm gonna vote against that. The reason for that is I'm not too keen about having noncompliance and there's no intent of the users to even comply. So therefore, I think my even agreeing with some of these terms should not be extended and I don't think I feel comfortable enough to extend noncompliance.

Chairperson Lay: Any more comments? Commissioner Freitas?

Mr. Freitas: Yeah, I second the motion because they're in a financial problem. What they're trying to do is get out of the property so it will go probably back to residence. It will not be a church and sell it and move on. That's why they're not going ahead and the drainage and what have you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I support the motion too. I mean, I think that with the extension we are also extending the time limit for compliance. And we have done that in the past giving people time, more time to comply. Angel walks in next Sunday and drops the money for compliance, guess what, it gets done. These are good people. Okay, I support Commissioner Wakida's amendment.

Chairperson Lay: Director, can you repeat the motion?

Mr. Spence: Okay, the motion is to amend the recommended condition to extend the time extension to 2015 rather than 2014.

Ms. Wakida: June of 2015.

Mr. Spence: June of 2015, pardon me.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I appreciate Commissioner Shibuya's concern and however, for me in this case, I think there's extenuating circumstances that have to do with this compliance issues, but I do appreciate his looking at the letter of the law.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: If I heard Gina right, the extension will start from the day that it what do you call would terminate and it would be the two-year or three-year extension. Would you please clarify that Gina?

Ms. Flammer: I think what you end up doing is giving a 34-month extension from the original expiration date. So I would put in there whether it 34 months or two years and so many months or until June 30, 2015.

Mr. Spence: I looked that up, June has 30 days rather than 31. It would be, it'd go on forever.

Chairperson Lay: Okay, let's call for the vote on this motion. All those in favor, raise your hand?

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

Chairperson Lay: Those opposed?

Mr. Spence: That's one nay.

Chairperson Lay: Motion passes.

It was moved by Ms. Wakida, seconded by Mr. Freitas, then

VOTED: To Amend Condition No. 1 that the Time Extension be Amended to June 30, 2015.
(Assenting - P. Wakida, J. Freitas, J. Medeiros, K. Ball, M. Tsai, W. Hedani, S. Duvauchelle)
(Dissenting - W. Shibuya)

Mr. Spence: So that's just for the amendment to June 30, 2015. Now it's back to the main motion.

Chairperson Lay: Any more comments on our main motion? Commissioner Hedani?

Mr. Hedani: Is the main motion to accept staff recommendation with the changes?

Mr. Ball: Yes.

Mr. Hedani: Okay. 'Cause what I heard was to approve paragraph no. 1.

Mr. Spence: I heard the original motion as accepting...being both changes including starting...the time extension as well as starting the services at 9:00 a.m.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I just wanna clear my next vote. I just wanted to be sure that it's not misunderstood. I'm fully supportive of this congregation. I'm fully supportive of their use of the property, but I'm not supportive of an extension because this is a noncompliance. You had an opportunity to comply and

you still have an opportunity to comply and you've taken the choice of noncomplying and yet you wanna continue use. So we can't have both. We're gonna have one or the other. So I'm gonna have to vote against this.

Chairperson Lay: We need a second on the motion.

Mr. Shibuya: Second by Commissioner Medeiros. Now can we repeat our main motion.

Mr. Spence: The motion is to approve the time extension and scheduling change to 9 o'clock on Sundays and as amended by the previous motion.

Chairperson Lay: Call for the vote, all those in favor, show of hands.

Mr. Spence: That's seven ayes.

Chairperson Lay: Those opposed?

Mr. Spence: And one nay.

Chairperson Lay: Motion carries, congratulations.

It was moved by Mr. Ball, seconded by Mr. Freitas, then

VOTED: To Approve the Amendments to the County Special Use Permit, as Recommended by the Department with Conditions.
(Assenting - K. Ball, J. Freitas, J. Medeiros, M. Tsai, W. Hedani, S. Duvauchelle, P. Wakida)
(Dissenting - W. Shibuya)

Chairperson Lay: Moving on. Did everyone get a chance to look at our action minutes for May 28, 2013?

C. ACCEPTANCE OF THE ACTION MINUTES OF THE MAY 28, 2013 MEETING

Mr. Freitas: Move to accept.

Mr. Medeiros: Second.

Mr. Shibuya: No, no, no I object. There's a correction.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: On Communications, let's say Alice Jordan and Bob Flint. I believe the voting was not correctly reflected. On the five-year time extension amending the project scope on the Land Use Commission Special Use Permit as recommended by the Department. The assenting parties

I think includes myself, W. Shibuya. I was one who abstained. One Commissioner who is missing and I'm also listed as dissenting. I abstained. Also the fact that Commissioner Hedani was present and I believe he voted. He can tell you how he voted.

Chairperson Lay: Corp. Counsel?

Mr. Giroux: If the abstention is made without reference to your rules on recusal then it's seen as an affirmative vote in favor of the motion.

