

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

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:00 a.m., Tuesday, September 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: ...Tuesday, September 10<sup>th</sup>. Public testimony is now open for those of you who wish to testify on one of your agenda items can step forward if you can't make it when the agenda item comes before us. Maximum time limit is three minutes for this testimony. If you testify now, you can't come and testify when the agenda item comes up again unless you have something new to testify on. Please be advised that applications for community plan amendments, 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 this time, does anyone wish to testify? Seeing none, public testimony is now closed. And our first agenda item?

Mr. Spence: Good morning, Commissioners.

Commission Members: Good morning.

Mr. Spence: Okay, your first...actually your only Public Hearing item this morning is Ilana and Jacob Waxman requesting a Short-Term Rental Home Permit, Paia Bay Suites in Paia and the Staff Planner is Mr. Kurt Wollenhaupt.

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

1. **ILANA and JACOB WAXMAN requesting a Short-Term Rental Home (STRH) Permit in order to operate the Paia Bay Suites Short-Term Rental Home(STRH), a two (2)-bedroom STRH in the Residential District on approximately 8,216 square feet of land located at 45 Loio Place TMK: 2-6-004: 007, Paia, Island of Maui. (T2013/0017) (K. Wollenhaupt)**

**The STRH application is being brought to the Maui Planning Commission because there is another permitted STRH operation within 500 ft. of the subject property.**

Mr. Kurt Wollenhaupt: Good morning, Members of the Maui Planning Commission. The item in front of you today in a public hearing is Short-Term Paia Haiku T2013/0017. The Short-Term Home Permit is entitled Paia Bay Suites. It was filed on April 29, 2013 by Marc Hodges, who is sitting to the left of me, who is acting as the consultant of Ilana and Jacob Waxman. Ilana Waxman is also in the audience today as the owner of the property to answer any questions. The applicant's requesting a Short-Term Rental Permit to operate a two-bedroom short-term rental home located at 45 Loio Place in Paia, Maui. There are two dwelling units on the property and it's the policy of the Department in this case to consider this as a single dwelling for the purposes of the Short-Term

#### Rental Home Permit.

The reason that we're here today is pursuant to Chapter 19.65.060(A)(2)(e) of the Maui County Code. When the Code...on the short-term rentals was passed, it was deemed that any application that came in after the first of this year in which there was another short-term rental within 500 feet would have to come to this Commission in order to look at the neighborhood and in order to consider in part, five different criteria. In this case, on Loio Street there are other short-term rentals. The reason that the other ones were approved is the other ones came in before the December 31<sup>st</sup> of last year. Any short-term rental permit that came in before the end of last year was not subject to this 500-foot rule. Consequently, on Loio Place there were three others that were approved. The three are makai of this house.

In today's debate, there's five factors as I indicated and I'm gonna quickly run through them which the Commission is to use to evaluate this. The first factor is the number and the distance of the subject parcel to other permitted short-term rental homes. As you can see in the staff report, there are other permitted short-term rental homes which are owned by people who live on the mainland and they would be considered more deluxe type of short-term rental homes located on the ocean. So that is what triggers today's hearing.

The second point to consider is the number and the substance of the protests for the short-term rental home application. There have been no protests for this application. This application has been sent out with a notice of the application back in April that this family wish to apply for a short-term rental home and there were no protests from that. Then there was a certified mailing to all the neighbors within 500 feet of this public hearing and there have been no protests with regards to this application

Third criteria C, existing or past complaints about rental operations on the property. There have been no verifiable complaints regarding rental operations. The property had been rented I believe in the past on a long-term basis, but has not been short-term rental. Then D, existing or past noncompliance with government requirements, there has been no evidence of any past noncompliance. And the last criteria, correspondence received by the Department, there has been no negative correspondence with regards to this action.

As indicated before on Loio Street there are three other approved short-term rentals. Those are all makai of this property. In looking at the ownership records it would appear that these are second homes owned by owners of record on the mainland. When we look at each of these applications we have to look at the environment. Loio Place is a unique road anchored at the makai end by Paia Bay and on the mauka end by the Paia Fire Department on the Hana Highway. Immediately east of the property is the large Paia Chinese Cemetery. There's only seven identified residential lots along Loio Place and actually one of the lots is identified immediately to the mauka side of the subject property as another cemetery I believe known as the Kaluna Cemetery. It is, of course, somewhat unusual to have conglomeration of STRHs on the same street. However, this case is unique in looking at the characteristics of the immediate neighborhood with the cemetery, the small number of residential lots, the lack of any protests either from the notice of the application or from today's public hearing. The lack of any police report complaints regarding the property. That fact that this owner has not been engaging in a short-term rental before this permit today, and the fact that an immediate family member, Mr. Marc Hodges will be...immediately family member of this

family will be the on island representative to monitor and mitigate all concerns over this property. We have a short presentation by Mr. Hodges that will show this parcel.

Mr. Marc Hodges: Thank you. Good morning, Commissioners.

Commission Members: Good morning.

Mr. Hodges: My official title is consultant, but Ilana and Jacob are my siblings, so I'm the older brother. It's a picture of my children down here. We're looking to use this property as a short-term rental. Our focus is on families that can come and enjoy Maui. And just some quick background. It's 45 Loio Place down makai of the fire station. The owners of record are Ilana and Jacob, my siblings. Their father bought the property as a vacant lot in 1977, and Ilana and Jacob are both born and raised here on Maui.

Here's a picture of the tax map there and there is actually only one full-time resident neighbor where on the east side there's a large lot, mostly cemetery on the south, there's another cemetery on the west is the only immediate adjacent neighbor that is there full-time and the properties to the north are used already as vacation rentals. So in terms of impact, I don't think there's going to be any impact with regard to the neighbors. And one thing I wanna point out is I lived in this house for several years while I was police officer here on Maui and know the neighbors in the neighborhood. So we do work together to maintain the street. The street is paid for by the residents to maintain and we take care of the area and work together. So I'm planning to be, if it's approved, the manager of the property and I'm already familiar with the neighbors and already have a history of working well with them in keeping the place quiet and orderly.

This is what it looked like a few months ago. It was built in 1987, and has been used as a long-term rental mostly by family and friends since that time. And it's just a low key structure. It's nothing fancy. And we had it especially in the family, once the County had changed the policy to allow an operation to be done legally, we decided we would apply for the permit. It has been a long-term rental the entire time. We have never operated in the short-term.

Aerial view of the subject, there with the white roof. Just again emphasizing that it is already an area that doesn't have a lot of neighbors close by and I don't believe it would be impacted. The amount of the traffic, it's a dead end street and the amount of traffic would be the same or less than it is now. We do have ample off-street parking. We don't anticipate impacts with the neighbors.

It's a good location for families to come. It's walking distance to the town and the shops and restaurants and the beaches. And we do plan on marketing it as a kind of a middle tier property that's accessible to people that wanna come visit that can't afford the more expensive vacation rentals.

We did some property clean up once we decided to apply for the permit. There were some chickens on the property that our tenants had so that will be one reduction in noise in the neighborhood. So the chicken house is out. And we just have a very clean simple look. Painted it, putting in new windows. It's a very kind of a midrange property there. We did apply for a building permit to replace the windows in the SMA permit. So we have been very careful and meticulous

in following the County rules. And it's just a very simply decorated property. This is downstairs. Very simple as you can see. And the upstairs. Sort of a dark picture there and we're painting the interior there this week.

Kurt pointed out that I will be manager should this permit application be approved and I do have experience as I mentioned in the neighborhood working with the neighbors and having been a police officer I'm familiar with the neighborhood, but we all know each other on the road and have a history of working together to just keeping it quiet and mellow over there. So I've had a discussion about our application with the neighbors and we're looking forward to working together.

There is, as I mentioned, ample off-street parking. There's actually room for six vehicles. We really only need two stalls, but we have room for six so we won't be putting any cars along the side of the road. And the other thing I wanted to point out, the house is set well back to the east side of the lot and the only full-time neighbor is far away to the west of the lot, so any noise impacts will be up towards the street and away from the one full-time neighbor. The other two sides are cemetery and the remaining fourth side is already a short-term rental that's owned by folks from the mainland.

