

**HANA ADVISORY COMMITTEE TO THE
MAUI PLANNING COMMISSION
MEETING OF FEBRUARY 20, 2014**

** 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, 2200 Main St., Suite 315, Wailuku, Maui, Hawai'i. ***

A. CALL TO ORDER

The meeting of the Hana Advisory Committee (Committee) was called to order by Chairperson, Scott Crawford, at 4:03 p.m., Thursday, February 20, 2014, at the Helene Hall, Hana Bay, Hana, Island of Maui.

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

Chair Scot Crawford: The hearing of the Hana Advisory Committee to the Maui Planning Commission for February 20, 2014, at Helene Hall, we have three items on our agenda, so we'll just move into them.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

C. APPROVAL OF MINUTES OF THE MAY 23, 2013 AND SEPTEMBER 26, 2013 MEETINGS

Chair Crawford: The first one -- oh, actually minutes, sorry. General public testimony. Okay. Thank you, Ward. So if anybody wants to testify now, you can go ahead and come up to the microphone and give public testimony. If anybody needs to go early or whatever, you can go ahead and testify now. If not, then we will look at the minutes of the May 23, 2013 and September 26, 2013 meetings.

Mr. Ward Mardfin: I move approval of the minutes for the May 23, 2013 meeting.

Chair Crawford: Do we have a second?

Mr. John Blumer-Buell: I will second it. I'm glad Ward made the motion, I wasn't at that meeting, so if they're good with you, they're okay.

Chair Crawford: Any discussion on the minutes?

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

It has been moved by Committee Member Mardfin, seconded by Committee Member Blumer-Buell, then unanimously

VOTED: to approve the minutes of the May 23, 2013 meeting.

Chair Crawford: And do I hear a motion for the September 26 --

Mr. Mardfin: I take it the minutes of May 23 passed?

Chair Crawford: Yes.

Mr. Mardfin: Mr. Chair, I move approval of the minutes of September 26, 2013.

Mr. Blumer-Buell: I was at the meeting and I'm happy to second.

Chair Crawford: Any discussion on the minutes from the September 26 meeting?

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

It has been moved by Committee Member Mardfin, seconded by Committee Member Blumer-Buell, then unanimously

VOTED: to approve the minutes of the September 26, 2013 meeting.

Chair Crawford: And the minutes are approved.

Mr. Blumer-Buell: With the Chair's permission, I'd like to make a short comment about the minutes.

Chair Crawford: Mr. Blumer-Buell.

Mr. Blumer-Buell: This is -- we've discussed this numerous times. Our minutes are not getting to the Planning Commission before they're looking at the very issues we are, and that has to -- they need to see our minutes before something comes up. We're just approving the minutes for the Rayner's project and they heard -- the Planning Commission heard that in last year, so can we improve that?

Mr. Clayton Yoshida: The draft minutes are provided to the Planning Commission as under Chapter 92, the minutes have to be provided within 30 days after the meeting, so we're moving forward with using the draft minutes 'cause those are the ones that are available.

Chair Crawford: Moving into the agenda item D, Public Hearings, with actions to be taken after the hearings. The first item on the agenda is:

Chair Crawford read the following agenda item into the record:

D. PUBLIC HEARINGS (Action to be taken after public hearing.)

- 1. ANYA PAIVIKKI RUTIZ and RICHARD RUTIZ requesting a State Land Use Commission Special Use Permit in order to operate Anya's House Bed and Breakfast, a one (1) bedroom bed and breakfast located in the State Agricultural District at 41049 Hana Highway, TMK: 1-6-005: 026, Hana, Island of Maui. (SUP2 2013/0024) (G. Flammer)**

Chair Crawford: So we can start with public testimony.

Mr. Mardfin: Mr. Chairman?

Chair Crawford: Yes?

Mr. Mardfin: Before we start, this particular item is part of the `Aina o Kipahulu land organization in Kipahulu. I am an owner of a different property in the same 'Aia o Kipahulu association. I am doing this to disclose my relationship but I'm not going to recuse myself because I don't feel I have a financial interest in it.

Chair Crawford: Thank you. Okay, so at this time, we'll take public testimony. Yes?

Mr. Blumer-Buell: Just as a point of information that Gina can answer this but -- or our Corp. Counsel, the private agreements with association and homeowners association don't have an impact on what we're doing, is that correct? This is for whoever.

Ms. Gina Flammer: We're doing a bed and breakfast so it doesn't contain the same homeowner association provisions as the short-term rental association. We actually require a letter from that homeowners association, and usually that one is geared towards any covenants that would pertain to short-term or bed and breakfast use. I'm not aware of any covenants of that association. Okay. Thank you.

Chair Crawford: Okay, now, we'll take public testimony if anybody -- wait. Staff report first? Okay.

Ms. Flammer: Okay. My name is Gina Flammer. I'm a staff planner for the Department of Planning. I'm going to go ahead and show you a powerpoint. I want to let the members know, I did give you packet. There were four letters of support that came in after the letter -- after the staff report was mailed to you, those were included. I also gave you a color copy of the farm plan. I had to laugh. It kind of cut off the colors at the end but you can see it a little bit better than you can in the report, and I'll have a picture up here as well. So what I'm going to do is go ahead and show you some pictures of the property.

This is for a one-bedroom bed and breakfast use. It requires two permits. It requires a bed and breakfast permit, and because it's zoned state agriculture, it also requires a state land use permit. The bed and breakfast permit is reviewed and the approval authority is with the Department of Planning. There were no triggers. There weren't enough -- there weren't any protest that would have triggered a Hana Advisory, Maui Planning Commission review of that permit. Today, we're reviewing the state land use permit. You guys have done several of this, but if you have questions again, please feel free to jump in and we can talk about that.

So this is a map. This is really more for the Maui Planning Commission. I give them, generally, the same powerpoint. I wanted them to see where it is. We're in the Kipahulu area. I gave you the parcel map, so you can see that in the report as well, exactly where the parcel's located. And then I have some pictures. There's color copies of the powerpoint if anyone's have trouble seeing it that are in the back there.

And even though we're doing the ag permit today, I always like to show you what the other -- what the inside looks like, what the operation is. So here's the one bedroom. You can see the views.

And then we will start with the farm plan, and it has to be implemented. We've talked about this before. We have another division, our Zoning Division, that's in charge of implementation of the farm plans. They actually send an inspector out also. So in addition to me, there's another Department of Planning employee that goes out the property. And what I really wanted to show you with this, this is -- oh, you can't see the highlights, but this is the list of the trees and agriculture that's on the property. It's very hard to see with photos when you have such a large parcel, so I'm going to do my best to show you these photos, but I want you to see, there's 35 avocado trees; we're looking at 43 coconut; 32 papaya; 26 noni; 79 citrus trees. There's four acres of grazing. There's quite a bit going on on this property. But I'm going to do my best. So there's also a lot of banana, which when I looked at the list, I didn't even see that on there. Quite a bit of banana. We've got pohole fern that's sold commercially. We've got coffee that's also sold. You can see some

of the papaya here. There's lilikoi that you can see. Well, here you go. You've got a variety of citrus trees, mango, avocado. Just some examples of the trees. There's also a lot of flowers that are used for the bed and breakfast operation, and you can see some of those here as well.

I have to say, in all the site visits I've done, this property probably has the most agriculture and the most variety of any of the properties that I've seen. It's also leased out for cattle, and they're also doing beekeeping as well.

So if we look at the application, what we do, as the department, is we review it ourselves according to all the criteria in the law for both permits, and then we also send it out to agencies to take a look at it. The State Office of Planning, who's in charge of the state ag, they will send back comments if they don't see something that they're comfortable with. In this particular case, they had no comments probably because of all the agriculture. The State Land Use Commission, it's also sent to them. The Police Department didn't have any comments. No complaints were filed that they could find. And then we also send it to the Real Property Tax Division. Sometimes with ag property, they'll send another inspector out too and there'll be a third inspection for those people. And then also public comments are very important. There's two noticing that go out. The first one is a notice of filing, and that's for the bed and breakfast. That goes to everybody within 500 feet. And that goes out when the application is submitted. There were no comments during that period. There's also a second notification period whenever there's a public hearing, and that notice went out 30 days prior to today, and again, I did not receive any protest letters, but I did get 4 letters of support for this, which is kind of on the high end, so those are included in your packet.

We can go ahead and have public testimony and discussion, and I can do the recommendation after that.

a. Public Hearing

Chair Crawford: Okay. Would anybody like to give testimony on this item? Just come up to the microphone, state your name, and go ahead.