Mr. Shibuya: Okay, then I shouldn't be the dissenting. Should not be listed as dissenting. It's listed here. Okay, and Mr. Hedani is not...I mean, his vote is not listed.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, I did vote on that motion and I voted against on that motion. So Commissioner Shibuya is listed twice. Once as assenting and once is dissenting. Dissenting should have been my name. I called in the correction. It doesn't change the vote.

Mr. Giroux: So noted.

Chairperson Lay: The correction's so noted. With that change, I need a motion to approve the minutes from our last from May. Commissioner Shibuya?

Mr. Shibuya: Move to accept the minutes as amended.

Mr. Medeiros: Second.

Chairperson Lay: All those in favor say, "aye".

Commission Members: Aye.

Chairperson Lay: Those opposed? Minutes accepted.

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

**VOTED: To Accept the Action Minutes of the May 28, 2013 Meeting, as Corrected.
(Assenting - W. Shibuya, J. Medeiros, J. Freitas, K. Ball, M. Tsai,
W. Hedani, S. Duvauchelle, P. Wakida)**

Chairperson Lay: Now for the Director's Report.

Mr. Spence: No. 1 on the Director Report is...okay, the first one is notification of Planning Commission's...of the approval of the transfer by letter dated May 21, 2013. According to your rules for an SM1 Permit. Candace is here and so is Karlynn, the applicant's representative if you have

any questions on it.

D. DIRECTOR'S REPORT

- 1. Notification to the Maui Planning Commission of the approval of the transfer by letter dated May 21, 2013 of the following Special Management Area Use Permit pursuant to the provisions of the Maui Planning Commission's Special Management Area (SMA) Rules:**

MS. KARLYNN FUKUDA of MUNEKIYO & HIRAGA, INC. requesting a transfer of the Special Management Area Use Permit from BN01 INVESTMENTS, LLC to MAKENA HOMES, LLC for the development of a four (4) unit single-family condominium and related improvements at 201 Makena Road, TMK: 2-1-007: 066, Makena, Island of Maui. (SM1 2001/0017) (C. Thackerson)

Chairperson Lay: Commissioners? So you want a motion to approve?

Mr. Giroux: I believe it's no action.

Mr. Spence: No action.

Chairperson Lay: Okay, moving on.

- 2. Planning Commission Projects/Issues**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report**

Mr. Spence: The Commission has their SMA Minor and Exemptions Reports.

Chairperson Lay: Commissioners, any questions on our SMA Minor Report? Commissioner Shibuya?

Mr. Shibuya: Before I even get into the Minor Report, I do wanna thank the Planning Department, Planning Director for a copy of the submitted, Maui County submission to the Board of Education, I guess, Planning to the Land Use Commission, I believe. You guys responded good. I have a copy of it. Thank you very much. Where corrections are needed I so make a motion but there's no corrections. I like it and thank you very much for your transparency.

Now the Minor projects I have a concern here that maybe the Department can share with maybe the Administration or maybe the Council Members. We have no water restrictions right now, no water moratorium. However, we have requests for customers, I mean, water using customers to

conserve the use of water resources. In this latest minor report, I took a tally here of the new projects that are being constructed. Of them, there's 27 that have pools and spas, 2 in Wailuku, 4 in Lahaina, 13 in Kihei, 2 in Paia, 3 in Wailea and there's one that's the location is not known, but I doubt that would be in Upcountry, 2 in Haiku and 1 in Kahului. I'd like to understand what the policy is in terms of the County's Council as well as maybe the Administration's feeling as to where do we go with this? Are we expanding our resources or search for resources, water resources or are we just trying to raise the cost of the water resources that we currently have or are we creating dissension within our community because Na Wai Eha has sought some solution and I believe we need to balance some of these resources peacefully. So I know this is not the Planning Department's problem. They're reviewing the project in terms of Code compliance. It has nothing to do with the quantity of the resource that is gonna be consumed. So I'm making a fine distinction there that maybe the Planning Department may need some guidance on this from the Council, from the Administration.

Chairperson Lay: Director, do you wish to comment on that?

Mr. Spence: All the pools and spas that you see, I mean, we are reviewing those things under our set of rules and laws with...(inaudible)...in compliance with 205A, and according to the Commission's rules and that's the kuleana there. As far as the use of water that's under the Department of Water Supply. If, I mean, when you have a pool or a spa you're talking about an accessory to an existing home. They will be paying for that water. And as we've had in the last two months within the, you know, with the newspaper they're talking about raising the rate. So on the one hand it's not really an SMA issue, on the other, you know, there is a whole large discussion within the Department of Water Supply and with the County Council on what the rates will be and there's a little bit of rumblings about ...(inaudible)...

Mr. Shibuya: Yeah, no, I don't find fault with the Planning Department. I find perhaps maybe guidance or some community discussion may be needed to ensure that we keep the peace in the family here in Maui County.

Mr. Spence: Sure.

Chairperson Lay: Need a motion to accept or acceptance.

Ms. Wakida: I have a question.

