

**MAUI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 8, 2013**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Warren Shibuya at approximately 9:08 a.m., Tuesday, October 8, 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.)

Vice-Chair Shibuya: ...the Commission as well as the public, thank you for coming. We have a couple items here. We'll start with the agenda and then we'll get on with our activities today. Planning Director, will you please introduce the first item on our agenda?

Mr. Spence: Thank you, Mr. Chairman. First public hearing item is Ms. Maya Karina Paanaakala Myers requesting a Land Use Commission Special Use Permit in order to operate the Kalapana Short-Term Rental Home in Launiupoko, and Ms. Livit Callentine is our-- do we wanna have public testimony on any agenda item?

Vice-Chair Shibuya: I can do that. Okay, let's do that. I'll open it up for public testimony at this time. You may speak on any item because you don't have the opportunity to speak during...when the issue comes up. If you do speak at this time, you will not be allowed to speak on that issue when the issue comes up. So we'll allow you one, three-minute time period. Please introduce yourself.

The following person testified at the beginning of the meeting:

Ms. Karen Barret - Item B-2, Terry Epstein, SUP2 and STKM

Her testimony can be found under the item on which she testified.

Vice-Chair Shibuya: Other members in the public that would like to speak on any item here at this time? Seeing none, public--

Unidentified Speaker: ...(inaudible-speaking from the audience)...

Vice-Chair Shibuya: --no, we'll bring up the Epstein one later on. She talked about the Epstein, but she won't be allowed to testify when the item comes in. She may have some other things to do and that's why we're allowing general testimony on any item. Thank you. Seeing none, then public testimony on this matter, general testimony is closed. So Planning Director, will you please continue introducing the first item for us.

Mr. Spence: Again, Commissioners we have Ms. Myers, Karina Myers requesting a Land Use Commission Special Use Permit for a short-term rental home in Launiupoko, and our Staff Planner is Ms. Livit Callentine.

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

1. **MS. MAYA KARINA PAANAAKALA MYERS requesting a State Land Use Commission Special Use Permit in order to operate the Kalapana Short-Term Rental Home, a three (3) bedroom short-term rental home located in the State Agricultural District at 15 E. Huapala Place, TMK: 4-7-010: 049-0001, Launiupoko, Lahaina, Island of Maui. (SUP2 2012/0029) (L. Callentine)**

Ms. Livit Callentine: Good morning, Commissioners. And we're here today to review an application for a Land Use Commission Special Use Permit for short-term rental homes in the Agricultural District. I know you've been seeing a lot of these lately and will probably continue to do so. So this project is an example of practical agricultural tourism combining the growing of produce that is eaten and sold and given away with the income generating potential from a short-term rental. The property is just over two acres in size and the land classification is E, not suitable for anything much but pasture and grazing. The soil is stony, silty clay at a 7 to 15 percent slope. A farm plan has been approved by the Planning Director and been fully implemented. The applicant, Maya Myers is carrying out agricultural activities on approximately 65 percent of the property. This consists of plants such as citrus, avocado, banana, coconut, guava, breadfruit, kukui nut, ko, pomelo, and plumeria. Ms. Myers states that in addition to feeding her family she sells or gives away her produce at a local farmers market and she'll tell you a little bit more about that later. Once the short-term rental home is operational, she will invite guests to walk in the orchard and pick fruit for themselves. Approval of the Special Use Permit and the Short-Term Rental Home Permit later administratively will allow Ms. Myers to employ local housekeepers and gardeners. So there are no permitted short-term rental homes within 500 feet and as this Short-Term Rental Home application was submitted before December 31, 2012 it is not subject to Planning Commission review.

The Maui Police Department had no comments or concerns. Department of Finance did not respond to our request for comments. The State Office of Planning had no comments and the State Land Use Commission did not submit a response either. There were no letters in opposition or protests from neighbors adjacent to or across the street from the subject project. The Department received two comments from neighbors outside the short-term rental notification boundary and one was included in our report as Exhibits 13 and 14. The second letter was distributed to you this morning, and it looks like this, and this is a map showing the subject project property along with the 500-foot boundary notification for short-term rentals and the two locations of the properties that submitted letters. Both copies of the letters or email are attached for your information.

The Planning Department anticipates approving a permit for short-term rental home upon your approval of the Special Use Permit and Ms. Myers is here with us today and would, I believe like to say a few words about her project and then she and I will both be available for questions. Thank you.

Vice-Chair Shibuya: Thank you. Continue.

Ms. Maya Myers: Good morning everybody. My name is Maya Myers, and I wanna first start off with thanking you for your time for me to be able to present my home and our project to you. This is something I've become very passionate about just over the last year since we've bought the property. I live next door at the adjoining property on the other ...(inaudible)...for about three and

a half years now. And exactly a year ago, my father, my sister and I have purchased the property next door...(inaudible)...one compound again.

So we bought this property and our first intention of what we were gonna do is tend to the orchards and the irrigation. First week we had the property we walked around and realized that there were quite a few issues with the drip lines and the irrigation and unhealthy trees, et cetera. The property itself altogether is two acres and what we decided to do was redo all of the irrigation. A lot of it was on top. There were PVC pipes on top...(inaudible)...kind of an eyesore. The PVC pipes need to be underground otherwise they get exposed to too much sun. The drip lines were getting plugged with rocks and debris or were broken and having leaks. We were constantly fixing broken pipes and broken drip lines and was just wasting a ton of water. We've actually put in over \$15,000 in manual labor from our landscapers and also in all of the irrigation supplies. We've included copper valves. We put filtration systems in our main line to get rid of any snails or rocks from coming through. So this is a long-term project for us. It was one of those we're gonna do it once, we're gonna do it right, and that's how it's gonna be. So our landscapers ended up trenching the property, putting everything underground, as a result, a year later our trees have flourished or they are extremely happy trees, they are...(inaudible)..., they're producing more and it's great.

If you would, if I can draw your attention to the handout that I gave you, the binder there, the first page on there is actually a before and after picture. This is from the top of the orchard. This is adjacent to the house, the closest orchard to the home. The before picture was taken the first week we purchased the property and as you can see there's nothing but dirt on the ground and the trees are pretty small. They were planted in 2004 when the house was originally built, and the bottom pictures, we have grass underneath now, we put down some seagrass and some lawn, the plants are producing so much more fruit. It's been great. So our efforts have definitely taken fruit here. The other photos on here as well too shows just some basics on the following pages, this is our vegetable garden, and that is my daughter with her prize winning zucchini. And we have some citrus trees and also our papayas. The papayas are located on both. Both of our properties on the bottom orchard and they are producing very well thanks to changing out the drip lines on those. And we also have some tropical foliage as well. And we've actually put in quite a bit more tropical plants too in the front of the house and took out a lot of the red cinders that they had everywhere cause they have a tendency to blow everywhere on Launiupoko and we put in lots of greenery and foliage. So, and it's quite attractive. With all the trees growing too, they are...were already mature trees, but now that they're even bigger are creating a nice noise buffer and also quite a bit of privacy as well too. After all the pictures you'll also see all of our fruit trees that are actually quantified. We have over 80 trees on the proposed project alone, and then quite a bit more on my house next door as well too.

So we bought a farm, now what are gonna do with all that fruit? So there's a farmers market at the bottom of our hill every Saturday and it's in the morning from 8 to 12. People who run it are good friends of mine, Naomi and Patrick Goo, and I went to them and brought them over to our house and showed them our orchard and tried to figure out what exactly they need down there. I don't wanna be competing with other vendors that are down there. So what we do is we set up our own booth when our fruit is in season. This isn't every weekend because our fruit comes and goes. And we do sell our oranges, our tangerines, our pomelos, grapefruit. There's people that they make guacamole and sell avocados, so what we do is we sell our avocados to them and they make the guacamole. I don't wanna be a competing factor to somebody's who's already started and being

there. So we usually sell our produce to them, and that's Gordy and his wife, Sharon. On the days when we don't have a lot of fruits to sell, what I'll do is I'll just sell my fruit to the vendors that are already down there and who wanna sell are gonna be down there all day anyway so, they do purchase our fruits and I usually pick those on Thursdays and Fridays, deliver it to them on Saturday morning. Other than eating a lot of fruiting and juicing for hours on the weekends myself, we also just pass out a lot to our friends as well. But, it's been great. It's been a lot of fun.

Now with regards to the vacation rental property, it is our intent to actually market the property as agri tourism to the Maui visitors. We will invite the guests obviously to go and walk the orchards. There's one above where the house is and there's also another one below, both easy access to them, and they can pick their own papayas and have breakfast or make smoothies or have some juice in the mornings they like as well too. And when they pick a breadfruit, they're like, first of all, what is this and what do we do with it? So I've also included in our guest book that we have for our proposed vacation rental recipes for breadfruit, banana bread, what do to with star fruit, things that they're gonna be unfamiliar with, so just trying to educate them a little bit on as to what to do. And also enjoy something that they normally wouldn't at home. So we've got that, we got recipes, and also I just think that visitors are gonna be looking for a different kind of experience. If they're not going to want to...be wanting to stay in a hotel and they're gonna find it at our proposed vacation rental of Kalapana. As a grower, I feel that agri tourism provides a chance to help visitors reconnect with the land and where food comes from and it provides them experience as to what it is to be part of the land. I think you can all probably remember, you know, if you had a tree in the backyard, the first time you were picking fruit and actually consuming and figuring it out where that farm to table experience really is. For me, it was when I was in kindergarten we had our first trip to the taro field and I completely remember this experience very vividly, remember your feet being in the silty mud and getting stuck in there and the cold, cold water and then getting your taro and then pounding it, and as a kid having that anticipation like is it done yet, is it ready yet, and actually having that experience from start to finish, realizing where your food comes from and I think that visitors will be experience that as well too. Are there any questions?

Vice-Chair Shibuya: Commissioners, any questions for the presenter?

Ms. Myers: I do have a picture board as well too, just to give you a more general idea. If I can take a minute here I'll show you.

Vice-Chair Shibuya: Can you please describe where the streets are?

Ms. Myers: Yes. So we are on a corner property. This is Kaiheleku which is the main drive of Launiupoko and this is East Huapala Street. This is the proposed vacation rental and there is the gulch dividing the CPR property. So this is vacation rental and my home is on this side. So we actually have two different entrances. My driveway is here on Kaiheleku and the entrance to the property is on East Huapala Place. The main orchard from the picture that saw on the first page there is here up front. This all used to be dirt and gravel. The trees were half the size a year ago. It's amazing what a little water and sun can do, and we have replaced all the irrigation here. We've got plumerias here which our hula halaus come for May Day annually and they come and pick flowers from my property and from theirs. We got about 30 banana trees down here on the lower part of the orchard when we first bought the property there were 12 and now we have 30. The bottom orchard down here is our septic system, right next here next to the barn and we have a

leach field as well. This graded area is actually a pretty steep slope, you can't tell from the picture, but that's why there's nothing planted there. We've got more citrus trees and avocados, papayas, strawberry guavas and a large monkeypod tree here. On the other side of this poster is my home, and this is the other side of the gulch here. We've got papaya trees down here, we've got about 24 down here. We've got plumeria trees and coconuts all up the side. I have more citrus and garden beds here. We've got two starter avocados in the back. This is our septic and our leach fields so there's nothing growing there. And in the back of the house here is all ginger and ti leaves as well. So this is a better picture as well with the banana trees. There's quite a bit of fruit there, so...it's plentiful, it's great for selling, and it's great for everyone to enjoy and we hope that everyone does take advantage of that when they do come to visit us. Again, this side the main focus is most of our trees are up here, and now these are tangerines, oranges, grapefruits, pomelos, avocados, we have three mountain apple trees. I don't know if you've ever seen a mountain apply tree in bloom, but it's absolutely beautiful, and kukui nut trees and ko trees in the back.

Vice-Chair Shibuya: Thank you. Commissioners, any questions for the presenter? Commission Hedani? It was just more description, clarification. Yes?

Mr. Ball: The process is you gotta have public hearing.

Vice-Chair Shibuya: Okay, we'll have then public testimony on this, yeah, thank you.

Ms. Myers: Thank you.

a) Public Hearing

Vice-Chair Shibuya: At this time, I'd open up for public testimony on this issue only. Those that wanna speak on this, please step forward, identify yourself. Seeing none, then public testimony on this item is closed. Commissioners, if you have questions of the presenter? Commissioner Hedani?

Mr. Hedani: Yeah, question for the applicant. I noted in the testimony that was provided or the documents that I was provided that the CC&Rs for this subdivision preclude short-term rental homes. Were you aware that the CC&Rs contained that provision and did you accept the CC&Rs at the time you purchased the home?

Ms. Myers: Yes, when I first applied for the permit which was in October, beginning of October when we first started our permit process, we had not received a letter at that time from the association. It was through the permit process when we were putting all of our papers together that we did receive the papers from them as well too. I...Livit is gonna explain more in detail, but from a personal opinion, there are probably within one of every five homes in Launiupoko do run vacation rentals and this has probably been going on since its inception which probably been about 13 or 14 years now, so I think that the association probably brought this up because part of our application process with STRH and there have been others before me who have probably filled the paperwork before, you need to address the HOA and have them address the issue. And so I think at that meeting they decided well, let's address the issue and then we'll be able to go from there. So I was surprised at after all this time, after they know that there are vacation rentals up there that they are now trying to implement or prohibit vacation rentals. Livit has...she spoke with the management consultant company as well.

Mr. Hedani: Follow up question.

Vice-Chair Shibuya: Go ahead, Commissioner Hedani.

Mr. Hedani: Yeah, my question was at the time you purchased your home.

Ms. Myers: Yes, it was not, it was not an issue. It was not brought to us at the time.

Mr. Hedani: At the time you purchased your home when you get documents from the realtor they would contain a set of the CC&Rs for the subdivision.

Ms. Myers: Yes.

Mr. Hedani: Did you receive that at the time you purchased your home?

Ms. Myers: Yes I did. And when we purchased the home—

Mr. Hedani: And you have two properties in the subdivision?

Ms. Myers: Yes, and we purchased this home on September 21st, and then we received a letter from the HOA on October 9th, and so that was thereafter. When Livit spoke with Bill it was more on—

Vice-Chair Shibuya: Continue please?

Ms. Callentine: Yeah, I think I can explain this. So let me bring your attention to Exhibit 9 in the report and this is the letter from Management Consultants Hawaii who is the managing agent for the Mahanaluani Owners Association. So what this is a letter, what it actually addresses is a different section of the Code than the one short-term rentals are actually reviewed under. This discusses Chapter 19.37 which is regarding timeshares and transient vacation rentals. I called and spoke with Bill East, who is the managing agent representative for Management Consultants Hawaii and I explained to him that unless...first of all this was not the correct portion of the Code for them to be considering; and secondly, that I didn't see anything in their documents that prohibited, expressly prohibited or expressly permitted short-term rentals. So that is the guiding principle that that Staff has been going by is if there is not an expressed prohibition, we bring that to you, we don't...we, the County are not bound by any private restrictions, covenants, et cetera. But in any case, in this particular case, I should say, there is no outright prohibition on short-term rentals. Wanted to let you know that.

Vice-Chair Shibuya: Commissioners? Commissioner Ball?

Mr. Ball: I guess I have a question then.

Vice-Chair Shibuya: Please speak in the mic please?

Ms. Callentine: For me or the—

Mr. Ball: Yeah, I guess for you.

Ms. Callentine: Okay.

Mr. Ball: I mean, even Chapter 19.65, N(1) says that it doesn't matter to us anyway what the prohibitions are of a neighborhood. However, it seems like there's some kinda disconnect with the ...and I don't know if those people that wrote those letters were on the board or what, but they're saying that they have prohibitions against the vacation rental, but we've...I mean, we've done, we've approved vacation rentals in that neighborhood many a times so this is kind of the first time I'm hearing it. There might be an issue, but you read the thing, it doesn't have it, right. It doesn't have it, but ultimately it doesn't matter to us anyway.

Ms. Callentine: Yes, and 19.65, Short-Term Rental Chapter also says that short-term rentals will be permitted Agricultural District provided a Special Use Permit is obtained. So it's not outright permitted in the Agriculture District, but with a Special Use Permit, and when I...one of the things that Mr. East explained to me was that he had not personally drafted this letter. This was drafted by the board and that they were considering writing a new letter...that would not just apply...this didn't apply to this project in particular, this applied to the entire association boundaries, but they do...he does understand and I hope he has advised the board of the same that they...that they must amend their documents to expressly prohibit short-term rentals, and I believe they...well, I know they haven't done that so far I'll say that.

Vice-Chair Shibuya: Okay, Commissioners? Commissioner Wakida?

Ms. Wakida: Yes, for the applicant. Why have you decided not to rent this out long-term?

Ms. Myers: My family has been in the hotel and resort ...(inaudible)...years. My dad has started numerous companies whether it's the Aston Hotel and Resorts you might be familiar with, Mark Hotels and Resorts and Aqua. When he purchased the property he as...(inaudible)... and thought that agri tourism was just going to be great for this property. And with him being in the hotel business he knows that as far as hotels come Christmas time everything's fully booked and everything's overloaded. It's not like you would be taking away from the hotel business and whatnot and we thought this would be a great venue to have an opportunity for quests to stay there, but more of an experience as well too not just a place to stay. As far as the long-term rental, it really wasn't even an option to us, we decided to do short-term rentals right from the get go. The house is just totally designed for it.

Vice-Chair Shibuya: Commissioner Wakida follow up question.

Ms. Wakida: And what is the minium length of stay that you're proposing?

Ms. Myers: Five. Five nights and a maximum of 21.

Vice-Chair Shibuya: Commissioner Wakida?

Ms. Wakida: You also have one more dwelling on that property the one in bottom of the picture

there.

Ms. Myers: Yes, that's the barn.

Ms. Wakida: Is that long-term rented.

