

**HANA ADVISORY COMMITTEE TO THE  
MAUI PLANNING COMMISSION  
MEETING OF MAY 23, 2013**

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

**A. CALL TO ORDER**

The meeting of the Hana Advisory Committee (Committee) was called to order by Vice-Chairperson, Scott Crawford, at 4:20 p.m., Thursday, May 23, 2013, at Helene Hall, Hana Bay, Hana, Island of Maui.

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

Mr. Scott Crawford: Aloha. Good afternoon. Welcome to the Hana Advisory Committee to the Maui Planning Commission. I'm Scott Crawford, and I'm the Vice-Chair, and John Blumer-Buell is not present today so I'm going to open the meeting, so I hereby call the meeting to order, and the first item on our agenda is election of officers, but if there's anybody who wants to give testimony right at the beginning, who has to go or whatever, let us know if you want to do that before we get into other agenda items. If you can wait until we get into the specific items to give testimony, then that's great. Okay, so we'll proceed. Hearing no desire to give testimony now, we'll proceed to election of officers.

**B. ELECTION OF OFFICERS FOR THE 2013-2014 YEAR - CHAIR and VICE-CHAIR**

Mr. Crawford: So would anybody like to make a nomination? What are we -- we're electing chair, vice-chair. Chair first. Okay. One at a time. Okay. In speaking with John before the meeting too, he mentioned that he would prefer not to serve another term and give somebody else a chance to have a turn at the chair, so he doesn't want to be nominated.

Mr. Ed Cashman: I nominate Scott Crawford.

Mr. Clayton Carvalho: I will second that nomination.

Mr. Crawford: Okay, hearing nominations for myself from Mr. Cashman and Mr. Carvalho, any -- how do we proceed? Ask for discussion? Yeah, is there any discussion? Anybody have any comments on that? I'm willing to accept the nomination. I'll say that. Okay, hearing no comments at this time.

Mr. Ward Mardfin: Without any other nominations, I move the nominations be closed.

Mr. Crawford: I don't think we can have another motion while there's a motion on the table, as point of order. But are there any other nominations? Okay, hearing none.

There being no further nominations, a vote was taken.

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

**VOTED:       that Committee Member Scott Crawford serve as Chairperson for the 2013-2014 board year.**

Chair Crawford: Thank you for your faith in me to provide service diligently. Okay, do we have any nominations for vice-chair?

Mr. Cashman: I nominate Clayton Carvalho.

Mr. Mardfin: I'll second the nomination.

Chair Crawford: Clayton, do you accept the nomination?

Mr. Carvalho: I accept the nomination.

Chair Crawford: Any discussion? Okay, seeing no discussion, are there any other nominations at this time? Okay, seeing none, I'll call for the vote.

There being no further nominations, a vote was taken.

***It has been nominated by Committee Member Cashman, seconded by Committee Member Mardfin, then unanimously***

**VOTED:       that Committee Member Clayton Carvalho, Jr. serve as Vice-Chairperson for the 2013-2014 board year.**

Chair Crawford: No opposed. Unanimous election for vice-chair. Okay, and with that, we're ready to move on to our next agenda item, which Orientation Workshop.

## **C.     ORIENTATION WORKSHOP**

### **1.     Roles and Responsibilities**

Mr. Clayton Yoshida: Good afternoon, and congratulations to the new Chair and Vice-Chair of the Hana Advisory Committee. We thought, since this is the first meeting of the Committee's year, that we'd have a brief orientation as we have several public hearing

items, but I guess I did pass out a handout, Chapter 2.28, of the Maui County Code, and I just wanted to focus, again, on Section 2.28.060. The Hana Advisory Committee was created in 1989, through Ordinance No. 1859, and it consist -- you consist of seven members, each of you is a resident of the Hana District. To be eligible, you have to be a resident on the Hana District for at least 90 consecutive days prior to appointment by the Mayor, and if the committee member ceases to be a resident of the Hana District, then the member would forfeit their position on the Committee and the position would be vacant.

And your, under Section D, Powers, Duties, and Functions, the Committee advises the Maui Planning Commission on matters within its jurisdiction and carries out duties as maybe delegated to it by the commission. Oftentimes, the Maui Planning Commission will delegate the Hana Advisory Committee to be the hearings body on -- well, to hear -- conduct the public hearing on land use applications in the Hana region and make recommendations to the commission. So for the three public hearing items that you have today, they were all taken to the Maui Planning Commission and they were all -- the commission delegated the Advisory Committee to conduct the public hearing and make its recommendation.

The Planning Commission may also delegate to the Advisory Committee recommendations on proposed legislation, such as the -- as it has for the short-term rental bill or the bed and breakfast bills, and the service business residential bill. I did pass out copies of Section 13-2, of the Charter, that list various responsibilities for boards and commissions, and I just wanted to emphasize too, we did item 9, which is each board shall elect a chair from its membership annually, but I'd like to focus on item 8, which is a majority of the membership, entire membership of a board or commission shall constitute a quorum to do business. An affirmative vote of a majority of entire membership of a board or commission shall be necessary to take any action. So you're entitled to seven members, and four is a majority, so you need at least four affirmative votes to take any action. And it is important, for purposes of the record, that you clearly delineate reasons why you're making a decision because your recommendation is transmitted to the Planning Commission; in the case of the change in zoning, the Planning Commission's recommendation is transmitted to the council, and it should be clear on the record why you're deciding the way you're deciding. If there are any questions on that? If not, I'll turn it over to your attorney to talk about Sunshine Law and ethics.

## **2. The Sunshine Law**

Ms. Richelle Thomson: So you have a handout, also it's called on the cover, "The Hana Advisory Committee," and I apologize, there's a couple of typos in there. I originally did this for the Molokai Planning Commission, so there's couple of places where "Molokai" is still snuck in there. So the Sunshine Law is a Hawaii State Law regarding public meetings, so

of government meetings to encourage public decision making so that important decisions about communities and growth are made in the public and that also the public has the opportunity to participate and offer testimony, either written or oral.