I do have some experience already in managing. We do have permitted bed and breakfast in Haiku and we've been successful. By, we, I mean our family. My mother owns this and I help her to manage it. And we've been very successful in providing good customer service that's been recognized by Trip Advisor Certificate of Excellence in 2012 and 2013 for quality accommodations and good customer service. So we can do the job and we can represent Maui well to the visitor community. So we just ask for your kind consideration for the application and are available for any questions that you might have. Thank you very much.

**a) Public Hearing**

Chairperson Lay: Okay, Commissioners, at this time, I'm going to open for public testimony. If anyone wishes to testify at this time, please step forward, identify yourself, and you have three minutes. Seeing none, we're closing public testimony. Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: I have a question for our Planning Director. I understand, you know, what we've been given from Kurt and these other three short-term rentals and why they're there and so on. But my question to you is how do we preserve the character of an area if we've got short-term rentals all lined up on a street and what's to stop the next guy...the next neighbor and the next neighbor and pretty soon little charming Paia is just turned into a little tourist accommodation and local people are just shoved out? So can you, could you address that please?

Mr. Spence: Well, that is part of the reason why this application is before you today is County Council and members of the public were very concerned that too many short-term rentals in a specific area would detract from the character of an area. So, they put in the safeguard that, you know, something...(inaudible)... if there's others within 500 feet they need to go to the Planning Commission. So that's, that's what the Council built into this ordinance. In this particular case, you know, there are...I guess I'm not familiar exactly where the other rentals are within 500 feet.

Mr. Wollenhaupt: Okay, there are three short-term rentals on Loio Place that were approved before the end of last year. They would be the three makai right here, one, two, three and the owners of record would be living I believe in Seattle, California, and Oregon. The details are in the report. There's also a short-term rental at the end of the boundary of 500 feet, but that does not really affect nearly as the ...(inaudible)...three. So those are the three that are currently approved that would have been most applicable in your...(inaudible)...

Mr. Spence: Well, so that's why we're here today is because they're, I'm sorry I was not aware they were just on Loio Place. You know, that's...this is why...this is exactly why that provision is within the Code is so the Commission can look at it and say, okay, this fits into the street, it doesn't or whatever...I would note that, you know, we don't have any complaints about noise or previously operating, so it's just a, you know, I know Mr. Hodges has lived in this area for like he said previously. He's very familiar with the area and with the neighbors, et cetera. So if there was going to be a rental within this area that fits in this would probably be it.

Chairperson Lay: Follow up?

Ms. Wakida: Yes, please. Yeah, I agree, and I don't really have a particular objection here to this one. I guess it's more of a as general concern about protecting our residential neighborhoods and not just because there's no complaints allowing a short-term rental to move into a neighborhood. I feel that we should be holding to a higher standard. But like I said, I'm not so concerned about this particular...because it does seem to be fitting into a neighborhood, I'm just concerned about losing our neighborhoods in the future. So...

Chairperson Lay: Commissioner Ball?

Mr. Ball: Disclosure. I've known Marc since we were young kids, but I will not recuse myself from voting today. My question is for Marc and as the resident manager of a vacation rental so...in such close proximity to the ocean, what is your procedure when you check in guests as far as you know, maybe warning them. It doesn't really have to do with this permit but I'm just curious on that sort of aspect of the check-in?

Mr. Hodges: Sure. Our house rules specify it's a residential neighborhood and the way we also work with our Haiku B&B is that we maintain a relationship with our neighbors. We've had that property in Haiku for 40 plus years so we do advise our guests that this is a residential area that our relationship with our neighbors is crucial and that we expect them also to be respectful. With regard to the ocean, this property doesn't...it's not actually on the oceanfront but we do explain as well that the ocean property belongs to the property so there are gonna be people up and down on the beach. It's not like the mainland where you can own the beach. But we let them know it's a residential area that the beach is open to the public. People do use Loio Place to go fishing, to go to the beach. It is a public access and that's something that the residents we know, but we advise the guests this is a public access area along, along the road. So we let them know, you know, what the legal status is and encourage them to fit in quietly in the community rather than assuming it's like somewhere else.

Mr. Ball: And as far as the danger of the north shore ...(inaudible)... and that sort of thing.

Mr. Hodges: Sure. We encourage folks to walk through to go over to the sand beaches. You know, there's Paia Bay and other places like that. We do get local folks going out to the point that wanna go fishing, but the guests, we encourage them more to go—

Mr. Ball: It's all rocky out there.

Mr. Hodges: It's rocky, yeah. We encourage them to go walk over to Paia Bay or drive somewhere.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Thank you, Marc for presenting.

Mr. Hodges: Yes, sir.

Vice-Chair Shibuya: I just wanted to know where is the access, public access? If they were to park on Loio, where do you they access the beach, how do they do that?

Mr. Hodges: Well, there's parking along side of the road.

Chairperson Lay: One second. Please wait for the mic.

Mr. Hodges: Okay. Can you hear me? Okay, there is parking on the west side of the road and there is a little bit of parking right here at the end. We don't typically get a lot of folks parking. They mostly walk. When you get people in the upper neighborhoods that get down to the coastline they'll walk this road and the access is...the road runs right up to the edge of the ocean. So this is an open lot and people come and sit here, but you can get down to the ocean by walking and then you can come back along the coastline this way. So it's not, it's not a developed access, it's pretty much a traditional style and you're mostly gonna get people living in the area that will go out there for the sunset or you're gonna get people that are gonna go fishing or diving. It isn't really used by tourists so much. But it's a straight shot down. There's adequate parking along here for the folks that do go, but it's mostly walking or bicycle or skateboard. Thank you, sir.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Another question, maybe this is for Public Works. Who owns Loio Place and is it a place by County standards?

Ms. Dagdag-Andaya: I would defer to the applicant but it is considered a private road and the applicant earlier stated that the residents do maintain the road as well.

Vice-Chair Shibuya: Are there road standards that the County has that they would abide by?

Ms. Dagdag-Andaya: I'm sure when the subdivision was developed that it had to follow County standards according to our subdivision rules so it was constructed that way. And like I mentioned before, it's currently being maintained so the County doesn't have any maintenance issues on the

property.

Vice-Chair Shibuya: Yeah, sometime when it's the property or I mean, the road is not up to standards the County will not accept it. Is this the case?

Mr. Hodges: Would you like me to?

Vice-Chair Shibuya: Yes, go ahead, Marc.

Mr. Hodges: Thank you, sir. I'm not familiar with all the engineering standards. It's a paved asphalt road which the residents paid for. It has speed bumps. There's County signage at the beginning. There's no signage along the road. It's flat and it's paved. Not aware of any safety concerns that there might be, but I'm not familiar with the exact County engineering standards, but the residents pay to keep it paved with asphalt.

Vice-Chair Shibuya: Okay. I noticed in the photo in here that it seems like it's just a one car lane. It seems like there's ironwood trees on the north side.

Mr. Hodges: Yes, sir

Vice-Chair Shibuya: That had sort of blown over into that area and I don't know whose kuleana it is, the owners of the roadway or is it the cemetery that needs to be maintained.

Mr. Hodges: I believe that those ironwood trees are right up on the property boundary belonging to the cemetery.

Vice-Chair Shibuya: And so that there's some encroachment there. It appears that just by looking at the picture, but you know, I don't, I'm not familiar with that area.

Mr. Hodges: I'm not sure exactly where the boundary is.

Vice-Chair Shibuya: Okay, thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Mr. Hodges?

Mr. Hodges: Yes.

Ms. Wakida: I take it this is...you have one rental upstairs, one rental downstairs, correct?

Mr. Hodges: It's, they're permitted as two separate units for long...so for long-term rental purposes they could be rented separately. However, we are gonna be renting them all together per the County policy, be treated as one two-bedroom house under short-term rental.

Ms. Wakida: Okay, so you are intending to rent to just one party for the whole house?

Mr. Hodges: Correct. That's the permit condition.

Ms. Wakida: Okay, thank you.

Chairperson Lay: I have a question for Public Works. Seeing that this is a private road, is it possible in the future that they could close this road and make it a gated community? 'Cause we got a lot of rentals down there. I mean, is it a official public access at the end there where they have to keep it open, so that road has to remain open?