Ms. Myers: No, it's not rented at all. We actually have our ride on lawnmower in there. I have starter plants for papayas are actually butted up against the front of that porch area because it's so windy in Launiupoko that they have to be protected by something. That's usually where we keep that. And on the shed there on the side is where you see where we keep all our fertilizer and all our weed killer—

Ms. Wakida: So that's not rented out?

Ms. Myers: No, it's not. It can't be. There' no shower in there or anything. It's not ...(inaudible)...

Vice-Chair Shibuya: No other questions? Commissioner Hedani, would you like?

Mr. Hedani: I guess this is a question for Livit. The letter from Management Consultants Hawaii, Exhibit 9 says that Maui County Code 19.37.010 provides that unless the association's instruments such as its declaration explicitly permits vacation rentals they are not permitted?

Ms. Callentine: Well, that...you are correct, that's what is written here, but —

Mr. Hedani: Is that law?

Ms. Callentine: That's what's written there, but what that represents to me is a statement from the board that this is their opinion of what the documents say, but that is not what the documents say. So—

Mr. Hedani: I guess maybe I should redirect to Jim then in that case?

Vice-Chair Shibuya: Planning Director will you please clarify this issue?

Mr. Spence: On my handy dandy smart phone, sometimes smarter than me, the section they're referring to is...the title of the section is Timeshare, so that immediately brings to mind that that's not what this section is about. But I'll read 19.7...37.010. Except as provided in this section timeshare units and timeshare plans are prohibited. Transient vacation rentals are prohibited excluding bed and breakfast homes permitted under 19.64 of this title, short-term rental homes permitted under this chapter, under Chapter 19.65 which is exactly what we're dealing with here. So I'm not sure why the management company says this, but it expressly excludes short-term rental homes from this particular chapter.

Vice-Chair Shibuya: Does that help, Commissioners? Okay, thank you.

Mr. Spence: In other words, this chapter is not applicable to what we're talking about.

Vice-Chair Shibuya: Okay, thank you. Planner Livit will you continue.

Ms. Callentine: Are you ready for a recommendation?

Vice-Chair Shibuya: Members, any other questions, if not, yes.

b) Action

Ms. Callentine: Okay, thank you, sir. The application for Land Use Commission Special Use Permit complies with the applicable standards for an unusual and reasonable use within the State Agricultural District for reasons stated in the Maui County Planning Department's Report to the Maui Planning Commission which is dated October 8, 2013 for Docket No. SUP2 2012/0029. In consideration of the foregoing, the Maui Planning Department recommends that the Maui Planning Commission adopt the Planning Director's...the Planning Department's report and recommendation prepared for the October 8, 2013 meeting and authorize the Planning Director to transmit said findings of fact, conclusions of law, decision and order on behalf of the Planning Commission.

Vice-Chair Shibuya: Okay, Commissioners? Commissioner Ball?

Mr. Ball: I'll make a motion to approve the short-term rental on the Agricultural zoned District, State Agricultural District on two acres, 2.016 acres located at 15 Haupala Place.

Mr. Tsai: Second.

Vice-Chair Shibuya: Commissioner Tsai, thank you for your second. It' has been moved by Commissioner Ball, and seconded by Commissioner Tsai. Members any discussion? Commissioner Wakida?

Ms. Wakida: These Launiupoko applications are always kinda tough because Launiupoko is a strange area. It hasn't got much top soil. It doesn't really lend itself to good agriculture. Sugar cane grew wonderfully there because it likes all those rocks, but it doesn't really lend itself so it is kind of a tough thing because I like to see ag land use for ag purposes and this is a little difficult for me to look at this, and be overly critical of it. I think the farm plan's a little sketchy. Yes, walking the orchards and picking the fruit I think is a little kind of a fantasy because we all know picking papaya, you pick 'em green and you need to have a picker and you need to know how to do that and you could wait six, seven days for it to get ripe and so on. So, that may be wishful thinking on the applicant's part and there is some objection and understand the need to keep this area, to keep it with some rural integrity. I hope the applicant will follow through on this and continue to do this as aggressively as she stated that they have been doing so far because that's important to all of us that live on the west side, but I will be supporting this application.

Vice-Chair Shibuya: Thank you, Commissioner Wakida. Any other comments? Commissioner Hedani?

Mr. Hedani: I guess I have a concern when a project that's built and they set down CC&Rs for the project it's intended to apply to all of the properties within that project until the declaration expires. In this particular case, the County is taking the position that we don't care what the declaration says

even if it prohibits it, we're gonna go ahead and approve it. Is there a basis for doing that?

Ms. Callentine: Well, I will let the Planning Director speak to the question of whether in this particular case we say we don't care 'cause I do think we do care a lot. The whole Department really cares a whole lot and I think the answer to your question is, we review applications against laws, against rules, against standard procedures against the application forms. And having done so, we make a recommendation as to whether it complies or does not comply with standards. And if it does not comply, we cannot recommend approval. If it does comply, we recommend approval. In this case, and in other short-term rentals in the Agriculture District, the applicant is required to have a fully implemented farm plan. As you see in, I think it's Exhibit 6, I'm not sure but I think it's Exhibit 6, the farm plan has been approved and implemented. Now, I am not gonna...I didn't do that, I'm not gonna comment on the merits. I know that our Director has approved that farm plan and so we stand by that.

Vice-Chair Shibuya: Planning Director Spence would you wanna make a comment or...relating to this?

Mr. Spence: The Code in the...I was looking for it...again, my phone is smarter to me...(inaudible)...dig it up immediately, but the Code says that we can consider CC&Rs but we aren't. I mean, so...like Livit said, we care what the CC&Rs say, it's not we're, we're not ignoring them, we're not,. Okay, this is 19.65, okay, short-term rentals shall conform to the character of the existing neighborhood. So that's one of the things we're looking at the CC&Rs for and Councilman Couch regularly says, you know, that's one of the things that was intended to be used was the CC&Rs. Prior to issuing a permit the Department or applicable planning commission shall consider the following, consider the following, if the proposed short-term rental property is subject to any homeowner, condominium association or other private conditions, covenants or restrictions from the correspondence from the association or other entity responsible for enforcement of the condition is required. So they sent us the required letter. The correspondence shall include specific conditions to determine whether or not the short-term rental home use is allowed. The correspondence shall be used to assist the department in determining the character of the neighborhood. So, and it goes on, the Director and planning commission shall not be bound by any private conditions, covenants or restrictions upon the subject parcel. So while we looked at the...and I would comment that while we looked at the letter from the management company they didn't say...they didn't say where in their CC&Rs is prohibited. They said it really doesn't say one way or another. It doesn't expressly prohibit It doesn't expressly permit either. And then this section of the code goes on, you know, this is just to help determine the character of the neighborhood and this Commission is not bound in your decision making by those CC&Rs.

Vice-Chair Shibuya: Commissioner Ball?

Mr. Ball: And my recommendation for approval is based on the testimony from the Planning Department that there are no prohibitions on this. It's a moot point I guess it...

Vice-Chair Shibuya: Okay, thank you. Commissioner Hedani, would you like? Okay, any other Commissioners? Normally I respect the rights of property owners and when they do have CC&Rs I put a lot of weight in that and if it does say that they prohibit a short-term rental type of operations then I would respect that. Generally that's what I would do. If it does not have that, but the intent

is to not have short-term rentals and bed and breakfasts, then yes, I will listen to that too. In this particular case, there's nothing. They're not implying whether they support or deny it, and so there's where, Commissioners, we need to address this particular issue. Does this fit within the situation and the environment of this community? Livit in your estimation, does the community here support this proposal. Well, I didn't personally go around and interview everyone, all the neighbors and until this morning, I actually didn't see the several letters of support, one from a neighbor right across the street that's in the bound document that was distributed to us all this morning. In the back of that there are several letters of support. I had only seen two letters from people. I would side the 500-foot boundary and bear in mind that for a Special Use Permit, the notification is only adjacent and across the street not 500 feet, but we went out even further to meet the short-term rental home boundary just to see if anyone, you know, the notice went out to all those greater number of properties than it was required for the special use. So in my estimation, this is a...I would call it a rural community of approximately two acres farms. Some of them lots, some of them are largers. There's certainly a bundle of them. I was looking at the Old Launiupoko overview...subdivision overview map last night. And you know, there's a ...(inaudible)...neighborhoods. And when you look at an aerial photo of the entire region back off of it from this one property and look at it, it doesn't look at all dissimilar to any of the other properties. Now, again, I point out that whether...and a home is being use for long-term rental or short-term rental may...we don't have any evidence that says, if that's the case then there's gonna be a different impact than if it was a long term impact. So the property owner has the right to rent out long-term. We do not believe that there's a defacto greater impact from a short-term rental on a neighborhood, but yes, I do feel that this is in keeping with the character of the neighborhood.

Vice-Chair Shibuya: Okay, in terms of other types of approved STRHs here in this community how many have been approved?

Ms. Callentine: Okay, I have that in your report, and let's see, as of this report, there were 21 permitted short-term rental homes in the West Maui Community Plan out of a total 88 possible permits to be granted. Most of these are in Lahaina Town and northward along the cost and there were at that time 23 West Maui short-term rental home applications pending. As far as number in this particular neighborhood, I think I actually backed off the map. I didn't include it because I only included one that was showing the notification boundary. I do not recall any others that are...I mean, I'm not sure how big of a radius you're wanting to talk about but there certainly aren't any within 500 feet and probably there aren't any within a couple miles. I think it's the next community over that has a couple. One of 'em that you approved last month that's probably maybe two miles away and there's two right there adjacent and as far as I know those are the closest ones.

Vice-Chair Shibuya: Okay, because we're talking now the introduction of a tourist, eco tourism type of activity here. Okay.

Ms. Callentine: Excuse me, one of my esteemed colleagues just handed me a piece of paper that says there are two short-term rental home permits in Launiupoko and there is one B&B permitted in Launiupoko. He didn't say anything else but that. So I don't know where they are or how far away.

Vice-Chair Shibuya: Well, that's what I was fishing for that.

Ms. Callentine: Great.

Vice-Chair Shibuya: Thank you very much.

Ms. Callentine: You're welcome.

Vice-Chair Shibuya: Any other members, questions? Ready for the vote? Commissioner Hedani?

Mr. Hedani: Based on what I just heard Livit, a letter from the homeowners association is required according to our law. The letter that we received from Management Consultants Hawaii says TVRs are inconsistent with resident expectations and the nature and personality of this small agricultural community. Therefore, the board of directors does not support the establishment or permitting of TVRs or short-term rentals in this community association. Do we just ignore that?

Ms. Callentine: I think the Director already answered that question. We don't ignore any piece of information that we receive on an application. We consider it all very well, but when I line this application up against the eight or nine that you've already approved in the past six months, this is right in line with those as well, and some of them are in either an adjacent or the same homeowners association. So how could you reasonably decide to deny this one. You'd have to have a very strong basis that I couldn't begin to imagine for you.

Vice-Chair Shibuya: Commissioner Hedani go ahead.

Mr. Hedani: So I guess the logic is if we made a mistake on eight or nine other TVRs, we have to make a mistake on this one?

Ms. Callentine: Director, do you wanna try to take this one?

Mr. Spence: This is, you know, we include all these exhibits within the report to the Commission based on, you know, what the Commission would...history of what the Commission should be...this is certainly one of the letters. We send, you know, other projects we send DOT, Public Works, Water Department, I mean, everything the Commission needs to consider in making a decision. So this is one of them. We don't ignore it. We also don't just base our recommendation to the Commission on just one item. You know, we have to consider this project as a whole and do they meet all the other requirements of the law. Do they meet, you know, does it meet the standards that the ...(inaudible)...Commission has considered and we make a recommendation. Ultimately, it's up to the Commissioners to say what's important, what's not and you know, go accordingly. So, I mean, ours is just a recommendation to you. I don't wanna say, but it's a recommendation to you and that the Commission is going to vote, you know, accordingly.

Vice-Chair Shibuya: Members, ready for the question or you have more questions? Members, all those in favor of the motion, please raise your hand.

Mr. Spence: That's four ayes, that's five.

Vice-Chair Shibuya: Okay, we have a-

Mr. Spence: Motion is carried.

Vice-Chair Shibuya: Motion's carried unanimously. Thank you very much.

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

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

Ms. Callentine: Thank you, Commissioners.

Vice-Chair Shibuya: At this time, I want to take a recess. I'd like to take a short break and then before we introduce the next item, but I do wanna let the counsel know that I plan to have both items Communication 1 and Public Hearing Item No. 2 introduced and then we'll discuss this. Okay, we'll come back here at five after 10:00. Thank you.

A recess was called at 9:55 a.m., and the meeting was reconvened at 10:10 a.m.

Vice-Chair Shibuya: Call the meeting to order at this time. The next item here we'll address it in two parts and because it's presented in two parts, we want to at least introduce the item because it is hearing item as well as contested communication. We'd like to introduce both items. So, we'll the planner give us a quick synopsis of it and then we'll have a brief summary by the plaintiff as well as before we have open testimony at that time, and we'll have one session for testimony on both items. Danny, if you wouldn't mind just giving us a overview of this short-term rental home?

Mr. Dias: Thank you, Mr. Chair. I'll give you like a two-minute overview and then talk a little about some timelines regarding the petition to intervene. I just want you to know that the applicant's representative, Tom Croly, he has a power point presentation. I'm not sure when we're gonna do that, but that will cover the bulk of this project. Today the Commission is tasked with making a decision on both the Special Use Permit and Short-Term Rental Home Permit in addition to the Petition to Intervene which will come first. This a little different than normal obviously.

With respect to State Land Use Commission permits generally the Commission handles that. We handle the Short-Term Rental Permit. However, in this case you will also potentially make a decision on the Short-Term-

Vice-Chair Shibuya: Okay, excuse me Danny, could you just pause a little bit because I've gotta do it procedurally.

Mr. Dias: Okay.

Vice-Chair Shibuya: And then it has to be introduced by the Planning Director first before you continue. Okay, thank you. My mistake. Planning Director, will you please introduce both the hearing item as well as the Communication?

Mr. Spence: Commissioners, this is the second public hearing item on your agenda. Mr. Terry Epstein requesting a State Land Use Commission Special Use Permit for a Short-Term Rental Home at 120 Kaimanu Place, in Kihei or Wailea and also on the agenda is a Petition to Intervene. So what we're gonna do, Tom let's hold off on the presentation. Danny, why don't you go ahead and introduce the project. Give your standard description and then what we're gonna do is open up for public testimony and the petitioners for intervention can testify and the applicant at that point.

Mr. Dias: Okay.

Vice-Chair Shibuya: Thank you, Planning Director. Danny?

B. PUBLIC HEARING

- 2. MR. TERRY EPSTEIN requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate the Shambala Short-Term Rental Home, a six (6)-bedroom short-term rental home in the State Agricultural District at 120 Kaimanu Place, TMK: 2-1-019: 100, Wailea, Kihei, Island of Maui. (SUP2 2012/0030) (STKM T2012/0012) (D. Dias)**

The Short-Term Home Rental Home Permit application is being brought to the Maui Planning Commission because the neighbor protest threshold has been met.

Mr. Danny Dias: Okay, thank you. So as I was saying this Commission will potentially make a decision on both a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit and that is due to having four complaints within...from adjacent neighbors. In report, we discussed the amount of short-term rentals and B&Bs within 500 feet. I wanna point out that there was a mistake made. There's actually one B&B within 500 feet and our software didn't catch that, but we can get into that later. Right now in Maui Meadows there are 10 B&Bs and five Short-Term Rental Permits. This property is actually adjacent to Maui Meadows but it's not in Maui Meadows. It's part of Kaimanu Estates and there is a cap in Maui Meadows so there will only be five short-term rentals approved in Maui Meadows unless the Council increases that number.

With respect to ag on the property, I'll let the applicant's representative go, go into the details but essentially they submitted and received farm plan approval in 2004 under Director Mike Foley and that farm plan that was approved as been, has been implemented. In addition, in accordance to the Maui Island Plan, this property is included in the Rural Growth Boundary. So the intent is to rezone this from Ag to Rural in the future. That's my brief description.

Onto the Petition, just some dates for your information. The deadline to submit a Petition to Intervene was on September 24th at 4:30 p.m. We received the Petition at 4:26 p.m., however, the filing fee, the Certificate of Service and the copies required were not submitted. The next day, September 25th, we received a map that was added to the Petition but still no filing fee, Certificate of Service or copies. Fast forward to October 1st, that was Monday, we received the filing fee, Certificate of Service and copies and in addition, from the applicant's attorney, we received their Motion in Opposition, so concludes our quick little overview. Thank you, Mr. Chair.

Vice-Chair Shibuya: Thank you very much, Planner Dias.

a) Public Hearing

Vice-Chair Shibuya: At this time, I'll open up for public testimony and please introduce yourselves and you'll be restricted to...or try to limit yourself to three minutes and summarize within that time. If you have not signed in for the testimony, there is a sign up sheet there?

Mr. Tom Croly: Mr. Chair?

Vice-Chair Shibuya: Yes?

Mr. Croly: May I ask is this public testimony for both items or only for the Petition to Intervene?

Vice-Chair Shibuya: Both items.

Mr. Croly: Thank you.

The following testimony was received at the beginning of the meeting:

Ms. Karen Barret: Hello, my name is Karen Barret and I'm speaking on behalf of Mike Farina who lives in Kaimanu Estates. Thank you very much. To the Maui Planning Commission, my name is Mike Farina. I reside in Kaimanu Estates. My property directly borders the Epstein property for 475 feet. We have lived next to Terry and Kay Epstein for more than seven years. I would like the Planning Commission to know that the Epstein's are great neighbors. They are quiet people and very conscientious. We appreciate their dedication to maintaining their home and yard. They are quality people who care about the neighborhood and their neighbors. The Epstein's guests have never disturbed us or caused any problems in our neighborhood. I live here full time and have never experience any issues related to the Epsteins or their guests.