Page 3, What is an open meeting? So an open meeting is like today's meeting, open to the public, anyone who's present can offer testimony on any agenda item, and the Hana Advisory Committee can limit the length of the testimony to three minutes. You can also set a longer limit, five minutes or ten minutes, if you feel that that would be necessary or desirable for those items, and the important thing is to make sure that it's applied throughout, so if you lengthen the testimony time for one, it's allowable for everybody.

Notice of a meeting. So agendas are posted six calendar days ahead of time, and that's, obviously, to allow everybody the change to know the date, time, and place of the meeting. The agendas are set. You can add items to an agenda but only under very limited circumstances. So once the agenda has been posted, and, you know, usually this will come up during a meeting, you want to add something to an agenda, you can do that by a two-thirds affirmative vote, and you cannot add an item if it's going to be of reasonably major importance or if it would affect a number of people, and that's to prevent, you know, adding items that would affect a lot of people and not give them the opportunity or others in the community the opportunity to participate.

I'll skip over the minutes. That's pretty self-explanatory. But what is a meeting is important. So a meeting can mean a meeting of three or more of you at anyplace in the community if you're talking about board business. So what you want to do is avoid talking about things that are either on your agenda or likely to come up before you. Just avoid talking about anything that you think may come up before this body. Of course you're going to see each other all over the place at, you know, parties and the grocery store, of course you can talk to each other, but just prevent -- you know, don't talk to each other about board business, and that includes also e-mail exchanges, telephone conversations, Facebook; basically, just stay away from board business.

There are a few different types of interactions that are permitted under the Sunshine Law, investigative subcommittees, and those would be subcommittees established at a regular meeting for the purpose of investigating a certain topic. So less than quorum, which in this case would mean two or three of the members, could be on an investigative subcommittee and you can go out and you can meet separately and outside of the public meeting scope to do your investigations, and then you would come back and present your findings to the board, and then this body would take action, or not, depending on the topic.

Selection of officers. So -- selection of officers you can actually speak with each other outside, you know, and that's really to determine whether or not people are interested in serving ahead of time.

Let's see - presentations and discussions. So the Hana Advisory Committee can assign two or three members to present or discuss your position with, say, the County Council or the Maui Planning Commission if there was something that you felt that your presence in person and representation of the board would be important, you can do that. It's usually setup at a meeting like this where you would discuss, you know, whether there's a Maui Planning Commission meeting, you know, in June and a specific item is very important and you feel that it would be desirable to have some representation of the Committee so you could vote to send a couple of members there.

In the case of a canceled meeting, you can -- say that we come out here and there's no quorum, there's only three members, the public can still testify, the board members who are present can still ask questions, and if there are presentations, you can still take the presentations, you can't do any decision-making at that meeting, and that's to allow those people in the public who've come all the way out, you know, not to waste their time and also the applicant's, you know, they go through quite a bit of effort to be here too, so it's to allow them to go ahead and do their presentations. At the next meeting, the members who are present would report to the absent members and then you can go ahead and take action.

This permitted interaction, attendance at other meetings is new as of last year. So up to three Committee members, so less than quorum, can go to other meetings, you know, such as County Council or the Planning Commission, you can participate in discussions, the discussions can involve board business, you can't make any commitments to vote, and then you report back, basically, the gist of the meeting and what was discussed to the body as a whole.

Executive meetings are -- will usually come up in the context of regular meeting when the Advisory Committee would like to consult with their attorney on issues relating to the powers, duties, privileges, immunities, and liabilities of the board. So you can do that outside of a public meeting. And that needs to be added to the agenda if it's not known in advance and already posted.

Just a quick bit on Robert's Rules of Order. This is generally the flow of a meeting. So some things that may not be completely transparent. The chairperson runs, you know, runs the meeting, obviously, but the chair can also make motions, speak in the debate, and vote especially in a case, like today, where there are only four members present so to take action, you have to have all four votes to be in the affirmative. It's good to obtain the chair's permission to speak and that's so that, you know, it's good for the minutes so that you know who's speaking and you don't talk over each other so that the transcript is clear.

The flow of a motion, the maker of the motion makes it, it's seconded by another member, and then the formal rules say that it's stated or read by the chair; that may or may not be

necessary. It has to be made and seconded though prior to being received and considered by the board. So prior to moving on to discussion, you have, you know, the maker and then a second. Once you get to voting, if you do not vote, your silence is considered an affirmative vote, so you want to be sure to vote unless you have a conflict of interest that is more than just a disagreement. We'll go over conflict of interest in just sec.

A friendly amendment, you'll hear this and it's really kind of a misnomer. There are just amendments to motions, they can be friendly or unfriendly. So once a motion has been stated by the chair, so once it's seconded and the chair receives it, it's no longer property of the maker of the motion. It's the property of the board. So an amendment to that motion is a second motion that's handled first, so before you get to the main motion, you would either approve or defeat the amendment, and the move back to the main motion as amended or not.

### **3. Ethics**

Ethics. This is in the Charter, Article 10. So don't accept gifts, and business transactions that may -- or financial interest that might impair your judgement should be disclosed to the Committee members. You can also, you know, give your attorney a call and discuss a situation you might feel that you have a conflict. It's good to do that in advance of a meeting. And if you do have a direct financial interest or something that arises to the level of a conflict, you might be able to refrain from voting on that item. If you're in doubt, you can get an advisory opinion from the Board of Ethics. So the best thing to do though is, you know, give me a call, send me an email, tell me that you've got a situation you'd like to discuss and we can kind of iron out a game plan. So any questions?