Mr. Dean Wariner: My name is Dean Warner. I know several of you. I've been a teacher in Hana the past 17 years; just recently retired; still do some sub-work. And I have known Rick and Anya Rutiz for about 25 years, since I used to vacation in Kipahulu and stay at the Thomas's. They were close-by and we used to meet with them frequently when we had problems that we had to solve and didn't know how to do it, and they were old-hands so they knew how to bail us out. And I said in my letter that I felt that Anya was a very responsible and achieving business person for the Maui community and that she takes care of her guests, just about every need you can think of, and when there's a problem,

she's always there to help them out. And I having been in the bed and breakfast business myself in Colorado, I know how time-consuming it is and how much effort it takes to please your guests, which is a happy thing 'cause that's what they're paying you for. But I think it reflects good on the community, as a whole, when you have a good operator making people welcome and having them return again and again to stay with you. It says a lot for that business-owner and that says a lot for -- it does a lot to help the County of Maui progress in the visitor category. That's about all I wanted to say. I just wanted to add that I think Anya is a very responsible business-owner and I know that she was always careful about keeping her taxes paid and keeping her accounts squared away so that when she did get the chance to make an application, she would already have a track-record, and I think if you need to verify that, you would find out that she's been very responsible. Thank you.

Chair Crawford: Thank you. Anyone -- yeah, any questions from the Members of the Committee for Dean? Okay, go ahead, John.

Mr. John Kawika Smith: Aloha. My name is John Kawika Smith, and I'm one of the residents in the Kipahulu area. Our family has been from Kipahulu for a very, very long period of time, and I just wanted to step in today to this meeting and lend our support for Anya and Rick. Rick is a stellar guy in the community. The business, beautiful. I couldn't think of any better that would provide economic stimulus for the Hana community and the people of Kipahulu.

Chair Crawford: Thank you, John. Any questions from the Members? Okay, any other testimony?

Dwayne Smith: Good afternoon. My name is Dwayne Smith. I also -- I'm a part-time resident of Kipahulu, mostly from Oahu, but I do own land and I do own a home out here. I've known Rick for well over 17 or 18 years - high level of respect for him. I will talk in favor of allowing this project to do go through. I just believe that, you know, we have to be a little bit more pro-business and, you know, anybody that can bring people out to this area and give them a high level of respect, good treatment, and that continues to bring out tourists or that industry back to this area, I'm all for it so --

Chair Crawford: Okay. Thank you, Dwayne. Any questions from the Members of the Committee? Okay, any other testimony from the public? Alright, seeing -- do we want to hear from the applicant at this time? Okay, so we'll do that afterwards, during discussion. We'll have the staff recommendation first. Okay, so at this time, we'll close public hearing, and ask for the staff to give their recommendation for this item.

Ms. Flammer: Do any of the Committee Members have any questions? Did we want to have some discussion prior to the recommendation?

Chair Crawford: Ward?

Mr. Mardfin: I have some questions to ask to the applicant, but I thought you -- I will proceed with whichever method you find better - to have the recommendation from the planner or to ask questions of the applicant.

b. Action

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

Ms. Flammer: I can go ahead and give the recommendation. The staff recommendation is approval with seven conditions that we have listed in the recommendation report that went to you. I can go over each one, but they're all the same that we've talked about. I would like to point out the last which says that the farm plan has to stay implemented during the duration of the permit, and then they need to show that when they come in for a renewal application, I'm not so worried about this property, but we do do a site visit at the time of renewal also.

So, in consideration of the foregoing, the Maui Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the department's report and recommendation prepared for today's hearing, February 20, 2014, as the findings of fact, conclusion of law, and decision and order, and authorize the director of Planning to transmit said recommendation to the Maui Planning Commission.

Chair Crawford: Okay, do Members have any questions regarding the recommendation? Let's start with that and then -- go ahead, John.

Mr. Blumer-Buell: Yeah, I'd like Gina to explain the legislation, the enabling legislation for both B&Bs and STRs regarding transference. It's my, you know, it's my understanding that these permits were not going to be transferable, specifically to -- so that they don't -- the properties don't become commodified, you know, commodified with the B&Bs. If somebody sells, they need to reapply, is my understanding.

Ms. Flammer: Yes. That's correct. And if you look at no. 2 is the land use permit and this has a little bit of different condition than the bed and breakfast. Typically, state land use commissions, they're a general permit used for any use on agricultural land that's basically not agriculture. So this ones says it can be transferred with written approval of the Planning Director; however, the bed and breakfast permit has a provision, it's one of the conditions, it's actually written in the law that says you cannot transfer a permit, a bed and breakfast permit. So it's always, with any kind of law, it's always the more restrictive provision that weighs forward. I will tell you, the short-term rental home does allow transfer

to a spouse; the B&B does not at this time. But John is correct that it is not transferable and that was done specifically so that it did not raise the value of homes and affect neighbors.

Mr. Blumer-Buell: Thank you.

Chair Crawford: Any other questions from the Members regarding the recommendation?

Mr. Mardfin: Gina, after what you said, does that mean you're somewhat modifying recommendation 2 or condition no. 2, excuse me?

Ms. Flammer: That's an interesting question. Clayton, do you want to --

Mr. Yoshida: Clayton Yoshida, with the Planning Department. In this case, because it's in a state ag district, again, they need the two permits; the state land use commission special use permit, and the B&B permit in order to operate. So the B&B permit is nontransferable, that's part of the code as the council passed the ordinance, so Gina explained, they have to live with the more restrictive, which is the non -- they cannot transfer the B&B permit.

Mr. Mardfin: Thank you. That explains it. I understand what's going on. What we are voting on is a special use permit. We are not voting on a B&B. So this condition, as written, is appropriate for the special use permit. Then that makes perfect -- so there is no modification of conditions, as recommended by you.

Chair Crawford: Okay, any other questions regarding the recommendations at this time? Yeah, John?

Mr. Blumer-Buell: I just want to ask this once, and this is kind of just so the community understands part of this process so this isn't aimed at this particular application, but the 1994 Hana Community Plan, under Land Use, Implementing Actions, no. 5, says, "Conduct an inventory and study of existing nonconforming uses, including vacation rentals, to determine: 1. Their numbers; 2. Geographic distribution; and 3. Affects upon the local housing and real estate markets, and the local economy. And identify recommendations for resolving nonconforming use issues." My question for Gina and Clayton: Has that ever been done?

Ms. Flammer: I can take that one. That specific study has not been done. When we reviewed the bed and breakfast ordinance, we more generally or we took a global approach to it, so we did take a look at the nonconforming uses countywide in relation to vacation rental and they addressed those uses at the time, only allowing bed and breakfast and putting all the criteria and the standards. So that particular study wasn't done but the

county did something similar on a countywide level when they did the bed and breakfast and when they did the short-term rental home. And I'm not sure if you're aware of the department is currently looking at reorganizing themselves. The director has gone to the council and explained that we need some more help with implementation for exactly what you're talking about. So the department's aware that we have a lot of things in our community plan policies that we'd like to do, we don't necessarily have the staff resources or the time, and we're looking at doing some restructuring so that we can actually carry out all of those activities.

Mr. Blumer-Buell: Thank you, Gina. The reason I brought up that issue now is because as we see more and more B&Bs and STRs, the cumulative impact of this is going to impact the community in terms of affordable housing for our local residents, we have ten houses at this point that have been taken out of that possible rental market, so as time goes on, I'm just trying to say we need to be aware of the long-term impacts, including on the landfill and so forth, and that's what the plan's really, you know, I hope it gets done.

Ms. Flammer: You're actually charged with that. When you see the bed and breakfast permits that come to you, part of your job is to look at that overall picture. Now when the county took a look at the bill and they looked at the overall picture, the affect on the long-term housing market, they mitigated that by putting in the caps, and they mitigated that by having certain triggers that send them to you. So when we do the last B&B, that's actually the bed and breakfast permit, that's when you'll have a chance to kinda take a look at the global picture, but keep in mind the cap is the main tool the county put in the law to address that.

Chair Crawford: Okay, any other questions from the members at this time regarding the recommendations? And seeing none, then I guess we'll ask if we can have questions for the applicant? If you could come up to the microphone and just be available for Members to ask questions. Ward?

Mr. Mardfin: Hi, Anya. Don't feel offended by this, I ask it of everybody that comes for a B&B or short-term rental. I mean this is a special land use permit but the implications are for a B&B or short-term rental. Have you ever considered, we have a huge need in this community for long-term rentals, have you ever considered using this for a long-term rental? And let me just say, I met somebody just the other night who works at the National Park, he can't find housing, and long-term rentals would be wonderful if you could do it.

Ms. Anya Rutiz: I have considered it.

Chair Crawford: Oh, can you, excuse me, start by saying your name and --

Ms. Rutiz: Oh, Anya Rutiz. I have considered it. I could not make a living with the amount of money I could get out of a one-bedroom rental. The power system being alternative and pretty much everything out there is alternative, I have to monitor it practically daily, especially if the sun is not shining, it's a solar power situation. There's so many alternative things, plus I'm doing farming at the same time on the side, I would be on the land, you know, several times a week. It would not be a suitable situation for a rental when the owner is present all the time.

Mr. Mardfin: Thank you. I have a second set of questions. And I -- somebody partially addressed already about you currently pay -- how long has it been operating?

Ms. Rutiz: Ten years.

Mr. Mardfin: And you've been paying GET and TAT all the time? You currently have a home exemption?

Ms. Rutiz: I do.

Mr. Mardfin: Gina, what happens if, not with the special use permit, but for the B&B, when she gets -- if she gets a B&B ...(inaudible)...