Ms. Dagdag-Andaya: I believe they do. That's something I'll need to kinda double check with our Code, but as far as gating it, I don't...yeah, I'm not sure either. I'll need to check on that, but as of now, I mean, I don't know if... is that something you're concerned about for this?

Chairperson Lay: Yes.

Ms. Dagdag-Andaya: Yeah, I can check. I'll check right now.

Chairperson Lay: Director?

Mr. Spence: I would also note that we do get complaints if people try to close off public access to the shoreline and we follow up on those things. I believe this is one of the...there is a County Shoreline Access on this so they would not be able to close that off. So private road or not, they would have to allow the public access.

Chairperson Lay: Commissioner Ball?

Mr. Ball: However, what does that mean? 'Cause there is driveable public access and then there's walkable public access where the gate is there, but they have a little side gate. So now you have to...although the testimony was that there was most people walk down anyway, but just for future sake is there a definition between vehicular public access?

Mr. Spence: No. No, there's no differentiation. Just being somewhat familiar with this road, I find it really hard to believe that there would ever be a gate put up, you know, considering the cemetery is on the road, public shoreline access, et cetera, et cetera, it would be...you know, there's a lot of different people lives getting into them, roadway is not just...you know, I can't imagine this roadway becoming its own little gated enclave.

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

Vice-Chair Shibuya: Marc, on the photos that you show in 22-6, 22-5,22-7, 8, 10, 11, it shows a lot of clutter. And the trees that are not trimmed, it seems like it's overgrown. Also a barbeque unit that is listed or placed below the stairway and the stairway is a wooden stairway and that's the access in and out, I think that's a sole accessway. Can you explain some of these things because the picture that you show now this morning does not show all of this?

Mr. Hodges: Yes, sir.



Vice-Chair Shibuya: So there's a difference.

Mr. Hodges: Yes, sir. When we decided to apply for the permit there were long-term tenants there and those items belong to the tenant. So some of the items that they didn't want to take with them, I took to the dump, but the property has been cleaned up. And once we decided to apply for the permit, we gave them I wanna say almost 90 days notice and then began to clean the property up. So once they were able to find a place, I finished the clean up and it's now...well, sorry that picture is a little shady but it's now very clean. You can see my scaffolding on the back, I just finished painting the back, but the property is clean and clear now. But yeah, I apologize for the photographs in the application. When we took those photos, prepared the application our tenants still had notice to stay there for another 90 days so...

Vice-Chair Shibuya: Okay, 'cause I was concerned not only the clutter but I guess lack of area to hang their towels or wet trunks.

Mr. Hodges: Yeah, we're putting clothes lines.

Vice-Chair Shibuya: You are?

Mr. Hodges: Yes, sir.

Vice-Chair Shibuya: Okay, thank you.

Mr. Wollenhaupt: Just to...these reports, of course, have to go out considerable time. I've been out there a couple of times. I was out there the first time and they were definitely in the process of getting the place cleaned up. They also submitted as Mr. Hodges had said, their SMA for the windows. I went out there. I got that approved. So they were in the process of doing a lot of enhancements but the report has to come in and so now you're seeing and I've been out there to verify that it's being all cleaned up.

Vice-Chair Shibuya: Okay, well, it's just that I was looking at this and saying nah, it's not really commercial ready. I think you need to clean it up, but if you say it's cleaned up then, okay.

Mr. Hodges: Thank you.

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

**b) Action**

Mr. Wollenhaupt: Thank you, Members of the Maui Planning Commission. The Department's recommendation would be to approve this short-term rental under the accordance with Chapter 19.65.030 and that would be subject to the 23 conditions that are outlined. These conditions I won't go through as they are standard and typical for short-term rentals that have been approved in the past, but as you're the approving body, I have to outline each of the 23 conditions which indicate how they are to operate. The short-term rental permit would be valid until September 10, 2014,

subject to the further time extension process pursuant to 19.65.070. And so in consideration of the foregoing, the Department would recommend that the Commission adopt the report and recommendation prepared for the September 10, 2013 meeting as the findings of fact, conclusions of law, and decision and order and authorize the Director to transmit the said written decision and order on behalf of the Planning Commission.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Question on the time frame recommendation no. 1, September 10, 2014. Why is it only a year?

Mr. Wollenhaupt: Part of the process for the short-term rentals is that we're giving all the short-term rental permits one year and then they're doing a "automatic extension": for another two years as long as there are no complaints. If there are no complaints, the extension will be for two years, and then at the end of the total of three years, it will from an extension into a renewal. Now at the end of three years, the renewal process will be more detailed. They'll have to update their insurance, and they'll have a compliance report, but the Council felt that one-year would give them the opportunity, if there are objections then the Director has the ability to bring it back here, but rather than taking it through the whole compliance report, the whole renewal process, it would be a new extension process. So if it works well, they're gonna get three years.

Chairperson Lay: Commissioner Ball?

Mr. Ball: With that, I will recommend an approval of the Short-Term Rental Home located at 45 Loio Place, Paia, Maui.

Chairperson Lay: We have a motion. Do we have a second?

Ms. Wakida: I second.

Chairperson Lay: Motion by Commissioner Ball, seconded by Commissioner Wakida. Any discussion on the motion? Commissioner Shibuya?

Vice-Chair Shibuya: Just a question with Director. I understand that short-term rental type of applications in some districts are three years because there's a couple of cases that's coming up next, it says for three years and this one is only for one year. Why the difference?

Mr. Spence: It probably--

Vice-Chair Shibuya: I'm just following up Commissioner Ball's--

Mr. Spence: I believe in the Code it says, and I'm sorry, I don't have that in front of me. I believe in the Code it says, short-term rental homes that permit is granted initially for one year. There you go. I guess I better bring my Ipad. Okay, initial short-term rental home permits shall be valid for a maximum period of one-year with an extension of two years and this 19.65.070, Item A. So initial one. What you're about to see with these ones in Hana are the three years that's gonna be for the

Special Use Permit that goes along with the short-term rental home.

Vice-Chair Shibuya: Okay, that's correct. Okay.

Chairperson Lay: Any more discussion on the motion? Commissioner Hedani?

Mr. Hedani: I guess this is for the Director. When the question of short-term rentals came up there was a lot of debate, there was a lot of controversy relative to short-term rentals. Part of the discussion was, and it's very evident when you look at this particular map is that when a short-term rental establishes itself in the neighborhood, it affects the surrounding properties. The value of their property goes up. I'm sure the assessed values of the properties around it go up to the point where if you didn't have a short-term rental you would be encouraged to sell your property because of the burden of real property taxes and rising values or they would make you a millionaire, but you wouldn't be able to live there. They would make you an offer that you couldn't refuse. I think that's probably what's happening in this neighborhood and that's why the 500-foot radius provision was put into the law. Not only is the 500-foot radius being violated, it's being violated four times in this particular case and I have a problem with the Department recommending approval of something under that basis because the part of the law that talks about the 500-foot radius is to minimize the impact to the neighborhoods in which it operates, yeah. And it's going to consume this entire neighborhood. The question that was asked of the Director was why are there all these short-term rentals within the 500-foot radius, the answer was basically it was done before the effective date. The effective date has passed. What gives us an ability to approve it in spite of that at this point?

Mr. Spence: Okay, two comments, Commissioner Hedani's, question and comments. First off, real property tax is based on the use. I mean, these people's real property taxes are gonna go up because it is considered a commercialized home kind of use, commercialized residential I believe is the term they use. Okay, but that, that use is not, is not a permanent use. It's not like getting hotel zoning or business zoning. So it...because these permits not transferrable, they do not go with the land. So we've talked to Real Property Tax about that quite a bit and they've talked to the County Council quite a bit on this subject, they're taxed at a commercial residential rate so long as there is the short-term rental use. So it's not...it doesn't raise everybody's property values because you have some kind of permanent entitlement. The next person that moves into this house may not choose to or owns any of these properties they may not choose to do a short-term rental in which case, the property tax will go back down because there is no commercial use. Okay, so that is not a permanent increase in the property tax because there's no permanent entitlement of the home.