Mr. Mardfin: On your last page 12, it says Maui Planning Commission rule, whenever a conflict of interest, that would apply to us also?

Ms. Thomson: That's correct.

Mr. Mardfin: Thank you.

Chair Crawford: Okay, thank you for bearing with us through our orientation. We're ready to move on to the next agenda item.

*Chair Crawford read the following agenda item into the record:*

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

- 1. MS. NANCY PLENTY of KAUIKI ENTERPRISES, LLC to obtain a Change of Zoning from Urban Reserve District to Service Business Residential (SBR) District for approximately 1.25 acres of land located at 5050 Uakea Road, TMK: 1-4-004: 005, Hana, Island of Maui. (CIZ 2013/0001) (P. Fasi)**

*The Committee may make a recommendation on the application to the Maui Planning Commission.*

Chair Crawford: And so, at this time, we'll accept public testimony. Anybody who would like to testify, just come forward to the microphone. Oh, okay, we'll do the presentation first and then testimony, so go ahead and proceed with the presentation then.

Mr. Paul Fasi: Good afternoon. My name is Paul Fasi. I'm the staff planner for this project. The applicant's applying for a Title 19 change of zoning from urban reserve to service business residential. This will provide conformity with the Hana Community Plan designation, SBR, which is service business residential. A change of zoning to SBR will correctly reflect its existing use of the property as a small-scale residential business as a day spa with one short-term rental unit of approximately 200 square feet, a small café of approximately 1000 square feet, it seat 30. No development is being proposed at this time and its present use will continue.

The land use designations are as follows: state land use district is urban; the Maui Island Plan designates it as small town growth; the Hana Community Plan is SBR, service business residential; Title 19 of the county zoning is urban reserve and the reason for the change of zoning to SBR. It is in the special management area.

The application was submitted to the department. I've been working with the applicant on several outstanding issues. The applicant is in the audience today. And what we're working on currently is to bring the property and the -- its existing use into compliance. Presently, there are several un-permitted structures. She is diligently working with our Public Works Department, Development Services Administration, and the building permits division. It will take some time. Hopefully, all of the permits will be in place before it gets to the Maui Planning Commission.

The department supports this project. We, as of today, in terms of public testimony, we have received -- I have received one e-mail this morning in favor of it with some conditions -- with some concerns rather that it be brought into compliance. As I've said previously, the applicant is working towards compliance. There were two letters of support submitted with the application. I was just handed a third letter of support from the Hana Business Council, just before we started, so there is no communication in opposition to the project.

The applicant's proposed use is in compliance with the service business residential ordinance and the transition from urban reserve to service business residential is within the entire purpose of the service business residential district from urban reserve to the SBR. The SBR ordinance was recently enacted not too long ago and so that gives the community an opportunity to change their zoning from the urban reserve to service business residential, which what we're here for today.

If there are no questions, that concludes the department's overview. Thank you.

\_\_\_\_\_ a. **Public Hearing**

Chair Crawford: Alright, at this time, we'll take public testimony. If anybody would like to testify, just please come forward to the microphone and state your name. Seeing no one leaping forward, we'll ask the department for its recommendation.

Mr. Fasi: Excuse me, Chair, I do have --

Chair Crawford: Hold one just one second. Ward?

Mr. Mardfin: Yeah, before we get to the recommendations, I'd like to ask some questions if I might.

Chair Crawford: Yes. Go ahead.

Mr. Mardfin: Mr. Fasi, I read a -- well, there are a couple of things. This is very, very -- this one is very, very minor. Under your analysis, you said the project will provide direct and indirect additional opportunities and since they're not increasing their scope, I think it will continue the opportunities. That's just really technical. I did have a more substantive one, and it has to do with the -- it looks like they're going to put in a septic tank, an additional -- a second septic system, which would imply earth moving, and this is really a very historical sensitive area, so at some point in there, you said that there wouldn't be any earth moving, so I think at least there's going to be a little bit and wonder what we would do so that -- to protect any kind of archaeological evidence.

Mr. Fasi: The applicant is -- the applicant has proposed, not in this particular application, I believe they did receive permits to install the septic tank but they're just waiting for a contractor. So they did receive permits from Development Services Administration for the installation of a septic. The only holdup is they can't find a contractor to do the work.

Mr. Mardfin: Would there be somebody around making sure that -- what occurs if there were iwi discovered?



Mr. Fasi: The applicant, being in the special management area, would have to submit a special management ATF, special management area permit, after-the-fact, which would then include the assessment from -- the archaeological assessment if you haven't already submitted that and gotten that approval from the State Historic Preservation Division. I'm assuming that this has already transpired because you did receive the installation permits from DSA. But if it hasn't, then we would have to go just through normal procedures.

Mr. Mardfin: Paul, this is a question more for you than anything. I believe the applicant currently has a homeowners exemption. Would that change at all under -- for the real property tax, would that change at all if this change in zoning occurs?

Mr. Fasi: I believe that this is a question more geared more towards Gina at the far end of the table. I think that once the short-term rental kicks in, they do lose their homeowners exemption. Is that correct?

Ms. Gina Flammer: I'm not sure if the change in zoning would trigger it, a change in their taxes. If they do receive a short-term rental home permit, that would change their taxes. They would lose the homeowners exemption and they would get moved to a new rate, which I don't believe has been set yet, it's going to be set in the budget committee. I don't know that the change in zoning application today though, I don't -- it doesn't look like Finance commented about that in the staff report.

Mr. Fasi: The change in zoning does not trigger them losing their homeowners exemption. It's simply a change in zoning -- change of zoning.

Mr. Mardfin: But -- I understand that. However, if they could -- I think they're running a short-term rental there now, and if they do, then they would be wanting to get a permit and, at that point, that homeowners exemption would be lost.

Ms. Flammer: Yes. The applicant's working with the department on the other permit. This is coming first. You are correct that when that permit's granted, it does affect the property tax status.