Ms. Flammer: Okay, so how the law works -- if I could just backup a second. For up until recently, the department, on the application, was asking for a tax clearance form, so if somebody was operating, they had to show that tax clearance form, which is provided by the state, which looks at not only GET and TAT, they look at income tax too. It's quite thorough, I've heard. So the department might -- we wanted to address that, and it was addressed in her application. Secondly -- what was your second question?

Mr. Mardfin: Home exemption. Real property home exemption.

Ms. Flammer: So the home exemption, we -- not only do we send the real property tax division notice of the application, when the approval comes, we cc them on it. They will then remove the homeowners exemption, put them in a different tax classification, commercialized residential. From what I understand, that currently takes effect at the next fiscal cycle. I have had applicants, it might have even been one of them in the audience, that called the department and tried to remove their homeowners prior to coming in, and the real property tax told them, "We will not do that. Go through the application. If you're approved at that point, then we will."

Mr. Mardfin: Thank you very much. I just want -- I always like to make sure the applicants know that they're going to lose a significant financial advantage when they go this way.

Chair Crawford: John? Anybody else have a question? Okay, go ahead, John.

Mr. Blumer-Buell: I have a question. This is something I -- it's not just about your parcel but I've been curious about this with, you know, the Hawaiian community out here, and on your 16-acre parcel, you say in your testimony there are 4 owners in this hui, and a 3-acre portion belongs to me. Is this a hui or has it been condominiumized or -- I'm just trying to understand how that works.

Ms. Rutiz: We have sort of invisible borders. We all maintain certain parts of the land and I maintain the three-acre parcel of it.

Mr. Blumer-Buell: Okay. That's all I have, Scott.

Chair Crawford: Any other questions?

Mr. Mardfin: Are you -- Clayton?

Mr. Clayton Carvalho: Looking through the map, you have two other houses on the property including the one for rental?

Ms. Rutiz: Yeah.

Mr. Carvalho: That, and it says on the description that's the farm-worker housing?

Ms. Rutiz: Well, that's what the county categorized it. We all own -- I mean we live there as owners or the other owners live there. We're all farm workers.

Mr. Carvalho: Okay. Thank you.

Ms. Flammer: This might be the time to let you all know how our farm plan process works. They applied separately for a farm plan, and I told you it goes to zoning. That zoning, that permit reviewer, goes through and does a building permit check that's very thorough. Not only that -- so she did have some questions. I know Anya did have to provide all her building permits for all the properties. And then the inspector, different person, goes out and not only looks at the farming, but they also look at the uses, and the setbacks, and everything else, so at least I know, as a planner, when I get a farm plan back, that all the building permits, everything has been looked at by the department.

Chair Crawford: Not quite. Actually, I had one question for you myself. I know that there's, in order to access the property, it's a shared driveway, and this may be addressed in here, but is there -- have you received any either statements of opposition or for support from the other people who share the driveway?

Ms. Rutiz: No.

Chair Crawford: Okay. Are we ready for a motion? Any other questions from the Members at this time? In that case, I will hear a motion on agenda item D.1. Ward?

Mr. Mardfin: I move that we adopt the Planning Department's report and recommendation prepared for this meeting as our findings of fact, conclusion of law, decision and order, and authorize the director of Planning to transmit said recommendation to the Maui Planning Commission with the conditions as outlined in the report.

Chair Crawford: Do I hear a second to the motion?

Mr. Blumer-Buell: I'll second for discussion.

Chair Crawford: And the floor is open for discussion. John?

Mr. Blumer-Buell: Yeah, I just want to say that, you know, that their agricultural use is what we'd like to see more of. In some of the other B&Bs that we've approved, and STRs, they have an approved farm plan but it's really on the edge in terms of really food production and really using things agriculturally, so I just want to compliment what you've done with the ag. You're a good example of what should be done on ag land, and it doesn't have to be commercial. If we all had a couple acres with food production, we'll be fine when there's a -- if there's any sort of a food shortage, you know, you can feed yourself and your neighborhood, and that's what we want, and so mahalo.

Chair Crawford: Any other discussion? Okay, in that case, we will call for the vote on agenda item D.1. to recommend as -- with conditions as stated.

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

It has been moved by Commissioner Mardfin, seconded by Commissioner Blumer-Buell, then unanimously

VOTED: to adopt the Planning Department's report and recommendation prepared for this meeting as the Committee's findings of fact, conclusion of law, decision and order, and authorize the director of Planning to transmit said recommendation to the Maui Planning Commission with the conditions as outlined in the report.

Chair Crawford: And it passes with unanimous approval. Okay, moving on to item no. 2, D.2. This is:

Chair Crawford read the following agenda item into the record:

- 2. TORMOD ISETORP requesting a State Land Use Commission Special Use Permit in order to operate Ekena, a three (3) bedroom short-term rental home located in the State Agricultural District at 290 Kalo Road, TMK: 1-3-009: 013, Hana, Island of Maui. (SUP2 2013/0018) (G. Flammer)**

Chair Crawford: And, let's see, how did we do this? Start with the recommendation?

Ms. Flammer: Gina Flammer, the staff planner. Okay, so we have different options how to do public testimony. I've noticed in the past, we've done it with the staff report and then you have public testimony, and it works well. So I'm going to go ahead and I've given you the staff report. You can see that it's for a three-bedroom again, a short-term rental home this time, however, like the last one we just had, the short-term rental home, there were no triggers that would have sent it to the Hana Advisory Committee or the -- and the Maui Planning Commission, so what we're looking at today is the state land use special use permit. So again, this is, I know you guys all know where Kalo Road is, 290, this is at the top. You can see it right there. State -- bordered by state forest reserve up in that area.

I wanted to show you some pictures of what it looks like coming in. It's one of the better driveways I've seen in hana. And then you can see the pasture here, but I'm going to show some more pictures of it. This is really a piece of property that's carved out of some pretty serious forested land. You can see what they've done with it. Here's the property once you get to the top. And I'm going to show you what the inside looks like, the upstairs.

Okay, so here we come to the farm plan. In this particular case, the farm plan is only for the pasture area. The applicant was rather humble when they filled out their application and also for their ag usage for real property tax. There's quite a bit more in terms of agriculture and they actually do use the flowers. So I'm going to tell you a little bit about that as well. But first I'm going to show you what -- you saw, as we were coming up in that previous picture where the pasture area is, you can see here from the top where it is. I just wanted to show you in this picture too, it's hard to see on the screen, but I know for those of you looking at the pictures, there's a lot of African tulip and other native species that the owner has been working to reduce over the years. There's an example of it up there. I understand it's quite a full-time job keeping it where they are. The animals with that. You can see more of the pasture area here. You can see the African tulips that's moving in from the state forest. And then you can see some of the animals here.

And then she wrote -- I saw a description in the application about all the plants on the property. I was kind of surprised when I actually showed-up and saw how much, and then I received two letters from people that use the foliage and the flowers for special events. So again, I'm going to do my best to show you what's on the property just with some photos. And just to show you where the map is, we're looking at the green areas that are high. There's quite a bit packed into there. So -- and they're in really good shape, the flowers, so I can see how they can be either sold commercially or be donated to events and used. A lot of ginger on the property. And then you can see the banana as well. And you can tell they harvest just by looking at it. They recently planted I think those are olive trees. And then they have some other mature trees on the property. It might be a mac nut tree.

And then here are the two letters that I included in your staff report about the ag usage of the properties. One is actually commercially sold after the person uses them. The other one I think is donated more for special events. And then again, when we look at the agency comments, the State Office of Planning, and you've seen letters before where they do share concerns; in this particular case, there were no comments. Again, they looked at the ag use. Police Department had no concerns. And then real property, again, didn't have any. I will note that that 5.126 acres of pasture is classified for real property tax. And then public comments. There were no letters of protest. And then we had two letters of support that came in after the hearing so you have copies of those.

I could go right into the recommendation if that would make things easier?

Chair Crawford: Are there any, before she goes into the recommendations, are there any questions from the Members of the Committee? John?

Mr. Blumer-Buell: This is a question for Corp. Counsel and Gina. I wanted you to explain, with the STRs, the enforcement, the requirement to have, you know, I think we've -- I think when this ordinance passed originally, there was, you can explain this, a requirement to have a licensed real estate person within 15 miles or 15 minutes or something. Now, it seems to me, we overlooked that with the other applications, so I wanted to bring it up and just have you clarify that for us. Thank you.