The second thing, and maybe I should just say it different way, I mean, the Commission has expressed concern about preserving the character of the neighborhood and I think it was Commissioner Wakida said, what's the higher standard? This is the higher standard. The Council wrote into this ordinance, okay...when the Council wrote this ordinance they wanted people to come in, people who are already operating illegally to come in and apply for permits. Okay, well, you know, the race is on what, you know, who gets there first, et cetera, et cetera. The Council said, okay, if you can apply before December 31, 2012, you can, you know, it doesn't matter how many are in the neighborhood, more than likely the three without looking at the record, I would say more than likely the other three on the property were operating prior to that law taking you know, being

enacted, you know, already...staff already discussed it, you know, the property owners live elsewhere, those are probably a second home. So the Council made that provision that people could come in prior to the end of last year and apply and there would be no penalty, there would be no having to go to the Planning Commission et cetera. If you apply after that end of last year, then it gets bumped up to this higher standard where there's a review of a Planning Commission, by the Planning Commission. And so the...so the question is, is this...is this...addition of this particular rental is that going to detract from the character of the neighborhood or not? We recommended approval partially because, you know, the owners live here. They're longtime residents of Paia and Haiku. I recall, Jonathan Waxman, Marc's father was Benni D'Enbeau's husband, you know, former husband, who was part of the Paia-Haiku CAC for the community plan. I mean, very involved family within the community. This is not...these are not absentee owners. These are not people who are not responsible to the community. They live here. They have lived here, you know for a couple generations anyway that's why we recommended approval because this particular family does fit in with the community. But it is still that said, it is still up to the Commission to make a decision.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well, I'd like to make a comment. In response to that, whether the owners are old buddies of everybody and lived here forever or not, I don't think it's the big relevance. It's one more unit that's been pulled out of long-term rental here for somebody to rent and regardless of who owns it. Whether it's, you know, a wonderful family that's lived here forever or somebody in California.

Mr. Spence: Okay. And I will say, all these disclosures, I've known Marc for probably close to two decades. He actually intervened...well, he didn't intervene, he was a witness in an intervention on a project so, that I was working on as a Staff Planner. So I would hardly say he's a buddy. I would not make that characterization.

Mr. Ball: He's a buddy of mine.

Ms. Wakida: But I think you get my point?

Mr. Spence: I understand.

Ms. Wakida: Regardless of who owns it, it is that to me is...he may be a sterling manager but that's kind of irrelevant to the higher standard.

Mr. Spence: Okay, and I'm not saying you know, just because they're a kamaaina family that this should be passed. I'm saying my experience with them is that they're very responsible. So that's the point I was trying to make.

Mr. Wollenhaupt: Oh, I'd like to make a comment. You know, I take these really seriously. I went and looked at the neighborhood and I really did try to follow the criteria about the past noncompliance with government requirements, the correspondence that was received, any past complaints, whether this nature and the substance of the protests for the short-term rental homes,

and of course, looking at the number and the distance of the homes. So I tried to be very objective in looking at this in relation to other communities where we've had, and you're gonna be seeing these coming where the neighbors are protesting. Certain South Maui communities they're gonna be short-term rentals within 500 feet and you have very vocal, vocal opposition. And I did put a lot of weight, these people were notified twice all the neighbors, no phone calls, no e-mails, no objections of any kind and there are many local families that live in this, within 500 feet. Not everybody within this neighborhood have second multimillion dollar homes. So one has...I consider that in balance of everything. The property has been significantly upgraded and cleaned up and this is again, as our Director said, it's a nontransferable. In fact, ironically I'm even getting phone calls now from some people who have short-term permits when they have found out how much their property may go up based upon only their lot because now it's considered, actually I believe it might go into hotel, they're actually considering withdrawing because they're not sure if they want to do it. So these people take on a high level of responsibility and I look at all the factors when I made the recommendation to our Director for approval. So I just wanted to say that.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I find this application very troublesome in the sense that they had cleaned up the clutter, they had done the due diligence in terms of commercializing this operation. I find that that's good that they have done that. I am very much troubled as Commissioner Hedani is, in terms of the density, you can't get any denser than having four in line types of units and to me that's very problematic. True you have very quiet neighbors, they call it cemeteries bordering the area, they don't complain, and they don't voice their objections, but I do feel that when we start looking at the map and we start looking at density and we start looking at the intent of the 500 feet, I think this one is one is just appalling. I would not be able to support something like this. Even if they were vocal neighborhoods or non vocal neighborhoods, I find just four units right next to each other along the same shared roadway is very troublesome for me.

Chairperson Lay: Commissioner Ball?

Mr. Ball: All kidding aside too, and the reason why I support this is not because of my relationship with the applicant's management. And I, too, look at that same situation where their unit's right next to each other and if the neighborhood was set up a little different where it was more of a traditional neighborhood with houses, many houses around it, I would say, yes, we're gonna create a problem here. I think the location kinda lends itself to this set up because there's the ocean on one side and then there's a cemetery on the other side, and the cemetery will probably never be built on. So with that, and the fact that there was no complaints either with the notices sent out, you know, if there's an outcry from the public, believe me, Paia will be the ones that will be vocal about it. So you know, with that evidence that there is no complaints is one of the big reasons why I'd support this because I don't live in Paia and so, you know, I would have no say yea or nay to this. But I like that the beach access will, is gonna remain there and there's a lot of parking and stuff like and that and all the parking is off street for these rental units so it doesn't impact the shoreline access parking, and that's the reason why I would be in favor of this. But I do know the concerns of the other Commissioners as far as the impact, the density impact of those other rentals.

Chairperson Lay: I have a follow up question, you know, from Mr. Hedani, towards the Director.

We have one resident on this street. If this did pass would this raise their taxes on that property?

Mr. Spence: It should not.

Chairperson Lay: Is there a grandfather clause on that?

Mr. Spence: There's no grandfather clause. What they're looking at is it owner-occupied or is it, I mean, even a long-term rental...if it's owner-occupied they qualify for the homeowner's exemption. If it's a long-term rental then you know, they don't get that exemption, but it's still taxed at a residential rate not a commercial residential rate which is the higher rate. And they're like Staff pointed out there's some discussion of whether they should be taxed at a hotel rate or not 'cause that's gonna be an interesting discussion at Council. But no, the gentleman, the one property owner's taxes will not go up because it's not being short-term rented at least to our knowledge.

Chairperson Lay: Kurt, you have something to say?

Mr. Wollenhaupt: I think there's been perhaps an assumption that's been made here that short-term rentals are automatically going to raise...automatically going to increase property values notwithstanding that does not how these—I guess short-term rentals are going to increase the assessed value of the property. I'm not sure that that's necessarily the case. There are many, in some neighborhoods I have spoken with it would feel that short-term rentals are actually...they would reduce their value in their opinion. So I don't think we can jump to the conclusion that oh, more short-term rentals mean the assessor is gonna out now and assess people. I don't think the facts are in on that at all.

Mr. Spence: And I think that that's a distinction to be made. The value of the property may not go up, the rate at which they're taxed is higher.

Mr. Wollenhaupt: And only for the short-term rental.

Mr. Spence: It's still a, you know, if a rental home is three-bedrooms, two-bath on 10,000 square feet or whatever the case may be, it's still that with short-term rent or single-family occupied, it's just the rate itself that's different.

Chairperson Lay: Commissioners any more discussion? Commissioner Hedani?

Mr. Hedani: I disagree and here's why. When a short-term rental goes in it generates a hell of a lot of money. A long-term...we've evicted a tenant, a long-term tenant in this particular case was paying rent on a monthly basis. It's gonna go to daily rentals, weekly rentals, monthly rentals, short-term rental, I don't know what the going rate for the oceanfront units next door is, this one's gonna be slightly less, but I've heard of short-term rentals that rent for a very high amounts of money. That money generates the ability to improve the property further which is a good thing in some cases. The improvement of the three properties, four properties in this particular case all being improved by the income stream that comes from short-term rentals raises their value from the standpoint of what the property is worth. So the four properties adjacent to each other have higher value than the four properties up the street because they have the ability to keep making

improvements to their properties from the rental streams that come in whereas the others don't. The process can continue until it consumes the whole neighborhood because there's enough money being spun out by short-term rentals that enough may be not enough, one more may be better, and the property next door is valued less. I'll make 'em an offer they can't refuse. They'll be millionaires but they just can't live here anymore. Where do they go? Not my problem. Where did the long-term renter go here? Not my problem.