I am upset that anyone would change their vote in our Kaimanu community. We were asked to vote on whether the Epstein's to have a STRH. There was overwhelming support for the Epstein's desire to obtain a STRH license. I understand that Kerby and Judy Confer now wish to change their vote on this matter. You should understand that the Epsteins have been forced to bring a lawsuit against the Confers to protect their property value. I believe this is the only reason the Confers now want to oppose the Epsteins receiving a STRH license.

The Confer's purchased their home about three years ago and are part-time residents. My home and Terry and Kay's have suffered since the Confer's purchased their house. The Confer's built a platform deck above their pitched roof which looks directly into my bedrooms and the Epstein's bedrooms and bathrooms. Both of our families have protested the design, location and construction of this deck. We sought relief from our board as outlined in our CC&Rs. We asked the Confer's to halt construction until a compromise could be reached. They refused to stop construction.

The Confers added lights and a dumb waiter to the deck without Design Committee approval. They created a nuisance by putting a dining set on the platform and amplified music on what was

supposed to be a small viewing deck. When they are on island they entertain frequently and all the surrounding homes can hear their conversations and/or music as this deck is well above their home.

The other issue has been their disregard for maintaining their landscape. The Confer's property borders the only road to access our homes. They have a monster hedge of Oleanders along that road. The Oleanders hang over the street for months on end while they are off island. They do nothing to control the weeds under the Oleanders. Most of the year only one car can travel up the road because the branches hang so far into the street. I have seen Kay on more than one occasion trimming the branches back to the road's edge.

I am also aware that the Confers have been unwilling to trim the trees that are eliminating the ocean view from the Epstein's home. We both have considerable investments in our homes. Our ocean views are supposed to be protected with plant height restrictions in our CC&Rs. We both maintain our homes and landscapes year round. The Confers have been unwilling to follow Kaimanu's CC&Rs. They have chosen to ignore the rules in place to protect our property values. It is obvious they have changed their position on the Epstein's STRH license because of the lawsuit.

I, Mike Farina, hereby acknowledge that I have written this statement to support the Epstein's application for an STRH license under the name Aina O Kihei, LLC in the subdivision known as Wailea Ranch Estates and commonly known as Kaimanu. The home is located at 120 Kaimanu Place, Kihei, Maui, Hawaii 96753. Unfortunately, I'm off island starting Friday, February 4th. I hope you will let a third party read my statement to the Planning Commission before they make their decision on the Epstein's application. Thank you for your time.

Vice-Chair Shibuya: Thank you very much. Commissioners, you have questions for the testifier? Seeing none, are there...please sign in as a testifier.

This concludes the testimony received at the beginning of the meeting.

Vice-Chair Shibuya: You may speak now and then sign in later. Please introduce yourself.

Ms. Bethany Ace: Good morning, my name is Bethany Ace. I am counsel for the applicant and the movant and counsel for the applicant with respect as movant against the Petition to Intervene. I'm gonna limit my comments to the Petition to Intervene.

There are a number of reasons why this Petition to Intervene should be denied. First this is procedurally deficient. They actually never asked to intervene other than the title-

Vice-Chair Shibuya: Excuse me, are you are arguing the motion?

Ms. Ace: Yes, if that's to be reserved for a later time?

Vice-Chair Shibuya: Yeah, you'll have a time for your specific...and there's no time limit whereas here if you do present it, you're limited at three minutes.

Ms. Ace: Okay, I will reserve it for the time set aside for the motion hearing.

Vice-Chair Shibuya: Thank you. Okay, testifiers, please. Caron Barrett?

Unidentified Speaker: She already testified.

Vice-Chair Shibuya: She already spoke. Catherine Clark. Please identify yourself and limit yourself, your testimony to three minutes. Thank you.

Ms. Cathryn Clark: Aloha, Commission Members, my name is Catherine Clark. I've actually been in the vacation rental business since 1987, and even when I say it, it sounds like a really long time. I started out quite by accident. There was a local windsurfing shop that had a contract with a mainland company to provide condo space for people coming over to windsurf. The mainland company went bankrupt and they had visitors coming with nowhere to stay. So at the time they asked if I could quickly pull something together and that has ended up 26 years of being in the vacation rental business. We put people into condos, hotels, vacation rental homes.

Along the way, I met Irene Aroner of Tropical Villa Vacations. She's the vacation rental property manager for the home that you're about to hear. And we go back quite a long ways and I can honestly say that she has more integrity than many people in the industry. She will only do what she believes is right and a good example of that came up recently. Irene manages a group of units at Wailea Beach Villas, Hotel zoned, they're beautiful, every one of them is three bedrooms, can accommodate six people. We received a directive recently asking us to not to book two units to any one party. So right away you would say, well, what's that all about, I don't wanna make these bookings? But in Irene eyes it was because it would create too large an impact on the people surrounding those units. If somebody rents two units then maybe 12 would gather in one unit and she didn't want to impact the surrounding units in that way. So that's just a small example of the way that she operates and I can honestly say to any neighbors that have concerns that I personally believe that Irene would not take on this home if she didn't feel that should keep the neighborhood happy and to properly take care of the guests in the home such that they don't create any impact. She's been doing it for a really long time and she's been doing it really well. Thank you.

Vice-Chair Shibuya: Thank you very much. Commissioners, questions for the testifier? Seeing none, thank you very much. Next testifier is Donna Kauhane?

Ms. Donna Kauhane; Aloha everyone. I'm Donna Kauhane and my property borders on the Epstein property. I am opposed to a vacation rental mainly because of noise that would affect the rest of the neighborhood. And the Epsteins say that this is their dream home and I know what they mean because my home is my dream home too.

And I would not feel opposed to their renting if they were on the property so that the people that they were renting to, you know, they would be exposed anything that their renters would do. But that's not the case, because they are going to rent it when they're not there. When they're on the mainland and have a manager instead. And so instead, the neighbors will have to monitor the noise while they're away.

I was discouraged quite a few years ago when...my husband and I bought our property partially because there was ag land next to us. It was Ulupalakua Ranch land before it was Kaimanu Estates and then when it was Kaimanu Estates, it's two-acre land, two-acre lots. And so, you know,

that was perfectly acceptable. But I was discouraged because when they decided...when the Epsteins decided to build, they build a 13-foot concrete wall on the property line or began to. And even though the Ag...the regulations for Ag land is a six-foot fence, this wall was going up. The Commission did have them bring it down to 10 feet. It still is a solid concrete wall, but the Commission said that they need to make big windows so that we have the...continue to have air flow. And so the big open areas were there and then subsequently it was boarded up with wooden louvers.

The Espteins are requesting what amounts to a hotel-like venture. And my concern is--

Ms. Takayama-Corden: Three minutes.

Vice-Chair Shibuya: Can you summarize?

Ms. Kauhane: I will. My concern is that renters paying a very high price for their rental would feel free to party and make as much noise they want to in the absence of the Epsteins being here.

Vice-Chair Shibuya: Thank you very much. Commissioners, any questions? Commissioner Tsai? Ms. Kauhane, we have a question from a Commissioner.

Mr. Tsai: Ma'am I didn't get your name.

Ms. Kauhane: I'm Donna Kauhane.

Mr. Tsai: Donna, you say you're bordering the said property. Where are you, I guess on the map here, how far--

Ms. Kauhane: On the map, I'm No. 19. So I'm completely adjacent.

Vice-Chair Shibuya: Danny, is there something that you can project?

Mr. Dias: Okay, so if you look at Exhibit 41, towards the back, it has a map of those that wrote letters here. She is the second orange colored property.

Vice-Chair Shibuya: You wanna...Commissioner Tsai, you had a question? Go ahead.

Mr. Tsai: Danny, is that a access street next to Kaimanu Place right between the properties?

Mr. Dias: Yeah, that is the access to the Kaimanu Estates Subdivision. So it basically goes between those two properties there and then there's a gate...let me see if we have a photo of that, hold on. Okay, if you look at Exhibit 8, it shows the entrance from Kupulau Drive.

Mr. Tsai: Okay, thanks.

Vice-Chair Shibuya: Commissioners, any more questions? Thank you very much, Ms. Kauhane. We'll have Antoinette Polancy. Did I pronounce your name correctly? Please correct me. Please identify yourself.

Ms. Antoinette Polancy: It's Antoinette Polancy. Do you have a copy of this so I can tell you where my property is? I'm No. 20 on that map. So a corner of my property is next to this hotel that he wants to start. I'm sorry, what?

Vice-Chair Shibuya: You need to speak into the microphone.

Ms. Polancy: Oh, I'm sorry. Well, I'm No. 20, so a corner of my property is adjacent to his property, the Epstein property. What happens is, there's a great...this place is huge. His property is huge, the building was huge. It was built over a three-year period where we listened to the noise constantly and it has two swimming pools. I was told that one of them is for the dog. However, what he built here is this enormous place with six bedrooms, six baths. It's a hotel. If it's rented out for the way, you know, for these short-term rentals for vacationers, of course, they're gonna think they can make all the noise they want, and just the Epstein Family being there was plenty of noise. I called them several times, I said, geez, could you turn the music, could you be a little quieter? It's hard to live next to a hotel and that's what will happen. Now Mr. Epstein's come today and he's brought at least 10 or 12 people with him to testify who all are being paid or will be paid. So he's gonna have...and he's an attorney, he's gonna have a strong case, but I'm telling you...I'm against No. 20, No. 19 is Donna Kauhane, whom you've just spoke to, No. 18, Debra is here and she's gonna testify. No. 17, you have a letter...we're all half-acre lots that border this or you know, are one edge of it. You're gonna hear...you have a letter from Kathy Fitch, she's also against it. You know, I just want you to think about people instead of money and that's what this is all about, you know, I'm just...hope you'll do that. Thank you.

Vice-Chair Shibuya: Thank you ma'am. Commissioners, any questions for the testifier? Seeing none, I'll call the next testifier. I believe Bethany Ace, you're the legal counsel for the petitioner. We'll have you later, okay. Debra Dorn?

Ms. Debra Dorn: Good morning, my name is Debra Dorn, and I am on the Maui Meadows fence, wall line along with Donna and Tony and also another neighbor Kathy and my main concern, for me this is about maintaining the integrity and the peace of a quiet residential neighborhood. And the concern for me is that it's...the Epstein's have shown a history and a pattern of jeopardizing this quality of our neighborhood. As Donna said, these are dream homes too. She talked about, Donna talked about the wall going in. And somehow they got in a wall instead of a fence and it's taller than it should be, they adhered to having these opening spaces only I don't know, a short time, a month, a year later to put up these huge baffles. And so my question is about, well, my fear is about temporary lip service and adhering to rules and then later on going in there and doing something else without us...I mean, I don't wanna have to monitor, I want rules and regulations to be followed and I wanna be assured that my home's gonna be peaceful. See, we Maui Meadows neighbors on the other side of this wall are the ones that are closest to their house. So when they are...they have people there, we're the ones that hear. Their Kaimanu neighbors are further away. I don't know how the Kaimanu neighbors feel about it. ...(inaudible)...have happened me that discouraged me and if I can be assured that these things are not gonna happen and they're gonna be looked into, it will still be hard for me to have trust, but I will want to trusting and rely, but get a complaint, they brought in full size trees and there was a coqui frog that sang for months, and I called the County and I called the Epsteins. The County called them and they wouldn't let 'em on the property to take care of it. It took months. Finally I wrote to the paper and there was an article about it and Maui Invasive Species called me and then they called the Epsteins or whoever was managing at

the time and they did let them on, but I had to suffer through. I mean, have you heard those things. It's ear piercing decibels all the night long. Poor little thing calling for a mate. I've heard the loud music. I've called and it's been turned off immediately, so they are responsive and they will do that. And I understand from another neighbor that they've changed their system so it can't go very loud. It's just that there has to be a series of complaints, the shrubbery, the trees, their full size things they maintain them when I have a complaint.

Ms. Takayama-Corden: Three minutes.

Ms. Dorn: Okay, they only maintain mine 'cause I've complained. If they had concern for the neighbors they'd start up at Kathy's place and go all the way down to Tony's to maintain this quality. So in sum, I want nothing more, for more than my home to feel like my private peaceful home. I don't wanna police anybody, I don't wanna be infringed on, I wanna be listened to, and I don't want my rights dismissed. Thank you.

Vice-Chair Shibuya: Thank you very much. Commissioners, questions for the testifier? Seeing none, thank you very much, ma'am. Are there others that have not signed in that would like to provide public testimony at this time? Please step forward, identify yourself, limit yourself to three minutes please.

Mr. Jim Wagner: Good morning. My name is Jim Wagner. I've been a resident of Maui Meadows since 1987. I live within the vicinity of the property though I admit that my property does not abut theirs. I am a realtor and consequently have a great deal of respect for private property rights. And I think people should be allowed to do what they can with their property within reason and within the limits of the law. Obviously what they're asking to do is something that...the difference simply being that they're charging for people to spend the night to sleep whereas I could have all the number of guests I wanted to and there would be no issue with that. I just feel that, you know, there's an awful lot of resentment that probably started when they started building 'cause it's a very large home and there's some of that probably still within people's hearts a little bit, but I can tell any one of these people that I lived next door to a vacation rental for a long time, it was very nice, very pleasant. They changed to long-term rentals and after that I ended with three different tenants mostly of the construct trades except for the one who was a bartender. So when the bartender finally went to sleep, the construction guy got up. So it wasn't all that joyful either to live next to them. I feel that these people should be allowed to go ahead and pursue what they would like to do. It's their right. That's it.

Vice-Chair Shibuya: Thank you very much. Commissioners, any questions for the testifier? Seeing none, thank you very much. Mr. Wagner will you sign in?

Mr. Wagner: Sign in here?

Vice-Chair Shibuya: Yes, go ahead please. Any other public testifiers, please step forward, identify yourself, limit yourself to three minutes please.

Ms. Irene Aroner: Thank you. Good morning. My name is Irene Aroner. I'm the owner of Tropical Villa Vacations and Tropical Villa Realty. I am the designated agent for the property in the event that this permit is granted. I wanted to specifically address the coqui frog comments made earlier.

Coqui frogs were a problem throughout the entire island for a period of time. Coqui frogs were in all the vegetation surrounding my apartment in the middle of Kihei so I also listened to them for a very long period of time until the fortunately the State and County was able to eradicate them. But there were coqui frogs through Maui Meadows at the time that there was also apparently one, one coqui frog on a two-acre property, on the Epstein's property. So the soonest that I was notified of the noise caused by the coqui frog I responded. I was personally walking the property and inspecting the property every single day. I was up there at night, every night searching for the coqui frog. It took, a little bit of time to find him because as you may know they're extremely small, but we eventually in a two-acre property found this one coqui frog. So he was identified and removed from the property at the soonest opportunity. I did involve help from the invasive species group. They were wonderful. So my point to you is that we eliminated the coqui frog as soon as we learned about it and as soon as we possibly could find him. Meanwhile for an extended period of time after that, there were still coqui frogs in Maui Meadows, but we did what we needed to do within the property to eliminate that nuisance as soon as we learned about it. So I just wanted to explain that fact. Thank you very much for your time.

Vice-Chair Shibuya: Commissioners, any questions for the testifier? None, thank you very much. Danny would you continue with the describing? Okay, any other public testifiers? None. Then public testimony is closed. Danny did you...Can we have both parties on this intervention, come up for a brief summary of their positions. Please identify yourselves and then introduce your summaries.

C. COMMUNICATIONS

- 1. DARREN G. RUSSELL, attorney for KERBY CONFER and JUDY CONFER submitting a Petition to Intervene received on September 24, 2013 on the Short-Term Rental Home Permit application of MR. TERRY EPSTEIN in order to operate the Shambala Short-Term Rental Home, a six (6)-bedroom short-term rental home in the State Agricultural District at 120 Kaimanu Place, TMK: 2-1-019: 100, Wailea, Kihei, Island of Maui. (SUP2 2012/0030) (STKM T2012/0012) (D. Dias)**

Mr. Darren Russell: Good morning, Commission, Planning Staff, counsel.

Vice-Chair Shibuya: Please speak into the mic.

Mr. Russell: I'm sorry, my name is Darren Russell on behalf of the Confers. These are the neighbors of the Epsteins and we are the intervenors on this action today.

Ms. Bethany Ace: Good morning. My name is Bethany Ace, and I am counsel for the applicant.

Vice-Chair Shibuya: Thank you. Would you start?

Mr. Russell: I'll be brief your honor, Commission. So I believe you all have a copy of the petition. I'm going to address three of the items within the petition itself. The first is the covenants and restrictions as addressed extensively at a earlier petition this morning. I'd like to read you a section

from the restrictions. This is no noxious or offensive activity shall be carried on or upon any lot nor shall anything be done or placed thereon which may be a nuisance or become an unreasonable embarrassment, disturbance or noise of the other owners in their enjoyment of the lots or the common areas. So in sum this provision prohibits any activity that may become such nuisance, that may become an unreasonable disturbance. It's not saying that we may restrict it later, but rather it prohibits an advance of any activity that may cause such a disturbance.

The second item I'd like to discuss is Title 19, the very provision that brings us to this Commission today. Title 19 limits the number of short-term vacation homes in Maui Meadows to five. I'm sure many of you were here in public testimony it lasted nearly a day in which case residents of Maui Meadows adamantly we against vacation rentals in Maui Meadows. Now they're going to argue that the subdivision Kaimanu is not in Maui Meadows that's of reach. It is a cutout of Maui Meadows. You have to access it through Maui Meadows streets. You have to access it through a property that was...I believe it's an easement through a Maui Meadows homesite. You go through a gate to enter this small neighborhood. The applicant's property borders many Maui Meadows properties. We've heard testimony from them today.

My clients are in Kaimanu but they border the applicant property extensively. There's a large boundary between the two. The applicant's property sits above my client's property. I think that arguing Kaimanu is not part of the five permit limit is just outrageous because all of the effects of a short-term vacation rental there will impact Maui Meadows as if it were in Maui Meadows.