Ms. Flammer: Okay. Thank you for the question. This is the same situation we have with that when we looked at the Orsulak application as well as the Smith application. We have, in this particular case, a property manager, caretaker, who's been doing this for quite a long time. The law requires that a licensed realtor be the manager if the resident doesn't live within 30 miles. In Hana right now, we have yet to have anybody come in with a real estate licensed person. And from what I understand, it's because you need a realtor broker behind you that's going to be willing to take on this kind of business. The two-year -- there's a clause in the short-term rental home bill that says in two years, we have to bring

it back with suggestions to the council. We're going to be bringing the bill, the short-term rental, we're also going to bring you the B&B at the same time, we're going to align those bills, but we're going to talk with the short-term rental about how to solve, it's not only the Hana problem, Lanai has a similar problem, they actually have some brokers over there but they're not interested in doing this type of business, so we're looking at some alternatives. What we've decided, the department decided to go ahead and accept, and I think we've got maybe six applications right now, so we're moving ahead the ones that have the land use component, we're moving ahead that permit so that when we're able to go ahead, when it meets the requirements for the short-term rental, that we can issue that permit, but the short-term rental home permit cannot be issued until that provision is either changed or is met. So it could be met in a couple ways: It could be met by the owner move in full-time to Hana, or it could be met by the law changing, and we have some ideas that we'll bring to you, and we've talked about this before, and we had the suggestion of a Hawaii bank account and, I think, and also maybe an accountant. So for this particular application, we're going to move forward with the state land use special permit because it has to go through you and the Planning Commission, but neither permit will be officially approved until the requirements are met for the short-term rental home. Kind of a long answer but --

Unidentified Speaker: ...(inaudible)...

Ms. Flammer: Neither one will be approved until that one requirement is met.

Mr. Blumer-Buell: Thank you for that clarification. And I brought this up. We heard in the I think it was the September 26 meeting last year, we had similar situations, and just as a suggestion for, I think, particularly for Hana and maybe other rural communities, is if you have -- is Robin and Gaylord still your caretakers up there? I mean I'd be satisfied and it would probably work when you have good caretakers, we had Stacy Lynch, who spoke on behalf of some people before, if they could be bonded somehow in lieu of having to get a real estate person within 15 miles. I mean if you can bond, you know, them as a responsible caretaker somehow, then that would I think satisfy everybody. Thank you.

Ms. Flammer: Just to give you a preview, so you can think about this, one of the suggestions has been a travel agent license, which requires some type of fiduciary responsibility with the money, so that may be one of the options that we bring to you. So this will probably be one of the biggest issues we'll talk about when I bring that bill back to you, probably in May, maybe early June.

Mr. Blumer-Buell: This is the alignment of the two bills, right? Okay, thank you.

Chair Crawford: Thank you, John. Ward?

Mr. Mardfin: Hi, Gina. First, let me comment on what you've just said. That sounds like a decent arrangement for people that are living on the property. I would be a little bit more cautious if we're talking about a situation where there are people, you know, two miles away that were in charge but weren't living on it, and I know Gaylord, because Gaylord and Robin live there, it's easy to do. I'd be -- I might have different concerns if they weren't actually living on the property itself. My main question for you: This is a historic thing, and I'm trying to remember what it was, but I actually visited the property maybe five or six years ago to see Robin about something or other, and I saw the angles and stuff, and pasture, which is about the best you can do on a lot of that, the problem then was there was a requirement that if it was more than five acres, you had to have \$35,000 in agricultural revenue. You're not getting that, clearly. What happened to that requirement? Did that just disappear?

Ms. Flammer: No. The requirement is still there, however, when we looked back at our SUPs, it's the project area that we're looking, we're not looking at the TMK. So I'm not aware of Hana projects that have come to you. The one I think of the most is on Molokai, we had a, gosh, I want to say it was concrete batching plant that was on some couple hundred acres of land but the batching plant is only on this small portion, so the permit is only for that portion and that's the lot area that's on there.

Mr. Mardfin: Thank you. I now recall that conversation because that took care of it. It's where the structure is, not the entire lot surrounding it ...(inaudible)...

Ms. Flammer: Unless the entire lot is being used. But typically with farming, you don't want your guest going and --

Mr. Mardfin: Thank you. I recall that. Thank you very much.

Chair Crawford: Okay. Any other questions from the Members at this time? John?

Mr. Blumer-Buell: This is an alignment question for our staff. Do you see any light at the end of the tunnel for the County Council and the Water Department and everybody else actually having a definition of "agriculture?" There is no -- they don't know what "agriculture" is right now at the County Council, legally. So do you see that coming around too?

Ms. Flammer: It's not only the council, it's all the counties and the state that are really struggling with this. We're going from an old time plantation community, and the laws were written to reflect that in the '60s, '70s, into a diversified agriculture. I do know that each of the departments, the Water, Planning, and Finance Department, all have different enabling legislation that all traces back, at some point, to state law. It's quite a challenge to align

all of those. It would require a change in state law and county law. It sure would be nice though if we could have one thing.

Mr. Blumer-Buell: Thank you.

Chair Crawford: Any other questions from the Members? Okay, at this time then we can go ahead and go into the department recommendation and then --

- a. Public Hearing**
- b. Action**

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

Ms. Flammer: I was just wondering if we have public testimony?

Chair Crawford: How did we do it last time? We can do it either way, but if anybody would like to testify now, you can. Sometimes the testimony can inform the recommendation, sometimes the other way around. Anybody would like to provide testimony? Seeing none at this time, then we'll go ahead and as for the department's recommendation.

Ms. Flammer: Okay.

Chair Crawford: Yeah, yeah, close public testimony, officially, and now ask for the recommendation, and then we can have questions for the applicant if anybody has any.

Ms. Flammer: Okay. Great. So the Maui Planning Department recommends approval based upon the following seven conditions, same conditions that we just discussed for the last project. I always like to note no. 7, the farm plan has to remain implemented.

So in consideration of the foregoing, the Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the department's report and recommendation prepared for February 20, 2014 as its findings of fact, conclusion of law, decision and order, and authorize the director of Planning to transmit said recommendation to the Planning Commission.

Chair Crawford: Okay, having heard the recommendation, does anybody have questions for the applicant? Ward? Would you just come to the microphone and say your name when you respond to the first question.

Mr. Mardfin: Hello, Mr. Isetorp?

Mr. Tormod Isetorp: Isetorp.

Mr. Mardfin: Isetorp. Excuse me. I'm going to ask you the same question I asked the previous person. We have a crying need for long-term housing here in the Hana community, there are teachers and all kinds of people that need long-term housing, have you ever considered using your place for long-term housing as opposed to short-term rental?

Mr. Isetorp: I'm aware of what you're talking about, but in my case, if we do, I would not be able to use the place, so that's simply the reason as I'm getting older and older and up in years, I like to and I am spending more and more time here, so that is the reason why I would not consider that.

Mr. Mardfin: Thank you very much, Mr. Isetorp.

Mr. Isetorp: Sure.

Chair Crawford: Any other questions for the applicant? Seeing none, thank you, Mr. Isetorp.

Mr. Mardfin: Ready for a recommendation -- or a motion?

Chair Crawford: Yes. We -- I will hear a motion on the recommendation.

Mr. Mardfin: Regarding the state land use commission special use permit to operate Ekena, a three-bedroom short-term rental home, I move we approve the and adopt the recommendations -- we adopt the Planning Department's report and recommendation prepared for this meeting as the findings of fact, conclusion of law, decision and order, and authorize the director of Planning to transmit this recommendation to the Maui Planning Commission.

Chair Crawford: Anybody would like to second the motion?

Mr. Carvalho: I will second the motion.

Chair Crawford: Thank you, Clayton. At this time, the floor is open for discussion if anybody has any further discussion.

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

It has been moved by Commissioner Mardfin, seconded by Commissioner Carvalho, then unanimously

VOTED: to adopt the Planning Department's report and recommendation prepared for this meeting as the Committee's findings of fact, conclusion of law, decision and order, and authorize the director of Planning to transmit said recommendation to the Maui Planning Commission.

Chair Crawford: And the motion is passed unanimously. Moving on to agenda item D.3.

Chair Crawford read the following agenda item into the record:

- 3. GALE and MICHELE NOTESTONE requesting a Bed and Breakfast Permit in order to operate the Hana by the Bay Bed and Breakfast, a three (3) bedroom bed and breakfast home (B&B) located at 4888 Uakea Road, TMK: 1-4-014: 005, Hana, Island of Maui. (BBHA T2013/0002) (G. Flammer)**

This matter requires Maui Planning Commission review because there is a permitted Bed and Breakfast operation within 500 ft, of the subject property,

Chair Crawford: And we'll start by having the report from Gina.

Ms. Flammer: Okay. I'm Gina Flammer, the staff planner, again for this one. This time we're looking at a bed and breakfast home permit. It's zoned residential, so we're not looking at property on ag land this time. And the trigger for the Maui Planning Commission is there's another one within 500 feet, even though there were no protests, it still comes to you to take a look. And I just want to take this moment to let you know that the Maui Planning Commission listens to what you have to say. One of the members approached me after the meeting, after our last one, to tell me that she reads all of the minutes and really cares about what you guys -- wanted me to let you know that. I also want to remind you that when we're dealing with these B&B permits and short-term rental home permits, they look at the character of the neighborhood. We're the department, we do our best, we're your staff, so we provide you with information, but, ultimately, you're the community, you know, your neighborhoods, your community the best, so we're really relying on you and your knowledge of the area.