Mr. Mardfin: And I know this could be long-term process 'cause it goes from our body, to the Maui Planning Commission; from the Maui Planning Commission to the County Council for approval of a change in zoning. Thank you.

Mr. Fasi: If I would, Mr. Chair, I did promise former Chairman Buell that I would read his e-mail testimony into the record. May I do so? I receive this e-mail from John Blumer-Buell this morning:

Aloha Members of the Hana Advisory Committee to the Maui Planning Commission:

I regret I cannot attend today's meeting due to a serious lower back strain.

I want to go on the record as fully supporting the approval of the change in zoning application by Kauiki Enterprises, LLC.

For your information, the service business residential issues have been a lingering problem for the Hana planning process since the passage of the 1994 Hana Community Plan. I thank and congratulate the Chang 'ohana and the Planning Department for their efforts to resolve the problems.

I would like to the Chang `ohana establish their proposed certified kitchen as soon as possible. Please do everything you can to make that possible. This will help insure the food service operation is in compliance with the State Health rules and regulations. The food service operation, which is a benefit to the community, would no longer be subject to closure by the State Health Department.

Please help the Chang `ohana to establish a wastewater system that will make their operation independent from using the Hana Ball Park restrooms.

Please do not require paving for a parking lot. The addition of crushed rock, only if applicable, would be adequate. The use of red cinders would not be advisable. Red cinders float away in heavy rains and would end up in Hana Bay.

Thanks for your consideration. Mahalo, John Blumer-Buell.

And for the record, the Planning Department is working with the applicant towards this end. Thank you.

Chair Crawford: Thank you. Do we have any other questions or comments from the Members at this time? Mr. Cashman.

Mr. Cashman: For Mr. Fasi, yeah. You know, I noticed in your approval, there's no conditions. You know when you read the application, there's a lot of things that have to be done. Do we have to put conditions or we just -- we assume that you folks are going to track it?

Mr. Fasi: You can trust that the department will get the permits in place before it submits to getting on the agenda before the Maui Planning Commission. I will not take this matter before the Maui Planning Commission without the proper permits in place because it just would be a huge waste of time and we'd be back to square one. So, yes sir, the applications -- the permits will be in place prior to going to the Planning Commission.

Chair Crawford: Any other questions, Member, or comments? Okay, at this time, we'll entertain a motion and just to -- sorry. Let's hear the recommendation from the department.

**b. Action**

Mr. Fasi: The Maui Planning Department recommends that the Hana Advisory Committee recommend to the Maui Planning Commission approval of the change of zoning from urban reserve to the service business residential district. In consideration of the foregoing, the Maui Planning Department recommends that the Hana Advisory Committee adopt the Maui Planning Department's report and recommendation prepared for the May 23, 2013 meeting as its findings of fact, conclusions of law, decision and order, and further to authorize the Planning Director to transmit said recommendations to the Maui Planning Commission. Thank you.

Chair Crawford: Okay, now we'll entertain motions. And the alternatives we have before us here for action are to defer, to approve with no conditions, to approve with conditions. Ward?

Mr. Mardfin: I move that we adopt the Planning Department's recommendations, conclusions of law, and the recommendation as stated without further conditions.

Chair Crawford: Second by Mr. Cashman. Is there anymore discussion at this time? Mr. Mardfin.

Mr. Mardfin: As Clayton said a few minutes ago, it's very useful to have the thinking of the Committee on the record 'cause this will be read by the Planning Commission. I was going to put a condition on that they get these things done but the assurance by Mr. Fasi that it will be done before he takes it to the Planning Commission makes that an irrelevant additional condition. I think this is a wonderful project. I know that the interim situation that everybody was put in around here is a living nightmare. I'm glad you're getting through this. I understand that it's a long, painful process, and I thank you very much for doing it. You're going to have a great project there. I know you're -- I'm going to add one other little parenthetical comment. I know you don't have any -- I suspect you don't have any control over it, and I love eating the Thai food, but when there's Aloha Week or there's fundraising in the park for other groups, it would be nice if they actually shutdown that day

rather than compete with them. But anyway, it has nothing to do with my vote. I intend to vote affirmative on this and -- but it's just something I'm putting out there. Thank you.

Chair Crawford: Any other comments? Nope. Yeah, just state your name for the record.

Ms. Nancy Plenty: At this point -- I'm Nancy Plenty, identified as the applicant. You know, you're familiar with the whole lag that happened between the SBR zoning being created in the community plan and the actual creation of that zoning in ordinance, so, you know, that's the reason we don't have permits for all those things so we're just kind of, as I pointed out to Paul, we're kind of going backwards through the process because we went to get permits but because we didn't have zoning, we couldn't get the permits, so now it's like just working our way backwards. So it looks like we haven't been compliant but we do want to be in compliance and it's just a backwards process that's all.

Chair Crawford: Okay, thank you. Ed.

Mr. Cashman: I think we should encourage people to come forward and be legal because I think an example, in Hamoa, we have a place where there's like four, five different people selling food, and I know they don't want to be legal. To me, we should praise these people who come forward and want to make their business legal because I mean the reality is in Hana, we dearly these type of business. Okay.

Chair Crawford: Okay, any other comments at this time? Seeing none, I will call for the vote. All in favor -- and just to restate, we're voting to approve with no conditions in accordance with the department's recommendations.

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

***It has been moved by Committee Member Mardfin, seconded by Committee Member Cashman, then unanimously***

***VOTED: to adopt the Planning Department's recommendations, conclusions of law, and the recommendation as stated without further conditions.***

Chair Crawford: No opposed. The motion passes unanimously. Okay, we're ready to move on to our next agenda item.