Chairperson Lay: Kurt?

Mr. Wollenhaupt: I believe Ms. Gina Flammer who is intimately associated with this whole discussion has some illuminating information on the property taxes.

Ms. Gina Flammer: So when we discussed the bill when it came to you, some of you were here, we had this exact same discussion. We called real property tax and asked for someone to come and address the question. Marcy Martin came who's one of...can't remember her exact title, she explained that they look at like properties. So a property that has a different tax rate will not be compared to each other. So a short-term rental will not affect the rate of the property next door if it's not a short-term rental. They look at 'em in different categories. So it, it...I understand your point Commission Hedani, but from the tax perspective, they do not use the assessment of a property next door if it's in a different tax classification.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Okay, let me ask the question in a different way then. Property... Real Property Tax Division generally uses market data in order to establish values within a neighborhood. Market data would give you what the value of the property is if it's sold. In this particular case, one, two, three, four if we approve it, properties adjacent to each other would be valued higher or lower than a normal residence?

Ms. Flammer: It would depend. However, those homes they don't look at just the street, they look at the entire area when they're doing their valuations. The houses that have the permits are not included in that pool.

Mr. Hedani: Are you sure?

Ms. Flammer: Yes, we had Marcy Martin come and we asked her this exact question because it's very important. We wanna make sure we're not affecting residential neighborhoods. We would have put in a different remedy if the answer had been different. So when we heard from them that they don't look at, you know, the properties and compare them, we didn't feel like we had to put other conditions in the law to protect residents.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I have a friend that has a property in Kelawea Mauka. He just built his house. It's just a square house, it has plywood sidings and they valued his property at over a million dollars. He built it for \$300,000. The rationale that Real Property Tax gave him for the valuation was the

properties around him were sold at close to a million dollars and therefore, his property was applied...his taxes were applied on that basis and you're saying that doesn't apply here?

Ms. Flammer: No, it does, but if the properties around him have a short-term rental home permit or a bed and breakfast they're not part of the pool in which they do the assessment. So those houses that are valued at a million that were sold didn't have permits, but the ones that did, were not included in that pool. That's how it was explained to this Commission by Real Property Tax.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I know reality and I know what was said. I was in that briefing and I'm one of the affected persons in the Kula area. There is a house that was built next to our farm. It's \$1.3 million and our farm actually was assessed higher. So I went to the Tax Board and appealed and they listened. But the problem here is that you're putting the homeowner for one year into this type of problem here. It was assessed, the taxes went up, I couldn't change it until the next year after I made the appeal and prevailed on the Tax Board. Okay, that's reality.

Chairperson Lay: Commissioners, any more discussion? Seeing none, Director, can you repeat the motion?

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

Chairperson Lay: Call for the vote. All those in favor.

Mr. Spence: Two, three, four ayes.

Chairperson Lay: Those opposed?

Mr. Spence: That's two nays.

Chairperson Lay: Once again, I have the honor of seeing this through. So I'll have to say that I am very disturbed of it being four rentals at the end of the street. Worried that it's gonna be a takeover in that area where public would might possibly be denied I guess a comfortable access to that area as it was before. But also seeing that this is a resident who's been here for a long time. The place has been fixed up a lot. There's a big improvement in that. So there's hard balance to work out in that already. I'm gonna have to follow the Department's recommendations and see this through. Thank you. And congratulations. That was a rough one.

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

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



Chairperson Lay: Let's take a break.

A recess was called at 9:59 a.m., and the meeting was reconvened at 10:12 a.m.

Chairperson Lay: The meeting is now called back to order. Our second agenda item?

Mr. Spence: Commissioners, these are your Communication items. From the Hana Advisory Committee to the Maui Planning Commission with their recommendations for the next one, two, three items are...well, the first one is a bed and breakfast home request by Mr. Francis Kennedy. This is for the Special Use Permit and the Staff Planner is Ms. Gina Flammer and you will be seeing her for the next couple applications.

### **C. COMMUNICATIONS**

- 1. HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting its recommendation on the request by MR. FRANCIS KENNEDY for a State Land Use Commission Special Use Permit in order to operate the Hana Garden Room, a one (1) bedroom bed and breakfast home on property situated in the State Agricultural District at 255 Kalo Road, TMK: 1-3-009: 036, Hana, Island of Maui. (SUP2 2012/0031) (G. Flammer)**

Ms. Gina Flammer: Good morning, Commissioners. I volunteered to take Hana just 'cause I thought it was important for the residents out there to feel comfortable with government so I was...I really enjoy being out there. I wanted to just give you a little bit of background on how it works when you have a permit in Hana 'cause you're just starting to see it. This is the very first one, but you're gonna see a bunch that are gonna come through.

Generally the Hana Advisory Committee has been almost grateful to see people come in to try to get compliant. So they've thanked the people that have come before them. They also have made comments about the importance of some of the smaller parcels and the ag. They really understand the importance of food security out in Hana. So those have also been some very positive comments to the applicant. Pretty much most people you see out in Hana have ag on their property. It's just kinda way of life out there. So it's been very enjoyable to go out and see the different farms and what they're producing. A lot of them are commercial as well.

So today, we have Mr. Frank Kennedy who's doing a bed and breakfast in one of his bedrooms. He usually does a one-night stay. He's lived on the property and farmed the property for 34 years. He is a commercial farmer. He's one of the few pohole farmers. I got to learn what that is. He also wholesales other items. It's in the staff report and I'll get to that when I do the presentation. I'll let you know that map is in Exhibit 1, it's Kalo Road which is before Hana. We also just wanna point out that he did have four letters of support. I think one was from the neighbor next door.

Okay, so again, it is the...this is a bed and breakfast. It is the owner's home. We're not talking about a second farm dwelling or an ohana. This is his actual home. He's got about 75 percent of

the land is used for agricultural purposes. I'd say probably even more than that just from walking around the property and looking. I just wanted to let you know there's currently six B&Bs, approved B&Bs in the Hana region. There are five applications including this one that are being processed. We just got...I got one on my desk today that brought it to five. So they are, they are coming in, and the cap is 44 out there.

Oh, a little hard to see maybe we could...there you go, okay, it was a rainy day when I went out. So this is as good as we get here with the picture. The house is there to the right. Real modest home. You can see the entrance. There's a separate entrance right to the bedroom. That gives you a little better view of what it looks like. Those are the floor plan so you can see where the guest room is located. It's only a two-bedroom house. There's a picture of what the room looks like.

And then here's the farm the plan. It's the site plan. So you can see the house up in the front. Pretty much everything in the back is used for agriculture. Included in Exhibit 3, you have a copy of this in your application, and it shows what he wholesales and then also what's just used as nursery stock. I see he has chickens. I was actually out there a couple weeks ago and he had eggs for sale. I don't even know if...I was going to knock on the door, but I didn't wanna freak him out. It was on the weekend. So he does do more than just what's on there. And then here I'll just show you some pictures that you can see what it looks like. That's the pohole fern if anyone's curious what it looks like in the ground. A lot of banana on the property. Lot's of fruit trees as well. I think that's papaya on the right there. And then he's been planting all along too with the chickens. They not only eat the bugs but they do produce the eggs.

So in terms of the agency comments there were no comments from the police. The State Office of Planning also had no comments. And then there were four letters of testimony that are included in your packet. One of the people also came and spoke at the hearing and that was nice. It was someone that's known the applicant for quite a long time. So there we go. Do you have any questions? I do have the applicant here. It's Mr. Frank Kennedy.

Chairperson Lay: Does the applicant wish to say anything at this time? No? Right now, I'm going to open up to public testimony. If anyone wishes to testify, step forward to the mic, identify yourself and you have three minutes. Seeing no one, public testimony is now closed. Commissioners, you have any questions? Commissioner Wakida?

Ms. Wakida: My questions are just for educational purposes. You kind of flagged out a pohole farmer and you showed a slide that had pohole.