So with that, I'm going to open it up. So here's the house. We have the one-bedroom ohana on the front; the house is in the back. The permit is for the two bedrooms in the

main house and then one bedroom in the ohana unit. Here's the map. Again, this is more for the Maui Planning Commission so they can see where it is. Here's the main house. I think the two bedrooms, they're located right down here. So now we're looking at the main house. Here's the one-bedroom cottage. You can see the parking that right out in front of it. Here's the driveway. And then I just wanted to show the fire hydrant. We have a commission member who's interested in fire safety. I wanted him to see that. And then I wanted to just show you the neighborhood. So this is as we're going towards the police station. That's Joe's Place right down there. This is as we're looking in the other direction towards the bay, or towards where we are right now.

Okay, so how do you define the character of a neighborhood and why are we doing this? In our restrictions and standards, we have a lot of restrictions, a lot of standards, they're really cut-and-dry, really easy; it can only be under six bedrooms, you must have ownership -- legal ownership of the property, etcetera. Those are pretty simple. We make sure all those are met before they even come in for the application. It does give us some guidance, however, in two -- well actually, in this case, in one different area. It says, "The home shall not create any impact greater than what is there now, and it shall conform to the character of the neighborhood." I will tell you, often when we're looking at these, the character of the neighborhood, we're looking more at does it blend in to a residential area? In this particular case, we're really looking at the character of the neighborhood as a mixed-use neighborhood. This is going to be one of the more clear-cut cases you're going to see. We're going to see ones in the future that there's not a lot to look at. We're really going to rely on your understanding, and you're probably going to be looking do they blend?

In addition to those, what we just saw, the department, this was during the Jeff Hunt Directorship time, he established some criteria to guide us in what to look at when we're looking at them. This was adopted by the Maui Planning Commission. When we did the short-term rental home bill, we actually codified some of these or codified some of these, and when we do the alignment between the two bills, you're going to see us take the short-term rental home criteria, which are real similar, and we're going to suggest that they get put into the bed and breakfast. But for today, we're going to go ahead and analyze based on this as well.

Okay, so we take a look at, you know, the number and distance of the particular parcel to other B&Bs. There's two within a 500-foot map scenario, and I'm going to show the maps in a minute. None of them are adjacent though. You know, I have seen a tendency sometimes you do have two next door to each other. There were no protest in this time. I tend to notice that you learn your character of your neighborhood when you get protest letters. People will be very clear about letting you know how it doesn't fit in. We didn't have that in this case. And existing or past complaints about the rental operation; well, this applicant has not rented. They have lived there though. They do know their neighbors. Also, our third one is: Existing or past noncompliance with government requirements. That

could be anything from having a deck in the setback, in the shoreline setback, anything like that. There have been no violations of any kind for this particular property.

Here's the map that shows you where the two other permitted bed and breakfast are. We have John Romain's Bamboo Inn, and then Hana Bay, which is the Collins. I did put in there some maps to show you, I figured you're probably curious at this point where are all the B&Bs, and this just shows you the whole community plan area. And then I gave you the list of the ten. I start with the Rayners because the letter, it's in the process, the approval. It's been approved by the Maui Planning Commission. I thought you might be interested also in the short-term rental homes, so I did include a map showing you. There are two short-term rental homes along that street as well. There's Tutu's, and then there's Hana Bay, the Ogilvies. Those are almost next door to each other. And then I thought again, you might be curious about the whole community plan region, so I let you know kinda how they're spreading out. I will let you know, in both B&Bs and short-term rentals, we're finding island-wide that you do have some concentrations of some in some communities; that might just be the way things developed over the years, but again, you know, you're taking a look at that when they come to you to see is that appropriate? Does it fit? I gave you list also of all the short-term rental homes, I know we're looking at a B&B today, but I thought you might just be curious.

Okay, so again, when we're looking at the character of the neighborhood, what are we looking at? In this particular case, I took a look to see, and, you know, just from coming out here all the time and working with you guys, I know there are nonconforming vacation rentals along that street. Joe's Place is one of them. The Nakamura's just got theirs, which I believe is around the corner. There's another one, which I don't know have come in officially or not, it's along that street. There are two existing B&Bs, two existing short-term rental homes that are permitted. There's also a mix of zoning and a mix of community plan designations in that area.

So I gave you the community plan maps, just so you could take a look. They got some multi-family in the area. In the Maui Island Plan that we just went through, we established directed growth boundaries: small town, urban, and rural. This particular parcel is in the small town boundary, and then this is the first time I've seen this, but I have a community plan policy that speaks specifically to discouraging rentals outside the urban area, so I tried to take a look, is this the urban area of Hana? And that's again, you know, where we would need your expertise. I did the best I could.

So I gave you a pictometry map here, it's not in your report, but it's in the powerpoint. It kinda shows you all the uses. We have the Maui Hana Kai Condos, I think is what they're called. It's almost exactly across the street. Joe's Place is right up three parcels down. We have the Latter Day Saints Church that's up here. We have the Cultural Center that's more in this direction. Hana Kai Maui Resort Condominiums, that's what's almost across the

street, and that's an A-1 zoning with a multi-family community plan designation. So that's a nonconforming use 'cause they do short-term rental that you can see right from their front yard. We have Joe's rentals right down the street. I'm not sure how long that's been there but at least 20 years to get the nonconforming designation. Actually 20 -- I think '91 or '89, it was one of those two, it had to be in existence. I talked about the Bamboo Inn Bed and Breakfast, John Romain, that's right down the street, and then the Collins is right down the street in the other direction. Both are three-bedrooms. The Hana Bay House is a short-term rental, and then we have Tutu's House that are all on the same street.

And then I gave you the community plan map so you can take a look. We're working on it in color, just so you know. It's much easier to see when it's in color but it's not released to the public yet. So you can see the hotel designations, you can see open space, single-family, SBR, service business residential, park area, multi-family. It's really quite a mix. Residential zoning.

And then I also gave you the Maui Island Plan. I thought you might be kinda curious where some of these other small town, where the boundaries are, and so you can see where the boundary is on this one.

And then I, in your staff report, is we always put in the different community plan policies. I wanted to highlight the one, and I know this was adopted quite a while ago, but it does talk about discouraging uses outside of this particular area. You could read that to mean this is the preferred area for the community, but again, that's kind of your kuleana. And then I just let you know that it could be considered the urban part of Hana.

So again, agency comments. No Police Department comments. Real property tax didn't have any comments. And then public comments. This particular application was sent to all neighbors within 500 feet twice. I did not receive any letters during either one of those mailings. There were no protests that were received, and we have two letters of support for the application. Thank you.

Chair Crawford: Okay. Clayton, question regarding the presentation?

Mr. Carvalho: With the glut of bed and breakfast and short-term homes, both approved and coming up, is there -- will that affect our voting in the future, basically, because we have so many on that -- on that area, especially if you consider what it says in the community plan policy, it does say discourage transient rental accommodation uses outside? Does that mean we're going to be encouraging so many inside?

Ms. Flammer: I remember when we were first talking about the bill and we were talking about the community plan policy, and you guys had a short discussion about do we really want them all along this road? I will tell you that it's in the beginning when you don't --

when you're not -- your cap is 48, it's easy when you're not at 47, looking at the last one. You've got a lot of room in your cap. You're going to see some concentrations in some areas, and I think you need to ask yourself: Are you comfortable with that? Do you want them evenly spread out? You've got a cap, hard to legitimately deny underneath the cap. So it's a question that you really need to ask yourself: Is this what you want to see in the area? I would have to say that, as the department taking a look at the criteria, does it conform to the character of the neighbor, this neighborhood does appear already to have been an area where just naturally the market forces -- drove that kind of business right into it, and I guess the community was comfortable with it in the '90s, you're seeing the outcome of it. I don't know. It would be your decision now to decide is it what you want.

Chair Crawford: Any other questions from the Members at this time on the presentation?

Mr. Blumer-Buell: I have some --

Chair Crawford: John?

Mr. Blumer-Buell: Some questions. Thank you, Scott. I want to make a few comments to the, you know, I am very concerned, and this is just to take notes for when we're going to align these things, I'm really concerned that we're getting administratively approved B&Bs, and then when there's an STR right next door, there seems to be no relationship. I mean they should all be considered. If you look at Hana Bay, we have, you know, B&B, STR, B&B, and so forth, approved administratively, and then you get into we have a number illegal vacation rentals, so, you know, we've been asking this Committee for enforcement, you know, as part of our Euclidean zoning scheme, enforcement is part of that. So I really, you know, I'm not happy with how this thing has developed. The -- I worked on the 1994 Hana Community Plan and I want to read you something out of infrastructure or physical infrastructure, and this is out of Liquid and Solid Waste, it's under no. 10 on page 22: "Develop and implement a comprehensive waste management plan, which includes reduction, recycling, and reuse of solid waste and waste water as a major component." And the community, in the last '80s, worked on, we had the University of Hawaii Environmental Studies program come over, we worked on a low-tech wastewater system for around Hana Bay. And so there was -- it almost made it into the six-year budget for the county a couple of times. It's been, that particular waste water study, has been real close. It should be done. And that's something that, when you hear the -- well, we're kind of off base at this point, I think big time, when you see the thing that says discourage vacation rentals outside of the urban area, there was an expectation that we'd have the waste stream and waste water dealt with in Hana. It's never been done. Now it's, you know, it's -- there's a certain -- it makes sense to be looking on, you know, some of the ag pieces we've approved. The impact is a lot less than having it in Hana Bay. Right now, we have more than 100 cesspools going into Hana Bay. We have a injection well right on the ocean. We have a history from Dr. John Mink, Patsy Mink's husband, of documenting

high levels of chloroform bacteria in front of the Hana Kai. So I'm saying that, you know, we really need to look at this I think urgently and, you know, really have the community re-look at this, and so it's like it looks to me like the whole place is either, you know, B&Bs, STRs, or illegal vacation rentals. Where's the enforcement? Where's the plan? So I'm not happy with the way things are developing at all, and this is not specifically about the Notestone's project at all, this is -- these are generic problems the community's been looking at since 1982. The first Hana Community Plan passed in 1983 has language in it regarding a waste treatment system. It's never been one. We're all, you know, Hana Bay's our community gathering place so we need to, you know, I just think let's be aware of it. I'm glad that there's going to be this realignment of these bills.