Lastly, I'd like to talk about this, there's something, it was stated earlier about the integrity of this being a vacation rental and its management. It was interesting is this spokesperson was talking about the coqui frog prior to the passage of this law. And I think the reason that's interesting is I think that this property, and maybe I'm wrong, has been used as a vacation rental in the past. And the Code specifically notes that the Commission will take notice of whether or not a property has been rented on vacation or short-term basis prior to getting their permit. And again, maybe I'm wrong, but I believe that that is exactly what has occurred and I would like the Commission to take notice of that.

In sum, we are moving to intervene today, and I believe we have substantial grounds to do so. Thank you.

Vice-Chair Shibuya: Thank you very much. Bethany?

Ms. Ace: Good morning. Before I address the points raised by the petitioner, I'll point out that there is actually no Petition to Intervene before the Commission. Although it's titled a Petition to Intervene there's actually no request to intervene. The filing fee as the Planning...Mr. Dias pointed out, the filing fee was not filed on time, the Epsteins were actually never served. We only obtained this through, I believe it was Mr. Dias who then forwarded it to Mr. Croly, who then gave it us. Also, it doesn't meet any of the substantive requirements of a Petition to Intervene. There are specific contextual requirements, content requirements that are set forth in your rules. None of them are addressed in the petition. Moreover, this is just merely an action to retaliate.

I'm going to read something very quickly. This is Exhibit A to our Motion in Opposition. It's dated 11/27/12. To whom it may concern, I'm a property owner in Kaimanu Estates and my property is

located within 500 feet of the home of Terry and Mary Catherine Epstein at 120 Kaimanu Place. I would like to express my support of their application for a Short-Term Rental Permit to allow them to rent their home to visitors. My expectation is that their short-term rental use will have no impact on me and my peaceful enjoyment of my property, and this is signed by both of the Confers. The only thing that's changed since November 2012 is that Epsteins have filed an unrelated civil suit against the Confers for violation of the CC&Rs.

Moreover, the arguments regarding Maui Meadows, first off, the Confers have no standing to make arguments based on Maui Meadows owner's rights. They are not, they are not residents of Maui Meadows. Moreover, the specific statute that they cite for Maui Meadows five-unit cap specifically says that that is a carve out from the Kihei 100-unit cap and it says nothing regarding...there's a 100-unit cap for kihei and except, except for the five units for Maui Meadows *by the way we mean Kaimanu Estates which are not actually part of Maui Meadows.

Lastly regarding the nuisance issue. The specific CC&R cited does not as suggested in the petition and I use that term loosely state that short-term rentals are prohibited and as discussed on the previous application, why the commission is to consider private restrictions including CC&Rs, it is only to be used for purposes of determining the nature of the community. The association as well as the Planning Department looked at the impact on the neighbors particularly of the Kaimanu Estates and found that there would not be an adverse effect from this short-term rental and indeed the association supported this application which is all that the rules as well as the Commission...or sorry the report and recommendation require, i.e. that a letter is received and that the Commission looks at the letter and this letter from the association supports this application. So in short, it's procedurally defective, there's no substance, and it's merely to retaliate. This Petition to Intervene, again, I use the that term loosely provides no benefit to Commission. I suggest that it be denied and that the Commission continue on with hearing the application. Thank you.

Vice-Chair Shibuya: Okay, thank you. Commissioners?

Mr. Giroux: You know, at this time Commission, there's been several issues raised, I think you might want to go into executive session to discuss some of these, especially the procedural issues, not so much the substantive issues, but if you do wanna do that, there needs to be a vote, two-thirds of the Members present need to agree to that, and we have to limit our discussion to issues of that you decide you wanna, you know, as far as rights, duties, and liabilities that you're exposed to during this procedure.

Vice-Chair Shibuya: Okay, Commissioners. Commissioner Ball?

Mr. Ball: Motion to go into executive session.

Mr. Tsai: Second.

Vice-Chair Shibuya: It's been moved by Commissioner Ball, and seconded by Commissioner Tsai. Members, any discussion on this matter? Okay, let's take a vote. All those in favor for going into executive session, please raise your hand. Thank you very much. It's unanimous.

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

VOTED: To Go into Executive Session.
(Assenting - K. Ball, M. Tsai, W. Hedani, P. Wakida)
(Excused - J. Medeiros, I. Lay, J. Freitas, S. Duvauchelle)

Vice-Chair Shibuya: Members, public, Akaku thank you for being with us. Please bear with us, we'll have to clear the area and we'll come back and call you. It shouldn't be too long. Thank you.

Mr. Giroux: As part of the motion, we're gonna have Staff and the Planning Director remain to help sort out some of the procedure issue.

The Commission went into executive session from 10:48 a.m. to 11:25 a.m.

The meeting was reconvened at 11:31 a.m.

Vice-Chair Shibuya: Meeting is in order. I'd like to have both representatives please approach the microphone? Thank you. Counsel James Giroux?

Mr. Giroux: Thank you, Chair. I'd just like to put on the record we went into executive session to discuss the rights, duties and liabilities of this Commission regarding this Petition to Intervene. Some of the issues that need to be clarified and we'd like the parties to limit their arguments and kind of narrow the issues for us. We're looking at issues of timeliness, the issues of the filing fee, the issues of service, the issues of content requirement. Basically what we're gonna ask is for you guys to address these issues. The board is going to ask you questions regarding those issues and after they're done questioning and getting their responses then we will deliberate on those issues.

Vice-Chair Shibuya: Thank you very much Counselor Giroux. Commissioners, would you like to start off questioning? Commissioner Wakida?

Ms. Wakida: This is for Mr. Russell. The date that you filed this petition was what date?

Mr. Russell: ...(inaudible)... I know it was the last day to file...(inaudible-not speaking close to microphone)...

Unidentified Speaker: Can you hear him? Speak into the mic.

Mr. Russell: I'm sorry. It was September 24.

Ms. Wakida: At what time?

Mr. Russell: 4:26 p.m.

Ms. Wakida: And what did you bring as part of that?

Mr. Russell: I only brought the...either two or three copies of the petition.

Ms. Wakida: Can I continue?

Vice-Chair Shibuya: Continue Commissioner.

Ms. Wakida: Some fees were required. When did you pay those fees?

Mr. Russell: I believe it was, we were notified by Clayton, I'm not sure of his last name from the Planning Department that a fee had been omitted. I was not aware of it at the time and we paid it promptly on notice.

Ms. Wakida: And that would be, do you remember when?

Mr. Russell: No, I'm not sure. Maybe two days later.

Ms. Wakida: Who was responsible for doing this for you, this filing the petition and paying the fees?

Mr. Russell: This is just our responsibility.

Ms. Wakida: Well, no I meant, you obviously didn't take the petition over the Planning.

Mr. Russell: I actually did. I was in Wailuku and I brought it in myself.

Ms. Wakida: Okay.

Mr. Russell: And so I spoke with the clerks. They took one copy, stamped all the copies and returned them to us and that was the extent of it.

Ms. Wakida: I'm sorry, and that's when what?

Mr. Russell: That was the extent of the transaction. So I went into the Planning Office. They took one copy, they stamped all the copies which is why the copies that everybody received has a file stamp on it, of course, we returned to our office, made the copies, turned to a PDF and disseminated that.

Ms. Wakida: Okay, so that...those...the copies were brought over or sent over later?

Mr. Russell: That's correct.

Ms. Wakida: Okay.

Vice-Chair Shibuya: Planner Dias, can you remind us or at least refresh our memory in terms when was the suspense dates for filing. I believe there's 10 days prior to?

Mr. Dias: Correct, and that would be September 24th.

Vice-Chair Shibuya: September 24th would be the deadline?

Mr. Dias: Correct.

Vice-Chair Shibuya: And as I heard, that there were some other documents that were submitted were they not?

Mr. Dias: On September 24th we received the petition.

Vice-Chair Shibuya: No payment.

Mr. Dias: No payment, no certificate of service, and no copies.

Vice-Chair Shibuya: And no copies?

Mr. Russell: There were copies, they were returned us, but there were not 15 copies.

Vice-Chair Shibuya: Okay, so the insufficient number of copies.

Mr. Russell: That is correct.

Vice-Chair Shibuya: And there was inadequate, in fact, no payment of fees. And so the next day, which is overdue, I believe you faxed some material, did you not?

Mr. Russell: That's correct. When we got back to the office, we realized that the petition itself included a URL, a U-R-L, for the map for Maui County when we had originally sent it as a PDF, it was expected to be a hyperlink for that particular map. We realized that the paper version just included a description of the map. You'll see that in the original copy with that link is on the bottom of Page 3 or 4. So ...(inaudible)...is that PDF it was expected that you'd click it and have access to the map. It didn't work that well in practice.

Vice-Chair Shibuya: Yes I noticed that the page that we have it's a blank page.

Mr. Russell: That's correct. It should have the line on the bottom of the map address.

Vice-Chair Shibuya: Yes. Commissioners? Commissioner Ball?

Mr. Ball: Okay, so to intervene there is a process. The process is to submit with the fees, the copies and that sort of thing. The process is also to notify the other party whether it's by certified return receipt mail or a process server.

Mr. Russell: With respect to that, we are in litigation with...my clients are in litigation with the applicants herein. Direct communication from my client's attorney, which is me to them would probably be a violation of ethics. So we sent a copy to counsel.

Ms. Ace: May I address, briefly? To address the specific contention ...(inaudible)...or would you like...

Mr. Ball: Yeah, maybe later. Still trying to get...that's not the process though. The process is written.

Mr. Russell: So we reviewed the statutes. This our first petition. We reviewed the statutes the \$50 filing fee is actually under the General Fund provisions which we did not notice. I didn't actually see those reference on the Maui County website. However, the Code sections are available on the website. So we filed in accordance with what we saw in the instructions with respect to intervention.

Vice-Chair Shibuya: Okay, Commissioner Tsai?

Mr. Tsai: Yeah, I got a question regarding that fee, we're talking...when you submitted the application or the copies were you asked at the time that you were supposed to submit a fee as well?

Mr. Russell: No.

Vice-Chair Shibuya: I have the question in terms of when you file or prepare your petition you checked with appropriate Maui County Code which is 12-201, did you not?

Mr. Russell: Yes.

Vice-Chair Shibuya: Does 12-201 state some of these requirements?

Mr. Russell: I believe do. I do not believe it addresses the \$50 filing fee. That's I believe simply in the General Fund—

Vice-Chair Shibuya: Commissioner...thank you. Commissioner Ball?

Mr. Ball: Can you explain to me again what you said about the not notifying the other party? There was some kind of conflict or something/

Mr. Russell: Yeah, I believe that there is a direct conflict, so what we did is...actually I believe the exact same day, we sent an email to Gregory Kugle, who is counsel for the applicant herein. He notified us that it didn't come through. We sent it again. We also sent a, I believe a hard copy as well.

Mr. Ball: I guess I'm not following any of that.

Mr. Russell: Oh, I'm sorry. So I believe—

Mr. Ball: So either certified/return receipt or process server. But you chose not to do that because?

Mr. Russell: Well, we simply notified opposing counsel. But you may want to...I mean, Corporation Counsel may be able to speak to this issue. I don't believe a direct communication with the Epsteins from my office would be appropriate under the Rules of Ethics.

Mr. Ball: I don't know that's the process. I don't know about that, but...

Mr. Giroux: I think the other party wants to address, but we can have her position as far as that and

I can go into our rules as far as our process.

Vice-Chair Shibuya: Okay, we'll have Counsel Ace provide her inputs relating to this.

Ms. Ace: Thank you. First off, I would note that this hearing, specifically this meeting and the hearing on this application was specifically published in...it was, it was specifically published in the *Maui News* and it specifically stated the requirements and the specific commission rules that had to be followed for a petition to intervene. Regarding service, I agree with Commissioner Ball's position that the rules are clear of how service is accomplished. Neither of those were followed. The...there was an e-mail that sent to Greg Kugle, which is a director at my firm, who is also counsel in this matter advising that the petition was filed. However, we obtained the petition from the Planning Department not from...we never got a hard copy, we never got certified/return receipt, we never had a process server either through us or directly on the Epsteins.

Vice-Chair Shibuya: Okay, thank you. Commissioner Wakida? Does the Corporation Counsel want to reference anything in our rules about service?

Mr. Giroux: Okay, I'm just pointing out 12-201-21, Section B, "All papers served by either commission or any other party shall be served upon all counsel of record at the time of such filing and upon all parties not represented by Council or upon their designated agents in fact or by law." So we do have a clear method of...I mean, if there's a perception of a conflict then the paperwork should get to the counsel of record, and I think you've heard the argument of whether or not that happened.

Mr. Russell: Generally in service in litigation it is not through a process server with respect to a motion. Motions go back and forth all the time. If you guys wanna take a recess on this, I imagine my office can prove the documentation that it was served upon opposing counsel.

Vice-Chair Shibuya: Commissioner Ball? Speak in the mic, thanks.

Mr. Ball: Does Corp. Counsel want to speak to the argument of the e-mail was sufficient or not sufficient because of the perceived ethics conflict that they talk...that Mr. Russell's talking about?

Mr. Giroux: Your rules don't speak about notification by e-mail.

Mr. Ball: No, I understand that, but we're trying to determine whether there is an allowance for the petition to waive from the rules and the answer to the question is why didn't you send it certified/return receipt or a process server? The testimony was well, there was possible conflict ethics so we sent an e-mail.

Mr. Russell: I believe we also mailed, as well. There's a certificate of service showing that we mailed it.

Vice-Chair Shibuya: Please identify yourself.

Mr. Russell: I'm sorry, Commission. Darren Russell, again, on behalf of petitioners.

Mr. Giroux: I think one of the issues that we're looking at is that we don't have anything on the record showing any type of certificate of service. I mean, we have an... I believe an affidavit or...but when we're saying certificate, we're looking for in our rules, where it states that the method of service is by first class, certified mail, return receipt requested. And we don't have that in the record.

Mr. Russell: Checking on that, right.

Vice-Chair Shibuya: Counsel Ace?

Ms. Ace: While he's checking on that, may I address that?

Vice-Chair Shibuya: Sure, continue.

Ms. Ace: I'm not aware of any certified mail being delivered to my office. And it's my understanding that the COS was filed on October 1st. I have not seen the COS. If it attempts to...if it purports that it attempted service by certified mail on the 24th which was filing deadline that is incorrect and also contradicted by the fact that he...that opposing counsel has represented that on that date he sent an e-mail with...that did not have an attachment. So...and I would also cite that of the commission's rules, 12-201-21(d), Method of Service, "Service of paper shall be made by first class, certified mail return receipt request or other means authorized by law." That's not inconsistent with the provision that was read by Corporation Counsel regarding upon whom service would be made. It's a distinction between how service is made and upon whom it is made. Thank you.

Vice-Chair Shibuya: Thank you very much.

Mr. Giroux: Danny, you have the certificate of service? Can you have counsel look at that?

Ms. Ace: May I read from this?

Vice-Chair Shibuya: Yes, please.

Ms. Ace: And just for record, this is Counsel Ace, and just for the record this was handed to me by Mr. Dias. It states that the undersigned certifies that on October 1, 2013 a true and correct copy of the foregoing document was duly served on the following parties at their last known address. It states it was served on...and I'm skipping ahead a little bit on Gregory Kugle who as I previously mentioned is the director from my firm assigned to it, states that service was by U.S. mail postage prepaid and it's signed, dated October 1st.

First, it does not say that service was made by certified mail. It says that it was by U.S. postage prepaid. It also clearly identifies that the certification was that it was on October 1st which is—sorry, I'm horrible with math off the top of my head, but at least five days or so after the filing deadline which was September 24th. Your rules are clear and I believe that it doesn't provide for this attempt, runaround which by the way was actually after we...our opposition was not only...our Motion in Opposition was not only filed and sent, but we also gave a courtesy copy by e-mail in which we raise the arguments that the filing fee had not been filed, that we had not been served and lo and behold the next day, a COS and the filing fee were filed. Thank you.

Vice-Chair Shibuya: Commissioners, any other questions? Danny, in your estimation, on this submission that was done prior to the deadline or at least during the deadline was it complete in your estimation? Did it have all the facts that we need?

Mr. Dias: Do you mean what was submitted on the 24th?

Vice-Chair Shibuya: Yes, on the 24th what you received.

Mr. Dias: Well, as I stated earlier it was missing three items.

Vice-Chair Shibuya: Okay.

Mr. Dias: As far as I understand what we're supposed to get which is a filing fee, proof that the opposing party was served or the certificate of service, and then also the correct amount of copies that we then forward to this Commission.

Vice-Chair Shibuya: Now, I'm looking at the substance. Was the substance on that document adequate enough that we could proceed without the facts?

Mr. Dias: You mean the document itself, what was within it?

Vice-Chair Shibuya: Yes. Just the document itself.

Mr. Dias: To be honest, I didn't go into that level of detail.

Vice-Chair Shibuya: Okay, thank you. Planning Director?

Mr. Spence: Yes, just because I think it, I think it's the Director's job to make a determination or to make a recommendation to the Commission whether...the Department's position is, was the Petition to Intervene complete or not, I think that, you know, that responsibility is on me. I don't think it was complete. From everything that we've heard here, from reviewing the document, this does not appear to me that the Petition to Intervene was complete.

Vice-Chair Shibuya: Okay.

Mr. Spence: To many documents and material things that were missing.

Vice-Chair Shibuya: Okay, Commissioner Ball?

Mr. Ball: Move to deny intervene.

Vice-Chair Shibuya: Okay. Commissioners, there's a motion on the table. Any second?

Ms. Wakida: I'll second it for discussion.

Vice-Chair Shibuya: Okay, it's been moved and seconded to deny the petition. Members, any discussion? Commissioner Wakida?

Ms. Wakida: I wanted to bring up the concern of the content, the wording in the petition where it...other than the title, Petition to Intervene, I'd like to ask Corporation Counsel if there's supposed to be some language in here that asks for intervention?