Ms. Flammer: It's a fern.

Ms. Wakida: That's a type of fern. But what makes him a pohole farmer other than is it just an ornamental? This is something he grows on the property or what's the?

Ms. Flammer: Oh, no, no. He wholesales it. You wanna come talk about...I'm gonna have the applicant come up and explain in more detail.

Mr. Francis Kennedy: Good morning, Commissioners.

Chairperson Lay: Just identify yourself please.

Mr. Kennedy: Oh, Francis Kennedy, the applicant. Basically what we do is it started growing on the land on its own and we developed the...as it started expanding we developed pathways and different things to be able to harvest it, and we have a couple of different commercial clients, Rodeo General Store in Makawao. We've list it on Craig's List and I'm happy to say that there is a lot of County people that do call and they order from us.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So this is a...I mean, are you selling the cuttings or do you sell the whole plant?

Mr. Kennedy: No, no, no, just the fern tips. It's similar to like a fiddle back fern. It's curled and so we sell it that way.

Ms. Wakida: Thank you very much.

Chairperson Lay: So this is for salads, human consumption?

Mr. Kennedy: Yes, it is. You can cook it, you can use it like asparagus, you can eat it raw.

Ms. Wakida: Okay.

Chairperson Lay: Okay, any more questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Just one. On the floor plan, does the guest room have a door? Does that door lead to outside?

Ms. Flammer: Yes, there's a...it does. Let me...there's a...let me show it to you. I didn't take a picture of the door, it's off to the right of the photo right there. I'm just gonna show you where the door is.

Ms. Wakida: Right, I could see that. But what it leads into is a covered walkway of some sort?

Ms. Flammer: Yes. Look at some pictures, there you can see the door in this photograph and it was kind of interesting, I showed up as the same as the guests. They were actually behind me driving on the way out there. So I got to kinda watch the whole check in and how it works and he was a fireman and one of the things I do is I check the fire escape plans to make sure they're there and there it was on the back of the door leading you outside, but in a case like this, the fire escape plan is not as important as in other ones. But I think he felt a little safer knowing that there it was. I also check for the fire extinguishers. I made sure that that was there, and then I checked to make sure that the smoke detectors work.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Gina, talking about fire escape plan, does it have an alternative if the doorway is

locked?

Ms. Flammer: No, I think that might be...

Mr. Hedani: Is there a window of something that you could use?

Ms. Flammer: Oh, there has to be. For it to be a bedroom, it has to have...to adhere to Building Code, it has to have an egress window and the egress window has to meet certain specifications. Thinking of the current Code, I think it's 42 inches high right now, so it has to be enough so that somebody can get out and it has to be a certain...big enough for a fireman to get in and for a person to get out.

Chairperson Lay: Commissioner Ball?

Mr. Ball: I have a question sort of along those lines. You know, these rural properties are very far away from a fire station and things. Is there a difference with the fire extinguishers that are supposed to be there? I mean in size?

Ms. Flammer: All are required, all are required to have a 2 AB 10, I think that's the minimum which is actually not the ones they sell at Costco, the tall, skinny ones, it's what I have to tell people. It's the number one thing I find when I see the photo. We ask for a photo in the application just so we can flag it right away if it's not the correct one. It's the short fat one. So they're fairly large. And that's from the Fire Department that gave us those specifications.

Chairperson Lay: Gina, in your graphic, you have below as a addendum listing the farming, the farm activity. Why it's not acceptable on the side of the streambed and the rotation ...(inaudible)... and heavy rainfall, just a question on that.

Ms. Flammer: Sure. As far as I understand it, that's considered unusable land. And unusable land is actually backed out of the whole and then the percentage comes off of what's left. So technically what our farm plan examiner would have done is she would have taken the entire the lot, she would have backed out those areas and then she would have looked at the percentage. So I think we had two different percentages going on, one with 70, one with 75. I think that's because one backed out those two areas.

Chairperson Lay: Okay, this is back to the applicant then. So I'm familiar with the fern isn't it like prime growing area in that streambed for this type of fern, no?

Mr. Kennedy: Yes, it is.

Chairperson Lay: Come up to the mic, please.

Mr. Kennedy: Yes, it is. It grows up and down all that streambed and a number of other streambeds in the whole Hana area.

Chairperson Lay: It actually would be a usable area for you as far as your farming.

Mr. Kennedy: Well, the part where the fern grows is on the sides of the streambed. The streambed itself is, you know, like it gets washed away periodically. So it grows right up to the edge of the streambeds.

Chairperson Lay: Okay, thank you. Commissioners, any more questions? Commissioner Hedani?

Mr. Hedani: Gina, is there a 500-foot requirement and are there any other units within—

Ms. Flammer: Good question. I should have mentioned that in the beginning. Yes, there is a 500-foot requirement for all B&Bs countywide, and no there is not another bed and breakfast or short-term rental within 500 feet. But remember these are real big ag lots on this street. They go anywhere from I think 4 up to 18 acres.

Chairperson Lay: And just for clarification again, Gina, this is how many do have in Hana right now as far as bed and breakfast?

Ms. Flammer: We have six permitted bed and breakfast and we now have including this application we have five that are in, and the cap is 44. I did some outreach out there to get people to come in. We may do it again. I know there's probably more out there. I think they're waiting to kinda see what happens.

Chairperson Lay: Okay. Any more questions, Commissioners? Can we get the Department's recommendations at this time?

Ms. Flammer: Sure. Okay, we have seven conditions which you're all familiar with the last being that the farm has to remain implemented while the permit is valid. 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 the March 28, 2013, that was the Hana Advisory meeting date as its findings of fact, conclusions of law, and decision of order and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission. So we'll have to reword that a little bit. So that would be, and recommends that the Maui Planning Commission accept the report that you have as the findings of fact, conclusion of law, decision and order.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: As an avid consumer, rabid consumer of pohole fern, I move to accept the Department's recommendation.

Chairperson Lay: Motion by Commissioner Hedani. Commissioner Shibuya?

Vice-Chair Shibuya: I second it.

Chairperson Lay: Seconded by Commissioner Shibuya. Any discussion on this motion? Commissioner Wakida?

Ms. Wakida: Just one. This is a kind of farm plan application that I love to see where there is real serious effort of farming and it's established and so I'm really happy to see this happening in Hana. Wish it were happening in more places.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I am endorsing this. I accept this bed and breakfast application because I think it's sorely needed. This opportunity by a local family who supplement their agriculture income. And so I think this is outstanding.

Chairperson Lay: For me, I think it's a great thing because people are coming and they're a little apprehensive of applying so I'm glad people are coming out and I'm...you know, we all wanna make it all legal out there and make things happen in Hana. Can we have the Director repeat the motion?

Mr. Spence: The recommendation or the motion is to approve as recommended by the Hana Advisory Committee and by the Planning Department.

Chairperson Lay: Call for the vote. All those in favor?

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

Chairperson Lay: Motion carries.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by Hana Advisory Committee and the Department.  
(Assenting - W. Hedani, W. Shibuya, K. Ball, M. Tsai, S. Duvauchelle,  
P. Wakida)  
(Excused - J. Freitas, J. Medeiros)**

Chairperson Lay: Our next agenda item?

Mr. Spence: Our next one. This one is a short-term...this is a two-bedroom short-term rental home in Hana, and this is a recommendation by the Hana Advisory Committee to the Maui Planning Commission. The applicant is Mr. Lawrence Hansen, and the Staff Planner is Ms. Gina Flammer.

**2. HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting its recommendation on the request by MR. LAWRENCE J. HANSEN for a State Land Use Commission Special Use Permit in order to operate Hana's Heaven, a two (2) bedroom short-term rental home on property situated in the State Agricultural District at 355 Waiohono Road, TMK: 1-4-011: 005, Hana, Island of Maui. (SUP2 2012/0028) (G. Flammer)**

Mr. Gina Flammer: Okay, hello again. Now we're looking at short-term rental. Again, this is one

of the first ones that came in. I do wanna point out that the applicant does live on the property. However, he travels. So he came to the Department and asked what do we recommend and I looked at his travel schedule and he decided he'd like the flexibility so he did come in as short-term rental. I also wanna add that he recently added two bee hives. He's got a farm plan and then a future farm plan that you'll see in there. He purchased the property with his wife in 2009, and they've been increasing the farming. So as part of the future farm plan he's already put in the bee hives. He's got two of them right now. I think he's already put in 80 coffee plants and I think he's planted some 30 fruit trees. So let me go ahead and show you some pictures.