Now, the last point I wanted to make, and I think this is besides allowing STRs and B&Bs right next to each other, and they don't seem to trigger any kind of a hearing thing, I have a very specific example I want to give you of administrative approvals, I don't like them, that's on the permitted short-term rental and Hana Community Plan, this is Exhibit 10, on the Notestone's application, no. 6 is: Hana Bay House, Douglas and Mrs. Leslie Ogilvie. Now, this should have come before the Hana Advisory Committee, and because the rules let them do it administratively, they didn't have to come to our Committee. Now, here's a very specific thing that I would have brought up if it had been in front of us. I think everybody in this community knows that, you know, if you go down towards John Romain's Bamboo Inn, you know, take a look at all the -- where people are walking, there's a lot of residential people walking to Hana Bay from that end of Uakea Road. Same thing on the mauka side of the road, from the Notestone's and Joe's Place down to the crosswalk that the kids use that out of the subdivision. The thing that I would have brought up, and it can still be done peacefully and suggested, and the Hana Bay House has planted out that whole area on the roadside of the rock wall. They have planted out, at this point, people's ability to walk safely in that area. And somehow there's also a berm that came in there that makes it dangerous to walk in there too. Now, I've talked with Public Works Director, David Goode, about this, but, you know, we need, as a community, to decide how we can make that area safer with all this traffic. We have a very dangerous situation right at Uakea Road and Hana Bay, but we have a three-way stop there and perhaps it should be a four-way stop, you know, and this is all tied-in with this B&B. If we had a four stop sign, it would slow the traffic down. It's -- you know, people -- there's some people, tourists and locals, that go speed-up going down the hill past the Cultural Center and just jam-up the hill toward the Akule Hale. And so I think in thinking about pedestrian traffic and this prevalent in that area, and the B&Bs and STRS, we really need to be able to address that in this community and, you know, I think, you know, we'll talk to those people or whatever, and I think, you know, that it's not only that they've planted a few things right where people used to walk, but there's also this black-top berm that's now there too and that makes it dangerous, you know. So that's quite a mouthful but those are my concerns for the whole area. Thank you.

Ms. Flammer: Can I just ask, are you talking about the public right-of-way along the road, or are you talking about the unofficial route to Hana Bay that cuts through there?

Mr. Blumer-Buell: You know, I'm not sure if -- how wide the public right-of-way is and how much -- and, you know, where the boundaries. That would be a good thing to find out. I don't know like in the case of the Hana Bay House, if the county easement goes all the way up to the rock wall, then they shouldn't -- then they shouldn't be planting there in the first place. If you go walk along that whole area, there used to be a little bit of a blockage there in front of Andy Oliveira's house, which is now being converted, and they kinda cleaned that up, but, you know, if you go, if you walk from Hana Bay all the way to John Romain's or the dump road, just everybody's keeping that walkway pretty open; occasionally, the blue-tile house, the Wilson's, need to trim back their bougainvillea, but generally, there's a walkway safe for people to use just as there is on the mauka side. So, you know, I'm just -- I mean, you know, I've seen some -- I've been in some close calls at that three-way stop where I'm coming down towards Hana Bay and you can't really see around the Medeiros house, and you inch out there and somebody comes tearing down there, it's been close for me a few times, and there's lots of kids from the subdivision that are using that area. So let's think about what we can do to address those kinds of things in the new bill. And so that's, you know, that was generic things I wanted to throw at you. It's a good opportunity. And the last thing is, you know, enforcement, enforcement, enforcement. You know, we have people that came in today, thankfully, but one person's been running an illegal operation for 15 years, another one for 9 years, you know, we know -- I know that there was supposed to be two inspectors hired last year. I don't think they've been hired. I mean what is going on? You know, we make these laws and the laws and the land -- I've been involved in land use planning because I've always thought it's the best way for the community to control our future. We can have what we want. And so, you know, part of the, like I said, the Euclidean land system is enforcement. I don't mean to confuse anybody, but the Euclidean is a reference to a case that went to the Supreme Court, I believe, in Missouri, and somebody challenged the very notion that communities could have zoning and planning, and the U.S. Supreme Court upheld that communities have the right to plan. So anyway, thanks for listening.

Ms. Flammer: If I could just have a minute to address -- first of all, John, I just wrote down what you told me about the public right-of-way. I'll talk to our inspector about that. This particular applicant, without realizing it, had put a rock wall that was blocking some traditional access down to the bay, as soon as she learned about it, she removed everything. So she's -- I think maybe she's just unaware so it would be easy to talk to her about that. So I made a note to take care of that. Did you have any comments on this particular application or is this just general that I'm putting in for --

Chair Crawford: John?

Mr. Blumer-Buell: I wanted to inject these thoughts and ideas into the process today, and so you were talking about, you know, the realigning of the bills, and when Rick and Anya got up here, I made the comment about this report that's never been done. So I've kind of injected these things just to kind of inform, you know, our community discussion. And because a lot of these issues are in the Notestone's neighborhood, I think it's worth noting right now and --

Ms. Flammer: Okay. Thank you.

Mr. Blumer-Buell: I'm through with --

Ms. Flammer: Okay. The other thing I wanted to address, I just seen my note here, is the Maui Planning Commission has talked a lot about short-term rentals and bed and breakfast, and I also -- we also give them the short-term rentals when we're doing B&Bs, like I did with you. The reason the law doesn't include them is because the B&Bs continue to provide residential housing, so when you're taking a look at character of the neighborhood, caps, things like that, and its affect on long-term residential housing, the B&Bs are looked at differently because they're continuing to provide the residential housing. We'll see, when we go back to council and we discuss both bills at the same time, what they think, but that would be a good time then to make your comments also.

Mr. Blumer-Buell: Yeah, I have one last comment, and I have to bring this up. The caps for the Hana District were not endorsed by this community. The Hana Advisory Committee over and over said those caps are too high, and yet you have a County Council that has said, well, as soon as we get up to the caps, then we'll just approve more. Well, that's nonsense. I think I support the idea of some B&Bs and STRs, but, you know, that shouldn't change our neighborhoods, and that is what the concern is. So I think the cap really needs to be looked at too. I think -- I mean I'm not the only one that said it. They're way too high for Hana. I was at the County Council meeting when Bill Medeiros said, well -- he asked me at the County Council, he said, "John, weren't you part of the discussion group that came up with this?" And I said, "I was part of the discussion group but we never came up with those caps." So, you know, what was represented to the council was not accurate in the first place. So thank you.

Ms. Flammer: No, we included your recommendation to cut it in half to them. It might have even come from the department. I'll have to think back. I should probably give you an update on the enforcement also. We have a new administrator for zoning enforcement and administration. Once he come in, his first job was to interview and hire the two people. We got as far or he got as far as picking two people, offering them the job; from what I understand, they both accepted and then later declined, which sent him back to square one. Square one means you have to go back out to the community and get a list, a current list, so they're in process. I believe they've hired a trainee at this point. At some point,

we've gotta find some people. I think they might have rewritten the description to open it up to more people. But the department's actively working on hiring these people. But I tell the commission, almost every time, what your concerns are about enforcement, and they have the same as well, and so does council, actually.

- a. **Public Hearing**
- b. **Action**

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

Chair Crawford: Okay. Thank you. Thank you, John, for raising those concerns; putting them into the record; bringing them to the department's attention. And thank you, Gina, for your responses and for conveying the concerns and making sure that they're heard. At this time, we'll open public testimony if anybody would like to testify on this item. And seeing none, we'll hereby close public testimony, and then hear the department's recommendation and then we can have questions for the applicant.