*Chair Crawford read the following agenda item into the record:*

- \_\_\_\_\_ 2. **MS. BRIANNA LEE EVERETT requesting a State Land Use Commission Special Use Permit in order to operate the Hana's Tradewind Cottage, a two (2) bedroom bed and breakfast home on property situated in the State Agricultural District at 143 Alalele Place, TMK: 1-3-009: 107, Hana, Island of Maui. (SUP2 2012/0034) (G. Flammer)**

*The Committee may make a recommendation on the application to the Maui Planning Commission.*

Chair Crawford: We'll start with the presentation.

Ms. Flammer: Thank you, Chair. My name's Gina Flammer. I'm a staff planner with the department. I'm going to show you our presentation. It's kind of bright out. I don't know if it's the humidity or Hana. I've got a couple extra copies so if anybody would like to take a look. So because we're dealing with the same permit for the next two applications that we're going to review, I just wanted to real briefly go over what that permit is. I know this Committee did a great job last time, they made it through four of these, so I cut it down and made it really short, but I also wanted some of the audience and the applicants too just to be real clear on what we're talking about.

So we are -- both applicants that we're going to review today have two permits that are in. The one that we're reviewing is the land use special use permit, and that's because both are on state agricultural land. So if you remember from last time, Hawaii has the most complicated regulatory system. We have three layers in Hawaii. We have our county zoning, and that's where your change in zoning that you just reviewed with staff planner, Paul Fasi, that's a county zoning issue. Then you also have the community plan designation. And then you have a state land use designation. The reason we're here today is because the two properties are both in the state ag district.

And the purpose of this permit today is to make sure it meets some of the requirements ...(inaudible)... requirements of a land use special use permit. It can be obtained when an unusual and reasonable use is being presented, and there are some criteria that they give this body to go through in order to determine that. You are reviewing, the Hana Advisory Committee is reviewing this because the project is less than 15 acres. When you deal with projects that are over 15 acres, they go to the State Land Use Commission.

As I mentioned, often you'll have multiple permits with the same use. The reason we're here today -- well, just actually to backup a little bit, the Hana Advisory Committee, you will be seeing some bed and breakfast, and some short-term rental home permits in the future. Today we're only looking at the SUP because it's on ag land. In the future, when there are three or more bedroom, and when 30% of owners within 500 feet protest, or when there's an existing permitted B&B within 500 feet, so as we get more and more permitted

operations, this body's going to see more and more of these specific permits. The short-term rentals, just about the same, however, they have provisions where a smaller protest number will trigger your review of that application.

So again, we're looking today at a land use special use permit, and that's for any use that's not outright permitted. Here are just a couple of examples of all the different uses that have required them.

So how do you review these types of permits? Well, fortunately, they wrote out rules to tell us exactly what we need, and when we write our reports to the Committee, we list them out right in our staff report for you. So first of all, we need to make sure it's not going to be contrary to the objectives of 205, which is the ag district, and we do that for these types of bed and breakfast and short term rental uses. By looking at it implemented, we require an implemented farm plan and that's because of the State Office of Planning suggested that that would show consistency and that is where more than 50% of the land is being used for agriculture. We require that it be implemented, so we go out and we do an inspection; we actually have two inspectors from the department that go out, someone that looks just for the farm plan, and then the planner doing either the B&B or the short-term rental, and this SUP, we'll go out and do a tour as well. And then we have a farm plan that's actually put on paper and then it is approved after we have an inspector go out and make sure everything's verified.

We also have four other regulations that we make sure and we through in our staff reports that they meet this.

And then the role, just so everybody understands what we're doing today. The public hearing was delegated to you by the Maui Planning Commission because they want community members -- they want to make it easy for community members to come out, and they also know that you know your community so they want to hear what you have to say. They want to hear not only what your specific recommendation is but some of your reasoning behind it. They find it really useful and they really do -- they read not only the minutes, but they also read the report that I write, I'm going to write a summary, so if you have comments, I usually will read them back to you at the end to make sure that I get it correct, and also if you have additional ones at the same time. I like to make sure that everybody's onboard with the same comments and that I'm getting it from the group.

Okay, so now we're going to do two of the our projects. We'll start with the first one our Chair, Scott Crawford, mentioned, which is a bed and breakfast home, Hana Tradewind Cottage. It's a two-bedroom bed and breakfast. Because it's in the state ag district, you're reviewing it for the land use special use permit. The bed and breakfast permit is actually approved administratively by the department because there were not enough protest to

trigger, there were no protest actually, and it didn't meet any of the other criteria, there's not another one within 500 feet.

This is a two-bedroom bed and breakfast that we're talking about. It's located off of Alalele Road. It originally was a five-acre plot, five-acre flower farm. I kinda highlighted in the dark so you can see how it was subdivided. It was a family subdivision. The flower farm still kinda functions as one entire big property. You can see from here where the -- the yellow shows you where the outline of the property is, and then you can see the driveway and where it goes in and where the two-bedroom ohana unit is. And just so you can barely see, I included some pictures. As you come in, you can tell right away you're on a flower farm. The ginger, it's one of the areas where the ginger grows probably the best on the island. And then I'm just going to take you inside so you can take a look. We just have a standard kitchen. There's a nice sitting area. One of the bedrooms with two twin beds. You have -- there's another main bedroom. I wanted to let you know what it looked like from the street. There is a fire stand right out front. There's a sign. It's real easy to find. There's lots of clear access as you go in and out. And then I included some color photos in the report too so just so you can -- you can get an idea of just how much agriculture we're talking about. The applicants have gone beyond just the flower farming, she's also put in a vegetable garden for their family. What they mostly sell are mostly tropicals. I wanted to show you what red ginger is, I know you all know what that looks like, but when we get to Maui Planning Commissions, it's good to let them know exactly what they're growing and selling. And there's just some more. I didn't do a pictometry picture because there's so much vegetation it was hard to even see the cottage. It's amazing. They do a great job of keeping everything manicured, and I think that's when you have a commercial farm, you're out there cutting on a regular basis. They're also doing a little bit of pineapple. I think I saw a lot of papaya out there as well. And then I included in the staff report some pictures of what the website looks like. It is a commercial operation. You can order right off the web and they will ship the flowers right from there.