Mr. Giroux: Being that, you know, you're going off of the four squares of the document, you can only give what you're asked for. And I think there's also a major discrepancy in the petition in and of itself. It's only asking for a partial intervention where there's two matters before this board, the State Land Use Commission Special Use Permit, and the Short-Term Rental Permit. The petition is only calling out the Short-Term Rental Permit.

Ms. Wakida: Thank you.

Vice-Chair Shibuya: Any other discussions, Commissioners? If not, then I would like to call...well, I do have points that I'd like to mention here. First of all, it was not timely filed, it was filed because it was not paid, and it was complete because you had the fax that came in the following day, plus the service was not certified, and then not delivered in a timely manner. And it's unfair to Counselor Ace and her client. The incompleteness of the filing does not mean that it was filed. And in my mind that it is not acceptable. Incomplete means that we cannot come to a decision by reviewing that incomplete document. The reason provided was not an acceptable excuse or reasonableness in terms of why the facts was submitted after the deadline to supplement, to add to the actual petition. So therefore, I've come to my conclusion that I will support this motion. Members, any other comments from Commissioners? None? Ready for the question? All those in favor?

Ms. Wakida: Repeat the motion, please?

Vice-Chair Shibuya: Planning Director will you please repeat the motion?

Mr. Spence: The motion is to deny intervention.

Vice-Chair Shibuya: Commissioners, all in favor of denying the motion please raise your hand?
Okay, unanimous.

Mr. Spence: That's unanimous. And for clarity, the motion was to deny intervention.

Vice-Chair Shibuya: That's correct.

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

**VOTED: To Deny the Petition to Intervene.
(Assenting - K. Ball, P. Wakida, K. Ball, M. Tsai, W. Shibuya)
(Excused - J. Medeiros, I. Lay, J. Freitas, S. Duvauchelle)**

Mr. Giroux: And we'd just like to have the prevailing party to produce a draft Findings of Fact, Conclusions of Law, serve it upon the other party, and we'll have receive that document at a future

date. Chair, do you wanna give a timeline or deadline for that?

Vice-Chair Shibuya: Is it reasonable for you to file in about three weeks?

Ms. Ace: This is Counsel Ace, I believe so, but it depends on ensuring that I can get a copy of the video/transcript, correct?

Mr. Giroux: I believe... I guess we got...(inaudible)...

Vice-Chair Shibuya: Okay, there's a affirmative, about three weeks.

Ms. Ace: Yes.

Vice-Chair Shibuya: Okay, thank you very much.

Mr. Giroux: And we gotta talk about serving that draft on opposing counsel.

Vice-Chair Shibuya: Yes.

Mr. Giroux: Should be what-

Vice-Chair Shibuya: Three weeks.

Mr. Giroux: Maybe you should give them four weeks and have a week ahead of time have it served on the other party.

Vice-Chair Shibuya: Okay, well complete the draft in the three weeks, serve it to the Counsel Russell, and he having one week to review it and make corrections-

Mr. Giroux: Well, objections.

Vice-Chair Shibuya: -or objections.

Ms. Ace: Just given the Commission's ruling, just to clarify for delivery of that is an e-mail, PDF of the draft to opposing counsel is sufficient in three weeks from today?

Mr. Giroux: If it's agreeable to the other party.

Mr. Russell: It's agreeable. Darren Russell, that's agreeable.

Vice-Chair Shibuya: So it's agreeable with both parties. Okay, so-

Ms. Ace: Thank you.

Vice-Chair Shibuya: So three weeks draft and then the final comments or objections on the fourth. Thank you.

Vice-Chair Shibuya: Planning Director will you introduce that hearing item no. 2? We're back to the...we've disposed of the Petition and Communication 1.

Mr. Spence: Take it away, Danny.

B. PUBLIC HEARING

- 2. MR. TERRY EPSTEIN requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate the Shambala Short-Term Rental Home, a six (6)-bedroom short-term rental home in the State Agricultural District at 120 Kaimanu Place, TMK: 2-1-019: 100, Wailea, Kihei, Island of Maui. (SUP2 2012/0030) (STKM T2012/0012) (D. Dias)**

The Short-Term Home Rental Home Permit application is being brought to the Maui Planning Commission because the neighbor protest threshold has been met.

Mr. Danny Dias: Since I already did a short intro, I'm just gonna let Mr. Croly just go right into his power point presentation. Thank you.

Mr. Tom Croly: Aloha, Chair. I'm Tom Croly for Kay and Terry Epstein who are present here. I'm looking at the time and it's five minutes to noon. My presentation is about 15 minutes long. Would you like to adjourn for lunch and then come back after lunch for this?

Vice-Chair Shibuya: We'll continue.

Mr. Ball: Till lunch gets here.

Mr. Croly: The name of the proposed short-term rental is Shambala. The name of the property is Aina O Kihei. So just to clarify for you in some of the reference documents you'll see references made to Aina O Kihei which is the property name, the farm name and the name of the short-term rental would be Shambala should this permit be granted. The owners, Kay and Terry Epstein do make this property their full-time home. And I wanna start with that as a basic understanding. The property's located in Kaimanu Estates. Kaimanu Estates is not part of Maui Meadows. Kaimanu Estates is adjacent to Maui Meadows and it's a nine-lot, two-acre agricultural subdivision. There's five homes in Kaimanu Estates that are utilized as full-time residence, full-time homes by their owners including the applicants. The applicant's home that's under consideration is their full-time home. There are four homes in Kaimanu Estates that are utilized as second residences or vacation homes by their owners who have their full-time residence somewhere else. I point this out because one of the things that we're considering is, is this in character with the neighborhood? And I would say that this particular neighborhood with the nine homes and about half of the homes being used as second homes is...it would in character this type of use.

The Kaimanu Estates Owners Association took a vote of all the members and included in your exhibits is this letter from the Kaimanu Estates Owners Association and I'll read it for you. "The Kaimanu Estates Owners Association (KEOA) represents the nine property owners of Kaimanu

Estates of which you are one.” This is addressed to Terry Epstein. “The purpose of this letter is to provide the KEOA’s position regarding your application for permits to allow short-term rentals at your property. To determine the KEOA’s view of this matter, the association’s board polled the other eight Kaimanu Estate property owners. A clear majority of these owners responded that they are in favor of allowing these rentals on your property. Therefore, the KEOA has no objection to the applicable permits being granted. You have assured the association that issues regarding noise, disturbance, security, common area, parking will not arise as a result of these rentals. The KEOA support relies on this pledge. The KEOA wishes you success in this matter.” And it’s signed by Rick Sucathy, who is the president of the KEOA.

So as you discussed in the last one there was some question as to the CC&Rs in a particular area. There are no CC&Rs in this area that would forbid this use and they do have the full support of the owners association.

As I said before the proposed use is for the owners to temporarily or part-time use their home to accommodate visitors. When they’re not accommodating visitors, Kay and Terry live full-time in this home. It’s a six-bedroom, six-bath home and you might wonder why a couple would need a six-bedroom, six-bath home? They have a family with three children, and their children have five grandchildren or children of their own, and in total when they bring their family together in gatherings they have need for this entire property and that’s why they have a home as large as they to enjoy their whole family here they built this as their retirement home.

But the owner’s target is to use the home for about 8 to 14 rentals per year of at a minimum of seven nights for each of these rentals for a total, a maximum total of about 98 days. That’s what the target is. Nobody knows exactly how the rentals will come in. There may be someone who comes in and says, I’d like to rent this for four months. Well a four-month rental would not be legal without this permit. The minimum rental for a long-term rental is six months. So if someone were to come in and say, I wanna rent this for a longer period, they would not be able to do so without this permit. But the target right now is that they would like to target no more than about 98 days.

When the owners do rent the house, they will move out of the house and the house will be turned over to Tropical Villa Vacations for their management. And one of the requirements of the short-term rental permit is that you have a licensed real estate person as the manager. And each of the applications that the Planning Department reviews meets this requirement with the number of a broker and so forth. But I can tell you from personal experience that not all of these people are truly responsible for what’s going on. Tropical Villa Vacations is a professional organization that’s designed specifically for this use. I want to introduce the General Manager of Tropical Villa Vacations, Pikake Kamahale to talk about what their role will be specifically in managing this rental.

Vice-Chair Shibuya: Could we just delay, we’re missing one Commissioner and we need five for a quorum.

Mr. Ball: I’m right here.

Vice-Chair Shibuya: Oh, he’s back there. Oh, okay, continue.

Ms. Pikake Kamahele: All good, may I continue?

Vice-Chair Shibuya: I didn't see you. Thank you, please identify yourself.

Ms. Kamahele: Aloha, my name is Pikake Kamahele and I'm the General Manager of Tropical Villa Vacations. We are a licensed real estate brokerage firm here on Maui as well as a travel agency corporation. We started in 1995. Our founder is Irene Aroner, who you had the opportunity to meet earlier today. Her goal was to develop a professional property management company and offer a luxury vacation experience in a residential environment. In our collection we have 35 villas and homes. Three of which have already been permitted with STRH Permits. And up to this point, we have not had any issue with any of those homes so far. We have 35 full-time employees as well as dozens of privately contracted service providers that work with us. So we are very long-time and successful company so far.

My goal here today is to explain to you how we manage the guest experience in Shambala. First of all, the Shambala is the diamond of our collection and is only offered to a very select group of clients and their travel agents. Once a request comes in, we are...we have a very stringent process to ensure that they are the right fit for the home. Our goal is to preserve the quiet residential environment. We want to know who they are. We want to know the purpose of their visit. If they are here for weddings, large gatherings, family reunions, unfortunately they are not the right fit for this particular property. That is not what we are catering to. We have in our contractual agreement that they are required to sign, a list of house rules as well as codes of conduct. And to ensure that those are followed, there is a very large security deposit that is captured. In this particular home only two people per sleeping bedroom is allowed. Everyone must be registered. Non-registered guests are not allowed to access the property. So these are the steps that we take prior to the guest arrival.

Once the guest actually arrives they are greeted by our professional concierge who of course goes over and orientates them to the house, but also goes over the house rules and codes of conduct again to ensure that they are complied to and met. So this isn't a scenario where you pick up a key, you stay for seven days, you don't hear from us, and we simply come in afterward to see if the house is in good condition. We are in constant contact. And in the home every single day, not only to offer housekeeping services and guest services but also to ensure that the home is being used in a respectful manner, to ensure that they haven't gone out to Costco and got supplies for a party for 50, and to ensure that they are still keeping and preserving the quiet, peaceful neighborhood environment in which they have specifically sought.

We are available 24 hours a day should any issues arise and we made sure to make contact with the concerned neighbors today to ensure that if any issue should arise while we are renting property we are available 24 hours a day, and we will identify, rectify the issue immediately. We understand that it is a privilege and an honor to be in this neighborhood. We understand that this permit can be un...cannot be renewed for the following year. We stake our reputation and our years in this business in this industry on making sure that we manage this property properly. Thank you.

Vice-Chair Shibuya: Commissioners any questions for Ms. Kamahele? Thank you very much.

Mr. Croly: Thank you, Pikake. Tom Croly again. I wanna talk about the agricultural uses because

of the things that you're tasked to do today is to grant the State Special Use Permit and that require that we have our agricultural uses on this property in line. Prior to the subdivision that was created this was undeveloped ranch land with a productivity rating of "F", the lowest agricultural productivity rating. The subdivision was created in 1987, and I point this out because I know that many of the Commissioners as well as many of the members of the public have concerns about subdivisions like this that have been carved out of the Agricultural District and these two-acre lots were created and they don't look like the farms that we would expect in the Agricultural District. But that's not the doing of the applicant. The...since 1987, the rules have changed and subdivisions like this can't really be created any more. But the fact that this subdivision was created some 26 years ago, and it's been developed in a manner that it has, doesn't take away from the fact that it is in compliance with HRS 205 today.

As was already stated or as is in your packets it has an approved farm plan that was approved in 2003, and has been fully implemented. The owner spent five years building the house and another five years implementing the farm plan. And I'm quite empathetic to the neighboring Maui Meadows neighbors who had to put up with five years of construction in their backyard. That's not a pleasant thing at all. I've got a fellow building a house just down the street from me right now, and it's not nice to have construction going on real nearby your house and I know that that can create some bad feelings. But this house is now complete and the farm plan is fully in place. Since that farm plan has been put in place, we have 77 fruit bearing trees on this property.

The applicant has started fruit sales and there's a letter in your packet from Shaka Pops who they've become a supplier to from some of their fruit. They are Kihei business that makes gourmet ice pops, and there's also receipts in your packet from the last three months of sales to Shaka Pops of the fruit that they're supplying them. They've also made donations of their grass stolons to the Wailea Golf Course and in your packet there is a letter from the Wailea Golf Course about the donation of these stolons for reseeding their key boxes as well as to the County of Maui. Soon after the Tsunami last year, Kalama Park was inundated with a lot of water and it took away the grass there and the applicants made donations of their stolons and there's a letter in your packet from the County of Maui thanking them for that donation, and just noting that those products are going well.

In addition to the sales, there's also letters in your packet from the Lanakila Club and from the St. Theresa's Church of donations of fruit that they've made. My point being that there are, there is a product coming off of this property. And the applicant has met the State and County criteria for a fully implemented farm plan. But to talk more about the farm plan, I'd like to introduce the farm manager, Mason Smith to talk about exactly what the agricultural uses are on this property and what goes in to the maintenance of it. Mason?

Mr. Mason Smith: Hello, my name's Mason Smith. I take care of the farm at Aino O Kihei. I currently manage all the farming and the nursery operations. Have done so for the past two years. This work includes maintaining and harvesting numerous types of citrus trees, banana groves, avocado trees, mango trees, papaya trees, large pineapple beds and several thousand square feet of ginger and heliconia stock that we use for cut flowers. Over the past 18 months we have made numerous changes throughout the property to diversify the farm stock and increase the yield. Also we are developing two nurseries on the property to be used for propagation of ginger varieties that are growing on site for sale to local retailers. We will initially be growing three types of alpinia but may expand to propagating additional stock from the large numbers of cordyline and heliconia

varieties on site. We operate as an organic farm which requires numerous labor hours. We rely on manual weed control and nonsynthetic fertilizers and pesticides. This type of farming requires continuous addition of compost and frequent applications for organic pest control. Along with myself there are four other part-time workers at the farm on a weekly basis. We are more of a poly culture type farm using multiple crops in the same space as opposed to the traditional mono culture style farm where they've got, you know, one mass of, you know, one crop. For us, there are a lot of advantages to being this poly culture style of farm especially 'cause it's a smaller property. It allows us the ability to harvest fruit year round not just, you know, one big harvesting period. It keeps everybody working year round. Keeps the same crew there. A main benefit to being this type of farm is that it allows the property to have the space and appearance of really beautiful landscape while serving as a functioning farm creates a multi-use possibility for the house. I would say the one disadvantage to the poly culture style of farming is that it requires a lot more labor than a traditional mono culture but in our case, that provides a lot of people with work. Questions?

You know actually, one other thing I just wanted to add that I forgot. Earlier somebody made a comment about the foliage that runs down the property line that borders Maui Meadows and we've made major changes there for the benefit of the people in Maui Meadows. There was thousands of square feet of huge stands of bamboo that were planted as a screen, as protection screen. They provide a benefit for us, but not really any benefit for the people on Maui Meadows so we've removed all that bamboo. We have one section left to remove, but we're taking that out not as a benefit to us, but as a benefit to the people who have to deal with the rubbish or big pieces of bamboo leaning over in their yard. So that's just...we're addressing that problem.

Vice-Chair Shibuya: Okay, Commissioner Wakida?

Ms. Wakida: Mr. Smith, do you take care of other properties/

Mr. Smith: Yeah, I do work in a few other properties and then my wife and I operate a nursery upcountry. We have our own nursery.

Ms. Wakida: So you have a landscape business?

Mr. Smith: Yeah, I do landscaping and, you know, a lot of tree transplanting, a lot of irrigation work.

Ms. Wakida: So you work with...you have other clients that you work with as well?

Mr. Smith: Yeah, a few.

Ms. Wakida: Okay, thank you.

Vice-Chair Shibuya: Thank you very much.

Mr. Croly: I wanna talk briefly about the economic benefits from the property. As Mason just pointed out he has four part-time workers and about 50 percent of his work is directly on this property. The maintenance, the ongoing maintenance of this property makes work for about 20 to 30 contract workers. Additionally, granting this short-term rental permit would extend the economic benefits to Tropical Villa Vacations and the people that they employ marketing this product,

marketing this property, cleaning this property, looking after the guest needs. And to give you an example on a ultra high end property like this, each one-week rental requires four people to spend an entire week cleaning prior to and at the end of the rental. There's basically a full-time job for two weeks for four people just in cleaning up after the rental. TAT of 9.25 percent and GET of 4.17 percent would be paid on each rentals and the...there would be an increased property rate that would apply to this property. And I wanna take the time to point out the property tax implications of this property because I've heard from third parties people say, well, this is, this isn't a farm, this is...you know, the guy's taking advantage of agriculture and so forth, but I wanna point out this applicant has paid \$214,000 in real property taxes over the past six years. This is a \$130,000 more than he would pay as a homeowner. He has the right to claim this as a homeowner property because it is his full-time home. However, with the desire to use it for short-term rental he recognizes he would not qualify as a home owner. No agricultural assessment is taken on this property. That is, people who have...a portion of their property that's used for agriculture that can petition the Real Property Tax Department and say I would like you take some of my land and not tax it market value, tax it at its agricultural value. This is not taken by this applicant, although four properties in this subdivision do take an agricultural land value.

Should this permit be granted the taxes would increase by about 50 percent to \$62,000 a year approximately. If the permit were not to be granted and the applicant went back to home owner status, his taxes would be \$18,941 at current assessments.