Ms. Flammer: So after going through the analysis that we did in the staff report where we did our best to take a look at the character of the neighborhood, we saw that there were no protest letters. We did have some letters of support come in. We did look at the community plan maps. We went ahead and made a recommendation of approval. Now, you'll notice that the conditions for bed and breakfast and short-term rental homes are a lot more than they are for the state land use, I will let you know that we take these very seriously. To date, we've revoked two, they're short-term rental home permits, but we have revoked them for people not following. We do also -- I find we get many more calls about un-permitted operations, but we have had calls about permitted ones and our enforcement division does followup on that, and they followup on everything. We had a complaint about five trash cans out in front of the short-term rentals home, and our investigator was assigned that complaint, and he did followup and we all learned you can have six trash cans in this particular area. But we do take those very seriously. But, you know, I can go through each one of these, but there's quite a few. What I'd like to do is if you have any questions, you can go ahead and ask me about any of these. I will say the permit does limit it to a total of three guest rooms. We're very specific about that. The B&B can't operate when the owners aren't around unless there's an unexpected absence in which they need to appoint somebody else and let us know who that is. We can come at anytime for a periodic inspection. We do get RFSs where we do take a look at renewal time or revocation of a permit. They have to have all the smoke detectors, fire extinguishers. I think you all know where Gale works. That wasn't a problem. And that's about it. Oh, I see a little change here. So that's what we based our recommendation upon is all these conditions provided with the other aspects that we looked at.

So in consideration of the foregoing, the Planning Department recommends that the Hana Advisory Committee to the Maui Planning Commission adopt the department's report and recommendation prepared for today's meeting, February 20, 2014, as its findings of fact, conclusion of law, decision and order, and authorize the Director of Planning to transmit said recommendation to the Planning Commission.

I will also share your concerns again with the Planning Commission that you just mentioned. I wrote down so far: enforcement, enforcement, enforcement; a concern about administrative approvals; looking at short-term rentals and B&Bs as the same; and a need to look at overall community infrastructure. Does that sound accurate to you?

Chair Crawford: Specifically, the issue of waste and the traffic or --

Ms. Flammer: Waste and traffic.

Chair Crawford: And pedestrian traffic and the three-way stop sign.

Mr. Blumer-Buell: ...(inaudible)... thank you, Ward. Yeah, the treatment -- the idea of treating our wastewater is very important to what's going to happen to the quality of Hana Bay and the community. I've talked with a number of people in the community and some people go: We can never afford to spend money to hookup to a treatment system, and I always say to them, "This is a problem created by the county, the state, and the feds. It shouldn't be a burden on the community to have to fund this infrastructure." This is a federal and state issue primarily and that's where the money should come from, you know. Thank you.

Ms. Flammer: If I could just make a quick comment. One of the interesting things about these bills, besides making people farm before they can do this use, is we make sure that their wastewater infrastructure is up to code, so they have to have septic or the cesspool has to be only for one dwelling. With residential use, the county doesn't take a look at that, but for this particular use, we do.

Chair Crawford: Okay, thank you, Gina. Any other questions regarding the recommendations? Clayton?

Mr. Carvalho: A quick question. You said that these approved short-term rentals and bed and breakfasts are subject to periodic inspection as well as any complaint or violation?

Ms. Flammer: Yeah. We have the right to do that. We need to present credentials and come at an appropriate time.

Chair Carvalho: Any other questions from the Members? Ward?

Mr. Mardfin: Maybe I'm just not seeing it now 'cause I think I thought of it earlier, but where does it talk about having to give up the home ownership exemption?

Ms. Flammer: It talks about it -- oh. I don't think it's a condition. It's actually written in the law. It's one of the standards and restrictions in the law. It's the Real Property Tax Division, however, that's in charge of implementing that, so when we do the cc'ing is when it happens.

Mr. Mardfin: Oh, here I see it.

Ms. Flammer: I was going to say if you give me a second.

Mr. Mardfin: Section L, Conclusions of Law, page 3, item L: Single-family dwellings used as bed and breakfast shall not qualify for real property tax exemptions.

Ms. Flammer: Yeah. That's it.

Mr. Mardfin: Okay. So they know about that. They're going to lose their 200,000 exemption.

Ms. Flammer: So that's not a policy out of Finance, that's actually in the code.

Mr. Mardfin: Would you -- my real question -- well, that's a real question too. Recommendation no. 6, could you explain that a little bit?

Ms. Flammer: Okay, I'll start with a little bit of a history. We originally started with the recommendation that said the owner cannot operate anytime they are not on the property. We had one or two cases of medical emergencies and our director took another look and thought, boy, if we've got a family member that's injured on the Mainland and the person needs to take off that night and they've got guest coming in, what are we going to do? So this is where we came up with this. We also had somebody that needed to leave to go for medical treatments, so we worked on that, and that's how we came up with this. We do -- I've had a couple cases where I've had applicants, this came into play, and what they did is they let me know who the new manager was. With the short-term rental home, they're -- oh, actually, they are required under here, it says in the law for short-term rental, but this is just a condition. Again, when we align it, it'll be the same. It does that they have to notify those right next to them and across the street, when they're gone, who the person is. For the short-term rentals that have a sign, actually you have B&Bs signs in Hana, that phone number would probably need to reflect who the person that could deal with a problem if there were one. What I do when I get that is I go ahead and put it in the public KIVA system so that anybody can look it up at that point.

Mr. Mardfin: So if they decide to go on a two-week vacation to Disneyland, they just either don't rent it out to short-term rental during that period or they find some acceptable substitute and they've gotta clear it with your office?

Ms. Flammer: Yeah. This does say "emergency," however, so I don't -- we'd have to evaluate it on a case-by-case.

Mr. Mardfin: Okay. Thank you. I've just noticed that and I was just curious how that would ...(inaudible)...

Ms. Flammer: It's a little different than when you were on the commission. We try to evolve.

Chair Crawford: Any other questions from the Members on the recommendations? Okay, seeing none, at this time we'll ask the applicants to come to the microphone and if anyone has any questions for the applicants. Ward. And go ahead and state your name when you answer.

Mr. Mardfin: I enjoyed reading all these recommendations about the fire extinguishers and smoke detectors, and I figured, you're not like to mess-up on that side of things.

Mr. Gale Notestone: I hope not.

Mr. Mardfin: Let me get to the question I always ask you all. You know we need long-term rentals in this community.

Mr. Notestone: I realize that.

Mr. Mardfin: I'm going to ask it a slightly different way for you.

Mr. Notestone: Okay.

Mr. Mardfin: You're in the top house, and you're on the top floor, and I can understand why you wouldn't necessarily want to somebody long-term living right below you going in and out.

Mr. Notestone: Correct.

Mr. Mardfin: You might consider the ohana cottage for a long-term rental, and below your house for the short-term, I'm not forcing it, I'm just like it to be something you might think about at some point, and any response at this time?

Mr. Notestone: Well, in actuality, the -- and thank you for ...(inaudible)...

Chair Crawford: And just say your name for the record.

Mr. Notestone: My name's Gale Notestone; my wife, Michele. And thanks. Well, first of all, to answer your question, our ohana, we have rented out long-term, and every time we have rented it out, the tenant always asked for a discount; one, because they don't make enough money to afford the rent we would like to charge, and what we've found over the years is the cost of wear and tear, utilities going up -- it's where we're just breaking even, and sometimes losing money when it comes to, you know, big appliances, and so the wear and tear is one issue, and the lack of jobs in Hana is another issue but that doesn't really affect my application, but I think there's a need for jobs in Hana and I think with a bed and breakfast, which I plan on making it successful, it could add actually two jobs, one in cleaning and one in yard maintenance. I've perceive, possibly, that happening. So, yeah, the wear and tear, not really -- and plus the cost of our mortgage is very high. When we first built the main house, we thought to build a ohana cottage and rent it out, thus, helping with the mortgage, and it's just -- we're not turning a profit, if you will, and I'm a firm believer that "profit's" not a dirty word.

Mr. Mardfin: As a professional economist, I agree "profit's" not a dirty word. Thank you very much for your answer.

Mr. Notestone: I have a couple other things I'd like to say.

Chair Crawford: Yeah, please, go ahead.

Mr. Notestone: I wrote these things out. I'd like to support Mr. Blumer-Buell's motion on the intersection of Uakea and Keawe. I mean a three-way intersection -- I mean a three-stop intersection, I've never seen one ever in my life, and, yeah, it's remarkable we don't have more accidents there, so I'm in full support of making that a four-way stop. And we do have a septic system and we recycle. There you go. Anything else?

Chair Crawford: Thank you. Any other questions from the Members? Okay, seeing none, thank you very much.

Mr. Notestone: Thank you.

Ms. Anjoleen Hoopai-Waikoloa: I have a comment.

Chair Chawford: Yes, go ahead, Anjoleen.

Ms. Hoopai-Waikoloa: I just have a comment for the record as far as the intersection of Uakea and Keawe. It used to be a four-way stop. When I grew up, it was once a four-way stop. Correct? Right? I remember, growing up, it was a four-way stop and I don't - I don't remember what happened, if it was a car that banged it, or something that it went down and never came -- it just went away. A hui hou. But --

Ms. Michele Notestone: Can I testify and say I support that too? Do you need more support?

Chair Crawford: You can if you'd like.

Ms. Notestone: Because ...(inaudible)...

Chair Crawford: Go ahead and just say your name for the record.