The applicant is here. Her name is Brianna Everett if anybody has any questions for her. And that concludes my presentation. Thank you.

**a. Public Hearing**

Chair Crawford: Okay, do we have any public testimony regarding this item? Come forward and state your name for the record, please.

Ms. Lehua Cosma: Hi. Aloha and good afternoon. My name is Lehua Cosma. I've been on this Committee at one time with Mr. Cashman and I know it's not an easy job, but what I want to say is I want to commend the applicants that has come forward. I think it's such a great thing they're doing by taking that first step, it's positive, and we need more people like that in Hana to step up and, you know, make it legal, and just go through the process.

But I'm here because I live on 120 Alalele Place, so I'm the neighbors of Brianna Everett, and I support what they're doing. I see how hard they work, the flow farm, and there's no impact as the closest neighbor, and I ask for your support for them as well. And I thank you folks for coming out, and I congratulate the applicants 'cause I think it's wonderful that they're going through this process. Any questions?

Chair Crawford: Any questions from the Members? Okay, thank you.

Ms. Cosma: Thank you too.

Chair Crawford: Does anyone wish to testify at this time? Okay, seeing none, do you wanna hear the recommendation from the department unless the members have any questions or other questions at this time. Ward.

Mr. Mardfin: Yeah, I do have some questions. I have one question for the applicant actually. Brianna, I know you -- the application is for a B&B. Had you ever given, I ask this of all people so don't feel you're singled out, do you -- have you even given any thought to using it for long-term rental 'cause there's a really big need for long-term rental here?

Ms. Brianna Everett: Okay, my name is Brianna Everett. I have considered it. We've had it in short-term rental for a long time, and to be totally honest, we just can't afford to rent it long-term with our mortgage and our situation.

Mr. Mardfin: Thank you. That actually answers what my second question -- it's been operating currently, is that correct?

Ms. Flammer: Yes. We have on both of our applications, we have a box that ask if they're operating and we ask that they provide us tax information, a tax clearance form to show that they've been paying taxes. With the case of a B&B, we don't ask to show that they're not taking the homeowners or the circuit breaker, but we do ask that for short-term rentals. The council, when they look at the -- at least with the short-term rental bill and came up with this idea that -- well they knew people were operating and they were going to come in, they wanted a smooth transition, they wanted to make sure that people coming in were paying their taxes, so that's why we put the checkbox on the application.

Mr. Mardfin: Gina, my other question, it's kind of a strange one, I was trying to find this on the TMK map and you can get the property but you can't get a map of it, and is that because it was subdivided?

Ms. Flammer: Yes, it is. Our data -- I wanna say our data out of real property is six years old with updating the mapping. They're moving to a new system, which might explain why



some of it's a little bit outdated, but when there's been a subdivision, there's usually quite a lag before all that information gets uploaded.

Mr. Mardfin: Following up, on Exhibit 2, Brianna wrote a really nice letter explaining that she's -- this is going to be the B&B and that she lives in a different home, and I was trying to figure out where on Exhibit 2 that --

Ms. Flammer: Oh. You know, that's so great. It's not on there. But I wish I could see the screen. I did indicate where it is on the screen. Let me see if we can -- I'm going to walk up and show you. I outlined real lightly just for the powerpoint 'cause I noticed the same thing for the -- here. As you come in the driveway, the house is right here, so you pass right by it.

Mr. Mardfin: But it wasn't on our exhibit that we saw?

Ms. Flammer: No.

Mr. Mardfin: Okay. Now the letter makes sense 'cause it was saying it was on the same property and I was -- I only saw one house on the property.

Ms. Flammer: It's the area where there's no ag.

Mr. Mardfin: I'm sorry?

Ms. Flammer: It's about the only area on the property where there's no ag on the farm plan.

Mr. Mardfin: Okay. Thank you very much.

Chair Crawford: Any other questions from the Members or comments? Okay, seeing none, we'll ask for the department's recommendation.

**b. Action**

Ms. Flammer: Okay. The department recommends approval. We have seven standard conditions for both bed and breakfast and short-term rentals. I'm not going to read them to you. You're welcome to ask any questions. I do want to note that no. 7, our last one, does require that the farm plan remain implemented during the duration of the permit; I'm not so worried about this being with this long history of a commercial farm, but we will ask, when they come in for a renewal, for evidence as it's still implemented and we will go out and do an inspection to make sure.

So in consideration of the foregoing, the Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt this Planning Department's report and recommendation prepared for today's meeting, May 23, 2013, as its findings of fact, conclusions of law, and decision and order, and authorize the Director of Planning to transmit your recommendation to the Maui Planning Commission.

Mr. Mardfin: Are you ready for a motion?

Chair Crawford: Yes. We'll hear a motion at this time. Again, we're -- well, go ahead, Ward.

Mr. Mardfin: I move that we adopt the report prepared by Gina for the Maui Planning Commission as the findings of fact, conclusions of law, and decision and order for transmittal to the Maui Planning Commission. I move that we adopt -- approve this as written with no further conditions.

Chair Crawford: Mr. Cashman has seconded the motion. Any of the Members have any other comments or discussion at this time? Ward.

Mr. Mardfin: As always, I will always say something. Again, to get it on the record as to what we're doing, I can approve this wholeheartedly. I think it's a wonderful project. I especially like it when neighbors come up and -- for something that's already been running, when neighbors come up and say no problems. It's a wonderful way to do things. I can support this. And it looks like they're continuing to do agriculture on it so it meets all the conditions that would be of concern to me. Thank you.