Here's the unit itself right here. It's a two-bedroom farm dwelling. It's under the 1,000 square feet. Now this one's located on the other side of Hana. There is a...I think I've got a map in here. If anybody has been out there recently where they're doing the bridgework, he's right before there and then you head up in that direction. He's got an implemented farm plan that right now it's 58 percent of the property, but he's increasing that.

So I'm gonna give you some updated numbers. We have one short-term rental that's been approved out in Hana, and that was an administrative approval not on ag land and it was three, under four bedrooms and then we have 16 including this one that are pending right now. We had a meeting...this one was March 23<sup>rd</sup>, I think or 28<sup>th</sup>. We had another meeting where there were four applications at that meeting. I think three of them were...two were B&Bs, two were short-term rentals. You're gonna see the two today. We had another meeting, May 23<sup>rd</sup> where we had two applications. I think one was a short-term rental, one's a B&B, you 'll be seeing those in the next couple months. And then we're going out at the end of the month and we have four and I think one is a B&B and three are short-term rentals. So we're trying to get 'em to you as fast as we can. It really is a long process when you go out to Hana.

Okay, so here's the map that shows you where you are. So Hana's a little further up. So they're on the other side, kinda the Kipahulu side. Here's a little better view of the dwelling. Okay, so I'm gonna show you the agriculture now. Oh, I put his written description in like I do with most of them. And then here's the implemented farm plan. So here's the current farm plan and then he's got the list where everything corresponds to it. And then he's got a future farm plan. Which doesn't count towards the implemented farm plan. They only look at what's actually there, but I thought you might like to see that he's got planed. He's only owned it since '09. So he started coffee production when I was out there. They can take a little while till they get ripe. He's also got a...in the front of him he's got a bit of a hill so had to really look and decide what he could plant on that hill. So he's trying out the coffee to see how it works, and you can see the compost pile with all keiki coffee plants in front. And then just some of the citrus trees. Some are mature but a lot of them are...were planted within the past few years. I think that's the mango on the left. There's quite a bit of turmeric. I didn't know what that looked like till I went out. And then that's the bamboo. There's two different types of bamboo on the property. There's some coconut as well.

And then again, if we take a look at the comments, there were no comments from any of the three agencies. The Police, Real Property Tax and then the State Office of Planning, none of them had any comments. We did have some letters of support that are also included in your staff report. And then I do have the applicant here if you have any questions.

Chairperson Lay: Does the applicant wish to say anything at this time? Commissioners, any questions? Right now, I'm going to open up to public testimony. If anyone wishes to testify, step forward, you have three minutes. Seeing none, public testimony is closed. Commissioners, any questions? Commissioner Shibuya?

Vice-Chair Shibuya: I just wanna ask about this gulch. When it rains, does it run or is this gulch running all the time?

Mr. Lawrence Hansen: My name is Lawrence Hansen and it runs periodically when there is water up in the crater and then it runs at that point.

Vice-Chair Shibuya: Okay, 'cause a good of friend of mine and his wife were washed away and I'm concerned that now you have commercial folks that are not aware of some of these idiosyncracies.

Mr. Hansen: Yeah, we track it, and we basically see where the water does run when the run is running and we isolate those areas.

Vice-Chair Shibuya: Okay, and in this particular area are there some features that you can somehow show that if it gets to this level you better not try to ford it?

Mr. Hansen: Oh yes, oh yes. Basically we've researched it and at any level you should not pass through in a vehicle or walk through.

Vice-Chair Shibuya: That's right. Okay, thank you.

Mr. Hansen: And we have this posted in our cottage for guests.

Vice-Chair Shibuya: Okay.

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

Vice-Chair Shibuya: Gina, maybe you might know this. Access of the government road by the fire truck is it easily accessible?

Ms. Flammer: I didn't include it. I have a lot of pictures that I was gonna put in and now I remember back when I was there. It's one of the things I was really interested to see. I take my own car when I go out which is not an SUV and I had no trouble, and also I often measure, but this so wide, I didn't have to measure.

Vice-Chair Shibuya: Very good. Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: A question about the farm plan. It's nice to see all these plantings and things and some plants to sell locally, but the owner apparently travels. So who does the farming? Who manages the bee hives? Who's taking care of the property?



Mr. Hansen: It's one good thing about the short-term rental is that we're able to employ neighbors and people in the community where it's very hard to get jobs in Hana. So it's to our advantage. Even when I'm around we do employ people who we feel that since they work with us they do have income and that's very important us. It's almost a tradeoff for the rental in exchange for giving people in the community jobs.

Chairperson Lay: Follow up, Commissioner Wakida?

Ms. Wakida: Yeah, one more question. I can't find it right now, but I read in here some place part of the farm plan was coconuts. Who buys coconuts? I mean, in my experience, we can't give...we cut 'em down and give 'em away. Who...is it really a commercial venture?

Mr. Hansen: We have had people who buy keikis because they do it for women who are making different creams with the inside, the really soft inside for facial creams and so that's who's been buying our coconuts recently.

Ms. Wakida: Oh, well that's good. So somebody actually comes in and buys coconuts.

Ms. Flammer: Maybe I can answer that. You asked that question on another one. So when I went out to Hana most recently I was talking to the head of the Hana Business Council and I asked him about the coconuts. And the biggest coconut buyer in the area is Coconut Glen. I don't know if anybody's ever had the ice cream as you, oh, you'd love it. It's a nondairy ice cream that's on the road. He does tremendous business. He's who buys most of the coconuts. Coconuts has also become a, I don't wanna call it a fad, but it's become a health issue. You can buy the coconut water that's 2.30 at Whole Foods for one. It's \$1.65 at Mana. But for people that are allergy sensitive or just looking for a new healthy lifestyle they eat a lot of coconut and coconut type of products. So the value of coconuts have gone up. I think they're \$5.00 a piece now. I think they're \$6.00 at Twin Falls. So you should sell your coconuts. You'd be surprised.

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

Mr. Hedani: Did the Hana Advisory Committee have any additional recommendations over and above the Department's recommendation?

Ms. Flammer: I'm sorry. I should have brought up a little more what they had to say. This one went really quickly. I don't know if it was this particular one, I'd have to read the minutes again. They talked about the importance of these small farms. And that was about it for his. During the first couple ones they did ask a lot of questions, but most of their comments were positive ones regarding the farming and I think there were some recommendations on how to get rid of for the next applicant, how to get rid some of his cutworm problems. It was really an interesting discussion. But you can see in the letter there, I would have included anything extra that was recommended by them.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Just a quick question to the applicant. What kind of rates you're gonna charge for your

property?

Mr. Hansen: What type of what?

Mr. Tsai: What kind of rate are you gonna charge?

Mr. Hansen: Rate to the individuals renting you're saying? We do it by the amount of people staying at our cottage. We have up to four people. We do not wanna flood our cottage. So we have rates for two people, three people, and four people.

Chairperson Lay: Answer your question?

Mr. Tsai: Not really.

Mr. Hansen: Did you wanna know the amount?

Mr. Tsai: Yeah, the amount, I guess.

Mr. Hansen: It's 250 for two, 280 for three, and 320 for four, and if they stay more than four nights we give 'em a 20 percent discount.

Unidentified Speaker: And by the way, that was a free commercial for you.

Mr. Hansen: Yes.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Do you have a septic or a cesspool?

Mr. Hansen: Septic.

Vice-Chair Shibuya: Thank you.

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

Ms. Flammer: Okay, in consideration...again, we have the seven typical conditions. In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Hana Advisory Committee and the Planning Department's report and recommendation prepared for the Hana Advisory Committee meeting on March 28, 2013 as its finding of fact, conclusion of law and decision and order and authorize the Director of Planning to transmit said recommendation and recommends that the Maui Planning Commission accept said recommendation.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I just make a motion to accept the Hana Advisory Committee's recommendation as well as the Planning Department's recommendations, conclusions of law, decision and order.