Ms. Notestone: Michele Notestone. I'm a paramedic. So not just because it's in our community, I see it. I'm real uncomfortable with that intersection, especially since Ulu kind of built her rock wall higher and made it safer for her grandchildren and her family, which I totally agree on, but they kept this where this stop sign back in the same location, which I think it should be actually moved forward a little bit more so you have more visual access to the other directions of traffic coming, especially coming from Uakea, you know, towards the ballpark. It is very dangerous and I do think it should be a four-way, and I also think the stop sign should be moved coming down towards Hana Bay, in front of Ulu's house, Medeiros's, so I agree with John that should be changed.

Chair Crawford: Thank you, Michele. Clayton?

Mr. Carvalho: Just as a comment. There was a stop sign there, and there was no fencing, and the rock wall was, basically, brought up, it was extended, extended out and extended up, so there used to be a sign there but I mean she has a right because of the safety of her grand-kids to put that fence there and that rock wall, but, for some reason or loss in the translation that when that sign went down, it never came back up and she built around it.

Chair Crawford: Okay, any other questions or comments from the Members at this time? Okay, then I will hear a motion on the recommendation. Ward?

Mr. Mardfin: This is not a special land use permit, this is a bed and breakfast home permit to operate the Hana by the Bay B&B, three-bedroom bed and breakfast, and I move that we adopt the Planning Department's report and recommendations, including their conditions, prepared for the February 20, 2014 meeting, as our findings of fact, conclusions of law, decision and order, and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission.

Chair Crawford: Do I have a second?

Mr. Carvalho: I will second.

Chair Crawford: Thank you, Clayton. Any discussion on the motion at this time? John?

Mr. Blumer-Buell: Well, I just want to speak in favor of Ward's motion and thank the Notestones for coming in. You're both an asset to this community, people know that, and we wish you success.

Chair Crawford: Any other comments or discussion, at this time, on the motion? Ward?

Mr. Mardfin: Yeah, I just want to say while I understand John's concerns about waste and water and all the rest of the stuff, and I support him on it, basically, the community plan says this is where we should put these things, and that whole Lower Uakea Road is turning into our short-term rental area - we've got Hana Kai Apartments; we've got Joe's Place; we've got John Romain's place; we had a place overlooking the pond that but because it's owned by an organization rather than individual, they're not using that for long-term rental, about the only people that I can think of not there are the Cooper's place, but sort of by default, that's turning into our area for short-term rentals, and it's in our urban center, and I don't hear a lot of complaints from people about it, so I have no problem voting in favor of this motion.

Chair Crawford: Thank you, Ward. Any other comments or discussion on the motion? Okay, seeing none, I'll ask for a 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: to adopt the Planning Department's report and recommendations, including their conditions, prepared for the February 20, 2014 meeting, as our findings of fact, conclusions of law, decision and order, and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission.

Chair Crawford: Motion has passed unanimously. Thank you. Okay, now we move on 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**
- 3. Filing of Timely Financial Disclosure Forms.**

Mr. Yoshida: So thank you, Mr. Chairman, Members of the Advisory Committee. The department is processing two applications in the region, again one for the proposed quarrying at Kuwaipapa, county special use permit, and a county special use -- oh, state special use permit, and a county special use permit for the co-location of a antennae for a cellular company at the Hana Airport, but we haven't progressed to the point where we can schedule either application. The other thing is, well possibly, the two-year, as Gina was mentioning, the two-year review of the short-term rental home ordinance. So that seems to be more imminent than the hearing on the two applications. So I guess we won't schedule anything before probably May, and they probably will on the -- your comments on the short-term rental home ordinance.

Chair Crawford: Okay, thank you. Questions? Ward?

Mr. Mardfin: Two things. You included or somebody included four ordinances in our packet. Was that things that we're supposed to comment on today or some future meeting, or that was just for information?

Mr. Yoshida: I think these were ordinances that were passed by the council.

Mr. Mardfin: So there's no need for us to comment on them. It's for our information?

Mr. Yoshida: Yeah. They are now -- again, as you know, the department has been trying to update the Title 19 of the County Code in a systematic fashion, so the council is hearing some of these revamping of the business districts, and the light-industrial districts, and the hotel districts, and so forth.

Mr. Mardfin: Okay. It looks like Joe Alueta's been busy.

Mr. Yoshida: Yes.

Mr. Blumer-Buell: A comment on that is that remember the county gave us all these binders that are about four-inches thick, so what we got today are probably revisions that we should insert there if they're replacing what we already have, just, I mean, that's what they are, part of chapter -- Title 19 and so forth, yeah?

Mr. Yoshida: Yeah. They're updated and, periodically, I guess the Maui County Code is available online, so it is updated every few months. But again, this is what is in existence today as passed by the council. And the other thing --

Chair Crawford: One moment now. Clayton, do you have a question?

Mr. Carvalho: No.

Chair Crawford: Oh, okay. Go ahead.

Mr. Yoshida: Oh. So the only other thing was we're not experiencing any change over in membership, as the commission year starts on April 1, so all of the existing members are will retained for the next board and commission year. However, we're reminded to -- we're asked to remind all boards and commissions, if they are required to file financial disclosure forms, that they do it in a timely fashion because I will remind you that, several years ago, we had a council member who filed his financial disclosure form on the day before the general election, and that became quite a political issue before the Board of Ethics, so we don't want to get into that situation until we get into that situation, but remember to file your disclosure forms in a timely fashion, but you don't have to file it so --

Mr. Mardfin: Mr. Chair?

Chair Crawford: Okay, thank you for the reminder. Ward?

Mr. Mardfin: Did you bring scare forms for us today?

Ms. Hoopai-Waikoloa: Can you explain that form 'cause I've never heard of it?

Mr. Mardfin: When you got appointed, you filled out a financial disclosure form. The annual updates are actually fairly easy, I think. You only have to say if something's changed. But it would be nice if we had them or do we download these things somewhere?

Ms. Esmeralda: The advisory committees don't.

Mr. Mardfin: The Advisory Committee doesn't? Oh. Okay. I did as a Maui Planning Commissioner. I had to --

Chair Crawford: The Advisory Committee Members aren't required to file. John?

Mr. Blumer-Buell: Yeah, I was just going to add that I've served on this Advisory Committee several times and never been asked to fill out a financial disclosure, and this goes back probably 20 years I've worked with Clayton so --

Chair Crawford: Ward?

Mr. Mardfin: I was just confused because, as a Planning Commissioner, I did have to file them annually, and I just sort of thought I did, but I guess I don't now.

Chair Crawford: Clayton?

Mr. Carvalho: No, I just wanted to make a comment about a separate subject.

Chair Crawford: Yeah, go ahead.

Mr. Carvalho: It actually pertains to that recommendation of the Notestone's property. This is the first I've read of the caps for other areas, so we have the six areas, I don't know if you saw that, so Hana has 48. But if you look at the other areas, for one, Makawao, Pukalani and Kula, as one area, has actually 40, has a cap of 40. Paia and Haiku, 88. Wailuku and Kahului, 36. West Maui, 88. Kihei-Makena, 100. And we're somewhere in the middle of that. I mean I understand the need for jobs being created by these bed and breakfasts, but I don't know if that cap seems, as we discussed early, that cap seems a little too high, especially if we're considering in one area, Makawao, Pukalani and Kula to have a smaller cap, as well as Wailuku and Kahului.

(Committee Member Hoopai-Waikoloa was excused from meeting at 5:45 p.m.)

Chair Crawford: Thank you, Clayton. And Gina is taking note of your concerns and, John?

Ms. Flammer: Remember that when we talk about the bill. That can be an official comment.

Mr. Blumer-Buell: I would like to thank Clayton and the staff for continuing to keep no. 2 on our agenda, and that is, "Discussion of future Hana Advisory Committee agendas." If that's on every one of our agendas, then we have a chance to suggest something, for example, I suggested if we could look at the -- possibly look at the PK-4 condition zoning for the country club and golf course that was passed 17 years ago. In talking with the ranch manager, they don't want a golf course and country club. It sounds like they'll be willing to cooperate with the community to remove that from the community plan map. So, you know, this is just a good opportunity to keep that on the agenda and leave it open if somebody really had something timely. So thanks.

Chair Crawford: Thank you, John, for raising that issue. Any other Members have any other questions or comments at this time? If not, I'll hear a motion to adjourn the hearing. Ward?

F. ADJOURNMENT

Mr. Mardfin: Move to adjourn.

Chair Crawford: Do I hear a second?

Mr. Carvalho: I will second.

Chair Crawford: Clayton second.

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

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

VOTED: to adjourn the meeting at 5:48 p.m.

Chair Crawford: The meeting is adjourned. Thank you.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Scott Crawford, Chairperson
Clayton Carvalho, Jr., Vice-Chairperson
John Blumer-Buell
Anjoleen Hoopai-Waikoloa
Ward Mardfin

Excused

Ian Ballantyne
Ed Cashman

Others

Clayton Yoshida, Planning Program Administrator, Current Division
Gina Flammer, Planner
Richelle Thomson, Deputy Corporation Counsel