Chair Crawford: Before we move to the vote, I need to ask for a clarification from counsel regarding a conflict of interest, potential conflict of interest. I have a business as a website designer and hosting service, and the farm and cottage are one of my clients, so I need to ask if I'm permitted to vote on this application.

Ms. Thomson: Is it an ongoing engagement?

Chair Crawford: Yes.

Ms. Thomson: Do you feel that it would impair your ability to make an unbiased decision in any way?

Chair Crawford: No. I don't.

Ms. Thomson: Is it a significant financial interest that you have or is -- would that be considered one of many different minor account?

Chair Crawford: One of many different minor accounts.

Ms. Thomson: I think that it would probably be up to your personal view on whether you feel that you have a conflict in that situation, it's a minor enough type of interest.

Chair Crawford: Okay. Thank you. I wanted to disclose that and just have it on the record. Ward.

Mr. Mardfin: I was just going to say that I'm very happy. I used to do the same thing on the commission. I think it's really good to disclose that, and if it's a minor thing, then, as Corp. Counsel told us, go ahead.

Chair Crawford: Yeah, I -- yeah, I want to disclose that I don't feel like it will bias my opinion as far as the application. So having said that, I'll call for the vote.

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

***It has been moved by Committee Member Mardfin, seconded by Committee Member Cashman, then unanimously***

***VOTED: to adopt the Planning Department's report as the findings of fact, conclusions of law, and decision and order for transmittal to the Maui Planning Commission, and to approve this as written with no further conditions.***

Chair Crawford: Four affirmative votes; no opposed. The motion passes. Okay, now we're ready to move on to the next agenda item

*Chair Crawford read the following agenda item into the record:*

- 3. RICHARD and ANDREA M. RAY requesting a State Land Use Commission Special Use Permit in order to operate the Hale Noa Short-Term Rental Home (STRH) , a two (2) bedroom short-term rental home on property situated in the State Agricultural District at 175 Ulaino Road, TMK: 1-3-009: 091, Hana, Island of Maui. (SUP2 2013/0003) (G. Flammer)**

***The Committee may make a recommendation on the application to the Maui Planning Commission.***

Chair Crawford: We'll start with the presentation from the county. Thank you. Gina.

Ms. Flammer: It's me again, Gina Flammer. We're all a little crooked but we're all on one screen now, which is great. Okay, so we're dealing with the same permit that we just did a moment ago, it's a state land use because this property is located in the ag district. This is for a short-term rental home. Again, it's a two-bedroom cottage. However, it kinda hard to see the house. It's actually hard to see the house on the property. There's so much ag going on. I wanted to show you where it is. I think we read the address. The important part of this is we're looking at a four-acre long skinny lot. You've got the house that's pretty much positioned kind of in the front part, and then all the way back up, even on the sides, you're looking at the different fruit trees and other agriculture that they have going on. I did notice that they put 50% of their land area is in ag. I spent about an hour-and-a-half walking around the property. Some of these -- the areas that they have left out of ag are actually natural fruit trees that are in middle there that just weren't included. I will tell you I did not know what a mountain cherry tree looks like, so I don't have any pictures of that, but I know there's quite a bit on the property. I did want to show first what the house looks like and then I'll show the agriculture.

It's a two-bedroom cottage. It's got a carport; a kitchen when you first come in; seating area, which its got the slider off with a lanai, which is the other half of the seating area; you've got one bedroom, and then here's the second bedroom; and then you have an outdoor seating area. Lots of banana on the property. I also saw a lot of papaya. A variety of different fruit trees. There's some flowers too. I think it's hard in this area not to grow ginger. I didn't see a whole lot of flowers on the plants, which means they probably had been clipped fairly recently. I think the caretaker's the one who takes care of all that ag. These are the same pictures that are in the staff report. Then again I showed a lot of the papaya that's all over the property. And then I always like to see the keiki. It shows that they're continuing to plant out the property. I know they haven't owned it a super long time, but they're continuing to plant out and these will grow up.

The applicant is here in the audience if you have any questions. The manager, who's their daughter, is also here. Thank you.

Chair Crawford: Okay, I'll invite public testimony at this time. Anybody would like to testify, please come forward to the microphone. Gina?

Ms. Flammer: If I could mention one other thing too. The applicant is not currently operating. I told them we'd do our best at the county to get their -- expedite their permit. When you come through the Hana Advisory Committee, you're looking at about a nine-month process. They've been very patient as I've explained that to them. It's very important to them that they have their permit before they start operating.

**a. Public Hearing**

Chair Crawford: Thank you. Come to the microphone and state your name for the record, please.

Mr. Richard Ray: Rich Ray. We were operating when we bought the house like, a 15-year mortgage, so I've owned it almost 13 years. And back in the day, we had a long-term rental in there for a while too ...(inaudible)... who works with Rick Rutiz in the shop here at the Hana School, and we're really trying to make a go with the ag thing now much more and more. My best friend over here, Chuck Boerner, from Ono Farms, is helping me with that a lot. So I'm real excited about, I'm 61, you know, and I want to do more farming, so in order to do that, we decided to go to -- one reason we didn't rent it for a long time was when they were building their house, they lived in it in the neighborhood there, so it was -- and then we used for family uses, but now we want to make a go more with the ag so I need to get a little more cash flow out of it, and it also would be a good thing for the community because they're bringing people that -- I mean I love Hana, I think it's one of the most beautiful places on earth, and I want to be able to spend more time there ultimately. I come over from Oahu quite a bit and, you know, people that can come in there when we had short-term rentals, it was they fell in love with the place, they'd spend money here, go to the roadside stands, eat Thai Food at Pranee's, it wasn't there then but that's where they'd be going now, so I think it's a win for the community to do this. If you have any questions, I'd be willing to entertain them.

Chair Crawford: Ward.