Chairperson Lay: Oh, excuse me, Commissioner Wakida?

Ms. Wakida: Yes, and for the Planning Director, you got 15 open SMAs that are from '08. At what point does the Planning Department kick 'em out and say, okay, you've got to start over? I mean, do you just let these people ride forever?

Mr. Spence: No. Actually I regularly sign letters closing applications because a lot of times what we'll do is we will...well, any number of things happens. Some people just file applications so they can say they filed an application and they never had any intent of following it through in which case we'll, you know, we'll request information or whatever and we'll either get that information or not.

A lot of times people will file an application after-the-fact apartment alteration or to enclose a lanai or something like that. We'll request the information. If it gets to us, great we can finish out the permitting. If not, we'll send them a letter and say, you have 30 days to, you know, give us this information or, you know, we'll either close the file or proceed to enforcement or some combination thereof. So no, they're not allowed to just keep things open indefinitely. And I will talk to staff about following up on some of these older ones.

Ms. Wakida: Thank you.

Mr. Medeiros: I have a question?

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I just wanted to ask how many of these properties that has approvals are on ag land?

Mr. Spence: Well, for SMAs, of course they have to do Special Management Area and in very general terms you're talking about the makai side of the nearest State highway. So that's why all of Kihei is in, you know, Lahaina, in some places it extends above the highway. As you start getting out toward Haiku, you know, the Hana Highway follows the coast for a while but then it, you know, it goes mauka quite a bit. So all those homes out there all, the whatever the farms, et cetera, everything makai side of the highway all the way out to the Hana, all those are in the SMA and they've gotta get permits to construct or at least get assessed.

Mr. Medeiros: Okay, no, it's just a question because there's a lot of Ag zoned land that are not being used for ag purposes and putting a pool there would be just subsidizing their business other than ag. You know, I got no problem with a farmer who's actually farming building a pool for his kids, you know. But the extra use of the water in an Ag District, I'm like, oh wait a minute, you know?

Mr. Spence: That's one of things that we struggle with a lot.

Mr. Medeiros: Okay, as long as we're struggling, I'm good with that.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Mr. Director, after-the-permits, what is the procedure and is there a fine? I understand there's a fine if they go in after-the-fact?

Mr. Spence: There are...on enforcement, if we have a complaint, and we find out that somebody built something with no permit, we will send them a warning, and say, hey you gotta come and you gotta your permit for this. If they do not, well, okay, let's just – so they go, okay, I'm sorry. They submit their building plans, and they get their after-the-fact permit, we can assess prior fees in order—I mean, we can recoup the cost of...yeah, of staff time and et cetera in order to process this permit. A lot of times, there may be a violation, I mean, where they don't correct the after-the fact status where somebody blatantly will build another building. We have some repeat offenders who

know full well that they're supposed to get permits and they don't. So then we can go straight to violations without warnings. Your rules allow that, and we will both assess fees for processing the after-the-fact permit, but then we'll also get fines with that, and those fines as we had two weeks ago, those fines were settled with this Commission. So that's with a violation. So it can get intense and very complicated at times.

Mr. Freitas: Thank you.

Chairperson Lay: Commissioners? Need a motion of acceptance of the SMA Minor Projects for Maui.

Mr. Freitas: So move.

Mr. Tsai: Second.

Chairperson Lay: All those in favor raise your hand. Those opposed?

It was moved by Mr. Freitas, seconded by Mr. Tsai, then

**VOTED: To Accept the SMA Minor Permit and SMA Exemptions Reports.
(Assenting - J. Freitas, M. Tsai, J. Medeiros, K. Ball, W. Hedani,
S. Duvauchelle, P. Wakida, W. Shibuya)**

Chairperson Lay: Okay, moving on.

6. Discussion of Future Maui Planning Commission Agendas

a. June 25, 2013 meeting agenda items

Mr. Spence: Future Agenda Items. Commissioners, we have a memo from Mr. Clayton Yoshida dated June 7th, and next time there will be three public hearing items, and a couple of communications. It looks like it will be good agenda for next time.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Clarification, Director. On Director's Report did you mean under No. 1, (1) exempt actions in the SMA which no longer need an SMA Assessment. Is the word, "no" missing?

Mr. Spence: Yes. Which no longer needs, and we'll discuss this then but it's gonna be things like tenant improvements where you're not going to affect the ...(inaudible)...

Ms. Wakida: But the word's missing?

Mr. Spence: Yes.

Ms. Wakida: Okay.

Chairperson Lay: Commissioners, any more questions? If none, meeting's adjourned.

E. NEXT REGULAR MEETING DATE: JUNE 25, 2013

F. ADJOURNMENT

The meeting was adjourned at 10:40 a.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Keone Ball
Jack Freitas
Sandy Duvauchelle
Wayne Hedani
Ivan Lay, Chair
Jason Medeiros
Warren Shibuya, Vice-Chair
Max Tsai
Penny Wakida

Others

William Spence, Director, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works