The neighbor concerns are probably the main reason that we're here and we take them very, very seriously. This picture here if you look closely in the red at the top, it shows each of the folks over here's houses in th red, and just below that circled in black is the applicant's house. So you can see that one side of his house is bordered by these Maui Meadows neighbors and we certainly understand the concerns that have been expressed that it could get noisier if this permit is granted. But I wanna point out that the conditions of a short-term rental permit are greater than those conditions that are put on any home owner. So the applicant will be subject to much stricter limits on the amount of noise that he can generate as a short term rental than he would otherwise be subject to without a permit. So if I'm a neighbor of this property I would be comforted by the idea that his...granting this permit is going to put these restrictions on him. Without the permit, there really are no restrictions on how much noise can be made.

But nevertheless, the applicant has taken steps recently to address the concerns that have been expressed by neighbors specifically setting up the sound system on the house so that the speakers that are on the Maui Meadows side of the property are turned off completely. He's also in the process of revamping the speakers that are in the pool area so that they will be more directional. So the sound won't scatter, it will just stay in the pool area. And most importantly, he's put in place a program so that when the sound system is activated into guest mode, the guests may not turn the volume up beyond a certain level. When they go to a 100 percent, the volume won't go up any higher than a certain level. And we did some tests and in your packet there's a letter from Listen Up Audio that measured the sound decibel levels at the Maui Meadows neighbor line and found that it was between 60 and 70 decibels when we were at full volume. Sixty and 70 decibels is about the level of a conversation. I'm speaking at a level probably well above 70 decibels right now. The point is that when guests are in this property they will not have the ability to turn the sound up to the point that it should disturb the neighbors. And of course, you heard from Tropical Villa Vacations and their assurance that they are there to take care of any concerns that might come up

with respect to noise or any impacts from these guests.

Additional concerns have been expressed about the size of this property. And yes, this is the most beautiful home that I've ever seen in my life, bar none. It's a gorgeous estate. I certainly wish that I could live there, but I'm not in that tax bracket at all. It's a six-bedroom, six-bath house on two acres, but I'd like to point out that the maximum occupancy would be 12 guests. Usually it would be less than that because usually the person seeking this type of accommodation is not six friends getting together to pool their money to rent out this house and have a blow out. It's someone who has very good means and they're going to rent it for the privacy and the quiet that it affords. But by contrast the four abutting Maui Meadows half-acre lots together total two acres each has a house, each has a cottage with a total of 16 bedrooms. There's tenants in the cottages. One of the houses that a testifier you heard from is rented out full-time, the house and the cottage and the testifier doesn't live on the property and there's a total of 13 tenants in that space full-time. So the amount...the size of this house is really still in size and it's smaller than those adjoining properties.

As far as regulatory issues that you're here to consider, the house and improvements have all been permitted by Maui County. And when I looked up the permits on this house I found a house that was so well documented. Every single permit was not only applied for, it was...all the inspections were there and all these inspections were properly closed out. I've never seen a house that's been as well documented and well permitted as this one. All the requirements of the short-term rental permit have been met and the planner will give you his recommendation on that and the implemented farm plan has been approved by the County of Maui. The proposed short-term rental use will not impact the ongoing agricultural activities on the property or surrounding the property and will not require any additional public services.

So the applicants asked the Maui Planning Commission to grant approval of this permit for one year and let them prove that the proposed use will not create any impacts to the Maui Meadows neighbors and that it can fit seamlessly into the Kaimanu Estates neighborhood. Mahalo for your consideration.

Vice-Chair Shibuya: Okay, thank you very much. At this time, I'd like to take a recess here and we'll come back after lunch and continue maybe with our questions. And it will be...you want 1 o'clock?

Ms. Wakida: Yeah.

Vice-Chair Shibuya: Okay, 1 o'clock. We'll come back at 1 o'clock. Thank you.

A recess was called at 12:22 p.m., and the meeting was reconvened at 1:04 p.m.

Vice-Chair Shibuya: Planning Commission meeting called to order. We'll continue with the presentation or are you done, Tom?

Mr. Croly: Thank you, Chair. Yes, I have concluded my presentation. If you have any questions, I'm here and the applicants are here to answer any questions you might have.

Vice-Chair Shibuya: Okay, thank you. Commissioners, you have questions please? Commissioner Wakida?

Ms. Wakida: Vice-Chairperson is the applicant going to say anything?

Vice-Chair Shibuya: Well, does the applicant wanna say a few words? You're welcome, please identify yourself and you don't have three minutes. You may explain yourself.

Mr. Terry Epstein: Thank you. My name's Terry Epstein. My wife and I, Kay, bought our property as you saw in 2000. We've made it our...it's our retirement home. Sold my business on the mainland from...we were in Denver, Colorado. We sold our business in 2006, but we had started building our home in 2004-5 time period. It took us 30 months to build the home. We know that it was very aggravating for neighbors around. The bamboo was put in in 2001, and we did that and the wall to eliminate issues with construction problems crossing our boundaries. We have a wall on the other side of our property on the north border from our neighbor. It's a 10-foot wall, and we were trying to encompass the whole issue of the building situation. Noise which is hard to keep in even with a wall, but we grew the bamboo to create privacy and to keep the dust of the construction in our property. Mason Smith mentioned the mitigation of the issue of the bamboo. We are in the process of completely removing bamboo off our property. It's a very difficult process. If any of you have seen bamboo it tends to deep root itself and grow everywhere. We've slowly been removing it and I think we've removed it in front of Kathi Fitch's house 100 percent, and I think in front of Debra's property now 100 percent. And we're slowly moving our way down. We're gonna remove it next in front of Donna's house and I was just speaking to Mason while we were at lunch, we're gonna take down the height of the bamboo which will mitigate some of the issues with the wind when it blows and throwing bamboo into the neighbor's yards. We understand the different issues that have occurred regarding the noise over the years. We're not noisy people. We enjoy our home. We have our family come and visit as frequently as we can get our grand kids over here with our children, it's difficult, it doesn't happen enough for us, we love Maui. We're planning on living here and retiring the rest of our life here. So we appreciated this opportunity when you starting advertising that you were developing rules and regulations that were gonna govern short-term rentals. We decided that that would be a good surplus and additional income to us to be able to continue to stay here and keep our home up the way that they're like to keep it up, and we just appreciate the whole process. We have no issue with rules and regulations. We try and follow them whenever they're made known to us. And we wanna be good neighbors. We wanna be good neighbors to not only our Kaimanu neighbors but our Maui Meadows neighbors and we wanna thank you for this opportunity. So thank you again.

Vice-Chair Shibuya: Thank you.

Ms. Kay Epstein: You know we're trying to address everything--

Vice-Chair Shibuya: Please identify yourself ma'am.

Ms. Epstein: My name is Kay Epstein. Actually it's Mary Katherine Epstein, but I go by Kay. We're very happy in our home. We built an incredible space for us. It's something that we...when we were coming here as vacation renters would have sought out but could not find. We looked for many years for a home that would house all of our children, their spouses, and our grandchildren.

We were unable to find. So we were fortunate to find this two-acre property that had never been developed. I realize it was a hardship for our Maui Meadows neighbors to lose the ranch, what they considered ranch land behind their homes, but we did purchase the home with the intent to build and we spoke to each of them before we built. We identified, we hear what they're saying that perhaps they could hear our music and we have made efforts to hire a special company to come in and replace equipment, and we've done programming our home as a smart home. So we're able to program it and we'll have and do have a special guest program going forward that I hope we'll never disturb them. And I'd be happy to answer any questions you have.

Vice-Chair Shibuya: Okay, thank you very much. Commissioner Tsai?

Mr. Tsai: In the presentation that was given, he says you guys are planning for at least renting out 98 days a years which is about at least quarter of the time but it also states you guys are gonna be full-time residents. So I'm trying to get all the math to work where you guys—

Mr. Epstein: We have a home in Moana Estates. We take our dog, we have German Shepherd.

Ms. Epstein: You want me to explain?

Mr. Epstein: Go ahead.

Ms. Epstein: Since I'm here. When we were building our home we purchased a home to live in while our home was being built. We still own that home. So my husband's developed an allergy to our cats and our cats live in that home. I go there every single day to take care of my cats, but if our house is rented we will move into that home with the cats and open all the windows. Not much you could do, but we've kept that home. The market also, we bought that home when the market was at its high peak and the value of that home dropped significantly so we've decided to keep that home until we no longer need it or the market comes back. It's about two miles from our big house.

Mr. Tsai: Follow up.

Vice-Chair Shibuya: Commissioner Tsai?

Mr. Tsai: Yeah, sounds like you have a pretty substantial family.

Ms. Epstein: We do.

Mr. Tsai: You know, grand kids and stuff.

Ms. Epstein: Yes.

Mr. Tsai: Now if they do come here a lot, how are you gonna work this out with the whole rental and family? Are they gonna be staying there also? How are you gonna work that in?

Mr. Epstein: In the past when we've made plans to have family over—

Ms. Epstein: The house is no longer available for rental at that time.

Mr. Epstein: Yeah, we take it out of the rental pool. You know, it will just be eliminated from a date that it's available.

Ms. Epstein: It would be like it's occupied by a guest. We just let them know that we have a birthday celebration or a anniversary and the family's coming for that week, and it's just marked off the calendar as no available.

Mr. Epstein: But we do live here full time. We do have family on the mainland. This past year we made four or five trips. My mom was in the final stages of Alzheimers and was in Chicago in an assisted living place. We made five, four-day trips to the mainland this past year. She passed away in November of this last year. Kay's dealing with that same issue now with her mother and as needed we go to the mainland. We're going for Thanksgiving to visit our children for five days, but I'm sure that people that live here full-time and have Maui as their residence do take trips and do leave Maui at different, you know, in various times.

Ms. Epstein: Vacations.

Mr. Epstein: It's vacations or whatever.

Vice-Chair Shibuya: Yes, Commissioner Wakida, please?

Ms. Wakida: How long ago was your home completed?

Mr. Epstein: It was completed in 2008.

Ms. Wakida: And since then has it been rented out?

Mr. Epstein: It had to been rented out, yes.

Ms. Wakida: On short-term basis?

Mr. Epstein: It was rented for two weeks in 2011, no 2012. It was rented for two weeks in 2011. And it was rented for 18 days in 2010.

Ms. Epstein: Yes, on short-term rental.

Mr. Epstein: And we did file GET and TAT tax returns and paid it to the State.

Vice-Chair Shibuya: Any other questions, Commissioners? Thank you. Thank you very much.

Mr. Epstein: Thank you.

Mr. Ball: I have a question for the property management company and my question is with the...with the clientele that would be coming up there, what's in your policy to prevent them from telling you I don't care what you tell me that I can or can't do?

Ms. Irene Aroner: Thank you. That's a good question. We basically never have people like that.

Vice-Chair Shibuya: Please state your name please/

Ms. Aroner: I'm sorry, excuse me. Irene Aroner, Tropical Villa Vacations.

Vice-Chair Shibuya: Thank you.

Ms. Aroner: We basically don't have customers like that. We have been in business for 18 years and have rented to thousands and thousands of people. Hundreds of families a year come in and stay at our resort villas, Wailea Beach Villas and other locations and they're typically always respectful. They do have to sign a very detailed four-page contract. It gives us the right to fine them, it gives us the right to withhold monies from them. It gives us the right to basically evict them. And you know, people are purposely seeking quiet, nice, upscale, luxury accommodations to come and be comfortable but relaxed. They're usually exhausted when they get here. They're busy executives, corporate people, professionals, and they wanna to come to Maui and actually just do nothing but sit in bed all day and watch T.V. So, I mean, honestly that's what most of our clients...they're not the type that are coming here to sightsee or to go on adventures or activities or have parties. They wanna come here and relax and enjoy the warm weather, be in the warm air, feel the breezes, enjoy the foliage, and they just wanna kick back and be alone and relax.

Mr. Ball: Those aren't the ones I'm worried about.

Ms. Aroner: Right.

Mr. Ball: And I'm sure that's the ones the neighbors aren't worried about.

Ms. Aroner: But in 18 years, in 18 years and tens of thousands of individuals and thousands of families I've never had an issue. I've never been sued. I've never had a complaint filed against my company. We've never created an issue. We are board approved by the Wailea Beach Villas and the Residences at Kapalua. We're one of only two or three agents in each of those resort locations who are permitted to operate in those locations and in order to be qualified in those two locations, I had to meet very strict criteria and I had to document and demonstrate to them our history in managing rentals to a very high dependable, conscientious level. And we were able to document that and we've been operating in those resorts for years and we've never caused a problem there. So all I can say is we have a flawless service record. I turn down business that I feel is inappropriate, but there are remedies in our contract and through the process where we can effectively deal with an issue should something come up. But we give a great deal of thought to who we place where. And we make sure that we always are as responsible and conscientious as we can be. But basically we haven't ever created problems to date and if we did we would certainly deal with it immediately. If there were unregistered people on the property, I can ask them to leave because they're not registered, they're not on the occupant list. The police can come and help with that as well. So we have thought it out and we do have a process to deal with any issues, but I'm happy to say that typically we don't create any.

Vice-Chair Shibuya: We'll have Commissioner Tsai and Penny Wakida later.

Mr. Tsai: Question about your house rules. Do you have any clause in there regarding quiet hours?

Ms. Aroner: Absolutely yes. I always have for 18 years long before...in fact I kind of thought it was funny when I saw the rules and regulations and the house rules that Maui County requested for vacation rental operators to put in as a condition of their permit. I thought gee, that almost looks like my language. That looks almost like what my contract, how my contract is written. I thought maybe somebody copied one of my contracts. So at any rate for 18 years, I've always had house...I've always had a limit. People have to be quiet in the evening and it's in writing and it's enforced.

Mr. Tsai: Is that posted in the premise, on premise and it's being monitored?

Ms. Aroner: It's disclosed on our website first of all. It's disclosed in the quote that they get from us. It's disclosed in a four-page written contract the guests has to complete and sign. It's in a house book that's in a binder and it's also on a plaque in the house on display. So we attempt to communicate this information multiple times. Then also as Pikake testified when people arrive, we actually go through the house rules again and discuss them in person once they arrive at the property.

Mr. Tsai: What's your quiet hours.

Ms. Aroner: 9:00 p.m. to 8:00 a.m., and actually in some documents I've actually stated 9:00 p.m. to 9:00 a.m.

Mr. Tsai: Thank you.

Ms. Aroner: Thank you.

Vice-Chair Shibuya: Commissioner Wakida?

Ms. Wakida: Were you in charge of the property when it was apparently previously rented to a couple of people from Hollywood? It was a...I'm looking at a letter that had a complaint about that.

Ms. Aroner: There was a film actress who stayed at the property about two years ago. She came with her toddler infant and her parents, and later your husband came and a nanny was also with them. In total, there were six or seven people, but not even for the entire duration. They chose the property because they wanted privacy and seclusion. They didn't wanna be in the Four Seasons or the Grand Wailea Hotel.

Ms. Wakida: Right, but I mean, so you were managing the property then when they came?

Ms. Aroner: I managed that rental. They were my rental customers, but they didn't create a problem for any neighbors in their neighborhood.

Ms. Wakida: There was a...well, there seems to be some impact I guess on somebody, but...

Ms. Aroner: I haven't seen what you're talking about, so I –

Mr. Epstein: ...(inaudible-speaking from audience)...

Vice-Chair Shibuya: Mr. Epstein, if you have a comment, you come to...

Ms. Wakida: No, I'm referencing Kendrick, yeah...

Ms. Aroner: I'm sorry, I haven't seen what you're referencing.

Ms. Wakida: A letter by Doug Kendrick. Anyway...

Ms. Aroner: Can you read it to us?

Ms. Epstein: ...(inaudible)...

Mr. Epstein: We didn't, I don't even know–

Vice-Chair Shibuya: Please identify yourself and speak in the mic.

Mr. Epstein: Terry Epstein. I don't know of any letter from a Doug Kendrick. Oh, he references a couple and we rented in 2010 to as Irene said, some people from Hollywood. They didn't create a disturbance. They did walk around in the neighborhood, and spoke to people that...and that they were in Maui Meadows walking around on the streets, but they didn't create any disturbance where anybody contacted us meaning the Police did not come to our house. We didn't hear of any noise or any interruptions in our subdivision. I wasn't even aware of this letter till just now. I know we didn't receive it.

Vice-Chair Shibuya: Okay.

Ms. Aroner: If I can just clarify again it was just a family with a toddler and two grandparents and this person happens to be recognizable and she was jogging everyday, but she just jogged in and out of the subdivision and they didn't create any noise, they didn't create a disturbance, they didn't create any complaints, nobody called the Police. We weren't contacted with any complaints or concerns.

Vice-Chair Shibuya: Okay, thank you.

Ms. Wakida: Thank you.

Vice-Chair Shibuya: Commissioner Hedani did you wanna?

Mr. Hedani: I think the letter that you saw referenced Keith Urban and Nicole Kidman. Were you aware that they were on the property and were there any concerns that were expressed. The letter states that the outcome was no positive.

Ms. Aroner: I don't know what that person is referring to because they had a perfectly quiet, normal

visit here. It was a short stay. Actually she was away working during the daytime, and Mr. Urban wasn't even here for a period of the first few days. So they didn't create any problems they were very quiet.

Mr. Hedani: Is there any way for people to get to and from the project without going through Maui Meadows?

Ms. Aroner: No.

Mr. Hedani: So the impact of a hotel operation within Kaimana would impact everyone in Maui Meadows.

Ms. Aroner: No more than if the owners live in the house everyday and they're driving up and down the road from the highway, it would be the same.

Mr. Hedani: Unless there's 12 people in the house.

Ms. Aroner: Even when their family is here it's the same impact.

Mr. Hedani: But there is an impact.

Ms. Aroner: It's a house so I'm not sure how to answer that. It's a house and it's occupied and they have to be able to drive to the grocery store and to the beach, to the gas station. I think that that's a reasonable right and the use, the impact isn't any greater whether it's the owners or other people in the house. Typically the owners are in their house just the two of them. There's only two people in this house so actually in comparison to a lot of the other homes in Maui Meadows or in Kihei I think it can also be argued that the impact is less overall. A lot of times, most of the time it's just the two people living there.