Mr. Mardfin: I'd like to commend you for several things. One, that you did use it for long-term rental. I can understand, as you try to do more intensive agriculture, you have to come over so if there was a long-term tenant there, that it wouldn't work, so that's a perfectly good reason to take care of it.

Mr. Ray: I do some of the work there when I'm there. I come over and actually feed the trees and, you know, plan what's going to go next, and take some fruit out.

Mr. Mardfin: And I also commend you for, I had read it and Gina mentioned it but I had read it in the report, I commend you for not operating un-permitted the way many do. I think that's good that you try to follow the rules as best you can and I appreciate it. Thank you.

Chair Crawford: Any other comments or questions from the members?

Ms. Flammer: You ready? Sorry, we're -- okay.

**b. Action**

Chair Crawford: Go ahead with the recommendations.

Ms. Flammer: So we have the same -- I'm doing the department recommendation. We have the same conditions as we did for the bed and breakfast; again, noting that the farm plan has to remain implemented during the duration of the permit.

In consideration of the foregoing, the Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt this Planning Department's report and recommendation prepared for May 23, 2013, as its findings of fact, conclusions of law, and decision and order, and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission.

Chair Crawford: Would you like to make a motion, Ward?

Mr. Mardfin: I move that the Hana Advisory Committee adopt the recommendations as the findings of fact, conclusions of law, and decision and order for transmittal to the Director of Planning to go to the Maui Planning Commission exactly as prepared.

Mr. Carvalho: I would like to second that motion.

Chair Crawford: Second by Clayton. Any other discussion or comments at this time? Seeing none -- Ward?

Mr. Mardfin: If nobody else will, I'll do it. It's really -- I'm telling you, it's really useful to have stuff on the record.

Chair Crawford: Thank you. We appreciate you being the one to do it for us today.

Mr. Mardfin: I can vote wholeheartedly vote in favor of this. I think they're doing this exactly the right way. I appreciate the effort to have used the property for long-term property in the past and understand the reasons for using it for a short-term rental. You look like you're doing a lot of a really good agriculture and I appreciate it. I think this is a very -- approving this special use permit will help you on your way toward running a good legal operation. Thank you very much for coming forward.

Chair Crawford: Any other comments or questions? Mr. Cashman.

Mr. Cashman: This is not in regards to the applicant, but to me, you know, when the council passes a law, they have to make sure they can enforce it because that's been the problem in Hana, especially where I live Hamoa. There's un-permitted -- even if you

complain, it's still not enforced, so I mean to me it's good these people come forward and want to be legal, but, you know, once we approve them, or even the ones that don't come forward, in order for the thing to be effective, it has to have enforcement.

Chair Crawford: Thank you. Any other comments from the members? Okay, at this time we'll call for the vote.

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

***It has been moved by Committee Member Mardfin, seconded by Committee Member, Carvalho, then unanimously***

***VOTED: adopt the recommendations as the findings of fact, conclusions of law, and decision and order for transmittal to the Director of Planning to go to the Maui Planning Commission exactly as prepared.***

Chair Crawford: None opposed. The motion, and I should have restated the motion, but the motion is to recommend approval as per the recommendation of the department, and that motion passes unanimously. And that concludes agenda item D, the Public Hearing portion of the agenda, so we will move to agenda item E, the Director's Report.

## **E. DIRECTOR'S REPORT**

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

Mr. Yoshida: Thank you, Mr. Chairman and Committee Members. I guess as Gina had mentioned, there's a number of -- well, the short-term rental home ordinance is about a year old now and there have been a number of applications from the Hana region, and Gina is the lead person or maybe the only person in the division that's processing them all, and the short-term rental home legislation has spurred interest in the bed and breakfast permit so -- and a lot of them are in the state ag district that require a special use permit, so we have a number of them pending and we'll bring them to you maybe in the early fall. And then the only other application that I think would have to come to you is a special use permit application that we got recently for mining at Kawaipapa. We just got it maybe in the last two weeks or so. So that's what's kind of the plate in the near foreseeable future, but, you know, we are having more meetings than usual because we have a lot of these short-term rental homes and bed and breakfast applications in the ag district. So that's essentially our report.

Chair Crawford: Okay. Thank you. Do we want to discuss scheduling or -- scheduling for the next meeting?

Mr. Yoshida: I guess probably Gina will tell us when we have enough, you know, several applications that are ready to go before the Committee, and then we'll try to aggregate them so we bring, you know, three or four, or whatever, so to --

Ms. Flammer: If I could interrupt for second. I'm working with a number of applicants that are flying in from the Mainland so I'm trying to give them September or October from hearing when they're going to come, and we may do back-to-back meetings. We're going to start having some more where it's not just going to be SUPs, at some point, probably a little bit later, very end of the year, you're going to start actually reviewing the short-term rentals. You have some roads where there's many that are all coming in. You'll have one that's approved and then the rest are going to come to you. The way I'm looking at that schedule, it's looking more like the very end of the year, so you guys get the summer off, but then you're going to be busy.

Chair Crawford: Okay. Thank you. Is there any other comments from the Members or items of business that we need to address? If not, I'll entertain a motion for adjournment.

## **F. ADJOURNMENT**

Ed has moved to adjourn. Do I hear a second?

Mr. Carvalho: I will second.

Chair Crawford: And any discussion?

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

***It has been moved by Committee Member Cashman, seconded by Committee Member Carvalho, then unanimously***

***VOTED: to adjourn the meeting at 5:31 p.m.***

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards & Commissions



**RECORD OF ATTENDANCE**

**Present**

Scott Crawford, Chairperson  
Clayton Carvalho, Jr., Vice-Chairperson  
Ed Cashman  
Ward Mardfin

**Excused**

Ian Ballantyne  
John Blumer-Buell  
Anjoleen Hoopai-Waikoloa

**Others**

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