Chairperson Lay: Motion by Commissioner Shibuya. Do I have a second?

Mr. Hedani: Second.

Chairperson Lay: Second by Commissioner Hedani. Any discussion on the motion? Seeing none, can we repeat the motion?

Mr. Spence: The motion is to approve in accordance with the recommendation by the Hana Advisory Committee and the Maui Planning Department.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes.

Chairperson Lay: Motion carries.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by Hana Advisory Committee and the Department.  
(Assenting - W. Shibuya, W. Hedani, K. Ball, M. Tsai, S. Duvauchelle,  
P. Wakida)  
(Excused - J. Freitas, J. Medeiros)**

Mr. Spence: Thank you, Commissioners. The third Communication item is also Hana Advisory Committee review of a two-bedroom short-term rental home in Hana. The request is for a State Land Use Commission Special Use Permit, and the Staff Planner is Ms. Gina Flammer.

- 3. HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting its recommendation on the request by ROBERT and WENDY HOREN for a State Land Use Commission Special Use Permit in order to operate the Hale Nanea Short-term Rental Home, a two (2) bedroom short-term rental home on property situated in the State Agricultural District at 5440 Hana Highway, TMK: 1-4-003: 051, Hana, Island of Maui. (SUP2 2012/0018) (G. Flammer)**

Mr. Gina Flammer: Okay, and so again, we're looking at a short-term rental. It's a two-bedroom farm dwelling. The applicants live in Hana so they manage the property. He also farms the property. So he's there quite a bit. Let me go ahead and show you some pictures. Give you a little more information here. Again, it's a two-bedroom. It's located just on the other side of Hana along Hana Highway. The owners are residents and the implemented farm plan is about 70 percent of

the property.

I believe this is the owner that had to change out a window is that right? Yeah, our home inspection form one of the areas that we didn't use the current Code was egress windows. So this owner did actually have to lower his windows to current Code. And again, I included the applicant's written description in there. And then you have a copy of the farm plan, but let me show you what it looks like. So there's a lot of bananas on the property. The property is kinda divided into two areas. You can see the rental right there. There's a lot of banana right behind. There is a little path that goes through but the, I think the guests pretty much understand that's to them. That's where their area stops and then right behind is where you have...where the applicant farms.

So here's some of the new...I caught him when he was...some new planting areas. You can see there's a quite a bit of papaya as well, fruit trees. I believe Real Property Tax also came out and did an inspection as well. I think that's mango. A little hard to see. And there are some flowers on there which are used for the guests. So today was a really a sunny, the day I went out was really sunny. You can tell from the pictures. Kinda hard to capture. You can see some of the flowers in the back. The black taro.

Okay, and no other comments. The Police had no comments. Office of Planning did not have any comments. There was an inspection with Real Property Tax which did verify. I think...as I see with most of these applications at least out in the Hana area when Real Property goes out they usually increasing the area. A lot of times it's real old valuations and you know, people that farm tend to slowly expand. So when people call me, oh, they're coming out I usually let them know what's happened with other people. And then there, I think there's two letters of support for this application. And then again, I have the applicants Wendy and Otto Horen if you have any questions.

Chairperson Lay: Does the applicant wish to say anything at this time? At this time, we're gonna open up to public testimony. Does anyone wishes to testify? Step up to the mic and identify yourself and you have three minutes. Seeing none, we're closing public testimony. Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: Gina, where did you say that the owners lived?

Ms. Flammer: They live in Hana.

Ms. Wakida: But another property?

Ms. Flammer: Another property, yeah.

Ms. Wakida: So I have a question of who farms the land?

Chairperson Lay: Please identify yourself.

Mr. Otto Horen: My name is Otto Horen and I do. I do and some of our guys help me.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Can you give us a little more information on the commercial nature? We see a lot of farm plans that are basically in my opinion ornamental or the same thing that anybody has in their backyard in any subdivision because that's just the nature of Hawaii. So can you give us a little more information?

Mr. Horen: Yeah, we were selling bananas and papayas to the local fruit stands, but right now basically what we're doing I don't have time to be selling a lot of the fruit. We have 10 different types of citrus in various stages of growth. We also have two types of figs, two types of mangos, berries, all sorts of stuff. But we give a lot of the stuff that we grow right now, just we give it away. We're planning on trying to sell some to the hotel. We've talked to them about selling our limes and oranges and tangerines to the bar there. And they have a new chef there now and so hopefully that we can be selling them some of the bananas and other things that we do.

Ms. Wakida: Thank you.

Mr. Horen: You're welcome.

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

Ms. Flammer: Okay, so again we have the seven conditions that you're used to seeing. So in consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Hana Advisory Committee and the Planning Department's report and recommendation prepared for the Hana Advisory Committee meeting on March 28, 2013 as its findings of fact, conclusions of law and decision and order and authorize the Director of Planning to transmit said recommendation.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: So move.

Vice-Chair Shibuya: Second.

Chairperson Lay: Motion by Commissioner Hedani, seconded by Commissioner Shibuya. Any discussions on the motion? Seeing none, can the Director repeat the motion?

Mr. Spence: The motion is to approve based on the Hana Advisory Committee recommendation and the Planning Department's recommendation.

Chairperson Lay: Call for the vote. All those in favor? Oh, excuse me, Commissioner Wakida?

Ms. Wakida: How long is this permit for?

Ms. Flammer: This is a short-term rental permit...well, this is the SUP that goes with it. So the SUP

is for the three years. When we issue the Short-Term Rental Permit it will be one year and then Kurt was talking about the automatic renewal unless there's complaints. So we do the three years just so that the two dates can match up.

Ms. Wakida: Okay, thank you.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by Hana Advisory Committee and the Department.  
(Assenting - W. Hedani, W. Shibuya, K. Ball, M. Tsai, S. Duvauchelle,  
P. Wakida)  
(Excused - J. Freitas, J. Medeiros)**

Chairperson Lay: Moving on. Acceptance of the Action Minutes for the August 27, 2013 meeting. Everybody get a chance to look at 'em, any changes?

**D. ACCEPTANCE OF THE ACTION MINUTES OF THE AUGUST 27, 2013 MEETING AND  
REGULAR MINUTES OF THE JULY 9, 2013 MEETING**

Chairperson Lay: If not, I need a verbal acceptance.

Commission Members: Aye.

Chairperson Lay: Those opposed. We get an acceptance of our minutes. Director's Report.

**E. DIRECTOR'S REPORT**

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

Mr. Spence: Thank you, Commissioners. You have in front of you, going down, Commission Projects/Issues, EIS Report, on Number 3 and 4, you have your SMA Minor Permits and SMA Exemptions Report.

Chairperson Lay: Any questions, Commissioners? If we can get an acceptance of those reports? We'll do a verbal one. All those in favor?

Commission Members: Aye.

Chairperson Lay: Those opposed?

Mr. Spence: Okay, thank you.

**5. 2014 Meeting Schedule**

Mr. Spence: On this really bright pink sheet there's your 2014-proposed schedule.

**6. Discussion of Future Maui Planning Commission Agendas**

**a. September 24, 2013 meeting agenda items**

Mr. Spence: And then the Future Planning Commission Agenda, the next meeting is gonna be September 24<sup>th</sup>, and you're gonna have three public hearings. One, Mr. Kyle Ginoza to approve a 450-foot rock revetment to protect the the Kahului Wastewater Treatment Plant. Ms. Teresa Waters requesting a Special Use Permit for the Lahaina Animal Farm Short-Term Rental Home, and No. 3 is William and Connie Lawler requesting a Bed and Breakfast Permit in the State Rural District.

Chairperson Lay: Any questions, Commissioners? Seeing none, we have motion to adjourn?

Mr. Ball: So move.

Chairperson Lay: Planning Commission is over.

**F. NEXT REGULAR MEETING DATE: SEPTEMBER 24, 2013**

**G. ADJOURNMENT**

The meeting was adjourned at 10:50 a.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

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

**Excused**

Jack Freitas  
Jason Medeiros

**Others**

William Spence, Director, Planning Department (in attendance at 11:15 a.m.)  
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works