Vice-Chair Shibuya: Commissioner Hedani continue.

Mr. Hedani: I have a real problem with this. It almost would have been to your favor to allow the intervention in my opinion because in order to secure approval you need five votes. In this particular case I think the County ordinance that was set up to protect the Maui Meadows residents was intended to restrict the number of B&Bs and short-term rentals within the subdivision so that the people living within Maui Meadows would have a firm idea of what the maximum impact would be to their community. This side of a helicopter landing on the site—

Ms. Aroner: It's not possible to land a helicopter on the property.

Mr. Hedani: —let me finish. This side of that happening, all of the people within the Kaimana Subdivision to say that it's called Kaimana and therefore it's not part of Maui Meadows to me is disingenuous. The impact of everyone in the subdivision is an impact to the people of Maui Meadows. There are 53 houses that you have to pass in Maui Meadows to get from the Kaimana Subdivision to Piilani Highway. So that impacts 53 people within the subdivision every time somebody leaves the project. So I'm not sure that I can support a project that it violates not the letter of the provision that protects the Maui Meadows residents, but it violates the spirit of the

ordinance that was created to protect their tranquility. That's not a question, that's actually just a statement. I'm sorry.

Vice-Chair Shibuya: Commissioner Wakida?

Ms. Wakida: I have a question for Mr. Dias. Danny, I didn't see in our packet a copy of the farm plan. We have a map. Unless I overlooked it.

Mr. Dias: I believe I included the farm plan approval and then a site plan showing what was approved when the farm plan was approved. Keep in mind that the farm plan that you folks are used to seeing that's sort of, you know, the process is kind of...we've tightened it up a little as the years have gone by. But this was approved in 2003 or 2004, I believe. So essentially that's the documentation that was required. So Exhibit 13 shows the site plan that includes the types of plants that they said they were going to plant in 2004. And then I believe there's an approval letter of the farm plan somewhere in this packet.

Ms. Wakida: That's what I'm missing is that.

Mr. Dias: Okay, I'll have to look for it.

Ms. Wakida: Danny, the farm plan requires 51 percent of the property to be in ag. Is that my recollection, is that correct?

Mr. Dias: Yes.

Ms. Wakida: Because looking at the site plan, of course it's...if I wanted to see the, see the actual signature on this...but you said you have it?

Mr. Dias: Yeah, I have it and I don't think I included that letter in the packet. I can't find it. But it's there.

Ms. Wakida: Okay. Chairperson, a second question?

Vice-Chair Shibuya: Sure go ahead, continue.

Ms. Wakida: Maybe Danny you could address this too. There was a letter from the Police Department concerning...said the applicant noted there's sod farming. Was that on the farm?

Mr. Dias: I'm not exactly sure what he's referring to. Can I let...Tom wants to address that.

Mr. Croly: Tom Croly for the applicant. I assisted the applicant with yhis application. At the time this applicant came forward and immediately upon the passage of this ordinance. During the summer before the State Land Use Commission had looked at these, before they had reviewed any of these, what I had been told by the Planning Staff was that this special use would not have any agricultural requirements to it. That was the premise that we were working towards. So as I prepared the application that's how I prepared it. Since then—

Ms. Wakida: Excuse me, for interrupting. When was this, what year?

Mr. Croly: Okay, in 2012, May of 2012 the ordinance was passed.

Ms. Wakida: Yes, but you are aware this is on Ag property?

Mr. Croly: Right, right. So what we...those of us who were involved in the ordinance were told was that this Special Use Permit that would be requested would be the same as if we were putting up a cell phone tower for example in the Ag property. And the existence of a cell phone tower did not require any, you know, look at what type of Ag was there. That was what the Department had told us. It wasn't till we had Souki's letter that said, I'll accept it if meets the same requirements of the bed and breakfast ordinance that we then modified that. So the initial application which I prepared, identified this as sod farming. Since then we've gone into greater detail as to exactly what the agricultural efforts are.

Ms. Wakida: Okay, thank you.

Mr. Croly: Thank you.

Ms. Wakida: Danny, another question? It was suggested in this letter that the Department of Planning conduct a site visit. Have you been, have you been over the property?

Mr. Dias: Yes.

Ms. Wakida: And what did you see in terms of farming?

Mr. Dias: You know, honestly what I saw was pretty much exactly what...where's that exhibit....you know, the farm plan the site plan shows, Exhibit 13. It's spot on.

Ms. Wakida: Okay, thank you.

Vice-Chair Shibuya: Planning Director Spence.

Mr. Spence: Thank you, Mr. Chairman. The, I mean just because Commissioner Wakida brought up the thought are they required to farm? There's no...for the Special Use Permit there's no requirement to farm. What's before the...what's under the authority of the Planning Commission is the five guidelines that are contained in the Land Use Commission's Rules for Special Use Permits that the use shall not be contrary to the objectives sought to be accomplished by Chapters 205, 205A in the Rules of the Land Use Commission that the desired use will not adversely-affect surrounding properties. It will not unreasonably burden public agencies and provide services, unusual conditions, trends have arisen, and the land upon which the use is sought is unsuited for the uses permitted with the district. So I mean, like a cell phone tower or like so many other things, you know, childcare homes or other things, preschools that have come before the Commission to get Special Use Permits, there's no requirement that they actually farm. What you're trying to look at here is, is it contrary to 205, is it the land on which the proposed use is sought is unsuited for a use that's permitted within the district? So that is it poor for farming up there? It's rated "F". You know, they...I have no doubt they brought in a whole lot of top soil and just to get anything to grow.

So it's kind of like Launiupoko,(inaudible)... So, you know, these are really the things that are within your purview. I understand the question, you know, I think all the documentation that was given on how much they donate and stuff, that's more than I expected.

Ms. Wakida: Thank you.

Vice-Chair Shibuya: Okay, I do have a question for Mr. Croly, and the question is related to the reference made to Wailea and you are aware that in Wailea they do not allow STRHs and yet you make...there are some references to that and yet also, the fact that Kaimana is a separate subdivision bordering or is it actually part of Maui Meadows. Do you know what that status is?

Mr. Croly: I can tell you the history as I know it of the Kaimanu Subdivision. This parcel that the Kaimanu Subdivision sits on was never part of Maui Meadows and it was a stand alone, 18 or 20-acre parcel that was owned I believe by Ulupalakua Ranch, but it could have been one of the ranch folks up there and it was purchased by a group of investors who then subdivided it and purchased one lot within Maui Meadows to provide access to this otherwise landlocked parcel. It was challenged by the owners association of Maui Meadows as to the use of that individual lot for a access road if you will as opposed to for a, you know a residential home. That went to court. My understanding, I wasn't a party to it in any way, but my understanding was the judge found that it was a consistent use and allowed it. There were some conditions I believe that may have been put on it. One of the conditions was that they remove the tennis court that was on that lot in addition to that lot it serving as a access road they had also put a tennis court there. And I believe the court said, you had to remove the tennis court. But that was the only connection if you will to Maui Meadows that this access road was created. The land was never part of the Maui Meadows plat in any way. The reference for Wailea I'm not sure what you're referring to, but I'd like to make this point, in Wailea, you're right, short-term rentals in the subdivisions in Wailea are not allowed by their CC&Rs. Now one could come before you because someone could make an application, but it would be easy for this for this body to say that wasn't in the character of the neighbors of which it was allowed. So does that mean that people accessing Makena where short-term rentals are allowed and where we've approved three or four can't go through Wailea because Wailea doesn't allow them. I was party to the formation of this law for the short-term rentals and I was involved in the discussions with the Maui Meadows Neighborhood Association on which I sat as a board member. A compromise was reached to keep the Maui Meadows Neighborhood Association from standing in the way of this ordinance moving forward in general. The compromise was we'll limit the number of short-term rentals in this subdivision to five. There was never any discussion about that being a maximum impact or that any use of the roads would not be allowed for short-term rentals or bed and breakfast in that discussion when that happened at Council.

Vice-Chair Shibuya: Commissioner Tsai?

Mr. Tsai: Yeah, I think what we're referencing is the notes that you have here is, they're from different letters and individuals basically referencing that this particular property is in Wailea which it's not.

Mr. Croly: No, it's not in Wailea.

Mr. Tsai: Yeah, because we have a letter here from the General Manager of Wailea Community

Association stating specifically.

Ms. Epstein: Kay Epstein. Just probably what you're seeing when Kaimanu was established they called it Wailea Ranch Estates. The name was later changed by the owners to Kaimanu. So sometimes they reference the old paperwork it was known as Wailea Ranch Estates but it had nothing to do with the community Wailea, and that's why they wanted to change the name.

Mr. Tsai: But I think what the Wailea Community Association is stating is the fact they don't wanna be misrep...your future tenants if this gets approved, don't wanna be misled that this is in Wailea because it's not.

Vice-Chair Shibuya: Planner Dias?

Mr. Dias: Okay, I wanna address that really quick. I think what Mr. Bud Pikrone was referring to was the word, "Wailea", it was on our agenda. It said like, Wailea, Kihei, Maui. That's the only time that the word, "Wailea" has ever come up and that was just like a quick oversight. In the applicant's defense it never referred to their property as Wailea. It just ended up being on our agenda.

Vice-Chair Shibuya: Okay, thank you for clearing that up. Commissioner Ball?

Mr. Ball: Probably for the Director or maybe one of the planners know this. When the agricultural subdivision was created they had to go through some sort of review as far as ingress, egress of it because it runs through the neighborhood. So at some point I guess I would assume that there was a traffic study or something saying look it's fine to run these vehicles through Maui Meadows to get to the subdivision. The impact is low enough or something to that effect where it was okay and they didn't have to create their own road to the subdivision. And maybe Public Works can maybe answer that too. And this goes on Commissioner Hedani's concern of the impact on the 50 so odd neighbors that this subdivision created, but at some point somebody had to have that discussion when they created it, right?

Ms. Dagdag-Andaya: Correct. Rowena Dagdag, Deputy, Public Works. During the subdivision process I would believe at that time when it gets routed for comments that it does, traffic does get studied and egress and ingress. In Subdivision Code when you do a subdivision it needs to abut at least a private or a public street. So that's one of the requirements for the subdivision in order to get final. But unless, I mean, I would have to look through the files to see what kind of notes there were regarding traffic impact.

Mr. Ball: Well, I guess it would be safe to assume that they had met those because I mean, it's there.

Ms. Dagdag-Andaya: It's there.

Mr. Ball: However, with the caveat that they didn't probably discuss the impact of now instead of having two cars they have possibly six or 12 if everyone wants to drive their own car but it's probably not realistic. But I guess, you know, so I'm just wondering if we wanna think about that. I guess on a side note on that, Police report they also mentioned that they didn't think that it would be a issue either. So I don't know if that helps or hurts.

Vice-Chair Shibuya: Planning Director?

Mr. Spence: Just a comment. Somebody earlier noted the subdivision was done in I believe it's 1987. I know that procedures on reviewing subdivisions have changed considerably since then. So I'm not sure how much we looked at a lot of things in 1987. I'm sure with Maui Meadows Subdivision and changing that to Rural, I'm sure they looked at traffic at that time. I'm not sure...(inaudible)...that would be considered...(inaudible)...consequential compared to all of Maui Meadows.

Ms. Dagdag-Andaya: Yeah without seeing the file, can't really say.

Vice-Chair Shibuya: Commissioner Hedani?

Mr. Hedani: From my perspective it makes it only worse. You know, what I've just heard yeah. If the subdivision gained access to Maui Meadows by purchasing one of the lots for an access road then that lot is part of the subdivision because it provides access to the subdivision. So the lot that provides access to the Kaimana Subdivision is a part of Maui Meadows. And if they can get onto the property without going through that lot, hey, I'll buy it.

Vice-Chair Shibuya: Okay. So there's a question in terms of...I don't wanna put words in your mouth, that there's a question in terms of the HOA for Maui Meadows including the Kaimana or is it excluding Kaimana, right? And right now, Mr. Croly, you can probably address this, does it include Kaimana, the Maui Meadows HOA, does it include, and if it does not, then is there any intent of including the Kaimana residents?

Mr. Croly: The Maui Meadows Homeowners Association on which I sat as board member, I no longer do, does not represent any of the people in Kaimanu or the property that is part of Kaimanu Estates. Never has, and there's never been a discussion at the board level as to including it.

Vice-Chair Shibuya: Okay, the second part of the question is, are they intended to be part of the Maui Meadows HOA?

Mr. Croly: Again, I'm no longer on the board, but when I sat on the board and what I was privy to, there's never been any discussion or proposal for the Kaimanu Association to be merged into the Maui Meadows Neighborhood Association, and I don't think it would even be legal because the documents for these properties specify their own homeowners association. The documents for Maui Meadows actually don't specify a homeowners association. They specify CC&Rs but no homeowners association to enforce them. So when we talk about the Maui Meadows Neighborhood Association, we're not talking about an association that has been empowered by a set of documents or CC&Rs giving them that power. It's actually just an optional organization that you pay \$15 and you become a member of. And at the time that I was on the board less than 20 percent of the owners in Maui Meadows were members of the association.

Vice-Chair Shibuya: Understand, but coming back to Commissioner Hedani's question since you have access, Kaimana has access, buy purchasing a lot in Maui Meadows to get that access to Kaimana isn't it part of the HOA?

Mr. Croly: I believe what happened was that lot when it was purchased and, you know, became part of Kaimanu Estates it no longer was a part of Maui Meadows at that time. That the deeding...I mean, I don't know exactly what transpired but that lot became common property of the Kaimanu Estates Owners Association and was no longer part of the Maui Meadows.

Vice-Chair Shibuya: Commissioner Hedani, you wanna have a question relating?

Mr. Hedani: Not for Tom. It's probably for Danny or the Director.

Vice-Chair Shibuya: Okay, go ahead.

Mr. Hedani: On Page 3 of the application, Item 5, it says, there are no permitted short-term rental homes within 500 feet of the subject property, however, as of September 17, 2013, there are five permitted short-term rental homes in the adjacent Maui Meadows neighborhood. The Maui County Code, Chapter 19.64.030 limits the amount of short-term rental homes in Maui Meadows to five. Is that correct?

Mr. Spence: That is correct. And as stated we would not consider this subdivision a part of the Maui Meadows calculation as stated in the Code.

Vice-Chair Shibuya: Commissioner Ball?

Mr. Ball: Can I make a recommendation that we defer this issue so we can get more information as it pertains to the access lot purchased by Kaimanu from Maui Meadows. Seems like there's some discussion on whether it is or isn't, but I think that the access lot will either be still governed by the association of Maui Meadows or they've turned that over to Kaimanu, so it's not part of at all, a part of Maui Meadows?

Vice-Chair Shibuya: Yes, that's the question I had in terms of who owns it, where's the access and is this access part of the Maui Meadows Homeowners Association?

Mr. Ball: And the other reason why I recommend a deferral is because we will not have the votes to make a determination on this, if Hedani is going to the—

Vice-Chair Shibuya: That's right.

Mr. Ball: —opposition and I would be in favor of it so that would leave still each side with one...(inaudible)...loss.

Vice-Chair Shibuya: That's correct. Unfortunately we don't have the numbers of commissioners here, yes. Commissioner Hedani, do you have any comment or thoughts?

Mr. Hedani: I think Commissioner Ball has a great idea.

Vice-Chair Shibuya: Commissioner Wakida?

Ms. Wakida: Is the lot we're discussing, I'm looking at Exhibit 3, is this the piece of property that

runs up adjacent to the cul de sac I guess that's starts down here on, I don't know, forgot the name of that street, and then runs straight up? Is that the parcel that's under discussion?

Vice-Chair Shibuya: Yes. It goes through. There's one parcel that apparently has the easement for the access road.

Ms. Wakida: Right.

Vice-Chair Shibuya: Okay, to this Kaimana Subdivision and that's where in my mind, I'm not settled as to do they belong to the Maui Meadows Homeowners Association by virtue of that lot being part of Kaimana or...

Ms. Wakida: Yeah, I understand.

Vice-Chair Shibuya: Go ahead, Commissioner...I mean, Director Spence.

Mr. Spence: So if I hear the Commissioners, and now there's a motion on the floor, if I hear the Commission right, you would like us to get...to look at the subdivision files for both subdivisions and certainly I mean, I would bet money there are two different subdivision files, but certainly with the discussion on that access road.

Vice-Chair Shibuya: Yes, the access easement. Does that-

Mr. Spence: Okay, well...I see a lot.

Vice-Chair Shibuya: Yeah, yeah, whatever it is.

Mr. Spence: Okay.

Vice-Chair Shibuya: If it is a lot or that easement is through Maui Meadows HOA controlled land then is it not Kaimana linked to HOA of Maui Meadows?

Mr. Spence: And just for clarification. There is no...I mean, there's a homeowners association for Maui Meadows that is not the same kind of homeowners association that you would have for a Wailea subdivision or a condominium project. You know, they're not...it's not organized like that. It's a voluntary association and you can become a member of it if you so choose. I would not say that...as been reported the homeowners within Maui Meadows only a certain percentage of them are members of that association. The rest of them are ...(inaudible)...Those properties ...(inaudible)... be a part of it.

Vice-Chair Shibuya: That is correct.

Mr. Spence: Okay.

Vice-Chair Shibuya: Members, do you wanna make a motion?

Mr. Ball: I did make a motion.

Mr. Spence: A motion was made.

Vice-Chair Shibuya: There was no second, right? Is there any second for that motion?

Mr. Hedani: I second.

Vice-Chair Shibuya: Okay, so it was moved by—

Mr. Spence: We've had the discussion.

Vice-Chair Shibuya: Okay, we had the discussion. It was moved by Commissioner Ball, and seconded by Commissioner Hedani. We did have some discussion on this matter. Any other matters to discuss? Commissioner Hedani?

Mr. Hedani: That's only the first of all of these sticky tabs, but I'd like to defer the rest of the questions that I have to the point where we reconvene hopefully with a full Commission so you have nine members here that can exercise their judgement.

Vice-Chair Shibuya: Okay, that was just one of my sticky. I only had one. Okay, thank you. So will you, Planning Director will you repeat the motion, please?

Mr. Spence: The motion is to defer until the department goes and looks at the subdivision files, excuse me, with particular looking at the access road or lot.

Vice-Chair Shibuya: Yes.

Mr. Spence: The ultimate question is, is this a part of Maui Meadows or is it not?

Mr. Giroux: Chair, can we have a date certain?

Vice-Chair Shibuya: Clayton's not here so, at least the third meeting, the second meeting is too far?

Ms. Wakida: Chairperson?

Vice-Chair Shibuya: Yes, continue.

Ms. Wakida: The next agenda shows three items.

Vice-Chair Shibuya: But the timing, I'm looking at the dates, the number of days available. We have the I think enough time, right? And that's what I hear you're saying.

Ms. Wakida: Yes, it appears that way.

Unidentified Speaker: First meeting in November.

Vice-Chair Shibuya: Well, will you be able to find that information for the next meeting.

Ms. Dagdag-Andaya: I'm just wondering, I mean would it be sufficient to just check the Real Property Tax records right now or do you wanna check the-

Mr. Ball: No, the reason way we're deferring it-

Ms. Dagdag-Andaya: Oh, yeah, 'cause you don't have enough.

Mr. Ball: -we don't have members to vote.

Ms. Dagdag-Andaya: Yeah, okay. I mean, we can pull 'em right now. I can have staff pull it.

Vice-Chair Shibuya: In couple weeks.

Mr. Ball: I won't be here.

Mr. Dias: Regarding Rowena's comment, looking at what the information that the applicant provided, the owner of that property, it just says, "roadway". So I don't know if that's, does that mean, as for the County now or I'm not exactly sure. That's the only information I have...(inaudible)...

Ms. Dagdag-Andaya: Yeah, I'm pulling it up right now, but-

Vice-Chair Shibuya: Okay, November. Let's try November.

Mr. Spence: First meeting in November?

Vice-Chair Shibuya: First meeting of November. Okay, that's part of the motion.

Mr. Ball: I'll accept that amendment.

Mr. Hedani: I second that amendment.

Mr. Spence: Okay.

Vice-Chair Shibuya: Okay, all in favor, what's the right word, defer.

Mr. Spence: Motion is to defer until the first meeting in November.

Vice-Chair Shibuya: Okay, Members all in favor raise your hand.

Mr. Spence: Five ayes.

Vice-Chair Shibuya: Five ayes. Thank you. It's unanimous. We'll defer this issue.

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

VOTED: To Defer the Matter to the November 12, 2013 Meeting in Order to

Clarify Whether the Lot Purchased by Kaimanu Estates in the Maui Meadows Subdivision to Provide Access to Kaimanu Estates Subdivision is Still Part of Maui Meadows.

**(Assenting - K. Ball, W. Hedani, M. Tsai, P. Wakida, W. Shibuya)
(Excused - I. Lay, J. Medeiros, J. Freitas, S. Duvauchelle)**

Unidentified Speaker: What is the date and will we have a chance to testify again?

Mr. Spence: Yes. It will be the November 12th.

Vice-Chair Shibuya: November 12th.

Mr. Spence: We held the public...officially held the public hearing today, but the public has an opportunity to testify on every agenda item if you like.

Unidentified Speaker: ...(inaudible—speaking from audience)...

Mr. Spence: Yes, you will.

Vice-Chair Shibuya: Okay, we'll take a five-minute break. Thank you.

A recess was called at 1:55 p.m., and the meeting was reconvened at 2:05 p.m.

Vice-Chair Shibuya: Planning Director will you introduce the item on our agenda?

Mr. Spence: Commissioners, this is Item C-2, Mr. Charles Lee requesting a Use Determination for a HI-5 Recycling and Redemption Center in Wailuku and the Staff Planner is Mr. Kurt Wollenhaupt.

Vice-Chair Shibuya: Okay, thank you very much. Kurt?

2. MR. CHARLES LEE requesting a use determination to operate the Wailuku HI-5 Recycling and Redemption Center in the B-2 Community Business District at 883 Lower Main Street, TMK: 3-8-036: 092, Wailuku, Island of Maui. (UD 2013/0001) (K. Wollenhaupt)

Mr. Kurt Wollenhaupt: Good afternoon, Members of the Maui Planning Commission. The item before you today is a matter for a use determination for the Wailuku HI-5 Recycling Redemption Center to operate a recycling and redemption center at 883 Lower Main Street in the State Urban District and in the County Business B-2, community Business District at Wailuku, Maui, Hawaii.

Mr. Charles Lee is the applicant and Mr. Lee is in the audience today and will be happy to answer any questions. He wishes to operate a HI-5 Recycling and Redemption Center within the B-2 Community Business District at the former Big Island Scrap Metal Recycling and Redemption Center. This is a 10,444 square foot of land site and this site has been used successfully in the later 2000s for exactly the purpose that Mr. Lee wants to do. There were two options here. We

could have tried to transfer the old permit, but it was extremely convoluted with time, UDRB got involved, there were many issues that we felt it would be much cleaner just to look today for a use determination.

The history behind is written in the report so I won't go into that except that it had been operating successfully as a standard recycling center. There are no requests for service from any neighbors regarding problems with the old operation, and Mr. Lee wishes to essentially simply continue this standard recycling redemption center. I believe that he already has the paperwork in with the State Department of Health, Solid Waste Division, Deposit Beverage Container Program. And then if there was an approval today, that will be attached to that for the final approval from the State.

The B-2 District does allow such a use as this. In fact, it says, any other businesses or commercial enterprises similar in character and not detrimental to the surrounding area provided that such uses shall be approved by the Commission as conforming to the intent of this article that's why we're here today.

Just to give you a little bit of background however, the B-2 ordinance is up at the Council for revision and this body has looked this proposed revision. Should this revision be passed such items as this as long as they meet the Code will be permitted by right. So this would be similar to any of the other businesses allowed in this area, restaurants, mortuaries, general office, marinas, newsstands, pet shops, auto body, reservice stores. So Mr. Lee found himself kind of in a time frame here that he would like to get started and he has...he was courteous enough to come in. He had not started operations. The site has been very well maintained. The landscaping has been maintained according to the requirements of the UDRB. I've gone out there and so the property looks in fine shape to start this business up again.

It's not in the Special Management Area. It's surrounded by businesses as you all know driving down Lower Main there. It does meet the requirements of the Wailuku Community Plan especially with regards to economic activity, recognize the importance of small businesses to this region. Environmental point 12, it promotes recycling programs, reduce solid waste in landfills, including trying to promote convenient point to recycle material and also under the liquid and solid waste part of the community plan, as part of the solid waste management study, address the needs of planning for disposal and transfer sites with more convenience to residential areas, the collection system and location for sites needs to be improved in the County of Maui and in the Wailuku-Kahului Community Plan area to better serve residential areas.

There is a series of photographs that are included. Exhibit 1 shows the lot from the air. It's been completely cleaned up. The site has been landscaped and there's also a green screen fence that meets the requirements for screening that were actually attached with the old UDRB approval. As the other photographs shows the site is ready to go should the Commission approve this and it meets the parking requirements for such an operation. So that concludes the staff report.

Vice-Chair Shibuya: Thank you. Commissioners, questions? Well, let me open it up for public testimony. Seeing none, public testimony is closed. Commissioners, questions anyone? Commissioner Wakida?

Ms. Wakida: Based on the pictures that you've included it looks like there's a nice little green belt

there between the fence and the roadway. Is that true?

Mr. Wollenhaupt: That was all part of the long process with the UDRB.

Ms. Wakida: Yeah, is the applicant planning to do anything further?

Mr. Wollenhaupt: Well, the UDRB requested that there be some kind of vegetation and two trees so they have met the requirements of that. I'm not entirely sure how it got to the UDRB since it's outside of the SMA. This...I'm not sure that they plan on doing anything more and with regards to other properties in the area, this one certainly has been enhanced. There's the electronic waste disposal right next door to this one. So the landscaping in front of this property looks pretty nice. I drive past there most every day.

Ms. Wakida: Okay, thanks.

Vice-Chair Shibuya: Commissioner Ball?

Mr. Ball: Is this Mr. Lee's first redemption center?

Mr. Wollenhaupt: It's my understanding Mr. Lee has one operating in Lahaina. If you'd like more information, he'd be happy to talk to you about that. But he has successfully according to all records that I could find operated one in Lahaina.

Vice-Chair Shibuya: Mr. Lee would you like to say a few words? Please introduce yourself.

Mr. Charles Lee: Yes, my name is Charles Lee. I'm owner of the Lahaina Redemption Center.

Vice-Chair Shibuya: You wanna describe your activities and thank you go ahead.

Mr. Lee: I wanna do more good service to the community. I have about five years experience for that redemption center. So I can help the community.

Vice-Chair Shibuya: Okay, thank you very much. Questions, Members? Commissioner Hedani?

Mr. Hedani: Mr. Lee, you know, for to beautify the area is there a possibility that the landscaped area can be enhanced with like a hedge, a hedge of plants in order to better screen the area from view from the roadway?

Mr. Wollenhaupt: I can sort of assist maybe on something. As part, Mr. Lee knows, as part of this UDRB they wanted to have the green slat screen which was put in and that meets the requirements of the future very likely to be passed code which is amending B-2 which requires a screened area. So they meet the new requirements should the Council pass it. Part of the requirements for the UDRB was to have green grass area, the two trees which are growing, and then if there could be some bougainvillea which I know there had been plants. It's sometimes difficult to grow bougainvillea. It's been on and off over there for, well, six years. But the bougainvillea is what

specifically the UDRB had suggested. I'm not sure if that's the best plant. Again, this is not going to the UDRB. There's there's no reason that we would ever take this back again. So maybe I can...but anyway that's the history behind that. Your question would have to be...(inaudible)... by the applicant. Part of the issue, of course, couple of issues here that were brought out extensively in the past during the long process that this had gone through with Hammerhead Metals and the past, ferrous metals and all that. One of the issues that was brought up was there needed to some ability for security. This fence you can see through so there is some ability for security. There was some comments that if it was a completely solid, completely screened in, there could be some security issues. That was just one point. Then we would have to just...then there was some right-of-way issues that we talked about with the Department of Public Works as to who exactly owned all this. Water line issues about...if we get two kinds of plants it really will be too invasive with the sidewalk that's out there. So this went on for a long time and they were thinking maybe bougainvillea was one plant, but then some thought well is that particularly a native plant? So this has sort of been looked at in the past.

Vice-Chair Shibuya: Commissioner Hedani?

Mr. Hedani: I withdraw my request for a hedge. If it's already been reviewed by the Urban Design Review Board and they're happy with the landscaping, they was satisfied, you know, that's fine.

Vice-Chair Shibuya: Okay, thank you. Commissioner Wakida?

Ms. Wakida: What are the hours of the recycling center?

Mr. Lee: Eight to five.

Ms. Wakida: So there's no need for any lighting is that correct?

Mr. Lee: Yes.

Ms. Wakida: And do have a...what do you have on site to accommodate the employees? Do you put up a shelter, do you have porta potties?

Mr. Lee: Yeah, the portable bathrooms.

Ms. Wakida: Sorry?

Mr. Lee: We're gonna use portable bathrooms.

Ms. Wakida: Okay, yeah. And any other structures for the employees to keep 'em out of the sun?

Mr. Lee: I'm gonna put small tent.

Ms. Wakida: Okay.

Mr. Lee: Tent for the daytime.

Ms. Wakida: Okay, thank you.

Vice-Chair Shibuya: Any other questions, Commissioners? If not, then we can a motion or at least recommendation from the Staff?

Mr. Wollenhaupt: The Department would concur with the assessment that was brought in for the use determination that a HI5 Redemption Recycling Center is similar in character to other services and facilities that are permitted within the B-2 Community Business District on Lower Main Street in Wailuku and notes that such a recycling and redemption center has successfully operated in this location in the very recent past. Therefore, the Planning Department recommends that the Maui Planning Commission find the proposed use for the redemption recycling center to be an allowed use in this B-2 Community District on the subject property and in conformance with Title 19.802 of the Maui County Code and recommends that the Commission adopt the Planning Department report and recommendation prepared for October 8, 2013 meeting as its findings of fact, conclusion of law and decision and order and authorize the Director of Planning to transmit this decision and order on behalf of the Planning Commission.

Vice-Chair Shibuya: Okay, Commissioner Wakida?

Ms. Wakida: I move to adopt the recommendation by the Planning Department.

Mr. Hedani: Second.

Vice-Chair Shibuya: It was moved by Commissioner Wakida, and seconded by Commissioner Hedani. Director, will you repeat the motion?

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

Vice-Chair Shibuya: Members, any comments Okay, all those in favor of the motion, raise your hand? It's unanimous.

Mr. Spence: That's five ayes.

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

**VOTED: To Approved the Use Determination, as Recommended by the Department.
(Assenting - P. Wakida, W. Hedani, K. Ball, M. Tsai, W. Shibuya)
(Excused - I. Lay, J. Medeiros, J. Freitas)
(Absent - S. Duvauchelle)**

Vice-Chair Shibuya: It's unanimous. Thank you very much. Thank you, Kurt. Thank you, Mr. Lee. The next item.

Mr. Spence: Action minutes.

D. ACCEPTANCE OF THE ACTION MINUTES OF SEPTEMBER 24, 2013 MEETING AND REGULAR MINUTES OF THE AUGUST 27, 2013 AND SEPTEMBER 10, 2013 MEETINGS

Mr. Ball: Motion to accept Action Minutes of September 24, August 27th, September 10th. There are no changes.

Mr. Hedani: Second.

Vice-Chair Shibuya: Thank you very much for the motion, and seconded by Commissioner Hedani.

Mr. Ball: Sorry, I should clarify that. That's Action Minutes of September 24, but Regular Minutes of the 27th and 10th of September.

Vice-Chair Shibuya: No problem. All in acceptance, a verbal acknowledgment saying, "aye".

Commission Members: Aye.

Vice-Chair Shibuya: Any opposed, say "nay". Hearing none, it's unanimous accepted.

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

VOTED: To Accept the Action Minutes of the September 24, 2013 Meeting and the Regular Minutes of the August 27, 2013 and September 10, 2013 Meetings.
(Assenting - K. Ball, W. Hedani, M. Tsai, P. Wakida, W. Shibuya)
(Excused - I. Lay, J. Medeiros, J. Freitas)
(Absent - S. Duvauchelle)

Vice-Chair Shibuya: Director's Report?

E. DIRECTOR'S REPORT

- 1. Planning Commission Projects/Issues**
- 2. EA/EIS Report**

Mr. Spence: Okay, Commissioners, on your Director's Report have nothing on Items 1 or 2.

- 3. SMA Minor Permit Report**
- 4. SMA Exemptions Report**

Mr. Spence: The SMA 3 and 4, the SMA Minor Permit and SMA Exemptions Reports dated 9/27 of this year is before you.

Vice-Chair Shibuya: I do have a question and since we do have Mr. Frampton in the audience, I would like to invite him to say a few words if he would on Item SM2 2013/0069, Rock and Brew Restaurant if you wouldn't mind. You'd rather not? Oh, okay.

Mr. Spence: We have an appeal on that. I'm not sure it would be...legal proceedings, I'm not sure if...(inaudible)...

Mr. Giroux: ...(inaudible)...

Vice-Chair Shibuya: Okay, sorry. We need to accept.

Mr. Spence: You accept the reports.

Vice-Chair Shibuya: Any Members? Verbal acceptance, any nonacceptance say, "nay". Hearing none, it's been accepted unanimous.

5. Discussion of Future Maui Planning Commission Agendas

a. October 22, 2013 meeting agenda items

Mr. Spence: Okay, so the next Commission agenda item. First there will be a public hearing with Grant Chun of A & B Properties requesting an SMA Permit for two new retail buildings. T Maxx Store. Unfinished Business William and Connie Lawler, remember we had deferred that item. Also within Maui Meadows on the southern side of Maui Meadows and—

Ms. Wakida: Why did...excuse me, sir, why did we get...can you refresh our memory why did we defer it?

Mr. Spence: Because you've had a...remember the testified that said that there was all these other bed and breakfast and short-term rentals around them, and you directed the Planning Department to go and do the research on the calendar and so we're doing that. And Item C, notification of SMA Emergency Permit.

Vice-Chair Shibuya: Okay, thank you very much. Commissioner Hedani?

Mr. Hedani: I'd like to request if the Director could get for us for the next meeting an attendance summary for the Commission?

Vice-Chair Shibuya: Would that be possible.

Mr. Spence: And specifically what are you looking for?

Mr. Hedani: Well, specifically I'm looking for was who is excused, how many unexcused absences there are on the Commission because it's unfair to people. You know, they come before the Commission, if we only have five people here and it's a problem.

Vice-Chair Shibuya: We have to defer.

Mr. Ball: If we could direct the Vice-Chair to contact the Chair and make calls to make Members that are not here to let them know that they should be here. The ones that should have been here I guess. The name plates, I would say that they –

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

Mr. Ball: Because it really does not serve the public when they're not here and we have to have a majority vote.

Mr. Spence: How far would you like me to go back?

Mr. Hedani: Whenever the terms, March?

Mr. Spence: Since March.

Mr. Ball: But not counting next week, right?

Vice-Chair Shibuya: He's not gonna show up at the next meeting.

Mr. Spence: Okay, the next meeting is October 22, 2013.

Vice-Chair Shibuya: Any questions, any comments, none? Thank you. Commission adjourned.

F. NEXT REGULAR MEETING DATE: OCTOBER 22, 2013

G. ADJOURNMENT

The meeting was adjourned at 2:25 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Keone Ball
Wayne Hedani
Warren Shibuya, Vice-Chair
Max Tsai
Penny Wakida

Excused

Jason Medeiros
Ivan Lay, Chair
Jack Freitas
Sandy Duvauchelle

Others

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